

VOLUME IV

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IN THE TOWN OF AQUINNAH, FORMERLY GAY HEAD

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AFFIDAVIT OF NICHOLAS J. DECOULOS

I, Nicholas J. Decoulos, do hereby state that the following statements are based upon my own knowledge, information, or belief and that the facts and matters set forth herein are true and correct, and so far as based upon information and belief, I do believe the information to be true:

1. On December 8, 2008, the undersigned contacted the following persons:

Anna Glumpkin, an attorney for the Executive Office of Energy and Environmental Affairs,

Sarah Thulin, Chairperson of the Aquinnah Conservation Commission,

John Donnelly, Assistant Attorney General

and requested a copy of the Application of the Town of Gay Head relating to its participation in the Self-Help Program, May 28, 1995, Moshup Trail, SH #2.

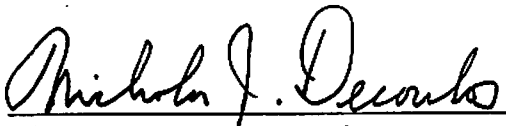
2. As of the date of this Affidavit, John Donnelly has informed me that he contacted Robert O'Connor of the Division of Conservation Services, who is attempting to recover the Application.

3. Reference is made to the Town of Aquinnah's Answers to Plaintiff's Interrogatories in the case of

Frangos, Trustee v. Town of Aquinnah, U.S. District Court, District of Massachusetts, Docket No. 03-CV-11159-MLW, in particular, #2 and #12, in which the Town identified ten lots on Assessor's Map 12, which comprise the 20 acres along the Moshup Trail mentioned in the Self-Help Agreement. I have correlated those lot numbers with the lots on the Partition Plan and they are as follows:

<u>Assessor's Map</u>	<u>1870 Plan</u>	<u>Owner</u>
99	571	VCS
100	570	Town
102	568	VCS
106	565	VCS
107	564	VCS
108	564	VCS
124	556	Town
125	556	Town
134	550	Town
135	549	Town

Signed under the penalties of perjury this 10th day of December, 2008.



 Nicholas J. Decoulos

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ANTHONY C. FRANGOS, Trustee
of Brutus Realty Trust,

Plaintiff

vs.

TOWN OF AQUINNAH,

Defendant

DOCKET NO. 02-CV-11159-MLW

THE DEFENDANT TOWN OF AQUINNAH'S ANSWERS TO PLAINTIFF'S
FIRST SET OF INTERROGATORIES

PLEASE TAKE NOTICE that, pursuant to Rule 33 of the Federal Rules of Civil Procedure, and the Plaintiff's Request that the Town Answer these Interrogatories Within Forty-Five days of January 23, 2003, the Defendant, the Town of Aquinnah ("Defendant" or "the Town"), hereby answers the Plaintiff's First Set of Interrogatories, as follows:

RESERVATION OF RIGHTS

The answers and objections herein are provided subject to Defendant's right to object to the admission into evidence of any and all of the answers on the ground that they are irrelevant to the issues in this action or are otherwise inadmissible. By its answers to these Interrogatories, Defendant does not intend to waive, but explicitly preserves, its attorney-client and attorney

work product privileges.

The answers and objections are based upon Defendant's present knowledge, information and belief. Defendant reserves the right to rely on any facts, documents or other evidence which may hereafter develop or come to its attention.

GENERAL OBJECTIONS

1. Defendant objects to the Interrogatories to the extent that they seek information and materials which are protected by the attorney-client privilege and attorney work produce doctrine. Such information will not be provided.

2. Defendant objects to the Interrogatories to the extent they seek information which is irrelevant, immaterial and not germane to any claim or defense in this action.

3. Defendant objects to the Interrogatories to the extent that they are overly broad, unduly burdensome and are not reasonably calculated to lead to the discovery of admissible evidence.

4. Defendant objects to the Interrogatories to the extent they exceed the scope of discovery permitted under the Massachusetts Rules of Civil Procedure.

5. Defendant objects to identifying documents or otherwise providing information that may be derived or ascertained from

documents that are being produced in response to Defendant's document requests, on the grounds that such identification is duplicative.

SPECIFIC OBJECTIONS AND RESPONSES TO INTERROGATORIES

INTERROGATORY NO. 1.

When the Dukes County Probate Court approved the sale of the common and undivided lands of Gay Head on December 1, 1878, please demonstrate if is (sic) there any evidence that the Town, the appointed Commissioners or the Probate Court intended to land lock certain parcels or not provide equal rights to all the lands.

ANSWER NO. 1.

The Town objects to this interrogatory on the grounds that it is overly broad, and vague and ambiguous insofar as the phrases "approved the sale" and "equal rights" are used. The Town further objects insofar as you ask the Town to discern what either the Commissioners or the Probate Court "intended." Subject to that objection and the general objections, the Town states that the final report of the Commissioners Joseph Pease and Robert Pease, which was approved by the Probate Court on December 21, 1876, speaks for itself.

INTERROGATORY NO. 2.

Please describe which lands comprised the "20 +/- acres along Moshup Trail" mentioned in the Commonwealth of Massachusetts, Executive Office of Environmental Affairs, Division of Conservation Services, Self-Help Program, Program Agreement, recorded at the Dukes County Registry of Deeds (the

Registry) in Book 672, Page 436 (the Self-Help Agreement).

ANSWER NO. 2.

The Town objects to this interrogatory on the ground that it is not reasonably calculated to lead to the discovery of admissible evidence. Subject to that objection and the general objections, the following parcels, identified by Aquinnah Assessors' Map and Lot numbers, comprise the "20 +/- acres along Moshup Trail" mentioned in the Self-Help Agreement: Map 12, Lots 99, 100, 102, 106, 107, 108, 124, 125, 134, and 135.

INTERROGATORY NO. 3.

What lands were purchased with the \$500,000 grant from the Massachusetts Self-Help Program?

ANSWER NO. 3.

