COMMONWEALTH OF MASSACHUSETTS
MARTHA’S VINEYARD COMMISSION
DRI #670-M2

In re: Lampost Workforce Housing.

MEMORANDUM OF APPLICANT IN SUPPORT OF PROPOSED MODIFICATION

Applicant: Windsor Circuit Ltd.
c/o Adam Cummings

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Property Location: 6 Circuit Avenue, Oak Bluffs
Parcel ID: 9-22

Proposed Modification: Section 1 to state:

1. Workforce Housing:

1.1. As offered by the Applicant, four (4) units with a total of nine (9) bedrooms shall be rented to employees of local businesses either as permanent year-round housing or temporary housing.

1.2. The rental workforce housing shall be for members of the seasonal or year-round workforce.

1.3. The applicant shall provide the MVC with yearly rental documentation proving that the residential units are utilized by Island Employees, no later than December 31st of each year.

Explanation:

“There are ten (10) residential units of housing contained in the Lampost Conversion. The Applicant is permitted four (4) units of unrestricted apartment use pursuant to Section 7.2 of the Oak Bluffs Zoning By-Laws. By special permit the remaining six (6) units of housing are permitted. The modification request aligns the project with similarly approved projects, such as the Phillips Hardware approval which restricted two (2) of eight (8) units (a total of three (3) bedrooms) for workforce housing (25%). This modification request would require forty (40%) percent of the residential units in the building to [sic] utilized for workforce housing…” See Exhibit 1 – DRI – 670 – Lampost Conversion 2022 Proposed Modification; see also Exhibit 2 – Special Permit for 6 Circuit Avenue.

MVC Modification Filing Date: January 5, 2022, revised January 20, 2022

MVC Hearing Date(s): February 28, 2022 and April 7, 2022
INTRODUCTION

The Applicant files this legal memorandum in further support of its proposed modification. The Applicant respectfully requests that:

1. The MVC approve the proposed modification through its endorsement of the MVC’s staff’s evidentiary findings and recommendations that:
   a. The Applicant is presently in compliance with the MVC’s imposed conditions as interpreted by the MVC. See Exhibit 3 – MVC Staff Report dated 4/6/22 at p. 4;
   b. The Applicant’s proposed modification for 4 restricted workforce housing units is “… consistent with the MVC Housing Policy.” Id.
   c. The allowance of the proposed modification contain an annual reporting requirement by the Applicant. Id.; see also Exhibit 1 – Proposed Modification at 1.3 (suggesting a provision stating: “the applicant shall provide the MVC with yearly rental documentation proving that the residential units are utilized by Island Employees, no later than December 31st of each year”).

2. The MVC approve the proposed modification due to the MVC and the Applicant’s adherence to - and fulfillment of - Section 2 of the MVC’s DRI written and established Compliance Procedures. See Exhibit 4 – Copy of DRI Compliance Procedures.

3. The MVC approve the proposed modification as it its probable benefits outweigh its probable detriments.
4. The MVC deem any issues of past non-compliance resolved and thereby *moot* as a result of the filing of the proposed modification, or alternatively, as a result of the filing and allowance of the proposed modification.

The Applicant respectfully requests that the MVC decide the proposed modification on its merits. An advisory ruling on past non-compliance should be avoided as it is unnecessary to deciding the proposed modification.

Section I of this Memorandum sets forth the argument and evidence as to why the MVC Staff findings and recommendations should be adopted. That should conclude the MVC’s consideration and action on the Proposed Modification.

Section II of this Memorandum responds to certain issues that have been raised expressly or implicitly through various statements or communications leading up to or during the April 7, 2022 public hearing. The Applicant’s position is that those issues are factually and legally irrelevant. To the extent those issues are considered relevant and are addressed by the MVC, the Applicant has responded in Section II for the sole purpose of ensuring a sufficient record to preserve the Applicant’s M.G.L. c. 30A § 14 appellate and due process rights. (providing avenue of appeal to judicially overturn legally unsupported and/or arbitrary and capricious administrative decisions).¹

**PROCEDURAL POSTURE**

Pending before the MVC is the merits of the Proposed Modification. That involves only two issues: (1) whether the Applicant is presently in compliance with the housing conditions of DRI No. 670-M; and (2) whether the probable benefits of the proposed modification outweigh its probable detriments.

¹ *Botsini-Prime, LLC v. Cape Cod Com’n*, 2011 WL 6752486 (Land Ct.) (Piper, C.J.) (analogizing the MVC standard in the context of the Cape Cod Commission).
What is not before the MVC is: (1) whether the Applicant was or was not in compliance with DRI 670-M at various points prior to the submission of the January 5th Proposed Modification; (2) what the proper interpretation of the term “as needed” meant with respect to DRI No. 670-M that would allow for that relevant determination to be made; or (3) decisions from the MVC relating to enforcement of any alleged past non-compliance which belongs to the zoning enforcement officer of the Town of Oak Bluffs and not the MVC.

ARGUMENT

The Applicant has amply satisfied the benefit of the modification by offering workforce year-round restrictions on forty (40) percent of the units available for rent through local zoning. In making this generous offer which exceeds all similarly-situated projects, the Applicant is cognizant of and has taken into consideration the disagreements over: (i) the compliance (or non-compliance history) of this development; and (ii) the interpretations of the phrase “as needed” included in the original DRI and 2018 modification. This motivation is combined with a genuine desire to move past acrimonious hearings and for the project and property to be viewed as it should be – a significantly positive step on the island to create, promote and sustain workforce housing that is not limited to seasonal, dorm-style use. Allowing this modification complies with and satisfies: (1) the MVC staff’s recommendations; (2) the MVC’s current housing policies; and (3) the procedures, terms and intent of Section 2 of the MVC’s DRI Compliance Procedures. The Proposed Modification should be granted.
I. THE PROPOSED MODIFICATION GREATLY EXCEEDS THE MVC’S 2019 HOUSING POLICY REQUIRING 10% OR MORE.\textsuperscript{2}

The Applicant recognizes the need for more attainable workforce housing on the island. The proposed modification is a generous offer to address that need. The Applicant has converted a former multi-story night club into an attractive mixed-use building that will have at least four (4) of the ten (10) total units dedicated to workforce housing. This offer is in line with, and even exceeds, the 2018 Phillips Hardware decision, DRI-663-M-Phillips Modification Decision, where the Commission approved a similar mixed use building conversion project in Oak Bluffs in which two (2) out of the total eight (8) units are dedicated to workforce housing. Also see the Old Stone Bank Condos decision, DRI-674-M-Old Stone Bank Condos Decision, where the Commission approved another mixed-use development in Vineyard Haven in which only one (1) unit out of the total ten (10) units are dedicated to affordable housing. In the Proposed Modification, the Applicant voluntarily sets aside forty percent (40%) of the total units to workforce housing. This provides a significant benefit to Oak Bluffs and island-wide employee housing stock.

