

TOWN OF FALMOUTH
BOARD OF SELECTMEN

AGENDA

MONDAY, NOVEMBER 25, 2019 – 7:00 P.M.

SELECTMEN'S MEETING ROOM

TOWN HALL

59 TOWN HALL SQUARE, FALMOUTH, MA 02540

7:00 p.m. OPEN SESSION

1. Call to Order
2. Pledge of Allegiance
3. Recognition
4. Announcements
5. Public Comment

7:15 p.m. SUMMARY OF ACTIONS

1. Licenses
 - a. Approve Application for Special One-Day Liquor License – FCTV – Televised Musical Event – 310 Dillingham Ave. – Thursday, 12/5/19
 - b. Approve Application for Special One-Day Liquor License – FCTV – Holiday Party & Silent Auction – 310 Dillingham Ave. – Thursday, 12/12/19
2. Administrative Orders
 - a. Re-Execute Conservation Restriction for two portions of registered land on the Woods Hole Oceanographic Institution (WHOI) Quissett Campus located at 360 Woods Hole Road
 - b. Execute Conservation Restriction for property located at 0 and 740 Ter Heun Drive, Falmouth
 - c. Approve Changes to the Shellfish Regulations for Winter of 2019-2020
 - d. Vote to authorize allocation of \$50,000 from the Air Force Center for Environmental Excellence fund to support the aquaculture/nitrogen removal program
3. Special Events

Recurring - Recommended:

 - a. Dive into Recovery – Freezin' for a Reason – Polar Plunge – Gosnold, Inc. – Falmouth Heights Beach – Saturday, 1/4/20

7:30 p.m. PUBLIC HEARINGS

1. Tax Classification Hearing
2. Fee Hearing, continued from 11/18/19

7:45 p.m. BUSINESS

1. Update on Vulnerability Assessment – Elise Leduc, Woods Hole Group
2. Approve 2020 Annual License Renewals:

ALL ALCOHOL RESTAURANT

41-70, 71 Water Street
99 Restaurant, 30 Davis Straits
Anchor Ale House, 100 Davis Straits
Bear 'n' Boots Gastropub, 285 Main Street
British Beer Company, 263 Grand Avenue
Chapoquoit Grill, 410 West Falmouth Highway
Casa Vallarta, 70 Davis Straits
DJ's Family Sports Pub, 872 Main Street
Epic Oyster, 70 County Road
Glass Onion, 37 North Main Street
Golden Swan, 323-325 Main Street
Jack's Restaurant & Bar, 327 Gifford Street

Josh's at Davisville, 339 East Falmouth Highway
Liam Maguire's Irish Pub, 273 Main Street
Paul's Pizza & Seafood, 37 Elain Avenue
Quahog Republic Dive Bar, 97 Spring Bars Road
Simply Divine Pizza Co., 271 Main Street
Sopranos' Casino by the Sea, 286 Grand Avenue
Water Street Kitchen, 56 Water Street

ALL ALCOHOL CLUB

Cape Cod Curling Club, 37 Highfield Drive
Cape Verdean Club of Falmouth, 126 Sandwich Road
Falmouth Elks Lodge #2380, 140 Palmer Avenue
Green Pond Yacht Club, Inc., 366 Menauhant Road

Midway Trap & Skeet Club, 284 Old Meeting House Road
Woods Hole Golf Club, 130 Quisset Avenue

ALL ALCOHOL INNHOLDER

311 Gifford Street dba Coonamessett Inn
311 Gifford Street
Delaware North dba Sea Crest Beach Hotel, 350 Quaker Rd

ALL ALCOHOL PACKAGE STORE

John's Liquor Store, 729 Main Street
Kenyon's Market, Inc., 769 East Falmouth Highway
North Falmouth Liquors, 362 North Falmouth Highway

WINE AND MALT RESTAURANT

Falmouth Cinema Pub, 137 Teaticket Highway
Ryan Family Amusements, 23 Town Hall Square

WINE, MALT AND CORDIALS RESTAURANT

Doggz & Hoggz, 7881 Main Street

WINE & MALT PACKAGE STORE

MPG Corp. dba Rapid Refill, 435 Palmer Avenue

FARMER WINERY

Cape Cod Winery, 4 Oxbow Road

FARMER BREWERY

Aquatic Brewery, 24 Spring Bars Road

COMMON VICTUALLER LICENSE

41-70, 71 Water Street
Doggz & Hoggz, 781 Main Street
Falmouth Cinema Pub, 137 Teaticket Highway
Ryan Family Amusements, 23 Town Hall Square
Falmouth Elks Lodge #2380, 140 Palmer Avenue
Green Pond Yacht Club, Inc., 366 Menauhant Road
Woods Hole Golf Club, 130 Quisset Avenue
99 Restaurant, 30 Davis Straits
Anchor Ale House, 100 Davis Straits
Bear 'n; Boots Gastropub, 285 Main Street
British Beer Company, 263 Grand Avenue
Chapoquoit Grill, 410 West Falmouth Highway
Casa Vallarta, 70 Davis Straits
DJ's Family Sports Pub, 872 Main Street
Epic Oyster, 70 County Road
Glass Onion, 37 North Main Street
Golden Swan, 323-325 Main Street
Jack's Restaurant & Bar, 327 Gifford Street
Josh's at Davisville, 339 East Falmouth Highway
Liam Maguire's Irish Pub, 273 Main Street
Paul's Pizza & Seafood, 37 Elain Avenue
Quahog Republic Dive Bar, 97 Spring Bars Road
Simply Divine Pizza Co., 271 Main Street
Sopranos' Casino by the Sea, 286 Grand Avenue
Water Street Kitchen, 56 Water Street
Pie in the Sky, 10 Water Street
Thai Kitchen, 258 Teaticket Highway

Starbucks Coffee Company, 11 Davis Straits
311 Gifford Street dba Coonamessett Inn
311 Gifford Street
Delaware North dba Sea Crest Beach Hotel, 350 Quaker Rd
Cape Cod Winery, 4 Oxbow Road

INNHOLDER LICENSE

311 Gifford Street dba Coonamessett Inn, 29 Main Street
Delaware North dba Sea Crest Beach Hotel, 350 Quaker Rd

ENTERTAINMENT

41-70, 71 Water Street
Falmouth Cinema Pub, 137 Teaticket Highway
Cape Verdean Club of Falmouth, 126 Sandwich Road
Green Pond Yacht Club, Inc., 366 Menauhant Road
Woods Hole Golf Club, 130 Quisset Avenue
Anchor Ale House, 100 Davis Straits
Bear 'n; Boots Gastropub, 285 Main Street
British Beer Company, 263 Grand Avenue
Casa Vallarta, 70 Davis Straits
Jack's Restaurant & Bar, 327 Gifford Street
Josh's at Davisville, 339 East Falmouth Highway
Liam Maguire's Irish Pub, 273 Main Street
Quahog Republic Dive Bar, 97 Spring Bars Road
Simply Divine Pizza Co., 271 Main Street
Sopranos' Casino by the Sea, 286 Grand Avenue
Pie in the Sky, 10 Water Street
311 Gifford Street dba Coonamessett Inn
311 Gifford Street
Delaware North dba Sea Crest Beach Hotel, 350 Quaker Rd
Cape Cod Winery, 4 Oxbow Road

SUNDAY ENTERTAINMENT

41-70, 71 Water Street
British Beer Company, 263 Grand Avenue
Casa Vallarta, 70 Davis Straits
Jack's Restaurant & Bar, 327 Gifford Street
Liam Maguire's Irish Pub, 273 Main Street
Sopranos' Casino by the Sea, 286 Grand Avenue
311 Gifford Street dba Coonamessett Inn
311 Gifford Street
Delaware North dba Sea Crest Beach Hotel, 350 Quaker Rd

AUTOMATIC AMUSEMENTS

Ryan Family Amusements, 23 Town Hall Square
Falmouth Cinema Pub, 137 Teaticket Highway
DJ's Family Sports Pub, 872 Main Street

THEATER LICENSE

Falmouth Cinema Pub, 137 Teaticket Highway

CLASS II USED CARS

Falmouth Auto Sales, 735 Teaticket Highway
Franks Auto Sales, 444 East Falmouth Highway
O'Hara Motors, 50 Spring Bars Road
Pier 37, 64 Scranton Avenue

VEHICLES FOR HIRE

White Tie Limousine Co., Inc., 292 Teaticket Highway

3. Minutes of Meetings:
 - a. Public Session – October 21, 2019; November 4, 2019; November 12, 2019; November 13, 2019; November 14, 2019
 - b. Executive Session – October 28, 2019, Vote to Release/Not to Release
4. Individual Selectmen's Reports
5. Town Manager's Report
6. Review and/or Discuss Correspondence Received

Megan English Braga, Chairman
Board of Selectmen

For the following one-day liquor license applications from FCTV, we have received:

1. Fees
2. Certificate of Liquor Liability Insurance
3. TIPS Certifications
4. Floor plan showing security and alcohol service area

2019

License Alcoholic Beverages

19-57-WM

Fee:

25

The Licensing Board of
The Town of Falmouth
Massachusetts
Hereby Grants a

Special License For The Sale of Wine & Malt Beverages

**License to Expose, Keep for Sale, and to Sell
Wines and Malt Beverages**

To Be Drunk On the Premises

To Falmouth Community Television

310 Dillingham Avenue
Falmouth, MA 02540

On the following described premises:

FCTV, 310 Dillingham Avenue, Falmouth, MA 02540

THE ABOVE NAMED PROFIT OR NON PROFIT ORGANIZATION IS HEREBY GRANTED A SPECIAL LICENSE FOR THE SALE OF WINE AND MALT BEVERAGES ONLY, TO BE DRUNK ON THE PREMISES.

This license is valid from the 5th day of December 2019 until the 5th day of December 2019, unless earlier suspended, cancelled or revoked.

The hours during which Alcoholic Beverages may be sold are from:

6:30 p.m. to 9:30 p.m. Thursday, December 5, 2019. Televised musical event--
"The Falmouth Music Workshop from Studio 310"

1. Certificate of liquor liability insurance required, 2. Servers must be TIPS certified, 3. Plan showing area(s) where alcohol will be served and consumed.

IN TESTIMONY WHEREOF, the undersigned have hereunto affixed their official signatures this 25th day of November 2019

Licensing Board

THIS LICENSE SHALL BE DISPLAYED ON THE PREMISES IN A
CONSPICUOUS POSITION WHERE IT CAN EASILY BE READ

Diane Davidson

From: Diane Davidson
Sent: Wednesday, November 13, 2019 4:54 PM
To: Brian Reid; Sean Doyle
Subject: 1-Day Liquor License Applications - FCTV
Attachments: 1-Day LL App-2019-FCTV Holiday.pdf; 1-Day LL App-2019-FCTV Televised Musical.pdf

Capt. Reid,
Lt. Doyle,

Attached please find two applications for one-day liquor licenses from FVTV 1) for a televised musical event at FCTV on Thursday, December 5, 2019 from 6:30 p.m. to 9:30 p.m., and 2) for a holiday party and silent auction at FCTV on Thursday, December 12, 2019 from 5:00 p.m. to 8:00 p.m. Please provide your recommendations for the Board of Selectmen by Thursday, November 21.

These applications are scheduled on the Monday, November 25 Board of Selectmen's meeting.

Thank you,

Diane

*Diane S. Davidson
Office Manager/Licensing
Office of the Town Manager and Selectmen
Town of Falmouth
59 Town Hall Square
Falmouth, MA 02540
diane.davidson@falmouthma.gov
(508) 495-7321*

2019

License Alcoholic Beverages

19-58-WM

Fee:

25

The Licensing Board of
The Town of Falmouth
Massachusetts
Hereby Grants a

Special License For The Sale of Wine & Malt Beverages

License to Expose, Keep for Sale, and to Sell

Wines and Malt Beverages

To Be Drunk On the Premises

To Falmouth Community Television

310 Dillingham Avenue
Falmouth, MA 02540

On the following described premises:

FCTV, 310 Dillingham Avenue, Falmouth, MA 02540

THE ABOVE NAMED PROFIT OR NON PROFIT ORGANIZATION IS HEREBY GRANTED A SPECIAL LICENSE FOR THE SALE OF WINE AND MALT BEVERAGES ONLY, TO BE DRUNK ON THE PREMISES.

This license is valid from the 12th day of December 2019 until the 12th day of December 2019, unless earlier suspended, cancelled or revoked.

The hours during which Alcoholic Beverages may be sold are from:

5:00 p.m. to 8:00 p.m. Thursday, December 12, 2019. FCTV holiday party and silent auction.

1. Certificate of liquor liability insurance required, 2. Servers must be TIPS certified, 3. Plan showing area(s) where alcohol will be served and consumed.

IN TESTIMONY WHEREOF, the undersigned have hereunto affixed their official signatures this 25th day of November 2019

Licensing Board

THIS LICENSE SHALL BE DISPLAYED ON THE PREMISES IN A CONSPICUOUS POSITION WHERE IT CAN EASILY BE READ

Diane Davidson

From: Diane Davidson
Sent: Wednesday, November 13, 2019 4:54 PM
To: Brian Reid; Sean Doyle
Subject: 1-Day Liquor License Applications - FCTV
Attachments: 1-Day LL App-2019-FCTV Holiday.pdf; 1-Day LL App-2019-FCTV Televised Musical.pdf

Capt. Reid,
Lt. Doyle,

Attached please find two applications for one-day liquor licenses from FVTV 1) for a televised musical event at FCTV on Thursday, December 5, 2019 from 6:30 p.m. to 9:30 p.m., and 2) for a holiday party and silent auction at FCTV on Thursday, December 12, 2019 from 5:00 p.m. to 8:00 p.m. Please provide your recommendations for the Board of Selectmen by Thursday, November 21.

These applications are scheduled on the Monday, November 25 Board of Selectmen's meeting.

Thank you,

Diane

*Diane S. Davidson
Office Manager/Licensing
Office of the Town Manager and Selectmen
Town of Falmouth
59 Town Hall Square
Falmouth, MA 02540
diane.davidson@falmouthma.gov
(508) 495-7321*

AMENT KLAUER LLP

Attorneys at Law
39 Town Hall Square
Falmouth, MA 02540

Robert H. Ament, Esq.
Kevin P. Klauer II, Esq.
Matthew M. Terry, Esq.



Website: www.amentklauer.com

November 4, 2019

Julian Suso, Town Manager
Town of Falmouth
59 Town Hall Square
Falmouth, MA 02540

Re: WHOI Conservation Restriction

Dear Julian:

In connection with relatively small pavement expansion projects at two research facilities on its Quissett Campus in late 2016, Woods Hole Oceanographic Institution ("WHOI") agreed to place a conservation restriction ("CR") on two small areas of the Campus containing 14,810 square feet and 8,606 square feet respectively. WHOI prepared the CR, and it was reviewed and approved for filing by the Massachusetts Division of Conservation Services ("DCS"). The Conservation Commission issued its Municipal Certification as to the CR's public benefit. The Conservation Commission executed the CR in December 2017 and the Board of Selectmen executed the CR in January 2018.

Since that time WHOI has been dealing with the National Institute of Standards and Technology ("NIST") an agency in the United States Department of Commerce, to obtain that agency's asset to the CR. NIST holds a covenant on the WHOI land in connection with a 2010 award of federal funding to construct the Laboratory for Ocean Sensors and Observing Systems (LOSOS), and WHOI determined that the CR, even though it affects only a very small area of the land subject to the NIST Covenant, could be considered a conveyance to which NIST should consent. The process of obtaining the federal government's consent has taken much longer than expected.

Given the passage of time, with the signatures of the Conservation Commissioners and the Selectmen being more than one year old, the DCS is requiring that we obtain the municipal signatures again before the CR is signed by the Secretary of Energy and Environmental Affairs and returned for recording. I therefore respectfully request that you have the enclosed signature page executed by the Selectmen and notarized.

Enclosed is a copy of the CR as executed by Mark Abbott, President of WHOI, with the previously approved municipal signatures. There have been no changes to the CR document since it was executed by the Conservation Commissioners and the Selectmen. The executed document is being held by DCS for the Secretary's signature once I have obtained the updated municipal signatures.

Julian Suso, Town Manager
November 4, 2019
Page 2

Thanks very much for your assistance in this matter. Please let me know if you have any questions.

Very truly yours,

A handwritten signature in black ink that reads "Bob Ament". The signature is written in a cursive style with a large, prominent "B" and "A".

Robert H. Ament

RHA/gmb
Enclosure

cc: Jennifer McKay, Conservation Administrator
David Derosier, WHOI Director of Facilities and Services
Christopher Land, WHOI General Counsel

The foregoing Conservation Restriction is accepted and approved by the Falmouth Board of Selectmen in accordance with General Laws Chapter 184 Sec. 32 on November _____, 2019.

Douglas C. Brown

Megan English Braga

Doug Jones

Susan L. Moran

Samuel H. Patterson

Commonwealth of Massachusetts

Barnstable, ss

On this ____ day of November 2019, before me, the undersigned notary public, personally appeared _____, as Chair of the Falmouth Board of Selectmen, proved to me through satisfactory evidence of identification, which was personal knowledge, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose.

