



## **2. FACTS**

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The exhibits listed below including the referral, the application, the notice of the 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 Applicant self-referred the project to the Commission on September 9, 2021 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, DRI Checklist Item: 1.3D *Modification to a previous DRI*. At the Land Use Planning Committee meeting on November 8, 2021, the Applicant opted to forego the modification review process and proceed with a public hearing review as a Development of Regional Impact.

### **2.2 Hearings**

Notice: Public notice of a hearing on the Application on December 8, 2022 was published in the MV Times on November 24, 2022; notice for December 8, 2022 was also published in the Vineyard Gazette on November 25, 2022. The December 8 meeting was cancelled on November 28. A revised hearing notice for a hearing on December 15, 2022 was published in the MV Times on December 1 and 8, 2022; notice for December 15, 2022 was also published in the Vineyard Gazette and December 2 and 9, 2022. Abutters within 300 feet of the property were notified by mail on November 29, 2022.

Hearings: The Commission held a duly noticed public hearing on the Application that was conducted pursuant to the Act and M.G.L. Chapter 30A, Section 2, as modified by Chapter 831 on December 15, 2022, which was continued to January 12, 2023. The hearing was closed that night with the exception of the written record, which was left open until January 30, 2023 at 5:00 p.m. and closed at that time. The hearings were held entirely using remote conference technology as allowable under Chapter 22 of the Acts of 2022.

### **2.3 The Plan**

The following plans and documents submitted by the Applicant and contained in the Commission's project file constitute "the Plan." All pages are 8.5" x 11" unless otherwise noted.

- P1. Plan of Land in Tisbury, Mass. prepared for Old Stone Bank Condominium by Schofield, Barbini & Hoehn Inc., consisting of one (1) 36" x 24" page, scale 1" = 20', dated June 17, 2021.
- P2. C-3 Stone Bank Project Restaurant Retail Unit C-3 Floor Plan and Site Layout, consisting of one (1) 35" x 24" page, designed and developed by Reid A. Dunn, Architect, scale 1/8" = 1'-0", dated November 4, 2021.

- P3. Seating Plan C-3 Stone Bank Project Restaurant Retail Unit C-3 Floor Plan and Site Layout, consisting of one (1) 35" x 24" page, designed and developed by Reid A. Dunn, Architect, scale  $\frac{1}{8}" = 1'-0"$ , dated November 4, 2021.
- P4. C-3 Elev. Stone Bank Project 75 Main Street and 16 Union Street, Tisbury MA, South and West Elevations, designed and developed by Reid A. Dunn, consisting of one (1) 35" x 24" page, scale  $\frac{1}{8}" = 1'-0"$ , dated November 4, 2021 and revised on November 15, 2021.
- P5. C-3 Plan Restaurant Retail Unit C-3 Floor Plan & Site Layout, designed and developed by Reid A. Dunn, consisting of (1) 35" x 24" page, scale  $\frac{1}{8}" = 1'-0"$ , dated November 15, 2021.
- P6. Preliminary Landscape Plan for Stone Bank 75 Main Street, Vineyard Haven, MA prepared by Teles Landscaping & Sourati Engineering, consisting of one (1) 36" x 24" page, scale  $1" = 10'-0"$ , dated November 17, 2021.
- P7. Restaurant Commercial Unit C-3 Kitchen Space & Site Layout Plan Stone Bank Project, 75 Main Street & 16 Union Street, Tisbury, designed and developed by Reid A. Dunn, consisting of one (1) page, scale  $\frac{1}{8}" = 1'-0"$ , dated December 5, 2021.
- P8. Kitchen & Bar Detail, consisting of one (1) page, scale  $\frac{1}{4}" = 1'$ , received April 25, 2022.
- P9. Taqueria Planting Plan, consisting of one (1) 17" x 11" page, scale  $\frac{1}{8}" = 1'$ , received June 3, 2022.
- P10. Schematic Drainage Plan Stone Bank Taqueria, consisting of one (1) page, scale  $1" = 10'$ , received June 3, 2022.
- P11. Drainage Areas overlayed on a Plan of Land in Tisbury, Mass. prepared for Old Stone Bank Condominium by Schofield, Barbini & Hoehn Inc., consisting of one (1) 36" x 24" page, scale  $1" = 20'$ , dated November 9, 2021; received June 3, 2022; also provided by the Tisbury Planning Board on September 19, 2022.
- P12. Typical Downspout Detail, consisting of one (1) page, scale  $1" = 1'$ , received June 3, 2022.
- P13. Landscape Plan for Stone Bank 75 Main Street, Vineyard Haven, MA prepared by Teles Landscaping & Sourati Engineering, consisting of one (1) 36" x 24" page, scale  $1" = 10'-0"$ , dated September 2, 2022.
- P14. As-Built Plan of Stormwater Facilities, Stone Bank Project, 75 Main Street and 16 Union Street, Tisbury, designed and developed by Reid A. Dunn, Architect, consisting of one (1) 48" x 24" page, scale  $1" = 10'$ , dated September 11, 2022.
- P15. Drainage Layout Plan for Old Stone Bank Condos, 75 Main St & Adjacent Sites, Vineyard Haven, MA prepared by Martha's Vineyard Engineering & Design using site plan prepared by Schofield, Barbini & Hoehn Inc., consisting of one (1) 36" x 24" page, scale  $1" = 20'$ ; and  $\frac{1}{2}" = 1'-0"$  on details, dated November 1, 2022 and updated on December 30, 2022.

