

# **Decision of the Martha's Vineyard Commission Designating the Island Wind District as a District of Critical Planning Concern**

**Including Ocean Zone voted November 5, 2009  
and Land Zone voted December 17, 2009**

## **1. General**

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

The Commission received nominations from the Chilmark Board of Selectmen and from the Chilmark Planning Board on September 23, 2009 for inclusion of geographic areas into a District, including the Ocean Zone. At the October 1, 2009 Meeting, the Commission voted to accept the nominated area for consideration.

Copies of the nominations and documents relating thereto are on file at the Commission offices, Stone Building, 33 New York Avenue, Oak Bluffs, Massachusetts.

The Commission held a Public Hearing at 7:00 P.M. on November 5, 2009, at the West Tisbury Public Safety Building, 454 State Road, West Tisbury, Massachusetts, on the proposed Island Wind District-Ocean Zone and on the Land Zone at 7:30 P.M. on December 10, 2009, continued to December 17, 2009, at the Martha's Vineyard Commission, Stone Building, 33 New York Avenue, Oak Bluffs, Massachusetts after due public notice to the municipalities, publication and notice required under Massachusetts General Laws, Chapter 30A, Section 2 (in 1977). The Public Hearings were 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.

On Thursday, November 5, 2009, the Commission voted to designate the Ocean Zone of the nominated area as a District of Critical Planning Concern. Sections 8 through 10 of the Act provide the process for setting and amending the boundaries, adoption of development guidelines to which development must conform, and regulation of the District.

## **2 Area Designation**

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Upon consideration of information submitted, the Commission's familiarity with the waters of the District, and pursuant to the Act and the Commission's Critical Planning District Qualifications (the "Qualifications") adopted under the Act, the Commission makes findings herein and hereby designates the Island Wind District as follows:

## **Ocean Zone:**

**That portion of the air space over all ocean waters within the County of Dupes County which exceeds two hundred twenty feet (220') in height above mean sea level, and extending from the Mean Low Water Line seaward to the bounds of the municipal corporations.**

## **Land Zone:**

**That portion of the air space over all lands and inland waters within the County of Dupes County which exceeds one hundred fifty (150') in height above mean natural grade (for land areas) and/or surface water level (for inland water areas), extending from the Mean Low Water line landward; except the Elizabeth Islands, the lands and inland waters within the Town of Edgartown, school buildings and grounds, the Indian Common Lands (generally known as the Cranberry Bogs, the Clay Cliffs and Herring Creek) and the Settlement Lands.**

The Commission has prepared a descriptive map appended hereto for the general information of the public and the towns. The boundaries of the Island Wind District, however, are as set forth above in this Decision and shall take precedence over any map.

Note: In Section 5.51 of this Decision, the towns are instructed to, after researching their needs, desires and options, re-evaluate the height coverage of the District as originally designated and may, in conjunction with proposal of regulations, request amendment which the Commission would consider in accordance with Section 8 of Chapter 831 of the Acts of 1977 as amended.

## **3. Why the Area Has Been Designated**

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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. Information available supports a finding by the Commission that the Island Wind District is of regional importance, that potential problems of uncontrolled or inappropriate development exist within the District, and that there are advantages to be gained by development of the area in a controlled manner.

In designating a District, the Commission must also consider the standards identified in the "Qualifications". The General Qualifications require the Commission to address itself to the need for designation, and to that end, the Commission finds that there exists a regional need for special regulations and planning to protect the District and its people from damage or 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 District or impediments to proper development will be a substantial loss to the region or to two or more towns on the Island.

Regarding regional interest in the Ocean Zone, the Commission embraces the principles of the public trust doctrine, legacy from old Roman and English law. The public trust doctrine rests upon two major principles; that the public has fundamental rights and interest in natural resources such as the air, the sea and the shore; and that government, as trustee of the public interest, has a duty to preserve and enhance these natural resources and the public's right to use them. The Commission notes unanimous support among Boards of Selectmen and Planning Boards for the designation, a rare expression of concurrence across town boundaries.

Regarding regional interest in the Land Zone, the Commission further finds that responsibilities regarding consumption and generation of energy are regional in nature, even global. The Commission notes that the "grid", by its nature, reaches across town boundaries to unite consumers of energy.