\textsuperscript{2} See the MVC Policy for DRI Review Housing with an effective date of July 12, 2019, which is after the 2018 modification. That document is available at the following link: https://www.mvcommission.org/sites/default/files/docs/Housing_Policy_2019_FINAL.pdf#:~:text=MVC%20Policy%20for%20DRI%20Review%20Housing%20Policy%20This,831%20of%20the%20Acts%20of%201977%20as%20amended.
II. CONSIDERATION OR RELIANCE ON PAST NON-COMPLIANCE BASED UPON DIFFERING INTERPRETATIONS OF THE PHRASE “AS NEEDED” IS NOT PROCEDURALLY OR SUBSTANTIvely PART OF THIS MODIFICATION REQUEST.

A. There Existed Ambiguity in the DRI Condition. The Proposed Modification Resolves that Ambiguity in the MVC’s Favor.

The 2018 modification came about due to the zoning change in the Town of Oak Bluffs which permitted the Applicant to create year-round, non-seasonal, non-dorm style housing.³ During the approval hearings in the summer of 2018, the MVC decided the modification did not require a separate public hearing because it did not constitute a “material change” and approved the modification. In arriving at that determination, the proposed modification and the language contained therein including its interpretation was openly debated by and between members of the MVC. Some members sought alternative language outright prohibiting any non-workforce renting of the units throughout the year regardless of circumstances and flexibility. Others openly questioned the interpretation and definition of key terms such as “workforce housing” and whether the “intent” of the language was “unclear.”⁴

At a separate hearing on 8/23/18, the modification was approved following a page-by-page review by the MVC.⁵ Similar-type debates regarding the language, the interpretation, the intent and how the workforce condition would apply in particular circumstances were raised again throughout the hearing.⁶

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⁴ Id. at 1:19:47-1:21:00.
The ambiguous term “as needed” has been a point of dispute between the MVC and the Applicant. The Applicant’s argument is that “as needed” avoided a blanket prohibition and that flexibility was afforded to him, while also remaining consistent with the overall purpose and goal of the project and the condition offered and approved. With the benefit of hindsight, the Applicant acknowledges that further clarity should have been obtained. The MVC, as well, was afforded the opportunity to further clarify the meaning and effects of this term. However, consistent with Section 2 of the DRI Compliance process, that problem has been aired and resolved. It warrants no further discussion or action.

B. It is Procedurally Improper for the MVC to Consider Alleged Past Non-Compliance in Deciding the Modification.

Opponents of the modification urge the MVC to deny the application on the basis that the Applicant was previously out of compliance with the condition. As was argued by the Applicant during the public hearing, for the MVC to do so would violate the MVC’s own written policy and the Applicant’s due process rights. The written policy creates the following framework for resolving alleged violations of non-compliance as well as established violations of non-compliance:

- **Step 1:** Educate owners about compliance. *See Exhibit 4 – MVC DRI Compliance Procedures at ¶ 2.1(2)* (make public announcement that MVC will be reviewing compliance of former DRI’s on basis of becoming aware of possible problems, inviting owners to re-read their DRI to make sure they are in

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7 See Boston Redevelopment Authority v. Pham, 88 Mass. App. Ct. 713 (2015) (holding that the BRA’s enforcement of its affordable housing objective was limited to the terms and definitions set forth in the operative documents, and that it could not give meaning to certain terms after the fact); In re Birchall, 454 Mass. 847, 852 (2009) (citations omitted) (determining that a party cannot violate a court order “where the order is ambiguous or disobedience to the order is doubtful”); Chicoine v. Comm’r. of Dep’t. of Env’tl. Protection, 82 Mass. App. Ct. 1110 (regulation that is overly unclear or ambiguous is not enforceable); Berliner v. Feldman, 363 Mass. 767, 771 (1973) (citations omitted))
compliance, and “…offering to help them deal with any cases of non-compliance”). The offer to help the owner bring the property into compliance comes after the procedure for dealing with the non-compliance has been settled (i.e., the alleged or established non-compliance has been identified, informal notice and engagement with the owner has occurred (see Step 2 below) and the non-compliance has ceased).

• **Step 2:** Informal notification to owner. *Id.* at 2.2(1) (guiding staff to call or send an email pointing out that there appears to be a concern and asking the owner to clarify the situation, assuming in the text of the policy that “…should resolve the situation…” in most cases).

Notably, both steps 1 and 2 presume that there has been or that there is active non-compliance with a DRI condition. That fact notwithstanding, the written policy calls for an informal resolution if that is achievable. *Id.* at 2.2.

• **Step 3:** Notification from the MVC staff to the compliance committee of the results of the initial inquiry and engagement with the owner, and the Committee would decide whether further action is warranted. *Id.* at 2.2(2).

• **Step 4:** Staff sends letter to the owner with a copy to the local Building Inspector (i.e., zoning enforcement officer), saying that the project appears to be in non-compliance, stating the reasons, asking that they rectify the situation giving appropriate time to comply or apply for a modification of their approval. *Id.* at 2.2(3).

The written policy makes clear that: (1) enforcement of the MVC’s condition belongs with the local building inspector under the legal framework of M.G.L. c. 40A; and (2) that the
intent of the policy is to make it appropriate and/or desired by the MVC that a proposed modification is a perfectly sound way for resolving past non-compliance. Id. at 2.2(3). The final sentence of paragraph 3 of section 2.2 (Notification of Noncompliance) states: “[p]resumably, the vast majority will want to comply, or will ask for a modification such as a change to a condition.”

