

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



CAPE COD  
COMMISSION

(508) 362-3828 • Fax (508) 362-3136 • [www.capecodcommission.org](http://www.capecodcommission.org)

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

August 29, 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	✓
Brewster	Elizabeth Taylor	Absent
Chatham	Vacant	Vacant
Dennis	Richard Roy	✓
Eastham	Joy Brookshire	✓
Falmouth	Andrew Putnam	✓
Harwich	Jacqueline Etsten	✓
Mashpee	Ernest Virgilio	✓
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, August 29, 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:**

**Proposed Amendment to Chapter H, Municipal Application for Revisions to DRI Thresholds**

Presentation on proposed amendments to Chapter H regulations, discussion and a vote by the full Commission to approve the amendments to Chapter H regulations as outlined by staff and forward to the Assembly of Delegates for adoption by County ordinance.

**Cape-wide Fertilizer Management District of Critical Concern (DCPC)**

PowerPoint slide presentation on the proposed Cape-wide Fertilizer Management DCPC designation, discussion and vote by the full Commission to approve designation as a DCPC district and forward to the Assembly of Delegates for adoption by County ordinance.

■ **EXECUTIVE DIRECTOR'S REPORT**

Executive Director Paul Niedzwiecki provided an update on the 208 Plan and said Workshops on Affordability and Financing are being held this week. He talked about the Community PlanIt Game and said they received over 4,000 comments from those who participated in the game.

■ **MINUTES**

The minutes of the July 25, 2013 Commission meeting were reviewed. Roger Putnam moved to approve the minutes. Len Short seconded the motion. The motion passed with two abstentions.

■ **AMENDMENT TO CHAPTER H, MUNICIPAL APPLICATION FOR REVISIONS TO DRI THRESHOLDS**

Andrew Putnam read the hearing notice and opened the hearing at 3:05 p.m.

Jessica Wielgus, Commission Counsel, explained the proposed amendments to Chapter H Section 1(b) and Section 4. She said the technical amendments give the Commission the ability to amend a threshold on behalf of the region. She said at its last meeting the Commission's Regulatory Committee reviewed the proposed amendments and voted unanimously to recommend it to the full Commission for its vote to approve and forward to the Assembly of Delegates for adoption by County ordinance. Ms. Wielgus said staff received comment from Joanne Miller Buntich, Director of Growth Management for the Town of Barnstable, in support of the proposed amendment.

Peter Kenney, resident of South Yarmouth, said it's the right thing to do in his opinion. He talked about how it could work in Yarmouth and said it would be a local option for towns. He encouraged the Commission to approve the amendment and questioned whether it would be wise to have the amendment approved at town meeting by a public vote.

Don Keeran, Assistant Director of the Association to Preserve Cape Cod, said the proposed amendment only does half the job as it just raises thresholds but does not lower thresholds in sensitive environmental areas. He said both types of scrutiny are needed and there should be a balance of the two. He urged that amendments to Chapter H give the Commission the ability to do both.

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

Royden Richardson moved to approve the amendments to Chapter H, as outlined by staff, and forward the amendments to Chapter H to the Assembly of Delegates for adoption by ordinance. Len Short seconded the motion. A vote called on the motion passed with a unanimous vote.

### ■ CAPE-WIDE FERTILIZER MANAGEMENT DISTRICT OF CRITICAL PLANNING CONCERN (DCPC) DESIGNATION

Chair Jack McCormack noted that this is a continued hearing from August 21, 2013.

The subcommittee reviewed the minutes of the August 21, 2013 public hearing. Len Short moved to approve the minutes of August 21, 2013. Royden Richardson seconded the motion. The motion passed with a unanimous vote by the subcommittee.

Paul Niedzwiecki said on August 29, 2012 MGL Chapter 128 was amended to eliminate legal authority of towns to enact fertilizer regulations except under the Cape Cod Commission Act and he then provided a chronology of events. He said this DCPC gives an option to towns—13 remaining towns as Falmouth and Orleans already have it and are therefore exempt—if they think they can remove nitrogen through fertilizer management. He said it gives towns the local option which has been taken away from them. He said the DCPC works by saying that this problem is important enough to take the time to look at it and do some planning by using the Cape Cod Commission Act as it is intended to keep a special place special by giving towns an option to make a decision. He said those who say no are saying they don't trust their towns. He said the DCPC will provide towns with assistance in dealing with nitrogen.

