
A Regional Case Report

Barriers to and Opportunities for Mutual Gains Negotiation and Conflict Resolution in Land Use Decision- making on Martha's Vineyard Island

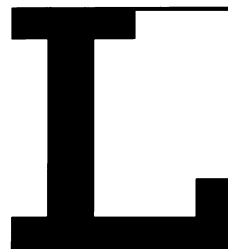
FINAL DRAFT August 6, 2004



Consensus Building Institute

238 Main Street, Suite 400
Cambridge, MA 02142

generously supported by



**LINCOLN
INSTITUTE
OF LAND POLICY**

*A Regional Case Report: Barriers to and Opportunities for Mutual Gains Negotiation and Conflict
Resolution in Land Use Decision-Making on Martha's Vineyard Island*
Copyright © 2004, 2009 Consensus Building Institute

Table of Contents

I. Change on Martha's Vineyard

Historical perspective
New challenges and opportunities

II. Planning and Negotiation Challenges

How current planning works
Role of the MVC
Key findings

III. Mutual Gains Negotiation in the Vineyard Context

Mutual Gains overview
Comparative Process Map – planning and negotiation
Opportunities and Obstacles on the Vineyard

IV. Building Capacity

Improving facilitation and meeting management
Building local land use planning knowledge
New roles and responsibilities

I. INTRODUCTION AND BACKGROUND

Since 1999, the Lincoln Institute for Land Policy and the Consensus Building Institute, both of Cambridge, Massachusetts, have developed and delivered an introductory and advanced course in land use mediation. In the some fifteen (15) times the course has been given, participants have asked time and time again: "How can the principles of mediation be brought practically home to use in local land use decision-making."

Most participants agree that land use dispute resolution, as currently handled, is protracted, costly, painful, and often results in very unsatisfactory results for some if not all parties. Many trainees come to these courses because of the promise held by mediation and the collaborative principles embodied in mediation. In fact, participants in mediation do see the promise realized. In a 1999 study of 100 U.S. land use cases, Lincoln and CBI found that 86% of participants in some kind of assisted negotiation had a positive view of the process. Almost 90% of those surveyed thought that assisted negotiation saved both time and money.

Yet, the practicalities of doing better seem to elude many if not most local boards, elected officials, planners, and developers. Local boards struggle with how to engage developers and stakeholders in effective, collaborative problem solving. Local and state rules and regulations, the formality of public hearings, and other constraints often prevent boards from working in a way that they would find more satisfying and effective.

Both our participants in the courses and many others have raised the following concerns and barriers to mediation and collaborative mediation principles in land use decision-making.

- Mediation takes away the proper authority of public officials to make decisions granted to them by law. At best, it's an improper delegation of authority. At worst, it's an abnegation of responsibility.
- Land use decision-making is supposed to be adversarial. Like the court of law, its underlying premise is that strongly and well-defended viewpoints will best result in superior outcomes in the public interest.
- Land use decision-making is a regulatory, not negotiated process. The jurisdiction passes laws and regulations. Proposals are compared to those rules and regulations, and a decision is made whether or not the proposal is allowable, or, under what conditions.
- If the local administrative process cannot find an accommodation among interests (and the rules), then the case must go to court on principle. There's nothing to mediate at that point. There's only a decision required by the courts on who is right and who is wrong.
- State and local laws require public hearings, prevent ex parte communications, and generally are a barrier to more fluid, effective, interest-based negotiations.

- Time, skill, and playing catch up. Local boards rarely have the time to do all the things it takes to get it right. Board meetings are public, long, and tiring. Members are barely up on the basic state and local ordinances, let alone skilled in negotiation and conflict resolution. And, towns rarely are able to have the foresight to predict a market that suddenly unleashes a deluge of development. When that happens, all the Board can do is play catch up, however they can.

Given the optimism found in the 1999 study but the continuing frustration of participants in our courses, we wanted to better understand the specific barriers to local officials in using mediation and, prior to the dispute, the principles of collaboration and mutual gains negotiation, to prevent disputes or at least resolve or manage them early. We also wanted to learn if at least some local officials were using, consciously or not, the principles of mediation and mutual gains negotiation in their behavior with stakeholders, in the application of skills such as uncovering interests, active listening, and option generation, and in overall planning strategies and processes.

Following a one-day mutual gains negotiation training for public officials on Martha's Vineyard, we realized we could explore these questions using the Island as a case study. The Island seemed a good choice because of its geographical distinction, its manageable size, its development pressures, multiple towns with home rule, and, for greater interest and complexity, a regional overlay, with the MarthasVineyard Commission.

With the help of the Island Mediation Program, our training participants and other local officials across the Island, agreed to work with us to think collectively about how to encourage, when appropriate, collaborative problem solving and mutual gains negotiations in land use planning and decision-making processes and what individual, regulatory, institutional and other barriers stand in the way.

The Changing Face of the Martha's Vineyard

"When I die, I want to be buried in Edgartown..."

So goes a saying that captures the love of place well known on the Vineyard. Located just off of Cape Cod, 25 miles long, and only 7 miles at its widest, the island holds a vision of summer retreat, natural wonder, and a mix of old salt and blue blood. It is comprised of six incorporated towns and a Native American reservation. The island has also seen dramatic change over the years -- from an ancient place of Indian farming and hunting centuries ago, to a rich whaling port in the 1800s, to sleepy island of New England fisherman, to the a retreat of the anti-establishment and privileged in the modern era. To its credit, the island has largely retained recognizable pieces of its past. Yet, like many threatened treasures, today it is also a major battleground over a sense of place.

Growth pressures are strong on the Vineyard. In the last 30 years, the island year round population has spiked from 2,000 to 16,000 -- peaking at 100,000 during the busiest of summer months. Tourists no longer arrive July 4 and depart Labor Day.

They now come year round. Off island landowners now rival the numbers on island, and there is a bustling construction trade, diverse amenities, and a new, thriving Brazilian sub-culture to fill labor demand.

Accompanying development pressures are severe. While change is inevitable, and there is also pressing need for affordable housing, environmental protection, and service provision. Struggling to keep its identity, Vineyard officials take one look at the mainland across the water to remind themselves what poor planning can mean.

Report Methodology

This report is based on twelve (12) confidential interviews CBI staff conducted with board members, board staff, developers, and others. Most people spent from one and one-half to 2 hours with us. We reviewed state and local land use laws and regulations, as well as publications from the Commission and others.

The interviews provided us a rich view of the on-the-ground island experience with land use decision-making. We are grateful for their generous time shared with CBI staff. All interviews notes are confidential and interviewee comments are captured without attribution by name or organization. All errors and omissions are the sole responsibility of CBI.

This report was conducted voluntarily and independently, with the generous report of the Lincoln Institute for Land Use Policy (www.lincolninstitut.edu). The Martha's Vineyard Mediation Program also generously provided support, sponsoring the original one-day mutual gains negotiation training, introducing us to local officials, arranging interviews, and reviewing drafts of this report. The Consensus Building Institute (CBI) is a not for profit facilitation and mediation based in Cambridge, MA and Washington, D.C. CBI provides expert training, research, and facilitation services in the land use context.

