

1 **DCPCs in the TOWN OF AQUINNAH**

2 **Town of Aquinnah District, Coastal District, Moshup Trail**  
3 **District, and Gay Head Cliff Area District**

4 **Discussion and Vote April 5, 2012**

5 **Conformance of Proposed Amended Regulations**

6 **Staff Notes (Jo-Ann Taylor, DCPC Coordinator) (notes April 3, 2012)**

7 **Purpose of Vote:**

8 **CONFORMANCE of Proposed Amended Regulations**

9 To review **CONFORMANCE** of proposed regulations to the Goals and Guidelines in the  
10 Commission’s Decisions designating the Town of Aquinnah District, Coastal District,  
11 Moshup Trail District and Gay Head Cliff Area District. The Commission’s conformance  
12 public hearing and vote are requisite for the amended regulations to become effective  
13 after 2/3 vote at the ATM in May.

14 **Staff Recommendation (DCPC Coordinator)**

15 • Grandfathering – “Grandfathering” is not standard for DCPCs, but may be  
16 proactively introduced, if desired. In the past, the Commission has included in Goals  
17 and Guidelines or found conformance of proposed regulations with “grandfathering”  
18 as of the designation date (or date of acceptance of the nomination). No dates were  
19 originally proposed in the Town’s submission. The staff recommendation is for the  
20 Commission to consider the following designation dates as in conformance:

- 21 ○ Coastal District December 22, 1975
- 22 ○ Gay Head Cliff Area District May 4, 1989
- 23 ○ Moshup Trail District September 7, 1995
- 24 ○ Town of Aquinnah District June 17, 1999

25 The Town requested, on April 2, “...the use of a single date for all DCPCs: the date  
26 these changes to the by-laws become effective...”. That would not be in conformance  
27 with the Goals and Guidelines of the Districts. A possible item **for Commission**  
28 **consideration** might be the 200’ frontage introduced into the Town of Aquinnah  
29 District regulations last year. The Commission found conformance last year, and the  
30 Town voted the regulation last year. The Commission **may** consider “grandfathering”  
31 structures in existence as of May 10, 2011 in conformance, considering that as the

32 date of inception. Otherwise, “grandfathering” would only be in conformance as of  
33 the date of the designation.

- 34 • Zoning Determination – The Town has proposed amended text in response to  
35 Commission questions and comments during the Public Hearing on March 22. The  
36 Commission’s Guidelines for all of Aquinnah’s DCPC’s require administration  
37 including site plan review. This is not unusual in Districts where specific numeric  
38 standards alone might not adequately protect the critical resource. The proposal  
39 appears to conform to the Town of Aquinnah District Guideline *“That the appropriate*  
40 *administration of exterior design, height and/or siting regulations, through a*  
41 *procedure to include site plan review, be developed; and that the site plan review*  
42 *procedure include clear and objective criteria for review...”* The proposal would keep  
43 site plan review by Planning Board Plan Review Committee, but reserve full Special  
44 Permit review for development projects with more substantial impact.

45 The proposed “zoning determination” is not in conformance with the Goals and  
46 Guidelines for the Coastal District, Gay Head Cliff Area District or Moshup Trail  
47 District, and in particular contradicts the Goals and Guidelines for the Moshup Trail  
48 District. The Commission’s Guidelines for the Gay Head Cliffs District, for example,  
49 require a Special Permit *for the siting of wells....* The Coastal District and the Moshup  
50 Trail District include protection regarding seemingly innocuous sheds, boathouses,  
51 fences, driveways, etc. The difference appears to be in the scope of protection. The  
52 Town of Aquinnah District is intended to focus on the impacts of development on the  
53 skyline and rural character. The other Districts are multi-purpose, protecting from  
54 erosion, pollution, etc.

