



REGIONAL PLANNING AGENCY OF DUKES COUNTY
SERVING AQUINNAH, CHILMARK, EDGARTOWN, GOSNOLD, OAK BLUFFS, TISBURY, & WEST TISBURY

Date: Issued Feb. 12, 2021; updated on **March 9, 2021**
To: Commissioners, MVC
From: Dan Doyle (staff)
Re: amendment by Edgartown Planning Board to [town bylaw](#) for [Cape Pogue DCPC](#)

Background on the Area & its Designation

Cape Pogue was designated because of its value as a:

- Wildlife, Natural, Scientific or Ecological, Resource District;
- Cultural or Historic Resource District;
- Hazardous District

District Goals

To prevent damage to structures, land and water as a result of erosion, preserve and enhance the character of views, to maintain the quality of well water, to prevent pollution, to enhance and protect recreation uses, to minimize adverse impacts of recreational use, to protect the quality of adjacent fin and shell fisher industries, to maintain and enhance the fishing economy and promote and protect wildlife habitats.

The District was initially proposed by Peter Look, former Edgartown Health Agent, who felt that development would have adverse impacts on the environment and breeding of wildlife. It was determined that town regulations in place at the time did not provide adequate protection for the area.

Groundwater is typically very shallow on this part of the island, and it's been noted that it is not a very resilient ecosystem when altered by development. Its fragility is partially explained by the shifting sands throughout the far reaches of Chappaquiddick. Because of its remoteness and relative inaccessibility, Cape Pogue has particular value when studying its ecosystem as there are limited complicating variables that might impact a study's findings.

Cape Pogue and its environs are primary habitat for many nesting birds, a key visitation area for snowy owls, along with a home to several rare plants. It serves as an island-wide spawning ground for spat, with maturing shellfish ultimately distributed across numerous embayments along the Vineyard's coast. Its regional significance does not stop there. The Bay is a destination for throngs of recreational boaters and in recent years, kite surfers. The gentle approach to the bay's shoreline make it an attractive place to anchor boats and wade onto the beach. At times, this conflicts with the nesting zones of rare birds. A penchant for many boaters to raft up to other vessels and party for extended stretches also adds a variable that could impact the ecological integrity inside of Cape Pogue.

Previous Amendment

In 1994, the area which prohibits piers was adjusted.

Past Implementation & Management

Upon designation of this district as a critical planning concern in 1988, a committee was conceived, entitled the *Cape Pogue DCPC Advisory Committee*. It was tasked with fostering cooperation in management of public and private lands in the District, advising the Planning Board on applications for Special Permits, proposing wildlife management and recreations guidelines. More specifically, it was charged with:

- maintaining records of property management plans
- encouraging implementation of management recommendations in the District Guidelines
- developing and proposing amended District Guidelines
- reviewing each application for a Special Permit for consistency with management plans and the District Guidelines and advising the Planning Board.

At its conception, the Committee was to include:

- a) Edgartown Conservation Commission
- b) Edgartown Board of Health
- c) Mass. Department of Environmental Management
- d) Mass. Department of Fisheries, Wildlife, and Environmental Law Enforcement
- e) The Trustees of Reservations Membership
- f) The Trustees of Reservations Staff
- g) County of Dukes County
- h) Martha's Vineyard Commission
- i) Cape Pogue Property Owner (appointed by the Chappaquiddick Island Association)
- j) Conservation/Wildlife Specialist (appointed jointly by Sheriffs' Meadow Foundation, Vineyard Conservation)

**To the best of our knowledge and according to testimony of town and MVC staff, this committee has never met nor been officially formed.*

Key Developments

The area grew in popularity during the pandemic this past summer as boating's popularity trended upward and vessel sales spiked. On a single summer day in 2020, over 400 boats were tallied inside of Cape Pogue.

As scallop harvests have plummeted across the State in recent decades, Cape Pogue has now become a source of envy for many former hotbed communities. This area does not yield what it once did, but it still posts between 5-7 thousand bushels/year. This is paralleled by a major uptick in the number of recreational permits issued by the town – and catch limits have been adjusted accordingly.

