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CAPE COD  
COMMISSION

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## DEVELOPMENT OF REGIONAL IMPACT SCOPING DECISION

DATE: January 11, 2018

TO: MARK WHITE, ENVIRONMENTAL PARTNERS GROUP, INC.  
1900 CROWN COLONY DRIVE, SUITE 402, QUINCY, MA 02169

PROJECT APPLICANT/ PROPERTY OWNER: LHI, INC. f/k/a THE LIGHTHOUSE INN INC.  
P.O. BOX 128, WEST DENNIS, MA 02670

PROJECT: LIGHTHOUSE INN GROIN IMPROVEMENTS (CCC NO. LR16030)

PROJECT LOCATION: THE LIGHTHOUSE INN  
1 LIGHTHOUSE INN ROAD, WEST DENNIS, MA 02670

ASSESSOR'S ID: MAP 12, PARCEL 7

TITLE INFORMATION: CERTIFICATES OF TITLE NOS. 16726 & 35195  
LOT 2, LAND COURT PLAN 9875-C  
LOTS C & E, LAND COURT PLAN 9875-A3  
LOT B, LAND COURT PLANS 9876-A & 12332-A

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### SUMMARY

The Cape Cod Commission (Commission) hereby finds and determines that no further Development of Regional Impact (DRI) review of the proposed reconfiguration of existing groin structures located at The Lighthouse Inn, 1 Lighthouse Inn Road in West Dennis, MA shall be required, and that the Applicant may proceed with local permitting for the Project, subject to the findings and conditions in this decision.

### FINDINGS

The Cape Cod Commission hereby finds and determines as follows:

GF1. The Lighthouse Inn (Inn) is a seasonal resort use that has been operated, and owned by the same local family, since 1938. The Inn Property is 7+ acres off Lighthouse Inn Road in West Dennis, with ~ 550 feet of shorefront along Nantucket Sound. The Inn offers guest

accommodations in a main guest house and cottages, a full restaurant service and function/conference space, a private beach, and family activities and coastal recreation opportunities. The Inn includes the West Dennis Light (aka Bass River Light), constructed along with a keeper's house in 1854. The lighthouse is the only privately owned, privately maintained working lighthouse in the country, and is currently permitted by the United States Coast Guard as a private aid to navigation.

GF2. The Property currently has a number of shorefront protection structures consisting of a bulkhead, and a rock revetment and groins located in the intertidal area adjoining the Property. The current groin configuration includes three (3) rock groin structures perpendicular to the shoreline, originally constructed in the late 19<sup>th</sup> century, rebuilt under permit in the mid 1960's. The groin configuration is unique in that the western two (2) groins have a shore-parallel breakwater between them, with an opening of approximately 25 feet, forming a nearly enclosed 'box.'

GF3. Constructed and permitted in the early to mid-1970s, the existing breakwater provides protection against wave damage and flooding on the Property, but, because of the relatively narrow opening in the breakwater and the overall configuration of the groin system, does not allow for adequate tidal exchange or flushing of the groin system. The existing groin system traps marine detritus behind the breakwater, which the Applicant mechanically removes and disposes of off-site, and limits wave action that would otherwise support a sustainable sand beach.

GF4. The Applicant proposes to reconfigure the existing rock groin system in order to maintain shore protection for existing site development, including the Inn's historic lighthouse and beach, while improving natural tidal flow and flushing to and from the Property's shoreline. The reconfiguration involves removing a portion of the shore-parallel breakwater and a portion of one western groin, and adding sections to the remaining breakwater and two western groins to create a series of three T-head groins and three crenulated embayments, commonly referred to as pocket beaches. (Project) No alteration of the existing, easternmost groin is proposed.

GF5. The Project Site is an area of 1.8± acres along most of the Property's 550-foot of ocean shorefront, extending seaward into the intertidal zone approximately 5 feet seaward from the end of the existing groin field. The existing groins extend 130' to 240' seaward from the Property's upland. All work associated with the Project, including sand re-nourishment, is contained within the Project Site area.

GF6. This reconfiguration will stabilize the beach, reduce detrital accumulation, and restore sand beach conditions along the shorefront. The design improves and optimizes the existing groin system through incorporation of contemporary advances and experience in the use of coastal structures with respect to their ability to maintain a stable sand beach of predictable geometry, particularly where such systems are subject to the erosion stress from adjacent coastal inlets.

