AGENDA FOR THE MEETING OF THE
SELECT BOARD
APRIL 8, 2020 - 6:00 PM
REMOTE PARTICIPATION VIA ZOOM AND YOU TUBE
PURSUANT TO GOVERNOR BAKER’S MARCH 12, 2020
ORDER REGARDING OPEN MEETING LAW
NANTUCKET, MASSACHUSETTS

I. CALL TO ORDER

II. SELECT BOARD ACCEPTANCE OF AGENDA

III. ANNOUNCEMENTS
1. The Select Board Meeting is Being Audio/Video Recorded.

2. COVID-19 Weekly Update:
   a. Local Emergency Orders - Status (Town Manager and Others as Noted)
      - No. 1 - Temporary Moratorium on Construction (Emergency Mgt Dir)
      - No. 2 - Personal Care Services (Temporary Shutdown) (Health Dir)
      - No. 3 - Stay at Home Order (Emergency Mgt Dir)
      - Board of Health 3/30/2020 Supplemental Emergency Order, Amended
        4/2/2020
      Action Item: Request for Decree of Emergency Order No. 4 (Extension of
      Recreational Shellfish Licenses)

   b. State Emergency Order(s) - Status

   c. Report from Nantucket Cottage Hospital (NCH President/CEO; Medical
      Director)

   d. Public Information (Asst Town Manager/Tivnan)
      - Outreach update
      - Dedicated email covid19@police.nantucket-ma.gov
      - Dedicated phone line 508-325-4111

   e. Economic Impact Work Group (C&T Director)
- Update on Potential Federal/State/Local Benefits and Relief Programs for Individuals/Families (Human Services Director)

f. Town Services Status (Town Manager)
   - Offices remain closed through May 4 (local vs state orders)
   - Essential services only in place; some occurring remotely
   - Daily call with Emergency Response Team
   - Daily communication with employees
   - Daily SITREP to Select Board
   - Town budget/staffing update

g. Public Comments Related to COVID-19


IV. PUBLIC COMMENT* FOR ITEMS NOT RELATED TO COVID-19 OR OTHER AGENDA ITEMS

V. NEW BUSINESS*

VI. APPROVAL OF MINUTES, WARRANTS AND PENDING CONTRACTS
   1. Approval of Minutes of October 2, 2019 at 6:00 PM.

VII. TOWN MANAGER’S REPORT

VIII. SELECT BOARD’S REPORTS/COMMENT
   2. Committee Reports.

IX. ADJOURNMENT

*Identified on Agenda Protocol Sheet
Select Board Agenda Protocol:

- **Roberts Rules**: The Select Board follows Roberts Rules of Order to govern its meetings as per the Town Code and Charter.

- **Public Comment**: For bringing matters of public interest to the attention of the Board. The Board welcomes concise statements on matters that are within the purview of the Select Board. At the Board’s discretion, matters raised under Public Comment may be directed to Town Administration or may be placed on a future agenda, allowing all viewpoints to be represented before the Board takes action. Except in emergencies, the Board will not normally take any other action on Public Comment. Any personal remarks or interrogation or any matter that appears on the regular agenda are not appropriate for Public Comment.

  Public Comment is not to be used to present charges or complaints against any specifically named individual, public or private; instead, all such charges or complaints should be presented in writing to the Town Manager who can then give notice and an opportunity to be heard to the named individual as per MGL Ch. 39, s 23B.

- **New Business**: For topics not reasonably anticipated 48 hours in advance of the meeting.

- **Public Participation**: The Board welcomes valuable input from the public at appropriate times during the meeting with recognition by the Chair. For appropriate agenda items, the Chair will introduce the item and take public input. Individual Board Members may have questions on the clarity of information presented. The Board will hear any staff input and then deliberate on a course of action.

- **Select Board Report and Comment**: Individual Board Members may have matters to bring to the attention of the Board. If the matter contemplates action by the Board, Board Members will consult with the Chair and/or Town Manager in advance and provide any needed information by the Thursday before the meeting. Otherwise, except in emergencies, the Board will not normally take action on Select Board Comment.
ORDER SUSPENDING CERTAIN PROVISIONS 
OF THE OPEN MEETING LAW, G. L. c. 30A, § 20

WHEREAS, on March 10, 2020, I, Charles D. Baker, Governor of the Commonwealth of Massachusetts, acting pursuant to the powers provided by Chapter 639 of the Acts of 1950 and Section 2A of Chapter 17 of the General Laws, declared that there now exists in the Commonwealth of Massachusetts a state of emergency due to the outbreak of the 2019 novel Coronavirus ("COVID-19"); and

WHEREAS, many important functions of State and Local Government are executed by “public bodies,” as that term is defined in G. L. c. 30A, § 18, in meetings that are open to the public, consistent with the requirements of law and sound public policy and in order to ensure active public engagement with, contribution to, and oversight of the functions of government; and

WHEREAS, both the Federal Centers for Disease Control and Prevention ("CDC") and the Massachusetts Department of Public Health ("DPH") have advised residents to take extra measures to put distance between themselves and other people to further reduce the risk of being exposed to COVID-19. Additionally, the CDC and DPH have advised high-risk individuals, including people over the age of 60, anyone with underlying health conditions or a weakened immune system, and pregnant women, to avoid large gatherings.

WHEREAS, sections 7, 8, and 8A of Chapter 639 of the Acts of 1950 authorize the Governor, during the effective period of a declared emergency, to exercise authority over public assemblages as necessary to protect the health and safety of persons; and

WHEREAS, low-cost telephone, social media, and other internet-based technologies are currently available that will permit the convening of a public body through virtual means and allow real-time public access to the activities of the public body; and

WHEREAS section 20 of chapter 30A and implementing regulations issued by the Attorney General currently authorize remote participation by members of a public body, subject to certain limitations;
NOW THEREFORE, I hereby order the following:

(1) A public body, as defined in section 18 of chapter 30A of the General Laws, is hereby relieved from the requirement of section 20 of chapter 30A that it conduct its meetings in a public place that is open and physically accessible to the public, provided that the public body makes provision to ensure public access to the deliberations of the public body for interested members of the public through adequate, alternative means.

Adequate, alternative means of public access shall mean measures that provide transparency and permit timely and effective public access to the deliberations of the public body. Such means may include, without limitation, providing public access through telephone, internet, or satellite enabled audio or video conferencing or any other technology that enables the public to clearly follow the proceedings of the public body while those activities are occurring. Where allowance for active, real-time participation by members of the public is a specific requirement of a general or special law or regulation, or a local ordinance or by-law, pursuant to which the proceeding is conducted, any alternative means of public access must provide for such participation.

A municipal public body that for reasons of economic hardship and despite best efforts is unable to provide alternative means of public access that will enable the public to follow the proceedings of the municipal public body as those activities are occurring in real time may instead post on its municipal website a full and complete transcript, recording, or other comprehensive record of the proceedings as soon as practicable upon conclusion of the proceedings. This paragraph shall not apply to proceedings that are conducted pursuant to a general or special law or regulation, or a local ordinance or by-law, that requires allowance for active participation by members of the public.

A public body must offer its selected alternative means of access to its proceedings without subscription, toll, or similar charge to the public.

(2) Public bodies are hereby authorized to allow remote participation by all members in any meeting of the public body. The requirement that a quorum of the body and the chair be physically present at a specified meeting location, as provided in G. L. c. 30A, § 20(d) and in 940 CMR 29.10(4)(b), is hereby suspended.

(3) A public body that elects to conduct its proceedings under the relief provided in sections (1) or (2) above shall ensure that any party entitled or required to appear before it shall be able to do so through remote means, as if the party were a member of the public body and participating remotely as provided in section (2).

(4) All other provisions of sections 18 to 25 of chapter 30A and the Attorney General’s implementing regulations shall otherwise remain unchanged and fully applicable to the activities of public bodies.

This Order is effective immediately and shall remain in effect until rescinded or until the State of Emergency is terminated, whichever happens first.
Given in Boston at 3:40 PM this 12th day of March, two thousand and twenty.

[Signature]

CHARLES D. BAKER
GOVERNOR
Commonwealth of Massachusetts
EMERGENCY ORDER No. 1    Temporary Moratorium on all construction projects on Nantucket.

In consideration of the State of Emergency declared in the Town of Nantucket, upon the recommendation of Emergency Management and Public Health Officials, and the need to protect the health of the inhabitants of the Town of Nantucket, the following order shall be implemented until such time as the state of emergency has been lifted.

Effective Friday, March 20, 2020 the Town is suspending all regular activity at construction sites on Nantucket, including but not limited to all work authorized by building permits and street opening permits. Upon issuance of this order, all active construction sites shall be secured to prevent unauthorized entry, damage to equipment and/or work-in-progress and to protect public safety. Operators shall employ the necessary crews and labor to complete the work necessary to secure their sites by 5:00 p.m. on Friday, March 20, 2020. After that time, only skeleton crews will be permitted to enter construction sites for the remainder of the moratorium and such entry shall be limited to what is necessary to ensure safety and security.

The only work that will be permitted after March 20, 2020 will be emergency work, which will need to be approved by the Town of Nantucket Planning and Land Use Services Department.

For purposes of this Order, Emergency Work Includes only the minimum work necessary to prevent damage to persons or property and/or to ensure the habitability of existing residential structures until such time as this order is lifted, including the following:

- Emergency Utility, road or building work, such as to repair water leaks and sinkholes.
- New Utility connections to occupied buildings where prior connections are no longer functioning.
- Mandated building or utility work to protect public health and safety.
- Work at health care facilities, shelters, including temporary shelters and other facilities that support vulnerable populations or that provide emergency services.
- Work which ensures the reliability of the transportation network.
- Other work necessary to render occupied residential building fully habitable.

In addition to the list of emergency construction projects, the Town will, on a case-by-case basis, review requests for exceptions to the temporary construction moratorium. These may be granted by the Building Commissioner for building related work or the Public Works Director for street-related work. These will be granted only if they support increased public health and safety.

This order is effective Friday, March 20 through Monday, April 6 and will be reviewed at regular intervals by the Select Board, the Town’s Incident Management Team and Public Health Officials. New projects cannot be started at this time, and no new permits will be issued unless they meet the criteria above.
Any currently permitted and/or active construction project/work must be in a secure situation by 5:00 p.m. on Friday, March 20, 2020.

Any person who violates this Order will be subject to issuance of an immediate Stop Work Order and an assessment of the maximum penalty authorized by law.

So Ordered by the Nantucket Select Board;
Dawn Hill-Holdgate, Chair
Rita Higgins, Vice-Chair
Matt Fee, Member
Jason Bridges, Member
Kristie Ferrantella, Member

In Concurrence with;
Libby Gibson, Town Manager
William Pittman, Director, Office of Emergency Management
Roberto Santamaria, Director, Department of Public Health
Paul Murphy, Nantucket Building Commissioner
Gary A. Shaw, President, Nantucket Cottage Hospital
EMERGENCY ORDER No. 2   Regarding Personal Care Services and Retail Stores

Effective Friday, March 20, 2020 all services offered to the public which cannot be provided at a distance of at least six (6) feet are hereby discontinued. This includes, but is not limited to:

Hairdressers and barbers
Nail salons
Massage services
Body Art
Body Work
Fitness Centers
Houses of Worship

This order does NOT include childcare facilities licensed by the Department of Early Education and Care who have been granted an exemption by the Department, or services provided by a licensed allied health care provider such as, but not limited to, physical therapy, speech therapy, occupational therapy or retail stores. This Emergency Order shall remain in effect until notice is given, pursuant to the Board of Health’s judgement, that the Public Health Emergency no longer exists.

Additionally, the Board of Health is encouraging all retail establishments that do not sell essential commodities such as food, medicine or cleaning supplies to consider voluntarily closing until April 6th. The Board of Health is also recommending that all retail establishments that do stay open should only do so if they can assure customers will be able to maintain social distancing practices consistent with CDC guidelines.

This order is issued pursuant to the authority conferred on boards of health pursuant to G.L. c. 111, §§95 through 105.