Just prior to the pandemic, the town's Marine Advisory Committee proposed to cap the number of boats entering the Bay. The Board of Selectmen opted to forego such a restriction for this past summer, expecting the pandemic

to reduce, not increase, traffic in the sensitive area. Yet the summer season played out differently, and competing uses taking place in this area have only come into sharper focus over the past year.

The newfound intensity of use in Cape Pogue prompted some town officials to assess whether there were existing provisions in place to legitimately enforce the district's guidelines and bylaw regulations. A consensus was reached that they are inadequate. The Planning Board intends the proposed changes to address this very issue through charging specific parties to enforce the bylaw, while also reconstituting the District's Advisory Committee. A subgroup (rules group in Fig. 1) of this Advisory Committee would be comprised of the Shellfish Constable and Conservation Agent, Zoning Enforcement Officer, Chief of Police, Harbormaster, and a member of the Marine Advisory Committee. They would collectively establish, review, and promulgate rules to carry out the Goals and provisions of the bylaw, and the Guidelines adopted by the MVC.

Proposed Amendments

Edgartown Planning Board proposes additional members and a change of appointing authority for one existing seat to the Cape Pogue DCPC Advisory Committee, along with an additional section, entitled *Enforcement*.

Article for town warrant, below:

Article

To see if the Town will amend the Edgartown Zoning Bylaw Section 5.4.F.1 "Cape Pogue DCPC Advisory Committee" as follows:

1. Membership shall include one representative from each of the following organizations, appointed by that organization:
 - a. Edgartown Conservation Commission
 - b. Edgartown Board of Health
 - c. Mass. Department of Environmental Management
 - d. Mass. Department of Fisheries, Wildlife, and Environmental Law Enforcement
 - e. The Trustees of Reservations Membership
 - f. The Trustees of Reservations Staff
 - g. County of Dukes County
 - h. Martha's Vineyard Commission
 - i. Cape Pogue Property Owner (appointed by the ~~Chappaquiddick Island Association~~ **Edgartown Board of Selectmen**)
 - j. Conservation/Wildlife Specialist (appointed jointly by Sheriffs' Meadow Foundation, Vineyard Conservation Society, and Vineyard Open Land Foundation)
 - i. Edgartown Police Department**
 - j. Edgartown Planning Board**
 - k. Edgartown Marine Advisory Committee**
 - l. Edgartown Harbormaster**
 - m. Edgartown Shellfish Constable**

And further to amend the Edgartown Zoning Bylaw Section 5.4 (“Cape Pogue DCPC”) by adding section 5.4.G as follows:

5.4.G Enforcement

The Marine Advisory Committee, Shellfish Constable and Conservation Agent, Zoning Enforcement Officer, Chief of Police, and Harbormaster shall jointly establish, review, and promulgate rules to carry out the Goals and provisions of this section, the intent of this Zoning Bylaw, and the Guidelines delineated in the MV Commission Decision Designating the Cape Pogue District as a District of Critical Planning Concern, as adopted in 1988 and as amended.

For purposes of this section, the office of the Edgartown Harbormaster, the office of the Edgartown Building Inspector, and the Edgartown Police Department, shall jointly and severally be authorized to administer and enforce special permits issued under this section, and all rules and regulations applicable to the Cape Pogue DCPC.

or take any other action relative thereto.

Next steps

Public Hearing is scheduled for March 11th at 7 pm via Zoom, where Commissioners will vote whether the proposed changes are in conformance with the [district guidelines](#) (Section 5, pg. 15).

Note: the Rules Group, below, would have the authority to manage the Cape Pogue district through institution of rules that honor the goals of the DCPC. The town would need to return to MVC for another amendment if they attempted to permanently add or eliminate a prohibited use within the district.

Fig. 1 – provided by Edgartown Planning Board, as proposed hierarchy

