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CAPE COD  
COMMISSION

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**Minutes**  
**Meeting of**  
**Cape Cod Commission**

December 4, 2014

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	Absent
Brewster	Elizabeth Taylor	✓
Chatham	Michael Skelley	Absent
Dennis	Richard Roy	✓
Eastham	Joy Brookshire	Absent
Falmouth	Andrew Putnam	Absent
Harwich	Jacqueline Etsten	✓
Mashpee	Ernest Virgilio	✓
Orleans	Len Short	✓
Provincetown	Austin Knight	Absent
Sandwich	Harold Mitchell	✓
Truro	Kevin Grunwald	✓
Wellfleet	Roger Putnam	✓
Yarmouth	John McCormack, Jr.	✓
County Commissioner	Mary Pat Flynn	✓
Minority Representative	John Harris	✓
Native American Rep.	Danielle Hill	✓
Governor's Appointee	Vacant	Vacant

The meeting of the Cape Cod Commission was called to order on Thursday, December 4, 2014 at 3:10 p.m. in the First District Courthouse, Assembly of Delegates Chambers, Barnstable, MA. Roll was called and a quorum established.

## ■ SUMMARY OF ACTIONS TAKEN/VOTES:

### **Public Hearing: Orleans Phosphorus Bylaw Provisions—Fertilizer Management DCPC**

Following presentations, testimony and discussion the Full Commission voted unanimously in favor to close the public hearing. Following the close of the public hearing the Full Commission voted unanimously that Orleans' Phosphorus Bylaw Provisions conform to the Guidelines for Implementing Regulations set out in the Fertilizer Management DCPC Designation, Barnstable County Ordinance 13-07.

### **Regional Policy Plan Five-Year Update**

Kristy Senatori, Deputy Director at the Commission, with the use of PowerPoint Slides provided an overview of the review process for the Commission's Regional Policy Plan Five-year Update. The PowerPoint slide presentation is an attachment to the minutes.

## ■ EXECUTIVE DIRECTOR'S REPORT

Paul Niedzwiecki invited Commission members to the Commission's holiday lunch on December 16. He said the Regional Policy Plan (RPP) hearings would be starting next week; the Commission has hired a new hydrologist with a starting date of December 1; on November 25 he attended the Massachusetts Economic Impact Awards ceremony and noted that Hydroid, a previous DRI project that came through the Commission, received an award; he attended the Massachusetts Digital Summit with the County's IT Director; the Commission has been attending meetings regarding the Route 6 issue and replanting efforts and said the Commission is working on long term recommendations with MassDOT on this; the public comment period for the 208 Plan ended on November 20; a wastewater summit is scheduled for the evening of February 25 and all day on February 26; the final 208 Plan will be submitted on March 1; the law suit between the Conservation Law Foundation and the U.S. Environmental Protection Agency has been settled; and on November 20 he met with the Martha's Vineyard Commission.

## ■ MINUTES

The minutes of the October 16, 2014 Commission Meeting were reviewed. Jack McCormack moved to approve the minutes. Roger Putnam seconded the motion. The motion passed with one abstention.

## ■ ORLEANS PHOSPHORUS BYLAW PROVISIONS—FERTILIZER MANAGEMENT DCPC

Harold Mitchell read the hearing notice and opened the hearing at 3:20 p.m.

Jon Idman, Chief Regulatory Officer at the Commission, with the use of PowerPoint slides provided an overview of the Fertilizer Management District of Critical Planning Concern (DCPC) Town Implementing Regulations. He provided background information, explained the DCPC process and designation timeline. He said the legal principle of preemption is if (state) government has enacted legislation on a subject matter, it shall preclude municipalities from enacting laws on the same subject if the state has intended to "occupy the field." He said the purpose of the DCPC is for the protection of values and resources through planning and regulation; local control—the DCPC would be implemented and administered by individual towns; it manages excess nutrients—better management lowers nutrient contributions to water resources; lower cost nutrient management—possible N credits through the 208 Plan; and Best Management Practices—incorporates best management practices and education through regulation. He explained the guidelines in Section 6.4 regarding time of fertilizer application, location of fertilizer application, manner of fertilizer application, education/outreach opportunities, certification/licensure opportunities, exemptions, and consistency with UMass Turf Best Management Practices. He said the Commission's model regulations/bylaw established an example for a regulation consistent with DCPC designation guidelines and he explained the different components of the model bylaw. He said the state regulation—Draft 330 CMR 31.00 not yet completed—differences with the