The Applicant wishes to comply and has done so. See Exhibit 2 – MVC Staff recommendation confirming compliance with DRI condition, as interpreted by the MVC. The Applicant has followed the MVC’s policy and request and has asked for a modification. See Exhibits 1 & 3; see also Exhibit 4 – Compliance Policy at 2.2(3). The modification request must be viewed and acted upon on its own merits and not be tarnished or prejudiced by any past alleged or concluded violations of the DRI condition. Because that is the MVC’s procedure and undisputed procedural status of this application, there can be no substantive and proper basis for attempting to make past non-compliance relevant to the modification request. It is not. Any conclusion stated or action taken would be purely advisory and not constitute proper findings or a lawful result of an adjudicative proceeding.8

- **Step 5**: If all of these efforts fail including a decision by the owner not to rectify or not to file for a modification, it is at this point that the Compliance Committee “should review the situation, and if it deems appropriate, make a recommendation to the full Commission as to what further action should be taken.”

- **Step 6**: If, following a recommendation to the full Commission and action by the full Commission, further action is needed to obtain compliance with a DRI

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8 Metropolitan District Police Relief Assn, Inc. v. Comm’r of Insurance, 347 Mass. 686, 689 (1964) (“General Laws c. 30A does not preclude granting relief. The division has given at most only an advisory ruling. See c. 30A § 8. There has been no adjudicatory proceeding. No exclusive statutory remedy precludes declaratory relief concerning this controversy”).
condition, the MVC can record a “Certificate of Noncompliance with the Registry of Deeds” and send notice to the appropriate parties.

- **Step 7:** In addition to recording a certificate, the MVC “may commence such other actions or proceedings as it may deem necessary to enforce its decisions, conditions or restrictions.” MVC Enabling Act at § 17.

The MVC does not possess broad authority that can be implied from the statute. The “other actions or proceedings” in this context would flow through: (1.) the local building inspector pursuant to a request for enforcement; (2.) if denied, an appeal to the zoning board of appeals; and (3.) if denied, an appeal of the ZBA decision to the Superior Court. In certain circumstances, it could potentially also include a Petition for Certiorari presented to the Superior Court or a Declaratory Judgment Action to resolve differing views of the enabling act, the MVC’s policies, or regulations or the terms of a specific DRI. What § 17 does not create in the MVC is a self-executing enforcement arm of its own administrative body.⁹

The arguments presented by the modification opponents effectively request that the MVC dramatically broaden its jurisdiction and authority, delve into unnecessary and irrelevant issues, render an advisory ruling, prejudice and interfere with the due process rights of the Applicant all while turning down a modification that clearly benefits the island and the purposes and goals of the MVC. Contrast *Morey*, 409 Mass. at 818-20.

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⁹ *Morey v. Martha’s Vineyard Commission*, 409 Mass. 813, 819-820 (1991) (rejecting argument that MVC had the broad authority under its enabling act to bring properties into its purview that were not referred to it by the permitting agency of the town where property or project is situated). The *Morey* case stands for the proposition of upholding the MVC’s significance and its charge while also expressly rejecting a broad-brush assertion of MVC authority. Mass. Prac. Massachusetts Conveyancers’ Handbook with Forms, 14:13 (Regional Controls – Martha’s Vineyard).
CONCLUSION

The Applicant requests that the MVC approve the proposed modification as argued for in Section I of this Memorandum. The Applicant respectfully requests that issues which were – or have become as a result of the filing for modification – irrelevant be set aside and this matter resolved on its merits, through the proper procedure and in consideration of all relevant evidence and argument.

Respectfully Submitted by the Applicant through its counsel:

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Exhibit 1
DRI - 670 – LAMPOST CONVERSION
2022 Proposed Modification

Reason for requested Modification:

There is a disagreement between the Applicant and the MVC over the words “as needed” in the Written Decision.

Modifications
The Applicant proposes to clarify and modify the conditions the MVC imposed on the Lampost Conversion Conditions.

The following is the proposed modification:

1. Workforce Housing:

   1.1 As offered by the Applicant, four (4) units with a total of nine (9) bedrooms shall be rented to employees of local businesses either as permanent year-round housing or temporary housing.
   1.2 The rental workforce housing shall be for members of the seasonal or year-round workforce.
   1.3 The applicant shall provide the MVC with yearly rental documentation proving that the residential units are utilized by Island Employees, no later than December 31st of each year.

Explanation
There are ten (10) residential units of housing contained in the Lampost Conversion. The Applicant is permitted four (4) units of unrestricted apartment use pursuant to Section 7.2 of the Oak Bluffs Zoning By-Laws. By Special Permit the remaining six (6) units of housing are permitted. The modification request aligns the project with similarly approved projects, such as the Phillips Hardware approval which restricted two (2) of eight (8) units (a total of three (3) bedrooms) for workforce housing (25%). This modification request would require forty (40%) percent of the residential units in the building to utilized for workforce housing.

Attached hereto is the rental history of the property. As stated, the premises have been primarily rented to workforce housing since construction was completed.
Previous and Current Leases for Apartments

2019
Construction for the project took approximately 6 months from start time to occupancy permits. Construction completed June 2019. Most of first floor was furnished at that time ready for occupants. Unit 3 needed work cleaning as it was the staging unit for that floor in terms of furniture, supplies, etc. Wasn’t ready for occupancy until August.

Unit 1: Rented to 4 workers who worked multiple jobs in the restaurant industry for 5 months.
Unit 2: Rented to employees of Oyster Bar and Cardboard box for 5 months.
Unit 3: Rented to owner of local restaurant for 1 month.
Unit 4: Rented to employees of Oyster Bar and Cardboard box year round.
Units 5, 6, 7, 8: Unoccupied for this year. Furniture, painting, etc. being completed through winter due to work stoppage required on Circuit Avenue.
Units 9 and 10: Rented periodically through word of mouth and Airbnb. Film festival employees utilized them for a total of 6 weeks.

