

LAW OFFICES
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Street Address:
3 MARINER'S LANDING
EDGARTOWN, MA 02539

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EDGARTOWN, MA 02539

January 25, 2024

Mr. Rich Saltzberg, DRI Coordinator
Martha's Vineyard Commission
P.O. Box 1447
Oak Bluffs, MA 02557

By Email

Re: **Flat Point Farm DRI 34-M5, West Tisbury**

Dear Rich:

I am writing on behalf of the Trustees of The Priscilla P. Fischer 1994 Trust (the "Fischer Trust") in response to some of the matters discussed at the LUPC meeting December 11, 2023.

Nitrogen Loading – Bedrooms and Agriculture

A. Bedrooms

Please see the correspondence and calculations from Vineyard Land Surveying and Engineering dated October 27, 2023. The Nitrogen Loading Summary has been reviewed by MVC staff.

As to bedrooms, the proposal is for up to six bedrooms in homes on Lots A, C, D, 4A, 4B, 4C, 4D, 5A, 5B, 5C, and 5D.

Guesthouses of 1,000 sq. ft. are allowed on Lots B and E. The proposal is for eight bedrooms on Lots B and E. It is up to the owner as to how many bedrooms are allocated between the house and the guest house.

This sets a total of 82 bedrooms on the subdivision.

B. Agriculture

As to agriculture, the Fischer Trust has supplied, with the nitrogen study, a Description and Nitrogen Mitigation report dated October 31, 2023 concerning the farming operations at Flat Point Farm.

In 2013, the Fishers granted to the Land Bank an Agricultural Preservation Restriction & Easement (Book 1329, Page 350) as well as a Conservation Restriction & Easement (Book 1329, Page 365) over the 25.54 acre southerly portion of Flat Point Farm by Tisbury Great Pond. This

will now be a separate parcel as shown on the subdivision plans as “Agricultural Preservation restriction.”

In October 2023, the Fischer Trust granted the Land Bank a 100 year Lease and Option to Purchase (Book 1665, Page 636) the 34.90 parcel at the north portion of Flat Point Farm shown as “Agricultural Preservation Parcel” on the subdivision plans. The Land Bank will purchase the parcel once all subdivision approvals are completed. The Fischer Trust also granted to the Land Bank an Agricultural Preservation Restriction & Easement (Book 1665, Page 621) on this portion of Flat Point Farm.

This ensures that 60 acres of the 109 acres of Flat Point Farm will be permanently preserved in agricultural use.

Affordable Contribution per West Tisbury Zoning Bylaw

Please see attached “Flat Point Farm Affordable Contribution for MVC Review” concerning the Fischer Trust proposed affordable contribution for the subdivision plan.

Lease to Emily Fisher

There is a Notice of Lease between the Fischer Trust as Lessor and Emily Fischer, as Lessee recorded in Book 1581, Page 234, dated May 20, 2021. The term of the lease is thirty years. Emily Fischer has constructed her single family residence upon the leased area, which consists of 1.5 acres on Lot B. Emily resides on the property with her husband Doug Brush and their children. Doug is a middle school science teacher at the West Tisbury school. There are no affordable restrictions in this lease. It is a family arrangement. See attached Notice of Lease and Site Plan.

The Fischer Trust requests that the LUPC vote to recommend that MVC vote to approve the modification request as submitted and remand the Form A and Form C plans back to the West Tisbury Planning Board for municipal review without further public hearing and review.

Respectfully submitted,



Eric L. Peters, Attorney for the Trustees
of The Priscilla P. Fischer 1994 Trust

Enclosures

cc: Martha’s Vineyard Bank, Tr.
Eleanor Neubert, Tr.
Jean M. O’Reilly, Tr.
Arnold M. Fischer, Jr., Tr.
Reid Silva, P.L.S.
West Tisbury Planning Board

Flat Point Farm
The Priscilla P. Fischer 1994 Trust
West Tisbury Affordable Contribution

January 25, 2024

In 2018, during MVC review of the Form B Plan, in correspondence with the West Tisbury Planning Board by Eric Peters, as counsel to the Fischer Trust, and confirmed by correspondence from Ronald H. Rappaport, counsel to the Planning Board, the affordable contribution under the West Tisbury Zoning Bylaw for the Flat Point Farm subdivision was determined to be one affordable lot pursuant to Section 4.4-6 of the West Tisbury Zoning Bylaw.

