

Warrant for Annual Town Meeting

April 27, 2009

COUNTY OF DUKES COUNTY, SS.

TO THE CONSTABLES OF THE TOWN OF CHILMARK,

GREETING:

In the name of the Commonwealth of Massachusetts, you are hereby directed to warn and notify the inhabitants of the Town of Chilmark, qualified to vote in elections and town affairs, to assemble at the Chilmark Community Center in said Town of Chilmark on Monday, the twenty-seventh day of April in the year Two Thousand and Nine A.D. at 7:30 o'clock in the evening, there and then to act on the Articles in this Warrant, with the exception of Article One.

And to meet again in the Chilmark Community Center, in said Chilmark on Wednesday, the twenty-ninth day of April in the year Two Thousand and Nine A. D. at 12 noon, there and then to act on Article One of the Warrant by the election of Town Officers and action on Questions on the Official Ballot.

The polls for voting on the Official Ballot will be open at 12 o'clock noon, and shall close at eight o'clock in the afternoon.

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

One Member of the Board of Selectmen	for three years
One Member of the Board of Assessors	for three years
One Member of the Board of Health	for three years
One Trustee of the Public Library	for three years
Three Members of the Finance Advisory Committee	for three years
One Member of the Cemetery Commission	for three years
One Fence Viewer	for three years
One Fence Viewer	for two years
One Surveyor of Wood, Lumber and Bark	for three years
One Surveyor of Wood, Lumber and Bark	for two years
One Surveyor of Wood, Lumber and Bark	for one year
One Tree Warden	for one year
Chilmark Member of the M. V. Land Bank Commission	for three years

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

ARTICLE 3. To see if the town will vote to raise such sums of money as will be necessary to defray town charges and to make the appropriations for the ensuing year, as printed under Departmental Budgets - Salaries and Expenses totals, provided that the amount set forth under the Community Preservation Committee (Dept. 179) shall be funded from the Community Preservation FY2010 Budgeted Reserve.

RECOMMENDED by FINANCE ADVISORY COMMITTEE

ARTICLE 4. To see if the town will vote to raise and appropriate the sum of **\$5,000.00** and further appropriate the sum of \$5,000.00 to be received from the Chilmark Town Affairs Council, subject to receipt, which amounts are to be added to the maintenance account of the Chilmark Community Center.

RECOMMENDED by FINANCE ADVISORY COMMITTEE

ARTICLE 5. To see if the town will vote to raise and appropriate the sum of **\$1,500.00** to transfer to the Martha's Vineyard Cultural Council to supplement state funding.

ARTICLE 6. To see if the town will vote to transfer the sum of **\$20,000.00** from the Overlay Surplus Account and transfer from available funds in the treasury the sum of **\$20,000.00** for a Reserve Fund to be administered by the Finance Advisory Committee, for the fiscal year beginning July 1, 2009.

RECOMMENDED by FINANCE ADVISORY COMMITTEE

ARTICLE 7. To see if the town will vote to transfer the sum of **\$25,000.00** from available funds in the treasury to the "General Stabilization Fund."

RECOMMENDED by FINANCE ADVISORY COMMITTEE

ARTICLE 8. To see if the town will vote to raise and appropriate the sum of **\$25,000.00** to be placed in the Fire Department Stabilization Fund, "with the intent that it be put towards the replacement costs for fire apparatus which is over twenty-five (25) years in age."

RECOMMENDED by FINANCE ADVISORY COMMITTEE

ARTICLE 9. To see if the town will vote to appropriate from available funds in the treasury the sum of **\$92,000.00** to design three affordable housing rental duplex units at Middle Line Road, hire a project manager & obtain cost estimates to construct the rental units; including the payment of costs incidental and related thereto.

RECOMMENDED by FINANCE ADVISORY COMMITTEE

ARTICLE 10. To see if the town will vote to raise and appropriate the sum of **\$4,691.11** to fund Chilmark's share of the County Pest Management program based on the county tax formula and authorize the Board of Selectmen to enter into an inter-municipal agreement with the County of Dukes County to provide an Integrated Pest Management Program.

Submitted by the Dukes County Commission

RECOMMENDED by FINANCE ADVISORY COMMITTEE

ARTICLE 11. To see if the town will vote to raise and appropriate the sum of **\$8,029.75** to fund Chilmark's share of the Vineyard Health Care Access program based on the county tax formula and authorize the Board of Selectmen to enter into an inter-municipal agreement with the County of Dukes County to provide a Health Care Access Program.