Mutual Gains Assumptions

This report assumes, generally, that stakeholders can achieve more fair, efficient, wise, and stable agreements when they employ the principles of mutual gains negotiation early in decision-making and, even after conflict has arisen, in seeking to settle that conflict. Mutual gains negotiation principles can underlie how people behave, what skills they employ, and how they strategize and plan. Such principles can be embodied in administrative processes and can be applied to dispute resolution as well as to conflict prevention.

The core idea of Mutual Gains Negotiation is to behave and act in such a way to help squeeze as much value out of situation as possible. This involves some key but very simple steps.

- Parties must explore their *interests* that underlie the stated positions. Just saying "no" is not enough. Why does someone not want a project? Because it

will increase traffic and ruin their view? Is that traffic a problem because of their commute, safety, or other reasons? This requires extensive preparation before a negotiation and sufficient time during a negotiation to uncover interests.

- Parties must take time to *create value* in a negotiation. That requires that the parties understand one another's interests, take time to explore a range of *options* that might satisfy those interests, and to look for ways to make everyone better off (though not necessarily equally better off).
- Parties should think carefully about how they are going to *distribute value*, or divide up the pie, to ensure relationships are maintained, deals can be explained in compelling and clear ways "back home," and no one feels cheated or taken (and thus, ready for revenge).

Of course, there is a whole literature on this subject and some references are included in an attached bibliography. We have also attached two short, one-page diagrams outlining the mutual gains approach to negotiation and consensus building.

II. BARRIERS AND CHALLENGES TO MUTUAL GAIN

Six towns from east to west -- Edgartown, Oak Bluffs, Tisbury (Vineyard Haven), West Tisbury, Chilmark, and Aquinnah – and the Gayhead Wampanoag Tribal Reservation make up the political jurisdictions of the Island. Each has their own town governments, planning boards, and unique character. Dukes County exists, but plays little to no role in land use. Overlaid on the Town's typical home rule jurisdiction over land use is the Martha's Vineyard Commission, a regional planning and regulatory body created in 1974 by state legislation (Chapter 831), in response to growth pressures.¹ Each town addresses local planning issues at the local scale, and refers projects of regional impact to MVC for oversight, planning and assistance with decision-making.²

This situation is similar to the general planning, review, and approval process in New England. Towns develop master plans and create zoning through zoning by-laws. Planning boards review subdivision plans, develop special permits and provide those projects with extra review, and consider, in Zoning Boards of Appeals (ZBAs), variances to local zoning restrictions. For example, for planning boards, Massachusetts General Law Chapter 41 requires that all sub-dividers submit their plans to the local planning board or commission. Applicants may request a ruling that the approval under the subdivision law is not required. The Massachusetts law also anticipates that larger and more complicated plans may receive an initial review through submission of preliminary plans. State law requires planning boards to hold public meetings, with proper notice, prior to approval, disapproval, or modification of a plan. The law also allows for 20 days after a decision in which an applicant can appeal the decision to Superior or land court.

The Vineyard is somewhat unique in that the Commission provides an additional overlay of review and regulation. Projects of "regional impact" must be forwarded to, and reviewed and approved by the Martha's Vineyard Commission. The Commission can also designate Districts of Critical Planning Concern that impose additional restrictions. The Commission is also tasked to help the Island's towns in long-term planning and analysis. The Commission is not entirely unique in Massachusetts. Cape Cod and Nantucket also have similar regional overlays.

Local Planning Challenges to Collaboration

In our interviews, we identified a number of barriers and challenges to utilizing more collaborative approaches to land use decision-making. We sought to identify these challenges in the spirit of seeking to understand the generic challenges of local planning processes.

¹ The MVC is made up of 21 people, elected by Vineyarders or appointed by elected officials. It is funded by town assessments and state grants and private donations.

² Overarching regional issues include concerns such as protecting water resources, preserving open space, transportation planning, affordable housing creation, and maintaining island character.

We want to make the following caveats and apologies before listing these challenges. First, it's the critic's job to find fault, so we came looking for challenges and barriers to better land use decision-making. Second, we are comparing the real world of land use decision-making that has evolved on the Island for a multitude of reasons, many of them good, and most of them practical or necessary, to the ideal of mutual gains negotiation. While we do have recommendations, we recognize that the "perfect should not be the enemy of the good," and only Islanders can determine whether and where these ideas actually have practical merit. Third, we know from our course attendees that many of these problems exist across towns and cities. The Vineyard does have a unique context, but its planning process challenges are shared by many. Fourth, we want to quote one of our interviewees, who said it best: "Look around at this beautiful place. Are we really doing so badly?"

Now that we have excused ourselves, on to the findings.

Board Capacity, Composition, and Lack of Time

Vineyard town boards, and their staff don't always have the capacity or time to get it right each time. Most board members are volunteers –attending five or six late night meetings and site walks a month – a significant amount of time for volunteers. Planning staff are usually small, part-time, and are intentionally called "secretaries" or "administrators" because many Vineyard towns "do not and will not have planners." Towns do not have the budget nor volunteers the time to always become trained in detail in local and state laws and statutes, court cases, administrative processes, conflict resolution, and best planning practices. Because of the difficulty of getting on and off Island, it is difficult for most to take the extra time to go to the mainland for those trainings that are available. Some interviewees also noted that boards do not always represent the island population both in terms of demographic and age. Others point to a lack of meeting facilitation skill that contributes to ineffective information sharing. Intra-board politics and personalities can also exacerbate conflict and confusion. Board members do not have the ability to always necessarily manage their own internal processes. According to one interviewee, "my Board should be on the Family Feud."

'Defensive Localism'³

New Englanders are known to be a parochial lot by disposition, history, and culture. With the predominance of home rule, most New England towns and cities exercise almost unilateral and complete control over land use decisions (within the bounds the courts allow). "Our towns, our own solutions", is how one Vineyard official describes his disposition to local planning. Not only does this view create conflict with the Commission and its regional role, it also sets up the expectation of conflict with outsiders. Often, board members see their role as the last and best defense against

³ This is a term developed by Gerald Frug. Because cities and towns lack adequate control over their own town affairs, they often resist efforts to bring themselves into larger regional strategies for housing, transportation, the environment, and other matters that have a regional scope. So even though they make lack the wherewithal to deal with these pressing concerns, they resist becoming part of a framework for dealing with those issues. See: *Dispelling the Myth of Home Rule – Local Power in Greater Boston*. Frug, G., Barron, D., Su, R. Rappaport Institute for Greater Boston. Cambridge, Massachusetts, 2004.

outside developers and interests who do not understand local culture, local needs, local history, and local streetscapes. Board members view themselves as responsible for holding the line. A distinct *on vs. off island* anti-development culture strengthens determination to protect the status quo. One interviewee noted: “When it’s a local, trusted developer that comes through my door, that’s one thing. But when an outsider, with his fancy suit, briefcase, and his full intent to bully us into submission, that’s quite another.” Though the towns could potentially benefit from more open dialogue with developers, abutters, and others, intensive development pressure, class and cultural differences among local board members and off-Island proponents has had the effect of pushing local government into often defensive and recalcitrant positions.

