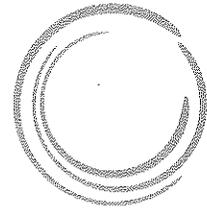


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CAPE COD
COMMISSION

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Minutes
Meeting of
Cape Cod Commission

April 14, 2011

The meeting was convened at 3:00 p.m., and the Roll Call was recorded as follows:

Town	Member	Present
Barnstable	Royden Richardson	✓
Bourne	Michael Blanton	✓
Brewster	Elizabeth Taylor	✓
Chatham	Lynne Pleffner	✓
Dennis	Richard Roy	✓
Eastham	Joy Brookshire	Absent
Falmouth	Mario DiGregorio	✓
Harwich	Robert Bradley	Absent
Mashpee	Ernest Virgilio	Absent
Orleans	Peter Monger	✓
Provincetown	Austin Knight	Absent
Sandwich	Joanne O'Keefe	✓
Truro	Peter Graham	✓
Wellfleet	Roger Putnam	✓
Yarmouth	John McCormack, Jr.	✓
County Commissioner	Mary Pat Flynn	✓
Minority Representative	John Harris	✓
Native American Rep.	Mark Harding	Absent
Governor's Appointee	Herb Olsen	Absent



The meeting of the Cape Cod Commission was called to order on Thursday, April 14, 2011 at 3:00 p.m. in the Assembly of Delegates Chambers in Barnstable, MA. Roll was called and a quorum established.

■ EXECUTIVE DIRECTOR'S REPORT

Paul Niedzwiecki said he recently attended a meeting at the Marine Biological Laboratory (MBL) in Woods Hole to discuss ongoing efforts regarding water quality. He said an economic development summit is scheduled for May 9 and 10 at the Wequassett Inn with the Cape Cod Commission being one of the five sponsors. He asked Commission members to contact him if they are interested in attending the summit. He said he recently met with the Commissioner of the Executive Office of Energy and Environmental Affairs and said they discussed many issues relative to wind and water. He said the American Planning Association held a meeting in Boston and several presentations by Commission staff were made. Mr. Niedzwiecki said he has begun his round of meetings with Boards of Selectmen.

■ MINUTES

The minutes of the March 3, 2011 Commission meeting were reviewed. Lynne Pleffner moved to approve the minutes of March 3, 2011. Peter Monger seconded the motion. The motion passed with four abstentions.

The minutes of the March 17, 2011 Commission meeting were reviewed. Michael Blanton moved to approve the minutes of March 17, 2011. Roger Putnam seconded the motion. The motion passed with two abstentions.

■ CAPE COD OCEAN MANAGEMENT PLANNING DISTRICT OF CRITICAL PLANNING CONCERN PROCESS UPDATE AND EXTENSION REQUEST

Heather McElroy, natural resources specialist at the Commission, using PowerPoint slides provided an update on the Cape Cod Ocean Management Planning District of Critical Planning Concern (OMP DCPC) process to date. She said the DCPC was designated in April 2010 by a County Ordinance and the one-year period to develop implementing regulations expires on May 5, 2011 unless extended. She said the state's OMP would guide planning for ocean based development for renewable energy, sand and gravel mining, and cables and pipelines. She said Cape Cod's plan would refine the OMP, provide visual impact assessment and define appropriate scale. She said since April 2010 a variety of meetings have been held, a Policy Committee has been engaged and they have had three workshops since January 2011. She said the goals of the Policy Committee have been to address wind turbine development potential, identify sites for renewable energy projects, and/or "no-go" areas, and provide recommendations on siting, appropriate scale and allocation for renewable energy projects. She said the Draft Cape Cod OMP includes mapped data. She said mapped resources show navigation routes and wind energy prohibited areas for whale core habitats, tern core habitats, other water bird important habitats, high value commercial fishing, commercial traffic lanes, Cape Cod Ocean Sanctuary, two nautical miles from mean high water, and expanded North Atlantic Right Whale habitat. She outlined the Policy Committee's recommendations for wind energy prohibited areas, public safety, compatibility with existing uses, environmental protection, community benefit, proximity to shore, appropriateness of technology and scale, and public trust. She said the Policy Committee has yet to discuss the regional allocation of turbines and local participation in project review. Ms. McElroy said the next steps in the process are for the Policy Committee to hold additional meetings to discuss additional issues and take a final vote on the recommendations, go to the Commission's Planning Committee to discuss draft regulations, hold a public hearing and then to the full Commission for a vote to forward the implementing regulations to the Assembly of Delegates for adoption. She said the time for submission of regulations ends May 5, 2011 and Commission staff is recommending a 90-day extension to August 3, 2011.

