

Barrs, B. 1975. Jurisdictional allocations in land use planning: the battle for control on Martha's Vineyard. MS Thesis. MIT

Last year, Harrison Street Corporation, a large Lexington developer bought 93 acres on Martha's Vineyard for \$35,000. On-site development now is expected to yield some \$1,400,000 for summer homes plus revenues for a condominium. William Brine, a summer resident which last August bought 232 acres for \$15,000 sold the land to a developer seven months later for 15 times that amount....<sup>9</sup>

expressed:

Today Martha's Vineyard stands on the brink. Soaring land values and celebrated clientele are luring thousands of land-starved Americans to the Island.<sup>9</sup>

<sup>9</sup> Christian Science Monitor May 1 1972

The Edgartown Road (between Vineyard Haven and Edgartown) became a federal secondary highway ten years ago. This required the cutting of great swaths of trees and bulldozing land to meet the federal highway standards. In the words of a local author:

Now cars whiz along the short, improbable federal highway from one sister town to the other, speeding on its smooth wide surface, skidding around its shoulders...and people begin to forget what a quiet island road looks like.<sup>11</sup>

From the statements by K in submitting his bill:

The islands stand, today, on the brink of a subdivision development explosion, from which, if it is not controlled there will be no turning back. ....the threat is not from internal pressures for natural expansion. Instead, it grows out of external pressures: off-island land developers marketing large-scale subdivisions of a kind entirely foreign to residential land-use patterns now existing on the islands.<sup>45</sup>

The threat to the islands is a very real one.<sup>46</sup>

Today, Nantucket and Martha's Vineyard stand on the brink. If unchecked development continues its current course, then there will be no turning back, and the generations which follow us will find these offshore islands...little different from today's sprawling suburbs...and heavily developed and suburbanized parts of Cape Cod or of Long Island or of New Jersey shore. This is not an overstatement.<sup>47</sup>

The statements of this threat are further qualified by for immediate action:

...we do not have years to study the problem, we have months - and we do not have years to reverse the trend [urbanization and commercialization]; we have months. So let us not waste this precious time.<sup>48</sup>

Time for the islands is of the essence. The urgency is plain for all to see, in the angular grids slashed through the moors and woods for subdivision roads; in the steepening curve of housing starts; in the Steamship Authority's boats filled to capacity on spring and fall weekends; and the steady ongoing destruction of dunes, beaches and wetlands.<sup>49</sup>

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<sup>46</sup> Ibid.

<sup>47</sup> 118 Cong. Rec. 12034.

<sup>48</sup> 117 Cong. Rec. 33904.

<sup>49</sup> 119 Cong. Rec. S.10,013.

The study with the greatest significance to the Island was the Metcalf and Eddy study.

Of greatest significance to the Vineyard was the study and comprehensive plan prepared by Metcalf and Eddy, a Boston engineering and planning firm for Dukes County Planning and Economic Development Commission between 1969 and 1971.<sup>52</sup> The final report contained the following challenge to the Island:

Can you be the exception and not protect the rural environment of your country from the ravages caused by unrestricted development or will your failure to act decisively and rapidly result in the undeterminate destruction of natural resources as has happened elsewhere? (Martha's Vineyard) and Nantucket are the bastions of hope for warm water islands lying off the Eastern Coastline of the United States.

The Summary Report contained the following warning:

By 1990 the County, particularly the Vineyard, could have destroyed its rural environment at economic disadvantage to itself and the developers will move on to the next unspoiled area. However, the next five years are critical. If a definite and well-ordered program of preventive and prescriptive medicine is not undertaken almost immediately or within the next two years, by 1975 the Vineyard undoubtedly will have contracted environmental terminal cancer.

The status of the Islands was recognised by other parties. The New York Times editorialized in October 1971:

Of the Atlantic Islands, perhaps the most desperately in need of protection...is Martha's Vineyard... now teetering on the edge of an uncontrolled speculative explosion that could destroy in a decade the delicate balance between man and nature that has evolved there in the course of three centuries.

K convinced that federal role was necessary as local ordinances were not effective. WT had tried to establish a moratorium on building permits to protect fresh water sources but abandoned that in the face of lawsuits by big developers.

Feds could provide authority and funds.

Towns argued that they could make the statutes but then needed the funds for land protection. Flurry of activity generating zoning, subdivision and other planning measures.

K argued that even the new MA state law did not go far enough and that the state did not have the necessary power and statutes. (This is incorrect). But feds has funds for outright acquisition.

