

DATE: June 1, 1989
TO: Planning Board, Town of Gay Head
FROM: Martha's Vineyard Commission
SUBJECT: Development of Regional Impact
RE: Addition to an existing structure.
APPLICANT: Anne F. Vanderhoop
Aquinnah Realty Trust
P.O. Box 170
Gay Head, MA 02535

DECISION OF THE MARTHA'S VINEYARD COMMISSION

SUMMARY

The Martha's Vineyard Commission (the Commission) hereby approves, with certain conditions, the Application of Anne F. Vanderhoop, Aquinnah Realty Trust, P.O. Box 170, Gay Head, MA 02535 for the addition to an existing structure as shown on the plans entitled: "Plan of Land in Gay Head, Massachusetts, prepared for the Aquinnah Realty Trust by Vineyard Land Surveying, Box 1548, Beach Road, Vineyard Haven, MA 02568, Dated March 10, 1989" consisting of one (1) sheet; "The Aquinnah Shop Deck for Anne and Luther Madison and David Vanderhoop, Dated October, 1988 by Russell H. Smith" consisting of one (1) sheet; "The Aquinnah Shop Gay Head, MA for Ann and Luther Madison and David Vanderhoop, Dated September, 1988 by Russell H. Smith" consisting of one (1) sheet; making a total of three (3) sheets; (The Plan).

The Decision is rendered pursuant to the vote of the Commission on June 1, 1989.

The Planning Board of the Town of Gay Head may now grant the necessary development permits for the Applicant's proposal in accordance with the conditions contained herein or may approve in accordance with the conditions contained herein and place further conditions thereon in accordance with applicable law, or may disapprove the development application.

FACTS

The proposed development is a Development of Regional Impact as defined by the Commission's Standards and Criteria, Developments of Regional Impact Section 3.301. The Application was referred to the Commission by the Planning Board of the Town of Gay Head for action pursuant to Chapter 831 Acts of 1977 as Amended (the Act). The Application and Notice of public hearing relative thereto are incorporated herein. Martha's Vineyard Commission staff document exhibits are incorporated by reference.

A duly noticed public hearing on the application was conducted by the Commission pursuant to the Act and M.G.L. Chapter 30A, Section 2 as modified by Chapter 831 on April 6, 1989 at 8:30 P.M. at the Commission offices, Olde Stone Building, New York Avenue, Oak Bluffs, Massachusetts.

The proposal is for an addition to an existing structure qualifying as a DRI since the proposal is greater than 1,000 square feet.

James Young, Chairman of the Land Use Planning Committee (LUPC), read the Aquinnah Public Hearing Notice, opened the hearing for testimony, described the order of the presentations for the hearing, and introduced Melissa Waterman, MVC Staff, to make her presentation.

Ms. Waterman used wall maps to show the site plan and give an orientation of the area and the DCPC districts in the area. She showed a video of the site depicting the patio constructed, the materials used, the area of the patio, the plantings done surrounding it, the lighting proposed, and the handicap access to the main Aquinnah shop. Ms. Waterman reviewed staff notes as follows:

Proposal: Outdoor patio; addition to the existing structure greater than 1000 sq. ft. Location: Gay Head Tax Assessor Map 6, Parcel 18, Lot 731, approximately 1.7 acres, off "the Loop", State Rd.

Applicable Zoning: A. Property Lies within the Rural-Residential Zoning District - minimum lot size, 2 acres (Sec. 3.10). B. Island Road District - a portion of the property lies within the 200 foot Island Road Zone (Sec. 4.30) C. Coastal District - a portion of the

property lies within the 500 ft. Coastal overlay zone, however no part of the building lies within the Shore zone of the Coastal District (Sec. 3.10) D. Moshup Trail District - most of the property lies within the Moshup Trail District (Sec. 9.35) & requires special permit from Planning Board Plan Review Committee. E. Part of the property lies within 200 ft. of the crest of bluffs > 15 ft. in height and so must apply for a special permit from the Planning Board Plan Review Committee (Sec. 7.40) F. Section 13.20 also applies to the proposal, for the restaurant is a pre-existing non-conforming use: "any such non-conforming use or structure may be extended or altered by a special permit from the Planning Board provided that the alteration bears a reasonable relationship to the original size and nature of the non-conforming use, and that the Planning Board finds that the change, extension or alteration shall not be substantially more detrimental than the existing non-conforming use to the neighborhood."

