1. DESCRIPTION

1.1 Applicant: David Danielson, DBA Lagoon Ridge

1.2 Project Location: Double Ox Road (Off of Barnes Road), Oak Bluffs Map 35, Lot 3 (32.5 acres).

1.3 Proposal: A Form C Definitive Plan for a subdivision of approximately 32.5 acres of land to create 23 lots with up to 25 dwelling units.

1.4 Zoning: The area is zoned R-3 Residential (Min. Lot size is 60,000 sf = 1.37 acres). The plan is based on Section 7.3: Flexible Development; a provision of the Oak Bluffs Zoning By-Laws which may allow density bonuses for certain obligations such as affordability, over 55 housing, and open space. A Yield Plan showing the Basic Maximum Number of Dwelling Units allowed by zoning, subdivision regulations, health regulations, wetland regulations and other applicable federal, state and local requirements is created and then the Planning Board may award a density bonus to increase the number of dwelling units beyond the Basic Maximum Number. Part of the property is located in the Lagoon Pond DCPC. Part of the property is located in the Oak Bluffs Water Resource Protection District (WRPD).

1.5 Local Permits: Planning Board for Form C Definitive Plan; Board of Health;

1.6 Surrounding Land Uses: Rural residential subdivisions and woods.

1.7 Project History: The Danielson property (Map 35 Lot 3) was the subject of DRI 464 in 1998 in which the property was divided into 3 parcels. Two 1.5 acres were created off of Barnes Road and the large Lot 3 (32.5 acres) was left for the future. Conditions included providing Oak Bluffs with a walking/biking easement over the ancient way; a 20 foot easement along Barnes Road for a bike path; and including the two DRI 464 lots in affordable housing calculations for future subdivisions (such as this one). In 2014 the MVC approved with conditions the Form B Preliminary Plan for this proposed subdivision. The Conditions included that the Form C plan submission would include, among other items: development envelopes; setbacks; delineation of cut zones and limits of work areas; location of septic systems; lawn areas; access and other fire safety issues; a landscaping plan; sign-off of from (NHESP) with a copy of the Declaration of Restriction; the covenants for the homeowners association including design and landscaping guidelines and restrictions.

1.8 Project Summary: The proposal is for a Form C Definitive Plan for a subdivision of approximately 32.5 acres of land using Section 7.3 “Flexible Development” in the Oak Bluffs Zoning, which allows more density/lots than standard zoning, to create 23 lots and up to 25 dwelling units.

- Originally the Applicant planned to build the three clusters in three phases. The proposal is now to develop the infrastructure for the entire subdivision at one time including roads, electrical connections, waterlines, and enhanced septic systems.
- However, the Applicant will then sell lots, not build houses.
- All units would be for sale at market rate except that two lots (one single and one duplex) would be donated to the Oak Bluffs Housing Trust for affordable housing.
- Six (6) units in cluster C would be restricted to housing for people over 55.
• The proposed “Flexible Development” would contain 4 more dwelling units than allowed by standard zoning through preservation of at least 60% open space and future units for people over the age of 55.

• Vehicular access for 19 of the 23 lots would be off of Barnes Road through an extension of Double Ox Road into the Danielson property. Vehicular access for 4 standard lots would be through an extension of Sages Way in the Pond View Subdivision. A stub would be put in connecting to the Voumard/Proskauer property for potential future development on that property.

• The project would be built in three “clusters”:
  o Cluster A: 4 large lots with 4 homes up to 4 bedrooms each (Connects to Pondview)
  o Cluster B: 4 standard lots with 4 homes avg. 3 bedrooms (Extension Double Ox Road)
  o Cluster C: 15 small lots with up to 17 dwelling units (2 duplexes) & 6 over-55 units.

• A package treatment plant would be built to treat the sewage of units in Cluster C and B. Units in Cluster A would have individual septic systems with de-nitrification.

2. ADMINISTRATIVE SUMMARY

2.1 DRI Referral: Oak Bluffs Planning Board
2.2 DRI Trigger: 1.2 (Previous DRI); 2.2 (Division of 10 or more lots); 2.5 (Division of 30 or more acres); 4.1a (10 or more dwelling units); and potentially others.

2.3 LUPC: March 14, 2016
2.4 Site visits:
2.5 Public Hearing: April 14, 2016

3. PLANNING CONCERNS

3.1 Some Key Issues

- Review of O.B. Z.B.L. Section 7.3 (Flexible Development)
  • In Section 7.3, which is unique and has never been used before, the Planning Board is given guidelines to confirm the Yield Plan and is given discretion to grant a Density Bonus based on a formula in the bylaw.
  o Should the MVC proceed assuming that since the Planning Board referred the project twice to the MVC that the Yield Plan is confirmed and the Applicant is entitled to the maximum allowable density bonus?

