MVC POLICY FOR DRI REVIEW
HOUSING

Effective Date: July 12, 2019

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This policy is one of a series of documents prepared to help applicants and members of the public understand how the Martha's Vineyard Commission ("Commission") evaluates proposed Developments of Regional Impact ("DRI"), as mandated by its enabling legislation, Chapter 831 of the Acts of 1977 as amended.

The Commission is statutorily required to weigh the benefits and detriments of a proposal to determine whether the project should be approved, approved with conditions, or denied. Consult the Commission website (www.mvcommission.org/DRI) or office (508-693-3453) for more information.

Chapter 831 requires the Commission to evaluate a proposed DRI based on a number of factors including "whether the proposed development will favorably or adversely affect the supply of needed low and moderate income housing for island residents". Chapter 831 also underscores the significance of "maintaining sound local economies". This policy is a revision of, and replaces, the Commission's 1998 Affordable Housing Policy (as further revised by the Commission in January 2019).

The Commission will use this policy during the review of the benefits and detriments of the proposal and to formulate conditions that may be attached to the approval of an application. It should therefore be used by the applicant to help design a proposal including applicant offers to offset anticipated detriments. Applicants are invited to consult the Commission's DRI Coordinator and Commission staff for help in identifying which policies apply to their project.

This policy is generally a good indication of the Commission's priorities and can help the Commission evaluate the merits of a proposal. However, the Commission weighs the overall benefits and detriments of all aspects of a project, and evaluates each on its own merits. Based on the individual circumstances of each proposal, the Commission could deny a project that respects some or even all tenets of the policy or might approve one that doesn't meet all parts of the policy. The Commission recognizes that there might be special circumstances whereby deviations from the guidelines might be appropriate.

1. HOUSING POLICY DESCRIPTION, GOALS AND OBJECTIVES

1.1 The Need for Affordable and Community Housing[1]

Martha's Vineyard is a small but complex community made up of a wide range of individuals and families. These individuals and families include those whose forebears trace back generations, as well as those who have more recently found a home here. Some live here year-round; some live here for much of the year; some are seasonal-only residents. Some are part of our growing population of seniors. Some are individuals with mobility impairments or other disabilities. Taken as a whole, the community includes a broad range of individuals with various talents, expertise and skills, running the economic gamut from those for whom housing is unaffordable to those who have greater financial security. Although the Island population is relatively small, the community offers employment opportunities in a variety of fields – some well-paid, others not – but all contributing to the Island's economy and well-being. This diversity is perhaps what distinguishes our community from many others.

The Island's ability to maintain such a diverse community – and particularly a diverse year-round community – is directly dependent on the availability of year-round housing affordable to a variety of household incomes. Islanders rely upon the services provided by a whole range of people at different income levels, including "essential workers" such as teachers, police, and health and human service providers and other workers whose pay may be below the Island's median income but who provide a wide variety of services which underlie the Island's economy and enable us all to enjoy the benefits of contemporary life.

Businesses, town governments and other non-profit enterprises need reliable labor in order to provide these important services. Indeed, the stability of the Vineyard's economy is dependent on being able to attract and retain qualified employees. However, the ability of these businesses and other enterprises to attract and retain labor has been constrained in large part by the shortage of available stable year-round housing for a significant portion of the Island's workforce. The lack of an adequate supply of housing forces some employees to live off-island and commute daily, preventing them from effectively becoming an integrated part of the Island community. In addition, the lack of such housing forces employers to pay more to attract and retain talent, driving up the price of goods and services and adversely affecting economic competitiveness. This lack similarly impacts consumer choice and access to essential services. Increasingly, the health of the Island community and economy and the quality of our Island life is vulnerable to a growing lack of year-round housing affordable to a variety of household incomes.

