

# AGENDA PACKET

03/06/19 REGULAR MEETING



# BARNSTABLE COUNTY

THE REGIONAL GOVERNMENT OF CAPE COD

COMMISSIONERS  
RONALD R. BEATY, Barnstable  
RONALD BERGSTROM, Chatham  
MARY PAT FLYNN, Falmouth

Board of Regional Commissioners

## REGULAR MEETING AGENDA



DATE: March 6, 2019

TIME: 10:00 A.M.

PLACE: Commissioners' Meeting Room  
Superior Courthouse  
3195 Main Street, Barnstable, MA 02630

### **OPEN SESSION (Open to the public):**

1. Call to Order
2. Pledge of Allegiance
3. Moment of Silence
4. Public Comment
5. Approval of Minutes
  - a. Regular Meeting of February 27, 2019
6. General Business
  - a. Update on the AmeriCorps Cape Cod Program
  - b. Discussion regarding requests for proposals regarding County legal services

*Note: For all items under General Business, the Board may take official action including votes*

7. New Business – Other business not reasonably anticipated by the Chair
8. Commissioners' Actions
  - a. Authorizing the filling of twenty-four (24) vacant AmeriCorps Cape Cod Member positions for Program Year 21, from September 3, 2019 through July 23, 2020

- b. Authorizing the creation of the position of Director of the Cape Cod Municipal Police Academy and appointment Peter Carnes to that position, effective March 11, 2019, as recommended by the County Administrator
- c. Authorization to create the position of Deputy Director of the Cape Cod Municipal Police Academy and appoint Wayne Sampson to that position, effective March 11, 2019, as recommended by the County Administrator
- d. Authorizing the promotion of Phil Burt to the full-time position of Director of the County Fire and Rescue Training Academy, from the position of BCFRTA Interim Director effective March 6, 2019, as recommended by the County Administrator
- e. Authorizing the approval of unpaid leave for Stacy Gallagher, Director of Children's Cove, for the period of February 20, 2019 through February 27, 2019
- f. Authorizing the execution of a Memorandum of Understanding with Cape Cod Healthcare, Inc., through the Barnstable County Regional Emergency Planning Committee, regarding a Regional Sheltering Plan
- g. Authorizing the execution of Certificates for Dissolving Septic Betterments

9. Commissioners' Reports

10. County Administrator and Staff Reports

11. Executive Session

**CLOSED SESSION (Closed to the public):**

- a. Executive Session to review Board of Regional Commissioner Executive Session minutes, pursuant to Massachusetts General Laws Chapter 30A, Section 21(a)(7) and Massachusetts General Laws Chapter 30A, Sections 22(f) and 22(g)

*The Board will reconvene in Open Session for adjournment and may take formal action to release Executive Session minutes.*

**OPEN SESSION (Open to the public):**

12. Adjournment

Reasonable accommodations for people with disabilities are available upon request. Please contact Justyna Marczak, Barnstable County ADA Coordinator at [jmarczak@barnstablecounty.org](mailto:jmarczak@barnstablecounty.org) or call 508-375-6646 at least 24 hours in advance of the meeting. The County Commissioners' meeting may be viewed in real time at <https://www.youtube.com/user/BarnstableCounty>, <https://www.barnstablecounty.org/>



# AGENDA ITEM 5a

Approval of Minutes: Regular Meeting of February 27, 2019

*COMMONWEALTH OF MASSACHUSETTS*

Barnstable, ss.

At a regular meeting of the Barnstable County Board of Regional Commissioners, held in the Superior Courthouse in Barnstable, on the twenty-seventh day of February, A.D. 2019

**Board Regional Commissioners:**

Ronald R. Beaty                      Absent

Ronald Bergstrom                  Present

Mary Pat Flynn                      Present

**Staff Present:**

Jack Yunits                              County Administrator

Steve Tebo                              Interim Assistant County Administrator/Director, Facilities  
Department

Justyna Marczak                      Human Resources Director

Owen Fletcher                        Executive Assistant, Administration

Janice O'Connell                      County Clerk/Assembly Clerk

Sean O'Brien                         Director, Health and Human Services

Ian Roberts                             Technical Support Specialist, Information Technology

**1. Call to Order**

Chairman Bergstrom called the meeting to order at 9:00 A.M.

**2. Pledge of Allegiance**

**3. Moment of Silence**

**4. Public Comment**

Multiple members of the public commented on a recent tweet by Commissioner Beaty which read “Generally speaking, are gay politicians too self-absorbed and self-centered to adequately represent ALL of their constituents in a fair and equitable manner?” The members of the public expressed their disapproval of the tweet. They argued that it was offensive to the community in general and to politicians who are gay specifically. They asked the Board to censure Commissioner Beaty. These speakers included Erin Andrews of Centerville, Melanie Barron of Yarmouthport, Richard Bibeault of Centerville, Dorria DiManno of South Dennis, Mark Downey of Dennis, Shira Kavon of Provincetown, Peggy McAloon of South Dennis, Meaghan Mort of Marstons Mills, Benton Niggel of Eastham, Paul Rifkin of Mashpee, Fred Schilpp of Barnstable, Christine Uljua of Falmouth, and Elizabeth Young of Marstons Mills

## **5. Approval of Minutes**

### **a. Regular Meeting of February 13, 2019**

*Motion by Commissioner Flynn to approve the regular meeting minutes of February 13, 2019 as presented, 2nd by Commissioner Bergstrom, approved 2-0-0*

## **6. General Business**

### **a. Discussion on the status of County Counsel**

Mr. Yunits engaged the Board in a discussion of current County needs for legal services. He explained that the County could need additional services due to new projects the County may engage in. The Board engaged in a lengthy discussion on how to handle these issues. It decided to place this item on the agenda again and ask for Commissioner Beaty’s input before deciding.

### **b. Discussion on a possible purchase of a third County Dredge**

*Motion by Commissioner Flynn to authorize a Request for Proposals for a new County Dredge, 2nd by Commissioner Bergstrom, approved 3-0-0*

Mr. Yunits and Mr. Tebo presented to the Board. The Board had a lengthy discussion on the need for more dredging equipment to meet increased needs. Mr. Yunits asked for the Board’s permission to continue the drafting of a possible Request for Proposals for new dredging equipment.

### **c. Discussion on and review of the proposed County Early Retirement Incentive Program**

Mr. Yunits explained that the program has been approved, is being reviewed by accounting, and will soon be sent to the Retirement Board for their consideration. The Board discussed the dangers of lessening the benefits of the program by backfilling positions.

**d. Discussion on the scheduling of a review of Board of Regional Commissioner Executive Session Minutes pursuant to Massachusetts General Laws Chapter 30A, Section 22(g)(1)**

Mr. Yunits discussed the need to periodically review those minutes under Massachusetts law.

**7. New Business – Other business not reasonably anticipated by the Chair**

There was no new business at the meeting.

**8. Commissioners' Actions**

**a. Authorizing the creation of the new position of HMIS (Homeless Management Information System) Program Manager, replacing the vacant HMIS Coordinator position**

*Motion by Commissioner Flynn to authorize the creation of the new position of HMIS (Homeless Management Information System) Program Manager, replacing the vacant HMIS Coordinator position, as recommended by the County Review Committee, as presented, 2nd by Commissioner Bergstrom, approved 2-0-0*

**b. Authorizing the refilling of the vacant Laboratory Director Position, in the County Health and Environment Department, as recommended by the County Review Committee**

*Motion by Commissioner Flynn to authorize the refilling of the vacant Laboratory Director Position, in the County Health and Environment Department, as recommended by the County Review Committee as presented, 2nd by Commissioner Bergstrom, approved 2-0-0*

Ms. Marczak discussed the need for both positions. Mr. O'Brien discussed the needs of the Lab. Ms. Marczak noted that the HMIS Program Manager position was grant funded.

**c. Authorizing the execution of a notarized letter is designating Stephen Amara, County Accountant, as Entity Administrator for the County and authorizing his access to the United States Government's online System for Award Management (SAM)**

*Motion by Commissioner Flynn to authorize the execution of a notarized letter is designating Stephen Amara, County Accountant, as Entity Administrator for the County and authorizing his access to the United States Government's online System for Award Management (SAM) as presented, 2nd by Commissioner Bergstrom, approved 2-0-0*

- d. Authorizing the approval of a grounds request by 2019 Cape Cod Doxie Day to utilize the Barnstable County Superior Courthouse for an event on September 28, 2019**

*Motion by Commissioner Flynn to authorize the approval of a grounds request by 2019 Cape Cod Doxie Day to utilize the Barnstable County Superior Courthouse for an event on September 28, 2019 as presented, 2nd by Commissioner Bergstrom, approved 2-0-0*

- e. Authorizing the addition of: PA Landers; John Egan Co., Inc. and; Drizos Contracting, LLC to the Current List of Approved Tradespersons, utilized by the County and Barnstable County Towns**

*Motion by Commissioner Flynn to authorize the addition of: PA Landers; John Egan Co., Inc. and; Drizos Contracting, LLC to the Current List of Approved Tradespersons, utilized by the County and Barnstable County Towns as presented, 2nd by Commissioner Bergstrom, approved 2-0-0*

- f. Authorizing the award of a contract to Agilent Technologies, Inc. for the supply and delivery of an Inductively Coupled Plasma Mass Spectrometry (ICP-MS) for the Health Lab at a cost of \$108,761.54**

*Motion by Commissioner Flynn to authorize the award of a contract to Agilent Technologies, Inc. for the supply and delivery of an Inductively Coupled Plasma Mass Spectrometry (ICP-MS) for the Health Lab at a cost of \$108,761.54 as presented, 2nd by Commissioner Bergstrom, approved 2-0-0*

- g. Authorizing the execution of a contract with Lawrence Lynch, Corp. for Miscellaneous Public Works for Towns in Barnstable County for the period of April 1, 2019 through March 31, 2020, with the option to renew for one (1) additional year**

- h. Authorizing the execution of a contract with Lawrence Lynch Corp. for Road Resurfacing in the Towns of Chatham, Harwich, Provincetown and Yarmouth for the period of April 1, 2019 through March 31, 2020**

*Motion by Commissioner Flynn to authorize execution of a contract with Lawrence Lynch Corp. for Road Resurfacing in the Towns of Chatham, Harwich,*

*Provincetown and Yarmouth for the period of April 1, 2019 through March 31, 2020, as presented, 2nd by Commissioner Flynn, approved 2-0-0*

- i. Authorizing the execution of a contract with Lawrence Lynch Corp. for Roadway Materials for Towns in Barnstable County for the period of April 1, 2019 through March 31, 2020, with the option to renew for one additional year**
- j. Authorizing the execution of a contract with Markings Inc. for Miscellaneous Public Works for Towns in Barnstable County for the period of April 1, 2019 through March 31, 2020, with the option to renew for one (1) additional year**
- k. Authorizing the execution of a contract with MCE Dirtworks for Road Resurfacing in the Town of Orleans for the period of April 1, 2019 through March 31, 2020**
- l. Authorizing the execution of a contract with PA Landers, Inc. for Roadway Materials for Towns in Barnstable County for the period of April 1, 2019 through March 31, 2020, with the option to renew for one additional year**
- m. Authorizing the execution of a contract with PJ Keating for Road Resurfacing in the Town of Sandwich for the period of April 1, 2019 through March 31, 2020**
- n. Authorizing the execution of a contract with Sealcoating Inc. for Miscellaneous Public Works for Towns in Barnstable County for the period of April 1, 2019 through March 31, 2020, with the option to renew for one (1) additional year**

Mr. Yunits discussed the nature of the above contracts. He informed the Commissioners that they previously approved all relevant awards for the contracts in Item 8g through Item 8n. Chairman Bergstrom asked for one motion for those items.

*Motion by Commissioner Flynn to approve Item 8g through Item 8n on the Regular Meeting agenda as indicated above, as presented, 2nd by Commissioner Bergstrom, approved 2-0-0*

- o. Authorizing the execution of a discharge of mortgage by Arthur R. Hillier and Katherine E. Hillier to Barnstable County, acting by and through the Cape Cod Commission, dated October 23, 2000, recorded with the Barnstable County Registry of Deeds Book 13824 Page 249**

*Motion by Commissioner Flynn to authorize the execution of a discharge of mortgage by Arthur R. Hillier and Katherine E. Hillier to Barnstable County, acting by and through the Cape Cod Commission, dated October 23, 2000,*

*recorded with the Barnstable County Registry of Deeds Book 13824 Page 249 as presented, 2nd by Commissioner Bergstrom, approved 2-0-0*

**p. Authorizing the execution of Certificates for Dissolving Septic Betterments**

*Motion by Commissioner Flynn to authorize the Chair to execute Certificates for Dissolving Septic Betterments, as presented, 2nd by Commissioner Bergstrom, approved 2-0-0*

**9. Commissioners' Reports**

The Commissioners did not give any reports at this meeting.

**10. County Administrator and Staff Reports**

Mr. Tebo thanked Mr. O'Brien for his work on the creation of a new Police Academy on Cape Cod.

