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Decision of the Martha's Vineyard Commission

DRI 365-M Airport Business Park Expansion

1. SUMMARY

- Referring Board:** Self-referred by Martha's Vineyard Airport Commission
- Subject:** Development of Regional Impact #365-M Airport Business Park Expansion
- Project:** Expansion of the Airport Business Park to include four new lease lots totaling 8.56 acres.
- Owner:** County of Dukes County
- Applicant:** Martha's Vineyard Airport (Kevin Brennan, Airport Properties Manager)
- Applicant Address:** Kevin Brennan, Airport Properties Manager
Martha's Vineyard Airport
71 Airport Road
West Tisbury, MA 02575
- Deed:** Recorded Land - Airport Business Park: Book 238, Page 37.
- Previous Decisions:** DRI 365: Book 612, Page 295; DRI 365-A: Book 739, Page 621.
- Project Location:** Map 24 Lots 2.39 and 2.4 on South Road, Map 24 Lot 2.41 on West Line Road, and Map 24 Lot 2.40 on North Line Road, Edgartown, MA.
- 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 14, 2021.
- Written Decision:** This written decision was approved by a vote of the Commission on October 28, 2021.

The permit-granting authorities of the Town of Edgartown 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

The exhibits listed below including the referral, the application, the notice of the 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 self-referred to the Commission on January 27, 2021 by the Applicant 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, DRI Checklist Item 1.3D *Modification to a Previous DRI*. The Applicant opted for a public hearing review as a Development of Regional Impact.

2.2 Hearings

Notice: Public notice of the hearing on the Application was published in the MV Times on July 8 and 15, 2021; notice was also published in the Vineyard Gazette on July 2 and 9, 2021. Abutters within 300 feet of the property were notified by mail on June 30, 2021.

Hearings: The Commission held a duly noticed public hearing on the Application that was conducted pursuant to the Act and M.G.L. Chapter 30A, Section 2, as modified by Chapter 831 on July 15, 2021, which was closed that night with the exception of the written record, which was left open until July 29, 2021 at 5:00 p.m. and closed at that time. The hearing was held entirely using remote conference technology as allowable under Chapter 20 of the Acts of 2021.

2.3 The Plan

The following plans and documents submitted by the Applicant and contained in the Commission's project file constitute "the Plan." All pages are 8.5" x 11" unless otherwise noted.

- P. SUBD-1 New Land Lease Parcels Martha's Vineyard Airport, 71 Airport Road, West Tisbury, MA 02568 prepared for McFarland Johnson, 53 Regional Drive, Concord, NH 03301 by Nitsch Engineering, 2 Center Plaza, Suite 430 Boston, MA 02108, scale 1" = 100', dated October 4, 2018, and modified in May 2021 to show new proposed lots.

2.4 Other Exhibits

- E. DRI 365 Airport Industrial Park MVC Decision, consisting of seven (7) pages, dated August 5, 1993, and attached site plan entitled Martha's Vineyard Airport Business Park Site Plan prepared by the Martha's Vineyard Commission, scale 1" = 100', undated.
- E. Martha's Vineyard Airport Business Park Development Regulations, consisting of seventeen (17) pages, dated May 8, 1996.

- E. DRI 365-A Airport Industrial Park Martha's Vineyard Commission - Martha's Vineyard Airport Commission Development Agreement, consisting of five (5) pages, dated August 5, 1998.
- E. Massachusetts Environmental Policy Act (MEPA) Greenhouse Gas (GHG) Policy and Protocol, consisting of twelve (12) pages, updated in 2015.
- E. Emails and attachments between Jed S. Mero, McFarland Johnson, and Jeffrey Santacruce, McFarland Johnson, to Everose Schlüter, Assistant Director of the Massachusetts Environmental Policy Act Office, Nicole Berthiaume, District 5 Permits Manager, and Amy Hoenig, Endangered Species Review Biologist, regarding MEPA requirements, consisting of ten (10) pages, dated 2018-2019.
- E. Applicant's Presentation: Airport Business Park Baseline Confirmation and Request to Modify DRI #365 and addendum, January 12, 2021, and updated on May 13, 2021.
- E. Martha's Vineyard Airport Lease Detail for MVC Reconciliation, consisting of one (1) page, dated April 12, 2021.
- E. Applicant's Response to MVC Questions, consisting of two (2) pages, dated April 27, 2021.
- E. Martha's Vineyard Airport Airport Business Park Waiting List, consisting of one (1) page, dated May 6, 2021.
- E. Staff Report for DRI 365-M Airport Business Park Expansion, dated June 9, 2021, and updated on July 14, 2021.
- E. Axis GIS maps of Airport Access Road, printed July 14, 2021.
- E. MVC Staff Presentation for DRI 365-M Airport Business Park Expansion, dated July 15, 2021.
- E. Email correspondence between Doug Finn, West Tisbury resident, and Adam Turner, Alex Elvin, Lucy Morrison, Fred Hancock and Joan Malkin, consisting of three (3) pages, dated July 27, 2021.
- E. Minutes of the Commission's Land Use Planning Committee Pre-Public Hearing Review, June 14, 2021.
- E. Minutes of the Commission's Public Hearing, July 15, 2021.
- E. Minutes of the Commission's Land Use Planning Post-Public Hearing Review, August 16, 2021.
- E. Minutes of the Commission's Deliberation & Decision, October 14, 2021.
- E. Minutes of the Commission's Approval of the Written Decision, October 28, 2021.

2.5 Summary of Testimony

The following gave testimony during the public hearing on July 15, 2021:

- Staff presentation by Alex Elvin, DRI Coordinator.
- Presentation of the project by Kevin Brennan and Geoff Freeman.
- Oral testimony from Public Officials speaking for their Boards: none.
- Oral testimony from the Public: none.

3. FINDINGS

3.1 Project History

The MVC approved DRI 365 in 1993, which designated the existing Airport Business Park as a DRI. The approval was for approximately 63 acres and 50 lots, and the lots at the time totaled 53.64 acres. Eight of the approved lots were later determined to be undevelopable due to Federal Aviation Administration (FAA) regulations, so only 45.26 acres were permitted for use at the time of this DRI application. The 1993 approval included one condition, that a development agreement between the MVC and the Airport Commission, governing future development and revenues at the Business Park, be adopted and included as part of the Decision for DRI 365. The Development Agreement was adopted in 1998, and a revised agreement is being drafted and will be included as an appendage to this Decision.

