

Town and County of Nantucket
Board of Selectmen • County Commissioners

Robert R. DeCosta, Chairman
Rick Atherton
Matt Fee
Tobias Glidden
Dawn E. Hill Holdgate



16 Broad Street
Nantucket, Massachusetts 02554

Telephone (508) 228-7255
Facsimile (508) 228-7272
www.nantucket-ma.gov

C. Elizabeth Gibson
Town & County Manager

*AGENDA FOR THE MEETING OF THE
BOARD OF SELECTMEN
APRIL 6, 2016 - 6:00 PM
PUBLIC SAFETY FACILITY COMMUNITY ROOM
4 FAIRGROUNDS ROAD
NANTUCKET, MASSACHUSETTS*

I. CALL TO ORDER

II. BOARD ACCEPTANCE OF AGENDA

III. ANNOUNCEMENTS

1. The Board of Selectmen Meeting is Being Video/Audio Recorded.
2. Town Offices Closed Monday, April 18, 2016 in Observation of Patriots' Day.

*IV. PUBLIC COMMENT**

*V. NEW BUSINESS**

VI. APPROVAL OF MINUTES, WARRANTS AND PENDING CONTRACTS

1. Approval of Minutes of March 16, 2016 at 6:00 PM; March 23, 2016 at 6:00 PM.
2. Approval of Payroll Warrants for Week Ending March 27, 2016; April 3, 2016.
3. Approval of Treasury Warrants for March 30, 2016; April 6, 2016.
4. Approval of Pending Contracts for April 6, 2016 - as Set Forth on the Spreadsheet Identified as Exhibit 1, Which Exhibit is Incorporated Herein by Reference.

VII. CONSENT ITEMS

1. Gift Acceptances: Natural Resources Department; Human Services (Saltmarsh Senior Center).

VIII. CITIZEN/DEPARTMENTAL REQUESTS

1. Nantucket Land Council, Inc.: Request for Preliminary Review of Conservation Restriction Donated by The Nature Conservancy, to be Held by Nantucket Land Council for 130 Eel Point Road.
2. Great Harbor Yacht Club, Inc.: Request for Acceptance and Execution of First Amendment to Grant of Pedestrian Easement.
3. Request for Determination that Nobuchi, Inc. d/b/a Sushi by Yoshi, Located at 2 East Chestnut Street, is Not Detrimental to the Educational and Spiritual Activities of a Church or School Pursuant to Section 16C of MGL Chapter 138.
4. Request for Determination that Faros 17 Broad LLC d/b/a Greydon House, Located at 17 Broad Street, is Not Detrimental to the Educational and Spiritual Activities of a Church or School Pursuant to Section 16C of MGL Chapter 138.

IX. TOWN MANAGER'S REPORT

1. Auditor: Overview of Fiscal Year 2015 Audit.
2. Update on Wannacomet Water Company New Administration Building.
3. Department of Public Works: Playing Field Maintenance Update.
4. Department of Public Works: Review of Dukes Road Sewer Installation.
5. Fire Chief: Update on March 23, 2016 Moorlands Fire; Volunteer Program.
6. Review of Provisions for New Jetties Beach Concession Lease (2017-2020).
7. Monthly Town Management Activities Report.

X. SELECTMEN'S REPORTS/COMMENT

1. Appeal of Scallop Catch Confiscation and Associated Penalty (Pennel and Sharon Ames).
2. Review of Comments to Zoning Board of Appeals Regarding Surfside Commons (106 Surfside Road) 40B Comprehensive Permit Application.
3. Committee Reports.

XI. ADJOURNMENT

** Identified on Agenda Protocol Sheet.*

Board of Selectmen Agenda Protocol:

- **Roberts Rules:** The Board of Selectmen follows Roberts Rules of Order to govern its meetings as per the Town Code and Charter.
- **Public Comment:** For bringing matters of public interest to the attention of the Board. The Board welcomes concise statements on matters that are within the purview of the Board of Selectmen. At the Board's discretion, matters raised under Public Comment may be directed to Town Administration or may be placed on a future agenda, allowing all viewpoints to be represented before the Board takes action. Except in emergencies, the Board will not normally take any other action on Public Comment. Any personal remarks or interrogation or any matter that appears on the regular agenda are not appropriate for Public Comment.

Public Comment is not to be used to present charges or complaints against any specifically named individual, public or private; instead, all such charges or complaints should be presented in writing to the Town Manager who can then give notice and an opportunity to be heard to the named individual as per MGL Ch. 39, s 23B.

- **New Business:** For topics not reasonably anticipated 48 hours in advance of the meeting.
- **Public Participation:** The Board welcomes valuable input from the public at appropriate times during the meeting with recognition by the Chair. For appropriate agenda items, the Chair will introduce the item and take public input. Individual Selectmen may have questions on the clarity of information presented. The Board will hear any staff input and then deliberate on a course of action.
- **Selectmen Report and Comment:** Individual Selectmen may have matters to bring to the attention of the Board. If the matter contemplates action by the Board, Selectmen will consult with the Chair and/or Town Manager in advance and provide any needed information by the Thursday before the meeting. Otherwise, except in emergencies, the Board will not normally take action on Selectmen Comment.

EXHIBIT 1
AGREEMENTS TO BE EXECUTED BY TOWN MANAGER
UNLESS RESOLUTION OF DISAPPROVAL BY BOARD OF SELECTMEN
April 6, 2016

Type of Agreement/Description	Department	With	Amount	Other Information	Source of Funding
Professional Services Agreement	Board of Selectmen	Roselli Clark & Associates	Not to exceed \$312,500 over three years	3-year contract for annual audit services	Finance Dept budget
Grant Agreement	Town Admin	Massachusetts Cultural Council	(\$2,500)	FY 2016 Cultural District Initiative grant; requires matching funds	Matching funds coming from Town Admin
Professional Services Agreement	DPW	Hager-Richter Geoscience, Inc.	\$45,000 over three years	Engineering services for ground penetrating radar	Sewer Enterprise Fund; Art. 28/2011 ATM - CPC funds for Cemetery Commission
Independent Contractor Agreement	Town Admin	NCTV18	Not to exceed \$10,000	Shared position of Video Production Coordinator with NCTV18	Town Admin Prof. Services
Professional Service Agreement	Finance Dept.	Albert Risk Management	Not to exceed \$40,000 for less than one year	Consulting services related to bid for property and casualty insurance	General Insurance
Supply Agreement	Marine Dept	Metallic Ladder Manufacturing Corp.	\$11,638	Purchase of three removable aluminum ramps for beaches	Beach Revolving Fund
Service Agreement	DPW	New England Surface Maintenance, LLP	\$5,600	Removal of asbestos from 20 South Water St.	Art. 10/2011 ATM
Employment Contract	Board of Selectmen	C. Elizabeth Gibson	\$155,000 (base salary)	New 3-year contract (2015-2018)	Town Admin budget

CONSENT AGENDA ITEMS FOR 04/06/16 SELECTMEN'S MEETING

1. Gift Acceptances

Recommend the acceptance of the following gifts to Town agencies:

-- Natural Resources Dept: \$1,000 from Darcy Creech and \$4,121.87 from the component fund of the Community Foundation for Nantucket, Born to Be Wild Oysters, both for Shellfish Propagation Facility

-- Human Services: \$300 from Jeanne Riggs and \$25 from Gardner and Betty MacDonald for Saltmarsh Senior Center

Recommended Motion: To accept all gifts for their designated purposes, with thanks to the donors

Town Administration will ensure that letters of thanks are sent.

TOWN OF NANTUCKET NATURAL RESOURCES DEPARTMENT

2 BATHING BEACH ROAD
NANTUCKET, MA 02554

(508) 228-7230



Board of Selectmen
16 Broad Street
Nantucket, MA 02554

Dear Board Members,

On behalf of the Natural Resources Department we are requesting that the Board of Selectmen accept a gift of \$1000.00 from Darcy Creech and a gift of \$4,121.87 from the component fund of the Community Foundation of Nantucket, Born to be Wild Oysters. This donation will be used for the Brant Point Shellfish Hatchery.

We will be in attendance at the upcoming meeting of the Board to answer any questions that you have in regards to this gift and program. Thank you for your attention to this matter.

Sincerely,

Jeff Carlson,
Town of Nantucket
Natural Resources Coordinator



MEMO

Date: March 25, 2016

TO: Rick Atherton

FROM: Laura Stewart, Saltmarsh Senior Center, Program Coordinator

RE: Request for acceptance of gift

I am writing to request acceptance of the following gift donation:

From Jeanne Riggs: \$300.00 to the Saltmarsh Senior Center

From Gardner & Betty Macdonald: \$25.00 to the Saltmarsh Senior Center

Thank you,

Laura Stewart

from the desk of.....

Laura Stewart
Program Coordinator,
Senior Services
81 Washington Street
Nantucket, MA 02554
508-228-4490

phone: 508-228-4490
fax: 508-325-5366
e-mail: lstewart@nantucket-ma.gov



Nantucket Land Council, Inc.

Six Ash Lane
Post Office Box 502
Nantucket, Massachusetts 02554

508 228-2818

Fax 508 228-6456

nlc@nantucketlandcouncil.org

www.nantucketlandcouncil.org

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Bob DeCosta, Chair
Nantucket Board of Selectmen
16 Broad Street
Nantucket, MA 02554

March 29, 2016

Re: Conservation Restriction, 130 Eel Point Road.

Dear Chairman DeCosta,

Enclosed for Town Counsel review is a conservation restriction to be donated by the Nature Conservancy to the Nantucket Land Council. Upon recording of the restriction, the Nature Conservancy will proceed with transferring the property to the Linda Loring Nature Foundation. Please place this on the next available Board of Selectmen Agenda.

Sincerely,

Cormac Collier
Executive Director

Honorary Directors

Jean Haffenreffer

Suzanne Mueller

Staff

Cormac Collier

Executive Director

Emily Molden

Resource Ecologist

Ema Johnson

Development Director



Grantor: The Nature Conservancy. Boston, MA
Grantee: Nantucket Land Council, Inc.
Nantucket, MA
Property Address: 130 Eel Point Road Nantucket, MA
Title Reference: Book 0504 Page 187

The Nature Conservancy, a non-profit corporation organized under the laws of the District of Columbia ("Grantor"), with its offices located at 4245 North Fairfax Drive, Suite 100, Arlington, VA 22203-1606, and with Massachusetts Chapter offices at 99 Bedford Street, Fifth Floor, Boston, MA 02111, its successors and assigns, acting pursuant to Sections 31, 32, and 33 of Chapter 184 of Massachusetts General Laws, for no consideration as this is a gift, grants with quitclaim covenants, to the Nantucket Land Council, Inc., a Massachusetts non-profit corporation, whose purposes include conservation of land in Nantucket County, Massachusetts, with its offices located at 6 Ash Lane, Nantucket, Massachusetts, its successors and permitted assigns ("Grantee") in perpetuity and exclusively for conservation purposes, the following described Conservation Restriction on a parcel of land located in the County of Nantucket, Massachusetts. A plot plan prepared Blackwell & Associates dated June 15, 2015 depicts the parcel as "Restricted Area" which is subject to the Conservation Restriction hereunder and is attached hereto as Exhibit A (the "Premises).

For Grantors title see Book 0504 Page 187 at the Nantucket Registry of Deeds.

Grantee warrants that Grantee is a charitable organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and the regulations thereunder (the "Code"), whose primary purpose is "To encourage, support and engage in research, study, and education regarding land in the County of Nantucket ...and to engage in, institute, defend and to support in any legal manner or way any litigation or administrative procedures regarding such land, its ownership and utilization; and to engage in such other activities as are necessary or reasonably appropriate thereto."

Grantee represents that Grantee is a "qualified organization," as that term is defined in Section 170(h)(3) of the Code; and

Grantee has received a determination Grantee is a “publicly-supported” organization described in Section 509(a)(1) and Section 170(b)(A)(vi) of the Code, and is not a private foundation under Section 509(a)(1) of the Code; and letter from the Internal Revenue Service dated November 24, 2003, to the effect that

Grantee holds a Conservation Restriction on 264 acres of abutting registered land owned by the Linda Loring Nature Foundation (the “Foundation”), said restriction being filed on April 4, 2007 as Document # 120125 in the Nantucket Registry District of the Land Court. Grantee acknowledges Grantor’s intent to donate the fee interest in the Premises to the Foundation immediately following the recording of this instrument; and

Grantor and Grantee recognize the natural, scenic, and special character of the Premises and have the common purpose of the conservation and protection in perpetuity of the Premises through the use of restrictions on the Premises;

NOW, THEREFORE, KNOW ALL PERSONS BY THESE PRESENTS, in consideration of the above and mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to Section 170(h) of the Code and the laws of the Commonwealth of Massachusetts, including Massachusetts General Laws, Chapter 184, Sections 31-33, Grantor hereby voluntarily grants and conveys to Grantee and its successors and permitted assigns a conservation restriction (the “Restriction” or “Conservation Restriction”) in perpetuity and for conservation purposes over the Premises. Grantor herein declares that the Premises shall be held, mortgaged, encumbered, transferred, sold, conveyed, used, and occupied subject to the covenants, conditions, and restrictions hereinafter set forth, which covenants, conditions, and restrictions shall be deemed to run with the land in perpetuity and to burden the Premises in perpetuity.

A. Purposes.

This Conservation Restriction is defined in and authorized by Sections 31-33 of Chapter 184 of the Massachusetts General Laws and otherwise by law. The purpose of this Conservation Restriction is to assure that the Premises will be maintained substantially in its current condition in perpetuity and for conservation purposes, predominantly in a natural, scenic and undeveloped condition, and to prevent any use or change that would materially impair or interfere with its conservation and preservation values.

The specific conservation values of the Premises are documented in a report to be kept on file at the offices of Grantee and incorporated herein by this reference, which documentation (“Baseline Documentation”) the parties agree

provides an accurate representation of the Premises as of the effective date of this grant and which is intended to serve as an objective information baseline for monitoring compliance with the terms of this grant; and

This Conservation Restriction is intended to protect the aforementioned natural and scenic resources of the Premises and Nantucket by restricting the size and extent of buildings; by prohibiting practices such as commercial agriculture and raising of animals which can damage or alter natural plant communities; and by encouraging conservation of the land in its predominantly vacant and undeveloped condition. These values include the following:

- **Open Space Preservation.** The protection of the Premises contributes to the protection of the scenic and natural character of surrounding and abutting permanently protected land and other Nantucket protected lands, and the protection of the Premises will enhance the open-space value of these lands, provide significant open space corridors and improve the overall public benefit and value of open space in the neighborhood.
- **Water Quality.** The Premises are located on Nantucket Island which has an EPA designated sole source aquifer for the use of its inhabitants. Protection of the Premises will further protect the water quality of the aquifer and surrounding wells. Protection of the premises will also reduce nutrient and pollutant leaching and runoff which will protect down gradient water sources including the Nantucket Sound to the north and Head of Long Pond to the southeast.
- **Protection of Wildlife Habitat.** The entire Premises falls within an area designated as “Priority Habitat for State-Protected Rare Species” by the Massachusetts Natural Heritage Program. The Premises provide a unique natural habitat for a wide variety of plant and animal species. The Premises are comprised of a globally rare sandplain grassland and coastal heathland, with a mix coastal shrub understory consisting of huckleberry, viburnum, black cherry, low bush blueberry and scrub oak which provides unique foraging and nesting habitat to bird, mammal and insect species.
- **Furtherance of Government Policy.** Preservation of the Premises is pursuant to clearly delineated conservation policy expressed in Nantucket’s Master Plan, adopted by Nantucket’s voters at the Annual Town Meeting in April 2009, which states in the Town of Nantucket 2007 Open Space and Recreation Plan as Goal/Objectives 1C: “The town should encourage the use of creative regulatory and non-regulatory land protection tools such as conservation restrictions, tax abatements, gifts and zoning measures.”; and in *The Nantucket Comprehensive Community Plan (NCCP)*, including the following objectives therein: Objective 4.1, “To aggressively acquire land and conservation restrictions to protect natural ecosystems;” Objective 4.2, “To encourage land

management activities by the Land Bank and nonprofit entities to provide permanent resource protection;"

Preservation of the Premises as open space is further pursuant to clearly delineated governmental conservation policy in accordance with "Nantucket's Goals and Objectives for Balanced Growth" which was adopted in November 1990 by Town Meeting and states as Objective A-1: "To identify and acquire critical open spaces through outright ownership or by less-than-fee means, such as conservation restrictions, scenic easements, and the purchase of development rights, in order to complete the Island's open space network.

B. Prohibited Uses:

Except for reserved rights as set forth in Paragraph C below, neither Grantor, nor the heirs, devisees, successors or assigns of Grantor, will perform or give permission to others to perform the following acts or uses which are prohibited on, under, or above the Premises:

(1) The construction or placement of any temporary or permanent building, landing strip, helicopter landing area, tennis court, mobile home, swimming pool, asphalt or concrete pavement, stadium, bleachers, outdoor lighting equipment, ropes course, sign, billboard, or other advertising display, utility pole, utility tower, utility conduit or utility line, windmills, septic system, or any other temporary or permanent structure on, above, or under the Premises;

(2) Excavating, mining, dredging or removing from the Premises of soil, loam, peat, gravel, sand, rock or other mineral resource or natural deposit except as necessary for proper drainage or soil conservation and then only in a manner which does not impair the Purpose of this Conservation Restriction;

(3) Placing, filling, storing or dumping on the Premises of soil, refuse, trash, boats, trailers, vehicle bodies or parts, rubbish, debris, junk, waste or other substance or material whatsoever or the installation of underground tanks;

(4) Cutting, removing or otherwise destroying trees, grasses or other vegetation on the Premises;

(5) Activities detrimental to drainage, flood control, water conservation, water quality, erosion control or soil conservation;

(6) The use of motorcycles, motorized trail bikes, snowmobiles and all other motorized vehicles and activities;

(7) The placement and maintenance of bee hives;

(8) Division or subdivision of the Premises, except for transfer for all or a portion of the land to a conservation organization, and no portion thereof or any other parcel to be used for building or zoning requirements;

(9) All commercial and municipal structures and all commercial or industrial activities and uses;

(10) Any work, including, but not limited to, filling and/or construction of roads, in wetlands as defined by the Wetlands Protection Act (Chapter 131, Section 40) or the Nantucket Wetlands Bylaw (Chapter 136 of the Nantucket Code);

(11) The use of the Premises for more than *de minimis* commercial recreation, business, residential or industrial use of the Premises.

(12) The use of pesticides and fertilizers; and

(13) Any other use of the Premises or activity which would materially impair conservation interests unless necessary for the protection of the conservation interests that are the subject of this Conservation Restriction.

C. Reserved Rights:

The provisions of Paragraph B notwithstanding, the following acts and uses by Grantor and the heirs, devisees, successors and assigns of Grantor are permitted provided they do not materially impair the conservation interests or purposes of this Conservation Restriction or are not considered inconsistent with the intent of this grant:

(1) The right to excavate and remove soil, gravel or other mineral resource or natural deposit only as may be necessary for the conduct of those uses and activities permitted in this Conservation Restriction, or for the maintenance of good drainage, soil conservation practices or other permissible use of the Premises; provided that following the completion of such use or activity any disturbed area shall be restored to its prior undisturbed condition;

(2) The right to excavate a known archaeological site identified by and under the direction of the Massachusetts Historical Commission and if applicable a qualified organization such as according to Massachusetts Regulations 950 CMR 70;

(3) The clearing, maintenance and use of fire breaks, trails, clearings, and unpaved roads on the Premises as reasonable necessary for the uses herein permitted; trails, clearings or unpaved roads shall not in the reasonable opinion of the Grantee, substantially alter the present condition of the Premises or harm wildlife habitat or natural vegetation nor place at risk the habitat of any rare or

endangered species as identified by the Massachusetts Natural Heritage Program or its successors. The construction of new trails or roads are allowed subject to a plan approved by Grantee in accordance with Paragraph E hereof;

(4) Hunting in accordance with then applicable local, state and federal regulations;

(5) The right to conduct any activity, such as selective cutting, grazing, mowing or burning, which is used to manage the habitat of any threatened or rare species, as identified by the Massachusetts Natural Heritage Program or its successors, and/or any other natural plant community on Nantucket and/or to enhance or manage wildlife. Such activity shall be undertaken only with the express written permission of Grantee in accordance with Paragraph E and under the guidance of Grantee, which may include conditions or limitations to protect wildlife, natural vegetation and environmental systems, and such activity may include the limited erection of nest boxes or osprey poles;

(6) The right to control noxious or invasive plant and animal species by mechanical and/or chemical means on the Premises only pursuant and subject to a plan approved by Grantee in accordance with Paragraph E hereof;

(7) The right to walk and conduct other passive educational and recreational activities on foot;

(8) The right to remove diseased and dead trees only in a manner that maintains the character of the natural vegetation existing on the Premises on the date of this Conservation Restriction;

(9) The right to survey and to conduct scientific research, including but not limited to, the maintenance, repair, and replacement of existing solar panels to generate power for atmospheric deposition water quality testing;

(10) The right to erect signs which are no greater than twelve (12) inches square, to inform and educate the public;

(11) The use of motor vehicles only as necessary and solely for exercising any of the reserved rights in this Paragraph C or as necessary by the police, firefighters, Board of Health agents, Department of Environmental Protection personnel, or other governmental agents in carrying out their lawful duties.

Certain reserved rights under this Paragraph C may require permits from one or more public agencies. The inclusion of any such rights herein does not imply that Grantee or the Commonwealth takes any position on whether any such permit should be issued.

D. Prior Notice to Grantee. Grantor agrees to notify Grantee, in writing, before exercising any right reserved herein, the exercise of which may have a significant impact upon the conservation interests associated with the Premises.

E. Notice and Approval. Whenever notice to or approval by Grantee is required under the provisions of Paragraphs B, C, or D, Grantor shall notify Grantee in writing not less than sixty (60) days prior to the date Grantor intends to undertake the activity in question; however, Grantee may waive or lessen the required period of time, provided said waiver is obtained in writing prior to the initiation of such activity. The notice shall describe the nature, scope, design, location, timetable and any other material aspect of the proposed activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the purposes of this Conservation Restriction. Where Grantee's approval is required, Grantee shall grant or withhold its approval in writing within sixty (60) days of the receipt of Grantor's written request. Grantor's written request shall specifically recite the length of time provided by this Conservation Restriction for review and response by Grantee. Grantee's approval shall not be unreasonably withheld, but it shall only be granted upon a showing that the proposed activity shall not materially impair the purposes of this Conservation Restriction. Failure of Grantee to respond in writing within sixty (60) days shall be deemed to constitute approval by Grantee of the request as submitted, so long as there exists no violation hereunder and the request sets forth the provisions of this section relating to deemed approval after sixty (60) days in the notice.

Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage prepaid, addressed as follows:

To Grantor: The Nature Conservancy
99 Bedford Street, 5th Floor
Boston, MA 02111
Attn: Legal Department

To Grantee: Nantucket Land Council, Inc.
Post Office Box 502
Nantucket, Massachusetts 02554
Attn: Cormac Collier

or to such other address as either party from time to time shall designate by written notice to the other.

F. Breach by Grantor.

In the event that a potential breach of this Conservation Restriction by the Grantor, by a third party employed by the Grantor, or by a party under contract to the Grantor, comes to the attention of Grantee, and Grantee in the exercise of its best professional judgment concludes that a breach may have occurred or is occurring, Grantee shall notify Grantor in writing of such an alleged breach. Except in the event of an emergency which requires immediate action, Grantor shall have thirty (30) days - or such additional time as Grantee deems reasonably necessary depending on the circumstances of the alleged breach - after delivery of such notice to initiate corrective actions, including restoration of the Premises, that are reasonably calculated to correct swiftly the conditions constituting such a breach. If Grantor fails to initiate such corrective action within such time, Grantee may in its discretion undertake such actions, including appropriate legal proceedings as are reasonably necessary to effect the correction of each such alleged breach. If a court of competent jurisdiction determines, or the Grantor acknowledges, that such correction resulted from Grantor's violation of this Conservation Restriction, then Grantee's costs of each such correction, including Grantee's expenses, court costs, survey costs and legal fees, shall be paid by Grantor.

G. Acts Beyond Grantor's Control; Third Party Breach.

Nothing contained in this Conservation Restriction shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Premises resulting from causes beyond Grantor's control, including, but not limited to, fire, flood, storm, earth movement, and acts caused by trespass on the Premises not contributed to by acts or omissions of Grantor, or from any prudent action taken by Grantor under emergency conditions to prevent, abate or mitigate significant injury to the Premises resulting from such causes. Parties to this Conservation Restriction agree that in the event of damage to the Premises from acts beyond the Grantor's control, that if it is desirable that the Premises be restored, the parties will cooperate in attempting to restore the Premises if feasible.

H. Extinguishment

(1) If circumstances arise in the future such as render the Purpose of this Conservation Restriction impossible to accomplish, this Conservation Restriction can only be terminated or extinguished, whether in whole or in part, by a court of competent jurisdiction under applicable law. If any change in conditions ever gives rise to extinguishment or other release of this Conservation Restriction under applicable law, then Grantee, on the first subsequent sale of the Premises following termination or extinguishment, shall be entitled to a portion of the proceeds in accordance with subparagraphs (2) and (3) of this Paragraph H,

subject, however, to any applicable law which expressly provides for a different disposition of proceeds. Grantee shall use its share of the proceeds to advance the conservation of Nantucket lands and waters in a manner consistent with the conservation purposes set forth herein.

(2) Grantor and Grantee agree that the grant of this Conservation Restriction gives rise to a real property right, immediately vested in Grantee, with a value that is determined by the ratio of the consideration recited herein for this Conservation Restriction to the assessed value ascribed by the Nantucket Assessor to the Premises on the effective date of this grant. Such ratio (hereinafter, the "proportionate value") shall be included in the Baseline Documentation and shall remain constant over time.

(3) Whenever all or any part of the Premises or any interest therein is taken by public authority under power of eminent domain or other act of public authority, then the Grantor and the Grantee shall cooperate in recovering the full value of all direct and consequential damages resulting from such action. All related expenses incurred by the Grantor and the Grantee shall first be paid out of any recovered proceeds, and the remaining proceeds (including, for purposes of this subparagraph, proceeds from any lawful sale of the Premises unencumbered by the restrictions hereunder) shall be distributed between the Grantor and the Grantee in shares equal to said proportionate value.

I. Access. The Conservation Restriction hereby conveyed does not grant to the Grantee, to the public generally, or to any other person any right to enter upon the Premises, except as follows: there is hereby granted to the Grantee and its representatives the right to enter the Premises at reasonable times and in a reasonable manner, for the purpose of inspecting the Premises to determine compliance herewith, of enforcing this Conservation Restriction, and after thirty (30) days prior written notice of taking any and all actions with respect to the Premises as may be necessary or appropriate with or without order of court, to remedy, abate or otherwise enforce any violation hereof. Nothing herein, however, shall impair any rights of others or of the public generally now existing in any portion of the Premises, and shall in no way limit, amend or alter the legal authority of the Grantee to access the Premises of the Grantor, its successors and assigns.

J. Legal and Equitable Remedies of Grantee. The rights hereby granted shall include the right to enforce this Conservation Restriction in accordance with its terms, including by appropriate legal proceedings and to obtain injunctive and other equitable relief against violations, including, without limitation, relief requiring restoration of the Premises to its condition prior to the time of the injury complained of (it being agreed that Grantee shall have no adequate remedy at law), and shall be in addition to, and not in limitation of, any other rights and

remedies available to Grantee. Grantee shall attempt to resolve issues concerning violations through negotiations with Grantor prior to resorting to legal means. In the event of a dispute over the boundaries of the Conservation Restriction, Grantor shall pay for a survey and permanent monumentation of the boundaries.

Grantor covenants and agrees to reimburse Grantee for those reasonable costs and expenses (including without limitation counsel fees) incurred by Grantee in enforcing this Conservation Restriction or in remedying or abating any violation thereof, provided Grantor has been determined by final judgment (after all appeal periods have passed) of a court of competent jurisdiction or by mutual agreement of Grantor and Grantee to be responsible for any such violations which resulted in Grantee's incurring enforcement, remediation or abatement costs.

By its acceptance of this Conservation Restriction, Grantee does not undertake any liability or obligation relating to the condition of the Premises not caused by the Grantee or Grantee's agents pertaining to compliance with and including, but not limited to, hazardous materials, zoning, environmental laws and regulations, or acts which are not caused by the Grantee or anyone acting under the direction of the Grantee.

Enforcement of the terms of this Conservation Restriction shall be at the discretion of Grantee. Any forbearance by Grantee in the manner and timing of its rights to enforce this Conservation Restriction or otherwise exercise its rights hereunder shall not be deemed or construed to be a waiver of such rights.

K. Severability. If any provision of this Conservation Restriction shall to any extent be held invalid, the remainder shall not be affected and shall remain in full force and effect.

L. Duration and Assignability. The burdens of this Conservation Restriction shall run with the Premises in perpetuity and shall be enforceable in perpetuity against the original Grantor, all successors and assigns of the original Grantor holding any interest in the Premises, and third parties as described in this Conservation Restriction. Grantee is hereby authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Conservation Restriction, and the original Grantor, and all successors in title or interest to the Premises, to the extent permissible under applicable law, appoints Grantee its attorney-in-fact to execute, acknowledge and deliver any such instruments on its behalf. Without limiting the foregoing, the original Grantor and all successors in title or interest to the Premises, agrees to execute any such instruments upon request.

The benefits of this Conservation Restriction shall be in gross and assignable, but only to an entity or governmental unit able and authorized to

enforce such restrictions, which entity shall also have purposes similar to those of Grantee and which encompass the purposes set forth in this Conservation Restriction. Such entity or governmental unit must qualify under Section 170(h) of the Internal Revenue Code of 1986, as amended, and applicable regulations thereunder, and under Section 32 of Chapter 184 of the Massachusetts General Laws as an eligible donee to receive this Conservation Restriction directly. Any assignment of benefits by Grantee (or successor) must require the transferee to carry out the purposes of this Conservation Restriction. Furthermore, no assignment by the Grantee of this Conservation Restriction shall be effective unless previously approved in writing by the Nantucket Selectmen and by the Grantor, whose approval will not be unreasonably withheld. Any assignment shall be in accordance with Article 97 of the Amendments to the Massachusetts Constitution if applicable.

M. Effective Date. While the Grantor may execute this instrument prior to obtaining title to the Premises and the receipt of final acceptance and approvals of this Conservation Restriction, this Conservation Restriction shall be effective only when Grantor has obtained such title, Grantor and Grantee have both executed this Conservation Restriction, the administrative approvals required by Section 32 of Chapter 184 of the General Laws have been obtained, and this Conservation Restriction has been filed for registration at the Nantucket Registry District of the Land Court and noted upon the Certificate of Title for the Premises. The Grantee shall file this instrument for registration in timely manner at the Nantucket Registry District of the Land Court and note it upon the Certificate of Title for the Premises.

N. Subsequent Transfers. Grantor agrees:

(1) to incorporate by reference the terms of this Conservation Restriction into any deed or other legal instrument which divests Grantor of any interest in all or a portion of the Premises, including, without limitation, a leasehold interest, and

(2) to make reference to this Conservation Restriction in any executory contract for the transfer of any interest in the Premises. Grantor further agrees to give written notice to Grantee of all transfers of any interest in all or a portion of the Premises and to provide such notice forthwith upon every transfer if such notice has not been given prior to a transfer. Such notice to Grantee shall include the name, address and telephone number of the transferee and his/her legal representative, if any. Failure of Grantor to comply with this Paragraph N shall not impair the validity of this Conservation Restriction or limit its enforceability in any way.

O. Estoppel Certificates. Upon request by Grantor, Grantee shall within twenty (20) days execute and deliver to Grantor any document which certifies the status

of Grantor's compliance with any obligation of Grantor contained in this Conservation Restriction and which otherwise evidences the status of this Conservation Restriction, as may be reasonably requested by Grantor, including a so-called estoppel certificate if applicable in form suitable for registration with Nantucket Registry District and notation upon the Certificate of Title then outstanding for the Premises.

P. Limitation of Grantor Liability. The Grantor shall not be liable for violations occurring after its, his or her ownership. Liability for any acts or omissions not excepted by operation of Paragraphs F or G hereof occurring prior to any transfer and liability preceding any transfer if in violation of this Conservation Restriction and not excepted by operation of Paragraphs F or G hereof shall survive the transfer. Irrespective of the above, any new owner of the Premises shall cooperate in the restoration of the Premises or removal of violations caused by prior owner(s).

