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Decision of the Martha's Vineyard Commission

DRI 338-M2 – Squibnocket Farm Access Causeway

1. SUMMARY

Referring Board: Chilmark Conservation Commission

Subject: Development of Regional Impact # 338-M2
Squibnocket Farm Access Causeway

Project: Relocation of the access road to the Squibnocket Farm Subdivision from the current location (through the town beach parking lot) to a new elevated causeway.

Owner: Squibnocket Farm, Inc.; Town of Chilmark; Trustees of The Vineyard Open Land Foundation

Applicant: Squibnocket Farm, Inc. represented by Vanasse Hangen Brustlin, Inc.

Applicant Address: C/O Vanasse Hangen Brustlin, Inc., 101 Walnut Street, Watertown, MA 02472
Attention: Daniel Padien

Project Location: Squibnocket Road, Chilmark, MA Map 35 Lots 17.3, 17.4, 20 and 22 owned by the Town of Chilmark; Map 35 Lot 1.30 owned by the Vineyard Open Land Foundation; Map 35 Lots 21 & 23 owned by Squibnocket Farm, Inc.

Description: The proposal is the construction of a 300 foot long, 12 foot wide pile supported causeway (10 foot wide roadway) with a finished roadway surface at elevation 13 feet (NAVD 88) to access the existing Squibnocket Farm Subdivision. There will be 3 car turnouts. The causeway will be constructed of epoxy coated steel piles (12 inch diameter), a pre-cast concrete deck, and timber railing. Utilities will run through a conduit attached below or within the deck and under the access road. The entrance road to the causeway will consist of fill covered by paving.

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 April 28, 2016.

Written Decision: This written decision was approved by a vote of the Commission on May 19, 2016.

The permit-granting authorities of the Town of Chilmark 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 on January 20, 2016 by the Chilmark Conservation Commission 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, under sections 8.3 (Archaeology); 8.5A (New Access to the Coast in Coastal DCPC); and 8.5 B (New Hard Surface Road in the Coastal DCPC). 8.5 A & B are Mandatory DRI Reviews. The project also triggered Section 1.2 (Modification of a previous DRI).

2.2 Hearings

Notice: Public notice of a public hearing on the Application was published in the Martha's Vineyard Times, March 10, 2016.

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 March 24, 2016 and closed on that date. The written record was left open until 5:00 pm April 1, 2016.

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 "DRI Application for DRI 338 – Squibnocket Beach Causeway, Chilmark" submitted by Meg M. Rehrauer of Ropes & Gray LLP dated March 8, 2016 consisting of 333 pages including the DRI Application Form; Description of Proposed Development and Summary of Impacts; Exhibits to the Proposed Development and Summary of Impacts; Written Authorization from Non-Applicants; Deeds for all involved parcels; Proposed Scope of Traffic Study; Water Resource Impact Information; and Plans of Existing Situation and Proposed Development. Exhibits include: (A) Locus Map; (B) Aerial Map; (C) Plans of Existing Situation and Proposed Development; (D) Other Permit Applications and Approvals; (E) Leasehold Area for the Expanded Beach Lease; (F) Committee Recommendations; (G) Photos from the February 8, 2016 Storm and Resulting Damage; (H) Additional Plans of the Roadway Design; (I) Photos from March 2nd Site Visit; (J) Landscaping Plan; and (K) Superseding Order of Conditions.

P2 "Squibnocket Access Project Notice of Intent: December 2015" prepared for Squibnocket Farm, Inc. by Vanasse Hangen Brustlin, Inc. submitted to the Massachusetts Department of Environmental Protection under the Massachusetts Wetlands Protection Act M.G.L. c. 131 Section 40 and to the Chilmark Conservation Commission. The NOI consists of 73 pages including USGS Site Location Map; Aerial Map; NHESP Map; Wetland Resource Areas; FEMA Flood Insurance Tare Map; Photo Location Map; Site Photos; Photo Simulations; Shadow Study; Proposed Work in Wetland Resource Areas; Mitigation Measures; Regulatory Compliance; and Stormwater Information.

P3 Environmental Notification Form EEA # 15428: Squibnocket Beach Restoration and Access Project. ENF consisting of 7 pages of General Project Information including programmatic and physical elements; alternatives; mitigation measures; phasing; declarations on Areas of Critical

Environmental Concern; Rare Species; Historical/Archeology Resources; Water Resources; and USGS topographic map.

P4 "Squibnocket Farm Proposed Planting Plan" prepared by VHB and Haley & Aldrich consisting of one page of landscape plan with locations and plant list and two details dated March 8, 2016 and updated March 29, 2016.

P5 "Squibnocket Bridge: Proposed Bridge Decision Concept" prepared by Childs Engineering Corporation, 34 William Way, Bellingham, MA (Design File No. 262015 SK-02) for Haley & Aldrich dated March 30, 2016 consisting of one page of plan, elevation, and section of proposed causeway with revised railing plan (revised from page 95 of DRI Application cited above).