3.2 Project Description

The proposal is to add four new lease lots (known as lots 39, 40, 41, and 44) to the Airport Business Park to accommodate new or expanded business. The new lots would total 8.56 acres, increasing the total developable area of the Business Park from 45.26 to 53.82 acres.

- Lot 39 (3.01 acres): Currently has no structures, was used in the past for construction staging for the Airport. Consists largely of hard-pack material from the subbase of the runway.
- Lot 40 (3.1 acres): Partially cleared from an earlier Steamship Authority project that did not materialize. Has new pine growth.
- Lot 41 (0.78 acres): Currently forested, previous site of a WWII bunker.
- Lot 44 (0.88 acres): Was mostly cleared for development in the past, now contains a ropes course for the Dukes County Sheriff's Department.

3.3 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 evaluation 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 testimony presented and reviewing all documents submitted during the hearing and review period.

3.4 Benefits and Detriments

Based on the record and testimony presented therein, the Commission finds the following pursuant to Sections 14 and 15 of 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 SECTIONS 14 AND 15 OF THE ACT.

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

The Commission finds that the project is appropriate and essential, in light of the fact that it will expand the existing Airport Business Park and be consistent with the current light industrial and other commercial uses in that area.

The Commission finds that the probable benefits of the project outweigh the probable detriments, as described below. With respect to impacts upon persons and property (Section 15(c) of the Act), the Commission finds the project would have a beneficial impact. With respect to impacts upon the environment (Section 15(b) of the Act), the Commission finds the project would have a detrimental impact. With the respect to the provision of municipal services or burden on taxpayers (Section 15(e) of the Act), the Commission finds the project would have a neutral impact. With respect to the impact on the supply of needed low- and moderate-income housing for Island residents (Section 15(d) of the Act), the Commission finds the project may increase housing needs by creating new jobs, but that the specific uses are not yet determined. The Commission finds the project would not unduly burden existing public facilities, and would generally align with local planning objectives.

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

With respect to Water Quality (including groundwater), the Commission finds that the project will likely lead to an increase in water usage associated with new business, but that the same is true for most commercial developments that the Commission reviews.

The Commission finds that effects associated with Coastal Erosion and Flooding do not apply to the project.

The Commission also notes the following:

Water quality (including groundwater)

- The proposed lots will be connected to the Airport Wastewater Treatment Facility, which is permitted for up to 37,000 gallons per day (GPD). The Airport currently averages about 15,000 GPD, which increases in the summer but is still well below the 37,000 GPD limit.
- Certain potential uses for the Business Park, including county offices and a jail, might exceed the capacity, but the Airport would take that into consideration when awarding leases.
- The Airport is in the process of updating the facility to meet new Department of Environmental Protection standards, which would also qualify the facility for up to 61,000 GPD.
- Future uses of the new lots would be subject to Airport Commission and potentially MVC review, as well as town zoning and FAA requirements.

Stormwater

- Stormwater management on each lot in the Business Park is the responsibility of the leaseholder.

Energy

- The current Airport Development Agreement and Business Park Development Regulations do not include any requirements for renewable energy or energy efficiency.
- The MA Environmental Protection Agency (MEPA) Greenhouse Gas Emissions Policy requires that certain projects undergoing MEPA review take steps to avoid, reduce, or mitigate greenhouse gas emissions. The Airport has stated that it will apply the policy to all Business Park leases going forward.
- Projects referred to the MVC under the Development Agreement are subject to the MVC Energy Policy.

Open space

- Three of the four proposed lots are partially cleared, but undeveloped. The other lot is currently forested. The properties would be further cleared, but the extent of clearing and development on each lot is undetermined.

Ecology and habitat

- Lots 39 and 40 were determined not to require NHESP or MEPA review; the four proposed lots abut but do not contain NHESP habitat.
- Much of the Business Park and surroundings, including all of the proposed new lots, contain forestland of statewide or local importance.

A3. The Commission finds that the proposed development would have a beneficial effect upon other persons and property (Section 15(c) of the Act).

With respect to Character and Identity and Scenic Values, the Commission finds the project will be consistent with light industrial and other uses in the Business Park, of which the new lots will

be a part. With respect to Noise, the Commission finds the project will likely not lead to an increase over current levels. The Commission finds that impacts associated with Social Development and Safety and Health do not apply to the project.

The Commission also notes the following:

Character and identity

- Many light-industrial uses such as those indicated in the Business Park waiting list currently take place at the Business Park and might otherwise be out of place in town centers or other parts of the Island.
- New development would be reviewed by the Airport Commission and would need to comply with the Business Park Development Regulations, including design review.
- Certain uses, including fuel and hazardous material storage, structures greater than 8,000 ft², and retail, recreational, educational, or entertainment uses, require review by the MVC under the 1998 Development Agreement, which is in the process of being revised.

Scenic values

- Proposed lots 39 and 44 would extend development in the Business Park toward Barnes Road and the shared-use path, potentially increasing the park's visibility from that direction.
- Lot 44 is already mostly cleared, but is not developed. It also includes a substantial amount of vegetation along North Line Road at the north entrance to the park.
- Lot 39 is partially cleared, but could also potentially increase the park's visibility from the road and path.

Economic development

- The project will allow for new or expanded business in a central location, although the specific uses are undetermined. The Airport Commission will award the new leases following Requests for Proposals, and subject to the Development Agreement, local zoning, FAA requirements, and possibly MVC review. The proposed uses will be consistent with current uses in the Business Park.
- The Business Park waiting list includes 38 applicants as of July 2021.

Noise

- Proposed lots 39 and 44 would extend development in the Business Park toward Barnes Road and the shared-use path, potentially increasing the audibility of noise from that direction.
- Future uses of the new lots are not yet determined, but would be subject to Airport Commission and potentially MVC review, as well as town zoning and FAA requirements.