So Ordered;

[Signature]
Board of Health

In Concurrence with;

[Signature]  [Signature]
Town Manager  Director, Office of Emergency Management
EMERGENCY ORDER #3
EFFECTIVE MONDAY, MARCH 23, 2020 AT 5:00 pm
OF THE NANTUCKET SELECT BOARD
AND DIRECTOR OF HEALTH AND HUMAN SERVICES ON BEHALF
OF THE BOARD OF HEALTH
DIRECTING ALL INDIVIDUALS LIVING IN THE TOWN & COUNTY OF
NANTUCKET TO STAY AT THEIR PLACE OF RESIDENCE
EXCEPT THAT THEY MAY LEAVE TO
PROVIDE OR RECEIVE CERTAIN ESSENTIAL SERVICES OR
ENGAGE IN CERTAIN ESSENTIAL ACTIVITIES AND WORK FOR
ESSENTIAL BUSINESSES AND GOVERNMENTAL SERVICES;
DIRECTING ALL BUSINESSES AND GOVERNMENTAL AGENCIES TO
CEASE NON-ESSENTIAL OPERATIONS AT PHYSICAL LOCATIONS IN
NANTUCKET; PROHIBITING ALL NON-ESSENTIAL GATHERINGS
OF ANY NUMBER OF INDIVIDUALS; AND ORDERING CESSATION OF
ALL NON-ESSENTIAL TRAVEL

Please read this Order carefully. Violation of or failure to comply with this Order is
punishable by a fine of up to One Thousand Dollars pursuant to Massachusetts
General Laws Chapter 111, Section 122.

UNDER THE AUTHORITY OF MASSACHUSETTS GENERAL LAWS CHAPTER 111, §§95
THROUGH 105, THE NANTUCKET SELECT BOARD AND THE NANTUCKET BOARD
OF HEALTH, ACTING THROUGH THE HEALTH AND HUMAN SERVICES DIRECTOR,
ORDERS:

1. The intent of this Order is to ensure that the maximum number of people self-isolate in
their places of residence to the maximum extent feasible, while enabling essential
services to continue, to slow the spread of COVID-19 to the maximum extent possible.
When people need to leave their places of residence, whether to obtain or perform vital
services, or to otherwise facilitate authorized activities necessary for continuity of social
and commercial life, they should at all times as reasonably possible comply with Social
Distancing Requirements as defined in Section 7 below. All provisions of this Order
should be interpreted to effectuate this intent. Failure to comply with any of the
provisions of this Order constitutes an imminent threat to public health.

2. All individuals currently living within the Town and County of Nantucket (“Town”) are
ordered to stay at their place of residence. To the extent individuals are using shared or
outdoor spaces, they must at all times as reasonably possible maintain social distancing of
at least six feet from any other person when they are outside their residence. All persons
may leave their residences only for Essential Activities, Essential Governmental
Functions, or to operate Essential Businesses, all as defined in Section 7. All businesses
with a facility in the Town, except Essential Businesses as defined below in Section 7, are
required to cease all activities at facilities located within the Town except Minimum Basic
Operations, as defined in Section 7. For clarity, businesses may also continue operations consisting exclusively of employees or contractors performing activities at their own residences (i.e., working from home). All Essential Businesses are strongly encouraged to remain open. To the greatest extent feasible, Essential Businesses shall comply with Social Distancing Requirements as defined in Section 7 below, including, but not limited to, when any customers are standing in line.

3. All public and private gatherings of any number of people occurring outside a household or living unit are prohibited, except for the limited purposes as expressly permitted in Section 7. Nothing in this Order prohibits the gathering of members of a household or living unit.

4. All travel on the island, including, but not limited to, travel on foot, bicycle, scooter, motorcycle, automobile, public transit, except Essential Travel and Essential Activities as defined below in Section 7, is prohibited. People must use public transit only for purposes of performing Essential Activities or to travel to and from work to operate Essential Businesses or maintain Essential Governmental Functions. People riding on public transit must comply with Social Distancing Requirements as defined in Section 7 below, to the greatest extent feasible. This Order allows travel into or out of the Town to perform Essential Activities, operate Essential Businesses, or maintain Essential Governmental Functions.

5. This Order is issued based on evidence of increasing occurrence of COVID-19 within the Commonwealth of Massachusetts and elsewhere in the Country, scientific evidence and best practices regarding the most effective approaches to slow the transmission of communicable diseases generally and COVID-19 specifically, and evidence that the age, condition, and health of a significant portion of the population of the Town places it at risk for serious health complications, including death, from COVID-19. Due to the outbreak of the COVID-19 virus in the general public, which is now a pandemic according to the World Health Organization, there is a public health emergency throughout the Town. Making the problem worse, some individuals who contract the COVID-19 virus have no symptoms or have mild symptoms, which means they may not be aware they carry the virus. Because even people without symptoms can transmit the disease, and because evidence shows the disease is easily spread, gatherings can result in preventable transmission of the virus. The scientific evidence shows that at this stage of the emergency, it is essential to slow virus transmission as much as possible to protect the most vulnerable and to prevent the health care system from being overwhelmed. One proven way to slow the transmission is to limit interactions among people to the greatest extent practicable. Importantly, the island has limited medical care options and availability, including but not limited to the number of hospitals and other healthcare operations, the number of beds available generally and in intensive care units, as well an extremely limited number of ventilators. Additionally, the Town acknowledges that the size of the island population is driven by seasonal residents and visitors; during the winter months, including early spring, the food supply, services industry, public safety personnel, general governmental staff, and more, are at minimum levels. By reducing the spread of the COVID-19 virus, this Order helps preserve critical and limited healthcare capacity in the Town.
6. This Order incorporates by reference, the March 10, 2020 Declaration of Emergency issued by Governor Baker, and the Declaration of Emergency issued by the Nantucket Select Board on March 18, 2020, and, further, formally acknowledges that several states and municipalities have issued stay-at-home orders to address the rapid transmission of COVID-19 by those who do not yet show symptoms, but are carrying the virus, and those that have been identified as presumptive positive or confirmed positive for the virus.

7. **Definitions and Exemptions.**

   a. For purposes of this Order, individuals may leave their residence only to perform any of the following “Essential Activities.” People at high risk of severe illness from COVID-19 according to the U.S. Centers for Disease Control and Prevention (“CDC”) and people who are sick are urged to stay in their residence to the extent possible except as necessary to seek medical care.

   i. To engage in activities or perform tasks essential to their health and safety, or to the health and safety of their family or household members (including, but not limited to, pets), such as, by way of example only and without limitation, obtaining medical supplies or medication, visiting a health care professional, or obtaining supplies they need to work from home.

   ii. To obtain necessary services or supplies for themselves and their family or household members, or to deliver those services or supplies to others, such as, by way of example only and without limitation, canned food, dry goods, fresh fruits and vegetables, pet supply, fresh meats, fish, and poultry, and any other household consumer products, and products necessary to maintain the safety, sanitation, and essential operation of residences.

   iii. To engage in outdoor activity, provided the individuals comply with Social Distancing Requirements as defined in this Section, such as, by way of example and without limitation, walking, hiking, bicycling, surfing, or running.

   iv. To perform work providing essential products and services at an Essential Business or to otherwise carry out activities specifically permitted in this Order, including Minimum Basic Operations.

   v. To care for a family member or pet in another household.

   b. For purposes of this Order, individuals may leave their residence to work for or obtain services at any “Healthcare Operations”, including but not limited to hospitals, clinics, dentists, pharmacies, pharmaceutical and biotechnology companies, other healthcare facilities, healthcare suppliers, home healthcare services providers, mental health providers, marijuana dispensary or any related and/or ancillary healthcare services. “Healthcare Operations” also includes veterinary care and all healthcare services provided to animals. This exemption shall be construed broadly to avoid any impacts to the delivery of healthcare, broadly defined. “Healthcare Operations” expressly excludes fitness and exercise gyms, yoga studios, and similar facilities.
c. For purposes of this Order, individuals may leave their residence to provide any services or perform any work necessary to the operations and maintenance of “Essential Infrastructure,” including, but not limited to, public works construction, airport operations, water, sewer, gas, electrical, roads and highways, public transportation, collection and proper disposal of solid waste, internet, and telecommunications systems, provided that they carry out those services or that work in compliance with Social Distancing Requirements as defined this Section, to the extent possible.

d. For purposes of this Order, all first responders, emergency management personnel, emergency dispatchers, court personnel, and law enforcement personnel, and others who need to perform Essential Services are categorically exempt from this Order in connection with the provision of such services. Further, nothing in this Order shall prohibit any individual from performing or accessing “Essential Governmental Functions,” as determined by the governmental entity performing those functions. Each governmental unit in the Town shall identify and designate appropriate employees or contractors to continue providing and carrying out any Essential Governmental Functions. All Essential Governmental Functions shall be performed in compliance with Social Distancing Requirements as defined in this Section, to the extent possible.

e. For the purposes of this Order, covered businesses include any for-profit, non-profit, or educational entities, regardless of the nature of the service, the function they perform, or its corporate or entity structure.

f. For the purposes of this Order, “Essential Businesses” means:
   i. Healthcare Operations and Essential Infrastructure;
   ii. Grocery stores, farm and produce stands, supermarkets, food banks, convenience stores, and other establishments engaged in the retail sale of canned food, dry goods, fresh fruits and vegetables, pet supply, fresh meats, fish, and poultry, and any other household consumer products (such as cleaning and personal care products). This includes stores that sell groceries and also sell other non-grocery products, and products necessary to maintaining the safety, sanitation, and essential operation of residences;
   iii. Food cultivation, including farming, livestock, and fishing;
   iv. Businesses that provide food, shelter, and social services, and other necessities of life for economically disadvantaged or otherwise needy individuals;
   v. Hotels, motels and leasing of residences ONLY for the purpose of providing shelter and lodging to people in accord with contractual agreements already in effect for people on the island as of the effective date of this order, or, in the event that temporary residences are needed for persons on the island whose residences are quarantined, to house non-
residents providing essential government or health care services, or as overflow from healthcare operations as may be needed;¹

vi. Newspapers, television, radio, and other media services;

vii. Gas stations and auto-supply, auto-repair, and related facilities;

viii. Banks and related financial institutions;

ix. Hardware stores;

x. Plumbers, electricians, exterminators, and other service providers who provide services that are necessary to maintaining the safety, sanitation, and essential operation of residences, Essential Activities, and Essential Businesses;

xi. Businesses providing mailing and shipping services, including post office boxes;

xii. Educational institutions—including public and private K-12 schools, colleges, and universities—for purposes of facilitating distance learning or performing essential functions, provided that social distancing of six-feet per person is maintained to the greatest extent possible;

xiii. Laundromats, drycleaners, and laundry service providers;

xiv. Restaurants and other facilities that prepare and serve food, but only for delivery or carry out. Schools and other entities that typically provide free food services to students or members of the public may continue to do so under this Order on the condition that the food is provided to students or members of the public on a pick-up and take-away basis only. Schools and other entities that provide food services under this exemption shall not permit the food to be eaten at the site where it is provided, or at any other gathering site;

xv. Businesses that supply products needed for people to work from home;

xvi. Businesses that supply other essential businesses with the support or supplies necessary to operate;

xvii. Businesses that ship or deliver groceries, food, goods or services directly to residences

xviii. Airlines, ferries, taxis, and other public and private transportation providers providing transportation services necessary for Essential Activities and other purposes expressly authorized in this Order;

xix. Home-based care for seniors, adults, or children;

xx. Residential facilities and shelters for seniors, adults, and children;

xxi. Professional services, such as legal or accounting services, when necessary to assist in compliance with legally mandated activities

xxii. Childcare facilities providing services that enable employees exempted in this Order to work as permitted and approved pursuant to the March 18, 2020 Executive Order Temporarily Closing All Child Care Programs and Authorizing the Temporary Creation and Operation of Emergency Child Care Programs.

¹ This section shall take effect on Wednesday, March 25, 2020 at 5:00 p.m., or such later date determined by the Town after consultation with appropriate state and federal entities. Until the effective date of this provision, it shall have the force of a strong recommendation to anyone considering coming to the Town.
g. For the purposes of this Order, “Minimum Basic Operations” include the following, provided, however, that employees shall comply with Social Distancing Requirements as defined this Section, to the maximum extent possible, while carrying out such operations:
   i. The minimum necessary activities to maintain the value of the business’s inventory, ensure security, process payroll and employee benefits, or for related functions.
   ii. The minimum necessary activities to facilitate employees of the business being able to continue to work remotely from their residences.

h. For the purposes of this Order, “Essential Travel” includes travel for any of the following purposes. Individuals engaged in any Essential Travel must comply with all Social Distancing Requirements as defined in this Section.
   i. Any travel related to the provision of or access to Essential Activities, Essential Governmental Functions, Essential Businesses, or Minimum Basic Operations.
   ii. Travel to care for elderly, minors, dependents, persons with disabilities, or other vulnerable persons.
   iii. Travel to or from educational institutions for purposes of receiving materials for distance learning, for receiving meals, and any other related services.
   iv. Travel required by law enforcement or court order.
   v. Travel required for non-residents to return to their place of full-time residence outside the Town. Non-residents on the island as of the date of this Order are encouraged to consider returning to their full time residences or to other areas where more plentiful hospitalization services are available. All persons leaving the island under this paragraph are strongly encouraged to verify that transportation to their place of full-time residence remains available and functional prior to commencing such travel.
   vi. Travel to return from outside Nantucket to a place of already-established full-time residence in the Town; residents shall include, but not be limited to the following: a person on the street or voter’s lists; a person that has registered their car at their Town address; a person who has listed their Town address as their primary address for purposes of taxation; and similar indicators of residency, a person who has traveled from their residence on the island within the last 30 days previous to this order and has documentation thereof, including, for example, a ferry or plane ticket receipt, or a person who leaves the island following the issuance of this Order for the purpose of providing Essential Governmental Functions or Essential Business, and has documentation thereof, such as a ferry or plane ticket receipt.  