Submitted by the Dukes County Commission

RECOMMENDED by FINANCE ADVISORY COMMITTEE

ARTICLE 12. To see if the town will vote to raise and appropriate the sum of **\$5,576.60** to fund Chilmark's proportionate share of the Dukes County Health Care Access program, based 50% on the county tax formula and 50% on population, to continue providing the FY2009 level of services to residents in need of assistance.

Submitted by the Vineyard Health Care Access program

RECOMMENDED by FINANCE ADVISORY COMMITTEE

ARTICLE 13. To see if the town will vote to transfer the sum of **\$15,000.00** from the Waterways improvement account and **\$15,000.00** from available funds in the treasury to pay for maintenance dredging in Menemsha Basin, including the payment of costs incidental and related thereto.

RECOMMENDED by FINANCE ADVISORY COMMITTEE

ARTICLE 14. To see if the town will vote to approve the following requests of the **Community**

Preservation Committee:

To see if the Town will vote to reserve from the Community Preservation Fund FY 2010 estimated annual revenues up to the following amounts for community preservation projects: **\$25,750** for Open Space Preservation; **\$25,750** for Historic Resources Preservation; **\$25,750** for Housing; and **\$180,250** for the Community Preservation Budgeted Reserve.

RECOMMENDED by FINANCE ADVISORY COMMITTEE

ARTICLE 15. To see if the town will vote to approve the following request of the **Community Preservation Committee:**

To see if the town will vote to appropriate from the Community Preservation **Historic Resources Reserve** the sum of up to **\$24,000.00** to restore historic stone walls along South Road.

RECOMMENDED by FINANCE ADVISORY COMMITTEE

ARTICLE 16. To see if the town will vote to raise and appropriate the sum of **\$500.00** to fund an actuarial study of Other Post Employment Benefits (OPEB).

RECOMMENDED by FINANCE ADVISORY COMMITTEE

ARTICLE 17. To see if the Town will petition the General Court to enact the following special act (House Docket 3369) or take any other action relative thereto:

An Act Authorizing The Government Employers In The County Of Dukes County To Establish A Pooled Other Post –Employment Benefits Trust Fund.

SECTION 1. Notwithstanding any general or special law to the contrary, the government employers in the County of Dukes County may, at their sole discretion, appropriate funds in order to offset the anticipated costs of premium payments for, or direct payments to, retired employees and the eligible surviving spouses or dependents of deceased employees. These funds shall be credited to a special fund to be known as the Dukes County Pooled Other Post Employment Benefits (OPEB) Trust Fund. Any interest or other income earned by the fund shall be added to and become part of the fund. The Board of Trustees of the Dukes County Pooled OPEB Trust Fund shall be the custodian of the fund, and the Trust Fund shall be governed the Declaration of Trust of the Dukes County Pooled OPEB Trust Fund.

SECTION 2. Each government employer, by a vote of its applicable legislative authority, may vote to join the Dukes County Pooled OPEB Trust Fund at any time after its creation.

SECTION 3. This act shall take effect upon its passage.

RECOMMENDED by FINANCE ADVISORY COMMITTEE

ARTICLE 18. To see if the town will vote to raise and appropriate the sum of **\$75,000.00** and transfer from available funds in the treasury the sum of **\$25,000.000** to begin the funding of obligations identified in the OPEB actuarial study authorized in Article 16, and to accept the provisions of MGL Chapter 32B section 20 further authorizing the Treasurer, with the approval of the Board of Selectmen, to create an Other Post Employment Benefits Liability Trust Fund, and/or to join the Dukes County Pooled OPEB Trust Fund.

RECOMMENDED by FINANCE ADVISORY COMMITTEE

ARTICLE 19. To see if the town will vote to appropriate from available funds in the treasury the sum

of **\$41,906.00** to fund the Oil Escalation Charge in the Quad Town Paving Contract with Lawrence-Lynch Corporation for the paving of North Road in the Fall of 2008.
RECOMMENDED by FINANCE ADVISORY COMMITTEE (with one abstention)

ARTICLE 20. To see if the town will vote to accept the provisions of MGL Chapter 60A section 9 and notwithstanding any other provision of this chapter to the contrary, any excise due under this chapter by a member of the Massachusetts National Guard or reservist or a dependent of a member of the Massachusetts National Guard or reservist shall be deferred while that member is on active service outside the commonwealth and for a period of up to 180 days after completion of that service. No interest or penalties shall be assessed for any period before the expiration of the 180 days.