Night lighting

- Proposed lots 39 and 44 would extend development in the Business Park toward Barnes Road and the shared-use path, potentially increasing the visibility of outdoor lighting from that direction.
- Future uses of the new lots are not yet determined, but would be subject to Airport Commission and potentially MVC review, as well as town zoning and FAA requirements.

Impact on abutters

- The surrounding land uses are all light industrial. There are no residential abutters.

A4. In regard to the supply of needed low- and moderate-income housing for Island residents (Section 15(d) of the Act), the Commission finds that the Development of the new lots may create new jobs, but that the specific uses are not yet determined. No housing mitigation or other proposals have been submitted.

A5. The Commission finds that the proposed development would have a neutral impact on the provision of municipal services or burden on taxpayers in the making provision therefore (Section 15(e) of the Act).

The Commission notes the project will likely have a minimal impact on municipal services and taxpayers, since it is located in a well-developed commercial area with existing infrastructure.

A6. The Commission finds that the proposed development would use efficiently and would unduly burden existing public facilities or those that are to be developed within the succeeding five years (Section 15 (f) of the Act).

The Commission finds the project will likely have a minimal impact on public facilities.

A7. The Commission find that the project as proposed generally does not interfere with the ability of the municipality to achieve the objectives set forth in the municipal general plan, and would not contravene land development objectives and policies developed by regional or state agencies (Sections 14(b), 15(g), and 15(h) of the Act), respectively.

With respect to Consistency with/and Ability to Achieve Town Objectives, the Commission notes that the project generally aligns with the Island Plan and Edgartown Master Plan by supporting local economic activity at the airport, including uses that might otherwise be inappropriate for the town center.

A8. The Commission finds that the proposed development as conditioned is consistent with municipal ordinances and by-laws (Section 14(c) of the Act).

The proposal is allowable under town zoning.

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 in general advances the Commission's land development objectives, as outlined in Section A7 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 project is consistent with local zoning.

D. THE COMMISSION FINDS THAT THE SITE IS IN CONFORMANCE WITH THE REGULATIONS OF DISTRICTS OF CRITICAL PLANNING CONCERN, AS EVALUATED IN LIGHT OF THE CONSIDERATIONS SET FOR IN SECTION 14(d) OF THE ACT.

The project site is within the Martha's Vineyard Lawn Fertilizer Control District, and is consistent with those regulations.

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 and offers, the Commission has concluded that the probable benefits of this proposed development in this location exceed its probable detriments in light of the considerations set forth in section 15 of the Act.

4. DECISION

The Martha's Vineyard Commission deliberated about the application at a duly noted meeting of the Commission held on October 14, 2021, and made its decision at the same meeting.

The following Commissioners, all of whom participated in the hearing and deliberations participated in the decision on October 14, 2021:

Voting to approve the project: Jeff Agnoli, Trip Barnes, Christina Brown, Josh Goldstein, Fred Hancock, Joan Malkin, Kathy Newman, Ben Robinson, Doug Sederholm, Linda Sibley, Ernie Thomas

Voting against: None

Abstentions: None

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

This Written Decision is consistent with the vote of the Commission on October 14, 2021, and was approved by a vote of the Commission on October 28, 2021.

5. CONDITIONS

After reviewing the proposal for this Development of Regional Impact, the Commission imposes the following conditions in order to minimize the potential detriments and maximize the potential benefits.

1. Lots 39, 40, and 44 must retain existing vegetation within at least 20 feet of North Line, East Line and West Line Roads, except where safety is concerned. This is in addition to the required 200' vegetated buffer along Barnes Road, measured from the property line.
2. Any structure or vehicles on the newly created lots shall not be more visible from Barnes Road than in the existing development.
3. Prior to the awarding of leases for any of the proposed lots, the MVC and Airport shall update the 1998 MVAC-MVC Development Agreement, which will then be included as an appendage to this Decision.
4. The Applicant shall provide an up-to-date map of the Business Park, with the square feet, acres, development status, and number for each lot, to the MVC within six months of approval, and the map shall be incorporated in the updated Development Agreement.
5. Any proposed modifications to DRI 365-M, as approved herein, shall be referred to the MVC for prior review and approval.

6. CONCLUSION

6.1 Permitting from the Town

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

The permit-granting authorities of the Town of West Tisbury may now grant the request for approval of the Applicant's proposal in accordance with this decision 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 Commission.

6.2 Notice of Appellate Rights

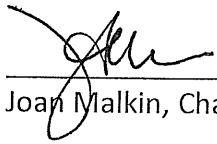
Any party aggrieved by a determination of the Commission may appeal to Superior Court within twenty (20) days after the Commission has sent the development Applicant written notice, by certified mail, of its Decision and has filed a copy of its Decision with the West Tisbury Town Clerk.

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.

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6.4 Signature Block


Joan Malkin, Chair

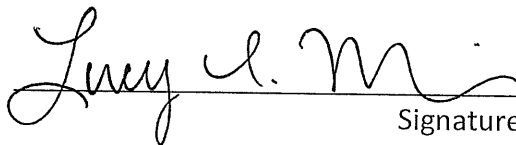
20 January 2022
Date

6.5 Notarization of Decision

Commonwealth of Massachusetts

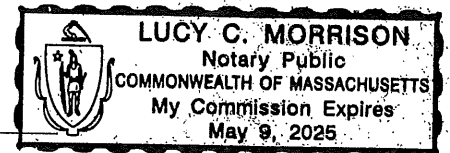
County of Dukes County, Mass.

On this 20th day of January, 2022, before me, Lucy C. Morrison, the undersigned Notary Public, personally appeared Joan Malkin, proved to me through satisfactory evidence of identity, which was personal knowledge to be the person whose name was signed on the preceding or attached document in my presence, and acknowledged to me that she signed it voluntarily for its stated purpose as a free act and deed, and who swore or affirmed to me that the contents of the document are truthful and accurate to the best of her knowledge and belief.


