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Conservation Restrictions

1

A New Way to Protect Open Space

There were only a handful of people present at a special meeting of the corporation held at General Headquarters in Milton on that April afternoon in 1971, but proxies numbering 115 easily created a quorum.

The matter at hand was a much-discussed and long-heralded amendment to the charter of The Trustees of Reservations which would permit it to accept conservation restrictions or easements, a practice authorized by Act of the State Legislature. The motion was approved unanimously and the organization entered a new era in land conservation.

A conservation easement or restriction, as they are called in Massachusetts, is a legal agreement between the owner of a property and a non-profit organization, which restricts the use of a defined area of land without affecting the ownership thereof. Conservation restrictions are designed to maintain a parcel of land in its "natural, scenic, and open condition" by transferring the rights to develop it to a land trust, a municipal Conservation Commission, or to a state or federal resource agency. The law also provides for preservation restrictions designed to protect a structure, feature or site "historically significant for its architecture, archaeology or associations."

The most significant characteristic of a conservation restriction is that the land affected remains private property. No rights are provided for public access unless, of course, specific permission is granted by the owner. Conservation restrictions allow landowners to enjoy their properties as they choose on the condition, of course, that their use is consistent with the terms of the restriction. They may continue to live on it, or use it for

“agricultural, farming or forest” purposes, provided it is kept in its “natural, scenic and open condition.”

Properties protected with conservation or preservation restrictions may be sold or leased. Their disposition may also be directed by will. The restriction runs with the land or building and will always be binding upon lessees, grantees, heirs, or assigns — indeed, upon any other future owner.

Restrictions are recorded at the Registry of Deeds and it is the responsibility of the charitable organization or public agency which holds the restriction to see that its provisions are enforced. This involves periodic inspections of the property by the holder of the restriction and, in the case of a violation, possible legal action.

Restrictions that are given in perpetuity and meet Internal Revenue Service criteria, entitle a donor to a Federal income tax deduction. The appraised value of the restriction may also be deducted from the donor’s estate, thus perhaps significantly reducing estate taxes.

Many early conservation restrictions negotiated by The Trustees and other organizations allowed landowners to reserve the right to build a specified number of houses within the restricted area, subject, of course, to the terms and purposes of the restriction. Such arrangements came to be called “floating house lots” because their exact location would not be established until some time in the future when the owner of the land and the holder of the restriction could agree upon a site.

In 1981, this practice was challenged by assessors in the Town of Medfield (see chapter 8). One important result of the initially unfavorable decisions in the case was to focus attention on the need for more care and specificity in locating structures, especially residences, within a restricted area.

Two approaches to the matter are now commonly employed, depending upon the particular characteristics being considered, the wishes of the donor, and the purposes of the restriction. One is to exclude from the restriction any lots which may be built upon in the future. The other is to establish defined “building envelopes” within the restricted area. Because these “envelopes” are controlled by the approval process and standards written into the restriction itself, any development, construction or reconstruction within a “building envelope” is subject to the holder’s review and approval.

Conservation restrictions offer a number of unique features. For landowners, they can provide a flexible way to help keep a property in family ownership by reducing its value for estate tax purposes. And, as the owner retains title to the restricted land, it need not be open to the public. If it is to qualify for tax advantages, however, the restricted land must offer significant public benefits. It can protect a scenic vista along a public roadway, for

example, a major wetland, prime agricultural soils, or an important wildlife habitat.

Communities often prefer conservation restrictions to gifts in fee as a way to preserve open space. Restricted land may still be taxed as private property although, theoretically, at a reduced rate. It is difficult, however, to predict how local real estate assessors will act. Cities and towns vary widely in how they appraise land restricted for conservation purposes, although the law does require that the parcel be assessed separately.

Finally, land trusts also find conservation restrictions useful as another way to protect a property's scenic and environmental values where public access is not needed. The cost of maintaining and enforcing restrictions is usually far less than managing a parcel of land which is open for public use and enjoyment. It has often been pointed out, however, that the majority of restricted properties at present are still in the hands of the original donor. Ownership by another individual, perhaps less interested in the environment, may raise the costs of enforcement in the future.

Today, conservation easements or restrictions are used by hundreds of land trusts throughout the United States. They are not, however, a recent invention. As early as 1930, they were employed to protect streams and scenic roads in the nation's capital as well as vistas along the Blue Ridge Parkway in Virginia and North Carolina, a property of the National Park Service.

In Massachusetts, the Conservation Restriction Act (Chapter 184, SS 31, 32 and 33) was authorized by the Legislature as early as 1969. Its requirements, which call for the approval of the Board of Selectmen in the community where the restriction is located, as well as the signature of the Secretary of the Commonwealth's Executive Office of Environmental Affairs, have often been cited as a model for the country as a whole because of their oversight provisions.

2

River Corridors: a Natural for Restrictions

Work had already begun to acquire The Trustees of Reservations' first conservation restriction before the special meeting of the corporation had taken place in April 1971.

More than half a year earlier, Standing Committee members Theodore Chase and Thomas B. Williams, and the Director, had met with Mrs. Muriel Lewis, her son George and her brother Richard Saltonstall to discuss the preservation of some two miles

of frontage on the Charles River in Sherborn. A part of their properties bordered Rocky Narrows and all of it was within the project area of The Trustees' just-launched Charles River Protection Program. George Lewis, Sr., had served as the Chairman of the Local Committee for Rocky Narrows Reservation and the Lewis family had been generously interested in the preservation of the river and its environs for many years.

In Ipswich, too, discussions had begun with a score or more landowners along Argilla Road about using conservation restrictions to protect salt marsh along the Castle Neck River, a tidal estuary which borders Crane Memorial Reservation and the islands of Crane Wildlife Refuge.

The project was to be a part of the ongoing Ipswich-Essex Salt Marsh Protection Program initiated earlier at the urging of Ipswich resident and Advisory Council member Charles W. Eliot II. Designed to be a comprehensive and cooperative neighborhood effort, the program to protect the river was coordinated and administered locally by volunteers John C. Vincent, Jr., an attorney whose advice proved to be invaluable in the process, and architect Charles S. Shurcliff, Jr., a resident of Argilla Road, who met personally with each landowner.

By the end of 1971, it was clear that conservation restrictions were going to play a major role in The Trustees of Reservations' land conservation efforts. The Standing Committee wisely proposed that a "contingency fund" be established to enable the organization to meet legal expenses which might be involved in defense of easement agreements. It was to be called the Conserva-

Members of the study team for the Upper Charles River Protection Program confer at Harvard's Graduate School of Design. From left, Ellis N. Allen, Chairman, Local Committee for Rocky Woods Reservation; Project Chief Garlund S. Okerlund, Department of Landscape Architecture, Harvard School of Design; GSD Associate Professor Peter L. Hornbeck and Project Chairman Thomas B. Williams, both members of the Standing Committee; David P. DeSmit, Project staff; and Professor Charles W. Eliot II, a member of the Advisory Council.



tion Restriction Fund and it was to set a precedent followed today by land trusts throughout the country.

It was agreed unanimously by the board that "contributions should be sought to accompany restrictions which may be accepted, to provide funds for their administration, maintenance and enforcement should the need arise."

All contributions were to become a part of a pooled reserve fund, the income and principal of which could both be used in case of a legal challenge. Standing Committee Chairman Augustus P. Loring initiated the fund with a contribution of \$200. Thanks to many other generous gifts along the way, the Conservation Restriction Fund today totals more than \$300,000. Considering the possible costs associated with litigation, and the organization's growing number of conservation restrictions (which topped 100 in 1991), gifts to the Fund continue to be sought whenever a restriction is acquired.

The Lewis restriction, which preserved wetland and upland along the Charles River, was recorded in December 1972. Some 81 acres in all, it was The Trustees of Reservations' first conservation restriction. With Broadmoor Wildlife Sanctuary nearby, the Saltonstall restriction was given to Massachusetts Audubon Society.

Today, nearly 20 years later, The Trustees of Reservations holds 16 conservation restrictions (located in eight different riverside communities) protecting a total of 663 acres of wetland and upland along the upper Charles River and two of its tributaries, Bogastow Brook and Trout Brook. Many hundreds of additional acres within the river corridor, of course, are preserved by properties held in fee, such as Noon Hill, the Shattuck Reservation, and Charles River Peninsula.

By 1974, 14 landowners along Argilla Road in Ipswich had preserved a total of 247 acres of upland and salt marsh bordering the Castle Neck River, again using conservation restrictions.

The concept was beginning to catch on with landowners throughout the Commonwealth. In the next few years, The Trustees of Reservations received gifts of conservation restrictions protecting Prospect Hill, Chilmark, the Vineyard's highest hilltop, as well some 75 acres of woodland and ocean frontage on the island's north shore. Another important restriction protected 63 acres of agricultural land in Medfield bordering Hartford Street and Rocky Woods.

3

Hunnewell Pinetum and Seven Gates Farm

In 1975, The Trustees of Reservations also accepted restrictions protecting some nine acres of land in Wellesely, site of "a remarkable collection of evergreens." The "Pinetum," much respected and admired by the Arnold Arboretum (which itself was unable to accept the restriction), was created in 1867 by Hollis H. Hunnewell whose aim was "to plant in it every conifer, native and foreign, that will be found sufficiently hardy to thrive in our New England climate." More than a century of experimentation with their growth and culture has resulted in the production of scores of new evergreens which are grown widely throughout the region today.

Because of the temporal nature and obvious fragility of any horticultural collection, The Trustees of Reservations prudently reserved the right to transfer the Hunnewell restriction to an organization of similar purposes, perhaps local, should that be necessary as time passes.

Meanwhile, discussions had begun as well with the president and shareholders of Seven Gates Farm, Chilmark, Martha's Vineyard, about the possibility of using conservation restrictions to protect areas of land at the property which were held in common. Originally purchased and planned at the end of the last century by Harvard geologist Nathaniel Shaler, Seven Gates includes more than 1,500 acres. Some 476 acres are allocated as house sites; the remainder are owned in common by the corporation's stockholders.

