

# AGENDA

Monday

August 15, 2016

**TOWN OF EASTHAM  
AGENDA  
BOARD OF SELECTMEN  
Monday, August 15, 2016  
4:00 p.m.**

Location: Earle Mountain Room

- I CAPE COD REGIONAL TECHNICAL SCHOOL- CAPITAL BUDGET PLANNING PRESENTATION (Joint meeting with the Finance Committee)
- II SELECTMEN/PUBLIC INFORMATION
  - 4:55 p.m. Peter Wade, Community Preservation Committee- Announcement of Public Meeting
  - 5:00 p.m. Announcement-Appointment of Town Administrator Search Committee

III PUBLIC HEARINGS

- 5:05 p.m. **PUBLIC HEARING Tax Rate for FY17**

In accordance with Chapter 369 of the Acts of 1982 amending Chapter 797 of the Acts of 1979, a public hearing will be held by the Board of Selectmen, regarding the allocation of the tax levy among the classes of property for Fiscal Year 2017. The Board of Assessors will present information and a recommendation relevant to making a final determination on the allocation of the tax levy among the four classes of real property; residential, open space, commercial, and industrial and one class of personal property. The Chairman of the BOS will recognize residents for questions and comment.

*(Meeting will be adjourned and meeting of the Board of Water Commissioners convened. Following the Board of Water Commissioners Public Hearing, the Regular meeting of the Board of Selectmen will reconvene.)*

PUBLIC HEARINGS

- 5:15 p.m. **PUBLIC HEARING Draft Water System Regulations**

The Board of Water Commissioners will hold a public hearing on the Draft Regulations for the Eastham Public Water System. Regulations and fees will be presented and discussed by the board, and there will be an opportunity for the public to ask questions and make recommendations/comments.

The proposed Draft Regulations are available at town hall Monday through Friday from 8 a.m. to 4 p.m. and online at [www.eastham-ma.gov](http://www.eastham-ma.gov)

  - A. Presentation of Draft Water Rates- Process & Draft Rates –Sheila Vanderhoef (followed by questions, comments, discussion)
  - B. Discussion of Draft Regulations (questions, comments, discussion)

The Board of Selectmen will consider any comments and proposed changes, and plan to vote on a final version of regulations and rates at their meeting September 6, 2016.

IV. APPOINTMENTS

- 6:00 p.m. UPDATE ON WATER SYSTEM-Mark White, Environmental Partners Group

**(All times except public hearings are approximate and items may be taken out of order)**

V. ADMINISTRATIVE MATTERS

- A. Action (Vote Required)
  - 1. Committee Appointments:
    - a. The Search Committee is recommending the appointment of Sue Pellowe to the Cultural Council as a regular member beginning August 15, 2016 and expiring June 30, 2019. (Vote)



- b. The Search Committee is recommending the appointment of John Kelley to the Animal Advisory Committee as a regular member beginning August 15, 2016 and expiring June 30, 2019. (Vote)
2. Transient Vendor Permits- Please see the attached list (Vote)
3. Request from the Cape Cod Suicide Prevention Coalition to designate September 5-11, 2016 as Suicide Prevention Week. Vote needed to adopt the attached proclamation.
4. Sign warrant/notice of primary election on September 8, 2016 from 7:00am to 8:00p.m. (No vote needed).
5. Execute (Vote and Sign) the Order of Taking for Hay Road.
6. Vote to accept and sign Conservation Restrictions for parcels of town-owned land previously purchased and set aside for conservation: 3155 State Highway, 800 Samoset Road, 40 Hatch's Way, 60 Clark's Point Road, and 700 Dyer Prince Road.

## VI. TOWN ADMINISTRATOR'S REPORT

## VII. OTHER BUSINESS

### Upcoming Meetings

<i>August 17, 2016</i>	<i>3:00p.m.</i>	<i>Timothy Smith Room</i>	<i>Work Session</i>
<i>September 6, 2016</i>	<i>5:00p.m.</i>	<i>Earle Mountain Room</i>	<i>Regular Session</i>
<i>September 7, 2016</i>	<i>3:00pm</i>	<i>Timothy Smith Room</i>	<i>Work Session</i>

*The listing of matters includes those reasonably anticipated by the Chair that may be discussed at the meeting. Not all items listed may in fact be discussed and other items not listed may be brought up for discussion to the extent permitted by law.*

*This meeting will be video recorded and broadcast over Local Access Channel 18 and through the Town website at [www.eastham-ma.gov](http://www.eastham-ma.gov)*

TA/TAX LEVY 8/15/2016

III. Public Hearing 5:05 pm

**LEGAL NOTICE  
TOWN OF EASTHAM  
PUBLIC NOTICE  
PROPERTY CLASSIFICATION HEARING**

A Public Hearing will be held on Monday August 15, 2016 at 5:05 p.m, by the Board of Selectmen in the Earle Mountain Room, in accordance with Chapter 369 of the Acts of 1982 amending Chapter 797 of the Acts of 1979, regarding the allocation of the tax levy among the five classes of property for Fiscal Year 2017.

The Board of Assessors will provide all information and data relevant to making a final determination on allocation of the tax levy among the four classes of real property, residential, open space, commercial and industrial, and one class of personal property as set forth in General Laws Chapter 40, Section 56. Options open to the Town will be provided, and the Chairman will recognize any taxpayers wishing to present oral or written information on their views.

Eastham  
Board of Selectmen





## **Board of Selectmen FY17 CLASSIFICATION HEARING**

August 15, 2016

At their meeting August 5, 2016, the Board of Assessors voted unanimously to make the following recommendations to the Board of Selectmen for the Fiscal Year 2017 Classification Hearing to be held August 15, 2016 at 5:05 p.m.

*On the matter of classifying the tax rate:*

- To **vote a residential factor of "1"** so that each class maintains 100% of its full value tax share and not shift the tax burden from the residential and open space classes to the commercial, industrial and personal property classes.

*On the matter of an open space discount:*

- **Not to grant an open space discount** which would shift the tax burden from the open space property to the residential property class.

*On the matter of a residential exemption:*

- **Not to grant a residential exemption** which would shift the tax burden within the residential class from residents to part-time-residents.

*On the matter of small commercial exemption:*

- **Not to grant a small business exemption** which would shift the tax burden within the commercial, industrial and personal property classes from certain small commercial properties to other commercial and industrial properties.

Voting in accordance with these recommendations would retain the historical pattern of taxation in Eastham. The following is an explanation of the various options and the reasons of the Assessor's recommendations:

### **Classification:**

Classifying the tax rate means applying different tax rates to different classes of property (residential, open space, commercial, industrial and personal property) according to procedures and formulas set by state statutes. Voting a **residential factor of "1"** establishes that the same tax rate is applied to all classes of property at a single rate per thousand dollars of value.

The fiscal year 2016 single tax rate was \$7.44. Classification allows the selectmen to allocate a higher percentage of the tax burden to the commercial, industrial and personal property classes by adopting a residential factor of less than "1". Such an action would result in a lower tax rate for the residential and open space classes, and a higher tax rate for the commercial, industrial and personal property classes.

### **Open Space Discount:**

The open space classification is reserved for properties that could otherwise be held for the production of income but instead are preserved in an open and natural condition for the benefit and enjoyment of the public, which does not necessarily imply public access to the property. Eastham currently does not have any properties classified as open space, so it would have no effect if the Board of Selectmen should vote an open space discount. The assessors are of the belief that the open space issues are best addressed through the exercise of conservation restrictions or chapterland elections, both demonstrate a firmer commitment to open space preservation on the part of the property owner and which also provide for some recapture of forgiven tax dollars.

### **Residential Exemption:**

The residential exemption grants an exemption of up to 20% of the average residential property value for all resident property owners. Through the selective application procedure of the exemption to the year-round residents and the calculation of the new tax rate to recapture the lost levy, the exemption results in reduced taxes being paid by the resident property owners, while shifting the tax burden to part-time resident property owners. The assessors do not recommend granting the residential exemption as this results in shifting the tax levy share not between the classes but between the residential class itself. As part-time residents already pay a personal property tax on the contents of their Eastham homes which residents do not pay, and customarily place fewer demands on municipal services, the assessors feel it would be inequitable to create this separation strata within the residential class.



## **Small Commercial Exemption:**

The small commercial exemption is another option for consideration by the selectmen. The result of legislation passed in 1994, this exemption allows the selectmen to exempt up to 10% of the assessed value of commercial properties that are assessed for less than \$1,000,000 and are occupied by businesses with less than 10 employees.

This exemption would shift the tax burden within the commercial, industrial and personal property classes from some small commercial and industrial properties. As Eastham has a small commercial/industrial class, the small business exemption could cause hardship on some businesses.

The Department of Revenue has certified the FY17 Recertification Year updated values. Attached is the LA4 form which indicates the total value by class of all parcels in Eastham, the Tax Rate Recapulation and the LA-5.

The next Selectmens meeting on August 24, you will be provided with the excess levy capacity on the LA5.

Your signatures will be required on the LA-5 at the conclusion of the classification hearing. Signing the LA-5 confirms the votes taken by the Selectmen at the hearing and indicates the Selectmen have been informed of the amount of the excess capacity. The Board of Assessors and I will be available for questions at the Tax Rate Classification Hearing on August 17, 2015.

If you have any additional questions regarding this matter, please do not hesitate to contact me.

Thank you.

Belinda Eyestone, MAA  
Principal Assessor  
Attachments

Cc: Board of Assessors  
Town Administrator, Sheila Vanderhoef  
Jacqueline Beebe, Assistant Town Administrator

## **Classification Motions**

August 15, 2016

To maintain the historic pattern of taxation in Eastham and due to circumstances noted below, the Board of Assessors voted unanimously this date to recommend the following:

1. To Maintain a single tax rate, taxing residential as well as commercial/industrial property at the same rate, the recommended motion would be:
  - **To move to continue the use of a residential factor of 1 (one)**
2. As Eastham does not have any parcels classified as open space the recommended motion would be :
  - **To move not to grant a discount to Open Space**
3. As part-time residents are already subject to an additional personal property tax, historically Eastham has not granted a residential exemption, The recommendation would be:
  - **To move not to grant a residential exemption**
4. As Eastham has such a small commercial/industrial class, the small commercial exemption would create undue hardship on some businesses, therefore historically Eastham has not granted a residential exemption. The recommended motion would be:
  - **To move not to grant a small commercial exemption**





August 15, 2016

Board of Selectmen  
Fiscal Year 2017 Classification Meeting  
August 15, 2016

The Department of Revenue has certified the FY17 Recertification Year updated values. Attached is State Tax Form LA-4 form which indicates the total value by class of all parcels in Eastham, the Tax Rate Recapulation and the LA-5.

Your signatures will be required on the State Tax Form LA-5 at the conclusion of the Classification Hearing. Signing the LA-5 confirms the votes taken by the Selectmen at the Hearing and indicates the Selectmen have been informed of the amount of the excess capacity. The Board of assessors and I will be available for questions at the tax rate classification hearing on August 15, 2016.

If you have any additional questions regarding this matter, please do not hesitate to ask.

Thank you.

Belinda Eyestone, MAA  
Principal Assessor  
Attachments

Cc Board of Assessors  
Sheila Vanderhoef, Town Administrator  
Jacqueline Beebe, Assistant Town Administrator

**ASSESSMENT/CLASSIFICATION REPORT as of January 1, 2016**  
**Fiscal Year 2017**

Property Type	Parcel Count	Class1 Residential	Class2 Open Space	Class3 Commercial	Class4 Industrial	Class5 Pers Prop
101	5,118	2,393,391,400				
102	280	67,999,000				
MISC 103,109	130	71,818,500				
104	103	44,454,300				
105	6	2,631,500				
111-125	4	1,813,900				
130-32,106	508	69,710,200				
200-231	0		0			
300-393	123			49,559,100		
400-442	22				8,313,600	
450-452	1				1,028,100	
CH 61 LAND	2	0	0	1,350		
CH 61A LAND	1	0	0	11,160		
CH 61B LAND	3	5	0	1,147,430		
012-043	55	21,836,790	0	21,864,380	0	
501	2,871					10,025,730
502	64					4,475,220
503	0					0
504	2					10,243,290
505	2					1,861,300
506	0					0
508	4					651,510
550-552	0					0
<b>TOTALS</b>	<b>9,304</b>	<b>2,673,655,590</b>	<b>0</b>	<b>72,583,420</b>	<b>9,341,700</b>	<b>27,257,050</b>
Real and Personal Property Total Value						2,782,837,760
Exempt Parcel Count & Value					386	220,040,100

For CH 61, 61A and 61B Land: enter the mixed use parcel count in the left-hand box, and enter the 100% Chapter land parcel count in the right-hand box.

**Signatures**

**Board of Assessors**

Belinda Eyestone, Director , Eastham , beyestone@eastham-ma.gov 508-240-5900 | 7/6/2016 11:06 AM

Comment:



**TAX RATE RECAPITULATION**  
**Fiscal Year 2017**

**I. TAX RATE SUMMARY**

la. Total amount to be raised (from page 2, IIe)	\$ 30,065,563.00
lb. Total estimated receipts and other revenue sources (from page 2, IIIe)	8,087,716.00
lc. Tax Levy (Ia minus Ib)	\$ 21,977,847.00
ld. Distribution of Tax Rates and levies	

CLASS	(b) Levy percentage (from LA5)	(c) Ic above times each percent in col (b)	(d) Valuation by class (from LA-5)	(e) Tax Rates (c) / (d) x 1000	(f) Levy by class (d) x (e) / 1000
Residential	96.0766	21,115,568.15	2,673,655,590.00	7.90	21,121,879.16
Net of Exempt					
Open Space	0.0000	0.00	0.00	0.00	0.00
Commercial	2.6082	573,226.21	72,583,420.00	7.90	573,409.02
Net of Exempt					
Industrial	0.3357	73,779.63	9,341,700.00	7.90	73,799.43
SUBTOTAL	99.0205		2,755,580,710.00		21,769,087.61
Personal	0.9795	215,273.01	27,257,050.00	7.90	215,330.70
TOTAL	100.0000		2,782,837,760.00		21,984,418.31

MUST EQUAL 1C

**Board of Assessors**

Belinda Eyestone, Director, Eastham, beyestone@eastham-ma.gov 508-240-5900 | 8/11/2016 11:10 AM

Comment: Signed on behalf of Assessors Sette, Fagan and Buffington

Do Not Write Below This Line --- For Department of Revenue Use Only

Reviewed By: Jared Curtis  
Date:  
Approved:  
Director of Accounts:

NOTE : The information is preliminary and is subject to change.

**TAX RATE RECAPITULATION**  
**Fiscal Year 2017**

**II. Amounts to be raised**

Ila. Appropriations (col.(b) through col.(g) from page 4)	28,980,022.00
IIb. Other amounts to be raised	
1. Amounts certified for tax title purposes	0.00
2. Debt and interest charges not included on page 4	0.00
3. Final court judgements	400,000.00
4. Total overlay deficits of prior years	0.00
5. Total cherry sheet offsets (see cherry sheet 1-ER)	5,022.00
6. Revenue deficits	0.00
7. Offset receipts deficits Ch. 44, Sec. 53E	0.00
8. CPA other unappropriated/unreserved	0.00
9. Snow and ice deficit Ch. 44, Sec. 31D	0.00
10. Other (specify on separate letter)	0.00
TOTAL IIb (Total lines 1 through 10)	405,022.00
Ilc. State and county cherry sheet charges (C.S. 1-EC)	525,519.00
Ild. Allowance for abatements and exemptions (overlay)	155,000.00
Ile. Total amount to be raised (Total Ila through Ild)	30,065,563.00

**III. Estimated receipts and other revenue sources**

IIIa. Estimated receipts - State	
1. Cherry sheet estimated receipts (C.S. 1-ER Total)	540,396.00
2. Massachusetts school building authority payments	0.00
TOTAL IIIa	540,396.00
IIIb. Estimated receipts - Local	
1. Local receipts not allocated (page 3, col (b) Line 24)	3,500,000.00
2. Offset Receipts (Schedule A-1)	0.00
3. Enterprise Funds (Schedule A-2)	0.00
4. Community Preservation Funds (See Schedule A-4)	1,951,420.00
TOTAL IIIb	5,451,420.00
IIIc. Revenue sources appropriated for particular purposes	
1. Free cash (page 4, col (c))	1,065,538.34
2. Other available funds (page 4, col (d))	1,030,361.66
TOTAL IIIc	2,095,900.00
IIId. Other revenue sources appropriated specifically to reduce the tax rate	
1a. Free cash..appropriated on or before June 30, 2016	0.00
1b. Free cash..appropriated on or after July 1, 2016	0.00
2. Municipal light source	0.00
4. Other source :	0.00
TOTAL IIId	0.00
IIIe. Total estimated receipts and other revenue sources (Total IIIa through IIId)	8,087,716.00

**IV. Summary of total amount to be raised and total receipts from all sources**

a. Total amount to be raised (from Ile)	30,065,563.00
b. Total estimated receipts and other revenue sources (from IIIe)	8,087,716.00
c. Total real and personal property tax levy (from Ic)	21,977,847.00
d. Total receipts from all sources (total IVb plus IVc)	30,065,563.00

NOTE : The Information is preliminary and is subject to change.

**TAX RATE RECAPITULATION**  
**Fiscal Year 2017**

LOCAL RECEIPTS NOT ALLOCATED \*

Receipt Type Description	(a) Actual Receipts Fiscal 2016	(b) Estimated Receipts Fiscal 2017
==> 1. MOTOR VEHICLE EXCISE	793,935.00	753,000.00
2. OTHER EXCISE		
==> a.Meals	0.00	0.00
==> b.Room	320,842.00	300,000.00
==> c.Other	4,327.00	4,000.00
==> 3. PENALTIES AND INTEREST ON TAXES AND EXCISES	99,453.00	92,000.00
==> 4. PAYMENTS IN LIEU OF TAXES	8,529.00	8,000.00
5. CHARGES FOR SERVICES - WATER	0.00	0.00
6. CHARGES FOR SERVICES - SEWER	0.00	0.00
7. CHARGES FOR SERVICES - HOSPITAL	0.00	0.00
8. CHARGES FOR SERVICES - SOLID WASTE FEES	793,381.00	700,000.00
9. OTHER CHARGES FOR SERVICES	15,931.00	14,000.00
10. FEES	566,459.00	525,000.00
11. RENTALS	90,022.00	87,000.00
12. DEPARTMENTAL REVENUE - SCHOOLS	0.00	0.00
13. DEPARTMENTAL REVENUE - LIBRARIES	0.00	0.00
14. DEPARTMENTAL REVENUE - CEMETERIES	0.00	0.00
15. DEPARTMENTAL REVENUE - RECREATION	464,508.00	400,000.00
16. OTHER DEPARTMENTAL REVENUE	0.00	0.00
17. LICENSES AND PERMITS	673,139.00	500,000.00
18. SPECIAL ASSESSMENTS	0.00	0.00
==> 19. FINES AND FORFEITS	37,266.00	35,000.00
==> 20. INVESTMENT INCOME	46,479.00	42,000.00
==> 21. MEDICAID REIMBURSEMENT	55,296.00	40,000.00
==> 22. MISCELLANEOUS RECURRING (PLEASE SPECIFY)	0.00	0.00
23. MISCELLANEOUS NON-RECURRING (PLEASE SPECIFY)	0.00	0.00
24. Totals	<b>3,969,567.00</b>	<b>3,500,000.00</b>

I hereby certify that the actual receipts as shown in column (a) are, to the best of my knowledge correct and complete, and I further certify that I have examined the entries made on page 4 of the Fiscal 2017 tax rate recapitulation form by the City, Town or District Clerk and hereby acknowledge that such entries correctly reflect the appropriations made and the sources from which such appropriations are to be met.

**Accounting Officer**

I hereby certify that the actual receipts as shown in column (a) are, to the best of my knowledge correct and complete, and I further certify that I have examined the entries made on page 4 of the above-indicated fiscal year tax rate recapitulation form by the City / Town / District Clerk and hereby acknowledge that such entries correctly reflect the appropriations made and the sources from which such appropriations are to be met.

Diane Rommelmeier, Town Accountant, Eastham, accountant@eastham-ma.gov 508-240-5900 | 8/10/2016 1:06 PM

Comment:

\* Do not include receipts in columns (a) or (b) that were voted by the City / Town / District Council or Town Meeting as offset receipts on Schedule A-1, enterprise funds on Schedule A-2, or revolving funds on Schedule A-3. Written documentation should be submitted to support increases / decreases of estimated receipts to actual receipts.

==> Written documentation should be submitted to support increases/ decreases of FY 2016 estimated receipts to FY 2017 estimated receipts to be used in calculating the municipal revenue growth factor.

NOTE : The information is preliminary and is subject to change.

TAX RATE RECAPITULATION  
Fiscal Year 2017

City/Town Council or Town Meeting Dates	FY*	APPROPRIATIONS					AUTHORIZATIONS			
		(a) Total Appropriations Of Each Meeting	(b) ** From Raise and Appropriate	(c) From Free Cash (See B-1)	(d) *** From Other Available Funds (See B-2)	(e) From Offset Receipts (See A-1)	(f) From Enterprise Funds (See A-2)	(g) From Community Preservation Funds (See A-4)	(h) *** Revolving, Funds (See A-3)	(i) Borrowing Authorization (Other)
05/02/2016	2016	494,000.00	0.00	145,538.34	348,461.66	0.00	0.00	0.00	0.00	0.00
05/02/2016	2017	28,486,022.00	24,932,702.00	920,000.00	681,900.00	0.00	0.00	1,951,420.00	63,700.00	0.00
	Total	28,980,022.00	24,932,702.00	1,065,538.34	1,030,361.66	0.00	0.00	1,951,420.00		

\* Enter the fiscal year to which the appropriation relates, i.e., fiscal year 2016 or fiscal 2017.

\*\* Appropriations included in column (b) must not be reduced by local receipts or any other funding source.

Appropriations must be entered gross to avoid a duplication in the use of estimated or other sources of receipts.

\*\*\* Include only revolving funds pursuant to Chapter 44, Section 53 E 1/2.

Clerk

I hereby certify that the appropriations correctly reflect the votes taken by City / Town / District Council.

Susanne Fischer, Town Clerk, Eastham, townclerk@eastham-ma.gov 508-240-5900 | 8/9/2016 2:02 PM

Comment:

NOTE : The information is preliminary and is subject to change.



DEPARTMENT OF REVENUE  
BUREAU OF ACCOUNTS  
CLASSIFICATION TAX ALLOCATION  
EASTHAM

City / Town / District

Fiscal Year : 2017

Return to : Bureau of Accounts, Boston, Springfield, Worcester

1. The selected Residential Factor is ----- 1.000000

If you desire each class to maintain 100% of its full values tax share,  
indicate a residential factor of "1" and go to question 3.

2. In computing your residential factor, was a discount granted to Open Space ?

Yes ----- No ----- X

If Yes, what is the percentage discount ? -----

3. Was a residential exemption adopted ?

Yes ----- No ----- X

If Yes, please complete the following :

Class 1 Total Assessed Value	=	2,673,655,590	X	0	=	
Class 1 Total Parcel Count *		0		Selected Res. Exemption %		Residential Exemption

\* Include all parcels with a Mixed-Use Residential designation

Applicable number of parcels to receive exemption ----- 0

Net value to be exempted ----- 0

4. Was a small commercial exemption adopted ?

Yes ----- No ----- X

% Selected ----- 0

If Yes, please complete the following :

No. of parcels eligible ----- 0

Total value of parcels ----- 0

Total value to be exempted -----

5. The following information was derived from the LA-7. Please indicate in column D percentages (accurate to 4 digits to the right of the decimal point) which result from your selected residential factor. (If a residential factor of "1" has been selected, you may leave Column D blank.)

A	B	C	D
Class	Certified Full and Fair Cash Value Assessments	Percentage Full Value Shares of Total Tax Levy	New Percentage Shares of Total Tax Levy
Residential	2,673,655,590.00	96.0766 %	96.0766 %
Open Space	0.00	0.0000 %	0.0000 %
Commercial	72,583,420.00	2.6082 %	2.6082 %
Industrial	9,341,700.00	0.3357 %	0.3357 %
Personal Property	27,257,050.00	0.9795 %	0.9795 %
TOTAL	2,782,837,760.00	100.0000 %	100.0000 %

NOTE : The information is preliminary and is subject to change.

6. I hereby attest that notice was given to taxpayers that a public hearing on the issue of adopting the tax levy percentages for fiscal year 2017 would be held on 08/05/2016 (date), 5:05 (time), at Eastham Town Hall (place), by Cape Codder Newspaper (describe type of notice).

Susanne Fischer, Town Clerk, Eastham, townclerk@eastham-ma.gov 508-240-5900 | 8/11/2016 8:16 AM  
City/Town/District Clerk

7. We hereby attest that on 08/15/2016 (date), 5:05 (time), at Eastham Town Hall (place) a public hearing on the issue of adopting the percentages for fiscal year 2017, that the Board of Assessors presented information and data relevant to making such determination and the fiscal effect of the available alternatives at the hearing and that the percentages set forth above were duly adopted in public session on 08/15/2016 (date).

8. The LA-5 excess capacity for the current fiscal year is calculated as 398,532

The LA-5 excess capacity for the prior fiscal year is calculated as 518,880.37

For cities : City Councilors, Aldermen, Mayor

For towns : Board of Selectmen

For districts : Prudential Committee or Commissioners

_____	_____	
	(Date)	(Comments)
_____	_____	
	(Date)	(Comments)
_____	_____	
	(Date)	(Comments)
_____	_____	
	(Date)	(Comments)
_____	_____	
	(Date)	(Comments)
_____	_____	
	(Date)	(Comments)

**Board of Selectmen Meeting**

August 15, 2016- 5:05 P.M.



**CLASSIFICATION HEARING**

**Fiscal Year 2017**

**FY17 \$404,800 Median value**

FY 2010:	\$411,050	X	\$5.51 Tax Rate=	\$2,264.8	Tax
FY 2011:	\$392,500	X	\$5.91 Tax Rate=	\$2,319.6	Tax
FY 2012:	\$389,300	X	\$6.35 Tax Rate=	\$2,472.0	Tax
FY 2013:	\$386,450	X	\$6.53 Tax Rate=	\$2,523.5	Tax
FY 2014:	\$382,250	X	\$7.02 Tax Rate=	\$2,683.4	Tax
FY 2015:	\$382,500	X	\$7.10 Tax Rate=	\$2,715.75	Tax
FY2016:	\$392,550	X	\$7.44 Tax Rate=	\$2,920.57	Tax

**Maximum Allowable Levy**

\$22,376,379 FY 2017

\$20,800,99 FY 2016

**Total Tax Levy**

\$21,977,847 FY 2017

\$20,277,996 FY 2016

**Total Amount to Be Raised**

\$30,065,563 FY 2017

\$27,964,439 FY 2016

**Total Estimated Receipts and Other Revenue Sources**

\$8,087,716 FY 2017

\$7,686,443 FY 2016

Eastham FY'17 Assessment Statistics

FY 13-16 Compared to FY 17

Less than or = \$350,000 assessed value -

FY	Count
2013	1,696
2014	1,816
2015	1,818
2016	1,638
2017	1,490

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Between \$350,000 and \$550,000 assessed value -

FY	Count
2013	2,532
2014	2,447
2015	2,451
2016	2,578
2017	2,652

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Between \$550,000 and \$750,000 assessed value

FY	Count
2013	454
2014	446
2015	446
2016	474
2017	559

---

Between \$750,000 and \$1,000,000 assessed value

FY	Count
2013	211
2014	206
2015	211
2016	231
2017	227

---

Greater than \$1,000,000 assessed value\*

FY	Count
2013	188
2014	179
2015	180
2016	185
2017	194

---

\*17 Parcels are assessed over \$2,000,000



**LEGAL NOTICE**  
**TOWN OF EASTHAM**  
**PUBLIC HEARING**  
**DRAFT WATER REGULATIONS**

III.  
Public Hearing 5:15

The Town of Eastham will hold a public hearing at 5:15 p.m. on Monday, August 15, 2016 in the Earle Mountain Room at Town Hall, 2500 State Highway, Eastham, MA 02642, on the draft water regulations for the public water system. Copies of the draft regulations are available at town hall during business hours Monday – Friday, from 8:00 a.m. to 4:00 p.m., or can be viewed online at [eastham-ma.gov](http://eastham-ma.gov).

August 15, 2016

To: Board of Selectmen

From: Sheila Vanderhoef, Town Administrator

RE: Proposal for Water use and base fees

#### SHEET 1

The first spreadsheet is a summary of the projected revenue by class for all four installation phases of the system. In each two-year period, we should make available the number of potential connections as shown.

On the far right of the sheet is listed the number of parcels being made ready for service in each of the four years.

The next column gives the use category.

The center section of the spreadsheet entitled Estimated Annual revenue – Water Usage, is the calculation of costs based on gallons used. It also shows the base fee for the use and the annual avg water bill.

The far left shows the calculation of revenue if all properties in the group connected.

#### SHEET 2-5

Each year is then displayed on a single sheet.

#### SHEET 6

This is the revenue from the previous sheets, and the cost needed to run the system including staffing and contractor (private operator) capital reserve and debt payments.

Also shown is the tax impact of the revenue shortfall.

#### SHEET 7

This shows the price per gallon and the base fee with proposed increases. Also shown is the estimated meter size, cost and the estimated number needed in each size. In addition, the average annual usages by parcel use type.

#### SHEET 8

Shows the estimate of operator costs and notes other assumptions used in this analysis.