Elizabeth Taylor referred to the map and the open area off Brewster and asked if the line delineates the line of low tide on tidal flat areas.

Heather McElroy said the line delineates that it's less than a mile out.

Elizabeth Taylor asked if anyone was aware of fishing weirs in the area just past the low tide line.

Heather McElroy said that's good information to add into the mix.

Elizabeth Taylor asked if the Policy Committee was going to discuss sand and gravel mining and would it be correlated with dredging.

Heather McElroy said the Policy Committee has not discussed sand and gravel mining as yet. She said sand and gravel mining would be shown on a different map. She said the map shown today is for wind turbines. She said there is overlap with sand and gravel mining with dredging.

Elizabeth Taylor asked if cables and pipelines had been taken up.

Heather McElroy said the state took that up in the Massachusetts OMP and said the OMP DCPC implementing regulations would be less comprehensive. She said she hopes the state will have another map for that.

Elizabeth Taylor asked how historic beds of eelgrass would be treated.

Heather McElroy said that is something that could be incorporated into the implementing regulations.

Elizabeth Taylor inquired about the depth for sand and gravel mining.

Heather McElroy said that would depend on different conditions.

Joanne O'Keefe asked for clarification and the reason for requesting an extension.

Heather McElroy said she is hoping that the Policy Committee will have recommendations finalized in mid May, it would go before the Commission's Planning Committee in June, it would go before the full Commission by the end of June and that would give the Assembly of Delegates the month of July to hold a public hearing and go before the full Assembly for consideration.

Peter Graham said the Board of Selectmen from his town thought the meetings were very well conducted. He inquired about TOY restrictions and referred to the exclusionary area for the North Atlantic Right Whale and asked if that prohibits development in that area.

Heather McElroy said TOY restrictions are time of year restrictions. She said regarding the exclusionary area the Policy Committee was on a path to exclude red areas on the map and then felt it went too far. She said the Committee then presumed that area is prohibitive and the burden would be on the applicant. She said that language has not been prepared yet.

Roger Putnam referred to Ms. Taylor's comment regarding fish weirs and said fish weirs were shown just off the tidal flats. He asked how would shellfish beds and eelgrass beds be reconciled.

Heather McElroy said the state's mapping efforts did not show those areas.

Jack McCormack said he belongs to a yacht club that has hosted regattas that have set up sailing circles in the sound. He asked when recreation is mentioned does it include boating.

Heather McElroy said yes. She said the state's plan identified areas for recreational boating and activities. She said the Policy Committee recommended protecting recreational boating and/or fishing activities. She said these areas would have to be considered through a project review process.

Roy Richardson asked how this would affect Cape Wind.

Heather McElroy said it would not affect Cape Wind. She said Cape Wind would be located in federal waters so it would be outside the area.

Michael Blanton said during the assembling of stakeholders towns were invited to participate in the process. He said he recently spoke to someone from the Aquinnah Tribe who said they had not been contacted.

Heather McElroy said they are on the Commission's distribution list as well as the Mashpee Wampanoag Tribe. She said they were both apprised of this but the Commission has not heard from them.

Michael Blanton said he would suggest contacting them.

Heather McElroy thanked Mr. Blanton for his suggestion.

Elizabeth Taylor said after we finish this process how would applicants going for permits be handled.

Heather McElroy said if the project triggers thresholds then the applicant would go through the DRI process. She said they would have to see if the state plan shows changes in thresholds.

