

Town and County of Nantucket Select Board • County Commissioners

Jason Bridges, Chair
Matt Fee
Kristie L. Ferrantella
Dawn E. Hill Holdgate
Melissa Murphy



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C. Elizabeth Gibson
Town & County Manager

AGENDA FOR THE MEETING OF THE SELECT BOARD SEPTEMBER 8, 2021 - 5:30 PM REMOTE PARTICIPATION VIA ZOOM WEBINAR NANTUCKET, MASSACHUSETTS

YOU TUBE LINK:

<https://youtu.be/yA7YJXGjyr0>

ZOOM WEBINAR REGISTRATION LINK TO VIRTUALLY ATTEND MEETING:

https://us06web.zoom.us/webinar/register/WN_D-cX_dFITfWB0ugmvlIUeg

I. CALL TO ORDER

II. SELECT BOARD ACCEPTANCE OF AGENDA

III. ANNOUNCEMENTS

1. The Select Board Meeting is Being Audio/Video Recorded.
2. Recognition of Retiring Assistant Health Director Artell Crowley with 30 Years of Service to the Town of Nantucket.
3. Nantucket Cultural District Received Five-year Designation from Massachusetts Cultural Council.
4. COVID Vaccine Clinics: 1st Way School Administration Site, Thursdays from 4:30 to 6:30 PM and Sundays from 12:00 to 2:00 PM. See <https://www.nantucket-ma.gov/2028/COVID-Vaccine> for Full Schedule.
5. Applicant Introduction/Review of Applications for Appointment to Vacant Roads and Right of Way Committee Seat Scheduled for Wednesday, September 15, 2021, Pursuant to Select Board Committee Appointment Policy.
6. 2021 Commissions/Committees Vacancies: Agricultural Commission and Cannabis Advisory Committee.
7. Fall Road Related Projects Update.
8. Select Board Announcements/Comments.

IV. FOLLOW-UP ON COMMENTS FROM PRIOR SELECT BOARD MEETINGS

V. PUBLIC COMMENT*

VI. COVID-19 UPDATE

1. Public Health Department Update.

VII. NEW BUSINESS*

VIII. APPROVAL OF MINUTES, WARRANTS AND PENDING CONTRACTS

1. Approval of Minutes of August 18, 2021 at 5:30 PM; August 19, 2021 at 1:00 PM.
2. Approval of Payroll Warrants for August 22, 2021; September 5, 2021.
3. Approval of Treasury Warrants for August 25, 2021; September 1, 2021; September 8, 2021.
4. Approval of Pending Contracts for September 8, 2021 - as Set Forth on the Spreadsheet Identified as Exhibit 1, Which Exhibit is Incorporated Herein by Reference.

IX. CONSENT ITEMS

1. Gift Acceptance: Fire Department; Planning and Land Use Services.

X. CITIZEN/DEPARTMENTAL REQUESTS

1. Nantucket Preservation Trust: Request for Approval of Historic Preservation Restrictions to be Held by Nantucket Preservation Trust for:
 - a) Nantucket Island School of Design and the Arts (NISDA), 23-25 Wauwinet Road.
 - b) 79 Orange LLC, 79 Orange Street.
2. Nantucket Land Council: Request for Re-execution of January 8, 2020 Select Board Approval and Execution of Conservation Restriction to be Held by Nantucket Land Council, Inc. for Portion of 16 Medouie Creek Road.

XI. PUBLIC HEARINGS

1. Public Hearing to Consider the Revocation of Private Shellfish Aquaculture Licenses Held by Theodore Lambrecht of 10 Trotters Lane, Known as Licenses #12 and #12B, Head of the Harbor, Consisting of 4 Acres Each.

XII. TOWN MANAGER'S REPORT

1. FY 2021 Fourth Quarter/End of Year Budget Reports: Airport Enterprise Fund (Tabled from August 18, 2021).

XIII. SELECT BOARD'S REPORTS/COMMENT

1. Preliminary Discussion Regarding Potential Select Board-sponsored Articles for May 2, 2022 Annual Town Meeting.
2. Committee Reports.

XIV. ADJOURNMENT

****Identified on Agenda Protocol Sheet***

SELECT BOARD AGENDA PROTOCOL:

Roberts Rules: The Select Board follows Roberts Rules of Order to govern its meetings as per the Town Code Charter.

Public Comment: Public Comment is to bring matters of public interest to the attention of the Board. The Board welcomes concise statements on matters that are within the purview of the Select Board. At the Board's discretion, matters raised under Public Comment may be directed to Town Administration or may be placed on a future agenda, allowing all viewpoints to be represented before the Board takes action, if any. Except in emergencies, the Board will not normally take any other action on Public Comment in its sole discretion.

To facilitate that any individual who wishes to provide Public Comment has the opportunity and to ensure the ability of the Board to conduct its business in an orderly fashion, the following rules and procedures are adopted consistent with state and federal free speech laws:

- The agenda for regular Select Board meetings will include a Public Comment period at the beginning of the meeting unless there is more urgent business for the Board to take up first. This time is reserved for speakers to address the Board on matters that are not related to any other Agenda item. If a speaker wishes to address the Board on a matter that is related to another Agenda item, the Chair will accept public comment when that Agenda item is reached during the meeting.
- All speakers are encouraged to present their remarks in a respectful manner.
- All remarks will be addressed through the Chair of the meeting.
- The Chair of the meeting may not interrupt speakers who have been recognized to speak, except that the Chair reserves the right to terminate speech which is not constitutionally protected because it constitutes true threats, incitement to imminent lawless conduct, comments that were found by a court of law to be defamatory, and/or sexually explicit comments made to appeal to prurient interests. Verbal comments may also be curtailed if they exceed three (3) minutes and to the extent they exceed the scope of the Board's authority.

Disclaimer: Public Comment is not a time for debate or response to comments by the Board. Comments made during the Public Comment period do not reflect the views or positions of the Board. Because of constitutional free speech principles, the Board does not have authority to prevent all speech that may be upsetting and/or offensive made during the Public Comment period.

New Business: For topics not reasonably anticipated by the Chair 48 hours in advance of the meeting may be brought up for discussion in accordance with the Open Meeting Law.

Public Participation: The Board welcomes valuable input from the public at appropriate times during the meeting with recognition from the Chair at his/her sole discretion. For appropriate agenda items, the Chair will introduce the item and take public input. Individual Board Members may have questions on the clarity of the information presented. The Board will hear any staff input and then deliberate on a course of action.

Select Board Report and Comment: Individual Board Members may have matters to bring to the attention of the Board during a meeting. If the matter contemplates action by the Board, Board Members will consult with the Chair and/or Town Manager in advance and provide any needed information by the Thursday before the meeting and/or schedule the matter for a future Board meeting. Otherwise, except in emergencies, the Board will not normally take action on Select Board Comment.

Approved on February 17, 2021

September 15, 2021 –Committee Appointments for Vacancies:

Roads and Right of Way Committee

1 Seat Available, 4 Applicants

1 Seats Term Ends 2024

Current Committee Members:

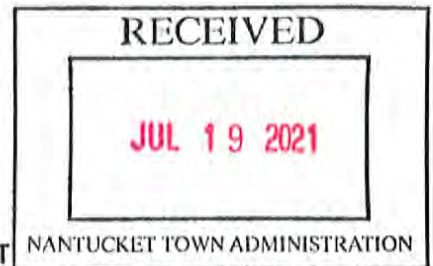
Allen Reinhard	2022
Bill Grieder	2022
Rick Atherton	2022
Phil Smith	2023
Lee W. Saperstein	2023
Nathaniel Lowell	2023
Edward Gillum	2024
Nelson Eldridge	2024
VACANT	2024

Applicants:

David Wunderlich – new applicant
Campbell Sutton – new applicant
Bruce L. Watts – new applicant
Rob Ranney – new applicant



TOWN OF NANTUCKET
COMMITTEE INTEREST FORM/NEW APPLICANT
For Appointment by the Select Board



Please return this form to the Town Administration offices by the advertised due date.
Please call for date of the Public Hearing for applications review or refer to the Public Notice.

Name: David Wunderlich Home Phone: N/A
Mailing Address: 4405 Leland St, Chevy Chase, MD 20815
Address: 46 Fair St, Nantucket, MA Alternate Phone: 301-758-4058
Email Address: DW@DavidWunderlich.com Date Submitted: July 19, 2021
REQUESTING APPOINTMENT TO: Roads & Right of Way Committee

Reasons for Committee Interest

- Have you ever attended a meeting of the committee/board/commission? No
- Why are you interested in this committee/board/commission?
- Are you prepared to commit to the meeting schedule of the committee/board/commission?

I am constantly challenged w/ ideas for improving access and efficiency & safety w regard to people moving around on island. I have a deep love of Nantucket & want to contribute to bettering it. I am a summer resident & visit frequently. I can participate in all meetings if on Zoom.

Relevant Experience

- What experience, skills or insight would you bring to the committee/board/commission? I
- What would you hope to accomplish on the committee/board/commission?

No formal training other than some classes on urban planning in college, but I am a pedestrian, bicyclist, motorist & parent and keenly aware of the challenges & opportunities we face w/ roads & rights of way. I hope to contribute to a safer, more beautiful & efficient & accessible transportation network on Nantucket.

Potential Conflicts of Interest

- Please list any committees appointed by the Select Board, local agencies or non-profit organizations of which you or a member of your immediate family are current members. NONE
- Are you or any member of your family employed by, or receive any financial consideration from, the Town of Nantucket? No

From: notifications@typeform.com
To: [Erika Mooney](#)
Subject: Typeform: New response for Town of Nantucket Volunteer Talent Bank
Date: Wednesday, June 30, 2021 9:03:51 AM

Your typeform Town of Nantucket Volunteer Talent Bank has a new response:

- **First and last name:**

David Wunderlich

- **Email:**

dw@davidwunderlich.com

- **Occupation / Title (Registered Nurse, Retired Engineer, etc.):**

Salesman

- **Education (i.e. Bachelors Degree, Certifications, etc.):**

Bachelor's Degree, Economics Univ of Florida

- **Are you seeking a:**

Alternate position

- **Committees of Interest:**

Roads and Right of Way Committee, Tree Advisory Committee, Conservation Commission

- **If you are not appointed to this Board/Committee, please list in order of preference, what other Board/Committees you are willing to be considered for:**

Roads and Right of Way committee

- **How long have you lived on Nantucket?**

two years, not a year round resident

- **Are you registered to vote on Nantucket?**

No

- **How did you hear about the Board/Committee?**

Daybreak Nantucket

- **Why are you seeking an appointment?**

I constantly wish to improve accessibility for pedestrians, bikers and yearn for a safer, sustainable and more liveable Nantucket

- **What is your experience or knowledge regarding the duties of this Board/Committee?**

Urban planning courses in college, little else, but a constant keen eye, awareness and curiosity for improvement

- **Please list any education, experience, professional achievement, previous occupation, skills, or special interests you may have that will assist you with this**

Board/Committee:

None.

- **How many times in the last year have you attended or watched a meeting of the Board/Committee to which you would like to be appointed?**

none

- **Would there be a possible conflict of interest if you were appointed to this Board/Committee?**

No

- **Have you ever had an application before the Board/Committee to which you are requesting an appointment?**

No

- **Please list all other Board/Committee's on which you have served in other towns:**
Board President, National Chamber Ensemble, Arlington, VA. 7 yrs

- **New Committee - Not Listed Above:**

none

Log in to view or download your responses at
<https://admin.typeform.com/form/TFsmVsMW/results>

Typeform sent you this email on behalf of a typeform creator. We aren't responsible for its content. If you suspect abuse, like suspicious links, please report it [here](#).

This email was scanned by Bitdefender



**TOWN OF NANTUCKET
COMMITTEE INTEREST FORM/NEW APPLICANT**

For Appointment by the Select Board

*Please return this form to the Town Administration offices by the advertised due date.
Please call for date of the Public Hearing for applications review or refer to the Public Notice.*

Name: Campbell Sutton

Home Phone: 508-228-3013

Mailing Address: 15 Appleton Road

Alternate Phone: _____

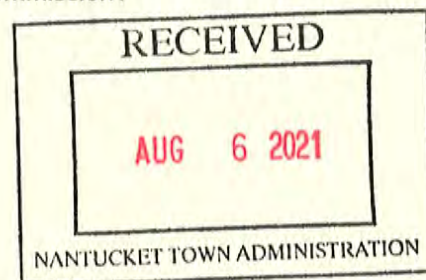
Email Address: coastpaper@gmail.com **Date Submitted:** August 6th 2021

REQUESTING APPOINTMENT TO: Roads & Rights of Way Committee

Reasons for Committee Interest

- Have you ever attended a meeting of the committee/board/commission?
- Why are you interested in this committee/board/commission?
- Are you prepared to commit to the meeting schedule of the committee/board/commission?

Please see attached



Relevant Experience

- What experience, skills or insight would you bring to the committee/board/commission?
- What would you hope to accomplish on the committee/board/commission?

Please see attached

Potential Conflicts of Interest

- Please list any committees appointed by the Select Board, local agencies or non-profit organizations of which you or a member of your immediate family are current members.

Please see attached

- Are you or any member of your family employed by, or receive any financial consideration from, the Town of Nantucket? *No*

Requesting appointment to the Roads and Rights of Way Committee.

While I have only attended the July monthly meeting, I have had interest in this committee for some time as I truly value the public ways and find its increasingly important to protect their existence, maintain accessibility for all ages and abilities, and expand them where and when possible.

If appointed to this Committee, I would make the time to attend and participate in meetings. In current and past committee appointments I've been involved with, I have a strong record of attendance.

Other committee/board appointments :

Alternate on the Planning Board (2022)

Bicycle and Pedestrian Advisory (2022)



TOWN OF NANTUCKET
COMMITTEE INTEREST FORM/NEW APPLICANT
For Appointment by the Select Board

*Please return this form to the Town Administration offices by the advertised due date.
Please call for date of the Public Hearing for applications review or refer to the Public Notice.*

Name: BRUCE L. WATTS

Home Phone: 508-325-3647

Mailing Address: 4 ALTHEAS LN, NANTUCKET

Alternate Phone: 508-901-1429

Email Address: ACKNPZ@YAHOO.COM

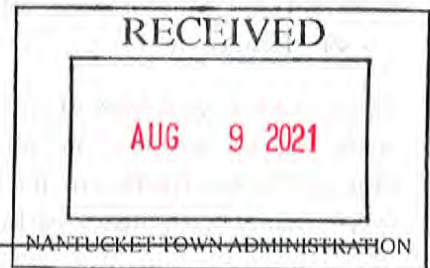
Date Submitted: 8/9/2021

REQUESTING APPOINTMENT TO: ROADS & RIGHTS OF WAY COMMITTEE

Reasons for Committee Interest

- Have you ever attended a meeting of the committee/board/commission?
- Why are you interested in this committee/board/commission?
- Are you prepared to commit to the meeting schedule of the committee/board/commission?

OVER →



Relevant Experience

- What experience, skills or insight would you bring to the committee/board/commission?
- What would you hope to accomplish on the committee/board/commission?

OVER →

Potential Conflicts of Interest

- Please list any committees appointed by the Select Board, local agencies or non-profit organizations of which you or a member of your immediate family are current members.
- Are you or any member of your family employed by, or receive any financial consideration from, the Town of Nantucket?

OVER →

ROADS & RIGHTS OF WAY COMMITTEE

MEMBERSHIP APPOINTMENT, 2021-2024

REASON FOR COMMITTEE INTEREST, RELEVANT EXPERIENCE, POTENTIAL CONFLICTS OF INTEREST:

I have not attended any of the Committee's meetings, but the Mission of the Committee is near and dear to my heart, as a Native Natucketer and former employee & Selectman. If accepted on the Committee, I can review previous Minutes via the Town website.

I am interested in ensuring public accesses to the various areas of the island as were established by our predecessors, & in determining how to protect same in perpetuity. Public accessibility on our island is a precious commodity, especially as land is purchased & developed, & if someone is not keeping track of these precious ways, they can continue to be lost to us forever. As a Native who grew up here, & from my years as Fire Chief & Selectmen I have a good basic knowledge of the locations of many ways which exist & need protecting. I also have the ability to communicate & negotiate effectively with property owners who may have concerns from their own points of view.

I am available to participate in Committee meetings in person during the summer months, & when I am in Florida during the winters, I can participate remotely via conference call, "Zoom", or other electronic meeting formats.

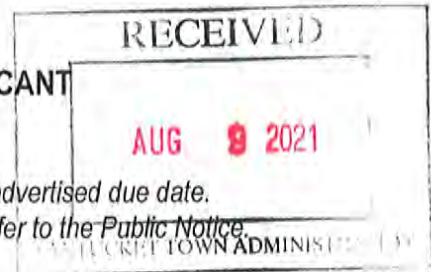
Neither I nor any member of my immediate family are currently serving on or employed by any local agencies or non-profits. However, my wife, Wendy & I are currently weekly volunteers as Shorebird Monitors for the Trustees on the Coskata-Coatue Wildlife Refuge. As a Town Retiree, the Town provides supplemental health insurance to both my wife and me.

Thank you for your consideration.

Bruce L. Watts



TOWN OF NANTUCKET
COMMITTEE INTEREST FORM/NEW APPLICANT
For Appointment by the Select Board



*Please return this form to the Town Administration offices by the advertised due date.
Please call for date of the Public Hearing for applications review or refer to the Public Notice.*

Name: Rob Ranney **Home Phone:** 508-813-5657
Mailing Address: PO Box 851
Nantucket, MA 02554 **Alternate Phone:** _____
Email Address: rranney@nantucket-ma.gov **Date Submitted:** 8-9-2021

REQUESTING APPOINTMENT TO: Roads and Right of Way Committee

Reasons for Committee Interest

- Have you ever attended a meeting of the committee/board/commission?
 - Why are you interested in this committee/board/commission?
 - Are you prepared to commit to the meeting schedule of the committee/board/commission?
- I have not attended a meeting of this committee. I am interested in this committee because it involves issues that I directly handle on a day-to-day basis as the Town Assessor. I am prepared to commit to the meeting schedule.

Relevant Experience

- What experience, skills or insight would you bring to the committee/board/commission?
 - What would you hope to accomplish on the committee/board/commission?
- As Town Assessor, and a 25+ year professional in island real estate, as well as having lived on island since 1977, I think I bring a solid insight to the discussion of roads and right of ways on Nantucket. I would hope to contribute to the committee in meeting its mission.

Potential Conflicts of Interest

- Please list any committees appointed by the Select Board, local agencies or non-profit organizations of which you or a member of your immediate family are current members.
I am appointed by the Select Board as Nantucket's representative to the Steamship Authority.
- Are you or any member of your family employed by, or receive any financial consideration from, the Town of Nantucket? I am employed by the Town of Nantucket as the Town Assessor. Also, my sister is the Town Manager.

NANTUCKET SELECT BOARD

Policy Statement and Procedures for Appointments to Committees, Commissions, Boards Adopted: May 19, 2021

BASIC GOAL

To encourage active citizen participation and involvement in local government affairs by encouraging local residents with expertise, skills, interest, and energy to seek appointment to the Town's Committees, Boards and Commissions. And, to expand the Town's outreach to its citizens to ensure that we engage as many diverse perspectives as possible to build and encourage awareness, understanding and appreciation through a lens of diversity, equity and inclusion.

POLICIES IN SUPPORT OF THE BASIC GOAL

- A. The Town will maintain a recruiting system, known as the Volunteer Talent Bank (Talent Bank), to find and appoint interested local residents who are best qualified by education, training and experience to contribute effectively to the work of the committee, commission or board. To the extent practical, the Select Board shall announce its intention to meet candidates for appointment and allow them to introduce themselves and review their applications no less than two weeks in advance of appointments.
- B. When an announcement is made by the Board regarding any vacancies, the Board will require that applicants file a Committee Appointment application. Following a public meeting with the applicant(s) at which the Board may ask questions, and/or the applicant may ask questions, a candidate shall be selected in accordance with the following procedure:

RECOMMENDED VOTING PROCEDURES FOR ANNUAL APPOINTMENTS

- 1. The Board reviews a list of openings for annual appointments with a committee appointment timeline in early April.
- 2. In mid-April, members of committees, commissions, boards whose terms are expiring are notified and asked if they would like to apply for reappointment. Incumbent Committee Interest Forms are mailed to all of these members and they are asked to respond in writing to indicate if they request re-appointment, or not. Incumbents need to meet the same deadlines as listed on the committee appointment timeline.
- 3. Annual committee openings are advertised in the local newspaper for four weeks, as well as on the Town website. Additionally, the openings are announced at the Board's weekly meetings starting in mid-April through the end of May.
- 4. Applications will be accepted only by the deadlines outlined in the annual Committee Appointments Timeline for all committees, commission and boards.

5. The Select Board holds two meetings to allow applicants to address the Board and review their applications.
6. Committee appointments are made at the last Select Board meeting of June, which date shall be at least one week after the names and applications of all applicants have been made public.
 - a. At this meeting, the Select Board may appoint, by majority vote, a candidate to fill any seat. Or, the Select Board, at its discretion, may elect to use a paper ballot voting procedure, or vote by e-mail if the Select Board meeting is held virtually.
 - b. The Chair shall ask Board members to submit their written choices for appointment (or to e-mail their choices for appointment to Town Administration in real time if meeting virtually). Each Board member writes their own name on a slip of paper, and then writes down their vote for the applicant(s) and passes their paper ballot directly to the Chair without other members viewing the ballot.
 - c. The Chair reads the paper ballot votes and notes which Board member cast the votes. If meeting virtually, Town Administration staff will read the results into the record, and after announcing how each Board member votes, staff will ask that Board members verbally confirm their votes.
 - d. The candidate(s) with the majority of votes will be appointed.
 - e. Any committee seats not filled will continue to be posted on the Town website and routinely advertised as vacant.

At its discretion, the Select Board may appoint a candidate to any Commission, Committee or Board even if the candidate is not present for the meeting.

RECOMMENDED VOTING PROCEDURES FOR VACANCIES THROUGHOUT THE YEAR

The Board's intent to fill vacancies will be noted on its regular meeting agenda for at least two weeks and applications of prospective candidates will be included in the Board's agenda packet to allow the Board and the public to review the prospective candidates' credentials. The vacancy will also be advertised in the Inquirer & Mirror for a minimum of two weeks as well as on the Town's website. Applications will be accepted only by a certain deadline for all committees, commission and boards.

1. Immediately following a meeting with candidates for appointment, the Select Board may appoint, by majority vote, a candidate to fill any vacancy. Or, the Select Board, at its discretion, may elect to use a paper ballot voting procedure, or vote by e-mail if the Select Board meeting is held virtually.
2. Immediately following a meeting with candidates for appointment, the Chair shall ask

Board members to submit their written choices for appointment (or to e-mail their choices for appointment to Town Administration in real time if meeting virtually). Each Board member writes their own name on a slip of paper, and then writes down their vote for the applicant(s) and passes their paper ballot directly to the Chair without other members viewing the ballot.

3. The Chair reads the paper ballot votes and notes which Board member cast the votes. If meeting virtually, Town Administration staff will read the results into the record, and after announcing how each Board member votes, staff will ask that Board members verbally confirm their votes.
4. The candidate(s) with the majority of votes will be appointed.

At its discretion, the Select Board may appoint a candidate to any Commission, Committee or Board even if the candidate is not present for the meeting.

ADMINISTRATION OF THE VOLUNTEER TALENT BANK

The Town Administration office shall be responsible for the Talent Bank data and all administrative materials, records and processes.

PUBLIC INPUT REGARDING CANDIDATES FOR APPOINTMENT

Any citizen may convey their support or objection of an individual's appointment/ reappointment through written notice to the Town Manager's Office. Town Administration shall forward any written comments concerning appointments/reappointments to the Select Board and to the person cited.

This policy may be amended by the Select Board at any time.

Select Board
2021 Committee Vacancy Appointments Timeline
As of 8/12/2021

August 12 – Advertise committee vacancies on Town’s website

August 19 and August 26 – Advertise committee vacancies in the Inky

August 18 and September 8 – Committee vacancies to be added to Select Board agendas as announcement

September 10 at 12:00 PM – Deadline for submitting applications for committee vacancies. This includes applications for:

- Agricultural Commission
- Cannabis Advisory Committee

September 15 and Sept 22 – The names of applicants who have submitted applications will be read aloud and applications will be included in the Board’s packet.

September 29 – Meeting for applicants to introduce themselves and review their applications; committee appointments.

NOTICE OF COMMITTEE VACANCIES
(as of 8/12/2021)

Applications are being accepted by the Select Board to fill vacancies on the following committees:

- Agricultural Commission - two seats, terms expire 2022
- Agricultural Commission - two seats, terms expire 2023
- Cannabis Advisory Committee - one seat, term expires 2022

Interested individuals may obtain a "Committee Interest Form" by clicking [here](#). Information on the responsibilities of the various committees may be obtained from the Town's website. Completed applications can be mailed or hand delivered to Town Administration, 16 Broad Street, Nantucket, MA 02554 or emailed to emooney@nantucket-ma.gov.

Applications must be submitted by **12:00 PM on Friday, September 10, 2021**, for a Select Board meeting on **Wednesday, September 29, 2021** where applicants can introduce themselves and review their applications, and appointments will be made.

Road Related Projects Update

- SEWER
 - Continuation of Surfside Road Sewer Improvements
 - Sept. 13 start date through Nov. 19
 - 3rd Sewer Force Main
 - Bid opening Oct. 6; possible start around December
 - South Shore Rd Sewer Extension
 - Anticipate going out to bid Jan 2022
- AIRPORT
 - Water Main Extension
 - Nov. 1 start date - project anticipated to last 142 days
- DPW
 - SIDEWALKS - Fall 2021
 - Easy Street Sidewalk from Land Bank Park to Cambridge St
 - Town Hall
 - Atheneum
 - Lily Pulitzer/5 South Water St
 - Jared Coffin House
 - Hotel Pipa/5 Chestnut St
 - Proprietors/9 India St
 - Stop & Shop
 - PAVING - Fall 2021
 - Madaket Rd - mill & overlay from DPW entrance 4,500' east towards town
 - DPW garage-area parking
 - Landfill entrance driveway

- Old South Rd - area in front of Inky parking lot/Rotary
- OTHER
 - North Water St-area drainage and/or final pave - TBD
 - Washington St & Francis St intersection widening - TBD
 - Waitt Dr construction - under construction
 - Bike Path Maintenance - BETA plan to seal cracks under review
- WATER
 - Washington St water main replacement - on hold until Washington St & Francis St intersection widening is scheduled
 - Water Main Extension (See Airport)
- OTHER
 - Town proposed water main expansion west of Airport - PFAS-related project
 - Richmond - line markings on Old South Rd and final sidewalk/shoulder work - week of Sept. 7
 - Sidewalk blocking on New Whale Street re: bulk fuel tank farm dismantling
 - Weekly house moves and modular moves
 - Street blockings

EXHIBIT 1
AGREEMENTS TO BE EXECUTED BY TOWN MANAGER
UNLESS RESOLUTION OF DISAPPROVAL BY SELECT BOARD
September 8, 2021

Type of Agreement/Description	Department	With	Amount	Other Information	Source of Funding	Term
Grant Agreement	Town Admin/Select Board	Nantucket Chamber of Commerce	\$50,000	Supplemental grant for Rock Solid Fund for business COVID recovery	Cape & Islands License Plate Fund and/or American Rescue Plan Act funding	December 31, 2021
Professional Service Agreement	Culture & Tourism	Atlas PyroVision Entertainment Group, Inc.	\$207,000	Display of fireworks for annual July 4th celebration for 2022, 2023 & 2024	Culture & Tourism Budget	September 8, 2021 - July 30, 2024
Software Agreement	DPW	ReCollect Systems, Inc.	\$11,985	Software for webpage and app for recycling information/guide	Solid Waste Budget	September 8, 2021 - September 7, 2024
Purchase Agreement	DPW	MHQ	\$122,493.50	Purchase of new packer truck	Article 10 2019 ATM	September 8, 2021 - June 30, 2022
Grant Agreement	Fire	U.S. Dept. of Homeland Security - FEMA	(\$309,055.41)	Federal grant award for the purchase of new portable and mobile radios for NFD	Federal Grant	August 12, 2021 - August 11, 2023
Professional Service Agreement	Human Resources	SyncStream Solutions, LLC	\$6,980.90	Affordable Care Act reporting services	HR Budget	September 8, 2021 - September 10, 2022
Professional Service Agreement	Human Resources	Rutherford Advisors, Inc. d/b/a The Executive Suite	\$20,000	Executive recruiting services for new Public Works Director	HR Budget	September 8, 2021 - June 30, 2022
Service Agreement	IS/GIS	Winslow Technology Group	\$7,350	Health check and remediation services for Town virtual environment	IS/GIS Budget	September 8, 2021 - June 30, 2022
Purchase Agreement	Marine	Marine Boatbuilders Co.	\$219,200	Purchase of septic pump-out boat for Harbor Master	Article 10 2021 ATM & Waterways Budget	September 8, 2021 - June 30, 2022
Amendment to Professional Service Agreement	Natural Resources	Arcadis U.S., Inc.	n/a	Extend end date of existing contract for development of Coastal Resilience Plan to allow for additional time for assistance with grant applications and final revisions to the CRP	n/a	September 8, 2021 - January 21, 2022

Amendment to Service Agreement	OIH	South Shore Generator	Add \$4,280 to original contract amount of \$93,630 for new contract total of \$97,910	Add funds to existing contract for annual repair and maintenance service for generators at Town facilities to include service at OIH	OIH Budget	September 8, 2021 - June 30, 2022
Grant Agreement	PLUS	Commonwealth of MA - Massachusetts Historical Commission	(\$22,500)	State grant award for an island-wide historic properties survey plan	State Grant	September 8, 2021 - September 30, 2022
Amendment to Professional Service Agreement	Sewer	Polydyne	Add \$18,750 to current contract amount of \$75,000 for new contract total of \$93,750	Add funds to existing contract for supply and delivery of sewer chemicals to allow for additional purchases	Sewer Budget	September 8, 2021 - September 10, 2022

CONSENT AGENDA ITEMS FOR 9/8/2021 SELECT BOARD MEETING

1. Gift Acceptances

Recommend the acceptance of the following gifts to Town agencies:

- Fire Department:
 - o Gift of \$100 from the Higgins Family to fund the Safe Grant initiatives led by the Fire Prevention Office
- Planning and Land Use Services:
 - o Gift of \$10,000 from ACK Natural, Inc. to be utilized for bike path and pedestrian improvements in the area of 17 & 19 Spearhead Rd pursuant to Planning Board MDC Special Permit #34-18

Recommended Motion: To accept all gifts for their designated purposes, with thanks to the donors.

Town Administration will ensure that letters of thanks are sent.

Nantucket Fire
Department

4 Fairgrounds Road
Nantucket, MA 02554
Tel: (508) 228-2324
Fax: (508) 325-7500



July 26, 2021

SELECT BOARD
16 BROAD ST
NANTUCKET, MA 02554

Re: Higgins, Robert and Jaqueline
Safe Grant Donation

Dear Chair Hill-Holdgate:

Mr. and Mrs. Robert and Jaqueline Higgins have made a generous donation of \$100.00 to fund the safe grant initiatives lead by the Fire Prevention Office. We are requesting that the select board authorize the transfer of this donation to the Safe Grant Account.

Please let us know if you have any questions or need anything further.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephen Murphy".

Stephen Murphy, Chief

SM/
Enclosures



Planning and Land Use Services

Building ▪ Historic District Commission ▪ Planning Board ▪ Zoning Board of Appeals

Memo

To: Nantucket Select Board
From: Megan Trudel, Land-Use Specialist
Date: September 3, 2021
Re: Gift Acceptance from ACK Natural

To Members of the Select Board:

Please accept check #995116 in the amount of \$10,000 as a gift to the Town of Nantucket to be utilized for bike path and pedestrian improvements in the area of 17 & 19 Spearhead Road as outlined in Condition #4 of the Major Commercial Development "MCD" Special Permit #34-18 for ACK Natural, Inc.

