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JENNIFER S. RAKO

December 3, 2021

Mr. James Hagerty  
Town Administrator  
Town of Edgartown  
P.O. Box 5158  
Edgartown, MA 02539

Re: Housing Bank

Dear James:

You have asked me to review the warrant article (the “Housing Bank Article”) seeking authority to petition the Legislature for a special act creating a “Martha’s Vineyard Housing Bank” (the “Housing Bank”). Specifically, you have requested that I: a) advise the Select Board as to how the Housing Bank Article, and the legislation it contemplates, differs from the process leading to and the substance of the 1985 special act creating the Martha’s Vineyard Land Bank Commission (“Land Bank Act”); and b.) outline any questions I may have.

At the outset, I note that the Housing Bank Article references that “An Act Establishing the Martha’s Vineyard Housing Bank” (“Housing Bank Act”) is on file with the Town Clerk. I am advised that the Housing Bank Act has not been finalized and is not likely to be filed with the Town Clerk until February. Accordingly, many of the questions that I have will have to await the filing of the Housing Bank Act.<sup>1</sup>

**I. Process for Adoption**

The Housing Bank Article proposes that, if approved by four of the six Island towns, then the as-yet-to-be-completed Housing Bank Act will be filed for adoption with the Legislature. The Housing Bank Article further states that, after approval by four towns but prior to submission to the Legislature, a committee consisting of one representative appointed by the Select Board from each of the approving towns (the “Housing Bank Review Committee”) can make amendments to the Housing Bank Act, “provided that the Housing Bank Article shall be subject to the maximum extent possible to the [parameters of the Housing Bank Article]”.

<sup>1</sup> The filing with the Town Clerk will have to be sufficiently timely to give the Town Meeting fair notice of what they are being asked to approve as a petition to the Legislature.

Subsequent to passage by the Legislature, the Select Boards of two-thirds of the towns voting in favor of the Act may approve changes made by the Legislature “which shall be within the scope of the general public objectives of the petition.”

The Land Bank Act, Chapter 736 of the Acts of 1985 (a copy of which is attached as Exhibit A), followed a two-step route to its enactment. First, all six Vineyard towns approved a warrant article at their respective town meetings in 1984 asking the Legislature to enact special legislation creating the land bank. (A copy of the warrant article is attached as Exhibit B.)<sup>2</sup> The Legislature passed the Land Bank Act in 1985, which specifically provided that the Land Bank would not come into existence until all six Vineyard towns voted to accept the Land Bank Act at a regular or special town election. All six towns did so at their town elections in 1986. (See Exhibit C for the applicable ballot question.)

The obvious advantage of the route which the Land Bank Act followed is that the voters had the opportunity to vote on the specific provisions that the Legislature had passed. The disadvantage of that process is that it would be more time consuming than the one contemplated by the Housing Bank Article. Deciding which procedural route to follow is a choice for the Select Board and ultimately the voters to make, as the Housing Bank Article could be amended to ask the Legislature to insert such a provision in the final bill.

## **II. Membership**

As noted, the Housing Bank Article provides that at least four of the six Vineyard towns must vote their approval before submission of the Housing Bank Act to the Legislature. It is unclear whether any towns which vote “no” would be required to be a part of the Housing Bank. I suggest that this point be clarified by amendment.

## **III. Withdrawal**

The Land Bank Act contains a process for member towns to withdraw. The Housing Bank Article does not reference a withdrawal mechanism,<sup>3</sup> but it does provide that the Housing Bank will expire after thirty years unless it is extended by a vote of the member towns at town meeting. I defer to your judgment as to whether the ability of a town to withdraw should be added to the Housing Bank Article’s amendment.

## **IV. Town Advisory Board Approval**

The Land Bank Act provides that the Land Bank cannot acquire property in a particular town without the approval of that Town’s Advisory Board (which, under the Land Bank Act, consists of representatives appointed by the Select Board, the Conservation Commission, the

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<sup>2</sup> I am aware that votes at prior town meetings have expressed a general will of the Island community that legislation aimed at addressing affordable housing on the Vineyard is warranted.

<sup>3</sup> It may well be that the Housing Bank Act will contain a procedure for withdrawal.

Planning Board, Board of Assessors, Board of Health, Parks and Recreation Committee and Water Commissioners). The Housing Bank Act does require approval of the Town Advisory Board<sup>4</sup> for any projects in the Town, but it exempts projects consisting of two or fewer units and equity participation loans (see further discussion below). You may wish to consider an amendment which would require that all Housing Bank projects in the Town require approval from the Town Advisory Board.

**V. Eligibility Requirements**

The Housing Bank Article allows funding of projects for year-round occupancy by persons earning up to 240% of the median income for Dukes County. Equity participation loans are exempt from the income requirements “if the commissioners determine that it would further the Housing Bank purposes to make such a loan without such restrictions.” I expect that the Housing Bank Act will provide further clarity on the criteria to be used in making such loans and which banking regulatory laws would be applicable, but you may wish to consider whether this exemption should be deleted.<sup>5</sup>

**VI. Oversight**

The Land Bank Act provides a comprehensive regulatory scheme through which its activities, including financial oversight, are overseen and reporting requirements are mandated. It also requires coordinated planning with town master plans. I would expect that the Housing Bank Act will incorporate similar oversight provisions.

**VII. Compensation of Commissioners**

The Land Bank Act expressly provides that the commissioners shall serve without compensation. The Housing Bank Article does not suggest a similar restriction, and commissioner compensation would not be subject to review by voters at town meetings. If you do not believe the commissioners should be compensated, you may wish to offer an amendment to that effect.

**VIII. Permanent Protections**

The Housing Bank Article calls for the imposition of permanent affordable housing restrictions on all properties under its jurisdiction, but the Article itself does not specify which entity or entities are to be the holders of such restrictions. I expect that the Housing Bank Act will provide clarity on which entities can hold a restriction.

