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## Decision of the Martha's Vineyard Commission

### DRI 560-M3 – Kuehn's Way Affordable Housing

#### 1. SUMMARY

Referring Board: Tisbury Zoning Officer

Subject: Development of Regional Impact #560-M3 – Kuehn's Way Affordable Housing

Owner: The Island Housing Trust Corporation; P.O. Box 779, Tisbury, MA 02575

Applicant: The Island Housing Trust (IHT); Philippe Jordi (Executive Director).

Project Location: Kuehn's Way (to be created off of State Road), Tisbury, MA, Map 53-A Lot 1.

Description: The Island Housing Trust (IHT) proposes to build a neighborhood of ten (10) clustered duplex buildings (20 residential units) for rental tenants earning less than 80% AMI with 40 bedrooms within a 4-acre building envelope on 14.85 acres.

Decision: The Martha's Vineyard Commission (the Commission) hereby modifies the Decision of the Commission: dated June 20, 2003 and recorded in the County of Dukes County Registry of Deeds; Book 954 Pages 0254 through 0264 inclusive, regarding the application of the Bridge Housing Corporation for a proposed 15 duplexes with a total of 30 units of housing for low and moderate income families (DRI 560); and the Decision of the Commission dated March 1, 2004 and recorded in the County of Dukes County Registry of Deeds, Book 991 Pages 0612 through 0613 inclusive (DRI 560-M), regarding the application of the Bridge Housing Corporation for minor modifications to the 2003 Decision; and the Decision of the Commission dated November 6, 2007 (DRI 560-M2) regarding the application of Bridge Housing Corp. for the revised proposal of 13 buildings (9 duplexes and 4 single family detached) with 22 units and 49 bedrooms of affordable housing.

At the July 21, 2016 meeting of the Commission, after hearing information on the proposed modifications, the Commission determined the extent of the modifications did not rise to the significance of requiring a public hearing for it to evaluate the proposal. The Commission voted on July 21, 2016 to approve the modifications identified herein to the original 2003 Decision with Conditions; 2004 Decision with minor modifications; and the 2007 minor modifications.

The permit-granting authorities of the Town of 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 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 The Plan**

The following plans and documents submitted by the Applicant and contained in the Commission's project file constitute "the Plan."

- P1 "Kuehn's Way: Martha's Vineyard Commission DRI 560 Modification Review DRI Application", consisting of thirteen 8.5" by 11" pages with Project Description; Project Impacts and Exhibits, prepared by Island Housing Trust Corporation, June 24, 2016.
- P2 "Kuehn's Way - Summary", consisting of seven 8.5" by 11" pages with Key Points, Details, Locus, Conceptual Diagram, Site Plan, and Perspective Sketch prepared by Island Housing Trust Corporation, June 14, 2016.
- P3 "Septic & Utility sketch plan", consisting of one 24" by 36" sheet with Site Plan showing wells, water pipes, cistern, and proposed locations of underground electrical utilities prepared by Vineyard Land Surveying & Engineering, Inc, June 14, 2016. Scale: 1 inch = 30 feet.
- P4 "Exterior Elevations – 1+2 Bedroom", consisting of one 12" by 18" sheet with Site Plan showing east, north, west, and south elevations of proposed clusters with one and two-bedrooms prepared by LDA Architecture & Interiors, June 14, 2016. Scale: 1/8" = 1'0".
- P5 "Floor Plans – 1+2 Bedroom", consisting of one 12" by 18" sheet with Floor Plan of proposed clusters with one and two bedrooms prepared by LDA Architecture & Interiors, June 14, 2016. Scale: 1/8" = 1'0".
- P6 "Exterior Elevations – 2+2 Bedroom", consisting of one 12" by 18" sheet with Site Plan showing east, north, west, and south elevations of proposed clusters with 2 two-bedroom apartments prepared by LDA Architecture & Interiors, June 14, 2016. Scale: 1/8" = 1'0".
- P7 "Exterior Elevations – 3+2 Bedroom", consisting of one 12" by 18" sheet with Site Plan showing east, north, west, and south elevations of proposed clusters with two and three-bedroom apartments prepared by LDA Architecture & Interiors, June 14, 2016. Scale: 1/8" = 1'0".
- P8 "Floor Plans – 2+2 Bedroom", consisting of one 12" by 18" sheet with Floor Plan of proposed clusters with 2 two-bedroom apartments prepared by LDA Architecture & Interiors, June 14, 2016. Scale: 1/8" = 1'0".
- P9 "Floor Plans – 3+2 Bedroom", consisting of one 12" by 18" sheet with Floor Plan of proposed clusters with two and three-bedroom apartments prepared by LDA Architecture & Interiors, June 14, 2016. Scale: 1/8" = 1'0".
- P10 "Quad Plans", consisting of one 12" by 18" sheet with plans of proposed clusters of four duplexes prepared by LDA Architecture & Interiors, June 14, 2016. Scale: 1/8" = 1'0".
- P11 "Applicant Offers" consisting 2 pages of written offers submitted by the Applicant on July 18, 2016 with regards to Site Design and Landscaping; Wastewater Disposal; Groundwater Monitoring; Water Supply; Exterior Lighting; and Permanent Affordability and Distribution of Units among Income Levels. These become conditions of the Commission's approval and listed

