



# THE DRI PROCESS

The Martha's Vineyard Commission was created by an act of the Massachusetts Legislature (Chapter 831) in response to what legislators viewed as a threat of unchecked development on Martha's Vineyard. The Legislature determined that towns on the Vineyard individually lacked the financial, technical, and political capability to adequately respond to new development in a way that would preserve the character and environment of the Vineyard.

In order to protect the unique "natural, historical, ecological, scientific, [and] cultural" qualities of the Vineyard, the Legislature adopted the Martha's Vineyard Commission Act, which created a system of regional planning and regulation. Primary authority under the Act is vested in a regional planning body, the Martha's Vineyard Commission. The Commission has the authority to regulate – or even stop – the local permitting process with regard to certain projects, known as Developments of Regional Impact ("DRIs"), or with regard to certain areas, known as Districts of Critical Planning Concern ("DCPCs").

The Martha's Vineyard Commission Act (Chapter 831) authorizes the Commission to review developments that are either so large or have such significant impacts on their surroundings that they would affect more than one town. Such projects are labeled Developments of Regional Impact. Examples include projects that could have a significant impact on nitrogen-loading in coastal ponds, that could seriously worsen traffic on the Island's major roads, or that could have a notable

impact on the Vineyard's scenic values viewed from highly traveled ways or from water bodies.

Once officially classified as a DRI, the project must be approved by the Martha's Vineyard Commission before a town board may issue a required permit or take any action. The Commission weighs the potential benefits and detriments of the proposal to determine whether the application should be approved, approved with conditions or denied.

This document outlines the basic steps of the DRI process. The following other documents could also be consulted.

- **Making a DRI Application** – This document explains how an Applicant should prepare an application.
- **MVC Regulations** – These regulations outline the DRI process including administrative details not included here. (The Regulations are presently undergoing revision).
- **The Martha's Vineyard Commission Act** (Chapter 831) – This is the MVC's enabling legislation. Sections 14 and 15, which outline the criteria that the Commission uses in weighing the potential benefits and detriments of a proposal, are included at the end of this document.
- **The Island Plan** – This Regional Policy Plan outlines the main orientations for the Vineyard's conservation and development.

**For an overview, see the summaries on page 6.**

## Step 1 – Referral

**Application to the Town:** The process begins when the proponent of a new project seeks a development permit from a town. A development permit includes a subdivision approval or special permit from a planning board, a building permit from a building inspector, a variance from a zoning board of appeals, an order of conditions from a conservation commission, or any other “permit, license, authority, endorsement or permission required from a municipal agency prior to the commencement of construction, improvement or alteration made to the building or land.” The applicant completes application papers and submits plans and documents as required by the town board or official.

**DRI Checklist:** The DRI Checklist consists of the standards and criteria used to determine when a development is a DRI and must or may be referred to the Martha's Vineyard Commission for review. The standards and criteria relate to a project's likely impact on the environment, traffic, and municipal services, among other factors. A copy of the checklist can be obtained from the Commission offices or website. Note that the checklist includes any project that was previously designated a DRI.

**Action by Town Boards:** The local board or official charged with issuing the permit applies the standards and criteria to determine whether the project is a DRI. If the board determines that a project is a DRI, it pauses its own review and refers the project to the Commission. The board, official or agent should complete the referral form and forward it plus all permit applications, plans, documents and other related materials supplied by the applicant to the Martha's Vineyard Commission, by certified mail.

**Types of referral:** There are three types of DRI referral.

- a. Mandatory Referral – The application must be referred to the Commission and the Commission must review it.

- b. Mandatory Referral Requiring Concurrence – The application must be referred to the Commission but the Commission may or may not concur with the referral.
- c. Discretionary Referral (also called an *In-Town, Out-of-Town or Island-Wide Referral*) – Any municipal agency in the town where the development is located, the board of selectmen of another town, or the Dukes County Commissioners may ask the Commission to review any project that it considers might have significant regional impact. The Commission may or may not concur with the referral.

