***CAPE COD NATIONAL SEASHORE ADVISORY COMMISSION THREE HUNDRED AND FIFTH MEETING***

HELD AT CAPE COD NATIONAL SEASHORE, Marconi Station

Area, Park Headquarters, South Wellfleet, Massachusetts, on Monday, December 12, 2016, commencing at 1:07 p.m.

SITTING:

Richard Delaney, Chairman Larry Spaulding

Don Nuendel Lilli Green Joseph Craig Mark Robinson Maureen Burgess

Nat Goddard, alternate Kathleen Bacon, alternate

Also present:

George Price, Superintendent

Kathy Tevyaw, Deputy Superintendent Lauren McKean, Park Planner

Sue Moynihan, Chief of Interpretation & Cultural Resources Courtney Butler, Assistant to the Superintendent

Kekoa Rosehill, Visual Information Specialist

Scott Greene, Army Corps of Engineers Project Engineer, New England District

Attorney Donald Nagle, attorney for Adventure Bound Camping Resorts/Horton's Campground

Audience members

**LINDA M. CORCORAN CERTIFIED COURT REPORTER**

**P. O. Box 4 Kingston, Massachusetts 02364**

**(781) 585-8172**

**I N D E X**

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# P R O C E E D I N G S

1. MR. DELANEY: I will call to order the 350th
2. meeting of the Cape Cod National Seashore Advisory
3. Commission.

# ADOPTION OF AGENDA

1. MR. DELANEY: You have an agenda in front of you
2. that's been sent out in advance.
3. I'll entertain a motion to adopt the agenda as
4. printed.
5. MR. ROBINSON: So moved.
6. MR. DELANEY: Oh, I'm sorry. Actually, you know, I
7. think one of the long discussions today might be the
8. discussion about Horton's Campground, and that doesn't
9. show up until --

|  |  |  |
| --- | --- | --- |
| 15 | MS. | BURGESS: Near the end. |
| 16 | MR. | DELANEY: -- the end. |
| 17 | The | attorney is here. Others are here. |
| 18 | MR. | PRICE: And also the Army Corps discussion. |
| 19 | MR. | DELANEY: The Army Corps for the FUDS project? |
| 20 | MR. | PRICE: Yes. |
| 21 | MR. | DELANEY: So those are two items that are |

1. important and may take a little time, and they don't
2. show up until at the end at *Old Business*. Perhaps it
3. would be convenient for everyone if we moved them up
4. early and took them right in the beginning.
5. Is that all right?
6. MS. BURGESS: Yes.
7. MR. DELANEY: So with that amendment or change to
8. the agenda, all those who are in favor, signify by
9. saying aye.
10. BOARD MEMBERS: Aye.
11. MR. DELANEY: Those opposed?
12. (No response.)
13. MR. DELANEY: It carries.

# APPROVAL OF MINUTES OF PREVIOUS MEETING - SEPTEMBER 19, 2016

1. MR. DELANEY: Approval of the minutes from our
2. previous meeting, which was September -- oh, I'm sorry,
3. Lilli?
4. MS. GREEN: I just had one minor change to the
5. minutes.
6. MR. DELANEY: To the minutes, okay, yeah. Please
7. go ahead.
8. MS. GREEN: On page 23, line 4, it's just a slight
9. grammatical change. I need to have the word *their*
10. changed to *the*.
11. MR. DELANEY: Okay. And I actually have one
12. myself. Line 5, but it's under the discussion of
13. President Obama's designation of a National Marine
14. Monument. I don't have the -- oh, it's page 5 -- page
15. 5, line 5. That should not be Stellwagen but just
16. George's Bank.
17. Okay, any other amendments?
18. (No response.)
19. MR. DELANEY: Got a seal of approval from our
20. scribe from Eastham, and with those two changes, I'll
21. accept a motion to approve the minutes as amended.
22. MS. BURGESS: So moved.
23. MR. DELANEY: Second?
24. MR. ROBINSON: Second.
25. MR. DELANEY: All those in favor, signify by saying
26. aye.
27. BOARD MEMBERS: Aye.

# REPORTS OF THE OFFICERS

1. MR. DELANEY: Reports of the Officers. I'll just
2. do that one. I don't have any.

# REPORTS OF SUBCOMMITTEES

1. MR. DELANEY: Reports from the subcommittees.
2. I think we should just try to dispatch with that
3. pretty quickly, Maureen. Would you like to give us an
4. update on Pilgrim?
5. MS. BURGESS: Make it short?
6. MR. DELANEY: Yeah.

|  |  |  |
| --- | --- | --- |
| 1 | MS. | BURGESS: Yeah, sure. |
| 2 |  | UPDATE OF PILGRIM NUCLEAR PLANT |
| 3 |  | EMERGENCY PLANNING SUBCOMMITTEE |
| 4 | MS. | BURGESS: With regard to the Pilgrim Nuclear |

* 1. Power Plant Emergency Planning Subcommittee, I hope most
  2. of you have seen the major coverage that's gone on in
  3. the last week through the *Cape Cod Times*. And Christine
  4. Legere has done very good coverage of both Pilgrim and
  5. the whole nuclear waste problem, but during the course
  6. of that journalism, there was an inadvertent e-mail sent
  7. out that came to the attention -- it was sent out by a
  8. member of the inspection team.
  9. As you know, Pilgrim is being scrutinized for a
  10. number of violations and lack of upgrades, and there's
  11. an in-house -- last week there was an in-house
  12. inspection process going on, and a gentleman who is an
  13. inspector by the name of Donald Johnson, chief of
  14. operations of the NRC's Northeast Region, sent out an
  15. e-mail with findings -- up-to-date findings of concerns,
  16. and that e-mail inadvertently was sent to Diane Turco,
  17. the representative from the founder of the Cape
  18. Downwinders, and that has gone public. So you may have
  19. seen that in coverage as well.
  20. I'll just very quickly mention some of the problems
      1. that Mr. Johnson noted with the plant. He described the
      2. Pilgrim plant as seemingly being overwhelmed. (Reading)
      3. It appears many staff across the site (end reading) --
      4. this is a quote -- (reading) may not have the standards
      5. to know what good actually is, Donald Johnson, chief of
      6. operations, reported (end reading). And then he went on
      7. to enumerate recurring problems with emergency diesel
      8. generators, poor engineering expertise, no communication
      9. with the shift manager for corrective action. And I can
      10. give you a link to where you can get this e-mail and the
      11. articles in the *Cape Cod Times*.
      12. So that has gone public, raising the concern and
      13. reinforcing some of the things that public officials or
      14. elected officials that we ourselves and others have been
      15. saying for years about the faulty maintenance and poor
      16. leadership there.
      17. So finally the Plymouth Board of Selectmen seem to
      18. have taken some kind of a stand. It's always been a
      19. frustration of mine, Mr. Chairman, that we here on the
      20. Cape are so concerned and yet Plymouth doesn't seem to
      21. be as concerned as many of our towns are. So that board
      22. of selectmen is now demanding a meeting with the NRC
      23. officials as soon as possible. I also found it a little
      24. ironic that their town manager, the main thing that she

1. seemed to be concerned about was that the information
2. went public rather than the nature of the information.
3. So I found that rather puzzling too.
4. So a lot of information on Pilgrim this week, and
5. the commissioners will see in their packets that we did
6. as a result of our last-minute -- the meeting rather
7. sent a letter to Governor Baker. This was before all of
8. this information was out, and I think it gives more
9. credence to the concerns that we raised in our letter
10. now that this information is out with regard to lack of
11. -- the Governor needs to take leadership in terms of
12. taking care of public health and safety, and he has
13. remained fairly silent on this and just keeps saying
14. that it is something that the NRC is in charge of and
15. that he seems to feel that they will do the job.
16. You may also remember that it was suggested that
17. some of us go back to our towns and see if our boards of
18. selectmen would also send letters of concern to the
19. Governor. And in your packet you will see not only the
20. letter from this commission but also I did draft one for
21. the Town of Truro, which I was gratified that our
22. selectmen agreed upon. And I know Lilli's done some
23. work, and perhaps she can tell us what she's done.
24. MR. DELANEY: Lilli?
25. MS. GREEN: Thank you. Thank you, Maureen. Thank
26. you, Mr. Chair.
27. I did also go back to my board of selectmen in
28. Wellfleet, and they took it upon themselves to take the
29. draft that I proposed and write their own letter, which
30. was very specific and actually very strong, which I
31. wholly support, and they sent that to Governor Baker. I
32. also went to the Assembly of Delegates, which I am a
33. member of representing the Town of Wellfleet, and I did
34. propose Resolution 16-08, which was adopted by the
35. assembly. All the members present, except for the
36. Bourne assembly member, voted in favor of 16-08, which
37. sent a letter to Governor Baker and is in your packets,
38. the resolution and the letter to Governor Baker, which
39. was signed by the speaker of the Assembly of Delegates.
40. So at this point we have a federal body, this body;
41. we have a county body, which is the Assembly of
42. Delegates; and we have local bodies, which are boards of
43. selectmen, that have now written a letter to Governor
44. Baker. And I think that that is important, and I'd like
45. to discuss then leveraging that as well because there
46. are problems and we all know there are problems. And
47. I'm thinking that perhaps we should ask for a meeting
48. with the NRC. I know that the safety officer for the
49. county is asking for a meeting with the NRC. The NRC
50. has agreed to a conference call with the county, but
51. they're still pressing for a meeting with NRC. Perhaps
52. if this federal body, the Cape Cod National Seashore
53. Advisory Commission, is also asking for a meeting with
54. the NRC, it may have some weight.
55. MR. DELANEY: Okay, thank you.
56. Do you have other information to report on this
57. topic, Maureen?
58. MS. BURGESS: No, just that I believe possibly
59. Provincetown also did send a letter, but I couldn't
60. confirm that. Their board of selectmen.
61. MR. DELANEY: Good. Well, first of all, thank you
62. both on behalf of the Commission for carrying this issue
63. forward. It's pretty clear the Governor has heard from
64. a lot of different organizations over quite a few months
65. now, and I do not believe any of us have had a response
66. at this point.
67. MS. BURGESS: No.
68. MR. DELANEY: And so, Lilli, you've suggested that
69. perhaps a follow-up step would be to actually, as other
70. groups who have written letters but no response are now
71. seeking to meet directly with the NRC -- that we should
72. add our names to that request.
    1. Okay, let's discuss that. Is that something that
    2. the committee chair -- subcommittee chair would endorse?
    3. MS. BURGESS: I would endorse that proposal.
    4. MR. DELANEY: All right. Members of the
    5. Commission, that or anything else that we might want to
    6. take?
    7. Larry?
    8. MR. SPAULDING: I just think we're starting to get
    9. beyond our purview. We've made our position clear. I
    10. mean, we could ask. I doubt that the Nuclear Regulatory
    11. Commission is going to want to meet with us, and we've
    12. got other business that to me has more priority without
    13. lessening the position we've taken in the letter we
    14. sent.
    15. MR. DELANEY: Realistically, you're probably right,
    16. but I think the strategy might be here is just to add
    17. some further weight and further voices to those who are
    18. requesting a meeting.
    19. MS. GREEN: I would agree to that. I don't know if
    20. there's a strategy that would be more effective than
    21. writing a letter to the NRC requesting a meeting knowing
    22. that the county is also requesting a meeting or writing
    23. -- copying the county with a letter that we might write
    24. to the NRC.
        1. MR. DELANEY: Let me ask. Have we written directly
        2. to the NRC ourselves?
        3. MS. BURGESS: I believe our first letter in 2012
        4. before it was relicensed went to the NRC. Didn't get a
        5. response. And obviously it got relicensed.
        6. MR. DELANEY: Yeah. Well, what -- Superintendent
        7. Price?
        8. MR. PRICE: I wrote a letter on behalf of the
        9. National Seashore at that point to the NRC.
        10. MR. DELANEY: Oh, that's right.
        11. MS. BURGESS: Right, and those letters are on --
        12. MR. PRICE: They didn't respond to me either. I'm
        13. shocked.
        14. MS. GREEN: George, is there a safety officer at
        15. this park that might have some weight in writing to the
        16. NRC?
        17. MR. PRICE: Well, we have a safety officer, but
        18. again, we're in a situation where it's one federal
        19. entity with another. So, for instance, even to get --
        20. to make sure that I was on secure grounds to send that
        21. letter, I contacted our solicitor. Basically the
        22. superintendent is the official.
        23. MS. GREEN: Would it be in your purview to write a
        24. letter again on behalf of the Advisory Commission?
            1. MR. PRICE: No, Rich writes it on behalf of the
            2. Advisory Commission. I do it on behalf of the Seashore.
            3. MS. GREEN: Would it be in your purview to write it
            4. on behalf of the Seashore?
            5. MR. PRICE: Well, we certainly could do an updated
            6. one. I think, to Larry's point, there's a lot of stuff
            7. going on right now. The question is, what's the most
            8. effective? I don't know -- I think the other -- I did
            9. not write one to the Governor, but I know everybody else
            10. has. And from what I've been able to gauge, the
            11. Governor's office has -- have the other committees
            12. involved with Pilgrim been able to?
            13. MS. BURGESS: Not effectively, no.
            14. Mr. Chairman, are you aware of any groups that have
            15. not similarly had any success?
            16. MR. DELANEY: In terms?
            17. MS. BURGESS: With the Governor.
            18. MR. DELANEY: No, I have not, but you would be
            19. closer to it than I would.
            20. I think one easy -- one option that's
            21. straightforward might be just to bundle our most -- our
            22. set of letters, because we now have several, send them
            23. directly to the NRC, say, "We have been on the record
            24. for an extended period on this, as have others, and we
73. like others would like to see the NRC meet with the
74. community directly, and we would like to participate in
75. that." So we reinforce everyone else's request, give
76. them some weight. It wouldn't be just an individual
77. meeting with us, but it would be a group meeting with
78. the community.
79. MR. ROBINSON: I think the impetus is this leaked
80. e-mail, which I consider a smoking gun.
81. MS. BURGESS: It might even be a whistleblower for
82. all we know.
83. MR. ROBINSON: I mean, yeah, but that has really
84. changed my whole sense of urgency on this thing. They
85. know they've got a problem. They're afraid to tell us.
86. MR. DELANEY: Yeah.
87. MR. ROBINSON: And it got out. But I think it's a
88. waste of time to keep pestering the Governor. He's made
89. it very clear it's not his -- his bailiwick.
90. MR. DELANEY: So would, Maureen, you as the
91. subcommittee chair be willing to draft basically a cover
92. letter to the NRC that says we, the commission, have
93. been on record as the enclosed three or four, five
94. letters have shown. We know others --
95. MR. ROBINSON: Very short. Very short.
96. MS. BURGESS: Yeah.
97. MR. DELANEY: Yeah. We know others are similarly
98. concerned, and recent information increases the sense of
99. urgency with which we would wish you would address this
100. by meeting with, among other things -- meeting with our
101. group of community representatives.
102. MS. BURGESS: Sure, I'd be happy to do that. Does
103. anybody have a problem with that?
104. (No response.)
105. MR. DELANEY: It kind of just adds -- you know, we
106. just add ourselves to the growing number of voices that 11 --
107. MS. BURGESS: So to the NRC?
108. MR. DELANEY: To the NRC, the NRC directly.
109. If that's the sense of it, I'd --
110. MR. PRICE: Well, I think that in that light -- I
111. think that would be an appropriate updated letter that I
112. would be able to do on behalf of the National Park
113. Service.
114. MR. DELANEY: Okay, that would be terrific.
115. Any other discussion on this recommendation?
116. MR. SPAULDING: Just a question. Are we going to
117. write two letters? George is one and Maureen's one?
118. MR. PRICE: Yes.
119. MR. SPAULDING: Okay.
120. MS. BURGESS: Would you all like to see the letter
121. first?
122. MR. DELANEY: You've done -- I think you've done
123. really well with all of this for us, Maureen, so I'm
124. totally confident.
125. MR. ROBINSON: When haven't we sent copies of other
126. things to the NRC? We just figured that the appropriate
127. course is to try the Governor?

|  |  |  |
| --- | --- | --- |
| 9 | MS. | BURGESS: We kept trying the Governor. |
| 10 | MR. | ROBINSON: But he sent it to FEMA, so why |
| 11 | wouldn't | we have sent that just to FEMA? |
| 12 | MS. | BURGESS: It's MEMA. |
| 13 | MR. | ROBINSON: Oh, it's MEMA? |
| 14 | MS. | BURGESS: MEMA. |
| 15 | MR. | ROBINSON: There's FEMA too, FEMA and MEMA. |
| 16 | MS. | BURGESS: Yes, that's the most recent one. |
| 17 | MR. | ROBINSON: But, yeah, the entity that's in |

1. charge of licensing.
2. MS. BURGESS: Right, it should always have been
3. cc'd to them. So I can (inaudible).
4. MR. ROBINSON: Yeah.
5. MR. DELANEY: So I don't believe we need a vote
6. officially on this. The sense of the group is that we
7. would request our subcommittee chair to continue what
8. you've been doing as representing us on this issue with
9. yet another letter as just described by me.
10. MS. BURGESS: Could there be any connection with
11. Barnstable County to let the assembly -- could we have
12. some kind of communication with them to see if they have
13. gotten any response?
14. MS. GREEN: I certainly will follow up and make
15. sure that this body is aware if the county has gotten a
16. response, but I would appreciate if the letter is copied
17. to the Assembly of Delegates.
18. MR. DELANEY: Okay, good, thank you, Maureen.
19. MS. BURGESS: Do you want just a little update on
20. the Nickerson?
21. MR. DELANEY: Just a quick update on the Nickerson,
22. and then we'll move on to our Army Corps report.
23. NICKERSON CONSERVATION FELLOWSHIP SUBCOMMITTEE
24. MS. BURGESS: We met in November just to regroup,
25. and one of the things that we decided on -- and I will
26. be joining some of the Friends and the treasurer from
27. the Friends here on Thursday. Our group asked for an
28. update on the nature of the investments to see if any of
29. that needed to be re-looked at and if we could get any
30. sort of -- just want to review with the treasurer. So
31. that's going to be taking place.
    1. And also I understand that Sophia Fox, who was the
    2. Seashore representative to the Nickerson Committee --
    3. Commission -- Committee -- Nickerson Conservation
    4. Fellowship Committee last year, is going back to her
    5. position as aquatic ecologist, and Dr. Nita Tallent will
    6. be taking over those responsibilities. So I will send
    7. Nita the minutes of the last meeting because those RFPs
    8. need to go out. We're hoping to get them out before the
    9. holidays.
    10. MR. DELANEY: Okay, great, thank you again.