The common land is extraordinary in its beauty and diversity. It includes a mile and one-half of sand beach and rocky shore on Vineyard Sound, three freshwater ponds, as well as open fields and woodland. Topography and soil conditions have encouraged the growth of sizable trees for the Vineyard, and there is an impressive forest of beech. Scenic cart roads and trails wind their way through the property. And the views everywhere are much the same today as they were a century ago.

Seven Gates is also a uniquely-planned community. Professor Shaler insisted that no one house be visible from another. The result is that buildings are sited in remarkable harmony with the natural environment that surrounds them.

In December, 1975, following review of a number of drafts, a conservation restriction protecting 1,126 acres of common land at Seven Gates was accepted by the Standing Committee.

Of interest among its usual provisions preserving the natural qualities of the environment, were the following: a) that "not more than 10 additional residences. . . shall, without the consent of [The

Trustees of Reservations] or their successors, be erected on the Restricted Property." And b) that "all the foregoing restrictions shall automatically terminate with respect to any property taken by eminent domain or affected by any governmental action for which the owners would be entitled to compensation had these restrictions not been imposed, upon the effective date of such taking or action."

This so-called "snap-back" provision was designed to maintain the full and fair market value of the property in case of condemnation by a government agency, local, state or Federal. It was hoped that this would discourage eminent domain by preventing the land from being taken at its restricted value or, as one landowner put it, "on the cheap."

The conservation restriction at Seven Gates Farm preserves a major portion of the north shore of Martha's Vineyard and every member of the Standing Committee agreed with Charles W. Schmidt, President of Seven Gates, who told *The Vineyard Gazette* "It's a great feeling among those who love the land to be able to preserve some of the most beautiful. . . in the world."

Schmidt, who with former Seven Gates President Richard D. Leahy, led the campaign to protect the common land, also initiated the second phase of the preservation project, the protection of individual house lots, also with conservation restrictions. By 1979, landowners had given The Trustees restrictions maintaining the open and scenic condition of five lots totalling 128.5 acres.

East of Seven Gates, a restriction very generously given to The Trustees of Reservations in 1975 by Dr. and Mrs. Robert Gantz protects 75 acres of their magnificent property with frontage on Vineyard Sound.

4

Nashawena Island: Vision and Generosity at Work

As land values rose, shareholders of properties held in trust, such as those at Seven Gates Farm, were justifiably concerned about the properties they held in common and their ultimate effect on their estate taxes. Could they continue to afford to pass these shares through from generation to generation? One of the ways the value of the land could be reduced was to give away the development rights using conservation restrictions.

In early 1976, the managing trustee of another major property contacted The Trustees of Reservations. He was Stephen H.

Forbes of Nashawena, one of the dramatically beautiful Elizabeth Islands which separate Vineyard Sound from Buzzard's Bay.

There was, of course, mixed with tax considerations, a genuine concern as well about the future of these magnificent properties themselves. In view of rising costs, would coming generations be able to preserve their open landscapes, or would they be forced to subdivide and sell off sections to help pay real estate taxes and other operating expenses? It seemed to the present generation of managers that now was the time to act. Discussions began immediately on a draft restriction for Nashawena.

One of the largest of the Elizabeth Islands (others of major size are Naushon, Pasque and Cuttyhunk), Nashawena totals some 1,900 acres. Primarily grassy moorland, the island is home to more than 300 sheep as well as wildlife of every description. Its landscape is wild and rolling. The open downs and high, sand cliffs are spectacular. And the views in every direction are extraordinary. Indeed, the *Massachusetts Landscape Inventory* lists Nashawena as "Class A — Distinctive," its highest category.

There are several freshwater ponds on the island as well, resting and feeding areas for waterfowl, and about five major structures. These include a two-family, white clapboard farm house, built prior to 1800 and located just up from the harbor; a large barn which can shelter the cows and horses with an attached sheep shed; a spring house; toolhouse; grain shed and two hen houses.

Further to the west are two other houses which are occupied at various times and seasons by members of the Forbes family and



Representatives of The Trustees of Reservations visit Nashawena each year to inspect the property's conservation restriction. With Director Fred Winthrop, far right, are, standing, Joannah Harris and Advisory Council member Nancy Clafin. On this occasion, Nashawena's welcoming committee included Amelia Forbes, seated, and Elliot Forbes, left foreground.

their guests. In a small burying ground, southwest of the farmhouse, there is a headstone dated 1736 and marked with the name of "Sarah Roon."

By design and by desire, life on the island is simple, as Stephen Forbes writes, in part, in this delightful memorandum dated 1976: "The two staff members and their wives [who run the farm and care for the structures] live the year round on the island. [Winters] are very quiet except for emergencies such as stranded vessels or accidents. The wives sew or knit or crochet or bird watch [and help] the men haul or cut fuel which is now wood, feed the animals, mend fences, do some repairs, keep up the paths, pump out the 'Islander' (a 40-foot, heavy-hulled power boat used to service the island), and [do] other necessary chores.

"In the summer, the island often hums with activity. Usually, the Edward Forbes' descendants come down for periods ranging from 10 days to seven or eight weeks. . . the Waldo Forbes' descendants come less [often]. Guests are frequent and partake of the island life which is rather varied. Riding, swimming, occasional fishing, occasional sailing or rowing, watching the farm animals (cows, hens, ducks and geese), cooking, washing dishes, singing, painting, [doing] odd repairs, reading, writing, photography, the list is endless. A very healthy outdoor life." Twice each year also, vast numbers of people gather to take part in a drive to collect and corral the sheep for shearing.

There are also, Stephen Forbes adds, "two vegetable gardens, one of pretty fair size. We grow corn, potatoes, squash, asparagus, peas, carrots, spinach, cabbage, celery, lettuce, onions, beets, and other truck garden products, including melons." Two tractors and a tilling machine, a mower and a manure spreader, help make work easier.

A Visting Committee from The Trustees of Reservations (Standing Committee members Theodore Chase; Peter L. Hornbeck; Robert Livermore, Jr.; Edo Potter; Thomas B. Williams and Director Gordon Abbott, Jr.) inspected the island with Mr. and Mrs. Forbes in May of 1976. By July, the Standing Committee had accepted the gift of a restriction and President Charles E. Mason, Jr., had signed the document for The Trustees of Reservations. It limits the construction of additional dwellings to 15, with no more than six to be built in any 20-year period. It also includes the so-called "snap-back" provision (today considered unnecessary), which first appeared in the conservation restriction for Seven Gates Farm, in case of a taking by eminent domain. And contributions were pledged over the years to the Conservation Restriction Fund.

In 1976, the 1,900-acre island of Nashawena was the largest land area in the Commonwealth to be protected with a conservation restriction. To preserve such a unique and historic landscape was an extraordinary accomplishment, made possible, of course,

by the vision and generosity of the Trustees of the Nashawena Trust. To Managing Trustee Stephen Forbes, who steered the restriction to a safe harbor, The Trustees of Reservations, on behalf of the public at large, expressed a lasting gratitude.

5

For Bothways Farm, Flexibility Was the Answer

Bothways Farm is the southern gateway to the Town of Essex, which today still mixes an historic riverfront where fishing vessels were constructed as early as the mid-seventeenth century, with the charm and beauty of an agricultural landscape.

Some 98 acres of land, Bothways Farm is bisected by Southern Avenue, which connects Essex and Manchester. Its barn, outbuildings and cottages, painted a cheerful yellow with white trim; its fields marked with gray stone walls and dotted with grazing sheep; and its willow pond where ducks and geese splash and play, are appreciated by thousands who pass it yearly. And all is maintained in mint condition by its owner, Mrs. Frederick C. Bartlett of Beverly.

For years, the property had been on every land trust's list for preservation. This was Mrs. Bartlett's desire as well, but by 1975, no satisfactory plan had been produced. There were those who proposed that it become a demonstration farm where the public could learn about agriculture and the ways of raising domestic farm animals. This, of course, would have called for an endowment of major proportions. There were others who urged that it be given as open space to Essex to be used as a town park.

The Trustees of Reservations, however, suggested a conservation restriction. Its flexibility would allow Mrs. Bartlett's heirs to sell the property upon her death and even subdivide it, making use of each of the outlying cottages, if the zoning by-law then permitted it, as separately-owned dwellings. The remainder of the property could not be built upon, thus ensuring that Bothways Farm would retain its open and scenic condition in perpetuity, its lovely landscape looking always much the same as it does today. With the restriction, the farm would also continue as private property, still providing valuable real estate taxes to the community.

Mrs. Bartlett and her advisors were delighted with the idea (as, indeed, was the Town of Essex), and in November 1976, the

Standing Committee accepted her gift with the understanding also that a contribution would be made to the Conservation Restriction Fund.

One condition of the restriction was that it permit the construction of a single, primary dwelling north of the barn which could serve a future owner as the main house. No such structure then existed.

Although there was some apprehension that seeking an additional gift to the Conservation Restriction Fund might be asking too much of an already generous donor, it did not turn out that way. Indeed, The Trustees' experience shows that landowners in general seem to understand and appreciate that the existence of the fund shows that the organization means business and will defend the terms of their restrictions against all comers. It is, in effect, seen as welcome insurance for the future.

Some years later, with a symbolic 100 friends and family members, Mrs. Bartlett, bright and spry as ever, celebrated her centennial birthday with an elegant luncheon on a sunny, summer day in the spruce grove at Bothways Farm. Perhaps the best birthday present of all was the knowledge that the farm she loved so much would be preserved as open space forever.

6

Tuckernuck Island: a Race with Time

The island of Tuckernuck lies west of Nantucket, some three miles from Madaket Harbor. Approximately two miles long and one mile wide, it totals some 980 acres. Together with Cape Cod, Martha's Vineyard and Nantucket, Tuckernuck (and its neighbor Muskegat) mark the southeastern edge of the Laurentide Ice Sheet which covered much of North America until 15,000 years ago.

