



CAPE COD  
COMMISSION



# Referring Historic Properties to the Cape Cod Commission for Review

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## CONTENTS

I. INTRODUCTION.....	3
II. PURPOSE OF DRI REVIEW OF HISTORIC PROPERTIES.....	4
III. DRI JURISDICTION .....	5
A. MANDATORY DRI REFERRAL.....	5
B. DISCRETIONARY REFERRAL .....	5
C. LIMITATIONS ON DRI REFERRALS .....	5
IV. DRI REFERRAL PROCESSES.....	6
A. MANDATORY DRI REFERRAL PROCESS.....	6
B. DISCRETIONARY REFERRAL PROCESS:.....	7
V. GUIDANCE FOR DETERMINING WHAT QUALIFIES AS A SUBSTANTIAL ALTERATION:.....	9
VI. CAPE COD COMMISSION HISTORIC PROPERTY REVIEW STANDARDS .....	11

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### CAPE COD COMMISSION

US Mail: P.O. Box 226 (3225 Main Street), Barnstable, Massachusetts 02630  
Phone: 508-362-3828 • Fax: 508-362-3136 • Email: [frontdesk@capecodcommission.org](mailto:frontdesk@capecodcommission.org)  
[www.capecodcommission.org](http://www.capecodcommission.org)



# I. INTRODUCTION

The Cape Cod Commission Act recognizes the importance of the region's significant historical, cultural, archaeological, and architectural resources and charges the Commission with protecting them. This document is intended to help local permitting boards, officials, property owners, and applicants understand when changes to historic properties must or may be referred to the Cape Cod Commission for Development of Regional Impact review, either through the mandatory referral or discretionary referral process.





## II. PURPOSE OF DRI REVIEW OF HISTORIC PROPERTIES

Historic properties on Cape Cod may have a variety of regulatory or planning designations, but only some of them afford protection from major alterations or demolition. Proposed demolition or exterior changes to structures in local historic districts require review and approval by the requisite local historic district committee. Before adoption of the Cape Cod Commission Act (“Commission Act”), historic structures and sites listed in the National Register of Historic Places were only protected from proposed changes if they were within a local historic district or associated with a state or federal agency action. Cape Cod Commission Development of Regional Impact (“DRI”) jurisdiction was designed to help fill this gap in protection, acknowledging that historic properties are important non-renewable resources that embody the region’s history and define its character.

The Commission Act and regulations require mandatory Development of Regional Impact (DRI) review of major changes to historic structures and sites that are recognized in the National Register of Historic Places and are not otherwise protected by local historic district regulations. The Act and regulations also establish a discretionary referral process that is available for potential Commission review of changes to certain historic properties that have been evaluated and found to be eligible for listing in the National Register of Historic Places, but which have not yet received that official historic designation.

The National Register of Historic Places is the nation’s official list of historic places worthy of preservation. It is overseen by the National Park Service, and nominations must be approved by the Massachusetts Historical Commission and confirmed by the National Park Service. The State Register of Historic Places is a compilation of all Massachusetts properties with historic resource designations, including properties in the National Register, in local historic districts, with preservation restrictions, and National landmarks. Because of the work required in designation, many significant historic buildings have not yet been designated. The Massachusetts Historical Commission maintains a database of historic resources (MACRIS) that includes properties with historic designations as well as those that have been inventoried but have no specific designation. The MACRIS database includes copies of all inventory forms and National Register documentation.



## III. DRI JURISDICTION

### A. MANDATORY DRI REFERRAL

Mandatory DRI review is required for any proposed Demolition or Substantial Alteration of a building, structure or site listed in the National Register of Historic Places or the State Register of Historic Places, outside a municipal historic district or outside the Old King's Highway Regional Historic District (see Section 3(a) of Chapter A: Enabling Regulations Governing Review of Developments of Regional Impact, as amended ["Enabling Regulations"]). See Section V of this document to determine what qualifies as 'substantial alteration'.

### B. DISCRETIONARY REFERRAL

Where the mandatory DRI referral process is unavailable, towns may seek DRI review of changes to an historic property through the discretionary referral process spelled out in Section 2(b) of the Enabling Regulations, subject to the limitations referenced below.