# OLD BUSINESS

* 1. UPDATE FROM ARMY CORPS OF ENGINEERS
  2. ABOUT THE PHASE III FUDS PROJECT
  3. MR. DELANEY: Now, moving back to taking an item
  4. out of order. I would like to ask our representative
  5. from the Army Corps of Engineers.
  6. MR. PRICE: Speaking of another government agency,
  7. I appreciate Scott Greene coming down to join us. Scott
  8. has made a presentation -- made a presentation to the
  9. Seashore staff on their next steps. As you recall,
  10. Scott joined us a while ago -- this is really an update
  11. -- basically using this body as a public forum on the
  12. next steps as to what's actually happening here.
  13. We also learned in that last meeting that, in fact,
      1. they do plan on doing some testing in the so-called
      2. airstrip, which actually is a landmark parcel that's
      3. owned by the Town of Wellfleet. And Brian Carlson, the
      4. assistant town administrator, was here for that same
      5. presentation when we learned that. We spoke with Brian,
      6. and most likely Scott will be asked to attend a board of
      7. selectmen meeting in Wellfleet at some point just to
      8. talk about the project in general, specifically as it
      9. involves the town property.
      10. Scott?
      11. MR. GREENE: Thank you. Thanks for inviting me to
      12. come today so I can update everybody. I need to punch
      13. in my code here.
      14. (Pause.)
      15. MR. GREENE: Again, thanks again for inviting me.
      16. As Mr. Price mentioned, we actually were here with -- we
      17. have a contractor that's been hired since the last
      18. meeting. The contractor is ERT, and they gave a
      19. presentation for the technical project plan meeting that
      20. was on the 19th of October. So a lot of these slides
      21. are from that presentation so we can keep you folks
      22. informed the same as we did during that project plan
      23. meeting.
      24. So it's a long agenda. And some of the slides are
          1. repeats of slides that you've seen before the last time
          2. I was here, so I'll go through those more quickly. But
          3. basically we're going to go through who are the key
          4. contacts, and now we have some more that you don't know
          5. from ERT, from our contractor and then with some of the
          6. terminology, what the Military Munitions Response
          7. Program is, which is what we're -- which is the program
          8. under which we're doing this work, the technical project
          9. planning process, which was the meeting we had the 19th
          10. for the first meeting, a quick review and site history
          11. of previous investigations, which, again, is a repeat of
          12. what I presented last time, remedial investigation
          13. goals, conceptual site model, the technical approach,
          14. which is a new -- new update since last time we met. So
          15. we kind of have general plans about what we plan to do
          16. and when we plan to do that. So we'll go through that a
          17. little bit, some of the logistics that will be involved
          18. in that step, and then some schedule ideas about when we
          19. would do that, that project.
          20. So these are the key contacts, and we're, of
          21. course, working with Massachusetts DEP, the National
          22. Park Service obviously, the Town of Wellfleet. As Mr.
          23. Price mentioned, some of that property is on the Town of
          24. Wellfleet's -- owned by the Town of Wellfleet, so we