2020:
Covid. 3 units backed out of seasonal rentals due to Covid.
Unit 1: 6 month rental for employees of local painter.
Unit 2: Santoro group year round.
Unit 3: Santoro group year round
Unit 4: 6 months to Oyster bar employees, 6 months to Santora group.
Unit 5: 2 months employee of local restaurant. 3 months to contractor’s employees.
Unit 6: Used periodically for friends and family.
Unit 7: Empty majority of summer (final staging unit). Rented one month to local contractor’s employees.
Unit 8: Rented to local businessman and his family for 6 weeks. Friends and family. Listed on Airbnb.
Unit 9: Airbnb
Unit 10: Airbnb

2021:
Unit 1: Santoro group year round
Unit 2: Santoro group year round
Unit 3: Santoro group year round
Unit 4: Santoro group year round
Unit 5: Martha’s vineyard Sharks managers for 3 months. Local restaurant employee for 7 months (winter).
Unit 6: Friends and family, Airbnb
Unit 7: Rockfish employee year round
Unit 8: Airbnb
Unit 9: Airbnb
Unit 10: Airbnb
Exhibit 2
NOTICE OF DECISION  September 6, 2018

RE: The Lampost Special Permit and Site Plan Review Application

Windsor Circuit Ltd.
(The Lampost)
6 Circuit Ave., Oak Bluffs, MA
Map 9 Parcel 22, zoning district B1

The Oak Bluffs Planning Board held a Public Hearing
on Thursday, August 23, 2018 at 5:00 p.m. in the Upstairs Meeting Room at the
Oak Bluffs Fire Station located at 6 Firehouse Lane, Oak Bluffs on the
application of the referenced petitioners seeking:

A Special Permit and Site Plan Review under Section 7.2 of the Zoning Bylaws and sections
10.3 and 10.4 or any action related thereto, to convert the top three floors of a five-story
nightclub/restaurant into ten residential apartments for seasonal and year-round workforce rental
housing.

DECISION: A motion was made to grant the special permit and approve the site plan
based on the submitted plans and findings under Zoning Bylaws 7.2.4, 7.2.5
and 7.2.6. of Section 7 and Section 10.3. The Board, consisting of Ewell
Hopkins (Chair), Mark Crossland (Vice Chair), Erik Albert, JoJo Lambert,
and Donalexander Goss, voted 5-0 to grant the special permit and approve
the site plan with Parking Mitigation as laid out under Zoning Bylaw
Section 5.1.5.

Procedural History:

History: 10/14/16 The Lampost project referred to Martha’s Vineyard Commission as a Development
of Regional Impact under 3.1a, 3.1b, 3.1c, and 3.1i; 4.1a, 4.1b; 4.2 and 8.2ii by the
Oak Bluffs Planning Board.

01/26/17 Project approved by the MVC, DRI 670.
11/14/17 By-law 7.2 Conversion of an Existing Building to Mixed Use (Commercial with Apartment Units) passed at town meeting.

05/18/18 Project with modifications referred again to the MVC Previous DRI’s Modification by the Oak Bluffs Planning Board.

06/04/18 Project with modifications approved by the MVC, DRI 670-M.

07/17/18 Special Permit and Site Plan Review application filed with Town Clerk and received by the Planning Board.

07/17 & 8/17 Special Permit and Site Plan Review application distributed via e-mail to the Board of Health, Conservation Commission, Building Inspector, Director of Public Works, Police Chief, Fire Chief, Sewer Commissioner and Water District.

07/31/18 Notice of Planning Board Public Hearing posted at Town Hall and on web site.

07/31/18 Notice of Planning Board Public Hearing mailed to abutters (and abutters of abutters) within 300 feet, the applicant and abutting planning boards.

08/02/18 First Notice of Hearing published in Martha’s Vineyard Times.

08/09/18 Second Notice of Hearing published in Martha’s Vineyard Times.

08/23/18 Site visit, noticed and open to public.

08/23/18 MVC meeting to approve and sign written draft Decision 670-M.

General Findings:

1. The Site is located at 6 Circuit Ave. in the B-1 Zoning District shown on Assessors Map 9 as Parcel 22. The proposal is to convert the existing three (3) floors of commercial nightclub space to residential apartment units for seasonal and year-round workforce housing.

2. There will be a total of ten units (two 3-bedroom units and eight 2-bedroom units), each furnished with individual kitchens and sanitary facilities. The units will be accessed from an elevator and/or staircase from the street level, first floor commercial space.

3. The conversion to residential housing was previously approved by the Martha’s Vineyard Commission (MVC) for dormitory style, workforce housing with a shared kitchen and sanitary facility design (DRI 670). On November 14, 2017, Oak Bluffs voted to change the Zoning By-Laws at Town Meeting to allow an apartment use in the B-1 district.
4. The proposed reconfiguration into ten (10) apartments is now allowed by the revised Oak Bluffs zoning. The modification increases the square footage by 1,500 sq. ft.; reduces the number of bedrooms from 24 to 22; increases the number of bathrooms from 5 to 10; and increases the number of kitchens from 3 to 10. —MVC DRI #670-M Lampost Workforce Housing Conversion Modification Decision

5. Per the DRI 670 Decision of January 10, 2016, the applicant proposed to provide workforce rental housing by converting the top three floors of a five-story nightclub/restaurant to workforce housing in two phases. —MVC DRI #670-M Lampost Workforce Housing Conversion Modification Decision

6. The 2016 DRI 670 Decision approved phase one included moving the existing entrance to the sports bar and to convert the third floor dance club to 14 employee bedrooms (double occupancy) with shared bathrooms, shared kitchen and a small common living area. —MVC DRI #670-M Lampost Workforce Housing Conversion Modification Decision

7. The approved phase two included converting the fourth floor to an additional seven (7) employee bedrooms (double occupancy) with shared bathrooms, kitchen and living area and the fifth floor to a 4-bedroom apartment. —MVC DRI #670-M Lampost Workforce Housing Conversion Modification Decision

8. The Commission approved the 2016 DRI 670 plan for conversion of the upper night club floors to workforce housing but did express some concern with the paucity of bathrooms and the fact that four of the dormitory style units on the second floor had no windows. —MVC DRI #670-M Lampost Workforce Housing Conversion Modification

The modified plans:

a. Reduce the total number of bedrooms from 24 to 22 bedrooms in ten individual apartments (plans show 39 beds) and increase the number of bathrooms from 5 to 10 bathrooms (one for each unit) and increase the number of kitchens from 3 to 10 (one for each unit). All units have windows. (see Plans dated June 13, 2018.)

b. Relocate the elevator to the middle of the building and create balconies on the second and third floors. —MVC DRI #670-M Lampost Workforce Housing Conversion Modification

c. Applicant stated they will bring the elevator into the interior behind the stairwell. —Public Hearing on Aug. 23, 2018 (see Plans dated June 13, 2018.)

d. The second floor will have three 2-bedroom apartments and one 3-bedroom apartment (18 beds).

e. The third floor will have three 2-bedroom apartments and one 3-bedroom apartment (15 beds).
f. The fourth floor will have two 2-bedroom apartments (6 beds) and a viewing and mechanicals deck.

