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Decision of the Martha's Vineyard Commission

DRI 566-M2 – Island Fuels Inc.

1. SUMMARY

- Referring Board: Building Inspector, Town of Tisbury, MA
- Subject: Development of Regional Impact #566-M2
Island Fuels Inc.
- Project: To locate a fuel company with three trucks at 44 Evelyn Way in Tisbury and install a 10,000 gallon ConVault above ground storage tank with two compartments for Number 2 Heating Oil and Diesel.
- Owner: Marc O'Donnell, M.V. Electric, 44 Evelyn Way, Tisbury, MA
- Applicant: Jay McMann; Island Fuel Inc.
- Applicant Address: P.O.B. 5011, Tisbury, MA
- Project Location: 44 Evelyn Way, Tisbury, MA Map 22-C Lot 7.1 (0.26 acres)
- Description: To locate a fuel company with three trucks at 44 Evelyn Way in Tisbury and install a 10,000 gallon ConVault above ground storage tank with two compartments for Number 2 Heating Oil and Diesel. The 10,000 gallon tank will be located near the front of the property with the tank and truck parking on a concrete slab. They will operate three trucks at this location.
- 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 March 18, 2010.
- Written Decision: This written decision was approved by a vote of the MVC on April 29, 2010.

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 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 8, 2010 by the Building Inspector of the Town of 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.

2.2 Hearings

Notice: Public notice of a public hearing on the Application was published in the Vineyard Gazette, March 5, 2010.

Hearings: 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 on March 18, 2010. The hearing was closed on that night.

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 "Site Plan in Tisbury, Massachusetts Assessor Parcel 22-C-7.1: Prepared for Island Fuel Inc.", consisting of one 22" X 17" sheet of site plans showing property, buildings, contours, location of concrete slab, above ground storage tank, parking, and plantings prepared by Sourati Engineering Group, P.O. Box 4458, Vineyard Haven, MA 02568, March 15, 2010. Scale: 1" = 10'

2.4 Other Exhibits

- E1. Referral to the MVC from the Tisbury Building Inspector, February 8, 2010
- E2. Staff Report, by Paul Foley, MVC DRI Coordinator, with the assistance of other staff members, February 23, 2010, revised on March 18, 2010.
- E3. Photographs of the site, taken on January 31, 2010 by MVC staff member Paul Foley.
- E4. Letter from Jay McMann (the applicant), dated January 27, 2010 consisting of four pages with one page of project description and three pages of "Specifications for ConVault Protected/Secondarily Contained Aboveground Tank".
- E5. Letter from Charles Blair, Edgartown Harbormaster, dated February 24, 2010.
- E6. Letter from Sherman Goldstein of the Mansion House, dated February 19, 2010.
- E7. Letter from Adam Bresnick of Island Food Products
- E8. Letter from Scott Dario of MV Transportation Services, dated March 10, 2010.

- E9. Letter from Susan Parker dated March 15, 2010.
- E10. Letter from fisherman stating they find the service reliable and good quality include: Donald Benefit; Rob Coad; Edmund Smith; Mark Posorzelski; Laurie Lucier; Tracy Sharples; John D. Smith; Steven Buckley; A. Edward Handy; Michael Hathaway; Mark DeFeo; William Bishop; and Jason Gale.
- E11. Minutes of the Commission's Land Use Planning Committee meeting, March 1, 2010.
- E12. Minutes of the Commission's Public Hearing, March 18, 2010.
- E13. Minutes of the Commission Meeting of March 18, 2010 – Deliberations and Decision.
- E14. Minutes of the Commission Meeting of April 29, 2010 – 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 Jay McMann.
- Staff reports by Paul Foley, MVC DRI coordinator; Bill Wilcox, MVC Water Planner; Mark London, Executive Director.
- Letters from citizens of Martha's Vineyard.
- Oral testimony from Town Boards or members of Town Boards: John Schilling, Tisbury Fire Chief.

3. FINDINGS

3.1 Project Description

- The site is about a quarter-acre (0.26 acre) lot on Evelyn Way in the B-2 Business District of Tisbury.
- There is an existing building that will not be altered at this time.
- The proposal is to locate a fuel company with three trucks at 44 Evelyn Way in Tisbury and install a 10,000 gallon ConVault above ground storage tank with two compartments for Number 2 Heating Oil and Diesel.
- A revised engineered site plan places the 10,000 gallon tank near the front of the property with the tank and truck parking on a concrete slab.
- No vehicles other than his delivery trucks will be fueled at this site.
- The Applicant plans to do vehicle maintenance for his fleet on site.
- They will operate three trucks at this location. In the winter time one or two trucks will leave for the day delivering home heating oil, on a very busy day they may return to pickup more fuel once or twice.
- The largest truck leaves once or twice a week in the morning to pickup product off island and returns in the afternoon.
- During the summer one truck leaves early in the morning to fuel fishing and other boats and returns in the afternoon. This truck will again leave around 8:00 PM to fuel tour and school buses, and other trucks at their locations.
- They may have an occasional customer come to the office to pay their bill, other than that there will be no retail operations at this site.

