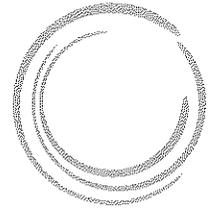


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CAPE COD
COMMISSION

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Minutes
Meeting of
Cape Cod Commission

July 21, 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	✓
Falmouth	Mario DiGregorio	✓
Harwich	Robert Bradley	Absent
Mashpee	Ernest Virgilio	Absent
Orleans	Leonard Short	✓
Provincetown	Austin Knight	✓
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	✓



The meeting of the Cape Cod Commission was called to order on Thursday, July 21, 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 on Monday the Secretary of the Executive Office of Energy and Environmental Affairs was on the Cape and took part in a bus tour to Waquoit Bay and other parts of the Cape. Mr. Niedzwiecki said they had an opportunity to discuss the \$150,000 line item in the Commission's budget for wastewater management. He said Senator Wolf and Senator Peake also took part in the tour. Mr. Niedzwiecki said he attended a meeting in Boston yesterday and said he has been appointed to the Water Infrastructure Finance Committee. He said the committee looks for ways to raise money for water issues. He said Cape Cod has a high profile on some of these issues and for Cape Cod they are looking to finance a region that has very little infrastructure compared to other parts of the state.

■ **ORLEANS COMPREHENSIVE WASTEWATER MANAGEMENT PLAN — PROCEDURAL ONLY**

Michael Blanton read the hearing notice and opened the hearing at 3:05 p.m.

Andrea Adams, senior regulatory planner at the Commission, said since the hearing notice was sent for today's hearing, the Town of Orleans Comprehensive Wastewater Management Plan (CWMP) has been granted an extension agreement to extend the decision period until September 22, 2011. She said for that reason, today's hearing is for procedural purposes only and she asked that the hearing be continued to a future Commission meeting.

Peter Graham moved to continue the hearing for the Orleans CWMP to Thursday, September 15, 2011 at 3:00 p.m. in the First District Courthouse, Assembly of Delegates Chamber. Michael Blanton seconded the motion. The motion passed with a unanimous vote.

■ **CAPE COD OCEAN MANAGEMENT PLANNING DISTRICT OF CRITICAL PLANNING CONCERN IMPLEMENTING REGULATIONS**

Elizabeth Taylor read the hearing notice and opened the hearing at 3:10 p.m.

Heather McElroy, natural resources planner at the Commission, said the purpose of today's hearing is to consider forwarding the implementing regulations to the Assembly of Delegates for adoption by ordinance for the benefit of Cape Cod. Using PowerPoint slides she provided background information and said in January 2010 the state issued an Ocean Management Plan (OMP); a result of revisions made to the Massachusetts Ocean Sanctuaries Act. She said the state's OMP allowed for renewable energy and development in sanctuaries, established a state policy and standards for development in the ocean, and developed exclusion areas. She said the state's OMP charged Regional Planning Agencies (RPAs) to identify appropriate scale and development criteria for allocation of up to 24 turbines in the planning area and develop regulatory review thresholds and criteria. She said the Cape Cod OMP District of Critical Planning Concern (DCPC) is in response to the state's OMP. She said the Barnstable County Commissioners nominated the DCPC in December 2010; it was designated as a DCPC district in April 2010 by County ordinance; the DCPC is a year-long planning process and it received a 90-day extension to August 3, 2011. She said the OMP DCPC guidelines allow for continuing use of ocean resources, consistent with protection goals; consideration of regional review thresholds; and defines appropriate scale for renewable energy projects. She said the guidelines identify eight factors for defining appropriate scale and said the first seven come from the state's OMP. In addition, she said the implementing regulations should consider protection of sensitive resources, ecosystem, physical impacts of development, water quality protection, dumping,

