



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

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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

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

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.

(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