

SELECTMEN'S MEETING  
Monday, April 7, 2014  
Selectmen Meeting Room  
6:30 p.m.

**AGENDA**

- 6:30 p.m. PUBLIC COMMENTS (10 min.)**
- 6:40 p.m. SELECTMEN CONCERNS AND LIAISON REPORTS (5 min.)**
- 6:45 p.m. TOWN MANAGER REPORT (5 min.)**
- 6:50 p.m. ITEMS FOR INDIVIDUAL CONSIDERATION**
1. Article Positions (10 min.)
  2. Sign Support letter for Complete Streets Program (5 min.)
  3. Approve Settlement Agreement with Marine Shale Processors Site (5 min.)
  4. Appointments – 2020 Vision Committee (5 min.)
- 7:15 p.m. CONSENT AGENDA (5 min.)**
1. Approve Water/Sewer Deferral
  2. Sign 2014 Minuteman Cane Award Proclamation
  3. Vote Members of the Monuments and Memorials Committee as Special Municipal Employees
- 7:20 p.m. EXECUTIVE SESSION (10 min.)**
1. Exemption 3 – Pending Litigation Update: Sellars v Lexington et al
- 7:30 p.m. ADJOURN**

The next meeting of the Board of Selectmen is scheduled for Wednesday, April 9, 2014 at 6:00 p.m. in the Selectmen's Meeting Room, 1625 Massachusetts Avenue.

# AGENDA ITEM SUMMARY

## LEXINGTON BOARD OF SELECTMEN MEETING

**DATE:** 4/7/14

**STAFF:** Lynne Pease

**ITEM NUMBER:** I.1

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**SUBJECT:**

Article Positions

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**EXECUTIVE SUMMARY:**

You have taken positions on all the articles. This is on the agenda only if something comes up that needs to be discussed.

Attached is the list of articles and your current positions.

**FINANCIAL IMPACT:**

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**RECOMMENDATION / SUGGESTED MOTION:**

**STAFF FOLLOW-UP:**

Selectmen's Office



ARTICLE	FINANCIAL ARTICLES (continued)	PRESENTATION	DM	PK	NC	JP	MC	AC	CEC	SC
	l) Parker Meadow Accessible Trail D&E m) CPA Debt Service n) Administrative Budget		Yes	Yes	Yes	Yes	Yes			
Article 9	Appropriate for Recreation Capital Projects		Yes	Yes	Yes	Yes	Yes			
Article 10	Appropriate for Municipal Capital Projects and Equipment a) Center Streetscape Improvements and Easements b) DPW Equipment c) Street Improvements and Easements d) Storm Drainage Improvements and NPDES Compliance e) Hydrant Replacement Program f) Comprehensive Watershed Storm Water Management Study and Implementation Measures g) Mass Avenue Intersections' Improvements and Easements h) Sidewalk Improvements and Easements i) Dam Repair j) Town Wide Culvert Replacement k) Town Wide Signalization Improvements l) Traffic Island Renovation m) Ambulance Replacement n) Heart Monitors o) Replace Town Wide Phone Systems-Phase III p) Network Redundancy and Improvement Plan – Phase II		Yes	Yes	Yes	Yes	Yes			
Article 11	Appropriate for Water System Improvements		Yes	Yes	Yes	Yes	Yes			





<b>ARTICLE</b>	<b>ZONING/LAND USE ARTICLES (continued)</b>	<b>PRESENTATION</b>	<b>DM</b>	<b>PK</b>	<b>NC</b>	<b>JP</b>	<b>MC</b>	<b>AC</b>	<b>CEC</b>	<b>SC</b>
Article 30	Amend Zoning By-Law – Medical Marijuana Treatment Centers	3/17 Tom Fenn Amend.	Yes Yes	No Yes	Yes Yes	Yes Wait	Yes Yes			
Article 31	Amend Zoning By-Law – Site Plan Review for Projects over 10,000 SF	3/17	Yes	Yes	Yes	Yes	Yes			
Article 32	Amend Zoning By-Law – Technical Corrections	3/17	Yes	Yes	Yes	Yes	Yes			

