

BR 0256827 325A  
THE MARTHA'S VINEYARD COMMISSION

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DATE: February 10, 1994  
TO: Board of Health, Town of Edgartown  
FROM: Martha's Vineyard Commission  
SUBJECT: Development of Regional Impact  
Re: Subdivision of Land  
APPLICANT: Herring Creek Farm Trust  
c/o General Investment & Development Co.  
600 Atlantic Avenue  
Boston, MA 02210

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DECISION OF THE MARTHA'S VINEYARD COMMISSION

SUMMARY

The Martha's Vineyard Commission hereby denies permission for the granting of permits for the development contained in the Application of Herring Creek Farm Trust, c/o General Investment and Development Co., 600 Atlantic Avenue, Suite 2000, Boston, MA 02210, as shown on the plans entitled: "Herring Creek Farm, Edgartown, Massachusetts, Illustrative Master Plan, Sasaki Associates Inc., January 1990, Revised October 1993, scale 1" = 100'", consisting of one (1) sheet; plus "Herring Creek Farm, Preliminary Subdivision Plan", scale 1" = 200' and bearing the following note in the margin: Tue. Oct. 05, 16:50:07 1993 Sasaki Vell G:\Airplots\Vellum 4HG-ISPS\_PLT, consisting of one (1) sheet; plus "Herring Creek Farm, The Development Plan", scale 1" = 200' and bearing the following note in the margin: Tue. Oct. 05, 16:20:11 1993 Local G:\Airplots\BOND\46 ISND\_PLT", consisting of one (1) sheet, making a total of three (3) sheets (the "Plan").

This decision is rendered pursuant to the vote of the

Commission on February 10, 1994.

The Commission disapproves the Application and denies permission to the Board of Health in the Town of Edgartown to grant the necessary development permits.

#### FACTS

The proposed development is a Development of Regional Impact as defined by the Commission's Criteria and Standards, Developments of Regional Impact, Section 3.201, 3.203, 3.401. The Application was referred to the Commission by the Board of Health of the Town of Edgartown for action pursuant to Chapter 831, Acts of 1977 as amended (the Act).

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, on April 4, 1991. Prior to the close of said hearing, the Applicant on September 27, 1993 withdrew its Application and submitted a revised Application. All written materials and testimony submitted in connection with the original Application, MVC DRI #325, were made a part of the record with respect to the revised Application. A duly noticed public hearing on the revised Application was conducted by the Commission pursuant to the Act and M.G.L. Chapter 30A, Section 2, on October 21, 1993 at 8:00 p.m. in the Commission Offices, Olde Stone Building, New York Avenue, Oak Bluffs, MA. The public meeting was continued on November 18, 1993, and December 16, 1993, and the record was kept open for further written submissions through December 30, 1993.

A summary of the testimony provided at the hearings is provided in Exhibit A attached hereto. This summary is for the convenience of the reader only and was not relied upon by the Commission in reaching its decision in this matter.

The proposal is for the subdivision of 215 acres into 54 lots plus one private club. It also includes a provision to deed approximately 25 acres of land to a non-profit organization to be preserved as open space; however, the development's

Importance and that special care must be taken because of the areas surrounding the Edgartown Great Pond are of regional the Commission. In the past, the Commission has determined that magnitude -- -- implicates each of these long-standing concerns of The proposed development -- -- both in its location and in its

both its rural character and its open vistas to the ocean. preserving the visual appearance of the island, which includes Additionally, the Commission has long been concerned with and water quality of the surface waters of the island.

Commission has long been concerned with maintaining shore edges unique habitats for plant and animal species. Similarly, the

fragile areas of the island, particularly where those areas are long been concerned with the protection of the ecologically

Consistent with this statutory mandate, the Commission has the enhancement of sound local economies."

development and uses which would impair them, and by promoting inspiration and scientific study, by protecting these values from

of Martha's Vineyard which contribute to public enjoyment, natural, historical, ecological, scientific, and cultural values

the enjoyment of present and future generations the unique of island residents and visitors by preserving and conserving for

the Act, is to "protect the health, safety, and general welfare The purpose of the Commission, as set forth in Section 1 of

(SECTION 14(A) OF THE ACT).  
CONSIDERATIONS SET FORTH IN SECTION 15 OF THE ACT.  
BENEFITS OF THE PROPOSAL AS EVALUATED IN LIGHT OF THE  
THE PROPOSED DEVELOPMENT WILL EXCEED THE PROBABLE  
A. THE COMMISSION FINDS THAT THE PROBABLE DETRIMENTS OF

14 of the Act:  
consideration, makes the following findings pursuant to Section information presented at the public hearing and, based upon such

The Commission has considered the Application and the

FINDINGS AND CONCLUSIONS

homeowners association would retain certain controls over activities on the dedeed parcel. The development qualifies as a DRI since, inter alia, the proposal is for the division of a contiguous ownership of land into ten (10) or more lots.

BK626P0829

fragile nature of the resources and habitats in the area. Indeed, the proposed development is situated in no less than four of the fourteen districts of critical planning concern which the Commission has designated on the entire island.

1. Based upon the record in this proceeding, the Commission finds that the proposed development at this location is not essential or especially appropriate in view of available alternatives. (Section 15(a) of the Act).

There is nothing essential for the island in the development of fifty-four single family dwellings which will be used primarily as second homes. Nor is there anything especially appropriate about the conversion of one of the largest contiguous properties on the entire island still operated as a working farm into a subdivision containing numerous multi-story homes.

The Applicant, however, suggests that the proposal is especially appropriate because it would both leave a working farm and create additional sandplain grasslands habitat adjacent to the Katama Airfield grasslands. While the Commission appreciates that the Applicant has made some effort on these issues in its proposed design, the development would nonetheless replace large-scale cultivation of corn and grazing of cattle with numerous residential dwellings and some restored sandplain grasslands. The effectiveness of the sandplains grassland restoration planned has been questioned by members of the public and others with expertise concerning this rare habitat. The remaining farm left by the proposal would be smaller, different in character, and subject to the conduct of individual lot owners, because the largest part of the remaining farm, the grazing land, would in fact cut across numerous lot owners' property.

