



CAPE COD COMMISSION

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Acceptance of District of Critical Planning Concern (DCPC) Nomination Black Beach/Great Sippewissett Marsh DCPC

DATE OF NOMINATION: June 13, 1995
DATE OF ACCEPTANCE: July 13, 1995
NOMINATING AGENCY: Falmouth Conservation Commission
LOCATION OF DISTRICT: West Falmouth, Massachusetts
TYPE(S) OF DISTRICT: Wildlife, natural, scientific, and ecological resource district
Hazard district

BOUNDARY:

Northern boundary: follows Little Neck Bars Road, where it intersects with Route 28A to its end at Chapoquoit Road. The boundary then follows Chapoquoit Road to the northern boundary of the town-owned Chapoquoit Beach.

Western boundary: follows the natural coast line from the town-owned Chapoquoit Beach south along the barrier beach, encompassing both barrier spits north and south that protect the opening into Great Sippewissett Marsh.

Southern boundary: follows the 100 year floodplain, which coincides very closely with existing roads. The southern boundary will be Arnold Gifford Road east to Wigwam road in Saconesett Hills to the railroad tracks. It then continues, following the flood plain to Old Homestead Lane and the junction of Route 28A.

Eastern boundary: follows the 100 year floodplain. Route 28A coincides very closely with this floodplain. The eastern boundary will extend from Old Homestead Lane north on Route 28A to Little Neck Bars Road extension, thereby closing the boundary loop of the proposed DCPC.

General Statement of Purpose and Reasons for Acceptance

In accepting the nomination of the Black Beach/Great Sippewissett Marsh DCPC the Cape Cod Commission makes the following findings:

1. There is a need for special planning and regulations in the Black Beach/Great Sippewissett Marsh DCPC area that will preserve or maintain a value or resource intended to be protected by the Act; and
2. Regulatory and/or planning tools are available which are likely to be effective in protecting or otherwise meeting the objectives of the proposed district.
3. The DCPC nomination as presented by the Town of Falmouth Conservation Commission explicitly identifies the threat to Black Beach and Sippewissett Marsh. Three areas of concern are the threat to the barrier beach, the marsh, and surrounding development due to a lowering of the dune height and profile, the threat of shellfish bed closures due to increased contamination and lessening of water quality due to the presence of high coliform bacteria counts, and the preservation of the existing habitat value for all species including those listed as threatened, rare and endangered.
4. The purposes of the DCPC are to protect against development which would negatively impact the dunes ability to function in a storm damage protection and flood control capacity. Also, the DCPC would ultimately seek to improve and upgrade septic systems and storm drainage in the boundary area to reduce fecal coliform contamination pressure on area waters and subsequently, shellfish beds. Finally, the area is rich in coastal primary and secondary dune and marsh habitat that would benefit directly from a protection and management strategy that values this sensitive resource.
5. The DCPC is also likely to provide improved coordination among and between permitting agencies with the Town of Falmouth by creating a set of unified development regulations applicable within the District.
6. A letter of support for the nomination was received from the Falmouth Board of Selectmen.
7. The proposed boundaries of the District are reasonably related to the purposes of the District and follow clear and easily definable boundaries.
8. The issuance of development permits, other than those specified below, for single family houses on lots held in common ownership or on lots in separate ownership may be substantially detrimental to the protection of the public health, safety and welfare, and would be contrary to the purposes of the Act and District of Critical Planning Concern.

Types and Classes of Development which May Proceed

Pursuant to Section 11(c) of the Cape Cod Commission Act, "the acceptance of a nomination for consideration for designation as a district of critical planning concern shall continue to suspend the power of a municipality to grant development permits for development within the nominated district. . . ."

The Cape Cod Commission, in conjunction with the Falmouth Conservation Commission, has identified the following types or classes of proposed development which may proceed during consideration of the nomination, provided however that such permits could have been issued in accordance with bylaws and regulations in effect in the town of Falmouth at the time of the local permit application. These types or classes of proposed development shall be deemed not substantially detrimental to the protection of public health, safety and welfare and will not contravene the purposes of the Cape Cod Commission Act and the DCPC nomination. Where a type or class of development is not included below, it may not proceed during consideration of the nomination.

- 1) Repairs and maintenance of existing structures, [i.e. replacement of exterior shingles, re-roofing (as long as there is no change in the roof line), interior renovations and/or elevation of existing structures to FEMA base flood elevation (as long as there is no increase in gross floor area as defined by the Falmouth Zoning Bylaw), replacement in-kind of doors, windows, etc.];
- 2) Replacement in the same footprint of existing decks, with no enclosure or increase in size (square footage);
- 3) Emergency repairs to septic systems or upgrades which comply with Title 5 regulations, and which will not result in any increase in flow to the system.
- 4) New construction pursuant to an Order of Conditions under the Falmouth Wetlands Bylaw issued prior to June 13, 1995, and which has all valid permits in place. Work cannot proceed if the project is under appeal.
- 5) Non-construction projects determined by the Falmouth Conservation Commission to have no negative environmental impacts on the area, i.e. vista pruning, limited removal of vegetation, etc.
- 6) Temporary structures without foundations may be constructed in accordance with Article 30 of the Falmouth Zoning Bylaws, provided however that if such structures have water/sewage disposal systems, they must be self-contained and further provided that all such structures must be removed in their entirety once implementing regulations are adopted or within two years, whichever occurs first.
- 7) Any development which constitutes emergency work as defined by Section 24 of the Cape Cod Commission Act. The proponent of any emergency work must notify the Commission immediately upon applying to a municipal agency or official for an application to conduct such emergency work. Emergency work shall be permitted and proceed only in accordance

with the standards and procedures set forth in Section 24 of the Act.

8) Any development, other than construction of new dwellings or construction or expansion of commercial uses, which can demonstrate that suspension of action on a local development permit application during the limited moratorium constitutes a substantial hardship. The Falmouth Conservation Commission shall act as the body that will hear hardship applications and determine whether they may proceed with applications for local permits. The Conservation Commission must specifically find, after a public hearing, that granting of the local development permit is necessary to avoid a substantial hardship and that immediate issuance of the local permit will not be substantially detrimental to the public good or substantially derogate from the intent or purposes of the DCPC nomination. The applicant for a hardship must provide written notice to the Cape Cod Commission at least 10 days prior to a public hearing on the hardship. Upon receipt of such a determination from the Conservation Commission, a project proponent may then apply to the relevant board(s) and official(s) for independent determinations of whether the applicable permit(s) should issue.

9) Activities exempt under Section 22 of the Cape Cod Commission Act including the repair, upgrade, change, alteration or extension of a single family dwelling or an accessory structure, septic system or water well relative thereto, if such dwelling existed prior to July 1, 1989, unless such upgrade, change, alteration or extension is greater than twenty-five percent of the floor area of the dwelling. Provided however, that the cumulative total of any expansions does not exceed 25% of the floor area prior to July 1, 1989.

10) Where an applicant demonstrates a taking under Section 11(h) of the Cape Cod Commission Act and where approval would not result in a reasonably foreseeable danger to public health or safety.

Conclusion

Based on the findings above, the Cape Cod Commission hereby accepts the nomination of Black Beach/Great Sippewissett Marsh as a District of Critical Planning Concern.

Sumner Kaufman
Sumner Kaufman, Chair

7/13/95
Date

COMMONWEALTH OF MASSACHUSETTS
Barnstable, ss.

Subscribed and sworn to before me this 13th day of July 1995

Katharine L Peters
NAME, Notary

My Commission expires _____