- P16. South Elevation Building D2 & Attached Fencing, consisting of one (1) 13" x 7.5" page, scale  $\frac{1}{8}" = 1'$ , received January 13, 2023.
- P17. As-Built Package, consisting of eighteen (18) 13" x 7.5" pages, scaled to  $\frac{1}{8}" = 1'-0"$  and dated January 23, 2023, unless otherwise noted including: Stone Bank Master Site Plan of As-Built & Intended Conditions, designed and drawn by Sam Dunn, scale 1" = 20'; 75 Main Street Rear - South Elevation, dated January 19, 2023; Building B North Elevation; Building B South Elevation; Building B East Elevation; Building D1 West Elevation; Building D1 North Elevation; Building D1 South Elevation; Building D1 East Elevation; Building D2 South Elevation & Attached Fencing; Building D2 North Elevation; Building D2 East Elevation; Building D2 West Elevation; Building F South Elevation; Building F East Elevation; Building E East Elevation; Building E South Elevation; and Building E North Elevation.

#### **2.4 Other Exhibits**

- E1. Referral to the Martha's Vineyard Commission from the Applicant, received September 9, 2021.
- E2. 310 CMR 15.000: The State Environmental Code, Title 5: Standard requirements for the siting, construction, inspection, update and expansion of on-site sewage treatment and disposal systems and for the transport and disposal of septage, consisting of ninety-seven (97) pages, effective date September 9, 2016.
- E3. Purchase and Sale Agreement between Sam Dunn and Patrick Lyons, consisting of eight (8) pages, 2021.
- E4. Project Narrative consisting of two (2) pages, dated September 9, 2021.
- E5. Town of Tisbury Wastewater Department Notice of Action regarding approval with conditions of change of use, consisting of one (1) page, dated September 16, 2021.
- E6. Agent authorization for Sam Dunn, consisting of one (1) page, dated September 28, 2021.
- E7. Emails between Alex Elvin and Sam Dunn with answers to staff questions about parking, wastewater, and employees, consisting of three (3) pages, dated October 9 to 14, 2021.
- E8. DRI Application, consisting of two (2) pages, signed October 15, 2021.
- E9. Email from Jared Meader (Tisbury Wastewater Superintendent) to Alex Elvin, regarding approval of sewer flow, consisting of one (1) page, dated October 19, 2021.
- E10. Emails between Alex Elvin and Sam Dunn with answers to staff questions about changes to condominium documents, heat lamps, hours of operation, the location of seats and bar, elevations and renderings, lighting plan, composting, stormwater, locally sourced food products, and revised site plans, consisting of two (2) pages, dated October 19 to November 3, 2021.
- E11. Picture of proposed string lights, consisting of one (1) page, received November 3, 2021.

- E12. Staff Report for DRI 674-M3 Stone Bank Restaurant, consisting of four (4) pages, dated November 5, 2021; updated to consist of seven (7) pages, dated June 17, 2022; updated on November 10, 2022; updated again on December 6, 2022; updated again on January 5, 2023; and updated to consist of nine (9) pages on January 11, 2023.
- E13. Staff Presentation to the Land Use Planning Committee, consisting of twenty-three (23) pages, dated November 8, 2021.
- E14. Letter from Jared Meader to Maura Valley (Tisbury Health Agent) regarding sewer flow approval, consisting of one (1) page, dated November 15, 2021.
- E15. Environmental Impact Minimization Plan, consisting of five (5) pages, received November 21, 2021.
- E16. Renderings of the proposed porch and outdoor seating, consisting of six (6) 42" x 22" pages, received November 21, 2021.
- E17. Revised Application Package consisting of twenty (20) pages, including revised narrative and associated plans: Restaurant Commercial Unit C-3 Kitchen Space & Site Layout Plan (dated December 5, 2021); Kitchen & Bar Detail Plan; renderings, string light example photo, modifications to Condominium Documents; overall site plan; schematic drainage plan; downspout detail, letter from Island Grown Initiative dated February 10, 2022; dishwasher specification sheet, examples of disposable items and take-out packaging, consisting of twenty (20) pages, received April 25, 2022.
- E18. Drainage Calculations for Proposed Retention Pond, prepared by Martha's Vineyard Engineering & Design, consisting of two (2) pages, dated April 29, 2022.
- E19. Emails between Alex Elvin and Sam Dunn with answers to staff questions about stormwater, hours of operation, the traffic study, site grading, employee housing, and employee work shifts, consisting of two (2) pages, dated May 13 to June 3, 2022.
- E20. List of materials submitted to Tisbury Planning Board, consisting of two (2) pages, received May 17, 2022.
- E21. Picture of proposed trash tote, consisting of one (1) page, received June 3, 2022.
- E22. Emails between Alex Elvin and Sam Dunn regarding condominium owner notification, consisting of one (1) page, dated June 17, 2022.
- E23. Staff Presentation to the Land Use Planning Committee, consisting of thirty-eight (38) pages, dated June 21, 2022.
- E24. Letter from the Tisbury Planning Board to the MVC with comments on the landscape plan, walkways and fencing, grade elevation plans, stormwater runoff, and solid waste, consisting of two (2) pages, dated June 28, 2022.

