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## Confirmatory Decision:

### DRI 696 Patient Centric of Martha's Vineyard West Tisbury Recreational Dispensary

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Previous Decision: Book 1543, Page 133  
Recorded on September 17, 2020

Previous Statement:

**A8 The Commission finds that the proposed development would largely contravene some land development objectives and policies developed by regional or state agencies. (Section 15(h) of the Act).**

Corrected to read:

**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).**



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## Decision of the Martha's Vineyard Commission

### DRI 696 PCMV West Tisbury Recreational Dispensary

#### 1. SUMMARY

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<u>Referring Board:</u>	Zoning Board of Appeals, Town of West Tisbury
<u>Subject:</u>	Development of Regional Impact #696 Patient Centric of Martha's Vineyard West Tisbury Recreational Dispensary
<u>Project:</u>	Proposal to operate a recreational marijuana facility at the existing registered marijuana facility.
<u>Owner:</u>	Gordon S. McArthur & Victoria E. Thurber, Trustees of the 510 Nominee Trust
<u>Applicant:</u>	Patient Centric of Martha's Vineyard, Geoff Rose (CEO); Phil Silverman (Attorney)
<u>Applicant Addresses:</u>	P.O. Box 1323 West Tisbury, MA 02575 2 Seaport Lane, 11 <sup>th</sup> Floor Boston, MA 02210
<u>Project Location:</u>	510 State Road, West Tisbury, MA. Map 16, Lot 101 (0.405 acres)
<u>Deed:</u>	Book 1294, Page 754
<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 August 13, 2020.
<u>Written Decision:</u>	This written decision was approved by a vote of the Commission on September 10, 2020.

The permit-granting authorities of the Town of West 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**

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 February 24, 2020 by the Zoning Board of Appeals of the Town of West 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, DRI Checklist Items 3.1f (Commercial Development - Change of Use); 3.1g (Increased Intensity of Use); 3.1h (Parking for 10 or more vehicles); 3.1i (High Traffic Generator), all of which are Concurrence Reviews. The Applicant decided to opt for a Public Hearing review as a Development of Regional Impact after the Land Use Planning Committee meeting on March 9, 2020.

### **2.2 Hearings**

Notice: Public notice of the public hearing on the Application of DRI 696 was published in the MV Times on June 11, 2020; notice was also published in the Vineyard Gazette on June 12, 2020. Abutters within 300 feet of the property were notified by mail on June 2, 2020.

Hearings: The Commission held a public hearing on the Application that was conducted pursuant to the Act and M.G.L. Chapter 30A, Section 2, as modified by Chapter 831 on June 18, 2020, which was continued to July 2, 2020, continued to July 9, 2020 without taking public testimony, and continued again to July 30, 2020. The hearing was closed on July 30, 2020 with the exception of the written record which was left open until August 6, 2020 at 5:00 pm and closed at that time. The hearings were held entirely using remote conference technology as allowable under Chapter 53 of the Acts of 2020.

### **2.3 The Plan**

The following plans and documents submitted by the Applicant and contained in the Commission's project file constitute "the Plan." Pages are 8.5" x 11" unless otherwise noted.

- P1. "Sketch Parking Plan in West Tisbury, Mass." consisting of one (1) 17" x 11" site plan prepared by Vineyard Land Surveying & Engineering P.O. Box 421 West Tisbury, MA 02575, scale 1" = 30', dated October 10, 2019.
- P2. Interior Floor Plans: "A-1 Ground Floor Plan" and "A-2 Basement Plan" consisting of two (2) 17" x 11" pages showing areas for public access, limited access and restricted access prepared by Atmosphere Design Group LLC, scale 1/8" = 1'0", received February 24, 2020.
- P3. Exterior Elevations: "A202 North & East Elevations" scale 1/4" = 1'0"; "A301" scale 1/2" = 1'0"; "A304" scale 1/2" = 1'0" consisting of three (3) 17" x 11" pages prepared for Vicki Thurber, received February 24, 2020.
- P4. Revised Interior Floor Plans: "A-01 Proposed Floor Plan" consisting of one (1) 24 x 36" plan prepared by Sullivan and Associates Architects, scale 1/4" = 1'0", dated March 16, 2020.
- P5. "Schematic Site Plan in West Tisbury, Mass - Site Plan" consisting of one (1) 24" x 36" plan prepared by Hayes Engineering, Inc. Civil Engineers & Land Surveyors 603 Salem Street Wakefield, MA 01880, scale 1"=20', dated June 29, 2020; revised July 21, 2020.

