Martha's Vineyard Commission
Minutes for the Regular Meeting of
June 17, 1999

The Martha's Vineyard Commission held a Regular Meeting on Thursday, June 17, 1999, at 7:30 p.m. at Commission Offices in the Olde Stone Building, New York Avenue, Oak Bluffs, Mass.

[The first 21 minutes of Tape One, Side A, consisted of a harsh buzz. Therefore, MVC Secretary Pia Webster relied upon her shorthand notes for that portion of the Meeting Minutes.]

At 7:41 p.m., a quorum being present, Richard J. Toole, Chairman of the Commission and the Selectmen's Appointee from Oak Bluffs, opened the Regular Meeting.

Chairing that evening's Public Hearing was Michael Colaneri, Chairman of the District of Critical Planning Concern (DCPC) Committee and a member at large from West Tisbury.

Public Hearing: Amendments to Decision/Regulations, Edgartown Ponds DCPC.

Mr. Colaneri began by reading aloud the Notice of Public Hearing:

The Martha's Vineyard Commission will hold a Public Hearing for the purposes of amending the Decision of Designation and Regulations pertaining to the Edgartown Ponds District of Critical Planning Concern.

The proposed amendments are as follows:

1.) Amend Section 2 of the Decision "Area Designated" by adding in paragraph 2, line 1, the words "waters of," so that said line will read: "All waters of and lands, streams and wetlands in the Town ..." [emphasis added]
2.) Amend Section II, General Guidelines by adding a new District to be entitled "Surface Waters District." [emphasis added]

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.

3.) Amend the Regulations of the Town of Edgartown as pertains to the Edgartown Ponds District of Critical Planning Concern as follows:

a.) Section 14.6.2 Areas of District.

Insert the word "waters" as the third word of the first sentence of Section 14.6.2.

Insert the following twelve (12) words at the end of Section 14.6.2: "or (3) are water bodies which exceed ten (10) acres in size."

b.) Section 14.6.8 Prohibited Uses.

Add two (2) new prohibited uses to end of list in Section 14.6.8 as follows:

5. Operation of personal watercraft.

6. Operation of greater than ten (10) horsepower engines for boats (commercial fishermen exempt).

Date and Time: June 17, 1999, 7:30 p.m.

Place: Offices of the Martha's Vineyard Commission
Second Floor Conference Room
Olde Stone Building
New York Avenue
Oak Bluffs, Mass.

Mr. Colaneri then asked if there was anyone from Edgartown who was going to make a presentation in support of the proposed amendment.
Presentation: Steve Ewing, Chairman of the Edgartown Ponds Advisory Committee.

The basic purposes of these amendments, explained Mr. Ewing, was to include the waters of the ponds in the Decision and Regulations governing the Ponds District, as well as to prohibit the use of jet skis and to limit the horsepower of boat engines on the ponds. "That's basically it," he said.

John Early, the Selectmen's Appointee from West Tisbury, wanted to know if "personal watercraft" was an adequate, loophole-free definition for jet skis. "Yes," replied Mr. Ewing, "it's Massachusetts General Law." Jane Varkonda, Edgartown Conservation Agent, then read the definition of "personal watercraft" from the Massachusetts General Laws. It was agreed that this was the precise term that should be used for the amendment.

Tristan Israel, the Selectmen's Appointee from Tisbury, had questions about "the mechanics" of the amendment. For instance, why was it needed and how would it work? MVC Executive Director Charles W. Clifford explained that Sections 1 and 2 of the existing DCPC Decision had to be amended in order to be consistent with changes in Town bylaws. Everything had been included in the current Guidelines except water, he added.

Mr. Israel remarked that, having "wrestled with the personal watercraft issue over the past couple of years, my understanding was that you couldn't ban their use. Does our enabling legislation allow us to do something like that?" he asked. Also, he wondered if any Town in the Commonwealth had successfully banned the use of jet skis on their waters. Mr. Colaneri observed that this question was beyond the scope of the current Public Hearing and would necessitate "another forum." "But is it legal?" asked Mr. Israel. County Commission representative Lenny Jason, Jr., interjected, "I think we're here to listen to the public. Let's move on."

Paul Bagnall, Edgartown Shellfish Constable and Marine Biologist and a member of the Edgartown Shellfish Committee, reported that the aforementioned committee supported the adoption of the amendments. He remarked that the law regarding the use of personal watercraft was "still evolving" and that one would have to consult an attorney on this. Addressing Mr. Israel, Mr. Ewing noted that the areas to which the Tisbury Selectmen's Appointee was referring were not in a DCPC, as the Edgartown ponds were. He also emphasized that in major part the amendments were for the protection of wildlife habitat.

