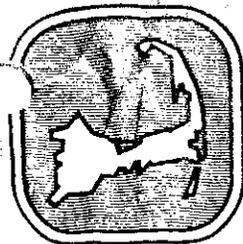


IS NOW

THE CAPE COD COMMISSION



CAPE COD PLANNING AND ECONOMIC DEVELOPMENT COMMISSION

1ST DISTRICT COURT HOUSE, BARNSTABLE, MASSACHUSETTS 02630

TELEPHONE: 508-362-2511

CCC #TR90046

DATE: October 25, 1990

TO: Board of Selectmen, Town of Yarmouth

Ms. Fayette Scheuch
West Hartford Conn.

Mr. Chris Reel
IEP, Inc.

RE: Development of Regional Impact
Cape Cod Commission Act, Section

APPLICANT: Ms. Fayette Scheuch

PROJECT: Smith Point Subdivision
Great Island, Yarmouth MA.

MAP/PARCEL: Assessors Map 34, Lot A-1

DECISION OF THE CAPE COD COMMISSION

SUMMARY

The Cape Cod Commission (Commission) hereby approves with conditions the application of Ms. Fayette Scheuch for a Development of Regional Impact (DRI) under Section 12(c) 3 of the Cape Cod Commission Act (Act), c. 716 of the Acts of 1989, as amended, for the proposed Smith Point Subdivision. The decision is rendered pursuant to the vote of the Commission on October 11, 1990.

PROJECT DESCRIPTION

The project site, known as Smith Point, is part of Great Island within the Town of Yarmouth. The site is bordered by Nantucket Sound, Lewis Bay and Uncle Roberts Cove. The proposed project is designed as an eight-lot single family cluster subdivision within 70 acres. The proposed subdivision includes three existing single family dwellings, four proposed single family dwellings within 30 acres, and a conservation restriction which will be placed on the remaining 40 acres. The project also involves an existing pier structure and two proposed pier structures.

PROCEDURAL HISTORY

Review of the proposed development by other agencies occurred as follows: [1] No filing was required under the Massachusetts Environmental Policy Act, Chapter 30, Sections 61-62H. [2] A preliminary Subdivision Plan for the project has been reviewed and accepted (conditionally) by the Town of Yarmouth Planning Board on January 17, 1990. [3] A Conceptual Development Plan and a Site Plan Approval Application have been submitted to the Town of Yarmouth Site Plan Review Board on April 27, 1990. [4] A Notice of Intent has been submitted to the Town of Yarmouth Conservation Commission on March 31, 1990, for the excavation and installation of piping for potable water transmission to single family home cluster subdivision. [5] The Cape Cod Commission held a hearing on an Exemption Application on Thursday, August 16, 1990, in Barnstable. After hearing the presentation by the applicant, the Exemption Application was denied.

This application for a DRI permit under sections 12 and 13 of the Act was filed with the Commission on June 15, 1990. A duly noticed public hearing on the application was conducted by the a sub-committee of the Commission pursuant to of the Act on August 29, 1990 at 3:00 p.m. in the Town of Yarmouth hearing room, Yarmouth, Massachusetts. The sub-committee continued the hearing to September 13, 1990 at 2:15 p.m. at the Commission office located on Main St. in West Barnstable. The sub-committee then closed the hearing and left the record open until the end of the meeting scheduled for September 24, 1990 at 2:15 at the Commission office. The sub-committee made their recommendations to the full Commission on October 11, 1990 at the 3:00p.m. hearing. The Commission voted to approve the DRI application of Fayette Scheuch for the proposed Smith Point subdivision with the conditions recommended by the sub-committee.

Materials Submitted for the Record

Materials submitted by the Applicant include:

- An application titled "Cape Cod Commission Development fo Regional Impact Exemption Application, July 1990", received July 27, 1990. This included plans and documents which show the project location, describe the character and environmental effects and document permitting efforts up to the present.
- Plans included "Preliminary Plan for Smith Point Subdivision", by IEP inc. dated December 13, 1989 with revisions dated 10/19/8911/14/89.
- Plans titled "Preliminary Plan for Smith Point Subdivision" also by IEP inc. dated 4/19/90 with revisions dated 10/19/89 and 11/14/89. These plans document proposed property boundaries, local topography, roadway and utility information and wetland resource delineations reviewed on-site with Mr. Brad Hall, Yarmouth Conservation Commission Agent.
- Two completed ground water studies conducted by Geologic Services Corporation, Orleans, MA.
- A water resources protection study for the Town of Yarmouth prepared by IEP, Inc., August 1988.
- An application titled "Supplemental Information for Cape Cod Commission Development of Regional Impact Exemption Application, 9 August 1990", received August 9, 1990.
- A list of abutters to the proposed development submitted on June 15, 1990.
- A memorandum dated 29, August 1990 from IEP, Inc., responding to staff comments.
- Nitrogen loading calculations from IEP, Inc.
- A water table map of the project location site.
- Draft Conservation Restriction granted to Trustees of Reservations, received 9/12/90
- Smith Point Architectural guidelines, received 9/12/90

Additional Materials:

- DRI Referral letter with attached information from planning board and site plan review committee.
- Letter from Arnold B. Chace, Jr., abutter to property.
- Letter from Brona Simon, State Archaeologist at the Massachusetts Historical Commission.
- Three (3) Cape Cod Commission Staff Reports, dated August 29, September 13, 24, 1990.

Testimony

At the August 29, 1990 hearing, the Commission heard oral testimony from the applicant, their representatives, Commission staff and other interested parties: The following spoke in favor of the project as proposed: Mr. George Dallas, esq., Gaston & Snow; Ms. Judith T. Wall, IEP, Inc.; Mr. Chris Reel, IEP, Inc.; Mr. Jim Freeman, IEP, Inc; Mr. Allan Scheuch.

Mr. Dallas provided the history of the Smith Point site area and described the proposed project. He stated that there would be no significant impacts from the construction of the new homes.

