

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF FISH AND GAME
CONSENSUAL ORDER OF TAKING
OF
CONSERVATION RESTRICTION AND CONSERVATION EASEMENT**

The Commonwealth of Massachusetts, acting by and through its Department of Fish and Game and its Division of Fisheries and Wildlife under the power and authority conferred by Section 15 of Chapter 15 of the Acts of 1996, Sections 2(26) and 8 of Chapter 21A, Chapter 79, Sections 31, 32, and 33 of Chapter 184 of the Massachusetts General Laws, as amended, acts in amendment thereof or in addition thereto, and any and every other power and authority to it granted or implied and for the purposes of said acts and of acquiring in perpetuity land and interests in land for fish and wildlife conservation, natural habitat protection, and associated public recreation consistent with and subject to Article XCVII of the Amendments to the Constitution of the Commonwealth of Massachusetts, does hereby take IN PERPETUITY AND EXCLUSIVELY FOR CONSERVATION PURPOSES, the following Conservation Restriction and Conservation Easement ("Conservation Restriction") on land located in the Town of Lee owned by Owner of Lee, containing approximately 4.3 acres of land located at 1235 Pleasant Street, Lee, Ma ("Premises"), which Premises is more particularly described in Exhibit A and shown in the attached reduced copy of a survey plan in Exhibit B, both of which are incorporated herein and attached hereto.

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

The terms, conditions, and restrictions of this Consensual Order of Taking of Conservation Restriction and Conservation Easement (“Consensual Order of Taking”) shall be binding upon and inure to the Commonwealth of Massachusetts acting by and through its Department of Fish and Game, 100 Cambridge Street, 6th Floor, Boston, MA 02114, and its Division of Fisheries and Wildlife, 1 Rabbit Hill Road, Westborough, MA 01581 (“Commonwealth” or “the Commonwealth”), and Town of Lee, whose business address is 32 Main Street, Lee MA 01238, and their respective successors and assigns (“Owner” or “the Owner”).

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

I. PURPOSES

This Conservation Restriction is defined in and authorized by Sections 31, 32, and 33 of Chapter 184 of the Massachusetts General Laws and otherwise by law. The purposes of this Conservation Restriction (“Purposes”) are to ensure that the Premises will be maintained in perpetuity in its natural, scenic, or open condition for fish and wildlife conservation, native habitat protection, management for biodiversity protection, associated public outdoor recreation, including hunting, fishing and trapping, and other conservation uses consistent with the spirit and intent of and subject to the protections of Article XCVII of the Amendments to the Constitution of the Commonwealth of Massachusetts, to prevent any use of the Premises that will impair or interfere with the Conservation Values (as defined below) thereof, and to allow public access for the enjoyment of the wildlife and open space resources of the Premises as specifically provided for herein.

The Conservation Values protected by this Conservation Restriction include the following:

- Open Space. The Premises contributes to the protection of the scenic and natural character of the Housatonic River and the protection of the Premises will enhance the open-space

value of these and nearby lands. The Premises abuts = ±13 acres owned by the Town of Lee and conserved by a Declaration of Permanent Restriction.

- Massachusetts Endangered Species Act Listed Species. The Premises includes areas designated by the Division of Fisheries and Wildlife acting by and through its Natural Heritage and Endangered Species Program (NHESP) as “Priority Habitats of Rare and Endangered Species”, the protection of which aligns with NHESP’s wildlife and habitat protection objectives. These objectives include protecting the state's wide range of native biological diversity and a particular focus on species officially listed as Endangered, Threatened, or of Special Concern in Massachusetts. Program designations within the Premises include: Wood Turtle (*Glyptemys insculpta*), Creeper (*Strophitus undulatus*) and Longnose Sucker (*Catostomus catostomus*).
- Public Access. Public access to the Premises will be allowed, including hiking, wildlife viewing, fishing, trapping, and hunting. This parcel in particular, being located along the Housatonic River, will provide cartop-boat and improved fishing access to the river.
- Biodiversity. The Premises includes areas designated as BioMap Aquatic Core Habitat, Wetland Core Habitat and Rare Species Core Habitat, as well as Critical Natural Landscape Aquatic Core Buffer and Wetland Core Buffer as defined by the Massachusetts Natural Heritage and Endangered Species Program. BioMap was first implemented in 2001 and is periodically updated. It is designed to guide strategic biodiversity conservation in Massachusetts 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. BioMap is also designed to include the habitats and species of conservation concern identified in the State Wildlife Action Plan.
- Wetlands. The shallow marsh and shrub swamp wetlands on the Premises provide valuable habitat for a diverse array of wildlife species as well as provide the many other public

benefits of wetlands protection recognized by the Commonwealth of Massachusetts (Section 40 of Chapter 131 of the Massachusetts General Laws).

- Rivers/Streams. The Premises has approximately 750 feet of frontage along the Housatonic River which is classified as a Coldwater Fisheries Resource and a high score of Fish Diversity in a Large River System which provides valuable habitat for a diverse array of aquatic wildlife species as well as provide the many other public benefits of river and stream protection recognized by the Commonwealth of Massachusetts (Section 40 of Chapter 131 of the Massachusetts General Laws).
- Floodplain. The majority of the Premises lies within the 100-year floodplain of the Housatonic River. The protection of this floodplain will ensure the continued availability of this flood storage during major storm events.

