



Town of Eastham
District of Critical Planning Concern Designation Decision

Introduction

As authorized by Section 10 of the Cape Cod Commission Act, the Cape Cod Commission (“Commission”) hereby proposes the Town of Eastham District, hereinafter described, for designation as a District of Critical Planning Concern (“District” or “DCPC”). The designation of this District was proposed by the Eastham Board of Selectmen.

The proposed Town of Eastham District qualifies under Section 10(a) of the Cape Cod Commission Act for proposed designation as a DCPC due to the presence of significant natural and economic resources or values of regional, statewide, or national significance; and, the presence or proposed establishment of a major capital public facility or area of public investment.

The purposes of this District are the protection of natural resource interests including the Salt Pond sub-embayment watershed; the improved regulation of economic resources within the Town’s major commercial district; improved design and layout of affordable housing resources; transportation management on a Federal/State highway that is a major area of public investment; protection of community character and improved management of development patterns; and to manage growth in a manner that is compatible with the resource management and protection goals for the District.

Procedural Background

On August 24, 2017, the Commission received a proposed nomination for the Town of Eastham District of Critical Planning Concern (DCPC) from the Eastham Board of Selectmen pursuant to Section 10(d) of the Cape Cod Commission Act (“the Act”). Notice of the nomination was published in the Cape Cod Times on August 31, 2017, beginning a full moratorium on the issuance of development permits within the proposed DCPC. On August 31, 2017, the full Commission voted to accept for consideration the proposed nomination as a DCPC, which ended the full moratorium on development within the DCPC and began the limited moratorium as outlined in the August 31, 2017 Commission decision.

As authorized by the Commission's Administrative Regulations, a Commission hearing officer held a duly noticed public hearing on October 3, 2017 at the Eastham Town Hall, Eastham, MA, to take testimony on whether the area should be proposed for designation as a DCPC, and to consider issues and goals related to the designation. The minutes from this public hearing are appended to this decision as Exhibit "A". The public hearing was continued to the full Commission meeting on October 12, 2017, at the First District Courthouse, Assembly of Delegates Chambers, in Barnstable, MA.

A public hearing was held before the full Commission on October 12, 2017, where the Commission voted unanimously to adopt its draft decision that the designation of the Eastham DCPC be forwarded to the Assembly of Delegates for adoption by County ordinance.

Description of Proposed District

The proposed boundary of the District of Critical Planning Concern (hereinafter "DCPC") encompasses commercially zoned land in the Town of Eastham, including District C Industrial, District D Retail Sales and Service, and District E Residential/Limited Commercial, and all land within the North Eastham Overlay District bounded on the north by the Eastham/Wellfleet Town boundary, to the south by Old Orchard Road, to the east by the Cape Cod Rail Trail, and to the west by Herring Brook Road and Massasoit Road. The proposed District consists of approximately 280 acres of land area and approximately 2.9 acres of open water. A map of the proposed District is appended to this Decision as Exhibit "B".

Included within the overall District are approximately 0.46 acres of land owned by the Commonwealth of Massachusetts – Cape Cod Rail Trail, a 10-acre parcel owned by the Town of Eastham, and U.S. Route 6, a federal/state highway right-of-way.

Types of Districts

The Eastham DCPC is designated for the following types of districts:

1. Economic or Development Resource District
2. Affordable Housing Resource District
3. Transportation Management District

Reasons for the District's Designation

The area designated as a DCPC by this decision is of critical concern to the region because of the presence of significant natural and economic resources or values of regional, statewide, or national significance; and, the presence or proposed establishment of a major capital public facility or area of public investment.

The potential for uncontrolled or inappropriate development exists within the District. The proposed District is bisected by a four-lane undivided highway with multiple curb cuts and

higher traffic volumes than other sections of U.S. Route 6. Permissive commercial zoning and the recent provision of town water to the proposed District have resulted in high-traffic volume commercial development proposals whose layout and design could be improved with adequate regulatory controls. Implementing regulations will allow the Town to provide the regulations desired by the community and ensure that this local economic center will grow in a way that existing infrastructure can support.

