

ISLAND ROAD DCPC COMMITTEE

**REDLINE**

B Hall Proposed Revisions to DRAFT AMENDMENTS FOR DISCUSSION PURPOSES

Working draft 11 1 11

DRAFT Amendment of Section 4.10 Compliance with Criteria and -Standards

4.12 Cultural and Historic District: Special Ways <sup>7</sup>

Special Ways are a rare or unique resource and make an unusual ~~8~~ contribution to the character of the Island for various reasons, often <sup>9</sup> depending on the particular way. ~~In general terms, they include, but are 10 not limited to, roads which have been virtually abandoned or left to 11 infrequent use. They are usually unimproved, narrow, which particularized contribution to the character shall be found and rustic, and 12 generally are not committed to major vehicular travel. They also trace back 13 to the Island's early history, including, in some cases, its pre-colonial 14 history. The most ancient Special Ways are among the last vestiges specifically determined by the MVC when designated, which contribution alone shall be the particular focus of the 15 historical travel network regulations to be developed to protect the contribution of Martha's Vineyard that resource. In general terms, they include, but are not limited to, roads which have been during the more recent past, been left to infrequent use. They are usually narrow dirt roads, often with provision for cars to pass, and generally are not committed to major vehicular travel, except to the neighborhoods they serve. They may also trace back to the Island's early history, including, in some cases, its pre-colonial history. They may provide 16 archeological resources, or means of retracing historic accounts, early trades and 17 development. In some cases, the ways are tied to early trades, as the Commission shall specifically determine for each reasonably differentiated stretch of each way proposed for nomination. Some 18 Special Ways were laid out by the early Proprietors in the course of dividing 19 commonly owned land into individually owned lots. Some Special Ways, 20 whether or not so laid out, are referenced in early deeds for purposes of 21 describing property boundaries and locations. They are literally paths In some cases, they may be old roads that 22 take us back through at one time may have some exceptional connection to the history of life on the island. 23, all as the Commission shall specify and determine upon acceptance of the nomination.~~

~~Because of their ties~~In order to the Island's past~~be designated~~, Special Ways ~~may~~must have an exceptional historic, cultural or symbolic importance. ~~The visual character~~24 ~~of these ways is crucial to this importance.~~ To retain this importance, ~~26~~ however, they must not be altered in a manner that ~~destroys their essential~~27

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irreparably eliminates the historic, cultural and symbolic character.~~If that existed at the time such character is recognized to have come into effect. 1~~ Destruction of a special way shall be such activity on the special way that eliminates most of the historic, cultural and symbolic significance of the way that the MVC has specifically determined, including, when such significance when it came into being. In accepting for nomination, the Commission must find that if such a special way were destroyed, its replication would take ~~28~~ extraordinary effort and expense, and in all events such replication would ~~29~~ lack most of the historic, cultural and symbolic significance it once ~~30~~ embodied. 312

For the above reasons, where such significant and unique historic nature of a way is specifically found by the MVC, these Special Ways, for the specific factors determined by the MVC for each such way, are individually recognized for their unique historical, ~~32~~ archaeological, symbolic and cultural resources of regional and statewide ~~33~~ significance, ~~and,~~ Each special way may include places, landscapes, ways and views which ~~34~~ are especially expressive of the character of the Island, the traditions of its ~~35~~ residents, and what makes the island of special interest to its visitors, ~~36~~ which shall be individually found and determined by the MVC which shall then reflect the unique characteristics of that unique way that are to be preserved.

In terms of their present and potential use, ~~including recreational use,~~37 the Special Ways vary in their nature, ~~requiring a separate determination as to each characteristically different stretch of each way sought to be designated as a special way.~~ In some cases, they provide or allow ~~38~~

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1 Why? If you are trying to retain the way for its historic significance, wouldn't the character of the way at the time its took on its "significance" be the charcter one would wish to try to preserve, to the extent practicable? Moreover, what EXCATLY do you mean by "destruction?" Putting a house on it would be essentially eliminating the route, but keeping it passable for emergency service vehicles, placing utilities along the route would neither destroy the route, nor alter its historic charcter.