- 55 • Municipal – A proposal to exempt municipal land from regulation would not conform  
56 to the Goals and Guidelines for the Coastal District, Gay Head Cliff Area District or  
57 Moshup Trail District, and in particular contradicts the Goals and Guidelines for the  
58 Moshup Trail District. Specific proposals for latitude regarding setbacks have been  
59 proposed, and are annotated with staff recommendations. Other than in the Moshup  
60 Trail District, the Goals and Guidelines provide for the Commission to find in  
61 conformance regulations that are less restrictive “...if the Commission finds that such  
62 Regulations will carry out the purpose of the Act and the intent of ...Guidelines...”.  
63 After discussion among Commissioners, this latitude may be utilized if the  
64 Commission finds the proposed regulations adequate.

65 **Proposal (including italicized staff comments and reference**  
66 **notes:**

67 3.) *(Town of Aquinnah District) Add new Section (including additional text submitted*

68 April 2, in underline):

69 **13.4-11 Pre-existing, nonconforming Structures and Uses**

70 A. Any pre-existing, nonconforming structure or use which does not conform to the  
71 provisions of this By-Law or any amendment thereto may nevertheless continue in  
72 its use. Pre-existing, nonconforming structures and uses in existence at the time this  
73 provision is adopted by the Town (**Staff recommendation: Date of June**  
74 **17, 1999 might be considered in conformance**) may be reconstructed,  
75 altered, or extended by Special Permit from the Planning Board Plan Review  
76 Committee; provided, however, that the reconstruction, extension, or alteration  
77 bears a reasonable relationship to the original size and nature of the  
78 nonconforming structure or use, and that the Planning Board Plan Review  
79 Committee finds that the change, extension or alteration is not substantially more  
80 detrimental than the existing nonconforming structure or use to the neighborhood.  
81 Changes qualifying for a zoning determination under Section 13.14-1 (*Town of*  
82 *Aquinnah Administration*) do not require a Special Permit if the Planning Board  
83 Plan Review Committee makes a finding that the proposed reconstruction,  
84 alteration, or extension does not increase the nonconforming nature of the structure  
85 or use.

86  
87 B. Construction or operations under a building or Special Permit shall conform to  
88 any subsequent amendment of this By-Law, unless the use or construction  
89 authorized thereby is commenced within a period of not more than six months  
90 after the issuance of the permit.

91  
92 C. If a pre-existing, nonconforming structure or use (**Staff recommendation:**  
93 **Date of June 17, 1999 might be considered in conformance**) is  
94 damaged or destroyed, it may be restored to its previous nonconforming status;  
95 however, pre-existing, nonconforming structures or uses abandoned or not used for  
96 more than five years shall not thereafter be revived.

97  
98 4.) Replace Section 3.4-2A (*Zoning By-Law Siting, Dimensional, and Density*  
99 *Requirements*) with the language in proposed section 13.4-11A above. (**Staff**  
100 **recommendation: Date of June 17, 1999 might be considered in**  
101 **conformance**)