1. need to contact them. We'll need to get access
2. agreement with them in order to do that sampling. Of
3. course, we'll meet with the Army Corps of Engineers and
4. then our contractors, Earth Resources Technology or ERT.
5. So this is some of the terminology, and I won't go
6. through this. So you don't need to memorize it or
7. anything but just kind of to take you through what the
8. terms are so when you hear them later on you'll have
9. some idea of what they are. This is under the Military
10. Munitions Response Program because Camp Wellfleet was,
11. of course, an installation where there were military
12. munitions, and we have different things that we call
13. military munitions with unexploded ordnance, discarded
14. military munitions, or munitions constituents. And this
15. project at this point is more focused on the munitions
16. constituents, which is what I was talking about the last
17. time I was here.
18. The technical project planning meeting, that
19. process is really a way to get information out to
20. people. So we have this forum and then that forum also
21. where we can kind of go into more technical details
22. about how we're going to do the sampling, what the
23. coordination pathways are, and that kind of information.
24. CERCLA, which I talked about last time, and then
    1. the Defense Environmental Restoration Program, which is
    2. where the FUDS, Formerly Used Defense Sites, like Camp
    3. Wellfleet -- where that comes from.
    4. So some additional terms. Munitions and explosive
    5. concerns, so those are any unexploded ordnance.
    6. Munitions debris, so if there's strapping or other
    7. things that are associated with a box of munitions,
    8. that's considered munitions debris. It's not that there
    9. could be any kind of explosive potential or even
    10. contamination associated with it, but it gives
    11. indications there were military munitions at that
    12. location because we found debris there. And then
    13. munitions constituent, which is the focus of this. And
    14. munitions constituents are contaminants that are inside
    15. of munitions. So if it's a bomb, for example, you might
    16. have something, TNT, or you might have RDX, which is
    17. Royal Dutch Explosives. And those munitions
    18. constituents can leach into groundwater, or they can
    19. contaminate soil. So that's really what we're focused
    20. on right now, to see if there's any of that residue.
    21. And then material potentially presenting explosive
    22. hazard, that's kind of self-explanatory.
    23. So the MMRP, it's not that old a program, September
    24. 2001, and it's specifically designed to address defense
25. sites that have military explosives of concern.
26. So this is the CERCLA process. Regional
27. investigation, which is the phase of the project that
28. we're in right now. The next stage would be if we find
29. contaminants of concern, then the next phase would be a
30. feasibility study where we look at what are different
31. options in order to remediate the contamination. Then
32. we would do a proposed plan, say, "Okay, this is what we
33. think we want to do. What does the public think of
34. that?" and then get comments, prepare a response and a
35. summary, and then ultimately get to a decision document.
36. And I mentioned the technical project planning
37. process. This is a long slide. I apologize. But
38. essentially it's: What's the project? What are the
39. data needs for the project? How are we going to collect
40. that data? And who's going to do it? Those kinds of
41. things.
42. So we had meeting one already. The next meeting
43. will be after we develop work plans for what the work is
44. going to be. Then we'll have a meeting to present it
45. and to see if there are additional comments on it. Once
46. everybody agrees to the work plan, then we'll go ahead
47. and proceed with the field work. And then meeting
48. number three is once you get all the data in, you
49. prepare a report, and then there will be a review of
50. that data in the report. So that will be the third
51. meeting.
52. I don't know if you can see this very well, but
53. this is Camp Wellfleet, and then the areas are broken
54. out into different areas. So I won't go through that in
55. any detail at this point, but all those areas have been
56. sampled or have been investigated previously for
57. munitions of explosives of concern.
58. MR. PRICE: Actually, Scott, do me a favor.
59. MR. GREENE: Yeah.
60. MR. PRICE: Go back to that slide for a second.
61. MR. GREENE: Sure.
62. MR. PRICE: Could you just point out the rectangle
63. that demonstrates the so-called landing strip?
64. MR. GREENE: So right here (indicates).
65. MR. PRICE: That actually wasn't truly a landing
66. strip for planes at one time. There were planes that
67. landed here, but I understand they were located
68. elsewhere. But that's really just a residue of
69. Wellfleet-owned property that wasn't turned over to the
70. NPS at the time the Park was established.
71. MR. GREENE: Yeah, it's interesting that it's right
72. directly in the middle of the facility, but I'm not sure
73. how that happened.
74. So yeah, we've been coordinating with the Town of
75. Wellfleet and will continue to do that so we can get
76. access agreement because one of the areas that we do
77. want to sample, as I'll show you in a later slide, is in
78. this area here in Area C, in part of that (indicates).
79. This is a big portion of that (indicates).
80. So this is a quick rundown of the site history. It
81. started in 1942-1944, mostly anti-aircraft testing.
82. There was a little bit of Dove missile testing that was
83. done from 1944 to 1947. Those Dove bombs that were
84. found -- I think there were five of them that have been
85. found -- they were all inert. They were just practice
86. rounds, but it was used for that. It was also used from
87. '47 to 1961 still really for the bulk of its operation
88. for a training center for Guardsmen and Reservists. And
89. then in 1961, of course, it was conveyed to the National
90. Park Service. In 2000 -- there were some previous
91. investigations that were done way back in the '60s when
92. they first turned it over, but I'm focusing more on the
93. stuff that's happening more recently. So we do have the
94. 2000 engineering evaluation and cost analysis, and that
95. did quite a bit of investigation into those Dove
96. missiles there. And then the recommendation was to do a
97. clearance of UXO or what we call MEC now. And then
98. there was in 2003 site-specific letter report, and here
99. we did some intrusive investigations, you know, where 98
100. anomalies were looked at, possibly an open detonation
101. area, the single-point anomaly, so that was
102. investigated. Then out of that was the 2006 report as
103. the final report. We found another one of these 1,000-
104. pound bombs that turned out to be inert.
105. For MEC items, the primary thing we found were
106. these 136 projectile flash tubes. They were all located
107. in one area. That was remediated. So that should be
108. okay at this point, but there might be an area we want
109. to look at for additional sampling. And really there's
110. been no other MEC items other than something recently
111. that was found. I'll get to that.
112. So in 2006 there was a site-specific final report
113. addendum. We looked for metals; no results greater than
114. soil target cleanup levels. Explosives; no results
115. greater than soil target cleanup levels. And then we
116. did removal actions in Areas A, B, and C looking for
117. munitions debris or MEC, and you can see the result of
118. that from, you know, 3,400 pounds of munitions debris
119. and 5,000 pounds that's really not related to munitions
120. debris but other scrap metal.
     1. So in summary, I mentioned the flash tubes here
     2. from these 106 cartridges, and then recently this anti-
     3. aircraft round that was found on the beach, it was
     4. originally thought to be maybe a 105. Actually, it
     5. turns out to a 76-millimeter round. So that is a recent
     6. thing. I mean, it's not so surprising because it is
     7. anti-aircraft. It was consistent with use, but I think
     8. it's -- you know, as I said, it's one of the first times
     9. we've actually found something that was MEC related. I
     10. shouldn't say we found it. You guys found it.
     11. And munitions debris, I'll just kind of go through
     12. these. These Dove 1,000-pound plastic practice bombs,
     13. 90 millimeter, 60 millimeter, 106 millimeter, and then
     14. 30 cal and 50 cal. So those are the kinds of things
     15. that we found munitions debris of.
     16. So the goals of a remedial investigation are to
     17. look for these areas where we found munitions debris or
     18. munitions of explosives of concern to do investigations
     19. in those areas to see if there's any munitions
     20. constituents related to that; so in other words, any
     21. contamination that might have come off of those items
     22. when they were there. The items are gone now, but is
     23. there any contamination associated with it? So we need
     24. to, of course, sample for the munitions constituents,
121. and then once we get that data back, we need to evaluate
122. is there any -- if there's contamination found, is there
123. any threat to humans or ecological resources. So that's
124. part of what we do in the remedial investigation stage.
125. So this is kind of straightforward. We have the
126. conceptual site model. They've already done
127. investigations for MEC and munitions debris. We need to
128. do samplings for munitions constituents for those
129. residual contamination. The assumption is that the
130. current and future land use is going to be recreational
131. under the Park Service. Of course, receptors include
132. site visitors, recreational users, site workers,
133. construction workers, and obviously ecological receptors
134. as well. And the pathways would be ingestion, dermal
135. contact, or inhalation. Right now we're not thinking
136. groundwater is a pathway of concern, but once we start
137. doing the soil sampling, if we find high levels of
138. contamination, then we would investigate for groundwater
139. contamination as well.
140. So these are the areas again, if you look at these
141. areas in blue here. So this is the area I was
142. mentioning is an area that we wanted to do some more
143. work in. Here it is in blue also where munitions debris
144. was found or a single point anomaly was detected there.
145. There's another map that goes on that's later on that
146. will show kind of a cross-hatch of the areas we want to
147. investigate, so we'll get to that one shortly.
148. So just in summary, the areas where we did find
149. munitions debris were Areas A, Area B, Area C, D, E, F,
150. J, and L. It wasn't found in Areas G, H, K, M, or N.
151. So this is what the munitions constituents sampling
152. would look like based upon the types of items that have
153. been found or were historically used at the site. So
154. for metals we'd be looking at barium, copper, lead,
155. nickel, manganese, and zinc. Explosives, of course.
156. And then potassium chloride or more commonly referred to
157. as perchlorate. And I mentioned the areas that we're
158. looking at already.
159. And we also want to collect some site-specific
160. background because metals are, of course, found in soils
161. everywhere. So we want to see what are the background
162. levels of the metals and then compare those to the areas
163. that we're targeting to see if they're comparable to
164. those levels.
165. And this is what the program would look like under
166. phase one. There are two decision units, and what that
167. means is those decision units are areas where the
168. receptor exposures might be different. So the upland as
169. opposed to the beach, there might be different
170. exposures. Obviously on the beach you'd have a lot more
171. recreation, a lot more access, and they might be exposed
172. more there. And then upland would be more like hikers,
173. construction workers, things like that, NPS workers.
174. So we'd be looking at surface soil zero to one foot
175. in depth, and that's based upon what is most successful
176. for people to come in contact with and also for
177. ecological receptors to come in contact with. And then
178. we'd set up these sampling units, and they'd be a half
179. acre in size, is what we're proposing right now. That's
180. still under discussion, but that's what's being
181. considered. And then we would take 30 samples within
182. that half-acre grid. There's some subsurface soil
183. sampling that we do also, and that would just be kind of
184. in areas that we think have a high likelihood of
185. contamination. We would take a couple samples that are
186. down deeper just to see if it's consistent with the
187. sampling we're doing at the surface or if there's
188. something different going on at depth. Then, of course,
189. we have to do quality control samples, and then we're
190. going to screen those sample results against both our
191. background levels and against EPA risk-based levels.
192. So this is kind of a summary, a snapshot, and this
     1. is some of the information we'll use to coordinate with
     2. the Town of Wellfleet and also to Fish and Wildlife and
     3. other entities that we need to coordinate the sampling
     4. events with. So we're collecting from 25 grids, is what
     5. we're proposing. We're going to evaluate that
     6. contamination to determine if we need to do anything
     7. else after that. The locations, I'll show you the map
     8. later on. And it will be just three people that will be
     9. doing the sampling. We'll probably be coordinating --
     10. well, we will be coordinating with the National Park
     11. Service, but they may provide resources to us as well in
     12. order to get us out to the location, make sure that
     13. we're not impacting ecological receptors or anything.
     14. And all the sampling right now that's being
     15. proposed will only be done by hand tools. We're not
     16. going to bring any heavy machinery or anything like
     17. that. It would just be hand tools. It might be like an
     18. ATV or something like that in order to get to the
     19. facilities where we want to do the sampling, but there
     20. wouldn't be any augers or anything like that, like
     21. machines. And right now we're thinking we'd like to try
     22. to do it in May. Of course, that's contingent upon
     23. coordination with the other entities. You know, Fish
     24. and Wildlife might have objections to that or somebody
193. at Park Service perhaps. I don't know, but we'll
194. coordinate that sampling schedule.
195. I know the map's sideways here, but these cross-
196. hatched areas are the areas that we want to do the
197. investigation. You can see the blue dot. So we're
198. focused on areas where there was munitions debris found.
199. So they would have more likelihood of having
200. contamination. So all these areas are areas that we'd
201. be interested in doing sampling at.
202. If we find something, then we might want to do --
203. well, we will want to do some additional sampling. That
204. would be the second stage, the second phase of it. You
205. know, we would do basically the same process again.
206. We'd develop the technical memorandum. We'd coordinate
207. it, and then once everybody agreed, then we'd proceed
208. with doing that sampling as well. And that may be more
209. intrusive, what we'll do. We'll have machines in in
210. order to do some groundwater samples and that kind of
211. thing.
212. MR. DELANEY: Are you close to the end, Scott?
213. MR. GREENE: I am, yeah. Am I taking too long?
214. Sorry.
215. MR. DELANEY: Yeah, we're getting close. We have a
216. big agenda.
     1. MR. GREENE: Okay, no problem.
     2. So I mentioned we're going to do -- I'm very close,
     3. just a few slides.
     4. We need to coordinate with cultural resources,
     5. natural resources. We need to do some utility checks,
     6. make sure we don't have any issues there, and then
     7. community relations coordination. And this form really
     8. helps us out with that a lot.
     9. So out of that comes our remedial investigation
     10. report. I mentioned that already. And then the follow-
     11. up actions, I've talked about those already; the
     12. feasibility study, develop a proposed plan, public
     13. comment, and ultimately a decision document.
     14. And that's the schedule. We probably only need to
     15. focus on the things that are coming up already. TPP-1
     16. we had already. We're developing a work plan right now,
     17. and we're coordinating with the other entities right
     18. now. So once the work plan is done, we'll coordinate
     19. that and have a meeting for TPP-2, and then we'll
     20. proceed with sampling.
     21. And that's really just a repeat of that
     22. information.
     23. MR. DELANEY: Good, terrific. All right, thank
     24. you.
         1. MR. GREENE: All right, great.
         2. MR. DELANEY: I'll entertain any questions from
         3. members of the Commission.
         4. Lilli?
         5. MS. GREEN: Thank you.
         6. I really appreciate the fact that you did reach out
         7. to the Town of Wellfleet -- I am the representative from
         8. the Town of Wellfleet to the Commission -- and that you
         9. are working with Brian Carlson, our assistant town
         10. administrator.
         11. I assume through him you will do any community
         12. action planning or --
         13. MR. GREENE: Yes.
         14. MS. GREEN: -- information session as far as the
         15. public comment is concerned. Can you just elaborate? I
         16. know it's not until May 2019 (sic), but will that be
         17. here at this meeting or within the community in
         18. Wellfleet?
         19. MR. PRICE: There's two things for that. This is
         20. the primary communication venue. And when they first
         21. came, we didn't know they were going to be in the
         22. Wellfleet rectangle. So now because it's town property,
         23. he's going to be working with Brian to figure out what
         24. the next steps are specifically, if it's a board of
217. selectmen meeting or what have you. The town
218. administrator was invited to this meeting, for example,
219. because he couldn't make the last one. So they'll
220. figure out what the sessions are after that.
221. MS. GREEN: And as far as the public comment is
222. concerned, will that be through this --
223. MR. PRICE: Yes.
224. MS. GREEN: -- format here and not through the town
225. itself?
226. MR. PRICE: Only as far as the town requests and
227. the board of selectmen.
228. MS. GREEN: So you will be working through the
229. board of selectmen in Wellfleet?
230. MR. PRICE: It depends on what -- again, it's Brian
231. Carlson is the contact to decide if it's a board of
232. selectmen meeting or when else the town meets.
233. MS. GREEN: Right.
234. MR. PRICE: If you and Brian want to have a
235. conversation to figure out what's necessary or what have
236. you.
237. MS. GREEN: Well, I appreciate that very much.
238. Thank you.
239. MR. DELANEY: Other questions?
240. (No response.)
241. MR. DELANEY: Okay.
242. MR. GREENE: That's probably the last time we'll go
243. through the background stuff and like that. So the next
244. time I do brief updates we'll be just focused on moving
245. forward.
246. MR. DELANEY: Sounds good. Thank you very much.
247. MR. GREENE: Thank you.
248. UPDATE ON HORTON'S CAMPGROUND PRIVATE COMMERCIAL PROPERTIES
249. RELATED TO THEIR CSCs
250. MR. DELANEY: Okay, taking the next item also out
251. of order on the agenda, we'd like to discuss the
252. situation with Horton's Campground. The attorney is
253. here.
254. This, as you recall, is an issue where we had in
255. front of us a certificate to suspend the certificate of
256. condemnation which is about to expire at the end of
257. December. And we have the role and responsibility of
258. making a recommendation to the superintendent about what
259. we would like to recommend be happening with that
260. certificate. So there have been a number of -- we've
261. discussed this at least twice. The campground's
262. attorney has been in front of us once or twice, I
263. believe. He's here again today.
264. So, Maureen, you are the representative of the town
     1. and a selectperson there. Perhaps you'd like to give us
     2. a little update on what has transpired with regard to
     3. meetings with the town, and then we can discuss what we
     4. want to do for a recommendation.
     5. MS. BURGESS: Mr. Chairman, I actually have not
     6. been involved with the meetings with the town. It has
     7. been -- Mr. Nagle, you can correct me if I'm wrong. It
     8. has been the town administrator, the building inspector,
     9. the health agent, the planner.
     10. ATTY. NAGLE: The town planner.
     11. MS. BURGESS: Sorry?
     12. ATTY: NAGLE: Yes, the town planner.
     13. My name is Don Nagle. I represent the Horton's
     14. Campground, and we have been interacting with the town
     15. on a number of different levels.
     16. MS. BURGESS: Could you just give us an update on
     17. where you are with the town in terms of the planning
     18. board, the zoning board, the steps that have been taken?
     19. Because that's where we left it last time, Mr. Chairman.
     20. ATTY. NAGLE: Sure, I'd be happy to.
     21. MR. DELANEY: Go ahead, Mr. Nagle.
     22. ATTY. NAGLE: Horton submitted a site plan review
     23. application to the planning board on -- let's see --
     24. this is December -- November 1. Leading up to that, we
265. had several meetings with the building inspector and the
266. town planner, Carole Ridley. So we put together what we
267. think is a pretty comprehensive package and addresses
268. all the items in the town zoning bylaws with regard to
269. what is required in the site plan review. And
270. significantly within that package is a restoration plan
271. to address the extensive clearing that happened at the
272. upper area of the Horton's Campground in the context of
273. putting in a comprehensive treatment plant system there.
274. So we submitted that on November 1. We received a
275. letter from Carole Ridley which identified some
276. additional information that she would like to see in
277. order to have a complete package in order to open up a
278. planning board meeting on that. And so we're working on
279. that response. A lot of details. Our engineers are
280. working on it. It's a very -- it was a comprehensive
281. plan that was submitted and a pretty detailed comment
282. letter that we're now working on to respond to. There
283. was a planning board hearing on this scheduled because
284. of the significant information that is being --
285. additional information that's being requested. We
286. rescheduled that hearing for the end of January. So
287. we're aiming to get a complete package into the town
288. planner within a couple of weeks and then have the
289. hearing at the end of January and have, in the interim
290. time, the opportunity for the planning board members to
291. review -- and particularly the town planner to review,
292. digest the information.
293. I mentioned the restoration plan. That was
294. submitted as part of the site plan review application
295. requirements, but we also submitted that same plan to
296. Natural Heritage to address a rare and endangered
297. species. So that went to Natural Heritage to ensure
298. that we're complying with those requirements as well.
299. MS. BURGESS: And has that been responded to?
300. ATTY. NAGLE: I'm sorry?
301. MS. BURGESS: Has Natural -- has NHESP responded?
302. ATTY. NAGLE: Yes, our consultants, Wilkinson
303. Ecological, is interacting with Natural Heritage and may
304. have provided comments, and they have prepared a draft
305. letter to officially determine really where we fall in
306. the regulatory scheme. And there are a few details that
307. need to be worked out between Wilkinson and Natural
308. Heritage before that letter is finalized. So Wilkinson
309. is working on that information right now. So there's
310. really two big things pending with the town. One is the
311. planning board the end of January, and the other is with
312. Natural Heritage.
     1. And there's a third aspect to this that I should
     2. brief this committee on, and that is that the genesis of
     3. this work was done in response to a stop work order
     4. issued by the building inspector. We are basically
     5. doing what that order says, but on the legal side, the
     6. question has come up: Is upgrading the facility to meet
     7. current groundwater discharge standards -- is that a
     8. change or alteration of a pre-existing nonconforming
     9. use? So that's an issue that we're going to address
     10. with the zoning board of appeals, and again, that -- I
     11. recently submitted a legal brief of that issue to the
     12. zoning board. And we're giving them time to digest that
     13. letter, to consult with town counsel on that, and we
     14. also have it scheduled for the ZBA hearing on that also
     15. around the end of January.
     16. So that's in a nutshell or not a nutshell -- that's
     17. really where we are now interacting with the town.
     18. MR. DELANEY: Question, Larry?
     19. MR. SPAULDING: I just have some procedural
     20. questions probably for Lauren.
     21. These certificates are good for five years?
     22. MS. McKEAN: Yes, that's how the Commission has
     23. decided to do it.
     24. MR. SPAULDING: Is it possible to grant a
         1. certificate for less than that so that it continues, for
         2. example, six months or a year?
         3. MS. McKEAN: Yes. In fact, that's what you had
         4. done when they were required to comply with the
         5. administrative consent order. You were saying until
         6. that such date as they either put in the wastewater
         7. plant -- treatment plant or conformed to the
         8. administrative consent order. So conditional things of
         9. that nature are permitted.
         10. MR. SPAULDING: And then my next procedural
         11. question is, if this certificate lapses because no
         12. action is taken, is it possible for someone to come in
         13. and ask for one or, at that point if it's lapsed, is
         14. that sort of it? You can't get it?
         15. MS. McKEAN: I think George has spoken to the
         16. solicitor's office about that, so I'll let George take
         17. that one.
         18. MR. PRICE: Right. We have officially withdrawn
         19. certificates in the past from individual property owners
         20. and at least one commercial business. If a certificate
