

# Martha's Vineyard Commission

## Regulations for Developments of Regional Impact

### 1 Authority

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These Regulations are adopted by the Martha's Vineyard Commission pursuant to Section Three of Chapter 831 of the Acts of 1977, as amended (the Act).

### 2 Purpose and Scope

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These Regulations are adopted in order to establish procedures for referral of Development Permit Applications for Developments of Regional Impact and to establish procedures for the Martha's Vineyard Commission's review of Developments of Regional Impact. These Regulations apply to the referral, review, approval, denial or conditioning of any Development Permit which is required by the Act for any project qualifying as a Development of Regional Impact under the Standards and Criteria as defined in Section 2.200 (12).

### 3 Definitions

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ACT – means Chapter 831 of the Acts of 1977, as amended.

APPLICANT – means any person who applies for a Development Permit.

AUXILIARY BUILDING – means a building giving support, helping, aiding, assisting, subsidiary, incidental or additional to an existing building.

DEVELOPMENT – means:

- any building, mining, dredging, filling, excavation or drilling operation; or
- any material change in the use or appearance of any structure or the land itself; or
- the division or subdivision of land into lots or parcels; or
- a change in the intensity of use of the land or structure or a change from residential to commercial; or
- the alteration of a shore, seacoast, river, stream, lake, pond or canal, including coastal construction; or
- the demolition of a structure; or
- 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.

DEVELOPMENT ORDINANCES AND BY-LAWS – means any by-law, rule, regulation or code adopted by a municipality for the control or regulation of development as defined herein within the boundaries of said municipality.

DEVELOPMENT PERMIT – means any permit, license, authority, endorsement, order of conditions, or permission required from a Town Board prior to the commencement of use, construction, improvement or alteration of buildings or land.

DRI – means Development of Regional Impact.

DRI CHECKLIST – means the document approved and issued by the MVC for use by Town Boards to determine whether a proposed development is a DRI. The DRI Checklist includes the Standards and Criteria defined herein and is on file with the MVC and Town Boards.

LUPC – means the Land Use Planning Committee.

MVC – means the Martha’s Vineyard Commission.

PERSON – means an individual, corporation, governmental agency, business trust, estate, trust, partnership, association, two or more persons having a joint or common interest or acting in concert, or any legal entity.

STANDARDS AND CRITERIA – means the document entitled “Standards and Criteria Pursuant to Section 12 of Chapter 831 of the Acts of 1977, as Amended” most recently adopted by the Martha’s Vineyard Commission and approved by the Secretary of Environmental Affairs pursuant to Section 7 of the Act. The Standards and Criteria are used by the MVC and by Town Boards to determine whether a proposed development is a Development of Regional Impact. The Standards and Criteria are on file with the MVC and the Town Clerks.

STATE AGENCY – means an agency, department, board, commission or authority of the Commonwealth of Massachusetts.

TOLL – means to suspend or stop temporarily.

TOWN BOARD – means any municipal agency, board, commission, department, office or official that has statutory authority to approve or grant a Development Permit. Referred to in the Act as a “Municipal Land Regulatory Agency.”

TOWNS – means Aquinnah, Chilmark, Edgartown, Oak Bluffs, Tisbury and West Tisbury.

**4 Referral of Applications**

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**4.1 Referral By A Town**

When an Applicant applies for a Development Permit, the Town Board receiving the Application will complete the DRI Checklist. If the proposed project for which the Development Permit is sought meets one of the criteria on the DRI Checklist, the Town Board shall refer the Development Permit Application to the MVC for review as a DRI by sending it to the MVC by certified mail.

**4.2 Discretionary Referral**

Section 3.101 of the Standards and Criteria provides that developments meeting the following criteria are DRIs:

- (1) Any development, with the concurrence of the Martha’s Vineyard Commission, which does not qualify under the Standards and Criteria but has been referred to the MVC by a municipal agency or agent in the Town where the development is proposed (In-Town Referral), or by the Board of Selectmen in any other Town on Martha’s Vineyard (Out-of-Town Town Referral), or by the County Commission (Island-Wide

Referral); these three types of referrals shall be known collectively as Discretionary Referrals.

- (a) Any of the Town Boards listed in Section 3.101 of the Standards and Criteria (In-Town Referral), or the Board of Selectmen in another Town (Out-of-Town Town Referral), or the County Commissioners (Island-Wide Referral) may initiate this Referral process by sending a letter to the MVC requesting that the MVC designate a proposed project as a DRI. Within forty (40) days of receipt of the request, the MVC shall hold a Public Hearing to determine whether the proposed development should or should not be designated a DRI. In making its determination, the MVC shall consider whether the proposal has any impacts on the values protected by Section One or the Interests referred to the Section Fifteen (a) through (h), inclusive, of the Act. The MVC shall notify, by certified mail, the Applicant, the referring agency and the Town Board before which the Development Permit Application is pending of its decision whether or not to designate the proposed project as a DRI.