As provided in the 2018 MVC Decision approving the Flat Point Farm Form B Plan, “Project Description” states:

"The Applicant is proposing to purchase or create one affordable housing lot off site."

In Section 3.4 “Benefits and Detriments,” the 2018 MVC Decision states:

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 15d) 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 MC does not have to meet the 20% affordable standard written in the town zoning.

In the 2018 MVC Decision at Section 5. “Recommendations for Definitive Plan,” there is no further mention of affordable housing or requirements.

In March 2020, the Fischer Trust purchased Lot 2 shown on the plan recorded in Plan Book 15, Page 30 Lot 2 consists of 3.03 acres and is north of the Edgartown-West Tisbury Road. It is 7 Harpoon Lane shown as Lot 121.1 on West Tisbury Assessor Map 31. See attached plans.

The Fischer Trust intends to apply to the West Tisbury Planning Board for a Special Permit pursuant Section 4.4-3.B. of the West Tisbury Zoning Bylaw to have a five bedroom single family residence and a three bedroom restricted affordable single family residence on Lot 2. The affordable residence will be used by the Fischer Trust to satisfy its affordable housing requirements under West Tisbury Zoning Bylaw Section 4.4-6 for the Flat Point Farm subdivision. The Fischer Trust has had preliminary discussion with the West Tisbury Planning Board concerning this proposal.

Section 4.4-3.B. of the West Tisbury Zoning Bylaw provides:

4.4-3.B. Multi-Family Housing by Special Permit

At the sole discretion of the Planning Board as Special Permit granting authority, upon a finding that the proposed dwelling units are consistent with the Town of West Tisbury Master Plan and provide needed housing for Town residents, and understanding the value of creativity in developing new housing, a Special Permit may be granted allowing any combination of residences or apartments where the density exceeds the standards in Subsection 4.4-1 (A), and allow building heights up to 32 feet, provided that:

1. At least 25% of the bedrooms shall be in units that are restricted as affordable housing subject to the terms and limitations of a covenant imposed by the Affordable Housing Committee
2. All affordable units created must be for year-round housing; and
3. No further sub-division will be allowed.

In making its determination whether to grant a special permit, the Planning Board shall consider the following factors, in addition to the general review criteria outlined in Section 9.2-2 of the zoning bylaws:

1. Neighborhood character and architectural design
2. Impact on neighborhood roads and traffic
3. Alternate best use of land as agriculture or conservation
4. Transportation and shared use path access
5. Visitability standards; and
6. Affordability Rule of Thumb

For any dwelling units approved under this Section 4.4-3B, the lot shall contain at least ten thousand square feet of buildable land per bedroom, unless an enhanced septic treatment system is used and approved by the Board of Health.

Lot 2 at Harpoon Lane supports 10 bedrooms under Title 5. The Fischer Trust proposal is for a five bedroom single family residence and a three bedroom affordable restricted single family residence. The 3.03 parcel supports the total of eight bedrooms on the parcel since 80,000 sq. ft. totals 1.84 acres. Three bedrooms for the affordable residence exceeds the 25% bedroom requirement under the bylaw.

The Fischer Trust has prepared a site plan showing the locations of the proposed residences and proposed septic systems and wells. See attached site plan.

Prior use of Section 4.4-3.B. to satisfy West Tisbury Planning Board affordable housing requirements

- A. Look Family and Crow Hollow Realty Trust

The Look Family with its Crow Hollow Trust subdivisions on the Road to Great Neck sought in 2010 to subdivide a three acre parcel containing an existing residence out of a larger tract parcel. The subdivision was referred to the MVC because the Crow Hollow property had been reviewed as DRI No. 341 in 1991.

The MVC determined the modification it did not need further review and it was sent back to the West Tisbury Planning Board. The Planning Board determined, after review by special counsel, that affordable housing was required under West Tisbury Zoning Bylaws. The initial affordable proposal by the Look family was to create a Homesite Lot on their property at Crow Hollow Farm and to give the Town \$40,000 to be used towards a future affordable housing project.

However, after discussion between the Look family and the West Tisbury Planning Board in 2010-2011, the Planning Board accepted the proposal by the Look family to use the Harpoon Lane property at Lot 1 as satisfying the affordable requirements of the West Tisbury Zoning Bylaw.

