

AQUINNAH ZONING BY-LAW

(Complete Version)

Approved At Special Town Meeting 11/7/01
Amended at Annual Town Meeting 05/11/04
Amended at Annual Town Meeting 05/08/05
Amended at Special Town Meeting 02/21/06
Amended at Special Town Meeting 11/17/09
Amended at Annual Town Meeting 05/10/2011
Amended at Special Town Meeting 05/08/2012

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AQUINNAH ZONING BY-LAW

ARTICLE I: GOALS AND PURPOSE

SECTION 1.1 GOALS

1.1-1 To protect and preserve the unique natural beauty as well as the rural and visual character of the Aquinnah landscape, to honor the significance of the land for the people of Gay Head/Aquinnah, and to remediate the impact of development on the residents of Aquinnah the following regulations have been adopted to guide development appropriate to and in harmony with its cultural and natural environment, to ensure that historical values and traditional reverence for the ocean coastline are honored and preserved for future generations.

SECTION 1.2 PURPOSE

1.2-1 The purpose of this By-Law is to promote the health, safety, convenience and welfare of the inhabitants of the Town of Aquinnah, to prevent flood damage, maintain water quality, assure adequate water supply, prevent pollution, promote wildlife habitats, assure the maintenance of cultural and historic sites and values, preserve and enhance the character of views, prevent damage to structures, land and water as a result of erosion, promote economic development of fisheries and related industries, maintain and enhance the overall economy of the Town of Aquinnah , and to provide them with the benefits and protection authorized by Chapter 808 of the Acts of the Commonwealth of 1975.

ARTICLE II: USE REGULATIONS

SECTION 2.1 DISTRICTS

2.1-1 The Town of Aquinnah is divided into the following districts:

- A. Rural - Residential Districts
- B. Marine Commercial Districts
- C. Special Overlay Districts (a district whose regulations are imposed in addition to the regulations of the underlying districts). Where there is a conflict between the zoning By-Law and a Special Overlay District regulation or restriction, the more limiting shall prevail. These districts include the Town Of Aquinnah District of Critical Planning Concern (Aquinnah DCPC), the Island Road District, the Special Ways Zone, the Special Places District, the Flood Plain Zone, the Coastal District, the Moshup Trail District of Critical Planning Concern (Moshup Trail DCPC) the Gay Head Cliff Area District of Critical Planning Concern (Cliffs DCPC), The Wild and Scenic North Shore District of Critical Planning Concern (North Shore DCPC) and the Rate of Development District of Critical Planning Concern (Building Permit Limitation DCPC).

2.1-2 These districts are located on a map entitled "Zoning Map of Aquinnah," attached as Appendix 1, and on file in the office of the Town Clerk. This map, with all explanatory matter concerning the special overlay districts, is hereby made part of the By-Law.

2.1-3 Articles I through IX of this By-Law contain the complete rules and regulations for the Town of Aquinnah, the Aquinnah DCPC, the Island Road District, the Special Ways Zone, the Special Places District, and the Building Permit Limitation DCPC, and also contain summaries of some of the more restrictive rules and regulations for the Moshup Trail DCPC, the Cliffs DCPC, the Coastal District, the Flood Plain Zone, and the North Shore DCPC. For owners of property in these latter districts complete rules and regulations are available here or at the Town Hall as follows:

- A. The Moshup Trail DCPC Rules and Regulations are contained in ARTICLE XI of this By-Law.
- B. The Cliffs DCPC Rules and Regulations are contained in ARTICLE XII of this By-Law.
- C. The Coastal District and Flood Plain Zone Rules and Regulations are contained in ARTICLE X of this By-Law.
- D. The North Shore DCPC Rules and Regulations are contained in ARTICLE XV of this By-Law.

SECTION 2.2 USES IN A RURAL-RESIDENTIAL DISTRICT

2.2-1 PERMITTED USES IN A RURAL-RESIDENTIAL DISTRICT

The following uses are permitted in a Rural-Residential District:

- A. Detached one-family dwellings, not including temporary or mobile structures except as provided below;
- B. Religious, educational, or municipal uses;
- C. Farm, forest, plant nursery, or other agricultural, aquacultural or horticultural uses;
- D. The harvesting and processing of fish and shellfish;
- E. Any use customarily accessory to and clearly incidental to a permitted principal use on the lot including any of the following:
 - 1. A home occupation employing no more than five persons not members of the resident family;
 - 2. The display and sale of natural products raised or prepared in the Town;
 - 3. The renting of rooms to, or boarding of, not more than eight persons not members of the resident family; or their guests;
 - 4. The temporary use of no more than two tents for the sleeping of members of the resident family or their guests;
 - 5. The storage of unregistered vehicles, boats, boat and equipment trailers and tents for the use of the resident family, if screened from view of the public road and/or adjacent residences;
 - 6. The keeping of horses, ponies, small animals and poultry for the enjoyment of the resident family;
 - 7. The temporary use of Board of Health approved portable toilets for special events or when mandated by law during construction.

2.2-2 USES BY SPECIAL PERMIT IN A RURAL-RESIDENTIAL DISTRICT

Any uses not specifically permitted above and not prohibited by other provisions of the By-Law are permitted in a Rural-Residential District, but only if the Planning Board grants a Special Permit for an exception. Such Special Permits may be granted if all other provisions of this By-Law are met, and if the following criteria are also met:

- A. The use is not likely to generate more auto trips both to and from the premises at the busiest hour of a normal operating day than is given by the number 10 multiplied by the number of acres contained in the lot. The estimation of likely auto traffic will be based on current available experience with the type and size of the use in question.
- B. Space for off Street Parking will be provided which is at least twice the footprint of all structures on the lot, and this parking arrangement will require no backing out onto the public right of way.
- C. All outdoor parking of trucks and unregistered vehicles, as well as storage, loading and service areas will be adequately screened from the view of roads and/or adjacent residences.

- D. There will be no odor, dust, fumes, glare, or flashing light which is perceptible without instruments more than 200 feet from the boundaries of the lot in question, except for warning devices, construction or maintenance work, or other special circumstances.
- E. The use will not cause continued erosion of the land or increased surface drainage for the lot.
- F. The use will not cause pollution of the surface or groundwater; saltwater intrusion into water supply wells; or an inadequate water supply to meet the anticipated demand of the proposed activity or of those existing or permissible on adjacent properties.
- G. No temporary or mobile structures not otherwise permitted under this by-law will be used or stored except if incidental to a fair, a special event, or a public construction project, and then only if for no more than 60 days.
- H. Where possible, the site design will preserve and enhance existing trees over 12 inches in diameter at the base, water courses, hills and other natural features, as well as vistas, ocean views and historic locations, and will minimize the intrusion into the character of existing development.
- I. The use will not cause the destruction of wildlife habitats, damage to wetlands or littoral ecology, damage to marine fisheries and shellfish, or any unnecessary decrease in agriculture use or potential productivity of the land.
- J. A swimming pool and tennis court may be considered accessory to the use of a dwelling provided that:
 - 1. Such a pool or court is used only by the residents of a dwelling and their guests,
 - 2. No portion of the pool or court is located within one hundred (100) feet of any boundary line of said lot,
 - 3. The pool is securely fenced to a height no less than five (5) feet,
 - 4. The location will not interfere with the enjoyment of the view,
 - 5. Any lighting used in connection with a swimming pool or tennis court shall be by permit issued by the Building Inspector. Such permit shall not be issued if the lighting to be constructed unreasonably illuminates neighboring property, and
 - 6. Conditions in regard to filling a pool and disposal of pool wastewater shall be set by the local Board of Health.

SECTION 2.3 USES IN A MARINE COMMERCIAL DISTRICT

2.3-1 PERMITTED USES IN A MARINE COMMERCIAL DISTRICT

The following uses are permitted in a Marine Commercial District:

- A. Aquaculture and the harvesting and processing of fish and shellfish;
- B. The servicing, repair, rental and charter, and storage of boats, provided that no more than four boats will be stored or assembled there;
- C. Religious, educational, or municipal uses;
- D. Any use customarily accessory to and clearly incidental to a permitted use on the lot, but not including the use or storage of tents, trailers, mobile homes, camper vehicles, and other temporary or portable dwellings or structures. The temporary use of Board of Health approved portable toilets for special events or when mandated by law during construction is permitted.

2.3-2 USES BY SPECIAL PERMIT IN A MARINE COMMERCIAL DISTRICT

Any commercial or industrial use not specifically permitted above, inclusive of Marinas and boat repair yards of larger size, which are not prohibited by other provisions of this By-Law and which are dependent on marine transportation, or marine products or which service marine transportation, are permitted in a Marine Commercial District, but only if the Planning Board

grants a Special Permit for an exception. Such permits may be granted if all other provisions of this by-law are met, and if the criteria listed in Section 2.2-2 are also met.

SECTION 2.4 USES IN OTHER DISTRICTS AND AREAS

2.4-1 COASTAL DISTRICT *(Amended 5.8.2012 STM)*

In the Coastal District the following uses are by Special Permit from the Planning Board Plan Review Committee:

- A. Construction of buildings or structures within two hundred (200) feet of wetlands, waterbodies, beaches, dunes or the crest of bluffs over 15 feet high.
- B. Within one hundred (100) feet above features, special permit may only be granted for a fishing related marine commercial structure.
- C. The Planning Board Plan Review Committee shall have the authority to modify or vary the dimensional requirements of sections 10.1-4B and 2.4-1B by Special Permit for the reconstruction or alteration of pre-existing, nonconforming structures in existence as of December 22, 1975, based on the standards established in Section 13.4-11A, however; pre-existing nonconforming municipal structures may also be extended.
- D. On Municipal lots, the Planning Board Plan Review Committee shall have the authority to modify or vary the requirements of section 10.1-4B and 2.4-1B by Special Permit for new municipal structures and uses if it determines that the siting of the new structure is in harmony with the goals of this By-Law.

2.4-2 COASTAL AREAS *(Amended 5.8.2012 STM)*

In Coastal Areas (areas within 500 feet of the mean high water mark of the ocean or any major pond):

- A. There shall be no swimming pools or tennis courts built.
- B. Except on municipal lots, there shall be no new boardwalks or parking lots.

2.4-3 SPECIAL HISTORICAL AND CULTURAL PLACES

- A. There shall be no development within forty (40) feet of a special place of historic value, as listed on the special places register of the Martha's Vineyard Commission.
- B. Within one hundred (100) feet of the special places listed in Section 2.4-3C:
 1. There shall be no development, construction, clearing of vegetation or shrubs, or alteration of the land without a Special Permit from the Planning Board Plan Review Committee which may be granted if the Committee finds that the proposal is in harmony with the cultural and historical aspects of the site.
 2. Uses will be permitted which do not require the construction, erection, installation, or placement of any structure, sanitary disposal facility, road or way, or fence. Such uses may include outdoor recreation (including hunting, trapping or fishing), conservation purposes, agricultural purposes, etc.).
- C. The following places are of special historical and cultural significance to the Town of Aquinnah and need to be honored and protected: Occooch Pond at its extreme high water mark, Toad Rock, Clay Pits, Mittark's Grave, Silas Paul's Grave, Gay Head Cattle Pound, Cook's Spring, Gay Head Baptist Church / Parsonage, Old Indian Cemetary, Indian Burial Ground Lot 1, Indian Burial Ground-Old Lobsterville Road, Gay Head School, Deacon Simon Johnson House.

2.4-4 Moshup Trail DCPC

- A. Within the Moshup Trail DCPC, a Special Permit shall be required by the Planning Board Plan Review Committee for a private parking area on a lot (refer to Article VII, Definitions, and to Article XI for the review criteria).
- B. No commercial parking area will be permitted except those which benefit the Townspeople, such as Philbin Beach.
- C. In order to preserve the visual integrity of the Moshup Trail DCPC, no person(s) shall place, store or maintain unregistered motor vehicles on these lot(s).

2.4-5 North Shore DCPC

Within the North Shore DCPC, the permanent placement of any fill or structures is only allowed for municipal purposes or for purposes of commercial fishing, shellfishing or aquaculture, and only by Special Permit from the Planning Board. This district covers the waters, and the land under the waters, on the North shore of Aquinnah from the Chilmark/Aquinnah Town line to the Gay Head lighthouse, and extending 100 feet seaward from the mean low water line.

SECTION 2.5 HAZARDOUS USE

2.5-1 In any district, no use of any building or parcel of land may be established which is hazardous to health, or dangerous due to the possibility of fire, explosion, or other cause.

2.5-2 UNDERGROUND PETROLEUM STORAGE TANKS

- A. No storage facility shall be installed unless the owner shall have first obtained a permit from the Board of Health and the Fire Department.
- B. The owner of every storage facility that has been installed prior to the effective date of this By-Law shall apply to the Board of Health, within six months of the effective date of this By-Law, for a permit to maintain the storage facility.
- C. No replacement or modification shall be made to any existing underground fuel storage facility until the owner has a permit from the Board of Health to carry on such activity.
- D. A complete copy of this By-Law is on file for public inspection at the Aquinnah Town Hall.

SECTION 2.6 STONE WALLS AND FENCES

2.6-1 No stone wall existing as of June 1, 1995 may be moved, removed or altered except by Special Permit from the Planning Board Plan Review Committee.

2.6-2 In order to minimize the visual prominence of man made features and protect the scenic/rural character of the town, a Special Permit is required for the removal, replacement or erection of fences in open/highly visible areas or within two hundred (200) feet of any public road or way. No Special Permit is required for removal, or erection of low visibility fences (made out of materials like chicken wire) for enclosing gardens or pets.

2.6-3 No fences, walls or structures shall be erected, placed, or constructed within twenty (20) feet of the centerline of Old Lobsterville Road, Old South Road, and Old Church Road.

2.6-4 In the Moshup Trail and Cliff's DCPC's a Special Permit shall be required from the Planning Board Plan Review Committee for the erection of new stone walls and fences.

2.6-5 In the Cliffs DCPC a Special Permit shall be required from the Planning Board Plan Review Committee for the removal or replacement of fences.

SECTION 2.7 UTILITIES

2.7-1 All new utilities, or in the case of a substantial renovation, all existing utilities shall be placed underground.

SECTION 2.8 SIGNS

2.8-1 There shall be no signs in the ADCPC except by approval from the Planning Board. Approval by the Planning Board may be granted for signs up to six (6) feet square in size with no moving or flashing elements and shall be unlighted unless by a steady white reflected and shielded light, in accordance with the Town lighting By-Law.

