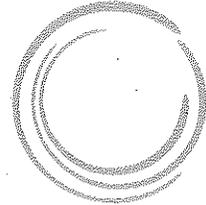


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CAPE COD
COMMISSION

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Minutes

Meeting of Cape Cod Commission

October 13, 2011

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

Town	Member	Present
Barnstable	Royden Richardson	√ (left meeting at 5:30 p.m.)
Bourne	Michael Blanton	√
Brewster	Elizabeth Taylor	√
Chatham	Lynne Pleffner	√
Dennis	Richard Roy	√
Eastham	Joy Brookshire	Absent
Falmouth	Mario DiGregorio	Absent
Harwich	Robert Bradley	√
Mashpee	Ernest Virgilio	√ (left meeting at 5:15 p.m.)
Orleans	Leonard Short	√
Provincetown	Austin Knight	Absent
Sandwich	Joanne O'Keefe	Absent
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, October 13, 2011 at 3:10 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 last night he attended the Bourne Financial Development Corporation's annual meeting and had an opportunity to talk to people about projects in Bourne. He said he expects to be reporting back on that soon. He said last week he met with the Smarter Cape Visioning Session to discuss OpenCape and broad band service and said discussion on that continues. He said they have also begun talking about scheduling another Smart Cape Forum again this year. He said the State Water Infrastructure Committee recently met and they are closing on their report to the general court. Mr. Niedzwiecki said he hopes to have a copy of the report within the next 30 to 60 days and he will keep Commission members apprised. He said the Commission's Executive Committee met to discuss litigation and he had nothing else from the Executive Committee to report on. Mr. Niedzwiecki introduced Jessica Rempel, a new staff member at the Commission. He said Ms. Rempel is a new regulatory officer at the Commission.

■ PUBLIC COMMENT

Mitch Relin, Brewster resident, said many issues have been brought up for large scale wind turbines that have been Developments of Regional Impact (DRIs). He said many towns have different processes that they follow and the Town of Brewster looks to the Commission to provide them with consistent fair review of projects that come before the Commission otherwise it would be confusing at the town level. He referred to a state hearing that is coming up regarding supervision over DRIs for wind turbines and asked if anyone from the Commission would be attending the hearing.

Paul Niedzwiecki said the Commission is aware of the hearing and said they plan to attend. He said the Bill has not changed in form. He said the Commission negotiated and provided language for appellate review last year and he believes that it's still intact.

Ann Canedy, former councilor in Barnstable, said she is concerned about the various bills at the statehouse regarding siting of land-based wind turbines. She said she has concerns about relinquishment of home rule. She said the siting authority is ultimately the state and she believes that is an attack on home rule. She said the Town of Barnstable has fought Cape Wind based on home rule and she does not want the Town to have to give up their seat. She said she hopes the Commission can offer their help on this matter.

■ CAPE COD OCEAN MANAGEMENT PLAN AND DETERMINATION OF APPROPRIATE SCALE

Jessica Wielgus, Commission Counsel, said for those Commission members who haven't sat on the joint Planning and Regulatory Committee meetings, the implementing regulations for the Cape Cod Ocean Management Plan (OMP) that were sent to the Assembly of Delegates were not adopted. She said what is before the Commission today has been seen by the Commission before. She said state legislature mandated the Commission to define appropriate scale of offshore renewable energy facilities and what should be considered to be a DRI. She said the OMP captures the definition of appropriate scale and also provides the Commission with guidelines when reviewing DRIs. She said where we are in the process is the District of Critical Planning Concern is still in effect and it will evaporate on October 21, 2011. She said today the Commission is being asked to determine appropriate scale before that timeline ends.

Heather McElroy, natural resources specialist at the Commission, said in order to ensure that Cape Cod has met its state-mandated requirement to define the appropriate scale for renewable energy facilities within the Cape's ocean waters prior to the expiration of the DCPC on October 21, 2011, the joint Planning and Regulatory Committee has recommended forwarding the draft Cape Cod OMP to the full Commission for adoption. She said the draft Cape Cod OMP is a plan that examines the existing resources, activities, and development potential within Cape Cod waters and defines appropriate scale for renewable energy facilities as well as makes recommendations for additional actions to address potential impacts from sand mining and other development. Using PowerPoint slides she provided an overview of the OMP, the planning process and explained the definition of appropriate scale. She referred to the mapped area for the OMP and described those areas where development is prohibited and compared it to the state wind energy exclusionary area. She described prohibited areas with ferry routes and important fish resource areas. She the Minimum Performance Standards in the Commission's