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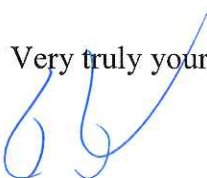
<sup>4</sup> The Housing Bank Article has a slightly different membership for the Town Advisory Board than the Land Bank, as it also includes two members to be appointed by the Town’s affordable housing committee.

<sup>5</sup> Without further clarity from the Legislature, I have questions about the legality of such a provision.

**IX. Conclusion**

A threshold issue is whether any Housing Bank Act should require approval by the voters at a town election before it goes into effect. Other issues to be addressed are: whether any town voting "no" will be required to be part of the Housing Bank; whether towns have the ability to withdraw prior to the expiration of 30 years; whether there should be exemptions for non-income eligible recipients; whether commissioners should be compensated; and whether all projects in the town should be approved Town Advisory Board.

I hope the above is helpful. Please let me know if you would like me to provide anything further.

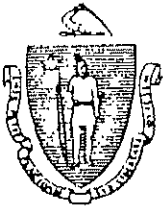
Very truly yours,  


Ronald H. Rappaport

RHR/ad  
Attachments

# **EXHIBIT A**

[SIMILAR MATTER FILED DURING PAST SESSION -  
SEE SENATE [REDACTED] NO. 2488 ... OF 1985 ... ]



## The Commonwealth of Massachusetts

IN THE YEAR ONE THOUSAND NINE HUNDRED AND EIGHTY-Six

### AN ACT ESTABLISHING THE COUNTY OF DUKES COUNTY LAND BANK

*Be it enacted by the Senate and House of Representatives in General Court assembled,  
and by the authority of the same, as follows:*

SECTION 1. For the purposes of this act, the words and phrases set forth in this section shall have the following meanings:

"Fund", shall refer to the Martha's Vineyard Land Bank Fund established under the provisions of section eight.

"Institutional lender", any bank as defined in section one of chapter one hundred and sixty-seven of the General Laws, any insurance company as defined in section one of chapter one hundred and seventy-five of the General Laws, and any mortgage company or investment company that made more than twenty mortgage loans in the calendar year preceding the year of the relevant mortgage for the purposes of subsection (m) of section twelve, and any national bank, federal savings and loan, federal savings bank, bank holding company, or state or federally chartered credit union.

NOTE — Use only ONE SIDE of each leaf. DOUBLE SPACE. Insert additional leaves, if necessary.

CHAPTER 736 THE COMMONWEALTH OF MASSACHUSETTS  
AN ACT ESTABLISHING THE DUKES COUNTY LAND BANK

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"Fund", shall refer to the Martha's Vineyard Land Bank Fund established under the provisions of section eight.

"Institutional lender", any bank as defined in section one of chapter one hundred and sixty-seven of the General Laws, any insurance company as defined in section one of chapter one hundred and seventy-five of the General Laws, and any mortgage company or investment company that made more than twenty mortgage loans in the calendar year preceding the year of the relevant mortgage for the purposes of subsection (m) of section twelve, and any national bank, federal savings and loan, federal savings bank, bank holding company, or state or federally chartered credit union.

"Land bank", the Martha's Vineyard Land Bank, established by section two.

"Land bank commission", the Martha's Vineyard land bank commission, established by section three.

"Purchaser", the transferee, grantee or recipient of any real property interests.

"Purchase price", all consideration paid or transferred by or on behalf of a purchaser to a seller or his nominee, or for his benefit, for the transfer of any real property interest, and shall include, but not be limited to, all cash or its equivalent so paid or transferred, all cash or other property paid or transferred by or on behalf of the purchaser to discharge or reduce any obligation of the seller; the principal amount of all notes or their equivalent, or other deferred payments, given or promised to be given by or on behalf of the purchaser to the seller or his nominee; the outstanding balance of all obligations of the seller which are assumed by the purchaser or to which the real property interest transferred remains subject after the transfer, determined at the time of transfer but excluding real estate taxes and other municipal liens or assessments which are not overdue at the time of transfer; and the fair market value at the time of transfer of any other consideration or thing of value paid or transferred by or on behalf of the purchaser, including, but not limited to, any property, goods or services paid, transferred or rendered in exchange for such real property interest.

"Real property interest", any present or future legal or equitable interest in or to real property, and any beneficial interest therein, including the interest of any beneficiary in a trust which holds any legal or equitable interest in real property, but shall not include any interest which is limited to any or all of the following: the dominant estate in any easement or right of way; the right to enforce any restriction; any estate at will or at sufferance, and any

estate for years having a term of less than thirty years; the reversionary right, condition, or right of entry for condition broken; the interest of a mortgagee or other secured party in any mortgage or security agreement; and the interest of a stockholder in a corporation, or a partner in a partnership.

"Seller", the transferor, grantor or immediate former owner of any real property interests.

"Time of transfer", of any real property interest shall mean, the time at which such transfer is legally effective as between the parties thereto, and, in any event, with respect to a transfer evidenced by an instrument recorded with the appropriate registry of deeds or filed with the assistant recorder of the appropriate registry district, not later than the time of such recording or filing.

"Town advisory board", a town board created in each of the towns of Chilmark, Edgartown, Gay Head, Oak Bluffs, Tisbury, and West Tisbury to assist the land bank commission in administering this act, such advisory board to consist of one representative duly appointed, either from its membership or otherwise, by each of the following town boards should they exist: conservation commission, planning board, board of assessors, board of health, park and recreation commission, board of selectmen and water commission.

SECTION 2. There is hereby established a Martha's Vineyard land bank, to be administered by a land bank commission established by section three, for the purpose of acquiring and holding and managing land and interests in land of the types set forth in section five.

