

BARNSTABLE COUNTY ASSEMBLY OF DELEGATES

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In the Year Two Thousand Fourteen

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[Proposed Ordinance 14-07](#)

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To amend Cape Cod Commission Local Plan Regulations as outlined below:

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Local Comprehensive Plan Regulations

Adopted 2/18/93

Revised 6/19/97, 7/22/97, 3/31/05, and [109/ /14](#)

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Section I. General Provisions

A. Authority and Purpose

The purpose of these regulations is to establish the Cape Cod Commission requirements for Local Comprehensive Plan (LCP) certification as authorized by Section 9 of the Cape Cod Commission Act ("the Act"), Chapter 716 of the Acts of 1989, as amended.

The Cape Cod Commission's ("the Commission") role under the Act is to anticipate, guide and coordinate the rate and location of development with the capital facilities necessary to support such development; to protect Cape Cod's unique values; to promote the public health, safety and general welfare; to maintain and enhance sound local and regional economies; and to ensure balanced economic development.

It is through the LCP that each town defines its vision for how to achieve the goals cited in the Act. As a key part of the local planning process, each town may prepare an LCP that is consistent with the Regional Policy Plan (RPP). The Commission is available to assist towns in the local planning process and in the preparation, certification and recertification of Local Comprehensive Plans.

In addition to articulating a vision and growth policy, the LCP is a source of information about existing and expected conditions within a town. Local and regional benefits resulting from LCP preparation and implementation include managing population growth and its impacts on the resources protected by the Cape Cod Commission Act; a stronger legal defense for the adoption of zoning changes, bylaws and ordinances, impact fees, and other measures that are necessary to manage growth; the ability to enter into development agreements with the Cape Cod Commission and developers; the designation of areas for growth where special regulations may be required to manage growth; use of the LCP by town boards and officials as a guide to allocate capital funding and prioritize town projects; use of the LCP by developers to guide private development projects; and access to planning-related financial incentives through the Commonwealth of Massachusetts and Barnstable County Government.

B. Effective Date

The regulations set forth herein shall be effective after adoption by the Cape Cod Commission upon filing with the Registry of Deeds. They shall apply to review, certification and recertification of any plan submitted for Commission review after the effective date of adoption.

C. Definitions

The definitions contained in § 2 of the Act and the RPP apply to these regulations. In addition, the following terms shall have the following meanings:

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Action Plan: The section of the LCP containing the action items that are necessary to achieve the goals and optional Local Standards of the LCP.

Action Plan Manager: The municipally designated committee or individual charged with managing the implementation of the Action Plan.

Build Out: The point at which a municipality is fully developed, both residentially and non-residentially, under existing municipal bylaws, regulations and ordinances.

Committee on Planning and Regulation: A standing committee of the Cape Cod Commission

Issue Areas: Those sections in the RPP that contain goals, policies and implementation items pertaining to specific environmental, economic and planning topics.

Local Planning Committee (LPC): A municipal body established pursuant to § 8 (b) of the Act.

Local Standards: The optional planning and/or regulatory targets contained in the LCP that are needed to achieve the goals identified in the LCP.

Minimum Performance Standards (MPSs): The standards contained in the RPP that serve as minimum requirements used by the Cape Cod Commission for planning and regulatory purposes.

Planning-Ad Hoc Committee: A ~~subcommittee~~ ~~standing committee~~ of the Cape Cod Commission.

D. Local Planning Committee (LPC) Authority

The LPC shall be designated by the Board of Selectmen/Town Council and has primary responsibility for development of a town's LCP. The LPC may be either the Planning Board or a specially designated committee. All local town boards should be fully involved in the planning process through the LPC.

E. Action Plan Manager Authority

After certification of the LCP by the Cape Cod Commission, the Board of Selectmen/Town Council shall designate an Action Plan Manager (Manager) to carry out the functions pursuant to Section 5. A of these regulations. The Manager may be either an individual or a specially designated committee.

