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Decision of the Martha's Vineyard Commission DRI 685 – Oak Bluffs Emergency Services Radio Tower

1. SUMMARY

<u>Referring Board:</u>	Planning Board, Town of Oak Bluffs, MA
<u>Subject:</u>	Development of Regional Impact # 685 Oak Bluffs Emergency Services Radio Tower
<u>Project:</u>	Proposal to construct a 140 foot tall radio communication tower for public safety purposes.
<u>Owner:</u>	Town of Oak Bluffs (land); Dukes County Sheriff's Office (structure)
<u>Applicant:</u>	Oak Bluffs Fire and EMS (Chief John Rose); Oak Bluffs Police (Chief Erik Blake); Duke County Sheriff's Office (Sheriff Robert Ogden).
<u>Applicant Address:</u>	Oak Bluffs Fire Department, 6 Fire House Lane, Oak Bluffs and Dukes County Sheriff's Department, 149 Main Street, Edgartown, Massachusetts.
<u>Project Location:</u>	347 County Road, Oak Bluffs Map 29 Lot 156. O.B. Landfill and Highway Dept.
<u>Description:</u>	The proposal is to construct a 140 foot tall self supported lattice radio tower for public safety communications. The tower would be surrounded by a 50' by 50' compound enclosed by chain link fence with a 12'x 10' concrete shelter and a 35KW outdoor generator with a 1000 gallon Liquid Propane (LP) fuel tank on a concrete slab. The tower would have two antennas for the radio frequency (RF) system and two 4-foot microwave dishes.
<u>Decision:</u>	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 4, 2018.
<u>Written Decision:</u>	This written decision was approved by a vote of the Commission on October 18, 2018.

The permit-granting authorities of the Town of Oak Bluffs may now grant the request for approval of the Applicant's proposal in accordance with the conditions contained herein and may place further conditions thereon in accordance with applicable law, or may deny the request for approval.

2. FACTS

The exhibits listed below including the referral, the application, the notice of public hearing, the staff report, the plans of the project, and other related documents are incorporated into the record herein by reference. The full record of the application is kept on the premises of the Martha's Vineyard Commission.

2.1 Referral

The project was referred to the Commission by the Planning Board of the Town of Oak Bluffs, 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, Sections 9.1 a (Telecommunications Tower over 35 feet) which requires mandatory DRI Review through the public hearing process and the project was reviewed as such by the Martha's Vineyard Commission. The referral was accompanied by a Statement of Support from the Planning Board with the condition that no non-public safety services will be allowed to utilize the tower.

2.2 Hearings

Notice: Public notice of a public hearing on the Application was published in the M.V. Times on September 6, 2018.

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 September 20, 2018 and was 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 "MVPCS: Oak Bluffs Tower Project – FY2019 Proposal" consisting of eight 8.5" by 11" pages describing the Martha's Vineyard Public Safety Communications System (MVPCS) proposed tower development at the Oak Bluffs Highway Site with project description, job scope, simulations of projected appearance, and coverage estimates prepared by Motorola Solutions and the Dukes County Sheriff's Office.
- P2 Additional simulations of the projected appearance of the tower from sites around Oak Bluffs provided at the request by MVC Staff including simulations from State Beach, the ferry and the Land Banks Trade Winds property.
- P3 Offers of the Applicant as recorded at the public hearing on September 20, 2018 and clarified at the Land Use Planning Committee (LUPC) on October 1, 2018.

2.4 Other Exhibits

- E1. Referral to the MVC from the Oak Bluffs Building Planning Board;
- E2. MVC Staff Report, by Paul Foley, MVC DRI Coordinator, with the assistance of other staff members, August 27, 2018; and revised September 20, 2018.

- E3. MVC Slide Show, by Paul Foley, MVC DRI Coordinator, August 27, 2018; and revised September 20, 2018.
- E4. Minutes of the Land Use Planning Committee (LUPC) meeting, August 27, 2018.
- E5. Minutes of the Commission's Public Hearing, September 20, 2018.
- E6. Minutes of the LUPC Post Public Hearing Review meeting, October 1, 2018.
- E7. Minutes of the Commission's Deliberations and Decision, October 4, 2018.
- E8. Minutes of the Commission's Approval of the Written Decision, October 18, 2018.

2.5 Summary of Testimony

The following is a summary of the principal testimony given during the public hearing on December 15, 2016:

- Presentation of the project: Duke County Sheriff Robert Ogden; Duke County Sheriff's Deputy Anthony Gould; Oak Bluffs Fire Chief John Rose.
- Staff report by Paul Foley, MVC DRI coordinator.
- Oral testimony from Public: None.

