

# PROPOSED LAWN FERTILIZER CONTROL DISTRICT

## UNDER CONSIDERATION

Public Hearing March 27, 2014 staff notes (Jo-Ann Taylor, DCPC Coordinator)

(March 25 edition – watch for possible updates)

### Note on the Evening's Proceedings

The Commission is holding a single public hearing addressing two DCPC procedures, **DESIGNATION** of a proposed District under consideration and **CONFORMANCE OF PROPOSED REGULATIONS**. The two are so closely linked that much of the presentation addresses both the designation vote and proposed regulations, as may the public hearing testimony. Please keep in mind that MVC has not designated the District and will undertake that vote after conclusion of the hearing. The vote on designation may well take place on March 27 and if affirmative should include the Goals and Guidelines for Development. Draft Goals and Guidelines have been prepared by staff and the DCPC Committee for use in the event of an affirmative vote, and are included in the public hearing materials for convenience.

On April 3, a vote should be taken on the Written Decision (affirmative or negative). Should the MVC vote to designate, a separate subsequent vote would determine whether or not the proposed regulations are in conformance with the Guidelines for Development specified in the Designation Decision. That vote could also take place on April 3 (possibly on March 27).

## 1. PROCEDURAL NOTES

### Purpose of hearing:

To consider designation of the proposed Fertilizer Control District under consideration since the MVC accepted the nominations on February 20, and to hear evidence as to whether the Commission should find that regulations proposed to govern the District conform to the Commission's Goals and Guidelines for the District.

### Timeline:

**The MVC could best accommodate the towns by completing its votes prior to the "Super Tuesday" night of April 8, when four Annual Town Meetings take place.** (Definitive time limits are as follows: designation vote by May 19, town regulations adoption within one year from designation)

## 2. AREA UNDER CONSIDERATION

Area under consideration for designation: (excerpts from the nomination are included here; full nominations were presented on February 20; a representative of the five nominations is appended and all five nomination documents are available on the Commission's website).

**The six towns, comprising the entirety of the Island of Martha's Vineyard, except for the Indian Common Lands – generally known as the Clay Cliffs, the Cranberry Bogs and the Herring Creek – and the Settlement Lands, and excluding Nomans Land Island.**

### 3. DESIGNATION CRITERIA

In making its designation decision, the Commission is guided by Section 8 of Chapter 831 of the Acts of 1977 as amended (“the Act”) and by its “Critical Planning District Qualifications” as well as the public hearing record. The “Qualifications” (sometimes known as the “Criteria”), which are excerpted in boxes below, are based very closely on the specifics of Section 8. The full “Qualifications” document is appended and is available on-line <http://www.mvcommission.org/dcpcs/qualifications.html>

#### 3.1 GENERAL QUALIFICATIONS

##### 3.1a NEED FOR DESIGNATION

**"There must be a regional need for special regulations or planning to protect the district from damage or losses by inappropriate development. The Commission shall find: that the present public or private regulations in a substantial part of the district cannot assure protection; and that damage to the district or impediments to proper development will be a substantial loss to the region or to two or more towns."**

The nominations appear to adequately address the designation for designation. The nominations were made or supported by all the Vineyard towns, expressing widespread concern for this need.

Nitrogen moves readily through groundwater and remains a threat to water quality as it moves through the ground and eventually surfaces in a pond, stream or the ocean. Although nitrogen is an important nutrient to support life, nitrogen in excess negatively impacts water quality. As noted in the nominations, the towns anticipate increasing pressure to improve water quality by reducing nitrogen inputs to groundwater. Without adequate regulation to limit nitrogen input, the towns may be forced to build expensive infrastructure such as sewer systems or expansion of sewer systems.

The nominations detail the progress of the Massachusetts Estuaries Project (MEP) assessments and the regulatory limits associated with those assessments *"Reports have been completed for Edgartown Great Pond, Farm Pond, Lagoon Pond, Sengekontacket Pond and Tisbury Great Pond. The MEP studies document that lawn fertilizers partly contribute to the eutrophication of our estuaries... The Massachusetts Department of Environmental Protection (Mass DEP) has issued Total Maximum Daily Loads (TMDLs) for each of the water resources with completed MEP reports. Similar studies are currently underway for Cape Poge Bay, Chilmark Ponds, Katama Bay and Lake Tashmoo. In due course, TMDLs will be established for all of these participating water resource areas."*

*"Eventual Commonwealth enforcement of TMDLs will require measures to reduce nitrogen levels, but if Vineyard towns do not soon adopt fertilizer regulations, they will be reliant upon the Commonwealth's regulations, which could remove fertilizer controls as a low-cost option for addressing part of the nitrogen problem. In 2012, the Commonwealth set out to develop statewide regulations of fertilizer use, reserving unto itself the ability to further regulate the use of fertilizers. The Cape and Islands communities were provided a window of opportunity to adopt regulations through the special legislative authority of their regional planning agencies. The window expires the latter of January 1, 2015 or one year after the commonwealth promulgates its statewide fertilizer regulations."*

*“Adding sewers to reduce nitrogen that is attributable to excessive fertilizer use rather than using proper fertilizing practice could increase long-term Clean Water Act compliance costs to the Vineyard community by \$10-20 million or more.”*

### **3.1b SIZE AND SHAPE OF DISTRICT**

**"The district shall consist of the land and water which reasonably belong in the district for the three following reasons: It is the critical area or critical resource which is in need of protection. It is the logical planning area that should be considered in adopting a coordinated system of regulations to protect the critical resource or critical area. The dimensions or landmarks which form the boundary of the district are convenient and recognizable."**

Regarding Size and Shape of the proposed District, the nominations request Island-wide designation and coordinated regulation *“The Island’s boards of Health are seeking a common, Island-wide regulation that establishes a sustainable standard of lawn care, one that promotes the responsible use of fertilizers for lawns and other turf, in order to prevent harm to our water resources from application of nitrogen in excess of what the soil and turf area are able to utilize... The strength of the regulations lies in the definition of a common, Island-wide vision, one that defines a common set of standards.. Only a common island-wide regulatory approach is capable of fully addressing the 5% to 12% of the controllable nitrogen that enters our ponds and harbors from landscape fertilizer. ”*

The nomination appears to adequately make a case for Island-wide designation, as the Commission has already found appropriate for the Coastal District, the Island Road District and the Special Places District. The very nature of groundwater movement ensures that it will cross town boundaries. Of the 14 coastal ponds and harbors for which MEP assessments have been completed, 8 lie within watersheds that span one or more neighboring towns. Should the Commission find that the area under consideration does warrant designation, the proposed boundary description appears to be adequate. The Commission does not regulate certain named Wampanoag lands that have been excluded from the nomination. The Settlement Lands are also excluded because of limitations on town regulations there. Nomans has also been excluded.

Some watersheds drain directly into the ocean, rather than to a pond or harbor. The nominations acknowledge that nitrogen from fertilizer may have little impact in the ocean, but nevertheless have asked for a unified designation and regulation for the benefits of standardization *“Applying the fertilizer regulations across the Vineyard would also significantly aid administration of the regulations and their objectives. Education and training efforts can be shared among towns. Landscapers would only need to know a single set of standards for anywhere on the Island. A common standard would also eliminate potential confusion for landowners with properties in more than one Island town. This ease of understanding and administration is also a compelling argument for including areas of the towns that drain directly to the ocean.”*

### **3.2 SPECIFIC QUALIFICATIONS**

The Specific Qualifications define resources that may be considered valid for designation of a District of Critical Planning Concern:

### 3.2a DRINKING WATER RESOURCE DISTRICT

**“The district is important to the protection of a regional aquifer, watershed, aquifer recharge zone or surface water supply with the following considerations:**

- **Development or waste disposal without special regulations in the district could endanger the quality or quantity of the water.**
- **Studies or expert advice indicate that the designation and regulation of the district could be effective in protecting the quality or quantity of water, and that, since public health, safety and welfare are paramount, special precaution should be taken.”**

The nominations appear to have adequately described the need for designation as a Drinking Water District.

