



## **2. FACTS**

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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 February 3, 2022 by the Tisbury Conservation Commission 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 1.3D *Modification to a Previous Development of Regional Impact*. At the Martha's Vineyard Commission meeting of July 14, 2022, the MVC voted that the modification was a significant enough change to require 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 21 and 28, 2022; notice was also published in the Vineyard Gazette on July 22 and 29, 2022. Abutters within 300 feet of the property were notified by mail on July 19, 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 4, 2022 which was continued to September 1, 2022, continued again to October 6, 2022, and continued again to November 3, 2022, The hearing was closed on November 3, 2022 with the exception of the written record which was left open until 5:00 pm on November 17, 2022 and closed at that time. At the Martha's Vineyard Commission meeting of December 1, 2022, the MVC voted to re-open the written record until 5:00 p.m. on December 8, 2022 to allow the Applicant to submit a letter in response to the Tisbury Planning Board. The hearings were 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. Site Plan in Tisbury, Mass. prepared for Safe Harbor Marinas Vineyard Haven, LLC by Vineyard Land Surveying & Engineering, consisting of one (1) 24" x 36" page, scale 1" = 20', dated December 8, 2021.
- P2. Updated Site Plans in Tisbury, Mass. prepared for Safe Harbor Marinas Vineyard Haven, LLC by Vineyard Land Surveying & Engineering, consisting of two (2) 24" x 36" pages, scale 1" = 30', dated July 27, 2022, including: Existing Conditions Plan and Proposed Site Plan.

- P3. Existing Conditions Site Plan in Tisbury, Mass. prepared for SHM Vineyard Haven, LLC by Vineyard Land Surveying & Engineering, consisting of one (1) 24" x 36" page, scale 1" = 30', dated September 23, 2022.
- P4. Proposed Site Plan in Tisbury, Mass. prepared for SHM Vineyard Haven, LLC by Vineyard Land Surveying & Engineering, consisting of one (1) 24" x 36" page, scale 1" = 30', dated September 23, 2022.
- P5. Site Stormwater Drainage Improvement Plan Tisbury, Mass prepared for SHM Vineyard Haven, LLC by Vineyard Land Surveying & Engineering, consisting of one (1) 36" x 24" page, scale 1" = 20', dated October 5, 2022.

**2.4 Other Exhibits**

- E1. Referral to the MVC from the Tisbury Conservation Commission, including cover letter, consisting of three (3) pages, received February 3, 2022.
- E2. DRI 258 Maciel Marine Martha's Vineyard Commission Decision, consisting of five (5) pages, dated July 16, 1987, and recorded at the Dukes County Registry of Deeds: Book 480, Page 570.
- E3. Map of shellfish closures in Lagoon Pond, prepared by MVC staff, 2017 to present.
- E4. Training Certificates for Chris Scott, consisting of three (3) pages, dated February 3, 2020.
- E5. Letter from Andrew Jacobs, Laboratory Manager, with results for Mud Creek tracking sample, consisting of one (1) page, with attached field sampling data sheets, consisting of seven (7) pages, dated September 4, 2020.
- E6. Safe Harbor Marina Stormwater Pollution Prevention Plan (SWPP), consisting of sixty-nine (69) pages, signed May 1, 2021.
- E7. Application Package for Safe Harbor Marina submitted to the Tisbury Conservation Commission and Department of Environmental Protection, consisting of thirty-two (32) pages, dated December 22, 2021.
- E8. Email from Chris Scott to Bill Veno regarding potential bike path connections, consisting of two (2) pages, dated May 26, 2022.
- E9. Application Package for Safe Harbor Marina submitted to the MVC, consisting of fifty-three (53) pages, received May 28, 2022.
- E10. Safe Harbor Marina Spill Prevention, Control and Countermeasure Plan (SPCC), consisting of twenty-one (21) pages, signed May 29, 2022.
- E11. Staff Report for DRI 258-M2 Safe Harbor Marina Modification, consisting of five (5) pages, dated June 23, 2022; updated to consist of seven (7) pages on July 13, 2022; updated to consist

of eight (8) pages on October 3, 2022; updated to consist of nine (9) pages on October 20, 2022; and updated again on November 1, 2022.

