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CHAPTER A

Enabling Regulations
Governing Review of Developments of Regional Impact
Barnstable County Ordinance 90-12

(as amended by Barnstable County Ordinances
90-14, 91-11, 94-3, 94-7, 94-10, 94-11, 96-5, 96-11, 97-6, 97-7, 98-18, 99-12, 02-20, 03-01, 03-16,
05-02, 09-10, 09-14, 10-08, 11-04, 13-04 and 14-03)

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SECTION 1: GENERAL PROVISIONS

(a) Source of Authority
The regulations and standards and criteria concerning review of Developments of Regional Impact (DRI) are adopted and amended pursuant to Sections 6 and 12(a) of the Cape Cod Commission (Commission) Act, Chapter 716 of the Acts of 1989, as amended (Act).

(b) Effective Date
The regulations and standards and criteria set forth herein (Enabling Regulations) shall become effective upon passage as an ordinance and upon recording with the Clerk, the Barnstable County registry of deeds and the county clerk. The Enabling 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. As used within these regulations and the Administrative Regulations, the following additional terms shall be defined as stated below. Defined terms used within these regulations appear capitalized to direct the user to the applicable definition.

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

Certificate of Compliance: Certificate issued by the Commission, and signed by the Executive Director or his/her designee, confirming that a project has been constructed in accordance with the Commission decision.

Change of Use: A change in the nature or purpose of the use of a developed parcel of land.

Chief Regulatory Officer: Chief Regulatory Officer of the Cape Cod Commission.

Clerk: Clerk of the Cape Cod Commission.

Concealed Antenna Monopole: Any monopole with antennas, cables and hardware concealed beneath a surface that is continuous with the surface of the supporting monopole (also known as a flagpole style monopole).

Committee on Planning and Regulation: A standing committee established by the Cape Cod Commission on August 7, 2014

County Clerk: The Clerk of Barnstable County.

Credit: A deduction in the calculation of total mitigation that an applicant may qualify for in the areas of Transportation, Water Resources, Affordable Housing, and Hazardous Materials/Waste of the Regional Policy Plan.

Demolition: Any act of pulling down, destroying, removing, dismantling or razing a structure or commencing the work of total or substantial destruction with the intent of completing the same.

Development of Regional Impact (DRI): A development which, because of its magnitude or the magnitude of its impact on the natural or built environment, is likely to present development issues significant to or affecting more than one municipality, and which conforms to the criteria established in the applicable standards and criteria for developments of regional impact pursuant to Section 12 of the Act.

Discontinued Use: A use that has ended, canceled or terminated.

DRI review: A process pursuant to Sections 12 and 13 of the Act.

Development of Regional Impact (DRI) Exemption: An exemption pursuant to Section 12(k) of the Act from Commission review of a proposed development that literally qualifies as a Development of Regional Impact.

Development of Regional Impact (DRI) Hardship Exemption: An exemption pursuant to Section 23 of the Act from Commission review of a proposed development that qualifies as a Development of Regional Impact.

Discretionary Referral: A referral in accordance with Section 12(e) of the Act by a Municipal Agency or the County Commissioners of a proposed development that does not meet or exceed any of the standards and criteria (thresholds) set forth in Section 3 of these regulations.

DRI Liaison: Town representative designated to act as a liaison to the Commission and coordinate with the Commission staff on regulatory issues.

Emergency Work Determination: A determination made by a Municipality or state agency, pursuant to Section 24 of the Act, that an emergency exists and that a development is necessary for the immediate protection of the health or safety of the public, notwithstanding that ordinarily such emergency work would require referral to the Commission as a Development of Regional Impact as set forth in Section 2below.

Executive Committee: A standing committee established by the Cape Cod Commission on April 25, 1990.

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

Gross Floor Area: The sum of the area of all floors within the perimeter of a building, located either above or below ground level, except Underground Parking within the structure which is accessory to the principal use shall not be included in the total Gross

Floor Area. Gross Floor Area shall be expressed in square feet and measured from the exterior face of the exterior walls, or the centerline of shared walls. It shall include all floor levels including basements, and mezzanines and attics without deduction for hallways, stairways, elevator shafts, mechanical rooms, closets, thickness of walls, columns, projections, or other similar features. Crawl spaces for plumbing, wiring, or other mechanical infrastructure or for storage and in all cases not designed for human occupancy shall not count towards Gross Floor Area. Attic spaces that consist of the following shall not count towards Gross Floor Area: 1) accessed only by a step ladder or drop-down retractable stairs, 2) with open rafters and floor joists, 3) with no means of ventilation other than ridge, peak or soffit vents, 4) with limited natural or man-made illumination, 5) not intended or designed for human occupancy. Outdoor areas used for storage, sales, service and display shall also be included in the total Gross Floor Area.

Hearing Officer(s): A person(s) designated to take testimony, open, close and continue hearings and to accept letters of withdrawal.

Jurisdictional Determination: A determination pursuant to Section 12(j) of the Act whether a development is or is not a Development of Regional Impact under Section 3 of the DRI Enabling Regulations, and as to whether the development is exempt from Commission review pursuant to Section 22 of the Act.

Limited DRI Review: A determination of the scope of DRI review in accordance with Section 5.

MEPA: Massachusetts Environmental Policy Act, M.G.L. Chapter 30, Sections 61-62H.

Occupied Area: An area that encloses a wireless facility and all equipment, including wireless communications and accessory equipment cabinets, telecommunications terminals and service enclosures, electrical transformers and service enclosures, wireless equipment buildings, foundations and mounting pads, generators, above-ground conduits, cables, and cable supports, and fenced enclosures. Below-ground cables, conduits, and enclosures may extend outside the Occupied Area so long as their penetrations above the surface are within the facility's Occupied Area. Underground utilities (telecommunications and electrical) may penetrate the surface outside the Occupied Area at a pad mounted transformer or terminal cabinet not to exceed four feet above ground, and at the utility pole from which the utility connection originates. Landscaping installed to screen the Occupied Area is not included in the Occupied Area calculation.

Outdoor Use: A use with facilities or activities that are predominantly accommodated outside, rather than within a structure. For instance, gravel mining, commercial parking lots, golf courses, marinas, and outdoor active recreation uses would generally be classified as Outdoor Uses. For all Outdoor Uses, the size of the facility shall be based on the Total Project Area.

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Previous Use: An immediately prior use of a building and/or site.

Project of Community Benefit (POCB): A project determined by the Commission to confer upon or result in distinct benefits to the community and the citizens of Barnstable County, consistent with Sections 1(a) and 1(c) of the Act.

Proposed Use: A planned or projected use of a site and/or building.

Regional Policy Plan (RPP): Planning and regulatory document, originally adopted by Barnstable County Ordinance 91-6, and amended from time to time, that includes Barnstable County's goals, policies and standards.

Residential Dwelling Unit: Facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation, whether in a complete, individual unit or a unit sharing common facilities. A Residential Dwelling Unit shall include but not be limited to bedrooms in nursing homes and congregate-care facilities.

Scoping Checklist: Scoping checklists for Limited DRI review for New Development or Redevelopment/Change of Use – list of questions in each issue area of the RPP utilized by the Commission to determine the scope of a limited DRI review in accordance with Section 5.

Secretary: The Secretary of the Massachusetts Executive Office of Environmental Affairs.

Substantial Alteration: An alteration that jeopardizes an historic structure's individual eligibility for listing in the National Register of Historic Places, or its status as a contributing structure in a National Register Historic District.

Substantive Public Hearing: A hearing of a Commission subcommittee or Hearing Officer held for the purposes of taking public testimony. Hearings conducted by Hearing Officer for procedural purposes only (for example, if an incomplete application has been filed), are not Substantive Public Hearings. Public hearings held jointly with the Executive Office of Environmental Affairs (MEPA Unit) for the purposes of receiving comments on an Environmental Notification Form (ENF) shall not be considered a Substantive Public Hearing under this definition. Public hearings held jointly with the Executive Office of Environmental Affairs (MEPA Unit) for the purposes of receiving comments on an Environmental Impact Report (EIR) shall be considered a Substantive Public Hearing under this definition.

Total Project Area: The calculation of Total Project Area shall include but not be limited to outdoor storage/sales/service/display, parking areas, landscaped areas and/or any site

alteration or site disturbance associated with the proposed development including the footprint of all buildings and structures.

Underground Parking: A structure or portion of a structure designated for parking vehicles that is entirely below natural grade, except for required ingress and egress.

Wind Energy Conversion Facility: All equipment, machinery and structures utilized in connection with the conversion of wind to electricity. This includes, but is not limited to, all transmission, storage, collection and supply equipment, substations, transformers, site access, service roads and machinery associated with the use. A wind energy conversion facility may consist of one or more wind turbines.

Wireless Communication Tower: Any guyed, monopole, or self-support tower, constructed for the purpose of supporting antenna(s) for transmitting and/or receiving radio frequency communications, including but not limited to television and/or radio broadcasting, personal wireless services as defined by the Telecommunications Act of 1996, private land mobile radio, point-to-point radio links, public safety radio services, or similar forms of electronic communication. This definition does not include amateur radio operator antennas or television antennas, which are accessory to a residential use.

SECTION 2: COMMISSION JURISDICTION

(a) Mandatory Jurisdiction

(i) When a Municipal Agency receives an application for a development permit, the Municipal Agency shall refer the proposed development to the Commission for review as a Development of Regional Impact (DRI) if the proposed development meets or exceeds any of the standards and criteria for DRIs set forth in Section 3 below, or as amended in accordance with Chapter H of the Cape Cod Commission Regulations of General Application, *Municipal Application for Revision of DRI Thresholds*, and as provided in Section 3(n), below.

(a) A town's Local Historical Commission shall review any proposed alteration or demolition of a National Register historic property that is outside a local historic district or the Old Kings Highway Regional Historic District. The purpose of such review shall be to determine whether the proposed project constitutes a "substantial alteration" under Section 3(a) of the Enabling Regulations. If the Local Historical Commission determines that a proposed project constitutes a "substantial alteration", the Building Inspector or other relevant municipal agency shall refer the project to the Commission for DRI review. If the Local Historical Commission finds that the proposed project does not constitute a substantial alteration, the local permitting process may proceed, provided that the Regulatory Committee does not, at its next regularly scheduled meeting, find that the proposed alteration/demolition

constitutes a "substantial alteration". If a Building Inspector or municipal agency refers a demolition, alteration or partial demolition of a National Register historic property that is outside a local historic or Old Kings Highway District to the Commission, it shall be reviewed as a DRI in accordance with Section 7(c)(viii) provided it constitutes a "substantial alteration" and is not exempt pursuant to Section 22 of the Act.

(ii) The Municipal Agency shall not refer the proposed development for review as a DRI if the project is eligible for any of the exemptions listed in Section 22 of the Act. Informal jurisdictional interpretations are available from the Commission staff to assist a Municipal Agency. Formal Jurisdictional Determinations are available pursuant to Section 12(j) of the Act and Section 9 below.

(iii) In applying the DRI standards and criteria ("thresholds"), the entire proposed project including future expansions shall be considered and not separate phases or segments thereof. Ownership by different entities does not necessarily indicate that projects are separate.

(iv) In accordance with Section 12(h) of the Act, the Commission may review proposed developments that have not been referred to the Commission by Municipal Agencies as a DRI if, at a public meeting, the Commission determines that the proposed development meets the standards and criteria for DRIs set forth in Section 3 below, or as amended in accordance with Chapter H of the Cape Cod Commission Regulations of General Application, *Municipal Application for Revision of DRI Thresholds*, and as provided in Section 3(n), below, and is not otherwise exempt by the provisions of Section 22 of the Act.

