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## **Decision of the Martha's Vineyard Commission DRI 34-M3 - Flat Point Farm Form B Plan**

### **1. SUMMARY**

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- Referring Board:** Planning Board, Town of West Tisbury, MA
- Subject:** Development of Regional Impact #34-M3  
Flat Point Farm Form B Plan
- Project:** A Form B Preliminary Estate Plan that proposes to create four (4) new lots for building, reconfigures four (4) existing building lots, creates and/or reconfigures five (5) lots around existing buildings and places an additional 35 acres (total 60.5) into conservation on a farm on Tisbury Great Pond.
- Owner:** Priscilla P. Fischer Trust, (Trustees: Tim Madigan; Eleanor Neubert; Jean O'Reilly; Arnold Fischer Jr)
- Applicant:** Flat Point Farm, Priscilla P. Fischer Trust, (Trustees: Martha's Vineyard Savings Bank; Eleanor Neubert; Jean O'Reilly; Arnold Fischer Jr)
- Applicant Address:** C/O Reid Silva, Vineyard Land Surveying, P.O. Box 421, West Tisbury, MA, 02575.
- Project Location:** Road to Great Neck, West Tisbury Map 35 Lot 3.1(91.6 acres)
- Description:** The four (4) existing 5-acre lots are being truncated and four new 3- acre lots are being created from the 2-acres taken from each and an additional 7 acres of land that are currently woods resulting in a total of eight (8) 3-3.5 acre lots in that area. Proposed Lots A-E are five Form A lots around existing structures that range from 3.1 to 6.3 acres for a total of 23.2 acres. As part of this plan the Land Bank would be purchasing an additional 34.95 acres of agricultural conservation land for a total of 73.4 acres of conservation of the original farm.
- 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 24, 2018.
- Written Decision:** This written decision was approved by a vote of the Commission on June 14, 2018.

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**

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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 January 18, 2018 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, Sections 1.2 (Modification to a previous DRI). After the Land Use Planning Committee (LUPC) Meeting on February 12, 2018 the Applicant chose to forego Modification Review before the full Commission and elected to go directly to a public hearing review as a DRI and the project was reviewed as such.

### **2.2 Hearings**

Notice: Public notice of a public hearing on the Application was published in the M.V. Times, April 19, 2018.

Hearings: On May 3, 2018, 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. The Hearing was closed with the written record left open until May 18, 2018.

### **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 "Preliminary Plan of Land in West Tisbury, MASS. Prepared for Flat Point Farm: The Priscilla P. Fischer 1994 Trust", consisting of one 24" x 36" sheet showing the proposed preliminary estate plan of 91.6 acres, Scale 1 inch = 200 feet, prepared by Vineyard Land Surveying & Engineering, Inc., P.O. Box 421, West Tisbury, MA 02575, September 20, 2016 and revised May 19, 2017.
- P2 "Project Summary" consisting of one 8.5" by 11" page describing the proposal and nitrogen calculations prepared by Vineyard Land Surveying & Engineering, Inc., P.O. Box 421, West Tisbury, MA 02575, dated February 9, 2018.

### **2.4 Other Exhibits**

- E1. Referral to the MVC from the West Tisbury Planning Board received January 18, 2018.
- E2. Staff Report, by Paul Foley, MVC DRI Coordinator, with the assistance of other staff members, Date, February 14, 2018; revised March 14, 2018; revised March 14, 2018; April 26, 2018; revised May 3, 2018.
- E3. "Flat Point Farm: Existing Structures" consisting of one 8.5" by 11" page listing the history of all existing structures on the Flat Point Farm, prepared by Eric Peters, Attorney for the Applicant, received February 9, 2018.
- E4. Letter from the West Tisbury Planning Board, dated December 12, 2017.
- E5. Letter from the West Tisbury Affordable Housing Committee, dated January 29, 2018.
- E6. Letter from the Eric Peters, attorney for the Applicant, dated March 6, 2018.
- E7. Letter from the Eric Peters, attorney for the Applicant, dated March 16, 2018.
- E8. Letter from the West Tisbury Town Counsel, dated March 21, 2017.