Ms. Wall and Mr. Reel, presented a plan of the site which highlighted resource areas, building and septic leachate envelopes, and proposed roadways. Mr. Reel spoke about septic flow/nutrient loading and pier impacts on the areas resources. Mr. Reel stated that there would be no significant impacts on the areas resources and further stated that the development, as proposed would not have any regional impacts.

Commission staff comments were made by Dorr Fox, Chief Regulatory Officer; Tom Camberari, Water Resource Coordinator. The main concerns addressed were nutrient loading from proposed homes, and the cumulative impacts of two new piers on the natural resources within Uncle Roberts Cove.

At the September 13, 1990 hearing, the Commission heard oral testimony from the applicant, their representatives, Commission staff and other interested parties: The following spoke in favor of the project as proposed: Ms. Judith T. Wall, IEP, Inc.; Mr. Chris Reel, IEP, Inc.; Mr. Allan Scheuch; Mr. and Mrs. Scheuch.

Commission staff comments were made by Dorr Fox, Chief Regulatory Officer and Lisa Hanscom, Regulatory Planner/Environmental Biologist. The main concerns addressed the cumulative impacts of two new piers on the natural resources within Uncle Roberts Cove.

At the September 24, 1990 meeting, the Commission heard oral testimony from the applicant, their representatives, Commission staff and other interested parties: The following spoke in favor of the project as proposed: Mr. George Dallas, esq., Gaston & Snow; Mr. Chris Reel, IEP, Inc.; Mr. Allan Scheuch.

Commission staff comments were made by Dorr Fox, Chief Regulatory Officer; Patty Dailey, Senior Regulatory Planner, and Lisa Hanscom, Regulatory Planner/Environmental Biologist. The main concerns addressed the cumulative impacts of two new piers on the natural resources within Uncle Roberts Cove and the proposed wording addressing archaeological resources on the site.

JURISDICTION

The proposed Smith Point Subdivision qualifies as a Development of Regional Impact (DRI) under Section 12 (c) (3) of the Act. Section 12 (c) (3) requires review of "any development which proposes to divide land of fifty acres or more which was in common ownership as of January first, nineteen hundred and eighty-eight." The application was referred to the Commission by the Town of Yarmouth Planning Board. The application and notices of public hearing relative thereto, the Commission staff's notes and exhibits and all written submissions received in the course of our proceedings are incorporated into the record by reference.

FINDINGS

The Commission has considered the Development of Regional Impact application of Ms. Fayette Scheuch for the proposed Smith Point Subdivision, and based on consideration of such application and upon the information presented at the public hearings and filed into the record, makes the following findings pursuant to Section 12 of the Act:

1. The proposed site for development is within a peninsula which is surrounded by Commonwealth tidelands with Nantucket Sound, Lewis Bay and Uncle Roberts Cove being the adjacent waters. Nantucket Sound and Lewis Bay are used extensively by the public for commercial and recreational activities (including public transportation, commercial and recreational boating, fishing, shellfishing, swimming and other water related activities).

2. Uncle Roberts Cove is presently open to both commercial and recreational shellfishing, and is used by recreational boaters. All of these waters are owned and used by the public and are of regional significance. Smith Point's proximity to these regional natural and coastal resources make its location one of regional concern. Mitigation to protect the resources includes:

- Limiting construction within designated "building envelopes" to keep buildings away from sensitive resources.

3. The potential septic flow combined with the location of the proposed septic systems east of the groundwater divide, which runs along the spine of the peninsula, raises concerns about the cumulative impacts of nitrogen loading to Uncle Roberts Cove and adjacent areas. Therefore, mitigation to protect water resources includes the following:

- Limiting the number of bedrooms on each lot, thereby limiting nutrient loading impacts.

4. The project includes an existing licensed pier/wharf at the south eastern end of the property. This structure was built to serve the existing house and cottages more than 20 years ago. The location of the existing pier/wharf on one end of the development does not provide adequate access to the proposed lots 1-4.

The project proposes two new pier structures (one permanent and one seasonal). The inner harbor of Uncle Roberts Cove, as stated previously, is open to both commercial and recreational shellfishing. As stated within the applicants request for a DRI Exemption, the area is also a habitat for many marine invertebrates and wildlife species.

Based on the location of the existing pier/wharf and the sensitive resources within Uncle Roberts Cove, the mitigation to protect these resources while allowing access to deep water for the proposed lots includes the following:

- Limiting the total number of new piers/floats for this eight lot subdivision to one (1) for the purpose of serving lots 1-4.

- Limiting the size of the one additional pier/float, and not allowing any additions to the existing pier/wharf structure.

5. Massachusetts Historical Commission has found that the project area possesses a strong likelihood for containing significant archaeological sites and possibly unmarked human burials, etc. To protect these resources the proponent must conduct an intensive archaeological survey prior to any development activities, as defined by the Cape Cod Commission Act c. 716 of the Acts of 1989, as amended. The survey must be completed to the reasonable satisfaction of the Cape Cod Commission in consultation with MHC. The results of the survey will be incorporated into the planning stages of development to avoid impacting any burials and sites that may be discovered during the archaeological survey.

CONCLUSION

Based upon the findings above, the Cape Cod Commission hereby concludes:

The Smith Point Subdivision with the following conditions will cause it to not have significant impacts on the unique natural, coastal and scientific values in which there is a regional, state and national interest in protecting and preserving.

