

February 3, 2011

Statement to House Energy Committee Regarding Industrial Wind Energy

"Lavish Subsidies in the Absence of Regulation Spells Trouble"

By Eric Bibler, President, Save Our Seashore

Madame Chairman, Ladies and Gentlemen of the Energy Committee,

Thank you for this opportunity to address you today on this important topic.

My name is Eric Bibler and I am a full-time resident of Weston, CT.

I am the President of an organization based in Wellfleet, Massachusetts called Save our Seashore, and I have spent much of the last 15 months, along with a very selfless and dedicated group of individuals, fending off ill-advised and irresponsible industrial wind energy developments along the length of Cape Cod.

I am testifying before you today in the hope that you may benefit from our experience on Cape Cod, which, like the State of CT, suffers from an absence of regulations and an abundance of lavish state and federal subsidies that have provided numerous and very powerful incentives for both private, and municipal, businesses to enter the wind energy business, in a pell mell fashion, in an effort to cash in on these artificial economic returns.

One of the great, and unacknowledged tragedies of this situation, in my opinion – a subject which I will not be able to give due treatment in this context – is the sheer scale of the economic distortion – and the enormous risk of collapse – that these incentives have created.

Since I have a background in the banking and financial industry (as a lender and a bond trader with several major firms), it was apparent to me early on that the *continued viability* of all of the multimillion dollar projects that were contemplated in Wellfleet, and beyond, was wholly dependent upon the willingness of the federal government, and the Massachusetts legislature, to continue providing subsidies that would allow producers like the tiny Town of Wellfleet to sell their production, continuously over a 20 year life of the project, at a rate that amounted to four times the wholesale price of electricity.

Without the subsidies – or even in the face of a modest reduction in the amount of the subsidies – the projects would collapse.

I offer this bit of information as an aside for the following reasons:

- 1) I believe that this fact must be acknowledged in any policy-making decisions because it reveals the *vulnerability* of these projects – and of their owner/

operators, including inexperienced, and relatively unsophisticated municipalities to the abrupt withdrawal – or non-renewal – of these enormous subsidies;

- 2) It highlights the necessity for serious attention to providing ample provision for the “*de-commissioning*” – the dismantling – of the projects and their massive structures in the event of economic failure or court decision (based upon impairment of health or property, or environmental degradation) forcing the operators to cease operations;
- 3) It is worth noting that the vast majority of decision making bodies – including many of the towns and Siting Councils that embrace these projects -- are not trained in financial risk analysis and *do not sufficiently appreciate the substantial risks* – and disruptive adverse consequences -- that are embedded in them.
- 4) It is particularly troubling to note, in this context, that *a majority of the projects that have been proposed are being pursued by inexperienced operators* – like municipalities that have never run a business or by shell corporations with no assets, no accountability and no prior experience – even as more experienced operators, and large companies, deem them to be too risky or uneconomic.

Most of these operators have no true appreciation of the financial risks, and no experience, or any understanding, of the technology, which is relatively new and untested, after all. They are all after the tax write-offs and the subsidies, and most of them have been actively prospected by quasi-government agencies, such as the Massachusetts Technology Collaborative, and/or the wind turbine manufacturers.

That is why every Town on the Cape – and everyone who owned a cranberry bog or a gravel pit – suddenly had a plan to install a multi-million dollar wind energy power plant.

I’ll leave this topic for now with the simple observation that once we were able to make officials in the Town of Wellfleet appreciate the risks they were taking on their proposed \$6-7 million project, they found this knowledge sufficiently sobering that it became one of the deciding factors in their decision to move swiftly from a unanimous endorsement of the concept to a unanimous decision by the Board of Selectmen to abandon it entirely.

But it took a great deal of effort – and the availability of financial expertise outside of the prescribed process – to achieve this understanding and this result. The Selectmen, who initially were not pleased with our opposition to their proposal, ultimately offered us many letters of thanks or sparing them from a terrible mistake.

February 3, 2011

I beg you also to understand that great credit is due to the Selectmen of Wellfleet for their willingness to study the issues and to proceed carefully, and not to be blinded by the “conservative” pro forma financial projections that seemed to offer them a much-needed opportunity to balance their budgets – the promise of a painless “free lunch.” Wellfleet is the exception to the rule.

Background of Save Our Seashore and a Brief History of Development on Cape Cod

Until the first week of November of 2009, until a chance visit to the house of my mother-in-law in Wellfleet, MA, I had no particular interest, and certainly no understanding, of industrial wind energy.