- E9. Letter from the following individuals: Michael Colaneri; Sarah O’Sullivan; Chris O’Sullivan; Paul Karasik; Emily Fischer; Samantha Look; Kate O’Sullivan; Simon Athearn; and Tucker Hubbell.
- E10. Minutes of the Commission’s Land Use Planning Committee meeting, February 12, 2018.
- E11. Minutes of the Commission’s Public Hearing, May 3, 2018.
- E12. Minutes of the Commission Meeting of May 24, 2018– Deliberations and Decision.
- E13. Minutes of the Commission Meeting of June 14, 2018 – 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 Eric Peters, Attorney for the Applicant; Reid Silva (Vineyard Land Surveying); Arnie Fischer Jr. and Eleanor Neubert.
- Oral testimony from Public: Samantha Look.

## **3. FINDINGS**

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### **3.1 Project Description**

- In 1976 Arnie Fischer Sr. came to the MVC to subdivide four 5-acre lots, one for each of his children, out of the 130 +/- acre original farm.
- In 2007 the MVC approved with conditions a 12.9 acre Form A lot (DRI 34-M) around an existing camp building built in 1969 by Short Cove. The lot was eventually sold to the Land Bank and is permanently protected open space.
- In 2009 the MVC approved a Form B preliminary estate plan. This plan supplants the 2009 plan.
- The remaining 91.6-acre farm is situated at the end of a peninsula on Tisbury Great Pond between Short Cove and Pear Tree Cove.
- The peninsula is open farm pasture for a depth of approximately 850 feet from the Great Pond, beyond which the landscape becomes woods and farm fields.
- This Form B Preliminary Estate Plan proposes to create four (4) new lots for building, reconfigures four (4) existing building lots, creates and/or reconfigures five Form A (5) lots around existing buildings and places an additional 34.95 acres (total 60.5 – Not including 12.9 acres already sold to Land Bank) into conservation on a farm on Tisbury Great Pond with a total of 13 buildable lots.
- The four (4) existing 5-acre lots created in 1976 are being truncated to a little over 3-acres each and four new 3- acre lots are being created from the 2-acres taken from each and an additional 7 acres of land that are currently woods resulting in a total of eight (8) 3-3.5 acre lots in that area.
- Proposed Lots A-E are five Form A lots around existing structures that range from 3.1 to 6.3 acres for a total of 23.2 acres. Some of these lots already exist but are being re-configured.
- As noted above The Land Bank purchased the 12.9 acre lot that was the subject of DRI 34-M in 2007. The Land Bank currently holds an Agricultural Preservation Restriction (APR) on a 25.54 field along Tisbury Great Pond. As part of this plan the Land Bank would be purchasing an additional 34.95 acres of agricultural conservation land for a total of 73.4 acres of conservation of the original farm.
- The Applicant is proposing to purchase or create one affordable housing lot off site.
- The plan also includes a significant relocation of the road within the farm away from the cove and existing and proposed house lots.
- The proposed Form B Preliminary Plan results in a total of thirteen (13) buildable lots and 73.4 acres of conserved land (including the 12.9 sold to Land Bank) on a total of 122.5 acres (DRI 34).

### **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 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 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 the majority of the proposed lot has long been and currently is farmland and that the majority of the land will be maintained as agricultural land in perpetuity. The Commission notes that this is a preliminary plan that cannot be acted upon and that no development is planned at this time.

**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 final division plan must be able to meet the MVC nitrogen loading requirements for Tisbury Great Pond in force at the time of the final subdivision.

With respect to Open Space, Natural Community and Habitat, the Commission finds that the proposal results in two large conservation parcels (60.5 acres total) that will not be further subdivided.

With respect to Night Lighting and Noise, the Commission finds that proposal should not have a noticeable impact.

With respect to Energy and Sustainability, the Commission finds that the project retains most of the property in its current state.

**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 notes that there could be a minor impact on the road relative to its current rural condition. The Commission notes that it has made no determination as to whether the proponent has legal access over a private way or easement by prescription to the lot. In accordance with the Town’s zoning, the Town will have to determine whether the proponent has legal access

to the lot, or alternatively, that the Town will waive the relevant provisions of zoning requiring, for example, frontage on a public way. This DRI decision does not purport to affect or determine the property rights of the proponent or of any abutter or other party with title interest in the way or easement.

With respect to Scenic Values, Character, and Identity the Commission finds that the existing farm is being protected and that the character of the land would remain largely intact. The Commission notes that the proposal allows a multi-generational farm to stay primarily in agricultural use and largely within the family

With respect to the Impact on Abutters, the Commission finds that abutters have expressed concerns that have been somewhat addressed by the offers and conditions contained in this Decision. The Commission notes that the issue of access will be dealt with by the Town and that the formal division plan must return to the MVC with solutions to several issues that have been raised but have yet to be resolved at this time.

