



DCPC Guidance Document

Guidance Document for the Nomination and Designation of
Districts of Critical Planning Concern
pursuant to the Cape Cod Commission Act, Chapter 716 of the Acts of 1989, as amended.

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This guidance document should be read in conjunction with DCPC Regulations, and Sections 10 & 11 of the Cape Cod Commission Act. Its purpose is to clarify the procedure for nominating and designating Districts of Critical Planning Concern.

What is a DCPC?

A District of Critical Planning Concern (DCPC) is an area of critical value to Barnstable County which must be preserved or maintained due to one or more of the following factors:

1. the presence of significant natural coastal, scientific, cultural, architectural, archaeological, historic, economic or recreational resources or values of regional, state-wide or national significance; or
2. the presence of substantial areas of sensitive ecological conditions which render the area unsuitable for development; or
3. the presence or proposed establishment of a major capital public facility or area of public investment.

DCPCs may cover areas located in one or more than one town. Districts may be nominated and designated for many purposes. For example, they may protect a municipal investment, protect a critical natural resource, or provide incentives for economic development. For a list of sample districts, see attached Appendix A.

How does a DCPC work?

A DCPC designation allows for creation and adoption of local special rules and regulations to govern development or other land use within a designated district. These special rules and regulations, called "Implementing Regulations," must promote the purposes for which the district was designated. Implementing Regulations, once they are certified by the Commission, are the means by which development or other land use is regulated within a district. For example, Implementing Regulations for a district which is designated to promote village center revitalization may provide incentives for development more dense than is otherwise permitted under existing regulations. Implementing Regulations for a district designated to protect a critical environmental resource may provide safeguards to prevent inappropriate development. Once a DCPC is designated and Implementing Regulations are adopted and incorporated into local by-laws and regulations, town agencies will oversee development and land use within the designated district, subject to the Implementing Regulations.

Why seek a DCPC designation?

A DCPC designation will allow a community or communities to:

- Protect and promote a value or resource identified by the Cape Cod Commission Act;
- Achieve some of the goals of its Local Comprehensive Plans;
- Effect a development moratorium during which development approaches and regulations that do not exist may be carefully considered and, as appropriate, adopted;
- Overcome local zoning constraints, including grandfathering.

A nominated area should require a special regulatory or planning effort which cannot otherwise be adequately addressed through existing local regulations. For instance, projects which would be grandfathered from changes in local zoning under the state enabling statute need not be afforded grandfathered status under Implementing Regulations adopted pursuant to a DCPC designation.

Who may nominate a proposed district?

Any area may be nominated for designation by the:

- a) Cape Cod Commission
- b) Barnstable County Commissioners
- c) Barnstable County Assembly of Delegates

Areas within towns, or areas in neighboring, contiguous towns, may be nominated by:

- d) boards of selectmen, historical commissions, planning boards, boards of health or conservation commissions.

Nominating parties (other than the Commission) must schedule a pre-application conference with Commission staff at which time submission requirements and the District Nomination Form will be discussed. Nominations should be delivered to the Commission Clerk in hand or by certified mail. Nominating parties may hold a public hearing prior to submitting a proposed district to the Commission in order to determine the level of local support for the nomination.

How does the public participate in the DCPC process?

The public participates in the DCPC designation process through public hearings by providing oral and written comments. Materials submitted on all nomination may be viewed at the Commission's office during the Commission's business hours, 8:30 a.m. to 4:30 p.m., Monday through Friday.

Upon receipt of a fully completed application for nomination, including completion of the Commission's Nomination Form, the Commission will: (1) publish an official notice of the receipt of a nomination in the Cape Cod Times; such notice will suspend the issuance of local development and subdivision permits; (2) publish informational notices in area newspapers; and (3) mail notice to local boards. The Commission will consider acceptance of the nomination at a public meeting.

If the nomination is accepted by the Commission for consideration as a designated DCPC, the Commission will hold a public hearing in the town or one of the towns within which the nominated area or a portion thereof is located. The Assembly of Delegates also holds a public hearing on the proposed designation. The purpose of the public hearings is to gather public comments on the proposed designation. Notice of hearings will be advertised in area newspapers and mailed to local boards and other interested persons. Information about stages of the DCPC nomination and designation process will also be published in the Commission's official publication, the *REPORTER*.

What procedures will the Commission use to review and process a nomination?

Upon receipt of a nomination application, the Commission will make an initial review of the application for completeness. The Commission may request further information on the nomination as it deems necessary. Upon receipt of a fully completed application, the Commission will review the proposed area and the reasons for its nomination. Within 45 days of receiving the completed nomination application, the Commission must either reject the nomination, or accept it and proceed with a full public review. Rejection of a nomination restores local permit granting authority and may limit reconsideration of the area. Upon acceptance of a nomination, the Commission will:

- a) describe the reasons for acceptance of the nominated area, including a description of the area's critical concern to the region, the problems of uncontrolled or inappropriate development or other land use activities in the area and the advantages anticipated from the regulation of development or other land use activities of the area in a controlled manner; and
- b) define the types and classes of development which may proceed during the nomination/designation process; and
- c) specify guidelines for development or land use in the district based upon findings relating to the critical concerns in the area. The guidelines will describe suggested land use or development regulations which will govern future activities in a manner appropriate to the district.