6. The Martha’s Vineyard Commission imposed a number of **conditions** which are detailed in **DRI 670-M** and are enforceable by the Town of Oak Bluffs’ Building and Zoning enforcement officers. They are also detailed below:

   a. **Workforce Housing**: As offered by the Applicant, the units shall be rented to employees of local businesses either as permanent year-round housing or temporary housing as needed. The rental workforce housing shall be for members of the seasonal or year-round workforce. The applicant shall provide the MVC with yearly rental documentation proving that the residential units are utilized by Island employees. The building shall be heated so that year-round workforce housing can be provided to workers.

   b. **Construction Scheduling**: As offered by the Applicant, a Construction Management Plan shall be submitted for the review of the Martha’s Vineyard Commission Land Use Planning Committee as to how construction will be staged and the timing of any sidewalk interruptions.

   c. **Energy**: As offered by the Applicant, the building shall comply with the Martha’s Vineyard Commission’s “Energy and Environmental Building” DRI Policy.

   d. **Exterior Lighting**: As offered by the Applicant, exterior lighting shall be limited to external sign illumination, security lighting, and emergency lights required by code, which are downward-shielded to prevent light spilling off the property. There shall be no flood lighting. All exterior lighting – except for security lighting, which shall be on motion detectors – shall be on timers and shall be turned off during the day as well during the night from one hour after the business closes at night to one hour before it opens in the morning. A final exterior lighting plan shall be submitted to and is subject to the approval of the MVC LUPC prior to the issuance of a CO.

   e. **Noise**: As offered by the Applicant, there shall be no formal or informal activities on the property that exceed the Commonwealth of Massachusetts Department of Environmental Protection’s Noise Control Regulation 310 CMR 7.10 at all boundaries of the property or that exceed the Town of Oak Bluffs noise regulations.

   f. **Wastewater, Groundwater and Storm Water Management**: As offered by the Applicant, the proposed workforce housing shall be connected to the Oak Bluffs water and wastewater systems.

   g. **Scenic Values**: As offered by the Applicant, final architectural plans and details, to be substantially the same as the plan approved by the Commission, shall be submitted for the review and approval of the MVC Land Use Planning Committee before a Building Permit is issued.
h. Modifications to MVC Decision 670-M: As offered by the Applicant, the applicant shall not alter the design or use of the premises from the approved plan, uses, and operating conditions without the approval of the Martha’s Vineyard Commission.

Applicable Laws and Decision Criteria:

The application is governed by Section 7.2 of the Zoning By-Laws (Conversion of an Existing Building to Mixed Use, Commercial with Apartment Units) as well as Section 5.1.5 (Special Permit in the B-1 District); Sections 10.3 (general special permit criteria) and 10.4 (site plan review criteria), among other provisions of the Zoning By-Laws, including MGL Chapter 40A, § 9.

Specific Findings / Testimony:

There was no public testimony in support of the project. There was no public testimony in opposition of the project. No members of the public were present at the Aug. 23, 2018, Public Hearing.

Planning Board member Erik Albert asked about the back deck; it does not appear to be covered from the Kennebec side and he thought there should be an overhang at the roofline. Applicant said he thought they could do that easily enough.

Planning Board chairperson Ewell Hopkins said that while the applicant had made a good argument against Parking Mitigation for the commercial space as they would be reducing its use, he thought that Parking Mitigation should apply to the new residential portion of the proposed plan.

Specific Findings / Zoning By-Law 7.2:

1. In accordance with By-Law 7.2, the purposes of Section 7.2.4 as set out in Section 7.2.1.1 and determined that the Applicant’s project, as proposed and as conditioned herein and in MVC Decision DRI 670-M, meets the following:

   a. allows mixed use development in the B-1 zoning district while maintaining the unique character of Oak Bluffs by encouraging the preservation of existing buildings within the historic context and setting in which they were established;

   b. provides for a variety of housing needs, including reasonable, affordable accommodations for a fluctuating work force and opportunities to create moderate income and senior housing units, both of which would promote economic growth and stability in the existing B-1 district;
c. permits a use that promotes rehabilitation and conversion of existing building in a manner that maintains the visual character of surrounding areas and reflects the architectural scale of existing development within the district;

d. minimizes visual and functional conflicts between residential and nonresidential uses within and abutting the B-1 district; and

e. allows for more compact development than may be permitted in residential zoning districts to reduce the impact of sprawl and traffic congestion.

2. In accordance with By-Law 7.2, the conditions under Section 7.2.5, the ground floor of the Applicant’s project fronts Circuit Ave. and is reserved for non-residential use. Circulation and access to and from dwelling units will be allowed on the ground floor level and the design will be in harmony with the existing neighborhood.

3. In accordance with By-Law 7.2, the standards under Section 7.2.6, the proposed development meets the following standards:

a. The commercial structure to be converted, reconstructed, restored or altered shall have variation in its overall architectural design, and plans depicting building elevations, building setbacks and exterior details (roofing, siding, glazing), of the proposal, including abutting structures, shall be included in the applicant’s construction documents in order to assure compatibility with existing development.

b. No building shall exceed the height currently allowed in the existing district.

c. Size of units – Units shall conform to the provisions of the State Sanitary Code, 105 CMR 410, any other state regulations as may be applicable, and with the rules and regulations of the Board of Health.

d. Bathroom, kitchen and other facilities – Units are not required to contain facilities and may share toilet, kitchen, or other facilities. Toilet and shower facilities shall conform to the provisions of the State Sanitary Code, 105 CMR 410, any other state regulations as may be applicable and with the rules and regulations of the Board of Health.

e. All roof mounted mechanical equipment must be enclosed to reduce the noise of operation and eliminate visibility of such equipment from the equivalent of an adjoining second floor level. In no case shall roof mounted equipment or the accompanying enclosures exceed a height of 6 feet above the roof deck, or occupy more than 30% of the area of the roof surface.

f. Building orientation, layout, and configuration shall be designed to provide adequate light and air for the proposed and adjoining buildings.
6. Under **Section 7.2.6.4 Parking**, the Planning Board determined that **Parking Mitigation under Section 5.1.5.3 of the Zoning By-Laws** is appropriate for the residential portion of this application, which states in part: “when a proposed use in the B-1 District cannot meet the off street parking requirements, it may be waived by special permit granted by the Planning Board where the applicant makes a payment in lieu to the Oak Bluffs B-1 District Parking Mitigation Trust.”

