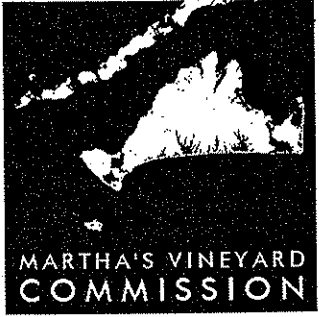




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# Decision of the Martha's Vineyard Commission

## DRI 34-M – Flat Point Farm

### 1. SUMMARY

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- Referring Board: Planning Board, Town of West Tisbury, MA
- Subject: Development of Regional Impact #34-M  
Flat Point Farm
- Project: To subdivide one 12.9-acre parcel off of a 110-acre piece of land.
- Owner: A.M. Fischer 1994 Trust, Priscilla P. Fischer (Trustee)
- Applicant: Priscilla Fischer, Arnie Fischer Jr., Eleanor Fischer, Vineyard Land Surveying (Glenn Provost – Agent)
- Applicant Address: C/O Glenn Provost, Vineyard Land Surveying, P.O. Box 421, West Tisbury, MA, 02575.
- Project Location: Road to Great Neck, West Tisbury Map 35 Lot 3.1 (110.3 acres)
- Description: The proposal is to subdivide a 12.9-acre parcel located on Tisbury Great Pond and Short Cove. The land is mostly an open field, but also contains a wooded area and natural vegetation along Short Cove. The property would be sold for construction of a single-family home including up to three structures.
- 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 April 12, 2007.
- Written Decision: This written decision was approved by a vote of the Commission on May 10, 2007.

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 February 27, 2007 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 3.102b, 3.203a, and 3.203b, the last two items being mandatory referrals.

### **2.2 Hearings**

Notice: Public notice of a public hearing on the Application was published in the Vineyard Gazette, March 23, 2007.

Hearings: On April 5, 2007, 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.

### **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 "Plan of Land in West Tisbury, MASS. Surveyed for AM Fischer 1994 Trust", consisting of one 18" x 24" sheet showing the proposed new parcel, Scale 1" = 100', prepared by Vineyard Land Surveying & Engineering, Inc., P.O. Box 421, West Tisbury, MA 02575, October 27, 2006.
- P2 "Plan of Land in West Tisbury, MASS. Surveyed for AM Fischer 1994 Trust", consisting of one 18" x 24" sheet showing the proposed new parcel and proposed Building Envelope (Note: Building Envelope has been shifted by the Conditions in this Decision), Scale 1" = 100', prepared by Vineyard Land Surveying & Engineering, Inc., P.O. Box 421, West Tisbury, MA 02575, October 27, 2006.

### **2.4 Other Exhibits**

- E1. Referral to the MVC from the West Tisbury Planning Board February 27, 2007.
- E2. Staff Report, by Paul Foley, MVC DRI Coordinator, with the assistance of other staff members, Date, April 9, 2007.
- E3. Letter from Susan Silva, dated March 28, 2007.
- E4. Minutes of the Commission's Land Use Planning Committee meeting, March 5, 2007.

- E5. Minutes of the Commission's Public Hearing, April 5, 2007.
- E6. Minutes of the Commission Meeting of April 12, 2007 – Deliberations and Decision.
- E7. Minutes of the Commission Meeting of May 17, 2007 – 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 Applicant Agent Glenn Provost (Vineyard Land Surveying).
- Letters from Susan Silva of West Tisbury.
- Oral testimony from Public:
  - Whit Manter
  - Samantha Look and Christian Strom

## **2.6 Party Status**

- No individuals and/or groups requested or were granted party status:

## **3. FINDINGS**

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### **3.1 Project Description**

- The 110-acre farm is situated at the end of a peninsula on Tisbury Great Pond between Short Cove and Pear Tree Cove.
- The proposed 12.9-acre parcel is on the corner where Short Cove meets Tisbury Great Pond.
- The peninsula is open farm pasture for a depth of approximately 850 feet from the Great Pond, beyond which the landscape becomes woods.
- The proposal is to create one un-subdividable 12.9-acre parcel with a 1.4-acre development envelope that would accommodate three structures not to exceed 10,000 square feet in footprint and 20,000 square feet in size.
- The site is currently farm pasture and woods.

### **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 vast majority of the land is outside of the building envelope and will be maintained as hay field/pasture land in perpetuity. The Commission finds that the sale of this property could help in the preservation of the rest of the historic farm, in the face of a difficult real estate and tax climate.

##### **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 project will be able to meet the MVC nitrogen loading requirements for Tisbury Great Pond. The Commission notes that a home or habitable structure built on the property will install an advanced de-nitrifying wastewater treatment system.