**11. Adjournment**

*Barnstable, ss. at 10:25 A.M. on this twenty-seventh day of February A.D. 2019, Commissioner Beaty made a motion to adjourn, 2nd by Commissioner Flynn, approved 2-0-0*

**List of Documents:**

- Draft Regular Meeting of February 27, 2019
- Correspondence dated February 17, 2019 from Jack Yunits, County Administrator, to John W. Parsons, Executive Director of PERAC regarding the Barnstable County ERIP
- Background information regarding the Barnstable County Early Retirement Incentive Program
- Massachusetts General Laws Chapter 30A, Section 22(g)(1)
- Memorandum dated February 26, 2019 to the County Commissioners from Jack Yunits, County Administrator, regarding adopting the County's website as the Official Method of Posting
- Title 940 of the Code of Massachusetts Regulations, Section 29.03(2)(b)
- Memorandum dated February 26, 2019 to the County Commissioners from Justyna Marczak, Human Resources Director, regarding creation of the position of HMIS Program Manager

- Memorandum dated February 20, 2019 to the County Commissioners from Beth Albert, Director, Human Services a request for Approval of New Job Description – HMIS Program Manager
- Memorandum to Justyna Marczak, Director, Human Resources Department, from Sean O'Brien, Director, Health and Environment Department, dated February 21, 2019 regarding the hiring of a New Director of the Barnstable County Laboratory
- Draft Notarized letter dated February 27, 2019 from the County of Barnstable to SAM.GOV Registration Processing in response to the SAM registration renewal requirements
- Authorizing the approval of a grounds request by 2019 Cape Cod Doxie Day to utilize the Barnstable County Superior Courthouse for an event on September 28, 2019
- Memorandum dated February 26, 2019 to the County Commissioners from Justyna Marczak, Executive Assistant, regarding a Grounds Request by 2019 Cape Cod Doxie Day
- Correspondence dated February 8, 2019 to Owen Fletcher, Executive Assistant, from Betsy Davis, Cape Cod Doxie Day Committee, and accompanying enclosures
- Memorandum dated February 5, 2019 to the County Commissioners from Elaine Davis, Chief Procurement Officer, regarding Approval of Pre-Qualified Vendors
- Memorandum dated February 20, 2019 to the County Commissioners from Elaine Davis, Chief Procurement Officer, regarding the Notice of a Bid Award to Agilent Technologies, Inc. for the supply and delivery of an Inductively Coupled Plasma Mass Spectrometry (ICP-MS) for the Health Lab
- Memorandum dated January 25, 2019 to the County Commissioners from Elaine Davis, Chief Procurement Officer, regarding the Notice of a Bid Award to Agilent Technologies, Inc. for the supply and delivery of an Inductively Coupled Plasma Mass Spectrometry (ICP-MS) for the Health Lab
- Contract with Lawrence Lynch Corp. for Road Resurfacing in the Towns of Chatham, Harwich, Provincetown and Yarmouth for the period of April 1, 2019 through March 31, 2020
- Contract with Lawrence Lynch Corp. for Roadway Materials for Towns in Barnstable County for the period of April 1, 2019 through March 31, 2020, with the option to renew for one additional year
- Contract with Markings Inc. for Miscellaneous Public Works for Towns in Barnstable County for the period of April 1, 2019 through March 31, 2020, with the option to renew for one (1) additional year
- Contract with MCE Dirtworks for Road Resurfacing in the Town of Orleans for the period of April 1, 2019 through March 31, 2020
- Contract with PA Landers, Inc. for Roadway Materials for Towns in Barnstable County for the period of April 1, 2019 through March 31, 2020, with the option to renew for one additional year
- Contract with PJ Keating for Road Resurfacing in the Town of Sandwich for the period of April 1, 2019 through March 31, 2020
- Contract with Sealcoating Inc. for Miscellaneous Public Works for Towns in Barnstable County for the period of April 1, 2019 through March 31, 2020, with the option to renew for one (1) additional year

- Discharge of mortgage by Arthur R. Hillier and Katherine E. Hillier to Barnstable County, acting by and through the Cape Cod Commission, dated October 23, 2000, recorded with the Barnstable County Registry of Deeds Book 13824 Page 249
- Memorandum dated February 28, 2019 to the County Commissioners from the Community Septic Management Loan Program regarding Certificates for Dissolving Septic Betterments

Approved, Board of Regional Commissioners:

\_\_\_\_\_  
Ronald Bergstrom, Chair

\_\_\_\_\_  
Mary Pat Flynn, Vice-Chair

\_\_\_\_\_  
Ronald R. Beaty, Commissioner

\_\_\_\_\_  
Date

The foregoing records have been read and approved, March , 2018.

A true copy, attest:

\_\_\_\_\_  
Janice O’Connell, Regional Clerk

# AGENDA ITEM 6a

Update on the AmeriCorps Cape Cod Program



# Barnstable County AmeriCorps Cape Cod

Year 20 (2018-2019) Mid-Year Update

# How does it work?



Federal Agency  
Funding Appropriated by Congress  
- Domestic Volunteer and  
Service Act 1973

- National and Community  
Service Trust Act of 1993
- Edward M. Kennedy Serve  
America Act

- 45 CFR 2505-2556



MA State Service  
Commission

Funded by CNCS to  
manage all AmeriCorps  
State Programs grants  
for MA



Applies for grant funds to  
run AmeriCorps Cape Cod  
(since 1999)

Matches grant funds 1:1  
- In-Kind Match  
(housing)  
- Cash Match

Run out of Resource  
Development Office

# Our Staff



**Andrew Platt**  
Program  
Coordinator



**Kayla Baier**  
Program  
Specialist

# Our Staff



**Alex Bates**  
Lower Cape Supervisor  
(Wellfleet "LeHac" House)



**Meredith Ballinger**  
Upper Cape Supervisor  
(Pocasset House & Barnstable "Ranch" House)

+administrative assistance from the Resource Development Office

# Year 20 Corps



# Residences

Wellfleet "LeHac" House  
Cape Cod National Seashore  
Since 1999 – 12 Members



# Residences

Pocasset House  
Barnstable County  
Since 2018 – 6-8 Members



# Residences

Barnstable "Ranch" House  
Town of Barnstable  
Since 2018 4-6 Members



# Training - September



Chainsaw Training – Cape Cod National Seashore Fire Management Office

# Group Service – Mondays & Fridays



# Invasive Species Removal & Wildfire Mitigation

Before



After



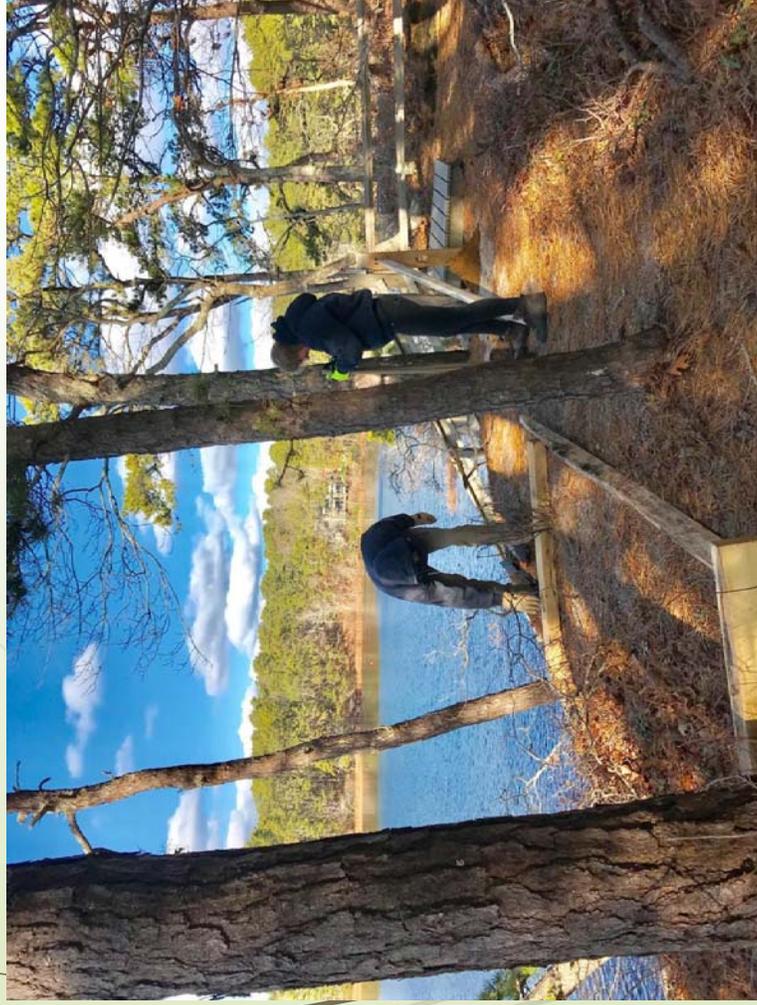
Orleans Conservation Trust – Mauch Property

# Invasive Species Removal & Wildfire Mitigation



Coombs Bog, Barnstable - Removing invasive willow trees and restoring native shrubland

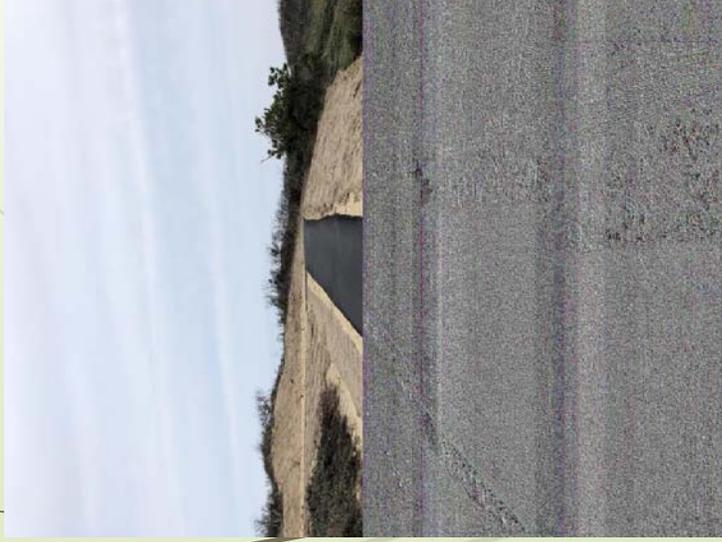
# Coastal Resilience & Erosion Control



Dyer Pond, Wellfleet

# Cape Cod National Seashore

Erosion Control



Fencing



Complete

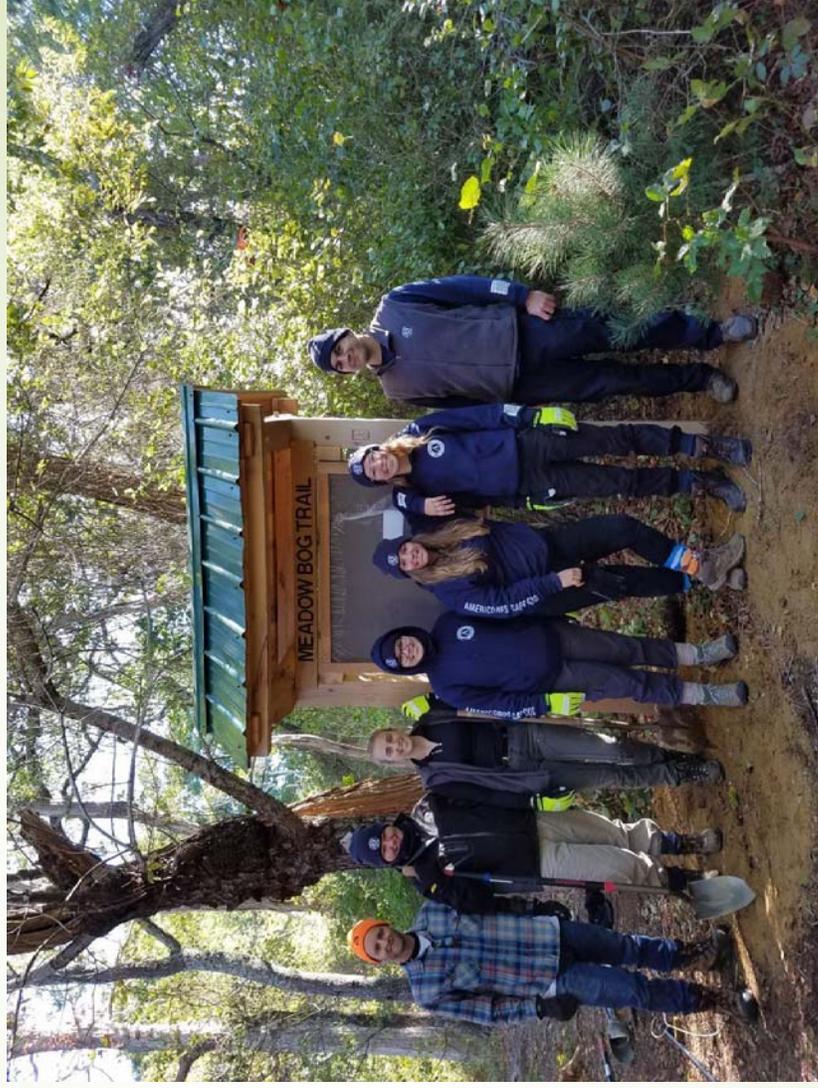


ADA Pathway Construction – Marconi Site, Wellfleet

# Trail Maintenance and Restoration



Rerouting Otis Atwood Trail - Barnstable



Meadows Bog Conservation Trail, Orleans

# Shellfish Propagation (Water Quality)



Town of Mashpee – Mashpee River Restoration

# Water Education (WETFest)

 **wixonschool**  
@wixonschool [Follow](#)

Thank you [@AmeriCorpsCC](#) for working with our 5th Grade students!