The Town objects to this interrogatory on the ground that it is not reasonably calculated to lead to the discovery of admissible evidence, and that it is vague and ambiguous insofar as term "purchased" is used. Subject to that objection and the general objections, the land referenced in the answer to Interrogatory No. 2 was acquired with funding from various sources. The Gay Head Conservation Commission sought reimbursement on behalf of the Town for the acquisition of Aquinnah Assessors' Map 12, Parcels 100, 134, and 135 from the Self-Help Program.

INTERROGATORY NO. 4.

Why is there a note in the upper left hand corner of the deed recorded at the Registry in Book 674, Page 57 describing the Self-Help Agreement recorded at said Registry in Book 672, Page 436?

ANSWER NO. 4.

The Town objects to this interrogatory on the ground that it is not reasonably calculated to lead to the discovery of admissible evidence, and that it asks the Town to speculate as to why a marginal note may have been placed on a deed recorded at the Registry of Deeds. Subject to that objection and the general objections, the Town refers the plaintiff to paragraph 8 of the Self-Help Program Agreement Recorded at Book 672, Page 436 in the Registry of Deeds and the Town's answer to Interrogatory No. 2.

INTERROGATORY NO. 5.

If the Town claims compliance with paragraph three of the Self-Help Agreement which states ". . . the facilities of the PROJECT shall be open to the general public and shall not be limited to residents of the PARTICIPANT.", please describe how both residents and non-residents of the Town enjoy said land.

ANSWER NO. 5.

The Town objects to this interrogatory on the ground that it is not reasonably calculated to lead to the discovery of admissible evidence. Subject to that objection and the general objections, the land can be enjoyed by both residents and

visitors who pass by on foot, in cars, or on bicycles.

INTERROGATORY NO. 6.

If the Town has stated, in any application to the Massachusetts Division of Conservation Services (DCS), that lands in the vicinity of Plaintiff's land to be purchased with state funds from the Self-Help Conservation Program, G. L. c. 132A, § 11 would be accessible by public transportation describe the procedure a non-resident would take to enjoy such lands.

ANSWER NO. 6.

The Town objects to this interrogatory on the ground that it is not reasonably calculated to lead to the discovery of admissible evidence. Subject to that objection and the general objections, the land is accessible by both Martha's Vineyard Sightseeing and Martha's Vineyard Transit Authority. Both entities have scheduled trips on a daily basis during the summer months.

INTERROGATORY NO. 7.

If the Town claims compliance with the sign provisions of paragraph 3 of the Self-Help Agreement, please describe where the sign is located on the southerly half of Lot 556.

ANSWER NO. 7.

The Town objects to this interrogatory on the ground that it is not reasonably calculated to lead to the discovery of admissible evidence. Subject to that objection and the general objections, the Town has placed a sign on Moshup Trail in

accordance with paragraph 3 of the Self-Help Agreement. The sign is not located on Lot 556.

INTERROGATORY NO. 8.

If a partnership between the Town has ever existed between the Sheriff's Meadow Foundation or VCS to purchase lands in the vicinity of Plaintiff's land, have written status reports ever been issued from such a partnership?

ANSWER NO. 8.

The Town objects to this Interrogatory on the grounds that it is vague and ambiguous insofar as the terms "partnership," "status reports," and "in the vicinity of" are used. The Town further objects on the ground that this interrogatory is not reasonably calculated to lead to the discovery of admissible evidence. Subject to the general objections and that objection, the Town is not aware of the issuance of any status reports concerning efforts to purchase land along Moshup trail.

INTERROGATORY NO. 9.

If a partnership between the Town has ever existed between the Sheriff's Meadow Foundation or VCS to purchase lands in the vicinity of Plaintiff's land, describe all donors to the effort.

ANSWER NO. 9.

The Town objects to this Interrogatory on the grounds that it is vague and ambiguous insofar as the term "partnership" is used. The Town further objects on the grounds that this interrogatory is not reasonably calculated to lead to the

discovery of admissible evidence, and that the Town could not possibly know the names of all the donors to either the Vineyard Conservation Society or the Sheriff's Meadow Foundation, which are private, non-profit entities.

INTERROGATORY NO. 10.

How did the prior owners of Lot 556, VCS and the Edey Foundation Nominee Trust (the Edey Trust), raise \$300,000 to purchase Lot 556?

ANSWER NO. 10.

The Town objects to this Interrogatory on the ground that it is vague and ambiguous insofar as it uses the term "How." The Town further objects on the grounds that this interrogatory is not reasonably calculated to lead to the discovery of admissible evidence, and that the question asks the Town to produce information that is in the possession of the Vineyard Conservation Society, which is a private, non-profit entity, and the Edey Trust, which is a private entity.

INTERROGATORY NO. 11.

Did VCS or the Edey Trust raise funds to purchase Lot 556 based upon the commitment of the \$500,000 grant from the Massachusetts Self-Help Program?

ANSWER NO. 11.

The Town objects to this interrogatory on the grounds that it is vague and ambiguous insofar as the term "commitment" is

used. The Town further objects to this Interrogatory on the grounds that is not reasonably calculated to lead to the discovery of admissible evidence, and that it seeks information that is the possession of Vineyard Conservation Society, which is a private, non-profit entity, or the Edey Trust, which is a private entity, and not the Town.

INTERROGATORY NO. 12.

Has the Town ever stated, in any application to DCS, that lands in the vicinity of Plaintiff's land to be purchased with state funds from the Self-Help Conservation Program, G. L. c. 132A, § 11 are open to thousands of residents and visitors?

ANSWER NO. 12.

The Town objects to this Interrogatory on the grounds that it is vague and ambiguous insofar as the term "open to" is used. The Town further objects on the ground that it seeks information that is not reasonably calculated to lead to the discovery of admissible evidence.

Subject to that objection and the general objections, the Gay Head Conservation Commission stated in its application forms dated May 28, 1995, that "[a]t present the land is enjoyed by thousands of residents and visitors as they pass by on foot, car or bike."

INTERROGATORY NO. 13.

Has the Town ever stated, in any application to DCS, that trails would be created on lands in the vicinity of Plaintiff's land that were to be purchased with state funds from the Self-Help Conservation Program, G. L. c. 132A, § 11?

ANSWER NO. 13.