As stated in the nominations, *“Significant portions of the Island rely on on-site drinking water wells for potable water and other areas zoned for residential use are occupied by Zone II recharge areas for municipal public water supplies. Nitrogen is essential for all living things, as it is an essential component of protein. Excessive concentrations of nitrate-nitrogen in drinking water can be hazardous to health, especially for infants, nursing mothers, and pregnant women. Limiting the amount of nitrogen applied in the form of fertilizer is protective of drinking water quality and will complement other nitrogen limiting measures.”*

Regarding specifics of drinking water needs, the nominations include separate descriptions of each town’s drinking water needs. Based on density of development, several of the towns have constructed public water supply systems. Others rely more on private wells. All rely on good water quality, which may be at least partly determined by another town’s nitrogen inputs. The nominations individually state:

- *“With the exception of the small area served by the Menemsha Water Company, the town of Chilmark is served entirely by on-site drinking water supply wells. Constructing drinking water wells in significant parts of town can present challenges due to complex geology and associated limited water supply. Protecting Chilmark’s drinking water quality due to the complexity and limits connected with establishing a source includes protecting its quality... Additionally, Chilmark’s geology supports many streams and ponds which in some cases are closely related to surrounding potable water supplies. Protecting surface water quality simultaneously protects drinking water quality in Chilmark.*
- *Significant portions of the Town of Edgartown rely on on-site drinking water wells for potable water, including Chappaquiddick and Katama. Additionally, the Zone II recharge areas for the municipal public water supply wells occupy approximately 25% of the area zoned for residential use. Two separate neighborhoods have experienced elevated nitrate levels in drinking water (perhaps caused by septic systems).*
- *The majority of the Town of Oak Bluffs relies on municipal public water for its potable water supply. Municipal public water supply Zone II’s cover approximately 50% of the areas zoned for residential and/or business use. Oak Bluffs’ public water supply Zone II’s span into neighboring towns as well.*
- *A review of private well tests in Tisbury have shown some elevated nitrogen levels. Tisbury has also seen slightly elevated nitrogen levels in the Sanborn Well.*
- *The Town of West Tisbury relies on private wells for potable water. Several abutting towns have Municipal public water supply Zone II’s that encompass a portion of West Tisbury.”*

### **3.2b FISHING RESOURCE DISTRICT**

**"The water body in the district is particularly well suited for the production of shell or fin fish or can be made productive through good management and improvements."**

The nominations state *"Although fertilizer is not applied directly to the surface waters, the MEP studies document the contribution of excess nitrogen that leaches into the groundwater and migrates to great ponds. The excess nitrogen stimulates algal growth to the detriment of other plants and shellfish. Reducing nitrogen loading, of which fertilizers are one source, can restore healthy habitat for fish."*

This distinction is usually made for a specific body of water. Some water bodies will not be suitable for the production of fish regardless of nutrient inputs.

### **3.2b WILDLIFE, NATURAL SCIENTIFIC OR ECOLOGICAL RESOURCE DISTRICT**

**"The district contains an important and identifiable wildlife, natural, scientific or ecological resource. This would include but not be limited to special plant and animal life and their habitats, as well as unusual geological features, and is critical because development may disrupt the ecological balance."**

### **3.2 c CULTURAL OR HISTORIC RESOURCE DISTRICT**

**"The district contains a place, landscape, way or view which is in some special way expressive of the character of the Island, traditions of the Island residents, and of special interest to Island visitors. The maintenance and protection of those values is essential to a sound local economy. The district also: is of exceptional symbolic or recreational importance to the residents of more than one town and is either visible or accessible to them or can reasonably be made so; or is rare, unique, or makes an unusual contribution to the diversity of the Island character; or is irreplaceable, or replaceable only with extraordinary effort or expense. Subject to the above general tests, designations may be considered for areas which are important for their connection with the history of the region-including its geological history or the history of its Indian settlement-or which symbolize and support the traditional activities and ways of Island life, or which give us a particular understanding of the Vineyard lands and their setting in the sea. These include places which present opportunities for hunting and fishing and the enjoyment of wildlife."**

The nominations state *"Although this nomination is not made as either a WSNE Resource District or Cultural District, regulating the appropriate application of fertilizer used for lawns and other turf will have positive impact on the health, vitality and appearance of the Island's great ponds. The great ponds are critical components of the Vineyard's natural ecosystems and iconic resources for recreation and enjoyment – as already recognized by the Commission's 1975 designation of the Coastal District."*

There appears to be cause for designation as a Wildlife, Natural Scientific or Ecological Resource District.

## **4. CORRESPONDENCE SUMMARY**

None as of March 25, 2014

1 **5. DRAFT GOALS AND GUIDELINES**

2  
3 Offered by DCPC Committee members Linda Sibley, Joan Malkin and John Breckenridge; prepared by  
4 Jo-Ann Taylor, DCPC Coordinator; with input from Bill Veno, MVC staff. Draft 2014-03-21 for public  
5 hearing on March 27, as a convenience in the event that the Commission chooses to vote in favor of  
6 designation. Such designation vote would include Goals and Guidelines.

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8 **5. Guidelines**

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10 The Commission adopts the following guidelines (“the Guidelines”) for the development  
11 of the Lawn Fertilizer Control District. In adopting the Guidelines, the Commission has  
12 evaluated each of the considerations enumerated by Section 8 of the Act and, in  
13 addition, has considered other relevant matters.

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15 Towns shall, in the manner required by the Act, adopt Regulations for the development  
16 of the Lawn Fertilizer Control District. The Commission draws the towns’ attention to  
17 Section 10 of the Act which in part provides, “In adopting such regulations, each  
18 municipality shall have all of the powers it otherwise had under the General Laws”. The  
19 Commission also finds a compelling need for the towns to adopt compatible regulations  
20 within the Lawn Fertilizer Control District. As used herein, the term "regulations" shall  
21 have the same meaning as in the Act.

22 **5.1 Goals**

23 5.1. A.To improve, restore and protect the quality of Martha’s Vineyard’s groundwater  
24 and water bodies by:

- 25 • Reduction of nitrogen entering Martha’s Vineyard’s groundwater and water  
26 bodies by means of an organized system of education, regulation of practice,  
27 and enforcement.
- 28 • Promoting lawn and turf fertilization practices appropriate to the Island’s climate  
29 and environment.
- 30 • Adoption of standards that may be more stringent or otherwise differ from those  
31 that may be promulgated by the Commonwealth of Massachusetts  
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33 5.1. B. To contribute to the towns’ ability to achieve compliance with any water quality  
34 standards prescribed by the Commonwealth for controllable nitrogen in water bodies.

35 **5.2 Establishment of Guidelines**

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37 The towns shall adopt regulations of the types described in the Act, which conform to  
38 these Guidelines, to control development within the Lawn Fertilizer Control District.

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**5.3 Guidelines**

**5.3.1 General Standards for Lawn and Non-agricultural Turf Fertilizer Application:**

The towns shall adopt regulations addressing the appropriate application of fertilizer for growing lawns and other non-agricultural turf, taking into consideration the need for Martha’s Vineyard to maintain surface water quality primarily through regulating inputs to groundwater.

