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Decision of the Martha's Vineyard Commission

DRI 462-M5 Red Arrow Road Community Housing/South Mountain Modification

1. SUMMARY

<u>Referring Board:</u>	West Tisbury Planning Board
<u>Subject:</u>	Development of Regional Impact #462-M5 Red Arrow Road Community Housing/South Mountain Modification
<u>Project:</u>	Subdivision of land to create a 3.17-acre lot to construct affordable/community housing.
<u>Owner:</u>	Island Cohousing Community Association, Inc.
<u>Applicant:</u>	South Mountain Company
<u>Applicant Address:</u>	John Abrams, South Mountain Company P.O. Box 1260 West Tisbury, MA 02575
<u>Deed:</u>	Recorded: Book 820, Page 735
<u>Previous Decisions:</u>	DRI 462 Island Co-Housing/South Mountain Company, Inc. - Recorded: Book 734, Page 364 DRI 462-M2 South Mountain Expansion - Recorded: Book 1033, Page 1042 DRI 462-M4 South Mountain Company Expansion - Recorded: Book 1505, Page 546
<u>Project Location:</u>	20 Rock Pond Road, West Tisbury. Map 10, Lot 200 (approximately 27.92 acres).
<u>Decision:</u>	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 October 13, 2022.
<u>Written Decision:</u>	This written decision was approved by a vote of the Commission on October 20, 2022.

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

The exhibits listed below including the referral, the application, the notice of the 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 May 2, 2022 by the Planning Board of the Town of West Tisbury 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, DRI Checklist Item 1.3D *Modification to a Previous DRI*. At the Land Use Planning Committee meeting on July 18, 2022, the Applicant opted to forego the modification review process, and elected for a public hearing review as a Development of Regional Impact.

2.2 Hearings

Notice: Public notice of the hearing on the Application was published in the MV Times on July 28 and August 4, 2022; notice was also published in the Vineyard Gazette on July 29 and August 5, 2022. Abutters within 300 feet of the property were notified by mail on July 26, 2022.

Hearings: The Commission scheduled a public hearing on the Application pursuant to the Act and M.G.L. Chapter 30A, Section 2, as modified by Chapter 831 on August 11, 2022 which was closed that same night with the exception of the written record which was left open until 5:00 pm on August 25, 2022 and closed at that time. At the Applicant's request, on September 22, 2022 the written record was re-opened for one week to accept additional materials, and was closed at 5:00 p.m. on September 29, 2022. The hearing was held entirely using remote conference technology as allowable under Chapter 22 of the Acts of 2022.

2.3 The Plan

The following plans and documents submitted by the Applicant and contained in the Commission's project file constitute "the Plan." All pages are 8.5" x 11" unless otherwise noted.

- P1. Lot 3 Grading and Drainage Plan prepared for Island Cohousing, West Tisbury Massachusetts by Schofield, Barbini & Hoehn, consisting of one (1) 36" x 25" page, scale 1" = 50'-0", dated March 27, 1998; and revised on October 16, 1998.
- P2. Plan of Land in West Tisbury, Mass. prepared for South Mountain Company, Inc. and Island Cohousing Community Association, Inc. by Schofield, Barbini & Hoehn, consisting of one (1) 36" x 24" page, scale 1" = 50', dated January 24, 2022.
- P3. Context Map, consisting of one (1) 17" x 11" page prepared by South Mountain Company and Whole Systems Design Collective prepared for Red Arrow Road Community Housing, dated March 11, 2022.

- P4. Proposed Site Plan, prepared by South Mountain Company and Whole Systems Design Collective prepared for Red Arrow Road Community Housing, consisting of one (1) 17" x 11" page, dated May 4, 2022.
- P5. Floor Plans & Elevations prepared by South Mountain Company for Red Arrow Road Community Housing, consisting of four (4) 36" x 24" pages, scaled to ¼" = 1'-0", and dated May 23, 2022 unless otherwise noted, including: House #1+2 Plan and Elevations; House #3 Plan and Elevations; House #4 Plan and Elevations; and Solar Shed Plans and Elevations, dated February 11, 2022.
- P6. Proposed Sewage Disposal System Plan consisting of two (2) 36" x 24" pages, prepared for Red Arrow Road Community Housing by Schofield, Barbini & Hoehn, scale 1" = 50', dated June 17, 2022.

