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CAPE COD
COMMISSION

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MEMORANDUM

February 2015

Re: Summary- Fertilizer Management DCPC and Implementing Regulations

In August 2012, Chapter 262 of the Acts of 2012 was enacted, which, among other things, vested exclusive authority over nutrient regulation in the Commonwealth (including regulation over fertilizer use and application) to the Massachusetts Department of Agricultural Resources (MDAR). The law contained certain exceptions to MDAR's exclusive jurisdiction, such as regulation adopted pursuant to the Cape Cod Commission Act, subject to certain conditions.

The Cape Cod Commission proposed all of Cape Cod as a Fertilizer Management District of Critical Planning Concern (DCPC) in August 2013 because of the perceived need for special regulation in Barnstable County to protect Cape Cod's unique water resources. Planning work done by the Cape Cod Commission, including work done in the development of the on-going Barnstable County Water Quality Management Plan pursuant to section 208 of the Federal Clean Water Act (208 Plan), served a basis for the proposed designation. The Barnstable County Assembly of Delegates (AOD) and County Commissioners approved the Fertilizer Management DCPC in September 2013 as Barnstable County Ordinance 13-07.

A DCPC is a planning and regulatory tool authorized under the Cape Cod Commission Act that allows a Cape Cod town or towns, the Cape Cod Commission, or the Barnstable County Commissioners to nominate, and for the Cape Cod Commission to subsequently propose, designation of an area for special resource protection. If such designation is then approved by the AOD and County Commissioners as a county ordinance, any Cape town within the designated area is allowed to adopt local 'implementing regulations,' consistent with the Guidelines for Regulation set out in the DCPC designation, in furtherance of the interests and to address concerns set out in the DCPC designation.

The principal concern set out in the Fertilizer Management DCPC is the degradation of area water quality due to the loading of excess nutrients, specifically nitrogen and phosphorus, to estuaries, embayments and fresh water systems from controllable sources such as wastewater and turf fertilizer use. Under the Massachusetts Estuaries Project, nitrogen from fertilizer accounts for approximately 11% of the excess, controllable nitrogen load to estuaries and embayments.

This DCPC designation allows Cape Cod towns, within the time-frame set out in the Cape Cod Commission Act, to adopt and administer local turf fertilizer regulation, subject to the Cape Cod Commission's determination that such regulation is consistent with the Guidelines for Regulation set out in the Fertilizer management DCPC ordinance. Pursuant to Section 262 of the Acts of 2012, the University of Massachusetts- Amherst Extension Program developed Turf Management Best Management Practices (UMass Turf BMP), which includes guidance on appropriate fertilizer use. The UMass Turf BMP was incorporated into the Fertilizer Management DCPC ordinance, including the Guidelines for Regulation set out therein. The Cape Cod Commission communicated with MDAR throughout the entire Fertilizer Management DCPC process.

In order to assist towns in developing local implementing regulations, the Cape Cod Commission developed model turf fertilizer regulation with input from stakeholders, including municipal stakeholders and UMass-Amherst Extension. The time for towns to adopt regulation under the Fertilizer Management DCPC ended December 31, 2014.

Several Cape towns (Barnstable, Brewster, Chatham, Eastham, Mashpee, Orleans and Provincetown) adopted implementing regulations within this period, and the Cape Cod Commission heard and determined that those implementing regulations were consistent with the Guidelines set out in the Fertilizer Management DCPC. Further, a few of these towns incorporated fertilizer application certification provisions into their implementing regulations; Cape Cod Cooperative Extension is in the process of establishing a fertilizer education and certification program to assist these towns with their efforts.