

The DRI Process

Review of Developments of Regional Impact

The Martha's Vineyard Commission was created in 1974 by an act of the Massachusetts Legislature in response to what legislators viewed as a threat of unchecked development on Martha's Vineyard. The Legislature determined that towns on the Vineyard individually lacked the financial, technical, and political capability to adequately respond to new development in a way that would preserve the character and environment of Martha's Vineyard.

In order to protect the unique "natural, historical, ecological, scientific, [and] cultural" qualities of the Vineyard, the Legislature adopted the Martha's Vineyard Commission Act (Chapter 831), which created a system of regional planning and regulation. Primary authority under the Act is vested in a regional planning body, the Martha's Vineyard Commission. The Commission has the authority to regulate or even stop the local permitting process with regard to certain projects, known as Developments of Regional Impact (DRIs), or with regard to certain areas, known as Districts of Critical Planning Concern (DCPCs).

Chapter 831 authorizes the Commission to review developments that are either so large or have such significant impacts on their surroundings that they would affect more than one town. Such projects are labeled DRIs. Examples include projects that could have a significant impact on nitrogen loading in coastal ponds, that could seriously worsen traffic on the Island's major roads, or that could have a notable impact on the Vineyard's scenic values in terms of views from highly traveled ways or water bodies.

Once officially classified as a DRI, the project must be approved by the Commission before a town board may issue a required permit. The Commission weighs the potential benefits and detriments of the proposal to determine whether the application should be approved, approved with conditions, or denied.

This document outlines the basic steps of the DRI process.¹ The following other documents should also be consulted.

- **The DRI Application** – Outlines what materials are required for DRI applications to be considered complete.
- **DRI Procedures** – A detailed list of DRI procedures, including referral, application, review, and various administrative processes not included here.
- **The Martha's Vineyard Commission Act (Chapter 831)** – The MVC's enabling legislation. Sections 14 and 15, which outline the criteria that the Commission uses in weighing the potential benefits and detriments of a proposal, are included at the end of this document.

¹ If there is any discrepancy between this document and the official documents of the Martha's Vineyard Commission such as Chapter 831, the DRI Procedures, DRI policies, or the DRI Checklist, the latter take precedence.

- **The Island Plan** – A Regional Policy Plan that outlines various objectives and strategies pertaining to conservation and development on the Vineyard.
- **DRI Policies** – Housing, Open Space Management, Site Design and Landscape, Water Quality Management, Energy, and Historic Preservation.

Step 1: Referral

Application to the Town: The process begins when the proponent of a new project seeks a development permit from a town. This may include a subdivision approval or special permit from a planning board, a building permit from a building inspector, a variance from a zoning board of appeals, an order of conditions from a conservation commission, or any other “permit, license, authority, endorsement or permission required from a municipal agency prior to the commencement of construction, improvement or alteration made to the building or land.” The applicant completes application papers and submits plans and documents as required by the town board or official.

Standards and Criteria: The Commission has established standards and criteria (often called the DRI Checklist) for determining when a development is a DRI and must be referred to the Commission for review. The standards and criteria relate to a project’s likely impact on the environment, traffic, and municipal services, among other factors. A copy of the current checklist can be obtained from the Commission offices or website. Note that the checklist includes any project that was previously designated a DRI; those projects are known as modifications and may be referred directly by the owner/applicant rather than a permitting agency.

Action by Town Boards: The local board or official charged with issuing the permit applies the standards and criteria to determine whether the project is a DRI. If the board or official determine that a project is a DRI, they pause their own review and refer the project to the Commission. The board or official should complete the DRI Referral Form and forward it along with all permit applications, plans, documents, and other related materials supplied by the applicant to the DRI Coordinator by both email and certified mail.

Types of Referral: There are three types of DRI referral:

- A. **Mandatory Referral** – The application must be referred to the Commission and the Commission must review it.
- B. **Mandatory Referral Requiring Concurrence** – The application must be referred to the Commission, but the Commission may or may not concur with the referral.
- C. **Discretionary Referral (also called an In-Town, Out-of-Town or Island-Wide Referral)** – Any municipal agency in the town where the development is located, the board of selectmen of another town, or the Dukes County Commissioners may ask the Commission to review any project that it believes might have significant regional impact. The Commission may or may not concur with the referral.