2 This section shall take effect on Wednesday, March 25, 2020 at 5:00 p.m., or such later date determined by the Town after consultation with appropriate state and federal entities. Until the effective date of this provision, it shall have the force of a strong recommendation to anyone considering coming to the Town.
vii. Provided, further, that during the pendency of this order, any person travelling to the island for any of the purposes authorized hereunder shall be subject to the following additional requirements:

1. Persons arriving on Nantucket by plane or boat may be asked to take their temperature, answer questions about where they have travelled, and to respond to any other precautionary questions of a similar nature considered appropriate by the CDC;

2. No person shall knowingly travel to Nantucket during the period of this order after testing positive for COVID-19 unless they are also able to demonstrate that they have recovered therefrom through proof of two negative tests or otherwise in a manner meeting then-current CDC requirements;

3. No person shall knowingly travel to Nantucket after being exposed to a person with COVID-19 unless they have been in quarantine for no less than 14 days since the knowing exposure and can provide evidence thereof;

4. Any person travelling to Nantucket for purposes other than those that are emergency in nature under this order, shall self-isolate for no less than 14 days at their place of residence, ensuring that they are vigilant about social-distancing, even in their place of residence, until the self-isolation period ends;

5. Any person travelling to Nantucket to provide healthcare services shall be exempt from paragraph 3 of this section, but shall exercise due care in accord with applicable CDC protocols to implement social distancing as described hereunder, other than during the treatment of patients or conduct of research.

i. For purposes of this Order, “Social Distancing Requirements” includes maintaining at least six-foot social distancing from other individuals, washing hands with soap and water for at least twenty seconds as frequently as possible or using hand sanitizer, covering coughs or sneezes (into the sleeve or elbow, not hands), regularly cleaning high-touch surfaces, and not shaking hands.

8. The Select Board and the Board of Health requests that the Chief of Police ensure compliance with and enforcement of this Order, and, further, that said Chief seeks the assistance of the Governor, State Representative and State Senator, and Attorney General to assist with enforcement, including, and, should the same prove necessary, the State Police or National Guard. The violation of any provision of this Order constitutes an imminent threat to public health.

9. Sections 1-12 of this Order, other than as set forth in Section 10, below, shall become effective at 5:00 p.m. on Monday, March 23, 2020 and will continue to be in effect through Sunday, April 6, 2020, the remainder of the period schools are closed pursuant to the Governor’s March 15, 2020 Executive Order, with an expectation that unless there are significant factual changes concerning the spread of COVID-19 and the treatment thereof in general, and the facts specifically applicable to medical care and treatment capacity on the island, this Stay-at-Home Order may be extended by vote of the Select Board and Director of
Health and Human Services. To allow for planning by, and sufficient notice to, all residents and voters of the Town, of any possible extension, the Select Board and Director of Health and Human Services shall discuss any developments and the then-applicable facts at its April 1, 2020, scheduled Board Meeting, and at any meeting thereafter as such board deems appropriate. Notice of any approved extension shall be communicated to the public as provided in Section 11. Residents are encouraged to access the Town website frequently for updates.

10. The provisions of Section 7(f)(v) and 7(h)(vi) of this Order relative to travel to the island shall take effect at 5:00 p.m., Wednesday, March 25, 2020, or at such later time as the Town deems appropriate following consultation with state and federal level government entities as to implementation; if the effective date of such sections is delayed, notice of such delay, and then of the effective date of such sections, shall be made in the manner set forth in Section 11; provided, however, that until the provisions of Section 7(f)(v) and 7(h)(vi) takes effect in accord with the provisions of this paragraph, they shall be treated as a strong recommendation.

11. Copies of this Order and any other notices required by this Order shall promptly be: (1) made available at the Town Administration Building; (2) posted on the Town Website; and (3) provided to any member of the public requesting a copy of this Order; further, shall, as soon as reasonably possible following adoption of the same, be provided to the Boston Globe, Boston Herald, Cape Cod Times, Nantucket Inquirer and Mirror, and the Associated Press.

12. If any provision of this Order or the application thereof to any person or circumstance is held to be invalid, the reminder of the Order, including the application of such part or provision to other persons or circumstances, shall not be affected and shall continue in full force and effect. To this end, the provisions of this Order are severable.

IT IS SO ORDERED:

_________________________________
Nantucket Select Board, by its Chair

_________________________________
Nantucket Board of Health, by the Director of Health and Human Services

March 22, 2020
SUPPLEMENTAL EMERGENCY ORDER

WHEREAS, effective Friday, March 20, 2020 the Town of Nantucket issued an Emergency Order temporarily suspending all regular activity at construction sites on Nantucket, including but not limited-to all work authorized by building permits and street opening permits (Emergency Order No. 1).

WHEREAS, the Town of Nantucket issued an Emergency Stay-at-Home Order on March 22, 2020 seeking cooperation of all residents to limit possible transmission of COVID-19 (Emergency Order No. 3).

WHEREAS, the situation involving the COVID-19 crisis continues to evolve, with additional guidance being issued daily by the Federal and State governments.

WHEREAS, on March 23, 2020, Governor Baker issued an order identifying certain essential and non-essential businesses and directed the Department of Public Health to issue a stay-at-home advisory.

WHEREAS, on March 24, 2020 Governor Baker, through his Chief Legal Counsel, issued guidance interpreting the March 23, 2020 order with respect to the scope of authority of local governments to regulate matters in the order, particularly with respect to construction.

WHEREAS, on March 25, 2020, the Town of Nantucket and all of the towns on Martha’s Vineyard requested that the Governor and Lieutenant Governor clarify such order based upon circumstances including but not limited to the Islands’ unique circumstances.

WHEREAS, on March 26, 2020, officials from Nantucket participated in a conference call with the Secretary of the Executive Office of Public Safety and Security, among others, and indicated their concern about continued construction on the island for purposes including but not limited to travel to and from the island, limited public safety personnel, limited hospital capacity, and more.

WHEREAS, on March 29, 2020, officials from the Town of Nantucket participated in a telephone conference with the Governor’s Legal Counsel, Legislative Director and Chief Secretary, who affirmed that local governments retain the authority to enact regulations that are more stringent than the Governor’s orders, to regulate activities within their jurisdictions based on their individual circumstances.

WHEREAS, we wish to re-affirm the unique circumstances facing the Town and island of Nantucket that require a strict limitation on all non-essential business, including construction and commercial landscaping projects, and to re-affirm that all non-emergency construction work and all commercial landscaping work is prohibited until the expiration of the applicable orders or they are sooner rescinded.
WHEREAS, Nantucket is uniquely situated insofar as it is only accessible by boat or airplane. In this regard, the primary method for travel to and from the island by many construction and landscape workers will be by boat. It is customary and expected that workers will travel together from the mainland and once they arrive, they will travel together to and from work sites. Due to the group nature of this type of travel, it is unlikely that sufficient physical distancing can be maintained.

WHEREAS, Nantucket has only one hospital, Nantucket Cottage Hospital. While the doctors, nurses and staff have done and continue to perform outstanding work in the face of this crisis, they have limited resources and cannot handle an influx of illness spread by failure to comply with social distancing protocols. Of particular concern are the facts that the Hospital has only fourteen licensed beds, three ventilators, and it does not have an intensive care unit. Thus, anyone needing such care will be required to be airlifted to a hospital on the mainland, further diminishing the capabilities on hospital staff.

WHEREAS, the Nantucket Cottage Hospital President Gary Shaw has said time and again that given the small size and the geographic isolation of the Islands and limited access to PPE and other emergency equipment, failure to limit exposure will necessarily result in the overburdening of each hospital’s resources and lead to a further health crisis emergency. Hospital leaders have further indicated that their ethics teams are now analyzing how the hospitals will make decisions as to who should receive treatment and who should not, or cannot. This is our reality today.

WHEREAS, during this state of emergency, Nantucket does not have sufficient resources to provide emergency police, fire and ambulance service above what it is providing to Island residents during this unusual period. Indeed, as an island community of just one municipality, Nantucket has no opportunities to call on the mutual aid of its neighbors to assist should its resources become overwhelmed.

WHEREAS, during this state of emergency, Nantucket does not have sufficient staffing to ensure that job sites are safe, insofar as it cannot commit emergency first-responders to performing construction detail work, it cannot monitor job sites to ensure that physical distancing requirements are met, and it cannot provide adequate support in the event of an emergency.

WHEREAS, it is essential that visitors to the Island be limited to only those who absolutely have to be here so that the Town’s limited resources do not become overwhelmed and insufficient to protect the health and safety of its residents, first responders and essential workers.

NOW THEREFORE, based on the conditions cited above, and other well-known adverse effects of the COVID-19 crisis, the Nantucket Board of Health, upon the recommendation of Emergency Management and Public Health Officials, the Director of the Nantucket Cottage
Hospital, and the Select Board, and the need to protect the health of the inhabitants of the Town of Nantucket, hereby reaffirms and supplements Emergency Orders Nos. 1 and 2, as follows:

There hereby continues in effect an Emergency Order imposing a temporary moratorium on all non-essential construction work until such time as the State of Emergency declared due to the outbreak of COVID-19 is lifted, as well as an Emergency Stay-at-Home Order that limits, among other things, landscaping.

As of the date of this Supplemental Emergency Order, all non-essential construction and landscaping shall continue to be prohibited in the Town of Nantucket and must immediately cease until further order, except as provided herein. This Order applies to all work sites, including but not limited-to all work authorized by building permits and street opening permits previously issued. This Order also prohibits work by commercial landscaping and other similar businesses performing work that is not essential as defined below.

This Order shall apply as follows:

Existing and newly permitted projects which comprise essential construction may be undertaken in a manner that is consistent with this Order and any further orders of the Commonwealth, the Board of Health and/or the Building Commissioner, to the extent that such orders are more restrictive than what is set forth herein.

For purposes of Emergency Order Nos. 1 and 3, and this Supplemental Emergency Order, essential construction includes only the following work:

- Work to build or repair roads, bridges, transit facilities, utilities, hospitals or health care facilities, or homeless shelters.
- Emergency Utility, road or building work, such as to repair water or sewer leaks and sinkholes.
- New Utility connections to occupied buildings where prior connections are no longer functioning.
- Site-specific building or utility work ordered by a Governmental entity to protect public health and safety.
- Work at health care facilities, shelters, including temporary shelters and other facilities that support vulnerable populations or that provide emergency services.
- Work which ensures the reliability of the transportation network.
- Other work necessary to render occupied residential buildings fully habitable.
Under no circumstance will the term emergency work include construction on unoccupied residential or commercial structures unless it is in a class of work described above.

Consistent with action already taken, all active construction sites shall be secured to prevent unauthorized entry, damage to equipment and/or work-in-progress and to protect public safety. Only skeleton crews will be permitted to enter construction sites for the remainder of the moratorium and period of this Supplemental Emergency Order, and such entry shall be limited to what is necessary to ensure safety and security.

At every site where essential construction activity continues under one of the categories authorized above, operators shall ensure that all activity is undertaken in a manner consistent with the Commonwealth of Massachusetts COVID-19 Guidelines and Procedures for all Construction Sites and Workers at all Public Work as issued by the Governor on March 25, 2020 and attached to this Order (the “Guidelines”). The Operator shall ensure that the work site and activities undertaken therein are and shall remain in compliance with the Guidelines. All permissive language (e.g. phrases with “please” or “should”) are hereby deemed mandatory obligations.

