

# **BARNSTABLE COUNTY ASSEMBLY OF DELEGATES**

**In the Year Two Thousand and Ten**

Ordinance 10-19

**To amend Chapter G, Growth Incentive Zone Regulations of the Code of Cape Cod Commission Regulations of General Application.**

## **Section 1. General Provisions**

### **(a) Source of Authority**

These regulations concerning Growth Incentive Zones (GIZ) are adopted pursuant to Sections 6 and 7 of the Cape Cod Commission Act (Act), Chapter 716 of the Acts of 1989, as amended.

### **(b) Purpose**

In accordance with the Act and to implement the goals of the Regional Policy Plan (RPP) and the Regional Land Use Vision Map, the Cape Cod Commission (Commission) hereby establishes a process for designating Growth Incentive Zones. The purpose of creating GIZs is to direct development and redevelopment into areas with existing development and adequate infrastructure and away from sensitive resource areas. Through designated GIZs, towns may enhance designated Economic Centers by encouraging a concentrated mix of residential and commercial uses within these locations while ensuring that all growth is properly served by adequate infrastructure.

As a means of encouraging mixed-use development inside GIZs, Developments of Regional Impact (DRIs) within these areas qualify for certain reduced Minimum Performance Standards (MPS) and requirements set forth in the RPP in the following areas: nitrogen loading, traffic mitigation, open space, and community character. In addition, as part of its GIZ application, a town may request modifications to existing DRI thresholds within a GIZ to encourage development to locate inside GIZs and outside of Resource Protection Areas (RPA) and other areas where growth is not appropriate.

### **(c) Effective Date**

The regulations set forth herein shall be effective following passage as an ordinance and upon recording of the ordinance with the Barnstable County Registry of Deeds.

### **(d) Definitions**

The definitions contained in the RPP, Section 2 of the Act, LCP regulations and the Commission's Enabling Regulations Governing Review of DRIs (Enabling Regulations) shall apply to these regulations.

## **Section 2. GIZ Eligibility**

- (a) Only areas designated as Economic Centers on an approved Land Use Vision Map adopted by the Assembly of Delegates and incorporated into the RPP are eligible for a GIZ designation from the Commission.**
- (b) The area proposed as a GIZ shall be a contiguous geographic area with clearly delineated boundaries that may include areas in more than one town. The GIZ shall neither expand nor create strip development, as defined in the RPP.**

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- (c) A proposed GIZ shall contain existing development and infrastructure, with opportunities for redevelopment, infill, and intensification of existing uses. Undeveloped parcels isolated from existing development are not appropriate areas for GIZs and shall be avoided.
- (d) A proposed GIZ shall be characterized by the following types of development (existing within the zone or planned, as demonstrated by pending zoning or planning proposals):
- A compact mix of uses;
  - A broad range of housing types, including multi-family dwellings and accessory apartments;
  - Civic and institutional uses; and
  - Pedestrian- and transit-oriented development.
- (e) GIZs shall avoid the following areas, as mapped by the Commission:
- Potential Public Water Supply Areas, rare species habitat, priority natural communities, wetlands, critical upland areas, unfragmented forest habitat, and land within 350 feet of vernal pools and 300 feet of ponds.
  - Undeveloped Velocity (V) zones as designated by FEMA
- (f) A GIZ may include incidental portions of areas identified under Section 2(e) herein for the purpose of maintaining its contiguity provided their inclusion would not pose significant adverse impacts to any of the resources protected under the Act and RPP.

**(g) Infrastructure**

A proposed GIZ shall include provisions for adequate infrastructure and services that either exist within the zone or are planned, as demonstrated by pending proposals. Such provisions shall be timed to meet the demand created by new development. Adequate infrastructure shall include:

- 1) Demonstrated capacity to provide public water supply for maximum day demand periods.
- 2) Infrastructure consistent with the goals and standards set forth under the RPP for a) collection and treatment of wastewater and effluent disposal and b) management of stormwater runoff.
- 3) Transportation infrastructure, including transit, bicycle, and pedestrian provisions to reduce the number of automobile trips made within the GIZ, as well as roadway, parking and circulation improvements, to accommodate expected traffic flow.
- 4) Sidewalks or other pedestrian facilities along all regional roadway frontage.
- 5) Marine/maritime infrastructure, where applicable, to ensure the continuance of traditional maritime industries.