102

- 103 5.) Replace Section 3.4-2B (*Zoning By-Law Siting, Dimensional, and Density*  
104 *Requirements*) with the language in proposed section 13.4-11B above. (**Staff**  
105 **recommendation: Date of June 17, 1999 might be considered in**  
106 **conformance**)  
107
- 108 6.) Replace Section 3.4-2C (*Zoning By-Law Siting, Dimensional, and Density*  
109 *Requirements*) with the language in proposed section 13.4-11C above. (**Staff**  
110 **recommendation: Date of June 17, 1999 might be considered in**  
111 **conformance**)  
112
- 113 7.) Amend Section 13.4-6 (*Town of Aquinnah District*) (Setbacks) to read:  
114 A. Except as provided in Section 13.8 (Special and Historic Places, also in Section  
115 14.2 (*Island Road*) and 2.4-3 (*Zoning By-Law Uses*)), Section 11.3 (Moshup Trail  
116 DCPC, also in section 3.5 (*Setbacks*)), Section 12.0 (Cliffs DCPC, also in Section  
117 3.5(*Setbacks*)) and Section 10.1 (Coastal District, also in section 2.4-1 (*Uses*) and  
118 3.5 (*Setbacks*)) of this By-Law, all structures shall be set back at least:  
119
- 120 1. Thirty (30) feet from any lot line;
  - 121 2. Forty (40) feet measured from the centerline of all roads and public  
122 ways.
- 123
- 124 B. The Planning Board Plan Review Committee shall have the authority to modify or  
125 vary these dimensional requirements by Special Permit for the reconstruction,  
126 extension, or alteration of pre-existing, nonconforming structures (**Staff**  
127 **recommendation: Date of June 17, 1999 might be considered in**  
128 **conformance**) based on the standards established in Section 13.4-11A (*Town*  
129 *of Aquinnah District Siting, Dimensional and Design Regulations*).  
130
- 131 C. On Municipal lots, the Planning Board Plan Review Committee shall have the  
132 authority to modify or vary these dimensional requirements by Special Permit for  
133 new structures if it determines that the siting of the new structure is in harmony with  
134 the goals of this By-Law. (**The Commission might discuss latitude**)  
135
- 136 8.) Change existing language in Sections 13.4-10 (*Town of Aquinnah District Siting,*  
137 *Dimensional and Design Regulations- Minimum Frontage*) and 3.7-1 (*Zoning By-Law*  
138 *Minimum Frontage*) to 13.4-10(A.) and 3.7-1(A) and add Section 13.4-10(B.) and 3.7-1(B):

139 B. The Planning Board Plan Review Committee shall have the authority to modify or  
140 vary the dimensional requirements of this By-law by Special Permit for the  
141 reconstruction, extension, or alteration of pre-existing, nonconforming structures  
142 **(Staff recommendation – as of June 17, 1999, but Commission may**  
143 **consider May 10, 2011, Town request – as of May 8, 2012,)** situated  
144 on lots containing less than the minimum frontage required by Section 13.4-10(A.)  
145 and 3.7-1(A).

146  
147 9.) Amend Sections 13.11-1B (*Town of Aquinnah District Coastal Areas – presently*  
148 *reads “There shall be no new boardwalks or parking lots.”*) and 2.4-2B (*Zoning By-Law*  
149 *Use Regulations*) (*Coastal Areas*) (*presently reads “There shall be no new boardwalks or*  
150 *parking lots.”*)to read:

151 Except on municipal lots, there shall be no new boardwalks or parking lots. **(Staff**  
152 **comment: The Commission might discuss latitude)**

153  
154  
155 10.) Delete Section 13.14-1 (*Town of Aquinnah District Administration*) Impact Fee  
156 Guidelines **(Staff comment: The Commission may find conformance. The**  
157 **Guideline reads as follows: “The Town shall consider innovative**  
158 **regulatory techniques, such as a scaled impact fee...”)**

159  
160 11.) Add New Section: (*Town of Aquinnah District Siting, Dimensional and Design*  
161 *Regulations*)(**replaced and resubmitted by the Aquinnah Planning Board**  
162 **March 30, 2012)**

### 163 **13.14-1 Zoning Determinations**

164 A. To simplify the implementation of this By-Law and to speed up the approval  
165 process for projects that have no negative impact on the resources that these By-  
166 Laws seek to protect, the Planning Board Plan Review Committee may determine  
167 that certain small developments, or certain parts of larger projects, can be  
168 approved by issuing a Zoning Determination rather than requiring the applicant to  
169 apply for a Special Permit. There shall be no fee for a Zoning Determination.  
170 Issuance of a Zoning Determination shall be made after site review at a public  
171 meeting only if the Planning Board Plan Review Committee unanimously  
172 determines that the proposed project: 1.) has no negative impact on the resources

173 the applicable By-Laws protect; 2.) is consistent with the goals and within the  
174 guidelines of this and any overlapping Districts of Critical Planning Concern; and  
175 3) does not appear to be detrimental to the interests of abutters. **(Staff**  
176 **recommendation: Only for the Town of Aquinnah District, the**  
177 **Commission might discuss latitude)**

178  
179 B. A Zoning Determination cannot be used to approve: a single-family residence;  
180 structures that will be visible in open and highly visible areas; or accessory  
181 structures or additions, including decks, with a footprint greater than 70 square  
182 feet. Examples of projects that might qualify for a zoning determination, as set  
183 forth in this section, include: the siting of a small shed in an area that is not open  
184 or highly visible; a small extension of a deck; or the addition of an outdoor  
185 shower. Zoning Determinations may also be used to determine whether a site is  
186 open and highly visible and to allow hand dug perc tests in the presence of a  
187 qualified archaeological observer instead of submission of a Project Notification  
188 Form to Mass Historic.

