

Dukes County Registry of Deeds
Electronically Recorded Document

This is the first page of the document - Do not remove

Recording Information

Document Number	: 4793
Document Type	: REST
Recorded Date	: October 04, 2023
Recorded Time	: 01:50:14 PM
Recorded Book and Page	: 01665 / 620
Number of Pages(including cover sheet)	: 16
Receipt Number	: 251846
Recording Fee	: \$105.00

Dukes County Registry of Deeds
Paulo C. DeOliveira, Register
81 Main Street
PO Box 5231
Edgartown, MA 02539
508-627-4025
www.Masslandrecords.com

**MARTHA'S VINEYARD LAND BANK COMMISSION
AGRICULTURAL PRESERVATION RESTRICTION & EASEMENT**

MARTHA'S VINEYARD BANK, ELEANOR D. NEUBERT, ARNOLD M. FISCHER, JR., and JEAN F. O'REILLY as TRUSTEES of THE PRISCILLA P. FISCHER 1994 TRUST dated November 22, 1994, as amended on December 19, 1995 and by Second Amendment and Complete Restatement dated December 20, 2004, as evidenced by a Trustee's Certificate recorded in the Dukes County Registry of Deeds (the "Registry") in Book 1329, Page 317, being the sole owners, for themselves and their successors and assigns (hereinafter collectively called the "Grantor"), for no consideration paid, this Agricultural Restriction & Easement constituting a gift of the Grantor, grants to the **MARTHA'S VINEYARD LAND BANK COMMISSION**, a corporate body politic constituted and existing under the laws of the Commonwealth of Massachusetts, with a mailing address of Post Office Box 2057, Edgartown, Massachusetts 02539, its successors and assigns (hereinafter called the "Grantee") an Agricultural Preservation Restriction & Easement in perpetuity (the "Restriction") on approximately thirty-five (35) acres of land, as more particularly defined in Section II-5 and as delineated on the sketch plan attached hereto as *Exhibit A* and incorporated herein by reference (the "Premises") in accordance with the following terms and conditions.

I. STATEMENT OF PURPOSE

Grantee's purposes as set out in its enabling legislation at Chapter 736 of the Acts of 1985, as amended, include the acquisition, holding and management of land and interests in land, including "... (b) agricultural lands; ... (f) land to protect scenic vistas."

By obtaining this Restriction, it is the primary intent of the Grantee to perpetually protect and preserve the Premises' agricultural lands; encourage sound soil management practices in accordance with normally accepted agricultural practices; preserve natural resources; maintain the Premises in active agricultural use as defined in Section II (2) below; regulate and control activities and/or uses which may be detrimental to the actual or potential agricultural viability of the Premises or detrimental to soil conservation. The primary goal of this Restriction is to allow and encourage Agricultural Uses, as defined below.

In addition, the Premises have significant scenic values of great importance to the Grantor, the Grantee, the people of Martha's Vineyard Island, and the Commonwealth of Massachusetts, as views from, of and across the Premises from nearby trails, anticipated future trails, and other land of the Grantor, and land abutting the Premises, provide a scenic vista.

II. DEFINITIONS

When used throughout this Restriction, the following words or phrases shall have the following meanings:

1. Abandoned or Abandon: land that has not been actively utilized for commercial agricultural activities or uses for a period exceeding two (2) years unless the non-utilization is recommended in a current USDA/NRCS plan as approved by Grantee.
2. Agricultural Use(s): the raising of animals, including but not limited to, dairy cattle, beef cattle, poultry, sheep, swine, mules, goats, bees and fur-bearing animals, for the purpose of selling such animals or a product derived from such animals in the regular course of business; or when primarily and directly used in a related manner which is incidental thereto and represents a customary and necessary use in raising such animals and preparing them or the products derived therefrom for market, as defined in M.G.L. c. 61A, § 1, as amended. Also, horticultural uses, the raising of fruits, vegetables, berries, nuts and other foods for human consumption, feed for animals, and flowers, for the purpose of selling such products in the regular course of business; or when primarily and directly used in a related manner which is incidental thereto and represents a customary and necessary use in raising such products and preparing them for market, as defined in M.G.L. c. 61A, § 2, as amended.
3. Condition: including, but not limited to; an easement, restriction, covenant, right, land exchange, or any other requirement or use prohibition.
4. Permanent Structure: any structure that requires the grading of soil or excavation for footings or foundations or which substantially alters or otherwise affects the soil profile.
5. Premises: approximately thirty-five (35) acres of land, as more particularly delineated and on shown as "Agricultural Preservation Parcel" Area = ± 34.90 Acres" on a certain plan entitled "Agricultural Preservation Parcel in West Tisbury, Mass. Prepared for "Flat Point Farm" The Priscilla P. Fischer 1994 Trust August 27, 2023 Scale 1" = 400' Vineyard Land Surveying & Engineering, Inc.," a copy of which is attached hereto as **Exhibit A** and incorporated herein by reference, and being a portion of the real property described in deed of Arnold M. Fischer to Arnold M. Fischer and Priscilla P. Fischer dated July 9, 1988 and recorded in Dukes County Registry of Deeds in Book 507, Page 43. For title, see Dukes County Probate Docket Nos. 990008P and DU12P0105EA.

6. Successors in Title: Grantor's and Grantee's, as the context so applies, assigns and successors in title to the Premises.
7. Temporary Structure: a structure that does not have a permanent foundation, or does not substantially alter or otherwise affect the soil profile.

III. TERMS AND CONDITIONS

A. Retained and Reserved Rights of Grantor Free of the Terms of this Restriction

The provisions of this Restriction are not intended to apply to so much of the Premises as lie within the sidelines of "Road to Great Neck (40 ft. wide)" as shown on Exhibit A and which crosses the Premises and serves as access to the remaining land of the Grantor and others (the "Road to Great Neck") and the travelled portion of the original Road to Great Neck that continues from the 40 Foot Way shown on Exhibit A southwesterly along Pear Tree Cove to other property of the Grantor.

For the avoidance of doubt, excepted and excluded from the provisions of this Restriction and fully reserved for the benefit of the Grantor and its successors and assigns are:

1. The perpetual right and easement, as appurtenant to the remaining land of Grantor, to pass and repass over, across and upon the Road to Great Neck to be used for all purposes for which streets and ways may now or hereafter be used in the Town of West Tisbury, together with the right to improve, repair and maintain the traveled surface of the Road to Great Neck conforming to the requirements of the West Tisbury Planning Board Rules and Regulations Concerning the Subdivision of Land and the West Tisbury Zoning Bylaws, now or hereafter in force and effect, and any Decision(s) of Approval of any Approval Not Required Plan or Subdivision Plan pertaining to the property of the Grantor or the Inholdings (as defined below), including the right to install, maintain, repair and replace utility lines (all of which shall be installed underground) for the transmission of electricity and intelligence, and the right of the Grantor to grant similar appurtenant perpetual rights and easements to the inholdings at Flat Point Farm owned by Anne Fisher and the O'Sullivan family and to the owners of Lot Nos. 4 through 7 as shown the plan recorded with the Registry as West Tisbury Case File No. 94, who are now or hereafter to be served by the Road to Great Neck (the "Inholdings").
2. The perpetual right and easement as appurtenant to the remaining land of

Grantor to maintain, repair, and replace the utility pole lying easterly of the northerly terminus of the Road to Great Neck (being the "Utility Pole" shown on Exhibit A at the northwest corner of the Premises) and the overhead utility lines running to said "Utility Pole" from New Lane/Tiah's Cove Road southeasterly to the Premises and where underground lines for the transmission of electricity and intelligence connect to said "Utility Pole" and run to the Road to Great Neck and within that 40 foot wide right of way southerly to the other land of Grantor and others.