2:42 PM · 7 Jan 2019

1 Retweet 5 Likes

  1  5 

# Individual Placements – Tuesday to Thursday

- CAPE COD COOPERATIVE EXTENSION
- CAPE COD COMMISSION
- BARNSTABLE COUNTY SEPTIC TEST CENTER
- BARNSTABLE COUNTY REGIONAL EMERGENCY PLANNING COMMITTEE
- BARNSTABLE NATURAL RESOURCES
- BREWSTER DEPARTMENT OF NATURAL RESOURCES
- CHATHAM DEPARTMENT OF NATURAL RESOURCES: SHELLFISH
- DENNIS NATURAL RESOURCES
- EASTHAM DEPARTMENT OF NATURAL RESOURCES
- FALMOUTH MARINE AND ENVIRONMENTAL SERVICES
- FALMOUTH CONSERVATION
- HARWICH DEPARTMENT OF CONSERVATION
- MASHPEE NATURAL RESOURCES AND CONSERVATION DEPARTMENTS
- ORLEANS DEPARTMENT OF NATURAL RESOURCES
- PROVINCETOWN PLANNING AND CONSERVATION DEPARTMENT
- SANDWICH DEPARTMENT OF NATURAL RESOURCES
- TRURO CONSERVATION DEPARTMENT/WELLFLEET HEALTH AND CONSERVATION
- YARMOUTH CONSERVATION OFFICE AND NATURAL RESOURCES DIVISION
- CAPE COD NATIONAL SEASHORE: FIRE MANAGEMENT
- CAPE COD NATIONAL SEASHORE: PLANNING DEPARTMENT
- WAQUOIT BAY NATIONAL ESTUARINE RESEARCH RESERVE
- ASSOCIATION TO PRESERVE CAPE COD
- AMERICAN RED CROSS
- BARNSTABLE CLEAN WATER COALITION
- BARNSTABLE LAND TRUST
- BREWSTER CONSERVATION TRUST
- CHATHAM CONSERVATION FOUNDATION
- DENNIS CONSERVATION TRUST
- IFAW – MARINE MAMMAL RESCUE
- LONG PASTURE WILDLIFE SANCTUARY
- MASS AUDUBON COASTAL WATERBIRD PROGRAM
- NATIONAL MARINE LIFE CENTER
- ORLEANS CONSERVATION TRUST

# Disaster Preparedness and Response



March 2018 – Winter Storm Skylar – Bourne members picked up by WBF

# Pre-Storm Preparations - Sandbagging



March 2018 – Prior to Winter Storm Riley

# Barnstable County Regional Shelter System



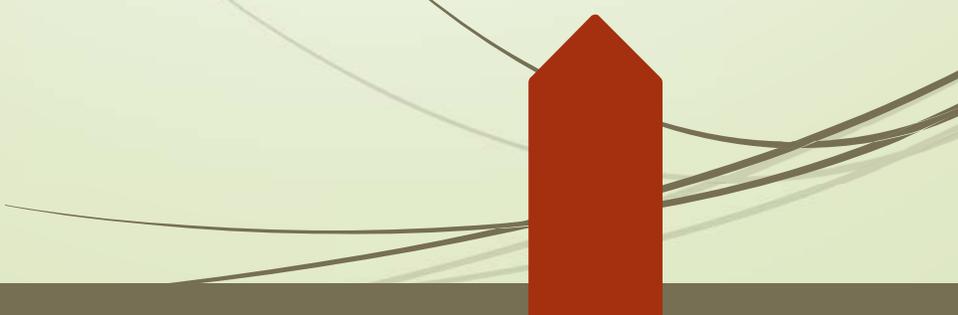
March 2018 –  
Four' easter

## Rest of the journey....

- ▶ September 4<sup>th</sup>: Members arrive
- ▶ Labor Day – End of September: Member Training
- ▶ October 1<sup>st</sup>: Member Service (Group and IPs) Begins
- ▶ Spring 2019: Prescribed Burning Training (Late April)
- ▶ March 2019: Year 21 Recruitment Begins
- ▶ April 2019: Selection of Year 21 Individual Placements
- ▶ July 25<sup>th</sup>, 2019: Year 20 Member Graduation @ CCCC
- ▶ August 2019: Reset for Year 21...

**Andrew Platt**  
Program Coordinator  
AmeriCorps Cape Cod

Office Phone: 508-375-6872  
[andrew.platt@barnstablecounty.org](mailto:andrew.platt@barnstablecounty.org)



# Questions?

# AGENDA ITEM 8a

Authorizing the filling of twenty-four (24) vacant AmeriCorps Cape Cod Member positions for Program Year 21, from September 3, 2019 through July 23, 2020



# BARNSTABLE COUNTY

OFFICE OF COUNTY ADMINISTRATOR  
SUPERIOR COURTHOUSE  
3195 MAIN STREET  
P.O. BOX 427  
BARNSTABLE, MASSACHUSETTS 02630

**Justyna Marczak**  
Human Resources Director  
Phone: (508) 375-6646  
Fax: (508) 362-4136  
jmarczak@barnstablecounty.org

## MEMORANDUM

**DATE:** March 5, 2019  
**TO:** County Commissioners  
**FROM:** Justyna Marczak, Human Resources Director  
**SUBJECT:** AmeriCorps Cape Cod Year 21 Member Positions

---

Please authorize the filling of twenty-four (24) vacant AmeriCorps Cape Cod Member positions for Program Year 21, from September 3, 2019 through July 23, 2020.

Approved:

\_\_\_\_\_  
Ronald Bergstrom, Chair

\_\_\_\_\_  
Mary Pat Flynn, Vice-Chair

\_\_\_\_\_  
Ronald R. Beaty, Commissioner

\_\_\_\_\_  
Date

# AGENDA ITEM 8b

Authorizing the creation of the position of Director of the Cape Cod Municipal Police Academy and appointment Peter Carnes to that position, effective March 11, 2019, as recommended by the County Administrator

# AGENDA ITEM 8c

Authorization to create the position of Deputy Director of the Cape Cod Municipal Police Academy and appoint Wayne Sampson to that position, effective March 11, 2019, as recommended by the County Administrator



# BARNSTABLE COUNTY COMMISSIONERS

SUPERIOR COURTHOUSE  
3195 MAIN STREET  
P.O. BOX 427  
BARNSTABLE, MASSACHUSETTS 02630  
PHONE: (508) 375-6648  
FAX: (508) 362-4136

HOME RULED CHARTERED  
IN 1989

RONALD BERGSTROM  
Chatham

MARY PAT FLYNN  
Falmouth

RONALD R. BEATY  
Barnstable

## MEMORANDUM

**DATE:** March 6, 2019  
**TO:** County Commissioners  
**FROM:** Stephen Tebo, Assistant County Administrator  
**SUBJECT:** Positions of Director and Deputy Director of Police Academy

---

Please authorize the creation of the position of Director of Cape Cod Municipal Police Academy and appoint Peter Carnes to that position, effective March 11, 2019.

Please authorize the creation of the position of Deputy Director of Cape Cod Municipal Police Academy and appoint Wayne Sampson to that position, effective March 11, 2019.

Sincerely,

Stephen Tebo  
Assistant County Administrator

Approved:

Board of Regional Commissioners

\_\_\_\_\_  
Ronald Bergstrom, Chair

\_\_\_\_\_  
Mary Pat Flynn, Vice-Chair

\_\_\_\_\_  
Ronald Beaty, Jr., Commissioner

\_\_\_\_\_  
Date

# AGENDA ITEM 8d

Authorizing the promotion of Phil Burt to the full-time position of Director of the County Fire and Rescue Training Academy, from the position of BCFRTA Interim Director effective March 6, 2019, as recommended by the County Administrator



# BARNSTABLE COUNTY COMMISSIONERS

SUPERIOR COURTHOUSE  
3195 MAIN STREET  
P.O. BOX 427  
BARNSTABLE, MASSACHUSETTS 02630  
PHONE: (508) 375-6648  
FAX: (508) 362-4136

HOME RULED CHARTERED  
IN 1989

RONALD BERGSTROM  
Chatham

MARY PAT FLYNN  
Falmouth

RONALD R. BEATY  
Barnstable

## MEMORANDUM

**DATE:** March 6, 2019  
**TO:** County Commissioners  
**FROM:** Stephen Tebo, Assistant County Administrator  
**SUBJECT:** Position of the Director of Fire Training Academy

---

Please appoint Phil Burt to a full time position of the Director of Fire and Rescue Training Academy, effective March 6, 2019.

Sincerely,

Stephen Tebo  
Assistant County Administrator

Approved:

Board of Regional Commissioners

\_\_\_\_\_  
Ronald Bergstrom, Chair

\_\_\_\_\_  
Mary Pat Flynn, Vice-Chair

\_\_\_\_\_  
Ronald Beaty, Jr., Commissioner

\_\_\_\_\_  
Date

# AGENDA ITEM 8e

Authorizing the approval of unpaid leave for Stacy Gallagher, Director of Children's Cove, for the period of February 20, 2019 through February 27, 2019



P.O. Box 427 • Barnstable, Massachusetts 02630  
Telephone (508) 375-0410 • Toll Free (888) 863-1900 • Fax (508) 375-0409

## MEMO

**Date:** February 28, 2018

**To:** Barnstable County Commissioners

**From:** Stacy Gallagher

**Subject:** Unpaid Time Off

---

Please approve unpaid time off for Stacy Gallagher, Director of Children's Cove for the period of February 20-27, 2019.

Thank you.

---

Ronald Bergstrom, Chair

---

Mary Pat Flynn, Vice-Chair

---

Ronald R. Beaty, Commissioner

---

### Partner Agencies

Barnstable County • Cape and Islands District Attorney's Office • Cape Cod Hospital  
Massachusetts Department of Mental Health • Massachusetts Department of Children & Families

# AGENDA ITEM 8f

Authorizing the execution of a Memorandum of Understanding with Cape Cod Healthcare, Inc., through the Barnstable County Regional Emergency Planning Committee, regarding a Regional Sheltering Plan

# *Memorandum of Understanding*

*Between*

*Barnstable County Regional Emergency Planning Committee*

*And*

*Cape Cod Healthcare Inc.*

## **I. Purpose**

The purpose of this Memorandum of Understanding (“MOU”) is to establish a working relationship between the Barnstable County Regional Emergency Planning Committee (“BCREPC”) and Cape Cod Healthcare, Inc. (“CCHC”) in preparing for and responding to disasters and storm events in Barnstable County. This MOU provides the framework for the cooperation between the two organizations in rendering assistance and service to victims of disaster and storm events who are clients of the Barnstable County Regional Shelter Plan who may require medical services and support.

## **II. Independence of Operations**

Each organization will maintain its own identity in providing service. None of the obligations undertaken in this MOU are intended to conflict with or override any pre-existing obligation of either agency. This MOU is not an obligation nor a commitment of funds, but rather a statement of understanding of process and procedures between the CCHC, BCREPC and other response agencies. Reviews, request for changes and interpretation of the general provisions of this MOU will be coordinated through the senior point of contacts within each agency designated below. Each organization is separately responsible for establishing its own policies and procedures and financing its own activities.

## **III. Definition of Disaster**

A disaster is an impending or occurring event of such destructive magnitude and force as to dislocate people, separate family members, damage or destroy homes and injure or kill people. A disaster produces a range and level of immediate suffering and basic human needs that cannot be promptly or adequately addressed by the affected people and that prevents them from initiating and proceeding with recovery efforts. Emergency agencies categorize disasters by their causative agents, broadly separated into natural and human caused disasters. Natural disasters include floods, tornadoes, hurricanes, typhoons, winter storms, tsunamis, hailstorms, wildfires, windstorms, epidemics and earthquakes. Human caused disasters whether intentional or unintentional – include residential fires, building collapses, transportation accidents, hazardous materials releases, nuclear accidents, explosions and acts of terrorism

## **IV. Barnstable County Regional Emergency Planning Committee**

The Barnstable County Regional Emergency Planning Committee (BCREPC) is a coalition of law enforcement, fire service, health care, public health, public works, EMS, military, and numerous other affiliated agencies as

outlined by the Massachusetts State Emergency Response Committee (SERC). It represents the towns of Barnstable, Bourne, Brewster, Chatham, Dennis, Eastham, Falmouth, Harwich, Mashpee, Orleans, Provincetown, Sandwich, Truro, Wellfleet, and Yarmouth in Barnstable County, and the town of Nantucket in Nantucket County.

The purpose of the BCREPC is to harness the power of planning, cooperation, and interoperability to assist Cape Cod communities to mitigate the threat from any hazard which may require the response of multiple jurisdictions.

The Barnstable County Regional Sheltering Plan – overseen by the BCREPC - consists of 6 regional shelters (Falmouth High School, Sandwich High School, Barnstable Intermediate School, Dennis-Yarmouth Regional High School, Cape Cod Regional Technical High School, Nauset Regional High School) and 2 satellite shelters (Bournedale School, Veteran’s Building - Provincetown). The emergency shelters are staffed by volunteer organizations and supported by public safety agencies at the municipal and county levels.

The emergency shelter program was instituted to provide the residents and visitors of Cape Cod with short-term refuge in the event of a large-scale hazardous incident in which it is unsafe for individuals to remain in their homes.

Shelter operations and coordination of resources are facilitated through the Barnstable County Incident Management Team and the Multi-Agency Coordination Center (MACC) in accordance with the principles of the National Incident Management System (NIMS). The decision to activate the Regional Emergency Shelter Program is made by the Executive Committee of the BCREPC.

## **V. Cape Cod Healthcare**

Cape Cod Healthcare is the leading provider of healthcare services for residents and visitors of Cape Cod. With more than 450 physicians, 5,300 employees and 1,100 volunteers, (CCHC) has two acute care hospitals, the Cape’s leading provider of homecare and hospice services (VNA), a skilled nursing and rehabilitation facility (JML Care Center), an assisted living facility (Heritage at Falmouth), the Cape’s only local laboratory service (CCHC Laboratory Services) and numerous health programs.

The vision statement of Cape Cod Healthcare is: “We will be the health service provider of choice for Cape Cod residents by achieving and maintaining the highest standards in healthcare delivery and service quality. To do so, we will partner with other health and human service providers as well as invest in needed medical technologies, human resources and clinical services. Above all, we will help identify and respond to the needs of our community.”

## **VI. Services for Shelter Clients in the Barnstable County Regional Shelter Program**

Shelter operations and coordination of resources are facilitated through the Barnstable County Incident Management Team and the Multi-Agency Coordination Center (MACC) in accordance with the principles of the National Incident Management System (NIMS). The decision to activate the Regional Emergency Shelter Program is made by the Executive Committee of the BCREPC. Through this MOU BCREPC will request the assistance of CCHC to provide a medical service component to three of the six regional shelter locations. Qualified clinicians from CCHC will provide medical services in accordance with CCHC’s established policies, protocols and procedures to the shelter population to the best of their abilities given the limitations of the shelter facility and environment. Such services will include basic first aid, patient assessment, assistance with medication administration as directed by overseeing physician, oxygen support and monitoring of shelter clients with existing medical conditions. These services generally will be provided by nurses and qualified medical assistants in reasonable numbers as determined by CCHC to provide sufficient care to the shelter population.

The three shelter locations which are to be supported by CCHC clinical assistance will be:

The Barnstable Shelter, located at the Barnstable Intermediate School, 895 Falmouth Road, Hyannis, MA 02601

The Falmouth Shelter, located at the Falmouth High School, 874 Gifford Street, East Falmouth MA 02536

The Harwich Shelter, located at the Cape Cod Regional Technical High School, 351 Pleasant Lake Ave, Harwich MA 02645

During weather events, BCREPC through the MACC will assist CCHC with the deployment of CCHC clinicians to the shelter locations at the request of CCHC.