Q. Non Merger. The parties intend that any future acquisition of the Premises shall not result in a merger of the Conservation Restriction into the fee. The Grantor agrees that it will not grant, and the Grantee agrees that it will not take title, to any part of the Premises without having first assigned this Conservation Restriction to a non-fee owner to ensure that merger does not occur and that the Conservation Restriction continues to be enforceable. If it is determined that a transfer or assignment of any interest will result in a merger, no deed shall be effective until this Conservation Restriction has been assigned to a non-fee owner or other action taken to avoid a merger and preserve the terms and enforceability of this Conservation Restriction. It is the intent of the parties that the Premises will be subject to the terms of this Conservation Restriction in perpetuity, notwithstanding any merger.

R. Successor Grantee. If Grantee shall cease to exist or to be a qualified organization under Section 170(h) of the Internal Revenue Code of 1986, as amended, or to be authorized to acquire and hold conservation restrictions under M.G.L. Chapter 184, Section 32, as amended, and a prior assignment of this Conservation Restriction has not been made, then Grantee's rights and obligations under this Conservation Restriction shall become vested in and fall upon the first (by order of listing) of the below-named organizations which agrees to acceptance of the assignment and which qualifies for assignment under the terms of this paragraph, and such vesting shall have been previously approved in writing by the Nantucket Select Board:

- (a) Nantucket Conservation Foundation, Inc., Nantucket, Massachusetts
- (b) Nantucket Islands Land Bank, Nantucket, Massachusetts
- (c) The Nature Conservancy, Boston, Massachusetts

In the event that none of the above-named organizations agrees to acceptance and qualifies for assignment, Grantee's rights and obligations shall become vested in such other organization, previously approved in writing by the Nantucket Selectmen and by the Grantor, whose approval will not be unreasonably withheld, as a court of competent jurisdiction shall direct under the doctrine of cy pres.

S. Restriction in Perpetuity. The provisions hereof shall inure to and be binding upon the heirs, executors, devisees, administrators, successors and assigns as the case may be of the parties hereto and shall be restrictions running with the land in perpetuity. The term "Grantor" herein, unless the context or wording otherwise requires, shall include all successors and assigns. The term "Grantee" herein, unless the context or wording otherwise requires, shall include all successors and assigns of the original Grantee Nantucket Land Council, Inc.

T. Amendment. If circumstances arise under which an amendment to or modification of this Conservation Restriction would be appropriate, Grantor and Grantee may jointly amend this Conservation Restriction; provided that no amendment shall be allowed that will affect the qualification of this Conservation Restriction or the status of Grantee under any applicable laws, including Section 170(h) of the Internal Revenue Code of 1986, as amended, or Sections 31-33 of Chapter 184 of the General Laws of Massachusetts. Any amendments to this Conservation Restriction shall occur only in exceptional circumstances. The Grantee will consider amendments only to correct an error or oversight, to clarify an ambiguity, or where there is a net gain in conservation value. All expenses of all parties in considering and/or implementing an amendment shall be borne by the persons or entity seeking the amendment. Any amendment shall be consistent with the purposes of this Conservation Restriction, shall not affect its perpetual duration, shall be approved by the Secretary of Energy and Environmental Affairs and the Town of Nantucket, and if applicable, shall comply with the provisions of Art. 97 of the Amendments to the Massachusetts Constitution, and any gift, grant or funding requirements. Any amendment shall be filed for registration at the Nantucket Registry District of the Land Court and noted upon the Certificate of Title for the Premises.

U. Controlling Law The interpretation and performance of this Conservation Restriction shall be governed by the laws of the Commonwealth of Massachusetts.

V. Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Conservation Restriction shall be liberally construed in favor of the grant to effect the purpose of this Conservation Restriction and the policy and purposes of Massachusetts General Laws Chapter 184, Sections 31-33. If any provision in this instrument is found to be ambiguous, any interpretation consistent with the purpose of this Conservation Restriction that would render the

provision valid shall be favored over any interpretation that would render it invalid.

W. Recordation. The Grantee shall record this instrument in timely fashion at the Nantucket Registry District of the Land Court and noted upon the Certificate of Title for the Premises.

X. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to this Conservation Restriction and supersedes all prior discussions, negotiations, understandings or agreements relating to the Conservation Restriction, all of which are merged herein.

Y. Pre-Existing Public Rights. Approval of this Conservation Restriction pursuant to M.G.L. Chapter 184, Section 32 by any municipal officials and by the Secretary of Energy and Environmental Affairs is not to be construed as representing the existence or non-existence of any pre-existing rights of the public, if any, in and to the Premises, and any such pre-existing rights of the public, if any, are not affected by the granting of this Conservation Restriction.

The foregoing Conservation Restriction is hereby executed by the undersigned, as a sealed instrument under Massachusetts law.

WITNESS my hand and seal this _____ day of _____ 2016.

COMMONWEALTH OF MASSACHUSETTS

Nantucket, ss. _____, 2016.

On this ____ day of _____, 2016, before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory evidence of identification, which were _____, to be the persons whose names are signed on the preceding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose.

Notary Public (Print Name)

My Commission Expires:

ACCEPTANCE OF GIFT BY THE NANTUCKET LAND COUNCIL, INC.

The gift of the above Conservation Restriction from The Nature Conservancy is hereby accepted this ___ day of _____, 2016.

Nantucket Land Council, Inc.

By:

Officer's Name

Officer's Name

COMMONWEALTH OF MASSACHUSETTS

Nantucket, ss.

On this ___ day of _____, 2016, before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory evidence of identification, which were _____, 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.

(Print Name) Notary Public

My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

Nantucket, ss.

On this ___ day of _____, 2016, before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory evidence of identification, which were _____, 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.

(Print Name) Notary Public

My Commission Expires:

APPROVAL BY BOARD OF SELECTMEN OF THE TOWN OF NANTUCKET

We, the undersigned members of the Board of Selectmen of the Town of Nantucket, Massachusetts, hereby certify that at a meeting held on _____, 2016, the Board of Selectmen voted to approve the foregoing Grant of Conservation Restriction by The Nature Conservancy to the Nantucket Land Council, Inc., pursuant to Massachusetts General Laws, Chapter 184, Section 32, as being in the public interest.

Board of Selectmen of the
Town of Nantucket

COMMONWEALTH OF MASSACHUSETTS

NANTUCKET, ss. _____, 2016

On this _____ day of _____, 2016, before me, the undersigned notary public, personally appeared

_____,
proved to me through satisfactory evidence of identification, which were _____, to be the person(s) whose name is signed on the preceding document, and acknowledged to me that he/she signed it voluntarily for its stated purpose, as a member of the Board of Selectmen for the Town of Nantucket.

Notary Public

My Commission Expires: _____

33-12
N/F
TUCKERED OUT LLC

33-13
N/F
TUCKERED OUT LLC

NOTE:
LOT SHOWN HERON IS NOT BASED ON
A FIELD SURVEY.
ACTUAL LOT DIMENSIONS MAY VARY
SUBJECT TO FULL SURVEY.
LOT SHOWN IS PER ADJOINING LOTS
SHOWN ON L.C.C. 15400-A1.

38-18
N/F
LINDA LORING NATURE
FOUNDATION INC.

38-3
N/F
LINDA LORING NATURE
FOUNDATION INC.

38-6
N/F
LINDA LORING NATURE
FOUNDATION INC.

39-1
N/F
LINDA LORING NATURE
FOUNDATION INC.

38-7
N/F
FISHERS LANDING
ASSOCIATION INC.

Exhibit A Conservation Restriction Plan In Nantucket, MA Prepared for NANTUCKET LAND COUNCIL

Scale: 1" = 200' June 15, 2015

MAP: 38 PARCEL: 4

#130 EEL POINT ROAD

OWNER: THE NATURE CONSERVANCY

BOOK: 504 PG: 187

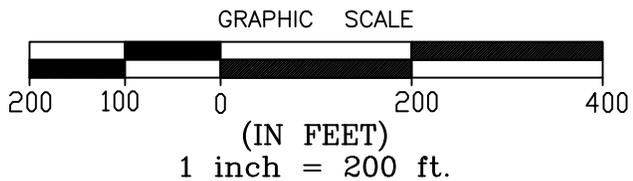
PROPRIETOR'S PLAN BOOK 1, PART OF SHARE 12

BLACKWELL & ASSOCIATES, Inc.
Professional Land Surveyors
20 TEASDALE CIRCLE
NANTUCKET, MASS. 02554
(508) 228-9026

PROPRIETORS ROAD (66' WIDE)

WAY (33' WIDE)

RESTRICTED
AREA



From: [Vicki Marsh](#)
To: [Libby Gibson](#)
Cc: [Erika Mooney](#); [John Giorgio](#)
Subject: Emailing - GHYC First Amendment to Grant of Pedestrian Easement signed.pdf
Date: Wednesday, March 30, 2016 4:01:01 PM
Attachments: [GHYC First Amendment to Grant of Pedestrian Easement signed.pdf](#)

Libby-

You have requested that I review the enclosed First Amendment to Grant of Pedestrian Easement ("Amendment") from Great Harbor Yacht Club, Inc. to the Town of Nantucket to determine whether it is in acceptable form for acceptance by the Board of Selectmen. In reviewing the Amendment and the referenced documents I found that the Commonwealth of Massachusetts, Department of Environmental Protection required in Special Condition #5 of the License granted to the Yacht Club, dated May 12, 2008, filed with the Nantucket Registry District of the Land Court as Document No. 124171, and recorded with Nantucket County Registry of Deeds in Book 1139, Page 167, that the easement be granted for the benefit of the Town of Nantucket and the general public. The Easement did not contain such a provision. The Amendment specifically provides that said easement "benefit the Inhabitants of the Town of Nantucket and the general public pursuant to and in accordance with Special Condition #5 of the License."

The only error I found in the Amendment was a scrivener's error of the page number of the Minor Modification referenced in the first paragraph of the Amendment. It should read "334" and not "324." The Amendment will then be in acceptable form.

If you have any questions concerning this matter, please feel free to contact me.

Vicki

Vicki S. Marsh, Esq.
KOPELMAN AND PAIGE, P.C.
101 Arch Street, 12th Floor
Boston, MA 02110
O: (617) 556 0007
F: (617) 654 1735
vmarsh@k-plaw.com
www.k-plaw.com

This message and the documents attached to it, if any, are intended only for the use of the addressee and may contain information that is PRIVILEGED and CONFIDENTIAL and/or may contain ATTORNEY WORK PRODUCT. If you are not the intended recipient, you are hereby notified that any dissemination of this communication is strictly prohibited. If you have received this communication in error, please delete all electronic copies of this message and attachments thereto, if any, and destroy any hard copies you may have created and notify me immediately

**FIRST AMENDMENT TO
GRANT OF PEDESTRIAN EASEMENT**

GREAT HARBOR YACHT CLUB, INC., a duly organized Massachusetts corporation, having a usual place of business at 96 Washington Street, Nantucket, Massachusetts ("GHYC"), as the owner of various parcels of land located in Nantucket, Nantucket County, Massachusetts, being the land known as 9B Salt Marsh Way, shown on plan recorded with Nantucket Deeds in Plan Book 21, Page 68 ("9B Salt Marsh"), by virtue of deeds recorded with Nantucket Deeds in Book 918, Page 237, and Book 955, Page 242, and Removal from Condominium recorded in Book 955, Page 246; the land known as 97 Washington Street, shown as Lot 20 on Land Court Plan No. 8254-H ("97 Washington Street"), by virtue of Certificate of Title No. 20941 at Nantucket Registry District; and the land known as 96 Washington Street, shown as Lot 13 on Land Court Plan No. 8254-E ("96 Washington Street"), by virtue of said Certificate of Title No. 20941 (9B Salt Marsh, 97 Washington Street, and 96 Washington Street being hereinafter collectively referred to as the "GHYC Land"), for good and valuable consideration paid, the receipt and sufficiency of which are hereby acknowledged, hereby amends that certain Grant of Pedestrian Easement, dated April 19, 2010, registered as Document No. 130464, recorded in Book 1230, Page 310, granted by it to the Inhabitants of the Town of Nantucket, in accordance with Special Condition #5 of that certain License and Plan No. 12128 issued by the Commonwealth of Massachusetts, dated May 12, 2008, registered as Document No. 124171, recorded in Book 1139, Page 167, as affected by a Minor Modification issued by the Massachusetts Department of Environmental Protection, dated October 16, 2008, registered as Document No. 125495, recorded in Book 1157, Page 334 (the "License"), to provide as follows:

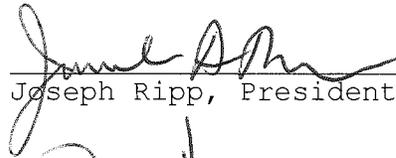
The permanent non-exclusive easement in gross to pass and repass over those certain portions of the GHYC Land (of variable width) shown as "Proposed Pedestrian Easement" on a plan prepared by Blackwell & Associates, Inc., dated July 14, 2009, entitled "Pedestrian Easement Plan," a copy of which is attached hereto as Exhibit A, for pedestrian passage only to, from, and between Union Street and that portion of the GHYC Land shown on said plan as the "Wooden Ramp To Beach" and for no other purpose, and also including pedestrian access over the area designated as "6' Wide Access Easement" on Sheet 6 of said plan, which area is parallel and directly adjacent to the "Wooden Ramp To Beach" shown on said plan, to provide public access to the flats and intertidal areas of the GHYC Land located between the

mean high water mark and mean low water mark, as the same may change from time to time due to tidal action, weather events and other natural forces and phenomena, for fishing, fowling, navigation and other purposes allowed by law, shall benefit the Inhabitants of the Town of Nantucket and the general public pursuant to and in accordance with Special Condition #5 of the License. Such easement shall terminate at such time as the License or any extension or renewal thereof is of no further force and effect

Executed and sealed as of September 1, 2015.

GREAT HARBOR YACHT CLUB, INC.

By:



Joseph Ripp, President



Richard Thayer, Treasurer

CONSENT OF MORTGAGEE

FIRST REPUBLIC BANK, being the holder of a certain mortgage from Great Harbor Yacht Club, Inc. to it, dated October 27, 2010, registered with Nantucket Registry District as Document No. 131888, recorded with Nantucket Deeds in Book 1252, Page 88, for consideration paid, hereby consents to the foregoing First Amendment to Grant of Pedestrian Easement, and agrees that said mortgage shall be held subject to and with the benefit of said First Amendment to Grant of Pedestrian Easement.

Executed and sealed on 9-9, 2015.

FIRST REPUBLIC BANK
By:

[Handwritten Signature]
Name: Jennifer L. Manning
Title: Vice President / Senior Credit Officer

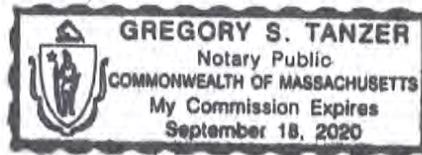
STATE OF Massachusetts

Suffolk County, ss

On this 9th day of September, 2015, before me, the undersigned notary public, personally appeared Jennifer L. Manning, VP Senior Credit Officer of First Republic Bank, (a) personally known to me, or (b) proved to me through satisfactory evidence of identification which was personal knowledge, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she signed it voluntarily for its stated purpose on behalf of First Republic Bank.

Gregory S. Tanzer
Notary Public

Printed name: Gregory S. Tanzer
My commission expires: September 18, 2020



ACCEPTANCE BY BOARD OF SELECTMEN

We, as a majority of the Selectmen for the Town of Nantucket, hereby accept and approve the foregoing First Amendment to Grant of Pedestrian Easement.

Dated: _____, 2016

Robert DeCosta

Matthew G. Fee

Rick Atherton

Tobias H. Glidden

Dawn Hill Holdgate

COMMONWEALTH OF MASSACHUSETTS

Nantucket, ss

On this _____ day of _____, 2016, before me, the undersigned notary public, personally appeared _____, being one of the members of the Nantucket Board of Selectmen, personally known to me to be the person whose name is signed on the preceding or attached document, and acknowledged to me that _____ signed it voluntarily for its stated purpose on behalf of the Town of Nantucket.

Notary Public

Printed name:
My commission expires:

Town and County of Nantucket
Board of Selectmen • County Commissioners

Robert R. DeCosta, Chairman
Rick Atherton
Matt Fee
Tobias Glidden
Dawn E. Hill Holdgate



16 Broad Street
Nantucket, Massachusetts 02554

Telephone (508) 228-7255
Facsimile (508) 228-7272
www.nantucket-ma.gov

C. Elizabeth Gibson
Town & County Manager

At a meeting held Wednesday, March 16, 2016, the Nantucket Board of Selectmen approved an application for a new annual wine/malt beverages restaurant license for Nobuchi, Inc. d/b/a Sushi by Yoshi, Terrence Noyes, Manager, for the premises located at 2 East Chestnut Street, Nantucket, MA 02554. The Board determines that this new liquor license is not detrimental to the spiritual activities of St. Mary's, Our Lady of the Isle Church, 3 Federal Street, Nantucket MA. This abutter is located within 500 feet of the premises of 2 East Chestnut Street, Nantucket MA.

Robert R. DeCosta, Chairman

Matthew G. Fee, Vice Chairman

Rick Atherton

Tobias B. Glidden

Dawn E. Hill Holdgate

Board of Selectmen
Nantucket, MA

Town and County of Nantucket
Board of Selectmen • County Commissioners

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C. Elizabeth Gibson
Town & County Manager

At a meeting held Wednesday, March 16, 2016, the Nantucket Board of Selectmen approved an application for a new annual all-alcoholic beverages restaurant/hotel license for Faros 17 Broad Street LLC d/b/a Greydon House, Alexander Leventhal, Manager, for the premises located at 17 Broad Street, Nantucket MA 02554. The Board determines that this new liquor license is not detrimental to the spiritual activities of the First Congregational Church, 62-64 Centre Street, Nantucket MA. This abutter is located within 500 feet of the premises of 17 Broad Street, Nantucket MA.

Robert R. DeCosta, Chairman

Matthew G. Fee, Vice Chairman

Rick Atherton

Tobias B. Glidden

Dawn E. Hill Holdgate

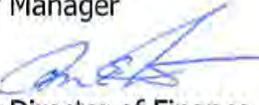
Board of Selectmen
Nantucket, MA

Town of Nantucket
Comprehensive
Annual Financial
Report 2015 (Audit)

Click [here](#) to view



TO: C. Elizabeth Gibson
Town & County Manager

FROM: Brian E. Turbitt 
Town & County Director of Finance

CC: Audit Committee

DATE: March 31, 2016

RE: Management Letter Responses

The Town's responses to the FY2015 management letter are outlined below.

Informational Items (pages 5 & 6)

Effect of Adoption of New Accounting Principal – Pensions

The Town is aware of the New Accounting requirements for the pension system; and understands the importance of this new requirement. If requested by Barnstable County or its auditors the Town will provide the requested information in a timely and efficient manner.

New Accounting Principal – OPEB

The Town is in the process of reviewing the new requirements to better understand the impact on the financial statements. This includes continued discussions with our auditors; and offsite instructional conferences that address the complicated areas. As a result, the Town is confident that it will implement this standard by fiscal 2018 or sooner.

Changes to the Single Audit Requirements

The Town continues to review the new requirements and will make sure that the necessary internal controls structure is in place as required under the new OMB A-133 guidelines.

Municipal Data Breaches

As noted in the informational item, the Town currently takes a proactive approach to network security. This will continue to be monitored to protect the security of the network and the information stored on the network. Vulnerable areas will be remediated immediately.

Findings and Comments (pages 7-11)

- A. **Status of Prior year items** – The Town continues to work on the remaining list of outstanding items, from not only the management letter, but the two operational reviews that were

completed. There are still a few remaining items that are open at this time; it is expected that the remaining items will be addressed and closed by the end of FY16; or a plan will be in place to complete as near the end of FY16 as possible.

- B. Student Activities** – The School and the Town have worked diligently over the past fiscal year to address the findings outlined in the review of the student activity accounts. While progress has been made there is an area to be improved upon. In that regard, the Town and School have implemented a reconciliation process that provides a complete reconciliation of the accounts on a monthly basis. The process is presently in place and is working as designed.
- C. Closing Process** – The Town recognizes the importance of the closing process. There are areas where closing processes have been implemented and those are working in an orderly manner. The focus has shifted from those areas to the areas identified in the management letter; specifically the reconciliation of construction in process and additions/deletions to fixed assets. A closing schedule with requirements has been developed and is presently in use within the Finance Department. A year-end timeline for departments is currently being developed and will be distributed to the departments two months prior to the end of the fiscal year. The effective use of these schedules will significantly reduce the issues that were observed during the FY15 audit.
- D. Special Revenue Funds** – The Town is in the process of reviewing the funds and will work with the departments responsible to determine the disposition or use of the remaining balances in the identified funds. Annually, as part of the fiscal year closing process, the Town will review the special revenue funds, to ensure that funds are spent, or closed as necessary.
- E. Cash Handling Tests** – The Town is in the process of revising the turnover policy, as well as conducting visits to all departments which handle cash. These are now done on a quarterly basis, with every department being visited four (4) times a year. The Finance Department is working with the Town Clerk's office to help correct the issues identified in the management letter. This is an ongoing process and one that will continue. The Finance Department has helped program the cash register; and it is now in operation in the Town Clerk's office. The use of the cash register will eliminate the need for the manual tally sheet, and will provide for greater control over the receipts in the office. The turnover of cash to the Treasurer's office has become more consistent, and is presently not delayed 2 to 3 weeks before being turned over for deposit.

TOWN OF NANTUCKET, MASSACHUSETTS

MANAGEMENT LETTER

YEAR ENDED JUNE 30, 2015

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ROSELLI, CLARK & ASSOCIATES
CERTIFIED PUBLIC ACCOUNTANTS

500 West Cummings Park
Suite 4900
Woburn, MA 01801

Telephone: (781) 933-0073

www.roselliclark.com

Honorable Board of Selectmen, Audit Committee
and Town Manager
Town of Nantucket, Massachusetts
16 Broad Street
Nantucket, Massachusetts 02554

We have audited the financial statements of the governmental activities, the business type activities, the discretely presented component unit, each major fund, and the aggregate remaining fund information of the Town of Nantucket, Massachusetts (the “Town”) as of and for the year ended June 30, 2015, which collectively comprise the Town’s basic financial statements and have issued our report thereon dated January 15, 2016. We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States.

Internal Control Over Financial Reporting

Management of the Town is responsible for establishing and maintaining effective internal control over financial reporting. In planning and performing our audit, we considered the Town’s internal control over financial reporting as a basis for designing our auditing procedures for the purpose of expressing our opinions on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the Town’s internal control over financial reporting. Accordingly, we do not express an opinion on the effectiveness of the Town’s internal control over financial reporting.

A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct misstatements on a timely basis. *A material weakness* is a deficiency, or a combination of deficiencies, in internal control such that there is a reasonable possibility that a material misstatement of the entity’s financial statements will not be prevented, or detected and corrected on a timely basis.

Our consideration of internal control over financial reporting was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control over financial reporting that might be deficiencies, significant deficiencies, or material weaknesses. We did not identify any deficiencies in internal control over financial reporting that we consider to be material weaknesses, as defined above.

This report is intended solely for the information and use of the Board of Selectmen, Audit Committee, Town Manager and others within the organization and is not intended to be and should not be used by anyone other than these specified parties.

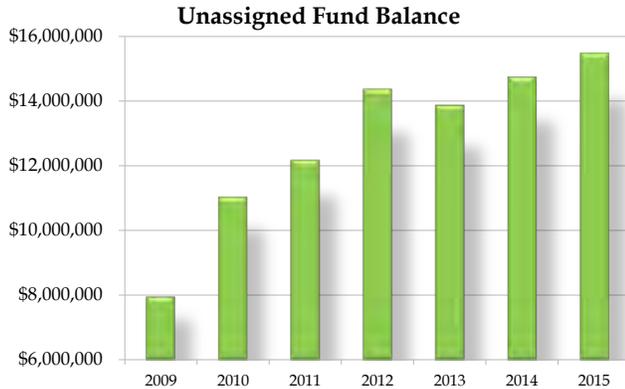
A handwritten signature in black ink that reads "Roselli Clark & Associates". The signature is written in a cursive, flowing style.

Roselli, Clark & Associates
Certified Public Accountants
Woburn, Massachusetts
January 15, 2016

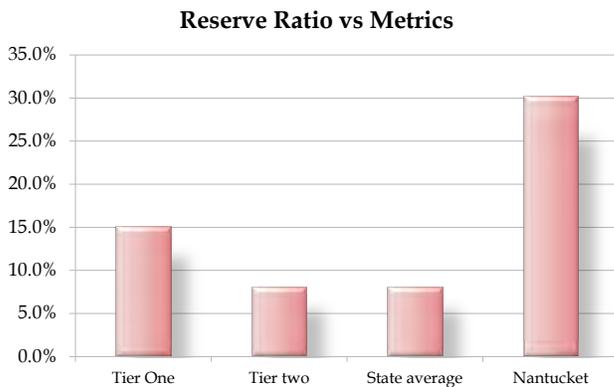
I. OVERVIEW

Fiscal year 2015 was a financially positive year for communities in Massachusetts. Many experienced increases to their reserve balances as average balances statewide increased to approximately 8% of general fund expenditures. In addition, unemployment rates have been reduced to pre-recession levels; and a favorable mortgage market has bolstered home sales which have been robust over the past 2 years. This has been especially true in Nantucket where real estate sales for calendar year 2014 exceeded \$1 billion for only the third-time in island history and assessed valuation has exceeded \$20 billion for the first time since fiscal year 2010; currently fourth highest in Massachusetts.

The Town ended the year with almost \$15.5 million in unassigned fund balance; and its OPEB Trust Fund which was established in fiscal year 2011 increased to \$0.8 million. This represents a \$0.7 million increase in unassigned fund balance from the prior year and was primarily due to better than expected local receipts combined with expenditure turn-backs. This was particularly impressive given there were moderate uses of free cash and continued excess levy capacity.



A common budgetary flexibility test used by the rating bureaus when conducting a credit evaluation is called a reserve ratio. The ratio is calculated by adding general fund assigned and unassigned fund balances presented in the financial statements and dividing



this by the general fund expenditures. 15% is considered tier-one and 8% - 15% is considered tier-two. The Town's ratio is 30.2% which places the Town considerably higher than these critical rating metrics; and is considered very strong.

These strong reserve levels, when combined with the Town's strong management practices and excellent

demographics, directly contributed to an upgrade in the Town's bond rating from Aa2 to Aa1 during the fiscal year. This is one notch below the highest investment grade possible and the Town should be proud of this achievement.

Another significant highlight for the Town was the completion of a Comprehensive Annual Financial Report (CAFR) for the year ended June 30, 2014. In June, 2015, the Town received notification from the Government Finance Officers Association (GFOA)

that the CAFR satisfied all the necessary reporting requirements to qualify for the prestigious Certificate of Achievement for Excellence in Financial Reporting. This was a major accomplishment for the Town, especially in light of the financial reporting issues that existed as late as 2013, when the Town was still included on the Department of Revenue watch list. The Finance Office now includes as one of its annual financial goals, the completion of a CAFR.

The remainder of the report is dedicated to informational items, and recommendations for improvement in control and efficiencies in operations. We urge the Town to implement recommendations where appropriate and cost/beneficial to do so.

II. INFORMATIONAL ITEMS

Effect of Adoption of New Accounting Principal – Pensions

In fiscal year 2015, the Town and virtually all municipalities in the Commonwealth adopted new pension accounting standards. The new pension accounting standards required, for the first time, that the Town present its portion of the unfunded pension liability owed to its current and former employees in the government-wide financial statements. At June 30, 2015, the net pension liability for the Town was approximately \$53.7 million.

It is important to note that the new pension accounting standards do not affect the underlying regional pension system or its funding schedule. All Massachusetts pension systems are required by Massachusetts general law to be fully funded by June 30, 2040. The Barnstable County Regional Retirement System, which is the pension system the Town participates in, is currently 60.4% funded based on a December 1, 2014 actuarial study and actual pension plan net assets as of December 31, 2014.

The new pension accounting standards will require that the Town become a more active participant in the audit of the Barnstable County Regional Retirement System. The Town can expect to have its retiree and employee census data tested on a rotational basis. It is therefore important that the Town promptly provide the requested documentation to the Barnstable County Regional Retirement System and its auditors in a timely manner so as to not delay this annual process of it and all other employer units of the retirement system

New Accounting Principal – OPEB

The Governmental Accounting Standards Board, or GASB, has issued a new pronouncement related to other postemployment benefits, or OPEB, that is substantially similar to the pension standard described above. OPEB typically includes health and welfare plans and other similar benefits provided to Town retirees exclusive of pension benefits.

Currently, the Town reports a net OPEB obligation (about \$38.7 million) in its government-wide financial statements. However, the proposed new accounting standards will require that the net OPEB liability (about \$88.8 million), be reported in the government-wide financial statements. Adoption of this new accounting standard is two years away for the Town.

While this proposed accounting standard will likely materially affect the Town's financial position, the Commonwealth has not passed legislation requiring municipalities to begin setting aside monies for this unfunded obligation like it has with pensions.

In order to begin to manage its OPEB obligation, the Town has established a formal OPEB trust fund like many other Massachusetts municipalities have done; and during fiscal year 2015 contributions increased the balance to approximately \$800,000. It is

expected that the Town will continue to fund part of its OPEB obligation annually and increase this funding in future years. This should have a positive impact on the Town's credit rating once the balance begins to accumulate.

Changes to Single Audit Requirements

The Office of Management and Budget, or OMB, raised the threshold for OMB A-133 compliance audits (i.e., single audits) from \$500,000 to \$750,000. This new threshold is expected to apply to the Town in fiscal year 2016. However, the Town generally exceeds the new \$750,000 threshold so it should continue to plan on having a single audit performed for the foreseeable future.

Also included in the new audit requirements is a requirement that the Town's internal control structure should be in compliance with recognized internal control framework such as the Green Book or COSO. At first pass, this requirement doesn't seem overly complicated. However, history has shown that seemingly harmless words similar to these can cause an entity to expend significant time and monetary resources in order to comply.

Adopting a formal internal control framework is new to municipalities and will likely require a good deal of evaluation, documentation, remediation and ongoing monitoring. We recommend that the Town commence this process by taking a common sense approach and tackle the areas in which the Town is most susceptible to an internal control deficiency. Over a period of time, the Town should complete the formal adoption of an internal control framework.

Municipal Data Breaches

We have alerted the Town in the past to be aware of network security. This informational item is being reported again as a reminder to continue to be vigilant. The past 12 months in Massachusetts have seen significant increases of breaches in local networks, some with reported attempted thefts in the millions.

The Town takes a proactive approach to IT security. We recommend that the Town continue to place an emphasis on IT security and continually update its IT security appliances and software as well as its policies and procedures regarding IT security.

III. FINDINGS AND RECOMMENDATIONS

A. Status of Prior Year Items

- The errors regarding the filing of unemployment claims which caused a deficit in the prior year have been resolved through a revision of the reporting and review process in this area. Proper rates are now being used.
- The internal accounting for the Health Insurance Trust has been revised to include an employee and employer portion of activity and equity in the general fund.
- Analyzing old outstanding receivable balances that have remained on the books for a number of years is a process that is currently ongoing. It involves several moving parts including the Assessor's Office, Deputy Collector, Collector's Office, Finance Office and possibly DOR. The Town expects to resolve this by the close of fiscal year 2016.
- Establishing more efficient procedures with respect to receivable reconciliations at year-end is a goal for the 2016 year-end close. Although many of the timing items identified in the prior year did not exist at the end of fiscal year 2015; improving the overall process by the end of the fiscal year is a goal of the Finance Office.
- Improving the cash reconciliation process has been a goal for the last few years. While the process has shown some improvement and older reconciling items have been resolved and adjusted, the existence of new reconciling items continues to be an issue. Like the receivable reconciliation process identified above, improving this is by the end of fiscal year 2016 is a goal of the Finance Office.
- The Town's overall closing process continues to be an issue. More specific details and an expansion of the prior year comment are included under current year findings later in this report.
- The Town is reviewing stagnant capital project balances and using those for similar type projects where legally permissible. Those needing re-appropriation are being submitted as part of an article at Town Meeting. The goal is to have exhausted all available stagnant funds by the close of fiscal year 2016 if possible.
- The issues identified in the payroll and DPW reviews have been incorporated into a plan with goals and timelines. Progress has been made on the less complicated items; the other more time consuming implementations are expected to be completed by the end of calendar year 2016.

