

dance with Article Forty-eight of the Amendments to the Constitution said chapter takes effect forthwith, being chapter six hundred and thirty-six of the acts of nineteen hundred and seventy-four.

JOHN F. X. DAVOREN,
Secretary of the Commonwealth.

Chap. 637. AN ACT PROTECTING LAND AND WATER ON MARTHA'S VINEYARD.

Whereas, The deferred operation of this act would tend to defeat its purpose which is, in part, to preserve the natural and cultural character of the island of Martha's Vineyard, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted, etc., as follows:

SECTION 1. Whereas, it is hereby declared that:

(a) the island of Martha's Vineyard possesses unique natural, historical, ecological, scientific, cultural, and other values; and that there is a regional and statewide interest in preserving and enhancing these values;

(b) these values are being threatened and may be irreversibly damaged by uncoordinated or inappropriate uses of the land;

(c) the protection of the health, safety, and general welfare of island residents and visitors requires the establishment of a regional commission whose purpose shall be to ensure that henceforth the land usages which will be permitted are those which will not be unduly detrimental to those values or to the economy of the island;

(d) the preserving and enhancing of these values requires the designation of districts of critical planning concern and the recognition of developments of regional impact, and the review thereof by the regional commission;

(e) such a program can protect the natural character and beauty of Martha's Vineyard and can contribute to the maintenance of sound local economies and private property values;

(f) the people of Martha's Vineyard did, on March fourteenth, nineteen hundred and seventy-four vote to endorse the provisions of this act;

Therefore, the purpose of the commission created by this act shall be to protect the health, safety, and general welfare of Island residents and visitors by preserving and conserving for the enjoyment of present and future generations the unique natural, historical, ecological, scientific, and cultural values of Martha's Vineyard which contribute to public enjoyment, inspiration and scientific study, by protecting these values from developments and uses which would impair them, and by promoting the enhancement of sound local economies.

SECTION 2. There is hereby created the Martha's Vineyard Commission, hereinafter referred to as the commission, which shall be a public body corporate and which shall have the responsibilities, duties, and powers established herein over the lands and inland waters in Dukes county, with the exception of the Elizabeth Islands and the Indian Common Lands known generally as the Cranberry Bogs, the Clay Cliffs, and Herring Creek, all situated in the town of Gay Head, and all lands owned by the commonwealth or any of its constituent agencies, boards, departments, commissions, or offices.

The commission shall consist of twenty-one members; one selectman from each town on Martha's Vineyard, appointed by the board of selectmen of that town, or a member of the planning board or any other municipal agency, board, department, or office, appointed to the commission by the board of selectmen of that town; nine persons to be elected at large, island-wide, provided that there shall be not less than one person nor more than two persons elected from each town on Martha's Vineyard and provided that said elections shall be held in accordance with the provisions of the following paragraph; one county commissioner of Dukes county, appointed by the county commissioners of Dukes county; one member of the cabinet appointed by the governor; and four persons whose principal residence is not on Martha's Vineyard, to be appointed by the governor, said persons to have voice but not vote in deciding matters before the commission. In the event that legislation relevant to the purposes of this act is enacted by the Congress of the United States, the commission shall consist of twenty-two members: the twenty-one persons described in the above section, and the Secretary of the Interior of the United States or his designee.

The election of the nine at-large members of the commission shall be conducted at the next state election following the effective date of this act, and all succeeding elections of such members shall take place at the biennial state election. The nomination of candidates for election to the office of commission member shall be in accordance with sections six and eight of chapter fifty-three of the General Laws, provided, however, that no more than ten signatures of voters shall be required on nomination papers for such office. Notwithstanding the provisions of section ten of chapter fifty-three of the General Laws, nomination papers for said candidates shall be filed with the office of the state secretary on or before the tenth Tuesday preceding the day of the election. Such nomination papers shall be subject to the provisions of section seven of said chapter fifty-three. All candidates for said office are hereby exempted from the reporting requirements as provided for in section sixteen of chapter fifty-five of the General Laws. All appointing authorities shall appoint persons to the commission no later than fifteen days after the date of the election of the nine at-large commission members, and said authorities shall notify the state secretary of their appointments in writing. Upon his election or appointment to the commission, each commission member shall be sworn to the faithful execution of his duties by the town clerk

in the town in which he resides; provided however, that the four commission members who do not have their principal place of residence on Martha's Vineyard shall be sworn by the town clerk of the town on Martha's Vineyard in which they reside. Upon the qualification of its members, but in no case later than December thirty-first, nineteen hundred and seventy-four, the commission members shall meet and organize by electing from among its members a chairman, vice-chairman, and clerk-treasurer. Succeeding election of officers shall be held annually, at a meeting called for that purpose; provided that the commission clerk-treasurer shall not concurrently hold the position of treasurer of Dukes County.