		Estimated Annual Revenue - Water Usage								
		Base Fee	ann avg per 1	0-15,000 gallons	15,001 - 30,000 gallons	30,001 - 50,000 gallons	Over 50,001 gallons	AVG ANNUAL BILL		
PARCELS				15,000	15,000	20,000	>50000	TOTAL		
YEAR 1				\$ 1.80	\$ 4.75	\$ 6.10	7.50		YEAR 1	
14	Mixed Res/Comm	132	45,495	27.00	71.25	94.52		325.02	4,550.24	
26	Mixed Comm/Residential	204	101,983	27.00	71.25	122.00	389.87	814.12	21,167.19	
1495	Single Family Home	96	49,348	27.00	71.25	118.02		312.27	466,847.84	
30	Condominium	96	49,348	27.00	71.25	118.02		312.27	9,368.18	
49	2- and 3-Family	168	101,717	27.00	71.25	122.00	387.88	776.13	38,030.25	
63	Multi-houses, Apts	204	493,580	27.00	71.25	122.00		424.25	26,727.75	
9	Motels, Hotels	920	1,048,361	27.00	71.25	122.00	7,487.71	8,627.96	77,651.62	
39	Retail, Offices, etc.	460	342,810	27.00	71.25	122.00	2,196.08	2,876.33	112,176.68	
14	Warehouse, Sand-Gravel, Elec. Transmission	204	8,291	14.92				218.92	3,064.93	
26	United States Government	576	22,525	27.00	35.74			638.74	16,607.34	
7	Commonwealth of Massachu	204						204.00	1,428.00	
62	Town-Owned	576	46,219	27.00	71.25	98.94		773.19	47,937.53	
17	Charitable and Religious Groups, Housing Authorities	576	123,614	27.00	71.25	122.00	552.11	1,348.36	22,922.04	
1851									848,479.57	
							CONNECTION RATE	50%	424,239.78	
							CONNECTION RATE	60%	509,087.74	









Estimated Annual Revenue - Water Usage									
		Base Fee	ann avg per 1	0-15,000 gallons 15,000	15,001 - 30,000 gallons 15,000	30,001 - 50,000 gallons 20,000	Over 50,001 gallons >50000	AVG ANNUAL BILL TOTAL	
YEAR 4				\$ 1.80	\$ 4.75	\$ 6.10	7.50		YEAR 4
1	Mixed Res/Comm	132	45,495	27.00	71.25	94.52		325.02	9,750.52
1	Mixed Comm/Residential	204	101,983	27.00	71.25	122.00	389.87	814.12	46,404.98
396	Single Family Home	96	49,348	27.00	71.25	118.02		312.27	1,739,671.77
2	Condominium	96	49,348	27.00	71.25	118.02		312.27	16,862.73
1	2- and 3-Family	168	101,717	27.00	71.25	122.00	387.88	776.13	48,119.91
1	Multi-houses, Apts	204	493,580	27.00	71.25	122.00		424.25	36,485.50
0	Motels, Hotels	920	1,048,361	27.00	71.25	122.00	7,487.71	8,627.96	120,791.41
1	Retail, Offices, etc.	460	342,810	27.00	71.25	122.00	2,196.08	2,876.33	138,063.60
0	Warehouse, Sand-Gravel, Elec. Transmission	204	8,291	14.92				218.92	3,502.78
2	United States Government	576	22,525	27.00	35.74			638.74	23,633.52
0	Commonwealth of Massachu	204						204.00	1,428.00
0	Town-Owned	576	46,219	27.00	71.25	98.94		773.19	47,937.53
0	Charitable and Religious Groups, Housing Authorities	576	123,614	27.00	71.25	122.00	552.11	1,348.36	70,114.46
405									2,302,766.70
							CONNECTION RATE	50%	1,151,383.35
							CONNECTION RATE	60%	1,381,660.02
							CONNECTION RATE	70%	1,611,936.69

# REVENUE/EXPENSE PROJECTIONS 2017-2027

	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027
	YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5						
<b>EXPENSES</b>											
PROJECTED TOTAL CUSTOMERS		1,851	2,567	1,273	405						
50% CONNECTION RATE CUSTOMERS		926	1284	637	203						
(MOVE CONNECTION IN FINAL TO 70%)						200	200	200	200	200	200
EXPENDITURES											
DEBT SERVICE	2,385,124.00	2,351,843.20	2,318,562.40	3,213,164.27	3,166,936.27	3,120,708.27	4,269,306.93	4,206,406.93	4,143,506.93	5,080,786.93	5,003,930.93
SYSTEM OPERATIONS (CONSULTANT)	(INCL/DED IN ENG FEES)	92,180.00	112,912.00	169,640.00	178,122.00	175,430.00	184,201.00	193,400.00	203,082.00	213,236.00	223,898.00
STAFFING (sign up assistance/billing, inspections)		56,000.00	57,680.00	59,410.40	61,192.71	63,028.49	64,919.35	66,866.93	68,872.94	70,939.12	73,067.30
CAPITAL RESERVE SET ASIDE		50,000.00	50,000.00	50,000.00	50,000.00	50,000.00	50,000.00	50,000.00	50,000.00	50,000.00	50,000.00
<b>TOTAL PROJECTED EXPENSES</b>	2,385,124.00	2,550,023.20	2,539,154.40	3,492,214.67	3,456,250.98	3,409,166.76	4,568,427.28	4,516,673.86	4,465,461.87	5,414,962.06	5,350,896.23
<b>REVENUES</b>											
USER CHARGES (ASSUME 50% CONNECTION RATE & 70% IN YEAR 2023-2027) (ASSUMER 2.5% INC YEAR 2022)		424,239.78	883,903.31	883,903.31	1,113,144.26	1,113,144.26	1,180,167.93	1,180,167.93	1,416,201.52	1,416,201.52	1,652,235.11
PERMIT FEES (MIN \$90 FOR INSPECTION YR 1-4 \$100 THEREAFTER)		83,295.00	115,515.00	57,285.00	18,225.00	20,000.00	20,000.00	20,000.00	20,000.00	20,000.00	20,000.00
<b>TOTAL PROJECTED REVENUES</b>	0.00	507,534.78	999,418.31	941,188.31	1,131,369.26	1,133,144.26	1,200,167.93	1,200,167.93	1,436,201.52	1,436,201.52	1,672,235.11
<b>REVENUE-EXPENSES</b>											
AMOUNT TO BE FINANCED BY TAXES	2,385,124.00	2,042,488.42	1,539,736.09	2,551,026.36	2,324,881.72	2,276,022.50	3,368,259.35	3,316,505.93	3,029,260.35	3,978,760.54	3,678,661.13
TAX RATE PER 1000	0.86	0.84	0.82	1.12	1.09	1.07	1.45	1.41	1.38	1.67	1.63
TAX IMPACT (\$425k HSE)	365.50	357.00	348.50	476.00	463.25	454.75	616.25	599.25	586.50	709.75	692.75



METER TYPE/SIZE		METER COST YEARS 1-3*	TYPICAL USE BASED ON METER SIZE	YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5
SINGLE METERS								
	5/8	163	RESIDENTIAL SFD/CONDO	96	98	101	103	106
	3/4	163	RESIDENTIAL SFD/CONDO	96	98	101	103	106
	1	268	MIXED RES/COMM	132	136	139	142	146
	1.5	454	2-3 FAMILY	168	172	177	181	185
	2	545	APTS/MIXED RES/COMM/INDUSTRIAL/STATE	204	209	214	220	225
COMPOUND METERS								
	2	1,406		344	353	361	370	380
	3	1,956	RETAIL/OFFICE	460	472	483	495	508
	4	2,488	GOVT/TOWN/CHURCH/HSG AUTH	576	590	605	620	636
	6	4,028	MOTELS	920	943	967	991	1,016
	8	4,381		1,036	1,062	1,088	1,116	1,144
* METER BID PRICE FOR THREE YEARS				** BASE FEE INCREASE 2.5% PER YEAR				
ANNUAL AVG WATER USE(gallons) BY PARCEL BY TYPE				USE PRICE PER 1000 GALLONS***				
Multiple-use property					YEAR 1 - 3	YEAR 3-5	YEAR 5-7	
	Mixed Res/Comm		45482	0-15,000	1.80	1.90	2.00	
	Mixed Comm/Res.		101983	15,001-30,000	4.75	5.00	5.25	
Residential				30,001-50,000	6.10	6.40	6.75	
	Single Family Home		1495	50,001 plus	7.50	7.90	8.25	
	Condominium		49348					
	2- and 3-Family		101717					
	Multi-houses, Apts		49350					
Commercial				*** YEAR 3-7 COST INCREASED 2.5% PER YR. ROUNDED TO EQUAL 5 OR ZERO				
	Motels, Hotels		1048361					
	Retail, Offices, etc.		342810					
Industrial								
	Warehouse, Sand-Gravel, Elec. Transmission		8291					
Tax Exempt								
	US Government		22525					
	Comm. of Mass.							
	Town-Owned		46219					
	Charitable and Religious Groups, Housing Authorities		123614					

A. Fees  
(Presentation)

### ASSUMPTIONS USED IN WATER REVENUE EXPENSE ANALYSIS

1 System with Private Operator (quote from White Water)

Op year

1	\$92,180.00 *
2	\$112,912.00
3	\$169,640.00 **
4	\$178,122.00
5	\$175,430.00
6	\$184,201.00
7	\$193,400.00
8	\$203,082.00
9	\$213,236.00
10	\$223,898.00

Notes: \* 4 hr per day + emergency calls

\*\* 8 hr/day + emergency calls

2 Assumes clerical assistance 1/2 time and 1/2 dedicated plumbing inspector

3 Capital reserve needed to replace meters and repairs. System under warranty for 2 years.

4 Revenue is a function of cost per gallon and estimate is use schedule for Water Mgt Permit  
If fees adjust 2.5% per year revenue impact is 27K - 33K

5 Base fee varies per use and reflects meter size needs or specific use.

6 Meter cost is from bid which is price for three years.

7 Tax impact is the delta of revenue to fees and is based on debt due for SRF funded loans

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PART V: MUNICIPAL WATER REGULATIONS

EASTHAM MUNICIPAL WATER SYSTEM

RULES AND REGULATIONS

(Draft 8-12-16)

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As adopted by the Board of Water Commissioners, \_\_\_\_\_, 2016.

## **PREAMBLE**

By virtue of statutory and other authority, and powers as described by General Laws, Chapter 40, Section 39A through Section 39G inclusive, and adopted by the May 4, 2014 and 2015 Town Meeting(s) in Article 8; to establish a municipal water supply and water distributing system, the Board of Water Commissioners (hereinafter called BWC) of Eastham, Massachusetts (hereinafter called Town) establishes the following rules and regulations, fees and charges related to providing potable water from the Eastham Municipal Water System (hereinafter called Water System).

The Water System as defined in Paragraph 2.21 will be operated and maintained by the Town of Eastham, through the Water System Operator under the direction of the BWC.

The Water System's approval of an application for service binds the Consumer to present and future rules and regulations and to present and future payment of all applicable fees, rates and charges.

The BWC may enact changes to the Policy, Rules, Regulations and Fees contained herein only after a Public Hearing.

## **POLICY & PURPOSE**

The BWC will guide and direct the future and present development and operation of the Water System with the following goals and vision:

- 1) **NEED:** Provide potable drinking water to Eastham properties that do not have a potable water source, and to allow property owners a choice to connect to the Water System unless otherwise required under Massachusetts regulatory requirements or Eastham Board of Health regulations to connect to the municipal water system.
- 2) **SELF SUSTAINING:** Establish and maintain a financially sound and self-sustaining management structure for the Water System.
- 3) **RESOURCE PRESERVATION:** Encourage conservation. Maintain and improve water resource protections.
- 4) **INFRASTRUCTURE:** Provide a Water System infrastructure such that the character of the town will be preserved as well as a means to encourage a vital local economy; of which current and future municipal, commercial, and residential uses of properties in Eastham will benefit.
- 5) **VISION:** Implement the Town's desire to provide water service to all properties in Eastham. Also to consider all possibilities that will improve service, reduce costs and increase revenue.
- 6) **REGULATION:** Comply with the requirements of the Massachusetts Water Management Act, Massachusetts Drinking Water Regulations (310 CMR 22.00, Town of Eastham Code and all other laws and regulations governing a

municipal Public Water Supply (PWS).

## **SECTION 1 - RESPONSIBILITY AND OWNERSHIP**

- 1.1 The BWC shall be responsible for overseeing the repairs, maintenance, construction, and reconstruction of the existing Town-owned capital facilities. For the purposes of this regulation, "capital facilities" shall mean water storage tanks, pump stations and appurtenances, water mains, gates, hydrants and appurtenances in public ways and private ways where system components are located.
- 1.2 The water service lines from the curb stop to the individual buildings are the responsibility of the property owners for new and existing water service installations including repairs, alterations and maintenance. (See Appendix B).
- 1.3 All Town-owned water mains that are in public or private streets are the responsibility of the Town.
- 1.4 All Consumers and users of the Water System will be charged for water consumption, according to one and the same fee schedule. (See Appendix A).
- 1.5 The BWC may declare a STATE OF WATER EMERGENCY if it finds there exists a water shortage or an impending water shortage; and/or a Declaration of Water Emergency has been made under Massachusetts General Laws, Chapter 21G as it is deemed essential to the protection of the public health, safety and welfare. In so doing, the BWC may establish priorities for the distribution of water or water use by a specified amount or to share water with other water systems. The BWC may also choose to develop a drought management or contingency plan and institute a conservation program for public and private use.

## **SECTION 2 - DEFINITIONS AND ABBREVIATIONS**

- 2.1 **BACK FLOW PREVENTER:** The Back Flow Preventer prevents the flow of water from the building into the Water System. See Appendix B.
- 2.2 **BASE SERVICE FEE:** The fee is assessed on every Water Use bill regardless of amount of water used or the use of the property. Fees are used to help offset costs of Water System operation.
- 2.3 **BOARD OF WATER COMMISSIONERS (BWC):** As defined in General Laws, Chapter 40, Section 39A through Section 39G inclusive, and adopted by the town, the Board of Water Commissioners is the Board of Selectmen, charged with overseeing the repairs, maintenance, construction, and reconstruction of the Eastham Municipal Water System.
- 2.4 **CONSUMER:** The word "Consumer" shall mean any person, partnership, firm, corporation, or organization of any type in which the owner(s) property is supplied with

water by the System. The Consumer shall customarily be the OWNER(S) of record or the duly authorized representative of the property being supplied with water.

- 2.5 CORPORATION STOP:** A water service shutoff valve located at a street water main. This valve cannot be operated from the ground surface because it is buried and there is no valve box. See Appendix B.
- 2.6 CURB BOX:** See CURB STOP.
- 2.7 CURB STOP:** The curb stop is inside an in-ground structure called a CURB BOX located at (or near) the property line, which contains a service valve. The service valve is the connecting point between the service line (from the water main) and the service line into the building receiving the water. The curb stop and service valve are the property of and maintenance responsibility of the Town. See Appendix B.
- 2.8 FULL FLOW CONTROL VALVE:** The Full Flow Control Valve is a water flow control valve located inside the foundation of a building, between the end of the service pipe and the water meter. If a meter pit is specified, the full flow control valve and check valve are included in the meter pit assembly. See Appendix B and C.
- 2.9 HOT BOX:** A hot box may be installed in lieu of an underground meter vault. The aboveground structure must be heated to prevent freezing of the water service line and meter.
- 2.10 LIEN:** The word lien shall mean the statutory claim a municipality may impose as defined in Massachusetts General Laws, Chapter 40 Section 42(A).
- 2.11 METER PIT, READER BOX:** If meters are not inside a heated building, they must be located at least 4.5 feet below ground to prevent freezing; a meter pit or vault/hot box must be constructed to house the meter for buildings without basements or that are located over 150' from curb stop.
- 2.12 OPERATOR:** See Water System Operator.
- 2.13 PUBLIC OR PRIVATE WAY:** A public or private way is the Town-owned or privately-owned road or street improved and open to the public as a throughway.
- 2.14 SERVICE LINE:** The service line is a pipe that connects the water supply main through the curb stop to inside the building receiving the water. The service line between the water main and the curb stop is the property and responsibility of the Town. The service line into the building from the curb stop is the responsibility of the Consumer. See Appendix B.  
SERVICE PIPE: See SERVICE LINE.
- 2.15 SERVICE VALVE:** Water flow control valve located inside the Curb Stop.
- 2.16 SITE PLAN:** When applying for a new service connection or alteration, a drawing that is drawn to scale is required to show the a) location of the existing drinking water source

(e.g., private well) b) building's location, c) location of the septic system d) location of all underground utility lines (electric, gas, etc.), e) proposed location of the water service pipes, water meter, valves, anti-backflow device and any other required components between the curb stop and into the building, and f) the current and future (if known) land use of the property. The **SITE PLAN** must be included with an application for a new connection and approved by the Water System Operator. In most instances, a Plot Plan or the Septic Plan (on file at the Board of Health) is acceptable if modified to show all the required site plan items.

- 2.17 **TIE SHEET/AS-BUILT DRAWING:** A drawing showing the locations of the pipes, meter, meter pit (if applicable), with respect to the septic system, buildings, underground utilities and any other aspect of the water service going into a building from the water main. The tie sheet is usually prepared by the contractor who installs the new water service between the curb stop and the building. Sometimes it is called an "AS-BUILT" drawing. This drawing or tie sheet is submitted after the service connection is completed.
- 2.18 **WATER METER:** The water meter is a device for measuring and recording the flow of water from the municipal water supply to the Consumer's building. In some cases the meter is located within the Consumer's building or structure and in other cases, in a box or vault elsewhere on the Consumer's property. Regardless of the location, the meter is provided and owned by the Water System. It may be repaired, tested, calibrated, improved or replaced by the Water System Operator, for which purpose the Consumer must permit entry with reasonable advance notice. The Consumer is responsible for reasonable care and use of the meter. Reasonable care is defined in Section 6.11 as "keeping the meter located in a clean, dry, warm, and accessible location".
- 2.19 **WATER SUPPLY MAIN:** The water supply main is the municipal water pipe (usually located in the street), to which a service line or pipe is connected to supply water to buildings.. See Appendix B.
- 2.20 **WATER SYSTEM OPERATOR** (otherwise known as **OPERATOR**): The Operator is responsible for the day-to-day operation of the Water System, and reports to the Eastham BWC.
- 2.21 **EASTHAM MUNICIPAL WATER SYSTEM** (otherwise known as **Water System** or **EWMS**) consists of capital facilities and is piped water distribution system drawing water from Town-owned wells located in Eastham. The Water System also includes water tower(s) to facilitate distribution and hydrants to provide fire protection for all properties in the service area.

**Additional definitions** as applicable are adopted as set forth in the Massachusetts Drinking Water Regulations 310 CMR 22.00, Massachusetts Plumbing Code, 248 CMR and in the Massachusetts Fire Prevention Regulations, 527 CMR.

#### **ABBREVIATIONS**

**CMR:** Code of Massachusetts Regulations  
**EPA:** Environmental Protection Agency



GPD: Gallons per day  
EMWS: Eastham Municipal Water System (otherwise called Water System)

### **SECTION 3 - RESPONSIBILITIES AND LIABILITIES OF THE CONSUMER**

- 3.1 **DAMAGE TO THE WATER METER:** Consumers will be held responsible for damage to the Water Meter as a result of freezing, hot water, or other external causes. Other external causes are defined as any damage not related to internal meter malfunction. When damage occurs, the Operator will furnish and set another Meter or repair the damaged one. The cost of such replacement or repairs shall be charged to the Consumer on the basis of cost of materials, labor, and current sales tax law.
- 3.2 **TAMPERING WITH THE WATER METER:** It is illegal to tamper with a Water Meter. Written authorization must be obtained from the Operator to install, alter or remove a Meter. Violations are subject to a fine as set forth in the General Laws of the Commonwealth of Massachusetts (See Ch. 165, § 11 which specifies a maximum imprisonment of 1 year and a fine. See the Rate Schedule in Appendix A for the amount of the fine.)
- 3.3 **OWNERSHIP OF PIPES, VALVES AND TAPS:** All pipes, valves, taps and other appurtenances between the Municipal Water Main and the outlet of the Curb Stop inclusive, are the property and responsibility of the Town. All piping, valves, equipment and any other appurtenances between the Curb Stop and the Consumer's building, are the property and responsibility of the Consumer; although such items are required to meet standards and specifications of the Water System. An EXCEPTION to the above is the water meter, which will always be the property of the Water System.
- 3.4 **REQUIREMENT FOR CONTROL VALVES:** Requirements established by the BWC for "Consumer" owned portions of the system include (but are not limited to) one (1) Full Flow Control Valve located near the point of entry of the service pipe through the building or structure wall.
- 3.5 **MASSACHUSETTS REGULATIONS:** Valves and other appurtenances shall conform to Massachusetts Plumbing Code Regulations and Water System specifications. All plumbing installations shall be performed by a licensed plumber in accordance with Massachusetts Plumbing Code and any other applicable regulations and to the satisfaction of the Operator. If any defects in workmanship or materials are found or if the Consumer's service has not been installed in accordance with the requirements defined in the Rule and Regulations and other Water System specifications, the water service will either not be turned on or will be discontinued if such defects are not remedied within a specific time set by the Operator and ratified by BWC. The Town will not be held liable for any defects in such workmanship or material. Consumer must apply to Office of BWC to alter in any way a previously installed and approved water service connection.
- 3.6 **MAINTENANCE OF CONSUMER'S PLUMBING:** All Consumers shall maintain the plumbing and fixtures within their own building(s) in good repair and protected from freezing at their own expense. Consumers shall make any repairs that shall be necessary to prevent



damage or leaking. All plumbing must conform to Massachusetts Plumbing Code and any other applicable regulations.

- 3.7 **ANTI-BACKFLOW PREVENTION DEVICES (CHECK VALVES):** As part of connecting the Consumer's property to the Water System and pursuant to Massachusetts Regulations 310 CMR 22.22, all water service Consumers are financially and legally responsible for the installation of an approved back-flow prevention device immediately "downstream" of the water meter or as specified by the Operator. See Appendix B. This device prevents water in the building from flowing back into the Water System.
- 3.8 **LEAKS:** The Operator shall have the right to shut off water supplied to any property where a leak EXISTS or is BELIEVED TO EXIST. The Operator will make a reasonable attempt to contact the property owner or authorized representative as soon as a leak is discovered. Any such leaks must be repaired and pass inspection by the Operator before water service will be restored. Operator will report any leaks in Operator's monthly report to the BWC. Consumer shall be responsible for the cost of any repairs from the curb stop into the building.
- 3.9 **SAFEGUARDING OF HOT WATER TANKS:** All Consumers having direct pressure hot water tanks are responsible for the installation of appropriate vacuum breakers and relief valves in the piping system. This is necessary to prevent any damage to such tanks and to protect against damage from other sources, if it becomes necessary to shut off the water at the water main in the street. The Water System will not supply water to buildings where direct pressure hot water tanks or appliances are used without these protective devices in accordance with Massachusetts Drinking Water Regulations 310 CMR 22.22.
- 3.10 **LIABILITY FOR INTERRUPTION OF WATER:** Neither the Town, nor the BWC, including contractors and employees shall be held liable or responsible to Consumers for loss or damage from any excess or deficiency in water pressure and any circumstances beyond the control of the Water System. Prior to the interruption of service to allow repairs, modifications, ~~or~~ maintenance ~~or flushing of~~ the water distribution system, the Operator will endeavor to notify affected water service Consumers, whenever practical, and with as much notice as is practical. HOWEVER, nothing in this section shall be construed that such notice is required. In the case of routine flushing of the system, consumers will be given at least 48 hours notice of flushing in their service area.
- 3.11 **LIABILITY FOR WATER RUST:** Neither the Town, nor the BWC, including contractors and employees shall be held liable or responsible for loss or damage from dirty water resulting from repairs, modifications, hydrant flushing or maintenance to the water distribution system, or any other reason.
- 3.12 **LIABILITY FOR FROZEN WATER SERVICE COMPONENTS:** It is the responsibility of all water service Consumers to ensure that all plumbing, fixtures, water meters and appliances are protected from freezing. Neither the Town, nor the BWC, including contractors and employees shall be held liable or responsible for loss or damage to any plumbing, fixtures, water meters or appliances due to freezing. The Consumer is financially responsible for any repairs that may be necessary to prevent freezing, leaks and damage.

#### **SECTION 4 - GENERAL RESPONSIBILITIES**

- 4.1 **CURB BOX:** The curb box shall contain a service valve which must be readily available to the Operator should it be necessary to turn off the water supply.
- 4.2 **SALE OR USE OF WATER:** The Consumer will not be permitted to supply or directly offer the water for sale or use to the property or parcel of another person, except in special emergencies and then only with the approval of the BWC; which approval, if given, will be for a specified and limited time.
- 4.3 **METERS:** The meter is provided and owned by the Water System. Meters, both residential and commercial, will be initially provided to property owners at no charge. In some cases the meter is located within the Consumer's building or structure and, in other cases, in a meter pit or vault elsewhere on the Consumer's property. If a meter pit or vault is required by the Operator, it will be the responsibility of the consumer to pay for the meter pit or vault and for all fees associated with the installation of these components. Meters may be repaired, tested, calibrated, improved or replaced by the Water System Operator, for which purpose the Consumer must permit entry with reasonable advance notice. Regardless of the location, the Consumer is responsible for the reasonable care and use of the meter. No meter shall be moved or disturbed without prior permission of the Operator.
- 4.4 **METER PITS, VAULTS OR HOT BOXES:** Service connections greater than 150 feet from the curb stop will be required to house the meter in a pit, vault or hot box adjacent to the curb box or larger commercial water main capped at the approximate property line. The BWC and/or the Water System Operator will determine whether a pit or vault/hot box is required. A meter pit will be utilized for meter sizes under two inches and vaults or hot boxes for any meter larger than two inches. The cost of meter pits and vaults/hot boxes will be the responsibility of the Consumer. The Consumer may voluntarily install a meter pit or vault/hot box at their property line (adjacent to the curb stop), in which case the property owner will be allowed to connect to and utilize their existing water service pipe from their water supply well provided that the pressure rating of their existing water service pipe meets that of the Water System. In this instance, the existing well would be removed from service. Meter pits are provided by the Town and paid for by the Consumer. Meter vaults are provided and paid for by the Consumer. The costs of repairs, maintenance and/or replacement of meter pits and meter vaults are paid for by the Consumer.
- 4.5 **METER REPAIR:** The Water System Operator will have the right to remove, repair or replace any meter. The cost of meter repairs or replacements due to defects will be paid by the Town. The costs of repairs, maintenance and/or replacement caused by freezing, hot water, or unknown causes, whether internal or external, will be charged to the Consumer.
- 4.6 **SHUT-OFF OR TURN ON SERVICE:** Except in the case of emergencies, all water shut-offs and start-ups require two weeks advance notice and billed according to fee schedule in Appendix A.

## **SECTION 5 - WATER SYSTEM DISCLAIMER OF LIABILITIES**

- 5.1 GUARANTEES:** Constant water pressure and uninterrupted service are not guaranteed. Further, the Consumer is not assured a full volume of water or the required pressure per square inch necessary to effectively operate any appliances and/or fixture. The same rule holds true of all variable conditions that may take place in the use of water from the water supply mains. The Operator will use all reasonable care and diligence to avoid interruptions and fluctuations in the service, but neither the Town, nor the BWC, including contractors and employees shall be held liable or responsible to Consumers for any loss or damage from any excess or deficiency in the pressure or volume or supply of water.
- 5.2 REPAIRS:** The Town, BWC, as well as water system contractors and employees will not assume any liability for conditions in the Consumer's plumbing or appliances associated with or following installation, repairs or flushing to any part of the system and shall not be responsible for damages caused by dirty water resulting from the opening or closing of any gates for repairs or any other reasons, or the breaking of any supply lines.
- 5.3 DUE NOTICE:** The Operator will endeavor to give due notice to as many of the Consumers affected whenever it may become necessary to shut off the water supply to any section of the system, to make repairs or changes or because of a broken main or service, and will, as far as practical, use every effort to prevent damage or inconvenience. Failure to give such notice will not involve the Town, the BWC, nor water system contractors and employees in any responsibility or liability for damage arising from the shutting off the water supply.
- 5.4 SHUT-OFFS:** The Operator reserves the right at any time, without notice, to shut off the water supply for the purpose of making repairs, extensions or other reasons. Consumers having boilers or other appliances on their premises are hereby warned against the danger of collapse or damage from the shutoff, and are urged to provide safety devices as described in the Massachusetts Plumbing code, for their protection. The Town, the BWC, water system contractors and employees shall not be liable for damages resulting from the shutoff.

## **SECTION 6 - PROCEDURES FOR SERVICE INSTALLATION AND USE**

- 6.1 CONTRACTUAL AGREEMENT:** Acceptance of service shall bind the Consumer to the laws, rules, regulations and policies of the Commonwealth of Massachusetts, the Town of Eastham, and the Rules and Regulations as written by the BWC. Acceptance of service shall form a part of the contract with every Water System Consumer and shall govern their relations.
- 6.2 APPLICATIONS FOR WATER SERVICE:** All applications for any new installations, alterations, replacements or change of ownership of a water service shall be submitted to the Office of the BWC by the owner of the property or their duly authorized representative. When applying for a new service connection or alteration a

Site Plan is required as defined in Section 2 of these Regulations. The application and Site Plan must be approved by the Water System Operator. A plumbing permit will also be required, and will be a part of the initial application. The water system connection will not be turned on until the connection has been inspected and approved by the Operator, and the Plumbing Inspector, and a record drawing of the service connection has been submitted to the Town.

- 6.3 MATERIALS AND INSTALLATIONS:** All materials to be used in conjunction with any and all water mains and installations of the same shall be in strict accordance with the "Specifications for Water Mains and Service Installation" of these Regulations found in Appendix B. All water mains and all water mains and appurtenances shall be installed by a Contractor who has been approved by the Town of Eastham.
- 6.4 METERS:** Meters are the property of the Town of Eastham. The meter size for each property will be determined by the Operator. Meters, both residential and commercial, will be initially provided to property owners at no charge.
- 6.5 RESPONSIBILITY FOR CHARGES:** Consumers of water shall be charged with and held responsible for all water passing through their water meter. Exceptions may be granted only by the BWC.
- 6.6 EXTENDING MAINS:** Applications for new service will be accepted for review subject to the existence of a municipal water main in a street or right-of-way abutting the property to be served AND the existence of sufficient water capacity. Approval of an application shall in no way obligate the BWC or the Town to extend water mains.
- 6.7 CONSTRUCTION:** Owner of a property that is already connected with the Water System and desiring construction, alterations or attachments shall submit plans and specifications for the proposed work to the office of the BWC for inspection, approval and for a determination as to whether the same is permissible. The BWC or its designated representatives shall determine the terms, charges and conditions under which the proposed water use shall be permitted.
- 6.8 WATER SERVICE INSPECTIONS:** The Consumer or Consumer's authorized representative shall notify the Operator prior to commencing work once plans and specifications have been approved. Upon said notification, the Operator will designate the requirements for inspections during construction as approval is required at different stages of work. No work shall be covered or enclosed until inspected and approved. Water System inspections will be scheduled during normal working hours. If by mutual agreement inspections are scheduled for other than normal working hours, the Consumer will be responsible for paying any and all extra costs. (Usually, the Contractor, hired by the Consumer, will handle all inspections as well as provide a "TIE SHEET" or "AS BUILT" diagram). The property owner is responsible for hiring approved, licensed and insured plumbers and contractors off of the approved lists by the Town. The Operator requires a minimum 48-hour notice to perform any inspection.
- 6.9 PRIVATE WELL:** The Operator has the responsibility to control all cross connections



for the safety of the Water System. Except where denied by the Eastham Board of Health regulations, a property that is connected to the Water System may retain a private well for non-potable uses, under the following conditions:

6.9.1 Private wells must meet all the requirements of the Eastham Board of Health regulations.

6.9.2 Cross connections between a public water system (PWS) and a private well or individual water source serving residential properties and dwellings used for potable or non-potable purposes are prohibited.

6.9.3 The BWC has the authority to terminate any water service connection to any facility or structure in which cross connections are found to be in non-compliance with 310 CMR 22.22. If necessary, the water service shall be disconnected for failure to test or maintain backflow prevention devices, as determined by the Operator.

Comment [RJT1]: We need to keep this in per DEP's requirements

6.9.4 If backflow prevention device has been removed, by-passed or otherwise rendered ineffective, water service shall be discontinued unless approved corrections are made immediately. All expenses are the responsibility of the Consumer.

6.9.5 All backflow prevention devices must be installed and repaired by a Massachusetts licensed plumber.

6.9.6 A thorough cross connection inspection must be made by the Operator (at no additional cost to Consumer) to prevent any possible cross contamination between the private well and the Water System.

6.9.7 Continuing use of a private well on the same property that is serviced by the Water System must be approved by the Eastham Health Agent. Inspections can be made without notice. Violations are subject to fines as set forth in Section 9.1 and possibly other consequences such as shut off of water service.

6.9.8 The Operator or Office of BWC will keep a record of all private wells that are being used for non-potable uses on file.

**6.10 RIGHT OF ENTRY:** Owner or occupants of any premises served by the Water System shall, upon presentation by Water System personnel of their credentials, authorize entry to their building (s) without a warrant for the purpose of inspecting and surveying their water system for new installation, cross connection, leak detection or to remove, repair, read or replace any water meter at any time the Operator deems necessary. When such access is refused, the water may be shut off and may not be turned on until such access has been allowed and fees have been paid for shutting off and turning on the water.

#### **6.11 FULL FLOW CONTROL VALVE AND ~~ANTI~~-BACKFLOW PREVENTION**

**DEVICES:** Full Flow Control Valve at the meter inlet shall be the first fitting inside of a serviced building and shall be inspected and approved by the Operator. There must also be an ~~Anti~~-backflow prevention device (double-check valve with drain) installed to permit removal of the meter without backflow from the internal water systems. (SEE APPENDIX B) The meter shall be located in a clean, dry, warm and accessible location. Upon completion of the installation of a water meter, the Operator shall be notified to inspect the installation and install a remote reader before the service is activated. The Operator, in cooperation with a licensed plumber, must inspect and approve the meter installation. In some instances, an expansion or

"bladder" tank shall be required by plumbing code for the hot water heating system.

**6.12 METER PITS AND VAULTS OR "HOT BOX":** When it is necessary or expedient to locate the meter in an underground pit or vault or aboveground in a hot box, it must be approved by the Operator and the Consumer shall bear the expense of same and shall bear the responsibility of reasonable care and maintenance of said box or vault such as keeping it clean and dry. In those instances where the service line from the curb stop to the dwelling or structure is more than 150 feet, a meter pit, vault or hot box is required. A meter pit will be utilized for meter sizes under two inches and vaults or hot boxes for any meter larger than two inches. The Consumer may voluntarily install a meter pit, vault or hot box at their property line adjacent to and downstream of the curb stop or valve, in which case the Consumer will be allowed to connect to and utilize their existing water service pipe from their water supply well, provided that the pressure rating of their existing water service pipe meets that of the Water System and the domestic plumbing connection to the well is abandoned. The Consumer shall not cover the pit or hinder access to the water meter in any way. Covers must remain accessible exposed at all times. Pits shall be furnished with inlet and outlet connections.