**5.3.1. a Intensity of Fertilizer Application:** Regulations shall limit the amount of nitrogen, by setting standards for concentration and frequency of application, and may limit the amount of other nutrients that may be applied to lawns and other non-agricultural turf. Such limits may be tailored to various situations.

**5.3.1. b Timing of Fertilizer Application:** Regulations shall stipulate time periods when fertilizers should or should not be applied, based on optimizing plant utilization of the fertilizer and preventing migration of the fertilizer to areas not intended to be fertilized. Short-term time periods may also be defined with regard to episodic circumstances such as the imminent passing of a heavy rainstorm.

**5.3.1. c Considerations for Siting:** Regulations should include specialized standards for particularly sensitive areas such as water bodies, wells, and the Buffer Zone defined in the town’s Wetland Protection By-Law. Regulations should address impervious surfaces and ensure that stormwater runoff shall not carry fertilizer to public roads or stormwater collection systems. Regulations may vary for different types of turf, such as sports turf or golf courses.

**5.3.1. d Exemptions:** Regulations may include exemptions based on the specialized character of particular types of lawn or turf, or based on the proficiency of a person applying fertilizer.

**5.3.1. e Adherence to Academic Standards:** Regulations should be consistent with the requirements and guidance contained in the UMass Best Management Practices for Soil & Nutrient Management in Turf Systems published by the University of Massachusetts Amherst Extension Center for Agriculture.

**5.3.2 Administration:** The towns shall administer these regulations with clearly defined standards and procedures for promoting and certifying proficiency in fertilizer application. Based on that proficiency requirement, it should not be necessary for each individual application of fertilizer to require a permit.

75 **5.3.2. a Education and Assessment:** Regulations shall provide for a general  
76 program of fertilizer education and establish assessment of proficiency for  
77 potential practitioners or other participants following completion of the program.

78 **5.3.2. b Authorization to Apply Fertilizer:** Regulations shall establish a  
79 structured system of accreditation that requires practitioners to achieve sufficient  
80 proficiency to apply fertilizer appropriately, and to be so documented by  
81 certificate, license or other mechanism. Regulations shall prohibit practitioners  
82 form fertilizer application without the appropriate License, Certificate, or other  
83 such authorization from the town.

84 **5.3.2. c Effective Date of Enforcement:** In order to accommodate the  
85 educational component integral to the effectiveness of this regulation, a town  
86 may defer enforcement to a date other than adoption of this regulation but no  
87 later than March 1, 2015.

88 **5.4 Complementary Programs across Town Boundaries:** Regulations in the towns  
89 shall be the same or substantially similar to each other in order to enable coordinated  
90 administration and to promote understanding by the public.



## 6. PROPOSED REGULATIONS

The Boards of Health have proposed regulations which appear to be in conformance with the Goals and Guidelines.

The basic approach was to set up a coordinated program of education and assessment, leading to authorization to apply fertilizer. As long as the system adequately trains and permits practitioners to apply fertilizer appropriately, there should be no need for a permit each time fertilizer is applied. There may be need to suspend enforcement of the regulations until an effective training program has been established and produced authenticated graduates.

An appropriate motion for approval would be *to determine that the proposed Regulations conform to the Goals and Guidelines for the Fertilizer Control District.*

The proposed regulations are appended as the second attachment (after the first 11 numbered pages).

Attachments

Critical Planning District Qualifications

Proposed regulations

Sample nomination (of 5 included in the record)

Correspondence

## **CRITICAL PLANNING DISTRICT QUALIFICATIONS**

### **GENERAL QUALIFICATIONS FOR ALL DISTRICTS**

#### **NEED FOR DESIGNATION**

There must be a regional need for special regulations or planning to protect the district from damage or losses by inappropriate development. The Commission shall find:

- that present public or private regulations in a substantial part of the district cannot assure protection; and
- that damage to the district or impediments to proper development will be a substantial loss to the region or to two or more towns.

#### **SIZE AND SHAPE OF DISTRICT**

The district shall consist of the land and water which reasonably belong in the district for the three following reasons:

- It is the critical area or critical resource which is in need of protection.
- It is the logical planning area which should be considered in adopting a coordinated system of regulations to protect the critical resource or critical area.
- The dimensions or landmarks which form the boundary of the district are convenient and recognizable.

### **SPECIFIC QUALIFICATIONS**

#### **DRINKING WATER RESOURCE DISTRICT**

The district is important to the protection of a regional aquifer, watershed, aquifer recharge zone or surface water supply with the following considerations:

- Development or waste disposal without special regulations in the district could endanger the quality or quantity of the water.
- Studies or expert advice indicate that the designation and regulation of the district could be effective in protecting the quality or quantity of water, and that, since public health, safety and welfare are paramount, special precaution should be taken.

#### **FISHING RESOURCE DISTRICT**

The water body in the district is particularly well suited for the production of shell or fin fish or can be made productive through good management and improvements.

#### **WILDLIFE, NATURAL, SCIENTIFIC OR ECOLOGICAL RESOURCE DISTRICT**

The district contains an important and identifiable wildlife, natural, scientific or ecological resource. This would include but not be limited to special plant and animal life and their habitats, as well as unusual geological features, and is critical because development may disrupt the ecological balance.

#### **CULTURAL OR HISTORIC RESOURCE DISTRICT**

The district contains a place, landscape, way or view which is in some special way expressive of the character of the Island, traditions of the Island residents, and of special interest to Island visitors. The maintenance and protection of those values is essential to a sound local economy. The district also:

- is of exceptional symbolic or recreational importance to the residents of more than one town and is either visible or accessible to them or can reasonably be made so; or
- is rare, unique, or makes an unusual contribution to the diversity of the Island character; or

- is irreplaceable, or replaceable only with extraordinary effort or expense.

Subject to the above general tests, designations may be considered for areas which are important for their connection with the history of the region-including its geological history or the history of its Indian settlement-or which symbolize and support the traditional activities and ways of Island life, or which give us a particular understanding of the Vineyard lands and their setting in the sea. These include places which present opportunities for hunting and fishing and the enjoyment of wildlife.

#### ECONOMIC OR DEVELOPMENT RESOURCE DISTRICT

The district will include areas which have special potential for providing employment or housing for Island residents, or for accepting necessary development which might be detrimental in other locations. The district must also:

- require special regulations to create, preserve or enhance that potential, and
- be better suited or more readily available for the facility or development than other areas of the Island, considering topography, utilities, costs and environmental and social impact; and
- have adequate access, preferably from a regional feeder road.

#### MAJOR PUBLIC INVESTMENT DISTRICT

The district will include areas which have a significant impact on an existing or possible future major public investment or areas which are significantly affected by such an investment. In addition, the district must qualify as follows:

- The district pertains to a major public investment as defined in Chapter 831 as amended<sup>1</sup>, and may include airports, highways, schools, parks, beaches, preserves, public utilities and medical facilities owned or operated by a Federal, state or county agency, or by a quasi-public or charitable non-profit agency; and
- the intended use or operation of the public investment or the health, safety and welfare of the public could be impaired by improper development in the district.

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<sup>1</sup>“A major public facility is any publicly owned facility of regional importance except:

(1) any public facility operated by a municipality primarily for the benefit of the residents of that municipality, or by any agency serving primarily the residents of one municipality;

(2) any street or highway which is not recognized as or maintained as a part of the state or federal highway system; or

(3) any educational institution serving primarily the residents of one municipality.”

