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BARNSTABLE, MASSACHUSETTS 02630



CAPE COD  
COMMISSION

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

## Minutes

### Meeting

### Cape Cod Commission

First District Courthouse • Assembly of Delegates Chambers  
3195 Main Street, Barnstable, MA 02630

September 14, 2017

The meeting was convened at 3:00 p.m., and the Roll Call was recorded as follows:

Town	Member	Present
Barnstable	Royden Richardson	✓
Bourne	Richard Conron	✓
Brewster	Elizabeth Taylor	✓
Chatham	Michael Skelley	✓
Dennis	Richard Roy	✓
Eastham	Joy Brookshire	✓
Falmouth	Charles McCaffrey	Absent
Harwich	Jacqueline Etsten	✓
Mashpee	Ernest Virgilio	✓
Orleans	Len Short	✓
Provincetown	Vacant	Vacant
Sandwich	Harold Mitchell	✓
Truro	Kevin Grunwald	✓
Wellfleet	Roger Putnam	✓
Yarmouth	John McCormack, Jr.	✓ ( <i>left at 4:45 p.m.</i> )
County Commissioner	Mary Pat Flynn	Absent
Minority Representative	John Harris	✓
Native American Rep.	David Weeden	✓
Governor's Appointee	Michael Maxim	✓

The meeting of the Cape Cod Commission was called to order on Thursday, September 14, 2017 at 3:00 p.m. in the First District Courthouse, Assembly of Delegates Chambers, 3195 Main Street, Barnstable, MA. Roll was called and a quorum established.

■ **SUMMARY OF ACTIONS TAKEN/VOTES:**

**Public Hearing: Sagamore Line Reinforcement Project, Western Segment Phase-3**

The Sagamore Line Reinforcement Project's Western Segment Phase-3 project proposes installation of approximately 2.2 miles of gas distribution pipeline along, in and under Service Road beginning at Chase Road in East Sandwich and extending easterly into West Barnstable. Following presentations, testimony and discussion a motion was moved and seconded to close the public hearing. With 14 members voting the motion to close the public hearing passed with 13 votes in favor and one opposed (Brookshire). Following the close of the public hearing a motion to adopt the draft written DRI Exemption Decision and grant the requested DRI Exemption for the Sagamore Line Reinforcement Project's Western Segment Phase-3 was moved and seconded. With 14 members voting the motion passed with 12 votes in favor and two opposed (Richardson and Brookshire).

**Public Hearing: Yarmouth Growth Incentive Zone**

A request by the Town of Yarmouth to extend the term of its designated Route 28 Corridor Growth Incentive Zone (GIZ) for an additional four years to October 22, 2021 was before the Cape Cod Commission for consideration. Following presentations and discussion the Commission voted unanimously to close the public hearing. Following the close of the public hearing, the Commission voted unanimously to adopt the draft written Yarmouth Route 28 Corridor Growth Incentive Zone Extension Decision and grant the requested extension for an additional four years to October 22, 2021.

**Public Hearing: Growth Incentive Zone Regulations Proposed Amendment**

Commission staff presented the proposed amendment to Growth Incentive Zone Regulations, Chapter G of the Code of Cape Cod Commission Regulations that would allow a Growth Incentive Zone designation period to be extended one time by the Executive Director for a period of up to 180 days. Following the presentation and discussion a motion was moved and seconded to close the public hearing. With 14 members voting the motion passed with 13 votes in favor and one opposed. Following the close of the public hearing, the Commission voted unanimously to submit, as drafted, the proposed amendment to Section 11 "Duration" of the Growth Incentive Zone Regulations, Chapter G of the Code of Cape Cod Commission Regulations, to the Assembly of Delegates for adoption by County ordinance.

■ **TRANSCRIPT OF THE CAPE COD COMMISSION MEETING ATTACHED**

Attached is the transcript of the September 14, 2017 Cape Cod Commission Meeting prepared by Linda L. Wesson, Professional Court Reporter. The transcript includes:

- Public Hearing: Sagamore Line Reinforcement Project, Western Segment Phase-3
- Public Hearing: Yarmouth Growth Incentive Zone
- Public Hearing: Growth Incentive Zone Regulations Proposed Amendment
- Presentation on the Marine Mammal Act by Erin Burke of the Massachusetts Division of Marine Fisheries.

A motion was made to adjourn at 5:01 p.m. The motion was seconded and voted unanimously.

Respectfully submitted,

---

Elizabeth Taylor, Secretary

### **List of Documents Used/Presented at the September 14, 2017 Commission Meeting**

- Handout material: September 14, 2017 Commission meeting agenda.
- Handout material: Sagamore Line Reinforcement Project, Western Segment Phase-3 draft DRI Exemption Decision.
- Material presented: PowerPoint slide presentation on the Sagamore Line Reinforcement Project, Western Segment Phase-3 by Colonial Gas Company dba National Grid.
- Handout material: Town of Yarmouth Route 28 Corridor Growth Incentive Zone Extension of Designation Period draft Decision.
- Handout material: Chapter G, Growth Incentive Zone Regulations draft proposed amendment.
- Material presented: PowerPoint slide presentation of the Marine Mammal Act by Erin Burke, Massachusetts Division of Marine Fisheries.

COMMONWEALTH OF MASSACHUSETTS

CAPE COD COMMISSION

PUBLIC HEARINGS:

Sagamore Line Reinforcement Project,  
Western Segment Phase 3

Yarmouth Growth Incentive Zone Term Extension

Chapter G, Growth Incentive Zone Regulations  
Proposed Amendment

HELD ON THURSDAY, SEPTEMBER 14, 2017

**TRANSCRIPT** prepared by Linda L. Wesson, Certified  
Verbatim Reporter and Notary Public in and for the  
Commonwealth of Massachusetts, at the First District  
Courthouse, Assembly of Delegates Chambers, 3195 Main  
Street, Barnstable, Massachusetts, commencing at  
3:00 p.m.

\* \* \* \* \*

**CANAL COURT REPORTING**  
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**A P P E A R A N C E S**Cape Cod Commission Staff:

Barnstable, Royden Richardson  
Bourne, Richard Conron  
Brewster, Elizabeth Taylor  
Chatham, Michael Skelley  
Dennis, Richard Roy  
Eastham, Joyce Brookshire  
Harwich, Jacqueline Etsten  
Mashpee, Charles McCaffrey  
Orleans, Leonard Short  
Sandwich, Harold Mitchell, Chair  
Truro, Kevin Grunwald  
Wellfleet, Roger Putnam  
Yarmouth, John McCormack, Jr.  
Minority Rep., John Harris  
Native American Rep., David Weeden  
Governor's Appointee, Michael Maxim  
Mr. Paul Niedzwiecki, Executive Director  
Ms. Kristy Senatori, Deputy Director  
Mr. Jonathon Idman, Chief Regulatory Officer

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**CAPE COD COMMISSION MEETING**

(Commenced at 3:00 p.m.)

CHAIR HAROLD MITCHELL: Today is September 14, 2017, and we'll start with the roll call.

MS. ELIZABETH TAYLOR: Barnstable, Royden Richardson.

MR. ROYDEN RICHARDSON: Present.

MS. ELIZABETH TAYLOR: Bourne, Richard Conron.

MR. RICHARD CONRON: Here.

MS. ELIZABETH TAYLOR: Brewster, Elizabeth Taylor, present.

MS. ELIZABETH TAYLOR: Chatham, Michael Skelley.

MR. MICHAEL SKELLEY: Here.

MS. ELIZABETH TAYLOR: Dennis, Richard Roy.

MR. RICHARD ROY: Present.

MS. ELIZABETH TAYLOR: Eastham, Joy Brookshire.

MS. JOY BROOKSHIRE: Here.

MS. ELIZABETH TAYLOR: Falmouth, Charles McCaffrey.

1 MR. CHARLES MCCAFFREY: (Not present.)

2 MS. ELIZABETH TAYLOR: Harwich,

3 Jacqueline Etsten.

4 MS. JACQUELINE ETSTEN: Present.

5 MS. ELIZABETH TAYLOR: Mashpee, Ernest

6 Virgilio.

7 MS. ERNEST VIRGILIO: Here.

8 MS. ELIZABETH TAYLOR: Orleans, Len

9 Short.

10 MR. LEONARD SHORT: Here.

11 MS. ELIZABETH TAYLOR: Provincetown is

12 still vacant. Sandwich, Harold Mitchell.

13 CHAIR HAROLD MITCHELL: Here.

14 MS. ELIZABETH TAYLOR: Truro, Kevin

15 Grunwald.

16 MR. KEVIN GRUNWALD: Here.

17 MS. ELIZABETH TAYLOR: Wellfleet, Roger

18 Putnam.

19 MR. ROGER PUTNAM: Here.

20 MS. ELIZABETH TAYLOR: Yarmouth, John

21 McCormack, Jr.

22 VICE CHAIR JOHN MCCORMACK, JR.: Here.

23 MS. ELIZABETH TAYLOR: County

24 Commissioner, Mary Pat Flynn.



1 Commissioner FLYNN: (Not present.)

2 MS. ELIZABETH TAYLOR: Minority  
3 Representative, John Harris.

4 MR. JOHN HARRIS: Here.

5 MS. ELIZABETH TAYLOR: Native American  
6 Representative, David Weeden.

7 MR. DAVID WEEDEN: Here.

8 MS. ELIZABETH TAYLOR: Governor's  
9 Appointee, Michael Maxim.

10 MR. MICHAEL MAXIM: Present.

11 MS. ELIZABETH TAYLOR: We have a  
12 quorum.

13 CHAIR HAROLD MITCHELL: Thank you, very  
14 much. At this time, I'd like to give anyone an  
15 opportunity that would like to come up and come  
16 to the podium and make a public comment. Seeing  
17 none. I'll move forward.

18 We do have minutes that were on the  
19 agenda for potential approval. Minutes for  
20 August 3, 2017, that is going to be held until  
21 the next meeting, so we will hold that at this  
22 time.

23 Our Executive Director's report, we'll  
24 hold that off to the end of the meeting at that

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time also. We'll get right into the public  
hearings.

1 PUBLIC HEARING:

2 Sagamore Line Reinforcement Project

3 Western Segment Phase 3

4 CHAIR HAROLD MITCHELL: We'll start off  
5 with the Public Hearing for the Sagamore Line  
6 Reinforcement Project. The Cape Cod Commission  
7 will conduct a Public Hearing and consider the  
8 Development of Regional Impact, DRI, Exemption  
9 application filed by the Colonial Gas Company,  
10 d/b/a National Grid, for Phase 3 of the Sagamore  
11 Line Reinforcement Project's Western Segment.

12 National Grid proposed installation of  
13 2.2 miles of gas distribution pipe along, in, and  
14 under the Service Road beginning at Chase Road in  
15 East Sandwich and extending easterly into West  
16 Barnstable. The Commission will consider whether  
17 to adopt the draft written DRI Exemption decision  
18 and approve the request DRI Exemption for this  
19 project.

20 Anyone wishing to testify orally would  
21 be welcome to do so. Written comments may also  
22 be submitted at the -- for the hearing.

23 At this time, we'll start with the  
24 presentation by National Grid. I ask you to

1 introduce yourself.

2 MR. MICHAEL KOEHLER: Sure.

3 CHAIR HAROLD MITCHELL: And your  
4 position. Thank you.

5 MR. MICHAEL KOEHLER: Thank you, Mr.  
6 Chair. Good afternoon, Chair Mitchell,  
7 Commission members, Commission staff, and members  
8 of the public. For the record, my name is Mike  
9 Koehler from the law firm of Keegan Werlin, and  
10 I'm appearing on behalf of National Grid as the  
11 applicant in this proceeding.

12 Various project team members are here  
13 with us, and we look forward to answering any  
14 questions that may arise during the course of the  
15 discussion today about the company's application.

16 At the outset, I also want to thank the  
17 Commission staff for their work in assimilating  
18 the information from the record into the draft  
19 decision that is before you today.

20 The company has prepared a brief  
21 presentation regarding the project that will be  
22 delivered by Mr. Ted Barton from Epsilon  
23 Associates, who's the company's environmental  
24 consultant for this project.

1                   But before I pass the baton to Mr.  
2                   Barton, I want to highlight a few key points that  
3                   the company believes support the Commission  
4                   voting today to adopt the draft decision as its  
5                   final decision in this proceeding.

6                   Foremost, as made clear by the findings  
7                   in the draft decision, the company has submitted  
8                   substantial record evidence supporting the fact  
9                   that given the limited impacts, the company's  
10                  project should be exempted from the Commission's  
11                  full DRI review process consistent with the  
12                  Commission standards and statutory mandates.

13                  Second, we also want to be clear that  
14                  the alignment for the project is presented in the  
15                  company's application that's before you today is  
16                  fully consistent with the plans that were  
17                  approved by the Energy Facilities Siting Board  
18                  and MEPA in 2006.

19                  The plan before you today are also the  
20                  result of numerous discussions with the towns of  
21                  Sandwich and Barnstable during the course of  
22                  developing the company's application as submitted  
23                  to the Commission in July.

24                  Third, I just want to briefly address

1           some written comments that you have received from  
2           Sandwich and Barnstable. And I want to say,  
3           initially, that we'll be happy to discuss the  
4           details of the towns' letter in more depth to the  
5           extent Commission members have particular  
6           questions for the company.

7                        But I want to highlight a few key  
8           points. In particular, the company has and will  
9           continue to work constructively with the towns,  
10          both Sandwich and Barnstable, to address issues  
11          of concern related to the company's proposed gas  
12          pipeline project.

13                       The towns' written comments reference  
14          concerns that are largely aimed at having the  
15          company facilitate the towns' plans for a bike  
16          path along Service Road. As the company has  
17          explained to the towns on numerous occasions, the  
18          company cannot agree to the towns' desires in  
19          this regard because it's unrelated to the project  
20          that the company's proposing and that is the  
21          subject of the draft decision and would  
22          necessitate the company filing an entirely new  
23          application with the Cape Cod Commission, as well  
24          as a project change filing with the Siting Board

1 and MEPA.

2 With respect to the Siting Board in  
3 particular, a project change proceeding is a very  
4 time and resource-intensive process, and the  
5 company does not believe it can satisfy the  
6 Siting Board's standards on need and cost  
7 minimization for approval of a project change of  
8 the magnitude contemplated by the towns.

9 Regardless, the company submits that  
10 the Commission need not concern itself with the  
11 ongoing discussions between the company and the  
12 towns that will, in any event, need to be  
13 resolved during the local street-opening permit  
14 process with each town. Simply put, the towns  
15 concerns related to the bike path are unrelated  
16 to the project before you today and should,  
17 therefore, not delay the Commission's approval of  
18 the draft decision.