<u>(b) Discretionary Referral</u>

(i) A Municipal Agency, including the Board of Selectmen/Town Council, in the Municipality where the development is located, or the County Commissioners or the Board of Selectmen/Town Council in any other Municipality, may refer a proposed development that does not meet or exceed any of the standards and criteria set forth in Section 3 below, or as amended in accordance with Chapter H of the Cape Cod Commission Regulations of General Application, *Municipal Application for Revision of DRI Thresholds*, and as provided in Section 3(n), below, and is not otherwise exempt by the provisions of Section 22 of the Act to the Commission for review. The Commission may accept the referral as a development that may have regional impacts and that presents one or more of the concerns listed in Section 12(b) of the Act. The referring agencies listed above may make a full Discretionary Referral or may make a limited Discretionary Referral setting forth one or more issue areas of the RPP, such as Land Use, Water Resources, Economic Development, Transportation, Affordable Housing, Open Space Protection and Recreation, Energy, Wetlands, Wildlife and Plant Habitat, Waste Management, Coastal Resources, and/or Heritage Preservation and Community Character, to be applied by the Commission in a limited DRI review as further authorized

under Section 7 below. Whenever a referring agency makes a Discretionary Referral it must forward notice to the Board of Selectmen/Town Council in the Municipality where the development is located. The Board of Selectmen/Town Council may forward comments to the Commission on any full or limited Discretionary Referral.

(ii) One single-family dwelling shall not be considered to have significant impacts on the values and purposes protected by the Act outside the Municipality in which it is located and may not be referred to the Commission pursuant to Section 2(b)(i) above unless that dwelling has been determined by the Massachusetts Historical Commission to be eligible for listing on the National Register of Historic Places. This provision shall apply to all new construction, repair, change, alteration or extension of a single-family dwelling or an accessory structure, septic system or water well relative thereto.

(iii) Developments on locations subject to prior DRI decisions shall be reviewed in accordance with Section 14.

(c) Jurisdictional Determinations

(i) Any Municipal Agency or Applicant for a development permit, whose application has not been referred to the Commission by a Municipal Agency or taken up by the Commission for review under Section 12(h) of the Act, may apply to the Commission for a Jurisdictional Determination as to whether a development is or is not a DRI under the Act, and/or as to whether the development is exempt from Commission review under Section 22 of the Act.

(d) Projects Subject to Regulation under MEPA

(i) Any proposed development for which an Environmental Impact Report (EIR) is required to be prepared under the provisions of MEPA shall be deemed a DRI. The Applicant shall file a DRI application for the proposed development to the Commission for review as a DRI. DRI Applicants who are also subject to regulation under MEPA may seek a Joint Review Process under MEPA and the Act pursuant to a November 25, 1991 Memorandum of Understanding between the two agencies.

(ii) An Applicant who is required to file an Environmental Notification Form (ENF) under MEPA shall, at the same time, file a copy of the ENF with the Clerk. If the Secretary does not require the preparation of an EIR, the Commission may review the proposed development as a DRI if, at a meeting, the Commission determines that the proposed development presents one or more of the concerns listed in Section 12(b) of the Act and is not otherwise exempt by the provisions of Section 22. Projects subject to regulation under MEPA may undergo a Joint Review Process under MEPA and the Act pursuant to a November 25, 1991 Memorandum of Understanding between the two agencies.

SECTION 3: DEVELOPMENTS PRESUMED TO BE DEVELOPMENTS OF REGIONAL IMPACT (DRI REVIEW THRESHOLDS)

Upon the effective date of this ordinance, the following standards and criteria ("thresholds") shall set forth the types and classes of development presumed to be Developments of Regional Impact (DRIs) or as amended in accordance with Chapter H of the Cape Cod Commission Regulations of General Application, *Municipal Application for Revision of DRI Thresholds*, and as provided in Section 3(n), below. Standards and criteria contained in Section 12(c) of the Act are superseded by the thresholds contained in these regulations upon the effective date of the ordinance, or as amended in accordance with Chapter H of the Cape Cod Commission Regulations of General Application, *Municipal Application for Revision of DRI Thresholds*, and as provided in Section 3(n), below. Any proposed development that meets or exceeds the thresholds adopted below shall be referred to the Commission as a DRI:

(a) Any proposed Demolition or Substantial Alteration of a building, structure or site listed on the National Register of Historic Places or the State Register of Historic Places, outside a municipal historic district or outside the Old King's Highway Regional Historic District.

(b) The construction or expansion of any bridge, ramp, road or vehicular way that crosses or provides direct access to an inland pond, barrier beach, coastal bank, dune, beach or tidal wetland or waterbody (as defined by MGL Ch. 131, Section 40) except a bridge, ramp or driveway serving no more than three single-family dwelling(s).

(c) Any development that proposes to divide parcel(s) of land totaling 30 acres or more in common ownership or control on or after September 30, 1994, including assembly and recombination of lots. This threshold shall include any development activity in conjunction with any land division of 30 acres or more not otherwise exempted from review under Section 22(e) of the Act.

(d) Any development that proposes to divide land into 30 or more residential lots. Any development that proposes to divide land into 10 or more business, office or industrial lots.

(e) Any of the following proposed developments: commercial, service, retail, wholesale business, industrial, private office, private health, private recreational or private educational which exceeds these criteria:

> (i) New construction of any building or buildings (including accessory and auxiliary structures) with a Gross Floor Area greater than 10,000 square feet;
>
> (ii) Additions to existing buildings that result in an increase greater than 10,000 square feet of Gross Floor Area;
>
> (iii) For Outdoor Uses, new construction or development that has a Total Project Area greater than 40,000 square feet;
>
> (iv) Any Demolition and replacement not resulting in a Change of Use that results in a net increase in Gross Floor Area greater than 10,000 square feet. Net increase is

calculated as the difference between the existing Gross Floor Area and the proposed Gross Floor Area.

(f) Any proposed Change of Use, or Demolition and replacement resulting in a Change of Use, involving commercial, service, retail, wholesale, industrial, private office, private health, private recreational or private educational uses in excess of the following thresholds:

(i)Where the Gross Floor Area of the building(s)~~,~~ or that portion of a building**,** subject to the Change of Use, is greater than 10,000 square feet. In cases where there is a Change of Use within a portion of a building only, all areas associated with that use shall be included in the 10,000 square foot calculation, including storage areas and ancillary areas;

(ii) Any Demolition and replacement that results in a Change of Use where the Gross Floor Area is greater than 10,000 square feet.

(iii) For Outdoor Uses, where the Total Project Area is greater than 40,000 square feet.

(g) Any proposed development, including the expansion of existing developments, that is planned to create or add 30 or more Residential Dwelling Units.

(h) Any development providing facilities for transportation to or from Barnstable County, including but not limited to ferry, bus, rail, trucking terminals, transfer stations, air transportation and/or auxiliary uses and accessory parking or storage facilities, so long as such auxiliary and/or accessory uses are greater than 10,000 square feet of Gross Floor Area or 40,000 square feet of outdoor area. For the purposes of this threshold the amount of outdoor area shall be calculated as set forth in the definition of Total Project Area.

(i) (1) Construction of any Wireless Communication Tower exceeding 35 feet in overall height, including appurtenances, from the natural grade of the site on which it is located, except for a new Concealed Antenna Monopole less than or equal to 80 feet in overall height from the natural grade of the site on which it is located that is designed to accommodate at least two carriers and with an Occupied Area limited to no more than 1300 square feet.

(2) Reconstruction of, attachment to or replacement of any existing Wireless Communications Tower, power transmission structure or utility pole for the purpose of supporting antenna(s) for transmitting and/or receiving radio frequency communications that increases its overall height above existing grade by more than 20 feet.

(j) Site alterations or site disturbance greater than two acres including but not limited to clear cutting, grading, and clearing land, unless such alteration or disturbance is conducted in conjunction with a building permit for a structure or a DRI approval or in conjunction with a municipal project.

(k) Mixed-use residential and non-residential developments with a Gross Floor Area greater than 20,000 square feet, or greater than 10,000 square feet of commercial space. For the purposes of this threshold the Gross Floor Area of Residential Dwelling Unit(s) shall be included in the Gross Floor Area calculation of the total development.

(l) Barnstable GIZ Threshold:

(i) There is a Growth Incentive Zone (GIZ) in Downtown Hyannis in accordance with Barnstable County Ordinance 05-13, as approved by the Cape Cod Commission in a decision dated April 6, 2006 (GIZ #05034) and whose boundaries are fully defined on a plan entitled "Town of Barnstable Growth Incentive Zone" prepared by the Town of Barnstable GIS Unit dated April 6, 2006 which is appended to decision GIZ #05034 and shall be on file with the Town of Barnstable clerk and the Cape Cod Commission clerk.

(ii) Within the Downtown Hyannis Growth Incentive Zone, any proposed development that meets or exceeds the threshold adopted in subsections (a) through (k) of this section shall not require referral to the Commission as a DRI, provided that:

(a) The proposed development is below the Cumulative DRI threshold approved by the Cape Cod Commission as described in its decision dated April 6, 2006 (GIZ #050034) of 600 residential units and 585,180 square feet of non-residential development;

The proposed development does not fall within any of the categories in the Hyannis GIZ decision dated April 6, 2006 found on pages 31-32.

(m) Yarmouth GIZ Thresholds:

In accordance with Barnstable County Ordinance 05-13 and a decision approved by the Cape Cod Commission dated July 26, 2007 *(Yarmouth Growth Incentive Zone/GIZ07010),* proposed development on the "Phase 1 GIZ properties" as identified on a map entitled "Map of Motels in the Yarmouth Growth Incentive Zone" dated June 14, 2007 is subject to adjusted DRI thresholds as set forth in subsections [1]-[4] below provided that the proposed development does not fall within the thresholds outlined in section (m)(ii) below.

[1] Proposed conversion or redevelopment of existing hotel/motel buildings within the Phase I GIZ properties to residential dwelling units is not subject to mandatory DRI review;

[2] Proposed expansion, rehabilitation, or redevelopment of existing hotel/motel buildings within the Phase I GIZ properties without changing use (i.e. continued use as either a hotel/motel) is not subject to mandatory DRI review;

[3] Proposed mixed use development or redevelopment (i.e. containing both residential and commercial use) of Phase I GIZ properties that contains less than a total of 10,000 s.f. gross floor area of either an office or commercial use or a combination of both is not subject to mandatory DRI review. In the event one of the uses is a motel/hotel within the Phase 1 GIZ properties, the square footage of that hotel/motel shall not be counted toward the 10,000 s.f. threshold for purposes of determining the threshold for DRI review.

[4] Proposed mixed use development or redevelopment of Phase I GIZ properties which contains more than 10,000 s.f. gross floor area of either office or commercial use or a combination of both shall be subject to mandatory DRI review, unless the proposed mixed use development or redevelopment also contains all of the following:

(a) at least 40% of the gross floor area of the proposed development consists of residential dwelling units; and
(b) the gross floor area of retail use does not exceed the gross floor area of the residential dwelling units; and
(c) the total amount of proposed office or commercial development or a combination of both does not exceed 10,000 s.f. per Phase I GIZ property; and
(d) in the event of an assemblage of more than one Phase I GIZ property, there is no individual occupant/unit of office/commercial or retail greater than 10,000 s.f. per Phase I GIZ property.

In the event one of the uses is a motel/hotel within the Phase I GIZ properties, the square footage of that hotel/motel shall not be counted toward the 10,000 square foot threshold for purposes of determining the threshold for DRI review.

ii) In addition, pursuant to Section 8(c) of the GIZ Regulations, the following DRI thresholds are not eligible for modification within the GIZ and such development shall be reviewed as a DRI:

[1] Any proposed demolition or substantial alteration of an historic structure or destruction or substantial alteration to an historic or archaeological site listed with the National Register of Historic Places or Massachusetts Register of Historic Places, outside a municipal historic district or outside the Old King's Highway Regional Historic District.

[2] Any development providing facilities for transportation to or from Barnstable County, including but not limited to ferry, bus, rail, trucking terminals, transfer stations, air transportation and/or accessory uses, parking or storage facilities, so long as such auxiliary or accessory uses are greater than 10,000 s.f. of Gross Floor Area or 40,000 s.f. of outdoor area.

[3] Development requiring an Environmental Impact Report under MEPA.

[4] Discretionary referrals proposed by the Town and accepted by the Commission as presenting regional impacts.

(n) A DRI threshold has been modified by the Commission pursuant to Chapter H of the Cape Cod Commission's Regulations of General Application.