This problem arises principally because Martha's Vineyard is a small island that has a unique character and tremendous natural beauty, both of which attract seasonal residents. These same

[1] NOTE: The terms "Affordable Housing" and "Community Housing" are used throughout this policy document. The term "Affordable Housing" comprises both Low Income Housing (up to 50% AMI) and Moderate Income Housing (from 50-80% AMI) and includes both Elder Housing and Workforce Housing for individuals/households earning up to 50% or 80% AMI, as the case may be. The term "Community Housing" has an income eligibility restriction from 81-150% AMI and likewise includes both Elder Housing and Workforce Housing options, in this case for individuals/households earning from 81-150% AMI. (See definitions at section 6.)

factors operate to create potential investment opportunities in Vineyard properties. Whether property buyers are seasonal residents or investors, there is strong demand both for existing year-round properties, which are converted into short-term rentals or kept for occasional use by the owner, and for undeveloped land. However, the finiteness of our land resources, the desirability of the Island as a vacation destination and/or investment opportunity and the fact that many of these seasonal residents and investors can afford to pay very high property costs based on incomes earned elsewhere have changed the dynamics of the housing market. Together, these factors have operated to rapidly drive up the price of property over the last several decades. The result is a housing market that is beyond the means of most working Vineyarders.[2]

The role of the Martha's Vineyard Commission is to help promote the provision of fair, decent, safe, affordable year-round housing for rental or purchase that meets the housing needs across income sectors but especially those income thresholds with the greatest need. The Commission's efforts are in cooperation with Island towns and the public and private organizations whose work is similarly aimed at meeting these Island housing needs.

This policy applies to the Commission's review of applications for Development of Regional Impact and seeks to ensure that new residential and commercial developments do not further exacerbate the existing housing problem. It lays out the criteria used by the MVC to calculate certain probable effects a development may have on the affordability of housing on the Island.

The Island's housing needs are well documented and this policy is based on the following legislation, studies and plans:

- MGLA, Chapter 40B (Massachusetts Comprehensive Permit Act)
- Mass Acts (2004), Chapter 445, An Act Authorizing Martha's Vineyard Affordable Housing Covenants
- 2003 MVC Nexus Study
- 2009 MVC Island Plan
- 2013 Martha's Vineyard Needs Assessment
- 2014 Affordable and Community Housing Zoning Analysis
- 2018 Draft Housing Production Plans (for each Island Town)

1.2 Applicability

This policy applies to all projects which trigger DRI review (whether mandatory, concurrence or discretionary referrals) that are likely to generate an incremental need for housing affordable to a variety of household incomes. Accordingly, it applies not only to DRIs involving residential developments and divisions of land and commercial developments over a specified square footage (including developments at the Airport Business Park), but it also applies, for instance, to projects involving a change of use or a change in intensity of use and to DRI modifications.

1.3 Strategies

[2] It should be noted that there is a year-round housing shortage at almost all income levels, and not simply at the lower levels.

In general terms, the following strategies may be employed in order to meet the objectives of this policy:

- provision of land
- provision of housing units
- payment of monetary mitigation.

1.4 Commission Discretion in the Application of this Policy

The Commission is keenly aware that each DRI project is different in terms of location, use, scale and other characteristics, and as a consequence, introduces a unique set of housing imperatives. In addition, the Commission acknowledges that there are a variety of housing options which can be used to address the Island's housing crisis, and that alternative solutions, exemptions or modifications not specifically identified in this policy may be warranted in the circumstances. Accordingly, this policy is intended to be implemented with flexibility while still being responsive to meeting the greatest affordable housing need and making the greatest impact in each case.

The Commission will use its discretion in determining the specific components and details of housing mitigation. In exercising its discretion, the Commission will be guided by its desire to achieve the greatest housing benefit. The Commission believes that the greatest housing benefit will result from projects that provide an increase in housing diversity and choice, increase the availability of year-round housing, utilize (and improve) existing housing stock, and increase housing affordability. The Commission may provide incentives to encourage the creation of the greatest housing benefit.[3]

Specific mitigation measures are outlined in this policy and, *in general*, they are listed in priority order of what the Commission believes would result in the greatest Affordable and Community Housing benefit. Although applicants may opt for Affordable and Community Housing mitigation measures that differ from those outlined in this policy or which have a lesser priority, mitigation is required in any event. The Commission's final determination regarding any DRI will be based on its assessment of the project's overall benefits and detriments; the Commission's assessment as to the adequacy of Affordable and Community Housing mitigation will form part of its deliberations.

2. RESIDENTIAL DRIs

Mitigation is premised on the Commission's objective of addressing the incremental Affordable and Community Housing impact generated by the DRI.

