



Open Space

This guidance is intended to clarify how the Open Space Goal and Objectives of the Regional Policy Plan (RPP) are to be applied and interpreted in Cape Cod Commission Development of Regional Impact (DRI) project review. This technical bulletin presents specific methods by which a project can meet these goals and objectives.

Open Space Goal: To conserve, preserve, or enhance a network of open space that contributes to the region's natural and community resources and systems.

- ***Objective OS1 – Protect and preserve natural, cultural, and recreational resources***
 - ***Objective OS2 – Maintain or increase the connectivity of open space***
 - ***Objective OS3 – Protect or provide open space appropriate to context***
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The applicability and materiality of these goals and objectives to a project will be determined on a case-by-case basis considering a number of factors including the location, context (as defined by the Placetype of the location), scale, use, and other characteristics of a project.

THE ROLE OF CAPE COD PLACETYPES

The RPP incorporates a *framework for regional land use policies and regulations based on local form and context* as identified through categories of Placetypes found and desired on Cape Cod.

The Placetypes are determined in two ways: some are depicted on a map contained within the RPP Data Viewer located at www.capecodcommission.org/RPPDataViewer adopted by the Commission as part of the Technical Guidance for review of DRIs, which may be amended from time to time as land use patterns and regional land use priorities change, and the remainder are determined using the character descriptions set forth in Section 8 of the RPP and the Technical Guidance.

The project context, as defined by the Placetype of the location, provides the lens through which the Commission will review the project under the RPP. Additional detail can be found in the Cape Cod Placetypes section of the Technical Guidance.



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INTRODUCTION

The vision for the future of Cape Cod is a region of vibrant, sustainable, and healthy communities, and protected natural and cultural resources. Open space is a critical element of achieving this vision.

The open space goal of the RPP is “to conserve, preserve, or enhance a network of open space that contributes to the region’s natural and community resources and systems.” Open space in all its forms provides a wide range of ecosystem services – direct and indirect contributions to human well-being – throughout Cape Cod. Open space preservation will ensure that the values and characteristics that make this place special will be sustained and stewarded for future generations.

Cape Cod is located within the southeastern Massachusetts pine barrens ecoregion, a globally rare habitat type comprised of a unique assemblage of plants and animals that thrive on the region’s nutrient-poor soils and variable climate. Within this ecoregion, a diverse matrix of habitat types — from salt marshes to sandplain grasslands to freshwater wetlands to estuaries — supports 132 state-listed rare plant and animal species and hundreds of additional species that rely on Cape Cod’s habitats year-round, during seasonal migrations, or for breeding. Priorities for protection include high value natural resources, significant wildlife habitat, and areas that protect current and potential future drinking water supply sites.

It is of regional importance to preserve Cape Cod’s cultural heritage, including traditional maritime and agricultural activities, as well as scenic views and community character. Another priority is to provide and preserve access to beaches, parks, walking and bicycling paths, woodland trails, and community gathering spaces. A range of accessible outdoor recreational opportunities throughout Cape Cod will sustain community health and well-being, as well as contribute to tourism-dependent economic activities. Connections between the natural and built environment in more densely developed areas will enhance quality of life and provide additional transportation and recreation options for residents and visitors alike.

With these priorities in mind, the provision of open space is a requirement of DRIs where new development is proposed. The methods, quantity, and form of open space provided will vary from site to site, reflective of Placetype, sensitive resources that may be present, connections to natural and community systems, extent of development

proposed, and context. The open space objectives may be met through the implementation of methods such as, but not limited to, those described on the following pages. This flexible approach to DRI review will allow for a strong correlation between the form and function of open space and Cape Cod's varied natural and community resources and systems.

Guidance on the method for calculating the required open space based on the *area of development impact* (see page OS-14), as well as the applicability of methods by Placetype (see page OS-15), follows within this Technical Bulletin.

SUMMARY OF METHODS

GOAL | OPEN SPACE

To conserve, preserve, or enhance a network of open space that contributes to the region's natural and community resources and systems.

