



PO BOX 1447, OAK BLUFFS, MASSACHUSETTS, 02557, 508-693-3453
FAX 508-693-7894 INFO@MVCOMMISSION.ORG WWW.MVCOMMISSION.ORG

**Minutes of the Commission Meeting
Held on March 27, 2014
In the Stone Building
33 New York Avenue, Oak Bluffs, MA**

IN ATTENDANCE

Commissioners: (P= Present; A= Appointed; E= Elected)

- | | |
|------------------------------------|---------------------------------|
| P Tripp Barnes (E-Tisbury) | P Joan Malkin (A-Chilmark) |
| P John Breckenridge (E-Oak Bluffs) | - W. Karl McLaurin (A-Governor) |
| P Christina Brown (E-Edgartown) | P K. Newman (A-Aquinnah) |
| - Madeline Fisher (E-Edgartown) | - Ned Orleans (A-Tisbury) |
| - Josh Goldstein (E-Tisbury) | P Doug Sederholm (E-Chilmark) |
| - Erik Hammarlund (E-West Tisbury) | P Linda Sibley (E-West Tisbury) |
| P Fred Hancock (A-Oak Bluffs) | P Brian Smith (A-West Tisbury) |
| - Leonard Jason (A-County) | P James Vercruysse (A-Aquinnah) |
| P James Joyce (A-Edgartown) | |

Staff: Mark London (Executive Director), Bill Veno (Senior Planner), Jo-Ann Taylor (Coastal Planner), Sheri Caseau (Water Resource Planner)

Chairman Fred Hancock called the meeting to order at 7:05 p.m.

1. MINUTES

Commissioners Present: T. Barnes, J. Breckenridge, C. Brown, F. Hancock, J. Joyce, J. Malkin, K. Newman, L. Sibley, B. Smith, J. Vercruysse.

James Joyce moved and it was duly seconded to approve the minutes of March 6, 2014 as written. In favor: 9. Opposed: 0. Abstentions: 1. The motion passed.

2. NEW BUSINESS

Commissioners Present: T. Barnes, J. Breckenridge, C. Brown, F. Hancock, J. Joyce, J. Malkin, K. Newman, L. Sibley, B. Smith, J. Vercruysse.

2.1 PED and Scenic Roads

Fred Hancock noted that PED has been talking about the scenic roads and thought it would be a good idea to create a Scenic Road Committee. The committee will work with town appointees on a number of initiatives to protect and restore our scenic roads, including talking with NSTAR about their future planning. If any Commissioners would like to serve on the committee, please let him know.

There was a discussion about the committee members and how the committee will work.

- **Katherine Newman** asked if there is a time limit for serving on the committee.
- **Joan Malkin** thought the next town representative for the Commission could take over on the committee.
- **Fred Hancock** said since it is not a standing committee the members would have to be reappointed yearly.
- **Brian Smith** asked if the committee falls under PED so in the absence of whoever is appointed PED could step in with NSTAR.
- **Fred Hancock** said it would not be a subcommittee of PED but under the auspices of the MVC.
- **Katherine Newman** asked if PED will continue with scenic roads until the committee is formed.
- **Christina Brown** confirmed that PED would continue.

2.2 Delivery

James Joyce asked whether the MVC would have jurisdiction over deliveries being made by drones, such as is being talked about by Amazon.

Linda Sibley thought that would be years away and the FAA would have to approve.

Christina Brown noted there is an assumption in Edgartown that the delivery of food such as pizza is not allowed under town bylaws.

Doug Sederholm joined the meeting.

3. FERTILIZER REGULATIONS DCPC

Commissioners Present: T. Barnes, J. Breckenridge, C. Brown, F. Hancock, J. Joyce, J. Malkin, K. Newman, D. Sederholm, L. Sibley, B. Smith, J. Vercruysse.

