

THE MARTHA'S VINEYARD COMMISSION

BOX 1447 • OAK BLUFFS
MASSACHUSETTS 02557
(508) 693-3453
FAX (508) 693-7894

Date: April 16, 2004
To: Building Inspector, Town of Oak Bluffs
From: Martha's Vineyard Commission
Subject: Development of Regional Impact
Subdivision of 26 residential lots and conservation of 190 acres
Project: The Preserve at the Woodlands / Southern Woodlands Reservation
DRI Number 555-2
Applicant: Corey Kupersmith et al, 50 Locust Ave., New Canaan, CT 06840
Project Location: 448 Barnes Road, Oak Bluffs, MA; Assessors Parcels 36-10, 36-12,
36-27, 36-27.1, 36-27.2, 41-2, 41-10, 42-2, 43-54, 49-15, 49-16,
50-38

Decision of the Martha's Vineyard Commission

SUMMARY

The Martha's Vineyard Commission (the Commission) hereby approves, with the conditions listed in Attachment A, the granting of permits for the development, as submitted and modified by the conditions herein contained, in the application of Corey Kupersmith et al, 50 Locust Ave., New Canaan, CT 06840, including:

- The definition of an area of approximately 190 acres to be sold to the Martha's Vineyard Land Bank; the use of this property for any purposes consistent with its legislative mandate and its rules, regulations and usual procedures including the possible presence of an emergency access route to serve the residential subdivision.
- For the approximately 93-acre area to be developed as a 26-lot subdivision, the Plan as proposed by the applicant and conditioned in this decision.

This Decision is rendered pursuant to a vote of the Commission on April 8, 2004.

The permit-granting authorities of the Town of Oak Bluffs may now grant the request for approval of the Applicant's proposal in accordance with the conditions contained herein and may place further conditions thereon in accordance with applicable law or may deny the request for approval.

FACTS

The project was presented as a Settlement Proposal. The property was, at least in part, the subject of previous proposals referred to the Commission by the Building Department of the Town of Oak Bluffs for action pursuant to Chapter 831 of the Acts of 1977, as amended (the Act). The project area has been the focus of three golf course proposals, reviewed and denied by the Commission as Developments of Regional Impact (DRIs) # 515, 543 and 556. A proposal for residential subdivision and rental units, submitted under the Chapter 40B comprehensive permit statute, was reviewed and denied as Development of Regional Impact # 555. A discretionary referral was received for cutting trees on the property, and the Commission voted that the tree-cutting project was a DRI, numbered 555-1. No application materials were received and that project was not reviewed. Notwithstanding the status of the project as a Settlement Proposal, the proposed development is a Development of Regional Impact (DRI) as defined by the Commission's Standards and Criteria for DRIs, Section 3.202 and 3.205 and was reviewed as such by the Martha's Vineyard Commission.

The Application and notice of public hearing relative thereto are incorporated into the record herein. Martha's Vineyard Commission staff document exhibits are also incorporated into the record by reference.

Hearings: A duly-noticed public hearing on the Application was conducted by the Commission on April 8, 2004 pursuant to the Act and M.G.L. Chapter 30A, Section 2, as modified by Chapter 831.

Description: Of the total ± 290 acres of the subject property, to conserve ± 190 acres of publicly accessible open space – the "Southern Woodlands Reservation" – by the Martha's Vineyard Land Bank and on the remaining ± 93 acres – the "Preserve at the Woodlands" – to develop 26 single-family house lots, and a private recreational area consisting of a horse barn, stable and riding ring, a man-made pond and other open space.

The Plan: The following plans and documents submitted by the Applicant and contained in the Commission's project file constitute "the Plan."