II. PROHIBITED and PERMITTED ACTS AND USES

A. Prohibited Acts and Uses

The Owner will not perform or allow others to perform the following acts and uses which are prohibited on, above, and below the Premises:

1. Structures and Improvements. Constructing, placing, or allowing to remain any temporary or permanent structure including without limitation any building, tennis court, landing strip, mobile home, swimming pool, asphalt or concrete pavement, graveled area, roads, sign, fence, gate, billboard or other advertising, antenna, utilities or other structures, utility pole, tower, solar panel, solar array, conduit, line, septic or wastewater disposal system, above- or below-ground storage tank, or dam;

2. Extractive Acts/Uses. Mining, excavating, dredging, withdrawing, or removing soil, loam, peat, gravel, sand, rock, surface water, ground water, or other mineral substance or natural deposit, or otherwise altering the topography of the Premises;
3. Disposal/Storage. Placing, filling, storing, or dumping of soil, refuse, trash, vehicle bodies or parts, rubbish, debris, tires, petroleum products, herbicides, insecticides or any other chemicals, junk, tree and other vegetation cuttings, liquid or solid waste or other substance or material whatsoever;
4. Chemical Application. Applying pesticides, herbicides, insecticides, fungicides, or other chemicals;
5. Adverse Impacts to Vegetation. Cutting, removing, or destroying trees, shrubs, grasses or other vegetation;
6. Adverse Impacts to Water, Soil, and Other Features. Acts and uses detrimental to drainage, flood control, water conservation, water quality, erosion control, soil conservation, natural habitat, fish and wildlife habitat, archaeological conservation, or ecosystem function;
7. Introduction of Invasive Species. Planting or introducing any species identified as invasive by the Massachusetts Invasive Plant Advisory Group or identified as invasive in such recognized inventories as the Massachusetts Introduced Pests Outreach Project, the Northeast Aquatic Nuisance Species Panel, or other such inventories, and any successor list as mutually agreed to by the Commonwealth and Owner;
8. Introduction of Non-Native Species. Introducing, establishing, expanding, or enhancing of plant, animal, insect, or other species not native to the Commonwealth of Massachusetts, whether by planting, releasing, cultivation, maintenance, or other act or use;

9. Motor Vehicles. Using, parking, or storing motorized vehicles, including motorcycles, mopeds, all-terrain vehicles, off-highway vehicles, motorboats or other motorized watercraft, snowmobiles, launching or landing aircraft, or any other motorized vehicles, acknowledging that vehicles necessary for public safety (i.e., fire, police, ambulance, other government officials) may have a legal right to enter the Premises;
10. Incompatible Outdoor Recreation. Non-motorized outdoor recreational activities that are incompatible with the Purposes or Conservation Values, such as mountain biking, horseback riding, rock climbing, camping, cooking, campfires, target practice, or mineral collecting;
11. Subdivision. Subdividing or conveying a part or portion of the Premises (as compared to conveyance of the Premises in its entirety which shall be permitted), it being the Commonwealth's and Owner's intention to maintain the entire Premises under unified Ownership;
12. Use of Premises for Developing Other Land. Using the Premises towards building or development requirements on this or any other parcel;
13. Adverse Impacts to Stone Walls, Boundary Markers. Disrupting, removing, or destroying stone walls, granite fence posts, or any other boundary markers;
14. Artifacts. Collecting of artifacts and the granting of permission for artifact collecting, either from the surface or the subsurface of the Premises, including for archaeological investigations;
15. Residential, Commercial, or Industrial Uses. Using the Premises for residential, commercial, or industrial purposes;
16. Inconsistent Acts or Uses. Any acts or uses that are inconsistent with the Purposes or that would impair the Conservation Values.

B. Permitted Acts and Uses

Notwithstanding the Prohibited Acts and Uses described in Section II.A, the Owner may conduct or permit the following acts and uses on the Premises, provided they are consistent with the Purposes and do not impair the Conservation Values. Any act or use not permitted herein is prohibited without prior written notice to and approval by the Commonwealth.

1. **Habitat Management.** Conducting habitat management activities intended to restore native biotic communities, or to maintain, enhance or restore wildlife, wildlife habitat, ecosystem function, or rare or endangered species including planting native trees, shrubs, and other vegetation in accordance with the notification and approval requirements and management standards for biodiversity, and management planning, all as described in the attached Exhibit C.
2. **Vegetation Management.** Maintaining vegetation, including pruning, trimming, cutting, and mowing, and removing brush, all to prevent, control, and manage hazards, disease, insect, or fire damage, and/or in order to maintain the condition of the Premises as documented in the Baseline Documentation Report (Section XIII);
3. **Non-native, Nuisance, or Invasive species.** Removing non-native, nuisance, or invasive species, interplanting native species, and controlling species in a manner that minimizes damage to surrounding, non-target species and preserves water quality. With prior written approval of the Commonwealth and with the submission of a Non-Native Species Control Plan, the application of pesticides, herbicides, insecticides, fungicides, or other chemicals on the Premises by a licensed applicator in strict compliance with all applicable federal and state laws and regulations, including but not limited to those administered by the Pesticide Bureau of the Massachusetts Department of Agricultural Resources;