Fred Hancock, Public Hearing Officer, opened the Public Hearing at 7:15 p.m. and read the public hearing notice. The Public Hearing is to consider designation of the proposed Lawn Fertilizer Control District under consideration since the MVC accepted the nomination on February 20, 2014 and to hear evidence as to whether the Commission should find that regulations proposed to govern the District conform to the Commission's Goals and Guidelines for the District. The area under consideration is the six towns comprising the entirety of the Island of Martha's Vineyard, except for the Indian Common Lands, generally known as the Clay Cliffs, the Cranberry Bogs and the Herring Creek and the Settlement Lands and excluding Nomans Land Island.

3.1 Staff Report

Bill Veno presented the following background information.

- In 2012, the Commonwealth decided to develop statewide regulations for fertilizer. Cape and Island towns were allowed to adopt more restrictive regulations than the state, but the local regulations have to be created via the authority of the regional planning agency, i.e., districts of critical planning concern.
- Nitrogen in excess negatively impacts water quality. Without adequate regulation to limit nitrogen input, the towns may be forced rely more upon expensive infrastructure such as new sewer systems or expansion of sewer systems.

- After the MVC advised towns of the new law and the window of opportunity to adopt local regulations, the Boards of Health stepped up and a working group was created to come up with draft regulations.
- UMASS Amherst Extension Service was contacted and Mary Owen was a great help.
- There was a joint public meeting of the Boards of Health in January and draft regulations were revised based on the input that was received.

Jo-Ann Taylor presented the following about the DCPC process.

- The Commission is hearing two DCPC items.
 - To determine whether the Commission should make the designation and, if so, to adopt goals and guidelines.
 - To hear if proposed regulations to govern the District are in conformance with the designation.
- Following the hearing the votes will be done separately: the designation and the conformance of the regulations.
- In order to best help the towns to make the designation and the regulations work, it is best to vote prior to the town meetings, which start on April 8, 2014.
- Three MVC Commissioners were part of the working group, namely John Breckenridge, Joan Malkin, and Linda Sibley.
- The area of consideration includes the six towns except for the Indian Common Lands, the Settlement Lands, and Nomans Land Island.
- In making the designation, the Commission is guided by Section 8 Chapter 831 of the Acts of 1977 as amended (“the Act”) and by its Critical Planning District Qualifications. There must be a regional need for special regulations or planning to protect the district from damage or losses to more than one town by inappropriate development.
- The nominations appear to adequately address the designation for designation. The nominations were made or supported by all the Vineyard towns, expressing widespread concern for this need, namely that without regulations the towns would be relying on what the state develops and that any way that nitrogen can be reduced is a plus for the towns.
- The district is to consist of the land and water that reasonably belongs in the district for the following three reasons:
 - It is the critical area or critical resource which is in need of protection.
 - It is the logical planning area that should be considered in adopting a coordinated system of regulations to protect the critical resource or critical area.
 - The dimensions or landmarks which form the boundary of the district are convenient and recognizable.

All the watersheds cross town boundaries. The nominations state “Although fertilizer is not applied directly to the surface waters, the MEP studies document the contribution of excess nitrogen that leaches into the groundwater and migrates to great ponds”. The nominations acknowledge that nitrogen from fertilizer may have little impact in the ocean but nevertheless have asked for a unified designation and regulation for the benefits of standardization. All watersheds are included, even those draining into the sounds or the ocean.

- The specific qualifications define resources that may be considered valid for designation of a DCPC concern. The nomination statements appear to support designation in three specific categories:

- One of these is protection of drinking water. Just as watersheds cross town boundaries, drinking water resources cross town boundaries as well.
- Regulating nitrogen is important for keeping water bodies in the best condition as fishing resources.
- The district contains an important and identifiable wildlife, natural, scientific or ecological resource. All of the Island’s surface waters are recognized as special resources.
- Draft Goals and Guidelines were drafted and presented as a convenience in the event that the Commissioners vote to designate. Such a vote must include Goals and Guidelines.

5.1 Goals

5.1. A. To improve, restore and protect the quality of Martha’s Vineyard’s groundwater and water bodies by:

- Reduction of nitrogen entering Martha’s Vineyard’s groundwater and water bodies by means of an organized system of education, regulation of practice, and enforcement.
- Promoting lawn and turf fertilization practices appropriate to the Island’s climate and environment.
- Adoption of standards that may be more stringent or otherwise differ from those that may be promulgated by the Commonwealth of Massachusetts

5.1. B. To contribute to the towns’ ability to achieve compliance with any water quality standards prescribed by the Commonwealth for controllable nitrogen in water bodies.