**Section 3. DRI Thresholds**

- (a) A town may request modifications to DRI Review Thresholds contained in the Commission's Enabling Regulations, Section 3, Developments Presumed to be Developments of Regional Impact within a GIZ except as provided by Section 3(c) herein. Modifications to existing DRI thresholds shall be reviewed in accordance with the specifications provided in Sections 2 and 3 of these regulations. Requests for DRI threshold modifications shall be included with the GIZ application. All proposed DRI threshold modifications must be approved by votes of both the Commission and the Assembly of Delegates.

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(b) *Cumulative GIZ DRI threshold*: A town may request to establish new DRI thresholds for the GIZ by modifying existing DRI thresholds as follows:

- Inside the GIZ: a limit (i.e. cap) may be established on the total amount of additional development and redevelopment allowed to proceed within the GIZ before mandatory DRI review is required. Proposed development that exceeds a mandatory DRI review threshold under the existing thresholds/Enabling Regulations in place at the time of the GIZ designation would not be subject to DRI review by the Commission until the designated cap/threshold is reached. A town seeking this type of DRI threshold must specify the cap/threshold amount in its GIZ application. If said cap/threshold as modified is approved by the Commission and the Assembly of Delegates, the town shall also monitor and report to the Commission all development within the GIZ in accordance with the terms and conditions of an approval decision.
- Outside the GIZ: existing DRI thresholds may be lowered (made more restrictive) to achieve the purposes of the GIZ and to discourage new development from locating outside the zone. A DRI threshold reduction in areas outside of the GIZ may be eligible for consideration as an Offset Action in accordance with Section 4(e) Offset Table of these regulations.

(c) The following DRI thresholds are not eligible for modification within the GIZ. Proposed development that meets or exceeds these thresholds shall be reviewed as a DRI.

- Any proposed demolition or substantial alteration of an historic structure or destruction or substantial alteration to an historic or archaeological site listed with the National Register of Historic Places or Massachusetts Register of Historic Places, outside a municipal historic district or outside the Old King's Highway Regional Historic District.
- The construction or expansion of any bridge, ramp, road, or vehicular way that crosses or provides direct access to an inland pond, barrier beach, coastal bank, dune, beach, or tidal wetland or waterbody (as defined by MGL Ch 131, Section 40) except a bridge, ramp, or driveway serving no more than three single-family dwellings.
- Any development providing facilities for transportation to or from Barnstable County, including but not limited to ferry, bus, rail, trucking terminals, transfer stations, air transportation and/or accessory uses parking or storage facilities, so long as such auxiliary or accessory uses are greater than 10,000 square feet of Gross Floor Area or 40,000 s.f. of outdoor area.
- Construction of any Wireless Communication Tower exceeding 35 feet in overall height, including appurtenances, from the natural grade of the site on which it is located, except for a new Concealed Antenna Monopole less than or equal to 80 feet in overall height from the natural grade of the site on which it is located that is designed to accommodate at least two carriers and with an Occupied Area limited to no more than 1,300 square feet.
- Reconstruction of, attachment to or replacement of any existing Wireless Communications Tower, power transmission structure, or utility pole for the

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purpose of supporting antenna(s) for transmitting and/or receiving radio frequency communications that increases its overall height above existing grade by more than 20 feet.

- Site alterations or site disturbance greater than two acres including but not limited to clear cutting, grading, and clearing land, unless such alteration or disturbance is conducted in conjunction with a building permit for a structure or a DRI approval in conjunction with a municipal project.
- Development requiring an Environmental Impact Report under MEPA.
- Wind energy conversion facility threshold.
- Discretionary DRI referrals proposed by a town and accepted by the Commission as presenting regional impacts.

