

AMENDED DECISION OF THE MARTHA'S VINEYARD COMMISSION
DESIGNATING THE MEMEMSHA, NASHAQUITSA AND STONEWALL PONDS
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 “Menemsha, Nashaquitsa *and Stonewall* Ponds District”.

On April 19, 2001, the Commission received a nomination from the Chilmark Conservation Commission and Planning Board for inclusion of geographic areas into a District. At its April 19, 2001 Regular Meeting, the Martha's Vineyard Commission voted to accept for consideration the nominated area.

On June 7, 2001, the Commission held a public hearing at 7:45 P.M., in the Baylies Room (lower level) of the Old Whaling Church, Main Street, Edgartown, Massachusetts, on the proposed Menemsha and Nashaquitsa Ponds 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 on Martha's Vineyard as a District of Critical Planning Concern.

On Thursday, June 14, 2001, 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.

On November 28, 2001, the Commission received a nomination from the Chilmark Planning Board and Conservation Commission to amend the guidelines and boundary for the District, and voted on November 29, 2001 to consider the amendments. On January 24, 2002, the Commission held a Public Hearing at Chilmark Community Center, State Road, Chilmark, and voted to so amend the boundary and guidelines.

*Amended M.V.C. decision designating the Menemsha, Nashaquitsa and
Stonewall Ponds DCPC*

Section 2.00 Amended Area Designation

The Menemsha, Nashaquitsa and Stonewall Ponds District consists of the waters and land thereunder in Menemsha, Nashaquitsa and Stonewall Ponds beginning at the Aquinnah-Chilmark town line north of State Road, extending into Menemsha Pond from mean high water for a distance of two hundred (200) feet and following said mean high water mark along the shore of Menemsha Pond easterly to and into Nashaquitsa Pond and hence to and into Stonewall Pond, hence along the mean high water mark back to and into Nashaquitsa Pond, hence along the mean high water mark of the northeasterly shoreline back to and into Menemsha Pond and hence along the easterly shoreline of Menemsha Pond northerly to the juncture of the Aquinnah-Chilmark town line at the end of North Road in Menemsha.

Section 3.00 Why the Area Has Been Designated

The Menemsha, Nashaquitsa and Stonewall Ponds District boundaries conform to Qualification Section 1.20. The Commission finds that the waters and the lands under the waters therein reasonably belong within the Menemsha, Nashaquitsa and Stonewall Ponds District. The water and the land under the 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 Menemsha, Nashaquitsa and Stonewall Ponds 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 Menemsha, Nashaquitsa and Stonewall Ponds 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 within the Menemsha, Nashaquitsa and Stonewall Ponds District is essential to the maintenance of the Island's unique cultural values. The Commission finds that the lands and waters within the District are essential to fishing and wildlife resources and associated natural resource habitats. The Commission finds that development in a controlled manner will serve to protect

*Amended M.V.C. decision designating the Menemsha, Nashaquitsa and
Stonewall Ponds DCPC*

the public's interests in the major public resource that defines the lands and waters of the District.

In considering the problems of uncontrolled or inappropriate development within the District, the Commission finds that to maintain and enhance the health, safety and general welfare of Island residents and visitors, and for present and future generations, special development controls within the District must be adopted.

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 Menemsha, Nashaquitsa and Stonewall Ponds District waters and lands under the waters will be a substantial loss to the region or to two or more towns on the Island.

In adopting its findings, the Commission has 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 Menemsha, Nashaquitsa and Stonewall Ponds District qualifies under the Specific Qualifications, Sections 2.00-2.80 of the Criteria and Standards ("the Specific Qualifications"). The Commission finds that the Menemsha, Nashaquitsa and Stonewall Ponds 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 of statewide significance, the Menemsha, Nashaquitsa

*Amended M.V.C. decision designating the Menemsha, Nashaquitsa and
Stonewall Ponds DCPC*

and Stonewall Ponds District meets the Specific Qualifications of the Fishing Resource District, Section 2.20; the Wildlife, Natural, Scientific or Ecological Resource District, Section 2.40, and the Cultural or Historic Resource District, Section 2.50.

Specifically, with respect to the third element of Section 8 of the Act, concerning 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 Menemsha, Nashaquitsa *and Stonewall Ponds 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

The proposed district is important to commercial and recreational fishing interests. According to Paul Diodati, Division of Marine Fisheries, Nashaquitsa Pond is classified by the Division as “significant juvenile finfish and shellfish habitat”. The presence of eelgrass beds indicates significant habitat for growing shellfish. The Town of Chilmark Open Space and Recreation Plan 1996 Update includes the following regarding fishing and shellfishing resources “Shellfishing, being a significant economic resource, needs further protections, propagation and predator control. Shellfishermen need adequate access to the resource areas...The Atlantic fisheries until recent years supported a considerable commercial fishing fleet in Menemsha. Sports fishing is equally important to our economy now with half a dozen charter boats, and countless individual fishermen dependent on the health of the Atlantic fisheries. The conservation of that resource is vital to the way of life the Town values...” Regarding boating, the plan includes the following “Every year the need for more moorings and dock space is brought up, especially at the Town Affairs Council meeting with summer residents in August. The assignment of available spaces appears haphazard. More spaces, better regulations and communications are in order.”

