



May 9, 2022

VIA EMAIL

Zoning Board of Appeals (the “Board”)
Town of Marshfield
870 Moraine Street
Marshfield, MA 02050

RE: Response to Peer Review Comments – Mill Creek Marshfield (the “Project”) located at Lot 6R in Enterprise Park, Marshfield, MA (the “Project Site”)

Dear Members of the Board,

In response to the letter dated April 22, 2022 from Mr. Ed Pesce of Pesce Engineering, which attaches a supplemental letter dated April 15, 2022 from Patrick Brennan of Amory Engineers, Mill Creek Residential, on behalf of Marshfield Commerce Way LLC (the “Applicant”), provides the following responses. For ease of reference, the comments and recommendations of Mr. Pesce and Mr. Brennan are printed below in italics and our specific responses follow in regular type.

In addition, in response to the letter dated April 21, 2021 from Ron Müller & Associates, please see the letter from Vanasse & Associates attached hereto as **Attachment A**.

Pesce Engineering Comment Letter

- 1. Please note that Pesce Engineering has teamed with Ron Müller & Associates (RMA) for review of the Traffic Impact Assessment, and Amory Engineers for a review of the drainage and water supply design. We direct the applicant to these separate peer review reports (attached), and ask the applicant to make the appropriate responses to these, as well as for those listed below.*

Response: No response needed

- 2. We also want to note that a question arose from the Town Planner’s office regarding the existing property line (possibly along the east and south). The questions were contained in an e-mail from Mr. Greg Guimond, Marshfield Town Planner, to the undersigned on April 8, 2022, and this was forwarded to the Applicant’s engineer, Anthony Donato, on the same day. We ask that this property line question be responded to as well.*

Response: Although there appear to be some discrepancies in how the Project Site is shown on the Town’s assessing and zoning maps, the chain of title to the Project Site on record with the Plymouth Country Registry of Deeds is clear and unambiguous. The portion of the Project Site at question was conveyed to the current owner pursuant to a deed dated January 7, 2002 and recorded in Book 21322, Page 222, and was owned by the prior owner dating back until the mid-

1950s. Additional details and materials have been provided in an email sent by Attorney Paul Momnie to Mr. Guimond with copy to Mr. Ed Pesce and Attorney Robert Galvin on April 27, 2022.

3. *We recommend that the Marshfield Fire Dept. review these plans and provide comments to the Board (if they haven't already) regarding the adequacy of emergency vehicle access, and the proposed number of fire hydrants and their locations.*

Response: We have reached out to the Marshfield Fire Department to schedule a meeting to discuss these items.

4. *When discussing this project with the Fire Dept., we also recommend that the applicant review/provide the following:*
 - a. *A fire truck turning analysis (swept path analysis) with the required fire truck, as directed by the Fire Dept. (we note that this swept path analysis is also a comment in the RMA review report).*
 - b. *Consideration of a second access/egress to the site (in the northwest corner).*

Response: A fire truck turning analysis is attached as **Attachment B**. We will discuss the need for a second means of egress with the Marshfield Fire Department.

5. *We recognize that the design plans submitted are only at the preliminary or conceptual design level. However, we recommend that the following additional information be submitted for final review by the Zoning Board, prior to either issuance of the Comprehensive Permit (CP), or at the discretion of the Board, as a Condition in the CP, to be submitted and reviewed by the Board's consulting engineer prior to the issuance of a Building Permit and the start of construction:*
 - a. *Floor plan and elevation drawings for the proposed Clubhouse building.*
 - b. *A plan or plans showing the building layouts, all property line setbacks, parking & driveway aisle dimensions, proposed curbing, pavement marking (including crosswalks), ADA accessible parking & ramps at sidewalks and building entrances, and locations of all proposed signage (Note: The RMA report also mentions that all signage and pavement markings shall be installed per MUTCD guidelines).*
 - c. *An Erosion Control Plan, which should include a detail & location of a rip-rap/crushed stone vehicle tracing pad (20 ft. wide X 50 ft. long minimum), locations of erosion control barriers (including the use of silt sacks or other similar measure for sedimentation control at all catch basins), and the requirement for the contractor to perform regular street sweeping on Commerce Way on a weekly basis, and as needed.*

- d. Final Landscape and Lighting Plans, showing the proposed planting schedule(s) and including a point-to-point photometric plan (Note: all exterior lighting shall be “Dark Sky” compliant).*
- e. Construction & cross-section details for all appropriate items, such as the paved surfaces, curbing & sidewalks, utilities & associated subsurface structures, fencing, pavement marking, etc.*

Response: Conceptual plans requested above will be provided as part of a future submittal during the Comprehensive Permit process. The Applicant has no objections to the items mentioned above.

- 6. As part of the additional information requested above, there are several areas on the site where it makes good safety sense to have the traffic controlled by a “STOP” sign and stop line – in addition to the one recommended by Vanasse & Associates, Inc. at the site exit driveway. We ask that the Applicant’s engineer consider providing additional stop signs at other locations, such as exits from the parking areas, and at the clubhouse (at the exiting lane on the north side of the clubhouse).*

Response: These changes will be incorporated into the final version of the site plan, which will be provided in a future submittal during the Comprehensive Permit process.

- 7. We recommend that the proposed buildings be numbered, and the entrance & interior roads be given a letter designation for ease in coordinating locations for design details.*

Response: We will do so in future plan revisions.

- 8. We recommend the applicant discuss and review with the Board the justification for the requested waivers & zoning relief. Please note that we do not see any engineering design related issues with most of the relief requested, and defer to the Zoning Board’s discretion on this relief. However, we have the following comments on specific waivers:*

Zoning Bylaw

- a. *§ 305-6.07 Accessory Buildings in the "R" District. Not sure why this waiver is requested, since there does not appear to be any accessory buildings proposed within the R-1 district?*

Response: The Project Site is partially located within the R-1 district and partially located within the I-1 district. This waiver was requested to the extent that any accessory buildings are located within the R-1 district.

- b. *§ 305-809(F) Lighting. We recommend that adequate exterior lighting be provided at all building entrances and parking areas. However, we ask that the applicant clarify the need for this waiver (less than 1.0 foot-candle at the point of least illumination of grades).*

Response: This waiver is to permit the Applicant to use industry-standard lighting at the Project, which will minimize visual impacts to neighbors and passers-by. The Project will have adequate illumination for night-time safety and visibility.

- c. *§ 305-10.04 Certificate of Occupancy. We understand why this phased occupancy waiver request is being made, but recommend that the Board's consulting engineer provide a letter for the record (and cc the Building Commissioner) for each phase of completion. This letter would confirm that adequate parking, safe site access, and the necessary utilities systems are completed to support the buildings to be released for occupancy in each phase.*

Response: The Applicant does not object to this recommendation as a permit condition.

- d. *§ 305-10.06 Permit Time Limits. We recommend that the Applicant discuss with the Board the time extension desired. At the discretion of the Board, the additional time requested may be included in the draft Comprehensive Permit.*

Response: The Applicant will require additional time beyond the 1-year limit to complete construction of the Project. The current construction schedule reflects a 33-month duration to substantial completion. The Applicant seeks to work with the Board to determine a reasonable time limit from the start of construction, with adequate buffer, given the scope of the Project.

General Bylaw

- e. *Chapter 70 Earth Removal. With the relatively large change in elevation on the existing site; ranging from approximately 196' in the southeast corner, to 148' in the northwest corner, we see that the proposed grading may involve earthwork and earth removal activities. We have the following specific comments about earth removal:*

- i. *The applicant should be aware that the draft Comprehensive Permit for this project will likely carry provisions and conditions pertaining to earth removal activities, similar to what was included for the Modera Marshfield project.*

Response: Understood and acknowledged.

- ii. *We recommend that an estimated cut & fill analysis be provided to the Board for review.*

Response: The applicant will prepare such an analysis and provide in a subsequent submittal.

- iii. *For any removal off site of excess fill, we recommend that the Applicant provide the estimated number of truck trips, the duration of trucking activities (weeks/months), and the proposed truck route to the Board for review.*

Response: The applicant will provide in a subsequent submittal.

- f. *Chapter 285, Article II Marshfield Water Conservation Bylaw. For consideration of this waiver, we recommend that the Applicant provide a list of the various water conservation design measures that will be included in the Project.*

Response: The project will include several water conservation design measures, including low-flow fixtures and faucets (including water closets), and submetering and per-unit water billing. Landscaping irrigation is expected to be provided by on-site wells.

9. *In addition to the water conservation measures mentioned above, we recommend the applicant discuss any proposed "green" design components of the Project, including energy conservation and "LEED" type design or construction features, provisions for onsite solar power generation, etc.*

Response: The Project will meet or exceed the requirements of stretch energy code. Several energy conservation design measures will be adopted, including submetering and per-unit electricity and natural gas billing, high efficiency lighting fixtures, and the provision of EV charging spaces. The project will incorporate air sealing strategies to compartmentalize units and reduce air infiltration.

10. *The project site is partially located within a mapped "Priority Habitat", which will require an application filing with the MA Natural Heritage and Endangered Species Program (NHESP). It is our understanding that this permitting may have been completed, and that the mitigation associated with this project may have been satisfied or completed, based on the e-mail correspondence in Exhibit R. However, this correspondence mentions "Phase 1" and there is no way of knowing if this represents full completion for this site, or if there are other phases of mitigation required. We recommend that the applicant provide the Board a copy of the Conservation and Management Permit (CMP) for this site, and an explanation of the mitigation required (and what has been performed or satisfied), as required by the CMP. Additionally, we recommend that the Applicant submit a copy of the Turtle Protection Plan, when approved by NHESP, and prior to the start of any construction or site clearing activities.*

Response: NHESP issued a CMP dated October 4, 2005, which authorized a taking of the Eastern Box Turtle associated with the development of an approximately 28.4-acre portion of the Enterprise Park subdivision, which included the Project Site (Lot 6R). This area was anticipated to be developed as "Phase I" of the Enterprise Park subdivision, but the Project Site was obviously not developed at that time. NHESP subsequently amended the CMP on February 26, 2019 to permit development of what was then the remainder of Enterprise Park. The CMP and 2019 amendment are attached as **Attachment C**.

The CMP required certain mitigation associated with development of the area of land comprising Phase I of the Enterprise Park subdivision. Jesse Leddick, Chief of Regulatory Review of NHESP, confirmed in a November 23, 2021 email that "Lot 6R is part of the Phase 1 CMP". In his December 14, 2021, Mr. Leddick confirmed that the current owner of the Project Site "has deposited the remaining mitigation funding associated with Phase 1". As a result, all mitigation required under the CMP for the development of the Project Site has been completed. The Applicant will provide a copy of the Turtle Protection Plan for the Project, once approved by NHESP.

11. *We recommend the Applicant review the proposed plan for trash removal and waste recycling (and associated facilities) for the residents.*

Response: All trash and recycling is via private collector. Townhome residents will have individual trash and recycling cans for each unit, which are picked up

approximately once per week. Flats residents will deposit trash/recycling into the centralized trash and recycling facilities.

12. This project proposes to mitigate post-development runoff from the Project roads and parking areas with deep sump catch basins (with outlet hoods), piped to a collection system, which is intended to discharge to the existing stormwater piping in Commerce Way, which will ultimately discharge to an existing stormwater detention basin in Enterprise Park off Progress Way. In addition to the stormwater management comments discussed in the letter report from Amory Engineers, we have the following additional comments:

- a. We recommend that a Stormwater Management Operation & Maintenance Plan be prepared that also includes a line for a name, date, and signature by the owner. This will ensure that the owner/applicant is aware of and understands the recommended maintenance and inspections that will be required in the future.*
- b. the revised grading & drainage plans should show all drainage structure details, including dimensions and cross section details for all recharge areas.*

Response: The applicant will provide these in a subsequent submittal.

Amory Engineers comments

1. *Drainage analysis to confirm that stormwater runoff rates and volumes will not be greater than what was originally designed for the site.*

Response: This has been completed and is attached hereto as **Attachment D**.

2. *Hydrant flow tests to determine available fire flow capacity.*

Response: The flow test has been completed in the field and was witnessed by the Marshfield Water Department. The complete analysis will be provided under separate cover.

Thank you for your time in reviewing these items. Please feel free to contact me if I can be helpful in any manner.

Respectfully submitted,



Anand K. Boscha
Marshfield Commerce Way LLC
c/o Mill Creek Residential
84 State Street, Suite 920
Boston, MA 02109

CC: Ed Pesce, Pesce Engineering
Tim Alexander, MCRT
Debbie Horwitz, Goulston & Storrs
Paul Momnie, Goulston & Storrs
Andrew Stebbins, TAT
Anthony Donato, Hancock-HW Moore
Jeff Dirk, Vanasse & Associates
Ben LaFrance, Hawk Design

Attachment A

Response to Ron Müller & Associates Comments

Ref: 9096

May 5, 2022

Zoning Board of Appeals
Town of Marshfield
870 Moraine Street
Marshfield, MA 02050

Re: Response to Traffic Peer Review
Proposed Multifamily Residential Community – Commerce Way
Marshfield, Massachusetts

Dear Members of the Zoning Board of Appeals:

Vanasse & Associates, Inc. (VAI) is providing responses to the comments that were raised in the April 21, 2022 *Traffic Peer Review* prepared by Ron Müller & Associates (RMA) in reference to their review of the January 2022 *Transportation Impact Assessment* (the “January 2022 TIA”) prepared by VAI in support of the proposed multifamily residential community to be located off Commerce Way and within Enterprise Park in Marshfield, Massachusetts (hereafter referred to as the “Project”). Listed below are the comments requiring response identified in the subject letter followed by our response on behalf of the Applicant.

Existing Conditions

Comment 5: *Figures 3, 4 and 5 show the existing weekday AM, PM and Saturday midday peak hour traffic volumes at the study area intersections. A review was made of the figures to ensure that the traffic volumes match the traffic volumes from the counts. All of the volumes are correct with the exception of the right turn movement from School Street to Plain Street (Route 139) during the weekday PM peak hour. This traffic volume is mislabeled as 15 when the actual turning movement volume based on the counts is 151. It is recommended that this volume be updated to reflect the turning movement counts. Furthermore, this comment impacts the No-Build and Build networks. Those networks should also be updated to reflect the proper volume on that movement.*

Response: The corrected weekday evening peak-hour traffic volumes are depicted on Figures 4R, 7R and 14R for 2021 Existing, 2029 No-Build and 2029 Build conditions, respectively.

Future Conditions

Comment 8: *Based on discussions between the applicant and the Town of Marshfield, no site-specific developments are proposed in the area that would have an impact on future traffic volumes at the study area intersections. Given the proximity of the site to Pembroke, it is recommended that the applicant contact the town to see if any developments there would have an impact on traffic volumes within the study area.*

Response: The Town of Pembroke Planning Board was contacted in order to determine if there were any projects planned within the study area that would have an impact on the future traffic volumes outside of the general background traffic growth rate. Based on this consultation, no specific projects within the Town of Pembroke were identified that would result in an increase to future year traffic volumes as presented.

Traffic Operations Analysis

Comment 12: *As mentioned in Comment 5, the traffic volume shown on the southbound right turn movement at the intersection of School Street and Route 139 is incorrect during the weekday PM peak hour. This incorrect volume is carried through to the No-Build and Build conditions. Analysis at this intersection during all peak hours should be rerun with the correct volume.*

Response: The revised traffic operations analysis is summarized in Table 10R with the detailed analysis worksheets for the Route 139/School Street intersection attached.

As can be seen in Table 10R, with the correction of the right-turn volume on the School Street approach during the weekday evening peak hour, the School Street right-turn movement was shown to operate at a LOS C (vs. LOS B) under 2021 Existing, 2029 No Build and 2029 Build conditions, with vehicle queues of up to three (3) vehicles (vs. zero (0)). These operating conditions are similar to those reported during the weekday morning and Saturday midday peak hours.

Comment 13: *The unsignalized capacity analyses tables do not include the volume-to-capacity (v/c) ratio for each movement. It is recommended that these tables be updated to show the v/c ratio as this measure of effectiveness can be helpful in determining the project's impacts in particular with movements that are approaching capacity.*

Response: The volume to capacity ratios at the unsignalized intersections have been added to Table 10R.

Comment 14: *The signalized intersection analyses were performed using the Highway Capacity Manual (HCM) 2000 methodology. It is recommended that the results be updated to reflect the newest HCM 6th methodology, or a reason be provided why this older version of the methodology was used.*

Response: MassDOT has approved the use of the 2000 *Highway Capacity Manual* (HCM) methodology for signalized intersection capacity analyses due to inconsistencies in the results reported at intersections with complex signal phasing.

Comment 15: *The capacity analysis worksheets indicate vehicle queues and delays are expected to increase to unacceptable levels on the westbound and northbound left turn approaches at the intersection of Route 139 and Enterprise Drive. Although these conditions are expected to occur with or without the project, the overall intersection operations are expected to incur a significant increase in delay during the Saturday peak hour with the addition of the site traffic. The Town of Marshfield should determine if this project warrants improvements to this intersection. This is further discussed in Comment 19.*



Response: See Response to Comment 19.

Recommendations

Comment 18: *Based on the analysis, an off-site recommendation was made at the intersection of Route 139 and Enterprise Drive. The applicant has suggested optimized signal timing and phasing to improve operations. Multiple movements currently operate at or over capacity with delays expected to increase in the future with the additional site traffic. These enhancements will improve operations on all movements from LOS F to LOS E or better. These improvements will require MassDOT permitting as Route 139 in this area is under MassDOT jurisdiction.*

Response: The Project proponent will apply to MassDOT for the issuance of the necessary rights, permits and approvals to implement an optimal traffic signal timing and phasing plan for the Route 139/Enterprise Drive intersection at the completion of the local approval process for the Project.

Comment 19: *Based on discussions with the town, there have been longstanding traffic issues associated with the intersections of Route 139 at Enterprise Drive and Route 139 at Furnace Street/Proprietors Drive. To rectify these issues, the town would like to widen Enterprise Drive to provide two left turn lanes onto Route 139 as well as to install protective/permissive left turn phasing for the northbound and southbound Proprietors Drive and Furnace Street approaches at their intersection with Route 139. It is our understanding that the prior athletic complex that was proposed on the site as part of the Enterprise Park Master Plan committed to a contribution toward these improvements in the amount of \$90,000. The applicant and the town should discuss whether a similar contribution is appropriate based on the project's anticipated traffic impacts.*

Response: The Project proponent will discuss providing a contribution to the Town for the design and construction of the improvements at the Route 139/Enterprise Drive and Route 139/Furnace Street/Proprietors Drive intersections as identified in RMA's comment in the context of the overall mitigation package for the Project. The contribution will be proportionate to the incremental impact of the Project at the intersections over No-Build conditions (i.e., a "fair-share" cost contribution).

Recommendations

Comment 20: *The site plan proposes one full access driveway to the site off of Commerce Way, approximately 600 feet east of the Modera Marshfield Phase I driveway and 1,200 feet west of Proprietors Drive. The proposed access driveway is to be 24 feet wide. Although not striped on the plan, it is assumed that 12-foot-wide travel lanes will be provided. A sidewalk is proposed along the western side of the driveway to connect to the existing sidewalk on the south side of Commerce Way. It is recommended that a crosswalk with ADA compliant wheelchair ramps be proposed across the driveway. It is further recommended that a stop line and STOP sign (R1-1) be placed on the driveway exit. The stop line should be located 5 feet from the proposed crosswalk and the stop sign should be placed adjacent to the stop line.*



Response: A STOP-sign (R1-1) and marked STOP-line will be provided for the Project site driveway as requested, and ADA compliant wheelchair ramps will be provided for crossing the driveway. This information will be add to the Site Plans and submitted by others under separate cover.

Comment 21: *The fire department's largest vehicle should be able to traverse the site. It is recommended that AutoTurn (or a similar program) be used to show a swept-path analysis of the largest fire truck to be used around the site. It is also recommended that the proponent coordinate with the Marshfield Fire Department regarding accessibility to all sides of each building.*

Response: A turning analysis will be provided for the Marshfield Fire Department design vehicle and submitted by others under separate cover. The Project proponent has been and will continue to coordinate with the Marshfield Fire Department with regard to the design of the Project and access to the proposed buildings.

Comment 22: *The site plan should show the sight triangles at the proposed driveways to assure that any proposed landscaping or signs are outside these sight triangles and do not impede driver visibility.*

Response: The requested information will be added to the Site Plans and submitted by others under separate cover.

Comment 23: *The site plan does not show any interior signing, striping, or dimensions. It is recommended that the applicant include a signing and striping plan of the interior drive aisles showing the dimensions of each and the proposed parking spaces. If the parking spaces are less than 20 feet deep, then the adjacent drive aisles should be 24 feet, rather than the 23 feet recommended in the traffic study. Pedestrian connectivity through the site by way of crosswalks and ADA-compliant wheelchair ramps should also be included on these plans.*

Response: A signing and striping plan will be added to the Site Plans and submitted by others under separate cover. The subject plan will illustrate pedestrian connections within the site, including the location of crosswalks and ADA compliant wheelchair ramps.

Comment 24: *The site plan proposes 505 parking spaces which equates to a parking ratio of 1.68 spaces per unit. As labeled on the site plan, 306 parking spaces will be surface parking and 204 spaces will be garage and tandem spaces. Based on this information, the total number of parking spaces will be 510 not 505. The applicant should confirm the total number of parking spaces.*

Response: The proposed parking supply will be updated on the Site Plans and submitted by others under separate cover.

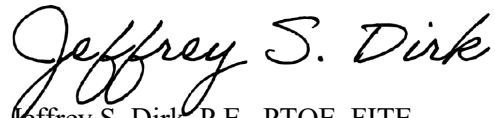


Zoning Board of Appeals
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May 5, 2022
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We trust that this information is responsive to the comments that were raised in the April 21, 2022 *Traffic Peer Review* letter prepared by RMA. If you should have any questions or would like to discuss our responses in more detail, please feel free to contact me.

Sincerely,

VANASSE & ASSOCIATES, INC.