**Oak Bluffs Zoning By-Law Site Plan Review Criteria (10.4)**

**Under Zoning By-Law 10.4, Section 10.4.3.3:** Where the Planning Board serves as the special permit granting authority, it shall consolidate its site plan review and special permit procedures.

**Decision of the Board:**

Member Mark Crossland made a motion to grant the special permit under **Section 7.2.4 Conversion and Expansion or Tear Down and Re-Build with Expansion of Existing Building to Apartment Units** and approve the site plan with the conditions listed below. Members Erik Albert and JoJo Lambert seconded. A roll-call vote was taken and the Board, constituting a quorum and the required supermajority, consisting of Ewell Hopkins (Chair), Mark Crossland, Erik Albert, JoJo Lambert and Donalexander Goss (via phone), voted 5-0 to grant the special permit and approve the site plan with the following conditions and suggestions:

1. The special permit is subject to the conditions imposed on the applicant in the Decision of the Martha’s Vineyard Commission on **DRI #670-M**. The MVC decision is attached to this document and is to be recorded as part of this decision.

2. **Condition:** The Planning Board imposes **Parking Mitigation** per Bylaw 5.1.5 to be applied to the top three (3) floors containing ten (10) residential apartments, based on the change of use from commercial to residential. The Planning Board waives Parking Mitigation to the commercial space. As of this date, the fee is $875/year for ten spaces, which the Planning Board shall annually review and modify, after notice to the owner/applicant and hearing.

3. **Suggestion:** The applicant will adjust the design of the overhang in back in order to incorporate the decks more tightly into the project.

4. **Suggestion:** The applicant will tie in to existing storm water and surface water management infrastructure available by the Town on Circuit and Kennebec, where possible.
D. Record of Board Vote.

The members of the Planning Board voted as follows to grant a Special Permit subject to the above-stated terms and conditions:

<table>
<thead>
<tr>
<th>Signature</th>
<th>In Favor</th>
<th>Against</th>
<th>Abstain</th>
<th>Recuse</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ewell Hopkins</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Erik Albert</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mark Crossland</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Donalexander Goss</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Jolo Lambert</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
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</tbody>
</table>

Filed with the Town Clerk on: 2018

Laura B. Johnston, Town Clerk

Copy of Special Permit Mailed to:

Windsor Circuit Ltd.
6 Circuit Ave., Oak Bluffs, MA 02557

All Noticed Parties (see abutter list)

The Planning Board of the Town of Oak Bluffs hereby certifies that a Special Permit has been granted Windsor Circuit Ltd., 6 Circuit Ave., Oak Bluffs, MA 02557, affecting the rights of the owner with respect to land or buildings at 6 Circuit Ave., Map 9, Parcel 22. Said Planning Board
further certifies that the decision attached hereto is a true and correct copy of its decision granting said special permit, and that copies of said decision, and of all plans referred to in its decision, have been filed with the town clerk.

The Planning Board also calls to the attention of the Owner or Application that General Laws, Chapter 40A, Section 11 (last paragraph) provides that no special permit, or any extension, modification or renewal thereof, shall take effect until a copy of the decision bearing the certification of the town clerk that twenty days have elapsed after the decision has been filed in the office of the town clerk and no appeal has been filed or that, if such appeal has been filed, that it has been dismissed or denied, is recorded in the registry of deeds for the county and district in which the land is located and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner’s certificate of title. The fee for such recording or registering shall be paid by the Owner or Applicant.

Ewell Hopkins, Chair

Dated: Sept 6, 2018

This decision was filed in the office of the Town Clerk, on September 6, 2018. Appeals, if any, should be made pursuant to Section 17, of Chapter 40A of the Massachusetts General Laws and should be filed within 20 days of the filing of this decision in the office of the Town Clerk.

Date Appeal Period Expired

I hereby certify that no appeal has been filed within the twenty day period following the date of the filing of this decision.

Attest: ____________________________
Laura Johnston, Town Clerk
Exhibit 3
1. DESCRIPTION

1.1 Owner and Applicant: Windsor Circuit Ltd (Adam Cummings)
1.2 Project Location: 6 Circuit Ave. (Map 9, Lot 22), Oak Bluffs (0.15 acres)
1.3 Proposal: Modification of the housing conditions for DRI 670-M to reduce the number of units restricted to workforce housing from 10 to 4.
1.4 Zoning: Business 1 (B1)
1.5 Local Permits: Special Permit modification
1.6 Surrounding Land Uses: Other business, residential, and multiple uses on Circuit and Kennebec Avenues.
1.7 Project History: The MVC approved DRI 670 in 2017, as a workforce housing development project allowing for the top three floors of the building at 6 Circuit Ave. to be converted from a dance club, bar, and storage facility in two phases. Phase one included moving the entrance to the sports bar below and converting the third floor to 14 employee bedrooms with shared bathrooms, kitchen, and living area. Phase two included converting the fourth floor to an additional seven employee bedrooms with shared bathrooms, kitchen, and living area, and converting the fifth floor to a four-bedroom apartment. All bedrooms were to be double occupancy.