P6 "Final Board of Selectman Slide Show" for the towns relocated parking lot and skiff launch and the homeowner's causeway dated December 15, 2015.

2.4 Other Exhibits

E1. Referral to the MVC from the Chilmark Conservation Commission; January 20, 2016

E2. MVC Staff Report, February 26, 2016; revised February 29, 2016; revised March 24, 2016.

E3. Power Point slide presentation dated March 24, 2016 prepared by Paul Foley, MVC DRI Coordinator, showing the site, images of the proposed project, plans, elevations, aerials, and other images illustrating the site and the proposal.

E4. Letters from the following citizens: Charlie Parker and 20 abutters (February 3, 2016); Jack Taylor (March 2, 2016); Rosalie Hornblower (March 7, 2016); Jack Taylor (March 11, 2016); Wendy Weldon and Leanne Cowley, co-chairs of the Squibnocket Pond District Advisory Committee writing as individuals (March 15, 2016); Charlie Parker and abutters revised presentation for March 24, 2016; Vineyard Conservation Society (March 24, 2016); Chris Murphy (March 25, 2016); Steve Bernier (March 28, 2016); Wendy Weldon and Leanne Cowley (March 28, 2016); Dave Damroth (March 30, 2016); Jack Taylor (March 30, 2016); Doug Liman – Slide Show (March 31, 2016); Parker, Orphanos, Jeffers and others (March 31, 2016); Alison Burger (March 31, 2016); Thomas Bena (April 1, 2016); Thomas Bena attachment with 62 page Squibnocket Chronology (April 1, 2016); Vineyard Open Land Foundation (VOLF), Eric Peters (April 1, 2016); Warren Spector (April 1, 2016); Zachary Lee (April 1, 2016).

E5. Minutes of the Commission's Land Use Planning Committee meeting, February 29, 2016.

E6. Minutes of the Commission's Public Hearing, March 24, 2016.

E7. Minutes of the Commission's Land Use Planning Committee meeting, April 11, 2016.

E8. Minutes of the Commission Meeting of April 28, 2016– Deliberation and Decision.

E9. Minutes of the Commission Meeting of May 19, 2016– Approval of the Written Decision.

2.5 Summary of Testimony

The following is a summary of the principal testimony given during the public hearing on March 24, 2016:

- Presentation of the project by: Mark Haley of Haley and Aldrich; Daniel Padien of Vanesse Hangen Brustlin, Inc.; and Meg Rehrauer of Ropes & Gray LLP.
- Staff report by Paul Foley, MVC DRI coordinator.
- Oral testimony from Public Officials on March 24, 2016 by: Sandy Broyard; Chairman of the Chilmark Conservation Commission.

- Oral testimony from Public on March 24, 2016 by: Charlie Parker; Thomas Bena; Doug Liman; Jack Taylor; Eric Peters (Chairman of the Vineyard Open Land Foundation); Janet Weidner; Tony Orphanos; Constance Messmer; Richard Toole; and Chris Murphy.

3. FINDINGS

3.1 Project Description

- The proposal was reviewed concurrently with a related and interconnected but separate project proposed by the Town of Chilmark on abutting properties to relocate the existing town operated parking lot at Squibnocket Beach and remove the existing stone revetment.
- The Squibnocket Farm Access Causeway project consists of the following:
  - Construction of an approximately 280 foot long at grade roadway connecting the existing Squibnocket Road (just before the proposed new town parking lot) to an approximately 300 foot long, 12 foot wide pile supported elevated causeway (10 foot wide roadway) with a finished roadway surface at elevation 13 feet (NAVD 88) to access the Squibnocket Farm (formerly known as Squibnocket Ridge) Subdivision;
  - There will be 3 car turnouts: 1 where the new road to the causeway leaves Squibnocket Road and 1 at each end of the causeway;
  - The causeway is modeled after the Menemsha drive-on dock;
  - It will be constructed of epoxy coated steel piles (12 inch diameter), a pre-cast concrete deck, and timber railing. Utilities will run through a conduit attached below or within the deck and under the access road;
  - Entrance roads to and from the causeway will consist of fill covered by paving.

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.

3.3 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 may be <u>appropriate in view of the available alternatives</u> (Section 15(a) of the Act.)

The Commission finds that this is an appropriate managed-retreat response to the impact on the existing access to Squibnocket Farms by increased erosion and rising sea level. The Commission notes that many alternatives were reviewed and considered. The Commission finds that the causeway would be a better and safer access for emergency response than a soft solution during storm events.

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

With respect to <u>Wastewater and Groundwater</u>, the Commission finds that the proposal is a benefit because plans include swales to deal with storm water.

With respect to <u>Open Space, Natural Community and Habitat</u>, the Commission finds that the proposal will be a benefit for open space, natural community and habitat. The Commission finds that there will be a minimal impact on wetlands and notes that the proponents carefully considered the impact on the wetlands with respect to the height and location tominimize shading of the wetlands plants.

