

JOINT MEETING

# Cape Cod Commission Executive Committee and Committee on Planning and Regulation

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January 13, 2022 | 2:00 P.M.

THANK YOU FOR JOINING THIS VIRTUAL MEETING

Please review the notes below while you wait for the meeting to begin

This meeting will be held virtually, with all commission members participating remotely, pursuant to Chapter 20 of the Acts of 2021, An Act Relative to Extending Certain Covid-19 Measures Adopted During the State of Emergency, signed into law on June 16, 2021. If anyone is having a technical issue, use either the chat box on your screen or call (508) 362-3828 and staff will assist you.

Participants wishing to speak should click the “Reactions” icon on the lower toolbar and then click “Raise Hand” in the dialog box to notify the chair. Telephone participants should **press \*9** to indicate that they wish to speak. **Press \*6** to mute/unmute. All participants should remain muted until recognized by the chair.

Meeting materials may be accessed at: [www.capecodcommission.org/cc](http://www.capecodcommission.org/cc)



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JOINT MEETING

# Cape Cod Commission Executive Committee and Committee on Planning and Regulation

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1. **Call to Order/Roll Call**
2. **Review and approval of prior meeting minutes:**  
Executive Committee December 16, 2021 (Roll Call Vote)
3. **Executive Director's Report**
4. **Chapter A of Cape Cod Commission Regulations**
5. **Cape Cod Commission Administrative Regulations**
6. **Chapter C of Cape Cod Commission Regulations**
7. **New Business**
8. **Adjourn**

Cape Cod Commission Executive Committee & CPR | January 13, 2022



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# 1. Attendance

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## Executive Committee

Harold “Woody” Mitchell, Chair  
Stephen Mealy, Vice Chair  
Elizabeth Taylor  
Richard Roy  
Kevin Grunwald

## Committee on Planning and Regulation

Elizabeth Taylor, Chair  
Tom Wilson, Vice Chair  
Jacqueline Etsten  
Harold “Woody” Mitchell  
John Harris  
  
Fred Chirigotis, Alternate

**ROLL CALL VOTES**

## 2. Review and Approval of Prior Meeting Minutes

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Executive Committee Minutes of December 16, 2021

**ROLL CALL VOTE**

# 3. Executive Director's Report

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Commission Executive Director Kristy Senatori will report on any recent staff activities



# 4. Chapter A of Cape Cod Commission Regulations

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Cape Cod Commission staff will review and Committee members will discuss and may make a recommendation to the full Commission on amendments to Chapter A, the Cape Cod Commission Enabling Regulations Governing Development of Regional Impact (DRI) to define an exemption process for projects that qualify as DRIs resulting from recent amendments to the Massachusetts Environmental Policy Act (MEPA) M.G.L. c. 30§§ 61-62I and its regulations.

# Background

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- State Legislature passed climate bill 3/26/21
- Environmental Justice component in the Climate Bill
  - Amended MEPA (M.G.L. c. 30 §§ 61-62I /its regulations)
  - EIR required if: w/i 1 mile of EJ population, if affects air quality, w/i 5 miles of EJ population
- Any project for which EIR required under MEPA is a DRI under Enabling Regulations

# Unintended Result

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- Expected to increase DRI projects under review by 40%
- Anticipated that many of those captured will not have regional impacts
- Proposed amendments to Chapter A, the Enabling Regulations Governing DRI's creates dedicated Exemption process to address this



# Cape Cod Commission Act

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## Section 12 (k) of Act - Exemption from CCC review

- Location, Character and Environmental effect
- Prevent its having any significant impacts
- On values and purposes protected by the Act
- Outside the municipality project is located



# Chapter A: Enabling Regulations Governing Review of Developments of Regional Impact

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- Existing DRI exemption process
- Proposed Amendments creates a special exemption process for projects for which an EIR is required

# Chapter A: Enabling Regulations Governing Review of Developments of Regional Impact

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- Committee on Planning and Regulation would conduct hearings and render decisions on these applications
  - Commission to consider delegation of authority for this purpose