Terms of office for the elected members of the commission and for the non-resident taxpayer members shall be two years. Terms of office for members who are selectmen or their designees or county commissioners shall be for one year and may be renewed only upon vote of the appointing body. The cabinet officer appointed by the governor shall serve at the discretion of the governor. Terms of office shall be computed from January first of each year.

Any vacancy in an appointed position shall be filled in the same manner as the original appointment for the remainder of the unexpired term. Any vacancy in the elected membership shall be filled by a majority vote of the planning board, or the board of selectmen in the absence of a planning board, of the town in which the former member was a registered voter; said vacancy to be filled for the remainder of the unexpired term. The Secretary of the Interior or his designee shall serve pursuant to applicable federal law.

The commission may also contract for such additional clerical, expert, legal, and other assistance as may be required to discharge its responsibilities and may reimburse its members and staff for reasonable expenses incurred in the performance of their duties, including meals, travel and lodging.

SECTION 3. The commission may adopt regulations for the control of districts of critical planning concern pursuant to sections nine through twelve, inclusive, of this act and to specify conditions and modifications necessary for the control of developments of regional impact pursuant to sections thirteen through seventeen, inclusive, of this act.

In adopting such regulations, the commission may include any type of regulation which may be adopted by any city or town under the following general laws, as amended: chapter forty, section eight C, the Conservation Commission Act; chapter forty A, the Zoning Enabling Act; chapter forty C, the Historic Districts Act; chapter forty-one, sections eighty-one E through eighty-one H, as they relate to official maps; chapter forty-one, sections eighty-one K through eighty-one GG, the subdivision control law; chapter one hundred eleven, section twenty-seven B, as it relates to regional health boards; and chapter one hundred thirty-one, sections forty and forty A, as they pertain to the protection of wetlands.

Regulations adopted pursuant to section eleven or conditions and

modifications specified pursuant to section seventeen by the commission under the above-mentioned general laws may differ from the otherwise relevant local development ordinances and by-laws in their scope and magnitude when such ordinances and by-laws are clearly restrictive of the purposes of the commission. In adopting regulations or specifying conditions which would not otherwise be permitted or required by existing local development ordinances and by-laws the commission shall describe in writing and present evidence which demonstrates that the public health, safety, and welfare would be endangered or that irreversible damage would result to natural, historical, ecological, scientific, or cultural values on Martha's Vineyard by the continuing application of the existing local development ordinance or by-law as it applies to the specific district of critical planning concern or development of regional impact which the commission is considering.

The commission may be designated by any state or federal agency to participate in or receive funds and technical assistance from any state or federal programs, especially as those programs relate to environmental protection, conservation, land use planning, water and air quality control, economic development, transportation or the development of region-wide public services. The commission may authorize debt in anticipation of receipt of revenue as provided in section four.

SECTION 4. The commission shall annually in the month of January estimate the amount of money required to pay its total expense for the following fiscal year, deduct estimated contributions from other sources, and pro rate the net expenses to each town on the basis of its latest equalized valuation for property tax purposes as established pursuant to section nine of chapter fifty-eight of the General Laws. The commission shall certify the amount so determined to the treasurer of each town within the commission's jurisdiction who shall include the sum in the tax levy of the year.

Upon order of the commission, each town treasurer shall, subject to the provisions of sections fifty-two and fifty-six of chapter forty-one of the General Laws, pay to the commission treasurer the town's share of the commission's net expenses.

The commission may receive for the purposes of this act any funds or monies from any source, including grants, bequests, gifts, or contributions made by any individuals, association, corporations, or by municipal, county, state, or federal governments. Monies so received shall be disbursed by the commission treasurer upon an order voted by the commission; and the charges upon all-towns may be reduced correspondingly upon a majority vote of the members if such monies were not included in the calculation of the town's net shares of expenses for the fiscal year.

