

MAR 1 '11 PM 2:28

ds

TOWN OF UXBRIDGE
21 S. MAIN STREET, UXBRIDGE, MA 01569 – 508-278-8600
BOARD OF SELECTMEN'S MEETING MINUTES
BOARD OF SELECTMEN'S MEETING ROOM
WEDNESDAY, FEBRUARY 23, 2011 – 5:30PM

Present: Chair Beth Pitman, Vice Chair Bruce Desilets, Clerk Jay Cahill, Selectman Cari Kay Robertson and Selectman Peter Baghdasarian. Also present Town Manager Michael Szlosek, Administrative Assistant Tracey Ante and Ms. Diana Walden with the BSC Group.

I. CALL TO ORDER 5:42PM

- A. Announcements - None
- B. Citizen's Forum – None

II. OLD BUSINESS

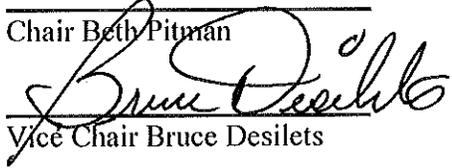
- A. Discussion/Action NHESP Conservation Restriction (attached to the minutes) – The Board reviewed the Conservation Restriction document. The Board and the Town Manager identified areas of concerns. However, the Board was informed that these were unlikely to be removed by the Massachusetts Executive Office of Energy and Environmental Affairs. The Board expressed they had no choice but to vote to accept the Conservation Restriction as written. **MOTION** by Mr. Desilets that the Board of Selectmen vote to approve the Conservation Restriction in favor of the Uxbridge Conservation Commission, as required by Massachusetts Natural Heritage and Endangered Species Program, on the Quaker Highway well field property in the form presented, subject to final review and approval by the Massachusetts Executive Office of Energy and Environmental Affairs. Seconded by Mr. Cahill, the motion carried 3-1-1 (Mr. Baghdasarian opposed, Ms. Robertson abstained).

III. ADJOURNMENT: Next BOS Meeting Monday 2/28/11

At 6:15PM, **MOTION** By Mr. Baghdasarian to adjourn the meeting. Seconded by Ms. Robertson, the motion carried unanimously.

Minutes respectfully submitted by, Tracey Ante
Minutes approved by Board of Selectmen:

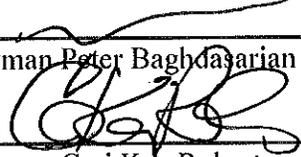
Chair Beth Pitman



Vice Chair Bruce Desilets

Clerk Jay Cahill

Selectman Peter Baghdasarian



Selectman Cari Kay Robertson

2/28/11

Date Approved



TOWN OF UXBRIDGE
21 S. MAIN STREET, UNXBRIDGE, MA 01569 – 508-278-8600
BOARD OF SELECTMEN'S MEETING
BOARD OF SELECTMEN'S MEETING ROOM
WEDNESDAY, FEBRUARY 23, 2011 – 5:30PM

Authorized Signature _____

I. CALL TO ORDER

- A. Announcements
- B. Citizen's Forum

II. OLD BUSINESS

- A. Discussion/Action NHESP Conservation Restriction

III. ADJOURNMENT: Next BOS Meeting Monday 2/28/11

FEB 17 '11 PM 4:58

OP
Town Clerk

h: 508.278.0405
508.330.8567

From: Patrick Costello [pcostello@lccplaw.com]
Sent: Monday, February 21, 2011 11:01 AM
To: Diana Walden; Beth A. Pitman; Michael Szlosek
Cc: Leslie Fanger
Subject: FW: High School Conservation Restriction

Good Morning:

Upon review of Diana's 2-17 email with NHESP/Dave's latest proposed revisions, I offer the following comments:

With respect to the Reservation of the Town's rights to use the property for public water supply purposes, I suggest that the introductory language set forth in the third paragraph on page 1 remain, as is, and I am satisfied with NHESP's language in Section II.B.1. While they did add the MESA review contingency, I don't believe NHESP will relent on that point. I believe that these clauses do adequately preserve the Town's rights to use the property for public water supply purposes.

The use of the property for the Blackstone River Bikeway is reserved at §II.B.4, however, the permission of the Division is specifically required as a prerequisite to such use. As a practical matter, I'm not sure how much of an impediment this may be, but it should be noted.

My comments under § III.A relative to the Town's obligation to reimburse the Conservation Commission and the Division for enforcement costs and expenses speak for themselves. As a matter of law, the Town cannot be contractually bound to a financial obligation for which there is no underlying appropriation. The second paragraph of this section appears to be particularly irrational because, in essence, the Town would be forced to reimburse itself (albeit through the Conservation Commission) for these enforcement costs and expenses. In the event of a dispute over reimbursement of these costs, the Con Comm could be compelled to assert a claim in court against the Town, which raises numerous issues relative to separation of municipal government interests, representation by counsel, potential discretion of Town Meeting to appropriate funds, etc. I just think that, in the final analysis, the enforceability of this language raises more public policy issues than protections, thus, I recommended that the language be deleted. Knowing how rigid and inflexible State agencies can be relative to deletion or revision of such boiler-plate legal language, I

Town Counsel
Comments

2/21/11 11:00am

Re: Conservation
Restriction

HS Project

doubt that NHESP will yield on this point. I do note that, even if this language remains in the CR, the Town could always raise lack of appropriation as a legal defense to any demand/claim for reimbursement of costs which may be asserted in the future.

With respect to Mike's comment on Section XIV.B, while I agree with his viewpoint substantively, I highly doubt that NHESP will yield on any revision thereto. I have seen this same clause in DEM/DCR CR's and I assume we will be told it is "standard" legal language mandated by counsel. As with the reimbursement of cost language noted above, it would be worthwhile to get some formal response from NHESP on these points, but I wouldn't consider these issues to be "dealbreakers".

As noted in my original revised draft back on 1-6-11, I do believe we should also incorporate a Certificate of Approval for execution by the Conservation to evidence compliance with the provisions of G.L. c. 40, §8C, which requires votes of both the Selectmen and Conservation Commission to effect a transfer of interest in land for conservation purposes. I have attached a copy of the Approval I previously prepared, but which has been deleted from the document.