The Applicant notes that the proximity of the Katama Airfield provides a rare opportunity to restore sandplains grassland habitat. While restoration of the sandplains grassland may be especially appropriate in this location, it does not follow that the construction of 54 multi-story homes is equally appropriate. The Commission is not persuaded that the construction of 54 houses and the substantial loss of character of the existing working farm is a necessary trade-off to obtain



restoration of sandplains grassland.

2. The Commission finds that the manner in which the Applicant proposes to develop the locus will adversely impact the environment relative to other alternatives. (Section 15(b) of the Act).

The Commission notes that the proposed development includes the use of mounded septic systems by at least fourteen of the dwellings. The proposed development relies upon these mounded or artificially raised septic systems in an effort to comply with applicable regulations. In fact, ten of the proposed mounded septic systems would be located within the one hundred year flood plain. While the Applicant's experts assert that a 100-year flood would not put these systems at risk, other testimony indicated that a 100-year flood could lead to direct breakout of sewage effluent.

Given the fragility of the ecosystem in the area and the proximity of the development to the Edgartown Great Pond and Crackatuxet Cove, the Commission does not believe it would be prudent to permit a development using mounded septic systems on this scale. A breakout of sewage effluent with its attendant nutrients, bacteria, and viruses could have serious consequences for human health and the environment in the area of the two ponds. In sum, the record establishes that development utilizing this number of mounded septic systems will have a more adverse impact on the environment than an alternative development that avoids use of mounded septic systems, or at least this number of mounded septic systems.

Even aside from concerns related to the use of mounded systems, there are other serious concerns arising from the manner in which the Applicant proposes to develop the site. Among those concerns is the environmental quality of the groundwater and surface waters in the vicinity of the development. Evidence suggests that the nutrient loadings from the septic systems at the proposed development may exceed the carrying capacity of Edgartown Great Pond and Crackatuxet Cove. The Commission is not convinced that the assumptions made by the Applicant in performing its analyses are appropriate.

In fact, the Commission finds that certain of the

BK626P831

assumptions made by Applicant in its nutrient loading study are not sufficiently conservative to protect those interests subject to the Commission's jurisdiction under the Act. Those assumptions include the use of a proxy for treatment plant nitrate loading concentration rather than detected concentrations in the vicinity of the plant and the use of actual average flows from the discharge plant, rather than the plant's permitted discharge. More conservative inputs result in the conclusion that the proposed development would exceed the carrying capacity of the Edgartown Great Pond and Crackatuxet Cove.

Finally, of at least equal concern in assessing the manner of the proposed development is its density. Although the Applicant has stressed that the proposed development is consistent with the applicable three acre zoning, the Commission's review under the Act is not circumscribed by local zoning requirements. Rather, the Commission is charged with responsibility for regional matters and concerns, which entails consideration of factors beyond local regulations.

Those factors do not preclude development in and around the Edgartown Great Pond. Indeed, the Commission has in the past approved several developments for land abutting the Edgartown Great Pond. However, in each instance, the density of the approved development was far less than the three acre zoning might have allowed.

The Commission's concern with the density of the proposed development is driven in part by the environmental fragility of the area and the threat that a development of this density might pose to natural resources as well as water quality. The landscape of the areas surrounding the Edgartown Great Pond features an array of habitat types supporting a variety of plant and animal species including some that are Federally or State listed endangered or threatened. Notwithstanding the Applicant's proposed open space management plan, the density of the proposed development with its associated human activity, pets, and vehicles would threaten those unique habitats.

3. The Commission further finds that the proposed development will adversely affect other persons

reasons described with respect to sections 15(a) - (c) of the protection, natural resources, and open character, for all of the objectives in the Edgartown Master Plan related to groundwater The proposal would interfere with accomplishment of

4. The Commission finds that the proposed development would interfere with the ability of the Town of Edgartown to achieve the objectives set forth in the Edgartown Master Plan, dated April 1990 and adopted by the Edgartown Planning Board. (Section 15(g) of the Act).

In any way upon that evidence in reaching its decision. 1969 transaction is relevant here. The Commission does not rely Creek Farm. The Commission does not believe that evidence of the

allegedly created in a 1969 transaction involving of Herring effect on the proposed development of contractual rights Evidence was submitted by certain persons regarding the Creek Farm as seen from Edgartown Great Pond.

the houses will disrupt the look of the northern part of Herring significantly disrupt the unique look of the area. Similarly, together with the suspension of crop cultivation activities will of numerous multi-story homes in the proposed development look of the area. In the Commission's judgment, the introduction inappropriate development from impairing or destroying the unique It is therefore most important that care be taken to prevent the man-made or cultural environment.

topography, soils and vegetation, is an important component of expansiveness. The visual character, a product of specific the land that give strong impression of openness or Edgartown Great Pond environment provide views from the water or Island landscape. The tranquility of the areas that make up the whole, the visual diversity of this location forms a unique cultivated corn do not exist in isolation. When taken as a vegetative changes from the pond shores and wetlands to shoreline through the grasslands and scrub oaks and barrens, the visual impact of the farm. The variety of change from the ocean Cove, the Commission is also concerned with the loss of the water quality of the Edgartown Great Pond and the Crackatuxet In addition to the adverse effects to the shore edges and and property. (Section 15(c) of the Act).



Fishing and farming are ancient determinants of Island character and land use. Ensure that they remain a visible part of the landscape. Protect these industries from changes in attitudes and ensure sufficient land in zoned for storage, equipment and activities. Prevent conflicts with residential land uses.

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Economic activities which are positive additions to the rural Island environment shall be encouraged... Encourage farming and fishing activities for the well-being of other parts of the Island economy, particularly tourism.

Second, the proposed development founders on the Regional Plan's policy of encouraging farming as a means of protecting the Island's rural character and environment.

In direct contravention of this policy, the proposed development will take a farm, which is currently producing food products on the island, and substantially convert it into residential dwellings. In short, the proposed development will make the Island less self-sufficient and more reliant on the building and tourist trades.

Give top priority to year-round job opportunities for permanent Island residents and increase the Island's self-sufficiency, particularly in production of food products. Diversify the economic base, so that the Island will be less reliant on the building and tourist trades.