189  
190 C. If the Planning Board Plan Review Committee determines that the small  
191 development or a certain part of a larger project qualifies under this Section, it will  
192 issue a written and signed Zoning Determination to the applicant, with a copy to  
193 the building inspector, granting permission to proceed with the work, including  
194 any conditions or limitations the Planning Board Plan Review Committee deems  
195 reasonable to impose consistent with the goals and purposes of this and any  
196 overlapping Districts of Critical Planning Concern. **(Staff recommendation:**  
197 **Only for the Town of Aquinnah District, the Commission might**  
198 **discuss latitude)**

199  
200 12.) Add the following as Sections 10.1-4 (*Coastal District Uses by Special Permit from*  
201 *the Planning Board Plan Review Committee*) E, F and G and Sections 2.4-1 (*Zoning By-*  
202 *Law Uses*) C, D and E:

203 (10.1-4E and 2.4-1C) The Planning Board Plan Review Committee shall have the  
204 authority to modify or vary the dimensional requirements of sections 10.1-4B  
205 (*Coastal District Uses - Restricts construction by Special Permit within 100' of*  
206 *wetlands, waterbodies, beaches, dunes or the crest of bluffs over 15' high to a*  
207 *fishing related marine commercial structure*) and 2.4-1B (*Zoning By-Law Uses -*

208 *Restricts construction by Special Permit within 100' of wetlands, waterbodies,*  
209 *beaches, dunes or the crest of bluffs over 15' high to a fishing related marine*  
210 *commercial structure) Special Permit for the reconstruction or alteration of pre-*  
211 *existing, nonconforming structures* **(Staff recommendation: Date of**  
212 **December 22, 1975)***based on the standards established in Section 13.4-11A*  
213 *(Town of Aquinnah District newly proposed Section on Pre-existing, nonconforming*  
214 *Structures and Uses), however; pre-existing nonconforming municipal structures*  
215 *may also be extended.* **(Staff recommendation: The Commission might**  
216 **discuss latitude)**

217  
218 (10.1-4F *(new)* and 2.4-1D *(new)*) On Municipal lots, the Planning Board Plan  
219 Review Committee shall have the authority to modify or vary the requirements of  
220 section 10.1-4B and 2.4-1B by Special Permit for new municipal structures and  
221 uses if it determines that the siting of the new structure is in harmony with the goals  
222 of this By-Law. **(Staff recommendation: The Commission might discuss**  
223 **latitude)**

224  
225 (10.1-4G *(new)* and 2.4-1E *(new)*) In the Coastal District, the Planning Board Plan  
226 Review Committee shall have the authority to make Zoning Determinations as  
227 provided for in Section 13.14-1. **(Staff recommendation: not in**  
228 **conformance)**

229  
230 13.) Add the following to Section 11.3-1 *(Moshup Trail - Construction)*:  
231 G. The Planning Board Plan Review Committee shall have the authority to modify  
232 or vary the dimensional requirements of section 11.3-1F *(setback 150' from*  
233 *Moshup Trail)* by Special Permit for the reconstruction, extension, or alteration of  
234 pre-existing, nonconforming structures based on the standards established in  
235 Section 13.4-11A *(Town of Aquinnah District newly proposed Section on Pre-*  
236 *existing, nonconforming Structures and Uses)*. **(Staff recommendation: date**  
237 **of September 7, 1989)**

