

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF FISHERIES, WILDLIFE AND ENVIRONMENTAL  
LAW ENFORCEMENT  
CONSENSUAL ORDER OF TAKING  
OF  
CONSERVATION RESTRICTION

← GRANTEE

The Commonwealth of Massachusetts, acting by and through its Department of Fisheries, Wildlife and Environmental Law Enforcement, under the power and authority conferred thereon by Section 15 of Chapter 15 of the Acts of 1996, Sections 2(26) and 8 of Chapter 21A, Chapter 79, and Sections 30, 31, and 32 of Chapter 184 of the Massachusetts General Laws, as amended, acts in amendment thereof or in addition thereto, and any and every other power and authority to it granted or implied and for the purposes of said acts and of acquiring land and interests in land for fish and wildlife conservation, natural habitat protection, and associated public recreation consistent with and subject to the purposes and protections of Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, does hereby take a conservation restriction and easement (hereinafter the "Conservation Restriction") on the land in Barnstable and Mashpee, Barnstable County, Massachusetts, described in Exhibit A attached hereto and incorporated herein by this reference (hereinafter the "Premises").

MEANING AND INTENDING to take and hereby taking a conservation restriction and conservation easement in, on, and to the Premises described in Exhibit A, howsoever said Premises are bounded and described, for the purposes described herein, including the purposes of and subject to the provisions of Article 97 of the Amendments to the Massachusetts Constitution, and including for the purposes above stated all such rights, including easements, privileges, and appurtenances of every name and nature, as may be necessary to give full force, virtue, and effect in perpetuity to the restrictions on the use of said Premises, the rights taken by the Commonwealth as set forth in the following provisions, and the purposes and protections of Article 97 of the Amendments to the Massachusetts Constitution.

The terms, conditions and restrictions of this Order shall be binding upon and inure to the benefit of the Commonwealth of Massachusetts, acting by and through its Department of Fisheries, Wildlife and Environmental Law Enforcement (hereinafter the "Commonwealth"), and the Towns of Barnstable and Mashpee, (hereinafter the "Owner"), and their respective successors and assigns:

The terms and conditions of the Conservation Restriction taken pursuant to this Order of Taking are as follows:

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 purposes of this Conservation Restriction are to assure that, while permitting the forestry and other permitted acts and uses described in Section III herein, the Premises will be subject to the prohibitions described in Section II hereof so that the Premises are retained in perpetuity predominantly in its natural, scenic, and open condition for fish and wildlife conservation, natural habitat protection, management of forest resources as described herein, associated public recreation, and other uses consistent with the purposes set

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BARNSTABLE, SAINT-NEWTOWN SEE PLAN 574 PAGE 66

forth in chapter 293 of the Acts of 1998 as amended by section 211 of chapter 127 of the Acts of 1999 (the Cape Cod Land Acquisition Program) and the spirit and intent of and subject to the protections of Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, and to prevent any use of the Premises that will significantly impair or interfere with the values thereof. A cooperative management plan will be developed for the property within two years to be reviewed by the Towns of Barnstable and Mashpee and the Commonwealth of Massachusetts, Department of Fisheries, Wildlife and Environmental Law Enforcement. The permanent protection of the Premises as provided herein will yield a significant public benefit for the following reasons:

1) The Premises consist of approximately 293 acres of forest and open land in Barnstable and Mashpee, Barnstable County, Massachusetts, as shown on the Plan of Land described in Exhibit A. The Premises consist of upland habitat, vernal pools, other freshwater resources, and cranberry bogs adjacent to Santuit Pond.

Two state-protected species, Eastern Box Turtle (*Terrapin carolina*, Species of Special Concern) and Spotted Turtle (*Clemmys guttata*, Species of Special Concern), have been documented by the Commonwealth's Natural Heritage and Endangered Species Program as being found on the Premises. Other state-protected rare species have been documented as occurring on similar nearby lands and thus may be present on the Premises as well. Preservation of the Premises by minimizing alterations to the natural character thereof will help protect the state-listed rare species and unique natural communities found thereon and thereby enhance the long-term survival and viability of these rare species and unique natural communities.