- Form B Conditions:
  o Has the Form C Submission complied with the requirements of the Form B Conditions?

- De-Nitrification:
  o How will the sewage package treatment plant be maintained?
  o Has the wastewater treatment facility plan been reviewed and approved by an outside engineer approved by the Oak Bluffs Board of Health?
  o How does the plan cover the costs of maintaining the wastewater treatment system in perpetuity?

- Affordable Housing:
  o Does the offer to donate 2 lots in Cluster C meet the “units” requirements of the Oak Bluffs Flexible Development By-Law?
  o How does the plan protect affordable units with respect to association fees?
It is not clear, how the affordable housing units will be exempt from all covenants and association fees as stipulated in the MVC’s Affordable Housing Policy.

- **Habitat:**
  o Does the Applicant have a “Declaration of Restriction” as required by NHESP and DRI 464-M2?

- **Clustering:**
  o Does having three “clusters”, two of which have large or standard sized lots, really meet the goals of clustering and flexible development?

### 3.2 Environment

- **Vegetation:** This is a hilly wooded moraine sloping northwest to the Lagoon containing primarily scrub oak, other hardwoods, and a few patches of pine with a typical Vineyard bushy underbrush.

- **Archeology:** The Covenants (Page 9 Secton O. Specific Prohibitions # 2) state that “any newly discovered site shall be protected by immediately stopping excavation and all work that would disturb the site and promptly notifying the MHC and other appropriate authorities”

- **Habitat:**
  o The property is mapped as Priority Habitat of Rare Species by the Massachusetts Natural Heritage and Endangered Species Program (NHESP).
  o For the Form B the Applicant hired environmental consultants to study the property and worked with NHESP to assess his plans. NHESP issued a letter on November 13, 2013 noting the following:
    - The property is located within mapped “Priority Habitat” of Gerhard’s Underwing (Special Concern); Faded Gray Geometer (Threatened); Pine Barrens Zale (Special Concern); and the Imperial Moth (Threatened).
    - The development of the proposal will occur on 10.3 of the 32.5 acres.
    - NHESP expects Lagoon Ridge to pursue a MESA Conservation & Management Permit (CMP) including the following measures:
      - Adequately protect 22.2 acres of on-site habitat for said species.
      - Creation of community by-laws and landowner education.
      - Refined Plans should:
        - Maintain connectivity and contiguity of habitat
        - Maximize protection through a Conservation Restriction
        - Minimize impacts with minimal clearing for roads/paving
        - Use of “dark skies” principles
    - During the process NHESP changed their rules and asked the Applicant to protect 60% of the property as untouched habitat.
    - NHESP then reviewed the Form B plan and determined that no MEPA review is required.

- **Landscaping and Trails:**
  o The covenants grant to the residents of Oak Bluffs the perpetual right to use of the north/south ancient way the Applicant calls Bar Rail Trail (Sec. IV, h)
  o Existing trails will be maintained.
  o The Land Bank has written that they would be willing to accept management responsibility via the conveyance of an easement for the oversight and maintenance of the
Old Road Trail aka Cross-Oak Bluffs Trail and Bar Rail Trail, the Jib Stay Trail, and a new lateral trail to Barnes Road.

- **Buffers and Lot Sizes:**
  - All lots in Cluster A (top) are larger than the minimum lot size (60,000 sf or 1.37 acres) required in standard zoning ranging in size from 1.82 to 2.61 acres. Two of the four lots in Cluster B (bottom) are slightly larger than minimum standard zoning lot size (1.45 & 1.46 acres) and two are slightly smaller than standard zoning lot size (1.2 & 1.34 acres).
  - The 15 lots in Cluster C range from 10,901 sf (0.25 acre) to 15,585 sf (0.35 acre) or 18% to 26% standard zoning lot size.
  - The large lots in Clusters A and C have at least 50 feet between their development areas and neighboring properties. However, Lots 8, 13, 15, 17, and 19 in Cluster C do not have buffer areas between them and neighboring lots.
  - The area outside the Building Envelope for each lot is not a “no cut” area. (See Section 1.(5) of the covenants).

- **Open Space:**
  - The properties are rated as “Exceptional” on the MVC Open Space Policy map due largely to their current undeveloped state. The proposal is to protect 60% of the land.
  - The covenants concerning “Use of Common Lands and Non-Residential Lots” (section n, p. 9) state the open spaces are to be managed for passive recreation by the Association. The Association can also approve appurtenant buildings and the significant alteration of vegetation.

- **Lighting:** Applicant has written “Dark Skies” principles into the covenants (page 7).

- **Energy/Sustainability:** The Applicant is proposing smaller homes in Cluster C, including duplexes, to create a more energy efficient development. The Covenants state that achieving a Home Energy Rating System (HERS) rating of 50 will be written into the Architectural Review Committee Guidelines.

