

SMITH & DOWLING

480 State Road Post Office Box 1087
Vineyard Haven, Massachusetts 02568

Telephone (508) 693-4150

Job No. 3879B

July 25, 2022

J. Hillary Conklin, Town Clerk
Town Hall P.O. Box 602
Tisbury, MA 02568

Re: **Form A Notice**
(Asr. Pcl. 51-A-6.11)

RECEIVED
JUL 25 2022
J. Hillary Conklin
Tisbury Town Clerk
10:35 AM

Dear Ms. Conklin:

In accordance with provisions of Massachusetts General Laws Chapter 41 Section 81-T, Section 81-P or Section 81-S, as and to the extent applicable, you are hereby notified that SMITH & DOWLING has prepared a plan entitled; " **A Plan of Land in Tisbury, Mass. prepared for Lawrence J. & Mary S. Cannon Scale: 1" = 50' July 17, 2022 SMITH & DOWLING Engineering - Surveying Post Office Box 1087 480 State Road Vineyard Haven, MA 02568** " for determination by the Planning Board that approval under subdivision control law is not required with endorsement of such fact on the plan and submitted said plan to the Tisbury Planning Board, this day.

The land to which the plan relates is located on Red Coat Hill Road, in Tisbury, Massachusetts.

The name of the record owner / applicant is Lawrence J. & Mary S. Cannon of 60 Park Place, Meriden, CT 06451.

This notice is addressed to you in duplicate. Would you please acknowledge, on the duplicate, receipt of the original and the date of such receipt and then return the duplicate to the undersigned.

Very truly yours,
SMITH & DOWLING



Douglas O. Dowling PE, PLS
Professional Engineer
Professional Land Surveyor

Encl.

FORM A

APPLICATION FOR ENDORSEMENT OF PLAN
BELIEVED NOT TO REQUIRE APPROVAL

July 25, 2022

To the Planning Board of **TISBURY**, Massachusetts:

The undersigned wishes to record the accompanying plan and requests a determination by said Board that approval by it under the Subdivision Control Law is not required. The under-signed believes that such approval is not required for the following reasons:

1. The division of land shown on the accompanying plan is not a subdivision because **Lots 2-A & 2-B** shown thereon has the amount of frontage, area and depth required by the **TISBURY** Zoning By-law and is on way, namely,

RED COAT HILL ROAD, as shown on the attached plan.

→ special way

2. The owners' title to the land is derived under a deed **dated May 29, 1998**, and recorded in the Dukes County Registry of Deeds in Book 731 Page 316 and shown as **Assessors' Map 51 Block A Lot 6.11**.

Received by Town Clerk :