As a matter of protocol or preference, I believe the Selectmen and Conservation Commission should determine whether they would prefer to have all members execute the CR or, alternatively, whether only the Chairman, upon vote of the entire body, will execute. The signature blocks should be revised accordingly.

There are still provisions of the Agreement which note that further input from EOEEA/NHESPA is pending. Will they be supplementing these sections? Assuming that these terms are finalized, that NHESP will hold firm on the provisions relative to reimbursement of costs and construction of the Agreement, noted above, and the Town is willing to concede those points, and the description of the Premises and the Conservation Area Plan are now in order, I believe we can prepare a "clean" draft of the CR for review, discussion and execution by the Board.

At what point will NHESP authorize us to issue such a clean version of the CR for presentation to the Selectmen?

I will be in the office today and all day tomorrow if you would like to discuss further.

Pat

Patrick J. Costello

Louison, Costello, Condon & Pfaff, LLP

101 Summer Street

Boston, MA 02110
617-439-0305
(fax) 617-439-0325

NOTE: This e-mail is a confidential and privileged communication between Louison, Costello, Condon & Pfaff, LLP and the the intended recipient. To the extent this communication contains legal advice or counsel, it is not intended to be a public record to the extent exempted under the doctrine of attorney/client privilege or any other applicable authority. Use of the information contained in this e-mail by anyone other than the intended recipient is prohibited. If you have received this message in error, please notify the sender immediately and promptly destroy any record of this e-mail.

From: Diana Walden [mailto:DWalden@BSCGroup.com]
Sent: Thursday, February 17, 2011 3:00 PM
To: Patrick Costello; beth.pitman@uxbridge-ma.gov
Subject: RE: High School Conservation Restriction

Hi Pat and Beth,

Dave emailed me redlines to the 2/15/11 version of the CR (same version I had provided to Pat) at 10:30 last night. His markups are in blue track changes under "Dave" (all previous town comments are in red under dlw).

He did not see Pat's version today but I think in sections where Pat had made changes, Dave also did so if Pat reviews those and agrees, we should be on the same page. (Does that make sense?).

The big sticking point is that there was no further mention of NHESP legal review of Pat's/Mike's issues with the legal template language which is what I thought we would be getting feedback on this week. I assume from Dave's past comments that this legal language is set in stone and the clauses can't be deleted as Pat originally suggested. But, I thought he was going to confirm that for us.

The kicker is that Dave won't be back until Tuesday next week. I can check in with his boss but I have the sense that they will not delete those clauses. Pat will have to review/advise on behalf of the town, whether keeping those clauses in is a serious issue.

Please feel free to call me with questions.

Thank you!!

Diana

Diana Walden
Environmental Scientist
BSC Group
33 Waldo Street
Worcester, MA 01608
617-896-4529>>> "Patrick Costello" <pcostello@lccplaw.com> 2/17/2011
12:34 PM >>>

Per Mike's message relative to a clean "final" execution draft Agreement, if I understand Diana's recent email relative to status, NHESP wants this draft in redlined format so that it can offer final comments/ revisions. I don't believe that it has yet approved any final CR language (although I have not had any direct contact with anyone there). Attached is a "cleaned up" version of the document noting only those areas where further EOEAA/ NHESP input was indicated in the draft or noting Town comments which have not been resolved yet. This draft assumes that NHESP has accepted all of our other revisions.

I would also re-incorporate the Certificate of acceptance by the Conservation Commission which I previously added to the document per G.L. c. 40 §8C.

Pat

Patrick J. Costello

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From: Patrick Costello

Sent: Thursday, February 17, 2011 10:33 AM

To: 'Diana Walden'

CC: 'Leslie Fanger'; 'Michael Szlosek'; 'Tracey Ante'; 'Peter Baghdasarian'; 'Bruce Desilets'; 'Jay Cahill'; Beth Pitman (beth.pitman@uxbridge-ma.gov)

Subject: High School Conservation Restriction

Importance: High

Diana:

Attached is the revised red-lined draft of the CR, which includes a few additional comments and revisions, as noted. I approve the subject draft as to form for consideration and approval by the Selectmen. Let me know if you have any further questions or comments. Thanks for your assistance in this regard.

Pat

(Mike/ Tracey: For some reason, the email address I have for Cari (hotmail) isn't recognized. Please forward to attached to her for review.)

Patrick J. Costello

Louison, Costello, Condon & Pfaff, LLP

101 Summer Street
Boston, MA 02110
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(fax) 617-439-0325

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MAKE ALL CHANGES USING THE TRACK CHANGES FUNCTION OF MS WORD

February June 16, 2011 07 Draft, 10 pages
[EOEEA: put date of draft and number of pages; leave date off of final executed copy]

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CONSERVATION RESTRICTION

The Town of Uxbridge, a municipal corporation and political subdivision of the Commonwealth of Massachusetts, acting by and through its Board of Selectmen, with a principal place of business at 21 South Main Street, Uxbridge, Worcester County, Massachusetts 1, _____ (OWNER OF LAND), _____ (ADDRESS OF OWNER STREET, TOWN, COUNTY, STATE), being the sole (or all of the) owner(s), for its my successors and assigns ("Grantor"), acting pursuant to Section 8C of Chapter 40 and Sections 31, 32, and 33 of Chapter 184 of the Massachusetts General Laws, hereby grants to the Town of Uxbridge _____ (NAME OF GRANTEE, eg. "Town of OZ acting by and through its Conservation Commission, pursuant to Chapter 40 Section 8C" or "Trustee of Lands"), its permitted successors and assigns ("Grantee"), in perpetuity and exclusively for conservation purposes, the following Conservation Restriction on a parcel of land located in the Town of Uxbridge _____ (TOWN), Massachusetts constituting approximately _____ acres, (# acres, TOTAL ACRES TO BE PROTECTED; OR "a 30 _____ acre portion of a 101 _____ acre parcel") ("Premises"), and more particularly described in Exhibit A, the Baseline Documentation Report & Survey (Exhibit B) and attached plan/sketch plan. The Conservation Restriction will be located over a portion of the parcel identified by Uxbridge Assessor's Map 35, Lot 4474. For Grantor's title see Worcester County Registry of Deeds Book 35525, Page 147 _____ (REGISTRY COUNTY, BOOK, PAGE, eg. "Bristol County (S.D.) Registry of Deeds Book 4783, page 333).