If the Commission accepts the nomination after the 45-day review, then within 60 days of acceptance of the nomination, or 120 days by extension, the Commission will hold a public hearing and decide whether or not to forward the previously nominated area to the Assembly of Delegates and County Commissioners for adoption by ordinance.

What is the effect of a nomination?

After receiving a fully completed nomination application, the Commission publishes an official notice of the nomination. Publication of official notice has the effect of suspending all local agencies' permitting authority within the nominated area for 45 days. If the Commission decides to further consider the nomination for acceptance after the end of the 45 day period, then local agencies' permitting authority continues to be suspended within the nominated area, except that the following types of development may proceed during the nomination/designation process:

- a) the types or classes of development certified by the Commission as consistent with the purposes of the proposed district (including emergency work); and
- b) developments which have received Development of Regional Impact (DRI) approval within the past seven years, as long as the approval is still valid; and
- c) DRIs referred to the Commission prior to the first published notice of the nomination, if the development is thereafter approved; and

- d) developments authorized by a development agreement approved by the Commission and the relevant town(s); and
- e) the construction of single-family homes, unless the Commission specifically finds that they may not proceed; and
- f) developments which have received all necessary permits and only require a Certificate of Use and Occupancy from the building inspector; and
- g) developments exempted from Commission review under section 22 of the Act listing transitional exemptions.

After an area is designated by ordinance, development or other land use activities may only proceed pursuant to Commission-certified Implementing Regulations, as adopted by the municipality into its local by-laws and regulations.

What criteria does the Commission consider when voting to forward a proposed designation to the Assembly of Delegates?

The Commission considers the following three factors in voting to forward a proposed designation to the Assembly of Delegates : (1) whether there is a need for special regulation or planning to protect the district from inappropriate development; (2) the proposed district must preserve or maintain a value or resource protected by the Act (see Section 1 of the Act); and (3) whether new regulatory and/or planning tools might be available which are likely to be effective in protecting or otherwise meeting the objectives of the proposed district. Inappropriate development and land use activities are those which are inconsistent with the intent and purposes of the proposed district and as such, must be determined on a case by case basis. A determination of appropriateness will be a part of the Commission's written decision stating the reasons for forwarding the proposed designation to the Assembly of Delegates for adoption by ordinance. Commission denial of a proposed designation is accompanied by a written explanation of the reasons therefor.

How is a DCPC adopted by ordinance?

If the Commission votes to propose designation, it then submits the proposed designation to the Assembly of Delegates. The Assembly will hold its own public hearing within 60 days of receiving the proposed designation from the Commission. Within the same 60-day period, the Assembly must vote to designate, reject, or return the proposed designation to the Commission for restudy and redrafting. If the Assembly votes to return the proposed designation to the Commission, it will submit to the Commission a written report identifying those elements it finds objectionable, together with a request for changes. The Commission has 45 days to redraft the proposed designation and resubmit it to the Assembly. If the Assembly does not accept the proposed district as redrafted by the Commission within 60 days, it is deemed denied. When the Assembly votes to designate a proposed district as an ordinance, the ordinance is forwarded to the County Commissioners for their approval pursuant to the Barnstable County Charter. If approved by the County Commissioners, the district becomes effective upon recording with Barnstable County Registry of Deeds.

When may an area rejected for designation be reconsidered?

Not for two years, unless four-fifths of Commission members present at a meeting vote to reconsider the same geographic area for the same concerns.

Where do I get more information?

Contact the Cape Cod Commission at 3225 Main Street, Barnstable, MA 02670 at (508) 362-3828. For information regarding the process of nominating DCPCs, contact the Chief Planner or Deputy Director. To receive notices of public hearings on nominated DCPCs in your area, contact the Commission Clerk.

Milestones to DCPC Designation

- 1) The completed nomination application is received by the Commission.
- 2) The Commission decides to reject or accept the nominated area for further consideration within 45 days;
- 3) If accepted, the Commission holds a public hearing on the proposed designation;
- 4) The Commission votes to propose or reject a designation within 60 days or, by extension, 120 days.
- 5) If the Commission votes to propose the designation, it is submitted to the Assembly of Delegates and County Commissioners for consideration and adoption by ordinance.
- 6) The Assembly of Delegates holds its own public hearing on the proposed designation.
- 7) The Assembly of Delegates decides to designate the proposed district by ordinance, or reject or return the proposed designation to the Commission for further review, within 60 days.
- 8) If the Assembly of Delegates designates the proposed district by ordinance, affected towns have 12 months to propose Implementing Regulations to the Commission for certification.
- 9) If the town/s fails to timely submit certifiable Implementing Regulations, they may be adopted at the county level.
- 10) Commission-certified Implementing Regulations are adopted into the maps and by-laws of the town/s and govern development or land use in the designated DCPC.

