

3225 MAIN STREET • P.O. BOX 226
BARNSTABLE, MASSACHUSETTS 02630



CAPE COD
COMMISSION

(508) 362-3828 • Fax (508) 362-3136 • www.capecodcommission.org

Minutes

Meeting of Cape Cod Commission

February 14, 2013

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	✓ (left at 5:10 p.m.)
Brewster	Elizabeth Taylor	Absent
Chatham	Vacant	Vacant
Dennis	Richard Roy	✓
Eastham	Joy Brookshire	✓
Falmouth	Andrew Putnam	✓
Harwich	Vacant	Vacant
Mashpee	Ernest Virgilio	Absent
Orleans	Leonard Short	✓
Provincetown	Austin Knight	✓
Sandwich	Joanne O'Keefe	Absent
Truro	Peter Graham	✓
Wellfleet	Roger Putnam	✓
Yarmouth	John McCormack, Jr.	✓
County Commissioner	Mary Pat Flynn	Absent
Minority Representative	John Harris	✓
Native American Rep.	Vacant	Vacant
Governor's Appointee	Herb Olsen	Absent

The meeting of the Cape Cod Commission was called to order on Thursday, February 14, 2013 at 3:00 p.m. in the Assembly of Delegates Chambers in Barnstable, MA. Roll was called and a quorum established.

■ **SUMMARY OF ACTIONS TAKEN/VOTES:**

Sagamore Line Reinforcement Project Western Segment Phase I & II

The Cape Cod Commission took testimony from the applicant, staff and the public and reviewed the draft decision. The Commission voted 10 in favor and one abstention to remand the hearing back to the Hearing Officer and unanimously continued the hearing to February 28, 2013 at 3:00 p.m. in the First District Courthouse, Assembly of Delegates Chamber.

Harwich Division Approval Not Required (ANR) Plan

The Cape Cod Commission had continued the hearing, unanimously voted to close the hearing and the record, and reviewed the draft decision. The Commission unanimously voted to approve the Harwich Division ANR as a Development of Regional Impact Exemption and to approve the draft written decision.

Notification of Withdrawal of Heritage Community Solar Gardens

The Cape Cod Commission voted unanimously to accept the withdrawal of the Heritage Community Solar Gardens project from Development of Regional Impact review.

■ **EXECUTIVE DIRECTOR'S REPORT**

Paul Niedzwiecki said on Wednesday the Regional Wastewater Management Plan (RWMP) was presented to the Assembly of Delegates. He said they had an informative discussion with them. He said they have been meeting with DEP trying to formalize our agreement to be able to draw down the \$3 million and begin the 208 planning process. He said they have begun a series of focus groups around the Cape, even in the face of the storm, they were able to get five focus groups under their belt so far this week that are really focused on helping the Commission develop a process for public outreach as we go through that regional wastewater planning effort over the next 12 months. He said Commission members will be receiving an email from the Commission over the course of the next week. He said one of them is ways that the Commission might be able to improve the Commission process, the subcommittee process, and the regulatory process to date. He said additionally, Commission members will be receiving another email from the Commission that will request Members to let the Commission know how they would like to receive Commission information in the future. He said the Commission has overcome some hurdles related to disseminating information electronically. He said the Commission is going to ask Members how they would like to receive it and the Commission should be able to respond in kind. He said the electronic format should be as simple as logging onto a website and viewing or downloading files. He said once the email has been sent and Commission Members submit their responses, he will give Members that feedback at the next Commission meeting. He said subsequently there will be a training session to instruct Members on how to access that information electronically.

■ **SAGAMORE LINE REINFORCEMENT PROJECT WESTERN SEGMENT PHASE I & II**

Chair John Harris noted that this is a continued hearing from January 23, 2013. The hearing opened at 3:10 p.m.

Before the proceeding Chair John Harris asked all those who wish to speak at today's hearing to stand and raise their right hand to be sworn in.

Jonathan Idman, chief regulatory officer at the Commission, provided a PowerPoint slide presentation and said the project is a proposed 20-inch in diameter gas pipeline installation to maintain adequate operating flows along the entire distribution system. He said the specific project before the Commission is Phase I and II of the Western Segment of the project. He said it runs approximately 23,000 feet in length; about 4.4 miles. He said the project is part of a larger Sagamore Line Reinforcement Project which is 13.1 miles long and stretches from the Lower Cape to the Upper Cape. He said the Eastern and Middle Segments were previously approved and the middle segment has been fully constructed. He referred to a map of the project showing the Eastern Segment that was previously approved, the Middle Segment that was previously approved and has been fully constructed, and the Western Segment. He said the Western Segment is proposed in two phases—Phase I and Phase II--has not been approved and is before the Commission today. Mr. Idman said Phase I stretches from the Spectra Energy Station, crosses Route 130, runs along Service Road, crosses Quaker Meetinghouse Road, and runs along Service Road to Chase Road. He said the project is before the Commission because it required the preparation of an

