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MARTHA'S VINEYARD: THE DEVELOPMENT OF A LEGISLATIVE STRATEGY FOR PRESERVATION

*By Carla B. Rabinowitz**

I. INTRODUCTION

The islands of the Nantucket Sound, off the coast of Massachusetts, have for over a century served as summer resorts for residents of the major cities of the Northeast. These islands—Nantucket, Martha's Vineyard, and a string of smaller islands known as the Elizabeths—remain to date largely rural, protected from urban sprawl by sheer difficulty of access. In recent years, however, the boom in tourism and second-home construction has created the danger that the islands may be overwhelmed by summer visitors, and their natural beauty irretrievably lost.

This article will trace the development of legislative attempts to preserve the historically rural character of the Nantucket Sound islands. Special attention will be given to Federal attempts in the form of the Nantucket Sound Islands Trust Bill,¹ sponsored in the United States Senate by Senator Edward M. Kennedy (D. - Mass.), and to state efforts in the form of the "Crampton Bill",² sponsored in the Massachusetts legislature by Lewis Crampton, state Commissioner of Community Affairs. For various reasons,³ opposition to the Kennedy bill has been strongest on Martha's Vineyard, and the Crampton bill, which evolved in response to that opposition, deals solely with that island. The article will therefore focus primarily on the conflicts and pressures which have arisen on the Vineyard, as residents call it, in the course of the development of these two bills.

Section II presents a background survey of the social and economic characteristics of Martha's Vineyard. Section III deals, in a summary fashion, with some current state and Federal approaches to preservation, and the problems associated with these approaches. The remainder of the article will trace the Kennedy and Crampton bills through the various stages of their complex evolution, and examine the pressures and the interrelationships which have contributed to that evolution.

II. MARTHA'S VINEYARD: BACKGROUND

A few statistics will illustrate the nature of the current economic situation on Martha's Vineyard. The total land area of the island, some 67,000 acres, was classified in 1970 as 9% developed, 11% public and semi-public open space, and 80% "vacant" (agricultural

or forest land with scattered houses).⁴ Over the past two decades, while year-round population has remained nearly constant, the population on "peak day" — the day on which the greatest number of tourists are present on the island, usually occurring during the 4th of July or Labor Day weekend — has more than doubled, with the number of "day trippers" increasing by 650% (Table 1). Unemployment ranges from 2.8% in the summer to 14% in the winter.⁵ An astonishing 19% of the labor force is employed in the construction industry,⁶ and the value of undeveloped land has recently been estimated at \$5,000 - \$10,000 per acre.⁷

TABLE 1: POPULATION ON PEAK DAY*

	Year-round*	Summer Seasonal	Weekly, Overnight	Day Trippers	TOTAL
1950	6,000	10,000	1,500	1,000	18,500
1960	6,500	15,000	2,500	2,000	26,000
1970	7,500	21,000	7,500	7,500	43,500
1980**	9,000	28,000	25,000	18,000	80,000

* includes guests

**projected

Consequences of the tourist boom which are already apparent include intolerably overcrowded roads and inadequate water and sewerage systems. In the summer of 1973, the town dump of Vineyard Haven became overloaded with raw sewage from restaurant cesspools, and the overflow ran out onto a state road.⁹

A factor which must be reckoned with in any legislative attempt to preserve the island is the division between winter residents and "off-islanders" (a category which includes summer residents). The majority of the vocal preservationists are off-islanders, whereas many winter residents are dependent for their livelihood on continued development. Resentment by winter residents against interference in local affairs by rich and politically powerful outsiders seems to have been a major cause of the difficulties which have been encountered by the Islands Trust Bill.¹⁰

III. CURRENT APPROACHES TO SCENIC PRESERVATION

A. *Constitutional Limitations and State Regulation*

In the 1923 landmark case of *Pennsylvania Coal Co. v. Mahon*,¹¹ the Supreme Court, speaking through Mr. Justice Holmes, set forth the doctrine that government regulation of private property which unreasonably diminished the value of that property was a "taking" of the property, for which compensation must be paid to the owner

under the Due Process Clause of the Constitution. The distinction between regulation and "taking", said Holmes, was one of degree, to be determined from the facts of each particular case.

The line of cases following *Pennsylvania Coal Co. v. Mahon* has posed problems for states and municipalities seeking to regulate land use. The distinction between permissible regulation and taking was unclear in *Mahon*, and subsequent state decisions have confused rather than clarified it.¹² Some recent Massachusetts cases, however, indicate an increasing willingness on the part of that state's courts to uphold a broad range of land use regulations under the rubric of the police power. These cases illustrate the limits within which the Massachusetts legislature or local governing bodies may act to preserve rural areas such as the Nantucket Sound Islands.

Very restrictive zoning bylaws have been upheld where the effect of those bylaws was to limit or prohibit development in wetlands and flood plains—areas in which experience has shown that unwise construction can have disastrous results. In *Turnpike Realty Co., Inc. v. Town of Dedham*,¹³ the Massachusetts Supreme Judicial Court upheld a bylaw prohibiting all construction in designated flood plains, citing the danger to the public inherent in such construction. Even though there was evidence that the value of the plaintiff's land had been reduced by 80% by the application of the bylaw, the court found that the plaintiff had not been deprived of *all* practical uses of its land, since the bylaw permitted agricultural, recreational, or horticultural uses. On this basis the court concluded that there had been no taking. In *Golden v. Board of Selectmen of Falmouth*,¹⁴ the court upheld the denial of a permit to fill a marsh, reasoning that the Board of Selectmen had "the power to deny the permit as long as its decision was not based on a legally untenable ground, or was not unreasonable, capricious, or arbitrary."¹⁵ The taking issue was not even discussed.

Bylaws directed merely to the preservation of open space and natural beauty, without compensation for the owners of restricted land, have fared less well. In another Massachusetts case, *Aronson v. Town of Sharon*,¹⁶ the court struck down a zoning bylaw fixing minimum lot size at 100,000 sq. ft. (approximately 2½ acres). Town officials had testified that the bylaw was meant to encourage property owners to keep their land open for conservation purposes. The court declared that it could see no advantage to the health, safety, or welfare of the community from such large lot sizes, and that the bylaw was therefore not within the permissible scope of the police

power. The court went on to state that if the community desired open land for recreation or conservation, it should not force individual landowners to provide it.

Apparently a balancing test is being applied. The more important the regulation, or the more fragile or easily damaged the type of land which is regulated, the greater the diminution in value of that land which will be allowable before a particular regulation is classified as a taking. Only in exceptionally vulnerable areas, such as floodplains or wetlands, can construction be banned completely. In other areas, regulations limiting profitable uses of land must have a demonstrable relation to the public health, safety, or welfare before they will be upheld. Regulations directed to purely aesthetic purposes will only be upheld if they cause no substantial diminution in the value of affected property.¹⁷

In accordance with these constitutional guidelines, Massachusetts has enacted a legislative program for the protection of inland and coastal wetlands and floodplains, under which development of such areas may be limited or banned entirely by local communities or the Commissioner of Natural Resources.¹⁸ An affected property owner may petition the Superior Court to determine whether a particular regulation, as applied to him, so deprives him of the practical uses of his property as to amount to a taking.¹⁹ If the court so finds, the regulation is invalid as to the petitioner's land. The state cannot thereafter be compelled to acquire the land, but has the option of doing so.

Massachusetts laws also provide for acquisition of conservation easements by governmental bodies or private organizations,²⁰ and for subsidies to cities and towns for the purpose of acquiring recreational land.²¹ The effectiveness of all these laws is dependent on the vigor with which they are carried out by state and local authorities, and on the amount of money available to those authorities for the purchase of land or interests in land. They do not provide any reliable means of protection for areas like the Nantucket Sound islands, where thousands of acres of commercially valuable land are sought to be preserved in a rural condition. The state and local governments simply do not have the financial resources which would be required to compensate owners for the effects of such preservation. The Federal government, on the other hand, does.

B. *Federal Preservation: The National Seashore Acts*

Because state and local governments often cannot afford the cost of preserving large areas of open land, the Federal government has

taken an active role in the preservation of valuable scenic and recreational areas. The National Seashore Acts²² are one component of this system of Federal preservation. When the problems of increasing recreational use first became evident on Martha's Vineyard and Nantucket, it was suggested that preservation of these islands be accomplished by making them part of the Cape Cod National Seashore.

The second in the series of National Seashore Acts, enacted in 1961,²³ authorized the Secretary of the Interior to establish and maintain the Cape Cod National Seashore. The basic feature of this legislation, as of all National Seashore legislation, is the acquisition by the Federal government of large tracts of beach and open land, which are thereafter kept open, subject to the minimum development necessary to handle tourists.²⁴ The total land area proposed for eventual inclusion in the Cape Cod National Seashore is 44,000 acres, of which 17,000 are shorelands.²⁵ The location and characteristics of the area (undeveloped land less than three hours' drive from Boston) dictate that it will inevitably be subject to extremely heavy tourist use: in 1971, the Seashore had three million visitors.²⁶

Like Martha's Vineyard and Nantucket, the area of Cape Cod covered by the National Seashore contains several long-established communities. Within this area, Congress has attempted to preserve the historic character of the developed town centers through a combination of zoning and eminent domain. The Secretary of the Interior is directed to issue standards for approval by him of town zoning regulations. Thereafter, he may not acquire by condemnation any property covered by an approved regulation, unless the local zoning board grants a variance for that property, or unless a non-conforming use takes place which is, in the Secretary's opinion, detrimental to the purposes of the Seashore.²⁷

Another section of the Act establishes an Advisory Commission, which is to last for ten years from the date of establishment of the Seashore.²⁸ This Commission, made up primarily of local residents appointed by the Secretary on local recommendations, must be consulted by the Secretary before he can issue any permits for commercial use or establish any public recreation areas within the Seashore. The Commission has no veto power, and members are to serve without compensation.