above-water habitat, protection of cultural resources and viewsheds, archaeological resources, cumulative impacts, use conflicts, multiple use of sites, and decommissioning. Ms. McElroy said the DCPC process provided a planning opportunity to refine the OMP, planning for ocean-based development (renewable energy, sand and gravel mining, cables and pipelines) and to define appropriate scale and visual impact assessment. She said the Policy Committee, Technical Advisory Committee, and Stakeholders groups were involved in the planning process and she then described the planning framework for the three groups. She said the OMP established a state-wide cap for offshore turbines that allows up to 24 turbines for Cape Cod. She said other types of renewable energy are not viable at this time. She explained the role of the Policy Committee and their recommendations on renewable energy, sand/gravel mining, and cables and pipelines. She said the Commission's Joint Planning and Regulatory Committees reviewed and voted unanimously to recommend the draft implementing regulations. She said the regulations reflect the Policy Committee recommendations, the Joint Committee comments and Commission staff recommends that the implementing regulations are consistent with the DCPC guidelines. She reviewed the draft implementing regulations for wind energy facilities, sand and gravel mining, cables and pipelines, and general regulations applicable to all development. She said the procedure for review of all development would be similar to a Development of Regional Impact (DRI) review. She referred to the revised Seascape Unit Map distributed to Commission members and said other than a formatting change, no substantive changes had been made. Ms. McElroy said today's required action is for the Commission to vote to approve and forward the implementing regulations to the Assembly of Delegates, for enactment by ordinance, to provide towns a say as to the definition of appropriate scale on Cape Cod.

Elizabeth Taylor said having sat through the Planning and Regulatory Committee review, still a lot of issues remain but it's important that the Commission act on this today. She said if not, the state would have control and to accept the regulations gives Cape Cod regional control. She urged approval by the Commission and said it puts regulations in place.

Michael Blanton concurred with Ms. Taylor. He gave accolades to Commission staff for providing this document and for all their efforts. He said we need to have something on the table that would give more authority to Cape Cod.

Roy Richardson said it's impossible to address all the issues in this huge responsibility. He said it's a dynamic issue and the Commission is a dynamic organization and acceptance of the regulations would allow the Commission continued involvement. He urged the Commission to approve the regulations and forward to the Assembly of Delegates for adoption.

Joanne O'Keefe concurred with Ms. Taylor and said it's better to have something on the books. She said she was impressed with the amount of time and work that went into the implementing regulations.

Joy Brookshire said this has been the most extensive process the Commission has gone through during her tenure at the Commission. She said had the Commission not gone through this process, the state would be telling us what Cape Cod should do. She said as parents of Cape Cod she believes they have made the Cape a better place for their children.

Jack MacCormack said when it was first presented to the Commission in April he mentioned that he had misgivings about the unprotected area in Nantucket Sound for boating activities and said he still has those misgivings. He said the Commission is at a deadline to establish guidelines and because of that he voted yes to the regulations.

Elizabeth Taylor said it's very important to remember that this is a regional process. She said once the process gets to the Assembly of Delegates she would ask Commission staff to help

towns with their plans. She said she would hope the Commission would provide suggested regulations that would provide towns with a framework. She said she would appreciate help from the Commission.

Peter Graham referred to Exhibit B on page 32 of the document and said he thought the map looked different in the PowerPoint presentation and asked if it was different.

Heather McElroy said the map in her PowerPoint presentation is the same map as in the document.

Charles McLaughlin, Assistant Counsel to the Town of Barnstable, said he respects the work done as well as the sand/gravel and cable elements. He noted that the Town is in litigation with Cape Wind and asked that the Commission consider issues that have arisen by the town. He said Barnstable is concerned about FAA air navigation in regard to safety and search and rescue measures. He said findings of the Advisory Council on Historic Preservation found that Cape Wind's proposal is incompatible with historic issues. He said Cape Wind has yet to answer those questions in the courts. He said they are concerned with the issue of navigational safety in regard to ferry service to and from Martha's Vineyard and fishing boats. He said those issues need to be considered. He said this is important to towns that might be permitted for development and every town that faces those areas of development will have emergency response issue concerns. He said towns will have questions in that regard and that would come out of their town budgets therefore it would be helpful for the Commission to develop regulations for those costs to be paid for by the developer. He said he agrees it's better to have something rather than nothing and he would support approving and forwarding the document to the Assembly but he would urge the Commission to look into the concerns he stated and that the Commission revisit the issues he stated. Attorney McLaughlin entered into the record and distributed to Commission members comments of the Advisory Council on Historic Preservation and an Affidavit of Roland Breault, Airport Manager of the Barnstable Municipal Airport.