The Commission hereby approves Ms. Fayette Scheuch a Development of Regional Impact permit, pursuant to Section 12 of the Act, with the following conditions:

1. If the Applicant fails to meet one or more of the conditions listed, this DRI permit shall lapse and the proposed development shall be automatically deemed in violation of the approval.
2. Prior to the construction of Smith's Point Road, a conservation restriction on Lot 8 shall be granted in perpetuity by Fayette Scheuch to the Trustees of Reservations, or similar conservation organization, substantially in the form attached hereto as Exhibit A. A copy of the final agreement shall be provided to the Cape Cod Commission;
3. None of the eight lots in the development may be further subdivided in order to facilitate additional residential, commercial or industrial buildings (but this condition shall not prohibit subdivision to accomplish relocation of lot lines or to permit additional "non-buildable" lots);
4. Lots 1 through 7 shall be used only for residential purposes and such other purposes ancillary thereto as permitted under the Yarmouth Zoning By-Law from time to time;
5. No residential structure shall be placed on Lots 1,2,3 or 4 except in the "Approximate Building Envelope" (approximate house and septic areas shown as shaded areas on plan) delineated on the plan entitled "Development Plan for Smith's Point Subdivision" by I.E.P., Inc. dated April 19, 1990, included in the DRI application;
6. No more than one residential building shall be constructed on Lots 1 and 5. Nothing contained in this decision shall prohibit the construction of guest houses on Lots 2,3,4, 6 and 7.
7. Nevertheless, the lots shall be restricted to a maximum number of bedrooms as follows:

<u>Lot No.</u>	<u>Maximum No. Bedrooms</u>
1	6
2	8
3	8
4	8
5	7
6	7

Lot No.

7
8

Maximum No. Bedrooms

12
0

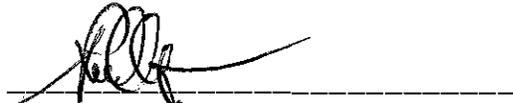
8. The construction of new buildings on Lots 1 through 7 shall be subject to architectural restrictions substantially similar to the "Smith's Point Architectural Guidelines as set forth in Exhibit B hereto;

9. Maximum building height shall be 35' from the average existing grade but in no event shall more than 50% of the structure be constructed between 28' and 35' in height above grade.

10. There is currently one pier/wharf owned by Fayette Scheuch existing on Uncle Robert's Cove. The dock/wharf is delineated on the plan entitled "Development Plan for Smith's Point Subdivision" by I.E.P., Inc. dated April 19, 1990, included in the DRI application. This structure may be repaired and maintained. This structure may not be enlarged. No additional pier/floats may be constructed to serve lots 5, 6, and 7.

11. One additional pier/float structure may be constructed to serve Lots 1, 2, 3, and 4. The maximum length of the pier and ramp structure may not exceed beyond the four (4) foot contour line (according to mean low water datum) . The width of the pier and ramp may not exceed four (4) feet. An attached seasonal float(s) may not exceed a total of 300 sq. feet in size. The pier/float structure and location, if approved at the local level, should be designed in accordance with the Town of Yarmouth Conservation Commission and Natural Resource department guidelines.

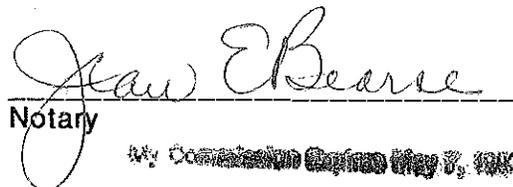
12. The Massachusetts Historical Commission (MHC) finds that the Smith Point Subdivision project area possesses a strong likelihood for containing significant archaeological sites and possibly unmarked human burials. The proponent must complete an intensive (locational) archaeological survey (950 CMR 70) which is to be conducted in compliance with Section 106 of the National Historic Preservation Act of 1966 (36 CFR 800), Massachusetts General Laws, Chapter 9, Sections 26C-27C, as amended by Chapter 254 of the Acts of 1988 (950 CMR 71) and the Massachusetts Environmental Policy Act (MEPA). The goal of the survey should be to locate and identify archaeological sites and unmarked burials which may be affected by the proposed development. No development activities, as defined by the Cape Cod Commission Act c. 716 of the Acts of 1989, as amended, Section 2(e), may take place until such survey is completed to the reasonable satisfaction of the Cape Cod Commission in consultation with MHC. The results of the survey will be incorporated into the planning stages of development to avoid impacting any burials and archaeological sites that may be discovered during the archaeological survey.



Richard S. Armstrong, Chairman

10/25/90

Date


Notary
My Commission Expires May 7, 1993

10/25/90

Date

CONSERVATION RESTRICTION
To
The Trustees of Reservations

Scheuch Property, Great Island, Yarmouth

Fayette S. Scheuch, with an address of 54 Westwood Road, West Hartford, Connecticut 06117, and her heirs, devisees, successors and assigns holding any interest in the Premises as hereinafter defined ("Grantor") grant, with quitclaim covenants, to The Trustees of Reservations, a Massachusetts charitable corporation established under Chapter 352 of the Acts of 1891, with an address at 572 Essex Street, Beverly, Massachusetts, its successors and permitted assigns, ("Grantee") in perpetuity and exclusively for conservation purposes, the following described Conservation Restriction on a parcel of land of approximately 36 acres located in the Town of Yarmouth, Massachusetts, said parcel being described in Exhibit A attached ("Premises").

Purpose. This Conservation Restriction is defined in and authorized by Sections 31-33 of Chapter 184 of the General Laws and otherwise by law. Its purpose is to assure that the Premises will be retained in perpetuity predominantly in their natural, scenic, and open condition and to prevent any use of the Premises that will significantly impair or interfere with the conservation values of the Premises. The conservation of the Premises will yield a significant public benefit for the following reasons:

- (1) Protection of the Premises will preserve a relatively undisturbed coastal beach, dune and maritime forest community; such undisturbed natural areas have become increasingly rare in Massachusetts, particularly along the south coast of Cape Cod.
- (2) Preservation of this natural area will protect the scenic amenity this area provides to members of the public using the opposite shore of Hyannis and Yarmouth, and as they pass through Lewis Bay and Hyannis Inner Harbor, either as passengers on the Martha's Vineyard and Nantucket Ferries or in recreational or fishing watercraft. The scenic value of this stretch of undisturbed beach, dunes and forest is increased by the relative scarcity of undisturbed shoreline along the highly developed Hyannis-Yarmouth coast.
- (3) Preservation of this natural area increases the amount of land on Great Island protected by conservation restriction, thereby increasing the long-term value of already protected lands for wildlife habitat and other conservation values.