2.4 Other Exhibits

- E1. Referral to the Martha's Vineyard Commission from the West Tisbury Planning Board, including cover letter, narrative, and plans consisting of eight (8) pages, received May 2, 2022.
- E2. Project Eligibility Letter from Richard Leonard, Martha's Vineyard Co-operative Bank, to John Abrams, South Mountain Company, regarding Island CoHousing LLC, consisting of two (2) pages, dated January 30, 1998.
- E3. DRI 462 Island Cohousing MVC Decision, consisting of sixteen (16) pages, dated June 25, 1998.
- E4. Town of West Tisbury Zoning Board of Appeals Decision for Island Cohousing Comprehensive Permit, consisting of six (6) pages, dated July 22, 1998.
- E5. Covenants, Conditions and Restrictions (CC&R) of Island Cohousing Community Association, Inc., consisting of thirteen (13) pages, dated March 26, 2000.
- E6. DRI 462-M2 South Mountain Expansion MVC Decision, consisting of six (6) pages, dated March 11, 2005.
- E7. DRI 462-M3 South Mountain Solar Panels remand letter, to Ernest Mendenhall, West Tisbury Building Inspector, from Paul Foley, MVC DRI Coordinator, consisting of one (1) page, dated July 16, 2012.
- E8. Letter from Alana Murphy, Deputy Associate Director of the Department of Housing & Community Development, to John Abrams, South Mountain Company, regarding DRI 462-M4 South Mountain Company Expansion, consisting of one (1) page, dated April 25, 2019.
- E9. DRI 462-M4 South Mountain Company Expansion MVC Decision, consisting of nine (9) pages, dated September 5, 2019.
- E10. KleanTu Homeowner Operation and Maintenance Manual for NitROE Waste-Water Treatment System (Massachusetts), consisting of fifteen (15) pages, dated February 1, 2020.

- E11. DRI 462-M4 South Mountain Company Expansion Condition 1.1 letter of approval, consisting of two (2) pages, dated February 11, 2022.
- E12. Red Arrow Road Community Housing - Nitrogen Calculations, prepared by Schofield, Barbini & Hoehn, consisting of three (3) pages, dated May 19, 2022.
- E13. MVC DRI Application, consisting of two (2) pages, signed May 23, 2022.
- E14. Project Narrative for Red Arrow Road Community Housing, consisting of two (2) pages, dated May 23, 2022.
- E15. Island Housing Trust Ground Lease, consisting of thirty-five (35) pages.
- E16. Red Arrow Road Community Housing - Updated Nitrogen Calculations, prepared by Schofield, Barbini & Hoehn, consisting of two (2) pages, dated June 17, 2022.
- E17. Emails between Matt Coffey (South Mountain) and Alex Elvin, regarding follow-up questions from the staff-applicant meeting, consisting of two (2) pages, dated June 17 & June 20, 2022.
- E18. Red Arrow Road Community Housing Memo regarding Wastewater and Housing Lottery, consisting of one (1) page, dated July 7, 2022.
- E19. Staff Report for DRI 426-M5 Red Arrow Road Community Housing, consisting of four (4) pages, dated July 15, 2022; and updated to consist of six (6) pages on August 26, 2022.
- E20. Staff Presentation to the Land Use Planning Committee, consisting of twenty-eight (28) pages, dated July 18, 2022.
- E21. Emails between Matt Coffey (South Mountain), Chris Alley (Schofield, Barbini & Hoehn) and Alex Elvin, regarding cost and electricity sharing of the solar array, consisting of seven (7) pages, dated August 1, 2022.
- E22. Email between John Abrams (South Mountain) and Alex Elvin, regarding trail easements and further subdivision, consisting of one (1) page, dated August 9, 2022.
- E23. Staff Presentation to the Martha's Vineyard Commission, consisting of thirty-three (33) pages, dated August 11, 2022.
- E24. Email from Ernest Thomas, West Tisbury Appointed Member to the MVC, to Alex Elvin, regarding IHT policies, consisting of one (1) page, dated August 11, 2022.
- E25. Email from Chris Alley (Schofield, Barbini & Hoehn) to Alex Elvin, regarding nitrogen calculations, consisting of one (1) page, dated August 17, 2022.
- E26. Applicant's Offers for Red Arrow Road Community Housing, consisting of one (1) page, dated August 18, 2022.