238  
239 H. On Municipal lots, the Planning Board Plan Review Committee shall have the  
240 authority to modify or vary the dimensional requirements of section 11.3-1F  
241 *(setback 150' from Moshup Trail)* by Special Permit for new structures if it  
242 determines that the siting of the new structure is in harmony with the goals of this

243 By-Law. (**Staff recommendation: The 150' setback emanates from the**  
244 **Town, not the DCPC Goals and Guidelines. The Commission may**  
245 **discuss conformance, including a reference to the Moshup Trail: Site**  
246 **Design Guidelines)**

247

248 14.) Add new section: (*Moshup Trail*)

249 11.9 Zoning Determinations

250 In the Moshup Trail DCPC, the Planning Board Plan Review Committee shall have  
251 the authority to make Zoning Determinations as provided for in Section 13.14-1.

252 (**Staff recommendation: not in conformance**)

253

254 15.) Switch the language in Section 12.3(E)2 (*Gay Head Cliff Area District Uses*  
255 *Requiring a Special Permit*) (“There shall be a no build/no cut zone within 150 feet of the  
256 crest of bluffs and cliffs, established...The only permitted use shall be for the signage,  
257 fencing or landscaping {planting} under the explicit written advice of the Site Review  
258 Committee and consistent with subsequent design guidelines and a joint management  
259 plan that may be adopted for the District.”) with the language in section 12.3(E)3 (“No  
260 further subdivision of property within the District.”), label the language in the new section  
261 12.3(E)3 as 12.3(E)(3a) (“There shall be a no build/no cut zone within 150 feet of the  
262 crest of bluffs and cliffs, established...The only permitted use shall be for the signage,  
263 fencing or landscaping {planting} under the explicit written advice of the Site Review  
264 Committee and consistent with subsequent design guidelines and a joint management  
265 plan that may be adopted for the District.”) and add the following:

266 b. The Planning Board Plan Review Committee shall have the authority to modify or  
267 vary the dimensional requirements of section 12.3(E)(3a) by Special Permit for the  
268 reconstruction, extension, or alteration of pre-existing, nonconforming structures  
269 based on the standards established in Section 13.4-11A (*Town of Aquinnah*  
270 *District newly proposed Section on Pre-existing, nonconforming Structures and*  
271 *Uses*). (**Staff recommendation: date of May 4, 1989**)

272

273 c. On Municipal lots, the Planning Board Plan Review Committee shall have the  
274 authority to modify or vary the dimensional requirements of section 12.3(E)(3a) by  
275 Special Permit for new structures if it determines that the siting of the new structure  
276 is in harmony with the goals of this By-Law. (**Staff recommendation: The**  
277 **Commission might discuss latitude, but not to less than 50'**)



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- 16.) Add new section (*Gay Head Cliff Area District*):  
12.3F In the Gay Head Cliff Area DCPC, the Planning Board Plan Review Committee shall have the authority to make Zoning Determinations as provided for in Section 13.14-1 (*Town of Aquinnah District Administration – newly proposed section on Zoning Determinations*). **(Staff recommendation: not in conformance)**
- 17.) Add new section (*Island Road District – Note that the Commission did not notice amendment to the Island Road District*):  
14.1-3(B)(3) In the Island Road District, the Planning Board Plan Review Committee shall have the authority to make Zoning Determinations as provided for in Section 13.14-1 (*Town of Aquinnah District Administration – newly proposed section on Zoning Determinations*). **(Staff comment: The Commission did not notice the Island Road District, and may not discuss this)**
- 18.) Amend **Section 3.5** (*Zoning By-Law*) **Setbacks** to read:  
A. Except as provided in Section 13.8 (Special and Historic Places, also in Section 2.4-3 (*Zoning By-Law Use Regulations*)) of this By-Law, all structures shall be set back at least:
1. Thirty (30) feet from any lot line.
  2. One hundred and fifty (150) feet from Moshup Trail,
  3. Forty (40) feet measured from the centerline of all other roads and public ways.
  4. One hundred and fifty (150) feet from the crest of bluffs or cliffs in the Gay Head Cliff Area DCPC.
  5. One hundred (100) feet from wetlands, waterbodies, beaches, dunes or the crest of bluffs over 15 feet high in the Coastal District, except for fishing related marine commercial structures.
- B. (*new*)The Planning Board Plan Review Committee shall have the authority to modify or vary these dimensional requirements by Special Permit for the reconstruction, extension, or alteration of pre-existing, nonconforming structures based on the standards established in Section 13.4-11A (also in 3.4-2A), except