Concurrence Vote: Type B and C referrals allow the MVC discretion as to whether to require a full public hearing. For a Discretionary Referral, the Commission will hold a public hearing the sole purpose of which is to consider whether the project is a DRI (see DRI Procedures for details). For either type B or C referrals, if the MVC does concur, the application is processed by the Commission. If the MVC does not concur because it does not believe that the project would have significant regional impact, the application is sent back to the town to continue the permitting process as the town sees fit.

Tolling: When a town makes a type A referral, or when the Commission accepts a type B or C referral, the permitting process in the town is put on hold (tolled) until the town receives the Commission's written decision on the project.

Step 2: Application

The following are the steps that an applicant must follow in order to apply to the Martha's Vineyard Commission for approval of a DRI. These steps are explained in more detail in the document *The DRI Application*. Applicants may also request a pre-application meeting with staff to discuss the project and/or review process.

- a. **Obtaining Documents:** The applicant obtains a series of background documents as well as specific documents related to the application process. This includes the following:
 - Chapter 831 – The MVC's enabling legislation. Refer in particular to sections 14 and 15 that outline the criteria that the Commission uses in weighing the potential benefits and detriments of a proposal.
 - DRI Procedures
 - DRI policies: Housing, Open Space Management, Site Design and Landscape, Water Quality Management, Energy, and Historic Preservation
 - The Island Plan
 - DRI Application Form
 - Fee Schedule

- b. **Pre-Application Meeting with Staff:** Although not required, you may contact the DRI Coordinator to set up a pre-application meeting with MVC staff at which staff will review the submission requirements and answer the applicant's technical and procedural questions. You should bring any plans, studies, or information on the property and/or proposal to this meeting. Staff of the referring municipal agency (e.g. the administrator of a planning board) may be invited to attend to help clarify procedures.

Prepare Application: The applicant begins to prepare the application. You should start to fill out the application form and prepare the other materials that constitute a complete application, including any material requested by staff. Detailed instructions are described in *The DRI Application*.

- c. **Staff-Applicant Meeting:** The applicant participates in a meeting with MVC staff to discuss the project. Staff will identify any additional information that is needed to complete the application. This is also another chance for the applicant to ask any questions about the process. Once staff determines that the application is ready, it will schedule step e below.
- d. **Draft Staff Report:** Before the LUPC meeting (step e), the Commission staff will prepare a draft staff report outlining the project history and proposal, administrative matters, planning concerns, and any other information that may be useful during the decision-making process.
- e. **Initial Meeting of the Land Use Planning Committee:** Once the application is advanced, the applicant will participate in an initial meeting of the Land Use Planning Committee (LUPC), a sub-committee of the Commission. The applicant is given an opportunity to explain the proposal, discuss the project informally with Commissioners and staff, and get feedback as to the issues and concerns that should be addressed during the public hearing. At this meeting the LUPC will determine the scope of the required transportation study (or waive the study) and will indicate what additional studies or information are needed to complete the application. Town officials are strongly encouraged to participate in this meeting so that members of the LUPC get a sense of the referring board's feeling about the proposal. While this meeting is open to the public, public comment is not generally allowed; occasionally, in the interest of clarification, a member of the public may be asked a question, or may be allowed to comment. No comments made by town officials or the public at this time are considered part of the public hearing record. There may be several meetings between the LUPC and the applicant.
- f. **Completion and Submission of the Application:** The complete application is filed with the DRI Coordinator. The application consists of the Application Form as well as all accompanying documents as outlined in the document *The DRI Application*. Note that meetings of the full Commission, including public hearings, will not be scheduled until staff and/or the LUPC determine that the application is complete.