The commission may authorize debt by a majority vote of the commission in anticipation of revenue to an amount not in excess of that to be received during the current fiscal year from all federal, state, county, and local sources. Notes issued under authority of this section

shall be signed by the clerk treasurer of the commission, and chairman of the commission shall countersign and approve them in the presence of the vice-chairman of the commission who shall certify to the fact on the face thereof. Such notes shall be payable, and shall be paid not later than one year from their dates, and shall not be renewed or paid by the issue of new notes, except as provided in section seventeen of chapter forty-four of the General Laws.

Where the imposition of a regulation promulgated by the commission pursuant to section eleven imposes costs on a municipal agency, the commission may transfer monies from its accounts to the accounts of such agency in reimbursement of such costs. For the purposes of this subsection, the term "costs" means those additional expenses incurred by a municipal agency solely in the performance of duties necessary to the enforcement of regulations promulgated pursuant to this act.

The commission may, upon a majority vote of its members, accept gifts of land, interests in land, or grants, bequests, gifts, or contributions for the purpose of acquiring land or interests in land in order to preserve and conserve land on Martha's Vineyard for the enjoyment and inspiration of present and future generations. The commission may also receive land or interests in land in trust or act in any appropriate capacity in a trust, provided that said trust be for the purpose of preserving and conserving land on Martha's Vineyard for public use and enjoyment.

SECTION 5. Notwithstanding the provisions of any ordinance or by-law of a municipality on Martha's Vineyard, every municipal land regulatory agency shall be governed by the procedures, standards, and criteria established pursuant to this act in passing on applications for development permits relating to areas and developments subject to this act. A copy of each such permit granted by any such agency after the temporary moratorium as provided in section seven shall be filed with the commission.

SECTION 6. The following words, wherever used in this act shall, unless the context requires otherwise, have the following meanings:

"Development", means any building, mining, dredging, filling, excavation, or drilling operation; or any material change in the use or appearance of any structure or in the land itself; or the dividing of land into parcels; or a change in the intensity of use of land, such as an increase in the number of dwelling units in a structure; or alteration of a shore, beach, seacoast, river, stream, lake, pond, or canal, including coastal construction; or demolition of a structure; or the clearing of land as an adjunct of construction; or the deposit of refuse, solid, or liquid waste or fill on a parcel of land.

"Development ordinances and by-laws", any by-law, ordinance, rule, regulation, or code adopted by a municipality for the control or regulation of activities related to construction, improvement, or alteration made to buildings of land within the boundaries of said municipality.

“Development permit”, any permit, license, authority, or permission required from a municipal agency prior to the commencement of construction, improvement, or alteration made to buildings or land.

“Municipal land regulatory agency”, any municipal agency, board, commission, department, office, or official that has statutory authority to approve or grant a development permit.

“Person”, an individual, corporation, governmental agency, business trust, estate, trust, partnership, association, two or more persons having a joint or common interest, or any legal entity.

“Regulations”, any ordinance, by-law, rule, regulation, or code which may be adopted by a city or town under the General Laws enumerated in section three of this act and which is adopted by the commission under the provisions of section eleven.

SECTION 7. Upon the election and complete organization of the commission there shall be a temporary moratorium for a period of twelve months, or for a period of forty-five days after standards and criteria are developed by the commission are approved by the secretary of communities and development as provided in section eight, whichever period is the shorter. During said moratorium period town authorities shall grant development permits only for:

(a) alterations to or replacement of existing structures, provided that the use and intensity of use of the altered or replacement structure remains substantially similar to the use and intensity of use of the previous structure;

(b) developments, construction, or improvements essential to protect the public health, safety, or welfare;

(c) the construction of one single family dwelling unit by one person on land owned by such person as of the effective date of this act. No person shall, however, be granted more than one development permit on Martha's Vineyard for the construction of a single family dwelling unit during the period of the moratorium, and all applications for permits to be granted during the moratorium period shall be submitted by the agency issuing the permit to the commission for certification as to compliance with this subsection. All permits granted under the provisions of this subsection shall also be registered with the commission within ten days of the granting of said permit;

(d) such other development, construction, or improvements as the commission once constituted, may specify; provided, however, that the commission, in acting under this provision, shall find that the provisions of the moratorium cause unnecessary and substantial hardship to the applicant and, that the granting of an exemption from the terms of the moratorium would be compatible with the purposes of this act;