“It’s a Small World”

In contrast to the above problem, the challenges of small communities poses, in a sense, the opposite problem. The Vineyard is a small place. That means planning board members, project proponents, abutters, and others can rarely avoid one another before, during, and after a decision. People see each other at events, the grocery store, local restaurants, and on the ferry to the mainland. That means, over time, tensions build, decisions are felt and taken personally, and conflicts become personalized and intensified, making “professionalism” difficult, at times, to maintain. Reputations are built (or destroyed) and don’t easily change over long periods of time. While vacationers may come and go, many of the board members, elected officials, and residents who pay attention to local politics have been involved for as few as ten to as many as fifty years.

“It’s the Structure, Stupid”

The structure of local planning and land use decision-making often encourages conflict. Municipal processes often exacerbate as much conflict as they try to prevent, mitigate, and manage.

- Most formal review processes require submittal of complete and formal plans. This means the first offer is out and apparent and ready, like a target, for slings and arrows. Even if a proponent is willing to modify and alter the proposal or design from the beginning, Board members and their constituents may react as if it is the one and only proposal and then act accordingly (often, negatively).
- Once the submittal is in, its review gets intermingled with the numerous and often overloaded agenda of both staff (if there are any) and the Board. This means there is often not enough time to ask questions and understand the why and how of proposals.
- Often times, the first encounter for proponent and his/her abutters is in a formal hearing with a microphone, a large audience, and a limited amount of time. The abutters may have received a certified letter or read about the project in the local paper beforehand. Anyone can attest such public hearings are not the greatest place for to build relationships. If the preparation we talk about above has not occurred, well, watch out. The public hearing, or “ritualized democracy” as we like to call it, certainly encourages slick presentations and fancy sales jobs, and the equally compelling broadsides, public protests and emotional appeals to community, family, and beauty. But such formalized

proceedings tend to discourage (some might say eliminate) clear communication, the uncovering of interests, and the generation of additional options or variations that might meet those options. The public gets to speak. The proponent gets to propose. And, Boards get an earful as they seek to dispose, but they often don't know what people really want or why. Too often, Board deliberations than follow the tone of the public hearing – positional, political, contentious, and frustrating.

- Lastly, regardless of the size, complexity, and controversy of the project, all applicants must wind their weigh through the same administrative process. This means consistency for all, but . . . Smaller projects have to expend extra dollars in such processes and usually all the work appears mostly pro forma and large, complicated projects overwhelm the standard administrative process, often swamping the proponent and Board alike in the flood of controversy.

As an example, according to many interviewees, this is no more true than in the DRI process at the Commission. Town board members, Commissioners, and others note that DRI meetings can be long, contentious, and “focused on the trivial.” One interviewee observer that some members want to “take on small-scale planning minutia, like the kind of trees to plant and paint to use, and that gets in the way of others seeing the bigger picture.” Ex parte rules prevent MVC members from holding informal conversations with developers and stakeholders in ways that could benefit information exchange. Instead, informal conversation is perceived as limited to public hearings, often described as “long and grueling” where expectations for education, understanding, and uncovering underlying interests and needs are left unfulfilled.⁴

The DRI process requires public hearings, requires appointment of a Hearing Office, and allows for “testimony.” Though some point out that this court-like and adversarial administrative process is intended and not necessarily ineffective, others believe that this leads to positioning, diatribes, and arguments, rather than effective transparent public processes and decision-making. One interviewee noted that once a project is formally submitted, the process does not allow nuanced tradeoffs among issues (parking, footprint, height, aesthetics) and joint reshaping of the plan. The Commission must accept or reject each plan, requiring multiple rounds of submittals that frustrate and tire applicants and staff. The current MVC noted this in his Looking at the Commission 2003 report: “The present system is, to a certain extent, a hit-or-miss process in that the applicant presents a proposal, but it is only after the Hearing closes [and the option for deliberation and voluntary modification ends] that the Commissioners clearly outline a position on this proposal. By then, it is too late to modify the proposal to response to the Commissioners’ concerns.” In addition, the size of the Commission (18 members), the politics of members, and the formality of the process tend to make matters more difficult. The hearing process becomes a joint guessing game of who wants (or can live with) what and what might get past (or through) whom.

⁴ It is important to note that the DRI process also has a positive effect. Applicants don't bring frivolous projects because of the daunting hurdles the DRI process poses. As one interviewee note, “we may not be able to stop the market forces [of development] but you can get folks to think twice before coming [before the board].”

The Commission has other unique structural challenges. Many projects at the local scale are referred up to the MVC for review. But once elevated, the Town board has no clear standing, input, or influence, other than as another stakeholder. This leads many Town board members excluded (and their specific interests) from the regional review process. They are treated like any another public voice instead of a planning partner. The MVC process, as most Town processes, also tends to have a “one size fits all” approach. The same submittal, review, hearing, and deliberation process is used for all projects, big, medium, and small.

In the face of the DRI process, when towns know that a building permit will trip the square footage allotment for automatic DRI review, they sometimes tell the applicant to scale back the footprint “just enough” to avoid the DRI process. Adding the DRI process permitting process can be a “deal killer”, in the words of one official. Others pointed out, however, that the Commission serves as a dispute resolution mechanism in its own right. For projects that Town boards find questionable or even objectionable, it is easier to forward them to the Commission for review than have to deal with the conflict and complexity themselves. *Looking at the Commission* also noted this: “Controversial projects are referred to the MVC even though they are without significant regional impact, because the Town doesn’t have the tools or the will to deal with them.”

Though some of the structural challenges noted above are unique to the Commission, others, such as ex parte rules, formal hearings, standardized processes regardless of project scale, and the requirement for formal, complete submittals, contribute to conflict at the town board level too.

The Litigation Hook

The threat of lawsuits also tends to inhibit experimentation. As one interviewee noted: “The administrative process is complex and so it is easy to make a mistake. Opponents of our decisions know this: if a procedural rule is broken, they can sue on that simply because they don’t like the substance of our decision. No matter how right we are on the substance, our process is never exactly perfect.” Thus, why venture beyond the exact letter of the law with informality, negotiation, and option generation, when it only opens the town for later litigation on technicalities and procedural grounds having little to do with the substantive issues at stake.

