

Cape-wide Fertilizer Management District of Critical Planning Concern
Statement of Purpose and Reasons for Acceptance of Nomination

WHEREAS, pursuant to Section 10(d) of the Cape Cod Commission Act (“Act”), the Cape Cod Commission may nominate areas, which are of critical value to Barnstable County to preserve and maintain, for designation as districts of critical planning concern (DCPC).

WHEREAS, pursuant to Section 10(a) of the Act, areas are of critical value to preserve and maintain due to, among other things, the presence of significant natural, coastal, and recreational resources and substantial areas of sensitive ecological conditions.

WHEREAS, pursuant to Section 10(c) of the Act, districts of critical planning concern may cover areas located in more than one municipality.

WHEREAS, Cape Cod’s coastal waterbodies and embayments, watersheds and ponds are significant, ecologically sensitive resources, and do not follow town boundaries.

WHEREAS, the volume of nitrogen entering Cape Cod’s coastal waters and freshwater ponds has increased over the last several decades as its population has increased.

WHEREAS, excess nitrogen within an embayment can result in eutrophication, significant algae growth, loss of eelgrass, diminishing shellfisheries, ponds choked with algae, and decreasing dissolved-oxygen concentrations—occasionally leading to massive fish and shellfish kills, odor, and frequent violation of water quality standards.

WHEREAS, coastal waterbodies and freshwater ponds around the Cape are showing the stress of excess nitrogen, with effects that impair their natural functions and their recreational appeal.

WHEREAS, water quality testing for the Massachusetts Estuaries Project has clearly documented that many of Cape Cod’s waterbodies have impaired water quality and ecological damage due to nitrogen loading in their watersheds.

WHEREAS, a major source of nitrates, a type of nitrogen that may be found in drinking water, is run-off from fertilizer application into water bodies, which in turn supply the aquifer.

WHEREAS, excess nitrates threaten drinking water resources;

WHEREAS, nitrogen from fertilizer in the groundwater or as runoff is an important and controllable source of nitrogen loading, with the greatest amount coming from residential fertilizer use.

WHEREAS, managing fertilizer use, through education, Best Management Practices, and enforceable regulations, will help towns achieve cost-effective and efficient nitrogen reduction.

WHEREAS, regulating fertilizer application is one of the more straight-forward, easily-implemented and cost-effective ways to help address the broader nitrogen loading issues on Cape Cod.

WHEREAS, the Cape Cod Commission hereby proposes for nomination a district of planning concern to manage fertilizer use and application, to be known as the “Fertilizer Management DCPC.”

WHEREAS, the nominated district is Cape-wide, including all 15 Cape Cod towns, extending to the geographic municipal boundaries of all 15 Cape Cod towns.

WHEREAS, there is a need for a special, coordinated system of planning and regulations to manage fertilizer use and application in the district proposed for nomination, which are likely to be effective in protecting or otherwise meeting the objectives of the proposed district by preserving or maintaining the resources intended to be protected by the Act.

WHEREAS, without special fertilizer management regulations in place in the proposed district, inappropriate fertilizer application could continue to contribute to degradation of Cape Cod’s water resources. Evidence suggests that fertilizer management regulations could help protect, maintain and repair Cape Cod’s water quality.

WHEREAS, the opportunity to adopt local fertilizer management regulations through a DCPC is especially important now that the county and towns’ ability to regulate this area has been restricted. The Attorney General has advised that recently enacted amendments to Chapter 128 of the General Laws give the Massachusetts Department of Agricultural Resources (MDAR) exclusive authority to regulate and enforce fertilizer application in the Commonwealth.

WHEREAS, one of the limited exceptions to MDAR’s exclusive jurisdiction in the Chapter 128 amendments is for regulations adopted pursuant to the Cape Cod Commission Act, if completed prior to January 1, 2014. Implementing Regulations adopted pursuant to a fertilizer management DCPC would preserve the towns’ ability to regulate fertilizer applications in light of these recently enacted amendments to Chapter 128 by the State Legislature.

WHEREAS, upon designation of this proposed DCPC, it is anticipated that; towns may, at their discretion, opt to adopt Implementing Regulations in the form of a fertilizer regulation consistent with a model regulation that will be developed by the Commission with input from the towns, the University of Massachusetts Amherst Extension, and the Massachusetts Department of Agricultural Resources.

WHEREAS, upon receipt of the DCPC nomination form, the Commission provided notice of the nomination pursuant to Section 11(a) of the Act, including the first newspaper publication in the Cape Cod Times on July 25, 2013, with subsequent publication in town newspapers.

NOW THEREFORE, consistent with Sections 10 and 11 of the Cape Cod Commission Act, the Cape Cod Commission hereby resolves as follows:

- I. Based on the reasons and purposes recited above and other evidence presented, the Commission accepts the nomination for consideration of a proposed Cape-wide Fertilizer Management DCPC, and shall pursue designation of said DCPC in accordance with Section 10 and 11 of the Cape Cod Commission Act; and
- II. Pursuant to section 11(c)(1) of the Act, the Commission certifies that, relative to the purposes of the proposed DCPC, no type or class of development will be substantially detrimental to the protection of the public health, safety and welfare and will not contravene the purposes of the Act, and a development by-law or by-laws had been in effect immediately prior to the nomination of such area and development permits could have been granted under those by-laws.
- III. Further, in accepting the nomination, the Commission expressly finds that the issuance of development permits for a single-family house or houses on lots held in common ownership or on lots in separate ownership is not substantially detrimental to the protection of the public health, safety and welfare and will not contravene the purposes of the Act
- IV. Therefore, because regulation of fertilizer application, which is the primary purpose of the DCPC, does not require development permits as that term is defined under the Act, among other reasons, the Commission excludes all types and classes of development from a moratorium on the issuance of local development permits during the period in which the DCPC designation and Implementing Regulations will be pursued, and a municipality may continue to grant development permits for all development within the nominated district, including but not limited to those specific types or classes of development enumerated in Sections 11(c) of the Cape Cod Commission Act, recited below;
 - for development that has received approval as a development of regional impact within the seven year period next preceding the nomination of the geographic area in which said development is located, in whole or in part and such approval is still valid;
 - for a development of regional impact that has been referred to the Commission for review prior to the first published notice of the nomination of a district of critical planning concern in which said development is located, in whole or in part, and subsequently is approved;
 - for a development authorized by a development agreement which has been approved by the Commission and the relevant municipality or municipalities.

Executed this 25th day July, 2013



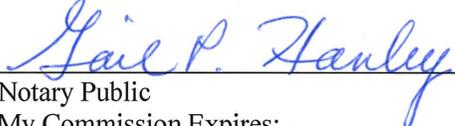
John McCormack, Chair

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss

July 25, 2013

Before me, the undersigned notary public, personally appeared John McCormack, in his capacity as Chairman of the Cape Cod Commission, whose name is signed on the preceding document, and such person acknowledged to me that he/she signed such document voluntarily for its stated purpose. The identity of such person was proved to me through satisfactory evidence of identification, which was [] photographic identification with signature issued by a federal or state governmental agency, [] oath or affirmation of a credible witness, or [] personal knowledge of the undersigned.



Notary Public
My Commission Expires:
9-28-18