This act shall not affect the eligibility of any member town to receive funds under the land conservation program created under section eleven of chapter one hundred and thirty-two A of the General Laws, or under any similar state program.

SECTION 3. The land bank shall be administered by a land bank commission, a public body corporate, consisting of seven persons, of whom there shall be one person who is a legal resident of each of the towns of Chilmark, Edgartown, Gay Head, Oak Bluffs, Tisbury, and West Tisbury, each person to be elected for a three year term, in the same manner as other elected town officials, provided that the initial terms, drawn by lot by the initial six appointed members, shall be staggered so that two members are elected each year, following the initial election of members; and provided, further, that the county commissioners shall, respectively, appoint the initial six members including one person who is a legal resident of each of the six towns that comprise the land bank to serve from the effective date of this act until the first elections of the regular members at each town's first regular or special town election following the effective date of this act. The secretary of environmental affairs or his designee shall be a voting member of the land bank commission. Members shall serve without compensation. The initial appointed members shall adopt temporary rules and regulations to the extent necessary to conduct business until the regular members are elected. The land bank commission shall elect a chairman and a secretary/treasurer from among its regular members; shall adopt, after holding a public hearing and after requesting recommendations from the town advisory board of each of the six member towns that comprise the commission, rules and



regulations for conducting its internal affairs and procedural guidelines for carrying out its responsibilities under this act. The land bank commission shall also adopt a management plan for managing each of its land holdings in a manner consistent with section five. In preparing a management plan for any parcel of land, the land bank commission shall use, as guidelines, the open space and master plans, if any, of the town or towns in which such parcel is located and shall request the recommendations of the town advisory board of any such town or towns; and the adoption or change of any such management plan shall be subject to the approval of the town advisory board of any such town or towns. Decisions of the land bank commission shall be by a majority vote, of those present and voting, and no business shall be transacted without four town representative members present; provided that decisions to acquire interests in land and to request state approval of any proposed disposition of an interest in any parcel of land or of any change in its use shall require the affirmative approval of at least four town representative members of the land bank commission. The land bank commission shall keep accurate records of its meetings and actions and shall file an annual report which shall be printed in the annual report of each member town.

SECTION 4. The land bank commission shall, subject to the provisions of this act, have the power and authority to: (a) acquire, by purchase or gift, fee simple interests, and any lesser interests, in any parcel of land situated within any of the towns that comprise the land bank commission, of the types set forth in section five, including any improvements thereon; provided, however, that the land bank commission shall, in considering any such acquisition, use as guidelines the open space and master plans, if any, of the town or towns in which such parcel is located, and provided further that any such acquisition shall require the approval of the town advisory board of any such town or towns; (b) accept gifts of funds to further the purposes of the land bank; (c) take any such interests in land by eminent domain pursuant to chapter seventy-nine of the General Laws, but only by a vote of the land bank commission in which at least four town representative members vote in favor of such taking and further, only after having been authorized to do so in each instance by a two-thirds majority vote of each town that comprises the land bank commission at its annual or special town meeting, and further, only after first making a reasonable effort to negotiate the acquisition thereto by purchase; (d) dispose of all or any part of its interests in any parcel of land, or change the use of such parcel, but only with the approval of the town advisory board of the town or towns in which such parcel is located and with the approval of the secretary of environmental affairs and subject to the provisions of Article XCVII of the Articles of Amendment to the Constitution of the Commonwealth, to the extent applicable; (e) incur debt, pledging the full faith and credit of each of the towns that comprise the land bank commission but only after having been authorized to do so in each instance by a two-thirds majority town meeting vote of each town; ~~or of the county of~~ ~~Dukes County, but only after having been authorized to do so in each~~ ~~instance by a two-thirds majority town meeting vote of each town in~~ ~~the county of Dukes County;~~ and incur debt, without such town meeting authorization, by pledging the full faith and credit of the land bank commission; (f) prepare an annual budget, which shall be subject to approval by the town advisory boards of the majority of the member towns of the land bank commission; (g) hire such staff and obtain such professional services as are necessary in order to perform its

duties; (h) administer and manage its interests in any parcel of land in a manner consistent with section five and with the land management plan adopted for such parcel under section three; and (i) expend funds to supplement municipal, state, or federal funds for the purchase of interests in land of the types set forth in section five.

SECTION 5. Interests in land to be acquired shall be situated in a member town and may consist of any of the following: (a) land to protect existing and future well fields, aquifers and recharge areas; (b) agricultural lands; (c) forest land; (d) fresh and salt water marshes and other wetlands; (e) ocean and pond frontage, beaches, dunes, and adjoining backlands, to protect their natural and scenic resources; (f) land to protect scenic vistas; (g) land for nature or wildlife preserves; (h) easements for trails and for publicly owned lands; and (i) land for passive recreational use.

SECTION 6. The land bank commission shall retain any real property interest acquired pursuant to this act predominantly in its natural, scenic or open condition, and shall not restrict access to any property interest on the basis of residency or domicile. With respect to any such real property interest, the land bank commission shall not permit any of the following without the approval of the town advisory board of the town or towns in which such real property is located and without the approval of the secretary of environmental affairs: (a) construction or placing of buildings, roads, signs, billboards, or other advertising utilities or other structures on or above the surface, (b) dumping or placing of soil or other substance or material as landfill, or dumping or placing of trash, waste or unsightly or offensive materials, (c) removal or destruction of trees, shrubs, or other vegetation, (d) excavation, dredging, or removal of loam, peat, gravel, soil, rock, or other mineral substance in such manner as to affect the surface, (e) surface use except for purposes permitting the land or water area to remain predominantly in its natural condition, (f) activities detrimental to drainage, flood control, water conservation, erosion control, or soil conservation, or (g) other acts or uses detrimental to such retention of land or water areas. In determining whether or not to approve a request from the land bank commission to use or improve any real property interest acquired by the land bank commission in a manner otherwise prohibited by this section, the secretary of environmental affairs shall consider whether such request is in the interest of conservation and any national, state, regional or local program in furtherance thereof, and also any public, state, regional or local comprehensive land use or development plan affecting the land, and any known proposal by a governmental body for use of the land.