OBJECTIVE OS1 – Protect and preserve natural, cultural, and recreational resources

METHODS

- Protect and preserve high value resources and minimize development footprint
 - Protect lands suitable for future water supply sites
 - Preserve wildlife habitat and unfragmented blocks of open space
 - Preserve the region's agricultural lands and scenic vistas
 - Preserve open space that benefits natural and community systems
 - Provide and enhance recreational opportunities and access to open space
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OBJECTIVE OS2 – Maintain or increase the connectivity of open space

METHODS

- Protect open space contiguous to undeveloped lands or protected open space
 - Preserve wildlife corridors and opportunities for the movement of wildlife
 - Establish, enhance, and connect greenways and recreational trails
-

OBJECTIVE OS3 – Protect or provide open space appropriate to context

METHODS

- Projects must provide protected open space according to Placetype in the ratio indicated in the summary table below.
- Depending on Placetype, the open space requirement can be met by one or a combination of three possible mechanisms as indicated in the summary table below: protection of open space on the project site, protection of high-quality land offsite, or by a cash contribution for the purpose of open space protection within the town.

- Where the following criteria are met, the amount of required open space may be reduced by up to 20%:
 - Where no sensitive resource areas are present, including BioMap2 Core Habitat or Critical Natural Landscapes, rare species habitat, wellhead protection areas, wetlands, waterbodies, vernal pools, floodplain, cultural or historic resources, beaches or dunes, agricultural lands or soils;
 - Higher quality open space is provided than what is impacted by the project, as determined by the number, value, and/or significance of the resources to be protected, and
 - The project is not located within a Natural Area or a Rural Development Area.
- The required open space is calculated based on Area of Development Impact (see page OS-14).

BRIEF SUMMARY OF OPEN SPACE MECHANISMS AND RATIOS SPECIFIC TO PLACETYPE:

The ratios below represent the relative amount of Protected Open Space to Area of Development Impact. The available mechanisms for meeting the Open Space requirement are set forth below.

Natural Areas | 3:1 – provide high-quality open space onsite, or in a Natural Area offsite

Rural Development Areas | 2:1 – provide high-quality open space onsite, or in a Natural Area offsite

Suburban Development Areas | 1:1 – provide high-quality open space, adequate buffers and pedestrian amenities onsite, offsite, or by cash contribution

Historic Areas | 1:1 – provide streetscape improvements and/or pocket park appropriate to context onsite, offsite, or by cash contribution

Maritime Areas | 1:1 – provide streetscape improvements and/or pocket park appropriate to context onsite, offsite, or by cash contribution

Community Activity Centers | 1:2 – provide pocket parks, streetscape improvements and/or public sitting areas onsite, offsite, or by cash contribution

Industrial Activity Centers | 1:1 – provide substantial buffers to development and protect sensitive resources onsite, offsite, or by cash contribution

Military and Transportation Areas | 1:1 – provide substantial buffers to development and protect sensitive resources onsite, offsite, or by cash contribution

DETAILED DISCUSSION OF METHODS FOR MEETING OBJECTIVE OS1

Objective OS1 – *Protect and preserve natural, cultural, and recreational resources*

The following methods may be implemented to demonstrate consistency with Objective OS1.

Protect and Preserve High Value Resources and Minimize Development Impacts

REGIONAL PROTECTION PRIORITIES

The permanent protection of land and resources within the Natural Areas Placetype is a regional priority. High value resources that are priorities for protection on Cape Cod include: BioMap2 Core Habitat, Critical Natural Landscapes, habitat for rare or endangered species, vernal pools and their buffers, Wellhead Protection Areas, potential future drinking water supply sites, lands adjacent to water resources such as lakes, rivers, shoreline, and wetlands, areas that provide a critical function in preserving the integrity and viability of Cape Cod's significant and diverse ecosystems, and large unfragmented blocks of undeveloped land and wildlife corridors.