TOWN OF [TOWN] BOARD OF HEALTH REGULATIONS  
Board of Health Regulation, Section [##]

THE CONTENT AND APPLICATION OF FERTILIZER FOR TURF  
ON MARTHA’S VINEYARD, TOWN OF [TOWN]

**SECTION 1. FINDINGS**

1.1 This Section details the public health and ecological foundations for the regulation of the use of fertilizer on turf in [Town].

1.2 In appropriate concentrations, nitrogen in the form of oxides plays a critical role in the nitrogen cycle and is essential to life. In excess, these forms of nitrogen represent an environmental pollutant that has the potential to harm our water resources, and ultimately damage human health. Excessive amounts of nitrogen, as well as phosphorus, contribute to undesirable algal and aquatic plant growth, and degrade the water used for drinking and shellfishing as well as swimming and boating.

1.3 Algal blooms cause our ponds and harbors to become increasingly anaerobic, with seabeds robbed of oxygen and devoid of aquatic life, and cloudy water columns filled with dense algal and aquatic plant growth. The algal bloom brings with it human health risks. Depending on the type, quantity and route of exposure, symptoms from algae blooms vary from skin and eye irritations to gastrointestinal and asthma-like symptoms, with children and pets being particularly susceptible.

1.4 [Town]’s groundwater is also at risk from nitrogen infiltration. Rising nitrogen levels in our Island ponds are caused in major part by rising nitrogen content in our groundwater. The groundwater/aquifer underlying [Town] is the source of its existing and future drinking water supply and should be preserved and protected from excess nitrate infiltration. Ingested nitrates are converted by the body into nitrites, which are capable of converting hemoglobin into an oxidized form that does not bind tightly to blood oxygen. Infants, young children, pregnant women and some people with compromised immune systems who drink water in excess of established Safe Drinking Water Standards are particularly vulnerable and may become seriously ill if untreated. The Island’s municipal and well water supply is an outstanding asset, one that is safe now and should be protected going forward.

1.5 The Island of Martha’s Vineyard in its entirety has significant amounts of glacially deposited coarse, sandy soils that are subject to rapid water infiltration, percolation, and leaching of nutrients into its groundwater that flow ultimately into the Island’s harbors, embayments, salt ponds and coastal resources, including the water and wetland resources of [Town]. Additionally, soils associated with terminal moraine and glacial till contribute to rapid runoff into streams feeding coastal water bodies. These unique geologic, topographic and hydrographic characteristics require innovative soil management practices. The adoption of specific turf and soil fertilization requirements across the

46 Island, including [Town], is necessary to protect the water and wetland resources of the  
47 Island, including [Town]'s.

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49 1.6 The six towns comprising Martha's Vineyard have engaged the Massachusetts  
50 Estuaries Project ('Estuaries Project') to undertake analyses of many of the harbors,  
51 embayments, salt ponds and coastal resources in the Island towns and to prepare reports  
52 detailing the nutrient loading from multiple sources, including fertilizers. The Estuaries  
53 Project considers fertilizers a locally controllable source of water degradation. This is  
54 very significant as it is anticipated that the State will require all Massachusetts towns to  
55 bring the nutrient levels of their coastal ponds, harbors and other water resources to  
56 within recognized acceptable water quality standards established in the federal Clean  
57 Water Act.

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59 1.7 As of the date of the enactment of this Regulation, Estuaries Project reports have been  
60 completed for Edgartown Great Pond, Farm Pond, Lagoon Pond, Sengekontacket Pond  
61 and Tisbury Great Pond. In addition, the Massachusetts Department of Environmental  
62 Protection has established the maximum amount of a pollutant that four of these ponds  
63 can receive and still safely meet water quality standards (known as "Total Maximum  
64 Daily Loads" or "TMDLs"). (TMDLs for Tisbury Great Pond are under consideration as  
65 of the date of the enactment of this Regulation.) Similar studies are currently underway  
66 for Cape Pogue, Chilmark Pond, Katama Bay, Menemsha Pond, Oak Bluffs Harbor,  
67 Oyster Pond, Pocha Pond, Squibnocket Pond and Tashmoo Pond. In due course, TMDLs  
68 will be established for all of these participating water bodies.

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70 1.8 Of the fourteen coastal ponds and harbors participating in the Estuaries Project, eight  
71 have watersheds that encompass portions of more than one town, suggesting that an  
72 Island-wide, coordinated approach is necessary for effective management of water  
73 quality in these ponds.

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75 1.9 The responsible application of fertilizers rests not only with property owners, but also  
76 with professional landscapers whose work takes them across the Island without regard to  
77 town or watershed boundaries. Coordinated regulation of fertilizers across the Island will  
78 facilitate the educational process for landscapers and will avoid confusion that might  
79 arise if fertilizer regulations were materially different from town to town.

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81 1.10 The [Town] Board of Health, recognizing that excessive use of fertilizers is part of  
82 the overall problem of nutrient pollution, promulgates this Regulation regarding the use  
83 of fertilizer on turf. As a parallel effort, the BMPs Working Group has assisted the Island  
84 town Boards of Health in drafting the *Best Management Practices for Landscape  
85 Fertilizer Use on Martha's Vineyard*, which is based on the *UMass Amherst Extensions'  
86 Best Management Practices for Soil and Nutrient Management in Turf Systems*, both of  
87 which from time to time may undergo changes in response to scientific research.

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89 1.11 The practices and standards set out herein are deemed necessary to protect the public  
90 health, including the maintenance of drinking water quality and the preservation of our  
91 water and wetland resources. They also represent an early step in achieving compliance  
92 with applicable water quality standards. This Regulation is intended to allow our Island's

93 waters to be both sustainable and sustaining, while affording reasonable use of fertilizers  
94 for the enhancement of lawn quality.

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96 1.12 It is anticipated that compliance with this Regulation will be achieved primarily as a  
97 community responsibility and as consequence of the adoption of a common standard of  
98 turf care in respect of both the sale and application of Fertilizer. This regulation provides  
99 for educational initiatives to enable this process to occur. To supplement these  
100 community-based activities, this Regulation also provides for an enforcement process  
101 applicable to those who apply Fertilizer in violation of the standards set out in this  
102 Regulation.

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104 **SECTION 2. PURPOSE**

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106 This Regulation provides for a reduction of nitrogen and phosphorus going into [Town]’s  
107 Water Resources by means of an organized system of education, licensure, regulation of  
108 practice, and enforcement. The Regulation is intended to contribute to [Town]’s ability  
109 to protect, maintain, and ultimately improve the water quality in all its Water Resources  
110 and assist in achieving compliance with any applicable water quality standards relating to  
111 controllable nitrogen and phosphorus.

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113 **SECTION 3. AUTHORITY**

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115 This Regulation is adopted by the [Town] Board of Health as authorized by  
116 Massachusetts General Laws, Chapter 111, Section 31 and is further authorized pursuant  
117 to the Fertilizer Management District of Critical Planning Concern designation, [detail  
118 authority], and by section 9 of Chapter 262 of the Acts of 2012, as amended.

119  
120 **SECTION 4. DEFINITIONS**

121  
122 For the purposes of this Regulation, the following words shall have the following  
123 meanings unless the context clearly indicates a different meaning:

124  
125 "Agriculture" means farming in all of its branches and the cultivation and tillage of the  
126 Soil, the production, cultivation, growing, and harvesting of any agricultural, floricultural  
127 or horticultural commodities. For the purposes of this Regulation, agriculture means  
128 production for commercial sale.

129  
130 "Application Fee" means a fee in the amount of \$100.