BCREPC may request CCHC to deploy medical services to the other regional shelters should the ones previously listed not be able to open during the disaster or storm event. CCHC at its discretion will determine if this is a request that can be supported. The remaining shelter locations are:

The Yarmouth Shelter, located at the Dennis Yarmouth Regional High School, 210 Station Ave, South Yarmouth MA 02664

The Sandwich Shelter, located at the Sandwich High School, 365 Quaker Meeting House Road, East Sandwich MA 02537

The Nauset Shelter, located at the Nauset High School, 100 Cable Road, Eastham, MA 02642

## **VII. Contact Information**

CCHC and BCREPC will routinely exchange and update point of contact information to facilitate effective communication. The primary points of contact in each organization will be responsible for the implementation of the MOU in their respective organizations, coordinating activities between organizations, and responding to questions regarding this MOU. In the event that the primary point of contact is no longer able to serve, a new contact will be designated and the other organization informed of the change. Each organization will maintain a minimum of two points of contact. (See Attachment A)

## **VIII. Method of Cooperation**

The Barnstable County Regional Emergency Planning Committee Regional Sheltering Plan, hereafter referred to as “the Plan,” is a five-stage operation utilizing the National Incident Management System. The five stages are Preparedness, Stand-by, Decision, Execution and Re-entry. Supporting agencies will develop specific internal procedures for each stage.

The coordinated transition from one stage to the next is critical to the execution of the Plan and will be triggered by particular events under the guidance of the BCREPC Executive Committee with the participation of the Cape Cod Health Care.

The BCREPC and CCHC will cooperate and coordinate in rendering their respective activities in the following manner:

1. The BCREPC and the CCHC will maintain close liaison at all levels of both CCHC and the BCREPC by conferences, meetings, telephone, facsimile, e-mail, and other means. They will share current data regarding disasters, to include statistical information, historical information, emerging needs and trends, damage assessments, disaster declarations, and changes in applicable legislation. They will include a representative of the other party in appropriate committees and task forces formed to mitigate, prepare for, respond to, and recover from disasters and other emergencies.

2. The BCREPC will complete periodic reviews of the Barnstable County response framework, roles, responsibilities, and coordination of services for regional sheltering operations and engage other agencies such as local emergency management in this process.
3. The BCREPC will identify and be responsible for managing regional shelters in Barnstable County and will support the regional sheltering concept through its individual government members. The BCREPC and the CCHC will together identify and develop standard operating procedures for shelter medical services to facilitate the delivery of disaster relief services to people including those with disabilities and/or functional and access needs during a disaster.
4. The BCREPC will be responsible for managing all regional shelters identified in the Plan in accordance with all Federal, State and local laws.
5. During a disaster CCHC will, as appropriate, at the request of the BCREPC, provide liaison personnel to the Multi Agency Coordination Center (MACC). The BCREPC will provide space and, whenever possible, other required support, such a computer, e-mail access and a designated phone line for the CCHC liaison personnel assigned to the MACC.
6. The BCREPC will establish MOUs with all other agencies participating in the Plan, including all appropriate school districts and other entities for the use of all the identified shelter facilities.
7. The BCREPC will ensure that custodial resources, including supplies and custodial workers, are available to provide cleaning, sanitation and facility related services at the shelters.
8. The BCREPC will ensure that there is the appropriate level of security in and around the shelters and will coordinate with local law enforcement to resolve any public safety and security issues at the shelters. For those shelters that are in school buildings, the BCREPC will ensure that the school facilities will not be available for normal school operations and school staff and students while the shelter is in operation.
9. CCHC and the BCREPC are responsible for their own independent organization's financial funding during times of disaster.
10. Neither party to this MOU will use the name, logo, emblem or trademarks of the other without prior written authorization for each use. Nothing in the MOU shall be construed as granting such authorization.
11. Regular communication will be maintained between CCHC and the BCREPC during non-disaster periods as well as during times of disaster response.
12. The BCREPC will keep the public informed of the cooperative efforts with CCHC through public affairs programs.
13. The BCREPC and CCHC may complete periodic reviews of the Plan and recommend specific changes to the Plan that are mutually beneficial to this MOU.
14. The BCREPC will schedule and coordinate, at least annually, a response simulation to include all agencies and parties to evaluate the state of readiness of the Plan.
15. CCHC will notify the onsite BCREPC representative (Branch Director) of its plans to conclude its shelter medical support operations and vacate the shelter at CCHC's sole discretion.

## **IX. Expenses**

This MOU does not create an obligation for either party to reimburse or compensate the other for any costs or expenses associated with cooperative activities related to this MOU. CCHC and BCREPC agree that to the extent their relationship may now or in the future entail and financial commitments to each other such commitments will be set forth in a separate, written agreement signed by both parties.

## **X. Periodic Review**

The BCREPC and CCHC along with representatives of the other participating agencies will, on an annual basis, on or around the anniversary date of this MOU, jointly evaluate their progress in implementing the Plan and revise and develop new plans or goals as appropriate.

## **XI. Term and Termination**

This MOU is effective as of the date of the last signature below and expires three (3) years from the last signature date. Six months prior to expiration, the parties will meet to review the progress and success of the cooperative effort. In connection with such review, the parties may decide to extend this MOU for an additional period, not exceeding five years, and if so shall confirm this in a signed writing. It may be terminated by written notice from either party to the other at any time for any reason or for no reason.

**XII. Miscellaneous**

This MOU does not create a partnership or a joint venture. Neither party to this MOU has the authority to act on behalf of the other party or to bind the other party to any obligation. This MOU is not intended to be enforceable in any court of law or dispute resolution forum. The sole remedy for non-performance under this MOU is termination, with no damages or penalty.

**XIII. Signatures**

\_\_\_\_\_  
Michael Lauf  
President/CEO  
Cape Cod Healthcare, Inc.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Ronald Bergstrom, Chair  
Barnstable County Commissioner

\_\_\_\_\_  
Date

\_\_\_\_\_  
Mary Pat Flynn, Vice-Chair  
Barnstable County Commissioner

\_\_\_\_\_  
Date

\_\_\_\_\_  
Ronald Beatty  
Barnstable County Commissioner

\_\_\_\_\_  
Date

## Attachment A – Point of Contact Information

| <b>Cape Cod Healthcare, Inc.</b><br>88 Lewis Bay Road<br>Hyannis, MA 02601 |  |  |
|--|--|--|
|  | <b>Primary Contact</b>   | <b>Alternate Contact</b>   |
| Name & Title   | Frank Riccio<br>Director of Security and<br>Emergency Preparedness | Michael Bachstein<br>Executive Directive of Facilities and Support<br>Services |
| Daytime<br>Phone   | 508-862-5675   | 508-862-5125   |
| Cell Phone   | 774-836-0002   | 774-487-6290   |
| E-mail<br>address  | friccio@capecodhealth.org  | mbachstein@capecodhealth.org   |

| <b>Barnstable County Regional Emergency Planning Committee</b><br>Address: Old Barnstable County Jail, 3195 Main Street, P.O. Box 427, Barnstable, MA 02630 |  |                                     |
|---|--|-------------------------------------|
|   | <b>Primary Contact</b>                                       | <b>Alternate Contact</b>            |
| Name & Title  | Philip Burt, Emergency<br>Preparedness Project<br>Specialist | Sean M. O'Brien, BCREPC Coordinator |
| Daytime<br>Phone  | 508-375-6902   | 508-375-6618                        |
| Cell Phone  | 774-994-7512   | 508-737-4118                        |
| E-mail<br>address   | pburt@barnstablecounty.org                                   | sobrien@barnstablecounty.org        |

# AGENDA ITEM 11a

Executive Session to review Board of Regional Commissioner Executive Session minutes, pursuant to Massachusetts General Laws Chapter 30A, Section 21(a)(7) and Massachusetts General Laws Chapter 30A, Sections 22(f) and 22(g)

*COMMONWEALTH OF MASSACHUSETTS*

Barnstable, ss.

At an executive session, held during a regular meeting of the Barnstable County Board of Regional Commissioners, in the Superior Courthouse in Barnstable, on the fifth day of December, A.D. 2018

**Board Regional Commissioners:**

Ronald R. Beaty                      Present

Leo G. Cakounes                      Present

Mary Pat Flynn                      Present

**Staff Present:**

Jack Yunits                      County Administrator

Steve Tebo                      Interim Assistant County Administrator/Director, Facilities  
Department

Owen Fletcher                      Executive Assistant, Administration

Robert Troy                      County Counsel

Ronald Bergstrom                      Chatham Delegate, Assembly of Delegates/Regional  
Commissioner-elect

Chairman Cakounes described the purpose of the meeting. He clarified that this meeting was for informational purposes only, to ensure that Commissioners Flynn and Beaty, along with Commissioner-elect Bergstrom are fully briefed on all work he did as Chairman on certain issues.

Chairman Cakounes first discussed the County Farm. The Board discussed the status of the Town of Barnstable's request to build wells on the property and Mr. Tebo's communications with the town on that issue. Mr. Tebo noted that it has been given permission to go on the property if they obtain insurance, the town has not followed up. The Board discussed subsequent negotiations about price, creating solar arrays, leasing of parcels, flexibility, and the effect on future construction.

The Board next discussed the Fire Rescue Training Academy. Chairman Cakounes explained that the County was outside its boundaries already and doing more than the Massachusetts Department

of Environmental Protection require for cleanup. There was a lengthy discussion on the nature of the contamination and county efforts at cleanup.

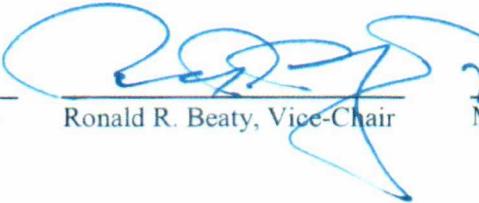
Further, the Board discussed the property where Children's Cove is currently located. The Board specifically discussed the size of the property, possible subdivision of it, and an expansion in the back for training.

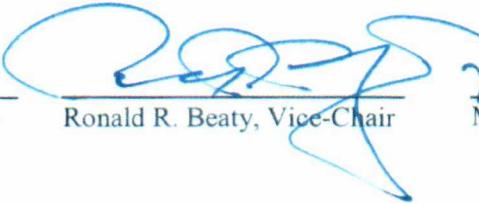
The Board also discussed the status of County owned properties in the Town of Bourne. Mr. Troy recused himself from discussions of the property due to previous conflicts. Chairman Cakounes explained the history of the properties in general, and conservation on the properties more specifically. The Board had a lengthy discussion on possible plans for the properties.

Finally, the Board engaged in a long discussion regarding the County Dredge. This discussion included a recounting of the lengthy history of problems with the new dredge, contractual issues with the company that provided it, and the possibility of litigation on matter.

*Barnstable, ss. at 12:48 P.M. on this fifth day of December A.D. 2018, Commissioner Beaty made a motion to return to open session for adjournment of the regular meeting, 2nd by Commissioner Flynn, approved 3-0-0*

Approved, Board of Regional Commissioners:

  
\_\_\_\_\_  
Leo G. Cakounes, Chair

  
\_\_\_\_\_  
Ronald R. Beaty, Vice-Chair

  
\_\_\_\_\_  
Mary Pat Flynn, Commissioner

12/19/18  
Date

The foregoing records have been read and approved, December 26, 2018.

A true copy, attest:

  
\_\_\_\_\_  
Janice O'Connell, Regional Clerk



COUNTY COMMISSIONERS  
Executive Session Minutes  
Wednesday, June 28, 2017

At the December 30, 2016 special meeting of the County Commissioners, the Commissioners made a motion to enter into Executive Session at 12:25 p.m. to discuss strategy with respect to the Civil Action filed by the Town of Barnstable as public discussion may have a detrimental effect on the litigating position of the County.

Roll call vote:

|                 |     |
|-----------------|-----|
| Leo G. Cakounes | Aye |
| Mary Pat Flynn  | Aye |
| Ronald R. Beaty | Aye |

Others

|               |           |     |               |
|---------------|-----------|-----|---------------|
| Jack Yunits   | County    |     | present:      |
| Owen Fletcher | Executive |     | Administrator |
| Tom Cambareri | Cape      | Cod | Assistant     |
| Robert Cox    | Special   |     | Commission    |
| Robert Troy   | County    |     | Counsel       |
|               |           |     | Counsel       |

There was a discussion regarding the final settlement offer negotiated with the Township of Barnstable. Commissioner Cakounes, with the aid of Counsel gave a lengthy presentation to those present regarding the terms of the agreement. Commissioner Beaty expressed concern that he and Commissioner Flynn had not been given enough time to review the final agreement. Commissioner Cakounes informed the other Commissioners that there was a deadline of June 30<sup>th</sup> to either agree to the settlement, or face certain litigation. The Commissioners reached out by phone to Mr. Cox for his remote participation in the meeting. There was a discussion regarding holding a meeting the following day to vote on the settlement. Mr. Cox explained to the Commissioners that the Town of Barnstable was unwilling to change the terms of the agreement, and Commissioner Cakounes argued that the time for negotiations had come to a close. Mr. Cox also explained the certain legal and potential financial consequences of not acting on the agreement immediately.

*Motion by Commissioner Beaty to approve and to execute a Settlement Agreement Dated June 28, 2017, in the matter of Town of Barnstable vs. Barnstable County as presented furthermore, Authorize the County Counsel of Robert Cox and Robert Troy to file all necessary documents to the relevant Courts for an agreement for Judgement, 2nd by Commissioner Flynn, approved 2-1-0 (Cakounes: Aye, Flynn: Aye, Beaty: No)*

*Motion by Commissioner Beaty pursuant to the Settlement Agreement to authorize the Chair and County Administrator to prepare and release a Press statement and be the authority to speak with the press and reporters as to the content of the Settlement and future relationship between Town of Barnstable and Barnstable County, 2nd by Commissioner Flynn, approved 3-0-0*

*Motion by Commissioner Beaty to approve and to execute the Access Agreement between the Town of Barnstable and The County for the purpose of Well Exploration on the County Land referred to as "The County Farm" as presented, 2nd by Commissioner Flynn, approved 3-0-0, 2nd by Commissioner Flynn, approved 2-1-0 (Cakounes: Aye, Flynn: Aye, Beaty: No)*

The Commissioners agreed to hold an Emergency Meeting directly following the Executive Session to announce the actions taken in Executive Session.