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Comment [MAM1]: The restricted area is referred to as the Premises. If you would like to describe the Property and then the restricted area within the Property, then you can add that information here.

[EOEEA: If there is a mortgage, you will need to obtain a subordination and attach it as an exhibit].

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[EOEEA: If there are building envelopes or exclusions, they should be mentioned here and shown on plans in Exhibit A]

[EOEEA: A BASELINE SURVEY must be completed prior to granting the CR and included as an Exhibit]

As indicated on the attached Plan (Exhibit A), the boundaries of the restricted area exclude the electric transmission corridor which is managed under an easement by the New England Power Company. This Conservation Restriction shall in no way impede or affect the regular operation and maintenance, access, or future development necessary along and within this utility corridor.

The Conservation Restriction boundaries do include the area proposed for currently permitted and potential future public well and related public water supply infrastructure development for the Town of Uxbridge. However, this Conservation Restriction shall in no way prevent or restrict any facilities or access necessary for operation and maintenance or development of wells and related public water supply facilities proposed by the Town of Uxbridge.

Finally, it is also noted that the future alignment/route of the Blackstone River Bikeway traverses the parcel and may require access within the premises. While the Bikeway is not a Town project, and the future schedule of this project is unknown, the Grantor does not wish or hereby intend to preclude this use of the subject parcel if it is approached by the (state agency) proponents of the Bikeway.

Comment [dlw2]: Dave - is this the appropriate place for this language or should it only be stated in the Reserved Rights section?

I. PURPOSES:

This Conservation Restriction is defined in and authorized by Sections 31-33 of Chapter 184 of the General Laws and otherwise by law. The purpose of this Conservation Restriction is to assure that the Premises will be maintained in its current condition as set forth in the baseline documentation report in perpetuity and for conservation purposes, (except for Reserved Rights as noted herein) predominantly in a natural, scenic and undeveloped condition, and to prevent any use or change that would materially impair or interfere with its conservation and preservation values.

A. **Wildlife & Habitat Protection.** Conservation of the Premises will protect habitat used by a variety of wildlife including, but not limited to, wood turtles (*Glyptemys insculpta*), _____ (list rare species, eg. "the

Comment [mm3]: Table included for formatting only. Remove outline before recording.

Blanding's Turtle (*Emydoidea blandingii*) and the Spotted Turtle (*Clemmys guttata*).

{optional, list other rare species present on or near the property. "eg. In addition, at least two other state listed rare species (the Four-toed Salamander (*Hemidaetylum scitatum*) and the Spatterdock-Darner (*Aeshna mutata*)) have been documented in the general vicinity of the Premises. The Premises and their general vicinity have been delineated by the Division as BioMap Core Habitat. BioMap Core Habitats are those areas of the Commonwealth of Massachusetts which, if protected, will conserve rare species and exemplary natural communities for the future."

{optional, list other unique features of site related to wildlife. "eg. Furthermore, the Premises contain numerous vernal pools. Vernal pools are ephemeral waterbodies which are the obligatory breeding sites for a number of rare and common wildlife species, as well as being sites for feeding, overwintering, rehydrating, nesting, and other activities for numerous species, including Blanding's and Spotted Turtles, Four-toed Salamanders, and Spatterdock-Darners. In particular, the vernal pools on the Premises are particularly important for the activities of Blanding's Turtles on the site."

- B. **Nearby Natural Areas.** {describe context and if area is upland and wetland, eg. "The Premises provide upland forest and wetland habitat for native wildlife and plant species and communities, including many species of native plants, lichens, mammals, birds, reptiles, amphibians, and invertebrates. The preservation of the forest and wetland resources on the Premises will protect these habitats."

The Premises are adjacent or in close proximity to include a variety of habitats including vegetative communities in several stages of succession and the associated edge habitat. The Premises are located directly adjacent to Emerson Brook and the Blackstone River, and include upland and wetland habitat. The protection of open, sandy nesting areas and the variety of vegetative cover types in immediate proximity to potential overwintering habitat will benefit and support the existing population of wood turtles.

An existing, intact riparian buffer along the Blackstone River on this parcel provides opportunity for wildlife migration to a large (greater than 400-acre) forested floodplain to the north of Route 122. The wetland and floodplain systems adjacent to the rivers are valuable habitat for many species including state-listed dragonflies and invertebrates. Extensive wetlands are also present at the confluence of Emerson Brook and the Blackstone River. Finally, the adjacency to the transmission corridor provides an alternative migration route to other pockets of forested habitat. {list other important features or protected areas, eg. "approximately 258 acres of conservation land owned by the X-Conservation Trust, the Y-Conservation Trust, the Town of Y, and the Named Non-Profit. In addition, the Premises are in close proximity to the Named River, an important riparian habitat for numerous state-listed rare species, including turtles, dragonflies, and freshwater mussels, as well as many other native animal and plant species. The Named River is a Focus Area for habitat protection by numerous land trusts and Town Conservation Commissions along the River as well as the Massachusetts Department of Fish and Game (F&G) and these entities have protected several hundred acres of important riparian habitat and open space along the River."

- C. **Scenic Landscape Preservation.** While a portion of the protected area is a previously disturbed gravel pit. The Premises comprise part of a scenic landscape associated with a natural, undisturbed environment. The open space conservation land protected under this Conservation Restriction is an important public and natural resource. The preservation of the 30 {insert number of acres} acre Premises, by prohibiting significant alterations to the natural character and proposing vegetative maintenance to maintain existing conditions thereof, will further protect and enhance the area's scenic and open space attributes and the recreational, human enjoyment, and ecological value, of the hundreds of acres of conservation land and open space.
- D. {as appropriate} Flood Plain Protection. The majority of the Premises lies within the 100-year floodplain of the Stoughton's River. Portions of the Premises lie within the 100-year floodplain of Emerson

Brook and the Blackstone River. While there were no future plans to develop this area, the protection of this floodplain will ensure the continued availability of this flood storage during major storm events.

