

THE COMMONWEALTH OF MASSACHUSETTS
In the Year One Thousand Nine Hundred and Eighty-nine

AN ACT ESTABLISHING THE CAPE COD COMMISSION.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. The general court hereby finds and declares that:

(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.

SECTION 2. As used in this act, the following words shall, unless the context requires otherwise, have the following meanings:

(a) "Applicant", any person who has made application for a development permit or whose proposed development is subject to review as a development of regional impact.

(b) "Assembly of delegates", the legislative body for Barnstable county established by chapter one hundred and sixty-three of the acts of nineteen hundred and eighty-eight.

(c) "Capital facilities", public facilities and services necessary to support development, including but not limited to roads, water, sewers, waste disposal, affordable housing, schools, police and fire protection facilities.

(d) "Commission", the Cape Cod commission created by section three.

(e) "Development", any of the following undertaken by any person: any building, construction, renovation, mining, extraction, dredging, filling, excavation, or drilling activity or operation; any material change in the use or appearance of any structure or in the land itself; the division of land into parcels; any change in the intensity of use of land, such as an increase in the number of dwelling units in a structure or a change to a commercial or industrial use from a less intensive use; any activity which alters a shore, beach, seacoast, river, stream, lake, pond, canal, marsh, dune area, woodland, wetland, endangered species habitat, aquifer, or other resource area, including coastal construction or other activity in Barnstable county within the jurisdictional limits of Barnstable county; demolition of a structure; the clearing of land as an adjunct of construction; or the deposit of refuse, solid or liquid waste or fill on a parcel of land or in any water area.

(f) "Development agreement", a contract entered into between the Commission and or a unit of a municipality or municipalities and a holder of property development rights, the principal purpose of which is to negotiate and to establish the development regulations that will apply to the subject property during the term of the agreement and to establish the conditions to which the development will be subject including, without limitation, a schedule of impact fees.

(g) "Development by-law", any by-law, ordinance, rule or regulation adopted by a municipality or municipal agency for the control or regulation of activities related to development affecting any buildings, land, water area or other resources within the boundaries of said municipality.

(h) "Development of regional impact", a development which, because of its magnitude or the magnitude of its impact on the natural or built environment, is likely to present development issues significant to or affecting more than one municipality, and which conforms to the criteria established in the applicable standards and criteria for developments of regional impact pursuant to section twelve.

(i) "Development permit", any permit, license, authority, order, approval, certificate, endorsement, or permission required from a municipal agency prior to the commencement or completion of any development, but not including any municipal dump permit issued to a household.

(j)"District of critical planning concern", a geographic area of Cape Cod identified by the commission as requiring special protection and designated by the assembly of delegates in accordance with the criteria, procedures and requirements set forth in sections ten and eleven.

(k)"Floor area", includes total enclosed floor area of all floors. For additions or auxiliary buildings, the floor area includes only the floor area of the addition or of the auxiliary building.

(l)"Governor's committee", a committee composed of the secretaries of the executive offices of environmental affairs; transportation and construction; economic affairs; labor; and communities and development; and any other state official designated as a member by the governor.

(m)"Impact fees", a contribution paid by a person undertaking a development to a municipality or municipalities pursuant to the provisions of section fifteen, designed to offset the impacts of a development. Impact fees may include, but are not limited to, creation or improvement of streets, sewers, water supplies, parks, schools, affordable housing and similar capital facilities.

(n)"Local comprehensive plan", the plan which may be prepared or adopted by a local planning committee with the consultation and assistance of the commission staff and adopted by a town meeting, as described in section nine.

(o)"Local planning committee", the committee established in each municipality to develop and manage the local comprehensive plan, as described in section eight.

(p)"Implementing regulations", the regulations adopted by municipalities or municipal agencies or the assembly of delegates to implement guidelines established by the commission for districts of critical planning concern.

(q)"Municipal agency", any municipal agency, board, commission, department, office, or official that has authority to approve or grant a development permit.

(r)"Municipality", any of the following municipalities on Barnstable county: Barnstable, Bourne, Brewster, Chatham, Dennis, Eastham, Falmouth, Harwich, Mashpee, Orleans, Provincetown, Sandwich, Truro, Wellfleet and Yarmouth.

(s)"Person", an individual, corporation, municipality, governmental agency or authority, business trust, estate, trust, partnership, association, joint venture, two or more persons having a joint or common interest, or any legal entity.

A state agency or authority shall not be deemed a person within the meaning of this act.

(t)"Regional policy plan", the plan prepared as described in sections seven and eight.

(u)"The regional policy plan advisory board", a board comprised of a designee of the following: the Association for the Preservation of Cape Cod, the Barnstable County Bar Association, the Cape Cod board of realtors, the Cape Cod Homebuilders' Association, The Compact of Cape Cod Conservation Trusts, the Cape Cod chamber of commerce, and a member of a town planning board,

town board of health, town conservation commission and town housing authority to be appointed by the county commissioners and one member of a local housing partnership committee, one member of the Barnstable County Health and Human Services Advisory Council, and five representatives of the Barnstable County minority community to be appointed by the county commissioners. The five minority community representatives shall include at least one person of: (1) Asian or Pacific Island ancestry; (2) Black ancestry; (3) Cape Verdean ancestry; (4) Hispanic ancestry; and (5) Native American ancestry. The county commissioners shall solicit, accept and consider nominations for these positions from minority community associations including, but not limited to, the Cape Cod Chapter of the National Association for the Advancement of Colored People; the Cape Verdean Club; the Martin Luther King Center; and the Wampanoag Tribal Council.

The commission shall exercise its best efforts in soliciting, accepting and considering such nominations. In the event that no nominations are received for the representative position for a particular minority group or that every candidate nominated or considered for the representative position for a particular minority group refuses to serve, the commission shall appoint a representative from another minority group.

(v)"Board of Selectmen", the board of selectmen in any municipality or the chief executive officer for any municipality that does not have a board of selectmen.

(w)"Ordinance", any ordinance adopted pursuant to section 2-8 and section 7-4 of chapter one hundred and sixty-three of the acts of nineteen hundred and eighty-eight by the assembly of delegates and approved by the county commissioners. Every such ordinance shall be effective immediately upon approval, notwithstanding paragraph (i) of section 2-8, unless a later day is specified in the ordinance.

(x)"Fair affordable housing", any residential housing unit which meets affordability standards promulgated by the executive office of communities and development and which prohibits discrimination because of the race, color, religious creed, national origin, sex, ancestry, sexual orientation or handicap of any person.

(y)"Minority", (a) Asian or Pacific Islander, a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands; (b) Black, a person having origins in any of the Black racial groups of Africa, the Middle East or the West Indies; (c) Cape Verdean, a person having origins in any of the original peoples of the Cape Verde Islands; (d) Hispanic, a person having origins in any of the original peoples of Mexico, Puerto Rico, Cuba, the Dominican Republic, Central America or South America; or (e) Native American, a person having origins in any of the original peoples of North America.

SECTION 3. (a) There is hereby created the Cape Cod commission which shall be the regional planning and land use commission for Cape Cod and shall have the responsibilities, duties, and powers established herein in Barnstable county. The commission shall be the regional planning agency for Cape Cod in accordance with applicable laws and regulations as provided in this act. The commission shall be an agency within the structure of Barnstable county government pursuant

to this act, and shall operate in accordance with Barnstable county administrative and budgetary procedures and in accordance with the provisions of section eighteen.

(b)The commission shall have nineteen members as follows: fifteen shall be representatives of each of the fifteen municipalities, appointed by each municipality's board of selectmen; one county commissioner for Barnstable county appointed by the board of the county commissioners; one Native American appointed by the board of county commissioners; one minority appointed by the board of county commissioners; one minority appointed by the governor. Each member of the commission must be a resident and a registered voter of one of the towns of Barnstable county. Each member shall have one vote except the governor's appointee, whose function shall be advisory except in the event of a tie vote.

(c)Each member of the commission appointed by each municipality shall serve a term of three years; provided, however, that among the initial members of the commission, six shall serve for a term of three years, five shall serve for a term of two years, and five shall serve for a term of one year. The governor's appointee shall serve coterminous with the governor. The county commissioners shall appoint or reappoint their representatives annually. The commission shall determine the length of each initial member's term by lottery at the first meeting of the commission. Any commission member may, at the end of his term, be reappointed.

(d)Each municipality's board of selectmen shall appoint a replacement to fill the term of its representative in the event that the position becomes vacant.