At every site where construction activity continues, one or more site-specific COVID-19 liaison officer(s) shall be identified who shall maintain a daily compliance log and shall certify that the contractor, subcontractors and all workers are in full compliance with this Order and the Guidelines.

Board of Health

Stephen J. Visco. Chair
Malcolm W. MacNab, MD, PhD, Vice Chair
James A. Cooper, Member
Rita Higgins, Member
Helene M. Weld, RN, Member

In concurrence with action taken by the Select Board:

Dawn Hill-Holdgate, Chair
Rita Higgins, Vice-Chair
Matt Fee, Member
Jason Bridges, Member
Kristie Ferrantella, Member

As well as Town Staff and representative of Nantucket Cottage Hospital:

C. Elizabeth Gibson, Town Manager
William Pittman, Director, Office of Emergency Management
Roberto Santamaria, Director, Department of Public Health
Paul Murphy, Nantucket Building Commissioner
Gary A. Shaw, President, Nantucket Cottage Hospital
EMERGENCY ORDER No. 4 Extension of Recreational Shellfish Licenses

In consideration of the State of Emergency declared in the Town of Nantucket and the Commonwealth of Massachusetts, upon recommendation of Emergency Management and Public Health Officials, and the need to protect the health of the inhabitants of the Town of Nantucket, the following order shall be implemented until such time as the State of Emergency has been lifted.

Given that fishing and shell fishing are defined as essential services for the purposes of gathering food, that 2019-2020 recreational shellfish licenses were set to expire on March 31, 2020 and that the Town has suspended the issuance of any new permits until the State of Emergency is lifted. It is Ordered by the Nantucket Select Board that all recreational shellfish licenses are extended until the State of Emergency is lifted and regular license sales resume. All 2020 licenses already sold are considered valid.

Any person engaging in recreational shell fishing is required to abide by all rules and regulations set by the Commonwealth of Massachusetts and the Town of Nantucket. This includes proper display of each individual’s license while engaging in shell fishing. Any person(s) engaging in shell fishing must practice proper social distancing in as recommended by the CDC in an effort to curb the spread of COVID-19.

Date: April 8, 2020

So Ordered by the Nantucket Select Board;
Dawn Hill-Holdgate, Chair
Rita Higgins, Vice-Chair
Matt Fee, Member
Jason Bridges, Member
Kristie Ferrantella, Member

In Concurrency with:
C. Elizabeth Gibson, Town Manager
William Pittman, Director, Office of Emergency Management
Roberto Santamaria, Director, Department of Public Health
Jeff Carlson, Director, Natural Resources Department
ORDER ASSURING CONTINUED OPERATION OF ESSENTIAL SERVICES
IN THE COMMONWEALTH, CLOSING CERTAIN WORKPLACES,
AND PROHIBITING GATHERINGS OF MORE THAN 10 PEOPLE

COVID-19 Order No. 13

WHEREAS, on March 10, 2020, I, Charles D. Baker, Governor of the Commonwealth of Massachusetts, acting pursuant to the powers provided by Chapter 639 of the Acts of 1950 and Section 2A of Chapter 17 of the General Laws, declared that there now exists in the Commonwealth of Massachusetts a state of emergency due to the outbreak of the 2019 novel Coronavirus ("COVID-19");

WHEREAS, on March 11, 2020, the COVID-19 outbreak was characterized as a pandemic by the World Health Organization;

WHEREAS, the number of presumptive positive and confirmed cases of COVID-19 continues to rise exponentially in the Commonwealth. As of March 22, 2020, the Department of Public Health had reported 646 cases of COVID-19, including 5 deaths, with 13 of the 14 counties in the Commonwealth impacted;

WHEREAS, the Department of Public Health is urging all residents of the Commonwealth to limit activities outside of the home and to practice social distancing at all times, both inside and outside of the home to limit the spread of this highly contagious and potentially deadly virus;

WHEREAS, on March 19, 2020, the Federal Cybersecurity and Infrastructure Security Agency issued guidance to assist States that identifies 14 critical infrastructure sectors whose workers provide services and functions that are essential to maintain in order to support a strong response to the COVID-19 pandemic;

WHEREAS, as Governor, I have identified additional services and functions that likewise are essential to promote the public health and welfare of the Commonwealth, and
therefore it is imperative to ensure that workers providing critical services and functions in these State and Federally designated sectors may continue to work to ensure community resilience and continuity of response efforts; and

WHEREAS, sections 7, 8, and 8A of Chapter 639 of the Acts of 1950 authorize the Governor, during the effective period of a declared emergency, to exercise any and all authority over persons and property necessary or expedient for meeting a state of emergency, including but not limited to authority over public assemblages in order to protect the health and safety of persons, regulating the sale of articles of food and household articles, and policing, protection, and preservation of public and private property;

NOW, THEREFORE, in order to minimize all unnecessary activities outside of the home during the state of emergency, I hereby order the following:

1. Maintaining Operation of COVID-19 Essential Services and Workforces

   The production and service sectors identified in Exhibit A are hereby designated as “COVID-19 Essential Services.” The workforces engaged and working in these production and service sectors are hereby designated as “COVID-19 Essential Workforces.” I shall amend and publish updates to Exhibit A as I determine necessary in response to conditions as they develop.

   Businesses and other organizations that provide the services and functions identified as COVID-19 Essential Services in Exhibit A are urged to continue operations during the state of emergency, but to do so with allowance for social distancing protocols consistent with guidance provided by the Department of Public Health.

   Restaurants, bars, and other retail establishments that sell food and beverage products to the public provide COVID-19 Essential Services and are designated as such in Exhibit A. These establishments are therefore encouraged to continue to offer food and beverages for take-out and by delivery provided that they follow the social distancing protocols set forth in Department of Public Health guidance. Restaurants, bars, or other establishments that offer food or beverages to the public shall not permit on-premises consumption of food or beverages.

2. Temporary Closing of Other Businesses and Organizations

   All businesses and other organizations that do not provide COVID-19 Essential Services shall close their physical workplaces and facilities (“brick-and-mortar premises”) to workers, customers, and the public as of 12:00 noon on March 24, 2020 and shall not re-open to workers, customers, or the public before 12:00 noon on April 7, 2020. Churches, temples, mosques, and other places of worship shall not be required to close their brick and mortar premises to workers or the public; provided, however, that such institutions shall be required to comply with all limitations on gatherings established in section 3 below.
Businesses and other organizations that do not provide COVID-19 Essential Services are encouraged to continue operations where they are able to operate through remote means that do not require workers, customers, or the public to enter or appear at the brick-and-mortar premises closed by this Order.

3. **Limitations on Gatherings**

   Gatherings of more than 10 people are prohibited throughout the Commonwealth. Gatherings subject to this Order include, without limitation, community, civic, public, leisure, faith-based, or sporting events, concerts, conferences, conventions, fundraisers, parades, fairs, festivals, weddings, funerals, and any similar event or activity that brings together more than 10 persons in any confined indoor or outdoor space. This limitation shall not apply to the operations or activities of any business or organization in its provision or delivery of COVID-19 Essential Services.

   This Order does not prohibit gatherings of more than 10 people in an unenclosed, outdoor space such as a park, athletic field, or parking lot.

   Athletic and recreational activities that bring participants into close, physical contact are prohibited even when involving 10 or fewer people and regardless of where conducted.

4. **Exceptions**

   (a) This Order shall not apply to any municipal legislative body or to the General Court or to the Judiciary.

   (b) This Order shall not apply to residential schools for special needs students. This Order also does not apply to public and private elementary and secondary (K-12) schools in the Commonwealth, which are subject to the March 15, 2020 Order Temporarily Closing All Public and Private Elementary and Secondary Schools, as may be subsequently amended, which suspended all normal, in-person instruction.

   (c) This Order does not apply to the operation of child care programs in the Commonwealth, which are subject to the March 18, 2020 Order Temporarily Closing All Child Care Programs and Authorizing the Temporary Creation and Operation of Emergency Child Care Programs, as may be subsequently amended.

5. **Implementing Guidance and Enforcement**

   The Commissioner of Public Health is directed to issue guidance ("DPH Guidance"), subject to my approval, to implement the terms of this Order. The DPH Guidance shall include a requirement that grocery stores and other retailers with substantial retail grocery sales establish special limited access hours during which elderly and other vulnerable populations may have exclusive access to make grocery purchases.
The Department of Public Health, along with any board of health or authorized agent pursuant to G. L. c. 111, § 30, shall enforce this Order and if necessary may do so with the assistance of State or municipal police. Violation of the terms of this Order or the DPH Guidance may result in a criminal penalty pursuant to Section 8 of Chapter 639 of the Acts of 1950 or a civil fine of up to $300 per violation, in the manner provided for non-criminal disposition of violations of municipal by-law, ordinance, rule, or regulation pursuant to G. L. c. 40, § 21D. A criminal complaint for violation of or a motion for an injunction to enforce this Order or the DPH Guidance shall be filed in the district court with jurisdiction for the municipality in which the violation has been charged.

In addition, I hereby direct the Commissioner of Public Health to act under the authority of G. L. c. 17, § 2A and G. L. c. 111, § 6 or any other appropriate authority to supplement the terms of this Order in the event she determines additional measures are required to ensure that the terms of this Order are observed.

This Order supersedes and makes inoperative any order or rule issued by a municipality that will or might in any way impede or interfere with the achievement of the objectives of this Order. With respect to work and travel in particular, any order or rule issued by a municipality is hereby made inoperative to the extent: (1) such municipal order or rule will or might interfere with provisions of this Order ensuring the continued operation of COVID-19 Essential Services; or (2) such municipal order or rule will or might interfere with the free travel anywhere within the Commonwealth of any person who is a member of any COVID-19 Essential Workforce where such travel is made in connection with the ongoing operation of COVID-19 Essential Services.

This Order rescinds and revokes the Order Prohibiting Gatherings of More than 25 People and On-Premises Consumption of Food or Drink, issued March 15, 2020.

If any provision of this Order or the application thereof to any person or entity or circumstance is determined to be invalid by a court of competent jurisdiction, such judgment shall not affect or impair the validity of the other provisions of this Order or the application thereof to other persons, entities, and circumstances.
This Order shall be effective at 12:00 noon March 24, 2020 and shall remain in effect through 12:00 noon on April 7, 2020 unless further extended.

Given in Boston at \[ \text{AM} \] this 23rd day of March, two thousand and twenty

\[ \text{Signature} \]

CHARLES D. BAKER
GOVERNOR
Commonwealth of Massachusetts
PRESS RELEASE

Baker-Polito Administration Announces Travel Guidelines and New Health Care Resources To Support COVID-19 Response

FOR IMMEDIATE RELEASE:
3/27/2020
Office of Governor Charlie Baker and Lt. Governor Karyn Polito
Governor’s Press Office
Department of Public Health
Executive Office of Health and Human Services
Massachusetts Department of Transportation

MEDIA CONTACT
BOSTON — Today, the Baker-Polito Administration announced new COVID-19 public health emergency responses issuing new guidelines on travel and transportation, and offering further support for health care professionals and patients.

Earlier today, Governor Charlie Baker, Lt. Governor Karyn Polito, Senate President Karen Spilka and House Speaker Robert DeLeo also announced an agreement to extend the 2019 state individual income tax filing and payment deadline from April 15 to July 15, matching the

**Travel Guidance:** Beginning March 27, all travelers arriving to Massachusetts are instructed to self-quarantine for 14 days. This guidance will be displayed as posters at service plazas along 1-90 eastbound, distributed as flyers at major transportation hubs and on posted on highway message boards. Visitors are instructed not to travel to Massachusetts if they are displaying symptoms. Health care workers, public health workers, public safety workers, transportation workers and designated essential workers are exempt from this requirement.

**Medical School Graduation:** Health and Human Services Secretary Marylou Sudders and DPH Commissioner Dr. Monica Bharel have coordinated with Massachusetts medical schools to facilitate early graduation of their qualified fourth-year students to allow graduates to support the health care workforce during the COVID-19 response. This coordinated effort includes Boston University School of Medicine, University of Massachusetts Medical School, Tufts University School of Medicine and Harvard Medical School.

**Emergency Limited Medical Licenses:** The Board of Registration in Medicine will provide medical school graduates who have matched as an intern, resident or fellow with a Board-approved Massachusetts health care facility or training program with Emergency 90-Day Limited Licenses to practice medicine to ensure that our health care workforce is prepared during the COVID-19 public health emergency.

To qualify, medical residents must fill out an application to be approved by the program or facility, and once approved, residents will receive the emergency license and be able to start when their program begins. This Emergency Limited License will allow medical staff to provide support while the regular screening progresses, and it is not a substitute for the regular Limited License process.