- E27. Nine letters of opposition from Michael Colaneri: June 14, July 17, July 26, August 3, August 15, August 23, August 24 (2), September 26.
- E28. Letter of support from Lawrence Schubert, member of the West Tisbury Zoning Board of Appeals, West Tisbury Affordable Housing Committee, and the West Tisbury Board of Assessors, dated August 11, 2022.
- E29. Letter from the Dukes County Regional Housing Authority regarding Department of Housing & Community Development
- E30. Red Arrow Road Community Housing - Project Description Offers memo, consisting of one (1) page, dated August 18, 2022.
- E31. Memo from the Applicant regarding Nitrogen mitigation; Accessibility; HOA Fees; Maintenance; Income in rental units; 140% units; and Maintenance of 140% units, consisting of two (2) pages, dated September 26, 2022.
- E32. Red Arrow Road Community Housing - Updated Nitrogen Calculations, consisting of three (3) pages, dated September 27, 2022.
- E33. Email from Sheri Caseau to John Abrams (South Mountain) and Alex Elvin, regarding updated nitrogen calculations, consisting of one (1) page, dated September 29, 2022.
- E34. Minutes of the Commission's Land Use Planning Committee Modification Review, July 18, 2022.
- E35. Minutes of the Commission's Public Hearing, August 11, 2022.
- E36. Minutes of the Commission's Announcement of the Re-Opened Written Record, September 22, 2022.
- E37. Minutes of the Commission's Land Use Planning Committee Post-Public Hearing Review, October 11, 2022.
- E38. Minutes of the Commission's Deliberation and Decision, October 13, 2022.
- E39. Minutes of the Commission's Approval of the Written Decision, October 20, 2022.

2.5 Summary of Testimony

The following gave testimony during the public hearing on August 11, 2022:

- Staff presentation by Alex Elvin, DRI Coordinator.
- Presentation of the project by John Abrams and Matt Coffey, South Mountain Company.
- Oral testimony from Public Officials speaking for their Boards: Amy Upton, West Tisbury Planning Board.
- Oral testimony from the Public: none.

3. FINDINGS

3.1 Project History

The existing lot is the site of Island Co-Housing, which the MVC approved as DRI 462 in 1998, allowing for 16 clustered housing units and a commercial lot to the north where South Mountain Company is now located. The Town later issued a 40B comprehensive permit for the project.

The MVC has also reviewed the following proposed modifications to DRI 462:

- DRI 462-M (2003): Wind turbine proposal; remanded to the Town.
- DRI 462-M2 (2005): Expansion of existing 10,000 ft² building by 2,769 ft².
- DRI 462-M3 (2012): 120-module solar array; remanded to the Town.
- DRI 462-M4 (2019): Additional lumber and storage space, conversion of shop to meeting space and offices, increase in parking spaces from 35 to 40, 12,000 ft² of forest clearing, increase in full time employees onsite, and other changes.

A total of 66 bedrooms were approved and 53 constructed. The current proposal satisfies Condition 1.1 of DRI 462-M4, which required a housing contribution.

3.2 Project Description

The proposal is to subdivide the approximately 29-acre lot on Rock Pond Road in order to create a 3.17-acre lot with six structures, including four houses and a total of 11 bedrooms. South Mountain will purchase the lot from Island Co-Housing, and Island Housing Trust (IHT) will eventually own the property and initiate 99-year ground leases for the units.

