



## CAPE COD COMMISSION

3225 MAIN STREET  
P.O. BOX 226  
BARNSTABLE, MA 02630  
(508) 362-3828  
FAX (508) 362-3136  
E-mail: [frontdesk@capecodcommission.org](mailto:frontdesk@capecodcommission.org)

# GUIDELINES FOR REFERRAL OF HISTORIC STRUCTURES TO THE CAPE COD COMMISSION

## Technical Bulletin 96-002

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Cape Cod Commission staff has been requested to establish thresholds to determine when a proposed demolition or substantial alteration to an historic structure requires referral to the Cape Cod Commission as a Development of Regional Impact (DRI) under Section 12(c)(1) of the Cape Cod Commission Act (Act). Section 12(c)(1) of the Act requires review of "any proposed demolition or substantial alteration of an historic structure listed with the National or Massachusetts Registers of Historic Places, outside a municipal historic district or outside the Old King's Highway District."

### **Purpose of Review Thresholds:**

Historic properties in Massachusetts may have a variety of designations which afford them varying amounts of protection. The strongest form of protection is provided to properties located within local historic districts established under the Historic Districts Act (M.G.L. Ch. 40C), municipal home rule authority, or special acts of the legislature, such as the Old King's Highway Regional Historic District. Properties listed in the National Register of Historic Places, either individually or as part of a National Register Historic District, are afforded limited protection from projects involving federal actions. The State Register of Historic Places is a master list of all of the Commonwealth's designated properties including those listed in the National Register of Historic Places and within local historic districts. This additional designation provides limited protection from projects involving state actions. Section 12(c)(1) of the Act was established to give the Commission the ability to review alterations to historic structures listed in the National or State Registers of Historic Places, which are not otherwise protected by local historic district regulations. This threshold of the Act was intended to encourage preservation and enhancement of historically significant buildings.

### **Exemptions for Residential Structures:**

The Act provides absolute exemption from review as a DRI for the limited repair, alteration and upgrading of single-family residential structures. Section 22(c) of the Act states that the Act shall not apply to the "repair, upgrade, change, alteration or extension of a single family dwelling or an accessory structure,...if such dwelling existed prior to July 1, 1989, unless such upgrade, change, alteration or extension is greater than 25% of the gross

floor area of the dwelling." This exemption applies to all single-family residential dwellings, including historic structures.

#### **Referrals of Single-Family Homes:**

If a proposed demolition or alteration is greater than 25% of the gross floor area of a single-family home, a determination must be made as to whether the alteration constitutes a "substantial alteration" pursuant to Section 12(c)(1) of the Act. These guidelines are designed to assist the Local Historical Commissions (LHC), and, where appropriate, the Massachusetts Historical Commission (MHC), in determining when a proposed change is considered "substantial" and should therefore be reviewed by the Commission as a DRI.

#### **Referrals of Other Structures:**

A proposed demolition to a listed or contributing structure which is not a single-family home shall be referred directly to the Cape Cod Commission for DRI review. As above, the LHC, and, where appropriate, the MHC, shall make a determination as to when a proposed alteration is considered "substantial" and should therefore be reviewed by the Commission as a DRI.

#### **Referral Evaluation Guide:**

In order to assist local permitting authorities and Historical Commissions in screening potential DRI referrals, Commission staff has outlined a guide to the review of historic structures to be used when evaluating a demolition or an alteration to an historic structure.

#### **Jurisdiction:**

The Cape Cod Commission shall review listed structures/buildings which are not regulated at the municipal level through Historic District Regulations established under M.G.L. Chapter 40C or created by special legislation. Its jurisdiction under the Act shall be limited to exterior architectural features of structures individually listed on the National or State Register of Historic Places and all contributing structures within a National Register Historic District.

#### **Proposed Review Guidelines-Definitions:**

The definitions listed below are designed specifically for use by Local Historical Commissions and permitting authorities in this DRI screening process. The definitions are based primarily on the National/Massachusetts Register of Historic Places and the National Historic Preservation Act. The definitions of the Cape Cod Commission Act, Administrative and DRI Regulations shall also apply, unless otherwise specified.

