

2020 Standards and Criteria (DRI Checklist) Revision Checklist Committee Discussion of Changes Proposed

DRI Checklist Review Committee, June 2020

Introductory Comments:

Despite the fact that the world as we knew it has changed, the need to continue our statutory responsibility in reviewing the Checklist has not. As part of its statutory mandate, every two years the Martha's Vineyard Commission is required to review its Checklist of development activities that must be referred to the Commission. Since the first DRI Checklist in 1976, the document has been revised on 12 occasions previous to this effort.

This iteration seeks to address a number of concerns. First, it seeks to introduce greater clarity in the description of the review process. Accordingly, section 1 now provides a more detailed explanation of that process. Further, it also clarifies that each Checklist item requires a mandatory referral, if not the full hearing process. Accordingly, each Checklist item now specifically identifies whether it is subject to a DRI hearing and review, or an initial concurrence review to determine regional impact. Under each Checklist item, there is a specific notation – either “Mandatory Referral Requiring MVC Concurrence” or “Mandatory Referral and MVC Review”.

Finally, please note that many changes are ‘administrative’ in nature – they seek to rearrange some of the sections to improve logical sequencing, or the text has been modified again to improve clarity. In some cases, explanatory text or notes have been added. In addition, many definitions have been simplified or eliminated. Accordingly, in looking at a red-lined change from the existing checklist to this one, many changes do not seek to effect any change in meaning.

The Checklist Review Committee sought to take account of the critical ‘character’ questions facing the island – namely the aggregate impact of incremental development. For many years the Commission (and the Checklist) was focused on the review of increasingly larger projects on the assumption that only those large projects were of sufficient size and scale to have regional impact. However, with the ongoing press of development, it appears that even ‘smaller’ developments (especially in some locations) may have regional impacts. In addition, the Commission has recently revised its Housing Policy and Water Quality Management Policy, and this revision looks at our Checklist with these two vital concerns in mind. This document shows the full text of the existing and proposed changes.

Finally, note that at the last meetings of the Checklist Review Committee, we determined that if we did not have a workable procedure in place to guide our proposed section 4.2 (Large Residential Structures) by the beginning of May, we would go ahead with submitting the rest of the Checklist for approval and return to work on this section later. Given the uncertainty and loss of work in the construction community, we believe that this remains the best path forward.

Principal Substantive Changes:

Note: Text boxes describe the rational for the proposed change immediately preceding the text box.

Section 1. General Information

This section has been revised to make the DRI process clearer for town officials and applicants. Among other things, it clarifies that referral for each Checklist item is mandatory but that the process thereafter may differ depending on the specific Checklist item. Note also that, under each Checklist item, there is now a clear indication as to whether the item triggers the DRI hearing process or the Concurrence review standard (to determine regional impact).

Section 2. Division of Land not in a Business, Commercial or Industrial Zone

Section 2.2

Existing

- 2.2 Any Development which proposes to divide land in Contiguous Related Ownership into the following number of lots or Parcels:
- a) in all areas ten or more lots or parcels; and
 - b) in Rural Areas six to nine lots or Parcels.

Proposed

- 2.2 Division of Land NOT in a Business, Commercial, or Industrial Zone.
Any **Division or Subdivision of Land** that results in any of the following:
- a) 5 or more Parcels not in a rural area
 - b) 3 or more Parcels of land in a ‘rural area’ (see map B-2).

These two changes recognize that many impactful developments happen on smaller acreage as the island approaches build-out and that developments of this size may well have regional impacts particularly with regard to wastewater and housing.

Section 2.3: Existing section 2.3 exempting limited divisions of large acreage Parcels has been eliminated. (and the sections following it have been re-numbered)

By lowering the number of lots in 2.2 the committee decided to eliminate the acreage trigger in this section. As there is no longer such a trigger, the exemption is no longer relevant.

Section 2.5

Existing (section 2.6 renumbered)

- 2.5 **ANRs:** Any Form A- Approval Not Required (ANR) creating three (3) or more lots or located in the Island Road DCPC or Coastal DCPC – with MVC Concurrence

Proposed

- 2.5 **ANRs:** Any Form A - Approval Not Required (ANR):
- a. that results in 3 or more **Parcels** (including **Parcels** created within the prior 5 years by ANR or by any **Division or Subdivision of Land**); or

–Mandatory Referral Requiring MVC Concurrence

- b. located in the Island Road DCPC or Coastal DCPC.

–Mandatory Referral Requiring MVC Concurrence

This revision enables review of cumulative developments by sequential ANRs, recognizing that, while individual ANRs are not likely to create regional impact, when viewed in aggregate they might.