Section II. Content

A. LCP Components

1. An LCP shall describe the history of the town's development, demographics and growth trends; the process that was used to develop the LCP, including evidence that broad citizen participation occurred at all stages of the planning process through media coverage, surveys, workshops, forums and public meetings, as appropriate; and evidence that the municipality consulted adjacent municipalities regarding shared concerns, such as shared geographic features and resources, shared public facilities and services, and shared transportation systems.
2. An LCP shall include text and graphics as appropriate that clearly articulate the community vision for the future of the town and a growth policy to ensure sustainable development that is consistent with the carrying capacity of the town.
3. An LCP shall include a basic inventory of existing resources, including benchmark data that can be tracked to evaluate progress, for each Issue Area in effect at the time of certification or recertification. To the greatest extent possible, existing studies and data

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should be used, with new data collected as needed to update and expand the available information.

4. An LCP shall include an analysis of existing conditions, problems, and future needs in all RPP Issue Areas.
 - a. Based on a Build Out study with sufficient data to justify the recommended actions for each Issue Area, the municipality shall prepare a plan for capital facilities demonstrating that adequate capacity exists or can be provided to meet the demands of any future growth projected in the LCP.
 - b. The analysis should be conducted townwide, as well as for any specific area proposed to accommodate intensified growth.
 - c. The analysis should be based on a 5 to 10-year timeframe at a minimum, or Build Out, whichever will occur sooner.
5. An LCP shall include goals for each of the Issue Areas. The vision statement and goals taken together shall set a direction for the municipality's future growth and development.
6. An LCP may include Local Standards, which are the specific targets needed to achieve the goals identified in the LCP.
7. The LCP shall include an Action Plan containing action items guided by the MPSs and Recommended Town Actions outlined in the RPP.
 - a. If a Town has not developed a housing needs assessment, it shall include an action item to develop such an assessment pursuant to § 9 (b) of the Act, as part of its Action Plan. The assessment should be consistent with the Planned Production regulations and guidelines that govern MGL Ch. 40B (760 CMR 31.07 (1) (i) and the state's guidelines for preparation of local housing plans (760 CMR 46:00).
 - b. Where existing master plans and other plans noted under Section II. B. 3 below are inconsistent with the Act and the RPP, the Action Plan shall include action items necessary to achieve consistency with Section III. A. 5 of these regulations.
 - c. The Action Plan shall include:
 - i. action items to gather benchmark data, as needed, to measure progress toward meeting the goals of the LCP (also refer to Section 2. A. 3).
 - ii. action items, as needed, to identify what further study is needed, how such study will be funded and an approximate timetable for its completion where an identified or potential problem requires study or detailed planning outside of the scope of the LCP.
 - iii. action items to make revisions, as needed, to local bylaws, regulations and ordinances (hereinafter referred to as "bylaws").
 - iv. action items that are currently in progress to address local problems, in addition to future action items.
 - v. an implementation schedule indicating the approximate time frame for the completion of each action item and the parties responsible for implementing them.

8. To encourage growth to occur in certain areas, towns may designate, revise or expand Growth/Activity Centers through the LCP certification and recertification process (also see Section 4).

B. Level of Detail

1. The data used in the LCP shall be sufficiently accurate, complete and up-to date to articulate issues, goals and implementation strategies. An LCP may include maps, charts and tables as needed for clarity.
2. For each Issue Area, the LCP should identify key problems or needs. The degree to which the LCP addresses a goal or action item shall reflect the extent of the municipality's problems within a particular Issue Area. The LCP should contain data to explain how the particular action items chosen are expected to address the problem or need.
3. Municipalities are encouraged to incorporate existing master plans, plans for open space, recreation, housing, harbors, water quality and similar planning documents into their LCPs to the extent that they are consistent with the Act and the RPP (also see Section III. A. 5).

Section III. Consistency

In determining if an LCP is consistent with the RPP, the Commission shall use criteria A through D, below.