- E25. Emails between Alex Elvin and Sam Dunn with answers to LUPC questions about the wait station, restaurant price point, utensils, fast food restaurants, high-use dishwashers, estimated propane consumption, and bar seating, consisting of three (3) pages, dated between June 28 and July 12, 2022.
- E26. Revised Stormwater Narrative, consisting of one (1) page, dated June 30, 2022.
- E27. Stone Bank Restaurant Fast Food Narrative, consisting of one (1) page, received July 12, 2022.
- E28. Staff Presentation on Stone Bank Condos Project Status, consisting of thirty-five (35) pages, including approved site plan, elevations, building permit plans, and site photos, dated July 13, 2022.
- E29. Letter from Adam Turner to Sam Dunn regarding possible discrepancies between the approved plans for DRI 674-M and construction work underway, consisting of one (1) page, dated July 28, 2022.
- E30. Email from Sam Dunn to Alex Elvin and Cheryl Doble (Tisbury Planning Board) regarding stormwater plan peer review, consisting of one (1) page, dated September 3, 2022.
- E31. Letter from Sam Dunn to Cheryl Doble regarding vermin control, lighting and privacy, noise, and odor, consisting of one (1) page, dated September 5, 2022.
- E32. Documents submitted for stormwater peer review for DRI 674-M3 Stone Bank Restaurant, including: Revised stormwater narrative (June 30, 2022); Map of drainage areas overlaid on site plan, undated; Grading Plan (July 19, 2022); Landscape Plan (July 16, 2021), Landscape Plan (September 2, 2022); Letter from Kent Healy (March 3, 2021); Martha's Vineyard Engineering & Design - Drainage Calculations for Proposed Retention Plan (July 8, 2022); Martha's Vineyard Engineering & Design - Drainage Calculations for Proposed Catch Basins (July 28, 2022).
- E33. Emails between Ian Jarvis (Mass DEP), Alex Elvin and Sam Dunn regarding the definition of fast food restaurant, consisting of three (3) pages, dated between September 19 and 21, 2022.
- E34. Staff Presentation to the Land Use Planning Committee, consisting of sixty-seven (67) pages, dated November 14, 2022.
- E35. Emails between Alex Elvin and Sam Dunn with answers to LUPC and staff questions, consisting of two (2) pages, dated December 2, 2022.
- E36. Public Hearing Notice for DRI 674-M3 Stone Bank Restaurant, consisting of one (1) page, dated December 8, 2022.
- E37. Public Hearing Notice for DRI 674-M3 Stone Bank Restaurant, consisting of one (1) page, dated December 15, 2022.
- E38. Email between Sam Dunn and Alex Elvin regarding employee housing, consisting of one (1) page, dated December 15, 2022.

- E39. Staff Presentation to the Martha's Vineyard Commission, consisting of sixty-four (64) pages, dated December 15, 2022.
- E40. Memo from the Applicant regarding public access, compliance issues, sewer flow, restaurant impacts, project history, consisting of seven (7) pages, dated December 19, 2022.
- E41. Memo from the Applicant regarding staff and Commissioner questions, with Applicant responses on December 24, 2022; Staff follow-up questions on December 27, 2022 and Applicant responses on January 3, 2023, consisting of five (5) pages.
- E42. Letter from Jared Meader to Alex Elvin regarding wastewater approval summary, consisting of one (1) page, dated December 29, 2022.
- E43. Staff Presentation to the Martha's Vineyard Commission, consisting of seventy (70) pages, dated January 12, 2023.
- E44. Stone Bank Security and Fencing Memo prepared by the Applicant, consisting of two (2) pages, dated January 13, 2023.
- E45. Stone Bank Taqueria Waste Memo prepared by the Applicant, consisting of six (6) pages, dated January 17, 2023.
- E46. Stone Bank Status of Construction Memo prepared by the Applicant, consisting of one (1) page, dated January 23, 2023.
- E47. Two (2) letters from Peter and Nancy Stam, abutters, with comments on noise, lighting, rodent control, odors, liquor, and bathrooms, and response to security memo and diagram, dated January 4 & 23, 2023.
- E48. Letter of opposition from Linda and Louis Pashman, dated January 24, 2023.
- E49. Two (2) letters of opposition from Katherine Scott with photo attachments, dated January 25 & 26, 2023.
- E50. Letter from the Tisbury Planning Board, consisting of two (2) pages, dated January 26, 2023.
- E51. Minutes of the Land Use Planning Committee's Modification Review, November 8, 2021.
- E52. Minutes of the Land Use Planning Committee's Pre-Public Hearing Review, June 21, 2022.
- E53. Minutes of the Land Use Planning Committee's Pre-Public Hearing Review, November 10, 2022.
- E54. Minutes of the Commission's Public Hearing, December 15, 2022.
- E55. Minutes of the Commission's Continued Public Hearing, January 12, 2023.
- E56. Minutes of the Land Use Planning Committee's Post-Public Hearing Review, January 30, 2023.

- E57. Minutes of the Land Use Planning Committee’s Continued Post-Public Hearing Review, February 6, 2023.
- E58. Minutes of the Commission’s Deliberation & Decision, February 9, 2023.
- E59. Minutes of the Commission’s Approval of the Written Decision, March 9, 2023.