## **5 General Information**

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### **5.1 Effect of MVC DRI Review on Town Board Time Limits**

Any statutory or regulatory time limits applicable to all Town Board reviews of a Development Permit Application (e.g., subdivision approvals, various decisions, et cetera) are tolled by referral of the Development Application to the MVC. In the case of a referral by the Town Board before which the Development Application is pending, this means that the time limit is suspended when the Application is mailed to the MVC by the Town Board, and resumes the day that the Town Clerk receives Notice of the MVC Decision, via certified mail, after review of the DRI. The day that the Application is mailed to the MVC by the Town Board and the day that the Town Clerk receives Notice of the MVC Decision shall not be included when calculating time limits applicable to Town Boards.

In the case of Discretionary Referrals (In-Town, Out-of-Town and Island-Wide Referrals), any applicable statutory or regulatory time limits are tolled when the MVC votes to designate the application as a DRI, and resume when the Town Clerk receives Notice of the Final MVC Decision, via certified mail. The day that the MVC so votes and the day that the Town Clerk receives Notice of the MVC Decision, via certified mail, after review of the DRI, shall not be included in calculating any possible time limits. If the MVC votes not to designate a proposed project as a DRI, the time limits applicable to Town Boards will not be tolled. The MVC shall notify all Permit Granting Boards in the applicable Town of the receipt of a Discretionary Referral (In-Town, Out-of-Town or Island-Wide) designation request, noting that any applicable statutory or regulatory time limits are only tolled when and if the MVC votes to designate said referral as a DRI.

### **5.2 Completeness of Application**

Upon receipt of the DRI Checklist from a Town Board, or upon designation as a DRI in the instance of a Discretionary Referral (In-Town, Out-of-Town or Island-Wide), the MVC will notify the Applicant as to whether the Application is deemed complete or incomplete.

#### **(a) Complete Application**

If the Application is deemed complete, the MVC will schedule a Public Hearing within thirty (30) days of its receipt of the DRI Checklist from a Town Board or, in the case of a Discretionary Referral (In-Town, Out-of-Town or Island-Wide), the date the MVC designates the proposed project as a DRI.

#### **(b) Incomplete Application**

If the Application is deemed incomplete by the MVC, the MVC will send the Applicant Written Notice specifying the additional information required and a reasonable time period for the Applicant to submit the additional material. The MVC will schedule a Public Hearing within thirty (30) days of the expiration of this reasonable period or within thirty (30) days of the date the Application is deemed complete.

(1) An Application shall be considered as incomplete if the requisite fee has not been paid.

(2) Incompleteness of an Application shall be grounds for disapproval of the Application.

(c) Request for Additional Information

The deeming of an Application as complete and the scheduling of a Public Hearing should in no way be construed as preventing the MVC from asking for additional information nor from asking for the expansion of information that has already been submitted. While the Applicant may have submitted information enough to permit the Application to be complete technically, the MVC may, due to the nature, location, magnitude and/or intensity of a particular proposal, require that additional information be submitted to supplement the materials already submitted.

(1) If the additionally requested information will result in a delay of greater than ninety (90) days, the MVC may, at its own discretion:

- (a) deny the proposal without prejudice and request that the Applicant submit a new Application when the additionally requested materials are available; or
- (b) request that the Applicant withdraw the Application without prejudice and resubmit when the additionally requested materials are available.

(2) Without prejudice shall mean that no new fee shall be sought for the new or resubmitted Application and that all previously submitted data and materials shall remain valid and shall become part of the new or resubmitted Application.

(d) Waiver of Time Requirements

The time limits contained in Sections 2.500(2)(b) and 2.500(2)(c)(1) may be waived by mutual agreement between the Executive Director of the MVC and the Applicant.

### **5.3 Waiver of Fee**

If a governmental agency is a DRI Applicant, upon Application the governmental agency may request, in writing, a DRI filing fee waiver. Said Application will be deemed provisionally complete with the filing fee waiver request. If the Commission determines that the project is for the health, safety and general welfare of the Town or Island, the Commission may, by majority vote, grant said fee waiver before rendering a Decision on the project.