Commission's model as there are no specific controls on N quantity; there is no potential control over "organics"; time of year restrictions December 1 to March 15; there is no opportunity for a local licensure/certification program; and wetland buffer zone applications. Mr. Idman said the next steps in the process are for the Commission to review consistency of town regulations adopted prior to December 31, 2014. He said Mashpee's bylaw was approved for consistency by the Full Commission on November 13, 2014, Orleans' bylaw is being heard by the Commission today and Barnstable, Brewster, Chatham, Eastham and Provincetown—five towns with six different regulations—will be heard on December 18, 2014. He said following that the Commission will develop a web page to assist stakeholders by posting a synopsis of locally adopted regulations online in an easily accessible format.

Chair Richard Roy asked if Provincetown would have their bylaw by the December 18 Commission meeting.

Jon Idman said he believes so.

George Meservey, Planning Director for the Town of Orleans, said at Town Meeting in 2013 Orleans approved a nitrogen control bylaw and followed up at Town Meeting on October 27, 2014 to address phosphorus. He said the phosphorus provision was developed by the Planning Board as the Board of Health chose not to move forward and Orleans opted to do a general bylaw as opposed to a Board of Health bylaw. Mr. Meservey explained that Orleans' phosphorus bylaw is consistent with the seven Guidelines for Implementing Regulations regarding timing of fertilizer application; location of fertilizer application; manner of fertilizer application; education; certification; exemptions and compliance with UMass Best Management Practices. Mr. Meservey said Orleans developed the bylaw within the DCPC timeframe, it meets and is consistent with the seven Guidelines for Implementing Regulations and it meets the needs of the town.

Jon Idman outlined his memo to Commission members and said the Commission is looking at just the phosphorus provisions today. He said Orleans does allow in their exemptions repairing of turf, if needed, and this is consistent with Best Management Practices. He said Orleans has chosen to make this a local matter and noted that the town is already regulating nitrogen. He said Commission staff suggests that the Town of Orleans' Phosphorus Provisions do conform to the guidelines set out in the Fertilizer Management DCPC Designation.

**Federal, state, county, and local officials were called to provide comment.** There was no comment by federal, state, county or local officials.

#### **Public comment was called**

Ed DeWitt, Executive Director of the Association to Protect Cape Cod, said this is a great second step that fits under the umbrella of the DCPC guidelines. He said Orleans is using Best Management Practices and it's a great step in saving taxpayers spending money on chemicals that harm water supplies.

Len Short moved to close the public hearing. Roger Putnam seconded the motion. The motion passed with a unanimous vote.

Harold Mitchell moved that Orleans' Implementing Regulations, adopted at Orleans Town Meeting on October 27, 2014, conform to the Guidelines for Implementing Regulations set out in the Fertilizer Management DCPC Designation. Len Short seconded the motion.

A vote called on the motion passed with a unanimous vote by the Commission.

#### **■ REGIONAL POLICY PLAN FIVE-YEAR UPDATE**

Kristy Senatori, Deputy Director at the Commission, with the use of PowerPoint Slides provided an overview of the process to review and amend the Commission's Regional Policy Plan every five years. She outlined the public hearing process for the upper-Cape, mid-Cape and outer/lower Cape sub-regions. She said the public

hearings will begin on December 9 at 4:00 p.m. in the Strategic Information Office/Barnstable County Complex; December 10 at 4:00 p.m. at the Chatham Community Center; December 11 at 4:00 p.m. at the Mashpee Public Library and she explained the goals/agenda for the December public hearings. Ms. Senatori's PowerPoint slide presentation is an attachment to the minutes.

A motion was made to adjourn at 4:00 p.m. The motion was seconded and voted unanimously.

Respectfully submitted,

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Harold Mitchell, Secretary

### **List of Documents Used/Presented at the December 4, 2014 Commission Meeting**

- Minutes of the October 16, 2014 Commission meeting.
- Handout material: December 4, 2014 Commission meeting agenda.
- Handout material: Memo to the Cape Cod Commission from Jon Idman, Chief Regulatory Officer.
- Handout material: Orleans Phosphorus Bylaw Provisions
- Materials presented: PowerPoint Slide presentation on Fertilizer Management DCPC Town Implementing Regulations prepared and presented by Commission Staff.
- Materials presented: PowerPoint Slide presentation on the Commission's Regional Policy Plan Five-year Update prepared and presented by Commission Staff.