(e) the subdivision of land, in order to correct minor discrepancies in boundary lines or to affect minor changes in boundary lines, for the purpose of clarifying titles or deeds to land; or the subdivision of land for the purpose of resolving conflicts resulting from the probate of estates; or the subdivision of land, in order to allow for the sale, gift, or bequest of land to a public or non-profit organization dedi-

cated to the conservation of land, for the purpose of conserving or preserving open space on Martha's Vineyard; or the subdivision of land by a person into not more than three lots during the moratorium period. Only one such subdivision shall be approved for each person, notwithstanding that such person owns land in more than one town on Martha's Vineyard, and provided further, that there shall be no further subdivision by any person of the parcels so subdivided during the moratorium period;

(f) the construction of separate, ancillary, nonresidential structures such as garages, barns, greenhouses, other agricultural structures, studios, docks, or wharves or the construction of structures such as decks, patios, porches, garages, or studios as additions to existing structures; provided that the use of any structure constructed under this subsection with the exception of agricultural structures shall not be used in any manner for commercial activities.

Nothing in this act shall be construed to prohibit the planning board of a town on Martha's Vineyard from accepting for consideration for approval any definitive subdivision plan pursuant to chapter forty-one of the General Laws, provided that such definitive subdivision plan was duly submitted to said planning board prior to the effective date of this act. Nothing in this act shall be construed to prohibit said planning boards from accepting for consideration for approval after the effective date of this act any preliminary or definitive subdivision plans pursuant to chapter forty-one of the General Laws, provided, however, that no approval on any definitive plan shall be granted by a planning board before the end of the temporary moratorium.

SECTION 8. Prior to any commission action pursuant to sections nine or fourteen, and within one year following the effective date of this act, the commission shall submit to the secretary of communities and development (a) standards and criteria which the commission proposes to use in determining whether or not a proposed area is one of critical planning concern as that term is defined in section nine of this act; and (b) standards and criteria which the commission proposes to use and to be used by municipal authorities in determining whether or not a proposed development is one of regional impact as that term is defined in section thirteen.

The secretary of communities and development, with the concurrence of such other members of the governor's cabinet as the governor shall designate for this purpose, may approve, disapprove or amend and approve with the advice and consent of the commission, the standards and criteria regarding designation of districts of critical planning concern and review of developments of regional impact if such standards and criteria are in accordance with the purposes of the commission. The secretary of communities and development and such other cabinet members designated by the governor shall approve, disapprove, or amend and approve standards and criteria submitted to them within forty-five days after the receipt of such standards and criteria.

SECTION 9. The commission may, after notice to all municipalities which include within their boundaries any part of the area of a proposed district of critical planning concern and after notice and public hearing pursuant to section two of chapter thirty A of the General Laws, designate specific geographical areas on Martha's Vineyard as districts of critical planning concern. The designation of such districts shall be made only in accordance with the standards and criteria for districts of critical planning concern approved pursuant to section eight.

A district of critical planning concern may be designated only for (a) an area which possesses unique natural, historical, ecological, scientific, or cultural resources of regional or statewide significance; (b) an area which possesses marginal soil or topographic conditions which render it unsuitable for intense development; or (c) an area significantly affected by, or having significant impact on, an existing or proposed major public facility or other area of major public investment. A major public facility is any publicly owned facility of regional importance except:

(1) any public facility operated by a municipality primarily for the benefit of the residents of that municipality, or by any agency serving primarily the residents of one municipality;

(2) any street or highway which is not recognized as or maintained as a part of the state or federal highway system; or

(3) any educational institution serving primarily the residents of one municipality.

Nomination of areas for consideration for designation as districts of critical planning concern may be made by the commission or by a board of selectmen, planning board, board of health, or conservation commission of any of the towns affected by this act for any area within or without its municipal boundaries. Nominations also may be made upon petition of twenty-five taxpayers of any town on the island. Within forty-five days of the receipt of a nomination the commission shall accept or reject the nomination for consideration for designation upon a majority vote of its members. The acceptance of a nomination for consideration for designation shall be accompanied by a general statement of purpose, describing the reasons for acceptance of the nomination for consideration. Nominations which are not accepted for consideration shall be returned to their sponsors with a written explanation of the commission's reasons for not accepting the nomination within forty-five days of submission. The commission may consolidate nominations which pertain to the same geographical area or to areas which are contiguous or it may amend a nomination. Nominations accepted for consideration for designation which do not receive designation may be reconsidered for designation within one year of the original acceptance for consideration upon a vote of two thirds of the commission members.

