

THE  
MARTHA'S VINEYARD  
COMMISSION

BOX 1447, OAK BLUFFS, MASS. 02557. 693-3453

DECISION OF  
THE MARTHA'S VINEYARD COMMISSION  
DESIGNATING THE CAPE POGE DISTRICT  
AS A  
DISTRICT OF CRITICAL PLANNING CONCERN



# THE MARTHA'S VINEYARD COMMISSION

BOX 1447 • OAK BLUFFS  
MASSACHUSETTS  
02557  
(617) 693-3453

## MARTHA'S VINEYARD COMMISSION DECISION

### CAPE POGUE DISTRICT OF CRITICAL PLANNING CONCERN

#### Section 1.00 General

As authorized by Chapter 831 of the Acts of 1977, as amended, the Martha's Vineyard Commission ("the Commission") hereby designates as a District of Critical Planning Concern ("a District"), the specific geographical areas hereafter described, to be known as the "Cape Pogue District of Critical Planning Concern".

The Commission held a public hearing at 8:00 P.M. on June 23, 1988 at the Martha's Vineyard Commission offices, Olde Stone Building, New York Avenue, Oak Bluffs, Massachusetts on the proposed Cape Pogue District, after due public notice to the municipalities, publications, and notice required under Massachusetts General Laws, Chapter 30A, Section 2. The public hearing was held as required under the Act to permit the Commission to receive testimony relating to whether it should designate the proposed district as a District of Critical Planning Concern.

The Commission received a nomination by taxpayer petition from Peter Lars Look and others for inclusion of geographic areas into a District (Nomination E 2,4,5,8,121). At its May 18, 1988 meeting, the Commission voted to accept for consideration the nominated area.

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

On Thursday, July 14, 1988, the Commission voted to designate the nominated area and amended area as a District of Critical Planning Concern. Section 8 through 10 of the Act provide the process for amending the boundaries, adoption of development guidelines, and regulation of the District to which development must conform.

Section 2.00 Area Designated

Upon consideration of information submitted to it, the Commission's familiarity with the lands and waters of District, oral and written testimony, and pursuant to the Act and the Commission's Standards and Criteria for Districts of Critical Planning Concern ("the Qualifications") adopted under the Act and appended hereto, the Commission makes findings herein and hereby designates the Cape Pogue District with Defined Boundaries as follows:

All the land and waters, bordered by the mean high water line, beginning at Wasque Point (southern-most point of Edgartown Assessor's Map 48 lot 45); thence northerly along said land bordered by the Atlantic Ocean to and including Cape Pogue Point, continuing southwesterly around said Point to the tip of land known as Cape Pogue Gut, bordered by the Atlantic Ocean. Thence around the tip in a northeasterly curve bordered by the mean high water line on the east by Cape Pogue Bay. Thence, continuing the curve southerly along the eastern shore of the Bay; including the water's of Shear Pin Pond. Thence continuing along the mean high water line in a southerly direction along the eastern shore of the channel (A/K/A the Lagoon), connecting Cape Pogue Bay and Poucha Pond to it's southern-most point. Thence running westerly along the northern side of the Dike Bridge to the mean high water line on the western most shore of Poucha Pond and continuing along said high water line and western shore of Poucha Pond, including Mumcheag' Creek and Daggetts Pond, to the most northern bound of Map 48, Lot 1 (Edgartown Tax Assessor's Map); Thence in a southwesterly direction along the eastern bound of Washo Avenue (as shown on Map 48, Map 47 and Map 50, Edgartown Tax Assessor's Map) to the mean high water line of Katama Bay; then in a southerly and easterly direction along said high water line to Map 51 Lot 49 (Edgartown Tax Assessor's Map); Thence in a westerly direction along said high water line to South Beach Road (A/K/A Katama Road), then southerly to the mean high water line of the Atlantic Ocean and at this point running easterly along said mean high water line to the point of origin.

The Commission has prepared a descriptive map appended hereto as Appendix "B" for the general information of the public and the municipalities. The boundaries of the Cape Pogue District, however, are as set forth above in this Decision and shall control over any map.

The Cape Pogue District boundaries conform to Qualification Section 1.20. The Commission finds that the lands and waters therein reasonably belong within the Cape Pogue District. Lands and waters within the District are a critical area and the Commission finds that this area needs protection afforded by the Act. The areas designated are a logical planning area and are suitable for the adoption of coordinated regulations for the District as a whole. Finally, the Commission finds that the boundaries of the Cape Pogue District, as established, are both convenient and recognizable.

# THE MARTHA'S VINEYARD COMMISSION

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Martha's Vineyard Commission Decision  
Amendment to the Cape Pogue DCPC  
By Affirmative Vote of the MVC  
July 21, 1994

The Cape Pogue District of Critical Planning Concern (DCPC) is hereby amended as follows:

Delete Section 2.00 Area Designated in its entirety and substitute in place thereof the following new section:

Section 2.00 Area Designated

Upon consideration of information submitted to it, the Commission's familiarity with the lands and waters of District, oral and written testimony, and pursuant to the Act and the Commission's Standards and Criteria for Districts of Critical Planning Concern ("the Qualifications") adopted under the Act and appended hereto, the Commission makes findings herein and hereby designates the Cape Pogue District with Defined Boundaries as follows:

All the land and waters bordered by mean high water line, beginning at Wasque Point (southern-most point of Edgartown Assessor's Map 48 Lot 45); hence northerly along said land bordered by the Atlantic Ocean to and including Cape Pogue Point, continuing southwesterly around said point to the tip of land known as Cape Pogue Gut, bordered by the Atlantic Ocean; hence easterly across the waters of Cape Pogue Gut to mean high water line at the southernmost corner of Map 18 Lot 1 on Cape Pogue Gut; thence continuing along the mean high water line northerly to the point of land known as John Oliver Point; thence continuing along the mean high water line in a southern and eastern direction along the western and southern shores of Cape Pogue Bay to the point of land forming the northern entrance to the waters known as the Lagoon; thence continuing along the mean high water line in a southerly direction along the western shore of the channel (a/k/a the Lagoon), connecting Cape Pogue Bay and Poucha Pond; thence running along the mean high water line on the western most shore of Poucha Pond and continuing along said high water line including Mumcheag Creek and Daggetts Pond, to the most northern bound of Map 48 Lot 1 (Edgartown Tax Assessors' Map); thence in a southwesterly direction along the eastern bound of Washque Avenue (as shown on Edgartown Tax Assessors' Maps 47, 48 and 50) to the mean high water line of Katama Bay, then in a southerly and easterly direction along said mean high water

(2)

line to Map 51 Lot 49 (Edgartown Tax Assessors' Map); thence in a westerly direction along said high water line to South Beach Road (a/k/a Katama Road) at this point running easterly along said high water line to the point of origin.

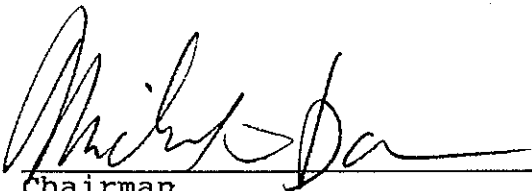
The Commission has prepared a descriptive map appended hereto as Appendix "B" for the general information of the public and the municipalities. The boundaries of the Cape Pogue District, however, are as set forth above in this Decision and shall control over any map.

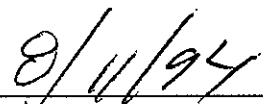
The Cape Pogue District boundaries conform to Qualification Section 1.20. The Commission finds that the lands and waters therein reasonably belong within the Cape Pogue District. Lands and waters within the District are a critical area and the Commission finds that this area needs protection afforded by the Act. The areas designated are a logical planning area and are suitable for the adoption of coordinated regulations for the District as a whole. Finally, the Commission finds that the boundaries of the Cape Pogue District, as established, are both convenient and recognizable.

The Cape Pogue District of Critical Planning Concern guidelines are hereby further amended as follows:

Section 2.2 Prohibited Uses is amended by the addition of a new subsection as follows:

2.d All non-municipal piers

  
\_\_\_\_\_  
Chairman

  
\_\_\_\_\_  
Date

Section 3.00 Why the Area has been Designated

When designating a District, Section 8 of the Act requires the Commission to specify why the area is of critical concern to the region, the problems associated with uncontrolled or inappropriate development, and the advantages to be gained by the development of the area in a controlled manner. In designating a District, the Commission must also consider the need for designation, as required by Section 1.10 of the Qualifications. Information available to the Commission supports a finding that the Cape Pogue District is of regional importance, that there exist problems of uncontrolled or inappropriate development within the District, affecting areas outside the District, and that there are advantages to be gained by development of the area in a controlled manner. The Commission specifically finds that controlled development of lands and waters within the Cape Pogue District is essential to the prevention of pollution of ground and surface waters. In addition, lands and waters within the District support and affect important wildlife habitats. This area contributes substantially to the Island's wildlife, scenic, natural, scientific and ecological resources. As fragile resources, lands and waters within the District are extremely sensitive to pollution, erosion, and the destruction of irreplaceable resources.

In considering the problems of uncontrolled or inappropriate development within the Cape Pogue District, the Commission finds that so fragile are these lands and waters and so important are the values they create and support that to maintain and enhance the health, safety and general welfare of Island residents and visitors, and for present and future generations, special development controls within the District must be adopted.

In considering the advantages to be gained by development in a controlled manner, the Commission finds that development which conforms to regulations to be established pursuant to the guidelines adopted by this Decision will contribute much to solving the problems of inappropriate development.

The Qualifications require the Commission to address itself to the need for designation. To that end, the Commission finds that there exists a regional need for special regulations and planning to protect the Island and its people from damage and loss resulting from inappropriate development. The Commission also finds after its review that present private and public regulations in the District cannot assure protection, and that damage to the Cape Pogue District lands and waters will be a substantial loss to the region or to two or more towns on the Island.

## Decision of the MVC - Cape Pogue DCPC

### Section 4.00 What Kind of District

Section 9 of the Act permits the Commission to designate a District only in accordance with the Criteria and Standards approved under the Act. Such a District may be designated only for:

- (a) an area which possesses unique natural, historical, ecological, scientific, or cultural resources of regional or statewide significance;
- (b) an area which possesses marginal soil or topographic conditions which render it unsuitable for intense development; or
- (c) an area significantly affected by, or having significant impact on, an existing or proposed major public facility or other area of major public investment.

The Cape Pogue District qualifies under the Specific Qualifications, Sections 2.40, 2.50 & 2.80 of the Criteria and Standards ("the Specific Qualifications"). The Commission finds that the Cape Pogue District meets Specific Qualifications as described herein.

Specifically, with respect to the first element of Section 8 of the Act, concerning unique natural, historical, ecological, scientific, or cultural resources of regional or statewide significance, the Cape Pogue District meets the Specific Qualifications of the Wildlife, Natural, Scientific or Ecological Resource District, Section 2.40; the Cultural or Historic Resource District, Section 2.50; and the Hazardous District, Section 2.80.

### Section 4.10 Compliance with Criteria and Standards

#### Section 4.11 Wildlife, Natural, Scientific or Ecological Resource District

Living and non-living components of the designated area are fragile and rare. The barrier beaches, dunes, and sand spit are preferred habitat for rare plant and bird species (see attachment). In addition to invaluable bird-nesting habitat Cape, Pogue is known to harbor two plant species listed as rare in Massachusetts. These are: Seabeach Knotweed (Polygonum glaucum) a transient plant of the less disturbed upper beach areas, and Bristly Foxtail (Setaria geniculata) a grass found on salt marsh borders.

The following chart depicts the importance of the area as nesting habitat.

