

THE MARTHA'S VINEYARD COMMISSION

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

RECEIVED-ENTERED

15 June 2001 M 3:45 p.m.

COUNTY of DUKES COUNTY
 REGISTRY OF DEEDS
 DIANNE E. POWERS

Document No. 48144

Certificate of Title: 5746

Date: June 14, 2001

To: Planning Board and
 All Permit Granting Boards
 Town of Edgartown

From: Martha's Vineyard Commission

Subject: Development of Regional Impact
 re: Modification of Previous Decision
 residential subdivision

Applicant: The Nature Conservancy
 Eastern Regional Office
 11 Avenue de Lafayette
 Boston, MA 02111
 and
 Herring Creek Farm Trust
 c/o General Investment and Development Co.
 600 Atlantic Avenue, Suite 2000
 Boston, MA 02210

Modification of Previous Decision
Summary

The Martha's Vineyard Commission (the Commission) hereby modifies the Decision of the Martha's Vineyard Commission dated November 30, 2000 and recorded in the County of Dukes County Registry of Deeds, Document No. 47212, Certificate of Title 5746, regarding the Application of Herring Creek Farm Trust, c/o General Investment and Development Co., 600 Atlantic Avenue, Suite 2000, Boston, MA 02210, as submitted by The Nature Conservancy, Eastern Regional Office, 11 Avenue de Lafayette, Boston, MA 02111, for the subdivision of land in the Town of Edgartown.

The Martha's Vineyard Commission held a Regular Meeting on Thursday, May 17, 2001 at 7:00 p.m. in the Chappaquiddick Community Center, Chappaquiddick, Edgartown, Massachusetts.

Under Item #8 New Business, the Commission took up the matter of the Modification request. Charles W. Clifford, Executive Director of the MVC, distributed materials pertinent to the proposed Modification and explained what was being sought by The Nature Conservancy. He noted that there was a bound document entitled "Petition for Modification to Definitive Subdivision Plan, Cluster Special Permit and Intensity Special Permit Approvals," submitted to the Edgartown Planning Board by The Nature Conservancy, prepared by Sasaki Associates, Inc., May 14, 2001, and containing seven (7) subdivision plans or sheets thereof depicting various aspects of the proposed changes on a series of maps. Included therewith was a letter from The Nature Conservancy to the Edgartown Planning Board outlining the changes that need to be made to both the MVC Decision as well as the EPB Decision.

The new proposal is being called "The Low Density Consolidation Plan," which will consist of ten (10) residential lots, four (4) of which presently have dwellings thereon, an area (the East Field, so called) for sandplain grassland restoration, the existing farm building on six (6) acres of land to become part of a farm education program, and the Center Field, so called, to be used for agriculture, pasture, hay, etc.

Following discussion, on a motion by Mr. Donaroma, duly seconded, the Martha's Vineyard Commission voted in the affirmative (10), with two negative votes and two abstentions, that the changes being proposed to the DRI Decision, in accordance with the Regulations of the Martha's Vineyard Commission, Section 2.500(6) Modification of a Previous DRI Decision, were an insubstantial change not warranting a public hearing.

It was then moved, duly seconded, to make the necessary modifications to the Decision of the Martha's Vineyard Commission dated November 30, 2000. The Commission voted in the affirmative to do so.

The Decision of the Martha's Vineyard Commission dated November 30, 2000 and duly recorded as previously noted is hereby modified as follows:

- 1.a.m. That Condition 1(a) shall be omitted in its entirety and following new wording substituted in place thereof:

- 1(a) That no individual residential structure shall have more than six (6) bedrooms.
- 1.b.m. That Condition 1(b) shall remain unaltered and as written in the November 30, 2000 Decision.
- 1.c.m. That Condition 1(c) shall be omitted in its entirety and the following new wording substituted in place thereof:
 - 1(c)(1) That the Commission accepts as submitted by the Applicant the proposed Declaration of Covenants, Easements and Restrictions and as identified as Document A Proposed Declaration of Covenants, Easements and Restrictions, as amended by the Town of Edgartown and/or the Commonwealth of Massachusetts, and as found in Section V Documentary Appendix to the Environmental Impact Statement submitted by Herring Creek Farm Trust to the Edgartown Planning Board on April 15, 1999.
 - 1(c)(2) That the Commission accepts as submitted by the Applicant the proposed Conservation Restrictions and Conservation Easements and as identified as Document B Proposed Conservation Restrictions and Conservation Easements, as amended by the Town of Edgartown and/or the Commonwealth of Massachusetts, and as found in Section V Documentary Appendix to the Environmental Impact Statement submitted by Herring Creek Farm Trust to the Edgartown Planning Board on April 15, 1999, said Conservation Restrictions and Conservation Easements to permit compatible uses such as "natural community management, ecologically compatible agriculture, horticulture, silviculture and farming activities, as well as activities intended to promote a greater understanding of conservation, agriculture and farming issues, including, without limitation, crop, hay, hedge-row, flower production, cultivation, harvesting, grazing and pasturage for livestock in the Central Field and on the Farm and grazing of residents' privately owned horses on the Central Field.
- 1.d.m. That Condition 1(d) shall be omitted in its entirety because the Commission has been convinced that the Edgartown Planning Board will maintain oversight and control of the Homeowners Association documents and in part because the Applicant has eliminated all lots from the Central Field.
- 1.e.m. That Condition 1(e) shall be omitted in its entirety in part due to the fact that all lots have been eliminated from the Central Field and in part due to the fact that the Applicant has dedicated the Central Field to agricultural uses.

- 1.f.m. That Condition 1(f) shall be omitted in its entirety due to the fact that the Commission has been convinced that the Edgartown Planning Board will continue to maintain oversight and control of all matters related to the Homeowners Association documents.
- 1.g.m. That Condition 1(g) shall remain unaltered and as written in the November 30, 2000 Decision.
- 1.h.m. That Condition 1(h) shall be omitted in its entirety and the following new wording substituted in place thereof:
 - 1(h) That the Commission accepts the Applicant's offer to cooperate with the Town of Edgartown and enter into an agreement regarding the management, maintenance and operation of the Sluiceway, so called, and further accepts the Applicant's offer to provide up to \$15,000 to help fund a watershed study of Crackatuxet Pond for the purposes of determining the appropriate nitrogen loading limit.
- 1.i.m. That Condition 1(i) shall remain unaltered and as written in the November 30, 2000 Decision.
- 1.j.m. That Condition 1(j) shall be omitted in its entirety and the following new wording substituted in place thereof:
 - 1(j) That within the development envelopes there may be fertilized lawn and landscaping areas not to exceed five thousand (5,000) square feet in area, and that said lawn areas may be fertilized using only slow-release sources of nitrogen, and that other non-native landscape plantings may only be used within the building envelopes unfertilized, and that only native plantings may be placed outside the building envelopes and shall not be fertilized, and that all decks and/or hard surfaces exclusive of driveways shall not exceed five thousand (5,000) square feet in sum total, and that attached or detached garages (maximum three (3) car capacity) may not be placed outside of the building envelope, and that such ancillary structures such as pools, greenhouses, garages (detached) and the like may be placed only within the building envelopes and must be hidden or screened from view from the Great Pond or from any public way.
- 1.k.m. That Condition 1(k) shall be omitted in its entirety and the following new wording substituted in place thereof:
 - 1(k) That the use of synthetic fertilizers or biocides (i.e., insecticides, fungicides, herbicides) on any of the properties comprising Herring Creek Farm be prohibited by covenant or other legally acceptable instrument(s), except that with the

approval of the Conservation Commission of the Town of Edgartown, such covenants or instrument(s) may except from this provision such biocide application by (or under the supervision of) non-profit, conservation-related organizations, provided the following conditions are satisfied:

- (1) the application of biocides is limited to the purpose of control and removal of invasive species and disease outbreaks;
- (2) the application is limited to the narrowest spectrum, least-persistent material appropriate for the target species; and
- (3) such application is subject to all applicable laws and regulations.

1.l.m. That Condition 1(l) shall remain unaltered and as written in the November 30, 2000 Decision.

1.m.m. That Condition 1(m) shall be omitted in its entirety due to the elimination of the RUCK communal system from the Proposal and that Condition 1(g) shall be used in place thereof.

1.n.m. That Condition 1(n) shall be omitted in its entirety due to the elimination of the RUCK communal system from the proposal and that Condition 1(g) shall be used in place thereof.