Jeffrey S. Dirk, P.E., PTOE, FITE
Managing partner

Professional Engineer in CT, MA, ME, NH, RI and VA

JSD/jsd

Attachments

cc: K. Braun, P.E. – RMA (via email)
E. Pesce – Pesce Engineering & Associates, Inc. (via email)
A. Boscha – Mill Creek Residential (via email)
File



ATTACHMENTS

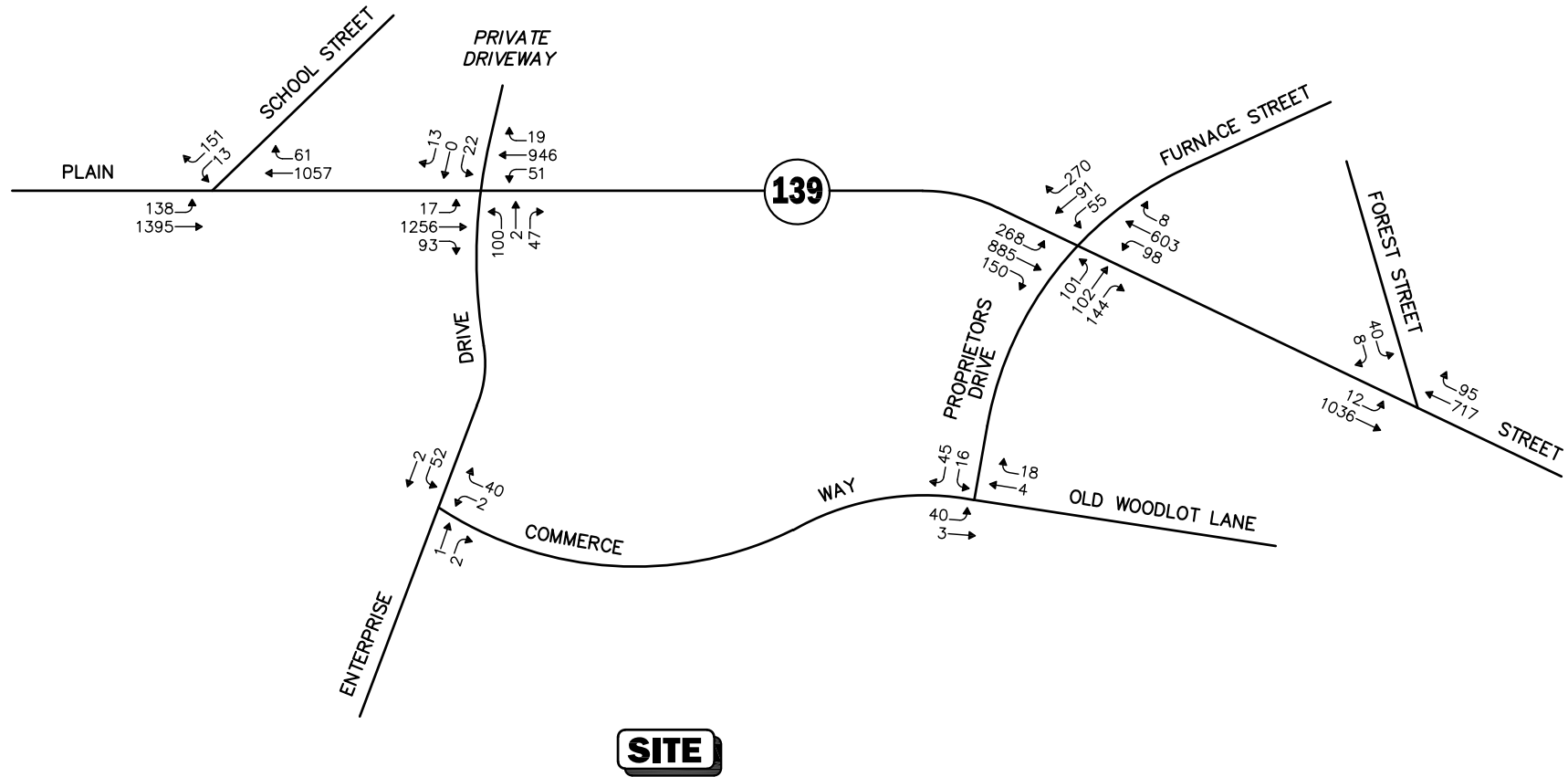
FIGURES

UNSIGNALIZED INTERSECTION LEVEL-OF-SERVICE AND VEHICLE
QUEUE SUMMARY

REVISED CAPACITY ANALYSIS WORKSHEETS



FIGURES



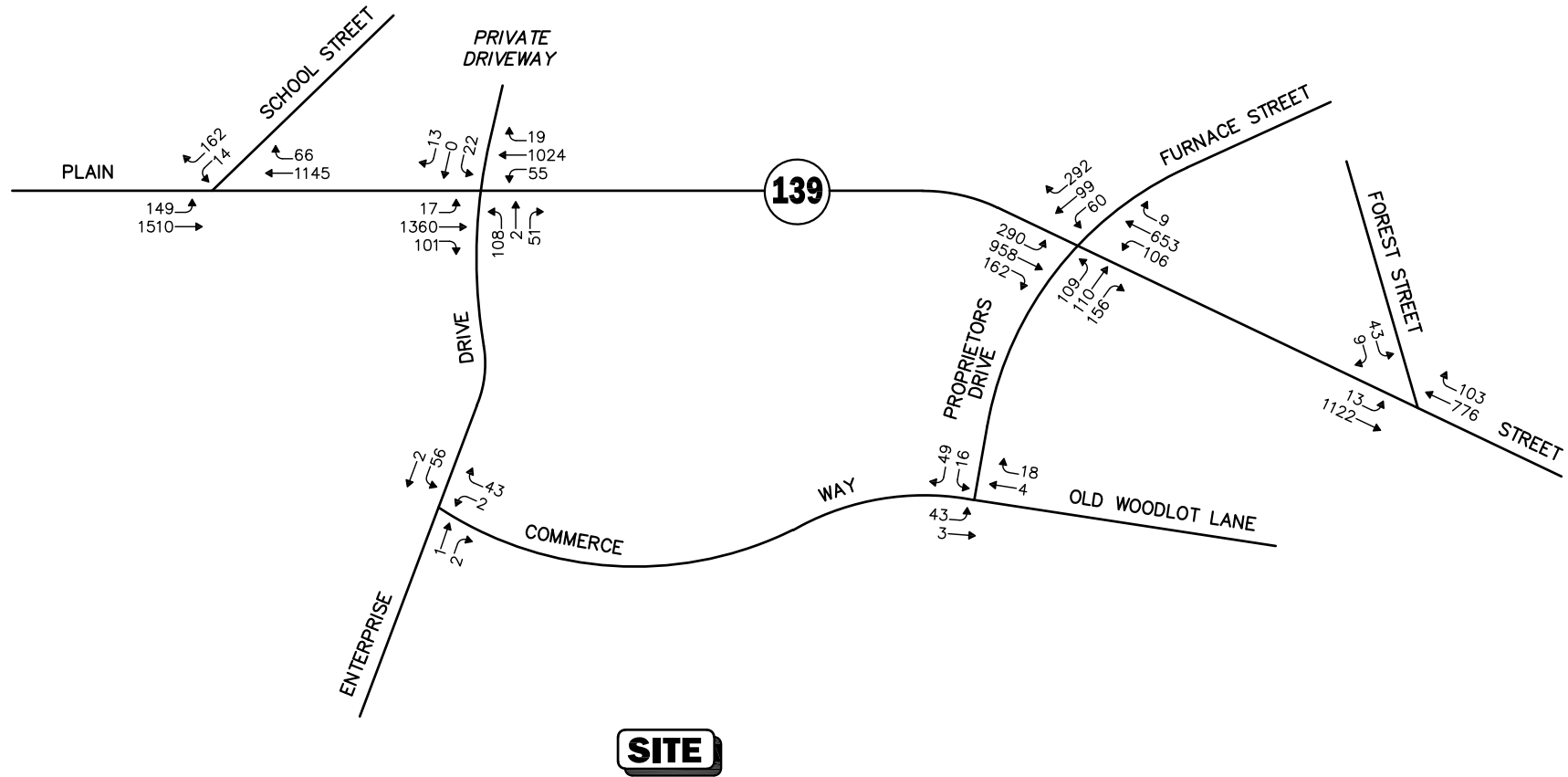
Note: Imbalances exist due to numerous curb cuts and side streets that are not shown.

Not To Scale



Figure 4R

2021 Existing
Weekday Evening
Peak-Hour Traffic Volumes



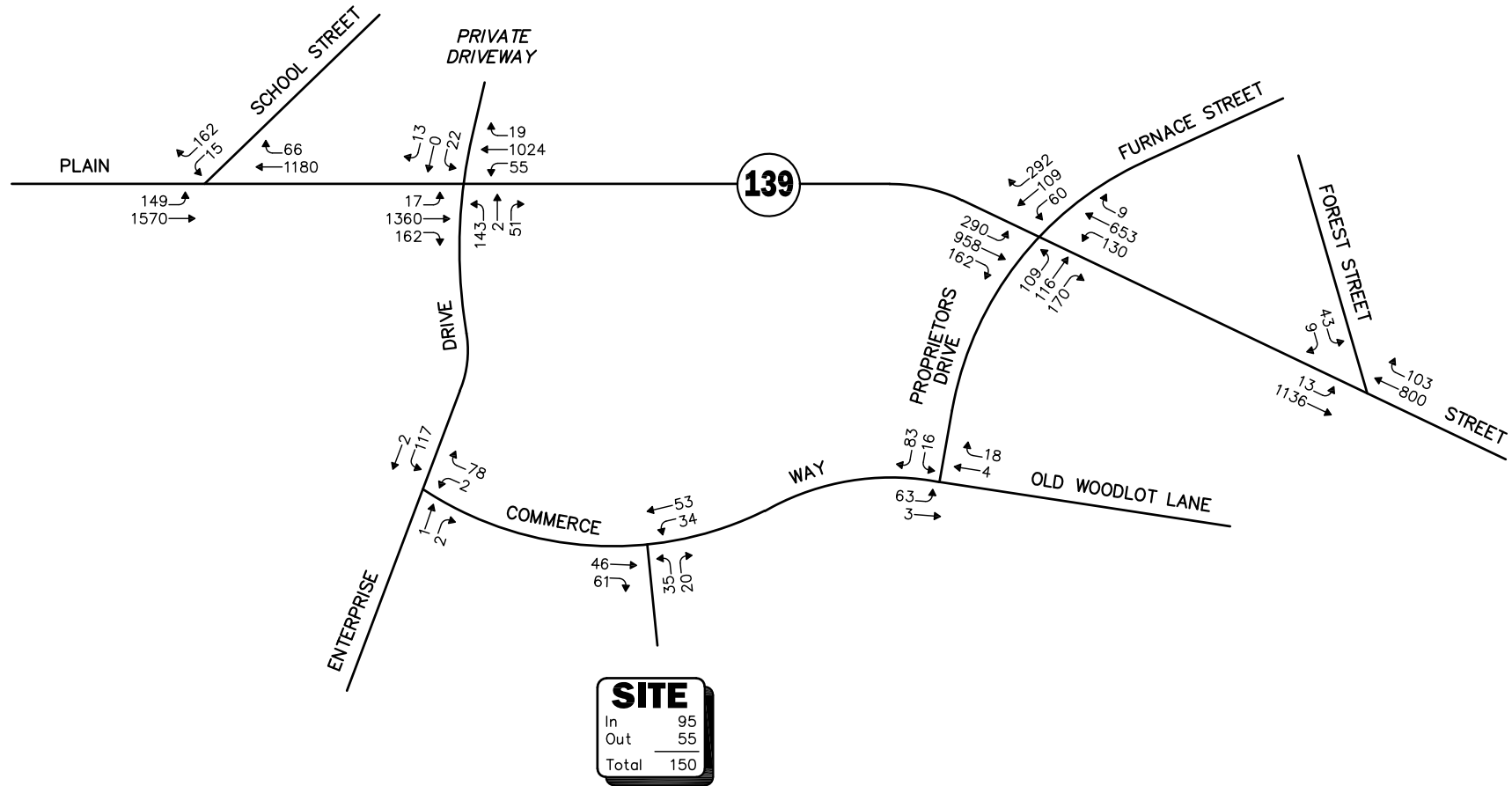
Note: Imbalances exist due to numerous curb cuts and side streets that are not shown.

Not To Scale



Figure 7R

2029 No-Build
Weekday Evening
Peak-Hour Traffic Volumes



Note: Imbalances exist due to numerous curb cuts and side streets that are not shown.

Not To Scale



Figure 14R

**2029 Build
Weekday Evening
Peak-Hour Traffic Volumes**

UNSIGNALIZED INTERSECTION LEVEL-OF-SERVICE AND VEHICLE QUEUE SUMMARY



Table 10R
UNSIGNALIZED INTERSECTION LEVEL-OF-SERVICE AND VEHICLE QUEUE SUMMARY

| Unsignalized Intersection/Peak-hour/Movement | 2021 Existing | | | | 2029 No-Build | | | | 2029 Build | | | |
|--|------------------|--------------------|------------------|--|---------------|-------|-----|---------------------------|------------|-------|-----|---------------------------|
| | V/C ^a | Delay ^b | LOS ^c | Queue ^d 95 th | V/C | Delay | LOS | Queue 95 th | V/C | Delay | LOS | Queue 95 th |
| Route 139 at School Street | | | | | | | | | | | | |
| <i>Weekday Morning:</i> | | | | | | | | | | | | |
| Route 139 EB LT | 0.19 | 12.4 | B | 1 | 0.22 | 13.4 | B | 1 | 0.24 | 14.0 | B | 1 |
| Route 139 EB TH | 0.00 | 0.0 | A | 0 | 0.00 | 0.0 | A | 0 | 0.00 | 0.0 | A | 0 |
| Route 139 WB TH/RT | 0.00 | 0.0 | A | 0 | 0.00 | 0.0 | A | 0 | 0.00 | 0.0 | A | 0 |
| School Street SB LT | 0.32 | >50.0 | F | 1 | 0.44 | >50.0 | F | 2 | 0.50 | >50.0 | F | 2 |
| School Street SB RT | 0.33 | 16.7 | C | 2 | 0.38 | 18.6 | C | 2 | 0.40 | 19.6 | C | 2 |
| <i>Weekday Evening:</i> | | | | | | | | | | | | |
| Route 139 EB LT | 0.26 | 13.7 | B | 1 | 0.30 | 15.2 | C | 2 | 0.32 | 15.8 | C | 2 |
| Route 139 EB TH | 0.00 | 0.0 | A | 0 | 0.00 | 0.0 | A | 0 | 0.00 | 0.0 | A | 0 |
| Route 139 WB TH/RT | 0.00 | 0.0 | A | 0 | 0.00 | 0.0 | A | 0 | 0.00 | 0.0 | A | 0 |
| School Street SB LT | 0.55 | >50.0 | F | 2 | 0.88 | >50.0 | F | 3 | 1.05 | >50.0 | F | 3 |
| School Street SB RT | 0.42 | 19.6 | C | 2 | 0.49 | 22.8 | C | 3 | 0.51 | 23.9 | C | 3 |
| <i>Saturday Midday:</i> | | | | | | | | | | | | |
| Route 139 EB LT | 0.24 | 14.4 | B | 1 | 0.29 | 16.1 | C | 1 | 0.30 | 16.7 | C | 2 |
| Route 139 EB TH | 0.00 | 0.0 | A | 0 | 0.00 | 0.0 | A | 0 | 0.00 | 0.0 | A | 0 |
| Route 139 WB TH/RT | 0.00 | 0.0 | A | 0 | 0.00 | 0.0 | A | 0 | 0.00 | 0.0 | A | 0 |
| School Street SB LT | 0.74 | >50.0 | F | 3 | 1.14 | >50.0 | F | 3 | 1.39 | >50.0 | F | 4 |
| School Street SB RT | 0.40 | 20.2 | C | 2 | 0.48 | 23.7 | C | 3 | 0.49 | 24.8 | C | 3 |
| Route 139 at Forest Street | | | | | | | | | | | | |
| <i>Weekday Morning:</i> | | | | | | | | | | | | |
| Route 139 EB LT/TH | 0.00 | 0.1 | A | 0 | 0.00 | 0.1 | A | 0 | 0.00 | 0.0 | A | 0 |
| Route 139 WB TH/RT | 0.00 | 0.0 | A | 0 | 0.00 | 0.0 | A | 0 | 0.00 | 0.0 | A | 0 |
| Forest Street SB LT/RT | 0.31 | 39.2 | E | 2 | 0.40 | >50.0 | F | 2 | 0.42 | >50.0 | F | 2 |
| <i>Weekday Evening:</i> | | | | | | | | | | | | |
| Route 139 EB LT/TH | 0.02 | 0.1 | A | 0 | 0.02 | 0.1 | A | 0 | 0.02 | 0.1 | A | 0 |
| Route 139 WB TH/RT | 0.00 | 0.0 | A | 0 | 0.00 | 0.0 | A | 0 | 0.00 | 0.0 | A | 0 |
| Forest Street SB LT/RT | 0.82 | >50.0 | F | 4 | 1.16 | >50.0 | F | 6 | 1.23 | >50.0 | F | 6 |
| <i>Saturday Midday:</i> | | | | | | | | | | | | |
| Route 139 EB LT/TH | 0.01 | 0.1 | A | 0 | 0.01 | 0.1 | A | 0 | 0.01 | 0.1 | A | 0 |
| Route 139 WB TH/RT | 0.00 | 0.0 | A | 0 | 0.00 | 0.0 | A | 0 | 0.00 | 0.0 | A | 0 |
| Forest Street SB LT/RT | 0.58 | >50.0 | F | 3 | 0.77 | >50.0 | F | 4 | 0.81 | >50.0 | F | 4 |

See notes at end of the table.

Table 10R (Continued)**UNSIGNALIZED INTERSECTION LEVEL-OF-SERVICE AND VEHICLE QUEUE SUMMARY**

| Unsignalized Intersection/Peak-hour/Movement | 2021 Existing | | | | 2029 No-Build | | | | 2029 Build | | | |
|---|------------------|--------------------|------------------|--|---------------|-------|-----|---------------------------|------------|-------|-----|---------------------------|
| | V/C ^a | Delay ^b | LOS ^c | Queue ^d 95 th | V/C | Delay | LOS | Queue 95 th | V/C | Delay | LOS | Queue 95 th |
| Enterprise Drive at Commerce Way | | | | | | | | | | | | |
| <i>Weekday Morning:</i> | | | | | | | | | | | | |
| Commerce Way WB LT/RT | 0.06 | 8.5 | A | 0 | 0.06 | 8.6 | A | 0 | 0.13 | 8.8 | A | 1 |
| Enterprise Drive NB TH/RT | 0.00 | 0.0 | A | 0 | 0.00 | 0.0 | A | 0 | 0.00 | 0.0 | A | 0 |
| Enterprise Drive SB LT/TH | 0.02 | 6.3 | A | 0 | 0.02 | 6.4 | A | 0 | 0.03 | 6.8 | A | 0 |
| <i>Weekday Evening:</i> | | | | | | | | | | | | |
| Commerce Way WB LT/RT | 0.04 | 8.5 | A | 0 | 0.05 | 8.5 | A | 0 | 0.09 | 8.7 | A | 1 |
| Enterprise Drive NB TH/RT | 0.00 | 0.0 | A | 0 | 0.00 | 0.0 | A | 0 | 0.00 | 0.0 | A | 0 |
| Enterprise Drive SB LT/TH | 0.00 | 7.0 | A | 0 | 0.05 | 7.1 | A | 0 | 0.10 | 7.3 | A | 1 |
| <i>Saturday Midday:</i> | | | | | | | | | | | | |
| Commerce Way WB LT/RT | 0.07 | 8.6 | A | 0 | 0.08 | 8.6 | A | 0 | 0.13 | 8.9 | A | 1 |
| Enterprise Drive NB TH/RT | 0.00 | 0.0 | A | 0 | 0.00 | 0.0 | A | 0 | 0.00 | 0.0 | A | 0 |
| Enterprise Drive SB LT/TH | 0.02 | 6.3 | A | 0 | 0.02 | 6.4 | A | 0 | 0.06 | 6.9 | A | 0 |
| Proprietors Drive at Commerce Way and Old Woodlot Lane | | | | | | | | | | | | |
| <i>Weekday Morning:</i> | | | | | | | | | | | | |
| Commerce Way EB LT/TH | 0.05 | 7.4 | A | 0 | 0.05 | 7.4 | A | 0 | 0.11 | 7.7 | A | 1 |
| Old Woodlot Road WB TH/RT | 0.02 | 0.0 | A | 0 | 0.02 | 0.0 | A | 0 | 0.02 | 0.0 | A | 0 |
| Proprietors Drive SB LT/RT | 0.04 | 6.7 | A | 0 | 0.04 | 6.7 | A | 0 | 0.05 | 6.9 | A | 0 |
| <i>Weekday Evening:</i> | | | | | | | | | | | | |
| Commerce Way EB LT/TH | 0.06 | 7.5 | A | 0 | 0.06 | 7.5 | A | 0 | 0.09 | 7.8 | A | 1 |
| Old Woodlot Road WB TH/RT | 0.04 | 0.0 | A | 0 | 0.04 | 0.0 | A | 0 | 0.04 | 0.0 | A | 0 |
| Proprietors Drive SB LT/RT | 0.07 | 7.0 | A | 0 | 0.08 | 7.0 | A | 1 | 0.12 | 7.2 | A | 1 |
| <i>Saturday Midday:</i> | | | | | | | | | | | | |
| Commerce Way EB LT/TH | 0.06 | 7.5 | A | 0 | 0.06 | 7.5 | A | 0 | 0.10 | 7.7 | A | 1 |
| Old Woodlot Road WB TH/RT | 0.01 | 0.0 | A | 0 | 0.01 | 0.0 | A | 0 | 0.01 | 0.0 | A | 0 |
| Proprietors Drive SB LT/RT | 0.06 | 6.9 | A | 0 | 0.07 | 6.9 | A | 0 | 0.10 | 7.0 | A | 1 |

See notes at end of the table.

Table 10R (Continued)**UNSIGNALIZED INTERSECTION LEVEL-OF-SERVICE AND VEHICLE QUEUE SUMMARY**

| Unsignalized Intersection/Peak-hour/Movement | 2021 Existing | | | | 2029 No-Build | | | | 2029 Build | | | |
|--|------------------|--------------------|------------------|--|---------------|-------|-----|---------------------------|------------|-------|-----|---------------------------|
| | V/C ^a | Delay ^b | LOS ^c | Queue ^d 95 th | V/C | Delay | LOS | Queue 95 th | V/C | Delay | LOS | Queue 95 th |
| Commerce Way at the Project Site Driveway | | | | | | | | | | | | |
| <i>Weekday Morning:</i> | | | | | | | | | | | | |
| Commerce Way EB TH/RT | -- | -- | -- | -- | -- | -- | -- | -- | 0.00 | 0.0 | A | 0 |
| Commerce Way WB LT/TH | -- | -- | -- | -- | -- | -- | -- | -- | 0.01 | 1.8 | A | 0 |
| Project Site Driveway NB LT/RT | -- | -- | -- | -- | -- | -- | -- | -- | 0.10 | 9.3 | A | 1 |
| <i>Weekday Evening:</i> | | | | | | | | | | | | |
| Commerce Way EB TH/RT | -- | -- | -- | -- | -- | -- | -- | -- | 0.00 | 0.0 | A | 0 |
| Commerce Way WB LT/TH | -- | -- | -- | -- | -- | -- | -- | -- | 0.03 | 2.8 | A | 0 |
| Project Site Driveway NB LT/RT | -- | -- | -- | -- | -- | -- | -- | -- | 0.07 | 9.8 | A | 0 |
| <i>Saturday MIDDAY:</i> | | | | | | | | | | | | |
| Commerce Way EB TH/RT | -- | -- | -- | -- | -- | -- | -- | -- | 0.00 | 0.0 | A | 0 |
| Commerce Way WB LT/TH | -- | -- | -- | -- | -- | -- | -- | -- | 0.02 | 2.4 | A | 0 |
| Project Site Driveway NB LT/RT | -- | -- | -- | -- | -- | -- | -- | -- | 0.08 | 9.5 | A | 0 |






^aDemand in vehicles per hour.^bAverage control delay per vehicle (in seconds).^cLevel-of-Service.^dQueue length in vehicles.

NB = northbound; SB = southbound; EB = eastbound; WB = westbound; LT = left-turning movements; TH = through movements; RT = right-turning movements.






REVISED CAPACITY ANALYSIS WORKSHEETS








2021 Existing Weekday Evening Peak Hour
1: Route 139 & School Street

| Intersection | | | | | | |
|--------------------------|---|---|---|--------|---|---|
| Int Delay, s/veh | 3 | | | | | |
| Movement | EBL | EBT | WBT | WBR | SBL | SBR |
| Lane Configurations |  |  |  | |  |  |
| Traffic Vol, veh/h | 138 | 1395 | 1057 | 61 | 13 | 151 |
| Future Vol, veh/h | 138 | 1395 | 1057 | 61 | 13 | 151 |
| Conflicting Peds, #/hr | 0 | 0 | 0 | 0 | 0 | 0 |
| Sign Control | Free | Free | Free | Free | Stop | Stop |
| RT Channelized | - | None | - | None | - | None |
| Storage Length | 185 | - | - | - | 0 | 70 |
| Veh in Median Storage, # | - | 0 | 0 | - | 0 | - |
| Grade, % | - | 0 | 0 | - | 0 | - |
| Peak Hour Factor | 97 | 97 | 88 | 88 | 84 | 84 |
| Heavy Vehicles, % | 0 | 1 | 2 | 2 | 0 | 1 |
| Mvmt Flow | 142 | 1438 | 1201 | 69 | 15 | 180 |
| | | | | | | |
| Major/Minor | Major1 | Major2 | | Minor2 | | |
| Conflicting Flow All | 1270 | 0 | - | 0 | 2239 | 635 |
| Stage 1 | - | - | - | - | 1236 | - |
| Stage 2 | - | - | - | - | 1003 | - |
| Critical Hdwy | 4.1 | - | - | - | 6.8 | 6.92 |
| Critical Hdwy Stg 1 | - | - | - | - | 5.8 | - |
| Critical Hdwy Stg 2 | - | - | - | - | 5.8 | - |
| Follow-up Hdwy | 2.2 | - | - | - | 3.5 | 3.31 |
| Pot Cap-1 Maneuver | 554 | - | - | - | 37 | 424 |
| Stage 1 | - | - | - | - | 241 | - |
| Stage 2 | - | - | - | - | 320 | - |
| Platoon blocked, % | | - | - | - | | |
| Mov Cap-1 Maneuver | 554 | - | - | - | 28 | 424 |
| Mov Cap-2 Maneuver | - | - | - | - | 28 | - |
| Stage 1 | - | - | - | - | 179 | - |
| Stage 2 | - | - | - | - | 320 | - |
| | | | | | | |
| | | | | | | |
| Approach | EB | WB | | SB | | |
| HCM Control Delay, s | 1.2 | 0 | | 36.9 | | |
| HCM LOS | E | | | | | |
| | | | | | | |
| | | | | | | |
| Minor Lane/Major Mvmt | EBL | EBT | WBT | WBR | SBLn1 | SBLn2 |
| Capacity (veh/h) | 554 | - | - | - | 28 | 424 |
| HCM Lane V/C Ratio | 0.257 | - | - | - | 0.553 | 0.424 |
| HCM Control Delay (s) | 13.7 | - | - | - | 238.1 | 19.6 |
| HCM Lane LOS | B | - | - | - | F | C |
| HCM 95th %tile Q(veh) | 1 | - | - | - | 1.8 | 2.1 |