The terms of this Conservation Restriction are as follows:

8. Each lot owner is responsible for any and all actions of all contractors, subcontractors or other workers, employees etc. employed by them or on their behalf.
9. Trailers, mobile homes, camper vehicles, camping trailers, RV's, and other mobile living quarters are not permitted unless uninhabited, and stored within enclosed structures. Stored boats must also be unoccupied, and may be so stored only in Uncle Robert's Cove or at the Cove's edge or elsewhere as the Association shall from time to time designate. The "winter" storage of boats is not permitted along the shoreline of Uncle Roberts Cove unless the boat is stored in an enclosed boat house and out of sight. One or two small tents, for use only of the immediate family or guests of Lot Owners and containing no kitchen or toilet facilities, may be erected on any Lot for not more than thirty days per year.
10. No motor vehicles of any type shall be permitted on beaches, dunes or trails or any areas outside of the Zone of Improvement or Smith's Point Road except as necessary to maintain such areas or in the event of an emergency.
11. At no place on the Property is hunting permitted unless determined by the Architectural Review Committee to be necessary to control and/or manage certain animal or bird populations or to prevent nuisance therefrom.
12. No foundation excavation or construction of concrete foundations shall be performed between June 15 and the Wednesday after Labor Day.

A. Prohibited Uses. Except as to reserved rights set forth in paragraph B below, Grantor will neither perform nor permit the following acts or uses on the Premises:

- (1) Constructing or placing of any building, tennis court, landing strip, mobile home, swimming pool, asphalt or concrete pavement, sign, fence, billboard or other advertising display, antenna, utility pole, tower, conduit, line or other temporary or permanent structure or facility on or above the Premises, except for fences appropriate to the conservation purposes of this Conservation Restriction;
- (2) Mining, excavating, dredging or removing from the Premises of soil, loam, peat, gravel, sand, rock or other mineral resource or natural deposit, except as necessary for proper drainage or soil conservation and then only in a manner which does not impair the purpose of this Conservation Restriction;
- (3) Placing, filling, storing or dumping on the Premises of soil, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, waste or other substance or material whatsoever or the installation of underground storage tanks;
- (4) Cutting, removing or otherwise destroying trees, grasses or other vegetation, except as provided in paragraph B below;
- (5) Activities detrimental to drainage, flood control, water conservation, water quality, erosion control or soil conservation;
- (6) The use of motorcycles, motorized trail bikes, snowmobiles and all other motor vehicles, except as reasonably necessary in exercising any of the reserved rights in paragraph B, or as required by the police, firemen or other governmental agents in carrying out their lawful duties;
- (7) Building, starting, or maintaining fires, except that fire may be used as reasonably necessary in exercising the rights reserved in subparagraph B(4) below;
- (8) Any other use of the Premises or activity thereon which is inconsistent with the purpose of this Conservation Restriction or which would materially impair other significant conservation interests unless necessary for the protection of the conservation interests that are the subject of this Restriction; and

- (9) Conveyance of a part or portion of the Premises alone, or division or subdivision of the Premises (as compared to conveyance of the Premises in its entirety which shall be permitted) without the prior written consent of the Grantee.

B. Reserved Rights. All acts and uses not prohibited in paragraph A are permissible. Notwithstanding the provisions of paragraph A, the following acts and uses are also permitted but only if such uses and activities do not materially impair the purpose of this Conservation Restriction or other significant conservation interests:

- (1) Walking, birdwatching, bathing, sunbathing, fishing, clamming, swimming, picknicking (but no fires) and boating.
- (2) The construction, maintenance and marking of trails for pedestrian use.
- (3) Maintenance of a wood road located on the Premises as reasonably necessary for the uses hereinafter permitted.
- (4) In accordance with generally accepted forestry conservation practices, selective pruning and clearing to control or prevent hazard, disease, or fire, to manage wildlife habitat, and to clear and maintain the trails and wood road referenced in subparagraphs B(2) and (3) above.
- (5) Sand dune stabilization and replenishment, including without limitation, altering, fencing, fertilizing and planting thereof, installing of jetties and groins, and dredging, placing and filling in connection with such stabilization and replenishment; provided, however, that no jetties or groins shall be constructed, nor any dredging, placing or filling of material be undertaken, without first providing notice to the Grantee as provided in Paragraph C, below.
- (6) The erection, maintenance and replacement of a reasonable number of regulatory signs (such as "no trespassing" or "no hunting" signs), each not to exceed four (4) square feet.
- (7) Prospecting for fresh water and the construction, maintenance, repair and replacement of wells and piping for the removal and transport of fresh water, provided any above-ground structures are kept to the minimum size necessary for such operation.

The exercise of any right reserved by the Grantor under this paragraph B shall be in compliance with the then-current Zoning By-Law of the Town of Yarmouth, the Wetlands Protection Act (General Laws Chapter 131, Section 40) and all other applicable

federal, state and local law. The inclusion of any reserved right in this paragraph B requiring a permit from a public agency does not imply that the Grantee takes any position on whether such permit should be issued.

C. Notice and Approval. Whenever notice to or approval by the Grantee is required under the provisions of paragraphs A or B, Grantor shall notify Grantee in writing not less than sixty (60) days prior to the date Grantor intends to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable and any other material aspect of the proposed activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the purposes of this Conservation Restriction. Where Grantee's approval is required, Grantee shall grant or withhold its approval in writing within sixty (60) days of receipt of Grantor's written request therefor.

