

**Island Road District of Critical Planning Concern
Amendments Voted February 9, 2012
Amendments to Section 4.12
Amendments to Goals and Guidelines**

On September 22, 2011, Martha's Vineyard Commission Chairman Chris Murphy appointed a DCPC Committee to review the Island Road District Special Ways Zone for possible update. The DCPC Committee met weekly for seven weeks. The Committee spent its time during the first meetings in reviewing the philosophy and reasons for having a Special Ways section in the Island Roads DCPC. They reported that they were impressed with the idea that this was one of the first DCPCs designated by the MVC when it was established in 1974. While much of the original language had held up very well, there was a sense that some modification would be appropriate.

The DCPC Committee recommended amendments to provide the towns and the Commission more flexibility in proposing, designating and regulating Special Ways. The original Island Road District, as designated in 1975, was intended to protect ways from being developed in a manner that would interfere with their cultural value. In the intervening years, there has been development within some segments of unprotected ways. So, by increasing the flexibility to afford protection to those ways, the Commission could still honor the original intent of protecting them. Special Ways protection could be afforded to a wider range of ways in need of protection from additional degradation, even if parts of those ways have already been developed for automobile access.

The DCPC Committee proposed amendments clarifying that current existing development in a portion of a way is not an impediment to designating that way as a Special Way. The Committee proposed amendments clarifying that designating a Special Way does not automatically confer or require any public right of access. The Committee also recommended adjustment of some language to more closely follow the wording of the "Critical Planning District Qualifications" for Cultural & Historic Resource Districts.

On Thursday, December 8, 2011, the Martha's Vineyard Commission held a Public Hearing pursuant to Chapter 831 of the Acts of 1977, as amended (the "Act"), and Massachusetts General Laws, Chapter 30A, Section 2, and the Standards and Criteria regarding designation of a District of Critical Planning Concern (DCPC), adopted by the Commission pursuant to Chapter 637 of the Acts of 1974 and approved on September 8, 1975 by the Secretary of Communities and Development. The DCPC Committee presented its recommendation for amendments to Sections 4 and 5 of the Designation. At the request of the West Tisbury Planning Board, the public hearing was continued to December 15, 2011 and closed.

The DCPC Committee met on December 28, 2011 and prepared its final recommendation to the Commission. In response to testimony on December 8, the DCPC Committee voted to withdraw its earlier recommendation to provide for width greater than twelve feet after DRI approval; recommending instead retaining the 1975 width restriction. The Committee also voted to accept a “grandfathering” clarification presented by staff December 15.

The Commission deliberated on Thursday, January 5, 2012 and Thursday, February 9, 2012, noting the designation criteria in Section 8 of the Act, particularly “*The Commission shall also specify broad guidelines for the development of the District. The issuance of such guidelines shall be based upon, but need not necessarily be limited to, the following considerations:...(d) that development of the District will not result in undue harm to cultural, economic, or historic values*”. The Commission voted on February 9, 2012 to amend Sections 4 and 5 of the Island Road District designation as recommended by the DCPC Committee. In so voting, the Commission noted that the amendments improve the effectiveness of the Island Road District, particularly with respect to the designation criteria in Section 8 of the “Act”.

Amendment of Section 4.10 Compliance with Criteria and Standards

4.12 Cultural and Historic District: Special Ways (replaced the text of Section 4.12 with the following)

Special Ways are a rare or unique resource and make an unusual contribution to the character of the Island for various reasons, often depending on the particular way. In general terms, they include, but are not limited to, roads which have been virtually abandoned or left to infrequent use. They are usually unimproved, narrow, and rustic, and generally are not committed to major vehicular travel. They also trace back to the Island’s early history, including, in some cases, its pre-colonial history. The most ancient Special Ways are among the last vestiges of the historical travel network of Martha’s Vineyard. They may provide archeological resources, or means of retracing historic accounts and development. In some cases, the ways are tied to early trades. Some Special Ways were laid out by the early Proprietors in the course of dividing commonly owned land into individually owned lots. Some Special Ways, whether or not so laid out, are referenced in early deeds for purposes of describing property boundaries and locations. They are literally paths that take us back through the history of life on the island.

Because of their ties to the Island’s past, Special Ways may have an exceptional historic, cultural or symbolic importance. The visual character of these ways is crucial to this importance. To retain this importance, however, they must not be altered in a manner that destroys their essential character. If a special way were destroyed, its replication would take extraordinary effort and expense, and in all events such replication would lack most of the historic, cultural and symbolic significance it once embodied.

For the above reasons, Special Ways are unique historical, archaeological, symbolic and cultural resources of regional and statewide significance, and may include places, landscapes, ways and views which are especially expressive of the character of the Island, the traditions of its residents, and what makes the Island of special interest to its visitors.

In terms of their present and potential use, including recreational use, the Special Ways vary in their nature. In some cases, they provide or allow for public access to a way, including as dedicated public ways, statutory private ways, common scheme ways, or otherwise. In other

cases, a special way may be a private way accessible only to the landowner or easement holders, which may be few or many. The status of the way as public, private, subject to easements, and who holds what rights therein, often involves determinations based on complicated legal principles. This determination of the status is not necessary to a special way designation, nor does the Commission's designation affect the status. Special Ways accessible to some or all members of the public offer an opportunity to experience the Island by slower means of transportation, such as walking, horse-back riding, or bicycling. Those Special Ways that are private, as well as those whose status is in doubt, may at some point in the future be made accessible through landowner agreements, court determinations, and other means, at which time they would provide recreational benefits, provided that their character had been preserved and protected. Thus, regardless of whether such ways are wholly private or subject to public rights of access, this is clearly a case where proper development guidelines at this time could preserve the character of old ways while enhancing them for existing or potential use by Island residents and visitors.