Commission member Michael Donaroma, Selectmen's Appointee from Edgartown, wanted to know what the Commission could do to help Edgartown carry this out. "How do we help you police this?" he asked. Mr. Ewing explained that the State Zoning Act allowed for the responsibility of enforcing of such regulations to be given to others. Therefore, the
Harbormaster and the Shellfish Department would be policing the ponds. He added that the fine for an offense could not exceed $300 per day.

Commission member at large Benjamin Hall, Jr., of Edgartown wondered if the subjects of the amendments were not in the Harbormaster's venue already. "Not necessarily," replied Mr. Ewing, "unless the jet skis, for instance, were within a certain distance from the shore." Why not have a "No Wake" rule instead? asked Mr. Hall. Then that rule would have to be for everybody, said Mr. Ewing. Mr. Bagnall commented that the Shellfish Department was on the Great Pond every day while the Harbormaster was not; so it was logical for the former to patrol its waters.

Members of the Public Speaking in Favor of or in Opposition to the Amendments.

[Mr. Colaneri, in fact, asked for members of the public in favor of the amendments to speak. Although the first two speakers were in favor, the third one, Mr. Maloney, was against the amendments. From this point on, there was a mixture of both proponents and opponents of the amendments.]

First to speak was Burt Fleming of Edgartown, who described himself as a resident of Edgartown Great Pond. Mr. Fleming stated that he had lived elsewhere on a body of water that allowed personal watercraft and that he believed they posed a significant safety hazard and noise nuisance. Moreover, the Great Pond's configuration did not afford itself to high-speed travel. He was, therefore, "vigorously opposed" to the use of personal watercraft on the Great Pond.

Kitty Burke of Edgartown, who also lived on the Great Pond, said that it was important to accept the amendments. Since Wilson's Point has been recognized as providing access, the environment of Edgartown Great Pond had changed significantly, she observed. She appealed to the Commission: "Please back the amendments."

Bill Maloney of Edgartown, a resident of Oyster Pond, said he was "very sympathetic to the issue." He said that he did not like jet skis, he did not like high-speed boats, and so forth. "We have a problem," he stated. But, he continued, he and his family had no access to the beach except by boat. They had a 16-foot Tashmoo with a 20-horsepower engine, which moved quite slowly when loaded down with four or five guests, he said. Moreover, someone could have an aluminum boat with a 10-horsepower engine that could go faster than his, which had an engine with twice the capacity. "I think you can create a worse problem than you have today," he remarked.

Next to speak was Tony Winch of Edgartown, who said he would prefer to have the speed of the boats limited rather than the horsepower capacity of their engines. He suggested that there be a No Wake area and a speed limit on the Great Pond as there was
in the Harbor. He agreed that a small aluminum boat with a 10-horsepower engine could travel quite fast.

David Lloyd of Edgartown, who described himself as a resident of Oyster Pond, said that he had bought a Tashmoo 10 years before and had never been warned that he might not be able to use it on the Great Pond someday. He himself had never witnessed any dangerous cruising, and he worried that two smaller boats, instead of, say, his Tashmoo, would in the aggregate make more noise, burn more fuel and have to make more trips.

Mr. Lloyd related how there was a road near his home with a 15-mile-per-hour speed limit. Sometimes, he said, there were a few drivers that would speed. "But we shouldn't all be forced to switch to bikes just because these clowns are speeding," he observed. "To penalize us and force on us the economic problem of buying new boats and selling our boats and spoil[ing] our summer for a sin we didn't commit to rectify a problem we don't have ... just doesn't seem to me fair."

Commission member at large Jim Vercruysse of Aquinnah and Selectmen's Appointee Megan Ottens-Sargent, also of Aquinnah, arrived at the Meeting at 8:02 p.m.

Commission member at large John Best, of Tisbury, wondered: If this was a problem in Oyster Pond, then was it also a problem in the far northern reaches of the Great Pond, like in Wintucket Cove, where one was even farther away from the beach? Mr. Bagnall explained that the Oyster Watcha Midland side of Oyster Pond had a covenant against outboards, and by deed the Flynn family had smaller boats. "In my mind this is a zoning regulation you would have at least six years to grandfather in, to utilize the motors that you have," he said. The 10-horsepower limit had been suggested because of oil pollution in the water, he added.

As for the residents of the upper reaches of the Great Pond, Mr. Bagnall said that they used sailboats. Also, he did not believe that there were a great number of people who had boats with 20-horsepower engines that essentially moved more slowly than some with 10-horsepower ones.

If the issue was pollution, wondered Mr. Toole, weren't there outboards coming out "with a cleaner burn," for instance, the four-cycle outboard? "Sure," said Mr. Bagnall, "you could encourage that, and possibly trade for a higher horsepower. But, you know, they're just starting to be widely offered, so this is what the Conservation Commission wanted to go with at this time."

Did the engines of the larger boats and the jet skis affect the shellfish more? asked Mr. Israel. "In terms of trolling in the water, yes," replied Mr. Bagnall, "and obviously something that is only operating in a couple of feet of water that runs a significant jet over
the bottom, that has high hydrocarbon content ... is going to be a detriment to the shellfish."