D. Proceeds from Extinguishment. The Grantor and the Grantee agree that the donation of this Conservation Restriction gives rise for purposes of this paragraph to a property right, immediately vested in the Grantee, with a fair market value determined by multiplying the current fair market value of the Premises unencumbered by this Restriction (minus any increase in value attributable to improvements made after the date of this grant) by the ratio of the value of this Restriction at the time of this grant to the value of the Premises, without deduction for the value of this Restriction, at the time of this grant. Such proportionate value of the Grantee's property right shall remain constant. If any change in conditions ever gives rise to extinguishment or other release of the Conservation Restriction under applicable law, then the Grantee, on a subsequent sale, exchange or involuntary conversion of the Premises, shall be entitled to a portion of the proceeds equal to such proportionate value, subject, however, to any applicable law which expressly provides for a different disposition of proceeds. Whenever all or any part of the Premises or any interest therein is taken by public authority under power of eminent domain, or if all or any part of this Conservation Restriction is otherwise extinguished by act of public authority, then the Grantor and the Grantee shall cooperate in recovering the full value of all direct and consequential damages resulting from such action. All related expenses incurred by the Grantor and the Grantee shall first be paid out of any recovered proceeds, and the remaining proceeds shall be distributed between the Grantor and the Grantee in shares equal to such proportionate value. The Grantee shall use its share of the proceeds in a manner consistent with the conservation purpose set forth herein.

E. Access. The Conservation Restriction hereby conveyed does not grant to the Grantee, to the public generally, or to any other person any right to enter upon the Premises except as follows: There is hereby granted to the Grantee and its representatives the right to enter the Premises (1) at reasonable times and in a reasonable manner for the purpose of inspecting the same to determine compliance herewith and (2) after 30 days

prior written notice, to take any and all actions with respect to the Premises at the then fee owner's cost as may be necessary or appropriate, with or without order of court, to remedy, abate or otherwise enforce any violation hereof.

F. Legal Remedies of the Grantee. The rights hereby granted shall include the right to enforce this Conservation Restriction by appropriate legal proceedings and to obtain injunctive and other equitable relief against any violations, including without limitation relief requiring restoration of the Premises to its condition at the time of this grant (it being agreed that the Grantee may have no adequate remedy at law), and shall be in addition to, and not in limitation of, any other rights and remedies available to the Grantee. Grantor covenants and agrees to reimburse the Grantee all reasonable costs and expenses (including without limitation reasonable counsel fees) incurred in enforcing this Conservation Restriction or in taking reasonable measures to remedy or abate any violation thereof. By its acceptance, the Grantee does not undertake any liability or obligation relating to the condition of the Premises. Enforcement of the terms of this Restriction shall be at the discretion of the Grantee, and any forbearance by the Grantee to exercise its rights under this Restriction shall not be deemed or construed to be a waiver. If any provision of this Conservation Restriction shall to any extent be held invalid, the remainder shall not be affected.

G. Acts Beyond Grantor's Control. Nothing contained in this Conservation Restriction shall be construed to entitle the Grantee to bring any action against the Grantor for any injury to or change in the Premises resulting from causes beyond the Grantor's control, including, but not limited to, fire, flood, storm, earth movement, and acts caused by trespass on the Premises not contributed to by acts or omissions of the Grantor, or from any prudent action taken by the Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Premises resulting from such causes.

I. Duration and Assignability. The burdens of this Conservation Restriction shall run with the Premises and shall be enforceable against the Grantor in perpetuity. The Grantee is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Conservation Restriction; and the Grantor appoints the Grantee as Grantor's attorney-in-fact to execute, acknowledge and deliver any such instruments on Grantor's behalf. Without limiting the foregoing, Grantor agrees to execute any such instrument upon request. The benefits of this Conservation Restriction shall be in gross and shall not be assignable by the Grantee, except in the following instances from time to time: (i) as a condition of any assignment, the Grantee requires that the purpose of this Conservation Restriction continue to be carried out, and (ii) the assignee, at the time of assignment, qualifies under Section 170(h) of the Internal Revenue Code of 1954, as amended, and applicable regulations thereunder, and under Section 32 of Chapter 184 of the General Laws as an eligible donee to receive

this Conservation Restriction directly. Grantor and Grantee intend that the restrictions arising hereunder take effect upon the date hereof, and to the extent enforceability by any person ever depends upon the approval of governmental officials, such approval when given shall relate back to the date hereof regardless of the date of actual approval or the date of filing or recording of any instrument evidencing such approval.

J. Subsequent Transfers. Grantor agrees to incorporate the terms of this Conservation Restriction in any deed or other legal instrument by which Grantor conveys any interest in all or a portion of the Premises, including, without limitation, a leasehold interest. Grantor further agrees to give written notice to the Grantee of the transfer of any interest at least twenty (20) days prior to the date of such transfer. Failure of the Grantor to do so shall not impair the validity of this Conservation Restriction or limit its enforceability in any way.

K. Termination of Rights and Obligations. Notwithstanding anything to the contrary contained herein, the rights and obligations, under this Conservation Restriction, of any party holding any interest in the Premises terminate upon transfer of that party's interest, except that liability for acts or omissions occurring prior to transfer, and liability for the transfer itself if the transfer is violative of this Conservation Restriction, shall survive the transfer.

L. Estoppel Certificates. Upon request by the Grantor, the Grantee shall within twenty (20) days execute and deliver to the Grantor any document, including an estoppel certificate, which certifies the Grantor's compliance with any obligation of the Grantor contained in this Conservation Restriction, and which otherwise evidences the status of this Conservation Restriction as may be requested by the Grantor.

No documentary stamps are required as this Conservation Restriction is a gift.

Executed under seal this _____ day of _____, 19__.

COMMONWEALTH OF MASSACHUSETTS

_____, ss. _____, 19__

Then personally appeared the above-named Fayette S. Scheuch and acknowledged the foregoing instrument to be her free act and deed, before me.

Notary Public
My commission expires:

ACCEPTANCE OF GRANT

The above Conservation Restriction is accepted this _____ day of _____, 19__.

THE TRUSTEES OF RESERVATIONS

By _____

Its _____

COMMONWEALTH OF MASSACHUSETTS

_____, ss. _____, 19__

Then personally appeared the above-named _____ and acknowledged the foregoing instrument to be the free act and deed of The Trustees of Reservations, before me.

