

# THE MARTHA'S VINEYARD COMMISSION

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MINUTES OF MARCH 16, 1989

## MARTHA'S VINEYARD COMMISSION MEETING

The Martha's Vineyard Commission held a public hearing on Thursday, March 16, 1989 at 8:00 p.m. at the Commission's offices, Olde Stone Building, New York Avenue, Oak Bluffs, MA regarding the following Development of Regional Impact (DRI):

Applicant: William R. Morris, III, Trustee  
Red Farm Nominee Trust  
1221 Potomac Street N.W.  
Washington, D.C. 20007

Location: Off Lambert's Cove Road  
West Tisbury, MA 02575

Proposal: Modification of May 1987 DRI Decision qualifying as a DRI since the proposal is the subject of a previous DRI.

Mr. Filley, Vice-Chairman, read the Red Farm Public Hearing Notice, opened the hearing for testimony and immediately continued the hearing to March 30, 1989 at 9:00 p.m. due to applicant's absence and at his request.

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Mr. Filley then opened the regular meeting of the Commission and proceeded with agenda items.

### ITEM #1 - Chairman's Report

There will be a demonstrating of a new computerized mapping and data system on March 25th at 12:00 here at the Commission offices. Mr. R. Podowski from the Island Institute will be making a presentation. They are presently looking to install this system in 2 sites, agencies involved in land use planning, where the system can be utilized. The systems are mapping based, using satellite images and analyzing ground cover and use that in data base as well as graphic format. He distributed a sign up sheet and welcomed members of the public to sign up as well.

ITEM #2 - Old Business - There was none.

ITEM #3 - Minutes of March 9, 1989

It was motioned and seconded to approve the draft minutes as prepared. There was no discussion. The motion carried with no opposition, 1 abstention (McCavitt). (Harney was in favor.)

ITEM #4 - Committee Reports

Ms. Borer, Executive Director, reported for Land Use Planning Committee (LUPC), they had met last Monday with applicants from the Red Farm DRI, Swan Neck DRI, and the Aquinnah Shop DRI. Next week we will meet with applicants from DelReal, the M.V. Hospital, Vineyard Crossing and Langmuir Subdivision.

Ms. Skiver, MVC staff, reported that the Joint Transportation Committee would be meeting on Wednesday, March 29, 1989 at 4:30 p.m. at the Commission offices to discuss the moped legislation, the Origin Destination Survey's preliminary results, Steamship Authority correspondence, and the Task Force report among other things. She urged any interested parties to attend.

Mr. Morgan, County Commissioner, reported on ongoing legislation. He stated that the Moped bills would be heard March 22nd at 10:00 a.m. in Room 136, the 12 Steamship Authority bills would be heard March 30th at 11:00 a.m. in Room 257 with the Committee on Transportation. There was discussion on the nature of these 12 bills. Ms. Skiver, JTC, asked if written testimony would be received after the hearing since JTC won't be meeting until the 29th. Mr. Morgan responded yes. He stated that the best bill is #2248 which is the bill the MVC had Choate, Hall & Stewart draw up.

Ms. Harney, Co-Chairperson of the Comprehensive Plan Advisory Committee (CPAC), reported that they had met tonight to set an agenda for us and the MVC staff to follow in developing a proposal which we will be presented to the full Commission. Mr. Adams, MVC Staff, added that CPAC will be meeting every 2 weeks to set an agenda to consider specific issue areas for the Comprehensive Plan. We will be calling on Task Force members and members of the public to provide feedback.

Mr. Ewing, Chairman of the Edgartown Ponds DCPC Subcommittee, stated that their report would be given under item #5.

When there were no further Committee reports Mr. Filley called a short recess to prepare for the next public hearing.

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The Martha's Vineyard Commission held a continued public hearing on Thursday, March 16, 1989 at 8:30 p.m. regarding the following Development of Regional Impact (DRI):

- Applicant: Swan Neck Trust  
Thomas C. Wallace  
P.O. Box 210  
Edgartown, MA 02539
- Location: Edgartown Great Pond  
Edgartown, MA
- Proposal: Subdivision of land qualifying as a DRI since the proposal is a division of land greater than 30 acres.