### **5.4 MVC Decision Time Limits**

The MVC will make a Decision on an Application with sixty (60) days of the close of the Public Hearing. This time limit may be waived by mutual agreement between the Executive Director and the Applicant.

### **5.5 Withdrawal of Application**

The Applicant may request, in writing, the withdrawal of his/her DRI Application. Based on the completeness of the Application, staff review and Public Hearing schedule, the Executive Director may determine what portion, if any, of the filing fee will be returned to the Applicant.

## **5.6 Modification of a Previous DRI Decision**

All requests for Modifications or Amendments of previous DRI Decisions must be referred in the normal manner of referral, using 3.102(b) of the Administrative Checklist, to the MVC, which shall determine, by majority vote, if the Modification request warrants a Public Hearing and full DRI review. If the MVC determines that the Modification is insubstantial, the MVC will issue a certificate pursuant to Section 8.4 of these Regulations.

## **6 Review of DRIs**

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### **6.1 Land Use Planning Committee**

The MVC has established a Land Use Planning Committee (LUPC), composed of MVC members, to assist it in its review of DRIs. The LUPC activities and proceedings are advisory in nature. The LUPC, in general, conducts the following activities:

#### **(a) Review of All DRI Applications**

DRI Applications are reviewed at LUPC meetings. Notice of LUPC meetings is provided by mail to Applicants, Referring Town Boards (in the case of In-Town and Out-of-Town Referrals), the County Commission (in the case of Island-Wide Referrals) and Town Boards before which the Application is pending, and is posted in the MVC Offices and all Town Halls on Martha's Vineyard.

The LUPC will review a given Application during as many meetings as it deems necessary and appropriate. There will be at least one LUPC meeting at which the proposed project will be discussed before the Public Hearing and may be additional meetings at other times during the review process, before and/or after the Public Hearing. Applicants and Town Boards are encouraged to attend and participate in LUPC meetings.

Notice of said meetings will be mailed to the Referring Board, the Board of Selectmen and to the Town representatives on the MVC at least seven (7) to ten (10) days prior to the date of the meeting.

At any time during the course of the review of a DRI, but prior to the start of the deliberative phase, an Applicant may be advised by the Commission or LUPC that the Application contains serious flaws and that withdrawal, without prejudice, of the Application, reworking of same and resubmittal for a new Public Hearing might be the prudent course to take. [Without prejudice means that no additional fee except for advertising costs and postage costs incurred in mailing re-notification to abutters will be required.]

(b) The purpose of LUPC meetings is to identify documents, clarify issues, and raise and address concerns and questions regarding the project.

(c) The LUPC may also, at its discretion, seek to visit the site of the proposed project with the Applicant or the Applicant's designated representative.

### **6.2 Traffic Impact Analysis**

The Applicant shall prepare and submit a specific scope of traffic study and may be required to engage an engineering firm to prepare and submit a traffic impact analysis in accordance with the checklist in Section (g) below.

(a) The Applicant may omit items within the checklist of steps for conducting traffic impact analyses enumerated in (g) below. If items are omitted, the Applicant shall submit, in writing, reasons why items are omitted. The Land Use Planning Committee (LUPC) may waive completion of a traffic impact analysis or completion of certain items listed in the checklist, enumerated in (g) below.

(b) Prior to proceeding with a traffic impact analysis, the Applicant shall submit a specific scope of study, including waiver requests, to the LUPC for their approval.

(c) The MVC Staff and, if necessary, the MVC's engineer shall review said scope of study and provide written comments to the LUPC for their review and approval.

(d) Upon approval by the LUPC of the scope of study, the LUPC will either:

- (1) allow the Applicant to proceed with the DRI process; or
- (2) inform the Applicant that he shall engage an engineering firm to prepare a traffic impact analysis and submit said analysis to the LUPC; said analysis shall be reviewed by the MVC staff and, if necessary, by the MVC engineer.

(e) The MVC staff and/or engineer shall review the traffic impact analysis and prepare and submit to the LUPC a technical memorandum summarizing the analysis.

(f) The MVC shall bill the Applicant for any charges rendered by the MVC engineer for review and comments on the Applicant's scope of study and/or traffic impact analysis. The MVC will provide the Applicant with a budget estimate for any required work to be performed by the MVC engineer. Said bill for services rendered shall be paid prior to rendering a Decision on the project.

(g) Checklist steps for conducting a traffic impact analysis. [See Attachment A.]

