

THE MARTHA'S VINEYARD COMMISSION

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MARTHA'S VINEYARD COMMISSION DECISION

EDGARTOWN PONDS AREA DISTRICT OF CRITICAL PLANNING CONCERN

Section 1.00 General

As authorized by Chapter 831 of the Acts of 1977, as amended, the Martha's Vineyard Commission ("the Commission") hereby designates as a District of Critical Planning Concern ("a District"), the specific geographical areas hereafter described, to be known as the "Edgartown Ponds Area District of Critical Planning Concern".

The Commission held a public hearing at 8:00 P.M. on April 27, 1989 at the basement of the Old Whaling Church, Main Street, Edgartown, Massachusetts on the proposed Edgartown Ponds Area District, after due public notice to the municipalities, publications, and notice required under Massachusetts General Laws, Chapter 30A, Section 2. The public hearing was held as required under the Act to permit the Commission to receive testimony relating to whether it should designate the proposed District as a District of Critical Planning Concern.

The Commission received a nomination from the Edgartown Board of Selectmen for inclusion of geographic areas into a District (Nomination 1,2,4,5,6,126). At its March 16, 1989 meeting, the Commission voted to accept for consideration the nominated area.

Copies of the nomination and documents relating thereto and the area accepted for consideration are on file at the Commission offices, Olde Stone Building, New York Avenue, Oak Bluffs, Massachusetts.

On Thursday, May 11, 1989, the Commission voted to designate the nominated area as a District of Critical Planning Concern. Section 8 through 10 of the Act provide the process for amending the boundaries, adoption of development guidelines, and regulation of the District to which development must conform.

Section 2.00 Area Designated

Upon consideration of information submitted to it, the Commission's familiarity with the lands and waters of the District, oral and written testimony, and pursuant to the Act and the Commission's Standards and Criteria for Districts of Critical Planning Concern ("the Qualifications") adopted under the Act and appended hereto (Appendix "A"), the

Commission makes findings herein and hereby designates the Edgartown Ponds Area District with Defined Amended Boundaries as follows::

All waters of and land, streams, and wetlands in the Town of Edgartown south of the Edgartown-Vineyard Haven Road, north of the Atlantic Ocean, east of the Edgartown-West Tisbury town boundary and west of Herring Creek Road, Slough Cove Road and Meetinghouse Road which lie within seven hundred (700) feet of mean high water of a coastal water body exceeding ten (10) acres in size, or the ocean; all land within three hundred (300) feet of streams and wetlands draining into the coastal great pond (measured from the thread of the streams or the edge of the wetland vegetation), herein after to be known as the Coastal District in Edgartown Ponds Area DCPC.

The Commission has prepared a descriptive map appended hereto as Appendix "B" for the general information of the public and the municipalities. The boundaries of the Edgartown Ponds Area District, however, are as set forth above in this Decision and shall control over any map.

The Edgartown Ponds Area District boundaries conform to Qualification Section 1.20. The Commission finds that the lands and waters therein reasonably belong within the Edgartown Ponds Area District. Lands and waters within the District are a critical area and the Commission finds that this area needs protection afforded by the Act. The areas designated are a logical planning area and are suitable for the adoption of coordinated regulations for the District as a whole. Finally, the Commission finds that the boundaries of the Edgartown Ponds Area District, as established, are both convenient and recognizable.

Section 3.00 Why the Area Has Been Designated

When designating a District, Section 8 of the Act requires the Commission to specify why the area is of critical concern to the region, the problems associated with uncontrolled or inappropriate development, and the advantages to be gained by the development of the area in a controlled manner. In designating a district, the Commission must also consider the need for designation, as required by Section 1.10 of the Qualifications.

Information available to the Commission supports a finding that the Edgartown Ponds Area District is of regional importance, that potential problems of uncontrolled or inappropriate development exist within the District, and that there are advantages to be gained by development of the area in a controlled manner. The Commission specifically finds that controlled development of lands and waters within the Edgartown Ponds Area District is essential to the

protection of water quality for shellfish propagation, wildlife habitat protection and the maintenance of scenic vistas. This area contributes both directly and indirectly to the Island's scenic, natural, and economic resources. The low topography and soil types make parts of the area extremely sensitive to erosion or flood damage. The comparatively undisturbed character of the majority of the nominated area provides habitat for diverse wildlife and plant species, including some that are Federally and regionally rare or endangered.

