



December 19, 2018

Andrew Gottlieb
Executive Director

Kristy Senatori, Executive Director
Cape Cod Commission
PO Box 226
Barnstable, MA 02630-0226

BOARD OF DIRECTORS

Margo L. Fenn
President

RE: Draft Technical Bulletins

Charles Sumner
Vice President

Dear Ms. Senatori:

Robert Ciolek
Treasurer

The Association to Preserve Cape Cod (APCC), the Cape's region-wide nonprofit environmental advocacy and education organization, has reviewed the 14 draft technical bulletins to the Draft Regional Policy Plan and offers the following comments.

Maureen O'Shea
Clerk

Michael Corrigan

DeeDee Holt

The draft technical bulletins appeared to thoroughly address all the issue areas (Open Space, Water Resources, Transportation, Wetlands, Wildlife and Plant Habitat, etc.) and the important regional goals and objectives associated with those issue areas. With few exceptions, the technical bulletins successfully identified in detail the critical areas that must be addressed by Developments of Regional Impact (DRI) to ensure that Cape Cod's natural resources and character are protected, restored and enhanced. APCC commends the Cape Cod Commission on this comprehensive effort.

Thomas Huettner

Pat Hughes

Cheryl Lubin

Elyse Magnotto-Cleary

Blue Magruder

Eliza McClennen

Kris Ramsay

Robert Summersgill

Taryn Wilson

Consistent with our previous position about the need for regulatory clarity, in our review of the 14 technical bulletins, APCC looked for language in the technical bulletins that was authoritative and definitive enough to ensure the same level of protection for the Cape's natural resources, and which would guarantee that DRI applicants were required to demonstrate the same high standards in developing their projects as existed in previous iterations of the RPP. As stated earlier, APCC found that the goals and objectives were very thorough in identifying the important subjects associated with each issue area. But, we question the consistent use of the word "should" instead of the standard word "must" used for documents that possess legal regulatory authority. The use of the word "should" in these instances presents a level of ambiguity as to whether a certain project review issue is required or is a suggestion and open to negotiation. In some of these occurrences, APCC is worried that any future flexibility in adhering to certain performance standards that are currently required under the 2009 RPP will lead to the degradation of the Cape's natural resources.

482 Main Street | Dennis, MA 02638

Tel: 508-619-3185 | info@apcc.org | www.apcc.org

A NON-PROFIT ORGANIZATION. DUES AND CONTRIBUTIONS TAX DEDUCTIBLE AS PROVIDED BY LAW.

If the purpose of the technical bulletins is to serve as the replacement for the MPS in the DRI review process, APCC believes they should include definitive, explicitly clear language on key areas. The following are several examples where APCC recommends the ambiguous word “should” be replaced with more definitive language. (Emphasis in the following has been added.)

Wetland Resources Technical Bulletin

Page 6: “Development activity adjacent to wetlands and their buffers should not adversely affect the vegetation, hydrology, sun exposure, or nutrient inputs to the wetland or buffer areas.” APCC recommends must not.

Water Resources Technical Bulletin

Page 11: “Impacts of development on local drinking water wells: The location of septic and other wastewater disposal systems, direction of groundwater flow, and proximity of public or private drinking water wells at the site and on neighboring parcels should be examined to verify that a project even when complying with site-wide loading standards is not contaminating nearby drinking water resources. Applicants should identify existing or proposed drinking water wells within 400 feet of project boundaries.” APCC recommends must.

Page 11: “To prevent the unintentional mobilization of contaminants into groundwater, documentation of all Environmental Site Assessments and remedial actions should be supplied for Commission review to ensure the best available information regarding surface and subsurface site conditions is considered when evaluating the project design.” APCC recommends must.

Page 13: “Wastewater treatment and collection systems that are proposed within FEMA flood zones should be designed to prevent elevated groundwater or floodwaters from entering the collection system during storm events.” APCC recommends must.

Page 15: “Applicants should provide to the Commission an inventory which includes the identities and quantities of expected and potential hazardous materials/wastes that will be generated, used, or stored on site for the proposed use. Similar inventories should be provided for the previous use (when applicants propose to reduce the quantity of hazardous materials present on site through redevelopment) or for the proposed offset site (when applicants propose to eliminate the same or greater quantity of hazardous materials from another project, site, or facility within the same WHPA or PPWSA).” APCC recommends must.

