
IN THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

Nos. 19-1661, 19-1857

AQUINNAH/GAY HEAD COMMUNITY ASSOCIATION, INC.;
TOWN OF AQUINNAH,

Plaintiffs-Appellees/Cross-Appellants,

COMMONWEALTH OF MASSACHUSETTS,

Plaintiff-Appellee,

v.

THE WAMPANOAG TRIBE OF GAY HEAD (AQUINNAH); THE
WAMPANOAG TRIBAL COUNCIL OF GAY HEAD, INC.; THE AQUINNAH
WAMPANOAG GAMING CORPORATION,

Defendants-Appellants/Cross-Appellees,

CHARLIE BAKER, in his official capacity as Governor of the Commonwealth of
Massachusetts; MAURA HEALEY, in her capacity as Attorney General of the
Commonwealth of Massachusetts; CATHY JUDD-STEIN, in her capacity as Chair
of the Massachusetts Gaming Commission,

Third Party Defendants/Appellees.

Nos. 19-1729, 19-1922

AQUINNAH/GAY HEAD COMMUNITY ASSOCIATION, INC.;
TOWN OF AQUINNAH,

Plaintiffs-Appellees/Cross-Appellants,

COMMONWEALTH OF MASSACHUSETTS,

Plaintiff-Appellee,

v.

THE WAMPANOAG TRIBE OF GAY HEAD (AQUINNAH); THE
WAMPANOAG TRIBAL COUNCIL OF GAY HEAD, INC.; THE AQUINNAH
WAMPANOAG GAMING CORPORATION,

Defendants-Appellants/Cross-Appellees,

CHARLIE BAKER, in his official capacity as Governor of the Commonwealth of Massachusetts; MAURA HEALEY, in her capacity as Attorney General of the Commonwealth of Massachusetts; CATHY JUDD-STEIN, in her capacity as Chair of the Massachusetts Gaming Commission,

Third Party Defendants.

On Appeal from the United States District Court for the District of Massachusetts
Case No. 1:13-cv-13286-FDS

**BRIEF OF AMICUS CURIAE OF THE
MARTHA'S VINEYARD COMMISSION IN SUPPORT OF
PLAINTIFFS-APPELLEES/CROSS-APPELLANTS**

Brian M. Hurley, BBO No. 245240
Stacie A. Kosinski, BBO No. 677829
Rackemann Sawyer & Brewster, P.C.
160 Federal Street
Boston, MA 02110-1700
Tel. No. (617) 542-2300
Fax No. (617) 542-7437
bhurley@rackemann.com
skosinski@rackemann.com
Counsel for the Martha's Vineyard Commission

CORPORATE DISCLOSURE STATEMENT

The Martha's Vineyard Commission is a statutorily created subdivision of the Commonwealth; it has no parent corporation and no publicly held corporation owns 10% or more of its stock.

TABLE OF CONTENTS

CORPORATE DISCLOSURE STATEMENT3

TABLE OF AUTHORITIES5

STATEMENT OF INTEREST OF *AMICUS CURIAE*.....6

INTRODUCTION AND SUMMARY OF ARGUMENT7

ARGUMENT12

 A. MVC JURISDICTION AND THE NON-GAMING PURPOSE OF
 MVC REVIEW12

 B. RECOGNIZING THE TRIBE’S POSITION CONCERNING
 JURISDICTION, THE MVC ATTEMPTED TO FASHION AN
 INFORMAL PROCESS FOR THE REVIEW OF NON-GAMING
 ELEMENTS15

 C. THE MVC IS STATUTORILY OBLIGATED TO REVIEW
 SPECIFIED PROJECTS AND TO MITIGATE ISLAND WIDE
 IMPACTS.....17

CONCLUSION.....19

CERTIFICATE OF COMPLIANCE.....21

CERTIFICATE OF SERVICE22

TABLE OF AUTHORITIES

CASES

Massachusetts v. Wampanoag Tribe of Gay Head (Aquinnah),
853 F.3d 618 (1st Cir. 2017)8

Rhode Island v. Narragansett Indian Tribe,
19 F.3d 685 (1st Cir. 1994)9

STATUTES

Chapter 637 of the Acts of 1974, St.1974, c. 6377

The Martha's Vineyard Commission Act, Chapter 831 of the Acts of 1977,
St.1977, c. 831, as amended St. 2017, c. 831*passim*

Indian Gaming Rgulatory Act, Pub. L. 100-497, 102 Stat. 2467 (1988), codified at
25 U.S.C. §§ 2701 et seq.8, 9

Wampanoag Tribal Council of Gay Head, Inc., Indian Claims Settlement Act of
1987, Pub. L. 100-95, 101 Stat. 704 (1987), previously codified at 25 U.S.C. §
1771 et seq. (2012)9

STATEMENT OF INTEREST OF AMICI CURIAE¹

The Martha's Vineyard Commission ("MVC") is one of 14 regional planning agencies ("RPAs") in the Commonwealth of Massachusetts. These RPA were established by state enabling legislation and each include members of the municipalities within the RPA's geographic reach.² The MVC's planning jurisdiction extends to the six towns located on Martha's Vineyard in Dukes County, Massachusetts, including the Town of Aquinnah. Dkt. 271-3.³ The MVC is statutorily charged with reviewing and approving specific types of development projects which "because of their magnitude or the magnitude of their effect on the surrounding environment, are likely to present development issues significant to

¹ Undersigned counsel hereby certifies that: no counsel for a party authored this brief in whole or in part; and no party, party's counsel or person - other than the *amicus curiae* - contributed money to fund the preparation or submission of this brief. The MVC notes that pursuant to its enabling statute, the net annual expenses of the MVC (after deductions from sources) are paid pro-rata by each member town into a general fund pool on the basis of their respective equalized valuation for property tax purposes. Accordingly, it is possible that a small percentage of those funds submitted by the Town of Aquinnah to the MVC operating costs might be used for MVC legal matters; however, any such funds have been excluded for this specific purpose and the MVC certifies that Town did not directly contribute any monies to fund the preparation or submission of this brief.

² The MVC is comprised of 21 Commissioners elected by the residents of Martha's Vineyard or appointed by elected officials. The Commissioners are representatives from the six towns located on Martha's Vineyard.

³ An affidavit from MVC Executive Director, Adam Turner, outlining the structure, purpose and authority of the MVC, as well as the MVC's attempts to work with the Tribe to review the gaming project was entered on the District

more than one municipality of the island of Martha's Vineyard.” The Martha's Vineyard Commission Act, “An Act Further Regulating the Protection of the Land and Waters of the Island of Martha's Vineyard”, Chapter 831 of the Acts of 1977, as amended (the “Act”), § 12.⁴

Given that the gaming facility at issue here is located in a portion of Aquinnah subject to MVC jurisdiction, and the Defendants-Appellants/Cross-Appellees' Opening Brief brings that very jurisdiction into question, the MVC has a special interest in the resolution of this case and the implications that a decision will have on its ability to work with the Tribe to address and mitigate the impacts of development projects on the entire Vineyard community. The MVC, as the agency statutorily responsible for the review and regulation of land use on the Vineyard, is uniquely situated to provide this Court with information concerning the purpose, function and procedures of the MVC, as well as its historical treatment of the Tribe in connection with the review of projects of a certain magnitude.

