

THE MARTHA'S VINEYARD COMMISSION

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DECISION OF
THE MARTHA'S VINEYARD COMMISSION
DESIGNATING
VINEYARD HAVEN HARBOR DISTRICT
AS A
DISTRICT OF CRITICAL PLANNING CONCERN
November 18, 1999 amended September 14, 2000



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**DECISION OF THE MARTHA'S VINEYARD COMMISSION
DESIGNATING THE VINEYARD HAVEN HARBOR DISTRICT
AS A DISTRICT OF CRITICAL PLANNING CONCERN**

Section 1.00 General

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

On September 10, 1999, the Commission received a nomination from the Tisbury Board of Selectmen for inclusion of geographic areas into a District. At its October 7, 1999 Special Meeting, the Martha's Vineyard Commission voted to accept for consideration the nominated area.

On November 18, 1999, the Commission held a public hearing at 7:30 P.M., at the Katherine Cornell Theater, 51 Spring Street, Tisbury, Massachusetts on the proposed Vineyard Haven Harbor District, after notice to the municipality and notice required by the Act and Massachusetts General Laws, Chapter 30A, Section 2. The hearing was held as required by the Act to permit the Commission to receive testimony relating to whether it should designate a specific geographic area within the proposed District on Martha's Vineyard as a District of Critical Planning Concern.

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

On Thursday, November 18, 1999, the Commission voted to designate the nominated area as a District of Critical Planning Concern. Sections 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 Designation

Boundaries:

Beginning at the northeasterly tip of the Eastville Beach Jetty, so called, and running southeasterly along the Tisbury-Oak Bluffs town line to the center point of the drawbridge over the entrance to the Lagoon Pond, then southwesterly to the northeasterly corner of the sea wall along Beach Road (a.k.a. Massachusetts State Highway) and hence along a line of 90 degrees to the southeasterly, as measured from the seaward face of said sea wall for a distance of 100 feet and hence along said 100 foot line from mean high water to the southwesterly end of said sea wall, and hence along a line 100 feet inland of mean high water along a crescent-shaped beach and hence a distance of 100 feet landward of the face of the bulkheads that form the interface of land and water on Lot 1, Map 10, Lot 16, Lot 15, Lot 14, Lot 13, Map 9C, and hence at a distance of 100 feet from mean high water along the seaward sides of Lot 12, Lot 11, Lot 10, lot 9, Lot 8, Lot 7, Lot 6, Lot 5, Lot 4, Lot 2 of Map 9C, and hence along said line 100 feet inland of mean high water across Beach Street Extension, Lot 6, Lot 4, Lot 3, Lot 2, Lot 1, Map 7E, Union Street, Lot 14, Map 7D and hence easterly 100 feet to mean high water and hence along the shore at the mean high water mark to the intersection of said mean high water mark and Horton Lane and hence turning south-southeasterly in a straight line across the harbor waters to the point of beginning.

Section 3.00 Why the Area Has Been Designated

The Vineyard Haven Harbor District boundaries conform to Qualification Section 1.20. The Commission finds that the lands and waters therein reasonably belong within the Vineyard Haven Harbor District. The land and water within the District is a critical area and the Commission finds that the area needs protection afforded by the Act. The area designated is a logical planning area and is suitable for the adoption of coordinated regulations for the District as a whole. Finally, the Commission finds that the boundaries of the Vineyard Haven Harbor District as established are both convenient and recognizable.

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 Vineyard Haven Harbor District is of regional importance, that there exist problems of uncontrolled or inappropriate development within the District and affecting areas outside 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 Vineyard Haven Harbor District is essential to the maintenance of the Island's unique cultural, historic and economic values. Moreover, the Commission finds that the area within the Vineyard Haven Harbor District is significantly affected by, and has significant impact on, an existing or proposed major public facility or other area of major public investment. The Commission specifically finds that the lands and waters within the District are essential to shellfishing resources and to the protection of water quality and associated natural resource habitats. The Commission finds that development within the District must be controlled to protect the general welfare of present and future Island residents and visitors.