Jessica Wielgus said a DCPC allows for protection of natural, coastal, economic, recreational and other resources of regional, state or national significance. She said one of Cape Cod's greatest resources is its water and the Commission can establish a DCPC to protect this resource. She said this DCPC will restore the legal authority of Cape towns to adopt fertilizer regulations. She said the DCPC is completely voluntary and each town will make the decision whether to opt in and where towns don't opt in, the DCPC disappears and does not apply. She said the DCPC is the only vehicle for towns to adopt local fertilizer regulations and if towns do not adopt regulations by January 1, 2014, towns lose the opportunity and the State will regulate. She said voting no on the DCPC is a vote against local control. Ms. Wielgus said the existing problems associated with fertilizer are water quality issues—nitrogen loading in watershed and embayments, impairment/eutrophication of freshwater bodies, and nitrate in drinking water. She said the DCPC designation alone does not create regulations as it merely provides an opportunity for each town to adopt regulations. She said after towns have their public hearings, each town would then decide whether to propose regulations for their town. She said voting yes to designate the DCPC and adoption of a draft decision sets forth seven general guidelines that need to be considered. Ms. Wielgus said staff recommends that the Commission designate the Cape-wide Fertilizer Management DCPC and forward to the Assembly of Delegates for adoption by ordinance.

Harold Mitchell asked if the Commission is suggesting adoption through local Boards of Health.

Jessica Wielgus said the Commission would suggest adoption through local Boards of Health. She said because of the short timeline Boards of Health do not need to go to Town Meeting.

Paul Niedzwiecki said if approved by the Commission today, it goes to the Assembly of Delegates and there will be two more opportunities for public comment. He said we are under a time constraint.

Joy Brookshire said this is not the first Cape-wide DCPC. She the Ocean Management Plan (OMP) DCPC was also Cape-wide.

Jessica Wielgus said the OMP was handed down by the State for local input. She said it was the first in the nation for zoning of the ocean. She said through that process Best Management Practices (BMPs) were developed that are in place right now.

Harold Mitchell inquired about educating the public/homeowners and asked how that would be done and where would the funding coming from.

Jessica Wielgus said they are working in conjunction with UMass. She said retail stores could have literature in their stores that would be available at the time of purchase. She said homeowners would have a choice at the time of purchase.

Harold Mitchell said many people don't buy fertilizer on Cape Cod and when it's bought off Cape that information would not be available in those locations and that is a concern.

Len Short said the Town of Orleans has put through an ordinance although he's not sure how it will be enforced. He said when water bills were sent out in Orleans they included information on what should and should not be done and people are starting to adhere to that so it's a start. He said professionals will do the right thing; he is worried more about homeowners.

Joy Brookshire asked Ms. Wielgus to describe the DCPC process.

Jessica Wielgus said if the DCPC designation is approved and forwarded to the Assembly of Delegates, it will first go to a public hearing before the Government Regulations Standing Committee and then to the full Assembly for a vote. If the Assembly votes to approve the DCPC designation, then the Commission would help to facilitate with draft regulations. She said there would be working groups and Commission staff would help towns to facilitate this. She said if towns choose to opt in, individual towns would hold their own public hearings. She said once regulations are adopted by the individual towns, those regulations would come back to the Commission and they would be reviewed for consistency with the guidelines in the Commission's decision.

Joy Brookshire inquired about continued opportunity for input by the public.

Jessica Wielgus said, yes, there will be continued opportunity throughout the process.

Harold Mitchell asked if the Assembly has seen the Commission's designation decision. He also asked if the Assembly could make changes to the designation decision.

Jessica Wielgus said it's not appropriate to send it to the Assembly before the Commission votes. She said the Assembly would either adopt it or remand it back to the Commission.

Harold Mitchell said if remanded back to the Commission, how would that affect the deadline.

Jessica Wielgus said if accepted towns would have until January 1, 2014 for regulations. She said if it's remanded back that would eat into time for the towns.

Mary Pat Flynn described the situation in Falmouth and said the Department of Natural Resources will be the enforcer of the bylaw. She said every community does things differently and there are ways for outreach and Falmouth is working through that now.

Roger Putnam inquired about the procedure for today's hearing.

