

# THE MARTHA'S VINEYARD COMMISSION

BOX 1447 • OAK BLUFFS  
MASSACHUSETTS  
02557  
(617) 693-3453

## MINUTES OF LAGOON POND DISTRICT OF CRITICAL PLANNING CONCERN PUBLIC HEARING JANUARY 14, 1988

Mr. John Early, Chairman of the MVC, welcomed the public and stated that an attendance sheet was being passed around and asked everyone to sign it. He then asked the Commissioners and staff to introduce themselves. Mr. Early then handed the floor over to Mr. James Young, Chairman of the DCPC Committee. Mr. Young read the public hearing as follows:

The Martha's Vineyard Commission held a Public Hearing on Thursday, January 14, 1988 at 8:00 P.M. at the Oak Bluffs Elementary School, School Street, Oak Bluffs, MA pursuant to Section 8, Massachusetts General Laws, Chapter 30A, Section 2, and the Standards and Criteria regarding designation of the District of Critical Planning Concern adopted by the Commission and approved on September 8, 1975 by the Secretary of Communities and Development, to hear testimony and receive evidence as to whether the Commission should designate specific geographic areas of the land and waters of Martha's Vineyard as described below in the boundaries as a District of Critical Planning Concern.

### Area Accepted for Consideration for Designation:

Starting at Lagoon drawbridge and Oak Bluffs Town line, thence northeasterly on Beach Road to Eastville Avenue; southeasterly on Eastville Avenue to Temahigan Avenue; northeasterly on Temahigan Avenue to New York Avenue; southeasterly on New York Avenue to Chestnut Avenue; southerly on Chestnut Avenue to Pacific Avenue; southerly on Pacific Avenue to Vineyard Avenue; westerly on Vineyard Avenue to Norris Avenue; southerly on Norris Avenue to Wing Road; southwesterly on Wing Road and Barnes Road to Alpine Avenue; southerly on Alpine Avenue to Massachusetts Avenue; continuing southwesterly 300' ± on Oak Bluffs Water Company right of way to Road marked as "50' way" in Vineyard Hills subdivision; easterly on said way, continuing southerly to intersection of way separating Lots 2.15, 2.16 and 2.17 Map 28, Oak Bluffs Assessors; southerly on said way to boundary line of Lot 3 Map 35, Oak Bluffs Assessors; southerly across Lot 3 to the westernmost corner of Lot 34-52.85; southeasterly along westerly bound of lots 34-52.85, 34-52.59, 34-52.58 to Meadow View Road; southerly along said road to intersection of boundary line between Lots 34-52.13 and 34-52.49, Oak Bluffs Assessors'; southerly on said line to boundary line of Lot 2, Map 42; easterly along said line to northwest boundary line of Lot 1, Map 42, Oak Bluffs Assessors'; southerly on common boundary line of Lots 1 and 2 to intersection at north corner of Lot 10.10, Map 49, Oak Bluffs Assessors'; southerly on western boundary line of Lots 10.10 and 10.11 and continuing to intersection of Lot 12.6, Map 49, Oak Bluffs Assessors'; thence westerly along trail known as Old County Road to intersection of northwest corner of Lot 30, Map 50, Oak Bluffs Assessors'; southerly on

common boundary line of Lots 29 and 30, Map 50, Oak Bluffs Assessors'; to Edgartown Road; westerly on Edgartown Road 800' + to intersection of 30' Way at Martha's Vineyard Regional High School, Lot 3, Map 55, Oak Bluffs Assessors'; southerly on said Way 2000' to Edgartown town line, thence westerly 5000' along Edgartown/Oak Bluffs town line and northerly bound of M.V. State Forest at a junction of Tisbury, Oak Bluffs, West Tisbury and Edgartown town lines as shown on Oak Bluffs Assessors Map 53; at that intersection point turning northerly, following the Oak Bluffs-Tisbury town line 6900' to the intersection of the common boundary line of Lots 8 and 9, Map 25, Town of Oak Bluffs Assessors, continuing northeasterly on said line, for a distance of approximately 2500' + crossing Tisbury town line; and continuing northeasterly 1500' + along the western bound of Lot 9 and 10 Map 19, Tisbury Assessors; the western bound of Lots 21, 22, 23, 24, 25, 6 Map 20, Tisbury Assessors; to point of intersection of boundary line of Lot 1, Map 21, Tisbury Assessors'; thence westerly along said line 305' +, turning 90 degrees northerly on said line 1500' + to Marie Street; (Town of Tisbury) continuing in a northerly direction along Marie Street, Elizabeth Street and westerly along Cook Road to the intersection of State Road; northeasterly on Mass. State Highway A/K/A State Road and A/K/A Main Street, thence northerly on Beach Street to shore of Vineyard Haven Harbor; northeasterly on shoreline of Vineyard Haven Harbor to point of origin, Lagoon Drawbridge and including the waters of Lagoon Pond.