In considering the problems of uncontrolled or inappropriate development within the District, the Commission finds that inappropriate development threatens to erode the valuable cultural and economic qualities traditionally associated with Vineyard Haven Harbor and the surrounding lands. 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 much to solving the problems of uncontrolled or inappropriate development.

The Qualifications require the Commission to address itself to the need for designation. 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 a substantial part of the District cannot assure protection, and that damage to the Vineyard Haven Harbor District lands and waters, or lands and waters affected by District activity, or impediments to proper development, will be a substantial loss to the region or to two or more towns on the Island.

In adopting its findings, the Commission has particularly been guided by the testimony presented at the Public Hearing which is adopted and incorporated herein by reference.

Section 4.00 What Kind of District

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

- a) an area which possesses unique natural, historical, ecological, scientific or cultural resources of regional or Statewide significance;
- b) an area which possesses marginal soil or topographic conditions which render it unsuitable for intense development; or
- c) an area significantly affected by, or having significant impact on, on existing or proposed major public facility or other area of major public investment.

The Vineyard Haven Harbor District qualifies under the Specific Qualifications, Sections 2.00-2.80 of the Criteria and Standards ("the Specific Qualifications"). The Commission finds that the Vineyard Haven Harbor 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 Vineyard Haven Harbor District meets the Specific Qualifications of the Fishing Resource District, Section 2.20; the Wildlife, Natural, Scientific or Ecological Resource District, Section 2.40; the Cultural or Historic Resource District, Section 2.50, and the Economic or Development Resource District, Section 2.60.

Specifically, with respect to the third element of Section 8 of the Act, concerning 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 Vineyard Haven Harbor District meets the Specific Qualifications of the major Public Investment District, Section 2.70.

Section 4.10 Compliance with Standards and Criteria

Section 4.11 Fishing Resource District

Commercial and recreational shellfish in Vineyard Haven Harbor include: the bay scallop (*Argopecten irradians*) and the quahog (*Mercenaria mercenaria*). Shellfish catch records for the town are included in the Annual Town Reports. Those records reveal quite an increase in shellfish catch over the past several years..."In 1997 we had another very successful bay scalloping season, with over 3,800 bushels, once again one of the top harvests in the State. Due to the lack of bay scallops in other shellfishing areas, the fishermen were paid very well for their prized catch."¹ In the same report, Shellfish Constable Derek Cimeno reported that the Harbor opened for the harvesting of quahogs for the first time in four years, due to improved water quality. Tisbury's records include no breakdown by pond. According to Shellfish Constable Derek Cimeno, Inner and Outer Harbor are quahog resources, Outer Harbor is a scallop resource (seawall area and off West Chop)².

The following table shows shellfish catch reported in the Annual Town Reports for the years 1993 through 1997.

	Bushels, Town-wide				
	commercial			family	
	clams quahog	quahogs scallops	scallops	clams	
1997	127 1,024	1,151	2,608	927	773
1996	57 1,430	646.5	3,027.5	325.5	354.5
1995	290 346	906	1,116.5	112.5	339
1994	89 162	601	315	331	507
1993	47 116	464	587	235.5	281.5

According to the 1996 FEIR for the Vineyard Haven Harbor dredging project, the harbor "has been identified as a spawning habitat for the winter flounder, until March 31". Winter flounder (*Pseudopleuronectes americanus*) move into

¹ Town of Tisbury, 1997, Annual Town Report

²Shellfish Constable Derek Cimeno, 1999, personal communication

shallow waters like Vineyard Haven Harbor during the winter months, hence the name. Smaller winter flounder, under 3 pounds, are also known as blackback. Larger winter flounder are known as lemon sole. Popular among recreational fishermen, the winter flounder are easily caught on light tackle, particularly in early spring as the harbor water warms and they begin migrating to cooler offshore waters, and again in September when they return. The minimum size is 12 inches. They spawn in the harbor from January 15 to March 31, and during that time the fishery is restricted to recreational catches only. Dredging activities are also restricted during the spawning period.