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

The Commission finds the proposal does not trigger the MVC's Affordable Housing Policy because four of the thirteen buildable lots were created in 1976 before the MVC adopted an Affordable Housing Policy. The Commission notes that the West Tisbury Zoning By-laws Section 4.4-6 requires more affordable housing mitigation than the MVC policy (20% versus 10%). By Special Permit, the Planning Board may exempt Applicants from this requirement by creating lots for the use of family members, if it finds that suitable resale restrictions are in place. Since the Planning Board can grant a Special Permit to exempt proposals based on certain criteria they consider then the MVC does not have to meet the 20% affordable standard written in the town zoning.

**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).**

The Commission finds that the development of this property would add to the tax rolls of West Tisbury while still preserving most of the pasture land.

**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).**

The Commission finds that this proposal should have minimal impact on public facilities.

**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.

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 suggestions for the Form C Definitive Plan such as those relating to the location of the development envelopes, 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 Commission 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.**

As noted in A3, The Commission notes that it has made no determination as to whether the proponent has legal access over a private way or easement by prescription to the lot in accordance with the Town's zoning. The Town will have to determine whether the proponent has legal access to the lot, or alternatively, that the Town will waive the relevant provisions of zoning requiring, for example, frontage on a public way.

**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 partly located within the Coastal District of Critical Planning Concern (DCPC) and the Floodplain District of Critical Planning Concern, and must conform to their regulations.

#### **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 May 24, 2018 and made its decision at the same meeting. The following Commissioners, all of whom participated in all hearings and deliberations on this project, participated in the decision on May 24, 2018.

- Voting in favor: Clarence A. "Trip" Barnes; Leon Brathwaite; Christina Brown; Rob Doyle; Fred Hancock; Joan Malkin; Kathy Newman; Ben Robinson; Doug Sederholm; Linda Sibley; Ernie Thomas; and Richard Toole.
- 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 24, 2018 and was approved by vote of the Commission on June 14, 2018.

#### **5. RECOMMENDATIONS FOR DEFINITIVE PLAN**

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After reviewing the proposal for this Development of Regional Impact, the Martha's Vineyard Commission imposes the following recommendations for the Form C Definitive plan in order to increase the benefits and minimize the detriments of the project.

##### **1 Wastewater, Groundwater And Storm water Management**

- 1.1 With respect to wastewater the Applicant must be able to meet the MVC nitrogen loading requirements for Tisbury Great Pond in force at the time of the final division.

**2 Final Division Plan**

- 2.1 The final Division Plan shall be submitted to and is subject to the approval of the Martha's Vineyard Commission.
- 2.2 The Applicant, when submitting the final Division Plan, should include the following:
  - Building envelopes on future lots aimed at reducing the impact on existing and potential farming and grazing areas, balanced with minimizing the impact on the pond;
  - A clear indication of where, if any, there will be guest houses;
  - Measures to meet the MVC Water Quality Policy in place at that time;
  - A definitive instrument that limits future division.

**3 Road**

- 3.1 The West Tisbury Planning Board shall determine the adequacy of the road.

**6. CONCLUSION**

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**6.1 Permitting from the Town**

The Applicant 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.

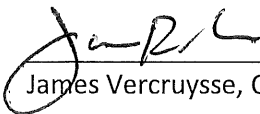
**6.2 Notice of Appellate Rights**

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 submit a Form C Definitive Plan. Should Form C Definitive Plan not be submitted for review and approval 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**


 \_\_\_\_\_ Date July 3, 2018

James Vercruyse, Chairman

**6.4 Notarization of Decision**

Commonwealth of Massachusetts  
County of Dukes County, Mass.

On this 3<sup>rd</sup> day of July, 2018, before me,  
Jo-Ann Taylor, the undersigned Notary Public, personally  
 appeared James Vercruyse, 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.

Jo Ann Taylor  
Signature of Notary Public  
Jo Ann Taylor  
Printed Name of Notary  
My Commission Expires January 31, 2025

**6.5 Filing of Decision**

Filed at the Dukes County Registry of Deeds, Edgartown, on: July 6, 2018

Deed – Book 1976 page 463

Document Number: 00003749