- "The Preserve at the Woodlands - Prepared for the Martha's Vineyard Commission" Revised April 5, 2004
 - Attachment A – Information from previous MVC Denial of DIGC III
 - Attachment B – "Memorandum" from James G. Ward to Brian Lafferty Regarding Interim and Permanent Restrictions, dated April 5, 2004
 - Attachment C – Excerpts from MVC Letter to Brian Lafferty, dated February 10, 2004

- Attachment D – Applicable Excerpts from Oak Bluffs Zoning By-Law
- Attachment E - "Traffic Assessment – The Preserve at the Woodlands – Oak Bluffs, Massachusetts" Prepared for C.K. Associates; MS Transportation Systems, Inc.; March 2004
- "Memorandum" to MVC from The Preserve @ the Woodlands Regarding Clarifications, dated April 5, 2004
- "The Preserve at the Woodlands - Oak Bluffs Massachusetts" by Ducharme & Wheeler, Inc., 1092 Main Street, Bolton, Massachusetts Consisting of one sheet as follows:
 - Conceptual Lot Layout Plan – Exhibit A; Scale 1"=200'; Dated 3/19/04
- "Southern Woodlands Reservation – Preliminary Management Plan", Martha's Vineyard Land Bank, approved by vote of the Oak Bluffs Town Advisory Board March 22, 2004 and approved by vote of the Land Bank Commission March 22, 2004.

FINDINGS AND CONCLUSIONS

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 notes that, notwithstanding the project's status as a Settlement Proposal, the Commission has reviewed the proposal as a Development of Regional Impact, using the procedures and criteria that the Commission normally uses in evaluating the benefits and detriments of such a proposal. The Commission has considered the Application and the information presented at the public hearing, including listening to all the testimony presented and reviewing all documents and correspondence submitted during the hearing and review period.

The Commission also notes that the Applicant had applied previously for approval of housing and three times for approval of a golf course on the same property. The Commission finds that the Applicant has responded to concerns expressed during the hearings and in the decisions for those proposals, and that the present proposal represents revisions that have significantly reduced the potential negative impacts associated with the earlier proposals. Indeed, the Commission finds that the Applicant has presented a project that is not merely acceptable, but will make a significant contribution to open space preservation on the Island.

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

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

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

The Commission finds that the proposed development is entirely appropriate, particularly in view of the alternatives.

The site in question is a large unbroken block of upland woodland, a virtually undisturbed natural ecosystem and habitat that possesses significant natural, ecological, historical, scientific, cultural and other values needing protection as required by Chapter 831 of the Acts of 1977, as amended. The Commission has determined that these values have been considered and protected to a great extent by the proposed plan.

Consistent with its statutory mandate, the Commission has maintained a long-standing concern for the protection of the ecologically fragile areas of the Island, particularly where those areas are unique habitats for plant and animal species. In Chapter 831 the legislature stated, "*The island of Martha's Vineyard possesses unique natural, historical, ecological, scientific, cultural, and other values and there is a regional and statewide interest in preserving and enhancing these values. These values are being threatened and may be irreversibly damaged by uncoordinated or inappropriate uses of the land.*"

The Commission believes that the preservation in its natural state of the majority of the existing natural environment of this property, as well as the positive impact on the traditional natural character and image of Martha's Vineyard as a whole, are major benefits.

The Commission believes that the proposed use for the site will have greater public benefit while significantly reducing the environmental damage, in comparison with the alternative proposals previously presented for the property. The Commission finds that the proposal includes a mix of clustered market homes, sited and laid out to minimize encroachment on and fragmentation of the woodlands, conserving a large part of the most ecologically valuable land. It has been planned to place minimal burden on Oak Bluffs taxpayers, to respect the town's nutrient loading limits and to mitigate the impacts of lighting and landscaping from households. This approach will preserve a great portion of the forested area, causing minimum disruption to the significant habitat, and will produce minimum degradation of groundwater and surface water quality.

The Commission notes that part of the property is to be purchased by the Martha's Vineyard Land Bank, thereafter to be managed by the Land Bank according to a Management Plan to be developed after careful assessment of the resources and

with opportunity for public input and involvement. This, combined with the Land Bank's legislated responsibilities and adopted practices, cause the Commission to be satisfied that the resources therein will be forever protected from inappropriate uses, and that the public will forever enjoy appropriate recreational and other opportunities on this property.

