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# **DRI PROCEDURES**

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

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137 **1. AUTHORITY, PURPOSE, AND SCOPE**

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138  
139 **1.1 Statutory Authority**

140  
141 These Procedures are adopted by the Martha’s Vineyard Commission pursuant to  
142 section 5 of Chapter 831 of the Acts of 1977, as amended.  
143

144 **1.2 Purpose and Scope**

145  
146 These Procedures list the bases (identified in the **DRI Checklist**) on which proposed  
147 projects are referred to the Commission for consideration as **DRIs**. They outline the  
148 procedures by which referrals are made and how the Commission then treats them  
149 after referral. They explain the application process for **DRIs**, the procedures applicable  
150 to a **DRI** review (including public hearings), the decision-making process and  
151 considerations, and the impact that **DRI** proceedings have on the local permit approval  
152 process. This document is intended to provide guidance to the MVC and  
153 Commissioners in the processing of **DRIs**. It is also intended to inform **Applicants** as to  
154 how DRIs will be administered and determined.  
155

156  
157 **2. DEFINITIONS AND TERMINOLOGY**

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158  
159 **2.1 Defined Terms:** The following capitalized terms have the meanings given when used  
160 in these Procedures. Note that these defined terms appear in **bold** throughout.

161  
162 **Applicant:** Any person who applies for a **Development Permit** or submits a **DRI**  
163 **Application**.

164  
165 **Certificate of Compliance:** A certificate issued by the Commission and signed by the  
166 Executive Director confirming that a project (or an aspect of a project) has been  
167 carried out in conformity with one or more conditions of a written decision.  
168

169 **Concurrence Referral:** See definition at section 3.2.

170  
171 **Development of Regional Impact or DRI:** A proposed project which triggers at least  
172 one item in the DRI Checklist.

173  
174 **Development Permit:** Any permit, license, authority, endorsement or permission  
175 required from a **Municipal Authority** prior to the commencement of construction,  
176 improvement, or alteration made to buildings or land.  
177

178 **Discretionary Referral:** See definition at section 3.2.

179  
180 **DRI:** A development of regional impact as defined by the **DRI Checklist**.  
181

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

186  
187 **DRI Checklist:** The Standards and Criteria most recently adopted by the Commission  
188 pursuant to sections 7 and 12 of the Act which specify the types of development that  
189 are likely to present development issues significant to more than one town.

190  
191 **Hearing Officer:** The person who presides at public hearings on **DRIs**, generally the  
192 **LUPC** Chair, unless another Commissioner is appointed to do so by the Commission  
193 Chair.

194  
195 **Land Use Planning Committee** or **LUPC:** A committee comprised of Commissioners  
196 operating to assist the Commission in an advisory capacity in the review of DRIs. The  
197 roles and responsibilities of the **LUPC** and the manner in which it operates are set out  
198 in section 9, **General Provisions – The LUPC**.

199  
200 **Mandatory Referral:** See definition at section 3.2.

201  
202 **Modification:** A change to a previously approved **DRI**, including a change to any  
203 approved plans, use, or conditions.

204  
205 **Modification Referral:** See definition at section 3.2.

206  
207 **Municipal Authority:** A municipal agency, board, commission, department, office, or  
208 official that has statutory authority to approve or grant a **Development Permit**  
209 (referred to in the Act as a “Municipal Land Regulatory Agency”).

210  
211 **2.2 Additional Terms:** The following additional capitalized terms have the meanings given  
212 when used in these Procedures. However, they do not appear in bold in this  
213 document.

214  
215 ‘*Act*’ means the Martha's Vineyard Commission Act (Chapter 831 of the Acts of 1977,  
216 as amended).

217  
218 ‘*Bylaws*’ means the MVC Bylaws.

219  
220 ‘*Commission*’ and ‘*Commissioners*’ means the members of the MVC appointed or  
221 elected in accordance with section 2 of the Act.

222  
223 ‘*Commission Chair*’, ‘*LUPC Chair*,’ and the ‘*Executive Director*’ include their designee.

224  
225 ‘*Executive Committee*’ means the Executive Committee of the Commission as  
226 constituted under the Bylaws.

227

228            *'Executive Director'* means the Executive Director of the Martha's Vineyard  
229 Commission.