The Commission finds that the proposed district will preserve and maintain values and resources intended to be protected by the Act. The Commission specifically finds that controlled development within the proposed Town of Eastham District is important for the protection of coastal water quality; balanced economic growth; the provision of adequate capital facilities, including transportation and water supply; the coordination of the provision of adequate capital facilities with the achievement of other goals; the development of an adequate supply of fair affordable housing; and the preservation of architectural values. The Commission finds that there are planning and regulatory tools available which are likely to be effective in protecting or otherwise meeting the objectives of the District and that current regulatory mechanisms are not in place to control growth and development in a manner that would appropriately manage and protect the resources within the proposed District.

The Commission makes the following additional findings regarding the critical concerns in the proposed District:

Water Resources

The southeasterly portion of the proposed District lies within the contributing area to the Salt Pond sub-embayment, within the Nauset Harbor watershed. According to the Final Massachusetts Estuary Project (“MEP”) Technical Report for Nauset Harbor, the Salt Pond sub-embayment watershed requires significant nitrogen removal (i.e. removal of 100% of the septic load). An approved Total Maximum Daily Load (“TMDL”) report, currently in progress, will require nitrogen reductions in the Salt Pond sub-embayment. Reductions in nitrogen loading within the watershed could be targeted to both development and redevelopment. Stormwater management retrofits or installations of best management practices (“BMPs”) within the District that treat for nitrogen would reduce nitrogen loading to Salt Pond and greater Nauset watershed. Additionally, minimizing turf (i.e. fertilizer application), impervious surfaces (i.e. generation of stormwater runoff), and inadequately treated wastewater discharges within the Nauset watershed would help mitigate any increase in nitrogen load to the already-impaired embayments.

Economic Resources

The proposed District is the Town’s core commercial area and is primarily zoned for general business use, which allows a variety of retail, accommodations, and other commercial uses. The Town has invested considerable funds into the proposed District by authorizing the design and construction of a one hundred thirty million dollar (\$130M) public water supply system throughout the Town. This major public investment will provide town water to all properties

within the proposed District. New development and redevelopment is now more feasible for many property owners within the proposed District, as evidenced by several recent retail and residential development proposals and permits issued by the Town. The advantage to developing the area in a controlled manner includes addressing the impact of future growth on the character of the community.

Provision of Adequate Capital Facilities

The proposed District is bisected by U.S. Route 6, a Federal/State highway that serves as the major travel corridor to the Outer Cape towns of Wellfleet, Truro and Provincetown with average summer daily traffic volumes of approximately 25,000 - 30,000 vehicles/day. Average summer daily traffic volumes on Route 6 at the Wellfleet/Truro town line average 14,000 vehicles/day, and 12,000 vehicles/day at the Truro/Provincetown town line. Summer traffic congestion and safety on Route 6 impacts both residents and visitors daily. The Eastham section of Route 6 consists of a four-lane cross-section with 12-foot vehicle lanes and a 5-foot sidewalk on the west side of the roadway. There are no sidewalks on the east side of the roadway where most of the businesses and numerous curb cuts are located. There are approximately 100 curb cuts along the approximately 2.5-mile section of Route 6 within the proposed District.

The corridor lacks sufficient bicycle and pedestrian accommodations, and has not received upgrades to mitigate traffic volumes, safety issues, and stormwater runoff. As a state highway, Route 6 is under the jurisdiction of the Massachusetts Department of Transportation (“MassDOT”) and the Town lacks the capacity and the regulatory framework to implement comprehensive improvements to the roadway.

In 2015, Eastham Town Meeting authorized the design and construction of a one hundred thirty million dollar (\$130M) public water supply system throughout the Town. This major public investment will provide town water to all properties within the proposed District. New development and redevelopment is now more feasible for many property owners within the proposed District, as evidenced by several recent retail and residential development proposals and permits issued by the Town.

Provision of Adequate Supply of Fair Affordable Housing

The availability of public transit provided by the Cape Cod Regional Transit Authority (“CCRTA”) Flex bus, coupled with the proximity of commercial and retail services along Route 6 and the availability of town water, makes the proposed District an appropriate location for affordable housing. The Town is seeking to diversify its housing stock by promoting mixed-use/village style development. This type of development will provide additional opportunities to accommodate appropriately designed residential units at higher densities, which is a vital component in making the development of affordable housing economically viable within the District.