131  
132 "Best Management Practices for Landscape Fertilizer Use on Martha’s Vineyard" or  
133 "Martha’s Vineyard BMPs", means a sequence of activities designed to minimize  
134 Fertilizer use while also promoting healthy vegetative growth, as prepared by a working  
135 group of Island landscape professionals, golf course superintendents, Health Agents,  
136 landscape retailers, and conservationists.

138 "Board of Health" means the [Town] Board of Health whose members are elected by the  
139 voters of [Town] to oversee public and environmental practices through the actions of its  
140 Health Department.

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142 "Buffer Zone" means the area abutting a Resource Area within which no alteration (as  
143 that term is defined in Commonwealth's Wetland Protection Act or the [Town] Wetland  
144 Protect Bylaws and Regulations) is permitted without an Order of Conditions or a  
145 Negative Determination from the [Town] Conservation Commission.

146  
147 "Compost Tea" means a liquid infusion of Organic Compost but, for the purposes of this  
148 Regulation, is not considered a Slow Release Fertilizer.

149  
150 "Fertilizer" means a substance that enriches the Turf or Soil with elements essential for  
151 plant growth, such as nitrogen, phosphorus, or other substances. Fertilizer also includes  
152 'combination products', sometimes referred to as 'weed and feed', which contain  
153 Fertilizer in combination with pre- or post-emergence herbicides, insecticides, other  
154 pesticides or plant growth regulators. Fertilizer does not include those substances that are  
155 normally excluded from Fertilizer such as dolomite, limestone, or lime.

156  
157 "Golf Course" means the managed (i.e. mowed and fertilized) Turf at each of  
158 Chappaquiddick Golf Club, Farm Neck Golf Club, Edgartown Golf Club, Mink  
159 Meadows Golf Club, and Vineyard Golf Club.

160  
161 "Health Agent" means the individual who has direct oversight of the daily activities of  
162 the Board of Health.

163  
164 "Horticulture" is a general term meaning plant science and plant products. For the  
165 purposes of this Regulation, horticulture means the raising of flowers, fruits, vegetables,  
166 berries, herbs, nuts, and other similar products for commercial sale.

167  
168 "Impervious Surface" means a surface that has been compacted or covered with a layer of  
169 material so that it is highly resistant to infiltration by water, but does not include  
170 compacted areas on athletic fields, such as baseball infields, and intensely trafficked Turf.

171  
172 "Landscape Professional" means a person, either as a sole proprietor or as an employee of  
173 a company or a municipality, who in exchange for money, goods, services, or other  
174 consideration applies Fertilizer to Turf. A Landscape Professional includes Turf  
175 management staff at a Golf Course.

176  
177 "License" means that documentation issued by [Town] authorizing the individual or  
178 commercial entity holder to apply Fertilizer in [Town].

179  
180 "Licensee" means a Landscape Professional who has a valid License.

181  
182 "Liquid Fertilizer" means a form of Fertilizer which typically is sprayed directly onto a  
183 plant.

184

185 “Martha’s Vineyard Lawn Fertilizer Working Group” means the group of individuals  
186 from the six Island towns, including landscape professionals, golf course superintendents,  
187 Conservation Commissioners, Selectmen, Board of Health Commissioners and Health  
188 Agents, and Martha’s Vineyard Commission members, who met and consulted with  
189 members of the public representing these and other constituencies to draft this  
190 Regulation.

191  
192 "Organic Compost" is a Slow Release form of Fertilizer comprised of the biologically  
193 stable, non-pelletized, humus-like material derived from composting or the aerobic,  
194 thermophilic decomposition of organic matter.

195  
196 “Participating Town” means an Island town that has voted to adopt regulations governing  
197 the use of Fertilizer that are substantially similar to this Regulation.

198  
199 “Property Owner” means the owner of record of the Turf or Soil to which Fertilizer is  
200 applied (and, for the avoidance of doubt, includes [Town]).

201  
202 “Relevant Employee” means a person engaged (as an employee, agent, contractor or  
203 otherwise) by a Landscape Professional who applies Fertilizer to Turf or Soil.

204  
205 “Resource Area” means an area subject to protection under the Commonwealth’s  
206 Wetland Protection Act or the [Town] Wetland Protection By-Laws or Regulations.

207  
208 "Slow Release" in relation to nitrogen, means nitrogen in a form that delays its  
209 availability for uptake and use after application, and is not rapidly available to Turf.  
210 Slow Release is also sometimes referred to as ‘controlled-release’, ‘timed-release’ or  
211 ‘slowly soluble/available’. This definition expressly excludes nitrate salts and urea.

212  
213 "Soil" means the upper-most layer of the earth's surface, comprised of mineral and  
214 organic matter, which can host biological communities.

215  
216 "Soil Test" means a technical analysis of Soil conducted by a Soil testing laboratory that  
217 measures extractable nutrient values using a Modified Morgan soil testing procedure and  
218 making recommendations based on values as determined by the University of  
219 Massachusetts Extension Soil and Plant Tissue Testing Lab.

220  
221 "[Town]" encompasses the land and water of the Town of [Town] on the island of  
222 Martha’s Vineyard, County of Dukes County.

223  
224 “Turf” means grass-covered Soil held together by the root system, and includes turf used  
225 for sports and recreational activities as well as for lawns and utility areas.

226  
227 "Water Resource" includes, without limitation, groundwater, streams, including  
228 intermittent streams, creeks, rivers, freshwater and tidal wetlands, ponds, lakes, marine  
229 waters, canals, lagoons, embayments, estuaries and all waters defined in Massachusetts  
230 General Laws, Chapter 131, Section 40 and the [Town] Wetland By-Laws or  
231 Regulations.



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## SECTION 5. TURF PERFORMANCE STANDARDS

### 5.1 General Turf Performance Standards

5.1.1 No person shall apply Fertilizer between November 15<sup>th</sup> and the following April 15<sup>th</sup>.

5.1.2 No person shall apply Fertilizer to Turf or Soil immediately before or during heavy rainfall when the Lawn or Soil is likely to be saturated with water, when the Turf or Soil has the characteristics of an Impervious Surface or when they are showing signs of stress due to drought, or any other time when the Fertilizer is unlikely to be taken up by the Turf root structure.

5.1.3 No person shall apply or deposit Fertilizer on any Impervious Surface or on any place or in such a manner as would allow the Fertilizer to enter into storm drains or other storm flowage receptacles and/or channels. If a person inadvertently applies or deposits Fertilizer to an Impervious Surface by spill or otherwise, or applies or deposits Fertilizer as prohibited in this section, that person must immediately remove the Fertilizer.

5.1.4 No person shall apply Fertilizer containing more than 0.5 pounds of nitrogen per 1000 square feet of Turf *per application*, provided, however, that a single application of Fertilizer between April 15 and June 1 and a single application of Fertilizer in September may contain up to .75 pounds of nitrogen per 1000 square feet of Turf. Cumulative applications of Fertilizer must not exceed 3.0 pounds of nitrogen per 1000 square feet of Turf per year. Fertilizer shall not be applied within 4 weeks of a prior application. For the purposes of this Regulation, Fertilizer applied by all persons to the same Turf will be aggregated.

5.1.5 No person shall apply Fertilizer unless it contains at least 50% of its nitrogen in the Slow Release form. Compost Tea and Liquid Fertilizer are exempt from this standard, provided that no single application exceeds 0.1 pounds of nitrogen per 1000 square feet over a 4-week period.