230  
231            *'Public Hearing'* means a meeting of the Commission, quasi-judicial in nature, that is  
232 open to the public and at which the public may provide evidence and otherwise  
233 participate.

234  
235            *'MVC'* means the Martha's Vineyard Commission constituted under section 2 of the  
236 Act.

237  
238            *'MVC website'* means the MVC website at [mvcommission.org](http://mvcommission.org).

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**3. REFERRALS OF DEVELOPMENT PERMITS**

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**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

291 public hearing to the owner of the premises on which the proposed project is  
292 located (and to the **Applicant**, if different) and to the Board of Selectmen of the  
293 Town in which it is proposed. The Commission shall hold and conclude a public  
294 hearing within 40 days of receipt of the referral unless the **Applicant** agrees in  
295 writing to an extension. Unless the Commission votes to accept the  
296 **Discretionary Referral** within 50 days after the receipt of the referral, or within  
297 10 days after the end of any extended period, the referral shall be deemed  
298 denied. The permit granting **Municipal Authority** may then proceed with its own  
299 review procedures.

300  
301 **d. Modification Referral:** A type of project identified in the **DRI Checklist** as a  
302 “Modification to a Previously Approved DRI,” which must be referred to the  
303 Commission by the **Municipal Authority** or, if no **Development Permit** is required for  
304 the **Modification**, the then-current property owner must seek Commission approval  
305 prior to making the Modification. Subject to section 3.2.d.3, upon a referral of this  
306 type, the Commission shall hold a meeting to receive sufficient information to enable  
307 it to determine whether the proposed **Modification** presents sufficient regional  
308 impacts that Commission review, including a public hearing, is appropriate. For the  
309 purposes of this section 3.3.d, ‘regional impacts’ may include impacts not only of the  
310 **DRI Modification**, but cumulative impacts of the original **DRI**, as approved, and any  
311 subsequent **Modifications** (whether referred to or approved by the Commission).  
312 (Note: If a proposed **Modification** would itself trigger a **Mandatory Referral**, the  
313 Commission shall dispense with the meeting and proceed to a public hearing as set  
314 forth in section 4 of these Procedures.)

315  
316 **1. Determination Following a Meeting:** If the Commission determines that the  
317 proposed **Modification** presents sufficient regional impacts to warrant  
318 Commission review, including a public hearing, appropriate, the procedures set  
319 forth in section 4 of these Procedures apply. If the Commission determines that  
320 the **Modification** does not present such impacts, the Commission will not hold a  
321 public hearing but it shall then proceed to deliberate and consider whether to  
322 approve the **Modification**. (See section 6.10.)

323  
324 **2. Non-Substantive Modifications:** In lieu of a **Modification Referral**, an **Applicant**  
325 may apply to the Commission for a “Certificate of No Effect” in the case of a non-  
326 substantive **Modification**. (Examples might include minor adjustments to the  
327 location of buildings or roadways, building design, landscaping, or other  
328 features.) The Executive Director, in consultation with the **LUPC** Chair, may issue  
329 the certificate on determining that the **Modification** is not substantive and would  
330 not have impacted the Commission’s findings or decision in approving the **DRI**,  
331 provided that Commissioners have been notified of the intent to issue such a  
332 certificate and no Commissioner has objected to the intended issuance by notice  
333 to the Executive Director within 5 business days. On issuance of any certificate,  
334 the Executive Director shall notify the Commissioners. A copy of the certificate  
335 shall be sent to the **Town** building inspector and the referring **Municipal**  
336 **Authority**, and kept in the MVC **DRI** file. If the Executive Director concludes that

337 the alteration constitutes a substantive alteration, the procedures set out for  
338 **Modification Referrals** apply.