5.2 Establishment of Guidelines

The towns shall adopt regulations of the types described in the Act, which conform to these Guidelines, to control development within the Lawn Fertilizer Control District.

5.3 Guidelines

5.3.1 General Standards for Lawn and Non-agricultural Turf

Fertilizer Application: The towns shall adopt regulations addressing the appropriate application of fertilizer for growing lawns and other non-agricultural turf, taking into consideration the need for Martha’s Vineyard to maintain surface water quality primarily through regulating inputs to groundwater.

5.3.1. a Intensity of Fertilizer Application: Regulations shall limit the amount of nitrogen, by setting standards for concentration and

frequency of application, and may limit the amount of other nutrients that may be applied to lawns and other non-agricultural turf. Such limits may be tailored to various situations.

5.3.1. b Timing of Fertilizer Application: Regulations shall stipulate time periods when fertilizers should or should not be applied, based on optimizing plant utilization of the fertilizer and preventing migration of the fertilizer to areas not intended to be fertilized. Short-term time periods may also be defined with regard to episodic circumstances such as the imminent passing of a heavy rainstorm.

5.3.1. c Considerations for Siting: Regulations shall include specialized standards for particularly sensitive areas which may include water bodies, wells, and the Buffer Zone defined in the town's Wetland Protection By-Law. Regulations shall address impervious surfaces and ensure that stormwater runoff shall not carry fertilizer to public roads or stormwater collection systems. Regulations may vary for different types of turf, such as sports turf or golf courses.

5.3.1. d Exemptions: Regulations may include exemptions based on the specialized character of particular types of lawn or turf, or based on the proficiency of a person applying fertilizer.

5.3.1. e Adherence to Academic Standards: Regulations should be consistent with the requirements and guidance contained in the UMass Best Management Practices for Soil & Nutrient Management in Turf Systems published by the University of Massachusetts Amherst Extension Center for Agriculture.

5.3.2 Administration: The towns shall administer these regulations with clearly defined standards and procedures for promoting and certifying proficiency in fertilizer application. Based on that proficiency requirement, it should not be necessary for each individual application of fertilizer to require a permit.

5.3.2. a Education and Assessment: Regulations shall provide for a general program of fertilizer education and establish assessment of proficiency for potential commercial practitioners following completion of the program.

5.3.2. b Authorization to Apply Fertilizer: Regulations shall establish a structured system of accreditation that requires commercial practitioners to achieve sufficient proficiency to apply fertilizer appropriately, and to be so documented by certificate, license or other mechanism. Regulations shall prohibit commercial practitioners from

fertilizer application without the appropriate License, Certificate, or other such authorization from the town.

5.3.2. c Effective Date of Enforcement: In order to accommodate the educational component integral to the effectiveness of this regulation, a town may defer enforcement to a date other than adoption of this regulation but no later than March 1, 2015.

5.4 Complementary Programs across Town Boundaries: Regulations in the towns shall be the same or substantially similar to each other in order to enable coordinated administration and to promote understanding by the public.

(end of draft Goals and Guidelines)

- The Boards of Health have proposed regulations which appear to be in conformance with the Goals and Guidelines. As long as the system adequately trains and permits practitioners to apply fertilizer appropriately, there should be no need for a permit each time fertilizer is applied.
- There may be a need to suspend enforcement of the regulations until an effective training program has been established and produced authenticated graduates. The DCPC takes effect as soon as the MVC finds conformance of the DCPC and the towns vote at town meeting. In order to accommodate the educational component integral to the effectiveness of this regulation, a town may defer enforcement to a date other than adoption of this regulation but no later than March 1, 2015.