2A. Residential DRIs Involving the Creation of Lots by Division or Subdivision

[3] For instance, the Commission may accept a reduced mitigation contribution if the applicant is providing housing which is consistent with 'Smart Growth' principles. Or, if permitted by local zoning, the Commission may allow a development to exceed standard density requirements provided the additional Dwelling Units authorized are allocated to Affordable or Community Housing. As a further option, additional benefits which may accrue from a DRI project which provides multi-family Affordable and/or Community Housing units and/or Affordable or Community Housing beyond that suggested by this policy will be considered by the Commission when it weighs the overall benefits and detriments of a DRI project.

2A.1 Mitigation: The following mitigation options are available to an applicant:

(a) Provide 10%[4] of the total number of Buildable Lots in the division or subdivision as Affordable or Community Housing sites; or

(b) Provide the same number of comparable off-site Buildable Lots as Affordable or Community Housing sites.

If the number of lots is not a round number, any fractional number of lots more than or equal to 0.5 shall be rounded up to the next whole number. Any fractional number of lots less than 0.5 shall be accounted for with monetary mitigation calculated as set forth in section 2A.3 and paid to a Housing Entity.[5] Buildable Lots provided must ordinarily not be less than the average size building lot in the development. At least half of the lots provided under this section 2A.1 must be set aside for Affordable Housing.

2A.2 Ensuring the Development of Building Lots: Building Lots must be Provided to a Housing Entity for development or, if the lots are developed by the applicant or Provided to a third party which is not a Housing Entity, the applicant must submit a development plan acceptable to the Commission. The plan must specify the developer and the proposed timetable for development, and must provide sufficient undertakings to ensure that the land will be developed for Affordable or Community Housing in accordance with the plan.

2A.3 Monetary Mitigation: Monetary mitigation in respect of each Buildable Lot identified in section 2A.1 shall be an amount equal to the Fair Market Value of the average size lot in the development (including the value of any rights, entitlements or memberships that accompany lots in the division/subdivision, as well as the value of lot improvements generally provided in the development) as at the date of the sale of the first lot in the development.

2A.4 Prior Divisions/Subdivisions: Lots created under prior divisions (including prior Form A divisions and prior divisions of farmland treated as a DRI) or prior subdivisions (regardless of whether they have been previously reviewed as a DRI) will be included in the calculation of the total number of Buildable Lots.[6] (This section does not apply to divisions or subdivisions created before 1974, but it does apply to divisions and subdivisions subsequent to that date even if the original division or subdivision occurred prior to 1974.)

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[4] The Commission believes that 10% may be a conservative target for the Island given the unique factors described in section 1 of this policy and the increased pressure on Island housing since the Commission's initial use of this number in 1998. Accordingly, in some circumstances the Commission may determine that a different number is appropriate.

[5] For instance, if a project proposes to create 15 lots, the total mitigation would be 2 lots – one lot for the first 10 lots in the development and the fractional remainder of 0.5 lots would be rounded up to a second lot. If a project proposes to create 14 lots, the mitigation would be 1.4 lots. One lot would be provided for Affordable or Community Housing. The 0.4 lot remainder could be dealt with by way of monetary mitigation. Similarly, if a project proposes to create 6 lots, the mitigation would be 1 lot.

[6] For instance, if a DRI project proposes to establish 4 new Buildable Lots within an existing subdivision but, as part of the initial subdivision, the property was divided into 8 lots, the total number of Buildable Lots would be 12. Likewise an ANR creating 2 Buildable Lots from a single Buildable Lot in a previous project comprising 8 Buildable Lots would not in and of itself trigger a DRI review. However, in any later division subject to DRI review (including a later ANR), all lots, however and whenever created, would be subject to inclusion and review under this policy.

2A.5 Previously Provided Affordable or Community Housing: In determining mitigation due under this section, consideration will be given to any Affordable or Community Housing mitigation provided at the time of any prior division or subdivision.

2A.6 Family Subdivisions: The purpose of this section is to facilitate the ability of Island families to continue to reside on the Island. The Commission, at its discretion, may determine that any Buildable Lots in a subdivision which the owner intends to convey to his/her immediate family members shall not be included in the total number of Buildable Lots at the time of the DRI review. If any of the lots are subsequently conveyed to a non-family member, they will be deemed subject to this policy and will be included (retroactively) in the total number of Buildable Lots. Any monetary mitigation payable will be based on the fair market value of the lot (excluding any improvements) at the time of the conveyance out of the family. This arrangement may be subject to conditions, including the timing of the conveyance of any such lots to the family members.