## **7 Public Hearing**

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### **7.1 Notice**

The MVC will give Notice of the scheduled date for a Public Hearing by certified mail to the Applicant, the Town Board before which a Development Permit Application is pending; the Town Clerk of the Town in which the proposed project is located; in the case of an In-Town or Out-of-Town Referral, the Town Board and Town Clerk of the Referring Town; and in the case of a Island-Wide Referral, the County Commission. The Notice and Public Hearing shall be in accordance with Section 2 of Chapter 30A of the General Laws, except that only fourteen (14) days rather than twenty-one (21) days of Prior Notice shall be required, and the Notice does not have to be sent to the Secretary of State. The Notice shall contain, at a minimum:

- (1) the name and address of the Applicant;
- (2) a brief description of the proposed project, including its nature, size and location;
- (3) the date and time of the Public Hearing;

- (4) the address of the MVC Offices, where the Hearing will be conducted, or if not the MVC Officers, the location where the Hearing is to be held;
- (5) a statement that the Application, plans and other information regarding the project are available at the MVC Offices for review by the public; and
- (6) a statement that any person may submit written comments and/or testimony prior to or during the Public Hearing.

## 7.2 Testimony

During the Public Hearing, chaired by the Chairman of the LUPC, testimony will be received in the following order:

- Applicant testimony
- MVC staff review and reports
- MVC Commissioner questions
- Testimony from Town Boards [A Board Member must be speaking for a majority of the Board. A Board Member may present his or her own statement during public testimony.]
- Testimony from Proponents
- Testimony from Opponents
- MVC Commissioner questions
- Applicant summation

The Hearing Chair 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.

Correspondence timely received will be noted in the Record. The MVC Commissioners may address questions to the Applicant or any other person giving testimony. The MVC may request that additional information be provided by the Applicant. The MVC is not required to consider documentary information at a Public Hearing submitted by an Applicant less than three (3) working days prior to said Public Hearing.

## 7.3 Hearing Closure

Once a Hearing is closed, an Applicant may request that the MVC not take any action upon said Application for a period not to exceed six (6) months, after which the MVC shall re-open the Hearing for additional testimony prior to making a Decision on the Application.

## 8 MVC Decision Process

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### 8.1 LUPC Recommendation

Subsequent to the close of the Public Hearing and the Public Record, the LUPC will meet to formulate its recommendations regarding the project. Staff, at that time, may be asked to provide a synopsis of the proposal and of information provided therein. The Applicant and Town Boards will be invited to this LUPC meeting and all other LUPC meetings at which the proposed project is discussed.

At an MVC Meeting subsequent to the LUPC meeting, the LUPC will make its recommendation to the full MVC concerning the proposed project. The MVC will vote either to adopt the recommendation of the LUPC, adopt the recommendation with modifications, or reject the recommendation completely.

Subsequent to the close of the Public Hearing and close of the Public Record, the Martha's Vineyard Commission may, by two-thirds vote of members eligible to vote on the DRI, waive the referral to LUPC and take immediate action.

## **8.2 MVC Vote**

The MVC assessment and subsequent vote on the proposal will be based upon the factors identified in Sections 14 and 15 of the Act; the MVC Regional Island Plan – Part One – Policy Plan; and the entire Record before the MVC. A Verbal Vote shall be taken by Roll Call Vote of the MVC.

Reconsideration of a DRI decision vote may only be made under the following circumstances:

- (1) The motion to reconsider is made at the same meeting and with the same Commissioners present as participated in the DRI decision vote, and
- (2) The motion to reconsider is made by a Commissioner who voted in the majority on the DRI decision vote. Any other Commissioner that voted on the DRI decision may second the motion.

If a motion to reconsider passes, the DRI process is re-set to the status prior to the DRI decision vote being taken. A re-vote on the DRI shall be held at the same meeting with the same Commissioners present as participated in the original DRI decision vote; alternatively, prior to adjourning or continuing the meeting at which the reconsideration was voted, a date shall be set for a re-vote within 14 days that maximizes the availability of Commissioners that voted in the majority on the original DRI decision vote. A special meeting may be scheduled for that purpose.

## **8.3 MVC Written Decision**

Following the MVC Verbal Vote, at the next Meeting of the MVC the staff shall present a draft of the Written Decision in accordance with said Verbal Vote. The MVC will vote to adopt, adopt with modification or reject the Draft Written Decision. If the MVC votes to modify or reject the Draft Written Decision, the staff will present a new or modified Decision at a subsequent MVC Meeting. No DRI Decision is final until a Written Decision has been accepted by a vote of the MVC and signed by the Chairman of the MVC.