Court's docket on July 25, 2019 as Docket No. 217-3. References to information included in the Turner affidavit are cited herein as Dkt. 271-3.

⁴ On March 14, 1974, residents of Martha's Vineyard voted to endorse legislation to create the MVC. On July 27, 1974, Governor Francis Sargent signed legislation (Chapter 637 of the Acts of 1974) transforming the former Dukes County Planning and Economic Development Commission into the Martha's Vineyard Commission. The MVC held its first meeting on December 5, 1974. In 1977, Chapter 637 was replaced by the Act. A full copy of the Act is attached hereto as Add. 1-18.

INTRODUCTION AND SUMMARY OF ARGUMENT

This case presents an important issue concerning the interplay between the Indian Gaming Regulatory Act (“IGRA”), 25 U.S.C. § 2701 *et seq.* and the Town of Aquinnah’s ability to enforce local regulatory, permitting, zoning and licensing requirements as relating to non-gaming activities. The applicable permitting requirements include review of projects of potential regional impact by the MVC.

There is no dispute that the Tribe can build and operate a gaming facility on Settlement Lands without a gaming license from the Massachusetts Gaming Commission, as this Court held that IGRA impliedly repealed the Commonwealth’s authority to enforce gaming laws on Tribal lands. *Massachusetts v. Wampanoag Tribe of Gay Head (Aquinnah)*, 853 F.3d 618, 629 (1st Cir. 2017). The ongoing dispute (as experienced firsthand by the MVC in its unsuccessful efforts to communicate with the Tribe) is whether the Tribe must adhere to local zoning, planning and permitting regulations as set forth in a settlement agreement between the Tribe, the Town and others.

As detailed in Plaintiff-Appellees/Cross-Appellants’ Principal and Response Brief (Response Br. 4-5), the MVC’s jurisdiction in this matter derives from a 1983 settlement agreement entered into by and between the Tribe, the Commonwealth, the Town and the Aquinnah/Gay Head Community Association, Inc. The settlement agreement provided, in relevant part, that “[a]ll Federal, State and Town laws shall apply to the Settlement Lands.” The agreement was later was

codified in federal law as the “Settlement Act,” which further provided that Settlement Lands would remain subject to *inter alia* ordinances and jurisdiction of the Commonwealth and the Town of Aquinnah. Wampanoag Tribal Council of Gay Head, Inc., Indian Claims Settlement Act of 1987, Pub. L. No. 100-95, 101 Stat. 704 (the “Settlement Act”) (previously codified at 25 U.S.C. § 1771 *et seq.* (2012)).

IGRA left in place the Town’s jurisdiction to regulate activities that are not considered to be “integral to gaming.” *Rhode Island v. Narragansett Indian Tribe*, 19 F.3d 685, 704-05 (1st Cir. 1994). In granting the Town’s motion for entry of final judgment, the District Court emphasized that finding, noting that under the Settlement Act, the Settlement Lands remain generally subject to state and local jurisdiction. Response Br. 15.

The MVC’s generally applicable permitting and land use rules and regulations, which focus on a project’s likely regional impact on the environment, traffic, and municipal services - *i.e.* the impact of increased land and water traffic, the creation or alleviation of environmental problems, and the extent to which a development may require municipal or regional services such as solid waste disposal, public water, sewage treatment, parking and tourist services – do not fall under the rubric of concerns that are “integral to gaming.” Any development project of the size and scope of the gaming facility that falls under MVC jurisdiction, regardless of the proposed use, is subject to the same review. The

gaming aspect of the proposed development is not and has never been the subject of MVC review and analysis. Dkt. 217-3. Rather, the purpose (and statutory mandate) of the MVC is to review and assist in mitigating the impact that a development of the size and scope proposed here is likely to have island-wide on traffic, housing, public safety, public health and the unique natural values of the Island.

Fair and uniform application of MVC review to all development projects that are either so large or have such significant impacts on their surroundings that they would affect more than one town serves to mitigate and ameliorate detrimental island-wide impacts. There is no justification, in law or in commonsense, to exclude from any local review projects proposed by the Tribe (gaming or otherwise). The MVC has historically treated and will continue to treat all applicants/project proponents, including the Tribe, in a fair and equitable manner in fulfillment of its statutory duties and obligations. *See* Dkt. 217-3.

The Tribe's assertion that the application of local permitting rules and regulations would necessarily impede the Tribe's ability to avail itself of IGRA – *i.e.* build a gaming facility on tribal land – is flawed for two reasons: First, as stated, the use of the facility for gaming is not and cannot be the subject of MVC consideration- this issue is well-settled and not up for review. It is fundamentally inaccurate to suggest that a review to mitigate the impact that a development of this size will have on traffic, housing, sanitation and emergency services will

prevent the Tribe from moving forward with its gaming plans. Second, the purpose of the MVC is to work with communities and development applicants, including the Tribe, to promote the development of land in a way that is safest and most beneficial to all – not to prevent/impede all development efforts, as the Tribe’s position would seem to suggest.

Prior to the advent of the gaming dispute, the Town and the Tribe enjoyed a cooperative relationship where permitting is concerned, with a number of projects receiving building and other permits without issue. Response Br. 5. Indeed, two previous developments proposed by the Tribe have also undergone MVC review as Developments of Regional Impact (“DRIs”). Dkt. 217-3. In these instances – in 1993 and 2007 - through open communication and cooperation between the Tribe and the MVC, the projects (both located on Settlement Lands and reviewed subsequent to the enactment of the Settlement Act in 1987), were reviewed and approved with conditions. *Id.* The MVC has no intention of treating the Tribe differently from any other applicant – in fact, as explained *supra*, the MVC has made special accommodations for the benefit of the Tribe. Specifically, in connection with the gaming facility, the MVC unsuccessfully attempted to fashion an alternative, “informal” method of review to address the Tribe’s jurisdictional concerns.

Finally, in the event that the Tribe believed that local laws and regulations were applied in an unfair, “arbitrary and capricious” manner, the Tribe has the

right to seek further review of any unfavorable decision in the Massachusetts Superior Court.

ARGUMENT

A. MVC JURISDICTION AND THE NON-GAMING PURPOSE OF MVC REVIEW

The goal and function of the MVC is to assist the communities within its jurisdiction to plan and implement short and long-range changes or improvements, including the review of DRIs. Dkt. 271-3. Given the unique nature of Martha's Vineyard, the MVC is charged with the statutory authority and responsibility to carefully consider and attempt to mitigate any project related impacts on transportation, the environment, land use and community development. The jurisdiction and authority of the MVC, as well as its planning and regulatory functions, are set forth in the Act. St. 1977, c. 831.

As codified in the Act, the purpose of the MVC is to “further protect the health, safety and general welfare of island residents and visitors by preserving and conserving for the enjoyment of present and future generations the unique natural, historical, ecological, scientific, and cultural values of Martha's Vineyard which contribute to public enjoyment, inspiration and scientific study, by protecting these values from development and uses which would impair them, and by promoting the enhancement of sound local economies”. St. 1977, c. 831, § 1. To serve this interest, the Legislature gave the MVC special regulatory powers, including the

ability to establish and regulate DRIs and Districts of Critical Planning Concern (“DCPCs”). *Id.* at §§ 8-16.