Signature of Notary Public

Lucy C. Morrison
Printed Name of Notary
My Commission Expires

May 9, 2025



6.6 Filing of Decision

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

July 27, 2022

Deed: Book 1632, Page 266

Document Number: 4854

AMENDED AND RESTATED DEVELOPMENT AGREEMENT

MARTHA'S VINEYARD AIRPORT COMMISSION

AND

MARTHA'S VINEYARD COMMISSION

This Amended and Restated Development Agreement ("Agreement") is entered into this 27th day of January 2022 by and between the Martha's Vineyard Commission (hereinafter the "MVC") and the Martha's Vineyard Airport Commission (hereinafter the "MVAC") (together, the "Parties"). It is the Parties' intent that this Agreement amends, restates and supersedes that certain Development Agreement between the Parties, dated August 5, 1998 and recorded in the Dukes County Registry of Deeds in Book 739, Page 622.

WHEREAS, pursuant to Chapter 831 of the Acts of 1977, as amended (the "Act"), the MVC is empowered to review developments of regional impact ("DRIs"); a DRI being a development which, because of its magnitude or the magnitude of its impact on the natural or built environment, is likely to present development issues significant to or affecting more than one municipality and which conforms to the criteria established by the applicable Standards and Criteria for DRIs pursuant to Section 7 and Section 12 of the Act (also known as the "DRI Checklist");

WHEREAS, on August 5, 1993, the MVC issued a decision on DRI 365, conditionally approving the creation of a 63+/- acre business park, within which a maximum of forty-nine (49) lots are or may be created for lease, on MVAC property in Edgartown (the "DRI Decision");

WHEREAS, on August 8, 1998, the MVC and MVAC signed a Development Agreement which indicated "said Business Park to be comprised of some 64+/- acres of land within which a maximum of forty-nine (49) lots are or may be created for lease or any increase of those numbers that may be approved pursuant to a modification of DRI 365";

WHEREAS, the MVC has completed and adopted the Island Plan; which, among other concerns, addresses the future economic viability and development of the Island of Martha's Vineyard in an environmentally sound manner;

WHEREAS, both parties recognize the need for commercial space that cannot be met and/or may be incompatible with the limited business districts of the various towns, and also the need to not compete with the towns for retail business;

WHEREAS, the MVABP is subject to the Town of Edgartown Zoning Bylaw, which sets forth permitted and conditionally permitted uses at the MVABP;

WHEREAS, as a result of funding received from the Federal Aviation Administration Airport Improvement Program and the requirements of accompanying grant assurances, the MVAC is obligated to follow guidelines such as FAA Order 5190.B which describe permitted and unpermitted uses of the entire Airport property.

THEREFORE, in consideration of the provisions and requirements set forth in this Agreement and contained in the Decision, the MVC and the MVAC do hereby agree that:

In order to ensure the continuance of a compatible environment for the operation of the MVABP, for the enhancement of a good business climate, and to ensure that future development within the airport business park is compatible with the values and purposes of the Island Plan, the parties do hereby stipulate and agree as to the following:

- I. That the MVAC shall review all proposals, which are not specifically exempted in Section IV of this Agreement, for tenancy in the MVABP in accordance with the MVABP **Development Regulations** appended hereto as Appendix 1 and made part of this Agreement. Adherence to these regulations are the basis of the MVC's agreement to raise the thresholds of MVC review in the MVABP.
- II. This Agreement shall apply to all developments within the MVABP, including, but not limited to, new construction, additions, auxiliary buildings, alterations, changes in use and modifications; provided, however, that any increase in the number of lots for lease within the MVABP shall require a modification of the Decision by the MVC.
- III. The MVAC shall insure that its successors and assigns, and as a condition of their tenancy, park tenants and their respective successors and assigns, shall agree to design, construct, maintain and operate their facilities in accordance with this Agreement. These restrictions shall run with the land.
- IV. The following uses shall require automatic referral to the MVC:
 - a. any building or structure that is proposed to be greater than 8,000 square feet. The square footage shall mean the cumulative square footage of all floors of all buildings on a given lot and would include any modification of existing structures that would raise the cumulative square footage above 8000 square feet;
 - b. any petroleum or hazardous material usage, including the storage thereof;
 - c. any retail establishment, even if permitted by Edgartown Zoning Bylaw and FAA regulation;
 - d. any recreational, educational, or entertainment use.

V. Noncompliance with the terms and conditions of the MVABP Development Regulations by an occupant or tenant of any of the lots or structures within the MVABP may result in the termination of this agreement with respect to the non-complying occupant, tenant and/or property and all developments proposed by said occupant, or tenant within the MVABP and/or all development regarding a non-complying lot or lots which meet or exceed the review thresholds articulated in the DRI Checklist may, at the discretion of the Dukes County Commissioners, be referred to the MVC for a DRI review.

VI. Noncompliance with the terms and conditions of this Agreement by MVAC shall result in a termination of this Agreement. All development proposals submitted subsequent to said termination, including any modifications to developments originally approved under this Agreement, which meet or exceed the MVC Standards and Criteria for DRIs then in effect must be referred to the MVC for DRI review.

VII. The waiver by any party of a breach or violation of any provisions of this Agreement shall not operate as, or be construed to be a waiver of any subsequent breach or violation thereof.

VIII. The invalidity or unenforceability of any provision or clause of this Agreement shall not in any way affect the validity or enforceability of any other provision or clause of this Agreement. If any part of this Agreement is adjudged to fail, either party may, at its option, withdraw from this agreement upon 30-days notice of said intent to withdraw to the other party.

IX. The MVAC and MVC may review this Agreement as needed and if the MVC determines, in its sole discretion, that it is necessary to amend this Agreement (including Appendix 1) to maintain consistency with the Decision, re: Martha's Vineyard Airport Business Park DRI No. 365, dated August 5, 1993, then the MVC shall initiate review and amendment procedures with the MVAC. Any amendment to the Edgartown Zoning Bylaw in effect at the time of execution of this agreement may trigger a review under this Section IX. If the parties cannot agree on amendments to bring the Agreement into consistency then both parties agree to participate in a non-binding mediation process. If the parties are unable to reach agreement through good faith participation in the non-binding mediation process, then either party may withdraw from this agreement upon the provision of 30-days notice to the other party.

