Martha's Vineyard Commission
Minutes for the Special Meeting of
August 26, 1999

The Martha's Vineyard Commission (the MVC or the Commission) held a Special Meeting on Thursday, August 26, 1999, at 7:30 p.m. at the Commission Offices in the Olde Stone Building, New York Avenue, Oak Bluffs, Mass.

At 7:38 p.m., a quorum being present, Richard Toole, Chairman of the Commission and the Selectmen's Appointee from Oak Bluffs, opened the Meeting. Mr. Toole announced that the Public Hearing for the Alien Moore Development of Regional Impact in West Tisbury (DRI #503) had been postponed at the request of the Applicant's agent.

Item #3: Approval of Meeting Minutes of August 5, 1999.

Moving on to the next item on the Agenda, Mr. Toole asked if all the Commission members present had read the Meeting Minutes of August 5, 1999. Jane A. Greene, the Selectmen's Appointee from Chilmark, said that she had not. "I figured I was going to be abstaining from the first Hearing," she explained. It was decided to approve the Minutes of August 5 at the next Full Commission Meeting, on September 9, 1999.

Item #4: Reports.

Delivering the Chairman's Report, Mr. Toole reported that MVC Executive Director Charles Clifford, Commission Staff and he had met with Congressman William D. Delahunt on Monday afternoon (August 23). Having just met with the "Call For Action" group, the Congressman wished to get the Commission's take on their proposal. "I think we explained to him the resources that we have and what we'd like to see. And he asked us how he could help. He didn't write any checks or give us any money, but I think he listened," said Mr. Toole.

Mr. Clifford said, "I think Richard [Toole] did a great job talking to him, but I'm not sure he understands what we're going up against." "I think he had his mind already made up," observed Mr. Toole. "I don't think he realized what's going on over here at all," added Mr. Clifford.
Mr. Clifford then recounted how Congressman Delahunt and his aide, Mark Forrest, did agree with the possibility of finding some special appropriations for a national estuaries program that had been proposed 1995.

Returning to their discussion about growth management on the Island, Mr. Clifford believed that the Congressman had been "enlightened" by the meeting. In addition, Congressman Delahunt had made an offer to get State officials down to the Island ("Whoever's left of the Cellucci people," remarked Mr. Clifford) to have a meeting with the Commission members. "May I suggest that we invite them to come down and discuss it with us," asked Mr. Greene, "as well as our Congressional and Senate people?" "Any time you want," replied Mr. Clifford. "With an agreement beforehand that this will be a discussion and not an argument," added Mr. Greene. Mr. Clifford noted that the Congressman planned to be on the Island the first week in October.

Mr. Clifford then spoke further about what it was that the Commission would have to communicate to State officials about the problems that the Island's success had wrought. He continued, "One of his [Congressman Delahunt's] questions was, 'When did this whole blow-up start?'" "1602," responded Lenny Jason, Jr., the representative from the Dukes County Commission.

Christina Brown, a Commission member at large from Edgartown and Co-Chair of the Land Use Planning Committee, provided the **LUPC Report**. She reported that the committee had met the Monday before (August 23) and had made recommendations for the approval of the Planet Vineyard Health and Fitness Club (DRI #501) with some conditions. She would discuss those conditions later, she said, during the Discussion and Decision segments of the Meeting.

Ms. Brown also reported that engineer Doug Hoehn was at the committee meeting as an agent for MVY Realty Trust (DRI #507). Michael Colaneri, a member at large from West Tisbury who had also attended the meeting, said that Mr. Hoehn had explained the reconfiguration of four lots, an earlier configuration of which had been approved by the Commission a few years before. The construction of a new road in the meantime had changed the Applicant's plans. Ms. Brown explained that the Applicant wished to create four buildable lots with front on the new side road, which was now a Town road. The committee had also discussed traffic issues with Mr. Hoehn.

There followed a brief discussion of a law suit that had been pending regarding MVY Realty Trust. Apparently, the Vineyard Conservation Society had sued the Commission, and the suit had been settled with prejudice, meaning that it could be opened again.

*[John Best, a Commission member at large from Tisbury, arrived at the Meeting at 7:52 p.m.]*
Providing the **DCPC Report**, Mr. Clifford announced that he had been contacted by Peter Fohlin, Executive Secretary of the Town of Tisbury, who had informed him that the Town had decided to go forward with the Vineyard Haven Harbor DCPC. The referral was expected to arrive the following week, added Tristan Israel, the Selectmen's Appointee from Tisbury.

Ms. Greene asked if anything had come from Chilmark regarding the Menemsha Creek DCPC. No, replied Mr. Clifford.

Ms. Greene delivered the **Aquinnah DCPC Exemption Committee Report**, noting that the committee had met last on Tuesday, August 24. They had heard three applications that evening: one for a septic upgrade, which was approved; one for a new three-bedroom house on 9 acres that had already had a septic system installed two years before, approved with a condition that the applicant screen in the direction of a nearby house; and a two-part application for a failed septic system and a three-bedroom house after the demolition of an existing Quonset hut, which was approved with conditions.

Michael Donaroma, the Selectmen's Appointee from Edgartown, asked Ms. Greene how many exemption applications they had heard so far. Ms. Greene said she could not answer that "off the top of my head." She then described the projects that had been denied. Robert Zeltzer, a member at large from Chilmark and also a member of the Aquinnah DCPC Exemption Committee, noted that the applications that had been approved, with one exception, had already been in the pipeline. And that exception had clearly fallen under Section 9(a), public safety, health and general welfare, he added.

John Early, the Selectmen's Appointee from West Tisbury and Chairman of the **Planning and Economic Development (PED) Committee**, reported that the group had met at 6:00 p.m. that evening. "We had a lively discussion," he observed. The committee had agreed on a definition of a dwelling unit: "A building or portion thereof which is designed for or occupied as a place of abode by one (1) or more persons, either permanently or transiently, containing cooking, sleeping and sanitary facilities."

The group had also discussed a definition of affordable housing, Mr. Early said. In addition, the committee had determined that the 240 building permit cap referred to 240 dwelling units; in other words, a multi-family structure containing three dwelling units would count as three permits.