- E12. Staff Presentation of DRI 258-M2 Safe Harbor Marina Modification to the Land Use Planning Committee, consisting of twenty-seven (27) pages, dated June 27, 2022.
- E13. Memo from Safe Harbor with responses to LUPC Meeting questions, consisting of twenty-three (23) pages, dated July 13, 2022.
- E14. Staff Presentation of DRI 258-M2 Safe Harbor Marina Modification to the Martha's Vineyard Commission, consisting of fifty-eight (58) pages, dated July 14, 2022; updated to consist of sixty-four (64) pages on August 4, 2022; updated to consist of seventy-three (73) pages on September 1, 2022; updated again to consist of seventy-one (71) pages on October 6, 2022; and updated again on November 3, 2022.
- E15. Email from Jeffrey DuBard to Alex Elvin regarding plans for Building 7 consisting of twenty-three (23) pages with attachments, dated July 15, 2022.
- E16. Memo from Island Collaborative LLC with project overview for Beach Road Mixed Use Development, consisting of twenty (20) pages with attachments, received July 15, 2022.
- E17. Email from Chris Scott to Alex Elvin regarding the stormwater pollution prevention plan and hazardous materials management, consisting of four (4) pages, dated July 18, 2022.
- E18. Email from Chris Scott to Alex Elvin with responses to staff questions, consisting of two (2) pages, dated July 27, 2022.
- E19. Letter from the Tisbury Planning Board, consisting of two (2) pages, dated August 3, 2022.
- E20. Email from Chris Scott to Alex Elvin regarding fecal coliform testing, consisting of one (1) page, dated August 30, 2022.
- E21. Email from Chris Scott to MVC staff regarding a wrongfully identified spill that was reported in a newsletter, consisting of two (2) pages, dated August 31, 2022.
- E22. Memo from Safe Harbor regarding Public Hearing Questions, consisting of nine (9) pages, received August 31, 2022.
- E23. Memo from Safe Harbor with answers to Lagoon Pond Association questions, consisting of three (3) pages, dated August 31, 2022.
- E24. Traffic Analysis prepared by MVC staff for DRI 258-M2 Safe Harbor Marina Modification, consisting of two (2) pages, dated August 31, 2022.
- E25. Safe Harbor Summary of Offers, consisting of three (3) pages, dated September 15, 2022.
- E26. Email from Chris Scott to Alex Elvin with responses to questions, consisting of nine (9) pages, dated September 30, 2022.

- E27. Memo from Safe Harbor with answers to questions, consisting of thirty-four (34) pages, dated October 1, 2022.
- E28. Staff Summary of Uses for DRI 258-M2 Safe Harbor Marina Modification, consisting of three (3) pages, dated October 3, 2022.
- E29. Drainage System Narrative, prepared by Reid Silva, Vineyard Land Surveying & Engineering, consisting of one (1) page, dated October 5, 2022.
- E30. Email from Chris Scott to Alex Elvin regarding installation of electrical conduits along the new racks, consisting of two (2) pages, dated October 13, 2022.
- E31. Email from Chris Scott to Alex Elvin with responses to MVC questions, consisting of four (4) pages, dated October 24, 2022.
- E32. Safe Harbor Sustainability Presentation, consisting of nine (9) pages, received October 27, 2022.
- E33. Emails between Chris Mclsaac, Emily Reddington, and Alex Elvin regarding pond restrictions on size and horsepower of motor boats, consisting of five (5) pages, dated October 31, 2022.
- E34. SHM Response to Tisbury Planning Board letter, consisting of five (5) pages, dated November 14, 2022.
- E35. Memo from Safe Harbor with MVC Closing Statement, given by Chris Scott at the MVC meeting on November 3, 2022, consisting of four (4) pages.
- E36. Twenty-six (26) letters of support from twenty-five (25) individuals, including: Stever Aubrey, October 17; Kevin Bayuk, October 17; Capt. James Boyle, August 5; Teresa Brewster, August 4; Orlando Corsi, Jr., November 1; Joseph Frawley, Jr., August 4; Charles Gentsch, November 2; Jay Grande, Tisbury Town Administrator, September 1; Jack Hager, October 26; Charles Hibbett, November 1; Martin Homlish, July 28; Jeff Kristal, August 9; Dave & Eli Laikin (2), August 31 and September 29; Steve May, July 29; William McCullough, August 1; John McDonald, July 25; John McGarry, October 27; William O'Doherty, October 7; Dick O'Hare, November 2; Alan Ouellet, October 26; Christopher Schneider, August 4; Jim Shepherd, November 1; Jennifer Stix, September 30; John Crocker, Tisbury Harbormaster, August 4; and Richard Weiss, July 28, 2022.
- E37. Fourteen (14) letters of concern from eight (8) individuals and organizations, including: Dr. Daniel & Barbara Kopans, August 4; the Lagoon Pond Association, November 17, Barbara Lampson, July 26; the MV Shellfish Group, November 2; Doug Reece (2) August 31 and October 7; Tisbury Waterways, Inc. (2) August 2 and September 1; Silvia Vogt (5) July 26, July 29, August 2, August 3, September 21; and Richard Weiss, September 1, 2022.
- E38. Thirty-three (33) letters of opposition from the following individuals: Maria Abate, October 5; Donna Bouchard, August 3; Cheryl Burns, September 29; Betsy Cabana, August 3; Victor Capoccia, August 3; Jody Coker, August 3; Mark DePucchio, August 3; David Forbes and Virginia Sherwood, October 7; Nancy Noble Gardner, August 3; Larry Gitlitz (2) August 4 and October 5;

Megan Holbrook, October 24; Theresa Holmes, September 29; Sallyann Kakas, October 1; Janna Kaplan, August 3; Marvin & Robert Klein, August 31; the Lagoon Pond Association (3) August 4, August 11, and September 1; Dee Lander and Leslie Pearlson, October 5; Bob Landreth, October 5; Jill McMahon, August 4; Susan Mead and Michael Perry, August 4; Susan Mead, October 5; Larry Perkins, August 3; David Reed, October 6; Becky and Marco Rivera, August 3; Amy Elizabeth Russo, August 3; Billy Sweeney, October 4; Liz Taft, October 5; Kris Vrooman, August 11; and Linda Ziegler (2) August 3 and October 1, 2022.

