

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 April 24, 2023 by the Tisbury Planning Board 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 Items 2.3d *Division of Land greater than 30 acres into six or more parcels*. Checklist Item 2.3d requires 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 May 4 & 11, 2023; notice was also published in the Vineyard Gazette on May 5 & 12, 2023. Abutters within 300 feet of the property were notified by mail on May 2, 2023.

Hearings: The Commission held a duly noticed public hearing on the Application that was conducted pursuant to the Act and M.G.L. Chapter 30A, Section 2, as modified by Chapter 831 on May 18, 2023, which was continued to June 1, 2023 and closed that night with the exception of the written record, which was left open until 5:00 p.m. on July 3, 2023 and closed at that time. The hearings were held in a hybrid format with attendance in-person but also utilizing remote conference technology as allowable under Chapter 2 of the Acts of 2023.

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. Topographical Plan of Land in Tisbury, Mass. consisting of one (1) 24" x 36" page prepared for Paradise Land Trust, John R. & Janet M. Packer, Trustees by Vineyard Land Surveying & Engineering, scale 1" = 100', dated January 11, 2023.
- P2. Form C Subdivision Plan of Land in Tisbury, Mass. consisting of one (1) 24" x 36" page prepared for Paradise Land Trust, John R. & Janet M. Packer, Trustees by Vineyard Land Surveying & Engineering, scale 1" = 100', dated January 11, 2023.
- P3. Road Profile in Tisbury, Mass. consisting of one (1) 36" x 24" page prepared for Paradise Land Trust, John R. & Janet M. Packer, Trustees by Vineyard Land Surveying & Engineering, scale 1" = 40', dated January 11, 2023.

P4. Exhibit A Working Trail Easement Sketch in Tisbury, Mass. consisting of one (1) page surveyed for Paradise Land Trust, John R. & Janet M. Packer, Trustees by Vineyard Land Surveying & Engineering, scale 1" = 150', dated June 27, 2023.

2.4 Other Exhibits

- E1. Referral to the MVC from the Tisbury Planning Board and supporting materials, consisting of eight (8) pages, received April 24, 2023.
- E2. "John Packer Has Ambitious Plans for Herd of Scotch Islanders at Northern Pines Farm" Article by Christina Del Sesto, published in the Vineyard Gazette, June 9, 1989, Volume 144, Number 6.
- E3. "Animal Farm: The Cycle of Life at Northern Pines Farm" Article by Christine Schultz, published in Martha's Vineyard Magazine, August 2003, pages 54-59.
- E4. "Free-Range Kids: Growing self-reliance on Northern Pines Farm" Article by Kate Tvelia Athearn, published in Edible Vineyard, Spring 2010, pages 25-27.
- E5. By-Laws of the Northern Pines Chappaquonsett Road Association, consisting of three (3) pages.
- E6. Nitrogen calculations report prepared by Sheri Caseau, MVC, for Kuffie's Pt Janet and John Packer, consisting of two (2) pages, dated April 3, 2023.
- E7. Staff Report for DRI 740 Northern Pines Subdivision, consisting of two (2) pages, dated May 1, 2023; updated on May 12, 2023; and updated again on June 11, 2023.
- E8. Nitrogen Calculations for 60 Kuffies Point Way prepared by Reid Silva, Vineyard Land Surveying & Engineering, consisting of one (1) page, dated May 1, 2023.
- E9. Photos of the site taken by staff on May 16, 2023.
- E10. Letter from John Packer: Chapter 61A overview including its ramifications to a family farm estate plan and the community, consisting of three (3) pages, submitted May 16, 2023.
- E11. Public Hearing Notice for DRI 740 Northern Pines Subdivision, consisting of one (1) page, dated May 18, 2023.
- E12. Staff Presentation to the full Commission on DRI 740 Northern Pines Subdivision, consisting of twenty (20) pages, dated May 18, 2023.
- E13. Farm Plan Memo from John and Janet Packer about nitrogen management on farmland, consisting of three (3) pages, dated May 26, 2023; updated to consist of four (4) pages on June 27, 2023.
- E14. Memo from John and Janet Packer about [natural] heritage, consisting of five (5) pages, dated June 27, 2023.
- E15. Letter from the James Lengyel, Martha's Vineyard Land Bank Commission, dated May 18, 2023.