Notary Public
My Commission Expires:

MUNICIPAL CERTIFICATION

We the undersigned Conservation Commission of the Town of Falmouth (the certifier/holder) hereby certify that the proposed conservation restriction is in the public interest in that it will be of benefit to the public as a result of (1) maintenance of and protection of wildlife food sources and habitat, particularly as the proposed conservation restriction area is within an area designated by the Natural Heritage Endangered Species Program as Priority Habitat of Rare Species, and the area abuts a vernal pool buffer that is substantially undisturbed forest upland; (2) the proposed conservation restriction area includes land that abuts 15.21 acres of upland and vernal pool habitat that is already under conservation restrictions; (3) preservation of open space in perpetuity; (4) prevention of public health threats and environmental degradation from development that might include installation of on-site septic systems; and (5) avoidance of potential construction on the conservation restriction area for residential, commercial, industrial, institutional or other uses.

Date: 11-29-17

Signed:

Courtesy [Signature]
Margaret [Signature]
Janna C. [Signature]
Kevin F. O'Brien
[Signature]

CR as Executed
and sent to DCS
for signature by
Secretary of
Energy and the
Environment.



GRANTOR: Woods Hole Oceanographic Institution
GRANTEE: The Town of Falmouth
ADDRESS OF PREMISES: 360 Woods Hole Road, Falmouth (Woods Hole), MA 02543
FOR GRANTOR'S TITLE SEE: Barnstable County Land Court Registry District Certificate of Title No. 44053

CONSERVATION RESTRICTION

Woods Hole Oceanographic Institution, a Massachusetts non-profit educational institution incorporated under Massachusetts General Laws Chapter 180, with an address of 360 Woods Hole Road, Falmouth (Woods Hole), MA 02543, being the sole owner, for its successors and assigns ("Grantor"), acting pursuant to Sections 31, 32, and 33 of Chapter 184 of the Massachusetts General Laws, grant with QUITCLAIM COVENANTS to the Town of Falmouth, a municipal corporation with an address of 59 Town Hall Square, Falmouth, Massachusetts 02540, acting by and through its Conservation Commission, their permitted successors and assigns, by authority of Massachusetts General Laws Chapter 40 Section 8C ("Grantee"), for consideration of less than One Hundred (\$100.00) Dollars, IN PERPETUITY AND EXCLUSIVELY FOR CONSERVATION PURPOSES, the following Conservation Restriction on land ("Property") located in Falmouth comprising two (2) portions of the registered land at 360 Woods Hole Road, Falmouth, Massachusetts, identified as "Conservation Restriction Area 0.34± acres total" and "Conservation Restriction Area, 8,606± S.F." on a plan entitled "Plan of Conservation Restriction prepared for WOODS HOLE OCEANOGRAPHIC INSTITUTION at the Quissett Campus in Quissett, Falmouth, MA", Scale: 1" = 80', Date: Aug. 17, 2016 (Sheet 1 of 1), prepared by Holmes and McGrath, Inc., Civil Engineers and Land Surveyors, 205 Worcester Court, Unit A4, Falmouth, MA 02540, which plan is attached hereto as Exhibit "A" and labeled "sketch plan." The two Conservation Restriction Areas (0.34± acres, and 8,606± S.F., a total of 0.54 acres, hereinafter referred to together as "the Premises") are further described by metes and bounds in Exhibit B attached hereto and incorporated herein by reference. The Premises includes a portion of the land shown on Land Court Plan 10087A (excluding Lots A, B, C, D; A1, B1 and C1 on Plan 10087D), and a portion of Lot A shown on Land Court Plan 13436A. For title, see Barnstable County Land Court Registry District Certificate of Title No. 44053.

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 perpetuity for conservation purposes, 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 ("conservation values").

As to the Conservation Restriction Area containing 0.34± acres, this Conservation Restriction is given as represented by Grantor to the Cape Cod Commission in connection with Grantor's expansion of the paved area north of the Laboratory for Ocean Sensors and Observing Systems ("LOSOS") on Grantor's Quissett Campus to allow for the additional storage of buoys and testing equipment. The Conservation Restriction Area containing 0.34± acres expands an existing Conservation Restriction Area of 15.21± acres that includes a vernal pool and adjacent upland buffer within an unfragmented wooded area, an area restricted in perpetuity and exclusively for conservation purposes by two prior Conservation Restrictions, one being dated January 13, 2006, registered with the Land Court Registry District of Barnstable County as Document No. 1,025,320, and the other being dated May 11, 2012, registered with the Barnstable County Registry District of the Land Court as Document No. 1,193,469. With the addition of the Conservation Restriction Area of 0.34± acres, the continuous area of unfragmented forest, a vernal pool and vernal pool buffer area, subject to restriction in perpetuity and exclusively for conservation purposes increases to 15.55± acres.

With respect to the Conservation Restriction Area containing 8,606± S.F., this Conservation Restriction is given as required by Special Condition 1 of the Order of Conditions issued to Grantor by the Falmouth Conservation Commission on August 30, 2016, allowing Grantor to expand an existing paved storage area and truck parking area near the Reinhart Coastal Research Laboratory on Grantor's Quissett Campus. Said Order of Conditions is registered with the Barnstable County Registry District of the Land Court as Document No. 1,204,189. The Conservation Area of 8,606± S.F. is located immediately adjacent to the 100' Buffer Zone A adjacent to a vernal pool to the north located partly on Grantor's land. The Buffer Zone A is a "no-disturbance" designation established by the Falmouth Wetland Regulations with respect to vernal pools, FWR 10.18 (5)(a)1.b. Buffer Zone A is required to be kept in a naturally vegetated state. By locating the Conservation Restriction Area of 8,606± S.F. on the edge of Buffer Zone A away from the vernal pool, the Conservation Restriction Area will more effectively protect the vernal pool habitat than if it were located immediately adjacent to the vernal pool, an area already protected.

It is the intent of the Grantor to preserve and protect the Premises in perpetuity, and the Grantor further intends by the granting of this Conservation Restriction to convey to the Grantee the right to preserve and protect the conservation values of the Premises in perpetuity. The Property containing the Premises is located off of Woods Hole Road in the Town of Falmouth in an area known as Quissett and is a portion of the Quissett Campus of the Woods Hole Oceanographic Institution, the world's leading independent, non-profit organization dedicated to ocean research, exploration and education. The Quissett Campus consists of over 123 acres of land.

Purpose

This Conservation Restriction is defined in and authorized by Sections 31-33 of Chapter 184 of the General Laws of Massachusetts and otherwise by law. Its purpose is to assure that the Premises will be maintained in perpetuity for conservation purposes 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.

The purposes, enhancement and preservation of the Premises will be of benefit to the public as a result of:

- Maintenance of and protection of wildlife food sources and habitat, particularly as the Premises is within NHESP designated Priority Habitat of Rare Species that includes unfragmented forest upland and land immediately adjacent to a designated vernal pool buffer area, and the Premises abuts or is proximate to other upland which is presently undisturbed, and a portion of which is subject to the above-referenced Conservation Restrictions filed in 2006 and 2012;
- preservation of open space in perpetuity;
- preservation of a defined area of undisturbed forest;
- avoidance of public health threats and environmental degradation that could result from incompatible uses, including placement of on-site septic systems on the Premises; and
- prevention of potential construction on the Premises for residential, commercial, industrial or other uses, (hereinafter called the "Conservation Interests").

The entire Premises falls within an area designated as "Priority Habitat of Rare Species" by the Massachusetts Natural Habitat and Endangered Species Program ("NHESP"). The Premises is designated by the Cape Cod Commission as being within a Significant Natural Resource Area (SNRA) due to the presence of state listed endangered species habitat. NHESP has advised the Grantor that the following state-listed rare species have been found in the vicinity of the Premises: Least Tern, Roseate Tern and Common Tern. In connection with the expansion of paved area near LOSOS, the Natural Heritage and Endangered Species Program ("NHESP"), by letter dated August 6, 2015, issued a determination that the proposed work would not result in a prohibited "take" of state-listed rare species.

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 not perform or allow other to perform the following acts and uses which are prohibited on, above, and 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;

- (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 making topographical changes to the area;
- (3) Placing, filling, storing or dumping 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;
- (5) Activities detrimental to drainage, flood control, water conservation, water quality, erosion control, soil conservation, or archaeological conservation;
- (6) Use, parking or storage of vehicles including motorcycles, mopeds, all-terrain vehicles, trail bikes, or any other motorized vehicles on the Premises except for vehicles necessary for public safety (i.e., fire, police, ambulance, other government officials) in carrying out their official duties;
- (7) Subdivision or 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 building or development requirements on this or any other parcel;
- (8) The use of the Premises for more than *de minimis* commercial recreation, business, residential or industrial use;
- (9) The disruption, removal, or destruction of the stone walls or granite fence posts on the Premises, if any;
- (10) Any other use of the Premises or activity which is inconsistent with the purpose of this Conservation Restriction or which would materially impair its conservation values.

B. Reserved Rights and Exceptions

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 conservation values or purposes of this Conservation Restriction:

- (1) Permits. The exercise of any right reserved by Grantor under this Paragraph B shall be in compliance with zoning, the Wetlands Protection Act, 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 of Massachusetts takes any position whether such permit should be issued.

- (2) The de minimis pruning or cutting down and removal of vegetation damaged during or after a storm, fire or other disaster, only as necessary, including so as to maintain existing footpaths, and in every case subject to advance approval of the Grantee except where delay may expose person or property to imminent loss or injury;
- (3) The right to plant and maintain native shrubs, trees and other vegetation, provided that the conservation values or purposes of this grant are not impaired, and subject to advance approval of the Grantee and upon advance consultation with the NHESP;
- (4) The right to conduct archaeological research, including artifact retrieval, but only after obtaining a permit from the State Archeologist of the Massachusetts Historical Commission as required by Section 27C of Chapter 9 of the General Laws of the Commonwealth and Title 950 of the Code of Massachusetts Regulations, Section 70 et. seq., as they may be modified from time to time, and with approval of the Grantee;
- (5) The right to conduct forestry research, subject to advance approval of the Grantee and upon advance consultation with the NHESP.
- (6) Erection and maintenance of small signs in locations determined by the Grantor denoting information or admonitions, including but not limited to, "Conservation Area", "Private Property" and/or "No Hunting";
- (7) The right to use and maintain existing footpaths of a width not to exceed six feet, and, subject to advance approval of the Grantee and upon consultation with the NHESP, and on terms and conditions satisfactory to the Grantee, the right to relocate the existing footpaths, to reserve easement rights to traverse on foot on such footpaths, or to grant easements to others to traverse on such footpaths;
- (8) The right to install, use and maintain underground utilities to serve the lands comprising the campus of the Woods Hole Oceanographic Institution, or its successor, now known as the "Quissett Campus", subject to the advance approval of the Grantee and upon consultation with the NHESP and provided that it is not feasible to install such new underground utilities within land not subject to this Conservation Restriction, the right to use and maintain existing underground utilities, and the right to relocate existing underground utilities subject to the approval of the Grantee and upon consultation with the NHESP, provided that disturbed areas are revegetated with native species following installation, maintenance or relocation;
- (9) The right, with the advance approval of the Grantee and subject to any applicable federal, state or local regulatory requirements, and upon consultation with the NHESP, to take other action reasonably necessary to preserve and protect the Conservation Restriction Interests and Purposes, including the following actions:
 - a. Removal from the Premises of mineral resources or natural deposits when necessary for proper drainage or soil conservation or erosion control,

- b. De minimis non-chemical vegetation management activity, including cutting, removing or otherwise destroying trees, grasses or other vegetation, when necessary for disease control, resource management or public safety interest.

Whenever the exercise of any of the foregoing reserved rights requires advance consultation with the NHESP, the proposed activity shall be allowed only upon an advance determination by NHESP that the proposed activity will not impair any of the Conservation Restriction Purposes and, specifically, that the habitat of the Premises will not be impaired.

C. Notice and Approval.

Whenever notice to or approval by Grantee is required, Grantor shall notify Grantee 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 and any other material aspect of the proposed activity in sufficient detail to permit the Grantee to make an informed judgment as to its consistency with the purposes of this Conservation Restriction. Where Grantee's approval is required, Grantee shall grant or withhold approval in writing within sixty (60) days of receipt of Grantor's request. Grantee's 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 to respond in writing within sixty (60) days shall be deemed to constitute approval by Grantee of the request as submitted, so long as the request sets forth the provisions of this section relating to deemed approval after sixty (60) days in the notice, the requested activity is not prohibited herein, and the activity will not materially impair the conservation values or purposes of this Conservation Restriction.

III. LEGAL REMEDIES OF THE GRANTEE

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 will 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 agrees to cooperate for a reasonable period of time prior to resorting to legal means in resolving issues concerning violations provided Grantor ceases objectionable actions and Grantee determines there is no ongoing diminution of the conservation values of the Conservation Restriction.

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. In the event of a dispute over the boundaries of the Conservation Restriction, Grantor shall pay for a survey and to have the boundaries permanently marked.

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 pertaining to compliance with and including, but not limited to, hazardous materials, zoning, environmental laws and regulations, or acts not caused by the Grantee or its agents.

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. In the event of any such occurrence, the Grantor and Grantee will cooperate in the restoration of the Premises, if desirable and feasible.

IV. ACCESS

The Conservation Restriction hereby conveyed does not grant to the Grantee, to the general public, nor to any other person 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, crossing other land now of the Grantee as necessary to do so, upon reasonable notice and at reasonable times, for the purpose of inspecting the Premises to determine compliance with or to enforce this Conservation Restriction. The Grantor also grants to the Grantee, after 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 perform a survey of boundary lines.

V. EXTINGUISHMENT

A. If circumstances arise in the future such as 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 after review and approval by the Massachusetts Secretary of Energy and Environmental Affairs. 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 and after complying with the terms of any gift, grant, or funding requirements. 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 bears to the value of the unrestricted property. Such proportionate value of the Grantee's property right shall remain constant. Any proceeds will be distributed only after complying with the terms of any gift, grant, or other funding requirements, including the funding received by Grantor from the National Institute of Standards and Technology, Department of Commerce, United States of America, under The American Recovery and Reinvestment Act of 2009, referred to in the Covenant of Purpose, Use and Ownership dated June 15, 2010, recorded in Barnstable Land Court Registry District as Document No. 1,143,111.

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 accordance with paragraph V. B - above, after complying with the terms of any law, gift, grant, or funding requirements. 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, provided Grantee shall give Grantor reasonable notice of its intent to make any such recording or filing; the Grantor, on behalf of itself and its successors and assigns, appoint the Grantee its attorney-in-fact to execute, acknowledge and deliver any such instruments on its behalf. Without

limiting the foregoing, the Grantor and its successors and assigns agree themselves to execute any such instruments upon request.

C. Running of the Benefit. The benefits of this Conservation Restriction shall run to the Grantee, 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; that the Assignee is not an owner of the fee in the Property, 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. Any assignment will comply with article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, if applicable.

VII. SUBSEQUENT TRANSFERS

The Grantor agrees to incorporate by reference the terms of this Conservation Restriction in any deed or other legal instrument which grants 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 any of the above shall not impair the validity or enforceability of this Conservation Restriction. Any transfer will comply with article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, if applicable.

The Grantor shall not be liable for violations occurring after its ownership. Liability for any acts or omissions occurring prior to any transfer and liability for any transfer if in violation of this Conservation Restriction 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 sixty (60) 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 a non-fee owner that is qualified under Section 170(h) of the Internal Revenue Code of 1986, as amended, and applicable regulations thereunder and is eligible to receive this Conservation Restriction under Section 32 of Chapter 184 of the General Laws of Massachusetts in order to ensure that merger does not occur and that this Conservation Restriction continues to be enforceable by a non-fee owner.

X. AMENDMENT

If circumstances arise under which an amendment to or modification of this Conservation Restriction would 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 Grantee will consider amendments only to correct an error or oversight, to clarify an ambiguity, or where 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 Energy and Environmental Affairs and if applicable, shall comply with the provisions of Art. 97 of the Amendments to the Massachusetts Constitution, and any gifts, grants or funding requirements. Any amendment shall be filed in the Land Court Registry District of Barnstable County.

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 a timely manner in the Land Court Registry District of Barnstable County.

XII. 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: Woods Hole Oceanographic Institution
360 Woods Hole Road
Falmouth (Woods Hole), MA 02543

To Grantee: Town of Falmouth
59 Town Hall Square
Falmouth, MA 02540

or to such other address as any of the above parties shall designate from time to time by written notice to the other or, if notice is returned to sender, to an address that is reasonably ascertainable by the parties.

XIII. 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.

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

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 Energy and 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. Homestead

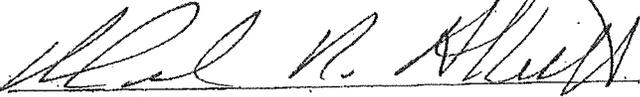
The Grantor attests that there are no homes on or abutting the Premises (including exclusions) that are occupied or intended to be occupied as a principal residence by any person entitled to claim homestead rights therein.