2B. Residential DRIs Involving the Construction of Dwelling Units, Including the Expansion of an Existing Development (but not including Mixed-Use Developments)[7]

2B.1 Mitigation: The following mitigation options are available to an applicant:

(a) Provide on-site (i.e., collocated with the other housing in the development) as Affordable or Community Housing 10% of the total number of Dwelling Units[8] proposed; or

(b) Provide the same number of comparable off-site Dwelling Units[9] (including existing housing or the construction of new housing) as Affordable or Community Housing.

If the number of Dwelling Units to be provided as Affordable or Community Housing is not a round number, any fractional number of units more than or equal to 0.5 shall be rounded up to the next whole number. Any fractional number of units less than 0.5 shall be accounted for with monetary mitigation calculated as set forth in section 2B.3 and paid to a Housing Entity. At least half of the Dwelling Units provided under this section 2B.1 must be for Affordable Housing.

2B.2 Mitigation under Section 2A: If the DRI involves both the division or subdivision of land and the construction of Dwelling Units, mitigation provided under this section 2B is in addition to mitigation provided under section 2A.

2B.3 Monetary Mitigation Calculation: Monetary mitigation in respect of each Dwelling Unit identified in section 2B.1 shall be an amount equal to the Fair Market Value of the average size Dwelling Unit in the development as at the date of the sale of the first Dwelling Unit in the development (or in the case of rental units, as of the date of the first certificate of occupancy).

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[7] This section applies to all developments of Dwelling Units, including, for instance, multi-family units, commercial hotels, apartment buildings, dormitories and condominium arrangements (both owned and rental).

[8] The total number of Dwelling Units includes all such units where permitted by zoning and/or the covenants applicable to the development.

[9] An off-site solution may be more appropriate than on-site housing if the carrying costs (e.g., taxes on the subject property) in the subdivision/town are out of an income-qualified applicant's reach, there is an identified need for types of housing other than that appropriate or proposed in the subdivision, or there is the potential for increased density and a greater number of housing units of at an off-site location.

2B.4 Condition of Dwelling Units: On-site Dwelling Units provided must be:

(a) newly constructed or renovated; and
(b) integrated with the other units in the development; and
(c) in keeping with the exterior architectural design, appearance, and construction of the other units in the development; and
(d) constructed of the same quality of materials used in the other units in the development.

The Commission may require the applicant to provide plans and other details with respect to these matters.

2B.5 Prior Construction of Dwelling Units: Dwelling Units constructed in the development prior to the current application will be included in the total number of Dwelling Units used to calculate mitigation.

2B.6 Previously Provided Affordable or Community Housing: In determining mitigation due, consideration will be given to any Affordable or Community Housing mitigation previously provided in the development.

3. NON-RESIDENTIAL DRIs

Mitigation is premised on the Commission's objective of addressing the incremental Affordable and Community Housing impact generated by the DRI.

3A. Non-Residential DRIs (not including Mixed-Use DRIs)

3A.1 Mitigation: The following mitigation options are available to an applicant:

(a) Provide sufficient on-site housing[10] as Affordable or Community Housing to accommodate the housing impact of the project; or
(b) Provide the same number of comparable off-site Dwelling Units[11] as are required under (a) above (including existing housing or the construction of new housing) as Affordable or Community Housing; or
(c) pay to a Housing Entity monetary mitigation calculated as set out in section 3A.2.

At least half of the housing provided under this section 3A.1 must be for Affordable Housing.

3A.2 Calculating Monetary Mitigation: Monetary mitigation for the commercial components of a project is calculated based on an estimate of the number of additional people to be employed as a result of the implementation of the applicant's DRI project.[12] The estimate is a

[10] Examples of on-site housing might include rental units above first floor commercial space or a separate residential building on site for larger commercial or institutional projects. See Section 3.B.2.
[11] See footnote 9.
[12] In the case of a modification of a DRI involving a change of use or a change in intensity of use, mitigation will be assessed having regard to the incremental housing impact of the total project. The incremental impact will be determined both with respect to the incremental intensity of use or change of use of the pre-existing space as well as any additional square footage proposed by the project (and the intensity of use code for that space). See Appendix A, Example 4.

function of the total new/additional square footage and the project's intensity of use[13] based on the type of use proposed[14] and is calculated as follows:

(new/additional square footage) x (project intensity of use) x ($8/sq ft[15])

Illustrations of the application of this formula are set out in Appendix A, Examples 1-4.