#### *Historic Structure/Building:*

A combination of materials forming a shelter for persons, animals or property, including but not limited to a garage, office, or shed as well as functional construction created for purposes other than creating shelter, including but not limited to a windmill, bridge, or gazebo. Historic structure/building may also be used to refer to an historically and functionally related unit, such as a house and barn.

#### *Contributing Historic Structure:*

An historic structure that adds to the historic architectural qualities, historic associations, or archaeological values for which a property or district is significant, including all detached structures on an historic property which contribute to the above qualities.

*Non-Contributing Structure:*

A structure located within a Local, Massachusetts or National Register Historic District which does not add to the historic architectural qualities, historic associations or archaeological values for which a property is significant because a). it was not present during the period of significance; b). due to alterations, disturbances, additions, or other changes, it no longer possesses historic integrity reflecting its character at that time or is incapable of yielding important information about the period; or c). it does not independently meet the National Register criteria.

*Historically Inappropriate Addition:*

Alterations which are inconsistent with the predominant architectural style and historic qualities of the structure.

*Demolition:*

Any act of pulling down, destroying, removing, or razing a building or structure, or any portion thereof, or commencing the work of total or substantial destruction with the intent of completing the same, without replacement.

*Substantial Alteration:*

An alteration which jeopardizes a structure's individual eligibility for listing in the National Register of Historic Places, or its status as a contributing structure in a National or Massachusetts Register of Historic Places, such as:

- addition, removal, alteration or substitution of defining architectural features such that the building/structure is incapable of yielding important historical information about its period, including changes to the following: exterior siding, roof pitch, fenestration, and the compatibility of additions in terms of general scale, massing, and materials.
- isolation of a property or alteration of its setting such that the historic character and integrity are no longer reflected in the site. Examples may include the following: introduction of parking lots, removal of subsidiary buildings or relocation of a structure from its original site.
- use of surface cleaning and maintenance methods which endanger the building, structure, or object's historic building materials, such as sandblasting and improper masonry repointing.

\*Note: It is recommended that local historical commissions refer to the U.S. Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings for assistance in determining a substantial alteration.

*Architectural Feature:*

The style, design, general arrangement, and components of all the outside surfaces of a structure which characterize the landmark or district, including but not limited to the following: the architectural style and general arrangement and setting thereof; the kind and texture of exterior building materials, or other materials applied to exterior surfaces and the type and style of windows, doors, lights, signs, and other appurtenant exterior fixtures.

*Gross Floor area:*

The sum in square feet of the area at each floor level that is included within the outside faces of exterior walls, not including architectural setbacks or projections. Included are all stories, attached or detached structures that have floor surfaces with clear standing head room (six feet, six inches minimum) regardless of their use, including but not limited to cellars, basements, mezzanines, penthouses, corridors lobbies, or offices. All structures included on the National or State Register listing may be included in the gross floor area calculation. Where a ground level area, or part thereof, within the outside faces of the exterior walls is left unenclosed, (for example, an atrium), the gross floor area of the unenclosed portion is said to be considered as a part of the overall square footage. The area to be demolished is included in calculating the total gross floor area of an existing structure.

**Exemptions:**

The following structures, activities or features are excluded from review by the Commission:

- Ordinary maintenance and repair of any exterior feature which does not involve a significant change in design, material, or outer appearance. This provision includes re-shingling or replacement of wooden clapboards. Activities not requiring a building permit are automatically exempt.
- Non-contributing structures in a National Register district.
- Temporary structures or signs.
- Terraces, walks, driveways, sidewalks, and similar structures, provided that any such structure is substantially at grade level and not within the outside faces of exterior walls.
- Fences, decks, walls, flagpoles, arbors and trellises, storm doors and windows, window air conditioners, lighting fixtures, and similar appurtenances. Radio antennae, satellite dishes, and similar appurtenances are not exempt.
- Emergency actions pursuant to Section 24 of the Act and Administrative Regulations, or the reconstruction, pursuant to the Regional Policy Plan, of a structure or exterior architectural feature damaged or destroyed by fire, storm or other disaster, provided that such reconstruction is substantially similar to the original in exterior design, is begun within the time limits specified by the local building code, and is carried forward with diligence. Under these conditions the building inspector shall issue a written certificate that an emergency condition exists and that immediate action to remove the hazard is necessary, pursuant to Section 5 of the Administrative Regulations.
- Demolition or alteration of historically inappropriate additions.

