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To: Martha's Vineyard Commission
From: Chilmark Planning Board
Date: December 12, 2016
Re: George & Robin S. Rivera Form A Plan

The Chilmark Planning Board referred the George & Robin S. Rivera Form A Plan (ANR) to the Martha's Vineyard Commission on the following grounds:

- prime agricultural soils - sec 2.4(c)
- division of habitat – section 2.5
- division of 10-30 acres – section 2.3
- discretionary referral – section 1.1(a)

The history of Mr Rivera's presentation of plans for his property at Map 17, Lot 21.1 to the Chilmark Planning Board is long. The Board believes that history is relevant to its decision to refer the Rivera Form A plan and that it may also be relevant to the Commission's deliberations. The following is a chronology of events involving the divisions of Mr Rivera's property:

Chronology of the First Form A (2005)

- On March 14, 2005, the Planning Board reviewed a Form A plan submitted by Mr Rivera showing the division of the 15.7-acre parcel into two lots: one with 12.6 acres and the other with 3.1 acres. The Board raised concerns about the adequacy of Quenames Road. Concerns about the possible conversion of a dwelling unit into a guesthouse were also raised. No action was taken and the matter was continued until March 28, 2005. (This Form A plan is not able to be located in the files of the Chilmark Planning Board. Among other things, the date of the plan is uncertain.)
- On March 28, 2005, Mr. Rivera's engineer presented a revised Form A plan that showed a division of the parcel into 4 lots. The Board again questioned the adequacy of Quenames Road and also questioned whether there was appropriate frontage. The matter was again continued. (This revised Form A plan is also not able to be located in the files of the Chilmark Planning Board.)
- On April 11, 2005, Mr. Rivera's engineer returned to the Board and presented a Form A plan. This plan, dated January 3, 2005, again divided the 15.7-acre lot into two parcels: one with 12.6 acres and the other with 3.1 acres. (It is not clear whether this plan was the same plan presented to the Board on March 14, 2005 since that plan has not been able to be located.) The minutes of the meeting indicate that, although there was mention of the concern raised earlier about the adequacy of Quenames Road, the issue of frontage had been resolved with the revised plan. The Board endorsed this Form A plan, noting that Mr Rivera would have to come back to the Board for prior approval of any construction.

Chronology of Interim Events (2005 – “Site Plan”)

- On July 11, 2005, the Planning Board reviewed a document submitted by Mr. Rivera and referred to as a “Site Plan” of the 12.6-acre parcel, dated July 8, 2005. The minutes from that meeting indicate that the plan showed three new dwellings, a barn, an office above the barn, but it did not indicate any division of the 12.6-acre parcel. (The Planning Board does not have copy of that plan in its files). The Board raised concerns about the adequacy of Quenames Road and increased density in the area. It also requested that the applicant provide (a) his plans for housing the family then living in one of the buildings proposed to be removed/replaced, (b) the intended use for each proposed building, (c) his proposal for affordable housing, (d) additional information on access, density and the impact of increased traffic. The Board expressed its desire to hear input from abutters, primarily due to the proposed increased density. The Board noted that Quenames Road would need to be improved and all owners in the area would need to agree to have the road improved. It was suggested that Mr. Rivera could improve the road along his side of the road. No action was taken and the matter was continued. Mr Rivera’s agent agreed to come back with the additional information requested. (It is not clear if the Board was reviewing the “Site Plan” as a Form A or Form C plan, although it seems not to have been a Form A or Form C Plan, since no division of land was proposed. Under Chilmark zoning and in specific circumstances, an owner of property in excess of 9 acres is allowed to build 3 dwellings – ie 1 per each 3 acres – without subdividing the land.)
- On August 22, 2005, Mr. Rivera’s engineer returned to the Board to discuss a “Site Plan”, dated August 17, 2005. This plan is described in the minutes as a ‘revised’ plan. The minutes confirm some of the details of the prior “Site Plan” (eg 3 dwellings) but there is now reference to a garage with an office above and a lap pool. (Because the prior plan cannot be found, the Board is unable to say with certainty what the differences between the original and revised “Site Plans” are.) Board minutes indicate that Mr Rivera expressed an interest in using his property “as constructively as possible”. The Board again raised concerns regarding the adequacy of Quenames Road and the proposed increased traffic on the road (which Mr Rivera estimated at 24 trips per day); the need for the extra dwellings and the plan for affordable rentals. According to the minutes, Mr Rivera stated that he would rent the property at an “affordable market rate” and that he was not willing to “commit himself to affordable rentals.” No action was taken and the matter was continued to enable the Board to seek advice of counsel.
- On August 24th, 2005, the Planning Board received legal advice confirming Board approval was required in the circumstances of the Rivera property for 3 dwellings on the single lot.
- On December 12, 2005, the Board again reviewed the “Site Plan”, dated August 17, 2005, and Mr Rivera clarified his request for 3 dwellings on the 12.6-acre lot. The Board expressed its view that Planning Board approval was required for the 3 buildings. Increased density and the inadequate condition of Quenames Road and Quansoo Road were again discussed. The Board noted that the road would need to be improved before it would approve an increase in density. The Board reiterated that Mr. Rivera could improve his side of the road, but he would need to seek the approval of abutters before improving any other part of the road. Further, the Board noted that the Fire Chief would like to increase the clearance from 14’ to 16’ to facilitate fire apparatus maneuverability. The Board told Mr Rivera that he would need to return to the Board showing a legal right to improve the roads, including Quansoo Road, leading to his property. The Board denied the application for three dwellings based on the inadequacy of the roads in part or in full from the parcel of land to South Road.