Rights versus Interests

Many development issues quickly become framed as issues of rights and rules rather than interests and agreements. Most public officials, whether on the Vineyard, or in the broader region, do not see how an alternative to status quo planning can function. As one stakeholder noted, once the proposal is questioned or challenged, “people dig their heels in here, because it’s about being right...people know about alternatives, like mediation, but don’t avail themselves to it.” One interviewee noted: “by the time we’re in outright conflict, it’s a matter of who is right and who is wrong. What’s to negotiate at that point? My job is to uphold the laws of the Town, not cut deals.” For some, experience shows that, by the time the mediator might become involved, positions are already hardened off, and it seems too late to change the inevitable journey into court. We were, in fact, surprised by the outright opposition or disbelief

that mediation could ever be effective once a full-blown dispute had arisen by almost all interviewees.

Strong Skepticism about Mediation

In our interviewees, we were surprised by the widely held opinion that mutual gains approaches and mediation will not work once legal filings are made and the case has left the local administrative processes and entered in the courts. Given the general skepticism of land use mediation on the Island, we feel it is important to reflect the views we heard below. The criticisms reflect at least some of the points made above as well.

“People dig in their heels here. It’s about being right, at least in the beginning.” It’s interesting. People know of mediation. There’s always the internet. But they just don’t often avail themselves of it.” *Interviewee.*

“Big cases are complicated, and suffused with values, passions, and personalities. What in these cases is there to mediate? It might work fine on small cases, but not large, visible, complicated ones.” *Interviewee*

“If all negotiation possibilities have been tried, and they usually are in our administrative processes, it becomes a matter of what’s right, what’s principled, and what might set precedent (‘if we let them go do that, imagine what the next one will do’). That can’t be mediated. It must be decided.” *Interviewee*

“By the time a mediator is called in, positions have hardened and it’s often just too hard to get them unstuck.” *Interviewee*

“Just don’t see how it can work. Land use is not like a contract negotiation. We’re not adversarial, if we can help it, but the process is quasi-judicial. You can’t just make “nice” decisions; you have to follow the rules. We have faced several lawsuits in the last few years simply because people didn’t get what they wanted. We are pretty sure we can do what we do, and usually prevail in court. When we lose, which is rarely, it’s because of a poorly written by-law. The rules are the rules, after all.” *Interviewee*

The Finger in the Dike

Ideally, prior planning and consensus building on a Town’s vision, goals, objectives, and plans would help prevent many conflicts and manage change effectively as it occurred. Prior to the submittal of any particular proposal (or concurrent with many), a board and its community have the opportunity (some say onerous task) to build consensus around master plans, special districts, and broader land use issues. During this time, multiple parcels are being discussed, no one proposal is being advanced by applicants, parties are not galvanized around one or another issue, and the future rather than the present can be the time horizon for discussion. Opportunity for back and forth discussion between local boards and their stakeholders is high. There is key informal opportunity for interaction with the potential developers as well; helping build a common vision of what kind of development the town seeks. As the Looking at the Commission report noted: “Many DRI’s are relatively small commercial

projects that are in built-up Down -Island Towns that could be dealt with at the Town level if there were a plan for the Business District or the whole Town.”

Of course, with small, local Boards, this effort requires professional resources, time, and money that may rarely be available. Thus, Towns master plans are often out-of-date, special districts and other planning tools are designed quickly and without full buy-in, and only when a town is faced with a slew of proposals and discovers that is caught in the midst of a real estate boom does it try to act (or react). Thus, like the poor boy in the dike, when the water is rushing past, there's no time to design a better dam. Numerous interviewees reminded us that much of the Island, until the 1970's was cleared, farmed, and rural. Only since then have the real estate markets of the 1980's and 1990's transform the Island, and consequently, the boards have had to grow with that boom. And, the realities of politics often prevent Boards from being preventative and proactive. One interviewees said: “Our town simply won't tolerate preemptive regulation or proactive by-laws. They'll shoot them down in town meeting. Thus, we have to be reactive. We sometimes have to wait for a problem to arise, even though we already are anticipating it. When it happens, the townspeople get up in arms, and only then can we write, forward, and pass a by-law to address the problem.”

Theoretically, on the Vineyard, with the professional planning capability of the Commission staff, and its mission to help the Island anticipate and plan for land use change, the Commission could serve to mitigate the very understandable limitations of local boards. However, because the Commission has often become consumed by its regulatory role, because it has not directed its resources more toward planning, and because local Towns may never have wanted the help, may not want it now given the uneasy relationship between a Town and the Commission, or simply are opposed to planning generally, these kind of regional planning opportunities have been missed.

III. OPPORTUNITIES FOR MUTUAL GAIN

Given the challenges that local boards, their applicants, and their interveners face, what might be done, in regards to informal or formal processes, to improve the situation? Are boards, at least in some cases, already employing the principles of mutual gain?

General Conclusions

Given our interviews, we reached some broad conclusions worth citing first.

- *Mutual gains is used by boards! And, it works.* We found numerous cases, from planning to early project review, where local boards and their members use the concepts of mutual gains.
- *The informality of the Vineyard is a plus.* Because the Vineyard is an informal, small place with a not entirely forgotten rural and fishing past, the cultural tends to be personal and informal. This allows people to sit down over coffee and talk, and talking often leads to understanding and casual and successful negotiation. This informality has proved to be a plus (at least much of the time) in the way Boards conduct business.
- *The best opportunities for mutual gain are early.* Using mutual gains negotiation can be highly successful, but perhaps the best indicator of success is employing it early and often. Interviewees cited the greatest success when they approached proponents (and critics) early in the approval process, or better yet, even earlier during effective planning efforts. Interviewees cited the greatest success when all, not just some, of the key stakeholders are brought together early and often in a process.
- *The longer you wait, the harder it gets.* Most interviewees noted that as the project approval process moves from its early stages to final proposals, formal review, and, formal disagreement, it gets harder to explore interests, invent new options, and maintain effective, working relationships. In fact, almost to a person, our interviewees stated that by the time a dispute is headed to court and local administrative processes are exhausted, the chances for mutual gains to work are minimal.
- *The Commission is a Facilitator and Mediator as well as Regulator.* Though the Commission may see itself primarily as a regulator of regional impact, many interviewees see it as the primary place where large, complex, and contentious projects go to be “resolved.” Though views are mixed on how well the Commission resolves conflict, most agree that it serves that function explicitly and implicitly, and ought to be skilled at conflict resolution.
- *More Learning is Needed.* Most of our interviewees stated it would be useful to have more training and assistance in improving their own negotiation skills,

that of their fellow board members, facilitation and conflict resolution skills, and of the processes they use.

To flesh out these ideas further, and in some detail, we seek to highlight the first four ideas in various stages of the general land use decision-making process. We'll take up the other two points later in the report.

The Land Use Planning and Approval Process

Planning

The *planning* stage, be that for a master plan or a special district, is typically characterized by lack of any specific, singular case or dispute, a multitude of properties and interests to consider, and a greater measure of time to consider interests, develop options, build consensus, and guide the marketplace with the vision and direction the Town wishes (we do note that not all Vineyard Towns have a current master plan).