2.8-2 There shall be no more than one sign per lot, and that sign may only be used to identify the premises and/or to refer to products or services available there.

2.8-3 Street signs are restricted to 6 inches by 24 inches. Signs identifying residence and posting signs (no hunting, no trespassing) are exempt.

2.8-3 In the Marine Commercial District the Planning Board may grant a Special Permit for more than one (1) sign per lot if it finds that the proposal is in harmony with the goals and purpose of ARTICLE I of this By-Law.

SECTION 2.9 ELECTRICAL GENERATORS

2.9-1 There shall be no permanent electrical generators in the Aquinnah DCPC except by approval of the Planning Board Plan Review Committee. Generators are structures and are subject to the setback requirements of section 3.5 and deciding requirements of section 3.9. Before granting a Special Permit the Planning Board Plan Review Committee must also consider the amount of noise created by the generator and its impact on people and wildlife in the neighborhood. Portable generators may be used during construction and for temporary emergency use without a special permit.

ARTICLE III: SITING, DIMENSIONAL, AND DENSITY REGULATIONS

SECTION 3.1 MINIMUM LOT SIZE

3.1-1 No existing lot shall be changed in any size or shape so as to result, if developed, in a violation of any of the dimensional regulations set forth below. No structures may be erected on any lot which is less than 2 acres in extent, except as provided by the rules for compact siting in Section 3.3-2 below, or unless that lot is a pre-existing lot as provided in Section 3.4.

SECTION 3.2 STRUCTURAL DENSITY

3.2-1 On any lot, the total footprint of all structures may not exceed two thousand (2,000) square feet except by Special Permit from the Planing Board Plan Review Committee.

3.2-2 Additions to existing structures may be allowed by Special Permit from the Planning Board Plan Review Committee.

SECTION 3.3 USE DENSITY

3.3-1 On any lot, there may be no more than one dwelling for every two (2) acres contained in the lot. No commercial enterprise may occupy the same lot as a dwelling unit, unless it is a home occupation accessory to the dwelling.

3.3-2 Compact Siting

The Planning Board may, by Special Permit, allow that no more than 20 dwellings with their normal accessory uses be placed on a contiguous group of lots of no less than 5000 square feet each, and with side and rear, but not street setbacks reduced to no less than 10 feet from the lot lines, provided this group of lots is immediately adjacent to an open area whose extent, together with the house lots, equals at least 2 acres multiplied by the number of dwellings. The Board must also find:

- A. The open area is legally established to remain permanently unbuilt-upon, permanently associated with those dwellings lots, and owned and maintained by their owners;
- B. Satisfactory and permanent provision is made for water supply and sewage disposal without cost or responsibility to the Town of Aquinnah; and
- C. The resulting compact development will be superior to conventional development in preserving open space, utilizing natural features, and allowing more efficient services while not being inferior to conventional development in any other respect.

3.3-3 Homesite Lots *(Amended 5.10.2011 ATM)*

A. For the purpose of helping Aquinnah residents who have lived here for a substantial period of time and who, because of rising land prices, have been unable to obtain suitable land for their permanent homes at a reasonable price, and who desire to continue to live in Aquinnah, the Planning Board Plan Review may grant a Special Permit to build a one-family dwelling for owner occupancy upon a Homesite Lot as prescribed in this By-Law.

B. Lots which are one acre or more and were created after the adoption of zoning, may be built upon by an individual who has been qualified by the Aquinnah Housing Committee under current Resident Homesite guidelines and by Special Permit from the Planning Board Plan Review Committee under the following conditions:

1. The lot satisfies all applicable Zoning and Board of Health requirements with the exception of section 3.1-1.
2. The applicant for the Special Permit transfers ownership of the Homestead Lot, prior to the issuance of a building permit, to the Dukes County Regional Housing Authority (DCRHA) or to an entity selected by the Town, through the Aquinnah Housing Committee, through an RFP or other process in accordance with governing law, to lease the Homestead Lot to the applicant, or other lessee approved by the Aquinnah Housing Committee, under a long term lease, which lease ensures the perpetual affordability of the Homestead Lot under terms acceptable to the Aquinnah Housing Committee and which provides the Town the option, in the case of a default, foreclosure, dissolution, or bankruptcy of either the applicant, the DCRHA, or any entity to which the Town has delegated the right to manage the Homestead Lot, to acquire the Homestead Lot.

C. Owners of lots containing three acres or more may create by subdivision a Homestead Lot for conveyance to an Aquinnah resident who has been qualified by the Aquinnah Housing Committee under current Resident Homesite guidelines, and by Special Permit from the Planning Board Plan Review Committee under the same conditions specified under Section 3.3-3B and 13.12-B provided, however that the remainder lot(s) must be at least 2 acres in area and satisfy all applicable Board of Health and Zoning regulations.

SECTION 3.4 NON-CONFORMING USES AND PRE-EXISTING LOTS

3.4-1 Pre-Existing Lots

Any pre-existing lot containing an area of at least 5, 000 square feet and held in separate ownership from any adjoining land may have erected on it any structure otherwise permitted on a lot of the minimum allowable area, even if the pre-existing lot does not comply with the minimum area requirements.

3.4-2 Non-Conforming Uses (*Amended 5.8.2012 STM*)

A. Any pre-existing, nonconforming structure or use which does not conform to the provisions of this By-Law or any amendment thereto may nevertheless continue in its use. Pre-existing, nonconforming structures and uses in existence as of June 17, 1999 may be reconstructed, altered, or extended by Special Permit from the Planning Board Plan Review Committee; provided, however, that the reconstruction, extension, or alteration bears a reasonable relationship to the original size and nature of the nonconforming structure or use, and that the Planning Board Plan Review Committee finds that the change, extension or alteration is not substantially more detrimental than the existing nonconforming structure or use to the neighborhood. Changes qualifying for a zoning determination under Section 13.14-1 do not require a Special Permit if the Planning Board Plan Review Committee makes a finding that the proposed reconstruction, alteration, or extension does not increase the nonconforming nature of the structure or use. Where Districts of Critical Planning Concern overlap, the earliest designation date (December 22, 1975 for the Coastal District and for the Island Road District, May 4, 1989 for the Gay Head Cliff Area District, September 7, 1995 for the Moshup Trail District, and June 17, 1999 for the Town of Aquinnah District) shall define the date of “pre-existing, nonconforming”.

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

C. If a non-conforming use or structure is damaged or destroyed it may be restored to its previous nonconforming status. Non-conforming uses or structures abandoned or not used for a period of not less than five years shall not thereafter be revived. Where Districts of Critical Planning Concern overlap, the earliest designation date (December 22, 1975 for the Coastal District and for the Island Road District, May 4, 1989 for the Gay Head Cliff Area District, September 7, 1995 for the Moshup Trail District, and June 17, 1999 for the Town of Aquinnah District) shall define the date of “pre-existing, nonconforming.”

SECTION 3.5 SETBACKS (*Amended 5.8.2012 STM*)

A. Except as provided in Section 13.8 (Special and Historic Places, also in Section 2.4-3) of this By-Law, all structures shall be set back at least:

1. Thirty (30) feet from any lot line.
2. One hundred and fifty (150) feet from Moshup Trail,
3. Twenty (20) feet from the centerline of Old Lobsterville Road, Old South Road and Old Church Road (The Special Ways Zone).
4. Forty (40) feet measured from the centerline of all other roads and public ways.
5. One hundred and fifty (150) feet from the crest of bluffs or cliffs in the Gay Head Cliff Area DCPC.
6. One hundred (100) feet from wetlands, waterbodies, beaches, dunes or the crest of bluffs over 15 feet high in the Coastal District, except for fishing related marine commercial structures.

B. The Planning Board Plan Review Committee shall have the authority to modify or vary these dimensional requirements by Special Permit for the reconstruction, extension, or alteration of pre-existing, nonconforming structures based on the standards established in Section 13.4-11A (also in 3.4-2A), except in the Coastal District and the Special Ways Zone in which only municipal structures can be extended, provided, however, that in the Gay Head Cliff Area District the setback from the crest of bluffs or cliffs shall not in any case be less than 50' (fifty feet). Where Districts of Critical Planning Concern overlap, the earliest designation date (December 22, 1975 for the Coastal District and for the Island Road District, May 4, 1989 for the Gay Head Cliff Area District, September 7, 1995 for the Moshup Trail District, and June 17, 1999 for the Town of Aquinnah District) shall define the date of "pre-existing, nonconforming".

C. On Municipal lots, except those in The Special Ways Zone, the Planning Board Plan Review Committee shall have the authority to modify or vary these dimensional requirements by Special Permit for new structures if it determines that the siting of the new structure is in harmony with the goals of the applicable By-Laws and in the Moshup Trail District the *Moshup Trail: Site Design Guidelines*, provided however that in the Gay Head Cliff Area District the setback from the crest of bluffs or cliffs shall not in any case be less than 50' (fifty feet).

SECTION 3.6 BUILDING HEIGHT, ROOFS, DECKS AND FOUNDATIONS

3.6-1 Building Height

The height of structures, as measured vertically from mean natural grade within twenty (20) feet of the structure to the highest point of the roof, shall not, except by Special Permit from the Planning Board Plan Review Committee exceed:

- A. In open/highly visible areas, and within 200 feet of any public road or way:
 - 1. Eighteen (18) feet for a gable or hip roof.
 - 2. Thirteen (13) feet for a flat or shed roof.
 - 3. The Planning Board Plan Review Committee may grant a Special Permit to exceed this height limitation up to a maximum of twenty-four (24) feet.
- B. In all other areas:
 - 1. Twenty-four (24) feet or two (2) stories, whichever is less, for a gable or hip roof.
 - 2. Nineteen (19) feet or two (2) stories, whichever is less, for a flat, shed or roof with a pitch less than 3 inches in 12 inches.

3.6-2 Slender and unoccupied projections customarily carried above the roof such as chimneys, flagpoles, antennas, and weathervanes may rise an additional 10 feet above mean natural grade, or higher by Special Permit from the Planning Board Plan Review Committee, where they will not block or damage the view from roads and or other residences, and are consistent with traditional character of the area.

3.6-3 In the Coastal District (ARTICLE X):

- A. Height shall be measured from the base flood elevation.
- B. Structures over 18 feet for a pitched roof and 13 feet for a flat or shed roof are only allowed in wooded terrain.

3.6-4 Roofs, Decks and Exterior Elements

Roof types other than gable, hip, flat, or shed; roof walks and/or second story porches and decks on new or additions to pre-existing structures shall require a Special Permit from the Planning Board Plan Review Committee in open/highly visible areas, and within 200 feet of any public road or way. Roof types other than gable, hip, flat, or shed; roof walks and/or second story porches and decks on new or additions to pre-existing structures should blend well with the dwelling and coordinate with the remaining design. Their scale and proportion should harmonize completely with the total structure and siting on the lot. The design guidelines for the Moshup Trail DCPC are available at the Town Hall and contain examples of acceptable designs.

3.6-5 Foundations

In open/highly visible areas, and within 200 feet of any public road or way, building foundations shall be no more than eighteen (18) inches in height from the median natural grade without a Special Permit from the Planning Board Plan Review Committee.

SECTION 3.7 MINIMUM FRONTAGE *(Amended 5.10.2011 ATM)*

(Amended 5.8.2012 STM)

3.7-1

- A. All lots shall have a minimum frontage of 200 feet on a public or private way.
- B. The Planning Board Plan Review Committee shall have the authority to modify or vary the dimensional requirements of this By-law by Special Permit for the reconstruction, extension, or alteration of pre-existing, nonconforming structures in existence as of May 10, 2011 situated on lots containing less than the minimum frontage required by Section 13.4-10(A.) and 3.7-1(A).

SECTION 3.8 ROADS

3.8-1 Goals

- A. To allow for safe access and travel along the roads, protect the visual character, diversity of landscape and historic features of the journey along the roads, and maintain and enhance the State Road System as a major public facility.
- B. To protect Old Lobsterville Road, Old South Road, and Old Church Road as historic places, to retain these ways open primarily for uses such as walking and horseback riding, but not developed as a primary vehicular route except for access to properties where no alternative access exists.

3.8-2

- A. No roads or ways may be more than twelve (12) feet wide except by Special Permit.
- B. No way or road shall be constructed within two hundred (200) feet of the centerline of Old Lobsterville Road, Old South Road, and Old Church Road which exceeds a width of twelve (12) feet.

3.8-3

- A. Roads and ways should use pervious paving materials such as gravel, bluestone, crushed shells, or wood chips. Roads and ways may not be paved with any impervious material unless by Special Permit from the Planning Board Plan Review Committee.
- B. Old Lobsterville Road, Old South Road, and Old Church Road shall not be paved with any impervious material.

3.8-4 Curbcuts and Vehicular Access

A. Curbcuts must be approved by the Planning Board Plan Review committee taking into consideration safety (line of obstruction vision to the public road), road frontage of lot, frequency and duration of use, and design. Whenever possible curbcuts are to be shared.

B. Any vehicular access to the public road must not result in direct vehicular access to the lot and must be at least 1,000 feet, measured on the same side of the road, from any other vehicular access and such accesses shall not be greater than 12 feet in width, except that if this requirement would prevent at least one (1) access to a public road from each lot held in separate ownership from the lots contiguous thereto as of December 22, 1975, each lot shall be allowed a single access which shall be located as far as practicable from all other such ways located on either side of the road. No land shall hereafter be divided or sold if such lot or lots would not be entitled to a way to provide vehicular access to a public way as provided herein.

SECTION 3.9 SITING

3.9-1 Site Plan Review

A. A Special Permit from the Planning Board Plan Review Committee is required for the siting of:

1. A building, structure or dwelling on its lot including primary and accessory dwellings and or buildings,
2. An addition to any existing buildings, structures or dwellings,
3. Roads, curbcuts, driveways, vehicular paths, pedestrian paths over three feet wide and private residential parking areas,
4. Pools and tennis courts.
5. Wells, septic systems and subsurface, surface drainage or runoff systems, in the Cliffs DCPC.

B. In reviewing the application for a Special Permit, the Planning Board Plan Review Committee will also determine whether the location qualifies as an “open/highly visible area” for the purposes of this By-Law.

