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September 14, 2022

Via Email and Federal Express

Joan Malkin, Chair
Martha's Vineyard Commission
The Stone Building
33 New York Avenue
Oak Bluffs, Massachusetts 02557

Re: 0 and 200 Red Coat Hill Road, Tisbury, Massachusetts 02568

Dear Ms. Malkin:

This office represents Lawrence and Mary Cannon (collectively, the "Cannons"), the owners of real property located at 0 Red Coat Hill Road, Tisbury, Massachusetts, more specifically identified as Parcel 51-A-6.1 (the "Property"). The Cannons filed an ANR Application with the Town of Tisbury's Planning Board (the "Planning Board"), seeking to endorse a deep lot subdivision plan dividing the Property into two lots, Lot 2-A and Lot 2-B. As required, the Planning Board referred the application to the Martha's Vineyard Commission (the "MVC") for concurrence to determine whether the application should be reviewed as a Development of Regional Impact ("DIR").

As such, MVC staff presented the application to the Land Use Planning Subcommittee (the "LUPC") on August 30, 2022, which decided to refer the application to the entire MVC for concurrence. Importantly, the presentation was made entirely by the MVC staff and none of the Cannons or their consultant were permitted to speak.¹ As such, inaccurate information was conveyed to the LUPC and presumably to the MVC. We write to correct the inaccurate information and to ensure that the Cannons will have a fair opportunity to participate in the upcoming MVC meeting on September 22, 2022.

First, MVC staff discussed the property located at 200 Red Coat Hill Road, Tisbury, Massachusetts ("200 Red Coat Hill Road"), formerly owned by the Cannons. MVC wrongly indicated that the Cannons owned 200 Red Coat Hill Road when the Cannons sold it in 2021. 200 Red Coat Hill Road is not relevant to the pending application. MVC staff also discussed alterations to 200 Red Coat Hill Road, including allegedly "clear-cutting" for the enlargement of a driveway, suggesting that the work was unauthorized and erroneously attributing the activity to the Cannons.

¹ We understand that one of the MVC Commissioners, Ben Robinson, who is also a member of the Planning Board, was allowed to speak but, again, the Cannons and their consultant were prohibited.

Again, the Cannons have not owned 200 Red Coat Hill Road since 2021 and the work was performed by the new owners after the sale of 200 Red Coat Hill Road. The suggestion was that the Cannons were "bad actors" and their conduct should be carefully scrutinized by the MVC. These errors could have easily been identified if the Cannons or their consultant were permitted to speak at the meeting.

More importantly, MVC staff gave the erroneous impression that the division of the Property for two potential single-family dwellings in strict compliance with § 07.04 of the Tisbury Zoning Bylaws would substantially increase traffic over the Island Road in two towns causing an issue of Regional Impact. We respectfully suggest that there is no evidence supporting the inference.

As you know, the Martha's Vineyard Commissions Act (Chapter 831 of the Massachusetts Acts of 1977) authorizes the MVC to review developments "which, because of their magnitude or the magnitude on their effect on the surrounding environment, are likely to present issues of significance to more than one municipality" *See* DRI Checklist. Concurrence is required for ANRS, which are Mandatory Referrals, and the MVC is charged with determining whether the development will "likely have a significant regional impact with respect to water resources, transportation, open space, habitat, visual, cultural, community, construction process, or any other factors." *Id.* The development in this instance is the division of residentially zoned land into two lots for the construction of a single-family dwelling and appurtenant structures on each lot. The Cannons are not proposing a definitive subdivision, a commercial or industrial project, or a mixed-use development.² They simply wish to divide their Property into two conforming lots for residential structures.

While the Property is bisected by the town line, the suggestion that traffic associated with two single-family dwellings will contribute to Regional Impact is not credible. We represent another client in connection with the development of a new single-family house in Marshfield. A question arose regarding the number of vehicle trips associated with a new single-family dwelling. Our registered traffic engineer opined that data from the Institute of Transportation Engineer's (ITE) Trip Generation Report indicates that a single-family house project will generate less than 10 vehicle trips per day with less than five trips both inbound and outbound. We respectfully suggest that a total of 20 vehicle trips per day (10 per dwelling) will not have a meaningful impact on traffic on the Island Road and will not adversely impact either town rising to a level of a Regional Impact.

We understand that the purpose of the September 22, 2022 meeting is "not intended to weigh the benefits and detriments of the [Project] but, rather, to determine only the issue of potential regional impact." *See* DRI Procedures. The division of the Property will have no Regional Impact because there will be no adverse impacts to water resources, transportation, open space, habitat, visual, cultural, community, construction process, or any other facts. Moreover, the activities allegedly performed by others on property not owned by the Cannons is not relevant to this determination. We request that the MVC please stay focused on its regulatory charge.

² Mr. Cannon has agreed to service both Lot 2-A and Lot 2-B with a common driveway, and that driveway will be restricted from the twenty-foot (20') buffer zones.

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We will be attending the meeting on September 22, 2022, and look forward to addressing the MVC directly.³ We request that the MVC determine that the division of the Property does not have Regional Impact and that a DRI is not required.

Please direct all future communications concerning the Project to our attention. Thank you for your consideration and we look forward to working with you.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Adam J. Brodsky', with a long horizontal flourish extending to the right.

Adam J. Brodsky
Drohan Tocchio & Morgan, P.C.

cc: Adam Turner, Executive Director (*via email*)
Bill Veno, Senior Planner (*via email*)
Alex Elvin, General Planner (*via email*)

³ The Attorney General writes in its *Open Meeting Law Guide* that: “[a]lthough public participation is entirely within the chair’s discretion, the Attorney General encourages public bodies to allow as much public participation as time permits.” See *Open Meeting Law Guide*, p. 17 (January 2018).