

REYNOLDS, RAPPAPORT, KAPLAN & HACKNEY, LLC

COUNSELORS AT LAW

TEL. (508) 627-3711, ext. 515

FAX (508) 627-3088

RONALD H. RAPPAPORT
rrappaport@rrklaw.net

December 4, 2023

BY E-MAIL

jhagerty@edgartown-ma.us

jvarkonda@edgartown-ma.us

Edgartown Selectboard
P.O. Box 5158
Edgartown, MA 02539

Edgartown Conservation Commission
P.O. Box 5130
Edgartown, MA 02539

Attention: James Hagerty and Jane Varkonda

Re: Dike Bridge Causeway and Bulkhead

Dear James and Jane:

You have asked me to address certain assertions made by Dylan Sanders, the attorney for The Trustees of Reservations (“TTOR”), in a letter to you dated November 6, 2023, regarding the location of: a.) the boundary line between Town ownership and TTOR property in the vicinity of the Dike Bridge and the adjoining causeway and bulkhead (the “causeway/bulkhead”); and b.) the portion of the causeway/bulkhead requiring repairs for safe transport to TTOR’s beach and trail network. After a review of the relevant title and historic documents – as set out in the balance of this letter – I believe that TTOR has incorrectly interpreted certain documents in its chain of title that assert ownership of the area in question and has overlooked the organization’s historical claims of ownership.

1.) Title to the Dike Bridge and Causeway.

In 1950, the Town, pursuant to the provisions of Chapter 349 of the Acts of 1949 (the “Special Act”), took by eminent domain from the Pocha Pond Meadow and Fishing Company (“PPMFC”) the land on which the Dike Bridge and a portion of the causeway is located. The property taken is described in the Order of Taking by both a metes and bounds description and

also by reference to a Plan of Land dated December 18, 1949 (the “Plan”).

The Plan clearly demarcates the limits of the land taken by the Town, which is slightly eastward of the Dike Bridge and does not include the deteriorated portion of the causeway/bulkhead. Further, and as discussed below, the easterly boundary of the land taken is consistent with and also shown on a Plan of Land dated July 18, 1975 prepared and recorded by TTOR on October 30, 1975 (the “1975 TTOR Plan”), a copy of which is attached hereto as Exhibit A, and deeds of record to TTOR.

2.) The Easterly Property Line.

TTOR’s letter of November 6, 2023 states:

“The Trustees are the majority owner of the East Beach, which is to the east of the bulkhead; the Trustees, however, do not own the bulkhead itself or the land on which it is built. Rather, the bulkhead is owned by the successors to what was called the Pocha Pond Meadow and Fishing Company. (The Town assessor’s maps which show the bulkhead as forming part of the East Beach lot are simply wrong and do not reflect the underlying deeds or title records.)”

The assessors’ map is based on the 1975 TTOR Plan recorded with the Dukes County Registry of Deeds, which shows TTOR as the owner of a 72.5 (±) parcel, including East Beach and the land adjacent to the Dike Bridge, including the deteriorated portion of the causeway/bulkhead. Further, deeds of record, including a deed dated October 20, 1975 from Sherman Hoar to TTOR, describe the property being conveyed as consistent with the 1975 TTOR Plan (a copy of that deed is attached hereto as Exhibit B), as does a 1977 deed from the Trustees of Tom’s Neck Farm Trust to TTOR, which similarly contains the same property description and purports to convey the land shown on the 1975 TTOR Plan. (Exhibit C.)¹ These two conveyances, together with other deeds of record, reflect that TTOR holds a majority interest in the 72.5-acre parcel which, as surveyed, includes the deteriorated causeway/bulkhead at the center of this dispute.

Attorney Sanders’ statement is also at variance with TTOR’s prior submissions to the Town. In 1992, TTOR submitted a Request for Determination of Applicability to the Edgartown Conservation Commission (Exhibit D hereto). Attached to the submission is a marked up version of the Trustees 1975 Plan, which shows a “vehicle control gate” just to the east of the Dike Bridge. The submission states:

“This proposal is dependent upon the placement of a vehicle control gate located on the TTOR/Town of Edgartown property line ...”

¹ We note that Sherman Hoar was a shareholder of PPMFC.