Thank you,

Megan Trudel
Land-Use Specialist
PLUS-Town of Nantucket



Agenda Item Summary

Agenda Item #	X. 1a & 1b
Date	9/8/2021

Staff

Erika D. Mooney, Operations Administrator

Subject

Request for approval of Historic Preservation Restrictions for a) NISDA, 23-25 Wauwinet Road and b) 79 Orange LLC, 79 Orange Street, both to be held by Nantucket Preservation Trust.

Executive Summary

Pursuant to the Board's Conservation Restriction and Preservation Restriction Policy, a preliminary review by the Board occurred at its 4/14/2021 meeting. Town Counsel has reviewed and issued a report.

a) In 2018, NISDA received Community Preservation Act funding for the preservation of the dairy barn, long shed and silos. The historic preservation restriction is a requirement of the CPA funding.

b) 79 Orange LLC is placing a voluntary historic preservation restriction on the building and property.

Staff Recommendation

Recommend the Board moves to approve the Historic Preservation Restrictions for a) NISDA, 23-25 Wauwinet Road and b) 79 Orange LLC, 79 Orange Street, both to be held by Nantucket Preservation Trust, and to find that the restrictions are in the public interest.

Background/Discussion

N/A

Impact: Environmental ☐ Fiscal ☐ Community ☐ Other ☐

N/A

Board/Commission Recommendation

N/A

Public Outreach

N/A

Connection to Existing Applicable Plan (i.e., Strategic Plan, Master Plan, etc.)

N/A



Attachments

Town Counsel opinion letters; Historic Preservation Restrictions for a) NISDA, 23-25 Wauwinet Road and b) 79 Orange LLC, 79 Orange Street



September 2, 2021

Vicki S. Marsh
vmars@k-plaw.com

Hon. Jason Bridges and
Members of the Select Board
Town & County Building
16 Broad Street
Nantucket, MA 02554

Re: Historic Preservation Restriction – 23-25 Wauwinet Road

Dear Members of the Select Board:

You have requested that I review the Historic Preservation Restriction (the “Restriction”) from the Nantucket Island School of Design and the Arts, Inc., a Massachusetts nonprofit corporation (the “Grantor”) to the Nantucket Preservation Trust, Inc., a Massachusetts nonprofit corporation (the “Grantee”), on the property located at 23-25 Wauwinet Road, Nantucket and the exterior of the buildings known as the “Sea View Farm” (the “Property”). In conjunction with my review of the Restriction, I reviewed the letter from the Massachusetts Historical Commission (the “MHC”) which approved of the latest version of the Restriction. Upon my review of the Restriction, it is my opinion that it is in acceptable form for presentation to the Select Board for your approval and determination as to whether the Restriction is in the public interest. The Restriction is in substantially the same form as approved by MHC, except that I have made certain typographical and grammatical revisions.

I also reviewed the Vote under Article 37 of the 2017 Annual Town Meeting, awarding a grant of Community Preservation Funds in the amount of \$132,856.00 to the Grantor for preservation and restoration of the exterior of the buildings and find that the Restriction is consistent with the requirements of that Vote to record an “appropriate historic preservation restriction ... running in favor of an entity authorized by the Commonwealth to hold such restrictions for such expenditures; meeting the requirements of Chapter 184 of the General Laws pursuant to Section 12 of the Community Preservation Act.” In reviewing the Restriction, I find, in my opinion, that it is an appropriate historic preservation restriction, which complies with the requirements of Chapter 184, §§ 31-33 of the General Laws and Section 12 of Chapter 44B of the General Laws, known as the Community Preservation Act. The Restriction is a permanent restriction which meets the requirements of Chapter 184, §§ 31-33 of the General Laws, and is held by the Nantucket Preservation Trust, Inc., a non-profit Massachusetts corporation which is authorized to accept historic preservation restrictions pursuant to G.L. c. 184, §§31-33.

I reviewed the description of the Property in the Deeds to the Nantucket Island School of Design and the Arts, Inc., dated June 1, 1982 filed with the Nantucket Registry District of the Land Court as Document No. 25539 noted on Certificate of Title No. 10132, and dated May 18, 1998 filed with said Registry District of the Land Court as Document No. 80244 noted on Certificate of Title



Hon. Jason Bridges and
Members of the Select Board
September 2, 2021
Page 2

No.14693 filed with said Registry District of the Land Court and find that it is consistent with the description of the Property in the Restriction and the Plans filed with said Registry District of the Land Court as Land Court Plan Nos. 6283-12 and 6283-13. I did not perform a title examination of the Property to determine whether the Grantor is the owner of the Property free of mortgages that would have a priority over the Restriction, or if foreclosed could result in a termination of the Restriction.

If I can be of further assistance to you in this matter, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in blue ink that reads "Vicki S. Marsh".

Vicki S. Marsh

VSM/dmm

cc: Town Manager
Mary Bergman, Executive Director of
Nantucket Preservation Trust

778246/NANT/19713/0001

GRANT OF HISTORIC PRESERVATION RESTRICTION

THIS HISTORIC PRESERVATION RESTRICTION is made this _____ day of _____, 2021, by and between the Nantucket Island School of Design and the Arts, Inc. (NISDA), a Massachusetts nonprofit corporation with a mailing address of Post Office Box 1848, Nantucket, Massachusetts 02554 (hereinafter “Grantor”) and the NANTUCKET PRESERVATION TRUST, INC., a Massachusetts nonprofit corporation with a mailing address of Post Office Box 158, Nantucket, Massachusetts 02554 (hereinafter “Grantee”).

WITNESSETH:

WHEREAS, Grantor is the owner of two parcels of land, together with the buildings thereon, located in Nantucket, Nantucket County, Massachusetts, now known and numbered as 23-25 Wauwinet Road, being the property shown as Lot 103 on Land Court Plan No. 6283-12 and Lot 105 on Land Court Plan No. 6283-13 (hereinafter “the Property”). For Grantor’s title, see Certificate of Title Nos. 10132 and 18379 filed with Nantucket Registry District of the Land Court (hereinafter “the Nantucket Registry District”). See also deed registered on May 18, 1998, Document No. 80244 at Nantucket Registry District, and deed registered on June 9, 1982, as Document No. 25539 at Nantucket Registry District. A description of the Property is attached hereto and incorporated herein by reference as Exhibit A, and copies of the above-referenced plans are attached hereto and incorporated herein by reference as Exhibit B. The Property and existing structures thereon standing are shown upon the Preservation Restriction Site Plan attached hereto and incorporated herein by reference as Exhibit C:

Known historically as “Sea View Farm” from its development as the island’s largest and last dairy farm, the buildings that now comprise the Nantucket Island School of Design and the Arts (NISDA) were constructed with standardized components of The James Way, a system of architectural elements and equipment designed to promote “sanitary farming” in the early twentieth century; built in the late 1940s and early 1950s these structures were part of a major modernization of the Sea View Farm and preserve the major agricultural structures that defined the dairy farm. They consist of a large Dairy Barn for fifty cows with an attached Milk Room (hereinafter “the Barn”), two silos one of which is attached to the east elevation of the Barn and the other is free-standing subsequent to the removal in the 1970s of a Heifer Barn to which it was originally attached (hereinafter “the West Silo” and “the East Silo” respectively), and an equipment-storage shed (hereinafter “the Long Shed”). Collectively, these four structures (hereinafter “the Buildings”) retain the characteristic architectural elements of their agricultural uses and provide rare surviving examples of farms that once existed to provide dairy products and perishable foods on Nantucket between the late 1840s when the maritime economy declined and the 1960s when the island’s expanding tourist/summer visitor economy created land values that rendered farming economically unviable.

In addition to the Buildings, the Property contains a wooden pavilion constructed in 1995 (hereinafter “the Pavilion”) that was built for NISDA as an educational program space unrelated to the agricultural history of the Property.

WHEREAS, the Property and the Buildings contribute to the historic setting of the surrounding historic district;

WHEREAS, the Community Preservation Committee of Nantucket (hereinafter the “CPC”) has determined that it is important that the property and the exterior of the Buildings be preserved and that they remain available for the benefit of the people of the Town and County of Nantucket, and in support of such interest recommended that Town Meeting appropriate for the Community Preservation Fund the sum of \$132,856 to be used for the preservation of the Property and the exterior of the Buildings (hereinafter the “Grant”);

WHEREAS, the 2017 Annual Town Meeting, therefore voted under Article 37 to appropriate the funds recommended by the CPC for the Grant and required as a condition of this appropriation that the Grantor convey an appropriate historic preservation restriction to a qualified recipient, a copy of said vote is attached hereto and incorporated herein as Exhibit G;

WHEREAS, Grantee is authorized to accept historic preservation restrictions to protect property significant in local, state, and national history and culture under the provisions of Mass. Gen. Laws c. 184, §§31, 32, and 33 (hereinafter “the Act”);

WHEREAS, Grantee is a nonprofit corporation whose primary purposes include the preservation and conservation of sites, buildings and objects of local state and national significance and is a qualifying recipient of qualified conservation contributions under Section 170 (h) of the Internal Revenue Code of 1986, as amended, and the regulations thereunder (hereinafter “the Code”);

WHEREAS, the Buildings and Property are significant for their architectural design and historic uses that reflect the economic, aesthetic, and cultural history of Nantucket, Massachusetts, and that illustrate historic design, setting, materials, and workmanship;

WHEREAS, because of its architectural, historic, and cultural significance, the Buildings and Property are a contributing resource within the Nantucket Historic District, listed in the National Register of Historic Places and as a National Historic Landmark on November 13, 1966, as amended on October 16, 2013, is included in the Nantucket Historic District established by the Town of Nantucket on June 4, 1970;

WHEREAS, Grantor and Grantee recognize the architectural, historic, and cultural values (hereinafter the “preservation values”) and significance of the Buildings and

the Property, and have the common purpose of conserving and preserving the aforesaid preservation values and significance of the Buildings and Property;

WHEREAS, the preservation values of the Buildings and the Property are documented in a set of reports, drawings, and photographs (hereinafter the "Baseline Documentation") attached hereto and incorporated herein by reference, which Baseline Documentation the parties agree provides an accurate representation of the Buildings and Property as of the effective date of this grant;

WHEREAS, the Baseline Documentation shall consist of the following: (1) a Legal Property Description, attached hereto and incorporated herein by reference as Exhibit A; (2) Land Court Plan Nos. 6283-12 and 6283-13 copies of which are attached hereto and incorporated herein by reference as Exhibit B; (3) "Preservation Restriction Site Plan in Nantucket, Massachusetts" prepared by Bracken Engineering, Inc. and dated April 30, 2020, a copy of which is attached hereto and incorporated herein by reference as Exhibit C; (4) a set of twenty-seven (27) exterior photographs produced by Mary Bergman, dated October 8, 2020 copies of which are attached hereto and incorporated herein by reference as Exhibit D; and (5) historical documentation consisting of a Massachusetts Historical Commission Inventory Form A of the Property, prepared by Brian Pfeiffer and Betsy Tyler dated July 20, 2019, a copy of which is attached hereto and incorporated herein by reference as Exhibit E, said documentation to be kept on file at the offices of the Grantee;

WHEREAS, the grant of a preservation restriction by the Grantor to Grantee on the Exterior of the Buildings and Property will assist in preserving and maintaining the Exterior of the Buildings and Property, and their architectural, historic, and cultural features for the benefit of the people of the Town and County of Nantucket, Commonwealth of Massachusetts, and the United States of America; and

WHEREAS, to that end, Grantor desires to grant to Grantee, and Grantee desires to accept, a preservation restriction in perpetuity on the Exterior of the Buildings and Property pursuant to the Act.

NOW, THEREFORE, in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and pursuant to the Act, Grantor does hereby voluntarily grant and convey unto the Grantee this preservation restriction (hereinafter "the Restriction"), in perpetuity, over the Exterior of the Buildings and Property, and expressly excluding any and all other property now or hereafter belonging to the Grantor.

1. PURPOSE. It is the Purpose of this Restriction to assure that the architectural, historic, and cultural features of the Exterior of the Buildings and Property and their internal structural elements as defined herein will be retained and maintained as set forth herein forever substantially in their current condition for preservation

purposes and that those original features which have been concealed or removed will be revealed, replaced and repaired as part of a long-term maintenance plan to restore the integrity of the Buildings' original character-defining architectural elements. To these ends, subject to Paragraphs 2 and 3 of this Restriction, the Exterior of the Buildings and Property will be retained and maintained forever substantially unchanged so that they continue to contribute to the historical setting and significance of the Nantucket Historic District; and any change of the Exterior of the Buildings or Property that will significantly impair or interfere with the preservation values of the Exterior of the Buildings or Property is hereby prohibited.

2. GRANTOR'S COVENANTS.

21 Grantor's Covenants: Covenant to Maintain. Grantor agrees at all times to maintain, replace, repair, and reconstruct the exteriors of the Buildings, as hereinafter set forth, as necessary to preserve the exteriors of the Buildings in substantially the same structural condition and state of repair as that existing on the effective date of this Restriction and to restore historic elements that have been removed with reproduction elements based upon documentation to enhance and strengthen the Buildings' historic appearance subject to review and approval by the Grantee. Grantor's obligation to maintain shall also require that the Property's open space area to the west, north, and east of the Buildings, be maintained in good appearance as open space. Subject to the casualty provisions of Paragraphs 7 and 8 of this Restriction, this obligation to maintain shall require replacement, rebuilding, repair, and reconstruction of the exteriors of the Buildings whenever necessary in accordance with *The Secretary of the Interior's Standards for the Treatment of Historical Properties with Guidelines for Preserving, Rehabilitating, Restoring and Reconstructing Historic Buildings* (36 C.F.R. 67 and 68), as these may be amended from time to time (hereinafter "the Secretary's Standards"). For the purpose of identifying categories of Major Maintenance requiring review and approval by Grantee and Minor Maintenance that, pursuant to Paragraph 6(c) hereof, does not require such review, copies of maintenance guidelines are attached hereto and incorporated herein by reference as Exhibit F and hereinafter referred to as the "Restriction Guidelines." Grantor's obligation to maintain shall be subject to the provisions of Paragraphs 3.1(f) and 6(b) hereof.

22 Grantor's Covenants: Prohibited Activities. The following acts or uses are expressly forbidden on, over, or under the Property, except as otherwise conditioned in this Paragraph:

(a) the Buildings shall not be demolished, removed, or razed except as provided in Paragraphs 7 and 8 hereof;

(b) nothing shall be erected or allowed to grow on the Property that would block all visibility of the Buildings from Wauwinet Road; vegetation shall be maintained

in a manner that shall not completely obstruct the views of the Buildings from Wauwinet Road;

(c) the dumping of ashes, trash, rubbish, or any other unsightly or offensive materials is prohibited on the Property;

(d) the Property shall not be divided or subdivided in law or in fact, except for minor lot line adjustments that do not result in the creation of additional buildable lots; and

(e) no aboveground utility transmission lines, except those reasonably necessary for the existing Buildings or made pursuant to utility easements already recorded, may be created on the Property.

3. GRANTOR'S CONDITIONAL RIGHTS.

3.1 Conditional Rights Requiring Approval by Grantee. Without the prior express written approval of Grantee, which approval may not be unreasonably withheld, but which may be subject to such reasonable conditions as Grantee in its discretion may determine, Grantor shall not undertake any of the following actions on the Buildings:

- (a) alter the following features of the Buildings, subject, however, to the maintenance covenants of Paragraph 2.1 hereof:
 - (1) the exterior massing, foundation walls, roof planes, and roof surfaces including without limitation:
 - a. the concrete-block base wall of the Barn;
 - b. metal roof ventilators on the Barn;
 - c. existing dormers and skylights on the Barn or the removal or installation of additional dormers or skylights from the Barn;
 - d. the existing brick chimney on the Barn;
 - e. the concrete slabs, cylindrical forms and domed metal roofs of the East and West Silos,
 - f. roof surfaces of the Barn and Long Shed which may be maintained with asphalt shingles or the installation of solar panels;
 - (2) exterior architectural features of all elevations including the primary façade (south elevation) and the east, west, and north elevations of the Barn; all elevations of the East and West Silos; and the façade (north elevation), east, south, and west elevations of the Long Shed; such protected architectural features shall include without limitation:
 - a. all wood shingle walls, wooden rake boards, window cases, door cases, and wooden trimmings;

- b. all doorways and doors, including doorways currently blocked with plywood;
 - c. all windows and window sash, both wooden and metal sash, including windows currently blocked with plywood;
 - d. the brickwork and flashings of the existing chimney at the Barn; and
 - e. the pre-cast concrete panels and exposed metal ring beams that form the walls of the East and West Silos; and
- (3) internal timbers, trusses, girts, tie-beams, concrete piers, bearing partitions, and other structural elements necessary to the stability of the exteriors of the Buildings;
- (b) erect or replace any external signs or external advertisements except: (i) such plaque permitted under Paragraph 12.8 of this Restriction; (ii) a sign stating solely the address of the Property; (iii) the signs currently located upon the Property; (iv) a sign permitted under Paragraph 6(b); and (v) signs as may approved from time to time by the Nantucket Historic District Commission;
- (c) make permanent substantial topographical changes;
- (d) construct additional buildings or structures, or enlarge or re-configure existing paving;
- (e) change the use of the Buildings and the Property to any use which Grantee reasonably determines would conflict with the Purpose of the Restriction; and
- (f) conduct activities identified as Major Maintenance and Minor Maintenance in the Restriction Guidelines that reasonably may be expected to make material changes in the exterior appearance, materials, or workmanship of the protected features of the Buildings, except as otherwise provided herein.

32 **Archaeological Activities.** The conduct of archaeological activities, including without limitation survey, excavation, and artifact retrieval, may occur only following the submission of an archaeological field investigation plan prepared by Grantor and approved in writing by Grantee and the State Archaeologist of the Massachusetts Historical Commission (Mass. Gen. Laws, c. 9, §27C, 950 C.M.R. 70.00).

33 **Review of Grantor's Requests for Approval.** In connection with Grantee's approval of the conditional rights set forth in Paragraphs 3.1 and 3.2 above, Grantor shall submit to Grantee two copies of information (including plans, specifications, and designs, and Nantucket Historic District Commission application and materials where appropriate) identifying the proposed activity with reasonable specificity. In connection

therewith, Grantor shall also submit to Grantee a timetable for the proposed activity sufficient to permit Grantee to monitor such activity. Within forty-five (45) days of Grantee's receipt of any plan or written request for approval hereunder, Grantee shall certify in writing that (a) it approves the plan or request, or (b) it disapproves the plan or request as submitted, in which case Grantee shall provide Grantor with written suggestions for modification or a written explanation for Grantee's disapproval. Any failure by Grantee to act within sixty (60) days of receipt of Grantor's submission or resubmission of plans or requests shall be deemed to constitute approval by Grantee of the plan or request as submitted and to permit Grantor to undertake the proposed activity in accordance with the plan or request submitted so long as the request sets forth the provisions of this Paragraph relating to deemed approval after the passage of time, provided nothing herein shall be construed to permit Grantor to undertake any of the activities prohibited hereunder.

4. **STANDARDS FOR REVIEW.** Grantee shall apply the Secretary's Standards in exercising any authority created by this Restriction to inspect the Property or the exterior of the Buildings or to the extent necessary to inspect the interior of the Buildings for the sole purpose of evaluating any construction to or alteration, repair, maintenance, or reconstruction of the exterior of the Buildings; to review any construction, alteration, repair, or maintenance; or to review casualty damage or to reconstruct or approve reconstruction of the Buildings following casualty damage.

5. **PUBLIC ACCESS.** Grantor shall not completely block views of the Buildings from the public right of way on Wauwinet Road either by intentional planting or fencing; Grantor further agrees to permit Grantee to make Baseline Documentation available to interested members of the public at Grantee's offices and by depositing copies of such Baseline Documentation in Grantee's library.

6. **GRANTOR'S RESERVED RIGHTS NOT REQUIRING FURTHER APPROVAL BY GRANTEE.** Subject to the provisions of Paragraphs 2.1, 2.2, 3.1 and 3.2 of this Restriction, the following rights, uses, and activities of or by Grantor on, over, or under the Property are permitted by this Restriction and by Grantee without further approval by Grantee:

- (a) the right to engage in all those activities and uses that: (i) are permitted by governmental statute or regulation; and (ii) are not inconsistent with the Purpose of this Restriction;
- (b) the right to maintain a sign similar in size to the "NISDA" sign currently affixed to the façade of the Barn which measures 12" x 60" identifying the owner of the Property and its use as a school; and the right to maintain a glazed display box for notices not to exceed 30" width x 40" height x 6" depth in size affixed to the façade (south elevation) of the Barn;

- (c) the right to conduct Minor Maintenance of the Buildings, as such maintenance is defined in the Restriction Guidelines, that is not reasonably expected to make material changes in the exterior appearance, materials, or workmanship of the Buildings, provided such work is done strictly according to the Secretary's Standards, and provided that the Grantor uses in-kind materials, applied with workmanship comparable to that which was used in the construction or application of those materials being repaired or maintained, for the purpose of retaining in good condition the appearance and construction of the Buildings. Changes in appearance, materials, or workmanship from that existing prior to the maintenance and repair require the prior approval of the Grantee in accordance with the provisions of Paragraph 3 of this Restriction;
- (d) the right to maintain the Pavilion in its current size, configuration, and materials; to enclose portions of the structure beneath the existing roof provided that the Pavilion is not enlarged either in height or in footprint beyond its current dimensions; or to remove the Pavilion;
- (e) the right to continue all manner of existing institutional use and enjoyment of the Buildings, the Pavilion, and Property, including but not limited to the right to maintain existing paved walkways, driveway access, parking, and easement areas with the use of same or similar surface materials; the right to maintain existing utility lines and plantings; the right to cut, remove, and clear grass or other vegetation, and the right to perform routine maintenance, landscaping, horticultural activities, and upkeep, consistent with the Purpose of this Restriction and Paragraphs 2 and 3 of this Restriction;
- (f) the right to renovate, update, and otherwise alter or change the interiors of the Buildings provided that such renovations, updating or alterations shall not require the removal or alteration of structural elements which would undermine the stability of the exteriors of the Buildings;
- (g) the right to conduct in the Buildings or on the Property activities that are not inconsistent with the protection of the preservation values of the Property and the exterior of the Buildings; and
- (h) the right to make such modifications to the Buildings as may be required by governmental entities to comply with local, state or federal laws, provided that such changes are reviewed and approved by the Grantee whose approval shall not be unreasonably withheld.

7. **CASUALTY DAMAGE OR DESTRUCTION; INSURANCE.** In the event that the Buildings or any part thereof shall be damaged or destroyed by fire, flood,

windstorm, hurricane, earth movement, or other casualty, Grantor shall notify Grantee in writing within fourteen (14) days of such damage or destruction, such notification to include what, if any, emergency work has already been completed. Grantor shall undertake no repairs or reconstruction of any type, other than temporary emergency work to prevent further damage to the Buildings and to protect public safety, without Grantee's prior written approval. Within thirty (30) days of the date of damage or destruction, if required by Grantee, Grantor at its expense shall submit to the Grantee a written report prepared by a qualified restoration architect and an engineer who are acceptable to Grantor and Grantee, which report shall include the following:

- (a) an assessment of the nature and extent of the damage;
- (b) a determination of the feasibility of the restoration of the Buildings and/or reconstruction of damaged or destroyed portions of the Buildings; and
- (c) a report of such restoration/reconstruction work necessary to return the Buildings to the condition existing as of the date hereof.

8. **REVIEW AFTER CASUALTY DAMAGE OR DESTRUCTION.** If, after reviewing the report provided in Paragraph 7 above and assessing the availability of insurance proceeds after satisfaction of any mortgagee's/lender's claims under Paragraph 9 hereof, Grantor and Grantee agree that the Purpose of the Restriction will be served by such restoration/reconstruction, Grantor and Grantee shall establish a schedule under which Grantor shall complete the restoration/reconstruction of the Buildings in accordance with plans and specifications consented to by the parties up to at least the total of the casualty insurance proceeds available to Grantor.

If, after reviewing the report and assessing the availability of insurance proceeds after satisfaction of any mortgagee's/lender's claims under Paragraph 9 hereof, Grantor and Grantee agree that restoration/reconstruction of the Property is impractical or impossible, or agree that the Purpose of the Restriction would not be served by such restoration/reconstruction, Grantor may, with the prior written consent of the Grantee, alter, demolish, remove, or raze the Buildings, and/or construct new improvements on the Property. Grantor and Grantee may then agree to seek to extinguish this Restriction in whole or in part in accordance with the laws of the Commonwealth of Massachusetts and Paragraph 14 hereof.

If, after reviewing the report and assessing the availability of insurance proceeds after satisfaction of any mortgagee's/lender's claims under Paragraph 9 of this Agreement, Grantor and Grantee are unable to agree that the Purpose of the Restriction will or will not be served by such restoration/reconstruction, the matter may be referred by either party to binding arbitration and settled in accordance with the Commonwealth of Massachusetts's arbitration statute then in effect, provided however that nothing

herein shall compel the Grantor to expend funds in excess of those received from insurance proceeds.

9. **Insurance.** Grantor shall keep the Property insured by an insurance company rated "A" or better by Best's for the full replacement value against loss from the perils commonly insured under standard fire and extended coverage policies and comprehensive general liability insurance against claims for personal injury, death and property damage. Such insurance shall include the Grantee's interest and name as an additional insured. Property damage insurance shall include change in condition and building ordinance coverage, in form and amount sufficient to replace fully the damaged Buildings without cost or expense to Grantor or coinsurance from Grantor. Grantor shall deliver to Grantee, within ten (10) business days of the Grantee's written request thereof, certificates of such insurance coverage. Provided, however, that whenever the Property is encumbered with a mortgage or deed of trust nothing contained in this paragraph shall jeopardize the prior claim, if any, of the mortgagee/lender of the insurance proceeds.

10. **INDEMNIFICATION.** Grantor hereby agrees to pay, protect, indemnify, hold harmless and defend at its own cost and expense, Grantee, its agents, directors, officers, and employees, or independent contractors from and against any and all claims, liabilities, expense, costs, damages, losses, and expenditures (including reasonable attorney's fees and disbursements hereafter incurred) arising out of or in connection with injury to or death of any person as a result of the existence of this Restriction; physical damage to the Property; the presence or release in, on, or about the Property, at any time, of any substance now or hereafter defined, listed, or otherwise classified pursuant to any law, ordinance, or regulation as a hazardous, toxic, polluting, or contaminating substance; or other injury, death, or other damage occurring on or about the Property, unless such injury, death, or damage is caused by Grantee or any agent, director, officer, employee, or independent contractor of Grantee. In the event that Grantor is required to indemnify Grantee pursuant to the terms of this Paragraph, the amount of such indemnity, until discharged, shall constitute a lien on the Property.

11. **TAXES.** Grantor shall pay immediately, when first due and owing, all general taxes, special taxes, special assessments, water charges, sewer service charges, and other charges which may become a lien on the Property unless Grantor timely objects to the amount or validity of the assessment or charge and diligently prosecutes an appeal thereof, in which case the obligation hereunder to pay such charges shall be suspended for the period permitted by law for prosecuting such appeal and any applicable grace period following completion of such action. In place of Grantor, Grantee is hereby authorized, but in no event required or expected, to make or advance upon three (3) days prior written notice to Grantor any payment relating to taxes, assessments, water rates, sewer rentals and other governmental or municipality charge, fine, imposition, or lien asserted against the Property. Grantee may make such payment according to any bill, statement, or estimate procured from the appropriate public office without inquiry into

the accuracy of such bill, statement, or assessment or into the validity of such tax, assessment, sale, or forfeiture. Such payment if made by Grantee shall constitute a lien on the Property.

12. ADMINISTRATION AND ENFORCEMENT

121. **Written Notice.** Any notice which either Grantor or Grantee may desire or be required to give to the other party shall be in writing and shall be delivered by one of the following methods – by overnight courier, postage prepaid, registered, or certified mail with return receipt requested, or hand delivery; if to Grantor, then to the Nantucket Island School of Design and the Arts, 23 Wauwinet Road, P. O. Box 1848 Nantucket, Massachusetts 02554, and if to Grantee, then to Nantucket Preservation Trust, Inc., at 11 Centre Street, P.O. Box 158, Nantucket, Massachusetts 02554.

Each party may change its address set forth herein by a notice to such effect to the other party.

122. **Evidence of Compliance.** Upon request by Grantor, Grantee shall promptly furnish Grantor with certification that, to the best of Grantee's knowledge, Grantor is in compliance with the obligations of Grantor contained herein or that otherwise evidences the status of this Restriction to the extent of Grantee's knowledge thereof.

123. **Inspection.** Grantee shall be permitted to conduct an annual inspection of the Property, including the exterior of the Buildings, in order to confirm Grantor's compliance with this Preservation Restriction Agreement. Such inspection shall be conducted at reasonable times and following advance notice to the Grantor of no less than ten (10) days. Grantor covenants not to withhold unreasonably its consent in determining dates and times for such inspections.

124. **Grantee's Remedies.** Grantee may, following thirty (30) days written notice to Grantor, institute suit(s) to enjoin any violation of the terms of this Restriction by *ex parte*, temporary, preliminary, and/or permanent injunction, including prohibitory and/or mandatory injunctive relief, and to require the restoration of the Property and Buildings to the condition and appearance that existed prior to the violation complained of. Grantee shall also have available all legal and other equitable remedies to enforce Grantor's obligations hereunder.

In the event Grantor is found to have violated any of its obligations, which violation has continued more than thirty (30) days after notice by the Grantee to the Grantor, Grantor shall reimburse Grantee for any reasonable costs or expenses incurred in connection with Grantee's enforcement of the terms of this Restriction, including court costs and attorney's, architectural, engineering, and expert-witness fees.

In the event that Grantor is required to reimburse Grantee pursuant to the terms of this Paragraph, the amount of such reimbursement until discharged shall constitute a lien on the Property.

Exercise by Grantee of one remedy hereunder shall not have the effect of waiving or limiting any other remedy, and the failure to exercise any remedy shall not have the effect of waiving or limiting the use of any other remedy or the use of such remedy at any other time.

125 Notice from Government Authorities. Grantor shall deliver to Grantee copies of any notice of violation or lien relating to the Property received by Grantor from any government authority within ten (10) business days of receipt by Grantor. Upon request by Grantee, Grantor shall promptly furnish Grantee with evidence of Grantor's compliance with such notice or lien where compliance is required by law.

126 Notice of Proposed Sale. Grantor shall promptly notify Grantee in writing of any proposed sale of the Property prior to sale closing.

127 Liens. Any lien on the Property created pursuant to any Paragraph of this Restriction may be confirmed by judgment and foreclosed by Grantee in the same manner as a mechanic's lien provided in Mass. Gen. Laws c. 254, §5, except that no lien created pursuant to this Restriction shall jeopardize the priority of any recorded lien of mortgage or deed of trust given in connection with a promissory note secured by the Property.

128 Plaque. Grantor agrees that Grantee may provide and maintain a plaque on the Property, which plaque shall not exceed 6 inches by 24 inches in size, giving notice of the significance of the Buildings and the existence of this Restriction. The plaque shall be approved by Grantor prior to installation, such approval not to be unreasonably withheld.

13. BINDING EFFECT; ASSIGNMENT.

13.1 Runs with the Land. Except as provided in Paragraphs 8 and 14, the obligations imposed by this Restriction shall be effective in perpetuity and shall be deemed to run as a binding servitude with the Buildings and Property. This Restriction shall extend to and be binding upon Grantor and Grantee, their respective successors in interest, and all persons hereafter claiming by, under, or through Grantor and Grantee, and the words "Grantor" and "Grantee" when used herein shall include all such persons. Any right, title, or interest herein granted to Grantee also shall be deemed granted to each successor and assign of Grantee and each such following successor and assign thereof, and the word "Grantee" shall include all such successors and assigns.

