CORRESPONDENCE
4/6/15

1	Barbara Holton	KOA Variance Granted
2	Bristol County Agricultural High School	Bristol County Agricultural/Out-of-District Cost
3	BP	FY16 Budget Review 4/7/15 at 5:45 PM
4	Verizon	FiOS Notice
5	MFD	Workshop at COA 4/14 @ 1 PM re Fire Safety
6	MCCAM	2014 Annual Report
7	Conservation Agent	Open Space Forum LAND Grant Info.
8	Archdiocese of Boston	Mass for Public Safety Personnel & Families
		10/4/15 at 11:30 a.m.
9	TEC Associates Consulting Engineers	Keolis Commuter Srvcs, LLC, 2015 Vegetation
		Control Program
10	David Cavanaugh-Herring Warden	Assawompset Pond Complex Legislation
11	Beauregard, Burke & Franco	MA Gaming Commission Discussion 3/19/15

Barbara A. Holton

68 Purchase St.

Middleborough, MA 02346

508-947-7444

Bholton68@hotmail.com

To the Health Department, Board of Selectman

Since the early 80's there have been ongoing issues at the Kampgrounds of America (hereafter K.O.A.). They range from zoning to health to planning board and assessors. There could even be others. The K.O.A. is in rural residence zoning and operates under a special permit which is obtained from the zoning board. Any alterations at the campground need a special permit. Up until the 1980's the K.O.A. was obtaining these permits. The registry of deeds records every variance or special permit given by a town to the property as an encumbrance sort of like a lien to ensure the owner of the property obeys the law an abides by these laws. Any changes to these special permits needs to be addressed by a board of the town a hearing needs to be published and people can go and voice their concerns. I know that as employees of a town and members of boards that I do not have to tell you what the procedure or laws are I am sure that you all know.

The encumbrances for special permits stop in the 1980's the certificate number for the K.O.A. encumbrances is 111207. Everything that has been done since the 1980's was done without a special permit up until 2012 when the zoning board gave the K.O.A. a special permit to have additional sites which they already had since the 1980's(see attached inspection sheet from the building inspector stating the number of sites they had in 2001). That corrected one broken law that was ongoing but it did not correct others like the number of cabins that they have placed on the property since there special permit for two. They now have over 20. Each cabin as they were placed should have received a special permit to do so. Each site that was put in should have had a special permit before it was put in. Each trailer that is left on site during the winter is unlawfully there. Each trailer that is not register is unlawfully there. Each trailer that has a structure that is attached is not allowed.

The planning board allowed the 101 acres that the K.O.A. originally started with to be subdivided and parts of it sold. The assessor's office still allows all the pieces of the property to get chapter 61b rate even tough two pieces are separated by another owner. The campground operated with improper sewage from the 1990's when the law changed until the Department of Environmental Protection stepped in and made the K.O.A. bring the failed system up to code. I know I don't need to bring any of this to anyone's attention it is all known and was always known but the most recent letter that I picked up from the health department has made me wonder why so many people failed in Middleboro and why a few survived.

The attached letter shows a variance being given to the K.O.A. by the health officer. I have searched for the hearing that took place that allowed this to be done and could not find one. In March of 2014 there was a hearing and the K.O.A. withdrew their request the next week. Looking forward in the agenda's I saw no requests submitted again. The Middleboro review had an article about people and how a man was stepping forward and telling his story and I believe others should do the same. The problem is that once you step up you are put down and as a person that did this for thirty years I know firsthand what the consequences are. I would like to know the legality of the variance the health officer gave the K.O.A. It is my belief that a variance is issued by a board.

Respectfully yours,

Barbara A Holton

Barbara A. Holton

4/1/15

Cc:

Zoning Board

Building Department

Health Department

Assessor's Department

Town Manager

Planning Board

ATT. D

Routine Inspection today (12 July 01)

1. found 171 Sites occupied this Date.
(31 Tents + 125 CAMPER SITE. + 15 CABINS)

2. Rest Room / Showers Building - Very clean and in Good order.

3. Sw Pool - ✓ Life guard on duty

4. Main Laundry / Store -

5. ~~Met to~~ I did discuss w/ owner - (Bill N.)

a - Lic for 276 Sites - Both include Spring fields

b - ZBA Approval for 205 Sites

c - He Bought it This is 1986 and the Lic. Number is Same and he did not Apply for any changes / increases -

He Showed me his In House Computer System - tracking Site occupancy.

Example:

Sat - 29 June (F) 216
30 " - (SA) 243
July 1 July (Sun) 221
2 " (M) 217
3 " (TU) 232
→ July 4TH " (W) 230 ←
5 (TH) - 235
6 - (F) 261

Removal Day 267

W. Galraith

TOWN OF MIDDLEBOROUGH
HEALTH DEPARTMENT

Jeanne Spalding
Health Officer

PH: 508-946-2408
FX: 508-946-2321

September 30, 2014

Mo Vandesteene, GM
Boston/Cape Cod KOA
438 Plymouth Street
Middleborough, MA 02346

RE: Variance Request

Mr. Vandesteene,

I have reviewed your variance request relative to leaving the camp "Deluxe Cabins" on sites during the period when the campground is closed in January and February. As these units are not generally considered mobile camping trailers and are used more as cabins to stay stationary, your variance request will be granted. This approval is based on the conditions so stated in your variance request letter dated September 25, 2014 indicating water and electric utilities will be disconnected, units will be used for winter storage and locked so they are not usable during the shut down time.

Please be advised that no other camping units may be on sites during the closure period.
Thank you for your cooperation on this matter.

Yours truly,

Jeanne C. Spalding, Health Officer

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BRISTOL COUNTY AGRICULTURAL HIGH SCHOOL

[Bristol County Agricultural School]

Office of
SUPERINTENDENT DIRECTOR

STEPHEN P. DEMPSEY

135 CENTER STREET
DIGHTON, MASSACHUSETTS 02715

Tel. (508) 669-6744, ext. 103
Fax: (508) 669-6747
Email: dempsey@bcahs.com

March 27, 2015

Allin Frawley
Chairman Board of Selectmen
Town of Middleborough
10 Nickerson Avenue
Middleborough, MA 02346

Dear Mr. Frawley:

With municipal budget activities currently underway, I wanted to send this letter with information to assist in your planning for the upcoming fiscal year. The town of Middleborough will have an estimated 11 student(s) attending Bristol County Agricultural High School, Dighton, Massachusetts in the next school year (2015/2016).

Tuition rates for out-of-district students at Bristol County Agricultural High School are established annually under Massachusetts statute by the school's governing Board of Trustees. The current rate (to help with your immediate planning) is $18,860.00. Out-of-district tuition has not increased substantially over the past six years, actually remaining level over the past two.

Our out-of-district tuition rates for the forthcoming school year, 2015/2016 have not yet been established by our Board. I will be sure to notify you immediately after they have been set in anticipation of your municipal tuition agreement with Bristol Aggie. If you have any questions or I can be of any assistance please do not hesitate to contact me.

Thank you for supporting the educational pursuits of your children.

Sincerely,

Stephen P. Dempsey

Stephen P. Dempsey
Superintendent/Director

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BRISTOL-PLYMOUTH REGIONAL TECHNICAL SCHOOL DISTRICT

207 HART STREET, TAUNTON, MASSACHUSETTS 02780-3715

Telephone 508-823-5151 Fax 508-880-7287

www.bptech.org

School Committee Members:

CAROL L. MILLS
Chair
BERKLEY

LOUIS BORGES, JR
Vice Chair
TAUNTON

MARK A. DANGOIA
BRIDGEWATER

EDWARD F. DUTURA
DIGHTON

GEORGE L. RANDALL, III
MIDDLEBOROUGH

TIMOTHY J. HOLICK
RAYNHAM

JAMES W. CLARK
REHOBOTH

THOMAS A. BERNIER
TAUNTON

Treasurer:
JOHN FRIAS

Superintendent:
RICHARD W. GROSS, ED. D.

March 23, 2015

To Whom It May Concern:

The Bristol-Plymouth Regional Technical School District Committee will hold a public hearing to review the FY 2016 Budget on Tuesday, April 7, 2015 at 5:45 p.m. in the Lecture Hall at the school located at 207 Hart Street, Taunton, MA.

Sincerely,

Richard W. Gross, Ed.D.
Superintendent

sec

Accredited by the New England Association of Schools & Colleges

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Jacqueline Shanley

From: Reddish, Jill M <jill.m.reddish@verizon.com>
Sent: Wednesday, April 01, 2015 2:06 PM
To: Reddish, Jill M
Subject: FiOS TV Notice
Attachments: Customer Notice - SNN.pdf

Dear Municipal Official,

This is to notify you of an upcoming change to the FiOS® TV channel lineup.

On or after June 15, 2015, SNN (Suncoast News Network) located on channels 26 SD/526 HD will move to channels 9 SD/509 HD.

Subscribers will be notified by bill message beginning on or around April 15, 2015. A sample customer notice is attached.

Access to the FiOS® TV channel lineup is available 24/7 online at verizon.com/fiostvchannels.

We realize that our customers have other alternatives for entertainment and our goal is to offer the best choice and value in the industry. Verizon appreciates the opportunity to conduct business in your community. Should you or your staff have any questions, please contact me.

Sincerely,

Jill M. Reddish

Jill Reddish
FiOS TV- Sr. Staff Consultant
Franchise Management - NE
617 342 0558

FiOS® TV Channel Change

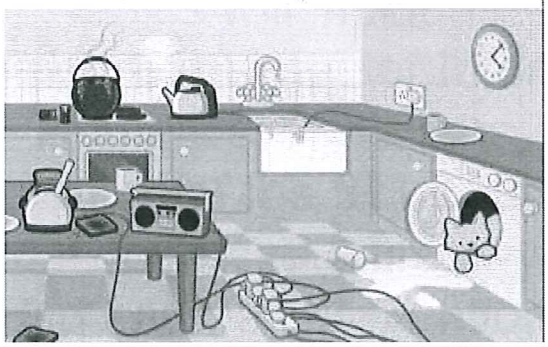
On or after June 15, 2015, SNN (Suncoast News Network) located on channels 26 SD/526 HD will move to channels 9 SD/509 HD.

MIDDLEBORO FIRE DEPARTMENT
Workshop
Tuesday, April 14 at 1:00 pm
Middleboro Council on Aging

Topics will include:
Smoke and CO Detector Information
Home Escape Plans
Activation of the 911 System
What to do if you have a fire in your home
Slip and Fall prevention
Kitchen Safety
A review of Safety Tips gathered from the blizzards of 2015

Please RSVP to reserve your seat.
508-946-2490

Safe Kitchen? Or Dangerous Kitchen?



6

Jacqueline Shanley

From: Karen Foye <kfoye@mccam02346.com>
Sent: Friday, March 27, 2015 10:59 AM
To: Jacqueline Shanley
Subject: MCCAM annual report
Attachments: MCCAM 2014 annual report PCC.pdf

Attached is the annual report for MCCAM to be submitted to the BOS. Per our license with Comcast we are required to submit our annual report on or around March 15th each year.

thank you
Karen

Karen Foye
Cable Access Administrator

MCCAM
10 Nickerson Ave. Middleborough, MA 02346
774.766.6350
www.MCCAM02346.com
kfoye@MCCAM02346.com

MCCAM
MIDDLEBOROUGH
Community Cable Access Media

REPORT OF THE PERMANENT CABLE COMMITTEE 2014

March 2014
Verizon installed a cable drop at the Wastewater Department per franchise agreement. MCCAM held 3 sessions at Oak Point to teach local residents about MCCAM and how to create their own programs, learn new technology and become a MCCAM volunteer. Annual LIVE Rotary Cable Auction aired in Middleborough, and Freetown. Middleborough Boy Scouts toured MCCAM and learned about PEG Access TV here in Middleborough.
26 meetings/events covered in the month of March including Candidates Forum.
1 new MCCAM volunteer – Nick Guarda

April
Network switch replaced at the DPW. Tour for Cub Scout Troop at MCCAM. Town events covered by MCCAM including the annual Canoe Race and 1st Annual Herring Run Festival. Renewed MassAccess membership.
19 meetings and events covered by MCCAM in April.

May
Staff worked on archiving project of files & DVDs. Cleared out all surplus equipment in the basement storage area.
24 meetings and events covered in May including the Memorial Day events, Cultural Council Awards Ceremony, Sheep Day and Annual Town Meeting.

June
Board of Selectmen vote to renew 3 yr terms for Robert Denise, Maureen Candito, Paul Lazarovich.
Current Terms for Permanent Cable Committee Members are as follows:

Robert Silva	term ending June, 30, 2015
Steven Callahan	term ending June 30, 2015
Ellen Driscoll	term ending June 30, 2015 (vacancy created in January 2015)
Robert Denise	term ending June 30, 2017
Maureen Candito	term ending June 30, 2017
Paul Lazarovich	term ending June 30, 2017
Adam Pelletier	term ending June 30, 2016
Mark Mobley	term ending June 30, 2016

Charles Cristello (Donna Bernabeo filled vacancy in December 2014 left by Charles when he left in October)
term ending June 30, 2016
Intricate Consulting assisted with archiving over the Inet between the NMS and Town Hall.. Fire incident at Town Hall. Karen Foye extinguishes fire. Part-time Video Production Technician contractor position at MCCAM posted. Hired Zachary Grundy to fill position. 15 meetings and events covered during the month of June.