Development Policy I-4 states:

The proposed development runs afoul of no less than five of the central objectives of the Regional Island Plan. First, that plan seeks to promote a balanced year-round economy which is not overly dependent on building and tourist trades. Basic Economic

5. The Commission finds that the proposed development would contravene the land development objectives of the Commission, as stated in the Regional Island Plan, including the Martha's Vineyard Commission Regional Policy Plan, adopted by vote of the Martha's Vineyard Commission, June 1991. (Section 15(h) of the Act).

Edgartown Master Plan, pp. 9-11.

Farm area caused by construction of 54 multi-story houses. See

the significant change in the appearance of the Herring Creek failure to preserve and enhance unique local environments, and the two ponds, loss of agricultural character of the land, include the location of the septic systems, carrying capacity of Act, above, and section 15(h) of the Act, below. These concerns



land's natural and visual qualities." Similarly, Policy IV-18 landowners should continue to match the use of the land to the of visual factors.... The Commission, the Towns and private "preservation of Island character demands careful consideration qualities that are 'suburban'...." Policy IV-17 emphasizes that Vineyard, and the unique character of each town. Reject "[p]reserve and enhance the rural quality of life on Martha's and visual quality of the island. Policy IV-12 seeks to Fourth, the Regional Plan seeks to maintain the character proposal is before the Commission.

developed consistent with this policy; however, no such other with a different proposal, the Herring Creek Farm could not be agriculture, water supply, and habitat. This is not to say that, maximize the preservation of the capacity of the land for development or adequately limit the intensity of uses so as to The proposed development does not sufficiently employ cluster limiting the intensity of uses." Policy IV-11 (emphasis added).

greatest extent possible through cluster development and by for agriculture, water supply, habitat or community needs to the critical lands is unavoidable, "preserve the capacity of the land The Regional Plan goes on to note that where development of Policies IV-1, IV-10.

Preserve suitable agricultural land and make it available for farming and grazing. Protect lands with agricultural potential.

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New land uses should conform to the traditional land use pattern and enhance traditional uses.

towards preservation of agricultural land:

preserve traditional land uses and a specific policy directed lands. The Regional Plan contains both a broad prescription to several shore edges involves just such critical and vulnerable that the proposed development of agricultural land which abuts protecting critical and vulnerable lands. The Commission finds Third, the Regional Plan places significant emphasis on environmental character; nor will it encourage farming.

story dwellings is not a positive addition to the island's rural Policies I-14, I-15. Replacing a working farm with 54 multi-

15(d) - (f) of the Act and found that either such factors were  
The Commission considered the factors set forth in Section  
benefits.

detriments of the proposed development exceed the probable  
would be sufficient to support the conclusion that the probable  
any one of the factors discussed in this section of the Decision  
the Act, the Commission notes that its findings with respect to  
factors set forth in sub-sections 15(a), (b), (c), (g), and (h) of  
reaches this conclusion on the basis of its evaluation of the

do not exceed its probable detriments. Although the Commission  
concluded that the probable benefits of the proposed development

presented by the Applicant and others, the Commission has  
In sum, after careful review of the submittals and testimony

Plan.

Those risks are inconsistent with these policies and the Regional  
models, the Commission cannot conclude that no such risks exist.  
conservative nature of Applicant's choice of assumptions in its

and surface water in the vicinity. Given the insufficiently  
development would pose real risks to the quality of groundwater  
analysis of the factor set forth in Section 15(b) of the Act, the

the quality of Island ponds..."). As described above in the  
groundwater protection regulations"; Policy IV-42 ("[p]reserve  
wetlands, and public water supplies for strict adherence to

IV-39 ("Scrutinize proposals for development near ponds, streams,  
water quality both in groundwater and surface waters. See Policy  
Fifth, the Regional Plan acknowledges the need to protect

land's natural and visual qualities.  
story dwellings. The proposal does not match the land use to the  
great space of the existing farm landscape with numerous multi-

The proposed development will break up the openness and  
for future generations."

natural, historical, ecological, scientific and cultural values  
public and private open space to protect the Island's unique  
great space. Policy IV-29 seeks to [p]reserve and increase  
notes the importance of preserving the appearance of openness and

Thomas R.G. Simmons  
Notary Public  
My Commission Expires August 11, 2000

  
\_\_\_\_\_  
, Notary

Michael J. Donaroma, Chairman

  
\_\_\_\_\_

Date

2/10/94

Date

2/10/94

Any party aggrieved by a determination of the Commission may appeal to the Superior Court within twenty days after the Commission has sent the Applicant written notice, by certified mail, of its decision and has filed a copy of its decision with the Town Clerk of the town in which the proposed development is located.

Commission: February 10, 1994.

This Decision is written consistent with the vote of the Edgartown. The Applicant may modify the development proposal and/or submit a new proposal to the Board of Health of the Town of

The Commission disapproves the Application and denies permission to the Board of Health in the Town of Edgartown to grant the necessary development permits.

D. THE COMMISSION FINDS THAT THE PROPOSED DEVELOPMENT, WHICH IS WITHIN FOUR SEPARATE DISTRICTS OF CRITICAL PLANNING CONCERN, IS GENERALLY CONSISTENT WITH THE REGULATIONS APPROVED OR ADOPTED BY THE COMMISSION PURSUANT TO SECTION 10 OF THE ACT WITH RESPECT TO THESE FOUR DISTRICTS.

C. THE COMMISSION FINDS THAT THE PROPOSED DEVELOPMENT IS GENERALLY CONSISTENT WITH DEVELOPMENT ORDINANCES AND BY-LAWS OF THE TOWN OF EDGARTOWN.

B. AS DESCRIBED ABOVE, WITH RESPECT TO SECTIONS 15(G) AND (H) OF THE ACT, THE COMMISSION FINDS THAT THE PROPOSAL WILL SUBSTANTIALLY AND UNREASONABLY INTERFERE WITH THE ACHIEVEMENT OF THE OBJECTIVES OF THE GENERAL PLAN OF EDGARTOWN AND THE REGIONAL ISLAND PLAN. (SECTION 14(B) OF THE ACT).

not pertinent to the issues raised by the proposed project, or such factors were relatively minor in their effects in comparison to other factors.

David Hirtzel of Sasaki Associates, Inc. discussed the goals

that the Plan had received for sustainable design.

She also discussed the term "sustainable design" and the award had worked with over the years and how the new Plan had evolved. into the changes to the Plan, the various groups that the Trust Ms. Shortleeve further discussed the time that had gone

Popeo, P.C.