In September, 1971, Senator Kennedy introduced legislation calling for a study of the feasibility of extending the Seashore to include the Nantucket Sound islands.²⁹ This proposal, however, was later withdrawn in favor of the Islands Trust concept embodied in the

present bill.

When questioned as to why the National Seashore model was not felt to be appropriate for the Nantucket Sound islands, individuals involved with the drafting of the Islands Trust Bill offered several explanations. One was the expense.³⁰ Senator Kennedy, on introducing S. 1929, the third version of the Islands Trust Bill, testified that "the National Seashore was highly effective on Cape Cod, as it dealt primarily with the largely undeveloped areas of the outer beach. But . . . it is my intention to treat the threat to the islands *in toto*, instead of simply the undeveloped fragile edges and areas."³¹ Since even the Federal government cannot afford to purchase the large areas of semi-developed and commercially valuable land which characterize most of the islands, this type of preservation necessarily involves curtailment of growth by means other than fee simple acquisition.

A related objection to the extension of the National Seashore was the economic "tension" created between vacant and developed land in the Seashore area.³² Preservation of large areas of open land makes the area as a whole more attractive, but the greater volume of construction generated by increased tourism is forced into a greatly reduced area of land. Taxes on unrestricted land go up because of the increased need for municipal services, resulting in possible hardship for resident homeowners who have nowhere else to move.

Apparently, however, the most basic opposition to the Seashore proposal stemmed from the island residents' antagonism to the idea of massive Federal intervention in their local affairs.³³ Islanders also feared the specific economic injustice which had resulted to some Cape Cod landowners when the original National Seashore appropriation of \$16 million ran out in 1970, and owners of land slated for acquisition by eminent domain were left for a time unable to sell their lands either to the government or to anyone else.³⁴ (No rational private purchaser would want to buy land which he knew would be acquired by the government in the near future, at the same price which he had paid for it).

Additional opposition to the proposal came from two apparently conflicting sides: island residents who had recently begun to feel the economic benefits of the construction boom were opposed to any action which they felt might slow down the boom, while others opposed the proposal because they felt that it might open the door to floods of tourists beyond the capacity of the local communities to handle.³⁵ As will be seen below, the drafters of the Islands Trust

Bill have made some effort to meet all of these objections; but their success has been partial, at best.

*C. The Department of the Interior Formulation:
Islands of America*

Shortly before the Kennedy proposal for extension of the National Seashore was introduced, the Department of the Interior published a recreational resource study entitled *Islands of America*,³⁶ containing proposals for the preservation and development of islands such as those of the Nantucket Sound. Islands considered suitable for inclusion in this study were those which were largely undeveloped, in close proximity to urban areas, and possessed of "outstanding natural, scenic, historic, or recreational values."³⁷ The study consists of an inventory of such islands (including Martha's Vineyard and Nantucket), and suggestions for actions by Federal, state, and local governments and private conservation groups for the preservation of these islands. The concept of a system of "island trusts" which is set forth in the study has been referred to by Senator Kennedy as one of the formative influences in the development of his own bill.³⁸

Two ideas contained in the study have been cited as particularly important:³⁹ (1) the idea of treating each island or island group as an entirety, rather than dealing only with areas specifically set aside for recreation; and (2) the idea of managing the Trust area through a locally constituted Commission (as contrasted with a group such as the Cape Cod Advisory Commission, which merely advises the Secretary as to the proposed boundaries of the area and the establishment of public facilities.)

The study includes a sample draft of legislation to establish a Casco Bay Islands National Trust.⁴⁰ The central feature of this proposal is the Trust Commission, established by agreement between the Federal government and the State of Maine, in which the Casco Bay Islands are located. The Commission is directed to develop a comprehensive plan for preservation and utilization of the islands, with recommendations for legislative action by Federal, state, and local governments. If the State of Maine fails within two years to adopt plans or acquire property consistent with these recommendations, the Commission may assume authority to acquire property and issue regulations "by whatever means are authorized under the constitution and laws of the State of Maine."⁴¹ Expenses of the Commission are to be paid half by the state and half by the United States.

Other actions recommended by the authors of the report include statewide zoning for island conservation, control of filling and dredging in fragile areas, acquisition of island property by state and local bodies and private organizations, and provision for public access to shorelands.⁴² The proposals do not include any new techniques of land use control, nor any active participation in administration of the Trust area by the Department of the Interior, aside from one Commission member to be appointed by the Secretary. Some of the recommendations of the study have been followed quite closely in the Islands Trust Bill, but there are major differences. The reasons for these differences will be examined in the following sections.

IV. NANTUCKET SOUND ISLANDS TRUST BILL

A. *Background*

On November 12, 1971, a month after his original proposal for the extension of the Cape Cod National Seashore, Senator Kennedy had printed in the Congressional Record a memorandum outlining goals for the preservation of the Nantucket Sound islands.⁴³ The memorandum advocates stringent restrictions on any further development of the islands, to be accomplished through a "varied and flexible mixture of controls." Both fee acquisition and acquisition of less-than-fee interests (such as development rights) in large tracts of property are seen by the authors of the memorandum as undesirably expensive and rigid; fee acquisition has the added disadvantage of removing the property from the local tax rolls and imposing high maintenance costs on the government. Traditional zoning is seen as unsuitable because it encourages scattered development, "precisely one of the development patterns most destructive to preservation efforts."

The new technique of "compensable regulations," advocated by the authors of the memorandum, would eliminate many of these problems. Under this technique, the value of the land would be calculated as of the day when the regulations go into effect, and that value would be guaranteed to the owner on resale. Under this system the validity of regulations would not have to depend on the police powers of the state, since just compensation would automatically be awarded for provable economic damage. Tight restrictions could be imposed, with costs to the government postponed or in some cases eliminated altogether;⁴⁴ and the restrictions could still be altered to provide needed flexibility in changing circumstances. The major

disadvantage of this technique, according to the authors, is that no one has ever tried it before.

B. *Original Version*

On April 11, 1972, the first version of the Islands Trust Bill, S. 3485, was introduced.⁴⁵ Several features of that bill must be noted here, as they immediately became the focal points of violent controversy among island residents and preservationists. The first such feature is the Islands Trust Commission established in Section 3. In this original version there is to be one Commission, consisting of 21 members appointed by the Secretary of the Interior for three year terms. Members are to serve without compensation. The Secretary is directed to "consult regularly with the Commission with respect to all matters relating to the Trust," and the Commission is directed to prepare an annual report and to recommend future actions by the Secretary.

Although this proposed Commission would have broader responsibilities than the Cape Cod Advisory Commission, it is still a far cry from the semi-autonomous body envisaged by the authors of *Islands of America*. This disparity suggests that the extent of the power to be vested in the Department of the Interior is not the result of the insistence of that department,⁴⁶ but rather reflects a belief on the part of Kennedy's staff that representatives of the local communities would be unable or unwilling to effectively limit growth themselves.

Section 5 of the bill sets forth four categories of land use, and the restrictions to be imposed on each. Class A ("Forever Wild") lands are to remain "forever free of developments or improvements of any kind," and are to be open to the public. Presumably, these lands are to be acquired in fee simple by the government. Elsewhere in the bill, all beach lands are designated as Class A.⁴⁷ Class B ("Scenic Preservation") lands are to remain in the possession of their present owners, but are not to be developed beyond their present intensity of use. Class C ("County Planned") and Class D ("Town Planned") lands are to be regulated by local governing bodies, subject to the approval of the Commission and the Secretary. These last categories involve only a small portion of the islands' land area,⁴⁸ surrounding the already developed town centers.

It is noteworthy that this version of the bill contains no mention at all of the principle of "compensable regulations" which was succinctly discussed in the earlier memorandum. It does not make clear what type of compensation, if any, is contemplated for the owners

of heavily restricted Class B lands, except in a limited class of "hardship" cases dealt with in Section 16.

Section 7 outlines the same zoning technique employed in the Cape Cod National Seashore Act, under which the Secretary's authority to acquire by condemnation is suspended with regard to any land covered by a valid zoning ordinance approved by him.⁴⁹ Sections 9 through 14 provide for a large variety of projects to be undertaken by the Secretary, including pollution and erosion control, transportation surveys, experiments with establishing a shellfish industry, training programs for local residents adversely affected by the construction limitations, and development of certain areas for public recreational use.