5.1.6 No person shall apply Fertilizer that contains phosphorus, unless a Soil Test taken within the prior 3 years indicates a phosphorus deficiency of less than 14 ppm, in which case the phosphorus application shall be limited to the quantity specified in the test results. A Soil Test is not required for the application of:

(a) Organic Compost;

(b) specially labeled 'starter' Fertilizer products intended for use in establishing Turf or in repairing damaged Turf when applied in conjunction with Turf seed;

(c) Compost Tea; and

279 (d) pelletized organic Fertilizer whose phosphate content by weight is no greater  
280 than 25% of its nitrogen content by weight.  
281

282

## 5.2 Fertilizer in the Buffer Zone

283

284 5.2.1 The Turf performance standards set out in Sections 5 (not including Section  
285 5.1.4) apply to the Buffer Zone, except as modified in this Section 5.2.  
286

287

288 5.2.2 No Fertilizer may be applied in the 10-foot wide strip running parallel and  
289 immediately adjacent to a Resource Area. In the remainder of the Buffer Zone, no  
290 person shall apply Fertilizer containing more than 0.25 pounds of nitrogen per 1000  
291 square feet of Turf *per application*, with cumulative applications not to exceed an  
292 annual maximum of 0.5 pounds of nitrogen per 1000 square feet of Turf, except that  
293 where there is a continuous 25-foot wide strip of Fertilizer-free, non-Turf vegetation  
294 running parallel to the Resource Area, Fertilizer may be applied to the area beyond  
295 the 25 foot strip to an annual maximum of 1.0 pound of nitrogen per 1000 square  
296 feet of Turf.

297

298 5.2.3 No person shall apply Fertilizer that contains phosphorus in the Buffer Zone,  
299 unless a Soil Test taken within the prior 3 years indicates a phosphorus deficiency of  
300 less than 14 ppm, in which case the phosphorus shall be limited to the quantity  
301 specified in the test results.

302

## 5.3 Fertilizer on Golf Courses

303

304 5.3.1 The performance standards set out in Section 5 (not including Section 5.1.6)  
305 apply to Fertilizer applied on Golf Courses except as modified in this Section 5.3.  
306

307

308 5.3.2 Applications of Fertilizer to Golf Courses shall not be made between  
309 December 15 and the following April 15<sup>th</sup>.

310

311 5.3.3 Liquid Fertilizer may not be applied more often than biweekly, provided that  
312 it is applied at a rate not to exceed 0.1 pound of nitrogen per 1000 sq. ft. per  
313 application.

314

315 5.3.4 The performance standards set out in Section 5.2.2 do not apply to putting  
316 greens and tee boxes in the Buffer Zone in existence at the effective date of this  
317 Regulation.

318

## 5.4 Exemptions: The following activities are exempt from Section 5:

319

320 5.4.1 Application of Fertilizer to home vegetable and flower gardens, landscape  
321 ornamentals, shrubs, trees, bushes, and container plants.  
322

323

324 5.4.2 Application of Fertilizer for Agricultural or Horticultural use.

325 5.5 **Precedence:** To the extent that the Commonwealth of Massachusetts or [Town] has  
326 enacted, enacts, or issues any law, regulation, bylaw, order or permit concerning the  
327 application of Fertilizer containing phosphorus or nitrogen on Turf or Soil which is more  
328 stringent than the performance standards set in this Section 5, those more stringent  
329 standards take precedence.  
330

331 **SECTION 6. EDUCATION, LICENSURE AND ADMINISTRATION**

332  
333 **6.1 Education and Assessment**

334  
335 6.1.1 The Board of Health shall:

336  
337 (a) maintain and offer for a fee a general program of Fertilizer education for  
338 Property Owners and Landscape Professionals that is based on this Regulation  
339 and the Martha’s Vineyard BMPs; and

340  
341 (b) administer an assessment to determine a Professional Landscaper’s or a  
342 Property Owner’s proficiency with respect to this Regulation and the Martha’s  
343 Vineyard BMPs following completion of the general education program.  
344

345 6.1.2 The Board of Health shall make available to the public, including Property  
346 Owners, Landscape Professionals and Fertilizer retailers a summary of the Section 5  
347 performance standards, as well as a copy of this Regulation, as amended from time  
348 to time.  
349

350 **6.2 Licensure**

351  
352 6.2.1 No Landscape Professional shall apply Fertilizer in [Town] without a License  
353 issued by the Board of Health in accordance with this Regulation.  
354

355 6.2.2 Subject to Section 6.2.3, an application for a License shall be accompanied by  
356 the Application Fee and documentation that the applicant has both completed the  
357 general program of Fertilizer education referred to in Section 6.1.1(a) and achieved  
358 proficiency as set forth in Section 6.1.1(b).  
359

360 6.2.3 Upon issuance of a License to an applicant, [Town] shall forward a “Notice of  
361 Issuance of Fertilizer License” to each other Participating Town nominated by the  
362 Applicant.  
363

364 6.2.4 When [Town] receives a “Notice of Issuance of Fertilizer License” from any  
365 Participating Town, the Board of Health shall issue and mail (or email or otherwise  
366 forward) a License to the applicant. The payment of a fee and the production of  
367 additional documentation shall not be required.  
368

369 6.2.5 A License shall indicate the License number and expiration date and shall be  
370 signed by the Licensee.  
371

372 6.2.6 Licenses shall be effective on issue and shall continue in effect for three  
373 calendar years, expiring on the third December 31 after being issued.

374  
375 6.2.7 Licenses may be renewed on application. Applicants for renewal must provide  
376 documentation of either re-completion of the general program of Fertilizer education  
377 or proficiency, as set out in Section 6.1.1, and pay the Application Fee.

378  
379 6.2.8 A Landscape Professional licensed under this Regulation shall keep his/her  
380 License in their possession and shall display the License when requested to do so by  
381 any [Town] enforcement officer.

382  
383 6.2.9 A Relevant Employee does not need to obtain a License, provided his/her  
384 employer maintains a ratio of not less than 1 Licensee to 8 non-Licensed Relevant  
385 Employees (the License held by the employer/owner being included for this  
386 purpose) and:

387  
388 (a) the employer has provided the Relevant Employee with training sufficient  
389 to ensure that the employee fully understands this Regulation and the  
390 Martha's Vineyard BMPs;

391  
392 (b) the Relevant Employee has demonstrated proficiency with respect to this  
393 Regulation and the Martha's Vineyard BMPs in accordance with an  
394 assessment tool provided by the Board of Health and administered by the  
395 employer;

396  
397 (c) the employer provides supervision appropriate to ensure that the Relevant  
398 Employee complies with this Regulation; and

399  
400 (d) the employer retains documentation sufficient to establish compliance  
401 with subsections (a), (b) and (c).

402  
403 These requirements set out in (a) and (b) above must be complied with not less often  
404 than every three years and within 6 months after any material amendments to this  
405 Regulation for each Relevant Employee.

406  
407 **6.3 Services to be Performed by a Third Party:** The Board of Health may appoint  
408 from time to time a third party to perform on its behalf the responsibilities and services  
409 set out above in Sections 6.1 and 6.2.

410  
411 **6.4 Liability**

412  
413 6.4.1 A Property Owner is liable for violations of this Regulation by a Landscape  
414 Professional or its Relevant Employees, including applying Fertilizer without a  
415 License, provided that the Property Owner knew or should reasonably have known  
416 that a violation would occur.

417

418 6.4.2 A Landscape Professional is liable for violations of this Regulation by its  
419 Relevant Employees.

420  
421 6.4.3 Notwithstanding Sections 6.4.1 and 6.4.2, any person who applies Fertilizer in  
422 violation of this Regulation may be held liable.  
423

424 **6.5 Enforcement**

425  
426 6.5.1 The Health Agent and the Board of Health may enforce this Regulation or  
427 enjoin violations thereof through any lawful process, and the election of one remedy  
428 by the Board of Health shall not preclude enforcement through any other lawful  
429 means.