Section 4.12 Wildlife, Natural, Scientific or Ecological Resource District

In 1994, the Wetlands Conservancy Program³ documented eelgrass beds located just seaward of the seawall along Beach Road, coincident with the scallop harvest area. Eelgrass (*Zostera marina*) is an important habitat. Eelgrass and other submerged aquatic vegetation (SAV) perform a number of functions. Eelgrass takes up nutrients in the water, thus performing a cleansing function. The plants trap sediment and stabilize the seabed, helping to prevent erosion. Eelgrass beds provide an important nursery habitat for juvenile finfish and shellfish. Eelgrass beds are particularly important in production of the commercially valuable bay scallop *Argopecten irradians*. Juvenile bay scallops attach to the eelgrass at during a critically vulnerable time in their development. The height of the eelgrass keeps the baby scallops out of the reach of certain benthic predators such as crabs, drills, starfish and conch. Eelgrass depends on clarity of water, in order to thrive.

Section 4.13 Cultural or Historic Resource District

The District clearly qualifies as a Cultural or Historic Resource District under all sections of the Qualifications. Testimony presented at the Public Hearing and other information available to the Commission points out the importance of this area to the cultural diversity of the Town and the Island.

Tisbury's Vineyard Haven Harbor Management Plan recognizes the value of the cultural identity of the working waterfront as part of the life of the downtown area "...it is the eclectic vitality which forms the character of the waterfront, and for which the Harbor Plan recommends protection. The life of the waterfront, and its connection with the village, are of special planning concern...The

³Wetlands Conservancy Program. 1994. Eelgrass Mapping Inventory

waterfront must not be allowed to succumb to 'strip' development as has plagued other parts of the Town."⁴ A number of other studies and reports have similarly pointed to character as an important commodity in the area of the harbor. The 1987 report Preliminary Facade and Streetscape Improvement Study focuses comments on the village area "Protection of the village character is a prime objective....the historic human-scaled village quality so precious in today's world is being eroded incessantly by increased use and independent actions of individual owners...Re-unite the village with its harbor. Re-establish the identity of the village as a waterfront community."⁵ According to the 1997 Tisbury Open Space Plan, Tisbury residents are interested in protecting "the working waterfront, harbor water quality, small-town Main Street, and Tashmoo and Lagoon resources". Similar sentiment was expressed in the earlier plan, the 1986 Open Space in Tisbury, where eighty-one percent of the survey respondents checked "protection of Tisbury's character from urbanization and development" a "high priority" item.

Section 4.14 Economic or Development Resource District

The waterfront is uniquely suited to siting of facilities and businesses that require access to the water. Special protection may be needed to ensure a place for those activities, as the waterfront is also seen as desirable for development of a number of competing activities. The 1981 harbor study documented the mixed commercial nature of existing land use in the area "Very few businesses on the waterfront require direct water access. Of 145 parcels in the study, only 16 support water-dependent activities, yet these parcels constitute 35% of the total commercial valuation in Tisbury. Only 6 acres of vacant land remain for developing boatyards, railways, storage and other marine facilities."⁶

As part of development of the Vineyard Haven Harbor Plan, forty-three parcels were examined along the harbor between the SSA terminal and Lagoon Harbor Park, and along the West Arm between Maciel Marine and Lagoon Harbor Park. The study area comprised 32.6 acres of commercially zoned property. Uses in 1993 were identified, and water dependency was compared to total acreage and to water frontage, with the following results:

⁴ Town of Tisbury, 1993. Vineyard Haven Harbor Management Plan

⁵ Preliminary Facade and Streetscape Improvement Study Tisbury Massachusetts Conway Design Associates 1987