(e)The commission members shall annually elect a chairperson, vice chairperson and secretary. The first set of officers shall be elected at the commission's initial organizational meeting, which shall be conducted within thirty days of the effective date of this act.

(f)The provisions of sections twenty-three A to twenty-three G of chapter thirty-nine of the General Laws shall apply to the commission.

(g)At any meeting of the commission, a majority of its voting members shall constitute a quorum. Unless a greater majority is otherwise explicitly required by this act, where a quorum is present, the commission may act upon a vote by a simple majority of the voting members present.

(h)The commission shall have an executive director, a fair, affordable housing specialist, a chief planner, an economic development officer and a chief regulatory officer, each of whom shall have education and experience in land use planning or regulation. The executive director shall be responsible for overall management of the commission's operations. The chief planner shall supervise planning matters including the preparation and amendment of the regional policy plan, the assistance to municipalities in their completion of local comprehensive plans, and the development of guidelines and regulations for districts of critical planning concerning. The chief regulatory officer shall supervise the development of regional impact review process. The commission shall also have a clerk whose duties shall include the keeping of the commission's official records. All appointments to the staff of the commission shall be made by the county commissioners upon the recommendation of the commission subject to the Barnstable county administrative, personnel and budgeting procedures.

The affordable housing specialist shall (1) assist each municipality in developing the low and moderate income housing component of its local comprehensive plan; (2) evaluate the adequacy and fairness of the low and moderate income housing component of each local comprehensive plan submitted to the commission for certification; (3) monitor the progress of each municipality in implementing the low and moderate income housing component of its local comprehensive plan; and (4) report to the commission on the progress of each municipality in implementing the low and moderate income housing component of its local comprehensive plan.

SECTION 4. (a) The commission shall have those powers necessary convenient to carry out the purposes and provisions of this act, including but not limited to the following powers, in addition to the regulatory and planning powers contained in this act:

- (1) to assist local governments in developing local comprehensive plans and, when requested, to assist local governments in carrying out their local planning and regulatory responsibilities;
- (2) to review and comment upon local comprehensive plans;
- (3) to sue and be sued;
- (4) to make use of alternate dispute resolution mechanisms such as negotiation, mediation or arbitration;
- (5) to retain, employ and remove employees, consultants, agents and attorneys, consistent with Barnstable county administrative, personnel and budgetary procedures, subject to Barnstable County's compliance with the affirmative action requirements set forth in Chapter 151B of the General Laws, as needed to carry out its responsibilities under this act;
- (6) to apply for and receive state, federal and private grants and loans and to expend such funds with the approval of the county commissioners;
- (7) to hold public hearings;
- (8) to appoint hearing officers and, where it deems appropriate, to delegate to such hearing officers the responsibility to hold public hearings under this act and to assemble and report the record for decision by the commission or its designee and recommend decisions to the commission or its designee; however, any applicant or party aggrieved, following a hearing by a hearing officer, shall have the right to a public hearing before the commission in accordance with the provisions of Section Five (H) of this Act.
- (9) to enter into contracts with the approval of the county commissioners;
- (10) to recommend to state agencies appropriate regulations for consistency with the regional policy plan;

- (11)to promulgate and amend rules and regulations as appropriate to carry out its responsibilities under this act;
- (12)to appoint advisory boards, commissions, subcommittees and panels as it deems appropriate to carry out its responsibilities under this act;
- (13)to recommend public acquisition of specified land areas for preservation or recreational purposes;
- (14)to make use of the services of federal, state, county and local employees as may be available to the commission to carry out its responsibilities under this act;
- (15)to coordinate its regulatory functions with local, state and federal authorities and, where possible and appropriate, to conduct joint hearings with those authorities;
- (16)to acquire funds as described in section eighteen and to manage such funds;
- (17)to make grants with the approval of the county commissioners and provide technical assistance to municipalities for use in local planning activities;
- (18)to assist municipalities in the study of local land use concerns;
- (19)to adopt plans, maps and studies as appropriate to carry out its responsibilities under this act;
- (20)to negotiate and enter into development agreements as described in section fourteen;
- (21)to conduct public education;
- (22)to conduct an annual public conference on land use on Cape Cod and to invite to such conference any private, local, state or federal governmental representatives it deems appropriate;
- (23)to produce an annual report which will be included in the annual Barnstable county report;
- (24)to require impact fees from persons in accordance with section fifteen;
- (25)to utilize land-use management tools lawful under the Constitutions of the United States and Commonwealth of Massachusetts and under the General Laws;
- (26)to reimburse commission members for reasonable expenses incurred in connection with their service on the commission consistently with Barnstable county administrative and budgetary procedures;
- (27)to establish a process and procedures for siting and developing capital facilities and developments of regional impact which are necessary to ensure balanced growth.

SECTION 5. (a) Whenever the commission is required to provide notice of a public hearing pursuant to the provisions of this act, the commission shall give notice by publication in a newspaper of general circulation throughout Barnstable county once in each of two successive weeks, the first publication to be not less than fourteen days before the day of the hearing. Notice shall also be posted in a conspicuous place in the commission's offices not less than fourteen days before the day of the hearing. Copies of all documents subject to notice and hearing shall be available for public inspection at the commission's office during normal business hours.

(b) In addition to the requirements of subsection (a), notice of public hearings regarding the adoption of the Commission's regulations in accordance with section six shall be:

(1) mailed at least fourteen days before the day of the hearing to the Assembly of Delegates, County Commissioners, board of selectmen, town clerk, building inspector, planning board, board of appeals and conservation commission of each municipality in Barnstable county, to any other municipal agency which makes a written request for such notice, and to the governor's committee;

(2) published in a newspaper of general circulation in each of the municipalities in Barnstable county, once in each of two successive weeks, the first publication to be not less than fourteen days before the day of the hearing.

(c) In addition to the requirements of subsection (a), notice of public hearings regarding districts of critical planning concern as required in section ten shall be:

(1) mailed at least fourteen days before the day of the hearing to the assembly of delegates, county commissioners, board of selectmen, town clerk, building inspector, planning board, board of appeals and conservation commission of each municipality in which the proposed district of critical planning concern or a portion thereof is located, to any other municipal agency which makes a written request for such notice, and to the governor's committee;

(2) published in a newspaper of general circulation in each of the municipalities in which the proposed district of critical planning concern or a portion thereof is located, once in each of two successive weeks, the first publication to be not less than fourteen days before the day of the hearing.

(3) mailed at least fourteen days before the day of the hearing to any person who makes a written request for notification relating to specific geographic areas of Barnstable county, provided such written request has been received by the commission at least twenty days but not more than two years before the mailing of such notice.

(d) In addition to the requirements of subsection (a), notice of public hearings regarding the developments of regional impact as required in section thirteen shall be:

(1) mailed at least fourteen days before the day of the hearing to the assembly of delegates, county commissioners, board of selectmen, town clerk, building inspector, planning board, board of appeals and conservation commission of each municipality in which the proposed development of

regional impact or a portion thereof is located, to any other town agency which makes a written request for such notice and to the governor's committee;

(2)mailed at least fourteen days before the day of the hearing to the applicant and to each abutter to the proposed development of regional impact, based on a list of abutters provided by the applicant and certified by the tax assessor of the municipality or municipalities in which the development of regional impact or a portion thereof is located. For purposes of this Section, abutters shall include owners of land directly opposite on any public or private street or way and owners of land located within three hundred feet of any boundary of the proposed development of regional impact.

(3)published in a newspaper of general circulation in each of the municipalities in which the proposed development of regional impact or a portion thereof is located, once in each of two successive weeks, the first publication to be not less than fourteen days before the day of the hearing.

(4)mailed at least fourteen days before the day of the hearing to any person who makes a written request for notification relating to specific geographic areas of Barnstable county, provided such written request has been received by the commission at least twenty days but not more than two years before the mailing of such notice.

(e)Each notice of a public hearing shall contain a brief description of the subject matter and the date, time and place of the public hearing and, where applicable, where an application including a map showing the location of the subject property may be viewed. Notice for public hearings concerning developments of regional impact shall also include the name of the development permit applicant.

(f)Public hearings regarding designation of districts of critical planning concern shall be held within the municipality or one of the municipalities within which the district of critical planning concern or a portion thereof is located.

(g)At least one public hearing regarding review of developments of regional impact shall be held in one of the municipalities within the area of Barnstable county in which the proposed development of regional impact is located.

(h)Whenever the commission holds a public hearing in accordance with the provisions of this act, it shall afford interested persons an opportunity to present data, views or arguments in regard to the subject matter of the hearing orally or in writing.