The headwaters of the Santuit River and its connection to Santuit Pond are located on the Premises. The Santuit River is an important natural resource that supports a wild brook trout population, an anadromous river herring run (alewives and blueback herring), an anadromous run of white perch and the catadromous American eel. The groundwater resources of the Premises help to support the cold, clean spring flow of the Santuit River which sustain its wild brook trout population. Wild brook trout populations are now rare in southeastern Massachusetts due to the impacts of over 300 years of development. These wild brook trout from the Santuit River sometimes enter the waters of Shoestring Bay (and other nearby estuarine and marine environments) and become "salters". Salter populations of brook trout have greatly declined throughout their limited range and are deserving of the highest standards of protection.

River herring travel up the Santuit River through the Premises in the spring to spawn in Santuit Pond. Small young-of-year herring travel down the river in the summer and fall to spend several years in the ocean before returning as adults to complete their life cycle. These herring runs help support a complex food web that help sustain osprey and other predatory bird populations as well as providing forage for many recreationally and commercially important marine and freshwater fish species. Santuit Pond is an important warmwater fishery for largemouth bass, chain pickerel, yellow perch, pumpkinseed sunfish and brown bullhead and important habitat for a wide variety of plants, freshwater mussels and other invertebrates, fish, birds and other wildlife species.

2) Protection of the Premises under this Conservation Restriction will minimize soil erosion, chemical pollution, and adverse water levels, quality, and quantity from the Premises into Santuit Pond, Lovells Pond, and the Santuit River, as well as into vernal pools on or near the Premises, thereby protecting the state-protected rare species, fisheries resources, and diverse natural communities from the adverse effects of such erosion, siltation, pollution, and changes in

water characteristics. Preservation of the Premises from development will maintain the natural forest and plant cover thereon and thereby help protect the high quality of water run-off from the Premises into the water resources on or downstream of the Premises, very important to the protection and long-term viability of the rare species, fisheries resources, and diverse natural-communities found on or near the Premises.

These 293 acres of protected open space are an important public resource in an area where residential and commercial development is rapidly destroying the remaining open spaces. The preservation of the Premises by reducing alterations to the natural character thereof, will further protect and enhance the area's scenic and open space attributes and the recreational, human enjoyment, and ecological value of this conservation land.

The Owner and the Commonwealth agree that the specific conservation values and other Land Bank purposes of the Premises shall be documented in a report signed by the Owner and the Commonwealth within 12 months of the recording of the Order of Taking to be on file in the offices of the Owner and the Commonwealth and incorporated herein by this reference (hereinafter the "Baseline Documentation Report"). This report shall consist of documentation that the owner and the Commonwealth agree collectively that provides an accurate representation of the condition and the conservation values and other Land Bank purposes of the Premises at the time this order of Taking is recorded and which is intended to serve as an objective information baseline for monitoring compliance with the terms of this Conservation Restriction.

II. Prohibited Acts and Uses

In order to carry out the purposes set forth in Section I above, the Premises will at all times be held, used, and conveyed subject to the following restrictions, and owner and Owner's successors and assigns shall not perform or permit the following acts, or uses on, over, or under the Premises, except as provided in III, Permitted Acts and Uses.

(1) Constructing or placing of any dwelling, building, tennis court, landing strip, mobile home, swimming pool, asphalt or concrete pavement, parking area, sign, billboard or other advertising display, utility pole or tower, conduit, line, fence, barrier, wall, septic system, or any other temporary or permanent structure or facility on, above or under the Premises;

(2) Mining, excavating, dredging or removing from the Premises soil, loam, peat, gravel, sand, rock or other mineral resource or natural deposits;

(3) Placing, filling, storing or dumping on the Premises of soil, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, waste, or any other substance or material whatsoever, including but not limited to the installation of underground storage tanks;

(4) Activities detrimental to drainage, flood control, water conservation, ground water, levels, erosion control, or soil conservation;

(5) The use of automobiles, trucks, motorcycles, motorized trail bikes, snowmobiles or any other motorized vehicles;