⁶ Vineyard Haven Inner Harbor Study, Marine Resource Management, Inc. 1981

Waterfront Uses in 1993

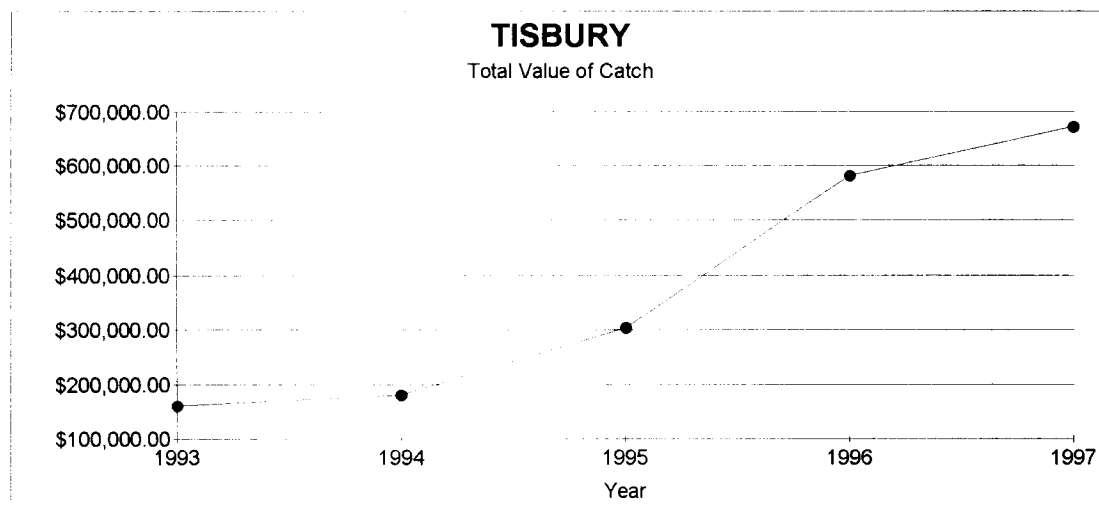
	acreage (acres)	%	water frontage ⁷ (feet)	%
Water Dependent & Accessory 51.0%	10.50	32.3%	2745	
Vacant 12.9%	2.73	8.4%	693	
Non Water Dependent 24.0%	15.6	47.9%	1290	
Mixed 12.1%	<u>3.7</u>		11.3	<u>652</u>
Total feet	32.6 acres			5380

It is encouraging that, although properties devoted to strictly non water dependent uses comprised 47.9% of the total (32.6 acres) land area of the waterfront, the actual waterfront frontage of those properties comprises only 24% of the total (5380 feet) waterfront frontage of the waterfront. Another point of note is the amount of vacant property. Vacant properties comprised 8.4% of the total land area and 12.9% of the total waterfront frontage. Many of the properties included vacant structures of various descriptions. In addition to categories of water dependency, the harbor planning study looked carefully at the types of non water dependent uses in place. Of the properties devoted to strictly non water dependent uses, only 4.1% of the land area and 3.9% of the waterfront frontage was devoted to pedestrian oriented services compatible with the waterfront. A larger proportion of the non water dependent properties, 6.8% of the land area and 20.2% of the waterfront footage, was developed for the builders' supply industry. There was a time when our freight was barged in, and the most logical place for a lumberyard was at the waterfront. Although our freight is now trucked to each destination, there remains a significant builders' supply presence at the waterfront. It is important to note, however, that the builders' supply industry may find itself in the same awkward position as the boatyard industry. Such land intensive uses stand to be crowded out by developmental pressure. The vacant properties and the builders' supply properties comprised 954 feet of the actual waterfront (18% of the total footage of waterfront) and 3.8 acres (12% of the total waterfront land area). Of the remaining non water dependent properties,

7 The study did not measure or include the frontage of the marshy islands in the West Arm of Lagoon Pond, which are zoned for commercial use.

many of which were in condominium ownership, properties comprising 89.1% of the non water dependent land area and 75.9% of frontage were devoted to uses such as office buildings which display no obvious relation to the waterfront.

The increased shellfish catch has also shown itself in increased value of the shellfish harvest, as illustrated in the following graphics. The dollar values are also taken from the town reports. The value of the catch, town-wide, climbed from \$161,015 in 1993 to \$672,458 in 1997. It has been estimated that a dollar earned in the commercial fishing industry generates \$4.50 in the local economy.⁸



Section 4.14 Major Public Investment District

There are a number of publicly-owned facilities in the nominated area, including the SSA terminal and Owen Park. The harbor itself is a major public facility. The Vineyard Haven Harbor Management Plan included this chronology of public investment in the harbor itself:

CHRONOLOGY OF DREDGING AND STRUCTURES:

- 1835 Bass Creek closed by fill (Gale of 1815 had partially closed the channel.)
- 1888 Protection of "Chops" adopted by U.S. Army Corps of Engineers (under Rivers and Harbors Act)