Regional Policy Plan would be applied during a DRI review in issue areas for heritage preservation and community character, economic development, water resources, coastal resources, wildlife and plant habitat, transportation, waste management and energy. She noted recommendations in the OMP for sand/gravel mining and cables and pipelines. In summary, Ms. McElroy said state legislature has mandated that the Commission define appropriate scale for offshore renewable energy facilities as DRIs, the Cape Cod Commission Act gives power to the Commission to adopt the Cape Cod OMP and said the Commission is being asked to vote to approve the Cape Cod OMP including the definition of appropriate scale.

Mary Pat Flynn asked if the Commission approves the plan today would there be another step in the process.

Jessica Wielgus said the Commission's vote to adopt the plan today would be the final step.

Roger Putnam said he remains concerned that the Commission has not defined noise or flicker in the plan. He said he believes the Commission should not vote on the plan until that is factually measureable. He said he would like to see real specifications instead of editorial specifications.

Roy Richardson said he has concerns about the Town of Barnstable and Craigville Beach. He said on the original map it showed that it would be a suitable place for wind turbines; subsequent maps don't show an open area in Craigville Beach. He said he is concerned because Cape Wind is going off that area and what will happen to the area. He said he has learned that the life expectancy of wind turbines is 12-14 years and that would mean more traffic in that area to maintain them. He said Craigville Beach is a major beach in the Town of Barnstable and he believes other beaches around would have more wind than Craigville Beach that would be better for wind turbines. He said he has also learned that in order to make turbines more economical they need to be high in height. He said he wants to participate and wants to approve what's good for the long term but he is not sure is ready to do that today. He said he is also concerned about the process and wonders what message this would send to the Assembly of Delegates if we lose on one side we can go the other way. He said he feels it could be confrontational.

Elizabeth Taylor said this process has gone on well over a year, it has been extremely well vetted and people had the opportunity to express their concerns. She said the state did mandate the Commission to adopt their own regulations and she is very disappointed by the Assembly of Delegates' vote. She said if the Commission doesn't approve the plan today, they would have no voice and to do nothing is ludicrous. She said changes can be made to regulations at a later date but they need something on the books and if they don't, the Cape would have no protection and no control. She said this is how they have to do it; regulations can be changed or tightened up later. She said the state map is wide open and the Commission should not allow that to happen.

Jack McCormack agreed with Ms. Taylor and said if no plan is in place we have no protection.

Michael Blanton echoed Ms. Taylor and Mr. McCormack's comments. He said this is a plan that we can start with. He said it doesn't cover everything but it gives us a frame work to start. He said to not approve the plan and be subject to the state's regulations would be a mistake.

Paul Niedzwiecki said no commercial developments are allowed out there so it means they would have to be town or CVEC projects. He said the state's plan is different. He said the state charged the Commission authority to determine a plan for up to 24 turbines and the Commission chose to use the DCPC process. He said the Assembly's reluctance to adopt the OMP implementing regulations doesn't preclude the Commission from adopting a plan. He said had the Assembly voted yes, the implementing regulations would have been adopted through a County ordinance. He said he doesn't see it as being confrontational and the Commission could go back to the Assembly of Delegates in the future. He said he can't understand the thinking that nothing is better than something. He said he is proud of the process that the Commission followed and the latest presentation shows that the entire DCPC area is protected. He said if the Commission uses Cape Wind as an example, then they have very little say; this plan would give the Commission say. He said if the Assembly had adopted the implementing regulations, the Commission would have had Minimum Performance Standards (MPSS) to use when reviewing DRIs but because they didn't, the Commission won't have MPSS. He said what the Commission has now is a plan to determine appropriate scale and if DRIs are tripped, the Commission would use it when reviewing DRIs and it would give us protection. He referred to Mr. Putnam's comment and said the Commission has a consultant on board to define those issues Mr. Putnam raised. He thanked Heather McElroy and Jessica Wielgus for all their work.

Ann Canedy said the Barnstable Town Council was never advised about the management plan and what was going on with this plan by the Commission. She said she agrees with Ms. Taylor, Mr. Blanton and Mr. Niedzwiecki and believes the plan protects home rule otherwise the state will determine where turbines go. She said the Commission has done a good job and she supports the Commission's efforts on this.