Of course, the greatest challenge to any small Board is knowing when to prioritize planning with limited resources of time and money, where to plan, who to involve, and how to ensure meaningful outcomes that are greater than paper plans that collect dust. Early planning is perhaps the best way to avoid future, site-specific conflict, or, at least to manage it. Of course, planning in and of itself can, create conflict. Good plans generally seek to reach out to the broad public, to get input from as many interested citizens as possible, to structure that input through a clear, transparent, and focused process, and to generate final products that are clear, understandable, and implementable. There are, of course, whole books and whole firms dedicated to ensuring the development of plans that build ownership and vision for a municipality.

And, the good news is, good planning does happen on the Vineyard, at least some of the time. Though there are probably many examples of successful planning on the Vineyard, we cite one specific example of how using the principles of mutual gain worked for local boards.

Edgartown Upper Main Street Business District

In the late 1980's, the Town of Edgartown realized that many key businesses were moving out of old Main Street further west, such as a Post Office and a grocery store. Residents feared that the growing business district would grow to resemble the dispersed, automobile-oriented new development that "had plagued so many other historic towns in Massachusetts."⁵ The Board hired a capable planning firm and the Board started hosting informal coffees and lunches for local businesses (and, whomever public was interested and showed up). Over oreos, sandwiches, and coffees, the volunteers sat around the table in Town Hall and hashed out a set of principles. Over the winter, after numerous meetings, with seven or eight businesses very actively participating, the Board arrived at a set of key principles. Once this hard

⁵ Edgartown Upper Main Street Master plan, August 1989.

work was complete, the Board hired an attorney to write up a by-law that would incorporate the principles. The principles included such things as: use creative site planning and a good design process to solve development/conservation conflicts and manage growth; use a variety of local architectural and landscape motifs such as fences, sidewalks, plantings, and clustering of mass to maintain local character; and, encourage architecture that is sympathetic to the older Town but does not require copying.

Many Town residents were initially reluctant to take this master plan and its associated by-laws and hand a special permit authority over to the Town. But, the informal, collaborative, and engaging way in which the plan was developed created buy-in. Thus, the by-law passed in Town meeting unanimously in September 1989, just a month after the “final” plan was printed. Interestingly, the collaborative approach to the planning process was embodied in the special permit process. The by-law requires proponents talking early and often to the Town when considering applying for a special permit. One interviewee stated: “The whole inclusive, dialogue approach to the plan development has interestingly led to the same behavior for the most of the subsequent approval processes. Furthermore, because the special master plan and permitting process is in place – created and administered by Edgartown – proponents often find themselves returned from any Commission review because the Commission deems the local special permitting process sufficient to protect the regional interest.

Pre-application

The *pre-application* stage is typically characterized by the presence of a serious applicant with a proposal in some stage of development that is likely to be submitted in the near future. This is probably the best time for employing mutual gains with project proponents, boards, and other stakeholders. From the proponent’s side, they can take the time to understand what the board generally wants and prefers by talking to board members and board administrators. The proponent can informally meet with local officials to discuss ideas and options, as well as concerns and needs. There is nothing in state law, to our knowledge, that prevents this *informal interaction* as long as the board makes no promises or decisions and meets individually, or in groups smaller than a quorum. Of course, developers are not always so enlightened, so it may take local boards (or their administrators) to encourage applicants to talk to them early and often, to take site walks prior to final plans are developed, and to generally get to know what works and doesn’t work locally before setting out with formal plans and applications. In at least some Towns, applicants are encouraged to come early for pre-application review before spending all of their money on consultants and designs. Site-walks, conversations with Board secretaries, coffee, and general conversation are all tools that both Boards and proponents do and can use to explore ideas and interests.

As for proponents, especially for more complex projects, there is nothing to stop them, ideally, from conducting a *stakeholder or issues assessment*. In such an assessment, the proponent themselves (or through an independent consultant), identifies the range of stakeholders, interviews them confidentially, analyzes the findings, and reports back to all they interviewed what they learned. This kind of early engagement would help identify key community issues and concerns, as well as to build relationships and

understanding prior to more formal and often more contentious hearings (where, after all, the stakes are higher because the proposal is all the more real). This kind of information could help inform siting and design, while still ensuring the project meets the financial and market needs of the proponent. Of course, this is rarely if ever done. Why? In our experience, it takes time when time and money are of the essence? It takes skill and expertise, not something in a limited budget consumed by financing, marketing, engineering, and design costs. Real fears of competition may limit the willingness to engage stakeholders early for fear the “word will get out.” Lastly, there seems to be a prevailing, and in our view highly mistaken notion, that if you don’t engage your potential critics, they somehow just won’t show up in public hearings and meetings.

We cite below two examples, one local and one from Florida, of mutual gains approaches in pre-application below.

Aquinnah Early Project Discussions and Informal, Formal Hearings

The Town of Aquinnah has learned that mutual gains and mediation techniques do work. The Town has very comprehensive and detailed by-laws and is currently under a town-wide DCPC or Designation of Critical Planning Concern, giving the Town special permitting authority over almost all projects.

The Town seeks to work with an applicant early, before the formal process begins with the formal submission. Applicants are encouraged to come talk to Board members early before thousands are spent on architectural and site plans for general discussions. The Town seeks to walk the site with the proponent or his/her engineer. To encourage this early intervention, the local building inspector encourages inquirers to do so. On the site tours, the Board can express its top priorities, from the preservation of view sheds of others to ensuring beachgoers views upland are preserved. In walking the site and talking to project proponents, if wetlands or other issues of concern arise, the Board members talk to the Conservation Commission or others about the issues and encourage the proponent to do so as well. In short, by the time the application is formally filed and heard before the Board, “There are no surprises. We have worked through all of the issues and though agreement may not be in place, at least clarity and full information is.”

Even in the hearings, the Board seeks to maintain the informality and back-and-forth of earlier, informal conversations. In the hearings, the Board seeks to be creative, flesh out ideas and suggestions, and identify solutions that can solve problems and bridge differences, and, the Board encourages the applicant to do the same. Some attorneys do not like the informality of the proceedings. And, according to one interviewee, it makes keeping minutes difficult. But, within all the rules and regulations of open, posted, public meetings, the Town is still open to utilize mutual gains approaches.

Florida Case

Application and Hearing

The application and hearing stage requires that the proponent submit a detailed plan. Usually formal regulatory or legal deadlines kick in requiring reviews and the like, as

well as public hearings, public posting of meetings, recording of minutes, and so forth.

At this point, a project's trajectory for the months to come may be set. Non-controversial projects may be reviewed quickly and approved. More controversial projects may be reviewed, re-reviewed, and face difficult and contentious public meetings, numerous changes, and even formal resubmittals before a decision is made. At this stage in the process, the project proponent faces the classic "first offer" dilemma. Does the proponent offer their ideal, recognizing it will be whittled down and revised by the public process to something less than perfect, in the proponent's eyes, but acceptable? Does the proponent outline the bare minimum for the submittal, and then point out options and places where input and advice would be helpful? Does the proponent put forth their best effort, and then defend it to the death (or near death)? One thing is clear, if the proponent has not done his/her homework as described in the steps above, they are more likely than not to encounter and exacerbate conflict. *Solid preparation* is essential to learn who are your stakeholders, what do they care about, and what there alternatives to being at least somewhat cooperative. For Boards, in this key and public stage of project review, though formal procedural rules may constrain them, it is still possible to utilize mutual gains approaches.