⁸ Massachusetts Division of Marine Fisheries, 1985. Massachusetts Fisheries Assessment at Mid Decade

- 1889-97 Protection of "Chops" completed by U.S. Army Corps of Engineers at a cost of \$54,314.26:
- 880 foot long sea wall
 - 3 groins
 - a temporary wharf for construction
 - a short stone breakwater at West Chop
 - 2400 linear feet of riprap sea wall along the western shore of the outer harbor
 - a short groin with 1210 feet of riprap sea wall at East Chop
- 1905-15 Commonwealth & Town constructed Inner Harbor Breakwater and dredged anchorage area in lee, at a cost of ~\$40,000
- 1933 Commonwealth & Town dredged Lagoon Pond entrance 6' deep X 100' wide and constructed first part of Eastville jetty, at a cost of ~\$30,000
- 1934 Commonwealth constructed bascule drawbridge 30' across Lagoon Pond inlet, at a cost of ~\$100,000
- 1935 U.S. Army Corps of Engineers adopted Inner Harbor fairway between Steamship dock and Outer Harbor 17' deep X 150-275' wide and anchorage 12' deep between Steamship dock and breakwater
- 1936 U.S. Army Corps of Engineers completed dredging of fairway and anchorage, ~136,000 cubic yards, at a cost of \$27,186, with an estimated maintenance cost of \$1100 per year (No maintenance work has been performed or needed to date.)
- 1937 Commonwealth & Town dredged sand accreted in shadow of breakwater back to 200' from western end of dogleg and anchorage 6' deep between federal anchorage and shore and between Steamship dock and dogleg, 62,000 cubic yards, disposal at sea, at a cost of \$16,302.76.
- ~1940 private construction of 300 foot long groin ~300' north of breakwater dogleg
- 1941 Commonwealth & Town dredged accreted sand between dogleg and shore to a depth of 5' (Sand had built ~250' since 1937, to meet and cover part of dogleg.) and shoaled sand between dogleg and new private groin north of dogleg, 11,600 cubic yards, disposal on marsh and flats, at a cost of \$6,274.80
- 1968 U.S. Army Corps of Engineers adopted Lagoon Pond entrance channel 8'deep X 100' wide and seaward extension of Eastville jetty by 200' (under Rivers and Harbors Act)

- 1973 Channel dredging and jetty extension completed at a cost of \$180,090 (\$99,100 federal and \$80,990 non-federal)
- 1975 Town dredged ~12,000 cubic yards, 200' X 150' in the dogleg area (~3333 cubic yards) and in the Commonwealth/Town part of the anchorage an area 90' X 720' to a depth of 9' (~7200 cubic yards), disposal upland (Town Landfill)
- 1983 Town dredged 1,000 cubic yards from dogleg area, disposal upland (Town Landfill)
- 1993 Town proposed to dredge ~25,000 cubic yards from dogleg channel and from catchment area of filled private groin north of dogleg, and ~7,600 cubic yards from the lee side of the Inner Harbor breakwater (estimated total ~32,600 cubic yards).

Section 5.00 Guidelines

The Commission adopts the following guidelines ("the Guidelines") for the development of the Vineyard Haven Harbor 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 Tisbury shall, in the manner required by the Act, adopt Regulations which at a minimum comply with these Guidelines for the development of the Vineyard Haven Harbor District. The Town may adopt such regulations under zoning, general by-law or any combination of such authorities the Town 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 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.

Section 5.10 Goals

To maintain and enhance the cultural heritage and economic vitality of the Vineyard Haven Harbor and waterfront; to promote the year 'round working waterfront and traditional waterfront industries and services; to promote pedestrian access along the waterfront; to protect habitats and water quality; to promote and protect shellfish habitats and fisheries; to maintain and manage the navigational resources of the harbor.

Section 5.20 Establishment of Guidelines

As used herein the terms "development", "permit" and "regulations" shall have the same meaning as in the Act.

The Town shall adopt regulations of the types described in the Act, as appropriate to conform to these Guidelines to control development within the Vineyard Haven Harbor District.

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.