C. The Grantor agrees that all liens, mortgages, construction loans and equity lines of credit shall be subordinate to this Conservation Restriction.

EXECUTED this 20th day of June, 2019.

WOODS HOLE OCEANOGRAPHIC INSTITUTION

By:



Mark R. Abbott
President and Director
(Authorized Signatory) See Doc. No. 1,143,110

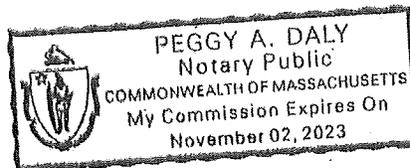
Commonwealth of Massachusetts

Barnstable, ss

On this 20 day of June, 2019, before me, the undersigned notary public, personally appeared Mark R. Abbott, President and Director, of the Woods Hole Oceanographic Institution, proved to me through satisfactory evidence of identification, which was Driver License, 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.



Notary Public;
My Commission Expires;



The foregoing Conservation Restriction was accepted and approved by vote of the Falmouth Conservation Commission in accordance with General Laws Chapter 184 Sec. 32 and the Town of Falmouth Conservation Restriction Policy at a public meeting held on March 14, 2012.

Pete Ull _____
Kevin F. O'Brien _____
William D. ... _____
Christy F. ... _____

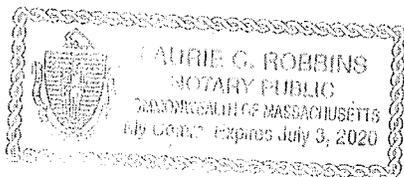
James C. Mathews _____

Commonwealth of Massachusetts

Barnstable, ss

On this 7th day of Dec, 2017 before me, the undersigned notary public, personally appeared Mary Schumacher Jamie Mathews, as Vice Chairman of the Falmouth Conservation Commission, proved to me through satisfactory evidence of identification, which was personal knowledge, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose.

Jamie C. Robbins
Notary Public:
My Commission Expires: July 3, 2020



The foregoing Conservation Restriction is accepted and approved by the Falmouth Board of Selectmen in accordance with General Laws Chapter 184 Sec. 32 on January 22, 2018

[Signature]
[Signature]
[Signature]

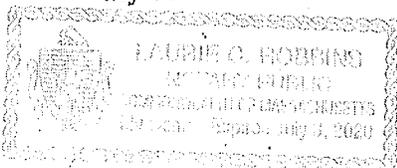
[Signature]
[Signature]

Commonwealth of Massachusetts

Barnstable, ss

On this 1st day of Feb., 2018 before me, the undersigned notary public, personally appeared Susan Moran, as Chair of the Falmouth Board of Selectmen, proved to me through satisfactory evidence of identification, which was personal knowledge, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose.

[Signature]
Notary Public
My Commission Expires: 7/3/2020



TOWN OF FALMOUTH
OFFICE OF TOWN COUNSEL
APPROVED AS TO FORM

[Signature]

1-4-18

APPROVAL BY SECRETARY OF ENERGY AND ENVIRONMENTAL AFFAIRS
COMMONWEALTH OF MASSACHUSETTS

The undersigned, Secretary of the Executive Office of Energy and Environmental Affairs of the Commonwealth of Massachusetts, hereby certifies that the foregoing Conservation Restriction from Woods Hole Oceanographic Institution to the Town of Falmouth has been approved in the public interest pursuant to M.G.L. Ch. 184, Sec. 32.

Date: _____, 2019

Kathleen A. Theoharides
Secretary of Energy and Environmental Affairs

Commonwealth of Massachusetts

Suffolk, ss

On this ____ day of _____, 2019 before me, the undersigned notary public, personally appeared Kathleen A. Theoharides, Secretary of Energy and Environmental Affairs, proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she signed it voluntarily for its stated purpose.

Notary Public:
My Commission Expires:

EXHIBIT A

Sketch Plan

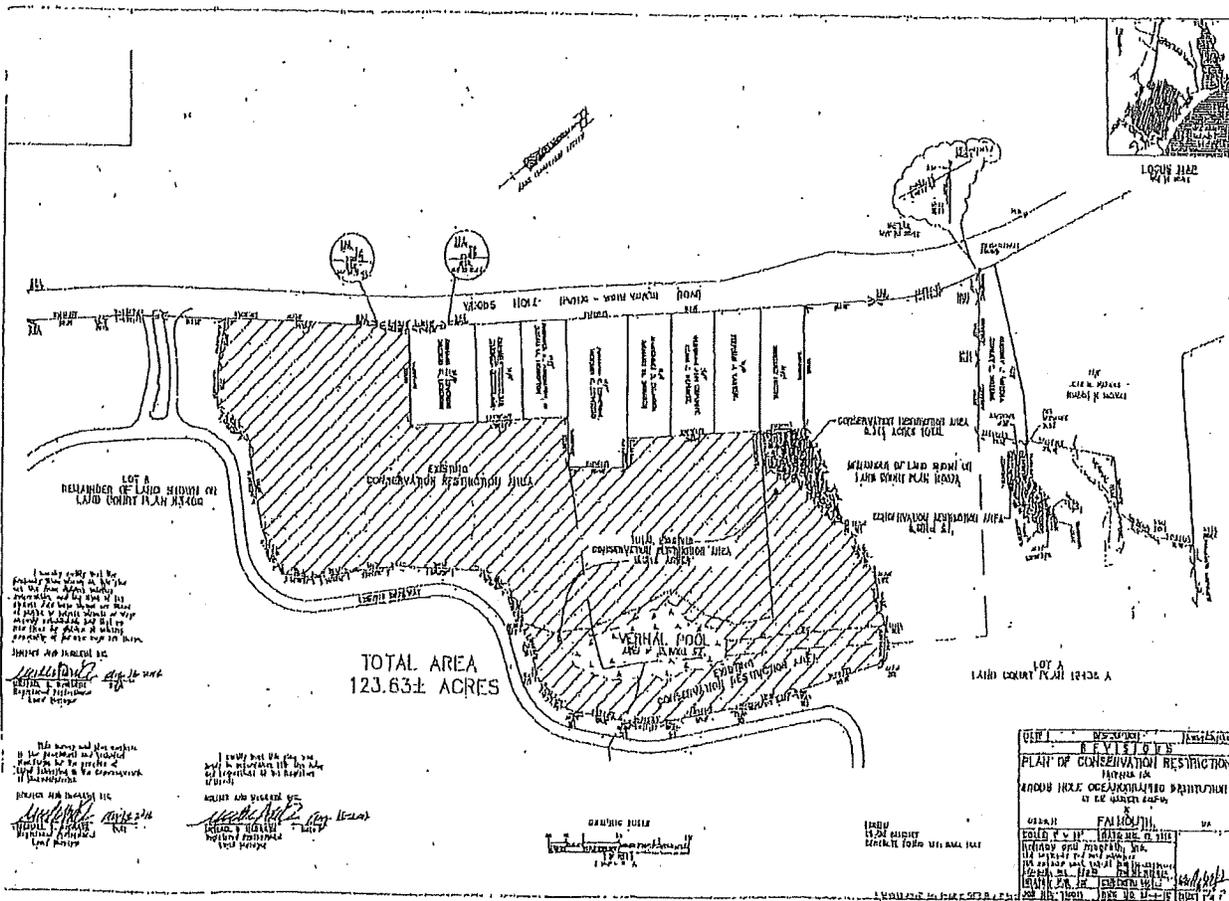


EXHIBIT A: SKETCH PLAN FOR CONSERVATION RESTRICTION
WOODS HOLE OCEANOGRAPHIC INSTITUTION, GRANTOR

EXHIBIT B
Legal Description of Premises

The Conservation Restriction Area includes the following two parcels together containing 0.55± acres:

The Conservation Restriction Area containing 0.34± acres, labeled "Conservation Restriction Area 0.34± acres total," is shown on a plan entitled "Plan of Conservation Restriction prepared for Woods Hole Oceanographic Institution at the Quissett Campus in Woods Hole, Falmouth, MA," Scale 1" = 80', Date: Aug. 17, 2016 (Sheet 1 of 1), prepared by Holmes and McGrath, Inc., Civil Engineers and Land Surveyors, 205 Worcester Court, Unit A4, Falmouth, MA 02540, which plan is attached hereto as Exhibit "A." Said Conservation Restriction Area, 0.34± acres total, is bounded and described as follows:

Beginning at the westerly corner of the Conservation Restriction Area containing 0.34± acres total, running

Thence N 33° 39' 44" E by land identified on the above-referenced plan as n/f Richard Hugus, a distance of 100.00';
Thence S 78° 05' 37" E by other land of Grantor, a distance of 227.34';
Thence S 78° 51' 01" W by other land of Grantor, being land already subject to a Conservation Restriction, a distance of 143.91';
Thence S 60° 34' 10" W by other land of Grantor, being land already subject to a Conservation Restriction a distance of 91.53'; and
Thence N 57° 21' 59" W by other land of Grantor, being land already subject to a Conservation Restriction, a distance of 67.64' to the point of beginning.

The Conservation Restriction Area containing 8,606± S.F., labeled "Conservation Restriction Area 8,606± S.F.," is shown on said plan dated Aug. 17, 2016, attached hereto as Exhibit "A." Said Conservation Restriction Area 8,606± S.F. is bounded and described as follows:

Beginning at the westerly corner of the Conservation Restriction Area 8,606± S.F., running

Thence N37° 28' 54"E by other land of Grantor, a distance of 46.20';
Thence S53° 09' 50"E by other land of Grantor, a distance of 59.00';
Thence S85° 17' 38"E by other land of Grantor, a distance of 68.00';
Thence S80° 52' 11"E by other land of Grantor, a distance of 25.00';
Thence S60° 20' 25"E by other land of Grantor, a distance of 33.00';
Thence S29° 39' 35"W by other land of Grantor, a distance of 45.00';
Thence N64° 25' 51"W by other land of Grantor, a distance of 16.00';
Thence S85° 49' 50" W by other land of Grantor, a distance of 100.00'; and
Thence N 53° 09' 50"W by other land of Grantor, a distance of 75.00' to the point of beginning.

For title reference to both Conservation Restriction Areas, see Certificate of Title No. 44053.

Sections 1-4 as amended by Chapter 409 Acts of 2010 Sections 4-13 of the Massachusetts General Court.

The conservation values include the following:

- Open Space Protection. The Premises contributes to the protection of the scenic and natural character of Falmouth, and the protection of the Premises will enhance the open-space value of the Premises' Pitch Pine-Oak forest area as well as the open space value of abutting conservation land. The Premises abuts the Beebe Woods and Peterson Farm conservation area, which consists of a total of approximately 475 acres of woodlands and trails.
- Soils. The entirety of the approximately 7.42-acre Premises consists of Prime 2 and Prime 3 Forest Land Soils, some of the most valuable soils for woodlands in the state.
- Protection of Wildlife Habitat. The Premises is located just southeast of Hamlin Point and east of Gunning Point, which together comprise a portion of a Massachusetts Natural Heritage and Endangered Species Program- ("NHESP") designated Priority Habitat of Rare Species as well as Estimated Habitat of Rare Species. The Premises is just south of an NHESP-certified vernal pool, located on the parcel that abuts Ter Heun Drive to the north, directly above the Premises. It is also located near an Atlantic White Cedar Swamp, a Massachusetts Endangered Species Act-identified Natural Community. The protection of the Premises aligns with NHESP's wildlife and habitat protection objectives and would ensure a buffer area of protection for each of these state-recognized habitats. The Premises is also located in a region recognized by The Nature Conservancy as one well-suited to adapting to climate change, in that it consists of adequate biological variability and potential microclimates such that species and ecosystems would have a significant chance of survival despite a shifting climate. Moreover, half of the abutting Beebe Woods and Peterson Farm conservation area is deemed by the University of Massachusetts, Amherst's Conservation Assessment and Prioritization System ("CAPS"), to be a forest area bearing an Ecological Integrity value of over 50% due to its wildlife habitat and biodiversity value. Permanently ensuring protection of the Premises with this Conservation Restriction would ensure that the Premises' value as a significant habitat and buffer of neighboring habitats is preserved for the long-term.
- Public Access. Public access to the Premises will be allowed for passive outdoor recreation, education, and nature study. Because the Premise abuts the combined conservation area of Beebe Woods and Peterson Farm, the public will be able to easily access the Premises. This Conservation Restriction will expand the recreation activities available in the abutting Beebe Woods and Peterson Farm area and will provide the residents of Falmouth with more open space permanently protected for outdoor recreation and enjoyment. The Premises is also accessible from the nearby Falmouth Hospital via public transit.
- BioMap2. In addition to being located approximately within one mile of an NHESP-designated Priority Habitat of Rare Species, the Premises is in close proximity to an

GRANTOR: The 300 Committee Land Trust, Inc.

GRANTEE: The Compact of Cape Cod Conservation Trusts, Inc.

ADDRESS OF PREMISES: 0 Ter Heun Drive, Falmouth MA

740 Ter Heun Drive, Falmouth MA

**FOR GRANTOR'S TITLE SEE: Barnstable Land Registry District,
Land Court Certificate No. _____**

CONSERVATION RESTRICTION

THE 300 COMMITTEE LAND TRUST, INC., being the sole owner and a Massachusetts charitable corporation, having an office and mailing address at 157 Locust Street, Falmouth, Barnstable County, Massachusetts, 02540, their permitted successors and assigns ("Grantor"), acting pursuant to Sections 31, 32, and 33 of Chapter 184 of the Massachusetts General Laws, grant with QUITCLAIM COVENANTS to **THE COMPACT OF CAPE COD CONSERVATION TRUSTS, INC.**, a Massachusetts charitable corporation with an office at 36 Red Top Road, Brewster, Barnstable County, Massachusetts 02631 and a mailing address at P.O. Box 443, Barnstable, Barnstable County, Massachusetts 02630, its permitted successors and assigns ("Grantee"), for nominal consideration, IN PERPETUITY AND EXCLUSIVELY FOR CONSERVATION PURPOSES, the following Conservation Restriction on land located in the Town of Falmouth, County of Barnstable, Commonwealth of Massachusetts consisting of two parcels for a total of 7.42 acres of land ("Premises"), which Premises is more particularly described in Exhibit A and shown in the attached sketch plans in Exhibit B, each of which are incorporated herein and attached hereto.

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 perpetuity for conservation purposes, in a natural, scenic and undeveloped condition, and to prevent any use or change that would impair or interfere with its conservation and preservation values ("conservation values").

Conservation Land Tax Credit: CLTC Program. The Premises was acquired utilizing, in part, the Conservation Land Tax Credit Program authorized under the Chapter 509 Acts of 2008

NHESP BioMap2-designated Core Habitat consisting of the Aquatic Core Component. This BioMap2 area is a wetland situated on the coast of Buzzard's Bay, between Hamlin Point and Gunning Point. BioMap2, published in 2010, was designed to guide strategic biodiversity conservation in Massachusetts over the next decade by focusing land protection and stewardship on the areas that are most critical for ensuring the long-term persistence of rare and other native species and their habitats, exemplary natural communities, and a diversity of ecosystems. BioMap2 is also designed to include the habitats and species of conservation concern identified in the State Wildlife Action Plan ("SWAP"). SWAP indicates that Pitch Pine-Oak Upland Forests are a large-scale habitat containing up to over 45 Species of Greatest Conservation Need (Chapter 4, pp. 92).

- Water Quality Protection. Protecting the Premises with this Conservation Restriction will ensure the maintenance of water quality of Deep Pond, also known as the "Punch Bowl," a kettle-hole pond located to the southeast of the Premises in the adjacent Beebe Woods. It will also contribute to the maintenance of water quality of nearby Buzzard's Bay because it will help block overdevelopment of this coastal area.
- Consistency with Clearly Delineated Barnstable County Conservation Policy. Protection of the Premises will assist in achieving Barnstable County conservation goals. In July 1991, the Barnstable County Assembly of Delegates, pursuant to the Cape Cod Commission Act (Chapter 716 of the Acts of 1989), adopted a *Regional Policy Plan* ("RPP"), amended in 1996, 2002 2009, and 2012, which provided, *inter alia* (references are to the 2012 Plan):
 - "To minimize adverse impacts on the land by using land efficiently and protecting sensitive resources, and to create vibrant communities by directing growth and redevelopment to appropriate locations" (Land Use Goal LU1, pp. 12);
 - "To preserve and enhance rural land uses, including agriculture, that are environmentally compatible with the Cape's natural resources in order to maintain opportunities to enjoy the traditional occupations, economic diversity, and scenic resources associated with rural lands. . . ." (Land Use Goal LU3, pp.18);
 - Regional Rural Lands Protection Tools: "The Commission will investigate the use of land use protection tools, including DCPCs and TDR, as well as conservation restrictions, toward the goal of protecting significant soils [and] natural resources. . . ." (LU3-C2, pp. 18);
 - "Open space has helped define Cap Cod's heritage and economy. Open space, and the rural character it imparts, is one of the region's most valuable assets. Marshes, beaches, farms, and woodlands contribute directly to key industries on Cape Cod, attracting tourists and providing areas for farming and cranberry growing, hunting, fishing, and swimming (Open Space and Recreation introduction, pp. 62);
 - Open Space and Recreation Goals to "preserve and enhance the availability of open space that provides wildlife habitat and recreational opportunities, and protects the region's natural resources and character" (OS1, pp. 64); and to "preserve and enhance opportunities for passive and active recreation to meet the needs of both residents and visitors" (OS2, pp. 65);

Granting this Conservation Restriction will help advance each of these objectives outlined in the RPP. Land Use Goal 1 will be served because protecting the Premises will minimize the adverse impact of overdevelopment, as it will provide a buffer to the valued Beebe Woods and Peterson Farm conservation area and will ensure the protection of the valuable habitats found in and adjacent to the Premises. Land Use Goal 3 will be advanced because protecting the Premises will ensure that it is maintained in its rural and scenic state. Conservation restrictions are listed as a tool to achieving this Land Use Goal 3. Granting this Conservation Restriction also aligns with the Open Space and Recreation Goals identified above because it will ensure the protection and enhancement of this critical open space area in Falmouth, and one of Cape Cod's critical open space assets. The open space areas of the abutting Beebe Woods and Peterson Farm will be enhanced by the addition of this parcel, as well as habitat protection. Passive outdoor recreation opportunities will be preserved and enriched by opening this approximately 7.42-acre parcel to the public for enjoyment of the outdoors.