	Breeding Populations		Cape Pogue
	Cape Pogue & Wasque	all Martha's Vineyard	Wasque Percentage
Herring Gull	234	409	57.2
Great Black-backed Gull	197	202	97.5
Least Tern	34	176	19.3
Common Tern	7	282	2.5
Black-crowned Night-Heron	250	270	92.6
Snowy Egret	350	352	99.4
American Oystercatcher	7	14	50.0
Piping Plover	3	10	30.0

TABLE 6. Percentage of Martha's Vineyard's waterbirds nesting on Cape Pogue and Wasque in 1985.

Taken from R.A. Culbert, (1984) The Breeding Biology of some Waterbirds Nesting on Cape Pogue Wildlife Refuge and Wasque Preservation.

Another species considered rare in New England and found on the site is Bushy Rockrose (Helianthemum dumosum)<sup>1</sup>. In addition experts expect that Post Oak (Quercus stellata) would be found within the cedars<sup>1</sup>. It is important to note that these plant and bird species rely on specific components of a changing environment, continuing management is imperative as natural and manmade disturbances, and plant community succession can drastically impede a given species ability to survive at a particular site. Because of it's isolated location, limited access, and varied habitats, the area is an excellent opportunity to study species with a limited set of variables.

The sandy spits consist of barren beach and dunes clothed in Beach Grass, Beach Pea, Rugosa Rose, and Poison Ivy. In the quieter water along the east side of Cape Pogue Bay are several salt marshes. Cape Pogue, with its undulating topography of dune origin, supports fresh and brackish ponds, Pitch Pine and Red Cedar thickets, and sparsely vegetated sandplain communities.

1. Massachusetts Natural Heritage Program (1982), "Wildlife Refuge Rare Species Preservation Plan".



Decision of the MVC - Cape Pogue DCPC

The perimeter of this District includes Federal and State barrier beach Designations and delineations which further document the sensitivity and dynamics of this District. Evidence reveals that this shoreline is unstable, and that in addition to shoreline erosion, rising sea levels play a part in shaping this shoreline (Ogden III, J. Gorden, "Shoreline Changes Along the Southeastern Coast of Martha's Vineyard, Massachusetts for the Past 200 Years", 1974). Cliff retreat at Wasque Point is documented to show an average loss of 10m/year (Kaye, Clifford "Map(with Text) showing shoreline changes of Martha's Vineyard over the last 200 years".)

The barrier beach provides nesting habitat for Least and Common Terns, Herring and Great Black-backed Gulls, Piping Plovers, Horned Larks, American Oystercatchers, and several species of songbirds. Black-crowned Night Herons and Snowy Egrets nest at little Neck, east of the barrier beach.

On Cape Pogue proper, the dunes have been stable long enough to support more diverse plant communities. The sandplain communities interspersed throughout the Cape are open areas dominated by Little Bluestem, Greene's Rush, Pennsylvania Sedge and Black Huckleberry, surrounded by Bayberry and Scrub Oak.

Section 4.12 Cultural or Historic Resource District

The landscape and view are expressive of the character of the Island and is of special interest to Island visitors. Recreation, through coastal fishing, swimming, boating and strolling, is an integral part of the lives of residents and visitors. Since the coastline is the first thing one sees when coming, and the last thing one sees when leaving, whether by boat or by airplane, it conveys the image of the Island. The area is visible from beaches on the eastern shore including Oak Bluffs, State Beach (Joseph Sylvia Beach) and the lighthouse in Edgartown. The view from Beach Road; one of the most heavily travelled roads on the Island, provides visitors and residents with the impression of expansive undeveloped shore front areas. While much of the shoreline is inaccessible except by boat or off road vehicles, the whole coastline is visibly accessible. The eastern shore of Chappaquiddick is viewed by ferry passengers to Oak Bluffs and Nantucket. This is a view of open water and predominantly undeveloped coastal environments. The ponds are important to people for the same reasons that the coastal perimeter is. The recreation and sheer aesthetic enjoyment of the pond environ is a major part of the experience of the Vineyard for residents and visitors. Hunting ducks and geese in these areas is a long standing Island recreational activity. Where public vistas are available across the ponds from public roads, views incorporating the land, the pond, and the sea are the most pleasant and memorable the Island has to offer and easily altered by incompatible development. Should this area become over developed or over-utilized no barrier beach, sand spit, dune, or cape system of comparable size or habitat intensity and diversity would remain accessible to the public for viewing or visiting anywhere on the Island.

Cape Pogue also offers outstanding recreational fishing, which is a traditional activity for residents, and brings a large number of visitors to the Island, especially during the annual Bass Derby in the Fall of each year. The size and success of the Island's fishing clubs testify to the fact that the resources for recreational fishing are more important for maintaining the quality of life for Island residents than for supporting the visitor economy.

The predominant use of the site is for fin and shell fishing, as well as beach going, and wildlife observation. These are traditional activities as described in this qualification. The waters touching the District are abundant with shellfish. In 1987, the percent of Edgartown's bay scallop catch of the States total was 59% of commercial landings and 21% of recreational landings (Department of Marine Fisheries, Mass., "Bay Scallop Catch and Value Statistics".) Additionally, the Town Reports and shellfish bed maps indicate significant volumes of quahogs harvested in the waters abutting the District (Town of Edgartown, Annual Town Reports, 1975-1986).