(6) Removal or destruction of trees, shrubs, or any other vegetation thereon within 200 feet of a vernal pool or other water body or watercourse;

(7) Any commercial, industrial, or institutional use, other than as permitted below;

(8) The storage of inorganic pesticides, herbicides, insecticides, fungicides, or other chemicals on the Premises;

(9) The application of inorganic pesticides, herbicides, insecticides, fungicides, or other chemicals on the Premises;

(10) Any other uses of or activities on the Premises which would be inconsistent with the purposes of this Conservation Restriction or detrimental to the conservation interests which are the subject of this Conservation Restriction;

(11) Conveyance of a part or portion of the Premises alone (as compared to conveyance of the Premises in its entirety and which shall be permitted), or division or subdivision of the Premises, without the prior written consent of the Commonwealth;

(12) Use of the Premises or any portion thereof to satisfy zoning requirements or to seek variances therefrom for development purposes;

(13) Planting, release, cultivation, maintenance, or other activity that would result in the intentional introduction, intentional establishment, and/or intentional enhancement of plant, animal, insect, or other species that are not native to the commonwealth of Massachusetts, except for non-native agricultural and horticultural animal, plant, insect, and other species permitted under Section III (10) for authorized agricultural and horticultural activities.

### III. Permitted Acts and Uses

Notwithstanding anything contained in Section II, the following acts and uses by Owner and Owner's successors and assigns are permitted on the Premises as acts and uses that do not materially impair the purposes of this Conservation Restriction:

(1) Maintenance of existing woods roads, bridges, culverts, fences, gates, and stone walls, and the construction of fences, gates and installation of stone barriers thereon, subject to the Forest Management Standards in Exhibit B attached hereto as applicable. The relocation of woods roads existing on the date this Conservation Restriction is signed, and the construction of new woods roads, bridges, culverts, fences, gates and stone barriers, are permitted if such activities are conducted subject to the Forest Management Standards in Exhibit B attached hereto as applicable.

(2) Recreational use of the property by the public, Owner and Owner's invitees, successors and assigns and their invitees, for passive outdoor recreational activities as defined in the management plan prepared by the Commonwealth and the Owner, provided that such activities shall not involve the use of motorized vehicles (except for motorized wheelchairs or similar equipment reasonably necessary to enable handicapped members of the public to access the Premises), and shall not be detrimental to the purposes of or violate the terms of this Conservation Restriction. Such recreational activities shall also include the right to construct and maintain trails and footpaths, and parking for public access along existing roadways or other suitable locations subject to the Forest Management Standards in Exhibit B attached hereto as applicable.

(3) The cultivation and harvest of forest products in accordance with Massachusetts forest management and conservation regulations as may be promulgated from time to time and as authorized by a Chapter 132 Forest Cutting Plan approved by a State Forester and the Commonwealth. All forest cultivation and harvest activities shall be carried out in accordance with a) all required best management practices and recommended guidelines in the Massachusetts Forestry Best Management Practices Manual (Kittredge & Parker, 1996) and subsequent versions if approved by the Commonwealth, and b) the Forest Management Standards described in Exhibit B attached hereto.

Unless owner seeks, and the Commonwealth grants, express written approval to conduct other forestry activities, owner shall conduct only those activities consistent with and authorized by an approved Forest Cutting Plan.

(4) Cutting, pruning, mowing and removal of trees, shrubs, and other vegetation which is not covered by an approved Forest Cutting Plan or Forest management plan to (a) remove hazards, diseased trees, or insect damage, and (b) pursuant to the management plan, (c) maintain the Premises as set forth in Section I and (d) to improve fish, wildlife or rare species habitats or to allow improved passage for migratory fish.

(5) To the extent permitted by applicable law the installation and maintenance of wells for the replacement of groundwater extraction wells lost to production and in addition up to two new supply capacity wells and associated equipment (so long as said equipment is appropriately screened from view) for use in extracting groundwater or collecting surface water for public water supply use on or off the Premises, provided that (a) any such activities shall be conducted in accordance with DEP regulations for standard municipal water supply wells and the requirements for minimal adverse impact to the purposes set forth in Section I and including, without limitation, minimizing impacts on the Santuit River; (b) any such activities shall not be conducted absent a demonstration by Owner that such activities will not have a detrimental effect on the natural resources on the Premises, including but not limited to watercourses and wetlands on the Premises.