No Action Taken by FINANCE ADVISORY COMMITTEE

ARTICLE 21. To see if the town will vote to accept the provisions of MGL Chapter 59 section 5K authorizing the board of selectmen to establish a program to allow persons over the age of 60 to volunteer to provide services to the town. In exchange for such volunteer services, the town shall reduce the real property tax obligations of such person over the age of 60 on his tax bills and any reduction so provided shall be in addition to any exemption or abatement to which any such person is otherwise entitled and no such person shall receive a rate of, or be credited with, more than the current minimum wage of the commonwealth per hour for services provided pursuant to such reduction nor shall the reduction of the real property tax bill exceed \$750 in a given tax year. It shall be the responsibility of the town to maintain a record for each taxpayer including, but not limited to, the number of hours of service and the total amount by which the real property tax has been reduced and to provide a copy of such record to the assessor in order that the actual tax bill reflect the reduced rate. A copy of such record shall also be provided to the taxpayer prior to the issuance of the actual tax bill. Such town shall have the power to create local rules and procedures for implementing this section in any way consistent with the intent of this section.

In no instance shall the amount by which a person's property tax liability is reduced in exchange for the provision of services be considered income, wages, or employment for purposes of taxation as provided in chapter 62, for the purposes of withholding taxes as provided in chapter 62B, for the purposes of workers' compensation as provided in chapter 152 or any other applicable provisions of the General Laws, but such person while providing such services shall be considered a public employee for the purposes of chapter 258, but such services shall be deemed employment for the purposes of unemployment insurance as provided in chapter 151A.

No Action Taken by FINANCE ADVISORY COMMITTEE

ARTICLE 22. To see if the town will vote to amend the Zoning Bylaws as follows:

Article 5: Signs and Outdoor Lighting

Section 5.9 Exterior Mechanical Noise Abatement

Purpose: Due to the proliferation of mechanical devices associated with and accessory to dwellings, such as, but not exclusively, air conditioners/heat pumps, swimming pool heating and circulating pumps, and electric generators, noise levels as perceived by neighbors and the general public are increasing. This section is intended to limit and abate such noise pollution.

Machinery, which has the potential to generate levels of sound with sufficient intensity

and/or duration as to cause or contribute to a condition of noise pollution, is hereby required to be placed in soundproof enclosures or to be so screened and insulated that the perceived sound levels do not rise by more than ten decibels (10 DbA) above the ambient sound level as measured at the property line, or at the nearest abutting residence. Machinery or mechanical units, which are placed outside the footprint of a dwelling, shall be treated as "structures" and shall be subject to the normal setbacks required by zoning and applicable permitting fee.

Wind Energy Conversion systems are exempt from this bylaw only as regards the sound made by the rotor blades as they pass through the air.

No Action Taken by FINANCE ADVISORY COMMITTEE

ARTICLE 23. To see if the town will vote to amend the Zoning Bylaws as follows:

Article 2 Definitions.

Section 2.22 WIND ENERGY CONVERSION SYSTEMS (WECS)

- 2.2.1. Wind Energy Conversion Systems (WECS): All equipment, machinery and structures utilized in connection with the conversion of wind to other forms of energy.
- 2.2.2. Wind Turbine: A single device that converts wind to electricity or other forms of energy, typically consisting of a rotor and blade assembly, electrical generator, and tower with or without guy wires.

ACCESSORY USES

Section 4.2A

- 4. Wind Energy Conversion System (WECS) subject to the following:
 - A. Purpose. The purpose of this section is to provide for the development and use of wind power as an alternative energy source, while protecting reasonable private property rights, public health, safety and welfare, preserving environmental, historic and scenic resources, controlling noise levels and preventing electromagnetic interference.
 - B. Applicability. Any application to erect a structure that utilizes energy from wind shall comply with this section.
 - C. Special Permit Granting Authority: The Chilmark Plan Review Committee, the members of which shall be the members of the Planning Board, the members of the Zoning Board of Appeals, and a member appointed by the Board of Selectmen, who may be a Selectman, shall serve as the Special Permit Granting Authority (SPGA).
 - D. Application Requirements: Applicants seeking approval for any wind energy conversion system shall comply with the following development requirements:
 - 1. Proposed WECS shall be consistent with all applicable local, state and federal requirements, including but not limited to all applicable electrical, construction, noise, safety, environmental and communications requirements.
 - 2. Applicants shall provide a description of WECS including technical, economic, environmental, and other reasons for the proposed location, height and design. A site plan must be submitted, prepared to scale by a registered land surveyor or civil engineer, showing the location of the proposed WECS, distances to all property lines, existing and proposed structures, existing and proposed elevations, public and private roads, above ground utility lines and any other significant features or appurtenances. A topographic map of the area within 2,000 feet of the proposed site must be submitted. Any portion of this section may be waived if in the opinion of the Chilmark Plan Review Committee, the materials submitted are sufficient for the Board to make a decision.
 - a. Tower height: Maximum height of the tower should be such that the bottom of the blade of the WECS is thirty feet higher than trees and structures within a five hundred foot radius

of the proposed site of the WECS. Applications for greater height require that the applicant demonstrate to the Chilmark Plan Review Committee that the benefits of a height greater than that mandated would outweigh the adverse impacts of the greater height.

