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CAPE COD  
COMMISSION

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# **CAPE COD COMMISSION**

## **CHAPTER D**

### **Development Agreement Regulations Governing the provisions for Development Agreements Barnstable County Ordinance 92-1**

(as amended by Barnstable County Ordinance 94-10, 99-5, 99-12, 05-14, 09-09 and 14-04)

November, 2014

# **BARNSTABLE COUNTY ASSEMBLY OF DELEGATES**

**In the Year Two Thousand and Fourteen**

## **Ordinance 14-04**

**To amend the Code of Cape Cod Commission Regulations of General Application Chapter D Development Agreement Regulations to read as follows.**

*BARNSTABLE COUNTY hereby ordains:*

Chapter D: Regulations for the Cape Cod Commission for the purpose of enabling Development Agreements.

### **SECTION 1. General Provisions**

(a) Source of Authority

These regulations of the Cape Cod Commission are adopted pursuant to the authority of Sections 6 and 14 of Chapter 716 of the Acts of 1989, as amended.

(b) Effective Date

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

(c) Definitions

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

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

Local Building Official: The local building inspector or building commissioner for the municipality(ies) in which the proposed development is located.

Clerk: The Clerk of the Cape Cod Commission.

Commission: The Cape Cod Commission

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

Lead Community: When the Commission is not a party and a proposed development agreement involves more than one municipality, the Lead Community shall be the municipality that the involved municipalities agree shall be the Lead Community. Where all involved municipalities cannot agree upon a Lead Community, the Lead Community shall be the municipality having the largest area encompassed by the proposed development.

Qualified Applicant: A person who has a majority legal or equitable interest in the real property which is the subject of the development agreement. A Qualified Applicant may be represented by an authorized agent.

Participating Parties: Those entities who have been selected by a Qualified Applicant to consider a particular Development Agreement, including the Qualified Applicant, and a municipality(ies), and/or a state agency(ies). Unless otherwise provided in a Town's bylaws, a municipality through its Board of Selectmen/ or for the town of Barnstable through its Town Manager, may appoint a negotiating board composed of members of its municipal boards and commissions as the Selectmen/Town Manager believe may best represent their town's interests.

Public hearing: A hearing noticed in accordance with section 5(a) and 5(d) of the Act.

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

## **SECTION 2. Purpose of Development Agreements**

The development agreement is a voluntary, binding contract. It is a tool which may be used by the Commission, municipalities, state agencies and developers to define the scope and substance of the proposed developments. Development agreements have several purposes. For the developer, a development agreement can assure that applicable development review regulations will not change over the necessary construction period. From the public perspective, such assurances encourage the developer to plan comprehensive projects and to provide major infrastructure and public benefits earlier in the project.

Pursuant to Section 14 of the Act, the Commission, Qualified Applicants, municipality(ies), and state agency(ies) may participate in development agreement process. A development agreement is a contract under which the Qualified Applicant agrees to provide certain benefits which contribute to one or more of the following: infrastructure; public capital facilities; land dedication or preservation; fair, affordable housing either on-site or off-site; employment opportunities; community facilities; recreational uses; or other benefits to serve the proposed development, municipality, and county, including site design standards to ensure preservation of community character. The development agreement shall establish the permitted uses, densities, and all other aspects of the development to limit off-site impacts attributable to the development, the duration of the agreement, and any other terms or conditions mutually agreed upon between the Qualified Applicant and all other parties to the agreement. The development as specifically described within an approved development agreement shall not be required to be subject to further Development of Regional Impact review pursuant to section 12 of the Act. A development agreement may contain a provision for Transfer of Development Rights as that term is defined in the Cape Cod Regional Policy Plan, Barnstable County Ordinance 91-6, as amended. A development agreement may provide that the entire development or any phase thereof be commenced or completed within a specified period of time. Until it is duly and fully executed, and the Commission Clerk has issued the certificate described in section five of this ordinance or the Town clerk has issued the certificate described in section 6 (i) of this ordinance,

there is no enforceable right to a development agreement or to any of the benefits, obligation or provisions thereof.

**SECTION 3. Vesting of Development Rights**

A development agreement shall vest land use development rights as described in Section 14(a) of the Act and section 7 of these regulations for the period or periods specified in the agreement. When a municipality is not a party to a development agreement, then land use development rights shall not vest with respect to that town's development bylaws and regulations. When the Commission is not a party to the development agreement, no land use development rights shall vest with respect to the regional policy plan, Commission regulations and decisions and the property shall be subject to subsequent changes in the Commission's regulations and decisions.

