Executive Summary

The Commission approved the Lagoon Ridge Preliminary Plan on 10/28/14. The Definitive Plan was then developed and referred to the MVC by the OB Planning Board on 12/10/15, little changed from the Preliminary Plan. The MVC Staff/Applicant conference to discuss the Plan and DRI List of Conditions took place in February. The Applicant’s Definitive Plan Checklist (attached) provides details on how Lagoon Ridge met the Conditions. It was closely reviewed by staff and LUPC and compared with the final draft of the Community Covenants, Deed Restrictions and Architectural Review requirements. Contracts, calculations, and specifications covering the enhanced nitrogen system were also submitted for review, and on March 17th the LUPC scheduled Lagoon Ridge for the April 14th MVC Public Hearing.

You may recall that the application for the Lagoon Ridge subdivision was filed under Oak Bluffs’ Flexible Zoning regulations. The town granted two bonus dwellings for extra open space preservation and two bonus dwellings for providing elder housing on the Danielson’s 32.5 acres off Barnes Road, allowing construction in total of twenty-five dwellings, including two duplexes. To meet MVC’s nitrogen standards and protect the Lagoon, all homes will have enhanced wastewater treatment, and 21-homes will be connected to an Amphidrome Wastewater Treatment system being used in sensitive watersheds on Cape Cod. Protection of the Lagoon was the major topic raised in public comments, and many steps, including a technologically advanced solution to wastewater, were adopted as the solution.

The Conditions set by the MVC for wastewater at Lagoon Ridge appear to have been met. Engineered plans are completed for the Amphidrome system, soil tests done, an Operations and Maintenance Manual submitted for review, and a contract allowing DEP and the Board of Health to step in to make corrections if the system does not operate as stipulated has been drafted and is ready to sign. The Health Agent for the Town of Oak Bluffs consulted with an “outside engineer”, reviewed the nitrogen calculations and approved the application to install the proposed system. Two quality-assurance companies on the Cape have submitted bids for effluent testing to be done monthly and less frequently only after tests consecutively meet requirements, either quarterly or as required by DEP. The test results will be routinely submitted to the MVC and the Oak Bluffs Health Agent, and periodically to DEP, to assure that the system works as intended.

Detailed plans for infrastructure include a new looped 8” water main connecting Sage’s Way to Barnes Road that the Oak Bluffs Water Commission believes will improve water flows in the entire area including Pondview, and a ROW and gate valves to allow future extension of a loop to Meadowview Farms for a similar purpose. Legal documents conveying the rights and easements have been prepared at the applicant’s expense and are ready to sign. As requested by the Fire Chief, the open trench across the woodlands will become a gated “fire-trail” providing yet another walking trail at Lagoon Ridge for public use.

One concern raised by the MVC during the Form B discussion was phasing, how to be assured that Cluster C with its affordable and elder housing would be completed, rather than just selling off larger lots for luxury homes. As it has developed, the entire subdivision must be done at one time. Electrical connections cannot be made from Pondview Road to Sage’s Way for technical
reasons and both the waterlines and electric lines will originate on Barnes Road, extending up Double Ox Road. This effectively cancels the planned sale of four lots on Sage’s Way in phase one. Then the MVC requested that the four homes on Double Ox Road be connected to the nitrogen-reducing wastewater system, meaning the Amphidrome system must be installed before those four homes can be occupied, effectively cancelling phase two. Bank loans will be sought to complete all of the infrastructure—roads, pipe, wire and septic—in a single “phase” as soon as the MVC and OBPB allows Lagoon Ridge to move ahead.

The Lagoon Ridge manager is committed to selling lots, not building houses. Accordingly, each lot sold will be restricted to a specific purpose and designated for a home with a specific number of bedrooms. Homes built in the Lagoon Pond DCPC, for example, will be restricted to three bedrooms. Six lots in the central cluster will be sold solely for construction of age-adapted elder housing. Similarly, to satisfy the OBPB and the MVC affordable housing requirement Lagoon Ridge has offered two lots to the Oak Bluffs Housing Trust restricted for building three affordable dwelling units, a donation that follows established patterns. Indeed, interpretation of the Flexible Zoning regulations is the legal duty of the Oak Bluffs Planning Board that has assured the MVC in writing that they will require from Lagoon Ridge a contribution to affordable housing that meets or exceeds all legal requirements. In addition, the applicant points out that by invoking cluster zoning with smaller, more affordable lots, Lagoon Ridge has already taken a major step towards creating housing priced within the reach of working Island families.