Chair Jack McCormack said there are no regulations in effect today. He said the Commission will be voting whether to forward the DCPC designation to the Assembly of Delegates.

Len Short said the subcommittee did meet and decided not to make a recommendation. He said the subcommittee would not be making a recommendation today. He said it will be voted on by the full Commission.

Mary Owen, UMass turf specialist, entered into the record documents on Turf Soil and Nutrient Management. She said these documents are available on their website and are designed for anyone to use.

Bill Clark, Director of the Barnstable County Cooperative Extension, said he has concerns and questions about the DCPC and said it's too early to approve it. He said it's being based on 9% of nitrogen getting into our estuaries. He said the Horsley & Witten report is not out for public comment yet. He said the guidelines are good but we are voting on a "blank check". He said what Orleans has are only recommendations they are not regulations. He said Cape Cod is a golf destination and a DCPC would impact the economics on Cape Cod—people will go elsewhere to golf. He said he would be happy to work with stakeholders.

Pat Armstrong, Yarmouth Parks and Recreation, said she is responsible for over 280 acres of public lands in Yarmouth. She said by having restrictions they may lose revenue from sporting fields. She said park lands need to be included in the exemptions. She said Yarmouth acts in a responsible manner.

Chair Jack McCormack said the Commission is not establishing regulations. He said the Commission would be voting whether to forward the DCPC designation to the Assembly of Delegates.

Charles Bramhall, Harold's LLC, said he has been in the "green" industry for 30 years. He said it's not necessary to have tighter restrictions. He said Mary Owen at UMass has been doing a great job. He said we should follow the State's BMPs and asked that the DCPC be disregarded.

Sandra Larson, resident of Eastham, said she applauds the Commission and she would support a vote to recommend the DCPC.

Sue Phelan, GreenCape, said Marblehead adopted a regulation for all town-owned properties. She suggested that the Commission look to them to see what they have done. She said she supports the DCPC.

Ed Nash said we are moving too fast in a short timeframe. He said we already have regulations from the State and he is opposed to the DCPC.

Rick Lawlor, Town of Yarmouth, said recognizing the science that is out there is critical. He said local regulations are tough and towns already report to Federal and State agencies.

Tom Fair thanked the subcommittee for listening to those who attended the hearing. He said the industry is being wrongly targeted.

Mark Perkins said 15 sets of regulations would be a nightmare and the DCPC will have a poor impact on the Cape's economy.

Peter Kenney said he served on the wastewater advisory committee in Yarmouth. He said he is not sure he supports the DCPC and he is not sure there is a basis to move forward. He said he would encourage having a technical database before the Commission proceeds. He said a lot of landscape contractors are very responsible and do the right thing.

Lindsey Counsel said there is no need for 15 sets of regulations across the Cape and said one regulation would work. He said there is a need for fertilizer management and said the Commission and towns

need to work with UMass. He said retailers should be certified as fertilizers are being sold to people who don't know what they are doing.

Bob Mann said he doesn't believe the premise is correct. He said we are being told that fertilizer is harming the environment and he doesn't believe that. He said he has been following UMass guidelines for 30 years. He said professionals know what to do.

Ed DeWitt, Executive Director of the Association to Preserve Cape Cod and a resident of Falmouth, said Falmouth was outraged when the Attorney General called Falmouth's bylaw invalid and they were outraged that they may have lost local control. He said this is about having local control versus State control. He said Cape Cod is different and we know Cape Cod better than those in Boston.

Steve Haywood said reasonable regulations give you buy in and that is what is needed. He said UMass BMPs were created by professionals for professionals. He said if there is not true enforcement you gain nothing. He said he provides good jobs and if there is a license cost, he fears the unintended consequences and the time taken away from work would be costly. He said the State does a great job regulating. He said there should be exemptions for surface and sub-surface applications and in the tree business he needs rain when he fertilizes.

Dan Helman, President of Cape Cod Landscapers Association, said if the DCPC passes the Commission should continue using people in the industry. He said the DCPC does not have enough substance. He said this should not be approved today as there are no regulations and this should be done correctly. He said if the DCPC is about septic systems then he does not support the DCPC.

Sandy Bayne, resident of Eastham and supervisor of PALS pond sampling, said we should be doing this and it's an opportunity that towns will not have again. She said she has questions regarding phosphorus and there is no mention of how we are going to deal with phosphorus. She said she is supportive of the DCPC but it should also include phosphorus.

