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CAPE COD
COMMISSION

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Minutes

Meeting of Cape Cod Commission

July 25, 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	Absent
Brewster	Elizabeth Taylor	✓
Chatham	Vacant	Vacant
Dennis	Richard Roy	✓
Eastham	Joy Brookshire	✓
Falmouth	Andrew Putnam	✓
Harwich	Jacqueline Etsten	Absent
Mashpee	Ernest Virgilio	Absent
Orleans	Leonard Short	✓
Provincetown	Austin Knight	✓
Sandwich	Harold Mitchell	✓
Truro	Vacant	Vacant
Wellfleet	Roger Putnam	✓
Yarmouth	John McCormack, Jr.	✓
County Commissioner	Mary Pat Flynn	✓
Minority Representative	John Harris	✓
Native American Rep.	Vacant	Vacant
Governor's Appointee	Vacant	Vacant

The meeting of the Cape Cod Commission was called to order on Thursday, July 25, 2013 at 3:00 p.m. in the Assembly of Delegates Chambers in Barnstable, MA. Roll was called and a quorum established.

Chair Jack McCormack introduced Harold Mitchell the new Sandwich Representative to the Cape Cod Commission. Mr. Mitchell shared his experience since moving to Cape Cod and said he is presently Chairman of the Zoning Board of Appeals in Sandwich.

■ **SUMMARY OF ACTIONS TAKEN/VOTES:**

Presentation on Cape-wide Fertilizer Management Proposed DCPC Nomination

PowerPoint slide presentation on the proposed nomination by the Cape Cod Commission, discussion and a vote by the Commission to nominate the proposed Fertilizer Management District of Critical Planning Concern (DCPC) and vote by the Commission to accept the nomination for consideration of a Fertilizer Management DCPC for Cape Cod.

Other Business

Chair Jack McCormack made an announcement regarding Commission members interested in being on Commission Standing Committees. Mr. McCormack made an announcement about iPads for Commission members. Members inquired about DCPC information being available on the Commission's website.

■ **EXECUTIVE DIRECTOR'S REPORT**

Deputy Director Patty Daley said the Commission has held four sub-regional meetings across Cape Cod to kick-off the 208 Water Quality Plan. She said the sub-regional meetings were held in the towns of Wellfleet, Mashpee, Barnstable, and Chatham. She said they had a good turn out and good participation. She said the Commission will be starting the Stakeholder process and the first stakeholder meetings will be held August 1 through August 14. Ms. Daley said the Commission is launching the Cape₂O online computer game—a free online game—and said she would urge everyone to go online and participate in the game. She said the Commission was invited to present at the ESRI conference in San Diego and she asked Kristy Senatori to provide an update.

Kristy Senatori, Deputy Director, said the Commission was asked to present at the ESRI Conference in San Diego. She said the Commission was selected to be part of their program based on an abstract presented on the Commission's MVP program.

Patty Daley said the Commission opened the Lowe's of Dennis hearing on July 16 and a second continued hearing is scheduled on Tuesday, July 30th.

■ **MINUTES**

The minutes of the June 20, 2013 Strategic Planning Session were reviewed. Austin Knight moved to approve the minutes. Len Short seconded the motion. The motion passed with a unanimous vote.

The minutes of the June 20, 2013 Commission meeting were reviewed. Austin Knight moved to approve the minutes. Len Short seconded the motion. The motion passed with a unanimous vote.

■ **CAPE-WIDE FERTILIZER MANAGEMENT PROPOSED DISTRICT OF CRITICAL PLANNING CONCERN NOMINATION**

Chair Jack McCormack opened the public meeting at 3:12 p.m. Mr. McCormack said the purpose of this public meeting is to present a proposed Fertilizer Management District of Critical Planning Concern (DCPC) nomination and to vote on whether to accept or reject the nomination for consideration.

Jon Idman, chief regulatory officer at the Commission, with the use of PowerPoint slides presented the DCPC nominating materials to the Commission. He said this is the second time a Cape-wide DCPC has been nominated and the first time a DCPC has been self-nominated by the Cape Cod Commission. He referred to a map showing the Fertilizer Management DCPC District Boundary and said the proposed DCPC is Cape-wide and includes all 15 towns which comprise Barnstable County, incorporating the area within their municipal corporation boundaries. Mr. Idman said a DCPC is a unique planning and regulatory tool authorized under the Cape Cod Commission Act, a DCPC designation protects and promotes resources or values of local or regional significance, and it can be administered by a town or towns through implementing regulations. He explained why a Fertilizer DCPC is needed and said excess nitrogen has impaired water quality, caused ecological damage, threatened drinking water and fertilizer, especially residential, is an important and controllable source of nitrogen. Mr. Idman referred to maps showing approximate managed lawn areas by land use type, total fertilizer nitrogen load (pounds per year), nitrate concentrations in Cape Cod public supply wells, and total nitrogen load to watersheds from fertilizer. He said a Fertilizer DCPC will help provide a cost effective and efficient nitrogen reduction through education, Best Management Practices, and enforceable regulations. He said the opportunity to adopt local fertilizer management regulations through a DCPC is important now that the county and towns' ability to regulate this area has been restricted. He said the Attorney General has advised that recent amendments to Chapter 128 of the Massachusetts General Laws give the Massachusetts Department of Agricultural Resources (MDAR) exclusive jurisdiction to regulate and enforce fertilizer application in the Commonwealth. He said one of the limited exceptions to MDAR's exclusive jurisdiction in the Chapter 128 amendments is for regulations adopted pursuant to the Cape Cod Commission Act if completed prior to the January 1, 2014 deadline. He said implementing regulations adopted pursuant to a fertilizer management DCPC would preserve the towns' ability to regulate fertilizer applications in light of the recently enacted amendments to Chapter 128 by the State Legislature. Mr. Idman explained how a Fertilizer DCPC would work and said once approved as a DCPC designation a model bylaw would be drafted by Cape Cod Commission staff with input from towns, the UMass Extension Program and the Massachusetts Department of Agriculture, and towns could opt-in voluntarily to adopt implementing regulations. Mr. Idman outlined the next steps in the process should the nomination be accepted for consideration by the full Commission today. He said if the nomination is accepted today, the public hearing process would begin, the Commission will vote on the proposed DCPC designation and forward to the Assembly of Delegates for adoption of the DCPC designation by ordinance, towns would adopt implementing regulations and those implementing regulations would be certified by the Commission. Mr. Idman acknowledged Commission staff Kerri Driscoll, Shawn Goulet and James Sherrard for their work the proposed DCPC nomination.