Section 4.13 Hazardous District

Access to sites, disposal of waste, provision of drinking water, and construction, are limited due to loose highly permeable soils, shallow groundwater, flooding, proximity to surface water and wind. The Coastal Perimeter is subject to flooding from hurricane or "northeaster" surges which have attacked most of the coast during some storm in the last century. With the exception of approximately 17 acres, the entire District is within special flood hazard areas, areas of 100 year flood or velocity (wave action) areas as delineated on Flood Insurance Rate Maps ( National Flood Insurance Program, Flood Insurance Rate Map, Town of Edgartown, March 18, 1985). The flood prone areas are definitely unsuitable to intense development, and development should be avoided if possible. Septic systems may contaminate shallow wells and surface water due to the high permeability and low filtering capacity of soils (Soil Conservation Service, 1982, Soil Survey of Dukes County, Massachusetts). Erosive conditions make construction and maintenance problematic. Salt water intrusion and septic contamination may affect well construction. The close proximity to salt water bodies and shallow groundwater(5') create a situation in which salt water intrusion is imminent under heavy use (Martha's Vineyard Commission, 1978, Water User's Guide). Access to the area is by boat or four wheel drive vehicles. Beach ORV tracks may be impassible during parts of the year thus requiring use of inner tracks through dune areas. Due to the lack of electric utilities homeowners must use noisy generators which scare off wildlife.

SECTION 5.00 GUIDELINES

The Commission adopts the following guidelines ("the Guidelines") for the development of the Cape Pogue District. In adopting the Guidelines, the Commission has evaluated each of the considerations enumerated by Section 8 of the Act and, in addition, has considered other relevant matters.

The Town of Edgartown shall, in the manner required by the Act, adopt Regulations which at a minimum comply with these Guidelines for the Development of the Cape Pogue District. The Town may adopt such regulations under zoning, subdivision, health general by-law or any combination of such authorities it deems best suited for the purpose. The Commission draws the towns' attention to Section 10 of the Act which in part provides, "In adopting such regulations, each municipality shall have all the powers it otherwise had under the General Laws." The Commission also encourages the Town to adopt compatible regulations within the Cape Pogue District.

GOALS

To prevent damage to structures, land and water as a result of erosion, preserve and enhance the character of views, to maintain the quality of well water, prevent pollution, to enhance and protect recreation uses, to avoid impacts associated with certain recreational uses, to protect the quality of adjacent fin and shell fisheries, to maintain and enhance the fishing economy and to promote and protect wildlife habitats.

Section I: Establishment of Guidelines:

1. As used herein the "development", "permit", "regulations" shall have the same meaning as in the Act.
2. The town shall adopt regulations of the types described in the Act, as appropriate to conforming to these Guidelines to Control Development within the Cape Pogue District.
3. In appropriate cases, after notice and a public hearing, the Martha's Vineyard Commission may permit a town to adopt regulations which are less restrictive than these Guidelines if the Commission finds that such regulations will carry out the purpose of the Act and the intent of these Guidelines for the District.
4. These Guidelines may be amended by the Commission after notice to the towns and notice and a public hearing in the manner required by the Act.
5. Unless otherwise stated in these Guidelines the regulations adopted pursuant to these Guidelines in no way alter the process for referral and review of Developments of Regional Impact according to the Act and the Criteria and Standards of the Commission.

Section II. General Guidelines for the Cape Pogue District

These guidelines are intended as an additional layer of protection as an "overlay" district. The provisions of this District shall not replace or pre-empt, but rather exceed provisions of the Coastal District, Beach Area By-law and other relevant controls in the Town of Edgartown. Specifically it is suggested that the degree of use by off road vehicles and the percent of public access which is encouraged by current vehicular management be reassessed as suggested in Section III, Recommendations.

1. Uses Requiring a Special Permit.

A Special Permit shall be required for any "development" as that word is defined in Chapter 831, Section 6 of the Acts and Resolves of 1977, for example any construction, alteration, addition and removal of structures, including but not limited to: dwellings, septic systems, stairwells, decks, boardwalks, impervious surface, trails and roads, out-buildings, boathouses, piers, recreational amenities, and fences and walls. The Special Permit Review Board, in this case, the Edgartown Planning Board, shall have the authority to grant Special Permits.

An applicant seeking a Special Permit shall submit an application to the Planning Board accompanied by a proposed schedule for all phases of development activities and a site plan or plans showing pre and post construction conditions, including topography, vegetation, location of wildlife breeding habitat, wetland areas and floodplains, plans and elevations of all structures, location of utilities, access roads or paths, septic systems and water supply facilities and any other information which will allow the Planning Board to determine the effects of the proposed development on:

- (a) coastal dunes, barrier beaches, coastal banks, rocky intertidal shores, salt marshes, land under salt ponds, land containing shellfish; wetlands and floodplains;
- (b) wildlife breeding habitat or seasons;
- (c) vegetative cover serving to stabilize land forms;
- (d) views within and looking at the site;
- (e) surface and groundwater resources, in particular any adverse effects, e.g. contamination, siltation, eutrophication, and salt water intrusion.

Plans shall be on a 1":40' scale unless the Planning Board authorizes a different scale, and shall be prepared by a registered land surveyor or registered professional engineer.

Upon receipt of the Special Permit application, the Planning Board shall forward a copy of the application to the Martha's Vineyard Commission staff, Harbor Master, Conservation Commission, Marine Advisory Committee, Shellfish Committee, Board of Health and Selectmen for written comments. Failure of the above named entities to submit written recommendations to the Planning Board within 21 days of the initial filing of the Special Permit application shall be deemed a favorable recommendation by the entity. The Planning Board shall review the written recommendations of above-named entities as it considers the proposed development.

The Planning board shall grant a Special Permit only after public notice and hearing in accordance with Section 11 of the Zoning Act, M.G.L. Chapter 40A, and only if it finds that the proposed development:

- (a) will not materially impair the physical integrity of coastal dunes, barrier beaches, coastal banks, rocky intertidal shores, salt marshes, land under salt ponds, land containing shellfish, wetlands and floodplains;
- (b) will not have a significant adverse effect on wildlife breeding habitat and construction can be timed so as to minimize disturbance during the wildlife breeding season;
- (c) will minimize the disturbance to existing vegetation except as to the footprint of the proposed structure;
- (d) has been designed to minimize obstruction of views of public waters, scenic and historic structures and natural and open landscapes from within and without the site.
- (e) will not unreasonably contribute to surface and groundwater pollution, in particular, contamination, siltation, eutrophication, and salt water intrusion.