In considering the problems of uncontrolled or inappropriate development within the District, the Commission finds that so fragile are these lands and waters and so important are the values they create and support, that to maintain and enhance the health, safety and general welfare of Island residents and visitors, and for present and future generations, special development controls within the District must be adopted.

In considering the advantages to be gained by development in a controlled manner, the Commission finds that development which conforms to regulations to be established pursuant to the guidelines adopted by this decision will contribute to solving the problems of inappropriate development.

The Qualifications require the Commission to address itself to the need for designation, and to that end, the Commission finds that there exists a regional need for special regulations and planning to protect the Island and its people from damage and loss resulting from inappropriate development. The Commission also finds, after its review, that present private and public regulations in the District cannot assure protection, and that damage to the Edgartown Ponds Area District lands and waters will be a substantial loss to the region or to two or more towns on the Island.

Section 4.00 What Kind of District

Section 8 of the Act permits the Commission to designate a district only in accordance with the standards and criteria approved under the Act. Such a district may be designated only for:

- a) an area which possess 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.

The Edgartown Ponds Area District qualifies under specific qualifications, Sections 2.20, 2.40, 2.50 and 2.80 of the Standards and Criteria ("the Specific Qualifications"). The Commission finds that the Edgartown Ponds Area District meets specific qualifications as described herein.

Specifically, with respect to the first element of Section 8 of the Act, concerning unique natural, historical, ecological, scientific, or cultural resources of regional or Statewide significance, the Edgartown Ponds Area District meet the specific qualifications of Fishing District, Section 2.20.

Section 4.10 Compliance with Criteria and Standards

Section 4.11 Fishing Resource District

Historically, the ponds along the entire south shore of Martha's Vineyard have supported commercial shellfishing. Dramatic seasonal shifts in available employment on the island made shellfishing a practical winter occupation. Edgartown Great Pond was listed as a valuable shellfishing resource in the Water Quality Management Plan for Martha's Vineyard, 1977. For years Oyster Pond, as its name implies, has produced strong crops of oysters, some of which now are relayed by the town to Edgartown Great Pond for transplanting. Fewer residents are actively shellfishing today than in years past, however the ponds along the south shore still have the potential to be economically important natural resources. Until recently, Edgartown Great Pond was known for oysters and clams. Oyster Pond, as its name implies, features extensive oyster beds. One study suggested that the proper concentration of nutrients and appropriate salinity concentrations in pond water may be to the key to commercially significant shellfish populations. (1)

Yet, increased populations of shellfish may not be economically profitable to Island shellfishermen if those shellfish cannot be sold. High fecal coliform bacteria levels in Edgartown Great Pond caused the state Division of Marine Resources to close the pond in 1988. The sluggish water circulation of Edgartown Great Pond, sedimentation of the pond and the brevity of the periodic openings to the sea may all exacerbate the existing fecal coliform bacteria additions from waterfowl or humans.

Edgartown Great Pond, unlike many of the larger coastal ponds of the Island, is accessible to the general public. The pond's character as a public resource underscores the need for careful testing, analysis and recommendations to craft an effective management plan for the water and adjacent lands around Edgartown Great Pond. With such studies, compatible management plans could be created for the other south shore ponds.

Section 4.12 Wildlife, Natural, Ecological or Scientific Resource District

The landscape of the south shore of Edgartown features an array of habitat types. Beach and dune areas merge with open grasslands; scrub and barrens vegetation changes to stands of pine and oak; sandy

pond shores lead to saltwater wetlands which in turn lead to the bottoms or frost pockets running north of the ponds. None of these landscapes exist in isolation from one another and, taken as a whole, form a very diverse and unique segment of the overall Island landscape. The special character of the south shore pond environment was recognized in a 1973 study by the Vineyard Conservation Society, summarized in the Water Quality Management Plan for Martha's Vineyard. The south shore was considered a prime habitat area which "due to [its] size and varied or unique environment, comprise a significant environment." (2) Several other features in the area were listed as areas of "valuable wildlife habitat in the form of small freshwater wetlands, potholes, scrub brush areas or open fields" (3):

Jane's Cove and Sleepy Snake Brook
Beach of Edgartown Great Pond
Crackatuxet Cove
Swan Neck
Jacobs Pond
Jobs Neck Cove and Ponds
Paqua Pond
Watcha Pond

The diverse habitats naturally support a variety of plant and animal species. The undisturbed character of a large proportion of the lands around the ponds allow many rare or endangered species to exist.

