

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 639 – Tisbury Wharf Dredge

1. SUMMARY

Referring Board: Conservation Commission, Town of Tisbury, MA

Subject: Development of Regional Impact # 639

Project: To dredge approximately 5,600 cubic yards of material from Vineyard Haven Harbor.

Owner: The dredging will take place in state waters.

Applicant: Tisbury Wharf Co. Inc.; Ralph M. Packer

Applicant Address: 144 Beach Road, P.O. Box 1317, Tisbury, MA 02568.

Project Location: Off of 158 Beach Road, Tisbury Map 9-C Lots 13 - 14

Description: The proposal is to dredge approximately 5,600 cubic yards of material from an 81,000 sf area in Vineyard Haven Harbor. The dredging would take place off of three docks (north, south, & west) of the Tisbury Wharf. The main area of dredging would be taken down to a depth of 16'-17'. That area would be tied in to the current grade outside the dredging area with a 4 to 1 slope. The largely clay spoils would be deposited at a site next to the capped Tisbury landfill on town land between November and early January.

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 October 24, 2013.

Written Decision: This written decision was approved by a vote of the Commission on November 7, 2013.

The permit-granting authorities of the Town of Tisbury 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 by the Conservation Commission of the Town of Tisbury, MA 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 5.1A (Development in the Water) a mandatory referral requiring review as a Development of Regional Impact and the project was reviewed as such by the Martha's Vineyard Commission.

2.2 Hearings

Notice: Public notice of a public hearing on the Application was published in the Vineyard Times, October 10, 2013.

Hearings: 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 October 24, 2013 and closed on that date.

2.3 The Plan

The following plans and documents submitted by the Applicant and contained in the Commission's project file constitute "the Plan."

- P1 "Proposed Dredging Plan in Tisbury, MASS." Prepared for Tisbury Wharf, Co. consisting of one 24" X 36" sheet showing the area for proposed dredging of off the west, south, and north piers of the Tisbury Wharf, areas where soil samples were taken, and 4 sections of the cut. Prepared by Vineyard Land Surveying & Engineering, Inc., 12 Cournoyer Road, P.O. Box 421, West Tisbury, MA 02575. Dated May 9, 2012; Revised July 23, 2012; Revised July 24, 2012, Revised February 6, 2013. Scale 1" =40'.

2.4 Other Exhibits

- E1. Referral to the MVC from the Tisbury Conservation Commission; received July 2, 2013.
- E2. Staff Report, by Paul Foley, MVC DRI Coordinator, with the assistance of other staff members, July 16, 2013; revised October 10, 2013; revised October 24, 2013.
- E3. Letter from Tisbury Conservation Commission dated June 26, 2012.
- E4. Letter from Thomas W. French, Assistant Director of NHESP at the Massachusetts Division of Marine Fisheries, dated June 28, 2012 with determination that "this project meets the state-listed species performance standard for the issuance of an Order of Conditions".
- E5. Minutes of the Commission's Land Use Planning Committee meeting, July 16, 2013.

- E6. Minutes of the Commission's Land Use Planning Committee meeting, October 7, 2013.
- E7. Minutes of the Commission's Public Hearing, October 24, 2013.
- E8. Minutes of the Commission Meeting of October 24, 2013– Deliberations and Decision.
- E9. Minutes of the Commission Meeting of November 7, 2013– Approval of the Written Decision.

2.5 Summary of Testimony

The following is a summary of the principal testimony given during the public hearing.

- Presentation of the project by Ralph Packer; William Austin; Steven Fleming.
- Staff reports by Paul Foley.
- Oral testimony from Public on October 24, 2013: None

3. FINDINGS

3.1 Project Description

- To dredge approximately 5,600 cubic yards of material from an 81,000 sf area in Vineyard Haven Harbor. The dredging would take place off of three docks (north, south, & west) of the Tisbury Wharf.
- The main area of dredging would be taken down to a depth of 16'-17'. That area would be tied in to the current grade outside the dredging area with a 4 to 1 slope.
- The largely clay spoils would be deposited at a site next to the capped Tisbury landfill on town land between November and the following January.
- The dredging will be done mechanically from a barge using a crane or excavator. The material will be placed on the barge with timber containment walls. Most of the dewatering will take place on the barge. When full the material will be taken to Packer's marine terminal.
- If the material is dry enough it will be loaded directly into trucks. If it is still too wet it will be stockpiled at the wharf until it is transportable.
- The purpose is to restore the depth to 16 feet so that ships do not lay on the bottom at low tide. According to Mr. Packer this area was last dredged in the 1930's to a depth of 16'
- Currently several small cruise ships as well as large private vessels use the affected docks. The whaler Charles W. Morgan is scheduled to make a visit to Vineyard Haven in June 2014.
- The Applicant has had the proposed dredging area tested. One of six samples had a reportable concentration sample (RCS). Three additional samples were collected around that spot with none above RCS-1, suggesting the hit was localized. The soils in the vicinity of where samples were found with levels above RCS-1 will be transferred under a Massachusetts D.E.P. Bill of Lading to Aggregate Industries in Dennis or Stoughton or an equivalent acceptable facility.

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 this is an appropriate location for larger vessels to dock.

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 Wastewater and Groundwater, the Commission finds that the proponent has tested the spoils in place and has offered to provide an independent third party to monitor the spoils as they are removed to insure that any potentially contaminated materials are contained and disposed of properly.

