BARNSTABLE COUNTY ASSEMBLY OF DELEGATES

In the Year Two Thousand and Twenty-Five

Ordinance ____

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
Enabling Regulations Governing 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.

SECTION 2. Definitions

Terms used in these regulations that are defined in Section 2 of the Cape Cod Commission Act shall have the meanings ascribed to them in the Act. 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.

Clerk. The Clerk of the Cape Cod Commission

Commission. The Cape Cod Commission.

Committee on Planning and Regulation. The standing committee by that name established by vote of the Cape Cod Commission on August 7, 2014.

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

Participating Parties. The Qualified Applicant and those entities that the Qualified Applicant has chosen to participate in a particular development agreement as set forth in Section 4 of these regulations.

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

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

SECTION 3. Purpose of Development Agreements

A development agreement is a voluntary, binding contract entered into between the Participating Parties in which a Qualified Applicant agrees to provide certain benefits that contribute to one or more of the following: infrastructure/public capital facilities; land dedication or preservation for open-space; community facilities or recreational use; fair, affordable housing either on-site or off-site; or other benefits to serve the proposed development, municipality, and county. In exchange, the Qualified Applicant receives certain development rights from the other Participating Parties as set forth in Section 5 of these regulations. A development agreement shall only be available for development projects that meet the standards and criteria for developments of regional impact adopted pursuant to Section 12 of the Act.

The principal purpose of a development agreement is to negotiate and establish the development regulations that will apply to the subject property during the term of the agreement and to establish the conditions to which the development will be subject including, without limitation, a schedule of impact fees.

SECTION 4. Who May Participate in a Development Agreement

(a) The Commission, municipality or municipalities, state agencies, and a Qualified Applicant may enter into a development agreement.

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

(1) The Commission;

(2) A municipality or municipalities;

(3) The Commission and a municipality or municipalities;

(4) The Commission and a state agency or agencies; or

(5) The Commission, a municipality or municipalities, and a state agency or agencies.

(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 any Regional Policy Plan adopted after 2018 and

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(2) Adopting a by-law, approved by the Commission authorizing the municipality to enter into a development agreement and establishing a procedure for reviewing, negotiating, approving and executing development agreements.

SECTION 5. Components of Development Agreements

(a) Required Components.

A development agreement must establish the permitted uses, densities, traffic, the duration of the agreement, and any other terms or conditions mutually agreed upon by the parties to the agreement.

(b) Permitted Components.

A development agreement may include any other terms or conditions mutually agreed upon by the Participating Parties, which additional terms may include, without limitation:

(1) A provision for the Transfer of Development Rights;

(2) A provision that the entire development or any phase thereof be commenced or completed within a specified period of time.

SECTION 6. Vesting of Development Rights

A development agreement shall vest land use development rights pursuant to Section 14(a) of the Act for the duration of the development agreement.

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 or Commission regulations or decisions, and the property shall be subject to subsequent changes in the Commission's regulations and decisions.

When a municipality is not a party to a development agreement, then land use development rights shall not vest with respect to that municipality's development bylaws and regulations.

SECTION 7. Procedure for Entering Into a Development Agreement with the Commission

The following process shall apply to all development agreements in which the Commission is a party, regardless of whether there are other parties to the agreement in addition to the Qualified Applicant.

(a) Initiation of the Development Agreement Process

(1) Notice of Intent to File a Development Agreement Application

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(2) The process for entering into a development agreement begins when a Qualified Applicant files a Notice of Intent to file a Development Agreement Application.Development of Regional Impact Determination

Upon receipt of a Notice of Intent to file a Development Agreement Application, the Executive Director or his/her designee shall make a determination as to whether the proposed development meets the standards and criteria for a development of regional impact adopted pursuant to Section 12 of the Act. If such standards and criteria are met, the application shall be referred to the Committee on Planning and Regulation.