The Town objects to this interrogatory on the ground that it seeks information that is not reasonably calculated to lead to the discovery of admissible evidence. Subject to that objection and the general objections, the Gay Head Conservation Commission did not make this statement in its application dated May 28, 1995.

INTERROGATORY NO. 14.

Please describe the circumstances which caused the Town to state that ". . . common convenience and necessity require the layout . . ." of Moshup Trail as expressed in the document recorded at the Registry in Book 227, Page 564.

ANSWER NO. 14.

The Notice of Taking speaks for itself concerning the necessity of requiring the layout of Moshup Trail.

INTERROGATORY NO. 15.

When the Town agreed to the layout and construction of Moshup Trail by the Dukes County Commissioners, was there any documentation or understanding with Dukes County that Moshup Trail would only provide access for those lands that fronted directly along the new road?

ANSWER NO. 15.

The Town objects to this interrogatory on the grounds that it is overly broad, and vague and ambiguous insofar as the terms "understanding" and "access" are used. Subject to that objection and the general objections, the Town is not aware of any information or documentation that is responsive to this interrogatory at this time.

INTERROGATORY NO. 16.

Why is there a consistent assessed value for all lands in the Town regardless of whether the lands benefit from access along a way?

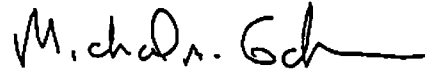
ANSWER NO. 16.

The Town objects to this Interrogatory on the grounds that it is vague and ambiguous insofar as the terms or phrases "consistent assessed value" and "benefit from" are used. The Town further objects on the ground that it is not reasonably calculated to lead to the discovery of admissible evidence. Subject to that objection and the general objections, the Town assesses property in accordance with the provisions of General Laws Chapter 58.

As to objections:

TOWN OF AQUINNAH

By its attorneys,

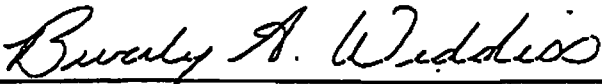


Ronald H. Rappaport
BBO No. 412260
Michael A. Goldsmith
BBO No. 558971
Reynolds, Rappaport & Kaplan
106 Cooke Street
P.O. Box 2540
Edgartown, MA 02539
(508) 627-3711

Dated: March 4, 2003

n:\u17\Aquinnaah\Frangos\int.answers.final

I, Beverly Widdiss, Administrator to the Board of Selectmen of the Town of Aquinnah, have read the answers to these interrogatories and state they are true and accurate to the best of my present knowledge and belief.



Beverly Widdiss

Dated: March 4, 2003

n:\u17\Aquinnah\Franceo\101.Lawyers.C101

Deed
LSS/10Z

0672PC436

THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS
DIVISION OF CONSERVATION SERVICES
SELF-HELP PROGRAM
PROGRAM AGREEMENT

Made this 30 day of October between the Town of Gay Head, hereinafter referred to as the PARTICIPANT, and the Commonwealth of Massachusetts acting by and through the Secretary of the Executive Office of Environmental Affairs, hereinafter referred to as the COMMONWEALTH

WHEREAS, the PARTICIPANT has established a Conservation Commission under Massachusetts General Laws chapter 40, section 8C and has made application to the COMMONWEALTH for assistance under the Massachusetts Self-Help Program, so-called under Massachusetts General Laws chapter 132A, section 11, as it may be amended, for a project briefly described as follows: (describe project and include description of property) Moshups Trail, SH #2, reimbursement @ 62%.

This project shall consist of the acquisition, in fee simple, of 20 +/- acres of land along Moshups Trail, by the Town of Gay Head for conservation purposes.

hereinafter the PROJECT.

WHEREAS, the COMMONWEALTH has reviewed said application and found the PROJECT to be in conformance with the purposes of Massachusetts General Laws chapter 132A, section 11 (and any other relevant statutes of state program).

WHEREAS, the COMMONWEALTH has approved said application and has obligated certain funds in the amount Five hundred thousand dollars, and zero cents (\$500,000.00).

1. WITNESSETH: the COMMONWEALTH and the PARTICIPANT mutually agree to perform this agreement in accordance with the Massachusetts Self-Help Program, so-called, and Massachusetts General Laws chapter 132A, section 11 and chapter 40, section 8C.
2. The PARTICIPANT agrees to perform the PROJECT described previously by authorizing its CONSERVATION COMMISSION to manage, maintain, and operate the PROJECT in accordance with the terms of and the obligations contained in the PARTICIPANT'S preliminary and final applications and any other promises, conditions, plans, specifications, estimates, procedures, project proposals, maps,

BA672PG437

- and assurances made part thereof, and with any special terms and conditions attached hereto, all of which are incorporated by reference. All significant deviations from the PROJECT shall be submitted to the COMMONWEALTH for prior approval.
3. The PARTICIPANT agrees that the facilities of the PROJECT shall be open to the general public and shall not be limited to residents of the PARTICIPANT. The PARTICIPANT shall prominently display on the PROJECT a sign designated by the COMMONWEALTH indicating the PROJECT received Self-Help funds.
 4. The PARTICIPANT acknowledges Article 97 of the Massachusetts Constitution which states, in part, that: "Lands and easements taken or acquired for such (conservation) purposes shall not be used for other purposes or otherwise disposed of except by laws enacted by a two-thirds vote, taken by yeas and nays, of each branch of the general court." The PARTICIPANT hereby agrees that any property or facilities comprising the PROJECT will not be used for purposes other than those stipulated herein or otherwise disposed of, unless the PARTICIPANT receives the appropriate authorization from the General Court, the approval of the Secretary of Environmental Affairs, and any authorization required by the provisions of Massachusetts General Laws chapter 41, section 15A.
 5. The PARTICIPANT further agrees that despite any such authorization and approval, in the event the property or facilities comprising the PROJECT are used for purposes other than those described herein, the PARTICIPANT shall provide other property and facilities of equal value and utility to be available to the general public for conservation and recreational purposes provided that the equal value and utility and the proposed use of said other property and facilities is specifically agreed to by the Secretary of Environmental Affairs.
 6. Failure by the PARTICIPANT to comply with this PROJECT agreement may, at the option of the COMMONWEALTH suspend or terminate all obligations of the COMMONWEALTH hereunder.
 7. Finally, since the benefit desired by the COMMONWEALTH from the full compliance by the PARTICIPANT is the existence, protection, and the net increase of conservation lands and public outdoor facilities which have been preserved in their natural state insofar as is practicable and because such benefit exceeds to an immeasurable and unascertainable extent the amount granted by this agreement, the PARTICIPANT agrees that payment by the PARTICIPANT to the COMMONWEALTH of money would be an inadequate remedy for a breach by the PARTICIPANT of this agreement, and agrees therefor that, as an alternative or an additional remedy, specific performance of the PARTICIPANT'S obligation under either Article 2 or Article 5 may be enforced by the COMMONWEALTH.
 8. The PARTICIPANT agrees to record a copy of this agreement at the Dukes Registry of Deeds at the same time the deed for the land comprising the PROJECT is recorded.