Chronology of Interim Events (2006 – Proposed Subdivision)

- Minutes from the Planning Board meeting on September 11, 2006 indicate that Mr Rivera was intending to propose a Homesite Lot, and he was invited to the next meeting on September 25, 2006.
- On September 25, 2006, Mr. Rivera appeared before the Board to informally discuss a possible subdivision of his property. He was accompanied by Mr Jeff Day, a potential candidate for an affordable housing lot, to be created by the proposed division of land. The Board again stated its concerns about the adequacy of Quenames Road and it requested that Mr. Rivera contact his neighbors/abutters to seek approval their in writing to the upgrading of the road to the standard required for a Form C subdivision. It does not appear that Mr Rivera ever followed up on this discussion.
- On October 23, 2006, two of Mr Rivera's abutters were present at the Board's meeting and they discussed their concerns about Quenames Road. The Board advised them to share their concerns with Mr Rivera. Nothing further occurred with the Board with respect to the proposed subdivision.

Chronology of the Second Form A

- On January 14, 2013, Mr. Rivera's engineer presented a Form A plan to the Board. This plan proposed to divide the 12.6 acres into two lots, one with 7.6 acres and the other with 5 acres. The Board again raised concerns about the adequacy of Quenames Road. The Board scheduled a visit to view the road. Minutes of the 2006 Board meeting were reviewed with the applicant (in particular, the need to improve the road with the abutters' consent).
- On March 11, 2013, the Board's road agent reported the Quenames Road condition was adequate, and the Form A plan was endorsed.
- [Although not directly relevant to referral of the 2016 Form A plan which has been referred to the Commission, Mr Rivera's engineer approached the Board in July 25, 2016 asking that the mylar version of the 2013 Form A plan be dated. Due to an apparent administrative error, the plan had not been dated after endorsement in 2013. During the course of several meetings during which the Board discussed the appropriateness of dating the mylar several years after the plan's actual endorsement, the Board became aware of continuing abutter concerns regarding the adequacy of the access to the Rivera property and the lack of consent to the improvements previously made to the road by Mr Rivera.]

Chronology of the Third Form A

- On October 17, 2016, George & Robin S. Rivera submitted a further Form A plan, dated October 13, 2016, which was heard by the Board at its next regularly scheduled meeting on October 24, 2016. This Form A plan would divide the 7.6 acre parcel into 2 lots, one with 3.2 acres and the other with 4.4 acres. Abutters, present at that meeting, advised that the Rivera property is classified as prime agricultural soils and that it contains natural habitat. In view of this information and after discussion, the Board determined to refer the Form A plan to the MV Commission.