elsewhere herein and which replace all conditions from previous MVC Decisions on the property (DRI 560, DRI 560-M & DRI 560-M2).

### **2.3 Other Exhibits**

- E1. Referral to the MVC from the Tisbury Zoning Officer (Received June 21, 2016)
- E2. Staff Report, prepared by Paul Foley, , with the assistance of other staff members, June 20, 2016; revised July 11, 2016; revised July 21, 2016.
- E3. PowerPoint slide show of the proposal, plans, site, GIS maps, prepared by MVC DRI Coordinator Paul Foley.
- E4. Letters were received from the following Town Officials: The West Tisbury Community Preservation Committee; John Schilling, Chief of Tisbury Emergency Services.
- E5. Letters were received from the following Island Organizations: James Lengyel of the M.V. Land Bank; Julie Fay of Martha's Vineyard Community Services; Patricia Moore of Healthy Aging MV; Abbie Burt of the Tisbury Affordable Housing Committee.
- E6. Letters were received from the following citizens of Martha's Vineyard: Janet Woodcock; Carol Collins; Robert Dias; Paul Munafo,; Mary Ellen Larson; Jon Cassel; Alec Gale; Paul Munafo; Carol Collins; Frank Pitts; Barney Zeitz; Chris Crawford; Richard Toole.
- E7. Minutes of the Commission's Land Use Planning Committee meeting, July 11, 2016.
- E8. Minutes of the Commission's Modification Review, July 21, 2016.
- E9. Minutes of the Commission's review of the Written Decision, August 4, 2015.

### **2.4 Project Description**

- o The proposal is to build a neighborhood of ten (10) clustered rental duplex buildings (20 residential rental units) with 40 bedrooms.
- o The total property is 14.85 acres of which the Martha's Vineyard Land Bank owns a Conservation Restriction on 8.9 acres. IHT retains the right to locate wells and septic systems in the Conservation area if necessary.
- o The proposed cluster of ten duplexes would be within a 4-acre building envelope.
- o In 2003 on the same property the MVC approved with conditions a proposal by the Bridge Housing Corporation (DRI 560) for 15 duplexes with a total of 30 units of housing for low and moderate income families. In 2007 the MVC approved a modification to the Bridge Housing (DRI 560-M) project of 13 buildings (9 duplexes and 4 single family detached) with 22 units and 49 bedrooms on 8.7 of 14.85 acres.
- o The current proposal has fewer units and fewer bedrooms than DRI 560 and 560-M. DRI 560 and 560-M had a 200 foot no-cut buffer along State Road. The current proposal concentrates the development to the south of Red Coat Hill (A Special Way) whereas the previous DRI's crossed it. This results in only a 100 foot no cut buffer along State Road.
- o All units will be rentals for tenants earning less than 80% AMI to be managed by the Dukes County Regional Housing Authority (DCRHA).
- o All units will be accessible with one fully handicapped accessible ADA unit.
- o There will be three (3) three-bedroom apartments (1,000sf each); fourteen (14) two-bedroom apartments (900 sf each); and Three (3) one-bedroom apartments (600 sf each).
- o Utilities on site will be underground.

- o The wastewater will be treated with an enhanced de-nitrification septic system.

### 3. DECISION

The Martha's Vineyard Commission considered the modification at a duly noticed meeting of the Commission held on July 21, 2016 and made its decision at the same meeting.

The following Commissioners, all of whom participated in the review of the modification on July 21, 2016, voted as follows on whether the project was a minor modification not requiring a public hearing review as a DRI:

- Voting the project a minor modification not requiring a public hearing: Christina Brown; Robert Doyle; Josh Goldstein; Fred Hancock; Lenny Jason; Jim Joyce; Kathy Newman, Abe Seiman; and Ernest Thomas.
- Voting against: Joan Malkin; Doug Sederholm.
- Abstentions: Trip Barnes.

