



CAPE COD COMMISSION

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DECISION OF THE CAPE COD COMMISSION
ACCEPTANCE OF DISTRICT OF CRITICAL PLANNING CONCERN (DCPC) NOMINATION FOR
CONSIDERATION OF OCEAN MANAGEMENT PLANNING DCPC

Date of Nomination: December 16, 2009

Date of Acceptance: January 21, 2010

Location of District: Barnstable County, Massachusetts

Type of District: Wildlife, Natural, Scientific, or Ecological Resource District
Cultural, Historic, or Archaeological Resource District
Economic or Development Resource District
Major Public Investment District
Hazard District

BACKGROUND

On or about December 31, 2009, the Commonwealth of Massachusetts promulgated the Ocean Management Plan (OMP). The OMP sets forth uses and activities allowed within the state's jurisdictional waters, and establishes performance standards for siting and permitting those uses. The OMP also charges the Regional Planning Agencies with determining appropriate scale of renewable energy projects, and with reviewing wind turbines proposed within the OMP planning area. On December 16, 2009, the Barnstable County Commissioners nominated the Ocean Management Planning area of Cape Cod for designation as a DCPC. This nomination is the subject of this decision.

BOUNDARY OF AREA NOMINATED

The proposed district is comprised of all the ocean waters and land below and air above within Barnstable County, starting from a line drawn 0.3 nautical miles seaward from Mean High Water (MHW) around Barnstable County and extending to 3 nautical miles from MHW, or the state jurisdictional boundary, whichever is farther from the shore, not to include the waters of Plymouth County, as shown on the attached map. This area is coincident with the planning area



as defined in the Massachusetts Ocean Management Plan and excludes the Cape Cod Canal and many of the bays, harbors and embayments as shown on the attached map. Where the bounds of Falmouth, Mashpee, and Bourne's municipal corporations intersect with the bounds of Wareham, Marion, Mattapoisett, Fairhaven, Gosnold, West Tisbury, Tisbury, or Oak Bluffs' municipal corporations, the district boundary ends with the municipal corporation boundary.

The boundaries are shown on the map attached herein as Exhibit A and incorporated by reference.

GENERAL STATEMENT OF PURPOSE AND REASONS FOR ACCEPTANCE

In accepting the nomination of the Ocean Management Planning DCPC for designation, the Cape Cod Commission makes the following findings:

1. On December 16, 2009, pursuant to Section 10(d) of the Cape Cod Commission Act (Act), the Barnstable County Commissioners nominated the Ocean Management Planning District as a District of Critical Planning Concern (DCPC).
2. Upon receipt of the nomination of the Ocean Management Planning District of Critical Planning Concern, the Commission provided notice of the nomination by mail to the Cape Delegation, Assembly of Delegates, the County Commissioners, the Cape Town Administrators, the Cape Town Clerks, as well as the Cape Building Inspectors, Boards of Selectmen, Planning Boards, Boards of Appeals, Conservation Commissions and Boards of Health, the Governor's Committee, the Woods Hole, Martha's Vineyard, & Nantucket Steamship Authority, Secretary Ian Bowles (EOEEA), and other interested parties. The Cape Cod Commission also provided notice of the nomination by publication in the following papers:
 - a. Cape Cod Times on 12/23/09
 - b. Barnstable Patriot on 12/25/09
 - c. Register Newspapers on 12/31/09
 - d. Cape Codder Newspapers on 12/25/09
 - e. Barnstable Enterprise on 12/25/09
 - f. Falmouth Enterprise on 12/25/09
 - g. Bourne Enterprise on 12/25/09
 - h. Bourne Courier on 1/6/10
 - i. Mashpee Enterprise on 12/25/09
 - j. Sandwich Enterprise on 12/25/09
 - k. Cape Cod Chronicle on 12/24/09
 - l. Provincetown Banner on 12/31/09
3. There is a need for special planning and regulations in the Ocean Management Planning District that will preserve and maintain values and resources intended to be protected by the Cape Cod Commission Act. This designation is of critical value to Barnstable County due to the following features found within and around the ocean water resources surrounding Cape Cod: the presence of significant natural, coastal, cultural, historic,

archaeological, economic resources, as well as future public infrastructure development, and possible use conflicts with identified hazards.