Following the adoption of Oak Bluffs Bylaw Section 7.2 pertaining to the conversion of existing buildings to mixed-use, DRI 670 was modified in 2018 (DRI 670-M) to allow for 10 apartments in the top three floors of the building, rather than the mix of apartments and dormitory bedrooms. The modification also increased the square footage by 1,500 ft², reduced the total number of bedrooms from 24 to 22, increased the number of bathrooms from five to 10, and increased the number of kitchens from three to 10. The modification was approved without a public hearing, with the following conditions related to housing:

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1 Section 7.2, Conversion of an Existing Building to Mixed Use (Commercial with Apartment Units), allows the Planning Board to issue Special Permits for mixed-use projects in the B1 district. It also increased the allowable number of apartment units for certain projects, depending on the total lot area. The bylaw includes the following statement of purpose:

- Allow mixed-use development in the B-1 zoning district while maintaining the unique character of Oak Bluffs by encouraging the preservation of existing buildings within the historic context and setting in which they were established.
- Provide for a variety of housing needs, including reasonable, affordable accommodations for a fluctuating workforce and opportunities to create moderate-income and senior housing units, both of which would promote economic growth and stability in the existing B-1 district.
- Permit uses that promote rehabilitation and conversion of existing buildings in a manner that maintains the visual character of surrounding areas and reflects the architectural scale of existing development within the district.
- Minimize visual and functional conflicts between residential and nonresidential uses within and abutting the B1 district.
- Allow for more compact development than may be permitted in residential zoning districts to reduce the impact of sprawl and traffic congestion.
1.1 As offered by the Applicant, the units shall be rented to employees of local businesses either as permanent year-round housing or temporary housing as needed. [Same as for DRI 670.]

1.2 The rental workforce housing shall be for members of the seasonal or year-round workforce.

1.3 The Applicant shall provide the MVC with yearly rental documentation proving that the residential units are utilized by Island employees.

1.4 The building shall be heated so that year-round workforce housing can be provided to workers.

The Oak Bluffs Planning Board issued a Special Permit in 2018 “to convert the top three floors of a five-story nightclub/restaurant into ten residential apartments for seasonal and year-round workforce rental housing,” noting the MVC conditions for DRI 670-M.

Units 6, 8, 9, and 10 have since been used as short-term rentals through Airbnb, rather than as workforce units. MVC staff initiated a compliance process in mid-2021 and then convened a formal meeting of the Compliance Committee in late 2021. A summary of how the 10 existing units have been used since 2019, based on documentation provided by the applicant, is available here. The applicant’s responses to LUPC questions in February regarding how the units have been used, including rental amounts, is available here.

In terms of current compliance, the applicant stated in March that all units had been removed from Airbnb and that Airbnb rentals for the summer had been canceled; that seven of the 10 units were currently being rented by local employees and the others unoccupied; and that no unit would be rented to anyone other than local employees until the modification review was complete.

**MVC Compliance Process (2021-2022):**

- **6/17/21:** Oak Bluffs Affordable Housing Committee chair informed MVC staff that some of the units were being rented through Airbnb.
- **7/19/21:** Staff met with owner to discuss the situation and possible next steps, including the option to request a modification.
- **8/10/21:** Staff sent compliance letter to owner, owner’s attorney, and town officials.
- **9/20-28/21:** Staff sent follow-up emails to the owner and others.
- **12/3/21:** MVC Compliance Committee met to discuss next steps.
- **12/7/21:** Compliance Committee chair sent letter to owner and others, setting one-week deadline to comply with the MVC conditions, before recommending legal action to the MVC.
- **12/9/21:** MVC agreed to allow 30 days for the owner to submit a request for modification. The owner also agreed to not accept any further Airbnb reservations until the issue was resolved.
- **1/5/22:** Modification request was submitted, and later amended on 1/20/22.

**1.8 Project Summary:** The request for modification states that there is a disagreement between the applicant and MVC over the phrase “as needed” in condition 1.1. The request is to modify the current housing conditions for DRI 670-M as follows (changes in red):

```
1.1 As offered by the Applicant, the units four (4) units with a total of nine (9) bedrooms shall be rented to employees of local businesses either as permanent year-round housing or temporary housing as needed.
```
1.2 The rental workforce housing shall be for members of the seasonal or year-round workforce. 
1.3 The Applicant shall provide the MVC with yearly rental documentation proving that the 
residential units are utilized by Island employees, no later than December 31st of each year. 

The request includes the following explanation:

There are ten (10) residential units of housing contained in the Lampost Conversion. The Applicant 
is permitted four (4) units of unrestricted apartment use pursuant to Section 7.2 of the Oak Bluffs 
Zoning By-Laws. By Special Permit the remaining six (6) units of housing are permitted. The 
modification request aligns the project with similarly approved projects, such as the Phillips 
Hardware approval which restricted two (2) of eight (8) units (a total of three (3) bedrooms) for 
workforce housing (25%). This modification request would require forty (40%) percent of the 
residential units in the building to [be] utilized for workforce housing.

Units 1-4 as shown in the as-built plans would be restricted as workforce housing.

2. ADMINISTRATIVE SUMMARY
2.1 Request for Modification: Jan. 5, 2022
2.2 DRI Trigger: 1.3D (Modification to Previous DRI)
2.3 LUPC: Feb. 28, 2022
2.4 Public Hearing: April 14, 2022

3. PLANNING CONCERNS
3.1 Island Housing Needs: The project as originally proposed and modified was for the conversion of 
existing commercial space into workforce housing. The MVC noted in its decision for DRI 670 that 
the proposal was a benefit in terms providing housing that could be used by the applicant’s 
employees and those of other Island businesses.

The proposed modification would reduce the number of required workforce units from 10 to four, 
and the number of associated bedrooms from 22 to nine (about a 60% reduction in both cases). 
The six non-workforce units would most likely be used as short-term rentals. It should be noted 
that only seven of the 10 units had been used as workforce housing prior to 2022, and in some 
cases informally or infrequently. Four of the 10 units were rented through Airbnb in 2021.

There are currently about 900 short-term rentals in Oak Bluffs, according to the short-term rental 
compliance company Hamari, and 15 traditional lodging establishments with a total of 336 rooms, 
according to the town.