Section 3. Commercial Development (Note: The general threshold remains at 3,500 sq ft.)

Section 3.1: Section 3.1.a and b. have swapped positions

The swap highlights that developments from 2,500 sq ft to 3,499 sq ft are Concurrence reviews and 3,500 and above are Mandatory reviews.

Section 3.1.A This is the existing section 3.2 on mixed use with the sq ft allowance reduced from 2,000sq ft to 1,400 sq ft

Existing

3.2 Mixed Use Development

- a) New construction totaling 3,500 sq ft or more of mixed-use (commercial and residential) Floor Area in one or more buildings- with MVC Concurrence
- b) Any Development, including the expansion of an existing development that proposes to create four or more units which mix residential and business, office or industrial uses. In a mixed use Development, up to three dwelling units shall be excluded from the Floor Area calculation for non-residential use up to 2,000 sq ft provided the residential space is permanently restricted to remain a residential and rental terms are not less than six months.

Proposed

3.1.A In a mixed-use Development described in sections 3.1.a, b, c, and d, the square footage of up to **2 Dwelling Units** (but not to exceed 1,400 sq ft) will be excluded from the **Floor Area** calculation if the **Dwelling Units** are permanently restricted for residential use and the rental terms are not less than 6 months.

The current trigger exempts from review a mixed-use structure as large as 5,500 sq ft. Despite the importance of providing an incentive for residential construction, the Checklist Review Committee felt that such a large mixed-use development might have potentially significant regional impact. Accordingly, the Committee decided to propose a lower threshold by reducing the exempted residential square footage to 1,400 - space adequate for two small units.

Section 3.2 a): This section has been added for clarity.

Section 3.2 b): This section currently appears as a note at the end of section 3.1.

Section 3.2 c): This section currently appears as section 3.3. It has been revised to eliminate specification of the square footage threshold, as it is assumed that all relevant thresholds will be set out in any Commission- and Town-approved Area Development Plan.

Please note Section 3.2 from the existing Checklist regarding Mixed Use Developments has been eliminated and replaced by 3.1.A (Please see above)

Section 3.3 d): This is currently section 3.4 d)

Existing

3.4 d) A public restaurant in a B-1 zoning district that is designed for, or proposes to expand to fifty (50) or more seats, as permitted by the Town Board of Health. With MVC concurrence

Proposed

3.3 d) A restaurant or food establishment in a business or commercial zoned district that is designed for, or proposes to expand to, 80 or more indoor/outdoor seats, as permitted by the Town Board of Health
–Mandatory Referral and MVC Review

The Checklist Review Committee felt that town commercial infrastructure (parking and transportation) could support, and towns could regulate, restaurants of up to 79 seats on their own. The Committee also clarified this as “business or commercial district” as some town areas allowing restaurants are not always named B-1.

Section 3.3 e): This is currently section 3.4 e)

Existing

3.4 e) any public restaurant or food establishment outside of a B-1 zoning district -- with MVC Concurrence

Proposed

3.3 d) a restaurant or food establishment outside a business or commercial zoned district that is designed for, or proposes to expand to, 50 or more indoor/outdoor seats, as permitted by the Town Board of Health

–Mandatory Referral and MVC Review with MVC Concurrence

Currently, any restaurant outside of the B-1 has to be reviewed. This revision only requires review of restaurants of 50 or more seats. The Checklist Review Committee felt that a food establishment under 50 seats would have a limited Island wide impact.

Section 4. Residential Development

Section 4.1

Proposed: Reduced the multi-unit threshold from 10 to 5 units in all cases. Added the following exception:

If all of the **Dwelling Units** and/or rooms for lease in a Development are deed restricted for affordable housing and/or community housing, the threshold for DRI review is increased from 5 to 10, provided that the Development complies with the MVC Water Quality Policy, as certified in writing by the Board of Health in the town in which the Development is located. For the purposes of this provision, the terms ‘deed restricted’, ‘affordable housing’ and ‘community housing’ have the meanings defined in the MVC Housing Policy.

The Checklist Review Committee felt that market rate housing developments may present regional impacts (including wastewater and housing) and that a lower trigger point would enable the MVC to require mitigation where appropriate. However, the committee recommends retaining the existing threshold for Affordable and Community housing.

Section 4.2 Large Residential Structures (Reserved for future use)

This is a placeholder for a future trigger for large residential structures.

