



July 19, 2024

Email (jjannell@town.orleans.ma.us]

Orleans Conservation Commission
c/o John Jannell
19 School Road
Orleans, MA 02653

**Re: Professional Services Proposal
Kent’s Point Conservation Area
38 Keziah’s Lane
Orleans, Massachusetts**

LEC File #: TOO\24-30701

Dear Mr. Jannell and Members of the Commission:

LEC Environmental Consultants, Inc., (LEC) is pleased to submit this proposal to conduct an Environmental Assessment (EA) for the Kent’s Point Conservation Area. The EA will include due diligence review/coordination with pertinent stakeholders and regulatory agencies, field assessments, preparation of a summary report with recommendations, and attending a public workshop and meetings with the Conservation Commission. The intent of the EA is to primarily:

1. Appraise the conservation value, biodiversity and current natural functioning of the site.
2. Evaluate public use impacts on the resource(s).
3. Help organize and hold a public workshop on the Assessment effort.
4. Recommend steps to improve the long-term management of the area for conservation and public use.

This proposal is based on the “Scope of Services for an Environmental Assessment of Kent’s Point Conservation Area” provided to LEC. LEC will communicate weekly with a designated point of contact for the Town to provide updates. This proposal includes a Scope of Services, Additional Services, and Fees for Services.

1 Scope of Services

The following tasks are to be performed under this agreement:

Due Diligence

- 1.1 LEC will review pertinent resource maps (NHESP, USGSG topographic map, FEMA FIRM, NRCS Web Soil Survey, etc.), aerial drone photographs and video, and past and current documents including, but not limited to the 1988 Environmental Assessment; the 1995 Kents Point Management Plan, the report of the 2015 Kents Point Task Force, and the 2015 (current) Kents Point Management Plan. Concurrently, LEC will coordinate with Conservation

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PLYMOUTH, MA	WAKEFIELD, MA	WORCESTER, MA	RINDGE, NH	EAST PROVIDENCE, RI



Commission, staff, and/or other pertinent stakeholders to further discuss key issues as outlined within the Scope of Services.

- 1.2 While LEC is aware that The River (Meetinghouse River) and portions of Lonnie's River and shoreline to Kent's Point are mapped by NHESP as a Priority Habitat of Rare Species (PH 2157) for the Diamondback Terrapin, LEC will file an Information Request with NHESP to confirm all state-listed rare species associated with PH 2157. LEC will consult with NHESP to review Terrapin information within the immediate vicinity. LEC will coordinate with the Orleans Conservation Trust (OCT) and/or Mass Audubon to review habitat restoration/management and Terrapin observations at the Henson's Cove Conservation Area (formerly White's Lane).
- 1.3 When available, LEC will review the Cape Cod Commission's (CCC) July traffic study to understand levels of use and parking lot turnover during the busy summer season. LEC will coordinate with CCC staff, as needed.

Field Assessment

- 1.4 LEC will conduct a minimum of three (3) site evaluations, including one (1) midday visit, one (1) site visit within one hour of sunrise/sunset to maximize wildlife observations following methodologies outlined within the CCC's *Wildlife and Plant Habitat Technical Bulletin* (effective 2/22/19), and one (1) weekend visit at the Kent's Point Conservation Area to document existing site conditions, public uses, habitat cover types, biodiversity, topography, hydrology, and soil characteristics to ascertain potential wildlife species utilization, thus complementing direct wildlife observations. LEC will review the shoreline and existing Coastal Bank conditions to assess coastal resiliency and susceptibility to coastal erosion.

The EA will cover the list of tasks (1-7) outlined with the Scope of Services, to be expanded as site conditions and observations inform the evaluation. Furthermore, LEC will establish a repeatable means of field data collection following scientifically accepted professional practices and standards (i.e., vegetative plots/transects, shoreline transects, etc.).

Report/Property Recommendations

- 1.5 LEC will provide a summary EA report outlining our findings from the Field Assessment along with recommendations to promote the long-term protection of the Conservation Area and resource(s), while balancing the continued public use and enjoyment. Recommendations will be informed by site conditions and observations, in addition to feedback received by the Town stakeholders. Recommendations will include, but are not limited to the following:
 1. Description of current use patterns and impacts from public use.
 2. How to protect the property for future generations of users, including specific asset protection recommendations and Best Management Practices.
 3. Areas in need of further preservation (unique areas) or restoration (high impact areas)
 - 3.1. A description of preservation and restoration techniques.



The summary report will include relevant maps, figures, and photographs. LEC will collaborate with the Conservation Commission, Staff, and/or Town stakeholders in drafting the summary report. Relevant public information will be included in the final report and findings or recommendations. A draft report will be submitted to the Conservation Department for review prior to finalization.