- E39. Minutes of the Tisbury Conservation Commission, January 18, 2022.
- E40. Minutes of the Commission's Land Use Planning Committee Modification Review, June 27, 2022.
- E41. Minutes of the Commission's Modification Review, July 14, 2022.
- E42. Minutes of the Commission's Public Hearing, August 4, 2022.
- E43. Minutes of the Commission's Continued Public Hearing, September 1, 2022.
- E44. Minutes of the Commission's Continued Public Hearing, October 6, 2022.
- E45. Minutes of the Commission's Continued Public Hearing, November 3, 2022.
- E46. Minutes of the Commission's Vote to Re-Open the Written Record, December 1, 2022.
- E47. Minutes of the Commission's Land Use Planning Committee Post-Public Hearing Review, December 12, 2022.
- E48. Minutes of the Commission's Deliberation and Decision, January 5, 2023.
- E49. Minutes of the Commission's Written Decision, January 12, 2023.

## **2.5 Summary of Testimony**

The following gave testimony during the public hearing on August 4, 2022:

- Staff presentation by Alex Elvin, DRI Coordinator.
- Presentation of the project by Chris Scott, Applicant.
- Oral testimony from Public Officials speaking for their Boards: none.
- Oral testimony from the Public: none.

The following gave testimony during the continued public hearing on September 1, 2022:

- Staff presentation by Alex Elvin, DRI Coordinator.
- Oral testimony from Public Officials speaking for their Boards: none.
- Oral testimony from the Public:
  - James Boyle spoke in favor of the project.
  - Steven May spoke in support of the project.

- Todd Perkins spoke in favor of the project.
- Barbara Lampson, abutter, raised concerns about the Bass Creek wetlands and potential drainage issues.
- Sherry Countryman, President of the Lagoon Pond Association, raised concerns about the nitrogen load in Mud Creek, boat traffic in the Lagoon, and potential safety hazards.
- Silvia Vogt, abutter, raised concerns about the navigability and water access.
- Closing statement by Chris Scott, Applicant.

The following gave testimony during the public hearing on October 6, 2022:

- Staff presentation by Alex Elvin, DRI Coordinator.
- Oral testimony from Public Officials speaking for their Boards: none.
- Oral testimony from the Public:
  - Barbara Kopans spoke about concerns over the number of boats in the Lagoon.
  - Doug Reece spoke about concerns over the health of the pond.
  - Larry Gitlitz raised issues of concern regarding pollution and safety.
  - Tara Webb-Duey stressed the importance of protecting the Lagoon's ecosystem.
  - Andra Minio spoke in opposition to the project.
  - Jefrey DuBard stated his plans to relocate and repurpose one of the buildings to Beach Road.
  - Ralph & Louie Dweck spoke about concerns regarding boat traffic and an increase in the number of boats in the Lagoon.
  - Tom Zinno suggested implementing speed zones and no wake zones in the Lagoon.

The following gave testimony during the public hearing on November 3, 2022:

- Staff presentation by Alex Elvin, DRI Coordinator.
- Oral testimony from Public Officials speaking for their Boards: none.
- Oral testimony from the Public:
  - Martin Homlish spoke about the improvements to the facility and the associated improvements to water quality.
  - Larry Gitlitz spoke about concerns related to the expansion of the facility.
  - Tom Zinno spoke in opposition to the project.
- Closing Statement by Chris Scott, Applicant.

### **3. FINDINGS**

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#### **3.1 Project History**

The MVC approved DRI 258 without conditions in 1987, allowing the construction of a 4,000 ft<sup>2</sup> building for boat work in the winter (Building 1). There were five other buildings already in place at the time, including the former North Tisbury Baptist Church (Building 7), which boatbuilder and designer Erford Burt moved to the site around 1940 and used as his boat shop. A proposal to raise Building 7 above the flood elevation was remanded to the town in 2014 (DRI 258-M). The marina currently offers

51 rentable boat slips, six slips for repairs, boat storage, and shallow-water access to Lagoon Pond. The property includes piers, ramps, floats, piles, a bulkhead, concrete launch ramps, wooden decks, boat storage racks, fuel storage, and the following buildings (numbered according to the 2017 Chapter 91 License):

	TYPE	USE	APPROXIMATE FOOTPRINT	ELEVATION	DATE
Building 1	Metal on concrete slab	Storage	4,000 ft <sup>2</sup>	28'5"	1987
Building 2	Wood frame	Shop, storage, loft, rentals	1,900 ft <sup>2</sup>	25'2"	1950
Building 3	Wood frame	Handicapped bathroom	280 ft <sup>2</sup>	21'9"	2021
Building 4	Metal	Shop and storage, boat rack attached	6,000 ft <sup>2</sup>	41'	1994
Building 5	Wood frame on concrete slab	Shop and storage	3,900 ft <sup>2</sup>	25'4"	1950
Building 6	Wood frame on partial concrete slab	Shop and storage	1,200 ft <sup>2</sup>	21'	2013
Building 7	Wood frame on piles, parking beneath	Office, storage, retail	2,000 ft <sup>2</sup>	34'2"	Early 1800s?
Building 8	Wood frame on blocks	Power washing machinery	100 ft <sup>2</sup>	15'8"	?
Building 9	Wood frame on concrete slab	Shops and storage	2,200 ft <sup>2</sup>	25'5"	1950