David Lloyd, who had spoken earlier, pointed out that the people in the Watcha area could drive to the beach, while the Oyster Pond people on Norton Peninsula like himself could not. And if people like him were forced to make more trips or to buy multiple boats, certainly that would not help the situation.

Bill Maloney said that if the concerns were speed and pollution (and he agreed these were a problem), then it would not make sense if he had to buy two aluminum boats that were in fact faster.

Tom Wallace, who described himself as being on the Edgartown Ponds Committee representing riparian owners but who was speaking as a pondside resident, pointed out that there were certainly "differentials" according to where one lived. The Great Pond had long had a speed limit, albeit an unenforceable one, of 10 miles per hour, and most people respected it. "Frankly, pollution is a major issue," he said, "and there are some motors that are very inefficient ..." In his view, it was wake that had the most impact. Because of the complexity of the issues, he favored a case-by-case review, with provisions for grandfathering and special permitting.

Mr. Ewing wondered if perhaps they should amend the wording of the amendments. He acknowledged that they had to separate Oyster Pond from the Great Pond. Mr. Clifford explained that if the committee "tweaked" or "adjusted" the amendment, then it would not have to come back to a full Public Hearing like the one that evening. "You can adjust the language of it, as long as the intent is the same," he said.

Mr. Jason wanted to know how much faster the Town would allow the boats to go. He pointed out that on Chilmark Pond there was a 5-horsepower limit and that this had worked well. Mr. Maloney explained that with four people in his Tashmoo plus a load plus a 20 horsepower motor, that a passing kayak went faster.

Mr. Colaneri said that in light of Mr. Clifford's comments, Messrs. Ewing and Bagnall could work further on the amendments. Mr. Ewing asked, "If we tweak it, do we have to come back?" "That depends on how severely you tweak it," replied Mr. Clifford.

Tony Winch of Edgartown noted that everyone wanted to get rid of jet skis. Couldn't the amendment separate the jet skis from other types of watercraft? he asked. Whitney Mannings of Edgartown commented on the impossibility of being able to invite her children and their families to the beach if she could not use their boat. Janet Bailey of Wilson's Landing thought that obviously there needed to be some limit. If 10 horsepower was not set as the limit, then how high would it go — to 25? to 50? Simply setting a speed limit would handle the problem better, she said.
Mr. Israel wondered if the Commission itself could amend the amendments. No, replied Mr. Clifford, we cannot amend the Town's regulations. There was further discussion of how much the Town could "tweak" the amendment before it had to return for another Public Hearing. Mr. Donaroma suggested giving the Ponds Advisory Committee more time to redo the amendment; he for one had no objection to holding another Public Hearing.

There followed a discussion of the possibility of voting on the amendment that evening and what that would mean. Michele Lazerow, a Commission member at large from Oak Bluffs, noted that she was comfortable with what Mr. Clifford had said and that she trusted the Town to act fairly. "I don't see big gulfs here," she added. Mr. Best cautioned against demanding a particular technology in the amendment -- for instance, a four-stroke engine -- since soon enough there would be an even cleaner engine. "It should be tied to an EPA standard and not to a particular technology," he said.

Mr. Colaneri wanted to know, if he closed the Hearing that evening and left the Public Record open for a week or two, would that be satisfactory? Mr. Clifford said he would be "leery" of not giving the public a change to comment in the forum of a Public Hearing. He suggested that the Commission vote on the amendment presented that evening, then have the committee work on it. If there was any significant change, it would simply come back to Public Hearing. There was some discussion of who would be enforcing the regulations, and Mr. Jason pointed out that the Commission was not involved in enforcement at all.

There followed a discussion, initiated by Mr. Hall, about what would be permitted in the Surface Water District. Mr. Clifford explained that the regulations for the District would be written by the Town and would then come back for Public Hearing. Mr. Hall also noted that the Great Pond was a State property. Did the Town or the Commission actually have jurisdiction over it? he asked. Under the Town charter, explained Mr. Clifford, the Town was in charge of that body of water.

At 8:36 p.m. Mr. Colaneri closed the Public Hearing. Mr. Toole called for a short break.

**Item #3: Approval of the Meeting Minutes of May 27, 1999.**

Mr. Toole called the Meeting to order at 8:40 p.m. Mr. Colaneri made a Motion to Approve the Minutes as Written, duly seconded. There was no discussion. The vote went as follows:

**AYES:** J. Best; C. Brown; M. Colaneri; M. Donaroma; J. Early; T. Israel; L. Jason, Jr.; M. Lazerow; M. Ottens-Sargent; L. Sibley; R. Toole; J. Vercruysse; R. Zeltzer; T. Henson, Jr.; and A. Gallagher.
NAYS: None.

