

DRI Checklist

Standards & Criteria for the referral of projects for possible review by the Martha's Vineyard Commission as Developments of Regional Impact pursuant to the Martha's Vineyard Commission Act (Chapter 831) Section 12.

AS VOTED BY THE MARTHA'S VINEYARD COMMISSION: 12/21/76
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1.0 PREAMBLE

As mandated by the Martha's Vineyard Commission Act (Chapter 831, as Amended, of the Acts of the 1977 Constitution of the Commonwealth of Massachusetts), these Standards and Criteria will be used to designate Developments of Regional Impact to be processed by the Commission in order to preserve and conserve the unique natural, historical, ecological, scientific, cultural and other special values possessed by Martha's Vineyard and to contribute to the maintenance of the Island's economy and property values. (Martha's Vineyard Commission Act, Section 7)

Based on the mandates of the Martha's Vineyard Commission Act, the purposes of the Martha's Vineyard Commission, and the Applicant's submitted plans, the Commission will be weighing the proposal's probable benefits against the probable detriments pursuant to Sections 14 and 15 of the MVC Act.

The Administrative Standards and Criteria Checklist must be completed by a Town official for the person requesting any permit, approval, authority or permission from Town authorities for development or development permits as defined further in this Checklist. If the referring board or official is uncertain about whether or not to refer a project, contact the Executive Director for assistance. Such regional impact permit requests, plus all permit applications, plans, documents and other related materials supplied by the

applicant, must be forwarded to the Martha's Vineyard Commission, via certified mail, for review and action PRIOR to any local decision on the development request.

There are four types of DRI referral.

- A. Mandatory Referral: The application must be referred to the Commission and the Commission must review it.
- B. Mandatory Referral Requiring Concurrence: The application must be referred to the Commission but the Commission may or may not concur with the referral.
- C. Modifications to A Previously Approved DRI: Similar to the Mandatory Referral Requiring Concurrence, any substantial change to a previously approved DRI must be referred to the Commission. The Commission will then decide whether the proposed change is substantial enough to require another Public Hearing. If the Commission decides that the change is not substantial enough to require a public hearing, based on specific plans, then the Commission will remand the referral back to the Town.
- D. Discretionary Referral: (also called an *In-Town, Out-of-Town or Island-Wide Referral*) Any municipal agency in the town where the development is located, the board of selectmen of another town, or the Dukes County Commissioners may ask the Commission to review any project that it considers might have significant regional impact. The Commission may or may not concur with the referral.

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

After review, public hearing, consideration, deliberation on the benefits and detriments, and decision, the Martha's Vineyard Commission will indicate, by Written Decision, to local authorities that:

1. The Commission has approved the application, or
2. The Commission has approved the application with conditions, or
3. The Commission has denied the application.

If the Commission has approved the application the local authorities may continue the local permitting process, including approvals with no additional conditions, approvals with additional conditions or denial of the application.

The following related documents are also available from the Commission Offices or on the website (www.mvcommission.org):

- the Martha's Vineyard Commission Act,
- the DRI Process,
- Making a DRI Application.

2.0 DEFINITIONS

The following definitions shall be used in conjunction with the Checklist:

- 2.10 Area of Use: Includes facilities associated with or land devoted to the primary use(s) of the facility, or primary development and/or facilities associated with and land areas used for accessory uses customary and incidental to the primary use.
- 2.11 Auxiliary Building: A building giving support, helping, aiding, assisting, subsidiary, incidental or additional to an existing building.
- 2.12 Change of Use: A change of use from one use category to another use category, such as a change from residential to commercial; wholesale to retail; commercial to industrial; semi-public/municipal to any other category; retail to food service; sit-down restaurant to take-out or fast food restaurant; or addition of take-out to a sit-down restaurant. Note: A change in ownership does not necessarily mean a change in use. However, if a change in ownership entails an increase in the intensity of use (see definition below) or a change in the type of use, or if it triggers any item on this checklist, then the project should be referred to the Commission. If the referring board or official is uncertain about whether or not to refer a change in ownership or a change in use, call the Executive Director for assistance.
- 2.13 Clearing: Cutting of trees or other removal of vegetation of more than 1 acre or more than 10% of a property.
- 2.14 Concurrence: A vote by the Martha's Vineyard Commission that determines that a project application referred to the Commission as a *Mandatory Referral With Concurrence* or as a *Discretionary Referral* has a regional impact and will be reviewed by the Martha's Vineyard Commission as a Development of Regional Impact.
- 2.15 Contiguous Ownership: Any group of two or more parcels in related ownership whereby any parcel in the group shares, for any distance, a common boundary line with at least one other such parcel. Lots in contiguous ownership may be located wholly within one Town, may cross Town boundaries or may cross zoning district boundaries.
- 2.16 Demolition: The removal or dismantling of existing construction, in whole or in part, with or without the intent to replace the construction so affected. (*From State Building Code, 7th Edition, 780 CMR 9302*)
- 2.17 Development:
- Any building, mining, dredging, filling, excavation or drilling operation (excluding single-user wells); or
 - Any material change in the use or appearance of any structure or in the land itself; or
 - The dividing of land into lots or parcels; or
 - A change in the intensity of a use of land such as an increase in the number of dwelling units in a structure; or
 - Alteration of a shore, beach, seacoast, river, stream, lake, pond or canal, including coastal construction; or
 - Demolition of a structure; or
 - The clearing of land as an adjunct of construction; or
 - The deposit of refuse, solid or liquid water, or fill on a parcel of land.

- 2.18 Development Permit: Any permit, license, authority, endorsement or permission required from a municipal agency prior to the commencement of construction, improvement or alteration made to buildings or land.
- 2.19 Division of Land: The act of subdividing or separating a parcel of real estate into more lots (including *Approval Not Required (ANR) Proposals*).
- 2.20 Farmland: Land used for the growing of crops, pastureland, nurseries, cut-flower operations and the commercial growing and sale of trees.
- 2.21 Fast Food: Food intended for consumption on-site or take-out which has been totally or partially prepared, normally resulting in a time lapse of less than ten minutes between the order-taking and the delivery of the food
- 2.22 Floor Area: The total area of a building measured by taking the outside dimensions of the building at each floor level intended for occupancy. Basement or attic space used in connection with a principal or accessory use shall be counted in the calculation of floor area unless such space is used exclusively for Passive Storage or has a ceiling height of less than 54 inches. Note that in calculating floor area with respect to thresholds of new floor space, this definition shall apply to the gross new floor space without giving credit to pre-existing square footage that has been demolished or removed.
- 2.19 Increase In Intensity Of Use: Any anticipated increase in any one of the following: a.) Vehicle and/or pedestrian traffic; b) parking requirements c) lot coverage percentage; d) products or services offered; e) hours of operation; f) water usage; g) wastewater flow; h) energy use; i) marine traffic.
- 2.20 Municipal Land Regulatory Agency: Any municipal agency, board, commission, department office, or official that has statutory authority to approve or grant a development permit.
- 2.21 Nitrogen-Sensitive Watershed: The land area which drains into a nitrogen-sensitive pond as defined by the Martha's Vineyard Commission.
- 2.21 Outdoor Commercial Space: The total outdoor area used for the display, delivery, loading, storage, processing, production, sales, leasing of material(s) and commercial parking lots, exclusive of access roads and structures (Floor Area).
- 2.22 Person: An individual, corporation, governmental agency, business trust, estate, trust, partnership, association, two or more persons having a joint interest or common interest, or any legal entity.
- 2.23 Place Of Assembly: As defined in 780 CMR State Building Code, a room or space accommodating fifty (50) or more individuals for religious, recreational, social, educational, political or amusement purposes, or for the consumption of food and drink, including all connected rooms or space with a common means of egress or entrance.
- 2.24 Related Ownership: A family or economic relationship among owners of land or facilities indicating premises that are under unitary or joint control, or are being developed for shared economic benefit.
- 2.25 Storage – Active (non-exempt): Any storage other than passive storage. For example, this could include commercial storage spaces for rent; storage facilities for equipment other than in basements or attics, stock rooms, outdoor storage of equipment, storage in vehicles or trailers for more than

30 days. (This type of storage may contribute directly or indirectly to traffic, parking, septage, visual, or other impacts commonly associated with commercial use.)