- b. Height Calculation: Overall height of the wind turbine shall be measured from the land in its natural state prior to grading or filling to the highest point reached by any part of the wind turbine.
- c. Setbacks: The minimum setback for the wind turbine shall be maintained equal to the overall engineer designed fall zone plus *ten (10) feet* from all boundaries of the site on which the WECS is located.
 - No part of the WECS support structure, including guy wire anchors, may extend closer to the property boundaries than the standard structure setbacks for the zone where the land is located.
 - WECS shall be setback a distance of four times the blade length from ways, drives, access easements, trails, ascertainable paths and above ground utility lines.
 - The Chilmark Plan Review Committee may reduce setbacks distances for the WECS with the permission of the abutting property owner(s) together with a recorded easement depicting such agreement.
- d. Wetlands: No part of a WECS shall be located within the jurisdiction of the Chilmark Conservation Commission unless issued an Order of Conditions.
- e. Noise: The WECS and associated equipment shall conform to the Massachusetts noise regulation (310 CMR 7.10). An analysis, prepared by a qualified engineer, shall be presented to demonstrate compliance with these noise standards and be consistent with Massachusetts Department of Environmental Protection guidance for noise measurement.
- f. Manufacturers specifications may be accepted when in the opinion of the Chilmark Plan Review Committee the information provided satisfies the above requirements.
- g. Shadowing/Flicker: The WECS shall be sited in a manner that does not result in significant shadowing or flicker impacts. The applicant has the burden of proving that this effect does not have significant adverse impact on neighboring or adjacent uses either through siting or mitigation.
- h. Visual Impact: The applicant shall employ all reasonable means, including landscaping and alternative locations, to minimize the visual impact of all WECS components. All components of the WECS and its support structure shall be painted plain non-reflective muted colors without graphics or other decoration. The applicant should consider any approaches that would make the WECS components less visible, such as use of a clear tail, de-glossing of blades, etc.
- i. Lighting: No lighting other than that required by FAA.
- j. Vegetation: Existing vegetation must be shown including average height of trees and any proposed vegetation removal on the subject property or abutting properties.
- k. Provisions for inspection and maintenance must be submitted.
- l. An applicant for a WECS must present an energy audit which details his/her energy needs and the extent to which the proposed wind turbine will mitigate these needs. The analysis should consider solar-generated power as an alternative.

3) Visual Assessment of Proposed WECS Location: The CPRC reserves the right to require the applicant to use either 3D imaging or use CAD visual impact, the cost of which is assumed by the applicant. Depending on the joint public hearing, the applicant may be required to give analysis of another location. Applicant must assume the cost of having a “dummy” WECS erected or using computer-aided analysis or tools to give a visual of the proposed WECS. If there is a visual aid erected (dummy tower or balloon), it must be left in place thirty days. Public notice of this “visual assessment period” must be provided, including notification to the two levels of abutters. Depending on the results of the joint public hearing, the applicant may be required to either erect the “dummy” WECS in another location or conduct computer-aided analysis of another location.

D. Application Review Process: The Chilmark Plan Review Committee may issue a special permit for any proposed WECS, any modification to a WECS or combination thereof with the following procedure:

1. A joint public hearing by the Site Review Committee and the Chilmark Plan Review Committee shall be held for the applicant to present the plan for the proposed WECS.
2. At a minimum, immediate abutters and their abutters (i.e. two levels of abutters) must be notified of the joint public hearing, for the WECS application. The Chilmark Plan Review Committee reserves the right to require notification of additional property owners depending on terrain, density and proposed height of the proposed WECS. Note that the abutter notification process may necessitate notification of abutters in an adjacent town.
3. Recommendations from the Site Review Committee shall be submitted to the Chilmark Plan Review Committee.
4. The Chilmark Plan Review Committee shall provide a written opinion explaining its decision. Such decision shall be based upon the following factors:
 - a. Height, blade diameter and power output.
 - b. Visibility in the view shed of any property owner(s) within 2,000 feet of the WECS.
 - c. Number of similar systems within a 1,000 foot radius.
 - d. Intrusion into public views.
 - e. Distance from any residence or public building.
 - f. Noise analysis.
 - g. Wind profile of the proposed site.
 - h. Compliance with all applicable Town regulations for structures.
 - i. General suitability of the proposed site including location in the Roadside or Costal District.
 - j. The results of the energy audit submitted by the applicant as part of the application process.
 - k. The height of vegetation surrounding the proposed WECS site at maturity.