A copy of the Commission's vote for consideration and all other information relating thereto are on file and may be examined at the offices of the Commission. Written testimony may be submitted prior to or during the hearing.

Mr. Young gave the order of this public hearing as follows: MVC Staff will give its presentation; the applicant will give his presentation, Town Boards will be called on for testimony and then the public will be allowed to give testimony.

Melissa Waterman, MVC Staff, referenced a handout to Commissioners and then discussed maps which were prepared for this hearing. She reviewed maps on the wall: Boundaries of the 50' Contour Map for Tisbury, Oak Bluffs, West Tisbury and Edgartown; the Recharge Area as depicted in 1977 and 1984 with the 50' and 100' contour; groundwater elevations for Lagoon Pond and wells in the recharge area, and the buildout map for all Towns on the Island. Ms. Waterman reviewed the purpose of the public hearing referencing the nomination papers submitted and cited the four districts which were given according to Critical Planning District Qualifications: Fishing District; Wildlife, Natural, Scientific or Ecological Resource District; Economic Development Resource District and the Drinking Water Resource District. She stated that the size of the proposed DCPC is 2,823.0 acres. Further, she reviewed the chronology of this nomination: on 10/22/87 the DCPC nomination, by the Eastville Lagoon Pond Association and the Joint Lagoon Pond Study Committee, received by the MVC with 121 signatures. Boundaries of the District encompass four towns: Edgartown, West Tisbury, Oak Bluffs and Tisbury. On 11/19/87 the DCPC Subcommittee of the MVC met with Rev. Dorchester and Mr. Mead as the nomination representatives. The boundaries of the proposed DCPC were amended to include only Oak Bluffs and Tisbury. On 12/3/87 the MVC votes to consider this nomination with the modified boundaries. A 60 day moratorium on the

issuance of development permits in the two towns goes into effect the next day. On 1/14/88 the public hearing on the proposed DCPC. On 1/28/88 the MVC will vote whether or not to designate the area a DCPC. If the MVC votes yes, the moratorium on issuance of development permits continues, for up to 12 months. If the MVC votes no, moratorium is then lifted. Regarding past nominations Ms. Waterman stated that on September 22, 1975 nomination of "Lagoon Pond and Adjacent Areas"; she stated that the nomination was consolidated into the coastal district. On May 11, 1977 Linda Marinelli nominated the "Lagoon Pond and Adjacent Areas" and on August 22, 1977 the MVC voted not to designate. Ms. Waterman noted staff suggestions at that time regarding management and regulatory techniques. She then stated that in July of 1981, Linda Marinelli nominates a DCPC for the Oak Bluffs portion of Lagoon Pond and the lands adjacent to the pond. There was a public hearing on July 30, 1981 regarding the proposed DCPC and on August 20, 1981 the MVC voted to deny the nomination.

Ms. Waterman then stated that she has included in the staff handout the applicable regulations with the District Bounds.

Mr. Young then asked for the applicants presentation.

Reverend Dorchester, Representative, stated that Bruce Poole is in the audience to answer or clarify questions which may arise. Reverend Dorchester read a statement in its entirety which in summary stated the following: Initial Observations - he stated that he would like to dispel some misconceptions about the proposed Lagoon Pond District and its sponsors stating that this nomination is not about the Lagoon Pond Piers, is not presented by new Island arrivals, does not feel that this nomination will decrease the value of land and that the applicants are seeking to protect the pond and the fresh water resources. He then discussed who the sponsors of this proposal are; about the proposal itself and reasons for the nomination; the boundaries of the District as proposed and amended and development within the proposed District (the statement was submitted for the record and can be found on file at the Commission).

Mr. Young, Chairman of DCPC Committee, then asked for testimony from Town Boards.

Cora Mederios, Tisbury Selectman, read a letter from her Board in support of the efforts to protect the pond with certain concerns and suggestions as follows: that there is a careful description of the bounds; that the bounds are reviewed to make sure that the area is not in conflict with Town Regulations; that the Board is opposed to Vineyard Haven Harbor, shorefront and inner harbor included within these bounds and lastly states that the Board endorses the DCPC contingent on changes as proposed by the Tisbury Planning Board and Board of Selectmen. The letter was then submitted for the record.

Linda Marinelli, Oak Bluffs Selectmen, read a statement which referenced municipal impacts, impacts on land and water and past nominations for this area which have not been designated. She stated in all cases it has been felt that regulations are in place to protect this area and questioned why there is still a problem. Further, that she feels through a DCPC Designation for this area new guidelines could be established to protect this area.