In 1995 TTOR submitted a plan (Exhibit E) to the Edgartown Planning Board showing the dividing line between Town and TTOR ownership consistent with the plan submitted in 1992 to the Conservation Commission. Like the earlier plans, the sketch submitted in 1995 to the Planning Board shows almost the entirety of the causeway/bulkhead easterly of the Dike Bridge to be situated on TTOR property.

Taken together, these historical and recorded documents show that the deteriorated portion of the causeway/bulkhead lies easterly of the land taken by the Town, and is on land owned, and/or claimed to be owned, and controlled by TTOR.

3. The Settlement of Taking Document.

An unsigned document entitled “Settlement of Taking,” a copy of which is attached hereto as Exhibit F, between the Town and the PPMFC recites that the taking was for “a certain portion of said dike or causeway and certain adjoining land” (emphasis supplied), and that, subsequent to the taking, the Town entered into possession “of the land thus taken.” While the draft Settlement of Taking document provides that “the Town would assume the obligation imposed upon the company by Section 1 of Chapter 185 of the Acts of 1848, to keep the causeway and dike as a public highway”² it does not, by its terms, extend that obligation to maintain a public highway easterly of the land taken. Nor does the 1949 Special Act of the Legislature authorizing the taking impose that obligation on the Town.

Finally, the “Settlement of Taking” document contains no signatures, and we have not been able to locate either an original or a signed copy, which would show that it had been executed. Even if it had been signed, the Town’s obligation to keep the highway and dike in suitable repair as a public highway applies to the portion of the property taken by the Town.³

4. Repair of the Causeway.

The issues of ownership and maintenance are irrevocably intertwined when a public entity must address competing fiscal responsibility for the maintenance and rebuilding of the causeway/bulkhead. While TTOR previously stated that it would present a proposal, the most recent suggestion that there only be a joint application for state funding does not advance the dialogue in the absence of a recognition or acknowledgment by TTOR that it will bear some of the financial responsibility for these expenses as the manager, steward and dominant tenant of the land it has historically claimed to own and control.

² Dike Road, the road westerly of the causeway/bridge, did not become a public road until 1959 when it was laid out and taken by the Dukes County Commissioners.

³ It is an open question as to what authority the Town would have to improve and maintain a roadway which it has not taken or laid out.

5. The Notices of Intent.

TTOR has submitted two Notices of Intent (“NOI”) to the Edgartown Conservation Commission (SE20-1702 and SE20-1703) in connection with management of the Cape Poge Wildlife Refuge, Wasque Reservation, and Leland Beach. The Selectboard has suggested that the Conservation Commission impose as a requirement for issuing the NOIs that TTOR set aside a portion of the permit fees to fund capital costs associated with the bulkhead and the causeway repairs.

TTOR takes the position that the Conservation Commission does not have the legal authority under the Wetlands Protect Act (G. L. c. 131, § 40) and the Edgartown Wetlands Protection By-law to impose such a requirement, and references that, under G. L. c. 84, §§ 1, 22 through 25, the Town has a responsibility for maintaining every public road it has laid out or accepted. As I have outlined in the preceding paragraphs, no layout or acceptance exists for any land or property eastward of the property taken by the Town in 1950. I am unaware of a law or regulatory scheme preventing the Conservation Commission from requiring an applicant for an order of conditions to set aside sufficient funds to ensure that the resource areas are adequately maintained.

6. Conclusion.

Maintenance and repair of the causeway/bulkhead is a responsibility to be apportioned equitably among various stakeholders with shared interests in continued public access to TTOR’s Chappaquiddick holdings. It would be helpful if TTOR could offer a concrete financial proposal, rather than stating that state funding is the “only meaningful, lawful and viable path forward.” There are a variety of cooperative endeavors⁴ which would ensure the continued right of the public (not simply the Town’s citizens) to enjoy access to TTOR’s recreational facilities. As a party with a claimed ownership of East Beach and the deteriorated portion of the causeway/bulkhead, TTOR should play a meaningful role in this effort.

Very truly yours,

/s/ Ronald H. Rappaport

Ronald H. Rappaport

RHR/ad
Enclosures
15001-040\ Dike Bridge ltr 12 4 23.doc

⁴ In the event TTOR wishes to be relieved of maintenance obligations, it could consider offering to relinquish its ownership interest in the land shown on the 1975 TTOR Plan.