SECTION 4: CHANGE OF USE DETERMINATION

(a) For projects that exceed the thresholds in Section 3(f), an Applicant or Municipal Agency may consult with the Chief Regulatory Officer who, based on the information provided to him/her, will determine whether a project constitutes a Change of Use as defined in Section 1**.** Such request shall be in writing and, if a request is made by a Municipal Agency, a copy of that request shall be provided to the Applicant prior to making such determination and the Chief Regulatory Officer may request additional information of the Applicant or the Town to make his/her determination.

(b) The Chief Regulatory Officer shall determine that a project either:

(i) Does not constitute a Change of Use and may therefore continue as the same use and proceed through the local permitting process without further review by the Commission, or

(ii) Constitutes a Change of Use, and the Applicant may therefore submit an application for a DRI Review in accordance with Section 5 below.

(c) Such determination by the Chief Regulatory Officer shall be stated in writing and mailed to the Applicant, Municipal Agency and Chair of the Regulatory Committee.

(d) If the Applicant or Municipal Agency disagrees with the determination made under Section 4 by the Chief Regulatory Officer, the Applicant or Municipal Agency may submit an application for a Jurisdictional Determination in accordance with Section 10.

SECTION 5: APPLICATION FOR LIMITED REVIEW

(a) For any project that is a DRI pursuant to Section 3 or 4 above, the proponent may apply to the Commission to limit the scope of DRI review. The Executive Director of the Commission will determine the scope of any Limited DRI review.

(b) A pre-application meeting between the Applicant and Commission staff is strongly encouraged prior to filing development plans at the local level to discuss the application requirements and the Limited DRI review process. Applicants should bring any conceptual plans, studies or information on the property and/or development proposal to this meeting.

(c) All applications for a Limited DRI Review shall be submitted in accordance with Section 2 of the *Administrative Regulations*, as amended. The application for a Limited DRI Review shall be filed at least five (5) business days in advance of an appointment to review the application with the Chief Regulatory Officer or his/her designee. The required number of copies specified on the relevant application form and attachments, as amended, as referred to in Section 2 of the Administrative Regulations, shall be submitted. The application package shall contain the application cover sheet and its required filing materials.

(d) Upon receipt of an application for Limited DRI Review, the Executive Director or his/her designee will review the application for completeness as follows:

(i) The application shall be considered complete when it contains all items listed on the application form, including all documents necessary to answer the questions applicable to the development on the Scoping Checklist for Limited DRI Review for New Development or Redevelopment/Change of Use ("Scoping Checklist").

(ii) If the application is not complete, the Executive Director or his/her designee shall notify the Applicant in writing, identifying the additional information required to address the scoping questions as well as information needed to render the application complete. A meeting may be scheduled between Commission staff and the applicant to discuss the additional information required to render the application complete and address the scoping questions.

(iii) When the application is deemed complete, the Executive Director or his or her designee shall notify in writing the Applicant, Municipal Agency, and the Chair of the Committee on Planning and Regulation.

(e) The Executive Director or his/her designee (hereinafter "Executive Director") shall do the following:

(i) Within 45 calendar days of the date on which an application is deemed complete, review the application and prepare the scoping decision referenced in section 5(e)(iv), below.. The Executive Director shall review the Scoping Checklist for Limited DRI Review for New Development or Redevelopment/Change of Use to determine whether they find that any of the scoping questions apply to the development.

(ii) If the Executive Director finds that an issue area or sub-issue area from the Scoping Checklist applies to the development as listed, then that issue area and/or sub-issue area as identified on the applicable Scoping Checklist and its corresponding section in the RPP shall be included in the scope of DRI review unless the Executive Director finds otherwise as provided in Section 5(e)(iii). The Executive Director shall consider the impacts of the proposed project, both quantitative and qualitative, on the resources protected by the Act and RPP and may require the review any sub-issue area or entire issue area listed on the Scoping Checklist and its corresponding section in the RPP if in

his/herdetermination, he/shefinds that the development may involve substantial deviation from the minimum performance standards of the RPP or may have significant impact upon the purposes and values identified by Section One of the Act.

(iii) If the Executive Director finds that an issue area or sub-issue area from the Scoping Checklist applies, he/she may find in his/her discretion that the issue area or sub-issue area does not require DRI review because it does not involve substantial deviation from the minimum performance standards of the RPP or does not have significant impact upon the purposes and values identified by Section One of the Act. Projects that are determined to be a Change of Use may be eligible for Credits for the proposed use based on the impacts of the Previous Use, as defined in the Scoping Checklist. Outside of Economic Centers as designated on the RPP Regional Land Use Vision Map and in towns without an endorsed Land Use map, a Change of Use shall not be eligible for Credits if the Previous Use has been Discontinued for three or more consecutive years and shall be evaluated under the Scoping Checklist for New Development. Projects that are determined to be a Change of Use inside designated Economic Centers shall not be subject to this three-year time limit.

(iv) , The Executive Director shall make his/her decision regarding the scope of the DRI review of the project. In making this decision, the Executive Director shall find either:

(a) He/she recommends to the full Commission that no further DRI review is required; or
(b) The scope of the DRI review is limited to specific issue areas; or
(c) A full DRI review is required.

(v) The Executive Director shall issue a written decision following his/her determination of the scope of DRI review. This decision shall be reported to the Committee on Planning and Regulation, who shall vote whether to adopt the decision as final, if the decision finds a limited scope pursuant to 5(e)(iv)(b) or that full DRI review is required pursuant to 5(e)(iv)(c). In the event of a finding that no DRI review is required, the Executive Director shall make the recommendation to the full Cape Cod Commission which shall render a final decision whether to allowa development to proceed without further DRI review, or, if DRI review is required, the issue areas to be reviewed. The Commission's final decision may require the issuance of a Certificate of Compliance prior to occupancy of the project to ensure that the development determined to not require DRI review was built in accordance with the plans and information presented to the Executive Director and Commission.

(f) If the Executive Director determines that limited or full DRI review is required, the Municipal Agency shall refer the project to the Commission in accordance with Section 2(a), and the Applicant shall make an application for DRI review. The applicant shall be responsible for submitting documentation required by the Executive Director and/or the Commission to claim any project benefits for issue areas outside the scope of limited DRI review.

(g) If the Commission determines that the project does not require DRI review, the Applicant may proceed through the local permitting process.

SECTION 6: TRANSITIONAL EXEMPTION FROM DRI REVIEW

(a) Projects that qualify under the provisions set forth in Section 22 of the Act shall be exempt from DRI review.

(b) For the purpose of determining if the project is exempt under Section 22(b) of the Act, a special permit or variance shall be deemed to be received upon filing with the town clerk. An Order of Conditions shall be deemed to be received upon the date of signature of the Order of Conditions, or if a Superseding Order of Conditions is rendered, then upon the date of signature of the Superseding Order of Conditions. A statement of the Secretary that the Environmental Impact Report adequately complies with MEPA is deemed to be received upon the date of signature of the Secretary's Certificate.

(c) For the purposes of determining if a project is exempt under Section 22(b) of the Act, a development will be deemed to be constructed in substantial compliance with the applicable development permit or approval on a case-by-case basis.

The determination of whether a project substantially complies with an original local permit or approval shall be based upon all of the following factors:

The proposed project is in substantial compliance if:

> (i) the proposed project and use reflect the nature and purpose of the project and use in the original local approval; and
> (ii) the changes do not result in the requirement for additional local development permit review in the form of a new permit, approval or a modification to the original approval; and
> (iii) the changes do not result in different or increased impacts, as compared with the original local approval, to the interests protected by the Act and the Regional Policy Plan.

The burden is on the project proponent to demonstrate that the change is not substantial. In order to resolve any issues regarding the requirement of DRI review, the project proponent may file an application with the Commission for a Jurisdictional Determination, as authorized by section 12(j) of the Act.

The Commission will presume that the project is no longer in substantial compliance with the original permit or approval if the project was the subject of an enforcement order or permit revocation because of non-compliance with the original approval. The applicant may present evidence to the Commission that, notwithstanding the enforcement order, the project is still in substantial compliance with the originally issued permit or approval.

SECTION 7: PROCEDURE FOR DEVELOPMENTS OF REGIONAL IMPACT (DRI) AND DISCRETIONARY REFERRALS

(a) Procedure for Referral

(i) Developments of Regional Impact (DRI)
A Municipal Agency referring a proposed development to the Commission for review as a DRI shall submit a DRI referral form to the Clerk. DRI referral forms may be obtained from the Commission during regular business hours.

(ii) A Municipal Agency's review of pending local development permit applications shall be suspended once a DRI referral is made. The suspension of review shall extend all constructive grant periods for Municipal Agencies for a period equal to the duration of Commission review, such periods to resume running after a final Commission decision is rendered.

(iii) Discretionary Referrals
Upon receipt by the Commission of a Discretionary Referral of a proposed DRI, the Commission may, at a public meeting, accept the referral for review as a development that may have regional impacts and presents one or more of the concerns listed in Section 12(b) of the Act. The Municipal Agency shall use the Scoping Checklist as described in Section 5(e)(i) as a guide in determining issue areas for referral. Pursuant to Section 4(a)(12) of the Act, the Commission may delegate to the Committee on Planning and Regulation, to the Executive Director, or to the Commission staff, the responsibility to meet and make a recommendation to the Commission as to whether the Commission should accept a Discretionary Referral of a proposed development. Upon a vote of the Commission to accept a Discretionary Referral for review as a DRI, Municipal Agencies shall suspend their review of pending local development permit applications related to the project that is subject of the Discretionary Referral. The suspension of Municipal Agency review shall extend all constructive grant periods for Municipal Agencies for a period equal to the duration of Commission review, such periods to resume running after a final Commission decision is rendered.

(b) Procedure for Filing DRIs

(i) Upon receiving notice from the Commission of the proposed development's referral as a DRI, or acceptance as a Discretionary Referral, the Applicant shall file an application for DRI review. The DRI application shall be filed at an application-filing appointment. This appointment shall be scheduled at least two business days in advance with the Chief Regulatory Officer or his/her designee. The required number of copies of the application is listed on the relevant application form and attachments, as amended, as referred to in Section 2 of the Administrative Regulations. Application packages submitted will not be accepted at this appointment unless they contain the application cover sheet and its required filing materials. A pre-application meeting between the applicant and Commission staff is strongly encouraged prior to filing development plans at the local level to discuss the application requirements and the DRI review process. Applicants

should bring any conceptual plans, studies or information on the property and/or development proposal to this meeting.

(ii) Simultaneously with the filing with the Commission of the number of copies specified in the relevant application form and attachments, as amended, as referred to in Section 2 of the Administrative Regulations, the applicant shall file a copy of such application and all subsequent submittals with the town clerk, building inspector, DRI Liaison, planning board, and any other Municipal Agency(ies) before which the applicant will appear.

(c) Procedure for Processing DRIs

(i) Notification

Upon receipt by the Commission of a mandatory referral of a proposed DRI, or upon a vote to review a project that should have been referred to the Commission for DRI review, or upon acceptance by the Commission of a Discretionary Referral from a Municipal Agency or under MEPA, the Commission shall notify, by certified mail, the Applicant, the town clerk and the building inspector of the Municipality(ies) in which the proposed development is located, and the Municipal Agency(ies) before which a development permit is pending, of the Commission's intent to review the proposed development as a DRI. Such notification will be mailed within 14 calendar days and will include the date on which the Commission received the referral and a copy of the DRI referral form, or the date on which the Commission voted to review the project.

(ii) Contents of Application

All applications for DRIs shall be submitted in accordance with Section 2 of the Administrative Regulations, as amended. Any Applicant for a DRI shall file a true copy of the deed(s) or other instrument(s) of record showing ownership of the property that is the subject of the application. If the Applicant is not the owner, the owner of record of the property must endorse and acknowledge the application in writing.

(iii) Completeness Review

[1] Upon receipt at the application-filing appointment of a DRI application, meeting the requirements of Section 7(b) above, the Executive Director or his/her designee, will review the DRI application for completeness. In order to be complete, a DRI application shall contain all items listed in the DRI application, unless waived by the Executive Director or his/her designee. If additional data or analysis is necessary to assess the impact of the proposed development, Commission staff may schedule a meeting with the Applicant to discuss the additional information required to facilitate Commission review.

