

# THE MARTHA'S VINEYARD COMMISSION

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

DECISION OF  
THE MARTHA'S VINEYARD COMMISSION  
DESIGNATING THE LAGOON POND DISTRICT  
AS A  
DISTRICT OF CRITICAL PLANNING CONCERN



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### DESIGNATING THE LAGOON POND DISTRICT

### AS A DISTRICT OF CRITICAL PLANNING CONCERN

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#### 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 "Lagoon Pond District of Critical Planning Concern".

The Commission held a public hearing at 8:00 P.M. on January 14, 1988 at the Oak Bluffs Elementary School Gymnasium, School Street, Oak Bluffs, Massachusetts on the proposed Lagoon Pond 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 Reverend Douglas Dorchester and others for inclusion of geographic areas into a District (Nomination OB,T,WT-12345678-119). At its December 3, 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, January 28, 1988, the Commission voted to designate the nominated 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 Lagoon Pond District with Defined Boundaries as follows:

Starting at Lagoon drawbridge and Oak Bluffs Town line, thence northeasterly on Beach Road to Eastville Avenue; southeasterly on Eastville Avenue to Temahigan Avenue; northeasterly on Temahigan Avenue to a point 1,500 feet from the mean high water line of Lagoon Pond. From this point, including all the land within 1,500 feet of the mean high water line of Lagoon Pond in the Town of Oak Bluffs. At the southerly portion of Barnes Road this boundary shall extend to the intersection of Barnes Road and Edgartown-Vineyard Haven Road, A/K/A the Blinker Light, thence in a northwesterly direction along the Edgartown-Vineyard Haven Road to the intersection of Park Avenue, Town of Tisbury, Assessor's Map 16-Block B, Lot 2, thence continuing in a northerly direction including the land within 1,500 feet of the mean high water line of Lagoon Pond to Causeway Road, Town of Tisbury, Assessor's Map 9, westerly on Causeway Road to the intersection of Main Street A/K/A Massachusetts State Highway, northeasterly on Massachusetts State Highway to intersection of Beach Street thence northerly on Beach Street to the western bound of the Town of Tisbury's Commercial District bound (boundary between Map 9 Block A, Lots 11 & 12), southerly along eastern boundary of parcel 9-A-41 then easterly along southern boundary of parcel 9-A-22 to Howard Avenue, southerly along Howard Avenue and the Commercial District Bound, at the point before Mud Creek Bridge, then easterly to the waters of Lagoon Pond (including Mud Creek and Bass Creek) thence easterly along the mean high water line to the point of origin and including the waters of Lagoon Pond.

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 Lagoon Pond District, however, are as set forth above in this Decision and shall control over any map.

The Lagoon Pond District boundaries conform to Qualification Section 1.20. The Commission finds that the lands and waters therein reasonably belong within the Lagoon Pond 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 area 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 Lagoon Pond District, as established, are both convenient and recognizable.

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 Lagoon Pond 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 Lagoon Pond District is essential to the prevention of pollution of ground and surface waters of the Lagoon Pond Watershed and the protection of the water quality of Lagoon Pond. In addition, lands and waters within the District support and affect important wildlife habitats. They are essential to shellfishing and finfishing in Lagoon Pond which are significant industries to the economies of both the Towns of Oak Bluffs and Tisbury. In addition, the water quality of the Pond supports extensive recreational use of Lagoon Pond. This area contributes substantially to the Island's wildlife, 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. Furthermore, the success of several major public facilities located within the District is dependent upon the quality of the pond's waters.

In considering the problems of uncontrolled or inappropriate development within the Lagoon Pond 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 Lagoon Pond District lands and waters will be a substantial loss to the region or to two or more towns on the Island.

#### 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 Lagoon Pond District qualifies under the Specific Qualifications, Sections 2.02, 2.04, 2.06, 2.07 of the Criteria and Standards ("the Specific Qualifications"). The Commission finds that the Lagoon Pond 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 Lagoon Pond District meets the Specific Qualifications of the Fishing Resource District, Section 2.20; the Wildlife, Natural, Scientific or Ecological Resource District, Section 2.40; the Economic or Development Resource District, Section 2.06; and the Major Public Investment District, Section 2.07.

