

The meeting of the Cape Cod Commission was called to order on Monday, March 30, 2009 at 1:00 p.m. in the Assembly of Delegates Chambers in Barnstable, MA. Roll was called and a quorum established.

## ■ CAPE WIND ENERGY PROJECT CONSISTENCY DETERMINATION

Chair John Harris noted that this is a public meeting not a hearing. He said the purpose of today's meeting is to hear testimony on Coastal Zone Management's (CZM) request that the Commission provide comments on any objections to CZM's Federal Consistency Certifications on the Cape Wind Energy Project.

He said all speakers are to identify those areas, if any, of inconsistency with the RPP or the LCP that they wish the Commission to consider presenting in its letter to CZM. Mr. Harris outlined the parameters of the meeting and said Commission staff will give a presentation on the RPP and then presentations on LCPs from the Towns of Yarmouth and Barnstable will be made. He said each of the presenters would be allowed 15 minutes to speak. He said following that officials from federal, state and municipal entities and parties who filed a written request to speak will be given 3 minutes each to speak. He said speakers would be called to the podium in the order their request was received by the Commission. He noted that there were individuals in the audience who had not requested to speak in writing prior to today's meeting and have asked to speak today. Mr. Harris said every attempt would be made to allow those individuals to speak if time permits.

Commission member Roy Richardson recused himself from the meeting.

Phil Dascombe, Senior Community Design Planner at the Commission, said on March 13, 2009 the Commission received a letter from Mr. Deerin Babb-Brott, Director of the Massachusetts Office of Coastal Zone Management requesting the Commission comment on any objections with respect to the Federal Consistency Certifications issued by CZM on the Cape Wind Energy Project. He said the correspondence also provides a 21-day period for the Commission to respond to CZM's certifications, with a deadline for providing comment of April 2, 2009.

Mr. Dascombe presented PowerPoint slides and briefly described the project and said Cape Wind is proposing to construct a wind park facility to include 130 wind turbines which would be connected via a submarine cable to an Electrical Service Platform (ESP). He said the electricity from each turbine would be transmitted via submarine cable to shore. He said the proposed upland cables would be joined to the submarine cables at the landfall location inside a below-ground, precast concrete transition vault. He said the upland transmission line system would be carried in a below-ground, concrete encased ductbank. He said the upland ductbank would be installed in a single trench below the existing roadway corridors and in NSTAR's right-of-way. He said the proposed transmission lines would include approximately 15 underground vaults along the roadway portion of the route and 9 underground vaults in the NSTAR right-of-way for the purposes of connecting portions of the cable together.

Mr. Dascombe provided a background history on the project and said the Cape Wind project was subject to a review by the Commission as a DRI as a project for which the Secretary of Environmental Affairs has required an Environmental Impact Report (ENR). He said on October 18, 2007 the Commission issued a procedural denial decision of Cape Wind's DRI application as the Commission found that Cape Wind had not provided sufficient information in their application for the Commission to determine if the project was consistent with the Minimum Performance Standards (MPS) in the 2002 Regional Policy Plan (RPP). He said on December 28, 2007 Cape Wind made an application to the Energy Facilities Siting Board (EFSB) for a Certificate of Environmental Impact and Public Interest and in their application, Cape Wind requested that the EFSB override the Commission's procedural denial decision as well as all remaining state and local permits. Mr. Dascombe said the Minerals Management Service (MMS), which is a division of the Department of the Interior, has been concurrently reviewing the Cape Wind project and has completed the environmental review process under the National Environmental Policy Act (NEPA). As the lead agency under NEPA, the MMS issued a Draft Environmental Impact Statement (DEIS) on January 18, 2008 and a Final Environmental Impact Statement (FEIS) on January 21, 2009. He said both the DEIS and FEIS were issued after the Commission issued its DRI decision. He said