**SECTION 4. Who may participate in a Development Agreement**

(a) The Commission, municipality(ies), state agency(ies), and Qualified Applicants may enter into a development agreement.

(b) A Qualified Applicant may choose to participate with:

- (i) the Commission, or
- (ii) the Commission and a municipality or municipalities within which the development is proposed, or
- (iii) the Commission and a municipality or municipalities within which the development is proposed and with a state agency or agencies; or (iv) a municipality or municipalities within which the development is proposed, or
- (v) a municipality or municipalities within which the development is proposed and a state agency or agencies.

Those parties selected to participate are referred to within these regulations as "Participating parties".

(c) A municipality may enter into a development agreement only after: (1) obtaining certification from the Commission that its Local Comprehensive Plan is consistent with the Regional Policy Plan; and (2) adopting a by-law, approved by the Commission, establishing a procedure for negotiating development agreements and authorizing a procedure for execution thereof by the municipality. The Commission shall provide a model development agreement by-law for use by interested municipalities. A development agreement that is inconsistent with local zoning shall require either a zoning amendment to remove the inconsistency or the development agreement shall be approved by the same entity and the same quantum of votes as would be required to amend the zoning bylaws of the Town. Thereupon, any departure from zoning expressly and specifically authorized by the development agreement shall be deemed effective.

**SECTION 5. Procedure for adopting a Development Agreement when the Cape Cod Commission is a party.**

(a) A Qualified Applicant shall file a Notice of Intent to file a Development Agreement application. The Cape Cod Commission Committee on Planning and Regulation shall determine

whether the proposed development is suitable and qualifies for the Development Agreement process. In making this determination, the committee must find that no development permit, as that term is defined by the Act, is pending, and shall also consider the following factors:

- (i) Whether the project would benefit from comprehensive review of the foreseeable and planned development to allow for planning of efficient infrastructure;
  - (ii) Whether the project exhibits two or more of the following characteristics:
    - (a) Involves a large area of development (25 acres or more);
    - (b) Includes multiple uses and/or structures; and
    - (c) Involves multiple properties under control by the same Qualified Applicant;
  - (iii) Whether construction of the project is anticipated to be built in phases over a period exceeding 7 years;
  - (iv) Whether a project has future expansions that are not fully or definitively defined but should be presented up front to avoid segmentation as described in section 2(a)(iii) of the Commission's Enabling Regulations Governing Review of Developments of Regional Impact;
  - (v) Whether a project has received a Final Environmental Impact report, certified as adequate by the Secretary of Energy and Environmental Affairs, if required under sections 61-62(h) of chapter 30 of the Massachusetts General Laws
  - (vi) Whether the Committee on Planning and Regulation has received testimony from any municipal agency (as that term is defined in the Act) in which the proposed development is to be located indicating whether it recommends the proposal as appropriate for a Development Agreement
- (b) (i) The Committee on Planning and Regulation shall make a recommendation to the Cape Cod Commission, which shall vote at a noticed public hearing whether a proposed development is suitable for consideration as a development agreement with the Commission and therefore the Qualified Applicant may proceed with a Development Agreement Application.
- (ii) If the Commission determines that a proposed project is suitable to be the subject of a development agreement, the Qualified Applicant shall have one year from the date of that determination to file a development agreement application with the Commission and to pay the applicable fee in accordance with the Cape Cod Commission Enabling Regulations, Barnstable County Ordinance 90-12, as amended. For good cause shown, the Committee on Planning and Regulation may extend the application period for no more than one year.
- (iii) An applicant shall meet with Commission staff at a pre-application meeting to review the application and its materials prior to its submission.

(c) The Development Agreement Application shall include:

- (i) A fully completed Development Agreement Application Form and its required attachments, including a certified list of abutters, prepared by the Assessors in the town or towns where such abutting land is located, unless such items are waived by the Executive Director or his/her designee;
- (ii) A legal description and a recent survey of the land subject to the agreement and the names of its legal and equitable owners;
- (iii) The proposed duration of the agreement;
- (iv) The development uses currently permitted on the land and development uses proposed on the land, including residential densities, and building densities and height;
- (v) A description of public capital facilities and private infrastructure and facilities that will serve the development, including who shall provide such capital facilities, the date any new facilities will be constructed, and a schedule to assure capital facilities adequate to serve the development are available concurrent with the impacts of the development;
- (vi) A description of any reservation or dedication of land and waters for public purposes, which may include recreational, conservation, agricultural, aquacultural, and historic purposes, or such other public uses which the Commission specifically approves;
- (vii) A description of all local development permits needed for the proposed development of the subject property(ies);
- (viii) A statement acknowledging that the failure of the agreement to address a particular permit, condition, term, or restriction shall not relieve the Qualified Applicant or Participating Parties of the necessity of complying with the law governing said permitting requirements, conditions, term or restriction;
- (ix) A Final Environmental Impact Report, certified as adequate by the Secretary of Energy and Environmental Affairs, if required under sections 61-62h of chapter 30 of the general laws;
- (x) Additional data necessary to assess the impact of the proposed development, as determined by Commission staff at a pre-application meeting.