Section 4.10 Compliance with Criteria and Standards

Section 4.11 Fishing Resource District:

Information presented at the public hearing and submitted with the nomination papers for Lagoon Pond indicates that the Pond supports a healthy and diverse array of fish, shellfish and crustaceans.

Reports by WHOI (1) and SP Inc. (2) show that Lagoon Pond historically has supported a strong scallop and soft clam population. Recreational harvests of scallops peaked at over 300 bushels in 1979, commercial harvests were over 1800 bushels during the same year. (3) Further information on the status of the fishing industry in the Pond may be found in the Towns' Annual Reports. In addition, the Town (4) of Tisbury appropriated monies in 1987 to rebuild the herring run at Upper Lagoon Pond, in order to re-establish the annual herring population.

The Massachusetts State Lobster Hatchery and the M.V. Shellfish Hatchery both are located on the Pond. The State Hatchery raises over 500,000 larval lobsters each year (5) and is the oldest State financed facility in New England. The Shellfish Hatchery was begun in 1976; each year it provides hundreds of thousands of shellfish spat to participating towns' Shellfish Departments. Both facilities use the water of the Pond to nurture the larval species.

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- (1) Arthur Gaines, Lagoon Pond Study; An Assessment of Environmental Issues and Observations the Estuarine System, Sea Grant Program, WHOI, July 1986.
  - (2) Bruce Poole, Lagoon Pond Final Report, SP Inc., Mass. Great Ponds Program, September 1987.
  - (3) Shellfish Catch Statistics, Lagoon Pond, 1967 - 1986, MVC, 1987.
  - (4) Towns of Oak Bluffs, Tisbury, Annual Reports, 1975 to 1986.
  - (5) Vineyard Gazette, July 24, 1987, Page 1.

Section 4.12 Wildlife, Natural, Scientific or Ecological Resource District:

While Lagoon Pond has not been formally recognized by an established environmental organization as a unique wildlife region, it does contain a wide variety of animal and bird life in a concentrated area. The estuarine character of the Pond encourages a diversity of plant and bird species - egrets, heron, ducks and an occasional osprey may be seen among the cord grasses, sedges and other coastal species on the shores.(6)

Mammals found in the area include North American otters, deer, and the ubiquitous skunk.(7) In addition, the Pond supports shellfish and lobsters, as was mentioned in the Fishing Resource District, and flounder, herring, blue crabs and conch.

Development within the Lagoon Pond watershed has changed many of the habitats required by the animals. Private homes, lawns and piers have some of the natural vegetation around the Pond and thus have affected the ecological balance of the area.

Section 4.13 Economic or Development Resource District:

The area has the special potential for providing employment for Island residents through the shellfishing industry and the State Lobster Hatchery and the Shellfish Hatchery. The number of recreation permits issued for towns during 1986 were Tisbury - 309 and Oak Bluffs - 327; this number has dropped by at least 31.7% in Oak Bluffs and 32.4% in Tisbury since 1980.(8)

Commercial permits totalled Tisbury-28 and Oak Bluffs-13; the two categories of permits brought \$20,998 to Tisbury and \$9,380 to Oak Bluffs for 1986.

Revenues from commercial fishing are estimated to generate between 1 to 3 times each dollar earned, in local economies. Thus the \$67,725 earned in Tisbury and \$16,325 earned in Oak Bluffs from scalloping in 1986(9) may have meant up to \$203,175 in Tisbury and \$48,975 in Oak Bluffs within the economies of the two towns. This sum, coupled with the year-round character of this industry, indicates a regional interest in protecting this resource.

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- (6) Mabel Gillespie, Where the Birds Are, Tashmoo Press, 1976  
William & Stephen Amos, Atlantic & Gulf Coasts, The Audubon Society, 1985.
- (7) Mammals of Martha's Vineyard, Allen Keith, Dukes County Historical Society, 1969.
- (8) From Town Reports, 1980 to 1986.
- (9) From Town Reports, 1980 to 1986.