**Concurrence Vote:** Type b and c referrals allow the MVC discretion as to whether they require a full Public Hearing or not by subjecting them to a Concurrence Vote. For a Discretionary Referral, the Commission will hold a Public Hearing whose sole purpose is to consider whether or not the project is a DRI (see DRI regulations for details). If the MVC *does* concur with the referral, the application is processed by the Commission. If the MVC *does not* concur with the referral because it does not believe that the project would have significant regional impact, the application is sent back to the town to continue the permitting process as the town sees fit.

**Tolling:** When a Town makes a type a referral, or when the Commission accepts a type b or c referral, the permitting process in the town is put on hold or “tolled” until the town receives the decision of the Commission.

**Action by Commission:** A file (open to the public during business hours) is created in which all documents related to the project are kept. The staff reviews the proposal and schedules a meeting with the applicant.

## Step 2 – Application

The following are the steps that an applicant must follow in order to apply to the Martha's Vineyard Commission for approval of a DRI. These steps are explained in more detail in the document *Making a DRI Application*.

- a. **Obtaining Documents:** The Applicant obtains a series of background documents as well as specific documents related to the application process.
- b. **Pre-Application Meeting with Staff:** The Applicant participates in a pre-application meeting with MVC staff.
- c. **Prepare Application:** The Applicant begins to prepare the application.
- d. **Pre-Hearing Meeting of the Land Use Planning Committee:** Once the application is advanced the applicant will participate in a Pre-Hearing Meeting of the Land Use Planning Committee (LUPC), a sub-committee of the Commission. The Applicant is given an opportunity to explain the proposal, to discuss the project informally with Commissioners and staff, to get feedback as to some of the issues and concerns that should be addressed during the public hearing. At this meeting the LUPC will determine the scope of the required transportation study and will indicate what additional studies or information are needed to complete the application. Notification for this meeting is posted in each of the town halls and sent to the permit granting boards in the town where the project is located. Town officials are strongly encouraged to participate in this meeting so that members of the LUPC get a sense about the referring board's feeling about the proposal. While this meeting is open to the public, public comment is not generally allowed; occasionally, in the interest of clarification, a member of the public may be asked a question, or may be allowed to comment. No comments made by town officials or the public at this time are considered part

of the public hearing record. There may be several meetings between the LUPC and the applicant.

- e. **Completion and Submission of the Application:** The complete application is filed with the Martha's Vineyard Commission. The Application is made up of the Application Form as well as all accompanying documents including a list of abutters, the application fee, plans of the existing situation and development proposal, document describing the proposal and its impacts and various studies as required by the Commission.

## Step 3 – Public Hearing

The full Commission holds a Public Hearing, normally as part of a Commission meeting held on Thursday evening at 7:00 p.m.

**Notification:** A notice for the Hearing is posted in each of the town halls and is sent to the permit granting boards in the town where the project is located. In addition, as a courtesy, abutters and abutters to abutters within 300 feet are sent a notice of the hearing.

**Purpose:** The main aim of the hearing is to allow Commissioners to gather the information they need to judge the benefits and detriments of the proposal by hearing the Applicant's presentation and by hearing testimony from staff, local officials and the public. The hearing also serves to enlighten the public about the proposal so it can give informed testimony. In addition, the hearing provides an opportunity to the Applicant to modify the proposal in response to concerns raised by Commissioners, local officials and the public.

**Site Visit:** Often, a site visit is scheduled during the LUPC meeting to allow the Commissioners a chance to familiarize themselves with the property. The Commissioner may use this time only to ask the Applicant questions of clarification specific to

the site. The public is welcome to attend the site visit but is asked to refrain from comment.

**Staff Report:** Before the Public Hearing, the Commission staff will prepare a Staff Report giving information any other information that may be useful during the decision-making process. The Staff Report and other materials related to the project are posted to the MVC website: [www.mvcommission.org](http://www.mvcommission.org). The Staff Report may be updated from time to time as more information becomes available.