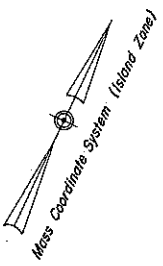
EXHIBIT A

PLAN OF LAND IN EDGARTOWN, MASS.
 Surveyed for
THE TRUSTEES OF RESERVATIONS
 July 18, 1975 Scale 1" = 200'
 Dean R. Swift Reg'd. Land Surveyor
 Vineyard Haven, Mass.

U.S.C. & G.S.
 Triangulation Sta.
 MIDWAY-1949

Cape Poge Bay

N 140,163.03
 E 213,780.78



72.5 ± Acres

The Lagoon

Muskeget Channel
 ATLANTIC OCEAN

APPROVAL UNDER THE SUBDIVISION
 CONTROL LAW NOT REQUIRED

Richard W. ...
...
...
...

DATE: JUL 30 1975

RECEIVED-ENTERED
 10:45 AM
 COUNTY OF DUKES COUNTY
 REGISTRY OF DEEDS
 OCT 30 1975
 PHILIP U. NORTON,
 REGISTRAR



Dean R. Swift

114

N 135,697.79
 E 213,563.10

The Trustees of Reservations
 see Ch. 122, Pt. 312

548
 G.R.F.

5/2.00 Norton

114

EXHIBIT B

MASSACHUSETTS GUYLAIN DEED SHORT FORM (INDIVIDUAL) 881

PAGE 329 PAGE 134

I, SHERMAN HOAR,
of Crocker Drive, County of Dukos

County, Massachusetts,

being unmarried, ~~MASSACHUSETTS GUYLAIN DEED SHORT FORM (INDIVIDUAL) 881~~ in part as a charitable contribution, and in part for a consideration paid of \$13,500.00, grant to THE TRUSTEES OF RESERVATIONS, a Massachusetts charitable corporation established under Chapter 352 of the Acts of 1891, of 224 Adams Street Hilton, Mass. 02186 with quitclaim covenants

the land in

[Description and recumbences, if any]

A 252/1344ths undivided interest in the land on the Island of Chappaquiddick, Town of Edgartown, County of Dukos County, Massachusetts, shown on Plan of Land in Edgartown surveyed for the Trustees of Reservations dated July 18, 1975, by Dean R. Swift, to be recorded herewith, being bounded and described:

Easterly by the Atlantic Ocean, 4500 ft. more or less;
Northerly by land of The Trustees of Reservations, 110 feet, more or less, 666.98 feet, and 170 feet, more or less;
Westerly by Cape Poge Bay;
Southerly and Westerly by land of Leland, 230.62 feet and 150 feet, more or less;
Southerly by land of The Trustees of Reservations 40 feet, more or less, 422.08 feet, and 110 feet, more or less.

Containing 72.5 acres more or less, according to said plan.

Intending hereby to convey the entire interest which I inherited through the estate of Christine J. Pease, Dukos County probate no. D7/4612 in and to the land known as the East Beach North Shore as more particularly described in a division of Caps Poge Beach Meadow, being that part set off to Joseph Huxford, Zadok Davin and Jethro Haggatt, and recorded on September 4, 1822 in Dukos County Registry of Deeds Book 21, Page 314.

DEEDS 3000-
DESD. 3080-

Witness my hand and seal this 29th day of October 1975

Sherman Hoar
Sherman Hoar

The Commonwealth of Massachusetts

Dukos ss.

October 29, 1975

Then personally appeared the above named Sherman Hoar

and acknowledged the foregoing instrument to be his free act and deed, before me

Edgartown, Mass. OCTOBER 30 1975

at 10 o'clock and 45 minutes AM

Received and entered with Dukos County Deeds

Book 329 Page 134

Notary Public - JAMES H. HAY
My commission expires May 21, 1980

(*Individual Joint Tenants - Tenants in Common - Tenants by the Entirety.)