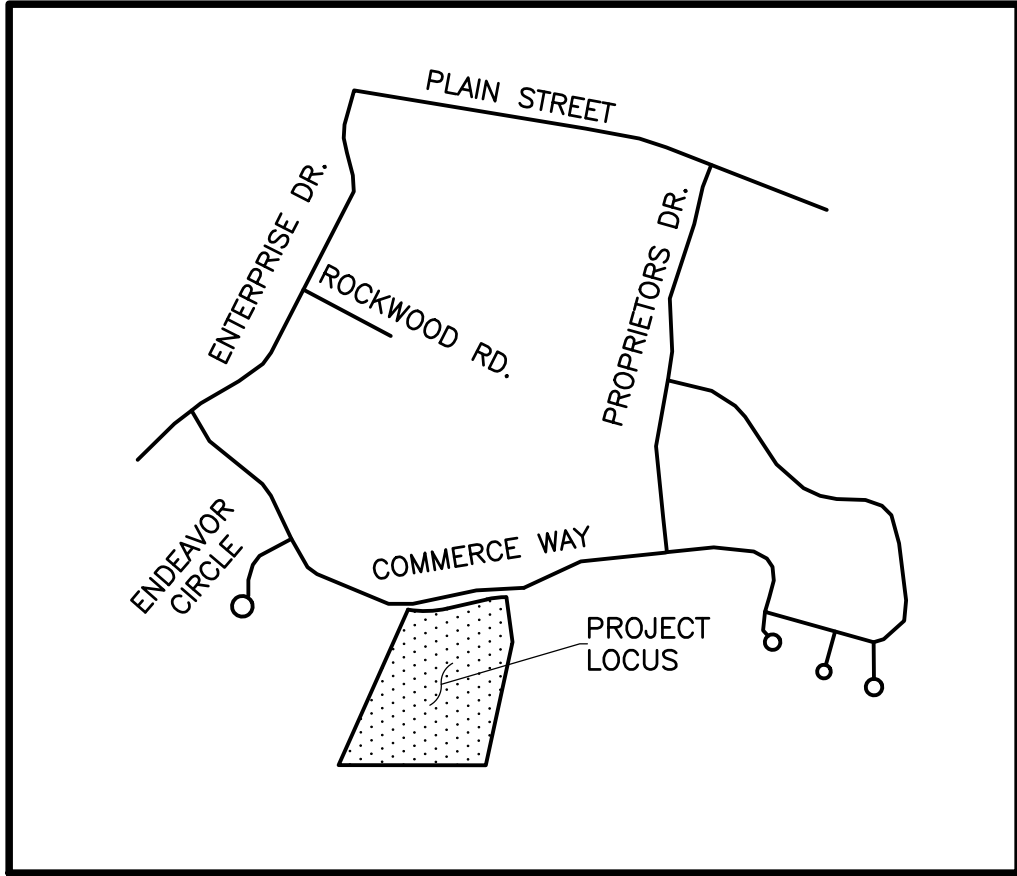
2029 No Build Weekday Evening Peak Hour
1: Route 139 & School Street

| Intersection | | | | | | |
|--------------------------|---|---|---|------|---|---|
| Int Delay, s/veh | 4.3 | | | | | |
| Movement | EBL | EBT | WBT | WBR | SBL | SBR |
| Lane Configurations |  |  |  | |  |  |
| Traffic Vol, veh/h | 149 | 1510 | 1145 | 66 | 14 | 162 |
| Future Vol, veh/h | 149 | 1510 | 1145 | 66 | 14 | 162 |
| Conflicting Peds, #/hr | 0 | 0 | 0 | 0 | 0 | 0 |
| Sign Control | Free | Free | Free | Free | Stop | Stop |
| RT Channelized | - | None | - | None | - | None |
| Storage Length | 185 | - | - | - | 0 | 70 |
| Veh in Median Storage, # | - | 0 | 0 | - | 0 | - |
| Grade, % | - | 0 | 0 | - | 0 | - |
| Peak Hour Factor | 97 | 97 | 88 | 88 | 84 | 84 |
| Heavy Vehicles, % | 0 | 1 | 2 | 2 | 0 | 1 |
| Mvmt Flow | 154 | 1557 | 1301 | 75 | 17 | 193 |
| Major/Minor | Major1 | Major2 | Minor2 | | | |
| Conflicting Flow All | 1376 | 0 | - | 0 | 2426 | 688 |
| Stage 1 | - | - | - | - | 1339 | - |
| Stage 2 | - | - | - | - | 1087 | - |
| Critical Hdwy | 4.1 | - | - | - | 6.8 | 6.92 |
| Critical Hdwy Stg 1 | - | - | - | - | 5.8 | - |
| Critical Hdwy Stg 2 | - | - | - | - | 5.8 | - |
| Follow-up Hdwy | 2.2 | - | - | - | 3.5 | 3.31 |
| Pot Cap-1 Maneuver | 505 | - | - | - | 27 | 391 |
| Stage 1 | - | - | - | - | 213 | - |
| Stage 2 | - | - | - | - | 289 | - |
| Platoon blocked, % | | - | - | - | | |
| Mov Cap-1 Maneuver | 505 | - | - | - | 19 | 391 |
| Mov Cap-2 Maneuver | - | - | - | - | 19 | - |
| Stage 1 | - | - | - | - | 148 | - |
| Stage 2 | - | - | - | - | 289 | - |
| Approach | EB | WB | | SB | | |
| HCM Control Delay, s | 1.4 | 0 | | 56.1 | | |
| HCM LOS | | | | F | | |
| Minor Lane/Major Mvmt | EBL | EBT | WBT | WBR | SBLn1 | SBLn2 |
| Capacity (veh/h) | 505 | - | - | - | 19 | 391 |
| HCM Lane V/C Ratio | 0.304 | - | - | - | 0.877 | 0.493 |
| HCM Control Delay (s) | 15.2 | - | - | - | 441.7 | 22.8 |
| HCM Lane LOS | C | - | - | - | F | C |
| HCM 95th %tile Q(veh) | 1.3 | - | - | - | 2.4 | 2.6 |

2029 Build Weekday Evening Peak Hour
1: Route 139 & School Street

| Intersection | | | | | | |
|--|---|---|---|------|---|---|
| Int Delay, s/veh | 4.9 | | | | | |
| Movement | EBL | EBT | WBT | WBR | SBL | SBR |
| Lane Configurations |  |  |  | |  |  |
| Traffic Vol, veh/h | 149 | 1570 | 1180 | 66 | 15 | 162 |
| Future Vol, veh/h | 149 | 1570 | 1180 | 66 | 15 | 162 |
| Conflicting Peds, #/hr | 0 | 0 | 0 | 0 | 0 | 0 |
| Sign Control | Free | Free | Free | Free | Stop | Stop |
| RT Channelized | - | None | - | None | - | None |
| Storage Length | 185 | - | - | - | 0 | 70 |
| Veh in Median Storage, # | - | 0 | 0 | - | 0 | - |
| Grade, % | - | 0 | 0 | - | 0 | - |
| Peak Hour Factor | 97 | 97 | 88 | 88 | 84 | 84 |
| Heavy Vehicles, % | 0 | 1 | 2 | 2 | 0 | 1 |
| Mvmt Flow | 154 | 1619 | 1341 | 75 | 18 | 193 |
| Major/Minor | Major1 | Major2 | Minor2 | | | |
| Conflicting Flow All | 1416 | 0 | - | 0 | 2497 | 708 |
| Stage 1 | - | - | - | - | 1379 | - |
| Stage 2 | - | - | - | - | 1118 | - |
| Critical Hdwy | 4.1 | - | - | - | 6.8 | 6.92 |
| Critical Hdwy Stg 1 | - | - | - | - | 5.8 | - |
| Critical Hdwy Stg 2 | - | - | - | - | 5.8 | - |
| Follow-up Hdwy | 2.2 | - | - | - | 3.5 | 3.31 |
| Pot Cap-1 Maneuver | 487 | - | - | - | 25 | 379 |
| Stage 1 | - | - | - | - | 203 | - |
| Stage 2 | - | - | - | - | 279 | - |
| Platoon blocked, % | | - | - | - | | |
| Mov Cap-1 Maneuver | 487 | - | - | - | ~ 17 | 379 |
| Mov Cap-2 Maneuver | - | - | - | - | ~ 17 | - |
| Stage 1 | - | - | - | - | 139 | - |
| Stage 2 | - | - | - | - | 279 | - |
| Approach | EB | WB | | SB | | |
| HCM Control Delay, s | 1.4 | 0 | | 68 | | |
| HCM LOS | | | | F | | |
| Minor Lane/Major Mvmt | EBL | EBT | WBT | WBR | SBLn1 | SBLn2 |
| Capacity (veh/h) | 487 | - | - | - | 17 | 379 |
| HCM Lane V/C Ratio | 0.315 | - | - | - | 1.05 | 0.509 |
| HCM Control Delay (s) | 15.8 | - | - | - | \$ 544.7 | 23.9 |
| HCM Lane LOS | C | - | - | - | F | C |
| HCM 95th %tile Q(veh) | 1.3 | - | - | - | 2.6 | 2.8 |
| Notes | | | | | | |
| ~: Volume exceeds capacity \$: Delay exceeds 300s +: Computation Not Defined *: All major volume in platoon | | | | | | |

Attachment B
Fire Truck Turning Analysis



tat

© The Architectural Team, Inc.
50 Commandant's Way at Admiral's Hill
Chelsea MA 02150
O 617.889.4402
F 617.884.4329
architecturalteam.com

Consultant:

Revision:

Architect of Record:

Drawn: EJR

Checked: AD/FAK

Scale: 1" = 50'

Key Plan:

Project Name:

MILL CREEK
MARSHFIELD

COMMERCE WAY
MARSHFIELD, MA

Sheet Name:

EMERGENCY
VEHICLE TURNING
MOVEMENTS

Project Number:

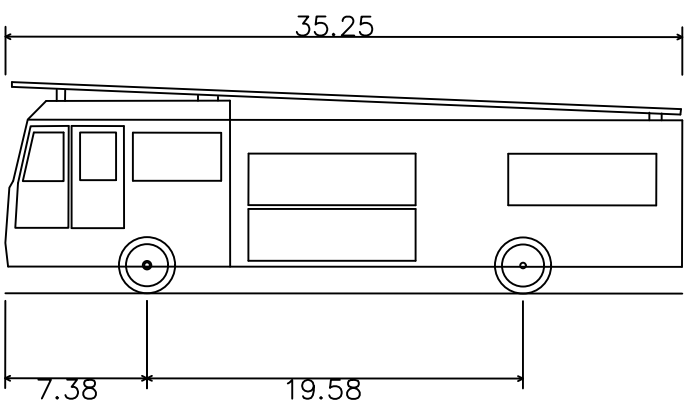
21065

Issue Date:

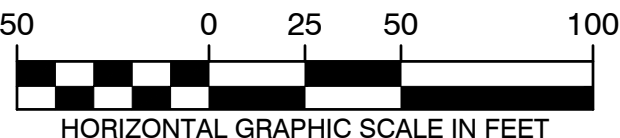
05/05/22

Sheet Number:

TM



Marshfield Ladder 1
Overall Length 35.250ft
Overall Width 8.333ft
Overall Body Height 11.000ft
Min Body Ground Clearance 1.393ft
Track Width 8.333ft
Lock-to-lock time 6.00s
Curb to Curb Turning Radius 37.800ft



Attachment C
Conservation Management Plan (CMP) and Amendment



Commonwealth of Massachusetts

Division of Fisheries & Wildlife

Wayne F. MacCallum, *Director*

MA ENDANGERED SPECIES ACT (G.L. c.131A) CONSERVATION AND MANAGEMENT PERMIT

Date: 4 October 2005

Conservation Permit No.: 005-072.DFW

NHESP File No. 05-17149

Permit Holder: Verrochi Realty Trust & VRT Corp.
80 L Washington Square
Norwell, MA 02061

Proposed Project: Enterprise Park, Phase I
Marshfield, MA

Pursuant to the authority granted in the Massachusetts Endangered Species Act (MESA) (G.L. c. 131A:3) and its implementing regulations (321 CMR 10.23), the Director of the Massachusetts Division of Fisheries & Wildlife (the "Division") hereby issues a Conservation and Management Permit to Verrochi Realty Trust and VRT Corp. (hereinafter the "Permit Holder"). This permit authorizes the "taking" of the state-protected Eastern Box Turtle (*Terrapene carolina*), which is listed as a species of "Special Concern" pursuant to MESA, for the construction of a four-lot commercial development and associated roadways and drainage structures, located off Route 139 and Route 3 (the "Proposed Project") on a +/-28.42 acre site in Marshfield, MA (the "Property"). The Property is the Phase I development portion of a larger land holding slated for future development (total acreage, +/-110 acres).

Under the authority granted by and in accordance with M.G.L. c. 131A, sec. 3 and 321 CMR 10.23, the Director may permit the taking of a State-listed Species for conservation and management purposes provided that there is a long-term Net Benefit to the conservation of the impacted species. If the Director determines that an applicant for a permit has avoided, minimized and mitigated impacts to the State-listed Species consistent with the following performance standards, then the Director may issue a conservation and management permit, provided:

- (a) the applicant has adequately assessed alternatives to both temporary and permanent impacts to State-listed Species;
- (b) an insignificant portion of the local population would be impacted by the Project or Activity; and
- (c) the applicant agrees to carry out a conservation and management plan that provides a long-term Net Benefit to the conservation of the State-Listed Species that has been approved by the Director in accordance with 321 CMR 10.23(5) and shall be carried out by the applicant.

www.masswildlife.org

Division of Fisheries and Wildlife

Field Headquarters, One Rabbit Hill Road, Westborough, MA 01581 (508) 792-7270 Fax (508) 792-7275

An Agency of the Department of Fisheries, Wildlife & Environmental Law Enforcement

The Director has determined that the Proposed Project will result in a "take" of the Eastern Box Turtle. However, the Director has also determined that (a) the Permit Holder has adequately assessed alternatives to both temporary and permanent impacts to State-listed Species; (b) an insignificant portion of the local population would be impacted by the Project or Activity; and (c) the conservation and management plan set forth herein that the Permit Holder agrees to carry out provides a long-term Net Benefit to the conservation of the State-Listed Species as mitigation to compensate for the "take" of those portions of the local State-listed Species adversely impacted by the Proposed Project.

Under this conservation and management plan, approximately 28.4 acres of Eastern Box Turtle habitat will be impacted by the proposed project. To minimize impacts to Eastern Box Turtles and provide mitigation, the project proponents will institute measures to remove turtles from construction areas prior to initiation of work, construct and maintain a permanent turtle barrier to keep turtles off of roads and out of developed areas, provide funding for local Eastern Box Turtle conservation planning and education, and, permanently protect a minimum of 57 acres of off-site Eastern Box Turtle Habitat by Conservation Restriction. The Division has determined that the Proposed Project would result in a "take", but would impact an insignificant portion of the local population of state-listed turtles. Therefore, the project can be permitted under MESA. This Conservation and Management Permit is issued to condition the Proposed Project and provide long-term net benefit mitigation to compensate for those portions of the local state-listed rare turtle populations impacted by the Proposed Project.

In accordance with the documents submitted to the Division entitled "Conservation and Management Permit Application, Enterprise Park Master Plan, Marshfield, Massachusetts" dated 9 June, 2005 (Prepared by Stenbeck & Taylor, Inc., Michael P. Last, Esq., Woodlot Alternatives, Inc., and Rackemann Strategic Consulting Inc., this Conservation and Management Permit is issued with the following conditions:

General Conditions:

1. The work (as described below) authorized by this Conservation and Management Permit shall be completed within three (3) years from the date of permit issuance. If necessary, the Permit Holder shall submit a written request to the Division for an extension, at which time the Division will review the Proposed Project pursuant to MESA for impacts to any state-protected rare wildlife or plant species found subsequent to the issuance date of the Conservation and Management Permit.
2. This Conservation and Management Permit shall not preclude the review of future projects on the Property that are subject to the Wetlands Protection Act regulations (310 CMR 10.59) by the Natural Heritage & Endangered Species Program ("NHESP") of the Division.
3. The work authorized by this Conservation and Management Permit involves the construction of commercial developments and drainage structures on Lots 6R, 24, "Drainage Lot A," and "Drainage Lot B" in the Enterprise Park Subdivision, and Assessor's Parcels D09-01-25 on Rockwood Road and D10-02-10A on the Existing Enterprise Drive, as well as all Phase I roadways and associated grading and utilities (See Permit Application, Figure 1), or any other development that maintains the mitigation commitments required by this Conservation and Management Permit and is consistent with General Condition 6 herein (the "Work").
4. When the Work is completed as described in the Conservation and Management Permit and the Conservation Permit Application, the Permit Holder shall submit a written request for a certificate of permit compliance to the Division.
5. Division representatives shall have the right to enter and inspect the area subject to this Conservation and Management Permit at reasonable hours to evaluate permit compliance, and may require the

submittal of any data not otherwise required under this Conservation and Management Permit, deemed necessary by the Division for that evaluation.

6. Any changes to the plans identified in this Conservation and Management Permit shall require the Permit Holder to inquire of the Division in writing whether the change is significant enough to require the filing of a new Conservation and Management Permit application or provide additional long-term net-benefit mitigation for affected rare species populations.
7. This Conservation and Management Permit shall apply to the Permit Holder and any successor-in-interest of the Permit Holder, or to a subsequent successor-in-control of the Property or portion thereof subject to this Conservation and Management Permit should Permit Holder convey its record ownership of the Property to said successor-in-control, as well as to any contractor or other person performing work conditioned by this Conservation and Management Permit. This Conservation and Management Permit shall transfer to said successor-in-interest or subsequent successor-in-control [ie, subsequent owners or operators] of the Property or a portion thereof upon the Division's receipt of a letter from such a successor indicating (1) that the successor is the successor-in-interest of the Permit Holder or the successor-in-control [ie, current owner or operator] of the Property or a portion thereof, and (2) that said successor agrees to and will perform the obligations of the Permit Holder as set forth in this Conservation and Management Permit. Neither the Permit Holder nor any successor-in-interest or successor-in-control to the Property shall be liable for any violation of this Conservation and Management Permit which shall occur prior to his or its ownership of the Property or the portion thereof which is subject to such violation or after he or it shall transfer ownership of the Property or of said portion thereof which is subject to such violation, as the case may be.
8. Prior to the start of work, the Permit Holder shall notify the Division in writing of the name, address, business and home telephone numbers of the project supervisor(s) and/or contractor(s) responsible for compliance with this Conservation and Management Permit. The Permit Holder is also required to provide updated information in writing to the Divisions should new or additional project supervisors and/or contractors be hired after Work has commenced.
9. Within 30 days of the issuance of this permit, the text of this Conservation and Management Permit shall be recorded by the Permit Holder in the Registry of Deeds or the Land Court for the district in which the Property is located so as to become a record part of the chain of title of the Property. In the case of recorded land, the Conservation and Management Permit shall be noted in the Registry's Grantor Index under the name of the owner of the Property upon which the proposed Work is to be done. In the case of registered land, the Conservation and Management Permit shall be noted on the Land Court Certificate of Title of the owner of the Property upon which the proposed Work is done. Permit Holder shall submit to the Division a date-stamped copy of said recorded Permit showing the date and book and page of recording of said Permit within 35 days of Permit issuance.
10. A violation of any conditions of this Conservation and Management Permit will result in an unauthorized Take pursuant to M.G.L. c. 131A, and may be subject to civil and or criminal penalties pursuant to M.G.L. c. 131A.

Special Conditions:

11. **Habitat Protection.** The Permit Holder shall execute Conservation Restrictions ("CR") on not less than 57 acres of land determined by the Division to provide suitable Eastern Box Turtle Habitat in the Town of Marshfield or other towns in southeastern Massachusetts. Prior to execution of a CR, each proposed CR parcel shall be approved in writing by the Division based on the suitability of the

parcel to provide Eastern Box Turtle Habitat, such approval not to be unreasonably withheld. The Division reserves the right to reject any parcel that the Division deems to be adequately legally restricted from future development so as to assure future Eastern Box Turtle habitat protection.

Said Conservation Restrictions shall be granted by the Permit Holder to the Wildlands Trust of Massachusetts, or to a qualified land trust, governmental entity, or other qualified entity approved in writing by the Division. Conservation Restrictions shall be in substantially the same form as shown in Attachment A. Any changes in the form of said Conservation Restrictions other than typographical or grammatical changes must be approved by the Division before said changed Conservation Restriction is submitted to the Secretary of the Executive Office of Environmental Affairs for signing. If the Executive Office of Environmental Affairs requires changes that substantially expand the permitted activities in said Conservation Restrictions, Permit Holder shall immediately notify the Division in writing of the requested changes so that the Division can review said proposed changes for compliance with the terms and provisions of this Permit. If the Division determines that said proposed changes to either of these Conservation Restrictions are inconsistent with the purposes of this Conservation and Management Permit, the Division shall have 60 days after receipt of said Notice to discuss said proposed changes with said Executive Office in order to seek deletion or modification of the requested changes. The decision of the Executive Office of Environmental Affairs shall be the final determination as to the terms of said Conservation Restrictions

Said Conservation Restrictions shall be executed and recorded in said Registry and date-stamped copies thereof delivered to the Division no later than September 1, 2007. Work shall cease if said Conservation Restrictions are not recorded and copies thereof received by the Division by this date, provided, however, that the Division may extend this date from time to time if the failure to execute and record said Conservation Restriction results from circumstances beyond the control of Permit Holder and so long as Permit Holder continues in good faith to seek to execute and record said Conservation Restriction.

Said Conservation Restrictions may be granted by the Town of Marshfield on behalf of the Permit Holder, provided that the Town of Marshfield adheres to the procedures for Conservation Restriction approval specified in Article 11 of this permit, and provided that the Town of Marshfield indicates in writing to the Division that a given Conservation Restriction is being granted for the purpose of meeting the habitat protection requirements specified in this permit.

12. The Permit Holder shall place \$110,000 into an escrow account, subject to an Escrow Agreement in substantially the same form as Attachment B, such funds and interest accrued thereon that may be used by the Division to secure Eastern Box Turtle net-benefit mitigation in the event that the Permit Holder fails to protect 57 acres of Eastern Box Turtle habitat as required in paragraph 11 of this permit.
13. Upon completion of the habitat protection required in Paragraph 11 of this permit, \$11,000 plus accrued interest from the escrow account described in paragraph 12 shall be paid over to the Wildlands Trust, Manomet Center for Conservation Sciences, or other like organization approved by the Division, to be used for (i) turtle habitat identification and mapping and (ii) educational outreach and programming relating to turtles and turtle habitat preservation. The use of these funds for these purposes shall be subject to reasonable review and approval by the Division.
14. **Authorized Construction and Uses.** This Conservation Permit authorizes construction and uses on the Property described in paragraph 3 above. All Work, with the exception of Work specifically

permitted under the terms of the Conservation Restriction (e.g., wetland replication) shall be confined to the unrestricted portions of the site, not subject to conservation restriction, as shown on the site plans referenced above.

15. **Turtle protection prior to and during construction.** Prior to the initiation of land clearing or construction on a given development parcel, the parcel shall be fully encircled with properly installed silt fencing or a similar temporary turtle barrier approved by the Division. The Division may require one-way turtle gates to be constructed as part of the temporary turtle barrier. Once a parcel is fenced, the parcel shall be searched for turtles by qualified wildlife biologists with a valid Scientific Collecting Permit, following a survey protocol approved in writing by the Division. Box turtles encountered during these searches shall be released in appropriate habitat near, but outside of, the construction area, in a location to be approved by the Division. The barrier shall be maintained in good condition throughout the construction period, and repaired as necessary. During the land clearing and site preparation period, the silt fence barrier shall be inspected at least 2 times/week (staggered) by a qualified wildlife biologist, and the area adjacent to the barrier shall be searched for Box Turtles. During the remainder of the construction period, the barrier shall be inspected at least once per week, and repaired on an as-needed basis.
16. **Turtle Barrier construction.** A permanent turtle barrier with turtle gates shall be constructed along the south and eastern boundaries of Lot 6 (Permit Application, Figure 1). The design and siting of the turtle barrier shall be approved in writing by the Division prior to the initiation of construction on Lot 6. Turtle barrier construction shall be overseen by a qualified wildlife biologist. The Division shall be notified in writing when barrier construction commences, and the barrier construction shall be completed by April 15, 2006. All other work shall cease if the barrier is not completed by this date. Upon completion of turtle barrier construction, the wildlife biologist shall provide written confirmation to the Division that the barrier has been installed properly. Said turtle barrier and gates will be subject to periodic inspection by the Division, the Conservation Restriction Grantee, and/or their representatives. The Permit Holder or its successor-in-interest or the subsequent successor-in-control of the Property or portion thereof subject to this Conservation and Management Permit, whichever may be the case, shall at its expense maintain the turtle barrier and gates in good condition and proper functioning in perpetuity.

Conservation Permit 005-072.DFW

Issued this 4th day of October 2005.

Work must be completed by 4 October 2008



Wayne F. MacCallum, Director

Massachusetts Division of Fisheries & Wildlife

Copies:

Marshfield Board of Selectmen

Marshfield Conservation Commission

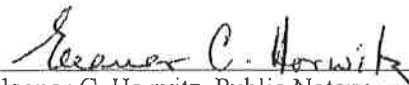
Marshfield Planning Board

DEP Southeast Regional Office, Wetlands Program

MEPA Director

Michael Last & Steve Davis, Rackemann, Sawyer, & Brewster

Commonwealth of Massachusetts, County of Worcester.
Signed before me on the 4th day of October 2005


Eleanor C. Horwitz, Public Notary
My commission expires October 20, 2006

ATTACHMENT A

Conservation Restriction

CONSERVATION RESTRICTION

I. GRANTOR CLAUSE:

The TOWN OF MARSHFIELD DEPARTMENT OF PUBLIC WORKS, having an address at 870 Moraine Street, Marshfield, Massachusetts ____ ("Grantor"), acting pursuant to Sections 31, 32, and 33 of Chapter 184 of the General Laws, grants, with quitclaim covenants, to the TOWN OF MARSHFIELD, ACTING BY AND THROUGH ITS CONSERVATION COMMISSION, a Massachusetts municipal corporation, having an address at 870 Moraine Street, Marshfield, Massachusetts 02050 and its successors and assigns ("Grantee") in perpetuity and exclusively for conservation purposes, the following described Conservation Restriction on ____ parcels of land situated in the Town of Marshfield, Plymouth County, Massachusetts, constituting approximately ____ acres, said parcels being as described in Exhibit A attached to this Conservation Restriction and made part hereof and being shown on the plans referred to in said Exhibit A.