430  
431 6.5.2 Subject to Section 6.5.3, a person who violates any provision of this Regulation  
432 is subject to:

433  
434 (a) in the case of a first violation within a consecutive 36-month period, a  
435 written warning;

436  
437 (b) in the case of a second violation within a consecutive 36-month period, a  
438 fine in the amount of \$50.00;

439  
440 (c) in the case of three or more violations within a consecutive 36-month  
441 period, a fine in an amount of \$300.00 per violation, unless the Town  
442 proceeds by criminal complaint or indictment under Section 6.5.6, in which  
443 case the maximum fine for the third and subsequent violations is provided  
444 therein; and

445  
446 (d) in the case of a Licensee (or a Relevant Employee), and subject to the  
447 notice and hearing provisions of Section 6.5.4, suspension of the License (or  
448 that of his/her employer, as the case may be) for 180 consecutive days or  
449 revocation of that License.

450  
451 6.5.3 A Licensed Professional who applies Fertilizer without having a valid License  
452 is subject to:

453  
454 (a) in the case of a first violation within a consecutive 36-month period, a  
455 written warning;

456  
457 (b) in the case of two or more violations within a consecutive 36-month  
458 period, a fine in the amount of \$300.00 unless the Town proceeds by criminal  
459 complaint or indictment under Section 6.5.6, in which case the maximum fine  
460 for the second and subsequent violations is provided therein.

461  
462 6.5.4 The Board of Health may suspend or revoke a License issued pursuant to this  
463 Regulation or any other applicable law. Such revocation or suspension may only

464 take place after a hearing held by the Board of Health of which the Licensee shall be  
 465 given seven (7) days written notice. Such notice shall be deemed given upon  
 466 certified return receipt mailing same to the address listed on the License application.  
 467

468 6.5.5 The Board of Health is authorized to penalize any person who violates these  
 469 regulations by issuing a ticket under the noncriminal disposition process provided  
 470 for in Massachusetts General Laws Chapter 40, Section 21D, and the Town's  
 471 noncriminal disposition by-law, Sections 1-2, 1-3, 1-4, 1-5 and 1-6 of the Code of  
 472 the Town of [Town]. If noncriminal disposition is elected, then any person who  
 473 violates any provision of this Regulation shall be subject to the penalties provided in  
 474 Sections 6.5.2 and 6.5.3, as applicable, per violation or, in the case of a continuing  
 475 violation, per day for each day of violation. Each day or portion thereof shall  
 476 constitute a separate offense. If there is more than one violation, each shall constitute  
 477 a separate offense.  
 478

479 6.5.6 A person who violates any provision of this Regulation may be penalized by  
 480 indictment or on complaint brought in the district court. Except as may be otherwise  
 481 provided by law, the maximum penalty for each violation or offense shall be one  
 482 thousand dollars (\$1,000). Each day or portion thereof shall constitute a separate  
 483 offense. If there is more than one violation, each shall constitute a separate offense.  
 484

485 **SECTION 7. SEVERABILITY CLAUSE**

486  
 487 If any section, part or provision of this Regulation is deemed invalid or unconstitutional  
 488 by a court of competent jurisdiction, that decision shall not affect the validity of the  
 489 remaining terms of this Regulation as a whole or any part thereof, other than the section,  
 490 part or provision held invalid or unconstitutional.  
 491

492 **SECTION 8. AMENDMENTS**

493  
 494 8.1 This Regulation was developed by a broad group of stakeholders representing diverse  
 495 interests and has been reviewed by soil and turf scientists and educators. Therefore,  
 496 notwithstanding the requirements of G.L. c. 111, §31, no amendment to this Regulation  
 497 shall be adopted until such time as the Board of Health shall hold a public hearing  
 498 thereon, notice of the time, place and subject matter of which, sufficient for  
 499 identification, shall be given by publishing in a newspaper of general circulation in the  
 500 Town and County once in each of two successive weeks, the first publication to be not  
 501 less than fourteen days prior to the date set for such hearing. No such amendment shall be  
 502 effective unless the proposed amendment has been reviewed and commented upon by soil  
 503 and turf scientists and educators and it is passed by the Board of Health.  
 504

505 8.2 Further, since these Regulations are also under Chapter 831 of the Acts of 1977, as  
 506 amended, any amendments to the Regulations shall first be approved by the Martha's  
 507 Vineyard Commission, as conforming to the guidelines for the Fertilizer Management  
 508 District of Critical Planning Concern.  
 509

510 **SECTION 9. EFFECTIVE DATE**

511

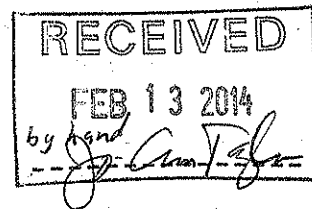
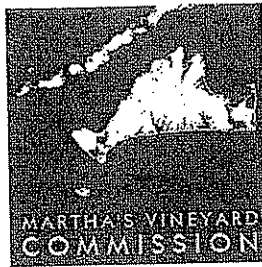
512 This Regulation shall take effect on January 1<sup>st</sup> 2015 and upon publication pursuant to  
513 G.L. c. 111, §31.

514

515 **SECTION 10. INTERIM PROVISIONS**

516

517 Landscape Professionals may apply Fertilizer without a license during the interim period  
518 between the effective date of this Regulation and the development of a licensing program  
519 by the Board of Health, provided that they comply with Section 5 of this Regulation.



# DCPC NOMINATION

## Instructions

Please review Appendix "Critical Planning District Qualifications" prior to completion of the nomination. Only nominations in accordance with the "Critical Planning District Qualifications" will be considered.

Sponsors are encouraged to contact the Commission's DCPC Coordinator (Jo-Ann Taylor, 505-693-3453, Extension 19, [taylor@mvcommission.org](mailto:taylor@mvcommission.org)) prior to completing and submitting the nomination.

Please answer all questions as completely and concisely as possible, using additional sheets as necessary.

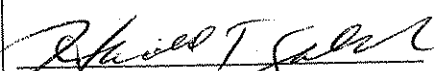
Include a locus map with proposed boundaries shown on an appropriate base, such as the town assessors' maps or a section of the most recent U.S.G.S. 1:25,000-scale topographic map.

If the sponsor is a town board or the Commission, include signature below and a copy of the vote.

If a taxpayer petition is included, include tax collector(s) verification for 75 signatures.

Submit the signed nomination, in person or by certified mail, to Martha's Vineyard Commission, Olde Stone Building, New York Avenue, P.O. Box 1447, Oak Bluffs, MA 02557.

**SIGNATURES:** If the sponsor is a town Board of Selectmen, Planning Board, Conservation Commission or Board of Health, or the Martha's Vineyard Commission, the appropriate officer of such board shall sign his or her name below. Attach a copy of the vote.

  
Harold T. Zaden

EDGARTOWN HEALTH      2-11-2014  
Board Chairman      2/11/2014



## NOMINATION INFORMATION

NAME AND ADDRESS of the nominating board (Board of Selectmen, Planning Board, Conservation Commission, Board of Health, Martha's Vineyard Commission) or a signatory of the taxpayers' petition. All correspondence will be directed to the sponsor whose name and address appears here.

