



Martha's Vineyard Land Bank Commission

January 24, 2023

Martha's Vineyard Commission
Post Office Box 1447
Oak Bluffs, Massachusetts 02557

Dear commissioners,

The land bank commission understands that you are reviewing an application submitted by Stillpoint Martha's Vineyard, Inc. and that questions have arisen as to the abutting conservation land, owned by the land bank. The land bank commission has voted to approve a basic planning protocol for this property and has asked me to share it with you:

1. Use of the preserve will be governed by two documents, as they are amended from time to time:
 - [a] the land bank's *Public use of land bank properties* policy (attached); and
 - [b] the land bank's management plan for the preserve (currently in formulation).

2. The core tenets and philosophical underpinnings of the *Public use* policy, as they relate to the preserve, are:
 - [a] the general public — i.e., individuals and families — has first-priority access to any land bank property; and
 - [b] commercial uses are prohibited; and
 - [c] "venue-based" activities are prohibited, e.g., film-making; performance art; the display of sculpture or paintings or graphics of any nature; wedding ceremonies; and the like; and
 - [d] visitors will confine themselves to sanctioned trails and will not disturb wildlife.

3. The preserve is closed to public use until the completion of the management plan and there is no access until that time. Once drafted, the plan will, *inter alia*, include the following items:
 - [a] a sign will be posted at the land bank trailhead, which will be located on Stillpoint property and which will contain three slots, stating that parking there is limited to land bank visitors only; and
 - [b] a carrying capacity for the number of visitors on the preserve at any one time will be set, such number to be subject to change without notice based on circumstances.
4. The number of visitors who are members of the general public will be defined as the number of automobiles in the land bank trailhead at any one time multiplied by four.
5. The number of Stillpoint event attendees eligible to be on the preserve on any one time will be computed by subtracting from the management plan's designated carrying capacity the number of visitors who are members of the general public.
6. All Stillpoint events will take place on Stillpoint property. If, following an event and independent of it, Stillpoint attendees wish to visit the preserve Stillpoint will compute the number of eligible Stillpoint attendees and so inform the participants so that the preserve's carrying capacity is not exceeded.
7. If a fee is charged for a Stillpoint event it will be considered a commercial activity for the purposes of the land bank's *Public use* policy and therefore no mention of the preserve can be made in Stillpoint's event advertising.

Thank you.

Very truly yours,



James Lengyel
Executive Director



Martha's Vineyard Land Bank Commission

PUBLIC USE OF LAND BANK PROPERTIES

*adopted by vote of the land bank commission: July 23, 2012
amended through: January 9, 2023*

Landscape reflects the lives of the people who live in it. Although the American landscape is thoroughly variegated, three primary elements can be isolated: commerce, personality and respite.

Every town witnesses to the first two. Trade and enterprise have created business districts and transportation networks, while houses and other forms of public art spotlight personality. Respite is to be found in open spaces, most particularly those less tamed conservation reservations that have been set aside in their natural state.

The land bank hews to the idea that commingling these elements dilutes them. As a result, the land bank seeks always to refine the ability of its properties to offer respite. This means that they need to be deaf to the call of commerce. They need to be immune to the thrust of personality. Instead, they are to offer individuals and families the opportunity to experience the outdoors — for nature study, hiking, picnicking, mountain-biking, horseback-riding, dog-walking, hunting, fishing, kayaking, swimming and all of the other types of passive recreation — in personal and/or unpaced ways.

The following Parts 1, 2 and 3, therefore, shall apply to all properties owned by the land bank in fee-simple:

1.0 Permitted uses

The following uses are permitted:

- 1.1 Passive recreation.** The land bank law permits only passive recreation on land bank properties. Examples are cited above. Hikers shall confine themselves to marked trails.
- 1.2 Household-based harvesting.** Low-impact harvesting — such as berrying, sugaring, herb-snipping, seaweed-gathering and the like — is permitted, provided:

- 1.21 that any limitations cited in any particular management plan for any particular property are honored; and
- 1.22 that no use shall be made of any species appearing on any federal or commonwealth list of endangered, rare or "of special concern" species; and
- 1.23 that no mechanized tools are employed; and
- 1.24 that no plants are uprooted or removed.

1.3 Tours. Interested individuals and organizations may lead guided tours on land bank properties, provided:

- 1.31 that the particular land bank properties are open to the general public and have approved management plans; and
- 1.32 that the tourguides comply with the terms of the management plans, particularly the requirement that attendees stay on designated trails; and
- 1.33 that no fee is charged for the tours, although donations — strictly voluntary — may be accepted; and
- 1.34 that the land bank is advised in advance of the particular dates and times of the tours.

2.0 Permitted uses, by advance permission only

The following uses are permitted, subject to land bank commission oversight:

2.1 Farming. No farming shall occur except in accordance with the following:

- 2.11 that the land bank shall maintain all fallow land in such a manner — including but not limited to regular mowing and removal of exotic or invasive species — as to facilitate its future agricultural use;
- 2.12 that the land bank shall, in the case of exemplary farm proposals submitted by qualified prospective lessees, be willing to consider installing, via either contracted or staff labor, livestock or deer fencing and/or agricultural wells, such improvements to be considered public assets;
- 2.13 that, in order to seek out such lessees, the land bank commission shall issue a public request-for-proposals (RFP), in the interests of fair

competition, and shall make notice of the RFP in the local newspapers, "trade" publications both on- and off-island, Martha's Vineyard Agricultural Society, Island Grown Initiative, and the like; and

2.14 that a rate of \$10 per acre per annum is applied and that no higher figure is entertained, so that the land bank can be certain that it is making its decisions based on the welfare of the land itself rather than any emoluments which may be offered to the institution; and