The EA report will be delivered within three (3) months of the Notice to Proceed (NTP).

Public Workshop/Meetings

- 1.6 LEC will attend and help coordinate one (1) public and publicized workshop to review the EA and answer questions from the public.
- 1.7 LEC will attend two (2) public meetings with the Conservation Commission to review and answer questions related to the EA, findings, and recommendations that will assist the Town in future land use decisions.

2 Additional Services

The following is a list of services that are specifically excluded from this agreement, but can be provided upon your authorization in accordance with the attached Standard Fee Schedule.

- 2.1 LEC will provide additional consulting services to support initial findings, as requested by the Client and/or Regulatory Authorities. These services are to be billed on an hourly basis according to the attached fee schedule.

3 Fees for Services

LEC will provide the services described in Article 1.1 through Article 1.7 for a flat fee of Twelve Thousand, Five Hundred Dollars (\$12,500.00), inclusive of any and all direct expenses (e.g., mileage, \$50.00 NHESP Info Request fee, and production), as described in the Scope of Services of this agreement.

The attached Terms and Conditions, and Standard Fee Schedule are also considered to be part of this agreement. If you wish to proceed, please endorse this agreement, initial each page, and return a copy to LEC. This proposal is valid until August 31, 2024.

Thank you for the opportunity to assist with this project. If you should you have any questions or require additional information, please don't hesitate to contact me at 508-746-9491.

Sincerely,

LEC Environmental Consultants, Inc.

Brian T. Madden
Senior Wildlife/Wetland Scientist

Agreed and Accepted By:

Signed: _____

Print Name: _____

Town of Orleans

Date: _____

LEC Environmental Consultants, Inc.

Terms and Conditions

This document, together with any attached proposals, plans, specifications or appendices, constitutes an Agreement between the Client and/or other involved parties and LEC Environmental Consultants, Inc. (hereafter referred to as LEC).

Below are the terms and conditions under which LEC will perform the attached Scope of Services. These terms and conditions also outline billing procedures and policies that apply to the Agreement for the duration of the Agreement with LEC.

1 Services to be Provided

- 1.1 LEC agrees to provide the Client with the services described in the attached Proposal in a responsible, professional manner.
- 1.2 Additional services may be requested by the Client and/or other involved parties and shall be invoiced in accordance with the attached Standard Fee Schedule.

2 Fees

- 2.1 Fees are re-evaluated on a semiannual basis. In the event of an increase, the Client will be notified 30 days in advance. Time is billed on a portal-to-portal basis.
- 2.2 Fees for services and/or hourly rates may be adjusted based upon project specific factors. Such factors may include, but are not limited to: time and labor required, difficulty of services involved, skills required to carry out the services, controversy involved; time schedule imposed by the Client and/or the unique project circumstances, the nature and length of the professional relationship with the Client, and the required level of experience of the consultant(s) performing the services.
- 2.3 Subcontracted services of other consultants will be invoiced at cost plus 20%.
- 2.4 The Client agrees to pay LEC in accordance with the rates and charges set forth in the attached Standard Fee Schedule.
- 2.5 If the services are discontinued for any reason after the execution of the Agreement, all services performed to date shall be compensated at the rates set forth in the attached Proposal and/or Standard Fee Schedule.
- 2.6 Reimbursable expenses are considered additional costs to the Client and are invoiced at cost plus 20% handling. These expenses may include, but are not limited to: facsimile transmission, transportation, postage, delivery charges, expendable project related supplies, meals and lodging. The Client will also be billed for disposable field supplies and/or special equipment, as applicable. Billing for such expenses shall occur on a monthly basis.
- 2.7 All Federal, State and Local Filing Fees are the responsibility of the Client/Applicant. Information regarding the type and amounts of required Filing Fees will be furnished to the Applicant in advance. Should LEC be requested by the Applicant to furnish these fees, the Applicant will be invoiced cost plus 20% handling.

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3 Payment

- 3.1 The mailing address for all payments is as follows: LEC Environmental Consultants, Inc. Attn: Accounts Receivable/Billing Dept., 380 Lowell Street, Suite 101, Wakefield, MA 01880.
- 3.2 Invoices for services shall be submitted on a monthly basis and/or upon the completion of services to be determined at the discretion of LEC. All such invoices shall be due and payable within 30 days of receipt.
- 3.3 LEC reserves the right to terminate or suspend its services at any time if our fees or charges set forth in the Proposal and/or these Terms and Conditions remain unpaid and we are not able to resolve a satisfactory arrangement for such payment.
- 3.4 The Client acknowledges and agrees that any invoice not paid within the 30 days shall commence to bear an interest charge at the rate of 1½ % per month (18% annum).
- 3.5 If a Client fails to pay an invoice as described above, the Client will then be classified as a delinquent account, and all future invoices must be paid in advance.
- 3.6 If a past due invoice must be forwarded to a collection agent, the Client agrees to pay all costs and expenses that LEC incurs in collecting any amounts due, including LEC's attorney's fees.