The beach areas are likely nesting areas for Piping Plovers, Least Terns or Artic Terns. According to the Massachusetts Natural Heritage Program, several rare or endangered species live within the grasslands on the west shore of Edgartown Great Pond, such as the Short-eared Owl and the Grasshopper Sparrow. (4) The value of these grasslands comes not only from the existence of such species but because they represent a fragment of a once common landscape, now found primarily at the Katama Airfield and Long Point. The relatively isolated nature of the lands and the size of the area suggests that other rare or endangered species, as yet unconfirmed, may exist in the area.

The scrub and barrens lands, where the vegetation is primarily scrub oak and pitch pine, provide groundcover for various animal species. The rare Barrens Buckmoth may be found in the scrub areas. (5)

The wetlands around the ponds serve a number of purposes. As wildlife habitat the wetlands are feeding and nesting areas for herons, egrets and ospreys, as well as otters or muskrats. A rare warbler, the Northern Parula, has been sighted in the past within coves of Edgartown Great Pond. (6) As a fundamental link in the pond food chain, the wetlands are additionally valuable; "coastal wetlands serve as the farmlands for the estuarine and near-shore environment by producing millions of tons of organic matter annually. The most productive of our coastal marshes produce over 10 tons of organic matter per acre each year.." (7) The detritus found within wetlands serves as food for zooplankton, juvenile herring or grass shrimp, which in turn are food for alewife, menhaden and young bluefish and striped bass.

Little scientific data has been gathered on the bottoms that stretch north from the ponds. These bottoms are characterized by poor soils, generally undifferentiated sands and gravels, which were deposited along meltwater streams as the last glaciers melted. (8) These bottoms are not common along the Massachusetts coast; they are found within the glacial outwash plains of Cape Cod, Martha's Vineyard and Nantucket. The low bottoms have their own micro-climates; frosts linger later in the year and the winds funneled off the ponds keep vegetation stunted.

Section 4.13 Cultural or Historic Resource District

As Looking at the Vineyard stated in 1973, "water and the activities related to it dominate Island life." (9) The ponds historically have been places for hunting and fishing. More recently they have been used for canoeing, sailing or for aquaculture. As a passive resource, views from the water or the land traditionally gave an impression of openness or expansiveness. This visual character, a product of specific topography, soils and vegetation, is an important component of the economic value of adjacent lands for use as residential lots.

Defined in terms of a viewshed, a large area of land is visually connected to a pond when the slope of the land is slight, for a dwelling some distance from the pond may be clearly seen from the water or from an opposite piece of property. A tall structure near a bluff or knoll similiarly may be seen from some distance away. (10) Careful siting will diminish the effect of development on a particular view. Views from areas open to the general public, such as town-owned or conservation organization-owned property, also should be defined and protected.

Section 4.14 Hazardous District

The principal hazard faced by property owners along coastal ponds is the twin danger of catastophic floods and the steadily rising level of the sea. The Federal Emergency Management Agency predicts an 8 foot flood stretching on average 250 feet inland along the southern portions of the ponds in the event of a 100 year storm; a majority of the land below the 10 foot elevation contour would be submerged. (11) However, more subtle changes due to sea level rise may have a greater long-term effect on the lands around the ponds. The state Coastal Zone Management study on sea level rise in Massachusetts predicted that under a worst case scenario, Edgartown will lose approximately 383.3 acres or 3.85 percent of its total upland area within 45 years. (12) That scenario cannot be considered inevitable yet even a gradual increase in sea level will affect upland areas by enlarging wetlands, raising the water table, triggering further erosion and causing saltwater intrusion in once-pure private wells. Should the latter occur, the town might be faced with installation of an extensive water system to service the coastal homes.