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

With respect to wastewater and groundwater, the Commission finds that, as stated in the application and confirmed by MVC staff, nitrogen contribution will meet all regulatory standards, and the standards for water quality for groundwater, for Lagoon Pond and for Sengekontacket Pond, as found in the Southern Woodlands DCPC regulations, and will more than meet the requirements within the zone of protection of the Farm Neck Town drinking water well, a nitrogen-sensitive area. The Applicant has demonstrated that there will not be a negative impact from nitrogen loading on Sengekontacket Pond or Lagoon Pond. The Commission notes that the zone of contribution for the Lagoon Pond town drinking water well lying within the southwest corner of the project site will be protected from development as this coincides with areas proposed to be held and managed by the Martha's Vineyard Land Bank. The project creates a minimal amount of impervious surface and will yield a modest amount of stormwater that will be controlled with a clear management plan. The Commission is also concerned about the use of chemical fertilizers, fungicides, herbicides, and pesticides, and notes that the Applicant has offered controls on their use and has provided limitations on the extent of the site that may be developed as managed landscaping, thus further limiting the use of such products. The Commission also notes that the area to be held by the Martha's Vineyard Land Bank will be managed as open space, with no expectations of high-maintenance landscaping on that portion.

With respect to open space, natural community and habitat, the Commission notes that the proposal will put 190 acres of the site into the care and keeping of the Martha's Vineyard Land Bank. The Land Bank's Preliminary Management Plan calls for a biological survey of the property to serve as a base for formulation of management objectives. Of the subdivision area, approximately 69 acres will be used for homesites and roads, with covenants restricting the "area of alteration" for construction of homes, lawns, landscaping and accessory uses to no more than 25% of lot area or 20,000 square feet, whichever is greater. Outside the lot building areas, the cutting of trees will be limited to no more than 30% of trees, and the disturbed areas will be re-vegetated with indigenous species. The Commission is of the opinion that the site is an important property contributing to the protection of species of special concern and to the Island's overall biodiversity. The Commission notes that this property is shown on the Commonwealth's Biomap as core habitat supporting rare or threatened plant and animal species and was designated Priority Habitat in July 2003. In fact, the project site comprises the great majority of the

BOOK 996 PAGE 0170

block of Oak Bluffs core habitat identified north of the State Forest. An earlier study for part of the property discovered evidence of the threatened Imperial Moth, which according to the Commonwealth is only found on Martha's Vineyard, and two species of concern, the Pine Barrens Zale Moth and Spiny Oak Worm Moth. The proposal considers and protects most of the woodland resources of the site. The proposal will preserve the significant area of pitch pine habitat in the vicinity of the former Webb's Campground, as that area is part of the approximately 190 acres of the site that will be held and managed by the Martha's Vineyard Land Bank. The proposal will leave intact much of the woodland habitat of the Southern Woodlands, a habitat that can accommodate rare interior and forest-dwelling species. The residential subdivision involves the disruption to some of the significant habitat, including Imperial Moth habitat, on this part of the property and will create a more suburban habitat, but this should be tempered by the inclusion of 23+ acres of private open space/recreational area, and by the proposed covenants and regulatory protections in place regarding eventual development of each homesite.

With respect to night lighting and noise, the Commission concludes that there will not be considerable negative impact from the modest number of houses on the night lighting and noise in the area – both of which will be offset by owners' covenants offered to minimize or mitigate these issues.

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

With respect to traffic and transportation, the Commission notes that there will be relatively little traffic impact from the proposed subdivision, and that the County Road access will efficiently utilize a road that can easily accommodate the increased burden.