Elizabeth Talbott, Oak Bluffs Resident and member of the Oak Bluffs Conservation Commission, discussed the history of the area in the past 10 - 15 years and stated that her Board supports the moratorium with the condition that this time will be used to set up a priority list of areas

detrimental to the Lagoon and a time limit for solving these problems. Further, she stated that the Conservation Commission will help in any way.

Mark Racicot, Tisbury Conservation Commission, stated that the Conservation Commission has a letter on file with the MVC which basically states that his Board agrees in principal with the establishment of the DCPC and states that the extent of the boundaries should be left up to the MVC Staff. He stated that the Tisbury Conservation Commission thinks very highly of the Bruce Poole Study on the Lagoon. Further that the Conservation Commission offers any assistance.

Jack Law, Selectmen of Oak Bluffs, stated his opposition to the DCPC as he does not feel it is right to give up local control.

John Corelli, Oak Bluffs School Committee, spoke of the impact on the school system due to increased number of children. And stated if the DCPC could help to control and answer questions of the future through research that he is for the DCPC. Further, he stated concerns for the drinking water supply.

There being no further testimony from Town Boards, Mr. Young called for testimony from the public.

Ronald Mechur, Oak Bluffs Resident, read a letter from Norman Sebal, President of the Meadow View Farms Properties Owner Association, which requested the deletion of Meadow View Farms from the boundaries of the proposed DCPC for the following reasons: there is a build-out rate of 7 lots per year and all septic systems are to be Title V and suggested that older systems is something which should be addressed.

David Amaral, property owner in the Lagoon area Tisbury, stated that he is hearing two situations 1) we may or may not need the DCPC to take care of the problems of the Lagoon - to this he stated that the Army Corp of Engineers for years has stated that the pond needs an additional opening and stated this has not been done. Further, he stated if the source of pollution is known then clean it up. 2) drinking water concerns - he stated that he believes that there are State laws to handle this problem.

Herbert Combra, Oak Bluffs resident, expressed concern for the Island as a whole should this DCPC be designated. He stated that a moratorium will cause other Towns to build more rapidly as they will be concerned their town is next. Also, he stated that the problem with the Lagoon Pond now is that enforcement of existing regulations has never been done and suggests enforcement now.

Margaret Hanley, Director of Environmental Services with GEI, stated at the request of the Bud & Patricia Moskow of Tisbury she has reviewed the report done by Bruce Poole. She stated that the main concern they have regarding the DCPC Petition is the Committee's reliance on the Lagoon Pond Report prepared by Bruce Poole and SP Engineering as they feel the technical data has been poorly documented and that sampling locations and methods used are inappropriate. Ms. Hanley submitted for the record a letter from Chris Duerring DEQE to Bruce Poole dated December 6, 1987 and an internal memorandum from DEQE which comments on the Report. Ms. Hanley cited, from the above letter and comments on the Lagoon Pond Diagnostic/Feasibility Draft Final Report, section A.3.1.h which in summary states the nutrient budget section of the report is unorganized and reasons and A.3.2 which in part states the feasibility portion of the study is unacceptable. She then cited a paragraph from the internal memorandum from Michael Ackerman to Chris Duerring which in summary stated that the report as submitted is unacceptable as a draft.

Leo Convery, Edgartown resident and land owner within the DCPC boundary, stated his concerns for moratorium effects (i.e. massive economic slowdown, legal considerations regarding moratoriums and property values.)

William Marks, President of Vineyard Environmental Protection Agency, stated that he concurs that there is a problem and has been a problem in the Lagoon Pond for a long time however, questioned the statement made in the Poole Report stating that the Pond will be dead in five years. Further, he stated that he feels the applicants that submitted the nominations may have been misguided by the Poole Study. He stated that the problem should be addressed within the immediate bounds of the pond and feels that the MVC will be able to address this problem.

Peter Rosbeck, developer, stated he is concerned with development and moratorium. He questioned if regulations will preclude use of property or delay use of. He stated that guidelines exist at the present time and are not being utilized. Further, he stated that with a moratorium comes the stimulation of growth therefore, on-going planning and implementation of existing regulations is needed and questioned the use of a moratorium.

Richard Binder, Edgartown resident, Tisbury landowner & Real Estate Broker, stated as Real Estate Broker his office sent out approximately 400 letters to landowners within the DCPC Bounds which explained the District. He stated that he has received responses from approximately half of the people who have responded that although conservation measures are important that if a moratorium is placed on this area they will not sit back passively.

Mr. Young requested that Mr. Binder submit these letters to the MVC.