### III. CLASSIFICATION OF TRUST LANDS (SECTION 5)

#### **(i) PROVISIONS**

All land within the boundaries of the Trust shall be assigned to one of the four classifications of land. The Secretary of the Interior may alter the assignments within ninety days upon recommendation of the majority of the Commission (section 5(a)). In this version the assignments are described verbally (section 6). The classifications are as follows (section 5(b)):

#### Class A: Lands Forever Wild

These lands are to remain forever free of development or improvements. The Secretary of the Interior shall permit a right of use and occupancy to owners and their successors or assigns of existing development or improvements at the date of enactment. This right cannot last longer than a period of twenty-five years. Access to such lands is to be free and open and subject only to the regulations of the Commission approved by the Secretary.

#### Class B: Scenic Preservation Lands

These lands shall not be developed beyond their present intensity of use. Owners of such lands or improvements may transfer, sell, assign, or demise them on the date of enactment but may not construct further improvements on these lands. Reasonable replacement, repair and extension is permitted, subject to Commission regulations.

#### Class C: County Planned Lands

These lands are to remain within the jurisdiction of the County under zoning and land use planning ordinances provided that such ordinances are approved by the Commission and Secretary.

#### Class D: Town Planned Lands

These lands are to remain within the jurisdiction of the town in which they are located under land use planning and local ordinances provided such ordinances are approved by the Commission and Secretary.

## V. PRIVATE NONPROFIT ORGANIZATIONS (SECTION 13)

### (i) PROVISIONS

1. The Secretary's authority to acquire lands by condemnation shall be suspended when:
  - (i) lands or interests are in the ownership of private nonprofit conservation, preservation, historic or other organizations or associations, and the restrictions against development meet the Secretary's standards,
  - (ii) twenty-four months after enactment, the lands or interests are irrevocably committed to be sold, donated, demised or otherwise transferred to such organizations or associations (section 13(a)).
2. The Secretary is authorized to provide technical assistance to State and local governments, private organizations and associations, and individuals with respect to the preservation and conservation of Trust lands (section 13(b)).
3. Only bona-fide and general-purpose organizations will be included in these provisions (section 13(c)).

### (ii) DISCUSSION

These are important provisions concerning private nonprofit organizations and associations. The main purpose of these provisions is to encourage preservation and conservation by voluntary private action, where at all possible. Lands owned or committed to conservation organizations are exempt from acquisition by the Secretary of the Interior. The bill therefore recognizes the important preservation and conservation work of local, private organizations and associations. Senator Kennedy believes that the future plans of these organizations are carefully tailored to a realistic appraisal of the Islands'

(vi) ONE EFFECT OF DISREGARDING THE FREEZE ON THE VINEYARD -  
A BUILDING BOOM

The other towns on the Vineyard, like Edgartown, disregarded this freeze provision and did not institute restrictions on the granting of building permits. As a result by mid-June 1972, a building boom on the Island erupted. Appendix 1(c) shows building permit figures for the down-island towns through to 1974. 1972 and 1973 were the peak years of the building boom - thereafter, the introduction of zoning, subdivision and other planning controls by the Island towns offset this boom. Typical comments at the time included:

The bill has precipitated wild building. We've never had construction like this. Every developer is rushing to do something else... If this situation continues for another six years, there won't be anything left to protect. Nothing will happen but development, development, development.<sup>113</sup>

Mr. Lewis King, Chilmark Selectman  
June 1972

On Martha's Vineyard, announcement of the legislation in April has led to an Island-wide building boom, despite a freeze date of April 11, 1972 that will carry over if the bill is refiled in the coming years. This has not been true on Nantucket where there is only one board of Selectmen and one set of county commissioners who have refused building permits on wild lands and have limited permits on Scenic Preservation Lands since May. Similar restrictions were approved by Selectmen of West Tisbury last week and may catch on elsewhere as residents of Martha's Vineyard realize that the legislation is designed to preserve a way of life they love and cannot defend on their own.<sup>114</sup>

<sup>114</sup> Boston Globe, October 9, 1972.

The Harvard Law School Memo considered it essential that there is public access to beaches, moors, forests and other areas of scenic recreational value. Good conservation involves concentration of intensive uses in designated areas, while preserving large stretches in their pristine or natural states. The Memo further recommended: "To provide public access and assure preservation, all beaches should be acquired in full fee."<sup>117</sup> Beaches should be administered in such a way to prevent harm from high-intensity public use. The memo also suggested that it might

The local opposition to the Kennedy bill was led by the Island Action Committee, a citizen group, comprised mainly of business interests and some local public officials. The All-Island Selectmen's Association was the main spokesman for the opposition of the island public officials. This body was also backed by the Dukes County Commissioners. A major tactic conducted by the opposition was a public referendum which incorporated a memorialization bill.

69% of people who pay taxes are non-residents. 70% of non-residents were in favor of bill; 21% against.

DCPEDC produced an alternative to Trust bill that they presented to TK and printed in the Congressional record. (See VG 12.21.1973; DRF files) To create a MV Resource Management Fund. Interior Secretary can enter into contractual agreements with MVC whereby land can be classified and acquired. More local control than K bill.

