

DECISION OF THE MARTHA'S VINEYARD COMMISSION  
DESIGNATING THE WILD AND SCENIC NORTH SHORE 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 "Wild and Scenic North Shore District of Critical Planning Concern".

On January 26, 2001, the Commission received a nomination from the West Tisbury Conservation Commission, Tisbury Conservation Commission, Chilmark Conservation Commission, and Aquinnah Conservation Commission, for inclusion of geographic areas into a District. At its February 1, 2001 Special Meeting, the Martha's Vineyard Commission voted to accept for consideration the nominated area.

On March 15, 2001, the Commission held a public hearing at 7:30 P.M., at offices of the Martha's Vineyard Commission, Olde Stone Building, New York Avenue, Oak Bluffs, Massachusetts, on the proposed Wild and Scenic North Shore 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.

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

On Thursday, March 22, 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.

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### Section 2.00 Area Designation

#### Boundaries:

The "Wild and Scenic North Shore District" consists of the waters and the lands under the waters, included within and bordered by a line beginning 100 feet seaward of the intersection of the Mean Low Water Line of Vineyard Sound with the easterly boundary of land of the United States of America, known as Tisbury Assessors' Parcel 2-H-2, and thence southwesterly 100 feet to said intersection, and thence along the Mean Low Water Line of Vineyard Sound, in the Town of Tisbury, in a generally southwesterly direction, to the corporate bounds of the Towns of Tisbury and West Tisbury, and thence along the Mean Low Water Line of Vineyard Sound in the Town of West Tisbury, in a generally southwesterly direction, to the corporate bounds of the Towns of West Tisbury and Chilmark, and thence along the Mean Low Water Line of Vineyard Sound in the Town of Chilmark, in a generally southwesterly direction, to the corporate bounds of the Towns of Chilmark and Aquinnah, and thence along the Mean Low Water Line of Vineyard Sound in the Town of Aquinnah, in a generally westerly direction, to the intersection of said Mean Low Water Line with a line drawn perpendicular to said Mean Water Line and intersecting the southwesterly boundary of land of the United States of America, known as Aquinnah Assessors' Parcel 6-22, and thence northwesterly along said line of intersection to a point 100 feet seaward of the Mean Low Water Line, thence continuing in Vineyard Sound along a line 100 feet seaward of the Mean Low Water Line, in an easterly and then generally northeasterly direction to the point of origin.

### Section 3.00 Why the Area Has Been Designated

The Wild and Scenic North Shore 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 Wild and Scenic North Shore 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 Wild and Scenic North Shore 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.

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Information available to the Commission supports a finding that the Wild and Scenic North Shore 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 Wild and Scenic North Shore District is essential to the maintenance of the Island's unique cultural values. The wild and scenic natural beauty of the District offers irreplaceable views and vistas, as well as unobstructed navigation throughout the District. 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 the District and neighboring lands are prone to storm damage that may be caused or exacerbated by inappropriate development within 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 Wild and Scenic North Shore 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 particularly been guided by the testimony presented at the Public Hearing, which is adopted and incorporated herein by reference.

### Section 4.00 What Kind of District

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

- a) An area which possesses unique natural, historical, ecological, scientific or cultural resources of regional or statewide significance;

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- 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 Wild and Scenic North Shore District qualifies under the Specific Qualifications, Sections 2.00-2.80 of the Criteria and Standards ("the Specific Qualifications"). The Commission finds that the Wild and Scenic North Shore District meets Specific Qualifications as described herein.

Specifically, with respect to the first element of Section 8 of the Act, concerning unique natural, historical, ecological, scientific, or cultural resources of regional or statewide significance, the Wild and Scenic North Shore 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 second element of Section 8 of the Act, concerning an area which possesses marginal soil or topographic conditions which render it unsuitable for intense development, the Wild and Scenic North Shore District meets the Specific Qualifications of the Hazardous District, Section 2.80.

### Section 4.10 Compliance with Standards and Criteria

#### Section 4.11 Fishing Resource District

The District is important to commercial and recreational fishing interests. The District is heavily fished by recreational fishermen, particularly during the Martha's Vineyard Bass and Bluefish Derby. Commercial fishermen use the District for lobster pots. The District includes productive mussel beds. It is likely that there is some shellfish spawning activity in the District, particularly the spawning of mussels, quahogs, soft shell clams, and possibly scallops<sup>1</sup>. The presence of eelgrass beds indicates significant habitat for growing shellfish. In addition to the catch landed from the District, it is important to consider the potential for fisheries. The Town of Chilmark Open Space & Recreation Plan 1996 Update includes the following policy regarding encouragement of fisheries and aquaculture "Protect and Improve FISHERIES - Encourage Aquaculture in appropriate locations". Although the rugged wave climate in the District does not lend itself to the available aquaculture

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<sup>1</sup> Fisheries information from personal communication with Gregory Skomal, Division of Marine Fisheries, 2001

technologies, it would be imprudent to rule out aquaculture opportunities that may develop with advanced technologies<sup>2</sup>.

