



DRI PROCEDURES

Martha's Vineyard Commission Administrative Procedures for Developments of Regional Impact

**This document replaces and supersedes a document
entitled "DRI Regulations" dated October 2, 2014 .**

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1. AUTHORITY, PURPOSE, AND SCOPE

1.1 Statutory Authority

These Procedures are adopted by the Martha's Vineyard Commission pursuant to section 5 of Chapter 831 of the Acts of 1977, as amended.

1.2 Purpose and Scope

These Procedures list the bases (identified in the **DRI Checklist**) on which proposed projects are referred to the Commission for consideration as **DRIs**. They outline the procedures by which referrals are made and how the Commission then treats them after referral. They explain the application process for **DRIs**, the procedures applicable to a **DRI** review (including public hearings), the decision-making process and considerations, and the impact that **DRI** proceedings have on the local permit approval process. This document is intended to provide guidance to the MVC and Commissioners in the processing of **DRIs**. It is also intended to inform **Applicants** as to how DRIs will be administered and determined.

2. DEFINITIONS AND TERMINOLOGY

2.1 **Defined Terms:** The following capitalized terms have the meanings given when used in these Procedures. Note that these defined terms appear in **bold** throughout.

Applicant: Any person who applies for a **Development Permit** or submits a **DRI Application**.

Certificate of Compliance: A certificate issued by the Commission and signed by the Executive Director confirming that a project (or an aspect of a project) has been carried out in conformity with one or more conditions of a written decision.

Concurrence Referral: See definition at section 3.2.

Development of Regional Impact or DRI: A proposed project which triggers at least one item in the DRI Checklist.

Development Permit: Any permit, license, authority, endorsement or permission required from a **Municipal Authority** prior to the commencement of construction, improvement, or alteration made to buildings or land.

Discretionary Referral: See definition at section 3.2.

DRI: A development of regional impact as defined by the **DRI Checklist**.

DRI Application: A written request by an **Applicant** for consideration of a **DRI**, comprised of an application form, application fee, and such additional materials (such as data, studies, plans, and illustrations) as the Commission may require to facilitate its review of the proposed project.

DRI Checklist: The Standards and Criteria most recently adopted by the Commission pursuant to sections 7 and 12 of the Act which specify the types of development that are likely to present development issues significant to more than one town.

Hearing Officer: The person who presides at public hearings on **DRIs**, generally the **LUPC Chair**, unless another Commissioner is appointed to do so by the Commission Chair.

Land Use Planning Committee or LUPC: A committee comprised of Commissioners operating to assist the Commission in an advisory capacity in the review of DRIs. The roles and responsibilities of the **LUPC** and the manner in which it operates are set out in section 9, **General Provisions – The LUPC**.

Mandatory Referral: See definition at section 3.2.

Modification: A change to a previously approved **DRI**, including a change to any approved plans, use, or conditions.

Modification Referral: See definition at section 3.2.

Municipal Authority: A 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”).

2.2 Additional Terms: The following additional capitalized terms have the meanings given when used in these Procedures. However, they do not appear in bold in this document.

‘Act’ means the Martha's Vineyard Commission Act (Chapter 831 of the Acts of 1977, as amended).

‘Bylaws’ means the MVC Bylaws.

‘Commission’ and *‘Commissioners’* means the members of the MVC appointed or elected in accordance with section 2 of the Act.

‘Commission Chair’, *‘LUPC Chair,’* and the *‘Executive Director’* include their designee.

‘Executive Committee’ means the Executive Committee of the Commission as constituted under the Bylaws.

'Executive Director' means the Executive Director of the Martha's Vineyard Commission.

'Public Hearing' means a meeting of the Commission, quasi-judicial in nature, that is open to the public and at which the public may provide evidence and otherwise participate.

'MVC' means the Martha's Vineyard Commission constituted under section 2 of the Act.

'MVC website' means the MVC website at mvcommission.org.

3. REFERRALS OF DEVELOPMENT PERMITS

3.1 Filing of Referrals

Referrals of applications for **Development Permits** pursuant to the **DRI Checklist** should be sent to the MVC by certified mail or email, with a copy to the **Applicant**. The MVC will follow up on an email referral with an email or call to the referring **Municipal Authority** confirming receipt. Referrals should identify which **DRI Checklist** criteria have been met.

