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## Decision of the Martha's Vineyard Commission DRI 672 – Damroth Subdivision

### 1. SUMMARY

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Referring Board: Chilmark Planning Board

Subject: Development of Regional Impact # 672  
Damroth Subdivision

Project: Proposed Subdivision of two (2) lots comprised of 14.6 acres into four (4) lots.

Owner: David A. Damroth

Applicant: David A. Damroth

Applicant Address: P.O. Box 295,  
Chilmark, MA 02535

Project Location: End of Oyster Lane, Chilmark, Map 11 Lots 54.4 and 54.5.

Description: The proposal is to subdivide two (2) lots comprised of 14.6 acres into four (4) lots. The parcels are part of an original property that was 28+/- acres bought by the Applicant in 1980. In 1987 the Applicant subdivided the 28 acre property into 5 lots (54.1; 54.2; 54.3; 54.4; and 54.5). The current proposal is a re-subdivision of lots 54.4 and 54.5. The proposal is to divide off one buildable lot from each of these two existing buildable lots for a total of four buildable lots, one of which will be a sub-standard sized "Youth Lot".

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 May 18, 2017.

Written Decision: This written decision was approved by a vote of the Commission on June 1, 2017.

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**

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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 referral from the Chilmark Planning Board was received at the MVC on January 19, 2017 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, under DRI Checklist Sections 2.3 (Division of more than 10 acres); 2.4C Division of Farm Land – Prime Ag. Soils); and 2.5 (Division of Habitat). Sections 2.3 and 2.4C are mandatory DRI Reviews requiring a public hearing and the proposal was reviewed as such.

### **2.2 Hearings**

Notice: Public notice of a public hearing on the Application was published in the Martha's Vineyard Times, February 23, 2017.

Hearings: The Commission held a public hearing on the Application that was conducted by the Commission pursuant to the Act and M.G.L. Chapter 30A, Section 2, as modified by Chapter 831 on March 9, 2017, continued to March 16, 2017 which was continued without taking testimony to April 6, 2017; which was continued without taking testimony to April 13, 2017, when the hearing was closed.

### **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 "NHESP & MVC Building Envelope Plan: Plan of Land in Chilmark, Mass" prepared for David A. Damroth. The plan consists of one 24" X 36" sheet showing a subdivision of Chilmark Map 11 Lots 54.4 (14.2 acres) and 54.5 (10.2 acres) into four parcels. The plan includes Building/ Development Envelopes; "No Disturb Buffer Zones"; access; easement; existing buildings; abutting lots; and two sets of notes (one relevant to the subdivision and one relevant to where development is allowed). Plan prepared by Schofield, Barbini, & Hoehn Inc.: Land Surveying and Civil Engineering, 12 Surveyor's Lane, Box 339, Vineyard Haven, Mass. Scale: 1" = 100'. Dated April 12, 2016.
- P2 "Damroth DRI 672 Offers" consisting of clarifying offers relative to Guest Houses; the MVC Water Quality Policy; Affordable Housing; Buffer Zones & Natural Heritage and Endangered Species; Lighting; and no further subdivision. Offers prepared by Schofield, Barbini, & Hoehn Inc., Land Surveying and Civil Engineering, dated April 11, 2017 and signed by David Damroth.

### **2.4 Other Exhibits**

- E1. Referral to the MVC from the Chilmark Planning Board.
- E2. MVC Staff Report, February 23, 2017
- E3. MVC Staff Report, March 9, 2017.

- E4. MVC Staff Memo from B. Veno and S. Caseau, March 31, 2017.
- E5. MVC Staff Power Point slide presentation prepared by Paul Foley, MVC DRI Coordinator, showing images of the site, plan, GIS maps, aerials and other images illustrating the site and the proposal.
- E6. Letter from Donald R. Dunner.
- E7. Letter from William and Michelle Seward and Adam and Carrie Marcus.
- E8. Letter from Julie Johnson Staples and Brent Staples.
- E9. Letter from Candace Nichols; who also submitted a number of historical documents and Chilmark Planning Board minutes and covenants relevant to the original 1987 subdivision.
- E10. Minutes of the Commission's Land Use Planning Committee (LUPC) meeting, February 6, 2017.
- E11. Minutes of the Commission's Public Hearing, March 9, 2017.
- E12. Minutes of the Commission's Public Hearing, April 13, 2017.
- E13. Minutes of the Commission's LUPC Post Public Hearing Review, May 1, 2017, 2017.
- E14. Minutes of the Commission Meeting of May 18, 2017 – Deliberation and Decision.
- E15. Minutes of the Commission Meeting of June 1, 2017 – Approval of the Written Decision.