# AGENDA ITEM SUMMARY

## LEXINGTON BOARD OF SELECTMEN MEETING

**DATE:** 4/7/14

**STAFF:** Lynne Pease

**ITEM NUMBER:** I.2

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**SUBJECT:**

Sign Support Letter for Complete Streets Program

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**EXECUTIVE SUMMARY:**

Attached is a proposed letter to send to Secretary Davey to encourage him to start up the complete streets program and release the funds.

See attached information.

**FINANCIAL IMPACT:**

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**RECOMMENDATION / SUGGESTED MOTION:**

Motion to send a letter to Secretary Richard Davey of Massachusetts Department of Transportation regarding implementation of the Active Streets Certification Program.

**STAFF FOLLOW-UP:**

Selectmen's Office



**Lynne Pease**

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**From:** Debmauger@aol.com  
**Sent:** Monday, March 31, 2014 1:27 PM  
**To:** Lynne Pease  
**Subject:** Fwd: FW: Municipal Sign-On Letter for Complete Streets Program  
**Attachments:** CompleteStreetsMunicipalSupportLettertoSec.Davey.docx

Lynne - Could you put this on the Mon, 4/7 agenda? Approve blah blah...

Thanks,  
Deb

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**From:** mciccolo@gmail.com  
**To:** Debmauger@aol.com  
**Sent:** 3/31/2014 12:19:40 P.M. Eastern Daylight Time  
**Subj:** Fwd: FW: Municipal Sign-On Letter for Complete Streets Program

Hi Deb,  
The Active Streets/Complete Streets legislation survived House & Senate versions of Bond bill and is expected to survive conference committee. It has not been materially changed as it's gone through the legislative process. Advocates are now turning their attention to encouraging Secretary Davey to gear up for this program and actually release these funds.

Lexington was one of the member communities that signed the legislative advocacy letter. Can you sign this letter to Davey or do you feel you need to bring it back to the full board?

Thanks,  
Michelle

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**From:** Downing, Nicholas [mailto:[NDowning@mapc.org](mailto:NDowning@mapc.org)]  
**Sent:** Thursday, March 27, 2014 11:18 AM  
**To:** Michelle Ciccolo  
**Subject:** Municipal Sign-On Letter for Complete Streets Program

Michelle:

*We are working to gather signatures for a new municipal support letter for the Complete Streets program to send to Sec. Davey. I know Deborah Mauger signed the last letter we sent to the legislature on behalf of the Lexington Board of Selectmen, so I wanted to ask you what the best way would be to see if she would do so again.*

# AGENDA ITEM SUMMARY

## LEXINGTON BOARD OF SELECTMEN MEETING

**DATE:** 4/7/14

**STAFF:** Lynne Pease

**ITEM NUMBER:** I.2

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**SUBJECT:**

Sign Support Letter for Complete Streets Program

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**EXECUTIVE SUMMARY:**

Attached is a proposed letter to send to Secretary Davey to encourage him to start up the complete streets program and release the funds.

See attached information.

**FINANCIAL IMPACT:**

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**RECOMMENDATION / SUGGESTED MOTION:**

Motion to send a letter to Secretary Richard Davey of Massachusetts Department of Transportation regarding implementation of the Active Streets Certification Program.

**STAFF FOLLOW-UP:**

Selectmen's Office

April 7, 2014

Richard A. Davey  
Secretary of Transportation and Chief Executive Officer  
Massachusetts Department of Transportation  
10 Park Plaza, Suite 4160  
Boston, MA 02116

RE: Implementation of Active Streets Certification Program

Dear Secretary Davey:

We applaud your efforts to promote a wide range of transportation options on our local and state roadways, including safe access for pedestrians, bicyclists, motorists and transit riders of all ages and abilities. The residents of our cities and towns want more transportation options that are safe, affordable, and convenient, and we appreciate MassDOT's leadership to support the infrastructure that makes this possible. The Mode Shift Goal, the Healthy Transportation Compact, and the Healthy Transportation Directive are just a few areas where MassDOT has provided leadership that is improving quality of life in the Commonwealth.