Mr. Early added that four of the Island Towns had held their building permit cap meetings and that Edgartown would be meeting on August 31, and Aquinnah, on September 9 at 7:30 p.m. in the Town Hall.

Regarding the **Cell Town Study Group**, Mr. Clifford asked the Commission members to read over the handout they had received with the wording of the new DRI Checklist item for cell towers. [A copy of that handout can be found in the Meeting File of August 26,
Mr. Clifford wanted to know if this was, in fact, the wording that the Commission had agreed on before he went ahead and scheduled the Public Hearing. (Mr. Donaroma mentioned in passing that the Edgartown Planning Board was being sued by AT&T, which had wanted to add more antennas to an existing tower. "The Board just felt 'enough is enough' and there just might be a better solution," said Mr. Donaroma.)

Ms. Greene made a Motion to Accept the wording of the DRI Checklist item, duly seconded. Mr. Colaneri wanted to know if the wording "personal telecommunications tower" would automatically exclude ham radio operators or people who had business antennas on their property. Ms. Brown and Mr. Clifford assured him that the Federal Telecommunications Act of 1996, which was cited in the Checklist item, already exempted those uses.

Mr. Early asked if this item would cover the addition of an antenna to an existing tower. "No, this is only for towers," replied Mr. Clifford. There ensued a brief discussion of what would be encompassed by the proposed wording. "This is a very simple beginning. This is a definition that many other communities in Massachusetts have used as a beginning," observed Ms. Brown.

The vote on Ms. Greene's Motion went as follows:

**AYES:** J. Best; C. Brown; M. Colaneri; M. Donaroma; J. Early; J. Greene; T. Israel; L. Jason, Jr.; M. Ottens-Sargent; L. Sibley; R. Toole; J. Vercruysse; R. Zeltzer; and A. Gallagher.

**NAYS:** None.

**ABSTAINING:** None.

Marcia Cini, a Commission member at large from Tisbury, had not yet arrived at the Meeting.

Public Hearing: Tisbury Wharf (DRI #474).

The time was 8:04 p.m. Ms. Brown, Co-Chair of the Land Use Planning Committee and Hearing Officer for the evening, opened the Public Hearing for Tisbury Wharf (DRI #474). Lenny Jason, Jr., left the meeting room during the Hearing that followed. Ms. Brown read into the record the Notice of Public Hearing.

"The public is invited to a Hearing concerning the following Development of Regional Impact (DRI #474):
Applicant: Tisbury Wharf Company
Post Office Box 308
Vineyard Haven, MA 02568

Location: Beach Road
Tisbury Assessor's Parcels 9-C-13 and 9-C-14

Proposal: Development and/or expansion and/or change in the intensity of use related to maritime transportation facilities.

Date and Time: Thursday, August 26, 1999, at 8:00 p.m.

Place: Martha's Vineyard Commission
Olde Stone Building
New York Avenue
Oak Bluffs, Mass.

Copies of the Application and Plan are available for public inspection at the Commission Offices. Written testimony may be submitted prior to or during the Hearing.

The Hearing is held in accordance with Section 14 of Chapter 831 of the Acts of the Commonwealth of 1977, as Amended, and Chapter 30A, Section 2, of the General Laws of the Commonwealth, as modified by said Chapter 831."

Ms. Brown then outlined the procedure that would be followed for the Hearing that evening. She clarified the focus of the Hearing, noting that this had been "a long referral process, but it is now here for a Public Hearing as a Development of Regional Impact. The questions of how it got here, sidetracks that may have been taken, particularly the question of whether it is a DRI or not, [are] not on the table tonight."

Applicant's Presentation.

Ralph M. Packer, the Applicant, began by noting that every time his company came to these Meetings, "a very strong member of your group gets up and leaves," referring to the departure from the room of Mr. Jason. Mr. Packer believed that Mr. Jason should not disqualify himself because his brother was sometimes employed by Mr. Packer, pointing out the many casual connections he himself had with some of the members seated before him. A brief discussion about this matter ensued, and the group agreed that the decision was up to Mr. Jason himself.

Mr. Packer then recounted how the ferry Schamonchi had been docking at Tisbury Wharf for about a year. It had taken the company two months to make the decision to have it
dock there. Mr. Packer had then received a cease-and-desist order from the Tisbury Building Inspector, indicating that he had to go to court or apply for a Special Permit.

In researching his options, Mr. Packer had concluded that perhaps he did not, in fact, have to apply for a Special Permit. He also believed that he did not have to come to the Commission as a Development of Regional Impact. He then invited Jack Collins, an attorney who works for Mr. Packer's company, to come forward to show a video. Ms. Brown asked if the video concerned the Application before them or the question of whether or not the property should be subject to the DRI process. Mr. Collins replied that it was a combination of both.

[Ms. Cini arrived at the Meeting at 8:11 p.m.]

A few minutes elapsed while Mr. Collins attempted to set up the VCR tape and component. Since his tape did not seem to be compatible with the Commission's equipment, Mr. Collins was reduced to explaining his video rather than showing it. "What we did is, we took a video. You know, a picture's worth a thousand words ... I was hoping I'd be able to show you this." He then provided some background on the Schamonchi, for instance, how it had for many years docked at Pier 44. During the winter two years before, the Schamonchi owners had been notified that they would no longer be able to dock there for a variety of reasons. For one, the dock was in bad shape and needed repairs.

Mr. Collins continued that after the Schamonchi owners had approached Tisbury Wharf, Mr. Packer had gone to Tisbury Town officials ("the Town Administrator, the Board of Selectmen, other Boards") and asked them what they thought about the Schamonchi's docking at Tisbury Wharf. "They said they didn't have any problems," said Mr. Collins. "People said, 'Look, when it's coming into the ... Pier 44 property, you're bringing it into a situation where there is almost no parking, where basically you can't do anything to unload these people except create a big mess. You're bringing in sometimes three, four and five hundred people. If anything, it's going to be an improvement.'"