(i)The commission shall establish a periodic publication which publication shall contain all notices and written decisions required by this act or summaries thereof and such other information the commission deems relevant and of interest to the public. Such a publication shall be provided by subscription or by individual copy to any person requesting such for a fee reasonably calculated to recover the costs of such publication.

SECTION 6. (a)The commission shall prepare proposed regulations of general application to enable it to fulfill its duties under this act, including, but not limited to, regulations concerning the

process of designating districts of critical planning concern; the review of developments of regional impact, and the imposition of impact fees in accordance with Section 15 of this Act. The commission shall submit these proposed regulations for adoption by ordinance to the assembly of delegates. The assembly of delegates shall then hold at least one public hearing to consider the proposed regulations. Within sixty days after the receipt of the proposed regulations, the assembly of delegates shall either adopt the proposed regulations by ordinance or return the proposed regulations to the commission for restudy and redrafting. In the event the assembly of delegates has objections to the proposed regulations, the assembly shall return the proposed regulations to the commission, together with a written report identifying the elements to which the assembly has objections and a request for changes. After such restudy and redrafting, the commission shall again submit the proposed regulations to the assembly in accordance with the provisions of this section. Prior to adopting such regulations, the commission shall hold a public hearing in a convenient place of its choosing in Barnstable county after providing notice thereof. The commission shall also promulgate regulations, consistent with this act, which will govern the administration of its duties under this Act. Regulations duly adopted by the commission shall be valid and enforceable after they have been filed with the clerk of the commission and recorded with the Barnstable county registry of deeds. Such regulations shall also be mailed to the town clerk of each municipality in Barnstable county, and to the governor's committee.

(b)The Commission may amend Regulations adopted under this Section through the same procedures provided in subsection (a) for adoption of regulations.

(c)No claim of invalidity of any regulation adopted or amended under this Section by reason of any defect in the procedure of adoption or amendment shall be made in any legal proceedings and no state, regional, county or municipal officer shall refuse, deny or revoke any permit, approval or certificate because of any such claim of invalidity unless legal action is commenced within ninety days of the effective date of such regulation or amendment and notice specifying the court, parties, invalidity claimed and date of filing is filed, together with a copy of the petition with the commission within seven days after commencement of the action.

(d)Reasonable fees as imposed by the commission pursuant to this act shall be uniform in relation to the type of relief sought. Fees shall be directly related to the administrative and technical costs required for the commission to carry out its responsibilities under the law. No fee shall be charged unless and until a schedule of fees is adopted as a regulation pursuant to this section. Fees may be waived by a majority vote of the commission. No fees may be imposed upon a municipality, municipal agency or a state agency.

SECTION 7.(a)The commission shall in consultation with local planning committees, the regional policy plan advisory board and the governor's committee prepare a regional policy plan for Barnstable county which shall be designed to present a coherent set of regional planning policies and objectives to guide development throughout said Barnstable county and to protect the region's resources, and which shall reflect and reinforce the goals and purposes set out in section one.

(b)The regional policy plan shall include but not be limited to:

(1) identification of Barnstable county's critical resources and management needs, including its natural, scientific, coastal, historical, recreational, cultural, architectural, aesthetic, and economic resources, groundwater and surface water supplies, available open space, and available regions for agricultural, aquacultural and development activity;

(2) a growth policy for Barnstable county including guidelines for the protection of Barnstable county's resources and the provision of capital facilities necessary to meet current and anticipated needs;

(3) regional goals for the provision of fair, affordable housing, job creation, waste disposal, open space, recreation, coastal resources, capital facilities, economic development, historic preservation, and any other goals deemed appropriate and important by the commission; and

(4) a policy for coordinating regional and local planning efforts, including coordinating planning activities of private parties and local, state or federal governmental authorities.

SECTION 8.(a) The commission shall prepare a draft regional policy plan within twelve months of the effective date of this act. Such draft regional policy plan shall be deemed complete upon the commission mailing it to each municipality's local planning committee, the assembly of delegates, the county commissioners, boards of selectmen and to the governor's committee. To assist the commission in developing the draft regional policy plan, the commission or a subcommittee thereof shall hold at least one public hearing in each of the three areas commonly known as the Upper, Lower and Mid-Cape regions of Cape Cod.

(b) The boards of selectmen of each municipality in Barnstable county are hereby authorized to establish and may appoint a local planning committee. The local planning committee shall elect its own chairperson. If a municipality already has an established planning board or committee, that board, or committee may act as the municipality's local planning committee should the municipality's board of selectmen so decide.

(c) During the sixty day period following the completion of the draft regional policy plan the commission shall hold at least one public hearing in each of three areas of Cape Cod described above, and shall accept oral and written comments on the draft regional policy plan.

(d) During the same sixty day period, each local planning committee, the regional policy plan advisory board and the governor's committee shall submit written comments to the commission.

(e) Within thirty days after the close of the sixty day comment period, the commission shall complete its final regional policy plan. The commission shall submit its final regional policy plan to the county commissioners and to the members of the assembly of delegates, with a request that an ordinance be introduced for its adoption as the Cape Cod regional policy plan. The assembly of delegates shall then hold at least one public hearing to consider the final regional policy plan. Within forty-five days after receipt of the final regional policy plan from the commission, the assembly of delegates shall either adopt the final regional policy plan by ordinance as proposed or return the final regional policy plan to the commission for restudy and redrafting in accordance subsection (f).

(f) In the event the assembly of delegates has substantive objections to the final regional policy plan as submitted by the commission, the assembly of delegates shall return the final regional policy plan to the commission for restudy and redrafting, together with a written report identifying those elements of the final regional policy plan to which the assembly of delegates has objections and a detailed request for changes. After such restudy and redrafting, the commission shall again submit the final regional policy plan to the assembly of delegates in accordance with subsection (e).

(g) Upon the assembly of delegates' adoption by ordinance of the final regional policy plan, the commission shall submit the final regional policy plan to the governor and the secretary of state and publish notice of its availability in the Massachusetts Register, the Environmental Monitor, a newspaper of general circulation in Barnstable county, and newspapers regularly published in each municipality. The final regional policy plan shall be recorded by the commission with the Barnstable county registry of deeds and shall become effective upon the later of the thirty days following the adoption date of the ordinance or on such recording. Copies of the final regional policy plan shall also be filed with the town clerk of each municipality in Barnstable county and with the governor's committee.

(h) The assembly of delegates shall, by ordinance establish a process for a thorough review and amendment of the regional policy plan, at intervals not to exceed five years. Notwithstanding the foregoing, the commission may initiate review of the regional policy plan on its own initiative at any time. All proposed amendments of the regional policy plan shall be submitted to the county commissioners and to the assembly of delegates in accordance with subsection (e). The review process shall include a provision for notice and public hearing in accordance with subsection (b) of section five and section six. Any amendments to the regional policy plan shall be submitted and filed in accordance with subsection (g).

SECTION 9.(a) After the assembly of delegates has adopted the final regional policy plan pursuant to the provisions of section eight, each municipality may by a vote of its town meeting or legislative body adopt a local comprehensive plan which is consistent with the regional policy plan and the goals of the act. Each municipality's local comprehensive plan shall include a plan for the capital facilities which will be necessary in that municipality to accommodate growth and development both in the municipality and throughout Barnstable county.

(b) The commission shall adopt regulations establishing minimum criteria for local comprehensive plans, which shall include a plan to provide for the development of fair low and moderate income housing consistent with local needs, and which may be certified by the commission as consistent with the regional policy plan. The local planning committee may develop a local comprehensive plan for submission to town meeting or the town legislative body for adoption. The commission staff may provide consultation and assistance to local planning committees. If a municipality has already adopted a comprehensive plan, the town meeting or other legislative body may adopt its existing plan as the municipality's local comprehensive plan, to the extent that it is consistent with the regional policy plan and with the guidelines established by the commission pursuant to subsection (b). After adoption of a local comprehensive plan by town meeting or other legislative body, the town clerk shall submit its local comprehensive plan to the commission for certification that it is consistent with the regional policy plan.

(c) If a municipality adopts a local comprehensive plan and it is certified by the commission, the municipality shall, within two years or such further time as the commission may allow, insure that its development by-laws are consistent with its local comprehensive plan. The commission may revoke the certification of a municipality's local comprehensive plan if the municipality fails to make its development by-laws consistent with said plan within the time allowed under this section.

In modifying their development by-laws pursuant to this section, municipalities may not alter the rights of property owners under section six of chapter forty A, section eighty-one P of chapter forty-one and section one hundred and twenty-seven P of chapter one hundred and eleven of the General Laws. The commission shall revoke the certification of a municipality's local comprehensive plan if the municipality fails to implement that portion of the local comprehensive plan which provides for the development of low and moderate income housing consistent with local needs within a reasonable period of time following certification of the local comprehensive plan.