July
Received $2500 check from Freetown for inter municipal cable access agreement bi-annual payment (goes into the General Fund). Worked on bringing web-viewing on demand and LIVE streaming of the GOV channel for MCCAM programming. VLAN created to connect NMS and Town Hall for backup archive. Letter sent to Verizon requesting cable drop at Housing Authority.
17 meetings and events covered in July including the 4th of July events and Parks & Rec shows.

August
MCCAM takes over control of channel 95 Comcast/35 Verizon so we have a true PEG lineup ie. separate Public, Education & Government channels. Krazy Days booth set up and covered. Worked in conjunction with the Board of Health to create their annual Food Handlers Course including 10 DVDs.
13 meetings and events covered during the month of August including Police Chief and Town Manager interviews, concerts on the lawn and.

September
FIOS internet installed for faster upload/download of video for web-viewing on demand. Intricate Consulting hired to install new network for use by MCCAM only.
15 meetings and events covered in September.

October
Upgrade of the NAS storage to fill all available slots on backup servers at Town Hall and NMS. WASP asset inventory computer upgraded. Parallells and Retrospect software updated. 16 events and meetings covered in October for MCCAM including multi-camera shoot for Town Meeting.

November
Karen Foye recognized by the Rotary Club as an Employee of Excellence for 2014. Verizon installed cable drop at the Housing Authority per franchise agreement. MET Tightrope Media System upgraded.
14 meetings and events covered by volunteers in November.

December
Donna Bernabeo appointed to the PCC to replace vacancy left by Charles Cristello.
14 meetings and events covered in December.

January 2015
Issuing Authority approves the addition of a full time Video Production Technician position to be added to MCCAM staff. Contractor Zachary Grundy has contract extended until the new full-time Video Production Technician position is filled. Letter sent to the Board of Selectmen for PCC vacancy created by Ellen Driscoll leaving the PCC.
11 meetings and events covered in January.

February
Introduced new MCCAM website with more user-friendly options for web-viewing on demand and LIVE streaming of GOV channel, today's channel schedule and more. Received $2500 check from the Town of Freetown for bi-annual payment of channel 95 cable access feed.
16 meetings and events covered in the month of February.

Current active MCCAM volunteers
Jim Cosgrove
Perry & Anna Little
John Healey
Lynn Rocha
Lori Ashley
Nick Guarda

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Jacqueline Shanley

From: Robert G. Nunes
Sent: Thursday, March 26, 2015 4:12 PM
To: Patricia Cassady; All Town Department Heads; ckowalker@comcast.net; Debbie Kirsch; Diane Stewart; Janet Miller; Jeff Erickson; John J. Medeiros; Steven Ventresca
Cc: Phyllis Barbato
Subject: RE: Open Space Forum LAND Grant info

Looking forward to participating!

From: Patricia Cassady
Sent: Thursday, March 26, 2015 4:11 PM
To: All Town Department Heads; ckowalker@comcast.net; Debbie Kirsch; Diane Stewart; Janet Miller; Jeff Erickson; John J. Medeiros; Steven Ventresca
Cc: Phyllis Barbato
Subject: FW: Open Space Forum LAND Grant info

FYI

From: AmeriCorps Region. Conservation Coordinator [mailto:RegionalConservation@wildlandstrust.org]
Sent: Thursday, March 26, 2015 2:36 PM
To: Betsy Hall; Charles Willse; George Mallard; Greg Howell; Hal Thomas; Jane Sears Pierce; Joan Pierce; Joe Grady; John Ferraro; Judy Grecco; Karen Edwards; Karen O'Donnell; Kathryn Cross; lfarinon; Linda Leddy; Malcolm MacGregor; Mary Dunn (meugdunn@gmail.com); Marynel Wahl; Maureen Thomas; Mike McDonough; nancy hemingway; Pat Loring; Perry Little; Phil Clemons; Sue MacCallum; Tim Dalia; Patricia Cassady; Valerie Massard; Vicky Malone; Wally Kemp
Cc: Katie O'Donnell
Subject: Open Space Forum LAND Grant info

Hello,

As mentioned at yesterday's Open Space Forum, the EEA RFP for the LAND Grant has been posted with a deadline of July 15th at 3:00pm. Municipal conservation commissions are eligible for this grant if they have an approved OSRP or have submitted a draft by the grant deadline. The maximum award is $400,000. An informational session will be held on May 12th in Boston. More information can be found here: http://www.mass.gov/eea/grants-and-tech-assistance/grants-and-loans/dcs/grant-programs/massachusetts-local-acquisitions-for-natural.html

The meeting minutes from yesterday's meeting will be sent out early next week. I have also updated upcoming events/deadlines in the google site (https://sites.google.com/site/southeastmaopenspacenetwork/).

All the best,
Liz

Elizabeth Migliore
Regional Conservation Coordinator
MassLIFT AmeriCorps Volunteer
Wildlands Trust
675 Long Pond Road
Plymouth, MA 02360
774-343-5121 x109
www.wildlandstrust.org

8

ARCHDIOCESE OF BOSTON
66 BROOKS DRIVE
BRAINTREE, MASSACHUSETTS 02184-3839

March 2015

Save the date:

We hope that you will be able to join us on October 4, 2015 at 11:30 am at the Cathedral of the Holy Cross in Boston for a special Mass in thanksgiving to God for all the men and women who serve our communities as public safety personnel and their families.

Hundreds of public service agencies throughout the Archdiocese of Boston, which includes one hundred forty four cities and towns in Eastern Massachusetts, will be represented. We are encouraging all public safety personnel and their families, regardless of their faith, to be part of this special Mass.

Please see the back side of this letter for the flyer sent to all public safety agencies in the Archdiocese of Boston.

A formal invitation will come from His Eminence Seàn P. O'Malley, OFM Cap. Archbishop of Boston a few months before the event.

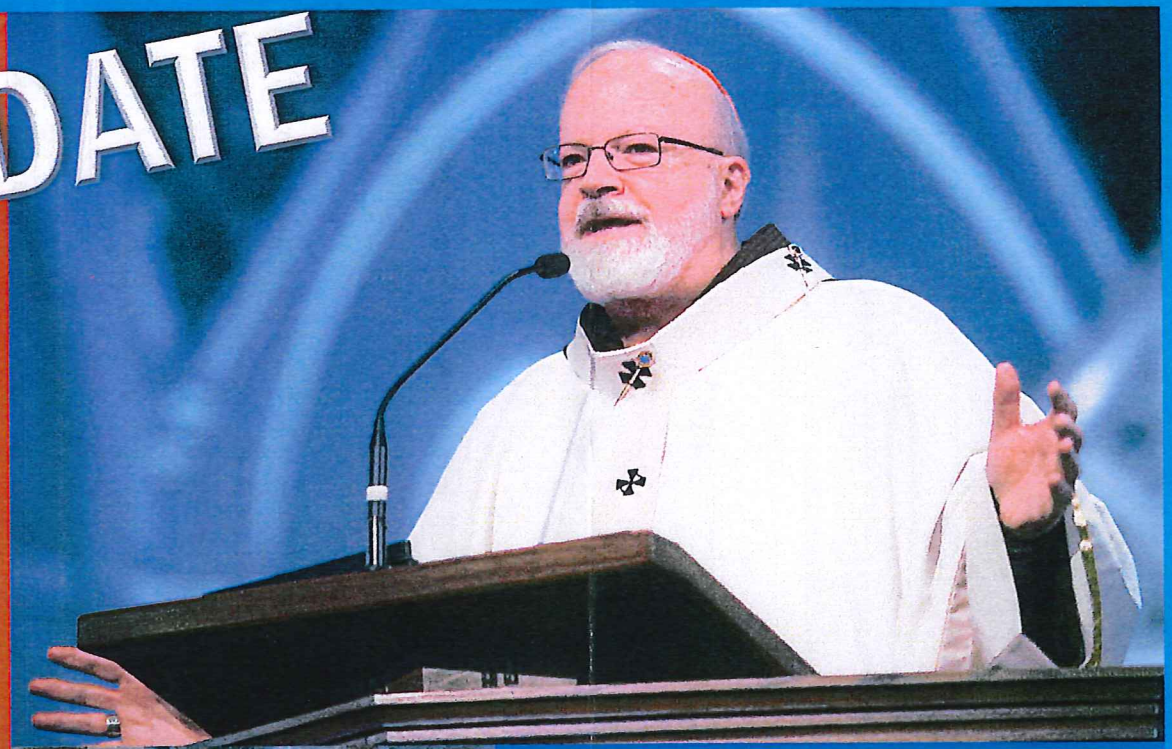
Blessings,

Deacon James F. Greer, MAPT, CT
Director of Chaplaincy Programs
Archdiocese of Boston

SAVE THE DATE

Sunday
October 4, 2015
11:30 AM

Cathedral of the
Holy Cross, Boston



Mass for Public Safety Personnel and Families

For more information
please visit :

http://www.bostoncatholic.org/
PublicSafetyMass/

His Eminence
Seán P. Cardinal O'Malley, OFM Cap.
Archbishop of Boston,
Main Celebrant

ALL ARE WELCOME

Photos by George Martell

9

TEC ASSOCIATES CONSULTING ENGINEERS

25 March 2015

Middleborough Conservation Commission
Middleborough Town Hall
20 Centre Street
Middleborough, MA 02346

RECEIVED
MAR 26 2015
TOWN OF MIDDLEBOROUGH
HEALTH DEPARTMENT

RE: Keolis Commuter Services, LLC
2015 Vegetation Control Program

Dear Commission Members:

Enclosed is Keolis Commuter Services 2015 Yearly Operational Plan prepared in accordance with the Massachusetts Rights-of-Way Management Regulations (333 CMR 11.00). The maps provided with this plan reflect those approved by the Commission from the Request for Determination filed by our company in 2011. These maps and updates thereof continue in effect unless modified and should be retained in your files. The identification on the maps of private drinking water supply wells remains an ongoing process. Please notify TEC Associates and the Department of Agricultural Resources of any omissions. Please also review your mailing address and the ten-digit police department emergency telephone number listed in the Plan and notify us of any revisions.

The herbicide application as proposed in the 2015 Yearly Operational Plan is scheduled as follows:

Rights-of-Way	20 June - 12 July 2015
Touch-up Application	8-30 August 2015
Brush Application (non-sensitive areas)	8-30 August 2015

The location of signs marking the limited and no-spray zones will be verified by the railroad prior to the application. Please call TEC Associates with any questions about this Plan.

Very truly yours,
TEC ASSOCIATES

Kyle Fair

Kyle Fair

Enclosure

cc: Board of Health
Board of Selectmen
DAR Rights-of-Way Program
Clary Coutu, Keolis

46 Sawyer Street South Portland, Maine 04106
207/767-6068 FAX 207/767-7125

Yearly Operational Plan

2015

KEOLIS COMMUTER SERVICES, LLC.

COMMUTER RAIL SYSTEM

470 ATLANTIC AVENUE
BOSTON, MA 02116

Prepared by:

TEC ASSOCIATES
46 SAWYER STREET
SOUTH PORTLAND, MAINE 04106

ABSTRACT:

This Yearly Operational Plan (YOP) describes the vegetation management operations for the Railroad's rights-of-way scheduled for vegetation maintenance during this calendar year in compliance with the Commonwealth of Massachusetts Rights-of-Way Management Regulations 333 CMR 11.00.

This YOP is a companion document to the Vegetation Management Plan (VMP) which has been approved by the Department of Agricultural Resources.

INTRODUCTION

Both Federal and State laws require railroads to manage vegetation to help insure the safe passage of people, material, and goods.

The Code of Federal Regulations mandates the safety of the railroad must be guaranteed by regular inspection and maintenance. Vegetation must be controlled so that it does not become a fire hazard, does not interfere with visibility, or impede direct visual inspections of the track structure. Vegetation must also be managed to allow for proper drainage of the track and ballast structure, to prevent tree and branch damage to cargo, and to provide safe footing and working conditions for trackside personnel. Vegetation growing along side the rails can prevent effective and adequate braking, especially in emergency situations.

The purpose of 333 CMR 11.00, Rights of Way Management, is to promote the implementation of Integrated Pest Management techniques and to establish standards, requirements, and procedures necessary to minimize the risk of unreasonable adverse effects on human heath and the environment associated with the use of herbicides to maintain rights-of-way. These regulations establish procedures which guarantee ample opportunity for public and municipal agency review and input on rights-of-way maintenance plans.

A Yearly Operational Plan or YOP must be submitted to the Department of Agricultural Resources every year herbicides are intended for use to maintain rights-of-way. The YOP provides a detailed program for vegetation management for the year. This YOP is a companion document to the Vegetation Management Plan (VMP) approved by the Department. The VMP is the long term management plan for the railroad which describes the intended program for vegetation control over a five year period.

Upon receipt of this YOP, the Department publishes a notice in the Environmental Monitor. The applicant has provided a copy of the YOP and Environmental Monitor notice to the Board of Health, Conservation Commission, and the chief elected municipal official for the city or town in which the herbicide treatment is proposed.

The Department allows a 45 day comment period on the proposed YOP beginning with publication of the notice in the Environmental Monitor and receipt of the YOP and Environmental Monitor notice by each municipality.