- Consistency with Clearly Delineated Town of Falmouth Conservation Policy. Protection of the Premises will further the Town of Falmouth's documented goals regarding conservation of land. In 2014, the Town of Falmouth outlined its open space and recreation goals in its updated *Open Space and Recreation Plan*, identifying goals, policies, and actions to guide conservation efforts. It identifies three major goals, each of which would be served in protecting the Premises. These goals are:
 - Goal 1: To acquire 30% of Falmouth's total land area as high quality, permanently protected open space;
 - Goal 2: Increase the number and type of passive and active recreational opportunities for Falmouth residents and visitors; and,
 - Goal 3: To maintain and expand the use of existing open space and recreational opportunities.

Granting this Conservation Restriction will aid in achieving each of these goals, as it will contribute toward the goal of permanently protecting 30% of Falmouth's total land, it will increase passive recreational activities for residents and visitors because it will expand those already available in the adjacent Beebe Woods and Peterson Farm conservation area, and it will enhance the experience of that area, as it will serve as an open space buffer.

In 1991, the Town of Falmouth adopted a *Conservation Restriction Policy*, consisting of policies and guidelines approved by the Board of Selectman, Assessors and Conservation Commission (updated and reaffirmed in 2001), which encourages the use of conservation restrictions in perpetuity as a means of "preserving open space. . . and providing scenic enjoyment, outdoor recreation and education of the public;" and, *inter alia*:

- to permanently protect open space;
- to preserve and protect a trail, shoreline, or beach;
- to prevent the cutting of trees or forests;

- to limit or prevent construction on land of natural resource value; and,
- to add to existing restricted land which is contiguous to the land proposed to be restricted.

Granting this Conservation Restriction aligns with each of these objectives, as it will guarantee permanent protection of this open space parcel, it will preserve and buffer the existing trails in the adjacent Beebe Woods and Peterson Farm conservation area, it will protect this Pitch-Pine Oak forest from demolition, it will guarantee that construction in this valued open space resource area will not occur, and it will add to the outdoor passive recreational opportunities already afforded on the abutting conservation land.

Permanently protecting the Premises with this Conservation Restriction also comports with the Town of Falmouth's goals and policies for growth in the next fifty years as outlined by the Town Planning Board's 2016 *Local Comprehensive Plan*. The Planning Board established goals to guide management of open space in Falmouth, including: "to protect the things about Falmouth to be treasured and kept, such as our natural resources and heritage" (pp.1). The scenic rural character of the Premises, comprised of Pitch Pine-Oak forest, is invaluable to the community and its visitors for outdoor recreation and respite and enjoyment of its natural beauty. When considered in conjunction with the abutting Beebe Woods and Peterson Farm conservation area, the Premises serves as a vestige of the rural heritage of Cape Cod, a resource to be treasured and safeguarded.

- Consistency with Clearly Delineated Federal Conservation Policy. Protection of the Premises meets the definition of "conservation purposes" as defined in 26 CFR 1.170A-14(d)(1), because its conservation would: protect the land for outdoor recreation by the general public; reserve the land for education regarding the natural world for Falmouth schools and the general public; protect wildlife, forest, and grassland habitats; and it would contribute to the preservation of open space because it abuts the Beebe Woods and Peterson Farm conservation area, a combined area of approximately 475 acres of already conserved land.
- Consistency with Clearly Delineated State Conservation Policy. The Premises possesses significant open space, natural, aesthetic, ecological, plant and wildlife habitat, solid and water resource quality, watershed, and scenic values (collectively "conservation values") of great importance to the Grantee and the people of Falmouth and the Commonwealth of Massachusetts.
- Preservation of Archaeologically Sensitive Area. The Massachusetts Historical Commission identifies the Sippewissett area of Falmouth, where the Premises is located, as highly archaeologically sensitive, due to its level, well-drained soils located in proximity to the wetlands and water resources of neighboring kettle-hole ponds, such as Deep Pond or the "Punch Bowl" on the abutting Beebe Woods parcel, as well as Buzzards Bay. Because of this location, this area was favored for land use and occupation by ancient and historic period Native Americans.

These and other conservation values of the Premises, as well as its current uses and state of improvement, are described in a Baseline Documentation Report (“Baseline Report”) prepared by Grantee with the cooperation of the Grantor, consisting of maps, photographs, and other documents and on file with the Grantee and referenced herein. The Baseline Report (i) is acknowledged by Grantor and Grantee to be a complete and accurate representation of the condition and values of the Premises as of the date of this Conservation Restriction, (ii) is intended to fully comply with applicable Treasury Regulations, and (iii) is intended to serve as an objective information baseline for subsequent monitoring of compliance with the terms of this Conservation Restriction as described herein. Notwithstanding the foregoing, the parties may utilize any evidence of the condition of the Premises at the time of this grant other than the Baseline Report, should the Baseline Report be unavailable or if it does not adequately address the issues presented.

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 not perform or allow others to perform the following acts and uses which are prohibited on, above, and 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, wind turbine, antenna, utility pole, tower, solar panel, solar array, conduit, line or other temporary or permanent structure or facility on, above or under the Premises;
- (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 making topographical changes to the area;
- (3) Placing, filling, storing or dumping of soil, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, tree and other vegetation cuttings generated off-site, 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;
- (5) Activities detrimental to drainage, flood control, water conservation, water quality, erosion control, soil conservation, wildlife habitat, or archaeological conservation;
- (6) Hunting, owing to state safety setbacks, trapping, or camping;
- (7) Use, parking or storage of vehicles including motorcycles, mopeds, all-terrain vehicles, trail bikes, or any other motorized vehicles on the Premises except for vehicles necessary for public safety (i.e., fire, police, ambulance, other government officials) in carrying out their official duties or as necessary for the mobility impaired;

- (8) Subdivision or 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 building or development requirements on this or any other parcel. The development rights which are encumbered and extinguished by this Conservation Restriction shall not be transferred to any other property pursuant to a transferable development rights plan, cluster development plan, or otherwise;
- (9) The use of the Premises for business, residential or industrial use, or commercial recreation;
- (10) Any other use of the Premises or activity which is inconsistent with the purpose of this Conservation Restriction or which would impair its conservation values.

B. Reserved Rights and Exceptions

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 impair the conservation values or purposes of this Conservation Restriction.

- (1) Vegetation Management. The selective minimal removing of brush, pruning and cutting to prevent, control or remove hazards, disease, insect or fire damage, or to preserve the present condition of the Premises, including vistas as documented in the Baseline Survey, woods roads, fence lines and trails and meadows;
- (2) Non-Native or Nuisance Species. The removal of non-native or invasive species, including the right to use pesticides, designed and applied to affect the target species and minimize impact to adjacent non-target species, preferably applied by hand. Any such use of pesticides will be in conformance with best management practices. Additionally, the Grantor reserves the right to engage in interplanting of native species, and to control species in a manner that minimizes damage to surrounding, non-target species and preserves water quality;
- (3) Composting. The stockpiling and composting of stumps, trees, brush, limbs, and similar biodegradable materials originating on the Premises, provided that such stockpiling and composting is in locations where the presence of such activities will not impair the conservation values (including scenic values) of this Conservation Restriction. No such activities will take place closer than one hundred (100) feet from any wetland, waterbody or stream. All exercise of this reserved right shall take into account sensitive areas and avoid harm to nesting species during nesting season;
- (4) Wildlife Habitat Improvement. With the prior written permission of Grantee, measures designed to restore native biotic communities, or to maintain, enhance or restore wildlife, wildlife habitat, or rare or endangered species including selective planting of native trees, shrubs and plant species;

- (5) Pest Control. The Grantor reserves the right to engage in trapping for pest control purposes.
- (6) Archaeological Investigations. The right to conduct archaeological activities, including without limitation archaeological research, surveys, excavation and artifact retrieval, but only (a) after written notification to and approval by Grantee, and (b) in accordance with an archaeological field investigation plan prepared by or on behalf of the Grantor and approved in advance of such activity, in writing, by the Massachusetts Historic Commission ("MHC") State Archaeologist as required by Massachusetts General Laws. A copy of the results of any scientific investigation on the Premises is to be provided to the Grantee. Plans for restoration of the site of any archaeological activity shall be submitted to the Grantee in advance of restoration, and such restoration shall be conducted only in accordance with a plan approved by the Grantee.

Activities detrimental to archeological and historic resources, including but not limited to earth moving and the alteration of historic stone walls/cellar holes/features, shall not be deemed to be detrimental to archeological and historic resources if a description of the proposed activity and its location is submitted in writing (e.g., on a Project Notification Form) with a plan of land (or assessors map) and a USGS map with the Premises outlined thereon, to MHC and MHC issues a letter stating that the proposed activity is not within a resource area or is determined to not have an adverse effect on said resources. Grantor and Grantee shall make every reasonable effort to prohibit any person from conducting archaeological field investigation on the Premises, including metal detecting, digging, or artifact collecting, without approval of the MHC State Archaeologist (or appropriate successor official), and shall promptly report any such prohibited activity to the MHC State Archaeologist (or appropriate successor official). Grantor and Grantee shall include the prohibition against digging, artifact collecting, or metal detecting in any list of rules for visitors to the Premises;

- (7) Trails. The marking, clearing and maintenance of existing footpaths as shown in the Baseline Report. With prior approval of the Grantee, the construction of new unpaved trails or the relocation or alteration of existing trails, provided that any construction, relocation, or alteration results in trails that are no wider than six (6) feet;
- (8) Signs. The erection, maintenance and replacement of signs with respect to trespass, trail access, identity and address of the occupants, sale of the Premises, the Grantee's interest in the Premises, any gift, grant, or other applicable source of support for the conservation of the Premises, and the protected conservation values;
- (9) Fences. Subject to Grantee's approval, Grantor reserves the right to erect and maintain open-faced (i.e., sight-pervious) fences, such as wooden split rail, for property boundary delineation, safety reasons, and trail demarcation, so long as the dimensions and design of said fences do not impede free wildlife passage;

- (10) Outdoor Passive Recreational Activities. The Grantor and its invitees are permitted to conduct non-commercial, passive recreational uses of the Premises during daylight hours, subject to reasonable regulation by the Grantor. Passive outdoor recreation activities may include walking, jogging, cross-country skiing, bird watching, hiking, wildlife observation, photography, fishing, sketching, painting, and other similar activities that do not conflict with the conservation values and that are permitted by law;
- (11) Right to Install Resting Benches on the Premises. The Grantor reserves the right to install on the Premises several resting benches. Installation of these benches will cause minimal disturbance on the Premises and will not negatively impact its conservation values;
- (12) Site Restoration. Any work undertaken in conjunction with the Reserved Rights described in this Paragraph B shall seek to minimize disturbance to the Conservation Values and other natural features within the Premises that may be impacted as a result of exercising of any of the Reserved Rights described herein. Upon completion of any site work performed in conjunction with the Reserved Rights described in this Paragraph B, any disturbed areas shall be restored substantially to the conditions with respect to soil material, grade, and vegetated ground cover as documented in the Baseline Report, as applicable, or in conformance with the conditions with respect to soil material, grade, and vegetated ground cover that existed prior to said work, if said work is done in any area not documented in the Baseline Report.
- (13) Permits, Regulations, Laws. The exercise of any right reserved by Grantor under this Paragraph B shall be in compliance with zoning, the Wetlands Protection Act, 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 whether such permit should be issued.
- (14) Best Management Practices. The exercise of any right reserved by Grantor under this Paragraph B shall follow, when available and if applicable, established, up to date, and regionally-applicable Best Management Practices or similar standards developed by a governmental agency or other entity with known expertise in the area of practice and designed to protect the natural features potentially affected by the action(s).

C. Notice and Approval.

Whenever notice to or approval by Grantee is required, Grantor shall notify Grantee, by a method requiring proof of receipt, in writing not less than sixty (60) days prior to the date Grantor intends to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable and any other material aspect of the proposed activity in sufficient detail to permit the Grantee to make an informed judgment as to its consistency with the purposes of this Conservation Restriction. Where Grantee's approval is required, Grantee shall

grant or withhold approval in writing within sixty (60) days of receipt of Grantor's request. Grantee's approval shall not be unreasonably withheld, but shall only be granted upon a showing that the proposed activity shall not impair the purposes of this Conservation Restriction.

Subject to any applicable law or regulation, failure of Grantee to respond in writing within sixty (60) days shall be deemed to constitute approval by Grantee of the request as submitted, so long as the request sets forth the provisions of this section relating to deemed approval after sixty (60) days in the notice, the requested activity is not prohibited herein, and the activity will not impair the conservation values or purposes of this Conservation Restriction.

III. LEGAL REMEDIES OF THE GRANTEE

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 will 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 agrees to cooperate for a reasonable period of time prior to resorting to legal means in resolving issues concerning violations provided Grantor ceases objectionable actions and Grantee determines there is no ongoing diminution of the conservation values of the Conservation Restriction. Prior to instituting litigation to enforce any violations of this Conservation Restriction, the Grantee shall first notify the Grantor and request the Grantor to remedy the violation; if the violation is not remedied within sixty (60) days, then the parties shall make a good faith effort to mediate the dispute before litigation is commenced, provided the Grantor ceases the violation immediately upon receipt of notice of the violation and is making a good faith effort to remedy the violation.

Grantee shall not, however, have the right to bring an action against Grantor with respect to a violation of this Conservation Restriction by trespassers or other third persons whose entry on the Premises is not authorized or not voluntarily acquiesced in by Grantor; Grantor agrees that Grantor will not voluntarily acquiesce in any violation of this Conservation Restriction by trespassers or such other third persons; and Grantor further agrees that, at the request of Grantee, Grantor will make reasonable efforts to deter such activities and to remedy the violation and will cooperate with Grantee to enforce this Conservation Restriction against trespassers and such other third persons.

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. In the event of a dispute over the boundaries of the Conservation Restriction, Grantor shall pay for a survey and to have the boundaries permanently marked.

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 pertaining to compliance with and including, but not limited to, hazardous materials, zoning, environmental laws and regulations, or acts not caused by the Grantee or its agents.

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. In the event of any such occurrence, the Grantor and Grantee will cooperate in the restoration of the Premises, if desirable and feasible.

IV. ACCESS

The Grantor hereby grants to the Grantee, or its duly authorized agents or representatives, the right to enter the Premises (i) after reasonable notification, at reasonable times and in a reasonable manner, for the purpose of inspecting the Premises to determine compliance with the provisions of this Conservation Restriction or to enforce it; and, (ii) after sixty (60) days prior written notice, except in an emergency in which case notice shall be given as soon as is practicable, to take any and all actions with respect to the Premises as may be necessary or appropriate, with or without order of court, to remedy, abate or enforce any violation hereof unless the Grantor has prior to the expiration of said sixty (60) days given written notice to the Grantee reasonably addressing all alleged violations and setting forth a reasonable plan to remedy any such alleged violation and has made reasonable efforts to cease the activity or to begin remediation. The Grantor also grants to the Grantee, after 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 perform a survey of boundary lines.

The Grantor agrees to take no action to prohibit or discourage access to and use of the Premises by the general public, but only for daytime use and only as described in Section II(B)(10) provided that such agreement by Grantor is subject to the Grantor's reserved right to establish

reasonable rules, regulations, and restrictions on such permitted recreational use by the general public for the protection of the purposes and conservation values of this Conservation Restriction. Grantor has the right to control, limit, or prohibit by posting and other reasonable means activities or uses of the Premises not authorized in Section II(B)(10). The Grantor's right to grant public access across the Premises is subject to the restrictions described in this Conservation Restriction. Any public use which is permitted by the terms of this Conservation Restriction constitutes permission to use the Premises for purposes described in the Massachusetts General Laws Chapter 21, Section 17C and the Grantor and Grantee hereto benefit from exculpation from liability to the extent provided in such section. The Grantee may require the Grantor to post the Premises against any use that may result in rutting or erosion or other damage to the natural resources of the Premises.