the MMS must also issue a “Record of Decision” on the project that would authorize the project to proceed. Mr. Dascombe explained the roles and responsibilities of CZM and said it’s a part of the Executive Office of Energy and Environmental Affairs (EOEEA) and their mission is to balance human activity with the protection of coastal and marine resources. He said CZM has the authority to review federal activities in the Massachusetts coastal zone to ensure that they are consistent with the CZM program policies. He said the Cape Cod Commission Act, Section 16(c), requires CZM to refer all consistency certifications in Barnstable County to the Commission to review for consistency with the RPP and Local Comprehensive Plans (LCPs). He said in January, 2009 CZM issued two consistency certifications for the Cape Wind Project and in March, 2009 CZM sent a letter to the Commission requesting that the Commission comment on any objections with respect to the consistency certifications issued by CZM on the Cape Wind Project. Mr. Dascombe referred to slides and compared standards that the Commission found inconsistent or unable to determine from October 18, 2007 with consistency findings noted in the staff report of March 26, 2009. He noted areas of consistency and inconsistency regarding: **water resources**—hazardous materials and wastes; state and federal stormwater/groundwater regulations; fresh water delineation assessment and/or management; discharge of untreated stormwater, parking-lot runoff, and/or wastewater; stormwater management and best management practices; separation between leaching basins and groundwater; stormwater maintenance and operation plan; **coastal resources**—development in V-zones; development on barrier beaches and coastal dunes; non-water-dependent development within 100 feet of the top of a coastal bank, dune crest or beach; new dredging; impacts to eelgrass beds; impacts to fish, shellfish and crustaceans; **wetland resources**—utility installation in wetlands and buffer areas; **wildlife and plant habitat**—clearing of vegetation and alteration of natural topography; rare species habitat; invasive species; cluster development outside sensitive resource areas; open space requirement; significant natural and fragile areas; air quality/noise; **economic development**—economic impact data required and analysis; **hazardous materials and waste management**—minimization of hazardous materials and wastes and compliance with Massachusetts Hazardous Waste Regulations; limitations on hazardous materials and wastes in wellhead protection areas and potential public water supply areas; preparation of an emergency response plan; and **heritage preservation/community character**—historic structures; historic and cultural landscapes; archaeological sites; and exterior lighting. Mr. Dascombe said representatives from the Towns of Barnstable and Yarmouth would give presentations on consistency with their town’s LCP. In conclusion, Mr. Dascombe said staff recommends that the Commission send a letter to CZM identifying areas where inconsistencies with the 2002 RPP are known or are unable to be determined as described in the staff report, relevant information be included on whether the project is consistent with the LCP from the Towns of Barnstable and Yarmouth, and other relevant information from today’s public testimony be included.

Suzanne McAuliffe, Chair of the Yarmouth Board of Selectmen, referred to the comment made that a lot of the details would be with local permitting and noted that a lot of the local permitting would be under the guise of the super permit. She said the towns of Barnstable and Yarmouth have local conservation permits and road opening permits. She said the town is concerned that if the super permit is granted it would take away from local permitting and Cape Wind would not honor their agreement with the Town of Yarmouth. She said Cape Winds’ plans have changed for a bigger vault and Cape Wind hasn’t provided enough information. She referred to an article that appeared in the Cape Cod Times regarding the width of the cable. She submitted for the record a letter from Karen Greene listing specific concerns the Town of Yarmouth has. Ms. McAuliffe said she is concerned that the project would go forward without enough information.

Attorney Charles McLaughlin submitted material into the record and referred the Allen versus BRA case. He said this case is about a bio-safety facility and the release of pathogens. He said he refers to this case because the language is relevant to this matter. He said results of the Cape Wind project would be catastrophic. Attorney McLaughlin said the Commission has the authority to ask CZM to impose mitigation.