In considering the problems of uncontrolled or inappropriate development, the Commission notes that *Chapter 114 of the Acts of 2008* superseded protective provisions of *M.G.L. Chapter 132A: Section 15. Prohibited activities in ocean sanctuaries*. The Commission finds that a void has been left in protection of valuable ocean resources within the town boundaries. The Commission concurs with the nomination statement: "...*Inappropriate development will endanger effective stewardship of Ocean waters held in trust for the public benefit or destroy...vistas of extraordinary beauty*".

For the overall District, the Commission concurs with the nomination statement: "*Inappropriate development will imperil the following resources:*

- *Environmental/ecological*
- *Economic (fisheries, tourism, land values)*
- *Historic and cultural resources*"

The Commission finds that so important are the environmental and economic impacts, and so important is the visual impact and the associated cultural values for present and future generations, and so important is the need to generate and consume energy wisely, that special development controls within the District must be adopted.

Regarding the advantages to be gained by development in a controlled manner, the Commission notes that much of the District's geographical configuration places it in a particularly advantageous position to develop wind power. Having an affordable, environmentally sound, reliable, and safe supply of energy is essential to the general welfare. The Commission finds a need to explore and resolve the inherent conflicts between development of wind power and protection of vistas and other resources. The Commission concurs with the nomination statements that appropriate development will include wind energy facilities consistent with the enabling legislation of the Martha's Vineyard Commission, which states in its opening passages "*The purpose of the commission created by this act shall be to further protect the health, safety and general welfare of island residents and visitors by preserving and conserving for the enjoyment of present and future generations the unique natural, historical, ecological, scientific, and cultural values of Martha's Vineyard which contribute to public enjoyment, inspiration and scientific study, by protecting these values from development and uses which would impair them, and by promoting the enhancement of sound local economies.*"

The Island Wind District boundaries conform to the General Qualifications regarding size and shape of the District. Information available to the Commission supports a finding that the lands and waters therein reasonably belong within the Island Wind District. The lands and waters within the District form a critical area and the Commission finds that the area needs protection afforded by the Act. The designation includes all waters extending to the three-mile limit of the towns' jurisdiction, thereby including all of the geographical extent of ocean that is suitable for the adoption of regulations. The Land Zone meets the boundary of the Ocean Zone and covers lands and inland waters. Information available to the Commission supports a finding that the area designated is a logical planning area and is suitable for the adoption of coordinated regulations for the District as a whole. However, it will be important for the towns to re-evaluate the height boundary of the District, after thorough evaluation of options, to be sure that the height boundaries (governing only development of a height greater than 220' for the ocean and 150' for lands and inland waters) remain viable for regulating the District. Finally, the Commission finds that the boundaries of the Island Wind District as established are both convenient and recognizable.

## 4. Kind of District

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Section 8 of the Act permits the Commission to designate a District 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, on existing or proposed major public facility or other area of major public investment.

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 Island Wind District qualifies.

Further, the District meets the Specific Qualifications of the "Qualifications" for a Wildlife, Natural Scientific Or Ecological Resource District, and for a Cultural or Historic Resource District.

### **4.1 Compliance with Specific Qualifications**

**4.1.1 Fishing Resource District** *The water body in the district is particularly well suited for the production of shell or fin fish or can be made productive through good management and improvements.*

The nominations state, "Inappropriate development will imperil the following resources....fisheries...". The nominations appear to adequately make a case for this Qualification.

**4.1.2 Farming Resource District** - *The district includes areas particularly suited now and in the future for sustaining or augmenting the Island's food supply or other agriculture. The district must have one or more of the following characteristics:*

- *The district is generally being farmed or can be converted to farming conveniently relative to other areas on the Island.*
- *Land ownerships within the district are generally of adequate size to support farming. Soil, climate and topography are well suited for farming.*

The Land Zone includes prime agricultural soils and farms presently in production. The designation appears to meet this criterion.

**4.1.3 Wildlife, Natural, Scientific or Ecological Resource District** - *The district contains an important and identifiable wildlife, natural, scientific or ecological resource. This would include but not be limited to special plant and animal life and their habitats, as well as unusual geological features, and is critical because development may disrupt the ecological balance.*

Regarding the Ocean Zone, the Commission concurs with the nomination statement "Inappropriate development will endanger effective stewardship of ocean waters."