## **8.4 MVC Decision Distribution and Recording**

The Applicant; the Town Board before which the Application for a Development Permit is pending; the Town Clerk of the Town in which the proposed project is located; in the case of an In-Town or Out-of-Town Inter-Town Referral, the Referring Town Board and Town Clerk of the Referring Town; and in the case of a Island-Wide Referral, the County Commission will be noticed by certified mail of the MVC Decision. The MVC will also cause the Decision to be recorded in the Dukes County Registry of Deeds.

## **8.5 Certificates of Compliance**

MVC Decisions may require that Applicants receive Certificates of Compliance from the MVC or the LUPC at specified stages of a proposed project. If Certificates of Compliance are required, the Applicant shall provide proof that he/she has complied with the conditions in the Decision. The MVC will cause the Certificates of Compliance to be recorded in the Dukes County Registry of Deeds. The requirement for Certificates of Compliance shall be noted in all Written Decisions.

## **8.6 Resubmittal of Denied Application**

Any DRI that has been denied may be refiled at any point, but the Applicant shall be apprised that should the proposal be identical or substantially unchanged from that which was denied, then the Applicant runs the risk of having the newly submitted Application meet the same fate since substantially unaltered or unchanged proposals would give the Commission no reasons to change the reasoning for the original denial.

## **9 Effect of MVC DRI Review on Town Board Review**

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### **9.1 Suspension of Approval**

From the time an Application for a Development Permit is referred by a Town Board to the MVC or, in the case of a Discretionary Referral (In-Town, Out-of-Town or Island-Wide), from the time that the MVC designates a proposed project as a DRI, the Town Boards shall suspend final approval of the Development Permit Application.

### **9.2 Local Participation in Review**

Town Boards are invited to meet with the LUPC and Applicant, and to participate fully in the Public Hearings.

### **9.3 Recommencing Local Review**

After the MVC issues its Decision, the Town Board shall proceed with its own review. The Town Board may not approve an Application which has been disapproved by the MVC, nor may it rescind conditions imposed upon a project by the MVC. The Town Board may, acting within its own jurisdictional authority, impose additional conditions upon a project, or may deny an Application which has been approved by the MVC.

### **9.4 Certificates of Compliance**

If a Decision requires that a Certificate of Compliance be obtained from the MVC, the local Town Official responsible for issuing Certificates of Occupancy may not issue such certificates until the Applicant receive said Certificates of Compliance.

## **10 Changes to an Approved DRI**

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### **10.1 Surrender of an Approved DRI**

The holder of an approved DRI may make an application requesting that the MVC terminate the DRI approval. The MVC may, by motion and majority vote, accept the Applicant's surrender of the DRI and render it no longer in effect, upon first holding a public hearing and determining that no material action has been taken on the DRI.

Upon accepting the surrender of a DRI approval, the MVC shall distribute and record its decision in the same manner as for DRI decisions provided in section 8.4.

This regulation does not require the Commission to act by motion and majority vote where a DRI approval

lapses on its own terms.

## 10.2 Rescission of an Approved DRI

The MVC may rescind a DRI approval if:

- a) The Applicant or its representative materially misrepresented the project in the application or the documents or other materials (e.g., videos, photographs, audio recordings, or other non-written materials) submitted to the MVC, or in testimony or other statements made in the public hearing before the MVC or any of its committees or subcommittees;
- b) The project developed is materially different from what was approved;
- c) The Applicant materially failed to comply with the DRI conditions or otherwise materially violated the DRI approval;
- d) As a result of an emergency, natural or otherwise, the project as approved poses a serious threat to the public health, safety or general welfare;
- e) The project would result in a violation of the Act or a regulation or bylaw of the MVC that was in effect when the DRI approval was issued, or would result in a violation of a municipal development ordinance or bylaw that was in effect when the DRI approval was issued, regardless of whether such violation was brought to the MVC's attention.

The procedure for rescinding a DRI approval shall follow the provision of section 7 and section 8 except as follows:

- (1) A Commissioner moves, properly seconded, to initiate the rescission procedure. A simple majority vote shall carry the motion.
- (2) The public hearing shall be held within 30 days of the motion's passage.
- (3) The MVC may rescind the DRI only upon a two-thirds majority vote.

## 11 Amendments to DRI Regulations

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These DRI Regulations may be adopted, amended or rescinded at any meeting of the Commission by a two-thirds vote of those voting, a quorum of nine being present; provided that the proposed amendment and notice of the meeting when the vote is to be taken has been sent to all members at least ten days prior to such meeting. If an amendment is proposed during a meeting, a vote on the adoption of such an amendment may not take place until the next meeting.

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As Modified by the Martha's Vineyard Commission, October 2, 2014