Applicant has requested that several items now linked to the Form C submission be shifted to the Phasing Plan. Please see the attached Definitive Plan Checklist for those requests.
Introduction:

The Lagoon Ridge (Form B) Preliminary Plan was approved by the MVC over a year ago with a list of Conditions. Work on the project has continued and the (Form C) Definitive Plan nearly identical to the Form B was filed last October with the Town Clerk and Oak Bluffs Planning Board. It was referred to the MVC on December 10, 2015 for final review. This checklist responds to the MVC’s 10/28/14 Decision, describing what has been done or will be done –and when-- to meet the MVC’s Conditions, which are reprinted in italics.

Condition 1 Subdivision: Following approval by the Oak Bluffs Planning Board of the Form B subdivision plan, the Applicant shall submit a Form C subdivision plan to the Planning Board for transmittal to the Commission for review and approval, which plan, among other items, will include: development envelopes shown on the plan; setbacks; final delineation of cut zones and limits of work areas; the location of septic systems; lawn areas; access and other fire safety issues; a landscaping plan; sign-off of final Plan from the Natural Heritage and Endangered Species Program (NHESP); and a copy of the Declaration of Restriction as required by NHESP.

X The Form C subdivision plan was completed, presented for review to the Oak Bluffs Planning Board, and referred back to the MVC and includes:
- Development envelopes defined in Square Feet and shown on the plan
- Setbacks provided on the plan and in covenants on page 5, l.1 and l.6.
- The location of the septic system shown on the Plan, with engineering details
- Access and other fire safety issues as described below
- Landscaping plans as defined/restricted in covenants at page 2, II k. and page 7, o.1.
- Delineation of no cut zones/limits of work is described on page 5 of the covenants, see entry 1. (1) through (6).
- Lawn areas are restricted to 10% of building envelopes by covenants on page 5 see 1.(2) and further enforced by Architectural Review.
- Complying with the Natural Heritage and Endangered Species Program (NHESP) requirements will be completed when an NHESP document is filed with the definitive plan at the Registry of Deeds. Within a year, as allowed, Lagoon Ridge will obtain a Declaration of Restriction from the Oak Bluffs Conservation Commission or a conservation group. If there are no takers, under the Covenants the Landowners Association becomes responsible for conserving and preserving the trails and woodlands.

Condition 2 Phasing and Construction:
1. As offered by the Applicant, construction noise will be limited to 7 AM to 7 PM.
2. As offered by the Applicant, roadways will be modified as needed to save “mother trees.”
2.3 For the Form C definitive plan submission to the MVC the Applicant shall submit a phasing plan prior to the issuance of any building permit. The Phased Development Plan shall include when lots and units will be developed. The Phased Development Plan shall demonstrate that mechanisms are in place to meet both MVC Policies and town Zoning Requirements concerning nitrogen loading limits, affordable housing and open space and all other conditions and offers related to this project.

Condition 2.1 Construction noise will be limited to 7 AM to 7 PM. X See Covenants, page 8 (3).

Condition 2.2 Trees will be saved. The roadways shown on the Plan have been surveyed, center-staked, and the margins of the 40-foot right-of-way (ROW) marked to establish the “symbolic fencing” for limits of work. The roadways were walked with an arborist, and large and attractive trees have been flagged for preservation. The centerline within the ROW will be moved to save trees and the area cleared for roads will be 30-feet wide or less.

