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Review Committee**

Thank you.

TO THE BARNSTABLE COUNTY COMMISSIONERS

December 1, 2006

The 21st Century Task Force was appointed to examine the following questions:

1. *How can the Commission effectively address its three-pronged mission: regional planning, regulatory review and technical assistance?*
 - *Should there be less emphasis on threshold based regulatory review (DRIs) and more emphasis on the use of regional planning tools such as DCPCs?*
 - *Should more staff time be devoted to technical assistance to towns in water resources, transportation, housing, historic preservation, and other areas of expertise?*
 - *How can the regulatory process be restructured to create incentives for redevelopment and discourage further sprawl?*
 - *Are there ways to make necessary mitigation costs (e.g for traffic, wastewater treatment, affordable housing and open space) more universal, predictable, and equitable?*
2. *How can the Commission and the towns achieve implementation of Local Comprehensive Plans (LCPs)? The Commission Act anticipated adoption of LCPs consistent with the Regional Policy Plan and modification of local regulations to implement these plans. What additional incentives and/or assistance are needed to make this more effective?*
3. *How can the Commission and the towns better reconcile differences between regional and local interests in both planning and regulatory matters? How can coordination and communication be improved?*

Since appointment by the County Commissioners and the Assembly of Delegates, the Task Force met 15 times between May 5, 2006 and November 21, 2006 and held 3 public hearings in Mashpee, Barnstable and Eastham. The Task Force heard presentations from a variety of groups and individuals representing business, preservation and conservation, town government, housing, Cape Cod Commission members, Commission staff, attorneys, developers and planners. Deliberations were held to discuss the testimony presented. It is from this work that the Task Force presents this report.

The Cape Cod Commission is charged with protecting the resources of Cape Cod. Its charge is stated in the very first paragraph of the Cape Cod Commission Act:

"The region commonly known as Cape Cod, comprised of Barnstable County, including all geographic areas to the jurisdictional limit of the commonwealth, possesses unique natural, coastal, scientific, historical, cultural, architectural, archeological, recreational and other values; there is a regional, state and national interest in protecting, preserving and enhancing these values; and these values are being threatened and may be irreparably damaged by uncoordinated or inappropriate uses of the region's land and other resources."

Since the Cape Cod Commission's creation in 1990, not much has changed in the interest

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and intent to protect Cape Cod's resources in a coordinated manner. In pursuit of the Task Force's mission to make recommendations to Barnstable County and ways to improve the processes of the Cape Cod Commission, we deliberated on a litany of topics including:

- Community character and the quality of development,
- The role of new development paying its own way,
- How mitigation fees are related to the impacts of the project,
- Whether growth has reached its maximum,
- The fiscal effect of open space,
- Options for use of existing properties,
- The time and money it takes to go through CCC review,
- The role of the towns, developers and attorneys,
- The cumulative long-term impacts of development,
- Checks and balances built into the CCC Act,
- The use of maps as a planning tool,
- Economic development and the definition of good jobs,
- Wastewater planning, affordable housing needs, and traffic.

In the end, we worked on how to refocus the Cape Cod Commission on its mission. Not all the individual members supporting this report necessarily agree on every point. However, we all do agree that the suggestions presented can make a significant improvement in the valuable services rendered by the Cape Cod Commission.

On behalf of the County of Barnstable, we present this report.

Keith Bergman
Larry Cole
Thomas Evans, Vice Chairman
Henry Kelley
Ed Mangiafico
Mark Robinson

Elliott Carr, Chairman
Lindsey Counsell
Maggie Geist
Vicky Lowell
Wendy Northcross, Vice Chairman
Henri Rauschenbach

REPORT OF THE 21st CENTURY TASK FORCE

November 21, 2006

In 2006, Cape Cod continues to be a special place: an economic brand name that attracts vacationers, retirees and others to an abundantly beautiful natural environment, even while Barnstable County continues to be one of the most rapidly growing areas in the Eastern United States.