(d) Within ten business days of certification by Commission staff that a completed application has been filed, the chair will appoint a subcommittee pursuant to Section 4(a)(12) of the Act, to represent the Commission in negotiating a development agreement. The development agreement will be subject, however, to final approval by the Commission. The authorized subcommittee and Participating Parties shall conduct a public hearing to review relevant information on applicable subjects to be reviewed under the Act, the RPP, the LCP and local zoning. The subcommittee and Participating Parties shall receive relevant public testimony to inform their decision. At least one public hearing shall be held in at least one of the municipality(ies) in which the proposed development is located.

(e) When the Development Agreement is being negotiated by the Applicant with both the CCC and a municipality, the Applicant shall meet separately with both the subcommittee and the municipality in a public meeting to identify areas of compliance and noncompliance with regulatory standards applicable to the subjects identified pursuant to subsection (d).

- (i) The subcommittee shall review the proposed development for consistency with the Act, the RPP and the LCP. The subcommittee may recommend and the Commission may approve a development agreement which is inconsistent with the Act or the Regional Policy Plan or a Local Comprehensive Plan if 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 and the interests protected by the Act, RPP or LCP can be advanced or protected by an alternate approach, which shall include appropriate mitigation.
- (ii) The Participating Parties shall review the proposed development for consistency with local zoning, the LCP and applicable state law. A municipality may recommend approval of a development agreement that is inconsistent with that town's development by-laws, provided, however, that such recommendation shall be subject to the amendment of the town development by-laws or the grant of appropriate relief under the town development by-laws to eliminate or excuse such inconsistency.
- (f) The subcommittees and Participating Parties shall meet with the Qualified Applicant in a public meeting so that the subcommittee may make findings with respect to consistency with the Act, the RPP and the LCP, and the Participating Parties may make findings with respect to the local zoning and applicable state law. The subcommittee and Participating Parties shall reconcile any conflicts between the two separate reviews. The subcommittee may request that a draft development agreement be drafted by Commission staff following this meeting for subsequent joint review.
- (g) A draft development agreement shall at a minimum, contain the following:
- 1) A description of the public benefits and improvements, which the Qualified Applicant has agreed to provide as consideration for the Development Agreement;
  - 2) A statement that the Development Agreement shall have the benefit of a freeze of the development standards specified in the Development Agreement for a specified term of years;
  - 3) A statement of compliance with the RPP, the Act, the LCP and local zoning, or in the instance that waivers are granted, a statement of compliance with the standards set forth in section 5(e);
  - 4) A statement that the development agreement shall become effective only following the issuance of a certificate by the Commission Clerk and/or the applicable Town clerk relative to the agreement as provided by section 5 and 6 of these regulations.
- (h) If at any time (including after being remanded), the subcommittee determines that entering into a Development Agreement is no longer in the best interests of the Commission, it shall so inform the Commission which may vote at a public meeting to terminate its participation in the negotiation of a Development Agreement. Prior to taking a vote on such termination, the Commission shall give the Applicant an opportunity to be heard. The Commission may remand the negotiation back to the subcommittee, or vote on the recommended termination. A municipality may terminate its participation in the negotiation of a Development Agreement by majority vote of its Board of Selectmen/or for the Town of Barnstable in writing by the Town Manager to the Commission Clerk. A state agency may give notice of termination of the

negotiation process by letter from its appointed head of agency. A Qualified Applicant may terminate its participation by certified letter, return receipt requested, to the Commission Clerk. Nothing in these regulations shall restrict the Commission or Participating Party(ies) from exercising their rights pursuant to the Act or Barnstable County Ordinance 90-12 as amended.