3.2 Preliminary Procedures Applicable to Specific Types of Referrals

- a. **Mandatory Referral**: A type of project identified in the **DRI Checklist** as a “Mandatory Referral with Mandatory MVC Public Hearing,” which must be referred to the Commission and which the Commission must review as a **DRI** according to the procedures outlined in the Act. Upon a referral of this type, the Commission shall proceed to hold a public hearing, and the procedures set out in section 4 of these Procedures apply.
 - b. **Concurrence Referral**: A type of project identified in the **DRI Checklist** as a “Mandatory Referral with Mandatory MVC Meeting to Determine Regional Impact,” which must be referred to the Commission, but with which the Commission may or may not concur. Upon a referral of this type, the Commission shall hold a meeting to receive sufficient information to enable it to determine whether the proposed project presents sufficient regional impacts that Commission review, including a public hearing, is appropriate. If the Commission determines that it does and, accordingly, concurs with the referral, the procedures set forth in section 4 of these Procedures apply. If the Commission does not concur, the project will be remanded to the Town.
 - c. **Discretionary Referral**: A type of project that may not qualify as a **DRI** under the **DRI Checklist**, but which any **Municipal Authority** in the Town where the proposed project is located, the Board of Selectmen of another Town, or the Dukes County Commission, may refer to the Commission seeking its designation as a **DRI**. Upon a referral of this type, the Commission shall hold a public hearing to receive evidence to enable it to determine “whether the proposed development will have impacts within other municipalities on the values protected by section 1 or the interests referred to in clauses (a) to (h) inclusive of section 15.” (See section 14 of the Act.) If the Commission determines it does, the referral will be accepted, and the procedures set forth in section 4 of these Procedures apply. If the Commission determines that it does not, the project will be remanded to the permit granting **Municipal Authority** (which may then proceed with its own review procedures).
1. **Notice and Procedures Applicable to Initial Public Hearings for Discretionary Referrals**: Within 30 days of receipt of a **Discretionary Referral**, the MVC shall publish in a local newspaper notice of a public hearing to consider accepting the referral as a **DRI**. The MVC shall cause the notice to be published not less than 7 days prior to the date of the public hearing, and shall mail written notice of the

public hearing to the owner of the premises on which the proposed project is located (and to the **Applicant**, if different) and to the Board of Selectmen of the Town in which it is proposed. The Commission shall hold and conclude a public hearing within 40 days of receipt of the referral unless the **Applicant** agrees in writing to an extension. Unless the Commission votes to accept the **Discretionary Referral** within 50 days after the receipt of the referral, or within 10 days after the end of any extended period, the referral shall be deemed denied. The permit granting **Municipal Authority** may then proceed with its own review procedures.

- d. **Modification Referral:** A type of project identified in the **DRI Checklist** as a “Modification to a Previously Approved DRI,” which must be referred to the Commission by the **Municipal Authority** or, if no **Development Permit** is required for the **Modification**, the then-current property owner must seek Commission approval prior to making the Modification. Subject to section 3.2.d.3, upon a referral of this type, the Commission shall hold a meeting to receive sufficient information to enable it to determine whether the proposed **Modification** presents sufficient regional impacts that Commission review, including a public hearing, is appropriate. For the purposes of this section 3.3.d, ‘regional impacts’ may include impacts not only of the **DRI Modification**, but cumulative impacts of the original **DRI**, as approved, and any subsequent **Modifications** (whether referred to or approved by the Commission). (Note: If a proposed **Modification** would itself trigger a **Mandatory Referral**, the Commission shall dispense with the meeting and proceed to a public hearing as set forth in section 4 of these Procedures.)
1. **Determination Following a Meeting:** If the Commission determines that the proposed **Modification** presents sufficient regional impacts to warrant Commission review, including a public hearing, appropriate, the procedures set forth in section 4 of these Procedures apply. If the Commission determines that the **Modification** does not present such impacts, the Commission will not hold a public hearing but it shall then proceed to deliberate and consider whether to approve the **Modification**. (See section 6.10.)
 2. **Non-Substantive Modifications:** In lieu of a **Modification Referral**, an **Applicant** may apply to the Commission for a “Certificate of No Effect” in the case of a non-substantive **Modification**. (Examples might include minor adjustments to the location of buildings or roadways, building design, landscaping, or other features.) The Executive Director, in consultation with the **LUPC** Chair, may issue the certificate on determining that the **Modification** is not substantive and would not have impacted the Commission’s findings or decision in approving the **DRI**, provided that Commissioners have been notified of the proposed modification and the intent to issue such a certificate and no Commissioner has objected to the intended issuance by notice to the Executive Director within 5 business days. If any Commissioner objects to the issuing of a certificate of no effect, the certificate shall not be issued and the procedures set out for **Modification Referrals** apply. On issuance of any certificate, the Executive Director shall notify the Commissioners. A copy of the certificate shall be sent to the **Town** building

inspector and the referring **Municipal Authority**, filed with the **DRI** decision at the Dukes County Registry of Deeds and kept in the MVC **DRI** file. If the Executive Director concludes that the alteration constitutes a substantive alteration, the procedures set out for **Modification Referrals** apply.