         21. lapses, my reinstating it is what the question is for
         22. the solicitor's office.
         23. MR. SPAULDING: So we don't know that then?
         24. MR. PRICE: Don't know it for sure.
313. MR. SPAULDING: From (inaudible)?
314. MR. PRICE: Yes.
315. MR. ROBINSON: Has it happened before?
316. MR. PRICE: I'm not familiar with it. It certainly
317. hasn't happened in my tenure.
318. So in the past when we've withdrawn a certificate,
319. it's because a private property owner decided to put on
320. an addition which we believed was somewhat out of our --
321. you know, our understanding, guidance, and, most
322. importantly, the town zoning.
323. The other commercial business was Jack's Gas on
324. Route 6. Some of you are familiar with that business.
325. So basically that fundamentally changed through the
326. certificate of that property as well.
327. MR. SPAULDING: My last procedural question is,
328. what is the drop-dead date when if it's not renewed or
329. something isn't done it will expire?
330. MS. McKEAN: The 31st.
331. MR. SPAULDING: Of this year?
332. MS. McKEAN: December.
333. MR. PRICE: So this was based, again, on this
334. committee's vote that I accepted to extend it until the
335. end of this one.
336. MR. DELANEY: And that was a year ago?
337. MS. BURGESS: That was three years ago?
338. MR. DELANEY: Three years ago?
339. MS. McKEAN: I'm not sure when we did it last.
340. MR. PRICE: I believe this was a year. The
341. previous one was for three years.
342. MS. McKEAN: Yeah.
343. MR. DELANEY: So they're extended twice already?
344. MR. PRICE: Yes.
345. MR. DELANEY: Once for three years and another one
346. for a year?
347. MR. PRICE: Yes.
348. MR. DELANEY: Don?
349. MR. NUENDEL: So it sounds by what I've heard --
350. and I'm pretty sure I'm right -- that if something gets
351. done with the Town of Truro it probably won't happen
352. until February? March? Well, that's the rub.
353. MR. DELANEY: Yes, so there's a time -- definitely
354. a timing issue here.
355. MS. McKEAN: I have a question.
356. MR. DELANEY: Sorry, Lauren?
357. MS. McKEAN: I have a question of the attorney
358. related to that, and that is we don't have the letter
359. that you wrote to the zoning board of appeals, but we
360. understood you were going there at the end of January.
361. Are you not at this point going to the ZBA at the end of
362. January?
363. ATTY. NAGLE: Yes, both the planning board and the
364. zoning board hearings were continued because really an
365. additional amount of information on two different
366. levels. So the end of January those two hearings will
367. occur.
368. The planning board and the ZBA have a certain
369. amount of time to render decisions, and as this
370. gentleman pointed out, that could push off a decision by
371. the town on whether to accept our site plan review and
372. what to do about the issue of whether this activity is
373. indeed an extension or a change of the current use,
374. which would kick the campground out of the
375. grandfathering status. Those two decisions will be
376. rendered probably mid- to late February, if not into
377. March.
378. MR. DELANEY: Okay. Lilli?
379. MS. GREEN: So I asked at the last meeting and got
380. an answer in the affirmative, but I just want to make
381. absolutely certain. If our recommendation is to extend
382. full well knowing that the Town of Truro has a stop work
383. order but our recommendation to extend also includes a
384. stop work order, is that still acceptable or is that
385. something that you (inaudible)?
386. MR. DELANEY: I'll let the superintendent answer
387. that on the stop work order.
388. MR. PRICE: Stop work order is the responsibility
389. of the town.
390. MS. GREEN: But can we condition our extension on
391. the fact that no work can proceed until we -- until they
392. come back to us? I mean, just to keep it on the books
393. but not -- but nothing can proceed until they come back
394. -- until we're satisfied that it meets our approval?
395. MR. PRICE: Sure. So something that specific
396. obviously I can check with our solicitor. I do not
397. believe that would be normally what I'd be able to do.
398. What we would and have done is that basically we're
399. looking for acceptance by the town -- acceptance by the
400. town that we believe meets the nature and the spirit of
401. the establishment of the Cape Cod National Seashore. So
402. we might even have approval by the town on a project
403. that the Seashore would then object to. The Blasch
404. house is an example of that.
405. So remember, you're advising to the superintendent,
406. to the National Park Service from your perspective, and
407. then the town officers review on what they believe is
408. acceptable. And then our responsibility is to meld that
409. together if it meets the spirit on the wall of the
410. enabling legislation, and that obviously is where we get
411. involved with the solicitors and all that sort of thing.
412. So that's different than a stop work order. It's
413. where do they stand with the ZBA and with the planning
414. committee in town. So I'm interested I think in that
415. larger response as opposed to something as specific as a
416. stop work order.
417. MS. GREEN: So the spirit of the stop work order
418. could be incorporated in our recommendation of
419. extension; is that correct?
420. MR. PRICE: I wouldn't even put stop order. I
421. would have it representing the town committees. The
422. Town of Truro is taking the lead on this, as I've
423. explained to the Town of Truro, both on the zoning and
424. on the planning.
425. MR. DELANEY: Joe?
426. MR. CRAIG: The last time we spoke, it was
427. mentioned that they infringed on Seashore property.
428. What has been done since then on that?
429. ATTY. NAGLE: We've come up with a restoration plan
430. that addresses Seashore property as well as Horton's
431. property. So that -- you know, that plan is really
432. before two entities right now, the planning board and
433. also Natural Heritage. Natural Heritage administers the
434. Mass. Endangered Species Act.
435. So what happens, obviously we're going to need
436. permission from the Seashore to do that restoration, but
437. in keeping with what the superintendent just said, the
438. town in this -- not only the town but also the state
439. under MESA will evaluate the merits of this restoration
440. plan that will occur not only -- as proposed not only on
441. Horton's property but also on Seashore property.
442. MR. CRAIG: Doesn't the Seashore get a chance to
443. approve or disapprove of the restoration project on
444. Seashore property?
445. ATTY. NAGLE: Absolutely.
446. MS. McKEAN: We do not have that in writing from
447. them yet, and as I understand it, Mass. Natural Heritage
448. is looking at it for the box turtle. Is that correct?
449. ATTY. NAGLE: That's what they're looking at right
450. now. And the letter that they --
451. MS. McKEAN: And remediation as a result, they'll
452. take it.
453. ATTY. NAGLE: Correct.
454. MR. PRICE: Just to be clear, what happened when
455. they went over the boundary onto the National Seashore
456. property, that's actually a separate issue in our minds
457. than the rest of the campground. So we're dealing with
458. it separately as if any other encroachments by a
459. property owner.
460. MR. CRAIG: I think that affects our decision.
461. MS. BURGESS: Yeah, it does.
462. MR. PRICE: (Inaudible).
463. MR. DELANEY: I think there are two different
464. procedurally and jurisdictionally, but just to refresh
465. our memory, that sentence up there that's the purpose of
466. this park and our mission here is to conserve the
467. scenery and natural and historic objects and wildlife
468. therein is what I see cuts across both the immediate
469. campground and the adjacent park. Both have been
470. equally damaged and extensively damaged, which is our
471. major issue of concern. So I think there's a damage
472. that cross-cuts. How getting it resolved, as the
473. superintendent says, may be a couple different
474. diameters.
475. George?
476. MR. PRICE: Just a clarification -- and I'm going
477. on a little dangerous ground here because I'm not an
478. attorney -- but Mr. Nagle just said that he's produced a
479. paper, a legal paper on whether or not the installation
480. of a wastewater treatment plant automatically negates a
481. change of use. I'm paraphrasing. That is a very
482. specific example perhaps that we would be talking to our
483. solicitor about because if that ended up by the state
484. and the town to be resolved, that's not a change of use.
485. Well, the Park Service may look at it very, very
486. differently because in our definition we're talking
487. about the entire landscape, and nobody thought of or
488. approved on our end utilities to every single campsite
489. that would upgrade those dramatically from the primitive
490. camping that had been there. So that might be a
491. specific example where we would even differ if you got
492. acquiescence from the town on what our course of action
493. would be.
494. MR. CRAIG: I would think that the zoning -- the
495. planning board zoning in the town would look at that
496. exact extension of use. I don't see how they could look
497. at it any other way.
498. MR. DELANEY: Any others? Larry? Okay, let's go
499. around again. Back to Larry.
500. MR. SPAULDING: Well, first of all, I think it
501. would be very important that that plan be submitted to
502. Lauren or the appropriate person. And I'd like to ask
503. Mr. Nagle when he's making these filings that we have
504. something in our record, that he would submit a copy of
505. whatever you're filing with the town to Lauren and the
506. town planner -- the Seashore planner so that if there's
507. something here, that people can look at to find out what
508. you're doing.
509. ATTY. NAGLE: Now, I may be mistaken about this.
510. MR. SPAULDING: I understand it's a matter of
511. public record, but then we've got to go over to the town
512. hall and get it.
513. ATTY. NAGLE: Oh, absolutely. And we have
514. submitted -- well, I should say in the past since this
515. began we've been submitting the same documentation that
516. we've been submitting to the town to the Cape Cod
517. National Seashore.
518. MR. SPAULDING: That's not what Lauren has said.
519. ATTY. NAGLE: We were instructed not to submit
520. those documents to the Seashore because it's a town
521. matter.
522. But I believe -- Lauren, correct me if I'm wrong --
523. with regard to the restoration plan, which I know
524. because we were talking about it, that this body is
525. keenly interested in, that I'm pretty sure you have a
526. copy of the restoration plan that we submitted to MESA.
527. MR. PRICE: Actually, if I can clarify. It's my
528. understanding the first plan that was submitted was
529. submitted to us first looking for feedback from the
530. Seashore in anticipation of discussions with the town.
531. That's what was inappropriate. We weren't the first
532. body in this. The town is the first body. So maybe
533. that's a clarification. It wasn't that we wouldn't be
534. interested in the plans, but we didn't want there to be
535. a misunderstanding that somehow you came to us first and
536. then went to the town.
537. ATTY. NAGLE: Right, that's correct. That's a good
538. clarification, but regardless, we're happy to share this
539. documentation with the Seashore.
540. And, Lauren, if you don't have a copy of the
541. restoration plan, believe me, I'll provide it to you
542. right away. But that was my understanding, that
543. Wilkinson submitted a courtesy copy to the Seashore.
544. MS. McKEAN: Wilkinson came here and submitted it
545. here, and so therefore we got a copy. We also got a
546. copy of the site plan review that was due November 1,
547. and I do have Carole Ridley's four-page letter saying
548. what needs to be done to upgrade this package.
549. ATTY. NAGLE: Right.
550. MS. McKEAN: So that's something that they can act
551. on, but that -- so that's the end of our paper trail.
552. We would like to get the ZBA letters. We are the
553. abutter on all sides of this property. We would like to
554. see all the submissions to the town.
555. MR. DELANEY: If I can just refresh my memory as
556. well as yours about the restoration letter, I think we
557. did see an initial draft here, and I recall a
558. conversation about how light and thin it was. There was
559. essentially a lot of concern among this body for
560. essentially putting in seedlings and seeds back in the
561. ground where full-grown trees. And I recall also the
562. conversation about it's one thing to put a few little
563. seedlings back in and call it a restoration plan, but it
564. really doesn't restore the ecology and the functions of
565. that area that have to do with topsoil, low lying
566. vegetation, mosses, greens, sublevel and higher levels
567. of vegetation. That was the whole ecology that has been
568. destroyed, and a restoration -- a true restoration plan
569. that best restores to as much as possible the ecology is
570. not I think our recollection was -- not just putting a
571. few seedlings there, even a few hundred seedlings, even
572. a few thousand. It was not satisfactory. We didn't
573. come to an official conclusion, but that was I think our
574. set of collective comments about the restoration.
575. MR. NUENDEL: I agree. And one thing, one topic
576. became of the larger trees. We talked about that, not
577. little seedlings or acorns.
578. MR. DELANEY: Right.
579. MR. NUENDEL: We talked about that as well.
580. MR. DELANEY: So we did have that initial reaction
581. to that.
582. Going around the room, continue around. Lilli?
583. MS. GREEN: Yes, thank you.
584. I have read in the paper -- and I'm not sure that
585. this is accurate, but I presume it probably is. I was
586. concerned about how the view that there was not a change
587. of use in this plan given the fact that it seems that
588. the new plan talks about electricity and Internet
589. connections and all kinds of utilities to every single
590. site where there was not that kind of activity before.
591. How is that not a change of use?
592. ATTY. NAGLE: So this is a different topic than
593. restoring the cleared area. So we're addressing -- we
594. received the initial comments from this body with regard
595. to the draft plan. We beefed it up. Wilkinson
596. Ecological is in regular communication with Natural
597. Heritage to make sure what you said about it's got to be
598. done right; it's got to be a real restoration to
599. habitat. The initial thinking is that or the initial
600. determination not made official yet by Natural Heritage
601. was it's a habitat for the box turtle. So we've got to
602. make sure that this area is restored to be consistent
603. with habitat for the box turtle.
604. So we're working on that. We'll provide whatever
605. updated drafts that we generate to the Seashore, and my
606. understanding, as George pointed out, that it's being
607. presented to the town under site plan review but also to
608. Natural Heritage to make sure that it's restored
609. properly. So that's one issue.
610. The issue that you're raising goes to whether
611. extending utilities, sewer, water, and electric, to
612. every campsite at Horton's is a change of use from the
613. pre-existing use. And that's a -- reasonable minds can
614. disagree on that issue. I submitted a letter, which
615. I'll provide a copy to the Seashore, that argues that
616. under case law, under zoning law -- that that is not a
617. change of use which would result in a loss of the
618. grandfathering protection that the campground has.
619. And let me explain a little bit about that. Since
620. the late '30s, early '40s Horton's has been a
621. campground. In fact, the original name was Horton's
622. Trailer Park. So what it had -- what Horton's has been
623. doing since before zoning was enacted in the Town of
624. Truro is people with RVs would come in, people with a
625. pop-up trailer would come in, and people with primitive
626. tents would come in. And that's what's been going on
627. since before zoning. So back almost more than ten years
628. ago, DEP knocked on our door and said, "Look, you have
629. --" -- so anyway there was those mix of three things,
630. primitive, pop-up, and RVs. And back in the '30s and
631. '40s, RVs were what they are. Now they're more
632. extensive and so forth and so on, but it's still RV
633. camping. A certain amount of the campsites had sewer --
634. have sewer, have water, and have electric. When DEP
635. knocked on the door and said, "Look, you've got to
636. provide -- these are substandard septic systems. You
637. have to upgrade them," so how do we upgrade them? You
638. have to put in a treatment plant. You have to connect
639. all these different separate septic systems into a
640. centralized collection -- collection pipes and to a
641. treatment plant. So what we said is, "Okay, we'll do
642. that, but if we're doing it, we're not going to just
643. provide sewer to a fraction of the campsites. We're
644. going to provide them to everyone." So that's what our
645. proposal is, and that's what we started doing in
646. accordance with an order from DEP to install the
647. collection system. Not just to some of the campsites,
648. to all of them.
     1. So the question you're raising --
     2. MS. GREEN: But I'm talking about Internet, and I'm
     3. talking about high-speed cable. I'm talking about that.
     4. It's a different thing than just an electric line or a
     5. sewer line. I'm talking about all of these new
     6. amenities that aren't included in what you're -- the way
     7. you're talking about it now.
     8. ATTY. NAGLE: Was there Internet or cable back in
     9. the '30s and '40s?
     10. MS. GREEN: Is that a change of use, though?
     11. ATTY. NAGLE: Well, that's the question. That is
     12. the question. And we're going to be talking to the
     13. zoning board of appeals about it at the end of January.
     14. And I've submitted my arguments, and my arguments are
     15. that under case law it's not an extension or a change of
     16. use. And there's a lot of cases that address this exact
     17. issue. Not only for campgrounds, but for a lot of
     18. things. For example, you have a grocery store that's a
     19. nonconforming use, and they sell groceries. And zoning
     20. changed, and you can't have grocery stores in that area,
     21. let's say. So now the grocery store wants to sell beer.
     22. Beer is not groceries. That -- cases have said that is
     23. a -- that is within the general purpose of a grocery
     24. store, to sell not just some things but other things as
649. well. And the courts have said that's not a change of
650. use.
651. There have been cases where there was -- I mean,
652. there's a lot of examples of where --
653. MR. NUENDEL: Well, we've heard examples. You
654. don't need to keep on going. We understand where you're
655. coming from.
656. ATTY. NAGLE: All right.
657. MR. NUENDEL: But here's one question I have. How
658. many tent sites do you have here now after this
659. reconstruction?
660. ATTY. NAGLE: 218.
661. MR. NUENDEL: 218?
662. ATTY. NAGLE: Yeah. And do you know how many there
663. were before we started this process? 218.
664. MR. NUENDEL: Okay.
665. ATTY. NAGLE: And our (inaudible) did say, even if
666. we put more campsites in, that's not necessarily a
667. change of use. It's still camping.
668. MR. DELANEY: Thank you. No, change of use is not
669. directly in our court.
670. ATTY. NAGLE: Right. Thank you.
671. MR. DELANEY: Lauren, you had a question.
672. MS. McKEAN: Yeah, I have a question or a
     1. clarification. As I understand it, DEP's consent --
     2. administrative consent order was for a wastewater
     3. treatment plant and not collection similar to North of
     4. Highland campground that we put a conservation easement
     5. on. And at that site people still go to the pump out
     6. station for the wastewater treatment plant. And so that
     7. is what was anticipated at this site, not collection and
     8. water. And I have no evidence in our file here that
     9. there was septic hookups to campsites.
     10. Maybe you can tell us. Was that a hookup to the
     11. restroom building? We don't have any knowledge of --
     12. ATTY. NAGLE: About 15 percent of the campsites,
     13. 218 of them, had hookups to septic.
     14. MS. McKEAN: Had hookups to septic?
     15. ATTY. NAGLE: About 15 percent.
     16. MS. McKEAN: What kind of systems? We don't see
     17. proof of that at all.
     18. MR. DELANEY: I think this next question is
     19. important. Hookup to what? Hookup to a treatment plant
     20. or a cesspool?
     21. ATTY. NAGLE: A cesspool. And that's what DEP said
     22. we can't have anymore.
     23. MR. DELANEY: Right.
     24. ATTY. NAGLE: And so, like I said, it was about --
         1. you know, about a third to a quarter of 218 campsites
         2. that had hookups to sewer.
         3. MS. McKEAN: Right, you just said 15 percent, not 4 --
673. ATTY. NAGLE: It's about 15 percent. I can give
674. you the exact numbers. The exact numbers are in the
675. letter that I'll provide you a copy of. But the bottom
676. line is those hookups were to an illegal septic system
677. that was substandard. And what DEP does -- they don't
678. care whether there are hookups at each individual
679. campsite. What they care about is that there are 218
680. campsites times 90, and that's the design flow for
681. campgrounds. And so they said, "Well, the design flow
682. is over 10,000 gallons per day if you look at the entire
683. campsite. And if that's the case, you can't get away
684. with, you know, these little septic pits that are not
685. pretreated to remove nitrogen." And what DEP said is,
686. "You need a treatment plant for the whole -- under the
687. law you need a treatment plant for the whole thing." So
688. that's what we did. We got a permit for it, and we got
689. a consent order that requires that we put this in.
690. So the issue is -- and I think what nobody really
691. anticipated was, well, wait a minute. You're putting
692. hookups to each of the sites whereas previously only 15
693. percent or so of the sites were hooked up to sewer. So
694. the question is, well, if you're hooking up all the
695. campsites, is that allowable under zoning? And I would
696. argue -- and I have argued and I will argue before the
697. ZBA that it's not an expansion of the pre-existing
698. nonconforming use.
699. MR. CRAIG: It's not an expansion from 15 to 100
700. percent?
701. ATTY. NAGLE: Correct.
702. MR. CRAIG: Wow. That's interesting.
703. ATTY. NAGLE: You know, my opinion doesn't count.
704. The ZBA has to rule on it. And ultimately it may be an
705. issue that goes to court.
706. MR. DELANEY: George?
707. MR. PRICE: Just FYI for the rest of you. So Rich
708. pointed to the Organic Act as far as what the Seashore
709. is about. I also want to put in, in our legislative
710. documents under zoning, part of the problem here that
711. finds it difficult to come up against the legal
712. arguments every step of the way is that we are also
713. trying to protect the Cape Cod character and trying to
714. protect the integrity of existing structures. So
715. unfortunately, when they were put in in '61 and in other
716. planning documents, everybody around the table knew what
717. that meant so nobody would have to be arguing that today
718. if those same people were sitting around the table
719. because the concept of what we were trying to protect
720. and preserve in the future was understood. Now we're
721. coming up against this type of nuance and legal
722. argument.
723. MR. DELANEY: Okay, Mark?
724. MR. ROBINSON: I thought I heard George say that
725. the Seashore can render independent judgment and
726. decision on change of use that is separate from the ZBA.
727. Correct?
728. MR. PRICE: Yes.
729. MR. ROBINSON: So, Rich, I thought I heard you say
730. that this wasn't before us now that he's talking about
731. restoration. But it's all part of it, isn't it, in
732. terms of how we make a decision on the certificate?
733. MR. DELANEY: (Nods.)
734. MR. ROBINSON: Does the campground plan to be in
735. business, operationally so this season?
736. ATTY. NAGLE: Yeah, we got the stop work order the
737. last -- beginning of May, and we stopped building the
738. treatment plant, but we're still open for business.
739. MR. ROBINSON: And you expect to be this summer too
740. even if not all of these issues are resolved?
     1. ATTY. NAGLE: Right, right. And we have notified
     2. DEP that we're in this -- you know, we're in this
     3. process and the deadline's in December. We're going to
     4. be pushed out.
     5. But, you know, the bottom line is Horton's wants to
     6. be in business because they're putting in this --
     7. because they have to put in this treatment plant. They
     8. want to make those services available to every campsite.
     9. They're not expanding the number of campsites, but they
     10. want to expand the amenities to each of the campsites,
     11. which makes sense. I mean, the treatment plant project
     12. is a multimillion dollar project.
     13. MR. ROBINSON: So I think to me context is
     14. everything, and with deference to our selectmen in here,
     15. this is the smallest town on Cape Cod. Cape Cod doesn't
     16. have the resources, financial, administrative, legal,
     17. that some of the larger towns might. If this was
     18. happening in Barnstable, you would not have proceeded.
     19. Your client would not have proceeded without touching
     20. anything, without getting big -- lots of review and
     21. permits and everybody involved.
     22. I feel like a little town is being taken advantage
     23. of here. We saw with the Kline house, that full speed
     24. ahead, damn the torpedoes, we'll get permits later.
741. Nobody can tell us no. And I know this is a different
742. set of circumstances, but it's the same idea, that the
743. small town without the resources.
744. I mean, is the ZBA going to submit your opinion to
745. town counsel to get special counsel that's going to cost
746. a lot more money? Are you going to pay for that extra
747. review? No, probably not. So the Seashore and the
748. federal government is at a level of competence to deal
749. with people that bull through regulations without regard
750. to consequences and considerations, and I think that the
751. decision we make here is independent and separate. And
752. I think that it's important that the Seashore have teeth
753. to the extent it does parallel to the zoning decisions.
754. MR. DELANEY: Maureen?
755. MS. BURGESS: I would agree with Mark. And I did
756. get a copy from the health agent of the discharge permit
757. from the Department of Environmental Protection, and I
758. just wanted to note that there was a Section No. 17 from
759. the DEP in the DEP document that says: (Reading) The
