CAPE COD
COMMISSION

Evergreen Circle Pickleball, Mashpee (CCC File No. 24023)
Development of Regional Impact Review
Subcommittee Meeting

Minutes | December 16, 2024 at 3:00 p.m.

Virtual via Zoom

APPROVED 01/12/2025

Summary of Actions Taken:

- The subcommittee recommended the draft DRI Decision approving the project for adoption by the full Cape Cod commission with changes as discussed, those changes being those minor scriveners, errors related to the numbers of certain findings.

Elizabeth Taylor, Acting Chair, called the subcommittee meeting to order by reading the meeting announcement at 3:00 p.m. She said the subcommittee meeting is being held virtually via Zoom with all members participating remotely.

The Chair then asked Cape Cod Commission staff member, Jeffery Ribeiro, to take attendance by roll call, and he did so.

Roll Call:

- Elizabeth Taylor (Acting Chair) Present
- Ernest Virgilio Absent
- Catherine Ledec Absent
- Peter Okun Present
- Dennis M. Prebensen Present

A quorum of members of the subcommittee being present, the Chair began by asking for staff comments on the Evergreen Circle Pickleball DRI.

Staff Presentation:

The Chair recognized Jeffery Ribeiro, Regulatory Planner, to provide comments. Mr. Ribeiro presented using a PowerPoint presentation.

He said Jeffrey Ribeiro provided a brief overview of the Draft DRI Decision for the Evergreen Circle Pickleball Project. He said that the Draft DRI Decision remains consistent with the prior meeting's discussion. He started by discussing Water Resources. Specifically, he talked about nitrogen loading and the monetary offset required for nitrogen produced by the Project. Mr. Ribeiro said that there were a few changes in the Draft DRI Decision including that the final nitrogen loading value was updated to 43.91 kg per year after recalculating to account for

small changes in the site plan. He said the monetary offset payment related to Finding F.33 and Condition C.10 reflect these updates.

Regarding Transportation, he said that the Draft DRI Decision included minor changes because the Town of Mashpee has plans to install a roundabout on Route 130 and Great Neck Road North, although this project is not yet funded or fully designed. He explained that proposed changes such as signal timing and signage may be waived if deemed unnecessary by the Department of Public Works.

Mr. Ribeiro then discussed the probable Project Benefits and probable Project Detriments included in the Draft DRI Decision. Project Benefits discussed included year-round recreational and employment opportunities and new tax revenues for Mashpee. The Project Detriments discussed were additional nitrogen loading to groundwater within a nitrogen-impaired embayment.

Subcommittee Questions:

The Chair asked whether bird-friendly building design elements, discussed at the last hearing, could be applied to this DRI under "community design", as it pertains to context-sensitive buildings and site design.

Jeffrey Ribeiro responded that bird-friendly design is outside of the current regulations and guidance, which is why it was not included. However, it is something that the applicant could choose to incorporate voluntarily.

Jordan Velozo confirmed that it is not addressed in the technical bulletins or required in DRI reviews, but the applicant could voluntarily implement such measures. It will not be included as a condition in the decision.

The Chair mentioned she would bring the topic up at the RPP (Regional Policy Plan) hearings.

The discussion moved to comments from the Applicant, Bill Russell. The Chair recognized Mr. Russell to speak.

Applicant Presentation:

Using a PowerPoint presentation, Mr. Russell provided an update on the Evergreen Circle project, particularly addressing nitrogen mitigation and associated fees. He discussed the ways that the Project has changed since originally proposed stating that the redesigned the septic system to select the best available for reducing nitrogen for a project of this size.

He talked about the appropriateness of the nitrogen mitigation fee. He talked about his understanding of the fee calculation and areas where he disagrees with the calculation of the fee. He discussed several other facilities and the timeline for Mashpee's sewer projects in the area. He showed a chart of alternative, lower fees and stated that they would be proportional to the Project's likely impact.

He said a landowner should not be penalized because their site falls under a municipal clean water plan, but their connection is greater than 5 years from now. He said that timeline is

determined more by the town benefitting from earlier phases of sewer development in other locations within the town, which is exactly what's going on in the town of Mashpee. He said that is the case in Mashpee and the RPP should account for it.