(3) Review and Suitability Recommendation by the Committee on Planning and Regulation

The Committee on Planning and Regulation shall review the Notice of Intent to File a Development Agreement Application and determine whether the proposed development is suitable for the development agreement process. In making this determination, the committee must find that no development permit is pending and shall also consider the following factors;

a. Whether the proposed development would benefit from comprehensive review of the foreseeable and planned development to allow for planning of efficient infrastructure Whether the proposed development exhibits any of the following:

   i. It involves 25 acres or more of development;

   ii. It includes multiple uses and/or structures; and

   iii. It involves multiple properties controlled by the same Qualified Applicant;

b. Whether and to what extent the proposed development will contribute to one or more of the following:

   i. Infrastructure;

   ii. Public capital facilities;

   iii. Land dedication or preservation for public purposes, which may include recreational, conservation, agricultural, aquacultural, and/or historic purposes;

   iv. Creation of affordable housing either onsite or offsite;

   v. Community facilities;

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vi. Recreational uses; or

vii. Other benefits to serve the proposed development, municipality, and county,

c. Whether construction of the proposed development is anticipated to be built in phases over a period exceeding 7 years;

d. Whether the proposed development has future expansions that are not fully 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;

e. Whether the proposed development 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 General Laws; and

f. Whether the committee has received testimony from any municipal agency in which the proposed development is to be located indicating whether it recommends the proposal as appropriate for a development agreement.

Upon completion of the foregoing review, the Committee on Planning and Regulation shall make a recommendation to the Commission as to whether the proposed development is suitable as the subject of a development agreement with the Commission.

(4) Suitability Determination by the Commission

Following receipt of the recommendation of the Committee on Planning and Regulation pursuant to Section 7(a)(2), above, the Commission shall convene at a Public Hearing to discuss and vote on whether the proposed development is suitable as the subject of a development agreement.

(b) Filing of a Development Agreement Application

(1) Timing and Fees

If the Commission determines that the proposed development is suitable as the subject of a development agreement with the Commission, 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 Commission's Enabling Regulations, Barnstable County Ordinance 90-12, as amended. Upon a showing of good cause, the Committee on Planning and Regulation may extend the application period for no more than one additional year.

(2) Pre-Application Meeting

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The Qualified Applicant shall attend a pre-application meeting with Commission staff to review the development agreement application and related materials prior to submission of the application.

(3) Components of a Development Agreement Application

The development agreement application shall include the following:

a. A fully completed development agreement application form and its required attachments, including a certified list of abutters, prepared by the Assessors in the municipality or municipalities where such abutting land is located;

b. A legal description and recent survey of the land subject to the agreement and the names of its legal and equitable owners;

c. The proposed duration of the development agreement;

d. The development uses currently permitted on the land and development uses proposed for the land, including residential densities and building densities and height;

e. 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 proposed development are available concurrent with the impacts of the proposed development;

f. A description of any reservation or dedication of land and/or waters for public purposes, which may include recreational, conservation, agricultural, aquacultural, and/or historic purposes, or other such public uses which the Commission specifically approves;

g. A description of all local development permits needed for the proposed development of the subject property or properties;

h. When a municipality is a party to a development agreement, such municipality shall furnish evidence that the proposed development complies with the applicable Local Comprehensive Plan. When a municipality is not a party to a development agreement, the applicant shall provide an analysis of the proposed development's compliance with the applicable Local Comprehensive Plan;

i. An analysis of the proposed development's consistency with all applicable municipal development by-laws and a list of all zoning waivers and/or relief necessary for the proposed development;

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j. 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 need to comply with the law governing said permitting requirements, conditions, terms, or restrictions;

k. 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; and

l. Any additional data necessary to assess the impact of the proposed development, as determined by Commission staff.

(c) Subcommittee Review of the Development Agreement Application

(1) Appointment of Subcommittee

Within 10 business days of certification by Commission staff that a completed application has been filed, the chair will appoint a subcommittee to review the application.

(2) Public Hearings

In considering the development agreement application, the authorized subcommittee shall conduct one or more Public Hearings and receive relevant public testimony to inform their decision. At least one Public Hearing shall be held in at least one of the municipalities in which the proposed development is located. The Qualified Applicant shall pay the cost of publishing notice of a Public Hearing as specified in the Schedule of Fees in the Commission's Enabling Regulations, Barnstable County Ordinance 90-12, as amended.