With respect to Open Space, Natural Community and Habitat, the Commission finds that the NHESP has reviewed the plans and that there will be time of year restrictions on the work to protect wildlife.

With respect to Night Lighting and Noise, the Commission finds that the project will have a minimal impact.

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 proposal will have a minimal impact.

With respect to Scenic Values, Character, and Identity, the Commission finds that the proposed will allow the return to Vineyard Haven harbor of the last surviving 19th century wooden whaling ship, the Charles W. Morgan. The return of this ship and other tall ships would be a welcome homecoming and enhance the historic character and identity of Vineyard Haven and Martha's Vineyard.

With respect to the Impact on Abutters, the Commission finds that the impact on abutters should be minimal.

A4 The Commission finds that the proposed development would have a positive impact upon the supply of needed low and moderate income housing for Island residents (Section 15(d) of the Act).

The Commission finds that the proposal has no impact on affordable housing.

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).

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 notes that the proposal will increase the capacity of Vineyard Haven Harbor.

A7 The Commission finds that the proposed development does not interfere with the ability of the municipality to achieve the objectives set forth in the municipal general plan. (Section 15(g) of the Act).

A8 The Commission finds that the proposed development would not contravene land development objectives and policies developed by regional or state agencies. (Section 15(h) of the Act).

In sum, after careful review of the plan and its attendant submittals and the testimony presented by the Applicant and others, and the addition of conditions such as those relating to wastewater and future traffic mitigation, the Commission has concluded that the probable benefits of this proposed development in this location exceed its probable detriment in light of the considerations set forth in section 14(a) of the Act.

B. THE COMMISSION FINDS THAT THE PROPOSED DEVELOPMENT WOULD BE CONSISTENT WITH THE LAND DEVELOPMENT OBJECTIVES OF THE COMMISSION, AS EVALUATED IN LIGHT OF THE CONSIDERATIONS SET FORTH IN SECTION 14(b) OF THE ACT.

The requested project, as a whole, advances the Commission's land development objectives, as outlined in the Martha's Vineyard Commission Regional Policy Plan adopted by the Commission in June 1991, and as noted previously in section A8 of this decision.

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.

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.

4. DECISION

The Martha's Vineyard Commission deliberated about the application at a duly noticed meeting of the Commission held on October 24, 2013 and made its decision at the same meeting.

The following Commissioners, all of who participated in all hearings and deliberations on this project, participated in the decision on October 24, 2013.

- Voting in favor: Tripp Barnes; John Breckenridge; Christina Brown; Madeline Fisher; Josh Goldstein; Erik Hammarlund; Fred Hancock; Lenny Jason; Jim Joyce; Joan Malkin; Doug Sederholm; and Brian Smith.
- 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 October 24, 2013 and was approved by vote of the Commission on November 7, 2013.

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 Applicant, or its successors in title at the time of such proceedings, shall pay the Commission's and/or Town's attorney's fees and costs incurred in obtaining judicial relief.

1 Dredging

- 1.1 As offered by the Applicant, dredging shall not take place between January 15 and May 31 to protect winter flounder spawning and juvenile development.

- 1.2 As offered by the Applicant, soils in the vicinity of where samples were found with levels above RCS-1 (Reportable Concentration Sample) will be transferred under a Massachusetts D.E.P. Bill of Lading to Aggregate Industries in Dennis or Stoughton or an equivalent acceptable facility.
- 1.3 As offered by the Applicant, the Applicant shall provide an independent professional third party to monitor all spoils as they are removed from the water to insure that any potentially contaminated materials, such as those found in the sample that were over RCS-1, are contained and disposed of properly.

6. CONCLUSION

6.1 Permitting from the Town

The Applicant 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 the conditions contained herein and may place further conditions thereon in accordance with applicable law, or may deny the request for approval. Any permit issued by the Town shall incorporate the plan approved by the MVC and the above conditions.

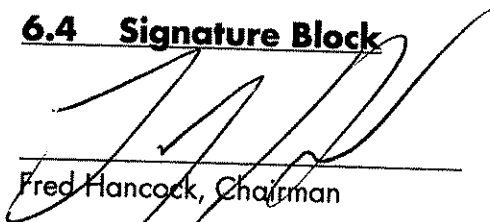
6.2 Notice of Appellate Rights

Any party aggrieved by a determination of the Commission may appeal to Superior Court within twenty (20) days after the Commission has sent the development Applicant written notice, by certified mail, of its Decision and has filed a copy of its Decision with the 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 the project. Should the proposed dredging 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.

6.4 Signature Block


Fred Hancock, Chairman

11-12-13
Date

6.5 Notarization of Decision

Commonwealth of Massachusetts
County of Dukes County, Mass.

On this 12th day of November, 2013, before me,
Jo Ann Taylor, the undersigned Notary Public, personally
appeared Fred Hancock, proved to me through satisfactory evidence of identity,
which was/were drivers' license to be the person(s) whose name(s)
was/were signed on the preceding or attached document in my presence, and who swore or affirmed to
me that the contents of the document are truthful and accurate to the best of his/her/their knowledge and
belief.

Jo Ann Taylor
Signature of Notary Public

Jo Ann Taylor
Printed Name of Notary

My Commission Expires February 9, 2018

6.6 Filing of Decision

Filed at the Dukes County Registry of Deeds, Edgartown, on: Nov 13, 2013

Deed - Book _____, page _____

DECIS - 1334 - 703