



CAPE COD COMMISSION

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CAPE COD COMMISSION

CHAPTER E

District of Critical Planning Concern Regulations
Barnstable County Ordinance 90-15
(as amended by Barnstable County Ordinance 91-10, 94-10 and 96-11)

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SECTION 1. General Provisions

(a) Source of Authority

These regulations concerning designation of districts of critical planning concern are adopted pursuant to Section 6 of the Act.

(b) Effective Date

The regulations set forth herein shall remain in effect until the Assembly of Delegates adopts superseding regulations by ordinance.

(c) Definitions

The definitions contained in Section 2 of the Act shall apply to these regulations. In addition, the following terms shall have the following meanings:

Act: An Act Establishing The Cape Cod Commission, Chapter 716 of the Acts of 1989, as amended.

Clerk: Clerk of the Cape Cod Commission.

Executive Director: The Executive Director of the Cape Cod Commission.

Area of Public Investment: An area of governmental investment for a public purpose including but not limited to infrastructure and land acquisition.

SECTION 2. Qualifications of Districts of Critical Planning Concern

(a) Pursuant to Section 10(a) of the Act, the Commission may propose the designation of certain areas which are of critical value to Barnstable County as districts of critical planning concern.

(b) The Commission shall submit its proposed designation of a district of critical planning concern to the Assembly of Delegates and County Commissioners for adoption by ordinance pursuant to Section 10(b) of the Act.

(c) There must be a need for special planning and regulations in the district. The Commission shall find:

1. that the proposed district will preserve or maintain a value(s) or resource(s) intended to be protected by the Act; and
2. that regulatory and/or planning tools are available which are likely to be effective in protecting or otherwise meeting the objectives of the proposed district.

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(d) The district shall consist of the land and water which reasonably belong in the district for the three following reasons:

1. The critical area or critical resource is in need of protection.
2. It is the planning area which should be considered in adopting a coordinated system of regulations to protect the critical resource or critical area.
3. The dimensions or landmarks which form the boundary of the district are identifiable.

SECTION 3. Who May Nominate an Area for Consideration as a District of Critical Planning Concern

(a) Nomination of areas for consideration as districts of critical planning concern may be made to the Commission pursuant to Section 10(d) of the Act.

SECTION 4. Procedure For Nominating A District

(a) No nominations shall be filed with the Commission until after September 27, 1990.

(b) A nominating party listed in Section 10(d) of the Act may nominate an area for consideration as a district of critical planning concern by scheduling and attending a pre-application conference with Commission staff and then completing a District Nomination Form and sending two copies of such Form, by certified mail or hand delivery, to the Clerk, Cape Cod Commission, 3225 Main Street, Barnstable, Massachusetts 02630. In those instances where the nominating party is the Commission, the Executive Director of the Commission or his or her designee shall prepare the District Nomination Form.

(c) The District Nomination Form shall include:

1. The name, address, and telephone number of the nominating party;
2. A map of the area to be nominated as a district of critical planning concern sufficient to identify affected properties and indicating the boundaries of the proposed district;
3. A written description of the proposed district, including references to any distinguishing landmarks, structures, roads, etc. which may act as boundary limits;
4. An explanation as to why the subject area should be designated a district of critical planning concern, including information as to:
 - (i) why the area presents a need for special regulation and planning to protect the district from development inconsistent with the proposed designation;
 - (ii) the types of problems associated with development of the area;and

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- (iii) the types of development that would be consistent with the purposes of the proposed district.
5. A list of all current municipal bylaws and regulations applicable to the area and a copy of each such bylaw and regulation.

SECTION 5. Procedure For Accepting Or Rejecting A Nomination Of An Area For Consideration As A District of Critical Planning Concern

- (a) The Commission shall accept or reject a nomination for consideration pursuant to Section 10(f) of the Act.
- (b) The Commission may consolidate nominations for consideration pursuant to Sections 10(c) and 10(h) of the Act.
- (c) Nominations for the same geographic area and for the same concerns which have been made to the Commission may be reconsidered pursuant to Sections 10(k) and 11(b) of the Act.

SECTION 6. Procedure for Accepting or Rejecting Proposed Designation of an Area as a District of Critical Planning Concern

- (a) The Commission shall render a decision on a proposed designation pursuant to Section 10(i) of the Act. The Commission shall render a decision within sixty days of accepting a nomination for consideration, unless the Commission provides a written explanation for a delay to the nominating party.
- (b) The Commission shall provide notice of the public hearing to consider the nomination of an area proposed to be designated a district of critical planning concern as required by Sections 5(a) and 5(c) of the Act. In addition to mailing notice at least fourteen days before the day of the hearing to the parties listed in Section 5(c)(1) of the Act, the Commission shall also mail such notice to the board of health of each municipality in which the proposed district of critical planning concern or a portion thereof is located.
- (c) The chairperson of the Commission may, at his or her discretion, appoint subcommittees of Commission members to conduct public hearings as provided in Section 10(i) of the Act.
- (d) The Commission's proposed designation shall specify in writing the reasons for recommending a proposed designation or refusal to recommend designation. If the Commission decides to propose a district of critical planning concern, its recommendation shall include a description of the area's critical concern to the region, the problems of development in the area which are inconsistent with the purposes of the proposed designation as defined by the Commission on a case by case basis, and the advantages anticipated from development of the area in the manner proposed by the guidelines for

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development. The guidelines for development will describe suggested land use regulations which will govern development in a manner consistent with the purposes of the proposed district. The Commission shall specify guidelines for development in the district based upon its findings relating to the critical concerns in the area. The guidelines for development shall be included in the Commission's proposed designation which is submitted to the Assembly of Delegates. The Commission's proposed designation shall include a written description and a map of the land area to be included in the designation sufficient to identify the areas affected by the district of critical planning concern designation.