Mr. Collins then addressed the issue of contiguous ownership and the fact that, since Mr. Packer had also acquired Pier 44, definition 2.19 of the "Standards and Criteria" would apply. "As I understand it, once a piece of property is contiguously owned with a whole bunch of other pieces of property, your regulations essentially treat it as one," he said. He then enumerated all the different activities that were carried out on these pieces of property and how docking the Schamonchi at Pier 44 or at Tisbury Wharf in the end made very little difference in terms of the whole property. Moving it to Tisbury Wharf, therefore, did not constitute a development per the Commission's definitions and regulations.

"What are we suggesting you do here?" Mr. Collins asked rhetorically. "We're suggesting to you that you use common sense and use those four options in your charter under the
statute. You can say to the Board, 'Go issue a permit,' you can say, 'Issue a permit with some conditions,' you can say, 'Don't issue a permit,' or the fourth option is, 'Do what you want to do.' He then reiterated the advantages of having the Schamonchi dock at Tisbury Wharf rather than at Pier 44 and spoke of how well the buses, taxis and foot traffic moved on the Tisbury Wharf property. "There is not any adverse impact on traffic," he emphasized, "it's an improvement."

Mr. Collins went on that admittedly there had been two issues relating to the property. For one, the Building Inspector had informed them that they were not allowed to sell tickets for the ferry from a trailer on the property; now the trailer was gone. And secondly, for a while they had been selling things like suntan lotion and toothbrushes from a small building near the dock. The Building Inspector and Planning Board had declared that a commercial use, and so the Packer people had desisted.

So, Mr. Collins concluded, the property was at the Commission as a DRI only because of the docking of the Schamonchi there. "You know better than I do, and everybody else does," he said, "that once you become a DRI, basically you're a DRI forever, and anything else you want to do on the property, for all practical purposes, okay? Respectfully, what Mr. Packer has suggested is that because those other proposals might very well, if they came at the same time as this one, might very well have made us a DRI, he'd have withdrawn it."

Mr. Collins continued, "So we'd like to suggest to you that if the Board were going to say, 'Okay, this really is a DRI situation,' we'd like to be able to withdraw as well. ... We're trying to do what we thought was community service. I got to tell you, knowing the Packer operation, clearly this was motivated by community intentions ..." Mr. Collins then suggested that the Commission send the proposal back to the Planning Board and tell them that it had not been an appropriate referral.

Ms. Brown, the Hearing Officer, gently interrupted Mr. Collins and told him he had made his point, whereupon he quickly summed up his argument.

Comments and Questions from the Commission Members.

Mr. Israel, the Selectmen's Appointee from Tisbury, responded that to do what Mr. Collins was suggesting would be "totally inappropriate." He also had some serious questions as to the reasoning about the appropriateness of the referral that Mr. Collins had just presented. He noted that he could respond to that, but the Commission's task for this evening was to look at the Tisbury Wharf as a DRI.

Mr. Israel then stated: "There are many people in the community who have projects who feel ... that they're [the projects are] beneficial to the community. But we have a process, and this process has been followed, and this is a DRI, and we're asking for, you know, a presentation of what's going on on that property, of the traffic, et cetera, et cetera. So if
we're going to go down another road, I suggest we shouldn't, because we voted you a DRI. If the Applicant needs more time to prepare and come back to give a presentation ... as one Commissioner, I'm willing to wait for that. But ... we said this was a DRI. There it is. A DRI means we're going to hear a Hearing, a presentation."

Mr. Zeltzer wanted to know who operated Pier 44. "One of our tenants," replied Mr. Collins. Megan Ottens-Sargent, the Selectmen's Appointee from Aquinnah, wondered what the basis was for the referral by the Conservation Commission. Ms. Brown explained that the ConCom referral for the proposed new dolphins on the property had, in fact, been withdrawn. "Is the Applicant done with the presentation?" asked Jim Vercruysse, a Commission member at large from Aquinnah. "That's a good question," responded Ms. Brown. Mr. Vercruysse then suggested that they hear from Staff before any more questions were posed by Commission members.

Mr. Donaroma then said, "I think what the Applicant just said is, if this is a DRI, he's packing his bags and he's out of here, okay? So my question is, if that's the case and the owner obviously does not want this property to be a DRI and he's willing to just pack it up and leave -- I'm curious how Tisbury feels about that."

Mr. Israel, who is also a Tisbury Selectman, responded by saying that there was a process that everyone tried to follow. The project had been referred up over a year before, and had the Applicant been anyone else, the Hearing would have taken place long before. The issue was not the Schamonchi, he said. They were talking about a regional process, and if Mr. Packer chose not to participate, then Mr. Israel was saddened by that. "But, so be it," he added.

Mr. Colaneri noted that the Application had been applied for. "That's what got it referred up here. It's here," he observed. "The Applicant has the option of withdrawing the Application, and that's what Mr. Packer is saying he's doing. If that's the case, then it doesn't get dealt with up here, then it goes into that gray area of going back to the Town to be sorted out somehow or what have you."

Mr. Israel pointed out that if the project were sent back to the Planning Board, the Board would be obliged to deny the Application. "Now, if we're saying, 'Fine, go back to the Planning Board. Forget all about the DRI process,' then let's eliminate it for everybody on this Island. ... Let's ban the DRI process."

Ms. Greene remarked that she did not recall that this project had come up for a concurrence vote. Mr. Clifford explained that this had been a direct referral from the Planning Board and that if the Applicant withdrew his Application from the Commission, then it was automatically withdrawn from the Town as well. "Then we have an operation without a permit, correct?" asked Mr. Israel. Yes, responded a number of people around the table at the same time.
Ms. Sibley asked Mr. Packer to clarify what he was withdrawing. Was it simply the dolphins project or was it everything, including the Schamonchi docking? The dolphin project had already been withdrawn, said several Commission members at once. "But the issue is the dock, not the Schamonchi," said Mr. Clifford. He continued, "What I'm saying is, the Commission is only looking at the pier. If you were to withdraw, then the Schamonchi, by virtue of landing there, in the eyes of the Town may or may not be proper. I am not making that judgment. The referral was not -- yes, it was triggered by the Schamonchi coming there -- but the referral was done not to review the Schamonchi, but the efficacy of the dock. ... You cannot sit here and voice judgment on the boat."