X. This Agreement sets forth the entire agreement of the parties. Any modification or amendments hereto must be in writing, signed by both parties and specifically reference this agreement.

XI. This agreement shall be valid in perpetuity unless dissolved by mutual agreement of the parties.

Ad 2

Adam Turner

Executive Director

Martha's Vineyard Commission

Joan Malkin

Joan Malkin

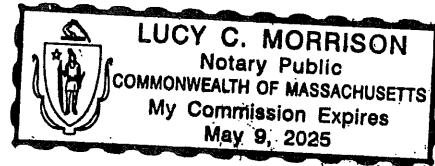
Chair

Martha's Vineyard Commission

Then personally, appeared the above-names Adam Turner and Joan Malkin acknowledge the forgoing instrument to be their free act and deed and the free act and deed of the Martha's Vineyard Commission, before me

Lucy C. Morrison

Notary

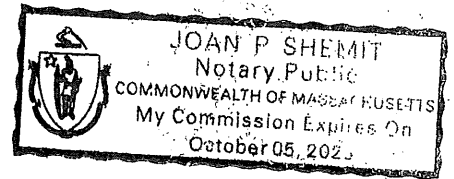


Bob Rosenbaum

Bob Rosenbaum

Chair

Martha's Vineyard Airport Commission



Then personally, appeared the above-names Bob Rosenbaum and acknowledge the forgoing instrument to be his free act and deed and the free act and deed of the Martha's Vineyard Airport Commission, before me

Joan P. Shemit

Notary

Martha's Vineyard Airport Commission

Martha's Vineyard Airport Business Park Development Regulations

May 8, 1996

Revision Approved December 9, 2021

Revised November 12, 2021

Appendix 1 to MVAC- MVC Revised Agreement, dated January 27, 2022

Martha's Vineyard Airport Business Park Development Regulations

- A. The purpose of these development regulations is to assure the Martha's Vineyard Airport Business Park (MVABP) continues to prosper with a properly functioning infrastructure which allows for future expansion of development on individual lots and the MVABP as a whole, while preserving and enhancing the characteristic local landscape and thereby protecting the public and private investment in the MVABP.
- B. These Regulations shall run with the land and shall be expressed as such in any lease or instrument conveying the property or any part thereof or interest therein from any Tenant or its successors or assigns to any future Tenant or its successors or assigns.

1. Design Review Goals

The goals of the design review process are to:

- A. Preserve and enhance the natural landscape while ensuring that buildings, outdoor commercial uses, and parking and other aspects of the project are well-designed and properly constructed.
- B. that driveways and other elements which interface with the MVABP infrastructure or impact on adjacent properties function properly.

The design review will be based on the MVABP Development Regulations (Regulations) which establish a systematic check point procedure to achieve the above-mentioned goals. The regulations are not intended to discourage original designs, but only to assure a high quality of design and construction in keeping with these goals.

2. Design Review Process

The owner(s) and/or lessee(s) of the proposed facilities and their architect/engineer should view the Design Review Process as part of a team effort to achieve the best possible balance between development and our natural environment.

3. Approvals, Variances, Waiver

- A. No building, utilities, exterior signs, structures or other improvements shall be erected, no exterior structural alterations or additions or changes to the land or vegetation may be made on any site without written approval by the Martha's Vineyard Airport Commission (MVAC) in the manner hereinafter provided. Such approval shall not be unreasonably withheld. Such written approval to be received prior to the commitment of any phase of alteration, installation, clearing, excavation or construction. The requirement of the MVAC's approval set forth in this Section is in addition to, and not in substitution for, any and all other regulations contained herein.
- B. The interpretation and application by the MVAC of the meaning of the regulations contained herein shall be final and conclusive, except for fraud or gross abuse of discretion.
- C. MVAC shall have the exclusive right to grant approvals required by the regulations herein and to waive or vary same in particular respects whenever, in its opinion, such variance or waiver will not be detrimental to the MVABP or the Airport as a whole.

5. Enforcement

- A. All of the provisions contained herein shall run with the land and shall be enforceable in perpetuity.
- B. The MVAC shall have the exclusive right to enforce the provisions herein, without liability for failure to do so. In the event any tenant fails to commence and diligently pursue the remedying of any violation within ten (10) days after notice, The MVAC or the staff member acting on the behalf of the MVAC shall have the right to enter upon or into any land or building of said tenant and remedy said violation at the expense of said tenant.

6. Submission Process

Preliminary Plans

All owner(s) and/or lessee(s) of the proposed facilities shall submit to the Airport Director or designee a Preliminary Plan showing improvements or additions to existing facilities and proposed changes to the land and vegetation, building, utilities, and exterior signs. The Preliminary Plan will be required whether the development is proposed by the MVAC or by a new or existing Tenant of the MVABP. The MVAC staff shall discuss with the owner(s) and/or lessee(s) recommended specific changes, if any, which must be made in the final Plan to insure approval by the MVAC. All improvements in the MVABP shall be constructed to avoid conflicting with the interests of any other improvement.

7. Procedural Checklist for Tenancy on Airport Premises

This checklist serves to provide prospective tenants with an approval process for the MVAC. It should be noted that depending on the particular project more items than are listed below might need to be presented.

- A The preliminary application shall contain the following information:
 - 1) Owner and general or limited partners of business
 - 2) Description of business
 - 3) Present and proposed location of business
 - 4) Age of business
 - 5) Business plan
 - 6) Proposed market
 - 7) Utility companies, requests for service and connection expenses estimates and how MassDOT Aeronautics Division (Airspace Review Determination (temporary crane) and FAA approvals will be sought, if needed
 - 8) Activity start date and actions necessary prior to start (excavation, building construction, etc.)
 - 9) Estimated size, location, and type of required building
 - 10) Number of Daily Trips (vehicle traffic estimate).

11) Number of present and estimated future employees

B. Additional Requirements—town, regional, and state regulations which may apply:

- 1) Zoning by-laws
- 2) Board of Health regulations
- 3) Department of Environmental Protection Quality Regulations
- 4) Local and state building codes
- 5) Martha's Vineyard Commission Development of Regional Impact (DRI)

C. Upon receipt of the application, the MVAC staff will review the applicant's information for consistency with the goals and objectives of the MVABP and insure that the development will not impede the safe and efficient operation of the airport.