Roy Richardson thanked Attorney McLaughlin for his comments and said the Committees did discuss those issues. He said an idea that came up was that costs would be contracted and provided for by developers.

Charles McLaughlin he said to rely on developers on good faith is unreliable and said the Commission needs to take this to the next step. He said, as yet, it has not been addressed.

Heather McElroy said many of the items Attorney McLaughlin brought up are in the draft implementing regulations but perhaps they don't go as far as he would like. She said the Committee spent a lot of time discussing FAA requirements and an emergency response plan. She said the regulations may not be perfect but they've gone a long way to provide protection.

Paul Niedzwiecki said this is the first attempt at a DCPC like this. He said any project out there would trip a DRI review and all the details would come out during the review process. He said he is confident that any project would trip a DRI that would have an extensive review of the project. He said no one else has done this; Cape Cod is the first to do this. Mr. Niedzwiecki said as they go along the Commission would have an opportunity to find ways to amend the regulations.

Joanne O'Keefe thanked Attorney McLaughlin for his comments. She said the Commission is there to listen to what towns have to say. She said this is a start.

Elizabeth Taylor thanked Attorney McLaughlin for his comments and said the Committee had long discussions about emergency response. She questioned whether there would be a technical bulletin that would outline what the Commission is looking for in regard to emergency response. She said perhaps the Commission should find out about a funding bond that could go to towns to pay for this.

Heather McElroy said, yes, the Commission would be establishing a technical bulletin.

Paul Niedzwiecki said the Commission would be developing a technical bulletin that would have some overlap. He said they would have a technical bulletin for each ordinance. He said they can get into more detail with technical bulletins.

Sheila Lyons, Barnstable County Commissioner, commended Commission staff for their work. She said Barnstable County would be implementing regulations in waters that never had them and said it's the first in the nation. She said the process was meant to bring the 15 Cape towns together to come to a consensus. He said the DCPC was in response to the state's Ocean Management Plan that was brought to us by Senator Rob O'Leary. She said many factors were taken into consideration. She said this is a starting point and Mr. McLaughlin raised good questions. She said many of these areas of concern have been addressed in the implementing regulations and said she has confidence in the implementing regulations. She said it's historic to the nation. She said she supports the document and she is very proud of Commission staff.

Preston Ridnick, Wellfleet resident, said he has been involved since the proposed wind turbine in Wellfleet. He said the implementing regulations are quite extraordinary and he is impressed with the regulations. He said but when looking at the PowerPoint presentation, he is concerned that Cape Cod will become an industrial zone. He said it's important to have local control for the Cape's protection. He said he hopes the Commission enacts the implementing regulations and that the Commission continues to refine them.

Kathy Sherman, Brewster resident, said she has concerns about the Nickerson State Park area for avian habitat and is concerned about near-shore habitat. She said she is concerned about landfall of cables from turbines and impacts to sensitive habitat. She said the horseshoe crab population in Massachusetts has declined and the Cape's economy depends on horseshoe crabs for many different reasons. She said there should be concern for the horseshoe crab and Diamondback terrapin as well. She asked if Massachusetts Audubon Society had been involved in the process.

Heather McElroy said they were part of the process. She said they were part of the Technical Advisory Committee but didn't weigh in much.

Lilli Green, resident of Wellfleet, thanked everyone who has spent enormous amounts of time and work developing the regulations. She referred to Mr. Niedzwiecki's comment that Cape Cod is the first to do this and asked what has been done in other areas that have been designated to get turbines.

Paul Niedzwiecki said when he said first he meant the first state ocean management plan. He said Martha's Vineyard took a different approach and said they have both land and water-based regulations that are different from the Cape Cod Commission.