Then Ms. Brown asked Mr. Packer to clarify his and Mr. Collins' intentions in light of Mr. Clifford's statement. Mr. Packer responded first by passing around a photograph taken just a few years before at the site. It appeared from the picture that there had been a more intensive use of the site at that time than there was at present, he noted. Mr. Packer concluded by saying that Martha's Vineyard had a lot of problems and that the Packer operation filled a small gap by allowing the Schamonchi to dock there. If New Bedford had its way with the Steamship Authority, the Schamonchi would be gone in any event.

He added that if his property would have to become a DRI if the ferry continued to dock there, the ferry would cease to dock there.

Ms. Sibley commented, "I find it sort of interesting that he [Mr. Packer] talks about 'getting in trouble.' I mean, I don't see why coming before the Martha's Vineyard Commission for review constitutes 'getting in trouble.' Commercial developments all over this Island of grossly smaller impact have been reviewed by this Commission and have been approved and are not 'in trouble.' " "It's the encumbering of his lot," observed Ms. Greene, "and he may not wish to do it."

Mr. Best pointed out that in many ways this was a repeat of what the Commission had heard a number of years before. The Tisbury Conservation Commission and Planning Board had repeatedly referred this and other parcels in that area owned by Mr. Packer to the Commission. Mr. Best said, "If we only referred things, as local Boards, to the Commission that were 'bad Applications,' there would probably not be a whole lot of work for us to do here. We've never felt on the Conservation Commission -- I don't think the Planning Board has either -- that we had the latitude only to refer things to the Commission that we thought were of deep concern to us."

This very thing, Mr. Best continued, had happened before after Mr. Packer had cleared his property of the storage tanks and had wanted to fill it with other things. The Conservation Commission had referred it, the Martha's Vineyard Commission had concurred, and Mr. Packer had withdrawn the proposal. "Therefore, we had nothing to hear," he said, "and it went away." Then Mr. Packer had gone ahead and filled the property anyway, he said.

Mr. Best noted that his issue was not with the project itself. In most cases, Mr. Packer was an exemplary businessperson, he said. "And he's generally, things he's done have not
been something that I would generally consider to be a controversy here at the Commission. It doesn't mean it shouldn't be before us. ... Are people going to play by the rules or are they not?"

Mr. Israel spoke of other instances of Mr. Packer's having withdrawn Applications. "The Applicant has the chance to work with the community," he said, "because there are traffic impacts, there are safety concerns that the Town has. Maybe those safety concerns would be allayed by a presentation." He emphasized that the proposal was at the Commission because it was regional and there were regional concerns in the community.

Regarding the issue of contiguous property, Mr. Israel contended that, contrary to Mr. Collins' assertions, there had been an increased intensity in the use of the property. You had two or three more ferries than what you had before, he said. "But don't say this is not a DRI when someone comes up with a 2,000-square-foot shed that you're going to come and condition the heck out of. But you're going to tell me that what's going on down there in the past 10 or 12 years ... is not a DRI, how do you tell the guy with the 2,000-square-foot building, 'You're a DRI'?"

Staff Report.

There was some confusion about whether or not to proceed with the Staff Report if Mr. Packer intended to withdraw his Application. Ms. Greene and Mr. Colaneri suggested that the Hearing proceed.

David Wessling, the Commission Staff member who facilitates the DRI process, referred to the Staff Notes dated August 25, 1999, a copy of which had been distributed to each Commission member. He spoke of the memorandum by Mr. Clifford, in which the Executive Director had evaluated the validity of the three referrals connected to this property made by the Town of Tisbury. The memorandum was included in the Staff Notes, as was a transcript of a meeting of the Tisbury Planning Board on September 9, 1998.

Tacked to the cork board behind him, said Mr. Wessling, was a site plan that showed how to get people to and from the site efficiently and safely. He went over some of the details of the plans, including the series of stanchions that were designed to control the flow of passengers, as well as the bus and taxi areas. Mr. Wessling also displayed some photographs he had taken of the site on a recent weekday. There was, he added, a little more activity on the weekends.

Mr. Wessling also noted that he had been to the site a few times and had been able to enter and exit the site without difficulty.

Mr. Donaroma asked if Staff had any recommendations or concerns. Mr. Wessling replied that it looked as if the site functioned well, that the currents into the site, for instance,
were not waiting on the road to enter. Mr. Vercruysse wanted to know if Regional Transportation Planner Andrew Grant had done a traffic analysis of the area. No, replied Mr. Wessling.

Mr. Israel wondered if Mr. Wessling thought that the plan for the internal flow on the site was a good one. He said he was a little confused because he had been to the site and had seen problems himself. So you just went there and thought it looked cool? asked Mr. Israel. Right, said Mr. Wessling.

Mr. Donaroma wanted to know if pedestrians were crossing the street in that area. Mr. Wessling said, yes, and he pointed out the locations of two crosswalks near the site. And the Applicant had mentioned that they had people directing traffic on the inside? asked Mr. Donaroma. Mr. Wessling responded that when he was there, he had not seen anyone doing this, although there were signs on the site to help direct traffic. Perhaps there was someone there to help on weekends, he said, when the site was busier.

Ms. Sibley asked if Mr. Wessling had observed "a full operation of landing, you know, the traffic moving and the people moving into town." Observing that she did not get out much during the summer, she had, in fact, gone by the site twice in the past few months. One time she had observed a bus backing out onto the road, in other words, it was not following the internal traffic plan. She had also noticed on both occasions that when the pedestrian traffic reached the point on Beach Road where there was almost no sidewalk, these people were walking in the road. Ms. Greene pointed out that at that point they were off Mr. Packer's site. "I'm just trying to remind people that we're looking at this parcel and not what goes on off of it," said Ms. Greene.

Ms. Israel observed that the project was regional because of the numbers of people that entered the community from that site. Moreover, he too had seen buses backing onto Beach Road. Lastly, he pointed to the multiple uses of the site and wondered if the parking situation and the flow of traffic would be improved if some of the other uses of the site were eliminated. "Well, sure," responded Mr. Wessling.