# Chapter A: Enabling Regulations Governing Review of Developments of Regional Impact

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## Review of Amendment language



# Review of Amendment language

## (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, with the exception that a proposed development which will have no significant impacts outside the municipality where it is proposed due to its location, character and/or environmental effects may seek a DRI exemption pursuant to Section 7 of these regulations. 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

**(vi) Timeframes for Developments Subject to Review by MEPA**

Notwithstanding Section 6(c)(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) unless it qualifies and the Commission or its designee has granted a DRI exemption pursuant to Section 7. 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

(b) Procedure for Processing Exemptions

**(i) Completeness**

[1] An applicant shall submit an application for a DRI exemption to the Chief Regulatory Officer. If the application is for an Exemption for a project in which MEPA has required an EIR, a completed application must be submitted within 7 days of the Secretary certifying the adequacy of a final EIR unless the hearing required within 45 days of that certification pursuant to Section 13(b) of the Act has been extended by written agreement. Failure to timely submit the completed application or extension agreement may result in a procedural denial pursuant to Section 13.

**(ii) Timeframes**

[1] As required by Section 12(k) of the Act, the Commission or its designee 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.

Notwithstanding the prior sentence for exemption applications for projects in which MEPA has required the preparation of an EIR, the Committee on Planning and Regulation is authorized to review the proposed development, conduct public hearings, assemble the record, and issue a written decision on the application as authorized by the Commission's Administrative Regulations. 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.



**(iv) Decisions**

The Commission, or for projects in which MEPA has required an EIR, the Committee on Planning and Regulation, 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. For projects in which MEPA has required an EIR, the Committee on Planning and Regulation may but is not required to utilize factual findings from the MEPA review process in its determination on whether the project will have no significant impacts outside the municipality in which it is proposed due to its location, character and environmental effects. The Clerk shall file and record decisions in accordance with Section 10(b).

### **SECTION 13: PROCEDURAL DENIALS**

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

- (i) the Applicant fails to **timely** submit a complete DRI application;
  
- (ii) the Applicant will not sign an extension agreement to extend the Commission's 60-day DRI decision time, **45 day hearing time frame from the certification of the adequacy of the EIR by the MEPA Secretary** or other administrative deadline for the purpose of submitting additional information requested by the Commission pursuant to Section 12(g) of the Act;

# Questions?

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# Recommended Motion

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Move to recommend that the Cape Cod Commission approve and forward to the Assembly of Delegates for adoption by ordinance the proposed amendments to Chapter A as presented by staff.



# 4. Chapter A of Cape Cod Commission Regulations

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POTENTIAL MOTION: Move to recommend that the Cape Cod Commission approve and forward to the Assembly of Delegates for adoption by ordinance the proposed amendments to Chapter A as presented by staff.

- Executive Committee
- Committee on Planning and Regulation

**ROLL CALL VOTES**

# 5. Cape Cod Commission Administrative Regulations

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Cape Cod Commission staff will review and Committee members will discuss and potentially make a recommendation to the full Commission on a delegation of authority to the Committee on Planning and Regulation to conduct the Development of Regional Impact (DRI) exemption review and decision process on projects that qualify as DRIs resulting from recent amendments to the Massachusetts Environmental Policy Act, M.G.L. c. 30 §§ 61-62I and its regulations.



# Administrative Regulations

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- **Amended MEPA (M.G.L. c. 30 §§ 61-62I /its regulations)**
  - EIR required if: w/i 1 mile of EJ population, if affects air quality, w/i 5 miles of EJ population
- Any project for which EIR required under MEPA is a DRI
- Proposed Special Exemption Process
  - To be heard/decided by the Committee on Planning and Regulation

# Administrative Regulations

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- **Section 4 (12) of the CCC Act**
  - Allows CCC to delegate its authority to subcommittees
  - “as it deems appropriate to carry out its responsibilities”
- **Administrative Regulations contain delegations of authority**