As you know, the Legislature recently authorized \$50 million to implement a new Active Streets Certification Program as part of the Transportation Bond Bill. We ask for your support to fully fund this program and to begin the implementation process in a timely manner.

This program would support cities and towns across the Commonwealth to implement "Complete Streets" policies by creating a grant program for which they would become eligible after taking simple steps to be certified, similar to the successful and popular Green Communities Act.

The Active Streets Certification Program will help the state reach the goal set by MassDOT to triple the number of walking, cycling, and public transportation trips by 2030 while simultaneously decreasing greenhouse gas emissions and increasing physical activity. We know that when communities invest in pedestrian and bicycle infrastructure, that residents and visitors take advantage of it. This is true in rural, suburban, and urban areas alike, though the specific type of infrastructure differs by community type.

Complete Streets also contribute to quality of life in our cities and towns, encouraging residents and visitors to shop locally, helping to attract and retain workplaces and employees, and increasing real estate values.

Many cities and towns in Massachusetts have already taken steps to implement Complete Streets, but we face limited resources to move this important priority forward. This program would provide the necessary incentives and resources to support even more cities and towns to advance Complete Streets.

Thank you for your support for healthy and vibrant communities.

Sincerely,

Deborah N. Mauger  
Chairman

DNM

# AGENDA ITEM SUMMARY

## LEXINGTON BOARD OF SELECTMEN MEETING

**DATE:**

April 7, 2014

**PRESENTER:**

Carl F. Valente

**ITEM NUMBER:**

I.3

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**SUBJECT:**

**Approve Settlement Agreement with Marine Shale Processors**

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**EXECUTIVE SUMMARY:**

The DPW uses a vendor to dispose of waste oil from its vehicles. Sometime between the years of 1984-1996 this waste oil was hauled to Louisiana to Marine Shale Processors. Marine Shale Processors closed in 1996 leaving behind some quantity of waste oil. The U.S. EPA and the Louisiana Department of Environmental Quality (LDEQ) are now overseeing the clean up of the site. Because Lexington waste oil was disposed of at this site, even though in a de minimis amount, we are responsible for a portion of the clean up costs. The Louisiana DEQ, through its Marine Shale Processing Site PRP Group, has negotiated a flat \$4000 settlement amount with all de minimus generators of waste oil. Town Counsel recommends this settlement.

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**FINANCIAL IMPACT:**

\$4000

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**RECOMMENDATION / SUGGESTED MOTION:**

Move to authorize the Town Manager to enter into the Settlement Agreement with the Marine Shale Processors Site Potential Responsible Parties Group in the amount of \$4000.

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**STAFF FOLLOW-UP:**

TMO will process agreement and payment

## SETTLEMENT AGREEMENT

**WHEREAS**, the Marine Shale Processors Site (AI No. 5414) (the "Site") consists of approximately 48 acres and is located at 9828 Louisiana Highway 182 East approximately 1.5 miles west of Amelia, St. Mary Parish, Louisiana, and is bordered by Louisiana Highway 90 to the north, industrial properties to the northwest and to the southeast, and Bayou Boeuf to the southwest; and

**WHEREAS**, Marine Shale Processors, Inc. ("MSP") purchased the Site in 1984 and converted it into a waste processing and treatment facility for non-hazardous oil field wastes, but in 1985, MSP began to incinerate hazardous wastes, including a wide variety of organic and inorganic hazardous substances; and