In its designation of a district of critical planning concern, the commission shall specify why the area is of critical concern to the region, the problems associated with the uncontrolled or inappropriate

development of the area, and the advantages to be gained from development of the area in a controlled manner. The commission also shall specify guidelines for the development of the district. The issuance of such guidelines shall be based on, but need not necessarily be limited to, the following considerations:

(a) that development of the district will not result in undue water, air, land, or noise pollution, taking into account the elevation of the district above sea level, the nature of the soils and subsoils and their ability adequately to support waste disposal, the slope of the land and its effect on effluents, availability of streams and other conduits for disposal of effluents, and the applicable health, water resources and environmental regulations;

(b) that the existing water supply of the district will not be unreasonably burdened by any development;

(c) that development of the district will not result in increased beach erosion or damage to the littoral ecology or wetlands;

(d) that development of the district will not result in increased beach erosion or damage to the littoral ecology or wetlands.

In any application for a development permit which applies to an area within a district of critical planning concern, the burden of proof of compliance with the above considerations shall be on the applicant. The commission may amend or rescind the designation of a district in the manner provided for designation.

Nominations accepted for consideration for designation which do not receive designation from the commission within sixty days of the date of acceptance shall be returned to their sponsors with a written explanation of the commission's reasons for not granting the designation. Initial nominations for districts of critical planning concern shall not be submitted to the commission for twelve months following the effective date of this legislation, or until standards and criteria are approved as provided in section eight, whichever period is the lesser.

SECTION 10. No municipality shall grant a development permit applicable within a district of critical planning concern except in accordance with regulations promulgated pursuant to section eleven.

The acceptance of a nomination for consideration for designation of a district of critical planning concern shall suspend the power of a municipality to grant development permits applicable within the district; provided, however that until regulations for the district adopted pursuant to section eleven have become effective, a municipality may grant development permits, applicable within the district if:

(a) the type of proposed construction, improvement, or alteration is essential to protect the public health, safety, and general welfare because of an existing emergency certified by the commission, and,

(b) a development ordinance or by-law had been in effect immediately prior to the nomination of such area and development permits would have been granted under such ordinance or by-law.

SECTION 11. After designation of a district of critical planning concern, a municipality whose boundaries include all or part of the

district may adopt regulations in accordance with the guidelines for the development of the district as set forth in the designation. In adopting such regulations, each municipality shall have all of the powers it otherwise had under the General Laws. A copy of regulations so adopted shall be transmitted to the commission. If the commission determines that the regulations adopted by a municipality comply with the guidelines for the development of the district specified in the commissions' designation of the district, the commission shall, after notice to all municipalities which include within their boundaries any part of the district of critical planning concern and after notice and public hearing pursuant to section two of chapter thirty A of the General Laws, approve or amend and approve such regulations. When two or more municipalities may, pursuant to this act, adopt regulations for areas within a single district, the commission shall encourage such municipalities to adopt compatible regulations.

If a municipality whose boundaries include all or part of the district fails to submit regulations which comply with the guidelines for the development of the district within three months after the designation, the commission may after notice to such municipality and after notice and public hearing pursuant to section two of chapter thirty A of the General Laws, adopt regulations applicable to such municipality's portion of the district. Such regulations shall specify the extent to which they shall supersede the otherwise applicable local development ordinances and by-laws or be supplementary thereto. Regulations so adopted shall be only the types specified in section three.

All regulations so adopted shall be incorporated, without regard to the provisions of section thirty-two of chapter forty of the General Laws, by the municipality into the official ordinances, by-laws, and maps of the municipality and shall not be effective prior thereto. Such regulations shall be administered by the municipality as if they were part of its development ordinances and by-laws. If such a regulation requires enforcement by an administrative office or body which has not been constituted by a municipality, the board of selectmen of the municipality shall enforce said regulation. At any time after the adoption by the commission of such regulations, the municipality concerned may adopt regulations which, if approved by the commission as provided in the preceding subsection, shall supersede any regulations adopted by the commission pursuant to this subsection.

A municipality may amend or rescind regulations in the manner provided for adoption and approval.