(6) The installation of signs (a) not to exceed four hundred (400) square inches in size in conjunction with the conduct of recreational activities, (b) not to exceed twenty-five (25) square inches in size for use in posting notice of ownership of the Premises along the boundaries of the Premises, and (c) not to exceed nine hundred (900) square inches in size for use in posting notice of ownership and use of the Premises, location of trails and public parking, and other appropriate wording.

(7) Use of motorized vehicles for conducting any of the uses and activities permitted by Section III hereunder, as necessary by the owner in responding to emergencies, and as necessary by the Commonwealth, police, firemen, and other governmental agents in responding to emergencies or otherwise carrying out their lawful duties.

(8) Agricultural activities and practices, including any equipment and structuring reasonably necessary to conduct such activities, described in subsection 9 or the management plan prepared by the Owner and the Commonwealth provided that (a) any such activities shall be conducted in accordance with best management practices, and (b) any such activities shall be conducted in a manner that minimizes any adverse effects on the natural resources on the Premises, including but not limited to any watercourse or wetlands on the Premises.

(9) Cranberry production activities from all acreage of former or present cranberry bogs will be managed to preserve fisheries and wildlife habitats, and with the following stipulations; no reclamation of abandoned bogs, no production allowed within 300 feet of the Santuit River, no discharge of water from Santuit Pond to Lovells Pond, proper screening (in accordance with rules of the Division of Marine Fisheries) of all irrigation and flood waters, dry harvesting only, no use of inorganic pesticides, herbicides or chemical fertilizers, construction of sedimentation basins to control sand transport off the bogs, preparation of a comprehensive agricultural activities section of the Premises Management plan acceptable to the Commonwealth that--reflects best management practices to protect fish and wildlife habitats and preparation of a water management section of the Premises Management plan to minimize impacts on the fisheries and wildlife resources of Santuit Pond, Lovells Pond and the Santuit River.



(10) The sale, lease or mortgage of the Premises except as otherwise provided in this Consensual Order, provided that notwithstanding any such sale, lease, or mortgage, the Premises shall remain subject to the terms of this Conservation Restriction.

(11) The control, management, and eradication of species not native to the Commonwealth of Massachusetts.

(12) Use and maintenance of all existing water monitoring wells for the purpose of groundwater protection.

The exercise of any permitted activity or use by the Owner under this Section III shall be in compliance with the then current Zoning Bylaw applicable to the Premises, the Wetlands Protection Act (General Laws Chapter 131, Section 40), the more restrictive of the then current applicable Wetlands Protection Ordinance of the Town of Barnstable or By-Law of the Town of Mashpee, and all other applicable federal, state, and local environmental protection and other laws and regulations, and the Owner agrees not to seek a variance therefrom for development purposes except as may be consistent with any acts permitted under this section III. The inclusion of any permitted activity or use in this Section III requiring a permit from a public agency does not imply that the Commonwealth takes any position on whether such permit should be issued.

Any activity or use not permitted herein is prohibited without the express written consent of the Commonwealth stating that such activity or use is not inconsistent with the conservation purposes of this Conservation Restriction. Any request by the Owner for approval of such an activity or use shall contain a detailed description of why such activity or use is not inconsistent with the conservation purposes of this Conservation Restriction. In the event the Commonwealth disapproves the requested activity or use, the Commonwealth shall provide a detailed written explanation of why said activity or use is inconsistent with the conservation purposes of this Conservation Restriction.

#### IV. Access by the Commonwealth and the General Public

The Commonwealth through its duly designated officers, directors, employees, representatives and agents shall have the right to enter the Premises at reasonable times and in a reasonable manner, including access by foot and/or by motorized vehicle or boat, for the purpose of inspecting the Premises, determining compliance with the terms of this Conservation Restriction, and preventing, abating or remedying any violations thereof.