3.2 Boards of Health Presentation on Regulations

Michael Loberg, Tisbury Board of Health member, presented the following:

- The regulations governing the Island-wide content and application of lawn fertilizer were drafted by the Island's Boards of Health with assistance from the MVC and the MV Lawn Fertilizer Working Group.
- The MVC put into place the entire process for the regulations to happen.
- For the Fertilizer Working Group, the members were of different geographic and skill set distribution.
- The Fertilizer Working Group did outreach and input was received from Polly Hill Arboretum, Water Alliance members, golf course managers, professional landscapers, retailers, pond associations, town Conservations Commissions, Vineyard Conservation Society, and UMass Extension Turf Program.
- Lawn fertilizers account for 5 to 15% of the controllable nitrogen in Island ponds. The goal of the lawn fertilizer regulations is to reduce the fertilizer portion by one-third and is a low cost response to the Mass Estuaries Program.
- Better management of lawn fertilizers is a chance to improve both Island groundwater and the quality of the Island ponds and protect human health. Opportunities exist to better control the timing, amount, and type of fertilizer application.
- The purpose of the lawn fertilizer regulations is to minimize nitrogen and phosphorus fertilization and to better protect water resources and public health as well as to meet state

and federal nitrogen and phosphorous limits. This will be done by means of regulation, education, licensure, and enforcement.

- People ask if these regulations really can be enforced. Penalties can be set for noncompliance. However, the main way that the regulations can be implemented is by establishing a common Island-wide standard of care, with discussions neighbor to neighbor, landscaper to client, retailer to customer, community association to community, and towns to community via Conservation Commissions, harbor and shellfish management and Boards of Health. The regulations will work if everyone works together.
- There are three standards.
 - General Turf Performance Standards.
 - Standards for Buffer Zones.
 - Standards on Golf Courses.
- The general standard for nitrogen is less than 3.0 lbs./1,000 s.f. annually and less than 0.5 lbs./1,000 s.f. per application.
- The type of fertilizer would be at least 50% slow release form of nitrogen.
- Fertilizer cannot be applied more than every four weeks and would be prohibited from November 14th to April 15th.
- Phosphorus cannot be applied unless a soil test says it is needed.
- There are exceptions to the application standards.
 - Nitrogen: there can be an application of up to 0.75lbs. N /1,000 s.f. until June 1st and again in September.
 - Type of fertilizer: liquid fertilizer at less than 0.1lbs. N/1,000 sf and compost tea are exempted.
 - Phosphorus: organic compost and compost tea are exempted from the soil testing requirement, as is starter fertilizer when applied with seed.
- Each town's Conservation Commission has its own definition for buffer zones and the regulations acknowledge this. Exceptions for the Buffer Zone:
 - If a 25-foot-wide non-turf, fertilizer-free, vegetative strip exists, then nitrogen application is permitted up to 1.0 lb. N/1,000 sf annually in the remainder of the buffer zone.
 - There are no exceptions for phosphorus in the buffer zone.
- Exceptions for golf courses:
 - Buffer zone restrictions do not apply to pre-existing tee boxes and greens.

Matt Poole, Edgartown Health Agent, presented the following.

- The regulations do not address home vegetables and flower gardens, landscape ornamentals, shrubs, trees, bushes, container plants, agriculture, and horticulture.
- The regulation is targeting turf and grass. The state is simultaneously drafting regulations to be enforced by Mass Department of Agriculture and is primarily phosphorus oriented.
- If the state regulation is more stringent than the Island regulation, the state regulation would prevail.
- There is a process for education and assessment, licensure, liability, and enforcement.
- The goal is to make it easy for the landscapers – so there is a program for education, licensure, and administration.
- Education and assessment:
 - Requires the town board of health to:

- Provide education on town lawn fertilizer regulations and on Martha's Vineyard best lawn practices.
- Administer licensure test to landscape professionals to assess efficiency.
- Furnish summary of regulations to the public, landscape professionals and fertilizer retailers.

There was a discussion about employee training.