Public notification of herbicide applications to the right-of-way is made by registered mail under separate cover at least 21 days in advance of the treatment. Notice is made to the Department of Agricultural Resources; the Mayor, City Manager or chairman of the Board of Selectman; the Board of Heath; and the Conservation Commission of the municipality where the right-of-way lies.

Any comments on this YOP should be directed to:

Kyle Fair
TEC Associates
46 Sawyer Street
South Portland, ME 04106
(207) 767-6068

MUNICIPALITIES WHERE TREATMENT DESCRIBED IN THIS YOP WILL BE MADE

Abington
Acton
Andover
Ashland
Attleboro
Avon
Ayer
Bellingham
Belmont
Beverly
Billerica
Boston
Boxborough
Braintree
Bridgewater
Brockton
Brookline
Cambridge
Canton
Chelsea
Cohasset
Concord
Dedham
East Bridgewater
Easton
Everett
Fitchburg
Framingham
Franklin
Gloucester
Grafton
Halifax
Hamilton
Hanson
Haverhill
Hingham
Holbrook
Hopedale
Ipswich
Kingston
Lakeville
Lawrence
Leominster
Lincoln
Littleton
Lowell
Lunenburg
Lynn
Malden
Manchester
Medford
Melrose
Middleborough
Milford
Millbury
Milton
Natick
Needham
Newbury
Newburyport
Newton
Norfolk
North Andover
Norwood
Plymouth
Plympton
Quincy
Randolph
Raynham
Reading
Revere
Rockport
Rowley
Salem
Salisbury
Saugus
Scituate
Shirley
Somerville
Southborough
Stoughton
Swampscott
Taunton
Tewksbury
Wakefield
Walpole
Waltham
Wellesley
Wenham
West Bridgewater
Westborough
Weston
Westwood
Weymouth
Whitman
Wilmington
Winchester
Woburn
Worcester

YOP REQUIREMENTS AND TABLE OF CONTENTS

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I.	The Company which will perform any herbicide treatment	1
II.	Individual representing applicant and supervising the YOP	1
III.	Herbicides proposed including application rates, carriers, and adjuvants	2
IV.	Herbicide application techniques and alternative control procedures	3
V.	Identification of target vegetation	4
VI.	Flagging methods to designate sensitive areas on the ROW	5
VII.	Procedures and locations for handling, mixing and loading of herbicide concentrates	7
VIII.	Emergency contacts	8

APPENDICES

A. Herbicide Fact Sheets as approved by the Department of Agricultural Resources, herbicide labels, and MSDS.

B. Maps locating the ROW and sensitive areas not readily identifiable in the field.

I. THE COMPANY WHICH WILL PERFORM ANY HERBICIDE TREATMENT

This company or contractor will perform the herbicide treatment. Applicators are certified by the Department of Agricultural Resources in the applicator category Right-of-Way Pest Control.

Company Name	RWC, Inc.
Address	Lockhouse Road
	P.O. Box 876
	Westfield, MA 01086
Telephone #	(413) 562-5681
Contact Person(s)	Brian Chateauvert

II. INDIVIDUAL REPRESENTING APPLICANT AND SUPERVISING THE YOP

Individual supervising execution of the YOP and representing the railroad.

Name & Title	Clary Coutu, Environmental Compliance Mgr.
Address	Keolis Commuter Services, LLC.
	470 Atlantic Avenue
	Boston, MA 02116
Telephone #	(617) 874-6946

III. HERBICIDES PROPOSED INCLUDING APPLICATION RATES, CARRIERS, ADJUVANTS, AND APPLICATION TECHNIQUES

Weed Control Herbicide Program for the Roadbed

The post-emergent herbicide program is aimed primarily toward keeping the ballast section and shoulder, yards, switches, signals, and highway grade crossings weed free. Areas scheduled for weed control treatments have been inspected for density of target vegetation to determine appropriate control methods. Herbicide Fact Sheets for the herbicides proposed are found in Appendix A.

Location	Herbicide(s)	Carriers or Adjuvants	Application Technique	Application Rate
Sensitive area buffer zone	Aquaneat		Foliar	2 qts/acre
	Oust Extra		Foliar	4 oz/acre
	Escort XP		Foliar	2 oz/acre
		More	Foliar	2-5 oz/100 gal
		Incite 80	Foliar	2-5 oz/100 gal
Non-sensitive areas	Aquaneat		Foliar	2 qts/acre
	Oust Extra		Foliar	4 oz/acre
	Escort XP		Foliar	2 oz/acre
		More	Foliar	2-5 oz/100 gal
		Incite 80	Foliar	2-5 oz/100 gal
Touch-up applications	Aquaneat		Foliar	2 qts/acre
	Oust Extra		Foliar	4 oz/acre
	Escort XP		Foliar	2 oz/acre
		More	Foliar	2-5 oz/100 gal
		Incite 80	Foliar	2-5 oz/100 gal

Brush Control Program for Areas Adjacent to the Roadbed

The brush control program is designed to prevent the re-growth of trees and other woody vegetation in areas adjacent to the roadbed. Areas scheduled for brush control treatments are limited to target vegetation which obscures visibility or interferes with railroad signs, signals, or communication wires. Herbicide Fact Sheets for herbicides proposed may be found in Appendix A.

Location	Herbicide(s)	Carriers or Adjuvants	Application Technique	Application Rate
Non-sensitive areas	Aquaneat		Foliar	4 qts/acre
	Escort XP		Foliar	2 oz/acre
		More	Foliar	2-5 oz/100 gal
		Incite 80	Foliar	2-5 oz/100 gal
Touch-up applications	Aquaneat		Foliar	4 qts/acre
	Escort XP		Foliar	2 oz/acre
		More	Foliar	2-5 oz/100 gal
		Incite 80	Foliar	2-5 oz/100 gal

IV. HERBICIDE APPLICATION TECHNIQUES AND ALTERNATIVE CONTROL PROCEDURES

Herbicide applications within the Railroad right-of-way will be preformed using low pressure application from a specialized hy-rail truck equipped with a spray boom. This method is suitable for application within the buffer zone, or restricted application zone of sensitive areas, as defined in 333 CMR 11.04. The spray vehicle is equipped with spray nozzles and controls to allow for treatment of the entire roadbed, or to selectively treat individual sections of the ballast and ballast shoulders. Within sensitive areas, a container will be used to catch any accidental dripping of herbicide. It is a trough-shaped apparatus mounted just behind and above the boom, and will be hydraulically lowered to sit underneath the spray nozzles while the vehicle is traveling through areas where herbicide spraying is prohibited.

In order to assist in rapid identification of sensitive areas in the field, a pilot vehicle will proceed approximately 1/4 mile ahead of the applicator vehicle in order to signal ahead the location of sensitive areas.

In order to provide greater mobility and decrease the amount of time required to apply the herbicide mixture in the railroad yard areas, a vehicle equipped with hoses will be used in these areas. In compliance with the Regulations for herbicide application in sensitive areas, the spray pressure from the hoses will not exceed 60 psi.

ALTERNATIVE CONTROL PROCEDURES

No alternative vegetation control methods are feasible within the track areas of the right-of-way. No vegetation control is proposed in ballast areas where herbicide use is prohibited.

Touch-up techniques controls any target vegetation within the ballast that may have been missed or not treated during the initial phase. Control of vines and other vegetation that might creep onto the ballast from roots growing outside the original treatment boundaries can be managed as a selective, foliage, or spot spray. No more than 10% of the initially identified target vegetation on the right-of-way in any municipality may be treated during a touch-up application and the total amount of herbicide applied in any one year shall not exceed the limits specified by the label or YOP [per 11.03(8)(c)].

V. IDENTIFICATION OF TARGET VEGETATION

Whenever and wherever possible an integrated approach to vegetation management will be implemented by encouraging plant communities that hinder the growth of target vegetation. Prior to a herbicide application, a review will be made noting location, density, and type of vegetation present. This information will be used to develop a herbicide application program that will be effective against target vegetation and minimize the amount of herbicide used.

In accordance with the Code of Federal Regulations, 49 Part 213 - Track Safety Standards, all vegetation growing in the ballast and ballast shoulder; in yards; and around switches, signals, signs and highway grade crossings is considered target vegetation and must be controlled so that it does not:

a) become a fire hazard to track-carrying structures;
b) obstruct visibility of railroad signs and signals;
c) interfere with railroad employees performing normal trackside duties;
d) prevent proper functioning of signal and communication lines; and
e) prevent railroad employees from visually inspecting moving equipment form their normal duty stations.

Woody vegetation growing in areas adjacent to the shoulder will be managed to promote the growth of low growing shrubs. Targeted woody vegetation will be that which has the potential to block visibility or invade the roadbed and/or overhead communication lines. Target vegetation will include but not be limited to the following:

Ailanthus	Black Walnut	Honey Locust
American Basswood	Buckthorn	Maple
American Beech	Butternut	Northern Catalpa
American Hornbeam	Cherry	Oak
Apple	Eastern Horphornbeam	Pine
Ash	Eastern Red Cedar	Poplar
Aspen	Elm	Sassafras
Birch	Flowering Dogwood	Shadbush
Black Locust	Hawthorn	Spruce
Black Tupelo	Hickory	Sumac

VI. FLAGGING METHODS TO DESIGNATE SENSITIVE AREAS ON THE ROW

Sensitive areas are defined in the Rights-Of-Way Management Regulations (333 CMR 11.02) are as defined in 333 CMR 11.04, any areas within the Right-of-Way, including No-Spray and Limited-Spray Areas, in which public health, environmental or agricultural concerns warrant special protection to further minimize risks of unreasonable adverse effects. These include but are not limited to the following:

No Spray Area, any area that is both within a Right-of-Way and within:

(a) any Zone I;
(b) 100 feet of any Class A Surface Water Source;
(c) 100 feet of any tributary or associated surface water body where the tributary or associated surface water body runs within 400 feet of a Class A surface water source;
(d) 10 feet of any tributary or associated surface water body where the tributary or associated surface water body is at a distance greater than 400 feet from a Class A surface water source;
(e) a lateral distance of 100 feet for 400 feet upstream, on both sides of the river, of a Class B Drinking Water Intake;
(f) 50 feet of any identified Private Well;
(g) 10 feet of any Wetlands or Water Over Wetlands;
(h) 10 feet of the mean annual high-water line of any river; and
(i) 10 feet of any Certified Vernal Pool.

Limited Spray Area, any area that is both within a Right-of-Way and within:

(a) any Zone II or IWPA;
(b) a distance of between 100 feet and 400 feet of any Class A Surface Water source;
(c) a distance of between 10 and 200 feet of any tributary or associated surface water body where the tributary or associated surface water body runs outside the Zone A for the Class A surface water source;
(d) a lateral distance of between 100 and 200 feet for 400 feet upstream, on both sides of the river, of a Class B Drinking Water Intake;
(e) a distance of between 50 and 100 feet of any identified Private Well;
(f) a distance of between 10 and 100 feet of any Wetlands or Water Over Wetlands;
(g) a distance of between 10 feet from the mean annual high water line of any river and the outer boundary of the Riverfront Area;
(h) a distance of between 10 feet from any Certified Vernal Pool and the outer boundary of any Certified Vernal Pool Habitat; and
(i) a distance of 100 feet of any Agricultural or Inhabited Area.

* Limited Spray Area(s) are those in which spraying is restricted to one annual application of a herbicide through low pressure foliar techniques.

Non-Sensitive Areas are upland areas and/or track not in proximity to sensitive areas and do not require specific precautions or herbicide restrictions.

Sensitive areas, no-spray areas, limited-spray areas, and non-sensitive areas will be marked at their boundaries with permanent color-coded markers. Sensitive areas considered to be readily identifiable in the field (i.e. agricultural and inhabited areas) will not be marked. The markers will be one or any combination of the following:

color-coded signs attached to posts
color-coded signs attached to the railroad ties
color-coded painted rail sections

Sensitive and non-sensitive areas will be designated by the following color-codes:

white	non-sensitive areas
blue	sensitive area in which a minimum of 12 months shall elapse between herbicide applications
double blue	sensitive areas in which a minimum of 24 months shall elapse between herbicide applications.
yellow	no spray zone

VII. PROCEDURES AND LOCATIONS FOR HANDLING, MIXING, AND LOADING OF HERBICIDE CONCENTRATES

The herbicide application crew will wear protective clothing and personal safety equipment when mixing, handling, loading, or applying herbicide, including standard work clothing or coveralls, work gloves, and work boots. Latex or nitrile rubber gloves, as well as eye goggles are recommended to be worn during mixing of herbicide concentrate as some herbicides may cause mild eye and skin irritations.

Mixing and use of herbicide shall be consistent with the labeling instructions included on the packaging. The herbicide mix will be prepared from herbicide concentrate and water. In compliance with the regulations, the handling, mixing and/or loading of this material will not occur within 100 feet of any sensitive area. Wherever and whenever possible, the herbicide applicator will prepare the herbicide mix on non-porous surfaces, such as pavement or concrete.