Environmental Impact Report (EIR) under MEPA and therefore is a mandatory Development of Regional Impact (DRI). He said this is a special sort of DRI in a sense, and that is why in this case anybody who wanted to give testimony took an oath. He said the DRI is subject to the adjudicatory hearing procedures in the Commission's DRI Enabling Regulations because it is subject to the jurisdiction of the Energy Facilities Siting Board (EFSB). Mr. Idman said a public hearing was held on January 23, 2013. He said as is the case with any DRI, there are a number of things the Commission has to find in order to approve the project. He said as reflected in the Staff Report and the Draft Decision, Commission staff suggests that the Commission may make the required findings that the project benefit outweighs the project detriment; and that the project is consistent with the Cape Cod Commission Act and Minimum Performance Standards of the Regional Policy Plan, municipal development bylaws, Local Comprehensive Plan (LCP), and Districts of Critical Planning Concern (DCPC). He said testimony is included in the record provided by the Sandwich Town Planner that the project is consistent with municipal development bylaws and the LCP, and is not located in a DCPC. He said the project proponent has also identified probable project benefits and detriments in its pre-filed testimony, suggesting that the project benefit is greater than the detriment. He said the Commission will want to independently deliberate on probable benefits versus probable detriments. Mr. Idman discussed compliance with key Regional Policy Plan (RPP) issue areas regarding water resources, wildlife and plant habitat, open space and recreation, and transportation. He said based on the Draft Decision Commission staff believes the Commission can make the required findings and approve the project as sketched out in the Draft Decision.

Ed Wencis, project manager for National Grid, with the use of PowerPoint slides, said Mr. Idman gave a good overview of the project and he would make every attempt not to be redundant with his presentation. He said the project that they are seeking approval for is part of a grander reinforcement project on the Cape. He said the Sagamore Line Reinforcement Program is comprised of three segments that Mr. Idman talked about--the Western, Middle and Eastern--and the project they are seeking approval for today is the Western Segment Phase I and II. He said the major driver of the grand project including the one they are seeking approval for is to enhance the capacity of the greater Cape natural gas distribution system. He said they will be reinforcing from the Sagamore Line one of the two major arteries that supplies the Cape with gas. He said it will increase the capacity such that they can continue to provide reliable service to existing customers and provide surplus capacity in the system to accommodate future growth and it will also reduce our reliance on Liquid Natural Gas (LNG). He said the length of all three segments of the Sagamore Line Reinforcement Project is about 13.1 miles within the towns of Sandwich, Barnstable, Yarmouth, Dennis and Harwich. He said they have been working on the project for several years and it's a 10-year project more or less. He said the project that is before the Commission today is approximately 4.4 miles. He referred to PowerPoint slides showing a graphic of the three segments of the total Sagamore Line Reinforcement Project and described each of the three segments. He referred to photographs representing the existing conditions and described the construction of the proposed project. He said the project benefits are to enhance the capacity for the Greater Cape national gas distribution system and to provide service to future customers as well; the Town of Sandwich will recognize some tax revenue based on their estimated cost of the project; it will help facilitate a future bike path based on the proposed location; and provide a number of short-term benefits including employment of local labor during the construction process. He explained design modifications that were made and the proposed construction sequence that will be done along the route of the project. He said there are approximately 50 homes that are within 300 feet of Service Road within the proposed construction limits and National Grid is committed to meeting with every property owner along that route within 300 feet of Service Road to talk about the tree clearing and screening impacts for those individuals. He said to mitigate potential environmental impacts they will be implementing a number of environmental controls during pre-construction, during construction and post-construction. He talked about a Traffic Management Plan; a Turtle Protection Plan for the Eastern Box Turtle that Natural Heritage has approved; and vegetation mitigation as a result of the clearing. He explained the number of permits required as part of the project and the permitting process. He outlined the current construction schedule for Western Segment Phase I and II.