Preservation of Architectural Values and Appropriate Site Design

In 2014, the Town approved overlay zoning within the proposed District to encourage mixed-use development in a traditional village-style development pattern. The overlay zoning has not yielded any new mixed-use development and the bylaw has not been effective in producing the form and type of development desired by the Town. Permissive commercial zoning and the recent provision of town water to the proposed District have resulted in high-traffic volume commercial development proposals whose impacts, layout and design could be improved with adequate regulatory controls.

Existing Regulatory Framework

The principal existing regulatory framework within the approximately 280-acre proposed District consists of the Eastham Zoning Bylaw, Eastham Subdivision Rules and Regulations, Eastham Wetlands Bylaw and Wetlands Regulations, and Eastham Board of Health Regulations.

Guidelines for Proposed Implementing Regulations

The following guidelines shall serve as the basis for the future establishment of implementing regulations to be adopted by the Town of Eastham pursuant to Section 11 of the Cape Cod Commission Act. In order for the implementing regulations to be approved, they must be found by the Commission to be consistent with the following guidelines.

Goals and Interests

The objective of these Guidelines is to ensure protection of the following goals and interests of the District through the establishment of implementing regulations by the Town of Eastham. The goals and interests of the District are to:

- Enhance and protect the character of Eastham's commercial areas.
- Encourage mixed-use development.
- Support and enhance the local economy in North Eastham.
- Improve bicyclist and pedestrian safety and access along the Route 6 corridor.
- Minimize traffic conflicts and improve access management throughout the District.
- Expand opportunities for creation of affordable housing.
- Adopt best management practices to manage nutrients discharged through stormwater within the District.
- Support appropriate-scale businesses, as well as compatible public/private institutional uses and maritime uses.

Guideline 1: The town could consider adopting appropriate site layout and design standards to achieve traditional village style development.

Eastham's underlying zoning regulations, including dimensional requirements discourage the compact development form desired by the town in this area. Allowing smaller lot sizes would encourage creation of a higher density village-style design. Reduced setbacks would facilitate improved site design, by allowing buildings to be closer to the street and encouraging parking to be located behind buildings, thereby promoting village character and pedestrian accessibility

The town could develop design guidelines or standards to encourage building and site design that promotes a mix of uses consistent with traditional village style development. The town could adopt building size limits based on the size and scale of existing structures and traditional village style form.

Guideline 2: The town could adopt regulations to encourage creation of a range of affordable housing.

The town could examine existing regulations to encourage a range of appropriately designed affordable housing to meet a range of housing needs.

The town could develop design guidelines or standards to encourage higher density housing consistent with traditional village style residential design.

The town could consider adopting inclusionary zoning that could require new development to provide affordable dwelling units.

The town could consider encouraging creation of affordable accessory units by creating incentives for property owners to add them, such as a by-right allowance.

The Town could review its zoning bylaw and revise it as necessary to incorporate design requirements or guidelines to assist property owners in designing accessory units that would match the existing character of surrounding neighborhoods. Consideration of the adoption of design guidelines could be considered part of a minimum criteria for allowing accessory apartments by-right.

Guideline 3: Development and redevelopment in the District could incorporate best management practices (Low Impact Development) to reduce stormwater impacts to water resources.

New development and redevelopment may increase stormwater impacts to water resources. The town could adopt Best Management practices that are consistent with model LID bylaws.

Guideline 4: Development and redevelopment could promote interconnectivity between properties to improve access for bicyclists, pedestrians, and motorists.

The town could adopt zoning and subdivision regulations to promote shared driveways, reduce curb cuts, and enhance circulation between sites.

Guideline 5: The Town may consider working with the Cape Cod Commission and MassDOT to develop a transportation management plan to address the deficiencies on U.S. Route 6, including adequate pedestrian and bicycle accommodations, access management, intersection safety as well as safety along the corridor.