- **Brian Smith** asked what is considered sufficient employee training and does the employer keep on file how the employees were trained. **Matt Poole** said training would be in house and reinforces the requirements. The details are not yet set. The employer would keep records. He attended the Nantucket certification class to get an insight. The idea is for people to know what they are doing so the training could possibly be an open book test.
- **Brian Smith** asked if there will be a fee for the test. **Matt Poole** said there is a separate fee for the test and it would be patterned after the Serve Safe Program used in the food industry. The Boards of Health are familiar with that program and process. After seeing the Nantucket program, he thought the testing may be made a little easier than initially thought. The idea is not to fail people but to get them educated.
- **Matt Poole** noted that UMass Extension also presented at the Nantucket session and they provide fairly detailed information that maybe hard to assess via a test.

Matt Poole continued:

- To obtain a license:
 - Landscape professional must demonstrate proficiency via a licensure test.
 - A \$100 licensing fee would be allow a landscaper to practice in all participating towns.
 - Licenses are good for three years and thereafter require retest and another \$100 fee.
 - Homeowners will be encouraged to participate in the educational program but it is not required.
 - A licensed individual may have up to eight employees working under his or her license so long as the licensed individual:
 - Provides sufficient employee training and supervision.
 - Maintains a list of the trained employees.
 - Assures that trained employees have a copy of the license in their possession while working.

Fred Hancock asked if the eight employees is a floating number or applies to certain named employees. **Matt Poole** said it would be named employees.

Katherine Newman asked about the compliance on Nantucket. **Matt Poole** said it is their first spring and it appeared to be accepted positively.

Matt Poole continued.

- Penalties would be:
 - Violations within a 36 month period; 1st violation written warning, 2nd violation \$50 fine, and 3rd violation \$300 fine.
 - For habitual offenders, violations would be calculated on a per town basis.

- Property owners may be held liable for violations if they had reasonable knowledge a violation would occur. A landscape employer is liable for violations by his/her employees. Anyone who commits a violation no matter their role may be held liable.

There was a discussion about enforcement.

- **John Breckenridge** asked who would enforce. **Matt Poole** said it would be the Board of Health and how much is being put down falls on the landscaper.
- **Doug Sederholm** questioned violations on a per town basis. **Matt Poole** said there are not reciprocal penalties. It is a town regulation so there is no legal authority in another town. There is not jurisdictional authority outside town lines. **Doug Sederholm** said if someone had fifteen violations previously in one town and then had one violation in another town they would just get a warning as a first violation and that did not seem adequate. **Matt Poole** said that type of situation can be looked out for based on what the Boards of Health know, they know who is who.
- **Trip Barnes** asked if a homeowner walks into Ace Hardware, will the regulations be explained to them and they will not need a license. **Matt Poole** said that the homeowner will not need a license and the retailer will have information and products to meet the regulations.
- **Katherine Newman** asked if the products are more expensive. **Matt Poole** said he has not heard it is an issue. Most east coast states are going in this direction.
- **Steve Anagnos**, from the audience, expressed concern and felt it would be important to have a homeowner licensed in a buffer zone to be sure they know how to apply the fertilizer properly.
- **Amber Hunt**, from the audience, said she finds it commendable that people have taken the time to put this together and thinks there are things to be tweaked like the quantity of nitrogen and felt it would be difficult to do a half pound. Developing our own regulations is a good start and they will be tweaked over the year.

Matt Poole continued:

- The effective date of enforcement is January 1, 2015. No license will be required until the license program is in place but the section 5 standards of the regulations must be complied with.
- As Jo-Ann Taylor noted, perhaps March might be a more appropriate effective date.
- Off-Island applicators will be required to have a Martha's Vineyard license.

Katherine Newman noted it would be great to have an educational piece for the public. So many people come to the Island unaware of what to do.

Fred Fournier asked if you hold a state applicators license can that be used. **Matt Poole** said it cannot, as it is for pesticides and herbicides. The individual would be required to take a test on the Vineyard's regulations. It would be useful that an experienced licensed landscaper also share information at the class for others who are not as qualified.

Matt Poole noted that the Working Group would like to see something uniform adopted in all six towns.