On that visit, my mother-in-law – who lives within the Cape Cod National Seashore – told us that one of her neighbors wanted to stop by to talk about the wind turbine that the Town of Wellfleet wanted to install on a legacy parcel of town-owned land in a pristine woods, in the very heart of the National Seashore, about a half-mile behind her house. She had informed the neighbor that she was “for” the project; that she had voted for it the week before at Town Meeting; and that she was unlikely to change her mind; but he gently persisted and she agreed to meet with him. She asked if we would attend the meeting.

The neighbor came over and began to explain the ramifications of the project. He was perplexed that the Town had sent letters to 56 abutters to the project, to residents who are normally fiercely protective of the natural beauty of the park, and that only 5 had responded.

As it turned out, the simple fact was that no one understood the location, the scale or the consequences of the project; and everyone had been given to understand that industrial wind turbines were silent, and wholly benign.

Within 30 minutes of study, we realized that a terrible tragedy was unfolding; that the consequences to the park, and to the residents in this wild and natural place would be dire; and that virtually no one – including my mother-in-law and her friends – understood any of the relevant aspects of the plan. Yet voters had just approved an expenditure of \$260,000 to pursue a plan that was projected to cost \$5 million (later almost \$7 million) – and which would have had a transformative influence on the Town, on the National Seashore, on the landscape and the “soundscape” and on a substantial tract of fragile, “unfragmented” habitat.

That was the beginning of my personal odyssey, and of Save Our Seashore, which was founded in a living room by a handful of people who cared passionately about a particular patch of ground, the National Seashore and all of Cape Cod.

We prevailed in our effort to urge the Town of Wellfleet to reconsider its plan and, ultimately, to abandon it, in March of 2010.

February 3, 2011

Along the way, we reached out to some of the historians in the National Park Service, who sympathized and who told us that our battle was eerily reminiscent of the famous struggle over the Hetch Hetchy canyon that led to the founding of the national park service.

We also reached out to the National Parks Conservation Association (NPCA) and provided them with our research into the inevitable adverse impacts upon the park. Finally, after months of study (and after reviewing, and changing, some of its internal policies), the NPCA issued a letter of support and commendation to Save Our Seashore, on behalf its 350,000 members, for opposing the project and fighting to protect the National Seashore and Cape Cod – even though our efforts were in direct opposition to the continued, and long-standing support of the park superintendent for the Wellfleet project, and similar initiatives to install industrial wind turbines within the park. As you can imagine, this step by the NPCA was not taken lightly and was, in fact, quite extraordinary.

We also solicited the help of scientists, acoustic noise specialists, medical professors and clinical researchers, electrical engineers, energy reporters and wind energy authors and experts, wildlife experts and numerous other specialists with formidable credentials and qualifications who had done pioneering work in evaluating the efficacy, and the consequences, of such massive industrial wind energy installations.

As noted, we managed to prevail against considerable odds in Wellfleet in a relatively short amount of time, thanks to a considerable amount of help from many sources and the willingness of the Selectmen there to give the problem close study and attention.

But we had become acutely aware that there were numerous ongoing threats to the National Seashore from other projects still on the drawing board and which carried the explicit support of the park superintendent – including two large wind turbines that he proposed to erect on federal property within the National Seashore. We felt it was our duty to continue our efforts to protect the national park from the threat of additional invasion on multiple fronts.

Even more alarming, we became aware that Cape Cod was positively overrun with project proposals for the installation of 400 and 500-foot wind turbines in places where they were bound to cause untold misery – due to the population density there – and to do vast environmental damage.

It quickly became apparent that every town had a proposal to build one – or two – or eight – huge wind turbines, all of them run through unsophisticated – or at least, unknowledgeable – local Planning Boards that had no idea what they were getting themselves into.

All of these projects had been percolating for years – fueled by millions of dollars in

February 3, 2011

grant money from the State of MA that provided virtually 100% of the upfront costs of laying the groundwork – and all of them fueled by the desire of these towns to tap into a huge river of subsidies that were funded by surcharges on consumers electric bills.

Hanging over the entire process was an ominous conflict of interest: the Towns that were *reviewing* the potential adverse impacts of the projects through their Special Permitting process – and granting the permits -- were also *the proposed owner/beneficiaries of the projects!*

The Towns were upholding a pretense of impartiality but were essentially going through a process of granting permits to *themselves* – after years of preliminary effort and after spending hundreds of thousands of dollars of state grant money -- in a state where the governor was exerting heavy pressure on them to help him turn Cape Cod into “the Saudi Arabia of wind.” And, of course, at the end of the rainbow, there was that gleaming pot of gold.