3.3 **Other Preliminary Procedural Matters**

- a. **Reclassification of a Referral**: If the Executive Director determines that a referral has misidentified the appropriate **DRI Checklist** item or that the referral has been improperly classified, the Executive Director may make the necessary correction and thereafter shall notify the referring **Municipal Authority** and the **Applicant**.
- b. **Initial Notifications**: Upon a Commission vote to concur with a **Concurrence Referral**, or a decision by the Commission to accept a **Discretionary Referral**, the MVC shall promptly notify by e-mail the **Applicant** (and the owner of the property, if different), the Town Clerk, the building inspector, and the referring **Municipal Authority**, if any, before which the **Development Permit** application is pending of its decision to review the proposed project as a **DRI**. In the case of Discretionary Referrals, notification will also be made by regular mail. In both cases, the procedures set forth in section 4 of these Procedures then apply.
- c. **Emergency Work**: If immediate action is necessary to protect the health and safety of the public, a municipal or state agency may determine that work of an emergency nature is warranted, and may issue a **Development Permit** for work that would otherwise require referral to the MVC as a **DRI**. The agency must promptly notify the Executive Director of the emergency and the required work. No work beyond that which is necessary to abate the emergency may be performed without filing a **DRI Application**. Emergency work may not extend more than 30 days after the onset of the emergency without written approval of the Commission.

Upon receipt of the notice, the Executive Director shall promptly convene a meeting of the Executive Committee, which shall determine what action, if any, is appropriate (including requiring that a **DRI Application** be filed, particularly in the case where ongoing conditions may be appropriate).

4. **DRI APPLICATIONS**

- 4.1 **Pre-Application Meeting**: MVC staff will ordinarily hold a pre-application meeting with the **Applicant** to discuss required documentation and the **DRI** review process.
- 4.2 **Studies and Reports**: MVC staff may identify traffic and other studies/reports that must be conducted and completed by the **Applicant** at its expense, in order to complete the **DRI Application**. In addition, the Executive Director, in consultation with the Commission Chair, may hire an independent professional to analyze technical or other matters beyond the expertise of MVC staff, in which case any fees shall be

borne by the **Applicant**. A cost estimate will be provided to the **Applicant** before the Commission proceeds to retain any outside consultants.

4.3 Completeness of DRI Application: MVC staff will work with the **Applicant** to ensure all required information is submitted. In general, the following materials are required for all **DRI Applications**:

- a. site plan
- b. floor plans for each level (indicating, for commercial **DRIs**, the approximate total space and usage)
- c. exterior elevations, with information as to exterior materials
- d. renderings/sketches
- e. storm water plan (from engineer)
- f. rough plan of landscaping intent, showing open space
- g. required fee, according to the MVC fee schedule in effect at the time of application

Additional documentation may be required depending on the **DRI** project specifications. The Executive Director will determine whether an application is complete, and so advise the **Applicant**. The Executive Director may grant a waiver of any required information in a particular **DRI**.

4.4 Waiver of DRI Application Fee

- a. **Governmental Agencies:** On request in writing, the **DRI Application** fee will be waived by the Commission for any governmental agency submitting a **DRI Application** on its own behalf.
- b. **Not-For-Profit Organizations:** On request in writing, the **DRI Application** fee may be waived by the Commission for any **Applicant** which is a not-for-profit organization upon the Commission's determining that the organization's project is for the health, safety, and/or general welfare of the Town or Island. The **DRI Application** fee will not be due pending the Commission's vote on the request. If the request for waiver is denied, the fee will be due before any further action is taken on the **DRI Application**.

4.5 Scheduling of Initial Public Hearing: The MVC shall schedule a public hearing within 30 days after receipt of a project referral and a complete **DRI Application** (including the application fee), as determined in accordance with section 4.3. (The 30-day requirement applies despite any pending request for a fee waiver under section 4.4.b.) This time limit may be waived by mutual agreement between the **Applicant** and the Commission. (Note: This section does not apply to **Discretionary Referrals** - see 3.2.c.1.)