Discretionary referrals are available regardless of whether an historic property is located within a local historic district; however, in making a discretionary referral, towns must make a case for why the Commission should accept such a referral and a local historic district commission's regulatory jurisdiction over demolition or other changes may play a role in that decision.

### C. LIMITATIONS ON DRI REFERRALS

The Enabling Regulations prohibit discretionary referral of proposed alteration or demolition of one single-family residential structure unless the structure has been determined eligible for listing in the National Register of Historic Places by the Massachusetts Historical Commission staff or board.

More broadly, Section 22(c) of the Commission Act exempts from the Commission's jurisdiction, changes to certain single-family homes and accessory structures if those changes constitute 25% or less of the dwelling's floor area.



## IV. DRI REFERRAL PROCESSES

Because DRI referrals of historic properties require familiarity with historic structure designations, building officials are advised to contact Commission staff to discuss and confirm whether there are any applicable historic property designations that might affect a referral.

The DRI referral process for historic properties typically aligns with local “demolition delay” review. Most Cape Cod towns have adopted a so-called “Demolition Delay By-law/Ordinance” under the authority of the home rule amendment to the Massachusetts Constitution, where the towns’ respective Historical Commissions serve as the reviewing authorities. Each of the 15 towns on Cape Cod has established an Historical Commission pursuant to MGL Chapter 40 Section 8D.

In towns that have a Demolition Delay By-law/Ordinance which requires the Historical Commission to review and issue a determination regarding proposed demolitions prior to a demolition permit, or if the Historical Commission has independent authority to review and approve or deny such demolition under the town’s regulations, a local Historical Commission is considered a Municipal Agency/permit-granting authority within the meaning of the Commission Act and may make a DRI referral. When an Historical Commission makes a determination or otherwise acts with respect to a DRI referral, the Cape Cod Commission will look to a formal vote of the Historical Commission authorizing such determination or action, and evidence that the Historical Commission’s review, determination and action was undertaken in a public proceeding.

### A. MANDATORY DRI REFERRAL PROCESS

The process for making mandatory referrals of historic properties is described in Sections 2(a)(i)(a) and 7 of the Enabling Regulations and is summarized in the steps noted below. In this process, the town’s Historical Commission is charged with reviewing any proposed exterior alteration or demolition of a National Register historic property that is not protected by local historic district regulations. The purpose of the Historical Commission’s review is to determine whether the proposed work constitutes a “substantial alteration” that would alter key character-defining features of the building and threaten the building’s continued eligibility for listing in the National Register of Historic Places. This gives the Historical Commission an opportunity to work with property owners planning major alterations, to inform them of the building’s significance, and to guide them to pursue alternatives that preserve the building’s important historic features.

1. **Forward Permit Application to Historical Commission:** The town’s Building Department forwards to the Historical Commission any building permit or demolition application or notice of intent to demolish that involves partial or full demolition, additions or alterations to a property listed in the National Register of Historic Places which is not located within a local historic district. National Register properties may be listed individually or may be designated as “contributing” buildings within a National Register historic district. The “contributing” designation is noted on



the District Data Sheet found in each National Register nomination (available in the MACRIS database).

2. **Historical Commission Review:** The Historical Commission reviews the proposal and votes on how to proceed.
  - a. If the Historical Commission finds that full demolition of an historic building is proposed, it shall inform the building inspector/commissioner of the finding and the need to refer the project to the Cape Cod Commission for mandatory DRI review.
  - b. If less than full demolition is proposed and the Historical Commission finds that the proposed project alters or destroys key character-defining features of the building that embody its historic or architectural significance such that the structure's continued listing or contributing status in the National Register is jeopardized, then the proposal constitutes a "substantial alteration;" it shall then inform the building inspector/commissioner of the finding and the need to refer the project to the Cape Cod Commission for mandatory DRI review.
  - c. If less than full demolition is proposed and the Historical Commission finds that the proposed project does not alter key character-defining features of the building that embody its historic or architectural significance, then the project shall not constitute a "substantial alteration." The Historical Commission then informs the building inspector/commissioner of its finding and that the local permitting process may proceed without the need for mandatory DRI review.
3. **Referral to Cape Cod Commission, if necessary:** In cases where the Historical Commission finds a proposed project constitutes a "substantial alteration," or when full demolition of an historic building is proposed, the building inspector/commissioner or other appropriate municipal agency (including the select board/town council) shall refer the project to the Cape Cod Commission for mandatory DRI review. In these cases, the DRI review will be limited to issues related to the "cultural heritage" goal of the Regional Policy Plan (RPP).