In addition, the transportation management plan will include a Cape Cod Commission corridor study of Route 6 to determine the best type of roadway system for Eastham (e.g., center turn lanes, a boulevard-type design, traffic signals, etc.). The Cape Cod Commission study is expected to be completed in the fall of 2018.

After concept-level plans have been developed and consensus has been reached on the best plan to move forward, the Town of Eastham, the Cape Cod Commission and MassDOT should work together to implement the design plans. The town may then amend or adopt its implementing regulations based on the results of the study.

Time Frame for Action

The Town of Eastham has one year from the date of the enactment of an ordinance by the Assembly of Delegates establishing the Eastham DCPC to adopt and incorporate implementing regulations that are consistent with the Cape Cod Commission guidelines into its official bylaws, regulations and maps. The Cape Cod Commission may grant an additional ninety-day extension of this time limit and may carry forward implementing regulations on the Town's behalf as provided by Section 11 of the Cape Cod Commission Act.

Conclusion

Based upon the reasons outlined in this decision, the Cape Cod Commission approves the request of the Eastham Board of Selectmen for designation of the Eastham District of Critical Planning Concern and will forward the designation to the Assembly of Delegates for enactment as a County ordinance.

[Signature Page Follows]

SIGNATURE(S)

Executed this 12th day of October 2017

Harold W Mitchell
Signature

Harold W Mitchell - chair
Print Name and Title

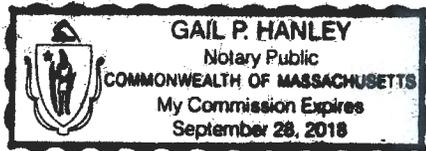
COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss

October 12, 2017

Before me, the undersigned notary public, personally appeared

Harold W. Mitchell, in his/her capacity as Chairman of the Cape Cod Commission, whose name is signed on the preceding document, and such person acknowledged to me that he/she signed such document voluntarily for its stated purpose. The identity of such person was proved to me through satisfactory evidence of identification, which was [] photographic identification with signature issued by a federal or state governmental agency, [] oath or affirmation of a credible witness, or [] personal knowledge of the undersigned.



SEAL

Gail P. Hanley
Notary Public

My Commission Expires: 9-28-18

Exhibit A

**Minutes from
Eastham District of Critical Planning Concern (DCPC) Hearing
October 3, 2017 at 4:00pm
Eastham Town Hall, Earle Mountain Room
2500 State Highway, Eastham, Massachusetts**

Commission Staff Present: Jonathon Idman (Chief Regulatory Officer *as Hearing Officer*), Sharon Rooney (Chief Planner), Jessica Wielgus (Commission Counsel), Glenn Cannon (Technical Services Director), Sarah Korjeff (Historic Preservation Specialist), Martha Hevenor (Planner), and Jeffrey Ribeiro (Regulatory Planner)

Documents Used/Received

1. Commission Staff PowerPoint Presentation, dated 10/3/2017
2. Town Staff PowerPoint Presentation, dated 10/3/2017
3. Eastham DCPC Nomination for Consideration Decision, dated 8/31/2017

Hearing Opened and Presentations

Jonathon Idman, as hearing officer, opened the public hearing at 4:00pm. He introduced the Commission staff present and then read the hearing notice. He provided an overview of the hearing proceedings planned, and then asked for a presentation by Sharon Rooney, Chief Planner of the Commission.

Ms. Rooney presented with the assistance of a PowerPoint presentation, which is attached hereto. Ms. Rooney provided an overview of the purpose of a District of Critical Planning Concern (DCPC) as articulated in the Cape Cod Commission Act, and she said the resources of concern in Eastham are Route 6, the public water supply system, the Town's primary commercial district, areas suitable for affordable housing, and areas within the nitrogen-impacted Salt Pond sub-embayment. She said the DCPC allows for a moratorium during which special rules and regulations to protect these resources can be adopted. She said there is significant public engagement, and she said that non-detrimental activities would be allowed to proceed.

Ms. Rooney provided an overview of the proposed DCPC district boundaries. She said the district was for the purposes of Economic Development, Affordable Housing and Transportation Management. She said the Route 6 is a major transportation resources with significant safety issues. She said the Town has invested significant time and effort in planning for North Eastham.