Even with the unique tools of the Cape Cod Commission (CCC), backed by the power of law contained within the Regional Policy Plan (RPP), Cape Cod continues to be threatened. That threat is to become like “everywhere USA”. We believe the threat is real and has been a result of several things:

- Zoning laws that have compelled too much residential and business sprawl and increased the consumption of open space per unit of new development,
- Rapid development creating problems in the areas of traffic, water quality deterioration and others,
- An era of “no new taxes” which provides insufficient public resources to fund necessary infrastructure.

Cape Cod’s economy revolves almost entirely around a sense of place. That is why retirees and vacationers come and entrepreneurs have chosen to locate businesses here. Historically, very few industries not drawing from these assets have lasted long.

Cape Cod is far from unique in marketing itself as a special place. But, as an eighty-mile long peninsula a few miles wide, the Cape is uniquely vulnerable to congestion. There is no way to build roads around it and no ‘further out-of-town’ to grow to. Growth can only come in the middle of what is already here.

The strength of the Cape’s economy doesn’t lie in the completion of every real estate project lurking in the head of a businessmen, land owner or developer: that never ending series of projects that have stoked controversy concerning the CCC. Many projects – particularly those proposing retail expansion along well-traveled roadways – harm the economy more than they help by transforming and congesting this special place. We already have too many miles of highway devoted to trying to hawk goods to anyone who passes by, too many retail outlets of many varieties, and many parts of our economic pie sliced too thin.

The Cape Cod Commission was created by a vote of the legislature and passage of a Cape-wide referendum with the goal of better planning and oversight of development. It called for four new tools:

- Formulation of the Regional Policy Plan drafted with public input and written by the Cape Cod Commission for approval by County government.
- Formulation of Local Comprehensive Plans (LCPs) in each town in keeping with the RPP and subject to certification by the CCC.

- CCC regulation of large-scale Developments of Regional Impact (DRIs) with thresholds for review established based on size and use, such as 10,000 square feet or more of commercial construction, and 30 acres or 30 units of residential development.
- Establishment of Districts of Critical Planning Concern (DCPCs), for which the CCC and Towns can adopt special development rules, which could suspend and/or reduce grandfathering protections.

Passage of the Act in 1990 and another Task Force reviewing the CCC in 1994 anticipated that towns would pass zoning changes and make other regulatory changes to implement their own plans, but for the most part this has failed to occur.

- Towns have not effectively changed zoning to help reduce sprawl, contain traffic or preserve village center vitality. The towns, however, know where their traffic and other problems lie.
- Falmouth, Provincetown, Chatham, and Barnstable have wastewater treatment plants that service small parts of town. They and a few other towns have begun to develop wastewater management plans, but much work remains to be done in all towns.
- Several towns have portions of their public water supply recharge areas zoned commercially or industrially.
- Most towns are experiencing 40B housing developments, some in illogical places, in part resulting from the towns' failure to zone for economically diversified housing.
- Shoreline management issues, access, erosion, armament and disaster planning flip flop between and within towns. All towns seem to ignore flood plain maps.

Zoning is not easy to change, but changes are essential for implementation of the LCPs.

Over the years, critics have charged the Commission with arbitrary or unfair decisions, and bureaucratic and lengthy processes with expensive mitigation and application fees. While criticisms have a place, we worked to identify what is real versus what is perception. The Commission's actual powers and work are not well understood by much of the Cape population. Controversy that sometimes surrounds the CCC appears to be consistent with similar regional regulatory agencies around the country (Adirondack Park Agency, California Coastal Commission, Long Island Pine Barrens Commission, and Martha's Vineyard Commission). Regardless of what complaints it may generate, we found that:

- Most Cape Cod Commissioners are mild-mannered, well-intended, hard-working public servants. The towns have done a good job appointing them.
- Most of the staff are typical, trained young professionals with zeal for their jobs.