SECTION 7. The land bank commission shall file annually with the secretary of environmental affairs a report of its activities during the year preceding such filing. The report shall list all real property interests currently held by the land bank commission including a description of the use thereof, and shall include all acquisitions, improvements and dispositions of real property interests by the land bank commission during such year. The report shall also include a current plan for its future operations which shall be, as far as possible, consistent with the open space and master plans of each of the towns and with any regional planning in the area. The secretary of environmental affairs may require any other information which said secretary deems important.

SECTION 8. The land bank commission shall meet its financial obligations by drawing upon a fund, to be set up as a revolving or sinking account within the treasury of the county of Dukes County. Deposits into the fund shall include (a) funds appropriated, borrowed, or transferred to be deposited into the fund by vote of the county commissioners of the county of Dukes County or of town meetings of the towns that comprise the land bank commission; (b) voluntary contributions of money and other liquid assets to the fund; (c) revenues from fees imposed upon the transfer of real property interests as set forth in section ten occurring after the effective date of this act as set forth in section fifteen, together with payments of interest and penalties under section thirteen; and (d) proceeds from disposal of real property or interests. All expenses lawfully incurred by the land bank commission in carrying out the provisions of this act shall be evidenced by proper vouchers and shall be paid by the county treasurer of said county only upon submission of warrants duly approved by the land bank commission. The county treasurer of said county shall prudently invest available assets of the fund, and all income thereon shall accrue to the fund.

SECTION 8A. An account shall be established by the land bank commission for each member town of the land bank. The county treasurer shall administer all transactions for the individual town accounts. Of the revenues collected under this act, fifty percent shall remain in the fund, to be directly administered by the land bank commission in accordance with the provisions of this act. The remaining fifty percent of the revenue collected shall be transferred to the individual town accounts in proportion to the amount of collected land bank revenues derived from transfer of any real property interest in any real property within each respective town. The town advisory board of each member town shall control the disbursement of funds of its respective land bank account; such revenue to be used for purchases allowable under this act within its town borders and for land bank purchases outside its town borders.

SECTION 9. The land bank commission shall keep a full and accurate account of its actions including a record as to when, or from or to whom, and on what account money has been paid or received relative to this act, and as to when, from and to whom and for what consideration real property interests have been acquired, improved, or disposed of. Said records or accounts shall be subject to examination by the director of accounts or his agent pursuant to section forty-five of chapter thirty-five of the General Laws.

Said county treasurer shall keep a full and accurate account stating when, from or to whom, and on what account money has been paid or received relative to the activities of the land bank commission and the land bank. Said account shall be subject to examination by the director of accounts or his agent pursuant to section forty-four of chapter thirty-five of the General Laws.

SECTION 10. There is hereby imposed a fee equal to two per cent of the purchase price upon the transfer of any real property interest in any real property situated in a member town or towns provided that the fee percentage may be reduced by a two-thirds vote in favor of such reduction at the annual town meetings of a majority of the member towns in a single calendar year. Said fee shall be the liability of the purchaser of such real property interest, and any agreement

between the purchaser and the seller or any other person with reference to the allocation of the responsibility for bearing said fee shall not affect such liability of the purchaser. Such fee shall be paid to the land bank commission or its designee, and shall be accompanied by a copy of the deed or other instrument evidencing such transfer, if any, and an affidavit signed under oath or under the pains and penalties of perjury by the purchaser or his legal representative, attesting to the true and complete purchase price and the basis, if any, upon which the transfer is claimed to be exempt in whole or in part from the fee imposed hereby. The land bank commission, or its designee, shall promptly thereafter execute and issue a certificate indicating that the appropriate fee has been paid or that the transfer is exempt from the fee, stating the basis for the exemption. The register of deeds for the county of Dukes County, and the assistant recorder for the registry district of the county of Dukes County, shall not record or register, or receive or accept for recording or registration, any deed, except a mortgage deed, relative to a real property interest in land situated in any town that is a member of the land bank commission to which has not been affixed such a certificate, executed by the land bank commission or its designee. Failure to comply with this requirement shall not affect the validity of any instrument. The land bank commission shall deposit all fees received hereunder with the county treasurer or the county of Dukes County as a part of the fund established by section eight. The fee imposed hereunder shall be due simultaneously with the time of transfer upon which it is imposed.

SECTION 11. At any time within seven days following the issuance of the certificate of payment of the fee imposed by section ten, the purchaser or his legal representative may return said certificate to the land bank commission or its designee for cancellation, together with an affidavit signed under oath or under the pains and penalties of perjury that the transfer, with respect to which such certificate was issued, has not been consummated, and thereupon the fee paid with respect to such transfer shall be forthwith returned to the purchaser or his legal representative.

SECTION 12. The following transfers of real property interests shall be exempt from the fee established by section ten. Except as otherwise provided, the purchaser shall have the burden of proof that any transfer is exempt hereunder:

(A) transfers to the government of the United States, the Commonwealth, and any of their instrumentalities, agencies, or subdivisions;

(B) transfers which, without additional consideration, confirm, correct, modify or supplement a transfer previously made;

(C) transfers made as gifts without consideration; in any proceedings to determine the amount of any fee due hereunder, it shall be presumed that any transfer for consideration of less than fair market value of the real property interests transferred was made as a gift without consideration to the extent of the difference between the fair market value of the real property interests transferred and the amount of consideration claimed by the purchaser to have been paid or transferred, if the purchaser shall have been at the time of transfer the spouse, the lineal descendant, or the lineal ancestor of the

seller, by blood or adoption, and otherwise it shall be presumed that consideration was paid in an amount equal to the fair market value of the real property interests transferred, at the time of transfer;

7.