Anything contained herein to the contrary notwithstanding, an owner of the Buildings and the Property shall have no obligation pursuant to this instrument when such owner shall cease to have any ownership interest in the Buildings and the Property by reason of a *bona fide* transfer. The restrictions, stipulations, and covenants contained in this Restriction shall be included by Grantor, by express reference, in any subsequent deed or other legal instrument by which Grantor divests itself of the fee simple title to or any lesser estate in the Buildings and the Property or any part hereof, including by way of example and not limitation, a lease of all or a portion of the Property, but excluding any lease with a term of fewer than one hundred twenty (120) days.

132 **Assignment.** Subject to Grantor's consent, which consent shall not be unreasonably withheld, Grantee may convey, assign, or transfer this Restriction to a local, state, or national organization that qualifies under the Act to hold preservation restrictions whose purposes, *inter alia*, are to include the preservation of historically significant buildings or sites, or if no such organization agrees to accept such assignment, then to a unit of federal, state, or local government, provided that any such conveyance, assignment, or transfer requires that the Purpose for which the Restriction was granted will continue to be carried out as a condition of the transfer. Grantee shall give Grantor sixty (60) days written notice prior to making any such assignment.

13.3. **Recording and Effective Date.** Grantee shall do and perform at its own cost all acts necessary to the prompt recording of this instrument in the land records of the County of Nantucket. Grantor and Grantee intend that the restrictions arising under this Restriction take effect on the day and year this instrument is recorded in the land records of the County of Nantucket.

14. **EXTINGUISHMENT.** Grantor and Grantee hereby recognize that circumstances may arise that may make impossible the continued ownership or use of the Property and the Buildings in a manner consistent with the Purpose of this Restriction and necessitate extinguishment of the Restriction. Such circumstances may include, but shall not be limited to, partial or total destruction of the Buildings resulting from casualty. Extinguishment shall meet the requirements of the Act for extinguishment including approvals following public hearings by the Town of Nantucket and the Massachusetts Historical Commission as required by the Act to determine that such extinguishment is in the public interest. Unless otherwise required by applicable law at the time, in the event of any sale of all or a portion of the Property (or of any other property received in connection with an exchange or involuntary conversion of the Property) after such extinguishment, all expenses reasonably incurred by Grantor and Grantee in connection with such sale shall be paid out of the sale proceeds; and the net proceeds shall be paid to Grantor unless otherwise ordered by a court or other government authority of competent jurisdiction.

15. **CONDEMNATION.** If all or any part of the Property is taken under the power of eminent domain by public, corporate, or other authority, or otherwise acquired by such authority through a purchase in lieu of a taking, Grantor and Grantee shall join in appropriate proceedings at the time of such taking to recover the full value of those interests in the Property that are subject to the taking and all incidental and direct damages resulting from the taking. All expenses reasonably incurred by Grantor and Grantee in connection with such taking shall be paid out of the recovered proceeds; and the net proceeds shall be paid to Grantor unless otherwise ordered by a court or other government authority of competent jurisdiction.

16. **INTERPRETATION.** The following provisions shall govern the effectiveness, interpretation, and duration of the Restriction.

(a) Any rule of strict construction designed to limit the breadth of restrictions on alienation or use of the Buildings and the Property shall not apply in the construction or interpretation of this Restriction, and this instrument shall be interpreted broadly to effect its Purpose and the transfer of rights and the restrictions on use herein contained.

(b) This instrument may be executed in two counterparts, one of which may be retained by the Grantor, and the other, after recording, to be retained by the Grantee. In the event of any discrepancy between the counterparts produced, the recorded counterpart shall in all cases govern. In the event of any discrepancy between two copies of any documentation retained by the parties, the copy retained by Grantee shall control.

(c) This instrument is made pursuant to the provisions of the Act, but the invalidity of the Act or any part thereof shall not affect the validity and enforceability of this Restriction according to its terms, it being the intent of the parties to agree and to bind themselves, their successors, and their assigns in perpetuity to each term of this instrument whether this instrument be enforceable by reason of any statute, common law, or private agreement in existence either now or hereafter. The invalidity or unenforceability of any provision of this instrument shall not affect the validity or enforceability of any other provision of this instrument or any ancillary or supplementary agreement relating to the subject matter thereof.

(d) Nothing contained herein shall be interpreted to authorize or permit Grantor to violate any ordinance or regulation relating to building materials, construction methods, or use. In the event of any conflict between any such ordinance or regulation and the terms hereof, Grantor promptly shall notify Grantee of such conflict and shall cooperate with Grantee and the applicable governmental entity to accommodate the purposes of both this Restriction and such ordinance or regulation.

(e) To the extent that Grantor owns or is entitled to development rights which may exist now or at some time hereafter by reason of the fact that under any applicable

zoning or similar ordinance the Property may be developed to use more intensive (in terms of height, bulk, or other objective criteria related by such ordinances) than the Property and Buildings are devoted as of the date hereof, such development rights shall not be exercisable on, above, or below the Property and the Buildings during the term of the Restriction, nor shall they be transferred to any adjacent parcel and exercised in a manner that would interfere with the Purpose of the Restriction.

17. **AMENDMENT.** If circumstances arise under which an amendment to or modification of this Restriction would be appropriate, Grantor and Grantee may by mutual written agreement jointly amend this Restriction, provided that no amendment shall be made that will adversely affect the qualification of the Restriction or the status of Grantee under any applicable laws, including Section 501(c) (3) of the Code and the laws of the Commonwealth of Massachusetts. Any such amendment shall be consistent with the protection of the preservation values of the Property and the Purpose of this Restriction; shall not affect its perpetual duration; shall not permit additional development on the Property other than the development permitted by this Restriction on its effective date; shall not permit any private inurement to any person or entity; and shall not adversely impact the overall architectural, historic, and open space values protected by this Restriction. Any such amendment shall be effective when the requirements of the Act with respect to amendments have been met and the amendment is recorded in the land records of the County of Nantucket. Nothing in this paragraph shall require Grantor or Grantee to agree to any amendment or to consult or negotiate regarding any amendment.

18. **COMPLIANCE WITH BUILDING LAWS.** Grantor and Grantee recognize that there may be circumstances where alterations are required to be made to the exterior of the Buildings in order to comply with local, state, and/or federal ordinances and laws which might otherwise not be permissible under this Restriction without Grantee's approval. In such event, Grantor agrees to notify Grantee in writing of such requirement and, if requested by Grantee within forty-five (45) days of such notification, to cooperate with Grantee in seeking a variance or waiver from such requirement or a modification of such requirement to mitigate any adverse effect of such compliance.

THIS RESTRICTION reflects the entire agreement of Grantor and Grantee. Any prior or simultaneous correspondence, understandings, agreements, and representations are null and void upon execution hereof, unless set out in this instrument.

TO HAVE AND TO HOLD, the said Historic Preservation Restriction, unto the said Grantee and its successors and permitted assigns forever. This HISTORIC PRESERVATION RESTRICTION may be executed in two counterparts and by each party on a separate counterpart, each of which when so executed and delivered shall be an original, but both of which together shall constitute one instrument.

EXECUTED and SEALED on _____, 2021.

GRANTOR

Nantucket Island School of Design & the Arts

BY: _____
Kathy Kelm, President

BY: _____
Denese Allen, Treasurer

GRANTEE

Nantucket Preservation Trust, Inc.

BY: _____
Alison Potts Groenstein, President

BY: _____
Bill Moore, Treasurer

COMMONWEALTH OF MASSACHUSETTS

Nantucket, ss.

On this ____ day of _____, 2021, before me, the undersigned notary public, personally appeared Kathy Kelm in her capacity as President of the Nantucket Island School of Design and the Arts, proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding or attached document, and who acknowledged to me that she signed it voluntarily for its stated purpose in her capacity as President of the Nantucket Island School of Design and the Arts, a nonprofit entity.

Notary Public
My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

Nantucket, ss.

On this ____ day of _____, 2021, before me, the undersigned notary public, personally appeared the above-named Denese Allen in her capacity as Treasurer of the Nantucket Island School of Design and the Arts proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding or attached document, and who acknowledged to me that she signed it voluntarily for its stated purpose in her capacity as Treasurer of the Nantucket Island School of Design and the Arts , a nonprofit entity.

Notary Public
My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

Nantucket, ss.

On this ____ day of _____, 2021, before me, the undersigned notary public, personally appeared the above-named Alison Potts Groenstein, proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding or attached document, and who acknowledged to me that she signed it voluntarily for its stated purpose in her capacity as President of the Nantucket Preservation Trust, Inc., a nonprofit corporation.

Notary Public
My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

Nantucket, ss.

On this ____ day of _____, 2021, before me, the undersigned notary public, personally appeared the above-named Bill Moore, proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding or attached document, and who acknowledged to me that he signed it voluntarily for its stated purpose in his capacity as Treasurer of the Nantucket Preservation Trust, Inc., a nonprofit corporation.

Notary Public
My Commission Expires:

APPROVAL BY THE SELECT BOARD OF THE TOWN OF NANTUCKET

We, the undersigned members of the Select Board of the Town of Nantucket, Massachusetts, hereby certify that at a meeting held on _____, 2021, the Select Board voted to approve the foregoing Grant of Preservation Restriction by the Nantucket Island School of Design and the Arts (NISDA) to the Nantucket Preservation Trust, pursuant to Massachusetts General Laws, Chapter 184, Section 32, as being in the public interest.

Select Board of the
Town of Nantucket

Jason Bridges, Chair

Kristie L. Ferrantella, Vice Chair

Dawn E. Hill Holdgate

Matthew G. Fee

Melissa K. Murphy

COMMONWEALTH OF MASSACHUSETTS

NANTUCKET, ss.

On this _____ day of _____, 2021, before me, the undersigned notary public, personally appeared Dawn E. Hill Holdgate, proved to me through satisfactory evidence of identification, which was personal knowledge of the undersigned to be the person whose name is signed on the preceding document, and acknowledged to me that she signed it voluntarily for its stated purpose, as a member of the Select Board of the Town of Nantucket.

Notary Public

My Commission Expires: _____

COMMONWEALTH OF MASSACHUSETTS

NANTUCKET, ss.

On this _____ day of _____, 2021, before me, the undersigned notary public, personally appeared Jason Bridges, proved to me through satisfactory evidence of identification, which was personal knowledge of the undersigned, to be the person whose name is signed on the preceding document, and acknowledged to me that he signed it voluntarily for its stated purpose, as a member of the Select Board of the Town of Nantucket.

Notary Public

My Commission Expires: _____

COMMONWEALTH OF MASSACHUSETTS

NANTUCKET, ss.

On this _____ day of _____, 2021, before me, the undersigned notary public, personally appeared Matthew G. Fee, proved to me through satisfactory evidence of identification, which was personal knowledge of the undersigned to be the person whose name is signed on the preceding document, and acknowledged to me that he signed it voluntarily for its stated purpose, as a member of the Select Board of the Town of Nantucket.

Notary Public

My Commission Expires: _____

COMMONWEALTH OF MASSACHUSETTS

NANTUCKET, ss.

On this _____ day of _____, 2021, before me, the undersigned notary public, personally appeared Kristie L. Ferrantella, proved to me through satisfactory evidence of identification, which was personal knowledge of the undersigned, to be the person whose name is signed on the preceding document, and acknowledged to me that she signed it voluntarily for its stated purpose, as a member of the Select Board of the Town of Nantucket.

Notary Public

My Commission Expires: _____

COMMONWEALTH OF MASSACHUSETTS

NANTUCKET, ss.

On this _____ day of _____, 2021, before me, the undersigned notary public, personally appeared Melissa K. Murphy, proved to me through satisfactory evidence of identification, which was personal knowledge of the undersigned, to be the person whose name is signed on the preceding document, and acknowledged to me that she signed it voluntarily for its stated purpose, as a member of the Select Board of the Town of Nantucket.

Notary Public

My Commission Expires: _____

**APPROVAL BY MASSACHUSETTS HISTORICAL COMMISSION
COMMONWEALTH OF MASSACHUSETTS**

The undersigned Executive Director and Clerk of the Massachusetts Historical Commission hereby certifies that the foregoing preservation restriction has been approved pursuant to Mass. Gen. Laws c. 184, §32.

Brona Simon
Executive Director and Clerk
Massachusetts Historical Commission

COMMONWEALTH OF MASSACHUSETTS

_____, ss.

On this ____ day of _____, 2021, before me, the undersigned notary public, personally appeared Brona Simon, proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she signed it in her capacity as Executive Director and Clerk of the Massachusetts Historical Commission for its stated purposes.

Notary Public

My Commission Expires _____

SCHEDULE OF EXHIBITS

- A. Legal Description**
- B. Registered Land Court Plans Nos.6283-12 and 6283-13**
- C. “Preservation Restriction Site Plan in Nantucket, Massachusetts” prepared by Bracken Engineering, Inc. and dated April 30, 2020.**
- D. Documentary Photographs of the Buildings**
- E. Massachusetts Historical Commission – Survey Form A**
- F. Restriction Guidelines**
- G. 2017 Annual Nantucket Town Meeting, Article 37**

EXHIBIT A

Property Description

(Historic Preservation Restriction - Nantucket Island School of Design and the Arts, Inc.
to Nantucket Preservation Trust)

Those certain parcels of land, together with the buildings thereon, located in Nantucket, Nantucket County, Massachusetts, now known and numbered as 23 and 25 Wauwinet Road, being shown as Lot 103 on Land Court Plan No. 6283-12, and Lot 105 on Land Court Plan No. 6283-13 at Nantucket Registry District.

Said premises are subject to the following matters:

- (a) Matters set forth on the face of Certificates of Title Nos. 10132 and 18379 at Nantucket Registry District, to the extent in force and applicable.
- (b) Grant of Easement and Release of Restrictions dated May 18, 1998, registered with Nantucket Registry District as Document No. 80251.
- (c) Notice of Variance granted by the Nantucket Board of Appeals, dated September 23, 1980, registered with Nantucket Registry District as Document No. 24446, as affected by Grant of Variance dated April 2, 1998, registered as Document No. 80239.
- (d) Order of Conditions dated May 5, 2020, registered as Document No. 165084 at Nantucket Registry District.

For title, see Certificates of Title Nos. 10,132 and 18,379 at the Nantucket Registry District of the Land Court.

EXHIBIT B
Subdivision Plan of Land in Nantucket, Hayes Engineering, Inc., Surveyors,
March 30, 1998 - Registered Land Plan #6283-13

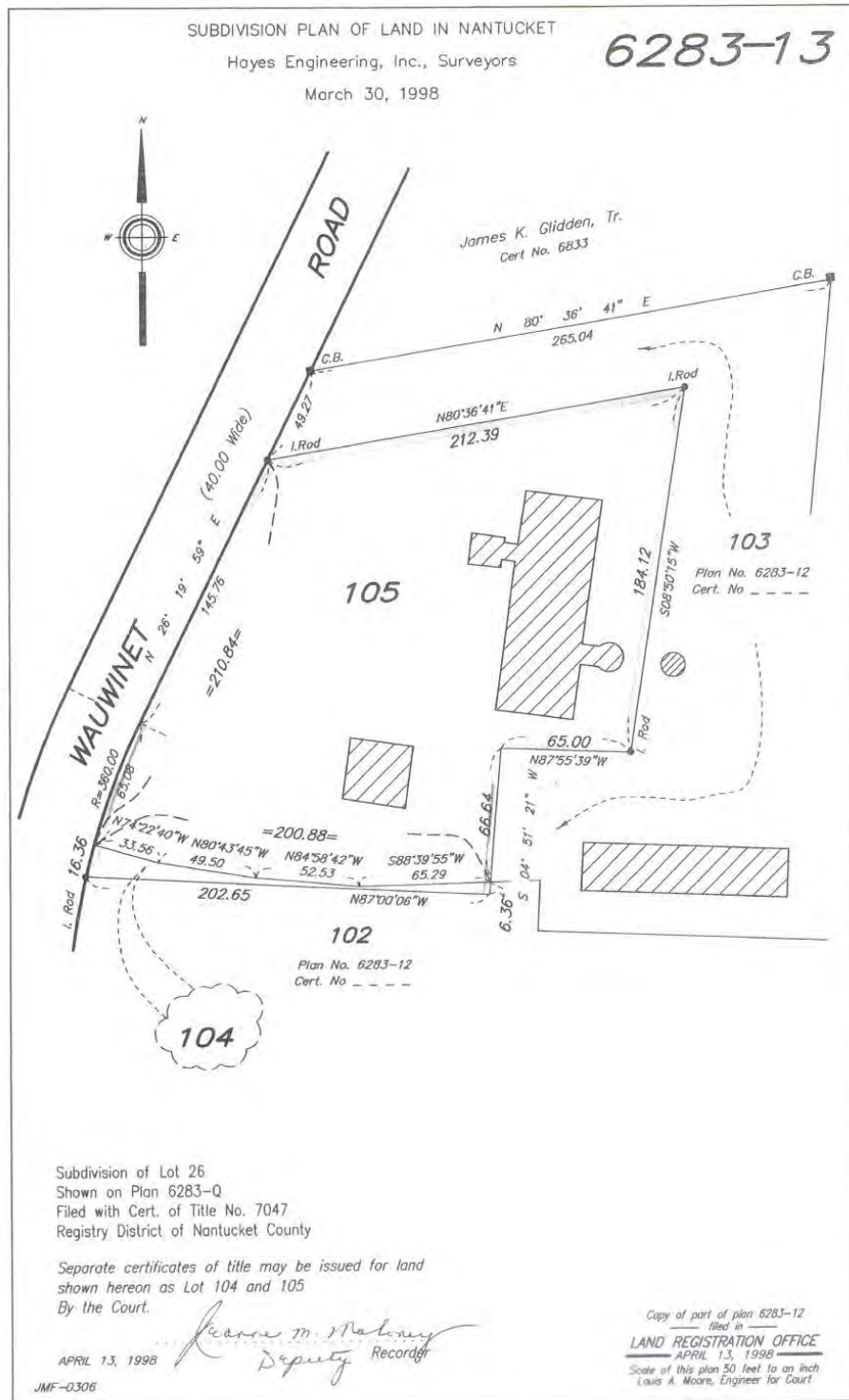


EXHIBIT C

Preservation Restriction Site Plan in Nantucket, Massachusetts” prepared by Bracken Engineering, Inc. and dated April 30, 2020

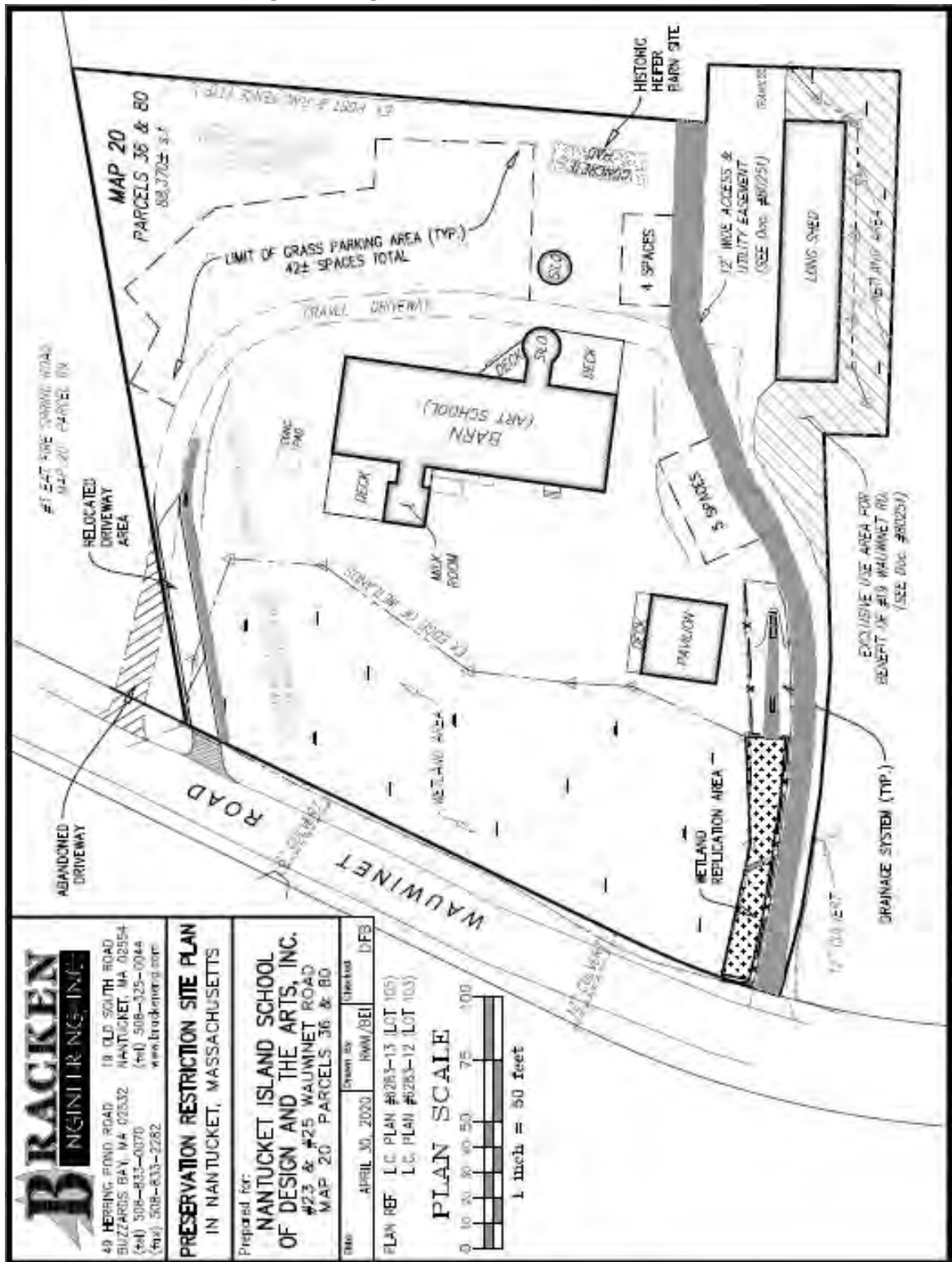


EXHIBIT D



Photo #1 – south elevation of the Barn



Photo #2 – south elevation of the Barn – detail of entry

EXHIBIT D



Photo #3 – south elevation of Barn – detail of gable windows & door

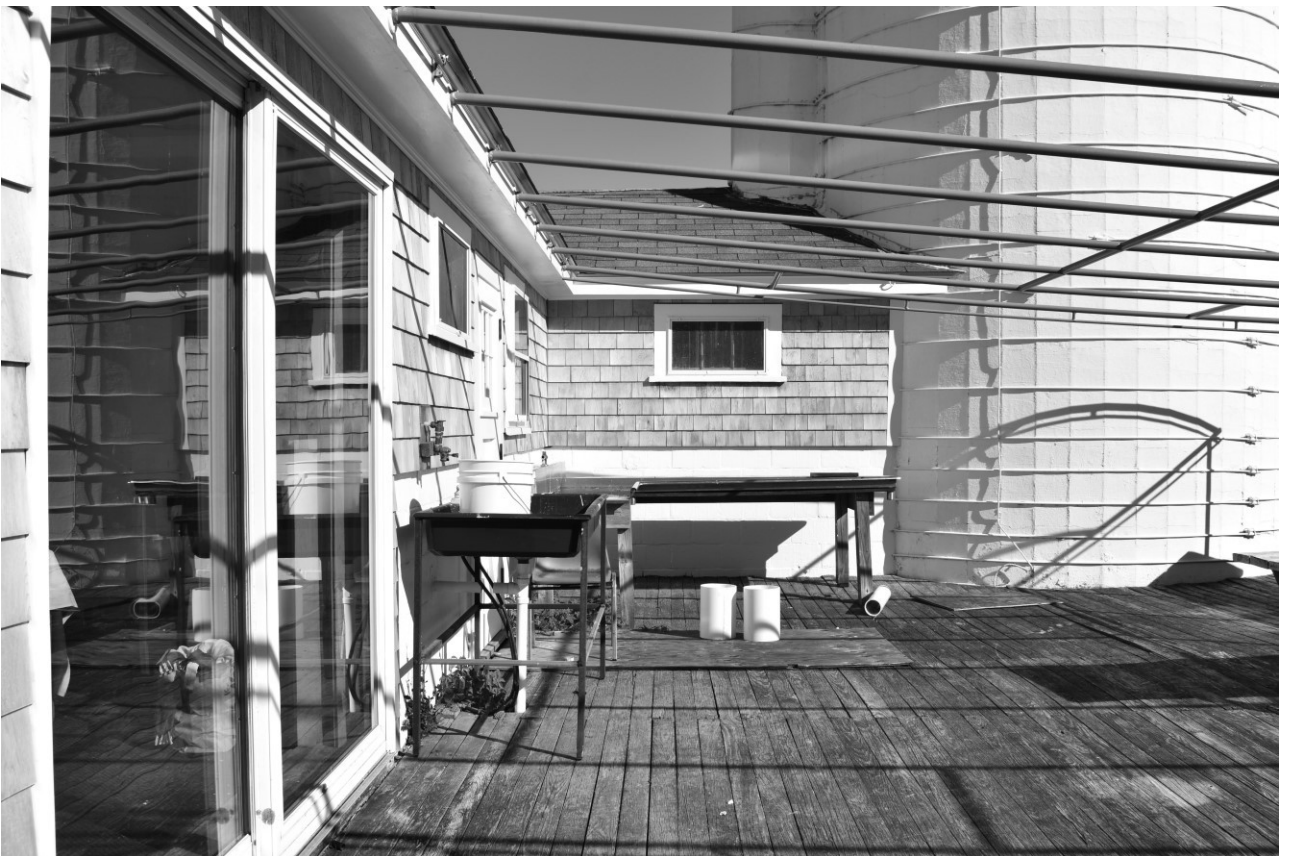


Photo #4 – east elevation of Barn, south elevations of connector to West Silo & Silo



Photo #5 – south elevation of West Silo



Photo #6 – north elevation of West Silo



Photo #7 – north elevation of West Silo; east & north elevations of Barn

EXHIBIT D



Photo #8 – north elevation – barn door – center doorway



Photo #9 – north elevation – west doorway



Photo #10 – north & west elevations of the Barn; north elevations of the connector, Milk House & deck



Photo #11 – Barn - north façade of connector & Milk House



Photo #12 – Barn - west & south elevations of the Milk House



Photo #13 – Barn – west elevation with west & south elevations of the Milk House (photo left) and the West Sill (background photo right)



Photo #14 – Barn – west elevation at connector to Milk Room (photo left)



Photo #15 – Barn – west elevation (mid-section between the Milk Room connector & south end)



Photo #16 – Barn – west elevation (south end) with dome of West Silo photo background)



Photo #17 – Barn – west elevation – north dormer

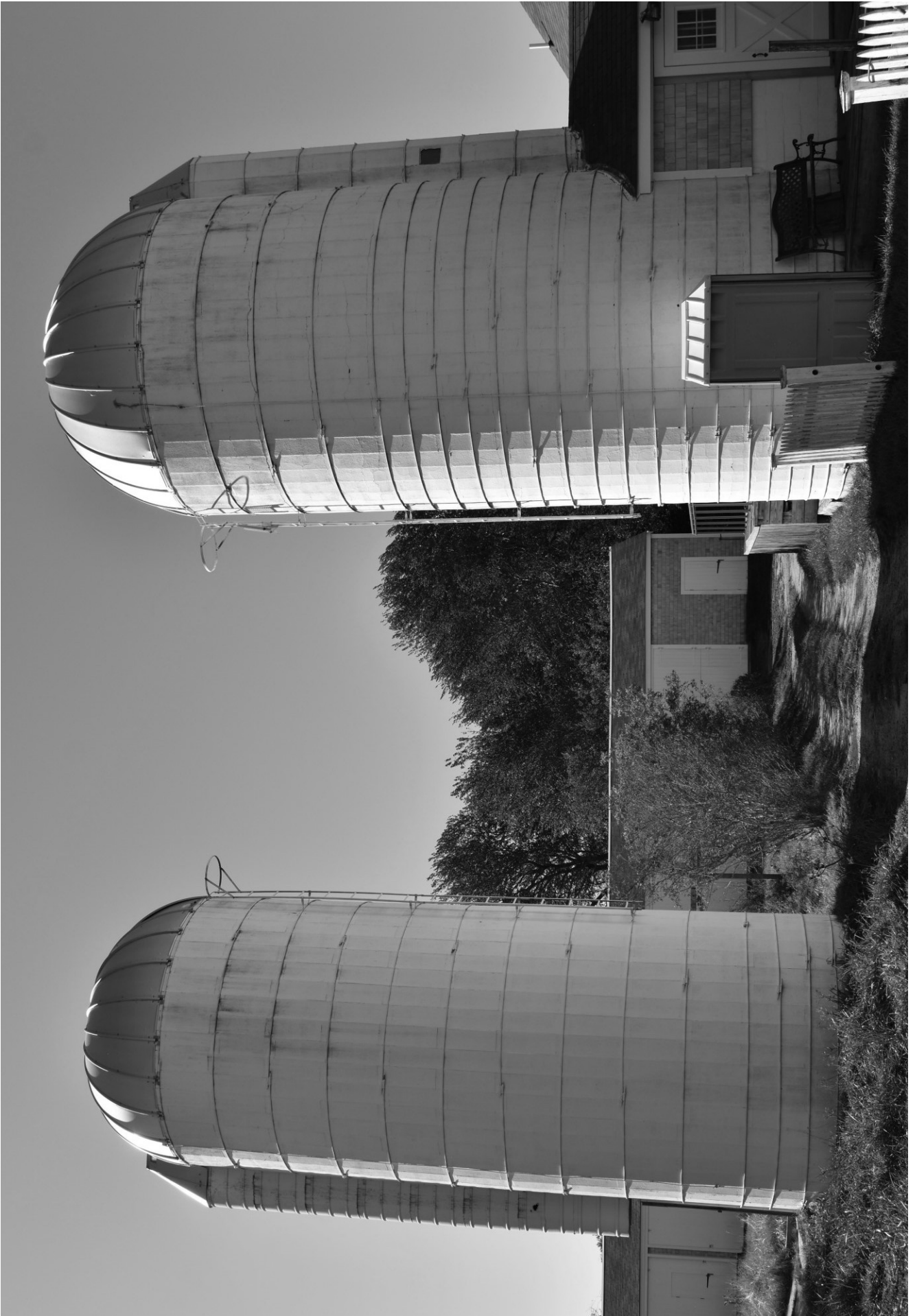


Photo #18 – left to right: East & West Silos – north elevations

EXHIBIT D



Photo #19 – East Silo – north & east elevations



Photo #20 – Long Shed – north elevation showing typical finishes at western bays



Photo #21 – Long Shed – north elevation

EXHIBIT D



Photo #22 – Long Shed – north elevation - door cut into sliding door at 2nd bay from east



Photo #23 – Long Shed – east elevation



Photo #24 – Long Shed – south elevation – viewed from east end looking westward



Photo #25 – Long Shed – south elevation viewed from west end looking eastward



Photo #26 – Long Shed – west gable elevation



Photo #27 – the Pavilion – north elevation

EXHIBIT E

FORM A - AREA

Assessor's Sheets USGS Quad Area Letter Form Numbers in Area

MASSACHUSETTS HISTORICAL COMMISSION
MASSACHUSETTS ARCHIVES BUILDING
220 MORRISSEY BOULEVARD
BOSTON, MASSACHUSETTS 02125

20-36 & 20-80

Siasconset

Photograph



Town/City: Nantucket

Place (*neighborhood or village*): Polpis

Name of Area: Sea View Farm (historic name)

Nantucket Island School of Design & Art

Present Use: art school, studios, classrooms

Construction Dates or Period: 1950-1960

Overall Condition: good

Major Intrusions and Alterations:

Acreage: 2.0 acres

Recorded by: Betsy Tyler & Brian Pfeiffer

Organization: Nantucket Preservation Trust

Date (*month/year*): March 14, 2020

Locus Map



☒ see continuation sheet

EXHIBIT E

INVENTORY FORM A CONTINUATION SHEET

NANTUCKET

Sea View Farm

MASSACHUSETTS HISTORICAL COMMISSION

Area Letter Form Nos.