The affordable housing on Lot 1 was allowed by a 2008 Special Permit granted by the West Tisbury Planning Board under Section 4.4-3.B. in 2008 recorded in Book 1245, Page 951. This Special Permit was issued pursuant to the then version of West Tisbury Zoning Bylaw Section 4.4-3.B., which allowed for the creation restricted affordable housing on the parcel in addition to a regular unrestricted single-family residence.

Lot 1 on the plan was sold to Kristian S. Strom, Trustee of 619 Realty Trust, in 2011 by deed recorded in Book 1245, Page 691, with the benefit of 2008 Special Permit. A condominium on the parcel was created and currently contains the single family residence and two small restricted affordable residences leased by Island Housing Trust

B. Feiner and Patton - Dr. Fisher Road

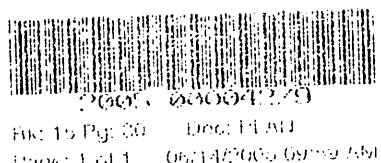
In 2012 the West Tisbury Planning Board granted a Special Permit under Section 4.4-3.B. to James Feiner and Cleonice Patton for three single family dwellings on a 3.1 are parcel at Dr. Fisher Road. Two of the three dwellings would be restricted to affordable housing. The Special Permit was amended in 2013 to approve revisions to the site.

C. Red Arrow Road – Island Co-Housing

More recently, the MVC approved the modification of DRI No. 462 for a proposal to create a 3.17 acre lot to provide for affordable housing residences and a “market” rate single family residence.