With respect to scenic values, the project promises outstanding positive impacts regarding scenic values, particularly in light of alternatives. The Commission notes that the primary vistas on the site, including the bluffs along Barnes Road, will be included in the land to be held by the Martha's Vineyard Land Bank, and should be preserved in their natural state, for the public to enjoy in perpetuity.

With respect to character and identity, the Commission finds that the project will have a positive impact in that it will largely maintain a natural forested area. The Commission notes particularly that the subject property is the largest of the few undeveloped areas of any size remaining in the Town of Oak Bluffs. Its preservation as open woodland allows the town to retain a sense of the rural identity that is essential to any part of Martha's Vineyard, and is often overlooked in light of the town's long history of hosting public facilities for more organized forms of recreation and other community activities. The Commission notes that the majority of existing trails, classified as Special Ways by the Town, would be located on the proposed Southern Woodlands Reservation, and that the Land Bank's Preliminary Management Plan calls for opening the property for hiking, non-

motorized bicycling, horseback riding and other passive uses; for maintaining the existing trails and for installing new trails as needed and as appropriate, and to work to connect the property with other conservation areas and neighborhoods by means of the cross-Oak Bluffs trail and other trails and nearby roads. Two trails, part of Chaise Road and almost all of Back Road Connector, would remain as trails within the proposed subdivision, although not open to the public. Regardless of whether or not the public presently has the right to use the Special Ways traversing the proposed subdivision, the historical character of the Special Ways – remnants of the cart paths dating back a century ago or more – will be maintained. The Preliminary Management Plan for the Southern Woodland Reservation also calls for investigation of the feasibility of resurrecting the former campground in a fitting location. The area known to hold significant archeological resources, near the Head of the Lagoon, would not be developed, but would be part of the land owned and managed by the Land Bank.

With respect to the impact on abutters, the Commission finds there was great effort to limit the negative effects of the project. It appears that local negative impacts, in the way of traffic and other concerns, will be minimal. Positive impacts will include affirmatively granting public access to the 190 acres of proposed conservation land, thereby removing any question of the public's right to continued use of the Special Ways on this parcel. There is protection of existing vegetative screening and creation of a buffer area between the proposed subdivision and the existing abutting residential area. The modest scale of the proposed construction project will have little negative impact on abutters with respect to dust, noise and traffic.

A4 The Commission finds that the proposed development will have a beneficial impact upon the supply of needed low income housing for Island residents (Section 15(d) of the Act).

The Commission notes that the project includes a unique and comprehensive proposal to mitigate affordable housing impacts. The Commission finds that the affordable housing proposal promises to produce tangible products with respect to the notable lack of affordable housing throughout the Island. The proposed land swap should particularly produce significant results, replacing a landlocked parcel with one that can be developed for affordable housing in that it is accessible by road as well as being close to infrastructure and community activities that should enhance the livability of any housing to be constructed there. If Oak Bluffs accepts the proposed land swap, it will acquire land well-suited for the production of affordable housing. The proposed Kupersmith Affordable Housing Trust should provide further resources for development of affordable housing. The Commission notes that the proposal includes on-site housing for caretaking and stable staff, thus reducing the long-term affordable housing needs directly associated with the project. Lastly, the Commission notes that the Applicant, in conjunction with one of the earlier development proposals, previously donated one acre of land to Island Elderly Housing, Inc. for construction of ten units of senior assisted living.

BOOK 996 PAGE 0172

A5 The Commission finds that the proposed development will have positive impacts on the provision of municipal services and the burden on taxpayers in making provision therefore (Section 15(e) of the Act).

With respect to the provision of municipal services, the Commission notes that the project will not seriously burden the capacity of town schools, town roads or public safety (fire and police). The Commission notes that the Oak Bluffs Water District has adequate water supply for the subdivision's drinking water. The Commission notes that the Applicant has offered to be responsive should the District request the Applicant to restrict water usage from the proposed private water well for the artificial pond. The fact that the individual houses will have individual septic systems will mean that there will be no need for Town sewerage. The residential subdivision as proposed appears to most likely be occupied primarily by seasonal residents; thus demands upon the Town's schools and bus system should be limited.

