

3225 MAIN STREET • P.O. BOX 226
BARNSTABLE, MASSACHUSETTS 02630



CAPE COD
COMMISSION

(508) 362-3828 • Fax (508) 362-3136 • www.capecodcommission.org

ADMINISTRATIVE REGULATIONS

Adopted October 10, 1991

(Revised 3/6/97, 4/14/97, 5/12/97, 1/21/99, 6/3/99, 5/30/02, 5/3/04, 9/23/04, 3/28/13 and 10/2/14)

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SECTION 1: GENERAL PROVISIONS

(a) Source of Authority

These regulations are adopted pursuant to the authority of Section 6 of Chapter 716 of the Acts of 1989, as amended.

(b) Effective Date

The administrative regulations set forth herein shall be effective upon adoption by the Commission.

(c) Definitions

The definitions contained in Section 2 of the Cape Cod Commission Act (Act) and Section 1 of the Enabling Regulations shall apply to these regulations. As used within these regulations, the following additional terms shall be defined as stated below.

Chief Planner/Deputy Director: The Chief Planner/Deputy Director of the Cape Cod Commission.

Counsel: The Staff Counsel for the Cape Cod Commission.

(d) Forms

The forms referred to in these regulations are available upon request from the Clerk of the Cape Cod Commission (Clerk).

(e) Docket

The Clerk shall establish a docket of all applications pending before the Commission. Upon acceptance of any application described in these regulations or the Enabling Regulations, the Clerk shall assign a docket number to the application. The Clerk shall maintain a separate docket for each category of applications.

SECTION 2: CONTENTS OF APPLICATION

(a) A detailed list of all materials required to be submitted for Development of Regional Impact (DRI), DRI Exemption, Hardship Exemption, Jurisdictional Determination and Limited DRI Determinations for Change of Use applications is contained within the relevant application form and attachments, as amended. Copies of these materials may be obtained from the Clerk during regular business hours. Application forms and their attachments will specify the format, number of copies and required materials to be submitted for Commission review.

(b) Applications for DRIs, DRI Exemptions, DRI Hardship Exemptions, Jurisdictional Determinations and Limited DRI Determinations shall be made in accordance with the submittal requirements specified for each process, and per the requirements of the Enabling Regulations.

SECTION 3: DELEGATIONS OF AUTHORITY

On September 11, 2003, and as revised on August 7, 2014 the Commission voted to delegate its authority in the following manner:

(a) DRI Review and the MEPA Process

(i) DRI subcommittees and staff are authorized to submit comment letters to MEPA as follows:

[1] For those projects undergoing Joint Review with the Executive Office of Environmental Affairs-MEPA Unit (MEPA) and the Commission, the DRI subcommittee shall review the relevant MEPA filings and submit comments to MEPA. The DRI subcommittee Chair is authorized to sign Commission comments relating to these projects.

[2] For projects not in the Joint Review process, staff shall review the relevant MEPA filings and may prepare comments to MEPA. The Executive Director, or in his/her absence the Chief Planner/Deputy Director, or in his/her absence the Chief Regulatory Officer, is authorized to sign Commission comments relating to these projects. Comment letters prepared by staff shall include a statement that the full Commission has not formally reviewed the project.

(ii) The Executive Director is authorized to determine which Environmental Notification Form (ENF) projects should be brought to the Commission for a determination on whether to review the project as a DRI. If the Secretary of Environmental Affairs (Secretary) determines that no Environmental Impact Report (EIR) is required, the staff should bring to the Commission's attention

[1] any project for which staff recommended the preparation of an EIR and which was not required to prepare an EIR; and,

[2] all projects otherwise not required to prepare an EIR (e.g., granted a waiver) which staff believes has potential impacts on the resources protected under the Regional Policy Plan (RPP).

(iii) For DRI exemptions sought by projects in which an EIR was required by MEPA, the Committee on Planning and Regulation is authorized to carry out the Commission's responsibilities under section 12(k) of the Commission Act to conduct public hearings, assemble the record, make findings and render a decision whether to grant an exemption.

(b) Discretionary Referral Recommendation

Commission staff will notify the Committee on Planning and Regulation or the Executive Committee and the Commission member(s) from the town(s) in which the subject development is proposed, of receipt of a discretionary referral under Section 12(e) of the Act. Presentations regarding the merits of the discretionary referral shall be made before the full Commission at a public meeting as soon as is practicable. The full Commission will make the final determination whether or not to review a discretionary referral as a DRI.

(c) Vote to Accept a DRI for Commission Review

The Executive Director is authorized to accept projects referred under the mandatory referral provisions of the Act and DRI enabling regulations.

(d) Delegation of DRI Review to Subcommittees

Subcommittees are authorized to hear and assemble the record on DRIs and to report to the full Commission. The full Commission will vote on approval, approval with conditions, or denial of DRIs.