Ms. Eber, Member of Land Use Planning Committee, read the Swan Neck Public Hearing Notice, opened the hearing for testimony, described the order of the presentations for the hearing, and introduced Melissa Waterman, MVC Staff, to give a staff update.

Ms. Waterman reviewed the staff update (available in its entirety in the DRI file) using wall displays to show the location of the area, the proposed lot locations including the proposed wildlife preserve, and the access. She noted excerpts from the January 26th hearing in the staff update highlighting description of the proposal, the applicable by-laws, and the development concerns. She noted the map at the back of the staff update depicting the area and the proposed lot locations.

Ms. Waterman then addressed the questions from the January 26th hearing as presented on the staff update beginning with groundwater. After reading the staff questions and applicant's responses Ms. Waterman answered questions from the Commissioners.

Mr. Ewing, Commissioner, asked what the range of the tide is? Ms. Waterman stated approximately 1.9 ft. according to the information submitted by the applicant. Ms. Waterman stated that the fact that the Pond is shallow and isn't open to the sea that often will probably mean this tidal range won't be reflected in the field. Mr. Ewing then asked the applicant where this information was gathered? Mr. Counter responded from Nautical charts of the area. Mr. Wallace stated that this figure is for the Atlantic Ocean the Pond level changes less.

Ms. Waterman then addressed the question of the wildlife preserve and its management and the question of the sufficiency of the buffer proposed. Ms. Waterman stated that the reported submitted by Mr. Simmons, (which is available in the DRI file) recommended a broad buffer.

Ms. Colebrook, Commissioner, questioned how large is the buffer and what does he propose? Ms. Waterman stated that the buffer proposed by the applicant varies in size but is approximately 400 ft. Mr. Simmons' report recommended a larger one. Ms. Colebrook asked if the homeowners would have access to the wildlife preserve? Ms. Waterman stated that the first proposal said no. It was asked how this could be done without fencing?

Ms. Waterman addressed the question of affordable housing by saying that the applicant at LUPC stated they would have a description of their proposal for us tonight.

Ms. Waterman then reviewed correspondence received since the last public hearing from Ms. Edith Potter, dated February 28, 1989 and Mr. Tim Simmons, Sheriff's Meadow Foundation, dated March 7, 1989. (All correspondence is available in its entirety in the DRI file.)

Ms. Colebrook asked about Mr. Simmons' suggestion to eliminate lots 8 and 9? Ms. Waterman stated that Mr. Simmons is in the audience and perhaps he can address that himself later in the hearing.

Ms. Waterman concluded by reading 2 letter received today which are summarized as follows: FROM: Mr. Thomas Chase, dated March 15, 1989. States the area is fragile as seen by its wetland vegetation and the tenuous reach of the peninsula into Edgartown Great Pond. The value of Swan Neck as a premier wildlife habitat can be seen by some of the reclusive species that abound here, such as the otter resting blackducks. Has several concerns from a wildlife management point of view: The low topography and isolated nature of Swan Neck makes it susceptible to periodic storm disturbance and inundation and although the plants and animals can withstand short term displacement, increasing settlement around Edgartown Great Pond makes it difficult for the species to find a place to retreat to and they must scatter or travel farther to find them. After a certain point, they simply leave altogether. Increased development will increase sustained human disturbance in this area such as boat traffic, clearing of vegetation, and free-running dogs, thus species that need insularity for feeding, breeding, or resting are less able to find the resources to do so. It is necessary to the Great Pond area, and is in the public interest, to provide biologically useful buffers. Under ideal circumstances he would recommend the following: A 500 foot no disturbance zone behind Lyles Bay would be established from lots 4 through 7. The two north-south lots might be designated between the western halves of lots 4 and 5 and again between 6 and 7. No development would occur in lots 8 but a 3 acre lot might be permitted in the northern corner of lot 9. Lot 8 and the remaining portions of the other lots would be annexed to the Swan Neck conservation land. If boat access to South Beach is necessary, prefer to allow access to the pond along the western margin of lot 9 rather than to invite boat traffic originating farther up Janes Cove. He states that the proposed preserve is too fragile and too small to maintain its biological integrity.