#### Section 4.12 Wildlife, Natural, Scientific or Ecological Resource District

According to the Massachusetts Natural Heritage Atlas, the District includes portions of the following Priority Habitats of Rare Species: PH 1799, PH 1784, PH1782, PH1775 and PH1773. The District includes portions of the following Estimated Habitats of Rare Wildlife and Certified Vernal Pools: WH1132, WH507, and WH1126. These mapped designations indicate that those areas are important in the life cycles of some protected species. According to the Natural Heritage and Endangered Species Program<sup>3</sup>, protected species within the District include:

✿ Roseate Tern, *Sterna dougallii* protected as endangered, by both the Massachusetts Division of Fisheries and Wildlife and the United States Fish and Wildlife Service. “Unlike the Common Tern, they do not exhibit strong defensive measures against mammals or humans”.<sup>4</sup>

✿ Piping Plover, *Charadrius melodus*; protected as threatened, by both the Massachusetts Division of Fisheries and Wildlife and the United States Fish and Wildlife Service. According to the United States Fish and Wildlife Service...”Human disturbance currently is the greatest threat to the piping plover’s survival”.<sup>5</sup>

✿ Least Tern, *Sterna antillarum*; protected by Massachusetts Division of Fisheries and Wildlife as a Species of Special Concern

✿ Common Tern, *Sterna hirundo*; protected by Massachusetts Division of Fisheries and Wildlife as a Species of Special Concern

The Wetlands Conservancy Program mapped the eelgrass beds of Martha’s Vineyard in 1995 and again in 2000. According to the maps, there are a number of eelgrass beds in the District. Eelgrass beds are important habitat for juvenile species of finfish and shellfish, particularly scallops.

The 1997 Tisbury Open Space Plan includes the directive “To protect and manage natural habitat areas to prevent impacts from human intrusion on fragile species, particularly rare and endangered species of plant and animals”.

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<sup>2</sup> Aquaculture information from personal communication with Richard Karney, M.V. Shellfish Group, Inc., 2001

<sup>3</sup> Correspondence from Christine Vaccaro, NH&ESP, February 26, 2001

<sup>4</sup> Massachusetts Natural Heritage and Endangered Species Fact Sheet

<sup>5</sup> United States Fish and Wildlife Service Fact Sheet

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, “the North Shore of Martha's Vineyard, from Aquinnah to Tisbury, comprises one of the last stretches of virtually pristine shoreline anywhere on the East Coast...The views from both land and water are spectacular; which accounts, in large part, for the attractiveness of the North Shore. Respect for the natural scenic beauty of Martha's Vineyard has long been a cultural value on this Island. The shoreline is almost entirely free of human-made structures such as piers, docks and groins. This allows for the unimpeded natural processes of beach erosion, recession and accretion to occur, providing continuous beach nourishment along the entire North Shore. One can walk the beaches and navigate small craft close to the shore without obstruction to navigation.”

The Martha’s Vineyard Commission’s Regional Island Plan includes direction “Preserve the Island's natural beauty and visual diversity for reasons of economy, heritage, character, recreation and aesthetics...The appearance of openness and great space is appreciated by Islanders and visitors, and it must be preserved. Manage change and growth to enhance the traditional and natural landscapes of Martha's Vineyard. Require that development plans fit the scale and quality of the inherited landscape so that generations to come will have views and open vistas to enjoy.”

According to Looking at the Vineyard, “Within the diverse general landscapes of the Vineyard there are also some very special locations about which Vineyarders hold strong feelings. These feelings may be based on historic or personal association, or on unique visual qualities. Some of these places are specific spots, others broad regions. Of all these places, we can say that, should we lose them or see them altered, and then we have lost something valuable, which cannot be replaced, just as we speak about the destruction of a fine old house, or the death of a person. For these particular places, then, we are justified in taking special precautions for their preservation.” Of the ten special locations singled out, five are located on the shore adjacent to the District. They include Lambert's Cove, Cedar Tree Neck, The Brickyards, Menemsha and the Neck, and the Gay Head Cliffs. The Brickyards, because of its inaccessibility from the land, is singled out as an important view from Vineyard Sound “Less well known, and not accessible to the public, the ruins of this early Island industry is a notable landmark of the North Shore, when seen from passing boats. The tall chimney still stands, flanked by a great sand cliff and rolling hills, and backed by Roaring Brook Swamp. No other man-made structure is within sight.”