**2.5 Reports**

- R1. Transportation Impact Assessment Scope of Work for proposed 70-seat restaurant, Stone Bank in Tisbury, Massachusetts, consisting of three (3) pages, dated November 8, 2021.
- R2. Traffic Impact Study and Access Plan prepared for Town of Tisbury, MA & 75 Main Street LLC for 75 Main Street Tisbury, MA 02568 by Fraser Poly-Engineering Services, consisting of one hundred eight (108) pages, dated April 2022.
- R3. Technical Memorandum from Fraser Poly-Engineering Services with answers to staff question about seasonal traffic, consisting of one (1) page dated June 16, 2022.
- R4. Proposal for Stormwater Management Peer Review by Fraser Poly-Engineering Services, consisting of two (2) pages, dated July 20, 2022.
- R5. Stormwater Management System Peer Review Memo, prepared by Kurt Fraser, Fraser Poly-Engineering Services, requesting more detailed information and as-built plans for the already installed stormwater features, consisting of two (2) pages, dated August 22, 2022.
- R6. Martha’s Vineyard Engineering & Design response to Kurt Fraser, consisting of one (1) page, dated September 19, 2022.
- R7. Stormwater Management System Peer Review Memo, prepared by Kurt Fraser, Fraser Poly-Engineering Services, requesting trench drain detail, drywell details, dimensions for leaching area, pipe length and sizes, dimensions of stone surrounding leaching pits, stormwater control component details, consisting of one (1) page, dated October 3, 2022.
- R8. Stormwater Management System Peer Review Memo, prepared by Kurt Fraser, Fraser Poly-Engineering Services, consisting of one (1) page, dated November 1, 2022.

**2.6 Summary of Testimony**

The following gave testimony during the public hearing on December 15, 2022:

- Staff presentation by Alex Elvin, DRI Coordinator.
- Presentation of the project by Sam Dunn.
- Oral testimony from Public Officials: Jared Meader, Tisbury Wastewater Superintendent.
- Oral testimony from the Public: Peter Stam, abutter.

The following gave testimony during the public hearing on January 12, 2023:



- Staff presentation by Alex Elvin, DRI Coordinator.
- Presentation of the project by Sam Dunn.
- Oral testimony from Public Officials: none.
- Oral testimony from the Public: John Ryder, abutter; Connie Alexander, Tisbury resident; and Peter Stam, abutter.

### **3. FINDINGS**

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#### **3.1 Project History**

The Old Stone Bank building, located on Main Street in Tisbury, was designed by architect J. Williams Beal in 1905 and constructed by local stonemason James Norton using local field stones. Businessman and Tisbury resident William Barry Owen had purchased a controlling share in the property in 1904. The building is a notable example of Romanesque and Bungalow styles. A separate building on the site, previously used for drive-through banking, was constructed in a similar style in 1910, with the drive-through portion constructed in 1988.

In 2017, DRI 674 involved the removal and replacement of terra cotta tiles on the bank roof. The tiles had already been removed and replaced with asphalt shingles when the project was referred to the Commission in 2016. The Commission voted to deny the application and require that the asphalt shingles be replaced with ceramic tiles consistent with the historic character of the building. Santander Bank closed the branch in 2017 and put the property up for sale. The tiles were replaced in 2019.

The MVC has approved the following modifications to DRI 674:

- DRI 674-M (May 2021): Renovation of two existing buildings and construction of five new buildings, with a total of 10 residential units and seven commercial units. The existing Stone Bank and annex (Building A) and a separate drive-through building (Building C) were to include a total of two residential units; one existing building was to be demolished and replaced with another building (Building B) to include two residential units; and four other new buildings (D1, D2, E, and F) were to be constructed with a total of six residential units. As conditioned, Building A (minus the annex) was to have commercial uses on both floors, and buildings B, C, E, and F were to have retail and/or office uses on the first floors. The total proposed square footage of structures on the property was 20,320 ft<sup>2</sup>, with 13,194 ft<sup>2</sup> of residential square footage and 7,126 ft<sup>2</sup> of commercial square footage. As conditioned, all commercial units were to be for office or retail use, with any proposed changes requiring MVC approval. In addition, Buildings A and F were to be revised to comply with Tisbury Zoning Bylaw 05.21.01, which prohibits commercial uses from occurring above residential uses in the B1 District. That revision was made with the LUPC's approval in June 2021. The project is currently under construction.
- DRI 674-M2 (August 2011): Modification of DRI 674-M Condition 2.1 to remove a 21-day limit on rentals for the residential units, and associated changes to the condominium Declaration of Trust and Master Deed.

- DRI 674-M4 (June 2022): Modifications to eliminate the second floor of Building C (unit R6), eliminate rooftop solar panels except on Building D1 (unit R7), and add a balcony on Building B. This was approved with the exception of a final plan for solar panels, which is still pending.

In addition to these modifications, in August and September 2021, the LUPC approved changes to the condominium documents including provisions related to the sale of parking spots, in order for the property to comply with the MVC conditions for DRI 674-M, and several other minor changes and corrections. The LUPC approved the final recommendations by the Tisbury Historical Commission (THC) in 2022. A site visit for the MVC and THC to view proposed paint colors, trim, sidewall and other features, as required by the LUPC, took place in August 2022.

Various issues with access, structures, and utilities have come to light during the construction of the Stone Bank Condos project. The MVC Executive Director informed the Applicant in July 2022 that a professionally surveyed, dimensional, as-built site plan must be submitted to the MVC prior to any Certificate of Compliance for the project. The MVC will review the site plan and may require further mitigation for any discrepancies with the approved plans.