Notary Public
My commission expires:

APPROVAL OF SELECTMEN

We, the undersigned, being a majority of the Selectmen of the Town of Yarmouth, Massachusetts, hereby certify that at a meeting duly held on _____, 19__ the Selectmen voted to approve the foregoing Conservation Restriction to The Trustees of Reservations pursuant to M.G.L. Chapter 184, Section 32.

Selectmen

COMMONWEALTH OF MASSACHUSETTS

_____, ss. _____, 19__

Then personally appeared the above-named _____ and acknowledged the foregoing instrument to be his or her free act and deed, before me.

Notary Public
My commission expires:

APPROVAL BY SECRETARY OF ENVIRONMENTAL AFFAIRS
COMMONWEALTH OF MASSACHUSETTS

The undersigned, Secretary of the Executive Office of Environmental Affairs of the Commonwealth of Massachusetts, hereby certifies that the foregoing Conservation Restriction to The Trustees of Reservations has been approved in the public interest pursuant to M.G.L. Chapter 184, Section 32.

Date: _____, 19____
Secretary of Environmental Affairs

COMMONWEALTH OF MASSACHUSETTS

_____, ss. _____, 19____

Then personally appeared the above-named _____ and acknowledged the foregoing instrument to be his or her free act and deed, before me.

Notary Public
My commission expires:

CDW:5/8/89

SMITH'S POINT ARCHITECTURAL GUIDELINES

INTRODUCTION

THE ARCHITECTURAL REVIEW COMMITTEE

The homeowners are bound by covenants that, so far as possible, preserve and protect the natural beauty and serenity of Great Island. To that end, no building, fence or other structure shall be erected or altered until the proposed site plan, building plans and materials shall have been approved in writing by the Architectural Review Committee (A.R.C.) consisting of two members of the Scheuch family, one outside professional with a background in architecture and landscape design and one appointee of the Great Island Homeowners Association (GIHA). The two Scheuch family members and the outside professional shall be voting members, the GIHA appointee shall have no vote.

THE GUIDELINES

The A.R.C. has created Guidelines to assist all homeowners in the planning and construction of their new homes. Creativity is encouraged, but there are basic standards set to promote a harmonious community aesthetic at Smith's Point. The Guidelines are intended to protect all property owners and to provide a simple uniform review process for approval by the A.R.C.

THE DESIGN APPROVAL PROCESS

The Guidelines outlined here, we believe, are each essential to sustain the beauty and the character of Smith's Point.

STEP 1. REVIEW THE RELEVANT DOCUMENTS

- a. The Design Approval Process (this one)
- b. The Architectural Guidelines

STEP 2. RETAIN PROFESSIONAL DESIGN CONSULTANTS Selection of an architect is required of all homeowners. Retaining a landscape architect is advisable if you or your architect are not adept at landscape or garden design. Have your consultants read and acquaint

themselves with the relevant documents. Have your architect become familiar with Great Island through at least one extended site visit.

STEP 3. OBTAIN A SURVEY Obtain a survey of your lot at a scale of 1" = 20': Have all bounds set in the field.

STEP 4. THE PRELIMINARY REVIEW

Arrange a date for the preliminary review by writing to LandVest, Inc., Chairman Consulting Services Department, Ten Post Office Square, Boston, MA 02109. Submit two copies of the developed design to the Architectural Review Committee. These plans will reflect the "schematic" stage of development in an architect's design process. This step in the review process allows the timely incorporation of the A.R.C. recommendations, avoiding revisions to the final Construction Documents.

The design must be presented with the following documents:

- a. Site Plan at 1/4" = 1'-0" or 1"-20'
-show exact location of house footprints in relation to property setback lines and boundaries.
- b. Existing and proposed contours at two foot intervals.
- c. Building indicated as foundation plan with entry area delineated and roof and deck lines shown as dashed lines.
- d. First Floor elevation indicated
- e. Drives and walks.
- f. Adjacent structures located.
- g. Floor Plans at 1/4" = 1'-0"
-all windows and doors with swings shown.
- h. Elevations. One for each major exposure at 1/4" = 1'-0".
-principal materials rendered.
-indicating overall height from road grade to ridge of roof.
-indicating roof pitch in function of 12 (i.e. 6:12)
- i. Samples
-a sample of the proposed outside wall finish
-roof sample
-exterior paint sample
-photographs of the window and door types
- j. At the time of Preliminary Review, the corners of the house must be staked on the lot in the proposed location. All trees to be removed should be flagged with red surveyors tape.
- k. Dates if available of proposed start and finish of construction.

STEP 5. THE FINAL REVIEW

This review is concerned with checking the construction documents for A.R.C. Guideline requirements, and

verification that the recommendations made at the Preliminary Review have been incorporated.

- a. Site Plan at 1" = 20'
 - show septic tank field and well for water service
- b. Planting Plan; include location of walks and drives
- c. Floor Plan at 1/4" = 1'
- d. Elevations, including roof plans, slope and overhangs, if any, at 1/4" = 1'; show proposed materials
- e. Typical fence, railing and deck detail
- f. Dates of start and finish of construction.
- g. Utility meter locations
- h. Physical limits of construction activity.

The Architectural Review Committee will stamp the drawing upon final approval.

SMITH'S POINT - ARCHITECTURAL GUIDELINES

The Great Island Guidelines are based on a historical perspective: generally that of the vernacular at Cape Cod, Nantucket and Martha's Vineyard and more specifically the 20th Century interpretation at Great Island itself. Within this architectural vocabulary there was a range of style and detailing present from the agriculture buildings to more elegant houses. It is important for the architect to know the buildings of Great Island. The aesthetic success of the whole requires that the theme also be carried through with the landscaping and other site details.

These Guidelines are designed to assure the following:

- Harmony in the forms and materials of the buildings on Great Island.
- Architecture which is sympathetic to the traditions of Cape Cod.
- Style; general Cape Cod vernacular architecture to include the multiple connecting Cape with steep pitched roof style, saltbox style and historic farmhouse design.
- Building materials and techniques which will age gracefully over the years.
- Architectural elements which are responsive to the New England climate.
- Preservation of the natural appearance and ecology of the Island.