Condition 2.3: Phasing Plan.
X A Phasing Plan will be completed and submitted to the MVC before the issuance of any building permit, as required. Major elements of the Phasing Plan like nitrogen-reduction wastewater treatment, affordable housing and open space are well defined.
X The Lagoon Ridge proposal to reduce nitrogen and meet the MVC-determined load limits for Lagoon Pond has been reviewed by the Health Agent, as authorized by Oak Bluffs Board of Health with technical support from Raul Lizardi-Rivera, of the consulting engineering firm of Holmes and McGrath of Falmouth, MA.
X The Open Space requirement preserving 60% open space, rather than the 40% required by Flexible Zoning, has been met and the calculations are shown on the Plan.
X To help solve the acute problem of affordable housing on the Island and meet MVC and OB requirements, Lagoon Ridge has offered to contribute two lots free-of-charge to the Oak Bluffs Affordable Housing Trust for future construction of three 2-bedroom dwelling units. Discussions are ongoing, and the power to interpret the Oak Bluffs Zoning Regulations appears to rest with the OBPB. The exact terms of the final settlement must still be established and will be included in the Phasing Plan for final MVC acceptance and review.

Condition 3 Covenants: For the Form C definitive plan submission to the MVC the Applicant shall provide the covenants for the homeowners association including design and landscaping guidelines and restrictions.
X The Community Covenants have been completed and submitted to the MVC for review.
X Design and landscaping guidelines and restrictions are stated in the covenants both for the Lagoon Ridge homeowners association and the Vineyard Hills Homeowners Association. See page 5, 1. Use of Residential Lots.

Condition 4 Landscaping:
4.1 For the Form C definitive plan submission to the MVC the Applicant shall provide landscaping guidelines for the development envelopes encouraging native plants and minimizing lawn areas to be submitted for the review and subject to the approval of LUPC before construction begins.
4.2 All fertilizers shall be slow-release, water-insoluble nitrogen source types. No synthetic pesticides including herbicides, fungicides and/or insecticides shall be used in the maintenance of landscaping.
4.3 Covenants shall include restrictions that all plantings in all lots shall be non-invasive species (as detailed in the MVC/Polly Hill list and the Massachusetts banned species list) and use best management practices.

Condition 4.1:
X Landscaping guidelines for the development envelopes to encourage native plants and minimize lawn areas are included in the covenants on page 5, see 1. 2 and 1. 6.

Condition 4.2:
X Fertilizer and pesticide restrictions are also covered in the covenants on page 7 see 0. 1.

Condition 4.3
X Non-invasive plants are also required by the covenants and invasive plants are defined, as required, on Page 2, entry h.

Condition 5 Exterior Lighting:
5.1 As offered by the applicant, “Dark skies” concepts will be written into the covenants for Lagoon Ridge.
5.2 As offered by the Applicant, all path and roadway lighting will be directed towards the ground.
5.3 A final lighting plan shall be submitted to and is subject to the approval of LUPC before construction begins. It should be based on the following principles: exterior lighting on buildings shall be limited to that required by code; exterior lighting shall be downward shielded to prevent light spilling off the property and shall be either motion sensitive or on timers to ensure that they are turned off when not necessary.
5.4 There shall be no street lights.

X Exterior lighting is covered in the covenants at on pages 6 and 7 see entry (11, a through f). The LUPC is asked to accept these detailed provisions for maintaining “dark skies” in the covenants as meeting these conditions without submission of further details in a “final lighting plan” as noted in Condition 5.3.

Condition 6 Affordable Housing:
6.1 As offered by the Applicant, land for 2 or 3 affordable dwelling units in Cluster C shall be offered to HabitatMV.
6.2 For the Form C definitive plan submission to the MVC the Applicant shall submit a detailed offer with respect to affordable housing that meets the requirements of the Oak Bluffs Flexible Development By-Law (7.3) and the MVC Affordable Housing Policy.
6.3 For the Form C definitive plan submission to the MVC the Applicant shall provide a plan to protect the affordability of affordable units with respect to association fees.

Condition 6.1
X The applicant, as required, formally offered two lots of land for 3 dwelling units to HabitatMV, but the offer was effectively declined.

Condition 6.2
X A plan for meeting the requirements of the Oak Bluffs Flexible Development By-Law (7.3) and the MVC Affordable Housing Policy is attached. Discussion with affordable housing proponents and groups will continue during the DRI Review. The exact terms of the final settlement will be included in the Phasing Plan as provided in Condition 2.3
Condition 6.3:
X Protecting the “affordability of affordable units with respect to association fees” is provided in the Covenants on page 3 see III. e. In addition, one regular monthly expense for all homeowners will be fees for operation of the nitrogen-reduction sewage treatment system, which will be assessed based on the number of bedrooms in each house, thus reducing the monthly fees for the smaller, affordable houses. Other suggestions are welcomed and will be considered.