(i) Once a development agreement has been drafted, the subcommittee and participating parties shall meet in public meeting to review the draft; the subcommittee shall recommend to the Commission whether it should authorize signature of the Development Agreement. The Qualified Applicant shall sign the draft development agreement recommended by the subcommittee to indicate their agreement to enter into the contract, unless otherwise provided in a Town's bylaws. The Commission shall notice and hold a public hearing to consider a development agreement by publication as required by Sections 5(a) and (d) of the Act.

A development which is the subject of an approved Development Agreement shall not be subject to Development of Regional Impact review. The Commission may hold joint hearings with local, state, and/or federal authorities and coordinate its regulatory functions with those agency(ies) pursuant to Section 4(a)15 of the Act.

(j) The Qualified Applicant shall pay the cost of providing notice of the Commission public hearing to consider the proposed development agreement. The fee for publishing notice of a public hearing to consider a development agreement is specified in the Schedule of Fees in the Commission Enabling Regulations, Barnstable County Ordinance 90-12, as amended.

(k) The Commission may authorize a development agreement by a simple majority vote of the Commission members present, so long as a quorum exists. The signature of the Chairman or Vice-Chairman of the Commission, as authorized by such a vote, shall bind the Commission to the development agreement once the agreement is effective.

(l) Following the Commission's approval of a development agreement, that agreement shall be presented to each other Participating Party for its consideration of approval. A municipality may approve a Development Agreement by majority vote of its Board of Selectmen/ or the Town of Barnstable by signature of its Town Manager. The signature of the majority of the Board of Selectmen/Town Manager, as authorized by such a vote, shall bind the municipality to the development agreement once the agreement is effective.

(m) The Commission shall file its approved development agreement with the Clerk of the Commission and with the town clerk(s) of the municipality(ies) in which the development is located. Notices of development agreements shall be published in a newspaper of general circulation in the municipality(ies) in which the development is located, including a brief summary of the contents of the development agreement and a statement of the copies of the development agreement are available for public inspection at the Commission's office during normal business hours. In addition, the Commission shall publish notice of its Development agreement in its official publication required by section 5(i) of the Act.

(n) The Clerk of the Commission shall issue a certificate relative to an approved development agreements in a form suitable for recording in the Barnstable County Registry of Deeds. The

certificate shall state (i) that the appeal period under G.L. c. 249, section 4 has expired without the clerk having received notice that an appeal in the nature of certiorari has been filed, or if such an appeal has been filed, that a final judgment has entered in favor of the Commission; (ii) that the chair or vice chair of the Commission has executed the development agreement as authorized by vote of the Commission; (iii) that a true copy of the development agreement is attached to the certificate; and (iv) that upon the duly authorized execution of the development agreement in the form attached to the certificate by the other parties to the development agreement, the development agreement shall be valid, binding and effective. Upon receipt of the fully executed development agreement, the clerk shall provide and record another certificate, attesting to the full execution thereof. The Commission shall record the Clerk's certificates in the Barnstable County Registry of Deeds. The Qualified Applicant shall bear the expense of recording. A development agreement shall not be effective unless and until the two clerk's certificates have been so recorded.

(o) The Commission shall, by its Enabling Regulations, establish the fees and charges imposed for the filing and processing of each application and document provided for or required under these regulations. State agencies and municipalities that are also a party to the development agreement may also, by separate resolution, establish additional fees and charges to be imposed for the filing and processing of each application and document provided for or required under these regulations.

(p) Any person aggrieved by the Commission's approval or execution of a development agreement may file an appeal in the Superior Court for Barnstable County or in the Land Court pursuant to G.L. c. 249, § 4. The complaint shall also name the Qualified Applicant as a defendant. The plaintiff shall deliver to the Clerk of the Commission notice of the filing of such an appeal and a copy of the complaint before four p.m. on the sixtieth day after the execution of the development agreement on behalf of the Commission. Upon the filing of an affidavit by the Clerk of the Commission with the court attesting that a notice of the filing of an appeal and a copy of the complaint were not delivered to the clerk within the time specified herein, the complaint shall be dismissed with prejudice.

In the event of such a dismissal, the court, in equity, may assess against the plaintiff the Commission's reasonable costs and attorney's fees incurred in any legal proceedings in the same action subsequent to the dismissal.

This means of appeal shall be exclusive.

(q) In the event that any Development Agreement approved by the Commission is the subject matter of any appeal or any litigation, there shall be added to the duration of such agreement a period equal to that from the date of filing of said appeal or the commencement of litigation, whichever is earlier, to the date of final disposition thereof, provided final adjudication upholds the validity of such agreement.