Section 5.30 Development Guidelines

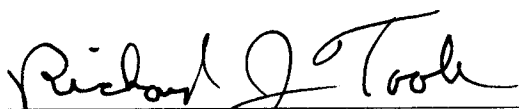
The Town shall adopt regulations which include or adequately consider the following:

5.31 That, within one year, the Town's harbor plan be updated and enlarged upon; to include assessment of potential impacts of existing and potential water uses on the cultural integrity and economic vitality of the harbor and waterfront; to include comprehensive long range goals for water uses and the waterfront.

5.32 That the Town shall develop and adopt clear, consistent and defensible controls, sufficient to protect the waterfront and harbor resources from the impacts of inappropriate water uses and waterfront development; such regulations shall integrate consideration of impacts on both the waterfront and the resources of the harbor itself.

5.33 That specifically exempted from DCPC regulation shall be all permits, construction, development and other activity incidental to the Town's compliance with the Second Modified Final Judgment or other agreements with, or requirements of the Commonwealth of Massachusetts concerning wastewater collection, treatment and disposal.

By vote of the Martha's Vineyard Commission
November 18, 1999


Richard J. Toole, Chairman

REFERENCES

- DCPC nomination, Tisbury Board of Selectmen, 1999
- Tisbury Shellfish Constable Derek Cimeno, 1999, personal communication
- Vineyard Haven Harbor Plan, Tisbury, Massachusetts, 1993, adopted by vote of Board of Selectmen, May 16, 1995
- Final Environmental Impact Report, Maintenance Dredging of a portion of Vineyard Haven Harbor, Coastal Engineering Co., Inc., 1996
- Preliminary Facade and Streetscape Improvement Study Tisbury Massachusetts, Conway Design Associates, 1987
- Vineyard Haven Inner Harbor Study, Marine Resource Management, Inc., 1981
- Tisbury Open Space Plan, Tisbury Conservation Commission, 1997
- Open Space in Tisbury 1986, The Tisbury Conservation Commission, 1986
- "Waterfront Land Use Study", Town of Tisbury, 1994
- Shellfish Constable Derek Cimeno, 1997 & 1998, Annual Town Reports
- Chapter 831, Acts of 1977 as amended
- The Martha's Vineyard Commission Regional Island Plan, The Martha's Vineyard Commission, 1991
- Massachusetts Division of Marine Fisheries, 1985, Massachusetts Fisheries Assessment at Mid Decade
- "Eelgrass Mapping Project", Wetlands Conservancy Program, 1994
- Pohle, David G., V. Monica Bricelj & Zaul Garcia-Esquivel, 1991, "The Eelgrass Canopy: an Above-bottom Refuge from Benthic Predators for Juvenile Bay Scallops *Argopecten irradians*"
- Kopelman and Paige, P.C., 1998, "Town of Tisbury Harbor Management and Control Regulatory Report"
- Town of Tisbury By-Laws

BOUNDARY AMENDMENT

On September 14, 2000, after a Public Hearing, the following amended boundary was voted for the District:

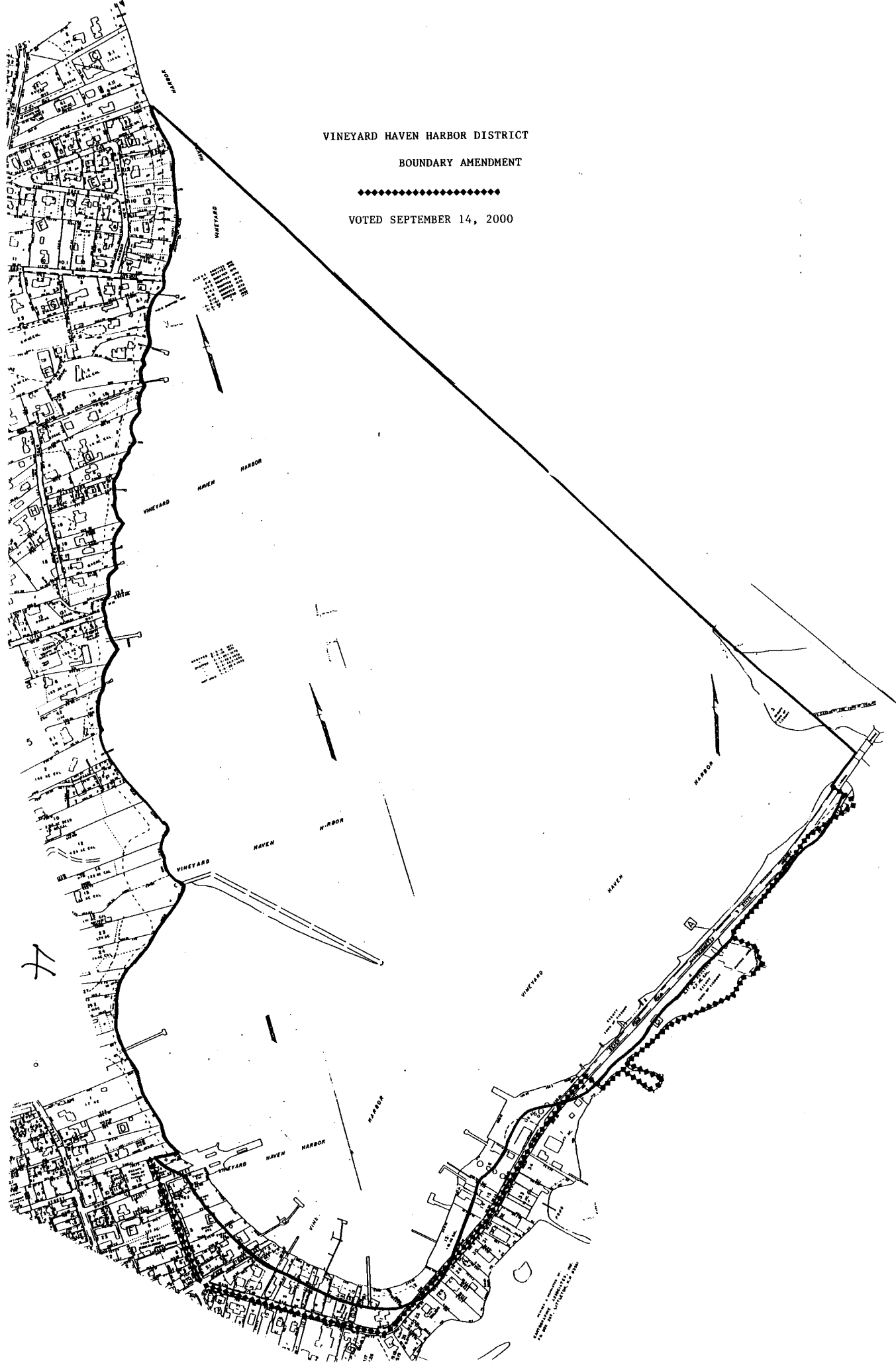
Beginning at the northeasterly tip of the Eastville Beach Jetty, so called, and running southeasterly along the Tisbury-Oak Bluffs town line to the center point of the drawbridge over the entrance to the Lagoon Pond, then southwesterly to the northeasterly corner of the sea wall along Beach Road (a.k.a. Massachusetts State Highway) and hence along a line of 90 degrees to the southeasterly across Beach Road to the mean low water mark of Lagoon Pond, and hence southwesterly along said mean low water line to the northeast boundary of Lot 2, Map 10-B, and hence northwesterly along said boundary to Beach Road, and hence southwesterly and then northwesterly along the centerline of Beach Road to Water Street, and hence northerly along the centerline of Water Street to its intersection with Lot 14, Map 7-D, and hence westerly and then northerly and then easterly along the boundary of said lot Lot 14, Map 7-D, and hence to the mean high water line of Vineyard Haven Harbor and hence along the shore at the mean high water mark to the intersection of said mean high water mark and Horton Lane and hence turning south-southeasterly in a straight line across the harbor waters to the point of beginning.

VINEYARD HAVEN HARBOR DISTRICT

BOUNDARY AMENDMENT



VOTED SEPTEMBER 14, 2000



VINEYARD HAVEN HARBOR DISTRICT

as voted November 18, 1999

Note: This boundary was amended on September 14, 2000

See amended boundary.