B. Student Activities

As part of the fiscal year 2015 audit, a follow-up was conducted regarding the status of observations made during the fiscal year 2013 audit. Many improvements were made to the process and a stand-alone report has been issued to the School Committee regarding the remaining findings. One of the remaining issues impacts the Town's Finance Department and thus is communicated in this letter. Since a

significant portion of the Student Activity equity balances is in the custodial possession of the Town Treasurer, and a general ledger account is maintained as an Agency Account in the Town's records, those balances are needed by the School Department in order to conduct a complete reconciliation of their balances on a monthly basis. This has not been done in either of the last two years and we suggest this process begins immediately.

C. Closing Process

As discussed under "status of prior year comments" the closing process continues to be a challenge for the Town.

The following are some of the issues observed when reviewing the closed balance sheet:

1. The Self Insured Health Trust final balance did not include an accounts payable amount for the last month of the year. This was a finding in fiscal 2013, corrected in 2014 and a finding again in 2015.
2. The required warrants payable entry made at year-end that represents a reconciling item between the Treasurer and the General Ledger was posted completely to the General Fund instead of spread across the multiple funds it impacted. This caused reconciliation issues when attempting to reconcile individual funds outside the General Fund.
3. The backup information for the journal entries made to the general ledger accounts was not always complete and often lacked explanation and/or supporting documentation which made the process of analyzing the entries inefficient.
4. Split payroll at year-end was not verified through a reconciliation process, instead complete reliance was placed on the entries generated by MUNIS.
5. Capital asset additions for outside departments, specifically Wannacomet Water and the Airport were not completed and reconciled to the Town's Capital Projects in a timely manner.
6. Other more minor issues also existed that were discussed with the Finance Office prior to our departure.

The Town is a very complicated entity with numerous enterprise funds and many departments and components acting somewhat autonomously. This causes the closing process to have multiple moving parts. The process needs to be planned in advance with the use of checklists and timelines and needs to be completed well before the audit team arrives. We suggest the Town implement such procedures, to improve the overall closing process.

D. Special Revenue Funds

Recently, the Department of Revenue appointed a new Director of Accounts. The individual has significant government finance skills which were accrued in her earlier career as a CPA in the municipal sector. One of the initial requests made by the new Director to the auditing group was to review the status of stale special revenue accounts. Many of these accounts become forgotten over years as individuals in charge of them retire or posting errors occur and are never corrected. In these instances, the new Director suggested that efforts are made to determine the true origin and purpose of the funds and if efforts fail, to make a one-time house cleaning entry to journalize these funds to the general fund as miscellaneous revenue. This will make efforts at the DOR level more efficient as it would remove the need for the field reps to review these stale accounts year after year to no avail.

We filtered through the Town's 200+ Special Revenue accounts and determined about 40% of the accounts, totaling \$953,240 have not had any activity in over two years and \$228,286 had no activity during fiscal year 2015. In many of the accounts it is obvious that coding errors occurred in prior years and have gone undetected; for example School grants that have been closed out with the State years ago most likely had expenditures posted to the General Fund in error and are still being carried because in years past, the Town was not reconciling grants with the School.

We suggest the Town Finance Office review the list we have prepared and begin analyzing those items that may be journalized, or used by a department head that has no knowledge the funds still exist.

IV. CASH HANDLING TESTS

As part of our risk assessment process, we reviewed certain cash handling areas in Town to determine if register balances reconciled to tapes used at the register. This is an area that will be conducted annually, on a surprise rotating basis, as part of the audit.

The following areas were reviewed with the corresponding results:

Town Clerk

Our observation test of the register process at the Town Clerk office detected a number of control issues as follows:

- The Clerk has been provided with a cash register however it is not used and instead a cash box is used.
- A tally sheet is maintained by category (i.e. birth certificates, marriage certificates, livery permits etc.) however it is not fully completed. The office staff communicated that it gets too busy to complete the tally sheet at the time of a transaction so best guesses are made to complete the sheet when a turnover is created weeks later. This however compromises any possible reconciliation since the tally sheet is adjusted to the cash on hand. Also, the guess work can't be accurate since many transactions are completed with cash and guessing what the cash was two weeks later is more "hit or miss" than accurate.
- We completed a live reconciliation of cash on hand to the tally sheet. Cash was \$2,160 and the tally sheet was \$1,430. This variance was due to the inefficiencies discussed above. Best efforts should be made to either use the cash register or maintain an accurate tally sheet. Reconciliations to cash on hand should be performed at the end of each day.
- Many of the Clerk's revenue items come with prenumbered documents. Dog licenses, birth certificates, marriage licenses etc. However the pre-numbering is never used as an effective reconciliation tool or control.
- Revenue reconciliations have never been performed to the Town's General Ledger or the Treasurer's records.
- Cash is turned over about every two weeks and sometimes three weeks. This contradicts Massachusetts General Laws and the Treasurer's policy to turn cash over weekly.

We suggest the Finance Office work with the Town Clerk's Office to improve the cash handling process currently in place.

Landfill

Register controls were adequate; the till balance agreed to the register tape without exception. Turnovers are timely and cash storage is now secure.

Wannacomet Water

Wannacomet does not use a register but instead uses a strong box and maintains a rolling balance of transactions. Register controls were adequate; the box balance agreed to the manual log without exception. Turnovers are timely and cash storage is secure.

Town Collector

Three registers are maintained in the Town Collector's Office. The controls were adequate; the till balances agreed to the register tapes without exception. Turnovers are timely and cash storage is secure.

Cafeteria

When reconciling the till balance, on first pass a discrepancy of \$26 existed, however \$25 was located under the cash drawer to balance to within \$1. Additionally, the cashier noted that she sometimes leaves the cash register unattended (locked) to stock snacks and perform other duties. Often students will leave money on the register to pay for items when unattended thus leaving these funds at risk. Deposits are made daily, thus turnover is timely.



***TOWN AND COUNTY OF
NANTUCKET
MASSACHUSETTS***

DEPARTMENT OF PUBLIC WORKS

Field Maintenance Schedule

Objective: To maintain Nobadeer Fields, Delta Fields and Tom Nevers Fields year-round so that the fields are maintained in accordance with standardized plans to keep them in top physical condition at all times; and, to insure the quality and level of maintenance services.

Primary Task: Provide the management and coordination of all existing maintenance activities of the site and grounds at each location, using this documented maintenance plan, which includes the following:

NOBADEER FIELD grass fields

November to March - Fields closed, gates locked.

April 1st - Take soil samples. Send to an accredited vendor (such as UMass) to determine what the soil needs are for any amendments (results typically take 1 month). Plan to implement necessary amendments at the correct time of year for each deficiency noted. Energize Irrigation System. There are 24 irrigation zones in total. This irrigation system is a computer controlled PLC system. Only irrigation contractors knowledgeable in golf course systems should work on this system. (In an emergency Wastewater staff may be able to help as these controls are similar to those used in the Surfside WWTP.) Make any repairs necessary to irrigation system found during energizing process. (Note: irrigation system must be shut down during lightning events to protect pump and motor from electrical damage) Paint lines for Spring Youth Sports. Coordinate field requirements with Community School and/or Sports Organizations. Sports start date dependent on weather (melt water must be drained from fields). Sports Organizations and Community School will be looking for direction/approval to start using fields. Check moisture content of fields. No use of fields until moisture content is less than 50%. (No standing water!) If there is a light winter they may look to start using fields in Mid March. If allowable per above requirements, usage before April should only be on a week by week approval basis. A rainy spring may be on a day by day approval basis. Any rain events will require Foreman to evaluate the soil moisture and notify the Community School and/or Sports Organizations.

April 15th - Adhere to Nantucket Fertilizer regulations (BMPs). Foreman must have current Nantucket Fertilizer license. Fertilize (Weed & Feed) as weather conditions dictate. Core aerate 3-4 inches – usually 2 passes in a checkerboard pattern. Diamond slice soil for additional aeration. Lime, fertilize and seed

per Nantucket Fertilizer Regulations BMPs. Soil Temperature must be above 48 degrees. Coordinate fertilizer purchase with vendor versed in Nantucket requirements. (Harrells has been useful.)

April to October - Inspect property daily and after every storm event. Perform mitigating actions if any damage. Mow 1x per week (2 mowers minimum 42" cut and 1 weedwacker for 6 hours). Trash pick-up is done daily by trash crew. Irrigation - Soil moisture, tested 1x per week to determine need for increased irrigation increase the number of zones times when soil moisture is less than 50%. Anticipated increases are as follows:

May – 3 days per week/25 minutes per zone (24 zones total)

July/August – 4 or 5 days week/30 minutes per zone

September/October– 3 days per week/25 minutes per zone

June - Fertilizer (1/2 lb nitrogen per 1000 sq. ft. per fertilizer BMPs)

July –August- Youth Sports ended: Close fields. Check soil moisture 3x per week. Fertilize with grub control (1/2 lb nitrogen per 1000 sq. ft. per fertilizer BMPs).

September – October –October 15 is last date for fertilizer application per BMPs. Calculations for amount of nitrogen applied on each field during the season must be kept on file in office. Core aerate, line, fertilize as needed per BMPs. Dethatch. Patch and repair all wear areas (seed or sod as necessary).

November 1st - Irrigation system shut down and winterized. Last mow is done about the first week in November.

NOBADEER FIELD turf fields

See attached maintenance program from installer of turf field.

DELTA FIELDS

November to March - Fields closed, gates locked.

April 1ST - Take soil samples. Send to an accredited vendor (such as UMass) to determine what the soil needs are for any amendments (results typically take 1 month). Plan to implement necessary amendments at the correct time of year for each deficiency noted. Energize Irrigation System. There are 31 irrigation zones in total. Irrigation system here is pump and storage tank, run by a timer. Make any repairs necessary to irrigation system found during energizing process. Paint lines for Spring Youth Sports. Coordinate field requirements with Community School and/or Sports Organizations. Sports start

date dependent on weather (melt water must be drained from fields). Sports Organizations and Community School will be looking for direction/approval to start using fields. Check moisture content of fields. No use of fields until moisture content is less than 50%. (No standing water!) If there is a light winter they may look to start using fields in Mid March. If allowable per above requirements, usage before April should only be on a week by week approval basis. A rainy spring may be on a day by day approval basis. Any rain events will require Foreman to evaluate the soil moisture and notify the Community School and/or Sports Organizations.

April 15th - Adhere to Nantucket Fertilizer regulations (BMPs). Foreman must have current Nantucket Fertilizer license. Fertilize (Weed & Feed) as weather conditions dictate. Core aerate 3-4 inches – usually 2 passes in a checkerboard pattern. Diamond slice soil for additional aeration. Lime, fertilize and seed per Nantucket Fertilizer Regulations BMPs. Soil Temperature must be above 48 degrees. Coordinate fertilizer purchase with vendor versed in Nantucket requirements. (Harrells has been useful.) Open bathrooms, de-winterize.

April to October - Inspect property daily and after every storm event. Mow 1x per week. Trash pick-up daily by trash crew. Irrigation: Soil moisture is tested 1x per week to determine need for increased irrigation as follows:

May – 3 days per week/25 minutes per zone (31 zones total)

July/August – 4 or 5 days week/25 minutes per zone

September/October– 3 days per week/25 minutes per zone

June - Fertilize if necessary per soil sample (1/2 lb nitrogen per 1000 sq. ft. per fertilizer BMPs.)

July – August - Youth Sports ended. Check soil moisture 2x per week. Mow 1x per week. Fertilize with grub control (1/2 lb nitrogen per 1000 sq. ft. per fertilizer BMPs).

September – October - October 15th is last date for fertilizer application per BMPs. Calculations for amount of nitrogen applied on each field during the season must be kept on file in office. Core aerate, line, fertilize as needed per BMPs. Dethatch. Patch and repair all wear areas (seed or sod as necessary).

November 1st - Irrigation system shut down and winterized. Last mow is done about the first week in November. Clean and winterize bathrooms.

TOM NEVERS FIELDS

November to March - Fields closed.

April 1st - Take soil samples. Send to an accredited vendor (such as UMass) to determine what the soil needs are for any amendments (results typically take 1 month). Plan to implement necessary amendments at the correct time of year for each deficiency noted. Energize Irrigation System. There are

31 irrigation zones in total. Irrigation system here is pump and storage tank, run by a timer. Make any repairs necessary to irrigation system found during energizing process. Paint lines for Spring Youth Sports. Coordinate field requirements with Community School and/or Sports Organizations. Sports start date dependent on weather (melt water must be drained from fields). Sports Organizations and Community School will be looking for direction/approval to start using fields. Check moisture content of fields. No use of fields until moisture content is less than 50%. (No standing water!) If there is a light winter they may look to start using fields in Mid March. If allowable per above requirements, usage before April should only be on a week by week approval basis. A rainy spring may be on a day by day approval basis. Any rain events will require Foreman to evaluate the soil moisture and notify the Community School and/or Sports Organizations. Rototill and edge infields

April 15th - Adhere to Nantucket Fertilizer regulations (BMPs). Fertilize (Weed & Feed). Overseed. Soil Temperature must be above 48 degrees. Line, fertilize per BMPs. Mow 1x per week. Open bathrooms, de-winterize.

May - Prepare Softball/Baseball fields (Rototill, groom and edge). Memorial Day. Baseball starts Memorial Day weekend.

April to October - Mow 1x per week. Irrigation (baseball – 17 zones total) (Softball – 8 zones total). Soil moisture tested 1x per week to determine need for increased irrigation as follows:

May/June – 3 days per week/25 minutes per zone (31 zones total)

July/August – 4 or 5 days week/25 minutes per zone

September/October– 3 days per week/25 minutes per zone

June - Fertilize if necessary per soil sample (1/2 lb nitrogen per 1000 sq. ft. per fertilizer BMPs.)

July – August - Youth Sports ended. Check soil moisture 2x per week. Mow 1x per week. Fertilize with grub control (1/2 lb nitrogen per 1000 sq. ft. per fertilizer BMPs).

September – October - October 15th is last date for fertilizer application per BMPs. Calculations for amount of nitrogen applied on each field during the season must be kept on file in office. Core aerate, line, fertilize as needed per BMPs. Dethatch. Patch and repair all wear areas (seed or sod as necessary).

November 1st - Irrigation system shut down and winterized. Last mow is done about the first week in November. Clean and winterize bathrooms.

188 Madaket Road
02554



*Town of Nantucket
Massachusetts*

Department of Public Works

To: Board of Selectmen
From: Kara Buzanoski, DPW Director *KAB*
Re: Dukes Road sewer
Date: 3/26/16
Cc: Roberto Santamaria, Health Director

The decision to accept the sewer line as designed was made following the BOS policy adopted in 1999 (please find it attached and highlighted).

We reviewed this sewer extension in accordance with the BOS/Board of Public Works 1999 policy and the BOS/Board of Public Works/Sewer Commissioners 1988 Wastewater Systems Regulations Governing the Use of Common Sewers.

To determine the size of the proposed system, the number of properties on the street was counted. The designer, who is a Registered Professional Engineer, Don Bracken of Bracken Engineering tallied 42 connections @ 300 gallons per day (which would give every connection a total of 6 bedrooms). As a side note, this is twice as much capacity as needed for the normal 3 bedroom house. Using the number of bedrooms and an average water usage of 50 gallons per person per day (from DEP conservative water usage averages) the estimated flow per dwelling unit was calculated. Again using industry standards the pipe and the pumps were sized. The calculations were stamped and certified by a Professional Engineer. Further, the design was reviewed and approved by the Town's Registered Professional Engineer, Town Engineer Silvio Genao and Civil Engineer, DPW Director, Kara Buzanoski.

The only documented notification to abutters of the sewer installation was for the Conservation Commission Hearing for the work within 100 feet of the wetlands.

Attached is an email correspondence from Asst. Health Director Artell Crowley to a resident of Dukes Road pertaining to this project.

DIVISIONS

ENGINEERING HIGHWAY SEWER SANITATION FORESTRY MOSQUITO CEMETERY RECYCLING

(508) 228-7244
(508) 228-7245
(508) 228-7289
FAX

Both the DPW and Health Department staff reviewed and conducted themselves professionally with the residents' best interests in mind in this endeavor. We responded to several emails, phone calls and had a meeting to which residents were invited on WHAT DATE The BOH has since agreed to allow several property owners, who requested it, additional time to connect. They did this in recognition of the owners' request for additional time to accumulate sufficient funds to comply with the connection requirement. Although this project was initiated by a private developer, Dukes Road is in the Madaket Needs Area and would, at some point, have been sewerred anyway, most likely with the same design as has now been installed.

DIVISIONS

ENGINEERING HIGHWAY SEWER SANITATION FORESTRY MOSQUITO CEMETERY RECYCLING

Sanitary Sewer Policy
By
Nantucket Board of Selectmen
(acting as Board of Public Works)
Adopted: January 6, 1999
Amended: June 26, 2002

Preamble

The Town of Nantucket and the Nantucket Planning Board have, over the last several decades, adhered to an unwritten policy that resulted in the construction, operation and ownership of sanitary sewer systems either within public or private rights-of-way. In some instances, this has caused the Town to lose control of a logical methodology for extension of sanitary sewers. This policy has also made it possible for the creation of the equivalent of privately owned "mini-sewer authorities" which have the power to exact fees or deny connection. The Town has, accordingly, lost some control over decisions relating to extension of the public system and, as a result, the power to guide or direct growth in accordance with publicly endorsed policies.

With the past policy, the Town has permitted the extension of low-capacity private force mains for multiple lots, sometimes without regard for future extension policy.

Revised Policy



It is hereby the policy of the Town of Nantucket that extension of sanitary sewers, the reconstruction of existing systems, and the construction of related improvements such as pumping station, shall be built to the standards and specifications of the Town, and shall be dedicated and accepted as public facilities. It is also the policy of the Town to pass on to the private sector, the cost of engineering, construction and acceptance testing of these facilities through betterment assessments or other means, to the extent allowed by law, and in consideration of issues of equity and fairness. Notwithstanding the above, the Town may choose to fund, through general revenue bonds or revenue bonds, improvements or extension of the public sanitary sewer system, in accordance with the Comprehensive Wastewater Management Plan (CWMP).

Comprehensive Wastewater Management Plan

It is the policy of the Town that all decisions by the Town pertaining to the extension of sanitary sewers, the allowance or private sewer connections, or the construction of related facilities, shall be in accordance with the CWMP, at such time as it is duly adopted by the Nantucket Board of Public Works. In the interim, pending adoption of the CWMP, the existing standards and specification of the Town and the provisions of this policy shall govern.

Specific Policies Pertaining to Existing Sanitary Sewers

Existing Private Sanitary Sewers

It is the policy of the Town to acquire those existing systems which have been designed and constructed with additional capacity to accommodate future growth in accordance with the CWMP, and which meet the standards and specifications of the Town.

Roberto Santamaria

From: Art Crowley
Sent: Tuesday, February 16, 2016 12:12 PM
To: 'JOHN ARCHER'
Cc: Kara Buzanoski; Roberto Santamaria
Subject: RE: compulsory change from functioning septic to (probably) inadequate sewer? Dukes road

Good Morning,

Thanks for sharing your concerns with us. I would like to provide you some information that may help you understand the Dukes Road sewer line a little better. Please feel free to share this with your neighborhood so that they are dealing with the correct information. The Board of Health enacted regulations 69.00 in 2003 to protect groundwater, surface water, estuaries and harbors on the island of Nantucket. This regulation requires anyone with access to sewer who is on a septic system connect to sewer within 2 years if they are outside of a watershed or 6 months if they are in a watershed. Dukes Road falls within both Nantucket Harbor Watershed and Hummock Pond Watershed. The sewer line within Dukes Road was designed and engineered by Bracken Engineering. The sewer plan was reviewed by the Town Engineer as well as a third engineering firm prior to approving the construction of this project. The line is designed to handle and serve all properties on Dukes Road. The line is a low pressure sewer line, which is the most cost effective for this project. Low pressure sewer lines, which operate with pumps are a common practice island wide as well as state wide and are a safe and effective low cost method for transporting sewage. DPW and the Board of Health have been in close contact thru out the installation of this line. We feel this is positive for the neighborhood, community and the environment.

As stated above, Dukes Road falls within both Nantucket Harbor Watershed and Hummock Pond Watershed. **If sewer were not available to you**, properties would be required to have their septic systems inspected by a licensed Massachusetts Septic Inspector. Should the system fail all properties within Nantucket Harbor Watershed would have to install an Innovative/Alternative Septic System (I/A). These systems are very expensive, much more than a conventional system and must have an operating and maintenance agreement (O&M) for life with an independent licensed contractor. The requirement for the I/A in this zone would also be triggered when a property transfers or new construction began. The Properties within the Hummock Pond Watershed would have to install I/A if they failed the required inspection and they do not meet 1 bedroom for every 10,000 sq ft of property. Roughly 86% of the homes on Dukes Road are undersized and would **not** meet the 1 bedroom for every 10,000 sq ft of property, therefore I/A would be required on repair.

The soil conditions in the Dukes Road area are difficult. High groundwater, wetlands and the difficult soil conditions would all add significant costs to an already expensive septic system, not to mention having to file with the Conservation Commission for many of these repairs. The total cost of the sewer hookup is roughly half of what it would cost to repair and install a compliant septic system. I did a quick review of 29 properties on Dukes Road for septic compliance just to put it into perspective. This information I got from our files. The failures would most likely be higher once a complete inspection of the system was conducted. Of the 29 properties 9 properties will fail the septic inspection, 11 have already connected to sewer (several w/ failed septics). Few properties have had their septic inspected and the majority of the systems were installed in or before 1996

The letter you received from Don Bracken of Bracken Engineering was on behalf of his client who was installing the sewer line. Mr. Bracken was providing you with your options. He has and had no authority to require you to hook to sewer and indicated as much in his letter by telling you "do nothing". I believe most of the home owners are confused with this statement in his letter.

The Nantucket Health Dept. has a Betterment Loan Program of which we will loan property owners money to pay for the sewer installation (not permit fees). The loan is over 20 years at 2% and is paid with your tax bill. We would be more than happy to assist you with this process.

If you have any further questions, please do not hesitate to contact us at your convenience.

Art Crowley
Nantucket Health Dept.
508-228-7200 ext 7014

From: JOHN ARCHER [<mailto:jarchermd@gmail.com>]
Sent: Monday, February 15, 2016 9:34 PM
To: Art Crowley
Subject: compulsory change from functioning septic to (probably) inadequate sewer? Dukes road

We are writing to express our deep frustration and opposition to the Board of Health's requirement to tie into the recent sewer line which was placed on Dukes Road by Alan Warden and adopted by the Town of Nantucket.

There are several problems with this requirement which we feel have not been adequately addressed. Further the manner in which this matter was handled has denied us due process and represents a significant financial burden of approximately 25,000 dollars in 6 months.

We own a 780 square foot 1 br, 1 ba cottage on Dukes road with a septic system in perfect order. The home is occupied by 2 people for a maximum of 3 months per year. Currently we have no plans to build a second structure but are fully aware that should we wish to do so in the future we may need to tie into the sewer system.

We live in Pennsylvania and were never told there was a sewer line going into Dukes Road until we received the certified letter stating that we were required to tie in. Some of our neighbors actually received a notice stating that they could tie in but didn't have to do anything if they didn't want to. Only the full time residents or the people who were impacted by the road construction were aware of the sewer line being placed. None of us had any idea we would be REQUIRED TO TIE IN.

This line is not a gravity line. It requires pumps and engineering. It is a 2 inch line. Can it handle the entire street? The fact that we need to hire engineers and purchase pumps and maintain them in the future is problematic.

We would support a public works system where we are required to transition to town sewer in the future IF our septic fails or IF we want to develop our properties. It is a hardship to require people to immediately spend this kind of money, destroy their property and rebuild their yards, and possibly not actually have the capacity to handle the development of the street in the future. If the town is going to collect money from us for the sewer system aren't they under some obligation to us to provide a sewer line of adequate capacity for the entire street.

In summary: there are problems with this line and with this requirement. It seems the DPW is not talking with the Board of Health. Both may have the best interests of the Nantucket Harbor and residents in mind but they need to coordinate their efforts and not victimize their tax paying citizens in the process.

Joanne and John Archer
14 Dukes Road
Nantucket, MA

501 North Rose Lane
Haverford, PA 19041



2015 00147343

Cert: 24951 Doc: CV
Registered: 03/13/2015 02:21 PM

COVENANT

I, ALAN J. WORDEN ("Grantor"), being the owner of the registered land situated at 51 Dukes Road, Nantucket, Nantucket County, Massachusetts, consisting of Lot 12 on Land Court Plan 36325-D and Lots 13 and 14 on Land Court Plan 36325-E ("Locus") by virtue of Certificates of Title Nos. 24951 and 25086 at Nantucket Registry District, in consideration of the issuance of a permit for the connection of structures now or in the future existing upon Locus to a municipal sewer main within Dukes Road, a public way, hereby covenant and agree with the Town of Nantucket ("Town") as follows:

(a) Any ownership rights of the Grantor existing now or in the future in the municipal sewer main in Dukes Road shall be and hereby are transferred to the Town.

(b) All other appurtenances and equipment, including but not limited to pipes and pumps, now or in the future connecting Locus to the sewer main in Dukes Road are and shall continue to be the property of the Grantor, who shall be solely responsible for their operation, maintenance, and all costs and expenses relating thereto.

The provisions hereof shall run with the land, shall burden the Grantor and his successors in title and interest to Locus, and shall inure to the benefit of the Town and its successors.

Executed and sealed on March 9, 2015.

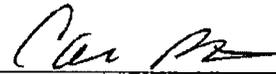

Alan J. Worden

COMMONWEALTH OF MASSACHUSETTS

Nantucket, ss.

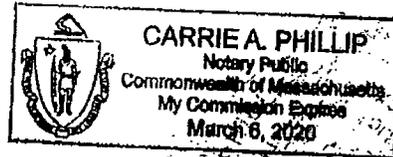
March 9, 2015

Then personally appeared the above-named Alan J. Worden, and acknowledged the foregoing instrument to be his free act and deed, before me,



Notary Public

My commission expires:



DOC No: 00147343

NANTUCKET COUNTY LAND COURT
REGISTRY DISTRICT

** RECEIVED FOR REGISTRATION **

On: Mar 13, 2015 at 02:21P

Document Fee: 75.00 Rec Total: \$150.00

CERTIFICATE No: 24951

Also noted on CERT 25086



Cert: 24951 Doc: CV
Registered: 03/13/2015 02:21 PM

LAND COURT, BOSTON. The land
herein described will be shown on
our approved plan to follow as

March 5, 2015

Plan 36325 E Lot 15
(EXAMINED AS DESCRIPTION ONLY)
T.C. Poubrouard Engineer STK

COVENANT

DUKE 53, LLC, a Massachusetts limited liability company ("Grantor"), being the owner of the registered land situated at 53 Dukes Road, Nantucket, Nantucket County, Massachusetts, consisting of Lot 15 on Land Court Plan 36325-E ("Locus") by virtue of Certificate of Title No. 24952 at Nantucket Registry District, in consideration of the issuance of a permit for the connection of structures now or in the future existing upon Locus to a municipal sewer main within Dukes Road, a public way, hereby covenant and agree with the Town of Nantucket ("Town") as follows:

(a) Any ownership rights of the Grantor existing now or in the future in the municipal sewer main in Dukes Road shall be and hereby are transferred to the Town.

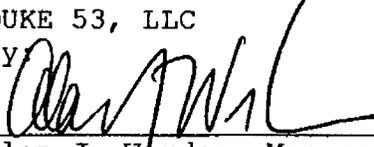
(b) All other appurtenances and equipment, including but not limited to pipes and pumps, now or in the future connecting Locus to the sewer main in Dukes Road are and shall continue to be the property of the Grantor, who shall be solely responsible for their operation, maintenance, and all costs and expenses relating thereto.

The provisions hereof shall run with the land, shall burden the Grantor and his successors in title and interest to Locus, and shall inure to the benefit of the Town and its successors.

Executed and sealed on March 9, 2015.

DUKE 53, LLC

By


Alan J. Worden, Manager

COMMONWEALTH OF MASSACHUSETTS

Nantucket, ss.

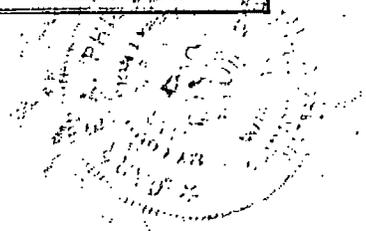
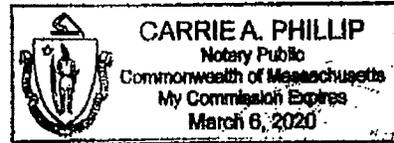
March 9, 2015

Then personally appeared the above-named Alan J. Worden, as manager of Duke 53, LLC and acknowledged the foregoing instrument to be his free act and deed and the free act and deed of Duke 53, LLC, before me,

Carrie A. Phillip

Notary Public

My commission expires:





William Francis Galvin
Secretary of the
Commonwealth

The Commonwealth of Massachusetts
Secretary of the Commonwealth
State House, Boston, Massachusetts 02133

March 12, 2015

TO WHOM IT MAY CONCERN:

I hereby certify that a certificate of organization of a Limited Liability Company was filed in this office by

DUKE 53 LLC

in accordance with the provisions of Massachusetts General Laws Chapter 156C on **September 25, 2013.**

I further certify that said Limited Liability Company has filed all annual reports due and paid all fees with respect to such reports; that said Limited Liability Company has not filed a certificate of cancellation or withdrawal; and that said Limited Liability Company is in good standing with this office.

I also certify that the names of all managers listed in the most recent filing are: **ALAN WORDEN**

I further certify, the names of all persons authorized to execute documents filed with this office and listed in the most recent filing are: **ALAN WORDEN, KENNETH A GULLICKSEN**

The names of all persons authorized to act with respect to real property listed in the most recent filing are: **NONE**



In testimony of which,

I have hereunto affixed the

Great Seal of the Commonwealth

on the date first above written.

William Francis Galvin

Secretary of the Commonwealth

DOC No: 00147344

NANTUCKET COUNTY LAND COURT
REGISTRY DISTRICT

** RECEIVED FOR REGISTRATION **

On: Mar 13, 2015 at 02:21P

Document Fee: 75.00 Rec Total: \$150.00

CERTIFICATE No: 24951

Town of Nantucket

MEMO

TO: C. Elizabeth Gibson
Town Manager
Board of Selectmen

FROM: Heidi Bauer 
Chief Procurement Officer

DATE: April 1, 2016

RE: Jetties Concession RFP



After many discussions with the various department personnel involved in the Jetties Concession, we have made changes to the bidding process for this concession going forward. I have attached a copy of the current Jetties lease with Marshall Thompson from 2012-2016 as a point of reference. I have also attached the most recent List of Events for 2015 as an indication of the amount of private events that he has scheduled over the season.

We have chosen to do an RFP going forward so as to have greater options regarding a Plan of Services for the concession as it has grown in popularity and use for both the Town and private events. The key changes include the following terms:

- Keeping the fee of \$500 for private events where the restaurant remains open but adding an increased fee of \$1000 for private events where the restaurant is closed to the public. There have been no other changes to the fee structure.
- Allowing for the Town to change the date of the July 4 Fireworks celebration to a date range of July 3-5.
- Allowing for the Town to use the housing on the second floor for employee housing. This is a negotiable criteria in the RFP.
- Increased the dates of occupation to the second weekend in May until Columbus Day. Previously, the concession was allowed to be occupied from the third weekend in May through Columbus Day.
- Required the List of Events to be submitted to the Events Manager by May 1. Previously, this list was required to be submitted to the Beach Manager by May 15.
- Increased the dates of operation as a full service restaurant and bar to the third week in May through Columbus Day with potentially limited hours of Thursday – Sunday from September 15 through Columbus Day. Previously, the dates of operation were required to be mid-June through the Sunday after Labor Day. This term is also a negotiable criteria in the RFP.
- Required the concessionaire to be open one extra day for every day the concession is shut down to the public. This is a new term in the RFP.
- Increased the level of comprehensive insurance required from a \$1 million limit to \$2 million limit based upon insurance advisor's recommendations.