5. PROCEDURES FOR REVIEW OF DRI APPLICATIONS

- 5.1 Pre-Hearing Meetings of the Land Use Planning Committee:** After a referral, the **LUPC** shall meet with the **Applicant** to ensure that all relevant documentation is available to the Commission when it meets to make the appropriate determination (see section 3.2), to guide the **Applicant** in preparing for the public hearing/meeting, and to assist the Executive Director in determining if the Applicant is ready for the public hearing/meeting. In addition, the **LUPC** will typically:
- a. determine the scope of any traffic study that should be conducted;
 - b. identify any additional peer review or other studies/reports that may be appropriate;
 - c. identify questions that the **Applicant** should be prepared to respond to at the public hearing;
 - d. in the case of a **Modification Referral**:
 1. consider whether the **Applicant** is in compliance with all prior decisions of the Commission and report its findings to the Commission. The **Applicant** may revise its **DRI Application** or otherwise seek to bring the project into compliance as part of the **Modification** for which approval is sought;
 2. review the **Modification** in light of the DRI policies (as revised or established) in effect as at the date of the filing of the **Modification**.

- 5.2 Site Visits:** A site visit for Commissioners may be held before or during the public hearing to view the site and better understand the proposed project in relation to its context. The MVC will post the site visit on the MVC website calendar. The site visit does not constitute a session of the public hearing. Members of the public may attend a site visit, but no testimony will be taken.

5.3 Public Hearings

- a. Notice of Public Hearing:** For any public hearing required under the Act or these Procedures, the MVC shall:
1. post a notice of public hearing on the MVC website (the MVC's official notification site) and the principal bulletin board at the MVC office;
 2. publish notice of public hearing in a newspaper of general circulation throughout Dukes County, once in each of two successive weeks, the first publication to be not less than 14 calendar days before the public hearing; and
 3. send by certified mail a copy of the notice to the **Applicant** (and the property owner, if different), the referring agency, and the Town Clerk of the Town in which the **DRI** is located.

The notice and public hearing shall be in accordance with Section 2 of Chapter 30A of the General Laws (except that only 14 days, rather than 21 days, prior notice shall be required, and the notice does not have to be sent to the Secretary of State).

The notice shall include, at a minimum:

4. the name and address of the **Applicant**;
5. a brief description of the proposed project, including its nature, size, and location;

6. the date, time, and location of the public hearing;
 7. a statement that the **DRI Application**, plans and other information regarding the project are available on the MVC website and at the MVC offices for review by the public;
 8. a statement that any person may submit written comments and/or testimony prior to or during the public hearing.
- b. Authority of the Hearing Officer:** The **Hearing Officer** will preside over the public hearing and:
1. is authorized to take testimony (including varying the order of testimony); open, close, continue, and suspend public hearings; determine when to close the record; accept letters of withdrawal; and otherwise preside over the public hearing;
 2. may set reasonable time limits for testimony with a view to hearing all relevant testimony while ensuring that the public hearing is completed in a timely fashion; and
 3. is responsible for ensuring that the proceeding is conducted in a civil manner, that testimony is confined to the proposed project, and that all testimony and questions are addressed to the Commission and not to the **Applicant**.
- c. Order of Evidence:** Testimony will usually be received in the following order:
1. MVC staff reports
 2. **Applicant** testimony and presentation of the proposed project
 3. Commissioner questions for clarification
 4. Testimony from representatives of local governmental boards speaking for the majority of the board
 5. Public testimony (including that from local officials speaking on their own behalf)
 6. Commissioner questions
 7. **Applicant** responses and summation.
- d. Written Testimony and Documentation**
1. **The Public Record:** All documents submitted by the **Applicant** (including the **DRI Application** and materials submitted in connection therewith), public officials, and members of the public prior to the close of the public record are part of the record and are available for review at the MVC offices and, when possible, posted on its website. All documents comprising the public record will be noted in the written decision.
 2. **Information Submitted for the Record:** At any time during the public hearing:
 - (a) the **Applicant** or any member of the public may submit documentary information or oral testimony;
 - (b) the Commission may require the **Applicant** to submit additional studies or reports at the **Applicant's** expense.

The Commission is not required to consider any information submitted less than 3 business days prior to the public hearing. The **Hearing Officer**, in their

discretion, may continue the public hearing to another date if additional time is required for consideration of the late-submitted materials.

3. **Continued Public Hearing to Allow Submission of Additional Evidence:** At any time prior to deliberation, an **Applicant** may request a continuance of the public hearing to submit additional documentary information (including a project re-design), and the **Hearing Officer** may continue the public hearing for a period not to exceed 60 days. If the **Applicant** is not prepared to proceed by that time, the Commission may (a) grant a further continuance, (b) request that the **Applicant** withdraw its application (with leave to re-file a new **DRI Application**), or (c) proceed to deliberation and decision based on the information then comprising the public record.