FROM: Bob Woodruff, dated March 16, 1989. States that this proposal is the second major development on the west side of the Pond in five years. He calculates Boldwater and Swan neck at buildout would permit a total of 82 new homes, 41 primary and 41 guesthouses. Human activity (disturbance factor) on wildlife caused by the mere presence of people and especially dogs and cats is of major importance. The fence proposed by the developer is not a practical or effective solution. Absence of wandering pets is the only solution. Stated that to the trained eye the area is a living museum of ecological adaptation and survival. The "neck" portion of the property is unbuidable; as such it is not a big sacrifice for the developer to permanently dedicate it for preservation. Another several acres of the transitional wet shrub wetlands between the Neck and the uplands lies in the flood plain and should be left intact as well. In concurrence with Mr. Simmons' report I urge the Commission, the Land Bank, and the Town to work with the Sheriff's Meadow Foundation to preserve the entire 77 acre tract.

Mr. Ewing asked about the Chase recommendation for a 500' buffer, would that follow the 10' contour? Ms. Waterman explained that it would probably be more than the existing Shore Zone which follows either the 10' contour or 500' from mean low water.

When there were no further questions from the Commissioners Ms. Eber called on the applicant to make his presentation.

Mr. Counter stated that they have addressed the issues raised in the letters. He provided a wall display showing the building zones and stated that they believe the setbacks created from the Shore Zone would not be in conflict with what is being said by the people in the conservation areas. Concerning lots 8 & 9 these are the largest lots with the house sites far away from the shore with sufficient tree height to reduce the visual impact. Concerning the Coastal District I am not quite sure, in some places it is 500', some it is 250', some 350'. We are all pushing this to a low density development plan and moving it back. In response to the question of the wildlife preserve management plan I have a memo to distribute (he submitted copies for the files and several copies for Commissioners review). This memo deals with the wildlife preserve establishment and the measures that would be taken, the rights of the Fullers on the preserve lot, and the consideration of a cluster plan. Concerning groundwater I have one correction to the staff information, on Page 1, Section c., the pond level is 2.07' not 2.7'. Mr. Lolley has done several test wells in the area tracking pond level to groundwater level and is here to address any questions you may have.

Mr. Lolley stated, in his opinion, the affect of the tide on the Pond when open didn't changed significantly from high to low tide.

Mr. Ewing stated he had heard it could change as much as 4'. Mr. Lolley stated that although he had only studied one cycle of openings he couldn't see how it could go up by 4 ft. the study of one opening

showed the pond level going up 2.07'. Mr. Ewing asked, the main question seems to be answered already, there could be a potential 6" drop at low tide? Ms. Waterman, MVC staff, stated this information came from the Edgartown Shellfish Department. Mr. Wallace stated he sees less than that and after living on the Pond for eight years he has never seen it been influenced by more than a couple of inches.

Ms. Bryant, Commissioner, asked if the Pond is only kept open for 8-9 days? The applicant responded that they try to open it at the lowest tides and keep it open as long as possible. This particular cycle was 8-9 days. Mr. Wallace added that the opening range from 2-3 days to 2 1/2 weeks and there are 4 opening per year.

Mr. Ewing asked if the pond were open 2 weeks, extrapolate on how quickly the effluent would move to the pond taken at the steepest gradient? Mr. Lolley used a wall display and stated that the eastern test well showed the most change. For every 1000 ft horizontally there is a 4' dip in elevations. The calculations based on the steepest amount of change results in 145 days for the effluent to reach the pond. Ms. Waterman added using 75' permeability as given in the septic plan, it is 1.2' per day, using 150' permeability it is 2.4' per day. Mr. Lolley stated that the main point is at its fastest it moves 2.4 feet per day and from there it slows down.