But some perceptions can become reality. And irrespective of the quality of its

personnel, there seems to be disconnection between the CCC and the development industry. A focus of this Task Force is to reduce this regulatory tension.

Because planning and control of development continue to call for a regional and local role, it appears that the CCC is more necessary than ever. Cape Cod needs a regional agency in order:

- To provide linkage on issues that cross town lines.
- To provide staff specialists with requisite skills to help towns with technical assistance (at the towns' request) and achieve financial savings through economies of scale.
- To serve as a regulatory backstop when local interests or outright conflicts will benefit from a process one step removed from town hall.

State laws and tradition are such that towns will always play the primary role in implementing plans because:

- They have the right to change zoning.
- The needs of each town vary.
- They are closer to the population.

Controlling development and changing zoning on Cape Cod will always generate controversy, but the Task Force believes this can be substantially reduced and become less debilitating if the CCC and towns work more closely together.

There is an urgent need to strengthen the relationship between town leaders and the CCC. Communication is a two-way street. The CCC needs to understand that every town has unique problems. The Towns need to understand that regional community interests frequently cross town boundaries. But defining developments of true regional interest requires more planning than merely establishing size thresholds.

To that end, the Task Force offers recommendations concerning planning, regulations, communication and management.

CCC PLANNING

Comprehensive planning is essential to preserve the vitality of Cape Cod. The Task Force believes that over time, better planning will necessitate less regional regulation by producing stronger local plans (LCPs). Three of the four primary tools in the CCC Act relate to planning:

- The Regional Policy Plan (RPP)
- Local Comprehensive Plans (LCPs)
- Districts of Critical Planning Concern (DCPCs)

Of these, only the RPP has been implemented fully as intended. And, many developers

either do not understand or choose to ignore that the Minimum Performance Standards of the RPP are law, not merely a list of suggestions.

Not all towns have completed LCPs and, although some have done more than others, none have passed all of the zoning necessary to implement their plans. As a result most LCPs have become of diminishing rather than increasing relevance to planning for growth on Cape Cod. The failure of towns to complete or implement these plans has by default made DRIs the primary means of growth control on Cape Cod.

The CCC and the towns need to work together to identify areas for future growth and essential areas to preserve and protect the character of Cape Cod.

Planning Recommendations:

Good maps are essential to better planning. The CCC should play a leadership role in establishing a unified Cape-wide map system for planning and zoning. The CCC should appoint an advisory committee of knowledgeable town mappers to assist in the selection and development of this Geographic Information System.

The maps should identify:

- *Appropriate growth areas of several types and sizes, including CCC approved Growth Incentive Zones (GIZs), where denser development will be permitted.*
- *Economic development zones, pre-approved to attract pre-defined good jobs (Creation of the right jobs in the right place implements Section II of the Cape Cod Commission Act, which calls for the Commission "to maintain and enhance local and regional economies, and to insure balanced economic growth.").*
- *Redevelopment zones with hotel/motel sites and other tourism related infrastructure.*
- *Diversified workforce-housing areas with greater density, providing housing for several levels of pre-designated income levels, where greater density is encouraged.*
- *Critical traffic arteries.*
- *Water recharge areas.*
- *Wastewater management areas to protect marine estuaries & ponds.*
- *Flood plains, and areas of erosion, shoreline armament and public access to the shore.*
- *State and national parks and other conservation restricted land.*
- *Other areas as necessary.*

The county maps should specify natural geographic boundaries where they exist, but the CCC should not micromanage boundaries that are not naturally defined.

The Regional Policy Plan should be reorganized to separate planning components from regulatory (zoning) requirements, clarifying the roles of each. The RPP should include:

- *Model town bylaws concerning development in all types of districts (perhaps as an appendix or by reference).*
- *Suggested minimum performance standards to implement sound development procedures in all types of zones.*
- *Provision for controlling regulations and thresholds for all development subject to CCC control. These regulations should be related as much as possible to type of area and degree of impact, not size.*
- *Necessary regulations for transferable development rights (TDRs)*
- *All standards and regulations shall create incentives for redevelopment.*

The CCC should solicit recommendations from each town concerning creation of all map zones, standards and regulations within that town and shall establish procedures making it as convenient as possible for towns to provide input.