Jo Anne Miller Buntich, Interim Director of Growth Management for the Town of Barnstable, talked about groundwater, scenic recreation, and natural resources. She said the installation of a transmission cable in the Lewis Bay area would be located within a rare species habitat. She talked about shellfish permits issued by the Town of Barnstable and said the development would result in loss and degradation of shellfish beds. She referred to the Hyannis Growth Incentive Zone

area and said the town is concerned about impacts to economic development. She said the project would also have adverse impacts to historic resources and scenic views and vistas.

Attorney Charles McLaughlin talked about the failure of CZM's process in regard to state standards. He said the oil spill response plan remains in draft form and questions asked by the Commission remain unanswered. He said the Allen versus BRA case addresses a critical issue and it should be used in the analysis of the Cape Wind project. He submitted into the record a letter from the DEP to the MMS regarding economic development and said it should be taken seriously. He said the Commission has the unique opportunity to use its authority here.

Brad Crowell inquired about the transmission cable and asked if it would run through property above and below water in Yarmouth and Barnstable.

Suzanne McAuliffe described the location of the cable in Yarmouth.

Attorney Charles McLaughlin said a portion of the cable would go through Barnstable water.

State Representative Matt Patrick submitted into the record his letter to the Commission. He said regardless of all the planning, regulations and laws, a good deal of any project's potential approval is left up to the judgment and subject to the prejudices of the Commission. He referred to an article that appeared in today's Cape Cod Times regarding Cape Wind's review and said it has been a long seven-year process and has taken longer to approve than most nuclear power plants. He reminded the Commission of the energy element in the Commission's RPP. He said oil used would be food-grade oil in comparison to #6 bunker oil. He said if Cape Wind is built there would be fewer ships carrying #6 oil in that area.

Michelle Jones, representing Martha's Vineyard/Dukes County fishermen, questioned how trap fishing could take place in that area. She talked about security and maintenance boats that would be in the area and said trap fishermen would have to work around a grid. She talked about the viability of the Horseshoe Shoal area for conch trap fishing and said that naturally sustainable area would be destroyed by the project. She said the issue is not about looking at windmills it's about a fishing industry.

Senator Robert O'Leary talked about the Ocean's Management Act (OMA) and said by the end of the year the final plan would be in place with a process that would require that a comprehensive plan always be in place. He said the OMA was made possible through the state level and at the federal level nothing like the OMA has happened. He said the Commission should pressure the federal government for not doing what they should have done.

Tom Bernardo, legislative aide to Representative Demetrius Atsalis, read into the record a letter from Representative Atsalis. Mr. Bernardo said the letter says the project should be denied as it does not comply with Barnstable and Yarmouth's LCP and minimum performance standards in the Commission's RPP. He said the Commission should consider impacts from the turbines not just the transmission cables. He said the only effective mitigation is relocation of the project to another site.

Bud Breault, Airport Manager/Barnstable Municipal Airport on behalf of the Airport Commission, said the Airport Commission believes the project is inconsistent with the minimum performance standards regarding structures presumed to be hazardous to aviation. He said they would recommend relocation to a more appropriate area where it would not impact with the air corridor and water resources. He said the present location is an inappropriate area as the Nantucket Sound area is a congested area for both air and water corridors.

Dean Melanson, Chief of the Hyannis Fire Department representing fire chiefs from Yarmouth and Barnstable, said they have not received any more information to date regarding a emergency response plan/fire response and mitigation plan. He said the Hyannis Fire Department is in the process of obtaining a fireboat but it would not be suitable in that case. He

said Cape Wind still has not communicated with him and he would like to talk to Cape Wind representatives about their plan to deal with emergency response management. He said there is still no emergency response plan to date.

George Green, Mashpee Board of Selectmen and designee for historic preservation for the Mashpee Wampanoag Tribe, said the Cape Wind project is inconsistent with the RPP and LCP for both Barnstable and Yarmouth. He said the project adversely affects the historic, archaeological and geologic resources of the Mashpee Wampanoag Tribe. He said traditional ceremonial practices of the Aquinnah Tribe would be impacted by Cape Wind and said the watersheds are important to the Tribes. He said the project violates the RPP and the Commission should preserve historic resources as it's mandated to do.

