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## **Written Decision of Non-Concurrence by the Martha's Vineyard Commission with the Referral of DRI 326-M (Rattner/White Houses) as a Development of Regional Impact**

Date: September 18, 2006  
To: Planning Board, Town of West Tisbury, MA  
From: Martha's Vineyard Commission  
Subject: Development of Regional Impact #326-M  
Project: Rattner/White Houses  
Owner: Patricia M. White and Steven Rattner  
Applicant: Patricia M. White  
Project Location: Obed Daggett Road (off of Indian Hill Road), West Tisbury Map 6 Lot 2 (10.88 acres) & Lot 2.1 (21.63 acres).

### **1. SUMMARY**

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The Martha's Vineyard Commission (the Commission) does not concur with the referral of DRI 326-M (Rattner/White Houses) as a Development of Regional Impact, as submitted in the application of Patricia M. White and as presented to the Martha's Vineyard Commission at a Concurrence Review on September 14, 2006 for a project located at Obed Daggett Road (off of Indian Hill Road), West Tisbury Map 6 Lot 2 (10.88 acres) & Lot 2.1 (21.63 acres).

This Written Confirmation is rendered pursuant to a vote of the Commission on September 14, 2006 based on the plan as presented and findings of fact determined during the Concurrence Review of September 14, 2006. The permit-granting authorities of the Town of West Tisbury may now review applicants' site plan in accordance with the findings of fact herein and may place conditions on any approval thereof in accordance with applicable law, or may deny the request for approval.

### **2. FACTS**

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The project was referred to the Commission 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, Section 3.101a. On September 14, 2006 the Martha's Vineyard Commission voted to not concur with the discretionary referral that the project should be reviewed as a Development of Regional Impact based upon the plan as presented and specific elements of the proposal clarified during the Concurrence Review. Martha's Vineyard Commission staff document exhibits are incorporated into the record by reference.

Hearing: A duly noticed Concurrence Review of the Discretionary Referral was conducted by the Commission on September 14, 2006 at the Stone Building in Oak Bluffs, MA pursuant to the Act and M.G.L. Chapter 30A, Section 2, as modified by Chapter 831, and was closed that night.

Description: The proposal is two separate projects: one is to move an existing 3,300 +/- square foot house to an abutting property under the same ownership; the other is to build a new house of 12,700 square feet (15,575 gross square feet including porches and basement) on the site of the existing house with a footprint of 6,774 square feet.

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

- "Plan of Land in West Tisbury Surveyed for Patricia White showing The Proposed Building Locations", Obed Daggett Road, West Tisbury, MA. Scale 1" = 100', consisting of one 24" X 36" sheet, Job No. 642-1, Vineyard Land Surveying, Inc., P.O. Box 421, West Tisbury, MA, 02575 – No Date – Received Martha's Vineyard Commission September 14, 2006.
- "Proposed Septic System on Land in West Tisbury, MASS.", Designed for Patricia M. White, 145 Obed Daggett Road, West Tisbury, MA. Map 6 Lot 2, 10.88 acres. Scale 1" = 40', consisting of one 24" X 36" sheet, Job No. 642-1, Vineyard Land Surveying, Inc., P.O. Box 421, West Tisbury, MA, 02575 – August 21, 2006.
- "Proposed Septic System on Land in West Tisbury, MASS.", Designed for Patricia M. White, 145 Obed Daggett Road, West Tisbury, MA. Map 6 Lot 2.1, 21.09 acres. Scale 1" = 40', consisting of one 24" X 36" sheet, Job No. 642-1, Vineyard Land Surveying, Inc., P.O. Box 421, West Tisbury, MA, 02575 – August 21, 2006.
- "Grade Comparison Diagram", Cross Section of 145 Obed Daggett Road, West Tisbury, MA. Map 6 Lot 2, 10.88 acres. Scale 1" = 40', consisting of one 11" X 17" sheet, No Author, No Date, – Received Martha's Vineyard Commission September 14, 2006.
- "WINDSONG: A Residence in West Tisbury, Massachusetts", Construction Documents consisting of twenty one 34" X 42" sheets of Site Plans, Building Plans, Elevations, Sections, and Details, Ferguson & Shamamian, Architects, 270 Lafayette Street, New York, NY, 10012 – July 11, 2006.
- "Windsong Relocation", Designed for Rattner Windsong, West Tisbury, MA. Scale varies, consisting of six 30" X 36" sheets of Foundation and Floor Plans for Relocation of the Windsong House, Hunter and Company, Inc., 9 Stoney Hill Lane, West Tisbury, MA, 02575 – July 24, 2006.

### **3. FINDINGS AND CONCLUSIONS**

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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 to determine whether it is a Development of Regional Impact, using the procedures and criteria that the Commission normally uses in evaluating such referrals. The Commission has considered the Application and the information presented at the concurrence review, including listening to all the testimony presented and reviewing all documents and correspondence submitted during the hearing and review period.

The decision to not concur with the referral of this project as a DRI is based on these findings of fact – including those that were clarified by the Applicant during the concurrence review – which form an integral and indispensable part of this decision. Should any aspect of the project substantially change, the permit-granting authorities should refer the project back to the Commission for consideration as to whether the modified project is a Development of Regional Impact.