(d) Municipalities which have local comprehensive plans certified by the commission may enter into development agreements with persons proposing developments and with the commission, other municipalities and state agencies in accordance with section fourteen, and may impose impact fees on proposed developments in accordance with section fifteen.

(e) The regulations referred to in subsection (b) shall not prohibit a municipality from proposing for certification or the commission from certifying a comprehensive plan which is more specific, detailed, or comprehensive, or which covers additional subject areas than the regulations require. This act and these regulations shall not prohibit a municipality from considering, adopting, enforcing or in any other way administering a comprehensive plan which does not comply with the regulations established by the commission, so long as it is not administered or enforced in a manner which otherwise violates this act.

(f) Each municipality may request financial and technical assistance from the commission in preparing a local comprehensive plan and in implementing land use regulations.

(g) In the event that the final regional policy plan is amended pursuant to subsection (h) of section eight any municipality having a certified local comprehensive plan shall conform said plan to the regional policy plan as amended pursuant to subsections (a) to (f) of section nine.

SECTION 10.(a) The commission may propose the designation of certain areas which are of critical value to Barnstable county as districts of critical planning concern that must be preserved and maintained due to one or more of the following factors:

(1) the presence of significant natural, coastal, scientific, cultural, architectural, archaeological, historic, economic or recreational resources or values of regional, state-wide or national significance; or

(2) the presence of substantial areas of sensitive ecological conditions which render the area unsuitable for development; or

(3)the presence or proposed establishment of a major capital public facility or area of public investment.

(b)The commission shall submit its proposed designation of a district of critical planning concern to the assembly of delegates for adoption by ordinance. The assembly of delegates shall then hold at least one public hearing to consider said proposed designation. Within sixty days after receipt of said proposed designation, the assembly of delegates shall either approve said proposed designation by ordinance or return said proposed designation to the commission for restudy and redrafting. In the event the assembly of delegates has objections to said proposed designation, the assembly shall return said proposed designation to the commission together with a written report identifying those elements to which the assembly has objections and a request for changes. After restudy and redrafting, the commission shall within forty-five days again submit said proposed designation to the assembly in accordance with the provisions of this section. If a proposed designation is not approved within sixty days of a second submission by the commission to the assembly of delegates, it shall be deemed denied. The designation shall take effect upon the effective date of the ordinance.

(c)Districts of critical planning concern may cover areas located in more than one municipality. Similar resources in different areas of Barnstable county should be treated similarly unless the commission makes a written finding that there are valid reasons based upon local differences and characteristics to justify treating them differently.

(d)Nomination of areas for consideration for designation as districts of critical planning concern may be made by the commission; or by the county commissioners or the assembly of delegates; or by a board of selectmen, historic commission, planning board, board of health or conservation commission of any municipality for any areas within the municipal boundaries of the nominating municipal board or a contiguous municipality. Whenever an historic commission, planning board, board of health or conservation commission makes such a nomination, it must forward notice to the board of selectmen. The board of selectmen shall forward comments, if any to the commission on any nomination made by the historic commission, planning board, board of health or conservation commission.

(e)Nominations shall contain information explaining why the subject area should be designated a district of critical planning concern and shall fully describe the area nominated.

(f)Upon receipt of a nomination the commission shall accept or reject the nomination for consideration within forty-five days. The acceptance of a nomination for consideration for designation shall be accompanied by a general statement of purpose, describing the reasons for acceptance and shall certify the types or classes of proposed development not substantially detrimental to the protection of the public health, safety and welfare and will not contravene the purposes of this act. Nominations which are not accepted for consideration shall be returned to their sponsors with a written explanation of the commission's reasons for not accepting the nomination for designation.

(g)No nominations shall be filed with the commission until after six months from the effective date of this act. Within five months from the effective date of this act, the commission shall promulgate

regulations governing the form and content of nominations and procedures for the review of nominations.

(h)The commission may consolidate nominations for consideration if it determines that multiple nominations relate to substantially similar resources, substantially similar geographic areas, contiguous or overlapping areas.

(i)Except as provided in subsection (g), the commission shall render a decision within sixty days of accepting a nomination for consideration, unless the commission provides written explanation for a delay. The commission may not take longer than one hundred and twenty days from acceptance of a nomination for consideration to render its decision. The commission shall provide notice to the town clerk of all municipalities which are included within the boundaries of any part of the nominated area and shall hold one or more public hearings in locations appropriate and convenient to the nominated area. The chairperson of the commission may, at his discretion, appoint subcommittees of commission members to conduct public hearings on district of critical planning concern nominations. Any such subcommittee shall report to the full commission and the full commission shall render the final decision on the proposed designation.

(j)The commission's final decision on a proposed designation shall specify in writing the reasons for designation or refusal to designate. If the commission decides to propose a district of critical planning concern, its decision shall include a description of the area's critical concern to the region, the problems of uncontrolled or inappropriate development in the area, and the advantages anticipated from development of the area in a controlled manner. The commission shall also specify guidelines for development in the district based upon its findings relating to the critical concerns in the area.

(k)Nominations for the same geographic area and for the same concerns which have been made to the commission but not recommended by the commission to the assembly of delegates for designation shall not be considered for acceptance for nomination within two years following the commission's decision not to designate or inaction unless the commission votes to accept them for nomination by a four-fifths vote of the members present, so long as a quorum exists.

(l)The commission's proposed designation decision shall include a written description and a map of the land area to be included in the designation sufficient to identify the areas affected by the district of critical planning concern designation. All district of critical planning concern designation decisions that have been approved pursuant to subsection (b) shall be recorded by the commission in the Barnstable county registry of deeds and shall become effective upon such recording. Copies of such decisions shall also be filed with the town clerk of each municipality in which the district of critical planning concern or a portion thereof is located. Notice of the designation shall be published in a newspaper of general circulation in Barnstable county and in newspapers of general circulation in each of the municipalities in which the district of critical planning concern or a portion thereof is located. For the purposes of sections twenty to twenty-three, inclusive, of chapter forty B of the General Laws, the commission shall be considered a local board.

(m)District of critical planning concern designations may be amended or rescinded by the same procedures as are set out in this section for designation.

SECTION 11.(a)Upon receipt of a nomination of an area as a district of critical planning concern, the commission shall provide notice of such nomination as follows:

(1)by mail to the assembly of delegates, county commissioners, board of selectmen, town clerk, building inspector, planning board, board of appeals, conservation commission and board of health of each municipality in which the nominated district of critical planning concern or a portion thereof is located; to any other municipal agency which makes a written request for such notice, and to the governor's committee; and

(2)by publication in a newspaper of general circulation in Barnstable county and in a newspaper of general circulation in each of the municipalities in which the proposed district of critical planning concern or a portion thereof is located.

(b)After the first publication of notice of the nomination of an area as a district of critical planning concern pursuant to subsection (a), no municipal agency may grant a development permit within the nominated district until the commission has decided not to accept the nomination or has denied a designation or the assembly of delegates and the county commissioners have rendered a final decision on designation. This subsection shall not apply to nominations for the same geographic area and for the same concerns which have been nominated within the previous two years but have not been accepted by the commission for nomination.

(c)The acceptance of a nomination for consideration for designation as a district of critical planning concern shall continue to suspend the power of a municipality to grant development permits for development within the nominated district; provided, however, that until regulations adopted pursuant to subsection (e) and (f) of section eleven have become effective, a municipality may grant development permits for development within the district if:

(1)the commission has certified in its acceptance of the nomination that the type or class of proposed development is not substantially detrimental to public health, safety or general welfare and does not contravene the purposes of this act and a development by-law or by-laws had been in effect immediately prior to the nomination of such area and development permits could have been granted under the by-laws; or

(2)a development has received approval as a development of regional impact within the seven year period next preceding the nomination of the geographic area in which said development is located, in whole or in part and such approval is still valid; or

(3)a development of regional impact has been referred to the commission for review prior to the first published notice of the nomination of a district of critical planning concern in which said development is located, in whole or in part, and subsequently is approved; or

(4)a development is authorized by a development agreement which has been approved by the commission and the relevant municipality or municipalities; or

(5)the commission has not expressly found in accepting a nomination that the issuance of development permits for a single-family house or houses on lots held in common ownership or on lots in separate ownership may be substantially detrimental to the protection of the public health, safety and welfare or in light of the factors specified in clauses (1) and (2) of subsection (a) of section ten, might contravene the purposes of this act.