# Administrative Regulations

## Proposed amendment

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### SECTION 3: DELEGATIONS OF AUTHORITY

#### (a) DRI Review and the MEPA Process

(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

# Administrative Regulations

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## **Recommended motion:**

- Move to recommend that the Cape Cod Commission vote to delegate its authority to the Committee on Planning and Regulation to conduct the DRI exemption and decision process and the Administrative Regulations be amended to reflect this delegation of authority



# 5. Cape Cod Commission Administrative Regulations

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Move to recommend that the Cape Cod Commission vote to delegate its authority to the Committee on Planning and Regulation to conduct the DRI exemption and decision process and the Administrative Regulations be amended to reflect this delegation of authority

- Executive Committee
- Committee on Planning and Regulation

**ROLL CALL VOTES**

# 6. Chapter C of Cape Cod Commission Regulations

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Cape Cod Commission staff will review and Committee members will discuss and may make a recommendation to the full Commission on draft revisions to clarify the process contained within Chapter C of the Cape Cod Commission Regulations of General Application, the procedure for proposing amendments to the Regional Policy Plan.



# Chapter C of the Cape Cod Commission Regulations of General Application

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- **CCC member requested staff review process and requirements**
- **Discussed by Executive Committee on 12/7 and 12/16**
- **Draft language for review and discussion today**

# Chapter C of the Cape Cod Commission Regulations of General Application

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- **First time section used**
- **Examination of its universal application**
- **Issues with process and application of the section**

# Topic Areas Discussed

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- **Process**
- **Filing Requirements**
- **Criteria for evaluation**
- **Staff: Structure of Chapter C itself**

# Process

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## Procedure for Proposing Amendments to RPP

1. Commission may initiate review at any time
2. Three other parties may do this:
  1. County Commissioners
  2. Assembly of Delegates
  3. Citizens Petition

## Where, when and how filed?

1. Designated person (specify)
2. Designated method (filing)
3. Timing (deadline/qualifiers)



# Filing Requirements

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## Petition requirements

### 1. Format

### 2. Certification of petition itself

- a) County Commissioners/Assembly of Delegates
  - By County/Assembly Clerk
- b) Citizen's petition
  - Town Clerk in each municipality

# Filing Requirements

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## Petition requirements

### 3. Number of signatures

- a) Objective number/can be measured
- b) Representative of majority of its members
  - 1) County Commissioners (2/3)
  - 2) Assembly of Delegates (Majority % vote)
  - 3) Citizen's Petition (currently 100) (Regional?)
  
- c) Other Petition requirements
  - 1) County – uses 3% of total County voters/last election
    - a) Not more than 25% from any town
    - b) Barnstable – 10%
  
  - 2) Other jurisdictions
    - a) Tahoe Regional Planning (Exec. Dir.)
    - b) Florida (8%)

# Potential Criteria for Petition Evaluation

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1. Is it consistent with the CCC Act?
2. How does it affect the administration of Planning and Regulatory functions?
3. What resources are available?
4. Statutory scheme of the Regional Policy Plan
5. Cape Cod Commission jurisdiction
6. Other State, Federal, Municipal laws



# Topic Areas

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**Staff:** Structure of Chapter C itself



# Text Review : Section 1

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- a) Source of Authority – Cape Cod Commission Act
- b) Effective Date – Same
- c) Purpose – added: Explains up front the three ways the RPP may be amended
  1. On Commission's own initiative
  2. By petition
  3. During the CCC 5-year update process
- d) Definitions – Adds:
  - Board of Registrars
  - Commission Act
  - County Clerk/Assembly Clerk
  - RPP



# Text Review : Section 2

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- Review of RPP on Commission's own initiative
- Same as Chapter C
- Limits this section to how the Commission can review RPP:
  - A. Section 8(h) – CCC can initiate at any time
  - B. Outlines that process

# Text Review : Section 3

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Section 3 A: Same as original Chapter C:

- Specifically describes the Petition process to amend the RPP
  - Majority Vote of the County Commissioners
  - Majority Vote of the Assembly of Delegates
  - By certified signatures of 1% of the persons registered to vote in Barnstable County at time of the petition
    - Measured by State Election statistics reported to Secretary of the Commonwealth as required by MGL c. 54 s. 133.