The island's first settlers were Indians. "Tookernook" is Algonquin for "loaf of bread," which may have been how the island was shaped in earlier days. The first Europeans, fishermen and farmers, arrived in the late seventeenth or early eighteenth century and by 1829 there were 30 houses on the island.

Since its beginning, life at Tuckernuck has been shaped by the always-changing natural world around it, and this has been its magic. Its size, isolation and lack of twentieth century services; the small number of now seasonal residents; and its delicate and dynamic ecosystems, make it a unique resource.

The simplicity of its essentially eighteenth century community is still intact. It is a place where summer fogs are quiet and

comforting; where storms are always exciting and where dawns and sunsets can be unsurpassed in beauty.

Its hilly morain, flat and expansive moors and low, sandy ocean shoreline, make it an ideal model for studying and monitoring coastal processes. It is important archaeologically because of its early Indian settlements. It supports a varied collection of flora and fauna and is a favorite spot for shore and surf fishing.

Above all, it is a place where people can be individuals, private unto themselves, but without the need for fences to protect their privacy. None of these alone make Tuckernuck unique, but taken together they create the spirit of the island, still a place, so rare today, where man lives quietly in harmony with nature.

Landowners at Tuckernuck, many of whom represent a fourth generation or more, have a special feeling for the island's wild beauty and remoteness, and a fierce pride in the simplicity and strength-giving qualities of its way of life. Yet in 1977, the island was caught in the whirlpool of a rapidly changing world. Pressures from every side menaced its tranquility and threatened ultimately to destroy the fragile beauty of its landscape.

There were at the time 26 houses on the island. Under the existing zoning by-law for the Town of Nantucket, an additional 726 standing structures, including 363 dwelling units and 363 accessory buildings, could be built if landowners exercised their rights and maximized the development of their properties. Although this was obviously unlikely, the potential was still there and a building boom was underway on both the Vineyard and Nantucket. One thing was certain: changes would take place at Tuckernuck in the years ahead.

To their great credit, property owners, young and old, were already searching for a way to deal with the pressures that were sure to come. On their own they had completed an extensive inventory entitled *Studies in the Ecology and Social History of Tuckernuck Island* to support a proposed change in zoning for Nantucket's out-islands. They had also begun conversations with The Trustees of Reservations about how to protect the island's precious resources in the years ahead.

Some months of discussion followed. There were meetings at General Headquarters in Milton with Henry A. La Farge, president of the Tuckernuck Landowners Association, and later in New York City with additional property owners. It seemed both to members of a special Steering Committee (La Farge, Scott Bartlett, William T. Howard, Mrs. Stanley Smith, Mrs. John Walker and Frederick R.H. Witherby) and to The Trustees of Reservations that a series of conservation restrictions would provide the best protection in the shortest time.

Wrote La Farge: "We estimate that 50 percent of the landowners will be interested in a restriction." There were 47 in all, but

many of those already committed were owners of larger parcels which had special environmental significance.

Of major interest also was the fact that the Tax Reform Act of 1976, just approved by Congress, provided for the deductibility for Federal income tax purposes of gifts to a charitable corporation of conservation restrictions of not less than 30 years' duration, if the gift or transfer was made prior to June 14, 1977. Congress, in effect, had created a window of opportunity of one year's duration, during which a limited-life restriction would receive tax benefits. After June 14, to qualify for deductibility, all restrictions would have to be perpetual.

For landowners at Tuckernuck, a 30-year restriction had considerable appeal. First of all, the rush to record before June 14 left too little time to persuade each landowner to join the conservation program. This meant that some would reduce the value of their properties significantly, perhaps increasing the value of a neighbor's who ultimately intended to develop. That seemed hardly fair.

Second, a scattered pattern of restrictions simply wouldn't provide the level of protection the island deserved. What was needed was a comprehensive program agreed to by every landowner. But it would involve completion of the inventory of the island's natural resources, the development of plans for the use of specific land areas including open space, the identification of future building sites, and an agreement on rights of way and access points for boats, the only practical way to reach the island in both good and bad weather. (A primitive landing strip for small aircraft did exist.)

A series of 30-year restrictions could provide time for this more comprehensive program of protection at least to be initiated and, if possible, completed. That was what sold the proposal to The Trustees of Reservations — that plus the fact that a number of the restrictions already proposed would protect significant portions of the island's two tidal ponds as well as major sections of its ocean shoreline. But June 14 was fast approaching.

In mid-April, at the River House in New York City, 13 Tuckernuck landowners (there were 20 at the meeting), whose properties totaled some 426 acres, told the Director they were sincerely interested in a program of 30-year conservation restrictions. A visiting committee of The Trustees of Reservations was organized immediately and arranged to meet on the island on May 20 and 21. With the deadline less than a month away, the race with time was on.

It was clear to visiting committee members Ann Brewer, Laurence Channing, Peter Hornbeck, Edo Potter and Director Gordon Abbott, Jr., that it was better at this point to concentrate on protecting key environmental areas of the island and to ask

owners of unconnected, smaller parcels of land inland, many of whom were willing to restrict their properties, to become a part of the proposed longer-range process of preservation.

Back in Boston, with now less than two weeks before the deadline for recording, the number of conservation restrictions in hand had dwindled to six. But they still preserved a total of 297 acres of land — some 30 percent of the island — all of it with pond or shore frontage. The Standing Committee had given the visiting committee authority to act and it agreed to accept the six restrictions.

Abbott and Tuckernuck Steering Committee members Mr. and Mrs. Frederick R. Witherby, who represented the grantors, flew to Nantucket on June 8 to present the restrictions to members of the Board of Selectmen for their approval. Duplicate copies had been delivered to Nantucket's Town Counsel in Wellesley, Massachusetts, and with his agreement reported by phone, the Chairman of the Board of Selectmen signed the documents the following day. They were then flown to Boston where Abbott picked them up by hand. A day later, on June 10, he met with Evelyn Murphy, the Commonwealth's Secretary for Environmental Affairs, who expressed her enthusiasm for the program to preserve Tuckernuck and added her signature to the restrictions.

Additional legal and administrative details (which included dealing with an estate) were finally completed at 2:30 p.m. on Monday, June 13. A chartered aircraft delivered the completed instruments to Nantucket. There they were met by Robert J. Marks, then Manager of The Trustees of Reservations' Coskata-Coatue Wildlife Refuge. Marks drove to the Registry of Deeds and recorded the documents at 3:40 p.m., 20 minutes before closing. The June 14 deadline had been met.

Today, nine permanent conservation restrictions, some of them formerly of 30-years' duration, are held locally by the Nantucket Land Council. The Trustees of Reservations holds one permanent restriction and four which will cease to exist after the year 2007. Work is underway to convert these to permanent status as well. Two properties are also protected with deed restrictions of 30 years' duration.

The job of preserving the open landscape of the island, however, is far from complete. And with growth and change still very much a threat to its special way of life, discussions continue about how to preserve the magic that is so much a part of Tuckernuck.

7

'For All Who Find Renewal in the Spirit of Nature'

There is little doubt that golf courses protect important areas of open space in their communities. Their landscapes are often scenic. Their vegetation, which varies in texture from smooth fairways and greens to rough grasses, shrubs and woodlands, is a fine habitat for song birds and small mammals. If there is a water hole, its pond can attract wildfowl as well as aquatic animals and fish. And a sizable number of golf courses throughout the country are also open for public use.

That is why in 1978, when discussions began with Mr. and Mrs. James N. Stavros about the possibility of using a conservation restriction to preserve Cape Ann Golf Course in Essex, The Trustees of Reservations expressed immediate interest.

There were, however, other reasons as well. The property, a landmark on the North Shore which the public had enjoyed for many years, bordered a marshland parcel of Crane Wildlife Refuge and had considerable frontage on scenic Route 133 which still provides passers-by with turn-of-the-century views of a primarily agricultural landscape.

For the Stavroses, the gift of a conservation restriction meant the surrender of a considerable sum of money which could have been theirs had the land been subdivided for development and sold to the highest bidder. That it was not, and instead placed in trust for the benefit of future generations, is a testimonial to their remarkable generosity and concern for the needs and aspirations of all mankind.

Mrs. Stavros, a graduate of Radcliffe College, had been a teacher in the Gloucester School System. James Stavros was born in Lagadia, Greece, a mountain town in the Peloponnesus, in 1892. At age 16, he left home and emigrated to the United States, settling in Gloucester. A veteran of World War I, he began his work as a factory hand. Later, despite difficulties with the English language, he graduated from Boston University and Suffolk Law School. He was associated with Cape Ann Golf Course for more than 50 years and was owner of the property from 1947 until his death in 1981.

Thanks to his generosity in his lifetime, and to the generosity of Mary Stavros in the years that followed, more than 173 acres of their land have been preserved, much of it with conservation restrictions.

The restriction protecting Cape Ann Golf Course has been used as a model by other communities around the country which



At White's Hill, Essex, Mrs. Mary Stavros, whose generosity made possible the James N. and Mary F. Stavros Reservation.

recognize the value and stability of knowing that significant areas of open space within their boundaries are protected in perpetuity.

White's Hill (which borders Cape Ann Golf Course) with its magnificent views of Ipswich Bay, Castle Neck, salt marsh and the tidal estuary of the Essex River, was sold by Mrs. Stavros to The Trustees of Reservations in 1988 for a fraction of its market value. Funds to meet its purchase price were raised from public subscription, and it is now a full-fledged reservation. The Trustees also holds an agricultural preservation restriction on some 70 acres of Stavros land west of Route 133.

At the dedication of White's Hill, Mrs. Stavros explained with gentle eloquence why she had chosen to preserve the property as open space and, indeed, why all her gifts of land had meant so much to her.