3. The right and easement to pass and repass over, across and upon original travelled portion of the Road to Great Neck that continues from the 40 Foot Way shown on **Exhibit A** southwesterly along Pear Tree Cove to other property of the Grantor to be used for all purposes for which streets and ways may now or hereafter be used in the Town of West Tisbury, together with the right to improve, repair, and maintain the traveled surface thereof.
4. The right to permit the Grantee to install trails for passive recreational enjoyment of the Premises by members of the public.

B. Prohibited Uses; Acts; Structures

The Grantor covenants for itself, its agents and employees, and its Successors in Title, that the Premises will at all times be held, used, and conveyed subject to, and not in violation of, the following restrictions:

1. No use shall be made of the Premises, and no activity thereon shall be permitted, which is inconsistent with the intent of this Restriction, or with the provisions of MGL Chapter 184, sections 31 through 33; and the rules, regulations and policies thereunder.
2. No structure used or useable for human habitation or any tennis court, swimming pool, indoor or outdoor horse arenas, dressage rings, riding rings, horse jumps, horse boarding facility, golf course, golf range, airport landing strip, cell tower, greenhouse, solar array, sight-impervious fence, and no other non-agricultural temporary or permanent structure shall be constructed, placed, or permitted to remain on the Premises.
3. No refuse, trash, vehicle bodies or parts, rubbish, debris, junk, waste, oil, radioactive or hazardous waste or other substance or material whatsoever shall be placed, stored, dumped or permitted to remain on the Premises, except as required for the use of the Premises for normal agricultural activities.

4. The Premises may be subdivided as a parcel of land of the Grantor comprising 34.90 acres consistent with the plan attached hereto as Exhibit A, but such parcel may not be further subdivided. The area of the Premises may be included in any calculation which may confer additional development rights under zoning or related ordinances to any other property currently owned by the Grantor.
5. Use of any existing or future roads, ways, trails, or driveways within the Premises other than the "Road to Great Neck (40' wide)" as shown on Exhibit A shall be strictly confined to agricultural, maintenance, or passive recreational purposes.
6. No filling or grading of the existing or future roads, ways, trails or trailheads, or driveways within the Premises other than the "Road to Great Neck (40' wide)" as shown on Exhibit A shall be undertaken except as permitted as set forth herein.
7. The Premises shall not be allowed to overgrow into shrubland or woodland, and the existing field on the Premises shall be mowed when not in active agricultural use. Grantee shall have the right but not the obligation to mow the Premises if agricultural use appears to have been abandoned by Grantor, or if the Premises are overgrowing into shrubland or woodland.

C. Structures That Require Prior Written Approval

Structures are allowed only with the prior written approval of the Grantee. Requests for such approvals, and the granting thereof, shall be governed by the procedures set forth in III (C) below.

D. Approval Process For Permitted Structures

The Grantor covenants for themselves and their Successors in Title, that prior to undertaking any uses or acts, or undertaking any construction of structures, described in Section III-D, the following procedure shall be followed:

1. The Grantor shall file a written request with the Grantee identifying intended use(s) or acts(s). Grantor shall not secure any applicable permits required by state or local law prior to obtaining Grantee's consent to the request unless otherwise agreed to by Grantee and Grantor.
2. Included with Grantor's request shall be:

- (i) a copy of a current Farm Conservation Plan, prepared by the USDA/Natural Resource Conservation Service, if applicable and when reasonably requested by the Grantee; and
 - (ii) any information and plans as the Grantee of this Restriction reasonably requires to determine that the intended use, act, or structure and its proposed location is consistent with the intent and purpose of this Restriction, as stated in Section I herein.
- 3. Within 30 days of receipt of the request, the Grantee may consent to the request, with or without conditions, upon a finding that:
 - (i) the proposed use, act or structure is authorized by this Restriction and the agricultural provisions of MGL Chapter 184, Sections 31 and 33; and the rules, regulations, and policies thereunder; and
 - (ii) the proposed use, act or structure shall not defeat nor derogate from the intent of this Restriction, and the agricultural preservation provisions of MGL Chapter 184 Sections 31 through 33, and the rules, regulations, and policies thereunder.
- 4. If Grantee consents to the request, or consents with conditions, to the Grantor's request, Grantee shall issue a certificate, suitable for recording, consenting, in whole or in part, to the request; and setting forth any conditions ("Certificate of Approval") and mail a copy to Grantor within said thirty (30) day period.
- 5. If the Grantee does not consent to Grantor's request, Grantee shall state in writing its reasons for denial of the request and shall mail a copy of the denial to Grantor within thirty (30) days of receipt of the request. Failure of the Grantee to act within said thirty (30) days shall be deemed constructive approval of the request.
- 6. At any time within the said thirty (30) day period the parties may mutually agree to extend the length of said period.

E. Enforcement of this Restriction

- 1. The Grantor grants to the Grantee, and its agents and representatives, (i) the right to enter upon the Premises for the purposes of inspecting the Premises to determine whether the Premises are being maintained in compliance with the terms of this Restriction, with any Certificate of

Approval, or with the agricultural preservation provisions of MGL Chapter 183, Sections 31 and 33; and the rules, regulations, and policies thereunder (ii) the right to enforce this Restriction; any Certificate of Approval, or of the agricultural preservation provisions of MGL Chapter 183, Sections 31 and 33; and the rules, regulations, and policies thereunder.

2. In the event of a violation of the terms of this Restriction, including Abandonment as described in section III G below, any Certificate of Approval, or the agricultural preservation provisions of MGL Chapter 183, Sections 31 and 33; and the rules, regulations, and policies thereunder or any Certificate of Approval, the Grantee reserves the right after providing thirty (30) days prior written notice to Grantor and an opportunity to cure the violation with said thirty (30) day period, to pursue any remedy available at law and equity, including injunctive relief.
4. The enforcement rights hereby granted shall be in addition to, and not in limitation of any other rights and remedies available to the Grantee for enforcement of this Restriction, any Certificate of Approval, or of the agricultural preservation provisions of MGL Chapter 183, Sections 31 and 33; and the rules, regulations, and policies thereunder.
4. The Grantor and their Successors in Title shall be liable, during the term of their respective ownership, for any violation of the terms of this Restriction, any Certificate of Approval, or of MGL Chapter 183, Sections 31 and 33; and the rules, regulations, and policies thereunder.
5. Notwithstanding the foregoing, in the event that Grantee acquires fee simple title to the Premises, such acquisition shall result in the merger of this instrument into the fee, and extinguishment of its enforceability.

F. No Abandonment of Agricultural Use

The Grantor agrees for itself, and its Successors in Title, that the Premises shall be maintained in active commercial Agricultural Use as defined herein, and the land shall not be abandoned, except in accordance with a USDA Natural Resource Conservation Service Farm Management Plan, approved by the conservation district for the locality in which the Premises is located. The Grantor and any successors in title, including lessees and licensees of the Premises, shall be liable for any non-compliance with the terms of this Restriction which occurs during their respective periods of ownership of the Premises.

IV. AUTHORIZATION

The foregoing Restriction is authorized by Massachusetts General Laws, Chapter 184, Sections 31 through 33, and otherwise by law, and is intended to ensure the protection and preservation of agricultural lands, scenic views and open space as expressed herein.

This Restriction shall be administered and enforced by the Grantee as Grantee in its sole discretion may decide. Nothing herein shall impose upon the Grantee any duty to maintain or require that the Premises be maintained in any particular state or condition, notwithstanding the Grantee's acceptance hereof.