4 General Conditions

- 4.1 All services will be performed in a timely manner. It is agreed between all parties that LEC cannot be responsible for delays occasioned by factors beyond its control, nor by factors which could not have been foreseen at the time the agreement was prepared and executed.
- 4.2 All documents prepared pursuant to this Agreement are instruments of service with respect to this project. They are not intended or represented to be suitable for reuse by the Client and/or other involved parties on any other Project and shall not be reused without the express written consent of LEC. Any reuse without written consent or adaptation by LEC for the specific purposes intended will be at the Client's own risk and without liability or legal exposure to LEC; and the Client, or whomever shall reuse said documents, shall indemnify and hold harmless LEC from all claims, damages, losses and expenses including attorney's fees arising out of or resulting therefrom.

Any such consent or adaptation of reuse will entitle LEC to additional compensation at rates to be agreed upon by LEC and the person or entity seeking to reuse said documents. This section may be specifically enforced by any court or competent jurisdiction by LEC which shall, in addition to injunctive relief, be entitled to recover damages, if any, arising from any breach of this section, together with costs and reasonable attorney's fees in any action brought to enforce the provisions of this Section.

5 Damages

- 5.1 The Client shall at all times indemnify and save harmless LEC and its employees on account of any claims, damages, losses, litigation, expenses, counsel fees, and compensation arising out of any claims, damages, personal injuries, property losses and/or economic damages sustained by or alleged to have been sustained by any person or entity, caused in whole or in part by the acts, omissions, or negligence of the Client, its agents, employees, or subcontractors in connection with the project.
- 5.2 The Client acknowledges that LEC is a corporation and agrees that any claim made by the Client arising out of any act or omission of any employee of LEC in the performance of this agreement shall be made against the corporation and not against such employee. Any breach of this section shall entitle said employee of LEC to, in addition to all other relief, costs and reasonable attorney's fees.

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6 Right of Entry

The Client hereby warrants, if the property is not owned by the Client, that permission has been granted for a Right of Entry by LEC, its agents, and staff for the purpose of performing all services described in the attached Proposal. LEC reserves the right to request written right-of-entry authorization prior to the commencement of services.

7 Unforeseen Conditions

If, during performance of services, any unforeseen conditions or occurrences beyond our control are encountered which, in LEC's judgment, significantly affect or may affect the services of the recommended Scope of Services, the Client will be promptly notified. Subsequent to the notification, the involved parties agree to pursue one of the following options:

- 7.1 If practical, in LEC's judgment, the original Scope of Services will be completed in accordance with the procedures originally intended in the Proposal for Professional Services.
- 7.2 The Scope of Services will be modified, and the estimate of charges revised, to include unforeseen conditions or occurrences. Such revision shall be in writing and signed by the parties herein.
- 7.3 The services will be terminated, effective on the date specified by LEC in writing. The Client agrees to pay in full for all services completed and fees up to and including the date specified in the written termination and to pay all reasonable costs incurred prior to, and in connection with, discontinuance of services.

8 Severability

In the event that any provisions of this agreement shall be deemed invalid or unenforceable, the other provisions herein shall remain in full force and effect and binding upon all parties.

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Standard Fee Schedule

Consulting and Field Services:

Hourly Rate:

Directors	\$175.00 – \$225.00
Senior Soil Scientist	\$150.00 – \$185.00
Senior Ecologist/Marine Biologist	\$150.00 – \$185.00
Ecologist/Marine Biologist	\$100.00 – \$165.00
Senior Wildlife Scientist	\$150.00 – \$185.00
Wildlife Scientist	\$100.00 – \$165.00
Wildlife Specialist	\$ 75.00 – \$110.00
Senior Wetland/Environmental Scientist	\$150.00 – \$185.00
Wetland/Environmental Scientist	\$100.00 – \$165.00
Wetland/Environmental Specialist	\$ 75.00 – \$110.00
Permitting Technician	\$ 60.00 – \$ 85.00
AutoCAD Technician	\$ 85.00 – \$125.00

Expert Testimony:

Executive Director	\$400.00
Assistant Director/Director	\$375.00
Senior Soil Scientist/Wetland Scientist	\$350.00
Wildlife/Wetland/Environmental Scientist	\$325.00
Ecologist/Marine Biologist	\$300.00
Wetland/Wildlife/Environmental Specialist	\$250.00

Reimbursable expenses include, but are not limited to: facsimile transmission, printing and binding, photocopying, delivery charges, postage, expendable project related supplies, research materials, permitting application fees, police detail, transportation, meals, and lodging.

