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## **Decision of the Martha's Vineyard Commission DRI 566-M3 – Island Fuels Expansion**

### **1. SUMMARY**

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Referring Board: Building Inspector, Town of Tisbury, MA

Subject: Development of Regional Impact #566-M2  
Island Fuels Inc.

Project: To increase the capacity for storing Oil and Diesel from the existing 10,000 gallons by adding a new 15,000 gallon tank for a total of 25,000 gallons.

Owner: Petro-Tech LLC

Applicant: Jay McMann; Island Fuel Inc.

Applicant Address: P.O.B. 5011, Tisbury, MA

Project Location: 44 Evelyn Way, Tisbury, MA Map 22-C Lot 7.1 (0.26 acres)

Description: To increase the capacity for storing Number 2 Heating Oil and Diesel from the existing 10,000 gallons by adding a new 15,000 gallon tank (for a total of 25,000 gallons) in a 25' tall above ground storage tank on the existing tank pad at 44 Evelyn Way and increase the number of trucks allowed on site to five.

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 May 3, 2012.

Written Decision: This written decision was approved by a vote of the MVC on July 12, 2012.

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

## **2. FACTS**

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

### **2.1 Referral**

The project was referred to the Commission on March 20, 2012 by the Building Inspector of the Town of Tisbury, MA for action pursuant to Chapter 831 of the Acts of 1977, as amended (the Act) and the Commission's Standards and Criteria Administrative Checklist for Developments of Regional Impact, Sections 1.2b (Previous DRI's – Modification) and 3.2b (Storage of Fuel). 3.2b requires mandatory review as a Development of Regional Impact.

### **2.2 Hearings**

Notice: Public notice of a public hearing on the Application was published in the Vineyard Gazette, April 20, 2012.

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 May 3, 2012. The hearing was closed on that night as well as deliberated and decided.

### **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 "Site Plan in Tisbury, Massachusetts Assessor Parcel 22-C-7.1: Prepared for Island Fuel Inc.", consisting of one 22" X 17" sheet of site plans showing property, buildings, contours, location of concrete slab, above ground storage tank, parking, and plantings prepared by Sourati Engineering Group, P.O. Box 4458, Vineyard Haven, MA 02568, March 15, 2010. Scale: 1" = 10'
- P2 Amendment to "Site Plan in Tisbury, Massachusetts Assessor Parcel 22-C-7.1: Prepared for Island Fuel Inc.", consisting of one 8.5" X 11" sheet showing the location of new storage tank on existing concrete pad.
- P3 "Spill Prevention Control and Countermeasure Plan (SPCC Plan)" prepared by Mount Engineering, Weymouth, MA for Island Fuel, Inc. at property located at 44 Evelyn Way in Tisbury, Massachusetts dated February 2012.
- P4 Edited photograph image of 44 Evelyn Way showing location of proposed new 15,000 gallon tank at 44 Evelyn Way in Tisbury, Massachusetts.

### **2.4 Other Exhibits**

- E1. Referral to the MVC from the Tisbury Building Inspector, Received March 20, 2012.
- E2. Staff Report, by Paul Foley, MVC DRI Coordinator, with the assistance of other staff members, March 23, 2012, revised on May 3, 2012.



- E3. Photographs of the site, taken on April 2, 2012 by MVC staff member Sheri Caseau, and May 3, 2012 by MVC staff member Paul Foley.
- E4. Spill Prevention Control Plan (SPCC Plan) consisting of 35 pages of plan in case of emergency prepared by Mount Engineering (Weymouth, MA 02188) dated February 2012.
- E5. Letter from John Schilling, Tisbury Fire Chief John Schilling dated May 2, 2012.
- E6. Minutes of the Commission's Land Use Planning Committee meeting, March 26, 2012.
- E7. Minutes of the Commission's Public Hearing and Deliberations and Decision, May 3, 2012.
- E8. Minutes of the Commission Meeting of July 12, 2012 – Approval of the Written Decision.

## **2.5 Summary of Testimony**

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

- Presentation of the project by Jay McMann.
- Staff reports by Paul Foley, MVC DRI coordinator and Sheri Caseau, MVC Water Planner.

## **3. FINDINGS**

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### **3.1 Project Description**

- The site is about a quarter-acre (0.26 acre) lot on Evelyn Way in the B-2 Business District of Tisbury.
- There is an existing building that will not be altered at this time.
- To increase the capacity for storing Number 2 Heating Oil and Diesel from 10,000 gallon to 25,000 gallons in an additional 25 foot tall above ground storage tank.
- The Applicant would also like to have five trucks on site rather than three.
- No vehicles other than his delivery trucks will be fueled at this site.
- The Applicant plans to do vehicle maintenance for his fleet on site.
- They may have an occasional customer come to the office to pay their bill, other than that there will be no retail operations at this site.

