



P.O.BOX 1447 • 33 NEW YORK AVENUE • OAK BLUFFS • MA • 02557
508.693.3453 • FAX: 508.693 7894
INFO@MVCOMMISSION.ORG • WWW.MVCOMMISSION.ORG

Decision of the Martha's Vineyard Commission

DRI 659 – North Bluff Sea Wall Replacement

1. SUMMARY

Referring Board: Town of Oak Bluffs Planning Board

Subject: Development of Regional Impact #659

Project: To replace an existing 720-foot long concrete sea wall on the North Bluff with a sheet metal pile driven seawall four (4') feet higher with a timber boardwalk on top.

Owner: Town of Oak Bluffs

Applicants: Town of Oak Bluffs; Bob Whritenour (Town Administrator)

Applicant Addresses: Oak Bluffs Board of Selectmen, 56 School Street (P.O. Box 1327), O.B., 02557

Project Location: Sea View Avenue Extension, Oak Bluffs, Map 9, Lot 58

Description: The proposal is to replace an existing 720-foot long concrete sea wall on the North Bluff with a sheet metal pile driven seawall four (4') feet higher (built over the existing concrete wall) with a timber boardwalk on top and stone revetment in front.

There are two funding sources: A \$2,000,000 Seaport Grant; A \$3,600,000 DCR Dam/Seawall Grant. The Boardwalk would run from the fishing pier to the harbor parking lot. There would be an A.D.A. accessible ramp from the parking lot to the beach. The sheeting would be a high nickel content steel with a dull buff gray enamel paint. Annual maintenance is estimated at \$5,000-\$7,500 a year.

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 January 7, 2016.

Written Decision: This written decision was approved by a vote of the Commission on January 21, 2016.

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 November 23, 2015 by the Oak Bluffs Planning Board 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) a Discretionary Referral. There were discussions as to whether the project triggered other items on the DRI Checklist such as Section 5.1 Developments in the Ocean. The Applicant chose to forego a Discretionary Review and go straight to DRI Public Hearing Review and the proposal 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 Martha's Vineyard Times on November 25, 2015.

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 December 10, 2015; and continued to December 17, 2015 with the written record left open until 5:00 pm on December 28, 2015 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." The plans consisted of several documents and plans submitted by the applicant. The applicant also described the proposed project in a presentation.

P1 *"Proposed North Bluff Seawall Repair and Harbor Access Plan: Oak Bluffs, Martha's Vineyard, MA"* prepared by C.L.E. Engineering for the Town of Oak Bluffs consisting of eighteen 24" by 36" sheets with the following plans and elevations detailed below: Cover Sheet; Existing Conditions Plan; Overall Site Improvements Plan & Grading Plan; Detail Plan STA 0+00 to 4+93; Detail Plan STA 4+93 to 7+60; Seawall Sections & Details 1 of 4; Seawall Sections & Details 2 of 4; Seawall Sections & Details 3 of 4; Seawall Sections & Details 4 of 4; Beach Access Ramp Details; Plaza Area Details; Concrete Stair Details; Beach Access Stair Details 1 of 2; Beach Access Stair Details 2 of 2; Electrical Plan 1 of 2; Electrical Plan 2 of 2; Electrical Details; Landscape Plan. Plans dated October 7, 2015 by C.L.E. Engineering, Inc., 15 Creek Road, Marion, MA 02738. Project Number OB1-2015, Stamped by John A. DeRuggeris, Massachusetts Professional Engineer No. 32842.

2.4 Other Exhibits

- E1. Discretionary Referral to the MVC from the Oak Bluffs Planning Board; November 23, 2015.
- E2. Staff Report, by Paul Foley, DRI Coordinator, with the assistance of other staff members, dated December 10, 2015; and revised December 17, 2015.