**Buoy Health Care Tool:** The Baker-Polito Administration announced the launch of Buoy Health’s new online resource for residents to check their symptoms and connect with the next appropriate health care resource. This tool does not replace emergency medical care, but it may be used as a support for residents during the COVID-19 outbreak to connect them with appropriate health care resources if they display coronavirus symptoms.
Buoy Health’s online 24/7 tool is free for Massachusetts residents and uses current COVID-19 guidance from the CDC and Massachusetts Department of Public Health. Visit Buoy.com/mass (http://www.buoy.com/mass) to learn more and use the tool.

**Advanced Practice Registered Nurses (APRNs):** The administration has issued a public health order to provide APRNs in good standing with greater flexibility in their prescribing practices. This order includes the following updates:

- Certified nurse midwives will be allowed to continue to prescribe as already authorized.
- Authorizes APRNs who have at least two years of supervised practice experience to prescribe without physician supervision.
- Authorizes APRNs with fewer than two years of supervised practice experience to prescribe with physician supervision, but without the normally required written guidelines.

Read the order here (/doc/march-26-2020-advanced-practice-registered-nurses-order).

**MassHealth Waiver:** The Centers for Medicare and Medicaid Services (CMS) has approved, in part, the Baker-Polito Administration’s 1135 waiver (https://www.medicaid.gov/state-resource-center/disaster-response-toolkit/federal-disaster-resources/index.html) to fast-track MassHealth enrollment, streamline administrative requirements for providers and better deliver critically needed health care services during the COVID-19 public health emergency. CMS has approved the following items of the waiver:

- Enrollment of out-of-state providers and easing other provider requirements when enrolling in MassHealth.
- Allowing providers to be reimbursed for care in alternative, unlicensed settings.
- Suspension of prior authorization requirements and extending pre-existing prior authorizations through the emergency.

**Health Care Professional Volunteers:** To support ongoing COVID-19 emergency response efforts, the Baker-Polito Administration has partnered with the Massachusetts Medical Society to match volunteers with our communities and health care providers based on skillsets and need. There is an immediate need for respiratory therapists and public health
nurses, and the administration is asking health care professionals interested in volunteering to sign up at MAResponds.org (/health-services-covid-19-volunteer-form).

###

**Media Contact**

Sarah Finlaw, Press Secretary, Governor’s Office

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<th>Phone</th>
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**Office of Governor Charlie Baker and Lt. Governor Karyn Polito**

(/orgs/office-of-the-governor)

Governor Charlie Baker, Lt. Governor Karyn Polito, and members of their administration are committed to making Massachusetts the best place to live, work, and raise a family.

**More** (/orgs/office-of-the-governor)
Baker-Polito Administration Extends Non-Essential Business Closures and Executive Branch Employee Guidance

Administration Updates Non-Essential Business Categories

FOR IMMEDIATE RELEASE:
3/31/2020
Office of Governor Charlie Baker and Lt. Governor Karyn Polito
Governor's Press Office
Department of Public Health
Executive Office of Health and Human Services
Executive Office of Housing and Economic Development
BOSTON — Today, the Baker-Polito Administration announced several updates related to the COVID-19 outbreak including extending the non-essential business emergency order and guidance for Executive Branch employees until May 4. The Department of Public Health’s Stay-At-Home Advisory remains in effect. The Administration also updated the “COVID-19 Essential Services” categories for businesses and other organizations that
provide essential services and workforces related to COVID-19 that are permitted to operate brick and mortar facilities during the emergency.

**Essential Services Order:** Governor Charlie Baker’s emergency order requiring that all businesses and organizations that do not provide “COVID-19 Essential Services” close their physical workplaces and facilities to workers, customers and the public will be extended until May 4. Businesses and organizations not on the list of essential services are encouraged to continue operations through remote means that do not require workers, customers, or the public to enter or appear at the brick-and-mortar premises closed by the order. This order also prohibits gatherings of more than 10 people until May 4th.

The Administration updated the “COVID-19 Essential Services” list today, which is based on federal guidance that was updated earlier this week. The new list will go into effect tomorrow, April 1, at noon. While these businesses are designated as essential, they are urged to follow social distancing protocols for workers in accordance with guidance from the Department of Public Health (DPH).

Some of the updates to the essential services list include:

- Clarity around the supply chain that supports other essential services
- Adding health care providers like chiropractors and optometrists
- Expanding the types of workers providing disinfectant and sanitation services

Click here (/doc/march-31-2020-essential-services-extension-order) for the essential services extension order.

Click here (/info-details/covid-19-essential-services?) for the full list of categories of “COVID-19 Essential Services.” (PDF (/doc/march-31-essential-services-list))

Click here (/info-details/covid-19-essential-services-faqs) for COVID-19 Essential Services FAQs created by the Executive Office of Housing and Economic Development.

**Hotel/Motel Guidance:** As part of the updated essential business list, DPH issued new guidance today around hotels, motels, inns, beds and breakfasts and other short-term residential rentals. Based on this new guidance, hotels, motels, and short-term rentals
may only be used for efforts related to fighting COVID-19, like front line health workers or individuals, or for Massachusetts residents who have been otherwise displaced from their residences.

Click here (/doc/march-31-2020-hotel-motel-guidance) for the Hotel/Motel Guidance.

Stay at Home Advisory: Last week, Governor Charlie Baker directed DPH to issue a stay-at-home advisory, and the Governor announced today that the advisory will remain in effect. Residents are advised to stay home and avoid unnecessary travel and other unnecessary person to person contact during this time period. Residents who are considered at high risk when exposed to COVID-19 should limit social interactions with other people as much as possible

Click here (/news/dph-public-health-advisory-stay-at-home-advisory) for the Stay-At-Home Advisory.

Executive Branch Employee Guidance: The Baker-Polito Administration today also extended the guidance issued to Executive Branch employees on protocol during the COVID-19 outbreak to ensure state government can continue to provide key services while protecting the health and safety of the public and the Executive Branch workforce. Under the guidance, all employees performing non-core functions who are able to work remotely should continue to do so until May 4. Full guidance will be sent to Executive Branch employees later today.

Some Executive Branch services and walk-in offices remain open, but residents are encouraged to use online services when available. For the status of in-person Executive Branch office locations, please click here (/info-details/covid-19-status-of-executive-branch-office-locations).

Field Medical Station Announcement: The Commonwealth, through MEMA, has requested and received approval for a Field Medical Station that will provide additional medical care capacity as the state plans for a surge in cases. The federal Strategic National Stockpile has approved a 250-bed field medical station that will be deployed to the DCU Center in the City of Worcester this week. This temporary facility will be managed by UMass Memorial and staffed by a partnership including the City of Worcester and others.
The temporary field medical center will be used to treat lower acuity patients who still need monitoring.

**Nursing/Rest Home Program:** The Commonwealth is implementing a pilot project that allows for safe, on-site testing of symptomatic residents of nursing and rest homes with a quick turnaround. The pilot will operate under the auspices of the Massachusetts National Guard in partnership with the Department of Public Health and Broad Institute of Cambridge, and samples will be collected by trained personnel from the Massachusetts National Guard. Prior to this launch, the only way for nursing home residents to be tested would be to be transported to a hospital or physician’s office.

Members of the public should continue checking [www.mass.gov/covid19](http://www.mass.gov/covid19) for the latest information on impacts from the COVID-19 outbreak.

###

**Media Contact**

**Sarah Finlaw, Press Secretary, Governor’s Office**

**Phone**

(617) 725—4025 (tel:6177254025)

**Online**

[Gov.press@state.ma.us](mailto:gov.press@state.ma.us)
Senior Meal Delivery Program:

- Began Monday, March 23rd following BOH approval
- Partnership between Saltmarsh and Sandbar/or, The Whale
- Safety/infection control measures: allergy and dietary restriction checks, prepared in commercial kitchen, social distancing between volunteer participants, gloves, masks, no-contact deliveries
- Growth: typically over 60 meals a night
- Requirements for participation- over 60 and living at home, not a current Meals on Wheels recipient (Meals on Wheels continues to operate as normal)
- Operates at no cost to TON or seniors
- This program will extend (original end date 4/10/20, new end date TBD)
- New funding vehicle via Community Foundation

Expansion of Food Program:

- Funding via Community Foundation’s Nantucket Fund for Emergency Relief- Food Initiative
- Partnering human services organizations with restaurants to follow same model as the Saltmarsh and Sandbar/or, The Whale
- Benefit to both restaurants and those in need
- Will roll out continuously as new restaurants and agencies partner

Contract Review Committee:

- Immediate release of remaining funding for FY 2020 to 11 human services agencies
- Will allow agencies greater flexibility to meet increased demand during emergency
- Scheduled for 4/15/2020 warrant

Product Distribution

- Direct distribution of scarce items to seniors via Saltmarsh and Generation Safe participant lists
- Cloth masks
- Toilet paper
- Done by TON staff to ensure safety and sanitation

Exempt Emergency Daycare

- Governor Baker placed an exemption for emergency child care programs authorized by EEC to operate on a limited basis for families designated as essential and prioritizes this be available for health care, public health, and first responders to ensure they are able to be at work and help with COVID response.
- 3 local providers now licensed for EEC
Relief programs Nantucket residents should be aware of:

- Nantucket Food Fuel and Rental Assistance: for fuel and rental assistance, call 509 901 1320 or visit assistnantucket.org; for food assistance call 508 228 2780 or visit assistnantucket.org
- WIC: Special Supplemental Nutrition Program for Woman, Infants and Children- expecting increased capacity but have not yet seen an increase in application from Nantucket. WIC EBT (Electron Benefit Transfer) cards are accepted at our Stop N Shops. Call 508 771 7896 or 508 942 7066, or apply online https://www.mass.gov/forms/apply-for-wic-online
- SNAP: Supplemental Nutrition Assistance Program- SNAP cards are accepted at both Stop n Shop and Bartlett’s Farm. Nantucket Cottage Hospital Social Services can assist with application process- call 508 825 8195 or apply online https://mass.gov/how-to/apply-for-snap-benefits-food-stamps
- Transitional Aid to Families with Dependent Children: available to families with children under 18 years of age, and those who are pregnant and due within 4 months, who meet income and asset limits- call our local DTA office, which is in Hyannis 508 862 6600

Other:

- HSD assisting some Nantucket organizations in federal grant application. Consortium between four applicant agencies, but if awarded some funding will go to other local agencies as partners in service delivery. This is a first for Nantucket agencies and hopefully the first of many (will remove some pressure from CRC).
- HSD focus on assisting Food Pantry in ability to increase capacity- location, volunteer base, supply chain, funding.
Nantucket's Census Complete Count Committee recognizes that our community's health and safety are the most pressing concerns during this unprecedented time, and that communication about public health takes priority. However, the 2020 Census is ongoing - and vitally important for Nantucket's future.

It's never been easier to get counted, and to count everyone who lives at your address. You can use your smartphone, tablet, or computer to do so online, you can do so over the phone in 13 languages, or you can complete and return the Census questionnaire that may have been delivered to your home by now. (You do not need a form to respond online or by phone, however!)

The US Census takes place once every ten years and is mandated by the Constitution. Statistics from responses are used to make decisions about federal funding for community services that we rely on every day: health care (including Medicaid, Medicare, and the Children's Health Insurance Program), schools, food assistance, housing, emergency services, senior programs, and more. An accurate count ensures that Nantucket gets it's share, as funding levels that are determined as a result of the 2020 Census will be in place for our community for the next ten years!

Please get counted, and encourage friends, colleagues, and family members to do so at 2020census.gov. Choose your language and click on the "Respond" button to take the Census. It's safe, quick, easy - and individual data is protected by federal law. Your information cannot be shared with any federal, state, or local agency for any reason. There is NO citizenship question on the Census, and everyone is asked to participate. We ALL count for Nantucket!

In an effort to "get out the count" on Nantucket we've started posting information on Facebook, via the Community Foundation for Nantucket's page. Please visit the foundation's page so you can see and - very importantly - share these posts on your own personal and organizational pages! You'll recognize some faces, and can learn a lot about why an accurate count is important. If Facebook isn't your thing, please share the information on Instagram or Twitter - or even by email.

Please get counted and help shape Nantucket's future!
Agenda Item Summary

Staff
Finance Director

Subject
Due Dates of Real and Personal Property Tax Bills and Applications for Exemptions and Waiver of Interest on Certain Late Payments.