In relevant part, the Act provides that the MVC shall review all applications for development permits which constitute DRIs. Section 12 of the Act authorizes the MVC to adopt standards for determining the types of development which qualify as DRIs. Based on that broad statutory authority the MVC has adopted such standards and criteria focused on developments likely to present issues to more than one town on the Island. The MVC also has broad authority and discretion as a regional land use and planning agency to evaluate and regulate a project within its jurisdiction that is referred to the MVC by a local town(s) and qualifies as or is determined to be a DRI. Section 3 of the Act authorizes the MVC to specify conditions for the development of a DRI which would not otherwise be permitted or required by existing local development bylaws where the MVC determines that the public health, safety and welfare would be endangered or that irreversible damage would result to natural, historical, ecological, scientific or cultural values on the Vineyard if the DRI was not developed subject to those conditions.

The Act also instructs that the agency or board within each municipality that has responsibility for issuing a development permit, shall review any application for proposed development to determine if the development is one of regional impact; if so, it shall refer the application to the MVC. St. 1977, c. 831, § 13.

Section 12 of the Act sets forth issue for consideration by the MVC in its review of a DRI. It provides that the MVC shall consider, but not be limited to, the review of regional issues including:

- a. Creation or alleviation of environmental problems (including air, water and noise pollution);
- b. Size of the site;
- c. Pedestrian and vehicular traffic to be generated;
- d. Number of persons to be present (employees, residents etc.);
- e. Intent to serve a regional market;
- f. Location near a waterway, publicly-owned land or municipal boundary; and
- g. Extent to which the development would require municipal or regional services such as solid waste disposal, public water, sewage treatment, parking and tourist services and public education facilities.

The MVC has promulgated a DRI Checklist that sets forth the standards and criteria used to determine whether a development is a DRI and must or may be referred to the MVC for review. Dkt. 217-3. The standards and criteria relate to a project's likely regional impact on the environment, traffic, and municipal services, among other factors. *Id.*

Under typical circumstances, a local board or permitting official applies the standards set forth in the Act (as set forth in the DRI Checklist) and makes a determination as to whether a project is a DRI. Dkt. 217-3. If so, the project then gets referred to the MVC for review.⁵ *Id.*

⁵ In the ordinary course, the MVC, through its Land Use Planning Committee (“LUPC”), receives detailed information by way of application from the landowner about a proposed use and the anticipated regional impact. The LUPC reviews the information and reports to the larger MVC with its analysis and recommendations. Once sufficient information is received and processed, the MVC schedules a hearing before the Commissioners to review the proposed development and to

In this case, taking the position that the Tribe is not subject to generally applicable non-gaming regulations, the Tribe made no applications for development permits from the Town. *Id.* Given the anticipated scope and impact of the project – in particular, the impact that a development of this size and magnitude would have on traffic, housing, public safety, sanitation and the environment, the Town of Aquinnah⁶, applying the statutory criteria and MVC guidance, referred the gaming project to the MVC for review. *Id.*

B. RECOGNIZING THE TRIBE’S POSITION CONCERNING JURISDICTION, THE MVC ATTEMPTED TO FASHION AN INFORMAL REVIEW PROCESS FOR NON-GAMING ELEMENTS

After referral, the MVC determined that the project fit within the definition of a DRI and also recognized that it would be situated within a DCPC as established by the MVC and Sections 8-10 of the Act. Ordinarily, such a project (i) would be reviewed by the MVC and its professional staff, and (ii) would be considered at a public hearing. Dkt. 217-3.

Recognizing the unique circumstances and the Tribe’s opposition to the formal process, the MVC attempted to work with the Tribe to create an alternate

determine: (i) whether the benefits of the proposal outweigh any demonstrated detriments and, if so, (ii) whether conditions should be imposed to ameliorate any potential adverse impacts associated with the proposed development. At the close of the public hearing, the MVC votes on whether to approve or deny a proposal and, in the case of an approval, votes on the conditions to be imposed with respect to such an approval. The applicant or development proponent has the right and opportunity to participate in the public process. The process often results in mutually agreed to changes and improvements. Dkt. 217-3.

and voluntary process of review. The MVC made clear in its communications with the Tribe that the gaming use of the proposed facility would not be the subject of the MVC review and analysis. Dkt. 217-3. Rather, the focus would be on working to arrive at a joint consensus as to the nature of the impact that a development of this size and scope would have on the subject property, the DCPC and the communities comprising Martha's Vineyard. The MVC, in light of its statutory obligation to review a project or development which qualifies as a DRI would thus review island-wide impacts of the development including traffic, housing and safety issues.

In an effort to resolve any jurisdictional dispute, the MVC proposed a process whereby the Tribe would provide impact related information and the MVC would review and comment in a public setting. The Tribe would reserve all rights under the proposal. Following an exchange of project related information (unrelated to gaming), the MVC would render a decision including suggesting conditions intended to mitigate any regional impacts. Dkt. 217-3.

After an exchange of correspondence, the Tribe agreed to meet with MVC representatives. That informal meeting took place on March 13, 2019. Dkt. 217-3. Although there was discussion of an informal review process based on specific, non-gaming, project information, the Tribe ultimately rejected such a process

⁶ The neighboring Town of Chilmark also requested review of the project, utilizing the process of discretionary referral set forth in the MVC guidelines. Dkt. 271-3.

which would have been undertaken with the understanding that the Tribe did not concede or agree that such a review was required. *Id.* Once the Tribe declined to share information or to participate in the informal process⁷, the MVC had no choice but to issue a decision declining to authorize the proposed project (without prejudice) because meaningful, albeit informal, review was impossible.

C. THE MVC IS STATUTORILY OBLIGATED TO REVIEW SPECIFIED PROJECTS AND TO MITIGATE ISLAND WIDE IMPACTS

Pursuant to the Act and the MVCs rules and regulations, the MVC, in close consultation with local boards, works to address potential environmental, economic and land use issues on a region-wide level. The MVC, by design and statutory mandate, takes into account island-wide needs and aims to work collaboratively

⁷ Following the meeting, on March 15, 2019, the MVC sent a letter to the Tribe proposing a follow-up discussion and sharing of information on the following topics:

- Site Plan Details;
- Description of Construction Activities;
- Utility Service and Drainage Plans;
- Transportation and Parking Plans;
- Intensity of the Proposed Use;
- Anticipated Housing Needs;
- Impact on Municipal Services;
- Waste Treatment/Management and Energy Plans;
- Archeological Impacts; and
- Impact on Scenic Values and Preservation of Island Character.

Unfortunately, efforts to employ an agreed upon informal review proved unsuccessful and a second meeting between the Tribe and the MVC never took place. Dkt. 217-3.

with project proponents to mitigate negative and enhance positive impacts of development. To this end, the activities of the MVC include planning, policymaking, communications, advocacy, education, and technical assistance on matters such as economic development, community preservation, natural resource use, infrastructure development and maintenance, environmental protection, land use control, historic preservation, transportation and transit planning, GIS mapping, regional housing, and information and technology sharing, among others.

Through cooperation with the MVC and participation in the review process, the Tribe, like all members of the community, could have availed itself of the services and expertise provided by the MVC to mitigate any potentially negative impacts of the gaming facility - which is ultimately a benefit to all members of the Island community. It is through these measures and assistance, the MVC strives to increase communication, cooperation, and coordination between all levels of government, as well as the private sector, to benefit the Martha's Vineyard region and to improve its residents' quality of life. Instead, the Tribe eschewed participation in any process, formal or informal, designed to consider and ameliorate any non-gaming issues related to the proposed gaming facility to be situated in a unique and fragile environment including a designated DCPC area. That decision was unnecessary and unfortunate.