I have attached the proposed Scope of Services for the RFP for your review as well.

II. SCOPE OF SERVICES.

General: The Concessionaire is responsible for the Operation of a typical snack bar, restaurant and retail concession with the ability to have functions in the function area after 5pm at Jetties Beach, 4 Bathing Beach Road, Nantucket, MA. The Concessionaire is responsible for the Operation of food service in order to offer breakfast, lunch and dinner service. The Concessionaire is also responsible for custodial maintenance of the Beach Maintenance area, as indicated on Exhibit A. Note: The Beach Maintenance area is within a traditional habitat area for both State and Federally protected shorebirds. The Town of Nantucket's agent will be the Events Manager.

Concession Premises: The Concession premises (hereinafter called the Premises) shall include the Concession building and the Bathhouse and the tent function area; beginning at the corner of the concession deck closest to the Parking lot walking approximately 180' perpendicular towards the ocean at that point turning West, parallel to the Ocean, walking approximately 100' thence turning South heading approximately 180' to the corner to Bathhouse squaring off the parameters of the tent function area as shown in Exhibit "A".

A. CONCESSION FEE AND OTHER CHARGES

- 1) **Concession Fee:** The Concessionaire shall propose an annual Fee in the amount set forth on the Bid Form attached to this Request for Proposals as Exhibit B for each occupancy period during the term hereof, as well as a payment of \$500.00 (Five Hundred Dollars) for each function for private events that doesn't close the restaurant, except the Nantucket Cottage Hospital's Annual Boston Pops Event, held on the Concession Premises during the term of this lease, hereinafter referred to as "Event Fee". If the restaurant is closed for a private event, the Event Fee shall be in the amount of \$1,000. For all days the restaurant is closed to the public for a private event, the concessionaire shall be expected to remain open an extra day at the end of the season in addition to the normal lease period.
 - a) The Annual Concession Fee shall be payable in two equal installments, the first due on or before July 1 and the second due on or before August 1 of each year.
 - b) The \$500.00 Event Fee as well as the \$1,000 Event Fee shall be payable on or before the start of each Event.

The Concessionaire's 10% bid deposit will be credited toward the first payment of the first year's annual concession fee.

- 2) **Security Deposit:** The Concessionaire shall file with the Town of Nantucket a \$5,000.00 security deposit; refundable at the end of the lease term, without interest to the Concessionaire within sixty (60) days, after determination has been made that the Concessionaire has fulfilled all of the terms of the contract and left the premises in adequate condition according to the Town and after presenting proof that all utility payments have been made and no defaults are left outstanding.
- 3) **Utility Payments:** The Concessionaire shall pay all water, power, gas, sewer, landfill, oil and telephone costs incidental to its operation hereunder. This obligation includes but is not limited to payment of water and electric bills, Landfill and Sewer User Fees for both the Concession and the Bathhouse portions of the premises. The Concessionaire is also responsible for turning on and turning off of all utilities and any and all utility deposits required doing so. The Concessionaire shall

present proof of payment of all utilities to the Town of Nantucket within thirty days of closing for the season. Should proof of payment not be presented the Concessionaire shall be considered in default and the Town of Nantucket has the right at its discretion to pay any outstanding amounts from the security deposit as stated in Section A3 above.

- 4) **Other Fees and Utilities:** The Concessionaire shall also be responsible for all licensing fees as determined by the Town, "all" utilities and all other costs associated with the operation of the premises; including any additional fees brought on by the presence of listed shorebirds and the protection plan implemented by the Town of Nantucket's Endangered Species Program, through the Beach Management Plan. Those items specifically provided herein are excluded.

B. TERM

- 1) **Lease Term:** Five years beginning January 1, 2017 and expiring on December 31, 2021.
- 2) **Operation Dates:** Successful bidder shall be permitted to occupy the Premises only during the Occupancy periods, which run from the second weekend in May through the Monday after Columbus Day each calendar year.

C. CONCESSIONAIRE'S OBLIGATIONS

OBLIGATIONS

- 1) **Concession Facility:** Concessionaire agrees to operate a Concession facility of a typical snack bar restaurant and a small retail business in accordance with the applicable rules and regulations and to obtain appropriate licenses before operating the facility and presenting the Town of Nantucket with the same. Small retail sales are allowed. The Concessionaire is responsible to offer food service in order to offer breakfast, lunch and dinner service. The concessionaire shall operate the premises so as to enhance the public's use and enjoyment of the adjacent public beach facility and in the best interest of the Town of Nantucket. The Concessionaire is responsible for compliance with all laws and regulations applicable to the operation of the premises, including but not limited to compliance with applicable ADA regulations.
- 2) **Private Functions/Special Events:** Prior to holding any Private Function, Special Event or activity of less than 250 people the Concessionaire shall obtain in writing approval from the Town of Nantucket and the Events Manager. A list of upcoming events, as well as completed Beach Event Forms (Exhibit C) must be submitted to both the Events Manager by May 1st. Any additional events after May 15th will require a Beach Event Form to be completed and submitted to the Town of Nantucket as soon as the event is scheduled. The Town of Nantucket shall have full discretion to deny permission to hold any Private Function, Special Event, or activity. Should the Town of Nantucket approve such a function all of the following conditions must be met:
 - a) If a fire on the beach is planned the Concessionaire must obtain a permit from the Fire Department. A copy of the permit will be give to the Town of Nantucket prior to the day of the function.
 - b) Concessionaire will be responsible for compliance with all Massachusetts, County and Town laws regulations and ordinances governing noise.
 - c) Private functions at the concession will be held in the premises only as shown on Exhibit A and

not on the remainder beach. The Town of Nantucket's policy is to disallow private functions on the remainder of the property.

- d) Section C 2 Private Functions above may be overridden by the additional provisions of this lease. Not any other part of the lease is affected by any such changes.
 - e) A completed copy of the Beach Event Form must be submitted to the Events Manager.
 - f) Depending on the status of the State & Federally listed species and after the review of the Town, the Concessionaire may be required to hire monitor(s) through the Town's Endangered Species Program. If the hiring of monitor(s) is deemed necessary a completed Detail Form must be completed and submitted to the Events Manager before the event. Exhibit D "
- 3) **Public Restrooms, Bathhouse and Shower facilities:** All areas designated as Public Restrooms, Bathhouse and Shower facilities shall be available as such for the public's use. At a minimum the Concessionaire shall operate the Bathhouse, toilet and shower facilities between the hours of 9:00 am and 5:30 pm seven (7) days per week from the second weekend in May through Columbus Day Weekend each year. The Concessionaire shall open the Bathhouse and toilet facilities at all times while the concession is operating. The Town of Nantucket reserves the right to open and staff the toilet facilities only at other hours for special events. Toilet room facilities must remain open even in inclement weather. The Concessionaire shall be responsible for the cleanliness of the Public Restroom facility and area surrounding the Public Restroom facility.
 - 4) **Kitchen Equipment:** The Concessionaire shall provide and install all kitchen equipment and food and drink equipment not already provided by the Town of Nantucket. Any purchase of equipment by Concessionaire from previous Concessionaire would be a private agreement and is not part of the contract for the facilities. Concessionaire is responsible for maintenance; replacement and removal of his/her own equipment. Any equipment affixed permanently to the premises shall immediately become the property of the Town of Nantucket subject only to the Concessionaire's right to use such equipment during the term hereof. The Concessionaire is responsible for preventive maintenance for the equipment provided by the Town of Nantucket. In addition the Concessionaire agrees to perform annual maintenance prior to closing the building each fall. A schedule of the minimum annual maintenance requirements is attached hereto, and incorporated herein, marked Exhibit "G". Any such equipment remaining after the expiration of this contract shall, at the option of the Town of Nantucket, either become the property of the Town of Nantucket or be removed and disposed of by the Town of Nantucket at the expense of the Concessionaire.
 - 5) **Custodial Services:** The Concessionaire shall clean the restrooms as often as required to maintain them in a condition satisfactory to the Town of Nantucket. The Concessionaire shall supply and maintain paper, soap and supplies as needed.
 - 6) **Maintenance:** The Concessionaire shall provide all custodial maintenance inside the buildings and outside the buildings in the Beach Maintenance Area indicated on Exhibit A, policing the beach and parking areas at least twice daily to keep it free of all litter and other trash generated by the patrons of the beach. All rubbish/trash collected by the Concessionaire or generated from the concession's operation will be secured, removed from the beach and disposed of at the Concessionaire's expense including landfill fees. The Concessionaire is responsible for repairing and maintaining any and all windows and door screens and must inform the Town of Nantucket immediately of any and all repairs so made. The Concessionaire will be required to provide a work order for all exterior and structural repair work to be performed by the Town of Nantucket. Once a pair of potentially

nesting listed shorebirds has been recognized, all cleaning of the beach's litter must be done by hand. NO beach raking will be permitted until the status of the State and Federally listed shorebirds has been examined by the Town and has been deemed permissible. Removal of the wrack line by hand or machine is prohibited. The Town is responsible for beach raking. All repairs, maintenance construction, power washing, or any other action that may involve excessive noise must be completed prior to April 15th

- 7) **Signs and Structures:** Before any temporary or permanent signs or structures are erected the Concessionaire shall first obtain such written approvals as may be required under existing Town regulations including but not limited to a Certificate of Appropriateness from the Historic District Commission of the Town. The Concessionaire shall then obtain the written permission of the Town of Nantucket.
- 8) **State and Federally Protected Species:** The Concessionaire must be aware that Jetties Beach is a known traditional habitat area for State and Federally listed species, such as the Piping Plover. Such listed species are protected under the Endangered Species Act and are monitored and protected by the Town of Nantucket's Endangered Species Program. The Town's Endangered Species Program is based on set State and Federal Guidelines. Failure to follow the rules, regulations and guidelines created by the State and Federal Government and implemented by the Town of Nantucket's Endangered Species Program may result in the potential closure of Jetties Beach. The Concessionaire is required to abide by all rules and regulations set forth regarding the "State and Federally listed species" and therefore must notify the Town of any "Private Function, Special Event or Activity" as soon as they are scheduled and no later than one week in advance of the event.
- 9) **Alcoholic Beverages:** In accordance with Section 54-1C of the Nantucket Code, the Town of Nantucket hereby grants its consent to the Concessionaire to serve alcoholic beverages for possession and consumption on the premises subject to the following conditions.
 - a) Concessionaire must obtain a liquor license from the Nantucket Board of Selectmen in accordance with all local, state and federal rules and regulations.
 - b) The area of the Premises in which alcoholic beverages will be served and consumed shall be limited and clearly delineated to the satisfaction of the Town of Nantucket. Appropriate precautions shall be taken to assure that alcoholic beverages are not consumed outside the premises.
 - c) The Concessionaire will be responsible for compliance with all Massachusetts and Nantucket laws, regulations and ordinances governing the serving and consumption of alcoholic beverages on the premises including the consumption of alcoholic beverages by minors.
 - d) Alcohol may only be served as indicated on the Concessionaire's liquor license.
If it is the intent of the successful concessionaire to extend the liquor license hours they will be required to obtain Board of Selectmen approval.
 - e) The Concessionaire shall hire a police detail for any private function at which alcohol will be served where more than 150 persons are expected to attend. The cost of such police detail will be paid by the Concessionaire or the sponsor of the function.
 - f) The Concessionaire hereby agrees to indemnify and hold harmless the Town and

County of Nantucket and all of their officials, members, officers, employees and agents from any and all claims arising out of the sale or consumption of alcoholic beverages on the premises and all other costs (including legal fees) related thereto. The Concessionaire will maintain liability insurance with respect to the serving of alcoholic beverages as required by the laws and regulations of the Commonwealth of Massachusetts and the Town and County of Nantucket. All Such policies of liability insurance shall name the Town and County of Nantucket and all other indemnified parties as additional insured parties under the policy. The Concessionaire shall deliver written proof of such insurance, by a certificate of insurance or otherwise as required by the Town, to the Town's designee on or before March 1 of each year during the term herein.

- g) Such provisions are subject to review, modification or termination by the Town of Nantucket at its sole discretion at any time.
- h) Tents set up on the beach portion of the premises cannot be set up until the day of the event for which they are being used and must be removed by Noon on the day after the event. Problems with this provision should be brought to the attention of the Town of Nantucket at least one week prior to the event if not previously addressed during the permitting process. Before erecting or removing a tent and/or floor on Jetties Beach, the Events Manager must be notified of the size of the tent(s), the times and the date(s). If the Town feels it is necessary, the Concessionaire will hire monitor(s) through the Town's Endangered Species Program to be present during both the erection of the tent and/or floor and the removal. Failure to contact the Town regarding a tent and/or floor may result in the loss of future tent/floor use.

11) **Use for dwelling purposes:** The Concessionaire is expressly prohibited from using any part of the premises for dwelling purposes except upon the following terms and conditions.

- a) Only that portion of the second floor of the main building known as the apartment may be used for dwelling purposes and may be so used only by the Concessionaire or employees of the Concessionaire during the period of Occupancy if approved by the Town. **The use of this housing by Concessionaire is negotiable as the Town may keep this housing available for its own employees.** If allowed to be used by the Concessionaire, immediate family only may enter the apartment two weeks prior to the occupancy period or two weeks prior to opening the concession whichever is later for the sole purpose of preparing the buildings for the summer season. The Concessionaire with immediate family only may remain in the apartment for up to two weeks after the occupancy period or two weeks after closing the concession whichever is earlier for the sole purpose of closing and winterizing the buildings.
- b) Use of the apartment is specifically restricted to a single family occupancy with the number of occupants allowed determined by the Nantucket Building Inspector.
- c) Leasing of rooms or space to transients or in any temporary basis is strictly prohibited.
- d) The apartment may not be sublet.
- e) Occupancy of the apartment for dwelling purposes may commence only after it has been inspected and approved by the Nantucket Building Inspector. Concessionaire shall be responsible for requesting this inspection by the

Nantucket Building Inspector and for complying with all required safety requirements. The Nantucket Building Inspector shall have the right from time to time and upon reasonable notice to the Concessionaire to inspect the premises to see that all terms and conditions of these specifications are being met.

- f) No structural changes or improvements may be made to the apartment by the Concessionaire without written consent of the Town of Nantucket. Any improvements made to the apartment including those necessary to meet building codes are the sole responsibility of the Concessionaire.
- 12) **Beach Access:** The Town of Nantucket will hold keys to the gate at the vehicle access to the beach and the Concessionaire will contact the Town of Nantucket if he/she requires access to the beach through the gate. The Town of Nantucket may deny access to the beach for motorized vehicles at the Town's discretion.
- 13) **Tennis Courts:** The Town of Nantucket reserves the right to sell liquid refreshments at the Town of Nantucket office building located at Jetties Beach.
- 14) **Hospital Event:** The Nantucket Cottage Hospital will have the use of the beach and the concession for two days during the summer to use for a major fund raiser. The Town of Nantucket will be responsible for providing the Concessionaire with up to three alternate dates for this event six months prior to the date of the event and providing the concessionaire the final date and dollar amount of compensation to be paid to the Concessionaire at least six months prior to the event.
- 15) **Fourth of July Fireworks:** The Town has discretion to schedule this event at Jetties Beach at any time from July 3 through July 5 weather dependent.
- 16) **Boardwalk:** The Boardwalk will be installed each season by April 15th by the Department of Public Works in concert with the Town of Nantucket. The boardwalk will be placed to the far right, between the Pavilion and the parking area, and will be flush with the sand. The boardwalk will remain in place for the summer season. The only event for which the boardwalk may be moved is the Hospital Fundraiser. Problems with this provision should be brought to the attention of the Town of Nantucket at least 48 hours prior to the event.
- 17) **No Pets** - The Concessionaire and/or its employees are prohibited from bringing his/her pet (s) to work.
- 18) **End of Season Inspection:** The Concessionaire shall schedule with the Town of Nantucket a date and time for the end of season inspection. The purpose of the inspection is;
 - a. To ascertain any and all repairs necessary prior to opening for the upcoming season.
 - b. To make sure the premises are clean and all items are secured prior to closing for the season.

D. IMPROVEMENTS

- 1) **Consent:** The Concessionaire shall not undertake any improvements to the premises without having first received the written consent of the Town of Nantucket. Should the Town of Nantucket consent to such improvements the Concessionaire shall obtain all required permits and present

copies of all permits to the Town of Nantucket prior to starting work. Any improvements to the premises shall be completed before April 15th. Should there be an emergency need for improvements after April 15th the Town must be provided with copies of the permits and details of the work. Before any work begins an assessment may be made by the Beach Manager based on the current status of the State and Federally listed species and the effect the work may have on their habitat/productivity.

- 2) **Ownership:** Any improvements made by the Concessionaire to the premises during the term of the contract including any structure, fixture or equipment affixed permanently to the premises shall become the property of the Town of Nantucket except as agreed upon in writing prior to installation.

E. INSURANCE

Insurance: The Concessionaire will maintain insurance as listed below and will deliver certificates to the Town of Nantucket, on or before March 1 of each year during the term, stating this insurance is in force, in any calendar year for the duration of this Agreement before he enters the premises:

- 1) **Worker's Compensation:** Worker's Compensation insurance in accordance with Massachusetts General Laws Chapter 152, as amended.
- 2) **Liability:** Comprehensive General Liability insurance including products liability for a combined single amount of \$2,000,000. This policy must have as one of its terms a provision that the Town and County of Nantucket and its Town of Nantucket are additional insured parties. A copy of this policy is to be provided to the Town of Nantucket annually on or before March 1. Such policy must also contain a provision that the Town of Nantucket will be provided with ten (10) days written notice by the insurer of any intent to cancel or a determination that such insurance will not be renewed.

F. OPERATING HOURS

- 1) **Concession Facility:** At a minimum the Concessionaire shall operate the Concession between the hours of 10:00 am and 5:00 pm seven (7) days per week from the third week in May, through Columbus Day Weekend. There may be allowed limited hours after September 15 of Thursday through Sundays with a full service bar and restaurant. The Concessionaire will offer breakfast service which will require expanding the hours of operation. The Town of Nantucket agrees to support expansion of the hours of operation necessary to provide breakfast and/or dinner service. The Concessionaire may extend the hours of operation subject to the written approval of the Town of Nantucket. In the event of the beach being unoccupied and closed due to inclement weather the Concessionaire may close after notifying the Town of Nantucket.

G. INDEMNIFICATION

- 1) **Indemnification:** The Concessionaire agrees at all times during the term of this contract to indemnify, hold and save harmless, the Town of Nantucket and the Town of Nantucket and its officials, employees and agents from and against any and all action or causes of actions, claims, demands, liabilities, losses, damages or expense of whatsoever kind and nature including all legal

costs arising out of or in connection with the operation and rental by Concessionaire of the premises or its performance or failure to perform or any provision of this contract.

- 2) **Waiver of Rights of Recovery:** The Concessionaire also agrees to waive all rights of recovery it may have against the Town of Nantucket and the Town and County of Nantucket for any loss to property or person for which the Concessionaire is insured.

H. TOWN OF NANTUCKET OBLIGATIONS

The Town of Nantucket agrees to the following:

- 1) **Repairs:** To make exterior and structural repairs to the premises subject to funding by Town Meeting. This would include boardwalk repair, parking lot maintenance, bike rack maintenance and safety inspections (with 24 hour notice to the Concessionaire). The Town of Nantucket is also responsible for sewer and water lines, repair of plumbing and wiring faults due to normal use, recreational equipment, as well as providing trash barrels during occupancy period.
- 2) **Special Events:** To inform the Concessionaire of any and all special events taking place on the premises.
- 3) **Improvements:** Any improvements or replacement of equipment made to the premises at the Town of Nantucket's expense will become the property of the Town of Nantucket.

Waiver of Liability

- 1) **Town of Nantucket's Obligation:** Except as a result of its failure to perform the obligations specifically provided herein within a reasonable period after receipt of written notice thereof, the Town of Nantucket shall not be liable to the Concessionaire for any injury or damage to the Premises or to any property of the Concessionaire or to any property of any third person, firm, association or corporation on or about the Premises.
- 2) **Beach Use:** Operation of the Premises by the Concessionaire is independent of the operation of the beach. The Town of Nantucket of Town may from time to time close the beach, acting in the public's interest or in the interest of the State and Federal regulations and guidelines set in place for the protection of listed species. The Town of Nantucket shall not be financially or otherwise liable to the Concessionaire or to the Concessionaire or its agents for any such closure, and such closure shall not change the Concessionaire's obligations as detailed elsewhere in this lease.

I. DEFAULT, DETERMINATION & REMEDIES

- 1) **Events of Default.** The occurrence of any of the following shall constitute an Event of Default by the Concessionaire hereunder:
- 2) **Failure to Make Payment.** The Concessionaire shall default in the payment of any installment of rent, utility, fee, or other sum herein specified on or before the date such payment is due; or
- 3) **Failure to Operate in the Public Interest or to Fulfill Other Non-Monetary Terms:** The Town of Nantucket determines that the Concessionaire has failed to operate the Premises in the best

interest of the Town and/or has failed to operate in accordance to the guidelines set for the management/protection of the State and Federally listed species, or the Concessionaire shall default in the observance or performance of the Concessionaire's non-financial covenants, agreements or obligations hereunder, and such default shall not be corrected within twenty (20) days after written notice thereof; or

- 4) **Failure to comply with the TOWN's Regulations:** The Concessionaire agrees to comply with the current TOWN Guidelines. The most recent version of said guidelines is attached hereto and marked as Exhibit "B".
- 5) **Bankruptcy.** The Concessionaire shall be declared bankrupt or insolvent according to the law, or, if any assignment be made of the Concessionaire's property for the benefit of creditors.
- 6) **Termination.** Upon the occurrence of any Event of Default hereunder, the Town of Nantucket shall have the right thereafter, in its discretion, to re-enter and take complete possession of the Premises, to declare the term of this Agreement ended, and to remove the Concessionaire's effects, without prejudice to any remedies which might otherwise be used for arrears of rent or other default.
- 7) **Remedies.** The Concessionaire shall indemnify the Town of Nantucket against all loss of rent and other payments which the Town of Nantucket may incur by reason of such termination during the residue of the term. If the Concessionaire shall default (after reasonable notice thereof in the case of non-monetary default) in the observance or performance of any conditions or covenants on Concessionaire's part to be observed or performed under or by virtue of any of the provisions in any article of this lease, the Town of Nantucket, without being under any obligation to do so and without thereby waiving such default, may remedy such default for the account and at the expense of the Concessionaire. If the Town of Nantucket makes any expenditures or incurs any obligations for the payment of money in connection therewith, including but not limited to reasonable attorney's fees in instituting, prosecuting or defending any action or proceeding, such sums paid or obligations incurred, with interest at the rate of the Prime Rate plus two percent (2%) per annum and costs, shall be paid to the Town of Nantucket by the Concessionaire as additional rent. "Prime Rate" shall be the interest rate published from time to time in the Wall Street Journal as the prime rate charged by the US money center commercial banks.

J. GENERAL PROVISIONS

- 1) **Late Charges.** A late charge of three percent (3%) of any amount due and unpaid fifteen (15) days after due date shall be added to the amount due from Concessionaire and a finance charge of one point five percent (1½%) per month will be added to all amounts remaining unpaid thirty (30) days after the date the amount was originally due, such charge constituting a charge equal to eighteen percent (18%) per annum.
- 2) **Compliance with M.G.L. Ch. 7.** The Concessionaire covenants and agrees that it will comply with the requirements of M.G.L. Ch. 7, § 40J, including but not limited to, the filing with the Massachusetts Executive Office for Administration and Finance, Division of Capital Asset Management of a disclosure statement in connection with the disposition of an interest in real property by the Town of Nantucket. A copy of the Disclosure Statement is attached hereto.

- 3) **Independent Concessionaire Relationship.** There is no relationship of joint venture, partnership, employment or agency between the Town of Nantucket, on the one hand, and the Concessionaire on the other, and neither party shall have nor exercise any control or direction over the method by which the other performs its work or functions, aside from such control or direction as provided in this Agreement, which the parties view as consistent with their independent Concessionaire relationship.
- 4) **Binding Obligations, Related Obligors.** It is further intended by the Concessionaire and its principals as a condition to this Agreement, that any corporations or other entities which control or are under direct or indirect common control of or with the Concessionaire or which may otherwise be reasonably considered to be a part of its operating business, shall be jointly and severally liable with the Concessionaire for its liabilities as a party to the Town of Nantucket hereunder.
- 5) **Successors and Assigns; No Right to Assign.** Concessionaire shall have no right to assign this Agreement or the rights granted hereby with respect to the Premises, or otherwise delegate any of its duties hereunder without the prior written consent of the Town of Nantucket, which may be withheld at the sole discretion of the Town of Nantucket. Any such attempted disposition without the consent of the Town of Nantucket in writing shall be null and void and of no force and effect. The terms, covenants and agreements herein contained shall be binding upon and shall insure to the benefit of the permitted successors and assigns of the respective parties hereto.
- 6) **Decisions by the Town of Nantucket.** Except as otherwise expressly provided in this Agreement, any decision or action taken by the Town of Nantucket relating to this Agreement or its operation or its termination shall be made by a majority vote of the Board of Selectmen. Responsibilities to monitor obligations shall be undertaken by the Procurement Office.
- 7) **Notices.** All notices required or permitted to be given to Town of Nantucket or Concessionaire shall be in writing and shall be given personally, or sent by certified mail return receipt requested, addressed to such party at its latest address of record. Notices to and payments to the Town of Nantucket shall be addressed to the Town of Nantucket at its offices, Two Bathing Beach Road, Nantucket, MA 02554 and notices to the Concessionaire addressed to it at its principal business address, which Concessionaire represents as appearing on the first page of this Agreement, or to such other addresses as the parties may designate to each other by such notice from time to time.
- 8) **Governing Law.** This Agreement is governed by the laws of the Commonwealth of Massachusetts. In any controversy, litigation or action arising hereunder, each party, including successors and assigns, irrevocably consents to the jurisdiction of the courts of Massachusetts, agrees that venue shall be proper only there; and waives personal service of any summons, complaint or other process and agrees that service thereof may be made in the manner of other notice given hereunder.
- 9) **Entire Agreement; Amendment Interpretation.** This Agreement and the specifications advertised by the Town of Nantucket constitute the entire agreement between the parties superseding all prior or contemporaneous oral or written understandings. No amendment or other modification of the terms of the Agreement shall be binding unless in writing, and duly executed by the parties hereto. No waiver of default by either party of any of the terms, covenants, and

conditions of this Agreement shall be deemed continuing or extending beyond the terms specifically waived in writing. If any provision of this Agreement shall be held unlawful, invalid, or unenforceable, the remainder of the Agreement shall not be affected thereby. Paragraph headings contained herein are for reference only and are not intended to define or limit the scope of any provisions of this Agreement.

K. OTHER CONCESSIONAIRE'S OBLIGATIONS

- 1) **Keys.** Provide keys to the Town for all locked areas within the Premises.
- 2) **Non Emergency Repairs.** Concessionaire shall request prior written approval from the Town for any non emergency repairs to be made to the Premises at Concessionaire's expense. If the work is scheduled between April 15th and Labor Day the Town must also sign off on any non emergency repairs. Pending the status of the State and Federally listed species and the description of the non emergency repairs, the Concessionaire may be required to hire monitor(s) through the Endangered Species Program to be present during the said repairs.
- 3) **Emergency Repairs.** Any emergency repairs Concessionaire will confirm in writing; responsibility for payment of such repairs will be determined in accordance with the terms herein. If the work is scheduled between April 15th and Labor Day the Town must also sign off on any emergency repairs. Pending the status of the State and Federally listed species and the description of the non emergency repairs, the Concessionaire may be required to hire monitor(s) through the Endangered Species Program to be present during the said repairs.
- 4) **Accidents.** Concessionaire shall report any emergencies, accidents or incidents that occur within the Premises to the Town in a timely manner. Exhibit E

References to be included with the Technical (non-price) Proposal:

Please include a list of all clients for whom you have provided a similar service during the past five years. Please include a contact name, company name, address, and telephone number.

The Town expects to check references. One or more poor references may be a basis for determining that a proposer is not responsible and result in a rejection of the proposal. Reference questions will include but may not be limited to service quality and general customer satisfaction.

Price Proposal:

Please provide separate prices for each year of the lease as a lump sum amount. **Offerors must use the price proposal form contained within this RFP.**

Insurance Required:

- (a) Workers' Compensation, covering the obligations of the CONTRACTOR in accordance with applicable Workers' Compensation or Benefits laws.
- (b) Commercial General Liability Insurance on an occurrence basis with a combined single limit of not less than \$2 million. Coverage is to include premises and operations, coverage

for liability of subcontractors. The policy shall contain an endorsement stating that the aggregate limits will apply separately to the work being performed under this Agreement.

- (c) Automobile Liability Insurance of not less than \$1 million combined single limit covering owned, hired and non-hired vehicle use.

III PROPOSAL EVALUATION PROCEDURE

The Chief Procurement Officer shall designate one or more persons to evaluate responsive non-price proposals according to the evaluation criteria contained below. Once evaluations are complete, the Chief Procurement Officer shall open and review price proposals, and make an award to the successful vendor.

Submittals that comply with the quality requirements will be further evaluated based on the comparative criteria detailed below. Each proposal will be assigned a rating for each comparative criterion and a composite rating.

Finalists will be identified from the evaluation of comparative criteria. The Town will rank these finalists. Price proposals will then be considered. The Town will negotiate a contract with the highest ranked finalist who proposes a price within the Town's budgeted amount. The Town reserves the right to reject any and all proposals if such rejection is in its best interest.

Minimum Quality Criteria/Requirements

Proposals must meet the following minimum criteria/requirements:

Proposals must provide all of the items described in Section I and below.

Proposals must identify a Plan of Services taking into consideration all of the items required in Section I and Section II Scope of Services.

Technical Proposals must provide proof that the business, as currently constituted, has been regularly and actively engaged on a full-time basis in the concessions business operating under the same business name and organization structure; and performing the type of work described in the section of this RFP entitled "SCOPE OF SERVICES" for a minimum of the past five (5) years. Such proof must include contact information for all owners for whom the offeror has performed services over the past five (5) years.

Technical Proposals must provide proof of Insurance(s).

Comparative Criteria

HA – Highly Advantageous

A – Advantageous

NA – Not Advantageous

Quality Control:

HA – Proposal demonstrates superior quality control and availability of resources and staff to perform the services requested.

A – Proposal demonstrates excellent quality control and some availability of resources and staff to perform the services requested.

NA – Proposal demonstrates adequate quality control, limited availability of resources and staff to perform the services requested.

Experience working with municipalities:

HA – Proposer has had more than three (3) municipal clients in the concessions business in the past five years.

A -- Proposer has had between one (1) and three (3) municipal clients in the concessions business in the past five years.

NA -- Proposer has had no municipal clients in the concessions business in the past five years.

Plan of Services:

HA – Proposer has shown the resources and ability to meet the requirements of a concession business able to operate a fully staffed restaurant and bar from the third weekend in May through Columbus Day with the potential limitation of hours to Thursday – Sunday from mid-September through Columbus Day.

A - Proposer has shown the resources and ability to meet the requirements of a concession business able to operate a fully staffed restaurant and bar from the beginning of June through September 30.

NA – Proposer has not shown the resources or ability to meet the requirements of a concession business able to operate a fully staffed restaurant and bar beyond the dates of mid June through Labor Day.

Housing:

HA – Proposer does not need the use of the housing on the second floor of the main building and has identified a plan to allow the Town to use this for Town employees within the context of the concession business.

A – Proposer has identified a plan to use the housing on the second floor of the main building for 50% or less of the identified season with the remainder of the time available to the Town for employee housing.

NA – Proposer has not identified a plan to allow the Town to keep the housing on the second floor of the main building for employee housing.

IV. RULE FOR AWARD

The Town will determine the most advantageous proposal from a responsible and responsive proposer, taking into consideration price and all evaluation criteria set forth in the RFP.

V. TERM OF CONTRACT

The lease agreement awarded will be for five years ending on December 31, 2021.

PROPOSAL RESPONSE FORM

JETTIES BEACH CONCESSION

The undersigned proposes to the Town of Nantucket the lease price specified below for the specifications contained herein.