220 MORRISSEY BOULEVARD, BOSTON, MASSACHUSETTS 02125

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- ☐ Recommended for listing in the National Register of Historic Places.
If checked, you must attach a completed National Register Criteria Statement form.

Use as much space as necessary to complete the following entries, allowing text to flow onto additional continuation sheets.

ARCHITECTURAL DESCRIPTION

Describe architectural, structural and landscape features and evaluate in terms of other areas within the community.

Located at 23-25 Wauwinet Road, the Nantucket Island School of Design occupies the former barnyard and core of the Sea View Dairy Farm on the east side of Wauwinet Road in the Polpis section of Nantucket. Once the center of the island's largest farm, the property contains 88,370 square feet of land on which stand the former Dairy Barn and Milk Room, now the Art School, the East and West Silos, the Long Shed (built as an equipment storage shed, now used as studios), and an open Pavilion. Land west of the buildings is open field and some wetlands along the road; east and north of the buildings is open field that rises eastward. Buildings on the property are:

Former Dairy Barn & Milk Room: Constructed in 1950, the Barn and Milk Room are constructed entirely from elements provided by the James Manufacturing Company which promoted its methods of "sanitary dairy barns" through catalogues of "The James Way" of building and planning dairy farms. The main block of the barn is a simple rectangular structure set on a poured concrete slab and enclosed by a pitched roof with gables at its north and south elevations. Materials of which the building is constructed are uniform at all elevations. All walls sit on a 4' high base of concrete blocks laid in running bond. Above this base, walls are of wood-frame construction clad with weathered wooden shingles and trimmed with painted flat-stock at door & window cases, building corners, and rake boards. The roof is covered with three-tab asphalt shingles.

The facade (south elevation) of the Barn is symmetrically arranged. At the center of the ground floor is a wide doorway containing two leaves of batten construction with ornamental 9-light upper panels. The doors are flanked by wooden six-light casements set above more recent concrete-block infill that marks the dimensions of the original barn doors. The current doorway and windows are contained within the same frame that has a projecting cap of flat stock set at an angle to shed rainwater. This doorway is, in turn, flanked by two metal hoppers containing three lights each; these hoppers and others that match them bear the stamp of the James Manufacturing Company that marks them as part of The James Way system. At the center of the gable are a pair of loading doors of batten construction with six-pane lights as the upper panel of each. Above the loading door is a projecting beam that served hoisting equipment to the loft. Flanking the loading doors are two wooden six-light casements.

The west elevation of the Barn is divided into two sections by the hallway that connects the Milk Room to the building. The southern half of the elevation extends approximately 2/3 of the building's entire length. Reflecting the interior's original use as cow stalls, the south part of the elevation retains three evenly spaced window openings for 3-light hoppers set directly beneath the eaves. Two of these three windows retain original metal sash. These openings have been interspersed by modern openings installed in the 1970s. Between the southernmost two original windows, there are two modern 1/1 wooden windows flanking a batten door with two panels, the lower of which has cross braces and the upper a six-pane light. Between the middle and northern original window opening (now closed with painted wood but retaining its opening) a single 1/1 wooden window has been added. North of this part of the wall (north of an internal chimney) original fenestration remains in the form of three windows set directly beneath the eaves. The southern two of these windows retain their original 3/3 metal sash; the northern window is now closed but retains its original opening. Set between the northernmost blind window and the center 3/3 window is a single added doorway, containing a batten door with two panels framed with cross braces. North of the Milk Room, the west elevation retains its original fenestration consisting of three evenly spaced 3/3 windows with metal sash. The angle created by the west elevation of the Barn and the north elevation of the Milk Room is filled by an open wooden deck (ca. 1970-80). The deck is set on concrete-block piers and

Continuation sheet 1

EXHIBIT E

INVENTORY FORM A CONTINUATION SHEET

NANTUCKET

Sea View Farm

MASSACHUSETTS HISTORICAL COMMISSION

Area Letter Form Nos.

220 MORRISSEY BOULEVARD, BOSTON, MASSACHUSETTS 02125

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has wooden stairs centered on its north and west sides. The deck is constructed of unpainted, weathered wood consisting of 4" decking, and a partial perimeter wall of vertical boards with a cap of flat-stock.

The north elevation of the Barn is asymmetrically arranged about a pair of sliding batten barn doors with cross-braced upper and lower panels at the wall's center. West of the double doors, is a single batten door with upper and lower panels framed with cross braces. East of the double doors is a single window with original 3/3 metal sash. The center of the gable has a single 12/12 wooden sash, added in the 1970s

The east elevation of the Barn is divided into two sections by the passage that connects it to the West Silo. The northern portion of the west elevation extends approximately 2/3 the length of the building. This portion of the east elevation contains eight 3/3 window openings, all but one of which retain their original metal sash. The north elevation of the connector to the West Silo contains a single batten door composed of a cross-braced lower panel and a glazed upper panel with six lights. The south elevation of the connector to the West Silo contains a single 3-light hopper with metal sash set beneath the eaves. The southern portion of the east elevation contains a 3/3 metal window at its junction with the connector to the West Silo; moving south it contains a doorway with single batten door composed of a cross-braced lower panel and a glazed upper panel with six lights; next south is a single 3-light hopper with metal sash; and finally at the southeast corner a modern two-panel slider door with single-pane leaves has been added (ca. 1970-80). Filling the angled area created by the southern portion of the west elevation and the south elevations of the connector and West Silo, is an added wooden deck (ca. 1970-80). The deck is constructed of unpainted, weathered wood consisting of 4" decking, and a partial perimeter wall of vertical boards with a cap of flat-stock.

The Milk Room stands out from the west elevation of the Barn to which it is connected by an enclosed corridor. The structure rises from a concrete-block base. The concrete-block walls are capped with a wide wooden bevel that extends back to shingle-clad wood-frame walls. The structure is enclosed by a low hip roof that is connected to the Barn by a pitched roof over the connector. Centered on the south elevation of the connector is a single batten door composed of a cross-braced lower panel and a glazed upper panel with six lights. The south wall of the Milk Room rises from a concrete-block base which has been modified at its west end by the blocking of a former double door. Evidence of the door remains in a concrete apron on grade and in the seam lines between original concrete-blockwork and the infill. Above the concrete-block base, the wall has two widely spaced windows framed with flat stock and containing 4-light metal inward-tilting hopper windows. The west elevation of the Milk Room contains a single 4-light metal hopper centered on the wall. The north elevation contains paired 4-light metal hoppers centered on its wall. The north elevation of the connector contains a single batten door composed of a cross-braced lower panel and a glazed upper panel with six lights.

Roofs: The roof of the Barn is a simple pitched roof covered with asphalt shingles. Evenly spaced along the ridge are three galvanized solid-hood James ventilators. The west slope of the roof has been modified by the addition (ca. 1970-1980) of two wood-frame dormers with hipped roofs at its south end. Each dormer is covered with weathered wood shingle and trimmed with painted flat-stock. The face (west elevation) of each dormer contains two pairs of wood 6-light casements. Moving northward, the roof is penetrated by a flat skylight and a red brick chimney. The east slope of the Barn roof contains 7 skylights unevenly spaced across the length of the roof. All skylights are flat with single-panes. Skylights appear to date from 1970-1980. Roofs of the connectors to the Milk Room and West Silo are simple pitched roofs with no penetrations. The Milk Room is covered by a hipped roof with no penetrations.

West Silo: Set on a poured concrete slab, this structure is made of pre-cast concrete staves set in a circular plan and joined together by iron tension bands. On the west side of the Silo, a nine-sided polygonal projection rises the height of the Silo, presumably for use in feeding silage into the top of the structure. On the east side, a single iron ladder rises from the head of the first storey to the roof. The Silo is enclosed by a domed roof of galvanized metal with applied ribs covering standing seams between the panels. The roof of the polygonal projection is roofed with the same material rising to a peak. Access to the interior of the Silo is through a doorway on its west elevation contained within the connector to the Barn. The method of construction used for the Silo is illustrated in James Way Catalogues beginning in the early twentieth century at which time the staves were made of terracotta blocks rather than pre-cast concrete.

Continuation sheet 2

EXHIBIT E

INVENTORY FORM A CONTINUATION SHEET

NANTUCKET

Sea View Farm

MASSACHUSETTS HISTORICAL COMMISSION

Area Letter Form Nos.

220 MORRISSEY BOULEVARD, BOSTON, MASSACHUSETTS 02125

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East Silo: Set on a poured concrete slab with its floor approximately 2' below current grade, the East Silo is a mirror image of the West Silo with the minor difference that its concrete staves are bound with more closely spaced tension bands than the West Silo. Its ground-level entry was once concealed by a connector to the Heifer Barn which was moved off the property in 1977-78. The former entry is now blocked by a batten door.

Long Shed: Located at the south end of the barnyard, the Long Shed is a one-storey stick-built structure set on a concrete-block footing. Exterior elevations are clad in weathered wood shingles trimmed with painted flat-stock. The structure is enclosed by a lean-to roof, the south slope of which descends to a height slightly less than one storey above current grade. The roof is covered by asphalt shingle. The building's façade (north elevation) contains a series of large sliding and swinging doors to allow access for the storage of agricultural equipment. Moving from west to east, the façade's first bay contains a single pedestrian entry with a batten door made of tongue-and-groove boarding. The next bay contains oversized double doors each leaf of which is divided horizontally to create Dutch doors. Each leaf of this doorway is made of tongue-and-groove boarding framed by flat-stock into a single panel. The next four bays contain single sliding doors made of tongue-and-groove boarding. These doors are hung from iron tracks. The easternmost two bays contain two large sliding doors like those of the central bays except that the door second from the east end has a smaller pedestrian doorway cut into its face.

The east elevation of the Long Shed is a windowless gable end. The rear (south elevation) rises slightly less than one storey on a low wall of concrete block above which the elevation is constructed of wood and clad with shingles. It has 8 windows spaced evenly along its length. Each window contains a 6-light wood sash set in a flat-stock case. The west end is a gable end, the southern portion of which has a partially height wall of concrete block that extends the base of the south wall onto the west. The rest of the elevation is wood-frame construction. Three 6-light windows are evenly spaced across this west elevation.

Pavilion: An open wood-frame structure, the Pavilion stands near the southwest corner of the property set away from the original barnyard buildings. The structure is set on concrete-block piers and wooden posts which frame the structure into two bays' width (east-to-west) and three bays' depth (north to south). A continuous set of steps extends across the north elevation to provide access. The east, south, and west sides of the Pavilion have a low wall formed by the back of a continuous bench that runs the perimeter. The roof is low pitched and is covered with asphalt shingles.

HISTORICAL NARRATIVE

Explain historical development of the area. Discuss how this relates to the historical development of the community.

Now the last surviving vestiges of Nantucket's dairy-farming history, the former barnyard of Sea View Farm preserves a small complex of agricultural buildings constructed from the James Way system of "sanitary" dairy farming that began in the early twentieth century and continued throughout the century.

Although the economy of Nantucket was always dominated by whaling and maritime trade, agriculture has played a changing role. The island's unoccupied moorlands served as grazing for sheep and some household cows during the eighteenth and early nineteenth centuries. The failure of whaling in the mid-nineteenth century led islanders to turn to agriculture out of necessity. An interest in new methods, crops, and livestock brought many retired mariners to the field. By 1850, there were more than a hundred small farms on the island. The Nantucket Agricultural Society was founded in 1856, and did much to recognize and encourage local efforts, sponsoring annual exhibitions and awards for animal husbandry and the cultivation of an impressive variety of crops.

Sea View Farm (also known as the Eat Fire Spring Farm) in Squam at the east end of the Great Harbor probably dates back to the eighteenth century. It was owned by the prominent Mitchell family in the 1830s, when it comprised thirty-eight acres. Henry B. Worth acquired the farm in 1905 and expanded the acreage with the purchase of five adjacent parcels.

Continuation sheet 3

EXHIBIT E

INVENTORY FORM A CONTINUATION SHEET

NANTUCKET

Sea View Farm

MASSACHUSETTS HISTORICAL COMMISSION

Area Letter Form Nos.

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The greatly enlarged tract was sold to Henry H. Fay, who subsequently sold the land to men who formed the Eat Fire Spring Farm Company. In 1948, the 400-plus acre farm—the largest on the island—was bought by Sherman J. Sexton of Chicago, who modernized the dairy operation. The Sextons renamed the farm Sea View Farm. On May 13, 1950, the *Inquirer and Mirror* reported: “Stuart Chadwick became the manager of Sea View Farms on Tuesday of this week. . . . A new barn is being built on the property on the Wauwinet Road and all new machinery will be installed. The main Dairy Barn with its attached Milking Room and two silos are constructed of elements manufactured by the James Manufacturing Company of Fort Atkinson, Wisconsin. Founded in 1903 by William James, a dairy farmer and blacksmith, built a more efficient cow stanchion that improved the sanitation in dairy barns. This invention and James's ideas about dairy management attracted the attention of a manufacturer in Fort Atkinson, Wisconsin where James moved to help develop a full line of products for dairy farmers, including the design of dairy barns and related structures. In the introduction to the company's 1918 *James Way Catalogue*, James stated:

It has been the privilege of the James Manufacturing Company to originate Sanitary dairy barn equipment ideas that make it easy to maintain the conditions of cleanliness in the stable required by law; equipment that not only helps in keeping the barn clean but effects great savings of labor, time and feed, forces cows to give more milk and prevents in many ways losses by accidents and disease.

Representative of the late nineteenth and early twentieth-century quest to apply scientific principles to the management of all aspects of contemporary life, the James Way System was one of a number of commercial companies that sought to apply scientific knowledge, modern ideas of motion efficiency, and improved sanitation to farming. To that end, the company developed designs for barns, milk rooms, silos and other related structures which it adapted to the needs of individual clients using standardized elements of its own design. The firm manufactured complete buildings that included metal windows set as hoppers which it recommended over double-hung sash to promote the movement of air, roof-top ventilators, the use of concrete slab floors and concrete-block walls at the lower levels of barns, stanchions, and hoisting equipment for the efficient movement of feed and manure, all of which were shipped for assembly on site. The Barn, Milk Room, and Silos of Sea View Farm preserve a high proportion of these original architectural elements stamped with the James Manufacturing Company's name.

Despite the thorough-going design and layout of the barnyard in 1950 and the assembly of a farm that was very large by Nantucket standards, the venture had a relatively short life due to changing national trends in food production and the acceleration of land values as Nantucket became more dominated by tourism. At the time of the barn's construction, the *Inquirer & Mirror* reported that milk from the farm's herd of Brown Swiss cows would be pasteurized at the Nantucket Dairy on Polpis Road. By 1964, Sea View Farm, under the ownership of Samuel Dunlap, was the only remaining dairy farm on the island and the sole supplier of milk to Nantucket Dairy, which was the only milk processing plant on the island. At that time, the large barn “with some renovations” was described as housing fifty cows. (*Inquirer & Mirror* 10/22/1964)

In 1968, the closing of the Nantucket Dairy marked the end of on-island production of milk. Abraham Glasser, then owner of Sea View Farms, subdivided the extensive farm property. In 1973, Dr. Howard and Hedda Marsh purchased a small parcel of land on which stood the Dairy Barn, Milk Room, and West Silo. The Marshes leased the property to the Nantucket Island School of Design and the Arts (NISDA) beginning in 1979, and the *Inquirer and Mirror* announced: “The Wauwinet Barn at Eat Fire Springs Farm in Wauwinet is the new home of the Nantucket Island School of Design and the Arts. The two-story facility, overlooking Polpis Harbor, will house all of the classrooms and the new office.” (10/11/1979). After fundraising for three years, NISDA purchased the property in 1982 converted the Barn into classrooms, studios, and gallery space. Adjacent land with the Long Shed and East Silo was purchased in 2000. The two silos were restored by Amish craftsmen in 2018.

Continuation sheet 4

EXHIBIT E

INVENTORY FORM A CONTINUATION SHEET

MASSACHUSETTS HISTORICAL COMMISSION
220 MORRISSEY BOULEVARD, BOSTON, MASSACHUSETTS 02125

NANTUCKET

Sea View Farm

Area Letter Form Nos.

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Continuation sheet 5

EXHIBIT E

INVENTORY FORM A CONTINUATION SHEET

NANTUCKET

Sea View Farm

MASSACHUSETTS HISTORICAL COMMISSION

Area Letter Form Nos.

220 MORRISSEY BOULEVARD, BOSTON, MASSACHUSETTS 02125

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AREA DATA SHEET – Sea View Farm

Assessors Parcel ID #	MHC #	Historic Name	Address	Date (Source)
20-36		Dairy Barn & Milk Room	23 Wauwinet Road	1950 (I&M)
20-36		West Silo	23 Wauwinet Road	1950 (I&M)
20-36		The Pavilion	23 Wauwinet Road	1995 (NISDA)
20-80		East Silo	25 Wauwinet Road	1950 (I&M)
20-80		The Long Shed	25 Wauwinet Road	ca. 1950-60

Continuation sheet 6

EXHIBIT E

INVENTORY FORM A CONTINUATION SHEET

MASSACHUSETTS HISTORICAL COMMISSION

220 MORRISSEY BOULEVARD, BOSTON, MASSACHUSETTS 02125

NANTUCKET

Sea View Farm

Area Letter Form Nos.

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Representative Photographs



Main Barn & West Silo (south elevations)



Main Barn & Milk Room (north & west elevations)

Continuation sheet 7

EXHIBIT E

INVENTORY FORM A CONTINUATION SHEET

NANTUCKET

Sea View Farm

MASSACHUSETTS HISTORICAL COMMISSION

Area Letter: Form Nos.

220 MORRISSEY BOULEVARD, BOSTON, MASSACHUSETTS 02125

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Representative Photographs (continued)



(left to right) West Silo and Main Barn – north & east elevations



(left to right) East and West Silos – north elevations

Continuation sheet 8

EXHIBIT E

INVENTORY FORM A CONTINUATION SHEET

NANTUCKET

Sea View Farm

MASSACHUSETTS HISTORICAL COMMISSION

Area Letter Form Nos.

220 MORRISSEY BOULEVARD, BOSTON, MASSACHUSETTS 02125

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Representative Photographs (continued)



Long Shed – north elevation



Pavilion – north elevation

Continuation sheet 9

EXHIBIT F

RESTRICTION GUIDELINES

The purpose of these Restriction Guidelines is to clarify the terms of this Historic Preservation Restriction that deal with maintenance and alteration to the Buildings, Property, and the Pavilion. Under Paragraph 3, prior permission from the Nantucket Preservation Trust (NPT) is required for any Minor Maintenance that is reasonably expected to materially change the appearance, materials, colors or workmanship from that existing prior to the maintenance and for any Major Maintenance. Minor Maintenance that is part of ordinary maintenance and repair and does not materially change the appearance, materials, colors or workmanship from that existing prior to the maintenance does not require NPT review and approval.

In an effort to explain what constitutes Minor Maintenance and Major Maintenance, the following list is provided. The list is by no means comprehensive. It is a sampling of common structural alterations.

PAINT

Minor: Exterior hand scraping and repainting of non-decorative and non-significant surfaces as part of periodic maintenance.

Major: Painting or fully stripping decorative surfaces or distinctive stylistic features, including murals, stenciling, ornamental woodwork, stone, and decorative or significant original plaster.

WINDOWS AND DOORS

Minor: Regular maintenance including caulking, painting, and necessary re-glazing. Repair or in-kind replacement of existing individual decayed window parts.

Major: Wholesale replacement of units; change in fenestration or materials; alteration of profile or setback of windows. The addition of storm windows is also considered a major change; however, with notification it is commonly acceptable.

EXTERIOR

Minor: Spot repair of existing cladding and roofing including in-kind replacement of clapboard, shingles, slates, etc.

Major: Large scale repair or replacement of cladding or roofing. Change involving inappropriate removal or addition of materials or building elements (i.e., removal of chimneys or cornice detailing; installation of architectural detail which does not have a historical basis); altering or demolishing building additions; spot or full re-pointing of masonry. Structural stabilization of the property is also considered a major alteration.

EXHIBIT F

LANDSCAPING/OUTBUILDINGS

Minor: Routine maintenance of outbuildings and landscape including lawn mowing, pruning, planting, painting, and repair.

Major: Moving or subdividing buildings or property; altering of property; altering or removing significant landscape features such as gardens, vistas, walks, plantings, and ground disturbances affecting archaeological resources, installation of paving, or re-location of access driveways.

WALLS/PARTITIONS

Minor: Making fully reversible, temporary exterior changes (i.e. sealing off doors *in situ*, leaving doors and door openings fully exposed).

Major: Creating new openings in exterior walls or permanently sealing off existing openings.

HEATING/AIR CONDITIONING/ELECTRICAL/PLUMBING SYSTEMS

Minor: Repair of existing systems.

Major: Installing or upgrading systems which will result in major exterior appearance changes (i.e. exterior ducts, piping, ventilators, HVAC units); the removal of substantial quantities of original materials in the course of construction.

Changes classified as Major Maintenance are not necessarily unacceptable. Under the Historic Preservation Restriction, such changes must be reviewed by the NPT in order to assess their impact on the historic integrity of the Property and Buildings. Changes to the Pavilion shall not be regarded as Major Maintenance unless they may result in the enlargement of the structure's footprint or height.

It is the responsibility of the Grantor to notify NPT in writing when any Minor Maintenance that is reasonably expected to materially change the appearance, materials, colors or workmanship from that existing prior to the maintenance or any Major Maintenance is contemplated. Substantial alterations identified as Major Maintenance may necessitate review of plans and specifications.

The intent of this Historic Preservation Restriction is to enable the NPT to review proposed alterations and assess their impact on the integrity of the Property and the Buildings, and to assure that changes to the Pavilion will not expand the structure, not to preclude future change. NPT staff will attempt to work with the Grantor to develop mutually satisfactory solutions which are in the best interests of the Property.

EXHIBIT G

ARTICLE 37

(Appropriation: FY 2018 Community Preservation Committee)

To see if the Town will vote to act on the report of the Community Preservation Committee on the Fiscal Year 2018 Community Preservation Budget and to appropriate or reserve for later appropriation monies from the Community Preservation Fund annual revenues or available funds for the administrative and operating expenses of the Community Preservation Committee, the undertaking of Community Preservation Projects and all other necessary and proper expenses for the year.

Purpose	Amount
<u>Historic Preservation</u>	
Nantucket Historical Association First phase of digitizing the Nantucket Whaling logbooks and Journals	\$40,000
Museum of African American History Fifth phase of restoration; interior carpentry, painting and floor finishes and exterior painting of Boston Higginbotham House, restoration of garage and restoration of driveway and accessible paths.	\$225,735
St. Paul's Church Restoration of Bell Tower	\$100,000
Nantucket Preservation Trust in collaboration with Preservation Institute Nantucket Completion of database and properties summary for Nantucket interiors inventory	\$23,600
American Legion Post 82 Second phase of conservation and restoration of exterior brick walls on east and north facades	\$93,000
Nantucket Atheneum First phase, conservation of four historic paintings	\$17,500
Nantucket Island School of Design & the Arts Preservation and restoration of two silos and stabilization of long barn	\$132,856
St Mary, Our Lady of the Isle Restoration of exterior doorways and entryways, exterior	

EXHIBIT G

EXHIBIT G

<u>Open Space Conservation/Recreation</u>	
Town of Nantucket Funds to pay the interest and principal of the Bond authorized at the 2012 Nantucket Town Meeting for the creation of an artificial turf playing field at Nobadeer Farm Road.	\$125,000
Linda Loring Foundation Funds to create a shed and for invasive species removal	\$16,500
Sustainable Nantucket Community Farm Institute, phase 2 Funds to enclose and prepare and additional 6.5 acres for farming	\$85,400
Preservation Institute Nantucket Document historic Nantucket waterfront, identify vulnerable areas, streets, properties and resources and time frame of increased flooding and create tools to assist the community to make informed decisions about protection and adaptation.	\$72,105
Sub-total	\$299,005
\$60,000 of the funds utilized in this category is from the Open Space reserves with the balance of the funds to be used in this category from the Community Preservation surcharge, interest and the State matching funds.	
<u>Administrative</u>	
Community Preservation Committee Administrative and operating expenses	\$120,000
Sub-total	\$120,000
All of the funds to be used in this category are from the Community Preservation surcharge, interest and the State matching funds.	
TOTAL	\$2,618,500
All amounts to be appropriated from the following sources:	
<u>SOURCES</u>	<u>AMOUNT</u>
Raised and appropriated from FY 2018 Community Preservation Surcharge	\$2,087,000
From State matching funds for FY 2017, to be received in 2018	\$ 395,000
From Interest	\$ 13,000

EXHIBIT G

EXHIBIT G

Completion of database and properties summary for Nantucket interiors inventory	\$23,600
American Legion Post 82 Second phase of conservation and restoration of exterior brick walls on east and north facades	\$93,000
Nantucket Atheneum First phase, conservation of four historic paintings	\$17,500
Nantucket Island School of Design & the Arts Preservation and restoration of two silos and stabilization of long barn	\$132,856
St Mary, Our Lady of the Isle Restoration of exterior doorways and entryways, exterior painting of all wood trim and foundation and brick repair , and detail carpentry	\$55,000
Town of Nantucket, Department of Public Works Restoration and erection of the base of the Sconset Flag Pole	\$45,000
Nantucket Town Clerk Phase one of the restoration and microfilming of the Lewis funeral ledgers and burial records	\$50,000
Sub-total	\$782,691
\$55,000 of the funds utilized for this category is from the Reserve for Historic Preservation with the balance of the funds to be used in this category from the Community Preservation surcharge, interest and the State matching funds.	
<u>Community Housing</u>	
Nantucket Affordable Housing Trust Fund Allocation to the fund subject to the fund obtaining approval from the CPC commissioners before the grant funds are expended on each particular project for affordable housing	\$400,000
Nantucket Interfaith Council Housing and rental assistance program	\$110,000
Habitat for Humanity Nantucket Inc. Construct additional houses at Sachem's Path and Ticcoma Way	\$200,000
Housing Nantucket Rehabilitation of community housing units created with CPA funds	\$94,204
Sachem's Path Nantucket, LLC Phase two infrastructure	\$250,000
Hall Keen Management Restoration of the east and south windows in Academy Hill Apartment building	\$250,600

EXHIBIT G

EXHIBIT G

<u>TOTAL</u>	\$2,618,500 \$2,367,900
All amounts to be appropriated from the following sources:	
<u>SOURCES</u>	<u>AMOUNT</u>
Raised and appropriated from FY 2018 Community Preservation Surcharge	\$2,087,000 \$1,836,400
From State matching funds for FY 2017, to be received in 2018	\$395,000
From Interest	\$13,000
From Designated Reserves for Historic Preservation	\$55,000
From Designated Reserves for Open Space	\$60,000
From Designated Reserves for Community Housing	\$8,500
<u>Total Revenues</u>	\$2,618,500 \$2,367,900
For fiscal year 2018 Community Preservation Purposes with each item considered a separate appropriation to be spent by the Community Preservation Committee. Provided however, that the above expenditures may be conditional on the recording of appropriate historic preservation restrictions for historic resources, open space restrictions for open space resources, recreational restrictions for recreational resources and for affordable housing restrictions for community housing; running in favor of an entity authorized by the Commonwealth to hold such restrictions for such expenditures; meeting the requirements of Chapter 184 of the General Laws pursuant to Section 12 of the Community Preservation Act.	

BOARD OF SELECTMEN COMMENT: At the Annual Town Meeting, the Board intends to move to request restoration of funding in the amount of \$250,600 removed by the Finance Committee motion for HallKeen Management for the restoration of the east and south windows in the Academy Hill Apartment building.

September 3, 2021

Vicki S. Marsh
vmars@k-plaw.com

Hon. Jason Bridges and
Members of the Select Board
Town & County Building
16 Broad Street
Nantucket, MA 02554

Re: Historic Preservation Restriction – 79 Orange Street

Dear Members of the Select Board:

You have requested that I review the Historic Preservation Restriction (the “Restriction”) from 79 Orange LLC, a Massachusetts limited liability company (the “Grantor”) to the Nantucket Preservation Trust, Inc., a Massachusetts nonprofit corporation (the “Grantee”), on the property located at 79 Orange Street, Nantucket and the exterior of the buildings now known as the “Antone Sylvia Grocery Store” (the “Property”). In conjunction with my review of the Restriction, I reviewed the letter from the Massachusetts Historical Commission (the “MHC”) which approved of the latest version of the Restriction. Upon my review of the Restriction, it is my opinion that it is in acceptable form for presentation to the Select Board for your approval and determination as to whether the Restriction is in the public interest. The Restriction is in substantially the same form as approved by MHC, except that I have made certain typographical and grammatical revisions.

In reviewing the Restriction, I find, in my opinion, that it is an appropriate historic preservation restriction, which complies with the requirements of Chapter 184, §§ 31-33 of the General Laws. The Restriction is a permanent restriction on the exterior of the building and the Property and is held by the Nantucket Preservation Trust, Inc., a non-profit Massachusetts corporation which is authorized to accept historic preservation restrictions pursuant to G.L. c. 184, §§31-33.

I reviewed the description of the Property in the Deed to 79 Orange LLC, dated July 29, 2014 recorded with the Nantucket County Registry of Deeds in Book 1444, Page 75 and find that the Property shown as Lot A on the plan of land entitled “ Division Plan of Land in Nantucket, MA, Prepared for 79 Orange LLC,” prepared by Blackwell & Associates, Inc. Land Surveyors, dated February 28, 2016 and recorded with said Deeds as Plan No. 2018-46 is a portion of the Property described in the Deed.

In reviewing the current owner’s title to the Property I found that the Property is subject to a mortgage to the Cape Cod Five Cents Savings Bank, dated June 12, 2015, recorded with said Deeds in Book 1486, Page 255 (the Mortgage”). This Mortgage would have a priority over the Restriction, or if foreclosed could result in a termination of the Restriction. However, the Cape Cod Five Cents Savings Bank has executed a Subordination of Mortgage to the Restriction, which shall be recorded



Hon. Jason Bridges and
Members of the Select Board
September 3, 2021
Page 2

with the Nantucket County Registry of Deeds, and which shall result in the Restriction having priority over the Mortgage and not being wiped out in the event of a foreclosure. Please note that I did not perform a full title examination of the Property.

If I can be of further assistance to you in this matter, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in blue ink that reads "Vicki S. Marsh". The signature is written in a cursive, flowing style.

Vicki S. Marsh

VSM/dmm

cc: Town Manager
Mary Bergman, Executive Director of
Nantucket Preservation Trust

778298NANT/19713/0001

GRANT OF HISTORIC PRESERVATION RESTRICTION

THIS HISTORIC PRESERVATION RESTRICTION is made this _____ day of _____, 2021, by and between the 79 Orange LLC, a Massachusetts limited liability company with a mailing address of c/o 50 Cliff Road, Nantucket, Massachusetts 02554 (hereinafter "Grantor") and the NANTUCKET PRESERVATION TRUST, INC., a Massachusetts nonprofit corporation with a mailing address of Post Office Box 158, Nantucket, Massachusetts 02554 (hereinafter "Grantee").