Any regulations or standards of any type that will have a binding impact on any proposed development through CCC review or any other procedure shall be clearly and emphatically delineated in a separate section of the RPP.

All maps, suggested bylaws and standards or regulations in the RPP should be changeable under existing procedures (CCC action or County Assembly vote) at any time.

Each town's Local Comprehensive Plan should include:

- *Town maps prepared utilizing the same system as those in the RPP. Whenever possible CCC and town maps should be consistent. Where different, the towns and the CCC should engage in respectful dialogue.*
- *Wastewater, traffic, housing, economic development, and shoreline management planning components.*
- *Specific proposed zoning or other regulatory changes necessary to implement all planning objectives.*
- *Utilization of development agreements or GIZs.*
- *A timetable to implement all of the plan's objectives, including zoning changes.*

The Commission should work with the towns and appropriate agencies to develop a regional housing strategy, filing special 40R type legislation for Cape Cod if necessary to implement the plan.

Districts of Critical Planning Concern

There are clearly areas on Cape Cod that need comprehensive thoughtful planning including areas that cross town boundaries. These areas may benefit from the "time-out" provided by DCPC designation.

The Commission should work with the towns to identify the areas that would benefit from such a planning process.

The Task Force recognizes that existing state laws, grandfathering, changes in property values and other factors will make it difficult in some instances to implement necessary zoning changes. The CCC and towns should work together to establish reasonable timetables and develop outreach programs to build public support to end sprawl and implement changes implicit in a sound map-based planning process.

These recommendations will focus considerably more discussion and debate into the RPP approval process, which is where intense discussion belongs. Adoption and amendment of the RPP are subject to recommendations of the CC Commissioners, who are appointed by each town, and ratification, where specified, by the County Assembly consisting of members elected by the voters of each town. Map based planning should reduce the never-ending debate over individual DRIs.

CCC REGULATION

Developments of Regional Impact (DRIs):

Regulation of some proposed developments on Cape Cod has become complex and gives the appearance of unevenness. The problems – length, expense, and complexity of the regulatory process – are by no means limited to the CCC, but shared by a myriad of sometimes conflicting town boards. This unevenness, derived particularly from the 10,000' threshold for CCC review, has backfired by causing a plethora of less regulated development just below that limit.

The CCC, a necessary agent of change voted by the people because the towns weren't doing enough, has become unnecessarily cumbersome – a maze of too many rooms. It would be well served by more pragmatic management keeping the process as short, simple and clear as possible without weakening its mission and effectiveness.

Other complications result from the CCC regulatory process being largely independent of town boards. An applicant can be caught in the middle if the CCC and town boards are not in agreement about under what conditions a project is approvable.

The CCC should act to the maximum extent possible within existing state laws, to provide a concurrent application structure with the CCC and as many town boards as possible by conducting joint hearings. This recommendation could accelerate the process, and the town and CCC would both benefit through working together as much as possible and observing each other's interests and issues through the process. Concurrent consideration of applications need not deprive any existing town board of its current authority to consider and act on any portion of an application.

The CCC should make the following additional procedural changes when DRI review is deemed necessary:

- Queen Anne Road and Rte 39 in Harwich (Stop and Shop), Rte 132 in Hyannis (BJs), and many other locations.
- Required installation of wastewater treatment facilities and storm water management improvements to reduce nitrogen loading at Sandwich Stop and Shop, Marstons Mills Marketplace, Willowbend Golf Course, and many other locations.

Both mitigation payments themselves, and the costs of determining them, have been viewed by some developers as a major source of unfair, unpredictable, and added expense, perhaps the most contentious part of the DRI process. Mitigation has thus served as major motivation to circumvent CCC DRI review by downscaling a project below the 10,000 square foot threshold.