Page 19: “To protect existing water resources and maintain safety by preventing flooding/ponding of water on roadways, stormwater systems should be designed to both capture and infiltrate rainfall from roadways, parking lots, and rooftops on the project site.” APCC recommends must.

Page 20: “A calculation of the high groundwater level should be performed to ensure that stormwater facilities are designed to maintain the proper 2 foot separation from the water table under all conditions.” APCC recommends must.

Page 20: “Stormwater systems should be designed to remove 80% of Total Suspended Solids (TSS) and provide water quality treatment for the first inch of precipitation from all impervious surfaces on the site.” APCC recommends must.

Page 21: “Projects that exceed 20,000 gpd withdrawals should provide adequate groundwater characterization to demonstrate that drawdown of the groundwater due to pumping will not negatively impact nearby surface waters and wetlands, which may be connected to and fed by groundwater.” APCC recommends must.

Wildlife and Plant Habitat Technical Bulletin

Page 7: “Applications for Developments of Regional Impact that propose to alter undeveloped areas should include a natural resources inventory (NRI) as detailed below (see application materials). The NRI should identify the presence and location of wildlife and plant habitat, including vernal pools, and serve as a guide for the layout of the development.” APCC recommends must.

Page 8: “Projects should be designed to minimize fragmentation of wildlife and plant habitat.” APCC recommends must.

Page 9: “Where development is proposed within mapped state or federal rare species habitat areas, the proponent should submit the development proposal to the Massachusetts Natural Heritage and Endangered Species Program (NHESP) for review and comment.” APCC recommends must.

Page 11: “Where turtles or other slow or sensitive wildlife species may be present (such as vernal pool species or amphibians), construction fencing should be employed to redirect wildlife away from the construction site.” APCC recommends must.

Open Space Technical Bulletin

Page 5: “Projects within all Placetypes should be designed to protect and/or preserve those areas with the highest natural resource value and to ensure that the most sensitive elements of a site are not impacted by development.” APCC recommends must.

Page 7: “Preserve Wildlife Corridors and Opportunities for the Movement of Wildlife: Topography, existing and proposed land use, and species requirements should be factored in when determining the necessary wildlife corridor width. Preservation of wildlife corridors should also be factored into the placement of fencing on-site.” APCC recommends “Topography, existing and proposed land use, and species requirements must be factored in when determining the necessary wildlife corridor width. Preservation of wildlife corridors must be factored into the placement of fencing on-site.”

Page 7: “Establish, Enhance, and Connect Greenways and Recreational Trails – When designing the site, any greenway connections already existing on the property should be preserved to the greatest extent possible.” APCC recommends must.

Page 10: “Military and Transportation Areas – If high value natural resource areas are impacted, open space onsite, or open space of equal or higher ecological value offsite should be permanently conserved.” APCC recommends must.

Page 10: “Preserve Open Space that Benefits Natural and Community Systems.” Throughout this section that describes how to incorporate open space into a project, the use of the word “should” creates uncertainty as to how much this will actually be required of DRI applicants. APCC recommends more definitive language be used.

Transportation Technical Bulletin

Page 6: “Driveway Location and Design – The site driveway should be located to avoid the creation or intensification of a hazard. Acceptable sight distance, as defined by the latest edition of the American Association of State Highway and Transportation Officials (AASHTO) A Policy on Geometric Design of Highways and Streets, should be met and maintained at all driveways. Furthermore, human-made sight-distance obstructions such as signage, utility poles and boxes, vegetation, and lighting should be located to avoid visual obstructions.” APCC recommends must.

Page 7: “Off-Site Safety Impacts and Mitigation – Regardless of the size or nature of the development, developments should not degrade safety for pedestrians, bicyclists, or motor vehicle operators or passengers.” APCC recommends must not.

Page 7: “The applicant should identify safety impacts of the development and implement appropriate safety improvements at all Study Area locations. Study Area locations should include, at a minimum, all regional road links, all intersections of regional roads, and all local road intersections with regional roads that are used by a project for access to the regional road network, where the project is expected to increase traffic by 25 or more trips during the project's peak hour.” APCC recommends must.

Page 8: “To allow the Commission to consider potential safety impacts and appropriate safety mitigation, the Applicant should provide... *(there follows a list of traffic safety information)*: APCC recommends must.