339  
340 **3.3 Other Preliminary Procedural Matters**

- 341
- 342 a. **Reclassification of a Referral**: If the Executive Director determines that a referral has  
343 misidentified the appropriate **DRI Checklist** item or that the referral has been  
344 improperly classified, the Executive Director may make the necessary correction and  
345 thereafter shall notify the referring **Municipal Authority** and the **Applicant**.
- 346
- 347 b. **Initial Notifications**: Upon a Commission vote to concur with a **Concurrence Referral**,  
348 or a decision by the Commission to accept a **Discretionary Referral**, the MVC shall  
349 promptly notify by e-mail the **Applicant** (and the owner of the property, if different),  
350 the Town Clerk, the building inspector, and the referring **Municipal Authority**, if any,  
351 before which the **Development Permit** application is pending of its decision to  
352 review the proposed project as a **DRI**. In the case of Discretionary Referrals,  
353 notification will also be made by regular mail. In both cases, the procedures set forth  
354 in section 4 of these Procedures then apply.
- 355
- 356
- 357 c. **Emergency Work**: If immediate action is necessary to protect the health and safety  
358 of the public, a municipal or state agency may determine that work of an emergency  
359 nature is warranted, and may issue a **Development Permit** for work that would  
360 otherwise require referral to the MVC as a **DRI**. The agency must promptly notify the  
361 Executive Director of the emergency and the required work. No work beyond that  
362 which is necessary to abate the emergency may be performed without filing a **DRI**  
363 **Application**. Emergency work may not extend more than 30 days after the onset of  
364 the emergency without written approval of the Commission.

365

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

370  
371  
372 **4. DRI APPLICATIONS**

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- 373
- 374 **4.1 Pre-Application Meeting**: MVC staff will ordinarily hold a pre-application meeting  
375 with the **Applicant** to discuss required documentation and the **DRI** review process.
- 376
- 377 **4.2 Studies and Reports**: MVC staff may identify traffic and other studies/reports that  
378 must be conducted and completed by the **Applicant** at its expense, in order to  
379 complete the **DRI Application**. In addition, the Executive Director, in consultation  
380 with the Commission Chair, may hire an independent professional to analyze technical  
381 or other matters beyond the expertise of MVC staff, in which case any fees shall be  
382 borne by the **Applicant**. A cost estimate will be provided to the **Applicant** before the  
383 Commission proceeds to retain any outside consultants.

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**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 **DRI**s, 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**

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**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

- 430 (see section 3.2), to guide the **Applicant** in preparing for the public hearing/meeting,  
431 and to assist the Executive Director in determining if the Applicant is ready for the  
432 public hearing/meeting. In addition, the **LUPC** will typically:  
433 a. determine the scope of any traffic study that should be conducted;  
434 b. identify any additional peer review or other studies/reports that may be  
435 appropriate;  
436 c. identify questions that the **Applicant** should be prepared to respond to at the  
437 public hearing;  
438 d. in the case of a **Modification Referral**:  
439 1. consider whether the **Applicant** is in compliance with all prior decisions of the  
440 Commission and report its findings to the Commission. The **Applicant** may  
441 revise its **DRI Application** or otherwise seek to bring the project into  
442 compliance as part of the **Modification** for which approval is sought;  
443 2. review the **Modification** in light of the DRI policies (as revised or established)  
444 in effect as at the date of the filing of the **Modification**.  
445

446 **5.2** **Site Visits:** A site visit for Commissioners may be held before or during the public  
447 hearing to view the site and better understand the proposed project in relation to its  
448 context. The MVC will post the site visit on the MVC website calendar. The site visit  
449 does not constitute a session of the public hearing. Members of the public may  
450 attend a site visit, but no testimony will be taken.  
451

### 452 **5.3** **Public Hearings**

- 453
- 454 a. **Notice of Public Hearing:** For any public hearing required under the Act or these  
455 Procedures, the MVC shall:  
456 1. post a notice of public hearing on the MVC website (the MVC's official  
457 notification site) and the principal bulletin board at the MVC office;  
458 2. publish notice of public hearing in a newspaper of general circulation  
459 throughout Dukes County, once in each of two successive weeks, the first  
460 publication to be not less than 14 calendar days before the public hearing;  
461 and  
462 3. send by certified mail a copy of the notice to the **Applicant** (and the property  
463 owner, if different), the referring agency, and the Town Clerk of the Town in  
464 which the **DRI** is located.

465 The notice and public hearing shall be in accordance with Section 2 of Chapter  
466 30A of the General Laws (except that only 14 days, rather than 21 days, prior  
467 notice shall be required, and the notice does not have to be sent to the Secretary  
468 of State).