WITNESSETH:

WHEREAS, Grantor is the owner of that certain parcel of land, together with the building thereon, located in Nantucket, Nantucket County, Massachusetts, now known as the Antone Sylvia Grocery Store and numbered as 79 Orange Street, being the property described in Exhibit A, attached hereto and incorporated herein by reference (hereinafter the "Property"), being the same Property shown as Lot A on that certain map entitled "Division Plan of Land in Nantucket, MA, Prepared for 79 Orange LLC," prepared by Blackwell & Associates, Inc., Land Surveyors, dated February 28, 2016 and recorded at the Nantucket County Registry of Deeds on Plan No. 2018-46, a copy of which is attached hereto and incorporated herein by reference as Exhibit B, by virtue of Grantor's deed dated July 29, 2014 and recorded July 30, 2014 in Nantucket County Registry of Deeds in Book 1444, Page 75, said Property including the following structures:

The Antone Sylvia Grocery Store (hereinafter "the Building") is a one-storey, wood-frame commercial structure with a simple rectangular floor plan extended by a lean-to addition at its southwest corner. Built in 1879 and restored in 2015-2016, the building is a notable local example of small-scale Victorian commercial architecture that was once more common within the Nantucket Historic District. The Building stands near the sidewalk at the southwest corner of Orange and West Dover Streets on an irregularly shaped lot with a lawn surrounded by a capped picket fence (south), a narrow passage between the Building and a neighboring structure (west), a narrow unpaved strip of land at West Dover Street (north), and a narrow piece of land filled with a stoop (east). The Building stands on a foundation wall of rubble stone and concrete blocks, above which all elevations are clad with weathered wooden shingles trimmed with flat-stock wood, excepting the east elevation (façade) which has ornate Italianate style trimmings consisting of paneled pilasters, a wide corbeled entablature with and a deep cornice on its gabled parapet. A pre-fabricated, wood-frame garden shed (hereinafter "Garden Shed") installed on site ca. 2015 stands south of the Building

and constitutes a modern element that does not contribute to the historical significance of the Property.

WHEREAS, the Property and the Building contribute to the historic setting of the surrounding historic district;

WHEREAS, Grantee is qualified to accept historic preservation restrictions to protect buildings and sites historically significant for their architecture, associations and/or archaeology under the provisions of Mass. Gen. Laws c. 184, ss. 31, 32, and 33 (hereinafter "the Act");

WHEREAS, Grantee is a publicly supported, tax-exempt, non-profit organization whose primary purposes include the preservation and conservation of sites, buildings, and objects of local, state, and national significance and is a qualifying recipient of qualified conservation contributions under Section 170(h) of the Internal Revenue Code of 1986, as amended, and the regulations thereunder (hereinafter "the Code");

WHEREAS, the Building and Property are significant for its architectural design and historic uses that reflect the economic, aesthetic, and cultural history of Nantucket, Massachusetts, and that illustrate historic design, setting, materials, and workmanship;

WHEREAS, because of its architectural, historic, and cultural significance the Building and Property are a contributing resource within the Nantucket Historic District, listed in the National Register of Historic Places and as a National Historic Landmark on November 13, 1966, as amended on October 16, 2013, is included in the Nantucket Historic District established by the Town of Nantucket on June 4, 1970, is included in the Massachusetts State Register of Historic Places, and was designated a Certified Historic Structure under Section 170(h)(4)(B) of the Code on November 13, 2017;

WHEREAS, Grantor and Grantee recognize the architectural, historic, and cultural values (hereinafter the "preservation values") and significance of the Building and Property, and have the common purpose of conserving and preserving the aforesaid preservation values and significance of the Building and Property;

WHEREAS, the preservation values of the Building and the Property are documented in a set of reports, drawings, and photographs (hereinafter the "Baseline Documentation") attached hereto and incorporated herein by reference, which Baseline Documentation the parties agree provides an accurate representation of the Building Property as of the effective date of this grant;

WHEREAS, the Baseline Documentation shall consist of the following: (1)
"Division Plan of Land in Nantucket, MA, Prepared for 79 Orange LLC, by Blackwell &

Associates, Inc., Land Surveyors, February 28, 2016” a copy of which is attached hereto and incorporated herein by reference as Exhibit B; (2) a set of fourteen (14) exterior photographs produced by Brian Pfeiffer, dated September 27, 2018, copies of which are attached hereto and incorporated herein by reference as Exhibit C; and (3) historical documentation consisting of a Massachusetts Historical Commission Inventory Form B of the Property, prepared by Brian Pfeiffer, dated October 30, 2018, a copy of which is attached hereto and incorporated herein by reference as Exhibit D, said documentation to be kept on file at the offices of the Grantee;

WHEREAS, the grant of a preservation restriction by the Grantor to Grantee on the Property and the exterior of the Building will assist in preserving and maintaining the Property and the exterior of the Building, and its architectural, historic, and cultural features for the benefit of the people of the Town and County of Nantucket, Commonwealth of Massachusetts, and the United States of America; and

WHEREAS, to that end, Grantor desires to grant to Grantee, and Grantee desires to accept, a preservation restriction in perpetuity on the Property and the exterior of the Building pursuant to the Act.

NOW, THEREFORE, in consideration of Ten (\$10.00) Dollars and other good and valuable consideration, the receipt of which is hereby acknowledged, and pursuant to Section 170(h) of the Code and Mass. Gen. Laws chapter. 184, ss. 31, 32, and 33, Grantor does hereby voluntarily grant and convey unto the Grantee this preservation restriction (hereinafter “the Restriction”) in gross in perpetuity over the exterior of the Building and the Property.

1 **PURPOSE.** It is the Purpose of this Restriction to assure that the architectural, historic, and cultural features of the Property and the exterior of the Building as defined herein will be retained and maintained as set forth herein forever substantially in their current condition for conservation and preservation purposes. To these ends, subject to Paragraphs 2 and 3 of this Restriction, the Property and the exterior of the Building will be retained and maintained forever substantially unchanged so that they continue to contribute to the historical setting and significance of the Nantucket Historic District; and any change of the Property or the exterior of the Building that will significantly impair or interfere with the preservation values of the Property or the exterior of the Building is hereby prohibited.

2 GRANTOR’S COVENANTS.

21 **Grantor’s Covenants: Covenant to Maintain.** Grantor agrees at all times to maintain, replace, repair, and reconstruct the exterior of the Building, as hereinafter set forth, as necessary to preserve the exterior of the Building in substantially the same structural condition and state of repair as that existing on the effective date of this

Restriction. Grantor's obligation to maintain shall also require that the Property's open space area to the south of the Building be preserved as open space. Subject to the casualty provisions of Paragraphs 7 and 8 of this Restriction, this obligation to maintain shall require replacement, rebuilding, repair, and reconstruction of the exterior of the Building whenever necessary in accordance with *The Secretary of the Interior's Standards for the Treatment of Historical Properties with Guidelines for Preserving, Rehabilitating, Restoring and Reconstructing Historic Buildings* (36 C.F.R. 67 and 68), as these may be amended from time to time (hereinafter "the Secretary's Standards"). For the purpose of identifying categories of Major Maintenance requiring review and approval by Grantee and Minor Maintenance that, pursuant to Paragraph 6(c) hereof, does not require such review, copies of maintenance guidelines are attached hereto and incorporated herein by reference as Exhibit E and hereinafter referred to as the "Restriction Guidelines." Grantor's obligation to maintain shall be subject to the provisions of Paragraphs 3.1(f) and 6(b) hereof.

2.2 Grantor's Covenants: Prohibited Activities. The following acts or uses are expressly forbidden on, over, or under the Property, except as otherwise conditioned in this Paragraph:

- (a) the Building shall not be demolished, removed, or razed except as provided in Paragraphs 7 and 8 hereof;
- (b) nothing shall be erected or allowed to grow on the Property that would impair the visibility of the Building from Orange or West Dover Streets;
- (c) the dumping of ashes, trash, rubbish, or any other unsightly or offensive materials is prohibited on the Property;
- (d) the Property shall not be divided or subdivided in law or in fact, except for minor lot line adjustments that do not result in the creation of additional buildable lots; and
- (e) no aboveground utility transmission lines, except those reasonably necessary for the existing Building or made pursuant to utility easements already recorded, may be created on the Property.

3 GRANTOR'S CONDITIONAL RIGHTS.

3.1 Conditional Rights Requiring Approval by Grantee. Without the prior express written approval of Grantee, which approval may not be unreasonably withheld, but which may be subject to such reasonable conditions as Grantee in its discretion may determine, Grantor shall not undertake any of the following actions on the Building:

- (a) alter the following features of the Building, subject, however, to the maintenance covenants of Paragraph 2.1 hereof:
 - (1) the exterior massing, foundation walls, roof planes, and internal wood-frame construction, including:
 - a. brick, stone and concrete-block walls of the foundation below and above grade; and
 - b. existing roof surfaces which may be maintained with asphalt or wooden shingles, and wooden rake boards;
 - (2) exterior architectural features of all elevations including the façade (east elevation) and the north, west, and south elevations; such protected architectural features shall include:
 - a. all walls including their shingle cladding; corner boards and friezes; window and door cases with their flat-stock trimmings; all existing doors; and all existing sash;
 - b. the façade storefront (east elevation), including its flush-board siding, paneled pilasters, and gabled parapet with corbeled cornice; two display windows each of which contains a large lower pane surmounted by three smaller panes and framed by half-round casings; and double doors each leaf of which contains a single recessed panel surmounted by a rectangular light together with the half-round casing that frames the doorway; and
 - c. the existing front stairs that extend the length of the façade together with their treads, risers and landing that extends the length of the façade, and the wooden railing at the north end of the stairway;
- (b) erect or replace any external signs or external advertisements except: (i) such plaque permitted under Paragraph 12.8 of this Restriction; (ii) a sign stating solely the address of the Property; (iii) the sign currently affixed to the façade of the Building identifying the “Antone Sylvia, Grocer – 1879”; and (iv) a sign permitted under Paragraph 6(b);
- (c) make permanent substantial topographical changes, nor remove or replace the capped picket fence along the Orange Street side of the property;
- (d) construct additional service structures, or enlarge or re-configure existing service structures or paving;
- (e) change the use of the Building and the Property to any use which Grantee reasonably determines would conflict with the Purpose of the Restriction; and

- (f) conduct activities identified as Major Maintenance and Minor Maintenance in the Restriction Guidelines that reasonably may be expected to make material changes in the exterior appearance, materials, or workmanship of the protected features of the Building, except as otherwise provided herein.

32 **Archaeological Activities.** The conduct of archaeological activities, including without limitation survey, excavation, and artifact retrieval, may occur only following the submission of an archaeological field investigation plan prepared by Grantor and approved in writing by Grantee and the State Archaeologist of the Massachusetts Historical Commission (Mass. Gen. Laws, c. 9, §27C, 950 C.M.R. 70.00).

33 **Review of Grantor's Requests for Approval.** In connection with Grantee's approval of the conditional rights set forth in Paragraphs 3.1 and 3.2 above, Grantor shall submit to Grantee two copies of information (including plans, specifications, and designs, and Nantucket Historic District Commission application and materials where appropriate) identifying the proposed activity with reasonable specificity. In connection therewith, Grantor shall also submit to Grantee a timetable for the proposed activity sufficient to permit Grantee to monitor such activity. Within forty-five (45) days of Grantee's receipt of any plan or written request for approval hereunder, Grantee shall certify in writing that (a) it approves the plan or request, or (b) it disapproves the plan or request as submitted, in which case Grantee shall provide Grantor with written suggestions for modification or a written explanation for Grantee's disapproval. Any failure by Grantee to act within forty-five (45) days of receipt of Grantor's submission or resubmission of plans or requests shall be deemed to constitute approval by Grantee of the plan or request as submitted and to permit Grantor to undertake the proposed activity in accordance with the plan or request submitted so long as the request sets forth the provisions of this Paragraph relating to deemed approval after the passage of time, provided nothing herein shall be construed to permit Grantor to undertake any of the activities prohibited hereunder.

4 **STANDARDS FOR REVIEW.** Grantee shall apply the Secretary's Standards in exercising any authority created by this Restriction to inspect the Property or the exterior of the Building or to the extent necessary to inspect the interior of the Building for the sole purpose of evaluating any construction to or alteration, repair, maintenance, or reconstruction of the exterior of the Building; to review any construction, alteration, repair, or maintenance; or to review casualty damage or to reconstruct or approve reconstruction of the Building following casualty damage.

5 **PUBLIC ACCESS.** Grantor shall not block views of the Building from the public right of way on Orange and West Dover Streets either by intentional planting or fencing; Grantor further agrees to permit Grantee to make Baseline Documentation available to interested members of the public at Grantee's offices and by depositing copies of such Baseline Documentation in Grantee's library.

6 GRANTOR'S RESERVED RIGHTS NOT REQUIRING FURTHER APPROVAL BY GRANTEE. Subject to the provisions of Paragraphs 2.1, 2.2, 3.1 and 3.2 of this Restriction, the following rights, uses, and activities of or by Grantor on, over, or under the Property are permitted by this Restriction and by Grantee without further approval by Grantee:

- (a) the right to engage in all those activities and uses that: (i) are permitted by governmental statute or regulation; and (ii) are not inconsistent with the Purpose of this Restriction;
- (b) the right to maintain a signboard over the front door of the storefront of the same size as the existing signboard up to a maximum size of four feet (4') in length and eight inches (8") in height, bearing the business name "Flock", and the right to change the name on that sign from time-to-time as business tenancies in the building may change;
- (c) the right to conduct Minor Maintenance of the Building, as such maintenance is defined in the Restriction Guidelines, that is not reasonably expected to make material changes in the exterior appearance, materials, or workmanship of the Building, provided such work is done strictly according to the Secretary's Standards, and provided that the Grantor uses in-kind materials, applied with workmanship comparable to that which was used in the construction or application of those materials being repaired or maintained, for the purpose of retaining in good condition the appearance and construction of the Building. Changes in appearance, materials, or workmanship from that existing prior to the maintenance and repair require the prior approval of the Grantee in accordance with the provisions of Paragraph 3 of this Restriction;
- (d) the right to continue all manner of existing commercial and residential use and enjoyment of the Building and Property, including but not limited to the right to maintain existing paved walkways and handicapped access ramps with the use of same or similar surface materials; the right to maintain existing utility lines and plantings; the right to cut, remove, and clear grass or other vegetation, and the right to perform routine maintenance, landscaping, horticultural activities, and upkeep, consistent with the Purpose of this Restriction and Paragraphs 2 and 3 of this Restriction;
- (e) the right to renovate, update, and otherwise alter or change the interior of the Building provided that such renovations, updating or alterations shall not require the removal or alterations of the original structural timbers, trusses, floor beam or other structural elements;

- (f) the right to conduct in the Building or on the Property activities that are not inconsistent with the protection of the preservation values of the Property and the exterior of the Building; and
- (g) the right to make such modifications to the Building as may be required by governmental entities to comply with local, state or federal laws, provided that such changes are reviewed and approved by the Grantee whose approval shall not be unreasonably withheld.

7. **CASUALTY DAMAGE OR DESTRUCTION; INSURANCE.** In the event that the Building or any part thereof shall be damaged or destroyed by fire, flood, windstorm, hurricane, earth movement, or other casualty, Grantor shall notify Grantee in writing within fourteen (14) days of such damage or destruction, such notification to include what, if any, emergency work has already been completed. Grantor shall undertake no repairs or reconstruction of any type, other than temporary emergency work to prevent further damage to the Building and to protect public safety, without Grantee's prior written approval. Within thirty (30) days of the date of damage or destruction, if required by Grantee, Grantor at its expense shall submit to the Grantee a written report prepared by a qualified restoration architect and an engineer who are acceptable to Grantor and Grantee, which report shall include the following:

- (a) an assessment of the nature and extent of the damage;
- (b) a determination of the feasibility of the restoration of the Building and/or reconstruction of damaged or destroyed portions of the Building; and
- (c) a report of such restoration/reconstruction work necessary to return the Building to the condition existing as of the date hereof.

8. **REVIEW AFTER CASUALTY DAMAGE OR DESTRUCTION.** If, after reviewing the report provided in Paragraph 7 above and assessing the availability of insurance proceeds after satisfaction of any mortgagee's/lender's claims under Paragraph 9 hereof, Grantor and Grantee agree that the Purpose of the Restriction will be served by such restoration/reconstruction, Grantor and Grantee shall establish a schedule under which Grantor shall complete the restoration/reconstruction of the Building in accordance with plans and specifications consented to by the parties up to at least the total of the casualty insurance proceeds available to Grantor.

If, after reviewing the report and assessing the availability of insurance proceeds after satisfaction of any mortgagee's/lender's claims under Paragraph 9 hereof, Grantor and Grantee agree that restoration/reconstruction of the Property is impractical or impossible, or agree that the Purpose of the Restriction would not be served by such

restoration/reconstruction, Grantor may, with the prior written consent of the Grantee, alter, demolish, remove, or raze the Building, and/or construct new improvements on the Property. Grantor and Grantee may then agree to seek to extinguish this Restriction in whole or in part in accordance with the laws of the Commonwealth of Massachusetts and Paragraph 14 hereof.

If, after reviewing the report and assessing the availability of insurance proceeds after satisfaction of any mortgagee's/lender's claims under Paragraph 9 of this Agreement, Grantor and Grantee are unable to agree that the Purpose of the Restriction will or will not be served by such restoration/reconstruction, the matter may be referred by either party to binding arbitration and settled in accordance with the Commonwealth of Massachusetts's arbitration statute then in effect, provided however that nothing herein shall compel the Grantor to expend funds in excess of those received from insurance proceeds.

9. **Insurance.** Grantor shall keep the Property insured by an insurance company rated "A" or better by Best's as currently insured. Such insurance shall include Grantee's interest and name Grantee as an additional insured. Grantor shall deliver to Grantee, within ten (10) business days of Grantee's written request thereof, certificates of such insurance coverage; provided, however, that whenever the Property is encumbered with a mortgage or deed of trust, nothing contained in this Paragraph shall jeopardize the prior claim, if any, of the mortgagee/lender to the insurance proceeds. If the Grantor conveys the Property to a person or entity, then the subsequent Property owner shall be obligated to keep the Property insured by an insurance company rated "A" or better by Best's for the guaranteed building cost against loss from perils commonly insured under standard fire and extended coverage policies and comprehensive general liability insurance against claims for personal injury, death, and property damage, such property damage insurance to include change in condition and building ordinance coverage, in form and amount sufficient to replace fully the damaged Property and Building without cost or expense to Grantor or contribution or coinsurance from Grantor.

10. **INDEMNIFICATION.** Grantor hereby agrees to pay, protect, indemnify, hold harmless and defend at its own cost and expense, Grantee, its agents, directors, officers, and employees, or independent contractors from and against any and all claims, liabilities, expense, costs, damages, losses, and expenditures (including reasonable attorney's fees and disbursements hereafter incurred) arising out of or in connection with injury to or death of any person as a result of the existence of this Restriction; physical damage to the Property; the presence or release in, on, or about the Property, at any time, of any substance now or hereafter defined, listed, or otherwise classified pursuant to any law, ordinance, or regulation as a hazardous, toxic, polluting, or contaminating substance; or other injury, death, or other damage occurring on or about the Property, unless such injury, death, or damage is caused by Grantee or any

agent, director, officer, employee, or independent contractor of Grantee. In the event that Grantor is required to indemnify Grantee pursuant to the terms of this Paragraph, the amount of such indemnity, until discharged, shall constitute a lien on the Property.

11. **TAXES.** Grantor shall pay immediately, when first due and owing, all general taxes, special taxes, special assessments, water charges, sewer service charges, and other charges which may become a lien on the Property unless Grantor timely objects to the amount or validity of the assessment or charge and diligently prosecutes an appeal thereof, in which case the obligation hereunder to pay such charges shall be suspended for the period permitted by law for prosecuting such appeal and any applicable grace period following completion of such action. In place of Grantor, Grantee is hereby authorized, but in no event required or expected, to make or advance upon three (3) days prior written notice to Grantor any payment relating to taxes, assessments, water rates, sewer rentals and other governmental or municipality charge, fine, imposition, or lien asserted against the Property. Grantee may make such payment according to any bill, statement, or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement, or assessment or into the validity of such tax, assessment, sale, or forfeiture. Such payment if made by Grantee shall constitute a lien on the Property.

12 ADMINISTRATION AND ENFORCEMENT

121. **Written Notice.** Any notice which either Grantor or Grantee may desire or be required to give to the other party shall be in writing and shall be delivered by one of the following methods – by overnight courier, postage prepaid, facsimile transmission, registered or certified mail with return receipt requested, or hand delivery; if to Grantor, then to 79 Orange Street LLC, c/o 50 Cliff Road, Nantucket, Massachusetts 02554, and if to Grantee, then to Nantucket Preservation Trust, Inc., at 11 Centre Street, P.O. Box 158, Nantucket, Massachusetts 02554 or to 508-228-1371 for facsimile transmission.

Each party may change its address set forth herein by a notice to such effect to the other party.

122. **Evidence of Compliance.** Upon request by Grantor, Grantee shall promptly furnish Grantor with certification that, to the best of Grantee's knowledge, Grantor is in compliance with the obligations of Grantor contained herein or that otherwise evidences the status of this Restriction to the extent of Grantee's knowledge thereof.

123. **Inspection.** Grantee shall be permitted to conduct an annual inspection of the Property, including the exterior of the Building, in order to confirm Grantor's compliance with this Preservation Restriction Agreement. Such inspection shall be conducted at reasonable times and following advance notice to the Grantor of no less

than ten (10) days. Grantor covenants not to withhold unreasonably its consent in determining dates and times for such inspections.

124 Grantee's Remedies. Grantee may, following thirty (30) days written notice to Grantor, institute suit(s) to enjoin any violation of the terms of this Restriction by *ex parte*, temporary, preliminary, and/or permanent injunction, including prohibitory and/or mandatory injunctive relief, and to require the restoration of the Property and Building to the condition and appearance that existed prior to the violation complained of. Grantee shall also have available all legal and other equitable remedies to enforce Grantor's obligations hereunder.

In the event Grantor is found to have violated any of its obligations, which violation has continued more than thirty (30) days after notice by the Grantee to the Grantor, Grantor shall reimburse Grantee for any reasonable costs or expenses incurred in connection with Grantee's enforcement of the terms of this Restriction, including court costs and attorney's, architectural, engineering, and expert witness fees.

In the event that Grantor is required to reimburse Grantee pursuant to the terms of this Paragraph, the amount of such reimbursement until discharged shall constitute a lien on the Property.

Exercise by Grantee of one remedy hereunder shall not have the effect of waiving or limiting any other remedy, and the failure to exercise any remedy shall not have the effect of waiving or limiting the use of any other remedy or the use of such remedy at any other time.

125 Notice from Government Authorities. Grantor shall deliver to Grantee copies of any notice of violation or lien relating to the Property received by Grantor from any government authority within ten (10) business days of receipt by Grantor. Upon request by Grantee, Grantor shall promptly furnish Grantee with evidence of Grantor's compliance with such notice or lien where compliance is required by law.

126 Notice of Proposed Sale. Grantor shall promptly notify Grantee in writing of any proposed sale of the Property prior to sale closing.

127 Liens. Any lien on the Property created pursuant to any Paragraph of this Restriction may be confirmed by judgment and foreclosed by Grantee in the same manner as a mechanic's lien provided in Mass. Gen. Laws c. 254, §5, except that no lien created pursuant to this Restriction shall jeopardize the priority of any recorded lien of mortgage or deed of trust given in connection with a promissory note secured by the Property.

128 **Plaque.** Grantor agrees that Grantee may provide and maintain a plaque on the Property, which plaque shall not exceed 6 inches by 24 inches in size, giving notice of the significance of the Building and the existence of this Restriction. The plaque shall be approved by Grantor prior to installation, such approval not to be unreasonably withheld.

13. BINDING EFFECT; ASSIGNMENT.

13.1 **Runs with the Land.** Except as provided in Paragraphs 8 and 14, the obligations imposed by this Restriction shall be effective in perpetuity and shall be deemed to run as a binding servitude with the Building and Property. This Restriction shall extend to and be binding upon Grantor and Grantee, their respective successors in interest, and all persons hereafter claiming by, under, or through Grantor and Grantee, and the words "Grantor" and "Grantee" when used herein shall include all such persons. Any right, title, or interest herein granted to Grantee also shall be deemed granted to each successor and assign of Grantee and each such following successor and assign thereof, and the word "Grantee" shall include all such successors and assigns.

Anything contained herein to the contrary notwithstanding, an owner of the Building and the Property shall have no obligation pursuant to this instrument when such owner shall cease to have any ownership interest in the Building and the Property by reason of a *bona fide* transfer. The restrictions, stipulations, and covenants contained in this Restriction shall be included by Grantor, by express reference, in any subsequent deed or other legal instrument by which Grantor divests itself of the fee simple title to or any lesser estate in the Building and the Property or any part hereof, including by way of example and not limitation, a lease of all or a portion of the Property, but excluding any lease with a term of fewer than one hundred twenty (120) days.

13.2 **Assignment.** Grantee may convey, assign, or transfer this Restriction to a unit of federal, state, or local government or to a similar local, state, or national organization that is a "qualified organization" under Section 170(h) of the Code and that qualifies under the Act as an eligible donee whose purposes, *inter alia*, are to promote preservation of buildings and sites historically significant for their architecture, associations, and/or archaeology, provided that any such conveyance, assignment, or transfer requires that the Purpose for which the Restriction was granted will continue to be carried out as a condition of the transfer.

13.3. **Recording and Effective Date.** Grantee shall do and perform at its own cost all acts necessary to the prompt recording of this instrument in the land records of the County of Nantucket. Grantor and Grantee intend that the restrictions arising under this Restriction take effect on the day and year this instrument is recorded in the land records of the County of Nantucket.

14. PERCENTAGE INTERESTS; EXTINGUISHMENT

14.1 Percentage Interests. For purposes of allocating proceeds pursuant to paragraphs 14.2 and 14.3, Grantor and Grantee stipulate that as of the date of this Restriction, Grantor and Grantee are each vested with real property interests in the Property and that such interests have a stipulated percentage interest in the fair market value of the Property and the Building. Said percentage interests shall be determined by the ratio of the value of the Restriction on the effective date of this Restriction to the value of the Property and the Building, without deduction for the value of the Restriction, on the effective date of this Restriction. The values on the effective date of the Restriction shall be those values used to calculate the deduction for federal income tax purposes allowable by reason of this grant, pursuant to Section 170(h) of the Code. The parties shall include the ratio of those values with the Baseline Documentation (on file with Grantor and Grantee) and shall amend such values, if necessary, to reflect any final determination thereof by the Internal Revenue Service or court of competent jurisdiction. For purposes of this paragraph, the ratio of the value of the Restriction to the value of the Property unencumbered by the Restriction shall remain constant, and the percentage interest of Grantor and Grantee in the fair market value of the Property thereby determinable shall remain constant, except that the value of any improvements made by Grantor after the effective date of this Restriction is reserved to Grantor.

14.2 Extinguishment. Grantor and Grantee hereby recognize that circumstances may arise that may make impossible the continued ownership or use of the Property and the Building in a manner consistent with the Purpose of this Restriction and necessitate extinguishment of the Restriction. Such circumstances may include, but are not limited to, partial or total destruction of the Building resulting from casualty. Extinguishment must be the result of a judicial proceeding in a court of competent jurisdiction and shall meet the requirements of the Act for extinguishment, including approvals by both the Town of Nantucket and the Massachusetts Historical Commission following public hearings to determine that such extinguishment is in the public interest. Unless otherwise required by applicable law at the time, in the event of any sale of all or a portion of the Property (or of any other property received in connection with an exchange or involuntary conversion of the Property) after such termination or extinguishment, and after the satisfaction of prior claims and any costs or expenses associated with such sale, Grantor and Grantee shall share in any net proceeds resulting from such sale in accordance with their respective percentage interests in the fair market value of the Property, as such interests are determined under the provisions of paragraph 14.1, adjusted, if necessary, to reflect partial termination or extinguishment of this Restriction. All such proceeds received by Grantee shall be used by Grantee in a manner consistent with Grantee's primary purposes. Net proceeds shall also include, without limitation, net insurance proceeds.

In the event of extinguishment, the provisions of this paragraph shall survive extinguishment and shall constitute a lien on the Property.

14.3 Condemnation. If all or any part of the Property is taken under the power of eminent domain by public, corporate, or other authority, or otherwise acquired by such authority through a purchase in lieu of a taking, Grantor and Grantee shall join in appropriate proceedings at the time of such taking to recover the full value of those interests in the Property that are subject to the taking and all incidental and direct damages resulting from the taking. After the satisfaction of prior claims and net expenses reasonably incurred by Grantor and Grantee in connection with such taking, Grantor and Grantee shall be respectively entitled to compensation from the balance of the recovered proceeds in conformity with the provisions of paragraphs 14.1 and 14.2 unless otherwise provided by law.

15. CONDEMNATION. If all or any part of the Property is taken under the power of eminent domain by public, corporate, or other authority, or otherwise acquired by such authority through a purchase in lieu of a taking, Grantor and Grantee shall join in appropriate proceedings at the time of such taking to recover the full value of those interests in the Property that are subject to the taking and all incidental and direct damages resulting from the taking. All expenses reasonably incurred by Grantor and Grantee in connection with such taking shall be paid out of the recovered proceeds; and the net proceeds shall be paid to Grantor unless otherwise ordered by a court or other government authority of competent jurisdiction.

16. INTERPRETATION. The following provisions shall govern the effectiveness, interpretation, and duration of the Restriction.

(a) Any rule of strict construction designed to limit the breadth of restrictions on alienation or use of the Building and the Property shall not apply in the construction or interpretation of this Restriction, and this instrument shall be interpreted broadly to effect its Purpose and the transfer of rights and the restrictions on use herein contained.

(b) This instrument may be executed in two counterparts, one of which may be retained by the Grantor, and the other, after recording, to be retained by the Grantee. In the event of any discrepancy between the counterparts produced, the recorded counterpart shall in all cases govern. In the event of any discrepancy between two copies of any documentation retained by the parties, the copy retained by Grantee shall control.

(c) This instrument is made pursuant to the provisions of the Act, but the invalidity of the Act or any part thereof shall not affect the validity and enforceability of this Restriction according to its terms, it being the intent of the parties to agree and to bind themselves, their successors, and their assigns in perpetuity to each term of this instrument whether this instrument be enforceable by reason of any statute, common

law, or private agreement in existence either now or hereafter. The invalidity or unenforceability of any provision of this instrument shall not affect the validity or enforceability of any other provision of this instrument or any ancillary or supplementary agreement relating to the subject matter thereof.

(d) Nothing contained herein shall be interpreted to authorize or permit Grantor to violate any ordinance or regulation relating to building materials, construction methods, or use. In the event of any conflict between any such ordinance or regulation and the terms hereof, Grantor promptly shall notify Grantee of such conflict and shall cooperate with Grantee and the applicable governmental entity to accommodate the purposes of both this Restriction and such ordinance or regulation.

(e) To the extent that Grantor owns or is entitled to development rights which may exist now or at some time hereafter by reason of the fact that under any applicable zoning or similar ordinance the Property may be developed to use more intensive (in terms of height, bulk, or other objective criteria related by such ordinances) than the Property and Building are devoted as of the date hereof, such development rights shall not be exercisable on, above, or below the Property and the Building during the term of the Restriction, nor shall they be transferred to any adjacent parcel and exercised in a manner that would interfere with the Purpose of the Restriction.

17. **AMENDMENT.** If circumstances arise under which an amendment to or modification of this Restriction would be appropriate, Grantor and Grantee may by mutual written agreement jointly amend this Restriction, provided that no amendment shall be made that will adversely affect the qualification of the Restriction or the status of Grantee under any applicable laws, including Section 501(c) (3) of the Code and the laws of the Commonwealth of Massachusetts. Any such amendment shall be consistent with the protection of the preservation values of the Property and the Purpose of this Restriction; shall not affect its perpetual duration; shall not permit additional development on the Property other than the development permitted by this Restriction on its effective date; shall not permit any private inurement to any person or entity; and shall not adversely impact the overall architectural, historic, and open space values protected by this Restriction. Any such amendment shall be effective when the requirements of the Act with respect to amendments have been met and the amendment is recorded in the land records of the County of Nantucket. Nothing in this paragraph shall require Grantor or Grantee to agree to any amendment or to consult or negotiate regarding any amendment.