- E. **Water Quality Protection.** Preserving the natural, undisturbed environment will provide for groundwater recharge and protect wetland resource areas. This is especially appropriate due to the presence of a public aquifer and the development of future well sites.
- F. **Furtherance of Government Policy.** Protection of the Premises furthers the Town of Uxbridge's goal to preserve the Town and Region's water resources. _____ {TOWN} 1996 Open Space and Recreation Plan including [cite items from plan, eg. "the protection of the Town's scenic landscape (Objective 2a), the protection of forest and farmland (Objective 2b), the protection of the Town and Region's water resources (Objectives 3a & 3a) and providing extra protection to the Town's most fragile resources (Objective 3b)"] [EOFEA. Particularly if the CR is a charitable deduction, note if the land being protected is identified in any federal, state, regional or local initiatives or policies, i.e. the BioMap, Natural Heritage, Living Waters, etc.]
- G. ~~As appropriate,~~ Massachusetts Endangered Species Act. This Conservation Restriction is granted pursuant to and in accordance with the requirements set forth in Conservation and Management Permit ~~to be completed NHESP No. XYZ-123-DIV, dated MONTH _____, 2007,~~ issued by the Commonwealth of Massachusetts Division of Fisheries and Wildlife acting through the Natural Heritage and Endangered Species Program ("Division") and attached hereto as *Exhibit C* and incorporated herein by this reference ("Permit").
- H. ~~{Others as relevant}.~~

These conservation values of the Premises and public benefits of this Conservation Restriction are described in more detail in the Baseline Documentation Report & Survey (*Exhibit B*) to be kept on file at the office of the Grantee and incorporated herein by this reference. Grantor and Grantee agree that this Baseline Documentation Report & Survey provides an accurate representation of the condition and the objective information baseline for subsequent monitoring of compliance with the terms of this Conservation Restriction as described herein.

II. PROHIBITED ACTS AND USES, EXCEPTIONS THERETO, AND PERMITTED USES

A. PROHIBITED ACTS AND USES

Subject to the exceptions set forth herein, the Grantor will neither perform nor allow others to perform the following acts and uses which are prohibited on, above, or below the Premises:

1. Constructing, placing or allowing to remain any temporary or permanent building, tennis court, landing strip, mobile home, swimming pool, asphalt or concrete pavement, sign, fence, billboard or other advertising display, antenna, utility pole, tower, conduit, line or other temporary or permanent structure or facility on, above or under the Premises; (See Reserved Rights)
2. Mining, excavating, dredging or removing from the Premises of soil, loam, peat, gravel, sand, rock or other mineral resource or natural deposit or otherwise make topographical changes to the area;
3. Placing, filling, storing or dumping on the Premises of soil, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, waste or other substance or material whatsoever or the installation of underground storage tanks;
4. Cutting, removing or otherwise destroying trees, grasses or other vegetation; (See Reserved Rights)
5. Activities detrimental to drainage, flood control, water conservation, water quality, erosion control, soil conservation, or archaeological conservation;
6. No snowmobiles, motorcycles, mopeds, all-terrain vehicles, bicycles, trail bikes, or any other motorized or non-motorized vehicles of any kind shall be used, parked, stored, maintained, operated or otherwise

Uxbridge High School, Quaker Highway, Conservation

RestrictionC:\Users\Ante\AppData\Local\Microsoft\Windows\Temporary Internet Files\Content.Outlook\DCYLS7ZC\2011_02_15_CR_language_version_NHESP_Comment_2_16_2011.docW:\NHESP\ENVIRO
NMENTAL REVIEW\MAIN\Land Protection\Conservation_Deed-Restrictions\Conservation-Restrictions\CR-Template-June
2009.doc

allowed on the Premises except for vehicles necessary for public safety (i.e., fire, police, ambulance, other government officials) in carrying out their lawful duties; (See Reserved Rights)

- 7. The disruption, removal, or destruction of the stone walls or granite fence posts on the Premises;
- 8. Conveyance of a part or portion of the Premises alone, or division or subdivision of the Premises (as compared to conveyance of the Premises in its entirety which shall be permitted), and no portion of the Premises may be used towards further building or development requirements on this or any other parcel.
- 9. Recreational Activities: Hiking, horseback riding, cross-country skiing and other passive, non-motorized recreational activities in order to reduce human/turtle interaction and reduce risk of collection as well as to protect integrity of public wells;
- 10. The use of the Premises for more than a *de minimis* commercial recreation, business or industrial use of the Premises.

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Any other use of the Premises or activity thereon which is inconsistent with the purpose of this Conservation Restriction or which would materially impair its conservation interests unless necessary for the protection of the conservation interests that are the subject of this Conservation Restriction;

B. RESERVED RIGHTS AND EXCEPTIONS TO OTHERWISE PROHIBITED ACTS AND USES

Notwithstanding paragraph A above, the Grantor reserves the right to conduct or permit the following activities and uses on the Premises, but only if such uses and activities do not materially impair the purpose of this Conservation Restriction or other significant conservation interests:

~~1. Recreational Activities: Fishing, boating, hiking, horseback riding, cross-country skiing and other non-motorized outdoor recreational activities that do not materially alter the landscape, do not degrade environmental quality, or do not involve more than de minimis use for commercial recreational activities; (optional)~~

1. Public Well Development. Provided the appropriate state and local permits are obtained (including MESA review), this Conservation Restriction shall in no way prevent, impair or restrict public well operation, maintenance, any facilities or access necessary for operation and maintenance, or development of public wells and related water supply facilities proposed by the Town of Uxbridge. Specifically, construction, installation, monitoring, maintenance, operation and replacement of wells, accessory structures, paved access drive and fencing associated with the construction, operation and maintenance of a well or well fields for a public water supply and (ii) exclusive use, protection and control of the Zone 1 area.