The Commonwealth shall also have the right, at its sole expense and with the prior written consent of the Owner, to access the Premises as described above and to perform acts to preserve, conserve, research, study, and promote the natural habitat of wildlife, fish and plants located on the Premises or on nearby properties.

The Commonwealth shall also have the right, at its sole expense and with prior written consent of the Owner, to access the Premises as described above and to carry out rare species and natural community research including but not limited to a) locating, collecting samples and otherwise studying and documenting any rare species, vernal pools, and natural communities which exist on the Premises b) conducting biological surveys, and c) monitoring the natural communities, habitats and species thereon, provided that no such activities by the Commonwealth may unreasonably interfere with the use of the Premises by the owner in accordance with the terms of this Conservation Restriction.

This Conservation Restriction also takes for the public generally the right to enter upon the Premises for passive outdoor recreational purposes by the general public, provided that such activities shall not involve the use of motorized vehicles (except for motorized wheelchairs or

similar equipment reasonably necessary to enable handicapped members of the public to access the, Premises), shall not be detrimental to the purposes of or violate the terms of this Conservation Restriction, and shall not unreasonably interfere with authorized uses of the Premises by the Owner as set forth in the management plan prepared by the Commonwealth and the Owner pursuant to Section I, Purposes. The terms and conditions of public access shall be determined by the Director of the Division of Fisheries and Wildlife in consultation with Owner.

Locations of access to the Premises shall be mutually agreed upon by the Owner and the Commonwealth. Public access on the Premises shall be monitored by the Commonwealth in accordance with its policies and practices and governed by M.G.L. Chapter 21, Section 17C, as amended.

The Owner may petition the Director to modify the terms of this Conservation Restriction concerning public access to the Premises for cause in the event that public access is being conducted in a manner that materially violates the access provisions and other provisions of this Conservation Restriction.

V. Legal Remedies of the Commonwealth

The rights herein taken include the right of the Commonwealth to take any reasonable actions with respect to the Premises as may be necessary or appropriate to remedy, abate or otherwise enforce any violations hereof including 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 its condition at the time of this taking (it being agreed that the Commonwealth may have no adequate remedy at law), which rights shall be in addition to, and not in limitation of, any other rights and remedies available to the Commonwealth, provide that prior to exercising its rights under this Section V the Commonwealth shall, except under emergency circumstances, provide reasonable notice to the Owner to provide Owner with an opportunity to address or correct any violations.

In any action by the Commonwealth to enforce the terms of this Conservation Restriction, if the Commonwealth obtains judgment from a Court of law ruling that the Owner has violated any of the terms of this Conservation Restriction, Owner shall reimburse the Commonwealth for all reasonable costs and expenses incurred in connection with obtaining and enforcing such judgment, including reasonable counsel fees and reasonable costs incurred in remedying or abating the violation.

In any action by the Commonwealth to enforce the terms of this Conservation Restriction if the owner obtains judgment from a Court of law ruling that the Owner has not violated the terms of this Conservation Restriction, the Commonwealth shall reimburse the Owner for all reasonable costs and expenses incurred in connection with obtaining and enforcing such judgment, including reasonable counsel fees.

Enforcement of the terms of this Conservation Restriction shall be at the discretion of the Commonwealth, and any forbearance by the Commonwealth to exercise its rights under this Conservation Restriction shall not be deemed or construed to be a waiver.

If any provision of this Conservation Restriction shall to any extent be held invalid, the remainder shall not be affected.

Except for its responsibilities to monitor public access to the Premises and for its own activities on the Premises, the Commonwealth does not undertake any liability or obligations relating to public access on or the condition of the Premises, provided that the terms of this

Conservation Restriction shall not be interpreted as requiring owner to take any action with respect to, or have any responsibility for, any costs or damages caused by public access to the Premises.

**VI. Subsequent Transfers**

The Owner 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 without limitation, a leasehold interest. The Owner further agrees to give written notice to the Commonwealth of the proposed transfer of any interest at least thirty (30) days prior to the date of such transfer. Failure of the Owner to do so shall not impair the validity of this Conservation Restriction nor limit its enforceability in any way.