According to the Massachusetts Natural Heritage Atlas, the Ocean Zone includes portions of the following Priority Habitats of Rare Species: PH 1799, PH 1784, PH1782, PH1775, PH1773, PH1880, PH1805, PH1807, PH1808, PH1786, PH1783, PH1790, PH1781, PH1776, PH1772, and PH1770. The District includes portions of the following Estimated Habitats of Rare Wildlife and Certified Vernal Pools: WH1132, WH507, WH1126, WH1134, WH6095, WH1142, WH7052, WH512, WH4130, WH729, WH504, WH1127, WH1125, WH497, WH496, WH77, WH229 and WH3063. These mapped designations indicate that those areas are important in the life cycles of some protected species. According to the Natural Heritage and Endangered Species Program, protected species within the Ocean Zone include:

- Roseate Tern, *Sterna dougallii* protected as endangered, by both the Massachusetts Division of Fisheries and Wildlife and the United States Fish and Wildlife Service. “Unlike the Common Tern, they do not exhibit strong defensive measures against mammals or humans”.<sup>1</sup>
- Piping Plover, *Charadrius melodus*; protected as threatened, by both the Massachusetts Division of Fisheries and Wildlife and the United States Fish and Wildlife Service. According to the United States Fish and Wildlife Service...“Human disturbance currently is the greatest threat to the piping plover’s survival”.<sup>2</sup>
- Least Tern, *Sterna antillarum*; protected by Massachusetts Division of Fisheries and Wildlife as a Species of Special Concern
- Common Tern, *Sterna hirundo*; protected by Massachusetts Division of Fisheries and Wildlife as a Species of Special Concern

The Wetlands Conservancy Program mapped the eelgrass beds of Vineyard waters and vicinity in 1995 and again in 2000. According to the maps, there are a number of eelgrass beds in the District. Eelgrass beds are important habitat for juvenile species of finfish and shellfish, particularly scallops.

Regarding the Land Zone, the lands and inland waters of Martha’s Vineyard are known for a number of rare species, and particularly for the globally rare Sandplain Grasslands habitat and associated species.

The Commission finds that both the Ocean Zone and the Land Zone of the Island Wind District contain an important and unique wildlife, natural, scientific or ecological resource, including special plant and animal life and their habitats, as well as unusual geological features, and is critical because development may disrupt the ecological balance.

**4.1.4 Cultural or Historic Resource District** - The district contains a place, landscape, way or view which is in some special way expressive of the character of the Island, traditions of the Island residents, and of special interest to Island visitors. The maintenance and protection of those values is essential to a sound local economy. The district also: is of exceptional symbolic or recreational importance to the residents of more than one town and is either visible or accessible to them or can reasonably be made so; or is rare, unique, or makes an unusual contribution to the diversity of the Island character; or is irreplaceable, or replaceable only with extraordinary effort or expense. Subject to the above general tests,

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<sup>1</sup> Massachusetts Natural Heritage and Endangered Species Fact Sheet

<sup>2</sup> United States Fish and Wildlife Service Fact Sheet

designations may be considered for areas which are important for their connection with the history of the region-including its geological history or the history of its Indian settlement-or which symbolize and support the traditional activities and ways of Island life, or which give us a particular understanding of the Vineyard lands and their setting in the sea. These include places which present opportunities for hunting and fishing and the enjoyment of wildlife."

The District clearly qualifies as a Cultural or Historic Resource District under all sections of the Qualifications. The nominations state, *"Inappropriate development will endanger effective stewardship of ocean waters, held in trust for the public benefit or destroy.....vistas of extraordinary beauty. Inappropriate development will imperil the following resources: ....economic (fisheries, tourism...), historic and cultural resources"*. The nomination statements and other information available to the Commission point out the importance of this area to the cultural diversity of the Island. The character of the Ocean Zone is strongly connected with the unique character of the wild ocean and its visual dominance of the skyline, providing a sense of place for residents and visitors alike, drawing large numbers of tourists to enjoy the strangely haunting vistas. The Martha's Vineyard Commission has created a number of Districts of Critical Planning Concern in the ocean waters to protect the unique vistas in those areas. In 1999, the Commission designated the entire town of Aquinnah as the Town of Aquinnah District, with the goal *to protect the scenic character of the District from undue visual intrusion*. In 2001, the Commission designated the Wild and Scenic North Shore District as a District of Critical Planning Concern, with the goals *to protect the wild and scenic natural beauty of the District from undue visual intrusion; to allow the unimpeded natural processes of littoral drift to occur, providing continuous beach nourishment along the length of the North Shore; to protect wildlife habitats; to prevent obstruction to navigation throughout the District; to protect against storm damage that may be caused or exacerbated by inappropriate development; to promote economic development of fisheries and related industries*.