**SECTION 6. Procedure for adopting a Development Agreement when the Cape Cod Commission is not a party.**

(a) The Development Agreement Application shall include:

- (i) A fully completed Development Agreement Application Form or a substantially equivalent form, including a certified list of abutters prepared by the Assessors in the town or towns where the abutters are located;
- (ii) A legal description and a survey of the land subject to the agreement and the names of its legal and equitable owners;
- (iii) The proposed duration of the agreement;
- (iv) The development uses currently permitted on the land, and development uses proposed on the land including residential/population densities, and building densities and height;
- (v) A description of public facilities that will service the development, including who shall provide such facilities, the date any new facilities will be constructed, and a schedule to assure public facilities adequate to serve the development are available concurrent with the impacts of the development;
- (vi) A description of any reservation or dedication of land for public recreation, conservation, agricultural, aquacultural, or historic purposes;
- (vii) A description of all local development permits needed for the development of the land;
- (viii) A statement acknowledging that the failure of the agreement to address a particular permit, condition, term or restriction shall not relieve the Qualified Applicant or Participating Parties of the necessity of complying with the law governing said permitting requirements, conditions, terms, or restriction;
- (ix) A Final Environmental Impact Report, certified as adequate by the Secretary of Environmental Affairs, if required under sections 61-62h of chapter 30 of the general laws;
- (x) Additional data and analysis necessary to assess the impact of the proposed development, as determined by the Municipality or Lead Community.

(b) All Qualified Applicants seeking to enter into a development agreement without the Commission as a party shall submit the proposed development to the Local Building Official for a determination of whether the proposed development qualifies as a Development of Regional Impact. If the Local Building Official determines that the proposed development is not a Development of Regional Impact, the Local Building Official shall forward his or her determination, together with the reasons for such determination and a copy of the development agreement application, to the Clerk within five (5) business days. If the Chief Regulatory Officer or his/her designee determines that the proposed development exceeds a DRI review threshold pursuant to the Act and

the Enabling Regulations, then the project shall be subject to DRI review or the Qualified Applicant should follow the Procedure for adopting Development Agreements as outlined in Section 5 of this ordinance. The Chief Regulatory Officer or his/her designee shall notify in writing the Qualified Applicant, the Local Building Official, and the Town Clerk(s) of the municipality(ies) in which the development is located of his/her decision within ten (10) days of receipt of the Local Building Official's determination.

If the proposed development is not a Development of Regional Impact, then the Qualified Applicant may pursue a development agreement without the Commission as a party pursuant to Sections 6 (c) – (j) below. If the proposed development is a Development of Regional Impact,

then the Qualified Applicant must either obtain a Development of Regional Impact approval prior to entering into negotiations for the agreement or the Commission must be a party to the development agreement, in which case, the provisions of Sections 5(a) – (p) above shall apply.

(c) The municipality which is a party, or when more than one municipality is a party, then the Lead Community shall oversee the development agreement process. The municipality or Lead Community shall hold a public hearing after receipt of a fully completed application from a Qualified Applicant for consideration of a proposed development agreement. At least one public hearing shall be held in at least one of the municipality(ies) in which the proposed development is located. The public hearing regarding review of a development agreement shall not exceed ninety (90) days, unless extended by mutual agreement of the parties. Failure to close the public hearing within ninety (90) days shall not result in a constructive grant of the proposed development agreement.

(d) When more than one municipality is a party to the agreement, the Lead Community shall oversee the development agreement process as specified in these regulations. Conflicts between the Lead Community and other municipality(ies) which are a party to the agreement shall be resolved through negotiation by the relevant parties. The Commission will facilitate such negotiations if asked by the towns involved. Because a development agreement is a voluntary process, unresolved disputes may result in one or more parties making a determination not to remain a party to the negotiation of the proposed development agreement. Parties may choose to terminate participation in the negotiation process as outlined in section 5(g).

(e) The municipality or Lead Community shall provide notice of the public hearing to consider a development agreement by publication as required by section 5(d)(1-3) of the Act, with the exception that the municipality or Lead Community is not required to provide such notice to the Barnstable County Assembly of Delegates, the Barnstable County Commissioners, and the governor's committee. The municipality or Lead Community shall also provide notice to the Commission at least fourteen (14) days prior to such hearing.

(f) The qualified applicant shall pay the cost of providing notice of public hearing to consider the proposed development agreement.