3A.3 Determination of Total Additional Square Footage: Total new/additional square footage includes all new/additional square footage in the proposed development or development extension including the basement, commercial and residential areas, and common spaces within the footprint of the building(s).[16]

3B. Mixed Use DRIs (DRIs with Non-Residential and Residential Components)

3B.1 Mitigation: Subject to section 3B.2, mitigation will be determined for the residential component as set forth in section 2B and for the non-residential component as set out in 3A.

3B.2 Additional Mitigation Considerations: In the case of mixed-use DRIs with 'above the shop' housing comprising:

(a) only Affordable Housing, the Commission may waive mitigation in respect of the non-residential and residential space;
(b) only Community Housing or Workforce Housing, the Commission may waive mitigation in respect of the residential space and deduct 50% of the new/additional square footage of the non-residential space from the calculation of total new/additional square footage;
(c) a combination of Affordable/Community/Workforce Housing and market-rate housing, the Commission may waive mitigation in respect of the residential space and deduct from the calculation of total new/additional commercial space square footage the square footage of the Affordable/Community/Workforce Housing; and
(d) only market-rate housing, the Commission will consider separately the housing impacts of the commercial and residential components of the project. The housing impact of the non-residential component will be calculated as set forth in section 3A.2, above. Mitigation for the residential component of the project will be an amount equal to the average post-development Fair Market Value of Dwelling Units in the development times the number of Dwelling Units determined under section 2B.1. In the case of a project involving 10 or more market rate Dwelling Units, the Commission's preference is to provide actual units and not monetary mitigation.

Indicative scenarios of the application of this section are set out in Appendix A, Example 5(a)-(d).

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[13] The Commission will determine the intensity of use based on the 2003 Martha's Vineyard Affordable Housing Nexus Study. (See Appendix B.) Alternatively, the Commission, on recommendation from the LUPC or on its own initiative, may require an independent 'nexus' study to quantify the project's impacts on the need for additional housing.

[14] In the case of a DRI that does not propose new/additional square footage, mitigation will be determined based on the incremental impact of the project on housing needs. See Appendix A, Example 3.

[15] The "per sq ft" multiplier will be automatically adjusted annually (commencing Jan 1, 2021) based upon the annual change in the US Department of Labor's Consumer Price Index, all Urban Consumers, Boston Metropolitan Statistical Area.

[16] As noted in footnote 12, the square footage of existing non-residential space may also be taken into account where there is a change of use or a change of intensity of use in that space at issue in the DRI.

4. EXCEPTIONS TO THE POLICY

4.1 Policy Exceptions: This policy does not apply to:

(a) towns, governmental and other publicly owned entities;

(b) non-profit organizations and quasi-publicly owned entities that can establish to the Commission's satisfaction that the principal population to whom they provide social services is the same as those who would qualify for Affordable or Community Housing; and

(c) projects whose impact on the need for additional Affordable or Community Housing is negligible, established to the Commission's satisfaction.

5. GENERAL PROVISIONS APPLICABLE TO DRIs

5.1 Deed Restricted Housing: All Building Lots and Dwelling Units Provided in accordance with this policy (including existing housing provided in lieu) must be Deed Restricted in perpetuity. All restrictions are subject to Commission review and approval.

5.2 Year-Round and Seasonal Rentals: Rentals of Affordable and Community Housing must be for year-round occupancy, provided that rentals of Workforce Housing for Seasonal Employees may be for terms less than one year but in no event less than 90 consecutive days.

5.3 Conveyance in Fee Simple: Building Lots (including those with a Dwelling Unit) must be conveyed in fee simple subject to Deed Restrictions and, in the case of off-site lots, must be suitable for the construction or establishment of Dwelling Units.

5.4 Costs of Appraisal: The Commission will select the appraiser retained for any determination of Fair Market Value. The applicant must pay for the costs of any appraisal.

