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## Decision of the Martha's Vineyard Commission

### DRI 49-M2 – MV Arena Wind Tower

#### 1. SUMMARY

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- Referring Board: Zoning Board of Appeals, Town of Oak Bluffs, MA
- Subject: Development of Regional Impact #49-M2  
Martha's Vineyard Arena Wind Tower
- Project: Construction of a wind generator on a lattice tower up to 172.5' tall (140' tall tower with a turbine with a 65' diameter) designed to also hold wireless communications equipment.
- Owner: MV Arena Inc.
- Applicant: M.V. Arena and Great Rock Wind Power, Jevon Rego (Board of Directors of the M.V. Arena), Gary Harcourt (Great Rock Wind).
- Applicant Address: 91 Edgartown-Vineyard Haven Road, Oak Bluffs, MA
- Project Location: 91 Edgartown-Vineyard Haven Road, Oak Bluffs Map 50 Lot 30 (3.28 acres)
- Description: To construct a wind tower up to 140 foot tall with a turbine up to a 65-foot diameter (maximum total height of 172.5 feet) with a 50-100 Kilowatt generator, located at the back of the MV Arena property and to install wireless telecommunications antennas on the tower for a maximum of four wireless providers.
- Decision: The Martha's Vineyard Commission (the Commission) approved the application for the project as a Development of Regional Impact with conditions, at a vote of the Commission on October 2, 2008.
- Written Decision: This written decision was approved by a vote of the Commission on October 2, 2008.

The permit-granting authorities of the Town of Oak Bluffs may now grant the request for approval of the Applicant's proposal in accordance with the conditions contained herein and may place further conditions thereon in accordance with applicable law, or may deny the request for approval.

## **2. FACTS**

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The exhibits listed below including the referral, the application, the notice of public hearing, the staff report, the plans of the project, and other related documents are incorporated into the record herein by reference. The full record of the application is kept on the premises of the Martha's Vineyard Commission.

### **2.1 Referral**

The project was referred to the Commission on June 20, 2008 by the Zoning Board of Appeals of the Town of Oak Bluffs, MA for action pursuant to Chapter 831 of the Acts of 1977, as amended (the Act) and the Commission's Standards and Criteria Administrative Checklist for Developments of Regional Impact, Section 3.102b, a modification to a previously approved DRI. On July 24, 2008 the full Commission voted that the project should go to a public hearing as Development of Regional Impact.

### **2.2 Hearings**

Notice: Public notice of a public hearing on the Application was published in the Vineyard Gazette, August 1, 2008.

Hearings: The Commission held a public hearing on the Application that was conducted by the Commission pursuant to the Act and M.G.L. Chapter 30A, Section 2, as modified by Chapter 831 on August 14, 2008 which was continued to September 11, 2008 and closed on that date.

### **2.3 The Plan**

The following plans and documents submitted by the Applicant and contained in the Commission's project file constitute "the Plan."

- P1 "Site Plan: Prepared for Martha's Vineyard Arena", consisting of one 8.5" by 11" page, prepared by Schofield, Barbini, & Hoehn Inc., State Road, Vineyard Haven, MA, October 2, 2008.
- P2 "EW50-100' Lattice Tower: General Arrangement" consisting of one 11' by 17" sheet for informational purposes only; prepared by Entegritiy Wind Systems Inc., [www.entegritiywind.com](http://www.entegritiywind.com).

### **2.4 Other Exhibits**

- E1. Referral to the MVC from the Oak Bluffs Zoning Board of Appeals June 20, 2008
- E2. Staff Report, by Paul Foley, MVC DRI Coordinator, with the assistance of other staff members, July 21, 2008; revised August 14, 2008; and revised September 11, 2008.
- E3. Photographs of the site, taken on August 14, 2008 by MVC staff members, Paul Foley and Mark London.
- E4. Letter from Michael Dutton, Oak Bluffs Town Administrator on behalf of the Oak Bluffs Selectmen in support, August 27, 2008.
- E5. Letter from Kate Warner of The Vineyard Energy Project in support, August 13, 2008.
- E6. Letter from John Clese of the YMCA of Martha's Vineyard in support, August 13, 2008.
- E7. Letter from Brian K. Nelson of Nelson Mechanical in support, August 8, 2008.