**Procedures for Determination of Referral of Historic Structures:**

A. Property owner or his/her agent files for a local development permit (i.e. building permit, special permit). If no local permit is necessary, the project is not subject to Development of Regional Impact (DRI) review.

B. Building Inspector or other municipal agency reviews the proposed project, asking the following questions:

1. Is the structure located within a local historic district and therefore governed by local historic district regulations? If yes, the project is not subject to DRI review under

Section 12(c)(1) of the Cape Cod Commission Act. Proceed with the local permitting process. If no, proceed to Question 2.

2. If the answer is yes to **all** of the following questions, the project should be referred to the Local Historical Commission for a determination (see Step D below). If the answer is no to **any** of these questions, proceed with the local permitting process:

- Is the structure either listed on the National or State Registers of Historic Places or listed as a contributing structure within a National Register Historic District?
- Does the proposed project involve alteration of any exterior feature of such an historic structure?
- If the structure is a single family dwelling, does the proposed project involve alteration of more than 25% of the gross floor area of the existing structure?  
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3. Does the project involve demolition of more than 25% of the gross floor area of a single family dwelling\*\* or any demolition of a listed or contributing structure which is not a single family dwelling? If yes, refer directly to the Cape Cod Commission for DRI review.

C. Applicant files two copies of plans and supporting documents with the Local Historical Commission. If any demolition is proposed, the applicant should provide photos and measurements of the area to be demolished.

D. The Local Historical Commission reviews the proposed alterations and/or demolitions as follows:

1. Local Historical Commission schedules a public meeting to discuss the proposed project. A notice of such meeting should be posted at least 48 hours in advance and should include the name of the applicant, the location of the property, and brief description of the proposed construction and/or demolition, as well as the date, time and place of the meeting. A copy of such notice should also be sent to the Cape Cod Commission.

2. The Local Historical Commission should make a written determination as to whether the proposed alterations/demolitions constitute a "substantial alteration" for the purposes of Section 12(c)(1) of the Cape Cod Commission Act. Within twenty-one (21) days of receipt of the applicant's plans and supporting documents, the Local Historical Commission should notify the Building Inspector or other municipal agency of its determination.

E. If the Local Historical Commission determines that a proposed project constitutes a substantial alteration, the Building Inspector or other relevant municipal agency shall refer the project to the Commission for DRI review under Section 12(c)(1) of the Cape Cod Commission Act. If the Local Historical Commission finds that the proposed project does not constitute substantial alteration, the local permitting process may proceed.

F. Notwithstanding the above, if the Building Inspector or other municipal agency do not concur with a Local Historical Commission's determination, the Building Inspector or

other municipal agency may file with the Commission an application for an informal jurisdictional determination.

G. The Commission shall make an informal jurisdictional determination as to whether DRI review is required within fourteen (14) days of receiving an application from a municipal agency. In making its jurisdictional determination, the Commission may consult with the Massachusetts Historical Commission (MHC) to determine whether the proposed project does involve substantial alteration. If the project is determined to be a substantial alteration by the Commission, the Building Inspector or other municipal agency shall refer the project to the Commission for DRI review under Section 12(c)(1) of the Act. Guidelines for DRI review of such referrals will be developed at a later date.

H. Pursuant to Section 12(h) of the Cape Cod Commission Act, the Commission may also review proposed alterations or demolitions of historic structures that have not been referred to it by municipal agencies if, in the Commission's judgement, the proposed project meets the standards and criteria for developments of regional impact.

\*\*Calculations of substantial alterations and demolitions to a single family dwelling should be based on the gross floor area of the existing structure. Thus, alterations and/or additions affecting more than 25% of the structure's gross floor area should be referred to the Local Historical Commission for a determination. Demolitions of more than 25% of the structure's gross floor area should be referred to the Cape Cod Commission for DRI review.