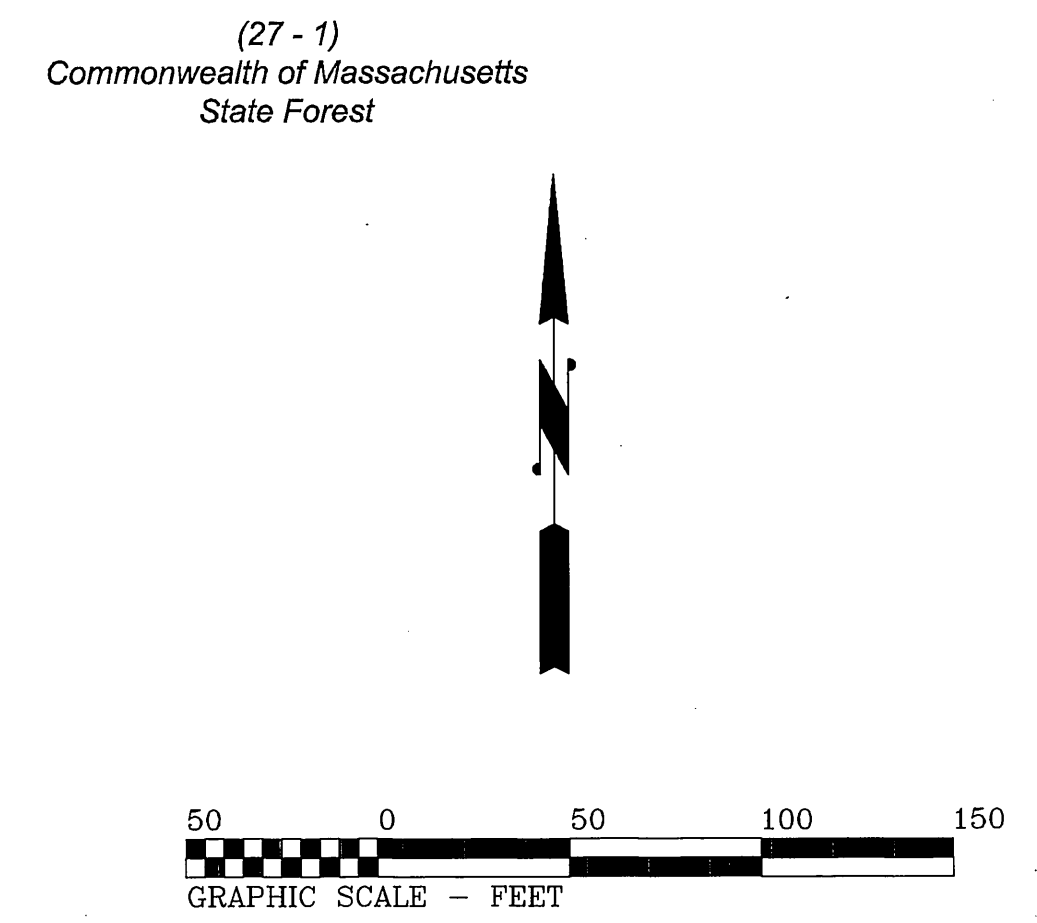
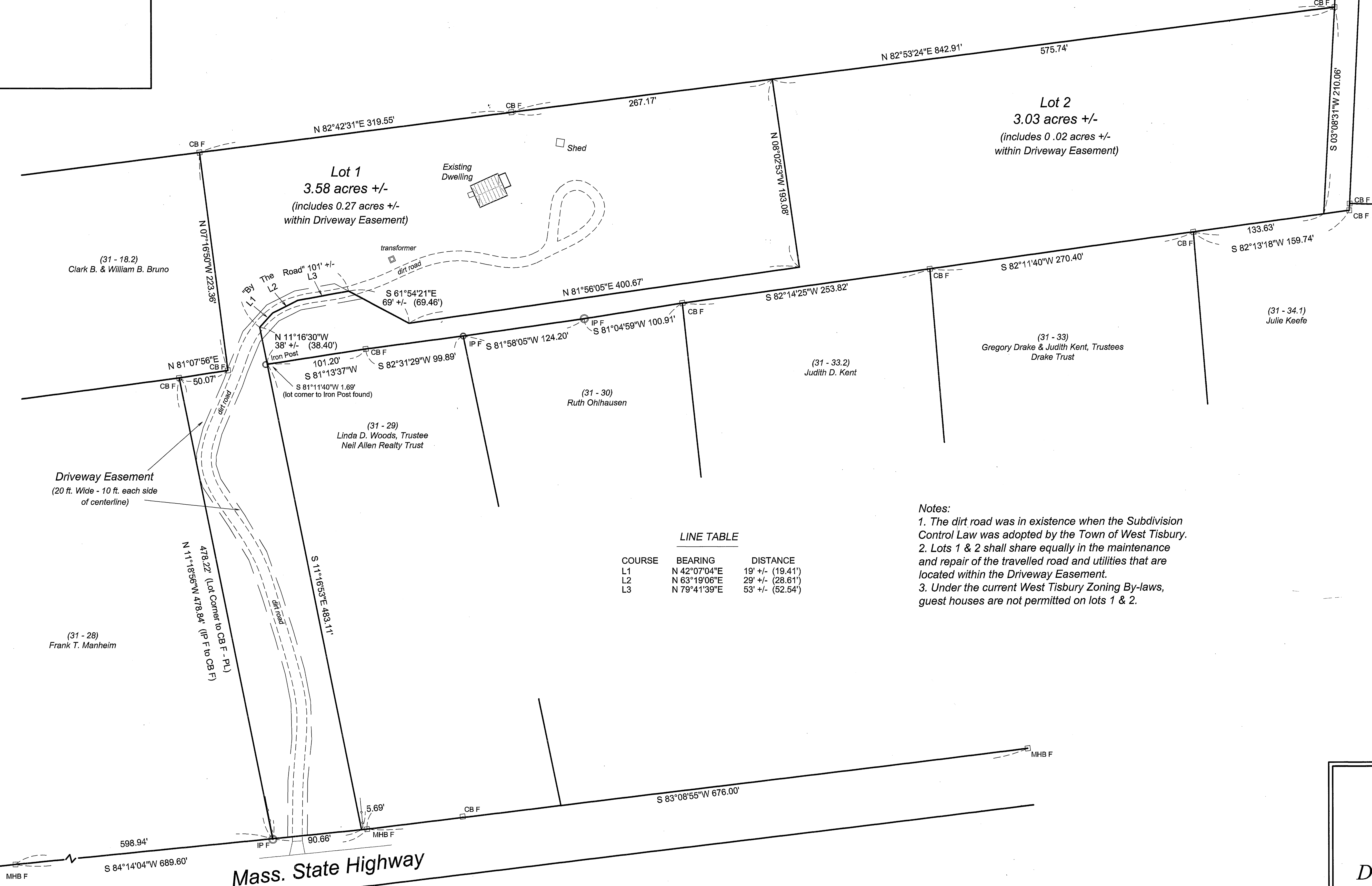
The West Tisbury Planning Board the granted a Special Permit in 2023 to Island Cohousing Community Association, Inc. pursuant to Sections 4.4-3 and 4.4-3B.