(g) The municipality or Lead Community shall review proposed development agreements for their consistency with local zoning and Local Comprehensive Plans. A development agreement that is inconsistent with local zoning shall require either a zoning amendment or shall be subject to the grant of such zoning relief as may be needed under the zoning bylaws of the Town as may be needed to resolve the inconsistency, unless the development agreement is approved by the same entity and the same quantum of votes as would be required to amend the zoning bylaws/ordinances of the Town. Thereupon, any departure from zoning expressly and specifically authorized by the development agreement shall be deemed effective.

(h) Each town which wishes to approve a development agreement shall do so in the manner provided in such towns' ordinances or by-laws. The municipality or Lead Community shall file its development agreement with the Clerk of the Commission and with the town clerk(s) of the municipality(ies) in which the development is located. Notices of development agreements shall

be published in a newspaper of general circulation in the municipality(ies) in which the development is located, including a brief summary of the contents of the development agreement and a statement that copies of the development agreement are available for public inspection at the town clerk's office during normal business hours of any municipality which is a party to the agreement. In addition, the municipality or Lead Community shall provide the Commission with a summary of the development agreement which the Commission shall publish in its official publication pursuant to section 5(i) of the Act.

(i) The town clerks of the contracting town or towns shall issue a certificate, which certifies the effective date of the development agreement. The certificate shall be issued in a form suitable for recording in the Barnstable County Registry of Deeds. The municipality or Lead Community shall record the certificate, to which the development agreement shall be attached as an exhibit in the Barnstable County Registry of Deeds and shall submit proof of such recording to the Clerk within 14 days of such recording. The Qualified Applicant shall bear the expense of recording.

(j) The municipality or Lead Community may, by separate resolution, establish the fees and charges imposed for the filing and processing of each application and document provided for or required under these regulations. Any other municipality or state agency which is also a party to the development agreement may, by separate resolution, establish additional fees and charges to be imposed for the filing and processing of each application and document provided for under these regulations.

### **SECTION 7. Duration of the Development Agreement**

A development agreement will commence and terminate as agreed by the parties, in writing, except as otherwise provided in this section and section 5(q). When the Commission is not a party, a development agreement shall not exceed ten (10) years, however, provisions in the development agreement pertaining to the preservation of open space and park areas, and agreements to pay for maintenance of utilities and other infrastructure may exceed such ten-year limitation. When the Commission is a party, a development agreement may be adopted for longer than twelve (12) years only upon a two-thirds vote of the Commission members present, so long as a quorum exists. Provisions in the development agreement to which the Commission is a party pertaining to the preservation of open space and park areas, and agreements to pay for maintenance of utilities and other infrastructure may exceed such twelve-year limitation or other duration limitation approved by the Commission. The development agreement may be extended once, by consent of all the parties to the agreement, subject to a public hearing in accordance with Sections 5 and 6 above. In no case shall such extension exceed the duration limitation contained in the original agreement.

### **SECTION 8. Amendment and Rescission**

(a) A development agreement may be amended or rescinded as provided below. Requirements for hearings, notice, costs and filing and recording of the amendments and rescissions of development agreements shall be followed as provided in sections 5 and 6 above.

(b) Modification categories

**1. Minor Modification:**

Amendments that are de minimus changes or technical corrections, as determined by both the Commission and/or the Lead Community, may be made without following the notice and public hearing requirements provided in Sections 5 and 6 above. Such changes may be authorized by the Executive Director of the Commission, a majority vote of the Board of Selectmen or for the Town of Barnstable by signature of its Town Manager, and endorsement of the Head of a State Agency.

**2. Major Modification:**

(i) When the Commission is a party to the development agreement, any party to the development agreement may petition to amend the development agreement. The participating parties may petition to rescind the development agreement; the Commission may petition to rescind the development agreement only in the event of failure of consideration. Such petition shall be made in writing and shall state, in specific detail, the petitioner's reasons for amendment or rescission. The petitioning party shall provide notice to all parties to the development agreement. (ii) When the Commission is not a party to the development agreement, any other party to the development agreement may petition the municipality or Lead Community to amend or rescind the development agreement. The petitioning party shall provide notice to all parties to the development agreement and to the Commission of its intention to amend or rescind the agreement by providing such parties and the Commission with a copy of the petition seeking such amendment or rescission. When the municipality or Lead Community initiates an amendment or rescission, it shall provide notice, in writing, to all other parties to the agreement and to the Commission.

(b) Amendments and rescissions must be ratified by all parties to the original development agreement. Any development agreement may contain provisions further regulating the amendment and/or rescission of a development agreement.

**SECTION 9. Enforcement**

A development agreement is a binding contract, which is enforceable by the contracting parties only and their successors and assigns in the appropriate Massachusetts courts.