Chris Joyce said if the DCPC passes the people in this room will be the only ones that fall. He said we should ask Mary Owen and Bill Clark to write the regulations. He said it should be regionalized as opposed to doing it by individual towns. He said he cannot support the DCPC.

Michael Talbot, representing Mashpee's Oversight Committee, said both the Oversight Committee and the Mashpee Board of Selectmen voted unanimously to approve the DCPC. He said we are looking at billions of dollars in wastewater treatment and are we going to tell people they can't do something to reduce the cost. He said if this is done right those people who are responsible will benefit from this. He said homeowners look to professionals to do the right thing. He said he supports the DCPC.

Leo Cakounes said this has been compared to the OMP DCPC and said that is not true as it was not under the jurisdiction of towns. He said no one from town Boards of Health are here today to support this. He said this comes from Commission staff. He said he applauds their work and believes in the DCPC tool when it's used in the right way but it's not being used the right way with this DCPC. He said he supports Bill Clark and UMass, he does not believe in licensing and said it's not reasonable. He said the guidelines are too broad and not specific enough. He said he takes issue with this being the last chance. He referred to MGL Chapter 128 and said there are other ways a town can enact regulations. He said nitrogen load is not in "panic mode." He asked that the Commission not approve the DCPC.

Carole Ridley, coordinator of the Pleasant Bay Alliance, said she supports the DCPC. She said it's important as it gives towns an additional tool to address nitrogen. She suggested that it include phosphorus, BMPs need to be developed for play fields, and standards for new subdivisions should be included. She suggested petitioning the legislature for more time but she supports moving the DCPC forward now.

Brian Herrington, Scotts Company, said consumer research should be looked at. He said the four-step program is a small percentage of their sales but it is consistent with UMass BMPs. He said the company provides educational materials for consumers and they are willing to work with everyone on educating the public.

Karen Connelly, Executive Director of Lawn Care Professionals, said lawns are beneficial in the fight against runoff. She said professionals have expertise in lawn care and many of them have degrees in math and science.

Brian Wick, Regional Director Cape Cod Cranberry Growers Association, said the State is coming out with their regulations and he is anxious to see how those regulations have been developed with BMPs from UMass. He said they are the experts. He said he doesn't want to see 15 different regulations telling commercial growers how to grow their crops.

Robert Maffei said he cannot support the DCPC. He said professionals have the same concerns about the environment and they do the right thing. He said he has concerns about licensing and keeping his employees. He asked that professionals not be burdened with more regulations.

Sheila Lyons, Barnstable County Commissioner, thanked Bill Clark for all his work in the County. She said debates become personal and she is impressed by the individuals in the room today and said it's unfortunate that representatives from the towns are not here as well. She said she supports the DCPC for the benefit and opportunity it gives to towns. She said she would recommend that towns use the professionals who are in this room today for their expertise. She said they could partner with towns to educate towns and the public and said she sees them as resources to the towns.

Len Short moved to close the hearing and the record. Ernest Virgilio seconded the motion. The motion passed with a unanimous vote.

Austin Knight said Provincetown has already started the process with the Board of Selectmen and said those individuals who will follow the rules are here today. He said they were told that if the DCPC is done first then something will follow and he is nervous about that. He said he is concerned that they are not seeing anything with "teeth." He said the professionals understand it but there are no homeowners here today. He said he understands if they don't do anything today then nothing happens.

Paul Niedzwiecki said the DCPC is a process. He said after today the Commission would continue with the process to bring in professionals and help from the County. He said the Commission is trying to give towns the option. He said the Commission will work hard to make sure concerns are addressed throughout the rest of the process. He said it is like the OMP DCPC because they are reaching where towns could not.

Austin Knight said the key part to this is that towns will have a voice.

Roger Putnam said Wellfleet already has a management plan for public lands. He asked if the DCPC would supersede Wellfleet's plan or could they continue with their management plan; he asked if the DCPC would take that away. He said he has concerns that a DCPC would force a town because it is a DCPC.

Jessica Wielgus said it would not supersede anything. She said if Wellfleet does not opt in, the guidelines would not be imposed. She said it would only apply to towns who opt in otherwise it does not apply.