**Proposal Price must include all costs and all other expenses.
There will be no reimbursable expenses allowed in the lease.**

CONTRACT YEAR	AMOUNT
Year 1:	\$
Year 2:	\$
Year 3:	\$
Year 4:	\$
Year 5:	\$
TOTAL PROPOSAL AMOUNT FOR 5 YEAR LEASE:	\$

Total proposal amount in words:

Name of proposer

Telephone Number

FEIN or SSN

Address, City, State and Zip Code



**AGREEMENT BETWEEN
THE TOWN OF NANTUCKET
AND
JETTIES BEACH INC.**

THIS AGREEMENT made effective January 1, 2012, by and between the **TOWN OF NANTUCKET, MASSACHUSETTS**, a municipal corporation, acting by and through its Town Administrator, with offices at 16 Broad Street, Nantucket, Massachusetts 02554 (hereinafter called the "TOWN"), and **JETTIES BEACH INC.** whose principal office address and state of incorporation are as set forth on Exhibit A (hereinafter called the "Concessionaire").

General: The Concessionaire is responsible for the Operation of a typical snack bar, restaurant and retail concession with the ability to have functions in the function area after 5pm at Jetties Beach, 4 Bathing Beach Road, Nantucket, MA. The Concessionaire is responsible for the Operation of food service in order to offer breakfast, lunch and dinner service. The Concessionaire is also responsible for custodial maintenance of the Beach Maintenance area, as indicated on Exhibit A. Note: The Beach Maintenance area is within a traditional habitat area for both State and Federally protected shorebirds.

The Town of Nantucket's agent will be the Procurement Office or his/her designee.

Concession Premises: The Concession premises (hereinafter called the Premises) shall include the Concession building and the Bathhouse and the tent function area; beginning at the corner of the concession deck closest to the Parking lot walking approximately 180' perpendicular towards the ocean at that point turning West, parallel to the Ocean, walking approximately 100' thence turning South heading approximately 180' to the corner to Bathhouse squaring off the parameters of the tent function area as shown in Exhibit "A".

A. CONCESSION FEE AND OTHER CHARGES

- 1) **Concession Fee:** The Concessionaire shall pay an annual Fee in the amount set forth on the payment Form attached to this Lease as Exhibit B for each occupancy period during the term hereof, as well as a payment of \$500.00 (Five Hundred Dollars) for each function, except the Nantucket Cottage Hospital's Annual Boston Pops Event, held on the Concession Premises during the term of this lease, hereinafter referred to as "Event Fee".
 - a) The Annual Concession Fee shall be payable in two equal installments, the first due on or before July 1 and the second due on or before August 1 of each year.
 - b) The \$500.00 Event Fee shall be payable on or before the start of each Event.

The Concessionaire's 10% bid deposit will be credited toward the first payment of the first year's annual concession fee.

- 2) **Security Deposit:** The Concessionaire shall file with the Town of Nantucket a \$5,000.00 security deposit; refundable at the end of the lease term, without interest to the Concessionaire within sixty (60) days, after determination has been made that the Concessionaire has fulfilled all of the terms of the Lease and left the premises in adequate condition according to the Town and after presenting proof that all utility payments have been made and no defaults are left outstanding.
- 3) **Utility Payments:** The Concessionaire shall pay all water, power, gas, sewer, landfill, oil and telephone costs incidental to its operation hereunder. This obligation includes but is not limited to payment of water and electric bills, Landfill and Sewer User Fees for both the Concession and the Bathhouse portions of

the premises. The Concessionaire is also responsible for all turning on and turning off of all utilities and any and all utility deposits required doing so. The Concessionaire shall present proof of payment of all utilities to the Town of Nantucket within thirty days of closing for the season. Should proof of payment not be presented the Concessionaire shall be considered in default and the Town of Nantucket has the right at its discretion to pay any outstanding amounts from the security deposit as stated in Section A3 above.

- 4) **Other Fees and Utilities:** The Concessionaire shall also be responsible of all licensing fees as determined by the Town, "all" utilities and all other costs associated with the operation of the premises; including any additional fees brought on by the presence of listed shorebirds and the protection plan implemented by the Town of Nantucket's Endangered Species Program, through the Beach Management Plan. Those items specifically provided herein are excluded.

B. TERM

- 1) **Lease Term:** Five years beginning January 1, 2012 and expiring on December 31, 2016.
- 2) **Operation Dates:** Concessionaire shall be permitted to occupy the Premises only during the Occupancy periods, which run from the third weekend in May through the Monday after Columbus Day each calendar year.

C. CONCESSIONAIRE'S OBLIGATIONS **OBLIGATIONS**

- 1) **Concession Facility:** Concessionaire agrees to operate a Concession facility of a typical snack bar and a small retail business in accordance with the applicable rules and regulations and to obtain appropriate licenses before operating the facility and presenting the Town of Nantucket with the same. Small retail sales are allowed. The Concessionaire is responsible to offer food service in order to offer breakfast, lunch and dinner service. The concessionaire shall operate the premises so as to enhance the public's use and enjoyment of the adjacent public beach facility and in the best interest of the Town of Nantucket. The Concessionaire is responsible for compliance with all laws and regulations applicable to the operation of the premises, including but not limited to compliance with applicable ADA regulations.
- 2) **Private Functions/Special Events:** Prior to holding any Private Function, Special Event or activity of less than 250 people the Concessionaire shall obtain in writing approval from the Town of Nantucket and the Beach Manager. A list of upcoming events, as well as completed Beach Event Forms (Exhibit C) must be submitted to both the Beach Manager by May 15th. Any additional events after May 15th will require a Beach Event Form to be completed and submitted to the Town of Nantucket as soon as the event is scheduled. The Town of Nantucket shall have full discretion to deny permission to hold any Private Function, Special Event, or activity. Should the Town of Nantucket approve such a function all of the following conditions must be met:
 - a) If a fire on the beach is planned the Concessionaire must obtain a permit from the Fire Department. A copy of the permit will be give to the Town of Nantucket prior to the day of the function.
 - b) Concessionaire will be responsible for compliance with all Massachusetts, County and Town laws regulations and ordinances governing noise.
 - c) Private functions at the concession will be held in the premises only as shown on Exhibit A and not on the remainder beach. The Town of Nantucket's policy is to disallow private functions on the remainder of the property.
 - d) Section C 2 Private Functions above may be overridden by the additional provisions of this lease.

Not any other part of the lease is affected by any such changes.

- e) A completed copy of the Beach Event Form must be submitted to the Beach Manager.
 - f) Depending on the status of the State & Federally listed species and after the review of the Beach Manager, the Concessionaire may be required to hire monitor(s) through the Town's Endangered Species Program. If the hiring of monitor(s) is deemed necessary a completed Detail Form must be completed and submitted to the Beach Manager before the event. Exhibit D "
- 3) **Public Restrooms, Bathhouse and Shower facilities:** All areas designated as Public Restrooms, Bathhouse and Shower facilities shall be available as such for the public's use. At a minimum the Concessionaire shall operate the Bathhouse, toilet and shower facilities between the hours of 9:00 am and 5:30 pm seven (7) days per week from the Friday prior to Memorial Day through Columbus Day Weekend each year. The Concessionaire shall open the Bathhouse and toilet facilities at all times while the concession is operating. The Town of Nantucket reserves the right to open and staff the toilet facilities only, at other hours for special events. Toilet room facilities must remain open even in inclement weather. The Concessionaire shall be responsible for the cleanliness of the Public Restroom facility and area surrounding the Public Restroom facility.
- 4) **Kitchen Equipment:** The Concessionaire shall provide and install all kitchen equipment and food and drink equipment not already provided by the Town of Nantucket. Any purchase of equipment by Concessionaire from previous Concessionaire would be a private agreement and is not part of the Lease for the facilities. Concessionaire is responsible for maintenance; replacement and removal of his/her own equipment. Any equipment affixed permanently to the premises shall immediately become the property of the Town of Nantucket subject only to the Concessionaire's right to use such equipment during the term hereof. The Concessionaire is responsible for preventive maintenance for the equipment provided by the Town of Nantucket. In addition the Concessionaire agrees to perform annual maintenance prior to closing the building each fall. A schedule of the minimum annual maintenance requirements is attached hereto, and incorporated herein, marked Exhibit "G". Any such equipment remaining after the expiration of this Lease shall, at the option of the Town of Nantucket, either become the property of the Town of Nantucket or be removed and disposed of by the Town of Nantucket at the expense of the Concessionaire.
- 5) **Custodial Services:** The Concessionaire shall clean the restrooms as often as required to maintain them in a condition satisfactory to the Town of Nantucket. The Concessionaire shall supply and maintain paper, soap and supplies as needed.
- 6) **Maintenance:** The Concessionaire shall provide all custodial maintenance inside the buildings and outside the buildings in the Beach Maintenance Area indicated on Exhibit A, Policing the beach and parking areas at least twice daily to keep it free of all litter and other trash generated by the patrons of the beach. All rubbish/trash collected by the Concessionaire or generated from the concession's operation will be secured, removed from the beach and disposed of at the Concessionaire's expense including landfill fees. The Concessionaire is responsible for repairing and maintaining any and all windows and door screens and must inform the Town of Nantucket immediately of any and all repairs so made. The Concessionaire will be required to provide a work order for all exterior and structural repair work to be performed by the Town of Nantucket. Once a pair of potentially nesting listed shorebirds has been recognized, all cleaning of the beach's litter must be done by hand. NO beach raking will be permitted until the status of the State and Federally listed shorebirds has been examined by the Beach Manager and has been deemed permissible. Removal of the rake line by hand or machine is prohibited. Said raking is contracted to an outside Contractor by the Visitor Services. All repairs, maintenance

construction, power washing, or any other action that may involve excessive noise must be completed prior to April 15th

- 7) **Signs and Structures:** Before any temporary or permanent signs or structures are erected the Concessionaire shall first obtain such written approvals as may be required under existing Town regulations including but not limited to a Certificate of Appropriateness from the Historic District Town. The Concessionaire shall then obtain the written permission of the Town of Nantucket.
- 8) **State and Federally Protected Species:** The Concessionaire must be aware that Jetties Beach is a known traditional habitat area for State and Federally listed species, such as the Piping Plover. Such listed species are protected under the Endangered Species Act and are monitored and protected by the Town of Nantucket's Endangered Species Program, via the Beach Manager. The Town's Endangered Species Program is based on set State and Federal Guidelines. Failure to follow the rules, regulations and guidelines created by the State and Federal Government and implemented by the Town of Nantucket's Endangered Species Program may result in the potential closure of Jetties Beach. The Concessionaire is required to abide by all rules and regulations set forth regarding the "State and Federally listed species" and therefore must notify the Beach Manager of any "Private Function, Special Event or Activity" as soon as they are scheduled and no later than one week in advance of the event.
- 9) **Alcoholic Beverages:** In accordance with Section 54-1C of the Nantucket Code, the Town of Nantucket hereby grants its consent to the Concessionaire to serve alcoholic beverages for possession and consumption on the premises subject to the following conditions.
 - a) Concessionaire must obtain a liquor license from the Nantucket Board of Selectmen in accordance with all local, state and federal rules and regulations.
 - b) The area of the Premises in which alcoholic beverages will be served and consumed shall be limited and clearly delineated to the satisfaction of the Town of Nantucket. Appropriate precautions shall be taken to assure that alcoholic beverages are not consumed outside the premises.
 - c) The Concessionaire will be responsible for compliance with all Massachusetts and Nantucket laws, regulations and ordinances governing the serving and consumption of alcoholic beverages on the premises including the consumption of alcoholic beverages by minors.
 - d) Alcohol may only be served between the hours of 5:00 pm and 9:30 pm during the Minimum Operating Hours governing the Concession Facility; i.e. the third week in June, or June 21st, whichever is later, and the Sunday Following Labor Day. Prior to the third week in June, or June 21st, whichever is later, and the Sunday Following Labor Day, the Town will consider requests to commence service of Alcohol earlier than 5:00 pm. Alcohol may only be served in conjunction with meals consumed within the premises.
If it is the intent of the concessionaire to extend the liquor license hours they will be required to obtain Board of Selectmen approval.
The current License for Alcoholic Beverages states the following;
April 1 to June 30 from 11:00 AM to 10:00PM (Private Functions Only); July 1 to August 30 from 5:00PM to 9:30PM (Private Functions and Dinner Service to the Public); September 1 to January 15 from 11:00AM to 10:00PM (Private Functions Only).
 - e) The Concessionaire shall hire a police detail for any private function at which alcohol will be served where more than 150 persons are expected to attend. The cost of such police detail will be paid by the Concessionaire or the sponsor of the function.
 - f) The Concessionaire hereby agrees to indemnify and hold harmless the Town and

County of Nantucket and all of their officials, members, officers, employees and agents from any and all claims arising out of the sale or consumption of alcoholic beverages on the premises and all other costs (including legal fees) related thereto. The Concessionaire will maintain liability insurance with respect to the serving of alcoholic beverages as required by the laws and regulations of the Commonwealth of Massachusetts and the Town and County of Nantucket. All Such policies of liability insurance shall name the Town and County of Nantucket and all other indemnified parties as additional insured parties under the policy. The Concessionaire shall deliver written proof of such insurance, by a certificate of insurance or otherwise as required by the Town, to the Town's designee on or before March 1 of each year during the term herein.

- g) Such provisions are subject to review, modification or termination by the Town of Nantucket at its sole discretion at any time.
- h) Tents set up on the beach portion of the premises cannot be set up until the day of the event for which they are being used and must be removed by Noon on the day after the event. Problems with this provision should be brought to the attention of the Town of Nantucket at least one week prior to the event if not previously addressed during the permitting process. Before erecting or removing a tent and/or floor on Jetties Beach, the Beach Manager must be notified of the size of the tent(s), the times and the date(s). If the Beach Manager feels it is necessary, the Concessionaire will hire monitor(s) through the Town's Endangered Species Program to be present during both the erection of the tent and/or floor and the removal. Failure to contact the Beach Manager regarding a tent and/or floor may result in the loss of future tent/floor use.

11) **Use for dwelling purposes:** The Concessionaire is expressly prohibited from using any part of the premises for dwelling purposes except upon the following terms and conditions.

- a) Only that portion of the second floor of the main building known as the apartment may be used for dwelling purposes and may be so used only by the Concessionaire or employees of the Concessionaire during the period of Occupancy. The Concessionaire with immediate family only may enter the apartment two weeks prior to the occupancy period or two weeks prior to opening the concession whichever is later for the sole purpose of preparing the buildings for the summer season. The Concessionaire with immediate family only may remain in the apartment for up to two weeks after the occupancy period or two weeks after closing the concession whichever is earlier for the sole purpose of closing and winterizing the buildings.
- b) Use of the apartment is specifically restricted to a single family occupancy with the number of occupants allowed determined by the Nantucket Building Inspector.
- c) Leasing of rooms or space to transients or in any temporary basis is strictly prohibited.
- d) The apartment may not be sublet.
- e) Occupancy of the apartment for dwelling purposes may commence only after it has been inspected and approved by the Nantucket Building Inspector. Concessionaire shall be responsible for requesting this inspection by the Nantucket Building Inspector and for complying with all required safety requirements. The Nantucket Building Inspector shall have the right from time to time and upon reasonable notice to the Concessionaire to inspect the premises to see that all terms and conditions of these specifications are being met.
- f) No structural changes or improvements may be made to the apartment by the Concessionaire without written consent of the Town of Nantucket. Any improvements

made to the apartment including those necessary to meet building codes are the sole responsibility of the Concessionaire.

- 12) **Beach Access:** The Town of Nantucket and Beach Manager will hold keys to the gate at the vehicle access to the beach and the Concessionaire will contact the Town of Nantucket and Beach Manager if he/she requires access to the beach through the gate. The Town of Nantucket and Beach Manager may deny access to the beach for motorized vehicles at the Beach Manager's discretion.
- 13) **Tennis Courts:** The Town of Nantucket reserves the right to sell liquid refreshments at the Town of Nantucket office building located at Jetties Beach.
- 14) **Hospital Event:** The Nantucket Cottage Hospital will have the use of the beach and the concession for two days during the summer to use for a major fund raiser. The Town of Nantucket will be responsible for providing the Concessionaire with up to three alternate dates for this event six months prior to the date of the event and providing the concessionaire the final date and dollar amount of compensation to be paid to the Concessionaire at least six months prior to the event.
- 15) **Boardwalk:** The Boardwalk will be installed each season by April 15th by the Department of Public Works in concert with the Town of Nantucket. The boardwalk will be placed to the far right, between the Pavilion and the parking area, and will be flush with the sand. The boardwalk will remain in place for the summer season. The only event for which the boardwalk may be moved is the Hospital Fundraiser. Problems with this provision should be brought to the attention of the Town of Nantucket at least 48 hours prior to the event.
- 16) **No Pets** - The Concessionaire and/or its employees are prohibited from bringing his/her pet (s) to work.
- 17) **End of Season Inspection:** The Concessionaire shall schedule with the Town of Nantucket a date and time for the end of season inspection. The purpose of the inspection is;
 - a. To ascertain any and all repairs necessary prior to opening for the upcoming season.
 - b. To make sure the premises are clean and all items are secured prior to closing for the season.

D. IMPROVEMENTS

- 1) **Consent:** The Concessionaire shall not undertake any improvements to the premises without having first received the written consent of the Town of Nantucket. Should the Town of Nantucket consent to such improvements the Concessionaire shall obtain all required permits and present copies of all permits to the Town of Nantucket prior to starting work. Any improvements to the premises shall be completed before April 15th. Should there be an emergency need for improvements after April 15th the Town must be provided with copies of the permits and details of the work. Before any work begins an assessment may be made by the Beach Manager based on the current status of the State and Federally listed species and the effect the work may have on their habitat/productivity.
- 2) **Ownership:** Any improvements made by the Concessionaire to the premises during the term of the Lease including any structure, fixture or equipment affixed permanently to the premises shall become the property of the Town of Nantucket except as agreed upon in writing prior to installation.

E. INSURANCE

Insurance: The Concessionaire will maintain insurance as listed below and will deliver certificates to the Town of Nantucket, on or before March 1 of each year during the term, stating this insurance is in force, in any calendar year for the duration of this Agreement before he enters the premises:

- 1) **Worker's Compensation:** Worker's Compensation insurance in accordance with Massachusetts General Laws Chapter 152, as amended.
- 2) **Liability:** Comprehensive General Liability insurance including products liability for a combined single amount of \$1,000,000. This policy must have as one of its terms a provision that the Town and County of Nantucket and its Town of Nantucket are additional insured parties. A copy of this policy is to be provided to the Town of Nantucket annually on or before March 1. Such policy must also contain a provision that the Town of Nantucket will be provided with ten (10) days written notice by the insurer of any intent to cancel or a determination that such insurance will not be renewed.

F. OPERATING HOURS

- 1) **Concession Facility:** At a minimum the Concessionaire shall operate the Concession between the hours of 10:00 am and 5:00 pm seven (7) days per week from the third week in June, or June 21st, whichever is later, through the Sunday following Labor Day each year. The Concessionaire will offer breakfast service which will require expanding the hours of operation. The Town of Nantucket agrees to support expansion of the hours of operation necessary to provide breakfast and/or dinner service. The Concessionaire may extend the hours of operation subject to the written approval of the Town of Nantucket. In the event of the beach being unoccupied and closed due to inclement weather the Concessionaire may close after notifying the Town of Nantucket.

G. INDEMNIFICATION

- 1) **Indemnification:** The Concessionaire agrees at all times during the term of this Lease to indemnify, hold and save harmless, the Town of Nantucket and the Town of Nantucket and its officials, employees and agents from and against any and all action or causes of actions, claims, demands, liabilities, losses, damages or expense of whatsoever kind and nature including all legal costs arising out of or in connection with the operation and rental by Concessionaire of the premises or its performance or failure to perform or any provision of this Lease.
- 2) **Waiver of Rights of Recovery:** The Concessionaire also agrees to waive all rights of recovery it may have against the Town of Nantucket and the Town and County of Nantucket for any loss to property or person for which the Concessionaire is insured.

H. TOWN OF NANTUCKET OBLIGATIONS

The Town of Nantucket agrees to the following:

- 1) **Repairs:** To make exterior and structural repairs to the premises subject to funding by Town Meeting. This would include boardwalk repair, parking lot maintenance, bike rack maintenance and safety inspections (with 24 hour notice to the Concessionaire). The Town of Nantucket is also responsible for sewer and water lines, repair of plumbing and wiring faults due to normal use, recreational equipment, as well as providing trash barrels during occupancy period.
- 2) **Special Events:** To inform the Concessionaire of any and all special events taking place on the premises.
- 3) **Improvements:** Any improvements or replacement of equipment made to the premises at the Town of

Nantucket's expense will become the property of the Town of Nantucket.

Waiver of Liability

- 1) **Town of Nantucket's Obligation:** Except as a result of its failure to perform the obligations specifically provided herein within a reasonable period after receipt of written notice thereof, the Town of Nantucket shall not be liable to the Concessionaire for any injury or damage to the Premises or to any property of the Concessionaire or to any property of any third person, firm, association or corporation on or about the Premises.
- 2) **Beach Use:** Operation of the Premises by the Concessionaire is independent of the operation of the beach. The Town of Nantucket of Town may from time to time close the beach, acting in the public's interest or in the interest of the State and Federal regulations and guidelines set in place for the protection of listed species. The Town of Nantucket shall not be financially or otherwise liable to the Concessionaire or to the Concessionaire or its agents for any such closure, and such closure shall not change the Concessionaire's obligations as detailed elsewhere in this lease.

I. DEFAULT, DETERMINATION & REMEDIES

- 1) **Events of Default.** The occurrence of any of the following shall constitute an Event of Default by the Concessionaire hereunder:
 - 2) **Failure to Make Payment.** The Concessionaire shall default in the payment of any installment of rent, utility, fee, or other sum herein specified on or before the date such payment is due; or
 - 3) **Failure to Operate in the Public Interest or to Fulfill Other Non-Monetary Terms:** The Town of Nantucket determines that the Concessionaire has failed to operate the Premises in the best interest of the Town and/or has failed to operate in accordance to the guidelines set for the management/protection of the State and Federally listed species, or the Concessionaire shall default in the observance or performance of the Concessionaire's non-financial covenants, agreements or obligations hereunder, and such default shall not be corrected within twenty (20) days after written notice thereof; or
 - 4) **Failure to comply with the TOWN's Regulations:** The Concessionaire agrees to comply with the current TOWN Guidelines. The most recent version of said guidelines is attached hereto and marked as Exhibit "B".
 - 5) **Bankruptcy.** The Concessionaire shall be declared bankrupt or insolvent according to the law, or, if any assignment be made of the Concessionaire's property for the benefit of creditors.
 - 6) **Termination.** Upon the occurrence of any Event of Default hereunder, the Town of Nantucket shall have the right thereafter, in its discretion, to re-enter and take complete possession of the Premises, to declare the term of this Agreement ended, and to remove the Concessionaire's effects, without prejudice to any remedies which might otherwise be used for arrears of rent or other default.
 - 7) **Remedies.** The Concessionaire shall indemnify the Town of Nantucket against all loss of rent and other payments which the Town of Nantucket may incur by reason of such termination during the residue of the term. If the Concessionaire shall default (after reasonable notice thereof in the case of non-monetary default) in the observance or performance of any conditions or covenants on Concessionaire's part to be observed or performed under or by virtue of any of the provisions in any article of this lease, the Town of Nantucket, without being under any obligation to do so and without thereby waiving such default, may

remedy such default for the account and at the expense of the Concessionaire. If the Town of Nantucket makes any expenditures or incurs any obligations for the payment of money in connection therewith, including but not limited to reasonable attorney's fees in instituting, prosecuting or defending any action or proceeding, such sums paid or obligations incurred, with interest at the rate of the Prime Rate plus two percent (2%) per annum and costs, shall be paid to the Town of Nantucket by the Concessionaire as additional rent. "Prime Rate" shall be the interest rate published from time to time in the Wall Street Journal as the prime rate charged by the US money center commercial banks.

J. GENERAL PROVISIONS

- 1) **Late Charges.** A late charge of three percent (3%) of any amount due and unpaid fifteen (15) days after due date shall be added to the amount due from Concessionaire and a finance charge of one point five percent (1½%) per month will be added to all amounts remaining unpaid thirty (30) days after the date the amount was originally due, such charge constituting a charge equal to eighteen percent (18%) per annum.
- 2) **Compliance with M.G.L. Ch. 7.** The Concessionaire covenants and agrees that it will comply with the requirements of M.G.L. Ch. 7, § 40J, including but not limited to, the filing with the Massachusetts Executive Office for Administration and Finance, Division of Capital Asset Management of a disclosure statement in connection with the disposition of an interest in real property by the Town of Nantucket. A copy of the Disclosure Statement is attached hereto.
- 3) **Independent Concessionaire Relationship.** There is no relationship of joint venture, partnership, employment or agency between the Town of Nantucket, on the one hand, and the Concessionaire on the other, and neither party shall have nor exercise any control or direction over the method by which the other performs its work or functions, aside from such control or direction as provided in this Agreement, which the parties view as consistent with their independent Concessionaire relationship.
- 4) **Binding Obligations, Related Obligors.** It is further intended by the Concessionaire and its principals as a condition to this Agreement, that any corporations or other entities which control or are under direct or indirect common control of or with the Concessionaire or which may otherwise be reasonably considered to be a part of its operating business, shall be jointly and severally liable with the Concessionaire for its liabilities as a party to the Town of Nantucket hereunder.
- 5) **Successors and Assigns; No Right to Assign.** Concessionaire shall have no right to assign this Agreement or the rights granted hereby with respect to the Premises, or otherwise delegate any of its duties hereunder without the prior written consent of the Town of Nantucket, which may be withheld at the sole discretion of the Town of Nantucket. Any such attempted disposition without the consent of the Town of Nantucket in writing shall be null and void and of no force and effect. The terms, covenants and agreements herein contained shall be binding upon and shall inure to the benefit of the permitted successors and assigns of the respective parties hereto.
- 6) **Decisions by the Town of Nantucket.** Except as otherwise expressly provided in this Agreement, any decision or action taken by the Town of Nantucket relating to this Agreement or its operation or its termination shall be made by a majority vote of the Board of Selectmen. Responsibilities to monitor obligations shall be undertaken by the Procurement Office.
- 7) **Notices.** All notices required or permitted to be given to Town of Nantucket or Concessionaire shall be in writing and shall be given personally, or sent by certified mail return receipt requested, addressed to such

party at its latest address of record. Notices to and payments to the Town of Nantucket shall be addressed to the Town of Nantucket at its offices, Two Bathing Beach Road, Nantucket, MA 02554 and notices to the Concessionaire addressed to it at its principal business address, which Concessionaire represents as appearing on the first page of this Agreement, or to such other addresses as the parties may designate to each other by such notice from time to time.

- 8) **Governing Law.** This Agreement is governed by the laws of the Commonwealth of Massachusetts. In any controversy, litigation or action arising hereunder, each party, including successors and assigns, irrevocably consents to the jurisdiction of the courts of Massachusetts, agrees that venue shall be proper only there; and waives personal service of any summons, complaint or other process and agrees that service thereof may be made in the manner of other notice given hereunder.
- 9) **Entire Agreement; Amendment Interpretation.** This Agreement and the specifications advertised by the Town of Nantucket constitute the entire agreement between the parties superseding all prior or contemporaneous oral or written understandings. No amendment or other modification of the terms of the Agreement shall be binding unless in writing, and duly executed by the parties hereto. No waiver of default by either party of any of the terms, covenants, and conditions of this Agreement shall be deemed continuing or extending beyond the terms specifically waived in writing. If any provision of this Agreement shall be held unlawful, invalid, or unenforceable, the remainder of the Agreement shall not be affected thereby. Paragraph headings contained herein are for reference only and are not intended to define or limit the scope of any provisions of this Agreement.

K. OTHER CONCESSIONAIRE'S OBLIGATIONS

- 1) **Keys.** Provide keys to the Town for all locked areas within the Premises.
- 2) **Non Emergency Repairs.** Concessionaire shall request prior written approval from the Town for any non emergency repairs to be made to the Premises at Concessionaire's expense. If the work is scheduled between April 15th and Labor Day the Beach Manager must also sign off on any non emergency repairs. Pending the status of the State and Federally listed species and the description of the non emergency repairs, the Concessionaire may be required to hire monitor(s) through the Endangered Species Program to be present during the said repairs.
- 3) **Emergency Repairs.** Any emergency repairs Concessionaire will confirm in writing; responsibility for payment of such repairs will be determined in accordance with the terms herein. If the work is scheduled between April 15th and Labor Day the Beach Manager must also sign off on any emergency repairs. Pending the status of the State and Federally listed species and the description of the non emergency repairs, the Concessionaire may be required to hire monitor(s) through the Endangered Species Program to be present during the said repairs.
- 4) **Accidents.** Concessionaire shall report any emergencies, accidents or incidents that occur within the Premises to the Town in a timely manner. **Exhibit E**

Agreement: The Concessionaire shall be responsible for adhering to all of the provisions stated in the Lease.

LEASE EXHIBIT A

1. **Name of Concessionaire:** Jetties Beach Inc.
2. **State of Incorporation:** MA
3. **Principal Office Address:** 40 Main Street, Nantucket, MA 02554
4. **Description of Services (§2.1):** Jetties Beach Concession lease as described herein
5. **Person, Department, or Committee, if any, to whom Concessionaire reports (§ 2.2):**
Diane A. O'Neil, Project Manager/Chief Procurement Officer or Jeff Carlson, Beach Manager
6. **Term of Agreement (§3.1):** 5 year Lease (January 1, 2012 through December 31, 2016)
7. **Completion Date (§3.2):** December 31, 2016
8. **Additional Insurance Coverage (§6.2(e)):**

**LEASE EXHIBIT B
JETTIES BEACH CONCESSION**

The undersigned proposes to in pay the Town of Nantucket the Lease price below for the concession operation specifications contained herein.

The Annual Concession Fee shall be payable in two equal installments, the first due on or before July 1 and the second due on or before August 1 of each year.

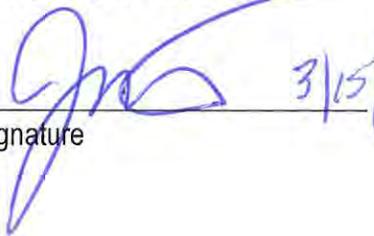
Year 1's first installment shall be \$47,500.50 less the bid deposit of \$9,502.00 = \$37,998.50.

Lease Year	Annual Lease Amount	Payment due July 1	Payment due August 1
Year 1 - 2012	\$ 95,001.00	\$47,500.50 - \$9,502 = \$37,998.50	\$47,500.50
Year 2 - 2013	\$ 97,376.03	\$48,688.02	\$48,688.01
Year 3 - 2014	\$ 99,810.43	\$49,905.22	\$49,905.21
Year 4 - 2015	\$ 102,305.69	\$51,152.85	\$51,152.84
Year 5 - 2016	\$ 105,222.69	\$52,611.35	\$52,611.34
Total for 5 Year Lease	\$ 499,715.84		

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first written above.

TOWN OF NANTUCKET, MASSACHUSETTS

CONCESSIONAIRE


 Signature 3/15/11

Approved As To Form:


 Libby Gibson, Town Manager

Org. /Obj

Approved as To Funds Available:


 Finance

TAX COMPLIANCE CERTIFICATION

Pursuant to M.G.L. 62C, §49A, I certify under the penalties of perjury that, to the best of my knowledge and belief, I am in compliance with all laws of the Commonwealth relating to taxes, reporting of employees and Concessionaires, and withholding and remitting child support.

Federal Employer ID Number

04-1952565

Jettes Beach Inc
Name of Corporation

JM 3/15/11
President's Signature Date

J. Marshall Thompson
Please Print Name

Exhibit C BEACH & PAVILION – BEACH EVENT FORM

One of these forms must be completed and submitted to the Beach Manager for each event; either before the initial May 15th deadline or directly after any event at Jetties Beach has been scheduled. Failure to do so may result in the loss of Jetties Beach use for future events.

It is required by the state that the Town of Nantucket implement a Beach Management Plan, including an Endangered Species Program, to protect both state and federally listed species. The following information will be required for any event held within proximity of any state or federally listed species habitat, nesting adults, juvenile chicks, and or unfledged chicks. Each event must hire endangered species monitor(s) through the Town to be present during the event and, if necessary, during the set up and removal of any tent(s), tables, floors and etc. There will be a **\$15/hr fee (per monitor)*** for any additional use of the monitors outside of their scheduled times, usually 8am-6pm. If needed, alterations may be made to this information within 48 hours of the event.