- **Water:**
  - **Wastewater / Stormwater:**
    - The parcel is in the Lagoon watershed, a nitrogen sensitive water body for which the Policy allows a loading of 3.4 kilograms per acre per year (110.4 kg N for the 32.47 acres).
    - The Mass Estuaries Report indicates the Lagoon is significantly over its nitrogen limit.
    - A portion of the land is located in the Oak Bluffs Water Resource Protection District (WRPOD). A portion is also located in the Lagoon Pond DCPC.

- **Nitrogen Calculations:**
  - Applicant proposes to use I/A system for 4 of the houses and a cluster wastewater treatment system for the remaining 17 houses in Cluster C and 4 houses in Cluster A.
    - Nitrogen load for proposed 4 houses with I/A systems @19mg/l N 35.02kg/yr
    - Nitrogen load for proposed 4 houses with cluster ww treatment @13mg/l 50.92kg/yr
    - Nitrogen load for runoff and landscaped areas 20.86 kg/yr
    - Total proposed nitrogen load for project if built as presented 106.8kg/yr*

*note: calculations based on information submitted that Cluster C would have a wastewater treatment system with effluent discharge of 13mg/l and that landscaped areas would be deed restricted to 10% of development envelope.
Form B Wastewater Conditions:

- The 21 dwelling units in Clusters B (4) and C (17) shall be connected to the onsite wastewater treatment facility with enhanced nitrogen removal that will reduce effluent nitrogen to 13mg/l or less.

- Nitrogen testing shall be done monthly for at least the first year and until 50% of the properties have been connected and are contributing to the wastewater facility. Testing can then be reduced to quarterly after three consecutive tests that meet the nitrogen limit of 13mg/l or less.

- All test results will be submitted to the Oak Bluffs Board of Health and to the Martha's Vineyard Commission.

- The four dwelling units in Cluster B within the Lagoon Pond DCPC will be allowed only one bedroom per 15,000 square feet and shall be connected to onsite wastewater treatment facility.

- The four dwelling units in Cluster A shall have wastewater nitrogen reduction that will reduce nitrogen effluent to 19mg/l or less.

- The properly shall meet all of the Commonwealth’s and Town’s wastewater regulations and the Martha’s Vineyard Commission nitrogen loading limit set for this proposal (110.4 kg N/acre/year for the 32.47 acres).

- The Applicant shall have the wastewater treatment facility plan reviewed and approved by an outside engineer approved by the Oak Bluffs Board of Health and said approved plan filed with the MVC. Concerns with the system were addressed by Bennett Engineering (see attached).

- The Applicant shall provide an operation and maintenance manual for the wastewater treatment and de-nitrification systems based on the design, installation, use, and maintenance recommended by the manufacturer. This manual shall be submitted to and is subject to the approval of the MVC’s Land Use and Planning Committee prior to installation.
  - Applicant will provide a bond for use in the event that the system does not meet testing requirements. If testing fails to meet requirements, and efforts to correct those failings are not successful, the Applicant shall provide mitigation (i.e. install and pay for I/A systems of other parcels in the watershed) to offset the difference in the Nitrogen load.
  - The Applicant shall submit a plan to cover the costs of maintaining the wastewater treatment system in perpetuity. Included in this plan will be methods to regulate the cost of services to the affordable houses.

- The Board of Health Agent for Oak Bluffs sent the MVC an Email on April 14 stating that “The Lagoon Ridge application is under a 3rd party review as mandated by the MVC in section 7 of the MVC’s article of decision. The 3rd party will come up with a recommendation or approval by next week Tuesday (April 19). The third party review has been completed and issues found were corrected, additional questions concerning reduced flow conditions and time needed by operator were also addressed and attached.
3.3 Transportation

- Access:
  - Vehicular access for 19 of the 23 lots would be off of Barnes Road through an extension of Double Ox Road into the Danielson property.
  - Vehicular access for 4 standard lots would be through an extension of Sages Way in the Pond View Subdivision. The agreement with Pond View is that no further extensions or units would be allowed to connect to Sage’s Way.
  - A stub would be put in on one leg of Cluster C connecting to the Voumard/Proskauer property for potential future development on that property.
  - The roads are proposed to be paved with asphalt.

- Parking: Individual lots would provide their own residential parking. A “Trail Parking/Access Gate” is noted on the plans for the other stub on Cluster C.

- Trip Generation: Trip generation for 25 units, based on the Institute of Transportation Engineers (ITE) Trip Generation rate, is 239 daily trips, with 25 PM peak hour trips.

- Traffic Summary: A traffic study was prepared for DRI 464-M which was a proposed subdivision of approximately 67.5 acres of land using cluster zoning to create up to 60 dwelling units. This proposal has half the acreage and less than half the number of units.
  - The LUPC approved the Applicants request to accept the previous traffic study for the larger subdivision with more units to be sufficient for this review.