**WHEREAS**, as many as 7,665 entities, including the signatories hereto, are alleged to have arranged for the treatment, storage, or disposal of hazardous substances and wastes at the Site, and the "nexus" of such entities with the Site is documented in hazardous waste manifest records in the possession of the Louisiana Department of Environmental Quality ("LDEQ") and/or the United States Environmental Protection Agency ("USEPA"); and

**WHEREAS**, MSP ceased operating the facility in 1996 but left behind storage tanks and bins containing incinerated waste residues and untreated waste, on-site stockpiles of incinerated waste and untreated waste, and fill material composed of incinerated waste material; and

**WHEREAS**, the USEPA and the LDEQ have issued demand letters to forty-six (46) entities who allegedly arranged for the treatment, storage, or disposal of waste at the Site, advising them that they should enter into an agreement to undertake a remedial investigation and corrective action study and remedial action at the Site, and providing such parties with information as to the other potentially responsible parties ("PRPs") with a "nexus" to the Site, including the signatories hereto; and

**WHEREAS**, eighteen (18) of the PRPs have entered into an agreement to (1) devote their resources to efficiently address any claims that may be asserted by the United States, the State of Louisiana, or other parties in connection with the Site, (2) allocate among themselves common legal, technical, administrative, and other costs incurred in connection with this matter, and (3) cooperate among themselves in this effort (the "Marine Shale Processors Site Joint Defense and PRP Agreement") and, pursuant thereto, have organized and constitute themselves when acting collectively under the terms of Marine Shale Processors Site Joint Defense and PRP Agreement as the "MSP Site PRP Group"; and

**WHEREAS**, the MSP Site PRP Group has established committees in an effort to, *inter alia*, coordinate, negotiate, and manage the investigation and remedial actions at the Site and seeks to try to avoid the costs of litigation with the LDEQ and USEPA, as well as litigation by and amongst the PRPs in related contribution actions; and

**WHEREAS**, the MSP Site PRP Group has retained consultants to carry out necessary actions to proceed with the remedial investigation and corrective action study, as well as other activities that may be approved by the MSP Site PRP Group; and

**WHEREAS**, in accordance with the Cooperative Agreement for Site Investigation and Remediation executed by the MSP Site PRP Group and the LDEQ, a remedial investigation and corrective action study are being conducted at the Site in accordance with applicable statutory and regulatory requirements; and

**WHEREAS**, the MSP Site PRP Group has reviewed the "waste-in" volumetric quantity information provided by the United States Department of Justice which was prepared from hazardous waste manifest documents and has determined that approximately 2,280 PRPs should be afforded the early opportunity, based upon the relatively small volume of wastes they shipped to the Site, to "cash-out" in this matter at a "de minimis" payment amount, and thereby avoid transaction or litigation expenses; and

**WHEREAS**, the MSP Site PRP Group has considered the matter, has determined that the cash-out amounts represent a reasonable contribution by the de minimis cash-out parties for their fair share of costs incurred and to be incurred by the MSP Site PRP Group, and has voted to approve a "cash-out" settlement to be offered to the PRPs, and to so advise the State of Louisiana of such settlement effort; and

**WHEREAS**, the MSP Site PRP Group has and will continue to incur significant costs in the investigation of the Site, as well as in negotiations with state and federal officials, etc.; and

**WHEREAS**, the PRPs to whom an early "cash-out" opportunity is being extended are not members of the MSP Site PRP Group, and have, to date, been able to avoid costs and expenses associated with the Site, and are not being asked to pay a "participation fee" to the MSP Site PRP Group or to accept any future liability risk associated with costs of the implementation of investigation and remediation activities at the Site; and

**WHEREAS**, the MSP Site PRP Group members have agreed to compromise, release, and waive any claims under state or federal laws that the MSP Site PRP Group and its members have, or may have, arising from the release or threat of release of hazardous substances at, on, or from the Site, against such of the PRPs that accept this early "de minimis" cash-out settlement opportunity.