- E3. Photographs of the site, taken on numerous dates by MVC staff member Paul Foley and Adam Turner.
- E4. CLE Engineering Response to questions from first public hearing of December 10, 2015 received at 3:30 pm on December 17, 2015.
- E5. CLE Engineering Response to questions from second public hearing on December 17, 2015 received at 3:17 pm on December 28, 2015.
- E6. Town of Oak Bluffs North Bluff Seawall Project Worksheet submitted to FEMA March 26, 2013.
- E7. Town of Oak Bluffs letter to FEMA regarding the withdrawal of funding August 22, 2014.
- E8. FEMA revision to North Bluff Seawall Project Worksheet September 9, 2015.
- E9. Letters from the following individuals: Brian Packish: 2015-11-23; Jason Lew: 2015-11-23; Kerry Scott: 2015-11-23; Ewell Hopkins: 2015-12-02; Jason Lew: 2015-12-05; Oak Bluffs Association: 2015-12-08; Peter Crafts: 2015-12-08; Renee Nolan: 2015-12-09; Stanley Arend: 2015-12-09; Heidi Signes: 2015-12-09; Belleruth Naparstek: 2015-12-10; Ewell Hopkins: 2015-12-10; Kerry Scott: 2015-12-10; Kathy Laskowski: 2015-12-10; Jordan Wallace: 2015-12-10; Natasha Taylor: 2015-12-10; Rosemary Verri: 2015-12-11; Cara Lane: 2015-12-12; Raymond Taylor: 2015-12-13; Nancy Read: 2015-12-14; Susan Feller: 2015-12-14; Richard Seeling: 2015-12-14; Jill Nelson: 2015-12-14; Ronald Zentner: 2015-12-14; Brian Packish: 2015-12-15; Liz Durkee: 2015-12-15; Renee Balter: 2015-12-15; James Westervelt: 2015-12-16; Nancy Phillips: 2015-12-16; Nancy McMahon: 2015-12-16; Mark Wallace: 2015-12-17; Joan Hughes: 2015-12-17; Dave Grunden: 2015-12-17; Richard Combra Jr: 2015-12-17; Kathy Laskowski: 2015-12-17; Kerry Scott: 2015-12-17; Richard Toole: December 19, 2015; Steve Auerbach: December 28, 2015.
- E10. Minutes of the Commission's Land Use Planning Committee meeting, November 23, 2015.
- E11. Minutes of the Commission's Public Hearing, December 10, 2015.
- E12. Minutes of the Commission's Continued Public Hearing, December 17, 2015.
- E13. Minutes of the Commission's Land Use Planning Committee meeting Post Public Hearing Review, January 4, 2016.
- E14. Minutes of the Commission Meeting of January 7, 2016 – Deliberations and Decision.
- E15. Minutes of the Commission Meeting of January 21, 2016 – Approval of the Written Decision.

2.5 Summary of Testimony

The following is a summary of the principal testimony given during the public hearing of December 10, 2015:

- Staff report by Paul Foley (DRI Coordinator) with written documents package and slide show.
- Presentation of the project by Bob Whritenour (Oak Bluffs Town Administrator); Liz Durkee (Oak Bluffs Conservation Commission Agent); and Carlos Pena (Project Engineer - C.L.E. Engineering).
- Oral testimony from Public Officials:
 - Brian Packish (Chairman of the Oak Bluffs Planning Board);
 - Ewell Hopkins (Oak Bluffs Planning Board);
- Oral testimony from Public:
 - Jason Lew;

- Jim Dearing;
- Mark Wallace;
- Gail Barmakian (Selectperson speaking as a resident not for Board);
- Kerry Scott;
- Horacio Thoracios.

The following is a summary of the principal testimony given during the public hearing of December 17, 2015:

- Staff report by Paul Foley (DRI Coordinator) with written documents package and slide show.
- Presentation of the project by Carlos Pena (Project Engineer - C.L.E. Engineering) and Bob Whritenour (Oak Bluffs Town Administrator).
- Review of questions and responses to questions from the first public hearing with the questions summarized by Adam Turner and the answers given by Carlos Pena and Bob Whritenour.
- Oral testimony from Public Officials:
 - Walter Vail (Oak Bluffs Board of Selectmen);
 - Gail Barmakian (Oak Bluffs Board of Selectmen);
 - Joan Hughes (Oak Bluffs Conservation Commission);
 - Brian Packish (Chairman of the Oak Bluffs Planning Board);
 - Kathy Burton (Oak Bluffs Board of Selectmen);
 - Mike Santoro (Oak Bluffs Board of Selectmen).
 - Greg Coogan (Oak Bluff Board of Selectman)
- Oral testimony from Public:
 - Steve Auerbach;
 - Kerry Scott;
 - Peter Bradford;
 - Nancy Phillips;
 - Mark Wallace;
 - Jordan Wallace;
 - Amy Billings;
 - Doug Abdelnour.

3. FINDINGS

3.1 Project Description

- The proposal at this time is to replace an existing 720 foot long concrete sea wall on the North Bluff with a sheet metal pile driven seawall four (4') feet higher (built over the existing concrete wall) with a timber boardwalk on top and stone revetment in front.
- The full proposal as described by the Applicant is to provide enhanced coastal storm protection against projected sea level rise by creating a sacrificial beach (15,000 CY), stone revetment (3-4 ton), raised seawall (4'), restored coastal bank and construct a timber boardwalk to provide a pedestrian link between the SSA Ferry Pier and O. B. Harbor.
- There are two funding sources: A \$2,000,000 Seaport Grant; and a \$3,600,000 DCR Dam/Seawall Grant.

- The Boardwalk would run from the fishing pier to the harbor parking lot.
- The funding does not allow the current proposal to incorporate the area between the OBPA Fishing Pier and the SSA Pier.
- The proposal was originally to replace the existing concrete wall with a new four foot higher concrete wall in the same location. Approximately \$2,000,000 of funding was withdrawn by FEMA in 2014 forcing the Applicants to revise their plan to the current proposal for a sheet metal pile driven wall in front of the existing concrete wall.
- Beach nourishment, while discussed and shown on submitted plans, is not part of the current application.
- There will be an A.D.A. accessible ramp from the parking lot to the beach. There are no plans for replacing the existing stairs to the beach. Details for improving the existing stairs by the Steamship Authority Pier were not provided.
- The sheeting would be a high nickel content steel with a dull buff gray enamel paint.
- Annual maintenance is estimated at \$5,000-\$7,500 a year.