BK672PC438

COMMONWEALTH OF MASSACHUSETTS

BY [Signature]
Secretary, Environmental Affairs

PARTICIPANT

BY [Signature]
BY [Signature]
Chief Executive Officer

CONSERVATION COMMISSION

BY [Signature]
[Signature]
[Signature]
[Signature]

Attached hereto evidence of authority to execute this contract on behalf of the PARTICIPANT: In the case of a municipality, a certified copy of the vote or votes of the governing body authorizing the PROJECT, appropriating the municipality's funds therefor, and authorizing execution of this agreement by the Officer, Board, or Commission whose signature(s) appear above.

Commonwealth of Massachusetts
March 14, 1996

Dukes County

They personally appeared the above-named William P. Sargent and acknowledged the foregoing instrument to be his free act and deed and the free act and deed of the Gay Head Conservation Commission, before me

Eggartown, Mass March 15 1996
at 3 o'clock and 47 P. M.
received and entered with Dukes County Deeds
book 672 page 436

Attest: [Signature] Register

[Signature]
Notary Public

My Commission expires
November 27, 1998

Agreement
672/436

BA 672PC439

DEED

MACDONALD HASKELL of New York, New York

for consideration paid, and in full consideration of THREE HUNDRED SIXTY THOUSAND (\$360,000.00) DOLLARS

hereby grant to the Town of Gay Head through its Conservation Commission for administration, control and maintenance under the provisions of M.G.L. c. 40, § 8C as amended, of 65 State Road, Gay Head, Massachusetts

with quitclaim covenants

The land with the improvements thereon in Gay Head, Massachusetts more particularly bounded and described as follows:

PARCEL ONE

A certain parcel of land situated in Gay Head, County of Dukes County, Commonwealth of Massachusetts, being Lot 549 Indian Lands, shown on a Plan entitled "map of Gay Head showing the partition of the Common Lands as made by Joseph T. Pease and Richard L. Pease, Commissioners" on file with the records of Dukes County Probate Court.

For title see Parcel 8 as set forth in deed dated March 1, 1990, recorded in the Dukes County Registry of Deeds in Book 536, Page 825.

PARCEL TWO

A certain parcel of land situated in Gay Head, County of Dukes County, Commonwealth of Massachusetts, being that portion of Lot 550 which lies NORTHERLY of Moshope's Trail, as shown on map of Indian Lands entitled "map of Gay Head showing the partition of the Common Lands as made by Joseph T. Pease and Richard L. Pease, Commissioners" on file with the records of Dukes County Probate Court.

Meaning and intending to convey parcels set forth as Lots numbered 134 and 135 as shown on Gay Head Assessors Map 12.

The above-described premises are conveyed together with the benefit of a Grant of Easement from Denys Wortman, Jr., Trustee of Wortman Vineyard Realty Trust to this Grantor dated February 23, 1995 and recorded in the Dukes County Registry of Deeds in Book 650, Page 426.

For Grantor's title, see deed from Denys Wortman, Jr., Trustee of Wortman Vineyard Realty Trust dated February 23, 1995 and recorded with the Dukes County Registry of Deeds in Book 650, Page 425.

Property Address: Moshup trail, Gay Head, Massachusetts

BK672PG440

Witness my hand and seal this 15th day of March, 1996.

Macdonald Haskell
Macdonald Haskell

COMMONWEALTH OF MASSACHUSETTS

County of Dukes County, ss.

March 15, 1996

Then personally appeared the above-named Macdonald Haskell, and acknowledged the foregoing instrument to be his free act and deed, before me

Frederick W. Haden
Notary Public

My Commission Expires: 3/10/2000

DEEDS REG OB
DUKES

03/15/96

MARTHA'S VINEYARD LAND BANK FEE

PAID: \$ _____

EXEMPT: \$ 0

18336 3.15.96 OL
NO. DATE CERTIFICATION

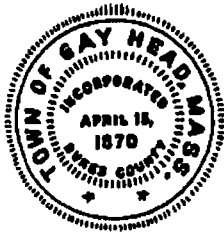
TAX 1641.60
CASH 1641.60

6798A#00 15:42
EXCISE TAX

Not to be checked by

Edgartown, Mass. March 15 1996
at 3 o'clock and 48 minutes P M
received and entered with Dukes County Deeds
book 1072 page 439

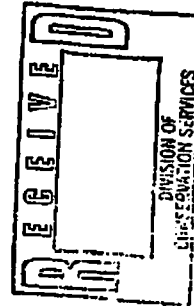
Attest: Jeane E. Powers Register



TOWN OF GAY HEAD
POST OFFICE BOX 128
GAY HEAD, MASSACHUSETTS 02535

May 29, 1996

Mr. Joel Lerner
Division of Conservation Services
Executive Office of Environmental Affairs
100 Cambridge St.
Boston, MA 02202



Dear Joel,

Enclosed you will find Gay Head's 1996 application for Self-Help Funds. The Gay Head Conservation Commission is very excited to continue a project that has met with great success this past year, largely due to the support of the Commonwealth.

As of this writing, we have prevented three new houses from being built on rare coastal heathland habitat and preserved the stunning vistas along Moshup Trail forever. The closing on the fourth property should take place in a matter of days.

