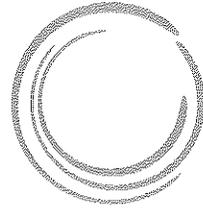


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CAPE COD  
COMMISSION

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## Minutes

### Meeting of Cape Cod Commission

August 19, 2010

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	✓
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	Sheila Lyons	Absent
Minority Representative	John Harris	✓
Native American Rep.	Mark Harding	Absent
Governor's Appointee	Herb Olsen	✓



Keeping a Special Place Special

The meeting of the Cape Cod Commission was called to order on Thursday, August 19, 2010 at 3:15 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 the Ocean Management Planning DCPC Policy Committee met for the second time last week to discuss the DCPC process and the tasks to be addressed by the Technical Advisory Working Group. He said they would be meeting at some point with the Technical Advisory Working Group and Stakeholders.

Mr. Niedzwiecki said the wastewater management effort is ready to be rolled out, priority watersheds have been identified and a meeting has been scheduled for September 23, 2010. He said the Commission has applied for three federal grants: Department of Transportation Tiger II Planning grant that will coordinate land use planning with transportation planning for the Cape Cod Canal Area; HUD Sustainable Communities grant that will focus on regional wastewater efforts; and a HUD Communities Challenge grant. He said the Town of Barnstable is the lead on this grant and the Commission will be partnering with the Town of Barnstable and the Regional Transit Authority.

Mr. Niedzwiecki referred to letters that have appeared in newspapers recently regarding NSTAR. He said it seems like there has been misinformation in the newspapers and the Commission may need to respond with a letter for clarification. He said the Commission has exercised full jurisdiction in this area and said it is not within the Commission's jurisdiction to ban the application of herbicides. He said the Commission has done the most it can to protect resources in those areas. He said the EPA is limited in what they can do and said the responsibility is with the state. He said the effort the Commission has taken has been to protect water supplies. He said the Commission would be following up in a public way to clarify the facts.

Chair Roy Richardson asked if the Bourne grant includes MacArthur's Boulevard.

Paul Niedzwiecki said the grant has not been finalized and the grant is mainly for bridges and rotaries. He said it may involve the Otis Rotary and if so it would include part of MacArthur's Boulevard. He said that is still being worked on.

Joanne O'Keefe asked if Sandwich could be included since Sandwich is a contiguous town.

Paul Niedzwiecki said they have had preliminary conversations with Sandwich officials. He said, yes, Sandwich could be included.

#### ■ 2009 REGIONAL POLICY PLAN PROPOSED AMENDMENT TO THE ENERGY SECTION

Chair Roy Richardson noted that this is a continued hearing from August 5, 2010.

Ryan Christenberry, Commission planner, said the Minimum Performance Standards (MPSs) proposed are for Wind Energy Conversion Facilities (WECFs). She said the Commission anticipates an increase in its regulatory review of wind energy projects on the Cape triggered by existing DRI thresholds. She said currently these reviews take place without suitable performance standards specific to wind turbines such as standards for noise, shadow flicker, and safety. She said Commission staff has proposed standards for review of wind turbine projects as an amendment to the Energy Section of the 2009 Regional Policy Plan as a first step in managing wind development projects for Cape Cod. She said the standards are intended to balance the desire for wind development in our communities while protecting the sensitive resources in our region. Ms. Christenberry explained each of the proposed MPSs and noted revisions that have been made since the packet of information that was mailed to Commission members last week. She said the proposed MPSs are for Safety E1.7, Noise E1.8, and Shadow Flicker E1.9 in the Energy Section of the Regional Policy Plan (RPP). She said the Commission's Planning Committee met on Monday, August 16 to discuss the proposed MPSs and then she explained each of the MPSs and reviewed the Planning Committee's proposed changes.

MPS 1 Safety (E1.7)—All WECFs shall maintain a clear area of 1.5 times the tip height from the base of the WECF to any structure outside the applicant's development site. Applicants may negotiate a reduced setback with the abutting property owner(s) provided that the reduction would not pose a threat to life or property and provided a waiver is obtained in a form that is recordable in the Barnstable County Registry of Deeds if the DRI is approved. Any waiver shall reserve rights to tort and nuisance claims. A schedule of operation, maintenance and

decommissioning procedures shall be provided with the application and shall be made part of any decision. Guidance can be found in Technical Bulletin 10-002.

MPS 2 Noise (E1.8)—All applicants for WECFs equal to or greater than 1 MW shall provide a noise study, to be verified by a consultant hired by the Cape Cod Commission and paid for by the Applicant, to adequately mitigate adverse noise impacts to residential uses outside the applicant's development site. Guidance on noise study components can be found in Technical Bulletin 10-002.

MPS 3 Shadow Flicker (E1.9)—All WECFs equal to or greater than 1 MW shall demonstrate there are no adverse Shadow Flicker impacts to neighboring or adjacent residential uses. Guidance on Shadow Flicker study components can be found in Technical Bulletin 10-002.

Elizabeth Taylor asked if there were more WECF regulations that the Commission is working on.

