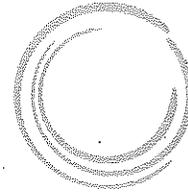


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**CAPE COD
COMMISSION**

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**Minutes of
Cape Cod Commission
CCC Member Training Session**

April 29, 2010

A CCC member training session of the Cape Cod Commission was held on Thursday, April 29, 2010 at 1:30 pm at the Cape Cod Commission, Conference Room, 3225 Main Street, Barnstable, MA.

Commission Members in attendance: Roger Putnam, Peter Graham, John McCormack, Michael Blanton, Roy Richardson, John Harris, Elizabeth Taylor, Peter Monger, Joanne O'Keefe, Mario DiGregorio, and Robert Bradley.

■ Jurisdiction

Marianna Sarkisyan, regulatory officer at the Commission, discussed jurisdiction and explained how projects come to the Commission for review—a mandatory review or discretionary review. She said a mandatory review is done when a development meets or exceeds a threshold pursuant to Section 3 of Chapter A, Enabling Regulations Governing Review of Developments of Regional Impact (DRIs) or projects that require an Environmental Impact Report (EIR) under Massachusetts Environmental Policy Act (MEPA). She said mandatory review projects come to the CCC for review as DRIs by a town referral—a municipal agency receives a development permit application—or if a town fails to refer a project that would otherwise qualify as a DRI under the thresholds of Section 3, the Commission can assert jurisdiction under Section 12(h) of the Cape Cod Commission Act. She said once a referral has been received the Commission reviews the entire proposed project including future expansions. Ms. Sarkisyan then explained the thresholds for a mandatory review as outlined in Section 3 of the Enabling Regulations. She said any proposed development for which an EIR is required is automatically a DRI and noted that it does not need to be referred. She said exceptions to mandatory review, Transitional Exemptions, are explained in Section 22 of the Cape Cod Commission Act. She said Section 22 of the Act allows developments that were in the process of being built when the Act was passed to be completed without going through the review process. Ms. Sarkisyan explained discretionary review, the second type of review. She said discretionary referrals under Section 2(b) of the Enabling Regulations are proposed developments that do not meet or exceed any of the standards/criteria in Section 3 of the Enabling Regulations and is not exempt by Section 22 of the Act but may have regional impacts or concerns listed in Section 12(b) of the Act. She said a municipal agency may make a referral and a town may indicate which issue areas of concern it would like reviewed. She said an applicant who is required to file an Environmental Notification Form (ENF) under MEPA shall also file a copy of the ENF with the Commission. She said if MEPA determines that an EIR is not required, the Commission may review the proposed development as a DRI if, at a meeting, the Commission determines that the proposed development presents one or more concerns listed in Section 12(b) of the Act and is not otherwise exempt. She said for jurisdictional determinations under Section 2(c) of the Enabling Regulations, a

municipal agency or the applicant can apply for determination from the Commission's Regulatory Committee on whether the proposed development meets the thresholds in Section 3 and/or is exempt under Section 22 of the Act or an informal determination may be requested by contacting the chief regulatory officer at the Commission. Ms. Sarkisyan entertained questions from Commission members.

■ Modifications to Developments of Regional Impact (DRIs)

Andrea Adams, senior regulatory planner at the Commission, discussed modifications under Section 13 of the Enabling Regulations. She said applicants who have obtained a favorable decision from the Commission can request in writing a modification request and said modifications can be made to all project types—DRIs, DRI Exemptions and Hardship Exemptions. She said the Commission's Regulatory Committee determines the category of modification as being a Minor Modification Type 1, Minor Modification Type 2, a Major Modification or whether the proposed modification is considered to be a new project. She described each of the modification categories. She said a Minor Modification Type 1 are revisions that are the result of more restrictive conditions imposed by a local board or technical corrections or changes that the Commission's Executive Director determines are *de minimus*. She said a Minor Modification Type 2 is a similar proposal to the original project but involves a minor Change of Use, a minor change to the site plan, or a small change to the findings or conditions of the original approval which does not affect the intent or outcome of the findings or conditions. A proposed change shall not result in different or increased impacts to the resources protected by the Act or the Regional Policy Plan (RPP). She said a Major Modification is a similar proposal to the original project but involves a major Change of Use, or changes to the site plan, findings, or conditions of the original approval, any of which would result in different or increased impacts to the resources protected by the Act or the RPP. Ms. Adams referred to Section 13c and said a modification is considered to be a new project when it's a substantially different proposal compared to the original project, any project that meets or exceeds thresholds in Section 3 of the Enabling Regulations or is a new DRI project. Ms. Adams entertained questions from Commission members.

■ Hardship Exemptions, Projects of Community Benefit, and DRI Exemptions

Kristy Senatori, chief regulatory officer at the Commission, said Hardship Exemptions are a type of DRI. She said Section 23 of the Act and Section 9 of the Enabling Regulations allows relief to be granted from the requirements of the Minimum Performance Standards (MPSs). She said Section 23 of the Act describes a Hardship Exemption as where a literal enforcement of the provisions of the Act would involve substantial hardship, financial or otherwise, and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Act. She said Section 9 of the Enabling Regulations states that projects should comply with the MPSs to the maximum extent feasible, any relief granted from the requirements of the MPSs shall relate directly to the nature of the identified hardship, be the minimum relief necessary to address the hardship, and the burden of proof is on the applicant. Ms. Senatori said Projects of Community Benefit (POCBs) are a type of hardship exemption. She said an applicant must demonstrate the project's need within and the benefit to the community and must also specify the difficulty that full compliance with the MPSs would entail. She said when a project is reviewed the Commission must consider whether the proposed project is a PO CB, the extent to which full compliance with the MPSs would diminish the community benefit(s) to be conferred, minimum extent of relief needed to address the hardship, and whether the relief granted would nullify or substantially derogate from the intent/purpose of the Act or result in a substantial detriment to the public good. She said a DRI Exemption applies to projects that literally qualify as a DRI but will not have regional impacts therefore projects do not need to proceed through review. She said under Section 12(k) of the Act and Section 8 of the Enabling Regulations the Commission must find that the development will not have significant impacts—on the resources, values, and purposes protected by the Act—outside of the

municipality in which it is located due to its location, character, and environmental effects. Ms. Senatori entertained questions from Commission members.

Jessica Wielgus, commission counsel, said the next Commission member-training sessions would be held on:

Thursday, May 13 at 1:30 pm on Change of Use, Limited Review, Joint Review/MEPA
Thursday, May 27 at 1:30 pm on DCPCs and Development Agreements

The training session adjourned at 2:15 p.m.

Respectfully submitted,

Elizabeth Taylor, Secretary