Executive Summary
The Governor recently signed Chapter 53 of the Acts of 2020. This legislation allows the Select Board to extend the due dates of property tax bills, exemption and deferral applications, and to waive interest on certain payments made after due dates.

The Select Board may vote to extend the due date from May 1, 2020 to a date not later than June 1, 2020 for the 4th quarter tax bills.

The Select Board may vote to extend the due dates for the exemptions and deferral applications under MGL C.59 S.59 not later than June 1, 2020.

The Select Board may vote to waive interest on certain payments made after due dates, including interest and penalties assessed on excise tax, property tax, betterment assessments, or apportionment thereof. The section allows the waiver of interest and penalties for late payments made on bills with a due date of March 10, 2020 or after, when such bills are paid late but paid on or before June 30, 2020. This section does not permit the waiver of interest or penalties for bills with due dates before March 10, 2020.

Staff Recommendation
Staff recommends adoption of local options as outlined in Chapter 53 of the Acts of 2020

Background/Discussion
These measures recommended because of the COVID19 pandemic and its impact on the community.

Impact: Environmental ☐  Fiscal ☒  Community ☐  Other ☐

Board/Commission Recommendation
N/A
Public Outreach

DOR has indicated that towns are required to mail a letter to every taxpayer notifying them of the adoption of this action (copy of sample attached); however, there is a dispute as to whether or not this is actually required. There is a cost to this of approximately $5,000 if we actually have to do this (and also whether or not we can even comply due to the Stay at Home Order with the printing and mailing of the letter.

Attachments

Copy of sample required letter
SAMPLE NOTICE TO TAXPAYERS
TO BE INCLUDED WITH TAX BILL OR SEPARATELY MAILED
(Samples should not be used without the advice of municipal counsel.)

Town/City of ________________

Important information Regarding Your Tax Bill

Under “An Act to Address Challenges Faced by Municipalities and State Authorities Resulting From COVID-19,” Chapter 53 of the Acts of 2020, the town/city has adopted local options to extend due dates for real and personal property tax payments and applications for exemptions and a waiver of interest on certain municipal tax and other bills paid by June 30, 2020. See below.

1. The due date of your real and personal property tax bill has been extended to **June 1, 2020**. June 1, 2020 is the new due date even if the due date for payment on your enclosed or previously mailed tax bill is April 1, 2020 or May 1, 2020.

2. The due date for applications for property tax exemptions has also been extended to **June 1, 2020**. June 1, 2020 is the new due date even if the due date for applications on your enclosed or previously mailed tax bill is April 1, 2020.

   This extension applies to applications for the exemptions listed in the third paragraph of G.L. c. 59, § 59, including exemptions under clauses 17, 17C, 17C1/2 and 17D (seniors, surviving spouses, minor children of deceased parent); 18 (financial hardship – activated military, age and infirmity); 22, 22A, 22B, 22C, 22D, 22E, 22F and 22H (veterans, surviving spouses and surviving parents); 37 and 37A (blind persons); 41, 41B, 41C and 41C1/2 (seniors); 42 and 43 (surviving spouse and minor children of firefighter/police officer killed in line of duty); 52 (certain eligible seniors); 53 (certain eligible properties with septic systems); 56 (National Guard and reservists on active duty in foreign countries); and 57 (local option tax rebates). This extension also automatically applies to applications for residential exemptions under G.L. c. 59, § 5C, for small commercial exemptions under G.L. c. 59, § 5L and for deferrals under G.L. c. 59, § 5, clauses 41A (seniors) and 18A (poverty or financial hardship due to change to active military).

3. The town/city has also voted to waive interest and other penalty for late payment of any excise, tax, betterment assessment or apportionment thereof, water rate or annual sewer use or other charge added to a tax for any payments with a due date on or after March 10, 2020 where payment is made late but before June 30, 2020. This applies to late payments of bills that have a due date of March 10, 2020 or after, when such bills are paid late but paid on or before June 30. This waiver of interest does not apply to bills with due dates before March 10, 2020 or if the bill is not paid by June 30.

   NOTE - If the municipal offices are closed on the June 1, 2020 extended due date for tax payments or filing of exemption applications as a result of the outbreak of the 2019 novel coronavirus or the declaration of a state of emergency issued by the governor on March 10, 2020, the due dates for tax payments and applications for exemptions are not extended – they will be due on June 1, 2020 even if the municipal offices are closed. (See section 10(b) of the Act.)

   [City/town should add information on how/where to make tax payments and file applications for exemptions, for example, by mail, through an on-line payment system or dropping payment into a lockbox (with the location). The city/town should also provide a telephone number where questions to local officials can be directed and the address of any relevant website information.]
Agenda Item Summary

Staff
Tucker Holland, Municipal Housing Director

Subject
Select Board comment letter to MEPA regarding revised plan for Surfside Crossing (SSX) development

Executive Summary
The Town has consistently expressed concerns regarding environmental and other issues surrounding the proposed development of 156 units of housing at the thirteen-and-a-half-acre wooded site off of South Shore Road. With the recent submission of an Environmental Notification Form by developers Josh Posner and Jamie Feeley to MEPA, the Town as an interested party is in position to submit a formal comment letter to MEPA and further register its concerns with the state on this topic.

Staff Recommendation
Submit a formal comment letter in advance of the April 14, 2020 deadline.

Background/Discussion
The Board has consistently expressed concerns over a number of aspects of the proposed SSX development including but not limited to environmental concerns. This is another opportunity to register these concerns with an appropriate state agency. It is important if the Town wishes to retain its standing in challenging any eventual issuance of a certificate by MEPA that it file a comment letter within the prescribed timeframe (by April 14). Attorneys Pucci and Witten of Town Counsel’s office are preparing a draft for the Board which should be available Monday evening (4/6) in advance of the Wednesday Board meeting (4/8).

Impact: Environmental ☒ Fiscal ☒ Community ☒ Other ☒
This item impacts multiple areas of priority to the Town.

Board/Commission Recommendation
N/A

Public Outreach
The wording of the letter is being crafted by Town Counsel with input from Staff, whom has spoken individually with Select Board members, and in conjunction with the Nantucket Land Council which is preparing its own letter which will be sent in separately.

Attachments
1. None at this time – draft letter forthcoming on 4/6.
April 6, 2020

BY ELECTRONIC MAIL ONLY (insert e-mail address)

Kathleen Theoharides, Secretary  
Executive Office of Energy and Environmental Affairs  
Attn: MEPA Office  
100 Cambridge Street, Suite 900  
Boston, MA 02114

Re: EEA 16173, Environmental Notification Form  
"Surfside Crossing," Nantucket, Massachusetts

Dear Secretary Theoharides:

This firm serves as Town Counsel to the Town of Nantucket ("Town"). We submit the following comments on the Environmental Notification Form (ENF) filed by Surfside Crossing, LLC regarding the above project on behalf of the Town by and through the Nantucket Select Board.

For the reasons discussed below, we respectfully request that the Secretary require the preparation of an Environmental Impact Report (EIR) for the project. We draw the Secretary's attention to the following:

I. **Broad Scope Jurisdiction**

MEPA review of this project is determined by the subject matter of the required permits. Review of a private project under the Massachusetts Environmental Policy Act ("MEPA"), G.L. c.30, ss.61-62H and the MEPA regulations, 301 CMR 11.00 et seq., is required if the project requires a permit from a state agency and it exceeds one of the review thresholds set forth in the MEPA regulations.

It is well settled that the issuance of a decision by the Housing Appeals Committee ("HAC") pursuant to G.L. c.40B, s.23 is a state agency “permit” within the meaning of the MEPA regulations. The proposed project is currently pending before the HAC due to the applicant’s appeal of the Nantucket Board of Appeals’ grant of a comprehensive permit.\(^1\) In addition, the proposed project

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\(^1\) The Select Board notes that Nantucket unquestionably has a critical need to design, permit and build below market rate housing. The Town has made the creation of such housing an urgent priority and worked successfully in recent years with the development community to construct below market rate dwelling units needed on the Island in accordance with the Town’s deliberate and rational housing plan. This plan has been recognized by the Department of Housing and Community Development as compliant with the Commonwealth’s “planned production” requirements and has earned the Town the status as “consistent with local needs”/"safe harbor" pursuant to both statute and regulations. Simply put, the Town supports the construction of below market rate housing consistent with the Town’s well thought out plan. The
requires a Conservation and Management Permit from the Division of Fisheries and Wildlife (“DFW”) pursuant to the Massachusetts Endangered Species Act (“MESA”).

Pursuant to the MEPA statute and regulations, no final agency action, including the HAC’s issuance of a decision, may be taken until after the Secretary of the Executive Office of Energy and Environmental Affairs (“EOEEA”) has issued a certificate of adequacy on the final MEPA review document. 301 CMR 11.12(4)(a). For projects requiring an Environmental Impact Report (“EIR”), which the Town argues must be completed for this matter, the HAC must accompany its action by issuing a “Section 61 finding” that confirms that “all feasible measures have been taken to avoid damage to the environment, or, to the extent that damage cannot be avoided, to minimize and mitigate damage to the environment to the maximum extent practicable.” G.L. c.30, s.61; 301 CMR 11.12(5).

The scope of MEPA jurisdiction is determined by the subject matter of the required permits. MEPA regulations specifically provide that subject matter jurisdiction may be functionally equivalent to broad scope jurisdiction in the case of certain permits or decisions such as, specific to this matter, those issued by the HAC or DFW. 301 CMR 11.01(2)(a)(3).

For example, the HAC, in reviewing the present comprehensive permit decision under appeal, will address issues including the number of dwelling units, impacts to open space and wetland resources, traffic patterns and safety, water and sewer infrastructure, relationship to municipal planning efforts and building and site design. See G.L. c. 40B, ss. 20; 760 CMR 56.07. Accordingly, an HAC decision has consistently been viewed by MEPA as a permit that conveys broad-scope MEPA jurisdiction.

Where the scope of the HAC's and DFW’s review will and have, extended to the full range of these topics, the Town suggests that MEPA must require an EIR pursuant to 301 CMR 11.00 for "Surfside Crossing" and the scope of the EIR must be inclusive of all aspects of the project that are likely, directly or indirectly, to cause Damage to the Environment, as that phrase is used in 301 CMR 11.00, including but not limited to destruction of endangered species habitat, infrastructure availability, open space and natural area protections; and increases in traffic, flooding and storm water flow.

current project is grossly inconsistent with the Town’s housing production plan and, moreover, inconsistent with normative development plans on the Island or anywhere else in the Commonwealth.

2 Broad scope jurisdiction extends to “all aspects of a Project that are likely, directly or indirectly, to cause Damage to the Environment”. 301 CMR 11.01(2)(a)(2).

3 In addition, DFW has issued a Conservation and Management Permit pursuant to MESA (determining a “take” of a rare and endangered species); the same is under appeal in the Suffolk Superior Court (See, Nantucket Land Council v. Division of Fisheries and Wildlife and Surfside Crossing, LLC, Docket No.1984CV03991).
II. 301 CMR 11.05(2) Required MEPA Filing Nine Months Ago: The ENF Must be Rejected Accordingly

The proposed project requires an ENF and as argued herein, should require an EIR pursuant to the Secretary’s discretion found at 301 CMR 11.04.

However, because the applicant appealed the Nantucket Board of Appeals decision approving a comprehensive permit for the project to the HAC, the applicant was required by 760 CMR 56.06(4)(h) and 301 CMR 11.05(2) to file an ENF with MEPA “no later than ten (10) days after filing the first application for a Permit or Financial Assistance”. 301 CMR 11.05(2). As the applicant’s appeal was filed with the HAC on or about July 2, 2019, their ENF was due to MEPA no later than July 12, 2019. Their MEPA filing is dated March 16, 2020 or nine months past when it was due.

The requirements of 301 CMR 11.05(2) are unambiguous and relevant portions are reprinted below:

“In all cases, the Proponent shall file their ENF sufficiently prior to the Commencement of the Project and any required Agency Action to allow timely compliance with MEPA… In the case of a Project that is undertaken by a Person and requires one or more Permits or involves Financial Assistance…the Proponent shall file an ENF at any time prior to but no later than ten Days after filing the first application for a permit or Financial Assistance.”

The applicant’s request for financial assistance to the Commonwealth (see further discussion in Section III below) is dated December 12, 2017. According to 301 CMR 11.05(2), the applicant was required to file with MEPA no later than December 22, 2017. Or, in a best-case scenario for the applicant if MEPA declines action on the discussion below regarding financial assistance from the Commonwealth, the applicant was required to file with MEPA no later than July 13, 2019 or ten days following the applicant’s filing of its initial pleading filed with the Housing Appeals Committee.