With respect to the burden on taxpayers, the Commission finds that the development will have a positive financial impact, providing substantial tax revenue without generating substantial need for services.

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

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

The Commission finds that the project is consistent with the objectives of the Oak Bluffs Master Plan of 1998, including the goal "to manage growth...in order to stabilize spending for services and to maintain the rural character of the neighborhoods..." and the policy "Encourage a variety of recreational uses in the R-3 District, including active recreational uses" (At the time, the subject property was zoned R-3). The proposal includes some residential growth, in the form of 26 homesites, and some recreational uses, mostly passive.

The Commission finds that the project is consistent with the Oak Bluffs Open Space Plan of 1996, which has among its objectives to preserve open space and the ancient ways in the Southern Woodlands. Survey results included the following relevant items "Significant support exists for preserving an open space use for as much of the southern woodlands, Featherstone and Webb's as possible. Town residents reject both unlimited development and no development whatsoever for this area...A well-developed plan for the southern woodlands/Webb's/Featherstone area, providing for golf course facilities, preservation of large wooded tracts with continuous walking trails, a picnic area, and modest, non-intrusive recreational

THE MARTHA'S VINEYARD COMMISSION

elements will most likely appeal to the greatest number of residents. Purchase of

the area by both the Land Bank and the Town have the largest BOX 1447 • OAK BLUFFS

MASSACHUSETTS 02557

(508) 693-3453

FAX (508) 693-7894

A8 The Commission finds that the proposed development will not contravene land development objectives and policies developed by regional or state agencies. (Section 15(h) of the Act).

The Commission notes that the development is consistent with the following policies of the Martha's Vineyard Commission, including the Martha's Vineyard Commission Regional Policy Plan, adopted by the vote of the Martha's Vineyard Commission, June 1991.

- IV-9: "Habitats for species that are threatened, rare, or of special concern on Martha's Vineyard have regional significance in New England and nationally. Plans for development affecting these critical habitats or species should acknowledge that they are extremely vulnerable and require strictest protection".
- IV-11: "Where private development of critical lands is unavoidable, preserve the capacity of the land for agriculture, water supply, habitat or community needs to the greatest extent possible through cluster development and by limiting the intensity of uses. Offer incentives to landowners whose development plans are compatible with the land's inherent values".
- IV-12: "Preserve and enhance the rural quality of life on Martha's Vineyard, and the unique character of each town. Reject qualities that are "suburban" and "urban".
- IV-13: "Test development proposals against this rural standard. Development proposals must contribute to the rural quality of life on Martha's Vineyard. This policy allows unlimited opportunities for the social and economic advancement of the people of Martha's Vineyard".
- IV-18: "The appearance of openness and great space is appreciated by Islanders and visitors and must be preserved. Manage change and growth to enhance the traditional and natural landscapes of Martha's Vineyard. Require that development plans fit the scale and quality of the inherited landscape so that generations to come will have views and open vistas to enjoy".
- IV-30: "The most important lands needing protection are pond and ocean frontages, natural habitats, farmlands, aquifer lands and buffer zones between developed areas".
- IV-42: "Preserve the quality of Island ponds, harbors, marshes and streams to encourage the expansion of fisheries, fresh and salt, shell and fin, commercial and sport. Developments which will contribute to increased productivity in Island waters will be encouraged".

- III-1: "Safe, warm, dry, affordable year-round housing must be available to the Island community. Proposals by private developers should reflect an effort to meet a share of the housing need"
- III-12: "All citizens are entitled to environmental quality and enjoyment of open space. The housing need should be met imaginatively while preserving the character of the Vineyard"

In sum, after careful review of the plan and its attendant submittals and the testimony presented by the Applicant and others, the Commission has concluded that the probable benefits of this proposed development in this location exceed its probable detriments.