Some form of mitigation or impact fees are imposed most places in the country to offset the substantial public expense of servicing new development. Cape Cod is not different. Past mitigation-funded improvements have been invaluable to Cape towns. Insufficient town revenues will necessitate continued assessments or fees requiring developers to provide infrastructure to offset their impact.

The Task Force recommends:

- *Mitigation will be fairer if it becomes less reliant on thresholds based on size. There is no magic line above which a project should pay and below which it should not. CCC mitigation should be related to area (map districts), not size thresholds, and be as universal and proportionate (uniform per unit or square foot) as possible.*
- *The CCC should cede as much mitigation as legally possible to the towns as impact fees, but retain continued collection if a town can't implement a program.*
- *Although there will always be unique circumstances concerning any development, mitigation and impact fees should be as predictable as possible.*
- *The uses of mitigation and impact fees should be linked to the impact of the development. The CCC should discuss mitigation and its possible uses with a town prior to imposition.*
- *The CCC should work with the towns to improve procedures for collecting mitigation and/or impact fees.*

Because state courts have required a tight nexus between fees and specific impacts of developments, the CCC has broader powers to impose mitigation than towns do to impose impact fees. Ironically these factors have resulted in contentious 'discretionary referrals' of below-threshold developments by a town to the CCC, seeking imposition of mitigation and other CCC conditions unavailable to the town.

Legislation

At least two recommendations in this report would be enhanced by passage of improved enabling legislation: those calling for zoning districts in all towns to facilitate workforce housing and concurrent regulatory review by CCC and towns.

The possibility of filing legislation is itself considered a controversial act. On one hand, the longer before CCC enabling statutes are updated, the longer regulation of development must proceed under increasingly irrelevant provisions. On the other hand, Massachusetts' legislative processes are viewed as unpredictable and subject to influences with little to do with Cape Cod.

The Task Force recommends:

The CCC should proceed to implement as many of the recommendations in this report as it can under current statutes, constantly monitoring the process with the towns. Legislation should be initiated only if and when results fall short of necessary goals.

CCC MANAGEMENT AND COMMUNICATIONS

After 16 years the CCC still has a polarized image resulting from diverging views on regulation of development on Cape Cod and the mission of the CCC to protect resources. Many property owners worry about efforts to control development even though they might be the primary beneficiaries of better planning. The enhancement of our built environment in livable villages coupled with the preservation of our beautiful natural environment must continue to be the calling card for Cape Cod. The long run interests of developers and conservationists are the same: to keep Cape Cod from being overwhelmed by its own success. An attractive, clean, smoothly functioning Cape Cod is key to our future economic health. In order to accomplish this the CCC must be an agency that is clear, simple, prompt and open in its communications.

The CCC's management objectives should include the following:

- *To provide sufficient ongoing staff training to ensure adequate communications, reduce unnecessary friction in its planning and regulatory work, and achieve all Commission objectives.*
- *CCC should establish a public relations policy providing continuous outreach to each town.*
- *CCC management should meet with each Board of Selectmen (and Town Council) and other appropriate town officials at least every 15 months.*
- *The CCC should attempt to establish a joint panel with the Cape Selectmen's & Council Association to monitor and evaluate problems of joint interest.*
- *Each CC Commissioner should play a leadership role in maintaining a satisfactory relationship with his/her town, including open channels of communication on DRIs within the town. Towns should select Commissioners carefully and their ability and obligation to serve as the fulcrum of two-way communication should be clearly defined and unchallengeable. Informal*

- communication consistent with Massachusetts open meeting law should be encouraged.*
- *The CCC should define and promulgate procedures for town input on any DRI within that town's boundaries.*
 - *The CCC website should be redesigned to make it more user friendly.*
 - *The CCC should strive constantly to improve its capabilities to provide technical and professional services to towns.*
 - *The CCC should encourage, provide and assist continuing education of Commissioners and town planning officials.*
 - *The CCC should devise a means to measure its progress on achieving its RPP goals, and should report such progress at regular intervals.*

SUMMARY AND CONCLUSION

The core recommendation of this report – that the CCC and towns should work more closely together to plan and implement future land use on Cape Cod – places a renewed focus on the need to change zoning. But the report notes that zoning has proven somewhat intractable. Cape Codders have easily resolved over and over again that we want to retain our attractive environment. But increasing property values have, if anything, made it ever more difficult to change zoning. Grandfathering, private property rights, and development interests fearful of change stand in the way.