D. After a preliminary plan has been reviewed by the MVAC staff it shall be designated as follows:

- 1) **Rejected as not meeting the minimum standards for application.** Such rejection may be appealed to the Airport Commission at the Commission's next regular meeting.
- 2) **Approved for further review,** if it meets minimum application standards and all additional requirements as specified in 7B and is not subject to Martha's Vineyard Commission review as a DRI. Additional documentation may be required at this time.
- 3) **Referred to the Martha's Vineyard Commission.** If the MVAC staff determines that the proposal meets the DRI standards and criteria of the MVC, it will request referral to the MVC. The applicant may also initiate referral by applying to the respective towns Building Inspector for a building permit.

NOTE: The County of Dukes County Commissioners, the select board member of any town and any permit granting board in the town in which the proposed development is located may refer the proposal to the MVC for review if they feel that the project will have regional impact, even if the project does not meet the standards and criteria of the MVC. Such a referral must receive the concurrence of the MVC by a vote to qualify as a DRI.

E. Once the application has been designated as Approved for Further Review, the MVAC staff will complete the application process and shall require the following:

- 1) Appropriate application fees
- 2) Plot plan and building layout
- 3) Building plans, including material of exterior and proposed color scheme
- 4) Estimated daily water usage
- 5) Sewer plan, including estimate of monthly sewage and other wastes to be discharged
- 6) Electrical service requirements and plan

- 7) Stormwater Control Plan 25-year event – Civil Engineer's Stamp
- 8) Employee and customer parking requirements and plan
- 9) Vehicular and pedestrian circulation relationship and plan
- 10) Security plans, including, but not limited to:
 - Interior and exterior lighting. Security lighting shall be timer controlled and shall be turned off at a time to be determined by the MVAC. Infrared sensors or other detection devices may be employed to activate lighting as a security measure after the determined shut-off time.
 - Fences and gates
 - Central and site alarm systems
 - Fire prevention and control provisions
 - Types of insurance
- 11) Evidence of financial capability to perform proposed project in the form of financial statements or other documentation.
- 12) Obstruction Evaluation / Airport Airspace Analysis (OE-AAA) if required.
- 13) Landscaping and planting plans
- 14) Type, size, and location of exterior signs conforming to appropriate town regulations

F. The staff will submit the completed checklist in their report with a recommendation of APPROVE or DO NOT APPROVE in the next scheduled MVAC meeting.

- 1) Upon receipt of the staff report, the MVAC shall consider the application, the information provided, the staff report and the goals and objectives of the MVABP and take whatever action it deems appropriate: APPROVED, DENIED, or APPROVED WITH CONDITIONS.
- 2) Applicants receiving an "Approval" shall draft a lease and have it forwarded to the MVAC for their authorization prior to execution.
- 3) Applicants receiving "Approved with Conditions" shall be further considered by the MVAC after the applicant has agreed to all conditions and resubmits the application for review by staff. Generally no conditionally approved applications will be accepted for reconsideration more than once and shall receive an Approval or Denial upon reconsideration.

G. Final Plans

Within thirty (30) days of the completion of the approved project, all lease holders shall submit to the MVAC a set of Final Plans incorporating the amendments and decisions made throughout the Design Review Process. Final Plans shall be reproducible and contain signature blocks for the Airport Director and signature blocks and seals of the

project's registered architect, a registered land surveyor and a registered engineer and shall be detailed as to:

- 1) Improvements as built
- 2) Approvals of installation and lien waivers from all local utilities, contractors, and subcontractors
- 3) Certificate of occupancy issued by local building inspectors
- 4) Plans showing all boundary markers with a narrative metes and bounds description of leased parcel
- 5) Building location, elevations, and plans
- 6) Location and design of signs and local approvals
- 7) Location and types of outdoor lighting
- 8) Plans for cutting or landscaping
- 9) Detailed specifications for all construction activities
- 10) Construction drawings for all circulation ways, parking, utilities, drainage
- 11) Provisions, if required, of a performance bond for tenant-provided infrastructure and tenant improvements
- 12) Receipts for the payment of all final fees
- 13) Stormwater Control Plan 25-year event – Civil Engineer's Stamp

H. Authorization to Occupy shall be issued only when the MVAC staff has received the required submissions. In no case shall the tenant occupy any leased premises, except for construction purposes, until such authorization has been issued. Any Lessee attempting to do so shall be deemed in violation of these MVABPDR and shall be subject to lease forfeiture.

8. Development Restrictions

A. AREA (SITE SIZE BUILDING RATIO)

Building(s) footprint to land ratio shall not exceed 1:4

B. BERM

- 1) Berm stripes, linear landforms designed to provide visual, physical, or sound barriers, may be required by the MVAC to separate and distinguish land uses.
- 2) Berms shall be of stable earthen construction, a minimum of four (4) feet in elevation above the surrounding elevation, no less than ten (10) feet in width at the base, and planted with native grass and indigenous vegetation.

C. BUILDING HEIGHTS AND SETBACKS

- 1) No building shall be closer than 20 feet to street line, 30 feet to either side lot line, or 30 feet to a rear site line except by special written approval by the MVAC (See PARKING).
- 2) No building shall be over 32 feet high except to enclose rooftop mechanical equipment associated with building functions.
- 3) Buildings visible from Barnes Road shall be no more visible than existing buildings visible from Barnes Road in either height or setback sighting.

D. BUILDING MATERIALS

- 1) All buildings shall conform to all applicable state and local building codes. All buildings shall be permanent, durable, and fire resistant.
- 2) All exterior materials shall be durable and of high quality and maintained in first class condition (See MAINTENANCE).
- 3) Commercial/Light Industrial Exterior Standards

To ensure the integrity of the MVABP visual environment, the MVAC may request final approval of exterior building colors. Any non-street facing or rear façade may contain door and/or window openings in any percentage.

- 4) Street Facing Exterior Standards

Street-facing sides of all buildings shall be wood shingle, natural wood siding, or painted or stained clapboard on all sides with painted or stained wood trim. PVC trim is not permitted. Roof pitch shall be no less than 6/12.