760. issuance of a permit does not authorize (end reading) --
761. and this was with regard to the wastewater treatment.
762. (Reading) The issuance of a permit does not authorize
763. any injury to persons or property or invasion of other
764. private rights, nor does it relieve the permittee of its
765. obligation to comply with any other applicable federal,
766. state, and local laws and regulations (end reading).
767. So I think, you know, from my point of view that
768. was a real oversight in terms of finding out really what
769. the local regulations were.
770. And, Mr. Chairman, I did have -- going back over
771. the minutes, I recalled that there was a comment from
772. the representative from Chatham, Joe Craig, that what we
773. saw in that restoration plan was not so much a
774. restoration plan for a reconstitution of what existed
775. before but rather an attempt to go forward with a plan
776. for the conditions as they exist now to permit more
777. amenities and to make it look more like a mobile home
778. park as we see them.
779. And I did, Mr. Nagle, go to Google Earth, and I
780. have provided the commissioners with -- and I can give
781. you a copy of this -- two satellite photos, one from
782. 5/20/16 showing the camp -- the area in question and an
783. earlier one from 2014 -- so June -- early June of 2014.
784. So you can see obviously the extent of clearing, and the
785. clearing of the canopy particularly you can -- is very
786. clear.
787. And the question had come up also in public comment
788. from the alternate representative from Wellfleet about
789. where did the trees go that were removed, where did the
790. loam and the topsoil go, and I started just doing some
791. calculations. It's very easy to do if you go to Google
792. Earth. You can use their ruler. And I looked at the
793. two main sections and got the square footage of the two
794. sections involved in what we're speaking about. And I
795. calculated the square footage, and then I converted that
796. into square yards and then into cubic yards. And I used
797. to do that just a ballpark, eight inches of digging,
798. which I have no idea if it would be a lot deeper than
799. that. But using eight inches and then converting that
800. into cubic yards, I came up with an estimate of what
801. could have been removed in that kind of a scenario. And
802. the figure -- and again, this is just ballpark -- was
803. 1,005 cubic yards of soil and loam that may have been
804. removed. It could be more than that. And I know we
805. don't know where that went, and it would be very
806. difficult to provide that environment again because it
807. has been removed. You know, if you're looking at values
808. and you used $36 a cubic yard as an estimate of worth of
809. the soil, it comes out to a figure of $36,180. And then
810. the question is, where did the wood go? Was it sold as
811. cordwood? Was it chipped up? And I think what bothers
812. me about it is, yes, I understand it's private property,
813. but it is within the Seashore. And I see that as a
814. natural resource that's been disturbed, and I don't know
815. -- you know, we can talk about restoration, but it's not
816. -- it's not reinstitutionalization of what was there.
817. MR. DELANEY: Before we move to -- I think we're
818. getting ready to examine what our options might be for
819. motion language. I think we need to make a decision
820. pretty soon about what we recommend to the
821. superintendent. I think Larry's ready. I think
822. Maureen. You've all had a couple of options. Let me
823. just recap. Then I'll ask if there's any other
824. discussion before we start examining our various
825. possible motion language options.
826. One point taken so far is -- and we've seen it
827. three times -- clearly there has been extensive damage
828. in this project to the natural resources of Cape Cod.
829. The superintendent pointed out -- and Mark reiterated --
830. it's not only the natural resources but the character of
831. the Park that we are mandated to consider and,
832. therefore, the larger context.
833. We know some of the specific authorities about ZBA
834. and elsewhere lie in other jurisdictions, but we also
835. understand that those relate to our assessment and
836. they're also important decisions. Third -- fourthly, I
837. guess, we have -- I'll remind us -- we have been in
838. terms of process and procedure I think working in good
839. faith with this project for two extensions of the
840. certificate already, one when we entered into good faith
841. about dealing with the wastewater situation. I guess
842. that was three years ago. And then when that lagged
843. four years ago now, then that three years went by, and a
844. year ago we see still no progress, and we were concerned
845. about lack of communication from the proponent to the
846. local towns -- we had not seen much progress there -- or
847. avoidance potentially of some of the committees. So we
848. extended for another year. So here we are again faced
849. with procedure that we've been I think very flexible
850. with and very -- at least the proponent we've been very
851. flexible with and given every benefit of the doubt to
852. prove to us that they are trying to deal properly with
853. natural resources, with the character, and in good faith
854. with the town, state responsibility, and ours. And I
855. think we've heard around this table that we're not sure
856. that it's happened to the extent that we had hoped it
857. would when we gave those extensions.
858. So am I kind of characterizing the feeling of the
859. board well? I would like to have others add to that
860. characterization if possible because that's the stage
861. that we have to then determine what we say to the
862. superintendent.
863. ATTY. NAGLE: May I?
864. MR. DELANEY: Would you like to react to that?
865. ATTY. NAGLE: Yeah, may I?
866. MR. DELANEY: Yeah.
867. ATTY. NAGLE: There's no question that there is --
868. a lot of damage was done, extensive clearing, and I
869. don't think anybody intended that. But that's what
870. happened, and we're prepared to restore it. And we've
871. submitted -- we hired a group that we think is qualified
872. to put together a plan to restore it, and we're open to
873. comments on that as to what -- as to the adequacy of it.
874. In fact, the adequacy of it is being scrutinized by
875. Natural Heritage.
876. We're required by state law to put in this
877. treatment plant, and that was what precipitated all of
878. this. Obviously we hired the wrong contractor to dig
879. the trenches and the internal roadways of this property,
880. and he ended up cutting down -- our clients -- my client
881. was aghast at the extent of it. And I think I said this
882. at the last meeting. We got the stop work order.
883. Frankly, leading up to the work to install the plant, I
884. appeared before this body for a number of years updating
885. it on the progress of getting a consent order with DEP
886. that adequately addressed the septic problems. Not just
887. at Horton's but at the North Truro camping area. I've
888. come back and reported the expansion of that. I
889. actually started with North Truro camping area, and then
890. we included Horton's in that. And my client agreed with
891. DEP to have a treatment plant that covered both
892. campgrounds. And I think this body was appreciative of
893. that, that we're doing the right thing.
894. So in terms of communication, I think that at least
895. since my involvement I've come here telling you exactly
896. what we're doing and why we're doing it. And I think
897. what caused this furor is that the extent of clearing
898. that was done in order to install this treatment plant
899. system was way beyond anything any of us imagined,
900. including my client. Once that happened we got a stop
901. work order, and we put together a restoration plan. We
902. tried to reach out to this body to say, "Look, here's a
903. draft. We're working on it. It's just to let you know
904. that we're working on it. Any comments you might have
905. we'll accept." Wilkinson incorporated the sentiment of
906. this board into an upgraded restoration plan, and we
907. have it now before the planning board. And we want to
908. do that.
     1. So I just want to give you my version of what
     2. Horton's has done and not done, and we're upset, as this
     3. board is, with regard to the clearing, but we're going
     4. to restore it.
     5. MR. DELANEY: We appreciate it. We appreciate your 6 --
909. ATTY. NAGLE: And we also want to move forward on
910. putting in the treatment plant.
911. MR. DELANEY: We appreciate that. Obviously we
912. didn't have responsibility for the part of your client's
913. contractor. That was unfortunate, but there it is.
914. We're responsible for that mission (indicates) and the
915. things I summarized a minute ago. And I think we are
916. also -- we also just want to add to that vision or that
917. summary that I made a second ago because not only are
918. all the issues there, but we have to look forward to
919. where the proponents, the campground now seems to be --
920. not seems -- I think to me, to all of us clearly
921. intended to take this project, which is to be able to
922. accommodate a whole different kind of camping facility,
923. are emphasizing bigger, more -- more amenities and more
924. luxurious kinds of RVs. With this kind of investment in
925. all those connections to each of the 215 sites, it seems
926. pretty obvious where this is going. Whether it was the
927. beginning or now or at the end, that's where this is
928. going. So I think we have to keep not only our current
929. set of facts in front of us but where we think the
930. future is going to be from all the statements we've
931. learned.
932. So with that in mind, we could do three things, and
933. maybe there are more options. But one recommendation
934. could be just simply say to the superintendent,
935. "Enough's enough. We recommend you let the certificate
936. expire at the end of the year and see what happens after
937. that." The second option is we could discuss an
938. extension, as we have done twice already for a total of
939. four years, and see what happens, or we could discuss or
940. consider an extension with a certain set of conditions.
941. Maybe there are others, but I'm putting those out not as
942. motions yet but just for us to start thinking about
943. where we want to go with this.
944. Now, Larry, you've been trying to say something.
945. MR. SPAULDING: I was going to go through the three
946. options. Option No. 1, I think we all agree we're not
947. going to be able to extend it for five years based on
948. we don't have any information. We don't have any plans.
949. Option No. 2 is we don't do anything. And the problem
950. with not doing anything is George doesn't have a
951. solicitor's opinion. Where if we don't do anything, is
952. that the end of it? Because one of my goals is to get
953. this thing restored. I don't want to put this guy out
954. of business and not get it restored, but it's got to be
955. done properly. So Option No. 3, which is my favorite
956. option, is a very limited extension with rights of
957. review, which maybe is a year, to give them time to go
958. through the town process.
959. I would also agree with what George said and with
960. what Mark said. The fact that the town may approve this
961. doesn't mean that we're going to say it's within what we
962. see up on the wall here. We still have to see what
963. they're doing. I think it's clear if the town doesn't
964. approve it that's the end of it for us. If they don't
965. approve it, we're not going to approve it. So my
966. inclination is to give them an extension for a year.
967. And that's not cast in stone, but having done these
968. things in my past life as a town attorney for Orleans
969. and Brewster, these things do take time. It's not going
970. to be resolved in January or February. It's going to
971. take longer than that.
972. I don't think we really prejudice ourselves that
973. much. I don't like the idea of the extension like we're
974. giving them something after what he just did to our
975. property, and I do agree that the issue of the Seashore
976. property is completely separate from the issue of their
977. improving the campground. And we haven't heard enough
978. about that either, but I don't really want to put them
979. out of business. I want to get this thing fixed, and
980. that's why I'm inclined to give them an extension for a
981. year.
982. MR. DELANEY: Any reaction on any one of the three
983. options or another?
984. Lilli?
985. MS. GREEN: Do you think that it could be resolved
986. within six months? I mean --
987. MR. SPAULDING: Practically speaking, I really
988. don't. I don't have that knowledge, but based on my
989. experience, it's going to take longer than that.
990. MS. GREEN: I mean, because it seems that if
991. there's a deadline of December, then we're talking about
992. January. I mean, it seems that the time for the
993. Horton's to --
994. MR. SPAULDING: Well, one of my conditions would be
995. that it's subject to continual review and it's subject
996. to being revoked at any time during that year if he's
997. not giving us the information we need and they don't act
998. with us in good faith that they're trying to solve the
999. problem.
1000. MR. DELANEY: Other comments? Maureen?
1001. MS. BURGESS: Mr. Chairman, my inclination would be
1002. to go -- and I don't know if this has been done before
1003. -- with Option 3, which would be not to renew the
1004. suspension from condemnation with the condition that
1005. they can come back when they've met the town board's
1006. guidelines for site plan review and the questions for
1007. ZBA. And I don't know if that's --
1008. MR. SPAULDING: Maureen, the problem is that we
1009. don't know if that can happen because we don't have an
1010. opinion.
1011. MS. BURGESS: Yeah, I know.
1012. MR. SPAULDING: If we were to vote that, if we knew
1013. it could happen, I might be in favor of that one, but we
1014. don't know that. And I'm afraid that if we just don't
1015. renew it and the opinion for George is that that's it,
1016. they can't get the certificate, that it may be a
1017. disincentive for them to try and put this thing back the
1018. way it's supposed to be.
1019. MR. DELANEY: Let's see what George can do.
1020. MR. PRICE: Just as a point of information because
1021. I was asked this exact question, my opinion is that the
1022. Advisory Commission should do what they feel they need
1023. to do. And obviously what you're doing is a
1024. recommendation to the superintendent, i.e., me. I won't
1025. be able to do anything without counsel from the regional
1026. office and with our solicitor's office. So if you have
1027. a recommendation on record, then that lets the town and
1028. the Horton's owners know what the feeling is. And I
1029. will have to obviously reserve what I'm able to do once
1030. I have all the information.
1031. MR. DELANEY: So if we adopt Maureen's recommenda--
1032. -- motion that basically says, "Enough's enough. You
1033. should withdraw it," that's only a recommendation.
1034. MR. NUENDEL: Correct.
1035. MR. DELANEY: You can still pursue your solicitor's
1036. source, and if you knew by the end of the year that, for
1037. example, you would not be -- you would lose the option
1038. of withdrawing once there's some compliance, then you
1039. might take a different course from what maybe that we've
1040. discussed. But if you knew you could reinstate it at a
1041. future date, the message would have been sent. I mean,
1042. I think part of this is letting people know that there
1043. is some urgency to this.
1044. MR. PRICE: Yes.
1045. MR. DELANEY: And that this thing cannot continue
1046. to be drawn out, wear the town down. Mark's points I
1047. think are good. Draw it out longer, wear the town down,
1048. wear the budget out, wear us out. I think we're trying
1049. to say there's some real urgency here, and that would be
1050. conveyed through Maureen's motion perhaps more than the
1051. other one.
1052. MR. NUENDEL: And I support that.
1053. MR. DELANEY: So just trying to keep this summary
1054. going. Let's go around the room.
1055. Don?
1056. MR. NUENDEL: I do support that because, you know,
1057. what the attorney here has said was they're blaming the
1058. contractor. I'm not certain that's true. I mean, how
1059. could this big huge business hire somebody and not know
1060. what they're doing. It just doesn't make sense to me.
1061. And so I think you're exactly right. Your words are
1062. perfect. It's been drawn out and drawn out and drawn
1063. out. And I think I agree with you, Maureen. I think we
1064. should consider it. You've got time. George is going
1065. to take our advisement or not. So he's not stuck in a
1066. corner. So that's where I am at this. I think it's
1067. time to play hardball.
1068. MR. DELANEY: Okay, all right.
1069. Lilli?
1070. MS. GREEN: Thank you. A couple of thoughts.
1071. I would be in favor of Maureen's proposal of a
1072. motion if I knew what the answer was from the solicitor.
1073. However, we don't, and I think that we need to -- if we
1074. were to vote in favor, we should also listen to what
1075. Larry's suggestions would be for the list of conditions
1076. if we were voting on an extension.
1077. And I would like to register again my opposition to
1078. the word *restoration* because, as Rich said, this is a
1079. whole ecosystem that's been destroyed, and you can't
1080. restore that ecosystem. So it would be something that
1081. would be acceptable or would be approved that would be
1082. put in place. It would never be a restoration.
1083. MR. DELANEY: Thank you.
1084. Joe?
1085. MR. CRAIG: The restoration that's being proposed
1086. -- I'm sure the new one that's being proposed by
1087. Wilkinson -- and I'm very, very familiar with Wilkinson;
1088. they've appeared before me on a number of occasions --
1089. is to restore it to Horton's specifications, not a
1090. restoration. It is not a restoration. It's to Horton's
1091. specifications. I think we have to keep that in mind.
1092. Like Larry said, it's never going to be back to where it
1093. was, and I think that's an important point to remember
1094. here.
      1. MR. DELANEY: I think that's a good point.
      2. Mark?
      3. MR. ROBINSON: Restoration is the wrong word.
      4. Replanted is the word.
      5. MR. CRAIG: That's correct.
      6. MR. ROBINSON: They can't restore it.
      7. I think one drop-dead thing for me is the portion
      8. that was created over the line onto the Seashore
      9. boundary is not going to have seedlings. That's going
      10. to have trees, not 60-foot high but 12-feet high or at
      11. least to have some canopy. And they may fail. They may
      12. have to be replanted. They may have to be watered by
      13. hand. But that's land that we are directly responsible
      14. for. It's not private property. It's federal property.
      15. And I think that that perimeter deserves the extra care
      16. and duty that we can provide.
      17. I like campgrounds. I'm not a camper. I like to
      18. camp in post and beam chalets that are not a camp per
      19. se, but I like campgrounds. I like the fact that we
      20. have affordable recreation for visitors to the Cape.
      21. The Seashore invested in North of Highlands Campground
      22. for just that thing. The Trustees of Reservations
      23. invested in Dunes' Edge just for that reason, so that we
      24. keep access to the Cape affordable for people. So I
1095. think it's an important facility.
1096. Of course we're in favor of getting the wastewater
1097. fixed, and I applaud Horton's for pursuing that maybe on
1098. a protracted basis but at least moving forward on it.
1099. I do have a concern, though, that with all this
1100. extension of utilities, what's to prevent the site from
1101. becoming a year-round as opposed to seasonal?
1102. ATTY. NAGLE: We have a seasonal license that is
1103. issued by the Town of Truro, and there is no plan to
1104. make it year-round.
1105. MR. ROBINSON: I've been on permitting boards. I
1106. have heard many times "We have no plans at this time to
1107. request that," and then time goes on and "Gee, you know
1108. what? We really need more revenue. We've got to stay
1109. open more months of the year. Give us a break. We're a
1110. local business." I mean, that's what this is setting up
1111. to be, is a year-round --
1112. MR. CRAIG: RV park.
1113. MR. ROBINSON: -- mobile home, et cetera.
1114. So you can say, "We have no plans at this time to
1115. do that. We're a seasonal license," but again, in a
1116. small town, revenue speaks. And that's my big concern
1117. here, is that the affordable recreation, camping, family
1118. atmosphere -- when you drive by some of these big places
1119. in Wareham on Route 25, they're there all year. They've
1120. been there forever, and there's no reason for them to
1121. pick up and move. They've got everything they need
1122. there. They've got all the utilities. They even
1123. planted a tree.
1124. So I think that I don't have any qualm in just
1125. saying, "No more suspension. You're done." And then if
1126. George says he can't do that legally, then that's a
1127. different question, but I think this board needs to send
1128. a strong message to the town, to the owners, and to the
1129. public that you don't ask questions later when you're
1130. dealing with development in the National Seashore.
1131. MR. DELANEY: Thanks, Mark.
1132. Larry?
1133. MR. SPAULDING: I'm trying to get a sense of what
1134. everybody said.
1135. So, Maureen, tell me what you think about this. If
1136. the advice is not to issue the certificate of
1137. suspension, if George determines that it is possible
1138. later to apply for one but if it's not possible at a
1139. later date to apply for one, to grant -- to advise that
1140. you grant an extension for a year. I'm just concerned
1141. that if your solicitor says, "Yeah, you can -- you can
1142. issue it later and issue another one," then I think the
1143. sense is that we don't want to renew it based on
1144. everything that's happened and the extensions they've
1145. gotten.
1146. MR. ROBINSON: Well, we'll have more information in
1147. six months.
1148. MR. DELANEY: Just before we go on to a couple more
1149. comments, Larry just articulated -- he must have looked
1150. over my shoulder --
1151. MR. SPAULDING: No, I didn't.
1152. MR. DELANEY: -- a kind of hybrid motion that I was
1153. starting to hear us get to, but let's put that aside for
1154. a minute and come back to some questions and comments.
1155. Lilli?
1156. MS. GREEN: Thank you.
1157. Would you be willing to state a list of conditions
1158. if George is not able to?
1159. MR. SPAULDING: Well, that depends on the sense of
1160. the board. Yes. The answer to that question is yes,
1161. but I was just trying to get a sense if we don't issue
1162. it, but if that's the end of it forever for them, then
1163. we can give the year with conditions.
1164. MS. GREEN: Right, what conditions? Would you
1165. articulate what the conditions would be?
1166. MR. SPAULDING: Sure.
1167. MR. CRAIG: The next question becomes, can we issue
1168. conditions? Is that something that we can do? And
1169. who's going to follow up on it?
1170. MR. SPAULDING: If he found out -- if we made a
1171. similar motion, I think, George, and the advice was you
1172. could give it for a year with conditions and we
1173. suggested the conditions, you could put a condition on a
1174. certificate of suspension from condemnation, I believe.
1175. So the answer is yeah, we could put conditions on it.
1176. MR. CRAIG: And who follows up?
1177. MR. PRICE: Well, two things. Number one, you all
1178. as a board would be asking and Lauren and I would be
1179. working with the town on how that was being implemented.
1180. MS. BURGESS: George, where would you -- sorry, Mr.
1181. Chairman.
1182. MR. DELANEY: I saw a couple more hands. Go ahead,
1183. Maureen.
1184. MS. BURGESS: I was just going to ask how long it
1185. would take you to get a response to our third proposal
1186. from the solicitor.
1187. MR. PRICE: By December 31.
1188. MS. BURGESS: You could?
1189. MR. PRICE: It expires this month.
1190. MS. BURGESS: I know.
1191. MR. PRICE: So one way or the other -- I could even
1192. not even send them a letter. It would just expire.
1193. That's one way to do it. I intend to send a letter
1194. explaining the position of the Seashore, and whether it
1195. was deciding not to issue or to issue with conditions,
1196. that's what I need to get from the solicitor.
1197. I don't know about the reissuing later down the
1198. road. My assumption is that we probably could.
1199. And, Larry, as an attorney, you'll appreciate the
1200. fact that all of the properties that have a certificate
1201. of suspension from condemnation now, they were all
1202. approved according to the letter of the legislation
1203. early on. So they had a certain time that they had to
1204. present the case, and the Commission was involved in
1205. those days, and it was issued. So by definition the
1206. original business -- and how many businesses do we have?
1207. MS. McKEAN: Well, there's now nine.
1208. MR. PRICE: Some nine businesses have that purview
1209. under that. So they previously complied. What we're
1210. talking about now is, are they still going to comply
1211. with all of the stuff that's happening? And that's what
1212. we collectively, largely you as a Commission and the
1213. Park Service, have to determine if this is keeping their
1214. eligibility intact or not.
      1. So because they already had a certificate, based on
      2. the legislation, that's what I'll be talking to our
      3. solicitor about. If this is dropped now, would they be
      4. able to come back in the future and petition to have it
      5. reinstated?
      6. MR. DELANEY: Lauren, you had a question? Earlier
      7. you did?
      8. MS. McKEAN: George made the point about them
      9. requesting by a certain date and showing that they were
      10. eligible.
      11. MR. DELANEY: Thank you.
      12. So I sense a fair amount of support in this group
      13. to start with a motion that says we would recommend the
      14. superintendent withdraw or let lapse the current
      15. certificate of suspension from condemnation pending an
      16. opinion from the National Park Service solicitor that
      17. would allow the certificate to be reinstated at such
      18. time that all parties involved are satisfied. And
      19. should that opinion say there is no such option for the
      20. ability to reinstate, then we would recommend one last
      21. extension for no more than one year during which time we
      22. would be fully informed of all transactions and we would
      23. be satisfied that the restoration plan is an appropriate
      24. one.

