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January 14, 2019

Kristy Senatori,
Executive Director

Via Email
Cape Cod Commission
PO Box 226

Barnstable, MA 02630

RE: Draft Cape Cod Regional Policy Plan – Draft Housing Technical Bulletin

Dear Ms. Senatori

HBRACC thanks the Cape Cod Commission for their work over the last few years to prioritize both housing initiatives and economic development. A stronger Cape Cod economy with more year-round employment opportunities is directly linked to creating more housing that increases both affordability and accessibility.

HBRACC's mission is to support homeownership on Cape Cod and its trade members through: legislative, educational, business and civic endeavors.

ASSOCIATION members adhere to a strong professional code of ethics ensuring that consumers receive the highest quality of service within the industry. We strive to broaden our influence as the industry's voice.

Your Regional Policy Plan lays a strong framework with broad goals that the entire community should support, and we thank you for your efforts. However, as you know, the strategies and execution to achieve those goals reside in the technical bulletins. We closely reviewed all of the technical bulletins, but focused our efforts on housing, community design, economy and transportation. The bulletins as a whole are a good and much needed step in the right direction in comparison to the last RPP. That being said, we have continued concerns that the bulletins do not properly reflect the recent momentum by the Cape Cod community and the Cape Cod Commission to create a regulatory environment that is conducive to more housing opportunities and a stronger economy.

We know that very few housing developments come to the Cape Cod Commission for approval and that this is due to a variety of factors. However, we believe it is important for the Commission to lead in the areas of better public policy, and the technical bulletins should reflect the direction the community at large wants. The documents should also be recognition that to solve our housing crisis, new development must be built, the housing strategy over the past several decades has not worked, and as the Commission's own recent housing study concluded, new development at all price points helps alleviate pressure at all price points.



HBRACC is encouraged by many aspects of the Housing Technical Bulletin. The bulletin finally moves away from the failed housing strategy of the region of the past, but we believe that it does not go far enough and misses an opportunity for the Commission to lead on a completely new housing strategy for the region. The Housing Technical Bulletin uses the failed stick-based approach to development rather than using 'carrots' to encourage the type of development it wants. In addition, it continues to put up onerous regulations that serve to discourage developers from putting forth ambitious projects

In the Housing Technical Bulletin:

- **HBRACC supports the relaxation of inclusionary zoning**

We support the exemption of inclusionary zoning for projects that have 1,200 square feet or less. However, we encourage you to consider other criteria rather than square feet and one that could include ownership opportunities. Perhaps this criterion could be one where the median price of a home in the community is within reach of 180% of AMI would also be exempt.

Inclusionary zoning in all areas of Cape Cod serves to exacerbate the housing affordability concerns as it continues the widening "missing middle" housing gap. Developers are forced to build higher end units when required to build affordable or workforce units leaving a gap in the 120% to 180% of AMI market -- the missing middle. Put simply, not all areas of the Cape have the market fundamentals that would price the 100% to 180% of AMI earners out of market-rate housing.

- **Replace the "should" with incentive-based approach "are encouraged to"**

In moving to a more incentive-based approach, we suggest replacing the word 'should' to "are encouraged to." The Commission moves toward that direction in the bulletin draft, and we encourage them to go further by making this change.

- **Staff approval for projects that meet certain requirements**

The Commission should incentivize developers through the Commission's approval process by laying out and approving a process whereby if a developer's proposal meets certain conditions, the project would be approved by staff -- a by-right sort of approval process. That would move the Commission closer to the path of least resistance.

- **Prioritize ownership developments that have accessory dwelling components**

The Cape Cod Commission has led the way on Cape Cod in drafting and supporting the need to use Accessory Dwelling Units as one of the tools to create more affordable year-round rental housing.

Ownership development proposals that allow for the ability to add Accessory Dwelling Units should be given the same favorable treatment as rental housing developments throughout the bulletin, and specifically, the same exemption to the inclusionary zoning requirement as developments of rental housing under 1,200 square feet. A development up for approval that utilizes the ability to do ADUs is a balanced approach the Commission should prioritize.