Additional high priorities for protection or preservation include: historic, cultural, and archaeological resources; regionally significant scenic vistas and roads; agricultural lands; the region's working waterfronts and maritime heritage; and unique landforms.

SITE DESIGN

Projects within all Placetypes should be designed to protect and/or preserve those areas with the highest natural resource value and to ensure that the most sensitive elements of a site are not impacted by development. A Natural Resources Inventory (see Wildlife and Plant Habitat Technical Bulletin) will provide guidance on significant natural resources and characteristics that should be given consideration during site design, including identifying lands that are a high priority for conservation.

On sites where high value natural resources, important wildlife habitat, or other significant resources are not present or do not create site design constraints,

development should be sited close to existing development, roadways, and infrastructure to limit the area of site disturbance.

By limiting impervious surfaces, more land will be left in its natural state, which will provide ecological benefits and may reduce the development footprint. Approaches for minimizing impervious surfaces include reducing paved areas by reducing parking or using asphalt alternatives, or providing some or all of a development's parking requirements under buildings or in multi-level parking structures.

Siting a project outside of Natural Areas will lessen the open space requirement and may also allow for flexibility in how open space is provided.

Protect Lands Suitable for Future Water Supply Sites

Lands identified as future water supply sites are a priority for protection. Ideally, development should not be located in these areas. Permanent protection of land identified as a high priority for protection due to suitability as a future water supply site may allow for a reduction in the open space required. The Water Resources Technical Bulletin provides additional strategies and resources for protecting the region's drinking water supply.

Preserve Wildlife Habitat and Unfragmented Blocks of Open Space

Clustering development will reduce fragmentation of open lands and habitat, which supports healthy ecosystem function, and preserves interior wildlife habitat. For residential subdivisions and commercial subdivision of land, clustering of development is strongly encouraged unless it is inconsistent with local bylaws. The design of cluster residential and commercial developments should preserve natural and community resources, maximize contiguous open space, respect the natural topography and character of the site, and employ wastewater treatment alternatives to allow for more compact development.

Preserve the Region's Cultural Heritage and Community Character

The preservation of the region's rich cultural heritage and community character is supported through flexibility in open space requirements within Maritime Areas and Historic Areas. Provision of public access to and community greenspaces within Historic Areas and Maritime Areas may be proposed as methods for meeting Objective OS1.

The viability and sustainability of working landscapes, including lands in agricultural production and working waterfronts, should be preserved to the greatest extent possible, to support the local economy, preserve Cape Cod's cultural heritage, and provide opportunities to meet some of region's needs locally and sustainably.

If there are regionally significant views within, towards, or across a site, sites should be designed to allow for continued access to those views to the greatest extent possible. The preservation or reestablishment of historic views to water or landscape vistas is encouraged (see also the Community Design Technical Bulletin)

Provide and Enhance Recreational Opportunities and Access

The provision of public access to on-site open space or a designated greenway within the property to off-site publicly accessible open space may be a component of the open space proposal, depending on factors which include whether there is a public benefit, the characteristics of the open space that access is being provided to, and the Placetype context.

The preservation of public access to resource-dependent recreational activities, such as swimming, boating, fishing, and sailing, is a high regional priority. On-site or off-site provision of open space that preserves public access may allow for a reduction in the open space required.

The provision of public access that benefits people of all ages and abilities through the establishment of ADA compliant pathways is also encouraged.

DETAILED DISCUSSION OF METHODS FOR MEETING OBJECTIVE OS2

Objective OS2 – Maintain or increase the connectivity of open space

The following methods may be implemented to demonstrate consistency with Objective OS2.

Protect Open Space Contiguous to Undeveloped Lands or Protected Open Space

In cases where the project site abuts land that has been permanently restricted for conservation or preservation purposes, or where it is adjacent to working landscapes such as lands in active agricultural production, site design should protect contiguous open space. This will expand unfragmented wildlife habitat, buffer development, and support healthy ecosystem function.