Effective: 2/2024

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Brian T. Madden

Senior Wildlife/Wetland Scientist

EDUCATION

Boston College

Boston, Massachusetts

BS Biology

Environmental Studies Minor

AFFILIATIONS

Association of Massachusetts

Wetland Scientists

Massachusetts Association of

Conservation Commissions

EMPLOYMENT

LEC Environmental

Consultants, Inc.

Plymouth, Massachusetts

2002-Present

Brian manages a wide range of residential, commercial, industrial, transportation, and municipal projects involving general and rare plant and animal species, and wetlands regulatory review in New England. Brian conducts habitat evaluations, natural resources inventories, vernal pool assessments, plant and animal surveys, and identifies, characterizes, and demarcates coastal and inland wetland resource areas. Brian regularly represents clients before the Massachusetts Natural Heritage and Endangered Species Program (NHESP) for projects within Priority Habitats of Rare Species and Estimated Habitats of Rare Wildlife associated with MESA (*Massachusetts Endangered Species Act*) Project Review. Brian conducts Rare Species Habitat Assessments and prepares Rare Species Survey Protocols outlining scientifically accepted field research methodologies for approval by the Division of Fisheries and Wildlife NHESP. Similar work has been conducted in New Hampshire, Connecticut, and Rhode Island.

Brian coordinates and consults with project team members regarding project design; rare species, and wetlands-related issues; and regulatory implications. He prepares and submits environmental permits following federal, state, and local regulations, and attends on-sites and public hearings representing clients before local Boards and Commissions, in addition to state and federal regulatory officials.

SELECT PROJECT EXPERIENCE

- Former Cape Cod Sea Camps Properties, Brewster
- Pilgrim Lake Swim Area Aquatic Veg. Management, Orleans
- Nagog Pond Wildlife Habitat and Impact Assessment, Acton
- Cedar Pond Water Quality Management Plan, Orleans
- Smith College Master Planning, Northampton
- WHOI Quissett Campus, Falmouth
- Cape Cod Rail Trail Extension, Wellfleet
- Northeastern Univ. Coastal Sustainability Institute, Nahant
- Comprehensive Wastewater/Water Resources Planning, Orleans, Falmouth, Sandwich, Bourne
- Nauset Beach Parking Lot/Hubler Lane Ext., Orleans

REPRESENTATIVE PROJECT EXPERIENCE

Former Cape Cod Sea Camps Properties—Brewster, MA

On behalf of the Town of Brewster and in coordination with the design team led by Reed Hilderbrand, LLC (Landscape Architecture), LEC conducted Natural Resources Inventories (NRI), wetland delineation, and vernal pool assessments on the 55± acre “Bay Parcel” (3057 Main Street / Route 6A) and 66± acre “Pond Parcel” (500 W. H. Besse Cartway). LEC compiled NRI Reports summarizing existing conditions, Wetland Resource Areas, resource mapping, vegetative communities, wildlife and wildlife habitat, wetland regulatory implications, and short-term ecological recommendations. Mr. Madden attended workshops, committee meetings, and a Community Forum and coordinated with the design team, Town officials, and Committee members to provide expert support and design guidance as the Town plans futures uses of the properties.

Cedar Pond Water Quality Management Plan—Orleans, MA

On behalf of the Town of Orleans, Mr. Madden provided environmental regulatory assistance associated with the reinstallation of weir boards within the existing outlet control structure at the northeastern portion of Cedar Pond to improve water quality within the Pond, restore diadromous fish habitat, and protect adjacent forested wetland habitat. Mr. Madden conducted wildlife habitat evaluations and coordinated with regulatory agencies, including MassDEP, MEPA, MA Division of Marine Fisheries, and Cape Cod Commission. Mr. Madden filed an Environmental Notification Form and Single Environmental Impact Report with MEPA and Chapter 91 Minor Project Notification with MassDEP-Waterways, and coordinated with MassDEP-Wetlands to facilitate the issuance of a Superseding Order of Conditions, allowing the project to proceed forward.