469 The notice shall include, at a minimum:

- 470
- 471 4. the name and address of the **Applicant**;
  - 472 5. a brief description of the proposed project, including its nature, size, and  
473 location;
  - 474 6. the date, time, and location of the public hearing;

- 475 7. a statement that the **DRI Application**, plans and other information regarding  
476 the project are available on the MVC website and at the MVC offices for  
477 review by the public;  
478 8. a statement that any person may submit written comments and/or testimony  
479 prior to or during the public hearing.  
480

481 **b. Authority of the Hearing Officer:** The **Hearing Officer** will preside over the public  
482 hearing and:

- 483 1. is authorized to take testimony (including varying the order of testimony);  
484 open, close, continue, and suspend public hearings; determine when to close  
485 the record; accept letters of withdrawal; and otherwise preside over the  
486 public hearing;  
487 2. may set reasonable time limits for testimony with a view to hearing all  
488 relevant testimony while ensuring that the public hearing is completed in a  
489 timely fashion; and  
490 3. is responsible for ensuring that the proceeding is conducted in a civil manner,  
491 that testimony is confined to the proposed project, and that all testimony and  
492 questions are addressed to the Commission and not to the **Applicant**.  
493

494 **c. Order of Evidence:** Testimony will usually be received in the following order:

- 495 1. MVC staff reports  
496 2. **Applicant** testimony and presentation of the proposed project  
497 3. Commissioner questions for clarification  
498 4. Testimony from representatives of local governmental boards speaking for  
499 the majority of the board  
500 5. Public testimony (including that from local officials speaking on their own  
501 behalf)  
502 6. Commissioner questions  
503 7. **Applicant** responses and summation.  
504

505 **d. Written Testimony and Documentation**

506  
507 1. **The Public Record:** All documents submitted by the **Applicant** (including the  
508 **DRI Application** and materials submitted in connection therewith), public  
509 officials, and members of the public prior to the close of the public record are  
510 part of the record and are available for review at the MVC offices and, when  
511 possible, posted on its website. All documents comprising the public record  
512 will be noted in the written decision.  
513

514 2. **Information Submitted for the Record:** At any time during the public hearing:  
515 (a) the **Applicant** or any member of the public may submit documentary  
516 information or oral testimony;  
517 (b) the Commission may require the **Applicant** to submit additional studies or  
518 reports at the **Applicant's** expense.

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

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

523  
524 **3. Continued Public Hearing to Allow Submission of Additional Evidence:** At any  
525 time prior to deliberation, an **Applicant** may request a continuance of the public  
526 hearing to submit additional documentary information (including a project re-  
527 design), and the **Hearing Officer** may continue the public hearing for a period  
528 not to exceed 60 days. If the **Applicant** is not prepared to proceed by that time,  
529 the Commission may (a) grant a further continuance, (b) request that the  
530 **Applicant** withdraw its application (with leave to re-file a new **DRI Application**),  
531 or (c) proceed to deliberation and decision based on the information then  
532 comprising the public record.

533  
534 **5.4 Meeting(s) of the LUPC Held Between Sessions of the Public Hearing:** The  
535 Commission may vote to request that the **LUPC** meet with the **Applicant** between two  
536 sessions of the public hearing to allow for identification and discussion of outstanding  
537 issues and to explore how they may be resolved. These **LUPC** meetings are  
538 consultative in nature and are not part of the public hearing.

539  
540 **5.5 Applicant Offers:** Prior to the close of the record, the **Applicant** may submit to the  
541 Commission offers in writing which (a) memorialize offers made orally during the  
542 public hearing, (b) constitute new offers or mitigation commitments which it wishes  
543 the Commission to consider, or (c) reflect changes to the project made during the  
544 proceedings (either in writing or orally).

545  
546 **5.6 Closure of the Record and the Public Hearing:** The **Hearing Officer** will close the  
547 public hearing on determining that the **Applicant** has had a reasonable opportunity to  
548 present the proposed project, and that local officials and the public have been given a  
549 reasonable opportunity to provide written and oral testimony on the project.

550  
551 **a. Leaving the Record Open:** After closing the public hearing, the **Hearing Officer** in  
552 their discretion may leave the written record open to receive additional written  
553 testimony and/or documentation. The **Hearing Officer** will announce the date  
554 and time of the closure of the written record before the close of the last public  
555 hearing. The **Hearing Officer** may specify the issue(s) on which additional  
556 materials may be submitted.