- One 797 ft² two-bedroom ownership unit with 80% Area Median Income (AMI) restriction
- Two 797 ft² two-bedroom houses with 140% AMI restriction, for workforce housing
- One approximately 2,000 ft² four-bedroom year-round house, including a garage/studio with detached bedroom, to be sold to a West Tisbury family
- Shared solar parking structure with electric vehicle charging stations, shared storage

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 evaluation 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 testimony presented and reviewing all documents 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 and 15 OF THE ACT.

The Commission finds that the probable benefits of the project outweigh the probable detriments, as described below. With respect to impacts upon persons and property (Section 15(c) of the Act) and impacts on the supply of needed low- and moderate-income housing for Island residents (Section 15(d) of the Act), the Commission finds the project would create a significant benefit. With respect to the impacts upon the environment (Section 15(b) of the Act), the Commission finds the project would create a slight detriment. The Commission finds the project would not adversely affect municipal services or taxpayers (Section 15(e) of the Act) and would not unduly burden existing public facilities.

A1. The Commission finds that the proposed development at this location is appropriate and essential in view of the available alternatives (Section 15(a) of the Act.)

The project is located in the vicinity of the existing Island Co-Housing development and will provide well needed affordable and community housing units in West Tisbury. As such, the Commission finds the project is both appropriate and essential.

A2. The Commission finds that the proposed development would have a slightly detrimental impact upon the environment relative to other alternatives (Section 15(b) of the Act).

With respect to Water Quality (considered a primary factor in the decision), the Commission finds the project would have a neutral impact, accounting for the onsite and offsite mitigation.

With respect to Open Space (also considered a primary factor in the decision), the Commission finds the project would create a slight detriment, due to the removal of vegetation on the site, which is currently forested. The Commission also notes the following with respect to impacts on the environment:

Water quality (including groundwater)

- The property is within the Tashmoo Pond Watershed, which is impaired, and the Greenlands Water Resource Protection District.
- The Applicant has proposed two NitROE denitrifying septic systems capable of serving up to 11 bedrooms on the property, and a shared well.
- The Applicant has stated that a newly formed homeowners association would contract with KleanTu for ongoing testing and maintenance of the NitROE systems.
- Using only the proposed 3.17-acre subdivision, the project is over the limit for Tashmoo Pond by 5.5 kg/year, which requires mitigation.

Open space

- The existing Island Co-Housing lot includes forest, gardens, and ponds. The proposed subdivision is in the northeast corner of the lot, which is currently forested, and is considered part of the Co-Housing common areas.
- The Applicant has stated that within the 75,931 ft² limit of development, mature trees and ground cover will be left intact wherever possible, and about half that area (38,430 ft²) will be revegetated, including with native species. The new lot will also incorporate common garden space.
- The existing Co-Housing lot contains NHESP Priority Habitat, but the new lot would be just outside that area.
- The project area is listed as either “Important” or “Exceptional” open space under the MVC open space guidelines.
- The original comprehensive permit application and supporting materials from 1998 stated that “A large percentage of the property (well over 75%) will be permanent undeveloped open space, and roadways will be minimized.” The proposal would still leave more than 75% of the original properties as open space. The project also involved a public walking path easement with the MV Land Bank, along the eastern property boundaries.
- The original DRI decision in 1998 includes a condition that “There shall be no change in use of or ownership of the common areas of the proposed development without the approval of the Martha’s Vineyard Commission,” but no other specific restrictions on those areas. Subsequent MVC decisions do not prohibit further development, although subdivisions were not necessarily envisioned as part of the original proposal. DRI 462-M4 in 2019 reduced the open space on the lots by 12,000 ft² for the purpose of increased parking.
- The Island Co-Housing covenants required the formation of a Design Review Committee to oversee future improvements, including within the common areas. The Applicant stated that the current proposal required the entire group of Co-Housing owners to sign the purchase and sale agreement for the 3.17 acres, including members of the Design Review Committee.