The MVC approved the modification of DRI No. 462 which provides for affordable housing and a “market” rate single family residence.



Plot No. 30
Page 1 of 1

Scale: 1" = 50'
Date: 03/08/2004

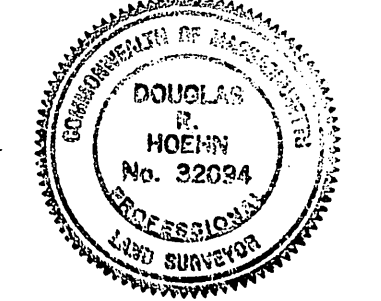


This survey and plan were prepared in accordance with the Procedural and Technical Standards for the Practice of Land Surveying in the Commonwealth of Massachusetts.

I certify that the preparation of this plan conforms with the rules and regulations of the Registers of Deeds effective January 1, 1976 and as amended.

Douglas R. Hoehn
Douglas R. Hoehn, Professional Land Surveyor

March 8, 2004
Date



APPROVAL UNDER THE SUBDIVISION CONTROL LAW IS NOT REQUIRED:
WEST TISBURY PLANNING BOARD

Myra Frank
DATE: March 8, 2004

- Notes:
- 1. The dirt road was in existence when the Subdivision Control Law was adopted by the Town of West Tisbury.
 - 2. Lots 1 & 2 shall share equally in the maintenance and repair of the travelled road and utilities that are located within the Driveway Easement.
 - 3. Under the current West Tisbury Zoning By-laws, guest houses are not permitted on lots 1 & 2.

LINE TABLE

COURSE	BEARING	DISTANCE
L1	N 42°07'04"E	19' +/- (19.41')
L2	N 63°19'06"E	29' +/- (28.61')
L3	N 79°41'39"E	53' +/- (52.54')

Plan of Land in
West Tisbury, Mass.
Prepared For
Douglas R. & Lauren J. Hoehn
Scale: 1" = 50' March 8, 2004
Schofield, Barbini & Hoehn Inc.
State Road, Vineyard Haven, Mass.
MV 9608



West Tisbury, MA

1 inch = 300 Feet



January 25, 2024

www.cai-tech.com



Data shown on this map is provided for planning and informational purposes only. The municipality and CAI Technologies are not responsible for any use for other purposes or misuse or misrepresentation of this map.

Assr.-Pcl. 31-17.1
"N/F Jevon Rego Revocable Trust, u/d/t"

Assr.-Pcl. 31-17.2
"N/F Michael Franken"

Assr.-Pcl. 27-1
"N/F Comm of Mass"

Assr.-Pcl. 31-34.1
"N/F Micheal Holtham"

Assr.-Pcl. 31-33
"N/F Padang Padang LLC"

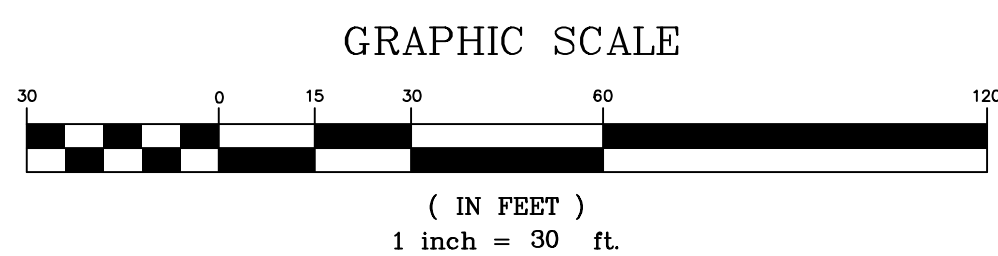
Assr.-Pcl. 31-33.2
"N/F Robert Moore"

Site Plan in
West Tisbury, Mass.