- 2.26 Storage – Passive (exempt): Any storage of supplies, equipment, materials or goods not actively used in connection with the principal or accessory use, such as out-of-season goods not currently offered to the public for sale.
- 2.27 Substantial Change: A change to an approved plan that would alter the characteristics (such as scale, massing, footprint, appearance, materials, impact on abutters and streetscape, occupancy, use, etc...) of a project to a degree that would require re-investigation to prove and insure compliance.
- 2.28 Topographic Alteration of the Land: The clearing, cutting, digging, drilling, or other activity on the land that results in a perceptible change to the landscape and/or threatens archaeological resources or natural habitat.
- 2.29 Unit: A residential, commercial, industrial, or other interior space owned or rented, as a separate entity on its own.

3.0 DEVELOPMENTS PRESUMED TO BE DEVELOPMENTS OF REGIONAL IMPACT

3.1 Discretionary, Modifications, and Miscellaneous Referrals

3.101 Discretionary Referrals: Any development – with the concurrence of the Martha’s Vineyard Commission – which does not otherwise qualify under the Standards and Criteria but is one which the Martha’s Vineyard Commission has been requested to designate as a Development of Regional Impact by:

- a) A municipal agency in the Town in which the development is proposed [In-Town Referrals];
or
- b) The Board of Selectmen in any Town on Martha’s Vineyard [Between-Town Referrals]; or
- c) The Dukes County Commissioners [Island-Wide Referrals]; as set forth in Section 14(e) of Chapter 831, as Amended. (See Attachment A for guidelines on such referrals.)

3.102 Previous DRIs: Any development – with the concurrence of the Martha’s Vineyard Commission – which is on property which has been, in part or in whole, the subject of a previously approved DRI application and is an amendment or modification to a previously approved DRI Application; (“once a DRI always a DRI”). This does not apply to properties for which a previous DRI Application has been denied, or withdrawn, or for which a previous DRI Approval has expired without implementation.

3.103 DCPC: Within any District of Critical Planning Concern, any development which the Martha’s Vineyard Commission has specifically classified as being of regional impact within the Guidelines approved for that DCPC.

3.104a Demolition of Historic Structures: The demolition or exterior alteration of any structure which has been identified as having historic significance by a local historic commission or architectural commission, by a general plan of the Town, by the Massachusetts Historical Commission, or is listed with the National or Massachusetts Registers of Historic Places,

exclusive of structures located within established historic districts or which are already protected by local historical or architectural commission review, as well as buildings located in the Martha's Vineyard Camp Meeting Association.

- 3.104b Archeology:** Any development which proposes the division or subdivision of land or the clearing or topographical alteration of land that is identified by any state or federal or local agency as being of archaeological significance – with the concurrence of the Martha's Vineyard Commission.
- 3.104c Habitat:** Any development which proposes the division or subdivision of land or the clearing or topographical alteration of land that is identified by any state or federal or local agency as being of wildlife habitat significance – with the concurrence of the Martha's Vineyard Commission.
- 3.105 Coastal DCPC:** Any development within the Coastal District of Critical Planning Concern that:
- a) results in a new or the expansion of an existing road, bridge or driveway which provides direct public vehicular access to the coast, a great pond or to a beach; or
 - b) results in a hard-surfaced road, parking lot or walkway with an impervious surface, as defined by local Town bylaws; or
 - c) results in a parking lot for more than five (5) vehicles; or
 - d) results in development on Nomans Land Island.
- 3.108 County and Town Acquisition Priorities, Plans, or Programs:** Any development located on lands that are listed in the acquisition priorities or long-term goals of the County or of any Town's plans and programs – with the concurrence of the Martha's Vineyard Commission.