**6.13 RIGHT TO CHANGE METERS:** If, in the opinion of the Operator, a meter does not fit the conditions of the service installation, the Operator has the right to change such meter. Such a change shall be ~~made~~ in accordance with current regulations and its costs ~~may be~~ are the responsibility of the Consumer. There is no charge to the Consumer if the Water System Operator replaces a meter (with no change in size) as part of maintenance to the Water System.

**6.14 REPAIRING OR REPLACING OR REMOVING METERS:** The Water System Operator shall have the right to remove, repair or replace any meter at any time it so determines. No meters shall be removed by the Consumer or their Plumber without prior written permission from the Operator.

## **SECTION 7 - BILLING FOR SERVICES**

**7.1 METER READING & BASE SERVICE FEE:** Meters will be read a minimum of every three months (quarterly). Water use charges will be billed in accordance with the current fee schedule (Appendix A). In addition to any water use charges, a Base Service Fee (BSF) will be added to each bill after the initial application for connection to the Water System is received. The BSF Fee ceases only when a house or building is demolished, removed from its site, declared uninhabitable by a legal authority, or the Consumer elects to "disconnect" from the Water System according to Section 7.9.

**7.2 BILLS PAYABLE:** Bills are payable to the "Town of Eastham" and will be sent to the Consumer of Record (or duly appointed representative), to the address provided on the Application for Service or provided by the Consumer. Tenants will not be billed. Consumer shall notify the office of the BWC promptly of any change of mailing address. If a bill is not paid in full within 90 day of the billing date, the account will be



considered delinquent.

- 7.3 **FAILURE TO RECEIVE A BILL:** Failure of the Consumer (or duly appointed representative) to receive a bill does not relieve the Consumer of the obligation of payment, nor from the consequences of non- payment.
- 7.4 **DELINQUENCY NOTICE:** When bills are not paid in full on or before the due date specified on the Consumer's invoice, reminder notices shall be sent. Notices shall be sent to the Consumer after 30, 60 and 90 days have elapsed from the due date and full payment has not been received. Failure to pay the delinquent amount specified, after a final notice has been sent to the Consumer via certified mail, will subject the property to municipal water lien processing. The delinquent amount shall be certified by the BWC and delivered to the Assessors for commitment to the Collector to be added to the property tax to which it relates, as provided under Mass. General Laws Chapter 40, Sections 42A – 42F. For bills which are already delinquent beyond these time periods, certification proceedings shall begin immediately with or without such notice.
- 7.5 **CHANGE OF OWNERSHIP:** The BWC must be notified prior to any transfer or any change in ownership of property currently serviced by the Water System. A final meter reading and a water service turn off must be scheduled with the Operator, coincident with the transfer. The Office of BWC will provide to the previous owner (or legal representative) the resulting water usage in gallons within the current billing cycle. The new owner must complete an Application for Water Service and follow the process of transferring the ownership of the connection to the new owner and the reinstatement of service. Any outstanding water use or any other charges, and the pro-rating of the Base Service Fee, must be adjusted between the buyer and the seller at the time of property transfer. Changes in owner address & billing will become effective at the next regular billing date following the date of notice. Failure of the seller to notify the Office of the BWC of a change of ownership does not alleviate the buyer of any charges due. All charges for any billing period are against the property and whoever the new owner is at the end of the billing period is liable.
- 7.6 **METER MALFUNCTION:** All water passing through a Meter must be paid for. If a Meter malfunctions or fails to register, the Consumer will be charged at the average daily consumption as shown by the Meter when it was in working order, for the corresponding period of two years preceding (or for whatever the preceding service time is, if less). In the case of a malfunction following transfer of ownership as outlined above, a shorter (post-transfer) period may be used to calculate average daily consumption.
- 7.7 **"MAIN" WATER METER:** For each property (parcel) connected to the Water System, there is a single (or main) water meter. This Water Meter is the property of the Town. It provides the water use in gallons for billing the Consumer (or duly appointed representative). If a Consumer with multiple units wants water meters for each unit, the additional water meters (and any additional plumbing charges) are the sole responsibility of the parcel owner and must be installed downstream of the Main Water Meter by a



licensed plumber, and inspected by the Plumbing Inspector. Disclaimer: the additional water meter(s) will not be read or maintained by the Water System Operator. Exceptions to this policy can be made by the Board of Water Commissioners.

**7.8 ABATEMENT & ADJUSTMENTS:** Abatements will be made for clerical errors, misreads or failure of Water System equipment. Abatements will not be issued for water leaks, unless otherwise allowed by the BWC. The Abatement Procedure for Water Bills is:

- 7.8.1 All claims for adjustments of water bills shall be made within thirty (30) days of the billing date.
- 7.8.2 The BWC shall, upon written request, consider an abatement of a previously paid water bill.
- 7.8.3 The BWC shall hold a hearing with Consumer within forty five (45) days of receipt of a request for abatement and shall render a decision within forty five (45) days of the hearing.

**7.9 DISCONNECT FROM WATER SYSTEM:** Any Consumer ~~currently~~ connected to the Water System that wishes to disconnect must do so at their own expense. A written request must be submitted to the Office of the BWC. Upon review & approval of this request by BWC and the Eastham Board of Health, the Consumer must hire an approved contractor to disconnect their water service at the water main, as witnessed by the Operator. This work is subject to approval and inspection of the Operator. Once inspected and approved, the water meter must be returned to the Office of the BWC or Operator. A final bill for water use must be paid before the account will be closed. The Consumer is not entitled to a refund of ~~any fees related to their initial hookup, the connection fee.~~ If the property owner wishes to connect at a later time the costs, terms and procedures described in these Regulations in effect at that future time will apply.

## **SECTION 8 – VIOLATIONS & PENALTIES**

- 8.1 VIOLATIONS OF REGULATIONS:** Any violations of these regulations may result in the BWC or Operator ordering the shutting off of water to the violator's premises. When water has been shut off due to violations, it shall not be turned on again until the BWC or Operator is satisfied that the violations have been corrected and there is no further cause for complaint, and charges have been paid to cover the costs associated with the violation and the discontinuing and reconnecting to service.
- 8.2 DISCONTINUANCE OF SERVICE:** A water service may be discontinued for reasons such as non-payment of water bills, charges, and liens for violations of rules and regulations contained herein, and in accordance with MGL Chapter 40 Section 42. A water service may be terminated without notice for fraudulent use. Reconnection of terminated service will be done only during normal working hours of the Operator, and a reconnection fee will be applied. Water service will not be reconnected until all charges are paid in full. If a request is made by the Eastham Health Department, water may be shut off if there is a health or safety reason at the property.

- 8.3 **INACTIVE SERVICE:** If an account does not have a meter and has been inactive for more than 24 months, the Operator may disconnect and cap the service from the distribution system.
- 8.4 **CROSS CONNECTIONS:** Any consumer found to be in noncompliance with the drinking water regulation of Massachusetts, 310 CMR 22.22 shall be subject to a fine by the Commonwealth of Massachusetts Department of Environmental Protection for each day that the violation occurs or continues. Water will be turned off immediately until violation has been corrected. There will be a Turn on and Turn off fee assessed per violation. There is also a testing fee per device, see non water related fees.
- 8.5 **TREATMENT:** No treatment by any unauthorized personnel shall be permitted. If anyone is found adding any treatment to Town's water they will be subject to fines established by the Board of Commissioners for each individual offense.
- 8.6 **MANDATORY RESTRICTIONS ON WATER USE:** Any consumer found in violation of a water ban subject to fines by the Town, at a rate set by the Water Commissioners.
- 8.7 **UNAUTHORIZED WATER USE:** Whoever unlawfully and intentionally injures a water meter or prevents such meter from registering the quantity of water supplied through it or use or causes to be used water without consent of the BWC shall be fined at a rate set by the Water Commissioners and will be responsible for its repair or replacement.
- 8.8 **DEFACING AND LITTERING ON TOWN PROPERTY:** Any person or persons willfully defacing and or littering upon Town owned property located within its watershed shall be fined.
- 8.9 **NO TAMPERING WITH TOWN PROPERTY:** All gates, valves, hydrants, shutoffs, water meters and standpipes and any other portion of the municipal system are the sole property of the Eastham Municipal Water System. They are not to be opened, closed, removed or in any way tampered with. Only personnel authorized by the Operator may use this equipment. Violators will be subject to charges or penalties as stated herein or by Massachusetts General Law Chapter 165.
- 8.10 **MARK OUTS:** No excavator shall, except in an emergency, make an excavation where town water exists unless notice is given to the Operator at least **72 business hours, excluding weekends and holidays**, before excavation. If an excavation is made without the request of a water mark out, the excavator shall be held solely responsible for any and all damages and injuries caused, and any penalties or legal action that may be brought against excavator,

## **SECTION 9 - PRIVATE ROADS**

- 9.1** Pursuant to the “POLICY & PURPOSE” of the Water System and based upon reasonable engineering, economic, and water need considerations the BWC in its reasonable discretion may cause water supply mains to be installed on private roads as defined in Section 2.12.

Sections 1 through 8 of the Eastham Municipal Water System Rules and Regulations and all Amendments thereto are specifically applicable to water supply mains installed on such private roads and service lines, valves and meters connected thereto.

- 9.1.2** Appropriate water easements, granting the right to install, inspect, operate, maintain, repair and replace water supply mains and appurtenances, must be granted to the Town, acting by and through the BWC, or waivers of appraisal and damages obtained for the taking of such easements by the BWC, from all property owners who abut the portion of the private way on which the work is to be done or who otherwise have an ownership interest in each such portion.
- 9.1.3** The installation of a water supply main on a private road shall not cause or render the Town of Eastham or the BWC to be responsible for or liable for the maintenance, repair, or plowing of any such private road on which a water main is installed. The private road after water supply main construction will be returned to a condition equivalent to its pre-construction state.
- 9.1.4** Any decision to introduce water supply mains in private roads is limited to private roads in existence as of 2014. Anyone creating a new private way must bear the burden of introducing all necessary utilities pursuant to the current or future requirements of the Eastham Planning Board’s subdivision rules and regulations and the rules and regulations of the Eastham Board of Health where applicable.

**SECTION 10 - AUTHENTICATION**

Upon due notice and hearing, we the undersigned, Water Commissioners of the Town of Eastham, Massachusetts, do this \_\_\_\_ day of \_\_\_\_\_ 2016, adopt the foregoing "Rules and Regulations" of the Eastham Municipal Water System.

TOWN OF EASTHAM  
BOARD OF WATER COMMISSIONERS:

\_\_\_\_\_  
Linda Burt, Chair Date

\_\_\_\_\_  
Bill O'Shea, Vice Chair Date

\_\_\_\_\_  
John Knight Date

\_\_\_\_\_  
Wallace Adams Date

\_\_\_\_\_  
Elizabeth Gayron Date

**APPENDIX A  
WATER USE RATES AND FEE SCHEDULE**

As adopted by the Board of Water commissioners, \_\_\_\_\_, 2016

Pursuant to the authority given by MGL c. 41, §69B, the Eastham Board of Water Commissioners has established the following schedule of prices and rates which must be paid by every customer as follows:

**WATER USE RATES: QUARTERLY BILLING PERIOD**

On \_\_\_\_\_ the Board of Water Commissioners held a Public Hearing and adopted a \_\_\_\_\_ annual increase of water usage rates and service fee effective on \_\_\_\_\_ and each consecutive year thereafter.

**Current Water Rates, effective for the Billing Period:**

Base Service Fee: \$ \_\_\_\_\_ (See Section 7.1 - does not include water usage)

**Water Fee**

\$ \_\_\_\_\_ per thousand gallons from ~~0-1000~~ to ~~1520~~,000 gallons

\$ \_\_\_\_\_ per thousand gallons from ~~1520~~,000 to ~~305~~,000

\$ \_\_\_\_\_ per thousand gallons from ~~305~~,000 to ~~560~~,000

\$ \_\_\_\_\_ per thousand gallons from ~~>50,000~~ ~~60,000 to 85,000~~

~~\$ \_\_\_\_\_ per thousand gallons from 85,000 up~~

**QUARTERLY WATER USE BILLING PERIODS: TBA**

Draft attachment A will be available for public hearing on 8/15/16



#### **ADDITIONAL FEES:**

Water meter test (1st customer requested test in billing period)-----	No charge
Additional Water meter test requests in same billing period ----- (Refundable if meter is more than 2% inaccurate)	\$50 up to actual cost
Water meter test (initiated by Water System operator)-----	No charge
Turn on or Turn off, or plumbing test-----	\$60 each occurrence
Cross Connection testing-----	No charge
Final Meter Reading (e.g. Ownership transfer)-----	\$50
Cut off water service & cap (System permission required)-----	Actual cost
Research Request-----	\$50/hour (no chg first ½ hr.)
Hydrant Use Setup (large volume purchase directly from System)-----	\$80 & includes 1000 gallons.
Hydrant Use Consumption-----	\$20/1000 gal after 1 <sup>st</sup> 1000
Return Check Fee (Collected by Town Treasurer)-----	\$25
Late payment fee or Delinquent Account Interest-----	See Section 7
Meter Tampering charge-(each occurrence) -See Section 3.2-----	\$500
Unauthorized use of fire hydrant (each occurrence)-----	\$1000
Replacement of frozen water meter (each occurrence)-----	Cost of meter plus \$150
Upgrade/Downgrade in meter size)-----	Cost of meter plus \$150

#### **FIRST TIME CONNECTION TO WATER SYSTEM**

Note: Most connections will have service sizes less than or equal to 2". The town will supply, at no cost to the property owner, meters for initial residential and commercial hookups and there is no hook-up fee. The BWC may adopt fees for meters and hookups at a later date, but not without holding a public hearing.



**CONSUMER COST COMPONENTS:**

The total cost to a consumer to connect to the Water System is the SUM of the following:

	What	Make Payment to	Financial Terms
1.	SYSTEM CONNECTION FEE	N/A	No FEE
2.	METER PRICE	Town of Eastham	No FEE
3	METER PIT, VAULT OR HOT BOX	Town of Eastham	Meter Pits must be purchased from the Town of Eastham. If a vault or hot box is required, it must be purchased separately and approved by the Water System Operator.
4.	PIPE INSTALLATION FROM curb stop (shut off close to property line) TO YOUR BUILDING.	Contractor who is "approved" by the System for service installations. (Meets competency & licensing requirements as established by System). (List available)	Contractor is hired by and works directly for Consumer. Cost includes all associated expense items such as parts & permits and inspection fees.
5.	INTERNAL PLUMBING WORK to connect to the Water System and disconnect your building's old water source, if applicable.	MA Licensed Plumber	Plumber is hired by and works directly for Consumer. This cost includes all associated parts such as expansion tanks, connection to water meter, permit & inspection fees.

**OTHER TERMS:**

1. Meter size and Service Size determination: Final decision rests with the Water System Operator, who will consider customer's current use of property and any expectations of the property owner.
2. Water Meter is the property of Town.
3. Service installation from Curb Stop to within Consumer's building: Must use a Contractor approved by the BWC (List available from Office of BWC).
4. Plumber for internal plumbing work: Must be Massachusetts licensed plumber.
5. These rates & charges apply to all parcels within the service area.
6. Fire protection taps (Residential & Commercial) require approval of the Eastham Fire Department
7. All service connections must be inspected by Operator prior to the first-time water turn-on.
8. Connection Application can be withdrawn and all monies refunded if the Office of BWC is notified in writing within 90 days of connection application approval notice and the water meter has not yet been installed.
9. "First billing period" starts upon approval of Consumer's application and ends when the current billing period ends. This means that the first billing period is at the very least, 1 month in duration and at the greatest, it is 6 months in duration.

## **APPENDIX B**

### **Specifications for Water Mains and Service Installation**

All materials to be used in conjunction with any and all water mains and installations of the same shall be in strict accordance with the "Specifications for Water Mains and Service Installation" of these regulations. All water mains and appurtenances shall be installed by the Town or a Contractor who has been approved by the Town.

#### **B1 Pipe Size**

All water mains shall be sized by the Town in conjunction with the Master Plan of the distribution system, or as calculated by the BWC or its consulting engineers. Piping for hydrant services shall have the minimum diameter of six (6) inches.

#### **B2 Fire Hydrant Spacing**

Fire hydrants shall be spaced at a minimum distance of 500 feet in residential zoned areas; 250 feet in commercial, business, and industrial zoned areas. The Fire Chief can request a different spacing standard depending on the situation. The applicant must show proof that the Fire Chief has approved all proposed fire hydrant locations. Measurements shall be taken along traveled way, whether public or private. Spacing of additional fire hydrants shall begin at the closest existing hydrant. An additional fire hydrant shall be placed at the dead end of all water mains.

#### **B3 Fire Hydrant Access**

No person shall obstruct access to a fire hydrant. Fire hydrants shall have a three foot clear radius measured from the center of the stem of the top of the hydrant. No foliage, fencing, parking space, or other object shall obstruct the clear area. No person may landscape to change the grade around the base of the hydrant so as to prevent the use of a four inch cap. Location where existing objects such as, but not limited to, buildings, walls, fences, trees, on sloping grades that does not permit a three (3) foot clearance radius, may be granted a waiver by the Town. Before any waiver of this Regulation is granted, all other possible locations must be considered.

#### **B4 Cost of Water Mains**

In private division of lands, commercial, business or industrial complexes, and all other areas not presently serviced by Town water, the developer or owner shall be responsible for all costs with regard to water main installation(s) and connection(s) to existing system and or maintenance of already installed water mains. All water mains shall be installed to the furthest property line.

#### **B5 Need for Water Mains**

The developer or owner of a division of land where water is available within 500 feet will be required to serve and supply the development with water in accordance with these regulations. Any property that has existing public water service and is a division of land, the developer or owner will be required to upgrade the water mains and services to comply with these rules and regulations before the transfer of any parcel. Industrial, commercial, condominiums or multi-family residential, and like buildings that are not a division of land shall be reviewed by the Water Superintendent and the Fire Chief on an individual basis. They shall still be governed by these Rules and Regulations and be required to install and maintain water mains and fire hydrants.

#### **B6 Application for Water Main Installations**

An application for water main installation shall be completed by the developer or owner and submitted to the Town for review and approval before any work can proceed. All applications must contain the complete information requested and an engineer construction plan prepared by

Formatted: Width: 8.5", Height: 11"

Massachusetts Registered Professional Engineer with a scale of 1 inch equal 40 feet (1"=40'). Payment of all required tapping fees, and installation fees including the service availability charge and any other fees established by the Board of Water Commissioners shall be made at the time of application.

**B7 Ductile Iron Pipe and Fittings**

- B7.1 All water main pipes shall conform in design and manufactured to the latest issue of ANSI/AWWA standard C150 "Thickness Design of Ductile Iron Pipe" and standard C151-91 Class 50 "Ductile-Iron Pipe, Centrifugal Cast in Metal Molds or Sand-Lined Molds for Water or Other Liquids". The pipes shall be supplied in lengths not to exceed 20 feet. Acceptable manufactures include American, McWane, US Pipe, or equal.
- B7.2 Fittings shall be compact ductile iron Class 350 Mechanical Joint, conforming to ANSI Specification A21.53 (AWWA C153 "Ductile-Iron Compact Fittings, 3-in Through 16-in for Water and Other Liquids"), latest edition. Fittings shall be suitable for use with restraints as specified hereinafter. Fittings shall be manufactured in the United States. Fittings shall be made of the same material and have the same lining and coating as the pipe specified above. All fittings shall be marked with the weight and shall have distinctly cast upon them the pressure rating, the manufacturer's identification, nominal diameter of openings and the number of degrees or fraction of the circle on all bends. Fittings shall be Tyler Union Awwa C153 Compact Fittings, or approved equal.
- a. Hydrant tees shall have a rotatable mechanical joint gland on the 6-inch plain end branch to provide positive valve restraint, unless otherwise allowed by the Engineer.
  - b. Caps and plugs, installed in all new work as indicated on the drawings, shall be provided with a threaded corporation or bleeder valve so that air and water pressure can be relieved prior to a future connection.
- B7.3 All pipe and fittings shall have a bituminous outside coating in accordance with AWWA C151 and C110, respectively, latest edition. All pipe and fittings shall be cement-mortar lined and seal coated in accordance with AWWA C104 "Cement-Mortar lining for Ductile-Iron pipe and fittings for water", latest edition. Cement mortar lining shall be double thickness.
- B7.4 Joints for pipe and fittings shall be push-on or mechanical joints conforming to AWWA C111, latest edition.
- B7.5 Restraint joints shall be furnished for thrust restraint for installation on all fittings and valves, where indicated on the drawings, or where required by the Engineer. Restraints for mechanical joints shall be Series 1100 Megalug as manufactured by EBAA Iron, ONE-LOK Series D-Slide Restraints as manufactured by SIGMA Corp., or approved equal.
- B7.6 Restraints for push-on joints shall be Field Lok gaskets by U.S. Pipe or Sure Stop 350 by McWane Ductile. Push-on joint restraints shall not affect the warranty by the pipe manufacturer.
- B7.7 Sleeve type couplings shall be of steel and shall be Style 38 by Dresser Mfg. Div.; Smith-Blair Style 441 or approved equal. Couplings shall be furnished with black steel bolts and nuts and with pipe stop removed. Gaskets shall be of a material suitable for exposure to liquid within the pipe.
- B7.8 Polyethylene pipe encasement shall conform to requirements of AWWA C105, latest edition. Virgin polyethylene shall conform to ANSI/ASTM D1248. Minimum nominal thickness shall be 8 mils. Polyethylene pipe encasement shall be V-BIO Poly.
- B7.9 Insulation shall be 2-inch thick polyisocyanurate foam with a density of 2.0 lbs/cf3. A 30-mils thick bitumen adhesive shall be used as a vapor and moisture barrier for direct burial applications.

- B7.10 Detectable aluminum foil plastic backed tape or detectable magnetic plastic tape manufactured specifically for warning and identification of buried piping shall be used. Tape shall be detectable by an electronic detection instrument. Tape shall be provided in rolls, 3 inches minimum width, color coded for the utility involved with warning and identification imprinted in bold black letters continuously and repeatedly over entire tape length. Warning and identification shall be CAUTION BURIED WATER PIPING BELOW or similar. Permanent code and letter coloring unaffected by moisture and other substances contained in trench backfill material shall be used. Tape shall be buried tape with the printed side up at a depth of 12 inches below the top surface of earth or the top surface of the subgrade under pavements.

**B8 Polyethylene Pipe and Fittings for Directional Drilling**

- B8.1 Black polyethylene (PE) materials used for the manufacture of polyethylene pipe, tube and fittings shall be PE 4710 high density polyethylene meeting ASTM D3350 cell classification 445574C (formerly PE 3408 meeting 345464C per ASTM D3350-02) and shall be listed in the name of the pipe and fitting Manufacturer in PPI (Plastics Pipe Institute) TR-4 with a standard grade HDB rating of 1600 psi at 73°F. The material shall be listed and approved for potable water in accordance with NSF/ANSI 61. Gray PE material, when used, shall be the same except for meeting ASTM D 3350 cell classification 445574E. When requested on the order, the Manufacturer shall certify that the materials used to manufacture pipe and fittings meet these requirements.
- B8.2 Polyethylene pipe shall be manufactured in accordance with AWWA C901-96 for sizes 1-1/4" thru 3" IPS diameters and to the requirements of ASTM D3035. Pipe 4" IPS and DIPS sizes 4" and above shall be manufactured to the requirements of ASTM F714 and AWWA C906-99. 2" and smaller water service pipe and tubing shall be manufactured in accordance with ASTM D2239 for inside diameter control IPS size or ASTM D2737 for outside diameter control CTS size.
- B8.3 The polyethylene pipe and fittings shall be certified as suitable for use in a potable water system, impart no taste, odor or other objectionable compounds to the water, and shall comply with AWWA C906 and applicable National Sanitation Foundation (NSF) requirements. Pipe delivered to the site shall have all required AWWA/NSF potable water markings.
- B8.4 Welded sections of pipe shall be pressure tested at 150 psi for 15-minutes prior to being pulled/installed in the ground. The pressure test shall result in zero leakage.
- B8.5 Polyethylene pipe shall be furnished with restrained mechanical joint adapters to allow mechanical joining with ductile iron pipe. The adapters shall have the same pressure rating as the polyethylene pipe and shall be butt fused to the pipe as specified herein. The adapters shall be complete with pipe stiffener, gaskets and all required bolts and nuts.
- B8.6 All high-density polyethylene piping to be installed as a water main or water line shall be DR11 DIPS. All high-density polyethylene to be installed as a casing pipe shall be SDR17 IPS. For 1" services, install 1" PE tubing within a 2" IPS SDR17 HDPE casing pipe with tracer wire. For services larger than 1", install PE tubing within a 4" IPS SDR17 HDPE casing pipe with tracer wire. Only long-side services (2" and smaller) shall have a casing pipe.
- B8.7 All polyethylene pipes shall be installed with tracer wire to facilitate the detection of the water line or casing pipe after installation. Tracer wire shall be attached to the center of the pipe at a minimum of 6 foot intervals and at all bends with duct tape. Tracer wire shall be 12 gauge copper with a 30 mil polyethylene coated jacket.

#### **B9 Water Services: Pipe, Corporations, Curb Stops, Saddles and Fittings**

- B9.1 Each unit shall have its own separate service, consisting of a corporation stop, curb stop, curb box, ball valve as soon as service enters building, meter and remote reader. From curb stop into building shall be the owners responsibility to maintain.
- B9.2 Unless otherwise specified, all pipe for services and 2-inch mains shall be polyethylene PE 4710, Class 250 tubing and shall conform to the provisions of AWWA specification C901 (latest version). The tubing shall be copper O.D. size and suitable for use with standard industry brass compression fittings without special adapters. Insert stiffeners shall be provided for use with all compression joint connections. Polyethylene tubing to be Drisco Pipe, Endot Industries, Inc., or approved equal. Tracer wire shall be 12 AWG copper with a blue in color, 30 mil polyethylene coated jacket.
- B9.3 The corporation stops shall meet the most recent revision of the AWWA standard "Threads for Underground Service Line Fittings" (AWWA C800). Corporation stops shall be Mueller 300 Ball Corporation Valve, Model B-25008N, as manufactured by Mueller Company or The Ford Meter Box Company for standardization purposes, no exceptions. Corporations larger than one inch shall be installed with saddles.
- B9.4 The curb stops shall meet the most recent revision of the AWWA standard "Threads for Underground Service Line Fittings" (AWWA C800). Curb stops shall be Mueller 300 Ball Curb Valve, Model B-25209N as manufactured by Mueller Company or The Ford Meter Box Company for standardization purposes, no exceptions. Curb Stops shall open Left.
- B9.5 The curb box shall be of the "Erie" type, cast-iron construction. The curb box shall be tar base enamel coated inside and out and shall be equipped with an operating extension rod. The lid shall be of extra heavy cast-iron construction with a brass pentagon plug. Curb stop boxes shall be manufactured in United States only.
- B9.6 Service saddles (for services larger than one inch) shall be Smith-Blair 313 Double Strap. Bodies shall be ductile iron (with fusion-bonded flexi-coat epoxy) and bales, nuts and washers shall be Type 304 stainless steel. Units shall be complete with Buna-N gaskets.
- B9.7 Unless otherwise approved, only compression type fittings manufactured by Mueller Inc., or Ford Meter Box shall be used. Mueller brass tees shall be used to provide 1-inch services off of 2-inch polyethylene tubing. Adapters required to allow connection to existing services shall be provided.

#### **B10 Gate Valves and Boxes**

- B10.1 Resilient wedge gate valves shall be iron body, resilient seated type meeting the latest edition of AWWA C509 or AWWA C515 with mechanical joint ends. The valves shall be designed for 200 psi working pressure and 400 psi test pressure. Valves shall have corrosion resistant fusion - bonded interior and exterior coatings. Valves shall be made in the United States. For standardization, valves shall be as manufactured by Mueller Company or American Flow Control, no exceptions.
- B10.2 Valves are to have O-ring seals and a non-rising stem. Valves shall have a 2-inch square operating nut, and be Open Left (counter-clockwise to open).
- B10.3 Valve boxes shall be cast iron, asphalt coated, sliding type, adjustable, together with cast iron covers with the word "WATER" plainly cast in relief on the top surface. A minimum 6-inch overlap is required between sliding sections. The inside diameter of the bottom section shall be at least 5-1/4-inches and shall have a belled base. The top section shall be at least 6-1/8-inches and have top flanges. The bottom section shall be at least 36-inches in length. The top section shall be at least 26-inches in length and have a plain bottom. No three piece combinations shall be acceptable. Valve boxes shall be manufactured in the United States.



**B11 Hydrants**

- B11.1 Fire hydrants shall have mechanical joint inlet connections to the main, two 2-1/2-inch hose connections, and one 4-1/2-inch steamer connection with a valve opening 5-1/4-inches in diameter minimum and a standpipe with an 8-1/2-inch minimum diameter. Hydrants shall be traffic model with dual drain ports.
- B11.2 The hydrants shall have an oil reservoir to provide lubrication to all stem threads, bearing surfaces and O-rings each time the hydrant is operated. The hydrants shall be made in the United States.
- B11.3 The hydrants shall have mechanical joint shoes, 5'6" bury (street level shoulder areas) or 6'-0" bury (raised sidewalk), 5-1/4-inch valve, and conform to AWWA Specification C-502. Hydrant shall be marked with an arrow and the word "open" to indicate the direction to turn the stem to open the hydrant. Hydrants shall open left.
- B11.4 The hydrants are to receive two coats of prime paint before shipment and once installed are to be cleaned and painted by the Contractor. Hydrants shall be painted in accordance with the Town of Eastham requirements.
- B11.5 For standardization, hydrants shall be Mueller Co. Centurion Model A-423, American Darling Model B84-B-5, no exceptions.
- B11.6 Hydrants shall have hydrant markers with reinforced fiberglass shaft heavy duty spring mounted 4' long x 3/8" diameter. One bolt mounting.

**B12 Tapping Sleeves**

Tapping Sleeves shall be manufactured by Mueller Co., Clow Corporation, or approved equal. Tapping sleeves shall match the requirements of the detail on the construction drawings. Tapping valves shall be manufactured by Mueller Company, Kennedy Valve Manufacturing Company or equal and shall be furnished with one flange end and one mechanical joint end. Valves shall open left. The Contractor shall verify the outside diameter of the pipe to be tapped.

**B13 Cover Over Pipe**

- B13.1 Pipe shall have four and one-half (4.5) feet of cover measured to finish grade of the street. Pipe to be hand covered one (1) foot with sand or stone free gravel and compacted and tamped around pipe to give good support and protection.
- B13.2 In case of any excavation, ground water swamps or when any unsuitable materials are encountered, the Contractor shall replace it with good material to provide proper support and alignment of the pipeline. In some cases, the Contractor shall use crushed stone for bedding covered with sand. Trench backfill shall be suitable material taken from excavation, approved common borrow or gravel hauled in. No mud, frozen earth, stones larger than 3/4" or other objectionable materials is to be used for refilling.

**B14 Ledge**

All ledges shall be removed to width of two (2) feet or greater than the diameter of the pipe and one (1) foot below the underside of the pipe. A bed of sand shall be placed in the trench prior to laying pipe.

**B15 Blasting Precautions**

All blasting shall be discussed with the Operator and or the Engineer's and the decision shall be made on individual bases.

**B16 Survey Markers**

Survey markers (line and grade) shall be required on all newly proposed streets. Pipes shall be laid within the roadway layout (easement in certain cases) as shown on plans approved by the Eastham Planning / Zoning Board.

**B17 Excavation within the Limits of Public Ways**

Permission shall be obtained from the Department of Highway's before any excavation can begin within any Town accepted street. The work shall be performed in accordance with EHD requirements. A street opening permit shall be obtained from Massachusetts Department of Public Works before any excavation can begin on any State Highway. This work shall be performed in accordance with permit.

