

****CCC staff comments/ responses in blue 3/20/18****

TO: E. Suzanne McAuliffe, Chair, Assembly of Delegates Barnstable County, Barnstable, MA

FROM: Felicia Penn, Hyannis, MA

RE: Comments: Public Hearing Chapter G, March 21, 2018
A REQUEST TO SEND THE DOCUMENT BACK TO COMMITTEE

Date: March 16, 2018

On February 20, in advance of the Cape Cod Commission's hearing on Chapter G, I submitted four pages of comments and questions. During the hearing on February 22, I listened to staff's presentation and offered additional comments. No changes or recommendations were incorporated in the proposed Chapter G language.

NOTE: at the Cape Cod Commission meeting of 2/22 the Harwich delegate informed the Chair that she wished to make a motion to refer the document back to committee because it needed more work. The Chair conveniently 'forgot' her request to make her motion, and the document passed 7-5, as written, with not one single word changed. The 7-5 vote indicates this document is a long way from receiving unanimous support as written.

A motion was appropriately made to forward the proposed GIZ regulations amendments to the Assembly, and the Commission approved and adopted the motion by majority vote. Before the full Commission took up the proposed GIZ regulations amendment, they were reviewed by both standing committees of the Commission.

Watch the video. The Harwich Delegate clearly indicated that she would like to make a motion to send this back to committee when the appropriate time came. The vote was a majority, 7-5, however the Barnstable delegate and other were missing.

I am a strong supporter of the concept of Growth Incentive Zones, which help implement smarter land use and economic development goals described in both the RPP (Regional Policy Plan) and the CEDS (Comprehensive Economic Development Strategy). It is through the actual implementation and execution of a Growth Incentive Zone that the very principles and vision of both the RPP and CEDS are fulfilled at the local level. It's critical that Chapter G language epitomizes these principles so it can serve as the appropriate instrument for implementation.

As proposed, Chapter G deviates too far from RPP and CEDS policies and ideals. I hope you take the time to modify this document to bring it into conformance with existing CCC policy, or at least send it back to committee to be edited.

Section 3A, Designation – Review and Approval Criteria, of the proposed regulations requires consistency with the Cape Cod Regional Policy Plan (RPP) and Section 1 of the Cape Cod Commission Act (Act). The GIZ regulations amendment is based on the fundamental purposes and objectives expressed in the Act. All regulations and initiatives of the Commission, including the RPP and CEDS, are intended to relate directly back to the Act. I question Chapter G’s conformance with the RPP as you can see with my comments.

The proposed Chapter G is a total re-write from the existing language. There is no similarity between the two documents including their purpose. The purpose of a Growth Incentive Zone is to define an appropriate area within which to implement the economic and land use policies of the RPP. Here is the stated Growth Policy from the RPP as depicted in the CEDS:

Though the language of the GIZ regulations amendment is markedly different from the existing GIZ regulations, the changes reflect a change in process rather than the purpose or substance. The purpose of the existing GIZ regulations is encompassed in the purpose clause of the GIZ regulations amendment. The GIZ regulations amendment purpose clause is broader than that in the existing GIZ regulations to reflect the breadth of the purposes and objectives set out in the Cape Cod Commission Act.

THE GROWTH POLICY FOR CAPE COD

The growth policy for Barnstable County, expressed throughout the 2009 Regional Policy Plan, is to guide growth toward areas that are adequately supported by infrastructure and away from areas that must be protected for ecological, historical, or other reasons.

The proposed Chapter G purpose is: *"Pursuant to the powers and authority conferred to the Cape Cod Commission under, without limitation, Sections 4 and 12 of the Act, these regulations set out a process whereby the Cape Cod Commission and Cape Cod Municipalities may coordinate their efforts to identify and designate Growth Incentive Zones (GIZs), areas particularly desirable and appropriate for concentrated growth and development, and establish corresponding Development of Regional Impact review thresholds unique to and in support of such designated areas. Such a designation furthers values and interests set out in Section 1 of the Act: to maintain and enhance sustainable and balanced year-round economies; to provide opportunities for economic development and growth; to maintain and enhance a variety of housing types and opportunities; to maintain and enhance the availability of desired goods, services and amenities; and to direct and incentivize development to locate into areas with a system of existing or planned synergistic uses, capital facilities, amenities, infrastructure and compact development and away from areas less appropriate or undesirable for this type of development."*

Absent any definition of 'less appropriate or undesirable', the phrase: *"away from areas less appropriate or undesirable for this type of development"* is too subjective to leave to interpretation by town planning boards or boards of selectmen. This document must be consistent with its 'parent documents', which set the policy.