Date: _____

Time: _____

Signature: _____



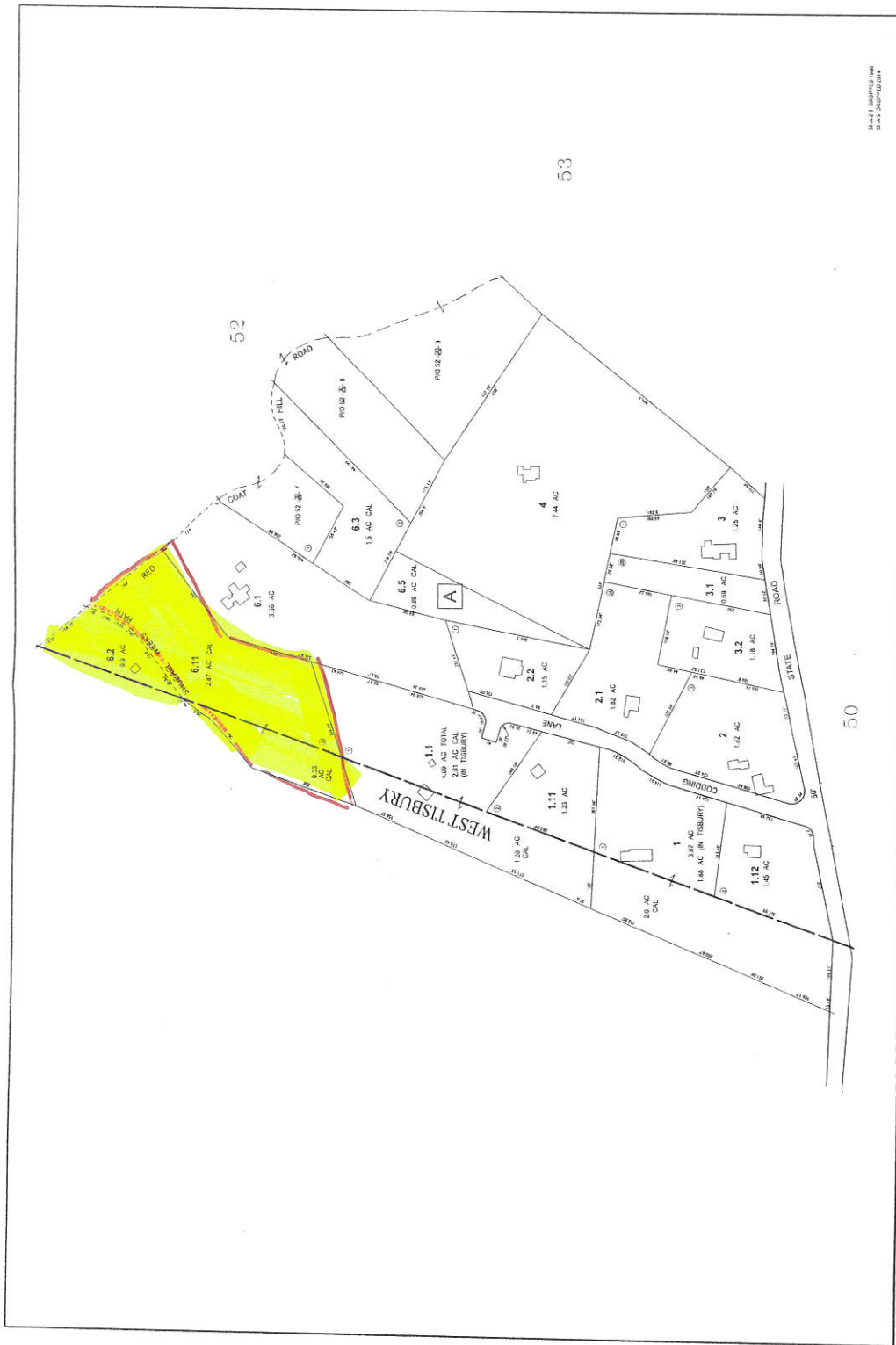
Douglas O. Dowling Agent for
Applicant/Owner

Lawrence J. & Mary S. Cannon
60 Park Place
Meriden, CT 06451

RECEIVED

JUL 25 2022

Tisbury Planning Board



THIS MAP IS FOR ASSESSMENT PURPOSES. IT IS NOT VALID FOR LOCAL JURISDICTIONAL SYSTEM AND IS NOT VALID FOR STATE PURPOSES. THE TOWN AND STATE OF MASSACHUSETTS SHALL BE RESPONSIBLE FOR THE INFORMATION CONTAINED HEREIN. TO OBTAIN MORE INFORMATION, CONTACT THE MASSACHUSETTS REVENUE SERVICE, DEPARTMENT OF REVENUE, 100 WEST MAIN STREET, LOWELL, MASSACHUSETTS 01851.

REVISIONS & PREPARED BY

CAI Technologies

1150 FORD AVENUE, SUITE 200
LOWELL, MASSACHUSETTS 01851

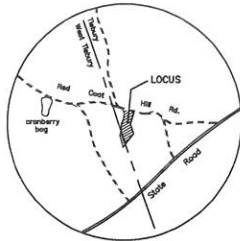
SCALE: 1" = 100'

SCALE: 1" = 100'

REVISIONS TO: JANUARY 1, 2018

TOWN OF TISBURY
BOARD OF ASSESSORS
VINEYARD GREEN, MASSACHUSETTS

MAP NO
51

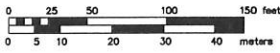


LOCUS MAP
SCALE: 1" = 2000± ft.



"I hereby certify that the preparation of this plan conforms with the Rules and Regulations adopted by the Registers of Deeds on January 1, 1976, as amended."
"I hereby certify that this survey and plan conforms to the Procedural and Technical Standards for the Practice of Land Surveying in the Commonwealth of Massachusetts."

Douglas O. Dowling PE, PLS
Professional Engineer
Professional Land Surveyor
Date: _____



(Asr. Pcl. 52-A-6)
Elaine Eugster, Tra.