Attest: Philip J. Norton

CHAPTER 153, SEC. 4 AS AMENDED BY CHAPTER 497 OF 1969

Every deed presented for record shall contain or have engrossed upon it the full name, residence and post office address of the grantee and a recital of the amount of the full consideration received or to be received by the grantee or the nature of the other consideration therefor, if not delivered for a specific monetary sum. The full consideration shall mean the total price for the conveyance without deduction for any liens or equities assumed by the grantee or remaining thereon. All such endorsements and recitals shall be recorded as part of the deed. Failure to comply with this section shall not affect the validity of any deed. No register of deeds shall accept a deed for recording unless it is in compliance with the requirements of this section.

EXHIBIT C

*Conformatory
Deed
Book 350
Page 368*

BOOK 343 PAGE 18

DEED

WE, SHERMAN HOAR, CAROLINE HOAR BAKER and BENJAMIN STUART HOARN, individually and as Trustees of TOM'S BECK FARM TRUST, under appointment by Probate Court, County of DuKes County, Case No. E1/21, by power conferred by Judgment of said Probate Court dated December 1, 1974, and every other power, for TWENTY-FIVE THOUSAND SIX HUNDRED SEVENTY-SIX AND 86/100 (\$25,676.86) DOLLARS paid, grant to THE TRUSTEES OF RESERVATIONS, a Massachusetts charitable corporation established under Chapter 352 of the Acts of 1891, of 224 Adams Street, Milton, Massachusetts 02186

A 467/114ths undivided interest in the land on the Island of Chappaquiddick, Town of Edgartown, County of DuKes County, Massachusetts, shown on Plan of Land in Edgartown surveyed for The Trustees of Reservations dated July 18, 1975, by Dean R. Swift, and recorded with the DuKes County Registry of Deeds in Case File No. 114, being bounded and described:

- EASTERLY by the Atlantic Ocean, 4500 feet, more or less;
- NORTHERLY by land of The Trustees of Reservations, 110 feet, more or less, 666.98 feet, and 170 feet, more or less;
- WESTERLY by Cape Poge Bay;
- SOUTHERLY and WESTERLY by land of Leland, 230.62 feet and 150 feet, more or less;
- SOUTHERLY by land of The Trustees of Reservations 40 feet, more or less, 422.08 feet, and 110 feet, more or less.

Containing 72.5 acres more or less, according to said plan.

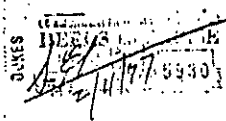
Intending hereby to convey the entire interest which Elva Stuart Hoar (DuKes County Probate No. D-7-4050) inherited through the estate of Benjamin W. Pease, DuKes County Probate No. D-4-1547 in and to the land known as the East Beach North Share as more particularly described in a division of Cape Poge Beach Meadow, being that part set off to Joseph Huxford, Zadok Davis and Jethro Daggett, and recorded on September 4, 1822, in DuKes County Registry

*CHS.
at
-A*

BOOK 343 PAGE 19

of Deeds Book 21, Page 114.

WITNESS our hands and seals this 3rd day of January, 1977



Sherman Hoar
SHERMAN HOAR

Caroline Hoar Baker
CAROLINE HOAR BAKER

Benjamin Stuart Hoar
BENJAMIN STUART HOAR

COMMONWEALTH OF MASSACHUSETTS

Dukes, ss. January 3, 1977

Then personally appeared before me the above-named SHERMAN HOAR and acknowledged the foregoing instrument to be his free act and deed.



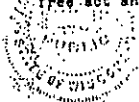
Harriet Hoar
Notary Public
My Commission Expires: November 24, 1978

STATE OF WISCONSIN

MILWAUKEE, ss.

Dec. 27, 1976

Then personally appeared before me the above-named CAROLINE HOAR BAKER and acknowledged the foregoing instrument to be her free act and deed.



Stephanie Johnson
Notary Public
My Commission Expires: Nov. 20, 1979

STATE OF ARIZONA

COUNTY OF PIMA, ss.

DEC 30, 1976

Then personally appeared before me the above-named BENJAMIN STUART HOAR and acknowledged before me the foregoing instrument to be his free act and deed.