Condition 7 Wastewater:
7.1 As offered by the Applicant, the 21 dwelling units in Clusters B (4) and C (17) shall be connected to the onsite wastewater treatment facility with enhanced nitrogen removal.
7.2 As offered by the Applicant, the four dwelling units in Cluster B within the Lagoon Pond DCPC will be allowed only one bedroom per 15,000 square feet and shall have wastewater nitrogen reduction.
7.3 As offered by the Applicant, the four dwelling units in Cluster A shall have wastewater nitrogen reduction.
7.4 The Applicant shall meet all of the Commonwealth’s and Town’s wastewater regulations and the Martha’s Vineyard Commission nitrogen loading limit set for this proposal (110.4 kg N/acre/year for the 32.47 acres).
7.5 For the Form C definitive plan submission to the MVC the Applicant shall have the wastewater treatment facility plan reviewed and approved by an outside engineer approved by the Oak Bluffs Board of Health and said approved plan filed with the MVC.
7.6 For the Form C definitive plan submission to the MVC the Applicant shall provide an operation and maintenance manual for the wastewater treatment and de-nitrification systems based on the design, installation, use, and maintenance recommended by the manufacturer. This manual shall be submitted to and is subject to the approval of the MVC’s Land Use and Planning Committee prior to installation. A copy of the manual shall also be provided to Oak Bluffs Board of Health (BOH). Effluent testing shall be done monthly for the first two years of service and if tests consecutively meet requirements then testing will be done quarterly or as required by DEP. Test results will be submitted to the MVC and Oak Bluffs BOH.
7.7 If testing fails to meet requirements, and efforts to correct those failings are not successful, the Applicant shall provide mitigation (i.e. install and pay for I/A systems of other parcels in the watershed) to offset the difference in the Nitrogen load.
7.8 For the Form C definitive plan submission to the MVC the Applicant shall submit a plan to cover the costs of maintaining the wastewater treatment system in perpetuity. Included in this plan will be methods to regulate the cost of services to the affordable houses.

Wastewater is a crucial concern with eight paragraphs of requirements in the MVC’s DRI Decision. The Oak Bluffs Board of Health and Health Agent have reviewed and approved a system that has consistently meets the nitrogen-output standards required to protect Lagoon Pond, and the applicant has requested that the MVC accept the results of that review. The wastewater treatment plans were also reviewed by an “outside engineer” approved by the Oak Bluffs Board of Health. Applicant will provide the LUPC with the O&M manual, testing method and schedule, and plans to cover maintenance costs as required by the MVC’s Decision. The specifics:

Condition 7.1 requires 21-dwellings to be connected to the nitrogen-reducing system. That has been done and is shown on the Definitive Plan.

Condition 7.2 restates the 15,000 SF/bedroom rule in the DCPC to be enforced by deed restrictions and the Town.
Condition 7.3 requires enhanced individual septic systems for homes on Sage’s Way. As provided in the Covenants, the systems chosen by the lot buyers must have a nitrogen output of 19 mg/ml or less.

Condition 7.4 will be met if the nitrogen-reducing system serving 21-homes reliably meets or exceeds the 14 mg/ml metric. Data collected from many comparable Amphidrome systems on Cape Cod predict that it will.

Condition 7.5 requires that an “outside engineer” approved by the Town of Oak Bluffs review the wastewater plan. A consulting sanitary engineer worked with the Health Agent to review the proposed Amphidrome system.

Condition 7.6 A sample O&M Amphidrome manual was submitted for review. As required, prior to installation the O&M manual for this particular system will be submitted to the LUPC for approval and placed on file with the Oak Bluffs Board of Health. In addition, all homeowners in Lagoon Ridge (see page 7 of the Covenants at III. 1. 15) will receive a copy of pertinent operating instructions and must accept them in writing.

Condition 7.7 states that if the system fails the applicant must provide mitigation. With monthly testing from the beginning any problems will be quickly noted and corrected. The MVC stipulated that effluent testing must be done monthly for two years and less frequently only after tests consecutively meet requirements, either quarterly or as required by DEP. Test results will be regularly and routinely submitted to the MVC and the Oak Bluffs Health Agent to assure that the system works as intended.