- P6. "Schematic Site Plan in West Tisbury, Mass - Lighting Plan" consisting of one (1) 24" x 36" plan showing proposed locations and specifications for outdoor lighting, prepared by Hayes Engineering, Inc. Civil Engineers & Land Surveyors 603 Salem Street Wakefield, MA 01880, scale 1"=20', dated June 29, 2020; revised July 21, 2020.
- P7. "Schematic Site Plan in West Tisbury, Mass - Landscaping Plan" consisting of one (1) 24" x 36" plan showing proposed locations and types of plantings, prepared by Hayes Engineering, Inc. Civil Engineers & Land Surveyors 603 Salem Street Wakefield, MA 01880, scale 1"=20', dated June 29, 2020; revised July 21, 2020.
- P8. "Schematic Site Plan in West Tisbury, Mass - Vehicle Turning Paths" consisting of one (1) 24" x 36" plan prepared by Hayes Engineering, Inc. Civil Engineers & Land Surveyors 603 Salem Street Wakefield, MA 01880, scale 1"=20', dated June 29, 2020; revised July 21, 2020.
- P9. "Patient Centric Narrative" consisting of seven (7) pages submitted February 24, 2020.
- P10. "Patient Centric Narrative" consisting of three (3) pages prepared by Phil Silverman, Esq. of Vincent Sederberg LLP dated July 24, 2020.
- P11. "Opening Day Plan" consisting of four (4) pages outlining plan goals, parking lot management, soft opening period, floor plan capacity, queuing, customer flow and plan evaluation, submitted on February 24, 2020.
- P12. "Traffic Impact Statement" consisting of three (3) pages prepared by Hayes Engineering for Patient Centric of Martha's Vineyard 510 State Road West Tisbury, MA dated December 15, 2019.
- P13. "Housing, Employees and Hours Statement" consisting of one (1) page prepared by Geoff Rose received February 25, 2020.
- P14. "Customer Demand Management Protocols" consisting of five (5) pages prepared by Phil Silverman Esq. of Vincent Sederberg LLP outlining a comprehensive plan to commence operations using a controlled appointment-only system, dated June 30, 2020; and revised on July 24, 2020.

## **2.4 Other Exhibits**

- E1. Referral to the MVC from the West Tisbury Zoning Board of Appeals, including ZBA Application and 2017 ZBA Special Permit Decision received February 24, 2020.
- E2. Staff Report for C.R.2-2020 PCMV West Tisbury Recreational Dispensary dated March 3, 2020.
- E3. Staff Report for DRI 696 PCMV West Tisbury Recreational Dispensary dated June 18, 2020; updated on August 10, 2020.
- E4. Host Community Agreement between the Town of West Tisbury, Massachusetts and Patient Centric of Martha's Vineyard, Ltd. consisting of eight (8) pages, signed October 23, 2019.
- E5. Draft Memorandum of Understanding between the Town of West Tisbury, MA, the Martha's Vineyard Commission, and Patient Centric of Martha's Vineyard, consisting of four (4) pages received July 21, 2020.
- E6. Letter from Abby Rabinovitz dated March 20, 2020.
- E7. Letter from Constance Goodwin and Richard Cascarino dated June 22, 2020.
- E8. Letter from Elissa Lash dated July 2, 2020.

- E9. Letter from Hunter Moorman dated July 9, 2020.
- E10. Letter from Michele Brescia, Richard Cascarino, Constance Goodwin, Christopher Gorman, Craig Miner, Abby Rabinovitz & Leslie D. Pearlson (Owners of Tea Lane Associates, 504 State Road) dated July 21, 2020.
- E11. Minutes of the Commission's Land Use Planning Committee Meeting, March 9, 2020.
- E12. Minutes of the Commission's Public Hearing, June 18, 2020.
- E13. Minutes of the Commission's Continued Public Hearing, July 2, 2020.
- E14. Minutes of the Commission's Continued Public Hearing, July 30, 2020.
- E15. Minutes of the Commission's Post-Public Hearing Review, August 10, 2020.
- E16. Minutes of the Commission's Deliberation and Decision, August 13, 2020.
- E17. Minutes of the Commission's Approval of the Written Decision, September 10, 2020.