Motion made by Commissioner Beaty to adjourn at 1:45 p.m., 2<sup>nd</sup> by Commissioner Flynn approved 3-0-0.

The foregoing records have been read and approved.

---

Leo G. Cakounes  
Chair

---

Mary Pat Flynn  
Vice-Chair

---

Ronald R. Beaty  
Commissioner

COUNTY COMMISSIONERS  
Executive Session Minutes  
Friday, December 30, 2016

At the December 30, 2016 special meeting of the County Commissioners, the Commissioners made a motion to enter into Executive Session at 11:09 a.m. to discuss strategy with respect to the Civil Action filed by the Town of Barnstable as public discussion may have a detrimental effect on the litigating position of the County.

Roll call vote:

|                |     |
|----------------|-----|
| Mary Pat Flynn | Aye |
| Sheila Lyons   | Aye |
| Leo Cakounes   | Aye |

Others present:

|               |                      |
|---------------|----------------------|
| Jack Yunits   | County Administrator |
| Owen Fletcher | Executive Assistant  |
| Tom Cambareri | Cape Cod Commission  |
| Robert Cox    | Special Counsel      |
| Robert Troy   | County Counsel       |

The Commissioners present noted that Ms. Lyons and Mr. Troy were participating remotely and asked them to verify that no one else could hear the session pursuant to the Open Public Meetings Law.

There was a discussion regarding progress in the settlement talks with the Town of Barnstable. The Commissioners agreed by consensus to authorize a settlement offer of \$2.6 million rather than \$2.5 million. There was a lengthy discussion regarding bonding for the cost of a possible settlement. The Commissioners discussed whether the County should bond the money itself, or have the Town do so, after which the County would pay it back. The costs to the County could be as large as \$250,000 annually. There also was a discussion regarding possible third party lawsuits to be filed by the County.

Motion made by Commissioner Cakounes to adjourn executive session and return to open session at 12:03 p.m., 2<sup>nd</sup> by Commissioner Flynn approved 2-0-0.

The foregoing records have been read and approved.

---

Mary Pat Flynn  
Chair

---

Sheila R. Lyons  
Vice-Chair

---

Leo Cakounes  
Commissioner

COUNTY COMMISSIONERS  
Executive Session Minutes  
Wednesday, November 16, 2016

At the November 16, 2016 regular meeting of the County Commissioners, the Commissioners made a motion to enter into Executive Session at 1:08 p.m. to discuss strategy with respect to the Civil Action filed by the Town of Barnstable as public discussion may have a detrimental effect on the litigating position of the County.

Roll call vote:

|                |        |
|----------------|--------|
| Mary Pat Flynn | Aye    |
| Sheila Lyons   | Absent |
| Leo Cakounes   | Aye    |

Others present:

|               |                        |
|---------------|------------------------|
| Jack Yunits   | County Administrator   |
| Owen Fletcher | Executive Assistant    |
| Tom Cambareri | Cape Cod Commission    |
| Robert Cox    | Special Counsel        |
| Steve Tebo    | Director of Facilities |
| Robert Troy   | County Counsel         |

Mr. Cox gave the Board an update on settlement negotiations with the Town of Barnstable. The last meeting with the Town was on October 26<sup>th</sup>. The County offered \$1.2 million to settle the suit, however the Town asked for \$5 million. The Town discussed possible financing options for the settlement, but have yet to provide any details regarding those options. Mr. Cox discussed the County's possible financial exposure if the case goes to trial. This exposure could be as large as \$10 million including all costs. However, if the County were to bring in third parties to the suit, the exposure could be as low as \$3 million.

The County's attorneys recommended that the County bear responsibility for roughly two-thirds of the cost for well cleanup, while the Town should be responsible for one-third of the cost. There was a discussion regarding the fact that some of the contamination could have come from the airport rather than the Fire Academy. It also was noted that the Town was aware of the filtration problems. The attorneys stressed that if the window for settlement closed and the County moved towards trial, discovery costs alone could be as large as \$20 thousand per month. Commissioner Cakounes suggested a cap of \$2.53 million for a settlement offer.

Motion made by Commissioner Cakounes to adjourn executive session and return to open session at 2:21 p.m., 2<sup>nd</sup> by Commissioner Flynn approved 2-0-0.

The foregoing records have been read and approved.

---

Mary Pat Flynn  
Chair

---

Sheila R. Lyons  
Vice-Chair

---

Leo Cakounes  
Commissioner

COUNTY COMMISSIONERS  
Executive Session Minutes  
Wednesday, August 25, 2016

At the August 25, 2016 special meeting of the County Commissioners, the Commissioners made a motion to enter into Executive Session at 1:11 p.m. to discuss strategy with respect to the litigation filed by the Town of Barnstable as public discussion may have a detrimental effect on the litigating position of the County.

Roll call vote:

|                |     |
|----------------|-----|
| Mary Pat Flynn | Aye |
| Sheila Lyons   | Aye |
| Leo Cakounes   | Aye |

Others present:

|                   |                                  |
|-------------------|----------------------------------|
| Jack Yunits       | County Administrator             |
| Kara Mahoney      | Interim Administrative Assistant |
| Tom Cambareri     | Cape Cod Commission              |
| Attorney Bob Troy | County Counsel                   |
| Attorney Bob Cox  | Special Counsel                  |
| Steve Tebo        | Director of Facilities           |
| Mary McIsaac      | Director of Finance/Treasurer    |

Attorney Bob Cox provided an update on the Fire Training Academy litigation. He reported he had prepared the documents to file against the town and fire departments and also reported on the conversation they had with the Town of Barnstable. An agreement was reached between the Town and the County to extend the clean-up period through September 3, 2016.

Mary McIsaac advised the Commissioners on funding options.

Attorney Cox will draft an outline on moving forward and send to them by email.

Motion made by Leo Cakounes to adjourn executive session and not to return to open session at 2:57 p.m., 2<sup>nd</sup> by Sheila Lyons, approved 3-0-0.

The foregoing records have been read and approved.

---

Mary Pat Flynn  
Chair

---

Sheila R. Lyons  
Vice-Chair

---

Leo Cakounes  
Commissioner

COUNTY COMMISSIONERS  
Executive Session Minutes  
Wednesday, July 20, 2016

At the July 20, 2016 regular meeting of the County Commissioners, the Commissioners made a motion to enter into Executive Session at 3:14 p.m. to discuss strategy with respect to the Civil Action filed by the Town of Barnstable as public discussion may have a detrimental effect on the litigating position of the County.

Roll call vote:

|                |     |
|----------------|-----|
| Mary Pat Flynn | Aye |
| Sheila Lyons   | Aye |
| Leo Cakounes   | Aye |

Others present:

|                   |                                  |
|-------------------|----------------------------------|
| Jack Yunits       | County Administrator             |
| Kara Mahoney      | Interim Administrative Assistant |
| Tom Cambareri     | Cape Cod Commission              |
| Attorney Bob Troy | County Counsel                   |
| Attorney Bob Cox  | Special Counsel                  |
| Steve Tebo        | Director of Facilities           |

Attorney Bob Cox addressed the County Commissioners for the first time since the County was served a summons from the Town of Barnstable through their legal firm, Anderson & Kreiger, on July 11, 2016.

Attorney Cox walked the Commissioners through the process and the work that he had done leading up to the filing of the litigation including his conversation with Attorney Arthur Kreiger that included a negotiated date of July 15<sup>th</sup> to present a monetary offer.

He notified the Commissioners that they now had 20 days to respond with an answer to the summons. He advised that the best approach would be to continue to take the high road and seek a meeting to sit down and talk and resolve the problem without a lawsuit. He also advised that they should be ready by preparing the paperwork to countersue the town and third parties who brought the foam to the Fire Training Academy. That would include the five fire districts within the Town of Barnstable and any other towns that used the site. He encouraged the route of pushing back on the town and using a practical approach of preparing the counter claim but not to serve them.

Jack Yunits discussed drafting a letter to the third parties informing them that they may be subject to litigation. He further addressed the Town of Barnstable's opinion on shutting down the Fire Training Academy and how shutting it down will bankrupt the County.

Mr. Yunits learned that the airport on the other side of Mary Dunn Pond still uses foam. As recently as the last October 2015 the Hyannis fire department used foam to put out fire at the airport.

Discussion was held on whether or not the legal firm of Anderson & Krieger had a conflict of interest in representing the town on this suit since the County has obtained their services to represent them in the ongoing CFL case. Attorney Kreiger never sent anything to request the County wave his conflict with the County to represent the Town.

Motion made by Leo Cakounes to adjourn executive session and to return to open session at 4:17 p.m.,  
2<sup>nd</sup> by Sheila Lyons, approved 3-0-0.

The foregoing records have been read and approved.

---

Mary Pat Flynn  
Chair

---

Sheila R. Lyons  
Vice-Chair

---

Leo Cakounes  
Commissioner

COUNTY COMMISSIONERS  
Executive Session Minutes  
Wednesday, June 29, 2016

At the June 29, 2016 regular meeting of the County Commissioners, the Commissioners made a motion to enter into Executive Session at 1:05 p.m. to discuss strategy with respect to potential litigation matters pertaining to the Fire Training Academy.

Roll call vote:

|                |     |
|----------------|-----|
| Mary Pat Flynn | Aye |
| Sheila Lyons   | Aye |
| Leo Cakounes   | Aye |

Others present:

|                   |                                  |
|-------------------|----------------------------------|
| Jack Yunits       | County Administrator             |
| Kara Mahoney      | Interim Administrative Assistant |
| Tom Cambareri     | Cape Cod Commission              |
| Attorney Bob Troy | County Counsel                   |
| Attorney Bob Cox  | Special Counsel                  |
| Steve Tebo        | Director of Facilities           |

Jack Yunits reported on his meeting with Tom Cambareri and the Barnstable Town Manager. He also reported on his meeting with DEP (Department of Environmental Protection) officials the previous week.

Tom Cambareri provided a presentation to the Commissioners regarding clean-up efforts, contaminated areas and work being done at the well site.

Attorney Bob Cox reported he and Tom Cambareri met with Attorney's that were involved in litigation against manufacturers. Looking into working with them and the possibility of pursuing litigation against the manufacturers. Also looking at going after the responsible parties (Towns and Fire Departments) that brought materials to the County property.

Discussion between Commissioners and Attorney Bob Cox and Attorney Bob Troy on holding a public session for Tom Cambareri's presentation. Attorney's advised against holding the public session as it will not be helpful at this time.

Executive Session concluded at 2:29 p.m. and meeting returned to Open Session.

The foregoing records have been read and approved.

---

Mary Pat Flynn  
Chair

---

Sheila R. Lyons  
Vice-Chair

---

Leo Cakounes  
Commissioner

*COUNTY COMMISSIONERS*  
*Emergency Meeting Executive Session Minutes*  
*Wednesday, March 2, 2016*

3-2-16  
Emerg. Exec. Session  
ONLY COPY

Commissioner Flynn called to order the meeting at 2:06 pm.

*At the March 2, 2016 emergency meeting of the County Commissioners, Commissioner Flynn made a motion to enter into Executive Session at 2:07 pm under M.G.L., Chapter 30A, Section 21 (a) (2) to conduct strategy with respect to imminent litigation in which the Chair is certifying that an open meeting may have a detrimental effect on the litigating position of the Body and not to convene in open session; 2<sup>nd</sup> by Commissioner Lyons.*

**Roll Call Vote:**

Mary Pat Flynn      Aye  
Sheila R. Lyons      Aye  
Leo Cakounes      Aye

*The motion passed via the roll call vote.*

**Staff Present:**

Mary Pat Flynn      Chair  
Sheila R. Lyons      Vice Chair  
Leo Cakounes      Commissioner  
Jack Yunits, Jr.      County Administrator  
Steve Tebo      Director, Facilities  
Denise Bradford      Administrative Assistant

**Other:**

Robert D. Cox, Jr.      Bowditch & Dewey, LLC Attorneys

**Documents:**

- Agenda for the March 2, 2016 Emergency Executive Session
- Draft Letter by Attorney Cox
- Fire Rescue and Training Academy Usage Charts

The purpose for this emergency meeting was to discuss the draft of the letter due by March 4, 2015 regarding PFOS and the Fire Rescue and Training Academy (FRTA). In discussion with opposing counsel Attorney Cox said he would give that party a letter by the due date so that this issue could move forward and to work with known information and facts.

Regarding the letter he said the he set forth primary legal arguments per the Town's demands. These were, generally, that their argument fell outside the scope of the law in that there was not enough information and that there were other parties responsible for the issues. Aspects of the draft letter were highlighted to indicate to the Board the areas needing clarification.

Per the Deed the County took ownership of the FRTA site in 1983. Prior to 1983 it was in the Cobb Trust. Cobb died in 1983, and the beneficiary of the Cobb Trust was the Town of Barnstable, who then acted as the owner of the property. Therefore, Attorney Cox requested more historical information. The Town transferred the Deed to the County with a value added to it of approximately \$4,000.00. In terms of bringing a claim against the County, there is limited exposure to claims due to the date the County took ownership.

Attorney Cox was still determining the parties who brought PFOS to the property. It appears that local towns brought their own EPT [emergency procedural training] equipment and containers for the liquids. This would then make local fire districts responsible, and the Town of Barnstable would have claims against them as well. He was still determining these facts. The next step was to ask the Town for information, then meet with them and start discussion regarding this information.

Discussion followed regarding the history of training on the property and the practice of determining contamination. In 1986 a 21e [Massachusetts Oil and Hazardous Material Release Prevention and Response Act] and was triggered, which has continued until this day. It was due to a leaking pipe valve. The pipes brought oil stored in tanks to concrete pits. PFOS contamination is an emerging concern, and not regulated. The County had not yet received a notice from any regulatory agency regarding PFOS but, as the current owner of the property, was responsible for addressing issues. It was noted, again, that there were other contributors and there are and were industrial sites next to the Town's well site in the area of the Academy. Attorney Cox confirmed that the draft letter requests documents and that the request was appropriate to further determine the property's history.