**Testimony from Town Boards.**

Peter Cronig, Chairman of the Tisbury Planning Board, that this whole situation had started about two years before when the Planning Board had asked Mr. Packer had come before them because they felt he needed a Special Permit. Mr. Packer, however, did not feel he needed a Special Permit. Mr. Cronig pointed out that Mr. Packer had been right when he had said earlier that the Planning Board was going to shut him down if he failed to come before them. They had held a Public Hearing, and Mr. Packer had continued to insist that he did not need a Special Permit and that he did not need to be before the Board.
Mr. Cronig continued that the Board then decided to send the Applicant to the
Commission. "And that's where we are two years later," he added. Then he explained
that his Board still had the same concerns, that now it was "after the season, which is
when Mr. Packer wants to withdraw, and the next year he'll be back and try to do it again,
and we'll have to go through the same process again." Some of the issues the Board
hoped would be addressed were: designated parking spaces on the site for taxis; proper
signage; schedules; sidewalks; crosswalks; lighting; plantings; egress from the boat; and
why a traffic study was not done.

Ned Orleans, a member of the Tisbury Planning Board, noted that one of the
purposes of zoning bylaws is, in broad form at least, to protect the health, welfare and
safety of the populace. Everything that had gone on on the Packer property since the
storage tanks had been removed had happened without a permit. "I think I'm right on
that. If it's not everything, then it's almost everything," he said. Moreover, as a bike rider
who passed the property often, it was clear to him that the activities generated by the site
threatened the safety of bicyclists; the bike lane on the Packer property was now being
used by pedestrians and moped riders. In fact, he said, it was safer just to ride down the
middle of Beach Road.

In addition, the State speed limit for the area was still posted as 30 miles per hour. "The
impact of the use of the property is not safe for people who are trying to get to it or get
away from it, particularly if they're pedestrians or bikers or moped riders," Mr. Orleans
concluded, adding that putting the Schamonchi out of business was "the last thing we
want to do. ... All we want to do is make sure that the operation of the property is such
that our citizens and visitors are safe when they're in that vicinity."

Next to speak was Marie Laursen, another member of the Tisbury Planning Board,
who wished to make the observation that the Application had been forwarded to the
Commission in May of 1998. "We're almost through the second season," she said.
"Pretty soon he [Ralph Packer] can say, 'I'm a pre-existing use.'" She added that the
Applicant was putting the Planning Board in a bad position and that it would not be hard
to make the Board "look like the bad guy. We try to work with the Applicant, and this
Applicant is going to figure out how to blame us for the Schamonchi not running in
Vineyard Haven." Ms. Laursen wanted to know if the Commission had a time limitation
for the Hearing of and Decision on an Application. "We do," said Ms. Brown, the
Hearing Officer. Ms. Brown then asked Ms. Laursen if she had anything to say about the
Application and the site plan.

Ms. Laursen said that she appreciated what Mr. Packer was doing for the Schamonchi and
the Town and she understood that his intentions were good. However, her Board would
like to ensure that the bathrooms on the site were in proper order with handicapped
access; that the lighting was improved (an accident that had occurred was due to lack of
lighting); that the provisions for parking were clarified; and that vehicles would not be able
to cut through the site as a means of moving ahead in backed-up traffic, as she had seen happen.

Ms. Laursen ended by expressing the hope that the Applicant could work together with the Planning Board and the Commission to ensure the public welfare and safety.

Ken Barwick, the Tisbury Building Inspector, said, "We are convinced that Ralph [Packer] is not going to do anything less than ... a superb job, if you will, in the operation of the Schamonchi and the other uses of that property with respect to circulation and, as Mr. Orleans brought out, the public safety aspect of it. And we appreciate that he's here tonight going through this process and hopefully will come out with a positive decision and we can move forward."

There were no members of the public at the Meeting who wished to speak for or against the proposal, nor were there any who wished to make general comments. Therefore, the Hearing moved back to Commission member questions.

More Questions from Commission Members.

Mr. Zeitzer then asked the Planning Board Chairman, "Mr. Cronig, if this were not a DRI, or if it were a DRI and Mr. Packer withdrew, then he has a choice of either meeting your requirements or you can deny him permission to use that dock as he is using it? Is that correct?" "I was just going to ask you the same question," replied Mr. Cronig. "We're in limbo if you don't see it as a DRI." Ms. Brown, the Hearing Officer, suggested that they continue with the Application itself and could discuss procedure at another time.

Mr. Donaroma asked if there had been any correspondence regarding the proposal; there had not been. Mr. Best remarked that Mr. Wessling had not commented on the other uses on the property insofar as their parking needs were concerned. Mr. Wessling responded that he had viewed the effects on the site of the activities generated by the Schamonchi. "There is separate parking for those offices," pointed out Ms. Greene. But Mr. Best observed, "If we don't know what the parking needs are for the other uses, then how are we to know if they are being supplanted by the uses of the Schamonchi?" Ms. Brown redirected the questions back to ones about the Applicant's presentation.

Mr. Donaroma, the Selectmen's Appointee from Edgartown as well as the Chairman of the Edgartown Planning Board, addressed the Tisbury Planning Board members: "If Mr. Packer decides to withdraw [his Application] from the Commission, and let's say that the Commission deems that he doesn't have an Application here, therefore it comes back to you [the Planning Board] -- do you have the ability to deal with it?" "I don't know," replied Mr. Cronig, Chairman of the Tisbury Planning Board.

Then Mr. Donaroma clarified with Mr. Cronig that his Planning Board was not against the docking of the Schamonchi per se. Right, replied Mr. Cronig, it was a public safety issue.
with the hundred of people coming off the boat. "So what Tisbury is doing is trying to follow process," said Mr. Donaroma. "It's a DRI, in other words, and you sent it here."

Mr. Donaroma continued, "The problem that we're all having is the Applicant is a Teflon Applicant. He does not want to be here."