[2] A Substantive Public Hearing shall not be scheduled until a DRI application is complete.

[3] Once a DRI application is complete, a Substantive Public Hearing will be scheduled and Commission staff shall review the application for its consistency

with the Act, Regional Policy Plan (RPP), Districts of Critical Planning Concern regulations, municipal development bylaws, and certified Local Comprehensive Plans and prepare a staff report. The RPP and associated technical bulletins applicable to the Commission review of the proposed development shall be those in effect at the date of the first Substantive Public Hearing.

(iv) Discussions with Local Officials

While the Commission is reviewing a DRI, the Municipal Agency before which the Applicant has development permits pending may conduct informal discussions, in compliance with the provisions of the Massachusetts Open Meeting Law, MGL. Chapter 39, Section 23A-23G. Applicants shall promptly furnish the Municipal Agency with copies of all information submitted to the Commission during Commission review.

(v) Timeframes

[1] The Commission shall hold a public hearing within the following timeframes:

(a) within 60 calendar days of receipt of a mandatory referral, or;
(b) in the case of a Discretionary Referral, within 60 calendar days of a vote by the Commission to accept a development for review as a DRI; or
(c) in the case of a vote of the Commission to review the project pursuant to Section 12(h) of the Act, within 60 calendar days of a vote by the Commission to review a development as a DRI.

If a DRI application is incomplete, a Hearing Officer may open the public hearing for procedural purposes only. No testimony shall be received at this hearing. At least one public hearing shall be held in one of the municipalities in which the proposed DRI is located, in accordance with Section 5(g) of the Act. The public hearing regarding review of a DRI shall be closed within 90 calendar days following its opening date, pursuant to Section 13(a) of the Act. Failure to submit a complete DRI application in a timely manner may result in a procedural denial, pursuant to Section 13. All public hearings will be noticed in accordance with Section 11(a).

[2] Applicants shall provide requested information in a timely manner. A timely manner means that information must be submitted to the Commission at least 14 calendar days in advance of a meeting or hearing. The Commission or its designee may postpone consideration of information submitted less than 14 calendar days prior to a scheduled meeting or hearing. In addition, failure to provide information in a timely manner may result in cancellation of a meeting or hearing and may result in a procedural denial, pursuant to Section 14.

(vi) Timeframes for Developments Subject to Review by MEPA

Notwithstanding Section 6(v) above, the following additional timeframes apply to certain projects being reviewed by MEPA.

[1] If the Secretary requires the preparation of an Environmental Impact Report (EIR), the project is deemed to be a DRI under Section 2(d)(i). The Commission shall hold a public hearing to review the project within 45 days of the Secretary's certification of the adequacy of the final EIR; or

[2] If the Secretary does not require the preparation of an EIR, and the Commission has determined that the project should be subject to DRI review (in accordance to Section 2(d)(ii)), the Commission shall hold a public hearing within 90 days of the Secretary's certification that no EIR is required.

The public hearing regarding review of a DRI that was accepted for review or required to be reviewed pursuant to MEPA filings shall be closed within 90 days following its opening date, unless extended by mutual agreement with the Applicant.

(vii) Hearing Notice

(a) The Commission shall provide notice of public hearings to consider a DRI as required by Sections 5(a) and 5(d) of the Act and in accordance with Section 12(a) of these regulations.

(b) Qualification after a Missed Hearing
Notwithstanding any general or special law to the contrary, for hearings held for review of developments of regional impact and adjudicatory hearings, a member of the Cape Cod Commission shall not be disqualified from voting in a matter solely due to that member's absence from no more than a single session of the hearing at which testimony or other evidence is received. Before any such vote, the member shall certify in writing that he/she has examined all evidence received at the missed session, which evidence shall include an audio or video recording of the missed session or a transcript thereof. The written certification shall be part of the record of the hearing.

(viii) Findings for Approval
The Commission shall review proposed DRIs for their consistency with the Act, the RPP, Districts of Critical Planning Concern (DCPC), municipal development bylaws and Local Comprehensive Plans. The Commission shall approve, or approve with conditions, a DRI and shall permit a Municipal Agency to grant a development permit for a proposed DRI if the Commission finds after a public hearing that:

[1] the probable benefit from the proposed development is greater than the probable detriment;

[2] the proposed development is consistent with the RPP and the Local Comprehensive Plan of the Municipality(ies) in which the proposed development

is located. All DRIs shall be subject to all Minimum Performance Standards in the RPP with the following exceptions, which shall be construed narrowly:

(a) Discretionary Referrals - If the Commission accepts a limited Discretionary Referral for DRI review as provided in Section 2(b)(i) above, the Commission shall waive application of Minimum Performance Standards outside of the scope of the subject matter of the local referral;

(b) Projects involving historic properties referred under Section 3(a) above - The Commission shall waive application of Minimum Performance Standards other than those of the Heritage Preservation/Community Character Section of the RPP, so long as the development proposal does not meet or exceed a threshold contained in Section 3(b-k) above;

(c) Hardship Exemptions approved in accordance with Section 9, including Projects of Community Benefit - The Commission may waive or modify application of one or more of the Minimum Performance Standards where such relief shall be the minimum necessary to address the hardship. Any relief granted shall not nullify or substantially derogate from the intent and purposes of the Act, and shall not result in a substantial detriment to the public good;

(d) Wireless Communication Towers under Section 3(i) above - The Commission may waive application of Minimum Performance Standards of the RPP, provided that the Commission finds that such standards are outside the scope of the proposed project.

(e) DRI Applications – In accordance with the Scoping Checklist for Limited DRI Review, the Commission may limit review to certain issue areas of the RPP and waive application of Minimum Performance Standards outside those determined to apply on the Scoping Checklist for Applicants seeking a limited DRI review, as described in Section 5 of these regulations.

[3] the proposed development is consistent with municipal development bylaws, or, if it is inconsistent, the inconsistency is necessary to enable a substantial segment of the population to secure adequate opportunities for housing, conservation, environmental protection, education, recreation or balanced economic growth;

[4] if the proposed development is located in whole or in part within a designated DCPC, it is consistent with the regulations approved or adopted by the Commission pursuant to Section 11 of the Act.

The Commission may also disapprove a proposed development that does not meet all of the criteria set forth above.

(ix) Conditions

[1] The Commission may set conditions for proposed developments as it deems appropriate, pursuant to Section 13(g) of the Act. Exactions for off-site improvements shall have a rational nexus to an impact attributable to the proposed development, must reasonably benefit the proposed development, and shall be proportionate to the impact created by the proposed development.

[2] Conditions attached to a DRI approval of a proposed development shall be in conformance with regulations and policies of the applicable local historic district and/or the Old King's Highway Regional Historic District.

(x) Decisions

Within 60 calendar days of the close of the hearing period, the Commission shall render a written decision on the proposed development. Such 60-day limit may be extended by mutual agreement of the Commission and the Applicant.

Pursuant to Section 13(c) of the Act, the chairman of the Commission may delegate to the Committee on Planning and Regulation or other subcommittee the responsibility to review the proposed DRI, assemble the record, and make a recommendation to the Commission.

The Clerk shall file and record decisions in accordance with Section 12(b) of the Enabling Regulations.

(xi) Failure to Pay Fee

Failure of an Applicant to pay the filing fee specified in Section 16 Schedule of Fees, will result in a determination that the DRI application is incomplete. No Substantive Public Hearing will be held to consider such incomplete application, pursuant to Section 7(c)(iii). Pursuant to Section 15, a procedural denial of the proposed development may result if such fee is not paid by the close of the 90-day public hearing period.

(xii) Withdrawals

[1] An Applicant may withdraw an application for DRI review from consideration by the Commission at any time prior to a Commission vote as long as such withdrawal is in a form approved by the Commission and as long as the Applicant provides documentation that the project has also been withdrawn from consideration at the local level. Failure to withdraw in a manner approved by the Commission may result in a procedural denial of the DRI application, pursuant to Section 15.

[2] In the case of a Discretionary Referral, a request for withdrawal by a referring agency should be granted only if either: (a) the project applicant has decided not

to proceed with the project, thereby obviating the anticipated regional impacts that justified Commission review; or, (b) the project applicant is legally bound to alter the project in a manner that would substantially mitigate its anticipated regional impacts, thereby rendering any further review of the project redundant and unnecessary.

(xiii) Certificates of Compliance

Prior to issuance of a Certificate of Use and Occupancy by a Municipal Agency, and 30 days prior to completion of the construction of the project, the Applicant shall file a written request with the Commission for a final Certificate of Compliance. The Commission may enter and inspect the property that is the subject of a DRI approval at reasonable times and with reasonable notice to determine compliance with said DRI approval. Within 30 days of such inspection, the Commission shall issue a final Certificate of Compliance if the project is built in accordance with the DRI approval and all conditions have been met. The Municipal Agency shall not issue a Certificate of Use and Occupancy until the Commission issues its final Certificate of Compliance. If no Certificate of Use and Occupancy is required under local regulations, the Applicant shall not use and/or occupy the project until the Commission issues its final Certificate of Compliance. The Commission may also from time to time issue other Certificates at key stages of the development. All outstanding fees due the Commission shall be paid prior to issuance of any Certificate of Compliance.

(xiv) Extension of DRI Permit

At least six months prior to the expiration of the seven-year timeframe on an approved DRI, an Applicant, or his/her successors or assigns, may apply for an extension of the DRI timeframe for up to an additional five years. An extension of the DRI timeframe may only be requested if a project has received DRI approval but has not received local development permits, and/or if a portion of the proposed project has not been completed as defined by Section 2(e) of the Act.

The Committee on Planning and Regulation shall review information provided by the Applicant and Commission staff, and within 60 days of receipt of an applicant's written request, advertise and hold a substantive public hearing pursuant to Section 5 of the Act to consider an extension request. When appropriate, Commission staff shall notify and consult with federal, state and local officials on the extension request prior to the public hearing. An extension of the DRI timeframe shall be reviewed for its consistency with Section 13(d) of the Act including consistency with the RPP in effect at the time of the opening of the public hearing on the extension request. In reviewing the extension request, the Committee on Planning and Regulation shall determine which of the following applies:

[1] The extension will result in a minor change or no changes to the original findings or conditions on the project. In such cases, the extension may be granted. The extension shall take effect on the date the extension is granted for a period not to exceed five years. Where applicable, the DRI decision shall be

modified to reflect any increase in a payment of funds to account for inflation over the original decision period plus the duration of the extension. No local development permits may be issued after the original date of expiration of the DRI approval unless and until such extension is granted.

[2] The extension will result in a major change(s) to the original findings or conditions of the original approval. In such cases, the extension shall not be granted and the Applicant shall be required to seek a new DRI approval.

Within 30 days of the closing of such public hearing, the Committee on Planning and Regulation shall determine if the extension may or may not be granted. If the extension is granted, the Regulatory Committee shall specify the duration of the extension in its decision. At its discretion, the Committee on Planning and Regulation may refer the request to the full Commission.

(d) Adjudicatory Hearing Procedure for Energy Related DRIs

(i) Application

These procedures shall apply to all DRI applications which concern proposed energy related facilities over which the Energy Facilities Siting Board ("EFSB") asserts jurisdiction. Because the EFSB's regulations at 980 CMR 6.03(1) provide that the Commission's adjudicatory findings of fact, on appeal, will be reviewed on the basis of the record before the Commission, the Commission deems it appropriate to prepare an expansive record for such DRIs. (By contrast, other DRI decisions are reviewed *de novo* when appealed to the Land Court or the Superior Court).

(ii) Scope and Application

All DRI applications pending on the date of this ordinance which propose to construct, install, operate, alter or convert an energy related facility which is subject to review by the EFSB, and all DRI applications filed hereafter for such facilities shall be subject to the expanded hearing procedure defined herein. This expanded procedure shall be administered by the DRI Subcommittee or its duly appointed hearing officer as provided in section (iv)[4] of these procedures.

(iii) Intervention and Parties

[1] The applicant shall be deemed a party as a matter of course, as also shall the town or towns in which a DRI is proposed. The applicant and the towns shall promptly file an appearance with the Subcommittee identifying one representative upon whom service may be made and stating the e-mail and mailing addresses of that person.