1

2

3 one.

4

MR. ROBINSON: The replanting plan.

MR. DELANEY: The replanting plan is an appropriate

A little bit lengthy, but basically it's, if I can

1. -- those are the kind of words, but it says time's up.
2. Do not extend. Let it lapse. But we also acknowledge
3. that there may be some resolution to all of these moving
4. parts, and if that's the time, then if everyone,
5. including we, are satisfied, it would only be fair to
6. reinstate it. But if you don't have that ability
7. anymore, then -- and here's the part that we have to all
8. be comfortable with -- we would allow a third extension,
9. the last one that we would give.
10. Mark?
11. MR. ROBINSON: If the certificate lapsed, would
12. that create a --
13. MR. SPAULDING: Create a financial problem?
14. MR. ROBINSON: -- create a title flaw with the
15. banks?
16. MR. SPAULDING: Yeah.
17. MR. ROBINSON: But that's not our problem. But the
18. property itself could not be used as collateral, which
19. would be a problem. I'm not a mortgage guy.
20. MR. CRAIG: It can also affect their insurance.
21. MR. ROBINSON: That's a pretty heavy hammer.
22. MR. DELANEY: Joe?
23. MR. CRAIG: I think your first half I would agree
24. with. As long as all parties -- when you said all
25. parties, all parties here -- that we're satisfied with
26. what's done, not necessarily the town, but we're
27. satisfied with what's done and then can be reinstated.
28. MR. DELANEY: I'm willing to think about that. I
29. was intending all parties meaning town boards,
30. ourselves, proponents obviously.
31. MR. CRAIG: Well, the certificate is ours.
32. MR. DELANEY: That's true.
33. MR. CRAIG: Not the town.
34. MR. DELANEY: Okay, we've raised an interesting
35. question. Let me see what Larry has to say.
36. MR. SPAULDING: I think the way that you put it is
37. a good way. And I would make that a motion, but I have
38. one addition to the motion, that if the -- if it ends up
39. that it's a year's extension, it's subject to review at
40. any time. So if he's not acting in good faith, we can
41. take a look at what he's doing.
42. MR. DELANEY: Okay.
43. MR. SPAULDING: I'd make your statement a motion,
44. and I might make that addition for the subject to review
45. if we do the year's extension.
46. MS. BURGESS: Yes, if the solicitor says that
47. that's not an option.
48. MR. SPAULDING: If that's not an option, he gets a
49. year.
50. MS. BURGESS: Then he gets a year, and we get to
51. receive the information about how the process is...
52. MR. SPAULDING: That's right. He's going to have
53. to -- if (inaudible).
54. MR. DELANEY: But the language is it's a year's
55. extension subject to continued review and at any point
56. it could be revoked.
57. MR. SPAULDING: It could be revoked, sure.
58. MS. BURGESS: And who would follow up with the
59. status of how it was proceeding? Would that be you,
60. Lauren?
61. MS. McKEAN: I'm just following it all along. I
62. can provide reports right before meetings or all the way

|  |  |  |
| --- | --- | --- |
| 19 | along if | you prefer. |
| 20 | MR. | PRICE: Right. |
| 21 | MR. | DELANEY: Okay. |
| 22 | MR. | SPAULDING: We don't have a second. |
| 23 | MS. | BURGESS: Oh, I second your motion. |
| 24 | MR. | CRAIG: Let me hear that again. |

* 1. MR. DELANEY: So the motion -- and I'll try to
  2. state it officially this time -- would be the Cape Cod
  3. National Seashore Advisory Commission would recommend to
  4. the superintendent to not -- to let the current
  5. certificate lapse on December 31, 2016, pending an
  6. opinion from his solicitor that the superintendent could
  7. at some future date reinstate a certificate should these
  8. matters before us be resolved and that should such an
  9. opinion not be forthcoming we would recommend the
  10. superintendent to extend the certificate for no more
  11. than one year pending --
  12. MR. CRAIG: Approval.
  13. MR. DELANEY: -- pending -- or during which --
  14. during which this commission would be fully informed of
  15. all activities and actions to resolve the issues and
  16. that we would reserve the right to --
  17. MR. SPAULDING: Revoke.
  18. MR. DELANEY: -- revoke that certificate at any
  19. time during the one year. And thirdly, ultimately the
  20. replanting and restoration plan would be approved to our
  21. satisfaction.
  22. I think that's the most direct piece to that.
  23. Joe, what do you think?
  24. MR. CRAIG: That extension, if it comes back, is
      1. not to be renewed again.
      2. MR. DELANEY: Okay, so the language would be should
      3. the solicitor's opinion say the extension would be for
      4. no more than one year and not to be extended in the
      5. future.
      6. MR. CRAIG: Right.
      7. MR. NUENDEL: Yeah, that's a good point.
      8. MR. DELANEY: I think the benefit of this, it does
      9. send and convey our sense of urgency. I think it does
      10. send a message that there's been a lot of zigzagging
      11. around in terms of process and time to really get it
      12. done, if it's going to be done. And I think it relies
      13. largely on keeping us focused on our major
      14. responsibility here, that preamble.
      15. Joe, what do you think?
      16. MR. CRAIG: One more thing to follow-up with what
      17. Larry had. Mark was saying we have to have something in
      18. addition to that and make sure the Seashore property is
      19. brought back to an approved state.
      20. MR. SPAULDING: That was in his motion.
      21. MR. DELANEY: Yeah.
      22. MR. CRAIG: Separate from --
      23. MR. DELANEY: Yeah, the replanting plan applies to
      24. -- our condition about the satisfactory replanting plan

1. is for both properties.
2. MR. CRAIG: Okay.
3. MR. DELANEY: Are people comfortable with that?
4. MR. SPAULDING: Uh-huh.
5. MS. BURGESS: Yeah.
6. MR. DELANEY: Any further discussion?
7. (No response.)
8. MR. DELANEY: All those in favor, signify by saying
9. aye.
10. MS. GREEN: Wait, was there a second?
11. MR. SPAULDING: Yes.
12. MR. DELANEY: Yeah.
13. MR. ROBINSON: Just one quick second. About our
14. sense of not getting a permanent year-round because that
15. would be a condition for a five-year extension if we get
16. to that point. It wouldn't be useful in this scenario.
17. MR. DELANEY: Say it again, Mark. What did you
18. say?
19. MR. ROBINSON: My concern is that it not become
20. more than a seasonal campground.
21. MR. CRAIG: That would be up to the town.
22. MR. ROBINSON: That to me is a change of use. It's
23. not adding utilities. It's changing it from seasonal to
24. year round.

|  |  |  |
| --- | --- | --- |
| 1 |  | MR. CRAIG: It's an expansion of use, is what it |
| 2 | is. | It's not a change of use. |
| 3 |  | MR. DELANEY: Larry? |
| 4 |  | MR. SPAULDING: No, I think it's minor. If he came |
| 5 | back | and satisfied us, it would be a reissuance of the |

1. five-year, not an extension. I don't want the condition
2. of no extensions to prohibit him from satisfying
3. everything and getting the five-year certificate of
4. suspension. So I don't want what you said to prohibit
5. that from happening if he does everything he's supposed
6. to. Because we talked about adding to the motion that
7. there never be an extension after the year, but we came
8. back with a temporary extension.
9. MR. ROBINSON: Whether we give him a year --
10. MR. SPAULDING: Let's just say temporary extension.
11. MR. DELANEY: Okay.
12. MR. SPAULDING: I just don't want him to satisfy
13. everything and have our motion indicate that that's it.
14. MR. ROBINSON: I agree.
15. MR. SPAULDING: Obviously if he does everything
16. he's supposed to, he can have a five-year extension.
17. MR. CRAIG: Exactly.
18. MR. DELANEY: Is that what yours ensures, Mark?
19. MR. ROBINSON: No, but I'll address it later.
    1. That's fine.
    2. MR. DELANEY: So I think we're close, but, Don,
    3. you've got to vote. You've got to vote. Don't run yet.
    4. Any other discussion?
    5. (No response.)
    6. MR. DELANEY: We have a motion that I'm not going
    7. to repeat because I think we've got it pretty well in
    8. our heads. I will confirm with the final language, but
    9. the secretary gets a sense of it. I think Linda gets a
    10. sense of it.
    11. All those in favor, signify by saying aye.
    12. BOARD MEMBERS: Aye.
    13. MR. DELANEY: Those opposed?
    14. (No response.)
    15. MR. DELANEY: Those abstaining?
    16. (No response.)
    17. MR. DELANEY: The issue carries unanimously -- the
    18. motion carries unanimously.
    19. Thank you, all. Good input on that one.
    20. Now we move on to the *Superintendent's Report*.

# SUPERINTENDENT'S REPORT

* 1. MR. PRICE: So, Mr. Chairman, considering the time,
  2. I guess let me ask because there are a number of items
  3. under *New Business* and we still have *Public Comment,* and

1. I just wanted to get a sense of what's the desire of the
2. group here for the *Superintendent's Report*.
3. MS. BURGESS: What time is it?
4. MR. PRICE: It's three, a little bit after three.
5. MR. DELANEY: It's three. I think, you know, we go
6. often to 3:30 or so.
7. MR. PRICE: Okay, I'll be quick.
8. MR. DELANEY: Since this is going to be one of your
9. countdown meetings, we would like to enjoy every bit of
10. you that we can.
11. (Laughter.)
12. MR. DELANEY: We're not going to have this pleasure
13. too much longer. You all know what I'm talking about,
14. of course.
15. MR. PRICE: First of all, I want to introduce the
16. famous Courtney Butler over here. You've seen Courtney
17. before.
18. (Applause.)
19. MR. PRICE: She has served for the last year,
20. almost two years now as an SCA Centennial volunteer
21. coordinator with us. So she's been paid for by the SCA
22. organization. And she's just been offered the position
23. as the superintendent's assistant down here. So by
24. definition that means that she would be the point person
25. for all of you on the Advisory Commission. So she'll
26. help organize, facilitate the meetings, and set up all
27. the different things that we have to do. So we're
28. pleased to have Courtney join our management staff,
29. and I just wanted to make sure you understood her new
30. role.
31. MR. DELANEY: Congratulations. We look forward to
32. working with you.
33. MS. BUTLER: Thank you.
34. SHOREBIRD MANAGEMENT PLAN/ENVIRONMENTAL ASSESSMENT - UPDATE
35. MR. PRICE: A couple of things. Number one, the
36. shorebird management plan, I just want to let you know
37. we made a decision. If you recall, we had thousands of
38. comments on the plan when we put it out. We're kind of
39. overwhelmed with doing the analysis, and at this point
40. our revised draft is, frankly, very complicated to
41. figure out to the uninitiated reader. So we made a
42. decision to pull back and reissue that plan as a new
43. edited document. That will be coming out at some point
44. later in the next year for an additional review. It
45. will still be under the EA process. We will not be able
46. to implement anything out of that plan for this coming
47. season because of the timeline, but we believe that
48. that's a pretty good way to go.
    1. OVERVIEW OF NPS ADMINISTRATIVE POLICIES
    2. RELATED TO PRIVATE PROPERTIES
    3. MR. PRICE: I have on my topic other administrative
    4. policies related to private properties. This resulted
    5. from the question from a reporter at the end of the last
    6. meeting which set us all kind of in a tailspin based on
    7. the way he asked the question, if you recall. So I had
    8. proposed that I would walk through it a little bit with
    9. you.
    10. Is that something I should do now, or should I wait
    11. for another meeting?
    12. MS. BURGESS: That's fine because we might have
    13. questions on it.
    14. MR. DELANEY: Yeah, I think it would be good.
    15. MR. PRICE: Okay. So basically several things.
    16. The reporter brought up questioning how the Park Service
    17. deals with private properties, and some of them are very
    18. concerned because, frankly, I've been asked to share
    19. conversations that I've had with private property
    20. owners, which I do not feel is appropriate. I believe
    21. that's between the Park Service and the property owner
    22. based on whatever the situation is.
    23. But I did want to let you know that the Seashore
    24. legislation was created to allow the creation of the
49. 44,000 acres that are actually in the boundary, and it
50. was a very specific stipulation. We talked a lot about
51. the certificate of suspension from condemnation at this
52. meeting, and that has to be not only for what's now the
53. noncommercial properties but also the 600 private homes.
54. So basically the person had to be able to demonstrate
55. that they owned their actual real estate, the land as
56. well as the improved structure in the same name prior to

9 September 1, 1959. So that was the date that the bill

1. was submitted to the Senate. I think it's interesting
2. because that's 1959. The legislation wasn't signed
3. until 1961. But what they were trying to do was to
4. prevent land speculation.
5. When the Seashore was first established, there
6. were actually a number of land lawyers that actually
7. were here as part of the planning team, and they went
8. through every single parcel in the entire Seashore and
9. basically let people know if they did not have a
10. certificate, that their property was important for the
11. development of the Seashore. Then they went through a
12. process that was everything from a friendly purchase and
13. sale, a willing seller to a condemnation process. Some
14. of them became very protracted, and some of them were --
15. different types of deals were, frankly, under the threat
16. of condemnation. There was actually a tax benefit to
17. the owner. We actually have had additional donations
18. specifically from municipalities and towns.
19. If you did have a certificate, basically you met
20. certain qualifications, and you had to be notified by a
21. certain time. We spent a lot of time -- and Lauren does
22. this, and Courtney will be doing this as well because
23. every time one of these 600 properties comes up for
24. sale, a lot of people are interested. So the sellers
25. want to verify that they have their act together on the
26. paperwork so that they can sell the property, and then
27. the buyers want to make sure they have their act
28. together that, in fact, this property has a
29. certification.
30. There are some properties that have never -- it
31. never came up because they weren't in the line of Park
32. development, and if there's a parcel for sale, that's
33. when they meet with us and we determine what's the
34. status. There have also been some disputes when people
35. were given a certificate of suspension from condemnation
36. at one point in time, but they went ahead and added well
37. beyond, say, house additions or changed the lot or other
38. things that was way out of what their original
39. certification was based on. So those are all the kind
40. of the nuances of how we get involved with this.
41. So we did a field trip this morning to the Biddle
42. property, for example, in Wellfleet, and that's an
43. example where they had the proper certification. They
44. were able to do whatever a private landowner could do
45. within the Town of Wellfleet according to the current
46. zoning laws, and that would have been by definition okay
47. with us if it stayed within certain parameters. Mrs.
48. Biddle, who was the daughter-in-law of Judge Biddle, the
49. famous owner -- last owner of the property as well as
50. Lorenzo Dow Baker had explored selling the house to a
51. developer, and there would have been I believe up to six
52. lots that would have been developed. She didn't like
53. that idea because she understood that the home that she
54. loved was going to be demolished as part of that
55. development process. Then through the Trust for Public
56. Lands they approached the National Seashore, and we were
57. particularly interested -- again, talking about all the
58. mission that we talked about this afternoon already,
59. they rathered that the entire parcel be kept intact if
60. the National Park Service could take it over and become
61. the owner. So it was based on the ten acres of
62. preservation in Wellfleet, that very important part of
63. Bound Brook that we were interested in preserving that.
64. So we worked with the family, worked with the trust,
65. worked with our land office, and then eventually ended
66. up with the property. We also ended up with four
67. structures, and certainly the primary house is on the
68. National Register, very historic and that is very
69. significant, but it was about the property that we're
70. involved in.
71. We have done other property land transactions. We
72. talked about the North of Highland Camping Area in Truro
73. where we did a conservation easement over 80 percent of
74. the property. We have in some cases offered structures
75. for town use. There was a time when the towns came
76. through, as I understand it, as a committee to look at
77. the available structures that were vacant. And I don't
78. know how many exactly, but I know when I arrived, the
79. last one that the Town of Eastham had actually secured
80. was picked up and relocated to town property, and it's
81. currently being used as affordable housing here in the
82. COA.
83. So there are a lot of things that we can do. If
84. someone has a certificate of suspension from
85. condemnation, they have private property rights just
86. like anybody else. They can pass it along to their
87. heirs. They can sell it. As long as that doesn't
88. change, that's what they can do. We can deal with that
89. private property owner as any other private property
90. owner in the Seashore. So we can decide to work with
91. them. We can purchase the property. We can do a lot of
92. other things. If someone does not have a certificate of
93. suspension from condemnation, then they do not have the
94. same options. Let's put it that way. And we still have
95. condemnation in our legislation. So that's kind of the
96. history of what we have to do.
97. One of the things I said to the field trip crew
98. this morning -- and it kind of reflects on what we spoke
99. about with Horton's Campground -- so everything that we
100. do with land, just like we do with our other programs,
101. the guiding principle is it has to be to the benefit of
102. the government. So everything that we do, especially
103. with lands, has to benefit -- you know, further advance
104. our laws and policies and the intent of the legislation
105. of Cape Cod National Seashore. And obviously we talk
106. about that a lot internally with the senior staff, but
107. we've got to talk to our lands office, we've got to talk
108. to the regional director, and we talk to the solicitor.
109. And they all basically have to buy in that truly this is
110. something that's of the greater good for the project.
111. So it's not a unilateral decision of just the
112. superintendent.
113. MR. DELANEY: Yeah, that's good.
114. MR. PRICE: So I just wanted to give you some
115. general outline of property so that you know some of the
116. things we get involved in.
117. SEASHORE PROJECTS
118. MR. PRICE: We have a couple of projects happening
119. right now that are pretty intense. I actually am going
120. to suspend voluntarily my Centennial PowerPoint because
121. I did want to share with you a lot of fun things that
122. happened this year, and in that were going to be some of
123. the construction projects. But I did just want to give
124. you a heads-up.
125. If you've been near the Salt Pond Visitors Center,
126. more construction, replacing the amphitheater. That was
127. last constructed when Mr. Delaney was a young man
128. helping out on that project.
129. MR. DELANEY: A wild college summer student.
130. MR. PRICE: Yeah.
131. Nauset Light Beach is under intense review right
132. now. We have a septic system, a bathhouse and stairs,
133. and potentially a new path. That work's falling all at
134. the same time. At some point when I have it figured out
135. -- because, I mean, we literally are intensely figuring
136. it out right now -- then I'll set up a meeting with the
137. board of selectmen and will make a public presentation
138. about what our next steps are. We have already
139. demolished the ladies' changing room, which was the
140. structure closest to the back and the septic tank. So
141. there's a lot of things going on with that.
142. I feel very good about where we are with the
143. Herring Cove North parking lot. We actually reached a
144. new juncture point in November that passed the design
145. advisory board, and we believe 2018 is still the
146. schedule for that. If I had any slides, I'd be showing
147. you the new parking lots that we totally rehabbed here
148. at Marconi and up at Province Lands as well, but we'll
149. save that for another time.
150. HERRING RIVER WETLAND RESTORATION
151. MR. PRICE: The Herring River EIS, so we had major
152. benchmarks this season. The environmental impact
153. statement was signed by the National Park Service. The
154. MESA process was signed and reviewed by the commission,
155. and we signed the MOU 3. So the memorandum of
156. understanding, this is actually setting up the executive
157. committee, and the first meeting of the executive
158. committee will be in January.
159. There are, if you read the papers, a lot of things
     1. that are still -- you know, have to be figured out, and
     2. I don't really want to spend time maybe in this meeting
     3. talking about it. We can do another session and topic
     4. on the Herring River, if you'd like, but securing
     5. funding obviously is still an issue. There are a number
     6. of private properties that still have to be resolved.
     7. The latest controversy to hit the papers, the use or not
     8. use of herbicides, how are we going to continue to
     9. protect things like the shellfishing and other topics,
     10. and also getting the word out in a better way about the
     11. continuing detrimental condition of the Herring River if
     12. nothing is done. And specifically the deterioration of
     13. the peat in that 1,100 acres without the flushing of the
     14. salt is by definition a very unsafe, unhealthy situation
     15. there. So that's one part of what the whole thing is
     16. trying to do.
     17. HIGHLANDS CENTER UPDATE
     18. MR. PRICE: You might have seen some of the news
     19. reports. Lauren can't believe this is finally
     20. happening, but we are in the process of completing the
     21. demolition of eight buildings up at the Highlands
     22. Center. So if you can envision, as you go up the
     23. driveway, there are two dormitories on the left-hand
     24. side that are in the worst condition with the most
160. asbestos. The building with the smokestack, the boiler
161. room area are probably the most visible that you'll
162. actually see. And then a number of the houses that are
163. a little bit further back in the woods. So this has
164. been a long time coming.
165. What's the dollar value on this again?
166. MS. McKEAN: 1.2 million.
167. MR. PRICE: $1.2 million. We still have a number
168. of the housing units that need to come down because they
169. have the same issues, and they've been identified since
170. the beginning almost that these were not buildings that
171. were salvageable. We won't be able to adapt a reuse
172. there. And we've been very impressed with the
173. contractor and with the oversight as to what's been
174. going on out there.
175. So those are a number of things that are happening.
176. ADVISORY COMMISSION APPOINTMENTS
177. MR. PRICE: And, Mark, before you walk out the
178. door, if I could -- I sort of was thinking this was
179. going to be *New Business,* but I'll say it right now.
180. So just as an FYI, I want you to know a number of
181. things about the Commission. There are a number of you
182. whose terms have expired. And after the first of the
183. year, I will be going through the process of notifying
184. your nominating entity again, but it's really quite a
185. list. Everybody from Mary-Jo; you, Joe; Larry; Bill
186. Clark and Sheila with the county. And obviously with
187. Sheila's new situation with the county, the county will
188. have to determine who they want to have as a
189. representative. Judith Stephenson had already sent us
190. her resignation from the Commission. She was one of the
191. representatives for the Governor. Mark is one of the
192. representatives for the Governor. So those are pieces
193. that will be coming out.
194. One of the things I also wanted to mention is,
195. especially in the light of my news, that the actual
196. Commission needs to be reauthorized in 2018. So it's a
197. ten-year cycle, and it's not too soon to think about
198. that.
199. Mr. Chair, my recommendation would be that you on
200. behalf of the Commission perhaps speak with the
201. Congressman's office. They would actually be, according
202. to what I understand, with the policy office in D.C. --
203. would be really the point person on this. So last time
204. I was involved with this, with the reauthorization, Mark
205. Forest was the chief of staff for the Congressman's
206. office. So he really carried the water on it.
207. MR. DELANEY: That's a good heads-up. Thank you.
     1. We appreciate you did that.
     2. MR. PRICE: It's a ways out, but it's not too soon.
     3. MR. DELANEY: No.
     4. MR. PRICE: So those are the -- those are the other
     5. points I wanted to share.
     6. MR. DELANEY: Well, we will acknowledge your
     7. announcement that you shared with us about the May 4
     8. retirement date. A little more time to digest that and
     9. reminisce with you and congratulate you, but it's big
     10. news for us obviously. And we're all going to wish you
     11. well, but we expect to work -- do a lot of work between
     12. now and then. So we've got a lot to get done.
     13. MR. PRICE: We will.