The following work has occurred on the property in recent years:

- 2013 Reconstructed Building 6 following a fire
- 2014 Raised Building 7
- 2017 Renovated Building 2
- 2021 Installed bathroom building
- 2021-2022 Replaced bulkhead
- 2022 Relocated and upgraded fuel tank and wash shed

### **3.2 Project Description**

The proposal is as follows:

- Demolish buildings 5, 6, 7, and 9 (total footprint of 9,355 ft<sup>2</sup>).
- Install two new boat racks and relocate existing boat racks on the site.
- Pour new concrete slab (about 8,850 ft<sup>2</sup>).
- Relocate a ConVault fuel storage tank and wash shed on the site (already completed).
- Construct new boardwalks along the steel bulkhead.

The Applicant has stated that the buildings to be demolished are in poor condition and no longer needed, and that the existing tenants will be leaving. The proposed concrete pad would allow for use of a forklift to store and retrieve boats. The project would increase the total storage capacity at the marina, including indoor, outdoor, and rack storage, from about 155 to 165 boats, including an increase in rack spaces from 78 to 118. No new buildings, piers, or floats are proposed.



	Existing	Proposed	Change
Rack spaces (total)	78	118	+40
<i>Rack spaces (valet)</i>	50	90	+40
Slips (total)	57	57	None
<i>Slips (valet)</i>	6	16	+10
Total storage spaces	155	165	+10
<i>In-water storage</i>	47	37	-10
Moorings	19	19	None

### **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 SECTIONS 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 the environment (Section 15(b) of the Act), the Commission finds the project would have both beneficial and detrimental impacts. With respect to impacts upon persons and property (Section 15(c) of the Act), the Commission finds the project would have a beneficial impact. The Commission finds the project would have a neutral impact with respect to municipal services or burden on taxpayers (Section 15(e) of the Act), would not unduly burden existing public facilities (Section 15 (f) of the Act), and would generally align with local planning objectives.

**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 project involves expansion of an existing use within the footprint of a marina that has operated at the site since the 1940s. As such, the Commission finds that the project is appropriate at the proposed location in view of the available alternatives.

**A2. The Commission finds that the proposed development would have both beneficial and detrimental impacts upon the environment relative to other alternatives (Section 15(b) of the Act).**

With respect to Environment / Water Quality (considered a primary factor in the decision), the Commission finds the project would have detrimental impact by increasing the number of boat rack spaces, which would potentially increase the number of boats per day operating on the pond.

With respect to Stormwater (considered a primary factor in the decision), the Commission finds the project would have a beneficial impact, in part by slightly reducing the impermeable area on the property. The project is designed to handle runoff onsite.

With respect to Material Use (considered a primary factor in the decision), the Commission finds the project would have a potential benefit if Building 7 is able to be relocated to another site.

With respect to Erosion, the Commission finds the project will have a beneficial impact by removing vulnerable buildings in the floodplain and installing more storm-resilient boat racks.

The Commission also notes the following:

Environment / Water Quality

- The property is on Lagoon Pond, which is impaired, and is connected to the town sewer. An existing bathroom building will be removed, although the Applicant has stated that the number of bathrooms onsite will remain the same.
- In terms of nitrogen levels, the West Arm of the Lagoon is typically more than double the Total Maximum Daily Load (TMDL) for the pond.
- The Division of Marine Fisheries conducts testing in the pond, and has frequently closed the area around the marina to shellfishing, including permanent closures since 2020. DMF has clarified that the closures are due to high bacteria counts in the pond, but has not confirmed the source, other than to describe various potential sources, including the marina. According to the Wampanoag Environmental Laboratory, data from May-November 2020 shows that fecal coliform counts in Mud Creek at that time were mostly due to birds.
- In terms of boat traffic, the project will increase boat rack capacity by 40 valet spaces. The number of boats slips will remain at 56, but the number of slips used for the valet service will increase from six to 16. As a result, the number of in-water storage spaces (May-Oct) would decrease by 10, and the average number of boats using the valet service per day in season would increase from about 5.54 to 9.85.
- The marina currently services and stores boats up to 40 feet long, but boat size is limited by the capacity of the forklift and racks. Some of the slips are combined to allow for larger boats.