With respect to Open Space, Natural Community and Habitat, the Commission finds that the proposal creates a development envelope that represent about 10% of the new 12.9-acre parcel thus preserving around 90% of the new lot.

With respect to Night Lighting and Noise, the Commission finds that no development is planned at this time. The Commission notes that if and when development is planned the landscaping and lighting will be subject to MVC Review.

With respect to Energy and Sustainability, the Commission finds that the project retains roughly 90% of the property in its current state, which includes pasture land. The Commission notes that no development is planned at this time.

##### **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 finds that if and when the property is developed the access road should not experience a significant increase in traffic due to the addition of one single-family residence and possibly a guest house.

With respect to Scenic Values, Character, and Identity the Commission finds that the construction of a new house on this property would impact the view from the Tisbury Great Pond, however the impact has been mitigated by setting the development envelope back 700 feet from the pond

and by adding landscaping to soften the view of any future buildings. It also notes that most of the existing farm is being protected.

With respect to the Impact on Abutters, the Commission finds that the applicant will be a direct abutter. The Commission notes that other abutters have expressed concerns that have been addressed by the offers and conditions contained in this Decision.

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

**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 little 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 conditions such as those relating to the location of the development envelope, 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 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.**

The Commission finds that the project is consistent with the municipal development ordinances and by-laws of the town of West Tisbury.

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

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#### **4. DECISION**

The Martha's Vineyard Commission deliberated about the application at a duly noticed meeting of the Commission held on April 12, 2007 and made its decision at the same meeting.

The following Commissioners, all of who participated in all hearings and deliberations on this project, participated in the decision on April 12, 2007.

- Voting in favor: John Breckenridge; Christina Brown; Mimi Davisson; Chris Murphy; Katherine Newman; Ned Orleans; Jim Powell; Doug Sederholm; Susan Shea; Linda Sibley; Richard Toole; and Andrew Woodruff.
- 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 April 12, 2007 and was approved by vote of the Commission on May 10, 2007.

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#### **5. CONDITIONS**

After reviewing the proposal for this Development of Regional Impact, the Martha's Vineyard Commission imposes the following conditions in order to increase the benefits and minimize the detriments of the project. The analysis of benefits and the resulting decision to approve the project is based on the proposal as modified by these conditions. These conditions form an integral and indispensable part of this decision.

These conditions are an essential part of this decision and shall be enforced as written. If the Commission finds it necessary to seek judicial relief to enforce the condition, the Applicant, or its successors in title at the time of such proceedings, shall pay the Commission's attorney's fees and costs incurred in obtaining judicial relief.

## **1 Wastewater, Groundwater And Stormwater Management**

- 1.1 As offered by the Applicant, the future sub-surface leaching area must be setback a minimum of 300 feet from the shoreline of Tisbury Great Pond.
- 1.2 As offered by the Applicant, the future septic design plan must incorporate an advanced treatment system, such as "Bioclere".

## **2 Development Constraints**

- 2.1 As offered by the Applicant, the number of bedrooms allowed on the site shall not exceed 12.
- 2.2 As offered by the Applicant, the maximum number of new structures allowed is three (excluding a pool and a tennis court).
- 2.3 As offered by the Applicant, the maximum footprint of all structures on the site shall not exceed 10,000 square feet (including dwellings, garage, pool, tennis court, shed, etc. but excluding decks and patios).
- 2.4 As offered by the Applicant, no asphalt paving is allowed.
- 2.5 As offered by the Applicant, there will be no hippie communes allowed.
- 2.6 As offered by the Applicant, the area outside the "Building Envelope" will be maintained in perpetuity as hay field/pasture land. However, the future sub-surface leaching area and well may be placed outside the "Building Envelope" if deemed necessary to meet the various Town and State regulations. A path to the Pond will also be allowed subject to approval of the Grantors and the West Tisbury Conservation Commission. (modified by conditions 2.7, 2.8, 4.3 and 4.4)
- 2.7 All new structures, including any pool and or tennis court, shall be located in a Building Envelope no closer than 150 feet from Short Cove, and no closer than 700 feet from Tisbury Great Pond (as shown on the plan).
- 2.8 All landscaping and alteration of the land must other than the entrance road and infrastructure connections shall be within a development envelope no closer than 100 feet from Short Cove and no closer than 700 feet from the Tisbury Great Pond.

## **3 Further Subdivision**

- 3.1 As offered by the Applicant, the lot cannot be further subdivided to create additional building lots.

## **4 Landscaping**

- 4.1 As offered by the Applicant, all proposed landscaping will be native materials.