19 With that, I'll turn the baton over to  
20 Mr. Barton. Thank you, very much, for your  
21 consideration today.

22 MR. TED BARTON: Thank you, Mike. Good  
23 afternoon, everyone. As Mike said, my name is  
24 Ted Barton; I'm a co-managing principal with

1 Epsilon Associates, a 50-person environmental  
2 consulting firm based up in Maynard, Mass. I've  
3 been personally working on this project since  
4 2005, and I've been here at a couple of earlier  
5 meetings. I see a few familiar faces on the  
6 bench.

7 I'm an environmental engineer by  
8 training. I'm a Registered Professional Engineer  
9 in Massachusetts and several other states, and  
10 this sort of work is at the core of my practice  
11 at Epsilon.

12 So, I'm going to take about 10 or 15  
13 minutes and walk you through some of the basics  
14 of the project. We're going to talk a little bit  
15 about the project need in the context of the  
16 existing system here on the Cape, talk a little  
17 bit about project design, the efforts that we've  
18 made at outreach in coordination with both public  
19 officials and the public as well.

20 We're going to talk about the schedule  
21 that's in front of us for the remainder of the  
22 local permitting and then the construction of the  
23 schedule. And then as Mike said, we'd be happy  
24 to take questions and discussions.



1           So this map which those of you who were  
2 here for some of the earlier reviews on this  
3 project have seen before, but the Sagamore Line  
4 Reinforcement Project was envisioned as a 10-year  
5 multiphase effort essentially to reinforce the  
6 backbone gas supply onto the Cape.

7           So there's an existing 42-mile-long  
8 line, the Sagamore Line, that comes over the  
9 Canal, runs pretty much the length of the Cape.  
10 And this project is intended to reinforce or  
11 supplement certain key stretches of that in order  
12 that additional gas can be moved onto the Cape.

13           So, the project was envisioned to be  
14 done in several phases. The middle segment,  
15 which is here in Yarmouth, Dennis, and a little  
16 bit of Harwich was built first. That was built  
17 maybe almost 10 years ago at this point. The  
18 first two phases of the Western segment, which  
19 are entirely within the town of Sandwich, were  
20 permitted about three or four years ago and  
21 construction was recently finished on those two.

22           The Eastern segment over here is being  
23 built as part of the mid-Cape main replacement  
24 project, which you also had before you about a

1 year ago.

2 So the remaining piece, which is what  
3 we're going to talk about today is right here,  
4 Phase 3 of the Western segment, and it's about  
5 2.2 miles of 20-inch pipe. And with that, this  
6 entire project will be completed.

7 So, this is a little more detailed map  
8 of the stretch we're talking about. It starts  
9 just on the east side of Chase Road where,  
10 basically, where Phase 1 and 2 left off. It runs  
11 for about 4/10 of a mile along Service Road in  
12 Sandwich, and then about 1.8 miles along Service  
13 Road in the Town of Barnstable, and it will end  
14 right in the vicinity of where Service Road  
15 crosses the Eversource high-tension lines toward  
16 the end of Service Road.

17 So, the reason we're doing all this, as  
18 I mentioned earlier, in addition to reinforcing  
19 the supply on the Cape, for quite a few years the  
20 Cape system has experienced low pressures  
21 especially at the extremity of the system,  
22 primarily during the winter during cold weather,  
23 high-demand periods. To supplement the pipeline  
24 supply, the company has maintained for many

1           decades an LNG facility in South Yarmouth, and  
2           that facility is used to inject additional gas  
3           into the system when the demand is high and the  
4           pipeline cannot meet the supply requirements.

5                        So the solution is more pipe basically  
6           to increase the flow and the pressure along the  
7           system. That, in turn, will enable the company  
8           to maintain reliable service, especially in the  
9           Mid and Lower-Cape, and it will also allow gas to  
10          be provided for future construction that may take  
11          place on the Cape.

12                      So some of the benefits of the project  
13          to the Cape, as I mentioned, it will facilitate  
14          or at least eliminate the possibility that gas  
15          could not be provided to new customers. It  
16          reinforces the gas supply to roughly a hundred  
17          thousand existing customers on the Cape. It will  
18          pay property taxes to the towns of Sandwich and  
19          Barnstable. It is, as we demonstrated in our  
20          application, we believe entirely consistent with  
21          the Regional Policy Plan and the Local  
22          Comprehensive Plan. There are some additional  
23          short-term benefits, some construction jobs, paid  
24          police details and the like.

1                   And last, but certainly not least, it  
2                   will reduce the company's need to rely on LNG  
3                   during the winter months and that will translate  
4                   to fewer LNG truck trips to fill the South  
5                   Yarmouth tank.

6                   So what are we proposing to build here?  
7                   Basically, 2.2 miles of new 20-inch welded steel  
8                   pipe. As I mentioned before, about 4/10 of a  
9                   mile in Sandwich, the balance of it is in the  
10                  town of Barnstable. The pipe will be placed  
11                  beneath the pavement in the westbound or  
12                  northside lane of Service Road. There's no tree  
13                  clearing required for this part of the project as  
14                  there was for Phase 1 and 2, but there will be a  
15                  need to do some tree trimming especially in  
16                  Barnstable. Because there are no overhead  
17                  utility lines in Barnstable, the existing trees  
18                  have grown pretty substantially over the road,  
19                  and for about 15 percent of the length of the  
20                  project we'll have to do some tree trimming in  
21                  order that those low-hanging limbs don't  
22                  interfere with the construction equipment as it  
23                  moves along the northbound side, and the trees  
24                  will be need to be trimmed up to a height of

1 about 20 feet.

2 So we also did a fair amount of  
3 research into what existing utilities exist along  
4 this stretch of Service Road. And somewhat  
5 uniquely for a developed area like this, there  
6 are no below-ground utilities and, in fact, no  
7 overhead utilities along the entire Barnstable  
8 stretch. That stretch of the road is bounded by  
9 Route 6 on one side and conservation land on the  
10 other side. So there's basically no one there to  
11 serve with utilities.

12 And in terms of the Sandwich stretch of  
13 Service Road, there is an overhead electric line  
14 but no underground utilities there other than the  
15 existing gas pipeline.

16 This is just two quick views of what  
17 the stretch of Service Road looks like now.  
18 Okay. Construction procedure; we would like to  
19 be able to do this work with two crews working  
20 simultaneously. One would probably start at the  
21 Chase Road end and one would start roughly in the  
22 middle of the 2.2 mile segment. They would work  
23 in parallel. If we can do that, we think this is  
24 a two-month/three-month at the outside

1 construction project, so it will move pretty  
2 quickly. If we can get through the local  
3 permitting in a timely way, we would be prepared  
4 to start next spring as early as possible,  
5 possibly in March, probably no later than April.  
6 So we would be in and out well before the summer  
7 season.

8           Given the relative narrowness of the  
9 road, we would like to be able to close the road  
10 at the worksites as we go along, obviously, with  
11 police details and with provisions to allow  
12 people to get in and out of their homes in the  
13 short stretch in Sandwich where there are people  
14 along -- that live along there. And there would  
15 be some postings that we'd want to put at either  
16 end suggesting that people use Route 6 as a  
17 detour for that one exit stretch.

18           All of this would be discussed with the  
19 towns. We have to prepare a more detailed  
20 Traffic Management Plan as part of the street  
21 opening process. So that would be subject to  
22 town agreement. But we'd like to be able to  
23 accomplish this in a way that we can move along  
24 quickly and not inconvenience the public for any

1 longer than necessary. So the road would be  
2 reopened each evening. The work areas would be  
3 temporarily patched and so on.

4 And then in terms of restoration, our  
5 concept at this point is that funds would be set  
6 aside for the towns to do curb-to-curb repaving  
7 using a contractor of their choice and timing of  
8 their choice. But the other restoration that  
9 would be required here would be, basically, just  
10 some planting and seeding along the road edge as  
11 that's disturbed.

12 These are a little out of order, but  
13 this is just a shot of giving you an idea of what  
14 a typical tree trimming might look like. So this  
15 is a west facing photo. So the north, the  
16 northbound lane is on your right, and that green  
17 hashed area is an idea of the tree trimming that  
18 would be required. And as I mentioned, this  
19 would need to occur for about 15 percent of the  
20 length of the route.

21 So a few of the environmental  
22 considerations that were looked at for the  
23 project in which are detailed in the application  
24 that we submitted; by working under pavement, we

1           avoid any need for actual clearing of trees.  
2           There's no significant off-road grading or land  
3           disturbance. There's no direct wetland impact,  
4           no floodplain impact.

5                         We've been to meet with the folks at  
6           National Heritage and Endangered Species, and we  
7           have their sign off on the rare species aspect of  
8           this. And by working in and right along the  
9           road, we're technically exempt from that review  
10          but we did it anyway, and we've agreed to some  
11          protective measures for turtles as we did for  
12          Phase 1 and 2.

13                        There are no DEP public water supply  
14          areas along this stretch. No expected impacts to  
15          archaeological or historical resources. No  
16          visual impacts other than one or two locations  
17          where we'll have some minor above-grade equipment  
18          for remote-operated valves and vents. And as I  
19          mentioned earlier, there are very few abutting  
20          residences on this stretch of the project, about  
21          17 homes in Sandwich, none in Barnstable.

22                        And this is an example of what the  
23          control box and vent pipe looks like. This  
24          photo, I believe, was taken down near Route 130



1 at the beginning of Phase 1 of the project.

2 As we've gone through this process and  
3 we've been working on this phase of the project  
4 for about the last year, year and a half,  
5 National Grid folks have done door-to-door  
6 outreach with the abutting landowners. We had a  
7 prefiling meeting with the Cape Cod Commission  
8 staff back in March. We've done a fair amount of  
9 state coordination, which I've touched on already  
10 and municipal coordination. There's been an  
11 extensive series of meetings between the company  
12 and the DPW town engineer folks in both the towns  
13 of Sandwich and Barnstable.

14 So our schedule for this, we do have to  
15 file a short project change filing, basically to  
16 get EFSB and MEPA sign off for hydrostatic  
17 testing in lieu of pneumatic testing. And for  
18 those of you who were here for the first two  
19 phases, you may remember that was part of the  
20 project change process that we went through for  
21 that. But given that we've done this already, we  
22 anticipate this to be pretty straightforward.

23 The primary work that remains is the  
24 local permitting for street-opening permit and

1 tree trimming. That would need to be done in  
2 both towns, and there also would be a  
3 Conservation Commission filing in Barnstable for  
4 buffer zone work.

5 Assuming we can get through that  
6 reasonably quickly, as I mentioned earlier, we'd  
7 like to be able to start construction in April or  
8 May. And if we can get this done in the two or  
9 three months that I discussed, we'll be out of  
10 there before the summer season gets underway.

11 Thank you for your attention.

12 CHAIR HAROLD MITCHELL: So, at this  
13 time, we'll have a presentation. You're  
14 completed?

15 MR. TED BARTON: I'm done.

16 CHAIR HAROLD MITCHELL: Thank you. At  
17 this time, we'll have a presentation by the  
18 Commission staff.

19 MR. JON IDMAN: Good afternoon. Thank  
20 you. Jon Idman, I'm your Chief Regulatory  
21 Officer. The staff's prepared a draft written  
22 DRI Exemption decision for your consideration,  
23 and staff recommends granting the DRI Exemption.  
24 Now that decision contains all the findings and

1 conditions necessary and appropriate to support  
2 the grant.

3 As was stated, this project will  
4 connect the Sagamore Line Reinforcement Project  
5 segments that have previously been permitted.  
6 All those other segments have either been  
7 constructed or are under construction currently.

8 This work is really typical of other  
9 in-pavement utility work that is done every day  
10 on Cape Cod. From a regulatory perspective here,  
11 this project requires Development of Regional  
12 Impact or triggers Development of Regional Impact  
13 review because, ultimately, the master plan that  
14 was proposed back in 2006 required the  
15 preparation of an Environmental Impact Report  
16 under MEPA, and then subsequently triggered Cape  
17 Cod Commission's DRI jurisdiction.

18 A DRI review is really generally about  
19 addressing permanent regional impacts from a  
20 project. In specific, a DRI Exemption  
21 application allows an applicant to maintain that  
22 a project won't have permanent regionally  
23 significant impacts to protected resources.

24 Now the applicants have provided an

1 expansive application here much like a full  
2 Development of Regional Impact application. And  
3 from staff's perspective, staff's analysis and  
4 recommendations wouldn't be significantly  
5 different or any different than if this were a  
6 DRI review. Really, the outcome from staff's  
7 perspective would be the same.

8 There's no clearing or major grading  
9 associated with this project. The work is either  
10 under payment or within existing disturbed area  
11 within public road layout. They've avoided  
12 impacts primarily by locating the project in  
13 these areas. Where there are impacts, they are  
14 anticipated to be temporary ones related to  
15 construction period impacts, things like traffic  
16 or erosion.

17 However, the applicants have proposed  
18 mitigation for these temporary construction-  
19 related impacts. They have a robust  
20 environmental construction plan that includes  
21 stormwater management for construction and spill  
22 protection as well as protocols for work in  
23 sensitive areas like wetlands buffers.

24 They provided a Travel Management Plan

1 that contains traffic controls during  
2 construction that's been developed and will  
3 continue to be developed in consultation with the  
4 towns.

5 Additionally, there's a commitment to  
6 establishing a roadwork escrow, which will allow  
7 repaving for this entire length. That will be  
8 offered for the benefit of the towns of Sandwich  
9 and Barnstable for them to apply and use flexibly  
10 as their budgets and projects permit that  
11 repaving.

12 The applicant has communicated with the  
13 towns, with the Massachusetts Historic  
14 Commission, and the Massachusetts National  
15 Heritage and Endangered Species Program. They've  
16 undertaken a botany study at the request of  
17 Heritage for some plants that -- there were  
18 questions whether they existed at the eastern end  
19 of this line. That botany study didn't result in  
20 any listed plant species. Heritage did request  
21 and the applicants are proposing turtle training  
22 be required by project contractors, and the  
23 applicant has agreed to work that into its  
24 Environmental Construction Plans.

1                   There are some conditions in this draft  
2                   DRI Exemption decision. As I mentioned, this  
3                   Environmental Construction Plan and Travel  
4                   Management Plan, the Commission staff would like  
5                   final copies of those. They were submitted in  
6                   draft form. That Turtle Protection Plan would  
7                   have to be formally integrated into the  
8                   Environmental Construction Plan.