Section 16 outlines the controversial "freeze". Beginning at the date of *introduction* of the bill, April 11, 1972, no new construction is permitted on lands classified in the bill as Forever Wild. Construction is to be permitted on other lands "only upon the granting of specific approval therefor by the Board of Selectmen of the particular town, after a showing of need." In the case of any "hardship" (undefined) caused by the provisions of this section, "the Secretary shall make a valuation thereof and award fair recompense." Buildings constructed in violation of this section will presumably be subject to nonconsent acquisition when the bill is finally passed, the theory being that anyone constructing such a building had adequate notice of the risk he was taking.⁵⁰ Although this provision has caused great resentment among island residents, the Chairman of the Dukes County Planning Commission, Alexander D. Fittinghoff, asserts that it has had no discernible effect on development patterns in the two years since the introduction of the bill.⁵¹

C. *Reactions: Main Themes of Protest*

The reactions of island residents to S. 3485 can be gleaned from local newspaper articles and letters to the editor in the months following its introduction, and from the reports of two organized local groups, the Vineyarders to Amend the Bill and the Committee to Preserve Nantucket, published in the Congressional Record with the introduction of the first amended bill, S. 1372, on July 27, 1972.⁵²

The first reaction in many quarters was one of violent opposition. The Martha's Vineyard Chamber of Commerce voted unanimously to oppose the bill, and the Dukes County Selectmen's Association concurred.⁵³ In January, 1973, State Rep. Terrence McCarthy of Martha's Vineyard introduced a petition in the Massachusetts legislature for adoption of resolutions memorializing the Congress of the

United States to oppose the bill.⁵⁴ Opposition was somewhat less vehement on Nantucket. A week after the introduction of S. 3485 the local paper editorially supported it, noting that all local attempts to limit growth through zoning had failed, and that stronger measures had been rejected by the state Attorney General as unconstitutional.⁵⁵

In the storm of protest, several main themes can be discerned:

1. *Loss of control by local communities.*

As with the proposal for extension of the Cape Cod National Seashore, the strongest opposition centered around the belief that the Islands Trust Bill would rob island residents of control over their own communities. Under S. 3485, the only significant powers of the locally constituted Commission are the power to recommend alterations in land classifications within 90 days after passage of the bill, the power to issue regulations for development of Class A and Class B lands, and the power to approve zoning ordinances in Town and County Planned Lands — all subject to the veto of the Secretary.⁵⁶ All matters of land acquisition are the exclusive province of the Secretary.⁵⁷ Though even these limited powers represent a step forward from previous legislation, the Secretary's unfettered authority raised the fear that the local communities would have little control over future patterns of development.⁵⁸

The feeling of loss of control is reflected in objections from both the Vineyard and Nantucket to the single Commission set up to deal with both islands.⁵⁹ These objections are not merely parochialism. It is logical to expect that a 21-member, unpaid Commission would be too cumbersome, and its members too busy with other activities, to do an efficient job of managing the resources of two islands. Even the matter of travel time between the islands could militate against efficient day-to-day administration.

2. *Overly harsh restrictions on the use of land.*

Opposition on this point was by no means confined solely to those who were economically dependent on the construction boom. Instead, much of the protest focused on the housing needs of middle- and lower-income residents.⁶⁰ If no new construction were to be permitted on Class B lands, the total volume of development would be forced into the small remaining areas around the town centers, producing the same undesirable "tension" referred to in the discussion of the Cape Cod National Seashore,⁶¹ and effectively pricing local residents out of the housing market. The proposed revision

of the bill by the Committee to Preserve Nantucket provided that owners of Class A and B lands could subdivide those lands so as to provide a single lot for each of their children and grandchildren, and that 10% of Class B lands would be designated as "Town Expansion Lands."⁶² The Vineyarders to Amend the Bill proposed that owners be permitted to develop 20% of their Class B lands, exclusive of wetlands and floodplains,⁶³ and suggested Federal assistance in financing low-cost housing for residents.⁶⁴

3. *Over-emphasis on recreational development.*

As with the proposal for expansion of the Cape Cod National Seashore, many feared that any Federal presence on the islands would lead to a vastly increased volume of day-trippers, who would overtax the resources of the small communities and spend very little money in the process.⁶⁵ Especially strong objections were directed at the provision that all beaches were to be open to the public.⁶⁶ The relatively uninhabited "down-island" area of Martha's Vineyard contains over ten miles of almost deserted, unpoliced beach, which islanders fear might be destroyed by unrestricted access.⁶⁷

Another, more sophisticated objection to the heavy emphasis on recreation was raised by Alan Kaufman, a lawyer who was involved in drafting and revising the bill. Such an emphasis, he argued, might lead courts to conclude more readily that any given restriction on the use of property was actually a compensable taking for public use. De-emphasis on recreation, and a focus on protection of the lifestyle of island residents, might thus decrease the costs of implementing the bill.⁶⁸ While this argument has some merit, a de-emphasis on public recreational use also raises the question of who the islands are being protected for, and how the national interest in protection can be justified.

Closely related to the objection to heavy recreational development of the islands was a drive on the part of some groups for strict limitations on access. In July of 1972, the Vineyard Conservation Society, in a letter to Senator Kennedy, proposed absolute limits on access to the islands. They advocated limiting the total number of passengers on all transportation modes to the figure for June 8, 1972, with preference going to island residents.⁶⁹ At the same time, the Concerned Citizens of Martha's Vineyard voted to work for a state bill to limit the Steamship Authority (the agency which is responsible for all steamship traffic to and from the islands) to its present passenger capacity, and to eliminate advertising designed to encourage tourism.⁷⁰ As of March, 1974, no such bill has been passed.

4. *Growth rate.*

The Vineyarders to Amend argued that the central problem for the islanders was not the total number of houses eventually constructed, but the breakneck pace at which such construction was currently taking place. They proposed a system whereby no individual could be issued more than three building permits in any year, with total permits issued in a year being limited to the average of the past five years, and preference going to residents building their own homes.⁷¹ Such a provision would effectively prohibit large-scale developments, and more particularly those developments in which many units are built at the same time by large off-island construction crews.⁷²

5. *Land classifications.*

Following standard practice in National Park and National Seashore areas, the Department of the Interior wanted the boundaries of the various land classifications established on passage of the bill, subject to minor changes within the first 90 days thereafter.⁷³ Island residents felt that this procedure would not allow enough time for the type of comprehensive survey on which such classification should be based, and, more importantly, that it would not allow enough time for residents themselves to have an effective voice in delineating such classifications.⁷⁴

6. *Employment.*

Finally, there was, and is, a great deal of concern about the effect of the bill on the islands' labor force. This concern is not inconsistent with the demand for curbs on the growth rate; one aim of such curbs would be to bring some stability into the construction industry, providing a satisfactory level of employment for many years in the future. But if development is to be curtailed at all, there is general agreement that something must be done to protect those residents whose jobs are affected. The bill's provisions for "training and retraining programs," and for experiments with aquaculture,⁷⁵ are not seen as providing any real employment alternatives. Consequently, the Vineyarders to Amend proposed an "income maintenance" program for those residents whose jobs might be eliminated by the bill, all such residents to be maintained at the level of income which they enjoyed before the bill was passed.⁷⁶

D. S. 1372 and S. 1929: Main Themes of Change

Since the original version of the Islands Trust Bill was introduced, there have been two major revisions: S. 1372, introduced July 27, 1972,⁷⁷ and S. 1929, introduced May 31, 1973.⁷⁸ A third, and presumably final, revision is expected in April of 1974. A study of these revisions throws some light on the complex series of political accommodations involved in developing a comprehensive system of land use controls adapted to the needs of a particular community.

K. Dun Gifford, one of the drafters of the bill, states that all "serious and constructive" suggestions of local groups were accepted.⁷⁹ The reports of the Vineyarders to Amend and the Committee to Preserve Nantucket have been cited as particularly influential in the shaping of the first revision, S. 1372.⁸⁰ In any case, the greatly reduced opposition as of this writing⁸¹ is evidence that many of the compromises in the latest bill (S. 1929) are acceptable to the islanders.

Several of these changes have occurred in response to the islanders' objection that the bill deprived them of control over their own communities. The makeup of the Commission, for instance, is changed in S. 1372 and again in S. 1929.⁸² Following the suggestions of the Vineyarders to Amend, S. 1372 sets up two Commissions. S. 1929 provides for three: a 7-member Commission for Nantucket, a 13-member Commission for Martha's Vineyard, and a 7-member Commission for the Elizabeth Islands. A majority of each of these Commissions is either appointed by the local Boards of Selectmen or elected by the voters of the towns involved. Under both revisions, Commission members are to be paid \$50 per day when actually serving, and may engage any professional, planning, or clerical services that they require, subject to the approval of the Secretary. One member of each Commission must be a seasonal resident, and the Martha's Vineyard Commission includes one member appointed by a private conservation organization, whose function is said to be "to keep the other members honest."⁸³ These changes go at least part of the way toward meeting the objections which had been raised about the ability of the Commissions to make informed decisions and influence policy, and about their responsibility to the local communities, while providing some safeguards so that the Commissions do not come completely under the control of vested local interests.

A more important step towards meeting the islanders' objections has been the change in the balance of power between the Secretary and the Commissions. One aspect of this change is the change in

language. In most sections of the bill, except for those dealing with property acquisition, the words "the Secretary" in the original bill become "the Commissions and the Secretary" in the first revision⁸⁴ and "the Commissions", or "the Commissions, together with the Governor and Secretary" in the second revision.⁸⁵ Complementing this change in language is the provision in Section 7 of the revised bills that, upon acquisition of any land or interest in land, the Secretary shall immediately transfer an undivided one-half interest to the Commission having jurisdiction over that land. In response to fears of residents that the tax base of the towns would be diminished by such acquisition, Section 7(c)(1) provides that the land acquired is to be subject to local real estate taxes as if privately owned. It is not clear whether the Commissions or the United States are to be liable for these taxes, but since all expenses of the Commissions are to be paid by the United States, it is probably immaterial.

The practical effect of this series of changes is not entirely clear. It can be assumed that the new provisions give the Commissions an equal voice with the Secretary in the administration and development of the acquired land—but such development is to be minimal, since most of the acquired land will be Class A. To cite an extreme example, the change in wording from "the Secretary shall permit a right of use and occupancy"⁸⁶ to "the Commissions and Secretary shall permit a right of use and occupancy"⁸⁷ is hardly a substantive increase in the powers of the Commissions, since neither phrasing allows for any discretion in carrying out the command. On balance, the changes seem to be primarily an attempt by the drafters of the bill to placate the islanders, without relinquishing any real power of the Federal government.