~~NHESP to add suggestion~~

2. Non-native flora. With the written permission of the Grantee and Division, the removal of non-native or invasive flora and interplanting of indigenous species;

3. Wildlife Habitat Management. ~~With the written permission of the Grantee and Division, measures designed to restore, maintain, enhance or otherwise manage biotic communities and/or habitats for native species, rare species, and/or species listed pursuant to the MA Endangered Species Act (MGL c131A) and implementing regulations (321 CMR 10.00) that can include, but is not limited to, selective planting or removal of native vegetation, forestry, modification of soils, and prescribed burning of vegetation.~~

~~With the written permission of the Grantee and Division, measures designed to restore, maintain, enhance or otherwise manage biotic communities and/or habitats for native species, rare species, and/or species listed pursuant to the MA Endangered Species Act (MGL c131A) and implementing regulations (321 CMR 10.00) that can include, but is not limited to, selective planting or removal of native vegetation, forestry, modification of soils, and prescribed burning of vegetation; This will specifically include the Turtle Nest Site Creation and Habitat Management and Vegetative Management Plan language and figures included within the MESA Conservation and Management Permit Application. The Division is requiring regular vegetative management to maintain existing and beneficial habitat conditions. NHESP to add suggestion~~

Comment [D4]: This language was taken from a similar CR

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Comment [D5]: This can be kept generic. The restoration and management will be referenced in the CMP as a requirement of Net Benefit and the actual documents will be attachments in the CMP. The CMP will be an attachment of the CR

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4. Trails. — Provided the appropriate federal, state and local permits are obtained, including permission of the Division, the future Blackstone River Bikeway may be constructed, maintained and developed within a portion of the Conservation Restriction.
2. The marking, clearing, mowing, and/or maintenance of footpaths and woods roads existing and shown in the Baseline Documentation Report & Survey (*Exhibit B*); {optional}
3. Signs. The erection, maintenance and replacement of signs with respect to hunting, trespass, trail access, identity and address of the occupants, sale of the Premises, the Grantee's interest in the Premises, and the protected conservation values provided such signs do not specifically reference species on the MA Endangered Species Act (MGL c131A) and its implementing regulations (321 CMR 10.00) by scientific or common name or provide the actual location of said species. Signs may use generalized terms such as "Sensitive Ecological Community," "wildlife habitat", "rare animal habitat" or other generalized terms.
4. Hunting, Trapping and Fishing: Hunting, trapping and fishing are permitted on the premises subject to all applicable laws, bylaws, regulations and authorities; {optional}
6. Alternative Access. The established limit of the Premises shall not encumber the existing New England Power Company utility easement located on the parcel. With the written permission of the Grantee, alternative access for the New England Power Company to reach portions of its transmission corridor shall be allowed when traveling along the easement is infeasible.
5. MESA Conservation and Management Permit (*Exhibit C*). All actions and activities required or authorized by Grantor, Grantee, and /or the Division in the Permit. {as appropriate}

Comment [D6]: This looks fine

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The exercise of any right reserved by Grantor under this Paragraph B shall be in compliance with the then-current Zoning, the Wetlands Protection Act, the MA Endangered Species Act (MGL c131A), and all other applicable federal, state and local laws, rules, regulations, and permits. The inclusion of any reserved right requiring a permit from a public agency does not imply that the Grantee or the Commonwealth takes any position of whether such permit should be issued.

C. NOTICE AND APPROVAL.

Whenever notice to or approval by Grantee and/or Division is required under the provisions of paragraphs A or B, Grantor shall notify Grantee and/or Division in writing not less than 60 days prior to the date Grantor intends to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable, MA Endangered Species Act Tracking Number and/or Conservation and Management Permit number (if applicable), and any other material aspect of the proposed activity in sufficient detail to permit the Grantee and/or Division to make an informed judgment as to its consistency with the purposes of this Conservation Restriction. Where Grantee and/or Division's approval is required, Grantee and/or Division shall grant or withhold approval in writing within 60 days of receipt of Grantor's request. Said approval shall not be unreasonably withheld, but shall only be granted upon a showing that the proposed activity shall not materially impair the purposes of this Conservation Restriction. Failure of Grantee and/or Division to respond in writing within 60 days shall be deemed to constitute approval by Grantee and/or Division of the request as submitted, so long as the request sets forth the provisions of this section relating to deemed approval after 60 days in the notice.

III. LEGAL REMEDIES OF THE GRANTEE AND DIVISION

A. LEGAL AND INJUNCTIVE RELIEF

The rights hereby granted shall include the right to enforce this Conservation Restriction by appropriate legal proceedings and to obtain injunctive and other equitable relief against any violations, including, without limitation, relief requiring restoration of the Premises to their condition prior to the time of the injury complained of (it being agreed that the Grantee may have no adequate remedy at law). The rights hereby granted shall be in addition to, and not in limitation of, any other rights and remedies available to the Grantee for the enforcement of this Conservation Restriction. Grantee shall attempt to resolve issues concerning violations through negotiations with Grantor prior to resorting to legal means. In the event of a dispute over the boundaries of the Conservation Restriction, Grantor shall pay for a survey and permanent monumentation of the boundaries.

Grantor covenants and agrees to reimburse to Grantee all reasonable costs and expenses (including reasonable counsel fees) incurred in enforcing this Conservation Restriction or in taking reasonable measures to remedy, abate or correct any violation thereof, provided that a violation of this Conservation Restriction is acknowledged by Grantor or determined by a court of competent jurisdiction to have occurred.

Comment [dlw7]: Patrick Costello, Town Counsel commented: I suggest that this be deleted due to the potential lack of appropriated funds available to the Town and, thus, the potential unenforceability of the provision.

This Conservation Restriction shall also be enforceable by the Commonwealth of Massachusetts acting through the Division. If the Division in its sole discretion determines that Grantee is not taking satisfactory action to monitor and/or enforce this Conservation Restriction, the Division shall give written notice to Grantee of said unsatisfactory monitoring and/or enforcement and the reasons therefore, and Grantee shall have 30 days in which to take action satisfactory to the Division to monitor and enforce this Conservation Restriction. If the Division in its sole discretion subsequently determines that the Grantee has failed to take satisfactory action within said 30-day period following written notice from the Division, the Division may in its sole discretion monitor and undertake whatever actions, including appropriate legal proceedings which include obtaining injunctive and other equitable relief, that the Division determines are reasonably necessary or appropriate to effect such corrections of any violations and/or to otherwise enforce the terms and provisions of this Conservation Restriction as provided herein.