In any event, the applicant has failed to comply with the unambiguous requirements of 301 CMR 11.05(2), which is not advisory or suggestive, but rather a mandatory requirement. “A regulation, by its definition, is not aspirational. See Black's Law Dictionary, 1475 (10th ed. 2014) (defining “regulation” as “[c]ontrol over something by rule or restriction ...”). Kain v. Department of Environmental Protection, 474 Mass. 278, 288 (2016).

If compliance with 301 CMR 11.05(2) is subject only to enforcement by MEPA when MEPA feels the need, the same conclusion would be true with regard to the review thresholds found at 301
CMR 11.03 or any of the other mandatory provisions of 301 CMR 11.07 regarding the content of EIR submissions. Of course such a proposition would be wrong. The regulation at issue here—301 CMR 11.05(2)—does not suggest or grudgingly request compliance with MEPA; it requires the same in clear and unambiguous language.


MEPA has no authority to “waive” or “look the other way” with regard to mandatory provisions such as those contained in 301 CMR 11.05(2). “The Secretary may waive any provision or requirement in 301 CMR 11.00 not specifically required by MEPA...”. As noted and as clearly set forth, 301 CMR 11.05(2) is not optional. It is a mandatory provision of 301 CMR 11.00 and cannot be waived by the Secretary.

In this case, notwithstanding the applicant’s ability to file with MEPA within ten days of filing for financial assistance from MassHousing (by December 22, 2017) and within ten days of filing its appeal with the HAC (by July 13, 2019), thereby complying with the requirements of 301 CMR 11.05(2) and 760 CMR 56.04(h), the applicant intentionally failed to do so.4

Having failed to comply with 301 CMR 11.05(2) and 760 CMR 56.06(4)(h), MEPA must reject the ENF as incomplete. See 301 CMR 11.05.

The stakes at issue here are significant. Nantucket has achieved, only days following the applicant’s filing of its comprehensive permit with the Board of Appeals, “safe harbor” pursuant to the comprehensive permit statute. “Safe harbor”, referred to in the statute as “consistent with local needs” is the status a municipality achieves when it has met any one of the statutory or regulatory criteria found in G.L. c.40B, §§.20-23 or 760 CRM 56.00 et seq. More importantly, “safe harbor” means that the board of appeals may deny or condition a comprehensive permit without the developer being able to appeal the same to the Housing Appeals Committee.

By failing to comply with the regulations governing compliance with MEPA regulations and appeals to the HAC, the applicant has forfeited its protection; it now must re-apply to the Board of Appeals under the Board’s “safe harbor” status.

4 See letter from counsel for the applicant to the Housing Appeals Committee dated ---, attached hereto.
While the Select Board understands that MEPA lacks jurisdiction over the regulations found at 760 CMR 56.00 et seq., MEPA does have jurisdiction over the review process triggered by this present application. “The purpose of MEPA and 301 CMR 11.00 is to provide meaningful opportunities for public review of the potential impacts of projects for which agency action is required, and to assist each agency in using…all feasible means to avoid Damage to the Environment…”. 301 CMR 11.01. The applicant has willfully violated the filing requirements of 301 CMR 11.05, requirements which compel rejection of the filing under MEPA. MEPA must reject the filing accordingly.

III. The Project Requires Financial Assistance from an Agency of the Commonwealth

The ENF states that "[n]o financial assistance or land transfer from an Agency of the Commonwealth is planned". See ENF at p. 1 where the applicant notes “N/A” in answer to the question “Identify any financial assistance…from an Agency of the Commonwealth…”. The applicant’s response is wrong.

MassHousing, a state agency, issued the Project Eligibility letter for the project on April 12, 2018. According to the Project Eligibility letter, the project will be financed through the Federal Home Loan Bank of Boston's New England Fund Program. Technical assistance offered by MassHousing, including issuance of the Project Eligibility letter, constitutes financial assistance from an agency of the Commonwealth. See Town of Middleborough v. Housing Appeals Committee, et al., 449 Mass. 514, 525-526 (2007)(citing 760 CMR 30.02 definition of subsidy to include "indirect financial assistance" and "technical assistance or other supportive services," and finding that "subsidy" includes "direct financial support and a wide range of indirect financial and nonfinancial support"). Simply put, financial assistance from an “Agency of the Commonwealth” is being sought and is required.

VI. Traffic Generation and Traffic Impacts

The applicant incorrectly states that 299 parking spaces are required by the proposed project, a convenient error given the MEPA threshold found at 310 CMR 11.03 of 300 parking spaces. In fact, well more than 312 parking spaces are required. The project is located in the LUG-2 Zoning District. The proposed residential structures are single-family dwellings. 156 dwelling units are proposed. Section 139-18 of the Zoning Bylaw unambiguously requires two (2) parking spaces, not one (1) as claimed by the applicant, for “Single Family Dwelling”. 156 times 2 equals 312.

Further, and of consequence, as reported in the BETA Engineers traffic analysis of the proposed project (“Surfside Crossing 40B, Traffic Impact and Access Study”, September 2018), attached hereto as if incorporated herein, prepared for the Town in review of the applicant’s original proposed project (consisting also of 156 dwelling units but in a slightly different configuration), no
fewer than twenty-eight (28) major intersections would function at Level of Service (“LOS”) “F” by the year 2025 if this project is constructed.

It is well understood that a LOS of “F” represents dangerous conditions to motor vehicles, bicyclists and pedestrians. See Highway Research Board Special Report Number 87, 1964 defining Level of Service F as evidenced where “demand exceeds roadway capacity, limiting volumes that can be carried and forcing excess demand onto parallel routes”. See also Fishbane, Kane and Tomer, Brookings Institution, 2019, identifying the financial consequences of denigrated levels of service.

The BETA report identifies several additional defects and threats from the proposed project—beyond the degradation of the Island’s road networks—and provides numerous constructive recommendations. See pages 51-55 of the BETA report. The applicant has ignored these recommendations.

It is worth pausing here to reflect upon MEPA’s role pursuant to 301 CMR 11.00. Based upon the facts presented, MEPA is clearly aware that a proposed residential development project will cause at least twenty-eight (28) intersections on a small island to be rendered dangerous and dysfunctional due to the efforts of one applicant.

G.L. c.61 requires MEPA to ensure that “damage to the environment” be minimized. “Damage to the environment” includes “air pollution, water pollution…excessive noise”. By including “Transportation” as a category of MEPA Review Thresholds (See 301 11.03(6)), both the statute and regulations require MEPA to consider the impact of traffic generation on the environment.

An applicant whose project would, single handily, negatively impact the lives of Nantucket residents and impose cost externalities on the Town and Commonwealth for decades should be required to implement comprehensive and effective mitigation. But, consistent with the applicant’s conduct to date and highlighted throughout its application to MEPA, below is the entirety of the applicant’s proposed traffic mitigation measures as contained in their MEPA submission, all found in one paragraph of page 7 of the submitted ENF:

1. The applicant proposes a sidewalk to connect to South Shore Road.
2. The applicant proposes a marked crosswalk.
3. The applicant proposes a path.
4. The applicant proposes exterior bicycle racks.
5. The applicants proposes weather protected bicycle parking areas.
In exchange for rendering 28 intersections dangerous to the health and safety of motorists, bicyclists and pedestrians, the applicant offers the above as mitigation. “Unacceptable” must be MEPA’s only response.

The applicant's "not my problem" approach to the increased traffic and circulation problems the project will cause is entirely at odds with MEPA’s mandate to provide agencies with the information needed to employ "all feasible means to avoid Damage to the Environment or, to the extent Damage to the Environment cannot be avoided, to minimize and mitigate damage to the Environment to the maximum extent practicable." 301 CMR 11.01(a). The applicant's unwillingness to provide MEPA or the Town with further information on these impacts - and how they might be avoided should give the Secretary more than sufficient reason to require an EIR. Surely, a project that will do so much damage to the environment—including but not limited to transportation impacts—requires something more than a single paragraph as to how the project’s impacts are to be mitigated. The MEPA bar cannot be so low that the regulatory off-set for negative impacts on 28 intersections on Nantucket Island is the provision of a sidewalk and bicycle racks.

An EIR must be required to provide the Commonwealth, the agencies that are reviewing this project and the public with a detailed traffic and transportation management plan designed to comply with and not insult, the very purpose of the MEPA statute.

V. Wastewater Disposal and Water Supply

The proposed project will generate 31,330 gallons per day of wastewater and relies solely on the Nantucket wastewater treatment plant and appurtenances for wastewater disposal. As of the close of the Board of Appeals hearing in this matter, the applicant failed to provide the Board and now fails to provide MEPA with complete, adequate or detailed plans as to how it will connect to the Town’s wastewater treatment plant or whether such connection will protect the Town’s infrastructure. As reported by the Town’s consultant, Weston & Sampson in April 2019, the applicant failed to:

1. Include information on the proposed wastewater flows for the development.
2. Illustrate sewer services to the buildings.
3. Provide specifications for materials, construction requirements and testing requirements related to the sewer system.
4. Show methods to protect the town’s existing 20-inch and 16-inch force mains that cross through the proposed development.
5. Provide methods to ensure protection of the force mains during construction, as there will be multiple utility crossings installed above and below the force mains.
6. Address the problems associated with the proposed force main connection to the town’s existing 12-inch force main in South Shore Road.
7. Provide information on the size of the proposed force main and provide details as to the connection to the existing force main.

8. Include any design information for the pump station.

A review of the materials submitted to MEPA and the HAC in this matter make clear that the applicant has done nothing to resolve, or even respond to, the omissions noted above and raised by a nationally recognized engineering firm.

In addition, Weston & Sampson provided the Board of Appeals, and now the Town provides MEPA, with viable alternatives for wastewater disposal for this proposed project. The applicant’s ENF provides none of this critical information - another ground for rejecting the ENF filing as incomplete (301 CMR 11.05(1)) or requiring an EIR pursuant to 301 CMR 11.04.

As recommended by Weston & Sampson and based on the future needs areas and the sewer system extensions recommended in the Nantucket 2014 Comprehensive Wastewater Management Plan (CWMP), the installation of a gravity sewer along South Shore Road with a new pump station installed at the Surfside WWTF would be the preferred alternative for the Town. This option would be consistent with the ongoing sewer master planning approach to serving the wastewater needs of the area. A new gravity sewer along South Shore Road could serve the Miacomet Needs Area as well as the properties along South Shore Road and would avoid impacting the operations of the existing pump stations and the Town’s force main system. This option could also allow for the diversion of flow from the three existing pump stations along South Shore Road, which currently pump flow to the Surfside Road Pump Station. This diversion of flow would allow for additional capacity at the Surfside Road Pump Station.

MEPA should require an EIR in this matter to fully address:

1. Whether the wastewater collection system for the proposed development can be safely connected to the town's existing force mains, which the Town believes is impossible.
2. Whether the wastewater collection system for the proposed development should be constructed to include the Town's preferred option of a new gravity sewer along South Shore Road, from the proposed development to the Surfside WWTF. This option would relocate the proposed wastewater pump station from the proposed development to the Surfside WWTF.
3. Whether the proposed flows from the project will create higher wastewater flows than the current zoning would allow, thus taking up planned capacity at the treatment plant.

In addition, MEPA should require an EIR to evaluate impacts of the proposed project on the Island’s limited drinking water supply. Currently, there are several new approved developments, with over 459 housing units that are planned to be built in the next five years or that are under construction. All of these homes will be connected to the Town’s public water supply and distribution system operated by the Wannacomet Water Company’s distribution system. The
The proposed project would conservatively require 11 to 12 million gallons of water per year. The Select Board is not confident that the Island will have sufficient water to provide for the anticipated demands from existing dwellings and those with a current vested right to build on the Island. An EIR should be required to determine whether the Island will have sufficient potable water to provide for the demands of the proposed project.

VI. The Entire Locus is Mapped As Endangered Species Habitat

The entire locus is mapped as endangered species habitat for the Coastal Heathland Cutworm and much of the locus is suspected to be habitat for the endangered Northern Long Eared Bat (NLEB). The Select Board refers MEPA to the comments submitted by the Nantucket Land Council (in response to the present ENF filing) as it relates to endangered species habitat and the impacts from this project on the same.