A further illustration of this strategy of revision may be seen in the analysis of the powers of the Commissions and Secretary set forth in Table 2. A close inspection of this Table reveals that the majority of changes in Commission authority, like the changes in language discussed above, do not involve any real relinquishment of Federal control. The areas in which the Secretary was directed to act alone in the original bill, and in which the later bills direct him to act in cooperation with the Commissions, include transportation surveys, pollution and erosion control studies, and provision of tourist facilities—activities which do not touch the vital issues of control of development in the islands. Where Federal money is to be spent, either to purchase land or to compensate owners for the detrimental effects of regulations, the Secretary must merely consider the recommendations of the Commissions. The Commissions,

on the other hand, have full authority only in devising beach regulations, surveying Indian Common Lands, and preparing Resident Homesite plans.⁸⁸

TABLE 2: POWERS OF THE COMMISSIONS UNDER THREE VERSIONS OF THE ISLANDS TRUST BILL⁸⁹

(O)=no authority; A=advisory capacity; C=cooperates (veto power); F=full authority

Section (in S. 1929)	S. 3485 (April, 1972)	S.1372 (July, 1972)	S.1929 (May, 1973)
4. Changes in Trust area	A	C	C
5(b)(1). Option to purchase Forever Wild land	-	C	C
5(b)(1). Access to Forever Wild land	C	C	C
5(b)(2). Regulations for Scenic Preservation land	C	F	C
5(b)(3). Approval of zoning in Town Planned land	C	(O)	(O)
6(b). Changes in classifications*	C	C	C
7. Acquisition of land	(O)	A	A
8(a)&(b). Purchase of Scenic Preservation land without owner's consent**	(O)	C	C
8(g). Compensable Land Use regulations	-	-	A
9. Erosion study	(O)	C	C
10(d). Beaches - acquisition	(O)	C	C
10(c)&(e). Beaches - regulations	-	C	F
11. Transfer of land to regional agency	-	-	C
12(a). Transportation survey & recommendations	(O)	C	C
12(b). Provision for public enjoyment	(O)	C	C
13. Suspension of bill for land subject to conservation restriction	(O)	C	C
14. Pollution survey	(O)	C	C
16(b). Rules for compensation for hardship due to freeze	(O)	C	C
17(a). Survey of Indian Common Lands	-	-	F
18(a). Resident Homesites: planning	-	-	F
18(c). Resident Homesites: acquisition of land	-	-	C

* Sec. 5(a) in S.3485

**analogous to Sec. 7(a) in S.3485

There are a few major exceptions to these generalizations. The revised bills do give the Commissions a voice in determining how many tourists shall be permitted or provided for, an issue of real importance to local communities.⁹⁰ They give the Commissions a veto over the use of eminent domain to acquire improved Class B (Scenic Preservation) land,⁹¹ thus allaying local fears about government unfairness to landowners. And they eliminate the veto of both the Commissions and the Secretary over local zoning ordinances in Town Planned Lands.⁹² But on balance, the revisions show an intent to make maximum use of the research and planning capabilities of the Commissions, while granting them only the politically necessary minimum of control.

A second major area of change, in the revised versions, has been in the loosening of restrictions on development in all categories of land. Although these changes have been made in response to local pressure, they have not been nearly as sweeping as those recommended by the Committee to Preserve Nantucket and the Vineyarders to Amend.

With regard to Class A lands, an innovative approach has been adopted.⁹³ In the original bill, the owner of improved Class A land could elect to retain a 25-year right of use and occupancy. In the revisions, that right may be retained for as long as the occupants are members of the same family—descendants or siblings of the original owner, or relatives by marriage. The land may not, however, be subdivided for the benefit of the owner's family, as the Committee to Preserve Nantucket had urged.⁹⁴ When an owner wishes to sell his property outside the family, the Secretary and Commission have a 60-day option to purchase the property at full and fair market value; if this option is not exercised, the sale may proceed as it otherwise would have.

This section raises more questions than it answers. It provides that "the Commissions and the Secretary shall have an option to purchase," but the other sections of the bill dealing with acquisition⁹⁵ give the Secretary sole authority to purchase, subject to a later transfer of an undivided one-half interest to the Commissions; so this section may not in fact be intended to give the Commissions a veto over the exercise of the option. Other sections of the bill provide that full and fair market value is to be determined as of April 11, 1972, that is, the value is to be unaffected by the restrictions or the prospect of possible restrictions in the bill;⁹⁶ but this section says only that value "shall be promptly determined." This distinction is significant because Class A restrictions prevent an outside pur-

chaser from constructing any new improvements. The market value of the land at the time of the contemplated sale, therefore, would probably be considerably lower than the market value as of April 11, 1972. If market value is determined as of the earlier date, the owner will sustain an uncompensated economic loss if the government does not exercise its option; if it is determined as of the later date, he will sustain an uncompensated loss whether or not the option is exercised. It is to be hoped that the final version of the bill will improve on the drafting of this section.

There has been more wrestling with the regulation of Class B lands than with any other provision of the bill. Some further development of these lands is necessary if all future construction is not to be crammed into the small areas around the town centers, but it has been difficult to devise development controls which are both firm and flexible. Following the recommendations of the Committee to Preserve Nantucket, S. 1372 provides that 10% of Class B lands in each town may be designated as "Town Expansion Lands."⁹⁷ The second revision, S. 1929, drops this idea, and substitutes a detailed set of guidelines under which all Class B lands, excluding wetlands, may be developed to a density of not more than 65 houses per square mile (approximately 10 acres per house). In terms of total construction this provision imposes a lower ceiling than the "Town Expansion Lands" provision of S. 1372. The Commission is to develop regulations consistent with these guidelines, which are to become effective after public hearings and approval by the Governor and Secretary. The regulations must encourage innovative "cluster zoning," under which closely grouped houses are surrounded by large areas of open space, and must require that all development take into account land capability and scenic values.⁹⁸

Lands designated Class C and Class D in the original bill have been merged into a single category of "Town Planned Lands," over which the towns have full authority to zone, subject only to "review and comment" by the Commission.⁹⁹ Classification of lands may be changed at any time by a Commission acting pursuant to an affirmative vote of a town meeting, with the concurrence of the Governor and Secretary.¹⁰⁰ The bill also authorizes, but does not direct, Federal purchase of land designated by a Commission on a "Resident Homesite Plan," for resale to residents at below-market price.¹⁰¹

Two other provisions in the revised bills are intended to protect the economic interests of landowners. Section 7(a)(3) provides that an owner of Class A or B lands "may notify the Secretary that continued ownership of those lands would result in hardship to such

owner," and the Secretary is directed to purchase such lands within six months, if funds are available, at fair market value prior to April 11, 1972. This provision appears to negate the "option to buy" provision in Section 5(b)(1), referred to above.¹⁰² Since fair market value prior to April 11, 1972 would exceed the value that a purchaser would be willing to pay for land subject to Class A restrictions, the owner of that land would naturally choose to offer it to the Secretary first, on a claim of hardship. But if the Secretary is *directed* to purchase the land in this situation, the existence of the "option" becomes meaningless. The two sections can be reconciled by reading the rather clumsy and ambiguous phrasing of Section 7(a)(3)¹⁰³ to mean that the Secretary must first determine whether "hardship" actually exists, and that if he decides that it does not, he still retains the option to purchase. This reading is not particularly helpful, however, since there is not so much as a suggestion of a definition of "hardship" to guide the Secretary in his determination.

The second means of protection for landowners is the method of "compensable regulations" which is finally set forth in the second revision.¹⁰⁴ Section 8(g) provides that the Secretary, after consultation with the Commission and after public hearings, shall issue Compensable Land Use Regulations, setting forth the manner in which decreases in land value as a result of the restrictions shall be calculated, and the manner in which owners "may pursue a right of action in the United States District Court." Although this language sounds as if compensation is to be obtained only as a result of court action, K. Dun Gifford explains that the regulations will provide for automatic payment through a body similar to the United States Court of Claims.¹⁰⁵ Compensation under this section is not payable where the "hardship" provisions of Section 7(a)(3), or the provisions of Section 8(a) apply. The latter section provides for use and development of Class B lands by the owners under approved zoning regulations. It may be surmised, then, that compensation is only payable on sale of the land to a non-governmental purchaser at a value below that of April 11, 1972 — the same compensation system proposed in the November 12, 1971 memorandum,¹⁰⁶ but expressed in a much less intelligible fashion. This section, too, should be improved in the final bill.

With regard to the third of the major themes of protest discussed above, the opposition to the bill's emphasis on recreational development of the islands, the suggestions of the islanders have been followed very closely. Nearly all references to recreational development have been eliminated in the revised bills,¹⁰⁷ which also

state that "because expanded access to the Islands would seriously impair them and be in contravention to the purposes of this Act, it shall be national policy that no bridge, causeway, tunnel, or other direct vehicular access be constructed."¹⁰⁸ In Section 12 (Transportation and General Uses), the Commissions and Secretary are directed to recommend specific measures to limit the number of motor vehicles and passengers transported to the islands.

The provisions for public use of beaches have also been drastically scaled down. S. 1372 provides only for acquisition of a 40-foot-wide right of passage over all beaches.¹⁰⁹ S. 1929 reduces this proposed acquisition still further, to a non-vehicular right of passage "of sufficient width for a person to pass and repass," except where such a right would interfere with the rights of owners of residential improvements. In addition, the Martha's Vineyard Commission is directed to designate two new public beaches on the southern or south-western shore.¹¹⁰

E. Continuing Problems: Why is the Vineyard Different?

The evolution of the Islands Trust Bill to date has occurred primarily in response to the objections of those affected. Some of these objections, however, have not been met. No change has been made, for example, in response to the demands for positive curbs on the growth rate. A possible reason for this omission is that such curbs can in all likelihood be constitutionally imposed by the towns themselves. An ill-conceived building "moratorium" imposed by West Tisbury on land already approved for development, subdivided and partially sold, had to be abandoned under threats of lawsuits from developers.¹¹¹ However, the neighboring town of Tisbury has now passed, and had approved by the Massachusetts Attorney General,¹¹² a law providing that only one-seventh of any large development may be constructed in any given year.¹¹³ Like the permit system advocated by the Vineyarders to Amend,¹¹⁴ this law will effectively prohibit large-scale construction by large off-island crews.