Ms. Colebrook asked what would happen if the Pond were not open as often or as well? Concerning the Pond it would flood out eventually. Concerning the effluent, it would take longer to reach the Pond. There was further discussion about the opening and closing of the Pond. Ms. Waterman stated that it was up the Shellfish Department to determine when and for how long the Pond was opened. Mr. Wallace stated they are concerned with the health of the Pond and that even when the effluent is moving the most rapidly it still has time to purify before reaching the Pond.

Mr. Counter added that all lots within 200' of the wetlands will have to go to the Conservation Commission and that they have allowed the cutting of view channels in the past. Ms. Colebrook asked Mr. Counter if they had addressed all the points expressed in Mr. Simmons' letter? Mr. Counter responded to some degree. Obviously, I can't disagree that the best development is no development, however when I get a plan as a planner I try to minimize the impact on the areas of concern. Dedication of this preserve is one way. Ownership doesn't necessarily mean we can control the wildlife but we can control the people with property lines. There was further discussion on the manners used to do this such as set backs, density, etc.

Mr. Evans asked Mr. Counter, are the houses in these building zones outside the Coastal District? Mr. Counter responded not necessarily and he showed which houses would be subject to the Coastal District regulations, namely lots 4-9. Mr. Evans asked if he owned lot 8 or 9 could he build his house in such a way that he could build a 32 foot house? The response was yes. Mr. Evans then asked Mr. Counter to

describe the visual impact of a 26 or 32 foot house from South Beach? There is a good tree cover but if you are asking how much could you see through the trees in the winter, there has been no study done.

Mr. Fischer, Commissioner, stated the owners could cut the existing trees for views. Mr. Counter stated that the Conservation Commission has control of that approval process. In most cases it has manifested itself into a 15% view channel, there is a review before, during and after the cutting.

Mr. Lee, Commissioner, asked how the applicant felt about eliminating lots 8 & 9? Mr. Counter said he thinks that is a very strong position to take on such a low density project. Mr. Lee added they seem to be the ones poorest in being above the 10 ft. contour. Mr. Counter stated there is a dip. The criteria of being above the 10' contour is meetable and I don't know if it is any weaker in one area than another. Lots are large to reduce the density in this area for that reason.

Ms. Harney, Commissioner, stated that after her site visit she thinks that cluster zoning would be a better plan for this area. Mr. Counter stated that there are roads and trails cuts through here. It is a beautiful place to walk. Generally the idea of clustering is that it generates open space that is offered as part of the amenities for living so close together, for instance a walking place along the shore. We are trying to stop foot traffic in this area to maintain the wildlife habitat with the property lines.

Mr. Jason asked if they had considered clustering on the west side, he thought these lots were higher? Mr. Jason said they had talked about reproducing what George Flynn had done to his land, the argument was that the Conservation Commission won't consider that. But with a fragile piece of property such as this have you gone to them and asked if they would? Mr. Counter responded not yet. We haven't had time. Mr. Jason said that he isn't saying that is how it should be done, but he would certainly confer with Tim Simmons and Tom Chase. It doesn't make sense to keep breaking up that large parcel of wildlife habitat with house lots. It seems you should be able to put them in one area and maintain the rest of the habitat. I suggest sitting down with the Conservation Commission and see if you can't work out something that works for that piece of land.

Mr. Ewing asked Mr. Counter about the statement in the memo handed out tonight that indicated "Due to the loss of the estate size parcels a greater density would be indicated", if you clustered would you use more than 9 lots? Mr. Counter stated that they would have a harder time with finances on cluster development and that more units would be needed. Ms. Sibley suggested that a new sales pitch would be the value of these lots with the preserve land. The improvements this density creates and how it influences what we are trying to achieve. The applicant discussed their methods of achieving the same goals and the Tashmoo Woods development and their lack of economic success.