REFERENCES

1. Matthiessen, G. and Toner, R., Possible Methods of Improving the Shellfish Industry of Dukes County, May 1966.
2. pp. 40, 321, Draft Plan/EIS, Water Quality Management Plan for Martha's Vineyard, MVC, July, 1977.
3. Ibid, p. 321.
4. letter to Carol Borer from Joanne Michaud, Massachusetts Natural Heritage Program, April 10, 1987.
5. Tim Simmons, personal communication.
6. Ibid.
7. p. 3, A Field Guide to Coastal Wetlands Plants, Tiner, R., University of Massachusetts, 1987.
8. "Geologic Map of Cape Cod and the Islands, Massachusetts," Oldale, R. and Barlow, R., USGS, 1986 and The Historic and Archeological Resources of Cape Cod and the Islands, Massachusetts Historic Commission, 1987
9. p. 4, Looking at the Vineyard, Vineyard Open Land Foundation, 1973.
10. pp. 17, 18, 21, Ibid.
11. FEMA, Flood Insurance Rate Maps, Edgartown #250069, 1985.
12. p. 8, Passive Retreat of Massachusetts Coastal Upland Due to Relative Sea Level Rise, WHOI, 1988.

Section 5.00 Guidelines

The Commission adopts the following guidelines ("the Guidelines") for the development of the Edgartown Ponds Area District. In adopting the Guidelines, the Commission has evaluated each of the considerations enumerated by Section 8 of the Act and, in addition, has considered other relevant matters.

The Town of Edgartown shall, in the manner required by the Act, adopt Regulations which at a minimum comply with these Guidelines for Development of the Edgartown Ponds Area District. The Town may adopt such regulations under zoning, subdivision, health general by-law or any combination of such authorities it deems best suited for the purpose. The Commission draws the Town's attention to Section 10 of the Act which in part provides, "In adopting such regulations, each municipality shall have all the powers it otherwise had under the General Laws". Regulations adopted under these Guidelines are essential to evaluate and adjust the physical impact of development in the District so that irrevocable damage to the Town and the Island does not result.

Goals

Section I: Establishment of Guidelines:

1. As used herein the "development", "permit", "regulations" shall have the same meaning as in the Act.
2. The Town shall adopt regulations of the types described in the Act, as appropriate to conforming to these Guidelines to Control Development within the Edgartown Ponds Area District.
3. In appropriate cases, after notice and a public hearing, the Martha's Vineyard Commission may permit a town to adopt regulations which are less restrictive than these Guidelines if the Commission finds that such regulations will carry out the purpose of the Act and the intent of these Guidelines for the District.
4. These Guidelines may be amended by the Commission after notice to the towns and notice and a public hearing in the manner required by the Act.
5. Unless otherwise stated in these Guidelines the regulations adopted pursuant to these Guidelines in no way alter the process for referral and review of Developments of Regional Impact according to the Act and the Criteria and Standards of the Commission.

Section II: General Guidelines for the Coastal District in the Edgartown Ponds Area DCPC

The Coastal District shall consist of three zones, as follows:

1. The Shore Zone: consisting of all land from mean high water to either the 10' elevation contour above mean sea level or to one hundred (100) feet inland of the inland edge of any beach or marsh grasses, or to one hundred (100) feet inland of the crest of any bluff exceeding a height of fifteen (15) feet, whichever is greater.
2. The Intermediate Zone: consisting of all land inland for two hundred (200) feet from the inland bound of the Shore Zone.
3. The Inland Zone: consisting of all the land from the inland boundary of the Intermediate Zone to the extent of the Coastal District, that is 700' from mean high water.

Boundaries for Streams and Wetlands draining into Coastal Great Ponds (salt or brackish water bodies greater than 10 acres in size):

Shore Zone: consisting of the land and water lying one hundred (100) feet from the thread of streams or from the edge of wetlands contiguous to ponds or streams draining into coastal ponds.

Intermediate Zone: consisting of all land inland for two hundred (200) feet from the inland bound of the Shore Zone.

The distances given for the zones within the Coastal District in the Edgartown Ponds Area DCPC are suggested.