The Martha's Vineyard Commission found the need to establish a number of inland water and land-based Districts based at least partly on cultural or historic resources; such as the Copeland Plan District, the Gay Head Cliffs District and the Moshup Trail District. The Martha's Vineyard Commission has established Island-wide Districts such as the Special Places District and the Special Ways Zone of the Island Road District.

The Martha's Vineyard Commission's *Regional Island Plan* includes direction *"Preserve the Island's natural beauty and visual diversity for reasons of economy, heritage, character, recreation and aesthetics...The appearance of openness and great space is appreciated by Islanders and visitors, and it must be preserved. Manage change and growth to enhance the traditional and natural landscapes of Martha's Vineyard. Require that development plans fit the scale and quality of the inherited landscape so that generations to come will have views and open vistas to enjoy."*

The Island Wind District meets the first part of the standard *"contains a place, landscape, way or view which is in some special way expressive of the character of the Island, traditions of the Island residents"*. The second part of the standard says that the area ALSO fits into one or more of three categories: *"is of exceptional symbolic or recreational importance to the residents of more than one town and is either visible or accessible to them or can reasonably be made so; or is rare, unique, or makes an unusual contribution to the diversity of the Island character; or is irreplaceable, or*

replaceable only with extraordinary effort or expense". The District clearly qualifies as a Cultural or Historic Resource District under all sections of the Qualifications.

***4.1.6 Major Public Investment District*** *The district will include areas which have a significant impact on an existing or possible future major public investment or areas which are significantly affected by such an investment. In addition, the district must qualify as follows:*

- *The district pertains to a major public investment as defined in Chapter 831 as amended<sup>3</sup>, and may include airports, highways, schools, parks, beaches, preserves, public utilities and medical facilities owned or operated by a Federal, state or county agency, or by a quasi-public or charitable non-profit agency; and*
- *the intended use or operation of the public investment or the health, safety and welfare of the public could be impaired by improper development in the district.*

The area under consideration includes a number of public facilities meeting the standard for this criterion.

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<sup>3</sup>"A major public facility is any publicly owned facility of regional importance except: (1) any public facility operated by a municipality primarily for the benefit of the residents of that municipality, or by any agency serving primarily the residents of one municipality; (2) any street or highway which is not recognized as or maintained as a part of the state or federal highway system; or (3) any educational institution serving primarily the residents of one municipality."



## **5. Guidelines**

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The Commission adopts the following guidelines (“the Guidelines”) for the development of the Island Wind 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 for the development of the Island Wind District. In the event that a town has adopted regulations prior to October 1, 2009, they may be submitted for the Island Wind District, and will be reviewed for conformance to the guidelines in the manner required by the Act. 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 the towns to adopt compatible regulations within the Island Wind District. As used herein, the terms "development", "permit" and "regulations" shall have the same meaning as in the Act.

### **5.1 Goals**

To protect the natural, cultural and economic resources in the County of Dukes County, while allowing for development of wind energy facilities consistent with the enabling legislation of the Martha’s Vineyard Commission (MVC), Chapter 831 of the Acts of 1977 as amended.

### **5.2 Establishment of Guidelines**

The Towns shall adopt regulations of the types described in the Act, which conform to these Guidelines, to control development within the Island Wind District.

In appropriate cases, after notice and a Public Hearing, the Martha's Vineyard Commission may permit a town to adopt regulations that 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.

### **5.3 Establishment of Zone(s)**

The Island Wind District shall consist of zone(s), as follows:

**5.31** The Ocean Zone, consisting of that portion of the air space over all ocean waters within the County of Dukes County which exceeds two hundred twenty feet (220’) in height above mean sea level, and extending from the Mean Low Water Line seaward to the bounds of the municipal corporation.

**5.32** The Land Zone, consisting of that portion of the air space over all lands and inland waters within the County of Dukes County which exceeds one hundred fifty (150’) in height above mean natural grade (for land areas) and/or surface water level (for inland water areas), extending from the Mean Low Water line landward; except the Elizabeth Islands, the lands and inland waters within the Town of Edgartown, school buildings and grounds, the Indian Common Lands (generally known as the Cranberry Bogs, the Clay Cliffs and Herring Creek) and the Settlement Lands

## **5.4 Guidelines Applicable Throughout the District**

The Towns and Martha's Vineyard Commission shall review and/or undertake studies of the impacts of wind energy facilities on natural, cultural and economic resources, which will serve as the basis for development of regulations to ensure the best possible siting, appropriate scale, project design, and public benefit of wind energy generation facilities.

Although "mitigation" appears throughout these Guidelines as an option, the possibility of mitigation shall not indicate that mitigation can necessarily overcome the unsuitability of a site or design.