ABSTAINING: B. Hall, Jr.

Item #4: Reports.

In presenting the Chairman's Report, Mr. Toole announced the forum on Regional Government sponsored by the League of Women Voters, which would take place at the Old Agricultural Hall in West Tisbury on June 22. He and Linda Sibley, a Commission member at large from West Tisbury and a member of the County Commission, would be participating, he added.

Mr. Toole also talked a bit about the Steamship Authority meeting earlier in the week. "We're in trouble, the Steamship Authority's in trouble," he commented, referring to the threat of a work slowdown by union members. There was some discussion of a television report by Emily Rooney about New Bedford's attempts to acquire some freight business, which report Ms. Sibley considered rather biased. Mr. Jason said that he was not so concerned with the New Bedford issue but with the negotiations with the union. "I would really urge both sides to work together and really try to keep the negotiations private," he said. "The Island has too much to lose, everyone has too much to lose ..."

As for the LUPC Report, Mr. Donaroma related how the Schotts had provided a thorough presentation to the committee regarding their proposed Planet Vineyard Health and Fitness Club at the airport business park, which would be somewhat visible from Barnes Road. A landscape architect had made a major part of the presentation, and "lots of effort" had gone into making the site look good, said Mr. Donaroma. Mr. Colaneri noted that the Applicant had not come up with estimates for average water usage. Some discussion ensued as to who the immediate abutters were and just how visible the project would be from Barnes Road.

Commission member at large Christina Brown of Edgartown, who is as well the Co-Chair of the LUPC, discussed the two preliminary presentations that had been provided by Pier 44 (regarding its handicapped bathroom expansion) and Tisbury Wharf. She related how there were some procedural and paperwork problems with both referrals, which the committee hoped to sort out by the following week. Mr. Best noted that Ralph Packer, the Tisbury Wharf Applicant, would be returning to the Tisbury Conservation Commission. He also explained how the Conservation Commission had referred the second Tisbury Wharf project because a DRI was already pending on the property.

Mr. Donaroma continued the LUPC Report, noting that the committee had gotten through Section 15(b) with regard to the Martha's Vineyard Golf Partners project. That DRI would be at the top of the agenda on the following Monday, and the committee intended
Mr. Toole asked if the Tisbury Harbor DCPC had been referred yet to the Commission. Mr. Israel explained that local boards had had several meetings regarding this and that the next meeting was set for early July, at which point the issue of the possible referral would be decided.

MVC Staff member Christine E. Flynn provided the Affordable Housing Subcommittee Report. She related that the subcommittee had met the Tuesday before, when they had discussed, among other things, the Town of Franklin case. Marcia Cini, a Commission member and an attorney, had gone over the fee-versus-tax issue, and they had discussed what other housing authorities were doing to obtain more money from the government. She added that the next meeting of the subcommittee would be on Wednesday, June 30, at 4:30 p.m.

As for the Cell Tower Study Group, Ms. Brown announced that on the following Monday consultant Ted Kreines would be presenting to the Edgartown Planning Board; all were welcome to attend. Ms. Brown went into some detail about what Mr. Kreines had to offer the Towns with regard to cell tower planning.

Mr. Clifford provided the Legislative Update: "No budget, no money." He then related how the budget was supposed to be done in seven days, but that that was not going to happen. EOEIA had been cut 30 percent, DEM by 35 percent. Mr. Clifford would be meeting with State Representative Eric Turkington the following Tuesday, he said. Every other State agency, he continued, had been cut about 30 percent. Mr. Jason commented that he hoped this was because of the Big Dig and not because of who was running Ways and Means (Montigny). "Are we cut 30 percent?" asked Ms. Brown. "We're cut out," replied Mr. Clifford, emphasizing the word "out." A general discussion of the State budget ensued.

Mr. Hall announced that on Tuesday evening the Town of Edgartown had voted overwhelmingly to amend its zoning at the airport to allow gas stations to have convenience stores, thereby opening the door to retail businesses at the business park. Mr. Hall noted that all those who had worked on designing and developing the B-3 Business District had voted against it. "Should have had a bigger committee," said Mr. Jason. The time was 9:02 p.m.

Aquinnah DCPC Report, Leading into Item #5, Discussion: Aquinnah DCPC.

In the absence of Commission member and Aquinnah DCPC Committee Chair Jane A. Greene, who was away on business, Robert Zeltzer, a Commission member at large from Chilmark, provided the Aquinnah DCPC Report. The designation had been for none of
them a cut-and-dried issue, he began, and the final vote on the committee recommendation had been 2-2. The two Commission members from Aquinnah, Jim Vercruysse and Megan Ottens-Sargent, were in support of accepting Aquinnah as a DCPC; since they represented the Town, Mr. Zeltzer thought the full Commission should pay close attention to their views. Mr. Vercruysse and Ms. Ottens-Sargent felt: 1) that the opposition to the designation was more about the lack of notification than about the substance of the nomination; 2) that the Town Boards did, in fact, need time to get together to organize and to plan; and 3) that it was quite important that the power of architectural review be given to the Town.