Community Design Technical Bulletin

Page 5: (In Objective CD1, referring to Natural Areas Placetype) “New development not encouraged. Redevelopment should be limited to small scale areas that can be screened from view.” APCC recommends “New development not encouraged. Limit redevelopment to small scale areas that can be screened from view.”

Page 6: (Objective CD2, referring to Natural Areas Placetype) “New development strongly discouraged. Reuse and redevelopment should minimize or reduce existing development footprints.” APCC recommends “New development strongly discouraged. Reuse and redevelopment minimizes or reduces existing development footprints.”

Page 9: “In areas where the shoreline is eroding, the setback for all new buildings and septic systems should be at least 30 times the average annual erosion rate of the dune or eroding bank and consider up to 70 times the average annual rate.” APCC recommends must.

Page 18: In language describing the design of outdoor lighting beginning on this page, APCC recommends more explicit specifications instead of the use of the word “should” as used throughout. Protecting night skies from excessive lighting is an essential element in protecting Cape Cod's rural and natural character. The same specificity should apply to signs.

Ocean Resources Technical Bulletin

The Ocean Resources Technical Bulletin’s Objectives OR1, OR2 and OR3 are much more definitive in describing what is required from a potential DRI applicant. However, in the discussion following the objectives, the use of the word “should” inserts a degree of ambiguity. For example, “All project proposals should include a noise mitigation plan...” Is this mandatory, as in, all project proposals "must" include a noise mitigation plan, or is this flexible guidance?

Other Comments

Coastal Resiliency Technical Bulletin

Page 6: “Objective CR2, development and redevelopment must be designed to address anticipated sea level rise.” Does the Commission use an established model for calculating anticipated sea level rise for the purposes of DRI regulatory review? How does this requirement apply to aspects of a project beyond the requirement to elevate structures, such as designing septic systems, driveways, utilities servicing the project, etc.?

Community Design Technical Bulletin

The term “substantial buffers” is used throughout this technical bulletin without specific definition of an appropriate width to satisfy “substantial.” This could lead to protracted negotiations with a DRI applicant and the potential for an erosion in established buffer requirements.

Unlike previous RPP with MPS, neither the Draft RPP nor this or other technical bulletins expressly prohibit the creation or expansion of strip development. Although the guidelines in this technical bulletin encourage more appropriate forms of development, APCC recommends the inclusion of a definitive statement prohibiting strip development.

Cultural Heritage Technical Bulletin

The language in this technical bulletin for the objectives and the methods achieving those objectives for the various placetypes stood out as being very specific and declarative in their

intent and in what is required, mostly avoiding "should" or other ambiguous language. APCC supports this approach, provided there is sufficiently specific language in the RPP giving the technical bulletins the same regulatory weight as the current MPS.

Housing Technical Bulletin

Cape Cod's challenge is to find opportunities to provide adequate housing to fit our community needs while also protecting our remaining natural resource areas from the impacts of further development. APCC supports the goals and objectives discussed in the Housing Technical Bulletin that seek to direct housing growth away from sensitive resource areas and to designated activity centers. To the extent that it is able through the DRI process, the Commission should strive to locate future housing in appropriate locations so that other RPP environmental goals/objectives such as habitat protection, water resource protection and wetland protection are not further compromised by increased impacts on these finite resources.

APCC strongly agrees with Housing Objectives HOU1 and HOU2 for the Natural Areas Placetype, which discourages new development in these areas. As with the Natural Areas, additional growth in Rural Development Areas should also be discouraged. Any housing that may occur in this area should be small lot cluster with permanent open space set aside to protect rural character and habitat areas. For Suburban Development Areas, housing should be directed, to the extent possible by the Commission, to where appropriate infrastructure exists. Infill should be strongly encouraged, conventional grid subdivision should be prohibited and development of greenspace should be strongly discouraged.

Ocean Resources Technical Bulletin

APCC noted several editing errors, including fragmented sentences in which the meaning was unclear, that should be corrected before finalization of this technical bulletin.

Open Space Technical Bulletin

Page 4: "Objective OS3 – Protect or provide open space appropriate to context." Within this objective, the Open Space Technical Bulletin proposes to allow a reduction in the open space requirement, up to 20 percent, under certain criteria. APCC supports the merits of this proposed method when used as an incentive for DRI applicants to provide higher value open space in Natural Areas to meet their open space requirements. To undertake this, APCC recommends that the Commission work with DRI applicants in concert with the towns and local land trusts to identify the most appropriate parcels.