Description of Project: History of Aquinnah (from applicant): 1959 - 30 inside seats, 30 outside with cesspool; 1976 - 75 inside seats, 40 outside plus rest room for employees, still on cesspool; 1984 - new septic designed for the kitchen wastes of a 120 seat restaurant (15 gal./day); system was not installed. (at some point a sleeping area was created for a summertime overnight watchman). 1987 - septic system installed, composed of one 1,000 gallon tank for the employee bathroom, one 1,000 gallon tank for kitchen wastes and a 12 foot x 8 foot leaching pit. 1989 - bathroom for handicapped customers, which may also be used by other customers, is being constructed. The bathroom has eliminated 10 inside seats. Applicant wishes to have 20 seats outside on the patio, on the principle that those seats will only be used half as frequently as those inside, due to bad weather. 1959 = 60 seats; 1976 = 115 seats; 1989 = 125 seats. (Note: The Mass. Department of Public Health requires restaurants with 51-99 seats to have one toilet for customers; a restaurant with 100-150 should have two.) New Patio: The patio is approximately 1,950 sq. ft., constructed of timber and masonry tiles. The deck lies approximately 2.33 feet above grade, which is 106 feet above sea level. The wooden fencing around the patio is approximately 5 feet high. The lights

around the deck are hooded and about 8 inches high. Plantings around the southwest portion of the patio are bayberry and beach rose. There is no handicapped access to the patio. Septic Plans: A system which meets Title V requirements estimates total wastewater flow from kitchen and customers at 35 gallons per seat. Wastewater flow from just kitchen waste is estimated to be 15 gallons per seat; this is what the Aquinnah Shop now has. Kent Healy found that a system designed for 35 gallons per seat would increase water input into the property soils by 50%. Introduction of 50% more water would affect the stability of the nearby cliffs, possibly accelerating natural slumping and erosion. Consequently, Mr. Healy has recommended that such a facility not be built on the property, although there is room for it, and that a water meter be used to maintain water use in the restaurant at the present level. Concerns: Handicapped access to building and patio; the sleeping area within the restaurant shall not be considered a grandfathered use or expanded in any way; are there plans for future parking expansion?; are there any landscape maintenance plans?; when and by whom will the water meter be checked, if installed? Correspondence: From: Gay Head Board of Selectmen: Water Delaney and Jeffrey Madison, Dated: October 17, 1988. They note an expansion of the business over the past 6 years for on-site storage, use of a sleeping area in violation of zoning by-law Sec. 3.30, lack of sanitary facilities for customers who are sent to the often-closed town facilities instead, possible improper installation of the system designed by Schofield Brothers in 1984, the lack of handicapped access to the building, blockage of the emergency access by the cars of the owner and employees. They further state that Board considers it unlikely that the three owners would not have known that some sort of permit would be required before construction could begin. Also raises question regarding alleged plans for expansion of parking area. Included with Selectmen's letter was one from Ron Rappaport, Town Counsel, to Water Delaney, Dated August 11, 1988. Mr. Rappaport was asked to advise the Town regarding possible remedies available regarding the Aquinnah construction. Stated that the following agencies or boards have jurisdiction over activities at the Aquinnah

Shop: Building Inspector, Martha's Vineyard Commission, Planning Board under Section 13.20, Board of Health, Conservation Commission.

FROM: Marie Belain, Dated: October 25, 1988. She stated that she is a shop owner at the Cliffs. She heard that the Aquinnah Shop owners had argued at a Selectmen's meeting that they did provide handicapped access to the shop via a cement ramp at the front of the building. She finds that hard to believe and related the story of a woman in a wheelchair who had great difficulty getting into the restaurant last summer. She noted that the side door which is more accessible is usually locked. She also wonders why the restaurant doesn't have a rest room when State law requires one for ever 20 seats. Ms. Waterman then answered questions from the Commissioners.