Stormwater

- The project would involve site grading, vegetated landscape features, and permeable driveways and parking areas to manage runoff and divert it to vegetated areas with native species.
- Total roof area would be about 4,787 ft².

Energy

- The project will include rooftop solar on the shared parking/storage structure, with rooftop solar also envisioned for each of the four houses.
- The Applicant has stated that the development will be net-zero in terms of energy use.
- In terms of sharing the cost and electricity, the Applicant has stated that either 1) a new homeowners association will own the system, with shared loads covered by a shared account and excess generation allocated equally among the households, or 2) another group would own the system and allocate credits to each account.

A3. The Commission finds that the proposed development would have a significantly beneficial effect upon other persons and property (Section 15(c) of the Act).

With respect to Island Housing Needs, the Commission finds that the provision of affordable and community housing would be the primary benefit of the project. The Commission also notes the following with respect to impacts on persons and property:

Island housing needs

- The Applicant has proposed the following restrictions/commitments for the four new houses:
 - One 797 ft² two-bedroom ownership unit
 - 80% AMI restriction
 - To be sold by lottery to qualified applicants by IHT/Town of West Tisbury
 - Two 797 ft² two-bedroom houses
 - 140% AMI restriction
 - To be purchased by South Mountain and retained as workforce rental housing, or sold as workforce homeownership housing
 - One approximately 2,000 ft² four-bedroom year-round house, including a garage/studio with detached bedroom.
 - To be sold to Julius and Mila Lowe of West Tisbury and deed-restricted as year-round housing. (The Lowes are partners with South Mountain in the purchase.)
 - The house will be partially subsidized and sold below market value
 - Designed to allow a fourth bedroom in the future with a walk-out basement
 - Possible garage and work studio in the future
- There will be up to 11 bedrooms on the lot, with the floor area of residential structures (including the potential finished basement and studio space associated with the four-bedroom house) totaling 4,947 ft².
- According to the Applicant, the project will require subsidies, with South Mountain contributing \$250,000 and Island Housing Trust contributing \$125,000. This exceeds the commitment of \$150,000 that South Mountain made as part of DRI 462-M4 in 2019.
- According to the written decision for DRI 462-M4, “The Commission finds that the Applicant’s offer of \$150,000 in monetary mitigation to a West Tisbury Affordable Housing entity or \$150,000 value in pro-bono services towards an Affordable Housing project in West Tisbury is a significant benefit.” One member of the public has challenged the current proposal as depriving West Tisbury of the affordable housing contribution, while benefitting South Mountain by way of the two units that it would retain or sell as workforce housing.
- The MVC noted in its original approval in 1998 that the development was inconsistent with local ordinances, but since it was a 40B the inconsistencies should be addressed by the West Tisbury ZBA. The original ZBA approval included a condition that the development be restricted

to a maximum buildout of 66 bedrooms, and that each of the 16 individual houses be limited to four bedrooms. (A total of 66 bedrooms were approved and 53 constructed.)

- Under Chapter 831, the MVC may approve projects that are inconsistent with town zoning, provided the inconsistency is necessary to provide housing, education, or recreation for a substantial segment of the population. The current proposal would require a modification of the Town's special permit.
- The Dukes County Regional Housing Authority, which currently monitors the Co-Housing units, has noted anomalies with the original deed riders, including a 0.5% resale fee instead of the standard 2% fee, which have complicated the monitoring process, including in regard to unauthorized rentals. DCRHA and the Town are currently in the process of assigning a new monitor to the existing units. However, the proposed units would not be part of Island Co-Housing.
- A model 99-year residential ground lease for the 80% AMI ownership unit has been provided. The two 140% AMI units will be subject to a commercial ground lease that IHT uses when ground-leasing to businesses, in this case South Mountain. If any of the 140% AMI units are sold, they will be subject to residential ground lease from IHT.
- The Applicant has agreed to ensure the 80% AMI unit is for homeownership and will be counted towards the state's Subsidized Housing Inventory for West Tisbury, consistent with the Town's Housing Production Plan. This would trigger Affirmative Fair Housing marketing, income certification, and a public lottery by a state-certified housing entity such as Dukes County Regional Housing Authority or Housing Assistance Corporation.
- According to the Applicant, the next additional house at Island Co-Housing would need to be an 80% AMI unit to maintain the 25% proportion under 40B.