This Restriction does not grant to the Grantee, members of the public, or any other person any right to enter upon the Premises, other than as follows:

- (i) Such entry permitted under the terms of the existing Trail Easement granted to Martha's Vineyard Land Bank Commission and recorded in Dukes County Registry of Deeds in Book 1328, Page 378, or as shall be permitted in the future under any future trails or trailheads which may be installed by Grantee;
- (ii) Use of the roads and ways by emergency vehicles, and by elderly and/or handicapped visitors;
- (iii) Entry by Grantee and Grantee's designees, agents, and representatives (and only for limited access as is needed for Grantee's maintenance vehicles);
- (iv) Use of the roads and ways by tenants, sub-tenants or licensees of the Grantee, and such tenants', sub-tenants', or licensees' employees, while engaged in agricultural activities within the Leased Premises.

This Restriction is in gross, exists in perpetuity, and is not for the benefit of or appurtenant to any particular land and shall not be assignable except to another governmental or charitable corporation or trust which has power to acquire interests in land and whose purposes include conservation of agricultural land and natural areas. The burden of this Restriction shall run with the Premises and shall be binding upon all future owners of any interest therein. This Restriction may only be released, in whole or in part, by the Grantee by the procedures established by Section 32 of Chapter 184 of the General Laws, as amended, and by Article 97 of the Amended Articles of the Massachusetts Constitution and otherwise by law.

If any section or provision of the Restriction shall be held to be unenforceable by any court of competent jurisdiction, this Restriction shall be construed as though such section had not been included in it. If any section or provision of the Restriction shall be subject to two constructions, one of which would render such

section or provision invalid, then such section or provision shall be given the construction that would render it valid. If any section or provision of the Restriction is ambiguous, it shall be interpreted in accordance with the agricultural preservation provisions of MGL Chapter 183, Sections 31 and 33; and Chapter 132A, Section 3, as amended.

This Restriction upon the Premises is conveyed subject to the rights of others in and to the overhead utility lines and poles running from the northwest corner of the Premises southeasterly to land of Philip W. Spalding, Trustee, all as shown on ***Exhibit A***.

-----Remainder of Page Intentionally Left Blank -----

WITNESS the execution thereof under seal this 29th day of September, 2023.

THE PRISCILLA P. FISCHER 1994 TRUST

by: Eleanor D. Neubert
Eleanor D. Neubert, Trustee

by: Arnold M. Fischer Jr
Arnold M. Fischer, Jr., Trustee

by: Jean F. O'Reilly
Jean F. O'Reilly, Trustee

by: Edward J. Murphy IV
Martha's Vineyard Bank, Trustee,
by: Edward J. Murphy IV
its: Managing Director, Investment Services

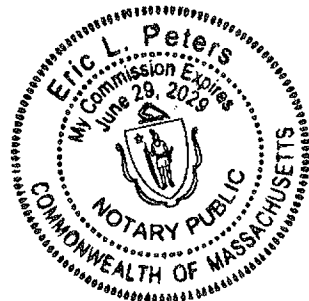
COMMONWEALTH OF MASSACHUSETTS

Dukes County, ss.

On this 29th day of September, 2023, before me, the undersigned notary public, personally appeared Edward J. Murphy IV, Managing Director, Investment Services of Martha's Vineyard Bank as aforesaid, proved to me through satisfactory evidence of identification, which was a MA Drivers License, to be the person whose name is signed on the preceding document, and acknowledged to me that s/he signed it voluntarily for its stated purpose, in his/her capacity of Trustee as aforesaid.

[Signature]

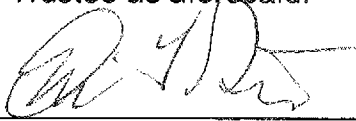
Notary Public
My commission expires: 6/29/29
AFFIX SEAL



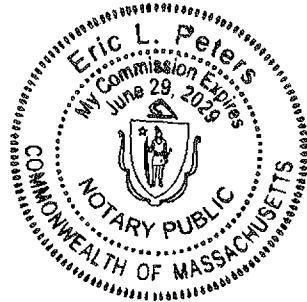
COMMONWEALTH OF MASSACHUSETTS

Dukes County, ss.