The objections to the fixing of land classifications on enactment of the bill have likewise not been met, although the greater latitude for changes in classification in the revised bills is a step in that direction.¹¹⁵ But the central objection is still the loss of local control. At the July 13, 1973 hearing of the Parks and Recreation Subcommittee of the Senate Committee on Interior and Insular Affairs, the Dukes County Planning Commission and the Vineyarders to Amend objected once again to the imbalance of power between the Commissions and Secretary. The Vineyarders to Amend proposed that the

Commissions be given a veto over all actions of the Secretary, including land acquisition.¹¹⁶ A draft revision of the bill, prepared “for discussion only” by the Planning Commission,¹¹⁷ would limit the Secretary to “developing guidelines for the use of funds”¹¹⁸—for instance, requirements that the Commission prepare a map and present supporting evidence for its actions.¹¹⁹

Most of the opposition to the bill at present comes from Martha’s Vineyard, rather than from Nantucket.¹²⁰ This disparity inevitably raises the question: why is the Vineyard different? The major distinction seems to be the relative distance of the two islands from the mainland. The trip to Martha’s Vineyard is 45 minutes by ferry, the trip to Nantucket 2½ hours. Nantucket is thus not subject to the floods of day-trippers who inundate Martha’s Vineyard in the summer. Moreover, a slightly lower percentage of the labor force is employed in construction on Nantucket than on Martha’s Vineyard.¹²¹ Nantucketers can thus see from afar the environmental damage caused by over-use of Vineyard land, without themselves having become addicted to the benefits of such over-use.

One contributing factor in the opposition of the Vineyarders may be the summer people-winter people antagonism discussed in Section II: proponents of the Islands Trust Bill may appear to island natives as simply more rich people trying to maintain the island as their private playground. Another, rather surprising factor which has been mentioned is the fact that Martha’s Vineyard contains six towns, and Nantucket only one.¹²² The rivalry engendered by this division, it is said, prevents the Vineyarders from cooperating on any major project. As an example, a minority of the Vineyarders to Amend, Subcommittee on Commission Authority, objected to the bill’s provision that Commission members were to be elected separately from each town, on the grounds that such a procedure would only encourage divisiveness.¹²³ Other Vineyarders, seeking to protect the interests of the smaller towns, have suggested that Commission members be elected at large, with a provision that not more than two could come from each town.¹²⁴

It is not entirely clear why the division of the Vineyard into six towns should result in increased opposition to the bill, unless residents of the smaller towns are afraid of domination by the larger ones through the Commission. Nevertheless, this opposition is something that the most astute efforts of Kennedy staffers have yet to overcome. The difference between the Vineyard and Nantucket illustrates the extent to which any general planning scheme may have to take account of the particular characteristics of distinct communities.

V. THE CRAMPTON BILL

Shortly after the introduction of the original Islands Trust Bill, S. 3485, in April, 1972, various groups of Vineyarders began work on a counter-proposal for a local regulatory body, to be established under the laws of Massachusetts, which would be able to achieve some of the same goals as the Kennedy bill. This proposal served as the source of a state bill known as the "Crampton Bill."¹²⁵ This bill was drawn up by the office of the State Commissioner of Community Affairs, Lewis Crampton, at the request of the Dukes County Selectmen's Association. Although the selectmen intended it as an alternative to the Islands Trust Bill, the Commissioner's office sees it instead as a supplement.¹²⁶ Unlike the Islands Trust Bill, it deals only with Martha's Vineyard. It is a regulatory bill, based entirely on the police powers of the state, and is therefore not intended to entail any substantial expenditure of government money.

The first two paragraphs of the preamble to the bill are closely based on the wording of Section 1 of the Islands Trust Bill, declaring that Martha's Vineyard possesses "unique natural, historical, ecological, scientific, cultural, and other values." However, where the Islands Trust Bill declares that "[t]he key to more effective preservation . . . is a program encouraging coordinated action by Federal, State, and local governments . . .,"¹²⁷ the Crampton Bill declares that "the regulation and enforcement of land use controls . . . can best be accomplished by individual towns . . . subject to general principles established by [a] regional Commission," which can "contribute to the maintenance of sound local economies and private property values."¹²⁸ The 19-member Commission established by the Crampton Bill consists of one selectman from each town, one registered voter from each town, elected at the annual town meeting, three state and county appointees, and four seasonal residents, who are to have "voice but no vote" in the Commission's deliberations.¹²⁹ Expenses are to be paid by the towns, with each town's share being proportionate to its property tax base.¹³⁰

The bill does not in itself establish any land classifications or use regulations. Instead, it gives the Commission authority to adopt regulations for the control of "districts of critical planning concern" and to specify conditions and modifications necessary for the control of "developments of regional impact." "Districts of critical planning concern" may be designated only for areas which: (1) "possess unique natural, historical, ecological, scientific, or cultural resources of regional or statewide significance;" (2) "possess marginal

soil or topographic conditions which render them unsuitable for intense development;" or (3) are significantly affected by, or have a significant effect on, existing or proposed "major public facilities" such as county roads, schools or airports. The Commission may designate such districts on its own initiative, on nomination by a Board of Selectmen, or on petition by twenty-five taxpayers of the town or towns affected.¹³¹ Regulation of such districts is to be done in the first instance by the towns, subject to the approval of the Commission.¹³²

The Commission is directed to adopt, and submit for approval to the Governor and the Commissioner of Community Affairs, standards for determining whether a proposed development is one "of regional impact." In adopting such standards, it must consider such factors as environmental constraints, the size of the site to be developed, the amount of traffic to be generated, and the extent to which the proposed development would "serve a regional market."¹³³ In accordance with such standards the individual towns, not the Commission, are to designate particular proposed developments as ones of regional impact.¹³⁴ Thereafter, the Commission may grant a permit for such a development only if it finds that its benefits to the community, evaluated according to a list of relevant factors set forth in the bill, exceed its detriments.¹³⁵

Several features of the Crampton Bill deserve to be noted. *First*, it applies to only a portion of island lands, and to only certain types of large developments. The theory is that control of critical types of development is all that is needed to ensure reasonable preservation of the natural character of the island, and prevent the imposition of intolerable burdens on the towns. This theory seems somewhat questionable if, as Planning Commission Chairman Fittinghoff asserts, one half of the housing starts in recent years have been single houses rather than developments.¹³⁶ The Crampton Bill includes no controls over subdivision of land by owners for sale in single lots. The result might simply be a proliferation of haphazard, uncoordinated construction.

Second, application of the Crampton Bill would not involve any significant reduction in housing construction, except through the possible elimination of shoddy or poorly planned (inexpensive) developments, and the increased delays in the permit process. Even in "districts of critical planning concern," a total ban on building is envisaged only for floodplains and wetlands.¹³⁷ This characteristic, of course, is a result of the political requirement that the bill not involve major government expenditures. The bill is carefully

drafted to bring as wide a range of regulation as possible within the limits of the police power; hence the constant references to the "health, safety, and general welfare of island residents and visitors" which are to be enhanced by regulation.¹³⁸ But even the expanded definition of the police power which is evident in recent Massachusetts cases¹³⁹ will not allow restrictions on construction for the sole purpose of protecting the scenic character of an area.

Other important features of the bill are its flexible, case-by-case approach to regulation, and the large extent to which authority to regulate is vested in the towns themselves. These features are clearly directed toward satisfying the objections raised by islanders to the Islands Trust Bill. However, they raise some objections of their own among supporters of that bill, who claim that the Vineyard is notorious for corruption in the building permit process, and that the Crampton Bill would simply put more effective control of that process in the hands of those who have been profiting from it for years.¹⁴⁰

A crucial public policy issue for both of these bills is the extent to which they are "elitist", in preserving the pleasures of the Vineyard for a small and affluent group. It seems indisputable that the Crampton Bill, although prepared in response to popular pressure, is not a "democratic" bill, in that it encourages the intensive development of high-priced, high-quality recreational developments to serve the upper middle class. But perhaps any attempt to preserve the natural character of an area is necessarily elitist, given the sheer numbers of people who wish to enjoy that natural character, and who cannot help damaging it in the process. Mary Reardon, one of the drafters of the Crampton Bill, has described it as "a short-sighted bill, directed at exactly what can be accomplished now." She expects that in fifteen years the island will be covered by such tight Federal controls (whether or not those of the Islands Trust Bill) that there will be no need for such a bill as the Crampton Bill.¹⁴¹

VI. INTERRELATIONS AND FURTHER EVOLUTION

By June, 1974, the fourth version of the Islands Trust Bill will probably have been announced. Apparently no version will be reported out of the Senate Committee on Interior and Insular Affairs until Senator Kennedy is satisfied that the major objections of the islanders have been met.¹⁴² The Crampton Bill is currently "under study,"¹⁴³ having been reported favorably out of the Committee on Natural Resources and Agriculture of the Massachusetts House of

Representatives. On March 1, 1974, the *Vineyard Gazette* carried the announcement that after protracted negotiations, Senator Kennedy, Commissioner Crampton, Senator Edward Brooke (who has opposed the bill) and U.S. Representative Gerry Studds (whose district includes the Nantucket Sound Islands) had reached an agreement on alterations in the two bills aimed at bringing them into closer harmony.