Christopher Milton of Mintz, Levin, Cohn, Ferris, Glosky and

Johnson, Trustee, Herring Creek Farm Trust; Robert Popeo and

John Ebersall, University of Massachusetts (Boston); Stuart

Angar and Dr. Eric Strauss, Environmental Consultants, Inc.; Dr.

William Mallar, University of Massachusetts (Lowell); Dr. Peter

Sasaki Associates, Inc.; Steve Smith, Geohydrocycle, Inc.; Dr.

(the Trust), introduced the members of her team: David Hirtzel of

Catherine Shortleeve, Trustee of Herring Creek Farm Trust

on the Applicant to make a presentation.

was occurring. She discussed the order of testimony and called

opportunity to be heard. She also explained the videotaping that

noted that the hearing would not be closed until everyone had an

record then they needed to state so when they spoke. She also

previous testimony brought forward and included in this hearing

carry forward and if those testifying wished to have their

DRI, all testimony from the previous DRI did not automatically

p.m. She then noted that since the proceedings were for a new

reconvened the public hearing in the Old Whaling Church at 8:35

Linda Sibley, Chair of the Land Use Planning Committee,

8:04 p.m.

Edgartown, MA, which was a larger facility. Adjournment was at

She then adjourned the hearing to the Old Whaling Church,

She noted that the Applicant was present.

opened the hearing for testimony at 8:00 p.m. on October 21, 1993

Land Use Planning Committee read the public hearing notice and

There being a quorum present, Linda Sibley, Chair of the

SUMMARY OF THE HEARING TESTIMONY

EXHIBIT A

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of the Plan. He discussed the various studies that had been done on the proposal and the site. He discussed the various attempts to comply with the spirit and the letter of the regulations covering the site. Mr. Hirtzel then, using the descriptive plan, explained the location of various features of the site. He noted the location of the 25 acres to be dedicated to conservation uses and the location of the amenities, the lot sizes, and which lots were clustered and which were not. He then discussed the development envelopes and the limitations to be imposed. He discussed the various components of the Plan. He then discussed the covenants and preservation of open spaces, design controls, and the prohibition against guest houses. He noted the Plan was a substantial revision of the previous submittal. He cited the areas of revisions and the meetings that had taken place that had prompted the reconsideration of the design.

Dr. Peter Auger discussed the overall habitat of the site and described the background of those who had worked on the wildlife study. He explained how the study was conducted, how the data base covered all four seasons, and how an appropriate sample size was selected. The team began by analyzing the area and he noted that a farm is a dramatically altered area; no grassland was associated with the location. The team sought to identify rare or endangered species to determine potential impact of development. He discussed the relationship of the site to the two great ponds and the meetings that were held with the ponds committees. He then discussed the methodology used to collect the baseline data. He then discussed the wetland area. He noted the cataloging of data so that it could be used and checked by others. He discussed the lack of certain species and the abundance of others which he related to the farm issues. He further discussed the methodology of sampling and related it to what was found. He then noted that the types of animals found were indicative of disturbed habitats such as a farm. He noted that deer were indicative of such sites.

Dr. Eric Strauss discussed the various species of birds that were found on the site. He discussed the methodology used to

identifying the birds of the area. He noted that diversity occurred at migration times. He discussed management strategies for shore birds such as piping plovers. He also noted that the greatest diversity and concentrations occurred near fresh water, such as rain collection areas. He felt the management strategy proposed by the Applicant was a reasonable one. He then discussed the individual species found in the area.

Dr. Auger then discussed the chances of overlooking certain species. He discussed the use of certain specialists to review particularly special areas. He discussed how the methodology was discussed with the MVC and others. He then discussed the shore bird habitats, the open area habitats, the beach areas, the use of off-road recreational vehicles (ORVs) on beaches. He discussed the usage of boats on pond edges. He discussed the damage possible from such vehicles. He then discussed the revision of the plan to include sandplain grass areas. He felt this would improve diversity of habitat, not taking the agricultural issue into account. He further discussed the grassland issue and stressed the biological diversity issue. He further discussed the difference between the old plan and the new one, especially the open space characteristics of the new plan. He then discussed the loss of the wetland area when the pond was breached. He then discussed how the wildlife study had influenced the revision of the plan. He also discussed the agricultural uses of the land and noted the rotation of grazing sheep would assist in habitat restoration.

Dr. John Ebersall discussed his role in the planning and study of the site. He discussed the conservation of the site and the critical concern for the site. He further discussed the issue of sandplains grasslands and the need to return to such a habitat system. He also discussed how the future preservation of the area might be assisted. He then suggested that it was necessary to weigh the farm area with which everyone is familiar against the habitat to be created by sandplain grasslands. David Hirtzel then discussed the open space management plan using illustrative drawings. He showed the various areas, such

- modified high impact agricultural uses in exchange
- eliminated residents' beach club
- an additional beach parcel.
- increased land area by including through purchase

indicated where those changes occurred:

David Hirzel then summarized the changes to the Plan and pond or the groundwater were indicated by the analysis. further concluded that no adverse impacts to either the great groundwater from the Plan was approximately 3,862 lbs. He He then indicated that potential impacts of nitrates on the the site to groundwater with respect to nitrates was 5,795 lbs. use impacts. He discussed the impact of the current land uses on of any impact. He then explained the model used to estimate land impact on the great pond. He felt that there was no indication He then discussed the nitrate loading in the area and the the groundwater level during breaching had dropped two feet. Smith then indicated that tidal influence became noticeable once groundwater flow was altered during the period of breaching. Mr. pond breach period and an unbreached period and indicated how the discussed the groundwater profile of the areas in both a great area and felt that the recharge period was 6.2 years. He then fresh water lens under the farm and the means of recharge in the monitoring wells related to the pond opening. He discussed the monitoring wells were located. He further discussed the impacts on groundwater under the farm. He noted where the quality. He then discussed the methodology used to determine the no detrimental effect and would contribute to improved water with the proposal. He indicated that the development would have Steve Smith of Geohydrocycle, Inc. discussed his involvement the new Plan.

then discussed the nutrient loading study and its influence upon subdivision plan itself and how it related to the open space. He envelopes and the open space area. He then showed the the areas which prohibited any structural uses, the building walkways. He then showed a no development plan which indicated as beaches, wetlands, habitat areas, and possible raised

for grassland habitat and low impact agricultural uses.