This report provides a roadmap from which all parties can benefit. It recommends an enhanced Regional Policy Plan and coordinated Local Comprehensive Plans developed under the leadership of the Cape Cod Commission (whose members are appointed by the towns) and approved by the County Assembly (whose delegates are elected by voters). These bodies, acting in partnership with towns, can implement our recommendations and in so doing provide an opportunity for Cape Cod towns, collectively, to reduce the regulatory role of the CCC. But to do so, the towns must put more teeth into their own plans, and make the necessary zoning changes to get the job done locally.

Without such action, not much will change. The proportion of Cape Cod resembling 'everywhere USA' will continue to grow. The people – and economy – of Cape Cod want and deserve better.

MINORITY REPORT

INTRODUCTION

The undersigned members of the 21st Century Task Force hereby submit the following minority report and request that this report be included as a part of the 21st Century Task Force report. In the alternative, we would request that this report be submitted to the County Commissioners contemporaneously with the 21st Century Task Report.

The minority members listed below have prepared this report not as criticism or disagreement with all aspects of the report as drafted and voted upon by the majority, but rather with full respect and appreciation for the hard work that the entire Task Force has undertaken over the past several months. We believe, however, that it is vitally important to clarify and amplify upon testimony and information received by the Task Force and to focus the County Commissioners and the public on several aspects of the Cape Cod Commission. In particular, we believe that there is a need to address several fundamental foundational issues, and also to make recommendations concerning the utilization of the Task Force recommendations moving forward.

We appreciate this opportunity to provide this report to the County Commissioners and the Task Force and wish to thank the members of the Task Force for their hard work and efforts.

The Task Force report makes many appropriate and positive recommendations relating to the role and activities of the Cape Cod Commission. At the same time, we believe that the following additional information and recommendations should be considered by the County Commissioners and the Assembly of Delegates upon receipt of the Task Force report. For ease of reference, our recommendations are set forth in the numbered paragraphs set forth below.

1. **APPENDIX.** We believe the Task Force report should be forwarded to the County Commissioners together with this minority report. We believe that the transmittal to the County Commissioners should also contain an appendix within which copies of all of the minutes of the meetings of the Task Force would be included, as well as copies of any reports or written submissions submitted to the Task Force by the public or third parties and the complete initial list of recommendations considered by the Task Force.
2. **PUBLIC WORKSHOP.** We believe that the County Commissioners and the Barnstable Assembly of Delegates should undertake a public review of the Task Force recommendations and jointly schedule a public workshop to allow for the full discussion and review of all of the recommendations, together with the issues raised in this minority report for the purpose of discussing and, hopefully, adopting an implementation plan. Such implementation should also involve

discussions with representatives from towns throughout Cape Cod and the Cape Cod Legislative Delegation.

