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## Martha's Vineyard Commission Land Use Planning Committee

### Notes of the Meeting of May 2, 2011

Held in the Stone Building, New York Avenue, Oak Bluffs. 5:30 p.m.

*Note: The LUPC dealt with two topics on May 2, 2011: The continued DRI Checklist Review and Tisbury Farm Market (DRI 631) Post-Public Hearing Review. These notes are only the DRI Checklist Review.*

#### Documents referred to during the meeting

- MVC Staff Handout outlining some issues related to the natural environment, historical preservation, water quality, and other issues.

The meeting was called to order at 5:30 p.m.

#### **1. DRI Checklist Review – Natural Environment; Historic Preservation; Water Quality**

*MVC Commissioners Present for this topic: Doug Sederholm (Chairman of LUPC); John Breckenridge; Ned Orleans; Fred Hancock; Camille Rose; Christina Brown; Linda Sibley; and Kathy Newman.*

*MVC Staff Present: Paul Foley, Bill Veno, Mark London, Bill Wilcox*

*Town Boards and Members of the Public: Leah Smith, Ginny Jones, Matt Cramer, Michael Donaroma, James Isaac, Jim Powell, Bruce Rosinoff, Tony Peak, Glen Provost*

Doug Sederholm welcomed participants to the next session calling for public input into possible revisions to the MVC's DRI Checklist.

#### **Natural Environment**

- Leah Smith said that anything that involves clear cutting or loss of habitat at any large scale, perhaps an acre, should be a threshold. There might be some critical habitats other than wetlands where any clearing should be reviewed. Development as well as subdivision of prime ag soils and in key scenic viewsheds should be subject to DRI review. The West Tisbury Planning Board reviews projects in certain location to determine whether it is considered wooded or open, in which case the height limits are different. She thinks it would be useful if there were requirement for projects in the most important public views, such in Vineyard Haven as seen from the road. Linda asked whether this is only for large houses. Leah said that commercial projects or many small houses could also be problematic. The planning board has limited purview to require changes based on this.
- Ginny Jones said there are certain highly visible public areas, such as at the Aquinnah Cliffs looking back. When parts of Katama were developed, it was highly egregious, though now there are trees that soften it a bit.
- Doug Sederholm noted that the Checklist now has a trigger for subdivision of agricultural land, but not for development of agricultural land. He asked whether a large development project on prime agricultural land (such as a large solar array) should be considered to be of regional impact.

- Ginny Jones asked about excavation and fill. There is a case which is really egregious. The owner Craw Hollow Farm excavated a couple of acres to a depth of 18", filled it in with gravel, sand, and sod to create an equine facility. They didn't need any permits. The Land Bank said it was agricultural use. According to the state definition, agriculture doesn't include private equine facilities, only commercial ones. Jim Powell added that the impacts included the trucking to remove large volumes of soils and bring in new soil. There was another case on the North Shore that involved huge volumes of excavation, soil was taken out to meet OSHA specs for safety of construction, and much will be trucked back in. It affects not only that property, but the whole neighborhood.
- Linda Sibley noted that some of these items don't require a permit, which is the normal trigger for a Checklist item. The wording of a discretionary referral does not require a permit, but refers to "development" so it would be hard to put on the Checklist but the town could send it.
- Matt Cramer had impacts of the airport construction of their runways. He lives near White Lynch who started the trucks at 5:30 a.m. to do the work on the 3-year contract. Also Packer's wharf and Goodale's pit were impacted by the airport project. When the MVC reviews a project, can it look at the construction impacts in other areas?
- For discretionary referrals of projects without a permit, the process could start with a complaint or a town board otherwise being made aware of the project, which would lead the board to make the referral.
- Michael Donaroma asked what protections we already have. The Wetlands Protection Act and existing MVC regulations already cover a lot of the Island. The town boards have a lot of control. If it is more than a given area of habitat removal, the owner has to go to the state. It is fine the way it is. There might examples of people not respecting the law, but that is a different issue from changing the law. As for being inconvenienced by trucks on the road, the MVC should not get involved other than for projects that are already before it. School buses and garbage trucks also start early.
- Ginny Jones said that they have imposed conditions on projects in light industrial areas to not have trucking before 7 a.m. and this has worked well.