Mr. Zeltzer then related how Mr. Hall had been opposed to the designation, seeing it as inappropriate since significant portions of the Town did not fall under the Guidelines for a DCPC. In addition, he thought that the Town could do most of it on their own. It would be better, Mr. Hall said, to designate specific areas like Lighthouse Road, the East Pasture and the Clay Pit. Mr. Zeltzer himself was concerned about the democratic process being circumvented. Moreover, he was "not at all convinced that the Town can't do the planning and the management on their own."

Members of the Aquinnah Planning Board had been permitted to speak at the last committee meeting, he went on. One of the most significant points that was revealed, said Mr. Zeltzer, was that the Planning Board meeting where the decision to nominate was made had not been a closed meeting; in fact, a member of the Board of Selectmen and a member of the Conservation Commission had been present, as well as two independent engineers. "If the Selectmen didn't know, it was because the message wasn't carried back," explained Mr. Zeltzer.

He continued that failing the approval of this Designation, the Commission members from Aquinnah would accept Designations that were more specific. All had agreed that the Tribal Lands were not under the DCPC regulations, and the improper wording of the original Nomination had been revised by Mr. Clifford. Mr. Hall, an attorney, had gone over the Guidelines with the other members of the committee; as a result, the Guidelines were now more specific and more protective. In sum, all had agreed that there were reasons to consider this, "and those of us who voted against it saw some need for it," said Mr. Zeltzer, emphasizing the word "some."

Mr. Toole asked about the changes to the Guidelines, which MVC Staff member Jo-Ann Taylor then explained. For example, the committee had selected different boundaries to exclude the Tribal Lands, that is, the Clay Cliffs, Herring Creek and the Settlement Lands, she said. However, the Town may have to the ability to regulate the Trust Lands, for example, which had been acquired since the settlement. The recommendations for Guidelines included: 1) that a review procedure be established that would ensure that any structure was consistent with the rural character of the Town; 2) that new structures would not radically interrupt the skyline; 3) that an administrative procedure be established
that would include site plan review; 4) that regulations be developed to address stone walls in existence as of June 1, 1995; and 5) that regulations be established to prevent the excessive removal of trees and vegetation.

Mr. Jason wondered if anyone had studied to what degree tax dollars would be reduced if structures could no longer interrupt the skyline. "If you no longer have the ability to build a waterview, that means the price of the house goes down," he observed. "What does that mean to the assessed valuation of the Town?" Ms. Ottens-Sargent replied that she did not know. Mr. Hall noted that at Town Meeting some had been of the opinion that the assessments would, in fact, go up; therefore, the real concern was for the lack of affordable housing. Mr. Colaneri, an assessor, insisted that this was not the case. He for one agreed with Mr. Jason that the value of the property lay to a large degree with the waterviews.

Mr. Vercruysse pointed out that the exact wording was "shall not radically alter" the skyline, emphasizing the word "radically"; the Guidelines did not prohibit the interruption of the skyline altogether. There had also been a concern that any Tribal Lands acquired in the future not be excluded from possibly being subject to the new zoning laws, he added.

Ms. Sibley pointed out that as long as the Town did not write regulations that were too strong, reasonable adjustments could be made and a "totally hideous" interruption of the skyline could be prevented. Mr. Colaneri discussed the exact wording of that particular Guideline, contending that the word "radically" should be removed. "[R]adically" was a weak word, Mr. Donaroma agreed. There followed a discussion of what exactly the Guideline meant. Ms. Lazerow said, "I think people will interpret as they feel about this issue what 'radical' means and even what 'trophy house' means. But I feel there is plenty of room within these things for the Town to come up with reasonable regs."

Ms. Ottens-Sargent felt that "a lot of the sentiment here" had come from the Moshup Trail District regulations. The new District, she said, was a way to unify the DCPC regulations in the Town; in addition, with the architectural review made available, the Town would have the special powers it needed to control the type of growth that would take place there.

Mr. Hall said that he was concerned about the boundaries of the area that had come in before the Commission, even more so after attending the Aquinnah Planning Board meeting the Friday before, where the Board had proposed a series of bylaw changes which were the first step in trying to make some changes in accordance with the new direction the Town was taking. "They're looking for ... our moratorium to help the Planning Board to do the planning with other Boards in Town that they feel they need to do, to finish the work they started a few years ago that's kind of fallen by the wayside," he said.
His concern, he continued, was that there were a number of lots in the Town that had been included -- unwisely, he thought -- in the proposed Designation; they really did not fall under the Guidelines of a DCPC, and there were policies with criteria under the statute that were required for the Commission to designate such a District. Mr. Hall believed that the Planning Board was using the designation as a way to enable the Town to do things for which they would be unable to get a two-thirds Town vote.