- The project includes relocating a ConVault wash station to just south of the proposed boat rack, on the new concrete slab (this was completed in May 2022). The station is used for pressure washing boats, with a drainage sock in the concrete slab to catch debris. Water is filtered and reused for additional washing. Any debris left over in the drainage tank is disposed off-Island as hazardous waste.
- The increase in boats onsite may also increase environmental impacts on the pond, including from boat paint, fuel/oils, solvents, and other waste entering the water. However, there is no clear data showing that this would be the case.
- The Applicant has noted that boats stored on racks would not require additional bottom paint, would spend more time out of the water, including for washing, would be safer during storms, and easier to monitor with more frequent inspections.
- SHM has committed to using 100% copper-free paint for all year-round customers by spring 2023.
- SHM is required to have a Stormwater and Pollution Prevention Plan under its EPA stormwater permit (including training, monthly site inspections, quarterly water sampling, and reports to the EPA), and has a Spill Prevention, Control and Countermeasures Plan, which includes monthly inspections of the property.
- The Applicant notes that the new impervious area will help with containing and cleaning up any spills, the new drainage area under the racks will prevent runoff from directly entering the pond, and the new drainage swales will help filter nitrogen.
- The Applicant also notes the following SHM rules and other factors regarding pollution:
  - No overnighting on boats, reducing the risk of potential waste discharge. Many of the boats are day boats and do not support overnighting. Due to the size of most of the boats, many do not have holding tanks with overboard discharge.
  - No discharge rules are strictly enforced. Bio degradable dye pellets are added to the holding tank of a vessel to confirm any suspected discharges.
  - SHM is Certified as a Clean Marina Operator by the Association of Marina Industries (AMI) and currently working through the verification process to Certify SHM Vineyard Haven as a Clean Marina.
  - Painting and maintenance are done inside with dust collection vacuums and sweeping rather than to contain waste. The property has very little direct to water discharge.
  - The boat washing service may reduce washing by boat owners, which could lead to more discharge and waste going into the pond.
  - Boat rack storage allows marina workers to notice if a boat is leaking or damaged, and to keep it out of the water.
- Boats would be stored both inside and outside in the winter, and protected with plastic shrink wrap. The Applicant has stated that it began participating in a shrink wrap recycling program this spring in conjunction with Bruno's and EL Harvey Waste Disposal. The program is for white marine shrink wrap only (blue and clear materials subject to prior arrangements), with material delivered to a DEP-certified recycling facility off-Island. The program is endorsed by the

Massachusetts Marine Trades Association, and is aimed partly at avoiding future regulations that limit the usage and disposal of shrink wrap. The Applicant and EL Harvey were unable to provide any chain of custody for the material sent from Safe Harbor, or to confirm the specific recycling facility, which is based on pricing and timing.

- A 1,000-gallon fuel tank has been replaced with a 6,000-gallon fuel tank, mostly for use in selling fuel to marina customers. Hazardous material and fuel storage permits, as well as the company's marine fueling permit and license to sell motor fuels, have been provided.

#### Stormwater

- The Applicant has indicated that the total impervious area on the property will decrease from 37,164 ft<sup>2</sup> to 36,664 ft<sup>2</sup> (1% decrease).
- A drainage plan to handle runoff from a proposed 8,800 ft<sup>2</sup> concrete pad shows a 3,722 ft<sup>2</sup> gravel drainage area below the proposed boat rack, just northwest and downgradient of the slab. The Applicant has stated that alternatives to concrete would not hold up to the weight of the marina equipment.
- A drainage plan for the entire property, designed to handle a 25-year storm, shows a gravel leaching area under the largest of the new boat racks, along with vegetated swales at three locations on the site, and a sandy basin below one of the existing boat racks. Runoff is shown as being away from Lagoon Pond Road, or toward the leaching areas and swales.
- The Applicant stated on 11/11/22 that the drainage plan accounts for any runoff onto the property from Lagoon Pond Road, but that any drainage issues on the road itself are beyond its control.
- The drainage plan shows that the proposed rack closest to the pond will be about 20 feet from the edge of the wetland, which is about 16 feet farther away than the existing buildings that will be removed.
- A vegetated swale would be located between the rack and the wetland, to improve stormwater management and filtration.
- The stormwater engineer has stated that soil compaction has occurred on the site, but that the foundation of the new rack will only occupy about 500 ft<sup>2</sup> and would not result in any further compaction near the wetland.
- The project is subject to DEP stormwater standards.

#### Erosion / Climate Change Resilience

- The property is within the 100-year floodplain and FEMA AE flood risk zone and will experience increased flood risk in the future. The project does not specifically account for sea-level rise, although four buildings totaling 9,355 ft<sup>2</sup> will be removed from the floodplain.
- The proposed racks are rated for 150 MPH winds when full, so could potentially withstand a category 4 hurricane.

- The West Arm of the Lagoon is currently a no-wake zone, with floating signs as you enter from the north. Staff recommends additional no-wake signage near the marina to preserve what remains of the eroding marsh in that area. (This has been offered by the Applicant.)

#### Material Use

- Island developer Jeffrey DuBard plans to purchase Building 7 and relocate it to the DeSorcy property on Beach Road, which he also plans to purchase, and which currently includes the Gannon and Benjamin Marine Railway, Martha's Vineyard Times building, a warehouse, art galleries, and other structures. A draft Building Acquisition and Removal Agreement between the Applicant and DuBard has been provided. The applicant has stated that if this plan does not materialize, then it will work with other interested parties to relocate the building, or dismantle it for later use.

