

**CAPE COD COMMISSION**

**Chapter H**

**Municipal Application for Revisions to Developments of Regional Impact  
Thresholds  
Barnstable County Ordinance 09-13**

December, 2009

## **Chapter H of the Cape Cod Commission Regulations of General Application Municipal Application for Revisions to DRI Thresholds**

### **Section 1. General Provisions**

#### **(a) Source of Authority**

These regulations concern proposed revisions by Towns to the Development of Regional Impact (DRI) thresholds in Chapter A of the Cape Cod Commission Regulations of General Application, Enabling Regulations Governing Review of Developments of Regional Impact, Barnstable County Ordinance 90-12, as amended by Barnstable County Ordinance, and are adopted pursuant to Section 12(f) of the Cape Cod Commission Act (Act), Chapter 716 of the Acts of 1989, as amended.

#### **(b) Function and Purpose**

These regulations establish the requirements and criteria for Towns to propose revisions to certain DRI thresholds described in the Cape Cod Commission's (Commission) *Enabling Regulations* as amended by Barnstable County Ordinance. The purpose of these regulations is to help implement a regulatory approach at the regional level to guide growth toward areas that are adequately supported by infrastructure and away from areas that must be protected for ecological, historical, or other reasons.

#### **(c) Effective Date**

The regulations set forth herein shall be effective following passage as an ordinance and upon recording of the ordinance with the Barnstable County Registry of Deeds.

#### **(d) Definitions**

The definitions contained in Section 2 of the Act, the Regional Policy Plan (RPP) in effect at the time of the first substantive public hearing on an *Application* filed according to these regulations, and in Chapter A of the Cape Cod Commission Regulations of General Application, Enabling Regulations Governing Review of Developments of Regional Impact, Barnstable County Ordinance 90-12, most recent amendment by Barnstable County Ordinance 05-02, March 2005, (*Enabling Regulations*) in effect at the time these regulations are effective shall apply to these regulations.

#### **(e) Discretionary Referrals**

Notwithstanding these regulations, in accordance with Section 12(e) of the Act and Section 2(b) of the *Enabling Regulations*, Municipal Agencies or the County Commissioners may at any time make Discretionary Referrals to the Commission of a proposed development that does not meet or exceed 1) any of the standards and criteria in the *Enabling Regulations* nor 2) the revised thresholds enacted through these regulations.

**Section 2. DRI Thresholds Eligible for Revision**

(a) DRI thresholds in Sections 3(d), 3(e), 3(f), 3(g) and 3(k) of the Commission’s *Enabling Regulations* revised as of March 2009 are eligible for possible revision through Chapter H.

**Section 3. Threshold Mapped Areas and Square Footage Ranges**

(a) Subject to the limitations specified in Section 2, a Board of Selectmen or Town Council, and Planning Board may propose within one or more of the identified *Regional Land Use Vision Map – RPP Mapped Areas* a revision to one or more of the DRI square footage thresholds in the *Enabling Regulations*. Such proposed revision must fall within the ranges specified in the table as outlined below. Such proposed revision must be to the approved and endorsed *Regional Land Use Vision Map*.

(b) Each area proposed for a revised DRI threshold(s) shall be a contiguous geographic area with clearly delineated boundaries. A Town may propose more than one such area in its *Application*.

**THRESHOLD RANGES ELIGIBLE FOR APPLICATION**

<i>Regional Land Use Vision Map – RPP Mapped Areas</i>	<b>Economic Centers (EC)</b>	<b>Industrial Service and Trade Area (ISTA)</b>	<b>Village</b>	<b>Resource Protection Areas (RPA)</b>	<b>Other</b>
Commercial (square feet)	Zero to 30,000	Zero to 40,000 (Industrial uses only)	Zero to 10,000	Zero to 7,500	Zero to 10,000
Residential (units/lots)	Zero to 30	Zero to 10	Zero to 15	Zero to 15	Zero to 30
Mixed Use (Minimum 40% Residential):	Zero to 60,000 Total Mixed Use Cap (square feet)	Zero to 40,000 Total Mixed Use Cap (square feet)	Zero to 20,000 Total Mixed Use Cap (square feet)	Zero to 15,000 Total Mixed Use Cap (square feet)	Zero to 20,000 Total Mixed Use Cap (square feet)

**Section 4. Who May Propose a Revised Local DRI Threshold for Threshold Change Application**

(a) A Board of Selectmen or Town Council, and Planning Board, upon an affirmative majority vote of both Boards, may propose a revised DRI threshold(s) to the Commission.