4. Archaeological Investigations. Conducting archaeological activities, including without limitation archaeological research, surveys, excavation and artifact retrieval, but only in accordance with an archaeological field investigation plan, which plan shall also address restoration following completion of the archaeological investigation, prepared by or on behalf of the Owner and approved in advance of such activity, in writing, by the Massachusetts Historical Commission State Archaeologist (or appropriate successor official) and by the Commonwealth. A copy of the results of any such investigation on the Premises shall be provided to the Commonwealth;
5. Trails. With prior written approval of the Commonwealth of a Trails Plan, construction of trails and the routine maintenance of said trails thereafter. Any Trails Plan shall be consistent with then-current provisions of the Massachusetts Department of Conservation and Recreation's Trails Guidelines and Best Practices Manual (or successor publication). In reviewing any Trails Plan, the Commonwealth shall consider (a) protection of natural resources, (b) planned density of the trail system, and (c) corresponding opportunities for off-trail enjoyment of the Premises and shall generally favor less developed rather than highly developed trail attributes;
6. Signs. Constructing, installing, maintaining, and replacing signs and informational kiosks with respect to the Permitted Acts and Uses, the Purposes, the Conservation Values, public access, identity and address of the Owner, the Commonwealth's interest in the Premises, boundary and trail markings, any gift, grant, or other applicable source of support for the conservation of the Premises. The size, wording, and location of such signs shall be approved in writing by the Commonwealth. "No Trespass" signs or signs limiting or prohibiting public access may not be used, installed, or maintained on the Premises without prior written approval of the Commonwealth. Any signs that are not in compliance with this Section II.B.7 may be removed at any time by the Commonwealth;

7. Compatible Outdoor Recreational and Educational Activities. Fishing, hunting, trapping, hiking, cross-country skiing, snowshoeing, nature observation, nature and educational walks and outings, and outdoor educational activities;
8. Parking. Maintaining and, with prior written approval of the Commonwealth, constructing one or more parking areas for the purpose of enhancing outdoor passive recreational, educational activities, and public use of the Premises. If the Outdoor Recreational Use per Section II.B(6) or Cartop Boat Access Use per II.B(9) necessitates, porta-potties may be seasonally placed inside the approved parking area. The number, size, location and time of year of the installation of porta-potties shall be approved in writing by the Commonwealth;
9. Motorized Vehicles. Using motorized vehicles by (a) Owner or Owner's invitees with mobility impairments, (b) non-recreational activities expressly authorized above, or (c) as directed by the Commonwealth to remedy non-compliance with this Conservation Restriction.
10. Cartop Boat Access. The construction, repair and operation of a cartop boat launch with prior written approval of the Commonwealth including, the development of a trail to allow the public access from a parking area to the water's edge.

C. Site Restoration

Upon completion of any Permitted Act or Use, any disturbed areas shall be restored substantially to the conditions that existed prior to said acts or uses, including with respect to soil material, grade, and vegetated ground cover, as approved in writing by the Commonwealth.

D. Compliance with Permits, Regulations, Laws

The exercise of any Permitted Act or Use under Section II.B shall be in compliance with all applicable federal, state, and local laws, rules, regulations, zoning, and permits, and with the

Constitution of the Commonwealth of Massachusetts. The inclusion in Section II.B of any Permitted Act or Use requiring a permit, license, or other approval from a public agency does not imply that the Commonwealth takes any position whether such permit, license, or other approval should be issued.

E. Notice and Approval

1. Notifying the Commonwealth. Whenever notice to or approval by the Commonwealth is required, the Owner shall notify or request approval from the Commonwealth, by a method requiring proof of receipt, in writing not less than thirty (30) days prior to the date the Owner intends to undertake the act or use in question, unless a different time period is specified herein. The notice shall:
 - a. Describe the nature, scope, design, location, timetable, and any other material aspect of the proposed act or use;
 - b. Describe how the proposed act or use complies with the terms and conditions of this Conservation Restriction, and will not impair the Purposes and/or Conservation Values;
 - c. Identify all permits, licenses, or approvals required for the proposed act or use, and describe the status of any such permits, licenses, or approvals;
 - d. Describe any other material aspect of the proposed act or use in sufficient detail to permit the Commonwealth to make an informed judgment as to its consistency with the Purposes and Conservation Values.
2. Commonwealth Review. Where the Commonwealth's approval is required, the Commonwealth shall respond in writing within thirty (30) days of receipt of the Owner's request, such response may include granting or withholding approval, denial of the request, or requesting additional information. Notwithstanding the foregoing, the Commonwealth's failure to respond within thirty (30) days of receipt shall not constitute approval or denial of the request. The Commonwealth's approval shall only be granted upon showing that the proposed act or use will minimize impacts to the

Conservation Values and will not impair the Purposes and/or Conservation Values. The Commonwealth may require the Owner to secure expert review and evaluation of a proposed act or use by a mutually agreed upon third party.

III. COMMONWEALTH AND PUBLIC ACCESS

1. The Commonwealth, acting through its officers, directors, employees, representatives, contractors, and agents, shall have and hereby consensually takes the right to enter and traverse the Premises, and at the Commonwealth's sole expense, to take actions to preserve, conserve, study, manage, and promote the natural habitat of wildlife, fish, plants, and other native species and natural communities, including those listed under the Massachusetts Endangered Species Act (MESA). Said management actions are to be conducted only with the prior written consent of Owner, such consent not to be unreasonably withheld.
2. The Commonwealth, acting through its officers, directors, employees, representatives, contractors, and agents, including personnel from the Commonwealth's Office of Fishing and Boating Access, shall have and hereby consensually takes the right to enter and traverse the Premises, and at the Commonwealth's sole expense, to take actions to construct, repair and operate a cartop boat launch site with prior notice to the Owner including creating parking and grading, mowing and development of a trail to allow the public easy access from a parking area to the water's edge.
3. The Commonwealth further shall have and hereby consensually takes the right to permit the general public to enter upon and traverse the Premises for outdoor recreational activities, including hunting, fishing, trapping, hiking, wildlife observation, and similar uses in compliance with all applicable federal and state laws, rules, regulations, and permits without restriction by Owner, provided that such activities (a) do not involve the use of motorized vehicles (except as may be required by law or specifically allowed herein), (b) are not detrimental to or in violation of the terms or Purposes of this Conservation Restriction, and (c) do not unreasonably interfere with the Permitted Acts and Uses (Section II.B). Points of entry for public access, including for motor vehicle parking shall

be determined by the Director of the Division of Fisheries and Wildlife in consultation with the Owner. The Director may determine the terms and conditions of public access, which may take the form of regulation. Owner may petition the Director to modify public access to the Premises for good cause consistent with the Purposes of the Conservation Restriction.