B. THE COMMISSION FINDS THAT THE PROPOSED DEVELOPMENT WILL 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, as a whole, advances the Commission's land development objectives, as outlined in the Martha's Vineyard Commission Regional Policy Plan adopted by the Commission in June 1991, and as enumerated previously in section A8 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 Commission notes that the Southern Woodlands DCPC was designated because, among other things, *"The Commission specifically finds that controlled development of lands and waters within the Southern Woodlands District is necessary for the prevention of pollution of ground and surface waters in and around the District and the water quality of nearby bodies of water. In addition, lands and waters within and around the District support and affect important wildlife habitats and contribute substantially to the Island's wildlife, natural, scientific and ecological resources."* [From the Commission's decision delineating guidelines for Oak Bluffs to develop regulations for the Southern Woodlands DCPC.]

The Commission finds that the proposed development is in conformance with the following specific numeric standards of the Southern Woodlands DCPC regulations:

- keep existing natural vegetation within 50' from perimeter of district;

- keep existing natural vegetation within 100' of Barnes Road;
- no development should result in a cumulative nitrogen concentration of more than 3 parts per million in the groundwater;
- no development should result in a cumulative nitrogen concentration of more than 1 part per million in Lagoon Pond and Sengekontacket Pond.

The conditions attached in Attachment A are an essential part of this decision and will be enforced as written. If the Commission finds it necessary to seek judicial relief to enforce any condition in Attachment A, the Applicant, or its successors in title at the time of such proceedings, shall pay the Commission's attorney's fees and costs incurred in obtaining judicial relief.

The Applicant must, consistent with this Decision, apply to the appropriate Town of Oak Bluffs Officers and Boards for any other local development permits which may be required by law.

This Decision is written consistent with the vote of the Commission: April 8, 2004 and was approved by vote at the Commission meeting of April 15, 2004.

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 Oak Bluffs Town Clerk.

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, and should substantial construction not occur during said two (2) year period, then this Decision shall become null and void and have no further effect. This time period may be extended upon written request from the Applicant and written approval from the Martha's Vineyard Commission.

James Athearn, Chairman

Date

DRI No. 555-2 – The Preserve at the Woodlands / Southern Woodlands Reservation

ATTACHMENT A - CONDITIONS

After reviewing the proposal for this Development of Regional Impact, the Martha's Vineyard Commission imposes the following conditions in order to increase the benefits and minimize the detriments of the project. The analysis of benefits and the resulting decision to approve the project is based on the proposal as modified by these conditions. These conditions form an integral part of this decision. Items that derive their origin in an offer from the Applicant and that were accepted by the Commission are so noted.

1. There may be minor adjustments of the following aspects of the plan without requiring additional approval by the Martha's Vineyard Commission, provided that they are approved by the Oak Bluffs Planning Board:
 - Lot lines within the residential subdivision may change, provided that the number of residential lots does not increase and the total area of open space within the residential subdivision does not decrease;
 - Roadway layout may change;
 - Number, size, and location of the buildings in the common area may change, provided the total footprint of said buildings does not increase by more than 10%;
 - The size, shape and existence of the pond may change, provided the area of the pond does not increase by more than 10%.
2. Subject to the approval of the Martha's Vineyard Commission's Land Use Planning Committee, there may be minor adjustments to the subdivision line between the Land Bank portion of the property and the residential subdivision provided the area of the former is not reduced by more than 5%.
3. The Martha's Vineyard Land Bank shall not be required to apply to the Martha's Vineyard Commission for review of developments on its part of the property on the basis of section 3.102 ("once a DRI, always a DRI"). This approval does not apply to any development otherwise specifically identified in the MVC Standards and Criteria.
4. As offered by the Applicant, manure shall be segregated and removed at no less than weekly intervals. Any exterior manure pile shall be covered and be sited so that surface water will drain away from it.
5. As offered by the Applicant, all fertilizers shall be slow-release, water-insoluble nitrogen source types both within common areas and on residential lots. No synthetic pesticides, including herbicides, fungicides and insecticides, shall be used in the maintenance of landscaping of common areas or residential lots.