The use of mutual gains can occur on various levels. First, *Boards can help applicants and stakeholders prepare* for the formal proceedings. Boards can post clear details on how their application works, along with easy to use checklists, fact sheets, and assistance from Board secretaries or staff. This does not mean the Board is taking a pro or con stance, but ensuring that the process is as transparent, clear, and simple as possible. For repeat players, local developers may know how to participate in the review process. For outside or off-Island developers, this may not be so clear. Yes, it can actually be in the interest of local boards to help outside proponents prepare for the proceedings. For example, in the face of uncertainty and anxiety (and, sometimes out of arrogance), a developer new to a board may "lawyer-up" with expensive attorneys and consultants in hopes expertise will overcome unfamiliarity. Of course, such an approach usually has the opposite affect: local board members see the outside as trying to "outgun" or "outmaneuver" local decision-making. One simple action Boards could take is to develop a list of "*Ten Things to do to Alienate Local Residents.*" While tongue in cheek, local Boards can help introduce outsiders to the local culture and idioms and help them prepare and present submittals and presentations that get to the substance of the proposal and avoid typical mistakes that raise local hackles.

Second, Board members can employ their *mutual gains skills and behaviors* in proceedings. They can employ active listening, ask good, clarifying questions, explore what options have been or might be considered, and treat applicants and stakeholders with respect (even if not everyone reciprocates). Third, Boards can run their meetings in a way that encourages more dialogue and deliberation, and less posturing and pontificating. The job of ensuring fairness, balance, understanding, and clarity usually falls to the chairperson. Thus, it can be quite helpful to have a chair that can exercise solid *facilitation skills*. Facilitators know how to avoid words, tone, and manner that enflames rather than calms people. They know how to ensure that all have a fair chance to speak. They know how to ask clarifying questions, to point out

common ground, to synthesize multiple ideas into common themes, and how to pull out from emotion and positioning, the underlying interests of the speaker. While some are always going to be more skilled than others at these techniques, these skills can be taught, practiced, and improved.

Third, Boards can think carefully about how the *structure* of their proceedings can help increase effective deliberation or hinder or even prevent it. Building (and, plagiarizing with permission) on the 2003 Looking at the Commission Report, we offer a critique of the current process and compare that to a “mutual gains” process of review that better embodies its principles. Some of the ideas might also be applicable to Town administrative processes as well. We do recognize that a process may not be able to practically include all these steps, and that some suggestions may be difficult to implement given current local or state administrative regulations.

THE CURRENT DRI PROCESS	THE MUTUAL GAINS DRI PROCESS
<i>Preparation</i>	
Applicants expend significant time and money developing formal, detailed, draft final plans.	Application expends limited time and money develop informal, conceptual ideas
Staff has little input into the plans other than ensuring that the necessary documents and requirements are met.	Staff sits down with applicant early, explains process, shares the Island Plan and its intent in this area offers inputs, conducts site visits, and shares experiences from other project review to highlight lessons learned
The Town does little and awaits the formal submittal of the applicant.	A Town liaison participates with staff in the informal, early meetings, sharing local concerns, Master Plans, and ideas with the Commission staff as well as the proponent.
Each project is treated in the same manner and forwarded to the same review process.	Each project is “screened” against certain criteria such as complexity, impact, and other measures, and then forwarded to: 1) a Commission determination for if it is of regional impact; 2) a streamlined review for smaller, simpler, less contentious projects; 3) a full-blown review process for complex, larger projects. The proponent is always free to request the full review process even if the staff recommends a more expedited review.
<i>First Land Use Planning Committee Meeting</i>	
The formal, draft final application is modified, as needed, and formally submitted.	The application is “pre-submitted” the LUPC with greater detail than the first submission.
A pre-hearing is held. The format generally reviews that all appropriate documentation is in place and offers questions and concerns likely to be expressed at the Commission hearing. The Committee is very careful to offer no suggestions or ideas to avoid the appearance of influence or speaking on behalf of the Commission.	A pre-hearing is held. The meeting is public, informal, and seeks to encourage not only concerns and issues, but also ideas and options. The committee chairs ensures the “no is not enough” groundrule is enforced. Anyone participating can be critical, but must also suggest constructive ideas and options. People sit at tables or around one large table. Microphones are not used. Participation is primarily among the staff, Commission, Town liaison, and proponent, but if time permits, the public is given opportunities to comment under the same groundrules.

Detailed dialogue is discouraged for the reason stated above.	The Committee members are clear they are in the “inventing options” stage only and cannot speak for nor necessarily anticipate the views of the Commission.
Any sense of a probable rejection of the project by the Commission, while occasionally inferred, is strictly avoided to avoid procedural litigation later and to ensure due and fair process.	If a project appears to contradict the basic and most important principles of the Island Plan and the Commission, the subcommittee may indicate such and encourage the applicant seek an expedited determination by the Commission. The Commission reviews the proposal and gives a preliminary indication of likelihood of review. A proponent who receives “likely to be denied” is always free to continue a submission through the formal process, but at their own risk.
No recommendations, ideas, or suggestions are provided in writing to the proponent.	If requested, the Committee prepares non-binding suggestions for improvement to the proponent, including identifying missing technical information that might help resolve differences. Furthermore, if there is extensive public attendance at the meeting, the LUPC may also forward recommendations to the Commission on additional public engagement activities that may be needed for this project review.
A site visit is scheduled, as needed. Commissioners refrain from discussion other than clarifying questions. The public may attend but is asked to refrain from comment.	A site visit is scheduled, as needed. Commissioner and the applicant participate in an informal site walk, informal conversation, and informal dialogue, including making suggestions and offering ideas. The proponent is in no way required to respond to suggestions nor include them in later proposals. The LUPC chair or designee, depending on civility, numbers of attendees, and permission from the proponent, may encourage interested members of the public to join in the conversation.
<i>First Commission Meeting</i>	
A hearing office is appointed, typically the chair of the LUPC.	A hearing facilitator is appointed, typically someone with the requisite facilitation skills. This may be a Board member, staff person, or even independent facilitator depending on the scope and complexity of the project.
The formal, draft final application is reviewed by the	A developed, but still conceptual plan is submitted for