Based on information provided by the applicant, rental rates for the units range from $2,000 to 
$5,700 per month depending on the unit and time of year. If all units are filled to capacity, then the 
rental range per person would be $500-$1,140 per month. Based on conversations with local 
business owners, year-round workforce rental rates on the Island in general range from about 
$1,000 to $1,800 per month for a one-bedroom apartment, and seasonal workforce rates range 
from about $150 to $250 per person per week, or about $600-$1,000 per month.
The Massachusetts Housing Partnership also publishes maximum allowable rents for Dukes County annually. The year-round rental limits in FY 2021 for households with income levels over 120% Area Median Income (usually the threshold for workforce housing) are as follows:

<table>
<thead>
<tr>
<th></th>
<th>120% AMI Rent Limit</th>
<th>150% AMI Rent Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Single Room Occupancy (SRO)</td>
<td>$1,730</td>
<td>$2,163</td>
</tr>
<tr>
<td>Studio</td>
<td>$2,309</td>
<td>$2,886</td>
</tr>
<tr>
<td>One bedroom</td>
<td>$2,474</td>
<td>$3,093</td>
</tr>
<tr>
<td>Two bedroom</td>
<td>$2,696</td>
<td>$3,711</td>
</tr>
<tr>
<td>Three bedroom</td>
<td>$3,432</td>
<td>$4,290</td>
</tr>
<tr>
<td>Four bedroom</td>
<td>$3,828</td>
<td>$4,785</td>
</tr>
</tbody>
</table>

Source: MHP and Dukes County Regional Housing Authority

**Staff recommendations:**

- The applicant’s request to reduce the number of workforce units from 10 to 4 would still be consistent with the MVC Housing Policy.
- Staff recommends requiring annual reporting for any workforce housing.
Exhibit 4
DRI Compliance Procedures

1 Proposed Procedures for New DRIs

1.1 Decision

1) Compliance begins with good decisions. Write Decision Conditions that are explicit, clear, and complete. The decisions should be clear as to what flexibility there is in the implementation of the project without requiring a modification of the decisions, such as shifting the location of a building or modifying the architectural design.

2) In the Decision, state that the conditions imposed by the Commission shall include a provision requiring that the municipal permit incorporate and restate the Commission’s conditions on a DRI approval in the local permit. In this fashion, where municipal officials are prepared to commence enforcement proceedings on their own, they clearly would have the authority to enforce Commission decisions along with the Town’s decisions.

3) Require a Certificate of Compliance before the Town issues a Certificate of Occupancy for those conditions which must be completed before occupancy (e.g. affordable housing contribution, part of the basic construction). Indicate that the Building Inspector may withdraw the Certificate of Occupancy for non-respect of any condition (including ongoing ones such as hours of operation and use of pesticides).

4) Make clear to applicants that the Commission may require a bond equal to 125% of the value of the work for those conditions that will be completed after the occupancy of the building (e.g. landscaping), when the scale of the project and the possible impacts of non-completion justify the cost and effort of bonding.

1.2 Exit Procedure

1) Send a copy of the Decision and approved plan (clearly stamped “Approved by the MVC” with the date) to the applicant, the building inspector, and the referring board. Have the applicant submit four sets of signed, dated plans of the proposal as approved by the Commission, one for each of the above and one for the MVC.

2) Contact the building inspector or referring board to review the decision with them, to point out any special concerns, and to invite them to attend the Exit Meeting with the applicant if they wish. Ask town officials to inform the MVC when the town’s final decision is made and send the MVC a copy of the town’s decision.

3) Post the Decision and the approved plans on the MVC Website.
4) Hold an Exit Meeting with the applicant at which we review the decision including all conditions and the need to come back if there are any changes. Make sure that they understand that the decision is being registered, and is now part of their deed.

5) Have the applicant sign a letter stating that they have read and understood the decision and conditions, and the obligation to return to the MVC for approval, before making any changes. Send a copy of this letter to the building inspector and referring board.

6) Hold a second meeting / site visit, with the building inspector if appropriate, to review compliance with MVC conditions. At the second meeting, the applicant shall provide a set of as-built plans that will be compared to the approved plans to ensure that the project is substantially similar to the approved plans. If the project is in compliance, issue a Certificate of Compliance and send it to the building inspector before the Town issues the Certificate of Occupancy.

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

2.1 Awareness of Decisions and Conditions

1) Put all decisions on the website including the key plans. This has started, but is a major task. Staff is starting with the most recent and working backwards, but is also prioritizing other projects of interest as identified by staff, Commissioners, Building Inspectors, town boards, and members of the public. We should ensure that it is easy to find decisions with just the project name or address. It should clearly show the book and page number of the registered decision.

2) Announce publicly that the MVC will be posting the decisions and plans in the coming months, and will be reviewing compliance of former DRIs on the basis of becoming aware of possible problems. This announcement should invite owners to re-read their DRI Decision to make sure that they are in compliance, and offering to help them deal with any cases of non-compliance. (This will only be done after the procedure for dealing with non-compliance has been settled.)

2.2 Notification of Noncompliance

1) If the MVC becomes aware of possible non-compliance with a DRI Decision, staff should call or send an email to the owner, pointing out that there appears to be a concern, and asking them to clarify the situation. In most cases, this should resolve the situation.

2) Staff should notify the Compliance Committee of the results of the initial inquiry, and the Committee would decide whether further action is warranted.

3) The next step is that staff should send a letter to the owner, with a copy to Building Inspector, saying that the project appears to be in non-compliance, stating the reasons, and asking that they either rectify the situation (giving them some time to comply if it expensive or complex), or apply for a modification of their approval. Presumably, the vast majority will want to comply, or will ask for a modification such as a change to a condition.
4) If this doesn’t result in remedial action by the owner, the Compliance Committee should review the situation, and, if it deems appropriate, make a recommendation to the full Commission as to what further action should be taken.

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

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

3. Non-Referral of Projects on the DRI Checklist

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

1) MVC staff will contact the town building inspector or regulatory board to clarify the situation.

2) If the situation is not clear-cut, the Compliance Committee will invite the building inspector and/or permitting board to discuss it with the Committee.

3) If it appears clear-cut that the project should be referred, MVC staff in cooperation with the Compliance Committee Chairman will send a letter to the building inspector and the relevant town permitting board (cc Board of Selectmen and Commission Counsel) informing them that the project appears to trigger the DRI Checklist and should be sent to the MVC for review as a DRI.

4) If the situation is not resolved, the Compliance Committee will consider the situation and advise the full Commission as to whether it recommends taking further action, including the possibility of legal action.

5) If a building inspector or referring board asks the Commission to clarify an item in the DRI Checklist that appears to be open to interpretation, MVC staff should make the clarification, seeking LUPC input if necessary, and so inform the town official. This will ensure that the DRI Checklist is applied in a similar and equitable way in all towns. These clarifications should be incorporated in future revisions of the Checklist.