Permitted Uses

Coastal District and Streams Shore Zone

Uses may be permitted which are consistent with the fragile nature of the area, such as outdoor recreation (including hunting, trapping and fishing), conservation purposes, aquaculture, agricultural purposes (including haying, construction of fences, planting and cultivation or transplanting of beach grass), etc. and as listed in Section 13.4a of the Edgartown Zoning ByLaws.

A variance procedure shall be established for land where the imposition of regulations would otherwise deprive a land owner of all other reasonable uses.

Uses Allowed by Special Permit

Coastal District Shore Zone

Certain minor non-residential structures and uses, requiring no on-site sanitary disposal facilities, including minor structures associated with shellfishing, fishing, crop storage, or other agriculture; docks, boathouses, and landings; and municipal structures associated with beach stabilization or drainage projects, etc., may be allowed by special permit. Fish processing facilities, alterations to buildings, and an addition to a single family residence existing before December 22, 1975, provided however, that any such addition or alteration will not require additional plumbing fixtures and/or on-site sanitary disposal facilities, may be allowed by special permit. Except that the upgrading of an existing septic system, determined by the Board of Health to have failed, to a system meeting State and local standards, shall be allowed by special permit.

Streams Shore Zone

1. Uses allowed by special permit within the Shore Zone.
2. Alterations of a bank or stream (such as for the construction of dams, bridges, waterwheels) may be allowed by special permit. Priority will be given to such alterations for farming and wildlife use.

Prohibited Uses

Coastal District and Streams Shore Zone

All other uses including dredging, filling, or alterations of any wetland or beach, except for minimal dredging, filling or alterations necessary for a use or structure permitted by special permit.

Permitted Uses

Coastal District and Streams Intermediate Zone

Within the Intermediate Zone, the presumption shall be that the highest and best use of the area is as a buffer between the Shore Zone and the ponds and the Inland Zone.

1. Guesthouses; non-habitable, minor accessory structures normally used for personal, family or household purposes.
2. Agricultural uses, provided that at a minimum, a 25' vegetated filter strip remains between the Shore Zone and activities within the Intermediate Zone.
3. Removal of vegetation, provided that complete revegetation of the area occurs using native grasses, dense cover or native tree species. (List will be provided.)

A variance procedure shall be established for land where the imposition of regulations may be demonstrated by a landowner to be unreasonable.

Uses Permitted by Special Permit

Coastal District and Streams Intermediate Zone

1. Uses including but not limited to driveways, patios, decks, tennis courts, pools or parking areas.
2. All uses allowed by special permit within the Shore zone.

Prohibited Uses

Coastal District and Streams Intermediate Zone

1. Uses not permitted by right or special permit including the creation of a residential lawn.

Permitted Uses

Coastal District Inland Zone

1. Single family residences shall be allowed provided that:
 - a. In order to control the quantity of sanitary disposal system leachate released into the ground in a District there shall be not less than a three hundred (300) foot separation between on-site sanitary disposal facilities or pit. Regulations may permit, in particular cases, less separation by variance which may be granted after public hearing: provided that there shall be a minimum separation of two hundred (200) feet and the applicant must prove that there will be no pollution to ground or surface water, domestic water supply or fisheries. In no case shall the lowest part of the disposal or leaching facility be less than five (5) feet above minimum ground water elevation.
 - b. There is not less than two hundred (200) foot separation between any on-site disposal facilities and domestic water supply wells.
 - c. Wells and on-site sanitary disposal facilities shall be not less than two hundred (200) feet from any portion of a salt water body.
 - d. All domestic water supply wells will require a permit from the town board of health before installation to assure compliance with all health regulations.
 - e. All on-site sanitary disposal facilities shall be located not less than six hundred (600) feet from wells used for public water supply.

f. Height of all structures from mean natural grade level shall be at least one (1) foot less than average surrounding canopy height in wooded areas. In open terrain, height of building shall be eighteen (18) feet for a pitched roof and thirteen (13) feet for a flat or shed roof. (Plan Review Committee may approve special permit to modify the height restriction, up to the maximum allowed in the underlying Zoning District, if it finds such modification is consistent with the character of the immediate landscape and the Guidelines as recited herein).