Ms. Colebrook asked if this was under Conservation Commission jurisdiction because it is within 200' feet of the water? Ms. Waterman stated that the Planning Board Review Committee has jurisdiction over the area within 200 feet of a bluff of 15 feet or greater. Ms. Colebrook then asked is it built? Ms. Waterman stated that the video showed an "as built" structure.

Ms. Medeiros, Commissioner, asked what the outside line depicted on the wall map? Ms. Waterman responded the edge of the Cliff.

Mr. Evans asked what the anticipated 50% increase in water eluded to by Mr. Healy represented? Ms. Waterman responded a change in design from the current 15 gpd to the Title V requirement of 35 gpd.

Mr. Ewing, Commissioner, asked if there was no public rest room now? Ms. Waterman stated there is one bathroom now and one is being constructed for handicap and other customer use. There was discussion about the provisions for handicap bathrooms as required by the Department of Public Health.

There were questions about the construction and drainage of the patio. Pictures were distributed to the Commissioners of the construction and Ms. Waterman stated that no drainage plans were submitted.

Mr. Fischer, Commissioner, asked about the statement in the Selectmen's letter that there was a possibility that the septic system was installed improperly, do we know why? The response was no.

When there were no further questions for Ms. Waterman; Mr. Young called on the applicant to make a presentation.

Mr. Russell Smith, agent for the applicant, stated that when the Vanderhoop's constructed this deck they did so under the mistaken idea that no building permits were necessary. The reasoning for this was that a deck had recently been built on adjacent property and no permit was required for that. The difference here is the height of the deck and that decides whether or not it is considered a structure, over 3 feet is considered a structure, and it therefore would require a building permit. We built this up using railroad ties, we cut off the crown a little and filled it in under the deck. The elevation above the existing grade is 2 1/3 feet but when you add the split rail fence it goes over the 3 foot limit. After the deck was built we were issued a cease & desist order and informed that we needed a permit from the Conservation Commission. I was asked to prepare a map of the area and although I am not a registered surveyor I produced a map showing elevations, the beach, the top of the bluff, the building and the new deck, which he put on the wall. Conservation Commission jurisdiction is within 100 feet of the bluff so this was out of their jurisdiction. However the Planning Board Plan Review Committee does have jurisdiction within 200 feet of the bluff so it is within their jurisdiction as well as in the Road District. The Conservation Commission had referred this to the MVC but after LUPC meeting and the DEQE site visit for the Notice of Intent it was determined that no permit was required from the Conservation Commission so the Planning Board Plan Review Committee referred it to the Martha's Vineyard Commission. He showed another drawing depicting the elevations of the deck and stated that it is highest at the front with the rear elevation being only 6". He went on to describe the materials used, the square footage, the lighting and the plantings and stated that the photos of last summer show the plantings in a healthy condition. The drainage is simple; it is higher in the middle so it drains on all sides. There was previously a problem with drainage and erosion around the existing building and this should dissipate that. Regarding the septic system, it was rebuilt within the last 2 years

and although it is not up to Title V standards it functions adequately. Concerning the public bathrooms, the one existing was never open to bus tour people, they were asked to use the town facility. The town supplies rest rooms for all the shops in this area, the Aquinnah is the only one on private property. Patrons of the shop can use this bathroom by requesting the key from their waitress, there has been discussion of noting the existence of the bathroom on the menu. Mr. Smith stated that he would answer questions from the Commissioners and then Mr. Healy would speak about the septic system.

Mr. McCavitt, Commissioner, asked, so the deck was constructed because of a mistaken belief that it was not a structure? Mr. Smith responded that only things greater than 3 feet require a building permit. Mr. McCavitt asked if this was a town requirement? Mr. Smith responded it is a State code and that he was just addressing this in response to the Selectmen eluding that this was done in poor faith. Mr. McCavitt asked what the difference was between this septic system and a Title V? The response was the size of the leaching area, the tanks are the same. Mr. McCavitt then asked if any permits were obtained? Mr. Smith responded no, after the cease and desist order was issued we applied to the Conservation Commission but it was not their jurisdiction.