Captain Charles Gifford, Woods Hole/Martha's Vineyard/Nantucket Steamship Authority, said the Steamship Authority completes over 22,000 trips yearly. He said he has concerns about electrical transmission lines and said Cape Wind would cause navigational hazards and impacts. He said project benefits should outweigh the detriments and one of the biggest detriments is the dredge channel that would interfere with the navigational channel.

James Liedell, Yarmouthport resident, corrected Suzanne McAuliffe's comment regarding the width of the cable she noted from an article by the Cape Cod Times. He said the Cape Cod Times made a correction to their article and noted the cable to be 7.3 inches not 7 feet.

Clifford Carroll, representing Wind Stop.Org and resident of Yarmouth, said the project is not consistent with minimum performance standards. He talked about oil spills and said Cape Wind has never done a mapping of shellfish beds. He referred to the comment made that the oil would be a food-grade oil and said Cape Wind has never provided fact sheets indicating toxicity levels. He said Cape Wind has never provided any information on that. He said emergency response plans are still incomplete and the detriments far outweigh benefits of the project.

Glen Whately, Alliance to Protect Nantucket Sound, said Cape Wind is inconsistent with the minimum performance standards regarding dredging and interference with radar. He said it would have an adverse visual affect on historic properties of the Aquinnah Wampanoag Tribe. He said he believes the project would raise electric bills and the detriments outweigh the benefits. He said the Commission should deny the project based on inconsistencies with Commission standards.

Sarah Turano-Flores, Alliance to Protect Nantucket Sound, said CZM referred the certificate of consistency after the fact and said they were required to do so prior to issuing a certificate. She said CZM is asking for a 21-day comment period and said the Commission should ask for an extension of the comment period. She said the FAA has released a notice of presumed hazard and described inconsistencies with minimum performance standards.

Robert Bussiere, resident of Mashpee and co-founder of Wind Stop.Org, talked about bird kills by turbines in Europe. He said turbine towers kill 20-40 birds a year. He said when birds and bats are killed in large numbers the result is more insects and disease. He said there would also be economic impacts from the project as well.

Bruce McPherson, resident of Hyannisport, said it seems as though Cape Wind is trying to take the Commission out of the mix. He said the Commission's procedural denial decision is spot on. He said he appreciates the Commission and would urge the Commission to continue to be the eyes and ears. He said all legal cases for this site should be handled in local courts.

Ted Chisholm, Massachusetts Boating and Yachting Clubs, said the Massachusetts Boating and Yachting Clubs represents over 50,000 households that belong to the association. He said he believes the project is not consistent with the Barnstable and Yarmouth LCPs. He said the poorly chosen location would interfere with public access and marine radar. He said the proposed project would have navigational impacts.

Wayne Kurker, Hyannis Marina, referred to the comment made regarding food-grade oil and said diesel and heating oil gets transported. He said these turbines have the unique phenomena of obscuring radar. He said no agency could handle an oil spill and the Coast Guard doesn't have the equipment to handle it. He said he is still curious about how much electric bills will go up and said Cape Wind still hasn't said.

Richard Neitz, Chairman of the Board/Cape Cod Chamber of Commerce, said the Chamber's mission is to promote economic viability. He said he believes Cape Wind is inconsistent with the Chamber's goals. He said he agrees that Cape Wind is inconsistent with minimum performance standard 3.1.1 and the proposed project is not economically sound. He urged the Commission to deny the project.

Bettina Washington, Tribal Historic Officer with Wampanoag Tribe Aquinnah, said the area is sacred to their people and the Cape Wind project would desecrate religious freedoms and tribal rights. She said the proposed project violates MPS 6.1.2 and 6.1.3. She said the transmission lines would be located in the Tribe's ancestral land. She said there would be impacts to archaeological and geologic resources. She said the MMS is still in consultation with the Tribe. She urged that the project be denied for their religious and cultural well-being.