NOTE:

This plan is being filed under Section 07.04 (Deep Lot Provisions) of the Tisbury Zoning By-Laws.

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

Date: _____

Endorsement is without regard to buildability or permitted occupancy, does not stay zoning violations and is subject to other notations hereon.

LEGEND

- ⊙..... denotes iron pipe in stones found
- (Asr. Pcl. 51-A-4)..... denotes Tisbury Assessor Parcel Number
- denotes drill hole in concrete bound set this survey
- denotes d.h. in a concrete bound found, unless noted otherwise

ZONING DISTRICT: R50

Being a division of Tisbury Asr. Pcl. 51-A-6.11 (being Lot 2 on Case File 517)

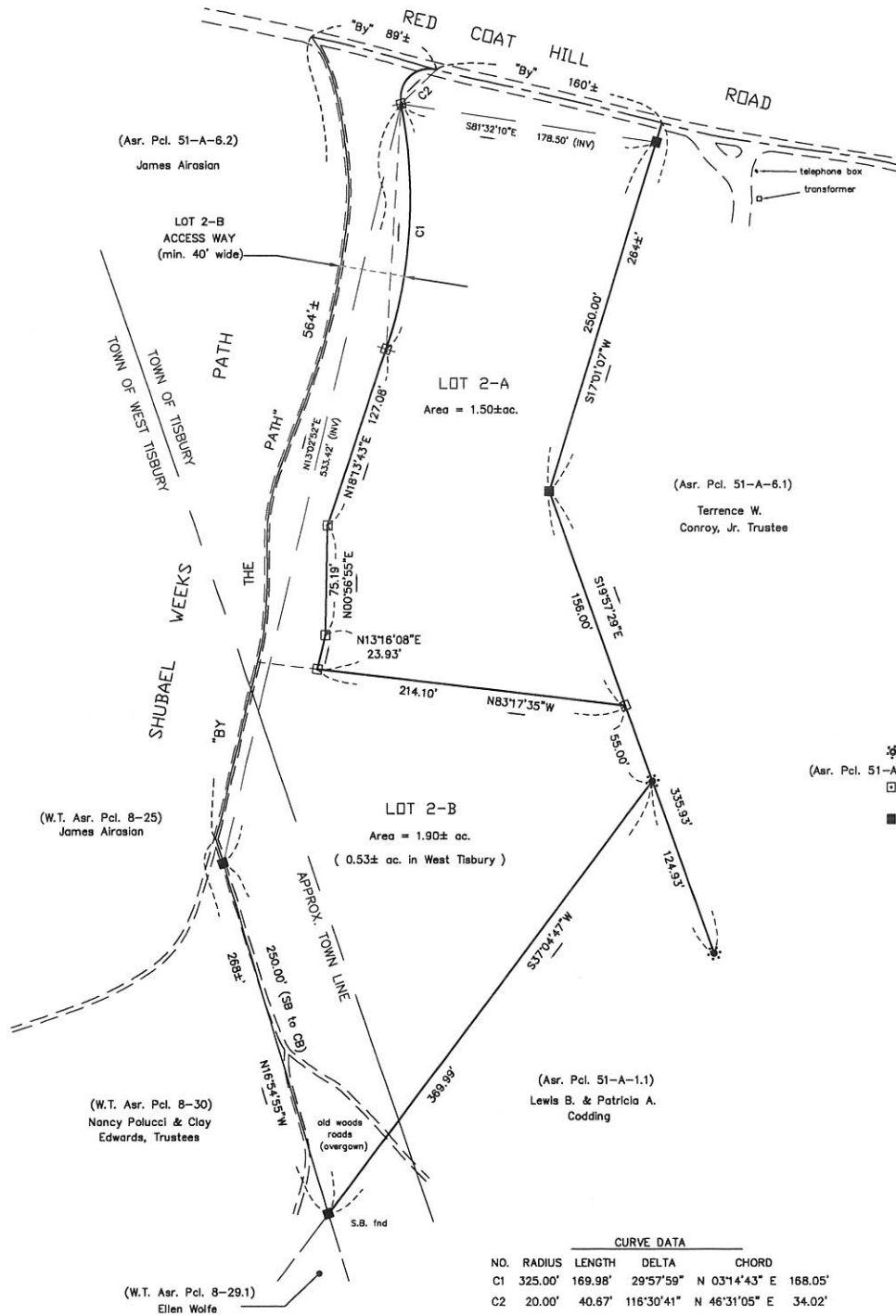
A Plan of Land
in
TISBURY, MASS.
prepared for
**LAWRENCE J. &
MARY S. CANNON**