- E8. Letter from Steven Higginson of the Church of Latter Day Saints in support, August 2, 2008.
- E9. MVC Questions for Applicant with Applicant Responses.
- E10. Minutes of the Commission's Land Use Planning Committee meeting, July 21, 2008.
- E11. Minutes of the Commission's Land Use Planning Committee meeting, September 22, 2008.
- E12. Minutes of the Commission's Concurrence Review, July 24, 2008.
- E13. Minutes of the Commission's Public Hearing, August 14, 2008.
- E14. Minutes of the Commission's Continued Public Hearing, September 11, 2008.
- E15. Minutes of the Commission Meeting of October 2, 2008 – Deliberations and Decision.
- E16. Minutes of the Commission Meeting of October 2, 2008 – Approval of the Written Decision.

## **2.5 Summary of Testimony**

The following is a summary of the principal testimony given during the public hearing.

- Presentation of the project by Jevon Rego (MV Arena), Gary Harcourt (Great Rock Wind); Tyler Studds (Great Rock Wind); Mike McCormack (MV Arena); Jim Albiani (Maxton Tower); Chris Hicks (Maxton Tower).
- Staff reports by Paul Foley, MVC DRI coordinator; Bill Wilcox, MVC Water Planner; Mark London, Executive Director.
- Oral testimony from Town Boards or members of Town Boards: None
- Oral testimony from Public: Jim Weiss (Superintendent of Schools); Brian Nelson (Nelson Mechanical); Susie Waller (MV Arena Fundraising Committee) on behalf of Bob and Gail Mone; and Phil Mercier.

## **3. FINDINGS**

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### **3.1 Project Description**

- The site is a long, narrow, 3.28-acre lot on Edgartown-Vineyard Haven Road across from the High School and next to the future YMCA.
- There is an existing Ice Arena that was built in 1976.
- The proposal is to construct a 140 foot tall wind tower with a turbine up to a 65-foot diameter (Total height of 172.5 feet) with a 50-100 Kilowatt generator, located at the rear of the MV Arena property.
- The MV Arena is the third largest energy consumer on the Island and the wind tower is estimated to generate up to 25% of the MV Arena energy needs.
- The Applicants are also in negotiations with a cell phone company who want to engineer a tower that could co-locate up to 4 cell phone antennas on the wind tower.

### **3.2 Statutory Authority**

The purpose of the Commission, as set forth in Section 1 of the Act, is to “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.”

The Commission has reviewed the proposal as a Development of Regional Impact, using the procedures and criteria that the Commission normally uses in evaluating the benefits and detriments of such a proposal. The Commission has considered the Application and the information presented at the public hearing, including listening to all the testimony presented and reviewing all documents and correspondence submitted during the hearing and review period.

### **3.3 Benefits and Detriments**

Based on the record and testimony presented therein, the Commission finds the following pursuant to Sections 14 and 15 the Act.

#### **A. THE COMMISSION FINDS THAT THE PROBABLE BENEFITS OF THE PROPOSED DEVELOPMENT WOULD EXCEED THE PROBABLE DETRIMENTS, AS EVALUATED IN LIGHT OF THE CONSIDERATIONS SET FORTH IN SECTION 14(a) OF THE ACT.**

##### **A1 The Commission finds that the proposed development at this location is appropriate in view of the available alternatives (Section 15(a) of the Act.)**

The Commission finds that a wind turbine would offer a significant benefit for the community by reducing energy costs and providing other revenues for this community facility, by reducing energy consumption coming from fossil fuels and by improving cell phone coverage. The Commission considers that this is an appropriate location for such a facility.

##### **A2 The Commission finds that the proposed development would have a positive impact upon the environment relative to other alternatives (Section 15(b) of the Act).**

With respect to Wastewater and Groundwater, as well as Open Space, Natural Community and Habitat, the Commission finds that the project will have minimal impact.