F. Installation and Procedural Requirements:

- 1) Compliance with Massachusetts State Building Code: Building permit applications shall be

accompanied by standard drawings of the wind turbine structure, including the tower, base, and footings. Documentation showing compliance with the Massachusetts State Building Code certified by a licensed professional engineer shall also be submitted. (Manufacturer specifications may be suitable at the discretion of the Inspector of Building)

- 2) **Compliance with FAA Regulations:** WECS must comply with applicable FAA regulations, including any necessary approvals for installations close to airports.
- 3) **Compliance with National Electric Code:** Building permit applications for WECS shall be accompanied by a line drawing of the electrical components in sufficient detail to allow for a determination that the manner of installation conforms to the National Electrical Code.
- 4) **Utility Notification:** No WECS shall be installed until evidence has been given that the utility company has been informed of the customer's intent to install an interconnected customer-owned generator. Off-grid systems shall be exempt from this requirement.
- 5) **Abandonment:** A WECS shall be considered to be abandoned if it is not operated for a period of two years, or if it is designated a safety hazard by the Inspector of Buildings. Once a WECS is designated as abandoned, the owner shall be required to physically remove the WECS within 90 days of written notice. "Physically remove" shall include, but not be limited to:
 - a) Removal of WECS, any equipment shelters and security barriers from the subject property.
 - b) Proper disposal of the waste materials from the site in accordance with local and state solid waste disposal regulations.
 - c) Restoring the location of the WECS to its natural condition, except that any landscaping and grading shall remain in the after-condition.
 - d) Before any permit is issued, every applicant for a WECS may be required to post and maintain a bond with the Town of Chilmark to cover the costs of abandonment and disassembly. The Chilmark Plan Review Committee shall determine the amount of the bond and approve the company that will issue the bond.
- 6) **Modifications:** All modifications to a WECS made after issuance of the Special Permit shall require approval by the Chilmark Plan Review Committee.
- 7) **Professional Fees:** The Chilmark Plan Review Committee may retain a technical expert/consultant to verify information presented by the applicant. The cost for such a technical expert/consultant will be at the expense of the applicant.
- 8) **Noise Complaint:** Upon notification of a complaint of excessive noise the property owner shall be responsible for supplying ambient and operating decibel measurements at the nearest point from the wind turbine to the property line of the complainant and to the nearest inhabited residence, to the Inspector of Buildings. If the noise levels are found to have exceeded allowable limits, the Inspector of Building shall notify in writing the owner of the property to correct the violation. If the noise violation is not remedied within thirty days, the WECS shall remain inactive until the noise violation is remedied which may include relocation or removal.
- 9) **Prevention of Access:** The applicant/owner shall ensure that all related components of the WECS are protected from unlawful access.
- 10) **Electromagnetic Interference:** No WECS installation shall cause electromagnetic interference. If interference is established, the Inspector of Buildings shall notify in writing the owner of the property to correct the violation. If the interference is not remedied within thirty days, the WECS shall remain inactive until the interference is remedied, which may include relocation or removal.
- 11) **Severability:** The provisions of this section are severable and, in the event that any provision

of this section is determined to be invalid for any reason, the remaining provisions shall remain in full force and effect.

You are hereby directed to serve this warrant by posting attested copies in three public places in said Town of Chilmark at least seven days before the time of said meeting, and to publish said warrant in one newspaper having general circulation in the Town of Chilmark during the week before said meeting.

Given under our hands this 17th day of March, A.D. 2008.

Chilmark Board of Selectmen

Warren M. Doty

Frank M. Fenner Jr., Chairman

J.B. Riggs Parker

I have notified the inhabitants of the Town of Chilmark qualified to vote in town affairs, by posting three (3) attested copies of this warrant in three (3) public places and by publishing said warrant in one newspaper having general circulation in said Town of Chilmark and made due return of this warrant at the time and place of said meeting. God save the Commonwealth.

Posted:

By: _____
Constable Daniel Bryant