(3) Standard for Subcommittee Review

The subcommittee shall review the proposed development and the application and make findings with respect to consistency with the Act, the Regional Policy Plan, and any applicable Local Comprehensive Plan. The subcommittee may recommend, and the Commission may approve, a development agreement that is inconsistent with the Regional Policy Plan or a Local Comprehensive Plan if:

a. 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

b. The interests protected by the Act, Regional Policy Plan or Local Comprehensive Plan can be advanced or protected by an alternate approach, which shall include appropriate mitigation.

(4) Draft Development Agreement

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In the course of its consideration of an application for a development agreement, the subcommittee may request that a draft development agreement be produced by Commission staff for subsequent review by the Participating Parties.

A draft development agreement shall at a minimum, contain the following:

a. A description of the public benefits and improvements, which the Qualified Applicant has agreed to provide as consideration for the Development Agreement;

b. 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;

c. A statement of compliance with the Regional Policy Plan, the Act, the Local Comprehensive Plan and municipal development bylaws, or in the instance that waivers are granted, a statement of compliance with the standards set forth in Section 7(c)(3) of these regulations;

d. A statement that the development agreement shall become effective only following the issuance of certificates by the Commission Clerk relative to the agreement as provided in Section 7(f) of these regulations.

(5) Subcommittee Recommendation

After a draft development agreement has been prepared and discussed, the subcommittee shall recommend to the Commission whether it should authorize signature of the agreement. If the subcommittee recommends that the Commission approve the development agreement, the Qualified Applicant shall sign the proposed development agreement to indicate its agreement to enter into the contract.

(6) Termination of Negotiations

a. By the Commission

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. The Commission shall then hold a Public Hearing to consider the subcommittee's recommendation. The Qualified Applicant shall have the opportunity to be heard at such Public Hearing. In considering the recommendation, the Commission shall vote either to remand the matter back to the subcommittee for further negotiation or terminate the application.

b. By a Municipality

A municipality may terminate its participation in the negotiation of a development agreement by majority vote of its Select Board/or for the Town of Barnstable in writing by the

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Town Manager to the Commission Clerk. In the event that a municipality terminates its participation in the negotiation of a development agreement, the other Participating Parties may elect to continue to negotiate the proposed development agreement without the municipality.

c. By a State Agency

A state agency may give notice of termination of the negotiation process by letter from its appointed head of agency. . In the event that a state agency terminates its participation in the negotiation of a development agreement, the other Participating Parties may elect to continue to negotiate the proposed development agreement without the state agency.

A Qualified Applicant may terminate its participation in the negotiation of a development agreement by certified letter, return receipt requested, to the Commission Clerk.

(d) Commission Consideration of Proposed Development Agreement

Upon receipt of the recommendation from the subcommittee, the Commission shall notice and hold a Public Hearing to consider the subcommittee's recommendation. The Qualified Applicant shall pay the cost of publishing notice of a Public Hearing as specified in the Schedule of Fees in the Commission's Enabling Regulations, Barnstable County Ordinance 90-12, as amended.

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

If in considering the proposed development agreement, the Commission determines that entering into a development agreement is not in the best interests of the Commission, it shall at a Public Hearing discuss potential termination of the development agreement process for the proposed development. The Qualified Applicant shall have the opportunity to be heard at such Public Hearing. At such Public Hearing, the Commission shall vote either to remand the matter back to the subcommittee for further negotiation or terminate the application.

(e) Process Upon Approval of a Development Agreement

(1) Following the Commission's approval, the development agreement shall be presented to any other Participating Party for its consideration. A municipality may approve its participation in a development agreement in whatever manner the municipality has adopted for the execution of agreements in accordance with Section 4(c)(2) hereof.

(2) All Participating Parties, including the Commission, shall execute the approved development agreement.

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(3) The Commission shall file the approved, fully executed development agreement with the Clerk of the Commission and with the town clerk of each municipality in which the development is located.

(4) A notice concerning the development agreement, 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 Commission's office during normal business hours, shall be published in a newspaper of general circulation in each municipality in which the development is located.

(5) Notice of the development agreement shall be published in the Commission's official publication required by Section 5(i) of the Act.