Natural Heritage and Endangered Species Program of the Commonwealth of Massachusetts Division of Fisheries and Wildlife ("NHESP") is the state entity that enforces and administers the Massachusetts Endangered Species Act, M.G.L. 131A, as it may be amended ("MESA").

II. PURPOSES:

The Grantor intends that this Conservation Restriction will assure that the Restricted Premises will be retained forever in its predominately natural, scenic, and open space condition. The Restricted Premises, contain unusual, unique or outstanding qualities the protection of which in their predominately natural or open condition will be of benefit to the public. The conservation values protected by the terms of this Conservation Restriction include the following:

- A. Preservation of land in an area known to provide suitable habitat for the Eastern Box Turtle, which is identified by the State of Massachusetts Natural Heritage and Endangered Species Program as a species of Special Concern. This includes the preservation of important breeding site and upland forest habitat for the Eastern Box Turtle.
- B. Enhancement and enlargement of conservation lands in the Town of Marshfield.

This Conservation Restriction serves to support the future issuance of a Conservation Permit No. _____ issued by the Commonwealth of Massachusetts Division of Fisheries and Wildlife dated _____, 2005.

III. PROHIBITED ACTS AND USES, EXCEPTIONS THERETO, AND PERMITTED USES:

A. Prohibited Acts and Uses: Subject to the exceptions set forth in Paragraph B below, the following acts and uses are prohibited on the Restricted Premises:

1. Constructing or placing of any building, tree house, tennis court, landing strip, mobile home, swimming pool, fences, asphalt or concrete pavement, sign, billboard or other advertising display, antenna, utility pole, tower, conduit, line or other temporary or permanent structure or facility on, below or above the Restricted Premises;
2. Mining, excavating, dredging or removing from the Restricted Premises of soil, loam, peat, gravel, sand, rock or other mineral resource or natural deposit;
3. Placing, filling, storing or dumping on the Restricted Premises of soil, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, or unsightly or offensive materials, waste or other substance or material whatsoever or the installation of underground storage tanks;
4. The storage, dumping or other disposal of toxic and/or hazardous materials or of non-compostable refuse on the Restricted Premises;
5. Cutting, removing or otherwise destroying trees, grasses or other vegetation;
6. The operation of snowmobiles, motorcycles, all terrain vehicles, off road vehicles or other recreational vehicles, horseback riding, or other equestrian activities;
7. The use of traps or poisons to kill animals or birds on the Restricted Premises;
8. The construction of permanent recreational facilities for baseball, football, tennis or other such activities;
9. Activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation, historic preservation, or wildlife habitat;

10. Any other act, activity or use of the Restricted Premises which would materially impair significant conservation interests, unless necessary for the protection of the conservation interests that are the subject of this Conservation Restriction; and

11. Subdivision of the Restricted Premises.

B. Reserved Rights and Responsibilities of Grantor. All acts and uses not prohibited in Paragraph A above, are permissible. Notwithstanding the provisions of Paragraph A, the following acts and uses are also permitted but only if such activities and uses are conducted in a manner that does not have a material deleterious impact upon the purposes of this Conservation Restriction.

1. Walking, hiking, running, cross country skiing, snow shoeing, bicycling on designated paths, nature study, and other passive outdoor recreational and educational activities.
2. The maintenance of presently existing trails and cart paths located on the Restricted Premises substantially in their present condition or as reasonably necessary for the uses permitted herein.
3. In accordance with generally accepted forest management practices: (a) pruning and cutting to prevent, control or remove hazards, disease, fire or insect damage. or (b) the cutting of trees to preserve or enhance the natural condition of the Restricted Premises, including vistas, roads and trails; or for designated purposes, in accordance with a plan, prepared by a professional forester or Landscape Architect and approved by the Grantees and NHESP, that is designated to protect the conservation values of the premises including, without limitation, scenic and wildlife habitat values.
4. With the written permission of Grantee and NHESP, measures designed to restore native biotic communities, or to maintain, enhance or restore wildlife, wildlife habitat, or rare or endangered species.
5. The placing of open-styled fences that do not interfere with the conservation purposes of this restriction or with wildlife movement.
6. The operation, maintenance, repair and replacement of the existing municipal water supply wells situated at, in, on and under the Restricted Premises, including all equipment, piping, conduits, pump houses and other appuntenances thereto, provided that, if such activities shall require excavation, the cutting or trimming of trees or other vegetation and/or any other intrusive activity, reasonable preventive measures shall be taken to

protect the Eastern Box Turtle from injury or harm as a consequence thereof and the area(s) which are so disturbed shall be restored as promptly as practicable to a condition consistent with the purpose of this Conservation Restriction.

7. The installation, construction, operation, maintenance, repair and replacement of one or more addition, municipal water supply wells to be situated at, in, on and under the Restricted Premises, including all equipment, piping, conduits, pump houses and other appuntenances thereto, provided that, if such activities shall require excavation, the cutting or trimming of trees or other vegetation and/or any other intrusive activity, reasonable preventive measures shall be taken to protect the Eastern Box Turtle from injury or harm as a consequence thereof; and the area(s) which are so disturbed shall be restored as promptly as practicable to a condition consistent with the purpose of this Conservation Restriction.

Notwithstanding anything herein to the contrary, the Conservation Restriction does not restrict, and is granted subject to, any existing easement rights.

IV. LEGAL REMEDIES:

A. Legal and Injunctive Relief: In the event that a breach of these restrictions by Grantor or by a third party comes to the attention of Grantee, Grantee must notify Grantor in writing of such a breach. Grantor shall have thirty (30) days after receipt of such notice to undertake actions, including the restoration of the Premises to its condition prior to the time of the breach complained of, that are reasonably calculated to correct swiftly the conditions constituting such a breach, provided, however, that Grantor shall have no obligation to restore conditions in existence prior to the effective date of this Conservation Restriction. If Grantor fails to take such corrective action, Grantee shall, at its discretion, undertake such actions, including appropriate legal proceedings, including obtaining injunctive and other equitable relief, as are reasonably necessary to effect such corrections, and the cost of such corrections, including Grantee's reasonable expenses, court costs and legal fees, shall be paid by Grantor, provided Grantor is determined to be responsible for the breach. Grantee covenants and agrees to reimburse Grantor all reasonable costs and expense (including without limitation reasonable counsel fees) incurred in defending against an enforcement motion prosecuted by Grantee upon a determination by a court of competent jurisdiction (or acknowledgment by Grantee) that Grantee willfully or knowingly prosecuted a frivolous enforcement action.

The Massachusetts Division of Fisheries and Wildlife shall have the same enforcement rights and legal remedies as provided to the Grantee in subparagraph

IV.A. These rights shall be in addition to, and not in limitation of, the rights and remedies available to the Grantee.

B. Grantee's Disclaimer of Liability: By its acceptance of this Conservation Restriction, Grantee does not undertake any liability or obligation to the condition of the Restricted Premises.

C. Grantor's Rights: Except as expressly provided herein, Grantor shall not have any obligation to maintain the Restricted Premises, but shall have the right to do so if it so elects in accordance with the terms of this Conservation Restriction.

Whenever notice to or approval by Grantee or NHESP is required under the provisions of this Conservation Restriction for activities on the Restricted Premises, except in the case of an emergency, Grantor shall give written notice by certified mail, return receipt requested, to Grantee and NHESP not less than thirty (30) days prior to the date Grantor intends to undertake the proposed 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 Grantee to make an informed judgment as to its consistency with the purpose of this Conservation Restriction and to monitor the proposed activity. Where Grantee's and/or NHESP's approvals are required, Grantee and/or NHESP shall grant or withhold its approval by written notice, by certified mail, return receipt required, to Grantor within thirty (30) days of receipt of the written request therefor. If Grantee and/or NHESP does not respond to Grantor's request within said thirty (30) days in accordance with the provision of this paragraph, Grantor's request shall be deemed approved as to the party that did not respond.

D. Non-Waiver: Any election by either party 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.

V. ACCESS

A. The Conservation Restriction hereby conveyed does not grant to Grantee or to the general public any right to enter upon or use the Restricted Premises for any purpose, including public recreation. However, with advance notice to Grantor, there is granted to Grantee and its representatives the right to enter the Restricted Premises at reasonable times and in a reasonable manner for the purpose of inspecting the same to determine compliance herewith.

B. Grantor reserves to itself, and to its successors and assigns, all rights accruing from their ownership of the Restricted Premises, including the right to engage in or permit or invite others to engage in all uses of the Restricted Premises

that are not expressly prohibited herein and are not inconsistent with the purpose of this Conservation Restriction.

VI. ASSIGNABILITY AND MISCELLANEOUS PROVISIONS

A. Running of the Burden: The burdens of this Conservation Restriction shall run with the Restricted Premises in perpetuity, and shall be enforceable against Grantor prior to the transfer or sale of all the Restricted Premises and then only against the successors and assigns of Grantor holding any interest in the Restricted Premises.

B. Running of the Benefit: The benefits of this Conservation Restriction shall be in gross and shall not be assignable by Grantee, except in the following instances and from time to time:

- (i) as a condition of any assignment, Grantee requires that the assignee make a commitment, in form and substance satisfactory to Grantor, in its reasonable discretion, to carry out the purpose of this Conservation Restriction, and
- (ii) the assignee, at the time of assignment, qualifies under Section 170(h) of the Internal Revenue Code of 1986, as amended, and applicable regulations thereunder, and under Section 32 of Chapter 184 of the Massachusetts General Laws as an eligible donee to receive this Conservation Restriction directly, and has the financial and administrative capacity to perform the obligation as Grantee under this Agreement.

VII. SUBSEQUENT TRANSFERS: Grantor agrees to incorporate by reference the terms of this Conservation Restriction in any deed or other legal instrument by which it divests himself of any interest in all or a portion of the Restricted Premises, including a leasehold interest. Upon any such transfer, notice must be made in writing, by hand delivery or Certified Mail (return receipt requested) of such transfer to Grantee at Grantee's address set forth in Section I above; provided, however, that failure to comply with these notice requirements shall not impair the validity of this Conservation Restriction.

VIII. ESTOPPEL CERTIFICATES: Upon request by Grantor, Grantee shall within thirty (30) days execute and deliver to Grantor any document, including an estoppel certificate, which certifies Grantor's compliance with any obligation of Grantor contained in this Conservation Restriction. If Grantee does not respond to Grantor's request within said thirty (30) days in accordance with the provision of this paragraph, Grantor shall be deemed to be in compliance with all of the obligations of Grantor contained in this Conservation Restriction. An affidavit signed under oath by Grantor and recorded with the Registry indicating that a written request was sent to Grantee

and that no response was received within said thirty (30) days shall be conclusive evidence in each instance of Grantor's compliance.

IX. EFFECTIVE DATE: This Conservation Restriction shall be effective when Grantor and Grantee have executed it, the administrative approvals required by Section 32 of Chapter 184 of the General Laws have been obtained, and it has been recorded, or if registered land, it has been registered.

X. MISCELLANEOUS:

- A. Controlling Law: The interpretation and performance of this Conservation Restriction shall be governed by the laws of the Commonwealth of Massachusetts.
- B. 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 hand delivered or sent by Certified Mail (return receipt requested), postage prepaid, addressed to the applicable party at the address set forth in Section I above, or at such other address as to which notice has been given as set forth in this Section. Notice shall be deemed given on receipt.
- C. Approval of this Conservation Restriction pursuant to M.G.L. Chapter 184, Section 32 by any municipal officials and by the Secretary of Environmental Affairs is not to be construed as representing the existence or non-existence of any pre-existing rights of the public, if any, in and to the Restricted Premises, and any such pre-existing rights of the public, if any, are not affected by the granting of this Conservation Restriction.
- D. No provision of this Conservation Restriction shall be used or construed to interfere with any of the incidents of ownership Grantor has in land abutting the Restricted Premises, including, but not limited to, the full use, enjoyment, improvement or transfer of said land.

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, Article 97 of the Massachusetts Constitution or Sections 31-33 of Chapter 184 of the General Laws of Massachusetts. Any such amendment shall be consistent with the purpose of this Conservation Restriction, shall not affect its perpetual duration, shall not permit additional development or improvements to be constructed on the Restricted Premises other than development or improvements

permitted by this Conservation Restriction on its effective date, and shall not permit any impairment of the significant conservation values of the Restricted Premises. Any such amendment shall be recorded in the official Registry records of Plymouth County, Massachusetts and must be approved by grantor, grantee, NHESP municipal officials and the Massachusetts Secretary of Environmental Affairs.

Executed under seal as of this _____ day of _____, 2005.

ATTACHMENT B

Escrow Agreement

ESCROW AGREEMENT

Reference is made to the Conservation and Management Permit, dated September _____, 2005, (the "Permit") issued by the Massachusetts Natural Heritage and Endangered Species Program ("NHESP") with respect to the mixed-use development project known as "Enterprise Park", which situated off Plain Street (Rt. 139) in Marshfield, Massachusetts (the "Project").

WHEREAS, in order to help assure the due implementation of the Eastern Box Turtle-related mitigation measures specified in the Permit, Verrochi Realty Trust and VRT Corp. (together "VRT"), as the Project owner and proponent, have agreed to place in escrow the sum of \$110,000 (the "Escrowed Funds"); and

WHEREAS, the Escrowed Funds are to be held by _____ (the "Escrow Agent") and disbursed subject to and in accordance with the terms of this Escrow Agreement.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, VRT, NHESP and the Escrow Agent agree as follows:

1. At the time of the issuance of the Permit, VRT will place the Escrowed Funds into escrow with the Escrow Agent to be held and disbursed subject to and in accordance with the terms of this Escrow Agreement.

2. The Escrow Agent shall place the Escrowed Funds in a fully insured interest bearing account (the "Escrow Account"), and shall hold and disburse the Escrowed Funds for the following purposes and in the following manner:

- a. The Escrowed Funds will be held as surety for the acquisition of conservation land or conservation restrictions on off-site parcels of land in order to compensate for the Phase I land being developed as part of the Project. Said Phase I land is described in the Permit. This mitigation is to be based on the ratio of two (2) acres of land to be restricted for each one (1) acre of land to be developed. Once the conservation acreage for Phase I of the Project is acquired or secured for restriction (the "Phase I mitigation completion"), the Escrowed Funds will then be applied to mitigation projects for Phase II of the Project as described in paragraphs 2 (c) and 2 (d) below. Prior to the Phase I mitigation completion, not to exceed \$20,000 of the Escrowed Funds may be disbursed upon direction of VRT for the following purposes relating to Phase I of the Project: (i) habitat surveys and physical boundary surveys of parcels to be potentially subject to conservation acquisition or restriction and (ii) legal fees to conduct title searches and to obtain legal title to or, alternatively, conservation restrictions on parcels to be subject to conservation acquisition/restriction.

- b. If the Phase I mitigation completion has not been achieved by September 1, 2007, NHESP shall have the right, for purposes of accomplishing the Phase I mitigation completion, to direct the balance of the Escrowed Funds to be applied to (i) the acquisition of parcels of land and/or conservation restrictions for the protection of Eastern Box Turtle habitat and (ii) to planning and research relating to the protection of the Eastern Box Turtle and its habitat. In the event that NHESP exercises its said right under this paragraph 2(b), the Phase I habitat protection mitigation (Conservation & Management Permit 005-072, Paragraph 11) shall be deemed fully completed.
 - c. Following the Phase I mitigation completion, and on the condition that the NHESP does not exercise its rights specified in paragraph 2.b. of this Escrow Agreement, \$11,000 plus accrued interest on this portion of the escrow funds will be paid over at the direction of the NHESP to the Wildlands Trust (of Marshfield), or other like organization approved by NHESP to be used for (i) turtle habitat identification and mapping and (ii) educational outreach and programming relating to turtles and turtle habitat preservation. The use of these funds for these purposes shall be subject to reasonable review and approval by NHESP.
 - d. Also, following the Phase I mitigation completion, the balance of the Escrowed Funds (not paid over to the Wildlands Trust or other like organization as provided in paragraph 2 (c) above) shall remain in the Escrow Fund and shall be disbursed for the following purposes relating to Phase II of the Project: (i) habitat surveys and physical boundary surveys of parcels to be potentially subject to conservation acquisition or restriction and (ii) legal fees to conduct title searches and to obtain legal title to or, alternatively, conservation restrictions on parcels to be subject to conservation acquisition/restriction.
 - e. Any amounts remaining in the Escrow Fund after the mitigation applicable to Phase II of the Project is completed shall be remitted to VRT or its designee.
3. Upon disbursement by the Escrow Agent of the full amount of the Escrowed Funds, this Escrow Agreement shall terminate, and the Escrow Agent shall have no further responsibility hereunder or on account thereof.
4. The Escrow Agent shall not be obligated to inquire as to the form, manner of execution or validity of any confirmation, letter, invoice or document received by him in connection with the implementation of this Agreement, nor is the Escrow Agent obligated to inquire as to the identity, authority or rights of the persons executing the same. In taking any action hereunder, the Escrow Agent may rely, and be fully protected in relying, upon any opinion, certificate, release, statement, affidavit, invoice, document or other instrument reasonably believed by him to be genuine and given in good faith. In case of any conflicting demands upon the Escrow Agent or in the event of the existence of a dispute or disagreement between the parties to this Escrow Agreement, Escrow Agent may withhold performance until

such time as the conflicting demands are withdrawn, such uncertainty is removed, or the rights of the respective parties have been settled by a court of competent jurisdiction.

5. VRT agrees to indemnify, defend and hold harmless the Escrow Agent from and against any and all loss, liability, damage and expense, including attorneys' and accountants' fees and court costs, which he may suffer or incur by reason of his serving as Escrow Agent hereunder, including, without limitation, by reason of any litigation that may result on account of or in connection with this Agreement or from any alleged acts or omissions of the Escrow Agent hereunder, provided, however, that this hold harmless and indemnification shall not apply to acts or omissions which are the result of the Escrow Agent's own gross negligence or willful misconduct.

6. In the absence of gross negligence or willful misconduct on his part, the Escrow Agent shall not be liable for any error of judgment, any action taken or omitted, any mistake of fact or any loss or injury resulting from his actions or the performance of or the failure to perform his duties hereunder. In no event shall the Escrow Agent be liable (a) for any consequential, punitive or special damages, or (b) for an amount in excess of the value of the Escrowed Funds, valued as of the date of deposit. If any fees, expenses or costs incurred by, or any obligations owed to, the Escrow Agent under this Escrow Agreement are not promptly paid when due, the Escrow Agent may reimburse himself therefor from the Escrowed Funds and may sell, convey or otherwise dispose of any Escrowed Funds for such purpose. The Escrow Agent may consult with legal counsel as to any matter relating to this Escrow Agreement, and the Escrow Agent shall not incur any liability for acting in good faith in accordance with any advice from such counsel. The Escrow Agent shall not incur any liability for not performing any act or fulfilling any duty, obligation or responsibility hereunder by reason of any event or occurrence beyond the control of the Escrow Agent (including, but not limited to, any act of a governmental authority, any provision of any present or future law or regulation, any act of God or war, or the unavailability of the Federal Reserve Bank wire or telex or other wire or communication facility).

7. All notices, requests, consents and other communications hereunder shall be in writing, shall be addressed to the receiving party at his or its address set forth below or to such other address as a party may designate by notice hereunder, and shall be (a) delivered by hand, (b) made by telex, telecopy or facsimile transmission, (c) sent by recognized overnight courier, or (d) sent by registered or certified mail, return receipt requested, postage prepaid.

If to the Escrow Agent:

If to VRT:

If to NHESP:

All notices, requests, consents and other communications hereunder shall be deemed to have been received (i) if by hand, at the time of the delivery thereof to the receiving party at the address of such party set forth above, (ii) if made by telex, telecopy or facsimile transmission, at the time that receipt thereof has been acknowledged by electronic confirmation or otherwise, (iii) if sent by overnight courier, on the next business day following the day such notice is delivered to the courier service, or (iv) if sent by certified mail, on the fifth business day following the day such mailing is made.

IN WITNESS WHEREOF, the parties have executed this Escrow Agreement as a sealed instrument this _____ day of September __, 2005.

VERROCHI REALTY TRUST

By: _____

VRT CORP.

By: _____

**MASSACHUSETTS NATURAL HERITAGE AND
ENDANGERED SPECIES PROGRAM**

By: _____

ESCROW AGENT

By:



MASSWILDLIFE



2019 00020519

Bk: 50931 Pg: 44 Page: 1 of 57
 Recorded: 03/25/2019 12:06 PM
 ATTEST: John R. Buckley, Jr. Register
 Plymouth County Registry of Deeds

DIVISION OF FISHERIES & WILDLIFE

1 Rabbit Hill Road, Westborough, MA 01581
 p: (508) 389-6300 | f: (508) 389-7890
 MASS.GOV/MASSWILDLIFE

MA ENDANGERED SPECIES ACT (G.L. c.131A) CONSERVATION AND MANAGEMENT PERMIT AMENDMENT

| | |
|--------------------------|--|
| DATE | February 26, 2019 |
| CONSERVATION PERMIT NO.: | 005-072.DFW (Amendment) |
| NHESP FILE NO. | 05-17149 |
| PERMIT HOLDER | Verrochi Realty Trust & VRT Corp. 80 L Washington Square Norwell, MA 02061 |
| PROJECT | Enterprise Park, Phase 2 Marshfield, MA |

Pursuant to the authority granted in the Massachusetts Endangered Species Act ("MESA") (G.L. c. 131A) and its implementing regulations (321 CMR 10.23), the Director of the Massachusetts Division of Fisheries & Wildlife (the "Division") hereby amends Conservation and Management Permit 005-072.DFW (the "Permit"). The Permit was originally issued to Verrochi Realty Trust and VRT Corp. (the "Permit Holder") on October 4, 2005 for the construction of a four (4) lot commercial development with associated roadways and drainage structures (Phase 1) on a ±28.42-acre portion of a ±110.0-acre site located south of Plain Street (Route 139) in the Town of Marshfield, Massachusetts (the "Property").

This amendment to the Permit (the "Permit Amendment") is issued to the Permit Holder to authorize construction of Phase 2, which includes development of thirty (30) additional parcels on remaining portions of the Property totaling ±89.57 acres (Plymouth County Registry of Deeds; see Attachment 2 for a list of parcels and associated recording information; the "Project"), as shown on the Project Plan (Attachment 1). Phase 2 includes newly acquired land, including (i) Parcels 09-01-15 (approximately 3.19 acres) and D08-01-05 (approximately 5.5 acres), acquired by the Permit Holder subsequent to the issuance of the Permit; and (ii) a subsequent owner of Lots 16R and 17R combined these parcels with a portion of Drainage Lot C of Parcel D09-01-69 (approximately 0.92 acres) and Lot B of Parcel E09-01-54 (approximately 1.51 acres). The Project may proceed in separate stages, with each stage to include one or more individual parcels. The Division notes that Lots 16R, 17R and 32 were sold by the Permit Holder to third parties prior to completing the MESA review process, and work has already occurred on Lot 32. The Division previously determined, based on the considerations provided in 321 CMR 10.16, that Lots 16R, 17R and 32 were part of the Enterprise Park project and that it would evaluate the cumulative impacts of projects or activities on Lots 16R, 17R and 32 when reviewing Phase 2 pursuant to MESA.

MASSWILDLIFE

Michael Verrochi
 80 L Washington Sq.
 Norwell MA 02061

M.R. BOOK 33655
 PAGE 228

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Phase 2 may collectively result in the permanent loss of up to ± 78.67 acres of suitable upland forest habitat and alteration to the feeding, breeding, migratory, and overwintering behaviors of the Eastern Box Turtle (*Terrapene carolina*), listed as "Special Concern" pursuant to the MESA.

Pursuant to this Permit Amendment, for each stage of the Project the Permit Holder will (a) permanently protect high quality habitat as open space and State-listed species habitat, either through Executive Office of Energy & Environmental Affairs-Division of Conservation Services ("EEA-DCS") approved conservation restrictions held by a Division-approved conservation entity, or through fee transfers to a qualified, Division-approved government entity subject to Article 97 provisions; and or (b) provide restricted funding for land protection, conservation research, habitat management, and or conservation planning to benefit the Eastern Box Turtle in Massachusetts. In order to meet the long-term Net Benefit performance standard of a Conservation and Management Permit (321 CMR 10.23), the Permit Holder shall protect up to ± 118.01 acres of habitat and/or provide its equivalent in funding (additional to Phase 1 mitigation, which has been completed). Furthermore, the Permit Holder shall implement a Division-approved plan to protect state-listed turtles during construction of each stage of the Project.

