

3225 MAIN STREET • P.O. BOX 226
BARNSTABLE, MASSACHUSETTS 02630



CAPE COD
COMMISSION

(508) 362-3828 • Fax (508) 362-3136 • www.capecodcommission.org

Date: July 2013

To: Boards of Selectmen
Barnstable Town Council

CC: Assembly of Delegates,
County Commissioners
Town Clerks
Building Inspectors
Planning Board
Boards of Appeals
Conservation Commissions
Boards of Health
Governor's Committee

From: Paul Niedzwiecki, Executive Director
Cape Cod Commission

Re: Memorandum
Proposed Nomination
Fertilizer Management District of Critical Planning Concern

On July 25th, the Cape Cod Commission will vote whether to accept a nomination for a Cape-wide, fertilizer management district of critical planning concern (DCPC).

A DCPC is a planning and regulatory tool authorized under the Cape Cod Commission Act that allows a Cape Cod town or towns to designate an area associated with particular land use concerns or opportunities, and then to adopt implementing regulations to address those concerns or opportunities.

The opportunity to adopt local fertilizer management regulations through a DCPC is especially important now that the county and towns' ability to regulate this area has been restricted. The Attorney General has advised that recently enacted amendments to Chapter 128 of the General Laws give the Massachusetts Department of Agricultural Resources (MDAR) exclusive authority to regulate and enforce fertilizer application in the Commonwealth.

One of the limited exceptions to MDAR's exclusive jurisdiction in the Chapter 128 amendments is for regulations adopted pursuant to the Cape Cod Commission Act, if completed prior to January 1, 2014. Implementing Regulations adopted pursuant to a fertilizer management DCPC would preserve the towns' ability to regulate fertilizer applications in light of these recently enacted amendments to Chapter 128 by the State Legislature.

Regulating fertilizer application is one of the more straight-forward, easily-implemented and cost-effective ways to help address the broader nitrogen loading issues affecting water quality on Cape Cod. Nitrogen from fertilizer in the groundwater or as runoff is an important and controllable source of nitrogen loading, with the greatest amount coming from residential fertilizer use. Managing fertilizer use through education, Best Management Practices and enforceable regulations will help towns achieve cost-effective and efficient nitrogen reduction.

If the Commission votes to accept the DCPC nomination for consideration, it will then hold public hearings to consider whether it should propose a Cape-wide DCPC designation for fertilizer management purposes.

Thereafter, if the Commission votes to propose such a designation, and the Assembly of Delegates subsequently approves the designation by county ordinance, then towns may, at their discretion, opt to adopt Implementing Regulations in the form of Board of Health fertilizer use regulations consistent with a model regulation that will be developed by the Commission with input from the towns, the University of Massachusetts Amherst Extension, and the Massachusetts Department of Agricultural Resources. Such regulations will focus on appropriate time, place and manner restrictions on the application of nitrogen-based fertilizers, as well as application best management practices.

If the nomination is accepted, there will be no moratorium on the issuance of local development permits, licenses or approvals during the DCPC process.