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Decision of the Martha's Vineyard Commission

DRI 679 – East Chop Bluff Repair

1. SUMMARY

- Referring Board:** Oak Bluffs Conservation Commission, Town of Oak Bluffs, MA
- Subject:** Development of Regional Impact #679
- Project:** To stabilize approximately 2,400 linear feet of bank located along East Chop Drive in Oak Bluffs by expanding the revetment constructed of angular armor stones by 30,360 square feet for a total area of 77,650 sf.
- Owner:** Town of Oak Bluffs
- Applicants:** Conservation Commission (Liz Durkee – Agent); Town of Oak Bluffs
- Applicant Addresses:** Oak Bluffs Conservation Commission, 56 School Street (P.O. Box 1327), Oak Bluffs, MA 02557
- Project Location:** East Chop Drive, Oak Bluffs, MA. The project area is an approximately 6.5 acre area on the northeastern shoreline of Oak Bluffs on Nantucket Sound below East Chop Drive from approximately Munroe Ave to Arlington Ave.
- Description:** The proposal is the stabilization of approximately 2,400 linear feet (lf) of bank located along East Chop Drive in Oak Bluffs. The project includes expanding the existing revetment seaward and landward to elevation 20 feet (NGVD 29) to account for wave run up and sea level rise. The project will increase the height of the revetment by 8-10 feet to a height of elevation 20' and expand the revetment by 30,360 square feet to a total area of 77,650 sf. The revetment will be constructed of angular armor stones at a slope of 1.5: 1 (h:v). Fill will be placed at a 27 degree angle from the top of the revetment to be graded and planted with salt tolerant vegetation to stabilize the slope such as Northern Bayberry, Beach Plum, Rosa Rugosa, Switch Grass, Goldenrod and Little Bluestem. The revetment will include a 5' flat top to improve public access.
- 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 March 15, 2018. This written decision was approved by a vote of the Commission on April 5, 2018.

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

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 October 2, 2017 by the Conservation Commission of the Town of Oak Bluffs 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 1.1 as a Discretionary Referral (1.1). However, the project triggers Section 5.1c (Development in the Ocean) on the DRI Checklist which requires a mandatory public hearing review as a Development of Regional Impact and the project was reviewed as such by the Martha's Vineyard Commission.

2.2 Hearings

Notice: Public notice of a public hearing on the Application was published in the MV Times, January 18, 2018.

Hearing: 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 February 1, 2018; the public hearing was continued to February 15, 2018 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 "Notice of Intent East Chop Coastal Bank Repairs Oak Bluffs, MA," consisting of 126 pages prepared for the Town of Oak Bluffs, 56 School Street, Oak Bluffs, MA 02557 by CLE Engineering August 2017.
- P2 "East Chop Bluff Repair" Sheet 1 of 4 "Plan View," consisting of a 24"x36" plan for the length of the project from approximately Brewster Ave to Weston Ave, prepared for the Town of Oak Bluffs, MA by CLE Engineering, 15 Creek Road, Marion, Massachusetts 02738. Scale: 1"=40'. Job Number 09027.300. Dated August 11, 2017.
- P3 "East Chop Bluff Repair" Sheet 2 of 4 "Plan View," consisting of a 24"x36" plan for the length of the project from approximately Weston Ave to Munroe Ave, prepared for the Town of Oak Bluffs, MA by CLE Engineering, 15 Creek Road, Marion, Massachusetts 02738. Scale: 1"=40'. Job Number 09027.300. Dated August 11, 2017.
- P3 "East Chop Bluff Repair" Sheet 3 of 4 "Sections & Details," consisting of a 24"x36" plan including vegetation planting details, prepared for the Town of Oak Bluffs, MA by CLE Engineering, 15 Creek Road, Marion, Massachusetts 02738. Multiple graphic scales. Job Number 09027.300. Dated August 11, 2017.
- P4 "East Chop Bluff Repair" Sheet 4 of 4 "Details," consisting of a 24"x36" plan including the access ramp, asphalt road shoulder, horizontal landing, and concrete catch basins, prepared for the

Town of Oak Bluffs, MA by CLE Engineering, 15 Creek Road, Marion, Massachusetts 02738. Multiple graphic scales. Job Number 09027.300. Dated August 11, 2017.