BASIC INFORMATION

Location of Event:		Type of Event:
Date of Event:	Time of Event (start-finish):	Number of Expected Guests:

TENT INFORMATION

Is a Tent being used; if yes what Company? No Yes, _____		Contact person of Tent Company and Phone Number:
If yes to tent :	Date to set up Tent:	Time to set up Tent:
	<i>Contingency date to set up Tent:</i>	<i>Contingency time to set up Tent:</i>
	Date to remove Tent:	Time to remove Tent:
	<i>Contingency date to remove Tent::</i>	<i>Contingency time to remove Tent::</i>

FLOOR INFORMATION

Is a Floor being used; if yes what Company? No Yes, _____		Contact person of Floor Company and Phone Number:
If yes to Floor:	Date to set up Floor:	Time to set up Floor:
	<i>Contingency date to set up Floor:</i>	<i>Contingency time to set up Floor:</i>
	Date to remove Floor:	Time to remove Floor:
	<i>Contingency date to remove Floor::</i>	<i>Contingency time to remove Floor::</i>

MUSIC INFORMATION

Is there going to be Music? No Yes		If yes by whom/what type?	Contact name & information for Music:
If yes to Music:	Sound Check Date:	Sound Check Time:	

CATERING INFORMATION

Is it Catered? No Yes		If yes, by whom?	Contact Number:
If yes to Caterer	Number of Caterers Staff:	Set up time:	Take down time:
	Are there going to be other structures used at the event, if yes what type (tables, chairs, generators, etc.) and how many? No Yes, _____		

REMINDER: A THOROUGH CLEAN UP PLAN IS REQUIRED FOR EVERY EVENT!

Note: Monitors are usually scheduled to be on the beaches from 8:00am to 6:00pm 7 days a week. It is suggested that any preparations for the event, such as tent erection, be done between the hours when monitors are scheduled to be present on the beach. Anything before or after these hours will be **\$15 per hour/per monitor***, and will be charged to the event. No event, or setting up/taking down of an event, can take place without a monitor present first. Be sure to contact the Beach Manager beforehand to be sure the appropriate people will be present.

CONCESSIONAIRE: _____ DATE: _____ BEACH MANAGER: _____ DATE: _____



**Exhibit D
Nantucket Endangered Species Program
Beach Event Detail**

**Employer-Billing Information
Event/Detail Information**

Type of detail: (wedding, cocktail party, Co. event, cookout)		Location:
Date of detail:	Actual detail start time:	Actual detail finish time:
Total hours to be invoiced:	Detail rate*:	Total due:

Name of company or person to be invoiced for this detail:	
Federal tax ID number of company or social security number of person to be invoiced for this detail:	
Has the invoice company/person previously Hired detail beach monitors?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Contact name of person to be invoiced for this detail:	
Billing Mailing Street Address:	
City, State, & Zip Code:	

* RATES: 2 hour minimum charge: 0600 to 2400 \$15.00. 0001 to 0600 \$18.00.

** The Town of Nantucket has a 10% Administration Surcharge and a Medicare Charge of 1.45% on all details. This will be added to the total due.

Beach Monitor Information

Beach monitor name:	Date:
Beach monitor signature:	

Exhibit E
BEACH & PAVILION - INCIDENT REPORT FORM

INSTRUCTIONS:

1. This form should be completed by the Concessionaire, Beach Manager and Town of Nantucket when they or their employees are involved with an incident in the vicinity of Jetties Beach.
2. Keep a copy for your records and submit a completed form to the Town of Nantucket, 16 Broad Street, Nantucket, MA

GENERAL INFORMATION

1. Individual(s) Involved in the Incident:		
2. Address:		
3. Home Phone:	4. Work Phone:	5. <input type="checkbox"/> Concessionaire <input type="checkbox"/> Beach Management <input type="checkbox"/> Town of Nantucket <input type="checkbox"/> Other: _____
6. Date and Time of Incident:		
7. Exact Location of Incident:		
8. Witness Name:	9. Phone Number:	10. Other Contact Information:

INCIDENT

11. How did the incident occur? Describe fully the events that took place; give details on all facts that led to the incident/accidents. Identify the individuals involved in the incident/accident and what their roles were.	
12. Describe the immediate action taken and state by whom:	
13. Was an Officials Agency Contacted? No Yes	14. If yes, which Officials were Contacted? NPD USF&W EPO Other: _____
15. Contact person at the Official Agency:	16. Phone Number:

DAMAGE OR THEFT

17. Exact Description of Damage or Loss:		
18. Describe the property/location in detail:		
19. Was an Official Agency Contacted? No Yes	20. If yes, which Officials were Contacted? NPD USF&W EPO Other: _____	21. Was there a case number and if yes, what was it? No Yes, _____
22. First Noticed by Whom?	23. Phone Number:	

ADDITIONAL INFORMATION

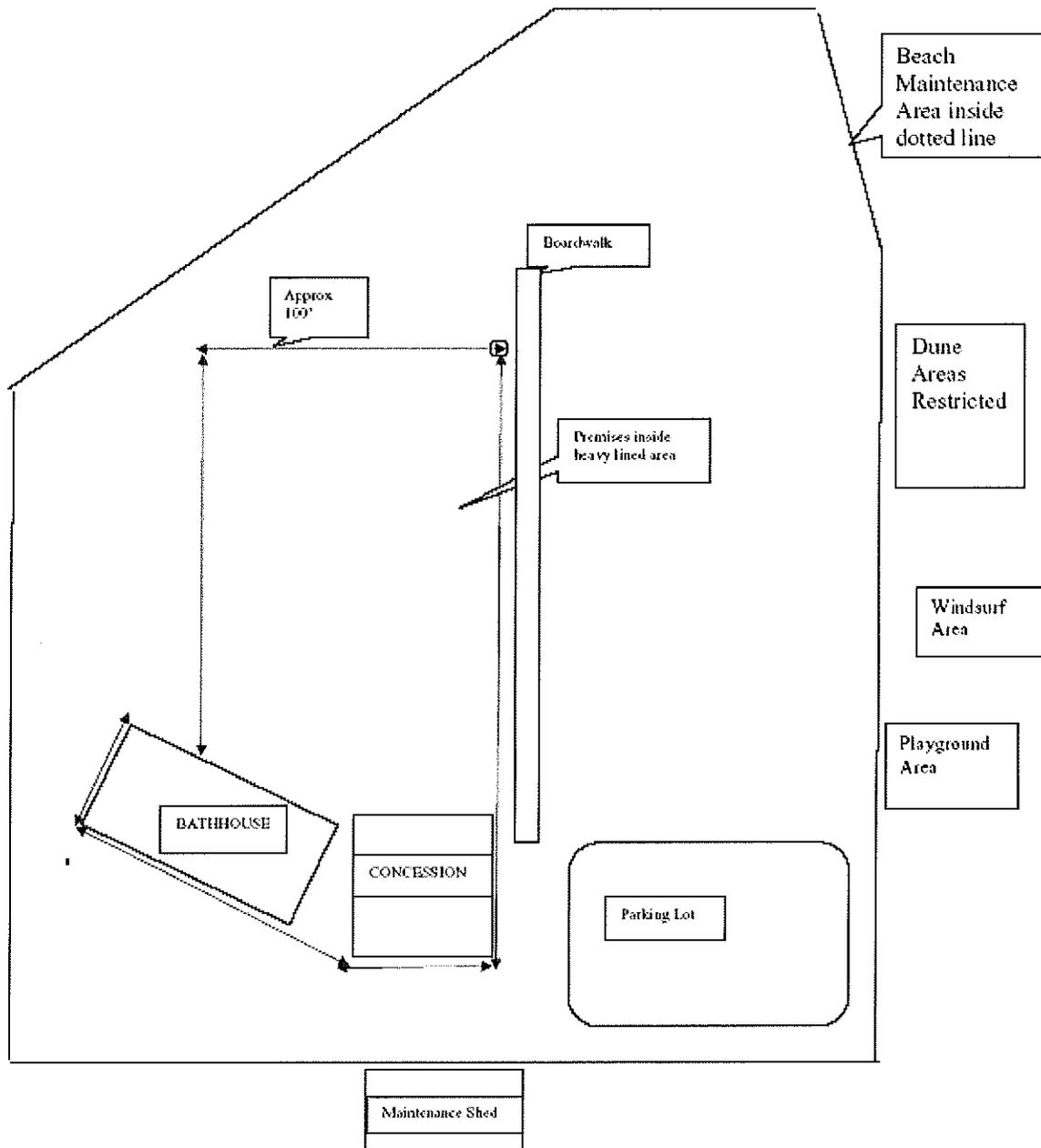
24. Person Completing Report:	25. Concessionaire <input type="checkbox"/> Beach Management <input type="checkbox"/> Town of Nantucket <input type="checkbox"/>
26. Phone Number:	27. E-mail Address:
28. Additional Information:	

29. I attest that the information given here is accurate to the best of my knowledge.	
30. Person receiving the Incident Report Form:	31. Date Received:

**EXHIBIT F
JETTIES BEACH
CONCESSION AREA**

(Not to Scale)

Concession Premises: The Concession premises (hereinafter called the Premises) shall include the Concession building and the Bathhouse and the tent function area; beginning at the corner of the concession deck closest to the Parking lot walking approximately 180' perpendicular towards the ocean at that point turning West, parallel to the Ocean, walking approximately 100' thence turning South heading approximately 180' to the corner to Bathhouse squaring off the parameters of the tent function area. as shown in Exhibit "F".



LEASE EXHIBIT G

All Concessions:

General Maintenance: All equipment is cleaned and oiled as needed.
Concessionaire responsible for maintaining screen doors and windows

End of Each Season:

Hoods and fan are cleaned; Hood fan wrapped for winter, Grease traps emptied walls and floors scrubbed to remove any and all grease; all equipment shall be cleaned and oiled, i.e. fryolator and/or grill.

Concessionaire meets with Town of Nantucket's designee to go over premises and repairs needed prior to next season

Specific to

Jetties: Nothing is to be stored under buildings; Ice Machine and bin are to be moved inside.

Children's: Nothing is to be stored under building

Surfside: Nothing is to be left outside.

LEASE EXHIBIT H
Town & County of Nantucket
16 Broad Street, Nantucket, MA 02554
(508)-228-7256

Guidelines, Rules, and Regulations for Property Use

General Guidelines

If you pack it in, pack it out. Keeping any property you use clean is only polite. Please help keep Nantucket clean for the next user.

The Town is committed to bringing all properties into compliance with ADA regulations, and work is proceeding in this area. If you have any questions about the accessibility of any area please call the office.

The Town welcomes the use of properties by the public and encourages small parties to use these areas at any time for recreational use during daylight hours. All users of Town properties are subject to the following general regulations:

- 1) Parking is allowed only in designated areas.
- 2) Alcohol is not allowed on Town property except as noted below.
- 3) All users of Town property are required to adhere to Town bylaws, especially those regarding noise and signs.
- 4) Overnight camping is prohibited.
- 5) No hunting is allowed on any Town property.
- 6) The selling of goods or services without the prior written consent of the Town is prohibited.
- 7) Any temporary event structure must be assembled and disassembled in 24 hours unless a time extension is granted by the Town prior to the event.
- 8) For Tom Nevers and the Jetties Parking Area a \$500 dollar security deposit is required in case of damage.
- 9) To schedule the Youth Fields each year each organization must send a letter of request to the Town by mid January, and submit a game schedule 4 weeks before the season opener.

Functions

Larger functions, including groups that wish exclusive use of a property, use of the facilities, to charge admission, or to allow the use of alcohol, are required to have their events approved by the Town prior to advertising the event. Sponsors wishing to put on such an event will be asked to meet with the Town's designee, to discuss the event, at which time the processes needed to approve the event will be established. The sponsor will need to fill out an application stating various information about the event, including the name of the activity (if any), the sponsor's name and address, and a general description of the event, including the use and/or setting up of buildings or other temporary structures, consumption of food, and other pertinent details.

Large Events

If more than 250 people are expected at an event, the Board of Selectmen's approval is required this process will require receipt of a completed Special Event Application at least sixty days prior to the event.

Alcohol

The Town **does not allow the use of alcohol** on any property under its jurisdiction without approval of the Town Administration and/or Board of Selectmen.

Parking and Vehicle Use

Other than designated parking areas, vehicle use on Town property is prohibited. Driving on beaches under is

subject to the Beach Vehicle bylaw, Chapter 56. Handicapped parking areas are available at most properties.

Beaches

Town beaches are open from 9:00 am to 5:00 pm seven days per week during the summer season. Lifeguards are administered through the Marine Department. Lifeguard Services at the beaches may be discontinued during inclement weather. Driving is not allowed on any life-guarded beach; flotation devices, boogie boards and "water wings" are also not allowed while lifeguards are on duty.

Security and Insurance

The Town may, at its discretion, require that event sponsors pay a security deposit and/or obtain written liability insurance naming the Town as insured parties. Whether or not such insurance is required by the Town, all sponsors will be required to sign an Indemnification agreement. All sponsors will be required to supervise the people at their event and ensure that restricted areas are kept restricted.

Property Use

The Town welcomes the use of its property for recreational purposes. Items may not be left on Town property without prior approval by vote of the Town. Changes or alterations of Town property also require vote of the Town, and any improvements made to property or buildings become the property of the Town.

Finally, all users of Town property should be aware that the Town reserves the right to restrict or deny use of its properties.

Additional Conditions

Visitors are welcome on all Town properties with the understanding that they use the areas at their own risk, respect the rights of private property owners within and abutting these areas, and comply with all published and posted regulations. The Town does not assume responsibility for injuries, or for the loss, theft, or damage of personal property.

Notice: Limitation of Liability

Entry upon or use of any property of the Town by any person shall constitute a release by such person of the Town, its agents, the Town of Nantucket, and any of its employees from any and all claims for personal injuries, property loss, theft, or damage sustained on Town property, and such release shall be binding upon such person, his personal representatives, and all persons claiming through or under him

**Exhibit I
DISCLOSURE STATEMENT
DISPOSITION OF REAL PROPERTY**

This form contains a disclosure of the names and addresses of all persons with a direct or indirect beneficial interest in the real estate transaction described below. This form must be filed with the Massachusetts Division of Capital Planning and Operations, as required by M.G.L. c. 7 §40J, prior to the conveyance of or execution of a lease for the real property described below. Attach additional sheets if necessary.

1. Public agency involved in this transaction: Town of Nantucket, Massachusetts
2. Complete Legal Description of Real Property: Concession Facilities
4 Bathing Beach Road,
Nantucket, Massachusetts
3. Type of Transaction: Sale Lease or rental for Five years: (term)
4. Seller(s) or Lessor(s):

Purchaser(s) or Lessee(s):

6. Names and addresses of all persons who have or will have a direct or indirect beneficial interest in the real property described above. *Note: if a corporation has, or will have a direct or indirect beneficial interest in the real property, the names of all stockholders must also be listed except that, if the stock or corporation is listed for sale to the general public, the name of any person holding less than ten percent of the outstanding voting shares need **not** be disclosed.*

Name		Address

None of the person(s) is an official elected to public office in the Commonwealth of Massachusetts, except as listed below"

Name		Title or Position

7. This section must be signed by the individual(s) or organization(s) entering into this real property transaction with the public agency named in item 1. If this form is signed on behalf of a corporation, it must be signed by a duly authorized officer of that corporation.

The undersigned acknowledges that any changes or additions to item 4 of this form during the term of any lease or rental will require filing a new disclosure with the Division of Capital Planning and Operations within 30 days following the change or addition.

The undersigned swears under the pains of penalties of perjury that this form is complete and accurate in all respects.

Signature		Date:
Printed Name		
Title		



The Jetties 2015 Event List

Event	Date
Rosenzweig/Wilson RD	6-12-15
Kim Findlay Corporate Clambake	6-13-15
Cressman Clambake	6-14-15
Jemison RD	6-19-15
Jefferies & Company, Inc.	6-23-15
Nantucket Retina Foundation Clambake	7-23-15
Topper/Lukens RD	7-31-15
Guitierrez Event WH	7-31-15
NCH Boston Pops Fundraiser (NO Town Fee)	8-8-15
Autism Speaks Fundraiser	8-15-15
Opera House Cup	8-16-15
Crosetto/Johnson RD	9-11-15
Ring/Berner Wedding	9-12-15
Antos Wedding	9-19-15
Bean Wedding	10-2-15



The Jetties 2014 Event List

Event	Date	Date Pd	Ck #
Tucker Blair BBQ Lunch	5-24-14	6/9/14	31612
Jefferies Corporate Clambake	6-18-14	7/11/14	31683
Fleming Corporate Clambake	7-18-14	7/11/14	31683
Simon Brunch	7-20-14	7/11/14	31683
MarineMax Corporate Clambake	8-1-14	8/15/14	31822
NCH Pops	8-9-14	No payment for this event	
Pietrogallo/Evans Wedding	8-16-14	8/15/14	31822
Autism Speaks	8-16-14	8/15/14	31822
Opera House Cup	8-17-14	8/15/14	31822
NCH Cocktail Party	8-23-14	8/15/14	31822
Criscitelli RD	9-5-14	8/15/14	31822
Smith – Charlotte & Ben Wedding	9-6-14	8/15/14	31822
Burke/Davis RD	9-12-14	8/15/14	31822
Tanya (Kaushik) & Jake Wedding	9-13-14	8/15/14	31822
Chris (Lipuma) & Meghan RD	9-19-14	8/15/14	31822
Maggie's Client RD	9-26-14	8/15/14	31822

Jetties

10/20/2014 09:52 |Town of Nantucket
krichen |G/L ACCOUNT DETAIL

|P 1
|glactinq

Org: 01420 Object: 43606
RENTAL FEES 001 -0400-0420-00-0000-43606

YEAR	PER	JOURNAL	EFF DATE	SRC	T	PO/REF2	REFERENCE	AMOUNT	P	CHECK NO	WARRANT	VDR NAME/ITEM DESC	COMMENTS
2015	02	001237	08/22/2014	CRP	1	1230664		-5,500.00	Y	✓		CUSTOMER <i>Spec Event</i>	JETTIES S
2015	02	001088	08/19/2014	CRP	1	1230018		-8,154.43	Y			CUSTOMER	FRANCIS S
2015	02	000384	08/06/2014	CRP	1	1227466		-76,287.82	Y	✓		CUSTOMER <i>Surfside</i>	JETTIES &
2015	01	001055	07/23/2014	CRP	1	1216809		-8,000.00	Y			CUSTOMER	SEA NANTU
2015	01	000961	07/22/2014	CRP	1	1216747		-8,000.00	Y			CUSTOMER	SEA NANTU
2015	01	000961	07/22/2014	CRP	1	1216810		8,000.00	Y			Reversal / 121674	SEA NANTU
2015	01	000679	07/17/2014	CRP	1	1213683		-1,500.00	Y	✓		CUSTOMER <i>function</i>	JETTIES F
2015	01	000679	07/17/2014	CRP	1	1213684		-76,287.83	Y	✓		CUSTOMER <i>Rental</i>	JETTIES R

Total Amount: -175,730.08

** END OF REPORT - Generated by Kathy Richen **

Monthly Town Management Activities Report

04/06/16

Highlights:

Personnel

- Various grievance and disciplinary actions
- Beginning prep for upcoming 2016 union negotiations
- Visitor Services Director hire

Meetings:

- Fertilizer regulations/water quality initiatives
- Department head weekly & monthly mtgs
- New municipal building
- Pre-season beach

Projects:

- Tank Farm relocation RFP & follow-up
- OIH: 3/23 consultant presentation, 3/24 forum, associated meetings
- IT Operational Review
- Hummock Pond Rd (aka Milk St ext) bike path ext
- Fire Station
- Brant Point Boat House
- Children's Beach Restrooms
- 4FG Housing
- Electric document project
- NRTA office move

Other:

- 2016 ATM (meetings, forums, warrant articles, motions, Voter's Guide, mailing)
- E-newsletter
- Sewer projects funding and outreach/public education (meetings, document prep, letters, responses to questions)
- Concession leases (upcoming)
- Mobile food unit RFP
- Paid parking at 2 FG lot (exploration)

Pennel C. Ames
Sharon L. Ames
5 Nobska Way
PO Box 951
Nantucket, MA 02554

February 2, 2016 (By email)

Board of Selectmen
Town of Nantucket
16 Broad Street
Nantucket, MA 02554

Dear Sirs and Madam:

Ref: Notice of Appeal from Action of the Department of Natural Resources (“DNR”)

This letter constitutes Notice of our appeal of the action of the Natural Resources Enforcement Officer on November 13, 2015 in confiscating our catch of bay scallops and orally imposing the associated penalty of an additional day off from scalloping.

The first section below argues that the appeal is timely, being filed within 30 days of the “issuance” of the penalty, as required by Section 7.2 of the Town of Nantucket Shellfishing Policy and Regulations, adopted by the Board of Selectmen on March 4, 2015.

The second section sets forth the reasoning as to why the penalties imposed by the Natural Resources Enforcement Officer should be set aside on the grounds that the actions of said officer deprived us of the economic benefit of our catch of scallops (and that from the day off) without due process.

Attached are a series of Appendices with relevant documentation which are part of this appeal. The attached Appendix is a Statement of Facts as known to us. In the interest of brevity, we are avoiding repeating the facts in this letter to the extent practicable. Thus the Statement of Facts is deemed incorporated herein.

1. The appeal is timely and should be allowed.

As noted, Section 7.2 of the Town of Nantucket Shellfishing Policy and Regulations provides for the filing of an appeal within 30 days of the “issuance” of the penalty. (Appendix) A search of the Town’s regulations and the Massachusetts General Laws (“MGL”) does not provide any obvious definition of “issuance” in the context of a penalty, but a search of the word in the MGL seemingly shows it always to be used in connection with a document.

No written citation or other document was given to us on November 13, 2015 when our catch was confiscated. The DNR claims that subsequent phone calls were made to us to ask us to come into the office to get the citations, but we have no records of such calls on our cell phones and recall no messages on our land line, and DNR has not produced requested telephone records (Exhibit 6) proving otherwise. Apparently, DNR made no attempt thereafter to mail or email to us the citations until the citations were included with other documents with a group email on which we were but one of the addressees, dated January 6, 2016 from Jeff Carlson, the Director of DNR (Exhibit 1). In the interim between November 13, and January 6, DNR had numerous opportunities to give us the citations but failed to do so.

We submit that this appeal is timely because constructive “issuance” of the citations for our alleged violations of the shellfish regulations did not occur until January 6, 2016 and this appeal is being filed within the requisite 30 days thereof.

2. The penalties imposed by the Natural Resources Enforcement Officer should be set aside as the procedure utilized for determining whether there had been violation of the Shellfish regulations deprived us of the economic benefits of our catch without due process.

Under Massachusetts law and Nantucket’s shellfish regulations, shellfish wardens are given extraordinary authority. Massachusetts General Laws gives shellfish wardens the same authority in the performance of their duties as police officers and both State law and local regulations give them the right to inspect catches without a warrant and confiscate the entire catch (thus imposing a financial penalty) if they find a violation. There is afforded no judicial proceeding and no trial to the offender. The regulations do not define violations of the Town’s shellfish regulations as a crime and do not even require a second opinion. Thus, shellfish wardens having these extraordinary powers should be held to at least the same standards in the performance of their enforcement duties as police officers in protecting the rights of offenders and creating a chain of evidence.

We assert we were improperly denied our right to due process when:

1. Our catches were physically confiscated and we were informed about the additional day off upon the finding that that we had a total of 27 allegedly illegal bay scallops in three of our boxes when the number of illegal scallops required to confiscate our 10-box catch was at least 200.
2. We were unaware and, therefore, not present when our entire catch was examined by DNR personnel.
3. We were not informed of our right to inspect the catch after DNR completed its inspection.
4. DNR personnel did not make a reasonable and timely effort to inform us of the issuance of citations for the alleged violations.
5. We were denied the basic fairness provided by having in place written rules and regulations governing the conduct of DNR enforcement officers or written procedures governing the inspection and/or confiscation of shellfish catches. (The assertion that such written rules and regulations do not exist is based on the lack of response to our Massachusetts record release request and the inaccuracy of the Enforcement Officer’s recitation at Barrett Pier on November 13, 2016 of the standard for confiscating a bay scallop catch.)
6. There is doubt, as raised by DNR’s photograph of the offending scallops and by Dr. Boyce’s comment, that there were enough illegal scallops in DNR’s count to comprise a violation.
7. Our scallops were dumped into the back of the Enforcement Officer’s truck and driven away without any identifying markings, thus breaking the chain of evidence which could have been used to ascertain that the scallops later counted and photographed by DNR out of our presence came from our catch.

On this basis of our being denied due process in the confiscation of our catch on November 13, 2015, we ask the Board to direct the DNR to withdraw the citations and expunge any record of our alleged violations from its files.

(Unfortunately, there seems to be no other remedy available to us. It hardly seems worthwhile to remand this back to DNR for further consideration as the evidence, such as it was, has long been disposed of. In addition, we have no recourse for the dollar value of the catch that was confiscated or lost from the day off. This appeal appears to be the only way to clear our names.)

For the record, Dan Drake is working with us on this appeal on a voluntary basis. He is authorized to speak on our behalf.

Regardless of the outcome of this appeal, we encourage you and Town Administration to work with the Harbor and Shellfish Advisory Board and other interested parties to ensure that the enforcement and penalty provisions of the Town's Shellfish Regulations and DNR's rules are fair and transparent in their administration and enforcement.

Thank you for your consideration.

Very truly yours,



Pennel C. Ames



Sharon L. Ames

Attachments:

APPENDIX – Statement of Facts

EXHIBIT 1 – Email from Jeff Carlson dated 1/6/2016 and attachments (reports, photograph and citations)

EXHIBIT 2 – P. Ames photographs of 275 scallops in a box

EXHIBIT 3 – Boyce email dated 1/31/2016 with attachment (photograph and comments)

EXHIBIT 4 – Copy of letter dated 1/1/2016 sent to all commercial shellfisherman by DNR

EXHIBIT 5 – Town of Nantucket Shellfish Regulations (Section 7)

EXHIBIT 6 – Massachusetts Record Release Request dated 1/8/2016

STATEMENT OF FACTS

We, Pennel C. Ames and Sharon L. Ames, are commercial scallop fishermen, duly licensed by the Town of Nantucket for the 2015-16 season. Pennel's license number is 14000468 and Sharon's license number is 13000143. Pennel has 38 years of experience commercial scalloping and Sharon has 24 years of experience.

On Friday, November 13, 2015 at about 10:45 am, we landed our ten-box, double-limit catch of bay scallops at the Walter Barrett Pier in Madaket. Upon putting the boxes on the pier, Jason McGrath, the Town deputy shellfish warden began examining our catch for seed. He could not find the growth rings on a handful of scallops but after Pennel showed him where they were, McGrath called his superior J.C. Johnsen, the Town's Natural Resources Enforcement Officer to come and look at our catch.

Johnsen arrived at the Barrett pier at about 11:30 am. He confirmed that the previously examined scallops did have growth rings and they were thrown back in the boxes. He then proceeded to cull through the entire contents of three scallop boxes and came up with twenty-seven "illegal" scallops that, while having growth rings, he said were undersized. (He did not find any seed.) Johnsen then told us he was confiscating our entire catch because finding twenty illegal undersized scallops was sufficient and informed us that we also had the following Monday "off" from scalloping. Johnsen then said that he had to get back to his office to write a report of the incident. The entire ten boxes of scallops were dumped into the back of Johnsen's town pick-up truck and at approximately 12 pm, he drove away without any other comment about what he was going to do with the scallops or whether we had any additional role to play. We were too upset and scared to ask any questions about possible next steps.

That was the last time we spoke with either Johnsen or McGrath about the incident, although they have subsequently claimed that they tried to reach us by telephone to tell us to come in to the Department of Natural Resources ("DNR") office to sign something. Our cell phone history records show no relevant incoming calls to our cell phones and no messages were left by them on our land line answering machine.

Sharon stopped into the Natural Resources Office at about 1:30 pm on December 1, 2015 to ask for a copy of the incident report and photographs mandated by the shellfish regulations. The person she spoke to did not know where the report was and said to the effect, "The photographs are around here somewhere." Jeff Carlson, head of the Natural Resources Department, and the enforcement personnel were not present, but Sharon spoke later with Carlson after he had called her on her cell phone at 2:49 pm and she subsequently returned the call. Carlson said he would be at the SHAB meeting that evening and she asked him to bring the report with him. He replied that it was "on a computer" and would try to locate it, along with the relevant photos. He offered to meet with Sharon at his office the next morning but she declined because we had decided that we would attend the SHAB meeting that evening to ask for assistance; feeling that we had been treated unfairly, in a manner not in compliance with the shellfish regulations. She wanted to see what came out of the SHAB meeting before agreeing to a meeting with Carlson.

At the SHAB in the afternoon of December 1, 2015, during the Board's discussion of our matter, Carlson again said that the report "was on a computer" and because the Enforcement Officer, (Johnsen) had taken a personal day, it was still unavailable. Before leaving the meeting, Sharon again asked Carlson for a copy of the report and he said he would get it to her the next morning.

On Wednesday morning, December 2, Sharon received a voice mail message on her cell phone from Joann Capone in the Department of Natural Resources office saying that the Enforcement Officer was going to be out the rest of the week and that they would contact her (Sharon) "...hopefully before the end of the week." to let her know that the report was available to pick up at the DNR's office. (Sharon subsequently saw Johnsen in his Town truck twice on Thursday, December 3. The second time, he was driving toward Madaket with another person in the truck whom she believes to have been the deputy warden, when she passed him on the Madaket Road about one-half mile west of the dump.)

At the SHAB meeting on January 5, 2016, which we attended, Carlson was not present.

On Wednesday morning, January 6, 2016, Dan Drake, whom we had advised on January 5, of what had transpired and who is now helping us with this matter, called Gregg Tivnan, Assistant Town Manager to state his concern with how the incident had unfolded and the subsequent lack of responsiveness from the Department of Natural Resources. Late in the afternoon of that same day, Drake and Pennel (among others) received an email (Exhibit 1, including the attachments) from Carlson to which were attached his and Johnsen's incident reports, a photograph of the alleged 275 illegal scallops in a scallop box and photo copies of the citations written to both Pennel and Sharon for their alleged violations. This was the first time we had seen any of the material related to the confiscation of our scallops on November 13, including the citations.

(We acknowledge that there are some discrepancies in the facts related in this narrative and in the reports included with Carlson's January 6 email. We assert that the facts related in this narrative are correct.)

On January 7, 2016 at Drake's request, Pennel also took some photographs at Nantucket Seafoods of 275 scallops, taken that day from Madaket Harbor, in a standard scallop box comparable to the one used by DNR for their alleged photo of our scallops. (Those photographs are attached as Exhibit 2)

On January 31, 2016, Dr. Peter Boyce, a member of SHAB and an experienced bay scallop researcher, submitted an email to us, without any request from us, with an attachment showing a blow-up of a portion of the photograph DNR submitted with its January 6 email, depicting what it claimed were our scallops. (Exhibit 3) In his comments accompanying the photo, Dr. Boyce said some of the scallops pictured did have identifiable growth rings and were legal scallops. He superimposed arrows on the photograph to show the growth rings. In his comments, Dr. Boyce also noted the difficulty he and another researcher were having in identifying growth rings on the outside of shells from this year's scallop harvest.

On Friday, January 8, 2016 we filed a Massachusetts Public Records Law request with Carlson (Exhibit 4), in an attempt to learn more about how this case was handled and any procedures the Department of Natural Resource has in place to govern the conduct of its enforcement officers. Although we understand the law requires a response to such a request within ten calendar days, we have received no response to our request as of February 2, 2016.

Coincidentally, DNR sent a letter to all Nantucket commercial shellfishermen dated 1/1/2016 and postmarked 1/6/2016 on the letterhead of Jeff Carlson. In that letter, which *inter alia* transmitted a copy of the Shellfish Regulations adopted on March 4, 2015, it was stated "In the event of a confiscation you have the right to inspect your catch after the warden has completed their (sic) inspection." (Exhibit 4) We believe this letter to be the first of its kind.