## **2.5 Summary of Testimony**

The following gave testimony during the public hearing on June 18, 2020:

- Staff presentation by Adam Turner
- Presentation of the project by Geoff Rose and Phil Silverman
- Oral testimony from Public Officials speaking for their Boards: None
- Oral testimony from the Public: Constance Goodwin, Abby Rabinovitz, Christopher Gorman, Chris Egan, Craig Miner, Leslie Pearlson

The following gave testimony during the continued public hearing on July 2, 2020:

- Presentation of the project by Geoff Rose and Phil Silverman
- Oral testimony from Public Officials speaking for their Boards: None
- Oral testimony from the Public: Constance Goodwin, Abby Rabinovitz

The following gave testimony during the continued public hearing on July 30, 2020:

- Staff presentation by Mike Mauro, Transportation Program Manager
- Presentation of the project by Phil Silverman
- Oral testimony from Public Officials speaking for their Boards: None
- Oral testimony from the Public: Abby Rabinovitz, Constance Goodwin, Chris Egan
- Closing Statement by Geoff Rose and Phil Silverman

## **3. FINDINGS**

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### **3.1 Project Description**

- In 2017, Patient Centric of Martha's Vineyard was awarded a Special Permit by the Zoning Board of Appeals of the Town of West Tisbury to operate a Registered Marijuana Dispensary (medical-only) at the property.
- The proposal would allow Patient Centric of Martha's Vineyard to operate a Recreational Marijuana Facility in conjunction with the existing medical-only facility.
- Patient Centric of Martha's Vineyard does not propose any major modifications from the Special Permit from 2017.

- No construction or exterior alterations to the building are proposed.
- No cultivation, manufacturing, or social consumption will occur on site.

### **3.2 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.

### **3.3 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.)**

Marijuana is a legal, permitted use that must be carefully regulated and sited. The proposed site has already been approved for medical marijuana sales by the Town of West Tisbury. The existing building is already permitted for medical marijuana as an approved use in the zoning district. The site is not large, and this approval permits recreational marijuana to be offered for sale but restricts the operation in terms of appointments per hour and the opportunity to expand.

##### **A2 The Commission finds that the proposed development would have a neutral impact upon the environment relative to other alternatives (Section 15(b) of the Act).**

With respect to Open Space, Natural Community and Habitat, the Commission finds a neutral impact given that the building and parking areas already exist on site. The Applicant proposes no further clearing and has submitted a Landscaping Plan.

With respect to Wastewater and Groundwater, the project utilizes an installed permitted septic tank and no additional facilities are proposed.

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

With respect to Traffic and Transportation, the Commission finds a negative impact on an important regional roadway. The project will add additional trips to the roadway. The project as conditioned by the Commission will result in a few trips delaying roadway operations, although only in peak seasons and at certain times. The Applicant has agreed to limit the hours of operation, but the development will still

result in additional traffic and noise. The parking lot is limited in size and additional trips may cause an issue if a higher number of appointments are permitted.

With respect to Night Lighting and Noise, the Commission notes that there will be security lighting on the premises. The Commission also notes that the Applicant has pledged Dark Sky compliance.

With respect to Scenic Values, Character, and Identity, the Commission notes that the physical landscape of the property will not change, and the building size will not increase, so scenic values are not to be affected. The existing vegetative screening will be preserved. The Commission notes that the building is already used for medical marijuana services and the proposed use is provided for in the zoning district by Special Permit. The Commission also notes that the building is surrounded by other non-residential uses including a grocery store and a bank. There are lower impact businesses in the area as well.

With respect to the Impact on Abutters, the Commission notes that the use has the potential to increase the intensity of use when compared to abutting uses. The Commission also notes that the property is limited in size. As a mitigation, the Applicant has offered to limit customers, and the Commission has placed conditions on this approval to limit the detrimental impacts.

**A4 The Commission finds that the proposed development would have a neutral impact upon the supply of needed low- and moderate-income housing for Island residents (Section 15(d) of the Act).**

With respect to the Impact on Low- and Moderate-Income Housing, the building lease includes a 1-bedroom unit that could be used for employee housing. Once the current tenants move (possibly Fall 2020), the Applicant has offered to use it for year-round housing.

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

With respect to the Use Efficiently or Unduly Burden Other Public Facilities, the Commission notes that traffic evaluation and mitigation might be required for higher numbers of customer appointments. All other municipal services are already provided to the medical marijuana facility. The Applicant will make regular Community Impact Payments to the Town to mitigate additional expenses, if any, caused by the operation of this facility.

**A6 The Commission finds that the proposed development would use efficiently and would 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 would not interfere with the ability of the municipality to achieve some of the objectives set forth in the municipal general plan. (Section 15(g) of the Act).**

With respect to Consistency with/and Ability to Achieve Town Objectives, the Commission finds that the site was evaluated and permitted for medical marijuana sales by the West Tisbury Zoning Board of Appeals in 2017. The project will return to the Zoning Board of Appeals for additional review.

**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 project is heavily regulated and has received approval from State Agencies.

- 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.**
- 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 property is not located in any DCPC.