If the Planning Board determines that the proposed development does not satisfy the above stated criteria, and that the goals of these Guidelines will be undermined, it may, in furtherance of the goals of these guidelines require modifications to the plans and attach conditions to the Special Permit relating to size, height, appearance, location of structures and/or the type, location, number and size of vegetation to be altered or replaced.

Except where the context otherwise requires, terms that are defined in the Department of Environmental Quality Engineering's Wetlands Protection Regulations 310 C.M.R. 10.00 will be so defined here.

## 2. Prohibited Uses

- a. The use of fertilizers, pesticides and herbicides outside of dwellings is prohibited.
- b. No further division or subdivision of property.
- c. No more than one dwelling per lot.

## 3. Government Participation

Increased participation of state and county agencies and the Martha's Vineyard Commission in co-management with private land owners. This participation may include provision of personnel for public education, maintenance, enforcement and habitat protection, and research. A particular need is for studies of regional users of Cape Pogue and an assessment of it's value as a statewide resource, particularly in it's relation to other nearby state lands.

#### 4. Guideline Review

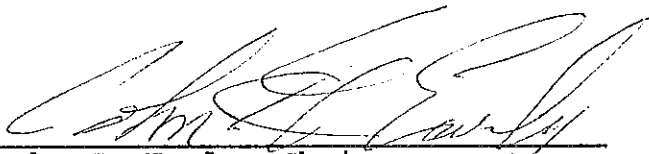
Establish an Advisory Committee consisting of representatives from DEM, DFW, Edgartown Board of Health and Conservation Commission, Trustees of the Reservation, the County of Dukes County, other local conservation groups, and MVC Staff. This committee would propose amended District Guidelines concerning wildlife management and recreation, and work with the property owners involved.

#### Section III - Recommendations

1. Management of Recreational Users To reduce impacts of recreational uses and, to encourage the Trustees of Reservations, and the County of Dukes County, to direct a greater percentage of funds generated by off road vehicle permits issued for areas of Cape Pogue to maintenance of this area, the following practices are recommended:
  - a. Examine adequacy of signage for off road vehicle tracks.
  - b. Increase education of off road vehicle users. Consider requiring a special license.
    - b.1 The development of a required viewing film of less than 5 minutes would decrease need for oral education by permit granting authority which may be impossible during busy times and pamphlets which are expensive and may be ignored. This film could be developed in conjunction with local conservation groups and shown at kiosks or on local television.
    - b.2 Increase opportunities for personal contact by adding on-site and off road vehicle permit personnel.
    - b.3 Establish display kiosk at site entrance.
    - b.4 Improve pamphlets.
  - c. Prohibit use of vehicles on beaches adjacent to Cape Pogue Bay and Poucha Pond.
  - d. Limit number of parallel tracks.
  - e. Consider a limit on the number of vehicles per day.
  - f. Contribute to maintenance budget of public and private roads running from the Chappaquiddick Ferry to Wasque and the Dike Bridge.
  - g. Consider construction of a bike/walking path as a recreational alternative to the use of four wheel drive vehicles.
  - h. Hire a ranger to protect nesting areas during nesting season.
  - i. Increased policing of off road vehicle users.