On this 29th day of ~~October~~ ^{September}, 2023, before me, the undersigned notary public, personally appeared Eleanor D. Neubert and Arnold M. Fischer, Jr., proved to me through satisfactory evidence of identification, which was personally known to me, to be the persons whose names are signed on the preceding document, and acknowledged to me that they signed it voluntarily for its stated purpose, in their capacity of Trustee as aforesaid.



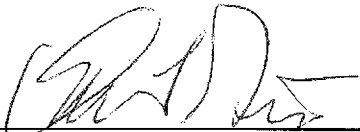
Notary Public ERIC L. PETERS
My commission expires: 6/29/2029
AFFIX SEAL:



COMMONWEALTH OF MASSACHUSETTS

Dukes County, ss.

On this 29th day of ~~October~~ ^{September}, 2023, before me, the undersigned notary public, personally appeared Jean F. O'Reilly, proved to me through satisfactory evidence of identification, which was personally known to me, to be the person whose name is signed on the preceding document, and acknowledged to me that she signed it voluntarily for its stated purpose, in her capacity of Trustee as aforesaid.



Notary Public ERIC L. PETERS
My commission expires: 6/29/2029
AFFIX SEAL:



MARTHA'S VINEYARD LAND BANK COMMISSION

Pamela Goff
By: Pamela Goff
Its Chairman

COMMONWEALTH OF MASSACHUSETTS

Dukes County, ss.

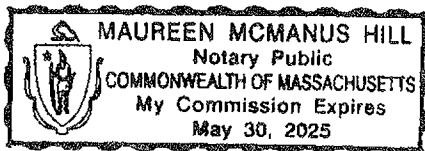
On this 3rd day of October, 2023, before me, the undersigned notary public, personally appeared Pamela Goff, Chairman of the Martha's Vineyard Land Bank Commission, as aforesaid, proved to me through satisfactory evidence of identification, which was a personally known, to be the person whose name is signed on the preceding document, and acknowledged to me that she signed it voluntarily for its stated purpose on behalf of the Martha's Vineyard Land Bank Commission.

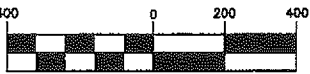
Maureen McManus Hill

Notary Public

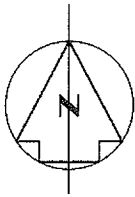
My commission expires: May 30, 2025

AFFIX SEAL:





(IN FEET)
1 inch = 400 ft.



Tisbury Great Pond
Pear Tree Cove

Assr. Pcl. 31-69
"N/F Monomy Farm LLC"
WT CF 448

"N/F Philip W. Spalding, Tr."
Assr.-Pcl. 35-6
WT CF 189A
WT CF 406

Assr.-Pcl. 35-6.21
Philip W. Spalding, Tr.

Assr.-Pcl. 35-6.17
"N/F Ronald D. Silva
Susan S. Silva"

Assr.-Pcl. 35-6.15A
"N/F Philip W. Spalding, Tr."