It has been a gratifying year, for all of its struggles, and we look forward to wrapping up the project in 1996-97. If we can successfully acquire the lots in this year's application, we will have protected all the presently buildable land in the project area. This would be quite an achievement in two year's time and the Town of Gay Head deeply appreciates the support of your office.

I trust that the application is comprehensive, but if you have any questions, don't hesitate to contact me.

Sincerely,


Mary Elizabeth Pratt, Chair. G.H.C.C.



508-645-9915
FAX 508-645-9054

TOWN OF GAY HEAD
RR#1 • BOX 128
STATE ROAD
GAY HEAD, MASSACHUSETTS 03535

August 9, 1995

This is to certify that the Town of Gay Head has established a municipal Conservation Commission under the provisions of the Massachusetts General Laws at Chapter 40 Section 8C.

As of this date, the names of Conservation Commission members are as follows:

Mary Elizabeth Pratt
William P. Sargent
William Vanderhoop, Jr.
Vernon Welch
Priscilla Wren
Caroline Worthington

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Jeananne Jeffers".

Jeananne Jeffers
Town Clerk

301 CMR: EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS

7.99: Appendices

APPENDIX A

EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS
DIVISION OF CONSERVATION SERVICES
SELF-HELP CONSERVATION PROGRAM
CHAPTER 132A, SECTION 11

S.N. # _____

APPLICATION FORM

1. MUNICIPALITY: Gay Head DATE: 5/25/96

2. LOCATION OF PROPERTY: (Indicate geographic locus in community, etc).
Moshup Trail

3. DOES PROPERTY ABUT ANY OTHER PUBLIC OR QUASI-PUBLIC LAND(S)?
YES X NO _____

If "YES" size of property and ownership

Size (Acres) 13.6 (1996) Ownership Several (see attached list)

4. PRESENT OWNER OF THE PROPERTY TO BE ACQUIRED:

see attached list

Name _____ Address _____

ASSESSORS SHEET NUMBER: _____ LOT NUMBER: _____

5. TOTAL ACRES TO BE ACQUIRED: 13.6 PROPOSED COST: \$ 604,000

APPRAISED VALUES

1) _____ 2) _____

6. COVER, Acres in:

A. Forest _____ B. Open _____

C. Wetland 2.5 D. Water _____

E. Agricultural Land _____

11 acres of coastal heathland

7. TOPOGRAPHY, Acres in:

A. Flat 2 B. Hilly _____

C. Rolling 11.5 D. Mountain 1

8. WATERFRONT, Linear

A. Ocean 268 ft. B. Lake _____

C. River _____ D. Stream 1500 ft. of stream frontage through the property.

4/15/88

301 CMR: EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS

7.99: continued

9. ZONING AND PRESENT USE OF PROPERTY: rural/residential
vacant land

10. BUILDINGS OR STRUCTURES ON PROPERTY? YES _____ NO X

A. If YES, how many, estimated value and current use: _____

B. Intended use of improvements, if applicable? _____

11. BRIEFLY DESCRIBE PROPERTY NOTING ANY UNIQUE FEATURES:
see attached description

12. IS PROPERTY ACCESSIBLE BY PUBLIC TRANSPORTATION?
YES X NO _____

NAME OF CARRIER M.V. Sightseeing
M.V. Transit Autho
WHAT IS THE FREQUENCY OF THE SERVICE: daily in summer

13. DOES PROPERTY HAVE FRONTAGE ON A STREET(S)? YES X NO _____

If "YES", name of street(s): Mobhup Trail

(On plot plan (Attachment #5) please indicate access point(s))

14. INDICATE ANY CURRENT OR PROPOSED RESTRICTION ON PROPERTY:
(Zoning Restrictions, Deed Restrictions, Conservation Restrictions,
Rights of Way)

zoning, Martha's Vineyard Commission District of
Critical Planning Concern

15. IS CLEAR TITLE AVAILABLE? YES X NO _____ UNKNOWN _____

16. IS ACQUISITION BY EMINENT DOMAIN _____ FRIENDLY NEGOTIATION X

GIFT _____ If by Gift: please describe in detail _____

17. HAS YOUR COMMUNITY VOTED TO OVERRIDE ITS DEBT LIMIT IN THE LAST TWO
MUNICIPAL FISCAL YEARS FOR OPEN SPACE PURCHASES? YES _____ NO X

Attach certified copies of municipal vote(s). Current fiscal year's vote
may be calculated in your answer.

4/15/88

301 CMR: EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS

7.99: continued

18. DOES PROJECT HAVE TOWN MEETING OR CITY COUNCIL APPROVAL? Phase I was approved at
(Attach copy of vote or proposed article) Town Meeting, 12/7/95
YES _____ NO _____

19. ARE YOU APPLYING TO ANY OTHER AGENCY FOR ACQUISITION FUNDS?
YES X (possibly) NO _____

If "YES", what agency D. P. M.

20. IS YOUR COMMUNITY ELIGIBLE FOR CONSIDERATION AS ONE OF EXTREME CRITICAL
NEED (FINANCIAL HARDSHIP)? YES X NO See statistics in Open
If yes and you are seeking the 10 point bonus rating, see Space plan and attachment to
definitions above and required attachments. application

21. IS THE PROJECT ONE OF PARTICULAR ENVIRONMENTAL SENSITIVITY? YES X NO _____
If yes and you are seeking the 10 point bonus rating see definitions
and required attachments above.

22. DESCRIBE PURPOSE OF ACQUISITION AND PROPOSED USE:

PART OF A LARGE ACQUISITION PROGRAM TO PRESERVE THE
EXTRAORDINARY SCENIC & ecological resources of the
Moshup Trail area of Gay Head (see attached)

23. RECREATION PLAN (Cite Pages): AT PRESENT THE LAND IS ENJOYED BY
THOUSANDS OF RESIDENTS & visitors as they pass by on foot,
by car, or bike. Once the parcels are assembled the plan
is to create mature trails in non-sensitive areas.