3.9-2 Siting Guidelines

A. All new development must be consistent with the rural character of the Town of Aquinnah, minimize visual prominence of manmade features and shall not radically alter or interrupt the skyline of the Town as viewed from any public way, including any public water body and including the lookout at the Aquinnah Cliffs. Before granting a Special Permit for a new structure, addition or alterations to the land such as a driveway or roadway, the Planning Board Plan Review Committee must consider the following guidelines:

1. In order to preserve the natural landscape, the profile of development should be as unobtrusive as possible. The impact of development should be determined from several vantage points including the highest public view, the aspect in the immediate vicinity and the nearest major public road. Height of structures should not exceed the local tree line. Plantings may be required to afford some screening of development including driveways from public or neighboring views. Large expanses of manicured lawns are discouraged.
2. Development should be sited on or at least near the side slope of a valley and never into the center of a valley. Development should not be sited at the top of a slope where their entire mass will be starkly silhouetted against the sky. Development should be sited down the grade so that the slope contains the buildings and serves as a partial backdrop for them.

3. In open/highly visible areas, if the slope of the natural grade allows a basement to be exposed above finished grade the project must be designed or landscaped so that the basement level is not visible from public places.
4. On wooded hillsides in highly visible areas, trees should be retained to minimize the visibility of the structure, but still allow it a view looking out among the trees
5. Driveways and roads should be winding, not straight, to help minimize the visibility of manmade features.
6. Optimum siting of development involves consideration of the public and private viewshed of neighbors and abutters.

3.9-3 Design Guidelines

- A. In open/highly visible areas and within two-hundred (200) feet of any public road or way:
 1. Regardless of architectural style, buildings and structures should be sheathed in traditional neutral materials, such as natural wood shingles.
 2. Roofs and ridgelines should be designed to blend into the horizon from most perspectives. Roofing materials shall be neutral asphalt, aggregate or cedar shingles.
 3. The use of glass walls is discouraged in order to minimize the impact of artificial interior light on the night skies for both public enjoyment and ecological reasons. Glass walls should be designed to have curtains or shades that occlude interior light.
 4. Trim colors should be neutral or natural wood.
 5. Design consistent with the rural and historical nature of the Town of Aquinnah is encouraged. Examples are available at the Aquinnah Town Hall.
- B. In the Moshup Trail DCPC:
 1. Buildings shall be constructed of natural wood shingles with neutral trim color (refer to ARTICLE VII Definitions).
 2. Roofing materials shall be black asphalt or cedar shingles.

3.9-4 Accessory Structures and Additions

Accessory structures and additions to pre-existing structures shall conform in materials, scale and proportion to the principal structure. In cases where pre-existing structures are not compatible with the requirements for new construction, accessory structures and additions shall conform to the requirements for new construction.

ARTICLE IV: CONSERVATION REGULATIONS

SECTION 4.1 CONSERVATION AREAS

4.1-1 These conservation areas are intended to include those areas regulated by Chapter 131, Section 40 of the General laws, and also to include all land which is less than 10 feet above mean high water. No structure may occupy, nor may any grading, excavation, or filling be done in any wetland, land subject to flood, cliff, beach, or dune immediately behind a beach except by Special Permit from the Planning Board and subsequent review and approval by the Conservation Commission. In granting a special permit, the Board must be satisfied that there will be no irreversible damage to the natural resources of the Town, and no hazard to the health or safety such as might arise from pollution, the backing up of sewage, increased flooding, structural damage, lack of safe egress, or a rupture of utility systems.

SECTION 4.2 EXCAVATION

4.2-1 No gravel, loam, sand, or clay or stone may be removed from any site without a Special Permit from the Board of Selectmen.

SECTION 4.3 CLEARING, CUTTING AND VEGETATION

4.3-1 Goals

The purpose of this by-law is to protect trees that create a tree line, to protect trees that shield homes and other structures from view, to preserve and enhance existing large trees, and to preserve natural vegetative buffer zones or “greenbelts” along property lines.

4.3-2 Clear Cutting

A. Except where the land is primarily used for farm, forest, plant nursery, or other agricultural or horticultural uses, there will be no clear cutting of trees on any lot except by Special Permit from the Planning Board Plan Review Committee. Clear cutting is defined as:

1. The removal of all living trees, over 3 inches in diameter at the base, from an area greater than 200 square feet,
2. The removal of any living tree over 9 inches in diameter at the base, or
3. The removal of any living tree, 3 inches to 9 inches at the base, when there is no other tree within a 25 foot radius.

To clarify, without a Special Permit you are allowed to clear 200 square feet of land of all trees as long as no trees over 9 inches in diameter at the base are removed, and as long as you are not removing just one tree, 3 inches to 9 inches in diameter at the base, with no other tree within a 25 foot radius.

B. There are more restrictive rules for clear cutting in the Moshup Trail DCPC (ARTICLE XI) and the Cliffs DCPC (ARTICLE XII) that state there shall be no removal of ground cover, shrubs or trees anywhere in these areas without a Special Permit. In the Cliffs DCPC there is a no build/no cut zone within one hundred and fifty (150) feet of the crest of bluffs and cliffs. No Special Permit is needed for clearing to create a vegetable, herb, or flower garden of 100 square feet or less, as long as you are not removing any trees over 9 inches diameter at the base.

C. There are more restrictive rules for clear cutting within 200 feet of wetlands and resource areas under the jurisdiction of the Aquinnah Conservation Commission that prohibit “ the destruction of vegetation” within these areas without a Special Permit. Clear cutting of trees less than 3 inches wide at the base for an area less than 101 square feet is allowed without a Special Permit.

4.3-3 PRUNING AND TOPPING

A. Pruning in a professional manner to promote the health and vigor of a tree, or for cosmetic/aesthetic purposes is allowed, however aggressive pruning that jeopardizes the health of a tree or significantly increases the visibility of man made structures requires approval from the Planning Board.

B. Topping to maintain an existing or previously approved view is allowed if it is done in a professional manner that will not hurt the health of the tree and preserves its natural canopy and form. Topping that jeopardizes the health of a tree or increases the visibility of man mad structures requires approval from the Planning Board.

4.3-4 Vegetation

Within the ADCPC, planting shall be indigenous or easily naturalized plant types and materials. The removal of invasive ground cover and shrubs to preserve an existing yard and the removal of invasive ground cover and shrubs in uncleared areas in order to protect any species are allowed throughout the ADCPC including the Moshup Trail and Cliffs DCPC’s. See Definitions (ARTICLE VII) for a list of indigenous and invasive species.

4.3-5 Tree Warden

To facilitate the administration of this By-Law, a Tree Warden has been appointed by the Selectmen and confirmed by the Planning Board. The Tree Warden has been delegated some of

the Planning Board's powers and responsibilities under this By-Law and is able to issue or deny approval for clearing, cutting, pruning and topping of ground cover shrubs and trees, within certain guidelines. There is no application fee or public notice requirement for a permit from the Tree Warden. Details on the administration of the by-law and the duties of the Tree Warden are available at the town hall offices.

4.3-6 Enforcement

Any person violating any of the provisions of section 4.3 shall be fined and shall restore the damage. The owner of the property will be fined \$300 per day for each tree over three inches (3") in diameter at the base that is cut, topped or aggressively/unprofessionally pruned, or for every 200 square feet of ground cleared, in violation of the bylaw. In addition, the person (s), if any, other than the owner, that committed the violation will be fined the same as the owner of the property. These fines will be assessed every day until the owner of the property submits a Special Permit application and a restoration plan to the Planning Board Plan Review Committee. If the Special Permit and restoration plan are not approved by the Planning Board Plan Review Committee, the daily fines shall be immediately reinstated until a restoration plan is approved and/or a Special Permit granted by the Planning Board Plan Review Committee.

A restoration plan must include a scale drawing showing the location, size and type of all vegetation to be planted so that the Tree Warden and Zoning Officer have a clear means for measuring compliance. A restoration plan must include a date by which the restoration is to be completed. If restoration is not complete by this date, the daily fines shall be immediately reinstated until restoration is completed. Restoration will be considered "completed" when the required planting is finished, however, the owner is required to foster the growth of any new plantings and replace plants that die, from anything other than acts of God that would have killed/destroyed the full growth plants being replaced, until the Tree Warden determines that the previously existing level of vegetation/buffer has been firmly re-established.

Failure to promote new growth or replace new growth that dies will be treated as a new clear cutting violation.

RESTORATION: Where the size and quantity of the cleared vegetation can be documented, restoration means replacement with an equal amount of new vegetation on an "inch for inch" basis. For all other cases, restoration means recreating the type of landscape and buffer that existed before the clear cutting with the quantity and types of plants determined by the Tree Warden.

"INCH FOR INCH" REPLACEMENT: A tree that is removed or damaged shall be replaced by a tree of the same kind and of the same diameter or shall be replaced by more than one tree of the same kind with a cumulative diameter equal to or greater than the original tree. Different types of trees or shrubs may be used as replacement vegetation, with the approval of the Tree Warden, who will determine what constitutes "inch for inch" replacement for the alternative plants used.

ARTICLE V: HISTORIC AND ARCHAEOLOGICAL RESOURCE PROTECTION

SECTION 5.1 GOALS

5.1-1 Historic and Archaeological resources are fragile features that embody the significant prehistoric and historic cultural heritage of the Town of Aquinnah and The Wampanoag Tribe Gay Head (Aquinnah); they provide a material record to understand and explain our past, and

enhance and enrich the Town's quality of life. The purpose of this By-Law is to protect the significant historic and archaeological resources of the town and provide a means for review of activities that may affect these non-renewable resources. The provisions of this By-Law do not waive applicable Federal and State laws regarding the discovery of unmarked human burial or skeletal remains (which require development activity to cease immediately) or the inadvertent or unexpected discovery of significant historical and archaeological resources.

SECTION 5.2 PROJECT REVIEW

5.2-1 Prior to any development in the ADCPC, it must be determined if there are significant historic and archaeological resources at the site. Significant historic and archaeological resources are those that meet the criteria for evaluation for listing in the National Register of Historic Places (36 Code of Federal Regulations, Part 60). This requirement applies to both developed and undeveloped lots and includes any activity, such as perc tests, well drilling, utility trenching, demolition, road construction, clearing, excavation or use of heavy machinery that may destroy or disturb historic and archaeological resources. The Planning Board Plan Review Committee shall determine what actions shall be taken to locate, identify, and evaluate, any significant historic and archaeological resources that may be affected by the development. If any significant historic and archaeological resources are found, The Planning Board Plan Review Committee shall determine what actions shall be taken to avoid, minimize, or mitigate adverse effects to said resources. In making the above determinations, The Planning Board Plan review Committee shall consult with The Massachusetts Historical Commission (MHC), The Tribal Historic Preservation Officer of The Wampanoag Tribe of Gay Head (Aquinnah), and such local agencies as it deems necessary for guidance.

SECTION 5.3 REVIEW PROCESS

5.3-1 The owner/agent must submit a Project Notification Form (950 CMR 71) and the required maps and plans (a complete list is available at the town hall) to The MHC by certified mail, and to the Planning Board Plan Review Committee. Within thirty (30) days of receipt by certified mail of adequate project documentation, The MHC will make its recommendations to the Planning Board Plan Review Committee. Within forty-five (45) days of receipt by certified mail of adequate project documentation by The MHC, The Planning board Plan Review Committee will hold a meeting to determine whether an archaeological survey of the site is required, and if so, the type and extent of the survey.

5.3-2 If a survey is required, it will be conducted by a qualified professional at the owner/agent's expense. The results of this survey will be presented to the MHC for technical advice and the Planning Board Plan Review Committee. If significant historic or archaeological resources are not found, the development may proceed through the normal permitting process. If the survey identifies areas of the site that are known or are likely to contain significant historic or archaeological resources, and the owner/agent agrees that these areas will not be affected or disturbed by the proposed development, the Planning Board Plan Review Committee will issue an order of conditions under which the proposed development may proceed through the normal permitting process. If the survey identifies areas of the site that are known or are likely to contain significant historic or archaeological resources that will be affected or disturbed by the proposed development, a more extensive survey may be conducted, at the expense of the owner/agent to locate, identify, and evaluate said resources. If significant historic or archaeological resources are found, the survey will also develop plans to avoid, minimize, or mitigate the adverse effects of the development.

5.3-3 The results of this final survey will be presented to the MHC and the Planning Board Plan Review Committee. The Planning Board Plan Review Committee shall then hold a meeting to determine what actions should be taken to avoid, minimize, or mitigate for any potential damage or impairment to any historic and archaeological resources and issue an order of conditions under which the proposed development may proceed through the normal permitting process.

ARTICLE VI: ADMINISTRATION

SECTION 6.1 BOARD OF SELECTMEN

6.1-1 This By-Law shall be enforced by the Building Inspector acting under the Board of Selectmen. No building shall be built or altered and no use of land or building shall be begun or changed without a permit having been issued by the Building Inspector, acting under the Board of Selectmen. Permits not used within a year's time shall become void. Each application for a permit shall be accompanied by such plans, surveys, and other data as may be necessary in the opinion of the Building Inspector to insure full compliance with this By-Law. If the Building Inspector is requested in writing to enforce the By-Law, against any person allegedly in violation of the same and declines to act, he shall notify in writing the party who requested such enforcement of any action or refusal to act and the reasons therefore within 14 days of receipt of such request.

SECTION 6.2 BOARD OF APPEALS

6.2-1 There is hereby established a Board of Appeals consisting of five members and two associate members to be appointed by the Board of Selectmen as provided in Chapter 808 of the General Laws. The Board of Appeals shall have the power:

- A. To hear and decide appeals; an appeal hereunder may be taken by any person aggrieved by reason of his inability to obtain a permit or enforcement action from any administrative officer under the provisions of Chapter 40A of the General Laws, by the Martha's Vineyard Commission or by any person, including an Officer or Board of the Town, or of the abutting Town aggrieved by an order or decision of the Inspector of Buildings, or other Administrative Official, in violation of any provision of said Chapter or this By-Law; and
- B. To authorize variances according to requirements of Chapter 808 of the General Laws.