- relocated and/or clustered 25 dwelling units
- created 15 acres of grassland via cluster and eliminated homes from best soils on site.
- eliminated 1,500 feet of roadway
- offered 25 acres of open space as donation and developed covenants, easements and restrictions for said open space.
- agreed to coordinated management of sidewalk depicted development envelopes on all lots
- deferred development for 10 years.

He then discussed benefits that the plan would offer:

- preservation 85% of site as open land
- 25 acre donation to be restored as sandplain grasslands
- open space management plan
- visual character of farm preserved including views
- community character
- preservation of view from Herring Creek Road
- environmental protection
- enhancement of bio-diversity
- public education to school by public access to fields and field trips
- functioning research site
- upgrade of utility systems
- preservation of farmlands
- phased development and deferment
- on-site habitat manager
- increase tax base
- affordable housing and others

Catherine Shortleeve discussed materials for the record and discussed how the plan related to the Regional Island Plan and other regulations and rules.

Ms. Sibley asked for Commissioner questions.

Mr. Sullivan asked about the number of septic systems



proposed. He was informed that there would be 55 septic systems including existing ones, 14 in mounded configuration. Mr. Sullivan asked about the beach club septic system and was told it was an in-ground system with a capacity of about 2,500 gallons per day.

Ms. Marinelli asked about septic system relation to groundwater. She was told that all systems would be above groundwater table as required by Title V.

Ms. Greene asked if existing systems met Title V. There was uncertainty as to what existing systems were. A discussion of how existing systems operated legally followed.

Ms. Marinelli questioned whether there would be any swimming pools, the number of showers and bathrooms in total. She was advised that there would be a maximum of four bedrooms per unit and pools were not excluded. The club would have a pool. A discussion of the question and Title V requirements followed.

Mr. Sargent raised a question regarding the deep monitoring well. The deep wells were indicated on the map. Mr. Sargent questioned the nitrate loading numbers and the relation of the numbers to any faulty systems or would there be monitoring systems. It was noted that all systems would comply with Title V.

Ms. Riggs raised a question about affordable housing and public access to ponds. Ms. Shortsleeve discussed the number of affordable housing units - four off-site and one on-site. She discussed the commercial beach club and indicated that the Trust would contribute \$9,250 for affordable housing in connection with the club. Ms. Shortsleeve also noted that there would be no public access through the property to the great pond.

Ms. Bryant questioned whether occupants from the off-site units would be able to use the beach. Ms. Shortsleeve indicated that they were not considered a part of the residential community.

Mr. Hall discussed the number of cabana units. Ms. Shortsleeve discussed the number of cabanas and their location. Ms. Marinelli questioned whether the beach club would be

privately financed. Ms. Shortleeve indicated that no public monies would be used for the beach club.

Mr. Early questioned how one got from the club to the beach. Mr. Hirzel indicated that there would be no access for vehicles to beach. There would be parking at the club and from there access to the beach would be by existing walks, boardwalks, golf carts, or other conveyances.

Mr. Sargent questioned when the affordable housing would be available. Ms. Shortleeve indicated that the first affordable lot would be made available at the beginning and the rest as each group of ten lots were developed.

Mr. Best raised a question of membership in the club. Ms. Shortleeve indicated that it was a private membership club at a membership of \$250.

Mr. Best raised a question regarding cluster lots. Mr. Hirzel indicated that there were 15 lots subject to clustering since they each contained less than the 3 acre lot size required under applicable zoning regulations.

Mr. Best then raised a question whether the covenants would ensure that the open areas would remain in perpetuity. He was advised that the open areas would remain in perpetuity.

Ms. Bryant raised a question on solicitation of memberships for the beach club. Ms. Shortleeve indicated that solicitation would be by advertisement.

Ms. Riggs raised concerns regarding the sandplain area and the wildlife area and the encroachment of housing thereon. Dr. Auger discussed the alternative to the Plan which was to continue the existing farm with no sandplain grass. He further discussed the concept of returning to sandplain grass.

Ms. Greene questioned the use of boats on Crackatuxet Pond. Mr. Hirzel indicated that the management plan indicated that there would be no boats launched from or stored on the banks and that access would be via an elevated walkway extending into the water and no more than three craft would be used to transport club members to the beach. A discussion of this matter followed.

Mr. Early questioned how the craft would be landed on the

beach side of the pond. Mr. Hirzel indicated by elevated walkways (docks) to protect edges. Ms. Shortslieve further discussed this issue. Dr. Strauss also discussed this issue and indicated that some form of raised conveyance would be needed and no foot traffic on the pond edge would be permitted. Mr. Early questioned whether a condition to that effect might be in order. Dr. Strauss felt absolutely.

Ms. Sibley noted the time and discussed the continuation and asked if there were any persons who could not return at a continuation.

Robert Hughes, abutter and member of Cohan family, discussed his relationship to the site. He discussed the original sale transaction and indicated that the Cohan family wished to have all previous testimony brought forward to this hearing. He discussed a 1969 agreement and its relationship to the proposal. He asked that the proposal be denied.

Paul Goldstein, biologist, discussed the wildlife and management plan for the area. He felt agriculture and sandplain grass are compatible. He felt the inventory was inadequate and indicated the reason why. He discussed the lack of identification of certain species that relate to sandplain grass. He then discussed those species that had been identified. He then discussed the methodology used and why he felt it was lacking. He also noted that samples were done in spring, fall and summer and that that sampling missed certain species. He then discussed the lack of fox on the island, the misidentification of certain trees which he believed could result when one is not familiar with the area.

Ms. Sibley explained the procedures that would occur at the continued hearing. She then discussed a procedural matter with the Commissioners regarding responses to experts. A discussion of this matter followed.

Dr. Strauss discussed the methodology used and explained how each specie was identified. He explained the confidence level of various sightings. He then discussed the migratory habits of certain species. He then discussed the issue of fox tracks and

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noted that the report should have said dog.

Dr. Auger discussed the issue of fox tracking and how one could mistake the identification of such animals. He then discussed the methodology for determining species and discussed the term "extirpated" with respect to the species on the site. He indicated comfort with the study.