GF7. The Project qualifies as a Development of Regional Impact (DRI) pursuant to Section 2(d)(i) of the Commission's *Enabling Regulations Governing Review of Developments of Regional Impact* (Enabling Regulations, revised November 2014), whereby "*Any proposed development for which an Environmental Impact Report (EIR) is required to be prepared under the provisions of MEPA shall be c. DRI.*"



GF8. The Applicant filed an Environmental Notification Form (ENF) for the Project with the Executive Office of Energy and Environmental Affairs (EOEEA) under the Massachusetts Environmental Policy Act (MEPA), which was noticed in the MEPA *Environmental Monitor* on December 7, 2016.

GF9. The Secretary of EOEEA issued a Certificate on the ENF on January 6, 2017, requiring the preparation of a discretionary Environmental Impact Report (EIR). Specifically, the Secretary found that the ENF did not provide sufficient information on existing and proposed conditions, proposed impacts and mitigation, alternatives, or consistency with applicable state regulations. The Project does not exceed a Mandatory EIR threshold; based on the content of the ENF and the comments received from state agencies requesting more information on the Project, the Secretary required a discretionary EIR pursuant to the MEPA Regulations and outlined a Scope for the Draft EIR (DEIR).

GF10. The Applicant filed a DEIR for the Project that was noticed in the MEPA *Environmental Monitor* on April 14, 2017. In response to the ENF Certificate, and to supplement the ENF, the DEIR provided a detailed description and analysis of the Project and its alternatives, an assessment of potential environmental impacts and proposed mitigation measures, which included: changes to the Project since the filing of the ENF; a construction cost estimate; a list of necessary Project permits and reviews; beach monitoring plan; sediment sampling results; information on coastal processes; a benthic habitat/eelgrass assessment; documentation of Massachusetts Historical Commission review; and responses to agency comments received by MEPA on the ENF.

GF11. The Secretary's Certificate on the DEIR, issued on May 26, 2017, determined that the DEIR "adequately and properly" complied with the MEPA regulations and required the submission of a Final EIR (FEIR) to respond to agency comments received on the DEIR. Specifically, the Certificate on the DEIR requested further information on the proposed beach nourishment and monitoring plan.

GF12. The Applicant filed an FEIR for the Project that was noticed in the MEPA *Environmental Monitor* on August 23, 2017. In response to the DEIR Certificate, and to supplement the DEIR, the FEIR provided updated Project permitting and coordination, changes to the Project since the filing of the DEIR, information on longshore sediment transport, and responses to agency comments received by MEPA on the DEIR.

GF13. The Secretary's Certificate on the FEIR, issued September 29, 2017, determined that the FEIR "adequately and properly" complied with the MEPA regulations, allowing the Applicant to proceed with local, state, and federal permitting.

GF14. Further Project review and permitting will include:

- A. State Permits and Notices
  - a. Office of Coastal Zone Management Federal Consistency Review
  - b. Department of Environmental Protection
  - c. Chapter 91 Waterways License
  - d. Section 401 Water Quality Certification
  - e. MA Department of Fisheries & Wildlife
  - f. NHESP MESA Project Review Checklist

- B. Federal Permits and Notices
  - a. US Army Corps of Engineers General Permit
  - b. Environmental Protection Agency NPDES Permit
- C. Local Permit
  - a. Dennis Conservation Commission Notice of Intent

GF15. In accordance with Section 5(a) of the *Enabling Regulations*, “For any Project that is a DRI...the proponent may apply to the Commission to limit the scope of the DRI review.”

GF16. The Applicant submitted an application on October 12, 2017 to limit the scope of DRI review pursuant to Section 5 of the *Enabling Regulations*, the application booklet entitled “Lighthouse Inn Groin Improvements, West Dennis, Massachusetts, Cape Cod Commission Limited DRI Review,” prepared for Lighthouse Inn Inc. by Environmental Partners Group, dated September 27, 2017, consisting of Appendices A-F. The Applicant also filed a copy of its FEIR, dated August 14, 2017, with the Commission to supplement its DRI Scoping application.

GF17. Pursuant to Section 5(e)(v) of the *Enabling Regulations*, upon submission and after review of such application, “In the event of a finding that no DRI review is required, the Executive Director shall make the recommendation to the full Cape Cod Commission which shall render a final decision whether to allow a development to proceed without further DRI review...”

GF18. The Commission’s Executive Director, through staff, drafted a decision recommending that the Project be scoped out of review under all issue areas in the RPP and that the Applicant may proceed with local permitting for the Project, subject to the findings and conditions in this DRI Scoping decision, without the requirement for any further DRI review for the Project. At a meeting on December 14, 2017, the Committee on Planning and Regulation (CPR) reviewed the Project and voted to recommend to the full Commission that it adopt the draft written DRI Scoping decision, including the determination that the Applicant may proceed with local permitting without the requirement for further DRI review.