### **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 IN LIGHT OF THE CONSIDERATIONS SET FORTH IN SECTION 14(a) OF THE ACT.**

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

The Commission finds that existing operation has been located at this address for two years without any problems.

**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 has adequate safeguards to minimize the risk of spills or leaks.

With respect to Open Space, Natural Community and Habitat, the Commission finds that the project is located in a commercial/industrial area. The Commission notes that the applicant planted some landscape screening along Evelyn Way.

With respect to Night Lighting and Noise, the Commission finds that the project has no new lighting planned and that the noise that will be created by trucks backing up is located in an industrial area.

With respect to Energy and Sustainability, the Commission finds that the expansion allows a distributor of energy to operate more efficiently.

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

With respect to Traffic and Transportation, the Commission finds that the project will generate a minimal amount of additional trips on Evelyn Way. The Commission notes that the delivery of fuel to the address by tractor trailer trucks may create brief delays on Evelyn Way.

With respect to Scenic Values, Character, and Identity, The Commission finds that the streetscape in that particular stretch of town is an industrial zone.

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

**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 proposal to add a 15,000 gallon storage tank to the existing 10,000 gallon tank does not trigger the MVC's Affordable Housing Policy.

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

**A6 The Commission finds that the proposed development would use efficiently and not unduly burden existing public facilities (other than municipal) or those that are to be developed within the succeeding five years. (Section 15(f) of the Act).**

**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).**

The Commission notes 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 and the Island Plan adopted by the MVC in December 2010.

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

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

The requested project, as a whole, advances the Commission's land development objectives, as outlined in the Martha's Vineyard Commission Regional Policy Plan adopted by the Commission in June 1991 and the Island Plan adopted by the MVC in December 2010, and as noted previously in section A8 of this decision.

**C. THE COMMISSION FINDS THAT THE PROPOSED DEVELOPMENT IS CONSISTENT WITH MUNICIPAL DEVELOPMENT ORDINANCES AND BY-LAWS, TO THE BEST OF THE COMMISSION'S KNOWLEDGE.**

The Commission finds that the project is allowed by zoning in the B-2 District of the town of Tisbury. The Commission notes that the above ground storage tank must be reviewed and approved by the State Fire Marshall.

**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 site is not located within a 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 May 3, 2012 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 May 3, 2012.

- Voting in favor: John Breckenridge; Christina Brown; Erik Hammarlund; Fred Hancock; Lenny Jason; James Joyce; Kathy Newman; Ned Orleans; Camille Rose; Linda Sibley; Brian Smith; and Holly Stephenson.
- 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 May 3, 2012 and was approved by vote of the Commission on July 12, 2012.

**5. CONDITIONS**

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

These conditions are an essential part of this decision and shall be enforced as written. The primary enforcement agent for the compliance of these conditions is the building and zoning enforcement officer of the Town. If the Commission or the Town finds it necessary to seek judicial relief to enforce the condition, the Applicant, or its successors in title at the time of such proceedings, shall pay the Commission's and/or Town's attorney's fees and costs incurred in obtaining judicial relief.

The project is approved as proposed and as described in Section 3.1 of this Decision. The Conditions in the MVC DRI 566-M2 Decision with respect to Wastewater, Groundwater, and Stormwater Management, Traffic and Transportation, Landscaping, and Exterior Lighting continue to be in effect and apply to this project as well.

**6. CONCLUSION**

**6.1 Permitting from the Town**

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



The permit-granting authorities of the Town of Tisbury may now grant the request for approval of the Applicant's proposal in accordance with the conditions contained herein and may place further conditions thereon in accordance with applicable law, or may deny the request for approval. Any permit issued by the Town shall incorporate the plan approved by the MVC and the above conditions.

### **6.2 Notice of Appellate Rights**

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

### **6.3 Length of Validity of Decision**

The Applicant shall have two (2) years from the date of receipt of the Decision of the Martha's Vineyard Commission contained in this document to begin 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**

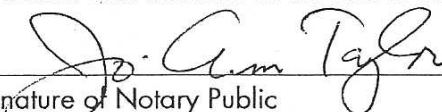
  
Chris Murphy, Chairman

8/6/12  
Date

### **6.4 Notarization of Decision**

Commonwealth of Massachusetts  
County of Dukes County, Mass.

On this 6<sup>th</sup> day of August, 2012, before me,  
Jo-Ann Taylor, the undersigned Notary Public, personally  
appeared Chris Murphy, proved to me through satisfactory evidence of identity,  
which was/were driver's license to be the person(s) whose name(s)  
was/were signed on the preceding or attached document in my presence, and who swore or affirmed to  
me that the contents of the document are truthful and accurate to the best of his/her/their knowledge and  
belief.

  
Signature of Notary Public

Jo-Ann Taylor  
Printed Name of Notary

My Commission Expires February 9, 2018

### **6.5 Filing of Decision**

Filed at the Dukes County Registry of Deeds, Edgartown, on: Aug 9, 2012

Deed - Book 1288, page 762  
DECIS