"This morning," she said, "I have two thoughts. The American Indian's closeness to the land as well as his idea of the spirit of a place. I believe that special places have special roles. It is very painful to me when they are ignored — when a marsh is destroyed for a shopping mall, a tract of woodland is demolished for a supermarket, or the rocky contours of a hillside are blemished by unsightly and inappropriate buildings. I, therefore, feel great gratitude that you, The Trustees of Reservations, have helped me save my lovely land from ruthless and insensitive exploitation."

She paused and spoke again. "My second thought. Shortly a stone will be placed here with the inscription: 'This land is a memorial to James Nickis Stavros; for the enjoyment of all who find renewal in the of spirit in Nature.'

"In this cluttered and complex life, we all need space — vistas of beauty, solitude, relaxation, recreation for assessing values, renewing courage, receiving inspiration. I believe the role of this place to be the enrichment of life for all who come here or pass by; and I hope they will appreciate this beauty as my husband did. So shall we all share in something good."

Little more that day needed to be said.

8

The Parkinson Case: a Clarification from the Highest Court

Thanks to the generosity of Mrs. Ellen T. Parkinson, The Trustees of Reservations in 1980 was able to preserve some 82.6 acres of pine and oak woodland and field bordering Hartford Street in Medfield. Located at the entrance to the town, the property also

includes two brooks and a small pond. It is not far from Rocky Woods Reservation. The restriction prohibits the construction of any building other than "one single family residence with the usual appurtenant outbuildings and structures." One, which Mrs. Parkinson inhabited, already existed. To build another it would have to be torn down.

Medfield's Board of Selectmen, aware that the gift would help maintain the charm and character of the community itself by preserving a precious piece of open space on its very threshold, was elated. Indeed, its members made a personal pilgrimage to Mrs. Parkinson to tell her so. But the Assessors, unfortunately, disagreed.

They declined to recognize the restriction as valid and enforceable, despite that fact that it had been approved and signed by their own Selectmen and by the Secretary of the Executive Office of Environmental Affairs. Their reasons are best explained by a court document: "It was the policy of the board," it declared, "'to assess land properly subject to a conservation easement or restriction at no more than 25 [percent] of full and fair cash value.' (The law provides that any land subject to a conservation restriction shall be assessed as a separate parcel of real estate.)

"Nonetheless, when the Board assessed [Mrs.] Parkinson's real estate in fiscal 1982 and 1983 at \$317,300 and \$346,700, respectively, it refused to discount the value of her property. [It] claimed that the conservation easement was invalid because it purported to apply not only to the land, but to [Mrs.] Parkinson's residence and outbuildings.

"The easement [was] invalid," the document declared, "not because it is prohibited by statute, but because its terms are so vague that it precludes any meaningful identification of the servient [restricted] estate. While no particular words are necessary for the grant of an easement, the instrument must identify with reasonable certainty the easement created and the dominant and servient tenements."

The contention was that the boundary between the restricted land which could be appraised for less than full and fair market value, and the land upon which the house stood was unclear, and thus a separate appraisal of the restricted land was impossible.

Mrs. Parkinson, assured that there were many other restrictions like her own which had been accepted as valid, properly paid her taxes in full for two years while filing for abatement with the Appellate Tax Board. The appeal was denied and Mrs. Parkinson sought redress from the state's Supreme Judicial Court.

Initially, the SJC upheld the decision of the Appellate Tax Board. The environmental community was in shock. There were scores of conservation restrictions like Mrs. Parkinson's which had been recorded over the past decade, restrictions which the Commonwealth itself had been a part of as a signatory.

Eleven conservation organizations besides The Trustees of Reservations filed for a rehearing of the matter before the Supreme Court and collectively submitted an amicus brief. They were joined in their efforts by the Attorney General of Massachusetts who emphasized the importance of the case "to the cause of environmental conservation." Faced with new information, the SJC declared it was willing to reconsider its decision and in May 1986, much to the relief of conservationists everywhere, it reversed itself and found for the plaintiff.

"We conclude," the justices wrote in a landmark decision, "that the board [Appellate Tax Board] erred in affirming the assessors' denial of real estate tax abatements on the taxpayer's property. The taxpayer's conservation restriction is valid because it meets all the requirements for a valid conservation restriction under G.L. c.184, SS 31 (the Conservation Restriction Act). Because the conservation restriction was approved by the Medfield selectmen and the Secretary of Environmental Affairs, it is enforceable by the express terms of G.L. c. 184, SS 32.

"Although the restriction," they continued, "permits one single-family residence with appurtenant outbuildings and structures, such use of restricted land is not prohibited by the statutes. The statutory requirement is that the land be kept 'predominantly' in its natural, scenic or open condition; and, significantly, the statute forbids that a conservation restriction may 'forbid or *limit*' building construction (emphasis added). G.L. c. 184, SS 31. The board was in error in so far as it concluded that G.L. c. 184, SS 31, does not authorize a conservation restriction on dwelling and appurtenant buildings."

The justices held also that although the law did, indeed, stipulate that restricted and unrestricted portions of land be assessed separately, the instrument in Mrs. Parkinson's case subjects all her property to the terms of the conservation restriction.

The question that remains then, the court said, is what is "the fair cash value of the taxpayer's land as encumbered by the restriction?" Previous decisions had upheld the concept that a "restriction on the use of property may reduce its value below that which would be appropriate in the absence of such restrictions."

Earlier, too, Mrs. Parkinson's real estate appraiser, appearing as a witness before the Appellate Tax Board, had testified that the property as restricted, including buildings, was worth \$212,500. In making the determination, he explained, he had calculated that the occupation of the single-family residence and outbuildings, expressly permitted by the easement, required the use of about seven acres of land. He valued the house and this "hypothetical" seven-acre parcel at \$175,000. He then valued the remainder of the land, encumbered by the restriction, at \$500 an acre.

Medfield assessors did not dispute the \$212,500 valuation, if the conservation restriction was presumed to be valid. The justices, therefore, declared that "the taxpayer has thus sustained her burden of proving overvaluation in the amount of \$104,800 and \$134,200 for the years 1982 and 1983, respectively." The case was remanded to Appellate Tax Board to take appropriate action. It was a victory for Mrs. Parkinson and for environmentalists everywhere.

Are there lessons to be learned from the Parkinson experience? "Most definitely," says Wesley Ward, The Trustees of Reservations' Deputy Director for Land Conservation. "First, we've begun to watch these challenges to restrictions more carefully, sharing information with other conservation organizations and with the Department of Food and Agriculture which holds numerous APRs (agricultural preservation restrictions).

"Second, we have mostly abandoned the idea of 'floating house lots' as in the Parkinson restriction, and are now defining specific 'building envelopes' where future residential construction may take place. This may be done," Ward explains, "with a survey or with boundary descriptions. Two or three possible building envelopes, for example, may be marked on a plan agreed to by the land owner before the restriction is accepted by The Trustees of Reservations."

The goal, of course, is to make the sites of future buildings as specific and unambiguous as possible while the restriction is being negotiated to prevent confusion, misunderstandings or disagreements later on. To cope with this in the early days of the conservation restriction program, The Trustees suggested successfully that restrictions state, for example, that three additional houses may be constructed in the future, but "only with the approval of The Trustees of Reservations, such approval not to be unreasonably withheld." Again, this phraseology, although it provided some control over siting, was no substitute for prescribing specific locations which all parties to the restriction agree will not jeopardize the "scenic, open and natural condition" of the landscape.

Finally, the Parkinson case demonstrated the vital importance of the Conservation Restriction Fund which, although significant contributions were made by other conservation organizations, was used to pay the lion's share of legal expenses.

9

Old Deerfield: an Historic Agricultural Landscape

By 1988, changes in Federal tax laws and rising property values had taken their toll. Gifts of major parcels of land and the endowments needed to accompany them had slowed to a trickle. And The Trustees of Reservations, wrote Director Fred Winthrop, Jr., had begun "to concentrate less on fee acquisition and more on conservation restrictions" to accomplish its mission.

Since 1972, the organization had acquired 70 conservation restrictions preserving more than 6,656 acres of land. It was equal to 37 percent of the land the organization held in fee title. It included, during the mid-1980s, four additional restrictions in Needham, increasing land protected by restrictions along the upper Charles River to 356 acres; a restriction protecting some 46 acres of shorefront in Mattapoisett; a restriction on the north shore of Goose Pond in Lee, protecting 112 acres of woodland; and a restriction in Salisbury, Connecticut (held by The Trustees' affiliate, the Massachusetts Farm and Conservation Lands Trust), which provides protection for some 433 acres of well-managed, white pine and mixed hardwood forest, bordering Bartholomew's Cobble.

Among the restrictions also was one which preserved some 240 acres — and one of the last barrier beaches in Massachusetts — at Great Island, Yarmouth, Cape Cod. The area also includes some 20 acres of upland and 14 acres of headland surrounding an historic lighthouse at Point Gammon as well as Pine Island, a smaller island of some 22 acres north of Great Island in Lewis Bay.

Of considerable significance also was a restriction which today protects the scenic beauty and agricultural values of some 71 acres of land in Deerfield. Site of one of the nation's most exquisite collections of museum houses, Deerfield today bears a remarkable resemblance to the Colonial village it was in the early eighteenth century. Ravaged by French and Indian raiders during the winter of 1704, most of the town was burned and 49 residents, including children, were killed. One hundred and eleven were taken captive and forced to march to Montreal.

By 1735, thanks to a treaty with the Indians, Deerfield residents could once again harvest their crops without fear. The town was rebuilt and soon became one of the largest and wealthiest in the region. A series of elegant houses were constructed. Many today, such as the Ashley House built for 35 pounds in 1733 for the town's Tory minister, and the Asa Stebbins House with its French wallpapers, Chinese porcelain and Federal-period furniture, are preserved by Historic Deerfield Incorporated.

But as much as the houses are a part of protecting the historic charm and character of the community, so is the prime-quality, highly-productive farm land which surrounds it. "The soils have been cultivated for 300 years by the settlers of Deerfield and before that by Native Americans," says Peter Spang, Curator of Historic Deerfield and a member of the Standing Committee of The Trustees of Reservations. But condominium developers also saw the benefits of building in Deerfield. Of special interest was the open agricultural land, well drained and ideal for construction purposes.