The following Commissioners, all of whom participated in the review of the modification on July 21, 2016, voted to approve the modification as modified by the Applicants offers:

- Voting the project a minor modification not requiring a public hearing: Christina Brown; Robert Doyle; Josh Goldstein; Fred Hancock; Lenny Jason; Jim Joyce; Joan Malkin; Kathy Newman, Doug Sederholm; Abe Seiman; and Ernest Thomas.
- Voting against: None.
- Abstentions: Trip Barnes.

Based on this vote, the Commission approved the application for the project as a Development of Regional Impact with the conditions listed in section 4 below. This written Decision is consistent with the vote of the Commission July 21, 2016 and was approved by vote of the Commission on August 4, 2016Z.

### 4. CONDITIONS

After reviewing the proposal as a minor modification to an existing Development of Regional Impact, the Martha's Vineyard Commission imposes the following conditions, offered by the Applicant, in order to increase the benefits and minimize the detriments of the project and which wholly replace all previous conditions. The analysis of benefits and the resulting decision to approve the project is based on the proposal as modified in the plans and as clarified by these conditions.

These conditions form an integral and indispensable part of this decision and shall be enforced as written. The primary enforcement agent for the compliance of these conditions is the building and zoning enforcement officer of the Town. If the Commission or the Town finds it necessary to seek judicial relief to enforce the condition, the Applicant shall pay the Commission's and/or Towns attorney's fees and costs incurred in obtaining judicial relief.

#### 1. Site Design and Landscaping

- 1.1. The Applicant shall plant additional vegetative screening, in addition to the vegetation already offered, to be located along the front portion of the property and facing the abutters, in order to increase the screening from State Road and the abutters, with the placement to be determined in cooperation with the Executive Director of the Martha's Vineyard Commission. Trees that die

within five years of being planted shall be replaced. The Island Housing Trust or its successors shall maintain and preserve the screening as proposed.

- 1.2. The 100' buffer along State Road shall be left untouched with the exception of the access road, a potential walking path or shared use path parallel to State Road, bus shelter, the Land Bank pedestrian access, and the addition of vegetative screening.
- 1.3. There shall be a 50' no-cut zone along the east side of the property, with the exception of the Land Bank pedestrian access along the east side.
- 1.4. There shall be a 50' no-cut zone along the north and south sides of Red Coat Hill Road with the exception of pedestrian access from the access road hammerhead and two wells indicated on the Plan. The placement of wells or septic systems, or the conduct of any other activity that involves vehicles using or crossing Red Coat Hill Road shall require prior written approval by the MVC Executive Director.
- 1.5. The siting of the houses indicated in the Plan may be adjusted by a maximum of 15', and the specific location of parking pads, vegetation and other site features can be adjusted, subject to the approval of the MVC Executive Director, provided that the setback requirements of conditions 4.2, 4.3 and 4.4 are respected, and that no house be closer than presently proposed along the western property line, along State Road, and along Red Coat Hill Road.

## 2. Wastewater Disposal

- 2.1. The Applicant will install a state approved de-nitrification septic system that will reduce the effluent nitrogen to 19mg/l or less.
- 2.2. The Applicant shall provide an operation and maintenance manual for the de-nitrification septic system based on the design, installation, use, and maintenance recommended by the manufacturers. These manuals shall be submitted to and are subject to the approval of the MVC's Land Use Planning Committee prior to installation.
- 2.3. As offered by the Applicant, testing for pH, BOD, TSS and Nitrate/Total Nitrogen of de-nitrification septic system effluent shall be conducted monthly for at least 6 months. Testing can then be conducted on a quarterly basis or as required by the Tisbury BOH until three consecutive tests meet the nitrogen limit of 19mg/l or less. All test results shall be submitted to the Tisbury Board of Health and to the Martha's Vineyard Commission.
- 2.4. The leaching trench shall be situated as close to the up-gradient (west) property boundary as permitted within Title 5 and the local Health Code of the Town.

## 3. Groundwater Monitoring

- 3.1. Existing monitoring wells (5 monitoring wells with two sited along the up gradient boundary and three along the down-gradient boundary) shall be sampled twice prior to wastewater disposal start up and the samples shall be analyzed for TKN, nitrate, ammonium, and specific conductivity.
- 3.2. Locations and depths of existing monitoring wells shall be provided to MVC Staff for review and approval. The wells shall be fitted with 10- foot screens placed at a depth that will bracket the average water table depth as indicated by MVC records. The wells shall be surveyed in to NGV Datum (1929) and two wells shall be placed between the proposed location of the leach trench and the nearest, known abutting private wells.
- 3.3. Sample acquisition shall follow the QA protocol available from the MVC. Prior to starting well monitoring the QA shall be reviewed and approved by the Tisbury Board of Health and the MV

Commission. A laboratory certified by the Commonwealth for these parameters shall conduct sample analyses.