SECTION 6.3 PLANNING BOARD PLAN REVIEW COMMITTEE

6.3-1 In addition to its customary responsibilities, the Planning Board shall hear and decide on applications for Special Permits for exceptions as provided in this By-Law; and as authorized by Chapters 831 & 808 of the Massachusetts General Laws. When reviewing applications for Special Permits in Special Overlay Districts, the Planning Board shall be joined by a member appointed by and from the Conservation Commission and a member appointed by and from the Board of Selectmen and shall function as both a Plan Review Committee and Special Permit Granting Board.

6.3-2 In granting any Special Permit, the Planning Board must be satisfied that the general criteria in Section 2.2-2 are met, as well as any special criteria for that type of Special Permit, and it may impose such conditions and safeguards as it deems appropriate. It shall adopt rules for the conduct of its business and procedures for the submission of applications including required maps, plans, views, and reports and other information.

SECTION 6.4 SPECIAL PERMITS *(Amended 5.10.2011 ATM)*

6.4-1 A Special Permit under this By-Law shall only be issued following a public hearing held within 65 days after the filing of an application with the Special Permit granting authority, a copy of which shall forthwith be giving to the Town Clerk by the applicant. A Special Permit granted under this By-Law shall lapse one year from the granting thereof, excluding the time required to pursue or await the determination of an appeal under General Laws Chapter 40A, Section 17, if a substantial use thereof has not sooner commenced except for good cause or, in the case of permit for construction, if the construction has not begun by such date except for good cause. **A Special Permit shall only be issued to the owner of property that is in compliance with section 4.3 of the By-Law.** Uses accessory to activities permitted as a matter of right, whether or not on the same parcel as activities permitted as a matter of right, which activities are necessary in connection with scientific research or scientific development or related production may be permitted upon the issuance of a Special Permit provided the granting authority finds that the proposed accessory use does not substantially derogate from the public good.

6.4-2 Extension of Special Permits *(Added 5.10.2011 ATM)*

If the rights authorized by a Special Permit are not exercised within the time period authorized in Section 6.4-1, the Special Permit shall lapse; provided, however, that the special permit granting authority, in its discretion and upon written application by the recipient of the special permit, may extend the time for exercise of the rights granted by the Special Permit, for a period not to exceed one year; and provided, further, that the application for such extension is filed with the special permit granting authority prior to the expiration of the original Special Permit. If the special permit granting authority does not grant the extension within 45 days of the date of application therefore, and upon the expiration of the original time period, the Special Permit may be re-issued only after notice and a new hearing pursuant to the provisions of G.L c. 40A, § 11 and the notice provisions of this By-law.

6.4-3 Zoning Determinations *(Added 5.10.2011 ATM)*

To simplify the implementation of this By-law, the Planning Board Plan Review Committee may determine that certain small developments, or certain parts of larger projects, identified on a particular application, do not require a special permit granted at a public hearing with public notice and notification of abutters. Such determination shall be made by a unanimous vote at a properly noticed public meeting and the project must be consistent with the goals and purposes of the applicable District(s) of Critical Planning Concern set forth in the Town of Aquinnah Zoning By-Law. Examples of projects that might qualify for a zoning determination, as set forth in this section, include: the siting of a small shed in an area that is not open or highly visible; a small addition, or extension, of a deck; the addition of an outdoor shower; conducting perc tests without submission of a Project Notification Form; determination if a site is open and highly visible before design work is started; or the cutting of trees or brush for well drilling or perc tests. If the Planning Board Plan Review Committee determines that the small development or certain part of a larger project qualifies under this Section, it will issue a written and signed Zoning Determination to the applicant, with a copy to the Building Inspector, granting permission to proceed with the work, including any conditions or limitations the Planning Board Plan Review Committee deems reasonable to impose consistent with the goals and purposes of the applicable section(s) of the Aquinnah Zoning By-Law.

SECTION 6.5 DEVELOPMENTS OF REGIONAL IMPACT

6.5-1 Developments which meet the qualifications as Developments of Regional Impact will be referred to the Martha's Vineyard Commission for review under the provisions of Chapter 637, and Chapter 831 of the Acts of 1977, as amended. No Permit or Special Permits may be issued for such developments, which have been so referred until the Martha's Vineyard Commission has approved, or approved with conditions, and referred the proposal back to Town for action.

SECTION 6.6 SITE REVIEW

6.6-1 Site reviews shall be conducted by the Planning Board Plan Review Committee. The Planning Board Plan Review Committee will receive applications for special permits within the Town and its DCPC's. The Committee shall review the applications and may make site visits to determine if the application conforms to the District regulations and to suggest guidance for development. Special Permits within Districts of Critical Planning Concern will be granted only for proposals determined by the Planning Board Plan Review Committee to be consistent with the purposes of the By-Law as stated in ARTICLE I and taking into consideration the special characteristics of the District.

SECTION 6.7 ZONING ADMINISTRATOR

6.7-1 The Board of Appeals may appoint a Zoning Administrator, subject to confirmation by the Board of Selectmen, to serve at its' pleasure pursuant to such qualifications as may be established by the Board of Selectmen. The Board of Appeals may delegate to said Zoning Administrator, some of its powers and duties. Any person aggrieved by a decision or order of the Zoning Administrator whether or not previously a party to a proceeding, or any municipal officer or board, may appeal to the Board of Appeals, as provided in Section 14 of Chapter 40A of the General Laws, within 30 days after the decision of the Zoning Administrator has been filed in the office of the Town Clerk. Any appeal, application or petition or filed with the Zoning Administrator as to which no decision has been issued within 35 days from the date of filing shall be deemed denied and shall be subject to appeal to the Board of Appeals as provided in Section 8 of Chapter 40A of the General Laws.

SECTION 6.8 PENALTIES

6.8-1 Any violation of this By-Law shall be enforceable pursuant to the authority granted by the Massachusetts General Laws, Chapter 40, Section 21 D. Violations shall be disposed of by the Building Inspector. Any person violating any of the provisions of this By-Law shall be fined not more than three hundred dollars (\$300.00) for each offense. Each day that any violation is permitted to exist after written notification thereof by the Building Inspector shall constitute a separate offense.

**SECTION 6.9 BUILDING PERMIT LIMITATION (RATE OF DEVELOPMENT)
DISTRICT OF CRITICAL PLANNING CONCERN**

6.9-1 Purpose

The Planning Board has determined that a need exists for controlled growth in the Town of Aquinnah due to the recent unprecedented building activity in the Town. In order to assess the impact on public services, infrastructure and environment, the Board feels that a temporary cap on the number of building permits issued annually would serve the best interests of the Town. To promote the purposes and goals set forth in ARTICLE I of the Aquinnah Zoning By-Law, to preserve the rural historic character of the Town, to encourage the development of critically needed affordable housing through planning and incentive designs, and to protect crucial natural resources, the following By-Law will allow adequate time for study and evaluation.

6.9-2 Number of Building Permits issued each year for Residential Construction.

For each of the three years commencing on the first publication of notice of the Planning Board hearing, the Building Inspector shall issue no more than six (6) permits each year for new residential construction. Two additional permits may be issued each year to the Aquinnah Resident Homesite Recipients. Except for Resident Homesite Permits any permit not issued in any year will not carry over to the next year. These permits are not transferable, in whole or in part.

6.9-3 Definitions

A. For the purpose of this By-Law, the term “new residential construction” shall include the following:

1. Any new dwelling, not including reconstruction or repair of a dwelling destroyed or damaged by fire, storm, or other natural disaster.
2. A conversion of a barn, garage or other accessory structure to use as a dwelling.
3. “Teardown renovations,” except when all the following conditions are met:
 - a. More than 25 percent (twenty five percent) of the original unit remains.
 - b. More than one major exterior wall of the original unit remains.
 - c. The original footprint and height of the structure is not exceeded.
 - d. The number of bedrooms is not increased.

6.9-4 Permit Issuance Priority System

A. Each year will be divided into six (6) periods corresponding to the calendar months of February, April, June, August, October and December, beginning in April of the year 2000 during which two (2) permits may be issued. One permit will be issued in each following period, provided that any unused permit can be carried over to the next consecutive period.

B. Priority Points: Applications for building permits shall be entitled to priority points to be awarded as follows:

1. Owners applying for a permit to build the primary residence: 10 points.
2. New construction of a primary residence 2,000 square feet or under: 10 points; 2,001 – 3,000 square feet: 4 points. In the case of conversion of a secondary or accessory building, points will be awarded on the basis of the total area of existing plus new construction.
3. Owners of lots greater than 4 acres, who file an agreement to place buildable acreage under perpetual conservation restrictions (i.e. give up development rights): 5 points per potential (2-acre minimum) buildable lot.
4. Primary residential dwelling unit for a first time homeowner: 5 points. The term “first time homeowner” shall be defined as a person or persons who have never owned their own home (including a condominium or cooperative apartment) regardless of the location.
5. Any new primary residential unit to be built by the Dukes County Housing Authority, or any Resident Homesite recipient, or pursuant to the Martha’s Vineyard Commission’s Affordable Housing Action Plan in conjunction with an approved Development of Regional Impact, the Wampanoag Tribal Housing Authority or under any other program or proposal found in writing by the Planning Board to have primary effect of providing permanent year round affordable housing: 20 points.
6. Owners who agree, by an enforceable written agreement, to gift to the Town a Resident Homesite prior to the issuance of their occupancy permit: 15 points.
7. For each month an application is passed over: 2 points.

6.9-5 Issuance of Building Permits

A. Provided that an application meets all the other requirements for the issuance of a building permit, permits shall be issued each period in the number allowed by this by-law to the applicant(s) having the highest number of priority points. In the case of a tie, priority shall be determined by the order of the date and time of filing of completed applications with the Building Inspector. For this purpose, the Building Inspector shall keep a chronological record of the date and time of filing of completed building permit applications. At the end of each month, the Building Inspector’s office will post the status of all applications, i.e., if not awarded, the number of priority points of each and its ranking as of the end of the month.

- B. Transferability: Neither priority points nor issued building permits shall be transferable.
- C. Review: This building cap process shall be subject to annual review by all permit granting bodies within the Town.
- D. Appeals: If an applicant for a building permit would suffer immediate and severe hardship, financial or otherwise (provided that such hardship is not self-imposed), by reason of a delay in issuance of a building permit resulting from terms of this By-Law, such applicant may appeal to the Planning Board for relief. The burden shall be on the applicant to establish to the Planning Board that such immediate and severe hardship exists, in which event the Planning Board may allow issuance of a building permit provided that the annual limit of eight (8) permits shall not be exceeded. Any such relief may not be granted if it is otherwise in conflict with the letter and intent of the Zoning By-Law of the Town of Aquinnah.

SECTION 6.10 AMENDMENT

6.10-1 This By-Law may be amended from time to time at an Annual or Special Town Meeting in accordance with the provisions of Chapter 808.

SECTION 6.11 VALIDITY

6.11-1 The invalidity of any section or provision of this By-Law shall not invalidate any other section or provision of it.

ARTICLE VII: DEFINITIONS

SECTION 7.1. In this By-Law the following terms shall have the following meanings unless a contrary meaning is required by the context or specifically prescribed.

ACCESSORY: A building, structure or use which is clearly subordinate to, and the use of which is incidental to, that of the main building, structure or use of the lot.

ALTERATION OF THE LAND FORM: Any man-made change in the existing character of the land including filling, grading, paving, dredging, mining, excavation, or drilling operation other than routine excavation, well-drilling, back-filling, grading, and paving incidental to the construction of a residence or other structure for which a building permit has been issued.

BASE FLOOD ELEVATION LEVEL: The level to which coastal waters may rise under the effect of wind, tide, and hurricane surge. Base flood means the flood having a 1% chance of being equaled or exceeded in any given year. Base Flood Elevation Levels are measured in feet above Mean Sea Level.

BLUFF: For purposes of this by-law, bluffs shall mean coastal elevation lying within 200 feet of the mean high water mark any ocean or tidal pond, with a height exceeding 15 feet (as measured from mean high water to the crest of the bluff) and the slope of whose seaward face exceeds 30 percent.

BODY OF WATER: Any exposed natural water surface, whether running, still, permanent or seasonal including but not limited to ponds, swamps, streams, ocean and springs.

BREAK AWAY WALL: Any type of wall whether solid or lattice, and whether constructed of concrete, masonry, wood, metal, plastic or any other suitable building material which are not part of the structural support of the building and which are so designed as to break away, under abnormally high tides or wave action, without damage to the structural integrity of the building on which they might be carried by flood waters.

BUILDING HEIGHT: Maximum height of structures as measured vertically from the natural grade level to the highest point on the roof. The height of the balustrade of a roof walk or deck shall be considered when calculating building height of a structure.

DEVELOPMENT (per MGL Ch.831 of the Acts of 1977 as amended): Any building, mining, dredging, filling, excavation or drilling operation; or any material change in the use of appearance of any structure or in the land itself; or the dividing of land into parcels, or a change in the intensity of use of land, such as an increase in the number of dwelling units in a structure; or alteration of a shore, beach, seacoast, river, structure; or the clearing of land as an adjunct of construction or the deposit of refuse, solid or liquid waste or fill on a parcel of land.

DWELLING: A structure used in whole or part for human habitation. A dwelling does not include a mobile home however mounted, trailer or similar transportable facility.

ONE FAMILY DWELLING: A dwelling, having no more than one principal entrance and one kitchen, designed, built and used for occupancy primarily by one and the same family except that when such family is not in occupancy, not more than one other family during any one time period may occupy the dwelling; provided that no agreement or arrangement allowing such occupancy by other than the principal occupying family shall provide for (i) a right of occupancy extending beyond one calendar year, (ii) renewal of the occupancy for any additional period of time; or (iii) any payment of financial obligation attributable to any period of time extending beyond one calendar year.

TWO FAMILY DWELLING: A dwelling divided into two separate habitable units each of which has a separate entrance, kitchen and toilet, each of which unit is designed, built, and used for occupancy primarily by one and the same family except that when such family is not in occupancy not more than one other family during any one time period may occupy such unit, provided that no agreement or arrangement allowing such occupancy by other than the principal occupying family shall provide for (i) a right of occupancy extending beyond one calendar year, (ii) renewal of occupancy for any additional period of time, or (iii) any payment of financial obligation attributable to any period of time extending beyond one calendar year.

ELECTRICAL GENERATOR: Any device used to generate electricity including those powered by wind, water or solar radiation

FAMILY: One or more persons related by blood, adoption or marriage, living together as a single, non-profit housekeeping unit, provided that no more than six persons unrelated by blood, adoption or marriage so living together shall be deemed a family.