CONCLUSION

The MVC has a direct interest in advocating for decisions – whether by this Court or by the Legislature - that promote the use of planning to develop land in a rational manner that responds to the needs of local residents; that allow land use to be governed through local and regional legislation enacted by the residents who are most affected; that further efforts by municipalities and RPAs to create, adopt, and implement comprehensive plans to guide the development of their land and resources; and that promote more comprehensive planning and allow for the mitigation of the impacts of development projects of a certain magnitude.

For the foregoing reasons, the Martha's Vineyard Commission respectfully submits that this Court should affirm the Judgment of the District Court thereby allowing the MVC to fulfil its statutory obligation to review a development proposal which qualifies as a development of regional impact.

Respectfully Submitted,

MARTHA'S VINEYARD COMMISSION,

By its attorneys,

/s/ Brian M. Hurley

Brian M. Hurley (BBO #245240)

bhurley@rackemann.com

Stacie A. Kosinski (BBO #677829)

skosinski@rackemann.com

Rackemann, Sawyer & Brewster, P.C.

160 Federal Street

Boston, Massachusetts 02110

(617) 542-2300

Dated: March 27, 2020

CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 29(a)(5), 32(a)(5), (6), (7)(B) and (C) and First Circuit Rule 32, I certify that the attached *Brief of Amicus Curiae The Martha's Vineyard Commission in Support of Plaintiffs-Appellees/Cross-Appellants* is proportionately spaced, uses 14-point Times New Roman type, and contains not more than 6500 words, exclusive of the table of contents, table of authorities, and certificates of counsel.

/s/ Brian M. Hurley _____
Brian M. Hurley

Dated: March 27, 2020

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing *Brief of Amicus Curiae The Martha's Vineyard Commission in Support of Plaintiffs-Appellees/Cross-Appellants* with the Clerk of the Court for the United States Court of Appeals for the First Circuit by using the appellate CM/ECF system on March 27, 2020.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Carrie M. Benedon, *carrie.benedon@state.ma.us*
Elizabeth A. Kaplan, *elizabeth.kaplan@mass.gov*
Juliana deHaan Rice, *juliana.rice@state.ma.us*
Scott David Crowell, *scottcrowell@hotmail.com*
Lael Ruth Echo-Hawk, *lael@mthirtysixpllc.com*
Elizabeth J. McEvoy, *emcevoy@barrettsingal.com*
Bruce A. Singal, *bsingal@barrettsingal.com*
Felicia H. Ellsworth *Felicia.Ellsworth@wilmerhale.com*
Claire M. Specht *Claire.Specht@wilmerhale.com*
William M. Jay *WJay@goodwinlaw.com*
Douglas J. Kline *dkline@goodwinlaw.com*
Joshua J. Bone *jbone@goodwinlaw.com*
Ronald H. Rappaport *rrappaport@rrklaw.net*
Michael A. Goldsmith *mgoldsmith@rrklaw.net*

/s/ Brian M. Hurley

Brian M. Hurley

March 27, 2020

ADDENDUM

The Martha's Vineyard Commission Act, Chapter 831 of the Acts
of 1977, as amended1



CHAPTER 831

THE MARTHA'S VINEYARD COMMISSION ACT

Chapter 831 of the
Commonwealth of
Massachusetts 1977 Acts and
Resolves as Amended

An Act Further Regulating The
Protection Of The Land And
Waters Of The Island Of
Martha's Vineyard

Table of Contents

Section

1. Goals
2. Organization, Election of Commissioners
3. Regulatory Powers
4. Assessments, Accounting
5. Application of Regulations
6. Definition
7. Adoption of Criteria & Standards
8. Districts of Critical Planning Concern (DCPC) Nomination
9. DCPC - Consideration
10. DCPC - Designation
11. DCPC - Adoption of Regulations
12. Developments of Regional Impact (DRI)
13. DRI Referral
14. DRI Review
15. DRI Benefits vs. Detriments
16. DRI Permits
17. Decision Enforcement
18. Decision Appeal
19. Additional Functions
20. Savings Clause - Actions
21. Savings Clause - Records - Interests
22. Savings Clause - Contracts
23. Savings Clause - Assessments, Monies
24. Savings Clause - Members, Employees
25. Repeal of Chapter 637
26. Severability of Provisions
27. Effective Date

Be it enacted by the Senate and House of Representatives in General Court Assembled, and by the Authority of the Same as Follows:

Section 1

Goals

The island of Martha's Vineyard possesses unique natural, historical, ecological, scientific, cultural, and other values and there is a regional and statewide interest in preserving and enhancing these values.

These values are being threatened and may be irreversibly damaged by uncoordinated or inappropriate uses of the land.

The protection of the health, safety and general welfare of island residents and visitors requires the establishment of a regional commission whose purpose shall be to ensure that henceforth the land usages which will be permitted are those which will not be unduly detrimental to those values or to the economy of the island.

The preserving and enhancing of these values requires the designation of districts of critical planning concern and the recognition of developments of regional impact, and the review thereof by the regional commission.

Such a program can protect the natural character and beauty of Martha's Vineyard and can contribute to the maintenance of sound local economies and private property values.

The people of Martha's Vineyard did, on March fourteenth, nineteen hundred and seventy-four vote to endorse the provisions of chapter six hundred and thirty-seven of the acts of nineteen hundred and seventy-four.

The purpose of the commission created by this act shall be to further protect the health, safety and general welfare of island residents and

visitors by preserving and conserving for the enjoyment of present and future generations the unique natural, historical, ecological, scientific, and cultural values of Martha's Vineyard which contribute to public enjoyment, inspiration and scientific study, by protecting these values from development and uses which would impair them, and by promoting the enhancement of sound local economies.

Section 2

Organization, Election Of Commissioners

There is hereby created the Martha's Vineyard Commission, hereinafter referred to as the commission, which shall be a public body corporate and which shall have the responsibilities, duties, and powers established herein over the lands and waters in the county of Dukes County with the exception of the Elizabeth Islands and the Indian Common Lands known generally as the Cranberry Bogs, the Clay Cliffs, and Herring Creek, all situated in the town of Gay Head, and to the extent they are excluded from the responsibilities, duties and powers of the towns, all lands owned by the commonwealth or any of its constituent agencies, boards, departments, commissions or offices.

The commission shall consist of twenty-one members, except as provided further in this section; one selectman or a resident registered to vote from each town on Martha's Vineyard, appointed by the board of selectmen of that town; nine persons to be elected at-large, island wide, provided that there shall not be less than one person nor more than two persons elected from each town on Martha's Vineyard and provided that said elections shall be held in accordance with the provisions of the following paragraphs; one

county commissioner of the county of Dukes County, or a designee, appointed by the county commissioners of said county; one member of the cabinet, or his designee, appointed by the governor; and four persons whose principal residence is not Martha's Vineyard to be appointed by the governor, said persons to have a voice but not vote in deciding matters before the commission. In the event that legislation relevant to the purposes of this act is enacted by the Congress of the United States, upon certification of such enactment by the President of the United States and by the governor of the commonwealth, and one member of the cabinet of the United States or the designee of such cabinet member shall also be a member of the commission.