The Director has determined that the revisions to the conservation plan proposed by the Permit Holder, as described herein, provide a long-term Net Benefit to the conservation of the Eastern Box Turtle. Therefore, the Project can be permitted pursuant to the MESA. All other provisions, terms and conditions of the Permit shall remain in effect and unchanged.

In accordance with the documents submitted to the Division entitled:

- Project Plan (dated 9/26/2018; prepared by Stenbeck & Taylor, Inc.; the "Project Plan"; Attachment 1);
- List of Parcels and Associated Mitigation (Attachment 2)
- Template "Declaration of Restriction" (Attachment 3);
- Template "Conservation Restriction" (Attachment 4);
- Template "Escrow Agreement" (Attachment 5);
- "Eastern Box Turtle Protection Plan Template" (dated September 28, 2018; prepared by LEC Environmental Consultants, Inc.; Attachment 6);

and any other plans and documents referenced herein, this Permit Amendment is issued with the following conditions:

General Conditions:

| | |
|----|--|
| 1. | The Project authorized by this Permit Amendment shall be completed within twenty-five (25) years from the date of issuance. If needed, the Permit Holder shall submit a written request to the Division for an extension of time to complete said Project and the Division will review the Project pursuant to MESA for any continuing impacts as described herein and for any new impacts to any State-listed species found subsequent to the issuance date of this Permit Amendment. |
| 2. | This Permit Amendment shall not preclude the review of future projects on the Property that are subject to the Wetlands Protection Act regulations (310 CMR 10.37, 10.58(4)(b), 10.59), as applicable, by the Natural Heritage & Endangered Species Program ("NHESP") of the Division. |
| 3. | The work authorized by this Permit Amendment involves the development, in one or more stages, of thirty (30) parcels as shown on the Project Plan (Attachment 1; the "Work"). The Work also includes construction of a trail system within limited portions of Phase 2. The Work also includes any other on-site activity required by the Division as a condition of this Permit Amendment. |

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| 4. | Division representatives shall have the right to enter and inspect the Property subject to this Permit Amendment at reasonable hours to evaluate Permit Amendment compliance and require the submittal of any reasonable information not otherwise required by this Permit Amendment but deemed necessary by the Division to complete its evaluation. |
| 5. | Any proposed change to any plan identified in this Permit Amendment, or to the State-listed species conservation plan required by way of this Permit Amendment, shall require the Permit Holder to inquire of the Division, in writing, whether the change is significant enough to require the filing of a new Conservation and Management Permit Application, and or require additional long-term Net Benefit for affected State-listed species. The Division retains the right to require the submittal of additional, reasonable information to evaluate the plan change. |
| 6. | This Permit Amendment shall apply to, and inure to the benefit of, the Permit Holder and any successor-in-interest of the Permit Holder, or to a subsequent successor-in-control of the Property or portion thereof subject to this Permit Amendment should the Permit Holder convey its record ownership of the Property to said successor-in-control, as well as to any contractor or other person performing Work conditioned by this Permit Amendment. Within three (3) days of the transfer of an interest in the Property or a portion thereof, any successor-in-interest or subsequent successor-in-control [i.e., subsequent owners or operators] of the Property or a portion thereof shall provide the Division with a letter indicating (1) that the successor is the successor-in-interest of the Permit Holder or the successor-in-control [i.e., current owner or operator] of the Property or a portion thereof, and (2) that said successor will perform the obligations of the Permit Holder insofar as such obligations pertain to the Property or portion thereof transferred to the successor-in-interest or successor-in-control as set forth in this Permit Amendment. |
| 7. | Prior to the start of Work on any stage of the Project , the Permit Holder shall notify the Division in writing of the name, address, email, business and home telephone numbers of the project supervisor(s) and/or contractor(s) responsible for compliance with this Permit Amendment. The Permit Holder shall provide updated information in writing to the Division should new or additional project supervisors and/or contractors be hired after Work has commenced. Within three (3) days of the start of Work on any stage , the Permit Holder shall send a letter to the Division stating the date upon which Work commenced. |
| 8. | Within thirty (30) days of issuance , the text of this Permit Amendment shall be recorded by the Permit Holder in the Registry of Deeds or the Land Court for the district in which the Property is located so as to become a record part of the chain of title of the Property. In the case of recorded land, the Permit Amendment shall be noted in the Registry's Grantor Index under the name of the owner of the Property upon which the proposed Work is to be done. In the case of registered land, the Permit Amendment shall be noted on the Land Court Certificate of Title of the owner of the Property upon which the proposed Work is done. The Permit Holder shall submit to the Division a date-stamped and signed copy of said recorded Permit Amendment showing the date and book and page of recording of said Permit Amendment within five (5) days after recording and/or filing, as applicable. No Work shall begin on the Property until the Permit Amendment is recorded and said recorded copy is submitted to the Division, except as otherwise approved by the Division in writing. |
| 9. | At the completion of Work on the Property, and at the completion of Work on any individual stage of the Project , the Permit Holder shall submit to the Division a written request for a Certificate of Permit Compliance or Partial Certificate of Compliance, as applicable, including as-built plans and other supporting materials demonstrating the completion of Work and compliance with all conditions herein. The text of the Division-issued Certificate or Partial Certificate shall be recorded by the Permit Holder (or its successor-in-interest) in the Registry of Deeds or the Land Court for the district in which the Property is |

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| | located so as to become a record part of the chain of title of the Property. The Permit Holder (or its successor-in-interest) shall submit to the Division a date-stamped and signed copy of said recorded Certificate or Partial Certificate showing the date, book and page within five (5) days after recording and/or filing , as applicable. The issuance of a Certificate or Partial Certificate shall be conclusive evidence of such Permit Holder's compliance with respect to its obligations under the Permit Amendment. |
| 10. | Any land protected to achieve a long-term Net Benefit associated with this Permit Amendment, shall remain undeveloped and protected as habitat for State-listed species in perpetuity. |
| 11. | The Permit Holder shall comply with all Conditions and Special Conditions contained within this Permit Amendment and complete the Project consistent with all Division-approved plans and supporting documents except as otherwise approved by the Division in writing. |
| 12. | The Permit Holder shall submit in writing any documents, plans, reports, or other items required for submission in accordance with this Permit Amendment, for review and written approval by the Division, unless otherwise stipulated in this Permit Amendment or by the Division in writing. |
| 13. | A violation of any condition of this Permit Amendment will result in an unauthorized Take pursuant to M.G.L. c. 131A and may be subject to civil and or criminal penalties pursuant to M.G.L. c. 131A. |

Special Conditions:

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| 14. | <u>Authorized Construction and Uses:</u> This Permit Amendment authorizes construction and uses on the Property as described in General Condition #3 above. All Work shall be confined to the area of the Property within the parcels shown on the Project Plan (Attachment 1) and listed in Attachment 2. |
| 15. | <p><u>Construction Phasing and Approval of Net Benefit Mitigation Plan:</u> In order to provide a long-term Net Benefit for the conservation of the Eastern Box Turtle, the Permit Holder has proposed to (a) permanently protect suitable, high quality habitat for the Eastern Box Turtle through conveyance of EEA-DCS-approved conservation restrictions to a qualified conservation entity, and or through conveyance of fee title to a qualified, Division-approved government entity subject to Article 97 provisions, pursuant to Special Condition #16; and or (b) provide restricted funding for land protection, conservation research, habitat management, and or conservation planning to benefit the Eastern Box Turtle in Massachusetts pursuant to Special Condition #17. Up to ±118.01 acres of habitat shall be protected, or its equivalent in funding provided, pursuant to the table provided in Attachment 2. The Project may proceed in separate stages, with each stage to include one or more individual parcels.</p> <p>In order to fulfill the mitigation requirements associated with the Work that has or will occur on Lots 16R, 17R and 32, which have been transferred to third parties, the ±20.81 acres of mitigation associated with these parcels shall be provided by the Permit Holder pursuant to the following schedule:</p> <ul style="list-style-type: none"> a) Within six months of the issuance of this Permit Amendment and prior to the start of Work on the first stage of the Project, ±5.81 acres of habitat shall be protected or its equivalent in funding provided. b) For the first thirty parcel acres of the Project, one half acre of habitat (or its equivalent in funding) shall be added to the mitigation associated with each parcel acre. This shall cumulatively result in ±15.0 acres of habitat protected, or its equivalent in funding provided, additional to the mitigation acreages provided in Attachment 2. |

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| | <p>Therefore, prior to the start of Work on any stage of the Project, which may include one or more individual parcels shown on the Project Plan (Attachment 1), the Permit Holder shall provide the following to the Division for review and written approval:</p> <ul style="list-style-type: none"> a) A project description and site plan associated with that stage, including parcel boundaries, total parcel acreage, and the design of any proposed curbing (see Special Condition #20). The plan shall also identify all parcels developed on the Property to date. <ul style="list-style-type: none"> i. All Parcels (except D08-01-05) - The Division's review of site plans associated with each stage shall be limited to evaluating the Turtle Protection Plan (pursuant to Special Condition #18) submitted on behalf of that stage, and for Lots 1-14, determining whether modifications to the design of proposed curbing and or perimeter fencing/barriers may be necessary to reduce potential risks associated with road mortality. The Division shall impose no other conditions or restrictions on the design or layout of proposed development within any stage of the Project. ii. Parcel D08-01-05 – The Permit Holder has agreed that, at a maximum, only limited (no more than 40% of the parcel acreage), passive disturbance (temporary grading, stormwater treatment systems, and or similar) shall be proposed within the northerly portions of Parcel D08-01-05. The Division may impose conditions or restrictions on the design, layout and extent of disturbance, as necessary, to minimize habitat fragmentation and mortality risks associated with proposed development of Parcel D08-01-05. The Permit Holder has agreed that remaining, undisturbed portions of this parcel shall be permanently protected in accordance with Special Condition #16 sufficient to address the Net Benefit mitigation associated with this parcel on-site. b) A draft Net Benefit mitigation plan associated with that stage, including documentation of compliance with all requirements provided under Special Conditions #16 and or 17, as appropriate. Unless otherwise approved in writing by the Division, Net Benefit mitigation shall be provided for the total parcel acreage associated with each stage, as shown in Attachment 2. For example and per the above, Net Benefit mitigation associated with D08-01-05 shall not be required for the total parcel acreage. As provided in Attachment 2, Work associated with Lot D10-03-01A shall not require Net Benefit mitigation. c) A draft Turtle Protection Plan pursuant to Special Condition #18. <p>No Work shall be initiated on any stage of the Project until the Permit Holder has received written authorization from the Division of having provided a long-term Net Benefit for that stage in compliance with Special Conditions #16 and or 17, as appropriate. Commencement of vegetation clearing, soil disturbance, and/or construction within any parcel associated with a stage – excepting work associated with construction of the trail system described in General Condition #3 – shall constitute the start of Work on that stage.</p> |
| 16. | <p>Permanent Protection of Habitat: The Permit Holder may propose to fulfill the long-term Net Benefit associated with any stage of the Project through (a) conveyance of an EEA-DCS approved conservation restriction (CR) to a qualified conservation entity approved in writing by the Division and or (b) conveyance of fee title to a qualified, Division-approved government entity subject to Article 97 provisions. Should the Permit Holder propose to meet the long-term Net Benefit associated with any stage(s) through permanent protection of suitable habitat, the following requirements shall apply unless otherwise pre-approved in writing by the Division:</p> <ul style="list-style-type: none"> a) Prior to the start of Work on that stage of the Project, the proposed habitat to be protected |

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| | <p>(the "Habitat Parcel") must be approved in writing by the Division, such approval not to be unreasonably withheld, pursuant to the following:</p> <ul style="list-style-type: none"> i. The Permit Holder shall provide to the Division, for review and approval, a plan associated with each Habitat Parcel. Said plan shall specify the boundaries, total acreage, acreage of suitable upland and wetland habitat, and a summary of habitat types (including an ortho-photograph and land cover map) associated with said Habitat Parcel. ii. The Division reserves the right to reject any parcel that it deems adequately legally restricted from future development or not providing high quality habitat in a suitable configuration sufficient to provide a long-term Net Benefit to the Eastern Box Turtle. iii. The Permit Holder may include additional habitat within a Habitat Parcel to address, in whole or in part, mitigation requirements associated with future stages of the Project. iv. Upon receiving Division approval of the Habitat Parcel, the Permit Holder shall submit to the Division for review and approval a final, recordable open space plan for the Habitat Parcel. Said recordable plan shall include segment lengths and angles for the Habitat Parcel, the location and design of permanent bounds and signs, and all other pertinent details in accordance with the Division's Land Restriction and Permanent Monumentation Guidance document. <p>b) Prior to the start of Work on that stage of the Project, the Permit Holder shall provide proof to the Division of appropriate recordation of a Declaration of Restriction on the Division-approved Habitat Parcel.</p> <ul style="list-style-type: none"> i. Prior to recording said Declaration, the Permit Holder shall provide a draft Declaration to the Division for review and approval, which shall be in substantially the same form as Attachment 3. ii. Said Declaration shall be executed and recorded in the Registry of Deeds or the Land Court for the district in which the Habitat Parcel is located so as to become a record part of the chain of title of the Habitat Parcel. iii. Any violation of the Declaration, as recorded, is a violation of this Permit Amendment in accordance with General Condition #13. The Declaration, as approved by the Division and recorded, shall remain in effect until such time as the CR required pursuant to Paragraph 16(e) is recorded. At the time the CR is recorded, the Declaration shall be superseded and the Habitat Parcel no longer subject to any provisions of the Declaration. <p>c) Prior to the start of Work on that stage of the Project, the Permit Holder shall submit proof to the Division of having filed a draft, Division-approved CR with EEA-DCS and of having obtained confirmation from a qualified conservation entity to hold said CR on the Division-approved Habitat Parcel.</p> <ul style="list-style-type: none"> i. The CR shall be granted to a qualified land trust, nonprofit organization or government entity approved in writing in advance by the Division. Prior to submitting the CR to EEA-DCS for review and approval, the Permit Holder shall provide a draft CR to the Division for review and approval, which shall be in substantially the same form as Attachment 4 or another form acceptable to the Division. ii. If EEA-DCS requires changes that substantially expand the permitted activities in said CR, |
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the Permit Holder shall immediately notify the Division in writing of the requested changes so that the Division can review said proposed changes for compliance with the terms and provisions of this Permit Amendment. If the Division determines that said proposed changes to the CR are inconsistent with the purposes of this Permit Amendment, the Division shall have sixty (60) days after receipt of said notice to discuss said proposed changes with EEA-DCS in order to seek deletion or modification of the requested changes.

- d) **Within six (6) months of the start of Work on that stage of the Project**, the EEA-DCS and Division-approved CR shall be executed and recorded in the Registry of Deeds or the Land Court for the district in which the Habitat Parcel is located so as to become a record part of the chain of title of the Habitat Parcel. Work shall cease if said CR is not recorded and copies thereof received by the Division by this date, provided, however, that the Division may extend this date from time to time if the failure to execute and record said CR results from circumstances beyond the control of the Permit Holder and so long as the Permit Holder continues in good faith to seek to execute and record said CR.
- e) As an alternative to (c) and (d), the Permit Holder may convey the Division-approved Habitat Parcel to a Town Conservation Commission or another qualified government entity approved in writing by the Division, subject to Article 97 provisions. Such conveyance shall comply with the following conditions, unless otherwise pre-approved in writing by the Division:

- i. The deed of conveyance for the Habitat Parcel shall be amended to include the following language, or other similar language pre-approved in writing by the Division:

"Dedicated to the public for the sole purpose of conservation of natural resources, including but not limited to, the conservation of species listed pursuant to G.L. c. 131A et. seq. which shall be considered the most important conservation purpose for which this land is to be protected in perpetuity and held under the care and custody of the Conservation Commission, pursuant to G.L. c. 408C. This parcel of land is being dedicated in order to meet a long-term Net Benefit pursuant to 321 CMR 10.23 with the Massachusetts Division of Fisheries and Wildlife and the Town of _____ as benefitted parties."

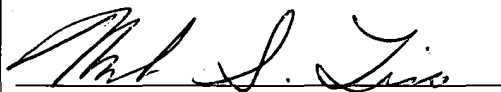
- ii. If deeded to a Town Conservation Commission, the Conservation Commission shall take a vote, and record said vote in the final written meeting minutes, to accept the Habitat Parcel pursuant to the above-referenced language (or other language pre-approved in writing by the Division) read aloud at said meeting prior to the vote. Additionally, the Board of Selectmen, or the nominated member(s) of said board, shall affirm the vote of the Conservation Commission with said affirmation recorded in the final meeting minutes.

Within six (6) months of the start of Work on that stage of the Project, the Permit Holder shall provide proof of conveyance of said land to the Conservation Commission or to another qualified government entity approved in writing by the Division. Proof of conveyance shall include proof of recordation with marginal reference to the land transfer language above, and if applicable, the dated of the Conservation Commission vote and the affirming vote of the Board of Selectmen. A copy of said recorded deed shall be submitted to the Division within five (5) business days of recordation. Work shall cease if said deed is not recorded and copies thereof received by the Division within six (6) months of the start of Work provided, however, that the Division may extend this date from time to time if the failure to execute and record said deed results from

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| | <p>circumstances beyond the control of the Permit Holder and so long as the Permit Holder continues in good faith to seek execution and recordation of said deed.</p> <p>f) Prior to the start of Work on that stage of the Project, unless otherwise authorized in writing by the Division, the boundaries of the Division-approved Habitat Parcel shall be permanently monumented and marked with signage as shown on the Division-approved, recordable open space plan described under (a)(iv). Said permanent bounds and signage shall be maintained in good condition by the Permit Holder and repaired or replaced, as necessary.</p> |
| 17. | <p><u>Funding for State-listed Species Conservation:</u> The Permit Holder may propose to fulfill the long-term Net Benefit associated with any stage of the Project by providing restricted funding to benefit Eastern Box Turtle in Massachusetts. Said funding shall be in the amount of \$11,500.00 per acre of Net Benefit associated with that stage of the Project, as well as an additional administrative fee of \$1,380.00 per acre as follows:</p> <p>a) The Permit Holder may propose to meet the long-term Net Benefit associated with any stage of the Project by providing the restricted funding directly to the Eastern Box Turtle Mitigation Bank operated by The Nature Conservancy (TNC) (pursuant to the Off-site Mitigation Memorandum of Agreement between the Division and TNC, dated July 16, 2008 and amended October 29, 2009), or to another party designated in writing by the Division. Said funds shall be restricted and used exclusively for land protection, conservation research, habitat management, and or conservation planning to provide Net Benefit mitigation for the Eastern Box Turtle in Massachusetts. Written proof of acceptance and receipt of said funds by TNC shall be provided by the Permit Holder to the Division in writing prior to the start of Work on that stage of the Project.</p> <p>b) Alternatively, or in combination with a), the Permit Holder may propose to meet the long-term Net Benefit associated with any stage of the Project by depositing the restricted funding into an escrow account prior to the start of Work on that stage of the Project. Said escrow account shall be subject to an Escrow Agreement in substantially the same form shown in Attachment 5, and must be reviewed and approved in writing by the Division prior to the start of Work associated with that stage. The funds associated with each specific stage of the Project shall remain within the escrow account for a period of eighteen (18) months from the date of deposit. During that period, the Permit Holder may attempt to permanently protect Eastern Box Turtle habitat pursuant to Special Condition #16. Should the Permit Holder permanently protect Eastern Box Turtle habitat pursuant to Special Condition #16 within said eighteen (18) month period, the Division shall authorize a refund from the escrow account to the Permit Holder. The amount of the refund shall be in the amount of \$11,500.00 per acre of permanently protected suitable habitat, as well as the associated administrative fee.</p> <p>If any portion of the funds associated with a specific stage of the Project are still held in escrow at the end of the eighteen (18) month time period, the balance of said funds shall be provided to the Eastern Box Turtle Mitigation Bank operated by TNC (pursuant to the Off-site Mitigation Memorandum of Agreement between the Division and TNC, dated July 16, 2008 and amended October 29, 2009), or another party designated in writing by the Division, within one (1) month of the conclusion of said eighteen (18) month period, subject to the terms of the Escrow Agreement. Said funds shall be restricted and used exclusively for land protection, conservation research, habitat management, and or conservation planning to provide Net Benefit mitigation for the Eastern Box Turtle in Massachusetts.</p> |
| 18. | <p><u>Turtle Protection Plan:</u> The Permit Holder shall implement an Eastern Box Turtle Protection Plan in substantially the same form as Attachment 6. All Work on the Property (including Work on Lot D10-03-01</p> |

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| | and the trail system described under General Condition #3) shall occur pursuant to the protective measures outlined within said Protection Plan unless otherwise approved in writing by the Division. A specific Protection Plan for each stage of the Project, which may include one or more individual parcels, shall be submitted to the Division for review and approval to confirm consistency with Attachment 6. The wildlife biologist(s) selected to implement said Plan must be pre-approved in writing by and in possession of a valid Scientific Collection Permit obtained from the Division. |
| 19. | <u>Construction Staff Education:</u> All construction, landscaping, and other sub-contractors associated with the Project shall be informed in writing of the likely presence of State-listed species on the Property and what measures should be implemented to minimize direct harm to State-listed species. Further, no wildlife shall be removed from the Property without approval of a qualified wildlife biologist or the Division except as necessary to receive veterinary treatment in the case of harm during construction. |
| 20. | <u>Curbing.</u> Any future curbing installed on the Property shall be low-profile "Cape Cod Berm" curbing or similar to minimize road mortality for Eastern Box Turtles and other species, except as needed at roadway intersections and drainage inlets or unless otherwise authorized in writing by the Division. |
| 21. | <u>Reporting Rare Species Observations:</u> The Division shall be notified, in the form of an NHESP Rare Animal or Plant Observation Form, within ten (10) days of the observation of any State-listed species within or outside the limits of Work. Preferably notification will be through the Division's data submittal tool, the Vernal Pool & Rare Species (VPRS) Information System. VPRS and our paper observations forms can be found at: http://www.mass.gov/dfw/nhesp/vprs . |
| 22. | <p><u>Notice of Appeal Rights:</u> This Determination is a final decision of the Division of Fisheries and Wildlife pursuant to 321 CMR 10.23. Any person aggrieved by this decision shall have the right to an adjudicatory hearing at the Division pursuant to M.G.L. c. 30A, s.11 in accordance with the procedures for informal hearings set forth in 801 CMR 1.02 and 1.03.</p> <p>Any notice of claim for an adjudicatory hearing shall be made in writing and be accompanied by a filing fee in the amount of \$500.00. The notice of claim shall be sent to the Division by certified mail, hand delivered or postmarked within twenty-one (21) days of the date of the Division's Determination to:</p> <p style="text-align: center;">Mark S. Tisa Director Division of Fisheries and Wildlife Field Headquarters One Rabbit Hill Road Westborough, MA 01581</p> <p>Any notice of claim for an adjudicatory hearing shall include the following information:</p> <ol style="list-style-type: none"> 1. The file number for the project; 2. The complete name, address and telephone number of the person filing the request, and the name, address and telephone number of any authorized representative; 3. The specific facts that demonstrate that a party filing a notice of claim satisfies the requirements of an "aggrieved person," including but not limited to (a) how they have a definite interest in the matters in contention within the scope of interests or area of concern of M.G.L. c. 131A or the regulations at 321 CMR 10.00 and (b) have suffered an actual injury which is special and different from that of the public and which has resulted from violation of a duty owed to them by the Division; 4. A clear statement that an adjudicatory hearing is being requested; |

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| | 5. A clear and concise statement of facts which are grounds for the proceeding, the specific objections to the actions of the Division and the basis for those objections; and the relief sought through the adjudicatory hearing; and a statement that a copy of the request has been sent by certified mail or hand delivered to the applicant and the record owner, if different from the applicant. |
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Mark S. Tisa, Director
Massachusetts Division of Fisheries & Wildlife

On this 26th day of February, 2019, before me, the undersigned notary public, personally appeared Mark S. Tisa, Director, proved to me through satisfactory evidence of identification, which was personal knowledge, to be the person whose name is signed on the preceding or attached document, and who swore or affirmed to me that the contents of the document are truthful and accurate to the best of his/her knowledge and belief.



Emily Melissa Holt, Notary Public
My Commission expires: July 12, 2024

Conservation Permit 005-072.DFW

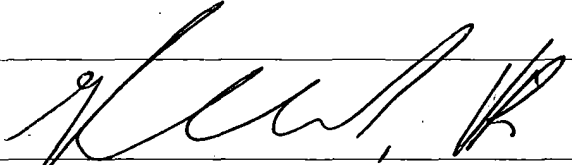
Amended this 26th day of February, 2019

Work must be completed by: February 26 2044



ACKNOWLEDGEMENT AND ACCEPTANCE OF ALL TERMS OF THIS CONSERVATION PERMIT AMENDMENT

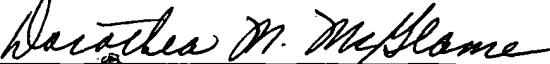

The undersigned below agrees that commencement of any work authorized by and described in this Permit Amendment constitutes acknowledgement and acceptance of all terms of this Permit Amendment.


Signatory 1
Organization MICHAEL J. VERROCHI, VP
VRT CORP.