S. 1929, the most recent version, contains one reference to the Crampton Bill: Section 11(d) authorizes the federally-created Commission to transfer control of districts of critical planning concern and developments of regional impact to the Commission created under state law. Such districts and developments would thereafter be exempt from the provisions of the Federal bill. From the standpoint of the aims of the Islands Trust Bill, this is an extraordinarily clumsy provision. The areas which are to be transferred to the looser control of the state agency are, by definition, the "critical" areas which are most easily damaged by development of any sort.¹⁴⁴ Accordingly, the first basic agreement which was reached in the negotiations was that if both bills were passed, the Commissions created would be the same, with the same authority and powers.¹⁴⁵

A memorandum from Commissioner Crampton to Governor Sargent, reporting on meetings of representatives of Kennedy, Brooke, Crampton and Studds on September 20 and 21, 1973,¹⁴⁶ throws some light on the difficulties which were encountered in the course of the negotiations. In order to resolve the conflict between the demands of the Vineyarders and the aims of the Islands Trust Bill, it was first proposed that Martha's Vineyard be dropped from the bill altogether. This idea was abandoned, apparently because of Kennedy's insistence on Federal preservation of the island, but all parties agreed that Martha's Vineyard should receive different treatment from Nantucket and the Elizabeth Islands. Crampton's office was arguing for looser, more flexible regulations, in harmony with those of the state bill, and for elimination of the map which would fix land classifications on enactment.

A basic theme of the negotiations was the elimination of overlapping functions between state and Federal governments, limiting each level to what it does best. The state government is best equipped, in terms of experience and expertise, to provide assistance to the Commission and the towns for research and planning, and to control access to the island through the state-controlled Steamship Authority. The Federal government, on the other hand, has greater powers and funds available for the acquisition of land

and interests in land. The memorandum, however, states that “. . . it has not been possible to completely eliminate duplication. The approach, instead, was to broaden the scope of the two bills so that they recognize the need for both conservation and planning.”¹⁴⁷ This broadening of scope is, of course, insurance so that if only one of the bills passes, that bill will still include provisions which are reasonably acceptable to all factions.

Several issues remained unresolved as of the date of the memorandum. *First*, there was disagreement as to whether the towns or the Commission would have primary jurisdiction in the development of regulations. The significance of this issue might be more political than legal; Ms. Reardon suggests that there might be greater cooperation, less hostility and less litigation if the responsibility is placed in the town governments in the Islands Trust Bill as well as in the Crampton Bill.¹⁴⁸ *Second*, Crampton's office continued to insist that “all initiatives to establish further controls, to acquire land, or to change the Commission's regulatory procedures must come from the towns.”¹⁴⁹ *Third*, Crampton's office wanted to eliminate all veto power of the Secretary of the Interior over Commission actions.

The attitude of the Department of the Interior has had some effect upon the outcome of these negotiations. The Department is reported to want nothing to do with the Islands Trust Bill, which it sees as imposing a thankless task, a tremendous drain on resources with no compensating benefit.¹⁵⁰ Kennedy's staff claims, however, that if the bill is to be passed the Department wants full control over the regulatory procedures established under it, and that placing too much power in the hands of local officials might increase the opposition of the Department and seriously impair the bill's chances of passage in Congress.¹⁵¹

Although the drafters of the two bills do not see them as mutually exclusive, but rather as complementary, other observers feel that passage of the Crampton Bill, which is regarded as highly probable, will make it much less probable that Congress will see fit to impose an additional layer of Federal regulation.¹⁵² It is therefore in the interest of Kennedy's staff to present a bill which seems to provide a needed complement to the state bill, helping state and local governments toward agreed-upon goals. If the pattern of previous revisions is followed, however, any changes in the final version of the Islands Trust Bill will be long on form and short on substance.

VII. CONCLUSIONS

Any opinion which is advanced about the merits of the Islands Trust and Crampton Bills, singly or in combination, will necessarily depend in large part upon subjective value judgments. Support for the stringent restrictions on development in the Islands Trust Bill is based, in part, on a value judgment that certain uniquely attractive or interesting landscapes should be preserved for their own sake, even at the cost of restricting enjoyment of those landscapes by large numbers of people who would otherwise seek such enjoyment. In an unusual form of self-denial, Americans would in effect be paying to protect the Nantucket Sound Islands from themselves. Similarly, the debate about the relative merits of the two bills is based, in part, on the amount of trust which each side places in the ability of the islanders to conduct their own affairs in harmony with national goals—and on the judgment of each side as to the relative importance of those goals as against the right of local residents to conduct their own affairs.

Some comments may be made, however, about the probable results of the two bills. Whatever form the final version of the Islands Trust Bill may take, its biggest problem will be money. The authorization of \$25 million contained in the bill—a figure of the same general magnitude as the \$33 million authorized for the Cape Cod National Seashore—is clearly not adequate for purchase of all Class A lands plus full compensation for owners of other lands for the diminution in value of their lands. Estimates of the amount which would be required for such compensation range up to \$200 million.¹⁵³ The \$25 million figure is based on the assumption that the government will not be forced to compensate most owners in full, either because: (1) the restrictions will not actually decrease the value of the land; or (2) owners of large tracts, who never had any intention of developing their land, will refrain from “cashing in” on the speculative value of their land by selling it for a government-guaranteed price.¹⁵⁴

In this respect, passage of the Crampton Bill would seem to make the goals of the Islands Trust Bill easier to achieve. A locally constituted body, which was directed to promote the health, safety, and welfare of the population through the application of sound ecological and planning principles, could accomplish a fairly broad range of regulation under the aegis of the police power, thus taking a large number of restrictions out of the “compensable” class and limiting the number of cases in which Federal funds would be required to

compensate owners. Furthermore, if local residents feel that their interests are being adequately protected by their townspeople, they might be less likely to try to protect themselves by "cashing in" on Federal largesse.

If the Crampton Bill is passed, but not the Islands Trust Bill, its effectiveness will depend entirely on the vigor with which its provisions are applied by the Commission and town governments. There is no reason to assume that such application will necessarily be slipshod. As of March, 1974, local governments on both the Vineyard and Nantucket have begun to make serious efforts to protect their communities through the development of innovative zoning bylaws.¹⁵⁵ A probable result of passage of the Crampton Bill by itself is the eventual transformation of the Vineyard into an attractive, well-planned upper middle class resort. The desirability of this result, as against the more stringent preservation embodied in the Islands Trust Bill, is for Congress to decide.

The development of the Islands Trust Bill may be seen in another light, as an exercise in practical psychology. The drafters of the bill have responded to the residents' objections on numerous matters which, while important to the economic or psychological well-being of the islanders, do not touch the major issues of land use control. Examples of this strategy are the "hardship" provisions,¹⁵⁶ provisions for Federal subsidies for resident homesites,¹⁵⁷ and the demphasis of recreational development.¹⁵⁸ Other sections of the bill have been altered in such a way as to make maximum use of the technical capabilities of the Commissions, giving the representatives of the local communities responsibility equal to that of the Federal government for research, surveys, and the day-to-day administration of acquired lands, without relinquishing Federal control over broad policy formulations or the expenditure of Federal money.¹⁵⁹ Some further relinquishment of Federal control will be necessary in the final bill, but progress in that direction may be constrained by the opposition of the Department of the Interior. The final result, to be successful, will have to be a delicate balance of the competing demands of all interested parties.

Finally, the Islands Trust Bill involves the application of still untested techniques of land use control, notably the concept of compensable regulations and the provisions for flexible development of Class B lands within the outlines of a legislatively imposed formula. Its experimental aspect is one source of objections to the bill,¹⁶⁰ but that very aspect is also one of the strongest arguments for its enactment. In a time when many of our scenic areas are threatened with

overdevelopment, there is an urgent need for experimentation with new methods of preservation. If the clumsy and contradictory language of some parts of the Islands Trust Bill can be remedied, passage of that bill would serve the national interest in a manner far exceeding its immediate effects on the islands of the Nantucket Sound.



FOOTNOTES

*Staff Member, ENVIRONMENTAL AFFAIRS.

¹S. 3485, 92d Cong., 2d Sess. (1972); amended version S. 1372, 92d Cong., 2d Sess. (1972); amended version S. 1929, 93d Cong., 1st Sess. (1973).

²Mass. H. 7479, introduced September 13, 1973.

³See, Section IVD, *infra*.

⁴Metcalf & Eddy, Inc., SUMMARY OF THE COMPREHENSIVE PLAN FOR DUKES COUNTY, MASSACHUSETTS, at 15, (October, 1971). Dukes County is coextensive with the island of Martha's Vineyard.

⁵*Id.* at 38.

⁶U. S. BUREAU OF THE CENSUS, CENSUS OF POPULATION, (1970). This contrasts with a state average of 4.8%.

⁷Telephone interview with Alexander D. Fittinghoff, Chairman, Dukes County Planning and Economic Development Commission, December 4, 1973.

⁸Metcalf & Eddy, *supra* n. 4, at 35, 49. All figures given are the maximum estimates from the Metcalf & Eddy tables.

⁹118 CONG. REC. 10,013 (daily ed. May 31, 1973) (speech by Senator Edward M. Kennedy on introduction of S. 1929).

¹⁰Planning Commission Chairman Fittinghoff states that the summer residents, who are most vocal in support of the Islands Trust Bill, are themselves "guiltiest of violating environmental law" by building houses on unstable dunes and in other areas which should remain wild. Telephone interview with Alexander Fittinghoff, *supra* n. 7.

¹¹260 U.S. 393 (1923).