Sources of Water and Safeguards to Prevent Contamination

Water used for herbicide mix will be obtained from hydrants and freshwater sources. During the herbicide mix preparations and during herbicide application, strict adherence to the following safeguards will be maintained:

1) Water will be obtained using hoses equipped with anti-siphon devices to eliminate herbicide backflow.

    a) Hoses used to extract water from water bodies will be equipped with two such devices: one will be found directly behind the mouth of the hose and another will be at the coupling that joins the hose to the mix tank.

    b) Hoses used to extract water from the hydrant will utilize the same setup as described above, except that a third anti-siphon device will be found within the coupling joining the hose to the hydrant.

2) The herbicide concentrate will not be added to the tank until the water has been obtained and the application apparatus is at least 100 feet outside a sensitive area.

Disposal of Herbicidal Wastes

Disposal of all herbicidal wastes will be the responsibility of the licensed applicator. It is the applicator's responsibility to ensure that such disposal will be carried out in an environmentally sensitive manner, in compliance with all Federal and State regulations and guidelines.

VIII. EMERGENCY CONTACTS

In the event of a spill or emergency, information on safety precautions and cleanup procedures may be gathered from the following sources:

Herbicide Label

Herbicide Fact Sheet

Herbicide Material Safety Data Sheet

Herbicide Manufacturer

BASF Specialty Products	(800) 545-9525
Dupont (general)	(888) 638-7668
Dupont (medical emergency)	(800) 441-3637
Dupont (transportation emergency)	(800) 424-9300
Monsanto	(314) 694-4000
Nufarm Turf & Specialty	(800) 345-3330

Massachusetts Pesticide Bureau	(617) 626-1782
Massachusetts DEP Emergency Response	(888) 304-1133
Chemtrec	(800) 262-8200
EPA National Pesticide Information Center	(800) 858-7378
Massachusetts Poison Control Center	(800) 222-1222

Local Community Chief of Police and/or Fire Chief

Abington	(781) 878-3232
Acton	(978) 263-2911
Andover	(978) 475-0411
Ashland	(508) 881-1212
Attleboro	(508) 222-1212
Avon	(508) 587-4207
Ayer	(978) 772-8200
Bellingham	(508) 966-1515
Belmont	(617) 993-2501
Beverly	(978) 922-1212
Billerica	(978) 667-1212
Boston	(617) 247-4200
Boxborough	(978) 263-3000
Braintree	(781) 843-1212
Bridgewater	(508) 697-0914
Brockton	(508) 941-0200
Brookline	(617) 730-2222
Cambridge	(617) 349-3300

Canton	(781) 828-1212
Chelsea	(617) 884-1212
Cohasset	(781) 383-1055
Concord	(978) 318-3400
Dedham	(781) 326-1212
East Bridgewater	(508) 378-7223
Easton	(508) 230-3322
Everett	(617) 389-2120
Fitchburg	(978) 345-4355
Framingham	(508) 872-1212
Franklin	(508) 528-1212
Gloucester	(978) 283-1212
Grafton	(508) 839-2858
Halifax	(781) 293-5761
Hamilton	(978) 468-1212
Hanson	(781) 293-4625
Haverhill	(978) 373-1212
Hingham	(781) 749-1212
Holbrook	(781) 767-1212
Hopedale	(508) 473-8444
Ipswich	(978) 356-4343
Kingston	(781) 585-0523
Lakeville	(508) 947-4425
Lawrence	(978) 794-5900
Leominster	(978) 534-4383
Lincoln	(781) 259-8113
Littleton	(978) 952-2316
Lowell	(978) 937-3200
Lunenburg	(978) 582-4531
Lynn	(781) 595-2000
Malden	(781) 322-1212
Manchester	(978) 526-1212
Medford	(781) 395-1212
Melrose	(781) 665-1212
Middleborough	(508) 947-1212
Milford	(508) 473-1113
Millbury	(508) 865-3521
Milton	(617) 698-3800
Natick	(508) 647-9500
Needham	(781) 444-1212
Newbury	(987) 499-3907
Newburyport	(978) 462-4411
Newton	(617) 796-2100
Norfolk	(508) 528-3232
North Andover	(978) 683-3168
Norwood	(781) 762-6888
Plymouth	(508) 830-4218
Plympton	(781) 585-3339
Quincy	(617) 479-1212
Randolph	(781) 963-1212

Raynham	(508) 824-2716
Reading	(781) 944-1212
Revere	(781) 284-1212
Rockport	(978) 546-3444
Rowley	(978) 948-7644
Salem	(978) 744-1212
Salisbury	(978) 465-3121
Saugus	(781) 233-1212
Scituate	(781) 545-1212
Shirley	(978) 425-2642
Somerville	(617) 625-1600
Southborough	(508) 485-2147
Stoughton	(781) 344-2424
Swampscott	(781) 595-1111
Taunton	(508) 824-7522
Tewksbury	(978) 851-7373
Wakefield	(781) 245-1212
Walpole	(508) 668-1095
Waltham	(781) 893-3700
Wellesley	(781) 235-1212
Wenham	(978) 468-4000
W. Bridgewater	(508) 586-2528
Westborough	(508) 366-3060
Weston	(781) 893-4803
Westwood	(781) 326-1903
Weymouth	(781) 335-1212
Whitman	(781) 447-7666
Wilmington	(978) 658-3331
Winchester	(781) 729-1214
Woburn	(781) 933-1212
Worcester	(508) 799-8600

APPENDICES

A. Herbicide Fact Sheets as approved by the Department, herbicide labels, and MSDS.

B. Maps locating the ROW and Sensitive areas not readily identifiable in the field.

Maps provided with the Yearly Operational Plan shall remain effective for the duration of the YOP unless modified. Subsequent YOP's will contain any modifications to the maps made during the previous year.

APPENDIX A

Below find a list of herbicides potentially in use by this Yearly Operational Plan. For a list of the exact products and rates of application to be used in this year's program please refer to page 2 of this document.

MANUF.	PRODUCT NAME	ACTIVE INGREDIENT(S)	EPA REGISTRATION #
NUFARM SPECIALTY	AQUANEAT	GLYPHOSATE	228-365
DUPONT	OUST EXTRA	SULFOMETURON METHYL METSULFURON METHYL	352-622
BASF SPECIALTY PRODUCTS	ARSENAL R.R. HERBICIDE	ISOPROPYLAMINE SALT OF IMAZAPYR	241-273
DUPONT	OUST XP	SULFOMETURON METHYL	352-601
DUPONT	ESCORT XP	METSULFURON METHYL	352-439
NUFARM SPECIALTY	POLARIS	ISOPROPYLAMINE SALT OF IMAZAPYR	228-534
NUFARM SPECIALTY	RAZOR PRO	GLYPHOSATE	228-366

LABELS & MSDS SHEETS:

To access the labels and MSDS sheets for any of the above products please follow the directions below:

1. Open your internet browser and enter the following address in the **Address bar**: http:// www.cdms.net/LabelsMsds/LMDefault.aspx
2. Highlight the T & O Button and Enter the **Product Name** (as found above) you wish to be informed about into the **Search bar** and hit the **Search button**.
3. A list of products will appear. Please be sure to reference the **Manufacture and Product Name** to locate the correct information.

HERBICIDE FACT SHEET:

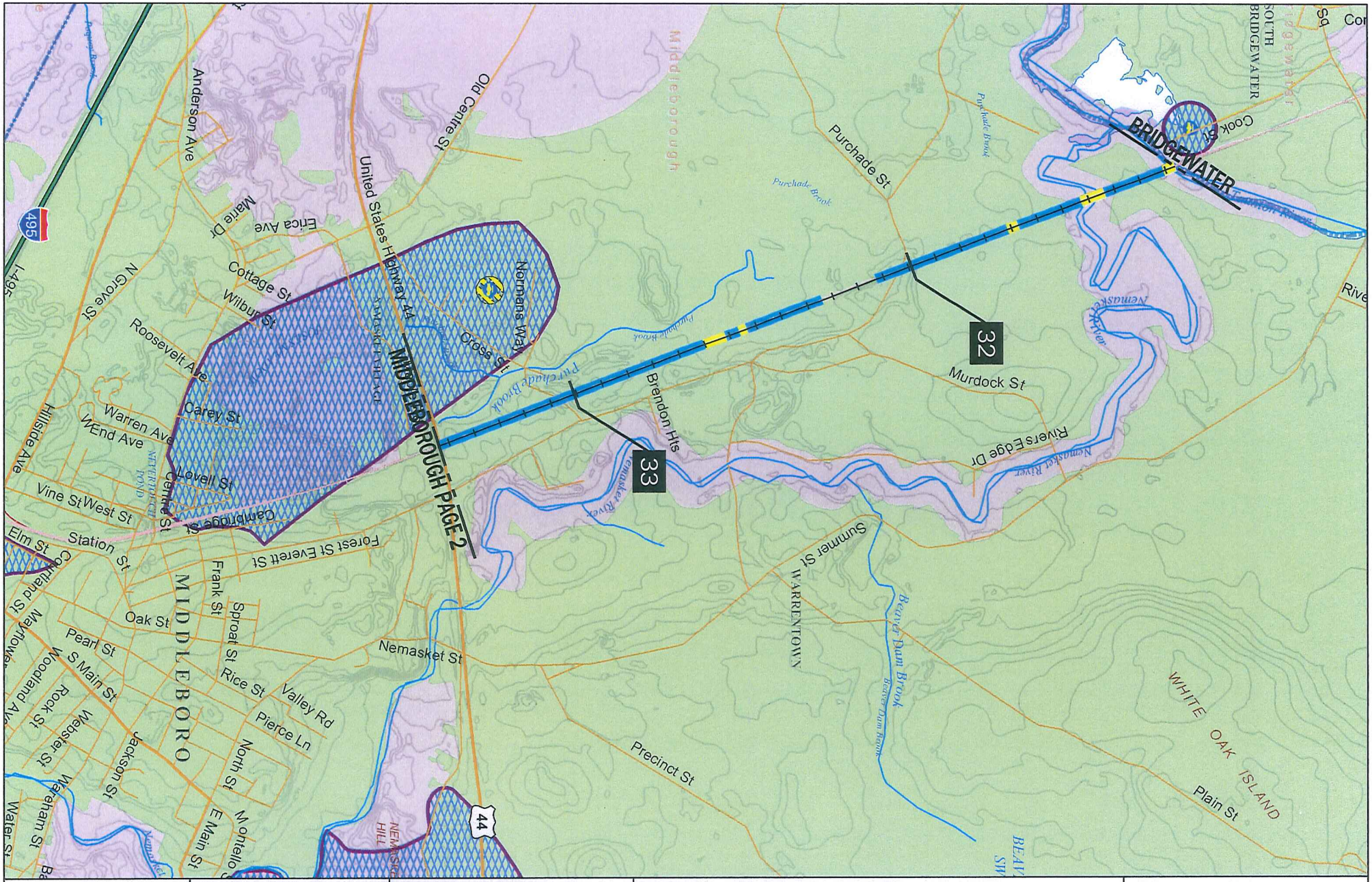
To access the herbicide fact sheets for any of the above products please follow the directions below:

1. Open your internet browser and enter the following address in the **Address bar:** http://www.mass.gov/eea/agencies/agr/pesticides/rights-of-way-sensitive-area-materials-list.html
2. Choose the link that corresponds to the **Active Ingredient** present in the product you are interested in.

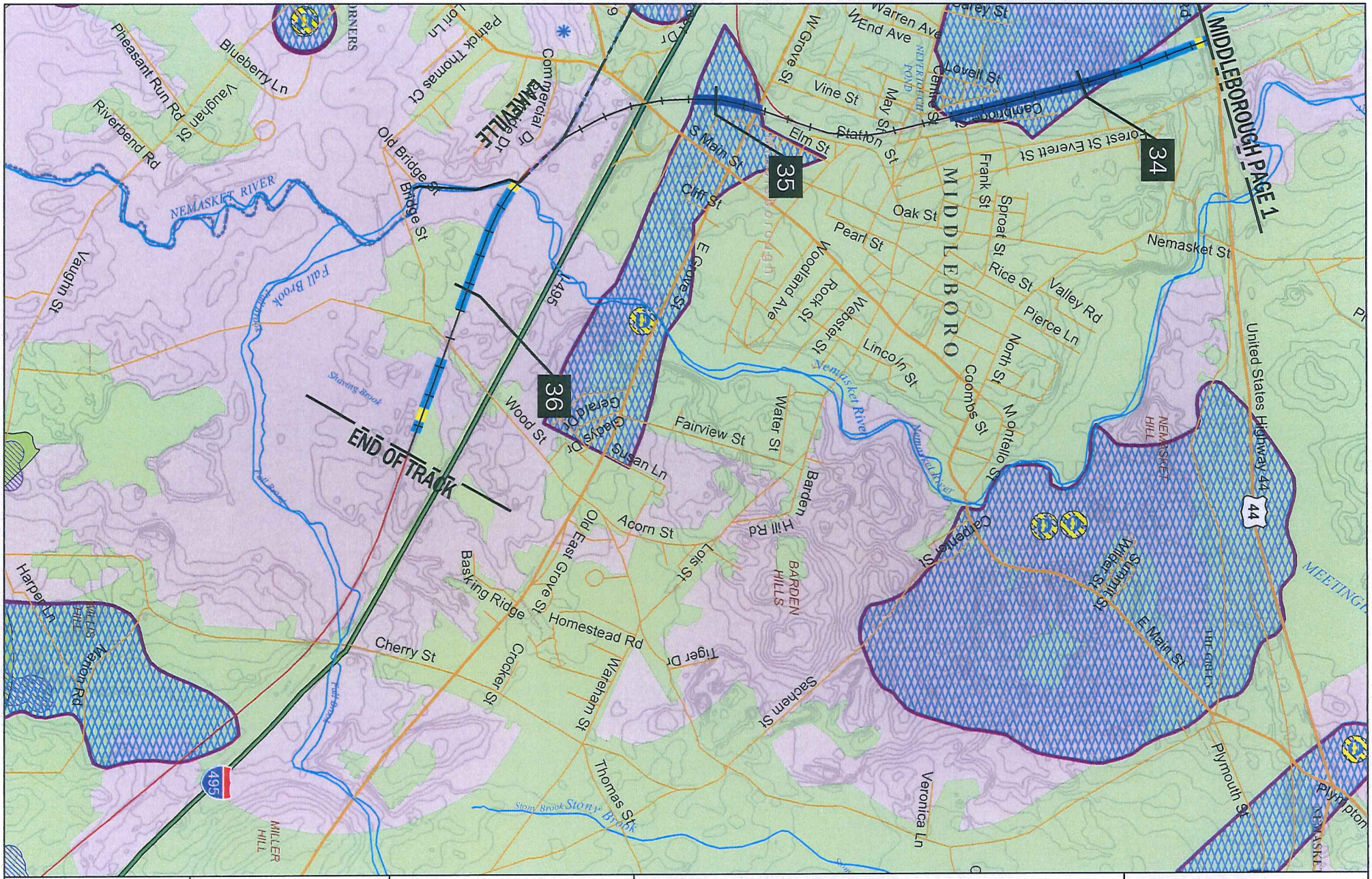
Hard copies of any of these documents may also be obtained by calling TEC Associates at (207) 767-6068 ex203.