5.4 **Meeting(s) of the LUPC Held Between Sessions of the Public Hearing:** The Commission may vote to request that the **LUPC** meet with the **Applicant** between two sessions of the public hearing to allow for identification and discussion of outstanding issues and to explore how they may be resolved. These **LUPC** meetings are consultative in nature and are not part of the public hearing.

5.5 **Applicant Offers:** Prior to the close of the record, the **Applicant** may submit to the Commission offers in writing which (a) memorialize offers made orally during the public hearing, (b) constitute new offers or mitigation commitments which it wishes the Commission to consider, or (c) reflect changes to the project made during the proceedings (either in writing or orally).

5.6 **Closure of the Record and the Public Hearing:** The **Hearing Officer** will close the public hearing on determining that the **Applicant** has had a reasonable opportunity to present the proposed project, and that local officials and the public have been given a reasonable opportunity to provide written and oral testimony on the project.

- a. **Leaving the Record Open:** After closing the public hearing, the **Hearing Officer** in their discretion may leave the written record open to receive additional written testimony and/or documentation. The **Hearing Officer** will announce the date and time of the closure of the written record before the close of the last public hearing. The **Hearing Officer** may specify the issue(s) on which additional materials may be submitted.
- b. **Reopening the Record:** After the written record has closed, the Commission may vote to reopen the written record to a date and time certain to enable the **Applicant** to submit additional written testimony and/or documentation. The **Hearing Officer** may specify the issue(s) on which additional materials may be submitted.
- c. **Reopening the Public Hearing:** If substantive, new written information has been submitted during the time that the written record remains open (or reopened), the **Hearing Officer** in their discretion and after consultation with the Commission Chair, may reopen the public hearing to ensure that the public has adequate

opportunity to address the new information. Notice in accordance with section 5.3.a must be given of any reopened public hearing. Oral testimony at any such reopened public hearing will generally be limited to the issues raised in the new information.

5.7 Post-Public Hearing Procedures

- a. **Preparation of an LUPC Report**: Subsequent to the close of the public hearing, the **LUPC** typically will hold one or more meetings for the purpose of preparing a report, including a preliminary list of possible conditions, a review and assessment of the offers made by the **Applicant**, and a preliminary review and analysis of the proposed project's benefits and detriments. The **LUPC** may by majority vote agree on a recommendation to the Commission as to whether the **DRI** should be approved, approved with conditions, or denied.
- b. **Proceeding Directly to Deliberation**: After the close of the public hearing and the written record, the Commission may vote to proceed directly to deliberation and decision rather than holding a post-public hearing **LUPC** meeting(s).

6. COMMISSION DELIBERATION AND DECISION

- 6.1 **Commission Decision Time Limits**: The Commission shall vote on a **DRI** within 60 days of the close of the public hearing (or if the hearing is closed and then reopened, 60 days from the date the resumed hearing is closed). This time limit may be waived with the **Applicant's** agreement.
- 6.2 **Role of Commission Chair**: The Commission Chair or Vice-Chair shall preside over the deliberation and decision.
- 6.3 **Presentation of LUPC Report**: At a Commission meeting subsequent to the post-public hearing **LUPC** meeting, the **LUPC** Chair will submit for the Commission's consideration its report and recommendation, if any. (See section 5.7.)
- 6.4 **Deliberation**: Prior to or during deliberation, the Commission shall determine whether to accept any offers made by the **Applicant** and agree on conditions of approval, if any. In considering a motion to approve, approve with conditions, or deny the **DRI**, the Commission shall deliberate, weighing the benefits and detriments according to the **Act**, in light of the entire record. Notice of a Commission deliberation will be given as with any public meeting of the Commission. Neither the **Applicant** nor any member of the public will be permitted to participate in the deliberation unless the Commission requires clarification of a matter under consideration in the deliberation and the Commission Chair recognizes the individual.
- 6.5 **Conditions of an Approval**: The Commission may make any **DRI** approval subject to conditions. The conditions may be proposed or amended by any Commissioner.

Votes on any proposed condition(s) may be taken individually or as a group at the discretion of the Commission Chair. Approved conditions are part of the decision.

6.6 Voting on a Decision: The Commission Chair, on determining that a motion has been discussed sufficiently, shall call for a vote to approve, approve with conditions, or deny the **DRI**. The vote shall be by roll-call voice vote and otherwise in accordance with section 8.1. At any time during deliberation and prior to a vote on the motion, the Commission Chair may call for a “straw vote” to poll the sense of the Commissioners. The Commission Chair may use the results of the straw vote to structure deliberation. The Commission Chair shall endeavor to conclude the deliberation and call for a vote during the same meeting session. If that is not possible, another meeting of the Commission shall be called as soon as practicable.