9                   As you heard referenced, there was a  
10                  letter received jointly from the towns of  
11                  Barnstable and Sandwich. There was a response  
12                  letter received from the town, I'm sorry, from  
13                  that applicant. Those letters are in your  
14                  materials, and I believe there are some town  
15                  officials here who may want to speak to these  
16                  issues as well.

17                  Notwithstanding the issue -- the letter  
18                  from the town, Commission staff believes that  
19                  this project is eligible for an exemption request  
20                  and recommends that the Commission grant this  
21                  exemption request. The towns have wrote opening  
22                  permits and the issues -- the towns raised can be  
23                  handled under that local permitting. The  
24                  concerns in the letter of staff's opinion are not

1 related to regional impacts over which the  
2 Commission has jurisdiction for impacts that can  
3 be imputed to the project as it's proposed.

4 So, I'll be brief. That's what I have,  
5 and I'd be happy to answer any questions as the  
6 hearing develops.

7 Thank you.

8 CHAIR HAROLD MITCHELL: Thank you. At  
9 this time, I'll take any questions or comments  
10 from the Commissioners.

11 Yes, Elizabeth.

12 MS. ELIZABETH TAYLOR: I really  
13 appreciate the work you have gone through to  
14 maintain the integrity of this project  
15 environmentally. I remember last time that you  
16 opened up 6A in Brewster, and I would caution you  
17 to make sure you close up the road so it's in the  
18 same or better condition because you didn't do  
19 that in Brewster. And we had a lot of issues  
20 when you opened up Route 6A.

21 So, just as a caveat, make sure you do  
22 your road repairs and patches -- I guess you're  
23 calling them permanent patches, just make sure  
24 they are up to par or better. It would be

1 greatly appreciated, I'm sure, by the towns.

2 Thank you.

3 CHAIR HAROLD MITCHELL: Thank you.

4 Anyone else? Yes, John.

5 MR. JOHN HARRIS: I heard a comment  
6 from the applicant that there would be less LNG  
7 trucks, and my question is is it ultimate plan to  
8 eliminate them in total, or do we still have to  
9 realize trucks going in to supplement the need  
10 for LNG?

11 MR. TED BARTON: Let me take a stab at  
12 that. It's been a little while since we looked  
13 at these numbers. But the gist of that question  
14 was something that the Siting Board asked at  
15 several different steps along the way for this  
16 project. And the intention is to greatly reduce  
17 and perhaps, in a warm winter, eliminate the need  
18 for LNG. But the LNG storage facility is planned  
19 to remain in place because it is important  
20 backup. So should there be particularly cold  
21 weather for a long period of time or an issue  
22 with the pipeline supply or the pipeline system,  
23 that's an important backup system. So that tank  
24 in South Yarmouth would remain in place for the



1           foreseeable future, albeit with fewer trucks  
2           because of the capacity of the pipeline is  
3           improved.

4                   MR. JOHN HARRIS: So that means that  
5           this is a temporary process, perhaps in the next  
6           10 years we'd be back to the same thing again?

7                   MR. TED BARTON: To my knowledge, the  
8           fix that is about to be finished is going to hold  
9           things for quite some time. I can't speculate on  
10          what might happen 20 years from now, but I've not  
11          heard any discussion of plans for projects beyond  
12          this.

13                   And as you know, the Mid-Cape  
14          replacement project is replacing much of the Cape  
15          system with brand-new pipe. So that is underway  
16          as well. And beyond that, I don't know if  
17          anybody from the company that's here today could  
18          add to that, but that's my knowledge of the  
19          situation.

20                   MR. JOHN HARRIS: No, I wasn't asking  
21          you to speculate on the future. Just looking at  
22          the current situation and the towns that are  
23          being affected by it now, you know, the town  
24          engineer from Sandwich is here, and someone's

1 going to say, well, oh, this is going to show up  
2 again and that's really the question.

3 So you just simply say it's a  
4 possibility and we leave it at that because you  
5 certainly indicated that there will be less  
6 trucks but there's no plan to eliminate this  
7 process.

8 And I just wondered, you know, from an  
9 engineering perspective a supply, you know, why  
10 wasn't it planned so that you could actually go  
11 and install perhaps a 30-inch pipe and not be  
12 worried about this in the next years.

13 MR. COLIN MURPHY: I'm Colin Murphy.  
14 I'm the Project Engineer for this project. I  
15 just wanted to add the prospective of scope  
16 between the existing main, which is a 12-inch  
17 main, and the proposal of this project would be a  
18 20-inch main to reinforce that existing 12. So  
19 to go from being limited by one 12-inch main to  
20 having the 12-inch main and a 20-inch main really  
21 provides a much greater amount of capacities than  
22 what's existing.

23 So the likelihood of needing full-time  
24 LNG truck deliveries after this project is

1 completed is unlikely. It would be saved for  
2 supplemental gas deliveries sort of as a backup  
3 option.

4 MR. JOHN HARRIS: Okay. Thank you.

5 CHAIR HAROLD MITCHELL: Thank you.  
6 Anyone else have a question at this time, the  
7 first round?

8 Joy.

9 MS. JOY BROOKSHIRE: On the last  
10 project that we reviewed, the abutters to the  
11 work that was going to be done were upset that  
12 you did not really notify them even though you  
13 were told that they were notified because they  
14 weren't there in their homes. They were away for  
15 the winter or whatever. And people that were  
16 further back off the road were never notified.

17 How have you notified the abutters this  
18 time, and did you reach all of them?

19 MR. MICHAEL KOEHLER: I can answer that  
20 question. Dennis, the community relations  
21 person, is here too for the company if I glitch  
22 the answer.

23 But my understanding is that, yes,  
24 everybody was talked to or at least contacted

1 with a door hanger. And to date, nobody has  
2 expressed any concerns to the company about the  
3 project. And I think I'm probably not  
4 overstating things by saying that the feedback  
5 that the company did get, most of it was  
6 appreciative -- not appreciative but there were  
7 no concerns raised about proposing a line that's  
8 in the street.

9 MS. JOY BROOKSHIRE: Also, some of the  
10 abutters were concerned because they live close  
11 to the work about possible safeguards if you had  
12 a gas leak. Could you describe your safety  
13 measures?

14 MR. MICHAEL KOEHLER: For this project?

15 MS. BROOKSHIRE: Uh-huh.

16 MR. MICHAEL KOEHLER: It will be the  
17 same as the last project. It will be, and I need  
18 some help from engineers here, about the safety  
19 of the gas pipeline, but, you know, company --  
20 safety is paramount. And so whether it's  
21 construction integrity or monitoring, ongoing  
22 monitoring. Bring the engineers back, not the  
23 lawyer.

24 MR. TED BARTON: But that's a good

1 introduction, Mike. So, Mike's right. The  
2 safety precautions --

3 CHAIR HAROLD MITCHELL: Excuse me; can  
4 you make sure your microphone is on, please. We  
5 record this, and I just want to make sure  
6 everybody understands and gets an opportunity to  
7 hear.

8 MR. TED BARTON: I think it's on. Can  
9 everybody hear me okay?

10 MS. BROOKSHIRE: Is there a green  
11 light?

12 MR. TED BARTON: Yeah, the green  
13 light's on so.

14 MR. MICHAEL KOEHLER: No.

15 MR. TED BARTON: Now the green light's  
16 on brighter. (Laughter.) So as Mike started to  
17 say, the safety program, if you will, for this  
18 2.2 miles of pipe is essentially the same as you  
19 heard about for the first 4.4 miles of the  
20 Western segment and for the middle segment which  
21 preceded it. And it really starts with the  
22 proper design and construction of the new pipe.  
23 So a lot of thought goes into the design, making  
24 sure that the pipe is at a proper burial depth.

1                   The construction is quite a painstaking  
2 process, so this is high-strength steel pipe.  
3 It's very carefully welded. Each weld is  
4 nondestructively tested or x-rayed, if you will,  
5 before the pipe goes into the ground. The  
6 coating, if it's disturbed during the welding  
7 process, is replaced. There's cathodic  
8 protection on the pipe which makes sure there are  
9 no corrosion as the pipe ages in the ground.  
10 This pipe is large enough and straight enough  
11 that it can be pigged or internally inspected.  
12 So at periodic intervals, something called a  
13 "smart pig" can be run through the pipe to look  
14 for any thinning of the pipe wall or any dirt  
15 that's in it that should be in it, etcetera.

16                   So it really is a carefully designed,  
17 carefully constructed pipe and that's the  
18 predominant way you ensure a safe pipe. And then  
19 beyond that, the location is marked. There will  
20 be as-built plans given to the town, provisions  
21 to make sure that there's no digging, which is  
22 the primary cause of pipeline issues once they're  
23 in the ground; a contractor unwittingly came in  
24 the area hitting the pipe and causing damage to

1 it.

2 So those are, off the top of my head,  
3 from what I remember from the last time around.  
4 Those are the key points but, Colin, do you want  
5 to add to that?

6 MR. COLIN MURPHY: Sure.

7 MR. TED BARTON: Very talkative  
8 engineers here.

9 MR. COLIN MURPHY: So this main  
10 was designed using DOT 192 and ASME 31.8 federal  
11 standards. Although this is a technically, as  
12 the federal government recognizes it, a  
13 distribution main, it was designed under the  
14 transmission of federal codes in addition to  
15 Massachusetts CMR 220.

16 And another point that was brought up  
17 earlier about the weld inspections and the smart  
18 pigging during construction, those are typically  
19 federal requirements. In order to exceed the  
20 safety standards outlined by the state, we defer  
21 to the Federal Transmission DOT Standards 192 and  
22 31.8. So we inspect 100 percent of all girth  
23 welds. We inspect the coating through a process  
24 known as jeeping for all two-part epoxy coating

1 repairs or welds.

2 Yeah, essentially, we adhere to all the  
3 federal standards for both construction and  
4 design. And the permit design drawings were  
5 stamped in accordance with those codes.

6 CHAIR HAROLD MITCHELL: Okay. Yes,  
7 Ernie.

8 MR. VIRGILIO: I'd just like to note  
9 having the opportunity to observe the work of  
10 this company over many years, especially as DPW  
11 Director in town in the past. I'd like to  
12 compliment you on your process; how safe your  
13 people are, your processes, your incredible work  
14 that you do, and I'd just like to say that it's a  
15 good company that does very good work on Cape Cod  
16 for us.

17 CHAIR HAROLD MITCHELL: Thank you.  
18 Seeing no other questions for the first round?  
19 Yes.

20 MR. RICHARD ROY: Will this project  
21 have to be completed before the moratorium is off  
22 in Yarmouth and Dennis and Brewster and Harwich?

23 MR. DENNIS MCKENNA: Hi. I'm Dennis  
24 McKenna, Customer and Community Manager. I'm



1 working on that project you're referring to, the  
2 Mid-Cape replacement. This project will not have  
3 to be completed before the moratorium is lifted.  
4 Right now, we're currently under construction  
5 with the Mid-Cape, and we are still planning on  
6 lifting the moratorium in April 2019. This was a  
7 planned -- as we've heard, it's been a long-  
8 planned reinforcement project for the Cape.

9 MR. RICHARD ROY: Is that project on  
10 schedule?

11 MR. DENNIS MCKENNA: The project is,  
12 currently, it's on schedule. We're working with  
13 the town of Harwich. The Cape is a challenge for  
14 us with the seasonality and the summer  
15 moratoriums versus other towns where they shut us  
16 down in the winter; it tends to be reversed, but  
17 we fully intend to complete that project on time.

18 MR. RICHARD ROY: Thank you.

19 CHAIR HAROLD MITCHELL: So, at this  
20 time, I'm going to close the first round of  
21 questions and open up the podium for any public  
22 comments beginning with officials. Any officials  
23 from the state/federal government? Seeing none.  
24 Any officials from the towns? Please come to the

1 microphone and introduce yourself and let us know  
2 your position.

3 Thank you.

4 MR. PAUL TILTON: Thank you. My name  
5 is Paul Tilton. I'm the Sandwich DPW Director  
6 and Town Engineer. I thank you for the  
7 opportunity to speak to you today. I also thank  
8 National Grid for a very thorough presentation.

9 I'd just like to point out I've been  
10 working on these projects, Phase 1 and 2 and now  
11 Phase 3 for over 10 years. And we've had a very  
12 good working relationship with National Grid.  
13 Very professional and responsive to the towns,  
14 and I do appreciate and thank them for that.

15 Just a little background about Phase 1  
16 and 2, first of all, and the reasoning behind the  
17 letter that we submitted and some of our concerns  
18 regarding the Phase 3 project. As you know, the  
19 Phase 1 and Phase 2 was a Development of Regional  
20 Impact. Initially, National Grid wanted to  
21 locate that gas main under the Service Road  
22 pavement. The town had some concerns about that.  
23 They submitted those concerns in a letter to the  
24 Cape Cod Commission.

1                   Based upon this, National Grid opted to  
2                   locate the gas main outside of the road. So  
3                   within a hundred foot layout along the Service  
4                   Road, the town layout, which is really where  
5                   utilities should go.

6                   As a result, this project was a very  
7                   successful project for National Grid and the  
8                   town. They developed and had an excellent Visual  
9                   Mitigation Plan which was conditioned by the Cape  
10                  Cod Commission. They also provided a final  
11                  construction grade which, ultimately, will be a  
12                  foundation for a shared-use path or bike path,  
13                  which is currently on the Transportation  
14                  Improvement Plan for 2022.

15                  This shared-use path is a priority of  
16                  the state, regional, and local agencies to  
17                  continue an extension of the Rail Trail across  
18                  the entire length of Cape Cod. Due to the excess  
19                  of Phase 1 and Phase 2, the towns of Sandwich and  
20                  Barnstable prefer that the same approach be taken  
21                  for Phase 3, which is locate the gas main outside  
22                  of the road. This is a logical continuation of  
23                  utility corridor and results in the least impacts  
24                  to the towns and meets the goals of both towns.

1                   National Grid's preferred option, as  
2                   you heard today, Phase 3, is to locate the gas  
3                   main under the Service Road pavement. Now the  
4                   town has many concerns in this regard. The major  
5                   concern is not necessarily the shared-use path  
6                   and being able to facilitate that. The major  
7                   concerns, and I won't go into detail here, but  
8                   they deal with the difficulty of installing  
9                   future town utilities and infrastructure.

10                   Also, concern about the safety for town  
11                   workers and water district workers working around  
12                   a gas main under the Service Road; reduced life  
13                   of the Service Road with that gas main under that  
14                   pavement, traffic disruption, most probably  
15                   significant cost borne by both the towns of  
16                   Sandwich and Barnstable.