(d)After the adoption of an ordinance approving the designation of a district of critical planning concern, a municipality whose boundaries include all or part of that district shall propose implementing regulations which are consistent with the guidelines for the development of the district as set forth in the assembly of delegates' designation. Proposed implementing regulations shall be submitted to the commission by the municipality after consideration by the municipal planning board, board of health, board of selectmen and conservation commission. The proposed implementing regulations shall also be submitted to the governor's committee. The commission, after notice to all municipalities in the district of critical planning concern and one or more public hearings, shall determine whether the municipality's proposed implementing regulations conform to the commission's guidelines. If the commission determines that the proposed implementing regulations do not conform to the commission's guidelines, such decision shall include specific reasons why the proposed implementing regulations do not conform and an opportunity for the municipality to amend its proposed implementing regulations. If the commission determines that the proposed implementing regulations do conform to the commission's guidelines, the commission shall so inform the municipality.

(e)Once approved by the commission, the municipality's regulations for the district of critical planning concern shall be incorporated by the municipality into the official by-laws, regulations and maps of the municipality and shall not be effective prior thereto. In accordance with section thirty-two of chapter forty of the General Laws, by-laws shall be submitted to the attorney general for approval. Implementing regulations shall be administered by the municipality as part of its development by-laws. If such regulation requires enforcement by an administrative office or body which has not been constituted by a municipality, the board of selectmen of the municipality shall enforce such regulation.

(f)If a municipality fails within twelve months after the enactment of an ordinance by the assembly of delegates designating a district of critical planning concern to adopt implementing regulations which are consistent with the commission's guidelines, the commission shall propose and the assembly of delegates shall adopt by ordinance implementing regulations applicable to that municipality's portion of the district of critical planning concern after notice and public hearing; provided, however, that the commission may grant an additional ninety days to a municipality to adopt and incorporate implementing regulations. Within two weeks following the expiration of said twelve months or ninety day extension thereof the commission shall notify the assembly of delegates of the municipality's failure to adopt and incorporate the implementing regulations and the commission shall provide the assembly with its own proposed implementing regulations. In the event that the assembly of delegates and county commissioners fail to adopt by ordinance implementing regulations for the municipality in question within seventy-five days of such submission and notification, the implementing regulations proposed by the commission shall be deemed to have been validly adopted.

(g) No municipal agency may grant a development permit for a development in a district of critical planning concern unless the proposed development is consistent with the municipality's approved implementing regulations or implementing regulations adopted by the assembly of delegates for the district of critical planning concern.

(h) Notwithstanding the provisions of this section, the commission shall permit a municipality to grant a development permit for a development in a district of critical planning concern or in an area which has been nominated and accepted for consideration for designation as a district of critical planning concern where an applicant demonstrates that to deny the development permit would constitute a taking of property in violation of the Massachusetts and United States Constitutions; provided, however, that no reasonably foreseeable danger to the public health or safety will arise from such approval or approval with conditions.

(i) A municipality may amend or rescind its implementing regulations through the same procedure that it uses to adopt the implementing regulations, subject to review and approval by the commission.

(j) If implementing regulations applicable to the entirety of a district of critical planning concern have not been approved by the commission or the assembly of delegates within eighteen months after the enactment of the designation of such a district, the designation of such part of such district for which the implementing regulations have not been approved or adopted shall terminate.

(k) For the purposes of sections twenty to twenty-three, inclusive, of chapter forty B of the General Laws, the commission shall be considered a local board.

(l) The provisions of this section shall not apply to any project for which a nonprofit educational institution has applied for or has received funds for the design and construction of said project on or before July first, nineteen hundred and eighty-nine, from an appropriation of the United States government.

SECTION 12.(a) The commission may propose standards and criteria specifying the types of development which are likely to present development issues significant to more than one municipality in Barnstable county. The commission shall submit these proposed standards and criteria for adoption by ordinance to the assembly of delegates. The assembly of delegates shall then hold at least one public hearing to consider the proposed standards and criteria. Within sixty days after the receipt of the proposed standards and criteria, the assembly of delegates shall either adopt the proposed standards and criteria by ordinance or return the proposed standards and criteria to the commission for restudy and redrafting. In the event the assembly of delegates has objections to the proposed standards and criteria, the assembly shall return the proposed standards and criteria to the commission, together with a written report identifying the elements to which the assembly has objections and a request for changes. After such restudy and redrafting, the commission shall again submit the proposed standards and criteria to the assembly in accordance with the provisions of this section. Developments which meet the standards and criteria may be termed developments of regional impact, and shall be subject to review by the commission in accordance with the provisions of this section and section thirteen. The commission may propose and the assembly of

delegates may adopt different standards and criteria for developments of regional impact for different areas in Barnstable county.

(b)The standards and criteria for developments of regional impact shall be based on the following factors:

(1)the impact of the development on the environment and natural resources, including but not limited to air, ground and surface water supply and quality; ecological, coastal, historical, cultural, architectural, archaeological, and recreational resources; endangered species habitats, open space, agriculture and aquaculture;

(2)the impact of the development on existing capital facilities, including but not limited to transportation and infrastructure, sewage, waste disposal, water supply, fair affordable housing, and meaningful employment;

(3)the physical size of the development and the site to be developed;

(4)the amount of pedestrian and vehicular traffic which the development would produce;

(5)the anticipated number of new residents or employees generated by development;

(6)the location of the development near a waterway, public land or municipal boundary;

(7)the extent of waste disposal, water supply, sewage treatment, parking, tourist services and public education facilities required for the development;

(8)the importance of the development to economic development in the region;

(9)the effect of the development on resources of the surrounding municipalities;

(10)other factors of regional concern as they may arise.

(c)Until the assembly of delegates has approved different standards and criteria under this section, the following developments shall be presumed to be developments of regional impact: (Please note that these standards and criteria have been superseded by Barnstable County Ordinance 90-12, as amended. Clerk of the Commission.)

(1)Any proposed demolition or substantial alteration of an historic structure listed with the National Register of Historic Places or Massachusetts Register of Historic Places, outside a municipal historic district or outside the Old Kings Highway Historic District.

(2)The development of any bridge, road or driveway providing direct vehicular access to the coast or a great pond.

(3)Any development which proposes to divide land of fifty acres or more which was in common ownership as of January first, nineteen hundred and eighty-eight.

(4)Any development which proposes to divide land of fifteen acres or more which was in common ownership as of January first, nineteen hundred and eighty-eight and which was the result of an earlier subdivision within the last seven years.

(5)Any development which proposes to divide land in common ownership into thirty or more residential dwelling units or ten or more business, office or industrial premises.

(6)Any proposed retail or wholesale business, office or industrial development, as well as any private, health, recreational or educational development which has a floor area as follows:

new construction: greater than ten thousand square feet; addition or auxiliary buildings: greater than five thousand square feet; or outdoor commercial space greater than forty thousand square feet. Use changes which have a floor area greater than ten thousand square feet.

(7)Any proposed development, including the expansion of existing developments, that is planned to create or accommodate more than thirty dwelling units.

(8)Any development the proposed construction or expansion of which will provide facilities for transportation to or from Barnstable county.

(d)The commission may compile and circulate to municipal agencies a list of proposed municipal projects throughout Barnstable county.

(e)A proposed development which does not exceed one of the specific thresholds in the interim standards and criteria set forth in subsection C of this section may be referred to the commission by a municipal agency, in the municipality where the development is located, or by the county commissioners or by the board of selectmen in any other municipality provided that the commission accepts the referral as a development which may have regional impacts and which presents one or more of the concerns listed in subsection (b).

(f)After notice and public hearing, the commission may, at the time it publishes the final regional policy plan or at any time thereafter, propose amendments or modifications to the standards and criteria for developments of regional impact subject to the approval by ordinance of the assembly of delegates. For the purposes of sections twenty to twenty-three of chapter forty B of the General Laws, the commission shall be considered a local board.

(g)The commission shall adopt regulations establishing an application procedure for development approval, and may require payment of reasonable fees by persons to cover the cost of the commission review pursuant to subsection (b) of section eighteen. Such regulations shall include a list of data and analysis which the applicants must submit to facilitate commission review. The commission may, however, require the submission of additional data and analysis from an applicant if it considers such additional information necessary to assess the impact of the proposed

development, and may establish a schedule for the submission and review of such data and analysis.