Each Form A submitted by Mr. Rivera (with the exception of the plan submitted on March 28, 2005 which was superseded by a subsequent revised Form A plan) has sought to create an additional lot line so as to increase by 1 the number of lots comprising the 15+ acre property.

(Notably there was also the 2005 plan that proposed several dwellings without actually dividing the property, and the 2006 proposed subdivision – neither of which was implemented.) At present, the property has been divided into 3 lots. Mr. Rivera’s most recent Form A would create a 4th lot from the original 15.7 acre parcel.

The Board does not question Mr. Rivera’s right to submit serial Form A’s in order to accomplish his development objectives. However, it is in part because this route leaves the Board with little authority to condition the development that it has referred this Form A to the Commission.

The Board’s determination as to whether a Form A plan should be endorsed rests only on the basis of (1) whether the lot has the required frontage and (2) whether access to the lot is adequate. If both of these requirements are met, the Board must endorse the Form A plan. The Board has no authority to condition a Form A plan, as it might in the case of a Form C definitive subdivision plan. Accordingly, considerations such as the number of dwelling units, affordable housing, building envelopes, no-cut areas, and a limitation on the number of curb cuts are beyond the Board’s purview in consideration of a Form A plan.

The following details the Board’s areas of concern.

Prime Agricultural Soils – Although this is the basis for mandatory referral, the Board does not have *specific* concerns about development on these soils but welcomes the Commission’s views as to how to best protect such lands.

Division of Habitat – The Rivera property lies amidst a large tract of land that is sparsely developed and remains largely a densely wooded area. Mr Rivera has already cleared a large portion of his lot. In order to minimize the impact of potential development on this land and to preserve the habitat (and the continuity of habit) for native flora/fauna, the Board would like the Commission to consider:

- specifying no cut zones around the perimeter of the property
- limiting landscaped areas

Division of 10-30 acres/Discretionary Referral – Although the present Form A plan is for the division of 12.6 acres, when considered in the context of the 2 prior Form A’s, their cumulative impact qualifies under section 2.3, ‘Division of Land’, of the DRI checklist. As the DRI checklist is not written to expressly capture serial form As, the Board has referred this Form A because it believes the intent of the DRI checklist is triggered by Mr Rivera’s series of Form A plans.

If Mr Rivera had filed a Form C (instead of the 3 Form A’s), the Board would have been able to address a number of concerns. Accordingly, the Board would like the Commission to consider:

- limiting the number of dwelling units to 1 per resulting lot (and therefore excluding any guest house)

The extent of development on the Rivera land is of concern to the Board. This is principally due to the continuing adequacy of Quenames Road, and accordingly the Board would like to minimize density and, hence, traffic. In addition, there are continuing concerns about the adequacy of access for emergency vehicles. A limit on development would also address habitat, visibility and character issues.

- limiting the curb cuts to 1 – there are few driveways in the vicinity, and it appears sound to try and limit the number of curb cuts in the small area concerned

- specifying a limited building envelope which will ensure that the appearance of the Rivera property from the road is consistent with character of the neighborhood and minimize the visibility of any house(s) on the Rivera property from Quenames Road
Most houses along Quenames Road are set well back into the property and are barely visible from the road. (This is not the case, however, with the house directly across from Mr Rivera's land on Quenames Road which is reasonably close to the road and visible – at least in the winter.)
- specifying/requiring vegetative screen and/or no cut zones – as above – again, to maintain the character of the neighborhood and minimize visibility of any house(s) both from Quenames Road and any public way/path (eg McGees Path)
- increasing the setback requirement – again to maintain the character of the neighborhood and minimize visibility
Standard minimum setback in Chilmark is 50' from the property line.
- requiring de-nitrification septic systems in accordance with MVC policy
The Rivera property is in the watershed for Tisbury Great Pond, an impaired pond.