With respect to <u>Night Lighting and Noise</u>, the Commission finds that the project will be a slight detriment with respect to noise and night lighting with car tires crossing the concrete deck and car lights shining towards homes. The Commission notes the proposal has no lighting and appropriate screening will mitigate car lights.

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

With respect to <u>Traffic and Transportation,</u> the Commission finds that there will be a positive benefit to the residents in the subdivision who will derive more reliable access to their subdivision. The Commission notes that the number of trips related to the usage of the kayak launch (a component of the Town project) is not known but the Town anticipates to be minimal.

With respect to <u>Scenic Values, Character, and Identity,</u> the Commission finds that after review the proposal has evolved to address concerns with scenic values and identity and efforts have been made to mitigate impacts.

With respect to the <u>Impact on Abutters</u>, the Commission finds that the residents in Squibnocket Farms Subdivision will have more reliable access. The Commission finds that this might negatively impact some abutters but notes that the subdivision was approved by the MVC and the Town many years ago.

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

A5 The Commission finds that the proposed development would have a positive impact on the <u>provision of municipal services or burden on taxpayers</u> in making provision therefore (Section 15(e) of the Act).

The Commission notes that the town will no longer be responsible for the maintenance of the access to the subdivision or the existing stone revetment.

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).

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

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).
The Commission finds that the development is consistent with the policies of the Martha's Vineyard Commission Regional Policy Plan, adopted by the vote of the Martha's Vineyard Commission, June 1991, as well as those of the Island Plan, adopted by vote of the Commission on December 10, 2009. The Commission notes and that the proposal is consistent with the Massachusetts Coastal Program Policies.

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, 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.

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 April 28, 2016 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 April 28, 2016.

- Voting in favor: Clarence 'Trip' Barnes III; John Breckenridge; Christina Brown; Robert Doyle; Lenny Jason; James Joyce; Joan Malkin; Kathy Newman; Doug Sederholm; Linda Sibley; Ernest Thomas; and James Vercruysse.

- 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 April 28, 2016 and was approved by vote of the Commission on May 19, 2016.

5. CONDITIONS

After reviewing the proposal for this Development of Regional Impact, the Martha's Vineyard Commission imposes the following conditions in order to increase the benefits and minimize the detriments of the project. The analysis of benefits and the resulting decision to approve the project is based on the proposal as modified by these conditions. These conditions form an integral and indispensable part of this decision.

These conditions are an essential part of this decision and shall be enforced as written. The primary enforcement agent for the compliance of these conditions is the building and zoning enforcement officer of the Town. These Conditions shall be part of the permit granted by 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 Towns attorney's fees and costs incurred in obtaining judicial relief.

1 Landscaping:

1.1 A final landscaping plan, essentially the same as the plan dated March 8, 2016 and updated March 21, 2016, including an implementation timetable, showing plant species and locations shall be submitted for the review and approval of LUPC within 60 days following construction being completed. All landscape plantings shall be maintained as shown on the final approved plan, in perpetuity.

1.2 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.

2 Railing Height:

2.1 The Commission approves the lowering of the railing to 30 inches as long as it meets code. The raising of the railing to 36 inches does not have to return to the MVC for modification review if required by code.

3 ANR:

3.1 The Commission includes as part of this approval the Approval Not Required (ANR) division of the beach lot from the existing Map 35 Lots 1.30 owned by the Vineyard Open Land Foundation (VOLF).

6. CONCLUSION

6.1 Permitting from the Town

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

The permit-granting authorities of the Town of Chilmark 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.

The Town' building inspector shall not issue a Certificate of Occupancy until it has received a Certificate of Compliance issued by the Executive Director of the Martha's Vineyard Commission confirming that the following condition in this Decision has been satisfied: 1.1.

6.2 Notice of Appellate Rights

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

6.3 Length of Validity of Decision

The Applicant shall have two (2) years from the date of receipt of the Decision of the Martha's Vineyard Commission contained in this document to begin substantial construction. Should substantial construction not occur during said two (2) year period, this Decision shall become null and void and have no further effect. This time period may be extended upon written request from the Applicant and written approval from the Martha's Vineyard Commission.

6.3 Signature Block

Jim R. C

Jim Vercruysse, Chairman

5.24.16

Date

6.4 Notarization of Decision

Commonwealth of Massachusetts
County of Dukes County, Mass.

On this 24th day of May, 2016, before me, Donna-Lee Stewart, the undersigned Notary Public, personally appeared Jame Vercruysse, proved to me through satisfactory evidence of identity, which was/were Personal Knowledge 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.

DONNA-LEE STEWART
Notary Public
Commonwealth of Massachusetts
My Commission Expires
February 24, 2023

Donna-Lee Stewart

Signature of Notary Public

Donna-Lee Stewart

Printed Name of Notary

My Commission Expires Feb 24. 2023

6.5 Filing of Decision

Filed at the Dukes County Registry of Deeds, Edgartown, on: May 26, 2016

Deed – Book 1406, page 787

DECIS # 00003157

DECIS # 00082292 Certificate # 9733
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