[2] Any other person who will be specifically and directly affected by the proposed DRI may file a written motion seeking to intervene as a party. Such motion shall describe the manner in which the movant anticipates the proposed DRI will specifically and directly affect the movant and/or the movant's property and the detailed factual grounds supporting that motion. Such motion shall also

state (i) the nature and substance of the evidence the movant will offer and (ii) the identity and qualifications of the witnesses whose testimony the movant will proffer. For purposes of intervention, the term "person" shall be broadly construed in accordance with G.L. c. 214, § 7A, and may include a group of ten or more persons domiciled in the Commonwealth who seek to prevent "damage to the environment" as defined in c. 214, § 7A. Every motion to intervene shall state the name and address of the movant(s) and shall be signed by and bear the name, mailing address and e-mail address of the attorney representing the movant. Service of papers upon the attorney for each party and each person seeking intervention shall constitute proper service as to the respective party or person.

[3] A person seeking to intervene as a party shall serve a copy of his motion to intervene upon each party under subparagraph [1] and upon any other person who has been granted party status and shall attach a certificate of service to his motion to intervene reciting such service. Motions to intervene as a party shall be filed no later than one week before the commencement of the public hearing. Any party receiving such a motion may file an opposition thereto within two business days of receipt of the motion.

[4] The Subcommittee or its designee delegated to conduct the DRI hearing shall decide such motions on the papers and promptly notify the parties and the person seeking to intervene of its decision. A Subcommittee may appoint its chair, or any other Subcommittee member or members, or a staff member as its designee as provided in Section (iv)[4] to rule on motions to intervene and/or such other motions as the Subcommittee specifies. The Commission and its Subcommittees may distribute their decisions, rulings and orders to the Parties electronically, by e-mail and by first class mail or by hand.

[5] Any person not permitted to intervene as a party shall nonetheless enjoy the right to participate in the public hearing as a member of the public, which shall include the right to offer testimony, opinion and argument on such generally applicable terms as are established by the Subcommittee and by the Commission. Any person whose motion to intervene has been denied may participate in the public hearing without adversely affecting any right to judicial review of the denial of their motion to intervene.

(iv) General Procedures

[1] Filing Documents. Any document to be filed with the Commission shall be e-mailed to the address specified by the Subcommittee in pdf format and hand delivered or mailed first class to the main office of the Cape Cod Commission, which is presently 3225 Main Street, P.O. Box 226, Barnstable, Massachusetts 02630. The date the Commission receives and date-stamps a paper (hard copy) shall be the date of filing.

[2] Service. Any Party filing papers with the Commission shall also serve a properly addressed copy of such filings on all other Parties to the proceeding electronically, in pdf format, and by hand delivery or first class mail. Each filing must be accompanied by a statement certifying the date and manner of service and the name and address of the Parties served.

[3] Time. Parties must file all papers within the time provided herein. Computation of any time period referred to herein shall begin on the first day following the act which initiates the running of the time period. The last day of the time period is included unless it is a Saturday, Sunday or legal holiday, in such case the period shall run until the close of the next business day. A Subcommittee may revise the timeframes in these procedures as it believes necessary to comply with the time limitations of the Cape Cod Commission Act ("Act"), in which event, the Subcommittee shall distribute the revised schedule to the parties and distribute copies thereof at its public hearings, on the Commission website, by posting and by mail to the town clerks of the towns where the DRI is proposed.

[4] Subcommittee. The Commission may appoint a DRI Subcommittee or Commission staff member to serve as hearing officers pursuant to §4(a)(8) of the Act to conduct the public hearing, to hear and report the evidence and testimony, and to assemble and report the record with a recommended decision for decision by the Commission. The Commission will hold a public hearing following receipt of the recommendations of the Subcommittee or its designee.

[5] Prehearing Conference. The Subcommittee or its designee may order the parties to attend a prehearing conference to narrow and define the issues, to determine what facts and issues can be agreed by the parties by stipulation or other agreement to establish time and other limits on cross-examination and argument and to consider any other matters that may aid in the orderly and efficient conduct of the public hearing and the disposition of the DRI application. Counsel for each party shall appear at the prehearing conference with full authority to act on behalf of their clients. Following the conference, the Subcommittee or its designee will issue a procedural order covering the matters resolved at the prehearing conference.

(v) Conduct of Public Hearing

[1] Evidence and Administrative Record. All Parties shall be represented at the public hearing sessions assigned for the parties by an attorney admitted to the practice of law in the Commonwealth. Parties shall have the right to introduce oral and documentary evidence in accordance with these regulations as permitted by the Subcommittee or its designee, to cross examine witnesses offered by other parties, to object to evidence offered by other parties, and to make written and oral arguments. Parties shall submit exhibits and written direct testimony under oath one week prior to the hearing and simultaneously serve copies on every other

Party. Every witness who submits pre-filed direct testimony shall be made available for cross examination unless excused therefrom at the discretion of the Subcommittee or its designee. At the discretion of the Subcommittee, or its designee, in extraordinary circumstances, a Party may proffer a witness who has not submitted pre-filed direct testimony. All witnesses offered by a Party shall testify under oath and be subject to cross examination by each other Party. The Applicant's witnesses shall be called first, unless the Subcommittee, in its discretion, adopts another order of evidence. The Subcommittee, the Commission and/or its designee shall be guided, but not bound, by the rules of evidence observed by the courts, and shall recognize the rules of privilege. The Subcommittee, the Commission and/or its designee may limit the time of each Party's cross examination and argument, and/or may require argument to be presented in writing.

[2] Record. The Subcommittee, the Commission and/or its designee shall make a record of their public hearings which shall consist of the pre-filed testimony, the pleadings filed by the parties, a stenographic transcript of the public hearing sessions assigned for the parties, exhibits admitted as evidence and such other filings as the Subcommittee, the Commission and/or its designee shall deem appropriate. Each party, except for the town or towns where the DRI is proposed, shall pay to the Commission its per capita share of the estimated cost of the transcript at the close of the public hearing.

[3] Motions. Any Party may request that the Subcommittee, the Commission, and/or its designee take action by filing a motion clearly stating the action and/or relief sought and the grounds therefor. Any Party may file a written response to any motion within five days after such motion is filed. The moving Party may file a reply within two business days after such response is filed. Additional filings may only be made with the permission of the Subcommittee or its designee. All motions, except those seeking intervention, may be filed only by a Party. Motions will generally be decided on the papers unless the Subcommittee, the Commission or its designee believes that oral argument would be helpful, in which case the Subcommittee, the Commission or its designee will notify the Parties and schedule a hearing.

[4] Post-hearing Briefs. At the close of the public hearing, the Subcommittee or its designee shall establish dates for the filing of briefs and other post-hearing proceedings in light of the statutory time limits in the Act.

(vi) Hearing

[1] Purpose. Hearings will be held when required by law or at the discretion of the Subcommittee the Commission or its designee in order to allow the Subcommittee or its designee and parties to examine witnesses with respect to their pre-filed testimony and to receive evidence from non-parties. Any person may offer evidence at a public hearing, but only parties may cross-examine the witnesses

whose pre-filed testimony has been offered by another party. The Subcommittee, the Commission, or its designee may limit the time for presentations of evidence, comments and/or argument by parties and members of the public in order to conduct an orderly and efficient hearing.

[2] Schedule, Location, and Public Access. The Subcommittee the Commission or its designee shall notify all parties, any persons with pending motions to intervene and the public of the schedule for public hearings. All hearings shall be held at the offices of the Commission, unless otherwise stated and shall be open to the public. Notice of public hearings shall be provided pursuant to Section 5 of the Act.

(vii) Decision and Appeal

[1] Decisions. Following the public hearing, the Subcommittee or its designee will provide the Commission and the parties with its recommended decision, clearly setting forth its factual findings and the reasons for its recommendations. The parties and the public may file comments on the Subcommittee's recommended decision within seven days of the Clerk's receipt of the recommendations. The Commission will hold a public hearing, and after the close thereof, will deliberate and vote. The Commission shall promptly provide all parties with a copy of the Commission's decision. Every decision shall be in writing and shall contain a statement of the reasons therefore, including determinations of fact or law necessary to the decision.

[2] Appeal. All appeals of Commission decisions shall be made in accordance with Section 17 of the Act.

SECTION 8: DEVELOPMENTS OF REGIONAL IMPACT (DRI) EXEMPTIONS

Any Applicant may apply to the Commission for an Exemption from Commission review of a proposed project that literally qualifies as a DRI, but where the location, character and environmental effects of the development will prevent its having any significant impacts on the resources, values and purposes protected by the Act outside of the municipality in which the development is to be located. The burden shall be on the Applicant to show that the project is exempt.

(a) Procedure for Filing Exemptions

(i) An Applicant seeking a DRI Exemption must file a completed application, in accordance with the relevant application form and attachments, as amended, as referred to in Section 2 of the Administrative Regulations. Any Applicant for a DRI Exemption shall file a true copy of the deed(s) or other instrument(s) of record showing ownership of the property that is the subject of the application. If the Applicant is not the owner, the owner of record of the property must endorse and acknowledge the application in writing.

(ii) An Applicant requesting a DRI Exemption may consult with the staff of the Commission prior to filing an application, for the purpose of determining the requirements of a fully completed application.

(iii) An Applicant requesting a DRI Exemption shall file an application at an application-filing appointment. This appointment shall be scheduled at least five business days in advance with the Chief Regulatory Officer of the Commission, or his/her designee. Application packages submitted will not be accepted at this appointment unless they contain the application cover sheet and its required filing materials. A pre-application meeting between the Applicant and Commission staff is strongly encouraged prior to filing of development plans at the local level to discuss the application requirements and the DRI Exemption review process. Applicants should bring any conceptual plans, studies or information on the property and/or development proposal to this meeting.

(b) Procedure for Processing Exemptions

(i) Completeness

[1] Upon receipt of an application for DRI Exemption, the Executive Director or his/her designee shall determine whether the application is complete within 14 calendar days of receipt of the application by the Clerk.

[2] If the Executive Director or his/her designee determines that the application for DRI Exemption is not complete, the Commission shall so notify the Applicant with a statement indicating that the application is not a complete application and the reasons therefore. A Substantive Public Hearing shall not be scheduled until the application is deemed complete.

[3] If the Executive Director or his/her designee determines that the application for DRI Exemption is complete, the Commission shall schedule a Substantive Public Hearing and notify the Applicant or his/her representative, the town clerk and the building inspector of the Municipality(ies) in which the development is located, the DRI Liaison, the Municipal Agency(ies) before which any development permits are pending, and the property owner listed on the relevant application(s), that the Commission has accepted such application. Such notification shall include the date on which the Commission determined the application was complete.

(ii) Timeframes

[1] As required by Section 12(k) of the Act, the Commission shall hold and complete a public hearing to consider a complete application for DRI Exemption within 45 days after the date on which the application was deemed complete. The Committee on Planning and Regulation or other subcommittee is authorized to review the proposed development, conduct public hearings, assemble the record, and make a recommendation to the Commission. The RPP and associated technical bulletins applicable to the Commission review of the proposed

development shall be those in effect on the date of the first Substantive Public Hearing.

(iii) Notice
The Commission shall provide notice of public hearings to consider a completed application for a DRI Exemption in accordance with Section 12(a).

(iv) Decisions
The Commission shall issue a written finding as to significant impacts of the proposed development within 21 calendar days of the close of the public hearing and shall issue a decision as to whether the DRI Exemption is granted. The Clerk shall file and record decisions in accordance with Section 12(b).

(v) Expiration
Any DRI Exemption granted by the Commission shall expire 3 years from the date of its issuance and its scope shall be strictly construed.

(vi) Failure to Pay Fee
Failure of an Applicant to pay the entire filing fee specified in Section 16, Schedule of Fees, will result in a determination that the DRI Exemption application submittal is incomplete. No Substantive Public Hearing will be held to consider an incomplete application pursuant to Section 8(b)(i).