18. **COMPLIANCE WITH BUILDING LAWS.** Grantor and Grantee recognize that there may be circumstances where alterations are required to be made to the exterior of the Building in order to comply with local, state, and/or federal ordinances and laws which might otherwise not be permissible under this Restriction without Grantee's approval. In such event, Grantor agrees to notify Grantee in writing

of such requirement and, if requested by Grantee within forty-five (45) days of such notification, to cooperate with Grantee in seeking a variance or waiver from such requirement or a modification of such requirement to mitigate any adverse effect of such compliance.

19. SUBORDINATION OF PRIOR LIENS. Grantor represents and warrants to Grantee that the Property is not subject to any mortgages, liens, or leases prior in right to this Restriction other than the following: Mortgage granted by 79 Orange, LLC to The Cape Cod Five Cents Savings Bank, recorded with the Nantucket Registry of Deeds in Book 1486, Page 255.

Kate W. Weld, Vice President of The Cape Cod Five Cents Savings Bank has subordinated The Cape Cod Five Cents Savings Bank mortgage to this Restriction with the Assent attached hereto and recorded herewith as Exhibit A-1. Grantor agrees not to enter into or permit other mortgages, liens or leases affecting the Property prior in right to this Restriction.

THIS RESTRICTION reflects the entire agreement of Grantor and Grantee. Any prior or simultaneous correspondence, understandings, agreements, and representations are null and void upon execution hereof, unless set out in this instrument.

TO HAVE AND TO HOLD, the said Historic Preservation Restriction, unto the said Grantee and its successors and permitted assigns forever. This HISTORIC PRESERVATION RESTRICTION may be executed in two counterparts and by each party on a separate counterpart, each of which when so executed and delivered shall be an original, but both of which together shall constitute one instrument.

EXECUTED and SEALED on _____, 2021.

GRANTOR

79 Orange LLC

BY: _____
Sheila C. Fee, Manager

GRANTEE

Nantucket Preservation Trust, Inc.

BY: _____
Alison Potts Groenstein, President

BY: _____
Bill Moore, Treasurer

COMMONWEALTH OF MASSACHUSETTS

Nantucket, ss.

On this ____ day of _____, 2021, before me, the undersigned notary public, personally appeared Sheila C. Fee, proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding or attached document, and who acknowledged to me that she signed it voluntarily for its stated purpose in her capacity as Manager of 79 Orange LLC.

Notary Public

My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

Nantucket, ss.

On this ____ day of _____, 2021, before me, the undersigned notary public, personally appeared the above-named Alison Potts Groenstein, proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding or attached document, and who acknowledged to me that she signed it voluntarily for its stated purpose in her capacity as President of the Nantucket Preservation Trust, Inc., a nonprofit corporation.

Notary Public

My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

Nantucket, ss.

On this ____ day of _____, 2021, before me, the undersigned notary public, personally appeared the above-named Bill Moore, proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding or attached document, and who acknowledged to me that he signed it voluntarily for its stated purpose in his capacity as Treasurer of the Nantucket Preservation Trust, Inc., a nonprofit corporation.

Notary Public
My Commission Expires:

APPROVAL BY SELECT BOARD OF THE TOWN OF NANTUCKET

We, the undersigned members of the Select Board of the Town of Nantucket, Massachusetts, hereby certify that at a meeting held on _____, 2021, the Select Board voted to approve the foregoing Grant of Preservation Restriction by 79 Orange LLC to the Nantucket Preservation Trust, pursuant to Massachusetts General Laws, Chapter 184, Section 32, as being in the public interest.

Select Board of the
Town of Nantucket

Jason Bridges, Chair

Kristie L. Ferrantella, Vice Chair

Recused
Matt Fee

Dawn E. Hill Holdgate

Melissa K. Murphy

COMMONWEALTH OF MASSACHUSETTS

NANTUCKET, ss.

On this _____ day of _____, 2021, before me, the undersigned notary public, personally appeared Dawn E. Hill Holdgate, proved to me through satisfactory evidence of identification, which was personal knowledge of the undersigned, to be the person whose name is signed on the preceding document, and acknowledged to me that she signed it voluntarily for its stated purpose, as a member of the Select Board of the Town of Nantucket.

Notary Public

My Commission Expires: _____

COMMONWEALTH OF MASSACHUSETTS

NANTUCKET, ss.

On this _____ day of _____, 2021, before me, the undersigned notary public, personally appeared Jason Bridges, proved to me through satisfactory evidence of identification, which was personal knowledge of the undersigned, to be the person whose name is signed on the preceding document, and acknowledged to me that he signed it voluntarily for its stated purpose, as a member of the Select Board of the Town of Nantucket.

Notary Public

My Commission Expires: _____

COMMONWEALTH OF MASSACHUSETTS

NANTUCKET, ss.

On this _____ day of _____, 2021, before me, the undersigned notary public, personally appeared Kristie L. Ferrantella, proved to me through satisfactory evidence of identification, which was personal knowledge of the undersigned, to be the person whose name is signed on the preceding document, and acknowledged to me that she signed it voluntarily for its stated purpose, as a member of the Select Board of the Town of Nantucket.

Notary Public

My Commission Expires: _____

COMMONWEALTH OF MASSACHUSETTS

NANTUCKET, ss.

On this _____ day of _____, 2021, before me, the undersigned notary public, personally appeared Melissa K. Murphy, proved to me through satisfactory evidence of identification, which was personal knowledge of the undersigned, to be the person whose name is signed on the preceding document, and acknowledged to me that she signed it voluntarily for its stated purpose, as a member of the Select Board of the Town of Nantucket.

Notary Public

My Commission Expires: _____

**APPROVAL BY MASSACHUSETTS HISTORICAL COMMISSION
COMMONWEALTH OF MASSACHUSETTS**

The undersigned Executive Director and Clerk of the Massachusetts Historical Commission hereby certifies that the foregoing preservation restriction has been approved pursuant to Mass. Gen. Laws c. 184, §32.

Brona Simon
Executive Director and Clerk
Massachusetts Historical Commission

COMMONWEALTH OF MASSACHUSETTS

_____, ss.

On this ____ day of _____, 2021, before me, the undersigned notary public, personally appeared Brona Simon, proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she signed it in her capacity as Executive Director and Clerk of the Massachusetts Historical Commission for its stated purposes.

Notary Public

My Commission Expires _____

SCHEDULE OF EXHIBITS

- A. Legal Description**
 - A-1. Subordination of Mortgage**
- B. Division Plan of Land in Nantucket, MA - Prepared for 79 Orange LLC, dated February 28, 2016, Blackwell & Associates, Inc., Surveyors, recorded at the Nantucket County Registry of Deeds on Plan No. 2018-46.**
- C. Documentary Photographs of the Building**
- D. Massachusetts Historical Commission - Survey Form B**
- E. Restriction Guidelines**

EXHIBIT A

Legal Description

That certain parcel of land, together with the buildings thereon, located in Nantucket, Nantucket County, Massachusetts, now known and numbered as 79 Orange Street:

Beginning at a point in the Westerly line of Orange Street that is South 39 degrees 12 minutes and 15 seconds East, 55.34' from the intersection of Orange Street and West Dover Street, said point being a rebar monument at the point of beginning.

Thence, South 55 degrees 01 minutes and 12 seconds West, a distance of 29.33' to a drill hole in a concrete monument.

Thence, North 34 degrees 58 minutes and 48 seconds West, a distance of 14.34' to a drill hole in a concrete monument.

Thence, South 55 degrees 01 minutes and 12 seconds West, a distance of 39.78'.

Thence, North 28 degrees 16 minutes and 27 seconds West, a distance of 38.43'.

Thence, North 33 degrees 43 minutes 46 seconds West, a distance of 15.78' to a point in the Southerly line of West Dover Street.

Thence along the southerly line of West Dover Street, North 67 degrees 17 minutes and 39 seconds East, a distance of 61.61' to the intersection of Orange Street and West Dover Street.

Thence along the Westerly line of Orange Street, South 39 degrees 12 minutes and 15 seconds East, a distance of 55.34' to the point of beginning.

Being Lot A shown on a plan titled "Division Plan Of Land" dated February 28, 2016. Prepared by Blackwell & Associates, Inc.

For title, see deed recorded with Nantucket County Registry of Deeds in Book 1444, Page 75.

EXHIBIT A-1

SUBORDINATION OF MORTGAGE

The Cape Cod Five Cents Savings Bank, its successors and assigns, the Lending Company, holder of a mortgage from 79 ORANGE, LLC, dated June 12, 2015 and recorded in Book 1486, Page 255 at the Nantucket Registry of Deeds (Subordinated Mortgage) hereby subordinates said mortgage to the following:

1. Grant of Historic Preservation Restriction granted by the Nantucket Preservation Trust, Inc., dated _____, 2021, recorded with the Nantucket Registry of deeds herewith;

SIGNATURE PAGE FOLLOWS

EXHIBIT A-1

Executed as a sealed instrument the 22 day of May 2019.

The Cape Cod Five Cents Savings Bank

Attest

By: KWeld (sign)

Kate W. Weld (print)

Its VP, Commercial Lending (title)

STATE OF Massachusetts

Nantucket County

On this 22 day of May 2019, before me, the undersigned notary public, personally appeared

Kate W. Weld, Vice President, proved to me through satisfactory evidence of identification, which was personal knowledge, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it on voluntarily for its stated purpose.



Official Signature and Seal of Notary Public

My Commission expires: 09/25/2020



EXHIBIT C



Photo #1 – façade (east elevation)

EXHIBIT C



Photo #2 – east property line showing capped picket fence and façade

EXHIBIT C



Photo #3 – east elevation (façade)

EXHIBIT C



Photo #4– north elevation

EXHIBIT C



Photo #5– north elevation – door & stoop



Photo #6 – west elevation

EXHIBIT C



Photo #7– west elevation – entry with screen door closed



Photo #8 – west elevation - entry

EXHIBIT C



Photo #9– south elevation



Photo #10 – south elevation - entry

EXHIBIT C



Photo #11 – south elevation and partial east elevation (photo left)



Photo #12 – south yard showing lawn and capped picket fence on Orange Street

EXHIBIT C



Photo #13 – garden shed – north and west elevations



Photo #14 – garden shed – north and east elevations

EXHIBIT D

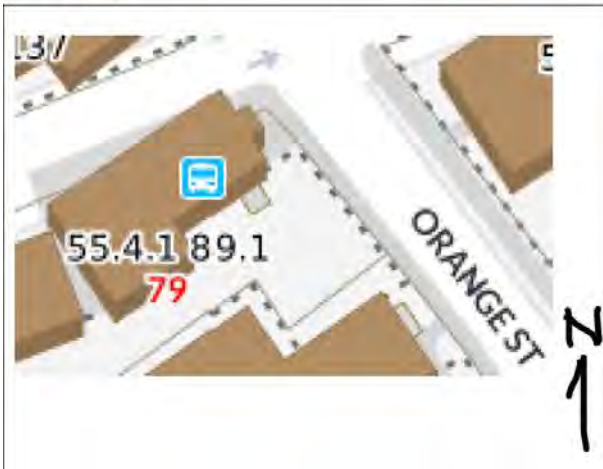
FORM B – BUILDING

MASSACHUSETTS HISTORICAL COMMISSION
MASSACHUSETTS ARCHIVES BUILDING
220 MORRISSEY BOULEVARD
BOSTON, MASSACHUSETTS 02125

Photograph



Locus Map



Recorded by: Brian Pfeiffer & Mary Bergman
Organization: Nantucket Preservation Trust
Date (month / year): December 15, 2020

Assessor's Number USGS Quad Area(s) Form Number

55.4.1 89.1

Siasconset

NAN.C
NAN.D

Town/City: Nantucket

Place: (*neighborhood or village*): Old Town Historic Area

Address: 79 Orange Street

Historic Name: Antone Sylvia Grocery

Uses: Present: commercial – yarn store

Original: commercial – grocery store

Date of Construction: 1869 & 1879

Source: Deeds

Style/Form: Italianate

Architect/Builder: unknown

Exterior Material:

Foundation: rubble stone & concrete block

Wall/Trim: flush boarding (façade) &
shingles (all other elevations)

Roof: asphalt shingles

Outbuildings/Secondary Structures: prefabricated storage shed set on concrete-block footings

Major Alterations (*with dates*): 2015-16 (repair of existing building & installation of salvaged 1869 façade)

Condition: excellent

Moved: no ☐ yes ☒ **Date:** 2016 (façade only)

Acreage: 3,340 square feet

Setting: densely built residential district of free-standing timber houses at the southwest corner of Orange and West Dover Streets

EXHIBIT D

INVENTORY FORM B CONTINUATION SHEET

NANTUCKET

79 Orange Street

MASSACHUSETTS HISTORICAL COMMISSION
220 MORRISSEY BOULEVARD, BOSTON, MASSACHUSETTS 02125

Area(s) Form No.

NAN.C & NAN.D

☐ Recommended for listing in the National Register of Historic Places.
If checked, you must attach a completed National Register Criteria Statement form.

Use as much space as necessary to complete the following entries, allowing text to flow onto additional continuation sheets.

ARCHITECTURAL DESCRIPTION:

Describe architectural features. Evaluate the characteristics of this building in terms of other buildings within the community.

The former Antone Sylvia Grocery Store is an Italianate style, one-storey structure of wood-frame construction set on a frost wall of rubble stone and concrete block which encloses a shallow crawl space. The original structure is constructed of a mixture of salvaged heavy timbers from earlier timber-frame structures and sawn stock from 1879; it is enclosed by a low-pitched, asphalt-shingled roof, the ridge of which extends east to west perpendicular to the Orange Street. A small addition with a shed roof was added to the west end of the building's south elevation around 1950-60. The façade (east elevation) has a false front with a gabled parapet and Italianate style ornamental details. All other sections of the building are undecorated and clad in weathered shingles trimmed with flat-stock boards; windows are set in flat-stock casings with 2" sills and wooden storm windows except as noted. Fenestration is irregular except at the façade.

As originally constructed, the façade (east elevation) contained a pair of double doors flanked by two display windows with 15/15 pane glazing; all openings were trimmed with half-round mouldings. Each end of the façade was trimmed with wooden quoins that rose to a wide entablature with a paneled frieze, brackets, and a deep cornice. This arrangement was partially modified in the early twentieth century by the introduction of new shop windows composed of large single lights surmounted by three narrower panes. Later in the twentieth century (ca. 1950-60), ornamental wooden trimmings were removed and the façade was shingled. At the same time double doors were replaced with a narrower single door and a one-bay gabled vestibule was added in front of the entry.

In 2015-16, the façade was restored with the installation of a salvaged façade of nearly identical detail and dimensions built at 106 Main Street in 1869 for the same original owner as 79 Orange Street. This façade was salvaged for re-installation when that building was demolished in 2001. As the façade currently stands, it is symmetrically arranged about a pair of double doors (fabricated 2015-16) each leaf of which is composed of a recessed panel surmounted by a rectangular light. Flanking the doorway are two display windows, each of which is composed of a large plate-glass light surmounted by a narrower panel of three lights; these windows were retained from the existing building fabric found at 79 Orange Street, as they closely matched the widths of display windows on the salvaged façade from 106 Main Street. Ends of the façade are trimmed with paneled pilasters that rise to stylized brackets and a wide corbeled entablature salvaged from 106 Main Street. All other flat sections of the façade are finished with horizontal flush boarding and half-round mouldings at openings that match original conditions at both 106 Main Street and 79 Orange Street. Extending along the base of the façade and connected on the south to a handicapped access ramp is a stoop composed of three steps and broad platform. The north end of the platform has a contemporary wooden railing composed of square balusters and newels with pyramidal caps.

A second portion of east elevation extends from the south elevation and is part of the shed addition (1950-60). It contains a single set of paired windows with 6/6 single-glazed sash that date from the first half of the twentieth century.

Continuation sheet 1

EXHIBIT D

INVENTORY FORM B CONTINUATION SHEET

NANTUCKET

79 Orange Street

MASSACHUSETTS HISTORICAL COMMISSION
220 MORRISSEY BOULEVARD, BOSTON, MASSACHUSETTS 02125

Area(s) Form No.

NAN.C & NAN.D

The north elevation is asymmetrically arranged. It rises from a low base of rubble masonry that is largely concealed by lead flashing. A wooden door (ca. 1900) flanked by two windows stand near the center of the elevation. The doorway is cased with flat stock and approached from a single concrete step. The door is composed of a two-panel base surmounted by a four-pane light. The doorway is asymmetrically flanked by two windows (6/6) containing pre-1880 single-glazed sash.

The west elevation is asymmetrically arranged and has a gabled roof with a lean-to extension on its south end. The foundation is largely concealed by the structure's proximity to grade and by a lead flashing that extends over the foundation wall. Moving from north to south, the elevation contains a single-light casement, a single window with 2/2 sash, and a single window set at a higher level than the other windows, also containing 2/2 sash. All windows appear to date from ca. 1879-1900. A single doorway exists at the south end of the elevation; it contains a modern wooden door (2016) with three raised panels surmounted by a nine-pane light glazed with double-insulating glass. The exterior of the door is fitted with a four-panel screen door, each panel of which has been glazed with face-mounted Plexiglas.

The south elevation consists of the original store building (east) and a shed addition (west). The south elevation of the store is blank excepting a single replacement door (2015-16) set in a flat-stock frame near the west end of the elevation. The door is composed of a single recessed panel surmounted by a rectangular light. The lean-to extension rests on a concrete-block foundation with a single vent near its east end; this section of the south wall contains a single window with 6/6 sash (ca. 1880-1900) at its west end and triple window composed of single-glazed 6/6 sash (2015-16) near its east end.

A prefabricated garden shed (2015-16) stands directly south of the southeast corner of the shed addition. This structure rests on concrete blocks set on grade. Walls are clad with weathered board-and-batten siding. The west elevation contains a single batten door made of beaded tongue-and-groove boarding. The shed's corners, door, eaves, and rake boards are all made of flat stock. The roof is covered with three-tab asphalt shingles.

HISTORICAL NARRATIVE

Discuss the history of the building. Explain its associations with local (or state) history. Include uses of the building, and the role(s) the owners/occupants played within the community.

The Antone Sylvia Store was one of five similar commercial buildings constructed in the late 1860s and 1870s as investment properties by Robert McCleave (1809-1878), a retired whaling captain. Of the five, two have been unrecognizably altered for residential use, one has been completely demolished, and the fourth (106 Main Street – the former Monument Square Grocery Store – Nantucket Survey #658) was demolished in 2001 with considerable public controversy reported locally and, in the New York Times, although its façade was detached from the structure, measured, and stored for future installation. Scattered around residential neighborhoods in the historic core of Nantucket's Old Town, these buildings served as local grocery stores until the mid-twentieth century when larger supermarkets centralized grocery shopping in two locations at the waterfront and at the eastern edge of town.

All five buildings bore similar details, namely, center doorways flanked by display windows, false fronts with ornamental parapets and varied mid-Victorian ornaments. Rehabilitation of the former Sylvia Store was undertaken in 2015-16 to return the building to commercial use as a yarn shop and to restore the building's

Continuation sheet 2

EXHIBIT D

INVENTORY FORM B CONTINUATION SHEET

NANTUCKET

79 Orange Street

MASSACHUSETTS HISTORICAL COMMISSION
220 MORRISSEY BOULEVARD, BOSTON, MASSACHUSETTS 02125

Area(s) Form No.

NAN.C & NAN.D

Victorian appearance by installing the façade from 106 Main Street on its east elevation. The dimensions of the two buildings were substantially the identical, allowing the re-installation to make use of the surviving gabled parapet, pilasters and other details. Following this installation, 79 Orange Street stands as the historic district's most notable Victorian commercial building and a unique survival from the Victorian streetscape that included such small-scale commercial buildings in residential districts.

Antone Sylvia Jr. (1834 or 1835-1906) purchased the property at 79 Orange Street in 1879. It appears on the 1886 Sanborn Map. Sylvia operated a grocery store at this location until his death in 1906. His wife, a local Nantucket woman Elizabeth C. "Lizzie" (Ray) Sylvia (1850-1929), retained the property and operated a shop where she sold wallpaper¹. She sold the building in 1909 to grocer Robert Brayton Austin (1873-1942) who operated a grocery store briefly before moving to California where he operated a grocery store by 1912.

Antone Sylvia was a well-known Portuguese resident of the island, originally born in Pico, Azores². He married Lizzie Ray in 1871. Nantucket whaleships of the 1700s and 1800s stopped in the Azores islands on voyages where new crew members would sign on. Some of these whalers eventually made their way to Nantucket and stayed. Azorean families on Nantucket contributed greatly to the language, foodways, and religious life on the island. By 1850, there were twenty-seven Azores-born men living on Nantucket, with another forty-five Azorean men serving on Nantucket whaleships. No Catholic mass had ever been celebrated on Nantucket until 1849, yet by 1896 construction of a Catholic church, St. Mary, Our Lady of the Isle, began.³

While it is unknown at this point when Antone Sylvia Jr. came to Nantucket, by the time he married Lizzie in 1871, the boom days of the whaling industry were gone. Instead, housing was abundant and the cost of living on Nantucket was relatively low. While many Azorean immigrants worked as laborers and fishermen, there were three grocers, of which Antone was one.

The Antone Sylvia Grocery Store was certified by the National Park Service as a contributing element to the Nantucket National Historic Landmark District on November 13, 2017 following installation of its Victorian façade salvaged from 106 Main Street.

BIBLIOGRAPHY and/or REFERENCES

Karttunen, Fran. *The Other Islanders*. <https://archive.org/details/otherislanderspe00kart/page/n9/mode/2up>
Nantucket County Deeds.
Nantucket Historical Association: Image #GPN2244 (view of 79 Orange Street ca. 1895).
Nantucket Death Certificates.
Ramblings. Nantucket Preservation Trust: 2015.

¹ *Ramblings*. Nantucket Preservation Trust: 2015.

² Town of Nantucket. Death Certificate.

³ Fran Karttunen, *The Other Islanders*

EXHIBIT E

PRESERVATION GUIDELINES

The purpose of these Preservation Guidelines is to clarify the terms of this Historic Preservation Restriction that deal with maintenance and alteration to the Building. Under Paragraph 3, prior permission from the Nantucket Preservation Trust (NPT) is required for any Minor Maintenance that is reasonably expected to materially change the appearance, materials, or workmanship from that existing prior to the maintenance and for any Major Maintenance. Minor Maintenance that is part of ordinary maintenance and repair and does not materially change the appearance, materials, colors or workmanship from that existing prior to the maintenance does not require NPT review and approval.

In an effort to explain what constitutes Minor Maintenance and Major Maintenance, the following list is provided. The list is by no means comprehensive. It is a sampling of common structural alterations.

PAINT

Minor: Exterior hand scraping and repainting of non-decorative and non-significant surfaces as part of periodic maintenance.

Major: Painting or fully stripping decorative surfaces or distinctive stylistic features, including ornamental woodwork and trim.

WINDOWS AND DOORS

Minor: Regular maintenance including caulking, painting, and necessary reglazing. Repair or in-kind replacement of existing individual decayed window parts.

Major: Wholesale replacement of units; change in fenestration or materials; alteration of profile or setback of windows. The addition of storm windows is also considered a major change; however, with notification it is commonly acceptable.

EXTERIOR

Minor: Spot repair of existing cladding and roofing including in-kind replacement of clapboard, shingles, slates, etc.

Major: Large scale repair or replacement of cladding or roofing. Change involving inappropriate removal or addition of materials or building elements (i.e., removal of cornice detailing; installation of architectural detail which does not have a historical basis); altering or demolishing building additions; spot repointing of masonry. Structural stabilization of the property is also considered a major alteration.

LANDSCAPING/OUTBUILDINGS

Minor: Routine maintenance of outbuildings and landscape including lawn mowing, pruning, planting, painting, and repair.

Major: Moving or subdividing buildings or property; altering of property; altering or removing significant landscape features such as gardens, vistas, walks, plantings, and ground disturbances affecting archaeological resources.

WALLS

Minor: Making fully reversible changes (i.e. sealing off doors in situ, leaving doors and door openings fully exposed) to the spatial arrangement of a non-significant portion of the building.

Major: Creating new openings in walls or permanently sealing off existing openings; adding permanent partitions which obscure significant original room arrangement; demolishing existing walls; removing or altering stylistic features; altering primary staircases.

Changes classified as Major Maintenance are not necessarily unacceptable. Under the Historic Preservation Restriction such changes must be reviewed by the NPT in order to assess their impact on the historic integrity of the Property, Building, and other structures.

It is the responsibility of the Grantor to notify NPT in writing when any Minor Maintenance that is reasonably expected to materially change the appearance, materials, colors or workmanship from that existing prior to the maintenance or any Major Maintenance is contemplated. Substantial alterations may necessitate review of plans and specifications.

The intent of this Historic Preservation Restriction is to enable the NPT to review proposed alterations and assess their impact on the integrity of the Property, the Building, and other structures, not to preclude future change. NPT staff will attempt to work with the Grantor to develop mutually satisfactory solutions which are in the best interests of the Property.



Agenda Item Summary

Agenda Item #	X. 2.
Date	9/8/2021

Staff

Erika Mooney, Operations Administrator

Subject

Re-execution of Conservation Restriction - 16 Medouie Creek Road

Executive Summary

At its January 8, 2020 meeting, the Select Board voted to approve and execute a Conservation Restriction ("CR") on a 4.6-acre parcel at Medouie Creek granted by Water's Edge Nominee Trust to the Nantucket Land Council ("NLC") to maintain the property in its current condition for conservation purposes in perpetuity. The NLC recently contacted the Town to inform us that there were delays and the final executed copy was not submitted to the Secretary of the Executive Office of Energy and Environmental Affairs for final approval within the required 12-month timeframe. No changes have been made to the document, and the state has asked that NLC seek updated signatures.

Staff Recommendation

For the Board to re-execute the CR and find that the CR is in the public interest.

Background/Discussion

This restriction has been approved by the Commonwealth in a letter dated December 10, 2019 pursuant to the Massachusetts Endangered Species Act (MESA) under the National Heritage and Endangered Species Program (NHESP) as the entire parcel falls within an area designated as a "Priority Habitat for State Protected Rare Species". The land under the CR contains sandplain grassland and preserves the coastal area and wetland resources. The majority of the site lies within the 100-year flood plain of Polpis Harbor so that the undisturbed environment will provide for groundwater recharge and protect the wetland resource area.

Impact: Environmental ☐ Fiscal ☐ Community ☐ Other ☐

N/A

Board/Commission Recommendation

N/A

Public Outreach

N/A

Connection to Existing Applicable Plan (i.e. Strategic Plan, Master Plan, etc.)

Fits under the Open Space and Recreational plan goals of the Town's 2009 Master Plan.



Attachments

CR and Town Counsel opinion letter from 1/8/2020



Grantor: Kevin F. Dale, Successor Trustee of Water's Edge Nominee Trust
Grantee: Nantucket Land Council, Inc.
Property Address: 16 Medouie Creek Road, Nantucket, Massachusetts 02554
Title Reference: Lot L, Land Court Plan No. 6283-F, Certificate of Title No. 23898,
Nantucket Registry District of the Land Court

CONSERVATION RESTRICTION

I, KEVIN F. DALE, SUCCESSOR TRUSTEE OF WATER'S EDGE NOMINEE TRUST, u/d/t dated March 11, 2011 and registered as Document No. 133903 at the Nantucket Registry District of the Land Court, with an address of P.O. Box 659, Nantucket, Massachusetts 02554, being the sole owner, for its successors and assigns ("Grantor"), acting pursuant to Sections 31, 32, and 33 of Chapter 184 of the Massachusetts General Laws, hereby grants WITH QUITCLAIM COVENANTS to the NANTUCKET LAND COUNCIL, INC., a not -for- profit corporation whose purposes include conservation of land in Nantucket, Massachusetts, with its offices located at 6 Ash Lane Nantucket, Massachusetts 02554, its permitted successors and assigns ("Grantee"), in perpetuity and exclusively for conservation purposes, for nominal consideration, the following Conservation Restriction on a 4.6-acre portion of a parcel of land located in the Town of Nantucket, Massachusetts shown as Lot L on Land Court Plan No. 6283-F filed with Certificate of Title No. 2992 at the Nantucket Registry District of the Land Court ("Premises"), more particularly shown as the Conservation Restriction Area on a plan entitled "Conservation Restriction Plan in Nantucket, MA Prepared for Water's Edge Nominee Trust," Prepared by Blackwell & Associates, Inc. dated January 8, 2015, a reduced copy of which is attached hereto as Exhibit "A". For Grantor's title, see Certificate of Title No. 23898 filed with the Nantucket Registry District of the Land Court.

I. PURPOSES:

This Conservation Restriction is defined in and authorized by Sections 31-33 of Chapter 184 of the General Laws and otherwise by law. The purpose of this Conservation Restriction is to assure that the Premises will be maintained in its current condition as set forth in the Baseline Documentation Report & Survey ("Baseline Report") in perpetuity and for conservation purposes, in a natural, scenic and undeveloped condition, and to prevent any use or change that would materially impair or interfere with its conservation and preservation values.

Water's Edge to
Nantucket Land Council

This Conservation Restriction is granted pursuant to and in accordance with the Massachusetts Endangered Species Act (MESA) (M.G.L. c. 131A) and its implementing regulations (321 CMR 10.00) and requirements set forth in a letter issued by the Commonwealth of Massachusetts Division of Fisheries and Wildlife acting through the Natural Heritage and Endangered Species Program (“NHESP” or “Division”); NHESP Tracking No. 11-30084, dated February 6, 2012 and July 26, 2013, that conditioned the project to avoid a prohibited Take of the Northern Harrier (*Circus cyaneus*), and attached hereto as Exhibit “B” and incorporated herein by this reference (“Letter”).

- A. **Wildlife & Habitat Protection.** The entire Premises falls within an area designated as “Priority Habitat for State-Protected Rare Species” by NHESP. The Premises also provide a unique natural habitat for a wide variety of plant and animal species. The Premises is comprised of sandplain grassland characterized by NHESP as critically imperiled in Massachusetts, with a mixed coastal shrub understory, a pond edge and pond ecosystem all which provide unique foraging and nesting habitat for bird, mammal and insect species.
- B. **Nearby Natural Areas.** The Premises is located in a coastal area consisting of Coastal Bank vegetation and Vegetated Wetland species and is varied in plant community types and edge habitats which have generally been transitioning from a sandplain grassland to a more overgrown brushy community. The area provides wetland habitat for native wildlife and plant species and communities, including many species of native plants, mammals, birds, reptiles, amphibians, and invertebrates. The preservation of this coastal area and wetland resources on the Premises will protect these habitats.

The Premises is located north of Polpis Harbor and is adjacent to land protected by the Nantucket Conservation Foundation.

- C. **Scenic Landscape Preservation.** The Premises comprises 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 approximately 4.5-acre 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 conservation land and open space in the immediate vicinity of the Premises.
- D. **Flood Plain Protection.** The majority of the Premises lies within the 100-year floodplain of Polpis Harbor. 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. The Premises are located on Nantucket Island which has a United States Environmental Protection Agency designated sole source aquifer for the use of its inhabitants. Protection of the Premises will further protect the water quality of the aquifer and surrounding wells. Protection of the premises will also reduce nutrient and pollutant leaching and runoff which will protect the down gradient water body of Nantucket Harbor, which abuts the property on several sides.
- F. **Furtherance of Government Policy.** Preservation of the Premises complies with the clearly delineated conservation policy expressed in Nantucket's Master Plan, adopted by Nantucket's voters at the Annual Town Meeting in April 2009, which states in the Town of Nantucket 2007 Open Space and Recreation Plan as Goal/Objectives 1C: "The town should encourage the use of creative regulatory and non-regulatory land protection tools such as conservation restrictions, tax abatements, gifts and zoning measures." It further complies with the *The Nantucket Comprehensive Community Plan* (NCCP), including the following objectives therein: Objective 4.1, "To aggressively acquire land and conservation restrictions to protect natural ecosystems;" Objective 4.2, "To encourage land management activities by the Land Bank and nonprofit entities to provide permanent resource protection;"

Preservation of the Premises as open space is further pursuant to clearly delineated governmental conservation policy in accordance with "Nantucket's Goals and Objectives for Balanced Growth" which was adopted in November 1990 by Town Meeting and states as Objective A-1: "To identify and acquire critical open spaces through outright ownership or by less-than-fee means, such as conservation restrictions, scenic easements, and the purchase of development rights, in order to complete the Island's open space network."