Protection of open space that is contiguous to undeveloped land that is not restricted provides for future expansion of the block of unfragmented open space, should the opportunity arise.

The Context Map (see Resources) is a useful resource in identifying contiguous open space that should be taken into consideration during site design.

Preserve Wildlife Corridors and Opportunities for the Movement of Wildlife

By reviewing the habitat types present on the property, as described in the Natural Resources Inventory and the Context Map, significant blocks of wildlife habitat and corridors of connected open space for the movement of wildlife across the landscape can be identified and protected. Topography, existing and proposed land use, and species requirements should be factored in when determining the necessary wildlife corridor width. Preservation of wildlife corridors is required to be factored into the placement of fencing on-site when this method is applicable.

Establish, Enhance, and Connect Greenways and Recreational Trails

The Context Map is a useful tool for identifying existing pathways to water, trails, and/or multi-modal greenways – a linear open space along either a natural corridor or a right-of-way converted to recreational use – on the project site itself and/or on neighboring properties. When designing the site, any greenway connections already existing on the property should be preserved to the greatest extent possible. The establishment of a new multi-modal greenway section across the property, connected to an existing off-site multi-modal greenway, may contribute to meeting any open space requirement in certain Placetypes.

DETAILED DISCUSSION OF METHODS FOR MEETING OBJECTIVE OS3

Objective OS3 – *Protect or provide open space appropriate to context*

The following methods may be implemented to demonstrate consistency with Objective OS3.

DRIs are required to provide open space appropriate to context. The following section addresses identification of open space required, including how to calculate the Area of Development Impact; identifying and incorporating open space appropriate to the Placetype; ensuring that the site design protects lands of high natural resource value and that it benefits natural and community systems; and alternate methods for meeting the open space requirement on an off-site parcel or through a cash contribution.

Calculate Area of Development Impact

The Area of Development Impact is the total undeveloped area on the site anticipated to be impacted by the proposed development (see Definitions for *development*). The project's civil engineer should calculate the square footage of areas disturbed by development activity and provide this on the proposed conditions plan.

In redevelopment projects, landscaped areas adjacent to existing buildings or parking may be considered as already disturbed area and excluded from the Area of Development Impact.

Where land is being subdivided for the purpose of residential, commercial, or other lot development, the Area of Development Impact includes the total undeveloped area proposed to be subdivided and/or developed. This provision encourages the efficient use of land and clustering to reduce overall impacts.

Any open space lot/area preserved in perpetuity as part of the project can be excluded from the Area of Development Impact and may be counted towards the open space protection requirement.

To incentivize reducing impervious surfaces due to parking, provision of some or all of a development's parking under buildings or in multi-level parking structures reduces the Area of Development Impact on a site, which in turn reduces the open space

requirement. On sites with structured parking, reduce the Area of Development Impact by twice the area of the structured parking.

Protect Open Space Appropriate to Context

How a project meets the open space requirement varies by Placetype, but may include the protection of land onsite (required in some areas), protection of land on an offsite parcel (may be the preferred method if the land protected has higher resource-protection value), or provision of a cash contribution to the town's open space acquisition fund. A combination of these methods may also be permitted.

Natural Areas – The permanent protection of high value resources within Natural Areas is a regional priority. Development is discouraged due to the sensitivity of resources present. The Commission presumes that the only way a DRI can meet open space objectives is to permanently restrict land from development in Natural Areas, in a minimum ratio of three parts open space to one part development. In most cases, the open space must be provided on site to meet the interests of protecting resources and the character of the Natural Areas Placetype. Projects located in Natural Areas may provide permanently protected open space offsite if the Commission finds that the interests of resources would be better met than providing protected open space on the project site.