A. GENERAL

1. All construction shall be subject to the provisions of state and local codes.
2. Maximum building height shall be two-and-one-half stories, as defined by the town of Yarmouth Zoning By-Law, with the exception of Lot 1, on

which the height limitation will be 25' from the plain of the first floor level but in no event shall more than 50% of the ridge poles on any structure be above 28 feet.

3. Building location shall be determined by taking into consideration minimizing site lines to existing homes on Smith's Point and along the shore of Uncle Robert's Cove and maximizing view corridors to open land and waters if desired. All buildings must be located within Zone of Improvement Designations.
4. Variances may be granted, only if required by the unique character of the Lot whereby a failure to grant the variance would result in a hardship to the Lot Owner and only if such variance is consistent with the general intent and purposes of the Architectural Guidelines, and will not have a material adverse effect on lots in the area. If a variance is granted by the Committee with respect to alterations or additions made after completion of the initial construction of the house on the lot, and such variance is disputed by any member of the Committee, including the nonvoting member, as being inconsistent with the standards for variances, at the request of the disputing member made at the meeting at which the variance is granted, the dispute shall be referred to an independent architect chosen by the Committee, for resolution, and the decision of such independent architect shall be binding. If there is such a request, the Committee shall make the referral within ten days after said meeting and the architect shall make its decision within 30 days after said referral.

B. EXTERIOR WALLS

The desire is to have colors that blend into the surrounding landscape and vegetation.

1. The following materials are permitted as wall finishes for buildings:
 - a. White cedar shingles. Color must be natural or stains, such as, gray or brown
 - b. Horizontal wood clapboard with right to clapboard all four sides. If all clapboard, the color would be white or earthtone (all shades of gray, brown or gray brown mixture). The desire is to have subtle

variations of the above colors that blend into the surrounding landscape and vegetation.

c. Brick - to be used at footings and chimneys only.

2. The following materials are permitted as finishes for fences:
- a. picket
 - b. lattice
 - c. split rail
 - d. palisade

C. ROOFS

1. The following materials are permitted for roofing:
- a. white or red cedar shingles
 - to match walls
 - b. galvanized steel
 - 1" standing seam pattern only
 - at garage, barn or workshop only
 - natural or green color only
2. The following materials are permitted for gutters:
- a. wood
 - cyma recta profile only
 - painted white
 - b. galvanized steel
 - half round profile only
3. The following configurations are permitted for roofs:
- a. simple gable
 - symmetrical, pitch min 9:12 max 12:12
 - asymmetrical, pitch min 6:12 max 12:12
 - b. simple hip
 - symmetrical, pitch 9:12 max 12:12
 - c. simple shed
 - asymmetrical, pitch min 4:12 max 12:12
 - if used against a principal building wall only
 - d. flat with railings or parapets
 - if accessible from an interior room only
 - railings pattern to be approved by the ARC
 - railings to be painted white
 - e. "Bow House"

D. DOORS & WINDOWS

1. The following materials are permitted:
- a. glass

- b. hardwood
 - painted, color to be approved by the ARC
- c. vinyl-clad wood.

2. The following are permitted operations:

- a. single and double hung
- b. casement
- c. fixed with frame
- d. louvered

3. The following are permitted configurations:

- a. rectangular or verticle proportion
- b. circular & semi-circular
- c. hexagonal & octagonal.

4. The following are permitted accessories:

- a. operable wood shutters
 - painted, color to be approved by the ARC
- b. window boxes
 - painted, color to be approved by the ARC
- c. real wood mullions
 - square or vertical proportion

E. TRIM AND SHUTTERS: All colors allowed, except vivid colors, such as, orange, pink, purple

F. OUTBUILDINGS

1. The following outbuilding uses are permitted:

- a. barbecues
 - brick to match chimneys
- b. garden pavillions and greenhouses -to match principal building
- c. gazebos, trellis structures and arbors
 - wood, painted white
- d. garages, workshops and barns
 - to match principal building
- e. guest houses and artists studios -to match principal building
 - not to exceed 1,000 sq. ft. footprint nor 1200 sq ft enclosed
- f. handball and squash courts and saunas -to match principal building
- g. in-ground swimming pools and outdoor tubs
- h. pool houses and equipment enclosures

Note: All garbage, trash and rubbish placed outdoor shall be kept in covered containers, protected from animals and screened from view outside the Lot, provided that this restriction does not preclude the composting of organic matter.

2. The following structures are not permitted:
 - a. open carports
 - b. above ground pools
 - c. paddle tennis court

G. MISCELLANEOUS

1. Exterior lighting: No exterior flood lights shining on the water or noticeably visible from other homes. Safety lighting around docks must be focused down.
2. The following shall be located where best hidden from adjoining lots and the road:
 - a. clothes drying yards
 - b. electrical meters
 - c. air conditioning compressors
 - d. standby generators
 - e. antennas
 - f. satellite dishes which must be surround by a fence to completely hide it from the road or adjoining lots.
3. Trees in excess of 4 inches in D.B.H. shall not be removed without the approval of the A.R.C. unless they are dead, diseased or dangerous.
4. Access stairways (designed to minimize erosion) will be permitted on Lots 1, 2, 3, and 4 to Nantucket Sound but only two sets of stairs for access to Uncle Roberts Cove in the vicinity of the new docks, if any, otherwise near the Lot 1 and Lot 2 boundary and the Lots 3 and 4 boundary.
5. The above guidelines may be amended from time to time in order to comply with applicable Building and Zoning Codes.
6. Notwithstanding the above guidelines, all buildings and structures shall be built in compliance with the applicable Building and Zoning Codes. Any requirement in these guidelines which is inconsistent with the Building and Zoning Codes, from time to time in effect, shall be construed in a manner consistent with such Codes to the extent possible and the Codes shall govern.
7. Landscaping - Buffers between lots are encouraged through the use of natural vegetation.