SCALE: 1" = 50' JULY 17, 2022

SMITH & DOWLING

ENGINEERING • SURVEYING
Post Office Box 1087 480 State Road
Vineyard Haven, Mass. 02568
(508) 693-4150
smithdowling@gmail.com

NO.	RADIUS	LENGTH	DELTA	CHORD
C1	325.00'	169.98'	29°57'59"	N 03°14'43" E 168.05'
C2	20.00'	40.67'	116°30'41"	N 46°31'05" E 34.02'



(Asr. Pcl. 51-A-6.2)
James Airoasian

LOT 2-B
ACCESS WAY
(min. 40' wide)

TOWN OF WEST TISBURY
TOWN OF TISBURY

SHUBAEL WEEKS
"BY" THE PATH

(W.T. Asr. Pcl. 8-25)
James Airoasian

LOT 2-B
Area = 1.90± ac.
(0.53± ac. in West Tisbury)

(W.T. Asr. Pcl. 8-30)
Nancy Palucci & Clay
Edwards, Trustees

(Asr. Pcl. 51-A-1.1)
Lewis B. & Patricia A.
Coddig

(W.T. Asr. Pcl. 8-29.1)
Ellen Wolfe

07/27/22

My name is Amy Upton. I am the new Planning Board Administrator for The Town of Tisbury.

I have been tasked with writing you a letter requesting your counsel on a Form A- ANR that came across my desk two days ago, on July 25, 2022. As I'm sure you are aware we need to act on this within 21 days of receipt, so it is a pressing concern. And it seems likely that we will need your counsel to proceed. (Is that 21 business days, or does the timeframe include weekends?) We need to schedule this discussion at our August 3rd meeting.

From the preliminary research I have done (MGL C.41 S. 81-T, 81-P and 81-S) in these past two days it is fairly clear that this Proposal is not uncomplicated and will require a closer look.

MGL 81-P

(p.245) Exclusion of lots from subdivision control law based upon their having sufficient footage on roadway shown on approval plan, also requires that there be actual street w/ adequate access for firetrucks and emergency vehicles.

(p.247) Despite technical compliance w/ frontage requirements, and a Planning Board's limited authority in acting under subdivision control law, a Planning Board can properly deny an ANR endorsement for proposed development where access to lots is non-existent for the purposes set out in law.

(p.248) Planning Boards "subdivision approval not required" endorsement on plan of land does not waive limitation on number of lots in subdivision and unconditionally entitle owner to a building permit without public hearing.

In deciding whether proposed subdivision plan is entitled to ANR endorsement by PB it is not right of common-law access to public way, but rather actual access, that counts.

The applicants are Lawrence J. & Mary S. Canon of Meriden, Ct. represented by Douglass O. Dowling of Smith & Dowling Engineering and Surveying. The applicant is proposing a Deep Lot Division located primarily in the Town of Tisbury on a Designated Special way referred to as "Red Coat Hill Rd." They propose to divide the existing lot of approx. 3.4 acres into two lots referred to in the Plan as Lot 2-A (1.5 acres) and 2-B (1.9 acres, of which .53 acres are located in the Town of West Tisbury) The Property essentially spans the town line between the two towns and the intersection of "Red Coat Hill Rd." and "Shubael Weeks Path" is the corner of the property. The proposed 40' wide access to the back lot 2-B runs alongside the designated special way in West Tisbury referred to as "Shubael Weeks Path". It is not clear from the plans if there is an existing curb cut to access Lot 2-A off of "Red Coat Hill Rd. on which this property claims to have the requisite frontage to apply for an ANR. At this point my questions are these:

- **Can the Tisbury Planning Board deny this ANR form A application without incurring a "Land Taking" scenario?**

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Under 2.6 b. of the MVC DRI Checklist states Any Form A ANR located in the Island Road DCPC is a Mandatory Referral Requiring MVC Concurrence.

Would a denial of either the ANR or the special Permit be seen as arbitrary and capricious since the board has granted a previous ANR prior to the designation as a special way and SP for new access on this Special way,

Additionally, In reference to Section 09.03 Special Ways Districts in the Tisbury Zoning By-laws.