- 3.4. The wells shall be sampled annually in the fall for a period of five years after occupancy, which period may be extended by the Board of Health should the data indicate a concern. Certified lab analyses and field data sheets as required by the QA shall be provided to the Board of Health and the MVC within 21 days of completion of the sampling.
- 3.5. Should the total nitrogen content of the down-gradient monitoring wells exceed 9 milligrams per liter while the up-gradient wells indicate no causative, off-site source, the Applicant or its successors shall notify the Tisbury Board of Health, the MVC and the abutters. The results shall be confirmed by a second sample as described in the QA.
- 3.6. Should down-gradient private wells within 500' of the leaching field that previously tested at 5ppm or less of nitrate exceed 10ppm while the up-gradient wells indicate no causative, off-site source, the Applicant's or its successor's wastewater system will be considered to have failed and shall either be upgraded to provide denitrifying capability within the segments that are up-gradient of the problem well(s) or the Applicant or its successors shall finance a solution agreeable to the Board of Health and the MVC. To establish a baseline, the Applicant or its successors shall provide an opportunity for analysis of private wells on adjacent lots within 500' of the eastern property line, at the expense of the Applicant or its successors.

#### 4. Water Supply

- 4.1. No trees shall be removed resulting from the installation of the water wells, and their installation is to be engineered to minimize the damage to the root systems of adjacent trees.

#### 5. Exterior Lighting

- 5.1. All exterior lighting shall be shielded to prevent up-lighting.
- 5.2. The only exterior lighting shall be porch lights.

#### 6. Permanent Affordability and Distribution of Units among Income Levels

- 6.1. All 20 rental units shall be rentals for tenants earning 80% or less of the Area Median Income (AMI) to be managed under contract by the DCRHA. All units shall be in compliance with the Affirmative Fair Housing Marketing Plan as prescribed by the Mass Department of Housing and Community Development's per project, per unit price guidelines. All 20 rental units shall remain Affordable to include rent, utilities, and any other monthly fees in perpetuity.
- 6.2. All 20 rental units shall count towards the state's Comprehensive Permit Law Chapter 40B Subsidized Housing Inventory (SHI) for the Town of Tisbury.
- 6.3. Home Businesses: Home-based businesses will not be allowed.

## 4. **CONCLUSION**

### 4.1 **Permitting from the Town**

The Applicants must, consistent with this Decision, apply to the appropriate Town of Tisbury Officers and Boards for any local development permits which may be required by law.

The permit-granting authorities of the Town of Tisbury may now grant the request for approval of the Applicants' 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. Any permit issued by the Town shall incorporate the plan approved by the MVC and the above conditions.

Tisbury officials shall not issue a Certificate of Occupancy until they have received a Certificate of Compliance issued by the Executive Director or DRI Coordinator of the Martha's Vineyard Commission confirming that the following Conditions of this Decision have been satisfied: 1.1; 1.2; 1.3; 1.4; 1.5; 2.1; 2.2; 2.4; 3.1; 3.2; 3.3; 4.1; 5.1; 5.2; 6.2; and 6.3.

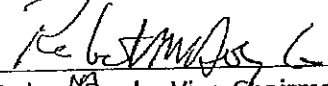
#### **4.2 Notice of Appellate Rights**

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 Tisbury Town Clerk.

#### **4.3 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 begin substantial construction. Should substantial construction not occur 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.

#### **4.3 Signature Block**

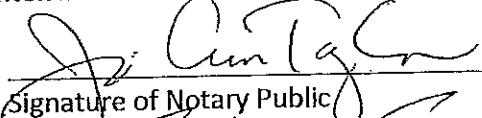
  
Robert M. Doyle, Vice-Chairman

8/15/16.  
Date

#### **4.4 Notarization of Decision**

Commonwealth of Massachusetts  
County of Dukes County, Mass.

On this 15<sup>th</sup> day of August, 2016, before me,  
Jo-Ann Taylor, the undersigned Notary Public, personally  
appeared Robert M. Doyle, 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.

  
Signature of Notary Public

Jo-Ann Taylor  
Printed Name of Notary

My Commission Expires February 9, 2018

#### **4.5 Filing of Decision**

Filed at the Dukes County Registry of Deeds, Edgartown, on: Aug. 19, 2016

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