Mr. Medeiros, Commissioner, asked if they had given any thought to combining lots 8 & 9? The applicant responded that it has been considered. He stated that lower density does seem to be a good conservation move but they did already start with a very low number.

Mr. Evans asked about the average density of the Boldwater subdivision in terms of the percentage of open space? Mr. Counter responded that the scale is very different, Boldwater is 580 acres, 120 acres of conservation land which is 19% of the land, there are 36 lots, and here open space is 20%. Mr. Evans stated that Boldwater has an average of 16 acres per lots here you get 8.6 acres per lot. He then asked why Boldwater has an average density of 16 acres per lot and here in a very sensitive spot you have 8.6 acres per lot? Mr. Counter responded that size of the lots are basically the same however some lots here are smaller, and this makes the average lower, in order to make larger lots in the more sensitive areas.

Mr. Ewing asked if there is any open space provided other than the unbuildable area? Mr. Counter responded that the open space is the Neck itself and also the areas on the lots that can't be built on.

Mr. Morgan, Commissioner, asked if the lot covenants restricted the owners from other thing besides structures? For instance what is in the covenants that would preclude boat moorings or using the beach to store boats? Mr. Wallace stated there are covenants enhancing the diversity of wildlife. Beaching boats is not currently prohibited.

Ms. Sibley, Commissioner, asked how long they think it would take to develop a Wildlife Management Plan? Mr. Counter responded that Mr. Ray Long and Mr. Gus Ben-David have agreed to help with this project. We don't know exactly how long it will take but we assume it will be completed within 12 months. There were then questions from Commissioners about placing restrictions on domestic animals, cats, dogs, etc. to protect the wildlife habitat. The applicant stated that there were no restrictions in place now and that they would need the experts' advise as to how best to preserve the wildlife habitat.

Ms. Eber asked about the affordable housing issue? Mr. Wallace stated that they have a 1.7 acre parcel available on the end of the West Tisbury Road and we proposed to create rental space there with 3 units, 1 to be marketed at market rate, 1 for the caretaker unit, and one to the Regional Housing Authority (RHA) for low income rental. He stated that the Zoning Board of Appeals must approve this proposal.

Ms. Bryant asked how they would fill the caretaker position, would they take applicants from the 707 list? Mr. Wallace stated they are interviewing qualified applicants, they may or may not be on the list.

There was further discussion about the affordable housing provisions, whether they meet Commission's 10% requirement, the number of bedrooms provided in the 1 RHA unit, and the possibility of having the caretaker position filled by a 707 applicant. Mr. Wallace stated that they haven't made final plans with the RHA yet. His intent is to



create something nice, not something that will be used as an example of what people don't want to see in the their neighborhood for affordable housing.

When there were no further questions Ms. Eber called on members of Town Board to give testimony, there were none. She then called on public testimony.

Mr. Gus Ben-David, stated that this is a fragile area and lots 8 & 9 are in direct contact with the Neck portion of the land. He used the Northern Harrier as an example, a ratorial bird with a number of idiosyncrasies, which is particularly sensitive to human disturbance, and will often change it nesting place from season to season and then return to the original nest once again. If at all possible these 2 lots should be eliminated or at least require that the area be left as natural as possible. There are other species here, otters for instance. This is a natural and organic treasure and I request that the MVC use great care in deliberating on this decision. There are some admirable qualities to this plan but also some place I think we could do better.

Mr. Simmons stated that his initial response in dealing with this project is that at least lots 8 & 9 should be left alone. His biggest concern in dealing with Open Space on the Island is how it functions. Isolated areas do have a significant habitat value but we do see a loss of continuous areas, fields, wetlands and peninsulas. The broadest habitat that can be accomplished will give us the best possible results. Eliminating lots 8 & 9 will give a larger continuous area.