COMMONWEALTH OF MASSACHUSETTS

On this 20th day of March, 2019, before me, the undersigned notary public, personally appeared Michael J. Verrochi, proved to me through satisfactory evidence of identification which was personally known to be the person whose name is signed on the preceding or attached document, and who swore or affirmed to me that the contents of the document are truthful and accurate to the best of his/her knowledge and belief.

Notary Public



DOROTHEA M. McBLAME
Notary Public
Commonwealth of Massachusetts
My Commission Expires November 20, 2020

SEAL

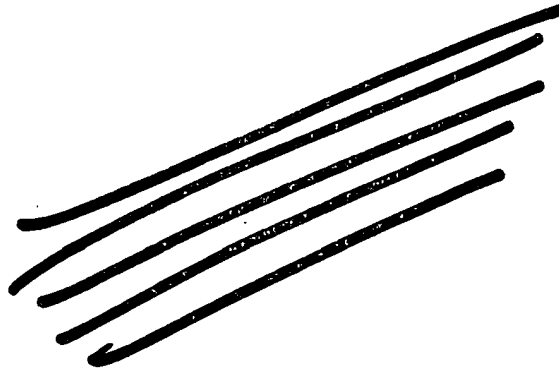
My commission expires: 11-20-2020

Distribution List

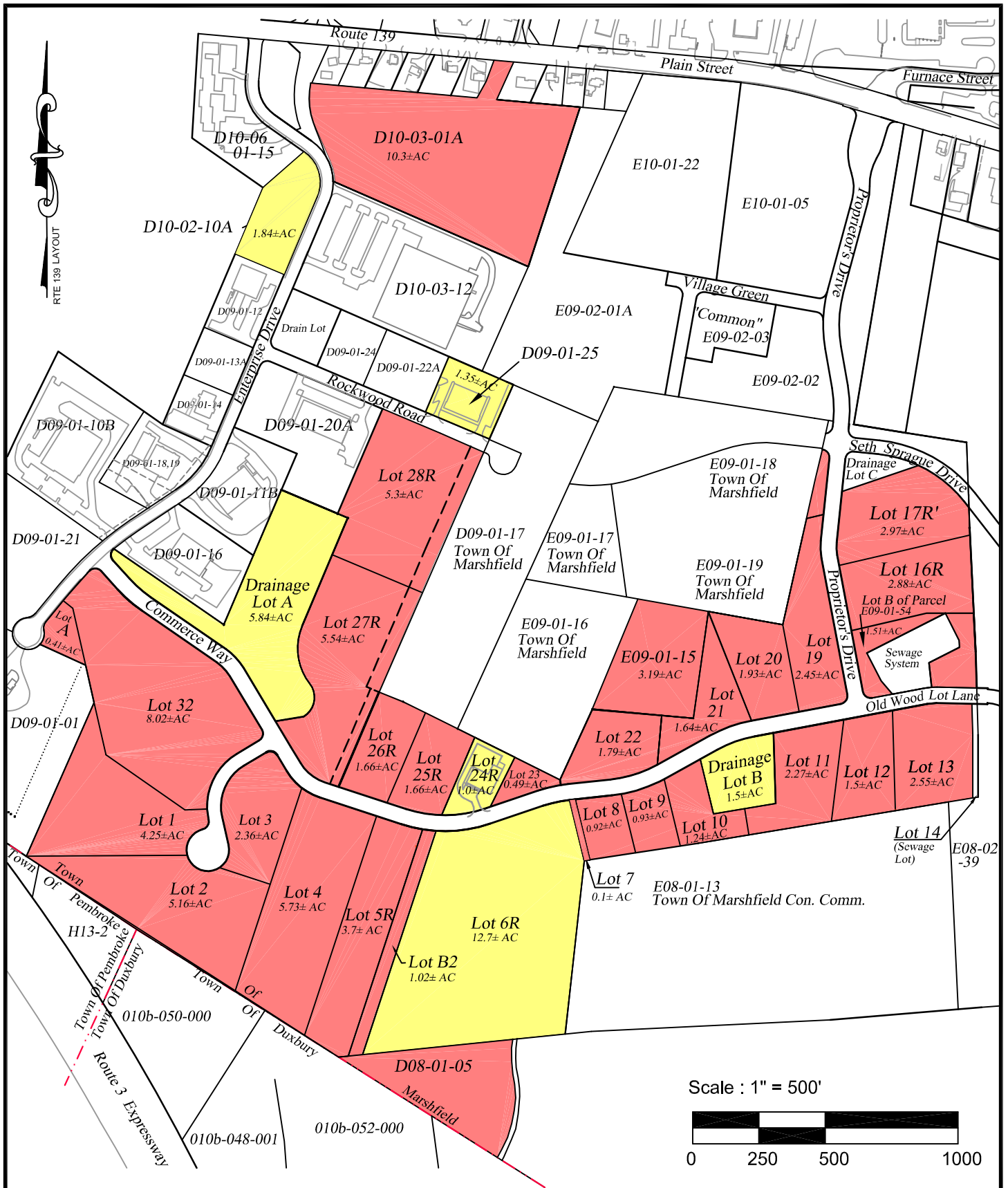
William Last, VRT Corp.
Brian Madden, LEC Environnemental Consultants, Inc.
Town of Marshfield Board of Selectmen
Town of Marshfield Conservation Commission
Town of Marshfield Planning Board
Jason Zimmer, MassWildlife Southeast District Office
Everose Schlüter, Assistant Director, MA Environmental Policy Act Office

Attachment 1

Project Plan (dated 9/26/2018; prepared by Stenbeck & Taylor, Inc.; the "Project Plan")



STENBECK & TAYLOR, INC.
Registered Professional Engineers and Land Surveyors



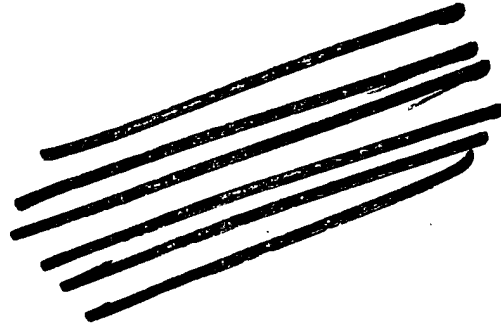
PHASE I - CURRENTLY EXISTING
PHASE II - FUTURE DEVELOPMENT

09/26/2018

STENBECK & TAYLOR, INC.
Registered Professional Engineers and Land Surveyors

Attachment 2

List of Parcels and Associated Mitigation



| Phase 2 | | | | |
|---------------------------|----------------|---------------------|--|---|
| Parcel | Parcel Acreage | Mitigation Acreage* | Assessors Parcel No. | Registry of Deeds |
| Lot 1 | 4.25 | 6.38 | D08-01-06 | Bk 6262, Pg 214 |
| Lot 2 | 5.16 | 7.74 | D08-01-07 | Bk 6262, Pg 214 |
| Lot 3 | 2.36 | 3.54 | D08-01-08 | Bk 6262, Pg 214 |
| Lot 4/5R | 9.43 | 14.15 | D08-01-10A | Bk 65, Pg 288; Bk 10082, Pg 86; Bk 5085, Pg 45; Bk 20590, Pg 250; Plan 736 of 2005 (Consolidation Plan) |
| B2 | 1.02 | 1.53 | D08-01-12 | Bk 65, Pg 288; Bk 10082, Pg 86; Bk 5085, Pg 45; Bk 20590, Pg 250; Plan 736 of 2005 (Consolidation Plan) |
| Lot 7 | 0.10 | 0.15 | E09-01-62 | Bk 6262, Pg 214 |
| Lot 8 | 0.92 | 1.38 | E09-01-61 | Bk 6262, Pg 214 |
| Lot 9 | 0.93 | 1.40 | E09-01-60 | Bk 6262, Pg 214 |
| Lot 10 | 1.24 | 1.86 | E09-01-59 | Bk 6262, Pg 214 |
| Lot 11 | 2.27 | 3.41 | E09-01-57 | Bk 6262, Pg 214 |
| Lot 12 | 1.50 | 2.25 | E09-01-54 | Bk 6262, Pg 214 |
| Lot 13 | 2.55 | 3.83 | E09-01-55 | Bk 6262, Pg 214 |
| Lot 19 | 2.45 | 3.68 | E09-01-66 | Bk 6262, Pg 214 |
| Lot 20 | 1.93 | 2.90 | E09-01-65 | Bk 6262, Pg 214 |
| Lot 21 | 1.64 | 2.46 | E09-01-64 | Bk 6262, Pg 214 |
| Lot 22 | 1.79 | 2.69 | E09-01-63 | Bk 6262, Pg 214 |
| Lot 23 | 0.49 | 0.74 | E09-01-26 | Bk 6262, Pg 214 |
| Lot 25R | 1.66 | 2.49 | D09-01-28 | Bk 6262, Pg 214; Plan 890 of 2005 (Consolidation) |
| Lot 26R | 1.66 | 2.49 | D09-01-28 | Bk 6262, Pg 214; Plan 890 of 2005 (Consolidation) |
| Lot 28R | 5.30 | 7.95 | D09-01-09C, D09-01-34 and D09-01-38 | Bk 6262, Pg 214; Plan 890 of 2005 (Consolidation) |
| Lot 27R | 5.54 | 8.31 | D09-01-33; D09-01-32; D09-01-07; D09-01-30 | Bk 6262, Pg 214; Plan 890 of 2005 (Consolidation) |
| Lot A | 0.41 | 0.62 | D09-01-37A | Bk 6262, Pg 214 |
| Lot B of Parcel E09-01-54 | 1.51 | 2.27 | Lot B of E09-01-54 | Bk 33254, Pg 198 |
| Lot 16R** | 2.88 | 4.32 | E09-01-53 | Bk 31913, Pg 96 |
| Lot 17R** | 2.97 | 4.46 | Lot A of E09-01-69 and Lot 17R of E09-01-02C | Bk 31913, Pg 96; Bk 30612, Pg 235; Plan 433 of 2012 (Consolidation Plan) |
| Lot 32** | 8.02 | 12.03 | D09-01-36A | Bk 33401, Pg. 268 |
| D08-01-05 | 5.50 | 8.25 | D08-01-05 | Bk 5085, Pg 45 |
| FWP | 3.19 | 4.79 | E09-01-15 | Bk 31845, Pg 241 |
| D10-03-01A*** | 10.90 | na | D10-03-01A | Bk 3875 Pg 324 |
| Total | 89.57 | 118.01 | | |

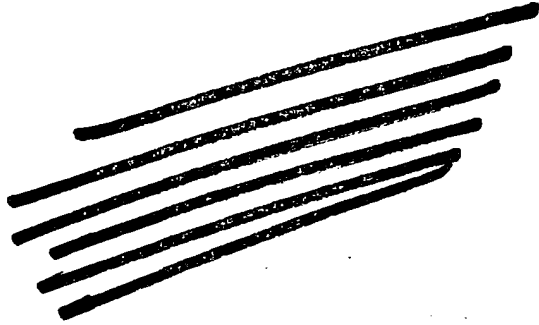
*presumes full development

**parcels sold to and currently owned by third party

***mitigation not required for development of this parcel

Attachment 3

Template "Declaration of Restriction"



Please make your changes using the "Track Changes" function by going to Tool/Track Changes).

DECLARATION OF RESTRICTION

THIS DECLARATION OF RESTRICTION (hereinafter the "Declaration") is made this _____ day of _____, 20____, by _____ [owner of land], _____ [address of record for owner] (hereinafter the "Declarant").

WITNESSETH

WHEREAS, Declarant is the owner of that certain parcel [or subdivision] of land known as _____ [name of parcel and subdivision] located in the Town of _____ [Town], _____ [County], Massachusetts (hereinafter the "Property"), shown on _____ [Title of recordable plan] dated _____ [date and last revision date of plan], prepared by _____ [Surveyor or engineering firm], and recorded in the _____ [County] County District Registry of Deeds at Plan Book _____ as Plan _____ (the "Plan"); and

WHEREAS, the Property contains important habitat, breeding sites, and migration routes for wildlife including the [insert species name] (*scientific name*), which at the time of this recording is listed as [insert status] pursuant to the Massachusetts Endangered Species Act (MESA) (G.L. c. 131A:3 and 321 CMR 10.23); and

WHEREAS, Declarant desires to protect a significant contiguous area of this rare species habitat as an integral part of the development of the Property; and

WHEREAS, the Property is subject to the terms and provisions of MA Endangered Species Act [G.L. c. 131A]; and

WHEREAS, Declarant desires and agrees that the _____ [legally describe portion of land to be protected, eg, "back portions of each of Lots 1-96, inclusive, shown on said Plan as "Open Space"]], which Open Space in total contain approximately _____ [acreage of restriction] acres as shown on said Plan, shall be maintained in perpetuity as habitat and open space, subject to the Prohibited Acts and Uses and Reserved Rights set forth below;

NOW, THEREFORE, Declarant hereby voluntarily declares and imposes **in perpetuity** upon the Open Space the following covenants, conditions and restrictions for the benefit of Declarant, its successors and assigns, the Town of _____ [Town] [hereinafter the "Town"], and the Commonwealth of Massachusetts Division of Fisheries and Wildlife [hereinafter the "Division"], and said Property shall be held, transferred, sold, conveyed, occupied and used subject to the covenants, conditions, and restrictions hereinafter set forth.

1. **Prohibited Acts and Uses.** Subject to the exceptions set forth in Section 2 below, the following acts and uses are prohibited in the Open Space:

- A. Construction or placing of any building, tennis court, landing strip, mobile home, swimming pool, fences, asphalt or concrete pavement, sign, billboard or other advertising display, antenna, tower, or other temporary or permanent structure or facility in, on, above or below said Open Space.

- B. Mining, excavating, dredging or removing soil, loam, peat, gravel, sand, rock or other mineral resource or natural deposit.
- C. Placing, filling, storing or dumping of soil, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, waste or other substance of material whatsoever or the installation of underground storage tanks.
- D. Cutting, removing or otherwise destroying trees, grasses or other vegetation or disturbance of shrubs, ground, forest floor or leaf litter.
- E. The use of motorized vehicles of any kind, except as required by the police, fire department or any other governmental agents in carrying out their lawful duties.
- F. The further subdivision of the Open Space.
- G. Activities substantially detrimental to drainage, flood control, water conservation, erosion control or soil conservation.
- H. Any other use of or activity on the Open Space which would materially impair significant conservation interests thereon unless necessary for the protection of the conservation interest that are the subject of this restrictive covenant.

2. **Reserved Rights.** Notwithstanding any provisions herein to the contrary, Declarant reserves to itself and its successors and assigns the right to:

- A. establish, enforce, waive, alter and amend such additional rules, regulations, covenants, conditions and restrictions governing use of the Open Space as are not otherwise prohibited by this Declaration of Restriction as agreed to in writing by the Division and allowed by applicable federal, state or local law or regulation, and
- B. conduct or permit the following activities in the Open Space if such acts do not materially impair significant conservation interests:
 - 1) Selective cutting or pruning of trees and vegetation to maintain access to and over existing footpaths located thereon and for protection of persons and property from imminent risks of harm or damage to persons and structures.
 - 2) Construct fences or necessary boundary markers on the Open Space upon written consent by the Division, such consent not to be unreasonably withheld.
 - 3) Habitat management activities, including forestry, may be permissible with prior written approval from the Natural Heritage and Endangered Species Program of the Division of Fisheries and Wildlife (the "Division"), its successors and assigns;

3. **Monuments and Signage.** The Declarant and the Declarant's Successors shall maintain in good condition any, bounds, monuments, markers and signs shown on the Plan, demarcating the boundaries of the Open Space, and shall repair and or replace said monuments and signage on an as needed basis.
4. **Term - Binding Effect In Perpetuity.** This Declaration of Restriction and its provisions herein set forth shall run with the Open Space as shown on said Plan **in perpetuity** from the date of recordation in the ____ [County] District Registry of Deeds and shall be binding upon Declarant, Declarant's successors and assigns, and any other party having an ownership interest in said Open Space or claiming to have an interest with respect to said Open Space as tenants, invitees, licenses or otherwise, and all of the respective heirs, successors, grantees, mortgages, assigns, agents, contractors, subcontractors and employees of the foregoing.

This Declaration of Restriction is hereby intended and declared to be in perpetuity and no re-recordation of this Declaration of Restriction under G.L. c. 184, ss. 23-30 or any other law shall ever be necessary in order to maintain the full legal effect and authority hereof and Declarant and its successors and assigns, including but not limited to all subsequent owners of the Open Space, hereby waive all their legal right to and shall forego any action in law or equity of any kind whatsoever attempting to contest the validity of any provision of this Declaration of Restriction and shall not, in any enforcement action, raise the invalidity of any provision of this Declaration of Restriction.

Notwithstanding anything inconsistent or to the contrary set forth above, the Town and the Division are hereby authorized, jointly and severally, to record and file any notices and/or instruments that the Town and/or the Division deem appropriate to assure the legal validity and enforceability in perpetuity of this Declaration of Restriction and the Declarant, on behalf of itself and its successors and assigns, hereby appoints the Town and the Division as its and their attorney-in-fact to jointly or severally execute, acknowledge, deliver and record any such notice or instrument on its and/or their behalf. Without limiting the foregoing, the Declarant and its successors and assigns agree to execute any such notices and instruments upon request of the Town or the Division.

5. **Enforceability.** The Town and the Division, jointly and severally, shall have the authority and right to enforce this Declaration of Restriction and are a benefitted parties.

The Town and the Division, jointly and severally, shall have the right to enter the Open Space, in a reasonable manner and at reasonable times, for the purposes of (i) inspecting the Open Space to determine compliance with this Declaration of Restriction; (ii) enforcing this Declaration of Restriction; and (iii) taking any other action which may be necessary or appropriate.

The Town and the Division, jointly and severally, shall have the right to bring proceedings at law or equity against any party or parties violating or attempting to violate the terms of this Declaration of Restriction to enjoin them from so doing and to

- cause any such violation to be remedied, including but not limited to restoration of the portion of the Open Space adversely affected, after providing written notice to such party or parties and all mortgagees of record if the names and addresses of such parties and mortgagees have been provided in writing to the Town and the Division.
6. **Severability.** If any court or other tribunal of competent jurisdiction determines that any provision of this Declaration of Restriction is invalid or unenforceable, such provision shall be deemed to have been modified automatically to conform to the requirements for validity and enforceability as determined by such court or tribunal. In the event the provision invalidated is of such a nature that it cannot be so modified, the provision shall be deemed deleted from this instrument as though it had never been included herein. In either case, the remaining provisions of this instrument shall remain in full force and effect.
 7. **Non-Waiver.** Any election by the Town and/or the Division as to the manner and timing of its right to enforce this Declaration of Restriction or otherwise exercise its rights hereunder shall not be deemed or construed to be a waiver of such rights.
 8. **Access.** This Declaration of Restriction does not grant to the Town, the Division, the general public, or to any other person or entity any right to enter upon the Property except the right of the Town and the Division to enter the Property at reasonable times and in a reasonable manner for the purpose of inspecting the same to determine compliance herewith and enforcing this Declaration of Restriction as set forth in Section 5 above.
 9. **Incorporation Into Deeds, Mortgages, Leases and Instruments of Transfer.** Declarant and Declarant's successors and assigns, including all subsequent owners of the Open Space or portions thereof, shall incorporate this Declaration of Restriction, in full or by reference, into all deeds, easements, mortgages, leases, licenses, occupancy agreements or any other instrument of transfer by which an interest in and/or a right to use the Open Space or any portion thereof is conveyed. Any such deed, mortgage or other interest purporting to convey any portion of the Open Space without including this Declaration of Restriction in full or by reference shall be deemed and taken to include said Declaration of Restriction in full even though said Declaration of Restriction is not expressly described or referenced therein.
 10. **Recordation/Registration.** Declarant shall record and/or register this Declaration of Restriction with the appropriate Registry of Deeds and/or Land Registration Office upon the later of (i) thirty (30) days of its date of execution or (ii) the conveyance of the first Lot located on the Plan to a *bona fide* purchaser.
 11. **Amendment and Release.** No amendment or release of this Declaration of Restriction shall be effective unless it has been approved in writing by the Division [hereinafter the Division Approval] and said amendment or release and the requisite Division Approval has been recorded with the appropriate Registry of Deeds and/or Land Registration Office.

IN WITNESS WHEREOF, ____ [name of signatory, owner of land], has caused these presents to be signed, acknowledged and delivered in its name and behalf this ____ day of _____, 20__.

By: _____

COMMONWEALTH OF MASSACHUSETTS

_____, ss. _____, 20__

On this day before me, the undersigned notary public, personally appeared(name), proved to me through satisfactory evidence of identification, which was ☐ photographic identification with signature issued by a federal or state governmental agency, ☐ oath or affirmation of a credible witness, ☐ personal knowledge of the undersigned, 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

SEAL

My Commission Expires: _____

Attachment 4

Template "Conservation Restriction"



MA DFW/NHESP MESA Conservation Restriction
MAKE ALL CHANGES USING THE TRACK CHANGES FUNCTION OF MS WORD

Draft: (Enter date of draft and number of pages)

Grantor: (Enter name of grantor)

Grantee: (Enter name of grantee)

Property Address (Enter address of Premises)

Grantor's Title: Book _____ Page _____ in _____ County Registry of Deeds.

CONSERVATION RESTRICTION

I, _____ (Owner of Land), _____ of (Address of Owner, Street, Town/City, County, State) _____, being the sole (or all of the owners), for my successors and assigns holding any interest in the Premises as hereinafter defined, (the "Grantor"), grants to _____ (Name and Address of Grantee) _____, (i.e. Town/City of (Add in Town/City), acting by and through its Conservation Commission) pursuant to Chapter 40 Section 8C or Trustee of Lands, its successors and permitted assigns ("the Grantee"), with quitclaim covenants, for nominal consideration in perpetuity and exclusively for conservation purposes, the following described CONSERVATION RESTRICTION, on the entirety of a parcel of land containing approximately _____ acres, more or less, in the Town/City of _____, County of _____, Commonwealth of Massachusetts, shown on _____ [Title of recordable plan] dated _____ [date and last revision date of plan], prepared by _____ [Surveyor or engineering firm], and recorded in the _____ [County] County District Registry of Deeds at Plan Book _____ as Plan _____ (the "Plan"); being more particularly described in the _____ (Date and Description) _____ Baseline Documentation Report and Survey to be kept on file at the offices of the Grantee and incorporated herein by this reference ("Premises"). The Grantor and the Grantee, their successors and assigns, are bound by and subject to the terms and conditions of this Conservation Restriction.

- I. **PURPOSES:** This Conservation Restriction is defined in and authorized by Sections 31-33 of Chapter 184 of the General Laws and otherwise by law. The purpose of the Conservation Restriction is to assure that the Premises will be retained in perpetuity substantially in its natural, scenic, and vegetated condition as set forth herein and to prevent any use of the Premises that will impair or interfere with the Conservation Values of the Premises. This Conservation Restriction supersedes the Declaration of Restriction recorded on the Premises in the _____ Registry of Deeds at Book _____, Page _____. The conservation of the Premises will yield a significant public benefit for the following reasons:
 - a. **Wildlife & Habitat Protection:** Conservation of the Premises will protect habitat used by a variety of wildlife including, but not limited to, _____ {list rare species, eg, "Blandings Turtle (*Emydoidea blandingii*), and the Spotted Turtle (*Clémmys gutata*)}. Other additional optional purposes include listing other rare species present on or near the Premises, other features on the Premises related to the protection of wildlife generally such as unique habitat features.}
 - b. **Nearby Natural Areas:** {describe context and if area is upland and wetland, eg, "The premises provide upland forest and wetland habitat for native wildlife and plant species and communities, including many species of native plants, lichens, mammals, birds, reptiles,

MA DFW/NHESP MESA Conservation Restriction
MAKE ALL CHANGES USING THE TRACK CHANGES FUNCTION OF MS WORD

amphibians, and invertebrates. The preservation of the forest and wetland resources on the Premises will protect these habitats." List other important features or protected areas.}

- c. Scenic Landscape Preservation: The Premises comprise part of a scenic landscape associated with a natural, undisturbed environment. The open space conservation land protected under this Conservation Restriction is an important public resource. The preservation of the Premises, by prohibiting significant alterations to the natural character thereof, will further protect and enhance the area's scenic and open space attributes and the recreational, human enjoyment, and ecological value of the hundreds of acres of conservation land and open space.
- d. Flood Plain Protection: {as appropriate} The majority of the Premises lies within the 100-year floodplain of the [Add in River] River. The protection of this floodplain will ensure the continued availability of this flood storage during major storm events.
- e. Water Quality Protection: Preserving the natural, undisturbed environment will provide for groundwater recharge and protect wetland resource areas.
- f. Furtherance of Government Policy: Protection of the Premises furthers the Town/City of [Add in Town/City] _____ Date Open Space and Recreation Plan including {cite items from the plan. Note if the land being protected is identified in any federal, state, regional or local environmental initiatives such as BioMap (*BioMap: Preserving the Diversity of Massachusetts in a Changing World*), Natural Heritage (*Comprehensive Wildlife Conservation Strategy* or *Living Waters, Statewide Land Conservation Plan* etc.)}.
- g. Massachusetts Endangered Species Act ("MESA"): This Conservation Restriction is granted pursuant to and in accordance with the requirements set forth in Conservation and Management Permit No. XYZ-123. DFW, date Month____, Year, issued by the Commonwealth of Massachusetts Division of Fisheries and Wildlife acting through the Natural Heritage and Endangered Species Program ("Division") recorded at Book Page No, in the _____ County Registry, and incorporated by reference herein ("CMP").
- h. Baseline Documentation Report (BDRS): Baseline Documentation Report ("BDRS") consists of maps, narratives, survey plans and aerial and ground photographs, which portray the condition of a restricted property at the time of the creation of the BDRS and immediately prior to recording of the Restriction. The purpose of the BDRS is to provide a baseline from which future changes to the property, whether natural or human-caused, can be measured including to objectively and accurately document natural or other uses, physical features, improvements, trails and as they relate to the prohibited and permitted uses of the restricted area.
- i. Other Relevant Purposes: These Conservation Values of the Premises and public benefits of this Conservation Restriction are described in more detail in the Baseline Documentation Report & Survey ("BDRS") to be kept on file at the office of the Grantee and incorporated herein by this reference. Grantor and Grantee agree that this BDRS provides an accurate representation of the condition and the objective information baseline at the time of the granting of this Conservation Restriction for subsequent monitoring of compliance with the terms of this Conservation Restriction as described herein. Notwithstanding, in the event

MA DFW/NHESP MESA Conservation Restriction
MAKE ALL CHANGES USING THE TRACK CHANGES FUNCTION OF MS WORD

that the BDRS is unavailable, or is determined to be inadequate for resolving any issue that may arise after the granting of this Conservation Restriction, other evidence may be used to show the condition of the Premise at either the time of the grant or some subsequent point in time.