(D) transfer to the trustees of a trust in exchange for a beneficial interest received by the seller in such trust; distribution by the trustees of a trust to the beneficiaries of such trust;

(E) transfers by operation of law without actual consideration, including but not limited to transfers occurring by virtue of the death or bankruptcy of the owner of a real property interest;

(F) transfers made in partition of land and improvements thereto; under the provisions of chapter two hundred and forty-one of the General Laws;

(G) transfers to any charitable organization as defined in clause three of section five of chapter fifty-nine of the General Laws, or any religious organization, provided that the real property interests to transferred shall be held by the charitable or religious organization solely for its public, charitable or religious purposes;

(H) transfers to a mortgagee in foreclosure of the mortgage held by such mortgagee, and transfers of the property subject to a mortgage to the mortgagee in consideration of the forbearance of the mortgagee from foreclosing said mortgage;

(I) transfers made to a corporation or partnership at the time of its formation, pursuant to which transfer no gain or loss is recognized under the provisions of section three hundred and fifty-one of the Internal Revenue Code of 1954;

(J) transfers made to a stockholder of a corporation in liquidation of the corporation, and transfers made to a partner of a partnership in dissolution of the partnership;

(K) transfers consisting of the division of marital assets under the provisions of section thirty-four of chapter two hundred and eight of the General Laws or other provisions of law;

(L) transfers of property consisting in part of real property interests situated within a town that is a member of the land bank commission and in part of other property interests, to the extent that the property transferred consists of property other than real property situated within a town that is a member of the land bank commission provided that the purchaser shall furnish the land bank commission with such information as it shall require or request in support of the claim of exemption and manner of allocation of the consideration for such transfers; and

(M) the first one hundred thousand dollars of the purchase price of a transfer made to a purchaser who, or whose spouse at the time of transfer, has at no time prior to said transfer owned or possessed any real property interest as defined in section one either within or without a town that is a member of the land bank commission provided that the purchaser intends to make the real property interest which is the subject of the transfer the purchaser's actual domicile within two

years of the time of transfer, with the intention to remain permanently or for an indefinite time and without any certain purpose to return to a former place of abode; provided further, that in the event of a subsequent transfer within five years of the transfer exempted from the fee under this subsection, other than the transfer of a mortgage to an institutional lender, the fee exempted shall become due, together with accumulated interest and penalties, and in addition to any fee otherwise due as a result of the subsequent transfer. The purchaser shall certify as to the foregoing, and the land bank commission shall attach to the deed a certificate which shall recite the fact that there is running with the land a lien equal to the amount of the fee exempted plus accumulated interest and penalties until such time as all conditions of the subsection have been met.

SECTION 13. A purchaser who fails to pay all or any portion of the fee established by section ten on or before the time when the same is due shall be liable for the following additional payments in addition to said fee:

(A) Interest. The purchaser shall pay interest on the unpaid amount of the fee to be calculated from the time of transfer at a rate equal to fourteen percent per annum.

(B) Penalties. Any person who, without fraud or willful intent to defeat or evade a fee imposed by this act, fails to pay all or a portion of the fee within thirty days after the time of transfer, shall pay a penalty equal to five per cent of the outstanding fee as determined by the land bank commission for each month or portion thereof thereafter that the fee is not paid in full; provided, however, that in no event shall the amount of any penalty imposed hereunder exceed twenty-five (25) per cent of the unpaid fee due at the time of transfer. Whenever the land bank commission determines that all or a portion of a fee due under this chapter was unpaid due to fraud with intent to defeat or evade the fee imposed by this chapter, a penalty equal to the amount of said fee as determined by the land bank commission shall be paid by the purchaser in addition to said fee.

SECTION 14. (A) The land bank commission shall notify a purchaser by registered or certified mail of any failure to discharge in full the amount of the fee due under this act and any penalty or interest assessed. The land bank commission shall grant a hearing on the matter of the imposition of said fee, or of any penalty or interest assessed, if a petition requesting such hearing is received by the land bank commission within thirty days after the mailing of said notice. The land bank commission shall notify the purchaser in writing by registered or certified mail of its determination concerning the deficiency, penalty or interest within fifteen days after said hearing. Any party aggrieved by a determination of the land bank commission concerning a deficiency, penalty or interest may, after payment of said deficiency, appeal to the district or superior court within three months after the mailing of notification of the land bank commission. Upon the failure to timely petition for a hearing, or appeal to said courts, within the time limits hereby established, the purchaser shall be bound by the terms of the notification, assessment or determination, as the case may be, and shall be barred from contesting the fee, and any interest and penalty,

as determined by the land bank commission. All decisions of said courts shall be appealable. Every notice to be given under this section by the land bank commission shall be effective if mailed by certified or registered mail to the purchaser at the address stated in a recorded or registered instrument by virtue of which the purchaser holds any interest in land, the transfer of which gives rise to the fee which is the subject of such notice; and if no such address is stated or if such transfer is not evidenced by an instrument recorded or registered in the public records in the county of Dukes County, such notice shall be effective when so mailed to the purchaser in care of any person appearing of record to have a fee interest in such land, at the address of such person as set forth in an instrument recorded or registered in the county of Dukes County.

(B) All fees, penalties and interest required to be paid pursuant to this act shall constitute a personal debt of the purchaser and may be recovered in an action of contract or in any other appropriate action, suit or proceeding brought by the land bank commission; said action, suit or proceeding shall be subject to the provisions of chapter two hundred and sixty of the General Laws.