APPENDIX B

MAPS



SCALE: 1:25,000	SHEET 1 OF 2	TOWN OF: MIDDLEBOROUGH	BRANCH: MIDDLEBORO MAIN LINE	DATE: 3/1/2011
Keolis Commuter Services	470 ATLANTIC AVENUE BOSTON, MA 02210	LIMITED SPRAY ZONE (1 YEAR INTERVAL)	Groundwater Source	DEP Approved Zone I
TEC ASSOCIATES CONSULTING ENGINEERS 46 SAWYER STREET SOUTH PORTLAND, MAINE 04106		LIMITED SPRAY ZONE (2 YEAR INTERVAL)	Surface Water Intake	DEP Approved Zone II / IWPA
		NO SPRAY ZONE	NHESP Vernal Pool	Zone A
				Zone B
				NHESP Priority Habitat



SCALE: 1:25,000	SHEET 2 OF 2	TOWN OF: MIDDLEBOROUGH	BRANCH: MIDDLEBORO MAIN LINE	DATE: 3/1/2011
Keolis Commuter Services	470 ATLANTIC AVENUE BOSTON, MA 02210	LIMITED SPRAY ZONE (1 YEAR INTERVAL)	Groundwater Source	DEP Approved Zone I
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		NO SPRAY ZONE	NHESP Vernal Pool	Zone A
				Zone B
				NHESP Priority Habitat

THE COMMONWEALTH OF MASSACHUSETTS

EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS

Department of Agricultural Resources

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

MDAR MASSACHUSETTS DEPARTMENT OF AGRICULTURAL RESOURCES

CHARLES D. BAKER Governor | KARYN E. POLITO Lt. Governor | MATTHEW A. BEATON Secretary | JOHN LEBEAUX Commissioner

NOTICE

Pursuant to the provisions of the Rights-of-Way Management Regulation, 333 CMR 11.00, in order to apply herbicides to control vegetation along railroad rights-of-way, a five-year Vegetation Management Plan (VMP) and a Yearly Operational Plan (YOP) must be approved by the Department of Agricultural Resources. Therefore, notice of receipt of a YOP and procedures for public review are hereby given as required by Section 11.06 (3).

A Yearly Operational Plan has been submitted for: Keolis Commuter Services, LLC (KCS).

This plan has been prepared and submitted to the Department of Agricultural Resources by: TEC Associates of South Portland, Maine.

Municipalities identified in the KCS YOP as locations where the rights-of-way will be treated with herbicides during the 2015 calendar year are:

> Abington, Acton, Andover, Ashland, Attleboro, Avon, Ayer, Bellingham, Belmont, Beverly, Billerica, Boston, Boxborough, Braintree, Bridgewater, Brockton, Brookline, Cambridge, Canton, Chelsea, Cohasset, Concord, Dedham, East Bridgewater, Easton, Everett, Fitchburg, Framingham, Franklin, Gloucester, Grafton, Halifax, Hamilton, Hanson, Haverhill, Hingham, Holbrook, Hopedale, Ipswich, Kingston, Lakeville, Lawrence, Leominster, Lincoln, Littleton, Lowell, Lunenburg, Lynn, Malden, Manchester, Medford, Melrose, Middleborough, Milford, Millbury, Milton, Natick, Needham, Newbury, Newburyport, Newton, Norfolk, North Andover, Norwood, Plymouth, Plympton, Quincy, Randolph, Raynham, Reading, Revere, Rockport, Rowley, Salem, Salisbury, Saugus, Scituate, Shirley, Somerville, Southborough, Stoughton, Swampscott, Taunton, Tewksbury, Wakefield, Walpole, Waltham, Wellesley, Wenham, West Bridgewater, Westborough, Weston, Westwood, Weymouth, Whitman, Wilmington, Winchester, Woburn, and Worcester.

KCS's vegetation control program for 2015 will be consistent with the VMP as approved by the DAR and involves an Integrated Pest Management (IPM) approach. In the 2015 program, brush control will be limited to manual or mechanical cutting in sensitive areas and sensitive area buffer zones. In non-sensitive areas, one foliar application will be conducted to selectively treat brush adjacent to the shoulder using a DAR approved herbicide mixture.

One selective herbicide application will take place in the non-sensitive and sensitive area buffer zones along the roadbed portion of the right-of-way using a DAR approved herbicide mixture. This post-emergent program is targeted toward the eradication of woody and herbaceous plant species germinating within the roadbed and around other fixtures including but not limited to: switches, signals, signs, and highway grade crossings. This application will be followed by a late summer touch-up application in areas of heavy vegetation growth.

Hi-rail vehicles equipped with herbicide application equipment will be used to treat the rights-of-way. Public notification (by registered mail) will be provided to the chief elected official, Board of Health, and Conservation Commission in each affected municipality at least twenty-one days prior to any herbicide application.

"Sensitive" areas as defined by the Rights-of-way Management Regulations will receive the full protection afforded by those Regulations. All herbicide applications will be done by an applicator properly licensed by the Department

of Agricultural Resources Pesticide Bureau and fully trained in herbicide mixing, handling, and application methods.

The applicant has described the following rights-of-way as sites that have been scheduled for herbicide treatment in 2015.

EASTERN ROUTE MAIN LINE
Newburyport to Boston

Newburyport	Beverly	Revere
Newbury	Salem	Chelsea
Rowley	Swampscott	Everett
Ipswich	Lynn	Somerville
Hamilton	Saugus	Boston
	Wenham	

GLOUCESTER BRANCH
Gloucester to Beverly

Rockport	Manchester
Gloucester	Beverly

WESTERN ROUTE MAIN LINE
Haverhill to Boston

Haverhill	Tewksbury	Melrose
North Andover	Wilmington	Malden
Lawrence	Reading	Medford
Andover	Wakefield	Somerville

NEW HAMPSHIRE ROUTE MAIN LINE
Lowell to Boston

Lowell	Wilmington	Medford
Tewksbury	Woburn	Somerville
	Billerica	Winchester

WILDCAT BRANCH
Wilmington to Wilmington Junction

Wilmington

FITCHBURG MAIN LINE
Fitchburg to Boston

Fitchburg	Boxborough	Waltham
Leominster	Acton	Belmont
Lunenburg	Concord	Cambridge
Shirley	Lincoln	Somerville
Ayer	Weston	Boston
	Littleton	

STOUGHTON BRANCH
Stoughton to Canton

Stoughton Canton

DORCHESTER BRANCH
Readville to Boston

Boston Milton

FRANKLIN BRANCH
Milford to Boston

Milford	Norfolk	Westwood
Hopedale	Walpole	Dedham
Bellingham	Norwood	Boston
	Franklin	

NEEDHAM BRANCH
Needham to Boston

Needham Dedham Boston

RANDOLPH INDUSTRIAL TRACK
Braintree to Randolph

Braintree Randolph

GREENBUSH BRANCH
Braintree to Scituate

Braintree	Cohasset	Hingham
Scituate	Weymouth	

MIDDLEBOROUGH MAIN LINE
Boston to Middleborough

Boston	Holbrook	East Bridgewater
Quincy	Avon	Bridgewater
Braintree	Brockton	Middleborough
Randolph	West Bridgewater	Lakeville

PLYMOUTH BRANCH
Braintree to Plymouth

Braintree	Whitman	Plympton
Weymouth	Hanson	Kingston
Abington	Halifax	Plymouth

BOSTON LINE
Boston to Worcester

Boston	Brookline	Newton
Weston	Wellesley	Natick
Framingham	Ashland	Southborough
Westborough	Grafton	Millbury
Worcester		

GRAND JUNCTION RUNNING TRACK
Boston to Everett

Boston	Somerville	Everett
	Cambridge	

PUBLIC REVIEW

The Department of Agricultural Resources (DAR) in particular seeks the verification of sensitive area locations reported in the Yearly Operational Plan (YOP). The Department itself has a limited ability to survey the geography, land use, and the water supplies, in all the communities through which the rights-of-way are located. Municipalities, however, have most of this information readily available, and the particular knowledge with which to better certify the sensitive areas in their communities. Therefore, the Department requests, and urges, the assistance of the affected municipalities, in reviewing the completeness and accuracy of the maps contained in the submitted document. The DAR has established the following procedures for this review.

The YOP may be viewed online at http://www.mass.gov/agr.

Yearly Operational Plans (YOP) and a copy of this notice will be sent by the applicant to the Conservation Commission, Board of Health (or designated health agent), and to the Head of Government (Mayor, City Manager, Chair of the Board of Selectman) of each municipality where herbicides are to be applied along the Rights-of-Way during the calendar year and where applicable the Massachusetts Water Resource Authority and the Massachusetts Department of Conservation and Recreation will receive a YOP or an internet address where the YOP could be viewed. Municipal agencies and officials will have (45) forty-five days, following receipt of the Yearly Operational Plan to review the maps contained in the document that indicate the location of "sensitive areas not readily identifiable in the field for inaccuracies and omissions. "Sensitive Areas" will be defined as in Section 11.01 a-f.

Municipal agencies and officials are requested to forward the YOP to the appropriate officials(s) in their municipality qualified to certify the accuracy of sensitive area locations as indicated on the maps. The maps should be "corrected" and returned to the applicant, also a copy of the maps with these corrections indicated should be sent to the Department of Agricultural Resources at the address listed below within the forty-five day review period. If a city or town needs more time to carry out this review, it should send a written request for an extension to the DAR and cite why there is a "good cause" for requesting additional time.

All corrections will be required to be made by the applicant, and corrected maps sent back to the city/town before the YOP can be considered "approved" by the Department for vegetation maintenance in that municipality. Any dispute on the part of the applicant regarding corrections made by the municipal authorities, should be indicated in writing to the Department and to the city/town which requested the disputed changes within (15) fifteen days of receipt of the request. The Department will decide whether or not the YOP should be approved without the requested changes. The DAR will consider the "final approval" of a YOP individually for each municipality.

The final (21) twenty one days of the public review period may serve concurrently to provide public notification as required by section 11.07 of the Rights-of-Way Management regulation, if the applicant has an approved VMP and if all the requisite city/town offices which have received copies of the YOP have completed their review and corrections have been duly made by the applicant and approved by the Department.

A failure by the city/town to respond to the applicants' submission of the YOP within the forty five (45) day public review period, will automatically be considered by the DAR to indicate agreement by municipal officials with the sensitive area demarcations as provided by the applicant in their YOP.

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

Rights-of-Way Program
Massachusetts Pesticide Bureau
251 Causeway Street, Suite 500
Boston, Massachusetts 02114-2151

Any additional questions or comments on any information provided as part of the proposed YOP should be addressed in writing to:

Kyle Fair
TEC Associates
46 Sawyer Street
South Portland, Maine 04106

A copy should also be sent to the ROW program at the above address.

COMMENT PERIOD ENDS AT THE CLOSE OF BUSINESS, FRIDAY MAY 8, 2015.

10

Jacqueline Shanley

From: David Cavanaugh <herringwarden@yahoo.com>
Sent: Monday, March 30, 2015 8:37 PM
To: Selectman Allin Frawley; Selectman Leilani Dalpe; Selectman John M. Knowlton; Selectman Diane C. Stewart; Selectman Stephen J. McKinnon
Cc: Robert G. Nunes; Jacqueline Shanley; Orrall Keiko - Rep. (HOU); Tom Barron; Dave Lemmo; Sylvester Zienkiewicz; Allin Frawley; Bryant Marshall; Ron Burgess; Cyndy Mattie Gendron; Mike Bednarski; Joe Urbanski; Cory Leeson; Brad Day; Bill Orphan
Subject: Fw: Assawompset Pond Complex Legislation

During the discussion at the selectmen's meeting Monday 3/30/15 about the proposed Assawompsett District legislation, Mr. Knowlton asked why the entire board did not receive my correspondence and answers.