If the Division in its sole discretion determines that immediate legal or other action is necessary to protect the Premises against injury or harm, the Division may waive this notice and 30-day Grantee response time period and take whatever legal and other action the Division deems as necessary or appropriate to protect the resources on the Premises.

Grantor covenants and agrees to reimburse to Division all reasonable costs and expenses (including reasonable counsel fees) incurred in enforcing this Conservation Restriction or in taking reasonable measures to remedy, abate or correct any violation thereof, provided that a violation of this Conservation Restriction is acknowledged by Grantor or determined by a court of competent jurisdiction to have occurred.

Comment [dlw8]: PCostello: Same comment as above

B. NON-WAIVER

Enforcement of the terms of this Conservation Restriction shall be at the discretion of Grantee. Any election by the Grantee as to the manner and timing of its right to enforce this Conservation Restriction or otherwise exercise its rights hereunder shall not be deemed or construed to be a waiver of such rights.

C. DISCLAIMER OF LIABILITY

By acceptance of this conservation restriction, the Grantee does not undertake any liability or obligation relating to the condition of the Premises not caused by the grantee or its agents pertaining to compliance with and including, but not limited to, hazardous materials, zoning, environmental laws and regulations, or acts which are not caused by the Grantee or anyone acting under the direction of the Grantee.

D. ACTS BEYOND THE GRANTOR'S CONTROL

Nothing contained in this Conservation Restriction shall be construed to entitle the Grantee to bring any actions against the Grantor for any injury to or change in the Premises resulting from causes beyond the Grantor's control, including but not limited to fire, flood, storm and earth movement, or from any prudent action taken by the Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Premises resulting from such causes. The parties to this Conservation Restriction agree that in the event of damage to the Premises from acts beyond the Grantor's control, that if it is desirable that the Premises be restored, the parties will cooperate in attempting to restore the Premises if feasible.

IV. ACCESS

This Conservation Restriction does not grant to the Grantee, to the public, or to any other person or entity any right to enter upon the Premises, except as follows:

The Grantor hereby grants to the Grantee, or its duly authorized agents or representatives, the right to enter the Premises upon reasonable notice and at reasonable times, for the purpose of inspecting the Premises to determine compliance herewith, of enforcing this Conservation Restriction. The Grantor also grants to the Grantee, after 30

days notice of a violation and failure of the Grantor to cure said violation, the right to enter the Premises for the purpose of taking any and all actions with respect to the Premises as may be necessary or appropriate to remedy or abate any violation hereof, including but not limited to the right to have a survey of boundary lines conducted at the Grantee's expense. This Conservation Restriction in no way limits, amends or alters the legal authority of the Division to access the property of the Grantor, its successors and assigns.

V. EXTINGUISHMENT

A. If circumstances arise in the future such as to render the purpose of this Conservation Restriction impossible to accomplish, this restriction can only be terminated or extinguished, whether in whole or in part, by a court of competent jurisdiction under applicable law. If any change in conditions ever gives rise to extinguishment or other release of the Conservation Restriction under applicable law, then Grantee, on a subsequent sale, exchange, or involuntary conversion of the Premises, shall be entitled to a portion of the proceeds in accordance with paragraph B below, subject, however, to any applicable law which expressly provides for a different disposition of the proceeds. Grantee shall use its share of the proceeds in a manner consistent with the conservation purpose set forth herein.

B. PROCEEDS. Grantor and Grantee agree that the donation of this Conservation Restriction gives rise to a real property right, immediately vested in the Grantee, with a fair market value that is at least equal to the proportionate value that this Conservation Restriction, determined at the time of the gift, bears to the value of the unrestricted property at that time. Such proportionate value of the Grantee's property right shall remain constant.

C. GRANTOR/GRANTEE COOPERATION REGARDING PUBLIC ACTION

Whenever all or any part of the Premises or any interest therein is taken by public authority under power of eminent domain or other act of public authority, then the Grantor and the Grantee shall cooperate in recovering the full value of all direct and consequential damages resulting from such action. All related expenses incurred by the Grantor and the Grantee shall first be paid out of any recovered proceeds, and the remaining proceeds shall be distributed between the Grantor and Grantee in shares equal to such proportionate value. If a less than fee interest is taken, the proceeds shall be equitably allocated according to the nature of the interest taken. The Grantee shall use its share of the proceeds like a continuing trust in a manner consistent with the conservation purposes of this grant.

VI. ASSIGNABILITY

A. RUNNING OF THE BURDEN

The burdens of this Conservation Restriction shall run with the Premises in perpetuity, and shall be enforceable against the Grantor and the successors and assigns of the Grantor holding any interest in the Premises.

B. EXECUTION OF INSTRUMENTS

The Grantee is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Conservation Restriction; the Grantor, on behalf of itself and its successors and assigns, appoint the Grantee their attorney-in-fact to execute, acknowledge and deliver any such instruments on its behalf. Without limiting the foregoing, the Grantor and her successors and assigns agree themselves to execute any such instruments upon request.

C. RUNNING OF THE BENEFIT

The benefits of this Conservation Restriction shall be in gross and shall not be assignable by the Grantee, except in the following instances:

As a condition of any assignment, the Grantee shall require that the purpose of this Conservation Restriction continues to be carried out; and the Assignee, at the time of the assignment, qualifies under Section 170(h) of the Internal Revenue Code of 1986, as amended, and applicable regulations thereunder, and is a donee eligible to receive this Conservation Restriction under Section 32 of Chapter 184 of the General Laws of Massachusetts.

VII. SUBSEQUENT TRANSFERS

The Grantor agrees to incorporate by reference the terms of this Conservation Restriction in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Premises, including a leasehold interest and to notify the Grantee within 20 days of such transfer. Failure to do so shall not impair the validity or enforceability of this Conservation Restriction.