- Will this Proposal need to come back before the PB to review a request for an additional curb cut on "Red Coat Hill Rd"?
- Access to "Red Coat Hill Rd." comes from "Shubael Weeks Path" which is a Designated Special Way in the Town of West Tisbury, and .53 acres of the proposed ANR is located in West Tisbury. This lot currently abuts "Shubael Weeks Path" and the proposed driveway to Lot 2-B includes 20' to one side of the centerline of this Special Way. What obligation, if any, does the Town of Tisbury have to the Town of West Tisbury in regard to this lot crossing the town line at various locations? In regard to the West Tisbury Special Way referred to as "Shubael Weeks Path", does WT jurisdiction over this Special Way become null and void once it crosses over to Tisbury?

Thank you for any information and assistance you may be able to provide.

Sincerely, Amy M. Upton

09.00 SPECIAL OVERLAY DISTRICTS:

09.02 TISBURY ISLAND ROAD DISTRICTS:

.04 REGULATIONS AND RESTRICTIONS, continued:

The Board of Appeals may grant a Permit to modify the height restrictions of the Tisbury Island Road Districts in specific instances, if it finds such modification consistent with the character of the neighborhood and the intent of the District.

05 Administration:

Any application for a permit or special permit as provided for in this section 09.02 shall require a referral to the Site Plan Review Board as described in Section 10.06.01.

(Amended Section 09.02.05: April 29, 2014 – Acting on Article 20)

09.03 SPECIAL WAYS DISTRICTS:

.01 Purpose:

The Special Ways designation protects old cart paths and trails that are cultural and historic links to the community's past, recreational resources for the enjoyment of the outdoors, a conservation resource to accommodate and promote non-motorized forms of travel, links to other trails and roads, and spaces of quiet beauty. The goal of the regulation is to preserve the character of the old ways and retain the abutting landscape. Additionally, the regulation is to protect and prevent the injurious effects that would accompany development of the Ways as a primary vehicular route.

Special Ways are often old path which have been abandoned or used infrequently. They are usually unimproved, rustic and narrow, and generally have very little or no vehicular traffic. The oldest Special Ways are among the last vestiges of the travel network of the past. They may provide archeological resources or means or retracing historic accounts of the development of Tisbury.

Special Ways vary in terms of their present and potential recreational and vehicular use. They may provide or allow for public access or they may be private. Determination of whether the public has the right to use a Special Way often involves complex legal principles but such a determination is not necessary for an old way to be designated a Special Way.

09.00 SPECIAL OVERLAY DISTRICTS

09.03 SPECIAL WAYS DISTRICTS:

.01 Purpose (Cont.):

The Special Ways Zone includes the path or road and adjacent land within 20 feet of either side of the centerline.

Special Ways are designated after a process involving a public hearing, approval of the Martha's Vineyard Commission, and a 2/3 vote of Town Meeting.

.02 Designated Special Ways:

References in this section to the Tisbury Assessors Maps are to the maps dated January 1, 1990 unless otherwise noted.

Red Coat Hill Road: Within twenty feet of either side of the centerline of **Red Coat Hill Road**, from West Tisbury/Tisbury line easterly to Deer Hill Road. (2014 Map)

Shubael Weeks Road a/k/a Shubael Weeks Path: Within twenty feet of either side of the center line of **Shubael Weeks Road** – From the West Tisbury town line northerly to its juncture with John Hoft Road. (2014 map)

03. Uses Permitted:

Any residential, recreational, agricultural or open space use permitted in the respective zoning districts, subject to existing regulations and restrictions, provided that the development does not result in direct vehicular access to the Special Way.

04. Regulations:

01. Development and use within a Special Way Zone shall not block or prevent non-motorized means of travel such as walking, horseback riding, and bicycling along a Special Way.

02. There shall be no alteration of the width or surface materials of a Special Way. This provision is not intended to prevent routine maintenance and repair of Special Ways.

09.00 SPECIAL OVERLAY DISTRICTS

09.03 SPECIAL WAYS DISTRICTS:

.01 Regulations(Cont.):

03. No Special Way shall be paved with any impervious material, *such as bituminous concrete or asphalt*, except for segments that may be approved for crossing over a Special Way.

04. There shall be no removal of existing vegetation within a Special Way Zone other than to keep the Special Way clear of debris and overgrown vegetation, except as permitted as part of a Special Permit or where the width of a Special Way Zone extends beyond a pre-existing fence or beyond where a fence may be allowed.