(vii) Withdrawal of Application
An Applicant may withdraw an application for a DRI Exemption from consideration by the Commission at any time prior to a Commission vote as long as such withdrawal is in writing and is approved by the Commission with respect to form and content. Failure to withdraw in a manner approved by the Commission may result in a procedural denial of the Exemption application, pursuant to Section 15.

(viii) Certificates of Compliance
Prior to issuance of a Certificate of Use and Occupancy by the Municipal Agency, and 30 days prior to completion of the work exempted under this section, the Applicant shall file a written request with the Commission for a final Certificate of Compliance. The Commission may enter and inspect the property that has been granted a DRI Exemption at reasonable times and with reasonable notice to determine consistency with said DRI Exemption. Within 30 days of such inspection, the Commission shall issue a final Certificate of Compliance if the project is built in accordance with the DRI Exemption. The Municipal Agency shall not issue a Certificate of Use and Occupancy until the Commission issues its final Certificate of Compliance. If no Certificate of Use and Occupancy is required under local regulations, the Applicant shall not use and/or occupy the project until the Commission issues its final Certificate of Compliance. The Commission may also from time to time issue other certificates at key stages of the development. All outstanding fees due the Commission shall be paid prior to issuance of a Certificate of Compliance.

SECTION 9: DEVELOPMENTS OF REGIONAL IMPACT (DRI) HARDSHIP EXEMPTIONS

Any Applicant may apply to the Commission for a DRI Hardship Exemption from Commission review of a proposed project, including a Project of Community Benefit. In accordance with Section 23 of the Act, the Commission may grant an Exemption, in whole or in part and with appropriate conditions, where it specifically finds that:

(i) a literal enforcement of the provisions of the Act would involve substantial hardship, financial or otherwise; and
(ii) desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Act.

Projects should comply to the maximum extent feasible with the Minimum Performance Standards of the RPP. Any relief granted from the requirements of the Minimum Performance Standards shall relate directly to the nature of the identified hardship and shall be the minimum relief necessary to address the hardship. The burden shall be on the Applicant to show that a hardship exists.

(a) Procedure for Filing Hardship Exemptions

(i) An Applicant seeking a DRI Hardship Exemption must file a completed application, in accordance with the relevant application form and attachments, as amended, as referred to in Section 2 of the Administrative Regulations. Any Applicant for a DRI Hardship Exemption shall file a true copy of the deed(s) or other instrument(s) of record showing ownership of the property that is the subject of the application. If the Applicant is not the owner, the owner of record of the property must endorse and acknowledge the application in writing.

(ii) An Applicant requesting a DRI Hardship Exemption shall file an application at an application-filing appointment. This appointment shall be scheduled at least five business days in advance with the Chief Regulatory Officer or his/her designee. Application packages submitted will not be accepted at this appointment unless they contain the application cover sheet and its required filing materials. A pre-application meeting between the Applicant and Commission staff is strongly encouraged prior to filing of development plans at the local level to discuss the application requirements and the DRI Hardship Exemption review process. Applicants should bring any conceptual plans, studies or information on the property and/or development proposal to this meeting.

(b) Procedure for Processing Hardship Exemptions

(i) Completeness

[1] Upon receipt of an application for Hardship Exemption, the Executive Director or his/her designee shall determine whether the application is complete within 14 calendar days of receipt of the application by the Clerk.

[2] If the Executive Director or his/her designee determines that the application for Hardship Exemption is not complete, the Commission shall so notify the Applicant with a statement indicating that the application is not a complete application and the reasons therefore. A Substantive Public Hearing(s) shall not be scheduled until the application is complete.

[3] If the Executive Director or his/her designee determines that the application for Hardship Exemption is complete, the Commission shall schedule a public hearing and notify the Applicant or his/her representative, the town clerk and the building inspector of the Municipality(ies) in which the development is located, the DRI Liaison, the Municipal Agency(ies) before which any development permits are pending, and the property owner listed on the relevant application(s), that the Commission has accepted such application. Such notification shall include the date on which the Commission determined the application was complete.

[4] Commission staff will identify the key areas of concern raised by the project and may suggest additional studies to be performed by the Applicant (e.g., traffic, nutrient loading, etc.) identifying impacts and required mitigation associated with the project. Commission staff will attempt to limit the scope of additional studies to those key areas of concern. Should the Applicant disagree with the staff's recommendation, he or she may request a meeting with the staff and the project subcommittee or Hearing Officer to discuss submission requirements. The determination of the subcommittee or Hearing Officer shall be final.

[5] Applicants shall provide requested information in a timely manner. A timely manner means that information must be submitted to the Commission at least 14 calendar days in advance of a meeting or hearing. The Commission or its designee may postpone consideration of information submitted less than 14 calendar days prior to a scheduled meeting or hearing. Failure to submit the required information in a timely manner may result in procedural denial of the project, pursuant to Section 14.

(ii) Timeframes

The Commission shall hold and complete a public hearing to consider a complete application for Hardship Exemption according to the timeframes as set out by Section 7(c)(v) of these regulations. The Commission may delegate to the Regulatory Committee or other subcommittee the responsibility to review the proposed development, conduct public hearings, assemble the record and make a recommendation to the Commission. The RPP and associated technical bulletins applicable to the Commission review of the proposed development shall be those in effect at the date of the first Substantive Public Hearing.

(iii) Notice

The Commission shall give notice of a public hearing to consider a complete application

for Hardship Exemption in accordance with Section 12(a).

(iv) Findings and Decisions

[1] – The Commission may waive or modify application of one or more of the Minimum Performance Standards for Hardship Exemptions, including Projects of Community Benefit, where:

(a) such relief granted shall be related directly to the nature of the identified hardship and shall be the minimum relief necessary to address the hardship; and
(b) any relief granted shall not nullify or substantially derogate from the intent and purposes of the Act; and
(c) any relief granted shall not result in a substantial detriment to the public good.

In determining whether a project may result in substantial detriment to the public good or whether it may nullify or substantially derogate from the intent of the Act, the Commission shall consider the extent of a project's compliance with the Act, RPP, municipal development bylaws, Local Comprehensive Plan, and, if applicable, compliance with the purposes of a District of Critical Planning Concern (DCPC) as contained in DCPC nomination and/or designation documents.

[2] Project of Community Benefit Hardship Exemption - The Commission may consider whether the proposed project is a Project of Community Benefit (POCB) as defined under Section 1(c) hereof, and accordingly grant a Hardship Exemption. In order for a POCB to be granted relief under a Hardship Exemption, the Applicant must demonstrate the project's need within and benefit to the community and specifically the difficulty full compliance with Minimum Performance Standards would entail.

The Commission may grant a Hardship Exemption to a proposed POCB. In determining the extent of relief, if any, to be granted, the Commission shall consider:

(a) whether the proposed project is a POCB as defined under Section 1(c) hereof;
(b) the extent to which full compliance with the Minimum Performance Standards would constitute a hardship by diminishing the community benefit(s) to be conferred;
(c) the minimum extent of relief needed to address the hardship; and
(d) whether any relief granted would nullify or substantially derogate from the intent and purposes of the Act or result in a substantial detriment to the public good.

[3] If at any point the use of the development is proposed to be changed or expanded, the applicant or subsequent owner or operator shall file a modification request with the Commission in accordance with Section 13. Any relief granted as part of the original Hardship Exemption may be modified within the Commission's discretion as part of such modification request to require additional or full compliance with the Minimum Performance Standards if the Commission finds that the basis for the original Hardship Exemption has changed.

(v) Decisions
The Commission shall issue a written finding within 60 calendar days of the close of the public hearing and shall issue a decision as to whether the Hardship Exemption is granted, provided, however, that said 60-day period may be extended by mutual agreement of the Applicant and the Commission.

The Clerk shall file and record decisions in accordance with Section 12(b) of the Enabling Regulations.

(vi) Expiration
Any Hardship Exemption granted by the Commission shall be valid and effective for seven years from its date of issuance, unless a shorter time period is specified in the decision, and its scope shall be strictly construed.

(vii) Transferability
The Commission may limit the transferability of any Hardship Exemption granted by the Commission as a condition of approval.

(viii) Failure to Pay Fee
Failure of an Applicant to pay the entire filing fee specified in Section 15, Schedule of Fees, will result in a determination that the Hardship Exemption application submittal is incomplete. No Substantive Public Hearing will be held to consider an incomplete application, pursuant to Section 9(b)(i). Pursuant to Section 15, a procedural denial of the proposed development may result if such fee is not paid by the close of the 90-day public hearing period.

(ix) Withdrawals
An Applicant may withdraw an application for a Hardship Exemption from consideration by the Commission at any time prior to a Commission vote as long as such withdrawal is in writing and is approved by the Commission with respect to form and content. Failure to withdraw in a manner approved by the Commission will result in a procedural denial of the Exemption application.

(x) Certificates of Compliance
Prior to issuance of a Certificate of Use and Occupancy by the Municipal Agency, and 30 days prior to completion of the work exempted under this section, the Applicant shall file a written request with the Commission for a final Certificate of Compliance. The

Commission may enter and inspect the property that has been granted a DRI Hardship Exemption at reasonable times and with reasonable notice to determine consistency with said DRI Hardship Exemption. Within 30 days of such inspection, the Commission shall issue a final Certificate of Compliance if the project is built in accordance with the DRI Hardship Exemption and all conditions have been met. The Municipal Agency shall not issue a Certificate of Use and Occupancy until the Commission issues its final Certificate of Compliance. If no Certificate of Use and Occupancy is required under local regulations, the Applicant shall not use and/or occupy the project until the Commission issues its final Certificate of Compliance. The Commission may also from time to time issue other certificates at key stages of the development. All outstanding fees due the Commission shall be paid prior to issuance of a**ny** Certificate of Compliance.

SECTION 10: JURISDICTIONAL DETERMINATIONS

Any Municipal Agency or Applicant for a development permit, whose application has not been referred to the Commission by a Municipal Agency or taken up by the Commission for review under Section 12(h) of the Act, may apply to the Commission for a Jurisdictional Determination as to whether a development is not a Development of Regional Impact (DRI) under the Act, and as to whether the development is exempt from Commission review under Section 22 of the Act. The burden shall be on the Applicant to show that the project is not a DRI.

(a) Procedure for Applying for Jurisdictional Determinations

(i) An Applicant or Municipal Agency requesting a Jurisdictional Determination must file a complete application, in accordance with the relevant application form and attachments, as amended, as referred to in Section 2 of the Administrative Regulations.

(ii) An Applicant requesting a Jurisdictional Determination should file a complete application at an application-filing appointment. This appointment should be scheduled at least five business days in advance with the Chief Regulatory Officer or his/her designee. Application packages submitted will not be accepted at this appointment unless they contain the application cover sheet and its required filing materials. A pre-application meeting between the Applicant and Commission staff is strongly encouraged prior to filing development plans at the local level to discuss the application requirements and the Jurisdictional Determination process. Applicants should bring any conceptual plans, studies or information on the property and/or development proposal to this meeting.

(b) Procedure for Processing Jurisdictional Determinations

(i) Completeness

[1] Upon receipt of an application for a Jurisdictional Determination, the Executive Director or his/her designee shall determine whether the application is complete within 14 calendar days of receipt of the application by the Clerk.

[2] If the Executive Director determines that the application for a Jurisdictional Determination is not complete, the Commission shall so notify the Applicant with a statement indicating that the application is not a complete application and the reasons therefore.

[3] If the Executive Director determines that the application for a Jurisdictional Determination is complete, then the Commission shall accept the application for a Jurisdictional Determination. The Commission shall notify the person submitting the application, the town clerk, the Regulatory Liaison and the building inspector of the Municipality(ies) in which the development is located, the Municipal Agency(ies) before which any development permits are pending, and the property owner listed on the relevant application(s), that the Commission has accepted such application. Such notification shall include the date on which the Commission determined the application was complete, notice of the date, time, and place of the public hearing to consider the application, and a statement that copies of the application are available for public inspection at the Commission's offices during normal business hours.