I'd like to answer that question and not leave it with Mr. Frawley's answer of "I don't know why Mr. Cavanaugh did what he did".

First off, my comments and questions to the legislation were/are as a private citizen at this point and somewhat as a representative of the ad-hoc lake level management group. I sent my initial comments to the Board of Selectmen and also to the members of the Herring Fishery Commission (as well as several others) as a heads up. I sent the followup messages to the Herring Fishery Commission as well as some others. Mr Frawley received the email chain as a volunteer observer with the Herring Fishery Commission. Ms.Dalpe contacted me directly and specifically asked me about my comments, so I included her in the responses.

I was a bit surprised nobody asked Rep. Orrall why the towns were not initially consulted, since that seemed to be one of the main comments to me from the board members.

Below is the ENTIRE email chain, the answers to my questions, and the followup responses to date. My intention is to keep everyone in the loop (towns and cities, ad-hoc group members, and town officials such as the ConCom which have official interest in the ponds and river.

David J. Cavanaugh
83 Miller St.
Middleborough, MA
On Monday, March 23, 2015 4:32 PM, "Spittle, Jeremy (SEN)" <Jeremy.Spittle@masenate.gov> wrote:

David,

Thank you. These are all very valid points that will be considered as we move ahead.

Thanks,
Jeremy

From: David Cavanaugh [mailto:herringwarden@yahoo.com]
Sent: Monday, March 23, 2015 4:12 PM
To: Spittle, Jeremy (SEN)
Subject: Re: Assawompset Pond Complex Legislation

As a whole, I would hope the district would not want to run roughshod over the communities, but each community will have but one vote. To paraphrase a common saying "water flows downhill" and it could easily be a five to one vote, four to two vote, etc. on something that could disproportionally impact one community, or one issue. Nothing in the bill prevents it.

To expand on another point:

1- Why no representatives from Mass. Fish and Wildlife or Marine Fisheries?

The legislation provides the commission with a representative from the Executive Office of Energy and Environmental Affairs to be appointed by the Secretary.

Three levels removed from local on the ground experts! Fish and Wildlife has mandates for inland species and *MarineFisheries* mandates the protection of diadromous fish which utilize lake and river habitat. I understand the argument (below) about possible conflict of interest, but the secretary (as a political appointee) can appoint whoever he/she chooses, with whatever political agenda could be dictated to the secretary from above. Nothing in this bill mandates species or habitat protection.

Leaving this decision up to the Secretary was determined as a good starting point.

In addition, a concern has been that if the newly established Commission determines it needs to or feels compelled to take action, then having a representative from Fish and Game on the Commission could present a conflict if actions under consideration fall within the regulatory enforcement authority of Fish and Game.

You must understand that when the dam management group was first formed through Rep. Canessa, three groups that were specifically NOT invited were the Middleborough Conservation Commission, the Lakeville Conservation Commission and the Middleborough-Lakeville Herring Fishery Commission (the three groups that have most to do with lake and river habitat issues). In fact, when I questioned that, a representative of Rep. Canessa's office wrote to me something to the effect that "we can't invite everybody" and the towns could choose who to represent them. After that answer, I invited myself to the group meetings, under the thought that if the group didn't want me there, they could kick me out and then explain why to the press. Thankfully, herring protection and lake and river habitat was seen as a vital interest by the group.

One idea would be to consider the appointment of EOEEA to be "non-voting" members so as to remove the issue of conflict, but this is just an idea at the moment.

One unintended consequence of that could be to remove fish, wildlife and habitat as a voted protected interest altogether.

again, I'm not opposed to this bill (neither am I in favor yet), but seeking more necessary information.
Thanks,
Dave C.

On Monday, March 23, 2015 3:46 PM, "Spittle, Jeremy (SEN)" <Jeremy.Spittle@masenate.gov> wrote:

Hi David,

Appreciate your thoughts on the legislation. Senator Rodrigues and Representative Orrall are committed to working collaboratively with the stakeholder group to pursue a regional approach. As such, the legislation they have filed jointly represents another step in their collective efforts to secure priority funding to help the four

towns and two cities of the APC conduct a flood management study. The intent has always been to address multiple objectives balanced around managing and monitoring water levels AND reducing and mitigating any future flooding impacts to surrounding communities.

With that said, I'd like to take a moment to respond briefly to some of the feedback you provided over the weekend.

1- Why no representatives from Mass. Fish and Wildlife or Marine Fisheries?

> **The legislation provides the commission with a representative from the Executive Office of Energy and Environmental Affairs to be appointed by the Secretary. The office of Mass Fish and Game falls under the EEA umbrella, so if the Secretary wanted to appoint a designee from Mass. Fish and Game, then he certainly could do so. Leaving this decision up to the Secretary was determined as a good starting point.**
>
> **In addition, a concern has been that if the newly established Commission determines it needs to or feels compelled to take action, then having a representative from Fish and Game on the Commission could present a conflict if actions under consideration fall within the regulatory enforcement authority of Fish and Game.**
>
> **One idea would be to consider the appointment of EOEEA to be "non-voting" members so as to remove the issue of conflict, but this is just an idea at the moment.**

2- The thrust of the bill is specifically geared toward flooding issues, not watershed management.

> **Yes, to a degree it is. Since 2010-2011, Sen. Rodrigues and Rep. Orrall have been pursuing efforts to secure priority funding to help the four towns and two cities of the APC conduct a flood management study. Following up on last year's Environmental Bond Bill that includes $4.75 M bond authorization for a flood study of the APC, this legislation is intended as a next step to help address the flooding and water level management issues.**
>
> **Moving forward, we will certainly consider including language in the legislation that addresses the issue of watershed management.**

3- The bill does not include a REQUIREMENT to not allow building in the floodplain and not replacing buildings in the floodplain damaged by flooding. What good is trying to assess and mitigate flooding if you don't deal with the most likely damage from flooding?

> **Rather than specifically mandate what should or should not be required, the bill establishes a commission with a general set of objectives meant to manage and monitor water levels and mitigate any future flooding impacts over the long term.**

4- It sounds like the "district" will have some authority to run roughshod over the interests of the individual communities.

> **It is unlikely a commission consisting of members appointed to represent each of the six communities will "*run roughshod*" over the interests of the very communities that have appointed them to serve on their behalf.**

5- Although the City of New Bedford and the City of Taunton certainly have interests within the "district", their presence is limited to water withdrawal issues and infrastructure. The city borders are not actually located within the Assawompset Pond Complex.

> **True. The concerns of Taunton and New Bedford, which utilize APC as a water supply and Long Pond as a backup, are important and should be included and considered in any discussion about managing and monitoring water levels.**

Again, your feedback and thoughts are appreciated and welcomed. It is our intention to continue working with the stakeholder group and ensure communication between all six communities is productive.

As we move forward, if you have any additional feedback or suggested thoughts about the legislation, then please let us know.

Thanks,

Jeremy

Jeremy Spittle
Legislative Director
Chair, Joint Committee on Revenue
Office of State Senator Michael J. Rodrigues
P: 617-722-1114
E: jeremy.spittle@masenate.gov

From: David Cavanaugh [mailto:herringwarden@yahoo.com]
Sent: Saturday, March 21, 2015 12:30 PM
To: Spittle, Jeremy (SEN); bschwartz@taunton-ma.gov; mike.bednarski@massmail.state.ma.us; CKennedy@newbedford-ma.gov; rgffry@middleborough.com; cpeck@middleborough.com; jchase@taunton-ma.gov; rgarbitt@lakevillema.org; funderhill@hotmail.com; brad.chase@massmail.state.ma.us; townadministrator@freetownma.gov; james.ricci@newbedford-ma.gov; astmayor@tmlp.net; Jon.Mitchell@newbedford-ma.gov; pamela.truesdale@massmail.state.ma.us
Cc: Rodrigues, Michael (SEN); Orrall, Keiko - Rep. (HOU); Schmid, Paul - Rep (HOU); Fiola, Carole - Rep. (HOU); Pacheco, Marc R (SEN); Wasylyk, Mary (SEN); Knowlton, Jeanine (HOU); Riportella, Beth (DEP) (beth.riportella@massmail.state.ma.us); Montigny, Mark (SEN); Moynihan, Michael (SEN)
Subject: Re: Assawompset Pond Complex Legislation

With a cursory reading .... I will need MUCH MORE information before I could possibly support this bill.

1. I notice that no representatives from Mass. Fish and Wildlife (to protect the interest of inland wildlife and fish, and habitat); Mass. *MarineFisheries* (to protect the interests of marine anandroumous fish, and habitat); or local herring wardens/herring protection groups from the included communities (to protect the interest of the largest herring run in the state, and runs in the various communities) are included in the district members.

2. The wording (and the thrust) of the bill is specifically geared toward flooding issues, not watershed management (which may have a detrimental effect on the watershed as a whole).

3. The bill does not include a REQUIREMENT to not allow building in the floodplain and not replacing buildings in the floodplain damaged by flooding. What good is trying to assess and mitigate flooding if you don't deal with the most likely damage from flooding? If buildings were not in the floodplain, no major flood damage would occur in the first place!

4. What is the meaning of the term "implement flood control measures" ?
   What is the meaning of the term "implement river flow management improvements" ?
   What is the meaning of the term "... in the interest of the district" ?

It sounds like the "district" will have some authority to run roughshod over the interests of the individual communities.

5. Although the City of New Bedford and the City of Taunton certainly have interests within the "district", their presence is limited to water withdrawal issues and infrastructure. The city borders are not actually located within the Assawompsett Pond Complex.

Just issues to ponder after a cursory reading.
David J. Cavanaugh
Fish Warden
Chairman,
Middleborough-Lakeville
Herring Fishery Commission
herringwarden@yahoo.com

On Friday, March 20, 2015 4:10 PM, "Spittle, Jeremy (SEN)" <Jeremy.Spittle@masenate.gov> wrote:

To all interested stakeholders,
The purpose of this email is to inform you of legislation Senator Rodrigues and Representative Orrall have filed – House Bill 732 and Senate Docket 836 (see attached) – to support the communities of Freetown, Lakeville, Middleboro, New Bedford, Rochester, and Taunton by establishing the Assawompset Pond Complex (APC) Flood Management District Commission ("Commission").
This legislation serves as the next step of our collaborative efforts to pursue a regional approach to reduce and mitigate any future flooding impacts to the APC communities. HB 732 and SD 836 propose to establish and enable the APC Commission to seek ways to procure the $4.75 M bond authorization (per Chapter 286 of the Acts of 2014) for a flood management study of the APC and implementation of recommended flood management and mitigation measures.
In addition, under HB 732 and SD 836, the APC Commission will be permitted to manage and supervise the newly established APC flood management district, assess and review existing conditions, make recommendations for flood management and mitigation, implement flood control measures, maintain and manage water levels for water supply and water storage, and to protect and preserve the APC in the best interest of the neighboring communities in and around the APC.
Moving forward, it is our hope you will join us in this effort to pursue a regional approach to reduce and mitigate any future flooding impacts to the communities of the APC.
Please feel free to contact either Senator Rodrigues or Representative Orrall with any questions, comments, or concerns you may want to share.

Best,
Jeremy

Jeremy Spittle
Legislative Director
Chair, Joint Committee on Revenue
Office of State Senator Michael J. Rodrigues
P: 617-722-1114
E: jeremy.spittle@masenate.gov

11

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OF COUNSEL
HON. WILLIAM H. CAREY
JAMES HODGSON
GEORGE J. LEONTIRE
NICHOLAS D. BERNIER

March 27, 2015

Stephen Crosby, Chair
Gayle Cameron, Commissioner
James F. McHugh, Commissioner
Enrique Zuniga, Commissioner
Bruce Stebbins, Commissioner
Massachusetts Gaming Commission
101 Federal Street, 23rd Floor
Boston, MA 02110

Dear Mr. Chairman and Commissioners:

The purpose of this letter is to address the discussion by Commission members at the March 19, 2015 meeting regarding requests for extension of deadlines for two license applications now pending in Region C. The undersigned are former City Solicitors for the City of New Bedford, covering time periods in the early 1980's (Beauregard) and late 1990's (Leontire); also we are life-long residents of the City of New Bedford and we are keenly aware of circumstances and economic challenges that have faced this area (Southeastern Massachusetts) over the course of the last 30+ years. We maintain law offices in the downtown historic district of the City of New Bedford (Andrew Robeson House). Our respective law practices touch on a multitude of clients and issues directly involved with the economic environment in New Bedford. We do not represent any entity or individual seeking a license from the Commission.

Respectfully, our concern is that much of the discussion regarding whether or not to grant two applicants a 45-day extension reflects a significant misunderstanding of the Commission's statutory obligations in acting on current applications for a casino license in Region C. If the correct statutory criteria are not applied, this area of the state may well experience a "left behind" effect that has unfortunately negatively impacted this area of the state too many times in past years.