17                   So, we're not opposed to their  
18                   proposal. We prefer the out-of-the-road-option.  
19                   But, right now, they propose some mitigation to  
20                   offset the location of that gas pipeline under  
21                   the Service Road pavement. We're not there yet.  
22                   We're sort of at an impasse. Unfortunately,  
23                   their plan right now is not consistent with the  
24                   goals of the towns.

1           Further, it increases cost to the towns  
2           expected to be in excess of \$15 million over the  
3           course of years when the town must install  
4           infrastructure and facilities along that road.

5           So, in order to make National Grid's  
6           proposal viable and for the towns to consider  
7           their option, National Grid must develop a plan  
8           that effectively mitigates all town impacts and  
9           meets the future goal of both towns.

10           In this regard and understanding that  
11           the Cape Cod Commission has recommended a DRI  
12           Exemption, we seek the Cape Cod Commission's  
13           assistance, their technical expertise to help  
14           advance a mutual acceptable project that meets  
15           the goals of both National Grid in the towns of  
16           Sandwich and Barnstable.

17           I thank you for the opportunity to  
18           speak and certainly available to any questions.

19           CHAIR HAROLD MITCHELL: Thank you.  
20           Anyone else?

21           MS. ELIZABETH JENKINS: Good afternoon.  
22           My name is Elizabeth Jenkins. I'm the Planning  
23           and Development Director for the town of  
24           Barnstable. I'd like to thank Mr. Tilton for his

1 leadership on this issue, and, well, I defer to  
2 his experience and expertise in this only to say  
3 that we concur with his position, and that the  
4 town of Barnstable is committed to finding a  
5 solution that supports the needs, of course, of  
6 National Grid as well as to bringing the  
7 Governor's vision of having a Cape Cod Rail Trail  
8 all the way across the Cape to fruition.

9 So, also available if you have any  
10 questions.

11 CHAIR HAROLD MITCHELL: Thank you. Any  
12 other public officials? Any public, period, that  
13 would like to step up to the microphone and  
14 comment? Seeing none.

15 We'll go back to a second-round of  
16 question from the Commissioners if there are any?  
17 Yes, Jackie.

18 MS. JACQUELINE ETSTEN: Just a comment  
19 that I hope that you have a certified arborist  
20 supervising the tree trimming so that it's not a  
21 shearing but it's a proper pruning that will  
22 benefit the trees in the future years.

23 Thank you.

24 CHAIR HAROLD MITCHELL: Anyone else?

1 Yes, Jack.

2 VICE CHAIR JOHN MCCORMACK, JR.: Thank  
3 you, Mr. Chairman. I just want to say that I'm  
4 always in favor of anything that will reduce the  
5 over-the-road deliveries, tanker trucks and Mr.  
6 Harris's remarks to hoping that they can be  
7 eliminated completely someday.

8 Thank you.

9 CHAIR HAROLD MITCHELL: Joy.

10 MS. JOY BROOKSHIRE: Did we grant a DRI  
11 Exemption for the last one down the Mid-Cape?

12 CHAIR HAROLD MITCHELL: I'll ask Jon  
13 Idman to answer.

14 MR. JON IDMAN: There was a DRI  
15 Exemption granted for the Mid-Cape Main  
16 Replacement Project but not for Sagamore Line  
17 Reinforcement Project, Western Segment, Phases I  
18 and II.

19 MS. JOY BROOKSHIRE: And without an  
20 exemption being granted or if an exemption is  
21 granted, how do we reach an agreeable decision of  
22 both the towns and the gas company to have the  
23 pipes underground, not under a road?

24 MR. JON IDMAN: Well, I'm not sure you

1           could reach an agreeable solution necessarily  
2           through Development of Regional Impact review  
3           either. I mean the Commission responds to  
4           projects that are before you. The project before  
5           you, staff's position, has very few, if any,  
6           permanent, regionally significant impacts. A  
7           bike path would be a great thing, but it's not  
8           any mitigation that's related to any impact  
9           that's being created by this project.

10                        So I think this discussion has to occur  
11           between National Grid and the towns and to the  
12           extent the Commission during those discussions  
13           can lend its technical expertise. I think the  
14           Commission staff would be willing to do so.

15                        MS. JOY BROOKSHIRE: That would be very  
16           nice.

17                        CHAIR HAROLD MITCHELL: John, if I  
18           could ask you a question, please? If we deny --  
19           if we approve this exemption but the towns of  
20           Barnstable and Sandwich come forward and are able  
21           to work with, what happens if they want to change  
22           that positioning and put that underneath instead  
23           of putting it down the road, put it to the side  
24           as was required in Phases 1 and 2; how does that



1           affect us?

2                       MR. JON IDMAN:  Essentially, a project  
3           for which an exemption was granted is modified, I  
4           guess it would depend on the extent of the  
5           modification.  I mean also recognize here that  
6           we're not talking about taking a line and moving  
7           it three feet.  I mean I think the reason there's  
8           some objection here by the company is given the  
9           resources, the wetlands, the priority habitat  
10          mapping, the residences along this area, and the  
11          topography, you're talking about moving it  
12          substantially outside the paved way because  
13          there's a large layout there, a hundred feet.

14                      But I guess your question is it would  
15          really depend on how much it's modified.  I mean  
16          there may be modifications that still fit within  
17          the four-corners of this decision.  Something  
18          else may require a new application to the  
19          Commission.

20                      CHAIR HAROLD MITCHELL:  Thank you.  Any  
21          other questions?

22                      Yes, John.

23                      MR. JOHN HARRIS:  I'm not really sure  
24          about this, but Mr. Tilton mentioned that the

1 town of Sandwich is projecting that they'd have  
2 to spend an additional \$15 million to address  
3 infrastructure issues. How are they going to go  
4 about resolving this matter because this seems to  
5 be outside of this hearing, but he's raised it as  
6 a significant concern?

7 So, I'm just listening because it means  
8 my taxes are going to go up too. But is this  
9 something that we should expect to come back to  
10 the Commission for some other review or some  
11 discussion?

12 Jon, you're the expert here.

13 MR. JON IDMAN: I'm not an expert but  
14 I'll try. No, I don't expect -- if you grant the  
15 exemption, I don't expect it to come back to the  
16 Commission. I expect for this discussion to take  
17 place during local permitting for the road-  
18 opening permits.

19 There's some other laws which the  
20 Commission should be aware of here. By statute,  
21 a public service corporation has, basically, an  
22 easement within a public way. So if that road  
23 opening permit were denied, the company would  
24 have the ability to go to the DPU, Department of

1 Public Utilities, and seek the ability to put  
2 this within the layout.

3 Another thing an agency under DPU is  
4 concerned with, the EFSB, is balancing the  
5 provision of utilities with the cost of utilities  
6 because those costs are passed along to  
7 ratepayers.

8 I think you heard that referenced in  
9 the presentation that, you know, a bike path is a  
10 great thing and it's a laudable endeavor, but  
11 there's only so much the company can do to take  
12 an unrelated project, incorporate it into its  
13 project, and have the EFSB sign off on that;  
14 where the EFSB is looking at the need and  
15 reliability of a project and the needs it's going  
16 to satisfy relative to the cost. The EFSB has  
17 looked at this project and determined that the  
18 company best meets its needs at lowest cost by  
19 proposing the line where it's proposed before you  
20 today.

21 And, you know, I'll mention something  
22 about \$15 million. I don't know where that  
23 number comes from. It was a statement made but I  
24 don't know if \$15 million means you can help us

1 with a \$15 million bike path project or if that  
2 \$15 means that their costs are going to increase  
3 because you would have to do something to the  
4 road itself. So there's been really no  
5 substantiation about what this \$15 million in  
6 increased costs actually means and what it's  
7 related to.

8 So if that's a discussion you want to  
9 have here, I would have that discussion, John,  
10 with Mr. Tilton because I'm not quite sure what  
11 the origin of that number is, what it relates to.

12 MR. JOHN HARRIS: Mr. Tilton already  
13 pointed out what it was, and he didn't give the  
14 details. But if that's what is necessary, I was  
15 simply asking a question that if, in fact, the  
16 town, in his expertise there, foresees that there  
17 will be a \$15 million infrastructure expense. He  
18 didn't say anything about a bike path or anything  
19 else like that; it was infrastructure, then that  
20 was the reason why I asked the question.

21 So, Mr. Tilton, if you've got anymore  
22 facts to add to it or we can move on.

23 MR. PAUL TILTON: Yes. The details  
24 behind that number, we have consulted VHB, our

1 consultant. We've also consulted the water  
2 district, and we've come up with just a bunch of  
3 estimates based upon their proposal. And part of  
4 their proposal for mitigation includes five-foot  
5 shoulders for a bicycle lane on the Service Road.  
6 That's part of their mitigation.

7 Unfortunately, it only includes the  
8 paving of those five-foot shoulders. It doesn't  
9 include any slope treatments. It doesn't include  
10 the actual specifications we require for road  
11 repaving, guardrails, retaining wall treatments;  
12 all those things would have to be part of their  
13 mitigation with those five-foot shoulders. They  
14 are not proposing to pay for that. So that's  
15 very costly. That, in itself, costs 2 million  
16 for the town of Sandwich to accomplish that, and  
17 5.5 million for the town of Barnstable to  
18 accomplish that.

19 Also, for the bike lanes, to be  
20 consistent, you need to have a uniform bike  
21 facility on a road. So if you provide a bicycle  
22 facility for Phase 3, it's my obligation to make  
23 sure I have uniform bicycle lanes the entire  
24 length of the Service Road. So for Phase 1 and

1 Phase 2, that cost to the town of Sandwich would  
2 be \$7.1 million.

3 Additional construction treatments,  
4 design treatments for drainage infrastructure  
5 requires us to work around that gas main,  
6 \$120,000.

7 The water district, because they have  
8 to provide service, if they have to go over or  
9 under that gas main, much more expensive. They  
10 have to deal with a lot of safety issues, shoring  
11 that cost is \$4,000 per crossing for the town of  
12 Sandwich water district.

13 Premature road failures; it's not if  
14 it's going to happen, it will happen when you  
15 have a gas main under the road. And they still  
16 haven't met our specifications for road paving,  
17 which would further deteriorate that road. That  
18 is \$960,000.

19 So, again, these are all costs and  
20 there's more that go along with that. But these  
21 are costs that would be borne by the towns of  
22 Sandwich and Barnstable. That's our major  
23 concern.

24 MR. MICHAEL KOEHLER: Mr. Chairman, if

1 I may be heard?

2 CHAIR HAROLD MITCHELL: John, are you  
3 done?

4 MR. JOHN HARRIS: Yeah. I would defer  
5 to my colleague, Mr. Virgilio. He indicated that  
6 this applicant engineering kindness is quite  
7 nice, so I suppose that we can expect that  
8 they're going to be very friendly and kindly to  
9 the situations that goes down the road because I  
10 don't see that there's going to be any commitment  
11 of any sort. It's a nice bit of look-ahead  
12 engineering, but if there's no commitment to a  
13 present, you know, that's where we stand.

14 CHAIR HAROLD MITCHELL: Mike, I'm going  
15 to let you speak back, and then I'm going to come  
16 back to questions from the Commissioners.

17 MR. MICHAEL KOEHLER: Sure. Thank you,  
18 Mr. Chair. So, I'll do the lawyer thing, and Mr.  
19 Barton can do the engineering thing. But, you  
20 know, like we started off by saying today, the  
21 company is, has been, and will continue to be  
22 committed to working constructively with Paul and  
23 his staff and the folks in Barnstable to address  
24 and mitigate the impacts related to this project

1 that are related to this project.

2 But I would ask you, all, in the list  
3 that Mr. Tilton just provided you, notice how  
4 many times the word "bike path" came up. And we  
5 submit to you that where the sticking points is  
6 with us and the towns deals on that point, we  
7 recognize the objective of the bike path. And  
8 however laudable the bike path idea is for the  
9 Cape and for the region, we continue to submit  
10 that it's two separate projects. There's the  
11 bike path and there's our pipeline project.

12 And our pipeline project has -- there's  
13 no nexus between our pipeline project and the  
14 desire for the bike path. So with respect to  
15 some of the engineering aspects of it, I'll let  
16 Mr. Barton tell you.

17 MR. TED BARTON: Yeah, so I'm going to  
18 offer a few comments on this, but let me start by  
19 noting that the \$15 million cost estimate that  
20 the town of Sandwich and town of Barnstable has  
21 put on the table, we saw, for the first time, in  
22 a letter that we received late in the day on  
23 September 11. So we've not had much time to  
24 study that in any detail.



1                   We did ask for some backup for it, and  
2 we got a half-page list of kind of bullet points  
3 which Mr. Tilton, I think, covered in his remarks  
4 a few minutes ago.

5                   But, building on that, one of the key  
6 points that Paul covered, and I think it's worth  
7 going back to, is the discussion about five foot  
8 additional paving to serve as a bike lane along  
9 Phase 3 of the project. So there's some history  
10 to that.

11                   This discussion of in-road versus off-  
12 road for Phase 3 has been going on in one form or  
13 another for at least a year now. And at one  
14 point, the company met with the town managers in  
15 an attempt to get another perspective on this.  
16 And one of the ideas that came out of that  
17 meeting was the idea that in lieu of a full-  
18 fledged separate shared use path or bike path  
19 well off-road that perhaps this piece of Service  
20 Road could be widened by 5 or 10 feet and a bike  
21 path striped off. It's not, in bike path worlds,  
22 it's not as good as a fully separate path, but it  
23 would be a whole lot better than the road that's  
24 out there now. So it seemed like kind of a

1 reasonable suggestion, and it was something that  
2 the company attempted to develop by talking about  
3 how that might be paid for via a paving escrow.

4 So as the discussion evolved, we heard  
5 a fair number of objections from the town at the  
6 DPW level that caused us to realize that that --  
7 what seemed like a reasonable compromise was  
8 really not going to work.

9 And one of the things that Paul alluded  
10 to in his comments or stated in his comments is  
11 if we did this widening of Phase 3 and striped  
12 off a bike path that he has an obligation to then  
13 provide a consistent bike path all the way back  
14 to 130. So half of the \$15 million cost estimate  
15 is based on the assumption that you would widen  
16 that stretch of Service Road from 130 to Chase  
17 and have striped bike lanes down either side  
18 which would then match the striped bike lanes  
19 that have been talked about for Phase 3.

20 So, that, you could do that. It seems  
21 kind of silly given that a big part of the reason  
22 that the Phase 1 and Phase 2 pipe was done off-  
23 road, while there were some legitimate utility  
24 interference concerns, it also, very clearly, was

1 to pave-the-way, no pun intended, for a bike  
2 path.

3 So now there is a cleared graded area  
4 that full length, 4.4 miles of Service Road, that  
5 will make a dandy grade for a shared-use path, a  
6 separate path off the road. That's clearly what  
7 the town would like to do.