Commission.	Commission review. The plan may be the same as reviewed by the LUPC or may have been modified to account for concerns and ideas mentioned in that LUPC initial meeting.
The Hearing is opened.	The hearing is opened.
The proponent provides a 20 minute presentation.	<p>The proponent provides a presentation. If the review is streamlined as screened by the LUPC, the presentation is formal with detailed plans and proposals. In this case, the hearing is more formal, similar to the current format, and the hearing is closed and a decision made at that time.</p> <p>If the full review process is needed, the Commission asks the proponent to explain the key fundamentals of the proposal, the areas that are essential to the viability of the project, and the areas where further discussion and option generation might be helpful. Basic site plans and rough drawings are presented, but complete, final, expensive renderings and presentations are discouraged.</p>
The staff presents its report as does the Town.	The staff presents a summary of the dialogue among the LUPC, the Town liaison, and the proponents. The staff report does not make a recommendation at this time, but highlights key issues and possible suggested solutions/options.
Public Testimony is held.	The public is invited to ask questions, raise concerns, and suggest ideas. With the proponent's permission, the public is encouraged to address its questions to the developer and the LUPC. The LUPC The public is asked to abide by basic groundrules, including be specific; be clear; state the reasons for supporting or objecting to a detail or overall project; and, wherever possible, making suggestions to address the concern raised. The hearing facilitator actively engages the participants in a useful dialogue and maintains order and civil dialogue.
The Commission asks questions.	The Commission discusses with the project proponent the proposal, concerns, ideas, and suggestions. The

	Commission may also identify stakeholder representatives to participate actively in upcoming
The hearing is closed.	The hearing is left open (unless the streamlined process is followed, which requires the hearing, hearing closure, and deliberation and decision that meeting or within two weeks).
<i>Second Land Use Planning Committee Meeting</i>	
A post-hearing meeting is held where the Commission discusses together for the first time the proposal in detail, analyzing the benefits and detriments of the project according to the MVC's enabling legislation.	A mid-hearing working meeting is held where the Commission continues to discuss the proposal in detail, analyzing the benefits and detriments of the project according to the MVC's enabling legislation. The LUPC may hold more than one meeting if the LUPC and proponent agree it will be fruitful.
The proponent is only allowed to speak for clarification purposes.	The proponent takes an active part in the dialogue.
The public is not allowed to speak.	The stakeholder designees assigned by the Commission at the initial hearing participate actively. The public may attend and, if time allows, be allowed to comment briefly.
The LUPC may, but often does not, issue a recommendation back to the Commission.	The LUPC strives to develop a consensus recommendation among the participants. Should a consensus not be reached, the LUPC strives to identify those areas of common ground in their recommendations. The staff then prepares a draft decision.
The project proponent cannot alter or revise his/her submittal.	Upon completion of the LUPC working meeting(s), the proponent issues final, formal plans.
<i>Second Commission Meeting</i>	
The Commission holds its final deliberations.	The Commission holds its final deliberations. The Commission discusses the LUPC recommendations, staff draft decision, and other issues as needed.
The public and the proponent are only in attendance, and do not participate.	The Commission may ask questions of and discuss with the proponent the proposal. The Commission may allow for brief public comments during the final deliberations. The Commission may recommend, and if the proponent chooses to, after deliberations, he/she may ask for a

	continuance of the hearing to revise the proposal one last time and submit the final plan.
The hearing has already been closed.	The hearing is closed.
The Commission decides to approve, approve with conditions, or deny the application.	The Commission decides to approve, approve with conditions, or deny the application.

Contested Decisions and Litigation

After a Board as made a decision, there is generally a short period of time in which the decision can be contested in court. Under Massachusetts law, a party has 20 days to file a legal action. Once a legal action is filed contesting the decision, the slow, onerous, and cumbersome process of filings, discovery, and court, begins. Theoretically at least, mediation would be an option any time up to the courthouse steps and an actual trial. As noted in our findings, numerous interviewees did express strong skepticism about mediation in resolving land use disputes. Despite this skepticism, we do believe that mediation can be useful. Mediation offers the potential for a quicker resolution (saving time and money) than the court process; a chance to jointly craft an agreement that avoids the uncertainty of predicting outcomes in court and the “winner takes all” quality of court decisions; and opportunity to craft tailored, nuanced resolutions that satisfy interests as well as rights and values. What might Boards, or at least advocates of mediation and alternative dispute resolution do, to encourage the use of mediation?

First, local board members, staff, and diverse participants in land use processes need *further education* about the benefits, costs, advantages, and disadvantages of mediation. The Island Mediation Program could offer, or at least sponsor, such a course or courses. Second, board members need *solid evidence* that it can work. We are attaching in this report our 1999 study regarding land use mediation. Third, the Commission, most likely, or Board members, could *lower the hurdle* for using mediation in a number of ways for both Town as well as Commission cases. Hurdles and possible actions include:

- *Hurdle:* The time and effort to locate a capable mediator.
- *Action #1:* Develop a list of local and regional mediators along with resumes, rates, and references. This could be posted on a website or in a short written guide and made available to all Boards and the Commission.
- *Action #2:* Create a part-time ombudsperson in conjunction with the Island’s Mediation Program. This person would be trained in facilitation, mediation, and land use planning and law. At any point in a project review, any Town Board or the Commission could call on the ombudsperson to assist in helping parties resolve their differences. For instance, a Board might ask the ombudsperson to simply talk to a proponent (or opponent) to help surface key needs or interests. A Board might ask the ombudsperson to facilitate a meeting where emotions are high and independent, neutral facilitation would be helpful. A Board might ask the ombudsperson to bring key parties together to help mediate a dispute, either one heading for trouble before final decision, or even after, when the case may be heading to court. This kind of local, knowledgeable troubleshooter might help reduce or eliminate many conflicts before they become intense, complex, and entrenched.
- *Hurdle:* The cost of mediation, at least to get started.
- *Action:* A Board or Commission, budget permitting, set aside a small fund to be used by disputants to voluntarily hire a mediator for a quick case review and to mediate an initial meeting to establish a mediation process, which

would include who pays. This fund might seek to provide matching funds rather than to subsidize the costs outright.

- *Hurdle:* The time and skill to assess if mediation is appropriate.
- *Action:* Often times, even if parties are open to mediation, they do not know how to begin. The Island could consider training local, volunteer mediators, local Board members, and others in early conflict assessment. If a dispute had arisen anywhere in the planning and review process, a Board could call on these trained volunteers to do a quick pre-assessment to determine if mediation might be useful and how it might proceed. While this can also be done in a more thorough and detailed way through a professional, independent mediator, there is often neither the time nor money to enlist such services. As an example Pace University's Land Use Law Center and the Consensus Building Institute trained regional and local planners in communities along the Hudson River to do just this. A planner or volunteer from other communities is then available to a community who needs quick advice and low cost to no cost assistance to assess a situation.

Training and Capacity Building

While mentioned in brief above, there are numerous ways in which Board members and their stakeholders might benefit from training and teaching. Most interviewees mentioned that getting Off-Island for training is a high if not prohibitive barrier to participation. Thus an Island-specific training program on key issues and for key skills would be helpful. Training subjects might include:

- Basic negotiation skills
- Conflict resolution and mediation.
- Conflict assessment.
- Communication skills
- Basic land use law.
- Creating master plans.