3.2 Division or Subdivision of Land

- 3.201 Division in a Business, Commercial, or Light Industrial Zone:** Any development which proposes to divide land which is located in a business, commercial or light industrial zoning district – with the concurrence of the Martha's Vineyard Commission.
- 3.202 Division of Ten or More Lots:** Any development which proposes to divide a contiguous or related ownership of land into ten (10) or more lots or parcels.
- 3.203 Division of Current, Former, or Potential Farmland:** Any development that proposes to divide a contiguous or related ownership of land of five (5) acres or more which is:
- a) Currently active farmland, or
 - b) Land that has actively been worked as farmland at any time since January 1, 1974; or
 - c) Identified as prime agricultural soils by the Soil Conservation Service; and which does not propose to protect, in perpetuity by irrevocable covenant or deed restriction, said agricultural lands from development which would interfere with future agricultural use of the site.
- 3.204 Division of Ten or More Acres:** Any development that proposes to divide a contiguous or related ownership of land of ten (10) acres or more:
- a) and which was the result of an earlier division since January 1, 1974; or
 - b) into three (3) or more lots not irrevocably prohibited from further subdivision.

3.205 **Division of Thirty or More Acres:** Any development which proposes to divide a contiguous or related ownership of land of thirty (30) acres or more, except when divided into less than six (6) parcels that are irrevocably prohibited from further division.

3.3 Development of Commercial, Business, and Industrial Land

3.301 **Commercial, Storage, Office, Industrial:** Any development of commercial, active storage, office and/or industrial lands or building(s), or any private educational facility that has one or more of the following:

- a) New construction totaling 2,000 square feet or more of commercial floor area in one or more buildings; or
- b) New construction of mixed-use totaling 2,000 square feet or more of mixed-use (commercial and residential) floor area in one or more buildings – with the concurrence of the Martha's Vineyard Commission. In a mixed-use development, residential space shall be excluded from the area calculation provided the residential space is permanently restricted to remain as residential and excludes short-term rentals of less than two months.
- c) New construction of addition(s) or auxiliary building(s) totaling 1,000 square feet or more of floor area, such square footage resulting in a total square footage of 2,000 feet or more – with the concurrence of the Martha's Vineyard Commission; or
- d) Outdoor commercial space of 6,000 square feet or more, including commercial polyhouse structures; traditional farming activities and outside plant stock are excluded – with the concurrence of the Martha's Vineyard Commission; or
- e) Any combination of new outdoor commercial space and new construction totaling 1,000 square or more resulting in a square footage of 2,000 square feet or more – with the concurrence of the Martha's Vineyard Commission; or
- f) Any change of use of part or all of the building (including conversion of basements, storage space or other exempt floor space to active floor space) – with the concurrence of the Martha's Vineyard Commission; or
- g) Any increase in intensity of use – with the concurrence of the Martha's Vineyard Commission; or
- h) Commercial parking lots designed to accommodate ten (10) or more vehicles, or larger than 2,000 square feet; parking lots which are incidental to another on-site existing permitted use are excluded; or
- i) Is on a Martha's Vineyard Airport parcel outside of the Airport Business Park and contains non-airport-related facilities – with the concurrence of the Martha's Vineyard Commission (Note: Development inside the Business Park is regulated by a Development Agreement between the MVC and the Airport); or
- j) Is on the list of Very High Traffic-Generating Businesses provided as Attachment A Part 1 – with the concurrence of the Martha's Vineyard Commission.

3.302 **Subheading to come]:** Any development for a new or proposed expansion of:

- a) A vehicular refueling, recharging, or repair station; or junkyard; or
- b) A facility for the retail or wholesale commercial storage of fuel and/or for hazardous materials; or
- c) Any commercial activity which proposes to provide drive-through window service; or

- d) A public restaurant in a duly established B-1 Zoning District which is designed or proposes to accommodate fifty (50) or more seats, as permitted by the Town Board of Health – with the concurrence of the Martha’s Vineyard Commission; or
- e) Any public restaurant or food establishment outside of a B-1 Zoning District – with the concurrence of the Martha’s Vineyard Commission; or
- f) Any commercial activity or development outside the B-1 Zoning District which would require relief from Town parking regulations or which would require parking off-site – with the concurrence of the Martha’s Vineyard Commission.

