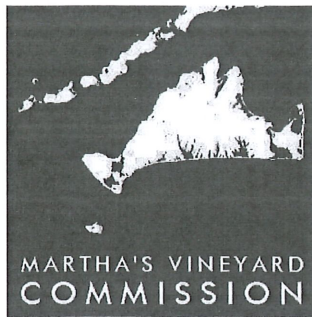




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Decision of the Martha's Vineyard Commission

DRI 739 566 Scrubby Neck Road ANR

1. SUMMARY

- Referring Board:** West Tisbury Planning Board
- Subject:** Development of Regional Impact #739 566 Scrubby Neck Road ANR
- Project:** Division of land in the Island Road District classified as prime agricultural soil and significant habitat.
- Owners:** Nicholas and Lori Ionnitui
- Applicant:** 566 Scrubby Neck LLC; Doug Hoehn (agent)
- Applicant Address:** 566 Scrubby Neck LLC c/o Schofield, Barbini, and Hoehn
12 Surveyor's Lane, Box 339
Tisbury, MA 02568
- Deed:** Recorded Land: Book 651, Page 164
- Project Location:** 566 Scrubby Neck Road, West Tisbury. Map 37, Lot 57.2 (6.37 acres).
- 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 January 12, 2023.
- Written Decision:** This written decision was approved by a vote of the Commission on January 19, 2023.

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 the 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 December 5, 2022 by the Planning Board 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 Item 2.6b *Approval Not Required (ANR) Subdivision in the Island Road DCPC*. After referral it was determined that the project also triggered Checklist items 2.4b *Division of Current, Former, or Potential Farmland*, and 2.5a *Division of Significant Habitat*. Checklist Item 2.4b requires a mandatory public hearing as a Development of Regional Impact.

2.2 Hearings

Notice: Public notice of the hearing on the Application was published in the MV Times on December 22 and 29, 2022; notice was also published in the Vineyard Gazette on December 23 and 30, 2022. Abutters within 300 feet of the property were noticed by mail on December 20, 2022.

Hearings: The Commission scheduled a public hearing on the Application pursuant to the Act and M.G.L. Chapter 30A, Section 2, as modified by Chapter 831 on January 5, 2023 which was closed that same night with the exception of the written record which was left open until 5:00 pm on January 9, 2023 and closed at that time. The hearing was held entirely using remote conference technology as allowable under Chapter 22 of the Acts of 2022.

2.3 The Plan

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

P1. Plan of Land (ANR) for DRI 739 consisting of one 24.35" x 36.06" page prepared by Douglas Hoehn of Schofield, Barbini & Hoehn Inc., scale 1" = 40', dated Nov. 10, 2022.

2.4 Other Exhibits

E1. Referral to the Martha's Vineyard Commission from the West Tisbury Planning Board, received Dec. 5, 2022.

E2. DRI Application Form, submitted by the West Tisbury Planning Board, consisting of two (2) pages, dated Dec. 6, 2022.

- E3. Memo from Doug Hoehn of Schofield, Barbini & Hoehn Inc. to the Martha's Vineyard Commission, regarding application of the West Tisbury Residential Building Size Bylaw, consisting of one (1) page, dated Jan. 5, 2023.
- E4. Email from Sharon and Raj Agashiwala, abutters, regarding the proposed subdivision, consisting of one (1) page, dated Jan. 1, 2023.
- E5. Staff Presentation to the Land Use Planning Committee, consisting of seven (7) pages, dated Dec. 19. 2023.
- E6. Staff Presentation to the Martha's Vineyard Commission, consisting of sixteen (16) pages, dated Jan. 5, 2023.
- E7. Minutes of the Land Use Planning Committee's Concurrence Review, December 19, 2023.
- E8. Minutes of the Commission's Public Hearing, January 5, 2023.
- E9. Minutes of the Commission's Deliberation and Decision, January 12, 2023.
- E10. Minutes of the Commission's Approval of the Written Decision, January 19, 2023.

2.5 Summary of Testimony

The following gave testimony during the public hearing on January 5, 2023:

- Staff presentation by Alex Elvin, DRI Coordinator.
- Presentation of the project by Doug Hoehn, on behalf of the Applicant.
- Oral testimony from Public Officials: none.
- Oral testimony from the Public: Andrea Plotkin, abutter; John Carey, abutter.

3. FINDINGS

3.1 Project History and Description

The proposal is to divide an existing 6.37-acre lot into two lots (3.3 and 3.07 acres). Lot 2, closer to Scrubby Neck Road, would utilize the existing access road for Lot 1.

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 evaluation 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 testimony presented and reviewing all documents 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 of 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 SECTIONS 14 AND 15 OF THE ACT.

The Commission finds that the probable benefits of the project outweigh the probable detriments, as described below. With respect to impacts on persons and property (Section 15(c) of the Act), the Commission finds the project will have a beneficial effect. With respect to impacts upon the environment (Section 15(b) of the Act), the provision of municipal services or burden on taxpayers (Section 15(e) of the Act), and public facilities (Section 15 (f) of the Act), the Commission finds the project would have a neutral effect.