FLOOR AREA: The gross floor area measured along the perimeter of the outside walls of a building without deductions for hallways, stairs, closet, thickness of walls, columns, or other features, including the combined total gross area of all floors, excluding unfinished basement and attic space used exclusively for storage and areas where the ceiling height is sixty inches or less.

FLOOD PLAIN DISTRICT: Those areas subject to coastal flooding at the Base Flood Elevation Levels established in Section 10.2 of this By-Law. The Flood Plain Districts are shown on the FIRM map on file in the Town Offices Building with the Town Clerk, Planning Board, and Building Official.

FLOOD PLAIN PERMITS: All permits required by Section 10.2 of the Zoning By-Law and shall be in addition to all other permits required by Town By-Law, State and Federal Laws for the construction of a structure or alteration of the land form.

FLOOD PROOFING: Watertight with wall substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effect of buoyancy. A registered professional engineer or architect shall certify that the flood proofing methods are adequate to withstand the flood depths, pressures, velocities, impact and uplift forces and other factors associated with the flood base.

FOOTPRINT: The total area of ground covered by all structures on a lot including decks, porches, and constructed walkways and patios, except in the Coastal District where the footprint will be defined by the weather walls.

FRONTAGE (*added 5.10.2011 ATM*): The boundary of a lot running along a private or public way, but not along a common driveway, which contains at least one point of vehicular access to the lot at a location providing safe and adequate sight distance.

INDIGENOUS: Originating in, or innate to, a specific region or area. Indigenous species that should be protected include but are not limited to: High Bush blueberry, shad, beach plum, bayberry, winter berry, witch hazel, swamp azalea, rosa rugosa, bettlebung/tupelo, American holly, beech and eastern red cedar.

INVASIVE SPECIES: Invasive species include Virginia creeper, bull briar, poison ivy, wild grapes, Russian olive and sumac among others.

LOT: A continuous parcel of land in single ownership with the legally definable boundaries.

MEAN SEA LEVEL: Whenever the Mean Sea Level appears in this by-law, it shall be the Mean Sea Level Datum of 1929, known as the National Geodetic Vertical Datum.

NATURAL: Existing in a condition that is not altered or improved in any way.

NATURAL GRADE: Established by determining the mid-point of the slope within the footprint (perimeter measurements) of the building plan of any proposed structure. A benchmark for the footings will be established by the Building Inspector; this will be accomplished by review of elevation plans provided by applicant and physical inspection of the property.

NATURALIZE: (Refers to vegetation) Plant materials which can be introduced into a region or area and flourish as if they were native.

NEUTRAL: Colors which have no strong hue, intensity, or brightness. Examples are on file with the Site Review Committee in the Aquinnah Town Hall.

OPEN AREA: An expanse of land which is characterized by low-lying groundcover, shrubs, or other vegetation.

PRIVATE PARKING: A defined parcel of land owned privately by an individual(s), association, corporation, trust, or other organization which is used for parking on a regular basis by one or more vehicles as an accessory to the principal permitted use of the lot.

ROOF TYPES:

- A. Flat: A roof with a single plane with no pitch or gable.
- B. Gable: The vertical triangle shape of a building wall above the cornice height formed by two sloping roof planes.
- C. Hip: A roof with planes that slope toward the center from all sides.
- D. Roof Walk: A porch enclosed by a balustrade placed on or around the roof a building.
- E. Second Story Porch: A structure attached to the second story of a building which serves as a semi-or fully enclosed space.
- F. Shed: A roof with a single pitch and no gable.

SITING: The position of a structure in relation to the boundaries and size of the lot on which it sits, the contour and general character of the landscape, other structure, driveways, walks, and vegetation.

STRUCTURE: A combination of materials assembled at a fixed location to give support or shelter. A structure includes any building. A fence or wall over 6 feet high is considered a structure.

SUBSTANTIAL IMPROVEMENTS: Any repair, reconstruction or improvements of a structure, the cost of which equals or exceeds 50% of market value of the structure either (a) before the improvements or repair is started, or (b) if the structure has been damaged and its being restored, before the damage occurred. For the purposes of this definition substantial improvement commences when the first alteration of any wall, ceiling, floor or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include any project for improvements of the structure to comply with existing state or local health, sanitary, or safety code specifications, which are solely necessary to assure safe living conditions.

TREE BASE: The diameter of a tree trunk within four inches above mean natural grade.

VELOCITY ZONES (V ZONES): Those direct coastal areas within a flood plain District which may be subject to extreme damage from the velocity of wave action or storm surge. The V-Zones are shown on the Town FIRM Map on file in the Aquinnah Town Clerk, Planning Board and Building Inspector Office's.

ARTICLE VIII: SUBDIVISION RULES AND REGULATIONS

The rules and regulations for the subdivision of land in Aquinnah are legally part of the Zoning By-Law; and may be obtained at the Town Hall under separate copy.

ARTICLE IX: PERSONAL WIRELESS FACILITIES RULES AND REGULATIONS

The rules and regulations for personal wireless facilities in Aquinnah are legally part of the Zoning By-Law; and may be obtained at the Town Hall under separate copy.

ARTICLE X: Coastal District (including The Flood Plain Zone)

SECTION 10.1 COASTAL DISTRICT

10.1-1 GOALS

To prevent flood damage, maintain water quality, assure adequate water supply, prevent pollution, promote wildlife habitats, assure the maintenance of cultural and historic sites and values, preserve and enhance the character of views, prevent damage of structures, land and

water as a result of erosion, promote economic development of fisheries and related industries, and maintain and enhance the overall economy of the Island.

10.1-2 BOUNDARY

The land, streams and wetlands which lie below the ten (10) foot elevation above mean sea level, or within five - hundred (500) feet at the inland edge of any beach or marsh grasses behind mean high water of the Sound, the Ocean, Menemsha Pond, or Squibnocket, and all land and water lying south of the line beginning at the point where the circular road, (the loop) at the intersection of State Road and Lighthouse Road is five hundred (500) feet inland from mean sea level thence around the circular road to the South and East to Moshup Trail, then easterly, southerly, northerly and then easterly along Moshup Trail to the State Highway, thence easterly along the State Highway to the Aquinnah-Chilmark Town boundary, excluding therefrom the common Lands described in "Zoning By-Law Map, Town of Gay Head, Massachusetts, December 9, 1976, Prepared by the Martha's Vineyard Commission."

10.1-3 PERMITTED USES

- A. Any use as permitted in the respective Zoning District subject to the regulations and restrictions in ARTICLE II and Sections 3.1, 3.2, 3.3, 3.5, 3.8-2, and 3.8-3 of this By-Law.
- B. The height of structures, as measured vertically from mean natural grade within twenty (20) feet of the structure to the highest point of the roof, is restricted to:
 - 1. Eighteen (18) feet for a pitched roof and thirteen (13) feet for a flat roof or shed roof (which is a roof of pitch 1 in 4 less),
 - 2. Twenty-four (24) feet for a pitched roof and thirteen (13) feet for a flat or shed roof (which is a roof of 1 in 4 or less) in wooded terrain.
 - 3. New utilities shall be placed underground.
 - 4. In the Coastal District (Section 10.1) height shall be measured from the base flood elevation.

10.1-4 USES BY SPECIAL PERMIT FROM THE PLANNING BOARD PLAN REVIEW COMMITTEE *(Amended 5.8.12 STM)*

- A. Construction of buildings or structures within two hundred (200) feet of wetlands, waterbodies, beaches, dunes or the crest of bluffs over 15 feet high.
- B. Within one hundred (100) feet above features, special permit may only be granted for a fishing related marine commercial structure.
- C. Vehicular access with width greater than twelve (12) feet.
- D. Pre-existing stone wall to be moved, removed or otherwise altered.
- E. The Planning Board Plan Review Committee shall have the authority to modify or vary the dimensional requirements of sections 10.1-4B and 2.4-1B by Special Permit for the reconstruction or alteration of pre-existing, nonconforming structures in existence as of December 22, 1975, based on the standards established in Section 13.4-11A, however; pre-existing nonconforming municipal structures may also be extended.
- F. On Municipal lots, the Planning Board Plan Review Committee shall have the authority to modify or vary the requirements of section 10.1-4B and 2.4-1B by Special Permit for new municipal structures and uses if it determines that the siting of the new structure is in harmony with the goals of this By-Law.

SECTION 10.2 FLOOD PLAIN ZONE

10.2-1 PURPOSE

The Town of Aquinnah recognizing the dangers inherent upon coastal flooding at times of hurricanes or severe storms and as a means of protecting its citizens and their property, hereby establishes a series of Flood Plain Overlay Districts and Zoning Regulations for construction of

structures and for the use of the land within these districts. Such districts are defined as shown on the flood Insurance Rate Map (FIRM), as published by the Federal Emergency Management

Agency effective September 29, 1996, as amended, accompanied by Aquinnah's Flood Insurance Study and on file with the Town Clerk, Planning Board and Building Inspector.

A. Base Flood Elevation Levels - The coastal area of the Town of Aquinnah shall have Base Flood Elevation Levels established as Zones AE and VE.

B. Flood Plain Permit - Permits for all proposed construction and uses of land within the Plain Districts shall be required for the following:

1. New construction of residential or non-residential structures.
2. Substantial improvement (as defined) of any existing structure.
3. The addition to existing structures of increased water, electric or sewage and septage systems shall conform to the rules and regulations adopted by the Board of Health.
4. Alterations of the land (as defined).

10.2-2 REQUIREMENTS *(Amended 5.10.2011 ATM)*

All Flood Plain Permits granted under Section 10.2-1B above shall be subject to the following provisions:

- A. Any new construction or substantial improvement to be undertaken within the Flood Plain District shall be subject to existing regulations and be in accordance with Mass. State Building Code, or Town By-Laws if more restrictive.
- B. All new and replacement utility and water facilities shall be located and constructed to minimize or eliminate flood damage.
- C. All new and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwater into the system and discharge from the systems into floodwaters. On-site waste disposal systems are to be located to avoid impairment to them or contaminant from them during flooding.
- D. Approval for any alteration of the landform (as defined) shall be obtained from the Planning Board Plan Review Committee by special permit. No alteration of the landform shall be permitted where there may be liability of altering the drainage or runoff to the detriment of other landholders or the Town. Before granting a special permit for the alteration of the landform, the Planning Board Plan review Committee shall dully consider any recommendations by the Conservation Commission.

10.2-3 ADDITIONAL REQUIREMENTS IN VELOCITY ZONES

If proposed construction or alteration of the land is located within a V Zone (as defined), all Flood Plain Permits granted under Section 10.2-1B above shall be subject to the following additional requirements:

- A. All new construction within the V Zones (as defined) shall be located landward of the reach of mean high tide
- B. Man-made alterations of sand dunes within the V-Zones is prohibited.

10.2-4 SPECIAL PERMITS *(Amended 5.10.2011 ATM)*

- A. The Planning Board Plan Review Committee may grant a Special Permit in the case of:
 1. New construction and substantial improvements to be erected on a lot adjacent to lots where existing structures have previously been constructed below the base flood level.
 2. Non-residential structures such as boat houses, boatyards or structures designed for education and research, the nature of which requires their location within the Flood Plain District.

3. Restoration and reconstruction of structures listed in the National Register of Historic Places or the State Inventory of Historic Places.
 4. When the nature of the structure requires their design with a lowest floor below the base flood elevations.
- B. Special Permits shall only be issued upon a determination by the Planning Board Plan Review Committee that:
1. Failure to grant the Special Permit will not result in increased flood heights, additional threats to public safety, extraordinary public expense or conflict with the existing local by-laws, and,
 2. The relief granted is the minimum necessary considering the flood hazard.
- C. Following the granting of such a Special Permit, the Planning Board Plan Review Committee shall notify the applicant in writing that the issuance of a special permit to construct a structure below the base flood level will result in:
1. Increased premium rates for flood insurance and,
 2. Increased risk to life and property.
- D. The Planning Board Plan Review Committee shall maintain a record of Special Permits including the justification of their issuance.

10.2-5 ADMINISTRATION

The Building Inspector shall administer the by-laws as follows:

- A. Review proposed construction and alteration of land form (as defined) within Flood Plain Districts to assure that all necessary permits have been received from those governmental agencies from which approval is required by Federal or State law, or Town By-Law.
- B. Obtain and maintain records of the elevation (in relation to mean sea level) of the lowest floor, including basement, of all new or substantially improved structures. In addition, maintain records as to whether or not such structures contain a basement.
- C. If a structure has been flood-proofed obtain and maintain records of the elevation (in relation to mean sea level) of the lowest floor and the elevation to which the structure was flood-proofed. In addition, maintain records of flood proofing certification, which have been prepared by registered professional engineers and architects in relation to the adequacy of flood proofing methods.

ARTICLE XI: Moshup Trail Cultural and Historic District of Critical Planning Concern

SECTION 11.1 BOUNDARY DESCRIPTION

11.1-1 The Moshup Trail DCPC includes the area shown on the map in the "Moshup Trail; site design guidelines book" dated September 1982, and the expanded boundaries as nominated by the Martha's Vineyard Commission in August of 1995.

SECTION 11.2 SIGNS

11.2-1 There shall be no signs in the Moshup Trail DCPC unless by Special Permit from the Planning Board Plan Review Committee

SECTION 11.3 CONSTRUCTION *(Amended 5.8.2012 STM)*

11.3-1 In order to minimize visual prominence of man-made features, avoid erosion or other land instabilities and otherwise preserve the cultural, historic and visual integrity of the Moshup Trail Cultural and Historic District of Critical Planning Concern, the following shall exist:

- A. A Special Permit shall be required from the Planning Board Plan Review Committee for the siting of a building on its lot. Buildings should be sited on or least near the side

slope of a valley and never into the center of a valley. Buildings should not be sited at the top of a slope where their entire mass will be starkly silhouetted against the sky. Building should be sited down the grade so that the slope contains the building(s) and serves as a partial backdrop for them.