4. Regulatory and/or planning tools are available which are likely to be effective in protecting or otherwise meeting the objectives of the proposed district. The objectives of the proposed district are detailed below, but broadly include planning for allowed uses within the state's ocean waters, and developing regulations to address impacts to natural resources, historic and community character resources, resources that support the regional economy, and to manage use conflicts.
5. Natural resources, cultural / historic / archeological resources, historic preservation / community character, economic resources, public infrastructure, and hazard planning are regional issues identified in the 2009 Regional Policy Plan (RPP).
6. The Executive Office of Energy and Environmental Affairs promulgated the state's Ocean Management Plan on or about December 31, 2009. The OMP provides data, tools, and a regulatory framework for siting and permitting limited types of uses or activities within the state's ocean waters. The OMP brings together an extensive array of information on ocean uses and resources, and provides a framework for the regulatory review of allowed uses in state waters. The OMP charges the regional planning agencies with certain tasks: 1) determine appropriate scale for renewable energy projects, and 2) regulatory review of wind turbines.
7. As a result of the promulgation of the OMP, the uses allowed by that plan, and the Plan's charges to the Regional Planning Agencies, the DCPC nomination explicitly identifies concerns with regard to potential development impacts on the natural, ecological, water, cultural, archaeological, historic, and economic resources, and hazards of the Ocean Management Planning District.
8. The purpose of the district, therefore, is to evaluate and establish criteria for determining appropriate scale for renewable energy projects within Barnstable County, and for establishing procedures and regulations for the review of wind turbines and other uses and activities allowed under the Oceans Act of 2008 within the district, including: 1) the installation or development of activities and facilities associated with the generation, transmission and distribution of electric power, 2) the laying of cables, 3) channel and shore protection projects, 4) sand and gravel extraction for shore protection or beach restoration, 5) projects authorized under Chapter 91 and deemed to be of Public Necessity and Convenience, and 6) other activities not specifically prohibited by the Oceans Sanctuaries Act. The five DCPC types proposed for designation pertain to the charges of determining appropriate scale and regulating wind, and relate to the broader charges of the Cape Cod Commission under the Cape Cod Commission Act (Act), namely to protect unique natural, cultural and other values and to ensure balanced economic development.

The context for the Act is the inherent connection between the Cape's continued economic success and the health of the Cape's environment and unique character of the Cape communities. At the regional scale, the Cape Cod Commission is uniquely

positioned to balance economic growth with resource protection through proper planning and regulation.

9. The Ocean Management Planning District, consisting of the ocean waters, adjacent sea bottom, and the airspace above the ocean waters, contains extensive and diverse natural resources of high ecological, wildlife and scientific value of local, regional, statewide, and in some cases national significance. Marine plants, finfish, shellfish, marine mammals, and seabirds occupy different areas in varying concentrations within the district. The district includes critical habitat in Cape Cod Bay for federally endangered whales (Northern Right Whale, Fin Whale, Humpback Whale) and sea turtles. Habitats within the district also support endangered seabirds such as the Roseate Tern, large, seasonal concentrations of sea ducks, and important finfish and shellfish populations (lobster, sea scallop, horseshoe crab, etc.). Extensive beds of eelgrass, an important sub-tidal habitat for a variety of marine organisms, occur within the district. The district's diverse natural resources provide scientific research opportunities that will provide a better understanding not only of the Cape's marine ecology but also how the ocean's resources can be sustainably used into the future. The designation of this area as a wildlife, natural, scientific and ecological resource district will allow the Cape Cod Commission and the Cape towns to plan for development and develop regulations to address impacts to the natural resources and ecosystems in the district.
10. The Ocean Management Planning District encompasses areas that form the setting of numerous land-based historic districts, historic structures, and cultural landscapes. The historic buildings, neighborhoods, working waterfronts, and cultural landscapes that tell the Cape's story are both historically significant and critical to maintaining the unique character that draws so many people to the region. In many cases, the ocean is a distinctive component of the setting of these resources and of scenic areas, and significant changes to the setting would affect the historic integrity of the region's resources. The designation of this area as a cultural, historic and archaeological resource district will allow the Cape Cod Commission and the Cape towns to plan for development and develop regulations to address impacts to the historic and community character resources in this area.
11. Underwater archaeological resources exist on and beneath the ocean floor in the proposed DCPC area. These resources comprise both historic shipwreck sites and also paleosols or intact land masses that have been submerged and are believed to hold information about Native American land use prior to their submersion. Nantucket Sound has been determined eligible for listing on the National Register due in part to the significance of these archaeological resources. These resources have not been fully inventoried. While the OMP acknowledges the presence of these archaeological resources, it does not clearly limit sand mining and other developments that would disturb the ocean bottom. The designation of this area as a cultural, historic and archaeological resource district will allow the Cape Cod Commission and the Cape towns to plan for development and develop regulations to address impacts to the historic, tribal and community character resources in this area.