The comment regarding local interpretation of appropriateness or undesirability does not to recognize the role the Cape Cod Commission has in reviewing and approving any GIZ proposed by a town. Chapter G regulations should not be subject to what body or individuals are reviewing it. The language in the GIZ should say what it means and not be left for anyone's interpretation.

IN addition to the definition offered above, here is the RPP language supporting the creation of policies and regulations BOTH within and without economic centers. As written this Chapter G language neglects the entire concept and leaves it up to interpretation.

“incentives to locate in Economic Centers and industrial and Service trade Areas:

The towns should adopt policies and regulations that encourage development within Economic Centers and Industrial and Service Trade Areas. Towns should adopt policies and regulations that discourage development in Resource Protection Areas and Other Areas identified on the Regional Land Use Vision Map. The towns should revise zoning in Economic Centers identified on the Regional Land Use Vision Map to encourage a greater diversity in size and price of commercial and residential property.” The RPP language takes the concepts in the CCC act to the next level and forms it into policy, and from this policy Chapter G, and Growth Incentive Zones are **constructed**. Clearly the concept still prevails that regulations and policies should be formed that encourage development within economic zones and discourage development in other areas.

The breadth of the GIZ regulation amendments purpose clause better relates to the broad purpose and objectives set out in the Cape Cod Commission Act. The breadth is necessary to allow towns to identify, and the Commission to review and decide, requests for GIZ designations under the regulations in light of the wide variety of circumstances that may be present in any given GIZ request for different parts of Cape Cod.

I, and others, object to this departure from the RPP and from existing Chapter G language and request that it be changed to read: *The purpose of the GIZ is to direct development, redevelopment and infill into areas with existing development supported by adequate infrastructure and away from sensitive resource or historical areas, while simultaneously establishing corresponding Development of Regional Impact review thresholds unique to the designated area.*

This suggestion wouldn't allow fulfillment and balance of the various purposes and objectives expressed in the Cape Cod Commission Act. As previously noted, Section 3A, Designation – Review and Approval Criteria, of the proposed regulations requires RPP consistency.

It is government's role to set the framework and it is the private sector's role to create the content. With the trend going toward form-based zoning and away from use-based zoning, how is this

comment relevant?

Here, for the record, is the stated purpose of the Cape Cod Commission:

The Cape Cod Commission was established in 1990 through an Act of the Massachusetts State Legislature (1989) and a countywide referendum. The Cape Cod Commission Act outlines the agency's role as follows:

*The purpose of the Cape Cod Commission shall be to further: the conservation and preservation of natural undeveloped areas, wildlife, flora and habitats for endangered species; the preservation of coastal resources including aquaculture; the protection of groundwater, surface water and ocean water quality; as well as the other natural resources of Cape Cod; balanced economic growth; the provision of adequate capital facilities, including transportation, water supply, and solid, sanitary and hazardous waste disposal facilities; the coordination of the provision of adequate capital facilities with the achievement of other goals; the development of adequate supply of fair affordable housing; and the preservation of historical, cultural, archeological, **architectural, and recreational values,***

This analysis cherry picks certain language, (but not the full) language, expressing the purposes and objectives of the Cape Cod Commission Act. There are three other paragraphs in Section 1 of the Cape Cod Commission Act. The paragraphs together represent the full purposes and objectives of the Act. There is no emphasis on particular values. In sum, Section 1 of the Act, reflected in the purpose clause of the GIZ regulations amendment, represents a balance between development, which is necessary for economic growth, employment opportunities and housing; adequate infrastructure; and the preservation of certain natural and built environment resources and values. The full language of Section 1 of the CCC Act is attached.

Note the emphasis on the environment and preservation of historical, cultural, archeological, architectural and recreational values. The proposed Chapter G language does not represent the same meaning; it appears to steer away from any reference to environmentally or historically sensitive areas and should be modified to come into conformance with the CCC, the RPP and the CEDS.

Excerpted from the CEDS 2017 annual report: *The Cape Cod Commission Act calls for the development of a Regional Policy Plan (RPP) to outline a coherent set of land use policies and development standards to guide growth on Cape Cod and to protect its resources. The RPP establishes the basis for economic development planning on Cape Cod, envisioning synergy between economic development and the protection and preservation of the Cape's resources and heritage. The CEDS incorporates the regional growth policy and economic development goals of the RPP.*

Chapter G is the document that provides for implementation of this concept at the local level and therefore should directly emulate its language and intent.