NOW, THEREFORE, in consideration of the above and the mutual covenants, terms, conditions, and restrictions contained herein, the Grantor and the Grantee voluntarily agree that the Conservation Restriction described herein is an appropriate means to ensure compliance with the CMP issued pursuant to MESA and achieve the community's open space goals and objectives, all of which thereby represent significant public benefits.

II. DEFINITIONS:

- a. Conservation Values: shall mean, without limiting the generality of the terms, those conservation attributes set forth above in Section 1 and as further described in the BDRS.
- b. Hazardous Material: shall mean any material or substance that, whether by its nature or use, is now or hereafter defined as a pollutant, dangerous substance, toxic substance, hazardous waste, hazardous material, hazardous substance or contaminant under any environmental law, or which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic or otherwise hazardous and which is now or hereafter regulated under any environmental law.
- c. Pervious: shall mean built of materials consisting of unconsolidated minerals such as sand, dirt or gravel, or natural materials such as wood chips or grass.
- d. Structure: (whether or not said term is capitalized) shall mean anything constructed or erected which requires permanent or temporary location on, in, over or under the ground or permanent or temporary attachment to something which is erected or placed on the ground and designed, intended or arranged for the housing, shelter, enclosure and/or structural support of persons, animals or property of any kind, including but not limited to houses, mobile homes, tents, barns, sheds, greenhouses, treehouses, and other buildings of any kind; silos and cribs; swimming pools; playing courts; outdoor riding rings; fences; pads; patios and decks; docks; bridges; roads; driveways and parking areas (whether surfaced with macadam, brick, paving stones, gravel, clay or other material); artificially surfaced walkways; solar panels; satellite dishes and antennae; signs and billboards; storage tanks; windmills and wind turbines; and water, sewer, power, fuel, gas and communication lines, other utility systems and related facilities.
- e. Passive Recreation: activities that are non-consumptive uses of resources and do not require prepared facilities like sports fields and pavilions. Passive recreation activities place minimal stress on the site's resources and are compatible with the Conservation Values. Examples include hunting, hiking, wildlife viewing, observing and photographic nature, picnicking, walking, bird watching, running/jogging, star gazing, and fishing. Passive recreation excludes mountain bikes, use of motorized vehicles, and horse-back riding, unless specified herein.

III. PROHIBITED USES & RESERVED RIGHTS:

MA DFW/NHESP MESA Conservation Restriction
MAKE ALL CHANGES USING THE TRACK CHANGES FUNCTION OF MS WORD

- a. Prohibited Uses: Except as to reserved rights set forth in Section III(b.) below, the Grantor shall not perform or permit others to perform the following acts or uses, which are prohibited, in, on, over or under the Premises:
- i. Constructing, placing, or allowing to remain any Structure on, above, or below the surface of the Premises;
 - ii. Mining, excavating, dredging or removing of soil, loam, peat, gravel, sand, rock or other mineral resource or natural deposit or otherwise making topographical changes to the area;
 - iii. Placing, filling, storing or dumping of soil, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, tree cuttings, waste or Hazardous Material or other substance or material whatsoever, whether or not generated on the Premises, or the installation of underground storage tanks;
 - iv. Removing, cutting, pruning or destroying vegetation (native or non-native), including, but not limited to trees or plants, understory, grasses and ground covers, except as allowed in writing by the Grantee and Division to remove hazards to users
 - v. The application or use on the Premises of fertilizers, fungicides, herbicides or pesticides in any quantity;
 - vi. The planting, release, cultivation, maintenance, or other activity that would result in the introduction of plant or animal species that pose a substantial risk of being invasive or are otherwise detrimental to the native plant and animal community on the Premises, as determined by the Division. A list of plant species deemed to be invasive, as of the time of this grant, is provided in the Massachusetts Prohibited Plant List, which is updated and maintained by the Massachusetts Department of Agricultural Resources;
 - vii. Activities detrimental to drainage, flood control, erosion control, water or soil conservation, archaeological resources or the quality of ground water and wetlands;
 - viii. Any commercial recreation, , other business or industrial use;
 - ix. Animal penning or grazing; holding horses, pets, livestock, or domestic animals within a paddock; horseback riding, causing or permitting any domestic or livestock to be unattended or to roam or be at large on the Property; and the storage or dumping of manure or other animal wastes; any agricultural use;
 - x. The use, parking or storage of motorized vehicles, including, but not limited to, trucks, trail bikes, motorized or non-motorized, all-terrain vehicles, dune buggies, boats, trailers, and snowmobiles, except as necessary by the police, fire fighters or other governmental agents in carrying out their lawful duties; and except for motorized wheelchairs or scooters used by physically challenged parties;
 - xi. The disruption, removal, or destruction of any stone walls or granite fences or posts;

MA DFW/NHESP MESA Conservation Restriction
MAKE ALL CHANGES USING THE TRACK CHANGES FUNCTION OF MS WORD

- xii. Subdivision or conveyance of a part or portion of the Premises alone, or division or subdivision of the Premises (as compared to conveyance of the Premises in its entirety which shall be permitted), and no portion of the Premises may be used towards building or development requirements on this or any other parcel;
 - xiii. No person may damage, disturb or remove any part or portion of the property or any or resource, real, natural, personal, cultural or historic, except through hunting, fishing, or trapping where permitted and carried out in accordance with regulations issued by the Division of Fisheries and Wildlife subject to MGL Ch 130, 101 and 321 CMR, or other written authorization from the Division of Fisheries and Wildlife; and
 - xiv. Any other use of the Premises or activity thereon which is inconsistent or interferes with, or that would materially impair the purposes or Conservation Values of this Conservation Restriction, unless necessary in an emergency for the protection of the Conservation Values that are the subject of this Conservation Restriction.
- b. Reserved Rights in the Premises: The Grantor reserves the right to conduct or permit the following activities provided they do not materially impair the Conservation Values or purposes of this Conservation Restriction or other significant interests:
- i. With prior written permission of the Grantee and Division, after consultation with and consistent with the advice of a professional biologist to ensure such use will not be detrimental to any state-listed species or other wildlife, the erection and maintenance of sight-pervious, non-enclosing, wildlife friendly fences, such as wooden split rail or other open-faced fences, or low hedges of native species;
 - ii. The right to install temporary or permanent boundary monuments; the right to erect and maintain small signs that provide information including identifying the Grantor and Grantee provided that such signage is consistent with the purposes of this Conservation Restriction and does not identify the location or existence of any specific state-listed species on the Premises;
 - iii. The Grantor and its invitees are permitted to conduct non-commercial, passive recreational uses of the Premises, such as nature study, birding, wildlife observation, walking on existing trails, and similar passive recreation activities, provided such uses do not alter the topography, including, but not limited to the landscape or environmental qualities of the Premises;
 - iv. With prior written permission of the Grantee and Division, the right to remove or control hazardous trees, poison ivy, oriental bittersweet, other invasive or exotic species, insect infestations, diseases, and other types of pests by methods, including but not limited to, the use of spot-applied herbicides, fungicides and pesticides in a manner that minimizes damage to surrounding, non-target species and preserves water quality;
 - v. With prior written permission of the Grantee and Division, the right to restore, maintain, enhance or otherwise manage biotic communities or habitats for native or

MA DFW/NHESP MESA Conservation Restriction
MAKE ALL CHANGES USING THE TRACK CHANGES FUNCTION OF MS WORD

rare species that include, but are not limited to, application of herbicide, selective planting of native species, cutting, prescribed burning or removal of native vegetation, forestry, and modification of soils. Where the CMP requires habitat restoration, maintenance or enhancement of rare species habitat, no written permission shall be required from the Grantee. All habitat restoration, maintenance or enhancement of rare species habitat shall be done in accordance with the written permission of the Division, or applicable CMP requirements;

- vi. The marking, clearing, mowing or maintaining of footpaths and woods roads existing and shown on the Plan and described in the BDRS;
- vii. All actions and activities required or authorized by the CMP, as the CMP may be subsequently amended and duly recorded with the _____ [County] County Registry of Deeds with reference to the CMP and this Conservation Restriction; and
- viii. Any work undertaken in conjunction with the reserved rights mentioned above in paragraph I.B. shall seek to minimize disturbance to the Premises. Upon completion of any site work performed in conjunction with paragraph III(b.), any disturbed areas shall be restored substantially to match the conditions with respect to soil material, grade, and vegetated ground cover that existed prior to said work.
- ix. Archaeological investigations and activities, including without limitation surveys, excavation, and artifact retrieval conducted under the direction of a qualified organization or person, following submission of an archaeological field investigation plan and written approval thereof by (a) the Commonwealth and (b) the State Archaeologist of the Massachusetts Historical Commission, and in accordance with Massachusetts 950 CMR 70.00 with approval of the Grantee in consultation with Division; and (c) the Division in accordance with the requirements of MESA.

The exercise of any right reserved by the Grantor under paragraph III(b) shall be in compliance with the then-current Zoning By-Laws of the Town/City/City of (ADD in Town/City/City), and all other applicable federal, state, county and local laws, bylaws, rules and regulations, including, but not limited to Massachusetts Historic Commission regulations and local wetland conservation commission bylaws and regulations. The inclusion of any reserved right in paragraph III(b) requiring a permit from a public agency does not imply that the Grantee or the Division takes any position on whether such permit should be issued.

IV. ADDITIONAL PROVISIONS:

a. NOTICE AND APPROVAL:

Whenever notice to or approval by Grantee or Division is required, Grantor shall notify Grantee or Division, as applicable, in writing not less than 60 days prior to the date Grantor intends to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable, MESA Tracking Number and/or CMP Number, if applicable, and any other material aspect of the proposed activity in sufficient detail to permit the Grantee or Division, as applicable, to make an informed judgment as to its consistency with the purposes of this Conservation Restriction and CMP. Where Grantee's or Division's approval is required, Grantee or Division, as applicable, shall grant or withhold

MA DFW/NHESP MESA Conservation Restriction
MAKE ALL CHANGES USING THE TRACK CHANGES FUNCTION OF MS WORD

approval in writing within 60 days of receipt of Grantor's request. The Grantee or Division may require the submittal of additional information necessary to evaluate the proposed activity. Grantee's or Division's approval, as applicable, 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. *[If this is a jointly held CR, need a Primary Decision Maker provision. Click inside box and hit space bar to delete this comment]*

Failure of Grantee to respond in writing within 60 days shall be deemed to constitute approval by Grantee or Division, as applicable, of the request as submitted, so long as the request sets forth the provisions of this section relating to deemed approval after 60 days in the notice, the requested activity is not prohibited herein, is not in violation of any local, state or federal law, including but not limited to MESA, and the activity will not materially impair the conservation values or purposes of this Conservation Restriction.

b. LEGAL REMEDIES OF THE GRANTEE:

i. Legal and Injunctive Relief.

The rights hereby granted shall include the right to enforce this Conservation Restriction by appropriate legal proceedings and to obtain injunctive and other equitable relief against any violations, including, without limitation, relief requiring restoration of the Premises to their condition prior to the time of the injury complained of (it being agreed that the Grantee will have no adequate remedy at law). The rights hereby granted shall be in addition to, and not in limitation of, any other rights and remedies available to the Grantee for the enforcement of this Conservation Restriction. Grantee agrees to cooperate for a reasonable period of time prior to resorting to legal means in resolving issues concerning violations provided Grantor ceases objectionable actions and Grantee determines there is no ongoing diminution of the conservation values of the Conservation Restriction.

Grantor covenants and agrees to reimburse to Grantee all reasonable costs and expenses (including reasonable counsel fees) incurred in enforcing this Conservation Restriction or in taking reasonable measures to remedy, abate or correct any violation thereof, provided that a violation of this Conservation Restriction is acknowledged by Grantor or determined by a court of competent jurisdiction to have occurred. In the event of a dispute over the boundaries of the Conservation Restriction, Grantor shall pay for a survey and to have the boundaries permanently marked.

The Conservation Restriction shall also be enforceable by the Commonwealth of Massachusetts acting through the Division; and does not limit in any manner the Division's authorities or duties under G.L. c. 131 and 131A et. seq. or the implementing regulations for such statutory provisions.

ii. Non-Waiver.

Enforcement of the terms of this Conservation Restriction shall be at the discretion of Grantee. Any election by the Grantee as to the manner and timing of its right to

MA DFW/N.HESP MESA Conservation Restriction
MAKE ALL CHANGES USING THE TRACK CHANGES FUNCTION OF MS WORD

enforce this Conservation Restriction or otherwise exercise its rights hereunder shall not be deemed or construed to be a waiver of such rights.

iii. 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.

iv. Acts Beyond the Grantor's Control.

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

c. 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 notice of a violation and failure of the Grantor to cure said violation, the right to enter the Premises for the purpose of taking any and all actions with respect to the Premises as may be necessary or appropriate to remedy or abate any violation hereof, including but not limited to the right to perform a survey of boundary lines.

[The Grantor also grants to the public the right to....*If public access is granted add terms of public access here OR delete if public access is not being granted.*]

d. EXTINGUISHMENT:

- i. If circumstances arise in the future such as render the purpose of this Conservation Restriction impossible to accomplish, this restriction can only be terminated or extinguished, whether in whole or in part, by a court of competent jurisdiction under applicable law after review and approval by the Massachusetts Secretary of Energy and Environmental Affairs and the Division. If any change in conditions ever gives rise to extinguishment or other release of the Conservation Restriction under applicable law, then Grantee, on a subsequent sale, exchange, or involuntary conversion of the Premises, shall be entitled to a portion of the proceeds in accordance with paragraph B below, subject, however, to any applicable law which expressly provides for a different disposition of the proceeds and after complying with the terms of any gift, grant, or funding requirements. Grantee shall use its share

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of the proceeds in a manner consistent with the conservation purpose set forth herein.

- ii. Proceeds. Grantor and Grantee agree that the donation of this Conservation Restriction gives rise to a real property right, immediately vested in the Grantee, with a fair market value that is at least equal to the proportionate value that this Conservation bears to the value of the unrestricted property. Such proportionate value of the Grantee's property right shall remain constant. Any proceeds will be distributed only after complying with the terms of any gift, grant, or other funding requirements [*"including" insert relevant information such as the CPA, LAND or PARC grant, Forest Legacy grant, etc., if applicable.*].
- iii. Grantor/Grantee Cooperation Regarding Public Action. Whenever all or any part of the Premises or any interest therein is taken by public authority under power of eminent domain or other act of public authority, then the Grantor and the Grantee shall cooperate in recovering the full value of all direct and consequential damages resulting from such action. All related expenses incurred by the Grantor and the Grantee shall first be paid out of any recovered proceeds, and the remaining proceeds shall be distributed between the Grantor and Grantee in accordance with paragraph V. B – above, after complying with the terms of any law, gift, grant, or funding requirements. If a less than fee interest is taken, the proceeds shall be equitably allocated according to the nature of the interest taken. The Grantee shall use its share of the proceeds like a continuing trust in a manner consistent with the conservation purposes of this grant.

e. ASSIGNABILITY:

- i. 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.
- ii. 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 herself and her successors and assigns, appoint the Grantee their attorney-in-fact to execute, acknowledge and deliver any such instruments on her behalf. Without limiting the foregoing, the Grantor and her successors and assigns agree themselves to execute any such instruments upon request.
- iii. Running of the Benefit. The benefits of this Conservation Restriction shall run to the Grantee, shall be in gross and shall not be assignable by the Grantee, except in the following instances:

As a condition of any assignment, the Grantee shall require that the purpose of this Conservation Restriction continues to be carried out; that the Assignee is not an owner of the fee in the Property, and the Assignee, at the time of the assignment, qualifies under Section 170(h) of the Internal Revenue Code of 1986, as amended, and applicable regulations thereunder, and is a donee eligible to receive this

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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.

f. SUBSEQUENT TRANSFERS:

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

The Grantor shall not be liable for violations occurring after their ownership. Liability for any acts or omissions occurring prior to any transfer and liability for any transfer if in violation of this Conservation Restriction shall survive the transfer. Any new owner shall cooperate in the restoration of the Premises or removal of violations caused by prior owner(s) and may be held responsible for any continuing violations.

g. ESTOPPEL CERTIFICATES:

Upon request by the Grantor, the Grantee shall, within thirty (30) *[60 days for municipalities unless otherwise agreed upon]* 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.

h. NON MERGER:

The parties intend that any future acquisition of the Premises shall not result in a merger of the Conservation Restriction into the fee. The Grantor agrees that it will not grant, and the Grantee agrees that it will not take title, to any part of the Premises without having first assigned this Conservation Restriction to a non-fee owner that is qualified under Section 170(h) of the Internal Revenue Code of 1986, as amended, and applicable regulations thereunder and is eligible to receive this Conservation Restriction under Section 32 of Chapter 184 of the General Laws of Massachusetts in order to ensure that merger does not occur and that this Conservation Restriction continues to be enforceable by a non-fee owner.

i. AMENDMENT:

If circumstances arise under which an amendment to or modification of this Conservation Restriction would be appropriate, Grantor and Grantee may jointly amend this Conservation Restriction; provided that no amendment shall be allowed that will affect the qualification of this Conservation Restriction or the status of Grantee under any applicable laws, including Section 170(h) of the Internal Revenue Code of 1986, as amended, or Sections 31-33 of Chapter 184 of the General laws of Massachusetts. Any amendments to this Conservation Restriction shall occur only in exceptional circumstances. The Grantee will consider amendments only to correct an error or oversight, to clarify an ambiguity, or where there is a net gain in conservation value. All expenses of all parties in considering and/or implementing an amendment shall be borne by the persons or entity seeking the amendment. Any

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amendment shall be consistent with the purposes of this Conservation Restriction and the CMP, shall not affect its perpetual duration, shall be approved in writing by the Secretary of Energy and Environmental Affairs and Division, and if applicable, shall comply with the provisions of Article 97 of the Amendments to the Massachusetts Constitution, and any gifts, grants or funding requirements. Any amendment shall be recorded in the [**enter County**] Registry of Deeds.

j. EFFECTIVE DATE:

This Conservation Restriction shall be effective when the Grantor and the Grantee have executed it, the administrative approvals required by Section 32 of Chapter 184 of the General Laws have been obtained, and it has been recorded in a timely manner in the [**enter County**] Registry of Deeds..

k. 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 be served personally or sent by first class mail, postage pre-paid, addressed as follows:

To Grantor: Type in address here.

To Grantee: Type address here.

To Division: Natural Heritage & Endangered Species Program
 Massachusetts Division of Fisheries & Wildlife
 1 Rabbit Hill Road
 Westborough, MA 01581

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

I. GENERAL PROVISIONS:

- i. Controlling Law. The interpretation and performance of this Conservation Restriction shall be governed by the laws of the Commonwealth of Massachusetts.
- ii. 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.

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

m. MISCELLANEOUS.

- i. 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.

- ii. Homestead

The Grantor attests that there is no residence on or abutting the Premises (including exclusions) that is occupied or intended to be occupied as a principal residence by a spouse, former spouse, or children of the grantor, or a spouse, former spouse, or children of a beneficiary of the trust, if Premises is owned by a trust.

Or

The Grantor hereby releases, agrees to waive, subordinate, and release any and all Massachusetts General Law Chapter 188 Homestead rights it may have in favor of this Conservation Restriction with respect to any portion of the Premises affected by this Conservation Restriction, and hereby agrees to execute, deliver and/or record any and all instruments necessary to effectuate such waiver, subordination and release. In all other respects, the Grantor reserves and retains any and all Homestead rights, subject to this Conservation Restriction, pursuant to M.G.L. c. 188 10(e).

- iii. The Grantor agrees to subordinate all liens, mortgages, construction loans and home equity lines of credit to this Conservation Restriction.
- iv. Attached hereto and incorporated herein by reference are the following:

SIGNATURE PAGES:

Grantor

Grantee Acceptance

Approval by Select Board or City Council

[Enter any other applicable signatures or certifications]

Approval of the Secretary of Energy and Environmental Affairs

Acknowledgement by the MA Division of Fisheries and Wildlife

EXHIBITS:

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Exhibit A: legal description

Exhibit B: sketch plan

[Applies to CPA purchases]Exhibit C: Town/City or City Vote

[Enter additional Exhibits, Addendums, Appendixes, Management Agreements, votes,
grant agreements, exclusions, etc...]

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WITNESS my hand and seal this ____ day of _____, 20____,

[Name of Grantor and Title if Grantor is corporate entity or Trust – make sure to attach corporate authority or trustee certificate if applicable]

COMMONWEALTH OF MASSACHUSETTS

[Enter County], ss:

On this _ day of _____, 20____, before me, the undersigned notary public, personally appeared _____, and proved to me through satisfactory evidence of identification which was _____ to be the person whose name is signed on the proceeding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

Notary Public
My Commission Expires:

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ACCEPTANCE OF GRANT

[If acceptance is by a land trust or other non municipal entity]

This Conservation Restriction from [Enter Grantor's name] was accepted by [Enter Grantee's name] this _____ day of _____, 20____.

By: _____

Its: _____, duly authorized

COMMONWEALTH OF MASSACHUSETTS

[Enter County], ss:

On this _ day of _____, 20____, before me, the undersigned notary public, personally appeared _____, and proved to me through satisfactory evidence of identification which was _____ to be the person whose name is signed on the proceeding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

Notary Public

My Commission Expires:

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ACCEPTANCE OF GRANT BY [TOWN/CITY/CITY OF _____] CONSERVATION
COMMISSION

[Use this Acceptance if Grantee is Conservation Commission]

We, the undersigned, being a majority of the Conservation Commission of the [Insert Municipality], Massachusetts, hereby certify that at a public meeting duly held on [ENTER DATE], the Conservation Commission voted to approve and accept the foregoing Conservation Restriction from [ENTER GRANTOR'S NAME] pursuant to M.G.L. Chapter 184 Section 32 and Chapter 40 Section 8(C).

[MUNICIPALITY] CONSERVATION COMMISSION:

COMMONWEALTH OF MASSACHUSETTS

[Enter County], ss:

On this _ day of _____, 20____, before me, the undersigned notary public, personally appeared _____, and proved to me through satisfactory evidence of identification which was _____ to be the person whose name is signed on the proceeding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

Notary Public
My Commission Expires:

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APPROVAL OF SELECT BOARD

We, the undersigned, being a majority of the Select Board of the Town/City of _____, hereby certify that at a public meeting duly held on _____, 20__, the Select Board voted to approve the foregoing Conservation Restriction from _____ to _____ pursuant to Section 32 of Chapter 184 of the General Laws of Massachusetts.

SELECT BOARD:

COMMONWEALTH OF MASSACHUSETTS

[Enter County], ss:

On this _ day of _____, 20__, before me, the undersigned notary public, personally appeared _____, and proved to me through satisfactory evidence of identification which was _____ to be the person whose name is signed on the proceeding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

Notary Public
My Commission Expires:

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APPROVAL BY SECRETARY OF ENERGY AND ENVIRONMENTAL AFFAIRS
COMMONWEALTH OF MASSACHUSETTS

The undersigned, Secretary of Executive Office of Energy and Environmental Affairs of the Commonwealth of Massachusetts, hereby certifies that the foregoing Conservation Restriction from [Grantor's Name] to [Grantee's Name] has been approved in the public interest pursuant to Massachusetts General Laws, Chapter 184, Section 32.

Dated: _____, 20__

MATTHEW A. BEATON
Secretary of Energy and Environmental Affairs

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss:

On this _ day of _____, 20__, before me, the undersigned notary public, personally appeared MATTHEW A. BEATON, and proved to me through satisfactory evidence of identification which was _____ to be the person whose name is signed on the proceeding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

Notary Public
My Commission Expires:

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ACKNOWLEDGEMENT BY THE MA DIVISION OF FISHERIES AND WILDLIFE

This grant of Conservation Restriction set forth above to the {Name of Grantee; if a Town/City, Town/City of X acting through its Conservation Commission} by {Name of Grantor} is acknowledged this _____ day of _____, 201__. The MA Division of Fisheries and Wildlife (Division) acknowledges the reserved rights and obligations of the Division set forth herein.