Ryan Christenberry said, no, what is being presented today is what they have.

Elizabeth Taylor asked about what had happened with the 3,000-foot setback.

Ryan Christenberry said it has been removed because community groups didn't want it and the Planning Committee voted to remove it.

Elizabeth Taylor asked if municipalities would be included.

Ryan Christenberry said, no, there is no intent to put forth that threshold.

Roger Putnam said he would offer an amendment to MPS 3 Shadow Flicker to say impacts to neighboring areas or residential uses.

Ryan Christenberry said that change could be made.

No motion was made for Mr. Putnam's suggested amendment.

John Harris asked if the 3,000-foot setback was coming back. He asked if it was being revised.

Ryan Christenberry said it was felt that projects couldn't make that threshold.

Paul Niedzwiecki said people were skittish about the 3,000-foot setback so the number was removed. He said removing it actually puts more of a burden on the developer. He said what is being proposed are standards that will be used if other thresholds are triggered; they don't stand-alone. He said at this point the Commission is satisfied to get these suggested standards on the books. He said this is a beginning and more may come later on.

Joanne O'Keefe referred to E1.8 Noise and asked if the "red" version is what is being adopted.

Ryan Christenberry said the Planning Committee's comments are reflected on a second sheet that was distributed to Commission members and that is the language that will be included. She said what the Planning Committee approved will be incorporated into the document.

Chair Roy Richardson referred to testimony that was received in Commission members' packets and asked if the Planning Committee had discussed it.

Ryan Christenberry said the Planning Committee didn't have an opportunity to see it because it came in after their meeting.

Chair Roy Richardson asked if the Planning Committee had known about the comments that had been made.

Ryan Christenberry said, yes, many of the comments had been discussed previously.

John Harris referred to El.7 Safety and asked if that would also be pulled into noise. He said a UMASS study has shown that noise complaints go further than it appears.

Ryan Christenberry said having these proposed standards on the books will help with those types of situations.

John Harris said when nuisance complaints come in how would they be adjudicated. He said we may never get out of the loop if people keep posing nuisance complaints.

Ryan Christenberry said once standards are set Commission staff can be directed to create a Technical Bulletin with written guidelines in place that would help Commission members sort through noise issues as they come up.

Paul Niedzwiecki said this is a starting point. He said the fastest way to get renewable energy going is in a regulated environment and said he hopes that is where this will take us. He said the Commission supports renewable energy and we need a regulated environment that people can start working with. He said the Commission will fill in the blanks as we move along.

Roger Putnam said he doesn't believe they have enough information here to make an intelligent decision. He said not that he doesn't agree but there just is not enough information here.

Joy Brookshire said the Planning Committee approved the standards because they know that new technology is being developed. She said she has no problem with that and believes the language in the standards will protect us. She said she has learned a lot. She said the three standards are the first step and the Commission will be adding to this. She said she supports the amendments to the Energy Section.

John Harris asked if the Technical Bulletin would be in place prior to this document going forward.

Ryan Christenberry said the process is that the standards are adopted first and then the Technical Bulletin comes after.

Paul Niedzwiecki said he believes the Technical Bulletin can be developed before projects come to the Commission.

Ryan Christenberry said the Technical Bulletin should come together quickly.

Paul Niedzwiecki said these three standards will help towns and he sees that as the most useful thing with these standards.

Peter Graham said there are safety measures built into these standards. He said we have a safety net and the Commission has the ability to hire expert consultants to help the Commission through this. He said a lot of the material received was biased. He said he believes it's a good start.

Chair Roy Richardson said this is a process and he has confidence in those on the Planning Committee. He said everything that is being said is being evaluated.

Joanne O'Keefe said the Planning Committee had lengthy discussions and talked about safety measures. She said we have to begin somewhere and said she would urge support by the Commission.

Richard Elrick, an energy coordinator who has been working with the Town of Bourne, said every argument believes us to believe that we need to develop renewable energy. He said regarding noise it's getting more and more challenging to site wind turbines. He said to have a 3,000-foot setback would mean that we wouldn't be able to site wind turbines on the Cape. He said every turbine is different and every location is different. He said it's not easily remedied to say that we need to have 2,000 or 3,000 feet around a turbine. He said the language in the document is too vague and will make it difficult to determine what should be done about noise. He said being more specific about noise would make it easier for developers. He said the language for shadow flicker is limited and he would recommend adding "significant" to no adverse shadow flicker. He said it would give it more clarity. He said we are not going to get to renewable energy projects if we make it harder for developers to get there.

Liz Argot, Cape and Islands Wind Network, referred to their website and said they would be happy to help with the development of the Technical Bulletin.

Chair Roy Richardson asked Ms. Argot if she had attended the Planning Committee meetings.

Liz Argot said, yes, she did attend.

John Lipman said should restrictions come from the Commission then it seems like it should come from towns that have good regulations on this. He said he is glad to see the provision to reduce the setback. He said it seems like such a reduction should be based on objectives and said he believes that should be changed and made to be more flexible. He said the state has well thought out standards on noise. He said he looks forward to the Technical Bulletin and offered his assistance in developing it.