Elizabeth Taylor said once implementing regulations are in place, would the Commission be reviewing sand and gravel mining projects.

Heather McElroy said those project would come under federal jurisdiction.

Peter Monger said on the map where it shows where turbines could go how many turbines would be put in Cape Cod Bay.

Heather McElroy said perhaps eight to twelve turbines. She said it depends on the scale of turbines. She said between that area allocation up to 24 turbines could be accommodated possibly.

John Harris referred to an extension date of August 3 and asked what happens if the regulations are not finished by then.

Heather McElroy said if the regulations are not adopted then the district goes away.

Jessica Wielgus, Commission counsel, said there is a provision in the Cape Cod Commission Act where the Commission can go forward with the DCPC. She said the Act provides the

Commission the ability to forward implementing regulations to the Assembly of Delegates on behalf of the Cape towns at the end of the extension period. She said the district doesn't necessarily go away.

Heather McElroy said the state plans to revise their OMP every five years.

Paul Niedzwiecki said the allocation of turbines is an imperfect process. He said we could always go back and request more turbines.

Mary Pat Flynn asked who would determine which areas are more suitable—in the Bay or in the Sound.

Heather McElroy said the Policy Committee may run out of time to do that so it may fall on a regulatory review process.

Roger Putnam said when looking at land-based turbines it was noted that they would drive away small animals. He asked if studies had been done to ensure that turbines in the ocean would not be damaging fisheries.

Heather McElroy said studies have shown that larger animals are particularly sensitive at longer distances. She said smaller fish may have some sensitivity but at shorter distances. She said findings show no significant impacts.

John Harris said he still doesn't understand who can apply.

Heather McElroy said this DCPC was a response to the state's Ocean Management Plan that started their boundaries of three nautical miles. She said the Commission echoed their plan. She said the state is really only concerned with renewable energy up to the amounts that they came up with and said Cape Cod was designated the most—up to 24 turbines. She said the DCPC district only applies to areas outside of 1500 feet off shore.

Elizabeth Taylor asked if staff was already working on regulations and questioned whether it should go to the Commission's Regulatory Committee as well.

Heather McElroy said she would take that to the Policy Committee.

Lynne Pleffner said in May when Boards of Selectmen have individuals who may not return, would those people be asked to stay on the Policy Committee as a representative.

Heather McElroy said Boards of Selectmen had to appoint a person to participate. She said they can ask that person to stay on the committee or they can re-appoint someone else.

Joanne O'Keefe asked if an extension of the timeline would have any consequences. She said would there be no adversity and all positive to move forward.

Heather McElroy said it would only affect a project waiting because of the moratorium. She said the DCPC seems to be consistent with the timelines that she previously noted.

Peter Graham moved to grant a 90-day extension to the municipalities to adopt and incorporate implementing regulations for the Ocean Management Planning District of Critical Planning Concern as is allowed by Section 11(f) of the Cape Cod Commission Act. Michael Blanton seconded the motion. A vote called on the motion passed with a unanimous vote.

■ **CAPE COD 2011 REGIONAL TRANSPORTATION PLAN**

Commission Counsel Jessica Wielgus said the presentation by Glenn Cannon on the Cape Cod 2011 Regional Transportation Plan that was scheduled for today's meeting would be postponed to a future Commission meeting as Mr. Cannon had to leave for a meeting in Provincetown.

■ **OTHER BUSINESS**

Joanne O'Keefe said she thinks Glenn Cannon would have mentioned a hearing regarding bike paths in Sandwich.

A motion was made to adjourn at 4:15 p.m. The motion was seconded and voted unanimously.

Respectfully submitted,

Michael Blanton, Secretary

LIST OF DOCUMENTS PRESENTED AT THE APRIL 14, 2011 COMMISSION MEETING

- Handout material: April 14, 2011 meeting agenda.
- PowerPoint slide presentation on the Cape Cod Ocean Management Planning DCPC Process Update and Extension Request prepared by the Cape Cod Commission.