- 2011 Traffic Study Findings Summary:
  - For the 2016 Build scenario, the LOS value of the three intersections is not significantly altered by the inclusion of trips from and to the proposed Lagoon Ridge development. For the two occasions where the LOS is changed from the 2016 No-Build to the 2016 Build, the difference in the delay values are a matter of 10 or less seconds.
  - Safe sight distances (SSD) and intersection sight distances (ISD) from the Double-Ox Road are adequate and in accordance with AASHTO published standards.
  - The VTA bus will provide residents with a means of transportation to commercial areas.
  - The findings of the traffic operation assessments in this report indicate that the proposed Lagoon Ridge development will not generate traffic movements at a level that will unduly inconvenience motorists with extended or excessive delays beyond the existing conditions.

3.4 Affordable Housing

- Section 7.3.9 (Affordable Component) of the Oak Bluffs Flexible Development By-law requires: “for any development creating more than ten (10) dwelling units, Affordable Units shall be required as follows: 1. Ten (10) percent of the units shall be affordable to persons or families qualifying a low income; or 2. Fifteen (15) percent of the units shall be affordable to persons or families qualifying as moderate income. In computing this requirement, the total number of dwelling units (i.e. the total of the Basic Maximum Number and density bonus units) shall be used. Numbers shall be rounded down in the computation of this requirement.”

- The DRI 464-M Form B MVC Condition said that "For the Form C definitive plan submission to the MVC the Applicant shall submit a detailed offer with respect to affordable housing that meets the requirements of the Oak Bluffs Flexible Development By-law (7.3) and the MVC Affordable Housing Policy".

- During the Lagoon Ridge Form B DRI review the question was raised whether the proposed offer of lots was consistent with the O.B. Flexible Development By-law which only mentions the creation and requirement of units.
On March 15, 2016, the Oak Bluffs Planning Board submitted a letter to the MVC but the Planning Board’s response did not clarify if the two lots were satisfactory to the Oak Bluffs Flexible Development By-law. They added that when they review the plan they will “do so with strict adherence to the affordable housing restriction”.

3.5 **Economic Impact**
- There could be a potential impact to schools since only 6–8 of the 25 units will be restricted to those over 55. The potential impacts to municipal services such as police and fire are likely to be minimal because the proposed project is surrounded by other residential subdivisions.
- The current tax revenue for this property is $5,717.79. The proposed project will generate additional property tax revenue for Oak Bluffs once the housing units have been developed.

3.6 **Scenic Values**
- **Streetscape:** The homes would not be visible from a major island road.
- **Building Massing:** No limit on size of houses has been offered yet.
- **Architectural Detailing:**
- **A.D.A. Accessibility:** Several units in Cluster C would be designed to be Universal Design.

3.7 **Local Impact/Abutters**
- Several rural residences in the woods would now have neighbors.

4. **CORRESPONDENCE**

4.1 **Town Officials:** The Planning Board has written saying they will ensure the project adheres to the regulations imposed by Section 7.3 when they review the project. **Dave Grunden of the Oak Bluffs Shellfish Department** has written asking the Commission to adopt a “No Net New Nitrogen” Policy for Lagoon Pond and if they approve the project have clear conditions on the wastewater plan.

4.2 **Island Organizations:** **James Lengyel of the Land Bank** has written encouraging lateral trails to Barnes Road and towards County road saying the Land Bank would accept responsibility for the maintenance and management of the trails in exchange for an easement; **Doug Reece of the Lagoon Pond Association** has written with concerns for the Lagoon and urging the Commission to adopt a “No Net New Nitrogen” Policy for Lagoon Pond.

4.3 **Public:** **Alan Robillard** has written stating that Mr. Danielson’s Checklist of items required for the Form C seems to raise more questions than provide answers. He goes on to list very many questions relative to affordability scenarios and wastewater; **Debbie DeBettencourt** with questions about the density and lack of buffer between the cluster and abutting properties. **Kate Feiffer and Chris Alley** have written with concerns about the density, noise, wastewater, how the affordable units would be created and overall vagueness of the plan.

4.4 **Letters after April 14, 2016:** **Alan Robillard (April 15, 2016)** Providing citations concerning alternative wastewater systems that he had referenced in his letter to the MVC, dated April 6, 2016; **Alan Robillard (May 17, 2016)** discussing information he heard at the MVC’s “Innovative Alternate (I/A) Conference: Cleaning Up Our Waters” held on May 12, 2016. He felt many of the most salient points highlighted the risks and cost of maintenance with I/A system’s. He also notes that the Form C plans do not have a data box with updated lot size information and he points out several conditions from DRI 464-M that he feels have not been adequately addressed yet.