Michael Koehler, legal counsel with Keegan Werlin, said he is appearing today on behalf of the company. He said Mr. Wencis gave a thorough overview of the project including the important benefits that the project will provide for the Cape. He said Mr. Idman gave an overview of the Draft Decision and its key findings and the company agrees with the Draft Decision's findings and respectfully requests that the Commission approve the project. He said there a few things that Mr. Wencis mentioned that he would like to emphasize on further. He said the project before the Commission is the result of an 18-month long effort by the company to listen to and respond to issues that have been raised by the town. He said in particular the town requested that the company locate the new pipeline to the north of the edge of the pavement of Service Road in order to take advantage of the wide layout of Service Road; about 100 feet wide to minimize potential interference with existing utilities and to preserve the

town's ability to set utilities under the pavement in the future. He said another potential benefit, is that the town also thought that relocating the project would help to facilitate the potential future development of a bike path. He said the company found that the location adjustment requested by the town is feasible and represented a balance and improvement from the company's original proposal. He said as a result of a number of good faith discussions and commitments, the company is pleased to have the support of the town and will continue to work with the town. He said the company also listened very closely to concerns raised by neighbors of the project. He said shortly after filing the DRI application with the Commission, the company hosted an Open House in Sandwich and all abutters within 300 feet of the proposed project layout both along and on Service Road and on adjacent side roads and subdivisions in the town were invited. He said the invitation included a description of the proposed layout of the project as well as the plan and construction schedule. He said for individuals who were unable to attend the Open House, the letter also included contact information of the company in the event that an individual was to reach out to the company to learn more about the project. He said a principal concern that the company has heard during the course of its working with the town and with abutters is the potential for adverse impacts associated with the clearing of the 10 to 15 foot wide strip along the north of Service Road. He said the company is committed to work with residences on a case-by-case basis to provide a visual mitigation for elimination of that buffer. He following completion of each phase of the project, those residences will receive a mailing that will be sent to each of the homeowners, and residents who believe that the vegetative buffer between their home and Route 6 has been materially impacted will be encouraged to contact the company. He said the company will work with each affected homeowner on a case-by-case basis to develop an appropriate screening plan. He said based on the evidence the company has shown that the project is consistent with Commission standards and that the benefits of the project outweigh any potential detriments, they respectfully request the Commission approve the project.

Austin Knight asked if the Commission would have a role in the impact to those 50 homes in the future or would it just be between the property owner and the applicant themselves. He asked if the Commission would have any involvement in the follow through toward the end or is that just going to be the two parties.

Jonathan Idman said the way the Commission decision is drafted there will be no participation by the Commission in that process to discuss mitigation post-construction. He said they did not see a need for that and said as we've heard in the presentation by the applicant, he believes they thought the mitigation through comprehensively.

Michael Blanton said he has the same concern as Mr. Knight regarding the Commission not having a role in the mitigation. He said he applauds the applicant for hearing the concerns of the abutters to this project. He said since several of the homes have differing setbacks from the roadway, maybe one universal single remedy isn't the remedy. He said Mr. Koehler said it would be addressed on a case-by-case basis and questioned whether that is going to properly and adequately protect the concerned abutters.

Chair John Harris said he has similar concerns.

Michael Koehler said he can assure everyone that the company has no interest in quibbling with each homeowner. He said they are truly committed to a good-faith and reasonable discussion with each homeowner to mitigate the impact that it's caused. He said that's why they set it up on a case-by-case basis because it's not uniform—the topography of Service Road is not uniform. He said the company is fully committed to its customers.

Michael Blanton said he appreciates the position of the company in being proactive in trying to address the concern and appreciates assurances that there won't be any quibbling with the homeowners. However, he is having a difficult time being comfortable enough to make a decision for the project without any determination of what the mitigation may or may not be and any indication from the abutters whether or not that mitigation would be adequate to address their concerns.

Michael Koehler said this is a familiar process for the company. He said they have done this before and they are comfortable with the process. He said they don't often have issues in this regard when they have a project like this.

Ted Barten, Epsilon Associates, explained part of the work that has gotten them to this point today. He said they have done a complete walk-down and have a set of photographs specifically for the purpose of having a baseline for these discussions which would happen a year and two years from now. He said He and Mr. Wencis walked and

drove the length of the 4.4 mile route in front of each of the roughly 50 homes that front on Service Road. He said they took photographs during the defoliate season of the 50 homes looking toward the south and a corresponding photo of the existing tree buffer between Service Road and Route 6 so they would have a good sense for the existing conditions. He said there is a range of different situations as a handful of houses are set well back from the road 500-600 feet and said you can't see the homes from Service Road even in defoliate conditions. He said at the other end a handful of homes are relatively close to Service Road maybe set back 70, 80, 90 feet and it appears from the street that the homeowner has deliberately done a fair amount of clearing and landscaping for reasons of their choosing. He said a handful of homes that have a nice lawn, fence, a few shrubs and pretty much have an open view towards Service Road, the trees, and then Route 6 beyond the trees. He said a vast majority of the homes are in between that. He said they are set back maybe 70 to 150 from the road. He said there is some mix of trees and in some places, there's some fencing. He said those homes are the ones that clearly a case-by-case look at mitigation would be appropriate. He said as Mr. Koehler mentioned they are going to do a mailing and said it will be done by phase in the fall assuming the construction is on schedule. He said the mailing would go to the first folks along the first phase. He said appointments would be scheduled to meet with the homeowners individually to talk about plantings. He said different people may have different preferences on that. He said that is what they have in mind to do.

