



DRI Compliance Procedures

1 Proposed Procedures for New DRIs

1.1 Decision

- 1) Compliance begins with good decisions. Write Decision Conditions that are explicit, clear, and complete. The decisions should be clear as to what flexibility there is in the implementation of the project without requiring a modification of the decisions, such as shifting the location of a building or modifying the architectural design.
- 2) In the Decision, state that the conditions imposed by the Commission shall include a provision requiring that the municipal permit incorporate and restate the Commission's conditions on a DRI approval in the local permit. In this fashion, where municipal officials are prepared to commence enforcement proceedings on their own, they clearly would have the authority to enforce Commission decisions along with the Town's decisions.
- 3) Require a Certificate of Compliance before the Town issues a Certificate of Occupancy for those conditions which must be completed before occupancy (e.g. affordable housing contribution, part of the basic construction). Indicate that [Request that?] the Building Inspector may withdraw the Certificate of Occupancy for non-respect of any condition (including ongoing ones such as hours of operation and use of pesticides).
- 4) Make clear to applicants that the Commission may require a bond equal to 125% of the value of the work for those conditions that will be completed after the occupancy of the building (e.g. landscaping), when the scale of the project and the possible impacts of non completion justify the cost and effort of bonding.

1.2 Exit Procedure

- 1) Send a copy of the Decision and approved plan (clearly stamped "Approved by the MVC" with the date) to the applicant, the building inspector, and the referring board. Have the applicant submit four sets of signed, dated plans of the proposal as approved by the Commission, one for each of the above and one for the MVC.
- 2) Contact the building inspector or referring board to review the decision with them, to point out any special concerns, and to invite them to attend the Exit Meeting with the applicant if they wish. Ask town officials to inform the MVC when the town's final decision is made and send the MVC a copy of the town's decision.
- 3) Post the Decision and the approved plans on the MVC Website.

- 4) Hold an Exit Meeting with the applicant at which we review the decision including all conditions and the need to come back if there are any changes. Make sure that they understand that the decision is being registered, and is now part of their deed.
- 5) Have the applicant sign a letter stating that they have read and understood the decision and conditions, and the obligation to return to the MVC for approval, before making any changes. Send a copy of this letter to the building inspector and referring board.
- 6) Hold a second meeting / site visit, with the building inspector if appropriate, to review compliance with MVC conditions. At the second meeting, the applicant shall provide a set of as-built plans that will be compared to the approved plans to ensure that the project is substantially similar to the approved plans. If the project is in compliance, issue a Certificate of Compliance and send it to the building inspector before the Town issues the Certificate of Occupancy.

2 Proposed Procedures for Past DRIs and Cases of Non-Compliance

2.1 Awareness of Decisions and Conditions

- 1) Put all decisions on the website including the key plans. This has started, but is a major task. Staff is starting with the most recent and working backwards, but is also prioritizing other projects of interest as identified by staff, Commissioners, Building Inspectors, town boards, and members of the public. We should ensure that it is easy to find decisions with just the project name or address. It should clearly show the book and page number of the registered decision.
- 2) Announce publicly that the MVC will be posting the decisions and plans in the coming months, and will be reviewing compliance of former DRIs on the basis of becoming aware of possible problems. This announcement should invite owners to re-read their DRI Decision to make sure that they are in compliance, and offering to help them deal with any cases of non-compliance. (This will only be done after the procedure for dealing with non-compliance has been settled.)

2.2 Notification of Noncompliance

- 1) If the MVC becomes aware of possible non-compliance with a DRI Decision, staff should call or send an email to the owner, pointing out that there appears to be a concern, and asking them to clarify the situation. In most cases, this should resolve the situation.
- 2) Staff should notify the Compliance Committee of the results of the initial inquiry, and the Committee would decide whether further action is warranted.
- 3) The next step is that staff should send a letter to the owner, with a copy to Building Inspector, saying that the project appears to be in non-compliance, stating the reasons, and asking that they either rectify the situation (giving them some time to comply if it expensive or complex), or apply for a modification of their approval. Presumably, the vast majority will want to comply, or will ask for a modification such as a change to a condition.

- 4) If this doesn't result in remedial action by the owner, the Compliance Committee should review the situation, and, if it deems appropriate, make a recommendation to the full Commission as to what further action should be taken.

2.3 Certificates of Noncompliance

Chapter 831, section 17 authorizes the Commission to enforce its decisions by recording a "Certificate of Noncompliance" in the Registry of Deeds. The Commission may find that such a recording is self-enforcing, particularly if the Commission sends a copy of the Certificate of Noncompliance to the mortgagee lender for the property as well as to the current owner.

2.4 Injunctive Relief

Section 17 of the Martha's Vineyard Commission Act (Chapter 831) authorizes the Commission to begin proceedings as it may deem necessary to enforce its decisions. Because most recent DRI decisions contain a provision making the landowners subject to paying the Commission's legal fees if judicial action is necessary to enforce the DRI decision, enforcement proceedings in Court should ultimately not be costly to the Commission. Unless immediate enforcement was necessary, enforcement proceedings should be preceded by the recording of a certificate of non-compliance at the Registry of Deeds and notice to the owner of record.

3. Non-Referral of Projects on the DRI Checklist

3.1 MVC Response to Non-Referral of Projects that Trigger DRI Checklist

If the MVC discovers that a project has been or is in the process of being reviewed and/or approved by a Town that appears to trigger the DRI Checklist but has not been referred to the MVC, we will use the following procedure.

- 1) MVC staff will contact the town building inspector or regulatory board to clarify the situation.
- 2) If the situation is not clear-cut, the Compliance Committee will invite the building inspector and/or permitting board to discuss it with the Committee.
- 3) If it appears clear-cut that the project should be referred, MVC staff in cooperation with the Compliance Committee Chairman will send a letter to the building inspector and the relevant town permitting board (cc Board of Selectmen and Commission Counsel) informing them that the project appears to trigger the DRI Checklist and should be sent to the MVC for review as a DRI.
- 4) If the situation is not resolved, the Compliance Committee will consider the situation and advise the full Commission as to whether it recommends taking further action, including the possibility of legal action.
- 5) If a building inspector or referring board asks the Commission to clarify an item in the DRI Checklist that appears to be open to interpretation, MVC staff should make the clarification, seeking LUPC input if necessary, and so inform the town official. This will ensure that the DRI Checklist is applied in a similar and equitable way in all towns. These clarifications should be incorporated in future revisions of the Checklist.