4. The Commonwealth further shall have and hereby consensually takes the right to erect signs on the Premises in accordance with the signage restrictions set forth in Section II.B (Permitted Acts and Uses).

IV. INSPECTION AND ENFORCEMENT

A. Entry onto the Premises

The Commonwealth, acting through its officers, directors, employees, representatives, contractors, and agents, shall have and hereby consensually takes the right to enter and traverse the Premises at reasonable times and in a reasonable manner, including access by foot or by motorized vehicle, to inspect the Premises, determine compliance with the terms of this Conservation Restriction, and prevent, remedy, or abate any violations thereof.

B. Legal and Injunctive Relief

1. Enforcement. The rights hereby taken shall include the right to enforce this Conservation Restriction by appropriate legal proceedings and to obtain compensatory relief, including without limitation, compensation for interim losses (i.e., ecological and public use service losses that occur from the date of the violation until the date of restoration) and equitable relief against any violations, including, without limitation, injunctive relief and relief requiring restoration of the Premises to its condition prior to the time of the injury (it being agreed that the Commonwealth will have no adequate remedy at law in case of an injunction). The rights hereby granted shall be in addition

to, and not in limitation of, any other rights and remedies available to the Commonwealth for the enforcement of this Conservation Restriction.

2. Notice and Cure. In the event the Commonwealth determines that a violation of this Conservation Restriction has occurred and intends to exercise any of the rights described herein, the Commonwealth shall, before exercising any such rights, notify the Owner in writing of the violation. The Owner shall immediately cease the violation upon receipt of the written notice and shall have thirty (30) days from receipt of the written notice to remedy any damage resulting from the violation, after which time the Commonwealth may take further action, including instituting legal proceedings and entering the Premises to take reasonable measures to remedy, abate or correct such violation, without further notice. Provided, however, that this requirement of deferment of action for thirty (30) days applies only if Owner immediately ceases the violation and the Commonwealth determines that there is no ongoing violation. In instances where a violation may also constitute a violation of local, state, or federal law, the Commonwealth may notify the proper authorities of such violation.
3. Reimbursement of Costs and Expenses of Enforcement. Owner and agrees to reimburse to the Commonwealth all reasonable costs and expenses (including counsel fees) incurred by the Commonwealth in enforcing this Conservation Restriction or in taking reasonable measures to remedy, abate or correct any violation thereof. In the event of a dispute over the boundaries of the Conservation Restriction, Owner shall pay for a survey by a Massachusetts licensed professional land surveyor and to have the boundaries permanently marked.

C. Non-Waiver

Enforcement of the terms of this Conservation Restriction shall be at the sole discretion of the Commonwealth. Any election by the Commonwealth 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.

D. Disclaimer of Liability

By acceptance of this Conservation Restriction, the Commonwealth does not undertake any liability or obligation relating to the condition of the Premises pertaining to compliance with hazardous materials, zoning, environmental, and other laws and regulations, or resulting from acts not caused by the Commonwealth, or their agents.

E. Acts Beyond the Owner's Control

Nothing contained in this Conservation Restriction shall be construed to entitle the Commonwealth to bring any actions against the Owner for any injury to or change in the Premises resulting from natural causes beyond the Owner's control, including but not limited to fire, flood, weather, climate-related impacts, and earth movement, or from any prudent action taken by the Owner 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 Owner and the Commonwealth will cooperate in the restoration of the Premises, if desirable and feasible.

V. TERMINATION/RELEASE/EXTINGUISHMENT

A. Procedure

If circumstances arise in the future that render the Purposes impossible to accomplish, this Conservation Restriction can only be terminated, released, or extinguished, whether in whole or in part, by a court of competent jurisdiction under applicable law after review and approval by the Commonwealth, any other approvals as may be required by Sections 31, 32, and 33 of Chapter 184 of the Massachusetts General Laws, and in compliance with Article XCVII of the Amendments to the Constitution of the Commonwealth of Massachusetts, as applicable.

B. Owner's and the Commonwealth's Right to Recover Proceeds

If any change in conditions ever gives rise to termination, release, or extinguishment of this Conservation Restriction under applicable law, then the Commonwealth, on a subsequent sale, exchange, or involuntary conversion of the Premises, shall be entitled to a portion of the proceeds in accordance with Section V.C (Commonwealth's Receipt of Property Right), 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. The Commonwealth shall use its share of any proceeds in a manner consistent with the Purposes and the protection of the Conservation Values.

C. Commonwealth's Receipt of Property Right

Owner and the Commonwealth agree that the conveyance of this Conservation Restriction gives rise to a real property right, immediately vested in the Commonwealth, with a fair market value that is at least equal to the proportionate value that this Conservation Restriction, determined at the time of the conveyance, bears to the value of the unrestricted Premises. The proportionate value of the Commonwealth's property right as of the Effective Date (Section X) was determined to be 50%. Such proportionate value of the Commonwealth's property right shall remain constant.