- B. Buildings shall be constructed of natural wood shingles with neutral trim color (refer to ARTICLE VII, Definitions).
- C. Roofing Materials shall be black asphalt or cedar shingles.
- D. Building foundations shall be no more than 18 inches in height from the median natural grade without a special permit from the Planning Board Plan Review Committee.
- E. Accessory structures and additions to pre-existing structures shall conform in materials, scale and proportion to the principal structure. In cases where pre-existing structures are not compatible with the requirements for new construction, accessory structures shall conform to the requirements for new construction (Items B. through D. above)
- F. All structures shall be set back at least 150 feet from Moshup Trail
- G. The Planning Board Plan Review Committee shall have the authority to modify or vary the dimensional requirements of section 11.3-1F by Special Permit for the reconstruction, extension, or alteration of pre-existing, nonconforming structures in existence as of September 7, 1995, based on the standards established in Section 13.4-11A.
- H. On Municipal lots, the Planning Board Plan Review Committee shall have the authority to modify or vary the dimensional requirements of section 11.3-1F by Special Permit for new structures if it determines that the siting of the new structure is in harmony with the goals of this By-Law and with *Moshup Trail: Site Design Guidelines*.

SECTION 11.4 VEHICULAR AND PEDESTRIAN WAYS

11.4-1 In order to maintain the visual integrity and to promote public health and safety, no driveway (i.e. curbcut) shall be permitted within the Moshup Trail Cultural and Historic District of Critical Planning Concern, without a Special Permit from the Planning Board Plan Review Committee. The Planning Board Review Committee shall consider but is not limited to the following criteria in granting a Special Permit:

- A. Road Frontage of lot (s);
- B. Frequency and duration of use;
- C. Driveway layout or alignment on the lot (s);
- D. Safety (line of unobstructed vision to the public road);
- E. Ability to share joint access with adjacent property owner (s); and
- F. The use of pervious paving materials such as gravel, bluestone, crushed shell or wood chips shall be employed.

SECTION 11.5 STONE WALLS AND FENCES

11.5-1 In order to minimize the visual prominence of man-made features and otherwise protect the cultural, historic and visual integrity of The Moshup Trail Cultural and Historic District of Critical Planning Concern, a Special Permit will be required by the Planning Board Plan Review Committee for new stone walls and fences. No pre-existing stonewall shall be moved, removed, or otherwise altered, except by Special Permit.

SECTION 11.6 PRIVATE PARKING AREAS

A. Within the Special Overlay Moshup Trail Cultural and Historic District of Critical Planning Concern, a Special Permit shall be required by the Planning Board Plan Review Committee for a private parking area on a lot (refer to ARTICLE VII, Definitions). The Planning Board Plan Review Committee shall consider but is not limited to the following criteria in granting a Special Permit:

1. Access to the parking area;
2. Siting or placement of a parking area on a lot;
3. The number of cars allowable on a lot;
4. Frequency and duration of the use of a parking area;
5. Pervious paving materials such as gravel, woodchips, bluestone, or crushed shell shall be employed; and
6. Adequate screening with plants and shrubs as recommended by the Site Review Committee.

B. No commercial parking area will be permitted except those which benefit the Townspeople, such as Philbin Beach.

C. In order to preserve the visual integrity of the Moshup Trail Cultural and Historic District of Critical Planning Concern, no person (s) shall place, store or maintain unregistered motor vehicles on these lot(s).

SECTION 11.7 ROOF TYPES

11.7-1 Roof types other than gable or hip, flat or shed, added roof walks and/or second story porches on new or pre-existing structures shall require a Special Permit from the Planning Board Plan Review Committee within the Moshup Trail Cultural and Historic District of Critical Planning Concern (refer to ARTICLE VII, Definitions).

SECTION 11.8 CLEARING AND VEGETATION

11.8-1 Within the Special Overlay Moshup Trail Cultural and Historic District of Critical Planning Concern, there shall be no removal of ground cover, shrubs, or trees in any area without a Special Permit from the Planning Board Plan Review Committee. Within the district, planting shall be indigenous or easily naturalized plant types and materials (refer to ARTICLE VII, Definitions, and to suggestions for planting material on file with the Site Review Committee in the Town Clerk's Office). No Special Permit shall be required for a vegetable, herb or plant garden not exceeding 100 square feet.

ARTICLE XII: Gay Head Cliff Area District of Critical Planning Concern

SECTION 12.1 GOALS

A. To protect the fragile historic, scenic and natural character of the Cliff Area from undue visual intrusion and land use impacts that may be harmful to the District and its users.

B. The Gay Head Cliffs were designated a National Natural Landmark in 1965 by the U.S. Department of the interior as they represent an important example of Nation's natural history and contain geological features of such distinctive quality to be of national significance. The area contains unusual geological features, increasingly being damaged by wave action and, more importantly surface runoff and human use.

C. The District is readily visually accessible along the length of Moshup Trail and from the popular stopping area and lookout at the Gay Head Cliffs and Lighthouse Property. Land within the District is also visible from the water.

D. The complexity of the geology and soils of the District demonstrate intense development, including well and septic system placement and installation, may necessitate careful scrutiny to avoid contamination, erosion, pollution, salt water intrusion and construction problems.

E. These regulations are intended as an additional layer of protection as an "overlay" District and to protect the resources as described herein. The provisions of this District shall not replace or preempt, but rather exceed provisions of the Coastal District, Island Road District, Moshup Trail District and other relevant controls in the Town of Gay Head.

SECTION 12.2 BOUNDARY

12.2-1 All land in the Town of Aquinnah beginning at the juncture of the south east bound of lot 47 map 6 and Lighthouse Road, running easterly and northeasterly along the eastern bound of said lot; thence northerly along the eastern bound of lot 48, Map 6 to the Cliff's edge; then westerly and southerly and southeasterly along the Gay Head Cliff's upper edge to the northwest bound of lot 57, Map 10; thence easterly along said lot's northern bound to Moshup Trail and northerly along said trail crossing the middle of the intersection of South Road and Lighthouse Road and continuing along the northern bound of Lighthouse Road to the point of origin.

SECTION 12.-3 USES REQUIRING A SPECIAL PERMIT

A. A Special Permit shall be required from the Planning Board Plan Review Committee for any "development" as that word is defined in Chapter 831, Section 6 of the Acts of 1977 as Amended namely:

1. The siting of a building, structure or dwelling on its lot including primary and accessory dwellings and or buildings, and additions to any existing or pre-existing buildings, structures or dwellings.
2. The removal of ground cover, shrub, trees from any lot in the District. No Special Permit shall be required for a vegetable, herb or plant garden not exceeding 100 square feet.
3. The placement of driveways, vehicular paths, pedestrian paths and private parking areas.
4. The removal, replacement or erection of fences and stonewalls in the District and stairways traversing Cliffs or bluffs.
5. The siting of wells, septic systems and subsurface, surface drainage or runoff systems prior to installation.
6. Also including but not limited to: any building, mining, dredging, filling, excavation, or drilling operation; or any material change in the use or appearance of any structure or in the land itself; or the dividing of land into parcels; or a change in the intensity of use of land, such as an increase in the number of dwelling units in a structure; or alteration of a shore, beach, seacoast, river stream, lake, pond or canal, including coastal construction; or demolition of a structure; or the clearing of land; or the deposit of refuse, solid or liquid waste or fill on a parcel of land.

B. An applicant seeking a Special Permit shall submit an application to the Planning Board Plan Review Committee.

1. An application shall be accompanied by a proposed schedule for all phases of development activities and a site plan or plans showing pre and post construction conditions; types and sizes of machinery and paths and areas to be traveled by such; methods of construction and installation; including topography, removal and replacement of vegetation, wetland areas, siltation barriers, plans and elevations and materials 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 Plan Review Committee to determine the effects of the proposed development on:
 - a. Coastal banks, cliffs and wetlands
 - b. Vegetative cover serving to stabilize landforms.
 - c. Views within and looking at the site.
 - d. Surface and groundwater resources, in particular any adverse effects, e.g. contamination, siltation, erosion and salt water intrusion.

C. Upon receipt of the Special Permit application, the Planning Board Plan Review Committee shall refer the application to the Site Review Committee pursuant to Section 6.3 of the Town's Zoning By-Law. In addition to the considerations for granting a Special Permit pursuant to

Section 6.3 of the By-Law, the Planning Board Plan Review Committee shall grant a Special Permit only after public notice and hearing and only if it finds that the proposed development:

1. Will minimize the disturbance to existing vegetation except as to the footprint of the proposed structure;
2. 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.
3. Will not unreasonably contribute to surface and groundwater pollution, in particular, contamination, siltation, erosion and salt water intrusion.
4. Engineering studies prove that the placement of wells and septic systems will prevent septic system effluent breakout along steep slopes and vertical cracks forming parallel to the Cliffs or steep slopes.

D. If the Planning Board Plan Review Committee determines that the proposed development does not satisfy the above stated criteria, and that the goals of these Regulations will be undermined, it may, in furtherance of the goals of these Regulations require modifications to the plans and attach conditions to the Special Permit, or may deny the Special Permit.

E. Additional Restrictions (*Amended 5.8.2012 STM*)

1. Height of structures, as measured vertically from mean natural grade within 20 feet of the structure to the highest point of the roof, shall not, except by Special Permit, exceed a height of 18 feet for a pitched roof and 13 feet for a flat or shed roof. The Planning Board Plan Review Committee may, with the advice of the Site Review Committee, grant a Special Permit exceeding the above height limitation up to a maximum of 24 feet.
2. No further subdivision of property within the District.
- 3a. There shall be a no build /no cut zone within 150 feet of the crest of bluffs and cliffs, established by a registered land surveyor, at the time a project is proposed and a Special Permit is applied for, within the District. The only permitted use shall be for the signage, fencing or landscaping (planting) under the explicit written advice of the Site Review Committee and consistent with subsequent design guidelines and a joint management plan that may be adopted for the District.
- b. The Planning Board Plan Review Committee shall have the authority to modify or vary the dimensional requirements of section 12.3(E)(3a) by Special Permit for the reconstruction, extension, or alteration of pre-existing, nonconforming structures in existence as of May 4, 1989, based on the standards established in Section 13.4-11A
- c. On Municipal lots, the Planning Board Plan Review Committee shall have the authority to modify or vary the dimensional requirements of section 12.3(E)(3a) by Special Permit for new structures if it determines that the siting of the new structure is in harmony with the goals of this By-Law, provided however that the setback from the crest of bluffs or cliffs shall not in any case be less than 50' (fifty feet).

ARTICLE XIII: Town of Aquinnah District of Critical Planning Concern

SECTION 13.1 GOALS

13.1-1 To protect and preserve the unique natural beauty as well as the rural and visual character of the Aquinnah landscape, to honor the significance of the land for the people of Gay Head/Aquinnah, and to remediate the impact of development on the residents of Aquinnah the following regulations have been adopted to guide development appropriate to and in harmony with its cultural and natural environment, to ensure that historical values and traditional reverence for the ocean coastline are honored and preserved for future generations.

SECTION 13.2 BOUNDARY DESCRIPTION

13.2-1 All lands and waters within the corporate bounds of the Town of Aquinnah, except the Indian Common Lands¹ (generally known as the Cranberry Bogs, the Clay Cliffs and Herring Creek) and Settlement Lands.²

SECTION 13.3 PERMITTED USES IN THE ADCPC

13.3-1 USES PERMITTED – Any use as permitted in the respective zoning district subject to the Special Historical and Cultural Places regulations and restrictions in Section 13.8 of this document.

SECTION 13.4 SITING, DIMENSIONAL, AND DESIGN REGULATIONS

13.4-1 SITE PLAN REVIEW

A. A Special Permit from the Planning Board Plan Review Committee is required for the siting of:

1. A building, structure or dwelling on its lot including primary and accessory dwellings and or buildings,
2. An addition to any existing buildings, structures or dwellings, Roads, curbcuts, driveways, vehicular paths, pedestrian paths over three feet wide and private residential parking areas,
3. Pools and tennis courts.

B. In reviewing the application for a Special Permit, the Planning Board Plan Review Committee will also determine whether the location qualifies as an “open/highly visible area” for the purposes of this By-Law.

13.4-2 SITING GUIDELINES

All new development must be consistent with the rural character of the Town of Aquinnah, minimize visual prominence of manmade features and shall not radically alter or interrupt the skyline of the Town as viewed from any public way, including any public water body and including the lookout at the Aquinnah Cliffs. Before granting a Special Permit for a new structure, addition or alterations to the land such as a driveway or roadway, the Planning Board Plan Review Committee must consider the following guidelines:

- A. In order to preserve the natural landscape, the profile of development should be as unobtrusive as possible. The impact of development should be determined from several vantage points including the highest public view, the aspect in the immediate vicinity and the nearest major public road. Height of structures should not exceed the local tree line. Plantings may be required to afford some screening of development including driveways from public or neighboring views. Large expanses of manicured lawns are discouraged.
- B. Development should be sited on or at least near the side slope of a valley and never into the center of a valley. Development should not be sited at the top of a slope where their entire mass will be starkly silhouetted against the sky. Development should be sited down the grade so that the slope contains the buildings and serves as a partial backdrop for them.
- C. In open/highly visible areas, if the slope of the natural grade allows a basement to be exposed above finished grade the project must be designed or landscaped so that the basement level is not visible from public places.

¹ Chapter 831 of the *Acts of 1977*, as Amended.

² “Joint Memorandum of Understanding Concerning Settlement of the Gay Head, Massachusetts Indian Land Claim, “ September 28, 1983.

- D. On wooded hillsides in highly visible areas, trees should be retained to minimize the visibility of the structure, but still allow it a view looking out among the trees
- E. Driveways and roads should be winding, not straight, to help minimize the visibility of manmade features.
- F. Optimum siting of development involves consideration of the public and private viewshed of neighbors and abutters.

13.4-3 BUILDING HEIGHT

A. The height of structures, as measured vertically from mean natural grade within twenty (20) feet of the structure to the highest point of the roof, shall not, except by Special Permit from the Planning Board Plan Review Committee exceed:

- 1. In open/highly visible areas, and within 200 feet of any public road or way:
 - a. Eighteen (18) feet for a gable or hip roof.
 - b. Thirteen (13) feet for a flat or shed roof.
 - c. The Planning Board Plan Review Committee may grant a Special Permit to exceed this height limitation up to a maximum of twenty-four (24) feet.
- 2. In all other areas:
 - a. Twenty-four (24) feet or two (2) stories, whichever is less, for a gable or hip roof.
 - b. Nineteen (19) feet or two (2) stories, whichever is less, for a flat, shed or roof with a pitch less than 3 inches in 12 inches.

