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Martha's Vineyard Commission

Land Use Planning Committee DRAFT

Minutes of the Meeting of October 17, 2005

Held in the Stone Building, New York Avenue, Oak Bluffs.

Commissioners Present: MVC Chairperson Linda Sibley, LUPC Chairperson Christina Brown, Carlene Condon, Paul Strauss, Deborah Pigeon, Doug Sederholm, Megan Otten-Sargent, Chris Murphy and John Breckenridge;

MVC Staff Present: Mark London, Paul Foley and Bill Veno

These are cumulative notes from September 12, October 3, 2005 and October 17, 2005

1. DRI Standards and Criteria Administrative Checklist Review/Revision

Section 3.101:

Any development, with the concurrence of the Martha's Vineyard Commission, which does not otherwise qualify under the Standards and Criteria but is one which the Martha's Vineyard Commission has been requested to designate as a Development of Regional Impact by:

- a) A municipal agency in the Town in which the development is proposed [In-Town Referrals]; or*
- b) the Board of Selectmen in any other Town in Dukes County [Between-Town Referrals]; or*
- c) the Dukes County Commissioners [Island-Wide Referrals]; as set forth in Section 14(e) of Chapter 831, as Amended. (See Attachment A for guidelines on such referrals.)*

This section reflects language in the enabling legislation and it was decided to more or less leave it alone. Mimi Davisson suggested we add a "Citizens Petition" item to this section.

Section 3.102:

Any development, with the concurrence of the Martha's Vineyard Commission, which:

- a) is on property which has been, in part or in whole, the subject of a previous DRI application and which was denied, or is an amendment or modification to a previously approved DRI Application; ("once a DRI always a DRI"); or*
- b) is a new proposal on a site upon which there is a previously approved DRI application for a different proposal.*

[In concurring with Checklist Items 3.101 and 3.102 above, the Martha's Vineyard Commission shall find the proposed development fulfills at least one of the considerations in Section 12 of Chapter 831, as Amended, of the Acts of 1977.]

It was suggested that 3.102 a) should be split into two parts so that those previous DRI's that were denied are separated from those that are amendments or modifications. There was also a suggestion that 3.102b) should be struck altogether so that properties are not encumbered. There was also a suggestion that perhaps the item should apply to "all Commercial" developments.

Section 3.103:

Within any District of Critical Planning Concern, any development which the Martha's Vineyard Commission has specifically classified as being of regional impact within the Guidelines approved for that DCPC.

It was noted that no one could remember any projects being referred under this section. As a way of making the Checklist easier to read it was suggested that the words "**District of Critical Planning Concern**" should be highlighted, as should other key words throughout the Checklist. This section might belong in another section.

Section 3.104a:

The demolition or exterior alteration of any structure which has been identified as having historic significance by a local historic commission or architectural commission, by a general plan of the Town, by the Massachusetts Historical Commission, or is listed with the National or Massachusetts Registers of Historic Places, exclusive of structures located within established historic districts or which are already protected by local historical or architectural commission review, as well as buildings located in the Martha's Vineyard Camp Meeting Association.

Someone wondered why this item was in this section? Perhaps there should be some new sections dealing with specific areas such as historic preservation. It was suggested that the words "local historic commission" and "architectural commission" should be highlighted. It was suggested that this item could be seen on a concurrence basis. It was decided that the language for this item should be revised and was assigned to Doug Sederholm for revision.

Section 3.104b:

Any development which proposes the division or subdivision of land that is identified by any state or federal or local agency as being of archaeological significance.

Section 3.104c:

Any development which proposes the division or subdivision of land that is identified by any state or federal or local agency as being of rare wildlife habitat significance.

It was suggested that these two items (b and c) should either be moved or repeated in the Division and Subdivision of Land Section. Staff should mesh the wording of "rare wildlife habitat" with that of the Natural Heritage and Endangered Species Program wording.

Section 3.105:

Any development within the Coastal District of Critical Planning Concern that:

- a) results in a new or the expansion of an existing road, bridge or driveway which provides direct public vehicular access to the coast, a great pond or to a beach; or*
- b) results in a hard-surfaced road, parking lot or walkway with an impervious surface, as defined by local Town bylaws; or*
- c) results in a parking lot for more than five (5) vehicles; or*
- d) results in development on Nomans Land Island.*

It was suggested that perhaps this Section should apply to all DCPC's with the exceptions noted. Mimi Davisson was assigned to rewrite this Section.