- E16. Letter from Adam Moore, Sheriff's Meadow Foundation, with confirmation of donated trail easement, dated June 27, 2023.
- E17. Twelve (12) letters of support for the proposal, from the following citizens: Brian Athearn, April 11; Karen Burke, May 18; Steve Ewing, April 29; the Kirk-Cherry family, May 18; Vincent & Heather Maciel, May 17; Joe Mikos, May 18; Elizabeth O'Brien, May 18; Katherine O'Brien, May 18; Kris & Bill O'Brien, May 18; Julie & Arthur Sierputoski, May 19; Cecily Stibitz and David Pizzano, May 18; Brenda & David Wallis, May 18, 2023.
- E18. Minutes of the Commission's Land Use Planning Committee Pre-Public Hearing Review May 1, 2023.
- E19. Minutes of the Commission's Public Hearing, May 18, 2023.
- E20. Minutes of the Commission's Continued Public Hearing, June 1, 2023.
- E21. Minutes of the Commission's Land Use Planning Committee Post-Public Hearing Review, July 10, 2023.
- E22. Minutes of the Commission's Deliberation and Decision, July 20, 2023.
- E23. Minutes of the Commission's Approval of the Written Decision, August 10, 2023.

2.5 Summary of Testimony

The following gave testimony during the public hearing on May 18, 2023:

- Staff presentation by Rich Saltzberg, DRI Coordinator.
- Presentation of the project by Glenn Provost and John Packer.
- Oral testimony from Public Officials speaking for their Boards: None.
- Oral testimony from the Public:
 - Chris Scott, abutter, spoke in favor.

The following gave testimony during the public hearing on June 1, 2023:

- Staff presentation by Rich Saltzberg, DRI Coordinator and Sheri Caseau, Water Resources Planner.
- Presentation of the project by Glenn Provost and John Packer.
- Oral testimony from Public Officials speaking for their Boards: None.
- Oral testimony from the Public: none.

3. FINDINGS

3.1 Project Description

Under Subdivision Control Law, the creation of eight 3.1-acre building lots and one 16.22-acre

agricultural parcel. The building lots will have water wells and septic systems. All utilities will be subterranean. The purpose of the project is family estate planning.

3.2 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.

3.3 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.

The Commission finds that the probable benefits of the project outweigh the probable detriments, as described below. With respect to impacts upon the environment (Section 15(b) of the Act), 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 proposed subdivision would have a beneficial impact. With respect to the provision of municipal services or burden on taxpayers (Section 15(e) of the Act), the Commission finds the proposed subdivision would have a neutral impact, as described in detail below.

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

Based on the preservation of open space that help will retain agricultural character at the proposed development, and based upon the compact between the Applicants and Sheriff’s Meadow Foundation that has secured a public trail easement that will improve access to conservation land and improve roadside safety for pedestrians, and based upon the Applicant’s willingness to structure the proposed subdivision as a family development and in doing so help to house some of the next generations of Islanders, the Commission finds the proposed subdivision is appropriate and essential in view of the available alternatives.

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

The Commission notes the following with respect to impacts on the environment:

Water Quality (including groundwater)

- The proposed subdivision site is located in the Lake Tashmoo watershed.
- This proposed family subdivision will have eight 3.01-acre building lots and one 16.22-acre agricultural parcel for a total of 41.15 acres. The proposed building lots will each have up to five bedrooms for a total of 40 bedrooms in the subdivision. Each lot will be equipped with a wastewater treatment system that will reduce effluent nitrogen to 11mg/L. The proposal meets the MVC Water Quality Management Policy for the Lake Tashmoo watershed.
- Section 3.5 of the MVC Water Quality Management Policy provides that Agricultural DRI Projects are not required to meet the MVC's nitrogen-loading limits if sufficient documentation is provided to assure that environmental impacts are minimized. The applicant submitted a Farm Plan, dated May 26, 2023, which was incorporated in the Applicant's offers of June 27, 2023. The MVC Water Resource Planner has determined that the Applicant's farm plan meets the MVC's policy for agricultural DRI projects.

Stormwater

- The proposed subdivision has no paved areas. Northern Pines Road and Kuffies Point Way, which front the site, are not paved.
- The proposed subdivision site is not expected to have paved surfaces in the future, according to Paradise Land Trust (Applicant) trustee, John Packer.

Open Space

- The proposed subdivision designates 16.22 acres of pastureland as preserved agricultural land.
- The proposed subdivision site is under a Chapter 61A declaration.