**Section 4. Offsets**

In exchange for raised DRI thresholds and reduced regulatory review inside the GIZ, towns shall implement development reduction and growth management actions (“offsets”) outside the GIZ including land preservation, downzoning, and lower DRI thresholds. The offsets shall be provided in clearly delineated geographic areas outside of the GIZ and may be proposed inside or outside of the town where the GIZ is located. Offset actions completed no more than 5 years prior to the date of the GIZ application may be eligible for consideration as an offset. The offset requirement is based on the amount of the Cumulative DRI Threshold and is calculated using the Offset Ratio.

*(a) Offset Actions*

The Offset Table in Section 4(e) identifies the following growth management measures that are eligible for consideration as Offset Actions:

1. Open Space Provision: upland set aside and permanently restricted for conservation, agriculture, or passive recreation purposes by a municipality, nonprofit conservation organization or land trust, homeowners association, or a person.
2. Undevelopment: removal of existing development and conservation of the land as permanent open space.
3. DRI Threshold Reduction: Decrease in commercial DRI threshold to 7,500 or less in designated RPAs.
4. Downzoning: A change in the zoning classification of land to a classification permitting development that is less intensive or dense.

*(b) Area of Offset*

Square footage or acreage of the site/location of offset(s).

*(c) Offset Ratio*

The Offset Ratio represents the product of the Area of the Offset (or number of residential units offset) and the Offset Multiplier, divided by the area (or number of units) of the Cumulative DRI Threshold. For GIZ approval the Offset Ratio shall equal 1 or greater.

- *Non-Residential Offset Ratio:*  
 $(\text{Area of Offset Action} \times \text{Offset Multiplier}) \div \text{Area of Cumulative DRI Threshold}$
- *Residential Offset Ratio:*

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$$\frac{(\text{Number of residential units offset, based on zoning} \times \text{Offset Multiplier})}{\text{Number of residential units of Cumulative DRI Threshold}}$$

*(d) Offset Multiplier*

The Offset Multiplier is a numerical factor applied to the Area of the Offset (or to the number of residential units for residential offset) that increases the Offset Ratio.

*(e) Offset Table*

The following table presents the Offset Actions and Offset Multipliers. Guidance can be found in Technical Bulletin 10-003.

<b>Offset Action</b>	<b>Non-Residential Offset Multiplier*</b>	<b>Residential Offset Multiplier*</b>
<b>Open Space Provision</b>		
In RPA	2.00	4
--and adjacent to protected open space	2.50	4
In DCPC	2.50	4
Other	1.00	2.00
<b>Undevelopment</b>		
In DCPC	2.00	3.50
In RPA	1.75	3
In Strip Development area	1.75	NA
In Other area	1.0	1.0
<b>Bonus Offset Actions</b>		
<b>DRI Threshold Decrease</b>		
In RPA or Other	Additional 1.0 multiplier applied to one Offset Action	
<b>Downzoning</b>		
In RPA or DCPC or Other	Additional 1.0 multiplier applied to one Offset Action	

\* For Offset Actions implemented in more than one location category (e.g. 10-acre Open Space provision with 9 acres inside RPA and 1 acre inside "Other" area) the Offset Ratio calculation should be performed separately for each location category based on the Area of Offset that is within each location. The total Multiplier maximum value for Offset Actions is as follows: *Commercial Offset Actions*: 2.50 without Bonus credits; 4.50 maximum with Bonus(es). *Residential Offset Actions*: 4.00 without Bonus credits and 6.00 with Bonus(es).

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**Section 5. Who May Propose a GIZ**

(a) A Board of Selectmen or Town Council (through the application of the Town Manager), and Planning Board, upon an affirmative majority vote of both boards, may propose a GIZ to the Commission.