Ms. Greene raised a question about the location where the sparrow was spotted. Dr. Strauss indicated the location was near mowed patches on the site where there was standing water. He then indicated the location on the map.

Ms. Sibley then continued the hearing to November 18. The Martha's Vineyard Commission held a continued hearing on Thursday, November 18, 1993 at 7:30 P.M. in the Olde Whaling Church, Main Street, Edgartown, MA on the following

Ms. Sibley read the public hearing notice and opened the hearing for testimony at 7:50 P.M. on November 18, 1993. She called upon the applicant to make a brief summary of the previous testimony.

Catherine Shortleeve discussed the proposal and the individuals who had done the work and their backgrounds. David Hirtzel of Sasaki Associates summarized the Plan. He discussed the way the Plan followed Vineyard traditions and provided protection to the resources of the area.

Ms. Sibley called for the staff report.

John Schilling, MVC staff, discussed the revisions to the Plan. He noted that there were approximately 6-8 acres in questionable ownership. He also noted the removal of certain features from the original Plan, such as one of the two beach clubs, an access road and the relocation of other lots.

Mr. Schilling discussed the 25-acre open space lot and the ownership thereof.

He then discussed the affordable housing offer. He then discussed water, sewerage and other utilities. He then discussed the sluiceway problem and how it related to the proposal. He felt there were certain conflicts with the Regional Policy Plan with respect to agriculture.

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He then discussed the correspondence that was submitted. Mr. Jason raised an issue of how the affordable units would be allocated, whether it was when ten units were sold or ten units were transferred. Ms. Shortleeve indicated that it was money being transferred, a sale in other words, that would trigger the availability of the affordable housing units. Ms. Greene discussed the number of affordable units that would be available if a certain number went to Wallace family members. Ms. Shortleeve indicated that it made no difference who the purchaser was, one affordable unit would be made available after each increments of ten sales. During any period when development was deferred, no affordable housing units would be available.

A discussion of the sale or conveyance of a lot followed. Mr. Sargent questioned whether there was any guarantee of affordable housing. Ms. Shortleeve indicated that the affordable housing was contingent upon the development being built, as approved.

Mr. Sargent questioned whether fourteen units being conveyed to family members after any deferred development period would trigger affordable units. Ms. Shortleeve indicated yes. David Wessling of the Commission staff discussed traffic issues and in particular the changes to the access/egress points. He discussed the access point and whether it had been satisfactorily reviewed.

Ms. Sibley questioned whether further studies would mean changes. Mr. Wessling felt that the access point had not been sufficiently evaluated by the Applicant.

William Wilcox, MVC staff, discussed the nitrate/groundwater impact. He further discussed the information obtained from the Applicant and the uncertainty of some of the data. He discussed a number of points on which he differed slightly from the Applicant and indicated some aspects of the data which he found confusing. He then discussed a study conducted by Dr. Arthur Gaines concerning nitrate intrusion in the Edgartown Great Pond. Mr. Wilcox felt the data would be more realistic if a better

He questioned how you can preserve the land as is and still regarding development in the area.

He then read a portion of a brief from a suit filed in 1979

the same as the previous one -- fifty four lots.

and letters received. He noted that the proposal was basically discussed the background of the proposal and the various reports received the most attention of any proposal he had ever seen. He

the Board of Selectmen. He indicated that the proposal had Ted Morgan, Selectman, Town of Edgartown, spoke on behalf of

Ms. Sibley then called for town boards.

discussion of whether they were in the flood plain followed.

systems. Mr. Wilcox indicated where they were located. A

Mr. Clark further questioned the location of these mounded

Wilcox indicated the plan involved fourteen such systems.

Mr. Clark questioned the number of mounded systems. Mr.

and exposure to wastewater effluent.

would happen but felt that there might be erosion, loss of usage, systems of a 100-year storm. Mr. Wilcox was unsure exactly what

Mr. Hall questioned the potential impact upon the mounded

eutrophication.

and any impact upon the Great Pond with respect to

Mr. Sargent raised a question regarding the nitrate movement

indicated he did not feel qualified to respond.

to any potential impact to the sandplain grasses. Mr. Wilcox

Mr. Sargent raised a question whether Mr. Wilcox could speak

indicated that he did not feel qualified to respond.

any potential impact to the sandplain grasses. Mr. Wilcox

Mr. Schwaikert questioned whether Mr. Wilcox could speak to

had revised the study to reflect this change.

Mr. Wilcox noted that there was no such area and the Applicant

there was no such area and wondered what that meant to the study.

Mr. Best discussed the unvegetated feed lot and felt that

raised systems.

had been considered. Mr. Wilcox briefly discussed the issue of

Mr. Best questioned whether the groundwater/septic system

recharge figure were obtained.

build fifty four houses. He further discussed the preservation that had gone on in the area.

He asked for a vote against the proposal.

Robert Avakian, Edgartown Conservation Commission, read a statement from the Commission regarding the proposal. The statement noted that the Commission had a problem with the restrictions and covenants and whether they would be able to fulfill the promised objectives. He then covered a number of points of question or concern.

He then noted that a copy of comments from Town Counsel, Ronald Rappaport, had been previously submitted to the Commission and asked that all previous testimony submitted under the previous DRI be brought forward.

Mr. Clarke questioned whether there were natural heritage maps available for the area.

Jane Varkonda, Conservation Officer, indicated that the barrier beach area and the area closest to Katama had potential habitat.

Steve Ewing, Edgartown Ponds Area Advisory Committee, read a statement of concern regarding the development. He discussed the size of the lots and open space created from various developments around the pond. He noted that the group had concerns that the mounded systems would adversely affect water quality in relation to the Great Pond and Crackatuxet Cove. He discussed the concerns of a beach club and access from shoreline lots. He felt the proposal called for lot sizes larger than those which had been historically permitted in other developments in the area. Ms. Sibley questioned how the surrounding developments calculated their densities. Mr. Ewing explained the basis for his information.