The emergency preamble to House Bill No. 3807 provides that the purpose of the Act is to create economic investment and job creation in the Commonwealth. The

Legislature clearly articulated 10 specific guiding principles that underlie the Gaming Legislation. Consistent with the Act's Preamble, Section 1 of the Act emphasizes the Act's purpose: creation of opportunities for the unemployed and encouragement of culturally and socially diverse communities in all sectors of the Commonwealth through a "robust licensing process". (See Attachment A-Excerpts of the Gaming Statute)

Section 18 of the Act lists 19 criteria on which the Commission must make written findings when evaluating a license. The extensive criteria set forth by the Legislature anticipate that a license will be granted to an applicant who qualifies. Attachment A.

We have prepared an abstract of the meeting discussion that indicates that the Commission may be on a course of straying from its statutory mandate. (See Attachment B-Selected sections from the official meeting transcript). Comments by the two members who voted no to the extension are disturbing. The sub-text of their comments is that a Region C license will inevitably be denied and that by voting yes, the Commission was simply prolonging the process. We urge those Commission members to reconsider their position and to keep an open mind on the Region's applications. We ask that the Commission render its decision in a fair and impartial manner without prejudging the merits of the pending applications before making an evaluation under the criteria outlined in the Act.

We believe that the intent of Chapter 194 of the Acts of 2011 (General Laws, Chapter 23K), read as a whole, is to place the three regions of the state (A, B, C) on equal footing with respect to the three casino opportunities created by the statute. Each region should be afforded equal treatment with respect to the criteria set forth in the statute for selection of an applicant. Each region is entitled to strive for the economic benefit envisioned by the statute.

The "competition" provided in the Casino statute is manifestly meant to be "intra-region," not "inter-region." However, some Commissioners' comments at the hearing suggested that the Commission should be looking to the potential effect that a Region C casino license might have on the already granted licenses in Regions A and B; and the impact of a future *potential* license that might or might not be operated by Native American Indian ownership.

We believe differently, that the Commissioners' obligation under the Act is to evaluate, *within each separate region*, which (if any) applicant is best suited to carry on the beneficial economic development within that region.

It would be a clear departure from the intent of the Massachusetts Casino legislation to have one or two of the three listed regions favored over another region, even if the Commissioners' intent is to protect existing granted licenses in Regions A and B (at the expense of Region C).

We believe that the Commission should not reexamine the Legislature's purpose in enacting Chapter 194, with its clearly stated intent that the Commission evaluate the merits and economic viability of the regional applicants' plans and agreements with the respective host cities. Section 18 states that the Commission will examine "how each

applicant proposes to advance the economic objectives" sought by the City (for each region) in negotiating and executing a host community agreement with the applicant.

In the case of KG Urban and the City of New Bedford, months of time consuming work and comprehensive discussions and negotiations have resulted in what the City of New Bedford believes will be an extremely favorable economic tool for the resurgence of the City's economy and employment. A fair and objective evaluation by the Commission, looking at *intra-region* considerations in evaluating KG Urban's application, is the proper and legal course that the Commission should follow. Our fear is that Commission members may (erroneously) proceed by considering economic factors outside of Region C (i.e. the continued viability of casino operations in Regions A and B) rather than afford Region C its own independent consideration.

Central to our view of the Gaming Legislation is that Section 19(a) of Chapter 194 could not be clearer as to the singular circumstance under which a Region may be denied a license. That circumstance is very specific. No license will issue:

"*...if the commission is not convinced that there is an applicant that has both met the eligibility criteria and provided convincing evidence that the applicant will provide value to the region in which the gaming establishment is to be located...*"

It should be beyond question that Region C is entitled to a fair application of criteria set forth in the law, just as such criteria were applied earlier to Regions A and B. Each region's casino proposal should be judged by the same criteria: whether the proposal "provides employment and support in all sectors of the economy, particularly where unemployment has been a traditional issue challenging *that region's* economy." The additional goals of promotion of small businesses and tourism, and cultural and social facilities, also need to be considered on an *intra-regional* basis. Accordingly, no one region should be denied an *intra-region* evaluation process. To fulfill the Legislative intent, the statutory criteria should be evaluated from a local regional context.

The HCA in this case, and any further information to be provided to the Commission, should be examined with respect to the proposed beneficial effects within Region C rather than consideration of the impact of a Region C casino on other regions of the state.

In addition, any present preoccupation or speculation by the Commission that equity partners may be shying away from the region overshadows and prejudices its obligation to fairly evaluate what the applicants are offering for Region C. This type of speculation could well create a self fullfilling prophecy.

We urge the Commission to make a clear and unambiguous statement that a Region C applicant who shows it has the wherewithal to build a casino in accordance with the criteria of the Act will be granted a license. This Commission must give Region C a fair shot at a license. Any damage already done needs to be addressed. No other Region has faced such bias suggesting that the Region cannot support a Casino. The Legislature made the determination that there was to be a Region C license if a qualified

applicant met the Act's criteria; the Commission does not have the right to disregard that mandate. The Commission exists to *administer* the law, not *change* it.

We do not address at length the Tribal Gaming Region C license issue. Its use as an argument against awarding a license is a red herring. The argument that the potential of a Tribal license should prevent the issuance of a commercial Region C license is simply a pretext to deny the region a license. The Tribe has made no headway with having the land taken by the Department of Interior. Given the state of the federal law as altered by the recent United States Supreme Court decision it is years away if at all. It is time that the Commission take the position that a qualified applicant willing to invest $650 million in Region C will trump any concerns over the establishment of a Tribal facility that may or may not occur in the future.

We are well aware that the Commission has power to issue or not issue a license. We submit, however, that such power is set forth in Section 19(a) (as explained above), and is intended to insure that a license is not issued to an unqualified applicant, and not to deny a Region a license altogether.

We agree with Commissioner James McHugh's comments at the March 19, 2015 Commission meeting. We hope the Commission members will take to heart his comments.

> I come at this from a little bit different starting point. This is really at tough problem. I think we all feel that it's a tough problem. But I come at it from a little different starting point.
>
> And the starting point is the statute and the purpose of the statute. The statute is designed to create an economic engine or engines. It's designed to create jobs. It's designed to create both permanent and construction jobs. And it's designed to help reach into, at least as we have applied it, into communities that are having difficult economic times and boost the economics.
>
> But I think we need to look at it carefully on the merits and not use a deadline as a proxy for avoiding looking at it. In fact, we can't avoid looking at it because we have an applicant who is qualified and whose application is going to go forward. So, we're going to look at it anyway. We're at the starting gate. Transcript pg. 271-274 see Attachment A

Region C deserves the same treatment afforded Regions A & B. This is the clear intent and language of the enabling statute.

Appropriate consideration of the above comments will benefit all citizens of the Commonwealth (including those working and residing in Region C who deserve equal treatment under the law).

Very truly yours,

GEORGE J. LEONTIRE

PHILIP N. BEAUREGARD

ATTACHMENT A

EXCERPTS OF THE GAMING STATUTE PREPARED BY ATTORNEYS' GEORGE J LEONTIRE AND PHILIP N. BEAUREGARD

Preamble to House Bill No. 3807. To provide for economic investments and job creation in the Commonwealth.

CHAPTER 23K. THE MASSACHUSETTS GAMING COMMISSION

Section 1. The General Court finds and declares that:
(1) ensuring public confidence in the integrity of the gaming licensing process and in the strict oversight of all gaming establishments through a rigorous regulatory scheme is the paramount policy objective of this chapter;
(2) establishing the financial stability and integrity of gaming licensees, as well as the integrity of their sources of financing, is an integral and essential element of the regulation and control of gaming under this chapter;
(3) gaming licensees shall be held to the highest standards of licensing and shall have a continuing duty to maintain their integrity and financial stability;
(4) enhancing and supporting the performance of the state lottery and continuing the commonwealth's dedication to local aid is imperative to the policy objectives of this chapter;
(5) **the commonwealth must provide for new employment opportunities in all sectors of the economy, particularly opportunities for the unemployed, and shall preserve jobs in existing industries in the commonwealth; this chapter sets forth a robust licensing process whereby an applicant for a gaming license shall submit a comprehensive plan for operating a gaming establishment which includes how the applicant will foster and encourage new construction through capital investment and provide permanent employment opportunities to residents of the commonwealth**;
(6**) promoting local small businesses and the tourism industry, including the development of new and existing small business and tourism amenities such as lodging, dining, retail and cultural and social facilities, is fundamental to the policy objectives of this chapter;**
(7) **recognizing the importance of the commonwealth's unique cultural and social resources and integrating them into new development opportunities shall be a key component of a decision to the award of any gaming license under this chapter;**
(8) applicants for gaming licenses and gaming licensees shall demonstrate their commitment to efforts to combat compulsive gambling and a dedication to community mitigation, and shall recognize that the privilege of licensure bears a

responsibility to identify, address and minimize any potential negative consequences of their business operations;
(9) any license awarded by the commission shall be a revocable privilege and may be conditioned, suspended or revoked upon: (i) a breach of the conditions of licensure, including failure to complete any phase of construction of the gaming establishment or any promises made to the commonwealth in return for receiving a gaming license; (ii) any civil or criminal violations of the laws of the commonwealth or other jurisdictions; or (iii) a finding by the commission that a gaming licensee is unsuitable to operate a gaming establishment or perform the duties of their licensed position; and
(10) the power and authority granted to the commission shall be construed as broadly as necessary for the implementation, administration and enforcement of this chapter.

Section 18. In evaluating application and issuing decision, MGC must evaluate and issue findings as to the following objectives:

(1) protecting the lottery from any adverse impacts due to expanded gaming including, but not limited to, developing cross-marketing strategies with the lottery and increasing ticket sales to out-of-state residents;
(2) promoting local businesses in host and surrounding communities, including developing cross-marketing strategies with local restaurants, small businesses, hotels, retail outlets and impacted live entertainment venues;
(3) realizing maximum capital investment exclusive of land acquisition and infrastructure improvements;
(4) implementing a workforce development plan that utilizes the existing labor force, including the estimated number of construction jobs a proposed gaming establishment will generate, the development of workforce training programs that serve the unemployed and methods for accessing employment at the gaming establishment;
(5) building a gaming establishment of high caliber with a variety of quality amenities to be included as part of the gaming establishment and operated in partnership with local hotels and dining, retail and entertainment facilities so that patrons experience the diversified regional tourism industry;
(6) taking additional measures to address problem gambling including, but not limited to, training of gaming employees to identify patrons exhibiting problems with gambling and prevention programs targeted toward vulnerable populations;
(7) providing a market analysis detailing the benefits of the site location of the gaming establishment and the estimated recapture rate of gaming-related spending by residents travelling to out-of-state gaming establishments;
(8) utilizing sustainable development principles including, but not limited to: (i) being certified as gold or higher under the appropriate certification category in the Leadership in Environmental and Energy Design program created by the United States Green Building Council; (ii) meeting or exceeding the stretch energy code requirements contained in Appendix 120AA of the Massachusetts building energy code or equivalent commitment to advanced energy efficiency as determined by the secretary of energy and environmental affairs; (iii) efforts to mitigate vehicle trips; (iv) efforts to conserve water and manage storm water; (v) demonstrating that electrical and HVAC equipment and appliances will be EnergyStar labeled where available; (vi) procuring or generating on-site 10 per cent of its annual electricity consumption from renewable sources qualified by the department of energy resources under section 11F of chapter 25A; and (vii) developing an ongoing plan to submeter and monitor all major sources of energy consumption and undertake

regular efforts to maintain and improve energy efficiency of buildings in their systems;
(9) establishing, funding and maintaining human resource hiring and training practices that promote the development of a skilled and diverse workforce and access to promotion opportunities through a workforce training program that: (i) establishes transparent career paths with measurable criteria within the gaming establishment that lead to increased responsibility and higher pay grades that are designed to allow employees to pursue career advancement and promotion; (ii) provides employee access to additional resources, such as tuition reimbursement or stipend policies, to enable employees to acquire the education or job training needed to advance career paths based on increased responsibility and pay grades; and (iii) establishes an on-site child day-care program;
(10) contracting with local business owners for the provision of goods and services to the gaming establishment, including developing plans designed to assist businesses in the commonwealth in identifying the needs for goods and services to the establishment;
(11) maximizing revenues received by the commonwealth;
(12) providing a high number of quality jobs in the gaming establishment;
(13) offering the highest and best value to create a secure and robust gaming market in the region and the commonwealth;
(14) mitigating potential impacts on host and surrounding communities which might result from the development or operation of the gaming establishment;
(15) purchasing, whenever possible, domestically manufactured slot machines for installation in the gaming establishment;
(16) implementing a marketing program that identifies specific goals, expressed as an overall program goal applicable to the total dollar amount of contracts, for the utilization of: (i) minority business enterprises, women business enterprises and veteran business enterprises to participate as contractors in the design of the gaming establishment; (ii) minority business enterprises, women business enterprises and veteran business enterprises to participate as contractors in the construction of the gaming establishment; and (iii) minority business enterprises, women business enterprises and veteran business enterprises to participate as vendors in the provision of goods and services procured by the gaming establishment and any businesses operated as part of the gaming establishment;
(17) implementing a workforce development plan that: (i) incorporates an affirmative action program of equal opportunity by which the applicant guarantees to provide equal employment opportunities to all employees qualified for licensure in all employment categories, including persons with disabilities; (ii) utilizes the existing labor force in the commonwealth; (iii) estimates the number of construction jobs a gaming establishment will generate and provides for equal employment opportunities and which includes specific goals for the utilization of minorities, women and veterans on those construction jobs; (iv) identifies workforce training programs offered by the gaming establishment; and (v) identifies the methods for accessing employment at the gaming establishment;
(18) whether the applicant has a contract with organized labor, including hospitality services, and has the support of organized labor for its application, which specifies: (i) the number of employees to be employed at the gaming establishment, including detailed information on the pay rate and benefits for employees and contractors; (ii) the total amount of investment by the applicant in the gaming establishment and all infrastructure improvements related to the project; (iii) completed studies and reports as required by the commission, which shall include, but need not be limited to, an economic benefit study, both for the commonwealth and the region; and (iv) whether the applicant has included detailed plans for assuring labor harmony during

all phases of the construction, reconstruction, renovation, development and operation of the gaming establishment; and

(19) gaining public support in the host and surrounding communities which may be demonstrated through public comment received by the commission or gaming applicant.