Joy Brookshire asked if they ever have a conflict about who is genuinely impacted.

Ted Barten said there could be a difference in opinion and that is in part why they took the photographs so that there is some objective to look at; what it looked like before any work was done and what it looks like once the work is done. He said, importantly as was mentioned by both Mr. Wencis and Mr. Koehler, it is not their intention to quibble with folks.

Joy Brookshire asked if they are planting more mature plantings or seedlings. She said young trees take a long time to grow.

Ted Barten said they would be reasonable size evergreens. He said they are thinking trees that can be planted without heavy equipment but certainly not seedlings; trees that might be six to eight feet tall, maybe at the base four or five feet across. He said they would be specimens that will grow well on the Cape. He said it may take a little time to grow in but they will not be seedlings to start.

Joy Brookshire asked who would nourish the replanted trees after they are in the ground; the homeowner or the company. She said it takes a while for the trees to take hold.

Ted Barten said they would be planted during the appropriate season either early in the spring or early in the fall so they have a chance to get established during a cooler part of the year. He said they would be planted by a professional landscape contractor with a good root ball, good bed of soil to put them in, mulched and fertilized initially but then it would be the responsibility of the homeowner to water them regularly so they take hold and grow properly.

Len Short said he would suggest that maybe to protect the company and also the homeowner that some sort of independent mediator be available to resolve any conflicts that might come forth as a result of their actions.

Ed Wencis said the company would entertain that and said in the subsequent discussion they could reach a conclusion or a consensus as to who that independent party would be.

Joy Brookshire said she has concerns about the company notifying the homeowner by mail as sometimes during the summer mail is overlooked. She said she thinks if the company had no response from the mailing to the homeowner that in good faith it would be nice for the homeowner to receive a phone call from the company. She said it would show that the company is going beyond what is expected of a utility company.

Ed Wencis said he doesn't see any reason why they couldn't do that.

Chair John Harris referred to their pre- and post-construction situation where they are trying to correct the problem with removing vegetation and asked if they have established a baseline for noise and visual impacts and whether they would be able to put it back close to where it was before or at least not worse than it was before construction.

Ed Wencis said he could speak to the vegetation. He said obviously the swath that will be cleared within the pipeline alignment would not be allowed to be re-vegetated in terms of brush or trees because they have to perpetually maintain the facility and have access to that area. He said if and when a bike path is developed obviously there would have to be a clearing for that. He said the area cleared is likely to remain cleared and, again, they will work with the individual property owners to come up with a best mitigation measure.

Ted Barten said they have not taken baseline noise measurements or acoustical measurements and said they hadn't done that for a reason. He said it's their opinion and experience that removing roughly 10 to 15 feet of a give-or-take 150 foot tree buffer will not have a discernible effect on noise levels at the homes whether they are 200 feet from Route 6 or 400 feet from Route 6. He said noise from a given noise source falls off as a function first of distance and said there is a mathematical formula for that. He said it's based on science and he then explained the mathematical formula. He said the modest amount of clearing that they are going to do is not going to affect in any discernible way the noise levels at the homes.

Chair John Harris said he throws his hat off to National Grid for their definition and said he agrees 100 percent. However, he said he thinks it's important that people who live along there should, in fact, receive in addition to his definition something that says that the dB level was "X" prior to it, and it's "Y" afterwards because it just simply gives everyone a better feeling about what's going on. He said he doesn't disagree at all with what was just explained.

Austin Knight inquired about the mixture of grass seed or hydro seeding and asked if the Commission has made recommendations for something that doesn't require a tremendous amount of care and water as the Commission does with other projects. He said he is also still concerned about a reasonable request and who determines what reasonable is.

Ted Barten said in terms of the replanting, their objective is to regrow something that will be a good ground cover; a mix of flowers, herbaceous layer of weeds and the like. He said they are obviously not interested in creating a nice turf lawn out there because that does require a lot of continuing care. He said the idea is to have something that will look fairly natural once it's grown in. It said it would probably be mowed to a foot or two high once or twice a year, but other than that, it would require minimal care.