5.5 Direct Marketing by the Applicant: If an applicant intends to directly market either for sale or lease Affordable or Community Housing, it must:

a. provide to the Commission and implement a plan to market Affordable and Community Housing units to potential buyers and/or renters in conformance with all applicable provisions of State and Federal Affirmative Fair Housing Laws;

b. meet all relevant criteria to ensure that any Affordable Housing units qualify for the State's Subsidized Housing Inventory;

c. enter into an agreement with the Dukes County Regional Housing Authority (or other entity similarly qualified by the Department of Housing and Community Development to render housing-related services on an ongoing basis) or its designee to:

   i. verify and confirm income eligibility;

   ii. certify the initial sales price, in the case of the sale of Affordable and Community Housing, and rents, in the case of rental Affordable or Community Housing, and;

   iii. certify compliance with the plan referenced in section 5.5(a); and

   iv. report non-compliance with the Commission,

as may be applicable in the circumstances. Administrative costs/fees which the authority may incur or charge to perform these services shall be paid by the applicant. This section (c) expressly applies to Workforce Housing.

5.6 Accessibility and Visitability: To accommodate the needs of aging Island residents and/or Island residents with disabilities, at least 10% of ground floor Affordable/Community Housing units provided in accordance with this policy must be legally handicapped accessible unit(s). All Affordable and Community Housing units provided in accordance with this policy must meet the following visitability standards: 32" clear passage through all interior main-floor doors, and at least one half-bath on the main floor of the unit. The Commission may consider requiring the units covered by this section to also provide an entrance with zero steps.[17] The Commission may waive or modify the requirements set forth in this section if it believes compliance would be unduly burdensome.

5.7 Demolition of Dwelling Units: Any DRI project that proposes to demolish, repurpose or otherwise eliminate an existing residential structure must replace each unit of housing in the structure to be eliminated either on-site as part of the DRI project or off-site in appropriate circumstances. The replaced housing must generally be at least of similar size unless replacement with a different structure can provide a greater Affordable or Community Housing benefit (e.g., a greater number of units). If any eliminated housing was Deed Restricted, the replaced housing must be similarly Deed Restricted. Replacement housing does not count toward any Affordable or Community Housing mitigation contribution. The Commission will consider the condition and habitability of the housing in applying this section. In addition, if the residential structure to be eliminated is freestanding (ie, it is not incorporated into a structure with other uses), the applicant must first make a good faith effort to move the structure off the property for reuse as Affordable or Community Housing elsewhere on the Island. Such a good faith effort may include appropriate advertising of the availability of the structure free of charge for a reasonable period of time and a financial contribution to the new owner (if a non-profit organization). The contribution amount may equal the appraised cost of the move and/or the costs of demolition and removal of the structure avoided by the applicant.

5.8 Exemption from Covenants in Association Agreements: Buildable Lots or Dwelling Units provided under section 2 (including Dwelling Units to be built by a third party and funded, in part or in whole by a monetary mitigation) must be free from any or all covenants applicable to other properties in the development that require the payment of fees or other assessments. Residents of Affordable or Community Housing in a development must have the same rights as other residents in the development. Applicants must ensure that association/subdivision agreements among homeowners may not be amended so as to increase the financial liability of occupants of Affordable or Community Housing in the development for fees and costs without prior Commission approval.

5.9 Implementation Aspects of Projects - Conditions of Approval: The following matters, as applicable, shall be set out as conditions of approval by the Commission:

a. the timing and provision of Buildable Lots and/or Dwelling Units (including off-site lots and units); and

[17] The Commission will not require above-the-shop housing in mixed-use developments to have zero-steps access.

b. in the case of development by the applicant, the rate and time frame of Affordable or Community Housing development;
c. the timing and manner of payment of monetary mitigation monies to a Housing Entity; and
d. evidence of recording of restrictions for the Buildable Lots and/or Dwelling Units imposed pursuant to this policy.

Approval of the project is also subject to the Commission's (or the LUPC's) approval of the marketing plan referred to in section 5.5(a) and the agreement referred to in section 5.5(c).

5.10 Ongoing Compliance and Reporting: The Commission may require the periodic reporting of information and/or the satisfaction of other measures to assist the Commission in determining compliance with this policy.[18]

6. DEFINITIONS

Affordable Housing refers collectively to Low Income Housing (up to 50% AMI) and Moderate Income Housing (up to 80% AMI) (and includes Elder Housing and Workforce Housing for those with incomes that qualify them for Affordable Housing).

AMI, or **Area Median Income**, means the most recent area median income for the County of Dukes County adjusted for household size, as determined by the US Department of Housing and Urban Development.