(C) If any purchaser liable to pay the fee established by this act neglects or refuses to pay the same, the amount, including any interest and penalty thereon, shall be a lien in favor of the land bank commission upon all property and rights to property, whether real or personal, belonging to such purchaser. Said lien shall arise at the time of transfer and shall continue until the liability for such amount is satisfied. Said lien shall in any event terminate not later than six years following the time of transfer. Said lien shall not be valid as against any mortgagee, pledgee, purchaser or judgment creditor unless notice thereof has been filed by the land bank commission (i) with respect to real property fixtures, in the registry of deeds for the county of Dukes County, or (ii) with respect to personal property, in the office in which a security or financing statement or notice with respect to the property would be filed in order to perfect a nonpossessory security interest belonging to the person named in the relevant notice, subject to the same limitations as set forth in section fifty of chapter sixty-two of the General Laws.

In any case where there has been a refusal or neglect to pay any fee, interest or penalties imposed by this act, whether or not levy has been made, the land bank commission, in addition to other modes of relief, may direct a civil action to be filed in a district or superior court of the commonwealth to enforce the lien of the land bank commission under this section with respect to such liability or to subject any property of whatever nature, of the delinquent, or in which he has any right, title or interest, to the payment of such liability.

The land bank commission may issue a waiver or release of any lien imposed by this section with the approval of the town advisory board of the town or towns in which the property subject to the lien is located. Such waiver or release shall be conclusive evidence that the lien upon the property covered by the waiver or release is extinguished.

SECTION 15. Any town that is a member of the land bank may

withdraw therefrom by the affirmative vote of a majority of the voters at any regular or special town election; provided, however, that any real property interest held by the land bank and situated in a town that withdraws from the land bank shall remain within the land bank until such time as the land bank is dissolved. Any town that withdraws from the land bank shall remain liable for all debts and obligations incurred by the land bank for any real property interests situated within said town during the period of such town's membership to the same extent as if the town had remained a member; provided that, such town shall not be liable for debts and obligations incurred by the land bank subsequent to the town's withdrawal. A town that has so withdrawn may petition the legislature to renew its membership.

If membership in the land bank is reduced to fewer than three of the original members, the land bank shall be dissolved. Upon dissolution of the land bank, title to all funds and other properties held by the land bank shall vest in the towns of the county of Dukes County as herein provided after provision is made for payment of all bonds, notes and other obligations of the land bank. Interests in land held by the land bank at the time of dissolution shall be transferred to the town or towns in which the land is situated, and placed under the control and management of the local conservation commission who shall maintain, protect, limit the future of, improve, or otherwise conserve and properly utilize open spaces of land. Such land shall remain subject to the provisions of Article XCVII of the Articles of Amendment to the Constitution of the Commonwealth. Funds held by the land bank shall be transferred to the towns of the county of Dukes County to be used to further the purposes of this act. Funds shall be transferred to each town in proportion to the fees generated by lands situated within such town over the life of the land bank under this act.

The land bank commission shall submit no amendment of this act to the general court unless and until such amendment has been approved by two-thirds of the member towns by the affirmative vote of a majority of the voters of the towns at any regular or special town election.

SECTION 16. Acceptance of this act, by each of the towns of Chilmark, Edgartown, Gay Head, Oak Bluffs, Tisbury and West Tisbury shall be by the affirmative vote of a majority of the voters at any regular or special town election at which the question of acceptance has been placed on the ballot. This act shall become effective on the date on which acceptance by all of said towns has been effected.



# **EXHIBIT B**

**REPORT OF ANNUAL TOWN MEETING  
HELD APRIL 10 and 23, 1984**

money from time to time in anticipation of the revenue of the financial year beginning July 1, 1984 in accordance with the provisions of the Massachusetts General Laws, Chapter 44, Section 4 and to issue a note or notes therefor payable within one year and to renew any note or notes as may be given for a period less than one year in accordance with the Massachusetts General Laws, Chapter 44, Section 17.

This motion seconded; thereafter voted in favor by a unanimous vote.

**Article 15.** Move to see how the Town desires to be recorded on the following non-binding resolution dealing with the creation of a Martha's Vineyard Land Bank.

Be it resolved that the residents of the Town of Edgartown support the establishment of a County Land Bank, the purpose of which is to acquire fee and less than fee interest in open space within Dukes County for future active and passive recreational use by the public, as well as lands to protect existing as well as future water supplies. Said County Land Bank shall be administered by a seven member Land Bank Commission, one member to be elected from each of the seven towns that comprise the County of Dukes County. Said Commission shall meet its financial obligations by drawing on a Land Bank Fund, financed by a two-percent fee assessed for certain transfers of real estate.

And, Be it further resolved, that the results of this vote be forwarded to the Town's representative in the General Court, the presiding officers in each branch, and his Excellency, the Governor of the Commonwealth.

This motion seconded; thereafter voted in favor by a unanimous vote.

**Article 16.** Moved that the Town vote to amend the existing Zoning By-law concerning development as follows:

a) In ARTICLE II. DEFINITIONS add the following new section:

19. "Development" shall include any building, reconstruction, or alteration of a structure or land; division of land into lots; change in the type of use of a structure or land; material increase in intensity of use of land, such as an increase in the number of offices, stores, or dwelling units in a structure or on land or a change in occupancy resulting in larger traffic, wastewater, or other offsite impacts; reestablishment of a use which has been discontinued for two years or longer; and commencement of mining, excavation, or filling on a parcel of land. "Development" shall not include ordinary maintenance or repair not requiring a building permit, transfer of title not involving the division of land into parcels, or change of occupancy not materially increasing intensity of use of land.

b) In ARTICLE XI. General Regulations add the following new section:

**11.14 General Development Regulations**

a) No use shall be allowed in any district if injurious or offensive to the neighborhood by reason of odor, fumes, dust, smoke, vibration, or noise.

b) General Design Requirements. The following shall apply to all new nonresidential and nonagricultural development

without erosion or prolonged ponding. In addition, building form, building location, egress points, grading and other elements of the development shall be such that, given the location and type and extent of land use, no reasonable alternative design would:

(1) Improve environmental consequences by reducing the volume of cut and fill, reducing the number of removed trees 4" trunk diameter and larger, reducing the area of wetland vegetation displaced, reducing the increase in peak storm water flow from the site, reducing soil erosion, or reducing threat of air or water pollution;

(2) Improve pedestrian or vehicular safety and convenience within the site and egressing from it; and

(3) Improve visual impacts by reducing the visibility of parking, storage, or other outdoor service areas viewed from public ways or premises residentially used or zoned; and reducing glare from headlights or area lighting.