Aware of the threat of development and anxious to protect their property, William and Julie Hester, owners of some 71 acres of farm land south of Main Street, asked the Department of Food & Agriculture about the possibility of selling their development rights to the Commonwealth. The Department appraised the land but the Hesters felt the figure was too low to accept. Historic Deerfield asked The Trustees of Reservations to help negotiate the sale. At the urging of The Trustees, the Department reviewed its appraisal, agreeing that land values had risen significantly since it was initially completed.

The Hesters kindly said they would await the outcome of the process. It was also suggested by The Trustees that Historic Deerfield itself consider contributing 10 percent of the cost of the proposed agricultural preservation restriction.

A new appraisal put the value at \$187,000 and this time the Hesters agreed to sell. In return for Historic Deerfield's contribution, The Trustees of Reservations also succeeded in getting the landowner to strengthen the restriction with a scenic easement to provide additional protection for the property which lies within Old Deerfield's Historic District.

That same year, as a part of The Trustees' continuing program to protect the outstanding agricultural landscapes of both Deerfield and its neighbor, the town of Sunderland, the Massachusetts Farm and Conservation Lands Trust purchased 8.5 acres of crop land in Sunderland and preserved it with an agricultural preservation restriction sold to the Department of Food & Agriculture. The restricted land was then bought by a farmer who wanted it to raise potatoes and vegetables.

A year earlier, retired Sunderland potato farmer Clarence F. Clark generously gave The Trustees of Reservations a restriction which today preserves some 80 acres of his land, much of which borders the Connecticut River. The property includes some 70 acres in active agriculture.

10

Scenic Roads: an Important Part of America's Past

Just west of New Marlborough, Monterey Road turns north towards the town of Monterey. Its unpaved surface is lined with stone walls built by settlers more than a century and a half ago. On either side then were fields and woodlots as well as the occasional two-story, wood clapboard farm houses with their barns and corn cribs, spring houses and wood sheds, chicken houses and carriage sheds, which were so much a part of the New England landscape.

Today, the fields have all but disappeared, taken over by a succession of white pine and hardwood, but the road itself, narrow and unpaved, is much the same as it must have been in earlier days. More than two miles in length, it is free of power lines and development of any sort and the surrounding forest with its marshes, streams, steep slopes and bankings, is habitat for a variety of wildlife.

A road of any sort promises the traveler adventure and excitement, and so it was for The Trustees of Reservations. In 1988, Philadelphia's Natural Lands Trust called to ask if The Trustees would accept a conservation restriction protecting some 197 acres of land along Monterey Road. Aware of the importance of preserving fast-disappearing scenic and historic roadways



Scenic Monterey Road, a significant portion of which is now protected with conservation restrictions, recalls earlier days in western Massachusetts when road surfaces were unpaved and horses and wagons were used for transportation.

throughout the Commonwealth, the organization responded positively and discussions began.

The owner, Miss Margaret Phillips, proposed the following imaginative scenario: she would first donate a conservation restriction to The Trustees of Reservations to protect the property's scenic, open and natural condition in perpetuity. Second, she would give fee title to the restricted property to Springside School in Philadelphia which, in turn, would sell the land to a private buyer, using the proceeds for its educational purposes.

An agreement had been reached earlier with a buyer who wished to reserve the right to construct his own as well as three other houses on the property as a part of his pledge to purchase the land for \$250,000. All that was left was to negotiate the site of the building envelopes so that they would be in keeping with the purposes of the restriction.

It was also agreed that there would be a trail, open to the public, for walking and horseback riding; that in keeping with the traditions of the land, commercial agriculture and forestry would be encouraged; and that The Trustees of Reservations would receive \$10,000 as a contribution to the Conservation Restriction Fund.

The buyer reported it was his intent to enlarge the existing hayfields and to inhabit the property during his retirement. Power lines for new construction would be installed out of sight of the road.

"One of the attractions of this parcel," explained Wesley Ward, Deputy Director for Land Conservation for The Trustees of Reservations, "is that it could be the first piece of the puzzle. With two land trusts now in the area in New Marlborough and Monterey, we have a significant opportunity, working with them, to protect a substantial amount of additional land along scenic Monterey Road."

Preservation of the land is also in keeping with environmental policies and objectives established by the Berkshire Regional Planning Commission.

11

The Brick Yard: Industrial Archaeology and Open Space

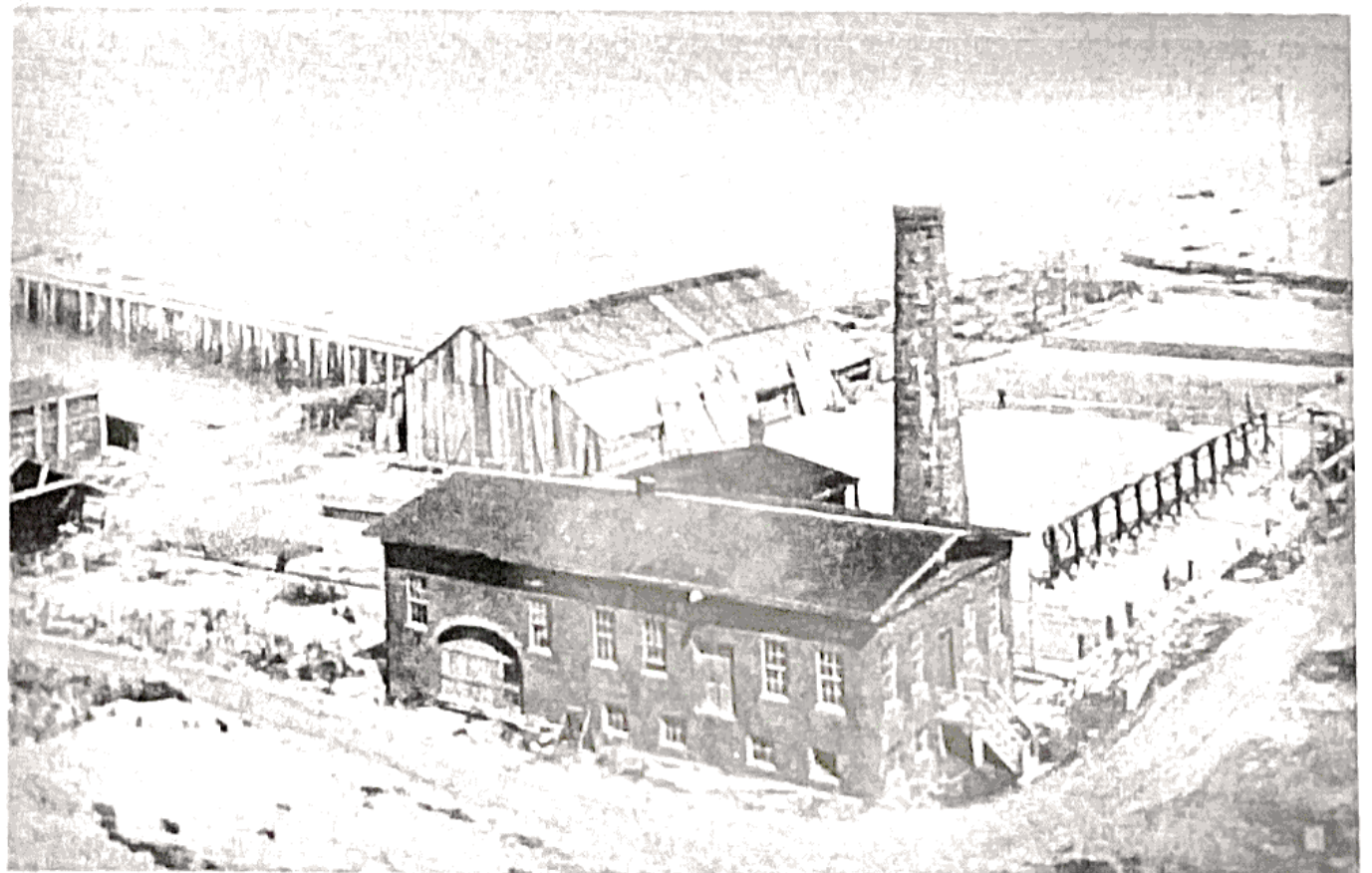
In 1973, the Vineyard Open Land Foundation, established to "promote the preservation of the natural beauty and rural character of Martha's Vineyard," issued a detailed report which looked at the visual characteristics of the island and discussed steps which might be taken to protect areas of unique interest and importance.

Entitled *Looking at the Vineyard*, the study compiled a list of "Special Places" about which, it said, Vineyarders hold strong feelings "because of their historic value, their scenic beauty or personal associations" which may have been experienced by a number of generations. One of these "special places," located in Chilmark, is known as "The Brick Yard."

"The ruins of this early Island industry," the report explains, "is a notable landmark of the North Shore when seen from passing boats. The tall chimney still stands, flanked by a great sand cliff and rolling hills, and backed by Roaring Brook Swamp. No other man-made structure is within sight. The outlet of the brook makes a good fishing ground nearby."

The brickyard, which, in its active days, was known as the Chilmark Brick and Tile Works, was operated by Nathaniel Harris

The Brick Yard at Roaring Brook, Chilmark, Martha's Vineyard, from an old post card. During its heyday, as many as a dozen schooners could be seen waiting off the dock for bricks to be brought aboard and shipped to the mainland.



from 1863 until the late 1880s. The property today is owned by Harris's granddaughter, Flora Harris Epstein, who lives nearby.

Bounded on the east by Roaring Brook, the area, some 37 acres in all, includes a sand and cobble beach, wetland, maritime shrub thicket, a riparian shrub community and mixed hardwood forest. Of particular historic interest, however, are the ruins and archaeological remains of a brick manufactory, an industry reportedly dating back to 1642 on this specific site. What made it so attractive to early industry was the availability of water power, rich clay deposits located at nearby Menemsha Hills, and its coastal location, which enabled bricks to be off-loaded to schooners, lighters and other vessels anchored just off shore.