Lilli Green entered into the record a CD of videotaped interviews conducted in New Zealand and Australia. She said during the winter she had the unique opportunity to go to New Zealand and Australia to research wind turbines. She said she has done extensive research on this and conducted interviews with over 25 people in Australia and New Zealand who have experienced

severe cardiovascular symptoms. She said people who live 12 miles away from turbines have experienced adverse health problems and she went on to explain the types of medical problems people have experienced. She urged that provisions be made regarding health impacts to people and said a Minimum Performance Standard should be created for this. She said this is not just happening to people in Falmouth it's happening around the world. She entered into the record a document from Donald Thompson and Verni Janson.

Barbara Howard asked Heather McElroy for the definition of "stakeholder" and asked how she could obtain a copy of the list of stakeholders.

Heather McElroy said Commission staff compiled a group of interested parties. She said they identified people interested in the process. Ms. McElroy said she would email Ms. Howard the list of stakeholders.

Lynne Pleffner moved to close the hearing and the record. Michael Blanton seconded the motion. The motion passed with a unanimous vote.

Michael Blanton moved that the Cape Cod Ocean Management Planning DCPC Implementing Regulations be approved, as presented, and forwarded to the Assembly of Delegates for adoption as an ordinance. Elizabeth Taylor seconded them the motion.

Joanne O'Keefe asked if the document is available online.

Heather McElroy said, yes, the document is available on the Commission's website.

Joanne O'Keefe referred to comments made by Kathy Sherman and asked whether she had attended previous meetings.

Kathy Sherman said she had attended previous meetings and heard what had been said.

Joanne O'Keefe thanked Ms. Sherman for attending those meetings.

Roger Putnam said he would like the record to show that he will vote for the implementing regulations but he believes they don't go far enough. He said it doesn't address economics, health issues that Lilli Green raised and it doesn't address short-term impacts. He said he's afraid they haven't really thought through this completely and it's a weak step.

A vote called on the motion to approve the Cape Cod Ocean Management Planning DCPC Implementing Regulations and forward to the Assembly of Delegates for adoption passed with a unanimous vote.

Paul Niedzwiecki thanked Heather McElroy her all her work on the implementing regulations and he also thanked the Policy Committee and the Commission's Planning and Regulatory Committees for their work as well.

Austin Knight said he agrees with Mr. Putnam's remarks and said this is Phase I and the Commission needs to look at Phase II regarding health concerns.

Joy Brookshire said this is just a start and perhaps the Policy Committee could work with their towns on this. She said she believes the Policy Committee is in the best position to do that.

Mary Pat Flynn referred to comments made by Mr. Putnam and Mr. Knight and said the Town of Falmouth has already formed a meeting on how the town can use this document. She said perhaps the Commission should contact towns for Phase II.

Roy Richardson said he concurs with Ms. Brookshire and said the Commission needs to go further on this.

A motion was made to adjourn at 5:00 p.m. The motion was seconded and voted unanimously.

Respectfully submitted,

Elizabeth Taylor, Secretary

LIST OF DOCUMENTS PRESENTED AT THE JULY 21, 2011 COMMISSION MEETING

- Handout material: July 21, 2011 meeting agenda.
- Handout material: Draft Cape Cod OMP DCPC Implementing Regulations.
- Handout material: Reformatted Exhibit F: Cape Cod OMP Map of Regional Seascape Units.
- PowerPoint slide presentation on the Cape Cod OMP DCPC prepared by the Cape Cod Commission.
- Comments of the Advisory Council on Historic Preservation on the proposed authorization by the Minerals Management Services for Cape Wind Associates to construct the Cape Wind Energy project on Horseshoe Shoal in Nantucket Sound submitted by Attorney Charles McLaughlin, Assistant Counsel to the Town of Barnstable.
- Copy of an Affidavit of Roland Breault, Airport Manager of Barnstable Municipal Airport, to the U.S. Department of Transportation, Federal Aviation Administration, Air Traffic Branch on the Cape Wind Energy project submitted by Attorney Charles McLaughlin.
- CD of videotaped interviews conducted in New Zealand and Australia on wind energy turbines submitted by Lilli Green of Wellfleet, MA.