Sims McGrath, Orleans Board of Selectmen, said he participated in the working group and agreed that discussions were lively. He said the plan is far more restrictive than a first reading would suggest. He said appropriate scale gives the Cape the opportunity to decide on its own destiny. He said he would encourage the Commission to support the plan.

Charles McLaughlin, assistant counsel for the Town of Barnstable, said he commends the Commission on their efforts but there is still quite a lot of work yet to be done on this. He said he is willing to work with representatives on this and he is interested in more being done in the way of emergency responders. He urged the Commission to adopt the plan.

Lilli Green, resident of Wellfleet, thanked the Commission for all the hard work that was put into the plan. She said the one thing lacking in the presentation is people and health issues. She said the Commission has the power to nominate another DCPC and bring in experts to address health issues. She said she is concerned about health effects on people as a result of wind turbines and referred to those residents in the Town of Falmouth who have experienced adverse health effects from wind turbines. She said she has interviewed people in New Zealand and Australia who live more than two miles away who have experienced adverse health effects. She said she is concerned that this issue is not being addressed.

Roy Richardson said he has been an enthusiastic supporter from the beginning. He said he has been in favor of the matter before the Commission today but he is not in favor of Craigville Beach to take the thrust of it.

Elizabeth Taylor said when we look at the map the whole area looks protected and within the outline the south side of the Cape is protected. She said we can't do any more to protect that area unless we go through the state.

Paul Niedzwiecki said the impression the original map left was that it was spatial in nature. He said this map is different; there is no as-of-right zoning. He said the Commission is trying to give as much protection to people as they ever had.

Lynne Pleffner moved that the Cape Cod Commission adopt the Cape Cod Ocean Management Plan including its definition of appropriate scale for offshore renewable energy wind facilities. Michael Blanton seconded the motion. The motion passed with 12 votes in favor and one vote opposed.

Elizabeth Taylor thanked everyone for all their work.

■ NOTIFICATION OF WITHDRAWAL: YARMOUTH COMPREHENSIVE WASTEWATER MANAGEMENT PLAN

Andrea Adams, senior regulatory planner at the Commission, said on September 19, 2011 the Commission received a letter from William Hinchey, Yarmouth Town Administrator, withdrawing the Town's Comprehensive Wastewater Management Plan (CWMP) from Development of Regional Impact (DRI) review. She said Yarmouth's CWMP was undergoing DRI review because the project required the preparation of an Environmental Impact Report. Ms. Adams said staff suggests the Commission vote to formalize the Town's withdrawal of its CWMP from DRI review.

Jack McCormack said he was very disappointed in the vote at Town Meeting but the people spoke. He said the people who attended the meetings understood but there was a lot of misinformation out there. He expressed his thanks to the Water Implementation Committee for their work on the project.

Jack McCormack moved to accept the withdrawal of the Yarmouth CWMP from DRI review. Elizabeth Taylor seconded the motion. The motion passed with a unanimous vote.

■ CAPE COD HEALTHCARE, INC. MODIFICATION TO DEVELOPMENT AGREEMENT

Andrea Adams, senior regulatory planner, said before the Commission today for consideration is an amendment to the 2003 Cape Cod Healthcare Development Agreement subject to Chapter D of the Commission's regulations governing Development Agreements. She said the Development Agreement envisioned construction of a 263,100 square foot ambulatory care medical complex offering several medical-related services in a campus setting consisting of several buildings. She said the complex will be constructed in several phases over a period of 7-10 years. She said the Wilkens Center, currently under construction, is on land subject to the Agreement and is part of the larger ambulatory complex. She said Attorney Eliza Cox, representing Cape Cod Healthcare, submitted a letter to the Commission on August 29, 2011 outlining a number of requested modifications to the Development Agreement including modifying condition T2 to postpone the requirement to set aside a Transportation Demand Management (TDM) parcel, to reduce the required number of bike racks, and to modify condition T5 to adjust the amount of traffic credits applied at this time. Ms. Adams then explained the Commission transportation staff analysis of the proposed modifications. Ms. Adams said Commission staff suggests that the Commission's Regulatory Committee could approve the proposed changes to the Cape Cod Healthcare 2003 Development Agreement as requested by Attorney Cox relative to the Wilkens Center as non-substantial amendments. She said earlier today the Regulatory Committee considered if the changes to the 2003 Development Agreement were non-substantial amendments and voted to endorse the modifications to the Development Agreement.