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 after review and approval by the Massachusetts Secretary of Energy and Environmental Affairs. If any change in conditions ever gives rise to extinguishment or other release of the Conservation Restriction under applicable law, then Grantees, 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 and after complying with the terms of any gift, grant, or funding requirements. Grantees 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 value that is equal to ten percent (10%) of the fair market value. For the purposes of this paragraph, said proportionate value 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 accordance with Paragraph V. B – above, after complying with the terms of any law, gift, grant, or funding requirements. 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. DURATION & 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, appoints the Grantee their attorney-in-fact to execute, acknowledge and deliver any such instruments on its behalf. Without limiting the foregoing, the Grantor and its successors and assigns agree themselves to execute any such instruments upon request.

C. Running of the Benefit. The benefits of this Conservation Restriction shall run to the Grantee, 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; that the Assignee is not an owner of the fee in the Property, 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. Any assignment will comply with Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, if applicable.

VII. SUBSEQUENT TRANSFERS

The Grantor agrees to incorporate by reference the terms of this Conservation Restriction in any deed or other legal instrument which grants any interest in all or a portion of the Premises, including a leasehold interest and to notify the Grantee not less than twenty (20) days prior to the execution of such transfer. Failure to do any of the above shall not impair the validity or enforceability of this Conservation Restriction. Any transfer will comply with Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, if applicable.

The Grantor shall not be liable for violations occurring after their ownership. Liability for any acts or omissions occurring prior to any transfer and liability for any transfer if in violation of this Conservation Restriction 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 thirty (30) days execute and deliver to the Grantor any document, including an estoppel certificate, which certifies the Grantor's compliance or non-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 a non-fee owner that is qualified under Section 170(h) of the Internal Revenue Code of 1986, as amended, and applicable regulations thereunder and is eligible to receive this Conservation Restriction under Section 32 of Chapter 184 of the General Laws of Massachusetts in order to ensure that merger does not occur and that this Conservation Restriction continues to be enforceable by a non-fee owner.

X. AMENDMENT

If circumstances arise under which an amendment to or modification of this Conservation Restriction would 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 Grantee will consider amendments only to correct an error or oversight, to clarify an ambiguity, or where 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 Energy and Environmental Affairs and if applicable, shall comply with the provisions of Article 97 of the Amendments to the Massachusetts Constitution, and any gifts, grants or funding requirements. Any amendment shall be recorded in the Barnstable 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 a timely manner in the Barnstable County Registry of Deeds.

XII. 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: The 300 Committee Land Trust, Inc.
157 Locust Street
Falmouth, MA 02540

To Grantee: The Compact of Cape Cod Conservation Trusts, Inc.
P.O. Box 443
Brewster, MA 02630

or to such other address as any of the above parties shall designate from time to time by written notice to the other or, if notice is returned to sender, to an address that is reasonably ascertainable by the parties.

XIII. 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 affect the purpose of this Conservation Restriction and the policy and purposes of Chapter 184, Sections 31, 32, and 33 of the Massachusetts General Laws. 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.

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

A. Pre-Existing Public Rights. Approval of this Conservation Restriction pursuant to Chapter 184, Section 32 of the Massachusetts General Laws by any municipal officials and by the Secretary of Energy and 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. Homestead. The Grantor attests that there is no residence on or abutting the Premises (including exclusions) that is occupied or intended to be occupied as a principal residence by a spouse, former spouse, or children of the grantor, or a spouse, former spouse, or children of a beneficiary of the trust, if Premises is owned by a trust.

*LOWELL PROPERTY CONSERVATION RESTRICTION
FALMOUTH, MA*

C. Subordination. The Grantor attests that there is no mortgage, promissory note, loan, lien, equity credit line, refinance assignment of mortgage, lease, financing statement or any other agreement which gives rise to a surety interest affecting the Premises.

D. Attached hereto and incorporated herein by reference are the following:

Signature pages:

Grantor – The 300 Committee Land Trust, Inc.

Grantee Acceptance – The Compact of Cape Cod Conservation Trusts, Inc.

Approval by Falmouth Board of Selectmen

Approval of the Secretary of Energy and Environmental Affairs.

Exhibits:

Exhibit A: Description of the Premises

Exhibit B: Sketch Plan of Premises

*LOWELL PROPERTY CONSERVATION RESTRICTION
FALMOUTH, MA*

WITNESS our hands and seals this ____ day of _____, 2019,

Anne-Marie Runfola, President,
The 300 Committee Land Trust, Inc.

Gary Vostok, Treasurer,
The 300 Committee Land Trust, Inc.

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss:

On this ____ day of _____, 2019, before me, the undersigned notary public, personally appeared Anne-Marie Runfola, President, The 300 Committee Land Trust, Inc., and Gary Vostok, Treasurer, The 300 Committee Land Trust, Inc., and proved to me through satisfactory evidence of identification which was _____ to be the persons whose names are signed on the proceeding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose.

Notary Public
My Commission Expires:

ACCEPTANCE OF GRANT

This Conservation Restriction from The 300 Committee Land Trust, Inc. was accepted by The Compact of Cape Cod Conservation Trusts, Inc. this _____ day of _____, 2019.

By: _____
Leonard W. Johnson

Its: President, duly authorized

By: _____
Henry Lind

Its: Treasurer, duly authorized

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss:

On this _____ day of _____, 2019, before me, the undersigned notary public, personally appeared Leonard W. Johnson, President, The Compact of Cape Cod Conservation Trusts, Inc., and Henry Lind, Treasurer, The Compact of Cape Cod Conservation Trusts, Inc., and proved to me through satisfactory evidence of identification which was personal knowledge of identity to be the persons whose name are signed on the proceeding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose.

Mark Robinson, Notary Public
My Commission Expires: 24 July 2020

APPROVAL OF BOARD OF SELECTMEN

We, the undersigned, being a majority of the Board of Selectmen of the Town of Falmouth, hereby certify that at a public meeting duly held on _____, 2019, the Selectmen voted to approve the foregoing Conservation Restriction from The 300 Committee Land Trust, Inc. to The Compact of Cape Cod Conservation Trusts, Inc. in the public interest pursuant to Section 32 of Chapter 184 of the General Laws of Massachusetts.

SELECTMEN:

TOWN OF FALMOUTH
OFFICE OF TOWN COUNSEL
APPROVED AS TO FORM



COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss:

On this _____ day of _____, 2019, before me, the undersigned notary public, personally appeared Megan English Braga, and 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 she signed it voluntarily for its stated purpose.

Notary Public
My Commission Expires:

**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 from The 300 Committee Land Trust, Inc. to The Compact of Cape Cod Conservation Trusts, Inc. has been approved in the public interest pursuant to Massachusetts General Laws, Chapter 184, Section 32.

Dated: _____, 2019

KATHLEEN A. THEOHARIDES
Secretary of Energy and Environmental Affairs

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss:

On this _____ day of _____, 2019, before me, the undersigned notary public, personally appeared KATHLEEN A. THEOHARIDES, and 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 she signed it voluntarily for its stated purpose.

Notary Public
My Commission Expires:

EXHIBIT A

Description of the Premises: 0 Ter Heun Drive
To be updated when we receive approved plan from land court

The Premises subject to this Conservation Restriction consists, in part, of a parcel of land located in Town of Falmouth, County of Barnstable, Commonwealth of Massachusetts, containing a total of 6.38 acres, shown as the portion of Lot B6 that is south of Ter Heun Drive on a plan of land entitled "Subdivision of Lot B2 Shown on Plan 3394E Filed with Cert. of Title No. 429 Registry District of Barnstable Co., Land in Falmouth, Scale 200 Feet to an Inch," dated April 13, 1926, prepared by C.B. Humphrey, Engineer for Court, said plan recorded at the Barnstable Land Registry District, Land Court Plan No. 3394-H, a reduced copy of which is attached hereto as Exhibit B. The portion of the Conservation Restriction constituting Lot B6 is subject to a pre-existing perpetual easement for highway purposes in favor of the Town of Falmouth for a roadway known as Ter Heun Drive per an easement recorded on January 9, 1961, at the Barnstable County Land Registry District as Land Court Document No. 68,006.

For Grantor's title, see deed recorded at the Barnstable Land Registry District as Land Court Certificate No. _____, Document No. _____.

Town of Falmouth Assessors Map: 37-21-0008-006B.

Street Address: 0 Ter Heun Drive, Falmouth, Massachusetts 02540

Description of Premises: 740 Ter Heun Drive

The Premises subject to this Conservation Restriction consists, in part, of a parcel of land located in Town of Falmouth, County of Barnstable, Commonwealth of Massachusetts, containing a total of 1.04 acres, shown as Lot 90 on a plan of land entitled "Subdivision Plan of Land in Falmouth," dated February 11, 1985, prepared by Holmes and McGrath, Inc., 205 Worcester Court, Falmouth, MA, said plan recorded at the Barnstable Land Registry District, Land Court Plan No. 3394-R, a reduced copy of which is attached hereto as Exhibit B-1.

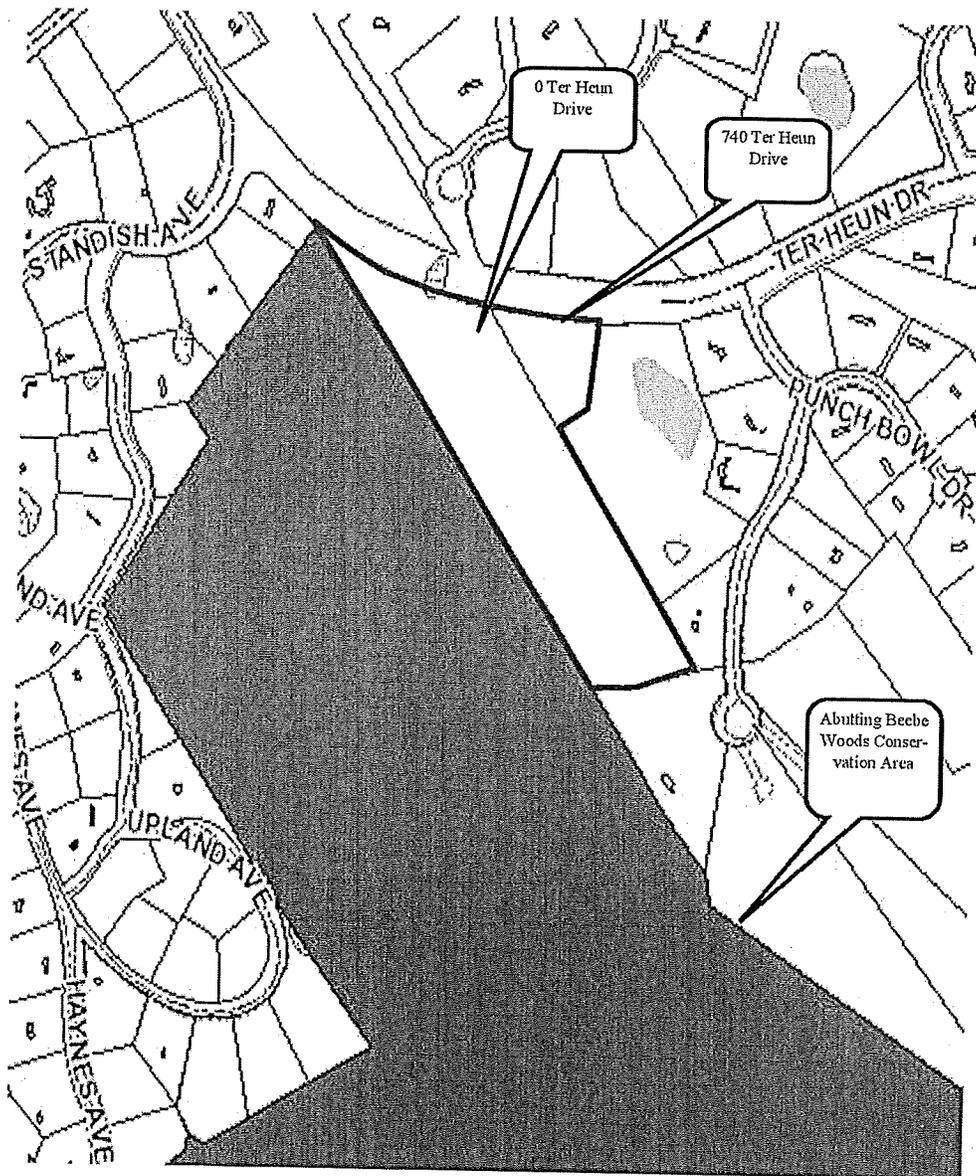
For Grantor's title, see deed recorded at the Barnstable Land Registry District as Land Court Certificate No. _____, Document No. _____.

Town of Falmouth Assessors Map: 37-21-007-090.

Street Address: 740 Ter Heun Drive, Falmouth, Massachusetts 02540

EXHIBIT B

Sketch Plan of Premises: 0 & 740 Ter Heun Drive
To be updated when we receive the approved plan from the land court



memo

Department of Marine & Environmental Services

To: Megan English Braga, Chairwoman Falmouth Board of Selectmen
CC: Julian Suso, Town Manager
Peter Johnson-Staub, Assistant Town Manager
From: Chuck Martinsen, Deputy Director of Marine & Environmental Services
Date: 11/22/2018
Re: Proposed Changes to Shellfish Regulations

Dear Madam Chairwoman and members of the Board of Selectmen,

Please find attached proposed changes to the Shellfish Regulations for the winter of 2019-2020. The proposed changes are being recommended due to a tremendous surplus of oysters in recreational shellfishing areas, which are vulnerable to winter ice damage. The proposed changes in the regulations will allow for the surplus of oysters to be harvested by first increasing recreational taking, and then by allowing commercial harvesting. Commercial harvesting would be allowed during specific dates and times to coincide with enforcement and tides. The proposed changes also promote the survival of newly seeded shellfish located in-shore, by having under-sized shellfish captured during harvest released to deeper water. The proposed changes were discussed with and are supported by the Shellfish Advisory Committee.

**TOWN OF FALMOUTH
SHELLFISH REGULATIONS**

Pursuant to MGL Chapter 130, Section 52, the following changes to the Shellfish Regulations are hereby adopted:

Change in Oyster Harvest Limits and Areas

WEST FALMOUTH HARBOR BB-54

Recreational Oyster Harvesting:

In addition to the normal weekend harvest, the West Falmouth Family Area shall be open to the recreational taking of oysters Wednesdays only from **November 25, 2019** until **February 1, 2020**. This regulation shall not apply to the taking of quahogs or scallops on Wednesdays. Recreational diggers may harvest TWO pecks of oysters per week from **November 25, 2019** until **February 1, 2020**. Recreational harvesters may only harvest 1 peck per day and no more than 2 pecks per week.

Commercial Oyster Harvesting:

The West Falmouth Family Area shall be open to the commercial taking of oysters on up to five (5) designated floating dates (dates to be determined). This regulation shall not apply to the taking of quahogs or scallops.

The West Falmouth Family Area shall be only be open to the commercial taking of oysters from a set of floating markers shoreward. Any oyster seed captured shall be released seaward of the orange stakes to protect from winter ice damage. All skiffs used for fishing are prohibited from being landed on the shoreline in the harvest areas to protect stocked shellfish. Boats shall not be anchored in the West Falmouth Family Area.

The dates and times of up to five (5) Commercial Harvesting dates in the recreational West Falmouth Family Area shall be determined by the Shellfish Constable based on weather and tide predictions indicating the freezing of the harbor and loss of oysters.

Per order of the Falmouth Board of Selectmen

Date: November 25, 2019

Megan English Braga, Chairwoman

Douglas C. Brown, Vice Chairman

Douglas H. Jones

Susan L. Moran

Samuel H. Patterson

CAPITAL IMPROVEMENT REQUEST FORM

Department:	Marine Environmental Science	Submitted/Prepared By:	Chuck Martinsen	Priority #
Project Title/Description:	Aquaculture - Nitrogen Removal			

Estimated Costs Capital:	(attach additional information if available)	Comments
Equipment	167,000	
Maintenance		
Planning/Study		
Design		
Construction		
Land Acquisition		
Other		
Contingency		
Total Capital	167,000	

Estimated Cash Flow:	Capital	O&M
FY 2019		
FY 2020	167,000	
FY 2021		
FY 2022		
FY 2023		
FY 2024		
FY 2025		
FY 2026		
FY 2027		
FY 2028		

O & M Costs:	One Time	Annual/Ongoing
Personnel		25,000
Expense		
Other		
Total O & M		

Available/Potential Funds:	Amount	Comment
Federal		
CWMP "Article 17" funds	17,911	Not yet approved
AFSEE	50,000	Not yet approved
Existing Articles/Funds		
Total Available		

Project Need/Goals and Performance Measurement:

This MES Department has worked with the Water Quality Management Committee, Shellfish Advisory Committee, Town Manager's Office and consultants to develop an aquaculture program that can be approved by the MA Department of Environmental Protection as part of the Town's Comprehensive Water Quality Management Plan (CWMP) to remove nitrogen from our estuaries. This aquaculture program is intended to supplement more expensive nitrogen remediation strategies such as sewers and septic systems with enhanced nitrogen removal capabilities. This program has multiple advantages over these more traditional nitrogen removal strategies: 1) It costs less than other methods on a per kilogram basis; 2) It generates revenue to offset costs; 3) It provides business opportunities to local growers and expands recreational and commercial wild harvest shellfish opportunities.