Prepared for
Arnold Fischer

Scale 1" = 40' January 25, 2024

VINEYARD
LAND SURVEYING
& ENGINEERING
12 Cournoyer Road
P.O. Box 421
West Tisbury, MA 02575
P 508-693-3774 | F 508-629-0440
VLSE.net



Dukes County Registry of Deeds
Electronically Recorded Document

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Recording Information

Document Number	: 4458
Document Type	: LEASE
Recorded Date	: June 01, 2021
Recorded Time	: 01:07:13 PM
Recorded Book and Page	: 01581 / 234
Number of Pages(including cover sheet)	: 5
Receipt Number	: 233736
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

NOTICE OF LEASE

In accordance with M.G.L. c. 183, §4, notice is hereby given of the following described lease:

Lessor: ARNOLD M. FISCHER, JR., ELEANOR D. NEUBERT, JEAN F. O'REILLY, and MARTHA'S VINEYARD SAVINGS BANK, TRUSTEES of THE PRISCILLA P. FISCHER 1994 TRUST, u/a dated November 22, 1994 by and between Priscilla P. Fischer, as Donor, and Priscilla P. Fischer and Martha's Vineyard Savings Bank, f/k/a Dukes County Savings Bank, as Trustees, as amended by a Restatement, dated December 19, 1995, and further amended by a Second Amendment and Complete Restatement of the Priscilla P. Fischer 1994 Trust, dated as of December 20, 2004, as evidenced by a Trustee's Certificate Pursuant to M.G.L. c. 184, §35 dated July 10, 2013 recorded with Dukes County Registry of Deeds (the "Registry") in Book 1329, Page 317, whose address is P.O. Box 602, West Tisbury, MA 02575 ("The Priscilla P. Fischer 1994 Trust").

Lessee: EMILY F. FISCHER, of P.O. Box 1171, West Tisbury, MA 0255

Date of Execution of Lease: May 20, 2021

Description of Leased Premises:

A portion of the premises owned by The Priscilla P. Fischer 1994 Trust situated at "Flat Point Farm" in West Tisbury, Massachusetts, and shown as "Lease Area 1 Area = +/-1.5 acres" on a plan entitled: "Lease Plan in West Tisbury, Mass. Prepared for "Flat Point Farm" The Priscilla P. Fischer 1994 Trust June 9, 2020 Scale 1" = 100' Vineyard Land Surveying & Engineering, Inc." and attached hereto as Exhibit A, which is by this reference made a part of this Notice of Lease and incorporated in it, together with all rights, privileges, easements, and appurtenances belonging to or in any way pertaining thereto, including the right to pass and repass over the "Road to Great Neck" and any other associated roads or ways now or hereafter constructed or relocated on Flat Point Farm by Lessor, together with the right to install, maintain, repair and replace underground utility lines for the transmission of electricity and intelligence upon the Premises /by connecting to such lines now existing or hereafter installed by Lessor on Flat Point Farm.

Term of Lease: Thirty (30) years

Rights of Extension or Renewal:

Right to extend the Lease for a term of an additional ten (10) years at the expiration hereof and the right to extend the Lease for an additional ten (10) years at the expiration of the first extended term; provided, however,

that Lessee shall give notice in writing to Lessor of its desire to extend the Lease not later than sixty (60) days prior to the expiration of the Lease or the subsequent extended term.

Date of Commencement: May 20, 2021

This Notice of Lease is executed pursuant to the provisions contained in the Lease and is not intended to vary the terms of the Lease.

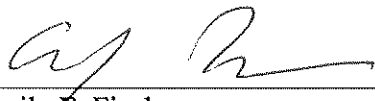
This Notice of Lease may be executed in multiple counterparts, which together shall constitute the original.

Executed as a sealed instrument this 20th day of May 2021.

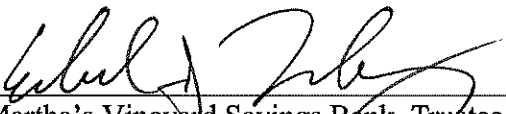
LESSOR:

LESSEE:

The Priscilla P. Fischer 1994 Trust:



Emily F. Fischer

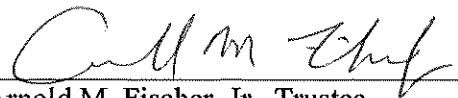


Martha's Vineyard Savings Bank, Trustee
by: Edward J. Murphy, Managing Director;
Financial Services

Jean F. O'Reilly, Trustee



Eleanor D. Neubert, Trustee



Arnold M. Fischer, Jr., Trustee

that Lessee shall give notice in writing to Lessor of its desire to extend the Lease not later than sixty (60) days prior to the expiration of the Lease or the subsequent extended term.