2 If the route alone is what is symbolic, then only where the route were wholly eliminated, could it be said to have been destroyed.

for public access to a way, including as dedicated public ways, statutory ~~39~~ private ways, ~~common scheme ways,~~<sup>3</sup> or otherwise. In other cases, a ~~40~~ special way may be a private way accessible only to the landowner or ~~41~~ easement holders, which may be few or many. ~~The status of the way as 42, in which case, designation shall NOT create any public right, and in which case such designation shall specifically be described as a private route only, warning the public that these ways may NOT be entered without the possibility of being cited for trespassing. The status of the way as public,~~ private, subject to easements, and who holds what rights therein, ~~43~~ often involves determinations based on complicated legal principles. ~~This 44~~ While this determination of the status is not necessary to a special way designation, ~~45 nor does~~ and the Commission's designation would not affect the status, ~~the MVC will best determine whether or not any public rights exist in the special way, and if it cannot make such a determination, such a special way shall be noted as being one where trespass may occur.~~ Special Ways ~~46~~ accessible to ~~some or all members of~~ the public may offer, where the roads are so traveled, an opportunity to ~~47~~ experience the Island by slower means of transportation, such as walking, ~~48~~ horse-back riding, or bicycling. <sup>4</sup> Those Special Ways that are private, as ~~49~~ well as those whose status is in doubt, may at some point in the future be ~~50~~ made accessible through landowner agreements, court determinations, and ~~51~~ other means, at which time they ~~would~~ might provide recreational benefits, ~~52 provided that their character had been preserved and protected, in addition to being a vehicular route.~~ Thus, ~~53~~

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regardless of whether such ways are wholly private or subject to public ~~54~~ rights of access, ~~this is clearly a case where~~ proper development guidelines ~~55~~ tied specifically to the unique historic, symbolic or cultural characteristics of each way that the MVC has specifically determined and the historic setting in which such characteristics came into being, at this time could preserve ~~the character of old ways while enhancing them 56 for existing or potential use by~~

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3 Common scheme ways are NOT, per se, public ways, unless laid out by some public authority or acceptance and only under very unusual circumstances as determined by a court.

4 What would that have to do with recreational benefits? After all, it is the unique historic, cultural or symbolic character that you are trying to preserve, NOT some potential future taking. Trying to retain property in some manner to permit a future taking is well beyond any jurisdiction given by the MVC statute.

~~Island residents and visitors.~~ <sup>57</sup>these characteristics as determined by the MVC in these old ways in each case.

Provided that the character of the special way is protected, nearby development is not as injurious as it might be along major vehicular transportation corridors because it is not accompanied by problems associated with large volumes of high speed vehicular traffic. For those ways accessible to the public, it could be pleasant to walk or horseback ride through populated as well as unpopulated areas where vehicular traffic is relatively low speed and infrequent, as on normal secondary Town streets. <sup>5</sup>

DRAFT Amendments of GOALS AND GUIDELINES <sup>58</sup>

Section 5B Goals for Special Ways Zone <sup>59</sup>

To protect the unique historic, cultural or symbolic existing character of Special Ways as determined specifically by the MVC for each Special Way, for all of the ~~60~~ reasons set forth in Section 4.12 (Cultural and Historic District: Special 61 Ways) and to ~~retain the view of landscapes abutting these ways by~~ <sup>62</sup> ~~preventing~~ prevent the injurious effects to those specific characteristics that may accompany development of the way ~~as~~ <sup>63</sup> ~~a primary vehicular route.~~ ~~Therefore, new vehicular access should be on~~ <sup>64</sup> ~~new rights of way, thus preserving the Special Ways for alternative forms~~ <sup>65</sup> ~~of transportation.~~ <sup>66</sup> 6 See also footnote 5 below.

DRAFT Amendments of Special Guidelines for the Special Ways Zone <sup>67</sup>

Section 5 V Special Guidelines for the Special Ways Zone <sup>68</sup>

Section 5V.A. Development Guidelines <sup>69</sup>

The Commission finds that these measures are necessary to <sup>70</sup> preserve the historic, archaeological, symbolic, and cultural character of the <sup>71</sup> Special Ways, ~~including, in appropriate instances, their character as~~ <sup>72</sup> ~~primarily for non-motorized forms of transportation.~~ As used herein, the <sup>73</sup> terms “development” and “development permit” are as defined in Chapter

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<sup>5</sup> This entire paragraph was trying to beat a privately owned way into some sort of recreational resource for use by the public. This is well beyond the jurisdiction of the MVC.

<sup>6</sup> The ways are almost always cart paths which means they are vehicular routes. It is incumbent on the MVC to determine what the unique historic, cultural or symbolic character they are trying to preserve in each way and when that came into being. The use of the way is by its very nature vehicular. In essence, you want to keep them as rural, dirt roads, but not prohibit traffic, nor eliminate it, because you cannot.