In cases where the Historical Commission has not yet acted under the respective Demolition Delay By-law/Ordinance, the Historical Commission retains the discretion to impose a demolition delay during local permitting, after the Cape Cod Commission has reviewed and approved the project.

## B. DISCRETIONARY REFERRAL PROCESS

The process for making discretionary referrals is described in Sections 2(b) and 7 of the Enabling Regulations and is summarized in the steps below:

1. **Historical Commission considers proposal:** After instituting a demolition delay period, the Historical Commission may consider whether the subject property has been determined eligible

for listing in the National Register of Historic Places by the Massachusetts Historical Commission staff or board (this determination is required if an Historical Commission intends to pursue a discretionary referral for one single-family dwelling or accessory structure). The Historical Commission may also consider the property's significance to the community, its own historic inventory and other relevant factors and decide whether to pursue discretionary DRI review in an effort to preserve the property.

2. **Historical Commission votes whether to refer:** The Historical Commission may vote to make a discretionary referral to the Cape Cod Commission for DRI review.
3. **Referral to Cape Cod Commission, if necessary:** The Historical Commission coordinates referral with the building inspector/commissioner and select board/town council. The town submits the referral form and supporting documentation of the properties' significance to the Cape Cod Commission for consideration.
4. **Cape Cod Commission votes whether to accept referral:** After receipt of the request, the Cape Cod Commission reviews and votes at a public meeting whether to accept the referral for DRI review. The town presents its request to the Cape Cod Commission at such meeting. If the Cape Cod Commission votes to accept the referral, the town's permitting process is suspended pending DRI review and approval by the Commission. In accepting the request for DRI review, the Cape Cod Commission may decide to limit the scope of substantive RPP issue areas relevant to DRI review, e.g. the cultural heritage goal of the RPP. If the Cape Cod Commission does not accept the referral, the project continues through the town's permitting process and demolition delay period without the requirement for DRI review.

If a town's Historical Commission is considering making a discretionary referral, Commission staff recommends the referral be made as early in the demolition delay period as possible, and preferably during first half of the delay period.





## V. GUIDANCE FOR DETERMINING WHAT QUALIFIES AS A SUBSTANTIAL ALTERATION

“Substantial Alteration” is defined in the Enabling Regulations as “An alteration that jeopardizes an historic structure’s or site’s individual eligibility for listing in the National Register of Historic Places, or its status as a contributing structure in a National Register Historic District.”

Full demolition of a National Register property automatically qualifies for mandatory DRI review. Partial demolition, new additions, and other exterior alterations may qualify as substantial alterations requiring mandatory DRI review if they involve removing historically significant or character-defining features of the structure. An Historical Commission should refer to a building’s MACRIS inventory form and/or National Register nomination for help in determining any significant character-defining features of the structure, and to the Secretary of the Interior’s Standards for Rehabilitation of Historic Properties, which are the basis for the following guidance. Commission staff is also available to provide technical assistance to Historical Commissions in making this determination.