- 4.2 Any landscaping around the house within the building envelope shall be submitted to and is subject to the approval of the LUPC, and should be designed to soften the view from the water and minimize the visual impact of the buildings and structures.
- 4.3 The presently mowed area shall be kept in hayfield/pasture except those areas outside the presently mowed area, including but not limited to the wooded area and wetland area, shall remain in their natural vegetative state.
- 4.4 Outside the development envelope, any fencing shall be in keeping with the style of a common type of agricultural fencing.
- 4.5 All fertilizers shall be slow-release, water-insoluble nitrogen source types. No synthetic pesticides including herbicides, fungicides and insecticides shall be used in the maintenance of landscaping.

## **5 Exterior Lighting**

- 5.1 Exterior lighting shall be designed to be in keeping with the general philosophy of minimizing the impact on the surroundings.

## **6 Docks**

- 6.1 There shall be no permanent dock on Short Cove or Tisbury Great Pond; only a temporary floating dock will be allowed.

## **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**

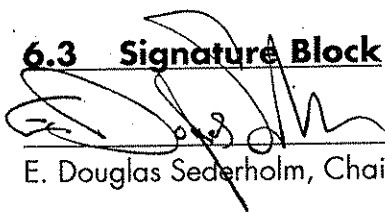
Any party aggrieved by a determination of the Commission may appeal to Superior Court within twenty (20) days after the Commission has sent the development Applicant written notice, by certified mail, of its Decision and has filed a copy of its Decision with the West Tisbury Town Clerk.

### **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 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.



**6.3 Signature Block**

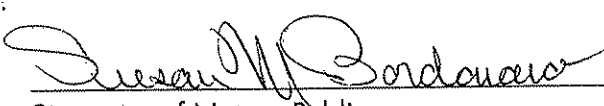
  
E. Douglas Sederholm, Chairman

5-25-07  
Date

**6.4 Notarization of Decision**

Commonwealth of Massachusetts  
County of Dukes County, Mass.

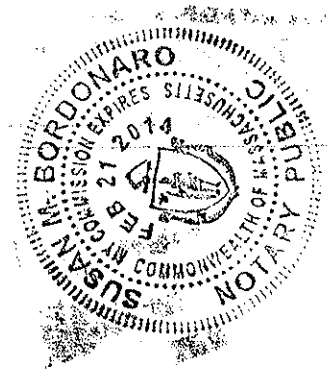
On this 25<sup>th</sup> day of May, 2007, before me,  
Susan M Bordonaro, the undersigned Notary Public, personally  
appeared E. Douglas Sederholm, proved to me through satisfactory evidence of  
identity, which was/were personal knowledge to be the person(s)  
whose name(s) was/were signed on the preceding 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.