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

- a. The motion to reconsider is made at the same meeting and with the same Commissioners present as participated in the DRI decision vote; and
- b. The motion to reconsider is made by a Commissioner who voted in the majority on the original DRI decision vote. Any other Commissioner who voted on the DRI decision may second the motion.

If a motion to reconsider passes, the prior Commission decision is set aside. The Commission will deliberate anew on the DRI, and the decision-making process set out in sections 6.2, 6.4, 6.5 and 6.6 of these Procedures applies to the re-vote. To the extent practicable, the re-vote shall be held at the same meeting and with the same Commissioners present as participated in the original decision vote. If it is not practicable, then 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. Only Commissioners who participated in the original deliberation and decision shall be eligible to participate and vote in the re-vote. A special meeting may be scheduled for that purpose.

6.8 Written Decision: Following the vote on the decision, at a subsequent meeting of the Commission, MVC staff shall present to the Commission a draft of the written decision prepared in accordance with the vote and matters raised in deliberation. The Commission will review the draft, during which time modifications may be made for the purpose of ensuring that the written decision accurately reflects the Commission’s deliberation and decision. No condition may be introduced that was not approved during the deliberation. Only members who voted on the original decision are eligible to participate and vote on the written decision. There must be at least 9 such members (a Commission quorum) participating. Approval of a written decision is by majority vote. No decision is final until the written decision is approved by this Commission vote, and signed by the Commission Chair.

6.9 Decision Distribution and Recording: The MVC shall send a copy of its decision to the **Applicant** by certified mail and shall file a copy with the referring agency and the Town Clerk of the Town in which the **DRI** is located. The MVC will also cause the decision to be recorded in the Dukes County Registry of Deeds. This section applies as well to **Certificates of No Effect**.

6.10 Special Provisions Applicable to Modifications

- a. **Considerations for Deliberation of a Modification:** The Commission's deliberation should have regard to the benefits and detriments of the **Modification** as a stand-alone change, as well as impacts on the benefits and detriments identified in the original **DRI** approval and any subsequent **Modifications**. The Commission shall review **Modifications** in light of the DRI policies (as revised or established) in effect as at the date of the filing of the **Modification** and may consider attaching conditions consistent with those policies.
- b. **Conditions:** No new condition (other than a standard condition which the Commission typically imposes in all **DRI** decisions) may be imposed in a decision in respect of a **Modification** in which no public hearing was held. A written decision approving a **Modification** should incorporate and restate all outstanding conditions from the original **DRI** decision and any subsequent **Modifications**. Outstanding conditions are those which have not been fully performed or which continue to be relevant to the project or the **DRI**.
- c. **Amending the Original Decision and Recording:** In the case of an approved **Modification**, the Commission shall issue an amendment to the original decision detailing the **Modification** and record it with the original decision as set out in section 6.9.

6.11 Post-Decision Activities

- a. **MVC Staff Meeting with Applicant and Referring Authority:** As soon as practicable after the Commission's approval of the written decision, MVC staff will ordinarily meet with the **Applicant** to go over the decision and, in particular, any conditions to ensure that they are understood. MVC staff shall also meet with the referring agency as needed. See section 10.4.
- b. **DRI Decision Conditions Requiring Further Review and Approval:** In those instances where elements of an approved project are not/cannot be complete at the time of the decision, the decision may include conditions requiring the Applicant to return to the Commission or **LUPC**, as specified in the condition, for further review and approval. Elements requiring further approval may include landscaping, lighting, and storm water plans; homeowners' association documents; etc. The review and approval are intended to ensure that these elements conform to Commission guidance or direction expressed during deliberation, or in the decision, or to applicable Commission policies.
- c. **Notification of Compliance:** A decision may require an **Applicant** to present evidence of compliance with specified conditions to the Commission or the **LUPC** at specified stages of a proposed project. If the Commission or the **LUPC**, as the case may be, finds that the condition has been met, the Executive Director shall issue a **Certificate of Compliance**, which shall be recorded with the Dukes County

Registry of Deeds, with copies to the **Applicant** and to the relevant **Municipal Authority**.

- d. **Compliance Generally:** Compliance with a **DRI** decision will be handled by the Commission in accordance with its DRI Compliance Procedures.