Mr. Best wanted to clarify the following point: If the Schamonchi came in with no passengers and no freight, then the Application would not be before the Commission? A discussion of this point ensued. Ms. Brown went over some details of the referral, which, she explained, was for the increased use of the property. The time was 9:16 p.m.

Mr. Israel said he wished to ask the Applicant a few questions: Do we have a site plan? Do you have a traffic plan? Do you have any kind of presentation about the other uses on that property that he could give to the Commission? Mr. Packer said that if there were all those problems on the site, the Building Inspector should have said something a long time before. He added that this was the first time he had heard about these problems.

Mr. Donaroma said, "At Land Use we went over all that with you. We told you that we would have concerns about lighting and screening and parking and all that kind of stuff. So the Applicant was well aware of what to bring in. What I keep hearing tonight is, he doesn't want to be here. ... And I don't hear anyone saying that this is not a DRI. So if we all agree that this is a DRI and it is here, then I think it's up to the Applicant to decide either he's going to go through the process or yank it."

Mr. Donaroma continued, "The Town of Tisbury sent it here, they did the right thing. ... I don't hear the Town of Tisbury having any real problems. They have some parking concerns ... and lighting and traffic and pedestrian [egress concerns] ... Really, it's just good planning. I think you're a planner, you're a businessman [and] I would like to see you go through the process, personally. ... I think you'd end up with a better project. But that's only my personal opinion."

Mr. Packer then asked if he could go back to the Planning Board to settle their differences. "The answer's 'No' to that, loud and clear," replied Mr. Donaroma. "Anything you want to do on that property -- it's 6,000 square feet, it's on the harbor, it's going to be in the middle of the DCPC, it's on a really heavy traffic area -- I mean, we reviewed an ice cream parlor across the street from you with four stools in it. So you're in a DRI area. ... The ice cream parlor didn't get an exception, and you shouldn't either."

Mr. Packer pointed out that he had, in fact, gone through the DRI process with several of his other properties. Ms. Sibley suggested that the Applicant come to observe some other DRI processes. Many of the Applicants had, in fact, "beautiful plans"; but it was the Commission's job to ensure that those plans were codified. In addition, even if the Applicant had an excellent track record, the property could be sold, in which case there might not be a comparable sense of responsibility on the new owner's part. In any event,
everyone else was required to bring in lighting plans and landscaping plans, for instance; Mr. Packer should not be treated any differently.

Correspondence.

Ms. Brown noted that there had been a letter from Planning Board regarding the proposal that had come with the referral and had been included in the Staff Notes of August 25, 1999. Mr. Wessling stated that there had been no recent correspondence, although there had been correspondence "about the process" that came in six or seven months before. Mr. Best wondered whether -- recent or not -- that correspondence would be relevant to the Hearing. Mr. Wessling explained that the Conservation Commission had submitted the old correspondence and reminded the Commission members that the project that had triggered the Conservation Commission referral (the new dolphins) had been withdrawn.

"What permit did Mr. Packer apply for?" asked Mr. Colaneri. One for a change in the intensity of use of the property, replied Ms. Brown.

Closing Statement by the Applicant.

Jack Collins said that he appreciated the Commission's time and that he felt they could "agree on about 85 percent of all this." He asked if there was any doubt that if the Applicant worked with the Planning Board, that they would be dealing with the same issues that the Commission would. "The Planning Board can also have a Public Hearing at the same time that this is going on, if you'd like to get moving on it," replied Mr. Donaroma. "They just can't make a vote. ... You can start working with them anytime."

Mr. Collins then suggested that a way to resolve the impasse was for the Commission to tell the Planning Board to go ahead. "We'll cooperate," he said. Also, he understood that if the Applicant did not want the property to be a DRI, he could simply withdraw. "We would like to be able to do that in a very nice way, in a cooperative way."

Ms. Sibley responded, "The only way to withdraw is to withdraw your permit application before the Planning Board." She explained that if the property tripped the DRI Checklist, the Planning Board was not free to issue a permit to the Applicant unless the Commission had okayed it. "Which means you can't do back and work if out with them [the Planning Board]," said Ms. Sibley.

A discussion continued along this line. It was Mr. Collins' contention that there should have been Commission Concurrence before this project had been heard; that was his interpretation, he said. If the Commission disagreed, then the Applicant would withdraw the Application from the Planning Board and from the Commission. "And then we very well may reapply with that and say, 'By the way, we'll work it out if you don't send us to the Commission.'" Then he said that it was clear that his client did not want to be a DRI; at the same time, his client wanted to keep the Schamoni.
"If there's some way you can do that, that's great," Mr. Collins continued. "We haven't had the opportunity, as some people have pointed out tonight, to address the issue of whether it ought to be a DRI. We didn't spend any real time making a presentation." If the Commission wanted to see a traffic study and so forth, then Mr. Collins suggested that the Commission "politely tell us to come back in a matter of weeks with the traffic and with the parking and the lighting and all those things. And we'll do that."

Mr. Zeltzer asked if the Commission could not nominate a proposal for DRI status on its own. No, answered several Commission members, that was the case with a DCPC.

Mr. Donaroma once again made it clear to the Applicant and his attorney that if they reapplied to the Planning Board for a Special Permit, the project would still have to come back to the Commission; the Board had no choice in the matter.

Mr. Israel then said, "At the risk of being accommodating, I'm willing to give the Applicant what he wanted if he wished us to continue this [Hearing] so he could make a better presentation to [the Commission]. I would certainly myself entertain that. Otherwise, I say, let's close the Hearing and vote on this."

"I would agreed with Tristan [Israel]," said Mr. Donaroma. "But I hear the Applicant does not want this to be a DRI and wants to yank it." Mr. Collins interrupted Mr. Donaroma and contradicted his [Mr. Donaroma's] last statement. "No," said Ms. Greene, "you're here -- now. Either you want to come forth with better plans so that we can review this project or you're going to yank it. That's the question. One or the other."

Mr. Collins seemed to waver and was talking about possibly bringing back more elaborate plans when Mr. Donaroma interrupted him. "I think I'm getting to my wits' end here," he said, "and I can see the frustration the Town's going through. It just goes on and on and on. So I have a question, point of order. If we close the Hearing right now, the gavel falls. We're done. But could he pull it at any time?" "Any time until we vote," answered three Commission members at the same time.