MVRMF – Interior Secretary can enter into contractual agreements with MVC; which can then purchase lands – MV and appurtenant islands. MVC will prepare a plan and program for classifying all land: lands where no development will occur; lands where extraordinary and innovative controls should occur; lands where normal control is applicable. Secretary through Fund can provide funds for the purchase of lands by MVC. Can use eminent domain; but encourages willing seller; MVC will convey ½ interest to towns to be held in a public trust; land will be taxable; MVC will coordinate with state and federal authorities;

MVC will also make immediate survey of public private access to lands in Fund area; make recommendations to limit the number of motor vehicles and passengers;

Will survey and create trails, bike path, etc.

MVC, Govenor and Secretary will provide pollution safeguards – groundwater and surface waters in and around fund area.

MVC will expend funds to experiment with development of aquaculture and other forms of employment including commencement of agricultural uses of land; also retraining programs.

Up to \$20m for land

### 1973 Consensus Committee (report filed)

#### Committee Members:

##### A. Vineyarders to Amend the Bill

James Alley  
Nicholas Freyberg  
Henry Hough

##### B. Island Action Committee

Robert Carroll  
Shirley Frisch  
Daniel Hull

##### C. Selectmen's Association

Herbert Hancock

##### D. Dukes County Planning and Economic Development Commission

Anne Hale  
Dean Swift  
Edwin Tyra

##### E. Student Council of Martha's Vineyard Regional High School

Larry Look

#### Discussions were held with the following:

##### Federal representatives

--K. Dun Gifford, representing Senator Edward Kennedy  
--Hap Ellis, representing Senator Edward Brooke  
--Richard Norling, representing Representative Gerry Studds  
--Stephe Ells, representing the Environmental Protection Agency  
--Leslie Arnberger  
--Albert Benjamin, and  
--James Killian, representing the Department of Interior  
(National Park Service)

##### State representatives

--Representative Terrence McCarthy  
--Henry Lee, representing Governor Francis Sargent  
--John Eller and Joe Wallace, representing Speaker David Bartley



This Committee, the members of which have signed their names to this report, met on the Vineyard eight times during the period of February through May, and twice went to Boston to meet with Federal and State officials. At each of these sessions Kevin Lynch of MIT and Gay Head acted as moderator and advisor. After intensive reviews of land control methods and many decisions, the Committee concluded that there was a need to:

1. moderate the annual rate of residential (second home) construction, while making ample provision for housing for low and moderate income Island residents;
2. preclude development from certain fragile areas;
3. improve the quality of development, and;
4. establish policy for transportation and access, both within and to the Island.

The meetings with State and Federal officials were held to answer six questions: Is it possible to enact legislation which would:

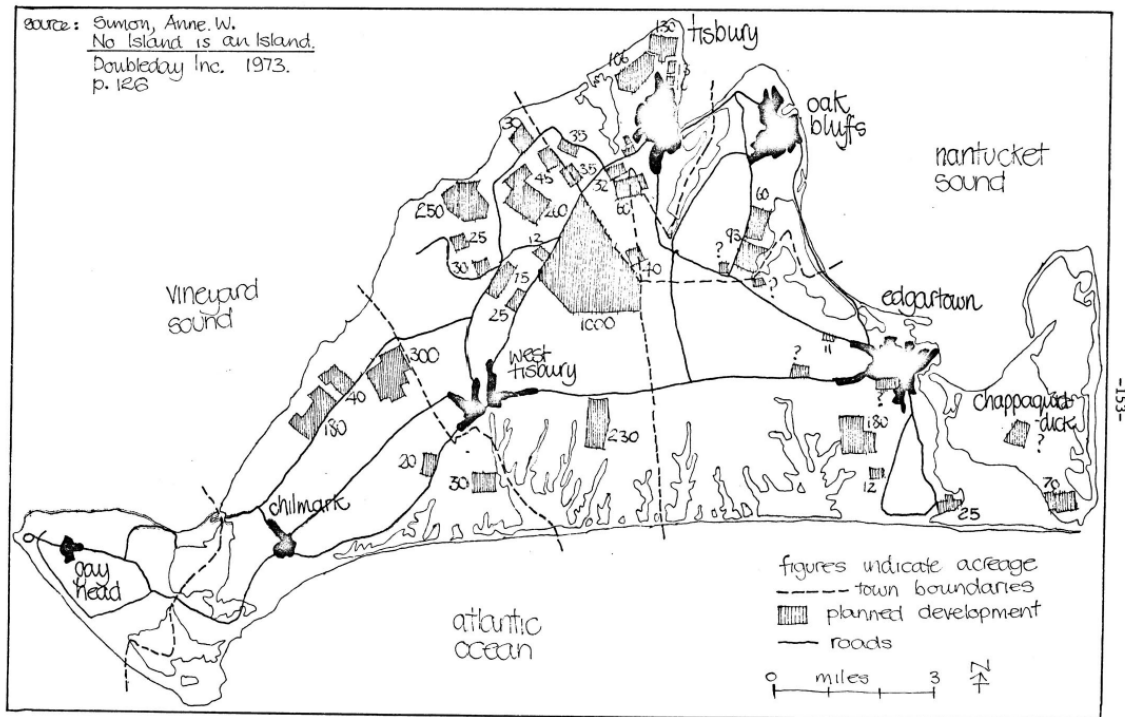
1. Permit a community to control and preclude development in fragile areas?
2. Permit a community to control the quality of development through the review of site plans?
3. Permit a community to control its residential growth rate?
4. Put land use proposals which have Island-wide implications under the control of an Island-wide authority?
5. Provide financial assistance for the acquisition of land which cannot be adequately protected by police power techniques, or for other necessary activities?
6. Make an Island-wide authority responsible for policy for the future of the transportation network both to and within the Island?