8 In one of the letters we received, Paul  
9 mentions that the state, in fact, has put some  
10 funding into the 2022 Transportation Improvement  
11 Plan to fund just that kind of construction.

12 So, I think at least half of the \$15  
13 million estimate, if you want to call it that, is  
14 based on an entire, from our perspective, based  
15 on a really mistaken premise or at least a  
16 premise that to us does not make a whole lot of  
17 sense.

18 So another option here is for the town  
19 to pursue construction of an off-road bike path  
20 along Phase 3. The towns would be responsible  
21 for designing that, as we understand that the  
22 state would pay for the construction of it, and  
23 then you would have, in fact, a consistent off-  
24 road bike path the entire length of Service Road.

1                   But as has been discussed, National  
2                   Grid is not in the bike path building business.  
3                   There's no reason to build a bike path as part of  
4                   a gas pipeline project, and that's really at the  
5                   root of the discussion that is being held.

6                   Now all that said, we still have the  
7                   whole road opening permit process in front of us,  
8                   and just as we have worked cooperatively with the  
9                   towns on the road opening for Phase 1 and 2, it's  
10                  certainly our intention to do the same thing on  
11                  Phase 3. Will we be able to find a solution that  
12                  everybody is okay with? We really won't know  
13                  until we have that discussion. But we fully  
14                  intend to have those discussions over the next  
15                  several months and, hopefully, we can find a  
16                  solution and people can move forward.

17                  So, I realize I was kind of light on  
18                  engineering content and long on speechifying, but  
19                  I thought it was an important point to make, so  
20                  thank you for listening.

21                  CHAIR HAROLD MITCHELL: Thank you.  
22                  Royden.

23                  MR. ROYDEN RICHARDSON: I think it's  
24                  important when the towns speak and the people in

1 the towns have concerns that we all pay attention  
2 and try to work these things out. I think when  
3 it comes to groups like you people represent, we  
4 all think about the money that you make, you  
5 know, on the people who live in the towns  
6 involved and that sort of thing.

7 I think the town people, as I would  
8 want to do those things which are fair, but in  
9 terms of I think -- I'm not the least bit clear  
10 about what they're saying. And I would think  
11 that we need to compare the benefits of the  
12 pipeline, have a sense of what the real benefits  
13 are, but also what the benefits of a bike path or  
14 whatever they're discussing. I think the company  
15 is big enough, and I also think the towns are big  
16 enough so they can sit down and talk out and come  
17 to some agreement. So when it gets to a place in  
18 the regulatory part we don't have to sort of  
19 figure all that out.

20 I wouldn't like to vote for or against  
21 what you proposed based on the information that  
22 you've given us in terms of what the towns'  
23 motives are and what they want. And I think it's  
24 an issue that when it comes to utilities wanting

1 to do something, it's an issue that everybody  
2 thinks utilities have all the money in the world.  
3 They might; I don't know. But I think the  
4 utilities have to take good care of their  
5 customers too, and this is certainly one way they  
6 should be able to do it.

7 MR. MICHAEL KOEHLER: So, I appreciate  
8 that, Commissioner, and if I could just respond  
9 briefly about that. I think, absolutely, what  
10 the company has gone above and beyond to try and  
11 work with the towns to come to a mutually  
12 agreeable solution, you know, with Paul's  
13 interest and the interest of the company.

14 I think another bit of perspective that  
15 might here is that from the companies'  
16 perspective, the companies are committed to their  
17 communities that they serve -- communities that  
18 they serve. They're also subject to heavy  
19 regulation from state regulators in terms of  
20 being able to justify certain projects, you know,  
21 the need for certain projects, the impacts of  
22 certain projects, the cost for certain projects.  
23 And the reason why cost is a consideration is  
24 because cost in projects like this ultimately end

1 up back with customers.

2 So what the company is always cautious  
3 about doing is addressing legitimate concerns  
4 that have a nexus to the project that the  
5 companies are proposing. So to the extent there  
6 are particular impacts that we can identify  
7 through conversations with Paul and folks in  
8 Barnstable about particular impacts associated  
9 with our proposed gas pipeline, we're all ears.  
10 And we look forward to those conversations.  
11 We'll have those conversations.

12 I think where we're getting into  
13 trouble is that the very laudable objective of  
14 the bike path is getting lumped into the very  
15 simple proposal by the company to build a gas  
16 pipeline. And the company has gone as far as it  
17 feels like it can in service to its customers and  
18 service to its regulators and service to the  
19 communities where it serves.

20 And I think with respect to the bike  
21 path, we're at a point now where it's -- when we  
22 think about -- so, hypothetically, if we were to  
23 accept the town of Sandwich and the town of  
24 Barnstable's desired approach for us to go off-

1 road such that we could facilitate the  
2 continuation of the bike path. What the company  
3 would be facing would be a real permitting  
4 gauntlet and one that we don't think we can  
5 justify, frankly.

6 What I mean by that is that if we were  
7 to adjust the alignment consistent with what Paul  
8 or Sandwich and Barnstable are advocating for  
9 here today, we would have to submit an entirely  
10 new application to the Commission and, also, we  
11 would have to submit an entirely new -- we'd have  
12 to submit a project change application to the  
13 Energy Facility Siting Board.

14 And when we're before the Energy  
15 Facility Siting Board on a project change, we  
16 have to justify that project change, and we have  
17 to justify it based on -- we have to be able to  
18 show that the project change is advantageous over  
19 what the Siting Board originally approved on the  
20 basis of environmental impacts, cost, and  
21 reliability.

22 So that's what we have to analyze these  
23 requests in the context of and, like I said  
24 before, the reason why the Siting Board cares



1 about cost is because it cares about cost to  
2 customers and the like.

3 So based on our experience on Phases 1  
4 and 2 with the Siting Board and the ultimate --  
5 how that all, as great as that turned out  
6 publicly, and the company was happy to do it and  
7 glad it worked out, but in making that  
8 calculation for Phase 3, we just can't justify it  
9 to the Siting Board. And we don't expect that we  
10 would be able to prove to the Siting Board that  
11 it would be something that the Siting Board could  
12 approve.

13 And in light of the fact of how  
14 important the project is to the Cape, you know,  
15 we're here today on this alignment, and we're,  
16 you know, we're going to be working with the  
17 towns through the street-opening permits. And I  
18 think based on what we've heard here from Paul  
19 today, I think there's room for some legitimate  
20 further conversations that we can have in that  
21 permitting process.

22 MR. ROYDEN RICHARDSON: Just one  
23 follow-up comment. You know, we're finding this  
24 out at this point of the proceedings. I would be

1 interested to know whether or not your company  
2 has sat down and talked with people in the towns  
3 about what your liabilities and all the problems  
4 you might have with them and have a nice, good  
5 conversation.

6 MR. MICHAEL KOEHLER: Lots of times.

7 MR. ROYDEN RICHARDSON: Because if we  
8 didn't have the land, you wouldn't have your  
9 pipeline, you know, and that's -- I just think  
10 that at this day and age we need to work things  
11 out and not get to this kind of place.

12 Thank you.

13 MS. JOY BROOKSHIRE: I don't really  
14 feel comfortable voting on this today. I think,  
15 and I was here when you brought forth the Mid-  
16 Cape center project, and I totally support the  
17 extension. And as a gas customer, I appreciate  
18 what you're doing, but I think you need to have  
19 that conversation.

20 I'd like to take a couple of weeks and  
21 have you meet with the town, and I'd like to see  
22 you meet with the abutters, and I'd like to have  
23 you have our staff in those meetings and see if  
24 you can work something out. Because when you

1           were doing the Mid-Cape project, it started with  
2           an under the road and it ended up under the  
3           ground, and you planted new trees; you reduced  
4           the visibility from the Service Road. You  
5           addressed the concerns of the abutters, and it  
6           turned out to be a great project. So, I'd like  
7           to see that happen here.

8                         Mr. PAUL NIEDZWIECKI: Thank you, Mr.  
9           Chair. I just would like the opportunity to put  
10          some of the Commission's relationship with  
11          National Grid in context. When we ran into this  
12          issue about reliable gas provision, which is an  
13          undeniable sort of regional issue, we worked with  
14          National Grid to make sure that everybody was  
15          involved, all the towns were at the table to work  
16          out that moratorium so that it had the least  
17          impact on the residents of Barnstable County. And  
18          they were great to work with through that  
19          process.

20                        The Cape Cod Commission's relationship  
21          with National Grid goes back to its predecessors,  
22          and this is an ongoing regulatory relationship  
23          past, present, and future. What's in front of  
24          you today is a specific request that it come to

1 the process for an exemption. It's been reviewed  
2 by staff.

3 The issues raised by both the town of  
4 Barnstable and the town of Yarmouth are important  
5 issues, and, you know, I certainly stand with  
6 those towns on those issues and would like to see  
7 those issues addressed. But there may be a  
8 potential conflation of these issues, the bike  
9 path versus the expansion of the pipeline.

10 But if there are impacts based on the  
11 design proposed, then we stand with the town of  
12 Sandwich on that. And the issue of the bike path  
13 is an important regional issue.

14 The point is whether we should be  
15 discussing that today as part of this request for  
16 an exemption. So what I will offer, and I think  
17 it was requested earlier, is that the Cape Cod  
18 Commission staff will facilitate or participate  
19 in any way requested with both the towns of  
20 Barnstable and the town of Sandwich in  
21 discussions with National Grid about this issue  
22 as it enters into the local process, and they go  
23 through road opening permits and any sort of  
24 potential appeals of those permits.

1                   And just, I think, the Commission  
2                   should be able to bring to those discussions not  
3                   just a familiarity with this exemption and with  
4                   National Grid and with the gas issue, but also an  
5                   extensive understanding of the effort to have a  
6                   Cape-wide bike path and maybe other potential  
7                   funding sources associated with that.

8                   So I think we could probably have  
9                   constructed discussions. I think there are local  
10                  processes that still are yet to play out where we  
11                  can be supportive of the towns and their efforts  
12                  to get a better resolution of both of these  
13                  issues.

14                  But I will remind the Commission of our  
15                  past dealings with the EFSB, and I would always  
16                  rather have those entities that have the ability  
17                  to appeal our decisions to the EFSB at the table  
18                  working cooperatively with us instead of just  
19                  ignoring us altogether.

20                  So those are my comments. I hope that  
21                  provides some context for today's vote.

22                  MR. MICHAEL KOEHLER: Commissioner  
23                  Brookshire, if I may? I just want to refer to --  
24                  on this point of collaboration, I want to point

1 out there's a table in our application where we  
2 list out on this, specific to this phase, the  
3 amount of back-and-forth and the number of  
4 meeting is Table 2.2 that's on page 6 of Section  
5 2 of our application.

6 But starting from back last April 2016,  
7 the companies have had extensive conversations.  
8 So it is something that the company take  
9 seriously of working collaboratively with the  
10 towns and will continue to do so during the  
11 street-opening permit process.

12 CHAIR HAROLD MITCHELL: I'm going to  
13 take a minute and speak real quick. I actually  
14 started the Bike Committee in Sandwich. I  
15 actually spearheaded the bike-path trail up the  
16 Service Road. I actually petitioned the  
17 Department of Transportation to put that as a  
18 priority project. I'm actually co-chair of the  
19 MPO, Metropolitan Planning Organization  
20 Committee, as Chairman of this, and I see the  
21 priority that the town has placed on the Service  
22 Road.

23 I worked with Paul Tilton on this  
24 project for years, and I understand his desire,

1 and the town of Sandwich's desire, and  
2 Barnstable's desire to complete this bike trail.

3 That being said, I also look at this  
4 project that we're looking at today as a DRI  
5 Exemption and listen to our staff and understand  
6 that the two don't gel together. And although  
7 you're going to move forward, I will stress with  
8 all my heart that we need to get together and  
9 figure this out. And it's nice to know that the  
10 Commission will have a part in that.

11 But I think it's important as the  
12 Commissioners know that we're dealing with two  
13 different ideas here. And as Jon has said  
14 earlier on, they're not related.

15 So I think we need to keep that in mind  
16 as we're looking at the DRI Exemption. I think  
17 we need to understand that the towns will still  
18 have their say on this and will be working hard  
19 to connect that bike trail as there's not a  
20 person in this room that really doesn't want to  
21 see that. And I think that we should, at this  
22 point, start closing up this and let's make our  
23 vote.

24 VICE CHAIR JOHN MCCORMACK, JR.: Mr.

1 Chairman, if I may? I move to close the public  
2 hearing.

3 MR. MICHAEL SKELLEY: Second.

4 CHAIR HAROLD MITCHELL: I have a motion  
5 and a second to close the public hearing. Anyone  
6 have an objection? So I'll take a vote; all in  
7 favor?

8 COMMISSION MEMBERS: Aye.

9 CHAIR HAROLD MITCHELL: Any opposed?

10 MS. JOY BROOKSHIRE: (Raised hand.)

11 CHAIR HAROLD MITCHELL: I have one  
12 opposed. So, at this time, I'll take a motion to  
13 either adopt the draft written DRI Exemption  
14 decision and grant the requested DRI Exemption  
15 for Phase 3 of the Sagamore Line Reinforcement  
16 Project's Western Segment.

17 VICE CHAIR JOHN MCCORMACK, JR.: So  
18 moved.

19 CHAIR HAROLD MITCHELL: I have a  
20 motion. Do I have a second?

21 MR. RICHARD CONRON: Second.

22 CHAIR HAROLD MITCHELL: I have a  
23 second. All in favor, please say "Aye."

24 COMMISSION MEMBERS: Aye.



1 CHAIR HAROLD MITCHELL: Any opposed? I  
2 see one.

3 MR. ROYDEN RICHARDSON: I think I'm  
4 opposed only because I think we ought to get  
5 together before we go forward any further or  
6 we'll be left holding --

7 CHAIR HAROLD MITCHELL: I think the  
8 towns will do that, Royden; I do. And I think  
9 from Paul's comments, we can all feel secure to  
10 know that that will be happening. So, I will  
11 take your no vote on this.

12 MS. BROOKSHIRE: And I'm a no.

13 CHAIR HAROLD MITCHELL: And I have --

14 MR. ROYDEN RICHARDSON: I'm in favor of  
15 the pipeline. I'm in favor of better cooperation  
16 between the, you know, groups involved.

17 CHAIR HAROLD MITCHELL: I understand.  
18 So we have two no votes, everyone else saying  
19 aye, so the motion passes.

20 Thank you, very much.

21 (Motion passed.)