- **Account for freeing up affordable inventory and project financial considerations when considering balance of mandatory affordable and workforce units**

There should be a recognition that creating more workforce units frees up existing affordable units, and the overall of the financial viability of the project when the Commission evaluates the demand for the proportion of workforce and affordable housing units to meet the 10% mandate. We would be disappointed to see a project not be built that could have provided needed workforce housing because the approval mandated more affordable units over workforce units to the point of making the project not financially viable. The Commission's own housing study shows that more workforce units frees up demand for affordable units down the pipeline, and that should be considered when evaluating the proportion of the units.

- **Remove language that off-site housing must occur at same rate and within time frame as the development of market-rate units in the "Timing of and Mix of Affordable Units"**

Depending upon where and how the off-site housing is situated to meet the inclusionary zoning requirements of the development, we worry project opponents could oppose the off-site housing development and unnecessarily delay it to prevent the proposal approved by the Commission of the market-rate units from being built. This is especially worrisome as we have seen the backlash against affordable and workforce housing projects across Cape Cod. We believe this requirement without any consideration of factors not within the developer's control could be a way to stop needed development.

- **Amend the last paragraph in "Detailed Discussion of Methods for Meeting Objective HOU2," to add in the word "rental" prior to housing**

Restricting ownership of housing to only "year-round ownership" poses significant enforcement and legal challenges. Instead, a better way to ensure the housing units are not being utilized for transient accommodations would be to require the homeowner's association or the condominium association to restrict short-term rentals.

- **Revise or make provisions for higher AMI for workforce housing**

Limiting the definition of workforce housing to only 120% of AMI does not take into account for areas where median home prices greatly outstrips AMI leaving a "missing middle," in some towns where it is up to 180% to 200% of AMI.

In the Community Design Technical Bulletin:

- **Remove language "follow established setbacks"**



While we understand the Commission's intent to follow traditional development patterns, there have been a lot of poor, restrictive zoning decisions made in previous decades, and we are concerned the language could perpetuate those past restrictions instead of correcting them by implementing better planning practices moving forward. We believe our suggestion follows the Commission's intent.

In the Economy Technical Bulletin:

- **Amend the last sentence of "Detailed Discussion of Methods for Objective EC4" to include "or down payment assistance programs"**

Employer down payment assistance programs are a great tool for employee assisted housing. Employers that contribute to them should be prioritized at the same level as the other initiatives listed.

In addition to our comments on the technical bulletins themselves, we also wanted to provide comments on letters the Cape Cod Commission has received from organizations and individuals. We are doing it in this way in order to not take credit for their intellectual idea, but instead, just provide our support or opposition to their proposal.

We agree with Attorney Peter Freeman's entire letter, but specifically we would call attention to these areas of his letter:

- **Concern of regulatory takings**

We agree with Attorney Freeman and voice his concern in regards to 350-foot buffer to vernal ponds and the 100-foot minimum buffer from edge of coastal and inland wetlands poses a regulatory takings concern.

- **Housing should be a public benefit relative to wetlands and their buffers**

We agree with Attorney Freeman that housing, both affordable and workforce housing, that meets affordability demands and provides opportunities to expand year-round economic development opportunities should be viewed a public benefit for these purposes.

- **Allow flexibility in the nitrogen loading requirement**

We agree with Attorney Freeman there should be flexibility on the 5 parts per million nitrogen loading requirement. We continue to encourage you to truly balance protecting the environment with the need for housing and jobs, and not prioritize one over the other.



- **Allow flexibility in building to LEED certification**

It is desirable that new building meets LEED standards, but there should be flexibility based upon cost factors to require across the board. There should be consideration for why a project may not meet certification requirements.

In reference the Association to Preserve Cape Cod's letter, we would like to specifically oppose the following:

- **Leave the word "should" in place, or even further replace with "are encouraged to" in the places the APCC requests changes**

HBRCC appreciates the opportunity to comment on the Regional Policy Plan's Technical Bulletins and are appreciate of the Commission's collaborative atmosphere with our organization and the broader real estate and development community on Cape Cod. Please keep up your good and necessary work.

Sincerely,

Peter Kimball
President HBRACC Board