- P5 "Certificate of the Secretary of Energy and Environmental Affairs on the Environmental Notification Form," consisting of five 8.5"x11" pages including the project description, dated July 21, 2017.

2.4 Other Exhibits

- E1. Referral to the MVC from the Oak Bluffs Conservation Commission; received October 2, 2017.
- E2. "Coastal Sediment Transport Study for the Shoreline from the East Chop Lighthouse to the Farm Pond Culvert" prepared by Applied Coastal Research and Engineering, Inc. 766 Falmouth Road, Suite A-1 Mashpee, MA 02649.
- E3. National Flood Insurance Program FIRM Flood Insurance Rate Map: Panel 108 of 227. Map Number 25007C0108J, revised July 20, 2016. Scale: 1"=500'.
- E4. National Flood Insurance Program FIRM Flood Insurance Rate Map: Panel 102 of 227. Map Number 25007C0102J, revised July 20, 2016. Scale: 1"=500'.
- E5. Historic Plans to Repair the site: 10 site plans dated 1945, 1946, 1952 (2), 1953, 1954, 1956, 1960, 1961 and 1966.
- E6. Wave Conditions Run-up Analysis Calculations.
- E7. MVC Staff Report February 1, 2018; Remaining Issues revision dated February 15, 2018.
- E8. Letters from the following citizens:
- a. A letter from Robert Whritenour, Oak Bluffs Town Administrator, dated January 11, 2018,
 - b. A letter from Tom Brooks dated January 31, 2018.
- E9. Photographs of the site, taken on September 22 and September 27, 2017 by MVC staff member Paul Foley.
- E10. Minutes of the Commission's Pre-Public Hearing LUPC Review, November 20, 2017.
- E11. Minutes of the Commission's Public Hearing, February 1, 2018.
- E12. Minutes of the Commission's Continued Public Hearing, February 15, 2018.
- E13. Minutes of the Commission's Post Public Hearing LUPC Review, February 26, 2018.
- E14. Minutes of the Commission Meeting of March 15, 2018 – Deliberations and Decision.
- E15. Minutes of the Commission Meeting of April 5, 2017 – Approval of the Written Decision.

2.5 Summary of Testimony

The following is a summary of the principal testimony given during the public hearing on February 1, 2018.

- Staff Report by Paul Foley, DRI Coordinator.
- Presentation of the project by Carlos Pena (CLE Engineering) and Liz Durkee (Conservation Commission Agent).

- Oral testimony from Public: Palmer Marrin; Betsy Dripps; Craig Dripps; Bill Potter; Anne Charmley; Grace Simpkins.

The following is a summary of the principal testimony given during the continued public hearing on February 15, 2018.

- Staff Report update by Paul Foley, DRI Coordinator.
- Presentation of the project by Carlos Pena (CLE Engineering) and Liz Durkee (Conservation Commission Agent).
- Oral testimony from Public: None.