**B18 Testing of Water Mains: Pressure Test and Chlorination**

- B18.1** Before acceptance by the Town, the pipe shall be pressure tested and chlorinated in accordance with "Installation of Ductile-Iron Water Mains and Appurtenances" AWWA Designation C600 latest edition. No one shall pressure test or chlorinate an installation without notifying the Town at least 48 hours prior. An Operator must be present for the duration of the pressure test and chlorination to witness and sign the chain of custody forms. All pressure test reports shall consist of actual distance of pipe and size, and the number of valves and hydrants. The Town shall furnish a water meter to measure water usage for disinfection and flushing. Before final approval is given, the contractor must submit an as-built drawing to the Town. It is at this time the Board of Water Commissioners shall then determine whether the pipes (project) may be accepted into the Town's water system.
- B18.2** Prior to pressure and leakage tests, the piping shall be thoroughly flushed clean of all dirt, dust, oil, grease and other foreign materials. This work shall be done with care to avoid damage to lining and coatings.
- B18.3** The Contractor shall submit a plan on the method of testing and chlorinating the mains for review to the Engineer. The plan shall include all equipment proposed for use during the work, or the name of the qualified testing company, which will perform the work. Testing of the water main shall not begin until the Engineer has approved the Contractor's plan. All testing shall be done in the presence of the Engineer.
- B18.4** Testing of Water Main:
- a. The Contractor, in accordance with ANSI/AWWA C600 specifications or latest revision thereof, will make all pressure and leakage tests to determine that the ductile iron pipe is structurally safe and free of excess leakage. The Contractor shall furnish all the equipment, materials and labor required for testing. The Contractor shall furnish, at his own expense, all the water needed for all water main testing.
  - b. Testing shall be done in sections of the main not to exceed a 3,000-foot maximum length. Valves shall be placed in the off position at the ends of the sections to be tested. The Contractor shall provide means to prevent water from entering other parts of the pipeline not subject to testing at all times. Contractor will ensure that air release valves and other venting devices are properly installed and placed in open position when filling pipe with water. Taps shall be installed at high points to release air in the water system.
  - c. After all entrapped air has been removed from the section; fill the main to the normal static pressure. The Contractor is allowed to let the main rest for up to 48 hours with static pressure. Using a special pressure pump, the Contractor shall raise the pressure to 150 pounds per square inch. The pump will then be shut off and separated from the test section by a globe valve. A fluid filled pressure gage, with a

maximum reading of 250 psi, shall have been placed beyond the globe valve. The test section will then be monitored for a 2-hour period.

- d. This pressure shall be maintained, within 5 psi, for a minimum of 2 hours during which time the line checked for leaks by the Engineer. Based on an average test pressure of 150 psi, the measured rate of water leakage shall not exceed the following rates in the section under test:

$$L = \frac{12.25SD}{133,200}$$

Where:

L = Allowable leakage, gallons per hour  
S = Length of pipe section tested, feet  
D = Nominal pipe diameter, inches

- e. Should leakage exceed this rate, the Contractor shall immediately locate the leak or leaks and repair same at his expense. Pipe shall be flushed and chlorinated when leakage does not exceed above standard. Approval does not absolve the Contractor from his responsibility if leaks develop within the new main or water services (to curb box) later within the warranty period.

**B18.5 Chlorinating and Flushing:**

- a. The Contractor, in accordance with the latest edition of ANSI/AWWA 651 Standard for Disinfecting Water Mains, shall chlorinate and flush the new water main. Chlorinated water to be flushed from the pipeline shall be de-chlorinated as shown on detail drawings or as approved by the Engineer. It shall then be discharged to the nearest storm drain. Chlorinated water shall not be discharged to any natural water body.
- b. Prior to chlorination, the Contractor shall properly flush the water mains. In general, flushing shall be performed at a flow rate required to achieve a minimum velocity of 3 feet per second, which is approximately 400 GPM in an 8-inch diameter main, 600 GPM in a 10-inch main, 900 GPM in a 12-inch main and 1,600 GPM in a 16-inch main. Flushing of the water main, at the above rates, for approximately 20-minutes per 1,000-foot section, will allow for three volume changes. This is a sufficient period of time for successfully cleaning the water main.
- c. The Contractor shall chlorinate the water main until the main contains a solution containing 25 mg/L available chlorine. The valves shall then be closed and the chlorinated water allowed to sit in the mains for 24 hours. The main will then be checked to assure the chlorine residual shall be at least 10 mg/L. If less than 10 mg/L is measured, the Contractor shall flush and re-chlorinate the mains at no cost to the Owner. All valves and hydrants shall be operated to insure their proper disinfection. Valves shall be operated to prevent super chlorinated water from entering the existing distribution system. The Contractor shall then flush the mains until clear, clean water is being discharged.
- d. Sixteen hours after the main has been flushed of chlorinated water, bacteriological samples (total coliforms and heterotrophic plate count) shall be taken. Two sample events shall occur. The first sample event from the designated locations shall be taken and the second sample event shall be taken from the same designated locations a minimum of 15 minutes apart. Both sets of samples shall pass. Water samples shall be taken from corporation stops along the length of the water main as designated by the Engineer. A minimum of two (2) samples shall be taken on each street, or two per 3,000 feet of pipe, whichever is greater. Each sample shall be

taken in duplicate, in sterile bottles and sent to a State approved private laboratory for analysis. The Contractor shall perform all necessary work including delivery of samples to a certified laboratory, and shall include the cost for sampling and analysis in his bid price. The results of the tests on these samples will determine the acceptance of the work and allow these new mains to be connected to the Town's system. The failure of any sample to pass the laboratory tests shall require the Contractor to reflush and re-chlorinate the mains and resample and test the water until acceptable results are obtained, all at no additional cost to the Owner.

- e. If, during construction, trench water has entered the main, or if in the opinion of the Owner's Engineer, excessive quantities of dirt or debris have entered the main, bacteriological samples shall be taken at 200-foot intervals and shall be identified as to location. Additional sample taps shall be installed and removed at the Contractor's expense.

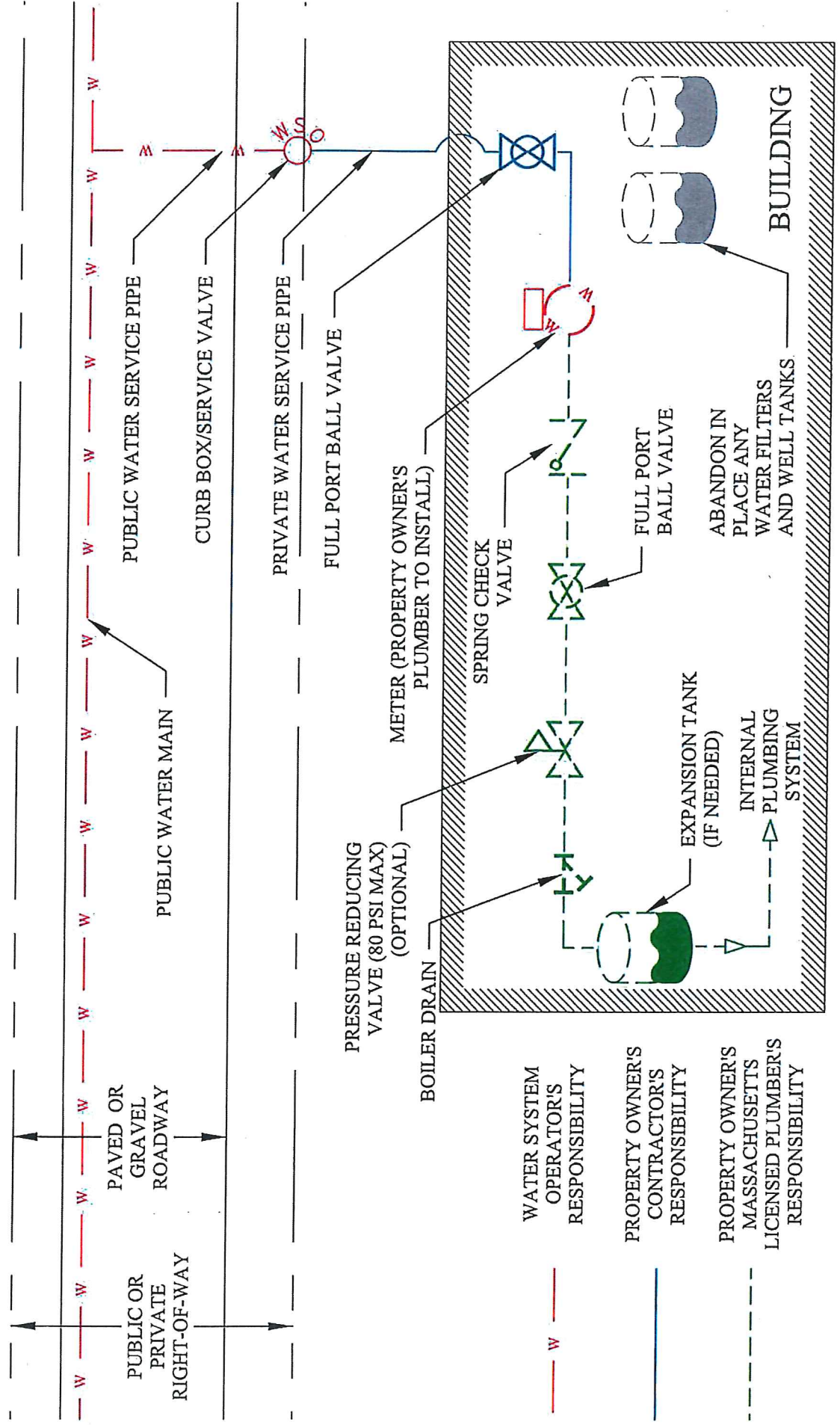
**B19 Road Layout** (~~Previous B19 in 8-5-16 draft removed~~)

Any privately owned pipes and or wires in the Town's road layout are not the responsibility of the town. Any items in the road layout that are damaged will not be paid for by the Town of Eastham

# EASTHAM MUNICIPAL WATER SYSTEM RULES & REGULATIONS

## APPENDIX C

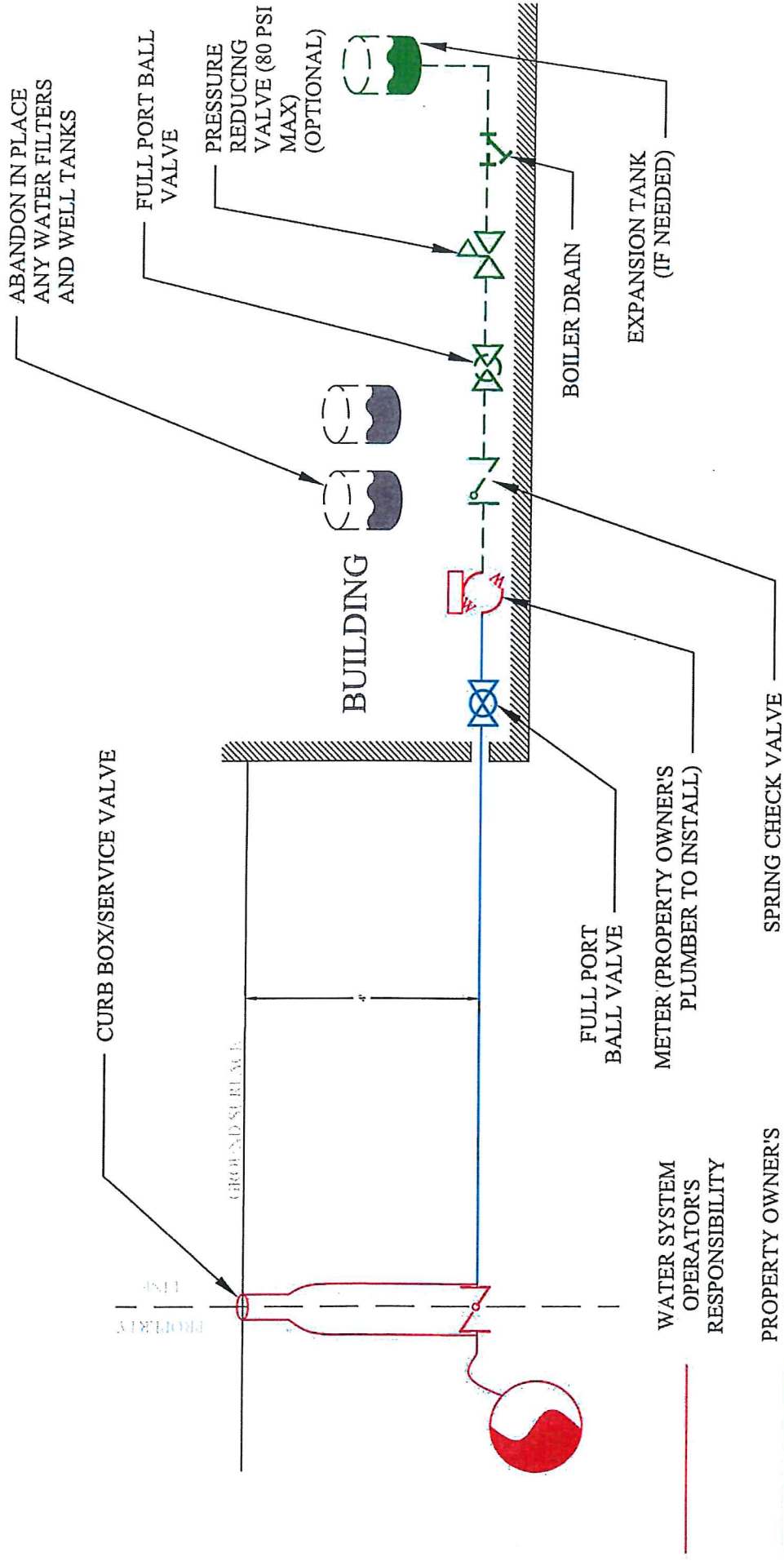
### TYPICAL WATER SUPPLY INSTALLATION PLAN DIAGRAM WITHOUT METER PIT



# EASTHAM MUNICIPAL WATER SYSTEM RULES & REGULATIONS

## APPENDIX C

### TYPICAL WATER SUPPLY INSTALLATION PROFILE DIAGRAM WITHOUT METER PIT

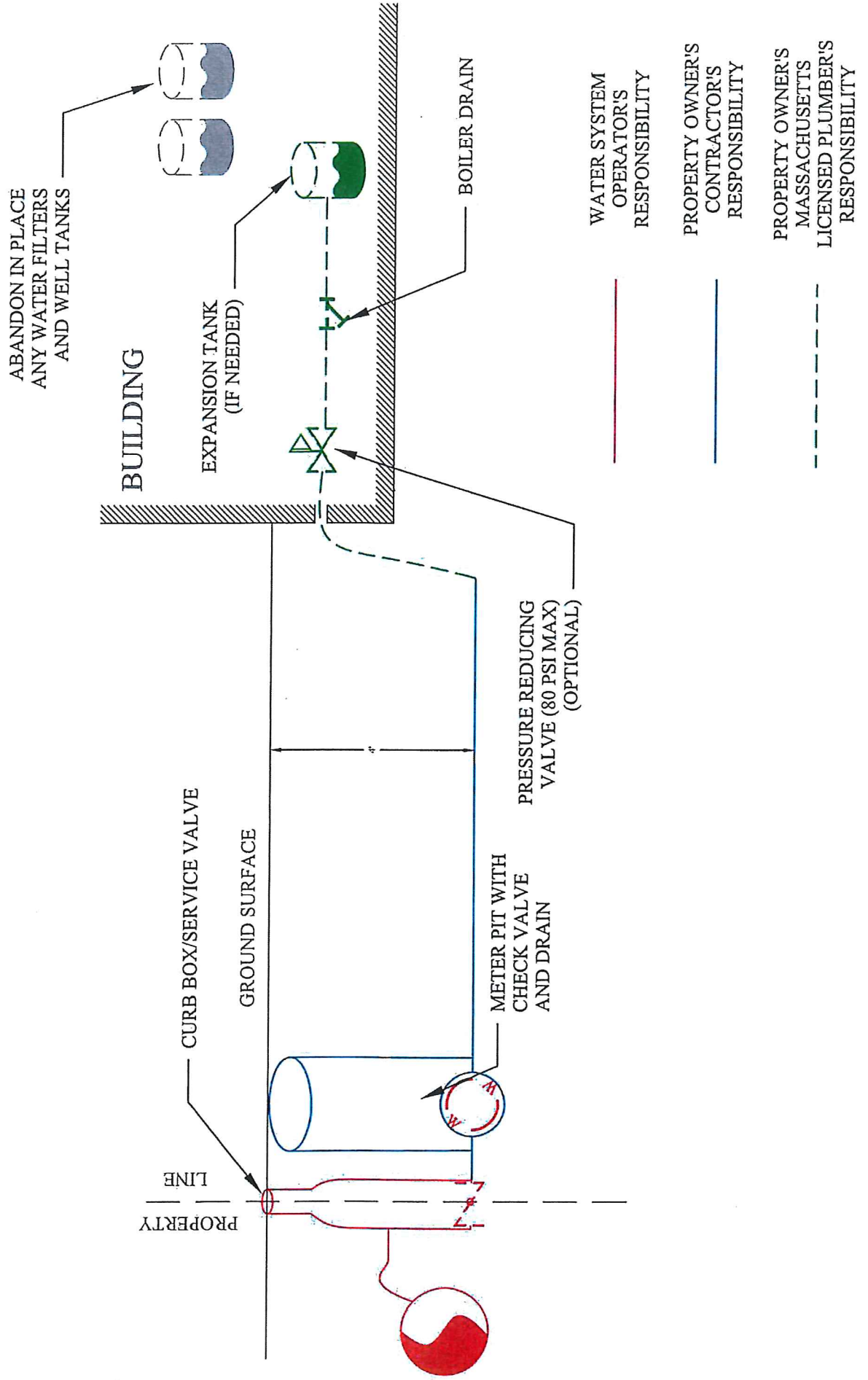




EASTHAM MUNICIPAL WATER SYSTEM RULES & REGULATIONS

APPENDIX C

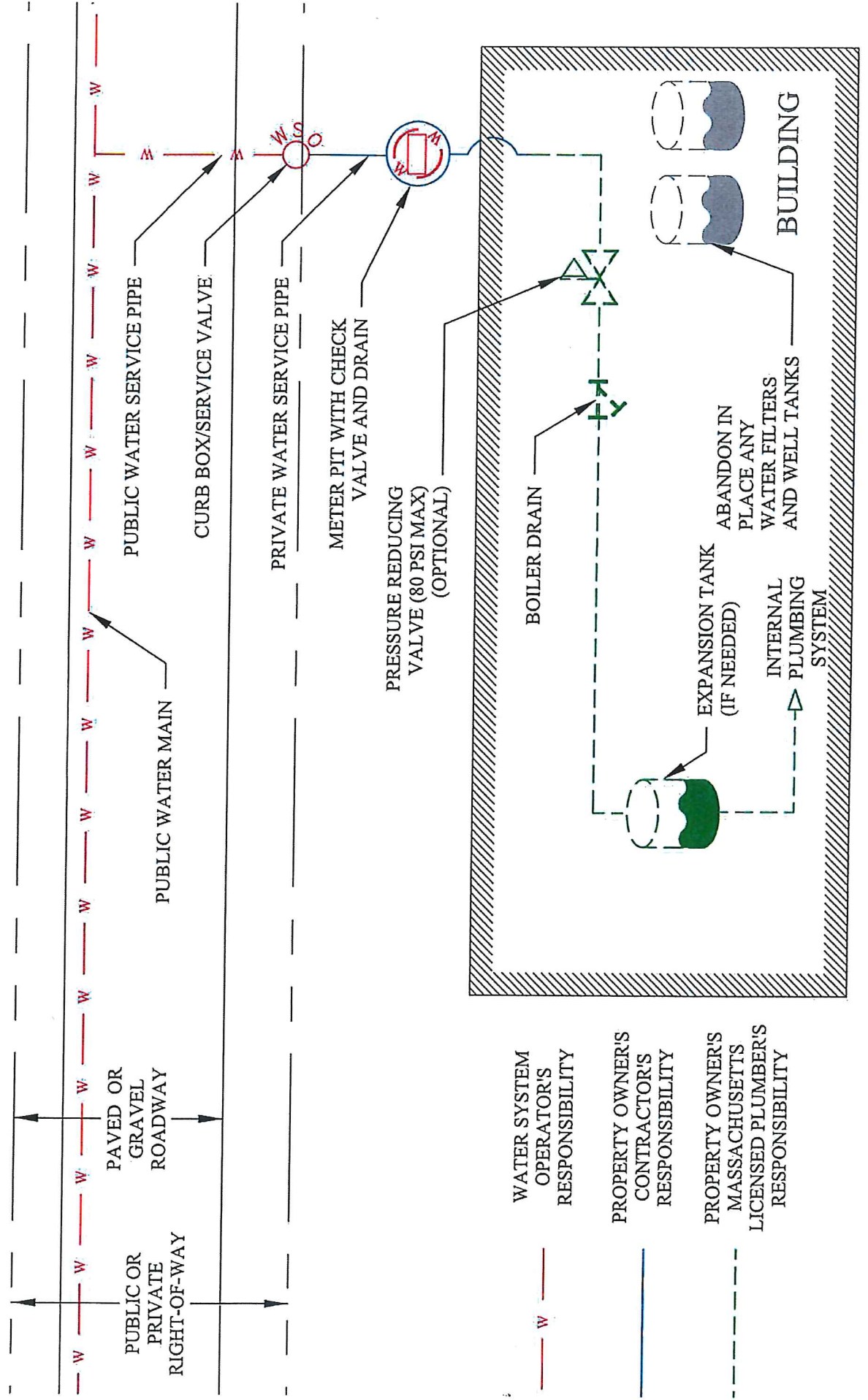
TYPICAL WATER SUPPLY INSTALLATION PROFILE DIAGRAM  
WITH METER PIT



# EASTHAM MUNICIPAL WATER SYSTEM RULES & REGULATIONS

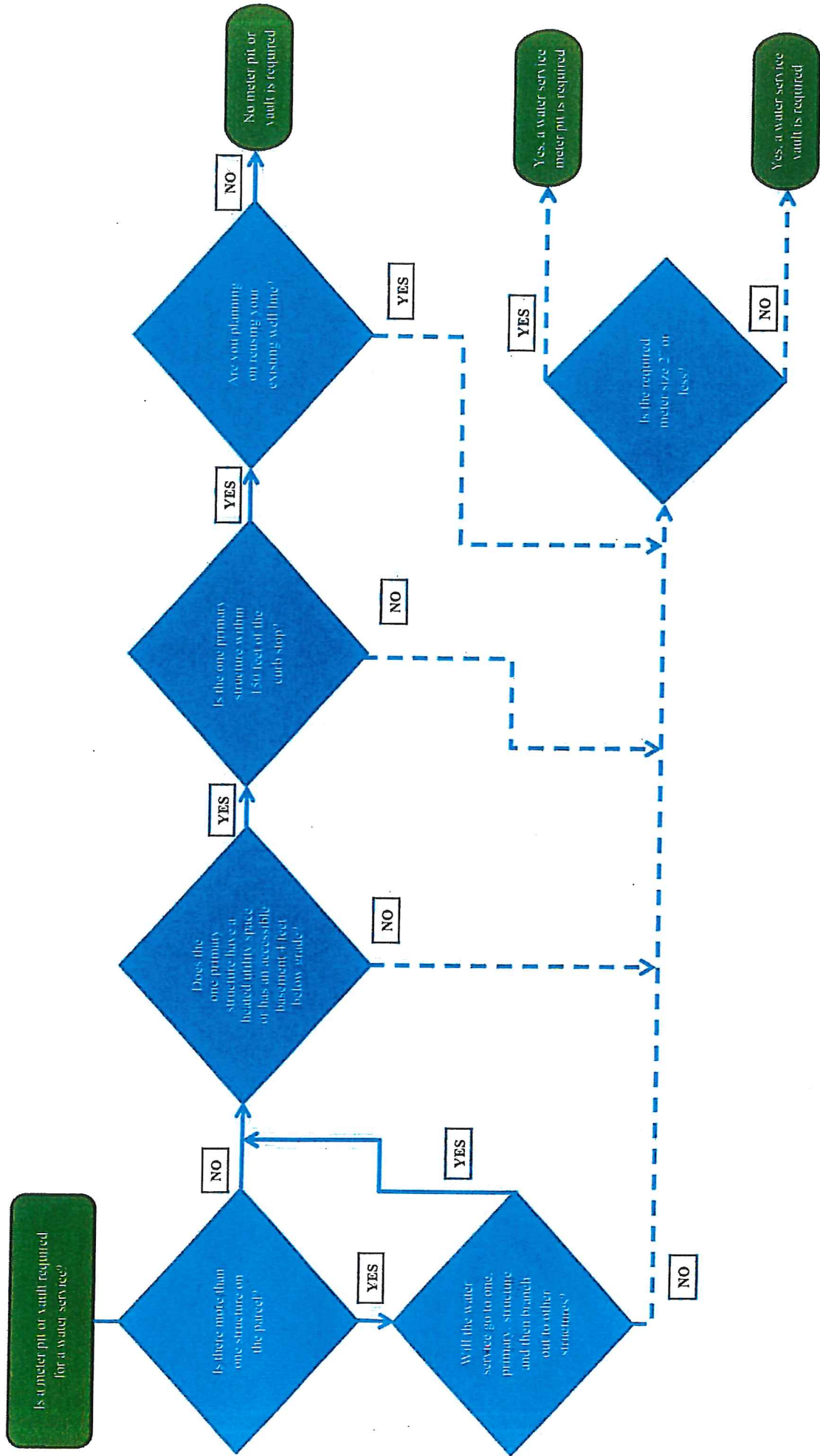
## APPENDIX C

### TYPICAL WATER SUPPLY INSTALLATION PLAN DIAGRAM WITH METER PIT



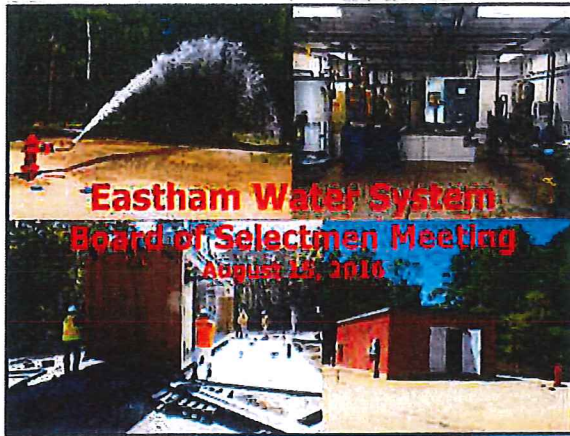
Eastham Municipal Water System  
Rules and Regulations

Water Service Meter Pit or Vault Determination Flow Chart  
Updated August 2016





IV Update on Water  
6:00pm



## Eastham Water System Board of Selectmen Meeting August 18, 2016

### Items

- Phase 1 Budget Status
- Construction Progress and Activities
- Ramping Toward Operations: Property Owner Coordination
- Service Connection Program
- Plumber Training Sessions

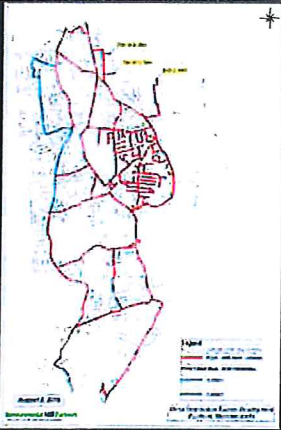
### Phase 1 Budget Status Through June 2016

*Construction is about 60% complete.*

	Original Budget	Current Budget	Total Completed
TOWN MEETING APPROPRIATION	\$ 45,800,000	\$ 45,800,000	\$ 45,800,000
Construction	\$ 35,670,000	\$ 30,173,038	\$ 18,945,973
Police Details	\$ 2,320,000	\$ 2,320,000	\$ 606,499
Engineering	\$ 5,400,000	\$ 5,400,000	\$ 3,409,355
Additional Items		\$ 3,752,978	\$ 468,107.00
TOTAL	\$ 43,290,000	\$ 41,646,016	\$ 23,429,934
BALANCE, Phase 1	\$ 2,410,000	\$ 4,153,984	

## Phase 1

- Completed water mains (in red)
- Curb Stops to be installed Fall 2016
- Water Mains Remaining (in green & blue)




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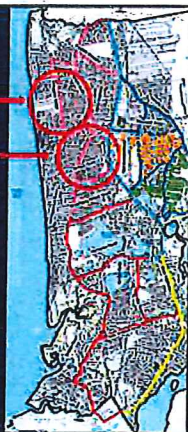
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## West of Route 6

- Work areas – August/September
- Contract 7
  - Aspinet, Whelpley, North Sunken Meadow, McKoy, Massasoit (portion) – completed
  - Massasoit south of Campground – August 15
  - Higgins Road (Crew 2) – August 8
- Contract 8 - Demobilized
  - Herring Brook, Governor Prence, Bridge, Samoset, Kingsbury – Completed




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## Construction Coordination Roads West of Rt. 6

- Weekly meetings with police
- Public notifications
- Detours and street closings
- [WEB PAGE](http://easthamwaterproject.weebly.com) for information  
[easthamwaterproject.weebly.com](http://easthamwaterproject.weebly.com)
- Eastham Water Project  
**617-657-0279**




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## Well Fields

### July/August Construction Activities

- Eversource
  - Work completed!!
  - Power at both well stations
- Well Station Buildings delivered and set in place
- Startup testing completed
- Wells pumping water for filling/flushing of water mains



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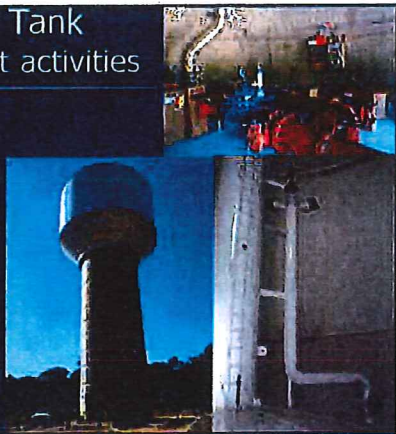
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## Water Tank

### July/August activities

- Site work (fencing, doors, driveway)
- Filling and testing: Awaiting sample results



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## Water Mains

### Landfill Area and Route 6

- Filling/Flushing/Testing Ongoing
- Service connections/curb stops installation schedule



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## Water Flushing and Testing: Sequence

- Flush
- Pressure Test
- Disinfection
- Dechlorination
- Sampling



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## Curb Stop Installations

- Starts after water main has passed all tests
- Curb stops installed at each property (one/property)
- Property owner coordination



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## Curb Stop Location Coordination with Property Owners

- Letters to property owners (tax address) sent
  - Contract 3 - Nauset Road, School House Road, Brackett Road, Old Orchard Road, Meetinghouse Road
  - Contract 4 - All Contract 4 roads
  - Contract 6 - State Highway (Route 6)
  - Contract 7 - portions of Aspinet Road & North Sunken Meadow Road, Whelpley Road & Ct.
- Response has been good
- 20-35 Emails/Phone calls every day to project hotline



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## Informational Sessions

- Public information sessions
  - Non-Resident Taxpayers Meeting – July 9<sup>th</sup> & August 20<sup>th</sup>
- Plumber training sessions July 28<sup>th</sup> & August 13<sup>th</sup>
- Service connection public session August 25<sup>th</sup> at 5pm at Town Hall



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## Water Connection Process

- Application
- Site plan with property information
- Meter sized and issued
- Service line and meter installation
- Inspections
- Record information
- Water turn-on



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## Public Outreach & Information

- Eastham web page  
**<http://easthamwaterproject.weebly.com>**
- Eastham Water Projects Email Address:  
**[easthamwater@envpartners.com](mailto:easthamwater@envpartners.com)**
- Eastham Water Project Phone Number  
**617-657-0279**



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I.A. 1.

**August 15, 2016**

To: Board of Selectmen

From: Sheila Vanderhoef, Town Administrator

**Re: Committee Appointments**

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The following is the information needed to make two committee appointments.

**Sue Pellowe**

The Search Committee recommends the appointment of Sue Pellowe to the Cultural Council as a regular member.

If the Board appoints her, her first term would commence August 3, 2016 and expire June 30, 2019. She seeks to replace Brian LaValley, whose term ended 6/30/16.

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**John Kelley**

The Search Committee recommends the appointment of John Kelley to the Animal Advisory Committee as a regular member.

If the Board appoints him, his first term would commence August 3, 2016 and expire June 30, 2019. He seeks to replace Martin Haspel, whose term ended 6/30/16.

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## Charge to the Cultural Council

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At least five (5) members but no more than twenty-two volunteer members. Length of term and term limits: The term of membership for a council member is three years. Members can serve a maximum of two consecutive terms, or a total of six years. They must remain off the council for a one-year interval before serving additional terms. Each council must annual elect a chair, secretary and treasurer. In addition, the terms of individual council members should be staggered; there should never be 100 percent turnover of members in a single year unless the MCC determines otherwise, as provided in 962 CMR 2.10. Local councils may also elect to designate former officers or members as nonvoting, ex officio council members to ensure continuity.