557  
558 **b. Reopening the Record:** After the written record has closed, the Commission may  
559 vote to reopen the written record to a date and time certain to enable the  
560 **Applicant** to submit additional written testimony and/or documentation. The  
561 **Hearing Officer** may specify the issue(s) on which additional materials may be  
562 submitted.

563  
564 **c. Reopening the Public Hearing:** If substantive, new written information has been  
565 submitted during the time that the written record remains open (or reopened),  
566 the **Hearing Officer** in their discretion and after consultation with the Commission  
567 Chair, may reopen the public hearing to ensure that the public has adequate

568 opportunity to address the new information. Notice in accordance with section  
569 5.3.a must be given of any reopened public hearing. Oral testimony at any such  
570 reopened public hearing will generally be limited to the issues raised in the new  
571 information.  
572

573 **5.7 Post-Public Hearing Procedures**

- 574
- 575 a. **Preparation of an LUPC Report:** Subsequent to the close of the public hearing, the  
576 **LUPC** typically will hold one or more meetings for the purpose of preparing a  
577 report, including a preliminary list of possible conditions, a review and assessment  
578 of the offers made by the **Applicant**, and a preliminary review and analysis of the  
579 proposed project's benefits and detriments. The **LUPC** may by majority vote  
580 agree on a recommendation to the Commission as to whether the **DRI** should be  
581 approved, approved with conditions, or denied.  
582
- 583 b. **Proceeding Directly to Deliberation:** After the close of the public hearing and the  
584 written record, the Commission may vote to proceed directly to deliberation and  
585 decision rather than holding a post-public hearing **LUPC** meeting(s).  
586

587

588 **6. COMMISSION DELIBERATION AND DECISION**

- 589
- 590 **6.1 Commission Decision Time Limits:** The Commission shall vote on a **DRI** within 60 days  
591 of the close of the public hearing (or if the hearing is closed and then reopened, 60  
592 days from the date the resumed hearing is closed). This time limit may be waived  
593 with the **Applicant's** agreement.  
594
- 595 **6.2 Role of Commission Chair:** The Commission Chair or Vice-Chair shall preside over the  
596 deliberation and decision.  
597
- 598 **6.3 Presentation of LUPC Report:** At a Commission meeting subsequent to the post-  
599 public hearing **LUPC** meeting, the **LUPC** Chair will submit for the Commission's  
600 consideration its report and recommendation, if any. (See section 5.7.)  
601
- 602 **6.4 Deliberation:** Prior to or during deliberation, the Commission shall determine  
603 whether to accept any offers made by the **Applicant** and agree on conditions of  
604 approval, if any. In considering a motion to approve, approve with conditions, or deny  
605 the **DRI**, the Commission shall deliberate, weighing the benefits and detriments  
606 according to the **Act**, in light of the entire record. Notice of a Commission  
607 deliberation will be given as with any public meeting of the Commission. Neither the  
608 **Applicant** nor any member of the public will be permitted to participate in the  
609 deliberation unless the Commission requires clarification of a matter under  
610 consideration in the deliberation and the Commission Chair recognizes the individual.  
611
- 612 **6.5 Conditions of an Approval:** The Commission may make any **DRI** approval subject to  
613 conditions. The conditions may be proposed or amended by any Commissioner.

614 Votes on any proposed condition(s) may be taken individually or as a group at the  
615 discretion of the Commission Chair. Approved conditions are part of the decision.  
616

617 **6.6 Voting on a Decision:** The Commission Chair, on determining that a motion has been  
618 discussed sufficiently, shall call for a vote to approve, approve with conditions, or  
619 deny the **DRI**. The vote shall be by roll-call voice vote and otherwise in accordance  
620 with section 8.1. At any time during deliberation and prior to a vote on the motion,  
621 the Commission Chair may call for a “straw vote” to poll the sense of the  
622 Commissioners. The Commission Chair may use the results of the straw vote to  
623 structure deliberation. The Commission Chair shall endeavor to conclude the  
624 deliberation and call for a vote during the same meeting session. If that is not  
625 possible, another meeting of the Commission shall be called as soon as practicable.  
626

627 **6.7 Reconsideration:** The reconsideration of a DRI decision vote may only be made under  
628 the following circumstances:  
629 a. The motion to reconsider is made at the same meeting and with the same  
630 Commissioners present as participated in the DRI decision vote; and  
631 b. The motion to reconsider is made by a Commissioner who voted in the majority  
632 on the original DRI decision vote. Any other Commissioner who voted on the DRI  
633 decision may second the motion.