Page 4: "Brief Summary of Open Space Mechanisms and Ratios Specific to Placetype." APCC supports the open space ratios required for DRIs in Natural Areas and Rural Development Areas. We also strongly recommend that higher quality open space be required for DRIs in Suburban Development Areas, as opposed to just requiring adequate buffers and pedestrian amenities as proposed in the technical bulletin. Suburban areas can still possess important resources, and the remaining open areas in many otherwise suburban areas have a value in their function of protecting wildlife corridors and preserving the character of neighborhoods.

The same applies to areas likely to be identified as Historic Character Areas, particularly in preserving landscapes that could function both as viewsapes as well as important wildlife corridors. Also, “adequate buffers” suggests a non-defined subjective approach, which may be the intent of the Commission, but leads APCC to question whether such non-specified guidance could actually result in insufficient open space buffers for some DRIs.

Page 5: “By limiting impervious surfaces, more land will be left in its natural state, which will provide ecological benefits and may reduce open space protection requirements.” APCC would like better clarification on this proposed method. Would limiting impervious surface within the project area reduce the open space requirement? If so, this may lead to marginal benefits, such as grass median strips, compared to actual open space preservation. Protecting as much open space on Cape Cod as possible, particularly high value open space, is an imperative.

Page 8: “The Commission may use discretion in defining a development envelope around existing development.” APCC would like more clarity on how and to what extent this discretion may be used.

Page 9: “Rural Development Areas – Methods such as clustering development to allow for the permanent protection of a larger unfragmented block of open space are encouraged.” (Emphasis added.) APCC strongly recommends that clustering be required by the Commission unless inconsistent with local bylaws.

Page 11: “Open space proposed for off-site protection should be of equal or higher natural resource value as the land being impacted by development.” APCC strongly supports this statement, but recommends that “should” be replaced by “must.” As stated above, APCC also recommends that the Commission work with DRI applicants in concert with the towns and local land trusts to identify the most appropriate parcels.

Waste Management Technical Bulletin

APCC recommends that the Waste Management Technical Bulletin include more specific requirements for managing, disposing and reducing waste for project construction as well as for certain projects that may produce waste post-construction, as is provided for in previous RPP minimum performance standards.

Water Resources Technical Bulletin

Page 4: “Objective WR1 – Protect, preserve and restore groundwater quality: Additional methods to meet Objective WR1.” The additional methods listed include “Utilize site design and operational best practices to preserve groundwater quality” and “Review existing Environmental Site Assessment(s) as available for previously developed properties and incorporate findings into project design.” APCC seeks clarification on whether the above-mentioned additional methods are required by the applicant or are optional. APCC recommends that they be required, if applicable to the project.

Page 4: “Locate treatment facilities outside FEMA V zones, A zones, and floodways; ACECs, wetlands and buffer areas, barrier beaches, coastal dunes, or critical wildlife habitat. Treatment facilities are proposed in FEMA A zones only to remediate water quality problems from existing nitrogen sources within that zone.” APCC recommends that any treatment facilities, or infrastructure associated with the facilities, that may be proposed in FEMA A zones must account for projected sea level rise in siting the facility.

Page 5: “Objective WR2 - protect, preserve and restore fresh water resources: Redevelopment mitigates loading from nutrients and other contaminants to fresh water resources to the maximum extent practicable.” APCC recommends that redevelopment must be required to achieve, at a minimum, a no net increase of nutrients and other contaminants to fresh water resources. This would make it consistent with the required method to meet Objective WR2 for new development, which is “New development prevents loading of nutrients and other contaminants to fresh water resources.” (emphasis added)

Wildlife and Plant Habitat Technical Bulletin

Page 6: APCC strongly supports “Objective WPH3: Protect and preserve rare species habitat, vernal pools, 350-foot buffers to vernal pools” and the methods listed for achieving this objective, which include “Locate development outside of rare species habitat, wetlands, vernal pools and their buffers, and BioMap2 Core Habitat and Critical Natural Landscapes” and “Provide a 350-foot undisturbed buffer to the vernal pool.” APCC recommends that this objective and associated methods be strictly enforced by the Commission and not subject to flexibility. Preventing the incremental chipping away of our remaining habitat areas and natural landscapes is a vital priority.

APCC thanks the Cape Cod Commission for this opportunity to provide comments.

Sincerely,



Andrew Gottlieb
Executive Director



Don Keeran
Assistant Director