¹²Even a brief discussion of this issue is beyond the scope of this article. For an exhaustive survey of the subject, see, Bosselman, F., D. Callies, and J. Banta, THE TAKING ISSUE, (Council on Environmental Quality, 1973). See, also, Wilkes, *Constitutional Dilemmas Posed by State Policies Against Marine Pollution — The Maine Example*, 23 ME. L. REV. 143 (1971); Broughton, *Aesthetics and Environmental Law: Decisions and Values*, 7 LAND AND WATER L.

REV. 451 (1972); *Note, State and Local Wetlands Regulation: The Problem of Taking Without Just Compensation*, 58 VA. L. REV. 876 (1972).

¹³359 Mass. 75, 284 N.E. 2d 891, *cert. den.* 409 U.S. 1108 (1972).

¹⁴358 Mass. 519, 265 N.E. 2d 573 (1970).

¹⁵*Id.* at 523, 265 N.E.2d at 576. *See, also, MacGibbon v. Board of Appeals of Duxbury*, 356 Mass. 635, 255 N.E.2d 347 (1970). In remanding the latter case for further factfinding on the taking issue, the court stated that the decision would depend on whether a regulation was exercised "in such a manner and to such an extent that it deprives the plaintiffs' land of *all* practical value . . ." (emphasis added). *Id.* at 641, 255 N.E.2d at 352. Later decisions have given MacGibbon an increasingly liberal interpretation.

¹⁶346 Mass. 598, 195 N.E. 2d 341 (1964).

¹⁷*See, Opinion of Justices*, 333 Mass. 773, 128 N.E.2d 557 (1955), dealing with the constitutionality of a proposed Historic District of Nantucket. The court found that the proposed regulations would be constitutional, since they would not inconvenience anyone to any great extent, and since they would contribute to the maintenance of property values.

¹⁸MASS. GEN. LAWS ch. 131 §§ 40, 40A (1972); ch. 130 § 105 (1965).

¹⁹MASS. GEN. LAWS ch. 131 § 40; ch. 130 § 105.

²⁰MASS. GEN. LAWS ch. 184, §§ 31, 32 (1969).

²¹MASS. GEN. LAWS ch. 132A, § 11 (1960), under which the Commissioner may pay up to half the cost of acquisition and development of such land.

²²16 U.S.C.A. §§ 459-459i.

²³16 U.S.C.A. § 459b (1961).

²⁴16 U.S.C.A. § 459b-1 (1961).

²⁵Newspaper interview with Benjamin Kelly, Assistant Superintendent of the Cape Cod National Seashore, *THE GRAPEVINE*, Feb. 16, 1972.

²⁶117 CONG. REC. 15,284 (daily ed. Sept. 29, 1971) (speech by Senator Kennedy on introduction of S. 2605).

²⁷16 U.S.C.A. § 459b-4(d) (1961). The Federal government cannot zone directly, power to zone being reserved to the states by the operation of the 10th Amendment. The technique used in the National Seashore legislation is called "encouraged zoning."

²⁸16 U.S.C.A. § 459b-7 (1961).

²⁹S. 2605, 92d Cong., 1st Sess. (1971).

³⁰Personal interviews with K. Dun Gifford and Alan Kaufman,

both of whom assisted in the development of the various versions of the Islands Trust Bill, (November, 1973). Gifford is credited with major responsibility for drafting the original bill. Kaufman refers to the concept as a "low-budget national park."

³¹119 CONG. REC. 10,013 (daily ed. May 31, 1973) (speech by Senator Kennedy on introduction of S. 1929).

³²Interview with K. Dun Gifford, *supra* n. 30.

³³Interview with K. Dun Gifford, *supra* n. 30; Letters to the Editor of the VINEYARD GAZETTE, October 1971 to date.

³⁴Newspaper interview with Benjamin Kelly, THE GRAPEVINE, Feb. 16, 1972. An additional \$17 million was appropriated in 1971. See, also, the interesting case of Drake's Bay Land Co. v. United States, 424 F. 2d 574 and 459 F. 2d 504, dealing with conflict between the government and a landowner during the establishment of the Point Reyes National Seashore.

³⁵Interviews with Alan Kaufman and K. Dun Gifford, *supra* n. 30; telephone interview with Alexander Fittinghoff, *supra* n. 7; Letters to the Editor of the VINEYARD GAZETTE, October 1971 to date.

³⁶U. S. Department of the Interior, Bureau of Outdoor Recreation (GPO, 1970).

³⁷*Id.* at 90.

³⁸119 CONG. REC. 10,013 (daily ed. May 31, 1973) (speech by Senator Kennedy on introduction of S. 1929).

³⁹*Id.*; interview with K. Dun Gifford, *supra* n. 30.

⁴⁰ISLANDS OF AMERICA, *supra* n. 36, Appendix VI, at 90. This proposal has not been introduced as a bill.

⁴¹*Id.* at 92.

⁴²*Id.* at 8-10, 47-55.

⁴³117 CONG. REC. 18,349 (daily ed. Nov. 12, 1971) (memorandum of Harvard Law School Legislative Research Bureau).

⁴⁴Costs could be eliminated altogether if the land appreciated in value after the imposition of regulations. This calculation, of course, does not take into account the possibly greater appreciation of unrestricted land, especially in a period of sharply rising land values.

⁴⁵92d Cong., 1st Sess. (1972).

⁴⁶In early 1972 the Associate Director of the National Park Service sent Senator Kennedy a letter indicating that the Park Service had no interest in a broad program of preservation of the Nantucket Sound islands. 118 CONG. REC. 5,794 (daily ed. April 11, 1972) (letter from Stanley Hulett to Senator Kennedy, printed with S. 3485). The bill's use of the "island trust" concepts first set forth in the Department of the Interior study might be interpreted as an effort by the

bill's sponsors to win the approval of the Department.

⁴⁷S. 3485, § 10.

⁴⁸Boundaries of the various classifications are set forth in § 6.

⁴⁹See n. 27, *supra*.

⁵⁰Interviews with K. Dun Gifford and Alan Kaufman, *supra* n. 30.

⁵¹Telephone interview with Alexander Fittinghoff, *supra* n. 7.

⁵²118 CONG. REC. 11,958-64 (daily ed. July 27, 1972).

⁵³NEW BEDFORD STANDARD-TIMES, April 20, 1972.

⁵⁴Mass H. 1014, introduced January 1973.

⁵⁵NANTUCKET INQUIRER AND MIRROR, April 20, 1972. Under MASS. GEN. LAWS ch. 40 § 32 the state Attorney General must approve all town bylaws, before they can go into effect.

⁵⁶S. 3485, §§ 5(a), 5(b)(1)-(2), 5(b)(3)-(4).

⁵⁷S. 3485, §§ 7(a), 8.

⁵⁸See, the testimony of the Vineyarders to Amend the Bill and the Dukes County Planning and Economic Development Commission at the July 13, 1973 hearing of the Parks and Recreation Subcommittee of the Senate Committee on Interior and Insular Affairs (not yet published).

⁵⁹*Proposed Revision of S. 3485 by the Committee to Preserve Nantucket*, 118 CONG. REC. 11,962; *Report of the Vineyarders to Amend the Bill, Subcommittee on Commission Authority and Duties*, 118 CONG. REC. 11,958 (daily ed. July 27, 1972).

⁶⁰*Report of the Vineyarders to Amend the Bill, Subcommittee on Land Acquisition*, 118 CONG. REC. 11,960 (daily ed. July 27, 1972).

⁶¹See, text, *supra*, at n. 32.

⁶²118 CONG. REC. 11,962 (daily ed. July 27, 1972).

⁶³*Report of the Vineyarders to Amend the Bill, Subcommittee on Boundaries*, 118 CONG. REC. 11,961 (daily ed. July 27, 1972).

⁶⁴*Report of the Vineyarders to Amend the Bill, Subcommittee on Land Acquisition*, 118 CONG. REC. 11,960 (daily ed. July 27, 1972).

⁶⁵Telephone interview with Alexander Fittinghoff, *supra* n. 7.

⁶⁶*Report of the Vineyarders to Amend the Bill, Subcommittee on Beach Access*, 118 CONG. REC. 11,961 (daily ed. July 27, 1972).

⁶⁷Interview with Lloyd and Rebecca Corwin, summer residents of West Tisbury.

⁶⁸Interview with Alan Kaufman, *supra* n. 30.

⁶⁹VINEYARD GAZETTE, July 18, 1972.

⁷⁰THE GRAPEVINE, July 19, 1972.

⁷¹*Report of the Vineyarders to Amend the Bill, Subcommittee on Definition of Need*, 118 CONG. REC. 11,959 (daily ed. July 27, 1972); compare the testimony of the Vineyarders to Amend and the Dukes

County Planning Commission at the July 13, 1973 hearing of the Parks and Recreation Subcommittee, *supra* n. 58.

⁷²Most of the big developers, who are reaping the greatest profits from the boom, are off-islanders, and in very large developments, so are their construction crews. The largest local firm has 15 employees. Telephone interview with Alexander Fittinghoff, *supra* n. 7.

⁷³Interview with Mary Reardon of the Massachusetts Department of Community Affairs, one of the drafters of the Crampton Bill, October, 1973; interview with K. Dun Gifford, *supra* n. 30; see S. 3485, § 5(a).

⁷⁴Testimony of the Vineyarders to Amend the Bill and the Dukes County Planning Commission at the July 13, 1973 hearing of the Parks and Recreation Subcommittee, *supra* n. 58.

⁷⁵S. 1372, §§ 15(a),(b); S. 1929, §§ 15(a),(c).