We began to get regular visitors to our website and we begin to get phone calls from concerned citizens. “Please help us!” the pleaded. They, too, had begun to do some research and they feared for their health and the health of their children; their quality life; and their value of their property – their homes that they had spent many years tending, improving and religiously paying for, usually with two incomes.

Residents in other towns had been proceeding down a parallel path to Wellfleet – absent some of the considerations revolving around the national park, and had accumulated similar knowledge and expertise.

Proposals that once seemed to have unstoppable momentum behind them were rejected in town after town – *because they made no sense*. Voters, and their town boards and committees in Orleans, Eastham and Harwich all turned away proposals that once enjoyed virtually unanimous support. The Old Kings Highway Historic District Commission held its ground and refused to certify a project at the Cape Cod Community College, winning a court judgment despite a lawsuit against it that was joined by the State of Massachusetts.

The recalcitrant park superintendent’s pet project in the National Seashore – proposed within less than a half mile of a major radar installation over the objections of both the Air Force and the Federal Aviation Administration was refused – twice – with a ruling stipulating that the “maximum permissible height” for a wind turbine at the proposed site was “zero feet.”

Projects are still pending in the Towns of Brewster (two 410 foot wind turbines), Bourne (eight 500-foot wind turbines) and Wareham. A project in Plymouth in cranberry bog has been approved, but the decision has been appealed. Other towns, including Dennis, are keen to build several, despite close proximity to residences.

February 3, 2011

Personally, I believe that it is doubtful that any of these projects will ever be built because they are all so demonstrably harmful and injurious.

The only large-scale industrial wind turbines that have been built on Cape Cod are the two in Falmouth – largely because the Town of Falmouth decided that it did not need to follow the Special Permit process or hold public hearings in order to build its own project – and significant group of residents in Falmouth is now paying a very heavy price. As a matter of fact, the Town of Falmouth proceeded to build their project even though GE Energy declined to provide them with a bid out of concern that one of the sites was too close to a major highway, and, therefore, unsafe.

To their credit, many of these victims in Falmouth – even as they seek some measure of relief from a town government that has chosen to marginalize and sacrifice them, to ostracize to ignore them – have faithfully attended board and committee hearings in *other* towns from one end of Cape Cod to another, detailing their symptoms of sleep deprivation, headaches, ringing or pressure in the ears, intense flicker effects, and so forth.

They consider this their duty as a public service: to warn their neighbors and to make every effort to ensure that no one else on Cape Cod should suffer the same fate by falling for the same false and misleading reassurances that lead them to support the projects in their Town of Falmouth.

More recently, belatedly, the Cape Cod Commission has taken determined steps to formulate Minimum Performance Standards and a detailed Technical Bulletin to govern the installation of these industrial wind energy plants on Cape Cod with the intent of fulfilling its stated mission of preserving the scenic and historic character of Cape Cod and of regulating development in such a way that it does not impair the character of the region or threaten the health and well-being of its residents.

This is an extremely welcome, and long-overdue, development and members of Save Our Seashore are working closely with the Cape Cod Commission to promulgate regulations that provide some meaningful guidance in all of these areas.

Lessons Learned – Putting It in a Nutshell

As may be apparent from the above narrative, events have been unfolding at a furious pace on Cape Cod as numerous wind energy projects have come to a head.

I am embarrassed to admit that what it took us many hundreds of man hours to appreciate – or at least to enunciate – the former Attorney General, and current Senator, from Connecticut, Senator Richard Blumenthal, was able to size up in a matter of days, or even minutes, or having been presented with a similar problem in Connecticut by making two very perceptive points:

1) Senator Blumenthal said, in his press conference in early January on this subject, that the current process as prescribed in Connecticut, is virtually "lawless."

When questioned on this point, Senator Blumenthal was quick to clarify: he did not mean that applicants, the Siting Council, or anyone else was breaking the law. What he meant was that "there simply *are no laws*" to provide the standard protections to other property owners, communities and other stakeholders. None.

2) After hearing the litany of problems that had been evaluated, or had ensued, from these projects on Cape Cod and all over the world, Senator Blumenthal observed that the problem is that industrial wind energy installations are essentially "incompatible" with other, pre-existing and wholly legitimate rights and uses of property for residential development; for scenic and historic preservation; for recreation; and for natural conservation.

Industrial wind turbines – towering 400 and 500 feet in the air, with a rotor width in excess of 300 feet, with individual blades weighing over 7 tons rotating at speeds in excess of 150 mph and emitting loud, unrelenting, repetitive, rhythmic, high intensity, pulsing noise and flicker -- are nothing less than giant, industrial, kinetic physical power plants. They are massive in scale; they are dominant, intimidating and incongruous on the landscape; they emit industrial noise – 24 hours a day – which is demonstrably much more destructive to health and disturbing than noise of comparable loudness from other more familiar sources such as railroads, airports or highways; they drive off and disrupt wildlife; and they therefore constitute a distinct threat to the use and enjoyment of property for other purposes and objectives, such as residential development or conservation.