D. 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 Owner and the Commonwealth shall cooperate in recovering the full value of all direct and consequential damages resulting from such action. All related expenses incurred by the Owner and the Commonwealth shall first be paid out of any recovered proceeds, and the remaining proceeds shall be distributed between the Owner and the Commonwealth in accordance with Section V.B (Owner's and Commonwealth's Right to Recover Proceeds) and Section V.C (Commonwealth's Receipt of Property Right). If a less than fee interest is taken, the proceeds shall be equitably allocated according to the nature of the interest taken. The Commonwealth shall use its share of any proceeds in a manner consistent with the Purposes or the protection of the Conservation Values.

VI. DURATION and 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 Owner and the successors and assigns of the Owner holding any interest in the Premises.

B. Execution of Instruments

The Commonwealth is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Conservation Restriction. The Owner, on behalf of itself and its successors and assigns, appoints the Commonwealth its attorney-in-fact to execute, acknowledge and deliver any such instruments on its behalf. Without limiting the foregoing, the Owner 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 Commonwealth and any assignment shall be subject to and comply with Article XCVII of the Amendments to the Constitution of the Commonwealth of Massachusetts.

VII. SUBSEQUENT TRANSFERS

A. Procedure for Transfer

The Owner 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 Commonwealth not less than sixty (60) days prior to the effective date of such transfer. Any transfers shall receive prior approval by the

Commonwealth to assure that the Premises is transferred to a qualified conservation organization. Failure to do any of the above shall not impair the validity or enforceability of this Conservation Restriction. If the Owner fails to 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, then the Commonwealth may record, in the applicable registry of deeds, or registered in the applicable land court registry district, and at the Owner's expense, a notice of this Conservation Restriction. Any transfer will comply with Article XCVII of the Amendments to the Constitution of the Commonwealth of Massachusetts, if applicable.

B. Owner's Liability

The Owner shall not be liable for violations occurring after their Ownership. Liability for any acts or omissions occurring prior to 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 Owner, the Commonwealth shall, within sixty (60) days execute and deliver to the Owner any document, including an estoppel certificate, which certifies the Owner's compliance or non-compliance with any obligation of the Owner contained in this Conservation Restriction.

IX. AMENDMENT

A. Limitations on Amendment

Owner and the Commonwealth may amend this Conservation Restriction only to correct an error or oversight, clarify an ambiguity, maintain or enhance the overall protection of the Conservation Values, or add real property to the Premises, provided that no amendment shall:

1. affect this Conservation Restriction's perpetual duration;
2. be inconsistent with or impair the Purposes;
3. affect the qualification of this Conservation Restriction as a "qualified conservation contribution" or "interest in land" under any applicable laws, including 26 U.S.C. Section 170(h), and related regulations;
4. affect the status of the Commonwealth as a "qualified organization" or "eligible donee" under any applicable laws, including 26 U.S.C. Section 170(h) and related regulations, and Sections 31, 32, and 33 of Chapter 184 of the Massachusetts General Laws; or
5. create an impermissible private benefit or private inurement in violation of federal tax law, as determined by an appraisal, conducted by an appraiser selected by the Commonwealth, of the economic impact of the proposed amendment; or
6. alter or remove the provisions described in Section V (Termination/Release/Extinguishment); or
7. cause the provisions of this Section IX (Amendment) to be less restrictive; or
8. cause the provisions described in Section VI.C (Running of the Benefit) to be less restrictive.

B. Amendment Approvals and Recording

No amendment shall be effective unless documented in a notarized writing executed by the Commonwealth and Owner and recorded in the applicable registry of deeds or registered in the applicable land court registry district.

X. EFFECTIVE DATE

This Conservation Restriction shall be effective when the Owner and the Commonwealth have executed it, any administrative approvals required by Section 32 of Chapter 184 of the Massachusetts General Laws have been obtained, and it has been recorded in the applicable registry of deeds or registered in the applicable land court registry district.

XI. 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:

OWNER: Town Administrator
Town of Lee
32 Main Street
Lee Ma, 01238

COMMONWEALTH: Assistant Director of Land and Habitat Conservation
Division of Fisheries and Wildlife
1 Rabbit Hill Road
Westborough, MA 01581-9990

Copy to: District Manager, Western District Wildlife District Office
Division of Fisheries and Wildlife
88 Old Windsor
Dalton, MA 01226

or to such other address or by such other delivery means 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.

XII. 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 to effect the Purposes and the policy and purposes of Sections 31, 32, and 33 of Chapter 184 of the Massachusetts General Laws. If any provision in this instrument is found to be ambiguous, any interpretation consistent with the Purposes 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 provisions of this Conservation Restriction shall not be affected thereby.

D. Entire Agreement

This instrument sets forth the entire agreement of the Owner and the Commonwealth 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.

XIII. BASELINE DOCUMENTATION REPORT

The Conservation Values, as well as the natural features, current uses of, and existing improvements on the Premises, such as, but not limited to, trails, woods roads, structures, meadows or other cleared areas, agricultural areas, and scenic views, as applicable, are described in a Baseline Documentation Report ("Baseline Report") prepared by the Commonwealth with the cooperation of the Owner, consisting of maps, photographs, and other documents and on file with the Commonwealth and referenced herein. The Baseline Report (a) is acknowledged by Owner and the Commonwealth to be a complete and accurate representation of the condition and values of the Premises as of the date of this Conservation Restriction, (b) is intended to fully comply with

applicable Treasury Regulations, (c) is intended to serve as an objective information baseline for subsequent monitoring of compliance with the terms of this Conservation Restriction as described herein, and (d) may be supplemented as conditions on the Premise change as allowed over time. Notwithstanding the foregoing, the parties may utilize any evidence of the condition of the Premises at the time of this Consensual Order of Taking in addition to the Baseline Report.