634 If a motion to reconsider passes, the prior Commission decision is set aside. The  
635 Commission will deliberate anew on the DRI, and the decision-making process set out  
636 in sections 6.2, 6.4, 6.5 and 6.6 of these Procedures applies to the re-vote. To the  
637 extent practicable, the re-vote shall be held at the same meeting and with the same  
638 Commissioners present as participated in the original decision vote. If it is not  
639 practicable, then prior to adjourning or continuing the meeting at which the  
640 reconsideration was voted, a date shall be set for a re-vote within 14 days that  
641 maximizes the availability of Commissioners that voted in the majority on the original  
642 DRI decision vote. A special meeting may be scheduled for that purpose.  
643

644 **6.8 Written Decision:** Following the vote on the decision, at a subsequent meeting of the  
645 Commission, MVC staff shall present to the Commission a draft of the written decision prepared  
646 in accordance with the vote and matters raised in deliberation. The Commission will review the  
647 draft, during which time modifications may be made for the purpose of ensuring that the written  
648 decision accurately reflects the Commission’s deliberation and decision. No condition may be  
649 introduced that was not approved during the deliberation. Only members who voted on the  
650 original decision are eligible to participate and vote on the written decision. There must be at  
651 least 9 such members (a Commission quorum) participating. Approval of a written decision is by  
652 majority vote. No decision is final until the written decision is approved by this Commission vote,  
653 and signed by the Commission Chair.  
654

655 **6.9 Decision Distribution and Recording:** The MVC shall send a copy of its decision to the **Applicant**  
656 by certified mail and shall file a copy with the referring agency and the Town Clerk of the Town in  
657 which the **DRI** is located. The MVC will also cause the decision to be recorded in the Dukes  
658 County Registry of Deeds.  
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660 **6.10 Special Provisions Applicable to Modifications**

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- 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**.

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

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711  
712 **7. OTHER ACTIONS RELATED TO DRIs**

713  
714 **7.1 Withdrawal of DRI Application:** The **Applicant** may request, in writing, the withdrawal  
715 of a **DRI Application** any time prior to the commencement of the Commission's  
716 deliberation. If the Commission accepts a withdrawal, the **DRI Application** will be  
717 deemed never to have been filed. The **Applicant** may not re-file a **DRI Application** for  
718 substantially the same project until after 2 years from the date of the withdrawal. The  
719 MVC shall advise the referring **Municipal Authority** of the withdrawal. The Commission  
720 may waive or reduce the 2-year requirement.

721  
722 **7.2 Re-filing of a Denied DRI Application:** A **DRI** that has been denied may not be re-filed  
723 before 2 years after the recording of the decision. The Commission may waive or  
724 reduce this requirement.

725  
726 **7.3 Validity of DRI Approval and Extension of a DRI Decision:** A **DRI** approval is valid for 2  
727 years from the date it is recorded. If no material work has been done at the project  
728 site, the **DRI** approval expires and there will be no valid approval to proceed with any  
729 work at the site. The **Applicant** may file a request for **Modification** to extend the 2-  
730 year time limit. The Commission may approve any such request retroactively. **DRI**  
731 policies in effect when the request for **Modification** was filed apply to the request,  
732 and any approval may be subject to conditions consistent with those policies.

733  
734 **7.4 Surrender of an Approved DRI:** The Commission may approve a request by an  
735 Applicant to surrender a **DRI** and may hold a public hearing on the request in its  
736 discretion. Any approval may be subject to conditions (eg if material construction has  
737 commenced at the project site). If the Commission accepts a surrender, the **DRI**  
738 decision will have no further effect and will be deemed never to have been issued.  
739 This decision will be recorded in the same manner as the original **DRI** decision.