Ms. Rooney then provided an overview of the DCPC process and detailed the exceptions from the DCPC moratorium. She said the purpose of the hearing was to take public testimony on the proposed boundaries of the district, the types of districts proposed, whether the public supports or opposes the designation, and any other issues not articulated that should be considered. She then stated the next step was a vote by the full Cape Cod Commission on October 12th, followed by consideration of the designation by the Assembly of Delegates. She said that if the DCPC is

designated, the Town would have 12 months to adopt implementing regulations, and the Town has indicated that it will seek to have implementing regulations before the annual Town Meeting in May of 2018.

Mr. Idman then asked for comments from Eastham Town Planner Paul Lagg.

Mr. Lagg presented with the assistance of a PowerPoint presentation, which is attached hereto. Mr. Lagg said that recent development has been made feasible by the provision of town water. He said the current zoning by-law does not adequately control the design, type, or size of development and does not include requirements for architectural/site design, affordable housing, or traffic safety improvements. He said cumulative traffic impacts have not been addressed. He reiterated that the reasons for nominating the DCPC were concerns over economic development, affordable housing, and transportation management. He said the Town hopes to support the local economy while maintaining the character of the town, diversify the housing stock through mixed-use development, and improve traffic safety while accommodating multi-modal travel.

Public Comment

Mr. Idman then asked for public comment starting with public officials, followed by those who signed in prior to the hearing, followed by all other members of the public.

Aimee Eckman of the Eastham Board of Selectmen said that she supports the DCPC to promote economic development, affordable housing and transportation safety. She said she hopes the implementing regulations will include support for locally-owned business, limits on formula business, and the inclusion of an architectural review board. She said that Eastham needs high-quality affordable housing with safe site access. She said comprehensive transportation safety analysis is needed at all town intersections, including provisions for safe bicycle/pedestrian access.

Bill O'Shea of the Eastham Board of Selectmen thanked the public for attending the hearing. He said the purpose of the DCPC is not to thwart development but to develop in a way that complements the town. He said that village-style development is needed as well as a comprehensive look at transportation issues.

Martin McDonald of the Eastham Board of Selectmen said the DCPC is important to the town. He said the Board of Selectmen voted unanimously in favor of the DCPC, and he thinks that is the will of the public. He said the designation is needed to protect the character of the town, including the beaches, national park, and unique culture of the town. He said the recent amount of commercial development has been an unanticipated consequence of the new town drinking water system. He said the town needs to define its community characteristics and have a means to control development.

Art Autorino of the Eastham Planning Board said that the overlay district was meant to improve the character of the town and encourage mixed-use development. He said the town needs to develop a plan to allow for development that allows a variety of businesses and uses.

Cynthia Gast says that she owns a cottage colony and may wish to change the use of some of her cottages. She said she supports the DCPC designation, but she says that she has concerns over the ability for her and other small commercial landowners to use their property.

Jamie Rivers said that she supports the designation of the DCPC. She said that she does not think that town has difficulty bringing business to town, but she does think the town has difficulty supporting small businesses. She said small businesses must be supported to maintain the character of the town.

Steve Wasby of the Eastham Zoning Board of Appeals said he favors the designation of the DCPC but does not think implementing regulations should be rushed. He said the Town's zoning by-laws should be looked at comprehensively, and a better timeline would be for the Town to call a special Town Meeting in the fall of 2018 to adopt implementing regulations or to wait for the annual Town Meeting in May of 2019.

Dave Schroepfer said he is a former selectman and a current member of the board of the Cape Cod Regional Transit Authority. He said he supports the DCPC but does not think implementing regulations can be adopted by the spring of 2018. He said safety and character are both concerns for Route 6. He said affordable housing is needed but should be small scale. He said he is concerned about crime associated with affordable housing. He said Route 6 should be designed for motorist, pedestrian and cyclist safety in a two-lane configuration. He said a bypass road is needed to re-route through traffic. He said he is in support of the formation of an architectural review board.