7. OTHER ACTIONS RELATED TO DRIs

- 7.1 **Withdrawal of DRI Application:** The **Applicant** may request, in writing, the withdrawal of a **DRI Application** any time prior to the commencement of the Commission’s deliberation. If the Commission accepts a withdrawal, the **DRI Application** will be deemed never to have been filed. The **Applicant** may not re-file a **DRI Application** for substantially the same project until after 2 years from the date of the withdrawal. The MVC shall advise the referring **Municipal Authority** of the withdrawal. The Commission may waive or reduce the 2-year requirement.
- 7.2 **Re-filing of a Denied DRI Application:** A **DRI** that has been denied may not be re-filed before 2 years after the recording of the decision. The Commission may waive or reduce this requirement.
- 7.3 **Validity of DRI Approval and Extension of a DRI Decision:** A **DRI** approval is valid for 2 years from the date it is recorded. If no material work has been done at the project site, the **DRI** approval expires and there will be no valid approval to proceed with any work at the site. The **Applicant** may file a request for **Modification** to extend the 2-year time limit. The Commission may approve any such request retroactively. **DRI** policies in effect when the request for **Modification** was filed apply to the request, and any approval may be subject to conditions consistent with those policies.
- 7.4 **Surrender of an Approved DRI:** The Commission may approve a request by an Applicant to surrender a **DRI** and may hold a public hearing on the request in its discretion. Any approval may be subject to conditions (eg if material construction has commenced at the project site). If the Commission accepts a surrender, the **DRI** decision will have no further effect and will be deemed never to have been issued. This decision will be recorded in the same manner as the original **DRI** decision.

8. GENERAL PROVISIONS – THE COMMISSION¹

8.1 Quorum and Voting

- a. **Quorum and Membership:** Nine (9) Commissioners constitute a quorum for a meeting or public hearing of the Commission. When opening a public hearing at

¹ **Note:** The Bylaws are the source of authority for the provisions in this section 8. In the event of any inconsistency between the Bylaws and any such provision, the Bylaws take precedence.

which testimony is taken, the quorum must include at least 1 Commissioner who is a resident of the Town in which the DRI is proposed.

- b. **Voting:** Subject to the Bylaws, any vote to approve or deny a DRI (including a vote on a **Modification**) and any other matter that the presiding officer deems “significant” requires a simple majority and shall be by roll-call voice vote. All votes of lesser importance may be by a show of hands or yea/nay.

8.2 **Eligibility**

- a. **Conflict of Interest:** Commissioners shall comply with Chapter 268A, Conduct of Public Officials and Employees.
- b. **Absence from a Public Hearing:** Except as specified in the Bylaws, Commissioners who miss a session of a public hearing where any substantive testimony is given are not eligible to participate in further public hearings or deliberation, or to vote on the **DRI**. Absence at a meeting where a public hearing is continued administratively without any testimony or discussion does not disqualify a Commissioner from further participation.
- c. **Absence from Deliberation:** Commissioners who miss any part of the deliberation of the Commission are not eligible to participate in any further deliberation on the **DRI**.
- d. **Disqualified Commissioners:** Commissioners who are disqualified or who recuse themselves for any reason or who are not otherwise eligible to participate should not be seated with the other Commissioners at any meeting or public hearings on the proposed project.

- 8.3 **Public Hearings and Meetings of the Commission:** Both public hearings and meetings of the Commission are open to the public, and members of the public and Town officials are welcome to attend both. At Commission public hearings, the public may participate by testifying and/or submitting written documentation. However, at Commission meetings, the public is not allowed to participate as a general rule. Hearings/meeting are recorded and minutes are maintained.

9. **GENERAL PROVISIONS – THE LUPC**

- 9.1 **Ad Hoc Committee:** The LUPC is an ad hoc subcommittee of Commissioners and is advisory in nature. The Commission Chair appoints the **LUPC** Chair.
- 9.2 **Principal Responsibilities:** The principal roles of the **LUPC** are to meet with an **Applicant** before formal proceedings are commenced to ensure that they are prepared for a public hearing and to review and preliminarily assess the benefits and detriments of a **DRI** after the public hearing and before Commission deliberation. Additional roles and responsibilities of the **LUPC** are set out elsewhere in these Procedures.