**VII. Representations of the Commonwealth**

The Commonwealth represents that it is a governmental agency of the Commonwealth of Massachusetts, that it is organized and operated for the purpose of preserving and conserving natural resources, natural habitats, environmentally sensitive areas and for other charitable, scientific and educational purposes, and that it has both the necessary funds and commitment to hold this Conservation Restriction exclusively for conservation purposes in perpetuity and to enforce its terms.

**VIII. Required Notification, Consent & Approvals**

(1) The Owner shall notify the Commonwealth in writing at least ten (10) days prior to undertaking any act not otherwise addressed in this Conservation Restriction which Owner has a good faith reason to believe may adversely affect the conservation interests associated with and protected by this Conservation Restriction.

(2) Whenever notification by the owner or the Commonwealth is required under the provisions of this Conservation Restriction, such notice shall be given in writing not less than ten (10) days prior to the date the notifying party intends to undertake the activity in question.

(3) Whenever the Owner's or the Commonwealth's consent or approval is required under the terms of this Conservation Restriction for any matter or action and the time in which consent or approval is to be given is not otherwise addressed in this Conservation Restriction, the Owner or the Commonwealth shall grant or withhold such consent or approval in writing within thirty (30) days of receipt of written request therefor, and the notifying party shall not undertake the activity in question until the expiration of said thirty (30) day period. Any such requested consent or approval shall not be unreasonably withheld so long as the granting of said consent or approval is consistent with the terms and purposes of this Conservation Restriction. Failure to act in writing within the stated thirty (30) day time period shall constitute consent or approval.

Any written notice required hereunder shall be sent by certified mail, return receipt requested, postage prepaid, to the following addresses:

**OWNER:**  
Town of Barnstable  
New Town Hall  
367 Main Street  
Hyannis, MA 02601-3907

**COMMONWEALTH:**  
Chief of Wildlife Lands  
Mass. Division Fisheries & Wildlife  
1 Rabbit Hill Road  
Westborough, MA 01581-9990



And

Town of Mashpee  
c/o Board of Selectmen  
Town Hall  
16 Great Neck Road  
Mashpee, MA 02649

Natural Heritage and Endangered  
Species Program  
Division of Fisheries and Wildlife  
1 Rabbit Hill Road  
Westborough, MA 01581-9990

**IX. Proceeds from Extinguishment; Eminent Domain**

The Owner and the Commonwealth agree that this Conservation Restriction gives rise to a property right, immediately vested in the Commonwealth, with a fair market value determined by appraisals on file with the Commonwealth. The Owner and the Commonwealth agree that this property right gives to the Commonwealth the proportionate value of the Premises determined by the ratio of this fair market value of the Premises at the time of this grant to the fair market value of the Premises at the time of this grant unencumbered by this Conservation Restriction as determined by said appraisals. Such proportionate value of the Commonwealth's property right shall remain constant. If any chance in conditions ever gives rise to extinguishment or other release of this Conservation Restriction under applicable law, then the Commonwealth, on a subsequent sale, exchange or involuntary conversion of the Premises; shall be entitled to a portion of the proceeds equal to such proportionate value, subject, however, to any applicable law which expressly provides for a different disposition of proceeds. Whenever all or any part of the Premises or any interest therein is taken by public authority under power of eminent domain, or if all or any part of this Conservation Restriction is otherwise extinguished by act of public authority, then the Owner and the Commonwealth shall cooperate in recovering the full value of all direct and consequential damages resulting from such action. All related expenses incurred by the Owner and the Commonwealth shall first be paid out of any recovered proceeds, and the remaining proceeds shall be distributed between the Owner and the Commonwealth in shares equal to such proportionate value. The Commonwealth shall use its share of the proceeds in a manner consistent with the conservation purpose set forth herein.

**X. Binding Effect**

The burdens of this Conservation Restriction shall be deemed to run with the Premises in perpetuity and in gross and shall be binding upon and enforceable against the Owner and all future owners of any interest in the Premises. This Conservation Restriction shall be subject to Article 97 of the Amendments to the Massachusetts Constitution. The Commonwealth is authorized to record and file any notices or instruments appropriate to assuring the perpetual enforceability of this Conservation Restriction.