Rural Development Areas – Methods such as clustering development to allow for the permanent protection of a larger unfragmented block of open space are encouraged. The Commission presumes that the only way a DRI can meet open space objectives in Rural Development Areas is to permanently restrict land from development, in a ratio of two parts open space to one part development. In most cases, the open space must be provided on site to meet the interests of protecting resources and the character of the Rural Development Areas Placetype. Projects located in Rural Development Areas may provide permanently protected open space offsite in natural areas if the Commission finds that the interests of resources would be better met than providing protected open space on the project site. An agricultural preservation restriction may be an appropriate approach for preserving active farmland on the project site.

Suburban Development Areas – Required open space in an amount equal to the total area impacted by development may include: on-site protection of significant natural and/or community resources; permanent protection of offsite land in Natural Areas; or

provision of greenspace within the Suburban Development Area community system the project is a part of, such as a pocket park, multi-modal greenway, or recreation area. A cash contribution may also be used to meet the open space requirement.

Historic Areas – Protecting character of historic areas is a priority within this Placetype. Impacts may be mitigated by providing public access to historic features, structures, and/or vistas in order to preserve the community's connection to its historic and cultural heritage. Streetscape improvements appropriate to historic context, pocket parks, or sitting areas, may be considered onsite open space in this Placetype. Permanent protection of offsite open space in a Natural Area or Rural Development Area, or a cash contribution may also be used to meet the open space requirement.

Maritime Areas – Protecting maritime character and coastal access are priorities in this Placetype. Projects should be designed to minimize development impacts on maritime activities and to preserve community character, including providing public pathways to scenic shoreline vistas or working waterfronts. Streetscape improvements appropriate to maritime context, pocket parks, or sitting areas may be appropriate. Permanent protection of offsite open space in a Natural Area or Rural Development Area, or a cash contribution may also be used to meet the open space requirement.

Community Activity Centers – Development with context sensitive design (see Community Design) in Community Activity Centers is strongly encouraged. Parks, multi-modal greenways, streetscape improvements appropriate to context, stormwater management systems that provide significant natural or community benefits, or outdoor community gathering spaces within the associated Community Activity Centers may be considered open space. If high value natural resource areas are impacted, open space onsite, or open space of equal or higher ecological value offsite should be permanently conserved. A cash contribution may also be used to meet the open space requirement.

Industrial Activity Centers – Development in Industrial Activity Centers is strongly encouraged. Multi-modal greenways, streetscape improvements appropriate to context, stormwater management systems that provide significant natural or community benefits, or restoration of degraded lands may meet open space requirements within the associated Industrial Activity Centers. If high value natural resource areas are impacted, open space onsite, or open space of equal or higher

ecological value offsite should be permanently conserved. A cash contribution may also be used to meet the open space requirement.

Military and Transportation Areas – If high value natural resource areas are impacted, open space onsite, or open space of equal or higher ecological value offsite should be permanently conserved. Maintaining adequate buffers between incompatible uses is a priority in designing industrial sites, and quality buffers may be used to meet the open space requirement. Permanent protection of offsite open space in a Natural Area or Rural Development Area, or a cash contribution may also be used to meet the open space requirement.

Protect Open Space of High Natural Resource Value

The protection of open space of high natural, cultural, and/or recreational resource value, including current and potential future drinking water supply sites and areas that contribute to preserving the integrity and viability of Cape Cod's diverse ecosystems is a priority. The presence of rare species habitat, wetlands, and other sensitive resources on-site will affect site design, project review, and open space requirements. Areas of high natural resource value include BioMap2 Core Habitat, Critical Natural Landscapes, habitat for rare or endangered species, vernal pools and their buffers, and Wellhead Protection Areas. The methods outlined in the previous sections provide guidance on preserving unfragmented blocks of undeveloped land, connections with contiguous open space, scenic vistas, landscapes that contribute to community character, working landscapes, wildlife corridors, and habitat for Cape Cod's native flora and fauna.

Preserve Open Space that Benefits Natural and Community Systems

In determining how to incorporate open space into a project, form and function consistent with the natural and community systems context should be taken into consideration. The proposed project must demonstrate how natural and community systems have been factored into site design and proposed open space. The Context Map (see Resources) is a tool for reviewing the site in the context of the systems it is a part of.