The 1990-1992 update to the Chilmark Master Plan lists the fishing resources in Menemsha Pond as striped bass, herring, lobsters, scallops, soft shell clams, quahogs and eels; in Nashaquitsa Pond as scup, flounder, soft shell clams, lobster, conch, razor clams, crabs, scallops, quahogs and eels; *and in Stonewall Pond as soft shell clams, scallops, quahogs, eels and blue crabs.* The shellfish resources are further described, “The Menemsha, Nashaquitsa and Stonewall Pond complex is the fishing ground for scallops. Menemsha and Nashaquitsa are consistently Chilmark’s most productive shellfish ponds because of good water circulation and salinity, and a good bottom and depth for scallop and quahog harvests. In recent years shoaling may have changed circulations patterns and affected some of the scallop habitat along the eastern

*Amended M.V.C. decision designating the Menemsha, Nashaquitsa and
Stonewall Ponds DCPC*

shoreline of Menemsha Pond. There is an opinion that the scallop spat issued during the summer months in the Menemsha Pond area is taken by the present tidal current and wind patterns more toward the Gay Head than the Chilmark portion of the pond as well as out the channel on outgoing tides. Menemsha Pond complex is also the principal hard-shell clam-fishing area, with Menemsha and Nashaquitsa the present productive areas...There is some commercial eel fishing. There is a herring run in Menemsha Pond but the fishery is in Gay Head. Lobster are also caught in Menemsha Pond in pots.”

Section 4.12 Wildlife, Natural, Scientific or Ecological Resource District

In their 1994 report on the eelgrass inventory, Charles Costello and Janice Stone wrote about the significance of eelgrass beds, “Eelgrass habitat provides an important nursery function to many different species of finfish and shellfish which spend significant portions of their lifecycle in and around this habitat. Eelgrass beds are critical to the bay scallop, *Argopecten irradians*, fishery. Scallop spat secure themselves onto the eelgrass leaves where they remain until they are large enough to avoid predators. The eelgrass keeps them floating above the potential danger of crabs, starfish, oyster drills and whelks. No other naturally-occurring system within the near coastal environment could fulfill the ecological functions which eelgrass beds provide.” They mapped the eelgrass beds of Martha’s Vineyard in 1994 and again in 2000. According to the maps, there are a number of eelgrass beds in the district. The map shows extensive eelgrass beds near the shores of Menemsha and Nashaquitsa Ponds and extensive eelgrass coverage of much of the northern half of Menemsha Pond. *The entire extent of Stonewall Pond was mapped as an eelgrass resource.* The map is attached.

MVC mapped the eelgrass beds within 200 feet of the shoreline, based on the Wetlands Conservancy map. Much of the shoreline area includes eelgrass beds within the first 200 feet. Total pond acreages are about 92 acres for Nashaquitsa Pond and about 640 acres for Menemsha Pond, of which about 370 acres are on the Chilmark side, *and 30 acres for Stonewall Pond.* The map is attached.

In 1999, Phil Colarusso, of the U.S. Environmental Protection Agency, investigated the health of the eelgrass beds in Menemsha Pond. He dove and sampled the eelgrass. He found that the eelgrass in Menemsha Pond was impacted by large quantities of algae and epiphytes (other plants that grow on the eelgrass leaves). He found that well-flushed areas were in better condition than those with restricted circulation. Epiphytes are commonly found growing on eelgrass leaves, but an overabundance, commonly associated with excess nutrient loading, can damage the eelgrass by reducing the amount of sunlight reaching the leaves.

*Amended M.V.C. decision designating the Menemsha, Nashaquitsa and
Stonewall Ponds DCPC*

Eelgrass map

*Amended M.V.C. decision designating the Menemsha, Nashaquitsa and
Stonewall Ponds DCPC*

Eelgrass map

*Amended M.V.C. decision designating the Menemsha, Nashaquitsa and
Stonewall Ponds DCPC*

In the Martha' Vineyard Commission's 2001 Chilmark, Menemsha & Squibnocket Ponds: Nutrient Loading and Recommended Management Program, William Wilcox found that circulation and load projections indicate that the Menemsha-Nashaquitsa-Stonewall Ponds system (which also receives nutrients from Squibnocket Pond) is well within its limits for nutrient loading and would remain so at buildout. He investigated tidal circulation, finding a 3.03-foot, flood-dominated tide at West Basin and a 2.9 foot, strongly ebb-dominated tide at Hariph's.