## **RPP FINDINGS**

GF19. The Commission reviewed the Project for consistency with relevant issues areas of the 2009 Cape Cod Regional Policy Plan, as amended August 2012 (RPP).

GF20. As the Project does not involve upland building development but involves the reconfiguration of an existing water-dependent structure in a coastal resource areas, and given the specific circumstances associated with the Project, the following RPP issue areas are not applicable or material to the Project, and are hereby scoped out of further DRI review: Water Resources, Marine Resources, Wetlands, Transportation, Waste Management, Energy, Affordable Housing, Heritage Preservation and Community Character.

GF21. The following issue areas from the RPP are applicable and material to the Project.

## **LAND USE**

LUF1. The Project involves use and development that is appropriate to and compatible with the area in which it is proposed, and is appropriately sited. The Applicant proposes to reconfigure



an existing, uniquely-configured water-dependent structure in a coastal resource area to enhance natural tidal exchange and maintain shorefront protection for an existing commercial development. The reconfigured groin system provides shorefront protection for an accommodations use, important to Cape Cod's tourist based economy, that has operated at this location for almost 80 years, and includes an historic lighthouse indicative of the region's maritime history. The Project involves neither substantial deviation from nor significant impact upon the applicable Land Use minimum performance standards (MPSs) and goals of the RPP, and therefore does not require further DRI review under the RPP issue area of Land Use. The RPP issue area of Land Use is hereby scoped out of further DRI review.

## ECONOMIC DEVELOPMENT

EDF1. The Lighthouse Inn Property is located within a mapped Economic Center (MPS ED1.1), and provides 13 year-round jobs and 75 seasonal jobs. The Inn is a long-standing, locally-owned business that contributes to the local-regional economy and supports the important seasonal tourism-based economic sector on Cape Cod. The Inn provides tax revenues to the State and the Dennis community (most recently, State tax revenue of \$217,017 and local tax revenue of \$115,805).

EDF2. The existing groin configuration has had an adverse impact on LHI's seasonal business, where the Applicant has lost visitor stays, conferences, and other events due to the unsightly and noxious odor conditions caused by the accumulation of marine seaweed, algae, and detritus within the central enclosed groin area. These business losses endanger LHI's ability to sustain current operations and employment opportunities, especially given the seasonality of the business, and the vital relationship between the Inn's business and its shorefront assets.

EDF3. The Project involves neither substantial deviation from nor significant impact upon the applicable Economic Development minimum performance standards and goals of the RPP, and therefore does not require further DRI review under the RPP issue area of Economic Development. The RPP issue area of Economic Development is hereby scoped out of further DRI review.

## COASTAL RESOURCES

CRF1. The Project will continue, and the Applicant has committed, to allow public access across the beach via the coastal walkway over the existing coastal revetment, consistent with MPS CR1.1 (Public Access).

CRF2. The Project will reconfigure an existing rock groin structure. MPS CR2.1 (Prohibiting Development in V-Zones) allows for the permitting of water-dependent structures provided the activity minimizes impacts to coastal resources. The Project will remove approximately 3,250 square feet (SF) of existing rock structure and construct approximately 2,900 SF of new rock structure, for a decrease in total structural footprint in the intertidal zone of 350 SF. The overall littoral drift regime at the Site is net easterly. No modification to the downdrift, easternmost groin is proposed, to further minimize and avoid potential impacts to properties east of the Inn, and to coastal resources generally. Reconfiguration of the groin system, and the resulting reduction of marine detritus deposited on the Inn Property, will reduce the need for regular, heavy truck and equipment removal activities on the Inn's beach, which is directly within a coastal resource area.

CRF3. As the coastal bank on the Property contains a rock revetment, effectively preventing any landward migration of coastal resources, and no changes to the revetment are proposed, MPS CR2.3 (Migration of Coastal Resources) and MPS CR2.6 (Coastal Banks and Their Buffers) are not applicable to the Project.