2. Agricultural uses provided that, as a minimum, a 25' vegetated filter strip remain between the inland boundary of the Intermediate zone and activities within the Inland Zone.

3. Uses permitted in Shore and Intermediate Zones

4. Removal of vegetation, provided that complete revegetation of the area occurs, using native grasses, dense groundcover or native tree species. (List will be provided).

5. Non-habitable, minor accessory buildings normally used for personal, family or household purposes.

Prohibited Uses

Coastal District Inland Zone

1. All other uses not permitted by right or special permit.

General Guidelines for Surface Water District

The Surface Waters District shall consist of all surface waters of all water bodies exceeding ten (10) acres in size contained within the boundaries of the Edgartown Ponds District of Critical Planning Concern as designated in Section 2 of this Decision.

Uses Prohibited.

All uses not permitted by right or special permit.

All special permits shall be reviewed by the Site Review Committee, which may be composed of the same members as the Katama Airport DCPC Plan Review Committees.

By majority vote of the Martha's Vineyard Commission, Swan neck Subdivision, Thomas C. Wallace, Trustee, Map 43, Lot 3.3, Town of Edgartown Assessors Maps, shall be exempt from guidelines and regulations established for this district.

General Recommendations to the Town of Edgartown

1. A committee shall be appointed, composed of public officials and private citizens, to draft management plans for the ponds within the DCPC area. Such efforts shall concentrate on Edgartown Great Pond first. The management plans shall make recommendations regarding methods for maintaining proper salinity and nutrient levels within the ponds, methods for controlling waterfowl activity on and around the ponds, the long-term effect of breaching the beaches of the ponds, and other land and water-based issues as they determine. Martha's Vineyard Commission members and staff may be members of the this committee.

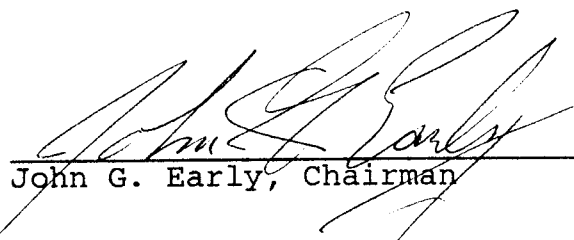
2. The Planning Board shall consider adoption of a flexible zoning by-law for lands within the originally nominated district. The Planning Board may use the West Tisbury flexible zoning by-law as a model in order to protect, preserve or enhance the following landscape features:

- open grasslands or fields
- bluffs overlooking ponds
- wetlands, fresh and salt
- open vistas
- existing agricultural fields
- prime agricultural soils
- specific, identified plant or wildlife habitat
- other natural features as Planning Board determines