24. PROPOSED DURATION OF PROJECT: FROM 5/95 TO 5/97

25. A. IS/ARE THERE ANY MAJOR STATE PUBLIC INSTITUTION(S) IN YOUR
COMMUNITY? YES _____ NO X

If "YES" identify the institution(s): _____

B. IS YOUR COMMUNITY BEING CONSIDERED FOR THE SITING OF A MAJOR STATE
PUBLIC INSTITUTION? YES _____ NO X Describe: _____

If "YES", has your community voted to accept the facility? Yes _____ No _____
Attach vote or agreement with appropriate state agency.

301 CMR: EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS

7.99: continued

28. SIGNATURE OF ALL CONSERVATION COMMISSION MEMBERS:

CHAIRMAN:
Mr. Stephen Pratt
Patrick McEwen
William E. [unclear]
William K. [unclear]
Carolyn [unclear]

ADDRESS:
Deputy Trail Gay Head, MA 02535
PO BOX 82 COTUIT MA 02535
Box 161A, Gay Head, MA. 02535
STAR CO. GAY HEAD, MA.
Lobsterville Rd. Gay Head MA 02535

27. COMMISSION MEMBER FAMILIAR WITH PROPOSAL THAT DIVISION PERSONNEL SHALL CONTACT FOR FIELD EXAMINATION OF PROPERTY:

Name: *ANZI PRATT* Address: *Deputy Trail Gay Head MA 02535* Phone Number Business or Daytime: *508 645 3035*

DESCRIPTION OF PROPERTIES

The area along Moshup Trail is primarily rolling glacial moraine with windblown sand, creating sand dunes which overlay the glacial till in many places. The area is pocketed with many small wetlands and streams, often tucked into hollows around the dunes. This mix of geological features results in an extraordinary diversity of habitats, some unique on the Island and very unusual in southern New England. The natural community has been classified as a coastal heathland, although one of the most interesting and ecologically important features of the area is the occurrence of widely different plant communities in very close proximity to one another. The coastal heathland community is considered globally endangered with somewhere between 2-3,000 acres remaining on Long Island, Nantucket, Martha's Vineyard and Cape Cod.

Northern harriers (listed as a threatened species in Massachusetts) hunt all along Moshup Trail, and nest sites have been identified in three of the last four years. Small cranberry bogs and swales harbor several beautiful species of orchids, including *Arethusa bulbosa*, which is also listed as a threatened species in Massachusetts and occurs in only a few locations on Martha's Vineyard. Several other state listed rare species are found in the area along Moshup Trail, including considerable Nantucket shadbush, sandplain blue-eyed grass, sandplain flax and spotted turtles.

Lot By Lot Property Description

Malonson (Map 12, Lots 106,107,108)

The construction of Moshup Trail in 1954 fragmented or obliterated many wetlands along its three mile length. The Malonson property is a case in point. Lot 108 to the north of the Trail is a mix of shrub swamp, moraine, and dune. The shrub swamp on Lot 107 is fed by groundwater from the north of the Trail passing under the road through glacial gravels, reaching the sea as a small brook on Lot 106. The *Arethusa* orchid (listed as "Threatened" by MNHESP), has been found on the border between Lots 107 and 120.

Lot 106 is the only parcel currently being considered for acquisition which has ocean frontage. The topography of Lot 106 is steep rolling moraine with actively eroding 30 foot bluffs. Atop the moraine is a large unvegetated dune, probably of early postglacial origin, typical of many in the area.

Blackwell (Map 12, Lot 137)

This parcel lies at the extreme westerly border of the Project area. It abuts Lot 135 (Haskell), purchased by the Town with Self Help funds (1995). Through it flows the major stream in the Project and its associated wetlands. It is most important as feeding habitat for the Northern Harrier which has nested for the past two years on a nearby lot. It is under purchase and sale agreement to Michael Corbo who intends to build a seasonal residence on the lot.

Attaquin (Map 12, Lot 126)

This lot abuts the northerly side of Flanders (Lot 125) purchased by the Town with Self Help funds (1995). It has a wide range of habitats, from dunes to wetlands and includes morainal hills with a grove of Black Oak trees. It is also of prime importance as Harrier feeding habitat and it is an integral part of the land purchase block. This is one of the prime building lots in the area with an elevation of 53 feet above sea level. There is currently no access to this property.

Vanderhoop (Map 12, Lot 128)

This lot abuts the easterly side of Lot 135 (Haskell), purchased with Self Help funds (1995). It contains a great variety of habitats from sand dune to woodland and is a part of a large open treeless area frequented by foraging Harriers. The largest American Holly tree in the project area is found on this property. This lot is also a prime building site with an elevation of 48 feet. It currently has no access.

Summary Of The Moshup Trail Project Acquisitions

Phase I of the Project called for the acquisition of 20 acres of land in five ownerships at an estimated cost of \$ 1.65 million. As of 5/25/96, three ownerships totalling 9.8 acres have been purchased for \$ 1,195,000. and a fourth ownership is under agreement for \$ 440,000. Negotiations with the fifth owner are still in progress and this property will be incorporated into Phase II of the Project.

Phase II of the Project involves 13.6 acres in four ownerships at an estimated cost of \$ 604,000.

To date a total of \$ 505,000. in gifts has been received since the Project began. This, coupled with the 1995 Self Help grant of \$ 500,000. brings the total funds raised to date for acquisition to \$ 1,005,000. The fundraising activities are on-going and the Coalition anticipates raising an additional \$ 500,000. to \$ 1,000,000. in donations towards the Project during the summer months.

Meanwhile, low interest or no interest loans are being used to bridge the purchases as they occur. To date the Coalition has loans totalling \$ 400,000. and anticipates additional borrowing may be necessary in order to complete Phase II purchases.