Suggested Criteria for Districts of Critical Planning Concern

The types of districts that may be proposed as districts of critical planning concern include, but are not limited to, the districts listed below or a combination thereof. The districts listed below are intended to provide guidance for district nominations only and are in no way intended to limit the type or scope of district nominations.

1. Water Resource District

The district is important to the protection of an aquifer, watershed, aquifer recharge zone, or surface water body with the following considerations:

- (i) Without special regulations in the district, development or waste disposal could endanger the quality or quantity of the water.
- (ii) Studies or expert advice indicate that the designation and regulation of the district could be effective in protecting the quality or quantity of water.

2. Aquaculture Resource District

The water body in the district is particularly suited for production of shell- or fin-fish and can be made productive through good management and improvements.

3. Agricultural Resource District

The district includes areas particularly suited now and in the future for sustaining or augmenting the food supply or other agriculture of Cape Cod. The district must have one or more of the following characteristics:

- (i) The district is generally being farmed or it is practical to convert it to agricultural uses.
- (ii) Land ownerships within the district are generally of adequate size to support agricultural uses.
- (iii) Soil, climate, and topography are well suited for agriculture.

4. Wildlife, Natural, Scientific, or Ecological Resource District

The district contains an important and identifiable wildlife, natural, scientific or ecological resource. This would include but not be limited to plant, animal, and marine life and their habitats, as well as unusual geological features.

5. Cultural, Historic, Architectural or Archaeological Resource District

The district contains a place, landscape, way, or view that is in some special way expressive of the character of Cape Cod, traditions of Cape Cod residents, and of special interest to Cape Cod visitors and residents. The district also must be:

- (i) of exceptional symbolic or recreational importance and is either visible or accessible to them or can reasonably be made so; or
- (ii) rare, unique, or makes an unusual contribution to the diversity of the Cape Cod character; or
- (iii) irreplaceable, or replaceable only with extraordinary effort or expense.

Subject to the above general tests, designations may be considered for areas that are important for their connection with the aesthetic value or the history of the region—including its geological history or the history of its Indian settlement—or that symbolize and support traditional activities and ways of life of Cape Cod, or that give us a particular understanding of Cape Cod. These include places that present opportunities to enjoy hunting, fishing, and wildlife.

6. Economic or Development Resource District

The district will include areas that have special potential for providing employment or housing for Cape Cod residents or for accepting necessary development that might be detrimental in other locations. The district must also:

- (i) require special regulations to create, preserve, or enhance that potential; and
- (ii) be better suited or more readily available for development than other areas of Cape Cod, considering topography, utilities, costs, and environmental and social impact.

7. Major Public Investment District

The district will include areas that have a significant impact on an existing or possible future major public investment or areas that are significantly affected by such an investment. In addition, the district must qualify as follows:

- (i) The district pertains to a major public investment and may include, but is not limited to, airports, roads and ways, schools, parks, beaches, preserves, public utilities and medical facilities owned or operated by a federal, state, county, or municipal agency; and
- (ii) The intended use or operation of the public investment or the health, safety, and welfare of the public could be impaired by inappropriate development in the district.

8. Hazard District

It is an area that possesses hazards due to natural or man-made conditions including but not limited to marginal soil or topographic conditions that render it unsuitable for intense development, flooding, waste treatment, groundwater, erosion, construction problems, salt water intrusion, and pollution.

9. Waterfront Management/Watersheet Zoning District

These districts identify appropriate uses of harbor and waterfront resources including but not limited to promotion of conservation, maritime and fishing industry uses, and recreational uses of the shoreline and adjacent waters.

10. Downtown Commercial Revitalization District

This district promotes development in downtown areas by accepting necessary development and reducing sprawl.

11. Transportation Management District

This district regulates development in order to facilitate public and marine transportation and/or traffic flow and safety between and within Cape Cod towns and to and from Barnstable County. Scenic views and recreational areas are maintained.

12. Affordable Housing Resource District

The district includes the presence or proposed establishment of a major capital public facility or area of public investment suited now and in the future for provision of decent, affordable housing of all types for low and moderate income Cape Cod residents. The district must also:

- (i) maintain the affordability of existing and new affordable housing; and
- (ii) designate areas for higher-density housing; and
- (iii) include incentives for towns to donate land for affordable housing; and
- (iv) be better suited for development than other areas of Cape Cod considering topography, proximity to social services and commercial centers, utilities, costs, and environmental impact; and
- (v) promote social diversity.