22

23

24

**PUBLIC HEARING:**

**Yarmouth Growth Incentive Zone Term Extension**

1  
2  
3 CHAIR HAROLD MITCHELL: Moving on to  
4 our second item on the agenda, the Yarmouth  
5 Growth Incentive Zone. The Cape Cod Commission  
6 will conduct a public hearing on and consider a  
7 request by the town of Yarmouth to extend the  
8 term of its designated Route 28 corridor Growth  
9 Incentive Zone, a GIZ, for an additional four  
10 years to October 22, 2021.

11 Anyone wishing to testify orally will  
12 be welcomed to do so. Written comments may be  
13 submitted at the hearing.

14 At this time, I'll ask for the town of  
15 Yarmouth to present to us, please.

16 MS. KAREN GREENE: Good afternoon. My  
17 name is Karen Greene. I'm the Director of  
18 Community Development for the town of Yarmouth.  
19 I'm joined today by a couple of our Planning  
20 Board members are here and our Town Planner Kathy  
21 Williams as well.

22 As most of you know because its 10  
23 years now, and a lot of you were here back then  
24 and I was here back then. It's hard to believe.

1 But as you know, Yarmouth is always working on  
2 ways to encourage redevelopment on Route 28. As  
3 a way to encourage investment in the  
4 redevelopment on our Route 28 motel properties,  
5 the town voted in 2006 to adopt what we call the  
6 "Motel Bylaw." The motel bylaw allows property  
7 owners to redevelop their motel properties as  
8 motels, multi-family housing with an affordable  
9 component, or as mixed-use, commercial and  
10 residential. All projects are subject to our  
11 design review requirements.

12 In 2007, understanding additional  
13 incentives were necessary to stimulate the  
14 investment we were looking for, the town applied  
15 to the Cape Cod Commission for a Growth Incentive  
16 Zone designation that's applicable to most --  
17 almost all of our Route 28 motel properties. In  
18 October 2007 that application was approved.

19 Over the last 10 years with the GIZ in  
20 place, we've continued to refine our local bylaws  
21 to add local incentives and to improve the  
22 quality of the development and have seen some  
23 utilization of the town's motel bylaw as well as  
24 the Growth Incentive Zone.

1                   We've had some large-scale success, the  
2 Hampton Inn broke ground almost immediately after  
3 the Growth Incentive Zone was adopted. That was  
4 the Cape's first new hotel in 25 years. It was a  
5 big deal.

6                   We've had some smaller scale successes,  
7 some that probably wouldn't have even tripped the  
8 thresholds for the Cape Cod Commission review,  
9 but I think having the GIZ in place has helped to  
10 send the message that we're looking for  
11 redevelopment and we're open to redevelopment.

12                   Captain Gadcliff is a smaller -- was a  
13 smaller motel. They created 24 housing units, 7  
14 of those were affordable. The Windrift, we call  
15 it our mixed-use success, they ended up creating  
16 8 housing units, 2 of which were affordable and  
17 retaining part of their motel business on the  
18 property.

19                   Recently, through our Affordable  
20 Housing Trust and utilizing CPA funds  
21 appropriated by Town Meeting for the affordable  
22 housing component of motel redevelopment, we've  
23 been able to incentivize some potential projects.  
24 Two proposals that are in the cue are 69 units of

1 housing at 881 Route 28, that's the former  
2 Cavalier Motel, and 40 units of housing proposed  
3 for 497 Route 28, the Yarmouth Gardens.

4 Just by way of information, Yarmouth  
5 Gardens is the oldest motel on Route 28. It was  
6 built in 1935. So we're real excited about the  
7 possibility of redevelopment.

8 Both of these projects will provide  
9 improved wastewater treatment via a wastewater  
10 treatment facility at 881 or an IA system at 497  
11 Route 28. Since 2007, the Yarmouth Board of  
12 Selectmen have continued to focus on town-wide  
13 wastewater solutions that are effective and  
14 economical, and Route 28 will continue to be a  
15 priority.

16 Unfortunately, and fast-forwarding ten  
17 years, we haven't seen as much progress as we'd  
18 like. The economic downturn in the mid-2000s  
19 really made things difficult. Only now in the  
20 last year have we seen substantial interest  
21 coming forward in our motel properties. A four-  
22 year, as-is extension of our Growth Incentive  
23 Zone will allow the projects that are in the cue  
24 as well as those that are percolating to move

1 forward.

2 We picked the four-year request because  
3 we felt it was short enough to really kind of  
4 keep the heat on and move things along quickly  
5 but long enough to help us -- long enough to give  
6 us enough time to start planning the next phase  
7 of our Growth Incentive Zone, which would likely  
8 have a broader focus beyond just our motel  
9 properties.

10 We've already begun to discuss this  
11 topic and are happy to report that we'll be  
12 kicking these efforts off the planning for the  
13 next phase next month through the Urban Land  
14 Institute's Technical Assistance Program. It's  
15 something that we'll be calling on Commission  
16 staff to help us with.

17 So, I am being brief today. Thank you  
18 for considering the request. Again, it's 10  
19 years. I can't believe it's come and gone, and  
20 I'm happy to answer any questions that you have.

21 CHAIR HAROLD MITCHELL: Thank you.

22 MS. KAREN GREENE: You're welcome.

23 CHAIR HAROLD MITCHELL: At this time,  
24 we'll have a presentation by the Commission

1 staff. Thank you.

2 MR. JON IDMAN: Thank you. Jon Idman,  
3 again. Staff supports the extension request and  
4 has prepared a draft decision for your  
5 consideration. Commission recommends granting  
6 the extension and adopting that draft decision.

7 Staff's opinion is that the town has  
8 met the requirements of the existing Growth  
9 Incentive Zone decision and the Growth Incentive  
10 Zone regulations sufficient to approve their  
11 request of extension.

12 The extension would further the major  
13 purposes of the GIZ, which are to improve the  
14 character along the Route 28 corridor in Yarmouth  
15 to update the existing accommodation stock and to  
16 create housing and affordable housing  
17 opportunities. The town, consistent with the  
18 Growth Incentive Zone decision, as made some very  
19 good changes into zoning to further these  
20 purposes. Copies of the zoning changes have been  
21 provided in your materials. The town has  
22 developed and adopted stormwater management  
23 regulations within the corridor.

24 And, finally, according to that

1 decision, the town has tracked development within  
2 the Growth Incentive Zone, including traffic and  
3 wastewater from that development and has reported  
4 those numbers to the Commission. A copy of that  
5 report is in your materials as well.

6 The zoning is especially impressive.  
7 It really does create better sight and building  
8 design controls in the corridor and encourages  
9 housing and affordable housing in that area.

10 Though the Growth Incentive Zone maybe  
11 hasn't been as successful as the town has wanted  
12 it to be for the entirety of the duration of the  
13 GIZ, it has spurred appropriate development  
14 particularly as it was intended to do.

15 It's because this development activity  
16 has been initiated according to the GIZ and is  
17 ongoing that the town seeks this extension.  
18 Really, the extension is for four years, and it  
19 is necessary to keep the same assumptions in  
20 place under which these projects which were  
21 ongoing were both designed and permitted,  
22 including those revised DRI thresholds that were  
23 adopted pursuant to the Growth Incentive Zone.

24 This is really similar to what



1 Barnstable has done about maybe a year and a half  
2 ago/two years now, Barnstable came to the  
3 Commission board and asked for a short-term  
4 extension. It's similar to what Yarmouth is  
5 doing because both towns, both with expiring GIZs  
6 and both seeking extensions or sought an  
7 extension are looking to do a new GIZ, building  
8 on the existing GIZ but broadening it to some  
9 degree. Like I said about Yarmouth, their Growth  
10 Incentive Zone really focuses on older motel and  
11 hotel stock in the area. Their new GIZ is going  
12 to look to kind of have a broader focus within  
13 the Route 28 corridor, broader than just motel  
14 and hotel properties.

15 We've gotten some letters in support  
16 for the Growth Incentive Zone extension in the  
17 record, and you have copies of those letters.  
18 One was from the Yarmouth EDC, another was from  
19 the Yarmouth Housing Trust, and there were two  
20 from those who are developing housing within the  
21 Growth Incentive Zone from Dakota Partners and  
22 from Commonwealth Community Developers.

23 So, with that, I will end, and I would  
24 be happy to try to answer any of your questions

1           you might have as they might arise.

2                     Thank you.

3                     CHAIR HAROLD MITCHELL: Thank you, Jon.  
4           We'll start with any opening questions for the  
5           first round of questions for the Commissioners.

6                     Yes, Elizabeth.

7                     MS. ELIZABETH TAYLOR: This is either a  
8           question for Yarmouth or for Jonathan. Are you  
9           getting SHI credit for these? They're all  
10          rentals; am I correct? None of them turned into  
11          condos or private ownership?

12                    MS. KAREN GREENE: No. All of these  
13          have been rentals, so in the case where they  
14          aren't -- the new projects that are coming  
15          forward are also looking to access low income  
16          housing tax credits. Those projects will be  
17          close to a hundred percent affordable.

18                    The smaller projects that I referenced  
19          were about 25 percent affordable, and as a rental  
20          project, they all count for the SHI.

21                    MS. ELIZABETH TAYLOR: That's what I  
22          was hoping. It's nice to see that you're making  
23          good progress on that.

24                    MS. KAREN GREENE: Thank you.

1 MS. ELIZABETH TAYLOR: Has the town  
2 incentivized this tax wise or what are you doing  
3 to create an incentive for an owner to actually  
4 do this, increase the number of affordable units?

5 MS. KAREN GREENE: So, with the two  
6 larger projects that have come forward, the  
7 towns' Affordable Housing Trust made request to  
8 Town Meeting through CPA funds, and the town's  
9 actually set aside more than \$3 million for the  
10 purpose. That's a lot of money.

11 MS. ELIZABETH TAYLOR: You way ahead of  
12 us. That's great. Thank you, very much.

13 MS. KAREN GREENE: You're welcome.

14 CHAIR HAROLD MITCHELL: Thank you. Any  
15 other questions in the first round?

16 VICE CHAIR JOHN MCCORMACK, JR.: Just a  
17 comment, Mr. Chairman, if I may? I want to  
18 reiterate what the Director of Community  
19 Development, Karen Greene, stated and that was  
20 the fact that this GIZ began in 2007. And I  
21 think everyone here should recognize the fact  
22 that 2007 was not a good year to start anything.  
23 We rapidly went into a recession that really  
24 killed the economy. And that's why we're looking

1 for an extension.

2 Thank you.

3 CHAIR HAROLD MITCHELL: Thank you. At  
4 this time, I'll open the podium for anyone that  
5 would like to speak on this. I'll start out with  
6 any federal, state, or local officials. Seeing  
7 none. Any of the general public that would like  
8 to speak to this? Seeing none.

9 Then I will ask for any final questions  
10 or comments from the Commissioners?

11 VICE CHAIR JOHN MCCORMACK, JR.: If I  
12 may, Mr. Chairman; I'd like to recognize not only  
13 Director of Community Development, Karen Greene,  
14 but the Town Planner Kathy Williams is here; the  
15 Chairman of the Planning Board, Norm Weare, and  
16 two members of the Planning Board with him,  
17 Joanne Crowley and Tom Baron.

18 Thank you.

19 CHAIR HAROLD MITCHELL: Our Yarmouth  
20 representative is making it known. (Laughter.)  
21 Anyone else?

22 So at this time, I will take a motion  
23 to close the public hearing.

24 VICE CHAIR JOHN MCCORMACK, JR.: So

1 moved.

2 MS. ELIZABETH TAYLOR: Second.

3 CHAIR HAROLD MITCHELL: I have a motion  
4 and a second. All in favor?

5 COMMISSION MEMBERS: Aye.

6 CHAIR HAROLD MITCHELL: Any opposed?

7 (Motion passed.)

8 CHAIR HAROLD MITCHELL: So at this time  
9 now, I will take a motion to adopt the Draft  
10 Written Yarmouth Route 28 Corridor Growth  
11 Incentive Zone Extension Decision and grant the  
12 request of the extension for an additional four  
13 years until October 22, 2021.

14 VICE CHAIR JOHN MCCORMACK, JR.: So  
15 moved.

16 (Secinded.)

17 CHAIR HAROLD MITCHELL: I have a motion  
18 and a second. All in favor?

19 COMMITTEE MEMBERS: Aye.

20 CHAIR HAROLD MITCHELL: Any opposed?  
21 Any abstentions? The motion carries.

22 (Motion passed.)

23

24

1                                   **Presentation of Marine Protection Act**

2                                   CHAIR HAROLD MITCHELL: Thank you, very  
3 much. At this time, I'm going to make a change  
4 in the agenda. I am going to ask for everyone's  
5 indulgence. I'm going to move the Marine Mammal  
6 Protection Act forward.

7                                   This is presentation on the Marine  
8 Mammal Protection Act by Erin Burke from the  
9 Massachusetts Division of Marine Fisheries  
10 discussion and questions from the Cape Cod  
11 Commission members. This was a request that was  
12 put forward by one of our Commission members that  
13 we get a better understanding of this.

14                                  And due to the hour and how things are  
15 going, I appreciate Erin's participation, and I'd  
16 like to go ahead and get her on now, please.  
17 Thank you.

18                                  MS. ERIN BURKE: Hello. I'm sorry; I'm  
19 trying to figure out how close I need to be to  
20 this. My name is Erin Burke. I work for the  
21 Massachusetts Division of Marine Fisheries. I'm  
22 their Protected Species Specialist.

23                                  The Cape Cod Commission staff asked me  
24 to come and give you an overview of the Marine

1 Mammal Protection Act and how it relates to  
2 states. I just want to preface that I am not an  
3 MMPA expert, and I'm not a seal expert. In my  
4 work for the state, I am a generalist, except  
5 when it comes to Right whales. I have to know  
6 absolutely everything there is to know about  
7 Right whales.

8 But other than that, I work on a number  
9 of different issues and serve as a subject matter  
10 expert for the state and policy and management.  
11 I'm not on the field as much as I used to be, so  
12 that's my story.

13 But I'm going to give you an overview  
14 of the MMPA and tell you what's possible for  
15 states, what has actually happened and, you know,  
16 what sort of room -- wiggle room a state has. I  
17 assume you guys want to hear about seals too, so  
18 we'll talk about that.

19 So, back in the early 70s, a bunch of  
20 conservation and environmental acts came into  
21 play. One of which was the Marine Mammal  
22 Protection Act in 1972, and it was in response to  
23 significant declines in some marine mammal stocks  
24 and concern that those stocks were going to keep

1 declining and not be in existence anymore or be  
2 functioning parts of that ecosystem.