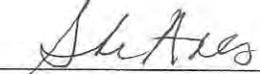
The confiscation of our catch on November 13, 2015 cost us together about \$1600 in net income (before boat expenses) and cost our openers an additional \$400. The wholesalers to whom we sell also lost their revenue from our catch. Additionally, the same amounts were lost from our "day off" on Monday, November 16.

Finally, from our November 13 experience, it was apparent to us that the shellfish wardens' training was inadequate. McGrath, the deputy warden, whom we do not believe has had any formal training, was unable to identify the growth rings on legal scallops he examined. Johnsen, the Enforcement officer, who we believe has been to training at Massachusetts Maritime Academy, was clearly incorrect in his statement to us on November 13 that finding 20 illegal scallops was sufficient to allow him to confiscate our catch. (At the time Johnsen stated that he had been taught that finding 20 illegal scallops constituted grounds for confiscating a catch during the state training he attended at Massachusetts Maritime Academy.) The Nantucket Shellfish Regulations (the relevant section attached as Exhibit 5) states that the minimum standard for a violation is that five percent of the catch in question be comprised of illegal scallops. Thus for ten boxes, with each box containing between 400 and 450 scallops, for a total of 4000 to 4500 scallops in our ten-box limit, the *minimum* requirement to confiscate the catch is 200 to 225 illegal scallops. In this case, we were told orally of the confiscation and "day off" penalty after the identification of only 27 illegal scallops, whereupon, as noted above, all the scallops were then dumped in Johnsen's Town truck and taken away.

We have not been scalloping since November 13, 2015 because of our concerns about the unfair enforcement of the regulations.

Respectfully submitted,


Pennel C. Ames


Sharon L. Ames


Date

Daniel Drake

From: Jeff Carlson <JCarlson@nantucket-ma.gov>
Sent: Wednesday, January 06, 2016 4:48 PM
To: Daniel Drake; 'Daniel W Drake'; Peter B. Brace; pennel.ames@comcast.net
Cc: Libby Gibson; Gregg Tivnan
Subject: Information in regards to Ames Violation 11-13-2015
Attachments: Nov 13,2015 Ames seed.pdf; Shellfish Regulations as adopted.pdf; Shellfish Warden Training Legislation.pdf

Good afternoon everyone,

Attached please find a summary of procedures used, the warden report, my report and other information in regards to this matter. I have also attached a copy of the current regulations and a copy of the state law detailing warden training.

Thanks,
Jeff Carlson
Town of Nantucket
Natural Resources Coordinator
Natural Resources Dept.
2 Bathing Beach Road
Nantucket, MA 02554
508 228-7230, jcarlson@nantucket-ma.gov

TOWN OF NANTUCKET NATURAL RESOURCES DEPARTMENT

JEFF CARLSON, NATURAL RESOURCES COORDINATOR
2 BATHING BEACH ROAD
NANTUCKET, MA 02554

JCARLSON@NANTUCKET-MA.GOV
508-228-7230



MEMO

1/6/2016

To: Peter Brace, SHAB Chairman
Dan Drake
Pennel Ames

From: Jeff Carlson, Natural Resources Coordinator

Re: Seed/Undersized Nubs Confiscation

There have been a number of questions and concerns raised in regards to the confiscation of bay scallops, warden procedures, and warden training. The shellfish warden program is a program that we take seriously and try to ensure consistency and fairness. Leading up to the March 4, 2015 adoption of the current shellfish regulations the Natural Resources Department (NRD) with a sub-committee of the Harbor and Shellfish Advisory Board (SHAB) spent over a year and a half developing and reviewing the new regulations. These meetings included procedural discussions and appropriate penalties. After being endorsed by SHAB they were then approved after two public hearings on March 4, 2015 by the Board of Selectmen. I have attached a copy of the adopted regulations to this correspondence as they will be referenced in this memo.

Warden Training – Massachusetts General Law Chapter 130, Section 98 requires “in each city and town bordering on coastal waters the mayor or the selectmen, as the case may be, shall appoint a person or persons, qualified by training and experience in the field of shellfishery management, as shellfish constables or deputy shellfish constables. A person having successfully completed the shellfish wardens training course at the Massachusetts Maritime Academy as certified by said academy, shall be considered qualified by training and experience in the field of shellfishery management and shall be eligible for appointment as a shellfish constable or deputy shellfish constable.” JC Johnsen has completed this course and has been appointed as the shellfish constable and the Director of Marine Fisheries and the Massachusetts Environmental Police have been noticed of the appointment.

In regards to the specific violation in question the taking of Seed Scallops or undersized scallops the text of the Town of Nantucket Shellfishing Policy and Regulations Section 4.14 is a direct match of 322 CMR 6.11. Any training in regards to this regulation for determination of a legal or illegal bay scallop would be applicable.

TOWN OF NANTUCKET NATURAL RESOURCES DEPARTMENT

JEFF CARLSON, NATURAL RESOURCES COORDINATOR
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Confiscation/Warden Procedures – this section will only discuss the procedures used in the case of a seed or undersized nub potential violation and confiscation. NRD assumes 400 individual scallops per bushel for the purposes of determining the required 5% seed or undersized nubs for initial analysis. Each license is allowed 5 boxes of bay scallops per day. By the math 100 bay scallops is 5% of a typical 5 box limit. If a boat has two license holders it is allowed up to 10 boxes of scallops but the catches are reviewed as one landing or total catch which would put the total amount of seed to 200 individual scallops. As a part of the review NRD staff will count out an individual box of the catch for the actual number of scallops in the bushel and use that number or 400, whichever is number greater. In an effort to make the use of time most efficient for the wardens and fisherman when checking a catch the trigger to review the entire catch is to find greater than twenty illegal scallops with minimal effort. This means going through the top of the boxes to see what is in the catch. In this particular catch the warden pulled out fifty scallops before deciding to take the catch for further review. Fifty scallops would be 25% of the required scallops for the entire catch. Upon taking a catch for review, the fisherman is notified of where they are going and invited to view the completed review and I am notified that they will be reviewing a catch for the possession of illegal scallops. The wardens and additional NRD staff, if needed, go through the catch to determine if the 5% threshold is met. Calipers are used to precisely measure the growth ring and shell height in the case of undersized nubs. This is to ensure that the 10mm restriction on the growth ring is met and then if the growth ring is inside of 10mm that the shell height is great than 2.5 inches. If it is not it is an undersized nub scallop as defined by state and local regulations. This process for a typical landing can take 3-5 hours depending on the number of NRD staff assigned to the analysis. I confirm the count of illegal scallops with the warden and we notify the Massachusetts Environmental Police of the violation and see if they wish to review it before its return to the water. To comply with Section 7.4 of the local regulations the confiscation is then documented by written reports and a photograph. All scallops are then returned to the water as required by this regulation. A confiscation and one day license suspension is required by Section 7.7 for the taking of greater than 5% seed or undersized nubs of the total catch. In this specific case the review ended after greater than 275 illegal scallops had been confirmed which exceeds greater than 5% (200 bay scallops) of a ten box landing. Had there been no violation the scallops would have been returned to the fisherman at a location of their choosing.

Protection of this fishery resource is something that the Natural Resources Department takes great pride in and takes this responsibility seriously. In the discussions with the Board of Selectmen, SHAB, fisherman, and through the Shellfish Management Plan

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protection of seed scallops is always one of the top priorities identified. These seed scallops and undersized nubs are what will be reproducing and helping to sustain the natural biomass of bay scallops within Nantucket Harbor. I hope this clarifies a number of the questions raised in regards to this specific incident.

Cc: Libby Gibson, Town Manager
Gregg Tivnan, Assistant Town Manager

On November 13, 2015 around 10:30-11:00 AM I received a call from Jason that he was checking Pennell and Sharon Ames catch and found some seed and would like me to come take a look I said I would be there in ten minutes. I arrived and Jason had a pile of scallops on their tailgate I started going through them and was finding a lot of seed and undersized nubs. The Souza's had pulled up to the dock to haul there boat I asked the Ames to move their vehicle up the street so we would be out of their way. As I started to go through there boxes I decided to give a quick check to all of their boxes and asked Jason to help check and it didn't take long to have fifty seed or undersized nub scallops on the tailgate. Sharon proceeded to tell me she had a boat to catch and I said if you would like I will take all of your boxes to the office and go through them and if I don't find five percent I will return your scallops to you so you can catch the boat and she said I do not know why you can't just give us a warning I said because I have found quite a bit of scallops that aren't legal and I'm going to check your catch. Penal said you might as well take my catch you're going to find what you need. At that point I had over fifty scallops on their tailgate and I said I'm taking your catch and I'm going to go through it at the office you can come down and see what I find if you would like. Sharon then proceeded to get right in front of me and yell that she has had a bloody nose and a brain aneurism and needed to get to New York to see a specialist and it's my fault she missed the boat and it was her fault they had the illegal scallops because she didn't have her glasses and couldn't see what she was looking. She asked why we couldn't just take her catch and I explained to her that you can't point the finger at one person you both are fishing in the same boat and usually both catches have the same amount of illegal scallops in them. I told them I would contact them when I'm done to let them know what I had found. Jason and Pennell and I loaded the scallops in my truck and I headed to the office. At the office Natural Resources, Jason and I went through their scallops and found more than five percent of seed or undersized nub scallops (over 275 individuals in less than five boxes) before we even made it through half of their catch I contacted the Ames and left them a message saying they had the next day off and I needed them to come to the office to sign the ticket and we could show them what we found. We received no response from the Ames.

JC Johnsen
Town of Nantucket
Shellfish Warden

TOWN OF NANTUCKET NATURAL RESOURCES DEPARTMENT

JEFF CARLSON, NATURAL RESOURCES COORDINATOR
2 BATHING BEACH ROAD
NANTUCKET, MA 02554

JCARLSON@NANTUCKET-MA.GOV
508-228-7230



Pennell and Sharon Ames
Taking of Seed and Undersized Nubs
11/13/2015

On November 13, 2015 I was contacted by the Shellfish Warden, JC Johnsen, about a potential seed violation for Pennell and Sharon Ames. JC then informed me shortly thereafter that he and Jason McGrath, the seasonal shellfish warden, had determined that the Ames' catch required a confiscation for further review as they had over fifty seed scallops without going through much of the catch. They confiscated the catch and returned to the office at 2 Bathing Beach Road for review of the catch. Then using calipers scallops were sorted into scallops legal for taking or scallops illegal for taking. This was done in the driveway at the office. I checked on them a number of times and additional NRD staff assisted with the counting and measuring. After they had reached over 5% seed or undersized nubs (greater than 275 individuals, 200 required typically for 5%) I recounted and confirmed the illegal scallops. They were then photographed and the entire catch was then returned to the water by the wardens. After verifying the return of the scallops we concluded the violation. JC notified them of their day off and asked them to come down and sign their ticket.

Jeff Carlson
Town of Nantucket
Natural Resources Coordinator

AMES
SEED VIOLATION
11/13/2015





Town of Nantucket Massachusetts

VIOLATION NOTICE

DEPARTMENT FILE NO.

DATE NOTICE WRITTEN 11/13/15

DEPARTMENT: POLICE HEALTH BUILDING MARINE H.D.C. A/ZB

A 28526

DEPARTMENT COPY

VIOLATOR	NAME (Last, First, Initial) Aimee Sullivan			OWNER (if different) or PARENT (if minor)		
	ADDRESS S Nantucket Way			ADDRESS		
	CITY/TOWN Nantucket	STATE MA	ZIP 02554	CITY/TOWN	STATE	ZIP
DATE OF BIRTH	RACE/SEX F	SOCIAL SECURITY NUMBER		DESCRIPTION OF AREA/PREMISES, BICYCLE OR VEHICLE		
DATE OF VIOLATION 11/13/15	LOCATION OF VIOLATION Barnes Park			TIME	<input type="checkbox"/> AM <input type="checkbox"/> PM	
A.	77 surf/waterboard w/prop			VIOLATION CODE 7.7	FINE 1000	
B.	confiscate chain					
OFFICER: CHECK ONE ONLY <input type="checkbox"/> WARNING <input type="checkbox"/> NON-CRIMINAL			IF NON-CRIMINAL TOTAL AMOUNT DUE: \$			
OFFICER CERTIFIES COPY GIVEN TO VIOLATOR		ID NO.	<input type="checkbox"/> BY HAND <input type="checkbox"/> BY MAIL	VIOLATOR ACKNOWLEDGES RECEIPT OF NOTICE X		



Town of Nantucket Massachusetts

VIOLATION NOTICE

DEPARTMENT FILE NO.

DATE NOTICE WRITTEN 11/13/15

DEPARTMENT: POLICE HEALTH BUILDING MARINE H.D.C. A/ZB

A 28525

DEPARTMENT COPY

VIOLATOR	NAME (Last, First, Initial) Aimee Sullivan			OWNER (if different) or PARENT (if minor)		
	ADDRESS S Nantucket Way			ADDRESS		
	CITY/TOWN Nantucket	STATE MA	ZIP 02554	CITY/TOWN	STATE	ZIP
DATE OF BIRTH	RACE/SEX M	SOCIAL SECURITY NUMBER 573421524		DESCRIPTION OF AREA/PREMISES, BICYCLE OR VEHICLE		
DATE OF VIOLATION 11/13/15	LOCATION OF VIOLATION Barnes Park			TIME	<input checked="" type="checkbox"/> AM <input type="checkbox"/> PM	
A.	77 surf/waterboard w/prop			VIOLATION CODE 7.7	FINE 1000	
B.	confiscate chain					
OFFICER: CHECK ONE ONLY <input type="checkbox"/> WARNING <input checked="" type="checkbox"/> NON-CRIMINAL			IF NON-CRIMINAL TOTAL AMOUNT DUE: \$			
OFFICER CERTIFIES COPY GIVEN TO VIOLATOR		ID NO.	<input type="checkbox"/> BY HAND <input type="checkbox"/> BY MAIL	VIOLATOR ACKNOWLEDGES RECEIPT OF NOTICE X		

**PART I** ADMINISTRATION OF THE GOVERNMENT**TITLE XIX** AGRICULTURE AND CONSERVATION**CHAPTER 130** MARINE FISH AND FISHERIES**Section 98** Shellfish constables; appointment; powers and duties; notice of appointment

Section 98. In each city and town bordering on coastal waters the mayor or the selectmen, as the case may be, shall appoint a person or persons, qualified by training and experience in the field of shellfishery management, as shellfish constables or deputy shellfish constables. A person having successfully completed the shellfish wardens training course at the Massachusetts Maritime Academy as certified by said academy, shall be considered qualified by training and experience in the field of shellfishery management and shall be eligible for appointment as a shellfish constable or deputy shellfish constable. Such shellfish constables and deputy shellfish constables shall be appointed for terms of three years, and may be reappointed. They shall, subject to the appointing authority, initiate, promote and manage shellfisheries in such city or town and shall make or cause to be made such studies as may be necessary to enhance the value of such shellfisheries. They shall enforce all statutes, ordinances, by-laws, rules and regulations relative to shellfish in such city or town. They shall, for the enforcement of sections thirty-one, thirty-seven, forty-one, forty-three and forty-four, have the authority granted to natural resource officers, subject to written rules and regulations of the commissioner. In the performance of his duties, a shellfish constable or deputy shellfish constable may request any person who he has cause to believe is engaged in unlawful shellfishing, is in unlawful possession of shellfish, or is in possession of shellfish unlawfully taken, to display forthwith for inspection all shellfish in his possession, and he may arrest without a warrant any person refusing or failing to comply with such request.

Upon the appointment of a shellfish constable or deputy shellfish constable under this section, the appointing authority shall forthwith notify the director of the division of marine fisheries and the director of the division of law enforcement.

COPY OF TON SHELLFISH REGULATIONS

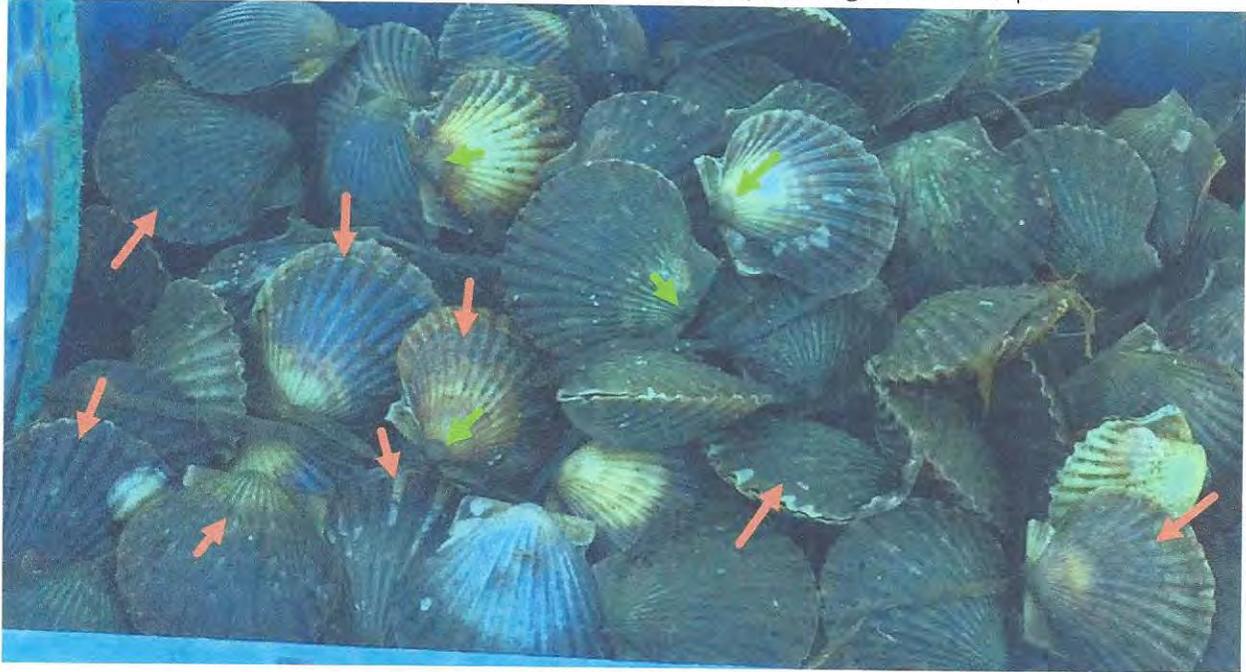
OMITTED

Pennel Ames Images of 275 Scallops from Madaket Harbor – 1/8/2016



Comments on the Nov13, 2015 Ames Seed Violation Photo

This is a sample of the scallops in the Ames seed report showing the annual growth rings that are identifiable in the photo provided. The green arrows identify the nub scallop growth rings which are clearly visible from the photo. While, it is hard to tell from the photos alone, these nubs appear to be of legal size (over 63mm in shell height). One relevant statistic is that the shells picked up on Nov 13 from the DPW shell pile contained 10% under sized nubs. The red arrows indicate annual growth rings which are identifiable from the photo. The ones marked are definitely not illegal seed scallops.



It should be noted that, this year, the annual growth rings are very difficult to discern, and while this may make the scallops illegal according to the strict wording of the State and Town law and regulations, which requires a "well defined annual growth ring", the purpose of the law is to ensure that scallops have had opportunity to spawn. It is clear to me that quite a few of the scallops in this box have had an opportunity to spawn, and should be classified as adults.

Note that I have participated in an ongoing study conducted by Val Hall this scallop season in which she samples shells taken from shanties or the DPW shell pile. We classify and measure 500 shells every two weeks, and have now looked carefully at 2,500 shells. From this experience, we are able to recognize several populations, e.g. there is a population of scallops with growth rings in the 15mm – 20mm range, such as the one seen in the lower left (short red arrow pointing up) which make them legal adult scallops. The arrow on the lower far right indicates a barely discernable growth ring similar to ones we see on a number of shells. I am certain that if you opened this scallop, you would find the telltale ridge on the inside which is a more definite indicator of an annual growth ring.

Dr. Peter Boyce
1/31/16

Daniel Drake

From: Peter Boyce <pboyce@aes.org>
Sent: Monday, February 01, 2016 10:07 AM
To: Daniel Drake
Subject: Comments on the Ames Seed Violation Photo
Attachments: Ames scallops classification-1.docx

Dan,
Here is the photo with some arrows indicating where I see annual growth lines indicating that these are not illegal scallops. I could make a better photo if I had a digital copy of the original to work with.
But, as you say, the problem is more with the procedure than than any individual case - where the evidence has long since vanished. Still, some of these growth rings are just too obvious to be overlooked.
--Peter

--
Dr. Peter Boyce
Research Associate, Maria Mitchell Association
508-228-9062 Cell:508-737-8628

TOWN OF NANTUCKET NATURAL RESOURCES DEPARTMENT

JEFF CARLSON, NATURAL RESOURCES COORDINATOR
2 BATHING BEACH ROAD
NANTUCKET, MA 02554

JCARLSON@NANTUCKET-MA.GOV
508-228-7230



EXHIBIT 4

Pennel Ames
PO Box 951
Nantucket, MA 2554

1/1/2016

Dear Commercial Shellfish License Holder,

We hope you had a great holiday season and commercial shellfish licenses are eligible for renewal. As a current license holder you will not be required to fill out the application going forward. Please bring this form and the appropriate payment per license to the Nantucket Public Safety Facility at 4 Fairgrounds Road. These renewals must be in by March 31st, 2016 or you will be subject to a late start. If you have changed address, vehicle, or boat you will need to fill out that section of the application and file it with the Natural Resources Department. You will be required to provide a copy of your valid Commonwealth of Massachusetts Shellfish License when purchasing your Town of Nantucket Shellfish License. Enclosed with this renewal letter is a current copy of the Town of Nantucket Regulations, blank catch reports, and a summary of changes from the previous version of the regulations. It is your responsibility to know and abide by the regulations. In the event of a confiscation you have the right to inspect your catch after the warden has completed their inspection. For copies of any of these materials please visit the Town of Nantucket Website www.nantucket-ma.gov or visit the Natural Resources office at 2 Bathing Beach Road.

Commercial Shellfish License Renewal

Name:		Please check
Bay Scallop	\$250	
Quahog	\$150	
Blue Mussel	\$150	
Conch/Whelk	\$150	
Aquaculture	\$150	
Other	\$150	
Total Due		
I am acknowledging receipt of this information and agree by signing to observe and comply with all applicable shellfish laws and regulations of the Town of Nantucket and Commonwealth of Massachusetts		
Signed:		

Town of Nantucket
Shellfishing Policy and Regulations
As Adopted on March 4, 2015 by Nantucket Board of Selectmen
Under Authority of Massachusetts General Law, Chapter 130
Under Authority of Chapter 122 of the Code of the Town of Nantucket

Section 7 – Enforcement

7.1-Enforcement Personnel: In compliance with Chapter 122 § 122-16 of the Code of the Town of Nantucket the Shellfish Warden as designated by the Board of Selectmen is the primary enforcement personnel. The Board of Selectmen shall assign any other personnel or deputies as they see fit for shellfish enforcement.

7.2-Penalties: Recreational and Commercial Violations and the associated penalties are listed in the tables below. Any penalty may be appealed to the Board of Selectmen within 30 days of the issuance.

7.3-Penalty Fees: Penalties must be paid in full with a receipt provided to the Natural Resources Department.

7.4-Disposition of Unlawful Catch: All confiscated catch will be documented and photographed before putting unlawful shellfish back into the water by the Shellfish Warden (MGL Ch.130; Section 12)

7.5-Suspension: Suspension applies to open fishing days only

Daniel W. Drake

From: Daniel W. Drake <ddrake@ackquack.com>
Sent: Friday, January 08, 2016 3:53 PM
To: Jeff Carlson
Cc: Gregg Tivnan; Peter B. Brace (coskataheaven@earthlink.net)
Subject: Massachusetts Public Records law request
Attachments: Ames MPRL Request 1-8-16 signed.pdf

Jeff,

I am working personally with Pennel and Sharon Ames with respect to the unfortunate incident on November, 2015. At their request, I am forwarding to you a Massachusetts Public Records Law request relating to information relevant to the confiscation of their catch and the assignment of an additional day off.

We acknowledge and thank you for the material which you sent yesterday. However, the Ames do not believe it sets forth a complete and entirely accurate description of what transpired. The specificity of their request is designed in part to find whether there is an answer to their concerns.

Please let me know if you have any questions.

One thing I am curious about, though not technically falling with the terms of the request, is why, if the Ames did not respond to the phone calls alleged to have been made to them, the citations were not mailed to them within a few days. That appears, from the form, to be a viable alternative. What is even more baffling is why, when you were first asked for the report at the SHAB meeting on December 1, 2015, the citations and the reports were not produced at that time.

Regards,

Dan

Daniel W. Drake
PO Box 194
Nantucket, MA 02554

Office: 508-325-7753
Home: 508-228-4833
Cell: 508-221-0770

Pennel C. Ames
5 Nobska Way
PO Box 951
Nantucket, MA 02554

January 8, 2016

Department of Natural Resources
Town Administration
Town of Nantucket
16 Broad Street – 1st Floor
Nantucket, MA 02554

Attn: Mr. Jeff Carlson, Natural Resources Coordinator (via email)

Dear Sirs:

Re: Massachusetts Public Records Law request

My wife, Sharon L. Ames, and I are commercial shellfishermen, duly licensed by the Town of Nantucket for the 2015-16 season. Sharon's license number is 13000143 and my license number is 14000468.

On November 13, 2015 at the Walter Barret Pier in Madaket, Natural Resources Enforcement Officer J.C. Johnsen, assisted by seasonal shellfish warden Jason McGrath, confiscated our ten-box (combined limit) catch of bay scallops after culling through 3 boxes of the catch and finding 27 scallops which he said were illegal to take. In addition to confiscating the entire day's catch, he also informed us both that we could not scallop on the following day (Monday).

Section 7(4) of the Town of Nantucket Shellfishing Policy and Regulations, adopted on March 4, 2015, reads as follows: "Disposition of Unlawful Catch – All confiscated catch shall be documented and photographed *before* (emphasis added) putting unlawful shellfish back into the water by the Shellfish Warden (MGL Ch. 130; Section 12)."

On December 1, we requested that the Natural Resources Department provide us with the documentation of the catch confiscated from us as well as the photographic images of the confiscated scallops. The material has been promised to us at least twice in early December, but nothing was delivered until a packet of material was emailed to us on Thursday, January 7, 2016. That packet included statements and other material which appear to be inconsistent with other representations made previously by representatives of the Natural Resources Department.

Accordingly, this is a request under the Massachusetts Public Records Law (M. G. L. Chapter 66, Section 10). I request that I be provided with the following records:

Department of Natural Resources

January 8, 2016

Page 2

- 1) Legible copies of all contemporaneous documentation, including photographic images, prepared by the Natural Resources Department as required by Section 7(4) of the Town of Nantucket Shellfishing Policy and Regulations or other rules, relating to the confiscation of ten boxes of Nantucket Bay Scallops from Pennel C. Ames and Sharon L. Ames by Natural Resources Enforcement Officer J. C. Johnsen on November 13, 2015;
- 2) Legible copies of all relevant documentation, including photographic images, relating to the confiscation of ten boxes of Nantucket Bay Scallops from Pennel C. Ames and Sharon L. Ames by Natural Resources Enforcement Officer J. C. Johnsen on November 13, 2015 prepared subsequent to the date of the event ;

(All items provided under requests 1) and 2) should be clearly marked as to the date of their preparation; not just the date of the matter to which they related.)

- 3) All relevant documentation and or photographic images of the disposition of said confiscated scallops;
- 4) Call records for any telephone calls made by members of the Natural Resources Department to the Ames' telephones, 508-228-6439, 508- 325-2416 and 508-680-4658, on the dates November 13-16, 2015, inclusive;
- 5) Copies of all citations for taking illegal catch issued to commercial scallopers for the period November 1, 2015 through December 31, 2015;
- 6) Copies of any written procedures of the Natural Resources Department governing the standards for its personnel in determining if shellfish have been taken illegally, the standards for justification of the confiscation of a catch, the handling of the physical confiscation of catches and the disposition thereof, and the extent of involvement of the fisherman or fishermen whose catch is threatened with confiscation in the process of determining whether his or their catch is in violation.

I recognize that you may charge reasonable costs for copies, as well as for personnel time needed to comply with this request. If you expect costs to exceed \$10.00, please provide a detailed cost estimate.

The Public Records Law requires you to provide me with a written response within 10 calendar days. If you cannot comply with my request, you are statutorily required to provide an explanation in writing.

Sincerely,



Pennel C. Ames

PO Box 951
Nantucket, MA 02554
Email:
Telephone 508-228-6439

Cc: (via email)

Gregg Tivnan, Assistant Town Manager, Town of Nantucket
Peter B. Brace, Chair, Harbor and Shellfish Advisory Board, Town of Nantucket

Libby Gibson

From: Jeff Carlson
Sent: Wednesday, January 06, 2016 4:48 PM
To: Daniel Drake; 'Daniel W Drake'; Peter B. Brace; pennel.ames@comcast.net
Cc: Libby Gibson; Gregg Tivnan
Subject: Information in regards to Ames Violation 11-13-2015
Attachments: Nov 13,2015 Ames seed.pdf; Shellfish Regulations as adopted.pdf; Shellfish Warden Training Legislation.pdf

Good afternoon everyone,

Attached please find a summary of procedures used, the warden report, my report and other information in regards to this matter. I have also attached a copy of the current regulations and a copy of the state law detailing warden training.

Thanks,

Jeff Carlson

Town of Nantucket

Natural Resources Coordinator

Natural Resources Dept.

2 Bathing Beach Road

Nantucket, MA 02554

508 228-7230, jcarlson@nantucket-ma.gov

TOWN OF NANTUCKET NATURAL RESOURCES DEPARTMENT

JEFF CARLSON, NATURAL RESOURCES COORDINATOR
2 BATHING BEACH ROAD
NANTUCKET, MA 02554

JCARLSON@NANTUCKET-MA.GOV
508-228-7230



MEMO

1/6/2016

To: Peter Brace, SHAB Chairman
Dan Drake
Pennel Ames

From: Jeff Carlson, Natural Resources Coordinator

Re: Seed/Undersized Nubs Confiscation

There have been a number of questions and concerns raised in regards to the confiscation of bay scallops, warden procedures, and warden training. The shellfish warden program is a program that we take seriously and try to ensure consistency and fairness. Leading up to the March 4, 2015 adoption of the current shellfish regulations the Natural Resources Department (NRD) with a sub-committee of the Harbor and Shellfish Advisory Board (SHAB) spent over a year and a half developing and reviewing the new regulations. These meetings included procedural discussions and appropriate penalties. After being endorsed by SHAB they were then approved after two public hearings on March 4, 2015 by the Board of Selectmen. I have attached a copy of the adopted regulations to this correspondence as they will be referenced in this memo.

Warden Training – Massachusetts General Law Chapter 130, Section 98 requires “in each city and town bordering on coastal waters the mayor or the selectmen, as the case may be, shall appoint a person or persons, qualified by training and experience in the field of shellfishery management, as shellfish constables or deputy shellfish constables. A person having successfully completed the shellfish wardens training course at the Massachusetts Maritime Academy as certified by said academy, shall be considered qualified by training and experience in the field of shellfishery management and shall be eligible for appointment as a shellfish constable or deputy shellfish constable.” JC Johnsen has completed this course and has been appointed as the shellfish constable and the Director of Marine Fisheries and the Massachusetts Environmental Police have been noticed of the appointment.

In regards to the specific violation in question the taking of Seed Scallops or undersized scallops the text of the Town of Nantucket Shellfishing Policy and Regulations Section 4.14 is a direct match of 322 CMR 6.11. Any training in regards to this regulation for determination of a legal or illegal bay scallop would be applicable.