Ms. Scott, Commissioner, asked again about the drainage plan? Mr. Smith stated there is no formal plan, essentially the structure is higher in the middle so it drains in all directions. The applicant added that there is crushed stone under the deck.

Mr. Fischer stated that he remembers seeing sand being tapped in during construction so there must be a layer of sand too.

Mr. Young asked if any cement or grout was used on the masonry? The response was no.

Mr. Lee asked who issued the cease and desist order? The response was the building inspector.

When there were no further questions for Mr. Smith, Mr. Healy gave the following presentation:

Kent Healy stated that he used the number of seats as a base number for the septic capacity needs. There were 75 seats inside and 40 outside, since 10 seats were lost inside due to the addition of the bathroom there will be 65 seats inside, and due to the addition to the deck, 68 outside. Based on the assumption that due to inclement weather the deck seats will only be utilized 50% of the time the end result is 65 inside seats and 34 outside seats and this is the estimate I used to calculate the base water flow. My conclusion is that the increase in use is not significant, 5%. There are 2 1,000 gallon tanks, 1 for the kitchen and 1 for the bathroom, and a 12 foot x 8 foot leaching pit. He gave the following figures (to Meet Title V, Actual Capacity by his calculations): Absorption; 850 gpd, 550 gpd; Capacity Actual Use; 3,300 gpd, 350 gpd (based on past season). He addressed the issue of losing cliff stability in relation to higher ground water levels and stated that the elevations of ground water usually rise due to rain. He went on to discuss the slide behind the structure, and the increased potential for instability if a Title V system were installed when only approximately 1/10th of their figure was actually used. He stated that we should be encouraging conservation of water usage, not allowing for a greater potential use. He stated that the best way to encourage decreased usage and monitor the usage is with a water meter that could be monitored and recorded daily. The liquid level in the leaching pit could be checked and if an emergency does exist they could go to weekly pump outs. One pump out per week would eliminate all anticipated usage. Mr. Healy then addressed Commissioners' questions.

Mr. McCavitt asked, don't you estimate actual use will be increased if the new toilet is installed and the patrons are informed of its existence on the menu? Mr. Healy responded that he doesn't anticipate any additional water usage. He stated that the system described is in place and we don't propose changing it, it does have a cushion now between the 350 gpd actually used and the absorption capacity of 550 gpd.

Mr. Filley asked what the potential is for installing another pit? Mr. Healy responded that he had done several test pits and there is an area suitable for another leaching pit.

Mr. Ewing asked if a leaching trench instead of a pit would help increase the absorption capacity? Mr. Healy stated it wouldn't make much difference.

Mr. Lee asked, regarding the runoff in the area of the terrace can you project what would happen with weather like it was today, extremely wet, and no dry well drainage? Mr. Healy responded that in listening to how the deck was constructed I guess this is a very good dry well with part being crushed stone I would anticipate no runoff. Mr. Smith stated that he had inspected the site after construction last summer and he saw no evidence of runoff or troughs that were created.

Mr. Ewing asked the applicant if he would be willing to install a water meter? Mr. David Vanderhoop stated he thinks it is the best way to regulate water usage and that one would have already been installed if they had thought of it earlier.

Mr. Young asked Mr. Healy to go over the number of seats again. You eluded that the inside would be decreased to 65 and the outside increased to 68 and that because of weather conditions you anticipate only 34 outside seats would be used, but what about during a stretch of good weather when all seats might be utilized for a week or more at a time. There is the potential for 133 seats and this could be a massive increase in the water used and that would far exceed the capacity of the system. How do you recommend reducing the damage to the Cliffs while still meeting the town's desire for a bathroom. Mr. Healy stated that it would be a simple process to pump out the system in such instances. It is a common solution. The monitoring device would be a system alert.

Mr. Vanderhoop stated that the point as he knows it is that the existing system won't affect the cliff as much as installing a new system would.