Emily Morrison
Notary Public
My Commission Expires: 5/12/1980

Witnessed at _____ 1977
at _____ 29 minutes _____ M
Received and entered with Dukes County Deeds
book 21, Page 11

Attest: Doreen W. King - 2 -
Register

EXHIBIT D

Form 1

Commonwealth
of Massachusetts

DEP Form No. _____

Title Proposed by DEP: _____

City/Town: Edgartown

Applicant: _____

**Request for a Determination of Applicability
Massachusetts Wetlands Protection Act, G.L. c. 131, §40**

and under the Edgartown Wetlands Protection Bylaw

1. I, the undersigned, hereby request that the Edgartown Conservation Commission Conservation Commission make a determination as to whether the area, described below, or work to be performed on said area, also described below, is subject to the jurisdiction of the Wetlands Protection Act, G.L. c. 131, §40
2. The area is described as follows (Use maps or plans, if necessary, to provide a description and the location of the area subject to this request.)

Location: Street Address East Beach, Chappaquiddick, Edgartown, MA

Lot Number: Map 32, Lot 2, Edgartown Assessor's Map

The Trustees of Reservations (TTOR) is a conservation land trust incorporated in 1891 to provide public access and protection to properties of unusual beauty and ecological importance. The Cape Poge Wildlife Refuge (Refuge) is one of 73 properties owned and managed by TTOR in Massachusetts.

3. The work in said area is described below. (Use additional paper, if necessary, to describe the proposed work.) (Continued)

Vehicle Control Gate, Dyke Causeway,
Cape Poge Wildlife Refuge

The Commonwealth of Massachusetts, Department of Public Works and the Town of Edgartown have announced their plans to rebuild the Dyke Bridge leading to the Refuge for the purposes of providing off road vehicle access to the barrier beach. TTOR has issued a position statement and intention to regulate vehicle access into the refuge during periods of shorebird nesting and migration (April 1- Sept. 30). This seasonal restriction will provide for the protection of the federally endangered piping plover (*Charadrius melodus*) and Massachusetts listed species of special concern, Least tern (*Sterna albifrons*) which we are obligated to protect under the terms of our charter. We feel the proposal we have outlined regarding the limitation of ORV access into the Refuge via the Bridge during the shorebird nesting and migration season will also assure continued public access to the beaches and fishing points within the Refuge.

(Continued)

Continued #3

This proposal is dependent upon the placement of a vehicle control gate located on the TTOR/Town of Edgartown property line located on the East side of the Dyke causeway. The gate will be closed to ORV's from April 1-September 30, and open at all other times. Pedestrians will NOT be restricted from entering the Refuge via the Bridge.

The vehicle control gate will be placed on the causeway in such a manner that pedestrians will be able to walk around the gate and vehicles will have adequate clearance to pass between the latch post and hinge post at times when the gate is open for ORV access.

Land owners at East Beach and Cape Poge will be provided keys to the gate for their personal vehicular access to their homes. Keys will also be provided to State and local police, fire and emergency organizations.

ORV access will be allowed to enter the Refuge on a yearround basis via Wasque Reservation. TTOR has taken the position that at those times when shorebirds are most vulnerable, they will be protected from increased levels of ORV disturbance. TTOR also has a responsibility to provide public access in balance with wildlife protection and thus existing ORV access to the Refuge will be allowed via Wasque Reservation.

4 The owner(s) of the area, if not the person making the request, has been given written notification of this request on 1/1/92 (date).
The name(s) and address(es) of the owner(s)

5 I have filed a complete copy of this request with the appropriate regional office of the Massachusetts Department of Environmental Protection February 4, 1992 (date).

DEP Northeast Regional Office
5 Commonwealth Avenue
Woburn, MA 01801

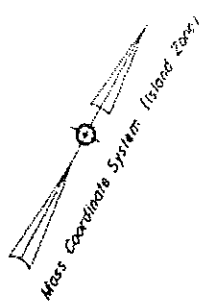
DEP Southeast Regional Office
Lakeville Hospital
Route 105
Lakeville, MA 02347

DEP Central Regional Office
75 Grove Street
Worcester, MA 01605

DEP Western Regional Office
State House West, 4th Floor
436 Dwight Street
Springfield, MA 01103

6. I understand that notification of this request will be placed in a local newspaper at my expense in accordance with Section 10.05(3) (b) 1 of the regulations by the Conservation Commission and that I will be billed accordingly.