# NEW BUSINESS

* 1. MR. DELANEY: That brings us then to *New Business*.
  2. I think we've just about businessed ourselves out.

# DATE AND AGENDA FOR NEXT MEETING

* 1. MR. DELANEY: A date and any immediate agenda items
  2. for our next meeting, which would be typically in --
  3. MR. PRICE: Well, the next meeting, let's talk
  4. about that for a second. We could have it in February.
  5. I'm still a little nudgy about the time it takes to get
  6. through the Federal Register process, especially
  7. considering the transition that's going to go on in D.C.

1. with the new administration.
2. So if you're game, Lauren and I can find out -- if
3. you want to pick a February date, that could be the
4. first priority date we start. But you know what? I'd
5. actually ask your deference to maybe pick a March date
6. as well so that we don't have to get back to you if

7 February is too soon. I say this because the Federal

1. Register put a hold at one point on any new submittals
2. pending the administration and all that sort of thing.
3. So I just think if we could have two dates tentative,
4. and then as soon as we could confirm the February, we'd
5. get back to you.
6. MR. DELANEY: Okay. If we go toward the end of
7. February, it would be February 27.
8. MR. NUENDEL: I like that.
9. MR. DELANEY: The week before that is school
10. vacation, if that impacts anybody. I assume that's
11. school vacation. I don't know for sure. Is it?
12. MS. BUTLER: It is.
13. MR. DELANEY: So the 27th would be a February date,
14. and then if that was too soon and we went two weeks
15. later, that would put us at March 13.
16. MR. NUENDEL: I'll be out of town.
17. MR. DELANEY: Okay.
18. MR. NUENDEL: And March 6 or 27 I'm all right.
19. MS. GREEN: The 6th would be good for me.
20. MR. DELANEY: The 6th? How about the 6th then?
21. THE COURT REPORTER: Not good for me.
22. MR. DELANEY: It's only one week apart then at that
23. point, but it gives you two different dates to work
24. with.
25. THE COURT REPORTER: No can do on the 6th.

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| 9 | MS. | BURGESS: Linda can't do the 6th. |  |
| 10 | MR. | DELANEY: Oh-oh. All right. |
| 11 | MR. | NUENDEL: The 20th? |
| 12 | MR. | DELANEY: It might be the 27th. |
| 13 | MR. | PRICE: The 27th doesn't work for me. |
| 14 | MR. | DELANEY: Is the 20th okay? |
| 15 | MR. | NUENDEL: Yeah. |
| 16 | MR. | DELANEY: So let's say the 27th in February | and |
| 17 | the 20th | in March. |  |
| 18 | MR. | PRICE: So which dates again? |  |
| 19 | MR. | DELANEY: The 27th in February and the 20th | in |
| 20 | March. |  |  |
| 21 | MR. | PRICE: The 27th would not work for me. |  |
| 22 | MS. | GREEN: In February? |  |
| 23 | MR. | NUENDEL: So I'll miss the 20th in there. |  |
| 24 | MS. | GREEN: Yeah, I won't be able to either. |  |

1. MR. DELANEY: Oh, two people are missing the 20th.
2. MS. GREEN: The 13th?
3. MR. PRICE: You're missing the 27th. The 20th is
4. good for me.
5. MR. DELANEY: It's not good for two of us.
6. MR. PRICE: Okay.
7. MR. DELANEY: And the 13th, is that good for you,
8. George?
9. MR. PRICE: The 13th is good.
10. MS. BURGESS: I think George is talking about
11. February.
12. MR. DELANEY: No, I'm in March.
13. MS. BURGESS: Where are you in?
14. MR. DELANEY: We set up February. February is the 15 27th.
15. MR. PRICE: The 27th is not good for me.
16. MS. BURGESS: Of February?
17. MR. PRICE: In February.
18. MR. DELANEY: Oh.
19. MS. McKEAN: It sounds like February 13 or March
20. 13. Is that right?
21. MR. PRICE: Yes.
22. MR. DELANEY: Yes. The 13th of either month; is
23. that what you're saying?
    1. MS. McKEAN: Yes.
    2. MR. DELANEY: That sounds like symmetry to me.
    3. MR. NUENDEL: February 13?
    4. MR. DELANEY: February 13. If not, it's March 13.
    5. Good suggestion, Lauren. Thank you.

# PUBLIC COMMENT

* 1. MR. DELANEY: So now that brings us to our public
  2. comment period. And I hope we have -- I think we have
  3. some public left, stayed with us.
  4. If you would like to make a comment on any of the
  5. business we talked about or other issues, all you have
  6. to do is identify yourself and the floor is yours.
  7. Any of the public want to comment? Yes, please.
  8. AUDIENCE MEMBER (HOLLY KUHN): As I think you know 15 --