**XI. Costs and Liabilities**

Except for any costs associated with any activities of the Commonwealth on the Premises, the Owner retains all responsibilities and shall bear all costs of any kind related to the ownership, operation, upkeep, and maintenance of the Premises, including the payment of all taxes and assessments and conformance with all applicable federal, state, and local laws and regulations.

**XII. Amendments**

This Conservation Restriction may be amended by the Owner and the Commonwealth, or their successors in interest, only insofar as the amendment is not intended to and does not have a material adverse effect on the conservation purposes of this Conservation Restriction and does not violate Article 97 of the Amendments to the Massachusetts Constitution. Either the Commissioner of the Department of Fisheries, Wildlife and Environmental Law Enforcement or the Director of the Division of Fisheries and Wildlife or their successors shall execute a written confirmation concluding that the amendment meets this criterion and explaining in detail the reasons for this conclusion. Any amendment shall be in writing, signed under seal, and recorded at the appropriate registry of deeds along with the written confirmation of the appropriateness of said amendment.

The Commissioner of the Department of Fisheries, Wildlife and Environmental Law Enforcement hereby makes the following award for the damages sustained by the owner of record of the area or areas hereinbefore described in the said taking to their property or entitled to any damages by reason of said taking:

<u>Supposed Owners</u>	<u>Award</u>
Towns of Barnstable and Mashpee	\$2,970,000

Said award is made subject to satisfactory proof of ownership or entitlement by individuals and/or entities claiming ownership of said parcels and/or entitlement to said award.

IN WITNESS WHEREOF, the Commonwealth of Massachusetts has caused these presents to be executed in its name and on its behalf by David M. Peters, Commissioner of the Department of Fisheries, Wildlife and Environmental Law Enforcement, herewith duly authorized, who does hereunto set his hand and seal this 12 day of June, 2002

THE COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF FISHERIES, WILDLIFE  
AND ENVIRONMENTAL LAW ENFORCEMENT

By: [Signature]  
David M. Peters, Commissioner  
251 Causeway Street Suite 400  
Boston, MA 02114

COMMONWEALTH OF MASSACHUSETTS

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June 12, 2002

Then personally appeared the above-named David M. Peters, to me known to be the Commissioner of the Department of Fisheries, Wildlife and Environmental Law Enforcement, Commonwealth of Massachusetts, and acknowledged the foregoing instrument to be the free act and deed of said Department before me

[Signature]

Notary Public



Expires: April 4, 2008

EXHIBIT A

The land in the Towns of Barnstable and Mashpee, Barnstable County, Massachusetts, bounded and described as follows: as shown on a Plan of Land entitled "Perimeter Plan of Land Location: Santuit-Newtown Rd. Barnstable (Marstons Mills), MA & Mashpee Prepared for Cotuit Golf Development Company, LLC, et al., Scale 1" = 400' Dated May 21, 2002, Weller & Associates, 1645 Falmouth Rd., Suite 4C, Centerville, MA 02632," with the exception of that portion labeled "N/F/ Souza," which Plan is recorded herewith in Plan Book 594 Page 66.

Also the land on Great Hay Road in Mashpee (Assessors Map 51, Lot 5).

As more particularly described as: all or a portion of certain parcels of land shown on the 2000 Mashpee Assessors' Maps as Map 30, Blocks 88, 138, 139 and 140 and the land contained in the layouts of the "paper" streets known as Wimbledon Way and Racquet Drive, Map 31, Block 1, Map 37, Block 55, Map 38, Blocks 1, 5, 6, 7, 9, 10, and 25, Map 47, Block 21 and Map 51, Block 5 not shown within the perimeter on said plan, as well as those parcels of land shown on the Town of Barnstable Assessors' Maps as Map 11, Parcels 1, 2, and 3, Map 12, Parcel 8 and Map 26, Parcels 1, 40-1, 41, 42 and 46 and the land contained in the layout of the "paper" street known as Wimbledon Way, along with those portions of adjacent street layouts which are appurtenant to any of said parcels.