The election of the nine at-large members of the commission shall be conducted at biennial state election in nineteen hundred and seventy-eight and succeeding elections of such members shall take place at the biennial state election. The nomination of candidates for election to the office of commission members shall be in accordance with sections six and eight of chapter fifty-three of the General Laws, provided, however, that no more than ten signatures of voters shall be required on the nomination papers for such office. Notwithstanding the provisions of section ten of chapter fifty-three of the General Laws, nomination papers for said candidates shall be filed with the office of the state secretary on or before the tenth Tuesday preceding the day of the election. Such nomination papers shall be subject to the provisions of section seven of said chapter fifty-three. All candidates for said office are hereby exempted from the reporting requirements as provided for in section sixteen of chapter fifty-five of the General Laws. Upon his election or appointment to the commission, each commission member shall be sworn to the faithful execution of his duties by the town

clerk of the town in which he resides; provided however, that the four commission members who do not have their principal place of residence on Martha's Vineyard shall be sworn by the town clerk of any town on Martha's Vineyard. Upon the qualification of its members, the commission members shall meet and organize by electing from among its members a chairman, Vice-chairman, and clerk treasurer. Succeeding election of officers shall be held annually, on or before December thirty-first, at a meeting called for the purpose; provided that the commission clerk-treasurer shall not concurrently hold the position of treasurer of said county. Terms of office for the elected members of the commission and for the non-resident taxpayer members shall be two years.

Terms of office for members who are selectmen or their designees or county commissioners shall be for one year and may be renewed only upon vote of the appointing body. The cabinet member or his designee appointed by the governor, shall serve at the discretion of the governor. Terms of office shall be computed from January first each year. Any vacancy in an appointed position shall be filled in the same manner as the original appointment for the remainder of the unexpired term.

Any vacancy in the elected membership shall be filled by a majority vote of the planning board, or the board of selectmen in the absence of a planning board, of the town in which the former member was a registered voter; said vacancy to be filled for the remainder of the unexpired term. The commission shall notify the municipality of any vacancy in the elected membership by notice to the town clerk and planning board at the town of residence of the elected member whose office is vacated. The cabinet member of the United States or his designee shall serve pursuant to applicable federal law.

The commission may also contract for such additional clerical, expert, legal and other assistance as may be required to discharge its responsibilities and may reimburse its members and staff for reasonable expenses incurred in the performance of their duties, including meals, travel and lodging.

Section 3

Regulatory Powers

The commission may adopt regulations for the control of districts of critical planning concern pursuant to sections eight to eleven, inclusive, and to specify conditions and modifications necessary for the control of developments of regional impact pursuant to sections twelve to sixteen, inclusive.

In adopting such regulations, the commission may include any type of regulation which may be adopted by any city or town under the following General Laws: section eight C of chapter forty; chapter forty A; sections eighty-one E to eighty-one H, inclusive, of chapter forty C as they relate to official maps, and sections eighty-one K to eighty-one GG, inclusive, of chapter forty-one; section twenty-seven B of chapter one hundred and eleven, as it relates to regional health boards; and sections forty and forty A of chapter one hundred and thirty-one, as they pertain to the protection of wetlands.

Regulations adopted pursuant to section ten or conditions and modification specified pursuant to section sixteen by the commission under the above-mentioned General Laws may differ from the otherwise relevant local development ordinances and by-laws in their scope and magnitude when such ordinances and by-laws are clearly restrictive of the purposes of the commission. In adopting regulations or specifying conditions which would not otherwise be permitted or required by existing local development ordinances and

by-laws the commission shall describe in writing and present evidence which demonstrates that the public health, safety and welfare would be endangered or that irreversible damage would result to natural, historical, ecological, scientific or cultural values on Martha's Vineyard by the continuing application of the existing local development ordinance or by-law as it applies to the specific district of critical planning concern or development of regional impact which the commission is considering.

The commission may be designated by any state or federal agency to participate in or receive funds and technical assistance from any state or federal programs, especially as those programs relate to environmental protection, conservation, land planning, water and air quality control, economic development, transportation or the development of region-wide public services. The commission may authorize debt in anticipation of receipt of revenue as provided in section four.

Section 4

Assessments, Accounting

The commission shall annually in the month of January estimate the amount of money required to pay its total expenses for the following fiscal year, deduct estimated contributions from sources, and pro rate the net expenses to each town on the basis of its latest equalized valuation for property tax purposes as established pursuant to section nine of chapter fifty-eight of the General Laws. The commission shall certify the amount so determined to the town clerk and assessors of each town within the commission's jurisdiction who shall include the sum in the tax levy of the year.

Upon order of the commission, each town treasurer shall, subject to the provisions of sections fifty-two and fifty-six of chapter forty-one of the General Laws, pay to the commission clerk-treasurer the town's share of the commission's net expenses. The amount so determined and levied shall not exceed .036 per cent of the latest equalized valuation for each town. A penalty of eight per cent annum shall be paid by towns delinquent in paying their assessed appropriations to the commission if not paid within sixty days of the notice of payment due.

The commission may upon majority vote of its members accept gifts of land, buildings, interests in land, or any funds or monies from any source including grants, bequests, gifts, or contributions made by an individual, association, or corporation or by any municipal, county, state or federal government. Monies so received shall be disbursed by the clerk-treasurer of the commission and the charge upon all towns may be reduced correspondingly upon majority vote of all members if such monies were not included in the calculations of the towns net share of expenses for the fiscal year.

The commission may authorize debt by a majority vote of the commission in anticipation of revenue to an amount not in excess of that to be received during the current fiscal year from all federal, state, county and local sources. Notes issued under authority of this section shall be signed by the clerk-treasurer of the commission, and the chairman of the commission shall countersign and approve them in the presence of the vice-chairman of the commission who shall certify to the fact on the face thereof. Such notes shall be payable, and shall be paid, not later than one year from their dates, and shall not be renewed or paid by the issue of new notes, except as provided in section seventeen of chapter of chapter forty-four of the General Laws.

The commission shall record all receipts and disbursements in accordance with the requirements of the commonwealth which govern accounting practices for towns.

All personnel, material and service charges shall be kept separately and allocated to either direct or indirect accounts by project or program. Complete annual accounting reports, prepared in the manner prescribed for towns, shall be published and distributed within ninety days after the end of each fiscal year. Copies of said annual accounting reports shall be made available to the public and copies shall be sent to the town clerks and the finance committees of each town in the county of Dukes County.

Section 5

Application Of Regulations

Notwithstanding the provisions of any ordinance or by-law of a municipality on Martha's Vineyard, every municipal land regulatory agency shall be governed by the procedures, standards, and criteria established pursuant to this act in passing on applications for development permits relating to areas and developments subject to this act. A copy of each such permit granted by any such agency shall be filed with the commission.

Where there is conflict between a local rule, regulation, ordinance, by-law or master plan, the more limiting or restrictive requirement shall prevail.

Section 6

Definition

The following words, wherever used in this act shall, unless the context requires otherwise, have the following meanings:

"Development", any building, mining, dredging, filling, excavation or drilling operation; or any material change in the use or appearance of any structure or in the land itself; or the dividing of land into parcels; or a change in the intensity of 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 waste or fill on a parcel of land.