**Section 6. Procedure for Proposing a GIZ**

- (a) The town proposing a GIZ shall schedule a pre-application meeting with Commission staff during which submission requirements will be identified
- (b) The proposing town shall conduct at least one advertised public hearing prior to submitting a GIZ application.
- (c) Following the pre-application meeting with Commission staff and the public hearing, the proposing town may propose a GIZ by submitting two copies of a completed GIZ application to the Clerk of the Cape Cod Commission. An application may be prepared and submitted jointly by multiple towns if the GIZ geographic area or its associated offsets involve more than one town.
- (d) The application shall include the GIZ Application Form and the supporting materials specified therein.

**Section 7. Procedure for Processing a GIZ Application**

- (a) In order to be deemed *complete*, all GIZ applications must:
  - 1. Be reviewed in consultation with the Commission staff at a pre-application meeting.
  - 2. Include evidence of the filing of a copy of the application with the Town Clerk of all abutting towns.
  - 3. Include evidence that prior to submitting an application that at least one advertised public hearing has been held by the municipality on the proposed GIZ.
  - 4. Include all of the items listed in the GIZ Application Form.
- (b) The Commission's Planning Committee (Planning Committee) or its designee shall conduct a public hearing after receipt of a completed GIZ application, as determined by the Commission's Executive Director or his/her designee.
- (c) The Commission shall provide notice of a public hearing to consider the GIZ application by publication as required by Section 5(a) and (b) of the Act.
- (d) The Planning Committee or its designee shall make a recommendation to the Commission regarding the proposed GIZ and the Commission shall vote at a public hearing whether to approve, approve with conditions, or deny such application. The Commission shall issue a written decision in a form suitable for recording with the Barnstable County Registry of Deeds. The GIZ designation shall take effect upon recording of such decision. In accordance with Section 3 herein, the written decision shall set forth conditions for allowing a DRI threshold modification. Following a vote to approve a GIZ, the Commission shall forward DRI threshold modification requests to the Assembly of Delegates for enactment as an ordinance as provided under Section 9(d) herein.

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**Section 8. Review and Approval Criteria**

(a) Plan Consistency

A proposed GIZ shall be consistent with the following documents:

1. The town's Commission-certified Local Comprehensive Plan (LCP).
2. The Regional Land Use Vision Map.
3. The goals of the RPP in effect at the time of the opening of the Commission's public hearing.
4. The Regional Transportation Plan.

(b) A GIZ applicant shall demonstrate the following to the Commission:

1. That the proposed GIZ can accommodate additional growth without harming the resources protected under the Act and the RPP;
2. That the town has provided effective growth management and development reduction actions outside the GIZ in accordance with Section 4; and
3. That the proposed GIZ is consistent with the criteria set forth under Section 1(b) Purpose and Section 2 Eligibility of GIZs of these regulations.
4. That the proposed GIZ is located entirely within an Economic Center as designated by the Regional Land Use Vision Map.

(c) Where a town has requested modification of DRI thresholds within its proposed GIZ (as provided under Section 3 herein), the Commission shall consider whether sufficient review standards and mitigation measures, including appropriate infrastructure, will be provided to ensure that local review will protect resources that otherwise would be protected under the RPP. The Commission may approve a DRI threshold modification request where it finds that such threshold modification is appropriate for achieving the purposes of the GIZ.

**Section 9. Procedure for GIZ Designation and DRI Threshold Modification**

(a) The Board of Selectmen shall determine by majority vote whether to require Town Meeting approval of the proposed GIZ. The Town Council shall consider approval by majority vote. The town shall forward the written record of such vote to the Commission as part of the GIZ application.

(b) The GIZ shall be considered designated upon approval by the Commission, except where Town Meeting or Town Council approval is required.

(c) Where Town Meeting or Town Council approval is required, a vote shall be taken on the proposed GIZ (including associated maps, proposed zoning changes, and capital expenditures) following an approval vote from the Commission. Adoption for all items shall be by the majority necessary for local adoption. Town Meeting or Town Council amendments to the approved GIZ shall be reviewed by the Commission in accordance with Section 10 Modifications to GIZs. The GIZ shall be considered designated upon approval by the Commission and Town Meeting or Town Council.