# Animal Advisory Committee Charge

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*In accordance with Chapter 9, Section 5N, of the Home Rule Charter and by vote of the Board of Selectmen, an ad hoc committee is hereby created that shall be known as the Animal Advisory Committee, (AAC).*

The Committee shall consist of three (3) members who are full time or part time residents of Eastham, who shall be appointed by the Board of Selectmen, for three year overlapping terms. At least one of the appointed members, shall have experience and/or interest in one or more of the following areas; obedience training, behavior modification, veterinary medicine, animal husbandry, animal boarding, animal breeding, or animal protection services such as but not limited to Wild Care, MSPCA, or the Animal Rescue League of Boston.

The primary focus of the committee shall be on training and management issues of individual dogs. In that regard the committee **shall** advise the Board of Selectmen on all matters relating to enforcement of state and local animal control regulations, which relate to non-commercial operations, and specifically when a public hearing is scheduled in accordance with the law. Committee suggestions and recommendations will be submitted in writing to the Board of Selectmen at least three days, in advance of the published hearing date. A committee member will also attend any such hearing and offer testimony and offer suggestions for the Board to consider in making a final decision. The committee shall be informed of all animal control complaints for which the Animal Control Officer issues a written warning. When issuing such warnings the Animal Control Officer shall inform the owner of the existence of this committee and suggest that the owner, voluntarily, seek assistance as necessary to avoid future violations.

The committee shall meet no less than quarterly, with the animal control officer and may request that the Town Administrator direct such other staff as may be appropriate including but not limited to the health agent, and a representative of the town clerk's office, to attend as needed. Additional meetings shall be scheduled by the chair of the committee as needed.

**Adopted by the Board of Selectmen on Monday, June 15, 2009**  
**Revised by the Board of Selectmen on Wednesday, December 4, 2014**

V. A. 2

**August 15, 2016**

To: Board of Selectmen

From: Sheila Vanderhoef, Town Administrator

**Re: Transient Vendor Permits**

Hands on the Arts- June 18 & 19, 2016

SPAT- July 20, 21, 2016

Windmill Weekend- September 10 & 11, 2016

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Please find below and attached the Transient Vendor applicants for approval by the Board of Selectmen. In each case, the \$20.00 fee has been received.

\*Permits are valid as stated, and was approved by Sheila July 19, 2016.

Susan Hancock* 102 Yankee Drive Brewster, MA 02631 Valid: July 19, 2016 – July 19, 2017	Margaret Newman* 391 Totten Pond Road, Suite 304 Waltham, MA 02459 Valid: July 20, 2016 – July 20, 2017
Judith Miller* 1716 SE Adair Road Port St. Lucie, FL 34952 Valid: July 20, 2016 – July 20, 2017	Theresa M. Chad P.O. Box 1378 North Eastham, MA 02651 Valid: August 15, 2016-August 15, 2017
Ronald Hunter P.O. Box 923 East Dennis, MA 02641 Valid: August 15, 2016-August 15, 2017	

AUG 08 2016

RECEIVED

Cape & Islands Suicide Prevention Coalition

P.O. Box 119

Barnstable, MA 02630

August 2, 2016

Chairman John F. Knight  
2500 State Highway  
Town Hall  
Eastham, MA 02642

Dear Chairman Knight:

Each year, we lose more than 30 Cape & Island residents to suicide. And for each of these suicide deaths, it is estimated that at least 6 additional people are profoundly affected by that loss—and more than 40 people affected by the loss. Suicide is a public health issue in our communities; and it is preventable.

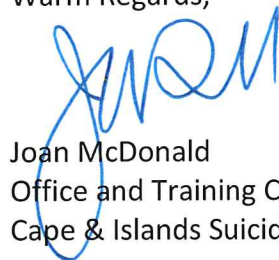
In recognition of National Suicide Prevention Month, the Cape & Islands Suicide Prevention Coalition is once again seeking to have the week of September 5-11<sup>th</sup> named "Suicide Prevention Week" in all of the Cape and Islands towns.

We aim to recognize this painful and often hidden part our communities, to demonstrate our commitment to suicide prevention, and to send a message of hope to those struggling, grieving, or affected in any way by suicide. We know that by decreasing the stigma that surrounds suicide, we increase the likelihood that someone will reach out for help.

Please accept this proclamation request for the selectman's agenda for an early September or late August meeting (Sample proclamation wording is attached) I appreciate your consideration of this request, and look forward to hearing from you.

The proclamation can be emailed to me at [suicideprevention@capecoalition.com](mailto:suicideprevention@capecoalition.com) or mailed to me at: Cape and Islands Suicide Prevention Coalition, P.O. Box 119, Barnstable, MA 02630

Warm Regards,



Joan McDonald  
Office and Training Coordinator  
Cape & Islands Suicide Prevention Coalition

## *PROCLAMATION* *SUICIDE PREVENTION WEEK*

*WHEREAS*, in the United States, one person dies by suicide every 12.3 minutes and 117 people die by suicide each day; and

*WHEREAS*, 22 veterans die by suicide each day; and

*WHEREAS*, suicide is the second leading cause of death for Massachusetts residents ages 15-44 and the suicide rate on the Cape and Islands is 1.4 times higher than the State average; and

*WHEREAS*, suicide is a tragic and disruptive event for families and communities ~ it is estimated that annually, there are 6.3 million suicide loss survivors who have lost a loved one to suicide; and

*WHEREAS*, suicide is a public health issue and a community concern, and through increased education and awareness of the issue a great number of suicides can be prevented;

*THEREFORE*, we do hereby officially designate the week of September 5 - 11, 2016 as "*SUICIDE PREVENTION WEEK*" in Eastham, MA.

**COMMONWEALTH OF MASSACHUSETTS**  
**WILLIAM FRANCIS GALVIN**  
**SECRETARY OF THE COMMONWEALTH**  
**STATE PRIMARY**

V.a. 4

**SS:** Barnstable County  
**To:** Either of the Constables of the Town of Eastham

**GREETING:**

In the name of the Commonwealth, you are hereby required to notify and warn the inhabitants of said city or town who are qualified to vote in Primaries to vote at:

**Eastham Town Hall Pct. 1**

On **THURSDAY, THE EIGHTH DAY OF SEPTEMBER, 2016**, from 7:00 A.M. to 8:00 P.M. for the following purpose:

To cast their votes in the State Primaries for the candidates of political parties for the following offices:

REPRESENTATIVE IN CONGRESS.....NINTH DISTRICT  
COUNCILLOR.....FIRST DISTRICT  
SENATOR IN GENERAL COURT.....CAPE & ISLANDS DISTRICT  
REPRESENTATIVE IN GENERAL COURT.....FOURTH BARNSTABLE DISTRICT  
SHERIFF.....BARNSTABLE COUNTY  
COUNTY COMMISSIONER..... BARNSTABLE COUNTY

Hereof fail not and make return of this warrant with your doings thereon at the time and place of said voting.

Given under our hands this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ SELECTMEN OF EASTHAM

I have posted attested copies of this warrant at the Post Office in Eastham and North Eastham at least seven days before the date of this election.

\_\_\_\_\_  
Constable

\_\_\_\_\_  
Date

A True Copy Attest:

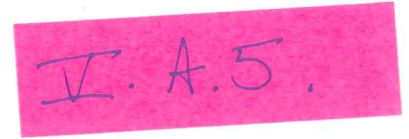
\_\_\_\_\_  
Susanne Fischer  
Town Clerk





## TOWN OF EASTHAM

2500 Stare Highway, Eastham, MA 02642-2544  
All departments 508-240-5900 • Fax 508-240-1291  
[www.eastham-ma.gov](http://www.eastham-ma.gov)



TO: Board of Selectmen  
FROM: Jacqui Beebe  
RE: Hay Road  
DATE: 8-12-16

Attached is the final Order of Taking for Hay Road. Once you have voted to execute the Order of Taking, and signed both copies it will be ready to go to the Registry of Deeds. Once filed, the road will belong to the Town and the process is complete.

We plan to begin work on Hay Road in September. Water main will be installed and then the road re-graded and finished.

COMMONWEALTH OF MASSACHUSETTS

BARNSTABLE, SS.

TOWN OF EASTHAM

ORDER OF TAKING

At a regularly convened meeting of the Board of Selectmen of the Town of Eastham held this \_\_\_\_ day of \_\_\_\_\_, 2016, it was voted and ordered:

The Board of Selectmen of the Town of Eastham, duly elected, qualified, and acting as such, on behalf of the Town by virtue of and in accordance with the authority of the provisions of Chapter 82, Sections 21-24, Chapter 83, Section 4, and Chapter 79 of the General Laws, as amended, and the vote under Article 27 of the May 2, 2016 Annual Town Meeting, a certified copy of which is attached hereto, accepting the layout ordered by the Board of Selectmen of a portion of Hay Road as a public way in the Town of Eastham, and authorizing the acquisition of interests in land within the layout as set forth below, and of any and every other power and authority which is hereunto in any way enabling, does hereby take, on behalf of the Town, for all purposes for which public ways are used in the Town of Eastham, together with the attendant customary uses, including but not limited to the construction, operation and maintenance of rights of way, drainage and utilities in, over, under, through, across, upon and along the following described:

1. *Public Way Easements:* For public way purposes, permanent easements in the land shown as "Hay Road" (the "Road") on a plan entitled "Plan of Land Showing a Portion of Hay Road, Eastham, MA, Prepared for Town of Eastham," dated March 23, 2016, prepared by Schofield Brothers of Cape Cod, recorded with the Barnstable County Registry of Deeds in Plan Book 664, Page 54, and a copy of which is attached hereto (the "Plan"). The Road is bounded and described as shown on the Plan.

Included in this taking are all roadway improvements and water and drainage infrastructure and appurtenances located on, under and over the Road. Structures and facilities located within the Road that are owned by private utility companies and easements presently encumbering the Road, including easements held by private utility companies, are not included in this taking. By this Order the Town does not eliminate existing easements, if any, in the easement premises.

2. *Drainage Easements:* Permanent easements for the purpose of installing, constructing, operating, improving, inspecting, repairing, replacing, relocating and forever maintaining or abandoning in place storm water drains, together with any manholes, pipes, conduits, culverts, channels, controls, detention and/or retention basins and other related appurtenances in, under, over, upon, along and across shown as "Drainage Easement" on a parcel of land shown on Assessors' Map 18 as Parcel 112-A, all as shown on the Plan (the "Drainage Easement Area"). Included in the taking are any and all drainage pipes, conduits, structures and related facilities located within the Drainage Easement Area.

The Town shall have the right to pass and re-pass over all the areas subject to the foregoing easements by foot and motor vehicle, including heavy equipment, from time to time and at all times, for the purposes set forth above and all uses incidental thereto.

Said land and easement areas are owned or supposed to be owned by the following, hereinafter collectively referred to as Owners.

Owner: Thomas A. Kersten and Penelope K. Kersten  
Address: 540 Hay Road, Eastham, Massachusetts 02642  
Interest Taken: Easement in Road  
Title Reference: Barnstable Registry District of the Land Court, Certificate of Title No. 69001  
Lot Reference: Lot 7 on Land Court Plan No. 35581-A

Owner: Eastham Conservation Foundation, Inc.  
Address: 80 Governor Prentice Road, Eastham, MA 02642  
Interest Taken: Easement in Road  
Title Reference: Barnstable Registry District of the Land Court, Certificate of Title No. 126454  
Lot Reference: Lot 14 on Land Court Plan No. 35581-A

Owner: Thomas A. Kersten and Penelope K. Kersten  
Address: 570 Hay Road, Eastham, Massachusetts 02642  
Interest Taken: Easement in Road  
Title Reference: Barnstable Registry District of the Land Court, Certificate of Title No. 64762  
Lot Reference: Lot 8 on Land Court Plan No. 35581-A

Owner: Vito F. Frazzette and Helga J. Frazzette  
Address: 55 Country Lane, Eastham, Massachusetts 02642  
Interest Taken: Easement in Road  
Title Reference: Barnstable Registry District of the Land Court, Certificate of Title No. 62733  
Lot Reference: Lot 11 on Land Court Plan No. 35581-A

Owner: Vito F. Frazzette and Helga J. Frazzette  
Address: 640 Hay Road, Eastham, Massachusetts 02642  
Interest Taken: Easement in Road  
Title Reference: Barnstable Registry District of the Land Court, Certificate of Title No. 76016  
Lot Reference: Lot 12 on Land Court Plan No. 35581-A

Owner: Margaret R. Colquhoun  
Address: 660 Hay Road, Eastham, Massachusetts 02642  
Interest Taken: Easement in Road

Title Reference: Barnstable Registry District of the Land Court, Certificate of Title No. 65609

Lot Reference: Lot 13 on Land Court Plan No. 35581-A

Owner: Joseph Forjan and Marie Forjan

Address: 690 Hay Road, Eastham, Massachusetts 02642

Interest Taken: Easement in Road

Title Reference: Barnstable Registry of Deeds, Book 18914, Page 293

Lot Reference: Lot 63 on Plan recorded with said Deeds in Plan Book 191, Page 21

Owner: Henry W. Fischer, Jr. and Jane E. Fischer, Trustees of the Henry W. Fischer, Jr. 2012 Living Trust, under Declaration of Trust dated July 24, 2012, an Abstract of which is filed with Barnstable Registry District of the Land Court as Document No. 1198121, and to Jane E. Fischer and Henry W. Fischer, Jr., Trustees of the Jane E. Fischer 2012 Living Trust, under Declaration of Trust dated July 24, 2012, an Abstract of which is filed with said Registry District of the Land Court as Document No. 1198122

Address: 710 Hay Road, Eastham, Massachusetts 02642

Interest Taken: Easement in Road

Title Reference: Barnstable Registry District of the Land Court, Certificate of Title No. 197833 and Barnstable Registry of Deeds, Book 26563, Page 347

Lot Reference: Lot 46 on Land Court Plan No. 24835-C and Lot 46A on Plan recorded with said Deeds in Plan Book 191, Page 21

Owner: Henry W. Fischer, Jr. and Jane E. Fischer, Trustees of the Henry W. Fischer, Jr. 2012 Living Trust, under Declaration of Trust dated July 24, 2012, an Abstract of which is filed with the Barnstable Registry District of the Land Court as Document No. 1198121, and to Jane E. Fischer and Henry W. Fischer, Jr., Trustees of the Jane E.

Fischer 2012 Living Trust, under Declaration of Trust dated July 24, 2012, an Abstract of which is filed with said Registry District of the Land Court as Document No. 1198122

Address: 225 Deacon Paine Road, Eastham, Massachusetts 02642

Interest Taken: Easement in Road

Title Reference: Barnstable Registry District of the Land Court, Certificate of Title No. 197834

Lot Reference: Lot 33 on Land Court Plan No. 24835-C

Owner: Helen Jo Howard, Trustee of the Helen Jo Howard 2016 Living Trust under Declaration of Trust dated June 16, 2016 evidenced by Abstract of Trust Pursuant to Massachusetts General Laws, Chapter 184, Section 35 dated June 16, 2016 and filed with Barnstable Registry District of the Land Court as Document No. 1297235

Address: 220 Deacon Paine Road, Eastham, Massachusetts 02642

Interest Taken: Easement in Road

Title Reference: Barnstable Registry District of the Land Court, Certificate of Title No. 209904

Lot Reference: Lot 47 on Land Court Plan No. 24835-C

Owner: Carolyn L. Fleming and Paul D. Fleming, Trustees of the Fleming Trust dated April 23, 2014, evidenced by a Trustee's Certificate Pursuant to M.G.L. c. 184, §35 filed with the Barnstable Registry District of the Land Court as Document No. 1244243  
Address: 555 Hay Road, Eastham, Massachusetts 02642  
Interest Taken: Easement in Road and Drainage Easement  
Title Reference: Barnstable Registry District of the Land Court, Certificate of Title No. 203158  
Lot Reference: Lot 34 on Land Court Plan No. 31478-F

Owner: Charles R. Gatti and Anne C. Gatti  
Address: 10 Uncle Nates Way, Eastham, Massachusetts 02642  
Interest Taken: Easement in Road  
Title Reference: Barnstable Registry District of the Land Court, Certificate of Title No. 208823  
Lot Reference: Lot 8 on Land Court Plan No. 31478-C

Owner: Robert A. Juckins  
Address: 655 Hay Road, Eastham, Massachusetts 02642  
Interest Taken: Easement in Road  
Title Reference: Barnstable Registry District of the Land Court, Certificate of Title No. 195408  
Lot Reference: Lot 32 on Land Court Plan No. 31478-E

Owner: Gregory N. Peterson  
Address: 695 Hay Road, Eastham, Massachusetts 02642  
Interest Taken: Easement in Road  
Title Reference: Barnstable Registry District of the Land Court, Certificate of Title No. 86766  
Lot Reference: Lot 26 on Land Court Plan No. 31478-E

Owner: Carol R. Ciaravino and Grantley Taylor  
Address: 715 Hay Road, Eastham, Massachusetts 02642  
Interest Taken: Easement in Road  
Title Reference: Barnstable Registry District of the Land Court, Certificate of Title No. 107051  
Lot Reference: Lot 25 on Land Court Plan No. 31478-E

Owner: Kurt H. Nyman and Anne R. Nyman  
Address: 729 Hay Road, Eastham, Massachusetts 02642  
Interest Taken: Easement in Road  
Title Reference: Barnstable Registry District of the Land Court, Certificate of Title No. 86225  
Lot Reference: Lot 22 on Land Court Plan No. 31478-E



Owner: Michael Carroll  
Address: 755 Hay Road, Eastham, Massachusetts 02642  
Interest Taken: Easement in Road  
Title Reference: Barnstable Registry District of the Land Court, Certificate of Title No. 84092  
Lot Reference: Lot 21 on Land Court Plan No. 31478-E

Owner: Lois F. Jones  
Address: 795 Hay Road, Eastham, Massachusetts 02642  
Interest Taken: Easement in Road  
Title Reference: Barnstable Registry District of the Land Court, Certificate of Title No. 119291  
Lot Reference: Lot 20 on Land Court Plan No. 31478-E

Owner: Thomas W. Marvel and Elisabeth P. Marvel  
Address: 815 Hay Road, Eastham, Massachusetts 02642  
Interest Taken: Easement in Road  
Title Reference: Barnstable Registry of Deeds, Book 4878, Page 30  
Lot Reference: Lot 6 on Plan recorded with said Deeds in Plan Book 355, Page 50

Owner: Robert L. Strakele and Barbara L. Strakele  
Address: 825 Hay Road, Eastham, Massachusetts 02642  
Interest Taken: Easement in Road  
Title Reference: Barnstable Registry of Deeds, Book 3440, Page 220  
Lot Reference: Lot 5 on Plan recorded with said Deeds in Plan Book 355, Page 50

Owner: Laurence E. Perry and Vivian M. Perry  
Address: 835 Hay Road, Eastham, Massachusetts 02642  
Interest Taken: Easement in Road  
Title Reference: Barnstable Registry of Deeds, Book 12773, Page 285  
Lot Reference: Lot 4 on Plan recorded with said Deeds in Plan Book 355, Page 50

Owner: Thomas M. Jurkiewicz and Sandra A. Jurkiewicz, Trustees of the Tom & Sandy Jurkiewicz Living Trust, under Declaration of Trust dated September 3, 2014, evidenced by a Trustee's Certificate Pursuant to M.G.L. c. 184, §35, dated January 7, 2015 and recorded with Barnstable Registry of Deeds in Book 28662, Page 101  
Address: 845 Hay Road, Eastham, Massachusetts 02462  
Interest Taken: Easement in Road  
Title Reference: Barnstable Registry of Deeds, Book 28662, Page 102  
Lot Reference: Lot 3 on Plan recorded with said Deeds in Plan Book 355, Page 50

Owner: Paul T. Cody and Melissa G. Cody  
Address: 855 Hay Road, Eastham, Massachusetts 02642  
Interest Taken: Easement in Road  
Title Reference: Barnstable Registry of Deeds, Book 12599, Page 133  
Lot Reference: Lot 2 on Plan recorded with said Deeds in Plan Book 355, Page 50

Owner: Mano Chinnaswamy and Jane Chinnaswamy  
Address: 1670 Bridge Road, Eastham, Massachusetts 02642  
Interest Taken: Easement in Road  
Title Reference: Barnstable Registry of Deeds, Book 22949, Page 137  
Lot Reference: Lot 1 on Land Court Plan recorded with said Deeds in Plan Book 355, Page 50

Owner: David W. Crary  
Address: 1700 Bridge Road, Eastham, Massachusetts 02642  
Interest Taken: Easement in Road  
Title Reference: Barnstable Registry District of the Land Court, Certificate of Title No. 21290  
Lot Reference: Unnumbered Lot on Land Court Plan No. 27619-A

If in any instance the name of any Owner is not correctly stated, the names of the supposed Owners being given as of this Order of Taking, it is understood that in such instance the land referred to is owned by an Owner or Owners unknown to us.

The Board of Selectmen hereby determines that no damages were sustained by parties with rights in the easements taken, all in accordance with the provisions of G.L. c. 79, §6, as amended and award no damages in accordance with this determination. No betterments will be assessed under this taking.

IN WITNESS WHEREOF, we, the duly elected and qualified Board of Selectmen of the  
Town of Eastham have hereunto set our hands on this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

TOWN OF EASTHAM,  
By its Board of Selectmen

\_\_\_\_\_  
John F. Knight

\_\_\_\_\_  
William O'Shea

\_\_\_\_\_  
Linda S. Burt

\_\_\_\_\_  
Elizabeth Gawron

\_\_\_\_\_  
Wallace F. Adams, II

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, 2016, before me, the undersigned notary  
public, personally appeared \_\_\_\_\_,  
member of the Board of Selectmen of the Town of Eastham as aforesaid, 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 he  
signed it voluntarily for its stated purpose on behalf of the Town of Eastham.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

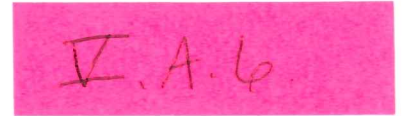


## TOWN OF EASTHAM

2500 State Highway, Eastham, MA 02642 - 2544

All departments 508 240-5900 Fax 508 240-1291

[www.eastham-ma.gov](http://www.eastham-ma.gov)



### CONSERVATION RESTRICTION

The Town of Eastham, acting by and through its Board of Selectmen, having an address of 2500 State Highway, Eastham, Massachusetts 02642, being the sole owner ("Grantor"), acting pursuant to Sections 31, 32 and 33 of Chapter 184 of the Massachusetts General Laws, hereby grants to **Eastham Conservation Foundation**, a Massachusetts non-profit corporation, with a mailing address of **P.O. Box 183, Eastham, MA 02642** and its permitted successors and assigns ("Grantee"), for consideration of One Dollar (\$1.00) Dollar, in perpetuity and exclusively for conservation and passive recreation purposes, the following Conservation Restriction on a certain parcel of land located on **3155 State Highway**, in the Town of Eastham, Barnstable County, Massachusetts containing approximately **7.99** acres, more or less, and described in a deed to the Grantor, filed with the Barnstable Registry District, **Book 16535, Page 160, #29737**, and further shown on a plan in Exhibit A attached hereto (the "Premises").

#### I. PURPOSES:

This Conservation Restriction is defined in, authorized by Sections 31-33 of Chapter 184 of the Massachusetts General Laws, and otherwise by law. The purpose of this Conservation Restriction is to assure that the Premises will be maintained in its current condition in perpetuity for conservation and passive recreation purposes, predominantly in a scenic and undeveloped condition, and to prevent any use or change that would materially impair or interfere with its conservation and preservation values.

The Premises was purchased using Massachusetts Community Preservation Act funds (M.G.L. Chapter 44B). The purposes of this Conservation Restriction are to assure that, while permitting certain acts and uses described in Section II.B hereof, the Premises will be subject to the prohibitions described in Section II.A hereof, so that the Premises are retained in perpetuity in their scenic and undeveloped condition for open space and passive recreation, and other conservation uses consistent with and subject to the protections of Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, and to prevent any use of the Premises that will materially impair or interfere with the conservation values thereof. The Premises contains outstanding qualities, including frontage on the state Department of Recreation bike path and pedestrian and vehicular access from Route 6. It is a naturally vegetated pine-oak woodland and has never been in residential use. There is no evidence that it has been used for subsurface mining, or hazardous waste disposal. The protection of this property will be of benefit to the public and in support of the qualities listed below:

- **Open Space Preservation**

The protection of the Premises contributes to the protection of the scenic and natural character of the Eastham and will serve the public as additional passive recreation space and as a connection to active recreation on the adjacent bike trail.

- **Passive Recreation and Public Access Trails.**

This parcel abuts the bike path and is currently undisturbed with passive recreational trails or uses. Its preservation will enhance the scenic qualities of the bike path and state highway, Route 6. .

- **Wildlife and Plant Education**

This site is within walking distance of Eastham Elementary School and abuts a bike path, and will provide an outdoor educational use opportunity.

- **Protection of Wildlife Habitat**

This open space that integrates and forms a larger contiguous open space which facilitates wildlife a migrations corridor, expands and preserves habitat, and promotes habitat and wildlife diversity.

This acquisition also, promotes elements in the Open Space and Recreation Plan, specifically the Natural Resources Goal which states in part;

***Natural Resources Goal:** Ensure Eastham has a good and ample amount of publicly accessible, multi-use open space land that provides both passive and active recreational opportunities, as well as aesthetic enjoyment, wildlife protection, and watershed protection.*

## **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, indoor riding ring, landing strip, mobile home, swimming pool, golf driving range, asphalt or concrete pavement, billboard or other advertising display, antenna, utility pole, tower, temporary or permanent structure or facility on, above or under the Premises, *except the town may add and maintain ancillary facilities such as drinking fountains, seating, trash receptacles, and shade shelters as needed, to enhance the use of the site by walkers, hikers, and cyclists.*
2. Mining, excavating, dredging or removing from the Premises of soil, loam, peat, gravel, sand, rock or other mineral resource or natural deposit or otherwise make topographical changes to the area except for minor grading for trails related to handicapped accessibility and access for passive recreation uses.



3. Placing, filling, storing or dumping on the Premises of soil, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, waste or other substance or material whatsoever or the installation of underground storage tanks;
4. Cutting, removing or otherwise destroying trees, grasses or other vegetation, including leaf litter, except as may be permitted by the Conservation Commission to support passive recreational use.
5. Activities detrimental to wildlife habitat, drainage, flood control, water conservation, water quality, erosion control, soil conservation, or archaeological conservation;
6. Storage or use of vehicles including motorcycles, mopeds, all-terrain vehicles, trail bikes, or any other motorized vehicles on the Premises except for vehicles necessary for management of the Premises by the Town, forestry activities, and public safety (i.e., fire, police, ambulance, other government officials), or as may be allowed to park in designated areas in conjunction with the use of the site or the adjacent bike path.
7. Subdivision or conveyance of a part or portion of the Premises. Further, no portion of the Premises may be used towards building or development requirements of this or any other parcel;
8. The use of the Premises for more than de minimus commercial recreation in conjunction with and in support of Conservation Commission approved activities.
9. Any other use of the Premises or activity thereon, which is inconsistent with the purpose of this Conservation Restriction

**B. Reserved Rights and Exceptions**

The Grantor reserves the right to conduct with the approval of the Board of Selectmen and Conservation Commission, 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. Recreational Activities. Walking, hiking, cross-country skiing, fishing, and other non-motorized outdoor passive recreational and educational activities that do not materially alter the landscape, do not degrade environmental quality, or do not involve more than de minimus use for commercial recreational activities. Motorized wheelchairs or similar equipment reasonably necessary to enable handicapped members of the public to access the Premises are permitted.
2. Trails. The marking, clearing and periodic maintenance of unpaved trails and walking paths.

3. Vegetation and Forest Management. In accordance with generally accepted management practices consistent with the conservation purposes of this Conservation Restriction, removing of brush, limited and selective pruning and cutting to prevent, control or remove hazards, disease, insect or fire damage, or to preserve the present condition of the Premises, including any existing trail and the selective clearing of forested or overgrown upland areas to create additional meadow habitat; and preserve the present condition of the Premises.
4. Non-native or Nuisance Species. The removal of non-native or invasive plant species or poison ivy done in a manner to affect only the target species and not non-targeted species.
5. Wildlife Habitat Improvement. Subject to the approval of the Grantee as described in Section II.C below, measures designed to restore native biotic communities, or to maintain, enhance or restore wildlife, wildlife habitat, including installation of nest boxes, selective planting of native trees, shrubs and plant species.
6. Infrastructure. The installation, use, maintenance, repair, renovation, or replacement of a pervious surface parking area with capacity for no more than 5 cars , informational kiosks and other signage, boardwalks or bridges, benches, and picnic tables.
7. Signs. The erection, maintenance, and replacement of signs by Grantor or Grantee for the following purposes: information about allowed and prohibited uses, educational or interpretative information, trail location/markings, distance and directional signs; property name, ownership, and property boundaries.
8. Fencing. The installation and maintenance of sight-pervious fences that do not interfere with the passage of wildlife or the conservation purposes of this restriction and do not, by their material detract from the scenic character of the landscape.
9. Permits. The exercise of any right reserved by Grantor under this Paragraph B or for which approval is granted shall be in compliance with the Town of Eastham Zoning Bylaw, the Town of Eastham Wetlands Bylaw, the state 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. All acts and uses not explicitly permitted by Section II, Paragraph B are prohibited unless otherwise approved as described in Section II.C below.

**C. Notice and Approval.**

Whenever notice to or approval by Grantee is required under the provisions of Paragraph A or B of this Section II, Grantor shall notify Grantee 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 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 the 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 Paragraph C relative to deemed approval after sixty (60) days in the notice.

**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 the condition prior to the time of the injury complained of (it being agreed that the Grantee has 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, and Grantee is authorized to pursue non-party violators. 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, if a violation of this Conservation Restriction is acknowledged by Grantor or determined by a court of competent jurisdiction to have occurred.

**B. Non-Waiver**

Enforcement of the terms of this Conservation Restriction shall be at the discretion of the 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.

**IV. ACCESS**

The Grantor hereby grants to the Grantee, or its duly authorized agents or representatives, the right to enter the Premises upon reasonable notice and at reasonable times, for inspecting the Premises to determine compliance with or to enforce this Conservation Restriction. The Grantor also grants to the Grantee, after 30 days prior written notice of a violation and failure of the Grantor to cure said violation within said 30-day period, 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, except in emergency when notice shall be given as soon as practicable.

This Conservation Restriction also grants to the general public the right to enter upon the Premises for passive outdoor recreational purposes including, but not limited to, hiking, wildlife observation, cross-country skiing, mountain biking, horseback riding, and other non-motorized, passive outdoor recreational and educational activities (except for motorized wheelchairs or similar equipment reasonably necessary to enable handicapped members of the public to access the Premises or as otherwise outlined in Section II of this Conservation Restriction, which shall be allowed).

**V. EXTINGUISHMENT**

If circumstances arise in the future such as render the purpose of this Conservation Restriction impossible to accomplish, this Conservation 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 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. After complying with the terms of any gift grant or funding requirements, including M.G.L. c.44B, Grantee shall use its share of the proceeds in a manner consistent with the conservation purposes set forth herein.

**A. Proceeds.**

Grantor and Grantee agree that the grant 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 Premises at that time. Such proportionate value of the Grantee's property right shall remain constant.

**B. Grantor/Grantee Cooperation Regarding Public Action**

Whenever all or any part of the Premises or any interest therein is taken by public authority under power of eminent domain or other act of public authority, then the Grantor and the Grantee shall cooperate in recovering the full value of all direct and consequential damages resulting from such action. All related expenses incurred by the Grantor and the Grantee shall first be paid out of any recovered proceeds, and the remaining proceeds shall be distributed between the Grantor and Grantee in shares equal to such proportionate value after comply with the terms of any gift, grant or funding requirements, including M.G.L. c.44B. 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 in the manner of a trust consistent with the conservation purposes of this grant.

**VI. ASSIGNABILITY**

**A. Running of the Burden**

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

**B. Execution of Instruments**

The Grantee is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Conservation Restriction; the Grantor, on behalf of itself and its successors and assigns, appoints 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 agrees itself to execute any such instruments upon request.

**C. Running of the Benefit**

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



As a condition of any assignment, the Grantee shall require that the purpose of this Conservation Restriction continues to be carried out and the assignee, at the time of the assignment, qualifies under Section 170(h) of the Internal Revenue Code of 1986, as amended, and applicable regulations thereunder, and is a donee eligible to receive this Conservation Restriction under Section 32 of Chapter 184 of the General Laws of Massachusetts. 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 by which it divests itself of any interest in all or a portion of the Premises, including a leasehold interest and to notify the Grantee within twenty (20) days of such transfer. Failure to do so 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 twenty (20) days, execute and deliver to the Grantor any document, including an estoppel certificate, which certifies the Grantor's compliance with any obligation of the Grantor contained in this Conservation Restriction.