Ecology and Habitat

- Approximately fifty percent (50%) of the proposed subdivision site consists of Priority Habitat under the Commonwealth's Natural Heritage program. Based on GIS mapping, the Priority Habitat corresponds to wooded portions of the site.
- The type of flora and/or fauna that support the Priority Habitat designation have not been publicly identified.
- The Applicant's Massachusetts Endangered Species Act (MESA) offer of June 27, 2023 states: "At this time our Land is active farm land and under Chapter 61A, with the exemption of our current home, and is therefore exempt from the requirements of a MESA filing (21 CMR 10.18 through 10.23) ... Therefore, we would like to offer that we continue to operate our land as we have been under the exemption. At such time that a lot leaves 61A status to become a residential lot we will at that time meet the requirements of a [MESA] Filing."

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

The Commission notes the following with respect to impacts on persons and property:

Traffic and Transportation - considered a primary factor in this decision

- John and Janet Packer, trustees of the Paradise Land Trust, the Applicant, have offered to donate a Trail Easement to the Sheriff's Meadow Foundation.
- Per a letter from the Sheriff's Meadow Foundation's Executive Director, Adam Moore, dated June 27, 2023, "The trail easement will run alongside the southeastern boundary of the Packer property, beside the Northern Pines Road. The trail would begin at the boundary of Sheriff's Meadow Foundation's Phillips Preserve along Northern Pines Road, and would end at the corner of the Packer property at the junction of Kuffie's Point Way and Northern Pines Road."
- Executive Director Moore's letter further states, "This trail easement would make a very valuable trail connection. It would allow walkers to avoid walking along the narrow Northern Pines Road, and would bring people from the Phillips Preserve almost all the way to the Land Bank's Hillman's Point Preserve. The trail would be open to the public, free of charge, for walking and non-motorized bicycling. The trail would be created and maintained by Sheriff's Meadow Foundation."
- The public trail easement will improve the access to conservation land and greatly improve roadside safety for pedestrians.

Scenic Values

- The proposed subdivision site is located on semiprivate roads and is not visible from any major thoroughfare, such as State Road.

Impact on Abutters

- 12 letters and/or emails in support of the application were received in a timely manner. Many of these letters cite the commitment of the Paradise Land Trust trustees, John and Janet Packer, to preserve family land and maintain a family farm.
- The proposed subdivision is thoughtfully designed to minimize impacts on abutters.

A4. The Commission finds that the impacts associated with the supply of needed low- and moderate-income housing for Island residents (Section 15(d) of the Act) would be beneficial.

With respect to Island Housing Needs, considered a primary factor in this decision, the Commission notes the following:

- The Applicant's proposal is to create a family subdivision to create building lots for the children of John and Janet Packer and possibly their grandchildren, while preserving a significant portion of the site for agricultural use.
- The proposal would provide stable housing for members of a long-established Island family to continue to be able to reside on the Island.

A5. The Commission finds that the proposed development would not adversely affect the provision of municipal services or burden on taxpayers in the making provision therefore (Section 15(e) of the Act).

With respect to the provision of municipal services or burden on taxpayers, 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).

A7. The Commission finds that the project as proposed generally does not interfere with the ability of the municipality to achieve 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 Commission notes that the proposed subdivision generally appears in accord with the Island Plan, and notably aligns with regards to strategies N1-4 and N2-7 of the Natural Environment section, and strategy T4-3 of the Transportation section.

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 complies with Tisbury's Subdivision Rules and Regulations and Subdivision Control Law.

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 in general advances the Commission's land development objectives, as outlined in Section A7 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 project is consistent with local zoning.

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 located within any DCPC.

In sum, after careful review of the plans, 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 Sections 14(a) and 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 July 20, 2023 and made its decision at the same meeting.

The following Commissioners, all of whom participated in the hearing and deliberations, or rehabilitated themselves, participated in the decision on July 20, 2023.

- Voting to approve the project: Jeff Agnoli; Trip Barnes; Christina Brown; Jay Grossman; Fred Hancock; Greg Martino; Kathy Newman; Kate Putnam; Ben Robinson; Doug Sederholm; Linda Sibley; Brian Smith; Ernie Thomas; Carole Vandal; Peter Wharton.
- Voting against: None
- Abstentions: None.
- Absent: Michael Kim
- Ineligible to participate: Joan Malkin

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 July 20, 2023 and was approved by a vote of the Commission on August 10, 2023.