3.3 Public Testimony

Brendan O'Neill, Executive Director Vineyard Conservation Society, said the Society has been working on a new homeowner packet of information and the fertilizer regulations will be a great addition. The Society focuses on protection of coastal ponds and the drinking water supply, and suggests to the public that if they use fertilizer to use slow-release and minimal amounts as well as to plant low-maintenance plants. All of these are small steps to help reduce nitrogen in the Great Ponds. The Vineyard Conservation Society supports the DCPC nomination and it offers a relatively inexpensive way to address 5 to 15% of the nitrogen pollution that the towns are facing. He thanked the boards for their leadership. It is a responsible step and achieves a reasonable balance on bad behavior.

Greg Palermo of the Friends of Sengekontacket said he is in favor of the proposed regulations and the nomination.

Megan Ottens-Sargent of the Water Alliance said the Alliance is an organization that meets and networks but does not enforce anything. She is impressed with the buy-in that the working group has received. The regulations exist, the Boards of Health are on board, and the retailers have been brought in. She is hoping the regulations will be tweaked as time goes on. The buffer zone is important when talking about phosphorus.

Steven Anagnos said reducing nitrogen is a good thing but if it is reduced too much it is hard to grow a quality turf; with a half a pound of nitrogen, that could be a problem. If there is not a healthy turf, there could be runoff. The half a pound restriction for parts of the year, may be too restrictive. Three quarters of a pound application is appropriate with combination products, but there should be more flexibility when that amount can be applied as long as the annual cap is not exceeded.

There was a discussion about revising the regulations.

- **Megan Ottens-Sargent** asked, since this is a DCPC hearing, whether the regulations are being looked at. **Fred Hancock** said it is a combined hearing, designation of a proposed District under consideration and conformance of the proposed regulations.
- **Megan Ottens-Sargent** asked if a town can add to the DCPC regulations. **Fred Hancock** said the town could make the regulations more restrictive, but that any amendments would come back to the MVC for hearing and vote.
- **Joan Malkin** said the regulations were developed as a comparison of one town to another and a comparison of a town to the state. Hopefully the regulations will be more restrictive than the state. Regulations should be similar from town to town for ease of administration in all towns and to maximize the overall effectiveness of the plan, so it is thought desirable that the regulations are all the same in each town.
- **Megan Ottens-Sargent** asked if the venues to change the application rates would have been at the Board of Health meetings. **Fred Hancock** confirmed it would. **Joan Malkin** noted that the MVC does not change the regulations.

Joe Smith said he has seen a lot of out of control fertilizer going into a marsh and he has personally controlled the use for forty years. Change is always tough but if you have the same rules it is easier to deal with it. The lawns that exhibit the Vineyard certification plaque look pretty good in his view. It is time to be concerned about our water.

Doug Sederholm asked if anyone has given thought to the economic impact to the people that are in the fertilizer business, as the MVC needs to be aware of that. By reducing fertilizer by one third, how does that translate into revenue for people in that business? Will the regulations affect the amount of fertilizer that is applied to golf courses?

Matthew Crowther, Mink Meadows Manager, said he did not think any golf course properties have been applying nitrogen at rates higher than three pounds. The total regulation does not appear to be a big hindrance. The difference between landscapers and golf course management is that landscapers get paid to mow and maintain lawns and make money on the manpower; golf courses have a budget to work with, so the courses don't throw a lot of fertilizer around. He is tweaking his fertilizer program and is using an organic bridge product. Golf course management gave their input to the working group. He said his pet peeve of the licensure process is being retested every three years. It seemed a little ludicrous to him but it is a give and take process. The golf courses were not thrilled with every aspect but walked away with what we could do. With regards to the buffer zone, if testing is being done every three years perhaps there could be some latitude. The professionals are being held to a higher standard than the homeowner and yet they are the professionals. Perhaps, in the buffer zone a license should be required so the buffer zone would be better protected. Some of the buffer zone restrictions could impact the other golf courses that have water bodies.

There was a discussion about fertilizer application on golf courses.