Peter Graham moved to approve the modifications to the 2003 Cape Cod Healthcare Development Agreement. Michael Blanton seconded the motion. The motion passed with a unanimous vote.

■ ORLEANS COMPREHENSIVE WASTEWATER MANAGEMENT PLAN

Elizabeth Taylor read the hearing notice and opened the hearing at 4:40 p.m.

The subcommittee reviewed the minutes of the October 7, 2011 subcommittee meeting. Roger Putnam moved to approve the minutes of October 7, 2011. Richard Roy seconded the motion. The motion passed with a unanimous vote by the subcommittee.

Andrea Adams, senior regulatory planner at the Commission, noted a letter that was distributed to Commission members from Bev Carney commenting on the project. She said the Orleans Comprehensive Wastewater Management Plan (CWMP) provides a strategy for wastewater management to achieve reductions of nitrogen loading to restore and protect Orleans' marine embayments. She said it also addresses freshwater ponds; areas with septic system problems associated with frequent pumping, intensity of use, and mounded systems; provides modest capacity for expanded residential housing in the commercial district; opportunities for regional management; and an adaptive management approach for its implementation. She said the CWMP proposes a six-phase wastewater management plan that will collect and treat up to an annual average wastewater flow of 0.64 million gallons per day from 2,800 properties to meet nutrient Total Maximum Daily Loads (TMDLs) for Pleasant Bay, north side embayments to Cape Cod Bay, and Nauset Marsh/Town Cove. She said it also accommodates septage and sludge handling and proposes five clustered treatment systems which will hasten nutrient removal. She said the phased plan also targets nutrient reduction through certain non-structural elements, including a fertilizer control program, storm water management, and a water conservation program. Ms. Adams said the Town was required to prepare an Environmental Impact Report (EIR) for its CWMP pursuant to the Massachusetts Environmental Policy Act (MEPA). She said the project comes under the jurisdiction of the Commission pursuant to Section 2 of the Commission's *Enabling Regulations Governing Review of Developments of Regional Impact* which requires proposed development for which an EIR is required to be prepared under the provisions of MEPA to undergo DRI review. She said the Town chose to undergo a joint Commission/MEPA review process and submitted an application in May 2009. She provided a procedural history on the project and said the subcommittee voted on October 7, 2011 to approve the project as a DRI with conditions and to forward to the full Commission. Ms. Adams said the water resources and coastal resources sections of the CWMP would be presented by Thomas Cambareri and she would continue her presentation following Mr. Cambareri's presentation.

Thomas Cambareri, hydrologist and water resources program manager at the Commission, said the Orleans CWMP will treat 53% of the Town (2,600 properties). He said the plan would be implemented over a period of 20 years with an estimated cost of \$150 million and the cost to the average homeowner would be approximately \$2,600 a year. Using PowerPoint slides Mr. Cambareri outlined six points in the plan and said 1) it addresses coastal eutrophication and TMDLs, 2) it provides infrastructure for sanitary, community aesthetics and economic

development, 3) is a composite of sewer and centralized treatment with opportunity for decentralized systems and continued use of Title 5, 4) it includes non-structural elements for fertilizer, storm water, enhanced attenuation and land use controls, 5) it provides opportunities for regional infrastructure sharing with the Towns of Eastham and Brewster, and 6) flexibility in its 20-year implementation through the Adaptive Management Plan as conditioned in the draft decision. He said the draft decision contains 61 water resource findings and noted some of the key issue areas. He reviewed the goals of the water resources section of the Commission's Regional Policy Plan (RPP) and several Minimum Performance Standards (MPSs) within those goals and the Plan's compliance with those standards. Mr. Cambareri discussed facility siting and described the process for selecting suitable sites. He said the town would be doing a preliminary site design and the final design would include conditions for issue areas for coastal resources, wetlands, endangered species and mitigation. He discussed salinity and flow, assimilative capacity, proposed cluster systems and outlined initial and long term implementation of the Orleans CWMP.