Mr. Hall acknowledged that there had been some houses in the East Pasture area that had "really raised some eyebrows." However, if one read what a Historical or Cultural Resource District was supposed to encompass, he said, the very first sentence indicated that one ought not to designate an entire Town but to designate a particular area. Mr. Hall continued: "I think that lots that are off of the main roads, that are down in the hollows or utterly invisible from any public place, that those are beyond what we should be trying to regulate ... But I do see a compelling reason to designate particular areas in the Town that are visible and giving them the kind of architectural review that [the Town] can't do under the current zoning ..."

Mr. Zeltzer asked Mr. Clifford whether the Town or Planning Board could come back to the Commission very quickly with another Nomination, this time for specific areas, should the current Nomination be voted down. "They could come back 8:30 tomorrow morning," replied Mr. Clifford. Mr. Zeltzer mentioned that the Commission members in the Aquinnah DCPC Committee hoped that the Wampanoag Tribe would be included in future planning discussions, although, of course, their lands would not be subject to any of the proposed DCPC regulations.

"I'm having a hard time with this one myself," said Commission member Tristan Israel. "My heart wants to, you know, go ahead and accept this thing. But I have some problems with the totality of it. I also have some problems with ... the lack of communication with the Tribe ... I'd like to just have a DCPC for the whole Island, you know, just stop everything ." Mr. Israel admitted to having just been a little facetious, then said on a more serious note: "I think that you can degrade the value of a DCPC when you're looking at whole areas of land, because there are areas that are really scenic, there are areas that aren't so scenic, there's a lot of variety on Martha's Vineyard ... I just think maybe [the designation] ought to be more refined."

Ms. Sibley pointed that one of the things the Town clearly needed time for was delineating those areas; it would be inappropriate if regulations, for instance, in those areas that could not be seen were the same as those for areas that could be seen from, say, the main highway. However, drawing the boundaries of the DCPC could be "an agonizingly difficult process," Ms. Sibley said, "and it may be Gay Head has had some experience with some of the agonizingly difficult drawings of boundaries. So it may be that what is appropriate is to draw the boundary around everything, but to have the regulations match the appropriate differences. And that's exactly what the Town needs time for." She added
that the only downside was that the DCPC Committee was going to be looking at a lot of waiver applications.

Anne Harney Gallagher, a Governor's Appointee, thought that the Tribe had to be brought in on the process, whether they were "put on committees or whatever ... But they have to have a voice, and that's what I was hearing loud and clear," she said.

Ms. Ottens-Sargent noted with regard to Ms. Gallagher's point that the Cape Cod Commission had a Native American Appointee. "Is that something we could consider?" she asked. Mr. Clifford explained that the legislation would have to be changed to do that. Moreover, he pointed out, prior to 1999 it had always been a Tribe member who had been appointed by the Selectmen to the Commission. The time was 9:39 p.m.

Ms. Ottens-Sargent then addressed Mr. Hall's comments. The sentiment of the Aquinnah DCPC Committee, she said, had been to exempt the Common Lands and the Settlement Lands. So the DCPC really was not over the entire Town. There was some discussion of what constituted said lands as a few Commission members looked over a map of the Town. "That's the kind of data we just don't have yet," noted Ms. Ottens-Sargent. "We don't know what particular lots would be exempt."

Ms. Ottens-Sargent than read aloud the second paragraph of Section 8 of Chapter 831. She explained how the Designation would actually benefit the Tribal Land when they developed their Trust Land on the interior. Moreover, the Committee was working with MVC Staff member Bill Veno on a network of public trails in areas where a house would not be visible from a public road but could be seen from a nearby trail. She continued, "The idea is to get some uniformity, and as I'm listening to the discussion, what might be an amazing approach, a good approach, would be to actually come up with some uniform overlay regulations that really are consistent with what's in Moshup Trail and the Cliffs. And then in the process of researching the topography of the low-lying areas, what have you, we could let those general overlay regs refer to everything, but then come back for more specific ones."

Ms. Ottens-Sargent added that there had been a Selectmen as well as a Conservation Commission member present when the Planning Board voted to come to the Commission with the DCPC. She explained that they were not just present but had voted as well in favor of the proposal. She also noted that it was her impression that Beverly Wright and the Tribe were objecting to the lack of communication about the designation, not about its purpose.

Mr. Zeltzer said he thought that the Town was "backing into something," that there was much that should have been done before such a nomination had gotten to this procedural point. "I think that the Town can buy time if the Building Inspector insists on complete and total applications and doesn't accept anything on the back of an envelope or anything
that misses anything that's required," he said. "That can slow down things." He suggested that the Town be "stingy" in issuing Special Permits and that the Town do all the work before the Nomination, not afterward, as Ms. Ottens-Sargent was suggesting. Overall, he was "not against the concept," he added.