740  
741  
742 **8. GENERAL PROVISIONS – THE COMMISSION<sup>1</sup>**

743  
744 **8.1 Quorum and Voting**

745  
746 a. **Quorum and Membership:** Nine (9) Commissioners constitute a quorum for a  
747 meeting or public hearing of the Commission. When opening a public hearing at  
748 which testimony is taken, the quorum must include at least 1 Commissioner who  
749 is a resident of the Town in which the DRI is proposed.

750  

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<sup>1</sup> **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.

751 b. **Voting:** Subject to the Bylaws, any vote to approve or deny a DRI (including a vote  
752 on a **Modification**) and any other matter that the presiding officer deems  
753 “significant” requires a simple majority and shall be by roll-call voice vote. All  
754 votes of lesser importance may be by a show of hands or yea/nay.  
755

## 8.2 **Eligibility**

- 756 a. **Conflict of Interest:** Commissioners shall comply with Chapter 268A, Conduct of  
757 Public Officials and Employees.  
758  
759  
760 b. **Absence from a Public Hearing:** Except as specified in the Bylaws, Commissioners  
761 who miss a session of a public hearing where any substantive testimony is given  
762 are not eligible to participate in further public hearings or deliberation, or to vote  
763 on the **DRI**. Absence at a meeting where a public hearing is continued  
764 administratively without any testimony or discussion does not disqualify a  
765 Commissioner from further participation.  
766  
767 c. **Absence from Deliberation:** Commissioners who miss any part of the deliberation  
768 of the Commission are not eligible to participate in any further deliberation on the  
769 **DRI**.  
770  
771 d. **Disqualified Commissioners:** Commissioners who are disqualified or who recuse  
772 themselves for any reason or who are not otherwise eligible to participate should  
773 not be seated with the other Commissioners at any meeting or public hearings on  
774 the proposed project.  
775  
776

777 **8.3 Public Hearings and Meetings of the Commission:** Both public hearings and meetings  
778 of the Commission are open to the public, and members of the public and Town  
779 officials are welcome to attend both. At Commission public hearings, the public may  
780 participate by testifying and/or submitting written documentation. However, at  
781 Commission meetings, the public is not allowed to participate as a general rule.  
782 Hearings/meeting are recorded and minutes are maintained.  
783

## 9. **GENERAL PROVISIONS – THE LUPC**

- 784  
785  
786 **9.1 Ad Hoc Committee:** The LUPC is an ad hoc subcommittee of Commissioners and is  
787 advisory in nature. The Commission Chair appoints the **LUPC** Chair.  
788  
789 **9.2 Principal Responsibilities:** The principal roles of the **LUPC** are to meet with an  
790 **Applicant** before formal proceedings are commenced to ensure that they are  
791 prepared for a public hearing and to review and preliminarily assess the benefits and  
792 detriments of a **DRI** after the public hearing and before Commission deliberation.  
793 Additional roles and responsibilities of the **LUPC** are set out elsewhere in these  
794 Procedures.  
795  
796 **9.3 Membership:** Commissioners are not appointed to the **LUPC**. Other than the **LUPC**  
797 Chair, the **LUPC** has no fixed membership. Participation is open to all Commissioners,

798 and they may participate as and when they choose. Accordingly, Commissioner  
799 participation in **LUPC** meetings may change from time to time and from **DRI** to **DRI**.  
800 It is preferable that Commissioners participating in an **LUPC** meeting continue to  
801 participate in any continuation of that meeting.

802  
803 **9.4** **Eligibility and Participation**: Commissioners who are disqualified or who recuse  
804 themselves for any reason or who are not eligible to participate in a given **DRI**  
805 proceeding may not participate in meetings of the LUPC.

806  
807 **9.5** **Quorum**: There is no quorum for a meeting of the **LUPC**. However, the number of  
808 Commissioners at any **LUPC** meeting is limited to less than a quorum of the  
809 Commission. If the number of Commissioners participating must be limited to avoid  
810 a quorum, the **LUPC** Chair may appoint Commissioners to participate among those  
811 expressing an interest, provided that Commissioners representing the Town in which  
812 the **DRI** is located will have preference. If **LUPC** consideration of a **DRI** under section  
813 5.7 continues beyond one session, the **LUPC** Chair may consider the importance of  
814 continuity of participation. Commissioners not participating in any **LUPC** meeting  
815 may nevertheless observe the proceedings.