The following Guidelines apply to the impacts that possible developments in the District have within the District as well as on resource areas including the waters located in the vicinity of the District.

**5.4.1 Scenic Resources:** Identify significant public views and vistas, prioritizing those of greatest public importance, public use, and visibility. Evaluate impacts of facilities on day and night viewing, considering "dark skies" and ambient lighting. Provide criteria for reasonable protection of public views and vistas, including from properties available through town residency or non-profit membership, such as siting and project design to avoid, minimize or mitigate the visual impact on public viewsheds.

**5.4.2 Natural Environment:** Consider the impact of facilities on wildlife and habitats, and other natural resources and establish criteria to avoid, minimize or mitigate any negative impacts through siting or project design.

**5.4.3 Cultural or Historic:** Consider the impact of facilities on cultural, or historic resources, and provide any necessary measures to avoid, minimize or mitigate any negative impacts.

**5.4.4 Maintenance, Decommissioning, and Removal:** Include, from the inception of the project, measures to ensure the adequate maintenance of facilities as well as their decommissioning and removal should they no longer be needed. Project approval shall be dependent upon provision of a bond or other mechanism to ensure that funds are available.

**5.4.5 Hazards:** Consider the possible hazards related to the installation of facilities, including collapse of facilities and spills of oil and/or chemicals. Establish criteria to minimize these hazards and mitigate harms.

## **5.41 Special Guidelines for the Ocean Zone**

**5.41.1 Ocean Scenic Resources:** Identify significant public ocean views and vistas, prioritizing those of greatest public importance, public use, and visibility. (For example, these could include: views from public beaches, including those available through town residency or non-profit membership; views of the water from public roads; views from specific lookouts such as the National Natural Landmark of the Gay Head Cliffs; and ocean views from public lands. Provide criteria for reasonable protection of public views and vistas, such as siting and project design to avoid, minimize or mitigate the visual impact on public viewsheds.

**5.41.2 Avian Resources:** Consider the impact of ocean wind generation facilities on avian resources, both for resident and migratory birds. Consider the rarity of a particular species as well as other factors such as overall avian biomass. Establish criteria to avoid, minimize or mitigate any negative impacts through siting or project design.

**5.41.3 Commercial and Recreational Fishing:** Consider the impact of ocean wind generation facilities on the commercial fishing industry as well as on recreational fishing in the vicinity of the District, considering impacts both on the fish and their habitats as well as impacts on the means of fishermen to continue fishing to support themselves, their families and communities. Establish criteria to avoid, minimize or mitigate any negative impacts through siting or project design.

**5.41.4 Commercial and Recreational Boating:** Consider the impact of ocean wind generation facilities on commercial as well as recreational boating in the vicinity of the District. Establish criteria to avoid, minimize or mitigate any negative impacts through siting or project design.

**5.41.5 Benthic Resources:** Consider the impact of the construction and ongoing operation of ocean wind generation facilities, including cables to connect such facilities with the mainland, on the sea bottom, in the vicinity of the District. Establish criteria to avoid, minimize or mitigate any negative impacts through siting or project design.

**5.41.6 Local Economic Benefit:** Ensure that local economic benefit from commercial facilities includes at least a reasonable portion of shares and a reasonable portion of net return, with a portion to be dedicated to reducing local consumption of fossil fuels.

## **5.42 Special Guidelines for the Land Zone**

Note: In the first three months of 2010, the Martha's Vineyard Commission, in conjunction with the towns and the community, will be preparing a preliminary Wind Energy Siting Plan (WESP) for the lands and waters of Dukes County, as the Commission notified towns earlier this year. The preparation of the Plan has two objectives:

- To assist in determining the "appropriate scale" of wind energy facilities permitted in ocean waters by the Oceans Act of 2008, in accordance with the Secretary of Energy and Environmental Affairs' anticipated acknowledgement of the MVC's authority in the Massachusetts Ocean Management Plan to be adopted December 31, 2009.
- To serve as guidance in determining what projects may be permitted directly by the towns and which should be reviewed by the MVC as Developments of Regional Impact, as well as to assist the MVC in its review of these projects.
- Towns are encouraged to work closely with the MVC on the preparation of the WESP to provide input into its preparation as well as to ensure that town regulations are aligned with the Plan and with possible amendments to the Goals and Guidelines of the Island Wind District.