It has taken several years to assess the feasibility of the public-private partnership initiative that this capital fundings will support - from both a permitting and economic perspective. Within the past year MA DEP confirmed it would approve aquaculture as part of a CWMP. In the past two months, the Board of Selectmen approved rental fees for this program, the Conservation Commission has approved the three pilot locations and three growers were selected for the pilot project phase of the public-private aquaculture partnership.

These funds will be used to purchase equipment to be rented to private aquaculture growers. Without these funds it would take many years to achieve the same volume of aquaculture and the resulting kilograms of nitrogen removal. The fees collected will be deposited to a revolving account. Funds in the revolving account will be used to promote shellfish propagation for wild harvest; to pay for future permitting costs required to expand the aquaculture program; and to purchase additional aquaculture equipment. The total needed for the next 12 months is \$167,000. We are requesting \$100,000 from Free Cash and \$67,000 from two other sources. The funding sources are the prior CWMP appropriations and a fund set up for environmental remediation projects with proceeds from the Air Force in connection with contamination at Otis.



**TOWN OF FALMOUTH
SPECIAL EVENT PERMIT**

EVENT Dive into Recovery – Freezin’ for a Reason

NAME Amanda Marcotte, Gosnold, Inc.

MAILING ADDRESS 200 Ter Heun Drive, Falmouth, MA 02540

EVENT DAY & DATE Saturday, January 4, 2020

RAIN DATE Saturday, January 18, 2020

EVENT LOCATION Falmouth Heights Beach

EVENT TYPE Polar Plunge

SET-UP ARRIVAL TIME 10:00 a.m. **EVENT HOURS** 10:00 a.m. – 1:30 p.m.

NUMBER OF ATTENDEES 70 **NUMBER OF VEHICLES:** 40

ADDITIONAL DETAILS Use of beach parking lot. Organizer will rent a portable restroom for the event.

CONDITIONS:

1. *Organizers to check area following event to ensure it is left clean.*

PERMIT FEE \$200.00 **FILING FEE** \$10.00
DEPOSIT \$300.00 *(Deposit refundable at conclusion of event provided that no litter or damage has occurred.)*

BOARD OF SELECTMEN:

Diane Davidson

From: Joe Olenick
Sent: Wednesday, November 13, 2019 8:25 PM
To: Diane Davidson
Subject: Re: Special Event Application - Gosnold Polar Plunge

Recreation is ok with this. Thanks Joe

Sent from my iPhone

On Nov 13, 2019, at 5:02 PM, Diane Davidson <diane.davidson@falmouthma.gov> wrote:

To Special Events Working Group,

Attached please find an application from Gosnold, Inc. to hold its annual Polar Plunge on Saturday, January 4, 2020 (rain date Saturday, January 18, 2020) at Falmouth Heights Beach from 10:00 a.m. to 1:30 p.m. Please review and provide your recommendations by Thursday, November 21, 2019.

This request is scheduled for review/approval by the Board of Selectmen on Monday, November 25, 2019.

Thank you,

Diane

*Diane S. Davidson
Office Manager/Licensing
Office of the Town Manager and Selectmen
Town of Falmouth
59 Town Hall Square
Falmouth, MA 02540
diane.davidson@falmouthma.gov
(508) 495-7321*

<SE-2020-Gosnold Polar Plunge.pdf>

Diane Davidson

From: Scott McGann
Sent: Thursday, November 14, 2019 10:37 AM
To: Diane Davidson
Subject: RE: Special Event Application - Gosnold Polar Plunge

No issues for us - Health
Scott

From: Diane Davidson <diane.davidson@falmouthma.gov>
Sent: Wednesday, November 13, 2019 5:02 PM
To: Boyd Demello <boyd.demello@falmouthfirema.gov>; Brian Reid <brian.reid@falmouthpolicema.gov>; Bruce Mogardo <bruce.mogardo@falmouthma.gov>; Diane Davidson <diane.davidson@falmouthma.gov>; Gregg Fraser <gregg.fraser@falmouthma.gov>; Jim Grady <jim.grady@falmouthma.gov>; Jeremiah Pearson <jeremiah.pearson@falmouthma.gov>; Joe Olenick <joe.olenick@falmouthma.gov>; Julian Suso <julian.suso@falmouthma.gov>; Mallory Langler <mallory.langler@falmouthma.gov>; Mel Trott <mel.trott@falmouthfirema.gov>; Melinda Rebelo <melinda.rebelo@falmouthpolicema.gov>; Pamela Marshall <pamela.marshall@falmouthma.gov>; Peter Johnson-Staub <peter.johnson-staub@falmouthma.gov>; Peter McConarty <peter.mcconarty@falmouthma.gov>; Rod Palmer <rod.palmer@falmouthma.gov>; Scott McGann <scott.mcgann@falmouthma.gov>; Sean Doyle <sean.doyle@falmouthpolicema.gov>; Timothy Smith <timothy.smith@falmouthfirema.gov>
Subject: Special Event Application - Gosnold Polar Plunge

To Special Events Working Group,

Attached please find an application from Gosnold, Inc. to hold its annual Polar Plunge on Saturday, January 4, 2020 (rain date Saturday, January 18, 2020) at Falmouth Heights Beach from 10:00 a.m. to 1:30 p.m. Please review and provide your recommendations by Thursday, November 21, 2019.

This request is scheduled for review/approval by the Board of Selectmen on Monday, November 25, 2019.

Thank you,

Diane

*Diane S. Davidson
Office Manager/Licensing
Office of the Town Manager and Selectmen
Town of Falmouth
59 Town Hall Square
Falmouth, MA 02540
diane.davidson@falmouthma.gov
(508) 495-7321*

Diane Davidson

From: Diane Davidson
Sent: Wednesday, November 13, 2019 5:02 PM
To: Boyd Demello - Falmouth Fire Rescue Department (boyd.demello@falmouthfirema.gov); Brian Reid; Bruce Mogardo (bruce.mogardo@falmouthma.gov); Diane Davidson (diane.davidson@falmouthma.gov); Gregg Fraser - Marine & Environmental Services (gregg.fraser@falmouthma.gov); James F. Grady - Department of Public Works (jim.grady@falmouthma.gov); Jeremiah Pearson (jeremiah.pearson@falmouthma.gov); Joe Olenick - Recreation Department (joe.olenick@falmouthma.gov); Julian M. Suso - Town Manager (julian.suso@falmouthma.gov); Mallory Langler (mallory.langler@falmouthma.gov); Mel Trott - Falmouth Fire & Rescue (mel.trott@falmouthfirema.gov); Melinda Rebelo; Pamela Marshall; Peter Johnson-Staub (peter.johnson-staub@falmouthma.gov); Peter McConarty - DPW (peter.mcconarty@falmouthma.gov); Rod Palmer - Inspectional Services (rod.palmer@falmouthma.gov); Scott McGann (scott.mcgann@falmouthma.gov); Sean Doyle; Tim Smith - Falmouth Fire Rescue Department (timothy.smith@falmouthfirema.gov)
Subject: Special Event Application - Gosnold Polar Plunge
Attachments: SE-2020-Gosnold Polar Plunge.pdf

To Special Events Working Group,

Attached please find an application from Gosnold, Inc. to hold its annual Polar Plunge on Saturday, January 4, 2020 (rain date Saturday, January 18, 2020) at Falmouth Heights Beach from 10:00 a.m. to 1:30 p.m. Please review and provide your recommendations by Thursday, November 21, 2019.

This request is scheduled for review/approval by the Board of Selectmen on Monday, November 25, 2019.

Thank you,

Diane

*Diane S. Davidson
Office Manager/Licensing
Office of the Town Manager and Selectmen
Town of Falmouth
59 Town Hall Square
Falmouth, MA 02540
diane.davidson@falmouthma.gov
(508) 495-7321*

TOWN OF FALMOUTH
BOARD OF ASSESSORS
PUBLIC HEARING NOTICE
FISCAL YEAR 2020
PROPERTY TAX ALLOCATION AND CLASSIFICATION HEARING

In accordance with the requirements of Massachusetts General Law Chapter 40, Section 56 the Falmouth Board of Selectman will hold a Fiscal 2020 Property Tax Classification Hearing Monday, November 25, 2019 at 7:30 p.m. in the Selectmen's Meeting Room of the Town Hall, 59 Town Hall Square, Falmouth MA.

The purpose of the public hearing is to consider the percentage(s) of the FY2020 tax levy to be borne by each class of taxable real and personal property.

All persons interested in the determination may appear and be heard at the time and place stated above.

Falmouth Enterprise: Friday, November 15, 2019

Account #: 2056

Legal Notices

**TOWN OF FALMOUTH
BOARD OF ASSESSORS
PUBLIC HEARING NOTICE
FISCAL YEAR 2020
PROPERTY TAX ALLOCATION AND
CLASSIFICATION HEARING**

In accordance with the requirements of Massachusetts General Law Chapter 40, Section 56 the Falmouth Board of Selectman will hold a Fiscal 2020 Property Tax Classification Hearing Monday, November 25, 2019 at 7:30 p.m. in the Selectmen's Meeting Room of the Town Hall, 59 Town Hall Square, Falmouth MA.

The purpose of the public hearing is to consider the percentage(s) of the FY2020 tax levy to be borne by each class of taxable real and personal property.

All persons interested in the determination may appear and be heard at the time and place stated above.

November 15, 2019



Town of Falmouth Assessing Department

59 Town Hall Square, Falmouth MA 02540

Telephone: 508-495-7380

Fax: 508-457-2511

Board of Selectmen

Cities and Towns that are certified by the Commissioner as assessing Property at full and fair cash value may elect to shift the tax burden among the major property classes within certain limits established by MGL Chapter 40, Section 56.

The Board of Selectmen must vote whether to establish different rates among classes of property or to continue to tax all classes at the same rate by adopting a factor of "1".

The adoption of different rates does not change the total property tax levy; rather it determines the share of the total levy to be carried by each class.

The options are as follows:

Split Tax Rate

Residential exemption (MGL 59:5C)

Small Business Exemption (MGL 59:51)

Open Space Exemption (MGL 59:2A)

Board of Assessors Action

Considering the analysis and fiscal impact, the Board of Assessors recommends to the Board of Selectmen vote a "Factor of 1" and reject the residential, open space and small business exemption.

The Board of Selectmen would vote the following motion if they decide to support the Board of Assessor's recommendation of a Factor of 1:

"Move that the Town of Falmouth continues to tax all classes at the same rate by adopting a factor of "1" and to reject the residential, commercial and open space exemption"



TOWN OF FALMOUTH ASSESSING DEPARTMENT

59 Town Hall Square, Falmouth MA 02540
Telephone: 508-495-7377
Fax: 508-495-7384

EFFECT OF SHIFT AT 150%

Class	% of Total	Value	Factor of 1		Shift	Tax Rate	
Commercial	5.33%	662,261,694	8.59	X	150%	12.89	\$8,533,241.93
Industrial	0.76%	94,223,900	8.59	X	150%	12.89	\$1,214,074.95
Personal Property	1.96%	243,506,810	8.59	X	150%	12.89	\$3,137,585.25
Residential	91.92%	11,418,879,547	8.59	X	96%	8.22	<u>\$93,825,651.50</u>
Open Space	0.03%	3,776,900					
TOTAL	100.00%	12,422,648,851					<u>\$106,710,553.63</u>
Total at factor of 1		12,422,648,851	8.59				\$106,710,553.63

EFFECT OF SHIFT AT 150% ON TAXPAYER WITH \$502,577 PROPERTY VALUE

CIP Classes		Tax at Single Rate		Rate	Classified	Change
502,577	8.59	4,317		12.89	6,478	\$2,161
Residential		Tax at Single Rate		Rate	Classified	Change
502,577	8.59	4,317		8.22	4,131	-\$186

VALUES	2020	2019	2018	2017	2016
TAX RATE	8.59	8.56	8.60	8.53	8.37
RESIDENTIAL	11,418,879,547.00	11,070,546,608.00	10,660,098,706.00	10,384,849,550.00	10,268,959,256.00
OPEN SPACE	3,776,900.00	3,416,600.00	3,331,200.00	3,251,100.00	3,232,100.00
COMMERCIAL	662,261,694.00	646,700,900.00	631,222,433.00	607,421,068.00	604,755,692.00
INDUSTRIAL	94,223,900.00	92,135,700.00	87,507,900.00	80,184,800.00	77,683,600.00
PERSONAL	243,506,810.00	237,702,590.00	236,231,350.00	244,381,580.00	239,818,381.00
TOTAL	12,422,648,851.00	12,050,502,398.00	11,618,391,589.00	11,320,088,098.00	11,194,449,029.00
GROWTH	1,093,012	783,727.00	953,225.00	932,538.00	1,007,407.00

**TOWN OF FALMOUTH
BOARD OF SELECTMEN
PUBLIC HEARING NOTICE**

As provided under Chapter 119, of the Code of Falmouth, a Public Hearing will be held in the Selectmen's Meeting Room, Falmouth Town Hall on MONDAY, NOVEMBER 18, 2019 at 7:30 PM to establish and promulgate fees, which are EFFECTIVE AS OF JANUARY 1, 2020 to be charged by Town Departments and agencies, except as provided by M.G.L., School Department, Planning Board, Library, Town Clerk, Town Treasurer and Collector of Taxes.

Megan English Braga, Chairman
BOARD OF SELECTMEN

The proposed changes in fees are listed below:

<u>DEPARTMENT</u>	<u>PRESENT FEE</u>	<u>PROPOSED FEE</u>
<u>BEACH DEPARTMENT</u>		
Hotel/Motel Sticker	\$10.00/day	\$15.00/day
<u>HEALTH</u>		
<u>Disposal Works Construction and Maintenance Permits</u>		
New single family residential construction and upgrades to septic systems	\$100.00	\$150.00
Replacement of individual non-leaching system components (septic tank, distribution box, piping)	None	\$50.00
New Commercial and multi-family septic systems	\$150.00	Delete
Commercial and multi-family septic systems <2000 gallons per day	None	\$200.00
Commercial and multi-family septic systems >2000 gallons per day	None	\$350.00
<u>Food Service Permits</u>		
Catering	None	\$75.00
<u>Mobile/Temporary Food Permits</u>		
Mobile/temporary food permit (1-4 days)	\$15.00/day	\$25.00/day
Mobile/temporary food permit (5 days or greater)	\$100.00	\$125.00
Mobile offering pre-packaged foods, frozen novelties & Non-potentially hazardous foods (non-TCS)	None	\$25.00
<u>Other Permits</u>		
Recreational camp permit	\$50.00	\$75.00
Swimming pools & spa permit	\$50.00	\$75.00
Motel Permit	\$25.00	\$50.00
<u>INSPECTIONAL SERVICES</u>		
<u>Other Inspectional Services Department Fees</u>		
Extension of time for permit work to begin	\$25.00	delete
Photocopies	\$.20/page	\$.05/page
Microfilm copies	\$1.00/page	delete
Map copies	\$1.00	delete
Computer printout copies	\$1.00	delete
Certified plot plan copies	\$1.00	delete
After hours and weekend inspection fee	\$150.00/inspection	\$225.00/inspection
<u>Plumbing Fees</u>		
After hours and weekend inspection fee	\$150.00/inspection	\$225.00/inspection
<u>Electrical Fees</u>		

After hours and weekend inspection fee \$150.00/inspection \$225.00/inspection

MARINE AND ENVIRONMENTAL SERVICES

Slips/Wharfage

(July & August: maximum stay is 30 nights) to (June, July & August: maximum stay is 30 nights)

Seasonal Slips (April 15th to Nov 15th)

Main Marina & Davis Floating Dock Section

Resident	\$157.00/ft.	\$161.00/ft.
Non-Resident	\$180.00/ft.	\$184.00/ft.

Charter Boat Section

Resident	\$157.00/ft.	\$161.00/ft.
Non-Resident	\$180.00/ft.	\$184.00/ft.

Green Pond

Resident	\$143.00/ft.	\$147.00/ft.
Non-Resident	\$164.00/ft.	\$168.00/ft.

Power Charges (seasonal slips all areas):

30 amp/110V (less than 30')	\$100.00/season	delete
30 amp/110V	\$300.00/season	\$415.00/season

TAX COLLECTOR

Demand fee	\$5.00	\$10.00
------------	--------	---------

Falmouth Enterprise: Friday, November 8, 2019

Account #: 2056

TOWN OF FALMOUTH
BOARD OF SELECTMEN

Meeting Minutes

MONDAY, OCTOBER 21, 2019
SELECTMEN'S MEETING ROOM
TOWN HALL

59 TOWN HALL SQUARE, FALMOUTH, MA 02540

JOINT MEETING – BOARD OF SELECTMEN – PLANNING BOARD

Present: Megan English Braga, Chairperson; Doug Brown, Vice Chair; Susan Moran; Doug Jones; Sam Patterson.