Amendments to section 5 island road district goals and guidelines (Amendments February 9, 2012 appear underlined. 1975 text appears in strike-through.)

Inserted in Section 5.00 Guidelines, before GOALS

The amended Goals and Guidelines apply prospectively to town regulations adopted after February 9, 2012. Existing town regulations that the Commission has determined conform to prior Island Road DCPC Goals and Guidelines are grandfathered and remain in full force and effect.

Amended Section 5B GOALS as follows:

To protect historic places the existing character of Special Ways for all of the reasons set forth in Section 4.12 (Cultural and Historic District: Special Ways) and to retain the view of landscapes abutting these ways open primarily for uses such as walking and horseback riding, but not developed these ways by preventing the injurious effects that accompany development of the way as a primary vehicular route except for. Therefore, new vehicular access to properties where no should be on new rights-of-way, thus preserving the Special Ways for alternative access exists forms of transportation.

Amended Section 5V SPECIAL GUIDELINES FOR THE SPECIAL WAYS ZONE as follows:

A. Development Guidelines

The Commission finds that these measures are necessary to preserve the historic, archaeological, symbolic, and cultural character of the Special Ways, including, in appropriate instances, their character as primarily for non-motorized forms of transportation. As used herein, the terms "development" and "development permit" are as defined in Chapter 637 of the Acts of 1974 or Chapter 831 of the Acts of 1977, both as amended, which shall together hereafter be referred to as the "Acts").

1. No way or road shall be constructed or expanded within the Special Ways Zone which exceeds a width of twelve (12) feet

2. No fences, walls, or structures shall be erected, placed or constructed within twenty (20) feet of the centerline of the Special Way, except that lesser setbacks for fences or stone walls may be allowed on abutting lots of less than one acre in size, taking into account such factors as height, transparency, materials and natural screening to prevent creation of a narrow, visually confined effect; in which case the town shall demonstrate that its regulations allowing such lesser setbacks are consistent with the purpose of this guideline. (See also Section 5.III.A regarding stone walls.)

3. Every attempt shall be made to retain a surface of indigenous sand, clay, gravel and/or grass.

4. No special way shall be paved with any impervious material, such as bituminous concrete or asphalt.

B. Uses Within the Special Ways Zone

1. Permitted Uses.

Any use permitted by the applicable town zoning district, provided that either of the following conditions are met:

The development does not result in direct vehicular access to the Special Way, or

The Special Way meets one or more of the following criteria as determined by the Planning Board

(a) the Special Way is identified as having provided the vehicular access for a specific development approved for a development permit prior to the Commission's acceptance of the special way nomination, provided that the development permit for such development is in effect at the time of development; or

(b) the Special Way is identified as the only legal means of vehicular access for a development or a use allowed as of right prior to the Commission's acceptance of the special way nomination (e.g., an easement over the special way provided the sole access to a landowner's property); or

(c) the Special Way is identified as having been routinely traveled by motor vehicles prior to the Commission's acceptance of the special way nomination and the continued vehicular use is of the same nature and extent as that which existed prior to such acceptance.

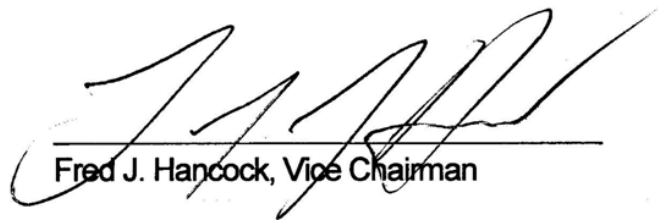
2. Uses allowed by Special Permit.

Any use permitted by the applicable town zoning district which results in direct vehicular access to the Special Way.

3. Uses Not Permitted.

- i. Any development within forty (40) feet of a special place of historic value as listed on the Special Places Register of the Commission.
- ii. Paving with any impervious material such as bituminous concrete or asphalt.

By vote of the Martha's Vineyard Commission on February 9, 2012
Decision adopted by vote of the Martha's Vineyard Commission May 3, 2012



Fred J. Hancock, Vice Chairman

5-3-12
Date

References and Documents

Chapter 831 of the Acts of 1977 as amended
Guidance on Nomination and Designation of Districts of Critical Planning Concern
Amendment working draft 2011-11-1
DCPC Committee post-public hearing report and recommendation 2011-12-28
Comparisons of the amendment recommendations with the 1975 Decision
Public Hearing Notice 2011-12-8
Staff notes for public hearing 2011-12-8
Staff notes update for December 15
Amendments draft 2011-10-14
Amendments for discussion purposes working draft 2011-10-27
Amendments staff advisory 2011-02-09
Amendments working draft 2011-10-07
Amendments working draft 2011-10-21
DCPC Committee Amendment Recommendations 2011-1-1 and 2011-12-28, drafts 2011-09-28, 09-30, and staff
draft 2011-09-22
DCPC Committee minutes 2011-09-22, 2011-10-5, 2011-10-13, 2011-10-20, 2011-10-27, 2011-11-2
DCPC Committee recommended final text Jan 5 and Feb 9
DCPC Island Road Flow Chart graphically representing the amendments 2012

Correspondence

From Vineyard Conservation Society in favor
From West Tisbury Planning Board asking for another week 2011-12-08
From West Tisbury Planning Board in favor 2011-12-15
From the Edgartown Selectmen in favor 2011-12-15
From Ben Hall Jr. 2011-12-08 alternative amendment text
From Ben Hall Jr. 2011-12-08 Cozy Hearth Housing Appeal Committee Decision 2008-04-14