Mark Harding referred to the American Religious Protection Act and the Freedom Act and asked Ms. Washington if this had been mentioned in consultation with Cape Wind.

Bettina Washington said that it was mentioned in letters they submitted.

Mark Harding said the staff report is lacking in that regard and he would ask that the Tribe's concerns be met in the future.

Peter Kenney, resident of West Yarmouth, said the project is turbine dependent and we don't know how large an area the project would be, we don't know how high the turbines would be, we don't know about the spacing or the cost from a project that doesn't exist. He said before we can determine consistency we have to know what we're talking about. He recommended that consistency be denied and that perhaps Mr. Gordon should be invited to come to the Cape and explain the latitude and longitude of the turbines. He said someone has not told the truth and the project was a bad idea in 2001 and it's a bad idea now.

Ed Barrett, President of Massachusetts Fishermen's Partnership said the project is inconsistent with MPS 2.2.1.1, 2.2.8, and 3.1.1. He said the Cape Wind project poses serious threats to navigation and poses hazards in Nantucket Sound. He said other fishing groups have echoed concerns about navigational safety and the project violates numerous standards. He urged denial of the poorly sited project.

Florence Seldin reminded everyone that the Commission Act required CZM to make this request to the Commission. She said today's meeting provides an opportunity for public comment. She said the Commission is not voting on the merits of wind energy or voting to deny or approve the project. She said the Commission is voting on inconsistencies of minimum performance standards in the RPP. She said staff did an excellent job with the staff report and she wants to make it clear what the Commission is voting on today.

Paul Niedzwiecki said this is not a debate about wind energy. He said undeniably there is a need and a benefit for energy projects in the right places. He said the project has already been procedurally denied. He said reference was made recently about a seven-year review process and said the Commission was a very small part of that. He said the Commission is trying to do their job in a methodical and expeditious way.

A 10-minute break was called at 3:40 p.m. and the meeting reconvened at 3:50 p.m.

Brad Crowell said he agrees with the water resources and hazardous waste sections and said Cape Wind has a long way to go.

Mark Lohan said if the EFSB grants Cape Wind a super permit how and who would administer it and would there be any local overview of that process.

Phil Dascombe said it would be done by the EFSB.

Jessica Wielgus said the EFSB has asked Cape Wind to consult with municipalities.

Brad Crowell referred to MPS 2.2.3.6 on page 12 of the staff report and said it appears there are two criteria. He asked what the reasoning was regarding sediment cores.

Phil Dascombe said at the time the subcommittee was looking for impacts of dredging.

John Ramsey, Commission consultant from Applied Coastal Inc., said sediment cores should be looked at along the route to look for the best route.

Brad Crowell said the staff report appears to consider the cable leading up to the three-mile limit. He said suggestions indicate that the Commission should be looking beyond that and asked what staff thought.

Jessica Wielgus said based on Section 16 of the Commission Act anything beyond the three miles could be considered as part of the benefits and detriments test.

Attorney Charles McLaughlin said having attended all the EFSB meetings Cape Wind agrees that the CZM process allows CZM to look at federal waters. He said it's appropriate and he believes this is what the state had in mind when it started the CZM process.

Roger Putnam referred to historic resources and asked how many changes had been made in the staff report since the procedural denial decision.

Sarah Korjeff, historic preservation planner at the Commission, said throughout the entire review process the review of impacts on historic resources has not yet been resolved. She said this is disturbing since other agencies are making decisions on the project. She said there is a tentative meeting on April 28 to continue the Section 106 process. She said she believes it would be appropriate for the Commission to discuss impacts of turbines on the historical and cultural resources.

Elizabeth Taylor asked if the Commission was going to raise the issue of hazards on navigation that has been mentioned.

Phil Dascombe said they could use all criteria used for a DRI review. If said if the Commission decides on that it could be raised as well.