3 So the MMPA prohibited the take of  
4 marine mammals in U.S. waters, and they define  
5 take pretty broadly as capture, kill, hunt, or  
6 harass. They also introduced a concept called  
7 OSP, which is what they wanted to maintain under  
8 the MMPA, which is the Optimum Sustainable  
9 Population, which is a pretty lofty goal. It's  
10 actually the maximum productivity that a  
11 population can have. So not just, which we'll  
12 talk a little bit more, that you won't go  
13 extinct; it's that like you are producing on all  
14 cylinders and, you know, at the time, there was a  
15 lot of public outcry to what was happening with  
16 marine mammal populations. And so I think some  
17 of the force behind the MMPA is a result of that  
18 whaling and tuna seine netting on pods, dolphins,  
19 and things. So the goal was to restore these  
20 depleted stocks and then also reduce serious  
21 injury and mortality in commercial fisheries.

22 Now when you compare this to the  
23 Endangered Species Act, which was enacted in  
24 1973, that is a little more straightforward, you



1 know, prevent extinction, recover the stocks, and  
2 once the stock is good, you know, you pull those  
3 protections off and the population goes on its  
4 way.

5 That's not really how the MMPA is set  
6 up, and there are some species that are obviously  
7 protected under the MMPA but are also listed  
8 under the ESA, like the Right whale.

9 So the MMPA was unique in its goal of  
10 having a healthy ecosystem function and marine  
11 mammals being a part of that. So they managed,  
12 as I said based on OSP, and there is not any  
13 mechanism to remove any of those protections for  
14 marine mammals or remove those animals from the  
15 Act.

16 So one thing that makes us think of is  
17 seals, of course, because they're a species that  
18 has, you know, recovered/proliferated quite well  
19 in U.S. waters or in Massachusetts because of the  
20 protections afforded by the Act.

21 So the Humpbacks were recently delisted  
22 from the Endangered Species Act, which is  
23 actually really controversial. There's a lot of  
24 people that think that that shouldn't have

1           occurred that way. But, you know, we aren't at a  
2           point where Humpback whales are like such a  
3           nuisance and are just like eating all the fish  
4           and getting in everyone's way. Seals is sort of  
5           a different story. I think some of it is  
6           warranted and some of it is just backlash. We  
7           didn't have the species in our water as part of  
8           our local ecology for a few generations.

9                     You guys may know some of this, but  
10           there was a bounty on Grey seals in Massachusetts  
11           until 1962. In a recent study by Duke University  
12           and others using Google Earth and some radio  
13           telemetry, they figured there was around 30 to  
14           50,000 seals currently in Massachusetts.

15                    Now the majority of those come from  
16           Canada. The majority of the Northwest Atlantic  
17           Grey Seal stock lives on Sable Island in Canada,  
18           and that is the source of the population in the  
19           U.S. When they look at the genetics of the  
20           Canadian stock and the U.S. stock, they're the  
21           same. There's no difference.

22                    So we don't have the good sense of the  
23           emigration and immigration and the movement  
24           between those two populations or those two

1 colonies, I would say, which makes it complicated  
2 when you talk about any kind of culling or  
3 removal program.

4 The Canadian population was reproducing  
5 at 12 percent a year which they believe is OSP,  
6 that is the max, and I think that was too much  
7 for that population to handle, so it's now gone  
8 down to reproducing at about 4.5 percent a year.

9 Now the rate of the increase of the  
10 U.S. population or the population in  
11 Massachusetts is not known. The feds have not --  
12 the way they've explained it is they don't have  
13 the money to do this work, which we'll talk a  
14 little bit more about. I'm sure there's a grad  
15 student that would love to take care of it for  
16 them but that's just my opinion.

17 So some of the concerns that we hear  
18 about seals in Massachusetts, I'm sure these are  
19 familiar to you as well as depredation of fishing  
20 gear by seals, stealing catch. You know, I used  
21 to be an observer on gill net boats out of New  
22 Hampshire back in the like dark ages of  
23 observing, and we would have some nets that would  
24 come up and all the bellies of the Cod would be

1           ripped out by the seals.

2                       And another concern is, obviously,  
3           competition for fish resources, just seals eating  
4           too much, being competitors, not just sort of  
5           thieves; infection of Cod with seal worm;  
6           attracting sharks to Massachusetts waters. Some  
7           people talk about water quality issues but  
8           studies have shown that the seals are not  
9           affecting the water quality in the beaches around  
10          their haul-out sites.

11                      So given there's so much unknown about  
12          the seal population in general and what their  
13          ecology is and their foraging behavior so the  
14          true impact of seals on our local ecosystem is  
15          still very unknown.

16                      Some of the things that people talk  
17          about a lot since -- if you look at the Stock  
18          Assessment Report for the Grey seal that the feds  
19          put out, they don't have a minimum population  
20          estimate, and they don't have an estimate for the  
21          trend in the population. And the explanation for  
22          that is that the aerial surveys haven't taken  
23          place so they can't get an abundance estimate,  
24          and they can't get an estimate on trend.

1                   So there's sort of a funding issue with  
2                   looking at a population that, you know, with the  
3                   Right whale and the Humpback whale, they have  
4                   been trying to prevent them from going extinct.  
5                   And so, of course, money gets thrown at them.  
6                   You have a species that isn't in danger; it's not  
7                   a big deal, you know, as far as like their  
8                   extinction, and people aren't chomping at the bit  
9                   to spend money on it. Unfortunately, that's just  
10                  the way it is.

11                  There's a lot that's not known about  
12                  residency patterns, if there's movement between  
13                  the U.S. and Canada foraging patterns how far  
14                  offshore these animals go; how long they spend  
15                  out there; how deep they dive; are they  
16                  overlapping with areas of commercial fishing?

17                  It's also difficult to try to get a  
18                  handle on the actual diet of the seals. So we  
19                  have to build a prey library of fatty acids and  
20                  stable isotopes of all the different potential  
21                  prey species, get DNA and blubber samples from  
22                  the seals, do gut content and scat analysis for  
23                  the hard parts.

24                  Some of this work is ongoing but it's

1 just starting, and its trophic dynamics are  
2 really complex, so trying to figure out how the  
3 seals are affecting fish stocks, and if we took  
4 the seals away, you know, they've talked about  
5 this in plenty of other places; Canada, you know,  
6 Baltic sea, Irish sea, and it's really hard to  
7 elucidate what is going on with these complex  
8 systems and what would happen if you took the  
9 seals away; if you would actually get the result  
10 that you were looking for that, you know, Cod  
11 would come back or whatever the end goal is.

12 So one of the questions that I hear a  
13 lot is what role can the state play, given that  
14 the MMPA's a federal law? So, clearly, it's a  
15 federal jurisdiction and their rules go to the  
16 beach. State rules can be more restrictive than  
17 federal rules but not less. Before the feds  
18 required sinking ground line in the lobster pot  
19 fishery, Massachusetts had made it mandatory for  
20 about four years prior to that because it was  
21 important to us in Cape Cod Bay and from a Right  
22 whale perspective, and we said, well, we don't  
23 care if you guys aren't going to do it; we're  
24 going to do it, and then the feds followed suit.

1                   Now the MMPA does have a provision to  
2 transfer authority for the management of the  
3 species to the state, Section 109 under "Federal  
4 Cooperation with States." And what that would  
5 entail is the state developing a conservation  
6 plan and any takes that occur would have to be  
7 humane.

8                   But one of the things that you have to  
9 happen first, which is the real sticking point,  
10 is that the state would have to use its resources  
11 to determine where the population is relative to  
12 OSP, which is something the feds haven't even had  
13 the funds to do.

14                   So the scope of that effort cost-wise,  
15 logistics, and size of that program, and then you  
16 also take on the legal responsibility for that  
17 species as well. So just from a litigations  
18 standpoint, it's incredibly risky.

19                   So in reading about this, I was trying  
20 to figure out who has done this? Who has, you  
21 know, who have the feds said, you know, here you  
22 go, take it, and it has never happened. So  
23 Hawaii and Maine looked into do it and Alaska too  
24 but, ultimately, I think the legal burden and the

1 financial burden was too much, and they decided  
2 not to pursue it.

3 There's also Section 120 of the MMPA  
4 deals with the Ballard Locks in Washington and  
5 Gulf of Maine salmon aquaculture. So there's a  
6 provision in there where the state can have  
7 authority to deal with nuisance animals, not a  
8 large-scale cull but dealing with nuisance  
9 individuals. But that's separate from 109, which  
10 is just the blanket transfer, here you go; you  
11 want Grey seals, it's yours. You know, that's  
12 completely different.

13 When you look at predator control  
14 programs and the long history of their use in  
15 wildlife management; in Europe, lynx and other  
16 species in the U.S. for wolves and coyotes and  
17 cougars, and there is, you know, sort of a  
18 straight connection between shoot a bunch of  
19 wolves and livestock in that area will be  
20 protected. But sometimes the results are  
21 straightforward. Some studies show coyote pups  
22 actually have a higher survival rate when you're  
23 killing the adults. Cougars will expand their  
24 range if you're shooting them in areas. You're



1 sort of pushing the problem off into a different  
2 region.

3 And in the case of seals, you know,  
4 they looked into this in South Africa and doing a  
5 cull but they found, based on fish stocks, impact  
6 on fish stocks. And they found that when they  
7 really studied the problem that they couldn't  
8 figure out what the link was going to be, and it  
9 didn't look like killing the seals was actually  
10 going to help the fish stocks, and so they called  
11 it off.

12 But I think the effectiveness of a  
13 culling program is hard to understand. There  
14 might be unintended consequences in the food  
15 chain, and it's a program that would have to be  
16 continued. And often, I was reading about  
17 culling programs, they're talking about taking 50  
18 percent of the population just out, which is a  
19 lot.

20 And we, you know, you just take the  
21 thought down the line and think about doing this  
22 on Monomoy, you know you have to get rid of the  
23 animals. You have to get them off the beach.  
24 Just the scope of a program like this -- I think

1 when people talk about, you know, we need to cull  
2 seals in Massachusetts, we really have to think  
3 about the nitty-gritty details of what a program  
4 like that would look like, even if it was easier  
5 for the state to take control over that species.

6 When I talked to the feds about this  
7 recently, there's a guidance document coming out  
8 from NMFS about non-lethal deterrents. And when  
9 I tried to get details from them about what that  
10 was going to look like, they wouldn't give them  
11 to me. So I don't know if it's going to be  
12 acoustic deterrents or if it's going to be sort  
13 of shooing them off the beach. They were very  
14 tight-lipped about it like, oh, it will be  
15 released soon. So I don't have more information  
16 about that.

17 So, I'm not exactly sure what you guys  
18 wanted to talk about today. I hope that sort of  
19 covered it. But the real take-away points is  
20 that it's federal act; there's limited ability  
21 for the state to intervene; no one has ever done  
22 it before, and if the state could take over  
23 management authority of that species, the cost  
24 and the scope of that program would be pretty

1           immense.

2                   CHAIR HAROLD MITCHELL: Thank you. Any  
3           of the Commissioners have any questions for Erin?  
4           Then we might be able to narrow it down what we  
5           were --

6                   MR. MICHAEL SKELLEY: Well, I guess I'm  
7           the culprit here. Mike Skelley; I'm from  
8           Chatham.

9                   MS. ERIN BURKE: Hi.

10                   MR. MICHAEL SKELLEY: Hi. It is a  
11           major problem for us. It's a major problem for  
12           our fishing industry. There was an article in  
13           the Cape Cod Times today that one seal eats six  
14           striped bass a day that are (Indiscernible) being  
15           taken. It's costing the towns on the Outer-Cape  
16           money now just to warn people about sharks.

17                   I'm not so sure I buy into the whole  
18           concept of 50,000 seals defecating and urinating  
19           in the water doesn't affect the quality of the  
20           water.

21                   MS. ERIN BURKE: Well, did you see the  
22           WHOI study, what they did?

23                   MR. MICHAEL SKELLEY: Pardon?

24                   MS. ERIN BURKE: The Woods Hole study

1           that they did with the Department of Public  
2           Health data, fecal coliform?

3                   MR. MICHAEL SKELLEY: No, I haven't  
4           read that. But, you know, some of these things  
5           are a little -- I'm a little skeptical about how  
6           these whole things came about. Obviously, you  
7           stated it very well, Erin, and I appreciate that.  
8           In the 70s, there was a great outcry for -- I  
9           think they wanted to save whales.

10                   MS. ERIN BURKE: Yeah.

11                   MR. MICHAEL SKELLEY: I don't think  
12           they wanted to save seals.

13                   MS. ERIN BURKE: Right. Probably.

14                   MR. MICHAEL SKELLEY: So one of the  
15           things that I thought about is legislative  
16           intent.

17                   MS. ERIN BURKE: Uh-huh.

18                   MR. MICHAEL SKELLEY: I don't think  
19           either the House or the Senate, in its debate of  
20           this bill, anticipated a problem in the Northwest  
21           or the Northeast with fisheries.

22                   MS. ERIN BURKE: Probably.

23                   MR. MICHAEL SKELLEY: No, probably not.  
24           And it probably didn't anticipate the fact that

1           it was going to cost the towns money and cost the  
2           fishing industry money. And they certainly  
3           didn't anticipate that we were going to have a  
4           problem with Great White sharks.

5                        So my view rather than taking a look at  
6           that as trying to find holes in the legislation;  
7           holes in the legislation through legislative  
8           intent. The law was established in '72, I guess,  
9           and it hasn't been tweaked since. And the  
10          department of the feds, and I'm not saying the  
11          state, the feds don't really intend to help us  
12          tweak it.

13                       MS. ERIN BURKE: It was tweaked in '94.  
14          That's when take reduction teams came in. That  
15          was when the part about incidental take and  
16          fisheries. There are amendments in 1994 that  
17          updated it for impact fisheries, establish take  
18          reduction teams, but that was the last time.

19                       MR. MICHAEL SKELLEY: Well, we have an  
20          obvious -- we try to protect the striped bass  
21          population, and we haven't done that really  
22          because our nuisance is the seals.

23                       We deal with the Cod situation, and we  
24          say that we over-fish it sometimes. Well, maybe

1 we have, but it's still a problem with the seals.  
2 I mean, 50,000 seals on the Cape is ridiculous,  
3 and they're starting to come into the Sound now.

4 MS. ERIN BURKE: Uh-huh.

5 MR. MICHAEL SKELLEY: You know, when do  
6 we have a hundred thousand seals that we have to  
7 deal with?

8 MR. ROGER PUTNAM: If you watch the  
9 seals on (Inaudible) fishing every damn day, you  
10 know perfectly well that all the conversation  
11 about what they're not doing is bunkum. The fish  
12 are -- the seals are eating fish hand over  
13 flipper.