Claire Gibson, landowner in Oak Bluffs, stated that the moratorium has cost her to lose out on the sale of her property.

David Wilson, Oak Bluffs Landowner, stated that the protection of the Pond is in the best interest of the Island and suggests that the MVC look at the bounds proposed as the proposed bounds will effect year-round residents.

Bruce Poole, SP Engineering, stated that he met with DEQE on tightening the feasibility aspects of the report. He discussed data available and chronology of studies and collection of data. He stated that the Gaines Study classified the pond as modest eutrophication potentials, in 1984, and the reason for the levels not being as strong as in ponds in Orleans and other places is that Lagoon Pond watershed was not nearly at buildout. He spoke of nutrients levels found during the testing of 10 wells and the test show that both nutrient and algae levels have increased over the past five years. Mr. Poole stated that 20% of the shoreline are classified as eutrophic according to DEQE's standards. Mr. Poole stated that levels of nitrogen become critical during the summer due to the domestic contributions (i.e. septic systems).

Ron Mechur, Resident, stated in 1979 he was the Director of the MVC when the Lagoon Pond Study was done. He stated that the problem is not that there is are not regulations in place however, the problem is non-compliance of these regulations. He stated that the recommendations in the report have probably never been looked at. Mr. Mechur stated that he feels that a moratorium will not solve the problems in the Lagoon. He suggested a need for creative solutions such as hiring a regional engineer, cooperation from residents and setting up a public trust to repair/replace system which otherwise residents could not afford.

Bob Lapetra, Oak Bluffs Resident, stated that there is a need for a wastewater treatment plant, further the problem is with property that is

already built, not unbuilt land. Lastly, he stated that there is a need for stronger monitoring.

Cora Mederios, Tisbury Selectmen, stated that she has heard nothing from the Board of Healths and since the protection of water quality is the issue she urged the MVC to help towns correct the water quality problems with sewage treatment plants.

Terrance Donahue, Edgartown Resident, expressed Island problems and stated that a moratorium will only treat a symptom and stated the Island needs to address wastewater treatment.

Doug Abdelnor, resident on Lagoon, stated that he goes swimming and fishing in the pond and feels there is no problem.

Robert Sawyer, Tisbury resident, stated the Lagoon Pond is an issue, but feels that a moratorium will not work and is not the solution. He stated as there are laws in place, the problem is with the enforcement of these laws. He stated that if the problem is septic systems then the existing homes are the problem. He suggested that there are probably monies available, for persons who can not afford to replace a failed system, through grants and the State.

There being no further public testimony Mr. Young summarized letters which has been received by the MVC for the record:  
To MVC from Stephen Berwick of Weinstein Bernstein & Berwick, P.C., Worcester, dated 12/9/87 representing Deer Run Limited Partnership, owner of a 12.9 acre parcel on west side of Airport Road, south of Edgartown-Vineyard Haven Road. Noted in letter that the land may be in this DCPC and is the belief of the partnership that the parcel should not be included in the bounds. To John Early from John & Carol Borselle, Edgartown, dated 12/14/87 stating they are in support of the DCPC nomination, but think that the scope is too large, reaching one mile beyond the Lagoon across the Edgartown-Vineyard Haven Road. Notes the Borselle's financial investment in their property and suggests that the moratorium be limited to the Lagoon side of the Edgartown-Vineyard Haven Road. To the MVC from Gerald Jones, the Forum Corporation, Boston, dated 12/23/87. Expresses extreme concern about steps taken in declaring DCPC for Lagoon Pond. Considers moratorium on construction to be wrong, particularly since the reports used to base DCPC on seem to be "one-sided, premature and unconfirmed." Considers size of DCPC too large; believes that there must be other alternatives. Also notes that he found out by chance about the public hearing. To the MVC from David Rosi, dated 1/2/88. States he owns property in Oak Bluffs and states he will not be able to attend public hearing but wishes his letter to be taken as his testimony. States that the DCPC would be a reactive response to the consequences of lack of planning for the area around the Lagoon by the towns and the Commission. Questions why the area wasn't made a DCPC 3-5 years ago, when subdivisions were being proposed. Further states that he bought property in Vineyard Hills, clearly subject to covenants and restrictions as part of the subdivision. He states that any plan of the Commission's must not "negatively impact" the value or marketability of the property, either directly or indirectly and notes that legal recourse would be taken if this happened. Concludes saying that the issue is one of fairness; people who bought property in earnest several years ago should not be penalized now.  
To the MVC from Leon Bennett Sr., Vineyard Haven, dated 1/4/88. States he would like to go on record as opposed to 60 day moratorium on the area around Lagoon Pond. Notes that a one-year moratorium would interfere with the livelihood of many Vineyard residents and that this fact should be