Discussion followed on the degree of responsibility of other parties, costs and liability. The Attorney's team was also looking at data on the Town's systems regarding PFOS and dioxane.

Other discussion followed on plans of action for the site such as the possibility of ceasing site activity, water berms and the removal of contaminants; how current water usage was affecting the site; creating an SOP prohibiting PFOS; protocols for water usage and handling contaminants and related record keeping. It was noted by Attorney Cox that there are residual contaminants in the groundwater and that the Town should be notified. Attorney Cox also recommended that the site not be shut down and that the County should make the best use of the property. It was noted by the Board that the Director of the Academy and the County Administrator were working in the direction of these solutions. In addition, local Fire Chiefs were responsive to the Academy as a training site.

Other discussion followed regarding the historical responsibility of the County and local towns. A groundwater flow study and assessment were also discussed, as well as the Town's issue with chlorinated solvents from the Barnstable Airport.

Attorney Cox said he would work on the letter for delivery on Friday (March 4, 2016).

*Barnstable, ss. At 3:15 pm on this second day of March, A.D. 2016 Commissioner Cakounes made a motion to adjourn the meeting; 2<sup>nd</sup> by Commissioner Lyons.*

**Roll Call Vote:**

Mary Pat Flynn      Aye

Sheila R. Lyons      Aye

Leo Cakounes      Aye

*The motion passed via the roll call vote.*

Respectfully Submitted,  
Denise Bradford, Administrative Assistant

Attest:

County Clerk

The foregoing records have been read and approved.

---

Mary Pat Flynn  
Chair

---

Sheila Lyons  
Vice-Chair

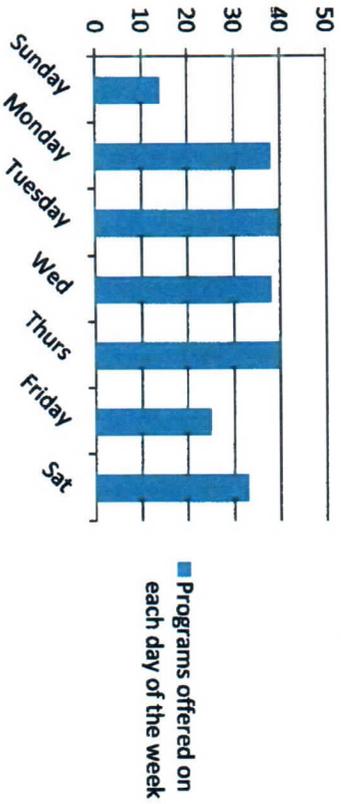
---

Leo Cakounes  
Commissioner

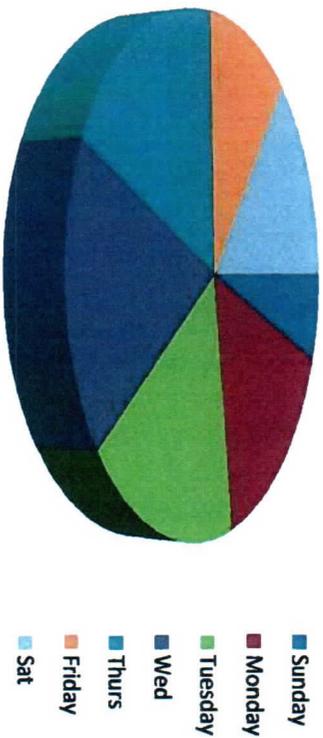
Programs offered on each day of

|        |        |         |     |       |        |     |
|--------|--------|---------|-----|-------|--------|-----|
| Sunday | Monday | Tuesday | Wed | Thurs | Friday | Sat |
| 14     | 38     | 40      | 38  | 40    | 25     | 33  |

### Programs offered on each day of the week



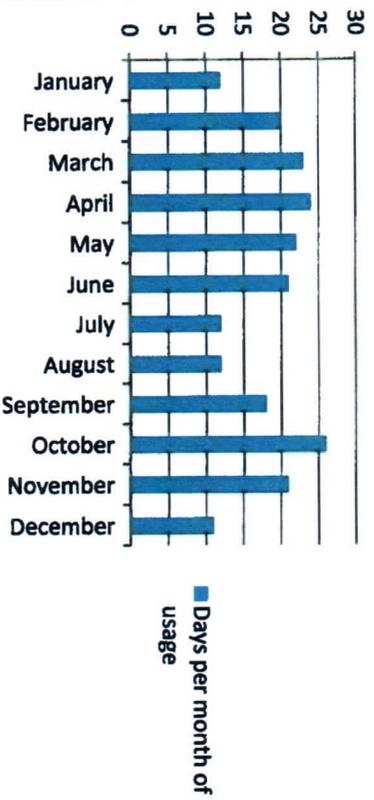
### Programs offered on each day of the week



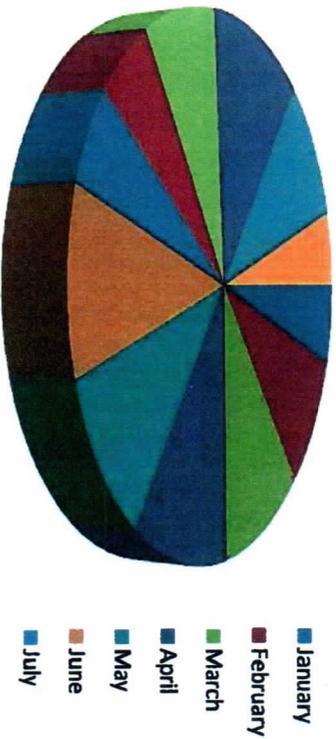
Days per month of usage

|         |          |       |       |     |      |      |        |           |         |          |          |
|---------|----------|-------|-------|-----|------|------|--------|-----------|---------|----------|----------|
| January | February | March | April | May | June | July | August | September | October | November | December |
| 12      | 20       | 23    | 24    | 22  | 21   | 12   | 12     | 18        | 26      | 21       | 11       |

### Days per month of usage

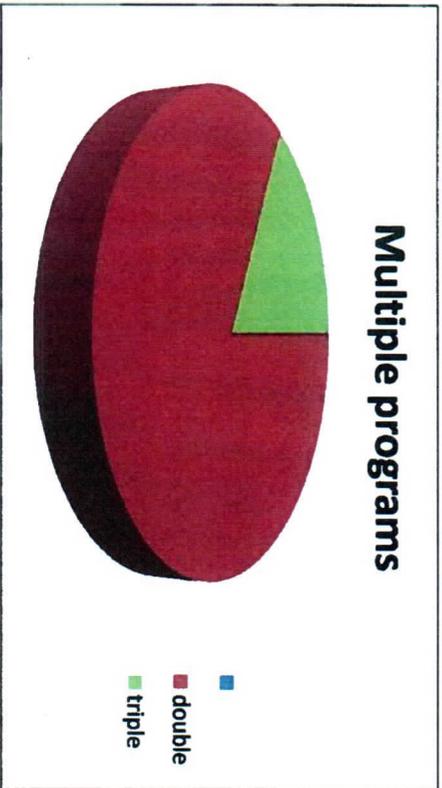


### Days per month of usage



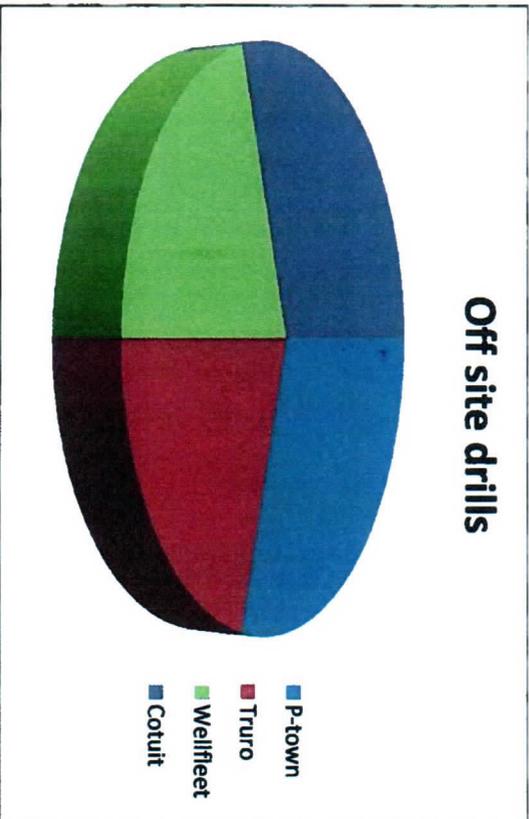
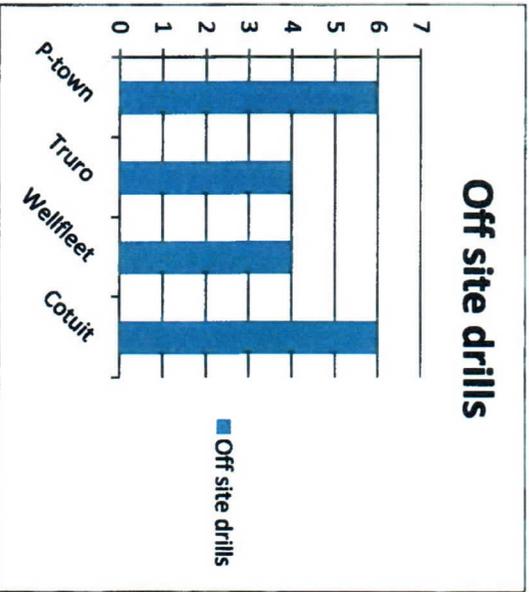
Multiple programs

|  |        |        |
|--|--------|--------|
|  | double | triple |
|  | 43     | 9      |



Off site drills

|        |       |           |        |
|--------|-------|-----------|--------|
| P-town | Truro | Wellfleet | Cotuit |
| 6      | 4     | 4         | 6      |



Used      Not Used  
Total days :    222      143



## Justyna Marczak

---

**From:** Cox, Jr., Robert D. <RCOX@bowditch.com>  
**Sent:** Monday, February 29, 2016 2:42 PM  
**To:** Michael Brillhart; Justyna Marczak; 'Robert Troy (rst@troywallassociates.com)'  
**Cc:** Tom Cambareri; Garner, Jennifer  
**Subject:** Barnstable County Fire Rescue Training Academy - Privileged and Confidential Communication  
**Attachments:** B0582820.DOCX.DOCX

*Privileged and Confidential Communication*

Michael, Justyna and Bob: Attached is a **confidential draft** letter in response to the Town of Barnstable's G. L. c. 21E, Sec. 4A notice letter. The letter is due Friday, March 4, 2016. Would like to have it reviewed by County Commissioners, in confidence, and get their comments. If you think needed, I could meet with the Commissioners to review, in executive secession, on Wednesday, March 2, 2016. Wording highlighted in yellow needs verification. Thank you. Bob

---

**From:** Michael Brillhart [<mailto:mbrillhart@barnstablecounty.org>]  
**Sent:** Monday, February 22, 2016 10:52 AM  
**To:** Cox, Jr., Robert D.  
**Cc:** Justyna Marczak; Robert Troy ([rst@troywallassociates.com](mailto:rst@troywallassociates.com))  
**Subject:** RE: Update - Barnstable County Fire Rescue Training Academy

Bob,

Thank you for your work thus far in preparing a draft response. As an "fyi", I will no longer be available after this Wednesday. The County hired its permanent County Administrator, Jack Yunits. Jack will start on Monday of next week.

Please copy Justyna Marczak, our HR Coordinator, and County Counsel Bob Troy. I will be in the office early next Monday to finalize paperwork and can perhaps discuss this with Jack and Justyna at that time.

It's been a pleasure working with you these past two months. Best of luck in the final outcome on this matter.

Michael Brillhart

This e-mail message is generated from the law firm of Bowditch & Dewey, LLP and contains information that is confidential and may be privileged as an attorney/client communication or as attorney work product. The information is intended to be disclosed solely to the addressee(s). If you are not the intended recipient, be aware that any disclosure, copying, distribution or use of the contents of this email information is prohibited. If you have received this email in error, please notify the sender by return email and delete it from your computer system. For more information about Bowditch & Dewey, please visit our web site at [www.bowditch.com](http://www.bowditch.com)

**DRAFT**  
**ATTORNEY WORK PRODUCT AND**  
**PRIVILEGED CONFIDENTIAL COMMUNICATION**

Robert D. Cox, Jr.  
Direct telephone: 508-926-3409  
Direct facsimile: 508-929-3012  
Email: rcox@bowditch.com

***For Settlement Purposes Only***

March 4, 2016

***Via Email [ruth.weil@town.barnstable.ma.us](mailto:ruth.weil@town.barnstable.ma.us)  
And Certified Mail/Return Receipt Requested***

Ruth Weil, Town Attorney  
Town of Barnstable, Town Hall  
367 Main Street  
Hyannis, MA 02601

***Re: Town of Barnstable – Response to January 21, 2016 Notice  
Under G.L. c. 21E, § 4A to Barnstable County***

Dear Ms. Weil:

This law firm represents Barnstable County (the “County”) in connection with environmental conditions allegedly associated with the Barnstable County Fire Rescue Training Academy (the “Academy”) located at 155 South Flint Rock Road, Hyannis, Barnstable County (the “Property”). The County is in receipt of the Town of Barnstable’s (the “Town”) letter dated January 21, 2016 (“Letter”) purporting to constitute notice of a claim pursuant to G.L. c. 21E, §4A(a). This letter shall constitute the County’s response to the Town’s Letter as required by G.L. c. 21E, §4A(a). This response and the information contained herein is provided to you for settlement purposes only and should not be construed as an admission of responsibility or liability on the part of the County as to any of the allegations or claims made in your Letter.

The Town is not entitled to relief under Section 4A because the Letter fails to (1) articulate with particularity the factual basis from which the County can determine what liability, if any, it may have with respect to the contamination alleged, (2) fairly state the basis for the Town’s proposed allocation of a 100% equitable share for past and future costs to the County, or (3) identify the nature, cost and expected duration of the response actions. Based on the limited

**DRAFT**  
**ATTORNEY WORK PRODUCT AND**  
**PRIVILEGED CONFIDENTIAL COMMUNICATION**

information provided by your Letter and information otherwise currently available to the County, the Town's demand is insufficiently supported and appears to be inconsistent with existing law. Nonetheless, subject to the Town providing the County additional information which would allow the County to fully evaluate the Town's claims, the County is prepared to discuss in good faith a resolution of the Town's legitimate claims.