Jacqueline Beebe, Eastham Town Manager, responded to concerns from the public about the timing of the adoption of implementing regulations. She said there is a need to balance time for planning with the potential for negative impacts to small businesses. She said the plan is to get as much accomplished by the annual Town Meeting, with additional planning work to continue into the future.

Mr. Idman added that the Commission's designation would not compel the Town to act by May of 2018.

Scott Kerry said he supports the designation. He said the Town needs the planning and technical services of the Commission to help the Town in its efforts.

Bonnie Nuendel asked if it would be possible to get affordable housing developers to consider mixed-use projects, if a traffic light was possible at the proposed Governor Prence Residences project, and if the Town's Housing Production Plan would be used in the DCPC planning efforts. She also said that traffic on Route 6 should be slowed, and Rock Harbor Village in Orleans is an example of a successful affordable housing development.

Edward Schneiderhan of the Eastham Zoning Board of Appeals said that one of the reasons a recent Comprehensive Permit application was denied was due the development being over two stories in height. He asked if the DCPC process could create binding design requirements for Comprehensive Permit projects.

Steve Wasby of the Eastham Zoning Board of Appeals added that he was sympathetic to impacts to small businesses but thinks all regulations should be looked at comprehensively. He said it would not be easy to update the by-laws as needed on an iterative basis.

Barbara Nigel said that she agrees with Ms. Beebe and Ms. Rivers that the implementing regulations should be ready for May Town Meeting. She said she thinks it can be done.

Jamie Rivers said that the Town and the Commission have been being very transparent and providing significant information to the public. She said the problem with past efforts has been initiatives not providing such information to the public.

Responses to Comments

Mr. Idman asked if Mr. Lagg had further comment or wanted to respond to questions from the public. Mr. Lagg said that the Town would be in the best position to control Comprehensive Permit applications if it achieves the state mandate of 10% of year-round housing units as affordable. He said until that is achieved the Town will be subject to projects under MGL Chapter 40B. He said implementing regulations will need to encourage mixed-use development, and, in some scenarios, perhaps require the provision of affordable housing units. He said accessory dwelling units will be important, as the biggest need is for affordable rental units. He said smaller-scale development can be encouraged by allowing such development as of right and not by special permit. He said the Housing Production Plan will be the playbook for the creation of housing in the Town and must be incorporated into the zoning by-law.

Ms. Rooney then offered further comment and said that Ms. Gast should consult Mr. Lagg and the Town's building commissioner about whether her specific projects would be exempted from the moratorium. She said Commission staff was already analyzing the Town's zoning by-laws under a District Local Technical Assistance grant project, which will be completed by the end of the year. She said the Town will have up to 12 months to adopt implementing regulations, if needed. She noted that a recent Urban Land Institute charrette was also completed, which will produce a report with further recommendations within 6 weeks. She said mixed-use affordable housing is already being constructed on Cape Cod, specifically at Mashpee Commons. She then asked Glenn Cannon, Technical Services Director, to comment on transportation issues.

Mr. Cannon said a lot of work is currently being done, and he said the Town is taking the correct actions to outline short-, medium-, and long-term steps that will be needed. He said the Commission will be working to figure out what exactly the Town wants for Route 6 so that can be clearly conveyed to MassDOT. He said that the traffic functions as part of a network, and no one piece of infrastructure would be effective to address all transportation issues on Route 6.