Signature *Christopher P. Kennedy* Name Christopher P. Kennedy
Islands Regional Supervisor
Address The Trustees of Reservations Te: 508-693-7662
RFD Box 319-X
Vineyard Haven, MA 02568



Glenn F. Flewell
12-31-91

72.5 ± Acr

The Lagoon

edge of marsh

approx. location of underground telephone line

M.H.W.

⊙ DENOTED IRON PIPE FOUND 11/15/91

MASS DEPARTMENT OF REVENUE
COUNTY OFFICE
100 STATE STREET
SOUTH BRIDGEFIELD, MASS 01545

Roucha Pond
N 135,807.79
E 212,834.18

see BR 178 Pt 370
Edward F. Leland &
Oliver S. Leland

The Trustees of Reservations
see BR 122 Pt 318

N 135,657.79
E 213,563.10

548
G.F.P.

EXHIBIT E

95-1.2 SITE PLAN

THE TRUST

PLAN FOR EAST BEACH BOARDWALK / GATEHOUSE

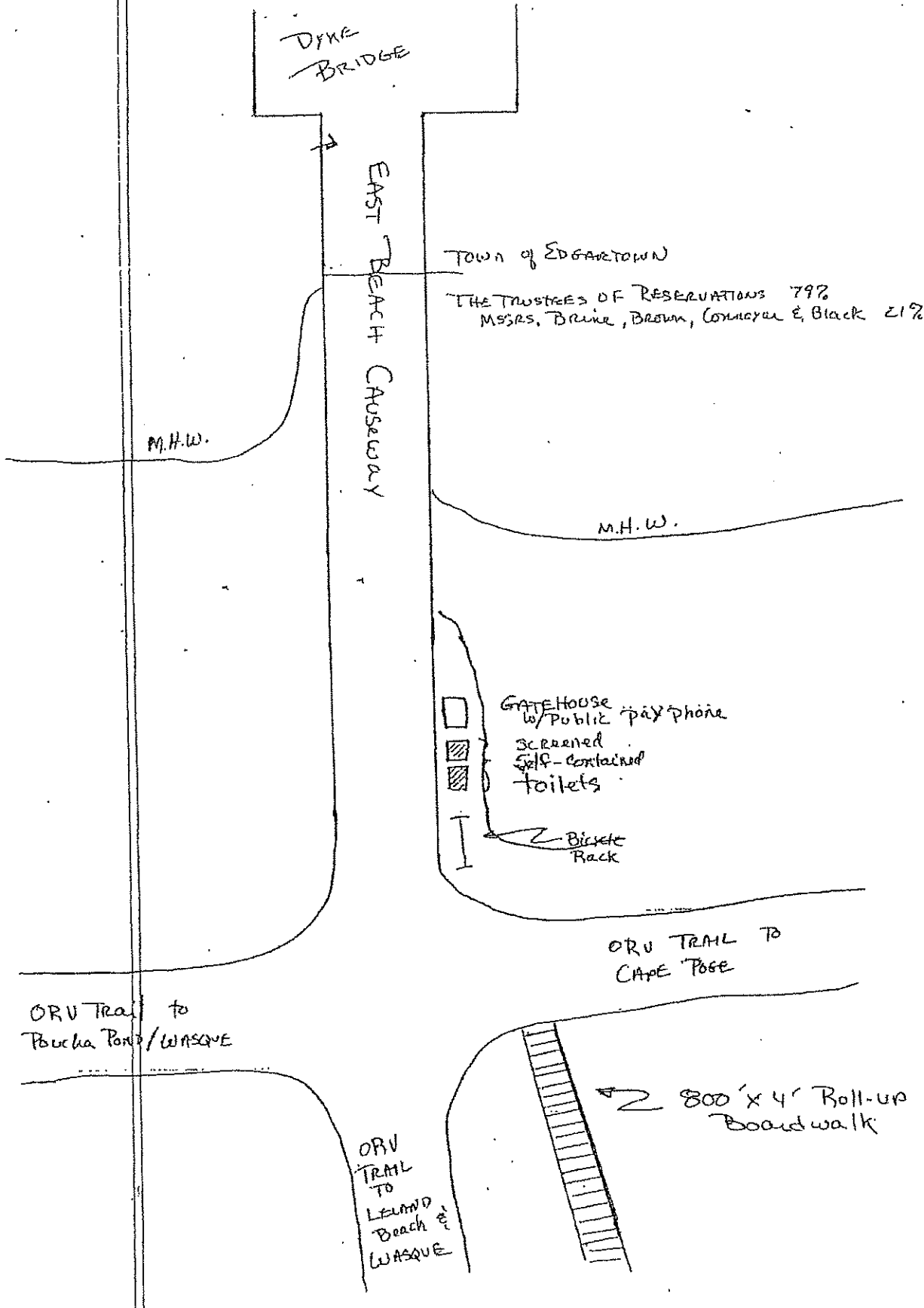


EXHIBIT F

SETTLEMENT OF TAKING

and that the terms of the Company's franchise are as follows: This agreement, entered into, by and between the Town of Edgartown, a municipal corporation of the Commonwealth of Massachusetts, located in the County of Dukes County, Massachusetts, hereinafter called "the Town", and the Pocha Pond Meadow and Fishing Company, a Massachusetts corporation, having its principal place of business in said Edgartown, hereinafter called "the Company", witnesseth:

Whereas, the Company was incorporated by Chapter 185 of the Acts of 1848 of the Great and General Court of Massachusetts, and was thereby granted certain rights and privileges, subject to certain duties, and

Whereas, pursuant to said statute, the Company built, maintained, and owned a dike or causeway across the outlet of Pocha Pond in said Edgartown, with a public highway thereon, and

Whereas, acting under the authority of Chapter 79 of the General Laws, and Chapter 349 of the Acts of 1949, and certain votes of the Town Meeting of February 14, 1950, the Town, by an eminent domain taking recorded March 23, 1950, in the Registry of Deeds of said County, Book . . . , Page . . . , and as shown on a plan of land entitled "Town of Edgartown land at Pocha Pond Dike, Chappa Dec. 18, 1949, Scale 20'", filed in said Registry of Deeds, on said March 23, 1950, Book . . . , Page . . . , took a certain portion of said dike or causeway and certain adjoining land, and