The project site should be designed to support and sustain natural and community systems, irrespective of property boundaries. This will allow for a systems-based approach to open space protection, as ecosystems, watersheds, wildlife habitat, multi-

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modal greenways, and other resources extend beyond property boundaries. Applicants should strive to take advantage of opportunities to link on-site and off-site open space to expand the contiguity of open space.

Protection or restoration of key areas which contribute to coastal resiliency support natural and community systems long-term. On-site or off-site provision of open space to improve coastal resiliency is encouraged. The “Coastal Resiliency” section of this technical guidance provides additional strategies and resources for meeting additional Coastal Resiliency objectives.

Based on the characteristics of a specific project and the resources present, the Commission may consider allowing stormwater management systems which incorporate LID principles, protect floodplain function, provide significant flood reduction benefits, or support coastal resiliency to meet open space requirements (see Water Resources and Community Design Technical Bulletins.)

While there is flexibility in how and where open space is provided based on Placetype, open space should benefit natural or community resources and systems to meet the open space requirements. For example, landscaped islands within parking lots, narrow buffers between developed areas, and drainage structures/detention basins may not be counted towards open space requirements.

OFF-SITE OPEN SPACE

As detailed in the summary table, open space may be provided by one of three methods, based on Placetype. In Natural Areas and Rural Development Areas, onsite open space is required, but in other Placetypes open space may be met by one or a combination of onsite, offsite, or cash contribution methods. Offsite open space may be suitable for project sites with low natural resource values, or dependent on the type of development being proposed. The determination of the appropriateness of off-site protection of open space will be made by the Commission in consultation with the Town (including but not limited to planning departments, conservation committees, open space committees, and land trusts), based upon the size and type of development that will be mitigated with open space protection, and the resource values of the proposed off-site location. The Commission will work with the town and local land trusts to help identify appropriate off-site parcels. Open space proposed for off-site

protection should be of equal or higher natural resource value as the land being impacted by development.

In the case of off-site open space protection, development rights on the property must be permanently extinguished and the land may not be used toward the calculation of densities for future development on the subject parcel or any other parcels.

CONTRIBUTE FUNDS FOR OPEN SPACE PROTECTION

In appropriate cases, the commission may allow a DRI to meet the open space requirement through a cash contribution to a town or land trust's open space acquisition fund. This provision allows a community to protect higher value or priority open space off-site and allow for more concentrated development in certain locations. The availability of this option is limited by Placetype (see Summary Table) and based on whether sensitive resources are present and consultation with the Town.

The cash contribution is determined by Commission staff by the following method, utilizing current Town Assessor's data for the town where the project is located:

- extract all residentially zoned developable parcels in excess of two acres,
- determine the per acre value for each of these properties,
- sort by value,
- remove the top and bottom 10 percent of properties, and
- average the remaining properties to calculate the per acre open space value.

The per-acre open space value may be adjusted by a reasonable inflation factor for years where current Assessor's data is not available.

Incorporate Greenspace into the Built Environment

All people on Cape Cod should have access to greenspace in their communities. Projects in more densely developed Placetypes should support the natural and community systems they are a part of by designing sites and providing greenspace in a manner that integrates the built environment through landscape improvements, provides access to outdoor spaces, and enriches community connections. In Community Activity Centers, for example, pocket parks, recreational areas, multi-modal greenways, walking paths shaded by native trees, and community gathering spaces may

be incorporated into the built environment to sustain community health and well-being. (see also the Community Design Technical Bulletin).

Restore Degraded Areas to a Natural State

The restoration of degraded areas on-site to provide significant natural, scenic, and/or recreational benefits may meet some or all of the open space requirement, depending on the specific natural or community systems the site is a part of. The removal of existing structures on-site to reestablish scenic vistas, reducing the amount of fragmented habitat, or enabling wildlife corridor connections are all encouraged. Any site revegetation should be consistent with the natural and community systems the site is a part of and should utilize native species. Where projects located on severely degraded areas such as gravel pits and landfill sites are revegetated, at the Commission's discretion, the revegetated areas may be counted toward meeting the open space requirement; these areas should be regraded consistent with the surrounding topography in a manner that reduces or eliminates potential erosion.