Edith Potter, Edgartown Conservation Commission, spoke about the plains area and the preservation that had taken place within the area. She discussed the quality of the soil in the area and felt it was wrong to lose prime agricultural soil to housing. She felt the underlying problem remained that of density. She felt agriculture was necessary to the Vineyard. She discussed

only method and discussed how sheep grazing had been used in maintenance method. Dr. Dunwiddie indicated burning was not the grasslands or whether mowing or cutting was a more effective Mr. Clark questioned whether it was necessary to burn proposal was unworkable.

that were not covered in the management plan. He felt that the grasslands would be accomplished. He further cited other items Applicant had failed to discuss how the restoration of the reestablishment of native grasslands ever attempted and that the Applicant. He noted that this would be the largest

inventory work and in the management proposals put forth by the testimony. He then identified problems that he had found in the Dr. Dunwiddie explained several points in his written preeminent expert on grasslands.

brought forward. He then introduced Peter Dunwiddie as the introduced written testimony and asked that previous testimony be Brendan O'Neil, Director, Vineyard Conservation Society, testimony.

reconvened the hearing at 9:47 p.m. She called for public Linda Sibley, Chairman of the Land Use Planning Committee The MVC took a five-minute break at 9:40 p.m.

act that permits it followed. A discussion of the pond opening and the legislative Bagnall indicated that he read the license as permissive and not Ms. Greene questioned the license for the sluiceway. Mr.

was present because of the pond opening and not in spite of it. were done by the Applicant. He also noted that the small wetland opening of the Great Pond in relation to the various studies that discussed his views on the proposal. He then discussed the

testimony on the previous DRI be brought forward. He further Paul Bagnall, Edgartown Marine Biologist, asked that his adequately protect the site.

be disapproved and that there a lower density be required to density was the overriding concern. She asked that the proposal the value of the natural aspects of the site. She stressed that the vulnerability of certain areas on the site. She discussed



years past. He discussed other methods. Ms. Greene questioned how seed could be obtained. Dr. Dunwiddie discussed the plant communities found in sandplain grasses.

Mr. Sargent questioned whether mounded systems could lead to the eutrophication of the pond and what would happen to the wildlife along the shore. Dr. Dunwiddie indicated that he was not qualified to respond.

Ms. Riggs discussed the hedgerows and what enhancement of sandplain grasses they would engender and further discussed the Katama farms and how the native grasses had returned when left alone. Dr. Dunwiddie discussed the development impacts on native grasslands and felt that development was deleterious. He noted that there would also be an impact upon animals. Ms. Riggs questioned the need for management. Dr. Dunwiddie discussed the past uses of areas that are now sandplain grasses. He discussed the enrichment of soils as not in best interest of grasslands and felt it would be a long time before the site would revert to grasslands. He then noted that agriculture and sandplain grasslands can coexist.

Ms. Greene questioned the appropriateness of using agricultural soils for sandplain grasslands. Dr. Dunwiddie discussed the possible methods of making agricultural soils more conducive to sandplain grassland habitat.

Mr. Donaroma questioned whether it was possible, given a good management plan involving seed collection and native plant transplanting, to establish a sandplain grassland. Dr. Dunwiddie indicated that it was possible by using native plants or local landscapers who use native plant materials.

Ms. Sibley questioned what problems would be encountered in order for the so called "East Field" to function with the Katama plains sandplain grasses. Dr. Dunwiddie indicated that any fragmentation in grasslands was problematic. He discussed those animals who would and would not interact in fragmented areas. Peter Auger discussed their previous meetings with Dr. Dunwiddie regarding the proposal. Mr. Auger indicated that he

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stood by the research team report. He further discussed the issue of habitats.

John Ebersoll further discussed the issue of agriculture and sandplain grasses. He discussed the present day agricultural use of the area. He discussed potential alternative agricultural uses. He further discussed the possible benefits of the hedgerows. He then discussed the areas that were to be devoted to sandplain grasses. He discussed the problem and control of pets and how detrimental pets could be. He discussed several other issues of the proposal that he felt were not noticed by other parties.

Ms. Bryant questioned whether Dr. Ebersoll was a paid consultant when he wrote the letter on University of Massachusetts stationary. Dr. Ebersoll discussed his actions in using university stationary.

Ms. Greene questioned the specialty and experience of Dr. Ebersoll. He indicated that he was an evolutionary ecologist and had 17 years experience.

Ms. Riggs raised a further issue regarding the usage of Commonwealth stationary and felt it was a bit misleading. She further discussed the letter and its contents. A discussion of this matter followed.

Mr. Jason questioned what would happen if the plan did not work. Dr. Ebersoll discussed the evolutionary potential of the area. He felt that sandplain grassland may occur in 5-6 years. He further discussed the restoration issue and noted that such a restoration had not been done. Mr. Jason asked about the length of time it might take for the farmland to return to grassland.

Dr. Ebersoll felt it would be difficult to determine exactly. Mr. Clark discussed what type of land was currently present and what was proposed and what effect the raised septic systems might have. Dr. Ebersoll indicated that the proposal was for sandplain grassland restoration and that the raised systems would have no effect although he would rather not have them. A discussion of this matter followed. A discussion of the problems caused by nitrates followed. A discussion of a lesser density

Mark Nelson further explained their review. He explained how the overall numbers for the carrying capacity of the pond were derived. He noted that their calculations indicated a carrying capacity of only about 2 lb. of nitrogen per acre per year -- far

He discussed the use of the carrying capacity of the land and water resources. He contrasted his method of analyzing carrying capacity with the methodology used by the Applicant. He discussed the mounded systems and how they did not meet the carrying capacity of the site. He then discussed the nitrate loading, the Gaines study of the Great Ponds, the overall drainage area of both ponds. He then further discussed the methodology employed and the results of the analysis.

Gray Bryan, President of Great Plains Conservancy, introduced Scott Horsley and Mark Nelson of Horsley, Witten Hegemann, Inc., consultants in water resources and land planning. Mr. Horsley discussed his background and the materials submitted for the record. He asked that all previous submittals be included in this DRI.

A discussion of whether the hearing would be continued followed. Ms. Shortleeve indicated yes. Sibley questioned whether a ban on cats was being considered. Issue being discussed would be in the management plan. Ms. discussion of this issue followed. Ms. Shortleeve felt that the followed. Ms. Shortleeve indicated cats would be restricted. A discussion of whether there would be restrictions on pets number of pets permitted by the proposed covenant restrictions. Ms. Riggs discussed the issue of domestic animals and the process.