↳ TOB (LAND BANK)  
GRANTOR

EXHIBIT B

FOREST MANAGEMENT STANDARDS FOR CONSERVATION RESTRICTIONS

ADMINISTERED BY THE DIVISION OF FISHERIES AND WILDLIFE

I. SPECIFIC REQUIREMENTS:

1. Conduct all forest cutting operations for >10 Mbf or >10 cords under an approved Forest Stewardship Plan and Chapter 132 Forest Cutting Plan. Utilize both required best management practices and recommended guidelines in the current Massachusetts Forestry Best Management Practices Manual (Kittredge & Parker, 1996 and subsequent verses if approved by the Commonwealth), as appropriate, to conserve soil and water quality on managed forestlands.
2. Provide a copy of any Chapter 132 Forest Cutting Plan and Stewardship Plan required in Section III(1) to the DPW Natural Heritage & Endangered Species Program on the earlier of the date the Plans are given to DEM Forest and Parks, or at least 20 days prior to the start of cutting, for review of potential impacts on state-listed species and priority natural communities. The address for the DFW Natural Heritage & Endangered Species Program is:  
  
Massachusetts Division of Fisheries and Wildlife Natural Heritage & Endangered Species Program Environmental Review 1 Rabbit Hill Road Westborough, MA 01581
3. Implement all appropriate mitigation measures recommended by DFW and/or DEM to limit impacts on state-listed species and priority natural communities. Upon the request of Owner, the DFW Natural Heritage & Endangered Species Program may assist Owner, at the Commonwealth's expense, to locate and map all habitats for state-listed species and priority natural communities within a proposed harvest area.
4. Locate and map all vernal pools within a proposed harvest area and apply Ch. 132 guidelines for activities in and around certified vernal pools to all vernal pools. Upon the request of Owner, the DFW Natural Heritage & Endangered Species Program may assist Owner, at the Commonwealth's expense, to locate, map and certify all vernal pools within a proposed harvest area.
5. Retain a portion of overstory trees during all forest cutting operations >1 acre in size. Retain a minimum average basal area of >10 square feet per acre in live trees >\_14" dbh in clumps or patches in even-age harvest areas. Retain sound, relatively wind-firm trees, and existing den trees and/or snag trees when possible. Retain both mast-producing hardwoods and cover-producing softwoods where possible. Retain some large downed woody material in or near retained groups when possible.

6. Utilize uneven-aged silvicultural systems, or even-aged methods that establish a fully stocked stand prior to overstory removal on steep slopes (those that exceed 35%) to provide continuous forest cover.

**II. GENERAL RECOMMENDATIONS:**

1. Manage in a landscape context and, if practical, try to provide features that are absent in the surrounding area.
2. Monitor forest health conditions, including insects, disease and damaging human-caused disturbance.
3. Choose an appropriate silvicultural system and implement it through the recommendations in the most recent US Forest Service silvicultural guide (see list in Section III of this Exhibit).
4. Consider using longer-than-normal rotations, both for individual trees and for stands.
5. Maintain special habitat features such as abandoned apple orchards and permanent openings (fields, log landings, etc.).
6. Maintain and/or protect cultural features such as cellar holes, stonewalls, wells, etc.
7. If the property is large enough, try to provide a variety of stand ages and species mixes, especially those that are absent or uncommon in the surrounding area.
8. Revegetate disturbed areas with bare soil by seeding with native or non-invasive species and fertilizing and liming.
9. Retain or create den trees. Here, bigger is better. The best candidates are live trees that are greater than 204 dbh and either have cavities or have the potential for having them (large dead limbs, wounds, etc.). If possible, utilize trees of mast producing species such as oak, beech, cherry or hickory for this purpose.
10. Consider using no-cut riparian buffers to provide surrogate old growth habitat. Plan harvesting activities to leave some large woody debris either standing as snags that will eventually fall or, if safety reasons require it, as logs on the ground. As with den trees, bigger is better.
11. Retain some patches of mature conifers, and create patches of seedling and sapling size conifers.