816  
817 **9.6** **Voting**: Any vote taken by the **LUPC** shall require a simple majority to pass.

818  
819 **9.7** **Postponement of Meeting**: The **LUPC** Chair may postpone a meeting on determining  
820 that too few Commissioners are present to fulfill the purposes of the meeting.

821  
822 **9.8** **Open to the Public**: Meetings of the **LUPC** are open to the public.

## 823 824 825 **10. EFFECT OF DRI REVIEW ON MUNICIPAL AUTHORITY AND REVIEW**

826  
827 **10.1** **Town Review Schedule**: Statutory or regulatory time limits and those established by  
828 regulation or bylaw applicable to **Municipal Authority** review of an application for a  
829 **Development Permit** (eg building permits, subdivision approvals, variances, decisions,  
830 etc.) are tolled by the referral of the proposed project to the Commission. This means  
831 that the time limits are suspended while the matter is before the Commission, from  
832 the time when the proposed project is referred and until the day that the Town Clerk  
833 receives notice of either the Commission decision after review of the **DRI**, or of the  
834 Commission's decision not to concur with a **Concurrence Referral**, or of the  
835 Commission's decision not to accept a **Discretionary Referral**. The day that the  
836 referral is mailed to the Commission and the day that the Town Clerk receives notice  
837 of the Commission's decision shall not be included when calculating time limits  
838 applicable to **Municipal Authorities**.

839  
840 From the date of a referral of an application for a **Development Permit** by a  
841 **Municipal Authority** to the Commission, or in the case of a **Discretionary Referral** or  
842 **Mandatory Referral**, from the time that the Commission designates a proposed  
843 project as a **DRI** until receipt of notice as above, the applicable permit granting  
844 **Municipal Authority** shall not grant or deny the **Development Permit**. It may,

845 however, discuss the proposal with the **Applicant** and hold a public hearing, provided  
846 that no decisions are made.

847  
848 **10.2 Local Participation in MVC Review:** Local officials are encouraged to attend **LUPC**  
849 meetings and to attend and participate in any DRI public hearing. Local officials are  
850 encouraged to comment on issues related to a **DRI Application** including how it  
851 relates to board and town regulations, policies, and guidelines, how the town board  
852 has dealt with similar applications in the past, and any concerns that they would like  
853 the Commission to consider.

854  
855 **10.3 Recommencing Local Review:** After the Commission issues its decision, the applicable  
856 **Municipal Authority** may then grant or deny the **Development Permit**. The  
857 **Municipal Authority** may not approve an application for a **Development Permit** in  
858 respect of which a proposed project has been denied by the Commission, nor may it  
859 rescind or alter conditions imposed upon a project by the Commission. The **Municipal**  
860 **Authority** may, acting within its own jurisdictional authority, impose additional  
861 conditions upon a project, or may deny an application for a **Development Permit** that  
862 has been approved by the Commission.

863  
864 **10.4 Post-Decision Review with Local Permitting Authorities:** After a written decision, the  
865 MVC staff will meet with the Town officials responsible for issuing building permits,  
866 certificates of occupancy, or other permits or certificates to identify any required  
867 **Certificates of Compliance** to be obtained from the Commission or the **LUPC**. (See  
868 section 6.10.c.) The local Town officials may not grant any permits or certificates until  
869 the **Applicant** receives the applicable **Certificate of Compliance** from the Commission.  
870 The Commission and its agents may enter and inspect the property that is the subject  
871 of a DRI approval at reasonable times and with reasonable notice to determine  
872 compliance with the **DRI** approval. If no certificate of occupancy is required under  
873 local regulations, the **Applicant** shall not use and/or occupy the project until the  
874 Commission issues all needed **Certificates of Compliance**.

875  
876 **11. AMENDMENTS TO DRI PROCEDURES**

877  
878 These Procedures may be adopted, amended, or rescinded at any Commission  
879 meeting, provided that notice of the meeting (including the text of any proposed  
880 amendment) has been sent to all Commissioners at least 10 days prior to the meeting.  
881 If an amendment is proposed during a meeting, a vote on the amendment may not  
882 take place until a duly noticed subsequent meeting.

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886 VOTED BY THE MARTHA'S VINEYARD COMMISSION

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888 \_\_\_\_\_  
889 Date

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Chairman

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