**NOW, THEREFORE**, in consideration of the mutual promises, representations, and warranties contained herein, and for other good and valuable consideration, the MSP Site PRP Group and the undersigned "de minimis" party signatories (hereinafter, individually, "cash-out party" and collectively, "cash-out parties") agree as follows:

#### **AGREEMENT**

1. Each cash-out party shall pay the MSP Site PRP Group the amount of \$4,000.00. The payment shall be made no later than 5 business days after the cash-out party's execution of this Settlement Agreement. The payment shall be made payable to the KEAN MILLER TRUST ACCOUNT (Federal Tax ID Number 72-0376776).
2. Each cash-out party represents and warrants that it has no information in its possession or in the possession of any of its representatives or agents that reflects total shipments of waste by that cash-out party to the Site in excess of 1 ton. The MSP Site PRP Group relies upon such warranty and representation and reserves all of its rights to re-open this matter and pursue any and all claims against the cash-out party that it and its members may have in the event that such warranty and representation is not accurate. Each cash-out party also represents and warrants that it will not alter, destroy, or otherwise dispose of any records, documents, or other information that reflects shipments of waste by the cash-out party to the Site or the cash-out party's potential liability regarding the Site, pending final settlement of this matter, and that it has not done so after receiving the settlement packet provided to cash-out parties.
3. Furthermore, in the event the MSP Site PRP Group obtains additional information that identifies total shipments of waste in excess of the above 1 ton by the cash-out party or a related entity, then this Agreement shall be modified accordingly to reflect any additional payment that may be required by the cash-out party, to receive the benefit of this Agreement.
4. The cash-out parties shall have no obligation to the MSP Site PRP Group to undertake or pay for any investigation or remediation of any kind, or for any other cost of response, past or present, at the Site.
5. The MSP Site PRP Group, upon the receipt of a cash-out party's properly executed Settlement Agreement and payment, shall execute and issue a general release to that cash-out party in the form set forth in Attachment E to the settlement packet provided to cash-out parties.
6. The MSP Site PRP Group shall advise the LDEQ of the payment by the cash-out party, will confirm that the payment is fair and reasonable, and, without warranty, will use its best efforts to have the cash-out party named as a participating PRP in any agreement or consent order with the LDEQ, so that the cash-out party shall be entitled to receive any and all liability protections afforded by such agreement or consent order.



7. Upon its execution by the MSP Site PRP Group and a cash-out party, this Settlement Agreement shall be a contract and may be enforced as such. Except to the extent necessary to seek a remedy for any breach of this Settlement Agreement, this Settlement Agreement is not and shall not be offered or deemed as an admission of-fact, law, or liability of any party. This Settlement Agreement shall be governed by and interpreted in accordance with the laws of Louisiana and constitutes the entire agreement among the parties. This Settlement Agreement shall be binding on all signatories and their successors and assigns.
  
8. This Settlement Agreement may be executed in multiple counterparts, each of which may be deemed an original, but all of which shall be deemed one and the same Settlement Agreement.

**Marine Shale Processors Site PRP Group**

**Cash-Out Party:**

\_\_\_\_\_  
 Jon Jewett  
 Chairman, Steering Committee

\_\_\_\_\_  
 Company Name

Date: \_\_\_\_\_

By: \_\_\_\_\_  
 (Signature)

\_\_\_\_\_  
 (print name)

Title: \_\_\_\_\_

Date: \_\_\_\_\_

TIN: \_\_\_\_\_

Thus sworn and signed before me on this the  
 \_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
 NOTARY PUBLIC  
 My commission expires: \_\_\_\_\_

# AGENDA ITEM SUMMARY

## LEXINGTON BOARD OF SELECTMEN MEETING

**DATE:** 4/7/14

**STAFF:** Lynne Pease

**ITEM NUMBER:** I.4

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**SUBJECT:**

Appointment – 2020 Vision Committee

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**EXECUTIVE SUMMARY:**

Mr. Ahluwalia has submitted an application to be a member of the 2020 Vision Committee and the Committee requested that he be appointed.