## **IX. NON MERGER**

The parties intend that any future acquisition of the Premises shall not result in a merger of the Conservation Restriction into the fee. The Grantor agrees that it will not grant, and the Grantee agrees that it will not take title, to any part of the Premises without having first assigned this Conservation Restriction to ensure that merger does not occur.

## **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 values. 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 filed with the Barnstable Registry of Deeds or the Barnstable County District of the Land Court if applicable.

## **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 of Massachusetts have been obtained, and it has been filed with the Barnstable Registry of Deeds, or Barnstable District of the Land Court, if applicable. The Grantee shall file this instrument in a timely manner with the Barnstable Registry of Deeds, or Barnstable District of the Land Court,.

## **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: Eastham Conservation Foundation  
P.O. Box 183  
Eastham, MA 02642

With A Copy to  
Grantee: Town of Eastham Board of Selectmen  
2500 State Highway  
Eastham MA. 02642

With Copies to: Vicki S. Marsh, Esq.  
101 Arch Street  
Boston, MA 02110

or to such other address as any of the above parties shall designate from time to time by written notice to the other or 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 provisions 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 official(s) 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.

WITNESS our hands and seals this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

TOWN OF EASTHAM,  
By Its Board of Selectmen

\_\_\_\_\_  
John F. Knight, Chair

\_\_\_\_\_  
William O'Shea, Vice Chair

\_\_\_\_\_  
Linda Burt, Clerk

\_\_\_\_\_  
Wallace F. Adams, II

\_\_\_\_\_  
Elizabeth Gawron

COMMONWEALTH OF MASSACHUSETTS

Eastham, ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, 2016, before me, the undersigned notary public, personally appeared \_\_\_\_\_, member of the Town of Eastham Board of Selectmen, 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 he/she signed it voluntarily for its stated purpose.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

ACCEPTANCE OF GRANT

Eastham Conservation Foundation accepts the above Conservation Restriction this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

By: \_\_\_\_\_

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, 2016, before me, the undersigned notary public, personally appeared \_\_\_\_\_, proved to me through satisfactory evidence of identification which was \_\_\_\_\_ to be the person whose name is signed on the preceding 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 to Eastham Conservation Foundation has been approved in the public interest pursuant to Massachusetts General Laws, Chapter 184, Section 32.

Dated: \_\_\_\_\_, 2016

\_\_\_\_\_  
Matthew A. Beaton  
Secretary of Executive Office of Energy and  
Environmental Affairs

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, 2016, before me, the undersigned notary public, personally appeared Matthew A. Beaton., 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 he signed it voluntarily for its stated purpose.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

## Exhibit A

### Plan of Premises

A certain parcel of land on **3155 State Highway**, Eastham, Massachusetts shown as Lot **5** on Massachusetts Deed filed with the Barnstable Registry District **Book 16535, Page 160, #29737**. Said Premises is conveyed together with and subject to the following, insofar as in effect:

1. Any and all public rights legally existing in and over the same.





## TOWN OF EASTHAM

2500 State Highway, Eastham, MA 02642 - 2544

All departments 508 240-5900 Fax 508 240-1291

[www.eastham-ma.gov](http://www.eastham-ma.gov)

### CONSERVATION RESTRICTION

**The Town of Eastham**, acting by and through its Board of Selectmen, having an address of 2500 State Highway, Eastham, Massachusetts 02642, being the sole owner ("Grantor"), acting pursuant to Sections 31, 32 and 33 of Chapter 184 of the Massachusetts General Laws, hereby grants to **Eastham Conservation Foundation**, a Massachusetts non-profit corporation, with a mailing address of **P.O. Box 183, Eastham, MA 02642** and its permitted successors and assigns ("Grantee"), for consideration of One Dollar (\$1.00) Dollar, in perpetuity and exclusively for open space and passive recreation purposes, the following Conservation Restriction on a certain parcel of land located on **820 Samoset Road**, in the Town of Eastham, Barnstable County, Massachusetts containing approximately **1.03** acres, more or less, and described in a deed to the Grantor, filed with the Barnstable Registry District, **Book 16097, Page 175, #115156**, and further shown on a plan in Exhibit A attached hereto (the "Premises").

#### I. PURPOSES:

This Conservation Restriction is defined in and authorized by Sections 31-33 of Chapter 184 of the Massachusetts General Laws and otherwise by law. The purpose of this Conservation Restriction is to assure that the Premises will be maintained in its current condition in perpetuity for open space and passive recreation purposes, predominantly in a scenic and undeveloped condition, and to prevent any use or change that would materially impair or interfere with its conservation and preservation values.

The Premises was purchased using Massachusetts Community Preservation Act funds (M.G.L. Chapter 44B). The purposes of this Conservation Restriction are to assure that, while permitting certain acts and uses described in Section II.B hereof, the Premises will be subject to the prohibitions described in Section II.A hereof, so that the Premises are retained in perpetuity in their scenic and undeveloped condition for open space and passive recreation, and other conservation uses consistent with and subject to the protections of Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, and to prevent any use of the Premises that will materially impair or interfere with the conservation values thereof. The Premises contains outstanding qualities. *It is naturally vegetated and while formerly part of a residential lot, this portion does not and did not have a structure or subsurface disposal works. There is no evidence that it has been used for subsurface mining, or hazardous waste disposal. The protection of this property will be of benefit to the public and in support of the qualities listed below:*

- **Open Space Preservation**

The protection of the Premises contributes to the protection of the scenic and natural character of the Eastham and will serve the public as additional passive recreation space and as a connecting corridor between two town owned conservation parcels.

- **Passive Recreation and Public Access Trails.**  
It is adjacent to and provides a thru connection to two town owned parcels and provides and protects a wetland area located near Samoset Road.
- **Wildlife and Plant Education**  
Connects to two large town owned area containing a special historical forested area, created as part of a centennial project.
- **Protection of Wildlife Habitat.**  
This connection integrates and forms a larger contiguous open space which facilitates wildlife migrations, expands habitat, and promotes diversity.

This acquisition also, promotes elements in the Open Space and Recreation Plan, specifically the Natural Resources Goal which states in part;

***Natural Resources Goal:** Ensure Eastham has a good and ample amount of publicly accessible, multi-use open space land that provides both passive and active recreational opportunities, as well as aesthetic enjoyment, wildlife protection, and watershed protection.*

## **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, indoor riding ring, landing strip, mobile home, swimming pool, golf driving range, asphalt or concrete pavement, billboard or other advertising display, antenna, utility pole, tower, temporary or permanent structure or facility on, above or under the Premises, *except the town may add and maintain ancillary facilities such as drinking fountains, seating, trash receptacles, and shade shelters as needed, to enhance the use of the site and its adjacent town owned parcels, by walkers, hikers, swimmers and cyclists.*
2. Mining, excavating, dredging or removing from the Premises of soil, loam, peat, gravel, sand, rock or other mineral resource or natural deposit or otherwise make topographical changes to the area *except for minor grading for trails related to handicapped accessibility and access for passive recreation uses.*



3. Placing, filling, storing or dumping on the Premises of soil, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, waste or other substance or material whatsoever or the installation of underground storage tanks;
4. Cutting, removing or otherwise destroying trees, grasses or other vegetation, including leaf litter, *except as may be permitted by the Conservation Commission to support passive recreational use.*
5. Activities detrimental to wildlife habitat, drainage, flood control, water conservation, water quality, erosion control, soil conservation, or archaeological conservation;
6. Storage or use of vehicles including motorcycles, mopeds, all-terrain vehicles, trail bikes, or any other motorized vehicles on the Premises except for vehicles necessary for management of the Premises by the Town, forestry activities, and public safety (i.e., fire, police, ambulance, other government officials).
7. Subdivision or conveyance of a part or portion of the Premises. Further, no portion of the Premises may be used towards building or development requirements of this or any other parcel;
8. The use of the Premises for any commercial recreation, business, residential or industrial use.
9. Any other use of the Premises or activity thereon which is inconsistent with the purpose of this Conservation Restriction

**B. Reserved Rights and Exceptions**

The Grantor reserves the right to conduct with the approval of the Board of Selectmen and Conservation Commission, 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. Recreational Activities. Walking, hiking, cross-country skiing, fishing, and other non-motorized outdoor passive recreational and educational activities that do not materially alter the landscape, do not degrade environmental quality, or do not involve more than *de minimus* use for commercial recreational activities. Motorized wheelchairs or similar equipment reasonably necessary to enable handicapped members of the public to access the Premises are permitted.
2. Trails. The marking, clearing and periodic maintenance of unpaved trails and walking paths.

3. Vegetation and Forest Management. In accordance with generally accepted management practices consistent with the conservation purposes of this Conservation Restriction, removing of brush, limited and selective pruning and cutting to prevent, control or remove hazards, disease, insect or fire damage, or to preserve the present condition of the Premises, including any existing trail and the selective clearing of forested or overgrown upland areas to create additional meadow habitat; preserving the present condition of the Premises, including meadows and trails.
4. Non-native or Nuisance Species. The removal of non-native or invasive plant species or poison ivy done in a manner to affect only the target species and not non-target species.
5. Wildlife Habitat Improvement. Subject to the approval of the Grantee as described in Section II.C below, measures designed to restore native biotic communities, or to maintain, enhance or restore wildlife, wildlife habitat, including installation of nest boxes, selective planting of native trees, shrubs and plant species.
6. Infrastructure. The installation, use, maintenance, repair, renovation, informational kiosks and other signage, boardwalks or bridges, benches, and picnic tables.
7. Signs. The erection, maintenance, and replacement of signs by Grantor or Grantee for the following purposes: information about allowed and prohibited uses, educational and interpretative information; trail location, distance and directional signs; property name, ownership, and property boundaries.
8. Fencing. The installation and maintenance of sight-pervious fences that do not interfere with the passage of wildlife or the conservation purposes of this restriction and do not, by their material detract from the scenic character of the landscape.
9. Permits. The exercise of any right reserved by Grantor under this Paragraph B or for which approval is granted shall be in compliance with the Town of Eastham Zoning Bylaw, the Town of Eastham Wetlands Bylaw, the state 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. All acts and uses not explicitly permitted by Section II, Paragraph B are prohibited unless otherwise approved as described in Section II.C below.

**C. Notice and Approval.**

Whenever notice to or approval by Grantee is required under the provisions of Paragraph A or B of this Section II, Grantor shall notify Grantee 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 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 the 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 Paragraph C relative to deemed approval after sixty (60) days in the notice.

### **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 the condition prior to the time of the injury complained of (it being agreed that the Grantee has 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, and Grantee is authorized to pursue non-party violators. 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.

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Enforcement of the terms of this Conservation Restriction shall be at the discretion of the 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.

**IV. ACCESS**

The Grantor hereby grants to the Grantee, or its duly authorized agents or representatives, the right to enter the Premises upon reasonable notice and at reasonable times, for the purpose of inspecting the Premises to determine compliance with or to enforce this Conservation Restriction. The Grantor also grants to the Grantee, after 30 days prior written notice of a violation and failure of the Grantor to cure said violation within said 30-day period, 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, except in emergency when notice shall be given as soon as practicable.

This Conservation Restriction also grants to the general public the right to enter upon the Premises for passive outdoor recreational purposes including, but not limited to, hiking, wildlife observation, cross-country skiing, mountain biking, horseback riding, and other non-motorized, passive outdoor recreational and educational activities (except for motorized wheelchairs or similar equipment reasonably necessary to enable handicapped members of the public to access the Premises or as otherwise outlined in Section II of this Conservation Restriction, which shall be allowed).

**V. EXTINGUISHMENT**

If circumstances arise in the future such as render the purpose of this Conservation Restriction impossible to accomplish, this Conservation 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 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. After complying with the terms of any gift grant or funding

requirements, including M.G.L. c.44B, Grantee shall use its share of the proceeds in a manner consistent with the conservation purposes set forth herein.

**A. Proceeds.**

Grantor and Grantee agree that the grant 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 Premises at that time. Such proportionate value of the Grantee's property right shall remain constant.

**B. Grantor/Grantee Cooperation Regarding Public Action**

Whenever all or any part of the Premises or any interest therein is taken by public authority under power of eminent domain or other act of public authority, then the Grantor and the Grantee shall cooperate in recovering the full value of all direct and consequential damages resulting from such action. All related expenses incurred by the Grantor and the Grantee shall first be paid out of any recovered proceeds, and the remaining proceeds shall be distributed between the Grantor and Grantee in shares equal to such proportionate value after comply with the terms of any gift, grant or funding requirements, including M.G.L. c.44B. 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 in the manner of a trust consistent with the conservation purposes of this grant.

**VI. ASSIGNABILITY**

**A. Running of the Burden**

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

**B. Execution of Instruments**

The Grantee is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Conservation Restriction; the Grantor, on behalf of itself and its successors and assigns, appoints 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 agrees itself to execute any such instruments upon request.

**C. Running of the Benefit**

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

As a condition of any assignment, the Grantee shall require that the purpose of this Conservation Restriction continues to be carried out and the assignee, at the time of the assignment, qualifies under Section 170(h) of the Internal Revenue

Code of 1986, as amended, and applicable regulations thereunder, and is a donee eligible to receive this Conservation Restriction under Section 32 of Chapter 184 of the General Laws of Massachusetts. 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 by which it divests itself of any interest in all or a portion of the Premises, including a leasehold interest and to notify the Grantee within twenty (20) days of such transfer. Failure to do so 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 twenty (20) days, execute and deliver to the Grantor any document, including an estoppel certificate, which certifies the Grantor's compliance with any obligation of the Grantor contained in this Conservation Restriction.

## **IX. NON MERGER**

The parties intend that any future acquisition of the Premises shall not result in a merger of the Conservation Restriction into the fee. The Grantor agrees that it will not grant, and the Grantee agrees that it will not take title, to any part of the Premises without having first assigned this Conservation Restriction to ensure that merger does not occur.

## **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 values. 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 filed with the Barnstable Registry of Deeds or the Barnstable County District of the Land Court if applicable.

## **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 of Massachusetts have been obtained, and it has been filed with the Barnstable Registry of Deeds, or Barnstable District of the Land Court, if applicable. The Grantee shall file this instrument in a timely manner with the Barnstable Registry of Deeds, or Barnstable District of the Land Court,.

## **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: Eastham Conservation Foundation  
P.O. Box 183  
Eastham, MA 02642

With A Copy to  
Grantee: Town of Eastham Board of Selectmen  
2500 State Highway  
Eastham MA. 02642

With Copies to: Vicki S. Marsh, Esq.  
Kopelman and Paige, P.C.  
101 Arch Street  
Boston, MA 02110

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

WITNESS our hands and seals this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

TOWN OF EASTHAM,  
By Its Board of Selectmen

\_\_\_\_\_  
John F. Knight, Chair

\_\_\_\_\_  
William O'Shea, Vice Chair

\_\_\_\_\_  
Linda Burt, Clerk

\_\_\_\_\_  
Wallace F. Adams, II

\_\_\_\_\_  
Elizabeth Gawron

COMMONWEALTH OF MASSACHUSETTS

Eastham, ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, 2016, before me, the undersigned notary public, personally appeared \_\_\_\_\_, member of the Town of Eastham Board of Selectmen, 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 he/she signed it voluntarily for its stated purpose.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

ACCEPTANCE OF GRANT

Eastham Conservation Foundation accepts the above Conservation Restriction this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

By: \_\_\_\_\_

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, 2016, before me, the undersigned notary public, personally appeared \_\_\_\_\_, proved to me through satisfactory evidence of identification which was \_\_\_\_\_ to be the person whose name is signed on the preceding 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 to Eastham Conservation Foundation has been approved in the public interest pursuant to Massachusetts General Laws, Chapter 184, Section 32.

Dated: \_\_\_\_\_, 2016

\_\_\_\_\_  
Matthew A. Beaton  
Secretary of Executive Office of Energy and  
Environmental Affairs

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, 2016, before me, the undersigned notary public, personally appeared Matthew A. Beaton., 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 he signed it voluntarily for its stated purpose.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

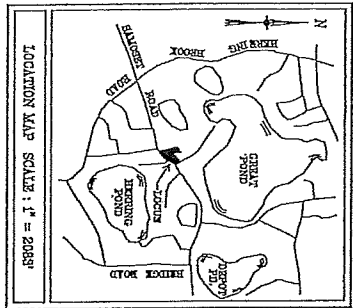
## Exhibit A

### Plan of Premises

A certain parcel of land on **820 Samoset Road**, Eastham, Massachusetts shown as Lot **3** on Massachusetts Deed filed with the Barnstable Registry District **Book 16097, Page 175, #115156**. Said Premises is conveyed together with and subject to the following, insofar as in effect:

1. Any and all public rights legally existing in and over the same.





OWNER OF RECORD: KRISTINA GRANT MESSEVEY  
13 ALDEN STREET  
LYSTON, CT 06355

DEED REFERENCE: DB 3446 PG 215  
ASSESSORS MAP: 14 PARCEL: 75  
ZONING CLASSIFICATION: A

GROSS AREA: 162,486 ± S.F. (3.74 ± AC.)

LOT 3 DOES NOT MEET THE CURRENT TOWN OF EASTHAM ZONING REQUIREMENTS, AND IS NOT TO BE CONSIDERED A BUILDABLE LOT.

PROPERTY IS NOT LOCATED IN AN ESTABLISHED FLOOD HAZARD AREA AS SHOWN ON F.H.M.A. COMMUNITY PANEL #20006 5022 D.

PLANNING BOARD ENDORSEMENT OF THIS PLAN IS NOT A GUARANTEE OF THE ACCURACY OF THE INFORMATION CONTAINED HEREIN. THE BOARD DOES NOT INDICATE THAT THE LOTS ARE BUILDABLE OR THAT THEY MEET ZONING, HEALTH, CONSERVATION OR GENERAL BY-LAW REQUIREMENTS.

APPROVAL NOT REQUIRED

EASTHAM PLANNING BOARD

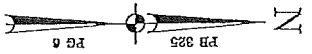
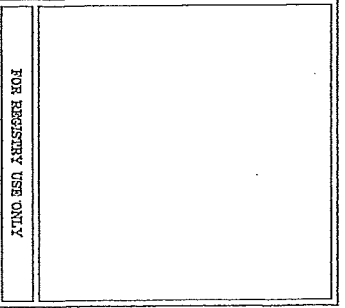
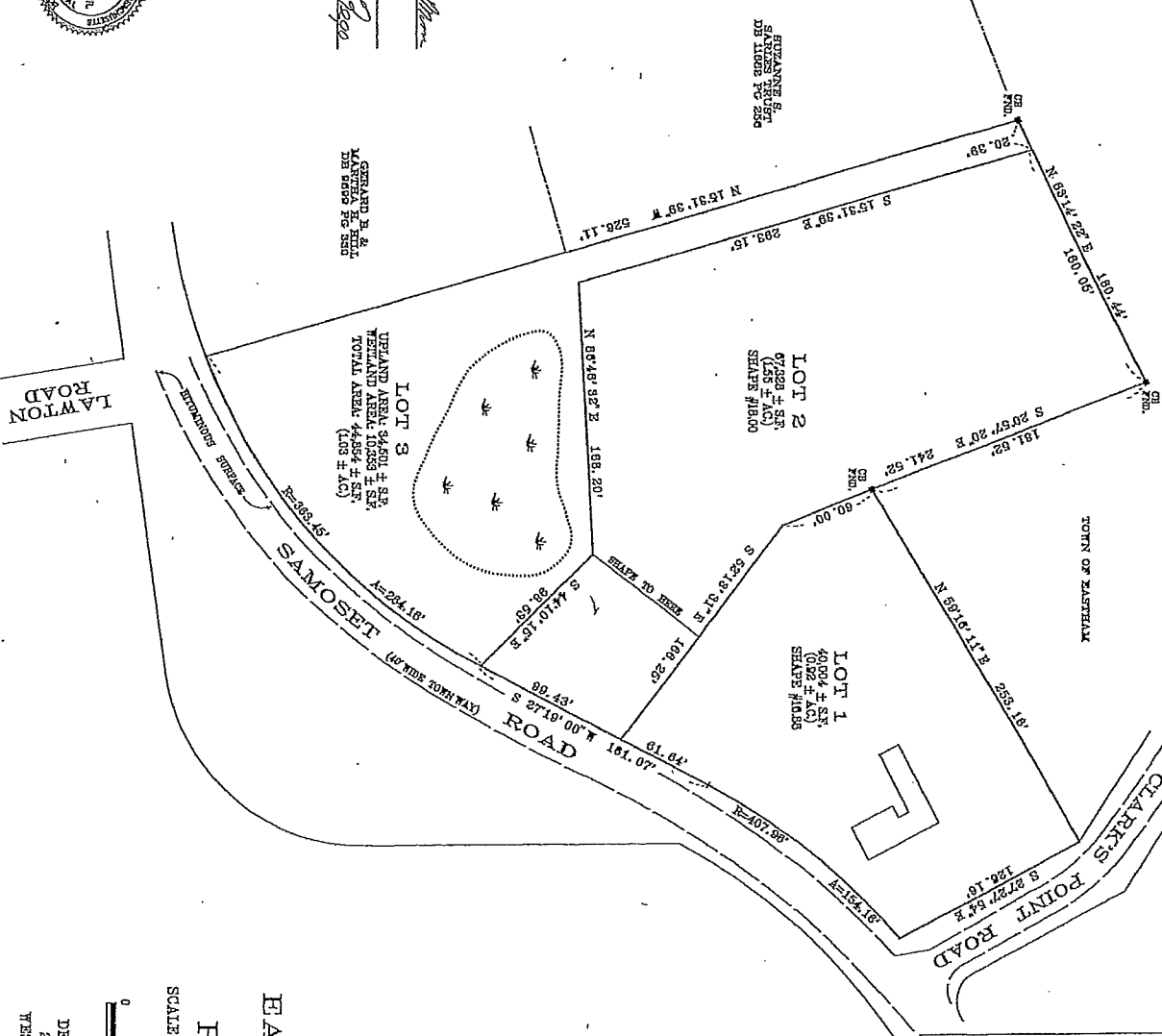
*[Signatures]*  
SIGNED DATE: 8/6/11, 2002  
APPLICATION DATE: AUGUST 22, 2002

I CERTIFY THAT THIS PLAN WAS MADE IN ACCORDANCE WITH REGISTRY OF DEEDS REGULATIONS EFFECTIVE JANUARY 1, 1976.

3/19/02  
DATE  
JOHN Z. DEMAREST, JR., P.L.S.



RECORDED  
2002 OCT 18 A 7 50  
11-07 DEEDS

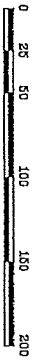


PLAN OF LAND IN  
EASTHAM, MASS.

PREPARED FOR  
REEF REALTY

SCALE: 1" = 50'

DATE: AUGUST 19, 2002  
REVISED: SEPT. 9, 2002



DEMAREST-AGUILAN ENGINEERING  
24 SCHOOL STREET P.O. BOX 463  
WEST DENNIS, MASSACHUSETTS 02670



## TOWN OF EASTHAM

2500 State Highway, Eastham, MA 02642 - 2544

All departments 508 240-5900 Fax 508 240-1291

[www.eastham-ma.gov](http://www.eastham-ma.gov)

### CONSERVATION RESTRICTION

**The Town of Eastham**, acting by and through its Board of Selectmen, having an address of 2500 State Highway, Eastham, Massachusetts 02642, being the sole owner ("Grantor"), acting pursuant to Sections 31, 32 and 33 of Chapter 184 of the Massachusetts General Laws, hereby grants to **Eastham Conservation Foundation**, a Massachusetts non-profit corporation, with a mailing address of **P.O. Box 183, Eastham, MA 02642** and its permitted successors and assigns ("Grantee"), for consideration of One Dollar (\$1.00) Dollar, in perpetuity and exclusively for open space and passive recreation purposes, the following Conservation Restriction on a certain parcel of land located on **40 Hatch Way**, in the Town of Eastham, Barnstable County, Massachusetts containing approximately **1.105** acres, more or less, and described in a deed to the Grantor, filed with the Barnstable Registry District, **Book 19356, Page 292, #97236**, and further described at Exhibit A attached hereto (the "Premises").

#### I. PURPOSES:

This Conservation Restriction is defined in and authorized by Sections 31-33 of Chapter 184 of the Massachusetts General Laws and otherwise by law. The purpose of this Conservation Restriction is to assure that the Premises will be maintained in its current condition in perpetuity for open space and passive recreation purposes, predominantly in a scenic and undeveloped condition, and to prevent any use or change that would materially impair or interfere with its conservation and preservation values.

The Premises was purchased using Massachusetts, Chapter 293 of the Acts of 1998 (Land Bank so called). The purposes of this Conservation Restriction are to assure that, while permitting certain acts and uses described in Section II.B hereof, the Premises will be subject to the prohibitions described in Section II.A hereof, so that the Premises are retained in perpetuity in their scenic and undeveloped condition for open space and passive recreation, and other conservation uses consistent with and subject to the protections of Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, and to prevent any use of the Premises that will materially impair or interfere with the conservation values thereof. The Premises contains outstanding qualities. It is naturally vegetated and while formerly part of a residential lot, this portion does not and did not have a structure or subsurface disposal works. There is no evidence that it has been used for subsurface mining, or hazardous waste disposal. The protection of this property will be of benefit to the public and in support of the qualities listed below:

- **Open Space Preservation**

The protection of the Premises contributes to the protection of the scenic and natural character of the Eastham and will serve the public as additional passive recreation space.

- **Passive Recreation and Public Access Trails**

This parcel has a connection to an active recreational area as it is adjacent to the bike trail.

- **Wildlife and Plant Education**

Provides for preservation of special pond edge vegetation. The site is elevated and provides special views of the pond and adjacent pond edges.

- **Protection of Wildlife Habitat**

This purchase precludes the residential development of limited pondfront land. It also, integrates and forms a larger contiguous open space via the bike path, which facilitates wildlife migrations, expands habitat, and promotes bio diversity.

This acquisition promotes elements in the Open Space and Recreation Plan specifically the Natural Resources Goal which states in part;

*Natural Resources Goal: Ensure Eastham has a good and ample amount of publicly accessible, multi-use open space land that provides both passive and active recreational opportunities, as well as aesthetic enjoyment, wildlife protection, and watershed protection*

## **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, indoor riding ring, landing strip, mobile home, swimming pool, golf driving range, asphalt or concrete pavement, billboard or other advertising display, antenna, utility pole, tower, temporary or permanent structure or facility on, above or under the Premises, except the town may add and maintain ancillary facilities such as drinking fountains, seating, trash receptacles, and shade shelters as needed, to enhance the use of the site by walkers, hikers, and cyclists.
2. Mining, excavating, dredging or removing from the Premises of soil, loam, peat, gravel, sand, rock or other mineral resource or natural deposit or otherwise make topographical changes to the area except for minor grading for trails related to handicapped accessibility and access for passive recreation uses.

3. Placing, filling, storing or dumping on the Premises of soil, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, waste or other substance or material whatsoever or the installation of underground storage tanks;
4. Cutting, removing or otherwise destroying trees, grasses or other vegetation, including leaf litter, except as may be permitted by the Conservation Commission to support passive recreational use.
5. Activities detrimental to wildlife habitat, 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 management of the Premises by the Town, forestry activities, and public safety (i.e., fire, police, ambulance, other government officials);
7. Subdivision or conveyance of a part or portion of the Premises. Further, no portion of the Premises may be used towards building or development requirements of this or any other parcel;
8. Any other use of the Premises or activity thereon which is inconsistent with the purpose of this Conservation Restriction

**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. Recreational Activities. Walking, hiking, cross-country skiing, fishing, and other non-motorized outdoor passive recreational and educational activities that do not materially alter the landscape, and does not degrade environmental quality. Motorized wheelchairs or similar equipment reasonably necessary to enable handicapped members of the public to access the Premises are permitted.
2. Trails. The marking, clearing and periodic maintenance of unpaved trails and walking paths.
3. Vegetation and Forest Management. In accordance with generally accepted management practices consistent with the conservation purposes of this Conservation Restriction, removing of brush, limited and selective pruning and cutting to prevent, control or remove hazards, disease, insect or fire damage, or to preserve the present condition of the Premises, including any existing trail and the selective clearing of forested or overgrown upland areas

to create additional meadow habitat; preserving the present condition of the Premises, including meadows and trails.

4. Non-native or Nuisance Species. The removal of non-native or invasive plant species or poison ivy done in a manner to affect only the target species and not non-target species.
5. Wildlife Habitat Improvement. Subject to the approval of the Grantee as described in Section II.C below, measures designed to restore native biotic communities, or to maintain, enhance or restore wildlife, wildlife habitat, including installation of nest boxes, selective planting of native trees, shrubs and plant species.
6. Infrastructure. The installation, use, maintenance, repair, renovation, informational kiosks and other signage, boardwalks or bridges, benches, picnic tables, and canoe/kayak launch areas.
7. Signs. The erection, maintenance, and replacement of signs by Grantor or Grantee for the following purposes: information about allowed and prohibited uses, educational/interpretative information; trail location, distance and directional signs; property name, ownership, and property boundaries.
8. Fencing. The installation and maintenance of sight-pervious fences that do not interfere with the passage of wildlife or the conservation purposes of this restriction and do not, by their material detract from the scenic character of the landscape.
9. Permits. The exercise of any right reserved by Grantor under this Paragraph B or for which approval is granted shall be in compliance with the Town of Eastham Zoning Bylaw, the Town of Eastham Wetlands Bylaw, the state 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. All acts and uses not explicitly permitted by Section II, Paragraph B are prohibited unless otherwise approved as described in Section II.C below.

**C. Notice and Approval.**

Whenever notice to or approval by Grantee is required under the provisions of Paragraph A or B of this Section II, Grantor shall notify Grantee 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

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 the 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 Paragraph C relative to deemed approval after sixty (60) days in the notice.

### **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 the condition prior to the time of the injury complained of (it being agreed that the Grantee has 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, and Grantee is authorized to pursue non-party violators. 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.

#### **B. Non-Waiver**

Enforcement of the terms of this Conservation Restriction shall be at the discretion of the 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.

**IV. ACCESS**

The Grantor hereby grants to the Grantee, or its duly authorized agents or representatives, the right to enter the Premises upon reasonable notice and at reasonable times, for the purpose of inspecting the Premises to determine compliance with or to enforce this Conservation Restriction. The Grantor also grants to the Grantee, after 30 days prior written notice of a violation and failure of the Grantor to cure said violation within said 30-day period, 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, except in emergency when notice shall be given as soon as practicable.

This Conservation Restriction also grants to the general public the right to enter upon the Premises for passive outdoor recreational purposes including, but not limited to, hiking, wildlife observation, cross-country skiing, mountain biking, horseback riding, and other non-motorized, passive outdoor recreational and educational activities (except for motorized wheelchairs or similar equipment reasonably necessary to enable handicapped members of the public to access the Premises or as otherwise outlined in Section II of this Conservation Restriction, which shall be allowed).

**V. EXTINGUISHMENT**

If circumstances arise in the future such as render the purpose of this Conservation Restriction impossible to accomplish, this Conservation 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 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. After complying with the terms of any gift grant or funding requirements, including M.G.L. c.44B, Grantee shall use its share of the proceeds in a manner consistent with the conservation purposes set forth herein.

**A. Proceeds.**

Grantor and Grantee agree that the grant 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 Premises at that time. Such proportionate value of the Grantee's property right shall remain constant.

**B. Grantor/Grantee Cooperation Regarding Public Action**

Whenever all or any part of the Premises or any interest therein is taken by public authority under power of eminent domain or other act of public authority, then the Grantor and the Grantee shall cooperate in recovering the full value of all direct and consequential damages resulting from such action. All related expenses incurred by the Grantor and the Grantee shall first be paid out of any recovered proceeds, and the remaining proceeds shall be distributed between the Grantor and Grantee in shares equal to such proportionate value after comply with the terms of any gift, grant or funding requirements, including M.G.L. c.44B. 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 in the manner of a trust consistent with the conservation purposes of this grant.

**VI. ASSIGNABILITY**

**A. Running of the Burden**

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

**B. Execution of Instruments**

The Grantee is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Conservation Restriction; the Grantor, on behalf of itself and its successors and assigns, appoints 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 agrees itself to execute any such instruments upon request.

**C. Running of the Benefit**

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

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## **VII. SUBSEQUENT TRANSFERS**

The Grantor agrees to incorporate by reference the terms of this Conservation Restriction in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Premises, including a leasehold interest and to notify the Grantee within twenty (20) days of such transfer. Failure to do so 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.