As outlined in the opening statement, this item has been removed from consideration at this time. The intention is to complete consideration of this item and propose a revision to the Checklist prior to the next 2-year revision once the MVC concludes its consideration of this item and establishes a procedure. This additional item will undergo the same public hearings on the text and Commission approval, and then the Commission will submit the revision for state approval.

Section 6. Institutional Development

Section 6.2

Existing

Any Development by a governmental or other publicly owned or quasi-publicly owned entity that will serve the residents of more than one Town

Proposed

Any Development that proposes the creation or expansion of a social, health, recreational or educational facility or other publicly owned or quasi-publicly owned entity designed primarily to serve the residents of more than one Town (excluding facilities with only incidental use by residents of more than one town)

–Mandatory Referral Requiring MVC Concurrence

The Checklist Review Committee feels the text from Checklist Version 12 is more appropriate and has reverted to that language. In addition, the Committee proposes that minor services provided to residents of other towns do not have sufficient 'regional impact' to warrant DRI review. Finally, the revision changes the review from Mandatory to Concurrence.

Section 7. Transportation

Section 7.1

Existing The note on this section reads: "For the purposes of this section, the term "Development" shall refer to facilities for transportation by air, land and water and shall include, but not be limited to: runways; terminals; staging areas; ticket offices; docks; the construction, widening or reconfiguration of Arterial and Collector Roads; parking facilities; bicycle paths; and bridges."

Proposed

The note is now incorporated in the main text. In addition, the term 'Arterial and Collector Roads' has been simplified to any 'principal road' and this is now covered in a new section 7.1 c.

In recognition of the effect that traffic and transportation have on the island, we have chosen to emphasize the review of roads by taking it from the note and enumerating it. It has also been changed from "Arterial and Collector" to principal road to be more inclusive.

Section 8. Natural or Cultural Resources

Section 8.1.b

Existing

The Demolition of any structure that:

...

- b. was constructed before January 1, 1900

[Note: The definition of Demolition was “Any act of pulling down, destroying, removing or razing any building or a substantial portion thereof (more than 50% of the floor area of the historic portion or 25% of any façade of the historic portion visible from the public way) with or without the intent to replace the structure so affected.]

Proposed

Any **Demolition** (or any exterior alteration of an historic or architecturally significant feature, as determined by a local Historic Commission) or relocation of a structure that either:

...

- b. was constructed before January 1, 1920.

Recent developments have made us aware that it is not just demolition that needs to be reviewed, but other aspects of alterations to or relocation of historic structures may also have negative impacts. Currently, the inclusion of alteration is in the definition of “demolition” but not spelled out in 8.1. In addition, the 1900 cutoff for demolitions has been changed to 1920 in an effort to preserve the conceptual approach of a 100-year cutoff. The Checklist Review Committee felt that having a date certain was a better trigger than “100 years”. (If this revision is approved, a corresponding amendment will be made to the Demolition Policy.)

Section 8.2 b: Clarifies review to any project on archeologically significant land.

Existing: Archeology: Any Development or excavation that proposes the division or subdivision of land or the clearing or topological Alteration of land that is identified by any state or federal or local agency as being of archaeological significance

Proposed:

Any **Development** that proposes:

- a. the **Division or Subdivision of Land** that is identified by any state, federal or local agency as being of archaeological significance

–Mandatory Referral Requiring MVC Concurrence

- b. any disturbance (e.g. excavation, digging, drilling, vegetation removal) to the surface of any land described in a. above

–Mandatory Referral Requiring MVC Concurrence

The Checklist Review Committee felt that 8.2 could be construed to mean that it only applied to the division of land. The proposal would include all development on archeologically significant land. This conforms to our current practice.

Section 8.3: The trigger for any site alteration of Significant Habitat has been reduced from 2 acres to 1 acre.

With increased development and climate change threatening these resources, the Checklist Review Committee felt it was important to enable increased protection of these resources as appropriate.

Section 8.5: This revision changes the review from Mandatory to Concurrence. (This is currently section 8.6.)

This narrow Checklist trigger relates to certain DCPC regulations that require a DRI referral. Although this provision is written in general terms, at the moment and as a practical matter it applies only to one DCPC.

Section 9. Communications and Energy

Section 9.3: The threshold for ground-mounted solar arrays has been reduced from 50,000 sq ft to 25,000 sq ft. the section has also been clarified by now saying “covering an area” of 25,000 sq ft.

This change does not reflect a bias against solar arrays. It is meant to enable review to mitigate any possible adverse visual impacts. It is also amended to specify that the 25,000 sq ft refers to the ground covered and not the square footage of the array itself.