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 in this location is appropriate in view of the available alternatives. The Commission notes that the necessary funding for the original plan, which was to replace the concrete wall with a concrete wall, was withdrawn and would have taken more time to permit and construct according to the applicant. Given the economic implications of the

wall's failure, the Commission supports the proposal. The Commission also notes that with sea level rise this might be the beginning of these types of projects.

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

With respect to Open Space, Natural Community and Habitat, the Commission finds that the boardwalk should make that area more accessible to the general public. The Commission notes that though the sheet metal is not historically used on beaches, the five foot reveal of the metal will generally be viewed from a distance.

With respect to Night Lighting and Noise, the Commission notes some concern that the additional lighting may not conform to dark skies principals and that the proposed 16' and 20' high lampposts might conflict with the pedestrians walking down Sea View Avenue Extension. Therefore the Commission has added a condition that the final lighting plan must be reviewed and approved by the LUPC.

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

With respect to Traffic and Transportation, the Commission finds that this is a highly visible gateway and transportation hub and that the boardwalk offers an alternative to walking in the road or the narrow sidewalk for pedestrians along Sea View Avenue Extension. The Commission finds that the seawall is being replaced with the intention to protect the roadway and general area from sea level rise and storm surge.

With respect to Scenic Values, Character, and Identity, the Commission notes that the major complaint from the public has been that the sheet metal will bring an industrial look to this stretch of highly visible beach.

With respect to the Impact on Abutters, The Commission finds that the proposal is the quickest and most affordable way to protect the wall from collapsing, that aesthetics are subjective, and that abutters can go to other beaches. The Commission notes that many of the neighbors objected to the appearance of the proposed sheet metal replacement of the existing concrete wall, the encroachment of the proposal on the beach and access to the beach, the uncertainty of future beach nourishment.

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).

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

The Commission finds that proposal is an example of local infrastructure improvements being paid for by State money. The Commission notes that the Town of Oak Bluffs will have to pay for ongoing maintenance.

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).

The Commission finds that proposal has been designed to fit in with the existing fishing pier.

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).

The Commission finds that boardwalk has been mentioned in some town plans before.

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 Applicants and others, and the addition of conditions as offered, 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 Commission finds that the development is consistent with the policies of the Martha's Vineyard Commission Regional Policy Plan, adopted by the vote of the Martha's Vineyard Commission, June 1991, as well as those of the Island Plan, adopted by vote of the Commission on December 10, 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 replacement of an existing seawall.

D. THE COMMISSION FINDS THAT THE SITE IS NOT WITHIN ANY DISTRICTS 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 January 7, 2016 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 January 7, 2016:

- Voting in favor: Trip Barnes; John Breckenridge; Christina Brown; Fred Hancock; Lenny Jason; Jim Joyce; Kathy Newman, Abe Seiman; Linda Sibley; and Ernest 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 the conditions listed in section 5 below.

This written Decision is consistent with the vote of the Commission January 7, 2016 and was approved by vote of the Commission on January 21, 2016.

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 **Lighting**

- 1.1 The final lighting plan shall be submitted for the review and approval of LUPC before construction on that section begins. The final lighting plan should include:
 - 1.1.1 Pole heights that do not bring lights near eyelevel on Seaview Avenue Extension.
 - 1.1.2 Reflector choices that spread light along the boardwalk instead of equally in all directions.
 - 1.1.3 On-Off control specifications such as dusk to dawn; time clock; or on at dusk for a set number of hours.
 - 1.1.4 Possible use of LED version of same pole fixture.

2 **Landscaping:**

- 2.1 The final landscaping plan, including an implementation timetable, showing plant species and locations shall be submitted for the review and approval of LUPC before construction on that section begins.

3 **Maintenance:**

- 3.1 The project shall be built and maintained substantially as presented to the MVC.

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.

The Town' building inspector shall not issue a Certificate of Occupancy for the boardwalk until it has received a Certificate of Compliance issued by the Executive Director or DRI Coordinator of the Martha's Vineyard Commission confirming that the following conditions in this Decision have been satisfied: 1.1 and 2.1.

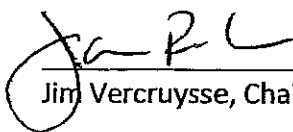
6.2 Notice of Appellate Rights

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 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. 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



Jim Verduyze, Chairman

1-17-16

Date

6.4 Notarization of Decision

Commonwealth of Massachusetts
County of Dukes County, Mass.

On this 27th day of January, 2016, before me,
Jo-Ann Taylor, the undersigned Notary Public, personally
appeared Jim Verduyze, proved to me through satisfactory evidence of
identity, which was/were ✓ driver's licence 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 February 9, 2018

6.5 Filing of Decision

Filed at the Dukes County Registry of Deeds, Edgartown, on: February 1, 2016

Deed Book DECIS-1397, Page 604