The following Guidelines apply to the impacts that possible developments in the Land Zone have within the District as well as on resource areas including lands and inland waters located in the vicinity of the District. They deal with the proper evaluation and selection of potential sites for wind energy facilities, proper location and design of turbines and associated structures, and research and monitoring (such as to assess impacts of the project on wildlife). They apply not only to wind turbines but also to the size and placement of construction areas, meteorological towers including their guy wires, power line corridors, access roads, electrical equipment, and other installations related to the wind energy generation facility.

Towns are advised to review and avoid conflicts with federal and state regulations including those dealing with aviation.

**5.42.1 Reasonable Development of Facilities:** Provide for the reasonable development of wind energy from public and/or private sources, compatible with the other guidelines. Consider utility-scale generation facilities to serve not only the needs within a town, but also the possibility of supplying energy to other parts of the Island and Commonwealth. Identify potential locations suitable for utility-scale facilities. Ensure that such suitability is not compromised by land use practices which invite conflict with utility-scale wind facilities.

**5.42.2 Health and Safety:** Identify risks and provide for siting, design, and installation of facilities in order to ensure safety of persons and property. These shall consider, among other things, climbing hazards, flicker, ice throw, guy wires, blade separation and possible collapse of wind turbines, and access to electrical equipment and to the interior of towers.

**5.42.3 Setbacks:** Provide adequate setbacks between wind turbines of various heights and other activities, including:

- Roads in the Island Road District,
- Other public and private ways that are not part of the facility,
- Residences,

- Non-residential occupied buildings, and
- Property lines.

These setbacks should be determined to maximize safety and to minimize sound emissions, shadow flicker, visual and environmental impacts. These setbacks may provide that in the case of several abutters erecting a communal facility, these setbacks may be reduced by common consent.

**5.42.4 Cultural Districts of Critical Planning Concern:** Within 300' of all cultural DCPCs, either prohibit utility-scale turbines or provide measures to ensure no undue impacts upon the critical resources protected by the District. (These include: Island Road District; Coastal District; Special Places District; Gay Head Cliff Area District; Moshup Trail District; Town of Aquinnah District; Wild and Scenic North Shore District; Dr. Fisher Mill District; Dr. Fisher Road District (West Tisbury); Meetinghouse Road and Tiasquam River District; Waskosim's Rock Special Place District; Menemsha, Nashaquitsa and Stonewall Ponds District; Oak Bluffs Southern Woodlands District; Oak Bluffs Harbor District; Copeland Plan District; and Vineyard Haven Harbor District.

**5.42.5 Noise and Vibration:** Identify potential impacts and provide for siting, design and installation of facilities to minimize the impacts of noise and vibration emanating from their operation, providing standards restricting noise impacts. Specify maximum sound-level thresholds, including the location and means of measurement, for the wind energy generating facilities and associated equipment. Include a limit on the increase in noise level at nearby residences and at property lines, addressing overall noise level and tonal sound (one octave band significantly higher than adjacent bands).

**5.42.6 Visual Impact:** Require that projects be sited to eliminate or minimize the shadow flicker on nearby properties. Require that projects be designed to minimize visual impact, such as by requiring that turbines be painted a neutral or subdued color and are free of advertizing. Ensure that lighting is minimized – such as by requiring that security lighting is on motion detectors.

**5.42.7 Public Spaces:** Identify the significant public spaces in each town and minimize the negative impact, if any, of wind energy facilities – including ancillary equipment and related access – on the space and its use. Consider how wind energy-generation facilities may help educate the public about renewable energy generation.

**5.42.8 Existing Uses:** Require that the installation of wind energy facilities interfere minimally with farm operations or other activities on the land.

**5.42.9 Construction Impacts:** Identify and minimize impacts related to shipping, site clearance, and temporary access.

**5.42.10 Maintenance, Decommissioning and Removal:** Include standards for erosion control, restoration of vegetation and prevention of noxious weeds, and standards for project dismantling and site restoration, including standards for disposition of foundation.

**5.42.11 Conformance with Wind Energy Siting Plan:** Require that a project either conforms to the Wind Energy Siting Plan prepared by the Martha's Vineyard Commission, or has been approved by the Martha's Vineyard Commission as a Development of Regional Impact.

## **5.5 Administration**

**5.51 Re-evaluation of boundary:** The towns shall, after researching their needs, desires and options, re-evaluate the height coverage of the District as originally designated and may request amendment which the Commission would consider in accordance with Section 8 of Chapter 831 of the Acts of 1977 as amended. This may be done in conjunction with proposal of regulations.