## 2.5 Summary of Testimony

The following is a summary of the principal testimony given during the public hearing on March 9, 2017:

- Presentation of the project by: Doug Hoehn (SBH Surveyors & Engineers); and David Damroth.
- Staff report by Paul Foley, MVC DRI coordinator.
- Oral testimony from Public Officials: None.
- Oral testimony from Public: David Seward; Candace Nichols (attorney representing Fred and Julie Staples).

The following is a summary of the principal testimony given during the public hearing on April 13, 2017:

- Presentation of the project by: Doug Hoehn (SBH Surveyors & Engineers).
- Staff report by Paul Foley, MVC DRI coordinator.
- Oral testimony from Public Officials: Richard Osnoss (Chairman of the Chilmark Planning Board).
- Oral testimony from Public: Candace Nichols.

## 3. FINDINGS

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### 3.1 Project Description

- The proposal is to subdivide two (2) lots comprised of 14.6 acres into four (4) lots.
- The parcels are part of an original property that was 28+/- acres bought by the Applicant in 1980.
- In 1987 the Applicant subdivided the 28 acre property into 5 lots (54.1 – 4.5 acres; 54.2 – 4 acres; 54.3 – 4.8 acres; 54.4 – 14.2 acres; and 54.5 - 10.2 acres).
- Lots 54.1, 54.2 and 54.3 have been sold and/or transferred to others.
- The current proposal is a re-subdivision of lots 54.4 and 54.5.
- The proposal is to divide off one buildable lot from two existing buildable lots for a total of four buildable lots.
- One of the new lots is a "Youth Lot" allowed under Chilmark zoning, and smaller than the otherwise required 3-acre minimum lot size.
- The number of bedrooms per lot is capped in order to meet nitrogen loading limits.
- Only one lot will be allowed to have a guest house, also constrained by the limitations on bedrooms.

- Old paths used by walkers and horseback riders define two sides of the applicant's property. Public access will be granted for use of these portions of the paths.
- Perimeter buffer zones of between 25 and 100 feet are established along the east and south boundaries, coinciding with the paths and complementing 100 foot buffers on the abutting properties. Additional buffer zones elsewhere of the project contribute to protecting the sensitive habitat found on this property.
- Further division of these four lots is prohibited.

### **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 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.

### **3.3 Benefits and Detriments**

Based on the record and testimony presented therein, the Commission finds the following pursuant to Sections 14 and 15 the Act.

#### **A. THE COMMISSION FINDS THAT THE PROBABLE BENEFITS OF THE PROPOSED DEVELOPMENT WOULD EXCEED THE PROBABLE DETRIMENTS, AS EVALUATED IN LIGHT OF THE CONSIDERATIONS SET FORTH IN SECTION 14(a) OF THE ACT.**

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

The Commission finds that this proposal is consistent with surrounding low density developments while still providing open space and the potential for public access to existing trails.

##### **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 applicant will be using a combination of standard Title 5 septic systems and advanced de-nitrification components, sequenced to always meet the DRI water protection policy.

With respect to Open Space, Natural Community and Habitat, the Commission finds that the project removes woodland habitat but also protects strategic areas of habitat. The applicant's plan includes "no disturb" buffers of varying widths along most of the external property lines. These combine with buffers of abutting properties to expand dedicated open space. Offers and conditions ensure that the applicant complies with NHESP standards.

With respect to Night Lighting and Noise, the Commission finds that the project is rural in nature and shall employ “dark sky” lighting provisions of Chilmark zoning bylaws, which are largely consistent with Commission lighting standards.

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

With respect to Traffic and Transportation, the Commission finds that that the small size of the project is not expected to noticeably effect Quenames Road or public roads.

With respect to Scenic Values, Character, and Identity, the Commission finds that the project retains most of the scenic values and the applicant has offered to contribute easements along rural paths. The application limits housing and provides substantial buffering. The project provides year-round housing opportunity and limits guest houses to preserve the rural nature of the property.

With respect to the Impact on Abutters, the Commission notes that the applicant has provided “no disturb buffer zones” along most of the perimeter boundaries of the project, varying in widths of 25, 50, 100 feet and more. This should lessen the impact of the development on abutters.