Tom Cambareri, water resources program manager and hydrogeologist at the Commission, said the Commission has been engaged in nitrogen planning for many years and it's important to know that fertilizer is an important source of nitrogen loading. Mr. Cambareri talked about fertilizer use in residential lawn areas, golf courses and applied load by town.

Austin Knight said many fertilizers today are combined with pesticides. He said he knows the DCPC will cover nitrogen and asked how the DCPC would cover those fertilizers combined with pesticides since it would only be regulating fertilizer.

Patty Daley said the Horsley & Witten study includes both. She said part of the County Commissioners plan with the NSTAR rights-of-way was to look at how pesticides were being used. She said the Commission and the County are committed to working on public education on its use with Best Management Practices.

Austin Knight said Provincetown has gone to a more natural turf.

Elizabeth Taylor inquired as to whether the DCPC covers just nitrogen and not phosphorus.

Jon Idman said the Commission is going forward because of the changes to state law. He said nitrogen is more compelling on the Cape and phosphorus will be dealt with by the state.

Elizabeth Taylor said certain groups are being exempted and asked if we would be left with no way to have requirements and how would we look at those who are or are not using Best Management Practices.

Jon Idman said they don't know what the regulations will look like yet. He said if the nomination is accepted, the Commission can move forward with the process and address those things.

Len Short said for the state phosphorus is a big concern. He said on the Cape nitrogen moves fast through sand and phosphorus moves slower. He said anything we can do to start dealing with this problem would help.

Richard Roy moved that the Cape Cod Commission nominate the proposed Fertilizer Management DCPC in the form and for the reasons established by Commission staff in their testimony and materials submitted to the record. Elizabeth Taylor seconded the motion.

Andrew Putnam inquired as to whether Falmouth's regulations would be affected by this.

Jon Idman said because Falmouth adopted a bylaw at spring Town Meeting, Falmouth has the benefit of another exception.

Patty Daley said Falmouth's bylaw was resuscitated, Orleans was not.

Andrew Putnam asked how golf courses would be affected. He said there are a lot of golf courses on the Cape how would they adjust.

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

Andrew Putnam inquired about how the regulations would be enforced and who would be enforcing them.

Jon Idman said that is a good question that could be addressed during the public hearing process.

Austin Knight said good questions are being asked that members could take back to their towns.

Chair Jack McCormack said the Commission can't tell towns now what the Commission is going to do until after the hearing process.

Roger Putnam said the Commission needs to move forward first instead of speculating right now. He said Commission staff needs time to proceed.

Elizabeth Taylor said a golf course in Brewster has reduced their nitrogen tremendously. She said it can be done. She said a certificate of compliance can operate well with this. She inquired about the January 2014 deadline and asked if that was just to get the DCPC function going or does it also include everything being done by towns as well.

Jon Idman said, yes, everything needs to get done by that deadline.

Richard Roy moved to accept the nomination for consideration of a proposed Fertilizer Management DCPC in the form established by Commission staff and adopt the accompanying proposed Fertilizer

Management DCPC Statement of Purpose as written. Roger Putnam seconded the motion. A vote called on the motion passed with a unanimous vote.

Patty Daley said the Commission's Mashpee Representative called to say that he was unable to attend today's meeting and he wanted to say that he supports and is in favor of the nomination.

■ OTHER BUSINESS

Chair Jack McCormack addressed Commission members and said members who are interested in being on a Commission Standing Committee should contact him directly or Gail Coyne at the Commission office.

Elizabeth Taylor asked if the DCPC information would be available on the Commission's website.

Jon Idman said now that the Commission has taken its vote, yes, it will be on the Commission's website.

Chair Jack McCormack said the Commission member iPads are in and they will be distributed to members with instructions soon.

Mary Pat Flynn said Falmouth's nitrogen bylaw has been approved. She said she would ask the town to put the bylaw on their website.

John Harris asked Mr. Cambareri about the amount of nitrogen.

Tom Cambareri explained the amount calculated and said a certain percentage is nitrogen and leaching into the groundwater. He said it's not attenuated it goes downgradient.

A motion was made to adjourn at 3:55 p.m. The motion was seconded and voted unanimously.

Respectfully submitted,

Andrew Putnam, Secretary

LIST OF DOCUMENTS PRESENTED AT THE July 25, 2013 COMMISSION MEETING

- Handout material: July 25, 2013 Commission meeting agenda.
- Handout material: Statement of Purpose and Reasons for Acceptance of Nomination
 - Fertilizer Management DCPC District Boundary Map
 - Approximate Managed Lawn Areas by Land Use Type Map
 - Nitrate Concentrations in Cape Cod Public Supply Wells Map
 - Total Nitrogen Load to Watershed from Fertilizer Map
 - Total Fertilizer Nitrogen Load (lb/yr) Map.
- Materials presented: PowerPoint slide presentation on the Cape-wide Fertilizer Management Proposed DCPC Nomination prepared by the Cape Cod Commission.