### **3.2 Project Description**

The proposal, as conditioned, is to modify DRI 674-M by changing the ground-floor use of Building E from office/retail to a restaurant, and replacing a proposed lawn just east of Building E with a wooden deck and 70 outdoor seats for the restaurant, including an outdoor bar. The lawn area is designated in the condominium Master Deed as a Limited Common Area (LCA) for the commercial unit in Building E. The proposal will entail certain changes to the Master Deed, which currently identifies all the commercial units as offices. The modification includes a second-floor deck across the eastern side of Building E (already built), compared to the approved plans from 2021, which show a smaller deck. The restaurant would be open seasonally for lunch and dinner from April to November (and possibly for take-out in the off-season), with about 650 ft<sup>2</sup> of indoor kitchen space and a 1,200 ft<sup>2</sup> outdoor seating area, including a full-service bar. Two restrooms for patrons only would be located in the building.

The restaurant is proposed as a “fast food” establishment. Patrons would seat themselves and order and pay online using their phones, or via a pick-up window in the building. The future owner would be Patrick Lyons, a summer resident and restaurateur from the Boston area who also owns Back Door Donuts in Oak Bluffs.

Note that the buildings were relabeled during the review by the Town, but building labels for this modification have been changed by staff to match those of DRI 674-M.

### **3.3 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 evaluation 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 testimony presented and reviewing all documents 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 of 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.**

The Commission finds that the probable benefits of the project outweigh the probable detriments, as described below. With respect to persons and property (Section 15(c) of the Act), the Commission finds the project would have a beneficial impact. With respect to impacts upon the environment (Section 15(b) of the Act) and municipal services and taxpayers (Section 15(e) of the Act), the Commission finds the project would have a neutral effect. The Commission finds the project would not adversely affect the provision of municipal services or burden on taxpayers (Section 15(e) of the Act), would not unduly burden existing public facilities, and would generally align with local planning objectives (Sections 14(b), 15(g) and 15(h) of the Act).

#### **A1. The Commission finds that the proposed development at this location is essential and appropriate in view of the available alternatives (Section 15(a) of the Act.)**

The property is located in the Business (B1) District in downtown Vineyard Haven, and includes pre-existing and well-known commercial structures, including two historic buildings, and has been vacant since 2017. Surrounding land uses include commercial and residential structures in the B1, B2 and Waterfront Commercial Districts, including an existing residence with access from Main Street the Steamship Authority Terminal, Vineyard Transit Authority transportation hub, a Town-owned parking lot, the Tisbury Stop & Shop, and businesses along Main Street, Union Street and Water Street. The Commission notes that the project will likely bring economic benefits to the Town (see section A3), and that many of the planning concerns raised during the hearing can be addressed as part of the Town permitting process. As such, the Commission finds the project is appropriate in light of the available alternatives.

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

With respect to Solid Waste, considered a primary factor in this decision, the Commission finds the project would have a neutral impact, accounting for the Applicant's efforts to reduce solid waste that will be generated by the restaurant. The Commission also notes the following:

- As proposed, most dining materials would be disposable or biodegradable.
- An "Environmental Impact Minimization Plan" proposes washable aluminum pans and plastic serving baskets with paper liners, bioplastic utensils, and other packaging materials labeled as biodegradable. The Applicant has clarified that the biodegradable items would go into the regular trash stream.
- Tote containers for waste, recycling and compost would be stored in what was originally shown as the general trash area for the condo units, which would have a capacity of 24 90-gallon totes. Up to 8 of those would be used by the restaurant, with trash pickup 2-3 times per week, or as needed based on the quantity produced.
- The Applicant will partner with Island Grown Initiative and Bruno's Rolloff on a composting program, with pickups once a week.
- The Applicant has stated that the main trash area will serve the restaurant, adjacent retail store, and four residential condo units, and that half the residential units would have their own trash areas.
- The totes would be locked to help control pests, and the Applicant has stated that a pest control program will be implemented.
- According to the Applicant:
  - The restaurant will produce virtually no plastic waste.
  - All beverages will be served in washable glasses. All soups and condiments will be served in washable containers.
  - The majority of food items...will be served in baskets with biodegradable/compostable paper liners and eaten without utensils.
  - Some items...will be served on washable plates or aluminum pans. Where utensils are required, they will be washable.
  - Cooking oils will be recycled.
  - The restaurant will not use traditional automatic dishwashing. Cookware and reusable aluminum serving dishes will be washed by hand in a 3-bay sink. Glasses, cutlery, plastic baskets, soup bowls and dishware will be cleaned in 2 high-temperature, low-water CMA washers.
  - All remaining service items used in the restaurant will be disposable, paper-based, biodegradable material - primarily napkins and compostable basket liners.
  - All take-out packaging will be biodegradable.

With respect to Green Space, considered a primary factor in this decision, the Commission finds the project would have a neutral impact, noting that commercial uses of space as shown in the plans for the Stone Bank Condos project (DRI 674-M) were contemplated at that time. The Commission notes the following:

- The project would involve replacing a proposed lawn just east of Building E with a wooden deck and 70 outdoor seats for the restaurant, including an outdoor bar.
- The lawn area is designated in the condominium Master Deed as a Limited Common Area (LCA) for the commercial unit in Building E.

With respect to Water Quality (including groundwater), the Commission finds the project would have a neutral impact. The Commission also notes the following:

- As part of the permitting process for DRI 674-M, the Applicant received two approvals from the Town Sewer Advisory Board to increase the allowed wastewater flow from 905 to 2,310 GPD (gallons per day).
- According to the Town Wastewater Department, the proposed restaurant use requires an additional 1,176 GPD (70 seats x 20 gallons = 224 GPD for removal of unit R6 as part of DRI 674-M4).
- In August 2021, the Wastewater Department approved a total of 3,486 GPD for the Stone Bank project with conditions. If additional dishwashing equipment were to be added in the future, additional wastewater flow may be required.
- According to the Town Wastewater Superintendent, the Town Sewer Advisory Board considers the proposed use to be “fast food” under Title 5, with a generation rate of 20 gallons per day per seat. The Town intends to monitor the restaurant’s water usage for two years, and adjust approval as necessary.