CRF4. The Project will remove 250 cubic yards (CY) of sediment from the foot of the coastal structure. A sediment analysis shows that this sediment appears to be clean and compatible with beach sediments, and will be used for beach nourishment of the Project, consistent with MPS CR2.9 (Dredged Material), MPS CR2.11 (Beach Nourishment Site Conditions), and MPS CR3.9 (Beneficial Reuse of Dredged Material). (See *Sediment Sampling Results and Sand Fill Specification*, prepared by Cape Cod Engineering, dated January 27, 2017)

CRF5. Beach nourishment of compatible sand fill will be added to nourish the sand beaches. Approximately 5,700 CY of sand is required to achieve the entrapment volume of the beach areas; to ensure that entrapment is achieved, the nourishment volume has been conservatively increased an additional 20% to 7,100 CY total. MPS CR2.11 (Beach Nourishment Site Conditions) requires the Applicant to demonstrate that the beach nourishment goals of the Project are supported by an examination of erosion and sediment transport rates along the shoreline. The Applicant has provided studies that support the proposed nourishment, and has coordinated with federal and state agencies to refine the beach nourishment volumes and placement on the beach. [See *Coastal Processes Assessment* (including coastal sediment transport modeling and design beach volume calculations), prepared by Olsen Associates, and included as Appendix E to the FEIR]

CRF6. Consistent with MPS CR2.12 (Beach Nourishment – Site Monitoring), the Applicant has provided a monitoring protocol consistent with *Beach Nourishment: MassDEP's Guide to Best Management Practices for Projects in Massachusetts*. A pre- and post-construction monitoring program that documents the beach geometry and trends in the shoreline condition over time will be implemented and used to assess the success of the groin reconfiguration and beach nourishment program. The Applicant will coordinate with MassDEP, NHESP, and CZM during construction and post-construction implementation of the beach monitoring plan. The Applicant will use data collected from this monitoring program to evaluate trends in beach profile conditions and to determine whether additional nourishment should be provided based on triggers described in the monitoring program. Should additional nourishment be warranted, the Applicant will coordinate these activities with federal and state permitting agencies.

CRF7. The Applicant has provided a survey of eelgrass beds adjacent to the Project Site. Construction activities are located outside of eelgrass beds, consistent with MPS CR3.10 (Eelgrass). (See *Benthic Habitat/Eelgrass Assessment*, prepared by Cape Cod Engineering, dated March 14, 2107)

CRF8. The Project involves neither substantial deviation from nor significant impact upon the applicable Coastal Resources minimum performance standards and goals of the RPP, and does not require further DRI review under the RPP issue area of Coastal Resources. The RPP issue area of Coastal Resources is hereby scoped out of further DRI review.



## WILDLIFE AND PLANT HABITAT

WPHF1. A portion of the Project Site includes an area of the beach mapped by NHESP as Rare and Estimated Species Habitat for the state-listed bird species of Piping Plover and Common Tern. The Applicant has coordinated with NHESP during review of the Project, and has submitted a MESA (Massachusetts Endangered Species Act) Project Review Checklist, consistent with MPS WPH1.4 (Rare Species).

WPHF2. The Applicant has received a letter from NHESP, dated October 26, 2017, determining that the Project avoids adverse effects to the rare species habitat and a prohibited "Take" of a state-listed species, subject to design and construction conditions in the letter. Those conditions require the Applicant to adhere to construction phase time of year restrictions to minimize impacts to rare bird species habitat; monitor beach conditions; allow for monitoring by a qualified shorebird monitor; and allow for the protection of any nests, scrapes, or unfledged chicks with symbolic fencing. The Applicant will also submit shoreline monitoring program reports to NHESP for review.

WPHF2. The Project involves neither substantial deviation from nor significant impact upon the applicable Wildlife and Plant Habitat minimum performance standards and goals of the RPP, and therefore does not require further DRI review under the RPP sub-issue area of Wildlife and Plant Habitat. The RPP sub-issue area of Wildlife and Plant Habitat is hereby scoped out of further DRI review.

## CONCLUSION

Based on the foregoing findings, the Commission hereby further finds and determines that the Project as outlined in this decision does not involve substantial deviation from the goals and minimum performance standards of the RPP, does not have significant impact upon the purposes and values identified by Section One of the Cape Cod Commission Act, does not require further DRI review, and that the Applicant may proceed with local permitting for the Project without the requirement for any further DRI review. This decision is subject to the conditions below.

## CONDITIONS

C1. This decision applies to and shall run with the Project Site, and allows the Applicant and its successors in title or interest to apply for and obtain local permitting for the Project, subject to the findings and conditions herein. The decision shall bind and be enforceable against, and inure to the benefit of, the Applicant, its heirs, successors, and assigns. The Applicant may undertake and obtain local permitting for the Project without further DRI review, pursuant to and consistent with the terms and conditions of this decision, within a period of seven (7) years from the date of this decision, which time may be extended by the Commission upon request and for good cause shown by the Applicant.