The ruins visible today date back to the mid-nineteenth century and Nathaniel Harris's Brick and Tile Works. Included is the brick chimney, water wheel and wheel pit, as well as the remains of the foundations of brick buildings used for administrative, manufacturing and residential purposes.

The great hurricane of 1938 destroyed a sea wall which had protected the area for decades, and the ensuing flood waters destroyed most of the buildings. Photographs in 1900 show the structures intact. Twenty years later there was some decay, but after 1938 the only prominent feature was the brick chimney. Today, it is in poor condition and continues to disintegrate.

The Trustees of Reservations had been interested in the site for more than two decades. As early as 1966, it had begun to acquire annually from Nathaniel L. Harris and his sister Catherine P. Harris gifts of undivided interests in what was to become Menemsha Hills Reservation. Some 149 acres in all, Menemsha Hills includes a dramatic marine escarpment or sand cliff, more than 150 feet high overlooking Vineyard Sound.

In 1973, the Trustees of Prospect Hill Realty Trust gave The Trustees of Reservations a conservation restriction protecting 8.3 acres of land, including the summit of Prospect Hill which, at 308 feet above sea level, is the highest hilltop on the Vineyard. But the brickyard, although in good hands, remained unprotected. There was, however, always hope for the future.

By December 1990, the moment had arrived and Mrs. Epstein generously agreed to give The Trustees of Reservations a conservation restriction which protects in perpetuity some 37 acres of her land, including the historic brickyard. The restriction contains special provisions for archaeological site protection as well as the right to stabilize or restore the existing ruins. It also allows The Trustees selected public access and the right to lead occasional tours of the property to interpret its history, both natural and cultural.

As part of the agreement as well, Mrs. Epstein graciously contributed two percent of the appraised value of the property to

the Conservation Restriction Fund. Today, the "two percent rule" is standard policy for donors of conservation restrictions.

Thus it was that another of the Vineyard's "special places" was preserved for generations to come.

12

Three Generations Act to Become 'Caretakers for the Future'

When the railroad came to Berkshire County in the 1840s, it bypassed the towns of Monterey and New Marlborough. But isolation from commerce soon became a blessing in disguise. For some decades later, their quiet hills and small farms began to attract a new economy — summer people — who sought to escape the noise and confusion of the city.

New Marlborough was first settled in 1739 by Benjamin Wheeler, who had come to the wilderness of western Massachusetts from the Town of Marlborough in Middlesex County, just west of Boston, now on Route 495. During the stagecoach era, the village was a way station between Hartford and Albany and included a number of taverns and many handsome houses, some of which still exist today.

Monterey, named to commemorate one of the great battles of General Zachary Taylor, was once the home of a number of small industries, including a paper mill. Taylor, a national hero, later became President of the United States. Monterey, too, like New Marlborough, became popular as a summer resort, and today the shores of Lake Garfield and Lake Buell are ringed with seasonal homes.

The countryside surrounding both communities was, until recent years, agricultural land — a charming mosaic of fields and forest, farm houses and barns. Today, however, only a few farms remain and most of the pastures have succeeded to woodland.

Among the summer-dwellers of the late 1920s was the Reverend Wilbur K. Thomas, who purchased the old Hyde Farm, some 120 acres of land in Monterey. Thomas hoped to establish a collective community with utopian ideals. "We first went there as kids," Andrew J. W. Scheffey explains. "It was a summer camp where we could live a rustic life. Wilbur Thomas, a remarkable man, was a friend of my mother's. A resident of Philadelphia, as we were, he was the administrator of the Carl Schurz Memorial Foundation which had been established by my grandfather to promote German-American understanding."

Scheffey, a former professor at the University of Massachusetts-Amherst's Department of Landscape Architecture and Regional Planning, is an environmental policy specialist, and in the 1970s was a member of the Standing Committee of The Trustees of Reservations.

With their children in the Berkshires, Dr. Lewis C. Scheffey and his wife, Anna (a gynecologist, Dr. Scheffey was Professor of Gynecology and Obstetrics at Jefferson Medical College), fell in love with the area themselves, and in 1938, purchased one acre of land at Hyde Farm. That winter they built a small cabin, without electricity, which in the ensuing years provided much pleasure for the whole family.

Three years later, in 1941, now unequivocally devoted to the charm and character of south Berkshire County, they were able to acquire an adjoining parcel of some 250 acres, part of a hunting preserve owned by the New Marlborough Association, and, as Andrew Scheffey says, "we became landowners in our own right."

By 1956, the Rev. Thomas had died, and, with Mrs. Scheffey's sister Hildegard Thu Plehn and her husband, Dr. and Mrs. Scheffey and their five children purchased from Mrs. Thomas all of Hyde Farm. With it came a fine early nineteenth century wood frame house with seven bedrooms, three fireplaces and a field stone foundation together with barn and outbuildings. "My aunt and her family," Andy Scheffey adds, "also built an A-frame house on a lovely site nearby above an open field." There were now three houses on the property.

When in 1965 the Clark Farm, some 200 acres, which also bordered the property, was advertised for sale, it was decided to acquire it, too, to preserve the integrity of the area as a whole. The Scheffey-Plehn families now owned a total of some 550 acres of land located both in New Marlborough and Monterey.

It is today primarily forest. Its landscape includes a diversity of wildlife habitats — streams, ponds and steep slopes as well as small areas of field. Views of the surrounding hills and ridges are outstanding. The New Marlborough-Monterey Road, a scenic roadway which pre-dates the Civil War, also passes through the property. Little development is visible along its entire five-mile length.

By the 1970s, the land and buildings were held in three trusts reflecting the proportionate ownership of the Scheffey and Plehn families, which now, with children and grandchildren, total 25 persons. Highly popular with family members, the property is used regularly.

Late in the same decade, one member of the family, deciding to relocate to south Berkshire County, inquired about the possibility of using a portion of the land to construct a permanent resi-

dence. The proposal stirred a powerful response. Different members of the family voiced strongly-held positions both pro and con. Yet collectively, they reflected deeply-rooted, emotional ties to the property and the traditional values it represented. At issue, of course, was the larger question: what was to happen to the land in the years ahead? And how could it best accommodate the desires of every family member?

In 1977, the entire family, young and old, met together to discuss the future. Moderated by a skilled and gentle attorney, the meeting explored new patterns of organization and a decision-making process. It was also agreed to engage landscape architect and planner Walter Cudnohufsky, founder and Director of the Conway School of Landscape Design, to further identify and examine the issues involved.

Impressed with the landscape, Cudnohufsky wrote that it is "primitive, tranquil, quiet, secluded, elevated, contained, modest, overgrown and ragged. . . a remote woodland farm." Indeed, he added, "the overall physiological balm which R.F.F. [Ravine Falls Farm] provides," is that it offers a feeling of permanence and stability. It may allow some of the members to function more successfully in everyday life knowing that R.F.F. is there, not only as a memory but as a reality."

Looking at the needs of the family in the years ahead, he raised three basic questions: first, he asked, is it possible to locate three or four additional buildings at Ravine Falls Farm without damaging the character of the site or the image of it held by family members? Second, are there good reasons to use the property and to participate in its maintenance? And third, are there some key facets of the character and image of the property which may presently be taken for granted?

Cudnohufsky also suggested a process be devised to discuss and eventually determine future directions. "You need," he said, "supported group leadership to help establish policy decisions and a work and management program for the farm buildings, meadows and woodlands."

He listed 10 considerations which he felt should be a part of the planning process: 1. There were many more people now involved, some young, some reaching retirement age. 2. Taxes and maintenance costs were rising. 3. Much of the land was underused or not used at all. 4. There were proposals from individuals to use the property more actively. 5. The rights, privileges and obligations of each family member must be defined. 6. A policy should be established to guide future decisions. 7. Social congestion and privacy issues should be addressed. 8. Questions of permanent occupancy and/or temporary occupancy needed answering. 9. Management decisions, including the possibility of forestry activities, should be discussed.

10. Maintenance of the property's structures — its houses, barn and dam — should be arranged for in the years ahead.

Although there was an extraordinary unanimity about preserving the natural character and environmental qualities of the property, there was some disagreement about the number of houses that might be permitted in the future which could accommodate family members without jeopardizing the values that everyone felt were important.

A decade passed and the lives of family members matured. Ideas for the property continued to be discussed and when disagreements arose, as they must in every family, it was Mrs. Scheffey, Sr., beloved and admired by all, who was able to hold young and old together.

Upon her death in 1987, her five children became the senior members of the family and it was decided to move ahead again. With professional assistance from the Kantor Family Institute in Cambridge, a process was developed for dealing with the "big question." Although options had been discussed and conservation was still the highest priority, formal agreement was now needed to take the necessary steps.

First, a plan was developed in conjunction with The Trustees of Reservations which protected 545 acres of the property with conservation restrictions to be held also, as appropriate, by two local land trusts: the New Marlborough Land Preservation Trust and the Monterey Preservation Land Trust.

Excluded from the restricted area were the three existing home sites and up to seven reserved building envelopes upon which additional structures might be placed in the future. Second, the three existing trusts were abolished and replaced by a new trust which will own the entire property and its dwellings. All members of the family above the age of 21 will be eligible to participate in the new trust.

The three dwellings, previously owned by individual families and family members, were each designated Individual Dwelling Groups (IDG). Any member of the family may join one or more IDG, and each IDG will be responsible for its own operating costs, rules of conduct and general upkeep. A newly-formed Board of Trustees will assess all members annually to cover the costs of maintenance, taxes and insurance. The Board will also be responsible for policies regarding use of the land for forestry, recreation and limited agriculture, and for overseeing the provisions of the conservation restrictions held by The Trustees of Reservations and the two local land trusts.