Whereas, since such taking, the Town has entered into possession of the land thus taken, and has breached said dike or causeway by constructing a channel to connect Pocha Pond to Cape Poga Pond, thereby damaging the franchise and property of the Company, and has awarded and tendered the Company as compensation for such damages the sum of two hundred fifty dollars (\$250.00), and

and that the damage to the Company greatly exceeds the sum awarded, and

Whereas, both parties hereto are desirous of amicably settling this controversy in the interests of the general public, and more particularly in the interests of the inhabitants of the Town:

Now, therefore, in consideration of their mutual grants and undertakings, the parties hereto covenant and grant as follows:

1. The Company waives any and all flaws and irregularities in the taking aforesaid, and accepts, in full settlement of its damages from such taking, the sum of two hundred fifty dollars (\$250.00) tendered it by the Town.

2. The Company does not purport to settle any claims by any individuals, based on said taking.

3. The Town does not admit that there have been any flaws or irregularities in said taking.

4. The Town assumes the obligation imposed upon the Company by Section 1 of Chapter 185 of the Acts of 1848, to keep the causeway or dike in suitable repair as a public highway, unless and until at some future date the Town shall abandon the breach in said dike or causeway and shall permit the Company to reclose the same.

5. The Town makes no representation that it will ever abandon said breach, or will ever permit the Company to close the same.

In witness whereof, the Town, by authority of a vote of the Town Meeting of February , 1951, has caused these presents to be signed in its behalf by its Selectmen, and its corporate seal

After specified; and the Company, by authority of a vote at its 1950 annual meeting, has caused these presents to be signed in its behalf by its President, and its corporate seal to be affixed and attested by its Clerk, on the date hereinafter specified.

Executed by the Town, February , 1951.

TOWN OF EDGARTOWN

by _____

its Selectmen

Attest: _____
its Town Clerk

Executed by the Company, February , 1951.

THE POCHA POND MEADOW AND FISHING COMPANY

by _____
its President

Attest: _____
its Clerk