These conservation values and other current conditions of the Premises and public benefits of this Conservation Restriction are described in more detail in the Baseline Report to be kept on file at the office of the Grantee and incorporated herein by this reference. Grantor and Grantee agree that this Baseline Report provides an accurate representation of the current condition of the Premises as of the date of this Conservation Restriction, and is intended to serve as an objective information baseline for subsequent monitoring of compliance with the terms of this Conservation Restriction as described herein. Notwithstanding the foregoing, the parties may utilize any evidence of the condition of the Premises at the time of this grant other than the Baseline Report, should the Baseline Report be unavailable or if it does not adequately address the issues presented.

II. PROHIBITED ACTS AND USES, EXCEPTIONS THERETO, AND PERMITTED USES

A. PROHIBITED ACTS AND USES

Subject to the exceptions set forth herein, the Grantor will neither perform nor allow others to perform the following acts and uses which are prohibited on, above, and below the Premises:

1. Constructing, placing or allowing to remain any temporary or permanent building, tennis court, landing strip, mobile home, swimming pool, asphalt or concrete pavement, sign, fence, billboard or other advertising display, antenna, utility pole, tower, conduit, line or other temporary or permanent structure or facility on, above or under the Premises;
2. Mining, excavating, dredging or removing from the Premises of soil, loam, peat, gravel, sand, rock or other mineral resource or natural deposit or otherwise make topographical changes to the area;
3. Placing, filling, storing or dumping on the Premises of soil, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, waste or other substance or material whatsoever or the installation of underground storage tanks;
4. Cutting, removing or otherwise destroying trees, grasses or other vegetation;
5. Activities detrimental to drainage, flood control, water conservation, water quality, erosion control, soil conservation, wildlife habitat, or archaeological conservation;
6. Using, parking, storing, maintaining, and operating of snowmobiles, motorcycles, mopeds, all-terrain vehicles, bicycles, trail bikes, or any other motorized or non-motorized vehicles of any kind, except for vehicles necessary for public safety (i.e., fire, police, ambulance, other government officials) in carrying out their lawful duties;
7. Disrupting, removing, or destructing the stone walls or granite fence posts on the Premises;
8. Conveying 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 further building or development requirements on this or any other parcel, it being acknowledged by the Grantor and Grantee that this Conservation Restriction is required as a condition of the Letter.
9. Using the Premises for business, residential or industrial use, or for more than a *de minimus* commercial recreation.
10. Any other use of the Premises or activity which is inconsistent with the purpose of this Conservation Restriction or which would impair its conservation values.

B. RESERVED RIGHTS AND EXCEPTIONS TO OTHERWISE PROHIBITED ACTS AND USES

The Grantor reserves the right to conduct or permit the following activities and uses on the Premises, but only if such uses and activities do not materially impair the conservation values or purpose of this Conservation Restriction or other significant conservation values:

1. Septic System: The installation, maintenance, repair and replacement of a septic system in the location as shown on Exhibit A, not to exceed a footprint of 12,900 square feet, to serve only the structures on the unrestricted portion of the Grantor's property abutting the Premises. Installation and/or replacement shall be approved by the Grantee in accordance with Paragraph II C. below.
2. Non-native flora. In accordance with the Land Management Plan, Water's Edge Nominee Trust, 16 Medouie Creek Road, Nantucket, MA, (hereinafter the "LMP"), by Wilkinson Ecological Design, dated June 20, 2013 revised July 15, 2013 (attached hereto as Exhibit C), which is the LMP described in the Letter, and/or with the written approval of the Grantee and NHESP, the removal of non-native or invasive flora and interplanting of indigenous species;
3. Wildlife Habitat Management. Maintenance of the Premises in accordance with the LMP, which is designed to restore, maintain, enhance or otherwise manage biotic communities and/or habitats for native species, rare species, and/or species listed pursuant to the MA Endangered Species Act ("MESA"), M.G.L. c.131A, and its implementing regulations, 321 CMR 10.00, that can include, but is not limited to, selective planting or removal of native vegetation, mowing of grasslands, forestry, modification of soils, and prescribed burning of vegetation; provided that any such maintenance activities are described in the LMP; Grantor is also permitted to maintain the Premises in accordance with the Nantucket Conservation Commission Order of Conditions SE48-2577 dated August 21, 2013, which allows driveway expansion, wetland replication, invasive species control, and indigenous plantings within the Premises. Copies of any monitoring reports required by these permits shall also be submitted to the Grantee.
4. Signs. The erection, maintenance and replacement of signs with respect to hunting, trespass, trail access, identity and address of the occupants, sale of the Premises, the Grantee's interest in the Premises, and the protected conservation values provided such signs do not specifically reference species listed by MESA and its implementing regulations by scientific or common name or provide the actual location of said species. Signs may use generalized terms such as "Sensitive Ecological Community," "wildlife habitat", "rare animal habitat" or other generalized terms.

The exercise of any right reserved by Grantor under this Paragraph B shall be in compliance with the then-current Zoning, the Wetlands Protection Act, the MA Endangered Species Act (MGL c131A), and all other applicable federal, state and local laws, rules, regulations, and permits. The inclusion of any reserved right requiring a permit from a public agency does not imply that the Grantee or the Commonwealth takes any position of whether such permit should be issued.

C. NOTICE AND APPROVAL.

Whenever notice to or approval by Grantee and/or Division is required under the provisions of paragraphs A or B, Grantor shall notify Grantee and/or Division in writing not less than 30 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 any other material aspect of the proposed activity in sufficient detail to permit the Grantee and/or Division to make an informed judgment as to its consistency with the purposes of this Conservation Restriction. Where Grantee and/or Division's approval is required, Grantee and/or Division shall grant or withhold approval in writing within 30 days of receipt of Grantor's request. Said approval shall not be unreasonably withheld, but shall only be granted upon a showing that the proposed activity shall not materially impair the purposes of this Conservation Restriction. Failure of Grantee and/or Division to respond in writing within 30 days shall be deemed to constitute approval by Grantee and/or Division (if in accordance with the law) of the request as submitted, so long as the request sets forth the provisions of this section relating to deemed approval after 30 days in the notice the requested activity is not prohibited herein and the activity will not impair the conservation values or purposes of this Conservation Restriction.

III. LEGAL REMEDIES OF THE GRANTEE AND DIVISION

A. LEGAL AND INJUNCTIVE RELIEF

The rights hereby granted shall include the right to enforce this Conservation Restriction by appropriate legal proceedings and to obtain injunctive and other equitable relief against any violations, including, without limitation, relief requiring restoration of the Premises to their condition prior to the time of the injury complained of (it being agreed that the Grantee may 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 shall attempt to resolve issues concerning violations through negotiations with Grantor prior to resorting to legal means. In the event of a dispute over the boundaries of the Conservation Restriction, Grantor shall pay for a survey and permanent monumentation of the boundaries.

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.

This 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 MESA or its implementing regulations. If the Division in its sole discretion determines that Grantee is not taking satisfactory action to monitor and/or enforce this Conservation Restriction, the Division shall give written notice to Grantee of said unsatisfactory monitoring and/or enforcement and the reasons therefore, and Grantee shall have 30 days in which to take action satisfactory to the Division to monitor and enforce this Conservation Restriction. If the Division in its sole discretion subsequently determines that the Grantee has

failed to take satisfactory action within said 30-day period following written notice from the Division, the Division may in its sole discretion monitor and undertake whatever actions, including appropriate legal proceedings which include obtaining injunctive and other equitable relief, that the Division determines are reasonably necessary or appropriate to effect such corrections of any violations and/or to otherwise enforce the terms and provisions of this Conservation Restriction as provided herein.

If the Division in its sole discretion determines that immediate legal or other action is necessary to protect the Premises against injury or harm, the Division may waive this notice and 30-day Grantee response time period and take whatever legal and other action the Division deems as necessary or appropriate to protect the conservation values on the Premises.

Grantor covenants and agrees to reimburse to Division all reasonable costs and expenses (including reasonable counsel fees) incurred in enforcing this Conservation Restriction or in taking reasonable measures to remedy, abate or correct any violation thereof, provided that a violation of this Conservation Restriction is acknowledged by Grantor or determined by a court of competent jurisdiction to have occurred.

B. NON-WAIVER

Enforcement of the terms of this Conservation Restriction shall be at the discretion of Grantee. Any election by the Grantee as to the manner and timing of its right to enforce this Conservation Restriction or otherwise exercise its rights hereunder shall not be deemed or construed to be a waiver of such rights.

C. DISCLAIMER OF LIABILITY

By acceptance of this Conservation Restriction, the Grantee does not undertake any liability or obligation relating to the condition of the Premises not caused by the Grantee or its agents pertaining to compliance with and including, but not limited to, hazardous materials, zoning, environmental laws and regulations, or acts which are not caused by the Grantee or anyone acting under the direction of the Grantee.

D. ACTS BEYOND THE GRANTOR'S CONTROL

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

IV. ACCESS

This Conservation Restriction does not grant to the Grantee, to the public, or to any other person or entity any right to enter upon the Premises, except as follows:

The Grantor hereby grants to the Grantee, or its duly authorized agents or representatives, the right to enter the Premises upon reasonable notice and at reasonable times for the purpose of inspecting the Premises to determine compliance herewith, or to enforce this Conservation Restriction. The Grantor also grants to the Grantee, after 30 days' 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 have a survey of boundary lines conducted at the Grantee's expense. This Conservation Restriction in no way limits, amends or alters the legal authority of the Division to access the property of the Grantor, its successors and assigns.

V. EXTINGUISHMENT

A. If circumstances arise in the future such as render the purpose of this Conservation Restriction impossible to accomplish, this restriction can only be terminated or extinguished, whether in whole or in part, by a court of competent jurisdiction under applicable law, after review and approval by the Massachusetts Secretary of Energy and Environmental Affairs 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. Grantee shall use its share of the proceeds in a manner consistent with the conservation purpose set forth herein.

B. PROCEEDS. Grantor and Grantee agree that the donation of this Conservation Restriction gives rise to a real property right, immediately vested in the Grantee, with a fair market value that is at least equal to the proportionate value that this Conservation Restriction, determined at the time of the gift, bears to the value of the unrestricted property at that time. Such proportionate value of the Grantee's property right shall remain constant.

C. GRANTOR/GRANTEE COOPERATION REGARDING PUBLIC ACTION
Whenever all or any part of the Premises or any interest therein is taken by public authority under power of eminent domain or other act of public authority, then the Grantor and the Grantee shall cooperate in recovering the full value of all direct and consequential damages resulting from such action. All related expenses incurred by the Grantor and the Grantee shall first be paid out of any recovered proceeds, and the remaining proceeds shall be distributed between the Grantor and Grantee in shares equal to such proportionate value as described in Paragraph V(B), above. If a less than fee interest is taken, the proceeds shall be equitably allocated according to the nature of the interest taken. The Grantee shall use its share of the proceeds like a continuing trust in a manner consistent with the conservation purposes of this grant.

VI. ASSIGNABILITY

A. RUNNING OF THE BURDEN

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

B. EXECUTION OF INSTRUMENTS

The Grantee is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Conservation Restriction; the Grantor, on behalf of itself and its successors and assigns, appoint the Grantee their attorney-in-fact to execute, acknowledge and deliver any such instruments on his behalf. Without limiting the foregoing, the Grantor and its successors and assigns agree themselves to execute any such instruments upon request.

C. RUNNING OF THE BENEFIT

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

As a condition of any assignment, the Grantee shall require that the purpose of this Conservation Restriction continues to be carried out, and that the Assignee is not an owner of the fee in the Premises and that the Assignee, at the time of the assignment, qualifies under Section 170(h) of the Internal Revenue Code of 1986, as amended, and applicable regulations thereunder, and is a donee eligible to receive this Conservation Restriction under Section 32 of Chapter 184 of the General Laws of Massachusetts. Any assignment shall comply with Article 97 of the Amendments to the Massachusetts Constitution if applicable.

VII. SUBSEQUENT TRANSFERS

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

The Grantor shall be liable only for violations occurring during his or her ownership, or for any transfer, if in violation. Liability for any acts or omissions occurring prior to any transfer and liability for any transfer if in violation of this Conservation Restriction shall survive the transfer. Any new owner shall cooperate in the restoration of the Premises or removal of violations caused by prior owner(s) and may be held responsible for any continuing violations.

VIII. ESTOPPEL CERTIFICATES

Upon request by the Grantor, the Grantee shall, within twenty (20) days, execute and deliver to the Grantor any document, including an estoppel certificate, which certifies the Grantor's compliance with any obligation of the Grantor contained in this Conservation Restriction.

IX. NON MERGER

The parties' intend that any future acquisition of the Premises shall not result in a merger of the Conservation Restriction into the fee. The Grantor agrees that it will not grant, and the Grantee agrees that it will not take title, to any part of the Premises without having first assigned this Conservation Restriction to 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. If it is determined that a transfer or assignment of any interest will result in a merger, no deed shall be effective until this Conservation Restriction has been assigned or other action taken to avoid a merger and preserve the terms and enforceability of this Conservation Restriction. It is the intent of the parties that the Premises will be subject to the terms of this Conservation Restriction in perpetuity, notwithstanding any merger.

X. AMENDMENT

If circumstances arise under which an amendment to or modification of this Conservation Restriction may 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, and in circumstances where in granting an amendment there is a net gain in conservation value. All expenses of all parties in considering and/or implementing an amendment shall be borne by the persons or entity seeking the amendment. Any amendment shall be consistent with the purposes of this Conservation Restriction, shall not affect its perpetual duration, shall be approved in writing by the Massachusetts 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. Any amendment shall be recorded in the Nantucket Registry of Deeds.

XI. EFFECTIVE DATE

This Conservation Restriction shall be effective when the Grantor and the Grantee have executed it, the administrative Approvals required by Section 32 of Chapter 184 of the General

Laws have been obtained, and it has been filed in the Nantucket Registry District of the Land Court.

XII. RECORDATION

The Grantee shall file this instrument in timely fashion in the Nantucket Registry District of the Land Court.

XIII. NOTICES

Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage pre-paid, addressed as follows:

To Grantor: Waters Edge Nominee Trust, Kevin F. Dale, Successor Trustee
P.O. Box 659
Nantucket, MA 02554

To Grantee: Nantucket Land Council, Inc.
6 Ash Lane
Nantucket, MA 02554

To the Division: Natural Heritage Endangered Species Program
Mass. Division of Fisheries & Wildlife
North Drive, Route 135
Westborough, MA 01581

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

XIV. GENERAL PROVISIONS

A. CONTROLLING LAW

The interpretation and performance of this Conservation Restriction shall be governed by the laws of the Commonwealth of Massachusetts.

B. LIBERAL CONSTRUCTION

Any general rule of construction to the contrary notwithstanding, this Conservation Restriction shall be liberally construed in favor of the grant to effect the purpose of this Conservation Restriction and the policy and purposes of Massachusetts General Laws Chapter 184, Sections 31-33. If any provision in this instrument is found to be ambiguous, any interpretation consistent with the purpose of this Conservation Restriction that would render the provision valid shall be favored over any interpretation that would render it invalid.

C. SEVERABILITY

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

D. ENTIRE AGREEMENT

This instrument sets forth the entire agreement of the parties with respect to this Conservation Restriction and supersedes all prior discussions, negotiations, understandings or agreements relating to the Conservation Restriction, all of which are merged herein.

XIV. MISCELLANEOUS

A. PRE-EXISTING PUBLIC RIGHTS.

Approval of this Conservation Restriction pursuant to M.G.L. Chapter 184, Section 32 by any municipal officials and by the Secretary of Environmental Affairs is not to be construed as representing the existence or non-existence of any pre-existing rights of the public, if any, in and to the Premises, and any such pre-existing rights of the public, if any, are not affected by the granting of this Conservation Restriction.

B. HOMESTEAD

The Grantor 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 Easement, 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)

C. SUBORDINATION OF MORTGAGE:

The Grantor shall record at the appropriate Nantucket County Registry of Deeds simultaneously with this Conservation Restriction all documents necessary to subordinate any mortgage, promissory note, loan, equity credit line, refinance assignment of mortgage, lease, financing statement or any other agreement which gives rise to a surety interest affecting the Property.

XV. ATTACHMENTS HERETO AND INCORPORATED BY REFERENCE

Signature Pages for Grantor and Grantee

Approval by Nantucket Select Board

Approval of the Secretary of Energy and Environmental Affairs

Acknowledgement by the MA Division of Fisheries and Wildlife

Exhibit A "Conservation Restriction Plan." Nantucket, MA Prepared for Water's Edge Nominee Trust by Blackwell & Associates, Inc. dated January 8, 2015.

- Exhibit B Conditional No Take Letter dated February 6, 2012, and July 26, 2013, issued by the Commonwealth of Massachusetts Division of Fisheries and Wildlife acting through the Natural Heritage and Endangered Species Program
- Exhibit C Land Management Plan, Water's Edge Nominee Trust, 16 Medouie Creek Road, Nantucket, MA, by Wilkinson Ecological Design, dated June 20, 2013 revised July 15, 2013.

GRANTING OF CONSERVATION RESTRICTION

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

Water's Edge Nominee Trust

By:_____

Kevin F. Dale, Successor Trustee

COMMONWEALTH OF MASSACHUSETTS

Nantucket, ss:

On this _____ day of _____, 20____, before me, the undersigned notary public, personally appeared Kevin F. Dale, proved to me through satisfactory evidence of identification which was _____ to be the person whose name is signed on the preceding document, and who swore or affirmed to me that the contents of the document are truthful and accurate to the best of his knowledge and belief and acknowledged to me that he signed it voluntarily for its stated purpose as Trustee of the Water's Edge Nominee Trust.

SEAL

Notary Public

My commission expires: _____

ACCEPTANCE OF GRANT

The above Conservation Restriction was accepted by the Nantucket Land Council, Inc. this _____ day of _____, 20____.

Nantucket Land Council, Inc.

By:_____

By:_____

COMMONWEALTH OF MASSACHUSETTS

_____, ss:

On this _____ day of _____, 20____, before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory evidence of identification which was _____ to be the person(s) whose name is signed on the preceding 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.

SEAL

Notary Public

My commission expires: _____

APPROVAL OF SELECT BOARD

We, the undersigned, being a majority of the Select Board of the Town of Nantucket, Nantucket County, Massachusetts, hereby certify that at a meeting duly held on _____, 20____, the Select Board voted to approve the foregoing Conservation Restriction from Kevin Dale as Successor Trustee of the Water's Edge Nominee Trust to the Nantucket Land Council, Inc., in the public interest pursuant to Section 32 of Chapter 184 of the General Laws of Massachusetts.

TOWN OF NANTUCKET
By its Select Board

Jason Bridges

Kristie L. Ferrantella

Dawn E. Hill Holdgate

Matthew G. Fee

Melissa K. Murphy

COMMONWEALTH OF MASSACHUSETTS

Nantucket, ss:

On this _____ day of _____, 20____, before me, the undersigned notary public, personally appeared Jason Bridges, Kristie L. Ferrantella, Dawn E. Hill Holdgate, Matthew G. Fee and Melissa K. Murphy, members of the Town of Nantucket Select Board proved to me through satisfactory evidence of identification which was personal knowledge of the undersigned to be the persons whose names are signed on the preceding document, and who swore or affirmed to me that the contents of the document are truthful and accurate to the best of their knowledge and belief, and are their free acts and deeds on behalf of the Select Board of the Town of Nantucket..

SEAL

Notary Public

My commission expires: _____

Water's Edge to
Nantucket Land Council

**APPROVAL BY SECRETARY OF ENERGY AND ENVIRONMENTAL AFFAIRS
COMMONWEALTH OF MASSACHUSETTS**

The undersigned, Secretary of Energy and Environmental Affairs of the Commonwealth of Massachusetts, hereby certifies that the foregoing Conservation Restriction from Kevin Dale as Successor Trustee of the Water's Edge Nominee Trust to the Nantucket Land Council, Inc. has been approved in the public interest pursuant to Massachusetts General Laws, Chapter 184, Section 32.

Dated: _____, 20__

Kathleen A. Theoharides
Secretary of Energy and Environmental Affairs

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss:

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

Notary Public
My Commission Expires:

ACKNOWLEDGEMENT BY THE MA DIVISION OF FISHERIES AND WILDLIFE

This grant of Conservation Restriction set forth above from Kevin Dale as Successor Trustee of the Water's Edge Nominee Trust to the Nantucket Land Council, Inc. is acknowledged this _____ day of _____, 20____. The MA Division of Fisheries and Wildlife (Division) acknowledges the reserved rights and obligations of the Division set forth herein.

Mark Tisa, Director

Date: _____

COMMONWEALTH OF MASSACHUSETTS

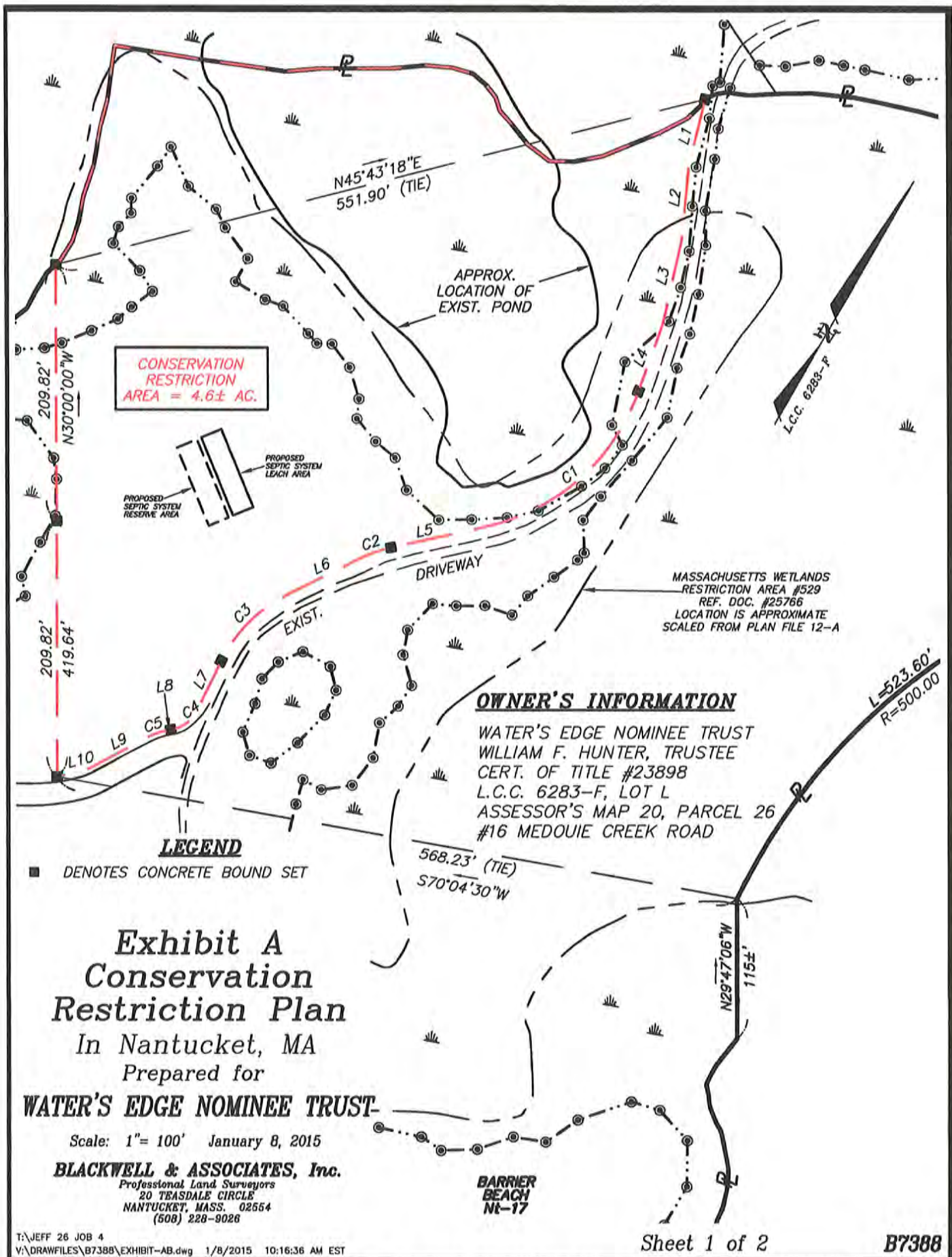
On this _____ day of _____, 20____, before me, the undersigned notary public, personally appeared Mark Tisa, proved to me through satisfactory evidence of identification, which was one of the following (check applicable box): ☐ a driver's license; ☐ a valid passport; ☐ personally known to be the person 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: _____

Exhibit A

“Conservation Restriction Plan in Nantucket, MA Prepared for Water’s Edge Nominee Trust,”
by Blackwell & Associates, Inc. dated January 8, 2015.



CONSERVATION RESTRICTION LINE & CURVE TABLE

<u>LINE</u>	<u>BEARING</u>	<u>DISTANCE</u>	<u>CURVE</u>	<u>RADIUS</u>	<u>ARC LENGTH</u>
L1	S16°03'19"E	56.54'	C1	175.00	175.72'
L2	S24°13'25"E	59.81'	C2	115.00	28.37'
L3	S17°11'33"E	70.56'	C3	120.00	77.67'
L4	S09°58'16"E	59.99'	C4	30.00	28.40'
L5	S47°33'40"W	79.33'	C5	50.00	16.29'
L6	S33°25'29"W	66.41'			
L7	S03°39'33"E	44.67'			
L8	S50°35'27"W	2.54'			
L9	S31°55'14"W	54.40'			
L10	S44°51'14"W	28.23'			

OWNER'S INFORMATION

WATER'S EDGE NOMINEE TRUST
WILLIAM F. HUNTER, TRUSTEE
CERT. OF TITLE #23898
L.C.C. 6283-F, LOT L
ASSESSOR'S MAP 20, PARCEL 26
#16 MEDOUIE CREEK ROAD

Exhibit A Conservation Restriction Plan

*In Nantucket, MA
Prepared for*

WATER'S EDGE NOMINEE TRUST

Scale: 1"= 100' January 8, 2015

BLACKWELL & ASSOCIATES, Inc.

*Professional Land Surveyors
20 TEASDALE CIRCLE
NANTUCKET, MASS. 02554
(508) 228-9028*

Exhibit B

Conditional No Take Letters dated February 6, 2012 and July 26, 2013 issued by the Commonwealth of Massachusetts Division of Fisheries and Wildlife acting through the Natural Heritage and Endangered Species Program.



MassWildlife

Commonwealth of Massachusetts

Division of Fisheries & Wildlife

Wayne F. MacCallum, *Director*

February 6, 2012

Nantucket Conservation Commission
37 Washington Street
Nantucket MA 02554

William Hunter
Waters Edge Nominee Trust
PO Box 659
Nantucket MA 02554

RE: Applicant: William Hunter
Project Location: 16 Medouie Creek Road
Project Description: Single Family Dwelling, Guest House, Garage, Septic
DEP File No.: 048-2417
NHESP Tracking No.: **11-30084 (related to 07-21548)**
Documents Reviewed: "Site Plan for Land Management" dated 1/31/12 (attached; herein the "Plan")
Land Management Plan prepared by Wilkinson Ecological Design dated 1/25/12

Dear Applicant and Commissioners:

The applicant listed above has submitted a *Notice of Intent* and revised plans (dated January 31, 2012) to the Natural Heritage & Endangered Species Program (NHESP) of the Massachusetts Division of Fisheries & Wildlife, in compliance with the rare wildlife species section of the Massachusetts Wetlands Protection Act Regulations (310 CMR 10.59). Additional materials were submitted for review pursuant to the Massachusetts Endangered Species Act (MESA; M.G.L. c. 131A) and its implementing regulations (321 CMR 10.00) (MESA).

Based on a review of information that was submitted and the information that is contained in our database, the NHESP has determined that the proposed project footprint is within the habitat of the following state-listed species:

Scientific Name	Common Name	Taxonomic Group	MA Status
<i>Bagisara rectifascia</i>	Straight Lined Mallow Moth	Invertebrate Animal	Special Concern
<i>Circus cyaneus</i>	Northern Harrier	Vertebrate Animal	Threatened

These species and their habitats are protected pursuant to the Massachusetts Endangered Species Act (MESA) (M.G.L. c. 131A) and its implementing regulations (321 CMR 10.00).

The proposed project includes the construction of single family dwelling, garage, guest house, barn, driveway, septic system, well, underground utilities, grading, landscaping and habitat management activities described in the Land Management Plan prepared by Wilkinson Ecological Design dated 1/25/12 as shown on the Plan. Additionally the project includes the protection of approximately 4.5 acres of the 32

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Division of Fisheries and Wildlife
Field Headquarters, One Rabbit Hill Road, Westborough, MA 01581 (508) 389-6300 Fax (508) 389-7890
An Agency of the Department of Fish and Game

WATERS EDGE TO NANTUCKET LAND COUNCIL

23



MassWildlife

Commonwealth of Massachusetts

Division of Fisheries & Wildlife

Wayne F. MacCallum, *Director*

July 26, 2013

Nantucket Conservation Commission
37 Washington Street
Nantucket MA 02554

William Hunter, Trustee
Waters Edge Nominee Trust
PO Box 659
Nantucket MA 02554

RE: Project Location: 16 Medouie Creek Road, Nantucket
 Project Description: Single Family Dwelling, Guest House, Garage, & Septic
 DEP Wetlands File No.: 048-2577 NHESP File No.: 11-30084

Dear Applicant:

The Natural Heritage & Endangered Species Program of the MA Division of Fisheries and Wildlife (the "Division") received and reviewed a *Notice of Intent* with revised plans (dated June 20, 2013, revised July 25, 2013; 11 Sheets) for the subject project.

The Division finds that the revised plans do not change our previous determination that this project **must be conditioned to avoid adverse effects** to the actual Resource Area Habitat of state-protected rare wildlife species and **must be conditioned to avoid a prohibited "take"** of state-listed rare species (Division letter dated 02/06/2012); *that determination stands and all conditions listed therein remain valid*. Issuance of an Order of Conditions approving the project as currently designed is consistent with the Interests of the WPA strictly related to rare species. A copy of any final Order of Conditions shall be mailed or hand delivered to the Division simultaneous with sending to the applicant as required pursuant to 310 CMR 10.05(6)(e)).

We note that all work is subject to the anti-segmentation provisions (321 CMR 10.16) of the MESA. Any activity not included in the current filing and located within *Priority Habitat* may require an additional filing with the Division for review if not otherwise exempt. If no physical work is commenced on the above proposed project within five years from the date of issuance of our original letter or there is a material change in the plans that were submitted to the Division, updated information and/or plans must be sent to the Division for review prior to any work.

Please contact Amy Coman-Hoenig, Endangered Species Review Biologist, at (508) 389-6364 with any questions or comments.

Sincerely,

Thomas W. French, Ph.D.
Assistant Director

cc: MA DEP Southeast Region
Arthur Gasbarro, Blackwell & Associates, Inc.

www.masswildlife.org

Division of Fisheries and Wildlife

Temporary Correspondence: 100 Hartwell Street, Suite 230, West Boylston, MA 01583

Permanent: Field Headquarters, North Drive, Westborough, MA 01581 (508) 389-6300 Fax (508) 389-7890

An Agency of the Department of Fish and Game

WATER'S EDGE TO NANTUCKET LAND COUNCIL 24

acre parcel labeled on the Plan as Proposed Conservation Restriction. The applicant is proposing to protect this area with a Conservation Restriction granted to the Nantucket Conservation Foundation.