**Hearing Officer:** A Hearing Officer, usually the Chair of the LUPC, chairs the Hearing. He or she has the responsibility of ensuring that it is conducted civilly and effectively, and that all parties wishing to testify are afforded an opportunity. The Hearing Officer may give priority to people who have not yet spoken, who are unable to return for another session of the Hearing, who are bringing up new issues, or who are without written testimony.

**Written Testimony:** Public officials and members of the public are encouraged to submit comments in writing before and during the Hearing. Any documents submitted about a project become part of the public record. The Commissioners consider it their responsibility to read all written testimony. Documents up to two pages long will be copied and distributed to Commissioners and the press. To have longer documents distributed, 25 copies should be submitted. All documents are available for consultation at the Commission office.

Information received one week before a session of the Hearing will be distributed to all Commissioners in advance of the Hearing. New information from the Applicant including changes to the proposal, and technical information from the public should be submitted in writing no less than three days before the session of the Hearing to allow for staff comments. If new information is provided after that date or if the information needs additional staff analysis, the Hearing Officer may choose to continue the Hearing to another date or to

keep the written record open after the close of the Hearing to allow the staff to comment, and to allow the Applicant and public to react to these comments.

**Hearing Procedure:** The following is the typical agenda for the Public Hearing. The Hearing Officer may vary the order based on the particular situation.

- **Applicant's Presentation:** This presentation summarizing the project will be limited to 20 minutes. If you anticipate a need for a longer presentation, particularly to explain complex technical information, please inform the DRI Coordinator who will discuss extending the time limit with the Hearing Officer. Please contact the DRI Coordinator if you need any special equipment, such as a projector. After the Applicant's presentation, Commissioners may ask questions of clarification.
- **Staff Report:** Staff then gives Commissioners a summary of the Staff Report.
- **Testimony from Public Officials:** Representatives from Town boards and other officials are invited to comment on the proposal. The board should designate one official spokesman (other members are free to testify as individuals).
- **Public Testimony:** The floor is then opened for public testimony. Usually, people in support of the project will speak first, followed by people with concerns or objections, although the Hearing Officer may vary this.
- **Commissioner's Questions:** Then Commissioners may ask questions of the Applicant, public officials, members of the public and each other.

**Time Limits:** The Hearing Officer may set reasonable time limits for testimony with a view to hearing all relevant testimony while ensuring that the hearing is completed in a timely fashion. The Applicant and members of the public with technical testimony should contact the DRI Coordinator at least three days before

the hearing so that the Hearing Officer can set a timetable for these presentations.

**Giving Oral Testimony: In order to give effective oral testimony, it is suggested that speakers:**

- Organize their thoughts in advance;
- Start by stating their name and address;
- Keep testimony short and to the point, addressing only issues directly relevant to the project as proposed;
- Avoid repeating information or opinions already given (other than briefly noting their support for a given point of view);
- Avoid reading more than about one page of text; longer texts should be summarized;
- Maintain a tone of politeness and avoid talking about personalities.

**Hearing Closure:** The Public Hearing will be closed when the Hearing Officer determines that the Applicant has had a reasonable opportunity to present the project and that local officials and the public have been given an opportunity to provide written and oral testimony on the project. Any information submitted after the close of the Hearing will not be considered during deliberations about the project.

For more complex projects, the Hearing Officer may continue the Hearing for the sole purpose of leaving the written record open, primarily to allow clarification or confirmation of information already discussed at the Hearing. The date of the closure of the public record will be announced before the close of the public session of the Hearing. At the subsequent Commission meeting, the Hearing Officer will normally close the Hearing without taking new testimony. However, if substantial new written information was submitted that the Hearing Officer deems was not adequately discussed at the Hearing, he or she may hold another session of the Hearing to take further testimony.

## Step 4 – Deliberation / Decision

The Commission reviews DRIs to determine whether:

- The probable benefits of the project will exceed the probable detriments;
- The DRI will interfere with the general plan of any of the Vineyard’s municipalities or for Dukes County;
- The DRI is consistent with the relevant municipal development regulations;
- The DRI is consistent with any applicable DCPC regulations.