Paul Niedzwiecki said it's been reviewed by staff and it's consistent with what the Commission has done in the past, so that should be okay. He said it's difficult to condition decisions especially when they relate to view sheds and where they would have to condition 50 different view sheds and to be put in the position of being that arbiter. He said the question is would the Commission allow staff to be the arbiter or would they have to come back to the full Commission; the 50 homeowners. He questioned how that would delay the project and what would be the applicant's avenue to address this if they felt that was burdensome. He said in this case it would be an appeal to the Energy Facilities Siting Board. He said that is part of the consideration and said it's very difficult to condition. He said it's not that the Commission didn't consider that. He said National Grid does have a track record of performance that was taken into consideration.

Jessica Wielgus, commission counsel, said we don't want to put the Commission in a position where you are exceeding your authority. She said at this point, the decision as written identifies that the project meets the Minimum Performance Standards and requiring certain mitigation that is outside the requirements of the Regional Policy Plan could result in a finding on appeal that potentially the Commissioners exceeded their authority here.

Elizabeth Enos, regulatory officer at the Commission, said a copy of the decision was given to Nathan Jones, the Sandwich Town Planner, who was the point person on this project. She said he attended the meeting to review the Draft Decision but he was unable to attend today's hearing.

Daryl Crossman, resident at 15 Telegraph Hill Road in Sandwich; one of the roads off of Service Road between Exits 2 and 3, read a letter that he submitted to Ms. Enos. His letter states his concern regarding the proposed gas line on Service Road and the lack of a comprehensive detail restoration plan of the pipeline if constructed. He said no approval should be given until the issue is thoroughly vetted as included input from residents in the area. He also noted concerns regarding noise levels and increased traffic on Service Road. He also expressed his disappointment that there were no official representatives from the town of Sandwich to address their issues or

concerns that had been brought up to them. He also expressed his concern about those individuals who live beyond 300 feet who probably hear as much noise and said they never received notification of any hearings. He said abutters and those who live beyond 300 feet never received notice of the Open House.

Ed Wencis responded to Mr. Crossman's comments regarding notification of the Open House to residences or abutters along Service Road. He said just to be clear, they did not send letters out to the general community. He said letters were sent to homes or properties within 300 feet of Service Road. He said they thought they were being quite conservative that any property owner within 300 feet of Service Road, within the footprint of where the work would take place, may have a concern and they wanted to make sure that they notified all of them to give them the opportunity to come to the Open House and get educated on the project. He said they did not invite or send notice to residences beyond 300 feet of Service Road.

Michael Koehler said another reason for the 300-foot notice is that is a standard practice in the industry, especially with respect to gas pipelines and transmission lines; 300 feet is standard. He said it is also part of the Commission's regulations as well.

Chair John Harris asked how many people attended the Open House.

Ed Wencis said only one couple, the Mann's. He said they came to the Open House and unfortunately that was all. He said their incentive for having the Open House was to get feedback from the community as part of the project.

Curt Mann, resident at 15 Overlook Drive in Sandwich, said he doesn't have a problem with National Grid but he does have a problem with the engineering of the whole project and said he can vouch from experience as he worked for Verizon for 39 years. He said the project could be engineered a different way. He said a few years ago the Town of Sandwich proposed to the residents an idea and plan to build a bike path next to Service Road. He said the plan stated the cutting and clearing of much of the trees and vegetation along the north side of the Service Road. He said it went to Town Meeting and was voted down by the residents because everyone said it was detrimental to the beauty and serene nature of the area on and near the Service Road. He said the destructive clearing from this project in his opinion would have a significant impact on the scene for both noise and adverse visual affect. He also inferred that National Grid is being made to fund the bike path indirectly.

Jim Hanlon, an abutter at 19 Telegraph Hill Road, said he appreciates the Commission's concern regarding residents negotiating with the gas company should they not find common ground and thanked the Commission for recognizing that. He referred to National Grid's visual mitigation and the use of the words "material," "substantially" and "significantly" and is concerned that it gives them a lot of leeway to say in their opinion it's not significant. He expressed his concerns about noise from the highway that would be heard from the removal of trees and said he disagrees with the 50-foot buffer that the gas company refers to in their document. He said the town and the gas company are partnering on a gas line and a bike path together and said that is how the package is being sold and presented to the Commission. He referred to other homes that the gas company recognized that may be affected.