GUIDANCE ON THE PERMANENT PROTECTION OF ONSITE AND OFFSITE OPEN SPACE

In order for onsite and offsite open space to meet any permanent protection requirements as a condition of DRI approval, it must be restricted in perpetuity for conservation, agriculture, and/or passive recreation purposes.

For those DRIs that elect to meet OS3 by the restriction of open space on or offsite, the following methods may be implemented:

- Land donated to the Town for conservation purposes
- Land donated to a nonprofit (501(c)(3)) conservation organization or land trust
- Conservation Restriction placed on land, held by Town
- Land held by homeowner's association with permanent Deed Restrictions in place

Donation in Fee to a Town, Conservation Organization, or Land Trust

To meet any open space protection requirements, an Applicant should consider donating the property outright to the Town the property is located within, a nonprofit conservation organization, or a land trust. Donating a property in fee for conservation purposes may be the most efficient means for meeting the open space requirement, providing the property has characteristics that make it conducive to a donation and that a partner has been identified who is willing to accept the donation and stewardship of the property in perpetuity.

Donations made to a Town should be placed under the care, custody, and control of a Conservation Commission pursuant to MGL, Ch. 40, Sec. 8C.

Conservation Restriction

Where ownership is retained by an individual, corporation, or association, a perpetual Conservation Restriction (CR) must be placed on the open space to ensure its permanent protection. Conservation Restrictions are authorized by MGL, Ch. 184, Sections 31-33. In appropriate instances an Agricultural Preservation Restriction may also be acceptable.

CRs must be approved by the holder of the restriction (Grantee), as well as locally (by the Board of Selectmen/Town Council and Conservation Commission). The Applicant

should provide evidence of having located a willing Grantee to accept the CR prior to a decision on the project. CRs must also be approved by the Secretary of Environmental Affairs and recorded at the Registry of Deeds or Land Court. If there is a mortgage on the property, the lender must subordinate the mortgage to the CR or provide a partial release for the land under CR. These requirements must be met before a Certificate of Compliance will be issued by the Cape Cod Commission and may be required earlier in the process for some types of projects as a result of permit conditions. It is advisable to submit a draft of the CR for state review prior to proceeding with local approvals of the CR.

Applicants are advised that the approval process for a CR may take several months, and consequently are advised to begin drafting the CR well in advance of seeking compliance with this requirement.

A CR should confer a public benefit in order for the Secretary of Environmental Affairs to make a finding of "public interest" in approving the CR. Such public benefits include: the protection of archeological or historic resources or sites; minimization of "damage to the environment" as defined in M.G.L. Ch. 30 Sec. 61; the protection of beautiful scenery visible from a public road or waterway; the protection of public drinking water sources; the preservation of the historic rural or cultural character of the municipality; the maintenance of critical wildlife habitat, wetlands, or other important ecosystems; the preservation and conservation of farm, forest, or grazing lands; and/or public use and public access to the restricted site. It should also be noted that the Secretary will generally not accept landscaped yards, driveways, roads, private tennis courts, pools, etc. for inclusion in lands subject to a CR. However, there are some uses such as recreation fields that may be included when a public benefit can be demonstrated. The public benefit provided by the CR must be specified in the restriction.

CRs should be considered permanent. Once a CR is placed on a parcel it can only be released after a public hearing and vote by the Selectmen or Town Council, and with approval by the holder (Conservation Commission, land trust, etc.), the Town through Town Meeting, the Secretary of Environmental Affairs, and the Massachusetts Legislature.