Mr. Clifford, the Executive Director, was clear on the issue: "If you vote tonight and he hasn't pulled it, it gets filed." "Can we vote tonight?" asked Mr. Early. "Not without a Land Use Planning Committee Meeting," said Ms. Greene. "We won't be voting tonight," confirmed Ms. Brown.

There followed further discussion about whether or not to close the Hearing that evening. It was established that Mr. Collins and Mr. Packer were willing to return to the Commission with a full presentation. However, Mr. Collins said he would not waive the possibility of the project's not being a DRI.
Ms. Brown then addressed Mr. Collins: "Mr. [Collins], would you be ready to come back with more detailed plans for planting, landscaping, traffic flow, parking, assignment of parking, lighting in two weeks? That's September 9." Mr. Collins responded that this date was too soon.

Mr. Zeltzer thought that in addition to the plans already discussed, a freight handling plan would be appropriate. Mr. Israel wanted the additional plans to be submitted early enough so that Staff could review them thoroughly before the full presentation at the Continued Public Hearing. Ms. Brown noted that the Applicant was welcome to return to the Land Use Planning Committee before the next session of the Hearing to talk about specifics, so it would be clear what was being asked for. It was decided to hold the Continued Public Hearing on Thursday, October 7, at 7:30 p.m.

Before the close of that evening's Hearing session, Mr. Vercruysse wanted to know if in the end the Applicant intended to withdraw the Application. "I don't want to come to another Meeting and waste my time," he said. Ms. Brown explained that if the Applicant withdrew before the Continued Public Hearing, that would be that; there wouldn't be another Meeting on this Application.

"Could we make the Land Use Planning visit a requirement, so that Staff will have time to evaluate the material ...?" asked Ms. Cini. "Sure," said Ms. Brown. Then Ms. Brown let the gavel fall and announced that the Hearing was continued until October 7. She thanked everyone for their attendance. The time was 9:46 p.m. Mr. Toole called for a five-minute break.

[Ms. Cini left the Meeting after the Hearing was closed and did not return.]

Item #6, Decision: Planet Vineyard Health and Fitness Club (DRI #501).

[The beginning of the proceedings following the break was not caught on the tape. It is not known who made the Motion to Move to Item #6.]

[Mr. Jason had returned to the Meeting Room.]

The Meeting reopened at 9:55 p.m. The Meeting moved to Item #6, Decision for Planet Vineyard Health and Fitness Club (DRI #501). The process was started with a report by Christina Brown, Co-Chair of the Land Use Planning Committee, on the conditions that the committee members had formulated for the project that they were recommending to the full Commission.

The conditions were: 1) that the Commission accept the revised landscaping plan, plus the planting of twelve (12) tall shade trees along the south side of the property to break the roof line, such shade trees to be at least two and a half to three inches in diameter and to be chosen from the species list provided by the Martha's Vineyard Airport Commission; 2)
that the approval be conditional upon receiving a letter from the Edgartown Fire Chief that okayed the sprinkler system and the access system for the facility; 3) that no photographic chemicals be used or disposed of on the property; 4) that a Certificate of Compliance shall be issued by the Commission before the Certificate of Occupancy would be issued; and 5) that the Applicant shall make an affordable housing contribution of $9,000.

Mr. Colaneri made a Motion to Approve with Conditions, duly seconded. Mr. Toole opened up the Meeting for discussion. Mr. Israel wished to propose a sixth condition about limiting the functions of the facility. After some discussion the following condition was formulated: that the facility would be used as a health club, with incidental uses, and a photographic studio only.

Mr. Zeltzer asked where the non-metal finishes on the building would be. Joan Lanza of Hughes Home Builders, Inc., an agent for the Applicant, replied that white cedar shingles would be used on the front facing Barnes Road and on the gable end. On the side facing the parking lot would be "8 feet of metal and then 3 feet of a stone that looks like fieldstone in a barn."

After a brief discussion of whether or not the limits of the function of the building had been in the Minutes for the Hearing, the Commission was ready to vote. The voice vote was 14 Ayes, 0 Nays and 1 Abstention.

AYES: J. Best; C. Brown; M. Colaneri; M. Donaroma; J. Early; J. Greene; T. Israel; L. Jason, Jr.; M. Ottens-Sargent; L. Sibley; R. Toole; J. Vercruysse; R. Zeltzer; and A. Gallagher.

NAYS: None.

ABSTAINING: M. Cini.

[Ms. Cini had left the Meeting at 9:46 p.m.]

Mr. Toole wished the Applicant luck. The time was 10:08 p.m.

Item #3: Reports [continued].

Ms. Cini had left the Meeting, so Staff member Christine Flynn was asked by Chairman Toole about any goings-on with the Affordable Housing Subcommittee. Ms. Flynn indicated that the committee had not met since the last Full Commission Meeting; the next Meeting would be at the Commission Offices at 5:30 p.m. on September 1, 1999.

"No budget," declared Mr. Clifford, providing the Legislative Update.
Item #9: Correspondence.

The Commission members read a letter from Nancy Heffner Donovan and Stephen P. Donovan, Jr., expressing their unhappiness with the recent changes at the Martha's Vineyard Airport. Among their complaints were: "woefully inadequate" baggage claim; "echo acoustics" that made it impossible to understand announcements over the PA system; and lack of adequate curb drop-off space.

"I concur with the noise," remarked Mr. Best, "it's the noisiest terminal I've ever been in." Mr. Israel thought that the Commission should respond, "being the people took the time to write the letter." Ms. Sibley, who is also a member of the Airport Commission, indicated that the Donovans were going to get a response from that commission and from herself as County Commission Chairman.

Ms. Sibley commented that there was indeed a vast area of grass that "totally under-utilizes" the space, which could be used for additional parking. There had been serious problems, she said, with long-term parking in what was supposed to be a short-term parking area for departures. There would be new signage indicating the parking areas. Also, there were commercial trucks in the long-term parking lot that should not be in that lot. "We're trying to get rid of them," she said.

