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Decision of the Martha's Vineyard Commission DRI 121-M – Allen Farm Subdivision and Form B Preliminary Estate Plan

1. SUMMARY

- Referring Board:** Planning Board, Town of Chilmark, MA
- Subject:** Development of Regional Impact #121-M
Allen Farm Subdivision and Form B Preliminary Estate Plan
- Project:** Approval of the subdivision as it now exists, and a Form B Preliminary Subdivision of 50.2 acres into four lots.
- Owner:** Allen Farm Nominee Trust
- Applicant:** Allen Farm Nominee Trust, Clarissa Allen and Mitch Posin (Trustees)
- Applicant Address:** C/O Reid Silva, Vineyard Land Surveying, P.O. Box 421, West Tisbury, MA, 02575.
- Project Location:** 421 South Road, Chilmark Map 25 Lot 20.1 (50.2 acres)
- Description:** Approval of the existing Subdivision including the additional Map 25 Lot 20-11. A Form B Preliminary Subdivision of 50.2 acres into four lots. One of the four lots would be the already developed home-site lot of 16.5 acres. The other lots would be 11.4 acres (Lot 1), 12.8 acres (Lot 2), and 9.5 acres (Lot 3). The plan also includes a proposed access road (0.7 acres). In 1980 DRI 121 was approved to divide 116.5 acres into 12 lots. Lot 21 is the largest of those lots.
- 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 November 1, 2012.
- Written Decision:** This written decision was approved by a vote of the Commission on November 15, 2012.

The permit-granting authorities of the Town of Chilmark 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 October 9, 2012 by the Planning Board of the Town of Chilmark, 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, Section 1.2 (Previous DRI). The full Commission voted on November 1, 2012 that the proposal was a significant change to the original DRI and required a public hearing review as a DRI.

2.2 Hearings

Notice: Public notice of a public hearing on the Application was published in the Vineyard Gazette, October 12, 2012.

Hearings: On November 1, 2012, 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. The Hearing was closed on that date. A Motion was made and passed to forego the Post-Public Hearing LUPC and go straight to Deliberation and Decision. The Decision was made on that date.

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 "Preliminary Subdivision: Plan of Land in Chilmark, MASS. Prepared for The Allen Farm Nominee Trust", consisting of one 24" x 36" sheet showing the proposed preliminary estate plan of Map 25 Lot 21 (50.2 acres) in Chilmark, Scale 1 inch = 100 feet, prepared by Vineyard Land Surveying & Engineering, Inc., P.O. Box 421, West Tisbury, MA 02575, September 19, 2012; revised November 1, 2012 with 2.5 acre building envelopes.
- P2 "Possible Offers or Conditions for Allen Farm Form B" drafted October 22, 2012 consisting of one page with 6 offers subsequently clarified and signed by Clarissa Allen and Mitch Posin on November 1, 2012.

2.4 Other Exhibits

- E1. Referral to the MVC from the Chilmark Planning Board.
- E2. Staff Report, by Paul Foley, MVC DRI Coordinator, with the assistance of other staff members, Date, October 12, 2012; revised October 21, 2012; and November 1, 2012.
- E3. Letter from Kristin and John Maloney in support; dated November 1, 2012.
- E4. Minutes of the Commission's Land Use Planning Committee meeting, October 15, 2012.
- E5. Minutes of the Commission's Land Use Planning Committee meeting, October 22, 2012.
- E6. Minutes of the Commission Meeting, October 18, 2012.

- E7. Minutes of the Commission's Public Hearing, November 1, 2012.
- E8. Minutes of the Commission Meeting of November 1, 2012– Deliberations and Decision.
- E9. Minutes of the Commission Meeting of November 15, 2012– 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 Reid Silva (Vineyard Land Surveying); Clarissa Allen and Mitch Posin.
- Oral testimony from Public: Rob Kendall; Ron Mechur; Mary DePasquale.

3. FINDINGS

3.1 Project Description

- In 1980 DRI 121 was approved to divide 116.5 acres into 12 lots. Of the 116.5 acres 77.5 were on the north side of South Road with eight buildable lots plus two open space lots.
- All of the 10 lots on the north side of South Road except lot 5 were 2 to 3.36 acres each.
- Lot 5 was 53.79 acres and was the main farm lot on the north side of South Road. Somewhere along the line in the ensuing years one more 3-acre lot (Map 25 Lot 20-11) was carved off of Map 25 Lot 20-1 (Lot 5).
- The Allen Farm created 2 affordable lots in 1980 though not required by MVC.
- Most of the property south side of South Road is now permanent open space. Originally 3 lots on the south side were approved for additional building lots but only one has been built on and the others have been converted to protected open space.
- The first proposal is the approval of the existing subdivision as it now exists. In 1983 one more 3-acre lot (Map 25 Lot 20-11) was carved off of Map 25 Lot 20-1 (Lot 5), apparently without returning to the MVC for DRI Review. The Commission has reviewed the compliance of the entire original 116.5 acre farm including the modifications since the last MVC approval on record, which include the addition of Lot 20-11 (originally an affordable lot) and Lot 16-6 on the south side of South Road which is an access to Chilmark Pond for Lot 16-2. The Commission notes that two other lots on the south side of South Road that had been approved for future buildings are now protected open space.
- The second proposal is for a Form B Preliminary Subdivision of 50.2 acres into four lots. One of the four lots would be the already developed homesite lot of 16.5 acres. The other lots would be 12.8 acres, 11.4 acres, and 9.5 acres. The plan also includes a proposed access road (0.7 acres).