According to the Massachusetts Natural Heritage Atlas, there are no rare or endangered species within the proposed district.

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.

According to the nomination, "Shellfishing, commercially or just for family use, is a valued way of life that depends on these ponds remaining relatively uncluttered and the bottom healthy". The criteria for this resource include "places which present opportunities for hunting or fishing..." The Town of Chilmark Open Space and Recreation Plan 1996 Update includes the following Goals for Recreation "1. To provide for the public enjoyment of Chilmark's unique natural environment through appropriate passive recreational opportunities and 2. To provide, within reason, for active recreational opportunities to promote the health and well being of its citizens.

Section 4.14 Major Public Investment District

According to the nomination, "The Town and the Martha's Vineyard Shellfish Group finance programs which seed and manage the shellfish resources". Most of the proposed district lies within the public waterways belonging to all citizens, to use and share equally. Only the area between Mean High Water and Mean Low Water may be privately owned, and the public retains rights to access to that area for purposes of fishing fowling and navigation.

*Amended M.V.C. decision designating the Menemsha, Nashaquitsa and
Stonewall Ponds DCPC*

Section 5.00 Amended Guidelines

The Commission adopts the following guidelines (“the Guidelines”) for the development of the Menemsha, Nashaquitsa *and Stonewall* Ponds 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 Chilmark shall, in the manner required by the Act, adopt Regulations which at a minimum comply with these Guidelines for the development of the Menemsha, Nashaquitsa *and Stonewall* Ponds 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 protect the finfish and shellfish resources of the district, to protect eelgrass habitats, to promote economic development of fisheries and related industries, to promote appropriate public or community access for recreation and for commercial fisheries.

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 Menemsha, Nashaquitsa *and Stonewall* Ponds District.

In appropriate cases, after notice and a Public Hearing, the Martha's Vineyard Commission may permit a town to adopt regulations that 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.

*Amended M.V.C. decision designating the Menemsha, Nashaquitsa and
Stonewall Ponds DCPC*

Section 5.30 Amended Development Guidelines

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

Permitted uses: Uses may be permitted, which are consistent with the fragile nature of the area, such as recreational fishing and boating, and which do not involve the permanent placement of any new fill, structure or other materials. Commercial fishing, shellfish and aquaculture activities may be permitted, so long as those activities are licensed by the appropriate federal, state and/or local licensing authorities, and do not require the placement of any permanent fill or structure. Maintenance of any fill or structure in lawful existence at the time of adoption of the Town's regulations may be permitted.

Uses allowed by Special Permit: Uses may be allowed by Special Permit, which are consistent with the Goals for the district; permanent placement of docks, piers or any other type of fill or structure *other than non-municipal piers*, and dredging and fill activities other than those permitted by right. The Town shall produce maps identifying eelgrass and shellfish resources in order to establish criteria for granting of a Special Permit. The Town shall establish administration of a procedure for granting a Special Permit; said procedure shall include solicitation and due consideration of input from the Town's Conservation Commission, Shellfish Constable, and Harbormaster. The Town may consider input from any other town boards or public officials.

Prohibited uses: All other uses not permitted by right or by Special Permit are to be prohibited. *New, non-municipal piers are specifically prohibited.*

By Vote of the Martha's Vineyard Commission
June 14, 2001

*Amended by Vote of the Martha's Vineyard Commission
January 24, 2002*

James Vercruysse, Chairman

*Amended M.V.C. decision designating the Menemsha, Nashaquitsa and
Stonewall Ponds DCPC*

REFERENCES

Chapter 831, Acts of 1977 as amended

Natural Heritage & Endangered Species Program, Massachusetts Natural Heritage Atlas 2000-2001 Edition

Town of Chilmark Open Space & Recreation Plan 1996 Update

Town of Chilmark, Chilmark Master Plan, 1985, 1990-1992 update

Town of Chilmark, 1999, "Waterways Rules & Regulations"

Charles Costello, Wetlands Conservancy Program, and Janice Stone, University of Massachusetts, 1994, "Eelgrass Mapping Inventory, Martha's Vineyard, Summer 1994"

December 4, 2000 letter from Paul J. Diodati, Division of Marine Fisheries

Phil Colarusso, U.S. Environmental Protection Agency, 1999, personal communication

Martha' Vineyard Commission, 2001, Chilmark, Menemsha & Squibnocket Ponds: Nutrient Loading and Recommended Management Program

Chilmark Conservation Commission and Chilmark Planning Board, April 19, 2001, nomination statements

Chilmark Conservation Commission and Chilmark Planning Board, November 29, 2001, nomination statements for proposed amendments