XIV. DAMAGES

The Commissioner of the Department of Fish and Game hereby makes the following award for the damages sustained by the Owner of record of the area or areas hereinbefore described in the said taking to their property or entitled to any damages by reason of said taking:

<u>Supposed Owners</u>	<u>Award</u>
Town of Lee	\$ 100,000

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

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IN WITNESS WHEREOF, the Commonwealth of Massachusetts has caused these presents to be executed in its name and on its behalf by Thomas K. O'Shea, Commissioner of the Department of Fish and Game, herewith duly authorized, who does hereunto set his hand and seal this ____ day of ____, 20__.

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF FISH AND GAME

By: _____
Thomas K. O'Shea, Commissioner

COMMONWEALTH OF MASSACHUSETTS

_____, ss _____, 20__

On this day before me, the undersigned Notary Public, personally appeared the above-named Thomas K. O'Shea, proved to me through satisfactory evidence of identification, which was personal knowledge of identity, to be the Commissioner of the Department of Fish and Game of the Commonwealth of Massachusetts whose name is signed above, and acknowledged to me that he signed the foregoing instrument voluntarily as Commissioner of said Department for its stated purpose.

Notary Public

SEAL

My Commission Expires: _____

AGREEMENT OF ASSENT (municipal version)

Town of Lee, Owner of the Premises described in Exhibit A attached hereto on which this Conservation Restriction is herein consensually taken by the Commonwealth, hereby acknowledges that this Conservation Restriction contains 1) certain duties and obligations that the Town of Lee as owner is required to comply with and carry out, and 2) certain rights taken by the Commonwealth such as development and use rights, public access rights, and the right to monitor and enforce the terms of this Conservation Restriction in order to effectuate the purposes thereof.

As the Select Board of Town of Lee and duly authorized by the Inhabitants of the Town, we, the undersigned acting on behalf of Town of Lee and its successors and assigns as owner of said Premises, hereby expressly agree to the terms of this Conservation Restriction, agree to fully and completely comply with and carry out said duties and obligations, and expressly assent to the rights of the Commonwealth taken herein and to the taking of these rights via this Consensual Order of Taking.

Signed as a sealed instrument under the pains and penalties of perjury this 15th day of October, 2025.

[TOWN]

By: Sean Regnier

By: ~~Bob Jones~~

By: Gordon D. Bailey

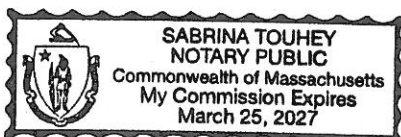
COMMONWEALTH OF MASSACHUSETTS

Berkshire, ss.

October 15, 2025

On this day before me, the undersigned Notary Public, personally appeared the above-named Sean Regnier, Bob Jones, and Gordon D. Bailey, proved to me through satisfactory evidence of identification which was personal knowledge to be the Select Board of the Town of Lee whose names are signed above, and who swore or affirmed to me that the contents of the foregoing AGREEMENT OF ASSENT are truthful and accurate to the best of their knowledge and belief and acknowledged to me that they signed the foregoing instrument voluntarily as the Select Board of the Town of Lee for its stated purpose.

[SEAL]



Sabrina Touhey
Notary Public

My Commission Expires: March 25, 2027

EXHIBIT A

Legal Description of Premises

The land located on the south side of Pleasant Street, in the Town of Lee, Berkshire County, Commonwealth of Massachusetts, Bounded and described as follows:

FIRST PARCEL: Bounded

Northwesterly by the State Road leading from Lee Village past the Pleasure Park to South Lee;

Easterly by land, now or formerly of James O'Brien, and

Southwesterly by the Second Parcel herein described;

SECOND PARCEL: Beginning at the southeast corner of the First Parcel herein described;

thence

Westerly on said First Parcel to said State highway; thence on said highway to the Cove Bridge, so-called; thence

Easterly on the Housatonic River to land now or formerly of James O'Brien; thence on

Westerly line of land now or formerly of said James O'Brien to the place of beginning.

Containing six acres, more or less.

Subject to flowage rights, if any, acquired by the American Writing Paper Company or its predecessors in title, by reason of the existence of its dam across the Housatonic River above its paper mill at South Lee.

Subject to the pole rights, if any, acquired by the American Telephone and Telegraph Company from Mrs. C.C. Ball and Minnie E. Ball by grant, dated May 23, 1900, and recorded with the Berkshire Middle District Registry of Deeds at Pittsfield in Book 309, Page 468.

Subject to the right to construct a drain granted by Amy J. Nettleton to the Commonwealth of Massachusetts, by deed dated September 18, 1930, and recorded with said Registry of Deeds in Book 438, Page 602.

Excepting and reserving from the above-described premises those certain portions thereof taken from highway purposes by the Commonwealth of Massachusetts.

Excepting and reserving from the above-described premises that portion of land conveyed by William E. Bailey to The Mead Corporation by deed dated December 23, 1965 and recorded with said Registry of Deeds in Book 811, Page 310.