I would like to extend Senator Blumenthal's analysis a bit to propose the following framework for describing, and evaluating, this problem – the same framework I have proposed to the Cape Cod Commission:

1) Acknowledge the legitimacy of the rights and interests of existing property owners.

Regrettably, the usual point of departure for the discussion of the merits of any proposal is the assertion by the proponents of our need to promote the development of renewable energy; to reduce green house gas emissions; to meet a State renewable energy goal; or to earn revenue for the Town.

But, in so doing, we fail to acknowledge the legitimacy of existing property holders who were there first, the actual code of the zoning bylaws or Special Permit provisions; hundreds of years of legal tradition; and even the Bill of Rights.

All of these sources reinforce the idea that *no developer* has the right to impair the use and enjoyment of property by his neighbors or to impose

unreasonable costs upon the community.

Wind energy developers invariably presume that their interests should supersede all others – to be accorded some sort of special status as if we are in a time of war -- even though all of the financial *benefits* of the project accrue to the developer and *all of the adverse consequences and external costs of the project* are imposed upon innocent third parties.

So the point of departure for any meaningful and equitable legislation must be to acknowledge the legitimate rights of existing property holders, and to assert that wind energy developers, notwithstanding their assertions to the contrary, do not possess any pre-emptive rights to the use and enjoyment of property.

This is consistent with all of our zoning laws, with the Special Permit language and with hundreds of years of tradition concerning property rights.

- 2) Acknowledge that the development of industrial wind energy is fundamentally incompatible with many other legitimate, antecedent uses of land.

If this is true – and, if not self-evident, it is very easy to establish – then this means that *other*, pre-existing, legitimate stakeholders are deserving of protection from the adverse impacts of wind energy development.

Care should be exercised to see that these other legitimate interests – some of which, like the National Seashore, have defended their interests against multiple threats literally for generations – are adequately protected.

A “lawless” Siting Council – with no rules, no guidelines, no experience and no understanding of the underlying issues – will never be able to accomplish this task.

- 3) The Burden of Proof rests with the Developer to Prove the Absence of Harm.

Currently, due to poisonous interaction of a number of factors, including the lack of regulation and the presumption that wind energy possesses some sort of ill-defined, pre-emptive rights, the wind energy developers are virtually never held to appropriate standard of proving that their projects will not impair other legitimate interests. This is true notwithstanding specific language to this effect in many Special Permit provisions in the zoning laws of individual towns!

The perverse result in Cape Cod is that residents who are under threat – or, as in the case of Falmouth, already being subjected to daily misery – are draining their bank accounts, skipping insurance payments or IRA contributions and liquidating retirement accounts or college funds to hire

February 3, 2011

their OWN lawyers, acoustic consultants, real estate appraisers, and so forth, to fend off the threat. This is completely inappropriate and unjustified. In fact, it is criminal.

God forbid that a project should be approved, and built, in violation of normal due process and numerous safety provisions, after a long campaign of willful denial of the applicable standards or in a grossly negligent manner. Then the victim's only recourse is to pursue an expensive lawsuit against his own town, when everyone knows that judges are notoriously reluctant to second-guess municipal planning boards, despite these extenuating circumstances and the obvious conflict of interest.

I believe that if legislators keep these three principles in mind – and flesh them out appropriately – they will prevent a great deal of harm.

We could write a dissertation on cataloguing the various tests that could be applied - the mechanisms - to accomplish these tasks. In fact, this is what the Cape Cod Commission is currently endeavoring to do in a simplified fashion.

Needless to say, this will require some time and effort – a powerful argument in favor of a moratorium to ensure that sensible protections are enacted. But it should be clear that the current “lawless” regime run through the Siting Council provides none of these protections and is wholly inadequate to the task.

Conclusion

Please keep in mind that anywhere there is potential for profit – especially for profit that is artificially inflated, or supported, by very large subsidies – in combination with a lack of regulation, there is ample scope for waste, abuse – and even tragedy.

Our government -- our legislatures and our state and federal executives – created and enacted these incentives and they have a responsibility to protect citizens from the gold-rush mentality that currently prevails which, after all, is a product of their own creation.

Finally, we beg you to remember that one critical function of the Rule of Law is to protect the weak and the powerless – especially when they are divided and disorganized – from the over-riding influence, even the predations, of others who are economically powerful and politically well connected.

Thank you for your time and consideration of these important matters.