With respect to Stormwater, the Commission makes no finding, acknowledging that the project involves a new stormwater system. The Commission also notes the following:

- The stormwater plan for DRI 674-M relied on direct percolation into existing or replaced sandy soils.
- The proposed seating area would be covered by decking above soil, with drainage directly into the ground. The restaurant area would serve as a drainage basin for about 7,800 ft<sup>2</sup> of impermeable area, including the roofs of the two adjacent buildings. Runoff from the roofs and canopies would be directed under the decking via gutters and downspouts.
- The Tisbury Planning Board and the MVC required a peer review of the stormwater management plan, which resulted in the development of an engineered drainage layout plan by MV Engineering and Design (later updated), and the following conclusions from Frasier Poly-Engineering Services (FPES):
  - *Given the site’s underlying soil conditions we feel the design method of utilizing the naturally excellent permeability of these soils is an appropriate and functional approach to controlling the stormwater runoff on the overall site.*
  - *We do however wish to inform the Town that if the groundwater table becomes unusually high, this could diminish the effectiveness and function of the stormwater management systems. The engineer has stated that the groundwater table is at approximately elevation 1.0. The systems designed are mostly above this elevation. These structures will be somewhat limited due to the lower portion being constructed in the saturated soil.*
- Hay bales during construction, as shown in the drainage layout plan, have not been installed.

With respect to Energy, the Commission notes the following:

- As previously approved, all buildings in the Stone Bank project were to have electric heating and cooling, with propane for cooking.
- The Applicant has proposed propane heaters and fireplaces for the restaurant seating area.

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

With respect to Traffic and Transportation, considered a primary factor in this decision, the Commission finds the project would have a neutral impact, in part because there is no parking requirement in the B1 District of Tisbury, and a Transportation Impact Assessment found that the project would have no impact in the vicinity. The Commission also notes the following:

- The Stone Bank project has 19 parking spaces, with at least one space designated to each residential unit. There are no spaces dedicated to the proposed restaurant, although the Applicant has stated that the owner will purchase three spaces associated with his residential unit in Building D2 that could be used for employee parking.
- Customers would need to either walk to the restaurant or use public parking in the downtown area. The proposed hours for the restaurant are 11:30 AM to 10:30 PM, seven days a week. Food delivery would be available for customers, with a 12 foot curb cut on Union Street for a delivery vehicle.
- Projected traffic, according to an independent Transportation Impact Assessment by Frasier Poly-Engineering Services (FPES):
  - 378 new weekday average daily trips (189 in, 189 out)
  - 53 new weekday PM peak hour trips (24 in, 29 out)
  - 382 new Saturday average daily trips (191 in, 191 out)
  - 41 new Saturday peak hour trips (23 in, 18 out)
  - Projected parking need: 17 spaces (Saturday weekend peak hour)
- The FPES report finds no parking, safety, or level of service (LOS) impacts in the vicinity of the project, but recommends the following transportation demand management and site access strategies for the project:
  - *Proponent should ensure that the proposed overall site design has adequate accommodations for pedestrian access and circulation. This should include, but not be limited to:*
    1. *Adequate walk-way width, especially for wheelchair access.*
    2. *Removal of barriers that may impede the path of travel.*
  - *Transit maps and schedules should be provided on the proponent's website to encourage the use of public transits.*
  - *Transit, maps and schedules be available at the establishment to encourage patrons to use non-automobile only access.*
  - *Provide employees with transit passes.*
  - *Bicycling and Walking: Provision for bicycles facilities, such as bicycle racks should be provided.*
  - *The proponent working with the Town of Tisbury should assist in the study of bicycle network connectivity in the area.*
  - *Develop a "Wayfinding" system to aid pedestrians and cyclists to better navigate the area.*
  - *Car/Rideshaing: Encourage employees of the restaurant to carshare/rideshare to and from work by connecting them with websites that promote carpooling.*
  - *Encourage patrons to access the restaurant via ridesharing to reduce parking impact.*

- *Provide promotional discounts for the use of alternative transportation such as ones mentioned above to restaurant patrons who use ride-share, transit tickets, bike, or walk.*
- The conditions for DRI 674-M require commercial unit owners to offer free VTA bus passes to any of their employees who request one.

With respect to Impact on Abutters, considered a primary factor in this decision, the Commission finds the project would have both beneficial and detrimental impacts. The Commission also notes the following:

- The seating area and bar as proposed would include dimmable LED string lights, but the amount and location are not specified. As conditioned, all lighting must be downward-shielded.
- The restaurant and bar would potentially create noise between the hours of 11:30 AM and 10:30 PM seven days a week in the summer, and potential impacts on the neighboring residential condo units, including in Buildings E and F, and residential properties to the north. The Applicant has stated that future condo owners have been notified of the proposal.
- The project may benefit commercial abutters by increasing foot traffic in the area.
- There are letters from the immediate abutters in the record expressing concerns about the project.