Mr. Russell also discussed five other Cape Cod Commission DRI decisions approved since 2019 and stated that found no mandates for nitrogen mitigation fees in the DRI (Development of Regional Impact) applications reviewed. He noted that several decisions, even with greater nitrogen discharge, did not require nitrogen fees, and emphasized that the Evergreen Circle facility's impact was comparatively lower.

Mr. Russell concluded by stating that judgment and flexibility should be applied to the project's nitrogen mitigation fee. He asked the subcommittee to apply the same judgment to this Project as has been done in other recent DRI decisions.

John Kenney, Attorney representing the Applicant, stated that while the calculation of the nitrogen fee is simple, the assumptions behind the calculations need to be reviewed. He said the formula takes the mean of the design flow and the assumed actual flow for nitrogen calculations, to calculate the fee. He noted that the applicant suggests using a lower actual flow (1,102 gallons per day) and a 14-year sewer projection (rather than the staff's 20 years), suggesting that would result in a fairer fee.

The Chair asked staff for any response at this time and asked if the Applicant had submitted anything new.

Mr. Ribeiro stated that the Applicant had discussed and submitted information about other DRI Decisions. He clarified that comparisons to those past projects, like Canal Street Crossing or the Wilkens Development Agreement, are not pertinent comparisons due to differences in discharge locations and nitrogen impacts. He said Canal Street Crossing, for example, is in an area of direct discharge—not in a nitrogen impaired embayment—so it did not require a nitrogen mitigation fee.

Subcommittee Discussion:

The Chair asked for questions or comments from members of the subcommittee.

Peter Okun said he trusts scientific data when it comes to the expected time for the Phase 5 sewer in Mashpee. He said town schedules may not always meet sewer implementation goals, pointing out that funding and political will often delay infrastructure projects. He was not inclined to reduce the fee based on the anticipated sewer extension schedule, stressing the importance of addressing nitrogen loading based on actual scientific projections.

The Chair recognized Mr. Russell to respond. Mr. Russell reiterated his earlier comments asking for a reduced nitrogen fee. He also said that other projects mentioned by staff like Canal Street Crossing are contributes more nitrogen to groundwater than this Project.

Mr. Ribeiro said he doesn't want to get into a back-and-forth but reiterated that Canal Street Crossing is in an area of direct discharge so it does not affect an impaired embayment, and that is why there was no payment for that Project.

Mr. Okun asked what a direct discharge is.

Mr. Ribeiro said there are groundwater flows that go to Waquoit Bay or Wellfleet Harbor and then there's also ones that go directly to the Ocean. He said in the case of Canal Street Crossing, it flows to the Canal, not nitrogen-impaired embayments. He said it is also possible that there are situations where there are embayments that are not nitrogen-impaired.

The Chair recognized the Applicant for any comments.

The Applicant said he does not want to cloud the discussion around the practicality of a nitrogen fee with prior DRI Decisions.

Motion to Recommend the Draft DRI Decision to the full Cape Cod Commission (with changes):

Mr. Okun moved to recommend the draft DRI Decision approving the project for adoption by the full Cape Cod Commission with changes as discussed, those changes being those minor scriveners, errors related to the numbers of certain findings.

Dennis Prebensen seconded the motion.

Roll Call:

- Dennis Prebensen: Yes
- Peter Okun: Yes
- Elizabeth Taylor: Yes

All members voting yes, the motion carried and the Draft DRI Decision (with changes) was recommended to the full Cape Cod Commission.

Mr. Ribeiro said that staff would update the decision and get it to the full Commission. He said the subcommittee would need to vote to adjourn stating that the hearing had already been continued to the next hearing of the full Cape Cod Commission.

Motion to Adjourn

Mr. Okun moved to adjourn the meeting.

Mr. Prebensen seconded the motion.

Roll Call:

- Dennis Prebensen: Yes
- Peter Okun: Yes
- Elizabeth Taylor: Yes

Materials Used:

- 12/16/2024 Evergreen Circle Pickleball Subcommittee Meeting Announcement/Agenda
- Staff Presentation dated 12/16/2024
- Applicant Presentation dated 12/16/2024
- Draft DRI Decision for Evergreen Circle Pickleball dated 12/12/2024