Early in the process, senior members of the two families contributed to the establishment of a Preservation Planning Fund, which has been used to generate final plans and surveys for the restrictions as well as for the reserved building sites, to carry out

soil testing and site analysis, to secure legal assistance and advice, and to prepare all required documents.

The process was orchestrated by an Interim Executive Committee, working with a number of sub-committees. In the fall of 1988, Walden Associates of Concord, Massachusetts, prepared the preliminary discussion report, which included planning and development options. The final evaluation and appraisal was completed in the fall of 1991. Gifts of the restrictions were made at the end of the year.

Director Fred Winthrop expressed the gratitude of The Trustees of Reservations. "This is an extraordinary property," he said, "hundreds of acres of forest, fields, streams and marsh, in one of the most scenic parts of the Berkshires. Its preservation is a real tribute to this family's conservation ethic."

"We grew up knowing and loving this place," Lewis C. Scheffey explains. "It is one of the few places on earth that really hasn't changed in our lifetimes. Now it has a good chance of surviving so future generations can understand how this part of New England looked in the early days.

"Our grandfather and our parents began a family tradition of respect for and appreciation of the land. There are now three generations who agree that we are all caretakers for the future."

Just to the south of the Scheffey and Plehn land is another 200 acres also protected with a conservation restriction given to The Trustees of Reservations in 1988 by Margaret E. Phillips. The property includes a portion of Harmon Brook and one mile of frontage on scenic New Marlborough-Monterey Road. Sandisfield State Forest is nearby as well.

13

Moraine Farm: an Olmsted Landscape Overlooking Wenham Lake

Like his Harvard classmate, Henry P. Walcott, who served as Chairman of the Standing Committee of The Trustees of Reservations for 23 years (1903-1926), John C. Phillips was interested in nature and the out-of-doors. But unlike Walcott, a physician who specialized in public health and recreation, Phillips's passion was agriculture.

His early years were filled with travel and adventure. Following graduation from college in 1858, he served as shipping agent in Boston and in Calcutta, finally establishing his own firm in New York. There, Phillips did business with Cuba. Later, he

moved his offices to Boston, where he dealt primarily with China and the Philippines.

But it was through the good fortune of gifts and inheritance, not success in business, that John Phillips became a wealthy man. According to a memoir written by his college roommate, the Reverend Edward G. Porter, William Phillips, John's fourth cousin, who never married, "took a fancy to him during a voyage together at sea," and offered him \$50,000 plus another \$50,000 "should he decide to marry." In 1873, William Phillips died, leaving John, now heir to his estate, "a large fortune in trust."

The following year in London, John married Anna Tucker of Boston. Returning to the United States, the couple built a handsome town house in the Back Bay at the corner of Berkeley and Marlborough Streets. Some years later, in 1879, with John's interest in farming, they purchased 275 acres of land on the shores of Wenham Lake in North Beverly; they called the estate Moraine Farm. (Actually, the property was misnamed. It includes glacial eskers, but no moraines.)

For advice about what to do next, Phillips called upon Charles Sprague Sargent, founding Director of the Arnold Arboretum and an early member of the Standing Committee of The Trustees of Reservations. To develop the property, Sargent suggested that Phillips engage the celebrated landscape architect, Frederick Law Olmsted, whose offices were in nearby Brookline.

According to Charles E. Beveridge, editor of the Olmsted Papers at American University in Washington, what resulted was a masterpiece in landscape design. It combined a country seat with active agriculture and an experimental forest. It was also, as Beveridge explains, the "forerunner of two extensive estates" that Olmsted planned "for members of the Vanderbilt family in the early 1890s — Biltmore in Asheville, North Carolina, and Shelburne Farms in Shelburne, Vermont.

"If Biltmore is, indeed," Beveridge writes, "the 'cradle of American forestry', as [both] the National Park Service and the U.S. Forest Service now [deem] it to be, then, in an important sense, Moraine Farm is the cradle of the cradle and deserves. . . recognition on that basis alone. . . ."

Most of Olmsted's ideas for the property are still in place today and will be in perpetuity, thanks to the thoughtful generosity of its present owners, Mr. and Mrs. George Batchelder, who in 1992 gave to The Trustees of Reservations and to Essex County Greenbelt Association an intricate and innovative conservation and preservation restriction protecting the environmental values and historic character of the centerpiece 175 acres of Moraine Farm.

Planning for the development of the property began in earnest in May of 1880. An inspection of the landscape and an

analysis of its soils revealed that about 40 acres were economically suited to tillage. What Olmsted urged be done with the remainder showed his genius for creating designs which adapted inventive development ideas to the limitations as well as the opportunities provided by the natural qualities of the site.

As Charles Sargent explained in an article which appeared in *Garden and Forest* in March 1892, "Mr. Olmsted's idea was to convert the whole estate, with the exception of the arable land in the northwest, into more or less open forest, in the midst of which the manor house should stand like a forest lodge in an oasis of kept grounds, confined to its immediate neighborhood and encircled by the boundaries of the terrace. . . ."

The "lodge" itself, with its outbuildings, was to be designed by the notable Boston architectural firm of Peabody & Stearns, but it was quite clear from the beginning which professional would take the lead. "I send you two suggestions for the treatment of your house site on Wenham Lake," wrote Olmsted in a letter to John Phillips in May 1880. "As the charm of the situation lies wholly in the look down upon and over the lake, whatever increases the down-looking and over-looking effect adds to its value. . . the second is that. . . the more you avoid the commonplace [look] of the villa or suburban cottage, and the more bold, rustic and weather proof. . . you make the immediate artworks of the house, the better."

Olmsted proposed the house "be set high, as near to the lake as it conveniently can be" and that it be "supported by a terrace, boldly projected, following natural lines, 'country-made' and highly picturesque in its outlines and material. . . mainly field stones, laid with a large but variable batter and with many crannies. . . ."

Peabody & Stearns did their job well. The main dwelling with its three stories and five distinctive brick and stone chimneys was a pleasing mix of shingle and half-timber with numerous gables. Its siting was just as Olmsted had specified. As a visitor approached the house, there was no "suspicion of the broad extended views" to the east and south. The lake was visible only from inside the house itself, and the view was made more exciting by the height of the stone terrace, a concept which Charles Beveridge reports was used later at Biltmore.

Just south of the house, Olmsted called for the construction of a "pavilion," a small octagonal structure of stone and wood, "not a mere shelter, but a more useful room, large enough for a coffee, reading or a ladies' room with windows and shutters. . . strongly but rudely and forest fashion built into the wild hillside. . . ."

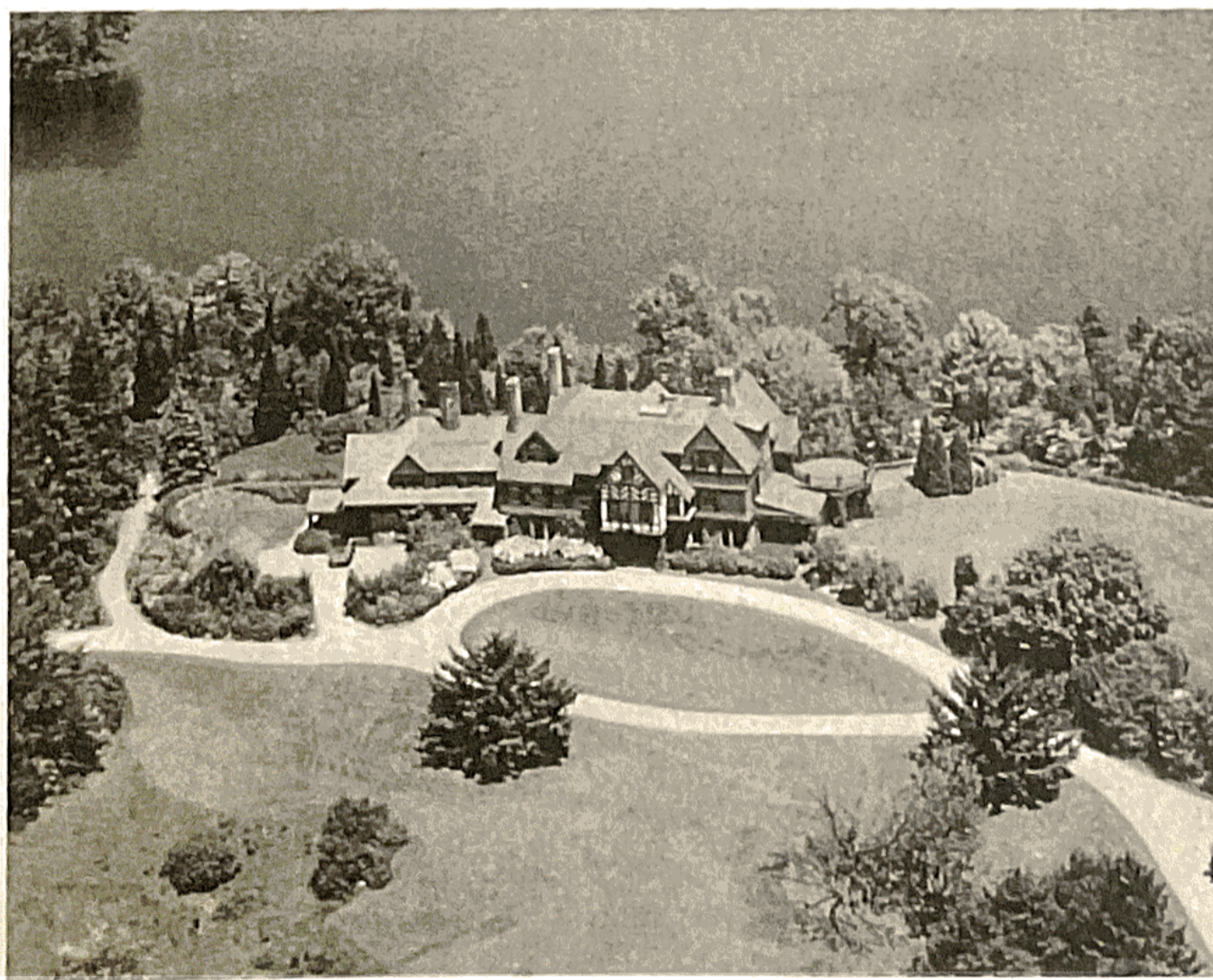
In keeping with his concept of creating separate spaces for separate functions — or "outdoor apartments," as he called them — Olmsted originally called for a "wild garden" planted with

ferns and perennials to be placed nearby at a level below the terrace so that it would be invisible on the approach to the house. Indeed, as Olmsted wrote to John Phillips, "if the gardener shows himself outside the walls, 'off with his head!'"