(ii) Timeframes
The Commission, or a Commission subcommittee, shall hold a public hearing to consider a complete application for a Jurisdictional Determination and shall make a determination as to the applicability of the Act to the proposed development within 21 calendar days after the date on which the Commission accepted the complete application, as required by Section 12(j) of the Act. The Commission or its designee shall make a written decision following this determination. The Commission may delegate to the Committee on Planning and Regulation or other subcommittee the responsibility to review the proposed development, conduct hearings, assemble the record, and make a recommendation to the Commission. The Commission may also delegate to the Committee on Planning and Regulation or subcommittee the authority to make a final determination on a Jurisdictional Determination. When the Commission will not meet in time to make such delegation, the Chair of the Commission is authorized to make this delegation and the Commission staff will report such delegation to the Commission at its next meeting.

(iii) Notice
The Commission shall provide notice of a public hearing to consider a complete application for a Jurisdictional Determination in accordance with Section 12(a).

(iv) Decisions
The Clerk shall file and record decisions in accordance with Section 12(b).

(v) Applicability
The issuance of a determination of non-applicability shall be final unless, within 60 days of issuance, the Commission's review of the proposed development as a DRI is initiated under Section 12(e) of the Act. If the Secretary determines that an Environmental Impact Report (EIR) is required, then the determination of non-applicability shall be null and void and the project will be deemed to be a DRI. The Applicant may, upon request to the MEPA Unit, obtain a determination of whether the proposed development will be required to file an Environmental Notification Form (ENF) under MEPA. State agency

projects for which an ENF is required may be deemed to be a DRI. State agency projects for which an EIR is required shall be deemed to be a DRI.

(vi) Failure to Pay Fee
Failure of an Applicant to pay the entire filing fee specified in Section 16, Schedule of Fees, will result in a determination that the Jurisdictional Determination application submittal is incomplete. No Substantive Public Hearing will be held to consider such incomplete application, pursuant to Section 10(b)(i).

(vii) Withdrawals
An Applicant may withdraw an application for a Jurisdictional Determination from consideration by the Commission at any time as long as such withdrawal is in writing and is approved by the Commission or in the instance where the Commission will not meet in time to accept said withdrawal, approval by the Chair of the Commission, with respect to form and content. An Applicant who has withdrawn an application from Commission review shall be charged the filing fee listed in the Schedule of Fees in Section 16.

SECTION 11: EMERGENCY WORK

(a) In an emergency situation where immediate action is necessary to protect the health and safety of the public, a Municipal or state agency may make a determination that work on a development is of an emergency nature, and may issue a development permit for work that would otherwise ordinarily require referral to the Commission as a Development of Regional Impact (DRI).

(b) A Municipality or state agency must make a site inspection before issuing a determination that work is of an emergency nature and requires a development permit without DRI approval. The determination must include a description of the work that is allowed on an emergency basis and may not include any work beyond that necessary to abate the emergency.

(c) Work on a development to abate an emergency shall not extend more than 30 days after the occurrence of the emergency unless written approval from the Commission has been obtained by the Municipality, the state agency, or the owner of the development.

(d) Notification of the determination of emergency shall be made by the Municipality or state agency by telephone immediately if it is issued during normal business hours, or otherwise or in the case of holidays on the next working day, to the Executive Director. Notification may also be made by facsimile machine transmission. A copy of the determination of emergency and of any development permit(s) issued thereunder shall forthwith be delivered to the Commission.

(e) The Commission shall provide for review of emergency determinations in accordance with the following procedures:

(i) Upon receipt of the copy of the determination of emergency or of the development permit(s) issued, the Executive Director shall forthwith notify the Committee on Planning and Regulation.

(ii) Within five business days of notification, the Committee on Planning and Regulation shall convene to review the determination of emergency and the development permits issued thereunder. The Committee on Planning and Regulation shall have the authority to stay the work until the next regularly scheduled meeting of the full Commission.

(iii) At its next regularly scheduled meeting, the Commission shall review the Emergency Work Determination and any development permit(s) issued thereunder. If the Commission orders the work to be stayed, it shall issue its orders in writing.

(f) The Commission may on its own or by the request of any Person, review an Emergency Work Determination and any development permit(s) issued thereunder. This review shall not stay the work unless the Commission, in writing, specifically so orders.

SECTION 12: NOTICING, DECISIONS AND APPEALS

(a) Noticing

(i) Developments of Regional Impact (DRI)
The Commission shall provide notice of public hearings for DRIs subject to the timeframes listed in Section 7(c)(v) in accordance with Sections 5(a) and 5(d) of the Act as follows:

[1] by publication in a newspaper of general circulation throughout Barnstable County, once in each of two successive weeks, the first publication to be not less than 14 calendar days before the day of the hearing;

[2] the Commission may also publish a courtesy hearing notice in a second newspaper of general circulation in the municipality(ies) in which the DRI is located.

[3] by posting notice in a conspicuous place in the Commission's offices not less than 14 calendar days before the day of the hearing;

[4] by making copies of all documents subject to notice and hearing available for public inspection at the Commission's office during normal business hours;

[5] by mailing notice at least 14 calendar days before the day of the hearing to the Assembly of Delegates, County Commissioners, Board of Selectmen/Town Council, town clerk, building inspector, planning board, board of appeals and conservation commission of each Municipality in which the proposed project or a portion thereof is located, to any other town agency which makes a written request for such notice and to the Governor's committee;

[6] by mailing notice at least 14 calendar days before the day of the hearing to the Applicant and to each abutter to the proposed DRI, based on a list of abutters provided by the Applicant and certified by the tax assessor of the Municipality or Municipalities in which the DRI or a portion thereof is located. Abutters shall include owners of land directly opposite on any public or private street or way and owners of land located within 300 feet of any boundary of the proposed project; and

[7] by mailing notice at least 14 calendar days before the day of the hearing to any person who makes a written request for notification relating to specific geographic areas of Barnstable County, provided such written request has been received by the Commission at least 20 calendar days but not more than two years before mailing of such notice.

(ii) DRI Exemptions, DRI Hardship Exemptions and Limited DRI Review
The Commission shall provide notice of public hearings for DRI Exemptions, DRI Hardship Exemptions and Limited DRI Review in accordance with all but Section [2] of the requirements of Section 12(a)(i) above.

(iii) Jurisdictional Determinations
The Commission shall provide notice of public hearings for Jurisdictional Determinations in accordance with all but Sections [2] and [6] of the requirements of Section 12(a)(i) above.

(iv)The Applicant, except a Municipality, shall bear the cost of providing notice of the Commission public hearing that are required by this section. The fee for publishing notice of a public hearing is specified in the Schedule of Fees as provided in Section 16.

(b) Filing and Recording of Decisions

(i) The Commission shall file its written decisions with the Clerk and by certified mail with the Applicant, the town clerk, and the building inspector of the Municipality(ies) in which the proposed development is proposed, and by mail with the Municipal Agencies and the DRI Liaison of the Municipality(ies) in which the proposed development is located. The written decision that the Commission files may include a copy of the plan of the proposed development that was the subject of a decision of the Commission.

(ii) Notices of such decisions shall be published in a newspaper of general circulation in Barnstable County, including 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 its written decisions in its official publication, The REPORTER, as required by Section 5(i) of the Act.

(iii)The Commission shall issue a decision in a form suitable for recording in the Barnstable County registry of deeds. The decision shall be recorded in the Barnstable County registry of deeds after the appeal period has elapsed and no appeal has been filed or, if such appeal has been filed, after it has been dismissed or denied. The Commission shall retain proof of such recording, including the recording information (either book and page or instrument number, date and time). No development (as the term is defined in the Act) shall begin on a proposed Development until the decision has been recorded. The Applicant shall bear the expense of recording and shall provide to the Clerk all information necessary to effectuate the recording of the decision.

(c) Appeals

All appeals of Commission DRI decisions shall be made in accordance with the provisions of Section 17 of the Act.

SECTION 13: MODIFICATIONS TO APPROVED PROJECTS

(a) Filing Requirements and Procedure for Filing

(i) An Applicant who has obtained a favorable decision from the Commission or a successor in interest to a favorable and transferable Commission decision may apply for a decision modification.

(ii) Applicants shall file a written request with the Commission seeking a meeting with the Committee on Planning and Regulation for consideration of a modification request. Such written request shall include the name and Commission file number of the approved project, copies of all local approvals for the project, and any other information, including plans showing the proposed modification, if applicable, which the Applicant deems relevant to the requested modification. The Commission staff will place the modification request on the Committee on Planning and Regulation's schedule as soon as practicable.

(iii) Any and all modifications to findings and conditions of an approved Development of Regional Impact shall be processed through this section.

(b) Procedure for Processing

(i) Proposals for revisions to approved Developments of Regional Impact (DRI), DRI Exemptions and Hardship Exemptions shall be reviewed by the Commission's Committee on Planning and Regulation, at a public meeting, to determine which modification category listed in Section 13(c) is applicable to the proposed modification.

(ii) When making its determination, the Committee on Planning and Regulation shall consider the following factors: proposed Changes of Use; changes to the site plan; changes to impacts to resources protected by the Act and/or the Regional Policy Plan (RPP); changes in the number or character of units, floor area or outdoor commercial

area; changes to architectural design or building facade; changes to the findings or conditions of the Commission's original decision; and, other factors that the committee deems relevant to the determination.

(iii) Following the Committee on Planning and Regulation's determination, the Commission or Committee on Planning and Regulation shall issue a written modification decision.

(c) Modification Categories
The Executive Director shall determine which of the following categories apply to each modification request:

(i) Minor Modification #1
Includes revisions that are a result of more restrictive conditions imposed by a local board or technical corrections or changes that the Executive Director or his/her designee determine are de minimus changes to the project. Such Minor Modifications shall be approved by the Executive Director or his/her designee and reported to the Regulatory Committee and do not require further review by the Commission. The Executive Director shall issue a written determination to that effect and send copies to the Applicant, Municipal Agency and the town clerk, building inspector and DRI Liaison of the Municipality(ies) in which the proposed development is located. Upon the approval of a Minor Modification #1, the project proponent may apply for, and Municipal Agencies may issue, local development permits consistent with the approved modification. Minor Modifications #1 shall be governed by the RPP in effect at the time of the original approval.

(ii) Minor Modification #2
Includes a substantially similar proposal to the original project but involves a minor Change of Use, a minor change to the site plan, or small change to the findings or a condition of the original approval which does not affect the intent or outcome of the finding or condition. A proposed change shall not result in different or increased impacts to the resources protected by the Act and/or the RPP. Such a minor modification may be approved by the Committee on Planning and Regulation and does not require further review by the Commission. The Committee on Planning and Regulation shall issue a written decision and send copies to the Applicant, Municipal Agency and the town clerk, building inspector and DRI Liaison of the Municipality(ies) in which the proposed development is located. Upon the Committee on Planning and Regulation's approval of a Minor Modification #2, the project proponent may apply for and Municipal Agencies may issue a local development permit consistent with the approved modification. Minor Modifications #2, as determined by the Regulatory Committee, shall be governed by the RPP in effect at the time of their original approval.

(iii) Major Modification
Includes a similar proposal to the original project but involves a major Change of Use or changes to the site plan, findings, or conditions of the original approval, any of which

would result in different or increased impacts to the resources protected by the Act and/or the RPP. Major Modifications may be limited to those subject areas where different or increased impacts have been identified. The Committee on Planning and Regulation shall specify the scope of the DRI review in its decision.

Major Modifications shall be reviewed by the Commission or its designee. Proposed Major Modification applications shall be submitted to the Clerk and shall proceed through the DRI review or DRI Exemption review process consistent with Sections 12, 13 or 23 of the Act, as applicable, and the Commission's regulations.

[1] Major Modifications to approved DRIs shall be reviewed by the Commission or its designee for consistency with Section 13(d) of the Act including consistency with the RPP in effect at the time of the opening of the public hearing on the modification request. If the applicant fails to proceed continuously and expeditiously through the DRI review process the Commission reserves the right to review the proposal for compliance with a subsequent RPP.