**5.52 Procedure:** Provide clear definitions of different types of wind energy generation facilities. For turbines, this could include scale (e.g. small, medium, and utility), type (e.g. monopole or lattice, fixed or floating), location (zone), use (commercial or non-commercial), and ownership (public or private). Prepare a map that indicates what types and scale of facilities would be considered in various locations.

**5.53 Criteria:** Include an appropriate administration of regulations that includes clear and objective criteria for project review, through a procedure to include a Special Permit procedure and/or Site Plan Review in order to determine the best possible siting of facilities.

**5.54 Developments of Regional Impact:** Regulations should identify what projects, due to their type, scale and/or siting, should be referred to the Martha's Vineyard Commission for review as Developments of Regional Impact.

**5.55 Balanced Approach:** The towns are encouraged to propose creative solutions in light of the need to balance protection of exceptional natural resources and the development of wind energy resources. In achieving balance, the degree to which wind energy resources are valued should reflect public interests and local impacts, based on criteria such as visibility, amount of energy produced, type of ownership, and other community benefit.

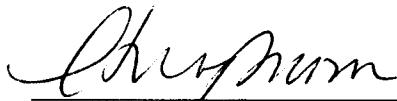
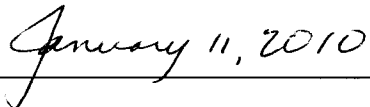
Town regulations shall provide for periodic evaluation of regulations based on the performance experience of facilities in place as well as of available technologies. Towns are encouraged to proposed updates to the Martha's Vineyard Commission, for conformance review in accordance with the Act, in order to keep the regulations performing as desired at the forefront of new technological advances.

By vote of the Martha's Vineyard Commission, November 5, 2009

  
Christina Brown, Chairman

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Land Zone voted by the Martha's Vineyard Commission, December 17, 2009

   
Christina Brown, Chairman

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## APPENDIX TO SECTION 5.42 SPECIAL GUIDELINES FOR THE LAND ZONE

**Inclusion of Numeric Standards:** The DCPC committee felt that it was premature to include numeric standards in the Guidelines. It is suggested that the Guidelines that might be adopted today call for standards, without including specific numbers. The revisions to the Guidelines to be prepared after preparation of the Wind Energy Siting Plan could include minimum numeric standards. The subcommittee suggested that the Commission might want to give an example of what standards could be, but not in the DCPC decision itself. The following is a possible wording.

*Based on a preliminary review of the literature:*

- *An example of the minimum setbacks could be the following multiples of the overall height of the turbine (to the tip of the blade): 2.5 times from roads in the Island Road DCPC; 1.25 times from other public and private ways that are not part of the facility, 1.5 times from residences, 1.25 from non-residential occupied buildings, and 1.1 times from property lines;*
- *An example of the noise standard could be a maximum of 5 decibels above ambient (background) noise level at the property line or occupied building (a commonly used standard, but one that is more restrictive than DEP's basic noise standard of 10 decibels above ambient), and no 1/3 octave band exceeding an adjacent band by more than 3 decibels.*



## REFERENCES

Chapter 831, Acts of 1977 as amended

Martha's Vineyard Commission, 1999, *Decision of the Martha's Vineyard Commission Designating the Town of Aquinnah District as a District of Critical Planning Concern*

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Natural Heritage & Endangered Species Program Fact Sheets