Activities Allowed within Protected Open Space

The types of activities allowed within protected open space will be based on the resources present on the site and the Placetype context. Applicants should work closely with the intended owner of the open space and/or holder of the CR when designating and determining the use(s) of the open space.

Protection of Significant Ecological Resources — Within sensitive ecological and/or wildlife habitat areas (such as rare species habitat, dunes, or other high value resource areas), it may be necessary to restrict public access and use of the open space.

Passive Recreation — Passive recreation involves the use of existing natural resources and does not require any development or alteration of existing topography or the use of motorized vehicles. Certain kinds of passive recreation may necessitate minimal alteration of existing vegetation for trail creation, maintenance, and other management activities. Depending on the site and the Placetype, active recreational areas such as playing fields may be an allowed use on land set aside as open space, if the Town agrees to accept the land for this purpose in fee simple.

Agricultural Activities — In appropriate circumstances, agriculture may be an allowed use on land set aside for open space. Instances where agriculture will not adversely impact rare species or their habitats, or adversely impact wetlands or water quality, may be included as allowed uses in a CR. Possible language within the reserved rights section of a CR may include allowances for agricultural activities such as pasture lands, crop lands, and lands accessory to agriculture. Where land is being donated to meet the open space requirement, land in active agricultural or planned for that use may be accepted. These lands typically should not contain structures. However, small structures that are integral to the agricultural operation (e.g. small sheep shelter within a field, pump house for cranberry bogs, fencing around pastures) may be considered by the Commission as allowable within the open space.

Other Forms of Restriction in Special Circumstances

In general, covenants, deed restrictions, and special permits do not satisfy a requirement for permanent protection of open space. In limited situations, such as when LID stormwater systems are incorporated into site design and provide natural/community benefits or in some development/redevelopment projects that incorporate greenspace into site design in the Community Activity Centers or Industrial Activity Centers Placetypes, covenants, deed restrictions, and special permits may be an appropriate tool to meet the open space requirement.

GENERAL APPLICATION REQUIREMENTS

Applicants are required to submit the following as part of their DRI application:

- Natural Resources Inventory (required when project is located on a greenfield site, or is located within a Natural Area – see Wildlife and Plant Habitat Technical Bulletin)
- Calculation of Area of Development Impact (see p. OS-14)
- Open Space Narrative discussing proposal based on Placetype ratio and area of disturbance
- Proposed Method of Permanent Open Space Protection and Conservation Partner, as appropriate

Commission staff are available for consultation early in the design of a project.

Applicants are encouraged to set up a meeting when the project is in its conceptual phase.

ADDITIONAL RESOURCES

Map Data Layers:

- Cape Cod Commission Data Portal (www.capecodcommission.org/RPPDataViewer)

Guidance on Open Space Conservation:

Additional information about conservation restrictions, including model language for developing conservation restrictions is contained in the Model Conservation Restriction, available through the Executive Office of Energy and Environmental Affairs, Division of Conservation Services <https://www.mass.gov/service-details/conservation-restriction-review-program>

Names of municipal and land trust open space contacts are available from the Cape Cod Commission.

DEFINITIONS

Development: Any of the following undertaken as a part of a Development of Regional Impact pursuant to Section 2 of the *Cape Cod Commission Enabling Regulations Governing Review of Developments of Regional Impact*, Barnstable County Ordinance 90-12: any building, construction, renovation, mining, extraction, dredging, filling, excavation, or drilling activity or operation; any material change in the use or appearance of any structure or in the land itself; the division of land into parcels; any change in the intensity of use of land, such as an increase in the number of dwelling units in a structure or a change to a commercial or industrial use from a less intensive use; any activity which alters a shore, beach, seacoast, river, stream, lake, pond, canal, marsh, dune area, woodland, wetland, endangered species habitat, aquifer, or other resource area, including coastal construction or other activity within the jurisdictional limits of Barnstable County; demolition of a structure; the clearing of land as an adjunct of construction; or the deposit of refuse, solid or liquid waste, or fill on a parcel of land or in any water area.