Condition 7.8: A plan to cover costs of wastewater treatment “in perpetuity” is required with the Form C. However, the completion date for all other elements under Wastewater is prior to installation, not earlier in the review process. The applicant has requested a later deadline for this Condition since direct and indirect costs must be known to complete a detailed, concrete response. Linking the sewer fees the homeowners pay to the Association to the number of bedrooms in each home is one way to “regulate costs” for the affordable houses. The requirement for “perpetuity” will be vested in the Homeowners Association, but may initially require supplementary funding from Lagoon Ridge management. Whether or not the operation of the Lagoon Ridge system ever become the responsibility of the Town as is done off-Island is completely speculative at this point.

Condition 8 Habitat:
8.1 As offered by the Applicant, over sixty percent (60%) of the acreage will be preserved as undisturbed native habitat.
8.2 As conditioned by the Division of Fisheries and Wildlife (DFW) Natural Heritage and Endangered Species Program (NHESP) based on a site plan prepared by Kristen Reiman dated March 26, 2014 (attached) for a development of a twenty-three (23) unit residential subdivision (sic) totaling 11.49 acres of permanent disturbance on a 32.1-acre property with 9.1 acres of the property to be permanently protected through a Declaration of Restriction and an additional 11.51-acres to remain as undisturbed open space, conditioned as follows:

8.2.1 Prior to start of Work, the Applicant shall record this (NHESP letter dated June 3, 2014) letter and the Site Plan in the Dukes County Registry of Deeds so as to become a record part of the chain of title for the Property. Prior to the start of Work, the applicant shall provide the Division with proof of said recordation.
8.2.2 Prior to the start of Work on each respective lot, symbolic fencing shall be erected around the limit of Work, as shown on the Site Plan, and maintained throughout the construction period. No work shall occur outside of the limit of work as shown on the Site Plan.

8.2.3 Within twelve (12) months of the start of Work, the Applicant shall provide proof to the Division (DFW and NHESP) of appropriate recordation of the above-referenced Declaration of Restriction in the Dukes County registry of Deeds so as to become a record part of the chain of title of the property.

8.3 Any substantial changes to this plan shall be submitted to the Natural Heritage and Endangered Species Program (NHESP) for further review.

X All requirements under Habitat have been, or will be, completed and a letter was sent to the NHESP to be sure no further steps were required by the Form C. An assuring email was sent to the DRI Coordinator from the NHESP. The limits of work and symbolic fencing restrictions will be followed. As mentioned previously, the Declaration of Restriction on 9.1 acres has been under discussion with the Oak Bluffs Conservation Commission. A one-year period is allowed to complete this step, and the applicant will go back to the Land Bank, Sheriff’s Meadow, VOLF or other conservation group to find a sponsor if needed.

Condition 9 Energy and sustainability:
For the Form C definitive plan submission to the MVC the Applicant shall indicate what measures are planned to address energy and sustainability.

X A high-efficiency standard for homes built at Lagoon Ridge has been set. The required HERS rating of 50 was discussed with the Building Inspector and will require tighter than usual construction. In addition, solar orientation and appropriate fenestration is required, to be enforced by the Architectural Review Committee and the Building Inspector. The covenants for the Lagoon Ridge Homeowners Association and the Vineyard Hills Homeowners Association, as modified, both reference the stretch code. In addition, under Flexible Zoning it is possible to adjust lot lines, if needed, to allow year-round, passive-solar homes to face South, towards the equator.

Condition 10 Archaeological Oversight:
For the Form C definitive plan submission to the MVC the Applicant shall indicate what measures shall be taken to ensure adequate oversight of excavation with respect to archaeological resources.

X The Covenants on page 8 see O. (2), are specific about stopping work and contacting the authorities if any items of archaeological interest such as human remains or ancient structures are unearthed.

X Local excavators who have submitted bids for road construction are sensitive to these requirements and will sign agreements regarding hours of work, repair of road damage, and protection of archaeological resources before the work begins.

Condition 11 Universal Design:
For the Form C definitive plan submission to the MVC the Applicant shall provide details of the six (6) units meeting "universal design" standards.