Offsets:

What is completely lacking in the proposed Chapter G regulation is the concept of "offsets". This concept is best described as follows: if dense growth exists within the designated GIZ, then there should be areas in town that remain undeveloped-creating a balance or an offset to the density. I realize that in the very first GIZ in Hyannis, the numbers assigned to the "offsets" were unattainable and difficult to manage. But the

concept of defining an area where there is dense growth within the GIZ to the benefit of other areas outside of the GIZ, meaning that development will not occur there, is sound planning practice. There is no reason to abandon the theory of offsets conceptually because it was difficult to manage. If there is no designation of offset areas, what's to prevent simultaneous rapid growth outside of the designated GIZ? If this is allowed to happen, then what's the point of a GIZ? Is the purpose of a GIZ only focused on managing projects that qualify for DRI designation in downtown areas? I think not.

The purpose of the “Growth Incentive Zone” regulations is the promotion and incentivization of development in certain areas, not the dis-incentivizing of development generally outside such an area, is the primary, logical focus of such regulations. The focus should properly be uses, development and activities within the GIZ.

I disagree. Again if you read the RPP language:

The towns should adopt policies and regulations that encourage development within Economic Centers and Industrial and Service Trade Areas. Towns should adopt policies and regulations that discourage development in Resource Protection Areas and Other Areas identified on the Regional Land Use Vision Map. The towns should revise zoning in Economic Centers identified on the Regional Land Use Vision Map to encourage a greater diversity in size and price of commercial and residential property.”

The RPP language takes the concepts in the CCC act to the next level and forms it into policy, and from this policy Chapter G, and Growth Incentive Zones are constructed. Clearly the concept still prevails that regulations and policies should be formed that encourage development within economic zones and discourage development in other areas.

The newly proposed Chapter G language, absent the concept of offsets, appears to be contrary to the CEDS: the CEDS clearly indicates that smart growth on Cape Cod includes a decrease in development outside Activity Centers. **The proposed Chapter G language doesn't support the CEDS' Smart Growth Pattern:**

The concept of offsets has not been abandoned as a requirement merely because they were ‘conceptually difficult to manage;’ they have been eliminated as a requirement because as a straight quid pro quo they don’t make sense in all cases. Limiting the developability of land outside a GIZ (especially where the types of uses and development that might be proposed inside a GIZ vs outside a GIZ are likely to be different) does not necessarily address anticipated impacts from development within a GIZ. This is something the Commission heard loud and clear from towns interested in GIZs, prevented from doing GIZs not because the areas discussed were inappropriate, but because of requirements like offsets which didn’t make sense in context. This does not mean that a town is foreclosed, within a particular GIZ application, from proposing to offset development within a GIZ by restricting land outside a GIZ, as a way of addressing anticipated impacts from development within a GIZ. This, however, should be an option (not a requirement) for a town, given the particular circumstances presented in a GIZ proposal.

A town still has the ability to limit development outside a GIZ through zoning changes or land use acquisition, regardless of the GIZ process.

Undevelopment outside of a GIZ represents part of the carrot and stick approach. Unless you, the Cape Cod Commission structure Chapter G to make this a requirement, NO TOWN will do it on their own. The CCC must act as a leader in this aspect of planning. We, the citizens are counting on you.

"CEDS Vision & Goals: Economic development on Cape Cod begins with the protection of the natural, built, and cultural assets of the area that make it unique."

LOW-IMPACT AND COMPATIBLE DEVELOPMENT		
To promote the design and location of development and redevelopment to preserve the Cape's environment and cultural heritage use infrastructure efficiently, minimize adverse impacts, and enhance the quality of life		
Benchmark	Measures	Trend Desired
Smart Growth Pattern	Number & share of New Development in Activity Centers	increase
	Number & Share of total residential units in activity centers	increase
	Number & Share of total commercial SF in activity centers	increase
	Housing Density in Activity Centers (units/acre)	increase
	Un-development outside of Activity Centers	increase