#### Energy

The Applicant plans to install electrical conduits along the new racks to allow for electric boat charging at such time that electric boat technology becomes more feasible for the marina.

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

With respect to Traffic and transportation (considered a primary factor in the decision), the Commission finds the project would have a slightly detrimental impact by increasing the amount of traffic on Lagoon Pond Road.

With respect to Scenic Values (considered a primary factor in the decision), the Commission finds the project would have a neutral impact, noting that existing buildings will be removed, while new boat racks are added and others relocated.

With respect to Public Access (considered a primary factor in the decision), the Commission finds the project would have a beneficial impact by improving existing access to the shoreline.

With respect to Housing and Economic Development (considered a primary factor in the decision), the Commission finds the project would have a beneficial impact by increasing business for the marina and providing improved services to marina customers. The Applicant will provide housing for any additional employees resulting from the project.

With respect to Impact on Abutters (considered a primary factor in the decision), the Commission finds the project would have a detrimental impact, based on various testimony that abutters provided during the hearing, and as outlined below.

The Commission also notes the following:

#### Traffic and Transportation

- The proposed increase in storage capacity may also lead to an increase in customer trips to and from the site, as well as additional employees, with potential impacts on traffic, including at 5 Corners to the north.
- Plans show an increase from 20 to 36 parking spaces distributed around the property, including for marina members. The Applicant has stated the following in regard to traffic impacts:
  - The project could reduce vehicle traffic to and from other public ramps in town by providing more storage and valet capacity at the marina.
  - The parking spaces will be delineated by concrete parking dividers and that cars would not need to back into the street to leave the property.
  - There would be enough space on the north and east lot lines for a proposed shared use path (SUP) connecting to Lagoon Pond Road, which has been in discussion for several years. This has been offered by the Applicant, although a detailed proposal has not been presented. The Applicant has stated that the offer is only for the SUP easement, not to achieve/pay for permitting and construction, and that the SUP would not be required under Chapter 91. The proposed easement is located in the wetland, which may complicate the permitting process.
  - The project is not expected to have any impacts on an existing footpath between Lagoon Pond Road and the Tisbury Marketplace.
- In terms of potential drawbridge openings, there is no limit on the height of boats at the marina, but the racks can only accommodate boats up to 14 feet tall. The marina generally does not accommodate sailboats, but does service some with fast-drop masts that do not require a rigger.

#### *Staff Traffic Evaluation (Summary)*

- *Existing average daily traffic = 2,322 vehicles*
- *Projected traffic, including employees and customers = 212 daily trips*
- *36 proposed parking spaces are adequate.*
- *Sight lines are adequate.*
- *Zero recorded accidents in front of the site.*

*Conclusion/Recommendation: The proposal to add more storage space for boats at Safe Harbor will not have a severe impact on the surrounding area. Adding rack space/service will reduce the number of boats stored seasonally in the slips. The only regional concern to the area remains to be the Five Corners intersection. Five Corners is already at a high capacity and is a known safety problem and poses more concern than the low volume road of Lagoon Pond Road. It is also a main intersection for access on Island, business, hospital use, and to the main year-round ferry terminal. Staff recommends that Safe Harbor participate in the Tisbury Master Plan working group to establish and oversee alternatives and mitigation improvements for the area.*

#### Scenic Values

- The property is located in a picturesque area overlooking Mud Creek, Bass Creek, and Lagoon Pond. It is highly visible from Lagoon Pond Road, and located between 5 Corners and the Martha's Vineyard Museum.

- The project would involve removing four existing buildings, relocating existing boat racks, and adding two new boat racks with an elevation of 38.15 feet (about 30 feet from ground level) and room for 40 boats. The elevations of the two existing racks are 38.1' and 20.6'. The maximum elevation allowed by the town is 40.77 feet.
- Storage capacity of the boat racks will increase from 78 to 118 boats, including an additional 40 spaces for summer valet service, and the Applicant hopes to store a higher percentage of boats in the racks, as opposed to on the ground. The marina currently stores about 155 boats on the property in the winter, and 80-90 in the summer.
- Two 8' wide boardwalks will be added to a new steel bulkhead along the pond.

### Public Access

- The Applicant has stated the following in regard to current and proposed public access to the water, which is required under Chapter 91:
  1. *We currently allow and promote walking through and across the property to either access the water or get through to and from Beach Road and Lagoon Pond Road. There are signs posted, in accordance with our Chapter 91 License, at entrance to the property, at the water's edge at the corner of the basin closest to Lagoon Pond Rd.*
  2. *We supply a dingy dock in the marina for Lagoon Pond mooring customer to access their boats.*
  3. *We have frequent visitors to the water's edge feeding the ducks, launching paddle boards and kayaks to access the west arm of the lagoon.*
  4. *We have always kept dock access open and free in the winter months for commercial shell fishing boats to tie up.*
  5. *We offer transient day dockage if we have slips vacant.*
  6. *We offer transient mooring use when moorings are vacant.*
  7. *We have frequent pedestrians using the bridge that crosses over to the Tisbury Market Place and plan to keep that access open and viable for future use. (NOTE: We are unclear who owns the bridge and whose responsibility it is to keep it up. This last winter we propped it back up and fixed a few boards in an effort to keep any walkers from falling into the swamp)*
  8. *We promote and encourage use of our open space on the bulkhead, with covered picnic tables and chairs to enjoy lunch or just watch the boats.*
  9. *Our continued efforts around the property aim to create open access for boaters and the like to enjoy the water.*

### Housing and Economic Development

- The project will allow Safe Harbor to store and service more boats, and potentially larger boats. The forklift currently operates from 8AM-5PM from May 1 to Oct. 7 (seven days a week from Memorial Day to Labor Day, and five days a week otherwise).
- The marina currently has seven full-time employees and 10-15 employees in the summer. The Applicant has stated that the project will lead to one additional full-time technician, and one additional seasonal dockhand.