Traffic and transportation

- The new lot will be accessed via Red Arrow Road, which runs along the northern edge of the Island Co-Housing lot. The addition of four dwellings will increase traffic on the road. The West Tisbury Planning Board has stated the following:
 - *The road that will serve the property is adequate and has been supporting traffic for several years.*
 - *In lieu of the formulation of a road association, South Mountain Company shall maintain the road (Red Arrow Road).*

Character and identity

- The project will be at least partly visible from Red Arrow Road, which is sparsely developed.
- The Applicant has stated: "The development is a progressive model of clustered homes for West Tisbury. The proposal works to address the housing needs of the island by creating multiple units within the established fabric of the town under the West Tisbury Bylaws for Multifamily Housing. The modestly sized buildings and shared common resources are arranged to limit site disturbance while offering a balance of communal interaction and privacy."
- Exterior building materials include asphalt roof shingles, white cedar siding, unfinished wood trim (likely reclaimed cypress), concrete foundation walls, and other wood features.

- Floor plans and elevations have been provided.

Landscape

- The Applicant has proposed plantings and up to 12,550 ft² of lawn areas that will be “drought-tolerant and appropriate for the local conditions.”

A4. In regard to the supply of needed low- and moderate-income housing for Island residents (Section 15(d) of the Act; considered a primary factor in the decision), the Commission finds the project would have a beneficial impact.

A5. The Commission finds that the proposed development would have a neutral impact on the provision of municipal services or burden on taxpayers in the making provision therefore (Section 15(e) of the Act).

The project will likely have a minimal impact on municipal services and taxpayers.

A6. The Commission finds that the proposed development would use efficiently and would 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 project will likely have a minimal impact on public facilities.

A7. The Commission find that the project as proposed generally does not interfere with the ability of the municipality to achieve the objectives set forth in the municipal general plan, and would not contravene land development objectives and policies developed by regional or state agencies (Sections 14(b), 15(g), and 15(h) of the Act), respectively.

The project generally aligns with sections 4 (Built Environment) and 7 (Energy and Waste) of the MVC Island Plan, but not necessarily sections 2 (Development and Growth), 3 (Natural Environment), or 8 (Housing). The Island Plan aims to limit new development in outlying areas, focus new development on areas that have already been developed, accelerate the rate of open space protection, and create more walkable communities that are less reliant on automobiles. The Island Plan also encourages the use of existing housing stock for affordable and community housing. The project site is not within any of the areas indicated for “Housing Development Suitability.”

A8. The Commission finds that the proposed development as conditioned is consistent with municipal ordinances and by-laws (Section 14(c) of the Act).

The proposal is subject to approval by the Zoning Board of Appeals as a modification to a Comprehensive Permit that was issued in 1998.

B. THE COMMISSION FINDS THAT THE PROPOSED DEVELOPMENT WOULD GENERALLY 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.

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 project is not consistent with local zoning but is tied to a Comprehensive 40B Permit, as outlined in Section A8 of this decision.

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 project site is not within any District of Critical Planning Concern.

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 and offers, the Commission has concluded that the probable benefits of this proposed development in this location exceed its probable detriments in light of the considerations set forth in section 15 of the Act.

4. DECISION

The Martha's Vineyard Commission deliberated about the application at a duly noticed meeting of the Commission held on October 13, 2022 and made its decision at the same meeting.