The Select Board agrees with the Nantucket Land Council that the applicant has precluded Town officials and their agents from entering the property to confirm what the Land Council’s and the Town’s experts have stated; i.e., that the locus is likely habitat for the Northern Long Eared Bat, an endangered species. MEPA should require an EIR that requires appropriate investigations to ascertain whether or not the locus is habitat for the NLEB; a determination that cannot be left solely to the self-serving representations of the applicant and its agents.

VII. The Project’s Generation of Stormwater Threatens the Island’s Sole Source Aquifer

Nantucket is a designated sole source aquifer pursuant to the Safe Drinking Water Act and the majority of the locus is within a mapped Zone II wellhead protection area (310 CMR 22.00 et seq.). Based upon the review of the Board of Appeals’ experts, the proposed project does not comply with the Commonwealth’s Stormwater Management Standards or the Commonwealth’s wellhead protection requirements and, accordingly, threatens the drinking water quality of the entire Island of Nantucket. Not surprisingly, MassDEP cites the purpose of 310 CMR 22.00 et seq. as “These regulations protect public water supply sources in Massachusetts. They make sure that our drinking water is safe, fit and pure.”

It is unimaginable that MEPA could conclude that an EIR is not required following a review of the paucity of details provided in the applicant’s ENF and being aware of the unique status of Nantucket’s drinking water supply. No one, including the applicant, has any understanding of the impacts the proposed project will have on the drinking water quality of Nantucket based upon the surficial, uninformed and inadequate investigations performed or provided by the applicant in this matter in general, but certainly as it applies to the proposed project’s impact on ground and drinking water quality.
The Select Board agrees with and incorporates that portion of the Nantucket Land Council’s MEPA comment letter that refers to the threats posed by the proposed project on the Island’s drinking water supply as well as the Island’s surface water resources, including but not limited to Miacomet Pond.

Only an EIR, required by MEPA, can properly address the project’s impacts on a federally designated sole source aquifer and a drinking water supply that, by definition, has measureable limits.

VIII. The Project Will Measurably Impact the Demand for Electricity On the Island

As an island, Nantucket is in a unique position regarding the generation of electricity for Island residents and business. For obvious reasons, there is an important need to manage Nantucket’s surging peak electric load. According to Nantucket’s electric utility company, National Grid, the demand for electricity on the island is growing at more than five times the Massachusetts state average. If demand continues to increase at this rate, a third delivery cable will be necessary by 2029, at an estimated cost of $150-175 million dollars to local ratepayers. While the applicant informs MEPA and the public of its commitment to environmental stewardship by offering “future potential solar panels on the building roofs and conduits for future car charging ports at parking at parking spaces” (ENF narrative at page 2), such “potential solar panels” and (undisclosed) “future car charging ports” will be of limited value if the Island lacks sufficient electrical capacity at peak loading periods.

An EIR should be required to evaluate the Project’s electric load consistent with MEPA’s obligations to assist the Executive Office of Energy and Environmental Affairs (emphasis added) in evaluating the impacts of the proposed project so as to ensure “a clean energy future for the state’s residents”.

IX. The ENF is Further Deficient In the Following Important Areas:

The ENF as submitted is deficient in numerous additional respects.

A. Lack of any meaningful alternatives analysis

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5 EOEEA’s webpage includes as an introduction, “EEA seeks to protect, preserve and enhance the Commonwealth’s environmental resources while ensuring a clean energy future for the state’s residents. Through the stewardship of open space, protection of environmental resources, and enhancement of clean energy, the Executive Office of Energy and Environmental Affairs works tirelessly to make Massachusetts a wonderful place to live, work and raise a family.”
The need for more scrutiny of this project is well illustrated by the short shrift the applicant has given to an alternative analysis - and the applicant's evident lack of understanding of the purpose of an alternatives analysis. As the Secretary is aware, the ENF form asks the applicant to

"[d]escribe the on-site project alternatives (and alternative off-site locations, if applicable), considered by the proponent, including at least one feasible alternative under current zoning, and the reason(s) that they were not selected as the preferred alternative."

The applicant's "Alternative Analysis" section, in its entirety, is limited to a comparison between a 156 unit project as originally filed with the Board of Appeals and under appeal at the Housing Appeals Committee, a revised 156 unit project labeled the “preferred alternative” and a 100 unit project and a 92 unit project. Other than a handful of paragraphs that fail to distinguish between these “alternatives”, the three page “analysis” contains merely words and numbers on paper. There is no “analysis” and there most certainly is no “alternatives analysis” contained in the ENF. See pages 3-6 of the ENF supplement. In addition, the ENF’s description of the Board of Appeals decision regarding the original 156 unit project is simply wrong. The Board approved the project with conditions. It is not, as the ENF wrongly states, “an effective denial”. There is no such thing as an “effective denial”.

As the Secretary is aware, the purpose of MEPA is not to promote the construction of housing, affordable or otherwise. Rather,

"[t]he purpose of the alternatives analysis is to consider what effect changing the parameters and/or siting of a project, or components thereof, will have on the environment, keeping in mind that the objective of the MEPA review process is to minimize damage to the environment to the greatest extent feasible. Examples of alternative projects include alternative site locations, alternative site uses, and alternative site configurations."

The most alarming part of the ENF’s “alternatives analysis” is the absence of any discussion, let alone analysis, of a "no build" alternative. There cannot be an honest preparation of an “alternative analysis” if one of the alternatives is not a “no build” option. An “alternatives analysis” that includes only those options attractive to the developer is inimical to a well-established process dating back to the inception of MEPA and, at the national level, NEPA. Neither statutory program could function if every developer ignored the responsibility of providing reviewing agencies with an analysis of “what if the project did not get built”. Most developers paint the “no build” option as grossly problematic or financially crippling. This developer has taken a more brazen approach by simply omitting the “no build” option altogether.
Contrary to the applicant's belief, the focus of an alternatives analysis is not on the developer, but rather with regard to the land; it is not to examine what is most "viable" or profitable for the developer, but rather to examine the comparative environmental impacts of the project and alternative uses. The Select Board trusts that the Secretary will not view the applicant's facetious "alternatives discussion" as satisfying MEPA requirements, but rather as evidence that the additional scrutiny of an EIR is warranted for an applicant who confuses profitability with evaluation of environmental impacts as the purpose of alternatives analysis.

B. Inconsistency of Project with the Town’s Planning Efforts

Nantucket has adopted a Master Plan consistent with G.L. c.41, s.81-D. This project is in direct conflict with that plan. In addition, the ENF ignores the Island’s Housing Production Plan, ignores decades of planning to protect the Island’s sole source aquifer and surface water resources and ignores basic and universally accepted notions of land planning and environmental resource protection. The proposed project also conflicts with virtually the entirety of the recently published Commonwealth “Rural Policy Plan” (October 2019).

The development plans are completely inconsistent with notions of “smart growth”, transit oriented development, “walkability” and other characteristics of sustainable development to which the Town and the Commonwealth are committed. In fact, the developer has not even attempted to describe the proposed project as having such characteristics. Given the paucity of details contained within the ENF, it is apparent that the developer believes that MEPA will accept the incomplete, inadequate and wholly unprofessional ENF as “good enough”. The Select Board does not believe, however, that MEPA should accept such a low bar for MEPA compliance.

Further, the proposed project eliminates all functional open space from the parcel, cramming buildings, roadways, parking areas and other infrastructure into a small undeveloped parcel of land that is designated as endangered species habitat. This is entirely inconsistent with normative planning principles. The applicant's statement that "green spaces, gardens and/or playgrounds are distributed within the development footprint" is inaccurate and misleading. ENF supplement at p.4.

The "open space" referenced by the applicant consists of remnants of land, like carpet scraps, left over following the placement of buildings surrounded by acres of parking lots, drainage structures, and roadways. These remnants of open space are accessible only by traversing active parking lots and roadways, and as such, are unrelated to the preservation of open space.

Finally, the applicant provides no discussion as to how the proposed project is consistent with any of the plans, policies or programs for development on the Island, most certainly because it is not.
An EIR should be required, and it should include a complete analysis as to whether the project comports with the Town’s historic and on-going municipal planning efforts.

C. Inconsistency with Principles of Site Planning

The Project proposes two means of egress for the 156 unit project development but both are within approximately 110 feet of each other on the same side of South Shore Road. If entrances were blocked or that portion of South Shore Road rendered impassible, the entire development would be blocked making fighting a fire difficult and would result in delays in controlling a fire, allowing it to spread.

Nantucket experiences unusually high winds, especially during winter season and reaching any fire that starts, particularly when it is windy, as quickly as possible is a matter of the public safety urgency. The essentially single means of egress for 156 units represents a real and present threat to the residents of the project and well as the Island generally.

In addition to ignoring basic site planning principles, the site plan proposes a development that ignores every lesson learned about creating healthy and livable places for residents. The site plan defies the basic tenant of new housing development of providing residents with functional open space for recreational and aesthetic enjoyment. The project—in addition to leveling all existing vegetation and wildlife on the locus (of the parcel’s 13.56 acres, only 1.3 acre will be left uninjured) provides the future residents of the development thin strips of ineffective buffer around the perimeter of the Property, which are not usable for any purpose; are small parcels that consist of land above the underground drainage infrastructure; and consist of the land that runs the 20-foot width of the Town’s easement for the sewer force main and, as to the latter, trees and landscaping will be prohibited. The overcrowding and lack of open space is wholly inappropriate, unschooled given the fact that the proposal is taking place on an historic Island, ignorant to the world wide lesson the ongoing pandemic is teaching us about density and overcrowding and completely avoidable but for the developer’s attempt to cram as many dwelling units onto the site as can be draw by its engineer on a two dimensional plan.

In addition, the ENF provides no details as to the impacts to abutters from construction noise and vibration, let alone the impacts of site clearing of over 90% of the locus. To date, the applicant has refused to provide any quantitative analysis of such impacts on nearby residences.

An alternatives analysis to the ingress and egress, design and construction mitigation options available for a reduced sized project should be explored in an EIR.
D. Failure to Address Archeological Issues

Notwithstanding the letter from Massachusetts Historical Commission ("MHC") found at Attachment G of the ENF, it is well known that the immediate area of the project site contains Wampanoag activity, burial ground and artifacts. An EIR should be required to fully assess whether development of the locus will destroy Native American sites or burial grounds. The 2018 letter from MHC is focused solely on the impact of the project to the Nantucket Historic District with no reference to the impact the project will have on ancient Native American sites. An alternatives analysis to impacts the project will have on Native American sites should be explored in an EIR.

X. Fail-Safe Review of this project under 301 CMR 11.04 is warranted

As discussed above, the applicant has ignored MEPA regulations, HAC regulations, and the reasonable requests of the Nantucket Board of Appeals and their credible and objective experts for details as to the impacts of the proposed project onto the Island’s natural and built resources. No one can deny, and the Town respectfully suggests that MEPA cannot ignore, the long term environmental and public health threats posed by this project.

301 CMR 11.04 provides for the requirement of an EIR for precisely the type of project impacts that will unquestionably result from the present matter and yet, do not trigger categorical EIR thresholds pursuant to 301 CMR 11.03.

The applicant's refusal to provide sufficient information in the ENF to evaluate the project’s impacts is consistent with its past behavior. The Board of Appeals was forced to render a decision without substantive information, the Division of Fisheries and Wildlife was forced to ignore the likely presence of the NLEB on the locus given the applicant’s refusal to allow on-site inspections and the Town’s engineers were forced to review the project’s impacts without being in possession of credible details as to how the project would impact the Island.

Knowing that, and knowing that the purpose of the MEPA statute is to inform state agencies of potential adverse environmental impacts, it defies common sense, logic and the law, to not require an Environmental Impact Report. MEPA must invoke the Fail Safe provisions found at 310 CMR 11.04 for this project.

XI Conclusion

The purpose of MEPA is not, as this ENF would suggest, to facilitate residential construction, “affordable” or otherwise. Rather, the purpose of MEPA is to "provide meaningful opportunities for public review of the potential environmental impacts of projects for which [state] Agency Action is required and to assist each agency is using . . . all feasible means to avoid Damage
to the Environment or, to the extent Damage to the Environment cannot be avoided, to minimize and mitigate damage to the Environment to the maximum extent practicable." 301 CMR 11.01(a). As the discussion above indicates, the impacts of this project are such that an EIR is needed to satisfy these purposes of MEPA. The Town of Nantucket, through the Nantucket Select Board, respectfully request that the Secretary require the applicant to prepare an EIR of a scope fully commensurate with the project impacts.

Respectfully submitted on behalf of the Nantucket Select Board,

Very truly yours,

[Signature]

Jonathan D. Witten

JDW/lmk
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