- The Applicant currently owns three cottages at 80 Lagoon Pond Road (total of three beds), and a three-bedroom house and three-bedroom apartment at 61 Lagoon Pond Road. The Applicant has provided the following information about the current offsite housing:
  1. *61 Lagoon Pond Rd*
    - *Front – 3 Bedroom Apartment – Vacant while we recruit for a new lead technician*
    - *Rear – 3 Bedrooms – Housing 1 employee*
  2. *80 Lagoon Pond Rd*
    - *Cottage 1 – Studio – Houses a Full Time Technician*
    - *Cottage 2- 1 Bedroom – Housing 1 employee*
    - *Cottage 3 – 2 Bedroom – Vacant*
- The Applicant plans to further develop 80 Lagoon Pond Road with six additional bedrooms, and is looking to purchase an additional single-family home offsite, to support its employees. The existing housing is expected to support the housing impact of the project.
- Current or recent tenants on the marina property include a cabinet maker, sign maker, and carpenter, all of whom would relocate offsite. The Applicant has stated that two of the tenants have plans to relocate offsite, and one already has.

Impact on Abutters

- Abutter concerns have focused mostly on potential impacts on the health of Lagoon Pond and the abutting wetland, as well as potential issues related to parking, flooding, and character.
- According to the Applicant, “SHM has proposed no new lighting which is not shielded and downcast for the safety of its customers and employees. No lighting is proposed that will create light pollution or cast off the SHM property.”

**A4. The Commission finds that impacts associated with the supply of needed low- and moderate-income housing for Island residents (Section 15(d) of the Act) do not apply to the project.**

**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 not unduly burden existing public facilities 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 finds 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 the Island Plan, including sections 2 (Development and Growth), 3 (Natural Environment), 4 (Built Environment), 6 (Livelihood and Commerce), 7 (Energy and Waste), and 8 (Housing). Section 10 (Water Resources) deals mostly with the impact of nitrogen on Island ponds, but also includes the following objectives and strategies:

- Eliminate or reduce direct discharge of stormwater runoff into sensitive water resources.
  - Set up a program to identify and correct problematic stormwater discharges from roads and other public lands.
  - Require development and redevelopment projects to maximize treatment and infiltration in order to retain all stormwater on site, favoring use of Low Impact Development techniques.
- Ensure appropriate management of coastal ponds and their watersheds, including improvements to water circulation.
  - Increase shellfishing in coastal ponds by increasing habitat area and quality.
  - Identify sources and reduce bacterial contamination that closes shellfish beds.
  - Manage boating and fishing to limit the impact on water quality.

**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 project is allowable by local zoning.

**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.**

**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 DCPC.

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**

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The Martha's Vineyard Commission deliberated about the application at a duly noted meeting of the Commission held on January 5, 2023, 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 January 5, 2023:

Voting to approve the project: Trip Barnes, Joan Malkin, Kathy Newman, Kate Putnam, Doug Sederholm, Brian Smith, Ernie Thomas, Peter Wharton

Voting against: Jeff Agnoli, Jay Grossman, Ben Robinson

Absent: Christina Brown

Ineligible to Participate: Michael Kim, Greg Martino, Linda Sibley, Carole Vandal

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 January 5, 2023, and was approved by a vote of the Commission on January 12, 2023.

## **5. CONDITIONS**

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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. Safe Harbor Marina will begin dialogue with the Town about a dredging collaboration to dredge the channel into the West Arm of the Lagoon.
2. Safe Harbor Marina will work with interested third parties as well as the Town, or take other opportunities, to preserve Building 7 by way of its relocation or disassembly for use off-site in lieu of its demolition.
3. Safe Harbor Marina will construct, in coordination with the Tisbury Harbormaster, a new 3'x4' informational dual-sided sign, mounted on a float at the entrance to the West Arm channel. The marker will meet uniform standard marking guidelines and contain wording regarding the no-wake zone, shell fishing area, and no-discharge zone. The back of the sign will note the end of the no-wake zone for those departing the channel into the main Lagoon Pond channel.
4. Safe Harbor Marina acknowledges that it has committed to procuring and securing workforce housing since purchasing the property 2021. In the spring of 2022, it secured a \$2.5 million, six-bedroom, two-house property for current and future employee needs. It also owns 80 Lagoon

Pond Road, which has an additional four bedrooms in three buildings, and has received approval for additional sewer flow at 80 Lagoon Pond Road to support the addition of eight new bedrooms for employee housing. The new housing planning will begin once Vineyard Land Surveying and Engineering is finished with planning for this proposal.