313 in the Coastal District in which only municipal structures can be extended. (**Staff**  
314 **recommendation: consider dates of December 22, 1976, May 4,**  
315 **1989, September 7, 1995, and June 17, 1999)**

316  
317 C. (new) On Municipal lots, the Planning Board Plan Review Committee shall have  
318 the authority to modify or vary these dimensional requirements by Special Permit  
319 for new structures if it determines that the siting of the new structure is in harmony  
320 with the goals of the applicable By-Laws. (**Staff recommendation: The**  
321 **Commission might discuss latitude, include Moshup Trail: Site Design**  
322 **Guidelines in reference to Moshup Trail District)**

### 323 **Goals and Guidelines for Conformance:**

324 It is important to keep in mind the Goals and Guidelines of the individual Districts  
325 (individual Decision documents available on the website and on file). Some highlights  
326 follow:

#### 327 **The Town of Aquinnah District**

328 *In appropriate cases, after notice and a Public Hearing, the Martha's Vineyard*  
329 *Commission may permit the Town to adopt Regulations that are less restrictive than these*  
330 *Guidelines if the Commission finds that such Regulations will carry out the purpose of the*  
331 *Act and the intent of these Guidelines for the District.*

#### 332 Goals of the Town of Aquinnah District:

333 The Goals of the Town of Aquinnah District are to: *"To protect the scenic character of the*  
334 *District from undue visual intrusion and to promote and maintain its rural character and*  
335 *culture".*

#### 336 Guidelines (excerpts):

337 *"That appropriate exterior design, height and/or siting regulations be developed for any*  
338 *potential new structure proposed for construction within the District, to ensure that any*  
339 *and all new construction shall be consistent with the rural character of the Town of*  
340 *Aquinnah and shall not radically alter or interrupt the existing skyline of the Town as*  
341 *viewed from any public way including any public water body and including the lookout*  
342 *at the Gay Head Cliffs.*

343 *“That the appropriate administration of exterior design, height and/or siting regulations,*  
344 *through a procedure to include site plan review, be developed; and that the site plan*  
345 *review procedure include clear and objective criteria for review...”*

346 **Coastal District**

347 *In appropriate cases, after notice and a public hearing, the Martha’s Vineyard*  
348 *Commission may permit a town to adopt regulations which are less restrictive than these*  
349 *Guidelines if the Commission finds that such regulations will carry out the purpose of the*  
350 *Act and intent of these Guidelines for the District...*

351 *Shore Zone Permitted Uses – Uses may be permitted which are consistent with the fragile*  
352 *nature of the area, such as outdoor recreation....conservation purposes, agricultural*  
353 *purposes...etc.*

354 *Shore Zone Uses Allowed by Special Permit – Certain minor non-residential structures and*  
355 *uses, requiring no on-site sanitary disposal facilities...and an addition to a single-family*  
356 *residence existing before December 22, 1975, provided however that any such addition*  
357 *or alteration will not require additional plumbing fixtures...may be allowed by special*  
358 *permit.*

359 *Inland Zone Permitted Uses – SFR with specific setbacks between wells, wells and*  
360 *septics, etc.*

361 *All utility installations must be underground, unless excepted by special permit.*

362 **Moshup Trail District**

363 *That appropriate design and/or siting guidelines be developed for any potential structure*  
364 *built within the District. These guidelines would possibly result in the amendment of*  
365 *present district regulations and zoning by-laws.*

366 *That the appropriate administration of design and or siting guidelines, through a special*  
367 *permit procedure, be developed.*