Mr. Jason questioned what the first step in restoration was. Dr. Ebersoll indicated that first step was either to do nothing or to plow the area as the restoration was an evolutionary process. Mr. Clark questioned what types of grasslands were best suited for soils in the area. Dr. Ebersoll indicated there was no comparison between sandplains grasslands and other types of grasses.

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less than the 32.6 lb. of nitrogen per acre per year calculation suggested by the Applicant. With respect to the Crackatuxet Cove, his calculations indicated 2.2 lb. per acre whereas the Applicant indicated a carrying capacity of 16 lb. per acre. He then discussed the management proposal which may have a further impact on the pond due to the relocation of units. Mr. Horsley further discussed that the zoning applicable in the area might not be sufficient to avoid adverse impacts on the ponds. Mr. Jason questioned how the calculation would work its impact on the pond. Mr. Nelson further explained the methodology. A discussion of this matter followed. Mr. Sargent questioned what happens when a pond eutrophies. Mr. Nelson explained the eutrophication process. Michael Wild, abutter, discussed the history of the farm. He discussed the fact that a development could occur on the farm but that the present proposal did not seem to make the grade. He then discussed the visual openness of the area. He then discussed the issue of flooding of the site. He then noted that he felt the East Field was being treated properly but felt that there were many issues with the contracts or promises or restrictive covenants. Ms. Sibley then discussed the matter of continuing with the testimony. A discussion of this matter followed. Following the discussion, the hearing was continued until December 16, 1993 at 7:30 p.m. in the Olde Whaling Church. The meeting adjourned at 11:25 p.m. The Martha's Vineyard Commission held a continued public hearing on Thursday, December 16, 1993 at 7:30 p.m. at the Whaling Church, Lower Level, Main Street, Edgartown, MA. Linda Sibley, Chairman of the Land Use Planning Committee, (LUPC), read the continued Public Hearing Notice, opened the hearing for testimony, at 7:40 p.m. on December 16, 1993. She noted that the previous meeting had adjourned during the public input portion of the meeting and indicated that this hearing would reconvene. Ms. Sibley then called for testimony from the public.

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He then discussed the reasons for the differences between local conservationists and the Applicant's experts. He felt that they had little experience with sandplain grassland areas. He also felt that their experience on the Vineyard was very limited and their unfamiliarity limited the value of their opinions. He discussed the reports that had been presented and what was wrong with the investigation. He felt implementation of the Plan would be detrimental to the site and the sandplain restoration

relationship of edge habitats on sandplain grasslands. He then discussed edge habitats and open habitats. He discussed the impacts on the pond environments. He discussed the skepticism with which the environmental community viewed the proposal. He then discussed the possible damage to the shorelines of both ponds and indicated that the sandplain restoration would not prove ecologically significant or viable. He then discussed the development. He indicated possible damage to the shorelines of

Foundation had submitted previously in opposition to the Foundation, reviewed several of the key points which the Richard Johnson, Executive Director, Sheriff's Meadow plan for Herring Creek Farm fell below the League's standards. She felt the League opposing the development of the site. Kathy Brennen, League of Women Voters, read a statement from

list. state-listed species and their relation to the endangered species endangered species. Mr. Culbert discussed the categories of Ms. Bryant questioned the difference between state-listed and found on the site. He felt the site was a valuable bird site. indicated that there were roughly fourteen state-listed species species found on the Island could be found on the site. He living on the site and indicated that roughly one-third of all He then indicated that there were some 123 species of birds

listings. that he had observed on the site. He then compared his listing inventory work. He then discussed the various species of birds that had been presented and the completeness of some of the Rob Culbert, local ornithologist, discussed the testimony

used to perform the inventory. He further discussed some of the some of the management plan issues. He discussed the methodology Peter Auger discussed the biological team and then discussed

The Commission reconvened at 9:35 p.m.

The Commission then took a brief break at 9:15 p.m.

and other related matters.

systems. He then discussed systems operations, flows, Title V, his background as an expert knowledgeable about on-site disposal William Mueller, regional professional engineer, discussed

concentrations followed.

months followed. A discussion of groundwater flows and nitrate A discussion of the high nitrate readings shown on several projections.

He went through his presentation using a series of overhead

original report and went on to explain why.

Steven Smith, hydrologist, noted that he stood by his

scientists had decided not to participate.

questioned why. Ms. Shortleeve explained why various local

Ms. Riggs discussed lack of input from local scientists and

handled by the team. Mr. Auger felt that they could.

Mr. Sullivan questioned whether the restoration could be

the team members relationship to sandplain grassland restoration.

explained how the team members were chosen. He further discussed

in sandplain restoration. Peter Auger indicated no and further

Mr. Sullivan questioned whether the team had any experience

up the whole matter.

planning issues, counsel on behalf of the Trust and she would sum

Peter Auger to wildlife and biological issues, Dave Hirtzel to

groundwater matters, William Mueller to on-site sewage disposal,

Ms. Shortleeve indicated that Steve Smith would speak to

give the closing summary.

There being no further testimony, the Applicant was asked to

grassland habitat and its functioning.

of certain areas. Mr. Johnson further discussed the sandplain

Ms. Sibley questioned certain comments about the viability

proposed.

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management proposals and the viability of them. He talked about the potential success of the management plan and the protection of open space.

David Hirtzel, Sasaki Associates, discussed the related planning issues regarding the proposal. He discussed the gitted land, the traffic issues, grasslands restoration and other points.

Ms. Greene questioned where the unclear title lands were.

Mr. Hirtzel showed where those lands were on the subdivision plan. Christopher Milton of Mintz, Levin, Cohen, Ferris, Glovsky and Popeo, counsel for the Trust, discussed various activities around the site which were disruptive to the site. Attorney Milton then discussed the environmental soundness of the Plan in the context of other activities in the general area.

Ms. Shortleeve then discussed the process and thanked those present for their time. She further discussed generalities of the Plan. She then discussed the benefits of the Plan as presented. She then discussed the issue of sustainable design, the relation to Chapter 831 and compliance with local ordinances. There being no further testimony, the hearing was closed at 10:02 p.m. with the record remaining open for two weeks for written submittals.

Edgartown, Mass. Feb 11 1994  
at 12 o'clock and 20 minutes PM  
received and entered with Dukes County Deeds  
book 626 page 827

Attest:

*Beverly W. King*

Register