When there were no further presentations by the applicant, and no other questions for the applicant or his agents, Mr. Young called on town board testimony.

Mr. Jerry Weiner, Building Inspector and Board of Health Agent, Town of Gay Head, stated that in addressing the use of pump outs, we have a system designed to use pumping as an emergency and have arrangements with other towns to accept liquid effluent from emergency needs. It is not intended to be used on a regular basis, only as a safeguard. Mr. Weiner further stated that this project was brought to his attention when it was near completion.

Mr. Ewing asked Mr. Weiner can't you guarantee that the effluent can be transported? Mr. Weiner responded that we can't approve a system without our own place to dump the effluent, the arrangements with other towns is in an emergency situation. Mr. Ewing stated but this system is existing? Mr. Weiner stated that if it failed it would be entitled to the same procedures as others. Mr. Ewing then asked if this one had ever been pumped? Mr. Luther Madison, applicant, responded this new system has never been pumped; it has worked fine since installation.

When there were no other members of Town Boards to give testimony, Mr. Young called on public in favor of the proposal, there was none. He then called on public in opposition.

Marc Widdiss stated that it is difficult to speak in opposition to this project when he knows the people from the Aquinnah so well and they usually represent themselves well. Unfortunately, in this occasion I think that several decisions were made that are in direct conflict with the Town's zoning. I am not certain what can be done about it. If indeed it was decided that the construction needs to be removed it may be more damaging than the original construction. You may be wasting your time by taking the septic as the main concern, you should be looking at what has been done in regard to the laws regulating that area and look at what is available to rectify the situation. This is not a good situation at all and it is difficult to call. I'd have a hard time deciding whether to tear into such a fragile area to clear this up. I think it was however a bad decision to go ahead as they did. If the zoning was followed something less objectionable might have been created.

Mr. Vanderhoop stated that we have always been conservative with water usage. In dealing with the septage by putting in a meter it won't change the way we operate water conservation wise.

Mr. Filley asked how much larger this deck is in comparison to the old one? Mr. Smith responded approximately 3-4 times larger but this is an additional deck not a replacement of the old one. Mr. Filley then asked if there were any additional devices that could be used to reduce the flow. Mr. Healy responded that they already had a low flow toilet and had recently installed a dishwasher that recycled its own water, there are many such devices but I believe the best way to reduce usage is to be conservative and monitor usage.

Mr. Morgan asked if there were any planting plans for the side of the deck near the owners' parking? Mr. Madison responded that they plan to plant rose ramblers to hide the timber but no shrubbery.

Mr. Evans asked about the Selectmen's concern regarding increasing the size of the parking area. Do you plan to expand and what is the existing size of the lot now? Mr. Madison responded that there are now 12-15 spaces provided. We had planned to enlarge the lot by 9-10 spaces. Mr. Young asked what permit would be required for such an expansion? The applicant responded he did not know.

Ms. Medeiros asked if there was any way to make the patio handicap accessible? The applicant responded not without additional construction and went on to state that the old deck was handicap accessible just not the new patio. Ms. Medeiros asked concerning water usage the Town of Tisbury forces restaurants to use paper plates, is it within your purview to do the same? Mr. Weiner responded that is an excellent suggestion and certainly any suggestions other towns have would be considered. Since we have no commercial district there are no guidelines for restaurant usage, this is the only restaurant in Gay Head.

Mr. Lee asked how the applicant envisioned the seating plan on the deck; are you looking for dining patrons rather than casual, limited time patrons and how will you regulate access to the deck? We all know what happens when these tour buses pull up; do you have a plan? Ms. Anne Vanderhoop responded I do have a plan. It is my

intent to make it reservation only for 28 seats, when the buses come in they only have 25 minutes so there will be a chain, as usual, across the dining area to prohibit people from rushing in to use the bathroom, these people can get take out at the front or the window. The patio will be used for luncheon and dining seating only. We have lost 10 inside seats in the alcove to make the handicap bathroom and we will never make that up. She went on to state that she wonders how many days people will be allowed to sit out on the patio with the wind and rain that is common in this area and stated she would keep a record. She went on to state that another fence would be constructed near the existing parking spaces in the front area of the patio and a sign would be erected stating exit only.