Mr. Toole's fear was that after the all publicity this issue had engendered, if the Commission turned the nomination down, anyone who was considering doing the type of construction that could be prohibited under the new regulations would rush ahead and do it before the revised Nomination got back to the Commission.

Ms. Sibley wanted to "respectfully disagree" with Mr. Zeltzer. "I think it's absolutely the way the process is supposed to go ... When you recognize that a particular area has critical planning needs, that's when you designate. And then you work on regulations to protect that area during the one-year period that you're given to do it. You don't work it all out in advance and then designate. That's not the way the law's written ... Communication should be better, but I don't think that's our problem." Ms. Sibley then pointed out that poor communication within a Town was not an uncommon situation. "We have to decide that they have a right, that they have a critical need to plan for this whole Town," she concluded.

Mr. Jason said that he "kind of" agreed with Ms. Sibley. However, by the Commission's own admission, he continued, some of the areas included in the designation did not fall into the category of Districts of Critical Planning Concern. "How can we in good conscience vote an entire Town where areas do not fall within an area of critical concern?" he asked. "I just don't understand that logic. The Town says it needs time. We can amend this District, we can give them some areas where they need new regulations. But to say, 'The entire Town is not an area of critical planning concern, but we're going to designate it anyway,' that's inappropiate," Mr. Jason said.

"I haven't acknowledged that," Ms. Sibley said. She and Mr. Jason continued to discuss this point. Mr. Jason suggested that the Town improve on the roadside regulations and on the Moshup Trail regulations, for instance, instead of requesting a blanket Designation as they had. He also suggested a District all along Lighthouse Road down to State Road. Some discussion of this followed.

Mr. Colaneri pointed out that if this was a trend, he could envision Tisbury and other Towns coming in to buy more time for planning and that was not what the DCPC process was for. "I think we're heading in the wrong direction," he said, "by allowing an entire community to be nominated and then pick and choose the rules and regulations. I mean, the Commission's been in effect since 1972, '74. And all of a sudden, now there's a major issue that needs an entire community to be nominated? I just can't buy into it. I do feel there are areas that possibly need to be addressed. But I don't think this is the way to do it."
Ms. Ottens-Sargent pointed to an analogy made by Mr. Hall during one of the Committee meetings about the DCPC moratorium being like a sieve, just one more layer of obstacle for people who wanted to build to go through. She added that the fact that some areas really did not fit into the criteria of areas of critical concern was of concern to her. "But, again, in the process of coming up with the criteria, that's going to be determined," she said. Ms. Ottens-Sargent then made reference to what she believed was an undisclosed conflict of interest on the part of Mr. Hall because his family owned land in the Town. She acknowledged that she and Mr. Vercruysse also owned land there, "but because we're residents, we don't have special interests," she said. Mr. Hall replied that, in fact, he had made a full disclosure. Some discussion of this ensued.

Mr. Clifford wanted to clarify a few points "that have been flying around here." First of all, he said, the regulations that are written for a DCPC cover the entire DCPC. "You cannot set up separate districts unless the Commission sets up separate districts," he explained. Secondly, it was his opinion that architectural review was going to be very hard to justify in court "unless you have something absolutely significant in the entire Town." Ms. Ottens-Sargent had some questions about site plan review, which Mr. Clifford clarified.

Mr. Hall then read aloud the proposed zoning changes that were coming before Town Meeting in Aquinnah. "They modeled it after the Sandwich bylaw," he said, "which passed the Attorney General's office." He continued that the bylaws were addressing a lot of the issues that required Special Permits. "I just think that 16 people sitting in a room should not decide to regulate lots that are clearly not justified in being regulated under our DCPC regulations ..." he added. "I just think it's incredibly bad precedent to start overreaching ... It's the wrong way to do it. It's planning backwards."

Mr. Israel asked if the Planning Board could simply create a District and demand site review of new buildings in that District. "I'm not into the big, giant houses that block everybody's view," he said, "but having said that, getting beyond height, getting beyond width ... I mean, what is the architecture we're talking about here? Shingles? ... I'm just trying to understand what it is that we're looking for." Some discussion of this point followed.

Ms. Sibley spoke again, noting "I don't think there's any other Town on the Island that it would make any sense for. Clearly, West Tisbury, Edgartown, these are huge, sprawling Towns that are very different in different ends of the Town. One of the things that is unique about Aquinnah is that it is a geological formation ... If you look at that map and you actually look at that line on the map which includes part of the Town of Chilmark, you've got a distinct geological formation there. On this Island we're all one Town. I can imagine someone coming in and saying, 'That up there is a distinct part of this Island that needs to be specially planned for.' And I don't think we should be overwhelmed by the
notion that it's a whole Town. It's actually two-thirds of or three-quarters of a unique geological formation.