Commissioner Davisson submitted the following:

Re-Worked Checklist Item

3.105 All developments within the Coastal District of Critical Planning Concern (DCPC), including Nomans Land Island.

EXEMPTIONS:

- a) Residential development that conforms to both local Town zoning bylaws and Coastal DCPC regulations, and does not require any special permitting.
- b) Other exemptions with concurrence of the Martha's Vineyard Commission.

Editor's Notes:

Implementation of this, or a similar version, might result in a few more concurrence reviews; but a simple review process could probably handle the load. Alternatively, the LUPC could brainstorm about other exceptions to explicitly define.

There are two direct translations from the current checklist; but I would suggest omitting them unless the LUPC feels that they are too important to omit. Point c) below could be considered covered in a); point d) would have to be covered by a concurrence review as specified in b).

- c) EXEMPTION: Creation or alteration of roads, bridges, or driveways that provide direct vehicular access to the water's edge for private access. (The current DRI checklist specifies DRI status for public access infrastructure only.)*
- d) EXEMPTION: Creation or alteration of a road, a parking lot for five (5) or fewer vehicles, or a walkway that has a pervious (permeable) surface. (The current DRI checklist specifies DRI status for impervious surfaced infrastructure only – for both private and public access.)*

LUPC 10/3 Discussions RE 3.105:

It was noted that this rewrite would lead to a lot of referrals. A Commissioner felt that this item was not well suited to the Exemptions structure and that if our intent is to get large houses in a DCPC sent to the MVC we should simply have a specific provision for it. Another Commissioner thought that we should bite the bullet and make a provision, after all, we are trying to protect the roadside view from all monstrosities not just commercial ones. This led to a bit of a philosophical discussion of how far we want to cast our net, or looking at it another way, how fine a mesh? A Commissioner stated that we are in the end game and that we need to review things now that perhaps we did not have to 30 years ago. They also noted that if we can find consensus now to do something new we should do it now and not wait or encumber the C.I.P. Planning Process. Thus LUPC Chairperson Brown assigned Kathy Newman, Mimi Davisson, Megan Ottens-Sargent, Deborah Pigeon, and Carlene Condon to draft a Vista and Roadside Guideline. Another Commissioner suggested that when developing guidelines for view sheds in the Coastal District that they keep in mind that we should consider the view from the Pond towards a large house. Another Commissioner suggested this could be an area where a "Citizen's Petition" could come

into play. However, another Commissioner said that "Citizen's Petitions" would have legal problems but that citizens could petition the Selectmen in their Town to refer something to the MVC.

LUPC 10/17 Discussions RE 3.105:

Sub-group to report on possible exemptions in view sheds or public vistas such as 500' back from road, houses 3,000 square feet or less, etc.... The group discussed whether or not to change all DCPC's for residential and/or commercial development in public vistas now or in two years (i.e. post CIP). Basically do we tackle building in public vistas now or after the CIP Process?

Section 3.108:

Any development located on lands that are listed in the acquisition priorities or long-term goals of the County or of any Town's plans and programs.

This was another one that no one could remember any projects being referred under. Someone thought it might go back to something in the legislation. The wording suggests it might predate the Land Bank.

Section 3.109:

Any development for a new or proposed expansion of:

- a) *a vehicular refueling, recharging or repair station; or*
- b) *a facility for the retail or wholesale commercial storage of fuel and/or for hazardous materials; or*
- or*
- c) *any commercial activity which proposes to provide drive-through window service; or*
- d) *a public restaurant in a duly established B-1 Zoning District which is designed or proposes to accommodate fifty (50) or more seats, as permitted by the Town Board of Health, with the concurrence of the Martha's Vineyard Commission; or*
- e) *any public restaurant or food establishment outside of a B-1 Zoning District, with the concurrence of the Martha's Vineyard Commission; or*
- f) *any commercial activity or development outside the B-1 Zoning District which would require relief from Town parking regulations or which would require parking off-site, with the concurrence of the Martha's Vineyard Commission.*

It was suggested and generally agreed that this Item should be moved to 3.3 Commercial Business and Industrial Development. Someone suggested that vehicular junkyard should be added to a). Someone wondered why not just apply this to new or proposed expansion of any commercial activity? This prompted someone else to ask if that would include home businesses? Someone else asked what is regional about every single new or expanded commercial activity? This prompted someone to ask what was regional about f) anyway. The response was that it was a way to address high traffic generating businesses.