"Development ordinances and by-laws", any by law, ordinance, rule, regulation or code adopted by a municipality for the control or regulation of activities related to construction, improvement, or alteration made to buildings or land within the boundaries of said municipality.

"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.

"Municipal land regulatory agency", any municipal agency, board, commission, department, office, or official that has statutory authority to approve or grant a development permit.

"Person", an individual, corporation, governmental agency, business trust, estate, trust, partnership, association, two or more persons having a joint or common interest, or any legal entity.

"Regulation", any ordinance, by-law, rule regulation or code which may be adopted by a city or town under the General Laws enumerated in section three of this act and

which is adopted by the commission under the provisions of section ten.

Section 7

Adoption Of Criteria & Standards

The commission shall submit to the secretary of the executive office of environmental affairs standards and criteria which the commission proposes to use in determining whether or not a proposed area is one of critical planning concern as that term is defined in section eight; and standards and criteria which the commission proposes to use and to be used by municipal authorities in determining whether or not a proposed development is one of regional impact as that term is defined in section twelve.

The secretary of the executive office of environmental affairs, with the concurrence of such other members of the governor's cabinet as the governor shall designate for this purpose, may approve, disapprove, or amend and approve with the advice and consent of the commission, the standards and criteria regarding designation of districts of critical planning concern and review of developments of regional impact if such standards and criteria are in accordance with the purposes of the commission. The secretary of the executive office of environmental affairs and such other cabinet members designated by the governor shall approve, disapprove, or amend and approve standards and criteria submitted to them within forty-five days after the receipt of such standards and criteria.

The standards and criteria submitted by Martha's Vineyard Commission established under chapter six hundred and thirty-seven of the acts of nineteen hundred and seventy-four, and by the secretary of communities and development on September eighth, nineteen hundred and seventy-five shall be deemed in

full compliance with this section and shall continue in full force and effect until such time as they are amended by the commission and approved, or amended and approved, by the secretary of the executive office of environmental affairs in accordance with this section.

Section 8

Districts Of Critical Planning Concern (DCPC) Nomination

The commission may, after notice to all municipalities which include within their boundaries any part of the area of a proposed district of critical planning concern and after notice and public hearing pursuant to section two of chapter thirty A of the General Laws, designate specific geographical areas on Martha's Vineyard as districts of critical planning concern. The designation of such districts shall be made only in accordance with the standards and criteria for districts of critical planning concern approved pursuant to section seven.

A district of critical planning concern may be Designated only for

- (a) an area which possesses unique natural, historical, ecological, scientific, or cultural resources of regional or statewide significance;
- (b) an area which possesses marginal soil or topographic conditions which render it unsuitable for intense development; or
- (c) an area significantly affected by, or having significant impact on, an existing or proposed major public facility or other area of major public investment. A major public facility is any publicly owned facility of regional importance except:

1. any public facility operated by a municipality primarily for the benefit of the residents of that municipality, or by any agency serving primarily the residents of one municipality;
2. any street or highway which is not recognized as or maintained as a part of the state or federal highway system; or
3. any educational institution serving primarily the residents of one municipality.

Nomination of areas for consideration for designation as districts of critical planning concern may be made by the commission or by a board of selectmen, planning board, board of health, or conservation commission of any of the towns affected by this act for any area within or without its municipal boundaries. Nominations also may be made upon petition of seventy-five taxpayers of any town on the island. Within forty-five days of the receipt of a nomination the commission shall accept or reject the nomination for consideration for designation upon a majority vote of its members. The acceptance of the nomination for consideration for designation shall be accompanied by a general statement of purpose, describing the reasons for acceptance of the nomination for consideration. Nominations which are not accepted for consideration shall be returned to their sponsors with a written explanation of the commission's reasons for not accepting the nomination within forty-five days of submission. The commission may consolidate nominations which pertain to the same geographical area or to areas which are contiguous or it may amend a nomination. Nominations accepted for consideration for designation which do not receive designation may be reconsidered for designation within one year of the original acceptance for

consideration upon a vote of two-thirds of the commission members.

In its designation of a district of critical planning concern the commission shall specify why the area is of critical concern to the region, the problems associated with the uncontrolled or inappropriate development of the area, and the advantages to be gained from development of the area in a controlled manner. The commission also shall specify broad guidelines for the development of the district. The issuance of such guidelines shall be based on, but need not necessarily be limited to, the following considerations:

- (a) that development of the district will not result in undue water, air, land, or noise pollution, taking into account the elevation of the district above sea level, the nature of the soils and subsoils and their ability adequately to support waste disposal, the slope of the land and its effect on effluents, availability of streams and other conduits for disposal of effluents, and the applicable health, water resources and environmental regulations;
- (b) that the existing water supply of the district will not be unreasonably burdened by any development;
- (c) that development of the district will not result in increased beach erosion or damage to the littoral or wetlands environments;
- (d) that development of the district will not result in undue harm to cultural, economic, or historic values.

In any application for a development permit which applies to an area within a district of critical planning concern, the burden of proof of compliance with the above considerations shall be on the applicant. The commission may amend or rescind the designation of a district in the manner provided for designation.

Nominations accepted for consideration for designation which do not receive designation from the commission within sixty days of the date of acceptance shall be returned to their sponsors with a written explanation of the commission's reasons for no granting the designation.

Section 9

DCPC - Consideration

No municipality shall grant a development permit applicable within a district of critical planning concern except in accordance with regulations promulgated pursuant to section ten.

The acceptance of a nomination for consideration for designation of a district of critical planning concern shall suspend the power of a municipality to grant development permits applicable within the district; provided, however, that until regulations for the district adopted pursuant to section ten have become effective, a municipality may grant development permits, applicable within the district if:

- (a) the commission has certified that the type or class of proposed construction, improvement, or alteration is essential to protect the public health, safety and general welfare because of an existing emergency certified by the commission; and
- (b) a development ordinance or by-law had been in effect immediately prior to the nomination of such area and development permits would have been granted under such ordinance or by-law.

Section 10

DCPC - Designation

After designation of a district of critical planning concern, a municipality whose boundaries include all or part of the district may adopt regulations in conformance to the guidelines for the development of the district as set forth in the designation. In adopting such regulations, each municipality shall have all of the powers it otherwise had under the General Laws. A copy of regulations so adopted shall be submitted to the commission.

Pursuant to the issuance of broad guidelines for the development of the district by the commission in its designation of a district of critical planning concern, four town boards, the town planning board, the board of health, the board of selectmen and the conservation commission shall prepare proposed regulations which conform to the guidelines. Said proposed regulations shall be transmitted to the commission by the boards of the town concerned.

If the commission determines that the proposed regulations, or regulations amended by the commission, conform to the guidelines for the development of the district specified in the commission's designation of the district, the commission shall, after notice to all municipalities which include within their boundaries any part of the district of critical planning concern and after notice and public hearing pursuant to section two of chapter thirty A of the General Laws, notify the four town boards of conformance to the guidelines. When boards from more than one town shall, pursuant to this act, submit proposed regulations for areas within a single district, the commission may encourage such boards to submit compatible regulations, notwithstanding the differences between the municipalities.

If the commission determines that said proposed regulations are not in conformance to the guidelines, the commission shall specify

to the four town boards why the regulations fail to conform to the guidelines. The four town boards may then submit to the commission proposed amended regulations. Upon the approval by the commission of proposed regulations or proposed amended regulations, the municipality in whose boundaries the district was designated may adopt the regulations or amended regulations by a two-thirds vote on a town ballot, with discussion of the question on the town meeting floor at the discretion of the moderator. A failure to adopt by a two-thirds vote of a town meeting constitutes a rejection of the regulations.