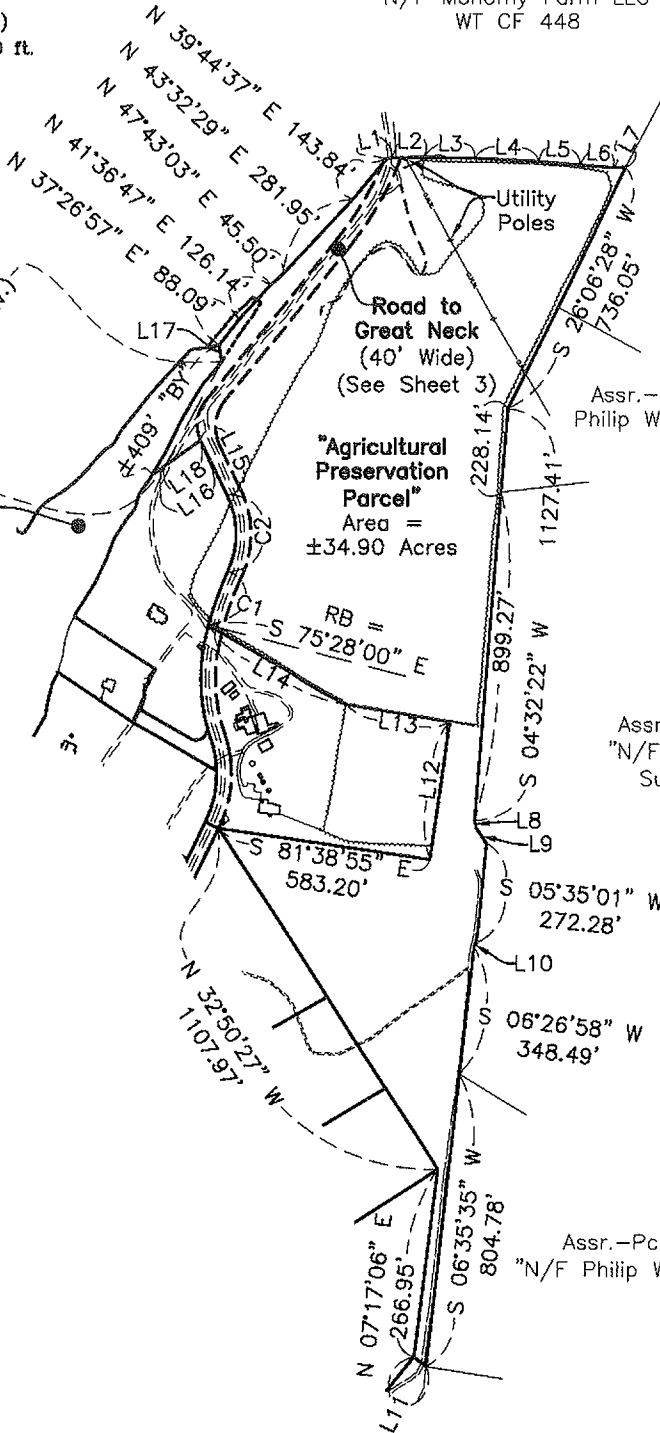


Exhibit A
Sheet 1 of 3
Agricultural Preservation Parcel in
West Tisbury, Mass.
Prepared for
"Flat Point Farm"
**The Priscilla P. Fischer
1994 Trust**

August 27, 2023 Scale 1" = 400'

Note: See Sheet 2 For Line and Curve Tables.



12 Courtyard Road
P.O. Box 421
West Tisbury, MA 02676
P 508-693-3774 F 508-697-5448
VLS.net

LINE TABLE		
L1	N 76°56'43" E	14.68'
L2	N 89°29'51" E	83.66'
L3	S 89°07'53" E	144.47'
L4	S 86°55'38" E	177.13'
L5	S 85°19'11" E	112.54'
L6	S 85°39'58" E	92.31'
L7	N 87°47'42" E	36.52'
L8	S 11°54'59" E	21.82'
L9	S 34°10'12" E	51.08'
L10	S 32°35'34" E	13.72'
L11	N 53°01'01" E	42.45'
L12	N 08°22'48" E	380.06'
L13	N 80°33'36" W	290.53'
L14	N 59°55'18" W	432.97'
L15	N 25°46'15" W	166.72'
L16	S 54°32'32" W	±162'
L17	N 10°15'27" W	45.14'
L18	S 54°32'32" W	117.47' Inv.

CURVE TABLE			
	DELTA	RADIUS	ARC
C1	09°56'46"	896.98'	155.71'
C2	50°15'02"	244.54'	214.47'

Exhibit A
 Sheet 2 of 3
 Agricultural Preservation Parcel in
West Tisbury, Mass.
 Prepared for
"Flat Point Farm"
The Priscilla P. Fischer
1994 Trust
 August 27, 2023