The Grantor shall be liable only for violations occurring during its or his or her ownership, or for any transfer, if in violation. Liability for any acts or omissions occurring prior to any transfer and liability for any transfer if in violation of this CR shall survive the transfer. Any new owner shall cooperate in the restoration of the Premises or removal of violations caused by prior owner(s) and may be held responsible for any continuing violations.

VIII. ESTOPPEL CERTIFICATES

Upon request by the Grantor, the Grantee shall, within twenty (20) days, execute and deliver to the Grantor any document, including an estoppel certificate, which certifies the Grantor's compliance with any obligation of the Grantor contained in this Conservation Restriction.

IX. NON MERGER

The parties intend that any future acquisition of the Premises shall not result in a merger of the Conservation Restriction into the fee. The Grantor agrees that it will not grant, and the Grantee agrees that it will not take title, to any part of the Premises without having first assigned this Conservation Restriction to ensure that merger does not occur. If it is determined that a transfer or assignment of any interest will result in a merger, no deed shall be effective until this Conservation Restriction has been assigned or other action taken to avoid a merger and preserve the terms and enforceability of this Conservation Restriction. It is the intent of the parties that the Premises will be subject to the terms of this Conservation Restriction in perpetuity, notwithstanding any merger.

X. AMENDMENT

If circumstances arise under which an amendment to or modification of this Conservation Restriction may be appropriate, Grantor and Grantee may jointly amend this Conservation Restriction; provided that no amendment shall be allowed that will affect the qualification of this Conservation Restriction or the status of Grantee under any applicable laws, including Section 170(h) of the Internal Revenue Code of 1986, as amended, or Sections 31-33 of Chapter 184 of the General Laws of Massachusetts. Any amendments to this conservation restriction shall occur only in exceptional circumstances. The Holder will consider amendments only to correct an error or oversight, to clarify an ambiguity, and in circumstances where in granting an amendment there is a net gain in conservation value. All expenses of all parties in considering and/or implementing an amendment shall be borne by the persons or entity seeking the amendment. Any amendment shall be consistent with the purposes of this Conservation Restriction, shall not affect its perpetual duration, shall be approved by the Secretary of Environmental Affairs and if applicable, shall comply with the provisions of Art. 97 of the Amendments to the Massachusetts Constitution. Any amendment shall be recorded in the _____ {County/Region} Worcester County Registry of Deeds.

XI. EFFECTIVE DATE

This Conservation Restriction shall be effective when the Grantor and the Grantee have executed it, the administrative Approvals required by Section 32 of Chapter 184 of the General Laws have been obtained, and it has been recorded in the Worcester County _____ {County/Region} Registry of Deeds.

XII. RECORDATION

The Grantee shall record this instrument in timely fashion in the Worcester County _____ {County/Region} Registry of Deeds.

XIII. NOTICES

Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage pre-paid, addressed as follows:

To Grantor:

Town of Uxbridge
c/o Board of Selectmen
21 South Main Street
Uxbridge, MA 01569

{Grantor-Name}

{Street-Address}

{City, State Zip Code}

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To Grantee:

Town of Uxbridge
Conservation Commission
21 South Main Street
Uxbridge, MA 01569

{Grantee-Name}

{Street-Address}

{City, State Zip Code}

To the Division: Natural Heritage Endangered Species Program
Mass. Division of Fisheries & Wildlife
North Drive, Route 135
Westborough, MA 01581

or to such other address as any of the above parties from time to time shall designate by written notice to each other.

XIV. GENERAL PROVISIONS

A. CONTROLLING LAW

The interpretation and performance of this Conservation Restriction shall be governed by the laws of the Commonwealth of Massachusetts.

B. LIBERAL CONSTRUCTION

Any general rule of construction to the contrary notwithstanding, this Conservation Restriction shall be liberally construed in favor of the grant to effect the purpose of this Conservation Restriction and the policy and purposes of Massachusetts General Laws Chapter 184, Sections 31-33. If any provision in this instrument is found to be ambiguous, any interpretation consistent with the purpose of this Conservation Restriction that would render the provision valid shall be favored over any interpretation that would render it invalid.

Comment [dlw9]: Michael Szlosek Comment: I am uncomfortable with this section, particularly the phrase "Any general rule of construction to the contrary notwithstanding" The "purpose" should not trump the plain language of the document.

C. SEVERABILITY

If any provision of this Conservation Restriction or the application thereof to any person or circumstance is found to be invalid, the remainder of the provision of this Conservation Restriction shall not be affected thereby.

D. ENTIRE AGREEMENT

This instrument sets forth the entire agreement of the parties with respect to this Conservation Restriction and supersedes all prior discussions, negotiations, understandings or agreements relating to the Conservation Restriction, all of which are merged herein.

XIV. MISCELLANEOUS

Uxbridge High School, Quaker Highway, Conservation

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A. **PRE-EXISTING PUBLIC RIGHTS.** Approval of this Conservation Restriction pursuant to M.G.L. Chapter 184, Section 32 by any municipal officials and by the Secretary of Environmental Affairs is not to be construed as representing the existence or non-existence of any pre-existing rights of the public, if any, in and to the Premises, and any such pre-existing rights of the public, if any, are not affected by the granting of this Conservation Restriction.

B. **SUBORDINATION OF MORTGAGE:** The Grantor shall record at the appropriate Essex County Registry of Deeds simultaneously with this Conservation Restriction all documents necessary to subordinate any mortgage, promissory note, loan, equity credit line, refinance assignment of mortgage, lease, financing statement or any other agreement which gives rise to a surety interest affecting the Property.

XV. ATTACHMENTS

- | | |
|-----------|--|
| Exhibit A | Plans showing area to be protected subject to Conservation Restriction with area(s) labeled at "Conservation Restriction Area" {REQUIRED} |
| Exhibit B | Baseline Documentation Report {REQUIRED} |
| Exhibit C | MESA Conservation & Management Permit {AS APPROPRIATE} |

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GRANTING OF CONSERVATION RESTRICTION

WITNESS my hand and seal this _____ day of _____, 200__.

Name: _____

Signature: _____

[Name(s) & signatures of ALL owners]

COMMONWEALTH OF MASSACHUSETTS

On this _____ day of _____, 2007, before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory evidence of identification which was _____ to be the person(s) whose name is signed on the preceding document, and who swore or affirmed to me that the contents of the document are truthful and accurate to the best of his/her knowledge and belief.