#### Section 4.14 Hazardous District

According to the National Flood Insurance Program, the entire District is within a coastal flood hazard area with velocity hazard (wave action). Base flood elevations have also been determined. The base flood elevation is the height of the floodwaters (above NGVD) for the flood having a 1% probability of being equaled or exceeded in any given year, also referred to as the 100-year flood. The Flood Insurance Rate Maps indicate base flood elevations for the District as follows: Tisbury V14, El 13, for West Tisbury V9 El 13, for Chilmark V9 El 12 and for Aquinnah VE El 11 (near the lighthouse) and VE El12 (near Chilmark).

The Tisbury Open Space Plan includes the policy “To discourage inappropriate development in areas subject to flooding and storm impact.” Storm damage from inappropriate development in the District might include the distribution of debris from damaged structures. Inappropriately placed shore protection structures, such as groins, could add to erosion problems associated with storms.

#### Section 5.00 Guidelines

The Commission adopts the following guidelines (“the Guidelines”) for the development of the Wild and Scenic North Shore 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 Towns of West Tisbury, Tisbury, Chilmark and Aquinnah shall, in the manner required by the Act, adopt Regulations which at a minimum comply with these Guidelines for the development of the Wild and Scenic North Shore District. The Towns may adopt such regulations under zoning, general by-law or any combination of such authorities the Towns deems best suited for the purpose. The Commission draws the Towns’ 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 Towns and the Island does not result.

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### Section 5.10 Goals

To protect the wild and scenic natural beauty of the District from undue visual intrusion; to allow the unimpeded natural processes of littoral drift to occur, providing continuous beach nourishment along the length of the North Shore; to protect wildlife habitats; to prevent obstruction to navigation, throughout the District; to protect against storm damage that may be caused or exacerbated by inappropriate development; to promote economic development of fisheries and related industries.

### 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 Towns shall adopt regulations of the types described in the Act, as appropriate to conform to these Guidelines to control development within the Wild and Scenic North Shore 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.

### Section 5.30 Development Guidelines

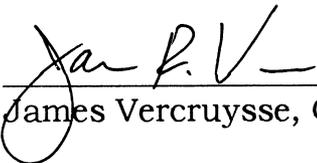
The Towns shall adopt regulations that include or adequately consider the following:

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. Routine maintenance of the inlets at Menemsha Creek, Lake Tashmoo and Mink Meadows may be permitted. Maintenance of any fill or structure in lawful existence at the time of adoption of the Town's regulations may be permitted. Beach nourishment may be permitted.

Uses allowed by Special Permit: Uses may be allowed by Special Permit, which are consistent with the Goals for the District; including permanent placement of any fill or structure for municipal purposes or for purposes of commercial fishing, shellfishing or aquaculture. The Towns 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. The Towns 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 prohibited.

By Vote of the Martha's Vineyard Commission  
March 22, 2001

  
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James Vercruyse, Chairman

REFERENCES

Chapter 831, Acts of 1977 as amended

Martha's Vineyard Commission, 1989, Martha's Vineyard Commission Decision, Gay Head Cliff Area District of Critical Planning Concern

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

Correspondence from Christine Vaccaro, Natural Heritage & Endangered Species Program, February 26, 2001

Natural Heritage & Endangered Species Program Fact Sheets

United States Fish and Wildlife Service Fact Sheet for the Piping Plover (*Charadrius melodus*), September 1993

Town of Tisbury, 1997, Tisbury Open Space Plan,

Town of Chilmark Open Space & Recreation Plan 1996 Update

Wetlands Conservancy Program, 2000, "Eelgrass Mapping Inventory"

Wetlands Conservancy Program, 1995, "Eelgrass Mapping Inventory"

Vineyard Open Land Foundation, 1973, Looking at the Vineyard

National Flood Insurance Program, Flood Insurance Rate Maps for Tisbury (1984), for Chilmark and for West Tisbury (1985) and for Aquinnah (1996)

Gregory Skomal, DMF, personal communication regarding fisheries resources, 2001

Richard Karney, M.V. Shellfish Group, Inc., personal communication regarding aquaculture activities, 2001

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