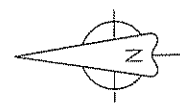
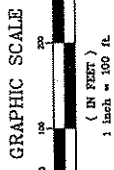
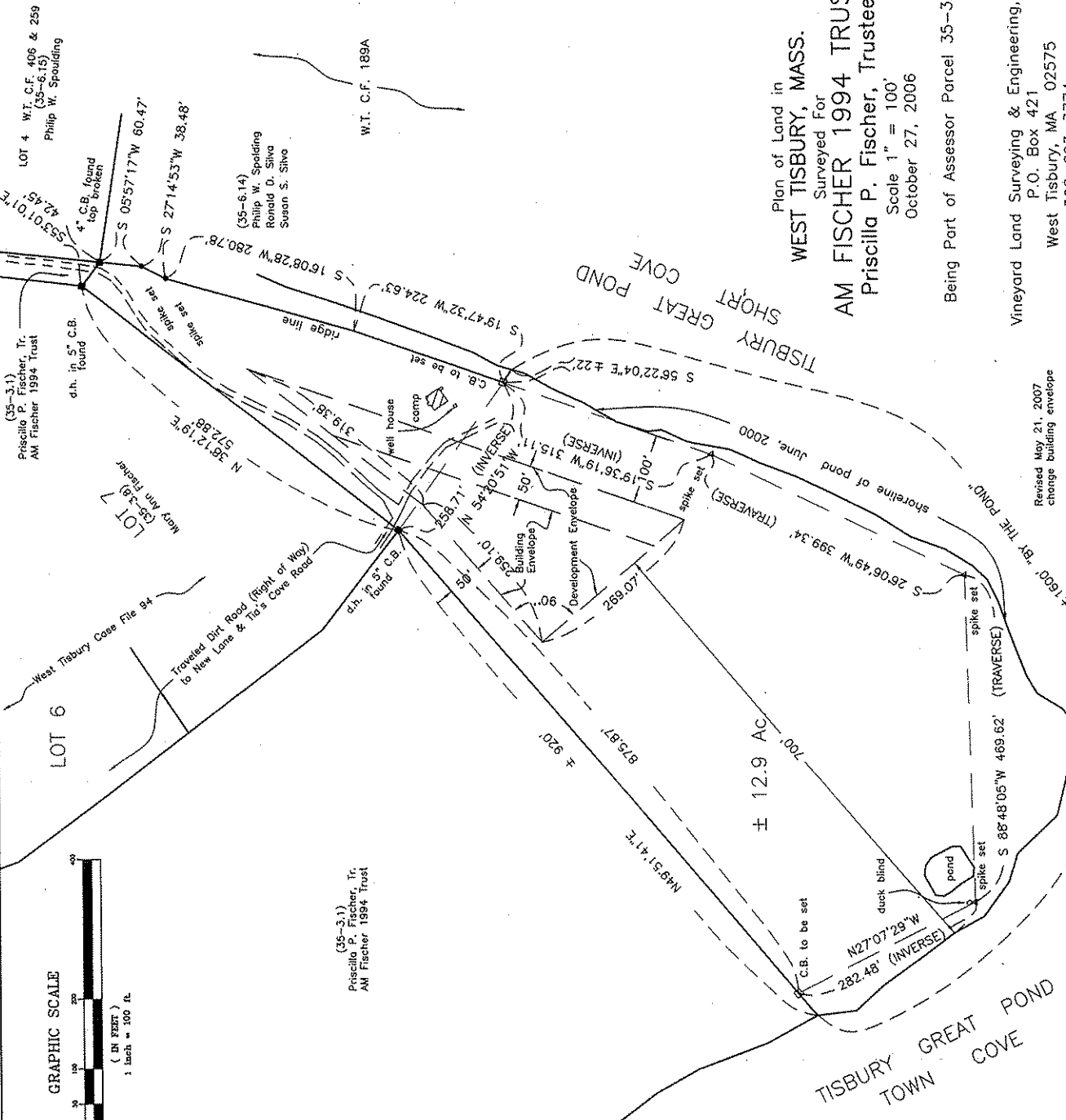
  
Signature of Notary Public

SUSAN M. BORDONARO  
Notary Public  
Commonwealth of Massachusetts  
My Commission Expires  
February 21, 2014

**6.5 Filing of Decision**

Filed at the Dukes County Registry of Deeds, Edgartown, on: \_\_\_\_\_  
Deed - Book xx, page xxxx





(35-3.1)  
Priscilla P. Fischer, Tr.  
AM Fischer 1994 Trust

LOT 4 W.T. C.F. 406 & 259  
(35-6.15)  
Philip W. Spoulding

(35-3.1)  
Priscilla P. Fischer, Tr.  
AM Fischer 1994 Trust

LOT 6

LOT 7  
(35-3.6)  
Mary Ann Fischer

(35-6.14)  
Philip W. Spoulding  
Ronald D. Silva  
Susan S. Silva

W.T. C.F. 189A

Plan of Land in  
**WEST TISBURY, MASS.**  
Surveyed For  
**AM FISCHER 1994 TRUST**  
Priscilla P. Fischer, Trustee

Scale 1" = 100'  
October 27, 2006

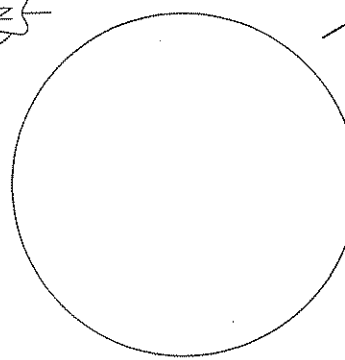
Being Part of Assessor Parcel 35-3.1

Vineyard Land Surveying & Engineering, Inc.  
P.O. Box 421  
West Tisbury, MA 02575  
508-693-3774

Job No. 1476

Revised May 21, 2007  
change building envelope

LOCUS MAP 1:25,000



TOWN OF WEST TISBURY  
PLANNING BOARD  
Endorsed  
Approval under the Subdivision  
Control Law Not Required

Date: \_\_\_\_\_

Chairman \_\_\_\_\_

Endorsement is without regard to buildability or permitted zoning, does not stay enforcement of zoning regulations, and is subject to other notation herein

I certify that 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 this plan has been prepared in conformity with the rules and regulations of the Registers of Deeds of the Commonwealth of Massachusetts.

Date: \_\_\_\_\_

Professional Land Surveyor

Attest: *Janice C. Powers* Register