368 *That problems unique to the area, such as parking lot developments, be addressed and*  
369 *appropriate regulations or guidelines for existing town authorities be developed.*

370 *Note that the Moshup Trail Site Design Guidelines, the referenced siting guidelines were*  
371 *developed, and are in use.*

372 **Gay Head Cliff Area District**

373 *In appropriate cases, after notice and a public hearing, the Martha’s Vineyard*  
374 *Commission may permit a town to adopt regulations which are less restrictive than these*  
375 *Guidelines if the Commission finds that such regulations will carry out the purpose of the*  
376 *Act and intent of these Guidelines for the District.*

377 *Uses Requiring a Special Permit A special permit shall be required from the Planning*  
378 *Board Plan Review Committee for any “development” as that word is defined in (the Act)*  
379 *including but not limited to:*

380 *The siting of a building, structure or dwelling on its lot including primary and*  
381 *accessory dwellings and/or buildings, and additions to any existing or pre-existing*  
382 *buildings, structures or dwellings.*

383 *The removal of ground cover, shrubs, trees from any lot in the District (except for a*  
384 *garden  $\leq 1,000$  ft<sup>2</sup>).*

385 *The placement of driveways, vehicular paths, pedestrian paths and private parking*  
386 *areas.*

387 *The removal, replacement or erection of fences and stone walls in the District and*  
388 *stairways traversing Cliffs or bluffs.*

389 *The siting of wells, septic systems and subsurface, surface drainage or runoff*  
390 *systems prior to installation...*

391 *Additional Guidelines include height restrictions and a no build/no clear zone*  
392 *within 50 feet of the crest of bluffs and cliffs within the District, with the only*  
393 *permitted use signage, fencing or landscaping (as further described).*

394

395 **Procedure**

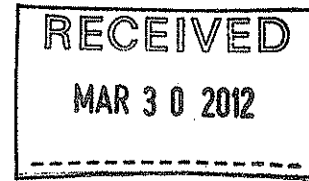
396 The Commission hears and considers proposed amendments to regulations in the same  
397 manner as the original regulations. After a public hearing, the Commission votes on  
398 whether or not **THE PROPOSED REGULATIONS CONFORM OR DO NOT**  
399 **CONFORM TO THE GUIDELINES FOR DEVELOPMENT SPECIFIED IN THE**  
400 **COMMISSION’S DESIGNATIONS OF THE DISTRICTS.** The Commission may  
401 also choose to find in conformance minor points of clarification which may arise during  
402 the course of the 2012 Annual Town Meeting vote which do not change the meaning of  
403 the regulation.

404 The amendments must also be voted by two-thirds vote of the May 10 Town Meeting in  
405 order to become effective. The Commission should close its hearing and vote prior to  
406 May 10.

407 **Correspondence**

408 Two letters have been received from the Aquinnah Planning Board regarding the  
409 proposals for grandfathering and for zoning determination.  
410

Town of Aquinnah  
PLANNING BOARD



TO: The Martha's Vineyard Commission  
DATE: March 30, 2012  
RE: Written Comments regarding proposed Aquinnah By-Law changes.

We submit the following in response to your comments and questions at the March 22, 2012 hearing.

Here is new language for the Zoning Determinations that we believe addresses some of the concerns raised at the hearing. It establishes a three point set of conditions that must be met for use of Zoning Determinations and it clearly establishes what may not be approved with them. Our Board discussed and decided against adding the requirement of notifying abutters and/or putting a public notice in the paper, because that would add labor and cost, significantly lengthen the approval process (we try to meet just once a month) and might also increase the number of projects receiving Zoning Determinations. Our intent is not to make the process less onerous for a lot of projects, but merely to speed up and simplify it for those few that clearly don't need the level of scrutiny our By-Law currently requires.