E. DRIVEWAYS

- 1) All driveways shall be at least 15 feet wide.
- 2) No less than one thirty-two (32) foot driveway shall be installed; where desired by the tenant, a second driveway of a single width of fifteen feet (15') will be allowed.
- 3) Wherever possible, shared driveways shall be developed to minimize the number of curb cuts.
- 4) No driveway on a corner lot shall be less than fifty (50) feet from an intersection.
- 5) All curbing shall be of granite or reinforced concrete
 - a) Curbing will be required at landings, building entrances, and driveway entrance ways

Curbing may be required to minimize storm water concentration (see PARKING)

F. EASEMENTS (RIGHTS-OF-WAY)

- 1) All utility, building, construction, and public access rights of way and easements will be shown on the submitted final plans.
- 2) No tenant shall withhold the entrance to leased property by authorized individuals to inspect, work upon, alter, or excavate as required to install, alter, or remove any utility.
- 3) No permanent construction by any tenant or tenant's agent shall be allowed on any such right of way or easement, once established, and any construction so located may be removed at the cost of the tenant.

G. GRADING

- 1) The maximum slope on graded areas shall be 3 to 1.
- 2) Any grading or regrading of any portion of any site must be performed so that storm water shall be retained on tenant's property.

H. LANDSCAPE DEVELOPMENT

- 1) No natural vegetation shall be disturbed until the planned disturbance has been permitted by the MVAC.
- 2) Topsoil is the property of the MVABP and shall not be removed from the site without the express consent of the MVAC.
- 3) A boulevard buffer strip with a minimum depth of 20 feet of native ground cover and trees shall be maintained by the lessee at the front lot line of all leased property.
- 4) All ground cover shall remain undisturbed in its existing state wherever natural growth is to remain. The graded areas along the driveways and parking areas must be kept in low ground cover planting.
- 5) A landscape plan, containing specific locations of indigenous trees, shrubs, and ground cover, shall be submitted with the final plans for approval. All vegetation approved will be maintained and, if necessary, replanted by the tenant for the life of the lease. Soil conditions limit the plant material that will grow successfully at the MVABP. For this reason, and to maintain the characteristic appearance of the Island and protect habitat for native species, the use of low maintenance indigenous plant materials is required and the introduction of ornamental species is to be kept to a minimum (see list of approved plants). One new tree from the list of approved species and of a trunk diameter greater than three (3) inches shall be planted on the property for every eight (8) parking spaces provided. Location of these trees should result in the shading of paved areas (see PARKING).
- 6) The MVAC reserves the right to enter onto leased property to maintain the required landscaping, if the lessee fails to do so. The lessee will be charged for professional landscaping services, plus an administrative fee.
- 7) Systems containing and then using rainwater on site are encouraged, especially rooftop collection systems.

I. LOADING AREAS

No truck parking, loading, shipping, or delivery areas shall be established within the front yard area; if the building is on a corner site this applies to the side yard abutting the street (see PARKING).

J. MAINTENANCE

- 1) The tenant is required to maintain the exteriors of all structures and all walks, driveways, parking and loading areas and landscaping on such site in good order, repair, and condition.
- 2) All exterior painted surfaces shall be maintained in first-class condition and shall be regularly repainted.

K. OUTDOOR STORAGE

- 1) All outdoor storage, including waste and transformers, shall be screened by durable, neat, opaque fencing or walls that shall harmonize with the architecture of the buildings in the MYABP.
- 2) Any finished products or semi-finished product stored on the property outside of buildings shall be confined, on a temporary basis only, to the rear one-half of the property, but shall in no instance be placed on the side of the building paralleling an existing or proposed street.
- 3) The installation of sheds, shipping containers and other small storage vessels must be approved in advance by MVAC and Town Building Office and regulated on an ongoing basis by the Town Building Official.

L. PARKING

- 1) No parking area shall be within 20 feet of street line.
- 2) Off-street parking shall be provided for all employees and customers. On-street parking is prohibited.
- 3) To preserve the natural qualities of the MVABP and to minimize storm water concentration and extensive grading, large continuous parking areas shall be avoided. Frequent natural or planted green areas must be planted and maintained to break up large parking areas.
- 4) All exterior lighting will be IDA Dark Sky Compliant fixtures downward facing and no more than 3000 K. Except for concerns of safety or security, exterior lighting shall be turned off after business hours.
- 5) Tenant must provide sufficient parking on their leased land for all employees and customers. The tenant is required to maintain the parking areas in good order, repair, and condition. No additional space may be paved without MVAC permission and a Stormwater Control Plan.

No employee parking area is to be used for the storage of materials or vehicles other than passenger vehicles. Trailer or truck storage shall be separately provided.

Unregistered, uninspected, and/or abandoned vehicles are not permitted to be parked on leased land.

- 6) Handicapped accessible spaces, as set forth in federal standards as to size and shape and appropriate ramping, shall be provided and appropriately marked as required.

M. PAVING

- 1) All driveway aprons shall be Type 1 bituminous concrete paving (Massachusetts Department of Public Works specifications) for a length of not less than twenty (20) feet. All parking lots will be constructed of not less than twenty (20) feet. All parking lots will be constructed of such materials so as to balance permanency, appearance, and storm water percolation. Completely paving the lot shall not be allowed.
- 2) A 25-year event Stormwater Control Plan detailing water collection, disbursement and chemical separation/retention must be submitted with any plans for use of any Business Park area. In particular, all storm water must be handled on the property and is not permitted to feed the street.

N. POLLUTION

- 1) Storage of petroleum products, toxic chemicals, waste products, or substances capable of contaminating the underground water supply and/or use of any or all such products will be done in accordance with any and all applicable regulations and rulings of governmental health, environmental or other agencies as may be in force. Disposal of any of the above products must be done as specified by applicable regulations. At no time shall they be introduced into the land, wastewater or stormwater systems of the MVABP
- 2) The use of salt or chemicals for traction on walkways, driveways, parking areas or any other exterior area within the MVABP is prohibited in order to maintain the quality of the aquifer. The use of sand is effective and has no deleterious effects.
- 3) No use offensive to the neighborhood by reason of odor, fumes, dust, smoke, noise or pollution, or which will be hazardous by reason of danger of fire, explosion, or health risk of any kind, will be permitted. Glare and heat from arc welding, acetylene torch cutting, or similar processes shall be controlled so as not to be objectionable.
- 4) All exterior lighting shall be "Dark Sky Approved" by the International Dark-Sky Association or it's international equivalent should this Association no longer exist.