See attached information.

**FINANCIAL IMPACT:**

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**RECOMMENDATION / SUGGESTED MOTION:**

Motion to appoint Saatvik Ahluwalia to the 2020 Vision Committee for a term to expire September 30, 2016.

**STAFF FOLLOW-UP:**

Selectmen's Office

# AGENDA ITEM SUMMARY

## LEXINGTON BOARD OF SELECTMEN MEETING

**DATE:** 4/7/14

**STAFF:** Lynne Pease

**ITEM NUMBER:** C.1-3

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**SUBJECT:**

Consent

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**EXECUTIVE SUMMARY:**

1. Approve Water/Sewer Deferral
2. Sign 2014 Minuteman Cane Award Proclamation
3. Vote to have the members of the Monuments and Memorials Committee designated as Special Municipal Employees.

See attached information.

**FINANCIAL IMPACT:**

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**RECOMMENDATION / SUGGESTED MOTION:**

Motion to approve the Consent Agenda.

**STAFF FOLLOW-UP:**

Selectmen's Office

## **Monuments and Memorials Committee**

Membership: Seven  
Appointed by: Selectmen  
Length of Term: 3 years, September 30 appointments, staggered  
Meeting Times: As needed

Description: The Committee will develop and publish an inventory of existing public and private memorials within Lexington, assess the condition of these public memorials, and recommend to the Board of Selectmen an annual maintenance and restoration plan.

The Committee will be charged with identifying the need for new public memorials for veterans and/or other persons or events and recommend possible design and locations for such memorials. All records pertaining to actions of the Monuments and Memorials Committee shall be filed with the Town Clerk for archiving purposes.

Criteria for Membership: The Committee seeks members with one or more of the following backgrounds:

1. Is a military veteran or represents a veterans' organization;
2. Is knowledgeable about Lexington's history;
3. Has knowledge and expertise in design, construction and preservation of statuary and monuments.

The Chair will be appointed by the Board of Selectmen.

A liaison shall be identified from each of the following: Town Celebrations Committee, Department of Public Facilities, Department of Public Works, and the Lexington Historical Society.

The Veterans' Services Office shall provide staff support.

Prior to serving as a member of this Committee, appointees are required to:

1. Acknowledge receipt of the Summary of the Conflict of Interest statute. Further, to continue to serve on the Committee the member must acknowledge annually receipt of the Summary of the Conflict of Interest statute. Said summary will be provided by and acknowledged to the Town Clerk.
2. Provide evidence to the Town Clerk that the appointee has completed the on-line training requirement required by the Conflict of Interest statute. Further, to continue to serve on the Committee, the member must acknowledge every two years completion of the on-line training requirement.

Ref.: Charge adopted by the Board of Selectmen on March 26, 2014.  
The Selectmen voted on \_\_\_\_\_ to designate members of this committee as Special Municipal Employees.

# AGENDA ITEM SUMMARY

## LEXINGTON BOARD OF SELECTMEN MEETING

**DATE:**

April 7, 2014

**PRESENTER:**

**ITEM NUMBER:**

Executive Session

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**SUBJECT:** Exemptions 3 – Ongoing Litigation

Suggested motion for Executive Session: *Move to go into Executive Session to discuss litigation regarding Sellars v. the Town of Lexington; and to reconvene in Open Session only to adjourn. Further, as Chairman I declare that an open meeting discussion may have a detrimental effect on the litigating position of the Town.*

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**EXECUTIVE SUMMARY:**

Update the Board on settlement discussions regarding the John Sellars litigation and discuss strategy going forward.

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**FINANCIAL IMPACT:**

NA

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**RECOMMENDATION / SUGGESTED MOTION:**

NA

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**STAFF FOLLOW-UP:**

TMO