Buildable Lot means a parcel of land on which regulations allow construction of a house without a variance or special permit (or where such a variance or permit is required, the applicant has secured it), and which is capable of having a water supply (well or municipal water hook-up) and septic treatment (septic system or sewer hook-up) and, for the avoidance of doubt, does not include a lot that is subject to a permanent restriction which prevents development.

Community Housing means housing for an individual(s)/household with an income eligibility restriction above 81% and up to 150% AMI (and includes Elder Housing and Workforce Housing for those with incomes that qualify them for Community Housing).

Construct or **Construction**, in relation to Dwelling Units, includes both the construction of new units and the adaptation, redesign, renovation, or reconstruction of an existing structure (whether residential or otherwise) which creates Dwelling Units or increases the number of Dwelling Units.

Deed Restricted or Deed Restrictions, in relation to lots and housing units provided in accordance with this policy, means housing that will remain as Low Income Housing, Moderate Income Housing, or Community Housing, as the case may be, in perpetuity to the maximum extent permitted by law through a deed restriction certified under Massachusetts General Law

[18] Conditions that may be imposed by the Commission will differ from project to project. For instance, the Commission may wish to require registration of the approved project plot plan with certain restrictions/conditions noted; annual reporting of employment data; review by the Commission in the event that actual housing impact exceeds estimated impact or if there is a change of use or intensity of use. Note that conditions attach to the property, and subsequent owners will be bound by a Commission decision including any conditions.

and recorded against title to the subject property.

Dwelling Unit includes principal dwellings, guest houses and, in appropriate circumstances, rooms for lease or rent.

Elder Housing means housing for an individual(s)/household members age 62 years or older.

Fair Market Value means the price to which a willing buyer and willing seller can agree as determined by an Island real estate appraiser (assuming the subject property is not Deed Restricted).

Housing Entity means a local town Affordable Housing trust or another established local public or non-profit entity that the Commission is satisfied has a proven track record and the capacity to develop Affordable and/or Community Housing.

Low Income Housing means housing for an individual(s)/household with an income eligibility restriction of up to 50% of AMI.

Moderate Income Housing means housing for an individual(s)/household with an income eligibility restriction above 50% and up to 80% AMI.

Provide, means:

a. in relation to a Buildable Lot, convey subject to Deed Restrictions to a Housing Entity or third party at no cost;
b. in relation to a Dwelling Unit for sale, convey subject to Deed Restrictions, to an individual(s)/household who is income-qualified for Affordable or Community Housing for a sale price appropriate to the Dwelling Unit as established by the Dukes County Regional Housing Authority (or other entity similarly qualified by the Department of Housing and Community Development to set such parameters); and
c. in relation to a Dwelling Unit for rental, lease in perpetuity to the maximum extent permitted by law (for individual rental terms no less than 12 months) for a rental fee appropriate to the Dwelling Unit as established by the Dukes County Regional Housing Authority (or other entity similarly qualified by the Department of Housing and Community Development to set such parameters).

Seasonal Employees means employees engaged for not less than a period of 90 consecutive days during the summer months.

Workforce Housing means housing restricted to year-round employees of the applicant or of another employer operating on Island and, in the discretion of the Commission in appropriate cases, may also include Seasonal Employees.

Appendix A
Illustrative Calculations of Non-Residential Monetary Mitigation

Example 1: Non-Residential

5,400sq' non-residential DRI for wholesale/storage space (with intensity code 1)

5,400 x 1 x $8 = $43,200

Example 2: Non-Residential

7,000sq' non-residential DRI for medical dispensary (with intensity code 3)

7,000 x 3 x $8 = $168,000

Example 3: Non-Residential (change in use)

2,500sq' conversion of medical offices (with intensity code 3) to be developed into retail (with intensity code 4)

2,500 x (4-3) x $8 = $20,000

Example 4: Non-Residential (change in use plus new/additional developed space)

Existing 3,000sq' non-residential used as offices (with intensity code 2) to be expanded to 5,000sq' non-residential use as restaurant (with intensity code 5)

3000 x 5 x $8 = $120,000 (existing space at new intensity)
minus 3000 x 2 x $8 = $48,000 (existing space at previous intensity)
$120,000 - $48,000 = $72,000 (difference in change of use for the existing space)

$2000 x 5 x $8 =$80,000 (new/additional space at new intensity)

Total Mitigation: $72,000 + $80,000 = $152,000

The following examples are indicative only and are premised on a very straightforward development scheme. The Commission's goal is to encourage above-the-shop housing by granting a waiver of some or all monetary mitigation so as to provide the greatest incentive for Affordable Housing, while still providing a meaningful incentive for Community and Workforce Housing. Any waiver will depend on the particular project, including for instance the amount of Affordable and/or Community/Workforce Housing relative to the square footage of the non-residential development, impact of the project's construction eg (duration, extent) on housing needs, projected number of project employees.