Section 4.14 MAJOR PUBLIC INVESTMENT DISTRICT:

The area that may be significantly affected by uncontrolled development of Lagoon Pond is the actual water column and subsurface areas of the Pond. It is within the waters of Lagoon Pond that the shellfish which provide a year-round income to many Islanders are found. The Shellfish Hatchery uses Pond water to nurture the shellfish spat, then grows the spat to transplanting size on rafts within the Pond itself. The success of State Lobster Hatchery depends in large part on the quality of the water from the Pond in which larval lobsters are grown.

In addition, one public well is found within the boundaries of the Lagoon Pond DCPC. Development within the zones of contribution to this major public investments will have an immediate effect on groundwater quality and a future effect on the quality of the Pond's waters.



## Section 5.00 Guidelines

The Commission adopts the following guidelines ("the Guidelines") for the development of the Lagoon Pond 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.

Towns shall, in the manner required by the Act, adopt Regulations which as a minimum comply with these Guidelines for the Development of the Lagoon Pond District. Each 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 of the powers it otherwise had under the General Laws." The Commission also encourages municipalities to adopt compatible regulations within the Lagoon Pond District.

### Goals

To maintain water quality, prevent pollution, promote wildlife habitat, promote the economic development of fisheries and related industries, and maintain and enhance recreational and other uses of Lagoon Pond and environs.

### Section I: Establishment of Guidelines:

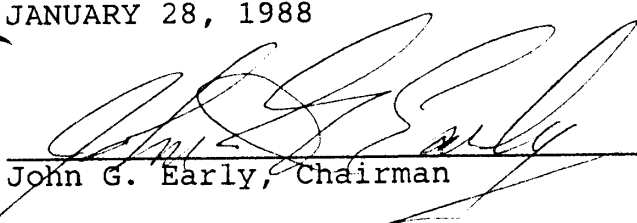
1. As used herein the "development", "permit", "regulations" shall have the same meaning as in the Act.
2. The town shall adopt regulations of the types described in the Act, as appropriate to conforming to these Guidelines to Control Development within the Lagoon Pond District.
3. In appropriate cases, 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 Lagoon Pond District