Ms. Sibley continued that she thought the speaker system might be at fault for the acoustic problems. "My own personal testimony, Linda [Sibley]," noted Mr. Best, "is you can't talk on the phones there because of the airplanes." "It's also dirty," said Mr. Donaroma. Ms. Sibley explained that they were very short-staffed and had been unable to add any additional staff because the State had not yet approved its budget.

Mr. Israel made a Motion to respond to the letter, telling the Donovans that the Martha's Vineyard Commission had read the letter and shared their concerns and that the Commission would pass their letter on to the Dukes County Commission and the Airport Commission. His Motion was seconded.

Mr. Colaneri then remarked on the lighting at the airport. "If the Airport Commission is working on issues and problems -- Has anybody been up there at night? If that's what the FAA allows for lighting up there, ... we can allow just about anything. That place, Linda [Sibley] -- you talk about nighttime glow, that place is definitely aglow with zillions of lumens." Ms. Sibley responded that they felt there was a safety problem with leaving the terminal late at night.

Mr. Toole asked for a vote on Mr. Israel's Motion. "And we're adding 'dirty' to it, too," said Mr. Donaroma. The vote went as follows:
AYES: J. Best; C. Brown; M. Colaneri; M. Donaroma; J. Early; J. Greene; T. Israel; L. Jason, Jr.; M. Ottens-Sargent; L. Sibley; R. Toole; J. Vercruysse; R. Zeltzer; and A. Gallagher.

NAYS: None.

ABSTAINING: None.

[Ms. Cini had already left the Meeting.]

Mr. Clifford then described a letter addressed to the Commission from the proprietors of the Windfarm Golf Practice Facility (DRI #432 and #432M), Tim Creato and John Baliunas, who had been talking to Oak Bluffs Town officials about lending out two or three of the driving spaces to companies who might want to have small get-togethers. Mr. Creato had spoken to Mr. Clifford about getting a letter from the Commission indicating that the Commission had no objections to this proposal. Mr. Clifford then added that liquor would be served at the gatherings.

The Executive Director then explained that this was allowed in Oak Bluffs recreation areas under the Town's bylaws. A discussion of the matter ensued. Mr. Jason moved that the Commission send a letter of objection, duly seconded. Mr. Toole asked for discussion.

Ms. Sibley pointed out that one of the concerns during the Public Hearing had been that there would be a "creeping development" of that area, which was agricultural and residential. Therefore, she said, she strongly objected to the proposal. Mr. Donaroma remarked, "I object to the booze stuff. And I don't have a problem with the club going there if somebody didn't want to promote further use of it."

Mr. Clifford said that it was his understanding that Mr. Creato was contending that it would be the same as somebody's renting out some lanes at a bowling alley. The people using it would bring the liquor, and the operators of the facility would have to have a license from the Town, with insurance, if people brought their own alcoholic beverages to their property. The Board of Selectmen would grant permission on a case-by-case basis.

Mr. Toole observed that the Commission had enough trouble already with this project. He then read aloud the aforementioned letter from Messrs. Creato and Baliunas.

"We approved a driving range," said Mr. Jason. "Now they're suggesting they're going to have something else in addition to the driving range." Other Commission members echoed Mr. Jason's sentiments. Mr. Colaneri noted that there was nothing about such private parties in the Decision. "What I'm suggesting," said Mr. Jason, "is that the Decision is very specific as to what is allowed." Mr. Colaneri responded that the Oak Bluffs Board of Selectmen should make the decision about the recent request.
Mr. Toole pointed out that the Commission had not endorsed private parties. Ms. Sibley, Mr. Donaroma and Mr. Jason agreed. Ms. Greene wanted to know specifically what the Selectmen had requested. "All we know is what the Applicant sent to us," she said.

Mr. Zeltzer said, "We approved a driving range, and specifically they represented it, and they brought in all their friends and neighbors and neighbors' wives to stand up in the room and tell us that it was great for the kids and it was a wonderful family resource and family-family-family and kids and high school, and that's all I heard. We approved a family kind of a place ... We also didn't tell them they couldn't do skeet shooting there. Does this mean they can go skeet shooting?"

The discussion wound down, and Mr. Best asked that the Motion be repeated. "Send a letter that we object," replied Mr. Jason. "The Motion would be, send a letter showing that all that's approved on those premises is a driving range." It was agreed to add that any additional uses would only be considered as a Modification of the Commission's Decision and Modified Decision (232 and 232M).

The Motion passed unanimously.

AYES: J. Best; C. Brown; M. Colaneri; M. Donaroma; J. Early; J. Greene; T. Israel; L. Jason, Jr.; M. Ottens-Sargent; L. Sibley; R. Toole; J. Vercruysse; R. Zeltzer; and A. Gallagher.

NAYS: None.

ABSTAINING: None.

[Ms. Cini had already left the Meeting.]

Item #8: New Business.

Ms. Brown moved that because Mr. Clifford would be off-Island on September 23, the continuation of the discussion on growth management with the "Call For Action" group should be moved to September 30. The Motion was seconded, and it passed unanimously.
A Motion was made to adjourn, duly seconded. The meeting adjourned at 10:23 p.m.

Chair

Date

Clerk/Treasurer

Date

PRESENT: J. Best; C. Brown; M. Cini; M. Colaneri; M. Donaroma; J. Early; J. Greene; T. Israel; L. Jason, Jr.; M. Ottens-Sargent; L. Sibley; R. Toole; J. Vercruysse; R. Zeltzer; and A. Gallagher.

ABSENT: B. Hall, Jr.; M. Lazerow; T. Henson, Jr.; and M. Bolling.

[These Minutes were written and typed by Pia Webster, MVC Secretary.]
Summary of Revisions to the
Meeting Minutes of August 26, 1999
Proposed by Commission Members
in the Meeting of September 23, 1999

[An excerpt from the Meeting Minutes of the Special Meeting of September 23, 1999 follows immediately. It describes the actions taken by the Commission with regard to the Minutes of August 26, 1999.]

There were no revisions proposed to the Special Meeting Minutes of August 26, 1999.