Name: Edgartown Board of Health  
Address: 70 Main Street, PO BOX 1596  
Edgartown, MA 02539  
Phone: (508)627-6120  
Fax: (508) 627-6124 FAX  
e-mail: [mpoole@edgartown-ma.us](mailto:mpoole@edgartown-ma.us) (Matthew E. Poole)

### NAME AND LOCATION (TOWN OR TOWNS) OF PROPOSED DISTRICT:

Martha's Vineyard Lawn Fertilizer Control District

Location:  
Aquinnah, Chilmark, Edgartown, Oak Bluffs, Tisbury and West Tisbury

### AREA PROPOSED FOR DESIGNATION:

Describe the location of the proposed district, referencing any distinguishable landmarks, structures, roads, assessors' map and parcel numbers, etc. which may act as boundary limits. If appropriate, give measurements in feet. Attach a locus map with proposed boundaries shown on an appropriate base, such as the town assessors' maps or a section of the most recent U.S.G.S. 1:25,000-scale topographic map. The proposed boundaries should be delineated as accurately as possible, both on the attached locus maps and in the narrative.

The six towns, comprising the entirety of the Island of Martha's Vineyard, except for the Indian Common Lands – generally known as the Clay Cliffs, the Cranberry Bogs and the Herring Creek – and the Settlement Lands, and excluding Nomans Land Island.

# NEED FOR DESIGNATION

Please review Appendix "Critical Planning District Qualifications" before continuing. The Martha's Vineyard Commission will only consider proposals warranting designation in accordance with the "Qualifications".

A. Indicate the type of district that is proposed (See Appendix "Critical Planning District Qualifications.") Nominations may include more than one category.

- 1. Drinking Water Resource District
- 2. Fishing Resource District
- 3. Farming Resource District
- 4. Wildlife, Natural, Scientific or Ecological Resource District
- 5. Cultural or Historic Resource District
- 6. Economic or Development Resource District
- 7. Major Public Investment District
- 8. Hazardous District

B. Referring to the SPECIFIC QUALIFICATIONS (See Appendix "Critical Planning District Qualifications.") explain why you feel that this area would warrant designation. Use additional sheets as necessary.

While the appropriate concentration of the nutrient nitrogen is essential to life, excessive amounts of nitrogen in the form of oxides and ammonia represent an environmental pollutant that has the potential to poison our Island's waterways and water table. Excessive amounts of nitrogen contribute to undesirable algal and aquatic plant growth, and degrade our water used for drinking, shellfishing as well as recreational swimming and boating. Promoting the appropriate use of fertilizers could also positively affect the related use of pesticides and herbicides.

The Massachusetts Estuaries Project (MEP) has shown that lawn fertilizer accounts for between 5% and 12% of the controllable nitrogen entering our Island ponds. The state and federal governments have stated their intent to get municipalities to bring these estuaries into compliance with the federal Clean Water Act. Adding sewers to reduce nitrogen that is attributable to excessive fertilizer use rather than using proper fertilizing practices could increase long-term Clean Water Act compliance costs to the Vineyard community by \$10 to \$20 million or more. Working in a coordinated manner, our Island has an opportunity to mitigate a portion of the nitrogen loading, thereby protecting our water in a cost-effective way. Time is a factor however.

In 2012 the Commonwealth set out to develop statewide regulations of fertilizer use, reserving unto itself the ability to further regulate the use of fertilizers. The Cape and Islands communities were provided a window of opportunity to adopt regulations through the special legislative authority of their regional planning agencies. The window expires the latter of January 1, 2015 or one year after the state promulgates its statewide fertilizer regulations.

The specific affected resource districts are detailed below:

a. Drinking Water Resource District

Significant portions of the Town of Edgartown rely on on-site drinking water wells for potable water including Chappaquiddick and Katama. Additionally, the Zone II recharge area for the municipal public water supply wells occupy approximately 25% of area zoned for residential use. Two separate neighborhoods have experienced elevated nitrate levels in drinking water (perhaps caused by septic system). Limiting the amount of nitrogen applied in all of these areas is protective of drinking water quality and will compliment other nitrogen limiting measures.

b. Fishing Resource District

Although fertilizer is not applied directly to the surface waters, the MEP studies document the contribution of excess nitrogen that leaches into the groundwater and migrates to great ponds. The excess nitrogen stimulates algal growth to the detriment of other plants and shellfish. Reducing nitrogen loading, of which fertilizers are one source, can restore healthy habitat for shellfish

c. Wildlife, natural, Scientific or Ecological Resource District

d. Cultural

Although this nomination is not made as either a WNSE Resource District or a Cultural District, regulating the appropriate application of fertilizer used for lawns and other turf will have positive impact on the health, vitality and appearance of the Island's great ponds. The great ponds are critical components of the Vineyard's natural ecosystems and iconic resources for recreation and enjoyment – as already recognized by the Commission's 1975 designation of the Coastal DCPC.

## District Nomination

C. Referring to the GENERAL QUALIFICATIONS (See Appendix Critical Planning District Qualifications<sup>1</sup>), please answer as simply as possible the following: (Use additional sheets as necessary)

1. Why is the resource or area important to more than one town or the Island as a whole?

As of this date, MEP reports have been completed for Edgartown Great Pond, Farm Pond, Lagoon Pond, Sengekontacket Pond and Tisbury Great Pond. In addition, the Massachusetts Department of Environmental Protection (Mass DEP) has issued Total Maximum Daily Loads (TMDLs) for each of the water resources. Similar studies are currently underway for Cape Pogue, Chilmark Pond, Katama Pond and Tashmoo Pond. In due course, TMDLs will be established for all of these participating water resource areas.

8  
Of these 14 coastal ponds and harbors, ~~xx~~ lie within watersheds that span one or more neighboring towns. It would be helpful if even one town adopts regulations to better manage fertilizer use. It would be far more helpful though if all towns do so as pond and harbor watersheds readily cross town boundaries. Only a common Island-wide regulatory approach is capable of fully addressing the 5% to 12% of the controllable nitrogen that enters our ponds and harbors from landscape fertilizer. This is both an Island-wide problem and an Island-wide opportunity. Political geography should not serve as a sanctuary for excess landscape nitrogen.

Lands draining directly into the ocean, where nitrogen from fertilizers have little effect, are nevertheless included in this nomination because of the potential impact to groundwater quality. Applying the fertilizer regulations across the Vineyard would also significantly aid administration of the regulations and their objectives. Education and training efforts can be shared among towns. Landscapers would only need to know a single set of standards for anywhere on the Island. A common standard would also eliminate potential confusion for landowners with properties in more than one Island town. This ease of understanding and administration is also a compelling argument for including the areas of the towns that drain directly to the ocean.

2. What are the problems associated with the uncontrolled or inappropriate development of the area?

The MEP studies document that lawn fertilizers partly contribute to the eutrophication of our estuaries. In the absence of this discussion our ponds and harbors might become anaerobic, with anoxic floor beds devoid of aquatic life, and cloudy water columns filled with dense algal and aquatic plant growth. Nitrogen oxide levels in drinking water, which are already high, could become more of an Island-wide problem.

Eventual state enforcement of TMDLs will require measures to reduce nitrogen levels, but if Vineyard towns do not soon adopt fertilizer regulations, they will be reliant upon the state's regulations, which could remove fertilizer controls as a low-cost option for addressing part of the nitrogen problem.

3. What kind of development would be advantageous within the proposed district?  
The Island's Boards of Health are seeking a common, Island-wide regulation that establishes a sustainable standard of lawn care, one that promotes the responsible use of fertilizers for lawns and other turf in order to prevent harm to our water resources from application of nitrogen in excess or what the soil and turf area able to utilize. This will rely upon education and training more than enforcement.

The strength of the regulations lies in the definition of common, Island-wide vision, one that defines a common set of standards and yields ponds, harbors and groundwater that are both sustainable and sustaining.