637 of the Acts of 1974 or Chapter 831 of the Acts of 1977, both as ~~75~~ amended, which shall together hereafter be referred to as the “Acts”). ~~76~~

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~~1.~~ No way or road shall be constructed or expanded within the ~~77~~ Special Ways Zone to a width over ~~twelve (12) feet, except that greater~~ ~~78a~~ historical width of one rod wide being sixteen and a half (16.5') feet, except where the Town or Commission has found such way to already exceed such width or historically to have exceeded such width, or except that greater width may be allowed by Special Permit after approval by the Commission ~~79~~ as a Development of Regional Impact. ~~80~~ Nothing in this paragraph shall be construed as preventing maintenance of the way for safe vehicular use to a width reasonably necessary to enjoy the rights of the easement in the way to the lands benefiting therefrom, including widths necessary to permit the safe and regular access by emergency service vehicles.

2. No fences, walls, or structures shall be erected, placed or ~~81~~ constructed within twenty (20) feet of the centerline of the Special Way, ~~82~~ except that lesser setbacks for fences or stone walls ~~may~~ shall be allowed on ~~83~~ abutting lots ~~of less than one acre in size~~, taking into account such factors ~~84~~ as potential width needed for passage of emergency service vehicles or drainage, height, transparency, materials and natural screening to prevent ~~85~~ creation of a narrow, ~~visually confined~~ suburban effect; in which case the town shall ~~86~~ demonstrate that its regulations allowing such lesser setbacks are ~~87~~ consistent with the purpose of this guideline. ~~(See also Section 5.III.A 88 regarding stone walls.)~~ ~~89~~ Where a Special Way is not determined by the MVC to be a public way, and where the unique character of the way as determined by the MVC will not be effected, gates shall be allowed to be placed across special ways to prevent trespass by those who do not have rights to use the way.

3. No special way shall be paved with any impervious material ~~90~~ (such as bituminous asphalt or concrete), except as may be determined by the Town on Town ways.

#### Section 5V.B. Uses Within the Special Ways Zone ~~9~~

##### 1. Permitted Uses ~~92~~

Any use permitted by the applicable town zoning district, ~~provided~~ ~~93~~ that either or otherwise in existence at the time of the following conditions are met: ~~94~~

~~A. the development does not result in direct vehicular access to the~~ ~~95~~ Special Way, OR ~~96~~

~~B. the Special Way meets one or more of the following criteria as 97 determined by the Planning Board 98 (a) the Special Way is identified as having provided the vehicular 99 access~~adoption of the Town by-law or imposition by the Commission of regulations for a specific development approved~~the District, provided that such use would not impede the protection of those unique historic, cultural or symbolic features of the way as specifically found by the MVC for a development permit 100~~each way.

~~Island Road DCPC Committee DRAFT amendments for discussion purposes 11-1-11-5 prior to the Commission's acceptance of the special way nomination; 101 or 102~~2. Uses allowed by Special Permit. (a) Any use permitted by the applicable town zoning district, which would impede the protection of those unique historic, cultural or symbolic features of the way as specifically found by the MVC for each way. (b) the Special Way is identified as the only legal means of vehicular 103 access for a development or a use allowed as of right prior to the 104 Commission's acceptance of the special way nomination (e.g., an 105 easement over the special way provided the sole access to a 106 landowner's property); or 107 (c) the Special Way is identified as having been routinely traveled by 108 motor vehicles prior to the Commission's acceptance of the special 109 way nomination and the continued vehicular use is of the same 110 nature and extent as that which existed prior to such acceptance. 111

~~2. Uses allowed by Special Permit. 112~~ After referral to the Commission as a Development of Regional ~~113~~ Impact and Commission approval if so required by the ~~114~~ Development of Regional Impact checklist in effect at that time, ~~115~~ the town may allow by special permit ~~any use permitted by the 116 applicable town zoning district which results in direct vehicular 117 access to the Special Way or which results in more intense 118 nature and/or extent~~construction or expansion of a Way within the Special Ways Zone to a width greater than a historic width of vehicular use. 119 After approval by the Commission as a Development of ~~120~~ Regional Impact, one rod wide, being sixteen and a half (16.5') feet, except where the town ~~121~~ Town or Commission has found such way to already exceed such width or historically to have exceeded such width, or except that greater width may allow~~be allowed~~ by Special Permit ~~121~~ construction or expansion of a Way within the Special Ways 122 Zone to a width greater than twelve (12) feet. 123 after approval by the Commission as a Development of Regional Impact.

3. Uses Not Permitted.

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Any development within forty (40) feet of a special place of ~~125~~ historic value as listed on the Special Places Register of the ~~126~~ Commission. ~~127~~

Paving the surface of the Special Way with any impervious material- (such as bituminous asphalt or concrete), except as may be determined by the Town on Town ways.