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LOW-IMPACT AND COMPATIBLE DEVELOPMENT		
To promote the design and location of development and redevelopment to preserve the Cape's environment and cultural heritage, use infrastructure efficiently, minimize adverse impacts, and enhance the quality of life		
Benchmark	Measures	Trend Desired
Quality of Life	New Development in Priority Protection Areas	decrease
	Alternative Transportation/Transit Use	increase
	Average Commute to Work Duration	decrease

	Acres of Recreational Open Space	increase
	land Use Diversity in Activity Centers	increase
Environmental Quality/ Resource Protection	Drinking Water Quality	improve
	Surface Water Quality	improve
	Impervious Surface	decrease
	Manicured lawn	decrease
	Tree Coverage	increase
	Number of Historic Structures (Pre-1950)	stable

Please consider amending the proposed Chapter G regulations by including language that supports offsets (un-development) outside of Growth Incentive Zones.

CEDS is primarily a plan, updated at five-year intervals, last updated in 2014, to attract economic development grant funds to Cape Cod for identified priority economic development projects. The GIZ amendments are indeed consistent with the CEDS (in which location-based, ‘smart’ concentrated growth is encouraged), but CEDS is not the primary basis for a GIZ designation. CEDS exists in parallel to a GIZ designation. CEDS also does not require that towns implement land use restrictions; land use restriction is one ‘tool’ to explore among others to further ‘smart growth’ on the Cape, in certain contexts. Note, that extension of the Downtown Hyannis growth Incentive Zone is one of the priority projects set out in the CEDS.

The CEDS annual report which this data was derived was dated June of 2017. It was adopted and voted on by the CCC as well as the Assembly. It clearly states that undevelopment of land outside of economic centers should be increased as a priority and a goal. It is not a parallel document to Chapter G, it is a parent document along with the RPP from which policies and regulations like Chapter G are derived. Chapter G helps to implement the RPP. Between the RPP and the CEDS it is clear that density is desired within designated areas and not in other areas...why is it so hard to convey that in this iteration of Chapter G?

Chapter G is the tool that addresses the essential question of how to manage our land use in a way that will bring us the greatest economic return without harming our key asset, the natural environment.

Proposed Additional Edits:

Section 2: DL: Proposed Language: may versus shall

Proposed language: *"The Commission's Committee on Planning and Regulation may meet to review and make a recommendation to the Commission regarding a proposed GIZ designation"*

Existing Chapter G regulations require the Committee on Planning and Regulation to meet to review and make a recommendation to the Commission regarding a proposed GIZ designation. **Please change the wording back to 'shall meet', instead of 'may meet'.**

It doesn't make sense to require a meeting with a standing committee of the Commission in all cases, which could be establishing 'process for the sake of process.' Where a meeting with the committee would be helpful in a particular GIZ review, the amendment allows for it but doesn't require it. The committee has no special training or jurisdiction that the full Commission does not have. The thinking here is that it is more important for the full Commission to have as much exposure to a GIZ application as possible, given that the full Commission is charged with GIZ decision-making, not a standing committee of the full Commission.

I couldn't disagree more. Conversations and in depth discussions take place at the committee level that usually don't take place at full board level. You are washing your hands of the responsibilities involved in vetting a GIZ application.

Section 2: D2: please add section (d):

"Shall be in compliance with the Regional Policy Plan and the Comprehensive Economic Development Strategy"

If you choose to not add the phrase above to this section, please add the CEDS to Section 3. #6D.

As previously noted, RPP consistency is already required in the proposed regulations. The GIZ regulations amendment includes a section that GIZ designations must be consistent with area-wide plans, and gives some non-exclusive examples of such plans: the so-called '208 plan;' the Regional Policy Plan; the Town's Local Comprehensive Plan; the Regional Transportation Plan. These are all goals-based, policy plans, and it doesn't make sense to refer to 'compliance' of an area designation (like a GIZ, where no actual development is before the Commission for review) with such plans. "Consistency" is the appropriate standard to employ, which is the term used in the Cape Cod Commission Act. In any given GIZ application, the amendment allows (but does not require) the Commission to review a proposed GIZ in light of the CEDS. The CEDS may have little or no relation to the particular GIZ being reviewed by the Commission, so requiring review and consistency with the CEDS may not make sense in all cases.

But it may make sense in some cases, so why is it a big deal to omit it? Why can't it be added?

Section 5. Modification to GIZ Designation Decisions

2. ~~Without limitation, a modification~~ Modifications may be requested to authorize changes to the geographic boundary and extent of an approved GIZ designation when and if development, redevelopment and infill have reached a satisfactory level within the GIZ. ~~The Conditions~~ Conditions in a GIZ designation decision, or DRI thresholds revised under a GIZ designation decision may be modified without limitations.