CERTIFICATE OF COMPLETION AND RELEASE

Cape Cod Commission, a body politic created pursuant to Chapter 716 of the Acts of 1989, as amended, and Massachusetts Historical Commission, a body politic created pursuant to M.G.L. Chapter 9 § 26, et seq., hereby certify that Fayette S. Scheuch has completed, to their reasonable satisfaction, an intensive archeological survey, as described in paragraph 5 under "Findings" and paragraph 12 under "Conclusion" in the Decision of the Cape Cod Commission for a Development of Regional Impact, CCC # TR90046, dated October 25, 1990, filed with the Barnstable Registry District of the Land Court as Document No. 519,993 noted on Certificate of Title No. 34218 and she has also completed the Archeology Agreement dated August 9, 1991 on file with the Massachusetts Historical Commission and the Cape Cod Commission. Consequently, Cape Cod Commission and Massachusetts Historical Commission release to Fayette S. Scheuch any rights they had under said paragraph 12 of the Decision and the Archeology Agreement to Lots 1 through 7 referred to in the Decision (being lots 96 through 107 on Land Court Plan 4075P) and development and construction activities may commence on these lots. Lot 8, as described in the Decision, (being Lot 108 on Land Court Plan No. 4075P), may only be developed by construction of a well, pipeline, 15 foot wide emergency access easement and a fire pond, which construction may now commence.

Witness the execution hereof under seal this 30 day of August, 1993.

MASSACHUSETTS HISTORICAL COMMISSION

By: Judith B. McDonough
Judith B. McDonough, Executive Director

CAPE COD COMMISSION

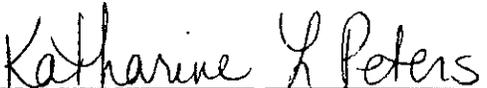
By: 
Armando J. Carbonell, Executive Director

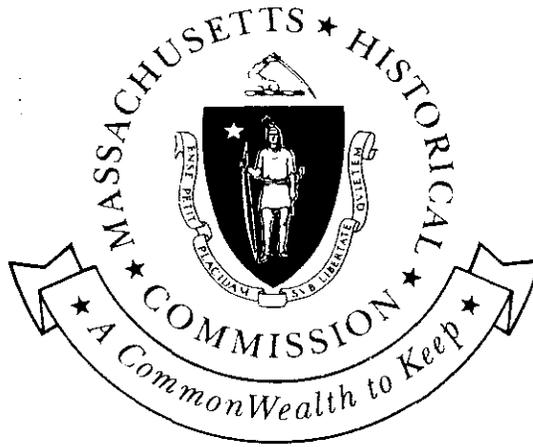
Commonwealth of Massachusetts

Barnstable, ss.

Sept. 9
August __, 1993

Then personally appeared the above-named Armando J. Carbonell, Executive Director, and made oath that he executed the above Certificate of Completion and Release as his free act and deed and as the free act and deed of the Cape Cod Commission, before me


Notary Public
My Commission Expires: _____



August 30, 1993

Sharon Rooney
Cape Cod Commission
3225 Main Street
Barnstable, MA 02630

RE: Smiths Point Cluster Subdivision, Yarmouth MA (MHC # 6055)

Dear Ms. Rooney:

The Massachusetts Historical Commission has reviewed the results of an intensive archaeological survey and data recovery program (950 CMR 70) per the Archaeology Agreement executed August 9, 1991 carried out by the Public Archaeology Laboratory, Inc. and Dr. Stephen Mrozowski of the University of Massachusetts, Boston for the Smiths Point Cluster Subdivision in Yarmouth, Massachusetts.

The archaeological survey identified an Indian habitation site (MHC Site # 19-BN-647) which the MHC determined was eligible for inclusion in the State and National Registers of Historic Places. After review of the project plans, prepared by Schofield Brothers, Inc. dated March 27, 1991, and consultations with Fayette S. Scheuch, the project proponent, the MHC determined that the implementation of a data recovery program as outlined in the Archaeology Agreement would sufficiently preserve the archaeological research value of Site 19-BN-647 and allow the Smiths Point Cluster Subdivision to proceed without having an adverse effect on Site 19-BN-647.

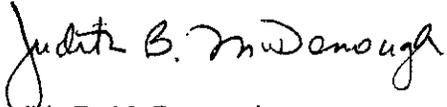
MHC is satisfied that the field portion of the intensive archaeological survey and data recovery program has been completed by the Public Archaeology Laboratory, Inc. and Dr. Stephen Mrozowski of the University of Massachusetts, Boston in accordance with the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation (48 FR 44716-44740) and the State Archaeologist's Standards (950 CMR 70) thus fulfilling Condition 12 of the Cape Cod Commission's approval dated October 25, 1990. The MHC is also satisfied that Fayette S. Scheuch has carried out Stipulations 1-7 (inclusive) as agreed per the Archaeology Agreement. The project may proceed as planned without further MHC review. A form of "Certificate of Completion and Release" to be filed in the Barnstable Registry District is enclosed.

Massachusetts Historical Commission
80 Boylston Street, Boston, Massachusetts 02116 (617) 727-8470
Office of the Secretary of State, Michael J. Connolly, *Secretary*

In the event that unmarked human burials are inadvertently discovered during any construction in the project area, excavation activities in the vicinity of the burial shall cease immediately and the State Archaeologist shall be notified pursuant to Massachusetts General Laws Ch. 38, Sec. 6B & 6C; Ch. 9 Sec. 26A & 27C; Ch. 7, Sec. 38A; and Ch. 114, Sec. 17 as amended by Ch. 659 of the Acts of 1983.

Please feel free to contact Connie Crosby of my staff if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Judith B. McDonough". The signature is written in a cursive style with a large initial "J".

Judith B. McDonough
Executive Director
Massachusetts Historical Commission
State Historic Preservation Officer

JBM/CC

enclosure

xc: George Dallas
Stephen Mrozowski
Fayette Scheuch