3. **PRIORITIES – RPP REVIEW.** There was consistent testimony throughout the Task Force review process that the priorities of the mission of the Cape Cod Commission needed to be reordered, such that the primary priority would be offering technical assistance and planning to the towns, with a subsidiary role in the area of land use regulation. We believe the RPP should be comprehensively and thoroughly revisited to accommodate the divergent needs and plans of the individual towns. The Minimum Performance Standards (MPS) should be understandable by the public and desired projects and usages should be encouraged with incentives. We believe redevelopment should have significant incentives and that updates to the RPP should occur whenever needed. The current rewriting of the RPP should involve extensive outreach to all segments of the community and broadened input.
4. **LOCAL COMPREHENSIVE PLANS.** The discussion and recommendations regarding Local Comprehensive Plans (LCP) supports a “forcing down” of Cape Cod Commission standards upon local municipalities. We believe the exact opposite should occur. The Cape Cod Commission needs to recognize and incorporate towns’ plans into the Regional Policy Plan, thereby allowing Local Comprehensive Plans to be truly “local”. The Town of Barnstable provides an excellent example of how towns can create a vision for itself that also coordinates with an appropriate vision and future for Cape Cod as a region. Clearly, the technical assistance and plan assistance available from the Cape Cod Commission to towns should be a major area of focus. It should be remembered in this regard that the primary motivating force behind creation of the Task Force by the County Commissioners was the consideration by several towns of withdrawal from the Cape Cod Commission.
5. **DCPC.** We believe strongly that the DCPC process must be town driven. Any utilization of a unilateral nomination process for the Cape Cod Commission designating a DCPC in any town should only be undertaken after adoption of a specific procedural process that allows towns an opportunity to address and consider the DCPC designation and, more importantly, which mandates town input, desires and recognizes Towns’ abilities to properly create a vision for themselves and all of Cape Cod as a region.
6. **ECONOMIC DEVELOPMENT.** We believe that the area of economic development and the role of the Cape Cod Commission and the Regional Policy Plan in economic development needs to be thoroughly and comprehensively reviewed and revisited. A specific defining of the Cape Cod Commission role to focus on economic development and methods to reward job creation and investment should be considered. One Task Force member during the process that stated we need to preserve Cape Cod for the next generation of retirees. We respectfully disagree. The Cape Cod Commission should and must preserve Cape Cod for the next generation of Cape Codders, including working people, students,

and our youth and younger adults. This is an example of the need to redefine what a “balanced” economy is on Cape Cod, and what the Cape Cod Commission’s role is in achieving same.

7. **OMBUDSMAN.** We applaud and support the idea of an outside independent ombudsman to conduct post mortem analysis following approval of DRI permits, as well as DCPC designation. The ombudsman should also be charged with review of timing and cost of DRI review, as well as the efficacy of mitigation. We would recommend that the ombudsman be a person appointed directly by the County Commissioners and not be an employee within the structure of the Cape Cod Commission.
8. **DRI REVIEW.** With reference to the DRI review process, we recommend the following:
 - We applaud the majority’s adoption of a tracking schedule and the use of meeting notes.
 - We strongly support the proposed joint-concurrent hearing process with town boards. We also believe the use of a prehearing conference between applicants and staff is an excellent suggestion which will, in fact, expedite the process.
 - DRI thresholds and the jurisdictional scope of Cape Cod Commission review should be carefully reviewed. Simply put, only projects of a truly regional nature should be reviewed by the Commission, and such review should be limited to only truly regional impacts. The concept of increased thresholds within growth activities areas, the adoption of Growth Incentive Zones (GIZ) and possible limited DRI review are all appropriate. We strongly oppose the reduction in base thresholds for DRIs. We feel strongly that the discretionary DRI referral process is fully adequate and leaves the decision making in that regard to the towns, which is most appropriate.
9. **MITIGATION.** We support the adoption of a “sliding scale” method of mitigation and for the adoption of a process that would carefully create fair, equitable and predictable mitigation methods. We also support the utilization of predetermined impact fees at the local level and coordination of same through the joint review process noted above. Mitigation must be fair, reasonable and equitable.
10. **REGULATORY REVIEW.** We ask that the County Commissioners and the Assembly of Delegates consider three fundamental issues raised during the task force review relating to decision making in the DRI review process:
 - Some methodology should be considered whereby votes by the Cape Cod Commission are weighted by community population. The majority report gives lip service to the fact that the Assembly of Town Delegates is weighted. It must be noted, however, that the Assembly has no direct role in the regulatory process, and that any changes to the regulatory process may not be formally initiated by

the Assembly, but must be initiated by the Cape Cod Commission. Further, the Assembly may not amend unilaterally any proposal sent to it by the Commission or the County Commissioners regarding regulatory review. Accordingly, the Commission has, in essence, veto power. While this is a difficult political and constitutional discussion, it is one that should take place by and between the Cape Cod Commission, the Assembly of Delegates and the County Commissioners as part of the Task Force charge.