The ~~Planning~~-Committee [on Planning and Regulation](#) of the Cape Cod Commission shall provide written guidance to municipalities on interpretation of consistency with the RPP upon request. Cape Cod Commission staff shall also provide informal guidance on an on-going basis.

A. Consistency with the RPP

1. The LCP shall include the goals of the RPP, although the municipality may choose to develop additional and/or more stringent goals than those in the RPP.
2. A municipality may choose to include Local Standards in the LCP that are consistent with the RPP's Minimum Performance Standards.
3. During consistency review, the Commission shall use the RPP's Minimum Performance Standards and Recommended Town Actions as a guide. The municipality may demonstrate through its inventory and analysis that an alternative action would achieve the same goal as the RPP or that a particular MPS is not applicable to that community.
4. The Action Plan shall include action items in all Issue Areas and may include additional Issue Areas not addressed in the RPP.
5. Where existing master plans and other plans incorporated into the LCP are inconsistent with the RPP, the certified LCP will supercede any inconsistencies.

B. Internal Consistency

Potential conflicts among the various sections of the LCP shall be identified and addressed so that the LCP is internally consistent in its vision, inventory, analysis, goals and Action Plan.

C. Consistency with Contiguous Municipalities

The LCP shall reflect inconsistencies between towns and with the RPP where overlapping mutual interests exist.

D. Recertification Consistency

For LCPs under recertification review, the consistency requirements of Section II and Section III of these regulations shall apply. The sections to be updated shall be identified by the town and shall include, at a minimum:

1. an updated Build Out study that takes into account changes in zoning that have been adopted since the LCP was previously certified;
2. a revised inventory that takes into account changes or new issues that affect the town; and
3. an updated Action Plan based on the revised Build Out study and inventory.

Section IV. Approval and Certification/Recertification Process

A. Recommended Municipal Public Hearings

The Local Planning Committee should conduct one advertised public meeting or hearing at each stage of the development of the LCP including, but not limited to, identification of issues, development of goals and Local Standards, and presentation of a draft LCP.

B. Required Municipal Public Hearing

Upon completion of a draft of the entire LCP, the Local Planning Committee shall hold a public hearing, revise the draft plan as necessary, and vote to transmit the draft LCP to the Cape Cod Commission for Preliminary Certification Review.

C. Cape Cod Commission Preliminary Certification

1. The town shall submit to the Clerk of the Cape Cod Commission:
 - a. the draft LCP, associated maps and appendices;
 - b. all written comments submitted for the required municipal public hearing; and
 - c. a summary of the required municipal public hearing testimony.
2. After receipt of the information in Section IV. C. 1 above by the Clerk of the Commission, ~~the Planning an Ad Hoc~~ Committee shall conduct a public hearing on the draft LCP with notice to the Local Planning Committee, Planning Board, Board of Selectmen/Town Council, Town Clerk of the municipality and all contiguous municipalities. Notice shall be posted in the Cape Cod Commission Reporter, pursuant to § 5 (a) and § 5 (i) of the Act, for the solicitation of public comments.
3. After the close of the public hearing, ~~the Planning an Ad Hoc~~ Committee of the Commission shall review the draft LCP at a regularly scheduled meeting and submit written comments to the Local Planning Committee. The ~~Planning-Ad Hoc~~ Committee shall invite the Commission representative from the Town whose plan is under consideration to participate in its review. The ~~Planning-Ad Hoc~~ Committee's comments will:
 - a. describe any inconsistencies noted under Section II and Section III above, and recommend measures to remedy them; and
 - b. include as attachments copies of any written comments received by the Commission.

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D. Municipal Revisions

1. If, based on the comments of the Planning-Ad Hoc Committee, the Local Planning Committee determines that significant revisions to the draft LCP are necessary, the Local Planning Committee may conduct a second public hearing on the proposed revisions.
2. The Local Planning Committee shall make revisions to the draft LCP resulting from the Planning-Ad Hoc Committee comments and the optional public hearing (if applicable) and vote to transmit the draft LCP, as amended, to the municipality's Town Meeting/Town Council for adoption. The Local Planning Committee should inform the Cape Cod Commission of any significant changes to the LCP that result from this revision process, and the Planning-Ad Hoc Committee may provide written comments on such changes to the Local Planning Committee.