Jim Athearn was assigned the job of revising section 3.109f).

3.2 Division of Land

Section 3.2 was assigned to Ben Hall and Linda Sibley to rewrite. There was a suggestion that the Title should be 3.2 Division and Subdivision of Land. Although it was also pointed out that all division of land is essentially a subdivision.

Section 3.201:

Any development which proposes to divide land which is located in a business, commercial or light industrial zoning district.

It was suggested that perhaps this one ought to be in 3.3 Commercial Business and Industrial Development.

Section 3.202:

Any development which proposes to divide a contiguous or related ownership of land into ten (10) or more lots or parcels.

A question was raised as to why the line was drawn at 10 lots? Someone said that they were more interested in the size of the lots rather than how many? How lots were being developed was also something the MVC should look at. In certain zoning districts perhaps 3.202 should not apply. Someone suggested that there ought to be performance standards. For example, if a developer did a, b, c, and d then they would not have to come to the Commission. There was also the suggestion that there should be guidelines. When it comes to frontage requirements from Form- A subdivision someone suggested there should be an acreage threshold.

Section 3.203:

Any development that proposes to divide a contiguous or related ownership of land of five (5) acres or more which is:

- a) *currently active farmland, or*
- b) *land that has actively worked as farmland within the past five (5) years; or*
- c) *identified as prime agricultural soils by the Soil Conservation Service; and which does not propose to protect, in perpetuity by irrevocable covenant or deed restriction, said agricultural lands from development which would interfere with future agricultural use of the site.*

It was noted that five years in the life of a farm is a blink of the eye and that the number ought to be more like 20 years. It was also suggested that the MVC should identify prime agricultural soils that have been farmed previously. It was also noted that half of the land that Commissioner Jim Athearn farms is on lots less than five acres.

Section 3.204:

Any development that proposes to divide a contiguous or related ownership of land of fifteen (15) acres or more:

- a) *and which was the result of an earlier division within the last eight (8) years; or*
- b) *into three (3) or more lots not irrevocably prohibited from further subdivision.*

There was a discussion of how the number of eight years was reached. Apparently that was the magic number that came out of Chapter 40a. It was suggested that their should be a specific date rather than a moving target.

Section 3.205:

Any development which proposes to divide a contiguous or related ownership of land of thirty (30) acres or more, except when divided into less than six (6) parcels that are irrevocably prohibited from further division.

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LUPC 10/3 Discussions RE Section 3.2:

A Commissioner felt that our threshold of 10 units is not working. We need to have a premise that is rational and based upon a nexus of what exists and what is needed. Executive Director said this was something that the Committee would have to work through in conjunction with counsel. A Commissioner said we need a way of controlling the spread of starter castles. The Towns are already struggling with cluster developments being taken advantage of by developers. A discussion of who generates the need for affordable housing ensued, some saying it is the rich who drive up land costs and others saying the burden is not being shared equally between year-round and seasonal residents.

3.300 Commercial Business and Industrial Development

Section 3.301:

Any development of commercial, storage, office and/or industrial lands or building(s), or any private educational facility that has:

- a) new construction totaling 2,000 square feet or more of floor area in one or more buildings; or*
- b) new construction of addition(s) or auxiliary building(s) totaling 1,000 square feet or more of floor area, such square footage resulting in a total square footage of 2,000 feet or more; or*
- c) outdoor commercial space of 6,000 square feet or more, including commercial polyhouse structures; traditional farming activities and outside plant stock are excluded; or*
- d) any combination of new outdoor commercial space and new construction totaling 1,000 square or more resulting in a square footage of 2,000 square feet or more; or*
- e) any change of use, or increase in intensity of use (including conversion of basements, storage space or other exempt floor space to active floor space) with the concurrence of the Martha's Vineyard Commission; or*
- f) commercial parking lots designed to accommodate ten (10) or more vehicles, or larger than 2,000 square feet; parking lots which are incidental to another on-site existing permitted use are excluded; or*
- g) is on a Martha's Vineyard Airport parcel outside of the airport business park and contains non-airport-related facilities, with the concurrence of the Martha's Vineyard Commission; or*
- h) is on the list of high traffic-generating businesses provided as Attachment B, with the concurrence of the Martha's Vineyard Commission.*

Section 3.3 was assigned to Linda Sibley and Doug Sederholm.