Andrea Adams, using PowerPoint slides, continued her presentation and discussed the subcommittee's analysis of the project and explained the findings and conditions in the draft decision regarding plant and wildlife habitat and wetlands, open space, heritage preservation and community character, and transportation for congestion management, trip reduction and safety. She said the general findings for approval are that the Orleans CWMP is consistent with the Orleans Local Comprehensive Plan Actions CF-27, CF28 and CF-34; municipal use is allowed in all zoning districts; the treatment plant and cluster systems are allowed by zoning; there are no Districts of Critical Planning Concern in Orleans therefore criteria is not applicable; and the probable benefits were found to be greater than probable detriments. She said probable benefits include public infrastructure for protection of public health and the improvement of water quality in the aquifer and restoration of marine water quality to meet federally adopted TMDLs for nutrients. She said the subcommittee voted on October 7, 2011 to recommend approval of the proposed CWMP as a DRI with conditions and forward the project and draft decision to the full Commission for review.

Margie Fulcher, Chair of the Orleans Board of Selectmen, said the Board of Selectmen has approved the Orleans Comprehensive Wastewater Management Plan. She said the decision is both fair to the town and it addresses wastewater quality. She thanked the subcommittee and Commission staff for their work on the project. She said the CWMP is a plan that serves Orleans and neighboring towns well.

Len Short commended the Commission and staff for all the work put into the project over the years and said it has been a continual process. He thanked all the people who attended the hearings and commented both pro and con. He said their comments were helpful. He also thanked adjoining Towns of Brewster and Eastham and said hopefully they will join in a regional effort.

Mary Pat Flynn congratulated the Town of Orleans for the CWMP. She asked what part of the project does the \$150 million cover.

George Meservey, Orleans Planning Director, said it covers the full core of the plan; it does not include operational costs.

Elizabeth Taylor said it has been a very long and controversial process. She thanked the Town of Orleans on behalf of the Town of Brewster and said it was very important for Brewster to have a seat around the table and to be on the committee. She said hopefully Brewster will be participating in their CWMP soon.

Sims McGrath, Vice Chair of the Orleans Board of Selectmen, said he was the selectmen's representative and was deeply involved in the draft plan. He said the plan has been improved and amended based on questions asked by the consultant and questions asked by people. He said the plan is not final. He said there would be scheduled refinements to the plan and the Commission would be apprised of those refinements. He said the Adaptive Management Plan has been remarkably received by the DEP. He said the CWMP DRI decision has gone through an exhaustive review and he thanked the subcommittee and Commission staff. He said he looks forward to support by the full Commission.

Charles Harris, Chair of the Eastham Water Committee, spoke in favor of the Orleans CWMP and said he supports a regional program.

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

Len Short moved to approve the proposed Orleans Comprehensive Wastewater Management Plan as a Development of Regional Impact (DRI) with conditions. Elizabeth Taylor seconded the motion. The motion passed with a unanimous vote.

Len Short moved to approve the draft DRI decision, with conditions, as amended, for the proposed Orleans Comprehensive Wastewater Management Plan. Jack McCormack seconded the motion. The motion passed with a unanimous vote.

Roger Putnam, Orleans CWMP subcommittee chair, expressed his gratitude to members of the subcommittee for all their work.

■ COMMISSION MEMBER COMMENTS

Elizabeth Taylor inquired about the hearing scheduled for next week that Ann Canedy referred to earlier in the meeting.

Paul Niedzwiecki said it's a state hearing on various efforts to expedite wind siting. He said someone from the Commission would be attending the hearing and he would report back to the full Commission.

A motion was made to adjourn at 5:40 p.m. The motion was seconded and voted unanimously.

Respectfully submitted,

Elizabeth Taylor, Secretary

LIST OF DOCUMENTS PRESENTED AT THE OCTOBER 13, 2011 COMMISSION MEETING

- Handout material: October 13, 2011 meeting agenda.
- Handout material: Cape Cod Ocean Management Plan.
- Handout material: Cape Cod Healthcare Development Agreement Modification Draft Decision.
- Handout material: Orleans CWMP DRI Draft Decision.
- PowerPoint slide presentation on the Cape Cod Ocean Management Plan prepared by the Cape Cod Commission.
- PowerPoint slide presentation on the Orleans CWMP project prepared by the Cape Cod Commission.
- Letter from Bev Carney commenting on the Orleans CWMP project.
- Letter from Jon R. Fuller, Orleans Selectman, commenting on the Orleans CWMP project.