- **James Joyce** said he was curious if the regulations are uniform, why the golf courses have until December 15 for application and others only have until November 15.
Matthew Crowther said when applying a granular product the application is at a specific time when the plant is not fully dormant, which is mid-December, and that also prevents runoff. A liquid product is usually used the first or second week of December and puts out less nitrogen.
- **Michael Loberg** said in Nantucket, the golf courses didn't come under the regulations since they could not negotiate a way through it. On the Vineyard there was a willingness of the golf courses to participate even though they are a high traffic area. The regulations are not perfect but we shouldn't let perfect be the enemy of the good. If deficiencies are seen, the working group is willing to drive changes. Golf courses were treated as a different customer because they have more traffic.
- **Matt Poole** said extending the timeline for application for the golf courses was done based on the management's knowledge and expertise so the working group extended the season and the frequency as a nod towards their expertise.
- **Matthew Crowther** said he is a homeowner on Cape Cod and as a homeowner he can apply more fertilizer there than he can as a professional on Martha's Vineyard. The golf courses are working within the regulations with a few minor exemptions that were given.

Megan Ottens-Sargent asked if a variance can be gotten. **Matt Poole** said there is a process for seeking exemption with the Boards of Health.

Michael Loberg said in dealing with the NSTAR herbicide issue the Tisbury Board of Health did not feel what NSTAR was doing was in the Town's or Island's best interest. If the regulations are passed under the timeline that was given to us, we won't be in that position again with nutrients.

James Joyce asked if the working group is upset that farms are not involved. **Michael Loberg** said the towns and Boards of Health will have the opportunity to address the regulations with them. We can work with the Island farms to use native compost and fertilizer which will help to reduce nitrogen and sustainability is important.

Fred Hancock closed the public hearing at 8:45 p.m.

3.4 Commissioners' Discussion

Designation

Doug Sederholm moved and it was duly seconded to approve the designation.

- **Jo-Ann Taylor** noted the designation vote also includes the guidelines.
- **Joan Malkin** asked on line 75, 5.3.2a Education and Assessment if the regulation is establishing proficiency for everyone or is it only concerned with licensed professionals and landscapers. She felt it is more stringent than necessary and suggested to change the language to potential commercial practitioners or potential practitioners as specified by the town. So the general homeowner does not have to get certified, remove "or other participants" and on line 77 add "commercial" before practitioners.
- **Linda Sibley** asked if everybody is to be educated but not everybody would be tested.
- **Joan Malkin** suggested adding "commercial" before the word practitioner for 5.3.2b Authorization to Apply Fertilizer.

Linda Sibley moved and it was duly seconded to approve the revisions. Voice vote. In favor: 11. Opposed: 0. Abstentions: 0. The motion passed.

- **James Vercruysse** said on line 82 there is a typo, form should be from.
- **Doug Sederholm** said there is a problem with the use of the word should on lines 57, 60 and 66, it should be shall.
- **Joan Malkin** said she was comfortable changing should to shall on lines 57 and 60 but was not sure about line 66.
- **Doug Sederholm** withdrew his suggestion for line 66.
- **Bill Veno** said the proposed regulations do not address any regulations for wells so line 57 would be non-compliant and is raising the question of how it will be interpreted.
- **Joan Malkin** said someday wells may be a part of the regulations, so perhaps change the word shall to "which may include" for line 57.

Christina Brown moved and it was duly seconded to approve the revisions for lines 57, 60 and 66. Voice vote. In favor: 11. Opposed: 0. Abstentions: 0. The motion passed.

- **Joan Malkin** felt the last sentence of lines 73 and 74 of 5.3.2 Administration is unnecessary and thought it might be wise to eliminate it.
- **Brian Smith** thought the sentence clarified if there is a question about the administration of the regulations.
- **Fred Hancock** said it is important to state a permit is not required for each application.
- **Linda Sibley** said 5.3.2 is not a system of permitting, the section is talking about a system of licensure.
- **Joan Malkin** said she would be okay leaving line 74 as written.