(h)Municipal agencies shall refer any proposed development which meets the standards and criteria set out by the commission for developments of regional impact to the commission for review, at which point the municipal agency's review shall be suspended until the commission has reviewed the proposed development. The commission shall invite municipal agencies to participate in all hearings. The commission may also review proposed developments that have not been referred by municipal agencies if, in the commission's judgment, the proposed developments meet the standards and criteria for developments of regional impact. If the commission determines that it should review a project that has not been referred to it by a municipal agency, it shall notify the municipal agency, the applicant, and the town clerk of the municipality in which the project is located of its intent to review the project by certified mail. Upon receipt of said notice, the municipal agency shall suspend its review of the application. The suspension of municipal agency review shall extend all constructive grant periods for municipal agencies for a period equal to the duration of commission review, such periods to resume running after a final commission decision is rendered.

(i)Notwithstanding the foregoing, any proposed development for which an environmental notification form must be filed under the provisions of sections sixty-one to sixty-two H, inclusive, of chapter thirty of the General Laws may be deemed a development of regional impact if the commission determines that the proposed development presents one or more of the concerns listed in subsection (b). Any proposed development project for which the secretary of environmental affairs requires the preparation of an environmental impact report in accordance with the provisions of sections sixty-one to sixty-two H, inclusive, of chapter thirty of the General Laws shall be deemed a development of regional impact.

(j)Any applicant for a development permit, whose application has not been referred to the commission by a municipal agency or taken up by the commission for review under subsection (h), or any municipal agency may apply to the commission for a jurisdictional determination as to whether a development is a development of regional impact under the applicable standards and criteria established in and pursuant to subsections (a) and (e) of section twelve. The commission shall adopt regulations establishing a procedure for jurisdictional determinations hereunder, prescribing the form and content of applications therefor, and requiring the payment of reasonable fees by persons to cover the cost of commission review. The commission shall hold a public hearing and issue a determination as to applicability within twenty-one days after receipt of a fully completed application for a jurisdictional determination. The commission shall determine whether a proposed development meets the jurisdictional thresholds of the applicable standards and criteria governing developments of regional impact. The issuance of a determination of nonapplicability shall be final, as applied for, unless, within sixty days of issuance, the commission's review of a development as a development of regional impact is initiated under subsection (e) of section twelve and provided that the secretary of environmental affairs has determined that no environmental impact report is required.

(k)Any applicant may apply to the commission for an exemption from commission review because the location, character and environmental effects of the development will prevent its having any

significant impacts on the values and purposes protected by this act outside of the municipality in which the development is to be located. The commission shall adopt regulations establishing a procedure for exemptions hereunder, prescribing the form and content of applications therefor, and requiring the payment of reasonable fees by applicants to cover the cost of commission review, provided that such fees shall not apply to any state agency. Each application for an exemption shall be noticed pursuant to subsections (a) and (d) of section five. The commission shall hold and complete a public hearing within forty-five days after receipt of a fully completed application for an exemption, provided that the certified list of abutters required by clause (2) of subsection (d) of section five is filed therewith. The commission shall make a finding whether a proposed development which literally qualifies as a development of regional impact may nonetheless be exempted from commission review because it will have no significant impacts on the values and purposes specified in section one outside of the municipality in which it is proposed due to its particular location, character and environmental effects. The commission shall issue a written finding as to significant impacts within twenty-one days of the close of the public hearing. Any exemption granted under this subsection shall expire three years from the date of its issuance and its scope shall be strictly construed.

(l)The commission shall compile a list of all municipally owned land which might be appropriate for multi-family housing development and circulate the same to state and municipal affordable housing agencies.

(m)The provisions of this section shall not apply to any project for which a non-profit educational institution has applied for or has received funds for the design and construction of said project on or before July 1, 1989, from an appropriation of the United States government.

SECTION 13.(a) After receipt of a referral of a proposed development of regional impact or after taking up a project for review on its own initiative in accordance with subsection (h) of section twelve, the commission shall, within sixty days, hold a public hearing upon proper notice which shall include written notice to each owner and all abutters of property whose development is found to be of regional impact. Such hearing shall be closed within ninety days following its opening date, and the commission shall, within sixty days after such hearing is closed, render a decision on the proposed development; provided, however, that any referral received by the commission under section twelve prior to the first meeting of the commission shall be deemed to have been received at the first meeting of the commission. Failure of the commission to issue a written decision sixty days after the close of the hearing shall cause a development of regional impact to be deemed granted; provided, however, that this time limit may be extended by mutual agreement with the applicant. All of the commission's written decisions shall be filed with the clerk of the commission and notices of such decisions shall be published in a newspaper of general circulation in the municipality or municipalities in which the proposed development is located.

(b)Notwithstanding the foregoing, for any development subject to the provisions of sections sixty-one to sixty-two H, inclusive, of chapter thirty of the General Laws, the commission shall conduct the public hearing referred to in subsection (a) within ninety days of the secretary of environmental affairs certification that no environmental impact report is required, or, if an environmental impact report is required, within forty-five days after the secretary of environmental affairs certifies the adequacy of the final environmental impact report.

(c)The chairman of the commission may at his or her discretion establish subcommittees to review specific developments of regional impact and report to the full commission. Such a panel or subcommittee shall be composed of at least five commission members and shall make decisions by a majority vote.

(d)The commission shall review proposed developments of regional impact for their consistency with the act, and, when available, with the regional policy plan and local comprehensive plans. The commission shall approve or approve with conditions a development of regional impact and shall permit a municipal agency to grant a development permit for a proposed development of regional impact if the commission finds after public hearing that:

(1)the probable benefit from the proposed development is greater than the probable detriment;

(2)after a regional policy plan has been adopted in accordance with section eight, the proposed development is consistent with the regional policy plan and the local comprehensive plan of the municipality in which it is located if the municipality has adopted a local comprehensive plan which has been certified by the commission as consistent with the regional policy plan;

(3)the proposed development is consistent with municipal development bylaws, or if it is inconsistent, the inconsistency is necessary to enable a substantial segment of the population to secure adequate opportunities for housing, conservation, environmental protection, education, recreation or balanced economic growth; and

(4)if the proposed development is located in whole or in part within a designated district of critical planning concern, it is consistent with the regulations approved or adopted by the commission pursuant to section eleven.

(e)The commission may approve, approve with conditions, or disapprove the development of regional impact. If the commission disapproves the development of regional impact no further work may be done on the development. A development of regional impact which has been approved, or approved with conditions shall be valid and effective, and municipal development permits may be issued pursuant thereto for seven years following the date of the written decision; provided, however, that in the event of any appeal from the decision, the seven year period specified herein shall begin only after the final disposition of any appeal. Upon the expiration of said seven year period, or said seven years as extended, no municipality may issue development permits pursuant to the original development of regional impact decision.

(f)Notwithstanding the provisions of subsection (d) of section thirteen, the commission shall approve or approve with conditions a development of regional impact where an applicant demonstrates that to disapprove the development of regional impact would constitute a taking of property in violation of the Massachusetts and United States Constitutions; provided, however, that no reasonably foreseeable danger to the public health or safety will arise from such approval or approval with conditions.

(g)Subject to the provisions of subsection (h), the commission may impose conditions on any development of regional impact as required to offset or mitigate impacts of the development on the

interests protected by this act. A development of regional impact decision may require that the applicant receive certificates of compliance from the commission or its designee at specified stages of the project. If such a condition is imposed upon the project, a certificate of compliance shall be obtained from the commission or its designee before the local official responsible for issuing certificates of occupancy may issue a certificate of occupancy for the development.

(h) In any case where a municipality's by-laws, ordinances, rules or regulations would be more restrictive than the conditions imposed by the commission on a development of regional impact, nothing in this act shall prevent the municipality from enforcing its by-laws, rules or regulations. In any case where the commission's conditions for a development of regional impact relate to a development subject to municipal historic district or the Old Kings Highway Historic District regulations, the commission shall conform its conditions to those regulations.

(i) The commission may bring suit in the superior court for Barnstable county or the land court to enforce its decisions under this section or to preserve its jurisdiction.

(j) For the purposes of sections twenty to twenty-three, inclusive, of chapter forty B of the General Laws, the commission shall be considered a local board.

(k) The provisions of this section shall not apply to a project for which a non-profit educational institution has applied for or has received funds for the design and construction of said project on or before July 1, 1989, from an appropriation of the United States government.