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.

As offered by the Applicant:

1. A trail easement shall be donated to the Sheriff's Meadow Foundation. The trail easement shall run along the edge of Northern Pines Road from the Sheriff's Meadow Foundation Phillips Preserve boundary to the junction of Northern Pines Road and Kuffie's Point Way. The trail easement will be a pedestrian and bicycle corridor that will bring people from the Phillips Preserve (Sheriff's Meadow property) almost all the way to the Hillman's Point Preserve (Land Bank property).
2. The farming at the proposed subdivision site will continue in the manner outlined in the project's Farm Plan dated May 26, 2023 (Exhibit 13 of this Decision).
3. At such time that a lot in the proposed subdivision leaves the Chapter 61A status to become a residential lot, the Applicant shall meet the requirements of a MESA filing.
4. No more than five bedrooms shall be created within any buildable lot in the proposed subdivision, and no more than 40 bedrooms shall be created within the proposed subdivision. Each lot will be equipped with a wastewater treatment system that will reduce the effluent nitrogen to 11 mg/L.

Further Conditions:

5. Only slow-release, water-insoluble, nitrogen-source fertilizers may be used in the maintenance of any landscaping on the building lots.

6. Any landscaping on the building lots must use only native or low-maintenance, drought-tolerant species that are non-invasive to minimize the application of nitrogen and water.
7. No pesticides or herbicides shall be used in the maintenance of landscaping. If the Applicant intends to apply pesticides and/or herbicides on the agricultural portion of the subdivision, insofar as the laws of the Commonwealth permit, the Applicant shall first provide a professional Ecological Assessment of the proposed subdivision site that includes an analysis of the potential impacts pesticides and herbicides could have on Massachusetts Endangered Species Act protected flora and fauna in and around the proposed subdivision site. The Ecological Assessment and the proposed plan for the application of pesticides and/or herbicides shall be submitted to the Land Use Planning Committee for prior review and approval.
8. Maintained landscape areas (fertilized lawn and gardens) on the building lots must be limited to a maximum area of 10% of the property area up to 4,000 square feet (per the Commission's Water Quality Management Policy).
9. If farming practices are changed from the descriptions given in the Nitrogen/Management Plan/Farming Plan dated June 27, 2023, the Commission shall be notified in writing and the Applicant, or the Applicant's heirs or successors, shall comply with whatever mitigation the Commission deems necessary to achieve compliance with the Commission's Water Quality Management Policy in effect at the time.
10. Should any of the lots in the proposed subdivision be sold or transferred outside the family of John and Janet Packer, the Commission shall be notified in writing prior to the sale or transfer and the Commission will determine an Affordable Housing mitigation contribution which shall be made in accordance with the Commission's Housing Policy in effect at the time. For the purposes of this condition, "family" means John and Janet Packer and any of their issue.
11. Any proposed modifications to DRI 740, 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 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 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 Tisbury Town Clerk.

6.3 Length of Validity of Decision

The Applicant shall have two (2) years from the date of the recording of this Decision to record the approved subdivision plan.

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6.4 Signature Block



Joan Malkin, Chair

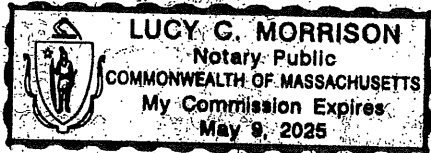
August 10, 2023
Date

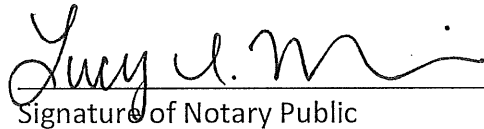
6.5 Notarization of Decision

Commonwealth of Massachusetts

County of Dukes County, Mass.

On this 10th day of August, 2023, before me, Lucy C. Morrison, the undersigned Notary Public, personally appeared Joan Malkin, proved to me through satisfactory evidence of identity, where was personal knowledge to be the person whose name was 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 her knowledge and belief.





Signature of Notary Public

Lucy C. Morrison

Printed Name of Notary

My Commission Expires May 9, 2025

6.6 Filing of Decision

Filed at the Dukes County Registry of Deeds, Edgartown, on: August 11, 2023

Deed: Book 1661, Page 305

Document Number: 33829