O. SHOULDERS AND DRAINAGE

- 1) The soil throughout the site is highly pervious and capable of absorbing storm water.
- 2) Shoulders of drives and parking areas may be pitched away from the pavements to eliminate storm water concentration.
- 3) Shoulders shall be at least 6 feet wide before sloping to existing grade.
- 4) Storm water from developed sites shall not be permitted to drain onto streets or abutting property.

P. SIGNS

All signs shall conform to town sign standards.

Q. SITE USE

No uses shall be undertaken unless and until the same have been approved in the manner herein provided.

R. SUBDIVIDING

No MVABP lot shall be subdivided or leased in part.

S. SUBLEASING

No facility constructed shall be permitted to be subleased unless the original or modified facility was so designed, approved by the MVAC and other approval authorities, and constructed for multiple tenancy.

T. UTILITIES

All utility installations and/or connection with existing utilities will be at the expense of the tenant. Completed applications for service or connection are a condition of approval prior to any final approval of the lease document.

U. WASTE DISPOSAL

No waste material or refuse shall be dumped or permitted to remain on any part of any leasehold. Any tenant whose process or manufacture produces industrial waste shall provide for the treatment and effective disposal of such waste under conditions described and approved as industry standard.

V. WATER SYSTEMS

- 1) No connections shall be made from any site to the water, stormwater, or wastewater treatment systems now existing or to be constructed in the MVABP without prior approval of the MVAC.
- 2) Plans must include the precise nature of the use to be made of each utility as well as the maximum volume wastewater use.
- 3) No increase in use or modification of the nature thereof or alteration of the water or wastewater systems thereafter may be made without further approval in writing of the MVAC.
- 4) All meters shall be located so as to permit convenient visual inspection and reading by utility personnel. Where such meters may be isolated for security reasons, a remote reading device of a type approved by MVAC staff shall be required to be installed at the tenant's expense.

W. ENERGY CONSERVATION

- 1) All-electric design for heating and cooling new commercial construction (while also discouraging onsite fossil fuel use for commercial renovations).
- 2) Energy efficiency targets based on established and widely used standards: the Massachusetts Stretch Energy Code (and Building Code), the International Energy Conservation Code (IECC) as adopted by Massachusetts, and the Environmental Protection Agency Energy Star program.
- 3) Onsite renewable energy to the extent feasible. Solar panels on buildings or canopies are encouraged.
- 4) Pedestal-ready (or equivalent), or full electric vehicle charging stations for at least some of the parking spots.

9. Definition of Terms

- 1) AUTHORIZATION TO OCCUPY shall be issued after the staff or designee has met all final plan requirements to the satisfaction of the MVAC and town building officials.
- 2) BUILDING SITE shall mean any lot, or portion thereof, or two or more contiguous lots or portions thereof, or a parcel of land upon which an industry or specifically approved buildings and appurtenant structures may be erected in conformance with requirements of these regulations.
- 3) BUILDING LINE OR LINES shall mean the minimum distance which buildings or outbuildings or any structures of any type or kind located aboveground shall be set back from the property or street lines.
- 4) IMPROVEMENTS shall include building(s), outbuildings appurtenant thereto, parking areas, driveways, loading areas, grading, masonry, walls, landscaping, outdoor storage, signs, lighting, waste disposal, water and wastewater systems, paving, alterations, and any structures of any type or kind located either above or below ground.
- 5) TENANT shall mean any leaseholder in the MVABP or MVAC.
- 6) PARK shall mean all land within the MVABP.
- 7) SIDE BUILDING shall mean the boundary or property dividing two adjoining building areas.

10. Code Review Fees

- 1) A non-refundable application fee of five hundred dollars (\$500) shall accompany each final application packet.
- 2) Staff shall determine what additional specialized review may be required in pursuit of application review and inspection.
 - a) Such review, including but not limited to professional engineering, architectural, construction code consultation, legal consultation, lease negotiation,

communication, plan duplication, or technical review of infrastructure impacts, shall be invoiced to the applicant at 125% of charges incurred.

- b) Said fees shall be paid to the MVAC by certified check prior to issuance of a final Authorization to Occupy.
- 3) All developments which would ordinarily qualify for MVAC review as a DRI, but which have been exempted because of compliance with the Development Agreement entered into by the MVC and the MVAC (which includes these regulations), shall be subject to the affordable housing and traffic mitigation requirements of the MVC in effect at the time of application.

General Conditions

- 1) Severability: The provisions of the MVABPDR are severable. If any provision is held to be invalid, the remaining provisions shall not be affected thereby. If the application of the MVABPDR, or any of its provisions, to any person or circumstance is held to be invalid, the application of these standards and their provisions to other persons or circumstances shall not be affected thereby.
- 2) Rules of Interpretation: The following rules shall apply when interpreting this standard.
 - a) Specific Provisions to Prevail: To the extent that any specific provision of the standard shall conflict with any general provision, the specific provision shall prevail.
 - b) Number and Gender: Words imparting the singular number may extend and be applied to several persons or things; words imparting the plural number may include the singular; words imparting the masculine gender shall include the feminine gender.

11. Changes

Amendments or alterations to this document may be made only as any such proposals have been approved according to the resolution process as established by the Home Rule Charter of the County of Duques County. A copy of changes so adopted shall be submitted to the MVC for concurrence.

Approved by Martha's Vineyard Airport Commission - December 9, 2021

Robert Rosenbaum, Chair

Donald Ogilvie, Vice Chair

Kristin Zern, Secretary

Richard Knabel, Treasurer

Geoffrey Wheeler, Commissioner

Jack Ensor, Commissioner

Bob Zeltzer, Commissioner