This motion seconded; thereafter voted in favor by a unanimous vote.

**Article 17.** Moved that the Town vote to amend the Edgartown Zoning By-laws by deleting the existing ARTICLE IX. B-1 Business District and substituting the following new ARTICLE IX. b-1 Business District as follows:

**ARTICLE IX. B-1 Business District**

The B-1 District is intended to provide a compact pedestrian-oriented environment for a mixture of residential and business uses servicing Edgartown's year-round population and visitors. In the B-1 Business District no development shall be allowed except as follows:

**9.1 Permitted Uses**

a. Principal and accessory uses permitted in the R-5 Residential District, subject to the requirements of Article VI, except those uses which require a special permit under section 9.2.

b. Any other principal or accessory use not included under 9.2 or 9.3 below.

**9.2 Conditionally Permitted uses by Special Permit from the Board of Appeals.**

a. Business use of more than 1,500 square feet floor area not in such use January 1, 1984, whether through new construction, addition, or conversion to business from residential use.

b. Inn or hotel.

c. Restaurant including fast-food restaurant only if pedestrian-oriented, evidenced by location on premises having no more than six off-street parking spaces and having no drive-through facilities.

d. Additions or alterations of more than 150 square feet to structures existing as of January 1, 1984 or replacements thereto if the ratio of total floor area of the structure with such additions or alterations to total area of the lot exceeds 1.0.

e. Uses requiring special permits under other sections of the Zoning By-law (wind energy conversion systems (4.2.g), accessory scientific use (11.11), outdoor dining (11.12), and

# EXHIBIT C

March 18, 1986

City of Dukes County, ss.

Pursuant to the within Warrant, I, this day, notified and warned the inhabitants of said Town, qualified to vote in elections and Town affairs, by posting in six various places, namely, Edgartown Town Hall, Edgartown Junior Yacht Club, Edgartown Office, Chappaquiddick Ferry House, Edgartown Drug Store, Depot Corner Station, and a true copy of this Warrant fourteen days at least before the time of holding said

/s/ Elmer A. Santos  
Elmer A. Santos, Constable  
Town of Edgartown

WARRANT FOR  
ANNUAL TOWN MEETING  
APRIL 8, 1986

City of Dukes County, ss.

To either of the Constables of the Town of Edgartown in the County of Dukes County, I hereby give you the following

INSTRUCTIONS:  
In the name of the Commonwealth of Massachusetts you are hereby directed to notify and warn the inhabitants of said Town, qualified to vote in elections and Town affairs, to meet in the auditorium of the Old Whaling Church (Methodist Church) on Main Street in said Edgartown on Tuesday, the eighth day of April, next, at seven-thirty o'clock in the evening and there to act on the articles of this Warrant, with the exception of Article One.

And to meet again in the Old Whaling Church (Methodist Church), ground floor, Church Street side, in said Edgartown on Thursday, the tenth day of April at ten o'clock in the afternoon, at the Polling Place, then and there to act on Article One of the Warrant by the election of Officers on the Official Ballot.

The polls for voting on the Official Ballot will be open at ten o'clock in the afternoon, and shall be closed at seven o'clock in the afternoon.

ARTICLE 1. To elect the following officers on the Official Ballot:

- One Moderator for One Year
- One Selectman for Three Years
- One Assessor for Three Years
- One Member of the Board of Health for One Year
- One Member of the Board of Health for Two Years
- One Member of the Board of Health for Three Years
- One Member of the Planning Board for Five Years
- One Member of the School Committee for Three Years
- Two Trustees of the Edgartown Free Public Library for Three Years
- One Park Commissioner for Three Years
- One Sewer Commissioner for Three Years
- Three Members of the Advisory Committee for Three Years
- Two Members of the Advisory Committee for Two Years
- Two Constables for Three Years

ALSO YES OR NO to the following questions:

QUESTION 1. Shall the Town of Edgartown accept the provisions of Chapter 736 of the acts of 1985, "An Act Establishing the County of Dukes County Land Bank" a fair and concise summary of which appears below?

The Martha's Vineyard Land Bank Act, Chapter 736, creates a seven member Commission consisting of one elected resident for each of the six towns of Martha's Vineyard plus the Secretary of Environmental Affairs. The Act shall impose a two percent (2%) tax on real estate transfers on Martha's Vineyard to be paid by the purchaser. The proceeds from said tax shall be used by the Land

Bank Commission to acquire fee simple or lesser interests in real estate for space preservation and public use. The Act contains thirteen categories of exemptions from the tax, including relief for first time property owners and real estate transfers among members of a family or trust. Half of the revenues generated by sales in a town may be spent within the town for uses authorized by this Act. The affirmative vote of all six towns of Martha's Vineyard is required for this act to become effective.

QUESTION 2. Shall the Town of Edgartown be allowed to assess an additional three hundred twenty-four thousand, four hundred and forty-four dollars (\$324,444.00) in real estate and personal property taxes for the fiscal year beginning July first, nineteen hundred and eighty-six?