If a municipality whose boundaries include all or part of the district fails to submit regulations which conform to the guidelines for the development of the district within six months after the designation, the commission may, after notice to such municipality and notice and public hearing pursuant to section two of chapter thirty A of the General Laws, adopt regulations applicable to such municipality's portion of the district.

The adoption of such regulations shall specify the extent to which they shall supercede the otherwise applicable local development ordinances and by-laws or be supplementary thereto. Regulations so adopted shall be only the types specified in section three.

All regulations so adopted shall be incorporated, without regard to the provisions of section thirty-two of chapter forty of the General Laws, by the municipality into the official ordinances, by-laws and maps of the municipality and shall not be effective prior thereto. Such regulations shall be administered by the municipality as if they were part of its development ordinances and by-laws. If such a regulation requires enforcement by an administrative office or body which has not been constituted by a municipality, the board of selectmen of the

municipality shall enforce such regulation. At any time after the adoption by the commission of such regulations, the municipality concerned may adopt regulations which, if approved by the commission as provided in this section, shall supercede any regulations adopted by the commission pursuant to this section.

A municipality may rescind regulations in the manner provided for adoption. The process to rescind regulations may be initiated by a written request by the commission or by the board of selectmen, planning board, board of health, or conservation commission or the town affected, or by a petition of seventy-five Island taxpayers.

The written request for rescission shall be presented to the following four town boards: board of selectmen, planning board, board of health and conservation commission. The four town boards shall hold a public hearing with due notice.

Following the hearing, the boards shall transmit to the commission a recommendation for its consideration. The commission shall hold a public hearing with due notice and shall make a recommendation for town meeting consideration.

The board of selectmen of the town concerned shall place upon the town ballot a question regarding rescinding of regulations. Regulations so rescinded shall immediately be removed from the local development ordinances and by-laws and shall not be supplementary thereto.

Section 11

DCPC - Adoption Of Regulations

If the commission has not approved or adopted regulations applicable to the entirety of a district within twelve months after designation of such district, the designation of such part for which regulations have not been approved or adopted shall be terminated.

No part of the area formerly designated as a district shall again be designated as a district for a period of twelve months from the date of such termination. Notice of such termination shall be given in the same manner as provided for designation.

Section 12

Developments Of Regional Impact (DRI)

The commission shall adopt and submit for approval, pursuant to section seven, standards and criteria which specify the types of development which, because of their magnitude or the magnitude of their effect on the surrounding environment, are likely to present development issues significant to more than one municipality of the island of Martha's Vineyard. For the purpose of this act, such types of development shall be termed developments of regional impact.

Notice shall be given by the commission at least fourteen days prior to a public hearing on amendments to the criteria and standards for development of regional impact.

Said notice shall be given by certified mail by the commission to but not limited to the following town boards or officials of each town on Martha's Vineyard: Board of Selectmen, Board of Health, Planning Board, Building Official, Conservation Commission and Board of Assessors.

Within ninety days following the public hearing the commission shall consider

changes to the standards and criteria, which shall be submitted in accordance with section seven.

In adopting standards and criteria pursuant to this section, the commission shall consider, but shall not be limited by the following considerations:

- (a) the extent to which a type of development would create or alleviate environmental problems, including, but not limited to. air, water and noise pollution;
- (b) the size of the site to be developed;
- (c) the amount of pedestrian and vehicular traffic likely to be generated;
- (d) the number of persons likely to be residents, employees, or otherwise present;
- (e) the extent to which a type of development is intended to serve a regional market;
- (f) the location of a type of development near a waterway, publicly-owned land, or a municipal boundary; and
- (g) the extent to which the development would require the provision of the following municipal or regional services: solid waste disposal, public water supplies, sewage treatment facilities, parking facilities and tourist services and public education facilities.

The standards and criteria shall be reviewed at least every two years.

Section 13

DRI Referral

The governmental agency within each municipality which has responsibility for issuing a development permit shall in accordance with the standards and criteria approved pursuant to section seven determine

whether or not a proposed development, for which application for a development permit has been made, is one of regional impact; if so, it shall refer the application for the development permit to the commission.

Section 14

DRI Review

The commission shall review all applications for development permits for developments of regional impact. Notice and public hearing pursuant to section two of chapter thirty A of the General Laws shall be required, except that only fourteen days rather than twenty-one days of prior notice shall be required and a copy of said notice need not be sent to the state secretary. The commission shall permit the referring agency to grant a development permit for such development only if it finds after such public hearing that:

- (a) the probable benefit from the proposed development will exceed the probable detriment as evaluated pursuant to section fifteen;
- (b) the proposed development will not substantially or unreasonably interfere with the achievement of the objectives of the general plan of any municipality or the general plan of the county of Dukes County;
- (c) the proposed development is consistent with municipal development ordinances and by-laws, or, if it is inconsistent, the inconsistency is necessary to enable a substantial segment of the population of a larger community of which the municipality is a part to secure adequate opportunities for housing, education or recreation; and
- (d) if the proposed development is located in whole or in part within a designated district of critical planning concern, it

is consistent with the regulations approved or adopted by the commission pursuant to section ten; and

- (e) a proposed development which does not qualify as a development of regional impact under the standards and criteria approved pursuant to section seven may nevertheless be referred to the commission as a development of regional impact by a municipal agency in the town where the development is located, by the board of selectmen in any other municipality in the county of Dukes county or by the county commissioners.

Within thirty days of the receipt of such a referral, the commission shall publish notice of a public hearing in a newspaper of general circulation on Martha's Vineyard to consider accepting a referral under this clause. The commission shall cause such notice to be published not less than seven days prior to the date of hearing in a newspaper of general circulation and shall mail written notice of said hearing to the owner of the premises, as appearing on the records of the assessors of the town in which the proposed development of regional impact is located and to the board of selectmen of said town, no less than seven days prior to the public hearing. Public hearings under this clause shall be held and concluded within forty days of receipt of a referral unless the proponent of the proposed development of regional impact agrees in writing to extend such period. Unless the commission votes to accept a referral under this clause as a development of regional impact within fifty days after receipt of a referral or in case of an extension of the public hearing period, within ten days after the end of the

extended period, the referral shall be deemed denied. At the public hearing the commission shall receive evidence as to whether the proposed development will have impacts within other municipalities on the values protected under section one or the interests referred to in clauses (a) to (h) inclusive, of section fifteen. If the commission votes to accept a referral of a development as a development of regional impact under this clause, the commission shall forthwith notify the town clerk, the board of selectmen and the municipal agencies of the municipality which are considering development permits for the proposed development which has been accepted as a development of regional impact by mailing to them a copy of the commission's vote. The commission shall also mail a copy of said vote forthwith to the applicant for any municipal development permits for the development of regional impact. Thereafter, the municipal land regulatory agencies and the commission shall treat the commission's vote as a referral pursuant to section thirteen and the commission shall review all applications for the development in accordance with this section and sections fifteen and sixteen.

The commission shall hold the public hearing within thirty days after receipt of the referral, or application. The commission shall make the required finding and notify the referring agency and applicant of its decision within sixty days after the public hearing. These time limits may be waived by mutual agreement between the commission and the applicant for the development.