*Agreement
6/24/96*

674 57

DEED

We, DAVID M. FLANDERS and FRANCES C. FLANDERS, of Chilmark, County of Dukes County, Massachusetts, in consideration of THREE HUNDRED THOUSAND (\$300,000.00) DOLLARS, hereby grant an undivided one-third (1/3) interest to the VINEYARD CONSERVATION SOCIETY, INC., a Massachusetts non-profit corporation with a principal place of business at Tisbury, Massachusetts, and a mailing address of RFD 319X, Lambert's Cove Road, Vineyard Haven, Massachusetts 02568, and an undivided two-thirds (2/3) interest to THE EDEY FOUNDATION NOMINEE TRUST u/d/t dated March 29, 1996, to be recorded herewith, with a mailing address c/o Linda S. Dalby, Esq., Peabody & Arnold, 50 Rowes Wharf, Boston, Massachusetts 02110, said Grantees to hold their respective undivided interests as tenants in common, with *quitclaim covenants*:

The land with the improvements thereon in Gay Head, County of Dukes County, Commonwealth of Massachusetts, being Lot #556 on a Plan of Indian Lands at Gay Head, filed in the Dukes County Registry of Probate, bounded and described as follows:

Beginning at the easterly corner bound of Lot #553; thence

By Lot #555, S 31° 36' E - 264 feet to a bound; thence

By Lot #559, S 58° 24' W - 473 feet to a bound; thence

By Lot #557, N 31° 36' W - 264 feet to a bound; thence

By Lot #553, N 58° 24' E - 473 feet to the first mentioned bound or place of commencement.

EXCEPTING AND EXCLUDING from the above-described premises the property described in The Record of a Layout of a Highway in the Town of Gay Head, in the County of Dukes County, Massachusetts, Layout No. 24, by the Board of County Commissioners in and for the County of Dukes County recorded on February 7, 1955 in the Dukes County Registry of Deeds in Book 227, Page 564.

For our title, see deed from Frances A. Landry to David M. Flanders and Hope R.M. Flanders dated October 29, 1962, and recorded in the Dukes County Registry of Deeds in Book 247, Page 20 and deed from Lorna T. Flanders, Steven B. Flanders and Martha Flanders Thurlow dated August 20, 1987, and recorded in the Dukes County Registry of Deeds in Book 483, Page 490.

PROPERTY ADDRESS: Moshup Trail
Gay Head, MA 02535

~~DEEDS REC 08
DUKES
04/04/96
TAX 1368.00
CASH 1368.00
4899A000 15:54
EXCISE TAX~~

MARTHA'S VINEYARD LAND BANK FEE

PAID. \$ _____
 EXEMPT. \$ 6
12452 4/4/96 Len
NO. DATE CERTIFICATION

789

BOOK 674 PAGE 58

EXECUTED as a sealed instrument this 3rd day of
April, 1996.

David M. Flanders
David M. Flanders

Frances C. Flanders
Frances C. Flanders

COMMONWEALTH OF MASSACHUSETTS

Dukes County, ss.

April 3, 1996

Then personally appeared the above-named David M. Flanders
and Frances C. Flanders, and acknowledged the foregoing
instrument to be their free act and deed, before me

[Signature]

Notary Public

My commission expires:

MY COMMISSION EXPIRES SEPT. 27, 1996

ct:\DW\amer\wccody.doc

Edgartown, Mass. Oct 4 1996
at 3 o'clock and 153 minutes P M
received and entered with Dukes County Deeds
book 674 page 257

Attest: Deanne P. Powers Register

#6888PC102

DEED

VINEYARD CONSERVATION SOCIETY, INC., a Massachusetts non-profit corporation with a principal place of business at Tisbury, Massachusetts, and LINDA S. DALBY, of Boston, Massachusetts, TRUSTEE of THE EDEY FOUNDATION NOMINEE TRUST u/d/t dated March 29, 1996, and recorded in the Dukes County Registry of Deeds in Book 674, Page 46, in consideration of ONE (\$1.00) DOLLAR and other good and valuable consideration, hereby grant to the TOWN OF GAY HEAD, through its CONSERVATION COMMISSION for administration, control and maintenance under the provisions of M.G.L. c. 40, § 8C, as amended, with a mailing address of 65 State Road, Gay Head, Massachusetts 02535, with *quitclaim covenants*:

The land with the improvements thereon in Gay Head, County of Dukes County, Commonwealth of Massachusetts, being Lot #556 on a Plan of Indian Lands at Gay Head, filed in the Dukes County Registry of Probate, bounded and described as follows:

Beginning at the easterly corner bound of Lot #553; thence

By Lot #555, S 31° 36' E - 264 feet to a bound; thence

By Lot #559, S 58° 24' W - 473 feet to a bound; thence

By Lot #557, N 31° 36' W - 264 feet to a bound; thence

By Lot #553, N 58° 24' E - 473 feet to the first mentioned bound or place of commencement.

EXCEPTING AND EXCLUDING from the above-described premises the property described in The Record of a Layout of a Highway in the Town of Gay Head, in the County of Dukes County, Massachusetts, Layout No. 24, by the Board of County Commissioners in and for the County of Dukes County recorded on February 7, 1955 in the Dukes County Registry of Deeds in Book 227, Page 564.

The above-described premises are conveyed subject to, and by acceptance and recording of this deed, the Grantee agrees to be bound by the terms of that certain Self-Help Program Agreement by and between the Town of Gay Head and the Commonwealth of Massachusetts acting by and through the Secretary of the Executive Office of Environmental Affairs acknowledged March 14, 1996, and recorded in the Dukes County Registry of Deeds in Book 672, Page 436.

PROPERTY ADDRESS: Moshup Trail
Gay Head, MA 02535

790

058880103

The within transfer by the Vineyard Conservation Society, Inc. does not constitute a transfer of all or substantially all of the assets of the Vineyard Conservation Society, Inc.

For title, see deed from David M. Flanders and Frances C. Flanders dated April 3, 1996, and recorded in the Dukes County Registry of Deeds in Book 674, Page 57.

IN WITNESS WHEREOF, the said VINEYARD CONSERVATION SOCIETY, INC. has caused its corporate seal to be hereto affixed and these presents to be signed in its name and on its behalf by JAMES H. CANNON, its President, and SETH MOSLER, its Treasurer, and the said LINDA S. DALBY, TRUSTEE of THE EDEY FOUNDATION NOMINEE TRUST, has executed and delivered this deed as a sealed instrument on this 22nd day of July, 1996.