SECTION 14.(a) An applicant may choose to participate with the commission and/or a municipality or municipalities, pursuant to subsection (d) of section nine, within which the development is located in a development agreement process. A development agreement is a contract between the applicant and the commission and a municipality or municipalities under which the applicant may agree to contribute public capital facilities to serve the proposed development and the municipality or both, to build fair affordable housing either on-site or off-site, to dedicate or reserve land for open-space community facilities or recreational use or to contribute funds for any of these purposes. The development agreement shall establish the permitted uses, densities, and traffic within the development, the duration of the agreement, and any other terms or conditions mutually agreed upon between the applicant and the commission. A development agreement shall vest land use development rights in the property for the duration of the agreement, and such rights shall not be subject to subsequent changes in development by-laws or commission regulations and designations.

(b) The commission shall adopt regulations setting out the requirements for parties entering into development agreements in accordance with this act.

(c) Where appropriate, the commission shall encourage development agreements among multiple parties, including multiple municipalities, the commission and state agencies.

(d) A municipality may undertake such other measures as it deems necessary to carry out a development agreement.

SECTION 15.(a)The commission shall adopt regulations governing the procedure by which a municipality or municipalities pursuant to subsection (d) of section nine or the commission may calculate, assess and impose impact fees on proposed developments, including procedures for waiving or offsetting impact fees for affordable housing developments.

(b)Any impact fee assessed under this section shall be paid to and held in a separate account in the municipality in which the proposed development is located or, in the event that the proposed development is located in more than one municipality, the impact fee shall be apportioned among the municipalities in accordance with the land area of the proposed development in each municipality or in such other allocation as the commission may approve.

(c)Any impact fee imposed or permitted under subsection (a) shall comply with the following:

(1)it shall have a rational nexus to an impact created by the development;

(2)it shall reasonably benefit the proposed development;

(3)it shall be used for the development or improvement of capital facilities in accordance with the agency or municipality's capital facilities planning element of the local comprehensive plan; and

(4)it shall be spent or used within a reasonable period of time or, any portion not spent or used within a reasonable period of time, shall be refunded to the applicant or party legally entitled to it as a result of an assignment from the applicant.

(d)Nothing in this section shall prevent a municipality from imposing fees which it may otherwise impose under applicable laws and constitutional provisions but under no circumstances may a municipality impose a fee more than once for the same impact.

SECTION 16.(a)Development in Barnstable county subject to commission review or located within a district of critical planning concern shall be consistent with the regional policy plan, local comprehensive plans, district of critical planning concern guidelines, local implementing regulations and conditions imposed by the commission on developments of regional impact.

(b)All developments in Barnstable county requiring any state agency activity requiring the filing of an environmental notification form or environmental impact report pursuant to sections sixty-one to section sixty-two H, inclusive, of chapter thirty of the General Laws shall be reviewed by the commission. Any person filing an environmental notification form or an environmental impact report for a proposed development in Barnstable county shall at the same time send a copy of such environmental notification form or environmental impact report to the commission. The commission shall then have thirty days in which to submit its written comments to the secretary of environmental affairs. The secretary of environmental affairs shall, in making a decision with respect to either an environmental notification form or an environmental impact report, give due consideration to, and respond in writing to any comments submitted by the commission.

(c)The regional policy plan, the standards and criteria for developments of regional impact and local comprehensive plans shall be taken into consideration by the coastal zone management office

of the executive office of environmental affairs as part of its regulatory policies. Coastal zone management shall refer all coastal zone management consistency certifications for proposed activities in Barnstable county to the commission for review of consistency with the regional policy plan and local comprehensive plans. The commission shall notify coastal zone management of any objections to a consistency certification where it finds proposed activities are inconsistent with the regional policy plan and local comprehensive plans. Any conflict between coastal zone management and the commission regarding the matters contained in this subparagraph shall be referred to and resolved by the secretary of the executive office of environmental affairs.

SECTION 17.(a)The commission shall, in the event of a dispute, encourage all parties to engage in available dispute resolution mechanisms, including, but not limited to, negotiation, mediation or arbitration.

(b)Any party aggrieved by a commission decision on a development of regional impact may appeal the commission's decision to the Barnstable county superior court or the land court. Any appeal of a development of regional impact decision shall be filed within thirty days after the commission has sent the applicant written notice, by certified mail, of its decision and has filed a copy of its decision with the town clerk of any municipality in which the proposed development is located. Notice of such appeal shall be served within such thirty days on the town clerk for the municipality in which the proposed development is located and the commission.

(c)No claim of a procedural defect in the proceedings for designation of a district of critical planning concern shall be made in any legal proceedings and no state, regional, county or municipal officer shall refuse, deny or revoke any permit, approval or certificate because of any such claim of invalidity unless action is commenced within ninety days of the designation and notice specifying the court, parties, procedural defects claimed and date of filing is filed, together with a copy of the petition, with the commission within seven days after commencement of the action.

(d)The court shall, on appeal, hear all evidence pertinent to the authority of the commission and determine the facts, and, upon the facts as so determined, annul such decision if found to exceed the authority of said commission or make such other decree as justice and equity may require. The foregoing remedy shall be exclusive.

All issues in any proceeding under this section shall have precedence over all other civil actions and proceedings.

(e)Upon the filing of any action challenging the validity or constitutionality of any provision of this act or its application, the commission, if not named as a defendant, shall be notified and permitted to intervene as a party in interest. Such notification shall be given by the party filing the action.

SECTION 18.(a)The commission shall be funded in accordance with the procedures established by the Barnstable county home rule charter, and in accordance with this section.

(b) A budget proposal reflecting anticipated revenues and expenses for the following fiscal year shall be submitted annually in accordance with Barnstable county administrative and budgetary procedures.

(c) Subject to the terms and conditions of the Barnstable county home rule charter, the commission may levy reasonable fees for the recovery of its regulatory activities and services that it provides and it may accept grants from public or private persons or entities. Such receipts shall be applied to the cost of operation of the commission.

(d)(i) To the extent that the amounts for the commission's budget exceed revenues derived under subsection (c) such excess amounts may be raised in accordance with sections thirty and thirty-one of chapter thirty-five of the General Laws, in an amount of not more than two million dollars, which shall not increase annually beyond the amount of two million dollars by more than two and one-half percent except as increased by those amounts approved by the voters pursuant to paragraph (ii). Any such excess amounts shall be exempt from the provisions of section twenty A of chapter fifty-nine of the General Laws and amounts so assessed by the county or any municipality shall not be included in calculating the total taxes assessed under subsection (a) or the maximum levy limit under subsection (f) for such municipality under section twenty-one C of chapter fifty-nine of the General Laws. Any such assessment made upon the municipalities of Barnstable county in accordance with sections thirty and thirty-one of chapter thirty-five of the General Laws shall be indicated separately from all other county taxes within the assessments made by the assessors thereof. Any amounts received under the assessments made pursuant to this subsection or pursuant to paragraph (ii) shall be deposited into an account to be known as The Cape Cod Environmental Protection Fund which shall be used only to fund the approved budget of the Cape Cod commission.

(ii) The assembly of delegates shall seek voter approval in order to assess an amount in excess of the two million dollars, increasing annually by not more than two and one-half percent, referred to in paragraph (i) as follows: after appropriation and assessment as described in said paragraph (i) the county commissioners shall either cause each municipality to place a question on the next biennial state ballot or shall fix a date for a county-wide election which shall be at least sixty days prior to the first day of the next fiscal year. Otherwise, each municipality shall conduct a special election on a date so fixed by the county commissioners, or on the date of the annual municipal election if said annual election is not more than thirty days after or not more than thirty days prior to said date fixed by the county commissioners. Each municipality shall certify the results of any such election to the county commissioners and the state secretary. The town clerk of each municipality shall place upon the ballot at such election the following question:

"Shall the municipalities of Barnstable County be allowed to assess an additional \$ _____ of which \$ _____ shall be assessed to the town of _____ for the purpose of funding the budget for the regulatory powers, duties, responsibilities and obligations of the Cape Cod Commission, the region's land use and planning agency?"

Yes _____ No _____

Amounts approved by the voters under this question shall not be included in calculating the "total taxes assessed" in paragraph (a) or the maximum levy limit in paragraph (f) of section twenty-one C of chapter fifty-nine of the General Laws."

Any such question shall be deemed approved if a majority of the persons voting thereon in Barnstable county vote yes.

SECTION 19. (a)The governor shall appoint a governor's committee for the purpose of ensuring that, to the greatest extent feasible, state agency planning is coordinated with and implemented in conjunction with the duties, responsibilities, plans and policies of the Cape Cod commission and the purposes of this act.

(b)The governor shall appoint the chair of the committee. The governor's committee shall meet with the commission at least once quarterly for the first two years of the commission's existence and at least annually thereafter.