Ernest Virgilio asked if the decision for a town lies with Town Meeting.

Jessica Wielgus said probably not at Town Meeting because of the timeline. She said towns would hold public hearings and decide if they want to opt in.

Royden Richardson said he believes a DCPC gives back to towns the opportunity to opt in. He said he believes it's always better when the initiative takes place locally. He said he supports giving towns back what is being taken away by the State.

Len Short said towns really don't have the expertise to develop regulations and said it should be done by the County. He said the County should develop a program that they could take to towns for their acceptance if they choose. He said professionals shouldn't have to get licensing from 15 towns and said that should be addressed. He said Cape Cod has a unique situation here and he supports the DCPC.

Mary Pat Flynn said the greatest benefit to towns with a DCPC is that they will have resources from the Commission and the County to help them develop this. She said in regard to Falmouth and Orleans they had to be approved by the State. She asked if the same would apply here or would towns be covered by the DCPC.

Jessica Wielgus said towns would be covered by the DCPC.

Mary Pat Flynn said she thought with a Comprehensive Wastewater Management Plan (CWMP) that towns had to have some fertilizer management included in the plan. She questioned whether this could be rolled into the 208 Plan as it would give them more time.

Joy Brookshire said she agrees with having a technical database and said we need people who are part of the industry to work with the towns. She said we need to address phosphorus as well. She said it's not about regulating professionals and said the concern is with homeowners and it would be great to have professionals educate homeowners. She said she would like to see towns work with industry professionals, Bill Clark and Mary Owen. She said she supports the DCPC.

Harold Mitchell said we are asking Boards of Health to work with this and we have not heard from any town boards and he is concerned about that. He said he supports towns having control but they haven't heard from the two major components; Boards of Health and residents. He said he is worried that people will go off-Cape to buy fertilizer and not know what they are doing. He said he believes we need to step back for more time.

Michael Blanton said he agrees with Mr. Mitchell that we haven't heard from towns. He said that is unfortunate especially if they are being charged with this but it is incumbent for the Commission to do the right thing without that. He said he is impressed with what the professionals have said and it's important to keep the professionals involved. He said we need to do something in regard to fertilizer management and a DCPC will help to continue the discussion.

Paul Niedzwiecki said the Commission has heard from the town of Barnstable. He said the Commission would include Town Managers in meetings as well.

Austin Knight moved to designate the Cape-wide Fertilizer Management DCPC. Len Short seconded the motion. The motion passed with 12 votes in favor and two votes opposed.

Austin Knight moved to approve the draft written decision, as amended, and forward the Cape-wide Fertilizer Management DCPC designation to the Assembly of Delegates for adoption by ordinance. Len Short seconded the motion. The motion passed with a unanimous vote.



A motion was made to adjourn at 5:45 p.m. The motion was seconded and voted unanimously.

Respectfully submitted,



Andrew Putnam, Secretary

### **List of Documents Presented at the August 29, 2013 Commission Meeting**

- Handout material: August 29, 2013 Commission meeting agenda.
- Handout material: Cape-wide Fertilizer Management DCPC Designation Decision prepared by the Cape Cod Commission.
- Materials presented: PowerPoint slide presentation on the Cape-wide Fertilizer Management Proposed DCPC prepared by the Cape Cod Commission.
- Submission to Record: Documents from Mary Owen, UMass, re: Turf Soil and Nutrient Management.
- Submission to Record: Letter from Elizabeth Ferranti re: suggestions for fertilizer regulations.
- Submission to Record: Letter from Charles Bramhall, re: opposition to Fertilizer DCPC.
- Submission to Record: Letter from Sandra Quinn Larsen re: support for Fertilizer DCPC.
- Submission to Record: Letter from Sue Phelan, GreenCape, re: support for Fertilizer DCPC and Organic Land Management—Model Policy/Regulations.
- Submission to Record: Letter from Mark Perkins re: opposition to Fertilizer DCPC.
- Submission to Record: Letter from Mark Talbot, Talbot Ecological Land Care, re: support for Fertilizer DCPC.
- Submission to Record: Flash drive from Rick Lawlor containing photographs and magazine article.
- Submission to Record: Letter from Karen Connelly, Massachusetts Association of Lawn Care Professionals, re: considerations for Fertilizer DCPC implementing regulations.