Michael Koehler said he respects Mr. Hanlon's opinions fully and said he did not mean to have any hesitation about recognizing the residents that were beyond Service Road that could potentially have impacts. He said to be clear on the bike path--a lot of the angst is being directed at the company with respect to the bike path—it's not the primary benefit of this project. He said they will not be funding the bike path; they are building a gas pipeline. He said one of the second order of benefits of the project is that it will potentially facilitate in the future if the town decides to go forward with the bike path. He said the reason why they framed the visual mitigation plan as material is that they wanted to weed out frivolous claims. He said as he mentioned previously they have no interest in quibbling with residents and they are very much committed to working with residents to come to a solution and the company will do that. He said regarding the incremental impact of the project on noise, they don't dispute that there are certain areas along Service Road where noise on Route 6 is very much discernible to residents, however, the project on an incremental basis is not going to contribute to that. He said it's their professional judgment based on science that incremental impact on noise is not going to be discernible.

Nancy Crossman, resident at 15 Telegraph Hill Road, said they are close to Service Road. She said she takes issue when she heard previous speakers mention the "benefit outweighs the project detriment" and "there is a significant loss of buffer" and finds that insulting for those residents who will be living along Service Road after this project is completed. She said she doesn't appreciate those words being in there because to the residents they

are not true. She inquired about the use of a horizontal drill versus a bore and what goes into that decision. She said she thought with all road crossings a bore would be used. She referred to notices that were sent to abutters that are 300 feet away means that the rest of the residents will have no say and no recourse. She questioned whether a traffic study along Service Road had been done to make sure that there wouldn't be an increase in traffic by cutting away the vegetation. She also inquired about the notice that was sent regarding the Sandwich grantor location and said she never saw or received a notice. She said she would ask that before approval is given that the restoration plan be part of the proposal otherwise she feels it will not have teeth. She said the suggestion for an independent party for mediation must be part of the proposal before it's accepted.

Ed Wencis said regarding the road crossing and the jack and bore versus the horizontal directional drill they are two different methods but they are both trenchless methods. He said the road crossings fall within the jurisdiction of MassDOT, not the town, because they are still within the interchange of Route 6 as he understands it. He said they will be crossing Quaker Meetinghouse Road and Chase Road and as they understand it that's within MassDOT jurisdiction. He then gave a brief description on the two methods and said before they can do either of the two methods they need approval from MassDOT and explained the permit process. He discussed the Sandwich grantor location and the application to the town and the DRI application. He said as far as a Traffic Management Plan (TMP) they have focused on the proposed main alignment that was submitted as part of the DRI application and working with engineers they developed a TMP specific to Service Road where they are proposing to put the gas main. He said as was mentioned previously the Sandwich Police Department will be instrumental in implementing that plan and they will have the right to modify it as they see fit so they will ultimately have the final say on how the TMP gets implemented.

Chair John Harris said there has been an issue raised about the 300 feet.

Michael Koehler asked that the question be repeated.

Nancy Crossman said the question was what recourse do residents have who live beyond the 300 feet if they are not happy with what happens after the fact. She said those residents beyond the 300 feet, which really isn't very far from the road, feel like they have no say in this. She said they received no notification, they found out from their neighbors and that is their concern.

Michael Koehler said he can appreciate that concern. He said he thinks the reason why a regulatory body, such as the Commission, the Siting Board, and the Department of Public Utilities sets a limit is because there has to be a limit. He said 300 feet is customary in the industry. He said it's customary with the regulatory bodies that govern National Grid and by setting a limit means that some people are going to be outside of it. He said part of the way the 300 feet gets set is that it's based on the consideration that certain projects have certain impacts. He said in this case they will be fully mitigating the impacts and they recognize that some people fall outside of that. He said they are committed to mitigating the impacts for those people that are able to demonstrate it.

Joy Brookshire said in letters that the Commission has received from abutters the major concern was increased sight and sound to Route 6. She said she is concerned that there isn't anything in writing as to the mitigation that will be taken after the work is done. She asked if anything could be done to help the abutters lessen their concerns that they will not be listened to after the work is done and how they could incorporate into that group the people that live just beyond the 300 feet.

Paul Niedzwiecki said there is a Draft Decision before the Commission today. He said the Commission could vote to adopt the decision or deny the decision but there is still time left in the hearing period. He said if Commission members saw it fit to remand this back to the Hearing Officer for further testimony and consideration of conditions, they could do so based on the benefits and detriments that have been discussed here today and might be discussed in further proceedings.