Mr. Bob Woodruff stated the the proposal is central to the Pond as a whole. Recently I was in the center of this Pond and saw thousands of birds from a dozen species. This is an extraordinary area. This configuration is a geological wonder. Where else is there an area left like this. We can't stop by saying that an area that totally floods is a sufficient wildlife preserve.

When there was no further public testimony Ms. Eber called on the applicant, he had no closing statement. She then closed the public hearing at 10:15 p.m. with the record remaining open for one week.

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Mr. Filley then reconvened the regular meeting and proceeded with agenda items.

ITEM #5 - Discussion - Consideration of Edgartown Great Pond  
DCPC, Town of Edgartown

Mr. Ewing, Chairman of the Edgartown Great Pond DCPC Subcommittee, reported that they held a meeting on Tuesday and deferred to Melissa Waterman, MVC Staff, to give us an update.

Ms. Waterman stated that they had changed the name to the Edgartown Ponds DCPC since it will encompass several ponds. She then reviewed the staff notes (available in their entirety in the DCPC file), including the proposed boundaries, the perceived problems, types of districts and reasons for the designation. She reviewed 2 letters, from the Edgartown Conservation Commission and the Edgartown Planning Board, supporting the designation. (Correspondence is also available in its entirety in the DCPC file.)

There were no questions for Ms. Waterman.

Mr. Ewing closed by saying that one of the reasons for a designation at this time is the fact that the Pond was closed to shellfishing last year and since there is development taking place this is a good time to stop and study the area. The DCPC will investigate and initiate specific studies on the Ponds and find ways to rectify the problems.

Mr. Lee seconded everything Mr. Ewing said. We know that ponds are themselves living things and there is an interdependence that could be effected. We need time for a period of study to investigate the ponds.

When there was no further discussion Mr. Filley moved on to the next agenda item.

ITEM #6 - Possible Vote - Consideration of the Edgartown Ponds DCPC

It was motioned and seconded to consider the Edgartown Ponds DCPC as presented. The boundaries were read for the record. This motion passed with a vote of 10 in favor, 0 opposed, 3 abstentions (Medeiros, Morgan, Filley). (Harney was in favor.)

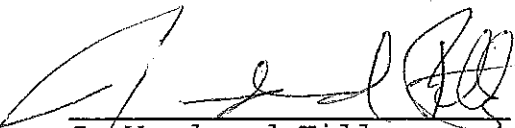
ITEM #7 - New Business

Ms. Colebrook asked for an update regarding the letter to Mr. Hagazian, Oak Bluffs Building Inspector, in regards to the Courtney and Captain's Table buildings. Ms. Borer explained that she was absent at the meeting when Mr. Hagazian's letter was read but in essence the Captain's Table has gone to the Zoning Board of Appeals and Mr. Hagazian didn't see the Courtney building as having any pre-existing non-conforming uses that would need permits. Ms. Colebrook stated she is curious about the Ken Rose building and the demolition being done near Jim's Package Store. The Commission requested Carol Borer, Executive Director, to get information on this development for the Commissioners.

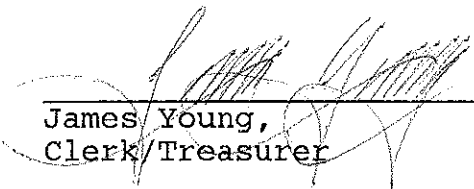
ITEM #8 - Correspondence - There was none.

The meeting was adjourned at 10:45 p.m.

ATTEST

  
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J. Woodward Filley,  
Vice-Chairman

3/23/89  
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Date

  
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James Young,  
Clerk/Treasurer

3/23/89  
\_\_\_\_\_  
Date

Attendance:

Present: Bryant, Colebrook, Eber, Evans, Ewing, Filley\*, Fischer, Jason, Lee, Medeiros\*\*, Morgan, Sibley, McCavitt, Harney.

Absent: Early, Scott, Wey, Young, Delaney, Allen, Geller.

\* Mr. Filley was not present at the table during the Swan Neck DRI.

\*\* Ms. Medeiros arrived at 8:40 p.m.