The Commission might play a role in identifying education needs across the six towns, prioritizing the ones most important to Islander, and then in conjunction with the Towns, identify and bring to the Island the expertise necessary to improve the capacity of local Boards. While providing information on off-Island course might be useful, from our interviews, it is our sense that only on-Island courses are likely to be well-subscribed.

Commission as Facilitator and Mediator

Generally, the Commission is seen as a regulator whose intent is to help manage development to help preserve the unique character of the Island as a whole. But in addition, the Commission also has a forward-looking planning function that has been often overwhelmed and overshadowed by its regulatory duties. Furthermore, practically, for better or for worse, the Commission is often in the middle of disputes and differences that need resolution. The Commission sometimes gets referred

difficult cases because a Town does not want to deal with the mess. The Commission will, by intent, receive for review the largest, most complex and most contentious projects on the Island. While any local board can probably get away with being less than skilled at conflict resolution most of the time, the Commission rarely can escape such a fate. In order to preserve its reputation and function, it must be successful at helping parties – abutters and proponents; towns and other towns; developers, historic preservationists, open space advocates, and many others – confront, and when possible, resolve their differences.

The Commission can play out this facilitative role in several ways:

- The Commission should and can model best practices for mutual gains collaboration in the way the staff exercises its duties, the Commission conducts its businesses, and how the structure of review processes function.
- The Commission can bring together diverse stakeholders across and off-Island to talk with and learn from one another. The Commission already hosts information and education sessions. The Commission can bring together diverse parties for instruction, information, and learning. This might include talks, guest lecturers, trainings, or other efforts.
- If the Commission does see as one of its roles conflict resolution, it can actively seek concrete ways to help reduce or avoid conflict. We make numerous suggestions in this report, but the Commission is probably the best to brainstorm, prioritize, and operationalize how it might assume this role more actively and effectively, from providing information to helping mediate (or support the mediation of) differences.

IV. CONCLUSION

In our interviews with Vineyard land use parties, we identified numerous barriers that get in the way of utilizing a mutual gains approaches. However, we also identified several Island efforts where mutual gains and collaboration have been underway or might be implemented. Yes, land use cases are often complex and contentious. Yes, there will always be those who want to build and those who do not want them to. But, there are numerous ways where local Boards and regional bodies can utilize the best of negotiation, conflict resolution, and consensus building theory and practice. While the Vineyard is a unique and relatively small place, we believe the mutual gains practices already used on the Island and the additional ones we suggest are applicable to a wide range of land use decision-making boards across the U.S.

APPENDIX A: INTERVIEWEE LIST

John Abrams
Principal Owner, South Mountain Construction

Ken Barwick
Building Inspector, Town of Tisbury

Christian Brown
Edgartown Planning Board (also member of MV Commission)

John Early
Selectman, West Tisbury

Philip Jorde
Executive Director, Dukes County Housing Authority

Edward "Tip" Kenyon
Chilmark Planning Board

Mark London
Executive Director, Martha's Vineyard Commission

Tony Peak
Chairman, Tisbury Planning Board

Camille Rose
Aquinnah Planning Board

Richard Toole
Martha's Vineyard Commission

David Wessling
Oak Bluffs Planning Board

Beverly M. Wright
Chairperson, Tribal Administration Building

APPENDIX B: INFORMATION SOURCES

Martha's Vineyard Commission Homepage

http://almanac.vineyardconservationsociety.org/mvc/mvc_mainpage.shtml

http://www.mvgazette.com/travel/vineyard_history/

http://mvgazette.com/news/2004/06/04/mvc_court_decision.php

Frug, G., Barron, D., Su, R. *Dispelling the Myth of Home Rule – Local Power in Greater Boston*. Rappaport Institute for Greater Boston. Cambridge, Massachusetts, 2004.

APPENDIX C: GLOSSARY OF DISPUTE RESOLUTION TERMS⁶

This abbreviated glossary focuses on the major concepts involved in building agreement and resolving disputes over land use and other public policy issues. It moves from general to specific concepts.

Alternative Dispute Resolution -- The range of concepts and procedures for resolving disputes outside conventional arenas, such as the legislature, the courts, and Administrative setting.

Public Dispute Resolution -- The theory and practice of negotiation, facilitation, mediation, collaborative problem solving, and consensus building as applied to public issues.

Public Participation -- Any process that is designed to engage citizens in the process of making public decisions. The objectives of public participation may be to inform and educate, seek input and advice, build agreement, and/or resolve disputes.

Collaborative Problem Solving -- A social learning process where people share knowledge, ideas, and experiences through cooperative, face-to-face interaction. The premise of collaboration is that if you bring together the right people in constructive ways with good information, they will produce effective, sustainable solutions to the challenges and opportunities they face. A collaborative problem solving process may or may not result in consensus.

Consensus -- As a decision-making process, consensus is where all people who have a stake in a particular issue jointly decide how to address the issue and resolve the dispute or improve the situation. In this respect, consensus is a special type of collaborative process. As a decision-making outcome, consensus means unanimity, and contrasts to decision-making outcomes characterized by voting and majority rules.

Negotiation -- A relationship between two or more parties who voluntarily come together to educate each other about their needs and interests in an attempt to resolve a perceived or actual conflict of interest.

Interests -- Interests are the collection of needs that a person or group brings to a negotiation, including beliefs and values, fears and concerns, hopes and expectations.

Positions -- A position is a solution or outcome that is designed to meet one or more person's needs. Positions are often expressed as "I want, I don't want, I will or will not." Positions tend to narrow the focus of a dialogue, force people into the mindset of "compromising my position," and prevent participants from creating value and accommodating diverse interests.

Stakeholders -- Stakeholders are individuals or groups that have an interest in or are affected by an issue; government agencies, legislators, and other decision makers that

⁶ Source: © Public Policy Research Institute and Consensus Building Institute – December 2003

are needed to implement any agreement that is reached; and people who may block an agreement if not involved in the dialogue.

Sponsor -- The individual, group, or organization that is considering initiating a consensus process to address or resolve some issue.

Convenor -- The person or group that carries out the convening steps (e.g., assessing the situation, designing the process), or oversees how they are carried out.

Facilitation -- the use of an impartial third party to promote effective information exchange, negotiations, and group decision-making. A facilitator is impartial to the issues being discussed; rarely contributes substantive ideas; and has no decision-making authority. The facilitator focuses on the process and procedures of dispute resolution and decision-making.

Mediation -- An extension of facilitation where the impartial third party meets privately and confidentially with the participants in an effort to identify opportunities and obstacles to building agreement. The mediator may shuttle back and forth among the participants, carrying messages and clarifying needs and interests.

Arbitration -- The intervention into a dispute of an impartial third party who is given the authority by the participants or another decision making entity (such as the legislature or the courts) to make a decision on how a dispute will be settled. Arbitration may be binding or non-binding.