**Section 5. Application Procedure**

(a) The Board of Selectmen or Town Council, and Planning Board shall submit two copies of a *complete DRI Threshold Change Application (Application)* or a *DRI Threshold Change Repeal Application (Repeal Application)* to the Commission Clerk.

(b) The Board of Selectmen or Town Council, and Planning Board shall also file a copy of such *Application* or *Repeal Application* with the Town Clerk of all abutting Towns at the same time such *Application* or *Repeal Application* is filed with the Commission Clerk.

(c) All *Applications* and *Repeal Applications* shall include:

- 1) A narrative description of the rationale for the proposed changes to a DRI threshold(s).
- 2) A map showing the area(s) proposed for revised DRI threshold(s) corresponding to the boundaries of an area(s) as identified on the approved and endorsed *Regional Land Use Vision Map* and a narrative description of the new proposed threshold(s) (*i.e.* 30,000 square feet). The map showing the area(s) proposed for revised DRI threshold(s) must include an identified scale and must be provided as a digital format as a Geographic Information Systems (GIS) *ShapeFile* or in AUTO/CADD format.
- 3) Evidence that prior to submitting the *Application* or *Repeal Application* that at least one advertised public hearing has been held by elected officials of the municipality on the proposed change to DRI threshold(s).

(d) Applications for Higher DRI Threshold(s)

- 1) An *Application* for a higher DRI threshold(s) shall also include the following information for the area(s) proposed for higher threshold(s):
  - a) A build-out analysis.
  - b) A description of the capital facilities and/or infrastructure improvements proposed for the area to address anticipated growth.
  - c) A description of existing or proposed funding mechanisms to provide for capital and infrastructure improvements to address anticipated growth. Such mechanisms could include: Town Meeting warrant articles or evidence of votes and ballot measures and evidence of their outcome as may be necessary to secure funding; local impact fee programs; District Increment Financing; and/or betterments.
  - d) Copies of current Town zoning maps.
  - e) Copies of current or proposed municipal bylaws, ordinances, overlay districts, design guidelines, health regulations or other applicable local regulations that address anticipated growth in the area.
  - f) Copies of technical studies or management plans that are current, ongoing, completed or proposed.
  - g) Evidence of measures taken to address underlying resource constraints as identified in the Regional Policy Plan in effect at the time of the *Application*.

### **Section 6. Review and Approval Criteria for Higher DRI Thresholds**

(a) To receive approval for a higher DRI threshold(s) according to Section 5(d), a Board of Selectmen or Town Council, and Planning Board must demonstrate to the Commission and the Commission must find that the proposed higher DRI threshold(s) is:

- 1) Consistent with the Town's Commission-certified Local Comprehensive Plan (LCP). For Towns that do not have a certified LCP, the proposed revision must be consistent with other relevant Town-approved planning documents, including but not limited to master plans, housing plans, open space plans, comprehensive wastewater management plans, and economic development plans,

2) Consistent with Section 1(b), *Function and Purpose* of these regulations,  
3) Consistent with the Goals of the Regional Policy Plan,  
4) Consistent with Section 1 of the Commission Act,  
5) Supported by plans and funding for capital facilities and/or infrastructure improvements necessary to address anticipated growth,

6) Supported by a regulatory framework that is consistent with the narrative submitted according to Section 5(c)(1) and with the information submitted according to Section 5(d)(1)(a) – (g) and which is designed to guide growth toward areas that are adequately supported by infrastructure and away from areas that must be protected for ecological, historical, or other reasons.

(b) The Commission may not approve any DRI threshold(s) higher than those set out in the table in Section 3 through these regulations.

### **Section 7. Review Criteria for Lower DRI Thresholds**

a) To receive approval for a lower DRI threshold(s) according to Section 5, a Board of Selectmen or Town Council, and Planning Board must demonstrate to the Commission and the Commission must find that the proposed lower DRI threshold(s) is:

- 1) Consistent with Section 1(b), *Function and Purpose* of these regulations,
- 2) Consistent with the Goals of the Regional Policy Plan, and
- 3) Consistent with Section 1 of the Commission Act.