"Can you explain to me why that is more unique than, say, the northwest moraine in West Tisbury?" asked Mr. Jason. "It isn't necessarily," replied Ms. Sibley. "But the northwest moraine in West Tisbury would be only a part of West Tisbury, and what I'm saying is that this happens to be ..." Mr. Jason interrupted her and said, "So you're saying this is not an outwash in Gay Head?" "It is not an outwash," said Ms. Sibley.

**Item #6, Decision, Designation of Town of Aquinnah DCPC.**

Mr. Colaneri made a Motion to Move to Item 6, Decision, duly seconded. The Commission members voted unanimously to move to the Decision. Ms. Sibley then made a Motion to Designate, seconded by Ms. Lazerow. Mr. Toole asked for discussion. There was some clarification by Mr. Toole as to whether or not, if this Motion failed, a Motion would or could be made to Designate a specific area or areas within the Town District(s) of Critical Planning Concern. Ms. Sibley made it clear that was her intention.

Mr. Colaneri pointed out that at the Public Hearing in Aquinnah the week before, he had received the impression that there was "an overwhelming opposition" to the Designation on the part of the Townspeople who were represented at that Meeting. "Is this the best use of a DCPC?" asked Mr. Jason. "I think that was a hell of a good question."

Mr. Hall wanted to know why a DCPC Designation was being repeated over the Cliffs District and the Moshup Trail District when these Districts had already accomplished everything in the Guidelines. Ms. Sibley responded that if he, Mr. Hall, voted against the Motion and it failed, then a more specific Designation could be crafted. "But why?" repeated Mr. Hall. "Because it's simpler to have one unified District in the end," replied Ms. Sibley.

Ms. Brown wondered what the DCPC would do that the advertised zoning bylaws or similar changes couldn't do. Some discussion of this issue followed. Mr. Colaneri was of the opinion that if the Commission designated the Town, it might be "usurping or exceeding the Townspeople's wishes to make their own decisions on the matter." The discussion continued. The time was 10:09 p.m.

Mr. Hall wanted to know: If the new zoning bylaws were passed and they were not published as DCPC regulations, then who would decide that these were the regulations for the District? Would the Town decide that these were the DCPC regulations that met the criteria, so to speak? If these bylaw changes had not been published as being the DCPC regulations pursuant to the Commission's Guidelines, then these would not necessarily be considered to be the regulations drawn and drafted pursuant to the Guidelines? In response Mr. Clifford observed, "I don't think you can take them from the Town. The
Town has to forward to you what they've proposed. They can forward that [that is, the bylaw changes.

Ms. Sibley refined the wording of her Motion; it was a Motion to Approve "the Designation per the Document Submitted." Mr. Toole then conducted a roll call vote on the Motion. The vote went as follows:

AYES:  J. Best; C. Brown; T. Israel; M. Lazerow; M. Ottens-Sargent; L. Sibley; R. Toole; J. Vercruysse; and A. Gallagher.

NAYS:  M. Colaneri; M. Donaroma; J. Early; B. Hall, Jr.; L. Jason, Jr.; R. Zeltzer; and T. Henson, Jr.

ABSTAINING:  None.

Ms. Brown commented, "I hope that we and the Town of [Aquinnah] can move along smartly ... and that this body agrees that we should move along smartly."

Under Item # 8, New Business, Mr. Colaneri made a Motion to vote to accept the Town of Edgartown's Amendments to the Edgartown Ponds District Decision and Regulations, duly seconded. "Let the Town of Edgartown sort out the horsepower and so forth," Mr. Colaneri added. "They need to get this on the books now." The vote went as follows:

AYES:  J. Best; C. Brown; M. Colaneri; M. Donaroma; J. Early; T. Israel; L. Jason, Jr.; M. Lazerow; L. Sibley; R. Toole; R. Zeltzer; T. Henson, Jr.; and A. Gallagher.

NAYS:  B. Hall, Jr.

ABSTAINING:  M. Ottens-Sargent; and J. Vercruysse.

The Meeting adjourned at 10:15 p.m.

Chairman  

Clerk/Treasurer  

Date
PRESENT: J. Best; C. Brown; M. Colaneri; M. Donaroma; J. Early; B. Hall, Jr.; T. Israel; J. Jason, Jr.; M. Lazerow; M. Ottens-Sargent; L. Sibley; R. Toole; J. Vercruysse; R. Zeltzer; T. Henson, Jr.; and A. Gallagher.

ABSENT: M. Cini; J. Greene; M. Allen; and M. Bolling.
Summary of Revisions to the
Meeting Minutes of June 17, 1999
Proposed by Commission Members
in the Meeting of July 29, 1999

There were no revisions to the Meeting Minutes of June 17, 1999, proposed by the
Commission members.

[An excerpt from the Meeting Minutes of the Special Meeting of July 29, 1999 follows
immediately. It describes the actions taken by the Commission with regard to the Minutes
of June 17, 1999.]