The suggested edits in the above paragraph are crucial to maintaining the integrity of a Growth Incentive Zone.

This suggestion misunderstands the point of modification to GIZ designations. The writer seems to assume that the primary purpose of modifying GIZ designations is to change the boundary of a GIZ, which is not accurate. Modifications allow a town, with approval by the Commission, to refine goals, strategies or performance measures as might be required over time in the dynamic environment of a GIZ, as circumstances change, in light of achieving the overarching purposes of a specific GIZ designation. It makes little sense to limit a town's very ability to request modification to a GIZ designation. In its review, the Commission has the discretion to determine whether a modification is appropriate to the overarching purposes and objectives set out in a particular GIZ designation.

I do not believe you read the entire edited paragraph...edits are only proposed when map boundaries are proposed for a change. Other modifications were not edited. The point is that a GIZ map should not be expanded until and unless a certain level of buildout, infill and redevelopment has already occurred within the GIZ. Should there be no buildout within a GIZ, and a town wishes to expand its borders, would that not run contrary to the whole purpose of a GIZ in the first place? Maintaining the borders of a GIZ provides integrity to the GIZ. The integrity of a Growth Incentive Zone designation is maintained through Commission, town and private actions consistent with the purposes, objectives and goals established in a particular GIZ designation.

Section 7: A&B: please add the Planning Board to the list of bodies within a town to be notified.

One of the Commission's objectives in the GIZ regulations amendment was to remove 'process for the sake of process,' and to reduce unnecessary procedural gatekeeping by the Commission. A Board of Selectmen/ Town Council, under the amendment, is the requesting party for a GIZ, and is the fiduciary for its citizenry. As a Board of Selectmen/ Town Council sees fit, it may develop and add local process (planning board, board of health, conservation commission) for a GIZ not otherwise required by the GIZ regulations, as amended. This leaves more flexibility in GIZ process to a town.

Adding the PB to a notification list in a town has nothing to do with process for the sake of process. I'm asking you to please cc the email or the letter to include the planning board. What is the harm in doing this? The planning board has statutory authority within the towns over planning, zoning, subdivisions, etc. The planning board is the body that approves the land use map for the towns. The planning board in the town of Barnstable, anyway, is the regulatory body for the GIZ. It makes sense that they would be notified of any communication between the Cape Cod Commission and the town. Just because you don't legally have to notify them doesn't mean that you shouldn't. Communication between the towns and the Cape Cod Commission is important. Why is it such a problem to indicate here in Chapter G, Section 7 that the Planning Boards within the towns will be copied on notifications?

CAPE COD COMMISSION ACT SECTION 1.

(a) 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, archaeological, 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.

(b) In order to protect these values and promote the public health, safety and general welfare, to maintain and enhance sound local and regional economies, and to ensure balanced economic development, this act creates the Cape Cod commission as the regional planning and land use commission with authority to prepare and oversee the implementation of a regional land-use policy plan for all of Cape Cod, to recommend for designation specific areas of Cape Cod as

districts of critical planning concern, and to review and regulate developments of regional impact.

(c) The purpose of the Cape Cod commission shall be to further: the conservation and preservation of natural undeveloped areas, wildlife, flora and habitats for endangered species; the preservation of coastal resources including aquaculture; the protection of groundwater, surface water and ocean water quality, as well as the other natural resources of Cape Cod; balanced economic growth; the provision of adequate capital facilities, including transportation, water supply, and solid, sanitary and hazardous waste disposal facilities; the coordination of the provision of adequate capital facilities with the achievement of other goals; the development of an adequate supply of fair affordable housing; and the preservation of historical, cultural, archaeological, architectural, and recreational values.

(d) The commission shall: anticipate, guide and coordinate the rate and location of development with the capital facilities necessary to support such development; review developments which will have impacts beyond their local community and determine the comparative benefits and detriments of those projects and their consistency with the regional policy plan and local comprehensive plans and goals; identify and protect areas whose characteristics make them particularly vulnerable to adverse effects of development; preserve the social diversity of Cape Cod by promoting fair affordable housing for low-income and moderate-income persons; promote the expansion of employment opportunities; and implement a balanced and sustainable economic development strategy for Cape Cod capable of absorbing the effects of seasonal fluctuations in economic activity.