Jack Buckley, Director

Date: _____

COMMONWEALTH OF MASSACHUSETTS

On this _____ day of _____, 201__, before me, the undersigned notary public, personally appeared Jack Buckley, proved to me through satisfactory evidence of identification, which was one of the following (check applicable box): ☐ a driver's license; ☐ a valid passport; ☐ personally known to be the person whose name is signed on the preceding or attached document; or ☐ other _____, and acknowledged to me that he/she signed it voluntarily for its stated purpose as Director of the Commonwealth of Massachusetts Division of Fisheries and Wildlife.

Notary Public
My commission expires:

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EXHIBIT A

Legal Description of Premises

[In order to satisfy the requirements of MGL Chapter 184 Section 26(c), any land burdened by a Conservation Restriction MUST be described by metes and bounds OR by reference to a filed plan. A mere deed reference does not satisfy the requirements of the statute

ALL Building Envelopes and Exclusion areas MUST be defined by metes and bounds.]

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EXHIBIT B

Sketch Plan

[This plan/map must show the CR area. The CR area and any exclusions or building envelopes should be clearly labeled.]

Attachment 5

Template "Escrow Agreement"



ESCROW AGREEMENT

This ESCROW AGREEMENT (this "Agreement") is entered into as of this ____ day of _____, ____ by and between the Massachusetts Division of Fisheries and Wildlife, by and through the Natural Heritage and Endangered Species Program, having a principal place of business at 1 Rabbit Hill Road, Westborough, Massachusetts, 01581 ("Division"); _____ {*permit holder/responsible party*} having a principal place of business at _____ {*business address for permit holder/responsible party*}; and _____ {*escrow agent name*}, having a principal place of business at _____ {*escrow agent address*} ("Escrow Agent"). The Division, _____ {*permit holder/responsible party*} and Escrow Agent are referred to herein collectively as the "Parties".

1. Recitals

a. The Conservation and Management Permit No. ____ DFW ("Permit") issued by the Division to _____ {*permit holder*} contains financial assurance provisions in paragraph #__ {*insert paragraph from issued permit*} of the Special Conditions section requiring that _____ {*responsible party*} ensure that funds are available in the sum of _____ (\$) (the "Funds") for the acquisition, restoration and/or management of habitat, and/or conservation research, for the benefit of _____ {*list all species; Common name, scientific name*}, populations in Massachusetts (hereinafter referred to as "Division-approved mitigation activities").

b. The Parties agree the Funds shall be paid by _____ {*responsible party*} to the Escrow Agent and held in an interest bearing escrow account ("Escrow Account") (further defined in 2 below) and expended pursuant to the terms and conditions described below to mitigate for the "take" of State-listed species and their habitat, as described in the Permit in connection with the _____ {*basic description of project*} (the "Project"), located in _____ {*municipality of project*}, Massachusetts.

The Parties enter into this Agreement for the purpose of defining the terms and conditions under which the Funds shall be held and disbursed.

NOW THEREFORE, after consideration of the above recitals, _____ {*responsible party*}, the Division and the Escrow Agent hereby covenant and agree as follows:

2. Escrow Account

a. Prior to the start of work, which is defined as the start of any soil or vegetation disturbance, _____ {*responsible party*} shall deliver to Escrow Agent the Funds, in the amount of \$ _____. {*When the Permit requires that funds be set-aside for the management of on-site habitat, add the following sentence*} In addition, _____ {*responsible party*} shall maintain a minimum balance in the amount of \$ _____ in the Escrow Account to fund the management of on-site habitat.

b. All funds delivered by _____ {*responsible party*} to the Escrow Agent shall be deposited by the Escrow Agent in an interest bearing account or held in obligations by the US Government at one or more banks ("Depository Bank"), said account(s) to be

at all times insured by the Federal Deposit Insurance Corporation and which shall pay interest on the Funds at a reasonable rate. The Escrow Agent shall ensure that all such account(s) are in the name of the _____{*responsible party*} only. In addition, the taxpayer information, including tax identification number, provided by the Escrow Agent to the Depository Bank shall be for the _____{*responsible party*} only. The Depository Bank shall be entitled to charge the Escrow Account for services related to maintenance of the Escrow Account at a rate not exceeding the Bank's standard charges to other customers for similar services.

c. The Escrow Account shall be opened by the Escrow Agent and funds may be withdrawn only by the Escrow Agent and no other person. Disbursements shall be made from the Escrow Account only in accordance with the terms of this Agreement.

d. The Escrow Agent shall maintain a record of all deposits, income, disbursements, and other transactions of the Escrow Account. Upon request, the Escrow Agent shall provide to any of the Parties a written accounting of all transactions. The Parties shall have the right to inspect all books and records of the Escrow Agent relating to the Escrow Account at reasonable times upon request. Escrow Agent's computation of the Funds is correct in the absence of manifest error.

e. The Escrow Agent shall keep possession of the book(s) and bank statements of the Escrow Account until such time as it is terminated in accordance with the terms of this Agreement, or until a successor Escrow Agent is appointed as provided herein.

3. Disbursements

From time to time, the Division may, on or before the date which is 25 years from the date of this Agreement, request in writing that the Escrow Agent to deliver all or portions of the Funds, plus any interest thereon, to be used for Division-approved mitigation activities. Upon receipt of such written request, the Escrow Agent shall deliver the requested portion of the Funds to the Division or any party designated in writing by the Division. Delivery of the Funds in accordance with the terms of this Agreement shall be made by cashier's check, or by federal funds wire transfer, at the option of the payee.

a. The Escrow Agent may make disbursements to the Depository Bank for services rendered in maintaining said account.

b. If the Division-approved mitigation activities are not, in whole or in part, implemented to the satisfaction of the Division, the Division or any party designated in writing by the Division shall have the right to use all or a portion of the Funds to correct or complete any such Division-approved mitigation activities in accordance with the Permit and any other written requirements of the Division.

c. If, at the end of 25 years from the date of this Agreement, any portion of the Funds is still held in escrow under this Agreement, then the Division shall, within six (6) months after such 25 year date, develop a plan for the use of any remaining Funds by the Division or any party designated in writing by the Division for the implementation of Division-approved mitigation activities in accordance with such plan

4. Termination of Agreement

This Escrow Agreement shall terminate, and the Escrow Agent shall be relieved of all liability, after all funds in the Escrow Account have been properly disbursed in accordance with the terms and conditions of this Agreement. When the Escrow Account is terminated, the Escrow Agent shall provide a final accounting of all transactions hereunder to the Parties.

5. Duties and Liabilities of Escrow Agent

a. The sole duty of the Escrow Agent under this Agreement is to receive funds from ____ {*responsible party*} and to hold the funds for disbursement according to Section 3 above. The Escrow Agent shall be under no duty to pass upon the adequacy of any documents, to determine whether any of the Parties are complying with the terms and provisions of this Escrow Agreement, or to determine the identity or authority of any person purporting to be a signatory authorized by ____ {*responsible party*} or the Division.

b. The Escrow Agent may conclusively rely upon, and shall be protected in acting on, a statement, certificate, notice, requisition, order, approval, or other document believed by the Escrow Agent to be genuine and to have been given, signed and presented by a duly authorized agent of ____ {*responsible party*} or the Division. The Escrow Agent shall have no duty or liability to verify any statement, certificate, notice, request, requisition, consent, order, approval or other document, and its sole responsibility shall be to act only as expressly set forth in this Agreement. The Escrow Agent shall not incur liability for following the instructions contemplated by this Agreement or expressly provided for in this Agreement or other written instructions given to the Escrow Agent by the Parties. The Escrow Agent shall be under no obligation to institute or defend any action, suit or proceeding in connection with this Escrow Agreement, unless first indemnified to its satisfaction. The Escrow Agent may consult with counsel of its choice including shareholders, directors, and employees of the Escrow Agent, with respect to any question arising under or in connection with this Agreement, and shall not be liable for any action taken, suffered or omitted in good faith. The Escrow Agent shall be liable solely for its own willful misconduct.

c. The Escrow Agent may refrain from taking any action, other than keeping all property held by it in escrow if the Escrow Agent: (i) is uncertain about its duties or rights under this Escrow Agreement; (ii) receives instructions that, in its opinion, are in conflict with any of the terms and provisions of this Agreement, until it has resolved the conflict to its satisfaction, received a final judgment by a court of competent jurisdiction (if it deems such action necessary or advisable), or it has received instructions executed by both ____ {*responsible party*} and the Division.

d. Escrow Agent is acting, and may continue to act, as legal counsel to ____ {*responsible party*} in connection with the subject transaction, whether or not the Funds are being held by Escrow Agent or have been delivered to a substitute impartial party or a court of competent jurisdiction. *{If the preceding sentence is not applicable, then use the following sentence}* Escrow Agent is not acting as counsel to ____ {*responsible party*} in Escrow Agent's capacity as escrow agent.

e. Each of the Parties admits, acknowledges and represents to each of the

other Parties that it has had the opportunity to consult with and be represented by independent counsel of such party's choice in connection with the negotiation and execution of this Agreement. Each of the Parties further admits, acknowledges and represents to the other Parties that it has not relied on any representation or statement made by the other Parties or by any of their attorneys or representatives with regard to the subject matter, basis or effect of this Agreement.

6. Escrow Agent's Fee

- a. Payments for services provided by Escrow Agent shall not be made from Escrow Funds.

7. Investment Risk

- a. In no event shall the Escrow Agent have any liability as a result of any loss occasioned by the financial difficulty or failure of any institution, including Depository Bank, or which holds United States Treasury Bills, or other securities, or for failure of any banking institution, including Depository Bank, to follow the instructions of the Escrow Agent. Without limiting the generality of the foregoing, in no event shall the Escrow Agent incur any liability as the result of any claim or allegation that the Escrow Agent should have invested the escrow funds in United States Treasury Bills rather than hold same on deposit at the Depository Bank, or vice versa.

8. Notices

- a. All notices permitted or required by this Agreement shall be in writing and shall be deemed duly provided when deposited in the United States mail, postage prepaid, certified or registered mail, return receipt requested, to the other Parties at the addresses set forth in the first paragraph of this Agreement. The Party providing notice may choose alternate methods, including hand delivery, Federal Express, or other recognized overnight courier. Notices provided by hand delivery; Federal Express or other recognized overnight courier shall be deemed duly provided when received at the addresses set forth in the first paragraph of this Agreement.

- b. All notices, certification, authorizations, requests or other communications required, or permitted to be made under this Escrow Agreement shall be delivered as follows:

To the DIVISION:

Assistant Director
Natural Heritage and Endangered Species Program
ATTN: Regulatory Review, CMP ____ (insert Permit Number Here)
Division of Fisheries and Wildlife
1 Rabbit Hill Road, North Drive
Westborough, MA 01581

To _____:

Company, Address, & Contact numbers

To the Escrow Agent:

Company, Address, & Contact numbers

or to such other place or to the attention of such other individual as a Party from time to time may designate by written notice to all other Parties.

9. Resignation, Removal, or Successor Escrow Agent

a. If, for any reason, the Escrow Agent is unable or unwilling to continue to act as Escrow Agent, he/she shall give written notice to the other Parties of his/her inability or unwillingness to continue as Escrow Agent. The parties shall agree upon a successor agent, formally appoint the successor agent, and provide written notification to the Escrow Agent of the subsequent appointment within ten (10) business days. The Escrow Agent shall then, within three (3) business days after receiving notice of subsequent appointment, deliver to the successor escrow agent all cash and other property held by the Escrow Agent under this Escrow Agreement. Upon such delivery, all obligations of the Escrow Agent under this Escrow Agreement shall automatically cease and terminate. If no successor escrow agent is designated within the prescribed ten (10) day period, or if notice of subsequent appointment is not received within such period, then the Escrow Agent may, at its option at any time thereafter, deposit the funds and any documents then being held by it in escrow into any court having appropriate jurisdiction, and upon making such deposit, shall thereupon be relieved of and discharged and released from any and all liability hereunder, including without limitation any liability arising from the Funds, or any portion thereof so deposited.

b. The Escrow Agent may be removed at any time by a written instrument or concurrent instruments signed by the Division and ____ {responsible party} and delivered to the Escrow Agent.

c. If at any time hereafter, the Escrow Agent shall resign, be removed, be dissolved, or otherwise become incapable of acting, or the position of the Escrow Agent shall become vacant for any of the foregoing reasons or for any other reason, the Parties hereto shall promptly appoint a successor Escrow Agent. Upon appointment, such successor Escrow Agent shall execute and deliver to his/her predecessor and to the Parties hereto an instrument in writing accepting such appointment hereunder. Thereupon, without further act, such successor Escrow Agent shall be fully vested with all the rights, immunities, and powers, and shall be subject to all the duties and obligations of his/her predecessor, and the predecessor Escrow Agent shall promptly deliver all books, records, and, other property and monies held by him/her hereunder to such successor Escrow Agent.

10. Interest

a. All interest income accrued on funds in the Escrow Account shall become part of the Escrow Account and shall remain in the Escrow Account. The _____ {*responsible party*} has the responsibility to pay federal and state taxes on the accrued interest on its funds in the Escrow Account, and the Escrow Agent may disburse funds from the Escrow Account for such purpose. Said disbursement may be made by the Escrow Agent only after receiving a written confirmation from _____ {*responsible party*}, with a copy sent to the Division, of all itemized federal and state tax liabilities incurred by interest accrued on the Escrow Account.

11. Miscellaneous

a. This Escrow Agreement shall be binding upon, and shall inure to the benefit of the respective Parties hereto and their successors and assigns.

b. This Agreement shall be governed by and be construed in accordance with the laws of the Commonwealth of Massachusetts.

c. This Agreement shall be interpreted as an instrument under seal.

d. This Agreement may be executed in any number of counterparts, each of which shall constitute an original, and all counterparts shall constitute one Agreement.

e. This Escrow Agreement may not be amended, altered, or modified except by written instrument duly executed by all of the Parties hereto.

f. If the term, condition or provision of this Agreement, or the application thereof to any circumstances or party hereto, ever shall be held to be invalid or unenforceable, then in each such event the remainder of this Agreement or the application of such term, condition, or provision to any other circumstance or party hereto (other than those as to which it shall be invalid or unenforceable) shall not be thereby affected, and each term, condition and provision hereof shall remain valid and enforceable to the fullest extent permitted by law.

g. Each individual and entity executing this Agreement hereby represents and warrants that he, she or it has the capacity set forth on the signature pages hereof with full power and authority to bind the party on whose behalf he, she or it is executing this Agreement to the terms hereof.

12. Effective Date

a. This Agreement shall take effect on the latest date of execution by the DIVISION, _____, or Escrow Agent.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties have caused this Escrow Agreement to be duly executed as of the day and year first written above.

FOR THE MASSACHUSETTS DIVISION
OF FISHERIES AND WILDLIFE:

Name:

Title:

COMMONWEALTH OF MASSACHUSETTS

_____, ss

_____, 20__

On this __ day of __, 20__, before me, the undersigned notary public, personally appeared _____, and proved to me through satisfactory evidence of identification, which were _____, 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:

FOR _____ (proponenet):

Company Name

By: _____

By: _____

Name: _____

Its: _____

STATE OF _____

_____, ss. _____, 20__

On this __ day of __, 20__, before me, the undersigned notary public, personally appeared _____, and proved to me through satisfactory evidence of identification, which were _____, 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:

FOR THE ESCROW AGENT:

Company Name

By: _____
Name:
Title:

COMMONWEALTH OF MASSACHUSETTS

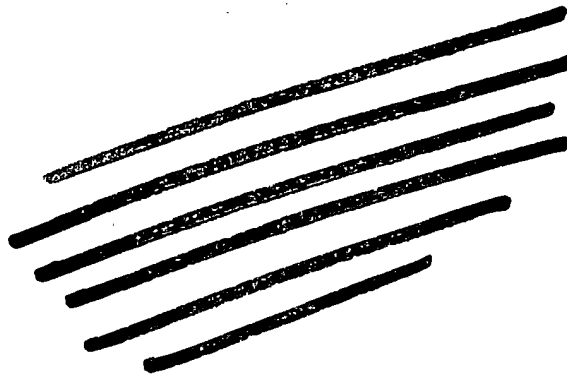
_____, ss. _____, 20__

On this __ day of __, 20__ , before me, the undersigned notary public, personally appeared _____, and proved to me through satisfactory evidence of identification, which were _____, 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:

Attachment 6

"Eastern Box Turtle Protection Plan Template" (dated September 28, 2018; prepared by LEC Environmental Consultants, Inc.)





LEC Environmental Consultants, Inc.
www.lecenvironmental.com
508-746-9491

NHESP #05-17149
Enterprise Park
Marshfield, MA
9-28-18

Eastern Box Turtle Protection Plan Template

This Plan is intended to review the general requirements to protect state-listed Eastern Box Turtles (*Terrapene carolina*) during the build-out/construction of Enterprise Park (the "Project"). As noted in the Conservation and Management Permit Amendment, development of Enterprise Park may proceed in separate stages, with each stage to include one or more individual parcels. A specific Turtle Protection Plan for each stage of the Project shall be submitted to NHESP for review and written approval prior to the start of Work on any stage of the Project.

Temporary Turtle Barriers

- 1) Prior to the commencement of any vegetative clearing activity on any stage of the Project, temporary turtle barriers, comprised of entrenched silt fencing, shall be installed around the proposed Limit of Work as reviewed and approved by NHESP.
- 2) Installation of the temporary turtle barriers must be conducted so as to minimize vegetation disturbance. It is not appropriate to clear large access paths prior to sweeps for turtle. No clearing may occur outside the Limit of Work approved by NHESP.
- 3) The bottom of the silt fencing must be carefully buried in a 4-6 inch deep trench, preferably by a ditchwitch. The trench and silt fencing must be backfilled and compacted on both sides. If it is not possible to dig a trench due to rocks or roots, then the bottom of the barrier must be affixed to the surface and appropriated weighted down.
- 4) The silt fencing must be composed of at least 2½ feet of vertical barrier above ground. The face of the material must be relatively smooth. Once installed, the barrier shall be taut between the stakes. Slumps or loose materials will undermine the effectiveness of the barrier. No backer material shall be utilized.
- 5) The location and design of individual construction entrances ("Turtle Gate"), to be approved by NHESP, shall be detailed within the individual Turtle Protection Plans. Turtle Gates are intended to only be large enough for vehicle passage into/out of the construction footprint. The Turtle Gate may be composed of an extra length of silt fencing or movable plywood board structure as approved by NHESP. The Turtle Gate must be closed each night between April 1st and October 31st (of any year) and the bottom of the Turtle Gate shall be flush with the ground. If an extra length of silt fencing is utilized, the fencing shall be weighted down with a solid wood post, sand bags, or similar in order to prevent turtles from entering the site during non-work hours.
- 6) If additional erosion control barriers (e.g., straw bales, waddles, etc.) are to be utilized with silt fencing, they shall be installed on the work-side of the silt fence to avoid turtles using these to potentially breach the barrier.



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Enterprise Park
Marshfield, MA
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- 7) Silt fencing should be installed immediately prior to the required searches described below.

Pre-Construction Turtle Survey

- 8) Pre-construction turtle surveys shall be completed by a NHESP-approved wildlife biologist(s) experienced with handling and surveying for Eastern Box Turtles.
- 9) The NHESP-approved wildlife biologist(s) shall obtain a Scientific Collection Permit and/or NHESP written authorization prior to conducting the turtle survey.
- 10) The NHESP-approved wildlife biologist(s) shall inspect the barriers and facilitate any repairs/alterations necessary to ensure the integrity of the barrier prior to commencing the surveying effort.
- 11) Turtle surveys conducted by the NHESP-approved wildlife biologist(s) must take place during appropriate weather conditions between May 1st and October 15th (unless otherwise approved by NHESP) to equal 4 hours of survey effort for each acre of forested upland to be surveyed and 2 hours of survey for each acre of any previously cleared lots, unless otherwise approved in writing. Specific surveying efforts for each stage of the Project shall be subject to NHESP's review and approval of the individual Turtle Protection Plans based on site conditions.

No pre-construction turtle sweeps shall be required on any previously cleared lots if work activities commence after barriers are installed around the NHESP-approved Limit of Work between November 1st and March 31st (of any year).

- 12) Any state-listed vertebrate species encountered during these searches shall be released in appropriate habitat near, but outside of, the construction footprint as detailed within the individual Turtle Protection Plans. All state-listed species encountered shall be reported to the NHESP through the VPRS System within 10 days of the observation.
- 13) Following completion of searches by the NHESP-approved wildlife biologist(s), a summary report shall be submitted to the NHESP indicating the name(s) of the searcher(s), date(s) of the pre-work search, the number of hours searched (per date), presence or absence of turtles, information on any turtles found, weather conditions, and condition of all turtle barriers. The report shall also be submitted through the VPRS System and NHESP shall be notified via email of the report submission.

Contractor Education

- 14) Prior to the start of work, a NHESP-approved wildlife biologist(s) shall conduct separate training sessions to educate contractors on the likely presence of Eastern Box Turtles within the vicinity of the work areas for each stage of the Project. Reference materials shall be



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distributed to describe proper identification of Eastern Box Turtles and appropriate protocols should a turtle be encountered within the construction footprint.

Routine Turtle Barrier Protection

- 15) *During the Turtle Active Season (April 1st through October 31st)*—Once per week, a person familiar with barrier maintenance and installation shall inspect the barrier and facilitate any repairs or alterations for each stage of the Project. Barriers shall remain vertical and taut between stakes and any holes along the bottom repaired immediately.
- 16) *Outside the Turtle Active Season (November 1st through March 31st)*—During late March of each year if exterior work continues over the winter months for each stage of the Project, the NHESP-approved wildlife biologist shall conduct an early season inspection of the barrier and facilitate any repairs or alteration necessary for proper barrier function. A summary report with photographs shall be submitted to NHESP prior to April 15th of each year for each stage of the Project.
- 17) Barriers shall be removed from each stage of the Project once work is complete and the construction footprint is stabilized by vegetation.

Attachment D
Drainage Analysis

HANCOCK ASSOCIATES

Surveyors | Engineers | Scientists

April 29, 2022

Mr. Edward L. Pesce, PE, LEED AP
Pesce Engineering & Associates, Inc
43 West Porter Lane
Dennis, MA 02670

RE: Comprehensive Permit Application – Mill Creek Marshfield
Commerce Way, Marshfield
Stormwater Capacity Narrative

Dear Mr. Pesce:

In response to Mr. Pat Brennan's Comprehensive Permit review letter dated April 15, 2022, we have prepared the following summary of our drainage design.

The record drainage study for the Enterprise Park Subdivision dated December 8, 2003 (prepared by Stenbeck & Taylor, Inc.) depicts the subject parcel (Lot 6r) as the furthest point east of the watershed contributing to the detention pond constructed within Drainage Lot A. Lot 6r is shown within the report discharging to a 30-inch drainage pipe (Reach 9) at 1% slope within Commerce Way.

The table below shows stormwater rates for various storm intervals as noted within the 2003 Stenbeck & Taylor Drainage Report. As noted below, the stormwater rate and volume, post construction is substantially less than the design flow noted within the record drainage report. This can be attributed to the overall greater open space depicted on the permit plans than the allowed under Zoning and proposed groundwater recharge.

| Storm Event | S&T 2003 Drainage Study | | Mill Creek Marshfield | | Delta | Percent Decrease |
|-----------------|-------------------------------|------|--------------------------|------|-------|---------------------|
| 2 Year Rate | 11.6 | CFS | 5.6 | CFS | 6.0 | 52% |
| 10 Year Rate | 20.3 | CFS | 13.0 | CFS | 7.4 | 36% |
| 25 Year Rate | 26.7 | CFS | 17.1 | CFS | 9.6 | 36% |
| 100 Year Rate | 36.8 | CFS | 22.6 | CFS | 14.2 | 39% |
| | | | | | | |
| 2 Year Volume | 0.9 | A.F. | 0.4 | A.F. | 0.5 | 56% |
| 10 Year Volume | 1.5 | A.F. | 1.0 | A.F. | 0.5 | 30% |
| 25 Year Volume | 1.9 | A.F. | 1.6 | A.F. | 0.3 | 18% |
| 100 Year Volume | 2.7 | A.F. | 2.6 | A.F. | 0.1 | 4% |

Overall stormwater management for the site includes catch basins with deeps sumps and oil trap hoods. Runoff from buildings will be collected in gutters, downspouts, and interior roof drains and then be recharged into the ground on the site. Distribution piping from the roof water collection system will be perforated to further promote additional groundwater recharge and a reduction in runoff rates.

We have been advised that run-off from the Town soccer fields off Rockwood Road will be mitigated through the construction of a separate stormwater basin capable of storing the 100-year storm event and does not impact the capacity of the existing basin with Drainage Lot A.

Given the above, please do not hesitate to contact me with any questions or comments.

Best regards,

A handwritten signature in black ink, reading "Anthony Donato". The signature is written in a cursive, flowing style.

Anthony Donato, PE, LEED AP
Senior Project manager/Boston Regional Office Manager