**A4 The Commission makes no finding on how the proposed development would impact upon the supply of needed low and moderate income housing for Island residents (Section 15(d) of the Act).**

This project does not trigger the Commission’s affordable housing policy. The town’s regulations for youth lots do not meet the Commission’s policies for addressing affordable housing. Nevertheless, the Commission notes that the undersized youth lot is only allowed by the town to provide an affordable building lot to someone.

**A5 The Commission finds that the proposed development would have a positive impact 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 project will have a negligible effect on municipal services but that the added tax revenues from the housing and construction jobs will be a beneficial to taxpayers. The applicant has protected habitat, which is important to the character and economic health of the island.

**A6 The Commission finds that the proposed development would use efficiently and not unduly burden existing public facilities (other than municipal) or those that are to be developed within the succeeding five years. (Section 15(f) of the Act).**

**A7 The Commission finds that the proposed development does not interfere with the ability of the municipality to achieve the objectives set forth in the municipal general plan. (Section 15(g) of the Act).**

The Commission finds that the proposal is consistent with Town plans.

**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 finds that the development provided housing, protects some open space, and extends trail access consistent with the rural character and is surrounded by similar, large lot subdivisions.

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, 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.**

**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.** In considering the issue of consistency with Chilmark zoning bylaws, it appears the Town practice interprets the written regulations different from the written word. The Chilmark Planning Board has indicated it is satisfied with the applicant's proposed Your Lot. The Commission considers that the Chilmark Planning Board is best suited to assess whether the Youth Lot as proposed is consistent with the Town's bylaws and guidelines as it has historically interpreted them.

**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 is not within a DCPC.

#### **4. DECISION**

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The Martha's Vineyard Commission deliberated about the application at a duly noticed meeting of the Commission held on May 18, 2017 and made its decision at the same meeting.

The following Commissioners, all of whom participated in all hearings and deliberations on this project, participated in the decision on May 18, 2017.

- Voting in favor: Gail Barmakian, Clarence "Trip" Barnes III, Robert Doyle, Josh Goldstein, Fred Hancock, Lenny Jason, Ben Robinson, Linda Sibley, Ernest Thomas and Richard Toole.
- 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 May 18, 2017 and was approved by vote of the Commission on June 1, 2017.

#### **5. CONDITIONS**

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After reviewing the proposal for this Development of Regional Impact, the Martha's Vineyard Commission imposes the following conditions in order to increase the benefits and minimize the detriments of the project. The analysis of benefits and the resulting decision to approve the project is based on the proposal as modified by these conditions. These conditions form an integral and indispensable part of this decision.

These conditions are an essential part of this decision and shall be enforced as written. The primary enforcement agent for the compliance of these conditions is the building and zoning enforcement officer of the Town. These Conditions shall be part of the permit granted by the Town. If the Commission or the Town finds it necessary to seek judicial relief to enforce the condition, the Applicant, or its successors in title at the time of such proceedings, shall pay the Commission's and/or Town's attorney's fees and costs incurred in obtaining judicial relief.

**1 Guest Houses:**

- 1.1 As offered by the Applicant, there shall be no guest houses on lots 4A & 4B, and only one guest house located either on Lot 5A or on Lot 5B.

**2 Water Quality:**

- 2.1 As offered by the Applicant, Lot 4A shall be limited to a 4 bedroom dwelling to be served by an advanced de-nitrification component to the existing Title V septic system when the system is required to be upgraded, either due to failure or to the expansion of wastewater flow beyond current capacity, i.e. construction of a dwelling.
- 2.2 As offered by the Applicant, Lot 5A currently has a 4 bedroom dwelling served by a Title V septic system but shall be served by an advanced de-nitrification component added to the septic system when the septic system is required to be upgraded, due to failure, due to the expansion of wastewater flow beyond current design capacity, or at the time a dwelling is applied for on Lot 5B, whichever occurs first.
- 2.3 As offered by the Applicant, the Applicant shall install an advanced de-nitrification component to the septic system on Lot 5B (now vacant) when a system is proposed.
- 2.4 As offered by the Applicant, there shall be only one guest house on either lot 5A or lot 5B. The Applicant shall limit the lot with the guest house to a 4-bedroom main house and a 2-bedroom guest house. The Applicant shall limit the lot without a guest house to a 4-bedroom main house.
- 2.5 As offered by the Applicant, Lot 4B is being created under the Youth Lot section of the Chilmark Zoning By-laws. The Applicant shall limit this lot to 4 bedrooms and the lot will be served by a septic system that conforms to Title V and Chilmark Board of Health regulations.
- 2.6 As offered by the Applicant, lawns and landscaping shall be limited to what is permitted by NHESP regulations and MVC Water Quality Policy guidelines.