B. Slender and unoccupied projections customarily carried above the roof such as chimneys, flagpoles, antennas, and weathervanes may rise an additional 10 feet above mean natural grade, or higher by Special Permit from the Planning Board Plan Review Committee, where they will not block or damage the view from roads and or other residences, and are consistent with traditional character of the area.

13.4-4 ROOF TYPES AND DECKS/ EXTERIOR ELEMENTS

Roof types other than gable, hip, flat, or shed; roof walks and/or second story porches and decks on new or additions to pre-existing structures shall require a Special Permit from the Planning Board Plan Review Committee in open/highly visible areas, and within 200 feet of any public road or way. Roof types other than gable, hip, flat, or shed; roof walks and/or second story porches and decks on new or additions to pre-existing structures should blend well with the dwelling and coordinate with the remaining design. Their scale and proportion should harmonize completely with the total structure and siting on the lot.

13.4-5 FOUNDATIONS

In open/highly visible areas, and within 200 feet of any public road or way, building foundations shall be no more than eighteen (18) inches in height from the median natural grade without a Special Permit from the Planning Board Plan Review Committee.

13.4-6 SETBACKS *(Amended 5.8.2012 STM)*

A. Except as provided in Section 13.8 (Special and Historic Places, also in Section 14.2 and 2.4-3), Section 11.3 (Moshup Trail DCPC, also in section 3.5), Section 12.0 (Cliffs DCPC, also in Section 3.5) and Section 10.1 (Coastal District, also in section 2.4-1 and 3.5) of this By-Law, all structures shall be set back at least:

- 1. Thirty (30) feet from any lot line;
- 2. Forty (40) feet measured from the centerline of all roads and public ways.

B. The Planning Board Plan Review Committee shall have the authority to modify or vary these dimensional requirements by Special Permit for the reconstruction, extension, or alteration of

pre-existing, nonconforming structures in existence as of June 17, 1999, based on the standards established in Section 13.4-11A .

C. On Municipal lots, the Planning Board Plan Review Committee shall have the authority to modify or vary these dimensional requirements by Special Permit for new structures if it determines that the siting of the new structure is in harmony with the goals of this By-Law.

13.4-7 STRUCTURAL DENSITY

On any lot, the total footprint of all structures may not exceed two thousand (2,000) square feet except by Special Permit from the Planing Board Plan Review Committee.

13.4-8 DESIGN GUIDELINES

A. In open/highly visible areas and within two-hundred (200) feet of any public road or way:

1. Regardless of architectural style, buildings and structures should be sheathed in traditional neutral materials, such as natural wood shingles.
2. Roofs and ridgelines should be designed to blend into the horizon from most perspectives. Roofing materials shall be neutral asphalt, aggregate or cedar shingles.
3. The use of glass walls is discouraged in order to minimize the impact of artificial interior light on the night skies for both public enjoyment and ecological reasons. Glass walls should be designed to have curtains or shades that occlude interior light.
4. Trim colors should be neutral or natural wood.
5. Design consistent with the rural and historical nature of the Town of Aquinnah is encouraged. Examples are available at the Aquinnah Town Hall.

B. Accessory structures and additions to pre-existing structures shall conform in materials, scale and proportion to the principal structure. In cases where pre-existing structures are not compatible with the requirements for new construction, accessory structures and additions shall conform to the requirements for new construction.

13.4-9 ROADS

A. Goals:

1. To allow for safe access and travel along the roads, protect the visual character, diversity of landscape and historic features of the journey along the roads, and maintain and enhance the State Road System as major public facility.
2. To protect Old Lobsterville Road, Old South Road, and Old Church Road as historic places, to retain these ways open primarily for uses such as walking and horseback riding, but not developed as a primary vehicular route except for access to properties where no alternative access exists.

B. Road Dimensions:

1. No roads or ways may be more than twelve (12) feet wide except by Special Permit.
2. No way or road shall be constructed within two hundred (200) feet of the centerline of Old Lobsterville Road, Old South Road, and Old Church Road which exceeds a width of twelve (12) feet.

C. Roadway Materials:

1. Roads and ways should use pervious paving materials such as gravel, bluestone, crushed shells, or wood chips. Roads and ways may not be paved with any impervious material unless by Special Permit from the Planning Board Plan Review Committee.
2. Old Lobsterville Road, Old South Road, and Old Church Road shall not be paved with any impervious material.

D. Curbcuts:

1. Curbcuts must be approved by the Planning Board Plan Review committee taking into consideration safety (line of obstruction vision to the public road), road frontage of lot, frequency and duration of use, and design. Whenever possible curbcuts are to be shared.

2. Any vehicular access to the public road must not result in direct vehicular access to the lot and must be at least 1,000 feet, measured on the same side of the road, from any other vehicular access and such accesses shall not be greater than 12 feet in width, except that if this requirement would prevent at least one (1) access to a public road from each lot held in separate ownership from the lots contiguous thereto as of December 22, 1975, each lot shall be allowed a single access which shall be located as far as practicable from all other such ways located on either side of the road. No land shall hereafter be divided or sold if such lot or lots would not be entitled to a way to provide vehicular access to a public way as provided herein.

13.4-10 MINIMUM FRONTAGE *(Added 5.10.2011 ATM) (Amended 5.8.2012 STM)*

- A. All lots shall have a minimum frontage of 200 feet on a public or private way.
- B. The Planning Board Plan Review Committee shall have the authority to modify or vary the dimensional requirements of this By-law by Special Permit for the reconstruction, extension, or alteration of pre-existing, nonconforming structures in existence as of May 10, 2011 situated on lots containing less than the minimum frontage required by Section 13.4-10(A.) and 3.7-1(A).

13.4-11 PRE-EXISTING, NONCONFORMING STRUCTURES AND USES

(Added 5.8.2012 STM)

- A. Any pre-existing, nonconforming structure or use which does not conform to the provisions of this By-Law or any amendment thereto may nevertheless continue in its use. Pre-existing, nonconforming structures and uses in existence as of June 17, 1999 may be reconstructed, altered, or extended by Special Permit from the Planning Board Plan Review Committee; provided, however, that the reconstruction, extension, or alteration bears a reasonable relationship to the original size and nature of the nonconforming structure or use, and that the Planning Board Plan Review Committee finds that the change, extension or alteration is not substantially more detrimental than the existing nonconforming structure or use to the neighborhood. Changes qualifying for a zoning determination under Section 13.14-1 do not require a Special Permit if the Planning Board Plan Review Committee makes a finding that the proposed reconstruction, alteration, or extension does not increase the nonconforming nature of the structure or use.
- B. Construction or operations under a building or Special Permit shall conform to any subsequent amendment of this By-Law, unless the use or construction authorized thereby is commenced within a period of not more than six months after the issuance of the permit.
- C. If a pre-existing, nonconforming structure or use in existence as of June 17, 1999 is damaged or destroyed, it may be restored to its previous nonconforming status; however, pre-existing, nonconforming structures or uses abandoned or not used for more than five years shall not thereafter be revived.

SECTION 13.5 HISTORIC AND ARCHAEOLOGICAL RESOURCE PROTECTION

13.5-1 GOALS

Historic and Archaeological resources are fragile features that embody the significant prehistoric and historic cultural heritage of the Town of Aquinnah and The Wampanoag Tribe of Gay Head (Aquinnah); they provide a material record to understand and explain our past, and enhance and enrich the Town's quality of life. The purpose of this By-Law is to protect the significant historic and archaeological resources of the town and provide a means for review of activities that may affect these non-renewable resources. The provisions of this By-Law do not waive applicable Federal and State laws regarding the discovery of unmarked human burial or skeletal remains (which require development activity to cease immediately) or the inadvertent or unexpected discovery of significant historical and archaeological resources.

13.5-2 PROJECT REVIEW

Prior to any development in the ADCPC, it must be determined if there are significant historic and archaeological resources at the site. Significant historic and archaeological resources are those that meet the criteria for evaluation for listing in the National Register of Historic Places (36 Code of Federal Regulations, Part 60). This requirement applies to both developed and undeveloped lots and includes any activity, such as perc tests, well drilling, utility trenching, demolition, road construction, clearing, excavation or use of heavy machinery that may destroy or disturb historic and archaeological resources. The Planning Board Plan Review Committee shall determine what actions shall be taken to locate, identify, and evaluate, any significant historic and archaeological resources that may be affected by the development. If any significant historic and archaeological resources are found, The Planning Board Plan Review Committee shall determine what actions shall be taken to avoid, minimize, or mitigate adverse effects to said resources. In making the above determinations, The Planning Board Plan review Committee shall consult with The Massachusetts Historical Commission (MHC), The Tribal Historic Preservation Officer of The Wampanoag Tribe of Gay Head (Aquinnah), and such local agencies as it deems necessary for guidance.

13.5-3 REVIEW PROCESS

A. The owner/agent must submit a Project Notification Form (950 CMR 71) and the required maps and plans (a complete list is available at the town hall) to The MHC by certified mail, and to the Planning Board Plan Review Committee. Within thirty (30) days of receipt by certified mail of adequate project documentation, The MHC will make its recommendations to the Planning Board Plan Review Committee. Within forty-five (45) days of receipt by certified mail of adequate project documentation by The MHC, The Planning board Plan Review Committee will hold a meeting to determine whether an archaeological survey of the site is required, and if so, the type and extent of the survey.

B. If a survey is required, it will be conducted by a qualified professional at the owner/agent's expense. The results of this survey will be presented to the MHC for technical advice and the Planning Board Plan Review Committee. If significant historic or archaeological resources are not found, the development may proceed through the normal permitting process. If the survey identifies areas of the site that are known or are likely to contain significant historic or archaeological resources, and the owner/agent agrees that these areas will not be affected or disturbed by the proposed development, the Planning Board Plan Review Committee will issue an order of conditions under which the proposed development may proceed through the normal permitting process. If the survey identifies areas of the site that are known or are likely to contain significant historic or archaeological resources that will be affected or disturbed by the proposed development, a more extensive survey may be conducted, at the expense of the owner/agent to locate, identify, and evaluate said resources. If significant historic or archaeological resources are found, the survey will also develop plans to avoid, minimize, or mitigate the adverse effects of the development.

C. The results of this final survey will be presented to the MHC and the Planning Board Plan Review Committee. The Planning Board Plan Review Committee shall then hold a meeting to determine what actions should be taken to avoid, minimize, or mitigate for any potential damage or impairment to any historic and archaeological resources and issue an order of conditions under which the proposed development may proceed through the normal permitting process.

SECTION 13.6 STONE WALLS AND FENCES

13.6-1 No stone wall existing as of June 1, 1995 may be moved, removed or altered except by Special Permit from the Planning Board Plan Review Committee.

13.6-2 In order to minimize the visual prominence of man made features and protect the scenic/rural character of the town, a Special Permit is required for the removal, replacement or erection of fences in open/highly visible areas or within two hundred (200) feet of any public road or way. No Special Permit is required for removal, or erection of low visibility fences (made out of materials like chicken wire) for enclosing gardens or pets.

13.6-3 No fences, walls or structures shall be erected, placed, or constructed within twenty (20) feet of the centerline of Old Lobsterville Road, Old South Road, and Old Church Road.

13.6-4 In the Moshup Trail and Cliffs DCPC's a Special Permit shall be required from the Planning Board Plan Review Committee for the erection of new stonewalls and fences.

13.6-5 In the Cliffs DCPC a Special Permit shall be required from the Planning Board Plan Review Committee for the removal or replacement of fences.

SECTION 13.7 UTILITIES

13.7-1 All new utilities, or in the case of a substantial renovation, all existing utilities shall be placed underground.

SECTION 13.8 SPECIAL HISTORICAL AND CULTURAL PLACES

13.8-1 There shall be no development within forty (40) feet of a special place of historic value, as listed on the special places register of the Martha's Vineyard Commission.

13.8-2 Within one hundred (100) feet of the special places listed in subsection 8.3:

- A. There shall be no development, construction, clearing of vegetation or shrubs, or alteration of the land without a Special Permit from the Planning Board Plan Review Committee which may be granted if the Committee finds that the proposal is in harmony with the cultural and historical aspects of the site.
- B. Uses will be permitted which do not require the construction, erection, installation, or placement of any structure, sanitary disposal facility, road or way, or fence. Such uses may include outdoor recreation (including hunting, trapping or fishing), conservation purposes, agricultural purposes, etc.).

13.8-3 The following places are of special historical and cultural significance to the Town of Aquinnah and need to be honored and protected: Occooch Pond at its extreme high water mark, Toad Rock, Clay Pits, Mittark's Grave, Silas Paul's Grave, Gay Head Cattle Pound, Cook's Spring, Gay Head Baptist Church / Parsonage, Old Indian Cemetary, Indian Burial Ground Lot 1, Indian Burial Ground-Old Lobsterville Road, Gay Head School, Deacon Simon Johnson House.

SECTION 13.9 SIGNS

13.9-1 There shall be no signs in the ADCPC except by approval from the Planning Board. Approval by the Planning Board may be granted for signs up to six (6) feet square in size with no moving or flashing elements and shall be unlighted unless by a steady white reflected and shielded light, in accordance with the Town lighting by-law. There shall be no more than one sign per lot, and that sign may only be used to identify the premises and/or to refer to products or services available there. Street signs are restricted to 6 inches by 24 inches. Signs identifying residence and posting signs (no hunting, no trespassing) are exempt. In the Marine Commercial District the Planning Board may grant a Special Permit for more than one (1) sign per lot if it finds that the proposal is in harmony with the goals and purpose of ARTICLE I of this by-law.

SECTION 13.10 CLEARING, CUTTING AND VEGETATION

13.10-1 Goals.

The purpose of this by-law is to protect trees that create a tree line, to protect trees that shield homes and other structures from view, to preserve and enhance existing large trees, and to preserve natural vegetative buffer zones or “greenbelts” along property lines.

13.10-2

A. Except where the land is primarily used for farm, forest, plant nursery, or other agricultural or horticultural uses, there will be no clear cutting of trees on any lot except by Special Permit from the Planning Board Plan Review Committee. Clear cutting is defined as:

1. The removal of all living trees, over 3 inches in diameter at the base, from an area greater than 200 square feet,
2. The removal of any living tree over 9 inches in diameter at the base, or
3. The removal of any living tree, 3 inches to 9 inches at the base, when there is no other tree within a 25 foot radius.