**13.14-1 Zoning Determinations**

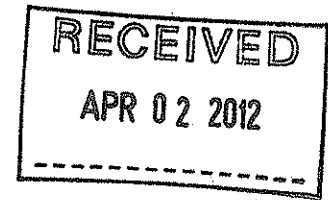
A. To simplify the implementation of this By-Law and to speed up the approval process for projects that have no negative impact on the resources that these By-Laws seek to protect, the Planning Board Plan Review Committee may determine that certain small developments, or certain parts of larger projects, can be approved by issuing a Zoning Determination rather than requiring the applicant to apply for a Special Permit. There shall be no fee for a Zoning Determination. Issuance of a Zoning Determination shall be made after site review at a public meeting only if the Planning Board Plan Review Committee unanimously determines that the proposed project: 1.) has no negative impact on the resources the applicable By-Laws protect; 2.) is consistent with the goals and within the guidelines of this and any overlapping Districts of Critical Planning Concern; and 3) does not appear to be detrimental to the interests of abutters.

B. A Zoning Determination cannot be used to approve: a single-family residence; structures that will be visible in open and highly visible areas; or accessory structures or additions, including decks, with a footprint greater than 70 square feet. Examples of projects that might qualify for a zoning determination, as set forth in this section, include: the siting of a small shed in an area that is not open or highly visible; a small extension of a deck; or the addition of an outdoor shower. Zoning Determinations may also be used to determine whether a site is open and highly visible and to allow hand dug perc tests in the presence of a qualified archaeological observer instead of submission of a Project Notification Form to Mass Historic.

C. If the Planning Board Plan Review Committee determines that the small development or a certain part of a larger project qualifies under this Section, it will issue a written and signed Zoning Determination to the applicant, with a copy to the building inspector, granting permission

to proceed with the work, including any conditions or limitations the Planning Board Plan Review Committee deems reasonable to impose consistent with the goals and purposes of this and any overlapping Districts of Critical Planning Concern.

Town of Aquinnah  
PLANNING BOARD



TO: The Martha's Vineyard Commission

DATE: April 2, 2012

RE: Additional written comments regarding proposed Aquinnah By-Law changes.

Regarding the addition of a date(s) for establishing "grandfathering," **on the advice of Town Counsel** we propose the use of a single date for all DCPCs: the date these changes to the bylaws become effective, (hopefully May 8, 2012). We propose this practical solution for several reasons:

1. This simplifies the process in that we don't have to go back and establish what did or didn't exist 20 or 30 years ago (and our town doesn't have the best record keeping) or deal with questions of overlapping DCPCs.
2. If we have been doing our job properly we haven't allowed any nonconforming structures to be built since the designation date so using the implementation date of these changes doesn't change what's grandfathered.
3. Our 200 foot frontage requirement became part of the Aquinnah DCPC on May 10, 2011, so to use the date of designation for the DCPC of June 17, 1999 would not protect any new homes or additions to existing homes that were built during the 12 years between those dates on lots with less than 200 feet of frontage. This would impact a lot of properties and would not likely pass at Town meeting.
4. There are certain municipal structures (that should have but did not go through the permitting process) in the Moshup, Coastal and Cliffs DCPC's that were constructed after the designation of those DCPCs, that we would like to legitimize and grandfather (shops at the cliffs, parking attendant booths, beach boardwalks and handrails).

We would amend the proposed new section 13.4-11 as follows to reflect this:

**13.4-11 Pre-existing, nonconforming Structures and Uses**

A. Any pre-existing, nonconforming structure or use which does not conform to the provisions of this By-Law or any amendment thereto may nevertheless continue in its use. Pre-existing, nonconforming structures and uses **in existence at the time this provision is adopted by the Town** may be reconstructed, altered, or extended by Special Permit from the Planning Board Plan Review Committee; provided, however, that the reconstruction, extension, or alteration bears a reasonable relationship to the original size and nature of the nonconforming structure or use, and that the Planning Board Plan Review Committee finds that the change, extension or alteration is not substantially more detrimental than the existing nonconforming structure or use to the neighborhood. Changes qualifying for a zoning determination under Section 13.14-1 do not require a Special Permit if the Planning Board Plan Review Committee makes a finding that the proposed reconstruction, alteration, or extension does not increase the nonconforming nature of the structure or use.