X The covenants for the Lagoon Ridge Homeowners Association on page 2, II. and on page 7 entry III. 1 m. include universal design definitions, design guidelines and restrictions for meeting universal design standards. The Town of Oak Bluffs has also been asked for guidance on the elder housing requirements including policy on continued occupancy of “over-55” housing by elders over time. A set of proposed regulations based on policies in other Towns in Massachusetts was written by the applicant and submitted to the OBPB as a suggested solution. The Covenants incorporate the anticipated guidance from the OBPB by reference; it will be adopted when it
Condition 12 Trails:
12.1 *As offered by the Applicant, the trails that cross Lagoon Ridge and connect to the Southern Woodlands DCPC will be labeled and maintained.*
12.2 *For the Form C definitive plan submission to the MVC the Applicant shall assure perpetual public access and adequate buffers to Bar Trail Road (aka Old Back Road Trail) and Jib Stay Trail as public walking paths.*
12.3 *For the Form C definitive plan submission to the MVC the Applicant shall address the request of the Martha’s Vineyard Land Bank with respect to the potential for additional lateral trails connecting to Barnes Road (MVLB Letter of July 15, 2014).*

Condition 12.1:
X *Signs identifying Bar Trail Road and the Jib Stay Trail will go up prior to the beginning of construction work on the subdivision. Applicant periodically walks the trails and maintains them. Unless the ConCom responds positively to our requests or the Land Bank or some other conservation group steps up, the Covenants make trail management the responsibility of the Homeowners Association on page 9 at IV. (h).*

Condition 12.2:
X *As offered by the Applicant, access for public parking at the end of Double Ox Road is provided on the Plan. In addition, wide buffers to Bar Trail Road (aka Old Back Road Trail) and the Jib Stay Trail as public walking paths are provided.*

Condition 12.3
X *An existing footpath to Barnes Road paralleling Double Ox Road will be conserved. Elsewhere the paths and game-trails that run towards the Lagoon and cross Lagoon Ridge from neighboring woods will be preserved when possible, although they continue onto properties over which the applicant has no control. The new Fire Trail over the water main will create another “lateral trail” as well.*

Condition 13: Original DRI 464 Conditions:
13.1 *As offered by the Applicant, Conditions from original DRI 464 that are still relevant will be followed:*
13.1.1 1a – *That should there be any proposal for the division or subdivision of Lot 3 (this subdivision) as shown on the Plan submitted (DRI 464) then that proposal shall be submitted to the Martha’s Vineyard Commission for review and action. (Note: That is being done with this review and the subsequent review of the Form C Definitive Plan by the MVC)*
13.1.2 1b – *That there shall be created a building envelope on Lot 1 and Lot 2 of the Plan (DRI 464) submitted and said envelope shall be no closer to the edge of the right of way of Barnes Road than one hundred (100) feet.*
13.1.3 1c – *That the Commission accepts the offer of the Applicant to provide to the Town of Oak Bluffs a walking/biking easement over the ancient way that presently traverses Lot 3 of the (original) Plan.*
13.1.4 2a – *That should there ever be a division or sub division of Lot 3 (Current Subdivision) of the Plan then Lot 1 and Lot 2 shall be included in the final total number of lots for the purposes of determining compliance with the Martha’s Vineyard Commission Affordable Housing Policy.*
13.1.5 3a – *The Applicant shall provide to the Town of Oak Bluffs, a twenty (20) foot wide easement for the purposes of developing a bike path along Barnes Road.*
Conditions 13.1 to 13.1.5:
X The conditions set by the original DRI 464 have been met.
X The easements granted the Town of Oak Bluffs for use of the Bar Rail Road are drawn on the Plan and include a fifty-foot, no cut buffer zone.

X The 20-foot easement for a bike trail near Barnes Road will be shown on the final Mylar version of the Definitive Plan and is referenced in the Covenants on page 9 under IV. g.

X Applicant agrees to sign documents granting the specified legal easements to the Town if and when requested to do so, and that requirement is made a continuing obligation of the Homeowners Association by inclusion in the Community Covenants on page 9 at IV. h.

This concludes the Conditions presented in the MVC Decision on DRI 464-M2.