QUESTION 3. Shall the Town of Edgartown be allowed to exempt from the provisions of Proposition 2½, so called, the amounts required to pay for the bond issued in order to pay the Town share of the purchase of the development rights of the parcel of land on the West Tisbury Road known as the Mindors Lot #2 as shown on a plan of land in Edgartown surveyed for Sherman and Harold B. Hoar, dated April 10, 1979, such purchase to be done in conjunction with funds from the State Agricultural Preservation Restriction Program and private funds?

QUESTION 4. Shall the Town of Edgartown be allowed to exempt from the provisions of Proposition 2½, so called, the amounts required to pay for bond or bonds issued in order to purchase the parcel of land, or portions thereof, or the development rights thereof, known as the Waller Farm on Herry Creek Road, being Assessor's Map 36, Lot 97.1 and any subsequent divisions of it, for conservation purposes?

ARTICLE 2.. To hear reports of the Town Officers and Committees, and to act thereon,

ARTICLE 3. To choose all other necessary Town Officers who are elected from the floor of the Town Meeting,

ARTICLE 4.. To see if the Town will vote certain amendments to the Classification Plan (Section 21) of the Personnel By-law as follows:

1. Add the position of Fire Department Clerk to the Annual Clerical Scale at Grade I.

2. Add the position of Council on Aging Clerk to the Annual Clerical Scale at Grade I.

1	2	3	4	5	6
5.50	5.75	6.00	6.25	6.50	6.75

3. Add the position of Police Department Clerk to the Annual Clerical Scale Grade III.

1	2	3	4	5	6
6.50	6.85	7.20	7.55	7.90	8.25

4. Delete the position of Assistant Librarian from the Annual Assistant's Scale, Grade I.

1	2	3	4	5	6
5.75	7.05	7.35	7.65	7.95	8.25

5. Add the position of Library Circulation Assistant to the Annual Assistant's Scale at Grade I.

6. Add the position of Library Technical Assistant to the Annual Assistant's Scale at Grade II.

1	2	3	4	5	6
7.25	7.55	7.85	8.15	8.45	8.75

7. Delete the position of Children's Librarian from the Annual Assistant's Scale, Grade 3.

1	2	3	4	5	6
7.75	8.05	8.35	8.65	8.95	9.25

8. Add the position of Children's Librarian to the Annual Assistant's Scale Grade 4.

1	2	3	4	5
8.25	8.60	8.95	9.30	9.65
				10.00

TRUSTEES PUBLIC LIBRARY, Three Years

Rosalie C. Bassett	618
Margaret (Midge) Simonds	527
Sara Thibodeau	1
John Perkins	1
Margaret O'Neill	1
Margery Stone	475
Blanks	1624

SEWER COMMISSIONER, Three Years

Edward W. Vincent, Jr.	324
John S. Lovewell	441
George Saarle	46
Blanks	812

CONSTABLE, Three Years

Elmer A. Santos	680
George L. Saarle	658
Blanks	286
	1624

PARK COMMISSIONER, Three Years

Glenn Saarle	5
Ralph Grant	15
George Saarle	26
Michael Ridgeway	11
John E. Hakes	34
Walter Sadowski	1
Anne C. Bacon	1
Kathleen Silva	1
Richard S. Knight, Jr.	3
Fred Fournier	2
Bruce McIntosh	1
Janice Belisle	1
Benjamin Hall	3
Robert Carroll	1
Duncan McBride	1
Paul Brewer	2
Susan Smith	1
John T. Burton	4
Nancy Shemeth	1
John Magnuson	1
Alfred Perry	1
Clifford M. Jernegan	1
Joseph B. Robichau	2
Jean Hathaway	1
Steve Ewing	1
Estey L. Teller	2
Barbara Boyle	688
Blanks	812

ADVISORY COMMITTEE, Three Years

Margaret (Midge) Simonds	525
Dawn A. Vincent	413
Steve Ewing	1
Robert Chapman	8
Eugene DeLorenzo	17
Kenneth Abbot	1
Mike Hewitt	1
John McSweeney	12
Richard S. Knight, Jr.	1
Scott Bettencourt	2
Douglas Ewing	1
Benjamin Hall	1
Barbara Bernard	1
Gary Look	2
Robert Carroll	1
Robert Waller	1
James Kelley	1
Paul Brewer	1
Noel Orcutt	2
Barbara Boyle	1
Susan R. Smith	1

Bailey Horton	1
Alice MacHackin	1
Jim Athearn	1
Stephen Potter	1
Harvey S. Ewing	1
John Chapman	1
Courtney Brady	1
James Carter	1
Alishan Haigazian	1
Blanks	1433
	2436

ADVISORY COMMITTEE, Two Years

John S. Lovewell	4
Robert Chapman	18
Eugene J. DeLorenzo	20
Priscilla Magnuson	1
Benjamin L. Hall	4
Edith Rodley	2
Kathleen Silva	1
Kathleen Shannon	1
John M. McSweeney	12
Scott E. Bettencourt	5
Richard S. Knight, Jr.	1
Gregory Marcella	1
Bruce McIntosh	1
Jack Hakes	1
Patti Dean	1
Joyce Swartz	1
Noel Orcutt	1
Barbara Phillips	1
Henry P. Smith	1
Theodora Bernard	1
Peter Wells	1
Wayne Royal	1
Richard Kelley	1
George Saarle	1
Elmer Santos	1
Paul Brewer	1
Patrick Mercier	1
Stuart Fuller	3
Ellie Dowd	2
Barbara Boyle	1
Susan R. Smith	1
John Boyle	1
Conrad Kurth	1
Richard I. Colter	1
Jane Tomassian	1
Suzanne Whittemore	1
Robert J. Carroll	1
Courtney Brady	1
C. Norton	1
David J. Blackburn	1
James Carter	1
Benjamin Hall, Jr.	1
James Kelly	1520
Blanks	1624

<u>QUESTION #1</u>	636
YES	158
NO	18
Blanks	812

<u>QUESTION #2</u>	665
YES	226
NO	31
Blanks	812