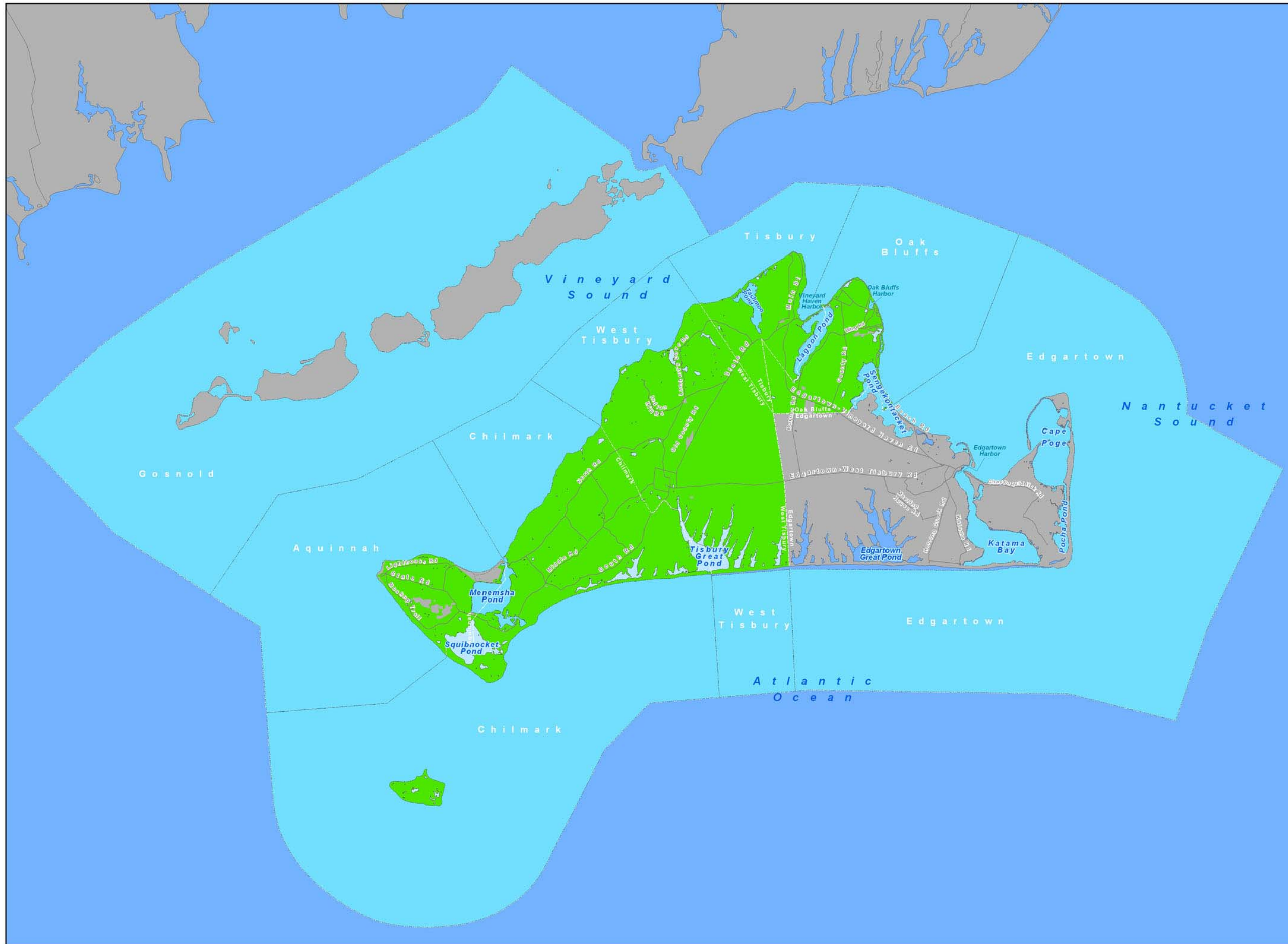
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Martha's Vineyard Commission, various Decisions Designating Districts of Critical Planning Concern



# Island Wind District

for illustration purposes only

	Town Boundary
	Land Zone - Island Wind DCPC Included Lands*
	Excluded Lands
	Ocean Zone - Island Wind DCPC Included Waters**
	Excluded Waters
	Roads Primary Road
	Secondary Road

\*Land Zone  
Included Lands: area > 150ft above mean natural grade  
Included Waters: area > 150ft above surface water level

\*\*Ocean Zone  
Included Waters: area > 220ft above mean sea level

**Land Zone Boundary:**  
That portion of the air space over all lands and inland waters within the County of Dukes County, except the Elizabeth Islands, the lands and inland waters within the Town of Edgartown, school buildings and grounds, the Indian Common Lands (generally known as the Cranberry Bogs, the Clay Cliffs, and Herring Creek) and the Settlement lands, which exceeds one hundred fifty feet (150') in height above mean natural grade (for land areas) and/or surface water level (for inland water areas), extending from the Mean Low Water line landward.

**Ocean Zone Boundary:**  
That portion of the air space over all ocean waters within the County of Dukes County which exceeds two hundred twenty feet (220') in height above mean sea level, and extending from the Mean Low Water Line seaward to the bounds of the municipal corporations.

**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.

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Data: Roads - MHD/MassGIS 2005, Town Boundary/Waters - MassGIS 1996, Parcel based info - Indian Lands 1999, Schools 2008 (Chik & Tsi), 2007 (Ch & Wts)  
Projection: StatePlane, MA - Nantucket, NAD83, Meters  
File: ds\_DR; duk\_wind\_slpc\_landwater.mxd  
Original in color