Section 15

DRI Benefits vs. Detriments

In making a finding of the probable benefits and detriments of a proposed development, the commission shall not restrict its consideration to benefits and detriments within the municipality of the referring agency, but shall consider also the impact of the proposed development on the areas within other municipalities. Such probable benefits and detriments shall be considered even if they are indirect, intangible or not readily quantifiable. In evaluating the probable benefits and detriments of a proposed development of regional impact the commission shall consider, together with other relevant factors, whether:

- (a) development at the proposed location is or is not essential or especially appropriate in view of the available alternatives on the island of Martha's Vineyard;
- (b) development in the manner proposed will have a more favorable or adverse impact on the environment in comparison to alternative manners of development;
- (c) the proposed development will favorably or adversely affect other persons and property, and if so, whether, because of circumstances peculiar to the location, the effect is likely to be greater than is ordinarily associated with the development of the types proposed;
- (d) the proposed development will favorably or adversely affect the supply of needed low and moderate income housing for island residents;
- (e) the proposed development will favorably or adversely affect the provision of municipal services and the

burden on taxpayers in making provision there for;

- (f) the proposed development will use efficiently or burden unduly existing public facilities or those which are to be developed within the succeeding five years;
- (g) the proposed development will aid or interfere with the ability of the municipality to achieve the objectives set forth in the municipal general plan; and
- (h) the proposed development will further contravene land development objectives and policies developed by regional or state agencies.

Whenever the commission is required to find whether the probable benefit from a proposed development of regional impact will exceed the probable detriment, it shall prepare a written opinion setting forth the grounds of its findings.

Section 16

DRI Permits

No referring agency shall grant a development permit for a development of regional impact except with the permission of the commission. In permitting the referring agency to grant a development permit for a development of regional impact the commission may also specify conditions to be met by the developer to whom the permit is being issued for the purpose of minimizing economic, social or environmental damage.

Section 17

Decision Enforcement

The commission may enforce any decisions, conditions or restrictions it may impose upon a development by recording certificates of noncompliance with appropriate plan or title references in the registry of deeds. The commission may commence such other actions or proceedings as it may deem necessary to enforce its decisions, conditions or restrictions.

Section 18

Decision Appeal

Any party aggrieved by a determination of the commission may appeal to the superior court within twenty days after the commission has sent the development applicant written notice, by certified mail, of its decision and has filed a copy of its decision with the town clerk of the town in which the proposed development is located. The court shall hear all pertinent evidence and shall annul the determination of the commission if it finds that said determination is unsupported by the evidence or exceeds the authority of the commission, or it may remand the case for further action by the commission or may make such other decree as is just and equitable. Costs of the appeal shall not be allowed against the commission unless it shall appear to the court that the commission acted with gross negligence, bad faith or malice. Costs of such appeal shall not be allowed against the appellant unless it shall appear to the court that the appellant acted in bad faith or with malice.

Section 19

Additional Functions

In addition to performing its functions under this act, the commission may perform any function assigned to it under federal law.

Section 20

Savings Clause - Actions

All petitions, hearings and other proceedings duly brought before, and all prosecutions and legal and other proceedings duly begun by any person, municipal land regulatory agency, local board or official or the Martha's Vineyard Commission, established by chapter six hundred and thirty-seven of the acts of nineteen hundred and seventy-four, as amended, which arise from or relate to the exercise of powers or the performance of duties under said chapter six hundred and thirty-seven and which are pending or incomplete immediately prior to the effective date of this act shall continue unabated and remain in full force and effect notwithstanding and passage of this act and shall thereafter be completed in accordance with this act.

All orders, actions, guidelines, standards and criteria, designations, procedures, by-laws, development ordinances and by-laws, regulations, conditions and modifications and decisions duly made, and all licenses, permits, authorities, permissions, certificates, approvals and endorsements duly granted, by any municipality, municipal land regulatory agency, local board or official of the said Martha's Vineyard Commission, as so established, which arise from or relate to the exercise of powers or the performance of duties under said chapter six hundred and thirty-seven and which are in effect immediately prior to the effective date of this

act, shall continue in full force and effect and the provisions thereof shall thereafter be enforced, until superseded, revised, rescinded or canceled in accordance with this act and any other applicable law.

Section 21

Savings Clause - Records - Interests

All books, papers, records, documents, equipment, lands, interests in land, buildings, facilities and other property, both personal and real, which immediately prior to the effective date of this act, are in the custody of the Martha's Vineyard Commission, established by chapter six hundred and thirty-seven of the acts of nineteen hundred and seventy-four, as amended, and which relate to or are maintained for the purpose of the exercise of powers or the performance of duties under said chapter six hundred and thirty-seven are hereby held by the Martha's Vineyard Commission established under the provisions of this act.

Section 22

Savings Clause - Contracts

All duly existing contracts, leases and obligations of the Martha's Vineyard Commission, established by chapter six hundred and thirty-seven of the acts of nineteen hundred and seventy-four, as amended, which relate to the exercise of powers or the performance of duties under said chapter six hundred and thirty-seven shall hereafter; be obligations which are assumed and performed by the Martha's Vineyard Commission established under the provisions of this act.

Section 23

Savings Clause - Assessments, Monies

All assessments made by the Martha's Vineyard Commission established by chapter six hundred and thirty-seven of the acts of nineteen hundred and seventy-four, as amended, and all monies heretofore received or to be received from any source by said commission for the performance of its duties and which remain unexpended on the effective date of this act shall immediately be transferred to the Martha's Vineyard Commission established under the provisions of this act and shall be available for expenditure by said commission. Any such assessments unpaid on the effective date of this act shall be due and owing to the Martha's Vineyard Commission established under the provisions of this act.

Section 24

Savings Clause - Members, Employees

The members of the Martha's Vineyard Commission established by chapter six hundred and thirty-seven of the acts of nineteen hundred and seventy-four, as amended, in office on the effective date of this act shall continue in office as members of the Martha's Vineyard Commission established by this act for the duration of the term for which they were originally elected or appointed.

All employees of the Martha's Vineyard Commission established by said chapter six hundred and thirty-seven immediately prior to the effective date of this act shall be transferred to and become employees of the Martha's Vineyard Commission established by this act. Such transfer shall be without impairment of seniority, retirement, or other rights or benefits accruing to the employees

and without interruption of service or reduction in compensation or salary grade.

12/21/77

Section 25

Repeal of Chapter 637

Chapter six hundred and thirty-seven of the acts of nineteen hundred and seventy-four, as most recently amended by chapter two hundred and nineteen of the acts of nineteen hundred and seventy-six, is hereby repealed.

(This draft incorporates the amendments of Chapter 319 of 6/25/79).

(Note: This copy of Chapter 831 repeats the headings of each section. These editorial additions are for the assistance of the reader, and are not part of the Act itself.)

Section 26

Severability of Provisions

The provisions of this act are severable and if any of its provisions shall be held unconstitutional or invalid by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the remaining provisions.

Section 27

Effective Date

This act shall take effect upon its passage.

MARTHA'S VINEYARD COMMISSION

P.O. BOX 1447, OAK BLUFFS, MA, 02557

T: 508-693-3453 F: 508-693-7894

INFO@MVCOMMISSION.ORG WWW.MVCOMMISSION.ORG