Decision of the MVC - Cape Pogue DCPC

BY VOTE OF THE MARTHA'S VINEYARD COMMISSION  
JULY 14, 1988

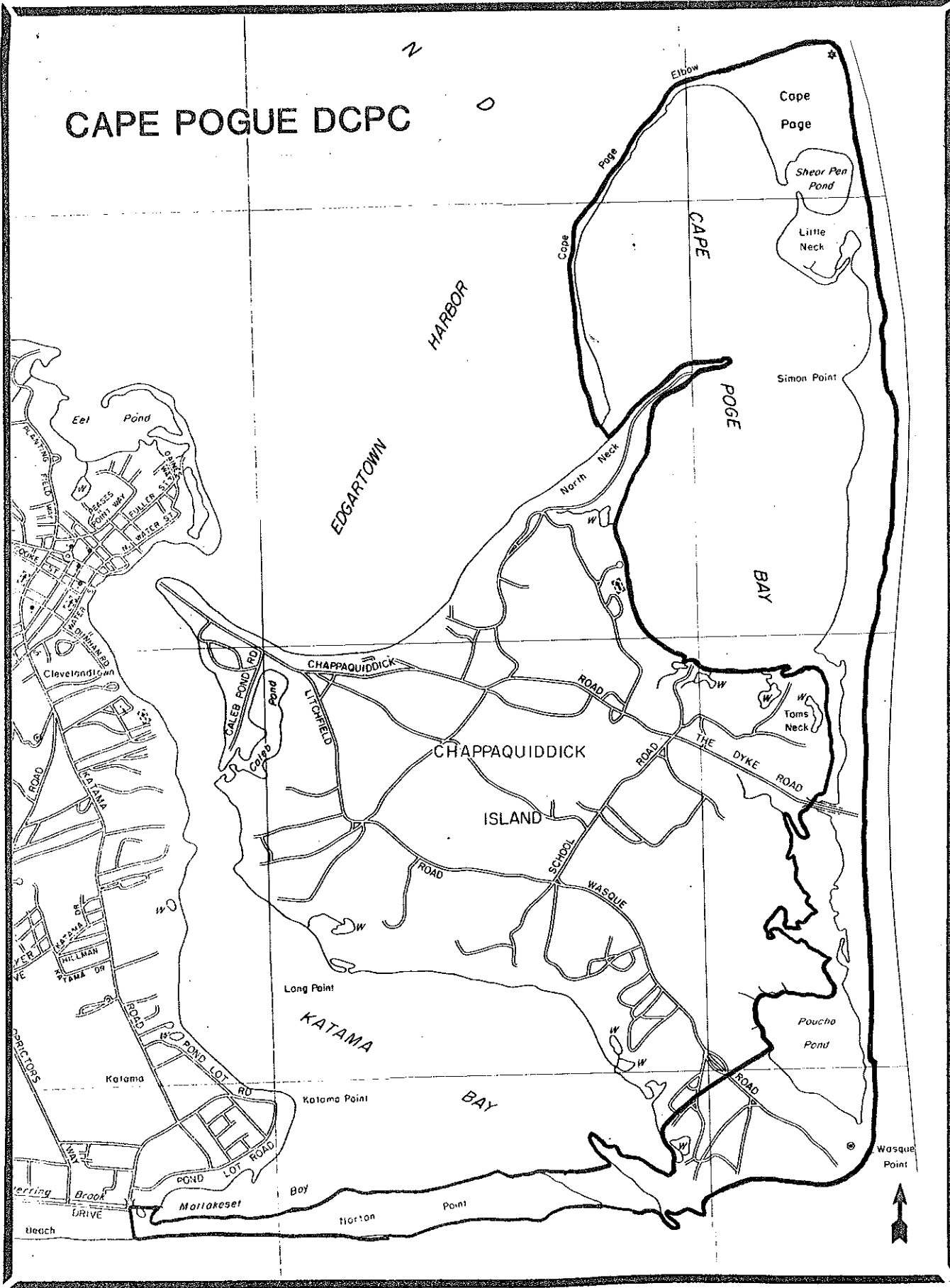


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John G. Early, Chairman



# CAPE POGUE DCPC



7/14/88

**5.3. Special Places District.****5.3.A.****Area**

Sampson's Hill, Chappaquiddick  
The land lying more than 90 feet above mean sea level.

**5.3.B.****Regulations and Restrictions**

1. The erection of structures within the District shall not result in breaking the skyline as observed from a public road or waterbody.
2. Departure from the terms of the district may be allowed by a Special permit from the Planning Board, provided that in the opinion of the Planning Board there is no other way or place on a lot (existing in separate ownership from adjoining lots before December 22, 1976) to build a structure without breaking the skyline, and such structure complies with the intent and purposes of this by-law and the zoning rules and regulations of the Town.

**5.4. Cape Pogue District.****5.4.A.****Goals**

To prevent damage to structures, land and water as a result of erosion, preserve and enhance the character of views, to maintain the quality of well water, to prevent pollution, to enhance and protect recreation uses, to minimize adverse impacts of recreational use, to protect the quality of adjacent fin and shell fisher industries, to maintain and enhance the fishing economy and promote and protect wildlife habitats.

**5.4.B.****Area of the District**

All of the land and waters, bordered by mead high water line, beginning at Wasque Point (Southernmost point of Edgartown Assessors' map 48 Lot 45); thence northerly along said land bordered by the Atlantic Ocean to and including Cape Pogue Point, continuing southwesterly around said point to the tip of land known as Cape Pogue Gut, bordered by the Atlantic Ocean; thence easterly across the waters of Cape Pogue Gut to mean high water line at the southernmost corner of Map 18 Lot 1 on Cape Pogue Gut; thence continuing along the mead high water line northerly to the point of land known as John Oliver Point; thence continuing along the mean high water line in a southern and eastern direction along the western and southern shores of Cape Pogue Bay to the Point of land forming the northern entrance to the water known as the Lagoon; thence continuing along the mean high water line in a southerly direction along the western shore of the channel (a/k/a the Lagoon), connecting Cape Pogue Bay and Poucha Pond; thence running along the mean high water line on the westernmost shore of Poucha Pond and continuing along said high water line including Mumcheag' Creek and Daggetts Pond, to the most northern bound of Map 48 Lot 1 (Edgartown Tax Assessors' Ma); thence in a southwesterly direction along the eastern bounds of Washque Avenue (as shown on Edgartown Tax Assessors' Map 47, 48, and 50) to the mean high water line of Katama Bay, then is a southerly and easterly direction along said mean high water line of Map 51 Lot 49 (Edgartown Tax Assessors' Map); thence in a westerly direction along said high water line to South Beach Road (a/k/a Katama Road), at this point running easterly along said high water line to the point of origin.

**5.4.C.****Permitted Uses**

Use regulations elsewhere in this By-law notwithstanding, only the following uses are permitted. Any structures associated with these uses and any other development or uses would require a Special Permit under Section 14.4.4.

1. Fishing and shellfishing, including aquaculture
2. Forestry, grazing, and farming including but not limited to such crops a cranberries, marsh hay, seaweed, and beach grass.

3. Conservation of soil, water, plants, and wildlife
4. Outdoor recreation activities including swimming, boating, nature study
5. Hunting, trapping, and duckblinds
6. Drainage works which are part of local flood and mosquito control conducted by an authorized public agency.
7. Public or publicly-authorized beach stabilization projects.
8. Repair and alterations to an existing structure, which work does not expand the existing footprint of the structure.