5. Safe Harbor Marina will provide \$5,000 of funding towards the Town of Tisbury's shellfish seeding program, or other program for seeding in Lagoon Pond, as deemed appropriate by the Tisbury Shellfish Department.

*Further conditions:*

6. In order to better identify the sources of bacteria and other contaminants in the West Arm of the Lagoon, the Applicant shall provide water testing results to the MVC. Testing will be done at two sites at the marina and a comparison site to be determined. A scope of work for the testing, including the proposed protocols and testing agency or agencies, shall be submitted to the LUPC for review and approval prior to receipt of a Certificate of Completion for the project. The testing shall include at minimum nutrient levels, petroleum products, copper, and zinc, as well as source-tracking for bacteria. The first round of testing results shall be provided prior to the start of operations for the project, the second round after six months of operations, the third within two months after the first full year of operations, and the fourth within two months after the second full year of operations. The LUPC shall review the testing results and determine if further mitigation is required for the project.
7. The Applicant shall conduct a rehabilitation feasibility study for the marsh area east of the marina. The results of the study shall be provided to the MVC within one year of receipt of a Certificate of Completion for the project. Pending the results of the study, Safe Harbor Marina shall work with town boards and/or other relevant groups to undertake any recommendations in the study.
8. Safe Harbor Marina shall appoint a representative or representatives to actively participate in any advisory council, board, or other group that welcomes such participation and whose mission and/or authority is to improve the health of Lagoon Pond. Such participation shall continue for as long as the group is actively pursuing its mission as it pertains to the health of the pond.
9. Safe Harbor Marina shall transition to 100% copper-free paint for all year-round customers at the Vineyard Haven location by March 1, 2023.

10. The Applicant shall provide final certification of the marina as a Clean Marina by the Association of Marina Industries to the MVC.
11. The Applicant shall provide chain of custody documentation for the shrink wrap recycling program in 2023 to the MVC, including the name and location of the DEP-certified recycling facility off-Island.
12. The Applicant shall provide a 10-foot easement along the northern and eastern boundaries of the Safe Harbor Marina property, as shown on the site plan dated Sept. 23, 2022, for the purpose of establishing a shared-use path (SUP) connecting Beach Road and Lagoon Pond Road. The Applicant shall cooperate with and support the town or any entity that is involved in establishing the SUP.
13. A plan for onsite solar generation to offset the property's current electrical demand shall be submitted to the LUPC for review and approval within two years after receipt of a Certificate of Completion for the project.
14. Prior to the start of construction, the Applicant shall provide to the MVC a final Building Acquisition and Removal Agreement, or other signed agreement as appropriate, for the relocation and/or reuse of Building 7.
15. The Applicant shall install electrical conduits along the new boat racks, in order to allow for electric boat charging at such time that electric boat technology becomes feasible for the marina.
16. The Applicant shall participate in the Tisbury Master Plan working group to establish and oversee various alternatives and improvements in the Lagoon Pond Road area.
17. The Applicant shall provide housing for any additional employees resulting from the project, either on its existing properties at 61 and 80 Lagoon Pond Road, or at another property that it acquires for employee housing on-Island.
18. A final landscape plan for the property, including a planting schedule, shall be submitted to the LUPC for review and approval prior to receipt of a Certificate of Completion.
  - Only slow-release, water-insoluble nitrogen-source fertilizers may be used in the maintenance of landscaping.
  - Landscape must use only native or low-maintenance, drought-tolerant species that are non-invasive to minimize the application of nitrogen and water.
  - No pesticides or herbicides shall be used in the maintenance of landscaping.

19. 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 Completion.
  - 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.
20. Prior to removal of the buildings, the Applicant shall provide a demolition/removal plan to the LUPC for review and approval.
21. The Applicant shall provide a surveyed, dimensional, as-built site plan prior to receipt of a Certificate of Completion.
22. Any proposed modifications to DRI 258-M2, 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 receipt of the Decision of the Martha's Vineyard Commission contained in this document to begin substantial construction.

**6.4 Signature Block**

*JM*  
Joan Malkin, Chair

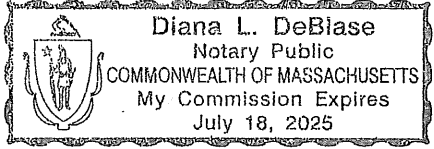
20 Jan. 2023  
Date

**6.5 Notarization of Decision**

Commonwealth of Massachusetts  
County of Dukes County, Mass.

On this 20<sup>th</sup> day of January, 2023, before me, Diana DeBlase, the undersigned Notary Public, personally appeared Joan Malkin, proved to me through satisfactory evidence of identity, which was known to me 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.

*Diana L. DeBlase*  
Signature of Notary Public



DIANA L. DEBLASE  
Printed Name of Notary  
My Commission Expires July 18 2025

**6.6 Filing of Decision**

Filed at the Dukes County Registry of Deeds, Edgartown, on: January 30, 2023  
Deed: Book 1647, Page 641  
Document Number: 0549