Planning Board: Patricia Kerfoot, Chairman, Paul Dreyer, Robert Leary, John Druley, Robert Leary, Jim Fox, Pamela Harting-Barrat; Charlotte Harris, Vice Chair.

Others present: Julian Suso, Town Manager; Peter Johnson-Staub, Assistant Town Manager; Tom Bott, Town Planner; Corey Pacheco, Assistant Town Planner.

1. Chair English Braga called the BOS open session to Order at 7 p.m. Planning Board Chair Kerfoot called the Planning Board meeting to order.
2. Pledge of Allegiance

BUSINESS

1. Transportation and Traffic

- a. Who is in charge of transportation policies and decisions?

The Planning Board noted that no one knew who made decisions on the policy level that other boards can make it happen.

Ms. English Braga noted there are lots of folks who touch upon this issue. Also working with the State, they have a level of approval as well. Setting the policies at the local level, the Transportation Management Committee has not been active for a long time.

Mr. Suso noted multiple committees represent many folks. The Transportation Management Committee ceased to function, but there are active committees such as Traffic Advisory Committee, Bikeways and Pedestrian, Historical Commission, and Disability Commission that enact decisions based on inquiries. Final decision making is the BOS function as the Roadway Commissioners.

Chair Kerfoot asked if a subcommittee who would investigate and report to the BOS various options and touch base with all the committees. Meet with those who have been assigned the priorities and see if they agree with those priorities.

Ms. Harris said the State has more say than anyone, the Cape Cod Commission regionally and they have their transportation subcommittee and authority over the money the State awards to them. They have a plan over multi year basis. Look at what they are planning from now through 2023, Falmouth is getting new signs while other communities are getting roads. The policies on the local comprehensive plan matches well with State and CCC policies, but the State has the money.

The BOS strategic planning, she brought up transportation a couple years ago. The BOS were looking for coordination where look at transportation issues by project; there's policy development that developers come to the Transportation Committee so there is a Town wide policy and coordination. Congestion slows and hampers people from their jobs. Great idea to have a body that coordinates all these things.

Mr. Johnson Staub asked about the issue being so massive, is it policy formation that is the gap, capital planning, and regulation of traffic. He suggested narrowing the scope so they can address it.

The BOS noted it makes sense to advertise openings and reappoint the Transportation Management Commission because it is charged with all that is being discussed. This commission can advise the BOS and have the ability to work with boards and relevant committees, and then make recommendations. The charge of the commission was reviewed. There is a belief that the commission disbanded because they would make a recommendation that would not then be adopted.

The BOS and Planning Board could propose an initial charge to get feedback on and be more directive so it is something relevant and they have been tasked to do.

The practical implementation could benefit looking at development through transportation management. It is crucial to look at the implication on traffic when large developments are planned.

Mr. Brown suggested considering 5 members instead of 7. They need to be able to interact with the DPW as well.

Chair English Braga noted there would be 2 at large; but they went with 7 to have the at large outweigh the appointed.

Mr. Dreyer thinks the committee is important. Mentioned Main Street wayfaring for certain vehicles such as delivery trucks, full dump trucks, large boats. Also a timing issue, possibly restrict deliveries. The committee will need technical expertise as well.

The makeup of the commission was discussed; the BOS has the ability to appoint nonvoting members of Town Staff to be professionals involved.

Discussed phasing the projects and choosing two topics to charge the commission with such as shuttle and offloading materials on Main Street.

Taking private streets was discussed and Mr. Suso noted that Mr. McLaughlin oversees it and works with Mr. McConarty; they have developed a list and streamlined the standards. It is a long list, when they get inquiries they are directed how to get in the queue. More money is needed for it. Challenge is limited in how many roads they can take care of; they would need to contract the work out.

Tom Bott noted that whether a road is public or private, they be developed to that standard.

The BOS noted there is a public education component as well.

Mr. Suso said they will update the BOS in the next couple months.

Grant Walker, Philadelphia St., Town Meeting Member, asked the BOS to consider the Energy Committee, a number of people with great expertise regarding grants and other programs.

b. Complete Streets

The packet includes information from Ray Jack. The Town has not adopted this as of this time.

Mr. Jack noted this was a State initiative, has wide support. Three tiered program which includes having a policy in place, acknowledged, voted, and signed by the Town Manager. There are 10 elements of complete streets listed in the packet. The draft as written meets those requirements. Once accepted by the State it makes the Town eligible for other programs. It is a complex process,

when prioritizing it looks at all transportation forms. Then constructability of the projects, Town would need to submit at least 5 projects to the State. The Town's commitment once adopted, it is about transportation, Town wide way finding, trying to take a lot of complex issues and incorporate into all planning initiatives. Mr. Jack's draft would be what the BOS would consider adopting. Complete Streets program is not rigid, recognizes each situation is complete. There is an exemption where if the costs of the overall project is high in order (20%) to incorporated complete streets, than the Town can refuse to do that. Grant money will not be there very long; allocated \$16 million overall, eventually they will run out of money. State officials have said not to expect money to come back. Embarking on an ADA transition plan: pathways, signalization review for ADA compatibility. An overriding theme will be the ADA component. For program initiation and implementation would not require additional staffing, would engage a consultant that the Town would pay. Chapter 91 has \$1.2 million cap on reimbursement, different for each community; big element is the actual road miles the Town needs to maintain. This is what the Town has been working with along with supplemental funds in the plan.

Mr. Jack noted the Transportation Improvement Program run through the county; Cape Cod is one MPO. Federal money into the State for transportation gets channeled out through the MPOS; local transportation projects. Projects have gotten larger, various projects are in various phases.

Main Street project included as a whole, including Phase 3.

Mr. Jack noted the study did not look at the curb cuts, this needs to be reviewed. This would be free; if changing front of the landscape to benefit the Town, the cost is incorporated into the master plan.

Mr. Bott and staff have been to training on this topic.

Mr. Druley asked if it applies to private roads? The BOS would grant relief. Whatever regulations in place, they will review the regulations for complete street construction on any street.

Route 28 curb cut on the corner where the bank is, the one involved with the intersection seems like a problem. Mr. Jack noted that was a State project intersection, those curb cuts would have to go through zoning if there were to be any changes. Mr. Bott noted that the Planning Board looks at opportunities to get rid of curb cuts.

- c. Truck deliveries on Main Street; diversion of large vehicles from Main Street to Jones Road

Need to ask the businesses and know the impact on them before the BOS takes a position. The committee can work on getting that information.

Common Carrier plate is allowed to do park in the street to deliver.

- d. Policies regarding parking: parking lots, shuttles

Mr. Leary reiterated the need for shuttle and parking lot. Idling is not good for area. This has been done in other communities, ex. Provincetown. FHS parking lot has buses parked, they should be utilized. He would like the committee to look at cost, staffing, equipment, charges.

The CCRTA provides the shuttle in Provincetown.

Mr. Bott presented slides via PowerPoint and Town meeting articles regarding purchase of land on Spring Bars Road and near the Town Common.

According to Mr. Suso, the BOA wants to keep the property together, so seeking Town Meeting approval for lease or purchase. Spring Bars Road would provide parking lot within walking distance of downtown attraction and beaches.

Mr. Suso reached out to CCRTA and will meet with Tom Kerr to discuss shuttle bus service and potential for adding these two sites to service.

Town Meeting Articles in November, hope to move forward if approved.

Article 11 regarding the BOA parcel, should the Town consider purchasing the entire property for parking and use of the Town building. Mr. Suso noted with amendment on Town Meeting Floor, could expand it to purchase of buildings and real estate.

Mr. Fox said you would have to take the entire bank, any expansion on that parcel you would need the back area for the septic. Spring Bars Rd., long term vision of walkways down to the water and having street face with nothing but parking is not for designing for people, it is designing for cars which is older type planning.

Mr. Suso commented that this could happen in a year, development of Davis Straights is up to 10 years out, utilizing something there that can serve the Town's short term needs.

Also discussed was using trolleys to pick up passengers and take them to the beach and then their hotel, this could be done quickly. Mr. Leary likes the idea of leasing the land.

- e. Current Status: Falmouth Transportation (Management) Committee

Traffic Advisory Committee

2. Housing

- a. 40R Smart Growth Zoning Program and Land use as it effects transportation and housing

Mr. Bott provided a PowerPoint presentation. 40R is a complement to Form Base Code, under which uses are not so critical it is how the form meets function. Looking for a lack of uncertainty. Article 3 request to enlist consultant to help analyze Form Based Code, which is pictures and graphics. Form Based Code is zoning, if affirmative vote at Town Meeting, then hire consultant to write the code that will go back to Town Meeting for approval. 40 R can happen without Form Based Code and vice versa.

40R is a Housing Bylaw, voluntary, Town can decide where to do affordable housing and how they want it to play out. Various densities. Single Family dwelling 8 units per acre; 2-3 family 12 units per acre, up to 20 units per acre for multiple family. Affordability requirement of 20%. Direct funding from the State as an incentive payment based on District size. For every unit you build, State provides \$3,000 per unit density bonus payment to the Town. Eligibility for school cost reimbursement money (chapter 40S).

Mr. Jones noted the 40R is not limited to use with Form Base Code. Mr. Fox noted that Form Base Code has not adopted 40R. Mr. Bott noted that moving forward with Form Base Code, article on town meeting floor to fund the Form Base Code. They are not mutually exclusive.

Mr. Johnson Staub explained that in both cases, these are not adopted for the whole town all at once. You pick a number of parcels and apply FBC or 40S to a specific place. Mr. Bott noted looking at this in the Davis Straights area, an area of concentrated development.

At least 20% of the entire district must be affordable.

Mr. Bott reviewed the process, consult with DHCD, and then to Town to review with BOS and other committees. The town reaps benefit of private development by receiving the incentive payments.

The development has to occur within three years or they ask for the incentive payment back.

The Town typically subsidizes about \$50-60,000 per unit, so the relative value of the incentive payments is low.

Mr. Bott reviewed the process and how to participate.

Ms. Moran would like the community to be walkable to home and work.

Mixed use development with storefronts/offices in the front with higher density housing behind that.

Mr. Leary noted with Form Based Code, not limited to what zoning allows at this time, could have other higher wage jobs that go into the mixed use development.

Under 40R there is a 40S compliment of School Cost Reimbursement, formula for additional funding to address impact on schools. Max incentive payment is \$600,000 that is an annual payment.

Reviewed other Town projects around the State.

Mr. Fox asked if restrictions on 40R if accept the 600k payment. 51% of the area developed must be for housing. May put together mix of units. If you do a 40B, having conversations with the Sate that they have done their housing plan. No provision under 40R that says how many bedrooms per unit, as 40B does.

The BOS has talked about affordable housing, greatest crisis is cannot support new, younger folks to live here; there are not enough rentals or sales on the market even for people who have the funds.

Mr. Jones likes the 40R, puts more control in the Town's hands than the 40B does.

Ms. Harris noted the reason we have no affordable housing because as a community we do not want affordable housing. It was community preservation money and bonding for open space; how much do you want for affordable housing.

Town needs influx of young folks who are raising their families here in Town. Need to have a range of living situations.

Mr. Druley said they are working on an apt bylaw, needs to be 100% housing, done by right in the districts the Town wants them in and 100% of units would count.

Mr. Johnson Staub noted the housing production plan recommended working on zoning, based on how the zoning initiatives move forward and money able to put in it will tell us where our priority is with affordable housing. A concern about bonding, may be about the capacity to manage the outflow of money. Zoning could stimulate private housing and development.

Mr. Brown is interested in the redevelopment plan to get a lot of units and not have it be a monstrosity.

Barratt said cannot expect developers to come in and build and say it is one of the worst towns to build in. Why not take a structure that exists and let developer redo it to make multi family units. Suggested a vacant area nursing home may be housing for summer workforce.

The appeals process, under 40R appeal process requires the appellant to post a bond for potential damages for what you're appealing. Davis Straights Zoning will be Form Based Code and 40R is the vehicle for that. Work out best when there is a developer looking at the property, need to have that outreach to developers.

Mr. Druley noted the Planning Board is looking at different venues to increase housing in Town, which will need to be approved by Town Meeting.

The community needs to be on board for these projects.

The Housing Summit defined who these people are who need affordable housing, including teachers, fire fighters, and police officers.

Long range planning is needed, but also need to look at existing housing. Consider accessory apartments, basement apartment egress issues become expensive. Could there be some program to provide low or no interest loans for accessory apartments.

Mr. Fox noted some local banks will take the accessory apartments and the bank will fund it.

Mr. Bott noted home program to help with low interest loans that you don't have pay back until you sell the house, up to \$50,000, 0% interest, and pay it back when you sell the house.

Local housing groups have gone in front of the Planning Board with land swaps , he would like to see groups like that purchase existing housing for sale, funding existing housing stock, it may take some pressure off the fact that a lot of housing is being bought by second home owners.

Chair English Braga noted they had talked about in the new year picking one of these things to brainstorm and coming out with a product that moves the process forward in a way that allows various entities working on these issues to have a clearer path forward.

Ms. Kerfoot noted looking at rezoning for the Davis Straights reset program. Salt Sea Apartments, if rezoned, could get more apartments there for elderly. Maybe go to second story with younger people living on upper floors. That may be able to be done more rapidly to make a change in this Town. Housing authority owns the apartments. The reset will take ten years or more.

On rare occasions they do tax takings, usually on undevelopable land.

Mr. Brown would like to learn what the current conditions of the housing authority inventory and how many are vacant due to disrepair. Any opportunity that may be there. Ms. Kerfoot would like to be notified so that they can continue the conversation. Could be at a future joint meeting.

3. Other

4. Adjourn

Mr. Jones motion to adjourn the BOS meeting at 9:40 p.m. Second Mr. Patterson. Vote: Yes-5. No-0.

Mr. Dryer motion to adjourn the Planning Board meeting. Second Mr. Leary. Vote: Yes-8. No-0.

Respectfully Submitted,

Jennifer Chaves
Recording Secretary

TOWN OF FALMOUTH
BOARD OF SELECTMEN
Open Session
Meeting Minutes
MONDAY, NOVEMBER 4, 2019
SELECTMEN'S MEETING ROOM
TOWN HALL
59 TOWN HALL SQUARE, FALMOUTH, MA 02540

Present: Megan English Braga, Chairperson; Doug Brown, Vice Chair; Susan Moran; Doug Jones.

Absent: Sam Patterson.

Others present: Julian Suso, Town Manager; Peter Johnson-Staub, Assistant Town Manager; Steve Rafferty, Water Superintendent; Peter McConarty, DPW Deputy Director; Ray Jack, DPW Director.

1. Call to Order by Chair English Braga at 7 p.m.
2. Pledge of Allegiance
3. Discussion/Update on Water Division Asbestos Concrete Pipe Issue

Ms. English Braga noted this meeting is to get more information, update, and give the public the opportunity to ask questions about the asbestos pipes heard about at last weeks' BOS meeting from Mr. Heylin.

Steve Rafferty, Water Superintendent, stated the asbestos pipe is part of the distribution system. The DEP had a system developed in 2015 and reissued guidance in July 2019. They have been following guidelines in cutting and removing pipe, but not in the disposal or storage, they are addressing that now. The public has not been at risk. 30% of the Town pipes are asbestos, the rubber gasket fails in some pipes, the pieces have been stockpiled in a cage, and some have been placed in plastic wrapper. On Thurs 10/30/19 he met with a DEP representative about how to dispose of the pipe already stored per DEP. They are not to be stored for more than 30 days. They need to hire an asbestos removal contractor, who will remove the material to a landfill licensed to take waste containing asbestos. The Town is forming procedures for this going forward. There are specific regulatory requirements for working around asbestos. In 2015 the DEP guidance document was issued; asbestos cement pipe that is in service is nonfriable because it is moist. Supervisory and work leaders are trained and have been furnished appropriate asbestos masks. They will extend training to all field staff in the Water Department.

Respiratory masks have been provided; the issue where we have fallen short is with the storage and disposal of the pipe. The complaint lodged had to do with storage of the pipe.

Mr. Jones noted the biggest problem of asbestos is getting into the air, Mr. Rafferty agreed.

According to Mr. Rafferty, the limitation on inhalation of asbestos is 10 fibers per liter of air. The EPA noted the value for asbestos in water, is 7 million fibers in a liter of water. It is the respiratory issue.

Mr. Brown noted it looked like small piles of material stored and asked what they are from. Mr. Rafferty explained that when they fix asbestos pipe, they get a length up to 36", often it is the collar that is removed due to a leak.

Ms. Moran asked Mr. Suso about going forward in capital plan of replacing roads on Route 28; there are water main breaks all over town. Will it affect the budget, does it make sense to expedite replacement or continue reacting to breaks and transport the material within 30 days.