Date of Commencement: May ____, 2021

This Notice of Lease is executed pursuant to the provisions contained in the Lease and is not intended to vary the terms of the Lease.

This Notice of Lease may be executed in multiple counterparts, which together shall constitute the original.

Executed as a sealed instrument this ____ day of May 2021.

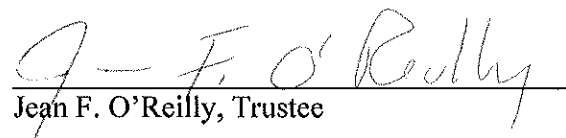
LESSOR:

LESSEE:

The Priscilla P. Fischer 1994 Trust:

Emily F. Fischer

Martha's Vineyard Savings Bank, Trustee
by: Edward J. Murphy, Managing Director;
Financial Services



Jean F. O'Reilly, Trustee

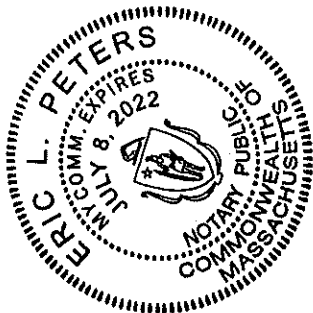
Eleanor D. Neubert, Trustee

Arnold M. Fischer, Jr., Trustee

COMMONWEALTH OF MASSACHUSETTS

Dukes, ss On this 20th day of May, 2021, before me, the undersigned notary public, personally appeared Eleanor D. Neubert and Arnold M. Fischer, Jr., Trustees as aforesaid, proved to me through satisfactory evidence of identification, which were personally known to me, to be the persons whose names are signed on the preceding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose as Trustees of The Priscilla P. Fischer 1994 Trust.

[seal]

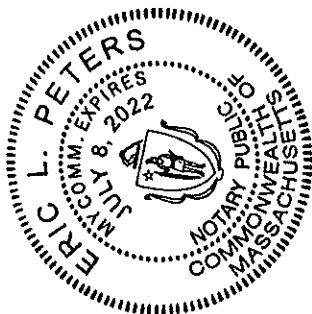


[Signature]
Notary Public – Eric L. Peters
My commission expires: 7/8/2022

COMMONWEALTH OF MASSACHUSETTS

Dukes, ss. On this 20th day of May, 2021, before me, the undersigned notary public, personally appeared Emily F. Fischer proved to me through satisfactory evidence of identification, which were personally known to me, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she signed it voluntarily for its stated purpose.

[seal]