### **Section 8. Procedure for Processing Applications**

(a) In order to be deemed *complete*, all *Applications* for a revised DRI threshold(s) must:

- 1) Be reviewed in consultation with the Commission staff at a pre-application meeting.
- 2) Include evidence of the filing of a copy of the *Application* with the Town Clerk of all abutting Towns.
- 3) Include evidence that prior to submitting an *Application* that at least one advertised public hearing has been held by the municipality on the proposed change to DRI threshold(s).
- 4) Include all of the items listed in Section 5(c).
- 5) Comply with Section 8(b), below, if applicable.

(b) In order to be deemed complete, *Applications* for a higher DRI threshold(s) shall also include all of the items listed in 5(d) unless waived by the Commission's Executive Director or his/her designee.

### **Section 9. Process for Review**

(a) Upon receipt of a complete *Application*, a Subcommittee of the Commission shall conduct at least one public hearing in accordance with Section 5(a) and 5(b) of the Act.

(b) The Subcommittee shall make a recommendation to the Commission regarding the proposed *Application*, and the Commission shall vote at a public hearing whether to approve or deny such *Application*.

(c) Within fourteen (14) calendar days, the Commission Clerk shall file a certification of the Commission's decision on an *Application* with the Clerk of the Assembly of Delegates.

(d) Any revised DRI threshold(s) shall take effect fourteen (14) calendar days after the Commission Clerk files a certification of the Commission's decision to approve an *Application* with the Clerk of the Assembly of Delegates.

(e) The Commission shall issue a written decision on the *Application* in a form suitable for recording with the Barnstable County Registry of Deeds or Land Court, and, in the case of an approval of such *Application*, shall make such changes as may be necessary to the *DRI Threshold Map*. The written decision and *DRI Threshold Map* shall also be filed by the Commission with the Town Clerk, Building Inspector, Planning Board and Conservation Commission of the Town making the *Application* to revise a DRI threshold(s).

### **Section 10. Appeal**

(a) A Board of Selectmen or Town Council, and Planning Board, upon an affirmative majority vote of both Boards, may nonetheless request the Assembly of Delegates re-examine its *Application* provided they can prove to the Assembly of Delegates 1) that the Commission was in error in making its decision in accordance with these regulations and 2) receive a three-fourths determination by the Assembly of Delegates for such error. Upon such vote, such *Application* shall be remanded to the Commission for a subsequent review and vote pursuant to Section 9.0 of these regulations.

### **Section 11. Petition for Repeal of a Revised DRI Threshold(s)**

(a) A Board of Selectmen or Town Council, and Planning Board upon an affirmative majority vote of both Boards, may petition the Commission for repeal of a revised DRI threshold(s).

(b) A Board of Selectmen or Town Council, and Planning Board seeking to repeal a revised DRI threshold(s) shall follow the procedure outlined in Sections 5(a) through 5(c).

(c) Upon receipt of a complete *Repeal Application*, the Commission shall vote at a public hearing whether to approve or deny such *Repeal Application*.

(d) The Commission may through a majority vote approve a petition for repeal of a revised DRI threshold(s).

(e) Within fourteen (14) calendar days of the Commission's decision to repeal a revised DRI threshold(s), the Commission Clerk shall file a certification on the Commission's vote with the Clerk of the Assembly of Delegates.

(f) Any repealed DRI threshold(s) shall take effect fourteen (14) calendar days after the Commission Clerk files a certification of the Commission's decision on an application to repeal a revised DRI threshold(s) with the Clerk of the Assembly of Delegates.

(g) The Commission shall issue a written decision on the *Repeal Application* in a form suitable for recording with the Barnstable County Registry of Deeds or Land Court, and, in the case of an approval of such *Repeal Application*, shall make such changes as may be necessary to the *DRI Threshold Map*. The written decision and *DRI Threshold Map* shall also be filed by the Commission with the Town Clerk, Building Inspector, Planning Board and Conservation Commission of the Town making a request for repeal of a revised DRI threshold(s).

**Section 12. Revocation**

(a) Should the Town fail to implement zoning, funding, and other requirements to comply with Sections 3, 5, and 6 of these regulations, and with the findings of the Commission's decision on an *Application*, the Commission may revoke the revised DRI threshold(s) by a majority vote of the Commission.

(b) Revocation may occur only after the Commission conducts a public hearing in accordance with Section 5(a) and 5(b) of the Act.

(c) The Commission shall issue a written decision revoking the revised DRI threshold(s) in a form suitable for recording with the Barnstable County Registry of Deeds, and shall make such changes as may be necessary to the *DRI Threshold Map*.

(d) Revocation of the revised DRI threshold(s) shall take effect upon the majority vote of the Commission.