Example 5(a): Mixed Use - Section 3B.2(a)
4,000sq' non-residential development for ground floor retail space (with intensity code of 4) and 5 Affordable Housing units on the second floor

non-residential: 4000 x 4 x $8 = $128,000 (entire amount waived because all housing provided is Affordable Housing)
residential: 10% x 5 = 0.5 units (entire amount waived because all housing provided is Affordable Housing)

Example 5(b): Mixed Use - Section 3B.2(b)
4,000sq' non-residential development for ground floor retail space (with intensity code of 4) and 5 Community/Workforce Housing units on the second floor

non-residential: (4000 x 50%) x4 x $8 = $64,000 (50% waived because all housing provided is Community or Workforce Housing)
residential: 10% x 5 = 0.5 units (entire amount waived because all housing provided is Community or Workforce Housing)

Example 5(c): Mixed Use - Section 3B.2(c)
4,000sq' non-residential development for ground floor retail space (with intensity code of 4) and 2 800sq' Affordable Housing units and 2 1000sq' market-rate units on the second floor

non-residential: (4000 - 1600) x 4 x $8 = $76,800 (waiver in respect of square footage dedicated to Affordable Housing)
residential: 10% x 2 = 0.2 units (100% waiver in respect of Affordable Housing units provided; market-rate housing is assessed in full)

Example 5(d): Mixed Use - Section 3B.2(d)
4,000sq' non-residential development for ground floor retail space (with intensity code of 4) and 4 market rate units on the second floor

non-residential: 4000 x 4 x $8 = $128,000 (no waiver applicable, as all housing is market-rate)
residential: 10% x 4 = 0.4 units (no waiver applicable, as all housing is market-rate)

NOTE: Monetary mitigation for the residential portion of the project would be calculated as set out in section 2B.3. In the case of a project involving 10 or more Dwelling Units, the Commission preference is to provide actual units and not monetary mitigation.

Appendix B
Intensity Codes

Intensity Code	Development Type
1	Warehouse, Distribution, Wholesale
2	Gas Station/Repair, Offices, Professional Services
3	Health Care/Medical
4	Retail
5	Restaurant, Food Service (Grocery Store)
6	Other

Appendix C
Payments to a Housing Entity

If an applicant pays any monetary mitigation to a Housing Entity for the development of Affordable or Community Housing, it must direct that the Housing Entity use such monies only as set out below.

1. Monetary mitigation paid to a Housing Entity may only be used for the following purposes:
   a. Capital expenses including land acquisition costs for, and design, engineering and construction costs of, new Affordable or Community Housing and/or for the preservation of existing, Deed Restricted Affordable or Community Housing at risk as a result of significant, unfunded, and necessary capital repair or replacement;
   b. Programs offering housing assistance such as soft second mortgages, provided that there is shared equity to create new permanent Affordable and/or Community Housing stock including a provision that funds would be repaid into the program upon sale of the property and that the property remains Deed Restricted Affordable or Community Housing (as the case may be).
   c. Project costs including soft costs (e.g., financing and legal fees) directly related to the development of specific new Affordable and/or Community Housing; and
   d. Rental subsidies, provided:
      - there are not enough opportunities to provide rental units that are Deed Restricted to Affordable or Community Housing; and
      - the rental subsidies are comparable in value to a long-term deed restriction (normally 30 years or more in Massachusetts).

2. For the avoidance of doubt, monetary mitigation paid to a Housing Entity must not be used for any of the following purposes:
   a. maintenance, heat, electricity, or other operating costs of existing Affordable or Community Housing;
   b. general studies or planning; or
   c. administration, staff salaries or other compensation, or other overhead.

3. Monetary mitigation funds may only be used to mitigate new housing impacts or preservation initiatives under paragraph 1a above.

4. Monetary Mitigation monies shall be placed in a segregated, interest-bearing account. Any monies not used for the designated purpose at the end of 7 years must be remitted to another Housing Entity as directed by the Commission.