Paul Niedzwiecki referred to Mr. Elrick's comment regarding adverse impacts and said he would suggest that the language say "no adverse impacts" or "no significant impacts." He said the Commission does not support a 3,000-foot setback and said the Commission decided to remove it. He said removing it does put more of a burden on the developer.

Jessica Wielgus, Commission Counsel, said the Planning Committee felt that "adverse" provides a protective measure for the Commission to make a determination.

Ryan Christenberry referred to the MPS for Safety E1.7 where it talks about the 1.5 times the tip height from the base of the WECF for setback and said that is an industry standard. She said it comes from a model bylaw from when the Commission worked on this with the Cape Light Compact a few years ago.

Chair Roy Richardson asked if there was any reason to believe that they shouldn't feel comfortable with the decision made by the Planning Committee.

Ryan Christenberry said having these standards would help bring transparency to the process.

Peter Graham moved to close the hearing and the record. John Harris seconded the motion. The motion passed with a unanimous vote.

Peter Graham moved to approve the amendments to the Energy Section in the 2009 RPP and forward to the Assembly of Delegates for adoption by ordinance. Joy Brookshire seconded the motion. The motion passed with 13 votes in favor and one opposed.

Roger Putnam left the Commission meeting at 4:30 p.m.

#### ■ 2009 REGIONAL POLICY PLAN PROPOSED TECHNICAL CORRECTIONS TO ORDINANCE 10-07

Chair Roy Richardson noted that this is a continued hearing from August 5, 2010.

Jessica Wielgus, presenting for Sharon Rooney, said corrections to the 2009 Regional Policy Plan Ordinance 10-07 are all technical in nature. She reviewed technical corrections on pages 63, 64, 77, 94, 111, and 117. Ms. Wielgus said the Commission is being asked to approve the technical corrections and forward to the Assembly of Delegates along with the approved amendment to the Energy Section of the RPP.

Peter Graham moved to close the hearing and the record. Jack McCormack seconded the motion. The motion passed with a unanimous vote.

Peter Graham moved to approve technical corrections to Ordinance 10-07 and forward to the Assembly of Delegates along with the amendment to the Energy Section of the RPP for adoption as one ordinance. John Harris seconded the motion. The motion passed with a unanimous vote.

#### ■ OCEAN MANAGEMENT PLANNING DISTRICT OF CRITICAL PLANNING CONCERN UPDATE

Heather McElroy, Commission planner, said the Policy Committee for the Ocean Management Planning District of Critical Planning Concern (OMP DCPC) held its first meetings and officials from 13 out of the 15 towns and three Regional Planning Agencies were in attendance. She said the purpose of the first meeting on July 29 was to

provide an overview of the project, including goals, process, and timeline; have the Policy Committee discuss and vote to endorse a set of guiding principles for the planning process; and have the Policy Committee discuss and comment on the Draft Tasks List (work program) for the Technical Advisory Workgroup. She said the focus of the meeting on August 12 was to discuss principles to guide the DCPC process and tasks to be addressed by the Technical Advisory Working Group and Stakeholders. She said the next meeting is planned for sometime in October. She said a visual assessment will be done and poll surveys are being done at five and hopefully seven beaches. She said the information from the poll surveys would help with the visual assessment and technical analysis. She said the Committee would be working with experts from SUNY Syracuse to help with the technical analysis. Ms. McElroy said information on the OMP DCPC can be found on a website that has been set up on the Commission's homepage.

John Harris asked if the visual assessment would be done based on just the seven towns.

Heather McElroy said it's a component of a larger analysis that the Commission will do.

Paul Niedzwiecki said the survey part is important. He said it's a piece of scientific surveys that can be put together.

#### ■ COMMISSION MEMBER COMMENTS

Jack McCormack said we are all aware of the wastewater issues before us and said we also need to think about stormwater issues as well.

Paul Niedzwiecki agreed and said new regulations are in place for stormwater.

Chair Roy Richardson acknowledged Commission members who had been at a long subcommittee meeting earlier today at the Commission office and are now in attendance at today's Commission meeting. He said it's been a long day for those members and he thanked them for their time and service.

A motion was made to adjourn at 4:45 p.m. The motion was seconded and voted unanimously.

Respectfully submitted,

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Michael Blanton, Secretary

#### LIST OF DOCUMENTS PRESENTED AT THE AUGUST 19, 2010 CAPE COD COMMISSION MEETING

- PowerPoint slide presentation on Wind Energy Conversion Facilities prepared by the Cape Cod Commission.
- Edits to Minimum Performance Standards made by the Commission's Planning Committee on August 16, 2010.
- Handout material: August 19, 2010 meeting agenda.
- Handout material: Draft Proposed Amendment to 2009 RPP Energy Section.
- Handout material: Edits to Minimum Performance Standards made by the Commission's Planning Committee on August 16, 2010.
- Handout material: Draft Proposed Technical Changes to 2009 RPP Ordinance 10-07.