**ALLEGED BASIS FOR LIABILITY**

In essence, the Town alleges that the County is liable by virtue of its status "as an owner [and] operator . . . on a site from or at which there is or has been a release or a threat of release of oil or hazardous material" and as "any person who otherwise caused or is legally responsible for a release or threat of release . . . from a site . . . liable without regard to fault, for damages to real or personal property incurred or suffered as a result of such release or threat of release." See Letter, pp. 4-5; see also G.L. c. 21E, §5(a)(1), (5).

The Letter falls short of providing sufficient facts to establish liability. While it is true that the County is the current owner of the Property, it has not owned the Property for the entire time the Academy has existed. The Academy was founded in the 1950's by the collective fire departments of Cape Cod [and was previously operated by five towns, one of which was the Town of Barnstable]. The County took ownership of the Property in or around 1983. Your Letter provides no information in support of the purported claim that the County owned and operated the Property at the time of the release or threat of release in question, or suggesting that the County caused or contributed to the release or threat of release for which the Town claims it has incurred response action costs.<sup>1</sup>

As to the County's liability under G.L. c. 21E, §5(a)(5), it is well-established that in order for liability to be imposed, the Town must prove that the County caused a release and that the release caused the contamination. Marengi v. Mobil Oil Corp., 420 Mass. 371, 374 (1995); Griffith v. New England Telephone and Telegraph Co., 420 Mass. 365, 369-370 (1995) ("there must be some showing that the defendant's conduct caused the contamination"). The Letter fails to offer any facts that establish either that the release was caused by the County or that the

---

<sup>1</sup> While the Town claims that a PFOS-containing substance was found at the Property on October 27, 2015, this discovery was made nearly six months after the Town began its alleged response actions, and thus could not have triggered those actions. The Town points to no other documented releases of PFOS-containing foam on the Property. See Providence and Worcester Railroad Company v. Chevron USA, Inc., 416 Mass. 319, 320 (1993) (claiming party must demonstrate that the release caused the contamination and the contamination caused the response actions).

**DRAFT**  
**ATTORNEY WORK PRODUCT AND**  
**PRIVILEGED CONFIDENTIAL COMMUNICATION**

County's conduct caused the contamination at issue. Therefore, the Town's reliance on Section 5(a)(5) to claim the County's liability is inappropriate.<sup>2</sup>

Even assuming that PFOS-containing foam was used by the Academy, the County's liability under G.L. c. 21E is tenuous, at best. PFOS is not categorized as a hazardous material in the Massachusetts Contingency Plan, 310 CMR 40.0000 *et seq.* ("MCP"). The Massachusetts Oil and Hazardous Materials List (MOHML), at Subpart P of the MCP, nowhere lists PFOS as a hazardous material. As the Town acknowledges in its Letter, PFOS has been identified by the EPA as an "emerging contaminant." According to EPA's March 2014 *Emerging Contaminants Fact Sheet –PFOS and PFOA*, referenced in the Town's Letter, PFOS is "included on the third drinking water contaminant candidate list, which is a list of unregulated contaminants that are known to, or anticipated to, occur in public water systems and may require regulation under the Safe Drinking Water Act (EPA 2009a)." (emphasis supplied). Neither EPA nor MassDEP has set a drinking water standard for PFOS.

Additionally, PFOS is omnipresent in the world's environment. It is ubiquitous in low levels in ground water. Indeed, the Silent Spring report noted that it was fairly common, and was found in many of the sites tested throughout Cape Cod. According to the EPA, PFOS has even been detected in the Arctic region and is found in human and wildlife tissues worldwide. Despite its widespread presence, the health effects of this substance are unknown. MassDEP's ORS Risk Assessment dated May 8, 2015 states that "risks from the worst case exposure scenario are low, adverse health effects from the use of the system's water to date are unlikely." Under these facts, the County's liability under G.L. c. 21E is far from certain and under no circumstances reasonably clear.

To the extent County has any liability under G.L. c. 21E, it is only liable for those costs attributable to a release at or from the Academy. See, G.L. c. 21E, §5(b), paragraph 1. There are other sources of PFOS and Class B firefighting foam in the vicinity of the Property, including, Barnstable Municipal Airport, which is owned and operated by the Town. PFOS is found in aircraft hydraulic fluids and PFOS-containing foam is widely used at airports. Indeed, the Barnstable Municipal Airport uses Class B Foam for its aircraft firefighting program and there is evidence that it has conducted training with Class B Foam at the airport. The Silent Spring Report, which the Town cites to in its Letter, states that "the Barnstable Municipal Airport may

---

<sup>2</sup> To the extent the Town suggests that the County is legally responsible for the contamination under Section 5(a)(5), the Letter provides no information that would give rise to the County's legal responsibility. The term "legal responsibility" as used in Section 5(a)(5) relates to a party's contractual obligation to prevent or correct releases. Griffith, 420 Mass. at 367-68; Marengi, 420 Mass. at 373-74. Nothing in the Letter suggests that this sort of "legal responsibility" was or should be imposed on the County.

**DRAFT**  
**ATTORNEY WORK PRODUCT AND**  
**PRIVILEGED CONFIDENTIAL COMMUNICATION**

be a source of two perfluorinated chemicals, [PFOS and PFOA],” and that the highest concentration of those chemicals were in two wells and a distribution system “known to be contaminated by a plume of petroleum hydrocarbons and volatile organic compounds from the Barnstable Municipal Airport.” (emphasis supplied).

The Letter also fails to provide any information, and we are not aware of any, indicating that the so-called “third-party defense” at Section 5(c)(3) would not be available to the County for the alleged releases. The provision provides, in pertinent part, that “. . . there shall be no liability under paragraph (a) for a person otherwise liable who can establish by a preponderance of the evidence, (A) that the release or threat of release of oil and hazardous material and the damages resulting therefrom were caused by (3) an act or omission of a third party other than the employee or agent of the person, or than one whose act or omission occurs in connection with a contractual relationship existing directly or indirectly, with the person, . . . if the person establishes by a preponderance of the evidence that he exercised due care with respect to the oil or hazardous material, that he took precautions against foreseeable acts or omissions of any third party and the consequences that could foreseeably result from such acts or omissions, and that he complied with all notification requirements of section seven.”

The facts alleged and known to the County demonstrate that this affirmative defense is available to the County and the County asserts it. **The on-site use and release of PFOS and Class B firefighting foam were caused by acts of third parties and/or predecessor owners or operators of the Property.** Fire departments and private industry entities have used the Academy’s facilities for training for nearly seventy years. One of the benefits of training at the Academy is the use of that specific fire department’s own tools, trucks, and other equipment that the department would actually use when responding to actual emergencies. It is these third parties who caused the release of PFOS containing materials at the Property. Further, PFOS is ubiquitous, and is found in many household cleaning products, breathable all-weather clothing (e.g. Gore-Tex), gaskets, hoses, wax, polishes, stains, varnishes, stain inhibitors, sewer sludge, pesticides, textiles, carpeting, and aviation hydraulic fluid.<sup>3</sup> Consequently, as to releases of PFOS containing material at the Property, those releases and any damages resulting therefrom were caused by parties other than the Academy. G.L. c. 21E, §5(c)(3) serves as a bar to any claims by the Town against the County for its claimed response action costs.

Moreover, PFOS was identified in other wells used by the Town that are not downgradient from the Property. Despite the Town’s allegation that the County is solely responsible for the alleged release, it is abundantly clear that there are other sources of PFOS

---

<sup>3</sup> This list is not exhaustive. See also, <https://assets.documentcloud.org/documents/2685393/Barnstable-County-Fire-Academy-Report.pdf>

**DRAFT**  
**ATTORNEY WORK PRODUCT AND**  
**PRIVILEGED CONFIDENTIAL COMMUNICATION**

contamination that are likely to have impacted the Town's Water Supply and Town Property. Responsibility for the acts and/or omissions of these third-party actors who are responsible for such releases should not be borne by the County.

Finally, the County has reason to believe that the Town's claims would be barred by operation of G.L. c. 21E, §5(b)(2), which provides that "no person who is liable solely pursuant to clause (1) of paragraph (a) and who did not own or operate the site at the time of the release or threat of release in question and did not cause or contribute to such release or threat of release shall be liable to any person who is liable pursuant to clauses (2), (3), (4), or (5) of said paragraph, except that any such person liable solely pursuant to clause (1) of paragraph (a) shall be liable to the commonwealth as set forth in paragraph (d)." As noted above, there are other sources of PFOS contamination in the vicinity of the Property, including, Barnstable Municipal Airport, which is owned and operated by the Town. **And to the extent that the Town was a prior operator of Property, is has potential liability under G.L. c. 21E, §5(a)(2),(3), (4), or (5).** Consequently, the County has reason to believe the Town's claims would be barred by G.L. c. 21E, §5(b)(2).

**ALLEGED DAMAGES**

The Town has inadequately specified the nature, cost, and duration of its response actions as required by G.L. c. 21E, §4A. G.L. c. 21E, §4 provides only for the recovery of reasonable costs for "necessary and appropriate" response actions undertaken regarding a release or threatened release. The Letter provides no facts suggesting that the Town's actions were reasonable, necessary, or appropriate. In order to obtain reimbursement for response costs incurred, the Town bears the burden of demonstrating that such costs are "reasonable" and that they derived from "necessary and appropriate response action[s]" which were causally related to releases by the County. Mystic Landing, LLC v. Pharmacia Corp., 443 F. Supp. 2d 97, 107 (D. Mass. 2006) citing John Beaudette, Inc. v. J.P. Noonan Transp., Inc., 419 Mass. 311 (1995).

The Town's Letter summarily states that it incurred \$772,497 as a result of its "proactive steps to evaluate and develop a treatment system to bring the Mary Dunn Wells back into service." None of this work was done pursuant to the MCP. The Town has performed no MCP response actions. Indeed, the Town's Letter, at page 2, describes the County's response actions. The County that has been, and will continue to perform, necessary and appropriate response actions related to contamination in soil and groundwater under RTN-4-190.

The Town further claims that the treatment system costs approximately \$298,500 annually to operate, exclusive of regular expenditures for repairs and maintenance. The Town offers no explanation as to how and why it arrived at the conclusion that this was the most

**DRAFT**  
**ATTORNEY WORK PRODUCT AND**  
**PRIVILEGED CONFIDENTIAL COMMUNICATION**

reasonable and appropriate course of action. The Town has known about the PFOS contamination since the Silent Spring Report was issued in May 2010. Notwithstanding that fact, the Town waited until May of 2015 to approve, on an emergency basis, funding to install the treatment system and implemented it in a matter of weeks. Although the Town's Letter fails to mention the 1,4 dioxane contamination in Town's water system from de-icing fluid used at the Barnstable Municipal Airport, the urgency of implementing a treatment system likely has more to do with seeking a remedy for that release, as 1,4 dioxane is a known carcinogen that is regulated as a hazardous material under the MCP, than seeking a remedy for the PFOS contamination. 1,4 - dioxane, used in aircraft deicing fluid, and chlorinated solvents, have been identified in the Town's water supply. The source of these contaminants is likely the Barnstable Municipal Airport and commercial areas located nearby. As such, none of the claims costs may be deemed "response actions" for which recovery is available under G.L. c. 21E, §4. Even assuming that the Town's actions for which it incurred costs might be deemed "response actions," the Town has provided no evidence suggesting that they were either "necessary" or "appropriate."

Even assuming, arguendo, that the treatment system was both necessary and appropriate response actions for remediation of PFOS contamination, the costs incurred were not reasonable. Certainly, had the treatment system been planned and installed in a more reasonable timeframe, as opposed to a matter of weeks, the cost would have been far less. The Town's "manufactured emergency" needlessly denied the County an opportunity to be involved in the decision-making process as to the most appropriate course of action and is vastly out of proportion to the perceived threat posed to the community by the alleged release.

Without any factual basis for determining whether the Town has incurred necessary and appropriate response action costs, it is impossible for the County to make any kind of assessment on the accuracy or appropriateness of the Town's claims. This deficiency not is only at odds with the plain language of §4A, but also frustrates the spirit of §4A which is designed to encourage settlement of c. 21E cost recovery disputes to avoid litigation. As a result of the Town's failure to satisfy the statutory requirement to provide the County with detailed information regarding the nature, cost, expected duration of its anticipated response actions, or proof of incurring necessary response action costs, the County is precluded from providing any meaningful response to the Town's claimed damages.

Furthermore, given that the facts available to the Town show that the County is not solely responsible for the release of PFOS containing materials, the Town must bear, in part, some responsibility for contamination as result of its prior participation in activities at the Property and/or as owner and operator of Barnstable Municipal Airport - an identified source of PFOS

**DRAFT**  
**ATTORNEY WORK PRODUCT AND**  
**PRIVILEGED CONFIDENTIAL COMMUNICATION**

contamination. As a result, the Town's claim that the County must bear 100% of the equitable share of past and future response costs is misplaced.

Section 4A(a) is specific; it requires a notifying party to "state said person's proposed contribution, reimbursement, or equitable share of such liability pursuant to this section and rationale for such proposal." Even assuming that the County has some liability to the Town, which the County denies, the Town, by virtue of its ownership and operation of the Barnstable Municipal Airport and the Town's sewage system, [and its role in operating the Academy prior to 1983], is also a responsible party. There are also other responsible parties, including, but not limited to, area fire departments and household and industrial users.

Under these facts, the Town's claim is limited to one of contribution and the County should only bear a share of the costs incurred in proportion to its respective liability. Martignetti v. Haigh-Farr Inc., 425 Mass. 294, 313 (1997).

In light of the Town's role in contamination by virtue of its prior involvement with the Academy, its ownership and operation of the Barnstable Municipal Airport, and other third party household and industrial sources, the Town's position that the County bear 100% of the response action costs is unreasonable.<sup>4</sup>

As to the Town's specific requests, at page 6 of the Letter, the County provides the following. Each request of the Town is reproduced below, followed by the County's response:

1. Town's Request: "Expediently undertake any and all actions necessary to fully remediate the PFOS contamination on and emanating from the County Property in accordance with MADEP requirements and directives and all other applicable law at the County's sole cost and expense."