SEAL

Notary Public

My commission expires: _____

ACCEPTANCE OF GRANT

The above Conservation Restriction was accepted by _____ this _____ day of _____, 200__.

By: _____

Its: _____, duly authorized

COMMONWEALTH OF MASSACHUSETTS

On this _____ day of _____, 2007, before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory evidence of identification which was _____ to be the person(s) whose name is signed on the preceding document, and who swore or affirmed to me that the contents of the document are truthful and accurate to the best of his/her knowledge and belief.

SEAL

Notary Public

My commission expires: _____

Uxbridge High School, Quaker Highway, Conservation

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APPROVAL OF SELECT BOARD

We, the undersigned, being a majority of the Select Board of the Town of _____,
_____ County, Massachusetts, hereby certify that at a meeting duly held on
_____, 200_, the Select Board voted to approve the foregoing Conservation Restriction to the
pursuant to Section 32 of Chapter 184 of the General Laws of Massachusetts.

Select Board

COMMONWEALTH OF MASSACHUSETTS

On this _____ day of _____, 2007, before me, the undersigned notary public, personally appeared
_____, proved to me through satisfactory evidence of identification which was
_____ to be the person(s) whose name is signed on the preceding document, and who swore
or affirmed to me that the contents of the document are truthful and accurate to the best of his/her knowledge and
belief.

SEAL

Notary Public

My commission expires: _____

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APPROVAL BY SECRETARY OF ENERGY AND ENVIRONMENTAL AFFAIRS
COMMONWEALTH OF MASSACHUSETTS

The undersigned, Secretary of Executive Office of Energy and Environmental Affairs of the Commonwealth of Massachusetts, hereby certifies that the foregoing Conservation Restriction to the Town of Acton has been approved in the public interest pursuant to Massachusetts General Laws, Chapter 184, Section 32.

Dated: _____, 200__

Ian A. Bowles
Secretary of Energy and Environmental Affairs

COMMONWEALTH OF MASSACHUSETTS
Middlesex, ss:

On this _____ day of _____, 200__, before me, the undersigned notary public, personally appeared Ian A. Bowles proved to me through satisfactory evidence of identification which was personal knowledge to be the person whose name is signed on the proceeding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose as Secretary of Energy and Environmental Affairs for the Commonwealth of Massachusetts.

SEAL

Notary Public

My commission expires: _____

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ACKNOWLEDGEMENT BY THE MA DIVISION OF FISHERIES AND WILDLIFE

This grant of Conservation Restriction set forth above to the {Name of Grantee, if a town; Town of X
acting through its Conservation Commission} by {Name of Grantor} is acknowledged this _____ day of
_____, 200__. The MA Division of Fisheries and Wildlife (DFW) acknowledges the reserved rights and
obligations of the Division set forth herein.

Wayne MacCallum, Director or Jack Buckley

Date: _____

COMMONWEALTH OF MASSACHUSETTS

On this _____ day of _____, 2006, before me, the undersigned notary public, personally appeared
_____, proved to me through satisfactory evidence of identification, which was personally known to be
the person whose name is signed on the preceding or attached document and acknowledged to me that he signed it
voluntarily for its stated purpose as _____ of the Commonwealth of Massachusetts Division of Fisheries
and Wildlife.

SEAL

Notary Public

My commission expires: _____

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Exhibit A

Uxbridge High School Conservation Area plan prepared by BSC Group to be recorded at the Worcester County

Registry of Deeds, depicting an approximately 30-acre portion of a 101-acre lot. {

Mention plan if there is one, and where it is recorded, or, "to be filed herewith". }

{Mention area of CR: "all of a 6-acre lot" or if it is a portion of a lot, say "an _____ acre portion of a _____ acre lot". }

Said land is subject to {mention any easements and or mortgages and their recording information}

Said land has the benefit of {mention any easements or other benefits and where they are recorded}

All as further shown on the Plan/Sketch Plan, attached hereto.

Other Exhibits, as appropriate: Town Meeting Vote, Subordination Agreement, Baseline Survey, Forestry Plan, etc.

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Exhibit B

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Baseline Documentation Report

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Exhibit C

MESA Conservation & Management Permit

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Subordination of Mortgage

I/We, _____, Present holder(s) of a mortgage on property
located at _____ Massachusetts ("Premises")
from _____ to _____ dated _____ and recorded
with _____ Registry of Deeds in Book _____, Page _____, filed
with _____ County Registry District hereby approve of, and subordinate the Mortgage
and the obligations secured thereby to the Conservation Restriction covering all/a portion of the Premises to be
recorded, to the same extent as if the Conservation Restriction had been executed and recorded before the execution
and recording of the Mortgage.

In Witness Whereof, the said _____
has caused its corporate seal to be hereto affixed and these presents to be signed in its name and behalf by
_____ its _____ this
_____ day of _____, 20_____.

by: _____, 20_____

[Attach acknowledgement certificate here]

COMMONWEALTH OF MASSACHUSETTS

, ss:

On this _____ day of _____, 200____, before me, the undersigned notary public, personally appeared
_____, proved to me through satisfactory evidence of identification which was
to be the person whose name is signed on the proceeding or attached document, and acknowledged to me that he
signed it voluntarily for its stated purpose.

Notary Public
My Commission Expires:

APPROVAL OF CONSERVATION COMMISSION

We, the undersigned, being a majority of the Conservation Commission of the Town of Uxbridge, Worcester County, Massachusetts, hereby certify that at a meeting duly held on January _____, 2011, the Conservation Commission voted to accept the foregoing Conservation Commission pursuant to Section 8C of Chapter 40 and Section 32 of Chapter 184 of the General Laws of Massachusetts.

Conservation Commission

COMMONWEALTH OF MASSACHUSETTS

On this _____ day of _____, 2011, before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory evidence of identification which was _____ to be the person(s) whose name is signed on the preceding document, and who swore or affirmed to me that the contents of the document are truthful and accurate to the best of his/her knowledge and belief.

SEAL

Notary Public

My commission expires: _____