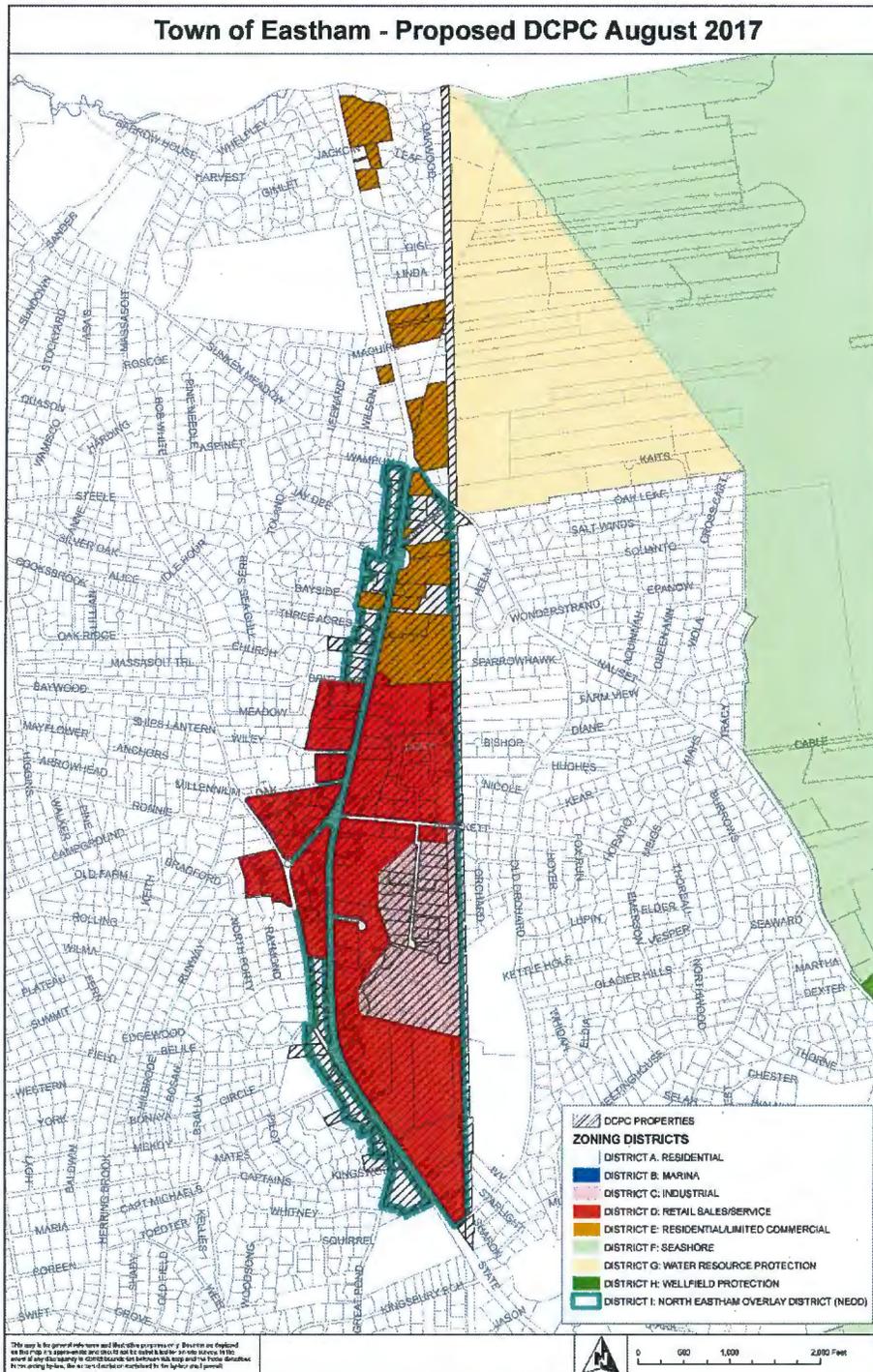
Mr. Idman noted that Comprehensive Permit applications do not come under the jurisdiction of the DCPC. He said that consistency with any adopted implementing regulations will be something that is looked at by the state when considering waivers for Comprehensive Permit applications.

Continuance

Mr. Idman provided an overview of the next steps in the DCPC designation process. He noted that there would be additional opportunity to comment at the continued hearing before the full Cape Cod Commission board on October 12th. He said that written comments could be submitted as well. He also noted that all materials for the DCPC can be viewed on the Commission's website, including a draft DCPC designation decision that will be posted later in the week. Mr. Idman then continued the hearing to the meeting of the full Cape Cod Commission on October 12, 2017 at 3:00pm in the Assembly of Delegates Chamber at the First District Courthouse located at 3195 Main Street, Barnstable, Massachusetts. The hearing was adjourned at 5:20pm.

Exhibit B

Map of Proposed DCPC Boundaries



**TOWN OF EASTHAM DISTRICT – DCPC DECISION
OCTOBER 12, 2017**