SECTION 12. If the commission has not approved or adopted regulations applicable to the entirety of a district within twelve months after designation of such district, the designation of such part for which regulations have not been approved or adopted shall be terminated. No part of the area formerly designated as a district shall again be designated as a district for a period of twelve months from

the date of such termination. Notice of such termination shall be given in the same manner as provided for designation.

SECTION 13. The commission shall adopt and submit for approval, pursuant to section eight, standards and criteria which specify the types of development which, because of their magnitude or the magnitude of their effect on the surrounding environment, are likely to present development issues significant to more than one municipality of the island of Martha's Vineyard. For the purpose of this act, such types of development shall be termed "developments of regional impact".

In adopting standards and criteria pursuant to this section, the commission shall consider, but shall not be limited by, the following considerations:

(a) the extent to which a type of development would create or alleviate environmental problems, including, but not limited to, air, water, and noise pollution;

(b) the size of the site to be developed;

(c) the amount of pedestrian and vehicular traffic likely to be generated;

(d) the number of persons likely to be residents, employees, or otherwise present;

(e) the extent to which a type of development is intended to serve a regional market;

(f) the location of a type of development near a waterway, publicly-owned land, or a municipal boundary; and

(g) the extent to which the development would require the provision of the following municipal or regional services: solid waste disposal, public water supplies, sewage treatment facilities, parking facilities and tourist services, and public education facilities.

SECTION 14. The governmental agency within each municipality which has responsibility for issuing a development permit, or when multiple permits are required, the local planning board, or board of selectmen in the absence of a planning board, shall in accordance with the standards and criteria approved pursuant to section eight determine whether or not a proposed development, for which application for a development permit has been made, is one of regional impact, it shall refer the application for the development permit to the commission.

SECTION 15. The commission shall review all applications for development permits for developments of regional impact and shall permit the referring agency to grant a development permit for such a development only if it finds, after notice and public hearing pursuant to section two of chapter thirty A of the General Laws, that:

(a) the probable benefit from the proposed development will exceed the probable detriment as evaluated pursuant to section sixteen;

(b) the proposed development will not substantially or unreasonably interfere with the achievement of the objectives of the general plan of any municipality or the general plan of Dukes county;

(c) the proposed development is consistent with municipal development ordinances and by-laws, or, if it is inconsistent, the inconsisten-

cy is necessary to enable a substantial segment of the population of a larger community of which the municipality is a part to secure adequate opportunities for housing, education, or recreation, and

(d) if the proposed development is located in whole or in part within a designated district of critical planning concern, it is consistent with the regulations approved or adopted by the commission pursuant to section eleven above.

SECTION 16. In making a finding of the probable benefits and detriments of a proposed development, the commission shall not restrict its consideration to benefits and detriments within the municipality of the referring agency, but shall consider also the impact of the proposed development on the areas within other municipalities. Such probable benefits and detriments shall be considered even if they are indirect, intangible or not readily quantifiable. In evaluating the probable benefits and detriments of a proposed development of regional impact, the commission shall consider, together with other relevant factors, whether:

(a) development at the proposed location is or is not essential or especially appropriate in view of the available alternatives on the island of Martha's Vineyard;

(b) development in the manner proposed will have a more favorable or adverse impact on the environment in comparison to alternative manners of development;

(c) the proposed development will favorably or adversely affect other persons and property, and if so, whether, because of circumstances peculiar to the location, the effect is likely to be greater than is ordinarily associated with the development of the type proposed;

(d) the proposed development will favorably or adversely affect the supply of needed low and moderate income housing for island residents;

(e) the proposed development will favorably or adversely affect the provision of municipal services and the burden on taxpayers in making provision therefor;

(f) the proposed development will use efficiently or burden unduly existing public facilities or those which are to be developed within the succeeding five years;

(g) the proposed development will aid or interfere with the ability of the municipality to achieve the objectives set forth in the municipal general plan; and

(h) the proposed development will further or contravene land development objectives and policies developed by regional or state agencies.

Whenever the commission is required to find whether the probable benefit from a proposed development of regional impact will exceed the probable detriment, it shall prepare a written opinion setting forth the grounds of its findings.

SECTION 17. No referring agency shall grant a development permit for a development of regional impact except with the permission of the commission. In permitting the referring agency to grant a development permit for a development of regional impact the com-

mission may also specify conditions to be met by the developer to whom the permit is being issued for the purpose of minimizing economic, social, or environmental damage.