E. Town Approval

1. The municipality's Town Meeting/Town Council shall vote to adopt all sections of the LCP. Adoption shall be by majority vote.
2. After adoption by a town, the draft LCP shall be the approved LCP, and shall be forwarded by the Town Clerk to the Clerk of the Commission for certification of consistency with the RPP pursuant to § 9 (b) of the Act.

F. Cape Cod Commission Final Certification

1. After receipt of the approved LCP, the Planning-Ad Hoc Committee shall review it and vote to recommend to the full Commission at a regularly scheduled meeting:
 - a. certification of the approved LCP and designated growth centers; or
 - b. conditional certification of the approved LCP and designated growth centers, if applicable, based on either specified amendments to the plan by a specified date, or completion of specified actions set forth in the conditional certification. The conditional certification may require that these amendments or actions be completed prior to establishment of growth/activity centers, imposition of impact fees or the execution of development agreements; or
 - c. denial of certification.
2. After receipt of the approved LCP and the Planning-Ad Hoc Committee recommendation, the Commission shall act on its certification at a regularly scheduled meeting. If the Commission fails to certify the approved LCP, it shall state its reasons in writing and refer the approved plan back to the municipality. These reasons must:
 - a. relate to changes that were recommended during the Commission's preliminary certification review as described in Section IV. C. 3. a, above, that were not incorporated by the municipality; or
 - b. relate to material added or deleted by the municipality since the preliminary certification review; or
 - c. relate to changes in law or circumstance since the preliminary certification.
3. The LCP shall be considered certified upon a vote of the Commission that it is consistent with the RPP. The Commission shall notify the municipality's Board of Selectmen/Town

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Council and Town Clerk in writing that the LCP has been certified. The Commission shall also notify the Boards of Selectmen of contiguous municipalities.

4. If an LCP fails to receive certification, revisions may occur pursuant to Section IV. A and Section IV. B, above, until the LCP attains consistency certification.

Section V. Implementation

A. Implementation Management

Where the Manager does not directly implement the action items in the Action Plan, the Manager shall initiate implementation by designating appropriate town officials or boards to take responsibility for actions within their purview. The Manager shall provide the responsible parties with clear direction as to the meanings, intents, purposes and scheduling of the LCPs implementation strategy. The Board of Selectmen/Town Council of the municipality shall provide the Cape Cod Commission with notice of the Manager appointed pursuant to Section 1. E above.

B. Revisions to Local Bylaws

§ 9 (c) of the Act states that within two years of the date of certification, a municipality shall adopt or revise its development bylaws to be consistent with its LCP and that the Cape Cod Commission may extend such time period. In order to maintain certification, the municipality shall make reasonable efforts to ensure that changes to the bylaws that are consistent with the Action Plan occur on a regular basis and are reported biennially. To accomplish this, the Manager designated under Section 1. E above shall work with other municipal boards and town officials to implement the Action Plan.

C. Biennial Action Plan Reporting

The Manager shall provide a biennial (once every two years) report to the ~~Planning~~ Planning and Regulation Committee of the Cape Cod Commission summarizing the actions that have been completed in the previous two years, including zoning changes and bylaws that were implemented, and all other research, studies and actions taken in the previous two years in accordance with the Action Plan. The report should also include actions that have not been completed and the reasons why not. After review, the ~~Planning~~ Planning and Regulation Committee shall make a finding as to whether adequate progress was achieved.