Austin Knight said he would make that motion because he does feel even though we say we can't mandate something because it's not in the Commission's jurisdiction there is an impact. He said the Commission has been notified of this and he believes the Commission has a responsibility. He said there has to be some sort of conclusion, remedy, or mediation that the Commission can feel comfortable with in order for the Commission to take a vote. He said there are concerns that he believes still need to be addressed. He said he's not trying to impede the progress he just wants to make sure that when this project does go forward that everybody's comfortable. He said

he understands you can't please everybody but he believes the Commission needs to make sure they take and do due diligence to as much as they can.

Joy Brookshire seconded the motion.

Peter Graham said it makes sense to support Austin's motion.

Michael Blanton asked for clarification. He said the Commission has received five different letters that have been distributed to Commission Members and they have heard testimony from the Crossman couple and two other gentlemen here all of which has identified that they are outside of the 300 foot abutter definition. He asked if there were any abutters here today that are actually within the 300 feet and said he would like to know who they are. He said a few people here today have not spoken.

Jim Hanlon said he does not live outside of the 300 foot area. He said he just doesn't live on the Service Road.

Andrew Putnam said we are talking about a significant project here. He said Mr. Austin said we are not going to please everybody and that's understandable with anything that is built or done. He said the transportation issue has been brought up a couple of times and he would like it looked at a little more. He said in the summer the Cape is a seasonal economy and he knows from experience driving five towns away to get to work that the back roads are convenient when no one knows they exist. He said he would like to know whether or not once the clearing is done with this project if it's going to make so much of it visible that we will see a significant change in the number of people driving down that road. He said he has been on the back roads when no one knew they existed and then once they were discovered during those summer months he could never get to where he wanted to get to on time. He said traffic is a concern on Cape Cod. He said there are many areas where it's obvious to everyone where the road is but in some areas it's not obvious. He said he would like to know whether or not some of the project area is going to be extended to a point where people will start noticing that there is another road and another way to get down the Cape.

Royden Richardson said he thinks it's important that the Commission take a second look at this but it's also important that they remember as it's written in the decision the Minimum Performance Standards (MPSs) for this project have been met. He said they should also remember that the MPSs have been established for a reason. He said they didn't come out of thin air; they were the result of many discussions. He said they were established to do those things that are necessary as it relates to projects. He said sometimes they are unpopular such as with utilities and then we learn even just recently that we can't get along without them. He said he doesn't have a problem taking a second look at this but he thinks the Commission has been well advised by counsel not to exceed its authority and that authority is established. He said the other thing to note is that we have an applicant who has come forward saying that they are going to treat this on a case-by-case basis and he believes a company such as this would not want to say that in public forum and then go back on their word.

Jack McCormack said he is not against the motion but he wonders how far back are they going to go from 300 feet, are they going back 350 feet, are they going back 400 feet or if someone is 450 feet away and questioned whether there would be a problem with that. He said we have to remember that there are a lot of good benefits to this program.

Joy Brookshire said there are benefits with this program. She said as far as the bike path that's between the residents and the Town of Sandwich in the future. She said she realizes that they can only do so much because of the MPSs but she thinks the engineers and the proponents of this project have heard enough of today's comments that they can come up with more "meat on the bones" as far as mitigation that they can give to the abutters within the 300 feet and people outside the 300 feet. She said it's not for the Commission to come up with some mitigation; it's up to the company. She said the gas company has been more willing to do things than some of the utility companies that the Commission has had to deal with in the past and they need to put their willingness into words on paper.

Leonard Short said he would like to suggest that Service Road is probably one of the best kept secrets to those of us who live on the Cape; not that tourists should be deprived of access to it. He said going back to mitigation or the opportunity for mediation, he would like to see the company propose mitigation or a mediation technique for the consumers and the abutters and that the mitigation and an independent mediation service be paid for by the company.

Jack McCormack asked that the motion be repeated.

Paul Niedzwiecki said the motion was to remand it back to the Hearing Officer for further testimony and consideration.

A vote called on the motion passed with 10 votes in favor and one abstention.

Jonathan Idman asked that the hearing be continued to a date and time certain.

Chair John Harris asked if the applicant would be ready in two weeks and to also assure that the abutters have sufficient notification and that we improve on how we will notify them as well.

Jonathan Idman said on a continued public hearing the Commission does not re-notice abutters.

Michael Blanton moved to continue the hearing to February 28, 2013 at 3:00 p.m. in the First District Courthouse, Assembly of Delegates Chambers. Jack McCormack seconded the motion.

Joy Brookshire asked if there is enough time for the abutters to be notified.

Jonathan Idman said the abutters who are interested and concerned are here. He said he doesn't want to raise a larger issue, but if we talk about conditioning a decision trying to speculate on concerns that we haven't heard about, it would be impossible. He said the people who are here today are concerned. He said they have constructive notice because they are being told now the hearing will be on February 28 at 3:00 p.m. He said the Commission does not plan to re-notice and there isn't enough time to re-notice for a meeting on February 28.