With respect to Economic Development, considered a primary factor in this decision, the Commission finds the project would have a beneficial impact by adding a new (possibly year-round) business to downtown Vineyard Haven, creating a small number of jobs, and bringing additional economic activity to the Town. This was considered the primary benefit of the project. The Commission also notes the following:

- The project would increase dining/drinking options at the primary gateway to the Island.
- The restaurant would be open seasonally for lunch and dinner from May to October, 11:30 AM to 10:30 PM and possibly for take-out in the off-season. Maximum hours for take-out would be 11:30 AM to 1:30 PM and 5 PM to 9 PM, seven days a week.
- The Applicant has stated that the restaurant will use local ingredients whenever possible, including seafood, dairy, fowl and produce.

With respect to Health and Safety, the Commission makes no finding, but notes the following:

- Kitchen staff would need to go outside and walk around the building to access the bathrooms.
- There would be one 11-hour shift per day, with a two-hour break in the afternoon. It is unclear what sort of shelter or break area would be provided for employees, including food runners and bussers.
- It is not clear what type of fire suppression system will be installed.
- It is not clear how frying and cooking oils will be stored and recycled.

With respect to Character and Identity, the Commission makes no finding, but notes the following:

- The proposal is located within the B1 District, in the vicinity of other commercial and restaurant uses.
- The project site is highly visible, given its proximity to the Town parking lot, VTA hub, and Steamship Authority terminal to the south.

- Examples of the proposed retractable awnings and outdoor lighting were provided and were entered into the record for this application.
- The proposed bar area would be located beneath the former drive-through portion of the building. The proposal would not affect the exterior of the existing drive-through building as previously approved, other than the addition of the awnings, but would possibly add a take-out window to Building E. Details about the take-out window have not been provided.
- The modification includes an (already built) second-floor deck across the eastern side of Building E, compared to the approved plans from 2021, which show a smaller deck.

**A4. The Commission finds the project would have a neutral impact on with the supply of needed low- and moderate-income housing for Island residents (Section 15(d) of the Act).**

With respect to Island Housing Needs, the Commission notes that the additional workers generated by the project could increase pressure on the available housing stock. The project as conditioned requires the Applicant and/or the restaurant owner to secure housing for any employee of the restaurant, except those who demonstrate that they have housing, and that the rent for such housing may not exceed 30 percent of the employee's gross income. The restaurant owner has estimated that the restaurant will create up to nine jobs (1 full-time manager, 3 full-time cooks, 3 part-time bussers, and 2 part-time bartenders).

**A5. The Commission finds that the proposed development would have a neutral impact on the provision of municipal services and the burden on taxpayers in the making provision therefore(Section 15(e) of the Act).**

The Commission finds the project will likely have a minimal impact on municipal services and taxpayers, since it is located in a developed area.

**A6. The Commission finds that the proposed development would use efficiently and would not unduly burden existing public facilities or those to be developed within the succeeding five years (Section 15 (f) of the Act).**

The Commission finds the project will likely have a minimal impact on public facilities.

**A7. The Commission finds that the project as proposed generally does not interfere with the ability of the municipality to achieve objectives set forth in the municipal general plan, and would not contravene land development objectives and policies developed by regional or state agencies (Sections 14(b), 15(g), and 15(h) of the Act), respectively.**

The project generally aligns with the Island Plan, including sections 2 (Development and Growth), 4 (Built Environment) and 6 (Livelihood and Commerce).

**A8. The Commission finds that the proposed development as conditioned is consistent with municipal ordinances and by-laws (Section 14(c) of the Act).**

The proposal is allowable by Special Permit.



- 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.**
- 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 project is consistent with local zoning and is allowable by Special Permit.

- D. THE COMMISSION FINDS THAT THE SITE IS IN CONFORMANCE WITH THE REGULATIONS OF DISTRICTS OF CRITICAL PLANNING CONCERN, AS EVALUATED IN LIGHT OF THE CONSIDERATIONS SET FORTH IN SECTION 14(d) OF THE ACT.**

The project site is not within any District of Critical Planning Concern.

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 detriments in light of the considerations set forth in section 15 of the Act.

#### **4. DECISION**

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The Martha's Vineyard Commission deliberated about the application at a duly noticed meeting of the Commission held on February 9, 2023 and made its decision at the same meeting.

The following Commissioners, all of whom participated in the hearings and deliberations, participated in the decision on February 9, 2023:

Voting to approve the project: Trip Barnes, Jay Grossman, Fred Hancock, Joan Malkin, Ben Robinson  
Brian Smith, Ernie Thomas

Voting against: Jeff Agnoli, Kate Putnam, Peter Wharton

Recused: Doug Sederholm

Absent: Kathy Newman

Ineligible to Participate: Christina Brown, Michael Kim, Greg Martino, Linda Sibley, Carole Vandal

Based on this vote, the Commission approved the application for the project as a Development of Regional Impact with conditions.

This Written Decision is consistent with the vote of the Commission on February 9, 2023 and was approved by a vote of the Commission on March 9, 2023.