Section VI. Revocation of Certification

- A. The Commission shall revoke the certification of a municipality's LCP if a municipality fails to implement that portion of the LCP that provides for the development of low and moderate income housing consistent with local needs within a reasonable period of time following certification of the LCP per Section V. B, above. For the purpose of this section, the Commission will consider good faith efforts by the municipality in making progress toward affordable housing goals and/or Local Standards.
- B. The Commission will, at five-year intervals, review growth/activity centers certified under the LCP, and may decertify an LCP and/or a growth/activity center, if the municipality fails to bring its development bylaws into consistency with its LCP or fails to provide necessary capital facilities in accordance with its plan for capital facilities. Decertification of growth/activity centers will not affect the status of a municipality's Local Comprehensive Plan. The MPSs in the RPP for certified growth/activity centers shall not apply if a growth/activity center is decertified pursuant to this provision.
- C. Revocation of certification of an LCP will result in loss of ability to assess impact fees and enter into development agreements, and will result in decertification of growth/activity centers, but shall not affect the validity of any development agreement fully executed prior to the date of revocation. Nor shall revocation of certification affect the validity or retention of

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any impact fees collected by a town or required under a binding agreement or development permit fully executed or issued prior to such revocation.

- D. The Commission shall not revoke the certification of an LCP or growth activity center without conducting a public hearing with notice pursuant to § 5 (a) and § 5 (i) of the Act, and to the Local Planning Committee, Planning Board, Board of Selectmen/Town Council, and Town Clerk for the municipality and all contiguous municipalities.

Section VII. Revision

A. Five-Year Revision

1. The Action Plan shall be updated every five years, at a maximum, to take into account changes in the municipality, local bylaws and ordinances, and the RPP and such plan shall be submitted to the CCC for recertification. New actions identified by a town as necessary to achieve the goals and standards of the LCP and RPP shall be included. The revision of the Action Plan shall be the responsibility of the Manager in accordance with Section 1. E and Section V. A. 1, above.
2. Concurrent with review of the revised Action Plan, the Commission shall specifically review certified growth/activity center bylaws and all bylaws approved by a town to implement the plan for capital facilities, and may decertify an LCP per Section 6 above.

B. Ten Year Revision

At ten-year intervals, at a maximum, each municipality shall review and revise its entire LCP consistent with these regulations. Such review shall be conducted by the Local Planning Committee in accordance with Section 1. D.

C. Regional Policy Plan Revisions

In the event that the RPP is amended, any municipality with a certified LCP shall bring its LCP into conformance with the amended RPP per § 9 (a) of the Act, and Section II and Section III of these regulations. Normally this will be completed during the five year Action Plan revision and the ten year LCP revision.

D. Amendment Procedure

Any revisions or amendments to the LCP shall be reviewed and certified for consistency with the RPP in accordance with all sections of these regulations.

E. Other Plans

These regulations shall not prohibit a municipality from considering, adopting, enforcing or in any other way administering a master plan that does not comply with these regulations so long as it is not administered or enforced in a manner that otherwise violates the Cape Cod Commission Act. However such municipalities shall not be considered to have certified LCPs in accordance with the Act.

Appendix 1: Approval and Certification/Recertification Process

A. Municipal Public Hearing

- Municipal Public Hearing on Draft LCP Date: _____
- Revisions as necessary Date: _____
- LPC vote to transmit to CCC Date: _____

B. CCC Public Hearing on Preliminary LCP

- CCC public hearing by the Planning Committee Date: _____
- ~~Planning Ad Hoc~~ Committee comment letter to LPC Date: _____

C. Municipal Revision Process

- Local revisions as necessary per the ~~Planning Ad Hoc~~ Date: _____
_____ Committee comment letter
- Optional public hearing for significant revisions Date: _____
- LPC vote to transmit to Town Meeting/Town Council Date: _____

D. Town Meeting/Town Council Approval of Preliminary LCP

- Town Meeting/Town Council vote to approve Date: _____

E. Cape Cod Commission Final Certification

- Final Certification Review and recommendation Date: _____
by the ~~Planning Ad Hoc~~ Committee to the Cape Cod Commission
- Final Certification vote by the Cape Cod Commission Date: _____

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[\(Submitted by the Cape Cod Commission to the Assembly of Delegates Clerk on October 3, 2014\)](#)

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