- **James Vercruysse** said since all towns agreed to have Island-wide licensing the MVC should think about Island wide enforcement. It wouldn't be difficult to enforce. Island wide enforcement should be written into the regulations.
- **Doug Sederholm** said with respect to Matt Poole noting town jurisdiction, it doesn't make sense to him not to have Island wide enforcement.
- **Fred Hancock** asked if the vote is on the designation including the goals and guidelines.
- **Bill Veno** asked Jo-Ann Taylor if all four types of Districts are being proposed.
- **Jo-Ann Taylor** said the Districts are Drinking Water Resource District; Fishing Resource District; and Wildlife, Natural Science or Ecological Resource District. Cultural or Historic Resource District was mentioned in the nomination, but not proposed. She added that the Cultural or Historic District criteria do not fit for this purpose as well as the other three.
- **Joan Malkin** asked if there is anything in the guidelines that direct the towns on the matter of enforcement.
- **Jo-Ann Taylor** said enforcement falls under 5.3.2 Administration line 71. The MVC does not need to specifically address enforcement. The MVC usually gives broad direction requiring only that the towns establish working procedures. The Commission helps the towns establish the regulations, after which the enforcement belongs to the towns.

Doug Sederholm moved and it was duly seconded to approve the Designation and the Goals and Guidelines as amended. Roll call vote. In favor: T. Barnes, J. Breckenridge, B. Brown, F. Hancock, J. Joyce, J. Malkin, K. Newman, D. Sederholm, L. Sibley, B. Smith, J. Vercruysse. Opposed: none. Abstentions: none. The motion passed.

Conformance

Fred Hancock suggested the Commissioners look for conformance of the regulations with the Goals and Guidelines.

Doug Sederholm said the regulations have been presented and now is not the time to be wordsmithing them.

Fred Hancock said the MVC is voting on if the regulations conform to the Goals and Guidelines.

Christina Brown asked if the Boards of Health regulations will be the same for all of the towns. **Matt Poole** confirmed they would be.

Doug Sederholm moved and it was duly seconded that the regulations conform to the Goals and Guidelines.

- **Doug Sederholm** thought the enforcement of the regulations is incredibly weak if the applicator is in violation and it is on a town by town basis. He hopes the towns over time, with experience of enforcing the regulations, will beef up the enforcement a little bit. On line 310, Liquid Fertilizer, he would prefer that it say "and shall be" and is just noting this language and understands it won't be changed.
- **Brian Smith** thought that perhaps line 462 (6.5.4) gives the town the ability to revoke the license under any circumstances.

- **Doug Sederholm** said revoking a license does fall under 6.5.4 and is not suggesting that the towns take a heavy hand to enforce but the towns should have the power to enforce if there is a bad apple.
- **Linda Sibley** questioned what happens if a licensee did not behave in one town yet is following the rules in another town.
- **Fred Hancock** said this philosophical discussion does not bear on the MVC vote of conformity of the regulations to the Goals and Guidelines.
- **James Vercruyse** said he did not see any mechanism to appeal and asked whether there is a process to appeal a town board.
- **Fred Hancock** said there is an appeal process at the town level.

Roll call vote. In favor: T. Barnes, J. Breckenridge, C. Brown, F. Hancock, J. Joyce, J. Malkin, K. Newman, D. Sederholm, L. Sibley, B. Smith, J. Vercruyse. Opposed: none. Abstentions: none. The motion passed.

The meeting was adjourned at 9:30 p.m.

DOCUMENTS REFERRED TO DURING THE MEETING

- Minutes of the Commission Meeting – Draft, Held on March 6, 2013
- Proposed Lawn Fertilizer Control District Under Consideration, Public Hearing March 27, 2014 Staff Notes
- Proposed Lawn Fertilizer Control District Draft Goals and Guidelines
- Critical Planning District Qualifications
- Town Board of Health Regulations Final Draft, Dated February 11, 2014, The Content and Application of Fertilizer for Turf on Martha’s Vineyard
- DCPC Nominations submitted by the Edgartown and Oak Bluffs Boards of Health on February 13, 2014, from the Tisbury Board of Health on February 14, from the Chilmark Board of Health on February 21 and from the West Tisbury Board of Health on February 24
- Chapter 831 of the Acts of 1977 as amended

Chairman

Date

5-1-14

Clerk-Treasurer

Date

5-1-14