#### 5.4.D.

#### Uses Requiring a Special Permit

1. Except as permitted under Section 5.4.C, a Special Permit shall be required for any "development" as that word is defined in Chapter 831, Section 6 of the Acts and Resolves of 1977, for example any construction, alteration, addition and removal of structures, including but not limited to: dwellings, septic systems, stairwells, decks, boardwalks, impervious surface, trails and roads, out-buildings, boathouses, piers, recreational amenities, fences and walls. The Planning Board shall be the Special Permit Granting Authority.
2. An applicant seeking a Special Permit shall submit an application to the Planning Board accompanied by a proposed schedule for all phases of development activities and a site plan or plans showing pre and post construction conditions, including topography, vegetation, location of wildlife breeding habitat, wetland areas and floodplains, plans and elevations of all structures, location of utilities, access roads and paths, septic systems and water supply facilities and any other information which will allow the Planning Board to determine the effects of the proposed development on:
  - a. coastal dunes, barrier beaches, coastal banks, rocky intertidal shores, salt marshes, land under salt ponds, land containing shellfish; wetlands and floodplains;
  - b. wildlife breeding habitat or seasons;
  - c. rare or endangered plants or animals and their habitats;
  - d. vegetative cover serving to stabilize land forms;
  - e. views within and looking at the site
  - f. surface and groundwater resources, in particular any adverse effects, e.g. contamination, siltation, eutrophication, and salt water intrusion. Plans shall be on a 1"=40' Scale unless the Planning Board authorizes a different scale, and shall be prepared by a registered land surveyor or registered professional engineer.
3. Upon receipt of the Special Permit application, the Planning Board shall forward a copy of the application to the Martha's Vineyard Commission staff, Harbor Master, Conservation Commission, Marine Advisory Committee, Shellfish Committee, Board of Health, Selectmen and the Cape Pogue DCPC Advisory Committee for written comments. Failure of the above named entity to submit written recommendations to the Planning Board within 21 days of the initial filing of the Special Permit Application shall be deemed a favorable recommendation by the entity.
4. The Planning Board shall review the written recommendations of the above named entities as it considers the proposed development. The Planning Board shall grant a Special Permit only after public notice and hearing in accordance with Section 11 of the Zoning Act, M.G.L. Chapter 40A, and only if it finds that the proposed development:
  - a. will not materially impair the physical integrity of coastal dunes, barrier beaches, coastal banks, rocky intertidal shores, salt marshes, land under salt ponds, land containing shellfish, wetlands and floodplains;

- b. will not have a significant adverse effect on wildlife breeding habitat and construction can be timed so as to minimize disturbance during the wildlife breeding season;
  - c. will not have a significant adverse effect on rare or endangered species of plants or animals on or their habitat, including the associated vegetation, topography, moisture, soils, and geology of those natural habitats.
  - d. will minimize the disturbance to existing vegetation except as to the footprint of the proposed structure;
  - e. has been designed to minimize obstruction of views or public waters, scenic and historic structures and natural and open landscapes from within and without the site;
  - f. will not unreasonably contribute to surface and groundwater pollution, in particular, contamination, siltation, eutrophication, and salt water intrusion.
5. If the Planning Board determines that the proposed development does not satisfy the above criteria, and that the goals of these guidelines will be undermined, it may, in furtherance of the goals of these guidelines, require modifications to the plans and attach conditions to the Special Permit relating to size, height, appearance, location of structures and/or the type, location, number and size of vegetation to be altered or replaced. Except where the context otherwise requires terms that are defined in the Department of Environmental Quality Engineering's Wetland Protection Regulations 310 CMR 10.00 will be so defined here.

**5.4.E.****Prohibited Uses**

1. The use of herbicides, pesticides, fungicides, and chemical fertilizers outside of dwellings if prohibited. No further division or subdivision of property which would result in a building lot or buildable lot is permitted. However, division of properties for the purpose of realignment of boundaries between abutting properties may be permitted if such division creates no buildable lots.
2. More than one dwelling per lot is prohibited.
3. Non-municipal piers.

**5.4.F.****Cape Pogue DCPC Advisory Committee**

A Cape Pogue DCPC Advisory Committee shall be established to foster cooperation in management of public and private lands in the District, to advise the Planning Board on applications for Special Permits, and to propose wildlife management and recreations guidelines.

1. Membership shall include one representative from each of the following organizations, appointed by that organization:
  - a. Edgartown Conservation Commission
  - b. Edgartown Board of Health
  - c. Mass. Department of Environmental Management
  - d. Mass. Department of Fisheries, Wildlife, and Environmental Law Enforcement
  - e. The Trustees of Reservations Membership
  - f. The Trustees of Reservations Staff
  - g. County of Dukes County
  - h. Martha's Vineyard Commission

- i. Cape Pogue Property Owner (appointed by the Edgartown Selectboard <sup>77</sup>)
  - j. Conservation/Wildlife Specialist (appointed jointly by Sheriffs' Meadow Foundation, Vineyard Conservation Society, and Vineyard Open Land Foundation)
  - k. Edgartown Police Department <sup>78</sup>
  - l. Edgartown Planning Board
  - m. Edgartown Marine Advisory Committee
  - n. Edgartown Harbormaster
  - o. Edgartown Shellfish Constable
2. Responsibility of the committee shall be to:
- a. maintain records of property management plans
  - b. encourage implementation of management recommendations in the District Guidelines
  - c. develop and propose amended District Guidelines
  - d. review each application for a Special Permit for consistency with management plans and the District Guidelines and advise the Planning Board.

**5.4.G****Enforcement** <sup>79</sup>

The Marine Advisory Committee, Shellfish Constable, Conservation Agent, Zoning Enforcement Officer, Chief of Police, and Harbormaster shall jointly establish, review, and promulgate rules with respect to wildlife and recreation management to carry out the Goals and provisions of this section, the intent of this Zoning Bylaw, and the Guidelines delineated in the MV Commission Decision Designating the Cape Pogue District as a District of Critical Planning Concern, as adopted in 1988 and as amended.

For purposes of this section, the office of the Edgartown Harbormaster, the office of the Edgartown Building Inspector, and the Edgartown Police Department, shall jointly and severally be authorized to administer and enforce special permits issued under this section, and all rules and regulations applicable to the Cape Pogue DCPC.

**5.5. Katama Airfield and Conservation Area District.****5.5A.****Purpose**

To protect and maintain the remaining Katama Great Plains including the rare wildlife and natural community, the Katama Airfield, and the open vistas which together sustain this unique natural area. To prevent the creation and maintenance of airfield hazards, thereby protecting the safety and welfare of users of Katama Airfield and the occupants of land in its vicinity and protecting the public resources of the Katama Airfield. To preserve and promote the wildlife habitat by maintaining and encouraging open sandplains grasslands and natural vegetation and uses on land adjoining the grasslands, thereby protecting the existing natural community including the rare and endangered species of plants and animals, the character of the landscape, and the public resources of the conservation lands.