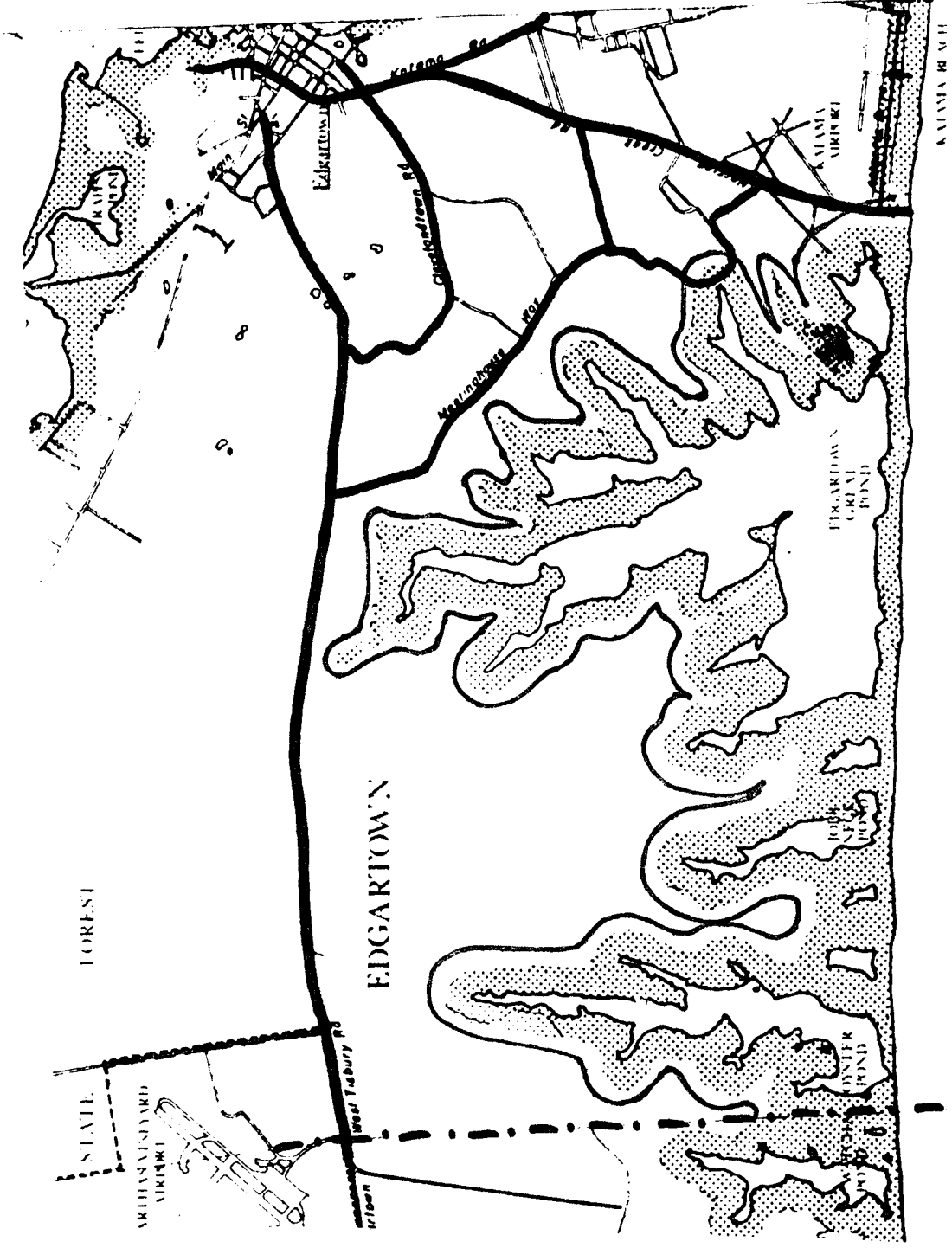
3. The Conservation Commission shall consider the merits of permitting clearing of vegetation within the area of the Conservation Commission's jurisdiction. Such clearing may only be for the purpose of creating open fields composed of dense groundcover, or native grasses.

4. The Martha's Vineyard Commission will assist the town boards in development of a Wildlife Management Plan for the lands south of the Edgartown-West Tisbury Road, as originally considered in the nominated district.

BY VOTE OF THE MARTHA'S VINEYARD COMMISSION
MAY 11, 1989



John G. Early, Chairman



APPENDIX "B" - Map of Amended Coastal District of Critical Planning Concern, Edgartown South Shore Ponds

[not to scale]

THE MARTHA'S VINEYARD COMMISSION

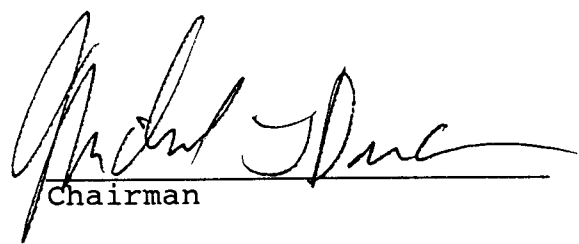
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Martha's Vineyard Commission Decision
Amendment to the Edgartown Ponds Area DCPC
By Affirmative Vote of the MVC
July 21, 1994

The Edgartown Ponds Area District of Critical Planning Concern is hereby amended as follows:

Section II General Guidelines for the Coastal District in the Edgartown Ponds Area DCPC
Uses - Allowed by Special Permit
Coastal District Shore Zone page 10
paragraph one, line 4 - delete the word "boathouses".

Prohibited Uses
Coastal District and Streams Shore Zone page 10
Add a second paragraph containing the single word:
Boathouses.


Chairman

8/11/94
Date