Step 3: Public Hearing

The full Commission holds a public hearing, normally as part of a Commission meeting held on Thursday evening at 7:30 p.m. In the case of modification or concurrence reviews, the Commission will first meet to determine if a hearing is necessary. If a hearing is not necessary, the Commission may remand the project to the town in the case of concurrence reviews, or vote to approve or deny the project in the case of modifications. For discretionary referrals, the Commission will hold an initial hearing to determine whether to hold a full hearing on the project, or remand the project to the town. (See section 1.)

Notification: A notice for the hearing is posted in each of the town halls and is sent to the permit granting boards in the town where the project is located. In addition, as a courtesy, abutters within 300 feet are sent a notice of the hearing.

Purpose: The main purpose of the hearing is to allow the Commission to gather the information it needs to judge the benefits and detriments of the proposal by hearing the applicant's and DRI Coordinator's presentations, and by hearing testimony from other staff, local officials, and the public. The hearing also serves to enlighten the public about the proposal so it can give informed testimony, and provides the opportunity for the applicant to modify the proposal in response to concerns raised by Commissioners, local officials, and the public.

Site Visit: Often a site visit is scheduled following the LUPC meeting to allow the Commissioners a chance to familiarize themselves with the property. The Commission may use this time only to ask the applicant questions of clarification specific to the site. The public is welcome to attend the site visit but is asked to refrain from comment.

Final Staff Report: Before the public hearing, Commission staff will prepare a staff report outlining the project history and proposal, administrative matters, planning concerns, and any other information that may be useful during the decision-making process.

Hearing Officer: A hearing officer, usually the chair of the LUPC, chairs the public hearing. He or she has the responsibility of ensuring that it is conducted civilly and effectively, and that all parties wishing to testify are afforded an opportunity. The hearing officer may give priority to people who have not yet spoken, who are unable to return for another session of the hearing, who are bringing up new issues, or who have not provided written testimony.

Written Testimony: Public officials and members of the public are encouraged to submit comments in writing before and during the hearing. Any documents submitted about a project become part of the public record. Commissioners consider it their responsibility to read all written testimony. All documents are available for consultation on the Commission website or at the office.

Information received one week before a session of the hearing will be distributed to all Commissioners in advance of the hearing. Information received less than a week before a hearing will be distributed as time allows. New information from the applicant, including changes to the proposal, and technical information from the public, must be submitted in writing no later than 5PM three business days before the scheduled session of the hearing in order to be considered during the session. If new information is to be provided after that date or if the information needs additional staff analysis, the hearing officer may choose to continue the hearing to another date or to keep the written record open after the close of the hearing to allow for comments by staff, the applicant, and the public.

Hearing Procedure: Following is the typical agenda for a public hearing, although the hearing officer may vary the order based on the particular situation:

- **Staff Presentation:** The main purpose of this presentation is to relay information in the staff report, including the project history and overview, along with any visual aids and application materials as appropriate to illustrate the project and planning concerns.

- **Applicant's Presentation:** This presentation summarizing the project will be limited to 20 minutes. If you anticipate a need for a longer presentation, particularly to explain complex technical information, please inform the DRI Coordinator, who will discuss extending the time limit with the hearing officer. After the applicant's presentation, commissioners may ask questions of clarification.
- **Testimony from Public Officials:** Representatives from town boards and other officials are invited to comment on the proposal. Each board should designate one official spokesperson. (Other members are free to testify as individuals.)
- **Public Testimony:** The floor is then opened for public testimony. Usually, people in support of the project will speak first, followed by people with concerns or objections, although the hearing officer may vary the order.
- **Commissioner Questions:** Commissioners may then ask questions of the applicant, public officials, members of the public, staff, and each other.

Time Limits: The hearing officer may set reasonable time limits for testimony with a view to hearing all relevant testimony while ensuring that the hearing is completed in a timely fashion.

Giving Oral Testimony: In order to give effective oral testimony, it is suggested that speakers

- Organize their thoughts in advance;
- Start by stating their name and address;
- Keep testimony short and to the point, addressing only issues directly relevant to the project as proposed;
- Avoid repeating information or opinions already given (other than briefly noting their support for or concerns with a given point of view);
- Avoid reading more than about one page of text (longer texts should be summarized);
- Maintain a tone of politeness and avoid talking about personalities.