Ms. Bryant asked what is the handicap access now? Am I to understand that you will have two seating policies, one for general public and one for handicap patrons? Ms. Vanderhoop stated the main point is that the buses don't have time to use this facility. Ms. Vanderhoop added that they do entertain kids from Jabberwocky every year and the room is filled with wheelchairs. There was further discussion on handicap access and the existing blacktop path. Mr. Widdiss stated concerning the handicap access to the cliff area, the town has tried to get the State, who owns the loop area, to widen or provide another handicap access. It was probably not high on their priority list.

Mr. McCavitt, Commissioner, asked the building inspector what the cease and desist order was based on? Mr. Weiner responded technically the zoning by law addressing the definition of a structure versus a terrace. If it is over 3 ft, and this will be because the rail is required, then it is no longer a terrace; it is a structure. As you can see in Mr. Smith's drawing one side is higher while the other is near grade. So there is a little ambiguity here in that any materials giving support is a structure, but if it were under 3 feet it would be a terrace. Mr. McCavitt then inquired about permits necessary for other work in the building, i.e. toilet installation or the construction of the bathroom? Mr. Weiner responded that under Title V the septage required is based on the number of seats so if the

plumbing permit is taken out that is all you need unless you make significant structural changes, a partition wall is not a great deal of concern. There was no additional square footage created and the proper permit has been taken out.

Jerry Weiner stated that in response to what Ms. Waterman said concerning violation of zoning by-law Section 3.30 (NOTE: This was actually a quote from the Selectmen's letter) regarding the issue of a sleeping area for the night watchman, since we only have rural residential zoning there is nothing to address this. The bed is a lesser use and should not be an issue in my opinion. He went on to state that the Vanderhoops sleep here in the summer but all washing and showering is done at their year-round home.

When there were no further questions or closing statements from the applicant, Mr. Young closed the public hearing at 10:00 p.m. with the record to remain open for two weeks since next week the Gay Head Cliff's DCPC public hearing would be held.

FINDINGS AND CONDITIONS

1. The Commission has considered the application and the recommendation presented from the Land Use Planning Committee meeting, the public hearing, and discussions during its decision deliberations and based upon such consideration, makes the following findings pursuant to Section 14 of the Act:

- a. THE COMMISSION FINDS THAT THE PROBABLE BENEFITS OF THE PROPOSED DEVELOPMENT, AS CONDITIONED HEREIN, WILL EXCEED THE PROBABLE DETRIMENTS OF THE PROPOSAL IN LIGHT OF THE CONSIDERATIONS SET FORTH IN SECTION 15 OF THE ACT.
- b. THE COMMISSION FINDS THAT THE PROPOSED DEVELOPMENT, AS CONDITIONED HEREIN, WILL NOT INTERFERE SUBSTANTIALLY OR UNREASONABLY WITH THE ACHIEVEMENT OF THE OBJECTIVES OF ANY GENERAL PLAN OF THE TOWN OR OF DUKES COUNTY.

c. THE COMMISSION FINDS THAT THE PROPOSED DEVELOPMENT AS SET FORTH IN THE APPLICATION AND PLAN WILL BE CONSISTENT WITH LOCAL DEVELOPMENT ORDINANCES AND BY-LAWS IN PLACE AT THE TIME OF THE SUBMITTAL.

. Pursuant to Section 15 of the Act, the Commission has considered whether the proposed development at this location is or is not essential or especially appropriate in view of the available alternatives on the Island of Martha's Vineyard. Further, and pursuant to Section 15 of the Act, the Commission has considered the questions of whether the development in the manner proposed, as set forth in the application and plan, will have a favorable or adverse impact on the environment in comparison to alternative manners of development. The Commission finds that the application and plan were referred to the Commission as a Development of Regional Impact (DRI) following the erection of a 1,950 square foot patio, which qualifies as a DRI. Further, the additional patio, existing restaurant and deck, and the existing septic system lie within 200 feet of the crest of the Gay Head Cliffs.