⁷⁶*Report of the Vineyarders to Amend the Bill, Subcommittee on Job Opportunities*, 118 CONG. REC. 11,959 (daily ed. July 27, 1972). This suggestion is typical of the somewhat unrealistic expectations of pro-Kennedy groups on the Vineyard, with regard to Federal generosity.

⁷⁷92d Cong., 2d Sess. (1972).

⁷⁸93d Cong., 1st Sess. (1973).

⁷⁹Interview with K. Dun Gifford, *supra* n. 30.

⁸⁰118 CONG. REC. 11,950 (daily ed. July 27, 1972) (speech by Senator Kennedy on introduction of S. 1372).

⁸¹119 CONG. REC. 10,013 (daily ed. May 31, 1973) (speech by Senator Kennedy on introduction of S. 1929); BOSTON SUNDAY GLOBE, July 30, 1972; interview with K. Dun Gifford, *supra* n. 30.

⁸²S. 1372, § 3 and S. 1929, § 3.

⁸³Interview with K. Dun Gifford, *supra* n. 30.

⁸⁴*E.g.*, S. 1372, §§ 5(a), 5(b)(1)-(3), 8(a), 11(a), 12(a), 16(a), 16(b).

⁸⁵*E.g.*, S. 1929, §§ 5(b)(2), 5(b)(3), 11(a), 11(d), 12(a). In some other sections of S. 1929, *e.g.*, §§ 12(b) and 16(a), the provisions are simply put in the passive voice: "no development shall be undertaken . . ."

⁸⁶S. 3485, § 5(b)(1).

⁸⁷S. 1929, § 5(b)(1).

⁸⁸S. 1929, § 17 provides for survey and acquisition of these lands and their transfer to the Wampanoag Indian Tribe. § 18 provides for Federal purchase of land designated by a Commission on a "Resident Homesite Plan" for resale to residents at below market price.

⁸⁹Adapted from a table presented with testimony of the Vineyar-

ders to Amend the Bill at the July 13, 1973 hearing of the Parks and Recreation Subcommittee, *supra* n. 58, detailing powers of the Commissions and Secretary under S. 1929.

⁹⁰S. 1929, §§ 12(a)-(b).

⁹¹S. 1372, §§ 8(a)-(b); S. 1929, §§ 8(a)-(b).

⁹²S. 1372, § 5(b)(3); S. 1929, § 5(b)(3).

⁹³S. 1372, § 5(b)(1); S. 1929, § 5(b)(1).

⁹⁴*Proposed Revision of S. 3485 by the Committee to Preserve Nantucket*, 118 CONG. REC. 11,962 (daily ed. July 27, 1972).

⁹⁵S. 1372, §§ 7(a)-(b); S. 1929, §§ 7(a)-(b).

⁹⁶S. 1372, §§ 7(a)(2)-(3); S. 1929, §§ 7(a)(2)-(3).

⁹⁷S. 1372, § 5(b)(2).

⁹⁸S. 1929, § 5(b)(2).

⁹⁹S. 1372, § 5(b)(3); S. 1929, § 5(b)(3).

¹⁰⁰S. 1929, § 6(b)(2).

¹⁰¹S. 1929, § 18.

¹⁰²*See*, text, *supra*, at n. 93.

¹⁰³“An owner or owners may notify the Secretary that the continued ownership of those lands would result in hardship . . . and the Secretary shall immediately consider *such* evidence, and the recommendations of the Commission, if any, and shall within six months following the submission of such notice, and subject to the then current availability of funds, purchase the lands” (Emphasis added. The italicized word has no discernible referent.)

¹⁰⁴S. 1929, § 8(g).

¹⁰⁵Telephone interview with K. Dun Gifford, January, 1974.

¹⁰⁶*See*, text, *supra*, at n. 43.

¹⁰⁷*E.g.*, S. 3485, § 1, setting forth a policy “to improve the recreational potential of the area;” § 12(b), permitting the Secretary to “develop such portions of Trust lands as he deems especially adaptable for public uses.” Compare S. 1929, §§ 1 and 12(b).

¹⁰⁸S. 1372, § 1; S. 1929, § 1(g).

¹⁰⁹S. 1372, § 10(c)(1).

¹¹⁰S. 1929, §§ 10(c), 10(d)(2).

¹¹¹119 CONG. REC. 10,013 (daily ed. May 31, 1973) (speech by Senator Kennedy on introduction of S. 1929); telephone interview with Alexander Fittinghoff, *supra* n. 7.

¹¹²*See* n. 55, *supra*.

¹¹³Tisbury, Mass., Zoning Bylaws, 1973; telephone interview with Alexander Fittinghoff, *supra* n. 7.

¹¹⁴*See*, text, *supra*, at nn. 71-72.

¹¹⁵S. 1372, § 5(a); S. 1929, § 6(b)(2).

¹¹⁶Testimony of the Vineyarders to Amend the Bill at the July 13, 1973 hearing of the Parks and Recreation Subcommittee, *supra* n. 58, (typed draft at 5).

¹¹⁷“Draft for Discussion Only — Martha’s Vineyard Resource Management Fund,” Dukes County Planning and Economic Development Commission, Nov. 16, 1973.

¹¹⁸*Id.* at 8(b).

¹¹⁹Telephone interview with Alexander Fittinghoff, *supra* n. 7.

¹²⁰NEW BEDFORD STANDARD-TIMES, July 18, 1972; interview with K. Dun Gifford, *supra* n. 30.

¹²¹17% as opposed to 19%. U. S. BUREAU OF THE CENSUS, CENSUS OF POPULATION (1970).

¹²²Telephone interview with Alexander Fittinghoff, *supra* n. 7; interview with Mary Reardon, *supra* n. 73; NEW BEDFORD STANDARD-TIMES, July 18, 1972. *See also*, n. 143, *infra*.

¹²³118 CONG. REC. 11,959 (daily ed. July 27, 1972).

¹²⁴Telephone interview with Alexander Fittinghoff, *supra* n. 7.

¹²⁵Mass. H. 7479, *supra* n. 2.

¹²⁶Interview with Mary Reardon, *supra* n. 73.

¹²⁷S. 1929, § 1(e).

¹²⁸Mass. H. 7479, Preamble.

¹²⁹Mass. H. 7479, § 1.

¹³⁰Mass. H. 7479, § 4.

¹³¹Mass. H. 7479, § 9.

¹³²Mass. H. 7479, § 11.

¹³³Mass. H. 7479, § 13.

¹³⁴Mass. H. 7479, § 14.

¹³⁵Mass. H. 7479, §§ 15, 16.

¹³⁶Telephone interview with Alexander Fittinghoff, *supra* n. 7.

¹³⁷Interview with Mary Reardon, *supra* n. 73; telephone interview with Alexander Fittinghoff, *supra* n. 7.

¹³⁸*E.g.*, Mass. H. 7479, Preamble; § 2.

¹³⁹*Supra*, Section IIIA.

¹⁴⁰Interview with Alan Kaufman, *supra* n. 30.

¹⁴¹Interview with Mary Reardon, *supra* n. 73.

¹⁴²Interview with Mary Reardon, *supra* n. 73.

¹⁴³Interview with Mary Reardon, *supra* n. 73. One of the factors holding up passage of the bill is § 20, “Local Acceptance Clause”, which provides for ratification of the bill by the individual town meetings. Some factions think it should be changed to provide for ratification in an island-wide referendum; each side feels it must set a precedent for future legislation of the same nature. State Rep.

McCarthy is trying to bypass the issue by arranging a preliminary town-by-town ratification before the bill is passed, so as to remove the necessity of including any such clause at all.

¹⁴⁴Areas of critical planning concern, estimated by Planning Commission Chairman Fittinghoff to involve approximately 10% of the area of the island, are not necessarily the same as areas designated "Class A" in the Islands Trust Bill, although there may be a rough correspondence. Telephone interview with Alexander Fittinghoff, *supra* n. 7.

¹⁴⁵Memorandum from Commissioner Lewis Crampton to Governor Francis Sargent, October 15, 1973, Re: Discussions on State and Federal Legislation for Martha's Vineyard.

¹⁴⁶*Id.*

¹⁴⁷*Id.* at 3.

¹⁴⁸Interview with Mary Reardon, *supra* n. 73.

¹⁴⁹Memorandum from Commissioner Lewis Crampton to Governor Francis Sargent, *supra* n. 145, at 4.

¹⁵⁰Interview with K. Dun Gifford, *supra* n. 30. Compare the letter of Park Service Associate Director Hulett to Senator Kennedy, *supra* n. 46.

¹⁵¹Memorandum from Commissioner Lewis Crampton to Governor Francis Sargent, *supra* n. 145, at 3.

¹⁵²Interview with Kelly McClintock of the Conservation Law Foundation.

¹⁵³*Id.*; letter from Senator Brooke to the author, Nov. 2, 1973. Senator Brooke admits that there are no figures on which to base such an estimate; he stresses instead the total value of the lands involved.

¹⁵⁴Interview with Alan Kaufman, *supra* n. 30. *See, text, supra*, at nn. 104-106.

¹⁵⁵*See*, Tisbury, Mass., Zoning Bylaws, 1973 (the one-seventh law); Gay Head, Mass., Zoning Bylaws, 1973.

¹⁵⁶S. 1929, §§ 7(a)(3), 16(b).

¹⁵⁷S. 1929, § 18.

¹⁵⁸*Supra*, n. 107.

¹⁵⁹*Cf.* Table 2, *supra*, and text following.

¹⁶⁰Testimony of Senator Edward Brooke at the July 13, 1973 hearing of the Parks and Recreation Subcommittee, *supra* n. 58.

The author wishes to express her thanks to Mr. K. Dun Gifford for the use of his copious file of newspaper clippings.