C2. Failure to comply and remain in compliance with all findings and conditions stated herein shall be deemed cause to revoke or require Modification to this decision.

C3. The Project shall be undertaken, constructed, operated, and maintained in accordance with the Findings and Conditions set out herein, including the plan sets and other information and documents referenced below:

- Hydrographic Plan of Existing Shorefront Conditions, prepared by Cape Cod Engineering, dated October 20, 2016
- Plan Set, “Lighthouse Inn: West Dennis, MA Beach Project”, prepared by Olsen Associates, Inc., in association with Cape Cod Engineering, Inc., dated January 30, 2017, revised July 14, 2017
  - Sheet 1: *Proposed Improvements*
  - Sheet 2: *Existing Conditions, revised September 22, 2017*
  - Sheet 3: *Plan of Improvement*
  - Sheet 4: *Plan and Section Locations*
  - Sheet 5: *Sections and Details – 1*
  - Sheet 6: *Sections and Details – 2*
  - Sheet 7: *Sections and Details – 3*
- Construction Protocol and Methodology (FEIR Section 2.5)
- Beach Monitoring Plan (which includes approaches for future regulatory agency coordination and potential mitigation) (FEIR Section 9.0)

C4. No local permitting for development work as approved herein shall be undertaken until this decision is final, namely that the decision appeal period pursuant to Section 17 of the Cape Cod Commission Act has elapsed or if such an appeal has been filed, until the appeal has been finally dismissed, settled or is adjudicated or otherwise disposed of in favor of the Applicant. The Commission shall record a copy of this decision with the Barnstable County Registry of Deeds when it is final, with recording costs borne by the Applicant. This decision shall not be effective until a copy of the same has been so recorded.

C5. This decision does not authorize any other work or development except as expressly authorized herein and depicted on the plans approved hereunder. Prior to undertaking the same, desired changes to the approved Project or to this decision shall require modification to this decision, in accordance with the *Modification* section of the Commission’s *Enabling Regulations* then in effect when such modification is sought. All plans and documents required to be submitted as conditions of this decision shall hereby be incorporated into this decision as and when received, reviewed, and approved by the Commission. Modification may result in a change in the scope of DRI review and whether further DRI review might be required for the Project.

C6. Prior to commencement of Project construction, the Applicant shall obtain all necessary federal, state, and local permits for the Project and submit copies to the Commission of final Project plans as approved, and permits, licenses and approvals issued by state, federal, and local authorities for review by Commission staff who shall determine their consistency with this decision. If Commission staff determines that the final plans are not consistent with those Project plans approved, referenced and incorporated herein, the Applicant shall be required to seek a Modification to this decision for further review and approval of the Project plan changes by the Commission in accordance with the “*Modification*” section of the Commission’s *Enabling Regulations* in effect at the time the Modification is sought, prior to undertaking such changes.



C7. Upon Project completion, the Applicant shall apply for and obtain a Certificate of Compliance from the Commission, evidencing that the Project was completed in accordance with this decision. Commission staff may make, and the Applicants hereby authorize, site inspections upon reasonable notice to the Applicants, as such visits are needed, to determine whether the Project has been constructed and is being maintained, used and operated in accordance with this decision, including the applicable conditions hereof.

***SIGNATURE PAGE FOLLOWS***

**SIGNATURES**

Executed this 11<sup>th</sup> day of January 2018.

Harold W Mitchell  
Signature

Harold W Mitchell Chairman CC Commission  
Print Name and Title

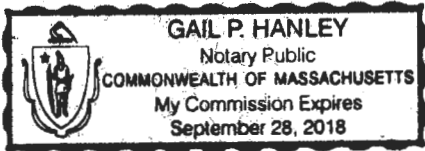
**COMMONWEALTH OF MASSACHUSETTS**

Barnstable, ss

January 11, 2018

Before me, the undersigned notary public, personally appeared Harold W. Mitchell,

in his/her capacity as Chairman of the Cape Cod Commission, whose name is signed on the preceding document, and such person acknowledged to me that he/she signed such document voluntarily for its stated purpose. The identity of such person was proved to me through satisfactory evidence of identification, which was [ ] photographic identification with signature issued by a federal or state governmental agency, [ ] oath or affirmation of a credible witness, or [  ] personal knowledge of the undersigned.



SEAL

Gail P. Hanley  
Notary Public

My Commission Expires: 9-28-18