(e) If the Commission's proposed designation is adopted by the Assembly of Delegates by ordinance, and is approved by the County Commissioners, then the Commission shall record the designation ordinance of the district of critical planning concern in the Barnstable County Registry of Deeds, pursuant to Section 10(l) of the Act, and the designation shall become effective upon such recording. The Commission shall file the designation with the town clerk of each municipality in which the district of critical planning concern or a portion thereof is located. Notice of the designation shall be published pursuant to Section 10(l) of the Act. Such notice shall include a brief summary of the contents of the decision and a statement that copies of the decision are available for public inspection at the Commission's office during normal business hours. In addition, the Commission shall publish notice of the designation in its official publication.

SECTION 7. Suspension of Municipal Power to Grant Municipal Permits

(a) Upon receipt of a nomination of an area as a district of critical planning concern, the Commission shall provide notice of such nomination as required by Section 11(a) of the Act.

(b) After the first publication of notice of the nomination of an area as a district of critical planning concern pursuant to Section 7(a) above, no Municipal Agency may grant a development permit within the nominated district as provided in Section 11(b) of the Act. A Certificate of Use and Occupancy may be issued in a nominated area when all other municipal development permits have been previously acquired for a particular development. Municipal development permits may be granted for developments within the nominated area which are exempted from Commission review by Section 22 of the Act. Upon the acceptance of a nomination for consideration by the Commission, emergency work as defined by Section 24 of the Act shall be certified as a type or class of proposed development which is not substantially detrimental to the public health, safety or general welfare and does not contravene the purposes of the Act, pursuant to Section 11(c) of the Act. The Commission certification will allow a municipality to grant development permits for development within nominated districts if the development constitutes emergency work as defined in Section 24 of the Act,

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notwithstanding that ordinarily such work would be suspended during consideration of a nomination. The proponent of any emergency work must notify the Commission immediately upon applying to a municipality for an application to conduct such emergency work. Emergency work shall be permitted and proceed only in accordance with the procedures set forth in Section 24 of the Act.

(c) The acceptance of a nomination for consideration for designation as a district of critical planning concern shall continue to suspend the power of a municipality to grant development permits for development within the nominated district as provided by Section 11(c) of the Act. Until regulations adopted pursuant to Section 8 below have become effective, a municipality may grant development permits for development within the district if the proposed development meets one of the five criteria set forth in Section 11(c) of the Act.

SECTION 8. Adoption of Implementing Regulations

(a) After the adoption by the Assembly of Delegates by ordinance and approval by the County Commissioners of the designation of a district of critical planning concern, a municipality whose boundaries include all or part of that district shall, pursuant to Section 11(d) of the Act, propose implementing regulations which are consistent with the guidelines for the development of the district as set forth in the Assembly of Delegates' designation. Proposed implementing regulations shall be submitted to and shall be acted upon by the Commission pursuant to Section 11(d) of the Act.

(b) The Commission shall provide notice of the public hearing(s) to consider the municipality's proposed implementing regulations as required by Sections 5(a) and 5(c) of the Act. In addition to mailing notice at least fourteen days before the day of the hearing to the parties listed in Section 5(c)(1) of the Act, the Commission shall also mail such notice to the board of health of each municipality in which the proposed district of critical planning concern or a portion thereof is located.

(c) After the public hearing held pursuant to Section 11(d) of the Act, the Commission shall determine whether the municipality's proposed implementing regulations conform to the designation ordinance as provided in Section 11(d) of the Act.

(d) Approved implementing regulations for the district of critical planning concern shall be incorporated by the municipality into the official by-laws, regulations and maps of the municipality and shall not be effective prior thereto, pursuant to Section 11(e) of the Act.

(e) If a municipality fails within twelve months after the enactment of an ordinance designating a district of critical planning concern to adopt and incorporate implementing regulations which are consistent with the

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designation ordinance, the Commission shall propose and the Assembly of Delegates and County Commissioners shall adopt by ordinance implementing regulations applicable to that municipality's portion of the district of critical planning concern after notice and public hearing pursuant to the notice provisions in the Barnstable County Charter; provided, however, that the Commission may grant an additional ninety days to a municipality to adopt and incorporate implementing regulations. Within two weeks following the expiration of said twelve months or ninety day extension thereof, the Commission shall notify the Assembly of Delegates of the municipality's failure to adopt and incorporate the implementing regulations and the Commission shall proceed pursuant to Section 11(f) of the Act.

(f) A municipal agency may grant a development permit for a development in a district of critical planning concern pursuant to Section 11(g) of the Act.

(g) The Commission shall permit a municipal agency to grant a development permit pursuant to Section 11(h) of the Act when appropriate.

(h) A municipality may amend or rescind its implementing regulations pursuant to Section 11(i) of the Act.

(i) Pursuant to Section 11(j) of the Act, a district designated by ordinance shall terminate if implementing regulations have not been approved or adopted pursuant to Sections 11(d) and 11(e) or 11(f) of the Act for the district within eighteen months after enactment of the designation. When a designated district lies within more than one municipality, only that portion of the district for which implementing regulations have not been approved or adopted pursuant to Sections 11(d) and 11(e) or 11(f) of the Act within eighteen months after enactment of the designation shall terminate as provided by Section 11(j) of the Act.

(j) The provisions of this section and of Section 7 above shall not apply to a project proposed by a non-profit educational institution which meets the criteria of Section 11(l) of the Act.