3. FINDINGS

3.1 Project Description

- The proposal is the stabilization of approximately 2,400 linear feet (lf) of bank located along East Chop Drive in Oak Bluffs.
- The project includes expanding the existing revetment seaward, landward and upward to elevation 20 feet (NGVD 29) to account for wave run up and sea level rise.
- The project will increase the height of the revetment by 8-10 feet to a height of elevation 20'.
- The plan would expand the revetment by 30,360 square feet for a total area of 77,650 sf.
- The revetment will be constructed of angular armor stones at a slope of 1.5: 1 (horizontal: vertical).
- Fill will be placed at a 27 degree angle from the top of the revetment to be graded and planted with salt tolerant vegetation to stabilize the slope such as Northern Bayberry, Beach Plum, Rosa Rugosa, Switch Grass, Goldenrod and Little Bluestem.
- The revetment will include a 5' flat top to improve public access.
- A bike rack system and ADA accessible ramp are proposed on the southern portion of the bank to provide safe access to the top of the proposed revetment.
- Current plans show a 4-foot wide road shoulder on East Chop Drive. However, the Town has stated that the plan is to restore the road to as it was with two way traffic. The Commission did not review the road as part of this DRI at the request of the Town.
- Damaged drainage outfall pipes within the existing bank will be replaced.
- Plans include Best Management Practice (BMP) storm water drainage improvements.
- The project will result in 6.2 acres of permanent impacts to coastal wetland resources including 34,500 sf of Land Under the Ocean (LUO), 14,004 sf of Coastal Beach, 200,000 sf of Coastal Bank, and 30,000 sf of Land Subject to Coastal Storm Flowage (LSCSF).
- East Chop Drive is considered one of the most scenic roads in the Town of Oak Bluffs and the Island of Martha's Vineyard and provides a critical scenic link for pedestrians, bicyclists and vehicles to East Chop Lighthouse and to the Oak Bluffs Harbor and the Downtown Business District

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.

3.4 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 the proposed development at this location is appropriate in view of the available alternatives. The existing revetment is failing and needs repair.

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

With respect to Wastewater and Groundwater, the Commission finds that the project is intended to protect an essential bluff from eroding into the ocean and that the proposal includes appropriate storm water drainage improvements using best management practices to minimize erosion.

With respect to Open Space, Natural Community and Habitat, the Commission finds that the proposal to stabilize the Bluff and the public road would allow future generations to enjoy the signature vistas of Cape Cod and the Vineyard and Nantucket Sounds.

With respect to Night Lighting and Noise, the Commission finds that the plan does not include lighting.

With respect to Sustainability, the Commission finds that if the Bluff is not stabilized it will be in imminent danger of eroding away, particularly during large storms.

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

With respect to Traffic and Transportation, the Commission finds that without the proposed stabilization of the Bluff the road could literally fall into the sea. The Commission notes that issues revolving around the future use of the road were not considered as part of this DRI review at the request of the Town.

With respect to Scenic Values, Character, and Identity: The Commission finds that the proposal to stabilize the Bluff would allow future generations to enjoy the sweeping vistas of Cape Cod and the Vineyard and Nantucket Sounds. The Commission notes that the proposed revetment and access will be more visible than the existing revetment.

With respect to the Impact on Abutters, the Commission finds that the project is essential to protect the viability of the abutters' properties in the future. The Commission notes that some abutters have expressed a concern with improved public access to the stabilized bluff.

With respect to the Construction Process, The Commission finds that the construction and delivery of materials could impose temporary detriments upon the residential neighborhood and island roadways and possibly exacerbate the erosion situation on the Bluff. The Commission notes that the project materials cannot be delivered directly to the site by water and that the material delivery will result in thousands of truck trips to the area.

A4 The Commission finds that the proposed development would have no impact upon the supply of needed low and moderate income housing for Island residents (Section 15(d) of the Act).

The Commission does not apply the affordable housing policy to municipal projects where the town is the Applicant.

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

A6 The 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).

A7 The 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).

A8 The 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).

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 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 *Island Plan* adopted by the Commission in December 2009.

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 a permitted use (municipal) in the R-2 Residential Zoning District and is also located in the Coastal DCPC.

D. THE COMMISSION FINDS THAT THE SITE IS LOCATED WITHIN THE COASTAL DISTRICT OF CRITICAL PLANNING CONCERN.

4. DECISION

The Martha's Vineyard Commission deliberated about the application at a duly noticed meeting of the Commission held on March 15, 2015 and made its decision at the same meeting.

The following Commissioners, all of who participated in all hearing and deliberation on this project, participated in the decision on March 15, 2015.