The following Commissioners, all of whom participated in the hearing and deliberations, participated in the decision on October 13, 2022:

Voting to approve the project: Jeff Agnoli, Trip Barnes, Christina Brown, Fred Hancock, Joan Malkin, Greg Martino, Kate Putnam, Doug Sederholm, Linda Sibley, Brian Smith, and Peter Wharton.

Voting against: Ernie Thomas.

Recused: Jim Vercruyse.

Ineligible to participate: Jay Grossman, Michael Kim, Kathy Newman, Ben Robinson.

Based on this vote, the Commission approved the application for the project as a Development of Regional Impact with conditions.

This Written Decision is consistent with the vote of the Commission on October 13, 2022, and was approved by a vote of the Commission on October 20, 2022.

5. CONDITIONS

After reviewing the proposal for this Development of Regional Impact, the Commission imposes the following conditions in order to minimize the potential detriments and maximize the potential benefits.

1. WATER QUALITY

- 1.1 As offered by the Applicant, two NitROE enhanced denitrifying septic systems will be installed onsite to reduce potential nitrogen loading in the watershed. The systems are designed for a total of eleven bedrooms.
- 1.2 To mitigate the excess nitrogen generated by the project (estimated at 5.5 kg/year over the limit for the property), the Applicant shall install at its expense one Innovative/Advanced septic systems in the Tashmoo Pond watershed, with preference for a property draining into areas with high nutrient levels, and/or a lower-income property or one with a failed system. A proposal for the system, including its location, estimated nitrogen load reduction, and operations and maintenance contracts, shall be submitted to the LUPC for review and approval prior to the issuance of a Building Permit. The Applicant shall enter into an agreement with the property owner on whose property the mitigating system will be placed. The agreement shall be subject to LUPC review and approval, and shall require that 1) the installed system be maintained and operated by the owner in perpetuity per the installer's specifications, 2) the owner provide annual certification of this (including test results where applicable) to the MVC, 3) the Applicant cover the cost of regular testing for the first five years, and 4) the property owner shall assign rights under the agreement to any subsequent property owner, who shall assume the property owner's obligations under the agreement. If a property owner fails to maintain and operate the system as required, or fails to provide the required certification, the Applicant is required to promptly enforce the terms of the agreement.
- 1.3 Testing results for the system as outlined above, and the project system, and water use records for the project, shall be provided to the MVC annually for three years. If the documented nitrogen reduction offsite does not amount to at least 5.5 kg/year in total, or if the excess nitrogen generated by the project exceeds 5.5 kg/year in total, then further mitigation may be required by the LUPC.

2. HOUSING/COMMUNITY

As offered by the Applicant:

- 2.1 High-performance modular construction will be paired with efficient all-electric mechanical systems and appliances to keep energy use low and avoid the use of fossil fuels.
- 2.2 Electric vehicle charging stations will be provided for each home.
- 2.3 A solar electric system is planned to offset estimated annual energy use of the property.
- 2.4 South Mountain Company Inc. will contribute \$250,000 to the project and will provide full documentation of the required \$150,000 of the \$250,000 contribution.

Additional housing conditions:

- 2.5 As stated by the Applicant, any rental household whose income exceeds the initial limitation shall pay 30% of its gross household income as rent going forward.
- 2.6 All maintenance shall be the responsibility of the owner of the dwelling unit.

With respect to the 80% AMI Affordable Housing unit, the following conditions apply:

- 2.7 The unit shall be limited to year-round occupancy, and shall be restricted by the IHT ground lease as Affordable Housing in perpetuity for an income-qualified occupant earning no more than 80% of the Area Median Income.
- 2.8 The initial occupant shall be selected through a public lottery administered in conformance with Affirmative Fair Housing Marketing tenets, by a state-certified housing authority such as the Dukes County Regional Housing Authority. All subsequent occupants shall be selected by the housing authority in accordance with its general practices. All occupant selection, annual income certification and required ongoing monitoring shall be at the Applicant's expense (including incidental administrative costs) and performed by the housing authority in accordance with its policies.
- 2.9 The Applicant shall maintain and provide such documentation as may be required by the certified housing authority for the purposes of monitoring, annual income certification, and other purposes reasonably incidental to the authority's responsibilities.
- 2.10 The unit shall comply with Universal Design standards and requirements.
- 2.11 The Applicant shall provide one zero-step entrance in the 80% unit. The Applicant shall also set up the other three houses for addition of future ramps if needed. All units shall include doors with 32" clear passage space and lever handles.
- 2.12 The occupant(s) shall have access to all amenities made available to other occupants, including but not limited to parking and common space. Any monetized amenities shall be free or adjusted to preserve the function of affordability for the occupant(s).
- 2.13 The Applicant shall meet all requirements for the Affordable Housing unit to count towards the State's Subsidized Housing Inventory (SHI) for the Town of West Tisbury.

With respect to the 140% AMI Workforce Housing units, the following conditions apply:

- 2.14 The units shall be limited to year-round (11-months per year) occupancy by members of the Island workforce.
- 2.15 The units shall comply with Universal Design standards.
- 2.16 The units shall be integrated with other units in the development and must be generally comparable in regard to factors including but not limited to square footage, number of bedrooms, design, construction, materials, and appearance.
- 2.17 To ensure compliance, the Applicant shall submit an annual affidavit to the MVC no later than December 31 of each year for each unit in perpetuity.
- 2.18 In the event the Applicant (or owner of the property) decides to convert previously approved rental units to homeownership units, the Applicant shall return to the LUPC for review and approval of the ground lease.

3. OPEN SPACE

- 3.1 As offered by the Applicant, approximately 55% of the property will be outside of the limit of work and remain undisturbed; bioswales will be integrated to capture surface water; and awns and plantings will be drought tolerant and/or native species.

4. OTHER CONDITIONS

- 4.1 The Applicant shall provide an engineered drainage plan to the LUPC for review and approval prior to receipt of a Building Permit.
- 4.2 The Applicant shall develop a water quality testing program to monitor the shared well water system, and shall provide annual testing results to the MVC upon request.
- 4.3 A final landscape plan for the property shall be submitted to the LUPC for review and approval prior to receipt of a Certificate of Occupancy.
- Only slow-release, water-insoluble nitrogen-source fertilizers may be used in the maintenance of landscaping.
 - Landscape must use only native or naturalized low-maintenance, drought-tolerant species to minimize the application of nitrogen, pesticides, and water.
- 4.4 A final exterior lighting plan for the property shall be submitted to the LUPC for review and approval prior to receipt of a Certificate of Occupancy.
- All exterior lighting shall be downward-shielded and comply with International Dark Sky Association standards.
 - The color temperature of exterior lighting shall not exceed 3,000 Kelvin.
- 4.5 The Applicant shall provide a surveyed, dimensional, as-built site plan prior to receipt of a Certificate of Occupancy.
- 4.6 Any proposed modifications to DRI 462-M5, as approved herein, including any modification resulting in any change of use or change in intensity of use, shall be referred to the MVC for prior review and approval.

6. CONCLUSION

6.1 Permitting from the Town

The Applicants 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.

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 this decision 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 Commission.

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.

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6.4 Signature Block

Joan Malkin, Chair

Date

6.5 Notarization of Decision

Commonwealth of Massachusetts

County of Dukes County, Mass.

On this _____ day of _____, 2022, before me, _____,
the undersigned Notary Public, personally appeared Joan Malkin, proved to me through satisfactory
evidence of identity, which was _____ to be the person whose name
was signed on the preceding or attached document in my presence, and acknowledged to me that she
signed it voluntarily for its stated purpose as a free act and deed, and who swore or affirmed to me
that the contents of the document are truthful and accurate to the best of her knowledge and belief.

Signature of Notary Public

Printed Name of Notary
My Commission Expires _____

6.6 Filing of Decision

Filed at the Dukes County Registry of Deeds, Edgartown, on: _____

Deed: Book _____, Page _____

Document Number: _____