3.303 Division of Land: Any development which proposes to divide land which is located in a business, commercial or light industrial zoning district – with the concurrence of the Martha's Vineyard Commission.

3.4 Other Developments

3.401 Multiple Units: Any development, including the expansion of an existing development, which proposes to create or accommodate:

- a) ten (10) or more dwelling units including guest houses; or
- b) ten (10) or more rooms for lease or rent; or
- c) four (4) or more business, office and/or industrial premises; or
- d) four (4) or more units which mix residential with business, office or industrial uses.

Note: Under section 3.401, “accommodate” refers to a project becoming a DRI, either by building a project larger than the threshold (e.g. a 12-room hotel) or by expanding an existing development beyond the threshold (e.g. adding 4 rooms to an 8-room hotel). However, it does not apply to a property that is already a DRI (e.g. adding 5 rooms to a 20-room hotel previously approved as a DRI. (Note that, in the latter case, the project will be referred to the Commission under section 3.102a, “Once a DRI, always a DRI” which is a concurrence item.)

3.402 Demolition in a Commercial District: Any development in a commercial district that proposes the demolition of an existing structure or structures that has/have an existing total cumulative square footage of 2,000 square feet or more, with the exception of those buildings that have been condemned by the town’s building inspector as unsafe – with the concurrence of the Martha's Vineyard Commission.

3.5 Developments in Harbors, Great Ponds, Ponds or Oceans

3.501 Development in the Water: Any development - such as new mooring basins, fill, construction of piers, armoring of coast, dredging, - that is proposed within the waters of Martha's Vineyard, namely:

- a) Edgartown, Vineyard Haven, Menemsha or Oak Bluffs harbors or the West Basin in Aquinnah; or
- b) A body of water of ten (10) acres or more; or
- c) The ocean within three miles of shore.

Exemptions from item 3.501 are:

- 1) Individually owned, private non-public piers that are not located on a barrier beach that has been designated either by a state or federal agency; and

- 2) Municipal dredging projects located entirely within a single Town and conducted in accordance with a dredging management plan that has been duly adopted by the relevant Town agency.

3.502a Commercial Piers: Any development which entails a change in use or intensity of use of a commercial pier – with the concurrence of the Martha's Vineyard Commission.

3.502b Other Commercial Development: Any commercial development that proposes the creation of:

- a) New commercial facilities related to the use of a pier; or
- b) The expansion of existing commercial facilities related to the use of a pier; or
- c) A change of use or a change in the intensity of use related to the use of a pier; and which is located on the landward portion of the property on which the pier is located.

3.6 Private and Public Facilities and Places of Assembly

3.601 Private Facilities: Any private development which proposes the creation or expansion of a social, health, recreational, religious or educational place of assembly with the capacity to accommodate more than 50 individuals (as defined by the State Building Code).

3.602 Public Facilities: A governmental or other publicly owned or quasi-publicly owned facility of 2,000 square feet or more and which is designed to serve the residents of more than one town.

3.7 Transportation Facilities

3.701 New or Expanded Facilities: Any development which proposes new construction or the expansion of existing facilities which:

- a) Will provide for transportation to or from the Island of Martha's Vineyard; or
- b) Will be or currently exists as part of an internal regional transportation system for the Island.

For the purposes of Item 3.701, the term "development" shall refer to facilities for commercial and public transportation by air, land and water, and shall include, but not be limited to, runways, terminals, ticket offices, docks, roadways, parking facilities, routes and bridges.

3.8 Communications Facilities and Towers

3.801 Telecommunications: Any development that proposes the construction or erection of any personal telecommunications tower as set forth in the Federal Telecommunications Act of 1996 and which would exceed thirty-five (35) feet in height as measured from the natural grade of the site upon which the tower is to be located, but not to include the reconstruction of or replacement of an existing tower on the same site, provided that the height of the replacement or reconstruction does not exceed the height of the existing wireless telecommunications tower.

3.802 Other Facilities or Towers: Any tower, wind turbine, or structure over 50 feet in height located within a District of Critical Planning Concern or over 100 feet in height in other areas – with the concurrence of the Martha's Vineyard Commission. However, this limit shall be 200

feet in height in a Town that has adopted a Wind Turbine and Tower Plan that has been approved by the Martha's Vineyard Commission.