### **Historic Preservation**

- James Isaac, Edgartown Historic District, the town now has over 224 buildings over 100 years old, many outside the historic district. They are working on a map of where they are located. Oak Bluffs has a demolition delay bylaw, but not Edgartown.
- Linda said that the current Checklist allows for referral of the demolition or significant alteration of buildings having historic significance, outside an historic district. This is a mandatory referral.
- Ginny Jones said there is a Massachusetts list of historic structures, which has criteria.
- Paul asked whether a Historic District Commission has the right to deny an application for demolition, or only delay it.
- Michael Donaroma said that in the case of the Edgartown Library, their Historic District Commission said that the historic house could be demolished provided a new building of historic character would be built in its place.
- Christina Brown asked what would be done if an owner cannot afford preservation.
- James Isaac said that Community Development Plans funds can be used. Presently, people demolish older houses to build bigger new ones. They could work on their list to determine whether they are

significant. James said that a town can deny demolition in an historic district. They also want to identify whether the building has special historic significance, beyond its architectural significance. He raised the concern that the present wording could be a problem if a town doesn't have the power to deny demolition in a historic district, and the Checklist exempts these areas from MVC review.

- Leah Smith said that it would be very useful to have a comprehensive map of 200 year-old buildings, so they are at least prepared to deal with situations when they come up.
- Mark London said the MVC prepared a map of 100-year-old buildings based on assessors' data, but it is not completely accurate since different assessors deal with the building age in different ways.
- Leah Smith said that the state did an inventory that we can use.

### **Water Quality**

- Doug Sederholm asked what threshold would be used, since the numbers are changing, though the Massachusetts Estuaries Project results is refining these numbers.
- Jim Powell said there is increasing data available. The cumulative totals are tipping the scale. Falmouth has such a problem with nitrogen loading that ponds are starting to stink and property values are going down.
- Bruce Rosinoff said the cumulative impact of projects doesn't lend itself to the DRI process. A DCPC might be more suitable. It is a huge problem.
- Doug said that there are some lots in commercial areas in the Tashmoo watershed which are too small to meet our guidelines. It may be more a planning and financial issue than a DRI issue.
- Bill Wilcox said that Title 5 doesn't address nitrogen, and the cumulative impact is the problem.
- Michael Donaroma said that much of this can be dealt with in the towns, and the MVC could help them. The MVC could make town boards aware of issues and what they could do to act.
- Doug Sederholm said that a key to the solution can be sewerage, which has to be dealt with at a town level.

### **Other Issues**

- Glen Provost said that, under the division of land, there is a big inequity in section 2.4, division of land between 10 and 30 acres. If you have 30 acres and divide it into 5 lots with a restriction on future subdivision, it does not trigger referral. But if you have 29 acres, you can only have 3 lots. But if your 29-acre lot was created after 1974, it becomes a DRI even if you are only carving off a little sliver to sell to the neighbor. Why does the date come into play? There is a discrepancy in the number of lots that can be created based on the size. He will think about what might make more sense.
- Linda Sibley said that this is related to incremental development. She agrees that this wording doesn't make sense. It is to avoid having someone carve off a few lots, then come back in a few years and carve back a few more, and you end up with more development and it has not been well planned.
- Ginny Jones said that it also doesn't provide for Form A subdivisions.

- Linda Sibley said that it would be useful if people give more specifics. We asked boards and individuals to identify projects that didn't trigger the Checklist which shouldn't have, and those that did trigger it and didn't need to.
- Ginny Jones said that the questionnaire should ask people to identify what needs to be more carefully defined, such as agriculture or historic significance.
- Tony Peak said that this discussion shows that it is important to understand the history and the original purpose of the wording. Also, whatever the threshold is, there is always someone who is just 1% below or above the threshold. We should look at how the DCPC process could be used to better deal with water quality.
- Christina Brown reminded people that the purpose of a discretionary referral is to allow town boards to refer a project that doesn't trigger a Checklist item.
- Bruce Rosinoff said that this is a huge challenge that will involve many town boards such as the selectmen, Planning Board, and Board of Health.