(c)The governor's committee and any state agency may also engage in joint planning programs with the commission.

SECTION 20.(a)The powers, duties, responsibilities and obligations of the Cape Cod planning and economic development commission, established under chapter four hundred and fifty-three of the acts of nineteen hundred and sixty-five, shall be transferred to the Cape Cod commission immediately upon its creation under this act. All contracts, employee rights and pension benefits held by or guaranteed by the Cape Cod planning and economic development commission or by Barnstable county on its behalf shall be preserved and retained by Barnstable county on behalf of the Cape Cod commission.

(b)All petitions, hearings and other procedures duly brought before, and all prosecutions and legal and other proceedings duly begun by, any person, municipal agency, local board or official or the Cape Cod planning and economic development commission, which arise from or relate to the exercise of its powers or the performance of duties, and which are pending or incomplete immediately prior to the effective date of this act, shall continue unabated and remain in full force and effect notwithstanding the passage of this act, and shall thereafter be completed in accordance with this act.

(c)All orders, actions, guidelines, standards, criteria, designations, procedures, by-laws, regulations, conditions, modifications, and decisions duly made and all licenses, permits, authorities, permissions, certificates, approvals and endorsements duly granted, by any municipality, municipal agency, local board, or an official of the Cape Cod planning and economic commission, which arise from or relate to the exercise of its powers or the performance of duties, and which are in effect immediately prior to the effective date of this act, shall continue in full force and effect and provisions thereof shall thereafter be enforced until superseded, revised, rescinded or cancelled in accordance with this act and any other applicable law.

(d)All books, papers, records, documents, equipment, lands, interests in land, buildings, facilities, and other property both personal and real which immediately prior to the effective date of this act

are in the custody of the Cape Cod planning and economic commission or are in the custody of Barnstable county on its behalf, which relate to or are maintained for the purpose of the exercise of its powers or the performance of duties, shall be held by the Cape Cod commission established under the provisions of this act, or may be held by Barnstable county on its behalf.

(e) All assessments made by the Cape Cod planning and economic development commission and all monies heretofore received or to be received from any source by said commission for the performance of its duties and which remain unexpended on the effective date of this act shall immediately be transferred to Barnstable county on behalf of the Cape Cod commission established under the provisions of this act.

SECTION 21. The county commissioners shall fix a date for a county wide election not sooner than sixty days nor later than one hundred and fifty days after the date of passage of this act. Each municipality shall conduct a special election pursuant hereto on the date so fixed and shall certify the results thereof to the county commissioners and the state secretary. The town clerk of each municipality shall place upon the ballot at such election, the following question:

Shall the provisions of chapter _____ (here insert chapter number) of the Acts of 198_ (here insert year) which would authorize (1) the establishment of the Cape Cod Commission which will be funded by the Barnstable County Assembly of Delegates, in accordance with Barnstable County administrative and budgetary procedures; and (2) the possible assessment by the County Assembly of Delegates of up to but not more than \$2 million per year, which amount shall be placed into an account to be known as "The Cape Cod Environmental Protection Fund" to be used only to fund the approved budget of the Cape Cod Commission and which amount would, at most, result in an increase in the property tax rate in the municipality of _____ (here insert name of municipality) of no more than _____ (here insert amount), be accepted in Barnstable County?

This act shall take effect only after all of the municipalities in Barnstable County have voted on the question and if it has been approved by a majority of all votes cast on the question. The effective date of the act shall be the date of such election.

Within thirty days from the date of passage the state secretary shall provide copies of this act to the town clerks for distribution to those voters who may request copies. The attorney general shall prepare a fair and concise summary of this chapter which he shall provide to the town clerks of the municipalities within thirty days after the effective date of this act. The town clerks of the municipalities shall mail a copy of the summary to each registered voter no later than ten days prior to the election together with a notice that full copies of this act are available from the town clerk upon request.

SECTION 22.(a) This act shall not apply to any development constructed in accordance with a building permit issued prior to the effective date of this act.

(b) This act shall not apply to any development which prior to July first, nineteen hundred and eighty-nine has received any one of the following: an order of conditions under section forty of chapter one hundred thirty-one of the General Laws; a special permit or variance under chapter forty A; a comprehensive permit under chapter forty B; or a statement of the secretary of

environmental affairs that the environmental impact report adequately complies with sections sixty-two to sixty-two H, inclusive, of chapter thirty, and which development is constructed or is thereafter constructed in substantial compliance therewith.

(c)The provisions of this act shall not apply to the grant of a development permit by a municipality or state agency for the repair, upgrade, change, alteration or extension of a single family dwelling or an accessory structure, septic system or water well relative thereto, if such dwelling existed prior to July first, nineteen hundred and eighty-nine, unless such upgrade, change, alteration or extension is greater than twenty-five percent of the floor area of the dwelling.

(d)The provisions of this act shall not apply to a development which, as of July first, nineteen hundred and eighty-nine, had applied for and was entitled to one of the permits or approvals listed in subsections (a) and (b) of this section but said approval or permit did not issue due to: (1) the existence of a development moratorium imposed by a town meeting prior to July first, nineteen hundred and eighty-nine, so long as such moratorium is terminated and the permit or approval actually issues as originally applied for and so long as the development is constructed in accordance with said permit or approval; (2) because the grant or denial of such a permit or approval was the subject of judicial review entered prior to July first, nineteen hundred and eighty-nine, and said judicial review is concluded in the applicant's favor and so long as the development is constructed thereafter in accordance with said permit or approval; or (3) because of negotiations with the planning board, as long as the planning board and the applicant have mutually agreed to extend any applicable deadline or because of ongoing administrative or appeals process, and said approval is thereafter received by July first, nineteen hundred and ninety, and is thereafter approved by the local board of selectmen by August first, nineteen hundred and ninety, and so long as the development is constructed in accordance with said permit or approval as originally applied for.

(e)This act shall not apply to a lot or lots shown on a subdivision plan endorsed by a planning board prior to July first, nineteen hundred and eighty-nine, in accordance with section eighty-one V of chapter forty-one of the General Laws, if the planning board has released the security held by it to ensure completion of construction of ways and the installation of municipal services, as required by section eighty-one U of said chapter forty-one, prior to the effective date of this act.

SECTION 23.The commission shall have the power after holding a public hearing pursuant to section five to grant an exemption, in whole or in part and with appropriate conditions, to any applicant from the terms and provisions of this act where the commission specifically finds that a literal enforcement of the provisions of the act would involve substantial hardship, financial or otherwise, to the applicant and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the act.

SECTION 24.(a)When a municipality or state agency makes a determination that an emergency exists and that a development is necessary for the immediate protection of the health or safety of the public, the municipality or state agency may issue a development permit to conduct such emergency work notwithstanding that ordinarily such work would require a referral to the commission as a development of regional impact.

(b) A municipality or state agency shall make a site inspection prior to issuing a determination that work on a development is of an emergency nature and requires a development permit without a development of regional impact approval. The determination regarding an emergency development shall include a description of the work which is allowed on an emergency basis, but shall not include any work beyond that which is necessary to abate the emergency.

(c) Work on a development to abate an emergency shall not extend more than thirty days after the occurrence of the emergency unless written approval from the commission has been obtained, by the municipality, the state agency or by the owner of the development.

(d) A copy of the determination of the emergency and of the development permits issued by the municipality or by the state agency shall be sent to the commission immediately upon issuance.

(e) The commission may, on its own motion or at the request of any person, review an emergency determination and the work authorized thereunder. Such review shall not operate to stay the work permitted by the municipality or the state agency unless the commission specifically so orders. The commission shall adopt regulations for an expedited review of emergency determinations under this section.

SECTION 25. Section 7-4 of Article 7 of chapter 163 of the acts of 1988 is hereby amended by striking out, in line 6, the word "or," - and by inserting after the word "obligation", in line 7, the words :- or, (6) any ordinance adopted pursuant to the Cape Cod Commission Act unless otherwise specified; provided, however, that any ordinance resulting in the reorganization, consolidation, abolition, merger, division or alteration of the terms of office, the manner of selection, number of members or prescription of the functions, powers, duties and responsibilities of the Cape Cod Commission shall be subject to the citizen referendum provisions of section 7-3; and provided, further, that any such action ultimately approved by the assembly of delegates or by the Barnstable county voters shall be reported to the senate and house clerks of the general court and be transmitted by them to the joint committee on local affairs.

House of Representatives, January 2, 1990.

Passed to be enacted,, Speaker.

In Senate, January 2, 1990.

Passed to be enacted,, President.

January 12, 1990.

Approved,, Governor.