To clarify, without a Special Permit you are allowed to clear 200 square feet of land of all trees as long as no trees over 9 inches in diameter at the base are removed, and as long as you are not removing just one tree, 3 inches to 9 inches in diameter at the base, with no other tree within a 25 foot radius.

B. There are more restrictive rules for clear cutting in the Moshup Trail DCPC (ARTICLE XI) and the Cliffs DCPC (ARTICLE XII) that state there shall be no removal of ground cover, shrubs or trees anywhere in these areas without a Special Permit, but no permit is needed for clearing to create a vegetable, herb, or flower garden of 100 square feet or less, as long as you are not removing any trees over 9 inches diameter at the base.

C. There are more restrictive rules for clear cutting within 200 feet of wetlands and resource areas under the jurisdiction of the Aquinnah Conservation Commission that prohibit “the destruction of vegetation” within these areas without a Special Permit. Clear cutting of trees less than 3 inches wide at the base for an area less than 101 square feet is allowed without a Special Permit.

13.10-3 Pruning and Topping

A. Pruning in a professional manner to promote the health and vigor of a tree, or for cosmetic/aesthetic purposes is allowed, however aggressive pruning that jeopardizes the health of a tree or significantly increases the visibility of man made structures requires approval from the planning board.

B. Topping to maintain an existing or previously approved view is allowed if it is done in a professional manner that will not hurt the health of the tree and preserves its natural canopy and form. Topping that jeopardizes the health of a tree or increases the visibility of man made structures requires approval from the planning board.

13.10-4 Vegetation

Within the ADCPC, planting shall be indigenous or easily naturalized plant types and materials. The removal of invasive ground cover and shrubs to preserve an existing yard and the removal of invasive ground cover and shrubs in uncleared areas in order to protect any species are allowed throughout the ADCPC including the Moshup Trail and Cliffs DCPC’s. See ARTICLE VII, Definitions for a list of indigenous and invasive species.

13.10-5 Tree Warden

To facilitate the administration of this by-law, a Tree Warden has been appointed by the Selectmen and confirmed by the Planning Board. The Tree Warden has been delegated some of the Planning Board’s powers and responsibilities under this By-Law and is able to issue or deny approval for clearing, cutting, pruning and topping of ground cover shrubs and trees, within

certain guidelines. There is no application fee or public notice requirement for a permit from the Tree Warden. Details on the administration of the by-law and the duties of the Tree Warden are available at the town hall offices.

SECTION 13.11 COASTAL AREAS (Amended 5.8.2012 STM)

13.11-1 In Coastal Areas (areas within 500 feet of the mean high water mark of the ocean or any major pond):

- A. There shall be no swimming pools or tennis courts built.
- B. Except on municipal lots, there shall be no new boardwalks or parking lots.

SECTION 13.12 HOMESITE LOTS (Amended 5.10.2011 ATM)

A. For the purpose of helping Aquinnah residents who have lived here for a substantial period of time and who, because of rising land prices, have been unable to obtain suitable land for their permanent homes at a reasonable price, and who desire to continue to live in Aquinnah, the Planning Board Plan Review may grant a Special Permit to build a one-family dwelling for owner occupancy upon a Homesite Lot as prescribed in this By-Law.

B. Lots which are one acre or more and were created after the adoption of zoning, may be built upon by an individual who has been qualified by the Aquinnah Housing Committee under current Resident Homesite guidelines and by Special Permit from the Planning Board Plan Review Committee under the following conditions:

1. The lot satisfies all applicable Zoning and Board of Health requirements with the exception of section 3.1-1.
2. The applicant for the Special Permit transfers ownership of the Homestead Lot, prior to the issuance of a building permit, to the Dukes County Regional Housing Authority (DCRHA) or to an entity selected by the Town, through the Aquinnah Housing Committee, through an RFP or other process in accordance with governing law, to lease the Homestead Lot to the applicant, or other lessee approved by the Aquinnah Housing Committee, under a long term lease, which lease ensures the perpetual affordability of the Homestead Lot under terms acceptable to the Aquinnah Housing Committee and which provides the Town the option, in the case of a default, foreclosure, dissolution, or bankruptcy of either the applicant, the DCRHA, or any entity to which the Town has delegated the right to manage the Homestead Lot, to acquire the Homestead Lot.

C. Owners of lots containing three acres or more may create by subdivision a Homestead Lot for conveyance to an Aquinnah resident who has been qualified by the Aquinnah Housing Committee under current Resident Homesite guidelines, and by Special Permit from the Planning Board Plan Review Committee under the same conditions specified under Section 3.3-3B and 13.12-B provided, however that the remainder lot(s) must be at least 2 acres in area and satisfy all applicable Board of Health and Zoning regulations.

SECTION 13.13 PERSONAL WIRELESS SERVICE FACILITIES

13.13-1 The rules and regulations for personal wireless facilities were approved as part of the ADCPC, are legally a part of the Zoning By-Law, and may be obtained at the Town Hall under separate copy.

SECTION 13.14 ADMINISTRATION (Amended 5.8.2012 STM)

13.14-1 Zoning Determinations (Added 5.8.2012 STM)

A. To simplify the implementation of this By-Law and to speed up the approval process for projects that have no negative impact on the resources that these By-Laws seek to protect, the Planning Board Plan Review Committee may determine that certain small developments, or certain parts of larger projects, can be approved by issuing a Zoning Determination rather than

requiring the applicant to apply for a Special Permit. There shall be no fee for a Zoning Determination. Issuance of a Zoning Determination shall be made after site review at a public meeting only if the Planning Board Plan Review Committee unanimously determines that the proposed project: 1.) has no negative impact on the resources the applicable By-Laws protect; 2.) is consistent with the goals and within the guidelines of this District of Critical Planning Concern; and 3) does not appear to be detrimental to the interests of abutters.

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

C. If the Planning Board Plan Review Committee determines that the small development or a certain part of a larger project qualifies under this Section, it will issue a written and signed Zoning Determination to the applicant, with a copy to the building inspector, granting permission to proceed with the work, including any conditions or limitations the Planning Board Plan Review Committee deems reasonable to impose consistent with the goals and purposes of this District of Critical Planning Concern.

13.14-2 SITE REVIEW

Site Reviews shall be conducted by the Planning Board Plan Review Committee. The Planning Board Plan Review Committee will receive applications for Special Permits within the Town and its DCPC's. Review Committee to be consistent with the purposes of the By-Law as stated in Article I and taking into consideration the special characteristics of the District. The committee shall review the applications and may make site visits to determine if the application conforms to the District regulations and to suggest guidance for development. Special Permits will be granted only for proposals determined by the Planning Board Plan

SECTION 13.15 WIND ENERGY GENERATING FACILITY REGULATIONS

(added 11/17/2009 STM) The wind energy generating facility regulations are part of the Aquinnah Zoning By-Laws and are available under separate cover.

ARTICLE XIV: The Island Road, Special Ways and Special Places Districts

SECTION 14.1 ISLAND ROAD DISTRICT

14.1-1 GOALS

A. MAJOR ROAD ZONE - To allow for safe access and travel along the roads, protect the visual character, diversity of landscape and historic features of the journey along the roads, and maintain and enhance the State Road System as a major public facility.

B. SPECIAL WAYS ZONE - To protect historic places, to retain these ways open primarily for uses such as walking and horseback riding, but not developed as a primary vehicular route except for access to properties where no alternative access exists.

14.1-2 BOUNDARIES

A. MAJOR ROAD ZONE - Within two hundred (200) feet of the right - of way of State Road, Moshup Trail, Lobsterville Road and Lighthouse Road.

B. SPECIAL WAYS ZONE - Within two hundred (200) feet of the centerline of Old Lobsterville Road (Jeffers Way), Old South Road, and Old Church Road.

(Amended 5.8.2012 STM)

14.1-3 PERMITTED USES WITHIN THE ISLAND ROAD DISTRICT

A. USES PERMITTED - Any use as permitted in the respective zoning district.

B. GENERAL REGULATIONS:

1. No stonewall shall be moved, removed, or otherwise altered, except by a Special Permit.
2. Any vehicular access to the public road must not result in direct vehicular access to the lot and must be at least 1,000 feet, measured on the same side of the road, from any other vehicular access and such accesses shall not be greater than 12 feet in width, except that if this requirement would prevent at least one (1) access to a public road from each lot held in separate ownership from the lots contiguous thereto as of December 22, 1975, each lot shall be allowed a single access which shall be located as far as practicable from all other such ways located on either side of the road. No land shall hereafter be divided or sold if such lot or lots would not be entitled to a way to provide vehicular access to a public way as provided herein. Variations from this requirement may be allowed by Special Permit from the Planning Board Plan Review Committee, provided safety and the visual character of the road are assured.

14.1-4 REGULATIONS AND RESTRICTIONS FOR THE MAJOR ROAD ZONE

A. HEIGHT OF STRUCTURES - Structures erected within the zone shall not, except by Special Permit, exceed a height of eighteen (18) feet for a pitched roof and thirteen (13) feet for a flat or shed roof (A flat being a roof with a pitch of 1 in 4 or less).

B. USES PERMITTED - Any use permitted in the respective Zoning District, subject the regulations and restrictions in Section 14.1-4A and 14.1-3B2.

14.1-5 REGULATIONS AND RESTRICTIONS FOR THE SPECIAL WAYS ZONE

A. USES PERMITTED - Any use permitted in the respective Zoning District, provided that the development does not result in direct vehicular access to the special way, subject to the regulations and restrictions in Section 14.1-3B, 14.1-5D2 and 14.1-5D3.

B. USES BY SPECIAL PERMIT- Any uses permitted by Special Permit under the Town Zoning by-law, subject to regulations and restrictions in Section 14.1-3B, 14.1-5D1 and 14.1-5D3, which result in direct vehicular access to the special way.

C. USES NOT PERMITTED – Any development within forty (40) feet of a special place of historic value, as listed on the special places register of the Martha’s Vineyard Commission

D. SPECIAL REGULATIONS: *(Amended 5.8.2012 STM)*

1. No way or road shall be constructed within the Special Ways Zone which exceeds a width of twelve (12) feet.
2. No fences, walls, or structures shall be erected, placed or constructed within twenty (20) feet of the centerline of the Special Way.
3. No Special Way shall be paved with any impervious material
4. The Planning Board Plan Review Committee shall have the authority to modify or vary the dimensional requirements of section 14.1-5(D)(2) by Special Permit for the reconstruction, extension, or alteration of pre-existing, nonconforming structures in existence as of December 22, 1975, based on the standards established in Section 13.4-11A.

SECTION 14.2 SPECIAL PLACES DISTRICT

14.2-1 BOUNDARIES

A. The land and water lying within one hundred (100) feet of the extreme high water mark of Occoch Pond.

B. The land lying within one hundred (100) feet of Toad Rock, Clay Pits, Mittark's Grave, Silas Paul's Grave, Gay Head Pound, Cook's Spring, Gay Head Baptist Church and Parsonage, Old

Indian Cemetery, Indian Burial Grounds Lot #1, Indian Burial Ground - Old Lobsterville Road, Gay Head School, Deacon Simon Johnson House and Occouch Pond.

14.2-2 USES PERMITTED

Uses will be permitted within the District which do not require the construction, erection, installation, or placement of any structure, sanitary disposal facility, road or way, or fence within the District. Such uses may include outdoor recreation (including hunting, trapping or fishing conservation purposes, agricultural purposes, etc.).

14.2-3 USES BY SPECIAL PERMIT

Construction within one hundred (100) feet of the Special Place shall only be by Special Permit from the Planning Board Plan Review Committee if it finds that the proposed construction is in harmony with the cultural and historic aspects of the site.

ARTICLE XV: The Wild and Scenic North Shore District

SECTION 15.1 PURPOSE

15.1-1 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 allow economic development of fisheries and related industries.

SECTION 15.2 BOUNDARY DESCRIPTION

A. The Wild and Scenic North Shore District consists of the waters and the lands under the waters, beginning at the corporate bounds of the Towns of Chilmark and Aquinnah, and thence along the Mean Low Water Line of Vineyard Sound in the Town of Aquinnah, in a generally westerly direction, to the intersection of said Mean Low Water Line with a line drawn perpendicular to said Mean Water Line and intersecting the southwesterly boundary of land of the United States of America, known as Aquinnah Assessors' Parcel 6-22, and extending 100 feet seaward from said Mean Low Water Line.

B. This regulation shall be applied vertically above and below the surface of waters included in the district.

SECTION 15.3 PERMITTED USES

15.3-1 Subject to the Rules and Regulations as are from time to time issued by the Harbor Master pursuant to the authority granted to him under M.G.L. C. 90B, 91 and 102 and, further subject to the granting of licenses and/or permits required by the Town, State or Federal boards or agencies exercising authority granted to them by law other than M.G.L. C. 40A, uses which are consistent with the fragile nature of the area, such as recreational fishing and boating, and which do not involve the permanent placement of any new fill, structure or other materials, are permitted. Commercial fishing, shellfish and aquaculture activities are permitted so long as those activities are duly licensed and do not require the placement of any permanent fill or structure. Maintenance of any fill or structure in existence as of the date of adoption of this regulation is permitted. Beach nourishment is permitted.

SECTION 15.4 USES BY SPECIAL PERMIT

15.4-1 The Planning Board may issue a Special Permit for permanent placement of any fill or structure for municipal purposes or for purposes of commercial fishing, shellfishing or aquaculture. Commercial dock permits shall be reviewed annually by the appropriate town

authority. Such structures shall be removed when and if the commercial use is discontinued. Such Special Permit shall be granted only after the Planning Board:

- A. Has reviewed and given due consideration to the written recommendation of the Conservation Commission. Upon receipt of the Special Permit application, the Planning Board shall forward a copy of the application to the Conservation Commission for comment. Failure of the Conservation Commission to submit its written recommendation to the Planning Board within 21 days of the initial filing of the Special Permit application shall be deemed a favorable recommendation. The Planning Board may also consider the recommendation of other authorities familiar with the District and its resources. And,
- B. Has determined that the proposed use is consistent with the Purpose of this By-Law and with the provisions of the Aquinnah Open Space Plan as from time to time adopted.

SECTION 15.5 PROHIBITED USES

15.5-1 All other uses not permitted by right or by Special Permit are prohibited.

Appendix 1 ZONING MAP OF AQUINNAH