3.400 Other Developments

Section 3.401:

Any development, including the expansion of an existing development, which proposes to create or accommodate:

- a) ten (10) or more dwelling units; or*
- b) ten (10) or more rooms for lease or rent; or*
- c) four (4) or more business, office and/or industrial premises; or*
- d) four (4) or more premises which mix residential with business, office or industrial uses.*

Section 3.402:

Any development in a commercial district that proposes the demolition of an existing structure or structures that has/have an existing total cumulative square footage of 2,000 square feet or more.

It was suggested that Section 3.4 should be split apart and moved to other sections.

3.500 Developments in Harbors, Great Ponds, Ponds or Oceans

Section 3.501:

Any development that is proposed within:

- a) Edgartown, Vineyard Haven, Menemsha or Oak Bluffs harbors or the West Basin in Aquinnah; or*
- b) a body of water of ten (10) acres or more; or*
- c) the ocean.*

Exemptions from item 3.501 are:

- 1) individually owned, private non-public piers that are not located on a barrier beach that has been designated either by a state or federal agency; and*
- 2) municipal dredging projects located entirely within a single Town and conducted in accordance with a dredging management plan which has been duly adopted by the relevant Town agency.*

Section 3.5 was assigned to Megan Otten- Sargent.

Section 3.502a:

Any development which entails a change in use or intensity of use of a commercial pier requiring installation or extension of utilities.

Section 3.502b:

Any commercial development which proposes the creation of:

- a) new commercial facilities related to the use of a pier; or*
- b) the expansion of existing commercial facilities related to the use of a pier; or*
- c) a change of use or a change in the intensity of use related to the use of a pier. and which is located on the landward portion of the property on which the pier is located.*

3.600 Private and Public Facilities and Places of Assembly

Section 3.601:

Any development which proposes the creation of a health, recreational or educational place of assembly, or governmental or other publicly owned or quasi-publicly owned facility of 2,000 square feet or more and which is designed to serve the residents of more than one Town.

Section 3.6 was assigned to John Breckenridge.

John Breckenridge submitted the following:

*Any development which proposes the creation of a health, recreational, **religious** or educational place of assembly, or governmental or other publicly owned or quasi-publicly owned facility of 2,000 square feet or more and which is designed to serve the residents of more than one town.*

Do we substitute "with the capacity to accommodate more than 50 individuals" for 2,000 square feet or more? This would mirror the definition of "Place of assembly" as written in 2.25 as defined in 780 CMR State Building Code.

The LUPC decided the new item should read:

Section 3.601:

A) Any private development which proposes the creation or expansion of a health, recreational, religious or educational place of assembly with the capacity to accommodate more than 50 individuals.

Or

B) A governmental or other publicly owned or quasi-publicly owned facility of 2,000 square feet or more and which is designed to serve the residents of more than one town.

LUPC 10/3 Discussions:

A Commissioner suggested that we should take out all of the qualifiers and simply leave it as any "place of assembly". Others thought the section should be split between private ventures and those proposed by public or quasi-public entities. It was also suggested that bullets could outline thresholds and exceptions. Someone also noted that they would just as soon see the majority of items on the checklist be on a concurrence basis, albeit with a more thorough concurrence review.

3.700 Transportation Facilities

Section 3.701:

Any development which proposes new construction or the expansion of existing facilities which:

- a) will provide for transportation to or from the Island of Martha's Vineyard; or*
- b) will be or currently exists as part of an internal regional transportation system for the Island.*

[For the purposes of Item 3.701, the term "development" shall refer to facilities for commercial and public transportation by air, land and water, and shall include, but not be limited to, runways, terminals, ticket offices, docks, roadways, parking facilities, routes and bridges.

Section 3.7 was assigned to Carlene Condon.

3.800 Communications Facilities

Section 3.801:

Any development that proposes the construction or erection of any personal telecommunications tower as set forth in the Federal Telecommunications Act of 1996 and which would exceed thirty-five (35) feet in height as measured from the natural grade of the site upon which the tower is to be located, but not to include the reconstruction of or replacement of an existing tower on the same site, provided that the height of the replacement or reconstruction does not exceed the height of the existing wireless telecommunications tower.