In sum, after careful review of the Plan and its attendant submittals and the testimony presented by the Applicant and others, the Commission has concluded that the benefits of this proposed development in this location exceed its probable detriments in light of the considerations set forth in section 14(a) of the Act.

#### **4. DECISION**

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The Martha's Vineyard Commission deliberated about the application at a duly noticed meeting of the Commission held on August 13, 2020 and made its decision at the same meeting.

The following Commissioners, all of whom participated in all hearings and deliberations participated in the decision on August 13, 2020:

- Voting to approve the project with conditions: Gail Barmakian; Trip Barnes; Christina Brown; Robert Doyle; Josh Goldstein; Fred Hancock; James Joyce; Joan Malkin; Kathy Newman; Ben Robinson; Doug Sederholm; Ernest Thomas; Christine Todd; and James Vercruysse.
- Voting against: None.
- Abstentions: None.
- Recused: Linda Sibley.

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 on August 13, 2020 and was approved by vote of the Commission on September 10, 2020.

#### **5. CONDITIONS**

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

1. Business Operations

1.1 As offered by the Applicant, there shall be no walk-in sales. All sales are to be made by appointment only.

1.2 As offered by the Applicant, the hours of operation shall be limited to no more than 10 am to 6 pm (7 pm Daylight Savings Time) Sunday through Thursday; and 10 am to 7 pm (8 pm Daylight Savings Time) on Friday and Saturday.



- 1.3 As offered by the Applicant, there shall be no more than five (5) appointments per fifteen (15) minute period, with an additional sixth (6<sup>th</sup>) appointment reserved for express orders.
- 1.4 Any change in operating procedures (sales by appointment only, hours of operation, number of appointments per hour, engagement of a parking attendant, etc.) shall require a modification to this Decision. No request for modification shall be filed until at least six (6) months after commencement of operations, and this six (6) month period shall include July and August.

## 2. Parking Management

- 2.1 As offered by the Applicant, for at least the first three months of operation (and possibly longer, as determined by the Town of West Tisbury), PCMV shall employ two (2) parking attendants to allow for the safe and efficient flow of traffic. The Applicant shall engage at least one parking attendant to monitor parking and traffic on the site and to ensure that no unauthorized use of the adjacent premises by patrons of the Applicant's business.
- 2.2 As offered by the Applicant, PCMV shall install signage and other pedestrian cues throughout the parking lot to ensure that pedestrians are able to traverse the lot safely.
- 2.3 Subject to the West Tisbury zoning bylaws, the Applicant shall install a sign at the entrance to the premises saying, among other things, that sales are by appointment only, no walk-ins. All advertising and media must include this notice as well, provided that such media may note that sales may be made on-line for delivery or for express-line pick-up (subject to an appointment for pick-up).
- 2.4 To enhance safe movement of vehicles entering State Road, a stop bar and accompanying stop sign shall be installed at an exit location that maximizes drivers' views to the left.
- 2.5 Striping shall be applied to delineate in and out lanes. This shall help guide exiting drivers in keeping to the right and avoid blocking incoming vehicles.

## 3. Housing

- 3.1 On expiration of the current lease of the 1-bedroom unit on the premises, the Applicant shall make the unit available for lease to an employee of the business. If no employee is interested in leasing the unit, the unit shall otherwise be leased for year-round workforce housing.

## 4. Landscaping and Lighting

- 4.1 Landscape and Lighting Plans shall be provided to the Land Use Planning Committee for approval before the issuance of a Certificate of Occupancy.
- 4.2 Trees on the abutting parcel to the north are to be maintained in perpetuity, and the addition of fencing to shield abutting properties.

These conditions are an essential part of this decision and shall be enforced as written. Any modification of these conditions requires a modification request to the DRI. 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.

## **6. CONCLUSION**

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### **6.1 Permitting from the Town**

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

The permit-granting authorities of the Town of West 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 Commission and the conditions above.

### **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 West 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.

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## **6.4 Signature Block**

\_\_\_\_\_  
E. Douglas Sederholm, Chairman

\_\_\_\_\_  
Date

## **6.5 Notarization of Decision**

Commonwealth of Massachusetts  
County of Dukes County, Mass.

On this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, before me,  
\_\_\_\_\_, the undersigned Notary Public, personally  
appeared \_\_\_\_\_, proved to me through satisfactory evidence of  
identity, which was/were \_\_\_\_\_ 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

\_\_\_\_\_  
Printed Name of Notary  
My Commission Expires \_\_\_\_\_

## **6.6 Filing of Decision**

Filed at the Dukes County Registry of Deeds, Edgartown, on: \_\_\_\_\_

Deed: Book \_\_\_\_\_, page \_\_\_\_\_

Document Number: \_\_\_\_\_