1.o.m. That Condition 1(o) shall be omitted in its entirety and the following new wording substituted in place thereof:

1(o) That all existing sewage disposal units serving more than four (4) bedrooms shall be converted to denitrification systems (total nitrogen in effluent of less than 19 milligrams per liter) prior to the sale or transfer of the residential dwelling.

1.p.m. That Condition 1(p) shall be omitted in its entirety due to the elimination of all RUCK systems from the proposal and the following wording be substituted in place thereof:

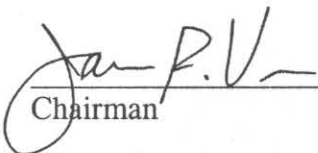
1(p) That each pre-approved denitrification septic system installed shall be sampled on a monthly basis by the owner of the lot upon which the system has been installed and the results shall be sent to the Edgartown Board of Health; and that the leaching areas and septic tanks associated with such systems shall be situated where the natural grade is above the 100-year flood level; and that there shall be no mounding allowed without the specific approval of the Edgartown Board of Health.

- 1.q.m. That Condition 1(p) shall be omitted in its entirety due to the elimination of all RUCK systems from the proposal and the following wording be substituted in place thereof:
- 1(q) That if the effluent quality discharge by any on-site denitrification system exceeds 19 ppm of total nitrogen, then an immediate retest shall be required; and that if the retest exceeds 19 ppm, then the owner of said system shall hire a registered professional engineer to examine the system to determine the reason for the failure and shall provide the Edgartown Board of Health with the evaluation and the steps that need to be taken to correct the problem; and that should the effluent continue to exceed the prescribed limits for two (2) consecutive monthly tests following the retesting, then the Board of Health may require an independent evaluation by a registered professional engineer at the expense of the owner of the system in question or the Homeowners Association; and that corrective measures will continue to be used until the system reaches the appropriate treatment level; and that no additional construction or expansion of residential dwellings leading to additional flow shall be allowed until the problem is resolved to the satisfaction of the Board of Health.
- 1.r.m. That Condition 1(r) shall be omitted in its entirety due to the elimination of the RUCK systems from the proposal.
- 1.s.m. That Condition 1(s) shall be omitted in its entirety due to the elimination of the RUCK systems from the proposal.
- 1.t.m. That Condition 1(t) shall be omitted in its entirety due to the elimination of the RUCK systems from the proposal.
- 1.u.m. That Condition 1(u) shall be omitted in its entirety due to the elimination of the RUCK systems from the proposal.
- 1.v.m. That Condition 1(v) shall remain unaltered and as written in the November 30, 2000 Decision.
- 2.a.m. That Condition 2(a) shall be omitted in its entirety and the following new wording substituted in place thereof:
- 2(a) That the Commission accepts the Applicant's or successor's offer to provide to the Dukes County Regional Housing Authority, Habitat For Humanity or any similar organization or committee responsible for the provision of affordable housing one (1) off-site buildable lot of two (2) acres or a combination of off-site buildable lots which total two (2) areas; the provision of which shall coincide with the directive of the Edgartown Planning Board with respect to the time or date of provision thereof.

The Planning Board of the Town of Edgartown and all Permit Granting Boards in the Town of Edgartown having jurisdiction may now proceed in accordance with applicable local and state laws to approve, approve with conditions or deny the Modification request of The Nature Conservancy and Herring Creek Farm Trust.

And further, The Nature Conservancy and Herring Creek Farm Trust are hereby put on notice that this Modification of the Decision shall not become effective until The Nature Conservancy has consummated the purchase of the Herring Creek Farm property and has recorded in the Registry of Deeds of the County of Dukes County legal documents, namely, a deed signifying ownership of said Farm.

The Nature Conservancy and Herring Creek Farm Trust are hereby put on notice that should the proposed Low Density Consolidation Plan not be consummated within one (1) year of the date of this Modification, then said Modification shall become null and void and the Decision shall revert back to the Decision of November 30, 2000, which shall become effective immediately thereupon and shall remain in full force and effect henceforth.


Chairman

6-15-01
Date


Notary

6-15-01
Date

IRENE MILLER FYLER
NOTARY PUBLIC
MY COMMISSION EXPIRES
JUNE 10, 2005