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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 filed with the Barnstable Registry of Deeds or the Barnstable County District of the Land Court if applicable.

## **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 of Massachusetts have been obtained, and it has been filed with the Barnstable Registry of Deeds, or Barnstable District of the Land Court, if applicable. The Grantee shall file this instrument in a timely manner with the Barnstable Registry of Deeds, or Barnstable District of the Land Court,.

## **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: Eastham Conservation Foundation  
P.O. Box 183  
Eastham, MA 02642

With A Copy to  
Grantee: Town of Eastham Board of Selectmen  
2500 State Highway  
Eastham MA. 02642

With Copies to: Vicki S. Marsh, Esq.  
Kopelman and Paige, P.C.  
101 Arch Street  
Boston, MA 02110

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

WITNESS our hands and seals this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

TOWN OF EASTHAM,  
By Its Board of Selectmen

\_\_\_\_\_  
John F. Knight, Chair

\_\_\_\_\_  
William O'Shea, Vice Chair

\_\_\_\_\_  
Linda Burt, Clerk

\_\_\_\_\_  
Wallace F. Adams, II

\_\_\_\_\_  
Elizabeth Gawron

COMMONWEALTH OF MASSACHUSETTS

Eastham, ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, 2016, before me, the undersigned notary public, personally appeared \_\_\_\_\_, member of the Town of Eastham Board of Selectmen, 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 he/she signed it voluntarily for its stated purpose.

\_\_\_\_\_  
Notary Public  
My Commission Expires:



ACCEPTANCE OF GRANT

Eastham Conservation Foundation accepts the above Conservation Restriction this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

By: \_\_\_\_\_

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, 2016, before me, the undersigned notary public, personally appeared \_\_\_\_\_, proved to me through satisfactory evidence of identification which was \_\_\_\_\_ to be the person whose name is signed on the preceding 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 to Eastham Conservation Foundation has been approved in the public interest pursuant to Massachusetts General Laws, Chapter 184, Section 32.

Dated: \_\_\_\_\_, 2016

\_\_\_\_\_  
Matthew A. Beaton  
Secretary of Executive Office of Energy and  
Environmental Affairs

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, 2016, before me, the undersigned notary public, personally appeared Matthew A. Beaton., 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 he signed it voluntarily for its stated purpose.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

## Exhibit A

### Plan of Premises

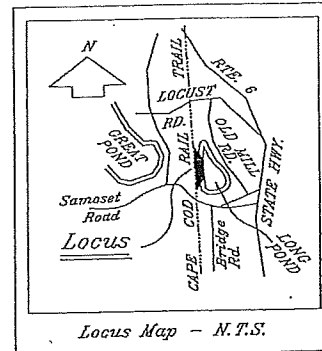
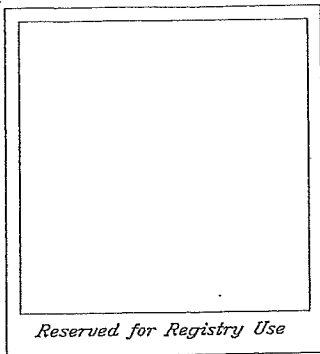
A certain parcel of land on **40 Hatch Way**, Eastham, Massachusetts shown as Lot **3** on Massachusetts Deed filed with the Barnstable Registry District **Book 19356, Page 292, #97236**. Said Premises is conveyed together with and subject to the following, insofar as in effect:

1. Any and all public rights legally existing in and over the same, and further this land locked parcel is accessed via a private driveway and said driveway is available for public use for non-motorized vehicle access



596-4

9f



Reserved for Registry Use

**ZONE:**  
District A

**REFERENCE:**  
Dd. Bk. 3372 Pg. 316  
PLBk. 282 Pg. 48  
PL Bk. 383 Pg. 78  
Assn's. Map 14 Pct. 105 & 106

**RECORD OWNER:**  
Freeman C. Hatch IV  
P.O. Box 421  
Eastham, MA 02642

**PLAN NOTE:**  
Lot 2B is to be conveyed to the Town of Eastham.

I certify that this plan has been prepared in conformity with the rules and regulations of the registers of deeds.

Lawrence E. Wilcox 10/26/04  
Professional Land Surveyor Date



EASTHAM PLANNING BOARD  
APPROVAL NOT REQUIRED

David Abbott  
[Signature]  
[Signature]  
[Signature]  
Date 11/1/04

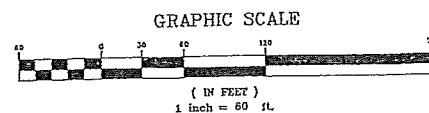
No determination of compliance with zoning requirements has been made or is intended.

Sta. 3330+00.00 Pin in Lead Plug (Fnd.)

Sta. 3310+18.15 Pin in Lead Plug (Fnd.)

Plan of Land  
in  
Eastham, MA  
showing a re-division of  
LOT 1A & LOT 2A  
Plan Book 383 Page 78  
prepared for  
The Town of Eastham

Scale: 1" = 60' Date: October 25, 2004



Ryder & Wilcox, Inc.  
P.E. & P.L.S.  
So. Orleans, MA

Job No. 9117

RECEIVED AND RECORDED  
TOWN DEC 10 P 3:54  
2004  
BARNSTABLE COUNTY  
REGISTER OF DEEDS  
JOHN F. MEADE

BOOK 596 PAGE 4



## TOWN OF EASTHAM

2500 State Highway, Eastham, MA 02642 - 2544

All departments 508 240-5900 Fax 508 240-1291

[www.eastham-ma.gov](http://www.eastham-ma.gov)

### CONSERVATION RESTRICTION

**The Town of Eastham**, acting by and through its Board of Selectmen, having an address of 2500 State Highway, Eastham, Massachusetts 02642, being the sole owner ("Grantor"), acting pursuant to Sections 31, 32 and 33 of Chapter 184 of the Massachusetts General Laws, hereby grants to **Eastham Conservation Foundation**, a Massachusetts non-profit corporation, with a mailing address of **P.O. Box 183, Eastham, MA 02642** and its permitted successors and assigns ("Grantee"), for consideration of One Dollar (\$1.00) Dollar, in perpetuity and exclusively for open space and passive recreation purposes, the following Conservation Restriction on a certain parcel of land located on **60 Clark's Point Road**, in the Town of Eastham, Barnstable County, Massachusetts containing approximately **1.394** acres, more or less, and described in a deed to the Grantor, filed with the Barnstable Registry District, **Book 19532, Page 45, #10038**, and further shown on a plan in Exhibit A attached hereto (the "Premises").

#### I. PURPOSES:

This Conservation Restriction is defined in and authorized by Sections 31-33 of Chapter 184 of the Massachusetts General Laws and otherwise by law. The purpose of this Conservation Restriction is to assure that the Premises will be maintained in its current condition in perpetuity for open space and passive recreation purposes, predominantly in a scenic and undeveloped condition, and to prevent any use or change that would materially impair or interfere with its conservation and preservation values.

The Premises was purchased using Massachusetts Community Preservation Act funds (M.G.L. Chapter 44B). The purposes of this Conservation Restriction are to assure that, while permitting certain acts and uses described in Section II.B hereof, the Premises will be subject to the prohibitions described in Section II.A hereof, so that the Premises are retained in perpetuity in their scenic and undeveloped condition for open space and passive recreation, and other conservation uses consistent with and subject to the protections of Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, and to prevent any use of the Premises that will materially impair or interfere with the conservation values thereof. The Premises contains outstanding qualities. *It is naturally vegetated and while formerly part of a large residential parcel used as a hunting/fishing camp, this portion does not and did not have a permanent structure or subsurface disposal works. There is no evidence that it has been used for subsurface mining, or hazardous waste disposal. The protection of this property will be of benefit to the public and in support of the qualities listed below:*

- **Open Space Preservation**

The protection of the Premises contributes to the protection of the scenic and natural character of the Eastham and will serve the public as additional passive recreation space.



- **Passive Recreation and Public Access Trails.**

It is adjacent to and supports a thru connection to two town owned parcels and provides over 550' of pond frontage.

- **Wildlife and Plant Education**

Connects to town owned area containing a special historical forested area, created as part of a centennial project.

- **Protection of Wildlife Habitat.**

This open space that integrates and forms a larger contiguous open space which facilitates wildlife migrations, expands habitat, and promotes diversity.

Promotes elements in the Open Space and Recreation Plan specifically the Natural Resources Goal which states in part;

***Natural Resources Goal:** Ensure Eastham has a good and ample amount of publicly accessible, multi-use open space land that provides both passive and active recreational opportunities, as well as aesthetic enjoyment, wildlife protection, and watershed protection.*

## **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, indoor riding ring, landing strip, mobile home, swimming pool, golf driving range, asphalt or concrete pavement, billboard or other advertising display, antenna, utility pole, tower, temporary or permanent structure or facility on, above or under the Premises, *except the town may add and maintain ancillary facilities such as drinking fountains, seating, trash receptacles, and shade shelters as needed, to enhance the use of the site by walkers, hikers, and cyclists.*
2. Mining, excavating, dredging or removing from the Premises of soil, loam, peat, gravel, sand, rock or other mineral resource or natural deposit or otherwise make topographical changes to the area *except for minor grading for trails related to handicapped accessibility and access for passive recreation uses.*
3. Placing, filling, storing or dumping on the Premises of soil, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, waste or other substance or material whatsoever or the installation of underground storage tanks;

4. Cutting, removing or otherwise destroying trees, grasses or other vegetation, including leaf litter, *except as may be permitted by the Conservation Commission to support passive recreational use.*
5. Activities detrimental to wildlife habitat, 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 management of the Premises by the Town, forestry activities, and public safety (i.e., fire, police, ambulance, other government officials);
7. Subdivision or conveyance of a part or portion of the Premises. Further, no portion of the Premises may be used towards building or development requirements of this or any other parcel;
8. The use of the Premises for any commercial recreation, business, residential or industrial use.
9. Any other use of the Premises or activity thereon which is inconsistent with the purpose of this Conservation Restriction

**B. Reserved Rights and Exceptions**

The Grantor reserves the right to conduct with the approval of the Board of Selectmen and Conservation Commission, 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. Recreational Activities. Walking, hiking, cross-country skiing, fishing, and other non-motorized outdoor passive recreational and educational activities that do not materially alter the landscape, do not degrade environmental quality. Motorized wheelchairs or similar equipment reasonably necessary to enable handicapped members of the public to access the Premises are permitted.
2. Trails. The marking, clearing and periodic maintenance of unpaved trails and walking paths.
3. Vegetation and Forest Management. In accordance with generally accepted management practices consistent with the conservation purposes of this Conservation Restriction, removing of brush, limited and selective pruning and cutting to prevent, control or remove hazards, disease, insect or fire damage, or to preserve the present condition of the Premises, including any

existing trail and the selective clearing of forested or overgrown upland areas to create additional meadow habitat; preserving the present condition of the Premises, including meadows and trails.

4. Non-native or Nuisance Species. The removal of non-native or invasive plant species or poison ivy done in a manner to affect only the target species and not non-targeted species.
5. Wildlife Habitat Improvement. Subject to the approval of the Grantee as described in Section II.C below, measures designed to restore native biotic communities, or to maintain, enhance or restore wildlife, wildlife habitat, including installation of nest boxes, selective planting of native trees, shrubs and plant species.
6. Infrastructure. The installation, use, maintenance, repair, renovation, informational kiosks and other signage, boardwalks or bridges, benches, picnic tables, and canoe/kayak launch areas.
7. Signs. The erection, maintenance, and replacement of signs by Grantor or Grantee for the following purposes: information about allowed and prohibited uses, educational and interpretative information; trail location, distance and directional signs; property name, ownership, and property boundaries.
8. Fencing. The installation and maintenance of sight-pervious fences that do not interfere with the passage of wildlife or the conservation purposes of this restriction and do not, by their material detract from the scenic character of the landscape.
9. Permits. The exercise of any right reserved by Grantor under this Paragraph B or for which approval is granted shall be in compliance with the Town of Eastham Zoning Bylaw, the Town of Eastham Wetlands Bylaw, the state 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. All acts and uses not explicitly permitted by Section II, Paragraph B are prohibited unless otherwise approved as described in Section II.C below.

**C. Notice and Approval.**

Whenever notice to or approval by Grantee is required under the provisions of Paragraph A or B of this Section II, Grantor shall notify Grantee 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 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 the 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 Paragraph C relative to deemed approval after sixty (60) days in the notice.

### **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 the condition prior to the time of the injury complained of (it being agreed that the Grantee has 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, and Grantee is authorized to pursue non-party violators. 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.

#### **B. Non-Waiver**

Enforcement of the terms of this Conservation Restriction shall be at the discretion of the 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.

**IV. ACCESS**

The Grantor hereby grants to the Grantee, or its duly authorized agents or representatives, the right to enter the Premises upon reasonable notice and at reasonable times, for the purpose of inspecting the Premises to determine compliance with or to enforce this Conservation Restriction. The Grantor also grants to the Grantee, after 30 days prior written notice of a violation and failure of the Grantor to cure said violation within said 30-day period, 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, except in emergency when notice shall be given as soon as practicable.

This Conservation Restriction also grants to the general public the right to enter upon the Premises for passive outdoor recreational purposes including, but not limited to, hiking, wildlife observation, cross-country skiing, mountain biking, horseback riding, and other non-motorized, passive outdoor recreational and educational activities (except for motorized wheelchairs or similar equipment reasonably necessary to enable handicapped members of the public to access the Premises or as otherwise outlined in Section II of this Conservation Restriction, which shall be allowed).

**V. EXTINGUISHMENT**

If circumstances arise in the future such as render the purpose of this Conservation Restriction impossible to accomplish, this Conservation 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 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. After complying with the terms of any gift grant or funding requirements, including M.G.L. c.44B, Grantee shall use its share of the proceeds in a manner consistent with the conservation purposes set forth herein.

**A. Proceeds.**

Grantor and Grantee agree that the grant 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 Premises at that time. Such proportionate value of the Grantee's property right shall remain constant.

**B. Grantor/Grantee Cooperation Regarding Public Action**

Whenever all or any part of the Premises or any interest therein is taken by public authority under power of eminent domain or other act of public authority, then the Grantor and the Grantee shall cooperate in recovering the full value of all direct and consequential damages resulting from such action. All related expenses incurred by the Grantor and the Grantee shall first be paid out of any recovered proceeds, and the remaining proceeds shall be distributed between the Grantor and Grantee in shares equal to such proportionate value after comply with the terms of any gift, grant or funding requirements, including M.G.L. c.44B. 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 in the manner of a trust consistent with the conservation purposes of this grant.

**VI. ASSIGNABILITY**

**A. Running of the Burden**

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

**B. Execution of Instruments**

The Grantee is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Conservation Restriction; the Grantor, on behalf of itself and its successors and assigns, appoints 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 agrees itself to execute any such instruments upon request.

**C. Running of the Benefit**

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

As a condition of any assignment, the Grantee shall require that the purpose of this Conservation Restriction continues to be carried out and the assignee, at the time of the assignment, qualifies under Section 170(h) of the Internal Revenue Code of 1986, as amended, and applicable regulations thereunder, and is a donee eligible to receive this Conservation Restriction under Section 32 of Chapter 184 of the General Laws of Massachusetts. 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 by which it divests itself of any interest in all or a portion of the Premises, including a leasehold interest and to notify the Grantee within twenty (20) days of such transfer. Failure to do so 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 twenty (20) days, execute and deliver to the Grantor any document, including an estoppel certificate, which certifies the Grantor's compliance with any obligation of the Grantor contained in this Conservation Restriction.

## **IX. NON MERGER**

The parties intend that any future acquisition of the Premises shall not result in a merger of the Conservation Restriction into the fee. The Grantor agrees that it will not grant, and the Grantee agrees that it will not take title, to any part of the Premises without having first assigned this Conservation Restriction to ensure that merger does not occur.

## **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 values. 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 filed with the Barnstable Registry of Deeds or the Barnstable County District of the Land Court if applicable.

## **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 of Massachusetts have been obtained, and it has been filed with the Barnstable Registry of Deeds, or Barnstable District of the Land Court, if applicable. The Grantee shall file this instrument in a timely manner with the Barnstable Registry of Deeds, or Barnstable District of the Land Court,.

## **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: Eastham Conservation Foundation  
P.O. Box 183  
Eastham, MA 02642

With A Copy to  
Grantee: Town of Eastham Board of Selectmen  
2500 State Highway  
Eastham MA. 02642

With Copies to: Vicki S. Marsh, Esq.  
Kopelman and Paige, P.C.  
101 Arch Street  
Boston, MA 02110

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

WITNESS our hands and seals this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

TOWN OF EASTHAM,  
By Its Board of Selectmen

\_\_\_\_\_  
John F. Knight, Chair

\_\_\_\_\_  
William O'Shea, Vice Chair

\_\_\_\_\_  
Linda Burt, Clerk

\_\_\_\_\_  
Wallace F. Adams, II

\_\_\_\_\_  
Elizabeth Gawron

COMMONWEALTH OF MASSACHUSETTS

Eastham, ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, 2016, before me, the undersigned notary public, personally appeared \_\_\_\_\_, member of the Town of Eastham Board of Selectmen, 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 he/she signed it voluntarily for its stated purpose.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

ACCEPTANCE OF GRANT

Eastham Conservation Foundation accepts the above Conservation Restriction this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

By: \_\_\_\_\_

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, 2016, before me, the undersigned notary public, personally appeared \_\_\_\_\_, proved to me through satisfactory evidence of identification which was \_\_\_\_\_ to be the person whose name is signed on the preceding 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 to Eastham Conservation Foundation has been approved in the public interest pursuant to Massachusetts General Laws, Chapter 184, Section 32.

Dated: \_\_\_\_\_, 2016

\_\_\_\_\_  
Matthew A. Beaton  
Secretary of Executive Office of Energy and  
Environmental Affairs

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, 2016, before me, the undersigned notary public, personally appeared Matthew A. Beaton., 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 he signed it voluntarily for its stated purpose.

\_\_\_\_\_  
Notary Public  
My Commission Expires:



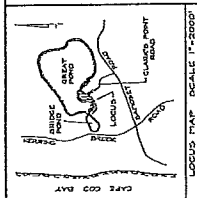
## Exhibit A

### Plan of Premises

A certain parcel of land on **60 Clark's Point Road**, Eastham, Massachusetts shown as Lot **7B** on Massachusetts Deed filed with the Barnstable Registry District **Book 19532, Page 45, #10038**. Said Premises is conveyed together with and subject to the following, insofar as in effect:

1. Any and all public rights legally existing in and over the same.

RECEIVED AND RECORDED  
12th DEC 10 A.D. 21  
MASSACHUSETTS  
NOTARY PUBLIC  
JOHN F. HEALD



LOCUS MAP SCALE 1"=2000'

PLAN BOOK 520 PAGE 60

FOR REGISTRY USE

GREAT POND  
(A GREAT POND)

LOT 7A  
TOTAL AREA 225,125 S.F.  
612 AC.  
UPLAND AREA 187,225 S.F.  
46 AC.

GREAT POND COVE

BRIDGE POND  
(A PRIVATE POND)

PLAN OF LAND  
CLARK'S POINT ROAD  
EASTHAM, MA.

SHOWING A REDIVISION OF LOT 4A.  
PLAN BOOK 540 PAGE 60

PREPARED FOR:  
ROBERT L. &  
SARAH P.K. MUMFORD

SCALE: 1"=50' NOVEMBER 24, 2004

0 25 50 100 150  
SCALE IN FEET

REFERENCE: MASSACHUSETTS MAP 11, PARCEL 085-1  
RECORD BOOK 118-0, PAGE 60  
PLAN BOOK 540 PAGE 60

NOTES:  
THIS IS NOT TO BE  
CONSIDERED A SEPARATE  
CONVEYANCE OF THE  
PROPERTY TO THE TOWN OF  
EASTHAM

APPROVAL NOT REQUIRED  
EASTHAM PLANNING BOARD

DATE: 11/11/04  
[Signatures]

NO DETERMINATION OF  
THE REQUIREMENTS HAS BEEN MADE  
OR IS INTENDED.

I CERTIFY THAT THIS PLAN WAS MADE IN  
ACCORDANCE WITH THE REGISTRY OF DEEDS  
REGULATIONS EFFECTIVE JAN. 1, 1972



W. J. B. [Signature]  
DATE: [Blank]

EAST CAPE ENGINEERING INC.  
LAND SURVEYORS  
44 RTE. 30 ULLAND, MA.

BOOK 595 PAGE 100



## TOWN OF EASTHAM

2500 State Highway, Eastham, MA 02642 - 2544

All departments 508 240-5900 Fax 508 240-1291

[www.eastham-ma.gov](http://www.eastham-ma.gov)

### CONSERVATION RESTRICTION

**The Town of Eastham**, acting by and through its Board of Selectmen, and Conservation Commission having an address of 2500 State Highway, Eastham, Massachusetts 02642, being the sole owner ("Grantor"), acting pursuant to Sections 31, 32 and 33 of Chapter 184 of the Massachusetts General Laws, hereby grants to **Eastham Conservation Foundation**, a Massachusetts non-profit corporation, with a mailing address of P.O. Box 183, Eastham, MA 02642 and its permitted successors and assigns ("Grantee"), for consideration of One Dollar (\$1.00) Dollar, in perpetuity and exclusively for conservation and passive recreation purposes, the following Conservation Restriction on a certain parcel of land located on Dyer Prince Road, in the Town of Eastham, Barnstable County, Massachusetts containing approximately 3.412 acres, more or less, and described in a deed to the Grantor, filed with the Barnstable Registry District of the Land Court as Document No. 1250004, noted on Certificate of Title No. 203922, and further described at Exhibit A attached hereto (the "Premises").

#### I. PURPOSES:

This Conservation Restriction is defined in and authorized by Sections 31-33 of Chapter 184 of the Massachusetts General Laws and otherwise by law. The purpose of this Conservation Restriction is to assure that the Premises will be maintained in its current condition in perpetuity for conservation and passive recreation purposes, predominantly in a scenic and undeveloped condition, and to prevent any use or change that would materially impair or interfere with its conservation and preservation values.

The Premises was purchased using Massachusetts Community Preservation Act funds (M.G.L. Chapter 44B). The purposes of this Conservation Restriction are to assure that, while permitting certain acts and uses described in Section II.B hereof, the Premises will be subject to the prohibitions described in Section II.A hereof, so that the Premises are retained in perpetuity in their scenic and undeveloped condition for open space and passive recreation, and other conservation uses consistent with and subject to the protections of Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, and to prevent any use of the Premises that will materially impair or interfere with the conservation values thereof. The Premises contains outstanding qualities, including waterfront coastal beaches and coastal dunes, an open sandy maritime heathland consisting of low-growing native heaths and heathers, bayberry, beach plum, beach pea, American beach grass, bayberry, rosa rugosa, eastern red cedar, and various lichens and as well as an upland consisting of a pine-oak woodland, the protection of which will be of benefit to the public (the "Purposes"). These qualities are described below:

- **Open Space Preservation.**

The protection of the Premises contributes to the protection of the scenic and natural character of the Eastham and will serve the public as additional passive recreation space.

- **Passive Recreation and Public Access Trails.**

Conservation of the Premises will preserve the public's use and enjoyment of the Premises for passive recreation, including the potential for passive trail-based activities, provided that these activities will not compromise the wildlife habitat, scenic and environmental values. There are current limited trails within the property primarily maintained by animal migration.

- **Protection of Wildlife Habitat.**

Perhaps this most important value of this property, is that it is identified by the Natural Heritage and Endangered Species Program area as an Estimated and Priority Habitat and consists of Coastal Beach, Coastal Dunes, open maritime heathland, forested pine-oak upland and a portion is located within the Inner Cape Cod Bay Area of Critical Environmental Concern.

- **Protection of Scenic Resources.**

The Premises is unique in that it comprises part of scenic Cape Cod Bay, working Rock Harbor and Boat Meadow landscape. Protection of the Premises will preserve the scenic character and scenic views of this open and aesthetically important landscape in the Town of Eastham.

This acquisition also, promotes elements in the Open Space and Recreation Plan, specifically the Natural Resources Goal which states in part;

***Natural Resources Goal:** Ensure Eastham has a good and ample amount of publicly accessible, multi-use open space land that provides both passive and active recreational opportunities, as well as aesthetic enjoyment, wildlife protection, and watershed protection.*

## 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, indoor riding ring, landing strip, mobile home, swimming pool, golf driving range, asphalt or concrete pavement, 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; *except the town may add and maintain ancillary facilities such as drinking fountains, seating, trash receptacles, and shade shelters only on the periphery of the property, and as needed, to enhance the use of the site by walkers, and beachgoers.*

2. Mining, excavating, dredging or removing from the Premises of soil, loam, peat, gravel, sand, rock or other mineral resource or natural deposit or otherwise make topographical changes to the area; *except for minor grading as may related to handicapped accessibility and access for passive recreation uses.*
3. Placing, filling, storing or dumping on the Premises of soil, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, waste or other substance or material whatsoever or the installation of underground storage tanks;
4. Cutting, removing or otherwise destroying trees, grasses or other vegetation, including leaf litter; *except as may be permitted by the Conservation Commission to support and maintain specific habitats, species and flora complimentary to passive recreational use.*
5. Activities detrimental to wildlife habitat, drainage, flood control, water conservation, water quality, erosion control, soil conservation, or archaeological conservation;
6. Storage of vehicles including motorcycles, mopeds, all-terrain vehicles, trail bikes, or any other motorized vehicles on the Premises except use of vehicles is limited to those necessary for management of the Premises by the Town, forestry activities, and public safety (i.e., fire, police, ambulance, other government officials), efforts shall be made to limit vehicular use as noted above to the periphery of the property. Parking on site is prohibited, however parking adjacent to the site and along the road frontage may be provided.
7. Subdivision or conveyance of a part or portion of the Premises. Further, no portion of the Premises may be used towards building or development requirements of this or any other parcel;
8. Any other use of the Premises or activity thereon which is inconsistent with the purpose of this Conservation Restriction

**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. Recreational Activities. Swimming, walking, hiking, cross-country skiing, fishing, and other non-motorized outdoor passive recreational and educational activities that do not materially alter the landscape, do not degrade environmental quality, are allowed. Motorized wheelchairs or similar equipment reasonably necessary to enable handicapped members of the public to access the Premises are permitted.

2. Trails. The marking, clearing and periodic maintenance of unpaved trails and walking paths.
3. Vegetation and Forest Management. In accordance with generally accepted management practices consistent with the conservation purposes of this Conservation Restriction, removing of brush, limited and selective pruning and cutting to prevent, control or remove hazards, disease, insect or fire damage, or to preserve the present condition of the Premises, including any existing trails.
4. Non-native or Nuisance Species. The removal of non-native or invasive plant species or poison ivy done in a manner to affect only the target species and not non-target species.
5. Wildlife Habitat Improvement. Subject to the approval of the Grantee as described in Section II.C below, measures designed to restore native biotic communities, or to maintain, enhance or restore wildlife, wildlife habitat, including installation of nest boxes, selective planting of native trees, shrubs and plant species.
6. Infrastructure. The installation of informational kiosks and other signage, boardwalks or bridges, benches, picnic tables, and canoe/kayak launch areas, and adjacent parking areas located along the road frontage or on adjacent parcels owned by the town.
7. Signs. The erection, maintenance, and replacement of signs by Grantor or Grantee for the following purposes: information about allowed and prohibited uses, educational or interpretative information, trail location/markings, distance and directional signs; property name, ownership, and property boundaries.
8. Fencing. The installation and maintenance of sight-pervious fences that do not interfere with the passage of wildlife or the conservation purposes of this restriction and do not, by their material detract from the scenic character of the landscape.
9. Permits. The exercise of any right reserved by Grantor under this Paragraph B or for which approval is granted shall be in compliance with the Town of Eastham Zoning Bylaw, the Town of Eastham Wetlands Bylaw, the state 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. All acts and uses not explicitly permitted by Section II, Paragraph B are prohibited unless otherwise approved as described in Section II.C below.

**C. Notice and Approval.**

Whenever notice to or approval by Grantee is required under the provisions of Paragraph A or B of this Section II, Grantor shall notify Grantee 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 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 the 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 Paragraph C relative to deemed approval after sixty (60) days in the notice.

**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 the condition prior to the time of the injury complained of (it being agreed that the Grantee has 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, and Grantee is authorized to pursue non-party violators. 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.

**B. Non-Waiver**

Enforcement of the terms of this Conservation Restriction shall be at the discretion of the 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.

#### **IV. ACCESS**

The Grantor hereby grants to the Grantee, or its duly authorized agents or representatives, the right to enter the Premises upon reasonable notice and at reasonable times, for the purpose of inspecting the Premises to determine compliance with or to enforce this Conservation Restriction. The Grantor also grants to the Grantee, after 30 days prior written notice of a violation and failure of the Grantor to cure said violation within said 30-day period, 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, except in emergency when notice shall be given as soon as practicable.

This Conservation Restriction also grants to the general public the right to enter upon the Premises for passive outdoor recreational purposes including, but not limited to, hiking, wildlife observation, cross-country skiing, and other non-motorized, passive outdoor recreational and educational activities (except for motorized wheelchairs or similar equipment reasonably necessary to enable handicapped members of the public to access the Premises or as otherwise outlined in Section II of this Conservation Restriction, which shall be allowed).

#### **V. EXTINGUISHMENT**

If circumstances arise in the future such as render the purpose of this Conservation Restriction impossible to accomplish, this Conservation 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 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. After complying with the terms of any gift grant or funding requirements, including M.G.L. c.44B, Grantee shall use its share of the proceeds in a manner consistent with the conservation purposes set forth herein.

**A. Proceeds.**

Grantor and Grantee agree that the grant 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 Premises at that time. Such proportionate value of the Grantee's property right shall remain constant.

**B. Grantor/Grantee Cooperation Regarding Public Action**

Whenever all or any part of the Premises or any interest therein is taken by public authority under power of eminent domain or other act of public authority, then the Grantor and the Grantee shall cooperate in recovering the full value of all direct and consequential damages resulting from such action. All related expenses incurred by the Grantor and the Grantee shall first be paid out of any recovered proceeds, and the remaining proceeds shall be distributed between the Grantor and Grantee in shares equal to such proportionate value after comply with the terms of any gift, grant or funding requirements, including M.G.L. c.44B. 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 in the manner of a trust consistent with the conservation purposes of this grant.

**VI. ASSIGNABILITY**

**A. Running of the Burden**

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

**B. Execution of Instruments**

The Grantee is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Conservation Restriction; the Grantor, on behalf of itself and its successors and assigns, appoints 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 agrees itself to execute any such instruments upon request.

**C. Running of the Benefit**

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

As a condition of any assignment, the Grantee shall require that the purpose of this Conservation Restriction continues to be carried out and the assignee, at the time of the assignment, qualifies under Section 170(h) of the Internal Revenue Code of 1986, as amended, and applicable regulations thereunder, and is a donee eligible to receive this Conservation Restriction under Section 32 of Chapter 184 of the General Laws of Massachusetts. 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 by which it divests itself of any interest in all or a portion of the Premises, including a leasehold interest and to notify the Grantee within twenty (20) days of such transfer. Failure to do so 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 twenty (20) days, execute and deliver to the Grantor any document, including an estoppel certificate, which certifies the Grantor's compliance with any obligation of the Grantor contained in this Conservation Restriction.

## **IX. NON MERGER**

The parties intend that any future acquisition of the Premises shall not result in a merger of the Conservation Restriction into the fee. The Grantor agrees that it will not grant, and the Grantee agrees that it will not take title, to any part of the Premises without having first assigned this Conservation Restriction to ensure that merger does not occur.

## **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 values. 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 filed with the Barnstable Registry District of the Land Court.

## **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 of Massachusetts have been obtained, and it has been filed with the Barnstable Registry District of the Land Court. The Grantee shall file this instrument in a timely manner with the Barnstable Registry District of the Land Court.