<sup>77</sup> Amended 2021, ATM, Article #76; Appointment Authority changed from Chappaquiddick Island Association.

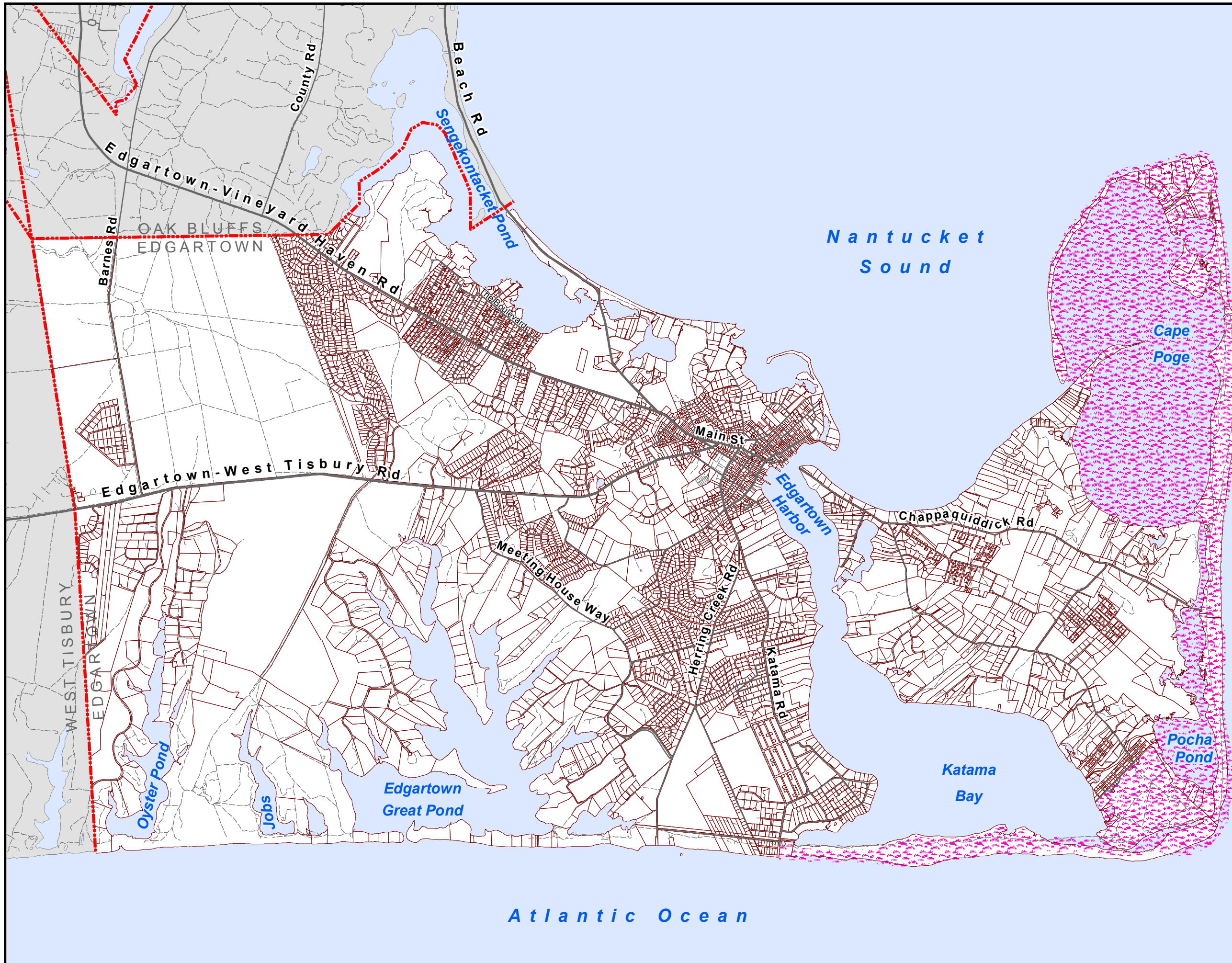
<sup>78</sup> Amended 2021, ATM, Article #76; adding appointees from Edgartown Police Department, Edgartown Planning Board, Edgartown Marine Advisory Committee, Edgartown Harbormaster, Edgartown Shellfish Constable.

<sup>79</sup> Amended 2021, ATM, Article #76; adding section 5.4.G.

# Overlay Zoning of Edgartown, MA

## Cape Poge District

### Zoning By-law Article XIV.4

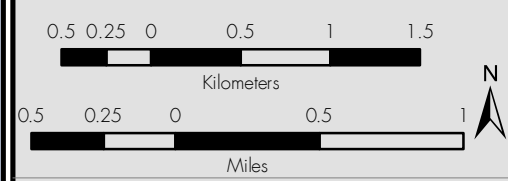


**Overlay Zone**

- Cape Poge District
- Parcel Boundary
- Land
- Roads
- Town Boundary

**DISCLAIMER:**  
Data provided are for planning purposes only. The data are not adequate for boundary determination or regulatory interpretation. The MVC cannot be responsible for how these data are used or interpreted by the end user.

Compiled By: Martha's Vineyard Commission, Cl Seidel, 3/3/09, ph. 508-693-3453, www.mvcommission.org  
Data: Town Boundary - MVC/MassGIS 2006; Roads MHD/MassGIS ye2005; Overlay Zoning - MVC 2007; Parcel Boundary - Cartographic Associates 2008; Land - MassGIS 2002  
Projection: Stateplane, MA Mainland, NAD83, m  
File: ds\_basics; edg\_zov\_page2.mxd  
Original in color on 11x17 paper



MARtha's VINEYARD COMMISSION  
MASS GIS  
Massachusetts Geographic Information System  
Massachusetts Executive Office of Environmental Affairs - 2004