#### **5. CONDITIONS**

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After reviewing the proposal for this Development of Regional Impact, the Commission imposes the following conditions in order to minimize the potential detriments and maximize the potential benefits:

1. Daily bar service must end with the close of food sales.
2. All disposable serving, eating, drinking, and take-away supplies must be non-plastic. Supplies for dining in the restaurant must be reusable except for the paper tray liners and napkins.
3. Within six months after one full year of operations, a pest control program shall be submitted to the LUPC for review and approval. The plan shall be developed in consultation with the immediate residential abutters, and address, at minimum, procedures for the containment of trash and the frequency of pickups. The plan may not include the use of pesticides or other toxins.
4. A final drawing set for the proposed awning, deck, fish tank, take-out window and other features of the building and seating area, included any proposed colors, prepared in accordance with the DRI application guidelines, shall be submitted to the LUPC for review and approval prior to the receipt of a Building Permit.
5. Any plan for outdoor heating shall be submitted to the LUPC for review and approval prior to the receipt of a Building Permit.
6. Any outdoor heaters shall not use fossil fuels.
7. The Applicant shall implement all of the transportation demand management and site access strategies as recommended in the Traffic Impact Study and Access Plan by Frasier Poly-Engineering Services.
8. The Applicant and/or restaurant owner shall secure housing for any employee of the restaurant, except for employees who demonstrate that they have housing. The housing may be either seasonal or year-round depending on the term of employment. For year-round employees, the annual rent shall not exceed 30 percent of the employee's gross annual income. For seasonal employees, the monthly rent shall not exceed 30 percent of the employee's gross monthly income. Annual verification as required by staff shall be submitted no later than June 30 of each year. The Applicant must provide staff with the name and contact information of the person responsible for this verification no later than May 31 of each year.
9. A final landscape plan for the property shall be submitted to the LUPC for review and approval prior to receipt of a Building Permit.
  - The plan shall include hedges or other vegetated screening to shield the residential properties to the north from noise and lighting generated by the restaurant.
  - Only slow-release, water-insoluble nitrogen-source fertilizers may be used in the maintenance of landscaping, and only for the establishment of plants.
  - Landscaping must use only native or low-maintenance, drought-tolerant species that are non-invasive to minimize the application of nitrogen and water.

- No pesticides or herbicides shall be used in the maintenance of landscaping.
  - The plan shall clarify pedestrian traffic flow on the paths through and adjacent to the restaurant so as to minimize conflict with the restaurant.
  - The plan shall indicate the amenities of the pocket park.
  - The plan shall include ongoing landscape maintenance, including garbage cleanup.
10. The final exterior lighting plan for the entire property shall be submitted to the LUPC for review and approval prior to receipt of a Certificate of Occupancy.
    - All exterior lighting shall be downward-shielded and comply with International Dark Sky Association standards.
    - The color temperature of exterior lighting shall not exceed 3,000 Kelvin.
    - The plan shall include all path lighting, and restaurant lighting which shall be confined to and contained within the restaurant area.
  11. The Applicant shall provide a surveyed, dimensional, stamped as-built site plan following the completion of construction, and prior to receipt of a Certificate of Occupancy.
  12. The condominium Master Deed, Declaration of Trust, and rules and regulations shall be updated as necessary to account for the modification, with the updated versions submitted to the LUPC for review and approval prior to receipt of a Certificate of Occupancy.
  13. If the proposed drainage system as shown in the Drainage Layout Plan dated Dec. 30, 2022, fails to function as shown in the plan, the Applicant shall submit to LUPC for review and approval a plan to repair the system.
  14. Any proposed modifications to DRI 674-M3, as approved herein, including any modification resulting in any change of use or change in intensity of use, shall be referred to the MVC for prior review and approval.
  15. Tisbury officials shall not issue a Certificate of Occupancy until they have received a Certificate of Compliance issued by the Executive Director or DRI Coordinator of the MVC.

AMENDED CONDITION FOR DRI 674-M

*In lieu of condition 1.1 as stated in the Decision for DRI 674-M, the project is conditioned so that all commercial units in the Stone Bank Condos project will be for retail or office use, with the exception of Building E, which shall be used as a restaurant kitchen and associated bathrooms. The commercial units in Building B will be for office use only. Any proposed change of use will return to the MVC for approval.*

*All other MVC conditions for the properties still apply.*

## 6. CONCLUSION

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### **6.1 Permitting from the Town**

The Applicants must, consistent with this Decision, apply to the appropriate Town of Tisbury Officers and Boards for any local development permits which may be required by law.

The permit-granting authorities of the Town of Tisbury may now grant the request for approval of the Applicant's proposal in accordance with this decision 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 Commission.

### **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.

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**6.4 Signature Block**

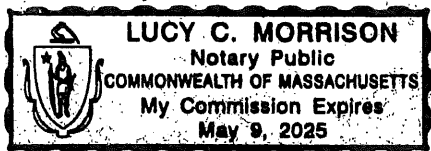
  
Joan Malkin, Chair

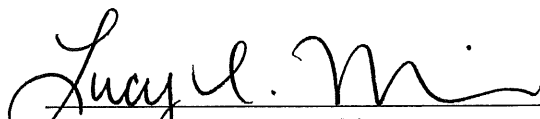
16 March 2023  
Date

**6.5 Notarization of Decision**

Commonwealth of Massachusetts  
County of Dukes County, Mass.

On this 16<sup>th</sup> day of March, 2023, before me, Lucy C. Morrison, the undersigned Notary Public, personally appeared Joan Malkin, proved to me through satisfactory evidence of identity, which was personal knowledge to be the person whose name was signed on the preceding or attached document in my presence, and acknowledged to me that she signed it voluntarily for its stated purpose as a free act and deed, and who swore or affirmed to me that the contents of the document are truthful and accurate to the best of her knowledge and belief.



  
Signature of Notary Public

Lucy C. Morrison  
Printed Name of Notary  
My Commission Expires May 9, 2025

**6.6 Filing of Decision**

Filed at the Dukes County Registry of Deeds, Edgartown, on: March 16, 2023

Deed: Book 1650; Page 367

Document Number: 1266