ATTACHMENT B

SELECTED SECTIONS FROM THE OFFICIAL TRANSCRIPT OF

THE COMMONWEALTH OF MASSACHUSETTS
MASSACHUSETTS GAMING COMMISSION
PUBLIC MEETING #147
CHAIRMAN
Stephen P. Crosby
COMMISSIONERS
Gayle Cameron
James F. McHugh
Bruce W. Stebbins
Enrique Zuniga
19 March 19, 2015 10:30 a.m. - 5:37 p.m.
20 BOSTON CONVENTION AND EXHIBITION CENTER
21 415 Summer Street, Room 102B
22 Boston, Massachusetts

THIS DOCUMENT WAS PREPARED BY ATTORNEYS': GEORGE J. LEONTIRE & PHILIP N. BEAUREGARD AS AN EXHIIT TO THEIR LETTER TO THE GAMING COMMISSIONER

THE DISCUSSION BEFORE THE COMMISSION WAS WHETHER TO GRANT NEW BEDFORD AND SOMERSET A 45 DAY EXTENSION FOR THEIR RAF-1 LICENSE. BROCTON'S RAF-1 WAS TIMELY FILED.

THE VOTE WAS 3 TO 2 IN FAVOR OF THE EXTENSION. COMMISSIONER CAMERON AND COMMISSIONER ZUNIGA OPPOSED. THE DISCUSSION, HOWEVER REVEALED SOME DISTURBING VIEWPOINTS BY THE COMMISSIONERS THAT WE BELIEVE ARE CONTRARY TO THE MA GAMING STATUTE. THE FOLLOWING ARE RELEVANT EXCERPTS FROM THE MEETING THAT EXEMPLIFY OUR CONCERNS.

GEORGE J. LEONTIRE AND PHILIP N. BEAUREGARD

THE FOLLOWING ARE EXCERPTS. THEY ARE NOT INTENDED TO CONVEY THE ENTIRE CONVERSATION BUT RATHER SNIPPETS OF SUCH CONVERSATIONS. TO READ THE ENTIRE MEETING TRANSCRIPT PLEASE GO TO MASSACHUSETTS OFFICIAL WEBSITE: MASSGAMING.COM

RELEVANT EXCERPTS

Beginning Tr. Pg. 265 **COMMISSIONER CAMERON:** Mr. Chair, I actually think we have two issues. We started to talk and Commissioner McHugh alluded to

thinking about the region as a whole as well these two particular requests. And I do think we should handle them separately. But I do think that there are two issues that we should at least talk about today.

CHAIRMAN CROSBY: Explain which -

COMMISSIONER CAMERON: The region as a whole, meaning the question was asked of one applicant and it's a question for us to talk about, not just the issue with the tribe, the issue with a market analysis, all of the changes that occurred in gaming which will effect our decision on what to do with Region C.

When we started this in April 2013, we had a lot of folks come before us and say, hey, don't let the region fall behind. And that was when we decided okay, the tribe has a path to move forward and continue on. At the same time, we would explore a commercial license.

Now we are here almost two years later and we're deciding and we're whether or not to give more extensions, which to me is a huge signal there's great risk in Region C. And I just think that's something we need to talk about. Commissioner McHugh's question, things that I have thought about as well, I think it's time for use to do a new market analysis, update the one we had done on Region C.

So much has changed, meaning Rhode Island the status has changed. Table games, combined ownership, Connecticut is talking about expansion. New Hampshire is through the House. Plainville, we did not have the decision in Plainville that the slots parlor would go in that location when we decided to open this up.

The compact was not renegotiated with a zero for another casino in that region at the time that we opened this up. So, lots has changed. And I think it's time (A) for a new market analysis, and (B) for an updated status on all tribal decisions, all legislation that have occurred in the last two years.

I know that there's even been a recommendation to make an appointment to go into the Bureau of Indian Affairs and ask what is the status.

So, I think there's a lot we can do as a Commission to update ourselves on changes in the environment that will help us make an informed decision with regard to Region C. So, I think that's the region as a whole.

Beginning Tr. Pg. 269 **COMMISSIONER ZUNIGA:** There is a significant piece that is missing from these two, the two applicants that are requesting in my view, which I do view connected to the market and the risk in that region.

I have this feeling that the reason it's taking them this long and continues to take them long and notwithstanding the recent momentum and the dramatic new HCA, for example, there is a major component with the equity. And I cannot help but think -- but wonder whether the equity will remain in the sidelines or it's very close to getting up from the sidelines because there's this added element of risk and this unique piece on this region.

I've made the case before you, my colleagues that this minimum capital investment may be a big hurdle in and of itself. We fine tuned that a little bit by including some of the costs that we have previously excluded but not all of them. And that's still a very high bar.

And I wonder if the market is reacting to that not just the capital investment but everything else, the prospect of the tribe, whatever additional development we've had. We've awarded three licenses, right? And that bears into the development, the

certainty, I guess, of those projects. The coming to fruition of those projects could be having a chilling effect on this other region.

So, I do see your point, Commissioner, about perhaps having to study, do a refresher. It's not a de novo market assessment because the framework would work. There could be a refresher that we could do with pinpointing the location. I still think that it's the most challenging region because it is less populated and has a less market potential.

Tr. Pg. 271 **COMMISSIONER ZUNIGA:** I am reluctant to extend it. I think the market is answering the way it's answered. We just need a little bit more time. We're almost there but we don't have the full piece. And I see the big important piece missing is that equity. The equity I think is important because they are ultimately the last ones to get paid. And therefore the ones who really think about the risk of the economics of this market.

And the dealmakers will continue to try to make a deal and that's what they get compensated to do. It's great that they're making great progress. But the equity, the group that gets paid at the end is the one that ultimately is looking at all of these risk factors. And I wonder if they are just a little too high.

Beginning Tr. Pg. 271 **COMMISSIONER MCHUGH:** I come at this from a little bit different starting point. This is really at tough problem. I think we all feel that it's a tough problem. But I come at it from a little different starting point.

And the starting point is the statute and the purpose of the statute. The statute is designed to create an economic engine or engines. It's designed to create jobs. It's designed to create both permanent and construction jobs. And it's designed to help reach into, at least as we have applied it, into communities that are having difficult economic times and boost the economics.

Tr. Pg. 274 But I think we need to look at it carefully on the merits and not use a deadline as a proxy for avoiding looking at it. In fact, we can't avoid looking at it because we have an applicant who is qualified and whose application is going to go forward. So, we're going to look at it anyway. We're at the starting gate.

Beginning Tr. Pg. 276 **COMMISSIONER STEBBINS** I take to heart Commissioner Cameron's thoughts. This is a different environment. We've always talked about the challenge for Region C. You see all the other activity happening. The location of one of our own facilities, the slots parlor in a nearby or adjacent vicinity in this region. Have some of the economic dynamics changed? Maybe that's something that we continue to look at on a parallel path if we decide to let one, two or three of these applicants or projects kind of move forward.

Beginning Tr.pg. 279 **COMMISSIONER ZUNIGA:** I view competition differently, especially with what has happened already. Yes, the first time when we did our first solicitation there was a big focus attracting as many operators as we could trying to get a robust response. But I think we've learned a lot throughout. And we have awarded licenses that make this a very competitive and saturated region.

Now we have three licenses to worry about their sustainability, their long-term profitability that we've awarded. The projects have begun. They are effectively, in my view, competing with a third commercial license,

notwithstanding the prospect of a fourth one. So, there's plenty of competition to go along here.

I think the view of competition only for the Phase-2 stage is a little misguided, in my opinion. There is still this significant hurdles that they have to meet, the minimum capital investment, the suitability, very high bars in and of themselves.

And they have to make money, the return on investment. So, it comes from the market that's available. I know that the market has grown since we have awarded the licenses in the rest of the state. The prospects have shrunk a little bit with some of the comments that Commissioner Cameron was making.

For example, Connecticut is now talking about expanding some of those hotels, the same case for Rhode Island. And New Hampshire continues to be a prospect. So, I think talking about competition by region in this case is a little bit -- I just view it differently. I know what you mean. And I know that was a big priority for us, but I think there are many other dynamics here that eventually affect our decision.

Tr. Pg. 281 **CHAIRMAN CROSBY:** That consideration is whether we would award a license at all and to whom. If we do award a license, is it better to be close to Plainville or far away from Plainville, or close to Rhode Island or far away from Rhode Island?

That issue of competition, is it the right thing to do, does it fit with the tribal situation whatever it is, that is one competitive environment that we make a decision on when we end up making a decision on whether there's one or two or three applicants.

But the competition I'm referring to is just making sure whatever we get to consider in Southeastern Mass., we clearly would be better off, I think, having competition in Southeastern Mass. for us to be picking among and on which to factor.

If we don't have any other bidders, we won't be able to think about whether it's a good idea to be closer to Plainville or closer to Boston or farther from Plainville or farther from Boston. I agree that there's various competitive situations, there's various competitive prisms, but this one I think is very much relevant.

Beginning Tr. Pg. 282 **COMMISSIONER ZUNIGA:** If you presuppose that once you get two competitors you're going to pick one, then your logic holds.

I think we are still in the prospect of do we award a commercial license here, which gets us back to the point that Commissioner Cameron was making. And we don't need two for that decision.

I think there's a unique challenge in this region from way back when because of the prospect of that fourth casino that changes the economics significantly. So, we may end up at the same place just with a half step in between. But I think there's a case to be made to the point that Commissioner Cameron was making. Maybe we can just refresh the market study and try to come back to this sooner rather than later. I view it as already challenging in and of itself.

The problem with our process is that that analysis only comes after Phase 2 when Phase 2 is submitted. That's our catch-22 of sorts.

Beginning Tr. Pg. 283 **COMMISSIONER MCHUGH:** Well, I'm not sure that it does. That's why I asked that question that I asked. We have a Phase 1 and Phase 2 process. And we used the Phase 1 and Phase 2 process now with three successive license proceedings. That doesn't mean we can't tailor it in this one to get at that question earlier rather than later before there are votes and expenditures of energy on a whole variety of things when we may conclude that the economics don't support it, support a license in this

I think that we're going to have one. And the idea that we may come to the end of the process and say no, it's not economically viable to put a casino there. But we also may come to the conclusion that it is. And if we come to that conclusion, it seems to me the Commonwealth's interest is much better served by having two to choose from rather than one. There is it seems to me the competition drives something better. Besides the idea that you say to a community that's got a 17 percent unemployment rate and a brownfield in the middle of the city that we are not going to do anything for your unemployment rate or consider doing anything for your unemployment rate, or cleaning up a brownfield that nobody else wants to clean up because you were 45 days late giving us something to think about. I have significant difficulty with that.

Beginning Tr. Pg. 285 **COMMISSIONER CAMERON:** I think we do communities as much of a disservice by just moving forward with this process and not addressing our concerns about the region sooner rather than later. So, I would just advocate that we no matter what the outcome of the extension is, we move forward sooner rather than later with an updated market analysis, an updated status on the tribal matters in the last couple of years, as well as pending litigation and any other factors that we deem would help us, inform us better at this time about the region.

I just think that's something that's really important. I think it's unfair to let people spend an awful lot of money with the understanding that we will in fact issue a license when I just don't want that to be the assumption.

Beginning Tr. Pg. 288 **COMMISSIONER ZUNIGA:** At the risk of repeating myself a little bit, it's not just the 45 days. There's been a lot of time. And I understand and I remember all of the steps in between the referendum and etc., etc. But there has been ample time for everybody, municipal officials and operators and dealmakers and equity investors. And it just feels that we've done this and we've had this discussion in some form or another a number of times. And I'm just picking up on the questions we were asking of our applicants. We could considerably be here 45 days from now having another similar request saying we just need a little bit more time. One of the objectives, the same objective actually economic development, jobs, revenues, works in the way of sooner rather than later. It doesn't just point us in the way of one day, which makes the decision that much more difficult.

Beginning Tr. Pg. 291 **COMMISSIONER STEBBINS:** It bears repeating but this body has always been clear that just because we have three licenses to award doesn't mean that we will award three licenses. I think that's well known by everybody in this room, but certainly a message that bears repeating to the people in the communities that will be affected by this.