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 property is listed as Prime Agricultural Soils, is mostly within BioMap 2 Core Habitat, and is partly within the Island Road District of Critical Planning Concern. However, the project would have no effect on the size or number of houses that could be built on the property per the West Tisbury Residential Building Size Bylaw, and as confirmed by the West Tisbury Planning Board and Building Inspector. The new lot would also utilize the existing driveway from Scrubby Neck Road. There was no evidence presented that the project has been actively farmed in recent decades, or that the proposal would alter any intended agricultural use of the property. As such, the Commission finds that the project is appropriate in the proposed location.

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 Ecology and Habitat, the Commission finds the project would have a neutral effect, since the same size and number of houses could be built on the 6.37 acres regardless of the proposed subdivision. The Commission also notes the following:

- The property contains BioMap 2 Core Habitat and Critical Natural Landscape, as well as Exceptional, Advisable, or Suitable open space according to the MVC Open Space Guideline Data.
- The property is located just north of the Long Point Wildlife Refuge.

- If Lot 2 were developed, the Applicant has stated that the existing driveway shown on the plan would be shared with Lot 1.

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

With respect to Agriculture, the Commission finds the project would have a neutral effect, since the same size and number of houses could be built on the 6.37 acres regardless of the proposed subdivision. There was no evidence presented that the project has been actively farmed in recent decades, or that the proposal would alter any intended agricultural use of the property.

With respect to Economic Impacts, the Commission finds the project would benefit the current property owners by creating a salable lot.

The Commission notes that any future development of Lot 2 would share the existing driveway with Lot 1.

A4. The Commission finds that impacts regarding the supply of needed low- and moderate-income housing for Island residents (Section 15(d) of the Act), do not apply to the project.

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

The Commission finds the project will likely have a minimal impact, if any, on municipal services and taxpayers.

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

The Commission finds the project will likely have a minimal impact, if any, on municipal services and taxpayers.

A7. The Commission find that the project as proposed generally does not interfere with the ability of the municipality to achieve the objectives set forth in the municipal general plan, and would not contravene land development objectives and policies developed by regional or state agencies (Sections 14(b), 15(g), and 15(h) of the Act), respectively.

The MVC Island Plan notes the gradual loss of farmland to subdivisions over time, and that the MVC Act could be used to ensure that ANR proposals are reviewed on the Vineyard. The Commission notes that no evidence was presented that the property has been actively farmed in recent decades, or that the project would alter any intended agricultural use of the property.

A8 The Commission finds that the proposed development as conditioned is consistent with municipal ordinances and by-laws (Section 14(c) of the Act).

The proposal is allowable under local zoning.

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 FOR IN SECTION 14(d) OF THE ACT.

The project site is within the Island Road District of Critical Planning Concern and is consistent with those regulations.

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 and offers, the Commission has concluded that the probable benefits of this proposed development in this location exceed its probable detriments in light of the considerations set forth in section 15 of the Act.

4. DECISION

The Martha's Vineyard Commission deliberated about the application at a duly noted meeting of the Commission held on January 12, 2023, and made its decision at the same meeting.

The following Commissioners, all of whom participated in the hearing and deliberations participated in the decision on January 12, 2023:

Voting to approve the project: Jeff Agnoli, Trip Barnes, Jay Grossman, Fred Hancock, Joan Malkin, Kathy Newman, Kate Putnam, Ben Robinson, Doug Sederholm, Brian Smith, Ernie Thomas, Peter Wharton

Voting against: None

Abstentions: None

Recused: None

Based on this vote, the Commission approved the application for the project as a Development of Regional Impact with conditions.

This Written Decision is consistent with the vote of the Commission on January 12, 2023, and was approved by a vote of the Commission on January 19, 2023.

5. CONDITIONS

After reviewing the proposal for this Development of Regional Impact, the Commission does not impose any conditions on the project. It should be noted that the DRI status of the property applies only to the division of land. Further development does not need to be referred to the Commission unless such development triggers the DRI Checklist on its own.

6. CONCLUSION

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 this decision 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.

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 record the ANR plan.

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6.4 Signature Block


Joan Malkin, Chair

20 Jan 2023
Date

6.5 Notarization of Decision

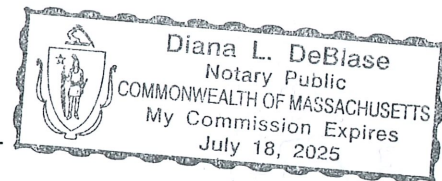
Commonwealth of Massachusetts

County of Dukes County, Mass.

On this 20th day of January, 2022, before me, Diana L DeBlase, the undersigned Notary Public, personally appeared Joan Malkin, proved to me through satisfactory evidence of identity, which was known to me to be the person whose name was signed on the preceding or attached document in my presence, and acknowledged to me that she signed it voluntarily for its stated purpose as a free act and deed, and who swore or affirmed to me that the contents of the document are truthful and accurate to the best of her knowledge and belief.


Signature of Notary Public

DIANA L. DEBLASE
Printed Name of Notary
My Commission Expires



6.6 Filing of Decision

Filed at the Dukes County Registry of Deeds, Edgartown, on: January 30, 2023

Deed: Book 1647, Page 663

Document Number: 0550

ATTEST: Paulo C. DeOliveira, Register
Dukes County Registry of Deeds