SECTION 18. Any party aggrieved by a determination of the commission may appeal to any court of competent jurisdiction. The court shall hear all pertinent evidence and shall annul the determination of the commission if it finds that said determination is unsupported by the evidence or exceeds the authority of the commission, or it may remand the case for further action by the commission or may make such other decree as is just and equitable. Costs of the appeal shall not be allowed against the commission unless it shall appear to the court that the commission acted with gross negligence, bad faith or malice. Costs of such appeal shall not be allowed against the appellant unless it shall appear to the court that the appellant acted in bad faith or with malice.

SECTION 19. Effective upon the date of the first meeting and upon the organization of the commission, chapter six hundred and ninety of the acts of nineteen hundred and sixty-six is repealed. All powers and duties of the Dukes County Planning and Economic Development Commission, including those authorized by the commonwealth and the federal government, shall be transferred to the commission and the terms of office of the members of the Dukes County Planning and Economic Development Commission shall expire at that time. For the purposes of executing the functions of the Dukes County Planning and Economic Development Commission as transferred, the commission boundaries shall include all of the land in Dukes county, specifically including the Elizabeth Islands and the Indian Common Lands.

All employees of the Dukes County Planning and Economic Development Commission who hold positions with the Dukes County Planning and Economic Development Commission immediately prior to the repeal of chapter six hundred and ninety of the acts of nineteen hundred and sixty-six shall be transferred to the commission at the time of repeal of said chapter six hundred and ninety. Such transfer shall be without impairment of seniority, retirement, or other rights or benefits, without interruption of service, and without reduction in compensation or salary grade notwithstanding any change in job title or duties resulting from such transfer.

All books, papers, records, documents, equipment, lands, interests in land, buildings, facilities, and other property, both personal and real, which immediately prior to the repeal of chapter six hundred and ninety of the acts of nineteen hundred and sixty-six, are in the custody of the Dukes County Planning and Economic Development Commission shall be transferred to the commission as of the date of the repeal of said chapter six hundred and ninety.

All monies heretofore received from any source by the Dukes County Planning and Economic Development Commission for the performance of its duties and remaining unexpended on the date of the repeal of said chapter six hundred and ninety shall be transferred to the commission as of the date of repeal of said chapter and shall be available for expenditure by the commission.

All duly existing contracts, leases, and obligations of the Dukes County Planning and Economic Development Commission which are in force immediately prior to the repeal of said chapter six hundred and ninety shall be transferred to the commission as of the date of the repeal of said chapter. All petitions, hearings, and other proceedings duly brought before, and all prosecutions and legal and other proceedings duly begun by the Dukes County Planning and Economic Development Commission which arise from or relate to the exercise of the powers or duties of said commission and which are pending immediately prior to the repeal of said chapter six hundred and ninety, shall continue unabated and remain in force notwithstanding the repeal of said chapter.

In addition to performing its functions under this act, the commission may perform any function assigned to it under federal law.

SECTION 20. The provisions of this act are severable, and if any of its provisions shall be held unconstitutional or invalid by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the remaining provisions.

Approved July 27, 1974.

Chap. 638. AN ACT ABOLISHING THE WALDEN POND STATE RESERVATION COMMISSION AND TRANSFERRING THE CARE AND MAINTENANCE OF THE WALDEN POND STATE RESERVATION TO THE DEPARTMENT OF NATURAL RESOURCES.

Be it enacted, etc., as follows:

SECTION 1. The Walden pond state reservation commission, established by chapter four hundred and ninety-nine of the acts of nineteen hundred and twenty-two, is hereby abolished, and the care and maintenance of the Walden Pond State Reservation including all of its facilities and equipment is hereby transferred to the department of natural resources.

The full-time permanent employees of said commission shall, on the effective date of this act, be transferred to positions within the department of natural resources, without impairment of seniority, retirement, vacation or other rights, and shall not be lowered in rank or compensation nor subjected to a qualifying examination or the serving of a probationary period and shall be deemed to be permanently appointed thereto under the provisions of chapter thirty-one of the General Laws.

SECTION 2. The balance, on the effective date of this act, of all monies appropriated for the maintenance and operation of the Walden Pond State Reservation in the hands of the county treasurer of Middlesex county shall be credited to Middlesex county; provided, however, that said county shall pay all bills or obligations incurred by the Walden pond state reservation commission for such operation and maintenance prior to said effective date.