[Signature]
Notary Public - Eric L. Peters
My commission expires: 7/8/2022

ATTEST: Paulo C. DeOliveira, Register

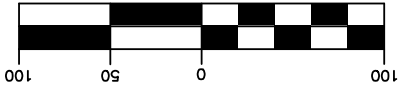
Exhibit A - Site Plan

Lease Plan in

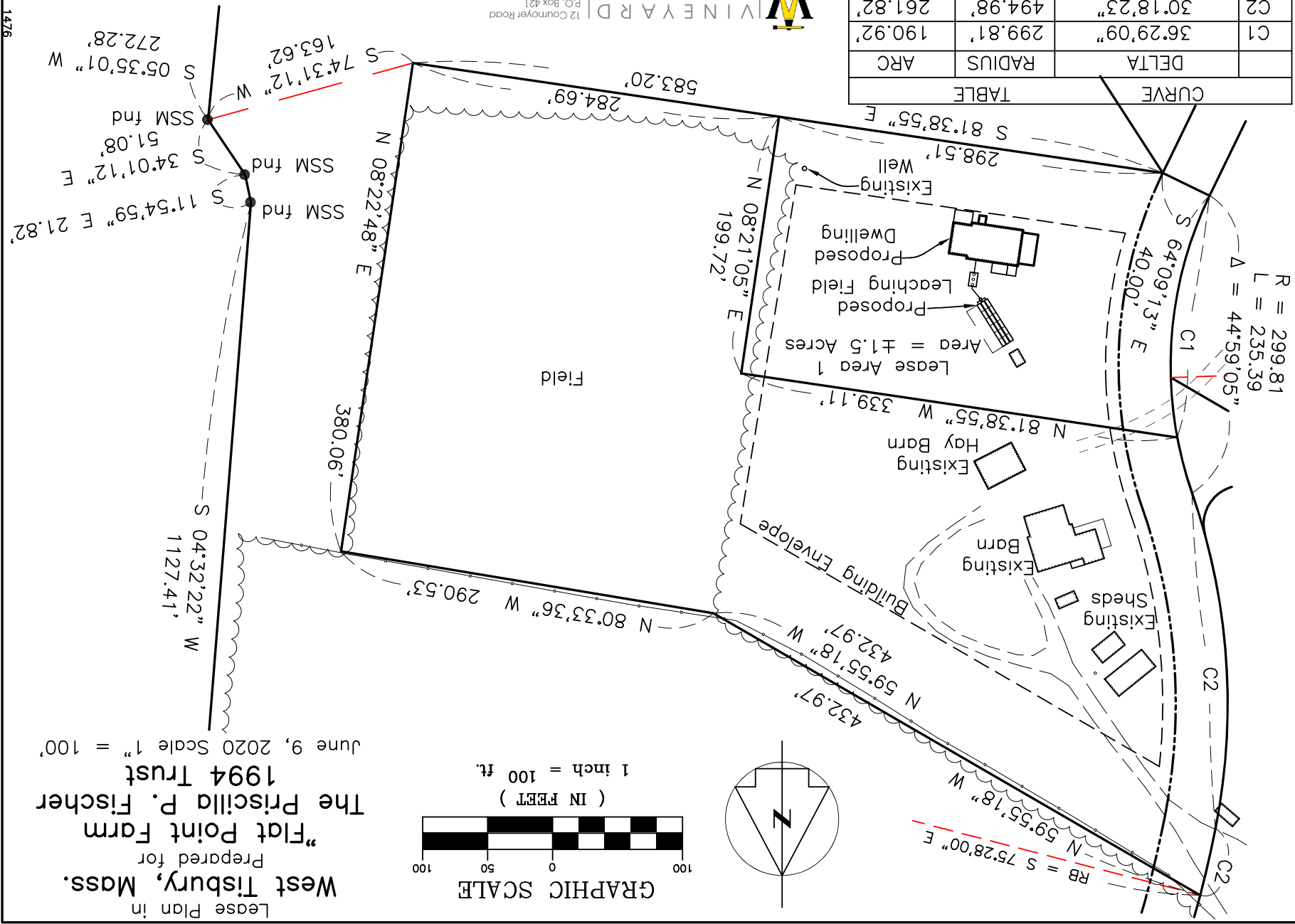
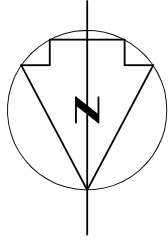
West Tisbury, Mass.
Prepared for

"Flat Point Farm
The Priscilla P. Fischer
1994 Trust
June 9, 2020 Scale 1" = 100'

GRAPHIC SCALE



(IN FEET)
1 inch = 100 ft.



CURVE		TABLE	
DELTA	RADIUS	ARC	
C1	299.81'	36°29'09"	190.92'
C2	494.98'	30°18'23"	261.82'
C3	896.98'	03°21'55"	52.68'

R = 299.81
L = 235.39
 $\Delta = 44°59'05"$

S 81°38'55" E
298.51'
Existing Well
Proposed Dwelling
Proposed Leaching Field
Area = ±1.5 Acres
Lease Area 1
S 64°09'13" E
40.00'
C1
S 81°38'55" E
339.11'
Existing Hay Barn
Existing Barn
Existing Sheds
Building Envelope
N 81°38'55" W 339.11'
N 08°21'05" E 199.72'
N 59°55'18" W 432.97'
N 80°33'36" W 290.53'
N 08°22'48" E 380.06'
S 04°32'22" W 1127.41'
S 11°54'59" E 21.82'
SSM fnd
S 34°01'12" E 51.08'
SSM fnd
S 05°35'01" W 272.28'
S 74°31'12" W 163.62'

W
LAND SURVEYING & ENGINEERING
12 Courtoyer Road
P.O. Box 421
West Tisbury, MA 02575
P 508-693-3774 F 508-629-0440
VLSE.net

s:\survey\14\1476-1\carlson 1476-1\1476 form c.dwg

JOB NO. 1476