VINEYARD CONSERVATION SOCIETY, INC.

By: James H. Cannon
James H. Cannon, its President

By: Seth Mosler
Seth Mosler, its Treasurer

Linda S. Dalby
Linda S. Dalby, Trustee as aforesaid

COMMONWEALTH OF MASSACHUSETTS

Dukes County, ss.

July 22, 1996

Then personally appeared the above-named James H. Cannon, President of the Vineyard Conservation Society, Inc., and acknowledged the foregoing instrument to be his free act and deed and the free act and deed of the said Vineyard Conservation Society, Inc., before me

Carol L. Magee
Notary Public

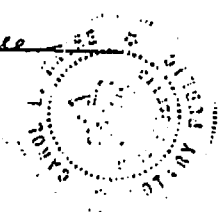
My commission expires: 10/4/96

MARTHA'S VINEYARD LAND BANK FEE

PAID: _____

EXEMPT § A

9793 11/8/96 Com Cause
NO. DATE CERTIFICATION



791

EX688PG104

COMMONWEALTH OF MASSACHUSETTS

Suffolk County, ss.

July 27th, 1996

Then personally appeared the above-named Linda S. Dalby, Trustee of The Edey Foundation Nominee Trust, and acknowledged the foregoing instrument to be her free act and deed and the free act and deed of the said The Edey Foundation Nominee Trust, before me

Marie C. Carroll
Notary Public

My commission expires: 2/23/01



Dorchester, Mass. Nov 8 1996
at 9 o'clock and 46 minutes A M
received and entered with Dukes County Deed:
Book 688 page 102

Attest: Deane P. Powers Register

n:\u0096\j\reg\head.doc

The Moshup Trail Project

A public and private land conservation partnership including the Gay Head Conservation Commission, the Gay Head Planning Board, the Sheriff's Meadow Foundation and the Vineyard Conservation Society, to protect and preserve Gay Head's Moshup Trail • Martha's Vineyard, Massachusetts

The Moshup Trail Project c/o Vineyard Conservation Society
 Post Office Box 2189 • Vineyard Haven MA 02568
 508 / 693-5207 • 508 / 693-9588 • Fax 508 / 693-0683

Progress Report to the Friends of the Moshup Trail Project

December, 1997

We are writing to you, as a key supporter of the Moshup Trail Project, to thank you for your help in the past, to provide you with an update on the achievements of the last several months, and to alert you to the work remaining to be done to bring this Project, already successful by any measure, to its conclusion.

Background -

The collaborative effort to conserve the last undeveloped block of rare and beautiful Moshup Trail moors has come a long way since the Vineyard Conservation Society, Sheriff's Meadow Foundation and the Town of Gay Head launched the Moshup Trail Project in 1994. Since then, 17 lots in 9 ownerships totaling 33 acres have been acquired at a cost of more than \$2.5 million, with funds raised from individuals, foundations and the Commonwealth of Massachusetts. Nearly eleven acres were acquired in the last month alone. Gifts of land and conservation restrictions are in the works on several other parcels. This success has been hard-fought, and represents a major conservation accomplishment for Martha's Vineyard.

Moshup Trail Project Acquisitions To Date

<u>Lot Number</u>	<u>Acres</u>	<u>Closing Date</u>	<u>Purchase Price</u>
100	2.9	March 7, 1996	\$525,000
134, 135	4.4	March 15, 1996	\$360,000
124, 125	2.5	April 3, 1996	\$300,000
97, 99, 102	5.2	June 3, 1996	\$440,000
106, 107, 108	4.9	October 8, 1996	\$357,500
119, 120	2.5	June 19, 1997	\$165,000
121 (one-half interest)		August 5, 1997	\$ 55,000
137	2.9	October 31, 1997	\$260,000
111, 112	5.8	November 10, 1997	\$150,000
121 (one-half interest)	2.3	November 10, 1997	Gift
TOTAL	33.4		\$2,612,500

[over]

Current Opportunity -

Today, six key lots are being targeted for acquisition, as shown on the attached map. They are, on the south side of Moshup Trail, Lot 122 and Lot 123. On the north side of Moshup Trail, they are Lot 128, Lot 126, Lot 109 and Lot 110.

Projected Cost -

Lots 122 and 123, abutting the Atlantic Ocean at the center of the Project's ocean-front boundaries, are critical to the effort to conserve unbroken habitat and ocean views throughout the project. An offer has been made on Lot 122 and efforts are being made to contact and negotiate with the owners of Lot 123. It is anticipated that these lots can be acquired for about \$110,000 in total.

Discussions have also been held with the owner of Lots 109 and 110, who has indicated his interest in selling the land to the Project, perhaps at a discounted price. These lots, which abut conservation property on three sides, together with Lots 118, 126 and 128, will complete the northern tier of the Project. It is anticipated that Lots 109 and 110 can be acquired for less than \$100,000.

Lots 126 and 128 are landlocked and their value is, therefore, limited. Were access to be established, and were the lots otherwise buildable, the value would be substantial — as much as \$400,000 each. [The Vineyard Conservation Society is currently in litigation with would-be developers of landlocked property to the north of the project area, who seek to force access to Moshup Trail over land acquired by the Moshup Trail Project. We strongly believe that this attempt will fail.] However, the owners of Lots 126 and 128, who may well benefit from a decision favorable to the developers, are reluctant to agree to a sale of their property before the litigation is concluded. Discussions with them will continue to determine whether there is a price, which reflects the uncertainty inherent in the litigation, that is mutually agreeable.

We extend our sincere appreciation to you for contributing to the success of this Project to date and invite you to continue your support. The result, so close at hand, will be the preservation of one of the world's flagship natural and scenic areas.

Funding for the Moshup Trail Project has been made available through the generosity of many private donors, the Edey Foundation, the Abraham and Ruth Krieger Foundation, the New York Community Trust, the Scheuer Family, the David H. Smith Foundation, the Sheriff's Meadow Foundation, the Sweet Water Trust, the Vineyard Conservation Society, and the Commonwealth of Massachusetts Executive Office of Environmental Affairs.