- Voting in favor: G. Barmakian, T. Barnes, C. Brown, F. Hancock, J. Malkin, K. Newman, B. Robinson, L. Sibley, E. Thomas, R. Toole, and J. Vercruyse.
- Voting against: None.
- Abstentions: None.

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 March 15, 2015 and was approved by vote of the Commission on April 5, 2018.

5. CONDITIONS

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 Commonwealth shall pay the Commission's and/or Towns attorney's fees and costs incurred in obtaining judicial relief.

1 Storm water Management

- 1.1 As offered by the Applicant, a final storm water management plan shall be submitted for the review and approval of the LUPC before site excavation begins.

2 Construction and Phasing:

- 2.1 The Applicant may perform construction on the project year round if necessary.
- 2.2 A final construction and materials delivery plan shall be submitted for the review and approval of the Oak Bluffs Board of Selectmen with the intent of minimizing impacts to residential neighborhoods.
- 2.3 All large truck deliveries shall use the designated primary truck access to the temporary ramp access, except in extraordinary circumstances, to prevent additional impacts and erosion to East Chop Bluff.
- 2.4 The Applicant shall submit a revised phasing plan for the review and approval of the MVC within two (2) months of securing their first round of funding. Such plan shall outline which portions of the full project scope shall be implemented, when the work shall be done, how the site shall be secured between construction seasons, and any modifications or other relevant changes to the plan.
- 2.5 The northern construction access road shall not be built until funding for that section has been secured.

3 Materials and Design

- 3.1 As offered by the Applicant, the plaque that commemorates a local citizen shall be replaced in the vicinity of its current location.
- 3.2 As offered by the Applicant, every effort shall be made to re-use materials such as stone and sand from the existing embankment in the proposed revetment to reduce waste.
- 3.3 As offered by the Applicant, any materials that cannot or should not be re-used shall be disposed of properly to a licensed facility if necessary.
- 3.4 As offered by the Applicant, final plan specifications including materials shall be submitted for the review and approval of LUPC before the project is put out to bid.
- 3.5 The Applicant shall investigate the use of alternatives and exceptions with the Massachusetts Department of Transportation with regard to the proposed style of guard rail to see if there is a historic and more appropriate alternative for the Vineyard and report back to the LUPC for review and approval of the selection.

4 Landscaping

- 4.1 As offered by the Applicant, a final landscape plan including plant species and locations, an implementation timetable and maintenance plans, and berm details is to be submitted for the review and approval of LUPC before construction begins.

5 Exterior Lighting

- 5.1 As offered by the Applicant, there shall be no lighting.

6 A.D.A. Accessibility

- 6.1 As offered by the Applicant, the access ramp shall be A.D.A. compliant to the top of the revetment.

6. CONCLUSION

6.1 Permitting from the Town

The Applicants 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 Applicants' 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.

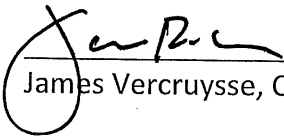
6.2 Notice of Appellate Rights

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

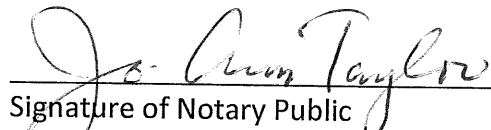

James Vercruyse, Chairman

5.3.18
Date

6.4 Notarization of Decision

Commonwealth of Massachusetts
County of Dukes County, Mass.

On this 3rd day of May, 2018, before me,
Jo Ann Taylor, the undersigned Notary Public, personally
appeared James Vercruyse, proved to me through satisfactory evidence of
identity, which was/were driver's license 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

Jo Ann Taylor
Printed Name of Notary

My Commission Expires January 31, 2025

6.5 Filing of Decision

Filed at the Dukes County Registry of Deeds, Edgartown, on: May 4, 2018

Deed Book 1446 Page 746

Document Number: 00002447