The Act gives the Commission wide latitude in considering whether the benefits of a project outweigh its detriments. For example, the Commission may consider the necessity of the project relative to alternatives; its effect on the environment, other persons or property, municipal services and public facilities; or its likely impact on affordable housing.

**LUPC Post-Public Hearing:** After the close of the Public Hearing, the application goes back to LUPC where the committee begins an analysis of the benefits and detriments of the project according to the MVC’s enabling legislation (Chapter 831 of the Special Laws of the State of Massachusetts). Applications are reviewed based on the criteria outlined in Chapter 831 and for their consistency with the Island Plan, with town regulations and with town plans. Note, that once a development is deemed to have regional impact, the Commission looks at both regional and local benefits and detriments. Once the LUPC has finished analyzing the committee formulates and adopts a recommendation to the full Commission to approve, approve with conditions, or deny the application.

**Deliberation and Decision by the Commission:** The full Commission will then meet to receive the LUPC recommendation to approve, to approve with conditions or to deny the application. The Commission can accept the recommendation, modify it or craft an alternate

decision. The Commission takes a roll call vote on the decision.

**The Written Decision:** After the Commission's vote, a written decision is drafted to reflect the Commission's oral decision. At a subsequent meeting, the full Commission body must vote to approve the written decision at which point the decision is final. Note that the decision is directed primarily to the town board or official, not the Applicant. After the written decision is approved, it is recorded in the Dukes County Registry of Deeds and carries forward with any land transactions. Copies are sent to the referring town board and to the Applicant.

### Step 5 – Action by the Town

The receipt of the Decision by the Town reactivates the local permit approval process. The timeframe for local approval, which was put on hold (tolled) when the application was referred to the Martha's Vineyard Commission, resumes.

If the Commission approves a DRI application, either as it was submitted or subject to certain conditions, the local board resumes its own review process. The Applicant should revise the proposal, if necessary, in accordance with the conditions set by the Commission. The town boards may add additional conditions or may deny it. However, any conditions set by the Commission must carry forward. The Town is responsible for enforcing the decision of the Commission including all conditions.

If the Commission denies a DRI application, no local board may issue a development permit for the project.

### Summary – Applicant

- Apply to town.
- If referred to the MVC, fill out DRI application form.
- Meet staff in scoping session.
- Participate in Pre-Hearing LUPC.
- Complete and file application along with plans, studies and other documents.
- Present proposal at Public Hearing.
- May attend LUPC and Commission analysis, deliberation and decision.
- If approved, complete application process with Town.

### Summary – Town

- Determine whether proposal is a DRI.
- If so, refer application to MVC.
- Participate in Pre-Hearing LUPC meeting (suggested).
- Participate in Public Hearing and/or send comments in writing.
- If application is approved by MVC, resume local approval process.
- Incorporate and enforce any conditions set by the MVC.

### Summary – Commission

- Staff meets Applicant in scoping session and helps Applicant prepare application.
- LUPC Pre-Hearing meeting with Applicant.
- Commission Public Hearing.
- LUPC Post-Hearing analysis.
- Commission Deliberation and Decision.

*Note: If there is any discrepancy between this document and the official documents of the Martha's Vineyard Commission such as Chapter 831, the Regulations or the DRI Checklist, the latter take precedence.*

## **Excerpt From The Martha's Vineyard Commission Act – Chapter 831**

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### **Section 14**

#### **DRI Review**

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The commission shall review all applications for development permits for developments of regional impact. Notice and public hearing pursuant to section two of chapter thirty A of the General Laws shall be required, except that only fourteen days rather than twenty-one days of prior notice shall be required and a copy of said notice need not be sent to the state secretary. The commission shall permit the referring agency to grant a development permit for such development only if it finds after such public hearing that:

- (a) the probable benefit from the proposed development will exceed the probable detriment as evaluated pursuant to section fifteen;
- (b) the proposed development will not substantially or unreasonably interfere with the achievement of the objectives of the general plan of any municipality or the general plan of the county of Dukes County;
- (c) the proposed development is consistent with municipal development ordinances and by-laws, or, if it is inconsistent, the inconsistency is necessary to enable a substantial segment of the population of a larger community of which the municipality is a part to secure adequate opportunities for housing, education or recreation; and
- (d) 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 ten; and
- (e) a proposed development which does not qualify as a development of regional impact under the standards and criteria approved pursuant to section seven may nevertheless be referred to the commission as a development of regional impact by a municipal agency in the town where the development is located, by the board of selectmen in any other municipality in the

county of Dukes county or by the county commissioners. Within thirty days of the receipt of such a referral, the commission shall publish notice of a public hearing in a newspaper of general circulation on Martha's Vineyard, and shall mail written notice of said hearing to the owner of the premises, as appearing on the records of the assessors of the town in which the proposed development of regional impact is located and to the board of selectmen of said town, no less than seven days prior to the public hearing. Public hearings under this clause shall be held and concluded within forty days of receipt of a referral unless the proponent of the proposed development of regional impact agrees in writing to extend such period. Unless the commission votes to accept a referral under this clause as a development of regional impact within fifty days after receipt of a referral or in case of an extension of the public hearing period, within ten days after the end of the extended period, the referral shall be deemed denied. At the public hearing the commission shall receive evidence as to whether the proposed development will have impacts within other municipalities on the values protected under section one or the interests referred to in clauses (a) to (h) inclusive, of section fifteen. If the commission votes to accept a referral of a development as a development of regional impact under this clause, the commission shall forthwith notify the town clerk, the board of selectmen and the municipal agencies of the municipality which are considering development permits for the proposed development which has been accepted as a development of regional impact by mailing to them a copy of the commission's vote. The commission shall also mail a copy of said vote forthwith to the applicant for any municipal development permits for the development of regional impact. Thereafter, the municipal land regulatory agencies and the

commission shall treat the commission's vote as a referral pursuant to section thirteen and the commission shall review all applications for the development in accordance with this section and sections fifteen and sixteen.

The commission shall hold the public hearing within thirty days after receipt of the referral, or application. The commission shall make the required finding and notify the referring agency and applicant of its decision within sixty days after the public hearing. These time limits may be waived by mutual agreement between the commission and the applicant for the development.

## **Section 15**

### **DRI Benefits vs. Detriments**

In making a finding of the probable benefits and detriments of a proposed development, the commission shall not restrict its consideration to benefits and detriments within the municipality of the referring agency, but shall consider also the impact of the proposed development on the areas within other municipalities. Such probable benefits and detriments shall be considered even if they are indirect, intangible or not readily quantifiable. In evaluating the probable benefits and detriments of a proposed development of regional impact the commission shall consider, together with other relevant factors, whether:

- (a) development at the proposed location is or is not essential or especially appropriate in view of the available alternatives on the island of Martha's Vineyard;

- (b) development in the manner proposed will have a more favorable or adverse impact on the environment in comparison to alternative manners of development;
- (c) the proposed development will favorably or adversely affect other persons and property, and if so, whether, because of circumstances peculiar to the location, the effect is likely to be greater than is ordinarily associated with the development of the types proposed;
- (d) the proposed development will favorably or adversely affect the supply of needed low and moderate income housing for island residents;
- (e) the proposed development will favorably or adversely affect the provision of municipal services and the burden on taxpayers in making provision there for;
- (f) the proposed development will use efficiently or burden unduly existing public facilities or those which are to be developed within the succeeding five years;
- (g) the proposed development will aid or interfere with the ability of the municipality to achieve the objectives set forth in the municipal general plan; and
- (h) the proposed development will further contravene land development objectives and policies developed by regional or state agencies.

Whenever the commission is required to find whether the probable benefit from a proposed development of regional impact will exceed the probable detriment, it shall prepare a written opinion setting forth the grounds of its findings.