3. FINDINGS

3.1 Project Description

- The proposal is to construct a 140 foot tall self supported lattice radio tower for public safety communications.
- The tower would be surrounded by a 50' by 50' compound enclosed by chain link fence with a 12'x 10' concrete shelter and a 35KW outdoor generator with a 1000 gallon Liquid Propane (LP) fuel tank on a concrete slab.
- The tower would have two antennas for the radio frequency (RF) system and two 4-foot microwave dishes.
- The proposed tower would increase the frequency of radio transmissions from 136 Megahertz to 700 MHz.
- The purpose is to fill in dead spots, improve reliability and update the technology from current antiquated 1960's analog VHF system. The tower would be part of a new planned multi-band digital system with point to point connectivity and upgraded hardware with failsafe redundant systems.
- New point to point Line of Site (LOS) digital microwave system includes five towers around the island in Oak Bluffs, West Tisbury DCR Fire Tower, Peaked Hill in Chilmark, Airport Regional Emergency Communications Center (RECC) at the airport in Edgartown; and co-location on an Edgartown Cell tower near downtown.
- The land that the tower will be constructed on is owned by the Town of Oak Bluffs. The tower structure and other equipment and appurtenances will be the property of the Dukes County Sheriff's Office (DCSO). The Town and the DCSO will have a Memorandum of Understanding regarding the ongoing maintenance and potential future decommissioning.

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 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 CONSIDERING THE CONSIDERATIONS SET FORTH IN SECTION 14(a) OF THE ACT.

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

The Commission finds that the location for this tower is appropriate. It is an industrial site, is shielded by several buildings and the tower will be located several hundred feet from the road.

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 project will have no impact.

With respect to Open Space, Natural Community and Habitat, the Commission finds that there is no land clearing required and the property is part of the larger landfill, transfer station and municipal services site.

With respect to Night Lighting and Noise, the Commission notes that the lighting is as yet undetermined and depends on what is required by the FAA.

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

With respect to Traffic and Transportation, the Commission finds that the project will have no impact.

With respect to Scenic Values, Character, and Identity: The Commission finds that the radio tower may be visible from some locations but notes that the site is appropriate and the tower will be set back from the road.

With respect to the Impact on Abutters, the Commission notes that the property is in a central location on municipal property away from abutters, and no public testimony was offered at the public hearing nor wrote in opposition.

A4 The Commission finds that the proposed development would have a beneficial 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 project will have no impact.

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

With respect to impact on services and burden on taxpayers the Commission finds that the antenna will provide improved public safety communications and is being paid for, at least partially, through grant awards by the State.

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 there are no burdens initially and through most of the project. Phase three will require all departments to get upgraded radio equipment and that while there may be a cost to that it will be a benefit to the service provided.

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, the Commission has concluded that the probable benefits of this proposed development in this location exceed its probable detriment considering 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 the Island Plan adopted by the MVC in December 2010.

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.

The Commission finds that the proposed development is not located within any District of Critical Planning Concern (DCPC).

4. DECISION

The Martha's Vineyard Commission deliberated about the application at a duly noticed meeting of the Commission held on October 4, 2018 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 4, 2018:

- Voting in favor: Gail Barmakian; Christina Brown; Robert Doyle; Josh Goldstein, Fred Hancock, Joan Malkin; Ben Robinson, Doug Sederholm, Linda Sibley, Ernest Thomas and James Vercruyse.
- 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 4, 2018 and was approved by vote of the Commission on October 18, 2018.

5. CONDITIONS

After reviewing the proposal for this Development of Regional Impact, the Martha's Vineyard Commission imposes the following conditions 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 Towns attorney's fees and costs incurred in obtaining judicial relief.

1 Existing System:

- 1.1 As offered by the Applicant, the existing VHF emergency communication network will remain fully functional until such time as the proposed Martha's Vineyard Public Safety Communications System (MVPSCS) is operational for the entire island.

2 Decommissioning:

- 2.1 As offered by the Applicant, if and when the proposed 140' tower becomes obsolete or is no longer used it will be taken down.

3 Use:

- 3.1 As offered by the Applicant, the proposed 140' Public Safety Communications System tower will be used only for public safety communications. There shall be no commercial use of the tower.

4 Structural Design:

- 4.1 As offered by the Applicant, the proposed 140' Public Safety Communications System tower shall be designed and constructed, at a minimum, to the national code as determined in the latest ANSI/TIA-222 standard in effect at the time of construction for Class III Structures for Dukes County.

5 Maintenance:

- 5.1 As offered by the Applicant, this a joint effort between the Town of Oak Bluffs and the Duke's County Sheriff's Office which is an independent State Agency with an obligation to help maintain and oversee the operations of the island wide emergency communication network.

6. CONCLUSION

6.1 Permitting from the Town

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

The permit-granting authorities of the Town of Oak Bluffs may now grant the request for approval of the 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 Oak Bluffs 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 may be extended upon written request from the Applicant and written approval from the Martha's Vineyard Commission.

6.5 Signature Block

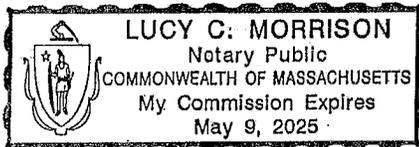
James Ver
James Vercruyse, Chairman

1-28-2019
Date

6.6 Notarization of Decision

Commonwealth of Massachusetts
County of Dukes County

On this 28th day of January, 2019, before me,
Lucy Morrison, the undersigned Notary Public, personally
appeared James Vercruyse, 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.



Lucy C. Morrison
Signature of Notary Public

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

6.5 Filing of Decision

Filed at the Dukes County Registry of Deeds, Edgartown, on: January 28, 2019

Deed - Book 00004, page 47

Document #: 00086300