Long Beach Conservation Area Management Plan—Barnstable, MA

On behalf of the Town of Barnstable, LEC conducted multiple in-season site evaluations and prepared a Conservation Management Plan (CMP) for the Long Beach Conservation Area (LBCA) in Centerville. The CMP summarized existing characteristics, uses, management challenges, and management recommendations associated with the public beach. LEC coordinated with stakeholders, including the Barnstable Conservation Commission, Barnstable Structures & Grounds Department (S&G), the Barnstable Police Department (BPD), and the Long Beach Road Association (LBRA) to develop the CMP.

Comprehensive Wastewater Management Plans—Orleans & Falmouth, MA

Comprehensive Water Resources Management Plan—Sandwich, MA

Shared Wastewater Study, Joint Base Cape Cod—Sandwich & Bourne, MA (for Town of Falmouth)

Mr. Madden has been involved in the development of Comprehensive Wastewater Management Plans in Orleans and Falmouth (Oyster Pond watershed), a Comprehensive Water Resources Management Plan in Sandwich, and a Shared Wastewater Study on Joint Base Cape Cod in Sandwich and Bourne for the Town of Falmouth (multi-town/stakeholder effort). As part of larger Project Teams, LEC’s primary role was related to due diligence, research, and review regarding state and federally-listed rare species and associated regulatory implications for each individual Plan/Study.

Nauset Beach Parking Lot and Hubler Lane Extension—Orleans, MA

On behalf of the Town of Orleans, Mr. Madden conducted vegetative and wildlife habitat evaluations, in 2012 and 2016, associated with the new Nauset Beach parking lot, extension of Hubler Lane, and associated walking path connections to existing beach parking lot. Mr. Madden provided follow-up support and consultation as requested by the Town.

Northeastern University Coastal Sustainability Institute—Nahant, MA

LEC has provided on-going consultation to Northeastern University for the design and permitting of the Coastal Sustainability Institute. Mr. Madden conducted ecological natural resources inventories to document existing vegetational communities, habitat cover types, unique habitat features, and wildlife utilization, in addition to the extent of invasive or non-native plant species.

During the preliminary design phases, LEC provided recommendations for potential mitigation through habitat creation, enhancement, and/or restoration and construction Best Management Practices to avoid or minimize wildlife habitat impacts.

Mr. Madden demarcated Bordering Vegetated Wetlands (BVW) on-site and consulted with project team members on the delineation of Coastal Bank, Coastal Dune, Coastal Beach, Rocking Intertidal Shores, and Land Subject to Coastal Storm Flowage.

LEC assisted the project team in the filing and presentation of a Notice of Intent (NOI) Application with the Conservation Commission for the proposed construction of a new building above an existing subgrade bunker and other related site improvements, in addition to filings (Environmental Notification Form and Draft and Final Environmental Impact Reports) to the Massachusetts Environmental Policy Act (MEPA) Office.

Nagog Pond Water Treatment Facility—Acton, MA

LEC was retained by the Concord Department of Public Works Water & Sewer Division to provide wildlife and wildlife habitat expertise for a Special Permit before the Acton Board of Selectmen for an upgrade to the Town of Concord's water treatment facility at Nagog Pond in Acton. Proposed upgrades include replacing the original 1909 intake pipe, upgrading/improving the existing ozone disinfection facility with a new state-of-the-art water treatment plant for production of potable water, and installing a perimeter security fence to protect the drinking water supply system infrastructure.

Mr. Madden conducted multiple wildlife habitat evaluations to document habitat cover types, wildlife habitat features, and wildlife utilization associated with Nagog Pond and surrounding lands, including Nagog Brook, a designated coldwater fishery. In response to concerns expressed by abutting land owners and the Acton Board of Selectmen, LEC provided recommendations to the Town of Concord regarding the design of the perimeter security fence to avoid and minimize potential wildlife habitat impacts. LEC also participated in Acton Board of Selectmen meetings to respond to wildlife related concerns expressed by the Selectmen.

In response to documented Bald Eagles at Nagog Pond, Mr. Madden conducted a field survey and met with town, state, and federal wildlife officials to discuss Bald Eagle activity at Nagog Pond and impact avoidance to nesting and foraging during work activities.

LEC continued to provide on-going consultation and recommendations to avoid and minimize wetland/habitat/wildlife impacts associated with water intake pipe replacement activities.

Smith College Master Planning—Northampton, MA

As part of the Mathews Nielson LA project team, Mr. Madden participated in development of the Smith College Landscape Master Plan (LMP), a 20-year plan to provide an inclusive, adaptable, educational, and connected landscape. Mr. Madden conducted habitat assessments, consulted on rare animal and invasive plant species management, prepared regulatory assessments of potential land use changes, and provided technical input and review of the draft LMP documents.