With respect to Night Lighting and Noise, the Commission finds that the project offers the following potential benefits: the equipment will be in an enclosed compound, the noise generation at the property line will be limited; exterior lighting will be minimized, and the location surrounded by institutions and open space will minimize the noise and lighting impact on residential abutters. However, the Commission notes that there will be some noise associated with the facility and that the FAA may require lighting at the top of the tower that will increase the tower’s visibility.

With respect to Energy and Sustainability, the Commission finds that the MV Arena is the third largest energy consumer on the Island and that it is estimated the turbine will generate up to 25% of the MV Arena energy needs.

**A3The Commission finds that the proposed development would have a limited, negative effect upon other persons and property (Section 15(c) of the Act).**

With respect to Traffic and Transportation, the Commission finds that the project will not lead to an increase in traffic and will slightly reduce the parking capacity behind the Arena.

With respect to Scenic Values, Character, and Identity: the Commission finds that the project will be one of the tallest structures on the Island, but that its visibility will be limited or mitigated in several ways: it is set well back from the nearest public road and is in a mainly institutional area; the most direct view from the Edgartown – Vineyard Haven Road will be screened when the Arena entrance is relocated and the current opening is landscaped. Also, the Commission notes that the increased vegetative screening along the rear of the property will improve the view from the Land Bank property and the Holmes Hole Road Ancient Way.

With respect to the Impact on Abutters, the Commission finds that the project is located at the rear of a parking lot in a primarily institutional area, and has been set back to minimize the presence and visual impact from the public way. The presence of the turbine near the Y and the High School can help it serve an educational role. However, the presence of the large tower and the turbine noise will likely affect the natural character and serenity of the Land Bank property; they could also affect the desirability of locating housing in the part of the Town’s Resident Homesite property located immediately adjacent to the turbine.

The Commission also notes that the accommodation of wireless telecommunications on this tower, including the offer to co-locate up to four cell phone antennae, would improve regular and emergency cell phone service in the area, and would reduce the need to erect other towers.

**A4The Commission finds that the proposed development would have a no impact upon the supply of needed low and moderate income housing for Island residents (Section 15(d) of the Act).**

**A5The Commission finds that the proposed development would have minor impacts on the provision of municipal services or burden on taxpayers in making provision therefore (Section 15(e) of the Act).**

**A6The Commission finds that the proposed development would use efficiently and not unduly burden existing public facilities (other than municipal) or those that are to be developed within the succeeding five years. (Section 15(f) of the Act).**

The Commission finds that the cost savings and income will help financially support this facility that provides recreational services to the community.

**A7The Commission finds that the proposed development does not interfere with the ability of the municipality to achieve the objectives set forth in the municipal general plan. (Section 15(g) of the Act).**

**A8The Commission finds that the proposed development would not contravene land development objectives and policies developed by regional or state agencies. (Section 15(h) of the Act).**

The Commission notes that the development is consistent with the policies of the Martha's Vineyard Commission Regional Policy Plan, adopted by the vote of the Martha's Vineyard Commission, June 1991.

In sum, after careful review of the plan and its attendant submittals and the testimony presented by the Applicant and others, and the addition of conditions, the Commission has concluded that the probable benefits of this proposed development in this location exceed its probable detriment in light of the considerations set forth in section 14(a) of the Act.

**B. THE COMMISSION FINDS THAT THE PROPOSED DEVELOPMENT WOULD BE CONSISTENT WITH THE LAND DEVELOPMENT OBJECTIVES OF THE COMMISSION, AS EVALUATED IN LIGHT OF THE CONSIDERATIONS SET FORTH IN SECTION 14(b) OF THE ACT.**

The requested project, as a whole, advances the Commission's land development objectives, as outlined in the Martha's Vineyard Commission Regional Policy Plan adopted by the Commission in June 1991, and as noted previously in section A8 of this decision.