All this, of course, was in keeping with the primary goal of creating and maintaining an open forest landscape which would dominate the property without "landscape gardening or groupings or displays of foliage" which were commonly employed in so many of the great summer estates then being developed along the North Shore.

Today, more than a century later, as Beveridge notes, the character of the landscape at Moraine Farm still reflects the fundamental principles of Olmsted's design. The drive, the carriage roads, the pavilion, the entrance lodge, the barn, the farm house, the shed, the chicken coop (now a comfortable cottage), and even the main house itself, which has been extensively remodeled through the years, are still in place. To be sure, Olmsted was forced to give way to Mrs. Phillips's insistence that an "old-fashioned flower garden" be included, but it remained hidden from view below.

An active benefactor and trustee of many charitable institutions, John Phillips died in 1885 at age 46, leaving a young widow and four children. The oldest, John Charles (who was nine at the time), became widely known and much respected for his knowledge of world wildlife, as well as a valued member of the Standing Committee of The Trustees of Reservations and winner of its



Aerial view of Moraine Farm in 1929 looking east towards Wenham Lake shows serpentine roadways leading to the original residence designed Peabody & Stearns, Olmsted's indoor and outdoor spaces south of the house, and the surrounding woodlands of hemlock, Norway spruce, sugar maple, red and white oak, and native red cedar

first Conservation Award. (His son Arthur served for six years as Secretary of The Trustees, and his grandson today continues the tradition as the Commonwealth's Commissioner of Fisheries & Wildlife.) Mrs. Phillips continued to live at Moraine Farm for six months each year until her death in 1925. Her son William, although often away as a career diplomat, build his own house on the property at some distance from his mother's. He called it Highover and it was home until his death in 1968. Phillips began his diplomatic service in London in 1903 as private secretary to Joseph Hodges Choate, whose summer place in Stockbridge, Naumkeag, was bequeathed to The Trustees of Reservations by his daughter Mabel. Choate was then U.S. Ambassador to the Court of St. James's.

Phillips also served as Second Secretary at the U.S. Legation in Peking. First Secretary at the time was John Gardner Coolidge, who with his wife Helen owned Ashdale Farm in North Andover. It later became the Stevens Coolidge Place, which The Trustees acquired in 1962. With a distinguished diplomatic record that included service as the U.S. Ambassador to Canada, Holland, Belgium and Italy, Phillips climaxed his career as Undersecretary of State.

In 1928, a major portion of the Phillips's property, including the main house, the gate house and the carriage roads, was purchased by George and Katherine Batchelder of Boston. A graduate of Harvard with the class of 1919, Batchelder was president of Batchelder & Whittemore Coal Company and later, following service in the Navy, during World War II, business manager of the Blood Protein Laboratory at Massachusetts General Hospital. His wife, an able and enthusiastic horticulturist, was a president of the North Shore Garden Club and a major figure in the Garden Club of America.

With the Batchelders in residence, the main house underwent a series of renovations designed to simplify it for a less formal, postwar way of life. But with a keen interest in the heritage of the property, they continued to maintain the landscape in the Olmsted tradition. By 1977, both George and Katherine Batchelder had died, and the remainder of the Phillips property, bordering Moraine Farm to the north, had been purchased for development. A few years earlier, Highover, which had been abandoned, was destroyed by fire.

Moraine Farm itself had been inherited by George Batchelder III and his wife, Mimi. Then residents of California, both decided to move back to Beverly. Batchelder had been a professor of biology at San Francisco State University and, at Moraine Farm, his Pollen Research Associates soon was collecting data for allergists around the nation. Mimi, a trained conservator specializing in works on paper, was asked to join the staff of the Northeast Document Conservation Center in North Andover. Together they



Rows of summer squash and hay are now planted in the 18-acre field near the barn designed by Peabody & Stearns and built in 1907.

began to rejuvenate the practice of forestry and agriculture at Moraine Farm.

George was appointed a member of the Conservation Commission in Beverly and, by happenstance, soon found himself involved in efforts to acquire the neighboring Phillips land to protect it from development and to preserve it as open space. Six single residence lots had been planned close to the shore of Wenham Lake, a regional water supply. The remainder of the land was to be used for the construction of as many as 75 single housing units or condominiums.

Finally, the City of Beverly prevailed. In 1987, in a joint effort with the Town of Wenham and with a grant of \$900,000 from the Executive Office of Environmental Affairs Self-Help Program for Massachusetts communities, \$1.2 million was appropriated to purchase the property. (George, careful to avoid a conflict of interest, separated himself from much of the process.)

Today, the city-owned John C. Phillips Nature Preserve totals 85 acres. It provides valuable open space for passive recreation and protects a critical portion of the watershed of Wenham Lake within the city limits, as well as much of the original Olmsted carriage road from Moraine Farm.

The Batchelders, meanwhile, as early as 1982, had begun discussions with The Trustees of Reservations about options which might be available to preserve major portions of their own property. A visit by Charles Beveridge, as well as by representatives of the Massachusetts Association of Olmsted Parks and the Massachusetts Historical Commission, had confirmed its historic and architectural significance.

Happily, the couple had also been joined by their son Terry, a graduate of Oregon State University with an advanced degree in animal nutrition from Cornell, and his wife Erica, who were with them for four years. With the enthusiastic support of their parents, the two added sheep to the agricultural mix at Moraine Farm, which now included firewood chips, Christmas trees, a young plantation of sugar-maples, nursery plants, hay and commercial vegetables. And all this in conjunction with the continued maintenance of the Olmsted landscape.

One of the preservation programs studied by both the Batchelders and by The Trustees (land conservation specialists Davis Cherington and Wesley T. Ward were most closely involved) proposed that a portion of the property become an active open space reservation. It was suggested, first, that a predetermined number of acres at Moraine Farm be given to The Trustees of Reservations. The Department of Environmental Management was then to agree to purchase its development rights. The funds received from this transaction were to be reserved by The Trustees as a perpetual endowment for the area's management and protection.



Hay, chopped for silage to feed a local herd of dairy cows, is raised today on the 10-acre field south of the approach road at Moraine Farm. With its sinuous edges and islands of trees, the landscape still reflects the characteristics of its original design.

"But," George Batchelder explained, "we had trouble rationalizing the intensity of public use which would have followed. We have seen other Olmsted parks where the impact of visitation had been enormous. Moraine Farm wasn't meant to be a park and we knew that if it became one, the details of the design would suffer."

The Batchelders wanted to continue the traditions of agricultural use as well as the original emphasis on managing forest lands. And, of course, implicitly, they wanted to preserve the features and the character of the Olmsted landscape and the significant architectural qualities of both the main house and other selected structures.

The final result was a unique agreement which combined both conservation and preservation objectives in a restriction designed to keep the property in private hands but to protect its public values. The instrument is held jointly by The Trustees of Reservations and by Essex County Greenbelt Association. Because Moraine Farm is such a historic and cultural treasure the restriction generously provides for two specially conducted tours of the property each year. Residents of the surrounding neighborhood are always welcome to walk the land, and there is an open invitation to anyone involved in academic research in the fields of forestry and agriculture.

The restriction, which totals 45 pages, was drafted, with legal assistance, by Charles Wyman, Land Protection Specialist at The Trustees of Reservations. It preserves 176 acres of open space, as well as the "materials and configuration of the main house" designed by Peabody & Stearns; "the rustic structure of the terrace; the pavilion; the wild garden with its brownstone stairways and grotto;" the shed; the farm barn (while allowing for its adaptive re-use); the hen house cottage; the gate house; the property's stone walls; the walks and carriage roads; the "well-drained field"; and the Olmsted pasture. Most important, the restriction protects the concept of "outdoor rooms" so ingeniously proposed by Frederick Law Olmsted. To provide flexibility for present and future owners, a right is retained to build on six lots carefully sited so as not to disturb the integrity of the property as a whole.

"Moraine Farm," Wyman explains, "represents the first time in Massachusetts that a combined conservation and preservation restriction has been used to preserve an historic landscape. It also provides a model which we hope may be useful elsewhere."

Today, as they have since 1977, George and Mimi Batchelder still continue the original purposes of Moraine Farm. The "well-drained field" is leased to local farmers and is still one of the most productive in Essex County. The Christmas tree business (they raise Colorado Blue Spruce, Douglas Fir and Scotch Pine) is thriving and if you visit the property before the holidays, you can

enjoy a cup of hot chocolate in the great barn and inspect decorated wreaths, homemade herbs and preserves, locally raised honey, as well as seasoned firewood, all charmingly arranged and available for purchase.

"Here in America," wrote Charles Sargent a century ago about Moraine Farm, "carefully prepared schemes for the improvement of country estates generally die with the person who makes them and his efforts and expenditure are too often lost, but a better fate has attended the Phillips Place, which fortunately has passed into sympathetic hands, and is administered with intelligence, energy and steadiness of purpose, and with the determination to develop and perfect the well-considered plans of the original owner."

He could have been writing today about the stewardship of George and Mimi Batchelder. Their thoughtful appreciation of the past and their generous concern for the future mean that the extraordinary qualities and characteristics of the landscape and structures of Moraine Farm will be protected in perpetuity.



Mimi and George Batchelder, whose generous gift of a conservation restriction for Moraine Farm, Beverly, uniquely combines both historic preservation and environmental conservation to protect an Olmsted landscape