The following alterations **SHOULD** be considered a “substantial alteration”:

- Any demolition (or demolition and reconstruction) of the original or primary historic building mass;
- Large-scale renovation projects that replace a significant amount of the building’s structural frame and character-defining architectural features. While some alteration of exterior materials is expected in rehabilitation work, key architectural features such as the original building massing, roof configuration, fenestration pattern and building materials should not be removed or substituted;
- Additions to primary building façades, prominent secondary façades, or primary roof slopes that change the historic character or require removal of distinctive architectural features. Additions should be limited to rear or secondary facades and roof slopes and should be stepped back to preserve a distinction between old and new portions of the building;
- Additions or new construction which are highly visible and dramatically different from the historic property or surrounding historic district. Contemporary or ‘green’ architectural forms can be combined with historic buildings but should be designed so they do not dominate the established character.
- Relocation of an historic building if the building has not been previously moved and it will change important relationships to other historic properties or the surrounding district. Established street setback patterns and orientation to landscaped commons or resource areas should be preserved;
- Removal or alteration of defining landforms in an historic landscape or site such that the property’s distinctive characteristics are no longer visible. Examples may include introduction of

prominent parking lots, construction of buildings in the midst of the landscape's defining forms, or obstruction of key views and vistas.

The following alterations **SHOULD NOT** be considered a "substantial alteration":

- Additions and alterations that are limited to rear or side facades and that do not require removal of distinctive architectural trim and features;
- Change or alteration of properties that are not "contributing" structures in a historic district;
- Demolition of later additions that do not have historic significance;
- Ordinary maintenance and repair of exterior features which do not involve a significant change in design, material or outer appearance; and
- Activities that do not require a building permit.





## VI. CAPE COD COMMISSION HISTORIC PROPERTY REVIEW STANDARDS

The Commission's standards related to historic and cultural resource protection are included in both the [Regional Policy Plan](#) and the [Cultural Heritage Technical Bulletin](#). The goal, objective and methods related to protecting historic resources are re-stated below. The Cultural Heritage Technical Bulletin includes an in-depth discussion of methods to meet this goal and objective, including reference to the Secretary's Standards for Rehabilitation of Historic Properties.

### GOAL | CULTURAL HERITAGE

*To protect and preserve the significant cultural, historic, and archaeological values and resources of Cape Cod.*

### CULTURAL HERITAGE OBJECTIVE CHI

Protect and preserve forms, layouts, scale, massing, and key character defining features of historic resources, including traditional development patterns of villages and neighborhoods.

### METHODS FOR MEETING OBJECTIVE CHI

- Renovate, re-use and incorporate historic structures into new development proposals in a way that retains their original building materials, including the structural frame and exterior architectural trim.
- Design changes or alterations to historic structures to be reversible (as discussed in the Secretary of the Interior's Standards), so that they can be undone in the future without loss of significant historic materials and original architectural features.
- Locate additions to historic structures on secondary facades and stepped back from the original structure to limit demolition of original materials and ensure that addition is secondary to the original building.
- Site new development outside of cultural landscapes such as open farmlands or designed parks and gardens, or locate at their periphery to preserve their unique character.

## COORDINATION WITH MHC

The Cape Cod Commission requires applicants to submit a Project Notification Form (PNF) to Massachusetts Historical Commission (MHC) as part of their DRI applications to ensure that MHC has an opportunity to comment on possible impacts to historic and archaeological resources in the project area. This provides the Cape Cod Commission and applicant valuable information that MHC maintains about the property relative to permitting and development.

## CCC REVIEW OF PROJECTS ADJACENT TO HISTORIC RESOURCES

When CCC conducts DRI review of proposed developments adjacent or proximate to historic resources or within historic districts, the design of those projects and their impact on surrounding historic resources is considered. The [Cultural Heritage Technical Bulletin](#) and the [Community Design Technical Bulletin](#) both discuss the importance of context-sensitive design and respecting the character of historic areas. The Regional Policy Plan identifies historic areas as a specific Placetype with recommended ways of addressing new development to insure context sensitivity. Applicants should review these Technical Bulletins to understand recommended methods for responding to specific historic contexts and Placetypes. Also see Section 13(h) of the Commission Act regarding the interaction between DRI review and local historic district regulations.



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US Mail: P.O. Box 226 (3225 Main Street), Barnstable, Massachusetts 02630

Phone: 508-362-3828 • Fax: 508-362-3136 • Email: [frontdesk@capecodcommission.org](mailto:frontdesk@capecodcommission.org)

[www.capecodcommission.org](http://www.capecodcommission.org)