- 9.3 **Membership:** Commissioners are not appointed to the **LUPC**. Other than the **LUPC** Chair, the **LUPC** has no fixed membership. Participation is open to all Commissioners, and they may participate as and when they choose. Accordingly, Commissioner participation in **LUPC** meetings may change from time to time and from **DRI** to **DRI**. It is preferable that Commissioners participating in an **LUPC** meeting continue to participate in any continuation of that meeting.
- 9.4 **Eligibility and Participation:** Commissioners who are disqualified or who recuse themselves for any reason or who are not eligible to participate in a given **DRI** proceeding may not participate in meetings of the **LUPC**.
- 9.5 **Quorum:** There is no quorum for a meeting of the **LUPC**. However, the number of Commissioners at any **LUPC** meeting is limited to less than a quorum of the Commission. If the number of Commissioners participating must be limited to avoid a quorum, the **LUPC** Chair may appoint Commissioners to participate among those expressing an interest, provided that Commissioners representing the Town in which the **DRI** is located will have preference. If **LUPC** consideration of a **DRI** under section 5.7 continues beyond one session, the **LUPC** Chair may consider the importance of continuity of participation. Commissioners not participating in any **LUPC** meeting may nevertheless observe the proceedings.
- 9.6 **Voting:** Any vote taken by the **LUPC** shall require a simple majority to pass.
- 9.7 **Postponement of Meeting:** The **LUPC** Chair may postpone a meeting on determining that too few Commissioners are present to fulfill the purposes of the meeting.
- 9.8 **Open to the Public:** Meetings of the **LUPC** are open to the public.

10. EFFECT OF DRI REVIEW ON MUNICIPAL AUTHORITY AND REVIEW

- 10.1 **Town Review Schedule:** Statutory or regulatory time limits and those established by regulation or bylaw applicable to **Municipal Authority** review of an application for a **Development Permit** (eg building permits, subdivision approvals, variances, decisions, etc.) are tolled by the referral of the proposed project to the Commission. This means that the time limits are suspended while the matter is before the Commission, from the time when the proposed project is referred and until the day that the Town Clerk receives notice of either the Commission decision after review of the **DRI**, or of the Commission's decision not to concur with a **Concurrence Referral**, or of the Commission's decision not to accept a **Discretionary Referral**. The day that the referral is mailed to the Commission and the day that the Town Clerk receives notice of the Commission's decision shall not be included when calculating time limits applicable to **Municipal Authorities**.

From the date of a referral of an application for a **Development Permit** by a **Municipal Authority** to the Commission, or in the case of a **Discretionary Referral** or

Mandatory Referral, from the time that the Commission designates a proposed project as a **DRI** until receipt of notice as above, the applicable permit granting **Municipal Authority** shall not grant or deny the **Development Permit**. It may, however, discuss the proposal with the **Applicant** and hold a public hearing, provided that no decisions are made.

- 10.2 Local Participation in MVC Review**: Local officials are encouraged to attend **LUPC** meetings and to attend and participate in any DRI public hearing. Local officials are encouraged to comment on issues related to a **DRI Application** including how it relates to board and town regulations, policies, and guidelines, how the town board has dealt with similar applications in the past, and any concerns that they would like the Commission to consider.
- 10.3 Recommending Local Review**: After the Commission issues its decision, the applicable **Municipal Authority** may then grant or deny the **Development Permit**. The **Municipal Authority** may not approve an application for a **Development Permit** in respect of which a proposed project has been denied by the Commission, nor may it rescind or alter conditions imposed upon a project by the Commission. The **Municipal Authority** may, acting within its own jurisdictional authority, impose additional conditions upon a project, or may deny an application for a **Development Permit** that has been approved by the Commission.
- 10.4 Post-Decision Review with Local Permitting Authorities**: After a written decision, the MVC staff will meet with the Town officials responsible for issuing building permits, certificates of occupancy, or other permits or certificates to identify any required **Certificates of Compliance** to be obtained from the Commission or the **LUPC**. (See section 6.10.c.) The local Town officials may not grant any permits or certificates until the **Applicant** receives the applicable **Certificate of Compliance** from the Commission. The Commission and its agents may enter and inspect the property that is the subject of a DRI approval at reasonable times and with reasonable notice to determine compliance with the **DRI** approval. If no certificate of occupancy is required under local regulations, the **Applicant** shall not use and/or occupy the project until the Commission issues all needed **Certificates of Compliance**.

11. AMENDMENTS TO DRI PROCEDURES

These Procedures may be adopted, amended, or rescinded at any Commission meeting, provided that notice of the meeting (including the text of any proposed amendment) has been sent to all Commissioners at least 10 days prior to the meeting. If an amendment is proposed during a meeting, a vote on the amendment may not take place until a duly noticed subsequent meeting.

VOTED BY THE MARTHA'S VINEYARD COMMISSION

January 20, 2022

Date

Chair, Joan Malkin