The Martha's Vineyard Commission finds the conditions, as set forth in this Decision, necessary in order to prevent increased water input into the soils which may affect the stability of the Gay Head cliffs with increased seepage accelerating natural slumping and erosion. In light of these considerations, the Commission sets the following conditions.

a. THE AQUINNAH SHOP SHALL NOT GENERATE IN EXCESS OF 350 GALLONS OF WASTE WATER FLOW PER DAY. TO EFFECT THIS CONDITION, THE APPLICANT SHALL ENTER INTO AN AGREEMENT, IN A FORM SATISFACTORY TO THE COMMISSION, WITH THE TOWN'S BOARD OF HEALTH PRIOR TO THE GAY HEAD PLANNING BOARD PLAN REVIEW COMMITTEE'S ACTION ON THE SPECIAL PERMIT APPLICATION TO MONITOR AND MANAGE THE EFFLUENT WITH THE INSTALLATION OF A WATER FLOW METER ASSURING IT WILL NOT EXCEED THE SYSTEMS CAPACITY. REPORTED FINDINGS AND MITIGATION MEASURES SHALL BE SET FORTH IN SAID AGREEMENT.

b. THE SEATING CAPACITY FOR THE AQUINNAH SHOP PROPERTY, AKA AQUINNAH REALTY TRUST, SHALL NOT EXCEED ONE HUNDRED AND NINE (109) SEATS. THE GAY HEAD BOARD OF HEALTH AND OR THE BUILDING INSPECTOR MAY PERIODICALLY INSPECT THE PREMISES TO ASSURE COMPLIANCE WITH THIS CONDITION.

3. Pursuant to Section 14 of the Act, the Commission has considered whether the development is consistent with regulations approved for a designated District of Critical Planning Concern (DCPC).

a. THE COMMISSION FINDS THAT THE APPLICATION AND PLAN WERE DULY SUBMITTED PRIOR TO THE COMMISSION'S CONSIDERATION OF THE NOMINATION FOR THE GAY HEAD CLIFF AREA DCPC, DESIGNATED MAY 4, 1989. FURTHER, THE COMMISSION FINDS THAT THE APPLICATION AND PLAN, ONLY THAT BEING BEFORE IT AT THIS TIME, ARE CONSISTENT WITH THE APPROVED GUIDELINES FOR THIS DCPC.

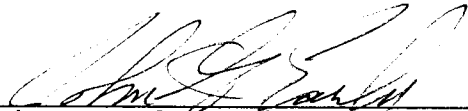
The Commission finds that the proposed development is consistent with local ordinances and by-laws to the extent it is required to, only the application being before it at this time. The Applicant must, consistent with this Decision, apply to appropriate Town of Gay Head Officers and Boards for any other development permits which may be required by law.

The Decision is written consistent with the vote of the Commission: June 1, 1989.

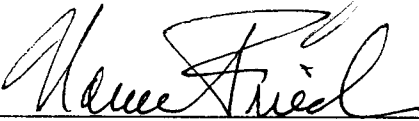
Any applicant aggrieved by a Decision of the Staff or Committee hereunder, may appeal to the full Martha's Vineyard Commission which shall decide such Appeal, after notice and hearing, within 21 days of the close of the public hearing.

The Executive Director may issue Certificates of Compliance which shall be conclusive evidence of the satisfaction of the conditions recited therein.

Any party aggrieved by a determination of the Commission may appeal to the 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 Town Clerk in the Town in which the proposed development is located.


 John G. Early, Chairman

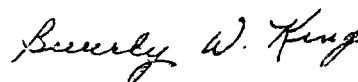
6/1/89
 Date


 Notary

6/1/89
 Date

NORMAN FRIEDMAN
 NOTARY PUBLIC
 My commission expires Nov 2, 1990

Edgartown, Mass. June 2, 1989
 at 12 o'clock and 50 minutes P M
 Received and entered with Dukes County Deeds
 book 522 page 258

Attest: 
 Register