12. The Ocean Management Planning District contains many resources of vital economic interest to the Cape, the Commonwealth, and beyond. The district contains extensive fish and shellfish resources, and areas of significant commercial fisheries activity. The OMP identifies extensive areas of significance for recreational fishing and other recreational boating activities, including whale watch tours, which contribute to the tourist economy on Cape Cod. The scenic ocean backdrop also draws visitors to the area, providing a seasonal boost to the local and regional economy. At the same time, the district contains significant wind and tidal currents which may provide opportunities for clean renewable energy development, with the potential to create jobs and reduce the outflow of funds for foreign oil. The designation of this area as an economic and development resource district will allow the Cape Cod Commission and the Cape towns to plan for development and develop regulations to address impacts to the ocean resources that currently, or may in the future, support the regional economy.
13. The Ocean Management Planning District encompasses an area that allows for the development of up to 24 community scale wind turbines, and the potential for other renewable energy development in the future. This new potential use (enabled by the Oceans Act of 2008) will make possible a major public or private investment that may ultimately benefit the public through the generation of clean renewable energy. The designation of this area as a major public investment district will allow the Cape Cod Commission and the Cape towns to plan for development, involve the community in identifying appropriate locations and scale for such an investment, and streamline the regulatory review process for renewable energy or other public investment projects.
14. The Ocean Management Planning District may include areas that due to topography or ocean currents, or other factors, may not be appropriate for additional development. There is the potential that additional development could create hazards, such as underwater structures that could shift currents or sediment transport, causing shoaling or other problems. In addition, the OMP identified many activities within the ocean, including shipping lanes or ferry routes, and possible conflicts with these kinds of activities. The designation of this area as a hazard district will allow the Cape Cod Commission and the Cape towns to plan for development, to explore and clarify possible hazards, and to develop regulations to address use conflicts.
15. The district consists of the land and water which reasonably belong in the district because the critical areas / resources identified are in need of protection; it is the planning area which should be considered in adopting a coordinated system of regulations to protect both the critical resources and areas identified.
16. The proposed boundary of the DCPC is reasonably related to the purposes of the district and follows an easily definable boundary. The dimensions and / or landmarks which form the boundary of the district are identifiable.

TYPES AND CLASSES OF DEVELOPMENT THAT MAY PROCEED

17. 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 Commission has identified the following types or classes of proposed development which may proceed notwithstanding this nomination during consideration and designation and until implementing regulations are adopted pursuant to Sections 11(d) and (e) of the Act, provided however, that such permits could have been issued in accordance with bylaws and regulations in effect in the Towns of Barnstable County at the time of the local permit application. Pursuant to Section 10(f) of the Act, the Commission certifies, by the acceptance of this nomination, that these types or classes of proposed development are not substantially detrimental to the protection of public health, safety, and welfare and do 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 unless the district fails, until implementing regulations are adopted, or unless it is exempt pursuant to Section 22 of the Act, or exempted pursuant to Section 23 of the Act.

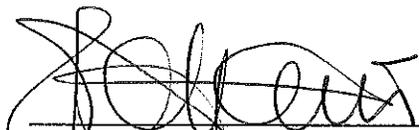
18. The Commission further finds in accepting the nomination of the DCPC that the issuance of development permits for the following activities should be allowed to continue in the Ocean Management Planning District during the moratorium:
- Normal and customary repair or maintenance to duly permitted structures such as jetties.
 - Any fishing or aquaculture activities.
 - Duly permitted maintenance dredging.
 - Issuance of mooring permits.
 - Marine debris cleanup programs on the seafloor within town harbors.
 - Placement, replacement, maintenance and/or repair of aids to navigation.
 - Sand or sediment mining for emergency nourishment of barrier and coastal beaches serving a storm damage prevention function.
 - Eelgrass restoration projects.
 - Aquatic recreational activities that do not require anchored or permanent floating structures.
 - Any development or redevelopment activity where all necessary permits for the development or redevelopment activity have been issued and are final before December 23, 2009.
 - A denied permit that was the subject of a judicial appeal filed prior to December 23, 2009, which appeal is favorably resolved by a final written decision of a Massachusetts court for the applicant during the period that the nomination is being considered.
 - Any development that 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.

- Where an applicant demonstrates that, as stated in Section 11(h) of the Cape Cod Commission Act, to deny a development permit would constitute a taking of property in violation of the Massachusetts and United States Constitutions; provided that no reasonably foreseeable danger to the public health or safety will arise from such approval or approval with conditions.
- Developments of Regional Impact (DRI) with a DRI approval as defined by Section 11(c)(2) of the Cape Cod Commission Act, and DRIs referred for review prior to December 23, 2009, and which are subsequently approved.
- Any development which can demonstrate that suspension of action on a local development permit application during the limited moratorium constitutes a substantial hardship, financial or otherwise, to the applicant 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 Cape Cod Commission Act. Hardship applications will be heard by the Cape Cod Commission in accordance with Section 23 of the Cape Cod Commission Act.

CONCLUSION

Based on the findings above, the Cape Cod Commission hereby accepts the nomination of the Ocean Management Planning District in Barnstable County for consideration as a District of Critical Planning Concern.



John D. Harris, Chair

21-Jan 2010

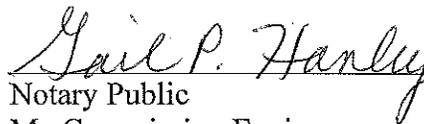
Date

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss

1/21, 2010

Before me, the undersigned notary public, personally appeared John D. Harris, in his capacity as Chairman of the Cape Cod Commission, whose name is signed on the preceding document, and such person acknowledged to me that he signed such document voluntarily for its stated purpose. The identity of such person was proved to me through satisfactory evidence of identification, which was photographic identification with signature issued by a federal or state governmental agency, oath or affirmation of a credible witness, or personal knowledge of the undersigned.


Notary Public

My Commission Expires:

10.13.11