## **1. Landscaping**

- 1.1 Lot 2 of map 6 (the present location of the existing house and the location for the new house) is the subject of an Order of Conditions (DEP File #SE79-237) recorded in the Dukes County Registry of Deeds at Book 1004, Page 865. That Order of Conditions references as an approved plan the Rattner/White residence Landscape Plan prepared by Horiuchi-Solien Landscape Architects and also a construction staging plan prepared by Horiuchi-Solien Landscape Architects. Those plans are incorporated in Special Condition #4 to the Order and changes to the landscape plan are required to be submitted to the Conservation Commission pursuant to paragraph 6 of the Order. With respect to Lot 2.1, no trees or other vegetation will be cut in any wetlands or coastal buffer zone except in accordance with applicable law and/or regulations.
- 1.2 The Landscaping Plan for Lot 2.1 will be submitted to and is subject to the approval of the West Tisbury Planning Board under the site plan review process. The plan approved by the West Tisbury Conservation Commission for Lot 2 will also be submitted to and is subject to the approval of the West Tisbury Planning Board in conjunction with the site plan review process.
- 1.3 In order to minimize the visual impact of the house (Lot 2.1) from the water, there shall be no cutting of trees and vegetation beyond 25 feet from the footprint of the house on the sides visible from the water except for reasonable clearing to create a view channel and maintenance to control invasive species. The Planning Board shall review proposed cutting for view channels as part of site plan review.
- 1.4 On both lots, trees shall be maintained sufficient to preserve the backdrop of trees behind and above the houses as viewed from the water.
- 1.5 There shall be no grading on either lot that increases run-off into Lily Pond.
- 1.6 No fertilizer shall be used on the property, other than slow-release, water-insoluble nitrogen source types. No synthetic pesticides including herbicides, fungicides and/or insecticides shall be used in the maintenance of landscaping.

## **2 Construction Commitments**

- 2.1 Prior to any work on site, the limit of work area shall be clearly marked in the field as shown on the Plan. All silt and snow fencing shall be checked and replaced as necessary and maintained until all construction is complete. Workers shall be informed that no use of machinery, storage of machinery or materials, stockpiling of soil or construction activity is to occur beyond this line at any time. All equipment shall be operated, parked, and maintained so as to limit alteration of wetlands and buffer zone to those areas clearly identified on the Plan and demarcated in the field by the flagging and construction barriers.

- 2.2 All demolition debris shall be contained in a wind proof manner and removed from the site at the end of each workday.

### **3 Obed Daggett Road Association Agreement**

- 3.1 The agreement between Mr. Rattner and Patrick Phear, the appointed Road Commissioner of the Obed Daggett Road Association, which outlines procedures to minimize disruptions during the excavation and construction phases of the project, shall be implemented. This includes but is not limited to the following, as they related to the use of Obed Daggett Road (the "Road"):
- During the Excavation Phase:
    - All major excavation and material removal will take place between September and April (inclusive).
    - Road users will observe a strict speed limit of 12 mph.
    - Construction vehicle traffic will be organized to ensure that no more than one truck is on the Road at any one time.
    - Mr. Flake has been entrusted to maintain the Road in good condition and leave it in the same condition when construction is finished. An escrow account of \$20,000 shall be established by Mr. Rattner to fund all necessary Road work.
  - During the Construction Phase:
    - All deliveries will be in the morning and there will be no more than two large delivery vehicles on the Road at any one time.
    - No more than ten workers vehicles will be on site at a time.
    - There will be no parking in the Obed Daggett turnouts.
    - No work prior to 7 am or after 7 pm or on Sundays.

### **3 Habitat**

- 3.1 The Building Inspector will consult with the Natural Heritage and Endangered Species Program (NHESP) to determine if the projects are subject to the new regulations that require that all projects occurring in a Priority Habitat on a site of 2 acres or greater should be sent to NHESP to determine whether a species "take" will occur.

### **4 Historic/Archaeological**

- 4.1 Written notice at least five calendar days in advance of excavation work that may potentially affect archeological resources on either lot shall be given to the Wampanoag Tribe of Aquinnah. A representative of the tribe shall be permitted to observe the excavation and the excavation will be suspended if in the opinion of the tribal representative significant archeological resources are uncovered.

### **5 Wastewater**

- 5.1 The leaching areas of wastewater systems associated with the project shall be set back a minimum of 300' from Lily Pond.

### **6 Energy**

- 6.1 The applicant shall install energy efficiency systems as described in the letter from Andrew J. Sebor dated August 28, 2006 and submitted to the Commission, including a geo-thermal heat pump

system and an energy recovery ventilation system. The Rattner/Whites will not install a pool on either lot.

**7 Excavation**

7.1 The trucks removing excavated material will abide by the Agreement between Steve Rattner and Patrick Phear, Road Commissioner of the Obed Daggett Road Association noted above.

**8 Further Subdivision or Development**

8.1 Pursuant to the MVC's 1990 decision allowing subdivision of this land into the two existing lots, any further subdivision of the two lots shall be referred to the MVC for review.

These findings of fact are an essential part of the decision not to concur and shall be enforced as written. If the Commission finds it necessary to seek judicial relief to enforce these findings of fact, 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.

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The Applicant must, consistent with this Written Decision of Non-Concurrence, apply to the appropriate Town of West Tisbury Officers and Boards for any local development permits which may be required by law. This Written Confirmation of Non-Concurrence is written consistent with the vote of the Commission: September 14, 2006. 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 Written Confirmation of Non-Concurrence and has filed a copy of it with the West Tisbury Town Clerk.

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Linda B. Sibley, Chairman

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Date

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Commonwealth of Massachusetts  
County of Dukes County, Mass.

On this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, before me, \_\_\_\_\_, the undersigned Notary Public, personally appeared \_\_\_\_\_, proved to me through satisfactory evidence of identity, which was/were \_\_\_\_\_ 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

\_\_\_\_\_  
Printed Name of Notary  
My Commission Expires \_\_\_\_\_