BOOK 990 PAGE 0177

- 6 As offered by the Applicant, existing Special Ways within the residential subdivision shall be preserved and protected with a 50' buffer of natural and native vegetation as specified in the DCPC regulations. At sometime in the future, the developer may request approval from the Oak Bluffs Planning Board to relocate up to 40% of the length of the Special Ways within the residential subdivision to make them more accommodating to the residents of the subdivision without further review by the Commission.
- 7 As offered by the Applicant, any vegetation used in the landscaping of common areas and in the buffer zones of residential lots shall be low-maintenance, native-type plantings.
- 8 As offered by the Applicant, only the following exterior lighting shall be permitted:
- Lighting as required by the building code;
 - Lighting for outdoor recreational purposes that is designed and shielded to avoid up-lighting, and is turned off when not in use;
 - Motion-sensitive security lighting designed and shielded to avoid spilling onto any neighboring properties;
 - Low-intensity street lighting designed and shielded to avoid up-lighting or as required by the Oak Bluffs Planning Board.
- 9 As offered by the Applicant, the documents related to the homeowners' association, the conservation restriction on the subdivision open space, and the affordable housing trust, as proposed in the Memorandum from James G. Ward to Brian Lafferty Regarding Interim and Permanent Restrictions, dated April 5, 2004, shall be drawn up incorporating the concepts therein and these conditions in a manner satisfactory to MVC counsel.
- 10 As offered by the Applicant, pumping from the well supplying the pond shall be temporarily halted if so requested by the Oak Bluffs Water District because of a water shortage.
- 11 As offered by the Applicant, if requested by the Martha's Vineyard Land Bank, there shall be an easement of passage on the open space parcel adjacent to parcel F, identified on the March 19, 2004 plan as "open space 60,628.62 ± SF 1.39 ± AC", in favor of the Martha's Vineyard Land Bank and its invitees.
- 12 As offered by the Applicant, Corey Kupersmith or his heirs or successors shall pay the entire administrative costs of the Kupersmith Affordable Housing Trust for the first ten years of its operations.
- 13 As offered by the Applicant, the Applicant shall work with the Commonwealth of Massachusetts Department of Fish and Wildlife (NHESFA) and the Land Bank.

14 All other offers in the documents constituting the Plan as well as offers in the oral testimony at the public hearing are accepted and become part of the Plan.

James A. Athearn
James Athearn, Chairman

April 16, 2004
Date

Commonwealth of Massachusetts
County of Dukes County, ss.

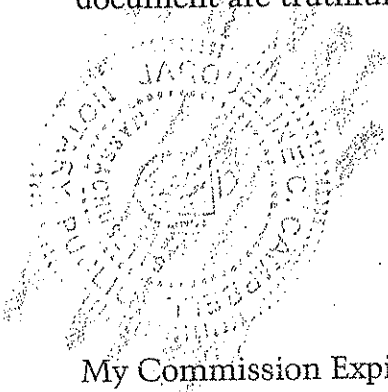
On this 16th day of April, 2004, before me,

Jacqueline C. Campbell, the undersigned Notary Public, personally

appeared James A. Athearn, proved to me through satisfactory

evidence of identity, which as/were driver's license

to be the person(s) whose name(s) was/were signed on the preceding or attached document in my presence, and who swore or affirmed to me that the contents of the document are truthful and accurate to the best of his/her/their knowledge and belief.



Jacqueline C. Campbell
Signature of Notary Public

JACQUELINE C. CAMPBELL
Printed Name of Notary

My Commission Expires May 7, 2010

Edgartown, Mass. April 16, 2004
at 1 o'clock and 56 minutes P M
received and entered with Dukes County Deeds
book 996 page 163

Attest:

Dianne E. Powers Register