Joy Brookshire asked if the company could send notices to the abutters.

Paul Niedzwiecki said he would not recommend that the Commission take that action at this point. He said we have heard testimony from the public and the applicant today. He said the applicant has suggested that they are willing to do even more than what is in the Draft Decision. He said he thinks two weeks is appropriate to deal with the issue and present another Draft Decision to the Commission for their consideration.

Roger Putnam said he would suggest the Commission not try to condition this. He said by continuing it to the next meeting the Commission can re-continue it for whatever they need to do but we have to have a date certain.

Michael Blanton said he would agree with Mr. Putnam and Mr. Idman's comment that this matter has been noticed properly. He said we have received testimony from concerned abutters and a two week notice is the date certain that they can arrive at. He said it's certainly more than enough time to try to see if we can find some resolution here.

Jonathan Idman said the meeting will obviously be at 3:00 p.m. on February 28 in the Assembly of Delegates Chambers.

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

A five minute recess was called at 5:05 p.m. and the meeting re-convened at 5:10 p.m.

■ **HARWICH DIVISION APPROVAL NOT REQUIRED (ANR) PLAN**

Chair John Harris noted that this is a continued hearing from January 31, 2013.

Jack McCormack moved to close the hearing and the record. Royden Richardson seconded the motion. The motion passed with a unanimous vote.

Jonathan Idman, chief regulatory officer at the Commission, said the Town of Harwich is seeking a Development of Regional Impact (DRI) Exemption approval. He said the town is proposing to divide a 142.82 acre parcel located at 205 Queen Anne Road in Harwich, MA into three parcels. He said the project proposes division of this property by way of an MGL Ch. 41, Sec. 81P Approval Not Required (ANR) Plan. He said Parcel 1 will be retained

by the town and used for its existing purposes. He said Parcels 2 and 3 are individually unbuildable but will likely be sold or leased and used individually in conjunction with abutting commercial and industrial properties. He said the project was heard by the full Commission on January 31, 2013 and staff was directed to draft a written decision. He said the Commission is being asked to consider the draft written DRI Exemption decision that is before the Commission today.

Jack McCormack moved to approve the Harwich Division ANR Plan as a DRI Exemption and to approve the draft written decision. Austin Knight seconded the motion. The motion passed with a unanimous vote.

■ **DELEGATIONS OF AUTHORITY**

Paul Niedzwiecki noted that this agenda item would not be taken up by the Commission today.

■ **MULLEN RULE**

Paul Niedzwiecki noted that this agenda item would not be taken up by the Commission today.

■ **NOTIFICATION OF WITHDRAWAL OF HERITAGE COMMUNITY SOLAR GARDENS IN BOURNE**

Andrea Adams, senior regulatory planner at the Commission, said on November 26, 2012 Commission staff received a referral from Christopher Farrell, Chair of the Bourne Planning Board, for development of a 1.9 Megawatt solar photovoltaic ground-mounted array in two parts on a 25.19-acre undeveloped site located at 53 MacArthur Boulevard/Route 28 in Bourne. She said on February 6, 2013 Commission staff received an email from Christopher Bailey which includes a February 5, 2013 letter from Ann Gratis, Administrative Secretary of Bourne's Planning Board. She said the letter from Ms. Gratis indicates that the proposed project has been withdrawn from consideration by the Planning Board. Ms. Adams said based on this, Commission staff suggests the Commission vote to accept the withdrawal of the proposed Heritage Community Solar Gardens ground-mounted solar array in Bourne from DRI review.

Austin Knight moved to accept the withdrawal of the Heritage Community Solar Gardens project from DRI review. Royden Richardson seconded the motion. The motion passed with a unanimous vote.

A motion was made to adjourn at 5:20 p.m. The motion was seconded and voted unanimously.

Respectfully submitted,

Richard Roy, Secretary

LIST OF DOCUMENTS PRESENTED AT THE FEBRUARY 14, 2013 COMMISSION MEETING

- Handout material: February 14, 2013 meeting agenda.
- Handout material: Sagamore Line Reinforcement Project Western Segment Phase I & II draft written decision.
- Handout material: Harwich Division ANR Plan draft written decision.
- Materials presented: PowerPoint slide presentation on the Sagamore Line Reinforcement Project Western Segment Phase I & II prepared by the Cape Cod Commission.
- Materials presented: PowerPoint slide presentation on the Sagamore Line Reinforcement Project Western Segment Phase I & II prepared by National Grid.