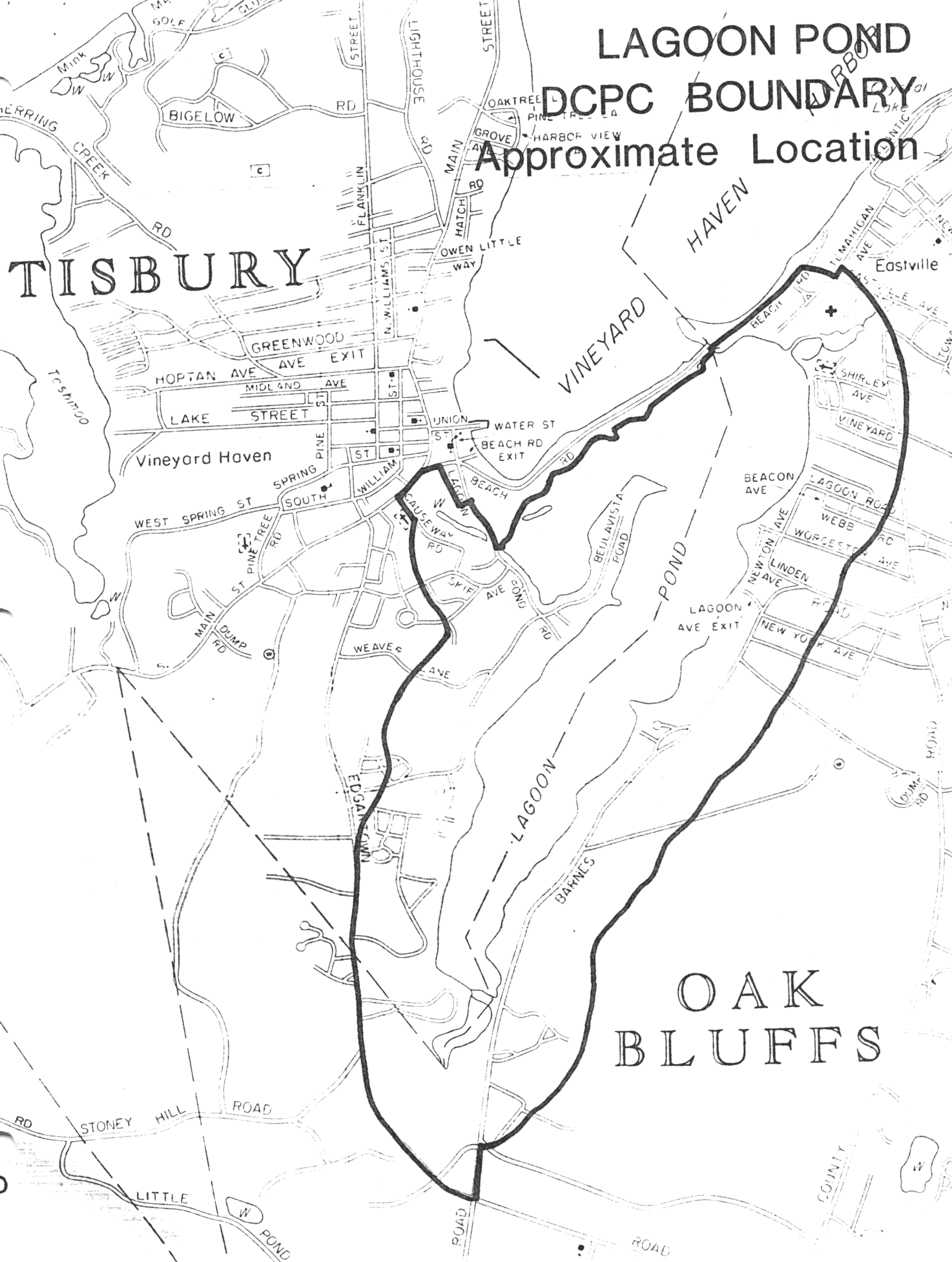
1. Plans for control of soil erosion should be part of subdivision applications to Town Board and/or to the Martha's Vineyard Commission and should be part of all new building permit applications.
2. Road or stormwater runoff from subdivisions should not be permitted to drain onto state/local roads. Plans must be submitted as part of subdivision applications to Town Board and/or to the Martha's Vineyard Commission to show that water will not enter roads. If roads or drainage systems are improperly designed or installed and water does enter the road as determined by Town designated Board or Official, then a fine shall be imposed by the Town.
3. All subdivisions and new building permit applications should require language in permits controlling or prohibiting use of lawn fertilizers.
4. Septic system monitoring should be done by Board of Health or appropriate board for homes 100', 250' and 500' of the shore.
5. Road Maintenance Program - Highway Department should inspect and regularly maintain catch basins along roads. For roads without catch basins, future road improvements should, as a minimum, require crowning roads away from the Pond. Towns should acquire land wherever necessary to construct road runoff detention basins. Towns should make efforts to eliminate storm water drains leading to Lagoon Pond.
6. Road drainage - Towns should plant and maintain sides of Town roads with grassy berms. The Towns should plant and maintain vegetative swales of at least 200' length where possible leading from paved roads to ponds.
7. Before the sale or transfer of property, or prior to the issuance of a building permit which may involve additional septage flow, a registered engineer and Board of Health must certify that the existing septic system meets Town and State standards and is functioning properly.
8. Towns should participate in the creation and implementation of lay monitoring programs for Lagoon Pond, through State Division of Water Pollution Control funding.
9. Towns should consider adopting regulations for uses in and over the waters of Lagoon Pond.
10. Periodic review of these guidelines should be done by the Towns with the assistance of the Martha's Vineyard Commission staff.

(All information and assistance referred to within the Guidelines above, is available for the Towns at the Martha's Vineyard Commission).

BY VOTE OF THE MARTHA'S VINEYARD COMMISSION  
JANUARY 28, 1988

  
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John G. Early, Chairman

LAGOON POND  
DCPC BOUNDARY  
Approximate Location



TISBURY

Vineyard Haven

OAK  
BLUFFS