## **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: Eastham Conservation Foundation  
P.O. Box 183  
Eastham, MA 02642

With A Copy to  
Grantee: Town of Eastham Board of Selectmen  
2500 State Highway  
Eastham MA. 02642

With Copies to: Vicki S. Marsh, Esq.  
Kopelman and Paige, P.C.  
101 Arch Street  
Boston, MA 02110

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

WITNESS our hands and seals this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

TOWN OF EASTHAM,  
By Its Board of Selectmen

\_\_\_\_\_  
John F. Knight, Chair

\_\_\_\_\_  
William O'Shea, Vice Chair

\_\_\_\_\_  
Linda Burt, Clerk

\_\_\_\_\_  
Wallace F. Adams, II

\_\_\_\_\_  
Elizabeth Gawron

COMMONWEALTH OF MASSACHUSETTS

Eastham, ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, 2016, before me, the undersigned notary public, personally appeared \_\_\_\_\_, member of the Town of Eastham Board of Selectmen, 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 he/she signed it voluntarily for its stated purpose.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

ACCEPTANCE OF GRANT

Eastham Conservation Foundation accepts the above Conservation Restriction this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

By:

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, 2016, before me, the undersigned notary public, personally appeared \_\_\_\_\_, proved to me through satisfactory evidence of identification which was \_\_\_\_\_ to be the person whose name is signed on the preceding 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 to Eastham Conservation Foundation has been approved in the public interest pursuant to Massachusetts General Laws, Chapter 184, Section 32.

Dated: \_\_\_\_\_, 2016

Matthew A. Beaton

Secretary of Executive Office of Energy and  
Environmental Affairs

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, 2016, before me, the undersigned notary public, personally appeared Matthew A. Beaton., 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 he signed it voluntarily for its stated purpose.

\_\_\_\_\_  
Notary Public

My Commission Expires:

## Exhibit A

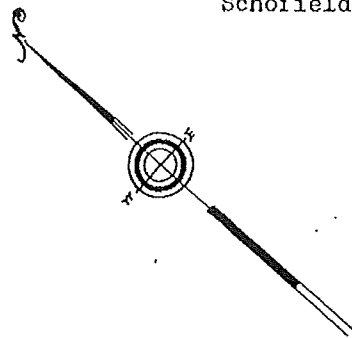
### Plan of Premises

A certain parcel of land on Dyer Prince Road, Eastham, Massachusetts shown as Lot 15 on Land Court Plan 28883-D filed with the Barnstable Registry District of the Land Court. Said Premises is conveyed together with and subject to the following, insofar as in effect:

1. Any and all public rights legally existing in and over the same below mean high water mark.
2. Order of Department of Natural Resources under G.L. c. 130, Section 105 filed with said Registry District of the Land Court as Document No. 197460.
3. Statement of Conditions filed with said Registry District of the Land Court as Document No. 112024 and amended Statement of Conditions as Document No. 1143969.
4. Eastham Planning Board Covenant filed with said Registry District of the Land Court as Document No. 1112025, as released as to Lot 15 by Document No. 1124256.
5. The Keene Way Subdivision Declaration of Restrictions, Protective Covenants and Easements filed with said Registry District of the Land Court as Document No. 1121882.
6. The Declaration of Trust Establishing the Keene Way Homeowners Association Trust filed with said Registry District of the Land Court as Document No. 1121883.

PLAN OF LAND IN EASTHAM  
Schofield Brothers, Civil Engineers  
December 1958

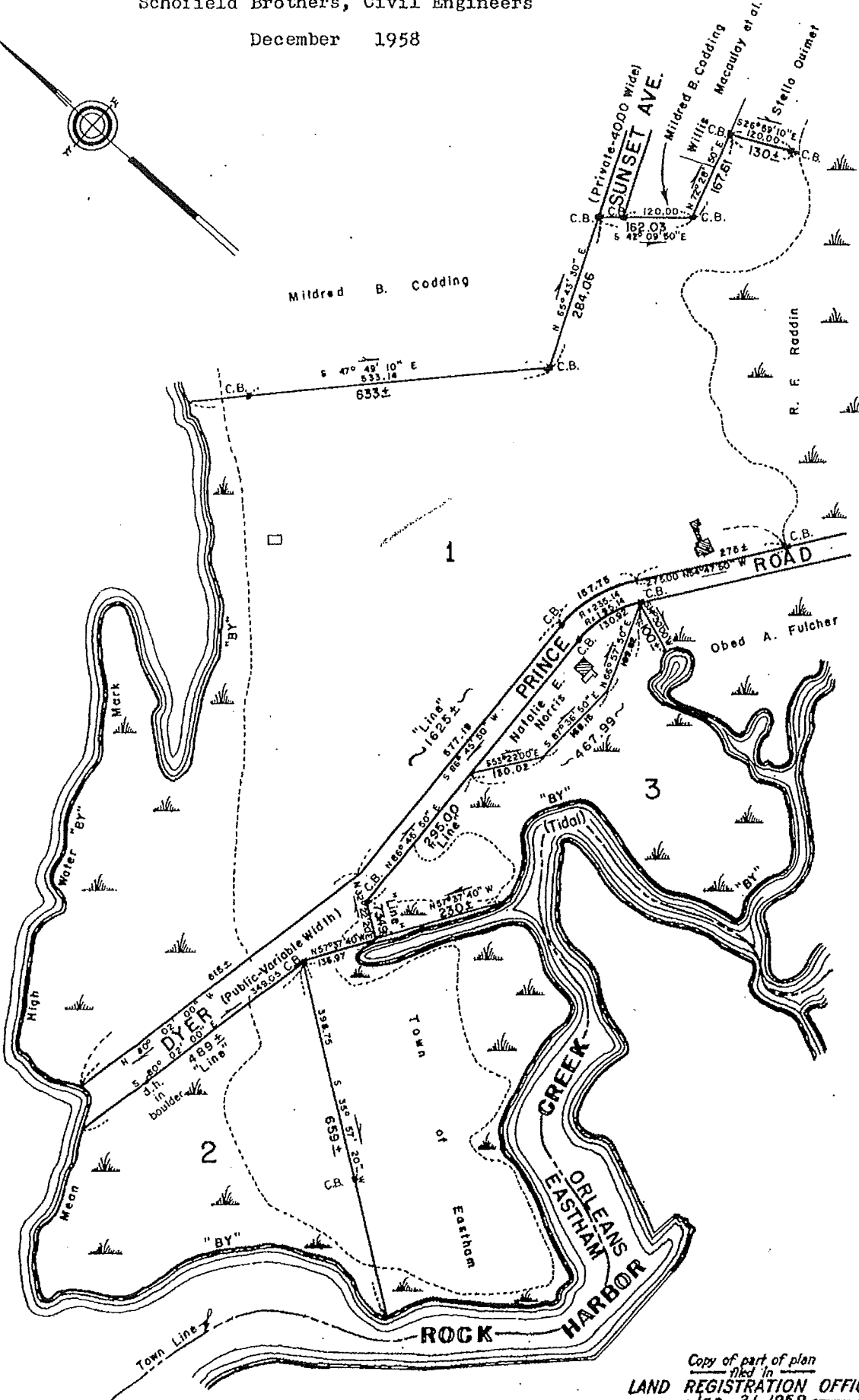
28883A



BAY

COD

CAPE

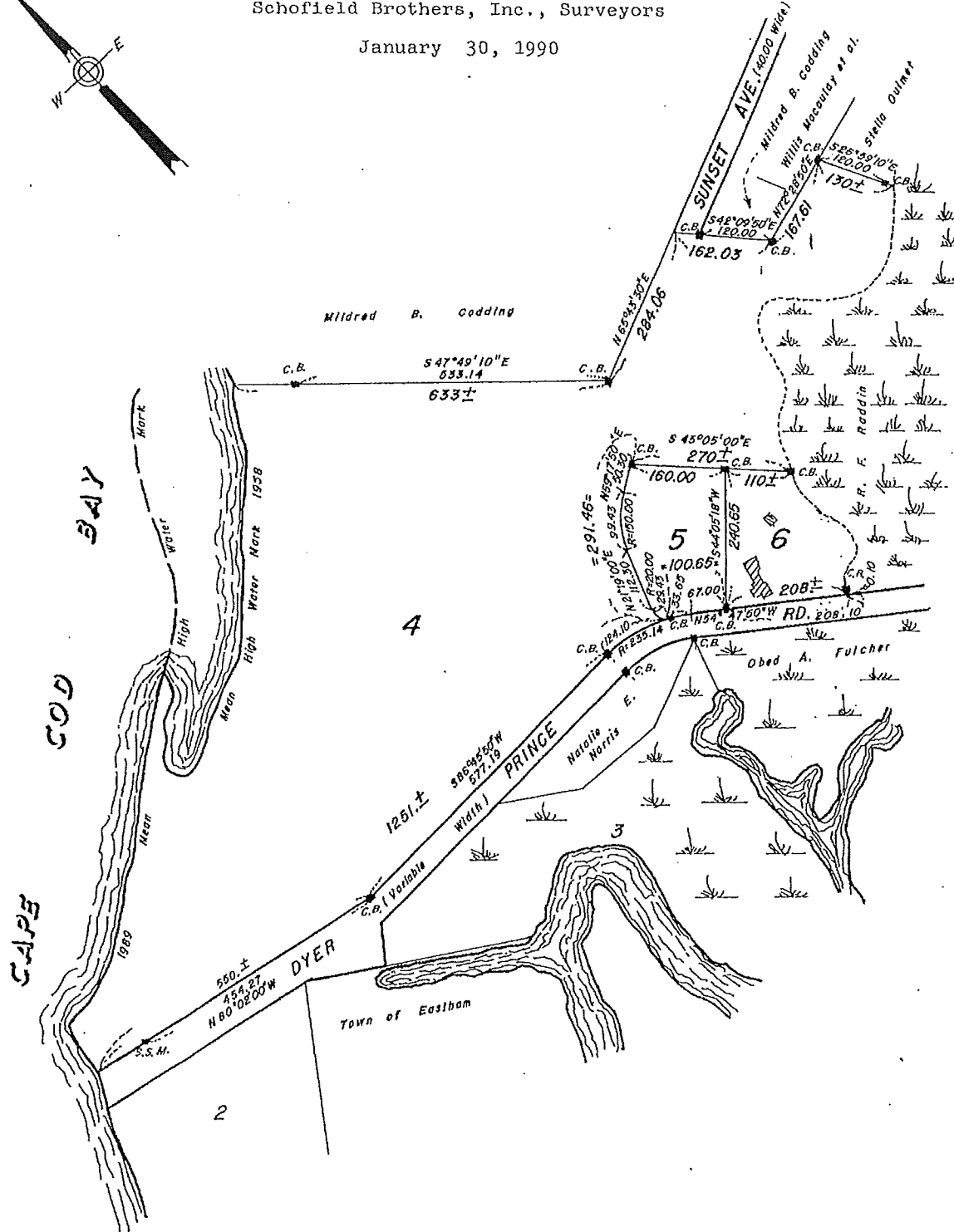
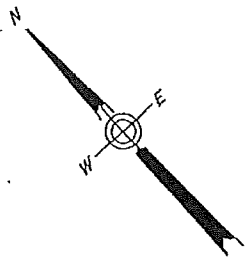


Copy of part of plan  
filed in  
**LAND REGISTRATION OFFICE**  
Jan. 21, 1959  
Scale of this plan 200 feet to an inch  
C.M. Anderson, Engineer for Court  
51-H-4

03 07 30727

SUBDIVISION PLAN OF LAND IN EASTHAM  
Schofield Brothers, Inc., Surveyors  
January 30, 1990

28883B



Subdivision of Lot 1  
Shown on Plan 28883A  
Filed with Cert. of Title No. 24534  
Registry District of Barnstable County

Separate certificates of title may be issued for land  
shown hereon as lots 4, 5, 6 and 7  
By the Court.

*Charles Tremblay*  
Recorder

Abutters are shown as  
on original decree plan.

Copy of part of plan  
filed in  
**LAND REGISTRATION OFFICE**  
**MARCH 20, 1990**  
Scale of this plan 200 feet to an inch  
Louis A. Moore, Engineer for Court

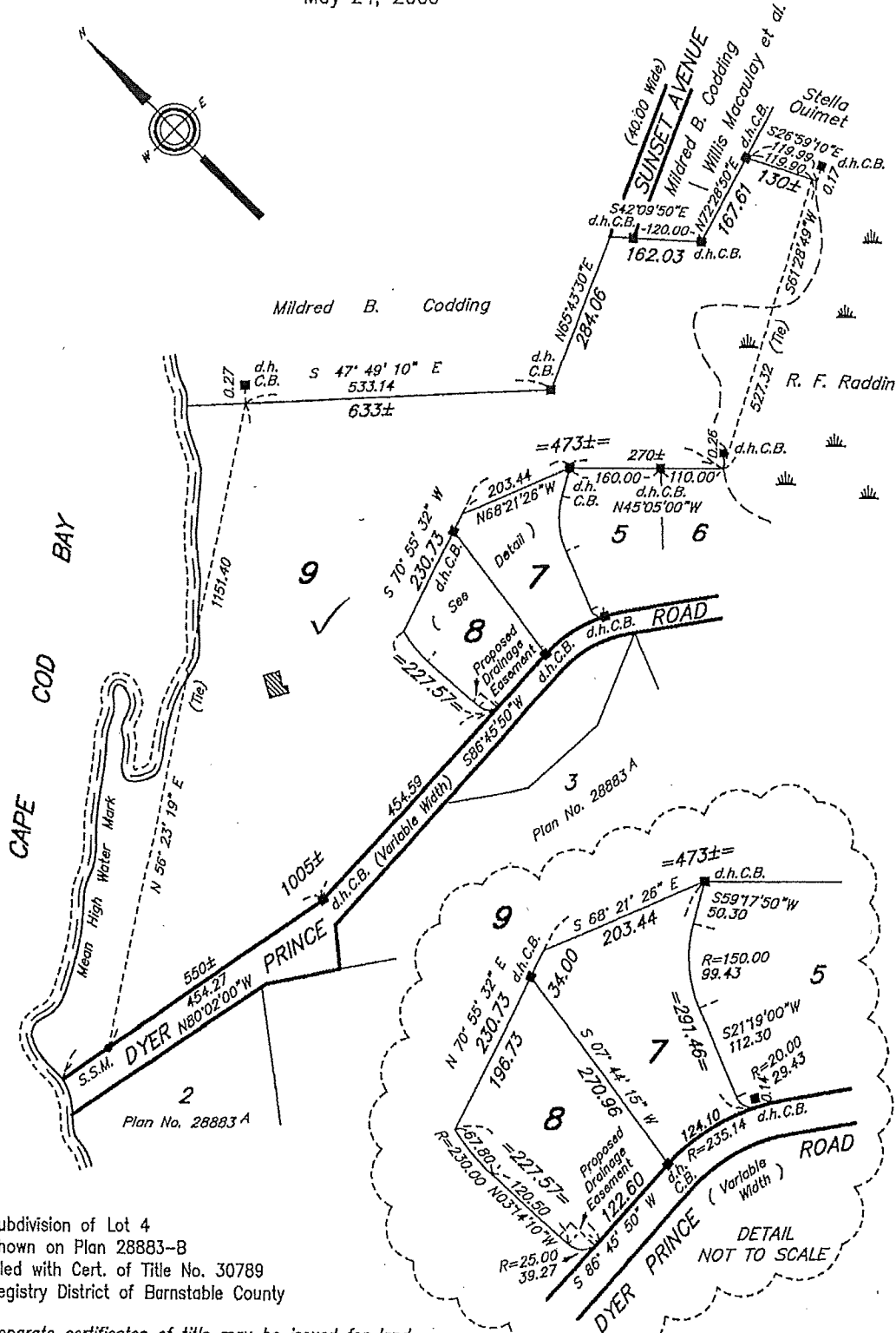
FF. MARCH 20, 1990

# SUBDIVISION PLAN OF LAND IN EASTHAM

Ryder & Wilcox, Inc., Surveyors

May 24, 2006

28883C



Subdivision of Lot 4  
Shown on Plan 28883-B  
Filed with Cert. of Title No. 30789  
Registry District of Barnstable County

Separate certificates of title may be issued for land  
shown hereon as Lots 7, 8 and 9  
By the Court.

Deborah J. Patterson...  
Recorder

September 11, 2008

ST-OBLK

Abutters are shown as  
on original decree plan.

Copy of part of plan  
filed in

LAND REGISTRATION OFFICE  
Sept. 11, 2008

Scale of this plan 200 feet to an inch  
T.C. Pontbriand, Acting Engineer for Court

# INFORMATION



## EASTHAM POLICE DEPARTMENT

2550 State Highway • Eastham, MA 02642  
508-255-0551 • Fax: 508-255-5412



EDWARD V. KULHAWIK  
*Chief of Police*

KENNETH J. RODERICK  
*Deputy Chief*

TO: Sheila Vanderhoef – Town Administrator

FROM: Edward V. Kulhawik – Chief of Police

DATE: July 29, 2016

RE: Traffic Enforcement

As we have discussed on numerous occasions, traffic enforcement and related incidents occupy the largest majority of time and resources from our department and with that in mind I have prepared this memorandum to explain our work and philosophy for dealing with this major component of our work.

Having come from another department that emphasized traffic and traffic enforcement, the transition was smooth when I arrived in 2009 and I was committed to carrying on the legacy for effective traffic enforcement in the town of Eastham. Traditionally, it was thought that civil citations were the only effective means of modifying driving behavior and thereby reducing serious accidents.

Over time and though research, it is broadly known in the policing management circles, that a more comprehensive approach, including a broad-based community interaction philosophy of enforcement built on education and enforcement, is a more effective tool for modifying behavior and for building a partnership with the community.

Through our comprehensive approach we focus on an "intelligence led" enforcement philosophy. That approach focuses on quality and quantity of motor vehicle stops with enforcement decisions based on the severity of the violation in conjunction with research done on the history of each operator.

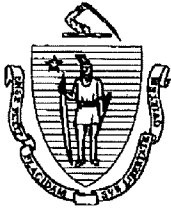
With each stop, the officer is able to use the in car computer to check the licensed operator for past stops and violations. Here In Eastham, I encourage numerous stops so as to emphasize our dedication to traffic safety, but I also emphasize a professional and educational approach. If the operator has been stopped in the past, the officer is instructed to look at the nature of the violation as well as the time it occurred. Examining the prior stops if present, gives the officer the information which will allow him or her to take an educated approach to effective driver behavior modification. Our approach has increased our presence on the highway by allowing for many more stops. Our approach has also been met with high praise from the courts who in the past would not have the information in hand to make appropriate judgements on citations in cases where operators would go to court to fight a civil citation. What we are now doing and what I have advocated for, is to provide the court this prior information regarding warnings the operator may have received, to assist in their decision making process. Using this method has allowed the court magistrate to counsel the operators in the court room, and for the most part support our enforcement decision. In addition, using a targeted approach to enforcement where we have received complaints or where we have witnessed prior accidents, allows us to saturate

*"In Partnership with our Community"*



this area with radar enforcement. In addition the deployment of our speed trailer allows for immediate feedback to operators passing through a location. I feel our multifaceted approach has been effective as we have not witnessed a fatality involving a motor vehicle at fault crash over the past four years. Our motor vehicle stops are at an all-time high averaging about 375 stops per month during the high traffic periods. Moving forward, I would like to allocate more man hours toward exclusive targeted enforcement as manpower allows. This additional personnel will be above and beyond the normal patrol officer enforcement. It is especially important to relegate these officers to exclusive traffic enforcement during the high volume period. During this time the highest and the high visibility of officers pays its dividends for keeping our community safe during it busiest time.

I thank you for your continued support of our department during this very difficult period in our nation for the law enforcement profession. We will continue to make traffic enforcement a high priority as we move forward together in keeping Eastham and our officers safe.



Commonwealth of Massachusetts  
**DEPARTMENT OF HOUSING &  
COMMUNITY DEVELOPMENT**

Charles D. Baker, Governor ♦ Karyn E. Polito, Lt. Governor ♦ Chrystal Komegay, Undersecretary

August 4, 2016

Mr. Richard Hayden  
Stratford Capital Group  
100 Corporate Place, Suite 404  
Peabody, MA 01960

RE: Governor Prence Residences- Eastham, MA – Site Approval Letter

Dear Mr. Hayden:

I am pleased to inform you that your application for project eligibility determination for the proposed Governor Prence Residences project located in Eastham, Massachusetts, has been approved under the Low Income Housing Tax Credit (LIHTC) program. The property is located at 4790 State Highway, Barnstable County, in Eastham, Massachusetts. This approval indicates that the proposed plan is for 50 units, 44 of which are affordable (88%) at no more than 60% of area median income. The proposed development will consist of 17 one-bedroom units, 28 two-bedroom units, and five three-bedroom units, and the rental structure as described in the application is generally consistent with the standards for affordable housing to be included in the community's Chapter 40B affordable housing stock. This approval does not constitute a guarantee that LIHTC funds will be allocated to the Governor Prence Residences project. It does create a presumption of fundability under 760CMR 56.04, and permits Stratford Capital Group to apply to the Eastham Zoning Board of Appeals for a comprehensive permit. The sponsor should note that a One Stop submission for funding for this project must conform to all Department of Housing and Community Development (DHCD) program limits and requirements in effect at the time of submission.

As part of the review process, DHCD has made the following findings:

1. The proposed project appears generally eligible under the requirements of the Low Income Housing Tax Credit program.
2. DHCD has performed an on-site inspection of the proposed Governor Prence Residences project and has determined that the proposed site is an appropriate location for the project.
3. The proposed housing design is appropriate for the site.
4. The proposed project appears financially feasible in the context of the Eastham housing market.

5. The initial proforma for the project appears financially feasible and consistent with the requirements for cost examination and limitations on profits on the basis of estimated development and operating costs. Please note again that a One Stop submission for funding for this project must conform to all DHCD program limits and requirements in effect at the time of submission.
6. The ownership entity will be a single-purpose entity controlled by the Applicant (Stratford Capital Group) subject to limited dividend requirements, and meets the general eligibility standards of the Low Income Housing Tax Credit program.
7. The Applicant controls the site.
8. In addition, during the review period, DHCD received the attached comments from the Town of Eastham. We strongly encourage the Applicant to work with the Town to thoroughly address its concerns. We anticipate that all issues will be carefully reviewed by the appropriate town boards and resolved to the satisfaction of all parties.

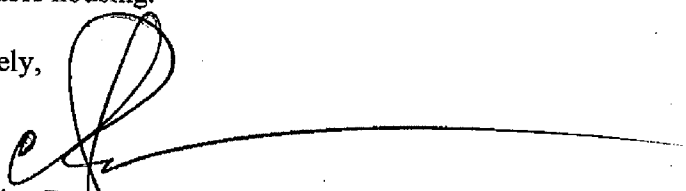
The proposed Governor Prence Residences project will have to comply with all state and local codes not specifically exempted by a comprehensive permit. In applying for a comprehensive permit, the project sponsor should identify all aspects of the proposal that will not comply with local requirements.

If a comprehensive permit is granted, construction of this project may not commence without DHCD's issuance of Final Approval pursuant to 760 CMR 56.04 (7) and an award of LIHTC funds. This project eligibility determination letter is not transferable to any other project sponsor or housing program without the express written consent of DHCD.

This letter shall expire two years from this date, or on August 4, 2018, unless a comprehensive permit has been issued.

We congratulate you on your efforts to work with the Town of Eastham to increase its supply of affordable housing.

Sincerely,



Catherine Rader  
Associate Director

Cc: John F. Knight, Chair, Board of Selectmen



## TOWN OF EASTHAM

2500 State Highway, Eastham, MA 02642 - 2544

All departments 508 240-5900 Fax 508 240-1291

www.eastham-ma.gov

Received

JUL 25 2016

July 21, 2016

Catherine Racer  
Associate Director  
Department of Housing & Community Development  
100 Cambridge Street  
Boston, MA, 02114

Division of Housing Development

RE: Governor Prentice Residences 4790 State Highway, Eastham, MA  
Chapter 40B Comprehensive Permit - Project Eligibility Comment Letter

Dear Ms. Racer,

Please be advised that the Eastham Board of Selectmen, at a public meeting on July 18, 2016, discussed your letter dated June 29, 2016. In that regard, the Board offers the following comments for your consideration:

1. A comparative analysis with our recently updated Housing Production Plan shows that the proposal is consistent with the recommendations listed in the plan for rental unit production and need.
2. While there appears to be no significant environmental concerns at the proposed site, traffic and site access, remain an important concern for this location. Route 6 is the Town's main transportation corridor. It experiences significant traffic volumes during the summer season and has a high accident rate. There have been several fatalities along this route over the past several years. Without appropriate traffic signals at the site, access to and from this location particularly, left hand turning movements for development residents and visitors, will remain difficult and could pose a significant safety hazard.
3. Given the nature of this development, which is 100% rental units, we believe that alternative transportation options are key. We encourage the developer, with DHCD's concurrence, to discuss with the Regional Transit Authority (RTA) the possibility of a bus stop, (in both directions) within, or adjacent to the development. Additionally, we expect a school population to develop within the site and we encourage, the developer to also provide for a school bus stop within the development.

The Board of Selectmen is eager to see the developer work cooperatively with our Zoning Board, and with local stakeholders to ensure that this development provides the best possible opportunity for safe and affordable housing for our community.

Sincerely,

  
John F. Knight, Chair  
Eastham Board of Selectmen

cc: Paul Lagg, Town Planner



## TOWN OF EASTHAM

2500 State Highway, Eastham, MA 02642 - 2544

All departments 508 240-5900 Fax 508 240-1291

[www.eastham-ma.gov](http://www.eastham-ma.gov)

August 3, 2016

Massachusetts Department of Agricultural Resources  
Attn: John Lebeaux, Commissioner  
251 Causeway Street; Suite 500  
Boston, MA 02114

RE: Request for Adjudicatory Hearing  
Sent Certified Mail, Return Receipt Requested

Dear Commissioner Lebeaux:

This correspondence is mailed to you return receipt requested and serves as Town of Eastham's formal Request for an Adjudicatory Hearing filed individually and jointly with other Cape Cod towns pursuant to 333 CMR 11.09. This Request for an Adjudicatory Hearing is filed as required by statute within twenty one days of MDAR's decision dated July 15, 2016 (attached) approving the Eversource Energy Company's Yearly Operational Plan (YOP) for the application of herbicides on rights of way (ROW) in Barnstable County and more specifically in the Town of Eastham.

The Town of Eastham brings this action because MDAR's decision of July 15, 2016 is inconsistent with 333 CMR 11.00 inasmuch as the Town of Eastham shall suffer economic, environmental, and reputational injuries far in excess of those suffered by the general public if the spraying of herbicides is allowed as contemplated in the Eversource YOP and, the Town of Eastham further contends, injuries to a town as a whole, to its citizenry as a whole, and indeed to any town on Cape Cod or in Dukes or Barnstable County, is potentially devastating, especially as regards clean, potable, chemical free drinking water. Additionally, said herbicidal spraying impacts the entire ecologically sensitive balance of life and nature on all of Cape Cod in a manner far different in kind and in magnitude from those unique impacts which might be suffered by the general public within the scope of the interests identified in 333 CMR 11.00 and MGL 132B.

The Town of Eastham asserts the herbicidal spraying contemplated by the YOP presents: (1) an immanent hazard and (2) is a not well evaluated or assessed threat of an unreasonably adverse effect on the environment, and in that and other regards is therefore a violation of Chapter 132B.

The Town of Eastham asserts the herbicidal spraying contemplated by the Eversource YOP inadequately provides for or considers the many non-target vegetation species on the ROWs it sprays. In fact, "ROW's are one of the primary early successional plant communities remaining in New England. As a result, many plant and animal species use ROWs as their homes, feeding grounds, or nurseries" and therefore public health and environmentally responsible protection of ROW interests warrants special protection to minimize the risk of unreasonable adverse effects on the overall environment.

The Town of Eastham further contends that Eversource Energy's YOP is impermissibly vague when it discloses that its Eastern MA foliar program application of herbicides is in "the pints per acre range."

The Town of Eastham further contends that (1) Eversource uses herbicide formulations high in acute toxicity, typically adding other adjuvant chemicals to the active ingredients in order to create the deadliest compounds, that (2) said compounds bio-accumulate and, as applied, that (3) said compounds have a long half-life with high mobility, none of which was adequately disclosed by Eversource or considered by MDAR.

The Town of Eastham sees no evidence these herbicides have been adequately or carefully reviewed jointly by MDAR and the Massachusetts Department of Environmental Protection, or the EPA for that matter, for use in "limited spray" sensitive areas as required.

The Town of Eastham also asserts the YOP is completely devoid of any reference to the consequences of the mixing of chemicals.

The Town of Eastham contends Eversource Energy, Eastern MA uses chemical compounds and toxins in violation of the Massachusetts Endangered Species Act (MESA; MGL c. 131 A) and its regulations, 321 CMR 10.00, inasmuch as the use of these chemicals alters and changes the physical and biological condition of a ROW in ways that detrimentally affect the capacity of the ROW habitat to support a population of endangered or threatened species.

The Town of Eastham asserts the Eversource spray plan will/does alter and change the physical or biological condition of ROW habitats in a way that detrimentally affects the capacity of the habitat to support a population of endangered or threatened species and provides no assessment mechanisms to "review, evaluate and determine the impact on endangered, threatened and special concern species of all works, projects or activities conducted by them." See MGL Chapter 131, the Massachusetts Endangered Species Act.

The Town of Eastham asserts it has herein specified in writing sufficient facts to compel the Department of Agricultural Resources to determine that the Town of name is in fact aggrieved.

The relief the Town of Eastham seeks is reversal of MDAR's approval of Eversource's 2016 YOP and a ban on any further spraying or application of any toxins on any ROWs within the Town of Eastham or indeed anywhere on Cape Cod that such application of toxins has the potential to negatively impact our economic, environmental, and reputational interests.

Also enclosed please find the Appearance of Attorney Bruce R. Taub who has been retained by the Town of Eastham to serve as legal counsel to the Town in all matters related to the Town's Application and Request for an Adjudicatory Hearing. In regard to same, please respect the legal convention/requirement that henceforth - as related to the Adjudicatory Hearing – any and all verbal, written, and electronic correspondence by MDAR, Eversource, the Pesticide Board, the Attorney General' Office, and indeed any state or governmental agency with the Town of Eastham must be conducted solely and exclusively through Attorney Taub's offices.

Thank you for your attention to these matters.

Very truly yours



John F. Knight, Chair  
Eastham Board of Selectmen



ELIZABETH WARREN  
MASSACHUSETTS

COMMITTEES:  
BANKING, HOUSING, AND URBAN AFFAIRS  
HEALTH, EDUCATION, LABOR AND PENSIONS  
ENERGY AND NATURAL RESOURCES  
SPECIAL COMMITTEE ON AGING

## United States Senate

July 20, 2016

UNITED STATES SENATE  
WASHINGTON, DC 20510-2105  
P: 202-224-4543

2400 JFK FEDERAL BUILDING  
15 NEW SUDBURY STREET  
BOSTON, MA 02203  
P: 617-565-3170

1500 MAIN STREET  
SUITE 406  
SPRINGFIELD, MA 01103  
P: 413-788-2690

[www.warren.senate.gov](http://www.warren.senate.gov)

ADMINISTRATION

AUG 08 2016

RECEIVED

John Knight  
2500 State Highway  
Eastham, MA 02642-5900

Dear John:

Thank you for contacting me about gun violence.

I meet mamas and daddies, sisters and grandmas who have lost children and grandchildren to gun violence - communities of people whose days will forever be marked by loss. I meet them, and I promise we will not forget. The facts are simple: 88 Americans die every day from gun violence. Seven of those people are children or teens. That's seven a day, every day - young bodies piling up by the thousands year after year. If seven children were dying of a mysterious illness every day, our country would do everything in its power to stop it. We must do the same for the epidemic of gun violence. Massachusetts has some of the toughest laws in the country. But strong gun laws in Massachusetts won't stop someone from going to a gun show in New Hampshire or Maine, states that don't require a permit or license to buy guns, and bringing those guns across the border. Congress must act.

Our communities have demanded action to curb gun violence, but the Senate has continued to fall short. When faced with the chance to vote for a bipartisan compromise to ensure that universal background checks prevent dangerous people from purchasing guns - something that 90% of Americans support - a minority of U.S. Senators blocked reform in 2013, again in 2015, and again in 2016. I was shocked and appalled.

This fight is just beginning. I voted in favor of measures to improve background checks for gun purchases, increase penalties for gun trafficking, limit the size of ammunition magazines, and reauthorize the expired ban on military-style assault weapons. I will continue to speak out and to support efforts to pass a comprehensive set of reforms to reduce gun violence.

There is no single solution for ending gun violence, but we must do better. We must honor the memory of those we have lost to gun violence and protect our children and families from these terrible tragedies. I will keep your thoughts in mind as I continue to look for other steps we can take. I believe that it is my responsibility as a United States Senator - and as a mother and grandmother - to reduce gun violence.

Sincerely,



Elizabeth Warren  
United States Senator