14 MS. ERIN BURKE: And we need data, that  
15 is the issue. And in Canada, they throw a lot of  
16 money at their seal questions because seals are a  
17 commodity. Recently, the EU banned seal products  
18 in Europe, so I think that situation has changed,  
19 but when I thought about why; why do they know so  
20 much about seals in Canada because they harvest  
21 them. We don't have that same situation here.

22 So, we need data to be able to say to  
23 the feds this is what we're going to do and why,  
24 and this is what the outcome is going to be. And

1 getting that data requires time and money.

2 MR. MICHAEL SKELLEY: Well, is there a  
3 market for seal meat in Japan or in New York?

4 MS. ERIN BURKE: I don't think so.

5 MR. ROGER PUTNAM: In Japan there is.  
6 In Japan, they do eat seal meat.

7 MS. ERIN BURKE: Seal meat.

8 MR. ROGER PUTNAM: Yeah.

9 MS. ERIN BURKE: I mean I don't even --  
10 I don't know how/what sort of the processing of  
11 seal meat in Canada, you know, how we would have  
12 to even go about that.

13 MR. MICHAEL SKELLEY: Well, I don't  
14 know if we would have to ask the government to  
15 spend any money.

16 MS. ERIN BURKE: There's heavy metals  
17 and --

18 MR. MICHAEL SKELLEY: And right where I  
19 used to live was basically farm country, and we  
20 had a lot of cows, a lot of dairy cows, in  
21 Connecticut. And it was always talked about  
22 after they stopped giving milk, you harvest the  
23 stock. Very common, I mean it ends up at  
24 McDonald's. And, right now, we have a stock that

1 if we found a market for that we could harvest --

2 MS. ERIN BURKE: I don't know that the  
3 global market for seal meat is really powerful  
4 though. And it's still a huge undertaking.  
5 Let's just say we kill 50,000 of them, you know,  
6 it's still a huge undertaking to do that out on  
7 very sensitive land, National Wildlife Refuge.  
8 Logistically, I think it would be tricky but --

9 MR. MICHAEL SKELLEY: So, in other  
10 words, we really have no solution to this  
11 problem?

12 MS. ERIN BURKE: Yeah.

13 MR. ROGER PUTNAM: Nor do we care.

14 MS. ERIN BURKE: No.

15 CHAIR HAROLD MITCHELL: Yeah, guys, if  
16 we can move on with some other questions from  
17 other people, that would be beneficial.

18 MS. ERIN BURKE: I don't think that  
19 people don't care.

20 CHAIR HAROLD MITCHELL: I mean I'm  
21 starting to see my hour here slipping away. So  
22 if we could stick to some questions, I'd  
23 appreciate it.

24 Thank you. Elizabeth, and then I'll go



1 to Jackie, and then I'll go to Kevin. Thank you.

2 MS. ELIZABETH TAYLOR: First of all, I  
3 think that we are the problem relative to fish  
4 stocks. The seals, they impinge on that, but we  
5 have to face it, we are the problem.

6 Do we have any information on the seal  
7 populations before they were allowed to be taken?

8 MS. ERIN BURKE: Historical --

9 MS. ELIZABETH TAYLOR: I assume there  
10 were shark populations at that time, but we  
11 didn't pay attention because there weren't that  
12 many people in the water.

13 MS. ERIN BURKE: Probably. I've tried  
14 to look into this and not been able to find a lot  
15 of information. I mean Native Americans did  
16 harvest them; we know that from historical  
17 records.

18 MS. ELIZABETH TAYLOR: Yeah.

19 MS. ERIN BURKE: But there isn't a lot  
20 that I've read about White sharks, but what the  
21 historical population of the seals in  
22 Massachusetts was, I haven't been able to find  
23 any information on that.

24 MS. ELIZABETH TAYLOR: Yeah. We also

1           have to face the fact that as the water  
2           temperature is changing, you get White sharks now  
3           because they can heat their bodies. But as the  
4           water warms up, we're going to get more Bull,  
5           Silky, Thresher, you know, Blacktip, Whitetip,  
6           any of them, Nurse sharks. And they'll be coming  
7           up the coast, and we will have those to deal with  
8           too. And they won't be here because of seals.  
9           They'll be going after other populations.

10                        So we have to start to live with the  
11           complications because of the temperature of the  
12           ocean warming up. And we have to start facing  
13           all of those issues too, and I don't think that  
14           culling seals is going to solve anything. If  
15           we're doing it because we've got White sharks  
16           here; it's their ocean, you know. Other areas  
17           live with it; we have to learn to live with it.

18                        Thank you.

19                        CHAIR HAROLD MITCHELL: Jackie.

20                        MS. JACQUELINE ETSTEN: What is the  
21           impact of the industrialized fishing fleets that  
22           are coming in quite close to the shore these  
23           days, vis-à-vis the seal population?

24                        MS. ERIN BURKE: What is the impact on

1 the seal population?

2 MS. JACQUELINE ETSTEN: Excuse me, on  
3 the fishing -- on the fishing populations. I  
4 can't even speak.

5 MS. ERIN BURKE: Oh gosh, I don't know.  
6 I mean that makes me think -- I think, you know,  
7 fishing in U.S. waters by foreign fleets I think  
8 has diminished a lot since the 80s or the 70s  
9 when they were doing that a lot, like big factory  
10 trawlers. I mean, bycatch of seals in gill nets  
11 is common but it's not, you know, enough. It's  
12 not like, you know, the harbor porpoise was sort  
13 of driving their population way down, or like we  
14 see with Right whales where entanglement and pot  
15 gear and gill net gear is actually a problem for  
16 their fecundity and survival. You know, there is  
17 (Indiscernible) seals but it isn't doing much to  
18 impact them.

19 As far as fisheries taking foods sort  
20 of out of the mouths of seals, I don't think that  
21 that is occurring.

22 MS. JACQUELINE ETSTEN: No, I'm sorry.  
23 I probably misspoke. I wanted to know what the  
24 impact on the fish populations of the

1 industrialized fishing methods was, vis-à-vis the  
2 seal consumption of fish?

3 MS. ERIN BURKE: I don't know. I'm  
4 sorry.

5 MS. JACQUELINE ETSTEN: We had a talk  
6 by somebody on herring. The speaker who seemed  
7 to be an expert in herring seemed to believe that  
8 the fishing was far more devastating on the  
9 herring population than the seals.

10 MS. ERIN BURKE: Right. I've seen  
11 studies like that.

12 MS. JACQUELINE ETSTEN: (Inaudible)  
13 when you go forward.

14 MS. ERIN BURKE: Right. When you look  
15 at what the mammal is taking out, whether its  
16 harbor porpoise or a seal compared to what the  
17 fishery is consuming, it's rather small. And  
18 that sometime in herring management, like they --  
19 I heard people talk about wanting to make sure  
20 that they set aside some allotment specifically  
21 for the harbor porpoise or some other marine  
22 mammal that really needs that stock.

23 CHAIR HAROLD MITCHELL: Thank you. I'm  
24 going to have one more question due to the hour.

1 With one more item still on the agenda, I need a  
2 quorum for. We're going to take one more  
3 question from Kevin.

4 And, Erin, I appreciate your time.  
5 We're going to move on. Thank you.

6 MR. KEVIN GRUNWALD: And I'm going to  
7 defer in the interest of time.

8 CHAIR HAROLD MITCHELL: All right.  
9 Erin, thank you, very much.

10 MS. ERIN BURKE: Thank you.

11 CHAIR HAROLD MITCHELL: It was very  
12 informative and we appreciate your time.

13 MS. ERIN BURKE: Take care.

14 CHAIR HAROLD MITCHELL: Appreciate  
15 that. Moving on.

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**PUBLIC HEARING:****Chapter G, Growth Incentive Zone****Regulations Proposed Amendment**

CHAIR HAROLD MITCHELL: We have one more item on the agenda, which is a GIZ Regulations Amendment.

The Cape Cod Commission will conduct a public hearing and consider proposed amendment to the Growth Incentive Zone Regulations, Chapter G of the Code of the Cape Cod Commission Regulations.

The purpose of the proposed amendment is to allow a Growth Incentive Zone designated period to be extended one time by the Executive Director for a period of up to 180 days.

Anyone wishing to testify orally will be welcome to do so. Written comments may also be submitted at the hearing.

Just in case anyone hasn't had an opportunity to look through the notes, basically what we're adding is the statement notwithstanding the GIZ designated period may be extended by one time by the Executive Director for a period of up to 180 days. Such extension

1 shall be reviewed for its consistency with  
2 Section 2 and Sections 8 herein, and with the  
3 goals of the RPP in effect at the time of the  
4 extension. Such extension shall be in addition  
5 to any extensions requested by town and granted  
6 by the Commission.

7 So, at this time, I would ask --

8 MR. ROYDEN RICHARDSON: So moved.

9 CHAIR HAROLD MITCHELL: Well, I think a  
10 presentation by the Commission staff.

11 MS. KRISTY SENATORI: Thank you, Mr.  
12 Chair. Kristy Senatori, Deputy Director with the  
13 Commission. And given the late hour, I certainly  
14 will be brief.

15 But as the Chair pointed out, this is a  
16 minor amendment to Chapter G, which is our Growth  
17 Incentive Zone Regulations. We have currently  
18 three approved Growth Incentive Zones. We have  
19 one in that you heard about today in Yarmouth.  
20 We have another in Buzzards Bay, and then a third  
21 in Hyannis, which you've also heard about in the  
22 recent months.

23 So, currently, each Growth Incentive  
24 Zone, as you heard in the case of Yarmouth, has

1 an expiration date. And this is actually proving  
2 somewhat problematic in some of these Growth  
3 Incentive Zones. And as Commissioner McCormack  
4 pointed out, 10 years isn't necessarily enough  
5 time to realize the cumulative thresholds that  
6 exist within these Growth Incentive Zones.

7 So the modification before you allows a  
8 180-day extension in time to the GIZ decision.  
9 It does not have any effect on the threshold. It  
10 doesn't have any effect on any of the other  
11 provisions in the Growth Incentive Zones'  
12 decisions themselves.

13 But this is particularly important  
14 especially in the case of Hyannis and where a  
15 staff-level process has already begun with the  
16 town of Barnstable staff and Cape Cod Commission  
17 staff in contemplating a new Growth Incentive  
18 Zone.

19 So this short timeframe extension to  
20 the Growth Incentive Zone decision will allow the  
21 Commission to work with the town to put forward a  
22 new application for a Growth Incentive Zone and  
23 follow the public hearing process that's required  
24 at the local level and then, ultimately, through



1 the Commission hearing process.

2 We are anticipating a larger set of  
3 regulation changes coming before the Commission  
4 in the next coming several months. And so this  
5 is just the first of those. This is just a small  
6 minor amendment that we would need to do in  
7 advance of some of those larger regs amendments.

8 So, I'm happy to answer any questions  
9 if you have any and thank you.

10 CHAIR HAROLD MITCHELL: Any questions  
11 from the Commissioners at this time?

12 MS. JACQUELINE ETSTEN: Does this  
13 immediately affect the Hyannis GIZ?

14 MS. KRISTY SENATORI: We could extend  
15 the Hyannis Growth Incentive Zone if you vote  
16 this approval today.

17 MS. JACQUELINE ETSTEN: I'm sorry?  
18 You --

19 MS. KRISTY SENATORI: We will be able  
20 to extend the Hyannis Growth Incentive Zone by  
21 180 days.

22 MS. JACQUELINE ETSTEN: Well, I  
23 expressed concern with the type of development  
24 that is occurring in Hyannis under the GIZ at

1 present, and I'd ask that that be on the agenda  
2 for review and discussion and it hasn't occurred.

3 So I would be opposed to this  
4 extension.

5 MS. KRISTY SENATORI: I think what  
6 you're mentioning for growth that's happened or  
7 is anticipated to happen under the Growth  
8 Incentive Zone is something that we're looking at  
9 as the new Growth Incentive Zone. So we're not  
10 modifying anything currently but anticipating a  
11 new Growth Incentive Zone, which could address  
12 some of your issues.

13 CHAIR HAROLD MITCHELL: Okay. Any  
14 other questions?

15 MR. RICHARD ROY: Does this go forward  
16 if we vote on it today or does this have to go  
17 before the Assembly?

18 Ms. KRISTY SENATORI: This would go to  
19 the Assembly of Delegates for approval.

20 MR. RICHARD ROY: Okay. Thank you.

21 CHAIR HAROLD MITCHELL: Any other  
22 questions? Any public comments? Okay. Any  
23 final comments by the Commissioners? Then I'll  
24 take a motion to close the public hearing.

1 COMMISSION MEMBERS: So moved.

2 CHAIR HAROLD MITCHELL: There's a lot  
3 of those. I'll take a second.

4 (Secoded.)

5 CHAIR HAROLD MITCHELL: Thank you. All  
6 in favor, say "Aye."

7 COMMISSION MEMBERS: Aye.

8 CHAIR HAROLD MITCHELL: Any opposed?

9 MS. JACQUELINE ETSTEN: No.

10 CHAIR HAROLD MITCHELL: Any  
11 abstentions?

12 MS. JACQUELINE ETSTEN: No, not an  
13 abstention, a no.

14 CHAIR HAROLD MITCHELL: Yes. So at  
15 this time, I'll take a motion to submit as a  
16 draft the proposal amendment to Section 11  
17 Duration of the Growth Incentive Zone Regulations  
18 Chapter G of the Code of the Cape Cod Commission  
19 to the Assembly of Delegates for adoption by  
20 ordinance.

21 A motion?

22 MR. RICHARD ROY: So moved.

23 CHAIR HAROLD MITCHELL: I have a  
24 motion. Do I have a second?

1 MR. JOHN HARRIS: Second.

2 CHAIR HAROLD MITCHELL: I have a  
3 second. All in favor?

4 COMMISSION MEMBERS: Aye.

5 CHAIR HAROLD MITCHELL: Any opposed?  
6 Any abstentions? It passes. Thank you, very  
7 much.

8 (Motion passed.)

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Commission Meeting concluded at

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5:01 p.m.)

**C E R T I F I C A T E**

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF BARNSTABLE, SS

I, Linda L. Wesson, a Certified Verbatim Reporter and Notary Public in and for the Commonwealth of Massachusetts, do hereby certify that the foregoing volume is a true and accurate transcript, prepared to the best of my ability, of the Cape Cod Commission Hearing, which was held on Thursday, September 14, 2017, at the First District Courthouse, Assembly of Delegates Chambers, 3195 Main Street, Barnstable, Massachusetts.

10/2/17

Date



Linda L. Wesson, CVR, ACT

Notary Public

My Commission Expires: June 3, 2022

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