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 property has long been and currently is farmland and that the majority of the land will be maintained as agricultural land in perpetuity. The Commission notes that the Form B is a preliminary plan that cannot be acted upon and that no development is planned at this time.

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 final division plan shall address the MVC nitrogen loading requirements for Chilmark Pond in force at the time of the final subdivision.

With respect to Open Space, Natural Community and Habitat, the Commission finds that the Allen Farm has been exemplary in terms of preserving open space and natural community.

With respect to Night Lighting and Noise, the Commission finds that proposal should not have a noticeable impact.

With respect to Energy and Sustainability, the Commission finds that through the years the Applicants have retained most of the property in its historical agricultural state and utilize some renewable energy.

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 impact on the road would be minimal.

With respect to Scenic Values, Character, and Identity the Commission finds that the existing farm is being protected and that the character of the land would remain largely intact. The Commission notes

that the proposal allows a multi-generational farm to stay primarily in agricultural use and largely within the family

With respect to the Impact on Abutters, the Commission finds that abutters have expressed concerns with respect to the wind turbine which is not before the Commission.

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).

The Commission finds that the Applicants volunteered two affordable lots of 12 lots at the time of the original subdivision in 1980 which would have surpassed the policy had it been in place at the time. The lots were not in perpetuity but that was not the norm at the time. The current proposal brings the total number of developed or developable lots to 14 which would not trigger the MVC 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).

The Commission finds that the development of this property would add to the tax rolls of Chilmark 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 minimal 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 and the Island Plan adopted by the Commission in December 2010.

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.

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 preliminary division is partly located within the Coastal District of Critical Planning Concern (DCPC) and the Island Roads District of Critical Planning Concern but notes that the proposed building envelopes are not located in either DCPC.

4. DECISION

The Martha's Vineyard Commission deliberated about the application at a duly noticed meeting of the Commission held on November 1, 2012 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 two decisions on November 1, 2012, one for approving the subdivision as it now exists and the other approving the Form B subdivision. The following voting record was identical for both decisions.

- Voting in favor: John Breckenridge; Pete Cabana; Erik Hammarlund; Fred Hancock; Lenny Jason; James Joyce; Chris Murphy; Kathy Newman; Ned Orleans; Camille Rose; Doug Sederholm; Linda Sibley; and Brian Smith.
- 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 November 1, 2012 and was approved by vote of the Commission on November 15, 2012.

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 Final Division Plan

- 1.1 As offered by the Applicant, the final Division Plan shall be submitted to and is subject to the approval of the Martha's Vineyard Commission.
- 1.2 The Applicant, when submitting the final Division Plan, shall include the following:
 - Building envelopes delineated on future lots aimed at reducing the impact on existing and potential farming and grazing areas,
 - Measures to address all MVC policies in place at that time;
 - Address the MVC's nitrogen-loading requirements for Chilmark Pond in the MVC's Water Quality Policy in force at the time of the final division.
 - Address the MVC's policies with respect to minimizing the visual impact of new construction, especially as seen from the road, and to clustering of development. This could require modifying the locations of future houses and roads, and adjusting lot lines.
 - A definitive instrument that limits future division.

6. CONCLUSION

6.1 Permitting from the Town

The Applicant must, consistent with this Decision, apply to the appropriate Town of Chilmark 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 Chilmark 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 propose a Definitive Subdivision. Should a Definitive Subdivision not be proposed 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

Chris Murphy
Chris Murphy, Chairman

11/14/12
Date

6.4 Notarization of Decision

Commonwealth of Massachusetts
County of Dukes County, Mass.

On this 19th day of November, 2012, before me,
Jo-Ann Taylor, the undersigned Notary Public, personally
appeared Chris Murphy, proved to me through satisfactory evidence of identity,
which was/were drivers 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.

Jo-Ann Taylor
Signature of Notary Public

Jo-Ann Taylor
Printed Name of Notary

My Commission Expires February 9, 2018

6.5 Filing of Decision

Filed at the Dukes County Registry of Deeds, Edgartown, on: November 20, 2012

Deed - Book _____, page _____
DECISION - 00076324 - 7917 cert #