(d) Where an application includes a request for modification of DRI thresholds, the town shall obtain a Certificate of Compliance from the Commission stating that all conditions of the decision requiring completion prior to DRI threshold modification have been met.

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Following the issuance of a Certificate of Compliance, the Commission shall submit the threshold modification request to the Assembly of Delegates for approval and adoption as ordinance. Threshold modifications shall be considered in effect upon recording of the ordinance adopted by the Assembly of Delegates.

**Section 10. Modifications to GIZ Designations**

(a) A Board of Selectmen or Town Council (through the application of the Town Manager), and Planning Board, upon an affirmative majority vote of both boards, shall apply in writing to the Planning Committee for consideration of a modification request. The Planning Committee shall determine which modification category listed in Section 10(b) of these regulations is applicable to the proposed modification. When making its determination, the Planning Committee shall consider the following factors: proposed changes to the GIZ geographic boundaries; changes in zoning regulations, changes to the findings or conditions of the Commission's original decision; and other factors which the committee deems relevant to the determination. The Committee shall review any such modifications for consistency with the GIZ criteria set forth in Section 2, GIZ Eligibility and Section 8, Review and Approval Criteria.

(b) Modification Categories

1. **Minor Modification:** Includes but is not limited to small changes to the GIZ or changes to findings or conditions of the original decision that would not entail different or increased impacts to the resources protected by the Act or the RPP. The Planning Committee may approve such modifications without a public hearing.
2. **Major Modification:** Includes but is not limited to significant changes to the GIZ or changes to findings or conditions of the original decision, any of which would result in different or increased impacts to the resources protected by the Act or the RPP. The proposing party shall conduct a public hearing on the proposed modification. Major Modifications shall also require a public hearing before the full Commission where the Commission may vote either to approve, approve with conditions, or deny the modification request.

**Section 11. Duration**

Unless specified otherwise in the Commission's decision, GIZ designations shall be valid for a period of up to 10 years, in accordance with Section 9(b) and 9(c) of these regulations. The designation period may be extended once or shortened by mutual agreement between the town and the Commission. A duly noticed public hearing pursuant to Section 5 of the Act shall be conducted by the Commission to consider the extension request. An extension of the designation period shall be reviewed for its consistency with Section 2 and Section 8 herein and with the goals of the RPP in effect at the time of the opening of the public hearing on the extension request. In no case shall such extension exceed the duration limitation of the Commission's original decision. Approved DRI threshold modifications shall be valid and in effect only while the GIZ is valid and in effect.



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**Section 11. Revocation**

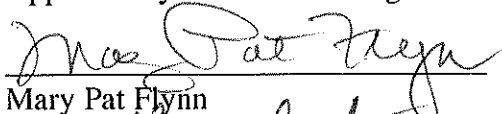
- (a) Should the town fail to implement zoning, funding, and other requirements to comply with Section 2 and Section 8 of these regulations and with the findings of the Commission's decision on the GIZ application, the Commission shall have the ability to revoke the GIZ designation.
- (b) Revocation may occur only after conducting a public hearing in accordance with Sections 5 (a) and (b) of the Act.
- (c) The Commission shall issue a written decision revoking the GIZ in a form suitable for recording with the Barnstable County Registry of Deeds.
- (d) Revocation of the GIZ shall take effect upon majority vote of the Commission. DRI threshold modifications shall be terminated upon GIZ revocation.

Adopted by the Assembly of Delegates on October 6, 2010.

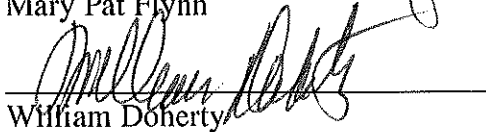


Ronald Bergstrom, Speaker  
Assembly of Delegates

Approved by the Board of Regional Commissioners OCT. 6, 2010 at 5:30pm  
Date Time



Mary Pat Flynn



William Doherty

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Sheila Lyons