Mr. Suso noted there is a program going forward for water main replacements, they on Main Street now, the oldest pipes, this will continue through Town over time. As the breaks occur, 40% of pipe is the asbestos cement base, which is not unusual because it is so common throughout America. When there are breaks, they need to be properly handled and the concern is just storage and disposal, not the handling. Standard operating procedure will be done going forward.

Mr. Jones noted the asbestos pipe is not the problem. Mr. Rafferty noted as part of the Main Street water main replacement project, consulting engineer is evaluating all piping in Town looking at a range of factors to develop a priority list for replacement and/or upgrading. Factors include Frequency of breaks, how critical is the pipe to the area, how many directions does it come from, and what is it serving. Expecting complete report by the beginning of next year.

Ms. English Braga noted two things that need to be answered are how did we get there and what are the concrete steps Town will do to address it.

Mr. Rafferty explained how we got here is a tough question, there is a culture in the water industry, the people who work with the asbestos cement pipe are concerned with handling and cutting it, but not concerned about stockpiling in safe location. The guidance documents, until 2015, and direction by DEP was that you do not have to build a plastic vented structure over every water main break because it is not friable. Guidance document in 2015, began the condition that employees can take course an OSHA 8 hour asbestos course that made them competent to determine if break is nonfriable, which dictates what you can do with the asbestos pipe.

The pipes were inside a fenced area, locked gate, but that does not meet requirements for storage and handling of the pipe. They have a plan, are having a contractor come out and will move forward with the plan to package it up and remove it.

The Main Street project includes disposal of pipes that may have asbestos, the contractor is responsible for doing the work safely, there are a number of locations where they need to tie the pipe to side street tie ins.

Ray Jack, DPW Director, accepts full responsibility and is moving forward implementing steps to fully establish who does what and when. The training includes those procedures. To ensure this is handled appropriately, no pipe storage will be there unless supervisor authorizes it, pre inspection by an individual competent person on site crew leader or supervision specific to AC pipe, proper removal and encapsulation at the sight, proper storage, and a competent person trained in AC pipe removal will do a post inspection to make sure there are no AC components around and that the site meets the requirements. Then to old shop area at Long Pond facility, he may relocate the storage to another site such as main garage area at Gifford Street, where there will be better security and greater oversight. Field Supervisor/Assistant Field Supervisor will do site inspection at the facility after repairs are completed to ensure storage is appropriate and monthly inspection of the facility to determine if any AC pipe components are there. An inventory will be maintained along with a schedule for removal to ensure removal.

Comments:

Mr. Heylin asked if Mr. Jack and Mr. Rafferty been trained in asbestos removal and/or attended the 8 hour OSHA course?

They have not.

Mr. Heylin asked if the breathing apparatus, when purchased, can public see receipt, what was purchased so we know what is being used?

In 2015 had facemask respirator being used, within the last year OSHA regulations are applicable to municipalities now, so they issued new respirators to all employees in February 2019.

Mr. Heylin noted each pipe is 24-36", how many breaks were in that pile?

Mr. Rafferty does not know how many breaks were in that pile, he can go back to work order system to download number and provide that to the BOS.

According to Mr. Rafferty, in 2015 when the guidance document came out, the Town notified the DEP of their procedures and storage yard. Since then, there is no history of contact with the DEP. The forms are available from the guidance document and will be used by the Town going forward.

Getting permission from the EPA is required per the guidance document.

Mr. Heylin asked if other equipment was used? They should be wearing full bodysuits, when they are there and cutting the pipes. Mr. Heylin said once cut the pipes become friable. What saw are they using to cut the pipes?

Mr. Rafferty said is not in DEP guidance document, but is addressed in the OSHA regulations for working with friable materials. During the cutting of the pipe, possible fibers may become loose, but once cut it does not become friable. Guidance document says once cut, you bag it.

Ms. English Braga asked if guidelines speak to people bringing fibers home. Mr. Jack noted procedures for cutting the pipe require it be wetted with water, other agent like soap, when being cut so it does not create airborne fibers. According to Mr. Jack, the Town is following guidelines with what workers are to wear when doing this work.

Mr. Heylin is concerned that people will have mesothelioma due to asbestos being taken home on their clothing. This could occur if workers did not have full nonporous body suits on and have asbestos friable from cutting. If workers are not given the proper equipment, it is possible others were exposed to it.

According to Mr. Heylin, the gate to the storage area was only closed July 4 weekend, prior to that it was always open. The fenced in area inside the old pumping station was not always closed.

Mr. Rafferty noted to his knowledge the area has been locked, it is required the facility be secured.

Mr. Jones noted he was up there after potluck and it was locked.

Mr. Brown noted OSHA safety training makes it clear the worker is the person to look out for his or her own safety and put ownis on the employee to do the work safety. If the worker is concerned, the employee needs to bring up their concern to their employer.

Mr. Rafferty is putting crew leaders and supervisors through the training; they will eventually extend the training to all workers.

Mr. Heylin said that in an article, it said the pipes came from New Years Eve water break, he would like to see the documentation for that break, along with equipment and timing to see it all lines up. He is worried about the Town workers and their families.

Asbestos in drinking water has negative effects, Ms. English Braga asked about the levels and it is 7 million parts per liter. Mr. Heylin asked if the level of asbestos has been tested in the drinking water.

Working conditions are the main concern.

Mr. Heylin noted his follow up questions:

2015 Mr. Rafferty spoke to the DEP, there has been no communication since. Has there been communication to the DEP regarding any of these breaks?

Mr. Rafferty answered no.

Mr. Heylin asked if the pipes were from the New Years Eve water break, they ordered ventilators in February and prior they were using dusk mask. Dust masks do not protect worker's lungs. Prior to the February order, were they using dust masks?

Mr. Rafferty answered it is unknown whether they were using respirators or dust control prior to February 2019 and whether they did or did not meet the requirements. In February 2019 they got all new hardhats, equipment to make sure it was compliant at that point, an effort led by Peter McConarty. He can look at what was previously bought.

Mr. Heylin asked if there were any of the workers doing this work who were not OSHA certified?

Are employees at every break equipped with nonporous full work suits?

Mr. Rafferty answered that Tyvek (phonetic) suits have not been utilized and is a question that needs to be posed to the DEP on whether the folks working with the pipe are required to wear these; it is not in the guidance document. If removing insulation on boiler, you need to wear the suit.

Mr. Heylin asked how the BOS and Town Manager will react and approach the situation.

Chair English Braga noted the equipment was updated in February 2019, they will double check about the suits, and make sure they are in compliance with the DEP. They will make sure the Town is in full compliance. The DEP is regulatory agency, if they find the Town has not done what they should, there will be consequences for the Town. Some information they will have to get back to Mr. Heylin about.

Mark Finneran, Precinct 6, commented this has been standard operating procedure for 20 years, what happens when the water dries that has the particles in it? Does it evaporate and then the stuff becomes a dangerous carcinogen again?

Chair English Braga asked if we test for asbestos in water supply?

Mr. Rafferty said they should not be concerned, but testing for asbestos fibers in water is not routine sample communities do because historically testing has not found it at a level to be concerned. Asbestos pipe is lined to protect the water going through the pipe from the structure of the pipe. There is a sampling document the DEP gives, he does not know when the DEP requested asbestos. According to the schedule, they would ask for it to be done in 2022. They should probably arrange to do the testing.

Mr. Jones asked if asbestos from these pipes may enter our water supply.

Mr. Rafferty noted they are sitting over the top of the hill, when it rains, water goes towards Route 28, not Long Pond. Filtration plant would capture a lot of the fibers.

Mark Finneran noted his understanding is that when respirators were purchased, the seller has to fit test every mask to the employee and reinspect/test on a yearly basis. Has this been done?

Mr. McConarty said that in February when done, they did PPE charts and fitted for everything they would use, they were fit tested in the office by superintendents of the divisions. The are the same respirators the highway dept uses when cutting concrete.

Scott last name unknown, E Falmouth, works for Coast Guard Health and Safety, there is an annual fit test for respirators. Staff using the respirators need to make sure the equipment fits, ultimately the work supervisors and all involved.

The BOS will get back to the public on information Mr. Rafferty and Mr. Jack will be following up on.

Mr. Jones asked for people to see something and say something, in this case the pictures were reportedly taken in January 2019, but not acted upon until recently.

4. Other Business

5. Adjourn

Mr. Jones motion to adjourn at 7:57 p.m. Second Ms. Moran. Vote: Yes-5. No-0.

Respectfully Submitted,

Jennifer Chaves
Recording Secretary

DRAFT

TOWN OF FALMOUTH
BOARD OF SELECTMEN
Meeting Minutes
TUESDAY, NOVEMBER 12, 2019

LAWRENCE SCHOOL
113 LAKEVIEW AVENUE
FALMOUTH, MA 02540

ROOM 105

Present: Megan English Braga, Chairperson; Doug Brown, Vice Chair; Susan Moran; Doug Jones; Sam Patterson.

Others present: Julian Suso, Town Manager; Peter Johnson-Staub, Assistant Town Manager; Frank Duffy, Town Counsel.

Chair English Braga called the session to order at 6:30 p.m.

Administrative Orders

1. Vote to Approve Conservation Restriction for 102 Chapoquoit Road – Buzzards Bay Coalition and The 300 Committee
Mr. Suso noted this came in from The 300 Committee to request, this is time sensitive given a closing and standard.

Mr. Patterson motion approval. Second Ms. Moran. Vote: Yes-5. No-0.

2. Acting as Trustees of the Falmouth Affordable Housing Fund, authorize approval of commitment letter for award of \$650,000 to Gifford Workforce Housing LLC for 10 units of affordable housing to be constructed at 591 Gifford Street

Mr. Johnson Staub explained this is a project the BOS voted to provide funding for in May 2019, this is the commitment letter that details the disbursement schedule. Motion recommended by special counsel in the packet. No change in the amount, these funds were committed and it is money in hand.

Mr. Jones motion to approve the motion as printed in the packet. Second Mr. Patterson. Vote: Yes-5. No-0.

3. Vote to Approve Letter of Support to MBL Semester in Environmental Science Program to apply for grant funding

According to Mr. Suso, the letter in packet regarding a response to a request from WHOI for support of a private grant they are seeking and this supports the work the students are doing, including water quality. This is not a grant to the Town, it is to the MBL, just a letter of support of the BOS.

Mr. Patterson motion approval. Second Ms. Moran. Vote: Yes-5. No-0.

4. Approve Request for Change of Venue from Nobska Light to Peg Noonan Park for the Chamber of Commerce Holidays by the Sea Caroling on Friday, 12/6/19

Michael Kasparian vetted, in touch with Friends of Nobska Light and the Village Association, this does not conflict with other weekend activities.

Ms. Moran motion approval. Second Mr. Patterson. Vote: Yes-5. No-0.

Business

1. Discuss/Vote Motions and Reports to Town Meeting as Needed

Article 9

The BOS discussed Article 9, acquiring option to purchase of land in the northwest section of Town. Ms. Moran believes this is premature since the BOS has since decided to create a committee to look at all fire services across Town and allow citizens to look at the report and recommendations. She would like to revote this.

Ms. Moran motion to reconsider the recommendations. Second Mr. Brown. Vote: Yes-3. No-2. (Mr. Jones and Mr. Patterson.)

Ms. Moran motion to indefinitely postpone in order to wait for the citizens' committee input. Second Mr. Brown.

The BOS discussed the wording of the article, it speaks specifically to a northwest fires station, new information from the consultant indicates that it may not be the recommendation geographically and the citizens' committee recommendation may be different. The specificity was what was at issue. Specificity of article is what bothers her.

Mr. Suso noted the Finance Committee met this evening at 6 p.m. and voted to indefinitely postpone this article.

The BOS made no recommendation.

Article 21

New version circulated that's not in book, Sandy (last name unknown) passed out the new version that was also passed out at precinct meetings and noted that the notes in capital letters are the changes. Chair English Braga said the words that made it binding article were struck from the article.

Mr. Patterson motion to reconsider Article 21. Second Ms. Moran. Vote: Yes-5. No-0.

Mr. Patterson motion to change the new main motion recommendation as amended. Second Ms. Moran. Vote: Yes-5. No-0.

Article 23

Mr. Brown wants to revisit as a vote.

Ms. English Braga motion to reconsider their vote because there is a lot of work to do to see if it is a

Mr. Jones motion to put forward the BOS point of view that they are in support of the concept of this article. If new language were brought to the BOS tomorrow, it could be potentially re-voted. Second Mr. Patterson. Vote: Yes-5. No-0.

No need to vote on it now, possibly address it tomorrow night.

2. Discuss, Consider and Vote Date for April 2020 Town Meeting

Ms. English Braga noted that Mr. Suso suggested Town Meeting begin on 4/14/19, but Representative Vieira may not be available.

Ms. Moran motion for Town Meeting to begin on 4/13/19. Second Mr. Patterson. Vote: Yes-5. No-0.

3. Other Business As Needed

Mr. Jones motion to adjourn at 6:56 p.m. Second Ms. Moran. Vote: Yes-5. No-0.

Respectfully Submitted,

Jennifer Chaves
Recording Secretary

DRAFT

TOWN OF FALMOUTH
BOARD OF SELECTMEN
Meeting Minutes
WEDNESDAY, NOVEMBER 13, 2019

LAWRENCE SCHOOL
113 LAKEVIEW AVENUE
FALMOUTH, MA 02540

ROOM 105

Present: Megan English Braga, Chairperson; Doug Brown, Vice Chair; Susan Moran; Doug Jones; Sam Patterson.

Others present: Julian Suso, Town Manager; Peter Johnson-Staub, Assistant Town Manager; Frank Duffy, Town Counsel.

1. Chair English Braga called the session to order at 6:30 p.m.
2. Discuss/Vote Motions and Reports to Town Meeting as Needed

The BOS discussed the proposed new language for Article 23. According to Attorney Duffy, now that the article is on the warrant, the BOS may make the main motion during Town Meeting and recommended the BOS check with the moderator on whether he will allow the BOS to make the main motion. If the moderator does not authorize this then the petitioner could move his article and the BOS could amend the article with this language. The text addresses concerns the BOS had about including zoning and other issues.

Mr. Jones motion that, with the authorization of the Town Moderator, the BOS make motion during Town Meeting to edit the language in the motion to begin "The Town vote to authorize the BOS to negotiate a lease of the former senior center..." Second Mr. Brown. Vote: Yes-5. No-0.

Mr. Mustafa thanked the BOS.

3. Other Business As Needed

Ms. Moran motion to adjourn at approximately 6:40 p.m. Second Mr. Jones. Vote: Yes-5. No-0.

Respectfully Submitted,

Jennifer Chaves
Recording Secretary

TOWN OF FALMOUTH
BOARD OF SELECTMEN
Meeting Minutes
THURSDAY, NOVEMBER 14, 2019

LAWRENCE SCHOOL
113 LAKEVIEW AVENUE
FALMOUTH, MA 02540

ROOM 105

Present: Doug Brown, Vice Chair; Doug Jones; Sam Patterson.

Absent: Megan English Braga, Chairperson; Susan Moran.

Others present: Julian Suso, Town Manager; Irie Mullin, Associate Town Counsel.

1. Vice Chair Brown called the session to order at 6:30 p.m. There is no business before the BOS. The BOS will be meeting next two Mondays.
2. Discuss/Vote Motions and Reports to Town Meeting as Needed
3. Other Business As Needed

Mr. Jones motion to adjourn. Second Mr. Patterson. Vote: Yes-3, No-0, Absent-2.

Respectfully Submitted,

Jennifer Chaves
Recording Secretary

REPORT

TO: Board of Selectmen

FROM: Julian M. Suso JMSuso

DATE: November 22, 2019

- The Board will be taking up several housekeeping items at your upcoming Monday, final business meeting for the month of November, including Annual License Renewals for 2020. Further included for your review/consideration are the proposed Shellfish Regulations for the coming winter season (2019-2020). You are also asked to authorize a \$50,000 allocation from existing AFCEE funding for the Town's aquaculture/nitrogen removal program which is now well underway.
- Selectmen will host your annual Tax Classification Hearing as well as continuing your hearing on proposed fee changes for the coming calendar year.
- Elise Leduc of the Woods Hole Group will be giving a presentation/update on the Vulnerability Assessment which has been underway for some time. As you know, there is considerable complexity involved in this analysis and limited time will only allow a summary presentation and questions from the Board.
- As a reminder, Town Hall and Town administrative offices will be closed on Thursday, November 28 and Friday, November 29 in observance of the Thanksgiving Holiday.
- As a further reminder, Falmouth's traditional "Holidays by the Sea" event begins on Friday evening, December 6, including the Saturday evening downtown holiday stroll and lighting of the Town Common on December 7, and culminates with the Annual Christmas Parade on Sunday, December 8.
- Work continues internally on the proposed FY2021 Budget. As you know, per our protocol, this proposed budget will be transmitted to Selectmen later in December for your review and consideration at the first two meetings in January.
- The two scheduled business meetings for the month of December are Monday, December 9 and Monday, December 16.