**C. THE COMMISSION FINDS THAT THE PROPOSED DEVELOPMENT IS CONSISTENT WITH MUNICIPAL DEVELOPMENT ORDINANCES AND BY-LAWS, TO THE BEST OF THE COMMISSION'S KNOWLEDGE.**

The Commission finds that the project is subject to Special Permit review by both the Planning Board and the Zoning Board of Appeals of the town of Oak Bluffs.

**D. THE COMMISSION FINDS THAT THE SITE IS NOT SUBJECT TO THE REGULATIONS OF DISTRICTS OF CRITICAL PLANNING CONCERN, AS EVALUATED IN LIGHT OF THE CONSIDERATIONS SET FORTH IN SECTION 14(d) OF THE ACT.**

The Commission finds that the proposed development site is not located within a District of Critical Planning Concern (DCPC).

#### **4. DECISION**

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The Martha's Vineyard Commission deliberated about the application at a duly noticed meeting of the Commission held on October 2, 2008 and made its decision at the same meeting.

The following Commissioners, all of who participated in all hearings and deliberations on this project, participated in the decision on October 2, 2008.

- Voting in favor: Andrew Woodruff, Chris Murphy, Katherine Newman, Jim Athearn, Christina Brown, John Breckenridge, Peter Cabana
- Voting against:
- Abstentions: Mimi Davisson

Based on this vote, the Commission approved the application for the project as a Development of Regional Impact with the conditions listed in section 5 below.

This written Decision is consistent with the vote of the Commission October 2, 2008 and was approved by vote of the Commission on October 2, 2008.

## **5. CONDITIONS**

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After reviewing the proposal for this Development of Regional Impact, the Martha's Vineyard Commission imposes the following conditions in order to increase the benefits and minimize the detriments of the project. The analysis of benefits and the resulting decision to approve the project is based on the proposal as modified by these conditions. These conditions form an integral and indispensable part of this decision.

These conditions are an essential part of this decision and shall be enforced as written. The primary enforcement agent for the compliance of these conditions is the building and zoning enforcement officer of the Town. If the Commission or the Town finds it necessary to seek judicial relief to enforce the condition, the Applicant, or its successors in title at the time of such proceedings, shall pay the Commission's and/or Towns attorney's fees and costs incurred in obtaining judicial relief.

### **1) Tower**

- a) As offered by the Applicant, the Applicant shall build a wind tower with a maximum height to tip of blade of 172.5 feet. This includes a tower of a maximum height of 140 to the center of the hub, and a rotor of a maximum diameter of 65 feet.
- b) As offered by the Applicant, the Applicant shall have no more than four wireless telecommunication (cell phone) carriers housed on the tower.
- c) As offered by the Applicant, the wireless telecommunication antennae and their supporting structures shall not extend more than approximately 2' beyond the outside members of the tower.
- d) As offered by the Applicant and in order to minimize the number of future towers, the Applicant shall agree to co-location of up to four providers.
- e) As offered by the Applicant, the design of the cell phone antennae and their supporting structures shall be submitted to and are subject to the approval of the MVC Land Use and Planning Committee. They shall be designed to minimize their visibility.

### **2) Landscaping**

- a) As offered by the Applicant, a final landscaping plan including exterior lighting and an implementation timetable showing plant species and locations shall be submitted for the review and approval of LUPC before construction begins.

- b) As offered by the Applicant, all fertilizers shall be slow-release, water-insoluble nitrogen source types. No synthetic pesticides including herbicides, fungicides and/or insecticides shall be used in the maintenance of landscaping.
- c) As offered by the Applicant, the Applicant shall relocate the current Arena curb cut in conjunction with the YMCA and according to the campus plan at which time plantings will be inserted in the space which in time will screen the tower from Edgartown Road. The Applicant shall also increase the vegetation between the front of the Arena and the Edgartown – Vineyard Haven Road and along the rear of the property, addressing the possibility of raising the grade at the rear, in order to better screen the rear of the property from the Land Bank property.