(f) Certification by the Clerk of the Commission

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

(1) That the appeal period under Section 17(b) of the Act has expired without the clerk having received notice that an appeal has been filed, or if such an appeal has been filed, that a final judgment has entered in favor of the Commission;

(2) that the approved development agreement has been executed by all participating parties, including by the chair or vice chair of the Commission as authorized by a vote of the Commission; and

(3) that a true copy of the fully executed development agreement is attached to the certificate; and

The Commission shall record the Clerk's certificate and the fully executed development agreement in the Barnstable County Registry of Deeds. The Qualified Applicant shall bear the cost of recording.

A development agreement shall not be effective, and there shall be no enforceable right to any of the benefits, obligations, or provisions therein, until it is duly and fully executed and the Clerk's certificate and such duly and fully executed development agreement have been recorded.

SECTION 8. Development Agreements Where the Commission is Not a Party

A Qualified Applicant may elect to enter into a development agreement without the Commission as a party, provided, however, that if the proposed development qualifies as a Development of Regional Impact, such proposed development must be referred by the relevant municipality to the Commission in accordance with Section 12 of the Act and shall be approved by the Commission prior to execution of the development agreement.

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When a proposed development agreement involves more than one municipality, the involved municipalities shall select a municipality to serve as lead community. If 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. The lead community shall oversee the development agreement process. Conflicts between the lead community and other municipality(ies) party to the agreement shall be resolved through negotiation between the relevant parties; the Commission will facilitate such negotiations upon request of the participating municipalities.

Municipal review, negotiation, approval and execution of a development agreement to which the Commission is not a party shall be governed by municipal regulations duly approved and adopted in accordance with Section 4(c)(2) hereof. The municipality or lead community shall provide the Commission with a copy of any final executed development agreement entered into pursuant to this Section 8.

SECTION 9 . Relationship to Local Zoning Requirements

A development agreement that is inconsistent with local zoning requirements shall not be effective unless either (1) the relevant municipality is a Participating Party and has approved the development agreement; or (2) the relevant municipality has authorized the departure from local zoning requirements in accordance with its zoning bylaws.

SECTION 10 . Development of Regional Impact Review

When a proposed development meeting the standards and criteria for a Development of Regional Impact under Section 12 of the Act is the subject of an approved development agreement and the Commission is a Participating Party, then the development agreement shall constitute the Commission's approval of the proposed Development of Regional Impact and the development as specifically described within the development agreement shall not be subject to Development of Regional Impact review under Sections 12 and 13 of the Act. In the event that a proposed development agreement is not approved by the Commission, the proposed development shall be subject to Development of Regional Impact review under Sections 12 and 13 of the Act.

SECTION 11 . Judicial Review

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 Section 17 of the Act. 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 thirtieth day after the execution of the development agreement on behalf of the Commission. This means of appeal shall be exclusive.

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SECTION 12 . Duration of a Development Agreement

A development agreement will commence and terminate as agreed by the parties, in writing, except as otherwise provided in this section.

A development agreement may be adopted for longer than twelve (12) years 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, affordable housing, and agreements to pay for maintenance of utilities and other infrastructure, and any other provision requiring recordation of a perpetual restriction may exceed such twelve-year limitation or other duration limitation approved by the Commission.

A development agreement may be extended once, by consent of all the parties to the agreement, after a Public Hearing. In no case shall such extension exceed the duration of the original agreement.

Following the expiration of an approved development agreement, a Qualified Applicant wishing to undertake new or additional development on a site that was previously the subject of a development agreement shall be required to either (a) pursue a new development agreement in accordance with Section 14 of the Act and these regulations or (b) obtain from the Commission approval of a new Development of Regional Impact in accordance with Section 13 of the Act.

In the event that any development agreement approved by the Commission is the subject of any appeal or other 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 to the date of final disposition thereof, provided final adjudication upholds the validity of such agreement.

SECTION 13 . Amendment and Rescission of a Development Agreement

Any party to a development agreement may petition the Commission to amend or rescind the agreement. 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.

Any amendment or rescission must be ratified by all parties to the development agreement.

De minimis changes or technical corrections to an approved development agreement do not require further review by the Commission and may be authorized by the Executive Director of the Commission.

SECTION 14 . Enforcement

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

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