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 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

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 has adequate safeguards to minimize the risk of spills or leaks.

With respect to Open Space, Natural Community and Habitat, the Commission finds that the project is located in a commercial/industrial area. The Commission notes that the applicant will be planting additional landscape screening along Evelyn Way.

With respect to Night Lighting and Noise, the Commission finds that the project has no new lighting planned and that the noise that will be created by trucks backing up is located in an industrial area.

With respect to Energy and Sustainability, the Commission finds that the project allows a new distributor of energy to operate more efficiently and safely.

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 the project will generate a minimal amount of additional trips on Evelyn Way. The Commission notes that the delivery of fuel to the 10,000 gallon tank by tractor trailer trucks may create brief delays on Evelyn Way.

With respect to Scenic Values, Character, and Identity: The Commission finds that the project, with the proposed landscaping, may improve the appearance of the streetscape in that particular stretch of the industrial zone.

With respect to the Impact on Abutters: the Commission finds that the project should have minimal impact on abutters.

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

The Commission finds that the proposal to install a 10,000 gallon storage tank does not trigger the MVC's Affordable Housing Policy.

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).

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).

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 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 allowed by zoning in the B-2 District of the town of Tisbury. The Commission notes that the concrete pad that the trucks and tank will be placed on will require approval by the Building Inspector. The Commission notes that the above ground storage tank must be reviewed and approved by the State Fire Marshall.

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 not located within a District of Critical Planning Concern (DCPC).

4. DECISION

The Martha's Vineyard Commission deliberated about the application at a duly noticed meeting of the Commission held on March 18, 2010 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 March 18, 2010.

- Voting in favor: Bill Bennett; John Breckenridge; Christina Brown; Pete Cabana; Fred Hancock; Chris Murphy; Jim Joyce; Lenny Jason; Kathy Newman; Ned Orleans; Camille Rose; Doug Sederholm; Holly Stephenson; Linda Sibley; 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 March 18, 2010 and was approved by vote of the Commission on April 29, 2010.

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. 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, or its successors in title at the time of such proceedings, shall pay the Commission's and/or Town's attorney's fees and costs incurred in obtaining judicial relief.

1 Wastewater, Groundwater And Stormwater Management

- 1.1 As offered by the Applicant, every year a loss control consultant from the insurance company shall evaluate their operations and spill prevention program.
- 1.2 As offered by the Applicant, they shall have spill containment kits on every truck along with oil absorbent pads. Any driver hired shall be trained personally by Jay and will not be allowed to operate any of their vehicles until Jay is satisfied they are fully competent with their equipment and procedures
- 1.3 As offered by the Applicant, all trucks are equipped with all the latest safety devices. Some of these devices include a brake Interlock system that will not allow the truck to move with any fuel hoses attached, dry disconnects that will not allow fuel to flow without being fully connected and electronic level devices that prevent the truck from being overfilled.
- 1.4 As offered by the Applicant, at their company location they will have available at all times spill containment equipment, including Oil absorbent pads, speedy dry, with steel waste drum to hold for proper pickup and disposal.

2 Traffic and Transportation

- 2.1 As offered by the Applicant, no vehicles other than his delivery trucks will be fueled at this site.

3 Landscaping

- 3.1 As offered by the Applicant, five red maples and four rhododendrons shall be planted along Evelyn Way to help screen the above ground storage tank.

4 Exterior Lighting

- 4.1 As offered by the Applicant, There shall be no additional lighting. All existing exterior lighting shall be downward shielded to prevent direct light from spilling off the property.

6. CONCLUSION

6.1 Permitting from the Town

The Applicant 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 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. Any permit issued by the Town shall incorporate the plan approved by the MVC and the above conditions.

The Town' building inspector shall not issue a Certificate of Occupancy until it has received a Certificate of Compliance issued by the Executive Director or DRI Coordinator of the Martha's Vineyard Commission confirming that the following condition in this Decision has been satisfied: 1.4.

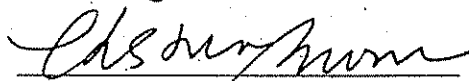
6.2 Notice of Appellate Rights

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



Christina Brown, Chairman

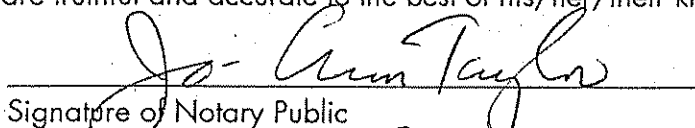
5/6/10

Date

6.4 Notarization of Decision

Commonwealth of Massachusetts
County of Dukes County, Mass.

On this 6th day of May, 2010, before me,
Jo-Ann Taylor the undersigned Notary Public, personally
appeared Christina Brown, 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 11, 2011

6.5 Filing of Decision

Filed at the Dukes County Registry of Deeds, Edgartown, on: May 11, 2010

Deed - Book 1210, page 1082

Decision - 2811