### **3) Exterior Lighting**

- a) As offered by the Applicant, the only lights on the wind tower shall be those required by the FAA and the Massachusetts Aeronautical Commission (MAC).
- b) As offered by the Applicant, exterior lighting on the equipment shed shall be limited to that required by code and shall be on a timer to ensure that it is turned off during the day as well as turned off during the night when the Arena is closed. Security lighting, if any, shall be on motion detectors.
- c) As offered by the Applicant, the only landscaping lighting that shall be installed is bollard lights no more than 3 feet tall, if needed for pedestrian and vehicular safety.

### **4) Use and Decommissioning**

- a) As offered by the Applicant, if the wind turbine is not operational for a period of more than 12 months, the Applicant shall dismantle and remove the tower at its expense, unless the Applicant has returned to the Commission and received approval to maintain the tower, and possibly the cell phone antennae, without the wind turbine.
- b) As offered by the Applicant, if the tower is removed, the Applicant shall restore the site.

### **5) Noise**

- a) As offered by the Applicant, all equipment shall be located in a compound enclosed by a fence with a shed.
- b) As offered by the Applicant, the Applicant shall maintain and install the equipment so that it does not result in an increase of more than 10db above average ambient level at any property line except for rare occurrences during high wind events and the temporary operation of the generator for testing and during power failures.

### **6) Bird Study**

- a) As offered by the Applicant, the applicant shall commission a study regarding avian mortality due to the wind tower for a period of one year beginning when the tower is operational.

### **7) Substantial Alterations**

- a) As offered by the Applicant, should Applicant wish to substantially alter the use of the premises from the proposed uses, the Applicant shall return to the Martha's Vineyard Commission to request approval of said alteration.

## **6. CONCLUSION**

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### **6.1 Permitting from the Town**

The Applicant must, consistent with this Decision, apply to the appropriate Town of Oak Bluffs Officers and Boards for any local development permits which may be required by law.

The permit-granting authorities of the Town of Oak Bluffs may now grant the request for approval of the Applicant's proposal in accordance with the conditions contained herein and may place further conditions thereon in accordance with applicable law, or may deny the request for approval. Any permit issued by the Town shall incorporate the plan approved by the MVC and the above conditions.

The Town's building inspector shall not issue a Certificate of Operational Use until it has received a Certificate of Compliance issued by the Executive Director or DRI Coordinator of the Martha's Vineyard Commission confirming that the following condition in this Decision has been satisfied: 1a; 1b; 1c; 1e; 2a; 2c; 3a; 3b; 3c; 5a; and 5b.

### **6.2 Notice of Appellate Rights**

Any party aggrieved by a determination of the Commission may appeal to Superior Court within twenty (20) 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 Oak Bluffs Town Clerk.

### **6.3 Length of Validity of Decision**

The Applicant shall have two (2) years from the date of receipt of the Decision of the Martha's Vineyard Commission contained in this document to begin substantial construction. Should substantial construction not occur during said two (2) year period, this Decision shall become null and void and have no further effect. This time period may be extended upon written request from the Applicant and written approval from the Martha's Vineyard Commission.

### **6.3 Signature Block**

\_\_\_\_\_  
E. Douglas Sederholm, Chairman

\_\_\_\_\_  
Date

### **6.4 Notarization of Decision**

Commonwealth of Massachusetts  
County of Dukes County, Mass.

On this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, before me,  
\_\_\_\_\_, the undersigned Notary Public, personally  
appeared \_\_\_\_\_, proved to me through satisfactory evidence of identity,  
which was/were \_\_\_\_\_ to be the person(s) whose name(s)

was/were signed on the preceding or attached document in my presence, and who swore or affirmed to me that the contents of the document are truthful and accurate to the best of his/her/their knowledge and belief.

\_\_\_\_\_  
Signature of Notary Public

\_\_\_\_\_  
Printed Name of Notary

My Commission Expires \_\_\_\_\_

**6.5 Filing of Decision**

Filed at the Dukes County Registry of Deeds, Edgartown, on: \_\_\_\_\_

Deed – Book \_\_\_\_\_, page \_\_\_\_\_