- Some methodology should be considered to allow a weighted based determination of importance for minimum performance standards and/or the ability to “trade-off” between MPS categories on particular projects. The example of allowing a small portion of open space on a DRI project to be used for affordable housing is a good one. Procedural protections could be put into place ensure that such flexibility is not abused (i.e., requirement of a two-thirds vote of the full commission).
- The lack of consistency in application of standards, disparate treatment of different projects and types of applicants (i.e. residential vs. commercial/profit vs. non-for-profits), all argue for careful and more comprehensive review of how the Commission does its regulatory business. We respectfully disagree with the majority that this issue is only one of perception (see page 4-5 of the report). In particular we believe strongly that the report prepared by the majority is incorrect when it states that “*developers either do not understand or choose to ignore [that the MPS] of the RPP are law, not merely a list of suggestions*”.(P. 6-7). We believe that there was clear and convincing testimony establishing exactly the opposite. In point of fact, we believe that applicants and their consultants fully understand the “rules of the game”, but that the inconsistent application of standards in an ad hoc or subjective fashion has led to the creation of an adversarial atmosphere (ie “regulatory tension”) This is both a policy and management issue.

11. OPERATION AND MANAGEMENT. We recommend that the County Commissioners consider the retention of an outside independent organization to review the operation and management of the Cape Cod Commission. This recommendation is without prejudice of any kind or nature toward the existing staff of the Cape Cod Commission. An organization of the size and nature of the Cape Cod Commission, utilizing taxpayers dollars to the extent paid in by each of the towns and with the tremendous responsibility imposed by the legislature via the Cape Cod Commission Act, could do nothing but benefit from such an outside independent objective review process. We believe simply that such an independent management review would go a long way to helping “reduce regulatory tension”.

We respectfully disagree with the majority that only “anecdotal evidence” exists regarding disparate treatment of projects, inconsistencies in the application of standards and oversight review of management. Information and testimony was submitted from numerous sources, including actual applicants and consultants, to support the concept of such an independent review. We believe it is telling that on pages 15 and 16 of the

majority's report dealing with "CCC Management and Communications", there is no mention within the recommendations of the word "applicant". The Commission has, in the minority's opinion, a real performance and image problem as evidenced by the fact that several towns were considering leaving the Commission. We do not believe that the report addresses this level of disconnect, nor does it provide solutions or suggestions regarding the adversarial nature of the regulatory review process.

CONCLUSION

The undersigned acknowledge the difficult nature of the task assigned to us by the County Commissioners. The foregoing report is intended to express our belief that the recommendations expressed herein will be of assistance to the Executive and Legislative branches of our County government as an adjunct to the majority's report. All of the minority members feel that these issues are appropriate for a discussion and review before the County Commissioners adopt an implementation plan. This report is not intended to divide, but rather, to seek to create, in the end, a unified approach.

We are committed to continuing to be involved and work with the County Commissioners and the Assembly of Delegates during this implementation process. We believe that the Task Force review process has been illuminating, educational and beneficial to all parties concerned. We appreciate the leadership of the Chairman in coordination of this effort over the past several months, and the commitment and participation of all Task Force members. We applaud the County Commissioners for the creation of the Task Force.

We feel, however, that the responsibility and charge given to the Task Force by the County Commissioners last spring requires a broader, more comprehensive and fundamental discussion than that proposed by the majority. It is for this reason that we submit this minority report. We appreciate the opportunity to do so.

Respectfully submitted, This 23rd day of October, 2006.

Michael Cole

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Tom Keyes

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