Elizabeth Taylor asked if rare species habitat would be included.

Phil Dascombe said the Commission can raise issues beyond what is in the staff report.

Elizabeth Taylor referred to MPS 6.1.1 and 6.1.2 and questioned whether "not applicable" should be used instead of "consistent."

Sarah Korjeff said historical is something the Commission can determine.

Elizabeth Taylor questioned whether historical would be based on information discussed today.

Sarah Korjeff said the Commission could make that determination today.

Joy Brookshire asked if it's possible to ask for an extension to allow more time to respond to public comment and address comments made by Mr. Harding. She said 21 days is not enough time.

Paul Niedzwiecki said it's possible but probably not advisable. He said the letter to CZM would give the Commission more reach in federal waters. He said perhaps the Commission could add an addendum.

Joy Brookshire said she was on the Cape Wind subcommittee in 2007 and said the subcommittee was faced with a short deadline. She said CZM would need to understand that the Commission didn't have enough information or time to review the project before and the Commission doesn't have enough time now.

Jessica Wielgus said the Commission could raise issues in the letter to CZM informing them that these issues exist.

Brad Crowell said he is concerned about "submitting everything but the kitchen sink." He said he agrees with what others have said that Cape Wind is not listening to the Commission but he has concerns about saying that. He said Cape Wind is eager to bypass the Commission and he is concerned that the Commission will be ignored if the Commission doesn't do what is within their jurisdiction.

Joy Brookshire said she would like the Commission to address issues about Native Americans. She said they have never been heard and they should be heard.

Jessica Wielgus said staff could list issues that have been raised today. Ms. Wielgus made suggestions on how they could be raised and listed in the letter to CZM. She said issues that are not in the staff report could be added to the CZM letter and other than that everything presented was aligned with what Commission members have raised.

Attorney Charles McLaughlin said he believes the water resources findings are important and would urge that it's made crystal clear. He said Cape Wind is not carrying their burden and has consistently ignored the Commission. He said there is no Cape Wind representative here today, these issues were raised today, Cape Wind did not show their burden and they are inconsistent with minimum performance standards of the RPP.

Clifford Carroll said Cape Wind has consistently not shown toxicity levels of oil spills. He said he could not understand how the Commission could allow that to not be identified.

Ernest Virgilio asked if there had been any opportunity to discuss the letter with CZM.

Paul Niedzwiecki said just today. He said CZM has an opportunity to consult with the Commission and that is the purpose of today's meeting. He said he agrees with Mr. Crowell's comments and said the letter to CZM could be structured to show inconsistencies.

Florence Seldin moved to direct staff to draft a letter to CZM incorporating recommendations by the staff regarding inconsistencies with the RPP, identify issues raised by the towns of Barnstable and Yarmouth regarding inconsistencies with their Local Comprehensive Plans, and include information and issues raised today. Brad Crowell seconded the motion.

Chair John Harris asked Ms. Wielgus if staff would be listing all issues raised specifically or just making a general statement.

Jessica Wielgus identified the additional issues to be raised beyond the staff report and town presentations as the FAA notice of a presumed hazard, MPS 2.2.1.1 where development should not interfere with existing public access to the shoreline, the historical and community character MPS 6.1.1, 6.1.2, and 6.1.6 involving historic and cultural landscapes for the purpose of the Section 106 review as well as for Native American concerns.

Elizabeth Taylor inquired about MPS 4.1.2, 2.2.1 and 2.2.8 that were mentioned and asked if they would be included.

Jessica Wielgus said she did not identify them but they could be raised as well.

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

Florence Seldin moved to authorize Chair John Harris to review and sign the letter to CZM on behalf of the Cape Cod Commission since it's due on April 2, 2009. Michael Blanton seconded the motion. The motion passed with a unanimous vote.

A motion was made to adjourn at 4:35 p.m. The motion was seconded and voted unanimously.

Respectfully submitted,

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Florence Seldin, Secretary