In return, what degree of control would the delegating authority agency wish to reserve for itself?

#### APPENDIX 1(c) : THE BUILDING BOOM ON MARTHA'S VINEYARD 1965-1974

##### Building Permit Data for Edgartown, Oak Bluffs, and Tisbury 1961-74

Year	Edgartown	Oak Bluffs	Tisbury/Vineyard Haven
1961	10 <sup>a</sup>	9 <sup>d</sup>	6 <sup>a</sup>
1962	7 <sup>a</sup>	15 <sup>d</sup>	12 <sup>a</sup>
1963	6 <sup>a</sup>	9 <sup>d</sup>	18 <sup>a</sup>
1964	6 <sup>a</sup>	11 <sup>d</sup>	11 <sup>a</sup>
1965	8 <sup>a</sup>	22 <sup>d</sup>	10 <sup>a</sup>
1966	24 <sup>a</sup>	24 <sup>d</sup>	10 <sup>a</sup>
1967	9 <sup>a</sup>	38 <sup>d</sup>	28 <sup>a</sup>
1968	9 <sup>a</sup>	42 <sup>d</sup>	28 <sup>a</sup>
1969	58 <sup>a</sup>	50 <sup>d</sup>	24 <sup>a</sup>
1970	61 <sup>a</sup>	74 <sup>d</sup>	20 <sup>a</sup>
1971	81 <sup>a</sup>	66 <sup>d</sup>	71 <sup>a</sup>
1972	84 <sup>b</sup>	121 <sup>d</sup>	44 <sup>b</sup>
1973	112 <sup>b</sup>	63 <sup>d</sup>	81 <sup>b</sup>
1974	98 <sup>c</sup>	23 <sup>c</sup>	58 <sup>c</sup>



APPENDIX 1(b) : DEVELOPMENTS UNDER WAY ON MARTHA'S VINEYARD, JUNE 1972

Later bill was amended to have three separate commissions; also dropped Secretary's ability to appoint all to just one; added non-resident taxpayer; changed form Secretary principal authority over Trust to Commission; change in lands to Open Lands; Resource Management Lands; Town Lands (dropped County Lands as no ability to zone) and eased controls in all including landowners in Open Lands keeping their lands; eventually land use plan will be subject to public discussion (many feds considered this went too far); 5<sup>th</sup> version – Secretary needs Commission permission to buy land; Commission could vote on any lands and then Secretary would need to purchase and then convey ½ ownership; also pay taxes; Commission could study employment including aquaculture but all other types;

Amended bill – beaches not public but right of passage with landowner compensation; no bridge, causeway or tunnel built; look at limiting access; affordable housing through below cost sales to residents;

Sargent's bill not meant as competitive; state no funds for purchase and large scale preservation; state's bill "regulatory planning"; August 1973 efforts to work both bills together;

It will be dismaying if Governor Sargent's bill is rushed through without adequate redrafting. It ought to be an effective measure on a State level to go along with the Islands Trust bill on the federal level to accomplish the partnership both Governor Sargent and Senator Kennedy have in mind. Here is a magnificent opportunity.<sup>148</sup>

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<sup>148</sup> Vineyard Gazette. August 28, 1973.

As bill accommodated local pressures it lost federal backing. Interior wanted more power and saw that going to the local representatives; they came to see the issue as local land use that could be handled locally. Constitutionality questioned as local board was able to decide on map and on purchases using federal funds. Secretary directed to acquire lands Commission tells it to.

New Administration opposed to bill.

Strong Interior opposition requires revamping bill to form that will not pass local concerns. Dilemma not resolved.

Towns now have the tools but they do not have the resources.