[2] Major Modifications to approved DRI Exemptions and Hardship Exemptions shall be reviewed by the Commission or its designee for consistency with Sections 12(k) or 23 of the Act and/or other sections of the Act, as applicable. The Commission shall consider the impacts of the original development proposal together with the impacts of the proposed modification, taking into account any mitigation already provided. If the rationale for granting the original Exemption no longer exists, the proposed modification shall be reviewed as a DRI per Sections 12 and 13 of the Act. Such modifications shall be reviewed for consistency with the RPP in effect at the time of the opening of the public hearing on the modification request. If the applicant fails to proceed continuously and expeditiously through the DRI or Exemption review process the Commission reserves the right to review the proposal for compliance with a subsequent RPP.

[3] Major Modifications that involve a Change of Use shall be subject to DRI review following a determination by the Committee on Planning and Regulation or its designee that the project would cause more detrimental impacts on any of the resources protected by the Act and RPP than those of the immediate prior use. However, the scope of the DRI review may be limited to those subject areas where impacts are significantly increased. The Committee on Planning and Regulation or its designee shall specify the proposed scope of the DRI review in its determination.

(iv) New Project

Includes a substantially different proposal compared to the original project. Such proposals shall not be considered a modification but instead shall be considered a new

DRI or Exemption submittal. New Projects shall be reviewed by the Commission or its designee. Proposed New Projects shall be submitted to the Clerk and shall proceed through the DRI review or Exemption review process consistent with Sections 12, 13 or 23 of the Act, as applicable**,** and the Commission's regulations. Any project that itself meets or exceeds the standards and criteria for DRI review set forth in Section 3 shall be considered a new DRI. New DRIs shall be reviewed for consistency with the RPP in effect at the time of the opening of the public hearing on the new DRI application. If the applicant fails to proceed continuously and expeditiously through the DRI review process the Commission reserves the right to review the proposal for compliance with a subsequent RPP.

(d) Applicants for projects that are determined to be Minor Modifications under Sections 13(c)(i) and 13(c)(ii) above shall file revised plans with the Clerk for recording at the Barnstable County registry of deeds. The applicant shall be responsible for all filing fees at the registry of deeds.

(e) The approval of a modification under Sections 13(c)(i - iii) shall not extend the seven-year time period of validity of the originally issued DRI or Hardship Exemption approval, nor shall it extend the time period of validity for DRI Exemptions with respect to the issuance of local development permits in reliance on said approval.

SECTION 14: DEVELOPMENTS ON LOCATIONS SUBJECT TO PRIOR DRI DECISIONS

The proponent of a proposed development or portion of development as that term is defined by the Act that does not meet or exceed any of the thresholds identified in sections 2(d) or 3, has not been referred in conjunction with section 2(b), and which was subject to a prior Cape Cod Commission Development of Regional Impact decision for which the DRI permit has expired and for which no conditions are applicable or remain outstanding, may seek a certification from the Committee that the proposed development does not require DRI review is not a DRI. The Chief Regulatory Officer or his/her designee shall advise the Committee whether a proposed development meets or exceeds a DRI threshold, whether the DRI permit has expired, and whether there remain outstanding any applicable conditions from a prior decision; if neither predicate applies, such a development is eligible for a certificate pursuant to this section. If the Committee on Planning and Regulation finds that the proposed development substantially complies with the minimum performance standards of the RPP and has no significant adverse impact upon the purposes and values identified in Section One of the Act, the Committee may authorize such a certificate.

Upon making this finding, the Committee on Planning and Regulation may authorize the Executive Director to issue a certificate in recordable form that the proposed development is not a DRI. The certificate shall describe the proposed development in specific detail or by schematic plans attached to the certificate. If the Regulatory Committee finds the proposed development involves substantial deviation from the RPP and significant impact upon the purposes and values

identified in Section One of the Act, the development shall be reviewed as a DRI and shall be eligible for limited review as a DRI pursuant to Section 5 of these regulations.

SECTION 15: PROCEDURAL DENIALS

(a) Developments of Regional Impact (DRI), DRI Exemption and DRI Hardship Exemption requests may be procedurally denied, without prejudice, when one or more of the following occur:

(i) the Applicant fails to submit a complete DRI application;

(ii) the Applicant will not sign an extension agreement to extend the Commission's 60-day DRI decision time or other administrative deadline for the purpose of submitting additional information requested by the Commission pursuant to Section 12(g) of the Act;

(iii) the Applicant fails to submit information requested by a Commission subcommittee or Hearing Officer in a timely manner;

(iv) the Applicant is participating in the voluntary Joint Review Process before MEPA and the Commission, and the applicant fails to submit information requested by the Commission or its subcommittee or a Hearing Officer and/or fails to submit information requested by the Secretary in a timely manner;

(v) other instances where the project fails to progress continuously and expeditiously through required regulatory processes and the Commission determines that a procedural denial without prejudice may be properly granted; or

(vi) the Applicant fails to pay the entire filing fee specified in Section 16, Schedule of Fees.

(b) For the purposes of applying the standards set forth above, the Commission or its designee shall determine a time frame for submission of information in a timely manner on a case-by-case basis.

(c) The Commission shall notify the Applicant in writing of a pending procedural denial and provide the Applicant with an opportunity to address a DRI subcommittee or standing committee regarding the status of the project.

SECTION 16: SCHEDULE OF FEES

(a) Pursuant to Section 6(d) of the Act, the Commission shall charge the following fees:

(i) **Filing Fees**
For all projects, in addition to the fee outlined below, if the Executive Director of the Commission determines that it will require the services of an outside consultant or other additional resources to assist in any aspect of the project evaluation, the project Applicant

will deposit with the Commission an amount of money estimated to cover 100% of these services. If this initial estimate is insufficient to adequately review the project proposal, the applicant will provide the additional funds necessary. Any funds not expended at the conclusion of the review will be returned to the Applicant.

[1] **Development of Regional Impact Applications**:

(a) **Residential Developments** - $10,580 base fee, plus $317 per lot or unit

(b) **Non-Residential Developments**

•Buildings: Fifty-three (53) cents per square foot of gross floor area as defined in Section 1

•Outdoor Space: Fifty-three (53) cents per square foot (including but not limited to outdoor display areas, swimming pools, tennis courts, and miniature golf courses)

* Wind Energy Conversion Facilities (WECF):
1-3 WECF with an output of 250kW up to less than 1MW each: $3,174
1-3 WECF with an output of 1MW or greater each: $9,522
Per WECF over 3: $3,174 per WECF
Not eligible for Fee Reductions in Section (a)(ii)

Other Non-Residential Developments - $10,580 base fee plus:
•Divisions of Land: $317 per lot
•Gravel Pits, Mining and Extraction Activities and Golf Courses: $317 per acre
•Wireless Communication Towers: $53 per linear foot of tower/monopole height above ground level
•Water dependent uses including but not limited to docks, piers and revetments: Twenty-six (26) cents per square foot
•Utilities and other linear development: Fifty-three (53) cents per linear Foot

(c) **Mixed Use Projects** - the applicable residential and non-residential per lot/unit/foot fee set forth above. The residential base fee is not applied to Mixed Use Projects.

(d) **Historic Properties** –
Single Family or Accessory Building - $424
Other - $2,646

(e) **Other** - For other types of land uses not covered above, $10,580 base fee plus (to be determined as needed, based upon similar uses in the fee schedule above.)

(f) **Limited DRI Review** – dependent on number of issue areas to be reviewed (i.e. water, traffic, etc.)
30% of regular DRI review if one issue area
40% of regular DRI review if two issue areas
50% of regular DRI review if three issue areas
100% of regular DRI review if more than three issue areas.

(g) **Discretionary Referral** – fee based on full or limited review fee as described above.

[2] **Limited DRI Determination pursuant to Section 5 of the Enabling Regulations**: $2,646 fee. If Regulatory Committee determines that a full or limited DRI review is required, appropriate review fee shall apply. This base fee may be applied to the full / limited DRI review fee if a DRI review is initiated within six months of the date of the Limited DRI determination.

[3] **Request for Hardship Exemption**:
Fifty percent (50%) of the cost of a full DRI review as required by section 16(a)(i)[1](a-g) above. The Applicant may also request up to an additional 15% reduction in the application fee if it qualifies for at least one of the criteria pursuant to Section 16(a)(ii) below. Should the exemption request be denied, the exemption filing fee may be applied to the full DRI review fee if a DRI review is initiated within six months of the date of the exemption request denial.

[4] **Development of Regional Impact Exemption**:
Fifty percent (50%) of the cost of a full DRI review as required by section 16(a)(i)[1](a-g) above. Should the exemption request be denied, the exemption filing fee may be applied to the full DRI review fee if a DRI review is initiated within six months of the date of the exemption request denial.

[5] **Development Agreements**: Fee shall equal the applicable DRI review fee. The Applicant may request payment in two phases with 50% of the entire fee due upon application and 50% of the entire fee due prior to the Commission noticing a hearing for consideration of execution of a final Development Agreement.

[6] **Request for Jurisdictional Determination**: $1,058

[7] **Modifications** to Approved DRIs and Exemptions as categorized under Section 12 above:

•Minor Modifications #1 -- No fee
•Minor Modifications #2 -- $2,116
•Major Modification #3 -- dependent on number of issue areas to be reviewed (i.e. water resources, traffic transportation, etc.)
30% of regular DRI review if one issue area
40% of regular DRI review if two issue areas
50% of regular DRI review if three issue areas
100% of regular DRI review if more than three issue areas.

[8] **Extensions:** $2,116 per request

(ii) **Reduction in Application Fee** – the Applicant may request that DRI fee, up to a maximum discount of 50% (or up to a maximum discount of 65% total if the Applicant is also applying for a Hardship Exemption), identified in Section 16(a)(i)[1] of these regulations be reduced if:

[1] The development is located in an Economic Center as designated by the Land Use Vision Map – 15% reduction
[2] The project is Redevelopment – 15% reduction
[3] The Applicant provides documentation of non-profit organization status pursuant to 26 U.S.C. §501(c)(3) or charitable trust status – 10% reduction
[4] The project is a division of land for estate purposes or for a conservation donation – 10% reduction

(iii) **Fee for Actual Costs of Publishing and Mailing Notice of Public Hearing**

[1] Public Hearing to Consider a Request for a Jurisdictional Determination
[2] Public Hearing to Consider a Request for a Hardship Exemption
[3] Public Hearing to Consider a Request for a Development of Regional Impact Exemption
[4] Public Hearing to Consider a Development of Regional Impact
[5] Public Hearing to Consider an application for a Limited DRI Determination
[6] Public Hearing to Consider a Development Agreement

(iv) **Fee for Actual Costs of Copying -** Applicant shall submit appropriate number of copies of written material as described in application form. If not submitted, fee of $0.20 per page of text, $5.00 per oversized copy such as map/plan/etc., or actual cost of reproduction will apply.

(v) **Fee for Actual Costs of Recording Documents at the Barnstable County Registry of Deeds/Registry District of the Land Court.**

(vi) **Fee for Post Decision Monitoring Costs** – For projects approved with a requirement for monitoring by Cape Cod Commission staff, a fee based on an estimate of staff time required shall be specified in the final decision.

(vii) **Fee for Establishing an Escrow Agreement/Account** – 1% of the Escrow Fund with a minimum fee of $265 and a maximum fee of $1,058

(viii) The fees established in this section shall be adjusted annually using the Consumer Price Index (CPI). The base period for the adjustment is the year in which this provision becomes effective. The CPI used will be for All Urban Consumers (CPI-U) for the Boston-Brockton-Nashua, MA-NH-ME-CT (Series All Items, Index Base Period 1982-84=100) as determined by the U.S. Department of Labor, Bureau of Labor Statistics (BLS) unless and until major CPI revisions or changes in the CPI index base period are made by the BLS at which time the revised CPI and base period will be used. The revised fee amounts shall become effective on July 1 of each year and shall be rounded to the nearest dollar or cent, as appropriate.

(b) Municipalities within Barnstable County and federal agencies, in those instances where such or federal agency is an Applicant for a proposed development shall be exempt from the fees charged by the Commission. In those instances where such municipality or federal agency is requesting a DRI modification, the modification fee shall be waived.

In the instance where an Applicant is seeking a reduction in the application fee per Section 16(a)(ii) above, the Executive Committee may determine whether the Applicant qualifies for reductions pursuant to Section 16(a)(ii)[3] and [4] above.