Subject to a sewer easement given to the Town of Lee, dated May 26, 1978 and recorded with said Registry of Deeds in Book 1004, Page 279.

Being all and the same premises conveyed to the Town of Lee by deed of Robert J. Daley and Letishia Daley, Trustees, of the Robert J. Daley and Litishia A. Daley dated _____ and recorded with the Berkshire Middle District Registry of Deeds in Book ____, Page ____.

EXHIBIT B
Plan of Premises

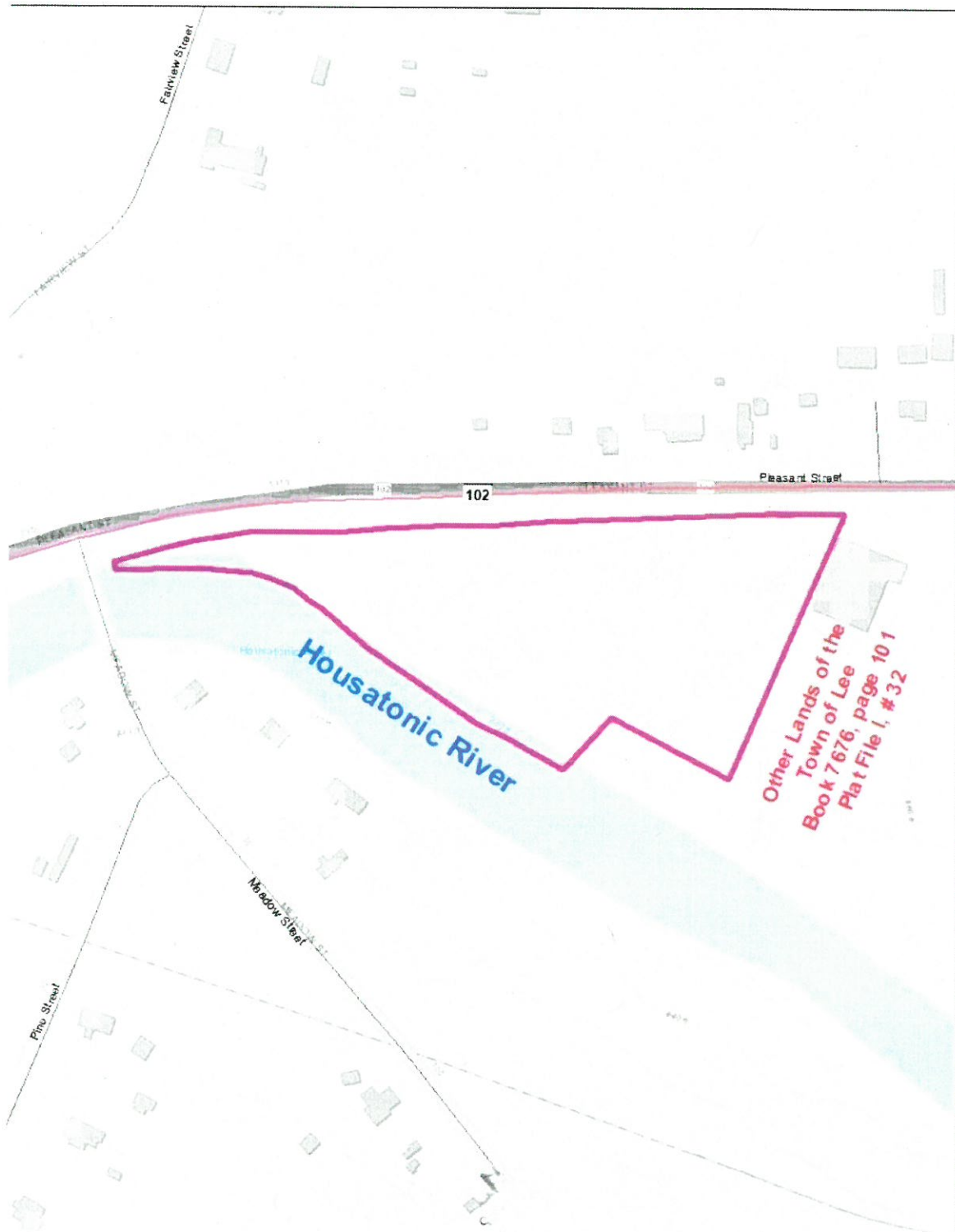


EXHIBIT C

HABITAT MANAGEMENT STANDARDS TO ENHANCE AND MAINTAIN NATIVE BIODIVERSITY ON LAND SUBJECT TO CONSERVATION RESTRICTIONS ADMINISTERED BY THE COMMONWEALTH

GOAL: Enhance and maintain native biological diversity on managed lands.

OBJECTIVES:

Apply current and generally accepted scientific principles for native biodiversity conservation as standards other on managed lands, including manuals or guidelines published by the Commonwealth and provided to Owner (collectively, "Habitat Guidelines").

STANDARDS:

This Exhibit describes the management planning, review, approval, and habitat management practices (collectively, "Standards") permitted under Section II.B of this Conservation Restriction. Habitat management activities carried out by Owner in compliance with the Standards shall be deemed by the Commonwealth to not impair the purposes of this Conservation Restriction.

All habitat management practices shall be carried out in accordance with (a) the Standards; (b) a management plan prepared and approved in accordance with the Standards ("Management Plan"); (c) Massachusetts habitat conservation statutes and regulations as may be enacted or promulgated from time to time, including but not limited to M.G.L. c. 131; (d) any state or local permits required by state law or regulation, such as an Order of Conditions issued under the Wetlands Protection Act, M.G.L. c. 131; and (e) all required best management practices and all recommended actions and guidelines in the BMP Manual or Habitat Guidelines.