2.15 that no lease will be issued without prior review by the land bank land superintendent as to:

2.151 the lessee's plan for the leasehold, specifically:

(i) the intended agricultural use; and

(ii) its soil management protocols (e.g., organic conditioning; pesticide use; composting; minimal disturbance of soil profile; cover crops so as to maintain roots in soil year-round; grazing intensity); and

(iii) the expected rotation of and variation in crops and livestock; and

(iv) the use of natural materials, as opposed to man-made; and

(v) any proposal to convert woodland or shrubland to pasture or cropland; and

(vi) its sensitivity to ecology of surrounding land; and

2.152 the likelihood that the farmer will be skilled enough to realize the proposal as submitted; and

2.153 the probability that the farmer will make serviceable use of the agricultural resource while not overburdening it or impeding public use of its environs; and

2.154 any past use of land bank farmland by that particular farmer.

2.16 that the sample lease attached as Exhibit A is used, as a guideline

subject to modification or waiver by the land bank commission at its discretion but with the following standard features:

- 2.161 expiration after five years but with a renewal clause yielding a total term of nine years; and
- 2.162 regular performance review; and
- 2.163 early termination in circumstances of dereliction; and
- 2.164 payment in cash in full at the time of lease execution, or in kind at the discretion of the land bank land superintendent; and
- 2.165 acknowledgment that the land bank may site trails along the perimeters or in pre-agreed locations for use by the general public; and
- 2.166 acknowledgment that any use of the leasehold by any party other than the lessee requires land bank approval; and
- 2.167 use of sound soil conservation and soil enhancement techniques which will facilitate or allow for future agricultural use; and
- 2.168 a recommendation that the lessee carry appropriate liability insurance, if deemed prudent by lessee as a result of analysis of the risk involved in its proposed farm operation but with the understanding that lack of same gives rise to no liability for the land bank as an institution, as it is protected by its own insurance policies.

- 2.2 **Hunting**. No hunting shall occur except in accordance with land bank policy, separately adopted.
- 2.3 **Firewood-gathering**. No firewood shall be removed except as part of an organized community-woodlot program overseen by the land superintendent or his designee.
- 2.4 **All other harvesting**. No other harvesting shall occur except in accordance with the following:

- 2.41 that the land bank commission shall first issue a public request-for-proposals so as to allow for fair competition; and
 - 2.42 that use of a product by the land bank itself — e.g., log harvesting for boardwalks, seed harvesting for field restoration — shall take precedence over use by anyone else; and
 - 2.43 that no use shall be made of any species appearing on any federal or commonwealth list of endangered, rare or “of special concern” species; and
 - 2.44 that priority will be given to those individuals/companies who:
 - 2.441 outline specifically how the product will be used, including a timetable so that the land bank can be certain that it will not go to waste; and
 - 2.442 have a demonstrated record in successfully using the particular product; and
 - 2.443 will use the product on Martha’s Vineyard; and
 - 2.444 will return a portion of the harvest to the land bank “in kind;” and
 - 2.45 that a license for such activity is issued by the land bank commission, such license possibly to include conditions such as:
 - 2.451 one harvesting per site in any one season; and/or
 - 2.452 harvestings on alternate years only, or less frequently, so as to assure the replenishment of the source site.
- 2.5 Extraction and collection.** No plants, animals, minerals or artifacts shall be extracted or collected except in accordance with the following:
- 2.51 that a license for such activity is issued by the land bank commission, such license to include conditions such as:
 - 2.511 adherence to the land bank ecologist’s protocol as regards item(s) sought, property, method and the like; and
 - 2.512 extraction or collection to occur exclusively under the

direct and on-site supervision of the ecologist; or

2.513 extraction or collection to be undertaken solely by the ecologist, with specimens then delivered to the requesting party.

2.6 Release of species. No species shall be released on any land bank property without prior land bank consent.

2.7 Private inurements. Betterments requested or sought to be exercised by private parties on land bank property in the absence of pre-existing legal rights — e.g., vegetation trimming; trail siting; crossing of land bank land by personal vehicles — shall not be permitted unless such betterments are (i) temporary; and (ii) *de minimus* in nature and scale; and (iii) pose no lasting impact to any resource; and (iv) constitute extraordinary circumstances; and (v) are part of a proffered exchange of such conservation benefit that its public magnitude offsets the short-term private benefit (its being stipulated that the offering of cash is not a conservation benefit).

3.0 Prohibited uses

The following uses are prohibited:

3.1 Active recreation. The land bank law prohibits the use of land bank properties for active recreation. Active recreation refers to any activity in which [a] structures of some nature are required and [b] participants conduct themselves according to rules or some sort of organization. Examples of active recreation are baseball, frisbee golf, geocaching, motocross riding, soccer, tennis and the like.

3.2 Commercial Uses. All commercial uses, excepting those permitted in Part 2, are prohibited, whether the cash is exchanged on- or off-premises.

3.3 Camping and campgrounds. Youth environmental education groups — e.g., scouts, school clubs — may apply to the land bank commission for a permit to camp. The commission may issue such permits provided that any such use is infrequent, closely supervised and limited to three or fewer consecutive nights. No other camping is permitted.

3.4 Nuisances. Recreational sound- or vibration-generating uses — such as unmanned aircraft (e.g., drones) or music-amplification devices — are prohibited.

3.5 Artistic exhibitions and other venue-based events. No land bank property shall be used as a venue for film-making; performance art; the display of sculpture or paintings or graphics of any nature; wedding ceremonies; and the like.