1. MR. DELANEY: Stand up and join us.
2. AUDIENCE MEMBER (MS. KUHN): Sorry. As I think you
3. know, I'm Holly, and I'm the one responsible for
4. bringing the lawsuit on the kiteboarding ban.
5. MR. DELANEY: Holly, what's your full name?
6. AUDIENCE MEMBER (MS. KUHN): Holly Kuhn.
7. MR. PRICE: Why don't you spell it for the
8. stenographer.
9. AUDIENCE MEMBER (MS. KUHN): K-U-H-N.
10. MR. DELANEY: Welcome.
11. AUDIENCE MEMBER (MS. KUHN): Filing a lawsuit
12. against the federal government is not something that I
13. take lightly, but it came after eight years of trying to
14. have a productive dialogue with the Seashore. I know
15. that Superintendent Price informed you back in June that
16. he and his staff have, quote, met with representatives
17. of the kiteboarding community numerous times and
18. obviously have not been able to satisfy them, but if you
19. were to look at the evolution of the kiteboarding ban, I
20. can't help but wonder in what way he thought he was
21. trying to satisfy us.
22. It started in 2008 with a ban at just one beach and
23. was expanded six years later to the entire Seashore with
24. one small exception and running from March until
25. October. The last straw came in 2015 when he proposed
26. banning kitesurfing in the entirety of the Park and year
27. round, at which point I felt that we had nothing more to
28. lose and our only recourse was to try to get a fair
29. hearing through the courts.
30. I choose to live on the Outer Cape because I love
31. the Seashore and I support its mission of conservation.
32. Kitesurfing is a recreational activity consistent with
33. the Organic Act and the enabling legislation in that it
34. is a no-trace water sport that uses renewable resources,
35. creates no emissions, promotes health, and inspires
36. spectators to get out and enjoy nature in ways that they
37. may have never imagined. A large part of its appeal is
38. the feeling of being closer and more connected to the
39. natural world, so it is no wonder that I would find it
40. somewhat offensive that Superintendent Price and
41. Shorebird Technician Mary Hake claim that we are harming
42. shorebirds. He has informed me that whenever a
43. kitesurfer flushes a bird it is considered a take. In
44. that case, I fear for the Seashore statistics as there
45. must be an astronomical number of takes occurring on
46. these shores every year as I see pedestrians, dog
47. walkers, vehicles, and even Seashore staff flushing
48. shorebirds on a daily basis. Or am I incorrect in
49. assuming this applies to every activity and is only
50. considered a take if it is a kitesurfer that causes the
51. flushing event? Herein lies the double standard.
52. Every human activity disturbs shorebirds. Edwin
53. Hoopes in his 1993 Master's Thesis looking at human
54. recreation within the Seashore and its relationship to
55. plovers noted that 98 percent of all human-related
56. disturbances were by pedestrians, dogs, and ORVs and
57. only two percent were by kites, and these were handheld
58. kites flown on the beach. It's safe to assume that the
59. percentage would be even smaller for kitesurfing kites
60. as they are not used nearly as often and, when they are,
61. they are flown mostly offshore. The U.S. Fish and
62. Wildlife Service had a similar knee-jerk reaction to
63. kiteboarding when it first started taking off, so to
64. speak, in the early 2000s, labeling it an emerging
65. threat to shorebirds. Since then shorebird census at
66. popular kiteboarding beaches simply did not reflect the
67. dire impact they had predicted, and acknowledging this
68. in the new Habitat Conservation Plan for Piping Plover
69. that came out this June in Massachusetts, the Division
70. of Fisheries and Wildlife stated kiteboarding is a
71. growing sport; however, this activity requires very
72. specific wind conditions that limit the number of
73. suitable kiteboarding days during the piping plover
74. breeding season. They will continue to assess these
75. activities.
76. In the summer, the prevailing wind direction is
77. Southwest, so kitesurfing on the ocean is particularly
78. limited in July and August because the wind is usually
79. blowing offshore, a wind direction that is not suitable
80. unless your goal is to land in Spain. Fish and Wildlife
81. Service recommends prohibiting kite flying within 200
82. yards of nests, which is the regulation that we were
83. used to and which the Seashore currently allows for
84. handheld kites, and we agreed that buffer zones should
85. be sufficient until proven otherwise. Superintendent
86. Price has stated it as fact and in writing that kites,
87. quote, are viewed as large predators flying and hovering
88. over incubating plovers and terns and will scare them
89. off their nests, end quote, and that buffer zones are
90. not sufficient because of the size of the kitesurfing
91. kites. Citing Edwin Hoopes' 1993 Master's Thesis as the
92. supporting literature, the actual quote is, quote:
93. Researchers believe that piping plovers may perceive
94. kites as an avian predator, end quote, with the source
95. of this proposition noted as a personal communication
96. with a U.S. Fish and Wildlife Service employee.
97. Furthermore, this does not take into account the fact
98. that kites for kitesurfing are flown over the water,
99. move in a slow and steady manner that resembles a cloud
100. more than a darting and diving bird of prey. And
101. studies by the agricultural industry and the FAA have
102. shown that kites are ineffective deterrents around farms
103. and runways and that when they are not depicted as a
104. bird do not move in a quick and erratic manner, and when
105. there are no negative consequences, birds become quickly
106. habituated to their presence. This is further supported
107. by the yearly plover monitoring reports around the
108. Commonwealth that show good nesting and productivity at
109. the most popular kiteboarding beaches in Massachusetts.
110. Superintendent Price has also referred to the
111. kiteboarding ban in South Padre National Seashore in
112. Texas to support his prohibition, but with the warmer
113. climate there and the year-round shorebird population, I
114. have a hard time comparing them to Cape Cod. It's like
115. comparing apples and oranges, and I would suggest
116. looking at Cape Hatteras National Seashore in North
117. Carolina, a park much more similar to this seashore and
118. also possibly the most popular kiteboarding destination
119. in the U.S. Their retired superintendent, Mike Murray,
120. who you may recall was the acting superintendent here in
121. 2005, deemed kitesurfing a popular and appropriate
122. recreational activity for the National Seashore.
123. Reading over the last few years of the annual
124. shorebird reports both here and in Hatteras, where there
125. are hundreds more kitesurfers than there are here, I did
126. not find one incident of a shorebird, a nest, or a chick
127. hurt, killed, or abandoned as a result of kitesurfing.
128. I did, however, read about injuries and deaths directly
129. resulting from pedestrians, dogs, ORVs, fishermen, and
130. other beach users leaving behind garbage that attracted
131. predators. Despite these findings, Superintendent
132. Price chose to ban kitesurfing from the near entirety
133. of this park for seven months out of the year. Does
134. this sound fair and justified or arbitrary and
135. capricious? I would say not only arbitrary and
136. capricious but unsupported. Claims of kitesurfing's
137. negative impact on shorebirds is not demonstrated in any
138. annual shorebird census. The science Superintendent
139. Price refers to is Hoopes' Master's Thesis, which is not
140. a peer-reviewed study, and studies from abroad, which
141. are simply reports and do not offer any correlation
142. between rates of human disturbance and plover
143. productivity. In fact, Superintendent Price told this
144. board in September 2014 that he enacted this radical
145. change in park usage based on some staff observations
146. and some of his own. At the open house in October, he
147. could not quantify how many of these observations led to
148. the prohibition, when or where they occurred, or the
149. distances involved or evidence of the negative impacts
150. sustained. The adverse effects that he spoke of to Mr.
151. Bill Clark were flushing of birds and a halt of
152. activity.
153. I would hope the same standard applies to all the
     1. other human disturbances which occur within the Seashore
     2. on a much more frequent basis and is not just being
     3. applied to our minority user group.
     4. If he observed kitesurfers too close to an
     5. enclosure one day, I am perplexed as to why he did not
     6. call law enforcement, why he did not attempt public
     7. outreach or to educate the kitesurfers who were clearly
     8. oblivious that they were doing anything so detrimental
     9. as to merit a seven-month-long ban. Add to this the
     10. fact that not a single kitesurfer has been issued a
     11. citation for a kiteboarding violation prior to making
     12. his determination and the superintendent's admission to
     13. this board that his observations weren't so much
     14. analytical as they were a, quote, direct experiential-
     15. type recognition, end quote, it seems to me it comes
     16. down to simply he didn't like what he saw. And in his
     17. haste to institute the prohibition, he violated several
     18. National Park Service management directives regarding
     19. a) conservation planning, environmental impact analysis
     20. and decision-making; b) civic engagement and public
     21. involvement; and c) scientific integrity, which requires
     22. federal employees to distinguish between personal
     23. opinion and assumptions and factual findings, to
     24. consider only high quality, rigorous, peer-reviewed
154. science that also incorporates opposing viewpoints and
155. pertinent and negative findings in establishing Park
156. Service policy.
157. This is a unique National Park in that it
158. incorporates a large part of the six towns on the Outer
159. and the Lower Cape, and because of this, one would
160. believe that it would be uniquely committed to civic
161. engagement and community involvement. But in 2009 when
162. the Wellfleet selectmen heard our concerns and agreed
163. not to ban kitesurfing on its town beaches, the Seashore
164. proceeded to institute the ban anyway, essentially
165. undermining our local government. Truro Selectman Bob
166. Weinstein summed it up when he stated this September,
167. "Superintendent Price has a history of not being
168. cooperative unless he sees it in his immediate purview."
169. The recent public comment period in October is
170. acknowledgment that he did not follow proper procedure,
171. but with his staff telling a *Cape Cod Times* reporter
172. there that it, quote, likely won't change anything, end
173. quote, it seems like a disingenuous gesture meant simply
174. to fulfill his legal obligation. It makes me sad to
175. think that if only Hatteras Superintendent Mike Murray
176. were still here, I wouldn't be sitting here holding you
177. up.
     1. And I did propose some rules, but I guess this
     2. isn't really the right venue. But I do think there are
     3. rules that would satisfy both sides and meet the
     4. Seashore's conservation and public safety requirements,
     5. but I guess that's for another venue.
     6. So I just want to leave you with one last image. A
     7. typical summer day at the Seashore, thousands of
     8. visitors pack the beaches during peak nesting and
     9. fledging season. They bring coolers, food, umbrellas,
     10. wind screens, portable furniture, dogs, barbecues,
     11. fishing poles, handheld kites, and they spend the day
     12. camped out on the beach in prime foraging and staging
     13. shorebird habitat, crushing the invertebrates the
     14. shorebirds feed on and disturbing the wrack line.
     15. Hundreds of ORVs drive out on the beach creating noise,
     16. polluting, and leaking fluids onto the ground. As the
     17. sun sets, some beaches allow up to ten beach fires a
     18. night. The crowds leave behind smoldering embers, ruts
     19. and holes in the sand for chicks to fall into, and trash
     20. that attracts predators. This occurs on a daily basis
     21. in the summer, permanently displacing shorebirds from
     22. certain high-traffic areas. These activities are
     23. permitted, but the idea of a handful of kitesurfers out
     24. on the water in a couple different spots within the
178. Seashore one or two days a week if the conditions
179. cooperate is somehow so much more impactful to birds
180. according to Superintendent Price that it cannot be
181. allowed anywhere along the entire 40 miles of Atlantic
182. shoreline from Provincetown to Monomoy for seven months
183. out of the year.
184. Hopefully you will see now why the kitesurfing ban
185. is arbitrary, capricious, and unsupported by science.
186. And I do have some handouts as well. These are the
187. shorebird statistics. The first page shows when the ban
188. -- I guess the ones online only go up to 2014, so
189. there's only one year of statistics since kitesurfing
190. has been banned, and they're not all that different from
191. when people were kitesurfing within the Seashore. And
192. then the next page are some pictures of what kitesurfing
193. actually looks like. And you can see that the rider
194. rides away from the beach or the surfer goes away from
195. the beach, turns around, and comes back in to ride a
196. wave. They're essentially just using the kite as
197. harnessing the wind to tow themselves into a wave. It's
198. a more efficient, some might say more fun, form of
199. surfing.
200. And then another picture shows the distance between
201. the plover enclosures and the actual water. So this
202. gives you an idea of how far away from the shore these
203. kites actually are and whether you think they have the
204. capacity to fly over the enclosures and scare birds off
205. their nests.
206. And the last page is on West Dennis Beach, which is
207. probably the most popular kiteboarding beach on Cape Cod
208. and has been for over a decade. And it is still a very
209. productive shorebird beach. So they don't seem to be
210. impacted at all by the many more numbers of kitesurfers
211. that they have there and in a much more confined space.
212. I don't think you ever have to worry about
213. kiteboarding becoming ridiculously popular here because,
214. to be honest, the ocean requires a certain level of
215. expertise that it takes a while to get to that point.
216. So most people just want to go on flat water somewhere.
217. They don't want to come out here and ride the ocean.
218. It's like almost too far a drive for them. They would
219. be just as happy to go to West Dennis or Kalmus or
220. Hardings rather than drive all the way out here. So as
221. far as it becoming a public safety concern and taking
222. over the beaches, I don't think that's something you'd
223. ever have to worry about. And I think the statistics
224. show that despite the fact that there were a few
225. kitesurfers out somewhere on the Seashore, that that did
226. not affect the populations in the more sensitive areas
227. and that somehow birds were still being productive. So
228. I don't see the need to shut down the entire 40 miles of
229. shoreline to protect the entire population of birds
230. across the Seashore. Clearly there are areas where they
231. are permanently displaced by all those activities that I
232. had mentioned, especially the town landing. So I don't
233. see why we're the only group that's not allowed to use
234. them.
235. MR. DELANEY: Okay, thank you very much. A lot of
236. information for us to consider. You made a lot of
237. interesting points. This is a relatively new issue for
238. the Park and for all of us. I know that you've been at
239. it for quite a few years, but the management of
240. kitesurfing is relatively new. So we're on a learning
241. curve, and this is helpful.
242. AUDIENCE MEMBER (MS. KUHN): I know we did come
243. here in 2014, Eric and Luke.
244. MR. DELANEY: Yeah.
245. Questions before or following from anyone on the
246. Commission? Thoughts?
247. (No response.)
248. AUDIENCE MEMBER (MS. KUHN): I mean, I'm guessing 24 --
249. MR. PRICE: Did you want to have that distributed
250. to everybody, those that are right here?
251. AUDIENCE MEMBER (MS. KUHN): Sure. Sure, yes, for
252. anybody that's interested.
253. MR. PRICE: Do you have a copy?
254. MS. McKEAN: I already have them all.
255. MS. BURGESS: I have a question, Mr. Chair.
256. MR. DELANEY: Question from Maureen?
257. MS. BURGESS: So this is in the courts now; is that
258. correct?
259. AUDIENCE MEMBER (MS. KUHN): Unfortunately. I
260. mean, I'm really sorry that it had to come to that
261. because we really were just looking for a few areas of
262. access.
263. MS. BURGESS: So does it make sense, Mr. Chair, for
264. us to have this on an agenda if that's the status of it?
265. MR. DELANEY: Well, I don't think we would be in a
266. position to take a decision, if that's what you're
267. saying, if it's in litigation at this point.
268. MS. BURGESS: Right.
269. MR. DELANEY: I think we certainly can continue to
270. inform ourselves and follow the litigation, and maybe
271. there is some outside -- some other resolution.
272. Specifically, Holly, what does your lawsuit ask to
     1. have happen?
     2. AUDIENCE MEMBER (MS. KUHN): We're not looking for
     3. damages or anything like that. I'd more than welcome a
     4. resolution. I don't like the idea of going to court. I
     5. don't like the idea of wasting taxpayer money. And I've
     6. already taken up way too much of your time, but we just
     7. want access. And I wouldn't have thought it was an
     8. issue because we are a no-trace sport and aren't a high-
     9. traffic area such as town landing. So I wouldn't think
     10. there'd be a conflict.
     11. MR. DELANEY: Okay, George?
     12. MR. PRICE: Just as a point of -- several points of
     13. information here. Obviously out of everything that
     14. Holly presented to you, there are a number of things
     15. that we can agree with and there are a number of things
     16. that we don't agree with. And those have been discussed
     17. in the past at other meetings and other sessions.
     18. Besides her submittal to federal court, the other
     19. thing that we did in September was we withdrew all of
     20. the regulations restricting kiteboarding in the
     21. Seashore. We then put out a notice for a public comment
     22. period under the Federal Register process. That public
     23. comment period ended the beginning of November, and our
     24. staff is in the process of reviewing those comments and
273. determining our position as to what our both reaction to
274. the comments would be as well as what any new
275. regulations may or may not be. So that's also in the
276. process.
277. The other item that I would mention is similar to a
278. lot of the things we actually talked about previously.
279. Obviously there's nothing that I do that's unilateral.
280. So everything that I've done was done in conjunction
281. with our shorebird scientists and in consultation with
282. U.S. Fish and Wildlife Service and other groups, and
283. that will continue to be the case.
284. The other thing that I would mention is, yes, there
285. are a number of other places that have put kiteboarding
286. restrictions in place for a variety of reasons. One of
287. the things that I've learned is that a lot of it has to
288. do with the geography of where your particular resources
289. are located. So even though Cape Hatteras sounds like
290. it's very familiar or similar to Cape Cod National
291. Seashore, we've learned that that's not the case. Their
292. geography is actually very, very different, and they are
293. able to do things that we can't do or there are
294. different things; same thinking about when we were
295. talking about the ORV process because they don't have a
296. lot of the geography that we have here that they have
297. down at Cape Hatteras.
298. And as far as whether it's a lawsuit or not, if
299. you're interested, then yes, it could be an agenda item
300. just to generally talk about where we are and what's
301. going on from the different perspectives. So, for
302. instance, after Luke was here several years ago, we
303. actually sat down with him, with our science staff, with
304. our shorebird staff to actually determine what our
305. various options were.
306. MR. DELANEY: But did I hear you say the staff is
307. revisiting the regulations at this point?
308. MR. PRICE: Yes.
309. MR. DELANEY: So that would be legitimate for us to
310. hear, and we'd appreciate an update on where those may
311. be going at our next meeting.
312. MR. PRICE: Well, I anticipate we'll have our
313. perspective on that completed in January.
314. MR. DELANEY: Okay. So that could be reported on,
315. and we could discuss it and react to it, to the proposed
316. new regulations.
317. MR. PRICE: It won't be proposed in February.
318. There'll be quite a lot (inaudible).
319. MR. DELANEY: Oh, okay.
320. MR. PRICE: But you can still react to it.
321. MR. DELANEY: Yeah.
322. MS. GREEN: Is it possible for you to wait until
323. you hear from us before you do finalize it?
324. MR. PRICE: The timing wouldn't work.
325. MR. DELANEY: And just another process question.
326. Do these regulations -- do they become part of the
327. shorebird management plan?
328. MR. PRICE: Basically, although there are a number
329. of pieces, the shorebird management plan is a broader
330. plan, and again, it talks about options, depending on
331. what the conditions are and what's required and what
332. isn't. So the plan is a much larger umbrella, if you
333. will, in pieces like this. The Superintendent's
334. Compendium can be changed year to year, for example. So
335. the shorebird management plan is much broader.
336. MR. DELANEY: But the issue with kitesurfing is
337. almost exclusively related to shorebirds.
338. MR. PRICE: And public safety.
339. MR. DELANEY: Okay.
340. AUDIENCE MEMBER (MS. KUHN): For July and August.
341. MS. GREEN: I hate to say this again or ask again,
342. but I know that there have been extenuating
343. circumstances in other issues where you've been able to
344. delay something. And this is a concern of citizens in
345. my town, so I'm asking on behalf of the citizens from my
346. town if it's possible for you to delay until after our
347. next meeting anything that's finalized. Is it possible
348. for you to do that?
349. MR. PRICE: The timing wouldn't work.
350. MS. BURGESS: Excuse me, Mr. Chairman.
351. Is that because of where you are with the court?
352. MR. PRICE: No, it's because of what it would take
353. in order to have regulations in place for the coming
354. season.
355. MR. DELANEY: Another comment from the public?
356. AUDIENCE MEMBER (KATHLEEN BACON): Yes, Mr.
357. Chairman, I just want to for the record state --
358. MR. DELANEY: Identify yourself, please.
359. AUDIENCE MEMBER (MS. BACON): Kathleen Bacon,
360. alternate for Wellfleet.
361. -- that I support Holly. Unfortunately, this is
362. one issue where I'm not siding with the Seashore. I
363. have observed kiteboarders. It's a very, very intense
364. sport in Wellfleet, and they're probably more respectful
365. than any other beachgoer in my particular experience.
366. And I for the record want to state that she's probably
367. going to win.
368. So my two cents.
369. MR. DELANEY: Well, okay.
370. What's the commissioners thoughts here? There
371. seems like there's some interest, and there are some
372. interesting points being made. It's an issue that I
373. think we want to be informed about.
374. MS. BURGESS: Yes.
375. MR. DELANEY: We probably want to have a chance,
376. where appropriate, to weigh in on. It sounds like this
377. first opportunity in March is not likely but because of,
378. I guess, a practical reason, that there needs to be some
379. kind of regulation in place for the summer.
380. AUDIENCE MEMBER (MS. KUHN): By March 15.

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| 13 | MR. | DELANEY: Oh, wait a minute. You're saying |
| 14 | January? | It has to be in place in January for the |
| 15 | summer? |  |
| 16 | MR. | PRICE: Yes. |
| 17 | MR. | DELANEY: It couldn't wait until March for the |
| 18 | summer? |  |
| 19 | MR. | PRICE: Correct. |

1. AUDIENCE MEMBER (MS. KUHN): The shorebird
2. technician informed the *Cape Cod Times* the public
3. hearing period likely would not change the current
4. rules, which were rescinded around October 7. Normally
5. the ban runs from March 15 to October 15, and we're not
6. rescinded in September unless I wasn't alerted of them
7. until too late. It's my understanding that they were
8. rescinded about a week before the ban would have ended
9. anyway and that --
10. MR. PRICE: When was the -- I may be misstating the
11. rescinding time. It was in the press release, whatever
12. it was.
13. AUDIENCE MEMBER (MS. KUHN): For the past two
14. years, the ban has started on March 15.
15. MR. PRICE: Yes.
16. AUDIENCE MEMBER (MS. KUHN): So my guess is that's
17. what the rush is.
18. MR. DELANEY: I see.
19. MR. PRICE: That's when the shorebirds return.
20. MR. DELANEY: So it's not the summer beach --
21. MR. PRICE: No, it's the shorebirds return the
22. middle of March, and the last staging birds are here
23. until the beginning of October.
24. MR. DELANEY: That then makes sense in response to
25. you. It's for that management purpose.
26. MR. PRICE: Yeah.
27. MR. DELANEY: But we will hear about them certainly
28. at our February/March meeting.
29. MR. PRICE: We can put it on the agenda.
30. MR. DELANEY: We can react to them. You've
31. certainly heard input from kitesurfers and others here.
32. MR. PRICE: Yes.
33. MR. DELANEY: Wellfleet has -- both reps have made
34. some issues -- have raised some issues. We got an
35. extensive report from Holly.
36. I imagine there were other comments as part of the
37. (inaudible) process.
38. MR. PRICE: Yes.
39. MR. DELANEY: So we would, I guess, encourage the
40. superintendent to be as balanced and mindful of the
41. public use that we've heard and seems to be one that is
42. -- maybe needs to be thought through again carefully.
43. MR. PRICE: I would just say that the last time
44. when Luke was here we spent a good part of the winter
45. season sitting down trying to examine what options would
46. be out there, and that's when we came up with the
47. existing restriction. So it was seriously looked at in
48. the past, and it will be seriously looked at again.
49. AUDIENCE MEMBER (MS. KUHN): With all due respect,
50. the restrictions were already in place, and that's why
51. we came before this board.
52. MR. PRICE: I know. That's why I'm saying we are
53. seriously looking at it again as a result of this last
54. comment period.
55. AUDIENCE MEMBER (MS. KUHN): Thank you.
56. MR. DELANEY: The other thing that has changed
57. recently is the new U.S. Fish and Wildlife approach to
58. shorebird management, plovers, and being able to figure
59. ways to accommodate reasonable use and still provide
60. certain protections. So maybe within that construct
61. your staff is reconsidering looking at options again.
62. I'm not sure what else we can do at this point
63. unless the members have a -- I think we should have a
64. specific recommendation.
65. AUDIENCE MEMBER (MS. KUHN): There is also the
66. National Defense Authorization Act on the 15th too as
67. well as the Fish and Wildlife guidelines. The National
68. Defense Authorization Act requests that wildlife buffers
69. be kept to a minimum and the shortest duration necessary
70. according to (inaudible).
71. MR. DELANEY: Very well. Again, thank you for your
72. comments, for your work.
73. Courtney, will you be able to circulate the
74. comments to us --
75. MS. BUTLER: I will.
76. MR. DELANEY: -- so we're better informed?
77. And we'll go from there.

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| 1 | All right, any other public comment? |  |
| 2 | (No response.) |
| 3 | **ADJOURNMENT** |
| 4 | MR. DELANEY: Hearing none, I will entertain a |
| 5 | motion to adjourn. |
| 6 | MS. BURGESS: So moved. |
| 7 | MR. DELANEY: Second? |
| 8 | MR. NUENDEL: Seconded. |
| 9 | MR. DELANEY: Those in favor, signify by saying |
| 10 | aye. |
| 11 | BOARD MEMBERS: Aye. |
| 12 | MR. DELANEY: Good working session. We got in | a |
| 13 | lot. |  |
| 14 | (Whereupon, at 3:57 p.m. the proceedings were |  |
| 15 | adjourned.) |  |
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# REPORTER'S CERTIFICATE

PLYMOUTH, SS

I, Linda M. Corcoran, a Court Reporter and Notary Public in and for the Commonwealth of Massachusetts, do hereby certify that:

The foregoing 133 pages comprises a true, complete, and accurate transcript to the best of my knowledge, skill, and ability of the proceedings of the meeting of the Cape Cod National Seashore Advisory Commission at Marconi Station Area, Park Headquarters, South Wellfleet, Massachusetts, on Monday, December 12, 2016, commencing at 1:07 p.m.

I further certify that I am a disinterested person to these proceedings.

IN WITNESS WHEREOF, I have hereunto set my hand and notarial seal this 16th day of February, 2017.

Linda M. Corcoran - Court Reporter

My commission expires: August 28, 2020