Hearing Closure: The hearing officer will close the public hearing when he or she determines that the applicant has had a reasonable opportunity to present the project, that local officials and the public have been given an opportunity to provide written and oral testimony on the project, and that any outstanding issues as identified by Commission or staff have been resolved to the Commission's satisfaction. Any information submitted after the close of the hearing will not be considered during deliberations about the project, unless the hearing officer leaves the written record open and such materials are received during that period.

The hearing officer may continue the hearing for the sole purpose of leaving the written record open, primarily to allow clarification or confirmation of information already discussed at the hearing. The date of the closure of the written record will be announced before the close of the public session of the hearing. If substantial new written information is submitted that the hearing officer deems was not adequately discussed at the hearing, he or she may reopen the hearing to ensure that the public has adequate opportunity to address the new information.

Step 4: Deliberation/Decision

The Commission reviews DRIs to determine whether

- The probable benefits of the project will exceed the probable detriments as outlined in Chapter 831;
- The DRI will interfere with the general plan of any of the Island municipalities or for Dukes County;
- The DRI is consistent with the relevant municipal development regulations, any applicable DCPC regulations, and any applicable DRI policies.

Chapter 831 gives the Commission wide latitude in considering whether the benefits of a project outweigh its detriments. For example, the Commission may consider the necessity of the project relative to alternatives; its effect on the environment, other persons or property, municipal services, and public facilities; or its likely impact on affordable housing.

LUPC Post-Public Hearing: After the close of the public hearing, the application goes back to the LUPC, which begins an analysis of the benefits and detriments according to Chapter 831. Staff will develop a list of planning concerns and relevant facts from the record as a starting point for this analysis. Note that once a development is deemed to have regional impact, the Commission looks at both regional and local benefits and detriments. Once the LUPC has finished its analysis, it may formulate and adopt a recommendation to the full Commission to approve, approve with conditions, or deny the application.

Deliberation and Decision by the Commission: The full Commission will then meet to receive the LUPC recommendation (if any) and decide whether to approve, approve with conditions, or deny the application. The Commission formally weighs the benefits and detriments of the project, and takes a roll call vote on the decision.

The Written Decision: After the Commission's vote, a written decision is drafted by staff to reflect the Commission's oral decision. At a subsequent meeting, the Commission votes whether to approve the written decision, and if approved it becomes final. Note that the decision is directed primarily to the town board or official, not the applicant. After the written decision is approved, it is recorded in the Dukes County Registry of Deeds and carries forward with any land transactions. Copies are sent via certified mail to the referring town board and to the applicant.

Step 5: Action by the Town

The receipt of the written decision by the town reactivates the local permit review process. The timeframe for local approval, which was put on hold (tolled) when the application was referred to the MVC, resumes. The applicant should revise the proposal, if necessary, in accordance with the conditions set by the Commission. The town boards may add additional conditions, or may deny the project. However, any conditions set by the Commission must carry forward. The Town is responsible for enforcing the decision of the Commission, including all conditions.

If the Commission denies a DRI application, no local board may issue a development permit for the project. The applicant may withdraw the proposal at the town level, or the permitting agency may issue a procedural denial.

Summary

Applicant

- Apply to town
- If referred to the MVC, fill out DRI application form
- Staff-applicant meeting
- Participate in pre-hearing LUPC
- Complete and file application along with plans, studies, and other documents
- Present proposal at public hearing
- May attend post-hearing LUPC meeting and deliberation/decision with full Commission
- If approved, complete application process with town

Town

- Determine whether proposal is a DRI
- If so, refer application to MVC
- Participate in pre-hearing LUPC meeting (encouraged)
- Participate in public hearing and/or send comments in writing
- If application is approved by MVC, resume local approval process
- Incorporate and enforce any conditions set by the MVC

Commission

- Staff meets with applicant and helps applicant prepare application
- Initial LUPC meeting with applicant
- Public hearing, modification review, or concurrence review (as applicable)
- Post-hearing LUPC meeting (as applicable)
- Commission deliberation and decision (as applicable)

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, 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.