Section 3 B : Addition

- Certification requirements – Clerk certifies for
  - County Commissioners (2/3)
  - Assembly of Delegates (majority)



# Text Review : Section 3

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## Section 3C: Addition

- Specifies Certification requirements for a citizen's petition
  - Signatures from each town certified by its town clerk
  - Not more than 25% from any one town
  - Certification is within same calendar year as petition
  - Not filed within one year of CCC five-year review

## Section 3D - Addition

- Certification of petition requirements within 30 days
- Allows for resubmission if technically deficient





# Text Review : Section 3

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## Section 3E: Same content

- Public hearing held once in each calendar year
- Any petitions received during that period are heard

## Section 3F - Same content with clarification

- Petitions administered on calendar year basis
- Deadline is April 1<sup>st</sup>
- Hearings required to commence by June 1<sup>st</sup>
  - Same deadline, specifies date rather than “within 60 days”

## Section 3G – Same content with clarification

- Commission can approve, approve with conditions or deny amendments
- Addition: “in whole or in part” (example multiple sections)

# Text Review : Section 3

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## Section 3H: Same content

- Commission prepares a report for the Assembly
- Sends to Assembly within 30 days of close of public hearing

## Section 3I: Same Content

- RPP amendments approved by CCC
- Submitted to Assembly of Delegates (hearing)
- Within 45 days of receipt from CCC, Assembly can:
  - Adopt amendments, return the amendments for restudy, or deny them

## Section 3J: Same content

- RPP amendments denied by CCC
  - If Assembly finds amendments deserve further consideration, submit to CCC for further consideration

# Text Review : Section 3

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Section 3K: New content

Standard of Review for Commission on petition articles:

- Commission in its discretion, may consider the following criteria in its review and decision making:
- Is it consistent with the CCC Act?
- How does it affect the administration of Planning and Regulatory functions?
- What resources are available?
- Statutory scheme of the Regional Policy Plan
- Cape Cod Commission jurisdiction
- Other State, Federal, Municipal laws



# Text Review : Section 4

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Commission's five-year review process: Same content

- A. Process for five-year review of RPP by CCC
- B. Process initiated every 5 years from completion of prior RPP
- C. Hearings held in Upper, Mid and Lower Cape regions
  - Tracks Cape Cod Commission Act
- D. Commission prepares a report for the Assembly
  - Specifies where report sent
- E. Public hearing held within 60-day comment period in same 3 subregions
- F. Within 30 days of close of comment period, CCC submits its final draft amended RPP.
- G. New: 30 and 60 day periods may be extended by CCC

# Text Review : Section 5

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Replaces text regarding Application of Amendments to DRI's

- Old section is covered by Cape Cod Commission Act and the Chapter A Enabling Regulations Governing DRI's
- Restates requirement that RPP amendments once adopted follow the regular requirements of the CCC Act

# Text Review : Section 6

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Miscellaneous – Same content, rearranged.

- A. Chair may appoint subcommittees initially comprised of five members.
- B. Notices must follow the requirements of section 5 of the CCC Act



# Questions ?

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# Recommended Motion

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Move to recommend that the Cape Cod Commission approve and forward to the Assembly of Delegates for adoption by ordinance the proposed amendments to Chapter C as presented by staff.





# 6. Chapter C of Cape Cod Commission Regulations

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Move to recommend that the Cape Cod Commission approve and forward to the Assembly of Delegates for adoption by ordinance the proposed amendments to Chapter C as presented by staff.

- Executive Committee
- Committee on Planning and Regulation

**ROLL CALL VOTES**

# 7. New Business

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Topics not reasonably anticipated by the Chair more than 48 hours before the meeting.



# 8. Adjourn

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- Executive Committee
- Committee on Planning and Regulation

**ROLL CALL VOTES**



# Thank you for attending.

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