05. No stone wall shall be moved, removed or otherwise altered except for repair, except by Special Permit from the Planning Board.

06. No fences, walls, structures, excavations, fill or obstructions shall be made, erected, placed or constructed within the Special Way Zone except by Special Permit from the Planning Board, except for gates, bars or stiles designed to regulate passage for non-vehicular travel or for vehicular travel where allowed. However, pre-existing, non-conforming constructions, clearings, and gates may be maintained, but may not be expanded.

Fences exception: Where the Special Way lies within any part of a building lot that is less than one acre in area, fences may be erected within the Special Way as follows:

- Fence must be at least 50% transparent (such as picket fence or split-rail fence).
- If fence height is under 4 feet, the fence must be at least 5 feet from the center line or 1 foot outside the top edge of the physical embankment alongside the Special Way, whichever is greater.
- If fence height is 4 to 6 feet, the fence must be at least 10 feet from the center line.

07. Relocation of a portion of a Special Way may be approved by the Planning Board by Special Permit, after holding a public hearing and finding that the relocation would: preserve the continuity of the Way, create new trail

09.00 SPECIAL OVERLAY DISTRICTS

09.03 SPECIAL WAYS DISTRICTS:

.01 Regulations(Cont.):

connections, provide increased public trail access, improve safety, or otherwise enhance the way. Relocation may be considered for the purpose of aligning Ways with property lines. However it is beyond the jurisdiction of the Planning Board to either grant or extinguish public or private rights-of-way by such action.

08. Where direct vehicular access is not allowed on the Special Way, vehicles may cross such a way by a proposed dirt, paved or otherwise improved roadway at, or nearly at, right angles. Proposed crossings must be reviewed and approved by the Planning Board by Special Permit. Vehicles may not use this provision to travel along the Way for any distance to gain access to a property. Consideration of such proposed crossings shall include appropriate means to draw attention to the crossing for people's safety. Proposed crossings must be reviewed and permitted by the Planning Board by Special Permit.

09. No non-native plantings shall be allowed within the Special Ways Zone except by special permit from the Planning Board.

05. Special Ways Regulations Relating to Vehicular Use:

X

01. Vehicular use is permitted by right if the Way was so used prior to acceptance of a Special Way nomination by the Martha's Vineyard Commission. The nature and extent of pre-existing vehicular use may not be increased without a Special Permit from the Planning Board.)

02. In planning development along a Special Way resulting in increased vehicular use of the Way, every effort must be made to minimize the length of the Special Way travelled by vehicles, for example through driveway placement.

03. Development or subdivision of land along a Special Way may not use the Special Way for new access when alternative access is reasonably available.

04. Criteria to be used by the Planning Board in review of Special Permit applications for new or increased vehicular use:

- a. A landowner wishes to develop or sub-divide his land and no other access is reasonably available. In this case, the access points must be located as close as

09.00 SPECIAL OVERLAY DISTRICTS

09.03 SPECIAL WAYS DISTRICTS:

.01 Special Ways Regulations Relating to Vehicular Use (Cont.):

possible to the end of the Way nearest a road or as close as possible to the nearest portion of the Way already traveled by vehicle.

b. In the case of sub-division of the property, a single access driveway or road onto the Special Way is required whenever possible.

06. Additional Consideration:

01. The Planning Board may grant a Special Permit for other development, uses or structures for which the imposition of regulations would otherwise deprive the landowner of all other reasonable uses.

(Adopted Section 09.03: June 13, 2020 – Acting on Article 6)

09.04 SCENIC ROADS

Administered by the Tisbury Planning Board.

.01 Designated Scenic Roads

The public portion of the Lambert's Cove Road.
(Adopted by Town Meeting vote, May 4, 1976).

.02 Regulations and Restrictions:

Any repair, maintenance, reconstruction or paving work done with respect to the designated Scenic Roads shall not involve or include the cutting or removal of trees, or the tearing down or destruction of stone walls, or portions thereof, except with the prior written consent of the Planning Board, after a public hearing.

09.05 FLOODPLAIN DISTRICT

.01 Purpose:

To promote the health, safety, and general welfare of the inhabitants of the Town of Tisbury by ensuring that structures, facilities, and uses are sited, constructed, and arranged so as to preclude or minimize Flood/Storm effects.