TOWN OF NANTUCKET NATURAL RESOURCES DEPARTMENT

JEFF CARLSON, NATURAL RESOURCES COORDINATOR
2 BATHING BEACH ROAD
NANTUCKET, MA 02554

JCARLSON@NANTUCKET-MA.GOV
508-228-7230



Confiscation/Warden Procedures – this section will only discuss the procedures used in the case of a seed or undersized nub potential violation and confiscation. NRD assumes 400 individual scallops per bushel for the purposes of determining the required 5% seed or undersized nubs for initial analysis. Each license is allowed 5 boxes of bay scallops per day. By the math 100 bay scallops is 5% of a typical 5 box limit. If a boat has two license holders it is allowed up to 10 boxes of scallops but the catches are reviewed as one landing or total catch which would put the total amount of seed to 200 individual scallops. As a part of the review NRD staff will count out an individual box of the catch for the actual number of scallops in the bushel and use that number or 400, whichever is number greater. In an effort to make the use of time most efficient for the wardens and fisherman when checking a catch the trigger to review the entire catch is to find greater than twenty illegal scallops with minimal effort. This means going through the top of the boxes to see what is in the catch. In this particular catch the warden pulled out fifty scallops before deciding to take the catch for further review. Fifty scallops would be 25% of the required scallops for the entire catch. Upon taking a catch for review, the fisherman is notified of where they are going and invited to view the completed review and I am notified that they will be reviewing a catch for the possession of illegal scallops. The wardens and additional NRD staff, if needed, go through the catch to determine if the 5% threshold is met. Calipers are used to precisely measure the growth ring and shell height in the case of undersized nubs. This is to ensure that the 10mm restriction on the growth ring is met and then if the growth ring is inside of 10mm that the shell height is great than 2.5 inches. If it is not it is an undersized nub scallop as defined by state and local regulations. This process for a typical landing can take 3-5 hours depending on the number of NRD staff assigned to the analysis. I confirm the count of illegal scallops with the warden and we notify the Massachusetts Environmental Police of the violation and see if they wish to review it before its return to the water. To comply with Section 7.4 of the local regulations the confiscation is then documented by written reports and a photograph. All scallops are then returned to the water as required by this regulation. A confiscation and one day license suspension is required by Section 7.7 for the taking of greater than 5% seed or undersized nubs of the total catch. In this specific case the review ended after greater than 275 illegal scallops had been confirmed which exceeds greater than 5% (200 bay scallops) of a ten box landing. Had there been no violation the scallops would have been returned to the fisherman at a location of their choosing.

Protection of this fishery resource is something that the Natural Resources Department takes great pride in and takes this responsibility seriously. In the discussions with the Board of Selectmen, SHAB, fisherman, and through the Shellfish Management Plan

TOWN OF NANTUCKET NATURAL RESOURCES DEPARTMENT

JEFF CARLSON, NATURAL RESOURCES COORDINATOR
2 BATHING BEACH ROAD
NANTUCKET, MA 02554

JCARLSON@NANTUCKET-MA.GOV
508-228-7230



protection of seed scallops is always one of the top priorities identified. These seed scallops and undersized nubs are what will be reproducing and helping to sustain the natural biomass of bay scallops within Nantucket Harbor. I hope this clarifies a number of the questions raised in regards to this specific incident.

Cc: Libby Gibson, Town Manager
Gregg Tivnan, Assistant Town Manager

On November 13, 2015 around 10:30-11:00 AM I received a call from Jason that he was checking Pennell and Sharon Ames catch and found some seed and would like me to come take a look I said I would be there in ten minutes. I arrived and Jason had a pile of scallops on their tailgate I started going through them and was finding a lot of seed and undersized nubs. The Souza's had pulled up to the dock to haul there boat I asked the Ames to move their vehicle up the street so we would be out of their way. As I started to go through there boxes I decided to give a quick check to all of their boxes and asked Jason to help check and it didn't take long to have fifty seed or undersized nub scallops on the tailgate. Sharon proceeded to tell me she had a boat to catch and I said if you would like I will take all of your boxes to the office and go through them and if I don't find five percent I will return your scallops to you so you can catch the boat and she said I do not know why you can't just give us a warning I said because I have found quite a bit of scallops that aren't legal and I'm going to check your catch. Penal said you might as well take my catch you're going to find what you need. At that point I had over fifty scallops on their tailgate and I said I'm taking your catch and I'm going to go through it at the office you can come down and see what I find if you would like. Sharon then proceeded to get right in front of me and yell that she has had a bloody nose and a brain aneurism and needed to get to New York to see a specialist and it's my fault she missed the boat and it was her fault they had the illegal scallops because she didn't have her glasses and couldn't see what she was looking. She asked why we couldn't just take her catch and I explained to her that you can't point the finger at one person you both are fishing in the same boat and usually both catches have the same amount of illegal scallops in them. I told them I would contact them when I'm done to let them know what I had found. Jason and Pennell and I loaded the scallops in my truck and I headed to the office. At the office Natural Resources, Jason and I went through their scallops and found more than five percent of seed or undersized nub scallops (over 275 individuals in less than five boxes) before we even made it through half of their catch I contacted the Ames and left them a message saying they had the next day off and I needed them to come to the office to sign the ticket and we could show them what we found. We received no response from the Ames.

JC Johnsen
Town of Nantucket
Shellfish Warden

TOWN OF NANTUCKET NATURAL RESOURCES DEPARTMENT

JEFF CARLSON, NATURAL RESOURCES COORDINATOR
2 BATHING BEACH ROAD
NANTUCKET, MA 02554

JCARLSON@NANTUCKET-MA.GOV
508-228-7230



Pennell and Sharon Ames
Taking of Seed and Undersized Nubs
11/13/2015

On November 13, 2015 I was contacted by the Shellfish Warden, JC Johnsen, about a potential seed violation for Pennell and Sharon Ames. JC then informed me shortly thereafter that he and Jason McGrath, the seasonal shellfish warden, had determined that the Ames' catch required a confiscation for further review as they had over fifty seed scallops without going through much of the catch. They confiscated the catch and returned to the office at 2 Bathing Beach Road for review of the catch. Then using calipers scallops were sorted into scallops legal for taking or scallops illegal for taking. This was done in the driveway at the office. I checked on them a number of times and additional NRD staff assisted with the counting and measuring. After they had reached over 5% seed or undersized nubs (greater than 275 individuals, 200 required typically for 5%) I recounted and confirmed the illegal scallops. They were then photographed and the entire catch was then returned to the water by the wardens. After verifying the return of the scallops we concluded the violation. JC notified them of their day off and asked them to come down and sign their ticket.

Jeff Carlson
Town of Nantucket
Natural Resources Coordinator

AMES
SEED VIOLATION
11/13/2015





Town of Nantucket Massachusetts

VIOLATION NOTICE

DEPARTMENT FILE NO.

DATE NOTICE WRITTEN

DEPARTMENT:

- POLICE, MARINE, HEALTH, H.D.C., BUILDING

A 28526

DEPARTMENT COPY

Form with fields: NAME, ADDRESS, CITY/TOWN, STATE, ZIP, DATE OF BIRTH, RACE/SEX, SOCIAL SECURITY NUMBER, DESCRIPTION OF AREA/PREMISES, BICYCLE OR VEHICLE, DATE OF VIOLATION, LOCATION OF VIOLATION, TIME, VIOLATION CODE, FINE, OFFICER CHECK ONE ONLY, VIOLATOR ACKNOWLEDGES RECEIPT OF NOTICE



Town of Nantucket Massachusetts

VIOLATION NOTICE

DEPARTMENT FILE NO.

DATE NOTICE WRITTEN

DEPARTMENT:

- POLICE, MARINE, HEALTH, H.D.C., BUILDING

A 28525

DEPARTMENT COPY

Form with fields: NAME, ADDRESS, CITY/TOWN, STATE, ZIP, DATE OF BIRTH, RACE/SEX, SOCIAL SECURITY NUMBER, DESCRIPTION OF AREA/PREMISES, BICYCLE OR VEHICLE, DATE OF VIOLATION, LOCATION OF VIOLATION, TIME, VIOLATION CODE, FINE, OFFICER CHECK ONE ONLY, VIOLATOR ACKNOWLEDGES RECEIPT OF NOTICE

April XX, 2016

Nantucket Zoning Board of Appeals
2 Fairgrounds Road
Nantucket, MA 02554

Re: Surfside Commons 40B Comments

Applicant: Surfside Commons LLC c/o Atlantic Development
Project: Surfside Commons in Nantucket/56 rental units on 2.5 acres
Location: 106 Surfside Road, Nantucket, MA
Subsidizing Agency: Massachusetts Housing Partnership

Dear Members of the Zoning Board of Appeals:

On April XX, 2016, the Board of Selectmen reviewed the pending application by Surfside Commons LLC for a comprehensive permit for 2.5 acres of land at 106 Surfside Road (“Property”) to construct 56 rental units (with 14 affordable units) in 4 residential buildings, with 122 bedrooms, 100 parking spaces and a clubhouse with a pool on (the “Project”); and the Board of Selectmen voted XX to XX to recommend to the Zoning Board of Appeals that any grant of a comprehensive permit shall be conditioned upon the following requirements:

- (1) **Sewer District Issue**. Since the Property is not in a municipal sewer district, legislative action, which the ZBA has no jurisdiction to take, would be required to include the Property, and any comprehensive permit relief should be conditioned upon the requirement that the necessary legislative action shall be taken before any connection is made.

The Zoning Board of Appeals should carefully review the following documents:

- St. 2008, c.396, special legislation that provides for creation and alteration of municipal sewer district only through legislative action;
- Nantucket Code, Chapter 41-3, which established municipal sewer districts using St. 2008, c.396 in 2010 (i.e., 2010 ATM approval of Article 31 on June 17, 2010);
- Nantucket Sewer Districts Town and Siasconset Map, as amended through April 2015, which shows the municipal sewer districts and that the Property is outside the municipal sewer districts; and
- Nantucket CWMP, the Town’s 20-year wastewater planning document, which does not include the Property.

As the Zoning Board of Appeals is well aware, in 2008, the General Court enacted legislation (St. 2008, c.396) that authorized Nantucket to create municipal sewer districts through Town Meeting legislation. In 2010, Nantucket Town Meeting used St. 2008, c.396 to adopt a by-law that created municipal sewer districts that can be altered only through Town Meeting Action. The Property is not in a municipal sewer district.

Since the 2010 adoption of the sewer district by-law under St. 2008, c.396, Nantucket has undertaken extensive sewer planning and now has a 20-year comprehensive wastewater plan. The careful and comprehensive planning undertaken by the Town has resulted in sewer districts that are carefully aligned with Town Overlay District properties, past 40B developments, and needs areas that were identified in the Comprehensive Wastewater Management Plan approved by the Town. The Property is not currently in a sewer district and there is no plan to extend a municipal sewer district to the Property within the next 20 years.

St. 2008, c.396, §1 expressly provides that, once Town Meeting establishes sewer districts, “No other sewers shall be constructed in any public roads or ways of the town which are not within the limits of such designated sewer districts and which are not under the control of the sewer commission.” As a result of the enactment of St. 2008, c.396 (Exhibit 1) and the establishment of municipal sewer districts by Town Meeting (Exhibit 2), the ZBA does not have jurisdiction to extend a municipal sewer district to the Property as the ZBA cannot take the Town Meeting action that is mandated by the General Court as required in order to extend a municipal sewer district. Zoning Board of Appeals of Groton v. Housing Appeals Committee, 451 Mass. 35, 41 (2008)(G.L. c.40B provides no authority for the Housing Appeals Committee to override the requirement for town meeting authorization as established by the Legislature.)

Since the Property is not located in a municipal sewer district or a needs area and the ZBA does not have jurisdiction to take the legislative action necessary to include the Property within a sewer district, the Project cannot connect to municipal sewer without future legislative action. Since the Project proposes to site 4 residential buildings, a pool, a clubhouse, 100 parking spaces and access ways on 2.5 acres of land, the Property is not feasible without access to municipal sewer, so any grant of a comprehensive permit should be conditioned upon the requirement that the Applicant seek and obtain the necessary legislative action to add the Property to a municipal sewer district.

- (2) **Sewer Costs.** If the Property obtains the legislative action needed to be included in a sewer district, the Applicant should be required to pay attendant sewer connection costs and fees.
- (3) **Water Infrastructure.** The Property is not served by municipal water and an on-site well appears not to be feasible and if municipal water infrastructure is

extended to the Property to serve the Project, the Applicant should be required to pay all attendant water connection costs and fees.

- (4) **Wellhead Protection District Issues.** The Property is located in the Lower Nantucket Wellhead Protection District (DEP Zone II) and, during the public hearing, all of the requirements in Zoning By-law (“ZBL”) §139-12B should be carefully examined and the Project and any waivers requested for the Project should be specifically and carefully peer reviewed.

The Board of Selectman urges that the Zoning Board of Appeals not grant any waiver of any requirement that is designed to protect local and municipal water supplies.

- **ZBL §139-12B.2(q):**

Since the Project proposes impervious surfaces for 70% of the Property, the Zoning Board of Appeals must carefully review this proposal in light of the prohibitions and requirements set forth under ZBL §139-12B.2(q), which prohibits any land use in this district, including all buildings and accessory structures, that would result in impervious surfaces of more than 2500 s.f. or 15% of a lot, whichever is greater, unless an a system for artificial recharge of 95% of annual precipitation is provided that will not result in the degradation of groundwater quality.

Specifically, under ZBL §139-12B.2(q), the Zoning Board of Appeals may and should require the Applicant to provide evidence of groundwater protection, including the history of treatment effectiveness of the proposed design/treatment technology proposed and may require monitoring of on-site, pre-and post-development ground water quality for potential pollutants.

- **ZBL §139-12B.3(a):**

A determination must be made as to whether the Project triggers the thresholds would result in the requirement for a water compliance finding under ZBL §139-12B.3. That determination should be made in consultation with the Wannacomet Water Company. If the Project triggers the requirement for the finding, then the finding must be made, either by the Zoning Board of Appeals under G.L. c.40B, in consultation with the Wannacomet Water Company, or, if the applicant agrees, the Applicant could go directly to the Wannacomet Water Company for the review.

- **ZBL §139-12B.3(c):**

Since the Project proposes a new nonconforming use for the Water Protection District, the Project should undergo the review required under ZBL §139-12B.3(c), with the Zoning Board of Appeals acting for the Planning Board, to

make the finding that Project shall be constructed and managed in a way that will eliminate threats to the aquifer through the proposed life of the use and structures proposed. While the special permit requirement does not apply under G.L. c.40B, the Zoning Board of Appeals should impose any conditions that are reasonably necessary to protect the integrity of the aquifer..

(5) **Public Safety Issues:**

A. Police Issues

All of the safety design issues raised by the Police Chief must be carefully considered. A peer review consultant trained in Crime Prevention Through Environmental Design should be hired to review the design of the Project to make sure that appropriate measures to protect the safety of the future residents and area residents. A copy of the Chief's comments is attached hereto.

As noted by the Chief, landscaping should be carefully designed to provide appropriate screening for the Project, which proposes great density, without creating opportunities for acts of violence to occur. Similar, all entrances and all internal hallways should be carefully designed to promote the safety of the future residents.

In particular, each common element of each residential unit (i.e., floors, ceilings and walls that are shared with an adjacent unit) should be carefully designed and built to provide noise and vibration controls, to protect the quality of life of the residents and prevent conflicts between and among the residents in such a dense development.

In particular, the parking requirement under ZBL §139-18. of one space per bedroom should not be waived as inadequate parking can and will create public safety issues, as noted by the Chief. We note that the Project proposes to devote a large amount of ground area to an outdoor pool, which will reduce the available space for parking. Modifications to the Project must be required to provide for the required parking.

In particular, there must be on site recreational opportunities for children. The main form of recreation is a large outdoor pool area that will be available for recreation purposes only during a short portion of each calendar year. Only a very small play area is proposed. As noted by the Chief, the Project needs to provide areas where effective year-round recreation can take place. The children at the Project will need to be able have paved areas where balls can be bounced and grassy areas where balls can be tossed and a safe area for bike riding.

B. Fire Issues

As noted by the Fire Chief, the Zoning Board of Appeals must make sure that all of the requirements of the new fire code (i.e., 527 CMR 18) are fully peer reviewed and fully satisfied. A copy of the Chief's comments is attached hereto.

Proper access for fire safety vehicles absolutely must be provided in order to protect both the future residents of the Project and the Town's public safety personnel. Failure to provide proper access to buildings will increase response time and allow dangerous conditions to develop that otherwise would be avoided.

The following issues must be carefully peer reviewed and the Project must be carefully conditions to address those issues:

- Public Emergency Access to the Project and the individual buildings must be provided and confirmed through computer modeling. All of the Chief's concerns about access to the Projects and the individual buildings must be fully satisfied. A copy of his comments is attached hereto.
- All Fire Code requirements shall be adhered to.
- Each parking space must be 22 feet long to avoid overhanging vehicles, as overhanging vehicles impair and slow emergency response efforts.
- There must be appropriate storage for residents' boats, either on site or off site, otherwise storage must be prohibited.
- Trees that will grow to block vertical access for emergency vehicles must be prohibited.
- Internal hydrants must be provided as recommended by the Chief. These hydrants must be required to be in place and charged with water when the framing of buildings begins.

(6) **Design Issues.** As designed the Project is inappropriate

A. Density.

The Town is well aware that 40B's typically exceed local zoning standards; however, the Project is entirely out of character with the surrounding neighborhood. The Project proposes to cover the majority of the Property with buildings, parking areas, access areas, and a swimming pool (which will be unusable for the majority of the year). The application cites 30% open space, the majority of which is unusable as thin strips of ineffective buffer around the perimeter of the property or land shadowed by the bulky buildings. These factors, combined with the lack of buffers for the Project from adjacent residential properties and the massive bulk and height of the buildings proposed, the Project is completely incompatible with its setting. It's worth noting that the proposed scale of the Project, in a more appropriate location, could be acceptable with further design refinements.

The Project is wholly inconsistent with the development concepts established in the Town's 2009 Master Plan, as adopted and in active implementation by the Planning Board, Nantucket Planning & Economic Development Commission, BOS and Town Meeting.

The Applicant asserts (Application p. 32) that the "living space per acre" proposed by the Project is 28,921 s.f. per acre and that this density compares favorably with other "sustainable compact neighborhoods on the Nantucket, as illustrated in Exhibit F to the Application. The neighborhoods, however, that are illustrated in Exhibit F are all located within the Town Overly District and within the Town Sewer District, so they are connected to municipal water and sewer, and are more closely situated to high-density residential and commercial areas, including the downtown and mid-island.

The density for the LUG-2 zoning district in which the Property is primarily located requires a minimum lot size of 80,000 s.f. of area, allows up to two full-size dwellings and one accessory dwelling not exceeding 550 s.f., and a maximum ground cover ratio of 4% is permitted. Assuming full build-out of the Property under existing regulations, there would be three (3) dwelling units totaling 4,341 s.f. of ground cover, and containing approximately 10,853 s.f. of living space (4,341 x 2.5) equal to 1,736 s.f. of "living space per acre." The Project proposes 56 dwelling units totaling 24,676 (22.7%) s.f. of ground cover, and containing approximately 72,303 s.f. of living space, equal to 28,921 s.f. of "living space per acre". The Project includes 53 more dwelling units, 5.68 times as much ground cover, 6.66 times as much living space, and 16.66 times as much "living space per acre" as would be allowed under existing LUG-2 regulations.

Furthermore, only 100 parking spaces are proposed for 122 bedrooms, which is insufficient; and 122 are required and needed. The Project proposes a large area of the Property to be devoted to an outdoor pool area that would provide no benefit during most of the year to the residents. The Project needs to be redesigned to provide more parking and increase reasonable, year-round recreational, on-site opportunities and the density should be reduced.

B. Height.

The height of the buildings proposed for the Project is wholly inappropriate for a rural Nantucket setting.

The Zoning Bylaw provides that no building (with limited exceptions in very specific and limited sections of Nantucket that are reserved for dense development) shall exceed 30 feet.

The Project proposes 4 residential buildings with a height of 44 feet and a fourth building with a height of 55 feet. This is totally out of character for Nantucket, generally, and should not be allowed. With the exception of utilitarian structures

such as municipal or airport or other institutional buildings, fuel tanks, radio towers, and lighthouses, the only examples of commercial or residential buildings that are similar in scale are located within the downtown and mid-island commercial areas.

C. Aesthetics.

The Project design is historically and contextually inappropriate and inconsistent with the well established guidelines of the Historic District Commission entitled “Building with Nantucket in Mind”.

The Project design resembles a dated, oversized resort that would typically be located in a highway oriented commercial strip on the mainland, accented with an oddly located pool at the center. In fact, it is exactly the type of development that the Country Overlay District specifically seeks to discourage and is contrary to the vision articulated throughout the Master Plan. The Project maximizes the use of three story balconies, a design feature which is unprecedented on Nantucket; and, furthermore, the balconies are located in such a way that they loom over adjacent residential properties and the Boy Scout Camp. There is no historic precedent for such a grouping of large scale buildings at an inland location.

In addition, two buildings would be within 10.6 feet of the front yard lot line and this is inappropriate in a location where the required front yard setback is 35 feet. The minimum side yard setback required is 15 feet; however, the proposed setback is as close as 5 feet and the dumpster appears to be located less than five feet from the lot line and in many places the setback from paved areas is less than five feet.

D. Town and Country Overlay District and 2009 Master Plan.

The Project is wholly inconsistent with the Town’s Zoning and 2009 Master Plan.

Nantucket’s 2009 Master Plan was adopted by the Planning Board pursuant to MGL Chapter 41 section 81D. It was accepted by the Nantucket Planning & Economic Development Commission, Board of Selectmen and Town Meeting (Article 26). The Master Plan was intended to be a 10 year document and it is actively referenced in over 100 zoning articles presented to Town Meeting over the past 6 years. There has been an effort to coordinate utilities with the zoning districts and to focus development around commercial nodes identified in Figure 15 of the 2009 Master Plan (page 46).

The Town and Country Overlay District concept was adopted by Town Meeting in 2001. In 2006 it was the subject of a survey distributed with the Annual Town Census. A total of 86% of respondents supported the creation of standards consistent with the Town and Country concepts. A non-binding 2006 ballot question was supported by 72% of the voters to “work to adopt additional

standards consistent with the Town and Country concept”. In 2009, as part of the Master Plan, zoning was re-structured for consistency with these organizational principles which affect the long-term physical development of the island.

The Country Overlay District, under Section 139-12F of the Zoning Bylaw, has the following purpose:

“The purpose of the Country Overlay District is to discourage development and to preserve areas characterized by traditional and historic rural land use patterns; to discourage the spread of disperse development patterns that promote automobile dependency, and are costly to maintain. The purpose of the Country Overlay District shall be considered by the Planning Board or Zoning Board of Appeals when determining the character and extent of site and infrastructure improvements to be required in a decision on an application for site plan approval...”

Conversely, the purpose of the Town Overlay District is to limit the spatial extent of growth by encouraging development where existing infrastructure exists or can be extended without undue expense and to create affordable housing opportunities through infill development, and to create development patterns that are conducive to alternatives to the automobile.

The Project location is wholly out of character for Nantucket, generally, and the Zoning Board of Appeals needs to work with the Applicant to have the Project redesigned and reduced.

(7) **Other Important Issues.**

The Applicant must be required to analysis of pre and post-construction conditions and pre and post-construction drainage calculations and that a qualified professional engineer provides a report that compares and analyzes the pre and post construction conditions for the Property and all adjoining land and all relevant watershed areas.

The Applicant must be required to provide full stormwater drainage calculations (pre and post construction) to the ZBA and they shall be subjected to peer review at the Applicant’s expense.

If the Applicant proposes to use pervious pavement for walkways and parking areas, then that, of course, could mitigate stormwater runoff concerns; however, if that approach is contemplated, there must be a proper operation and maintenance plan that provides for maintaining the pervious pavement, which would be a significant annual expense.

The Applicant must be required to provide drainage information for peer review that shall:

- a) be supported by adequate testing of the Property's soils, both as to percolation and permeability rates, and the location of seasonal high ground water levels;
- b) be required to undergo peer review by a drainage consultant hired by the Town at the Applicant's expense;
- c) be confirmed through peer review, before any approval can take place, to result in no net increase in the volume and rate of stormwater runoff from the Property, based upon drainage calculations that compare pre-construction and post-construction conditions;
- d) be confirmed, in particular, through peer review, to not result in any increase in the rate or volume of stormwater runoff from the Property or any change in the runoff from existing adjoining properties, when pre-construction and post-construction conditions are compared;
- e) include water control runoff from roofs of the dwellings and any accessory structures that are separate from and not combined with stormwater runoff from paved areas and not be introduced into any stormwater drainage basin;
- f) include operation and maintenance and replacement requirements for the access ways and stormwater drainage infrastructure; and

The Project must be required to include a sidewalk (at the Applicant's expense) to allow the future residents to reach the nearest bus stop to allow safe access for residents.

The dumpster must be located so as to not disturb any adjacent residential property.

The Applicant must be required to provide a detailed trash removal and recycling plan that identifies the frequency of trash pickup, the dumpster locations, all trash policies and enforcement procedures.

The Applicant must be required to obtain and provide a report that provides an estimate of the anticipated school aged children in the Project, so that the Town can plan ahead to serve the children.

The Project must be conditioned so as to eliminate all balconies, which are entirely inappropriate.

If a connection to the water system is allowed, the Applicant must be required to perform all water capacity tests to verify and demonstrate that the Project will not adversely impact the public infrastructure or reduce the water pressure available to existing water users.

The Project should be designed and built so as to maximize energy efficiency in terms of building materials and heating and other infrastructure. That would reduce the cost to the residents and should not greatly increase the Applicant's costs to undertake the Project.

The Project must include internal and off-site sidewalk improvements so as to facilitate pedestrian access to nearby neighborhoods and public transportation facilities. Sidewalks should be constructed of brick, concrete or asphalt (or a combination thereof) and meet AASHTO standards where appropriate.

The Project must have adequate snow storage areas and a snow removal policy that provides for removal in the event of large or repetitive snow events.

We understand the Project will have sprinklers.

The Applicant must perform a traffic infrastructure study, which includes sight distance assessments, to evaluate any improvements that would be required to serve the traffic the Project proposes. This study, given the number of residents proposed to reside in the proposed development, must include an assessment of access to nearby commercial, community, and public transportation facilities. The Traffic Study must take the high tourist seasons into account and include the conflicts that arise from the high number of vehicles, pedestrians and bikers that compete for use of Nantucket's ways and the impact of proposed access points on existing residents and commercial property owners. The Applicant must be required to pay for traffic peer review.

The Applicant must provide a lighting plan, to provide safe lighting for residents, but without light intrusion onto adjacent properties.

The Board of Selectmen thanks the Zoning Board of Appeals for its hard work on this important matter..

Very truly yours,

Robert R. De Costa, Chairman

Matt Fee, Vice Chairman

Rick Atherton

Tobias Glidden

Dawn E. Hill-Holdgate

cc: Police Chief
Fire Chief

Director of Planning and Land Use Services
Town Counsel
Surfside Commons, LLC c/o Atlantic Development

551859/NANT40B/0005

From: [Libby Gibson](#)
To: [Erika Mooney](#)
Subject: FW: 106 Surfside BOH Comments
Date: Friday, March 25, 2016 8:16:08 AM
Attachments: [20160325074312326.pdf](#)

Pls put in 4/6 agenda file

C. Elizabeth Gibson
Town Manager
Town of Nantucket
(508) 228-7255

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

From: Roberto Santamaria
Sent: Friday, March 25, 2016 7:44 AM
To: Eleanor Antonietti
Cc: Libby Gibson
Subject: 106 Surfside BOH Comments

Good Morning,

At yesterday's Board of Health meeting. The Board voted by unanimous consent to present the attached letter as their comments for the 40B project proposed at 106 surfside road.

Let me know if you have any questions.

Best Regards,
Roberto

Roberto J. Santamaría
Director of Health
Nantucket Health Department
508-228-7200



NANTUCKET HEALTH DEPARTMENT

3 EAST CHESTNUT STREET
NANTUCKET, MASSACHUSETTS 02554

Telephone 508.228.7200
Tele fax 508.325.6117

Date: March 17, 2016

To: Eleanor Antonietti, Zoning Administrator, Land Use Specialist

From: Malcolm MacNab MD, PhD, Nantucket Board of Health

Re: Comments for Surfside Commons 40B, 106 Surfside

The Nantucket Board of Health has reviewed the request of January 21, 2016 by the Zoning Board of Appeals for comments on a proposed 40B development located at 106 Surfside Road in Nantucket, MA referred to hereafter as "Surfside Commons".

The Nantucket Board of Health does not have oversight over the construction of Surfside Commons as long as all applicable rules and regulations of the Board of Health pertaining to this development are followed. Furthermore, the Nantucket Health Department will be available for all permitting and technical commentary required with the necessary permitting of this development.

If you have any further need for comment, please feel free to contact the Board.

Sincerely,

Malcolm MacNab MD, PhD

WANNACOMET WATER COMPANY



Nantucket Water Commission

Nelson K. Eldridge
Allen Reinhard
Noreen Slavitz

Robert L. Gardner
General Manager

1 Milestone Road
Nantucket, MA 02554

Telephone (508) 228-0022
Facsimile (508) 325-5344
www.wannacomet.org

Memorandum

To: Eleanor Antonietti, Zoning Administrator

Via E-mail

From: Bob Gardner, General Manager 

RE: Proposed Surfside Commons 40B, 106 Surfside Road

Date: March 30, 2016

Eleanor, Thank you for providing the relevant materials for the above referenced project and arranging for the site visit yesterday. After reviewing the materials submitted by the Applicant Wannacomet Water Co. offers the following comments to the Zoning Board of Appeals.

- 1. Water Service:** As the Applicant has stated, to provide water service to the site the water main will have to be extended from the intersection of Surfside and Fairgrounds Road. Wannacomet will require that the design of this water extension as well as the design of the water supply system within the project be submitted to WWCo for approval. However, at a minimum the new water main to be installed on Surfside Road shall be sized at 12" with fire hydrants every 500 feet. Although, the Fire Chief should be consulted on the number and location of hydrants particularly within the site. The new water main must be extended to the southerly property line and a valve left to facilitate any future extension without interrupting water service to the existing customers. All materials must be approved by Wannacomet Water Company before installation.
- 2. Metering:** Wannacomet has looked at several different metering scenarios for this project as well as other similar projects and we have decided on the following metering scheme. We will require that each building have a single master meter owned and maintained by WWCo. We re requesting that the developer provide a suitable location within each building to house the meter. That will be the meter from which the monthly billing will is arrived at. The responsible party for the bill shall be either the developer or a homeowner's association. Should the developer wish to install sub-meters to determine the water use by individual unit we have no objection to that. However, those meters will not be owner or maintained by WWCo.
- 3. Wellhead Protection District:** This project is within the Wellhead Protection District as defined in §139-12 of the Town of Nantucket Zoning By-laws. Therefore, upon request, and only upon request, from the ZBA the WWCo will be required to issue or deny a Certificate of Water Quality Compliance (CWQC). I have reviewed the drainage

calculations provided by the Developer and concur with their findings. However, prior to the issuance of a CWQC we will need to review the stormwater collection, treatment and recharge structures. I also, reviewed the inspection and maintenance plan for the stormwater system and find it to be acceptable and commend the applicant on including it with his submittal.

4. **Fees and Waiver Requests:** The Nantucket Water Commission has reviewed the requested waiver to local regulations as outlined in the submittal to the ZBA. The Applicant has requested the following two waivers from the Water Commission.
 - a. **Relief from Zoning By-law §139-12:** This Zoning By-law established the Wellhead Protection District and requires the Nantucket Water Commission acting through the Wannacomet Water Company to issue a Certificate of Water Quality Compliance when so requested by a permitting agency when the application triggers the threshold requirements outlined in the By-law. Therefore, the Water Commission cannot waive the requirements that trigger the need for a CWQC. However, The Wellhead Protection District Zoning By-law is one of the most significant tools for protecting the aquifer and should the ZBA waive that requirement the Water Commission will certainly exercise whatever options are available to the Commission to contest such a waiver.
 - b. **Waiver of the Water Connection Fees:** The connection fee to the existing system is \$5,000 and will not be waived by the Water Commission. The current connection fee for a 1" meter installed inside the living unit is \$1,600.00. Thus, the connection fee for the 56 living units and the single connection for the Clubhouse would be \$91,200.00 plus the \$5,000 for connecting to the existing system for a total fee of \$96,200. However, under the meter scenario that we described in Number 2 above the connection fee would still be \$5,000 for connecting to the existing system but the connection fees for the living units and clubhouse would be \$7,600 per building (5) for a total connection fee of \$38,000. Thus the total connection fees for the living unit buildings and the clubhouse would be \$43,000.

The bottom line is that the Water Commission is not going to waive any of the current fees regardless of the methodology used to compute the fees. All fees must be paid before the connection is made to the existing system.

Thank you for the opportunity to submit these comments and the Water Commission and Wannacomet Water Company will be present at the hearings.