(e) Hearing Officers

The Chief Regulatory Officer and Staff Counsel, or their designee(s), are designated as permanent hearing officers to open, close and continue non-substantive hearings and to accept letters of withdrawal. The Executive Director or his/her designees are designated as permanent hearing officers to hold public hearings under the Cape Cod Commission Act and to assemble and report the record for decision by the Commission. This delegation shall take effect upon passage.

(f) Authority to Extend DRI Decision Time

Pursuant to Section 13(a) of the Act, the authority to extend the decision time limit and sign the resulting extension agreement is delegated to, in order of preference, the Chair of the relevant DRI subcommittee, the Chair of the Regulatory Committee, or the Chair or Vice-Chair of the Commission.

(g) Written Decision

The Chair or Vice-Chair of the Commission, the Executive Director, is authorized to sign written decisions based on the Commission's vote.

(h) Certificates of Compliance

The Executive Director, or in his/her absence the Chief Planner/Deputy Director, or in his/her absence the Chief Regulatory Officer, is authorized to issue Certificates of Compliance pursuant to Section 13(g) of the Act. Such Certificates acknowledge compliance with conditions contained in Commission decisions.

(i) Authority to Accept Withdrawal of an Exemption Request When a DRI Review is Pending

The relevant DRI Subcommittee is authorized to accept the withdrawal of a Hardship Exemption or DRI Exemption request when a DRI review is pending for the same project.

(j) Comprehensive Permits under M.G.L. Chapter 40B

The Executive Director, or in his/her absence the Chief Planner/Deputy Director, or in his/her absence the Chief Regulatory Officer, is authorized to sign Commission comments relating to these projects with the understanding that staff will make every reasonable attempt to contact the local Commission member prior to the submission of those comments. Staff may bring more complex projects to the Committee on Planning and Regulation for review.

(k) M.G.L. Chapter 91 Comment Letters

The Executive Director is authorized to sign comment letters on M.G.L. Chapter 91 Waterways licenses issued by Massachusetts Department of Environmental Protection (DEP), and staff will

make every reasonable attempt to contact the local Commission member prior to submission of those comments.

(l) Letters Supporting/Opposing Pending Legislation and Pending Regulations

All letters will be approved as outlined below and will be reviewed by the Executive Director and signed by the Commission Chair. Copies will be given to all Cape Cod and County Commissioners.

i) For legislative initiatives or pending regulations relating to issues that are specifically mentioned in the RPP or for which the Commission has provided prior policy direction, staff are directed to prepare letters of support/opposition. Staff will report to the Executive Director and the Committee on Planning and Regulation on any such action taken.

ii) For legislative initiatives or pending regulations that staff believe are consistent with the RPP, but not specifically mentioned, staff will confer with the Executive Director for a determination of consistency. If the Executive Director concurs with staff, a letter of support/opposition will be prepared.

iii) For legislative initiatives or pending regulations that may depart from the RPP or are likely to be controversial subjects, the Executive Committee will review letters of support/opposition and bring them to the full Commission for approval.

(m) Elective Legal Matters

Staff will bring "elective" legal matters (i.e., the filing of amicus briefs) to the Executive Committee, time permitting, and will also notify the local Commission representative of the proposal to become involved in an elective legal matter.

(n) Metropolitan Planning Organization/Administrative Matters

The Executive Director is authorized to sign off on routine matters concerning regional transportation planning, such as the Transportation Improvement Program administrative adjustments, Unified Planning Work Program transfer requests and Cape Cod Regional Transit Authority grant requests.

(o) RPP Policy and Standards Interpretation

The Committee on Planning and Regulation may make recommendations to the full Commission or a DRI subcommittee concerning interpretation of RPP goals, policies, Minimum Performance Standards and Other Development Review Policies.

(p) Signature of Minutes

The Chair of the relevant DRI subcommittee is authorized to sign minutes in the absence of a subcommittee quorum.

(q) Litigation Oversight

The Executive Committee is authorized to oversee matters relating to litigation consistent with Barnstable County litigation management procedures.

(r) Budgets

The Executive Committee is authorized to submit an annual budget to the County Commissioners.

(s) Regional Planning Agency/Administrative Matters

The Executive Director is authorized to sign off on routine matters concerning the Commission's function as a regional planning agency, such as reviews of grants, plans, state dispositions of land and related matters.

(t) Regulatory Committee Approvals

The Chair or Vice-Chair of the Committee on Planning and Regulation is authorized to sign decisions in accordance with any Committee on Planning and Regulation vote.

(u) Executive Committee Action

When necessity requires, the Executive Committee may serve in the place of the Committee on Planning and Regulation and may act in its place.