**3 Buffer Zones and Natural Heritage and Endangered Species Program (NHESP):**

- 3.1 As offered by the Applicant, the Applicant shall create a buffer zone of at least 100 feet wide on the north side of Magee's Path and at least 25 feet wide on the west side of Old Field's Path, as shown on the plan and as requested by the Chilmark Planning Board.
- 3.2 As offered by the Applicant, a four (4) foot wide trail easement along the property lines defined by Magee's Path and by Old Field's Path shall be granted for public use as a trail for recreation use by foot, hoof and non-motorized bicycle. The easement shall be granted to the Town of Chilmark or to a conservation organization. Such grantee shall not be responsible for creating or maintaining the trails, nor shall it create or maintain the trails, until such time as similar public trail access is secured from adjacent landowners in the environs to form a continuous pathway that can be accessed by the public from either end. Access from such adjacent landowners does not have to be granted to the grantee of the easement from the applicant, nor must the public access be in the form of an easement.

- 3.3 The subdivision plan shall contain the note "Four (4) feet along Magee's Path and Old Field's Path reserved for public trail access."
- 3.4 The trail easement document shall be approved by both the Applicant and either the Town of Chilmark or a conservation organization prior to (exempting the Youth Lot) the issuance of a building permit for any lot, or the sale of any lot.
- 3.5 As offered by the Applicant, the Applicant shall work with NHESP to limit disturbance of the property to no more than 5 acres of land within the Priority Habitat areas. The Applicant shall forward a copy of the NHESP approval letter and plan to the MVC once they receive it.
- 3.6 The Applicant's plan approved in this Decision is based upon compliance with the Natural Habitat and Endangered Species Program's April 3, 2017 draft reconfiguration of priority habitat. The draft NHESP map is open for public comment until June 2017. NHESP staff has verbally told both the applicant and MVC staff that the applicant's plan is fine to proceed with. However, the applicant cannot proceed without a written certification from NHESP. Once received, the applicant shall forward a copy of such certification to the Commission to verify its consistency with the plan approved in this Decision.

#### **4 Lighting:**

- 4.1 As offered by the Applicant, the Applicant shall limit outdoor lighting to be in conformance with the Outdoor Lighting section of the Chilmark Zoning By-laws (Sections 5.5 through 5.8).

#### **5 Subdivision:**

- 5.1 As offered by the Applicant, the Applicant shall prohibit further subdivision that creates additional buildable lots. Property line adjustments are permitted provided no additional buildable lots are created.

### **6. CONCLUSION**

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#### **6.1 Permitting from the Town**

The Applicant shall, 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.

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

The Town Building Inspector shall not issue a building permit for Lot 4A, Lot 5A or Lot 5B until it has received a Certificate of Compliance issued by the Executive Director of the Martha's Vineyard Commission or the DRI Coordinator confirming that the following conditions in this Decision has been satisfied: Conditions 3.1 – 3.6.

#### **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 have it recorded at the Dukes County Registrar of Deeds. Should the Subdivision not be so recorded 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**

  
\_\_\_\_\_  
Jim Verduysee, Chairman

7-6-17  
\_\_\_\_\_  
Date

**6.4 Notarization of Decision**

Commonwealth of Massachusetts  
County of Dukes County, Mass.

On this 6<sup>th</sup> day of July, 2017, before me,  
Jo-Ann Taylor, the undersigned Notary Public, personally  
appeared James Verduysee, proved to me through satisfactory evidence of  
identity, which was/were driver's license to be the person(s)  
whose name(s) was/were signed on the preceding or attached document in my presence, and who  
swore or affirmed to me that the contents of the document are truthful and accurate to the best of  
his/her/their knowledge and belief.

  
\_\_\_\_\_  
Signature of Notary Public

Jo-Ann Taylor  
\_\_\_\_\_  
Printed Name of Notary

My Commission Expires February 9, 2018

**6.5 Filing of Decision**

Filed at the Dukes County Registry of Deeds, Edgartown, on: July 14, 2017

Deed – Book 1443, page 879