ATTACHMENT A: REGIONAL TRAFFIC IMPACT

Part I - Very High Traffic Generating Uses – Mandatory Referral – Section 3.301j

Uses that generate more than 150 trips per day per 1000 square feet (based on the rates issued by the Martha's Vineyard Commission or, if unavailable, by the Institute of Transportation Engineers), such as Bank, Convenience Market, Fast Food or Take-Out Restaurant, Service Station, State DMV Office, Video Rental Store.

Part II – High Other Traffic Generating Uses – Possible Discretionary Referral – Section 3.101

In identifying whether a proposal might have a regional traffic impact and should be referred to the MVC for possible review as a Development of Regional Impact, consideration should be given to the following factors.

- Whether the proposal is a High Traffic-Generating Use ((based on the rates issued by the Martha's Vineyard Commission or, if unavailable, by the Institute of Transportation Engineers), Namely uses that will generate between 75 and 149 trips per day per 1000 square feet, such as Daycare, Discount Store, Movie Theater, Post Office, Sit-Down Restaurant, Supermarket).
- Existing traffic conditions, including whether the project is located in on or close to roads or intersections which have been identified in the Martha's Vineyard Regional Transportation Plan as having significant traffic problems. These include, but are not limited to:
 - Edgartown: Upper Main Street, Main Street and intersecting streets, the Triangle;
 - Oak Bluffs: Beach Road, Circuit Avenue, SSA ferry area;
 - Tisbury: Upper State Road, Beach Street, Main Street and intersecting streets, Water Street and SSA ferry area, Five Corners,
- Whether the total expected number of additional trips from the proposal (based on the Institute of Traffic Engineers (ITE) Manual or local traffic-generation information) is anticipated to increase traffic on a road or intersection by more than 10% or 200 trips per day, especially if it has been identified as having significant traffic problems.

The MVC Traffic Planner should be consulted to help perform these calculations.

ATTACHMENT B: POSSIBLE FACTORS WARRANTING DISCRETIONARY DRI REFERRAL

The following questions may be used by local boards and agents in determining whether development proposals might warrant referral as a Discretionary DRI Referral (Checklist item 3.101). They should not be construed as a "required" checklist, or as an exhaustive list of factors that might warrant a referral of a development proposal.

Water Resources

- a) Will there be a serious increase in nitrogen loading (or other contaminants) from the proposed project, especially within a nitrogen-sensitive watershed?
- b) Will the project cause or increase any stormwater discharges into wetlands or water bodies?
- c) Will the project interfere with any existing public access to the shoreline?
- d) Will the project displace any water-dependent use?
- e) Will the project enlarge or intensify a use in a FEMA flood zone or have any adverse impact on a barrier beach or coastal dune?
- f) Will the project create any disturbance or alteration of a wetland or vernal pool or their buffer zones?

Transportation

- g) Will the project generate more traffic or require more parking facilities than the previous use? (see Attachment B)
- h) Will the project create any traffic safety problems?

Open Space and Habitat

- i) Will the project disturb the habitat of any rare or endangered plant or wildlife?
- j) Will the project reduce the amount of open space on the site to below 40 percent?
- k) Will the project disturb or disrupt open space on or abutting the site?

Sustainability

- l) Will the project discharge noise, odors or other noxious emissions?
- m) Will the project use a significant amount of non-renewable energy?
- n) Will there be a serious increase in the use, storage, treatment, disposal or generation of hazardous materials or wastes?

Visual and Cultural

- o) Will the project obstruct significant viewsheds or otherwise have a significant visual impact from a major Island road or downtown street, from a public body of water, or from another public open space?
- p) Will the project obstruct historic or ancient ways?

Other

- q) Are there any other factors peculiar to this project that, in the consideration of local permitting authorities, might have a regional impact?
- r) Will the project have an impact on cultural or historical resources or on neighborhoods?

The staff of the Martha's Vineyard Commission is available to help clarify the above factors with respect to specific projects and sites.