County's Response: The County is, and has been, performing all necessary and appropriate response actions in connection with contaminated soil and groundwater at or from the Property in accordance with the MCP. The County will continue to perform MCP response actions so as to achieve and maintain a Permanent Solution.

2. Town's Request: "Reimburse the Town for all of its response costs described incurred to date."

---

<sup>4</sup> The Town is further barred from seeking reimbursement of attorney's fees, as "[o]nly a party which has not contributed to, or caused, the release of hazardous materials necessitating its response actions . . . may be awarded attorney's fees and costs under §15." Martignetti v. Haigh-Farr Inc., 425 Mass. 294, 321, 680 N.E.2d 1131, 1148 (1997).

**DRAFT**  
**ATTORNEY WORK PRODUCT AND**  
**PRIVILEGED CONFIDENTIAL COMMUNICATION**

County's Response: As described above, the Town has not performed any MCP response actions that may be subject to reimbursement under G.L. c. 21E, Sec. 4. Nonetheless, the County prepared to discuss in good faith a resolution of the Town's claim for costs.

3. Town's Request: "Agree to reimburse the Town for any response costs it incurs in the future in connection with the PFOS contamination and from the FTA."

County's Response: As noted above, the Town has not performed any MCP response actions that may be subject to reimbursement under G.L. c. 21E, Sec. 4. G.L. c. 21E, Sec. 4 provides only for the reimbursement of reasonable response action costs, after they have been incurred, provided they are necessary and appropriate. The County is not prepared to commit to pay unknown future costs.

4. Town's Request: "Reimburse the Town for its costs to ensure the Town's drinking water supply is protected from further PFOS contamination and from the FTA."

County's Response: Such unspecified costs to "ensure the Town's drinking water supply is protected" are not recoverable under G.L. c. 21E, Sec. 4.

5. Town's Request: "Defend, indemnify and hold harmless and the Town against any claims by any person or governmental entity, including DEP, regarding the PFOS contamination."

County's Response: The Town's request to "defend, indemnify and hold harmless the Town" is not a legal remedy available to the Town under Chapter 21E or otherwise. Even if the Town, after trial, were successful on all its claims against the County, the Town would not be entitled to any such award or order.

6. Town's Request: Provide, within 10 days under the Public Records Law, G.L. c. 66, Sec. 10, certain documents.

County's Response: While disputing that such documents may be requested in conjunction with a Section 4A notice letter, the County nonetheless timely provided a response and the requested documents to the Town.

7. Town's Request: "Permanently discontinue use of the FTA for fire training purposes and shall limit the use of the FTA solely to administrative and office-type applications only and further prohibit the use or storage of any chemicals, paint, or other products that would, or might, pose a danger to the environment, ground water, or wellheads."

**DRAFT**  
**ATTORNEY WORK PRODUCT AND**  
**PRIVILEGED CONFIDENTIAL COMMUNICATION**

County's Response: The Town's request is not a legal remedy available to the Town under Chapter 21E or otherwise. Even if the Town, after trial, were successful on all its claims against the County under G.L. c. 21E, the Town would not be entitled to any such award or order.

For the reasons set forth above, the County must decline the Town's demand that the County reimburse and indemnify the Town and bear sole cost for any further remedial actions. Nonetheless, in an effort to resolve this matter, the County is willing to discuss in good faith the resolution of the Town's legitimate claims for response action costs, upon receipt of additional information that would allow the County to fully evaluate the Town's claims.

Pursuant to c. 21E, §4A(a)(b), the County requests that the Town provide the following information and documents:

- All documents and information reflecting the Town's use of the Property from the 1950s to date;
- All documents and information supporting the Town's claim that releases of hazardous material occurred at the Property during the time that the County owned and operated the Property;
- All documents and information relating to evidence of releases of PFOS containing material at the Property;
- All documents and information relating to PFOS containing material used, spilled, released or otherwise disposed of at the Barnstable Municipal Airport;
- All documents and information relating to the installation, operating conditions, pumping, and testing data relating to the treatment system installed at the Mary Dunn Wells;
- All documents and information relating or concerning the Town's decision to install a treatment system at the Mary Dunn Wells;
- All documents and information regarding PFOS containing material releases within a half-mile of the Mary Dunn Wells;
- All documents or information reflecting communications with MassDEP regarding the installation of the treatment system at the Mary Dunn Wells.

Ruth Weil, Town Attorney  
March 4, 2016  
Page 10

***DRAFT  
ATTORNEY WORK PRODUCT AND  
PRIVILEGED CONFIDENTIAL COMMUNICATION***

In addition, in order to fully evaluate the Town's claim, we would request full access to the Mary Dunn Well treatment facility for inspection and assessment and of all component parts.

As set forth above, the County disputes its liability and responsibility for the costs and relief the Town seeks under §§4 and 4A. Nonetheless, the County is eager to achieve a prompt resolution to the Town's claims and is prepared to engage in good faith discussions to resolve all of the Town's claims. The County assumes that the Town has a similar interest and will provide the documents and information requested and then, through confidential settlement negotiations, seek prompt resolution.

I look forward to hearing from you.

Very truly yours,

Robert D. Cox, Jr.  
Attorney for Barnstable County

RDCJR:jb  
cc: John Yunits, Jr., County Administrator

Barnstable, ss.

COUNTY COMMISSIONERS  
Executive Session Minutes  
Wednesday, February 12, 2015

Send to Council!  
HOLD

At the February 12, 2016 regular meeting of the County Commissioners, Commissioner Flynn made a motion to enter into Executive Session at 10:20 a.m. under M.G.L., Chapter 30A, Section 21 (a) (1) to discuss to Conduct Contract negotiations with Non-union Personnel Specific to the County Administrator Position, and to reconvene in Open Session, 2<sup>nd</sup> by Commissioner Cakounes, approved vote 3-0-0.

**Roll Call Vote:**

Sheila R. Lyons: Aye  
Mary Pat Flynn: Aye  
Leo Cakounes: Aye

**Staff Present:**

Justyna Marczak Human Resources  
Denise Bradford Administrative Assistant, County Commissioners

**Executive Session Discussion**

Commissioner Flynn said that Mr. John Yunits, Jr. had seen the Employment Contract and agreed to it. Mr. Yunits and County Counsel would be coming at 1:00 pm today to the County offices to execute the Contract. It was noted as well that the contract was fairly standard with a few minor edits. The Charter was referenced. At 180 days before end of the Employment Contract the Board must inform the County Administrator if the board will extend the Agreement.

Commissioner Flynn noted that item four [of the contract] asks for review of the strategic plan. If the County Administrator and the employees work together and agree on a strategic plan, the evaluation of the County Administrator would be based on those accomplishments. Commissioner Cakounes asked for simple guidelines on a page to use for the evaluation.

Commissioner Lyons said that evaluation had been lacking across the board for all department heads and programs. Ms. Marczak said that the Board should be evaluating department heads, and in the past three years the County Administrator did the evaluations following an older process. Commissioner Flynn requested an organizational chart to assist with evaluations and for the new County Administrator to start a workshop on this subject. Commissioner Lyons asked that an evaluation process be integrated within an overall assessment of the County, its grant programs and development of its mission.

*Commissioner Cakounes motioned to approve and execute the substantive terms and condition of the Employment Agreement between The Board of Commissioners of the Cape Cod Regional Government known as Barnstable County and John T. Yunits, Jr. pursuant to the action taken by the County Commissioners on*

*February 2, 2016 in appointing John T. Yunits as the County Administrator; Commissioner Lyons, 2nd. The motion passed, 3-0-0.*

Commissioner Flynn noted that the Contract has to be voted in open session as well.

Ms. Marczak was instructed to prepare three originals of the Contract for the Board to sign.

*Commissioner Cakounes made the motion at 10:30 a.m. to adjourn the Executive Session and return to Open Session. Commissioner Lyons, 2<sup>nd</sup>. The motion was unanimous at 3-0-0.*

Respectfully Submitted  
Denise Bradford, Administrative Assistant

Attest:

County Clerk

  
Mary Pat Flynn  
Chair

\_\_\_\_\_  
Sheila R. Lyons  
Vice Chair

\_\_\_\_\_  
Leo Cakounes  
Commissioner



The Town's letter states what the issues are and what they want. The County has a 45 days to respond (until March 4, 2016). It should lead to a good faith conference to let parties to work things out. The County, as the party being requested/blamed for the dispute gets to ask questions. Mediation may be offered. It will be in complete confidence and if the issue could be resolved in complete confidentiality, the mechanism that ensures that parties carry this out is a fee shifting mechanism. This means that if the other party doesn't bring their part in good faith or if the County does not respond in good faith, the noncompliant party would be required to pay attorney fees to the responsive party.

Mr. Cox then discussed claims. The question to ask in this litigation is: "are we liable? What are the damages?" This type of case involves: mediation/arbitrators, shifting of attorney fees and expert witness fees, causation or cost regarding the release or the threat of a release of waste. The Ch. 21E Statute is very specific as to reimbursement and fees. If the County is held liable, e.g., it would be responsible for future costs. The responsible parties are set by the statute; these are: the owner, operator, generator and transporters of waste generating sites or the person or people who otherwise caused or are legally responsible for a [waste] release. The County qualifies as an owner/operator of a property from which there has been a release.

Discussed next was how does the opposing party demonstrate that the contaminants have migrated to another property? If prevent further damage is prevented, does this allow for recovery? Who caused it the damage? Did the County purchase barrels of waste (he did not think so)? The people who actually brought the waste items to the site are also responsible. In environmental cases there is strict liability. The costs are often shared between the parties such as the owner/operator and the person who generated the waste. What does the County want to do about these parties?

Regarding the damage side of the issue:

- Does the County have the necessary and appropriate response action?
- Is its response actions appropriate under Ch.21E? For example, if the County were cleaning its property and sharing the costs with another party, is the County is taking appropriate and necessary response action?
- What has the Town done? Attorney Cox said he was not sure if the Town's response actions were necessary and appropriate. For example, the Town's May 5 action regarding the ¾ million, does it fit with necessary and appropriate?

Attorney Cox said there were two more points to raise with the Board. The first was public negotiation of settlement. The section 4a clause is geared to having confidential settlement negotiations before going to court (or not going to court). The Town decided to go public and release a proposed settlement agreement and put the demand letter out to the press the same day the County received it. His view is the County could take the same sort of tactic and posture in the public and note that the Towns' claims are not as clear cut and that there are another 40-50 parties who brought contaminants to the site. However, Attorney Cox also said that such a stance would not help the County and Town to come to a resolution.

He recommended that the Board talk to the Town and ask them to stop the posturing and to go through Section 4a. Resolve the issue in confidentiality once all information is gathered in order to understand the Town's basis for a claim. Attorney Cox then asked for direction from the Board.

Commissioner Cakounes noted that this was the first time anyone on the Board has discussed this matter with Counsel. There was a previous letter [from the Town]. That letter noted that on October 27 the County was still using the foam (PFOS), but Leo said the County has not used PFOS since 2009. The Town's letter asserts that PFOS are clearly hazardous materials. Leo wasn't sure of the status of the materials. Attorney Cox said he suspects that the PFOS would be defined as a hazardous material under section 21E.

Other items discussed with Attorney Cox:

- The county should not be responsible for 1.4 Dioxane. The Town's letter said that they do not use the Fire and Rescue Training Academy, but the Commissioners said that some of the Barnstable Fire Districts do use the academy. Mr. Tucker said that the Fire districts are separate governing agencies within the Town and are separate from the Town government. They raise their own taxes to support operations. Attorney Cox said this qualifies as another party.
- The County does not have a fire suppression team. Anyone using the quality as other parties who contributed to the waste on the site.
- The products in the foam that are considered hazardous are in hundreds of other items and returns back to the causation issue.
- It was suggested by the Commissioners that to look at class action suits at the companies who sold the foam. Also, if there is going to be litigation and/or the County gives the Town reimbursement, any mechanical devices become the property of the County, such as canisters being used for filtration on the wells.
- Allow the county to continue to do cleanup.
- Promote a better relationship with the Town instead of an adversarial one.
- It was suggested that closing the Academy should not be supported. A Board of Overseers was suggested as well.
- It was noted that all fire groups have PFOS and that the substance is universal in the environment. 3M was the biggest manufacturer of the foam but stopped production in 2001. The product is still in apparatuses in areas throughout the county and have not yet expired. In fact, the Academy's well has PFOS, even when pumped vigorously and may be spreading contaminants. The Town is pumping Mary Dunne well #3 very strongly which may be bringing in contaminants from in the area.
- If the Academy were closed down, would it end the county's reimbursement? Attorney Cox said that business should not be shut down and to utilize a [site] management protocol.

In conclusion, Commissioner Flynn asked for the discussion to move on to the next step. Attorney Cox felt this matter could lead to litigation. He suggested that he call Town counsel and ask them to not speak to the press. Commissioner Flynn asked that the Board members keep this very confidential.

Commissioner Cakounes was not sure of the proposed litigation strategy. Commissioner Flynn said that ~~some of what the Board is seeing/hearing is not true~~, and the County would have to counteract all that is going on that is ~~inaccurate/untrue~~. She does not want the public involved in the Board's discussion. Attorney Cox said that issue was not a typical litigation matter. It's a public health matter, and there are gray areas. He felt that a public forum will cause more tension and take up more of the Board's time.

*recurrently*

~~Two questions.~~ From the lawyer. In terms of engaging the town, Attorney Cox said he would undertake this action. The next was to have a formal written response which the Board could factually respond to instead.

*dep*  
*to come*  
*would be to draft a*

*Commissioner Cakounes made the motion at 1:16 p.m. to adjourn the Executive Session and return to Open Session. Commissioner Lyons, 2<sup>nd</sup>. The motion was unanimous at 3-0-0.*

Respectfully Submitted,  
Denise Bradford, Administrative Assistant

Attest:

County Clerk  
The foregoing records have been read and approved.

\_\_\_\_\_  
Mary Pat Flynn  
Chair

\_\_\_\_\_  
Sheila Lyons  
Vice-Chair

\_\_\_\_\_  
Leo Cakounes  
Commissioner