Unless Owner seeks, and the Commonwealth grants, express written approval to conduct other habitat management activities, Owner shall conduct only those activities consistent with and authorized by the approved Management Plan.

Management Planning Standards

Before any habitat management activities occur on the Premises, Owner shall prepare or cause to be prepared an initial Management Plan or update any existing plan such that the resulting Management Plan covers a period of at least ten (10) years from the initial date of the Conservation Restriction.

Owner shall update or cause to be updated said Management Plan at least every ten (10) years thereafter.

The Management Plan shall contain at a minimum the following elements:

1. Owner, property, and preparer information, including Owner names, mailing address, property location, plan preparer name and plan preparer mailing address.
2. List of lots or parcels, including Assessor Map and Lot numbers, deed book and page numbers, total acres, and acres included in the management plan for each lot or parcel.
3. A book and page reference to the recording of this Conservation Restriction and a summary of the conservation values and purposes contained in this Consensual Order of Taking.
4. History of land, including dates of acquisition, management, status of boundary marking, and forest management practices conducted over the last 10 years.
5. Stewardship planning information, including a description of natural and cultural features, long term goals (including a description of how these goals will protect and enhance the conservation values and purposes described in this Consensual Order of Taking), and the ability to accomplish such goals.
6. Property overview, regional significance, and management summary, including a description of landscape setting and eco-regional factors, property and land-use history, bedrock, soil, hydrology, climate and vegetation features, history of disturbance (timber harvesting, agricultural clearing, wildlife habitat creation, damage by natural event, etc.), and an assessment of how management of these lands might impact the local and regional rural economy.

7. Map showing locus of property on a topographic map.
8. Map showing boundaries of vegetative cover type, including forests, wetlands, streams, roads, property boundaries, and cultural features.
9. Unit descriptions for each identified habitat type. Habitat types shall include unit number, habitat type or natural community, and acres.
10. Unit narratives describing management history, access issues, presence of invasive species, pests or pathogens, soils, slopes, unique natural communities, cultural features, desired future condition, aesthetic quality, protection from fire, and any additional property-specific details related to habitat management issues. . The narrative shall describe cultural features such as cellar holes, stone walls, and known Native American cultural features such as camp sites and trails. The narrative description of the desired future condition shall include a management vision of the future landscape within a specified timeframe including a description of the desired habitat condition by identifying desired ecological features.
11. Current condition of property boundaries and method and schedule for marking or maintaining boundary marking.
12. Monitoring process and schedule, including a description of who will be responsible for completing the monitoring, what they will be monitoring, and the timing and/or frequency of the monitoring. Monitoring results may necessitate amendments to the management plan.

When Owner begins preparation of the initial and all subsequent Management Plans, Owner shall notify the Commonwealth in writing of such preparation and of the opportunity for the Commonwealth to advise Owner of any habitat management, protection, or enhancement projects that the Commonwealth intends to carry out on the Premises during this 10-year Management Plan pursuant to Section II.B (Permitted Acts and Uses) so that Owner and the Commonwealth can coordinate their respective activities and include the Commonwealth's activities pursuant to Section II.B (Permitted Acts and Uses) as part of the Management Plan, or to suggest certain habitat management activities for Owner's consideration. The Commonwealth agrees to make good faith efforts to advise Owner of such Section II.B activities during Management Plan preparation so that Owner's and the Commonwealth's activities can be coordinated and integrated to the maximum extent feasible.

Immediately upon completion of the initial and all subsequent Management Plans, Owner shall submit a copy thereof to the Commonwealth for review and written approval. The Commonwealth shall within thirty (30) days of submittal review the Management Plan or any revisions or updates thereof for compliance with the purposes of this Conservation Restriction and the Standards described in this Exhibit. Such plan and any revisions or updates thereto shall be subject to the approval of the Commonwealth for compliance with all terms of this Conservation Restriction. If the Commonwealth's anticipated Section II.B activities are not already included as part of the plan submitted for approval, the Commonwealth shall within such thirty (30) day period provide Owner with a written description of any anticipated Section II.B activities.

As a condition of Owner's exercise of habitat management activities permitted herein representatives of Owner and the Commonwealth shall meet annually with an Environmental Scientist of Owner's choice, or with an appropriate professional jointly chosen by Owner and the Commonwealth, for the purpose of reviewing contemplated state or local permit applications for habitat activities with the objective of integrating the Standards into such permit applications as a condition of approval by the Commonwealth, unless Owner and the Commonwealth agree that such a meeting would be either unnecessary or duplicative (a) in light of ongoing or recent dialogue regarding habitat enhancement issues or (b) because no habitat management activities are being planned for the foreseeable future.

DEFINITIONS:

Biological Diversity (Biodiversity): The entire assemblage of native flora and fauna and their supporting habitats and natural communities.

Habitat: The biological and physical conditions necessary for the sustained occurrence of a given plant or animal species.

Native: A species which occurs or has occurred within the Commonwealth which has not been deliberately or accidentally introduced by humans into the state nor introduced elsewhere and spread from that introduction into the state.

Natural Community: A recurrent assemblage of plants and animals found in particular and relatively predictable associations with the physical environments.

Notice and Approval under the Provisions of Exhibit C

Any written notice, review, or approval required hereunder shall be as provided in Section II.E (Notice and Approvals) of this Conservation Restriction.