WETLANDS PROTECTION ACT (WPA)

For projects within Estimated Habitat, the WPA Regulations state that "...if a proposed project is found by the issuing authority to alter a resource area which is part of the habitat of a state-listed species, such project shall not be permitted to have any short or long term adverse effects on the habitat of the local population of that species" (310 CMR 10.37, 10.59), and that "no project may be permitted within the riverfront area which will have any adverse effect on specified habitat sites of rare wetland or upland, vertebrate or invertebrate species, ... or which will have any adverse effect on vernal pool habitat certified prior to the filing of the Notice of Intent" (310 CMR 10.58(4)(b)).

Based on the information provided and the information contained in our database, it is the opinion of the NHESP that this project, as currently proposed **must be conditioned in order to avoid adverse effects** to the Resource Area Habitats of state-listed wildlife species (310 CMR 10.59). To avoid an adverse effect to the habitat of the Northern Harrier, the following conditions must be met:

- a) Prior to the start of work, the applicant shall submit proof to the NHESP of filing a draft Conservation Restriction (CR) with the MA Executive Office of Energy & Environmental Affairs-Division of Conservation Services. The CR shall be in substantially the same form as the draft submitted to the NHESP dated 1/27/12. Any changes to the CR other than typographical or grammatical changes must be approved in writing by the Division before said changes are submitted to the Secretary of the Executive Office of Energy & Environmental Affairs for approval.
- b) Said Conservation Restriction shall be executed and recorded 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, no later than six (6) months from the initiation of work. Work shall cease if said Conservation Restriction is not recorded and copies thereof received by the NHESP by this date, provided, however, that the NHESP 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 applicant and so long as the applicant continues in good faith to seek to execute and record said Conservation Restriction.
- c) Prior to the start of work, the applicant shall monument the boundaries of the Proposed Conservation Restriction as shown on the plans.
- d) All work within the Land Management Areas shown on the plan, excluding the installation of the septic system, shall adhere to the Land Management Plan prepared by Wilkinson Ecological Design dated 1/25/12 (herein "LMP"). Any changes to the LMP must be pre-approved in writing by the NHESP.
- e) As described in the LMP, copies of the annual monitoring reports described in the Three Year Management section of the LMP shall be submitted to the NHESP. Additionally, as noted in the LMP, after the 3 years of annual monitoring reports, a monitoring report will shall be provided to the NHESP every additional 5 years for a total of 15 years.

Provided these conditions are included in any final approving Orders of Conditions, the project will not result in an adverse impact to the Resource Area Habitats of state-listed wildlife species. We ask that the Conservation Commission send a copy of the final Order of Conditions, approving or denying the project, to the NHESP simultaneous with the applicant.

MASSACHUSETTS ENDANGERED SPECIES ACT (MESA)

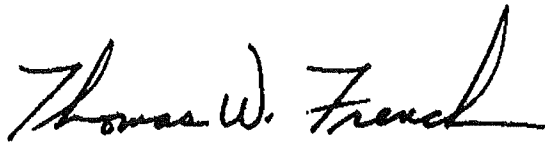
The MESA is administered by the NHESP of the MA Division of Fisheries & Wildlife, and prohibits the "take" of state-listed species. The "take" of state-listed species is defined as "in reference to animals, means to harass, harm, pursue, hunt, shoot, hound, kill, trap, capture, collect, process, disrupt the nesting, breeding, feeding or migratory activity or attempt to engage in any such conduct, or to assist such conduct, and in reference to plants, means to collect, pick, kill, transplant, cut or process or attempt to engage or to assist in any such conduct. Disruption of nesting, breeding, feeding or migratory activity may result from, but is not limited to, the modification, degradation or destruction of Habitat" (321 CMR 10.02).

Based on the information provided and the information contained in our database, the NHESP finds that this project, as currently proposed, **must be conditioned in order to avoid a prohibited "take" of state-listed species (321 CMR 10.18(2)(a))**, as outlined in the WPA section above.

Provided you comply with all the above-noted conditions and there are no changes to the project plans, this project will not result in a "take" of state-listed species. We note that all work is subject to the anti-segmentation provisions (321 CMR 10.16) of the MESA. This determination is a final decision of the Division of Fisheries and Wildlife pursuant to 321 CMR 10.18. Any changes to the proposed project or any additional work beyond that shown on the site plans may require an additional filing with the NHESP pursuant to the MESA. This project may be subject to further review if no physical work is commenced within five years from the date of issuance of this determination, or if there is a change to the project.

Please note that this determination addresses only the matter of state-listed species and their habitats. If you have any questions regarding this letter please contact Amy Coman-Hoenig, Endangered Species Review Assistant, at (508) 389-6364.

Sincerely,



Thomas W. French, Ph.D.
Assistant Director

Attachment

cc: MA DEP Southeast Region
Arthur Gasbarro, Blackwell & Associates, Inc.
Glenn Wood, Rubin and Rudman, LLP
Seth Wilkinson, Wilkinson Ecological Services

Exhibit C

Land Management Plan, Water's Edge Nominee Trust, 16 Medouie Creek Road, Nantucket, MA, by Wilkinson Ecological Design, dated June 20, 2013 revised July 15, 2013.

LAND MANAGEMENT PLAN

water's edge nominee trust
16 medouie creek road
nantucket, MA

june 20, 2013

revised july 15, 2013

WILKINSON ecological design
www.wilkinsonecological.com



INTRODUCTION & PROJECT GOAL

Located north of Polpis Harbor on Nantucket, the property at 16 Medouie Creek Road is varied in plant community types and edge habitats which have generally been transitioning from a sandplain grassland to a more overgrown brushy community. The goal of this land management plan is to manage the property at 16 Medouie Creek Road as a more open sandplain grassland landscape.

LAND MANAGEMENT OBJECTIVES

1. Intensely manage invasive plants to stop further encroachment into the parcel.
2. Manage native woody vegetation to maintain and enhance an open landscape including, sandplain grasslands.
3. Encourage and embrace existing native plants with minimal management to preserve the open landscape.





EXISTING CONDITIONS

The existing plant community zones observed onsite can be roughly described as follows:

Sandplain Grassland

Sandplain Grassland communities are found on flat, low-lying glacial outwash plains most commonly in close proximity to the ocean. Vegetation is dominated by grass and sedge species such as little bluestem, poverty grass and Pennsylvania sedge. Small patches of shrubs such as scrub oak, bayberry and black huckleberry can also be found dispersed throughout. Grassland communities have historically been maintained by fire and grazing, activities which are no longer common in coastal communities in Massachusetts. According to the Natural Heritage and Endangered Species Program (NHESP), Sandplain Grasslands support a disproportionate share of threatened or rare plant, bird, reptile and mammal species in the northeastern United States.

Early Successional Maritime Shrubland

Maritime Shrub plant communities are characterized by patches of dense shrubs interspersed with open areas of low growth or bare ground. These areas are often directly exposed to salt spray during storm events but are somewhat protected by bordering marshland or barrier beach under normal conditions. Invasive exotic plant species pose a threat to maritime shrubland communities because they can disrupt the diversity and distribution of the native plants upon which many species of birds and mammals are dependant. NHESP states that Maritime shrublands provide nesting habitat for many varieties of birds as well as cover and forage for a greater range of bird species during fall migrations. Various species of small mammals and reptiles are also dependant on this plant community type for cover, hunting and foraging.

Transitional Wetland Border

Wetland Border communities are typically found in the 0'-50' wetland buffer zone, but can vary widely depending on the individual wetland resource. Plant that grow in this zone are usually a mix of facultative wetland and upland species. Wetland buffer zones help to protect the adjacent wetland resource against possible degradation from nearby human activity.

Salt Marsh Border

Salt Marsh border communities thrive at an elevation just above the high marsh zone which is regularly inundated by water due to tides. Dominant plant species in the marsh border like switchgrass, common reed, and narrow-leaved cattail can withstand wet soils and occasional inundation but not the twice daily inundation experienced by marshland at lower elevations. According to NHESP, salt marsh, in particular, is one of the most productive and most endangered ecosystems in Massachusetts. Marshland vegetation is the foundation upon which an enormous variety of marine and terrestrial species depend for breeding, foraging and shelter. In addition, marshland acts as a buffer from damaging storms, protects adjacent lowlands from flooding, and uptakes pollutants contained in runoff.

LAND MANAGEMENT PROTOCOLS

Invasive Plant Management addresses specific, adaptive techniques for managing invasive species observed on site as well as locates and describes land management strategies in 6 distinct and separate areas as shown on the Site Plan For Land Management by Blackwell & Associates, Inc. (Areas A, B, C, D, E & F). The predominant invasive species to be managed include border privet, Asiatic bittersweet, shrub honeysuckle, autumn olive and phragmites reed.

Invasive Plant Management Protocol

Management protocols will utilize hand and mechanical treatment methods where feasible, while allowing for adaptive management strategies as site conditions dictate. The most recent science on invasive plant control underscores the importance of well-timed management treatments. Cutting will be scheduled when carbohydrates have been transferred from the roots to the above-ground portion of the plant, thus causing the most damage to the target plant and eliminating carbohydrate stores, which weaken the plant over time. Cutting will also be phased in order to steadily remove invasive species in favor of more suitable native plants. As the carbohydrate transfer is dictated primarily by weather, the management timeline is specified by season only, necessitating field expertise to initiate timely management procedures.

Note: Invasive Plant Management Protocols are designed to maximize the effectiveness of treatment and minimize disturbance to the natural resources. This requires well timed treatments based on individual plant life cycles, growing seasons, and levels of infestation. For more specifics on management of invasive plants refer to the Invasive Plant Management section and Three Year Land Management Timeline.

Specific Plant Actions:

1. **Asiatic Bittersweet** (*Celastrus orbiculatus*) poses a great threat to the preservation of native plant communities. Asiatic bittersweet has been officially classified as an invasive plant in Massachusetts because it has the ability to overwhelm open fields and forests alike, forming dense stands of the aggressive vine.

A treatment schedule based on the phenology of the plant is outlined in the Three Year Land Management Timeline. As a pre-treatment, Asiatic Bittersweet will be treated by hand cutting stems and immediately

treating them with an ultra-low volume wipe of Triclopyr-based herbicide to neutralize root materials, a low volume foliar spray, or a basal bark treatment. Herbicide application will be scheduled when carbohydrates have been transferred from the roots to the above-ground portion of the plant. Translocation of the herbicide will reduce the plant's ability to re-sprout by attacking its established root system first, then mechanically uprooting the remains.

2. **Shrub Honeysuckle** (*Lonicera morrowii* & *bella*) could pose a threat to this site if very early stage invasion is not managed to prevent a major infestation later. This species aggressively out-competes other native shrubs in the edge habitat and along open coastal banks and early successional communities. Shrub honeysuckle will invade a wide variety of native habitats, with or without any previous disturbance. According to vegetation management guidelines published by the University of Illinois at Urbana-Champaign, shrub honeysuckle is suspected of producing allelopathic chemicals that inhibit the growth of other plants. Honeysuckle should be mechanically uprooted if conditions allow. Regular hand pulling of juvenile plants is also recommended for persistent re-sprouts and seedlings.

3. **Autumn Olive** (*Elaeagnus umbellata*) is small tree that has the ability to fix atmospheric nitrogen, allowing it to readily out-compete native species while amending the surrounding soils with nitrogen. This change in soil condition can make nitrogen more available for other invasive and aggressive plant species. Autumn Olive should be mechanically uprooted if conditions allow. Regular hand pulling of juvenile plants is also recommended for persistent re-sprouts and seedlings.

4. **Border Privet** (*Ligustrum obtusifolium*), which can grow into a small tree, is particularly aggressive in heavier soils and adjacent to wetland resources. Mature plants annually produce hundreds of viable seedlings, which spread the species rapidly. Plants up to 4 inch basal caliper can be mechanically uprooted where conditions allow.

5. **Phragmites Reed** (*Phragmites australis*) is a particularly aggressive species that has the ability to colonize large areas if left unmanaged; spreading vigorously by its underground rhizomes, forming dense thickets; thereby excluding native vegetation. Phragmites thrives in marsh border habitats as well as disturbed areas such as roadsides and waste places, and is very tolerant of salt and elemental exposure. Although difficult to eradicate, there

has been successful control with a protocol that combines mowing and well-timed, cut, bundle and wipe herbicide applications. This technique entails gathering the reeds into a bundle, tying with a biodegradable twine, cutting at waist height and hand-wiping with a Glyphosate-based herbicide (approved for wetland use by the U.S. EPA) directly onto the cut ends of the reeds.

Land Management for Areas A, B, C, D, E & F

Area A

- Create more edge habitat and enhance grassland by removing selected woody vegetation
- Protect large specimen maritime shrubs while thinning out small clonal growth and restoring sandplain grassland

Area B

- Mow 90% of woody vegetation to maintain small shrub colonies connected by sandplain grassland

Area C

- Mow 90% of woody vegetation to maintain small shrub colonies connected by sandplain grassland

Area D

- Manage Phragmites stand and other smaller patches using the cut, bundle and wipe technique
- Proposed seed mix if necessary for area of dense upland phragmites infestation with: Sandplain Grassland Supplemental Seed Mixture(see below)
- Maintain existing intact sandplain grassland community
- Allow growth of some intact clusters of shrubs
- Mow approximately 90% of woody vegetation within mitigation areas to create additional edge and open grassland habitat
- Supplement less rich/diverse areas with: Sandplain Grass land Supplemental Seed Mixture (see below)

Area E

- Maintain existing intact sandplain grassland community
- Allow growth of some intact clusters of shrubs
- Mow approximately 90% of woody vegetation within mitigation areas to create additional

edge and open grassland habitat

- Supplement less rich/diverse areas with Sandplain Grassland Supplemental Seed Mixture(see below)

Area F

- Manage Phragmites stand and other smaller patches using the cut, bundle and wipe technique
- Sow Native Wetland Border Supplemental Seed Mixture(see below)

Sandplain Grassland Supplemental Seed Mixture

Little bluestem	<i>Schizachyrium scoparium</i>
Creeping Red Fescue	<i>Festuca rubra</i>
Switchgrass	<i>Panicum virgatum</i>
Partridge Pea	<i>Chamaecrista fasciculata</i>
Crinkled Hair Grass	<i>Deschampsia flexuosa</i>
Virginia Wild Rye	<i>Elymus virginicus</i>
Purple Lovegrass	<i>Eragrostis spectabilis</i>
Showy Aster	<i>Aster spectabilis</i>
Butterfly Milkweed	<i>Asclepias tuberosa</i>
Broom Sedge	<i>Andropogon virginicus</i>
Heath Aster	<i>Aster pilosus</i>
Round Head Bush Clover	<i>Lespedeza capitata</i>

Wetland Border Supplemental Seed Mixture

Common Rush	<i>Juncus effusus</i>
Common 3 Square	<i>Scirpus pogens</i>
Wool Grass	<i>Scirpus Cyperinus</i>
Boneset	<i>Eupatorium perfoliatum</i>
Little Joe Pye Weed	<i>Eupatorium dubium</i>
Wild Bergamot	<i>Monarda fistulosa</i>
Swamp Milkweed	<i>Asclepias incarnata</i>

LAND MANAGEMENT AREAS

(A) Management for Open Habitat & Invasive Species

Selective hand and mechanical removal of invasive species will be required to ensure the native plant community will continue to flourish and remain an open habitat. Remove any invasive species which may be encountered.

(B) Management for Open Habitat, Invasive Species & Grassland Enlargement

Selective hand and mechanical removal of invasive species will be required to ensure the native plant community will continue to flourish and remain an open habitat. A rotational mowing schedule is recommended as part of the overall land management strategy for this area. Existing maritime shrubs less than 3.5" in basal diameter should also be periodically mown.

(D) Management for Invasive Species, Rotational Mowing & Supplemental Phragmites Control

Preventing the spread of *Phragmites* reed within the management area and the mechanical removal of invasive shrub and vine species is necessary for the re-establishment of a native marsh border community. To sustain an open habitat, rotational mowing is recommended. Periodic cuttings of maritime shrubs less than 3" in basal diameter is also recommended.

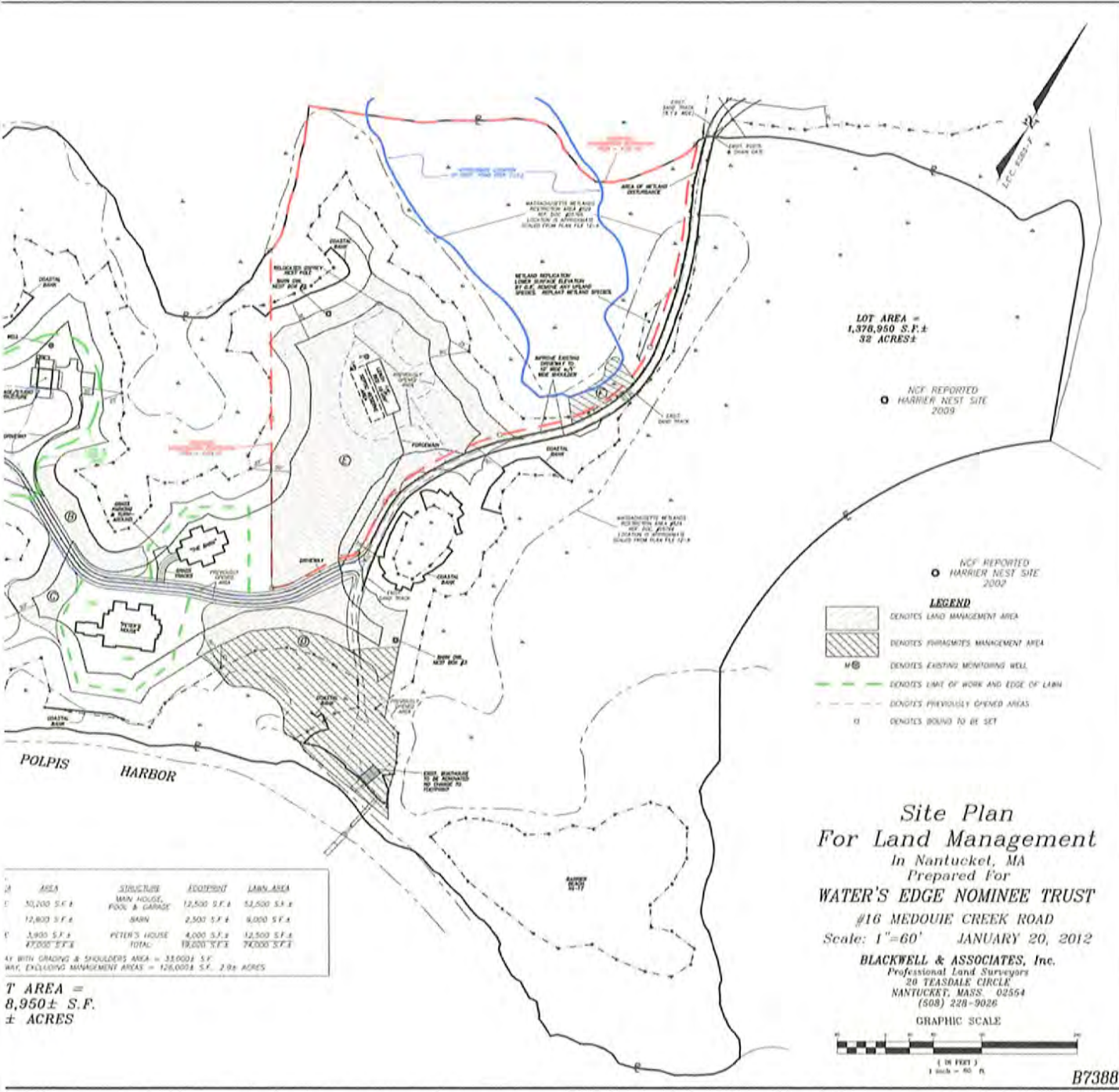
(F) Enhancement of Sandplain Grassland

The existing sandplain grassland community is mostly intact. Sensitive and selective management of early successional maritime shrubland species is recommended to maintain mature shrub colonies and control further advancement of succession. Techniques include the periodic cutting of shrubs less than 3" basal diameter, as well as, mowing every 2-3 years in the month of March.

(F) Supplemental Phragmites Control

Existing Phragmites stands pose a serious threat as they will continue to spread and displace native species. Eradication of the reed using the bundle, cut and wipe technique is recommended, as well as mechanical removal of invasive shrub species to stop the spread of invasive species further into the property.





Site Plan For Land Management in Nantucket, MA

Prepared For
WATER'S EDGE NOMINEE TRUST

#16 MEDOUIE CREEK ROAD
Scale: 1"=60' JANUARY 20, 2012

BLACKWELL & ASSOCIATES, Inc.
Professional Land Surveyors
20 TEASDALE CIRCLE
NANTUCKET, MASS. 02554
(508) 228-9026

GRAPHIC SCALE
1" IN FEET = 60' FT

B7388

THREE YEAR LAND MANAGEMENT TIMELINE

Year 1 - Winter

- Pre-treat Asiatic bittersweet by wiping a 13% concentration of a Triclopyr-based herbicide onto the base of the vines greater than 1/2" diameter.
- In all management areas, as indicated in the Land Management Protocols, mechanically uproot (using a hydraulic root grapple mounted on a compact piece of tracked equipment operating at approximately 3-4 p.s.i. ground pressure) Asiatic bittersweet, privet, shrub honeysuckle and autumn olive using specialized equipment with care to remove invasive root material, leaving native soils in place.

- Cut grassland as close to the ground as possible in degraded grassland portions of Area E.

- Using a slice seeder, over-seed any soils with the Sandplain Grassland Supplemental Seed Mixture (see page 7) in Area E.

- In areas A, B, C, D & E; selectively thin recently colonized grasslands by removing approximately 90% of woody vegetation and preserve high value native maritime shrubs such as Arrowwood Viburnum, Bayberry, Beach Plum, Winterberry Holly and Serviceberry.

Year 1 - Spring

- In all management areas, in the month of March, mow all grassland areas to a height of approximately 4-6".
- Prior to April 30th, a simple monitoring report will be developed describing the management activities to date and how these activities have advanced the goals and objectives of this plan. Using the principle of adaptive management, recommendations on how the goals could be met more effectively will be included. A series of images taken from set photo points in each management area will also be included.

Year 1 - Summer

- Within Areas E & F, in early June, pretreat Phragmites reed by cutting the stand to within 6 inches of the ground. Surrounding native vegetation within the stand will also be cut to protect this vegetation from coming in contact with herbicide later in the season. This non-target vegetation will re-sprout and thrive in the next growing season.

Approximately 4 weeks after cutting, when the height of the phragmites reed reaches an average of 18"-24" high, commence a bundle, cut and wipe treatment. Reeds will be gathered into a bundle, tied with a biodegradable twine, cut at waist height and hand-wiped with a Glyphosate-based herbicide (approved for wetland use by the U.S. EPA) directly on the cut ends of the reeds.

- Within Areas E & F, repeat cut and wipe herbicide application to persistent stalks every 2 to 4 weeks through the growing season as they reach an average of 18"-24".

- On or about August first, mow all areas to be maintained as grassland to discourage establishment of shrubs and exotic pasture grasses (presently observed in small quantities) which are capable of degrading sandplain grasslands.

Year 1 - Fall

- In all management areas, continue management treatments as previously cut plants re-sprout and seed bank germinates, where continued root grappling is no longer feasible, mechanically uproot or hand-pull woody invasive plants.

Year 2 - Spring

- Monitor plant response to earlier management treatments and calibrate follow-up treatments accordingly.
- If Phragmites control has reached 80%, replant Marsh Border Area according Plant Specifications. (Refer to Restoration Plan).
- Prior to April 30th, a simple monitoring report will be developed describing the management activities to date and how these activities have advanced the goals and objectives of this plan. Using the principle of adaptive management, recommendations on how the goals could be met more effectively will be included. A series of images taken from set photo points in each management area will also be included.

Year 2 - Summer

- Within Areas E & F, in early June, pretreat Phragmites reed by cutting the stand to within 6 inches of the ground. Surrounding native vegetation within the stand will also be cut to protect this

vegetation from coming in contact with herbicide later in the season. This non-target vegetation will re-sprout and thrive in the next growing season.

Approximately 4 weeks after cutting, when the height of the phragmites reed reaches an average of 18"-24" high, commence a bundle, cut and wipe treatment. Reeds will be gathered into a bundle, tied with a biodegradable twine, cut at waist height and hand-wiped with a Glyphosate-based herbicide (approved for wetland use by the U.S. EPA) directly on the cut ends of the reeds.

- Within Areas E & F, repeat cut and wipe herbicide application to persistent stalks every 2 to 4 weeks through the growing season as they reach an average of 18"-24".
- On or about August first, mow all areas to be maintained as grassland to discourage establishment of shrubs and exotic pasture grasses (presently observed in small quantities) which are capable of degrading sandplain grasslands.

Year 2 - Fall/Winter

- In all management areas, continue management treatments as previously cut plants re-sprout and seed bank germinates, where continued root grappling is no longer feasible, mechanically uproot or hand-pull woody invasive plants.

Year 3 - Spring

- In the month of March, mow all grassland areas to a height of approximately 4"-6".
- Monitor plant response to earlier management treatments and calibrate follow-up treatments accordingly.
- Prior to April 30th, a simple monitoring report will be developed describing the management activities to date and how these activities have advanced the goals and objectives of this plan. Using the principle of adaptive management, recommendations on how the goals could be met more effectively will be included. A series of images taken from set photo points in each management area will also be included.

Year 3 - Summer

Within Areas E & F, in early June, pretreat Phragmites reed by cutting the stand to within 6 inches of the ground. Surrounding native vegetation within the

stand will also be cut to protect this vegetation from coming in contact with herbicide later in the season. This non-target vegetation will re-sprout and thrive in the next growing season.

Approximately 4 weeks after cutting, when the height of the phragmites reed reaches an average of 18"-24" high, commence a bundle, cut and wipe treatment. Reeds will be gathered into a bundle, tied with a biodegradable twine, cut at waist height and hand-wiped with a Glyphosate-based herbicide (approved for wetland use by the U.S. EPA) directly on the cut ends of the reeds.

- Within Areas E & F, repeat cut and wipe herbicide application to persistent stalks every 2 to 4 weeks through the growing season as they reach an average of 18"-24".
- On or about August first, mow all areas to be maintained as grassland to discourage establishment of shrubs and exotic pasture grasses (presently observed in small quantities) which are capable of degrading sandplain grasslands.

Year 3 - Fall

- In all management areas, continue management treatments as previously cut plants re-sprout and seed bank germinates, where continued root grappling is no longer feasible, mechanically uproot or hand-pull woody invasive plants.

Ongoing Maintenance

After the treatments of year 3, the management plan should be assessed and re-evaluated. If land management treatments have been successful, only monitoring, hand removal and rotational mowing will be required to keep species from being reintroduced (this will vary depending on actual carbohydrate stores in the roots and environmental conditions throughout the treatment period). Invasive plants generally take a minimum of three years of active management to reach a level of successful control. After 3 years of annual monitoring reports which will be submitted to the NHESP and Nantucket Conservation Commission (NCC), a monitoring report will then be provided every additional 5 years for a total of 15 years.

General Note: Herbicides used are to be applied by knowledgeable, licensed individuals only.

DEFINITIONS

1. Native plants:

A native (indigenous) species is one that occurs in a particular region, ecosystem, and habitat without direct or indirect human actions. Native plants suited for our coastal areas bind sediments with their fibrous roots. Grasses and forbs create a groundcover that not only stabilize sediments, but improve the quality of wildlife habitat and slow water runoff. Many invasive plants lack fibrous root systems and often have allelopathic chemicals which inhibit the growth of surrounding vegetation, thus creating areas of bare earth which lead to faster rates of erosion, decreased wildlife habitat quality, and increased storm water runoff. The loss of native vegetation to invasive plant species degrades our wetlands and public interests (as stated below) and decreases the diversity of our biological community.

2. Invasive Plants:

As defined by the Massachusetts Invasive Plant Advisory Group, invasive plants are non-native species that have spread into native plant systems, causing economic or environmental harm by developing self-sustaining populations and dominating and/or disrupting those native systems. Invasive plant's biology and physiology equip them with the means to out-compete native plants, disrupting native plant communities and compromising the integrity of that ecosystem. Invasive plant species can alter hydrological patterns, soil chemistry, moisture holding capacity, and can accelerate erosion.

REFERENCES

Bravo, Melissa. "Japanese Honeysuckle." Plant Conservation Alliance's Alien Plant Working Group, Least Wanted: Alien Plant Invaders of Natural Areas. 5 March, 2003. Plant Conservation Alliance. 16 Nov. 2011.

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January 2, 2020

Vicki Marsh
vmarsh@k-plaw.com

Hon. Dawn E. Hill Holdgate and
Members of the Select Board
Town & County Building
16 Broad Street
Nantucket, MA 02554

Re: Conservation Restriction – 16 Medouie Creek Road, Nantucket, MA

Dear Members of the Select Board:

I have been asked to review a proposed Conservation Restriction (the “CR”) for a portion of a parcel of land at 16 Medouie Creek Road in the Town of Nantucket (the “Premises”) to be granted by Kevin F. Dale, Successor Trustee of Water’s Edge Nominee Trust (the “Grantor”) to the Nantucket Land Council, Inc. (the “NLC”), and to provide a report to the Select Board. The Premises are shown as a parcel of land consisting of approximately 4.6 acres on a plan entitled “Conservation Restriction Plan in Nantucket, MA Prepared for Water’s Edge Nominee Trust,” dated January 8, 2015, prepared by Blackwell & Associates, Inc. (the “Restriction Plan”), a copy of which is attached to the CR as Exhibit A. As explained below, the proposed CR does not grant any interest in the affected parcel to the Town or to the general public, but the CR is being presented to the Select Board for its approval, before being submitted to the Secretary of Energy and Environmental Affairs (“Secretary”) for the Secretary’s approval as being in the public interest.

I have been provided with copies of: (i) the proposed CR, as executed by the Grantor; (ii) the Restriction Plan; letters issued by the Commonwealth of Massachusetts Division of Fisheries and Wildlife acting through the Natural Heritage and Endangered Species Program (“NHESP”) dated February 6, 2012 and July 26, 2013 (Exhibit B to the CR), and (iii) the Land Management Plan, dated June 20, 2013, revised July 15, 2013 (Exhibit C to the CR). John Gioia, the conservation Restriction Reviewer of the Division of Conservation Services (“DCS”) has given preliminary approval to the CR. Based upon my review of the CR and the accompanying documents, I approve the CR as to form.

The CR is granted pursuant to and in accordance with the requirements issued by the NHESP Tracking No. 11-30084, as described in the letters attached as Exhibit B to the CR. Grantor proposes to construct a project involving a single family dwelling, guest house, garage and septic on a portion of the land at 16 Medouie Creek Road. NHESP determined that the proposed project is within the habitat of state-listed species which are protected by the Massachusetts Endangered

Hon. Dawn E. Hill Holdgate and
Members of the Select Board
January 2, 2020
Page 2

Species Act, G.L. c. 131A and its implementing regulations. It was the opinion of the NHESP that the proposed project must be conditioned in order to avoid adverse effects to the Resource Area Habitats of the state-listed wildlife species. One of the conditions required by the NHESP is the recording of the CR.

The CR describes the conservation values that will be protected by the CR and that support the approval of the CR as being in the public interest. The entire Premises is located within an area designated as "Priority Habitat for State-Protected Rare Species" by NHESP. The CR will enable the protection of the wide variety of plant and animal species located within the Premises. Furthermore, the Premises is located in a coastal area consisting of Coastal Bank Vegetation and Vegetated Wetland and the area provides wetland habitat for native wildlife and plant species and communities. The preservation of this coastal area and wetland resources on the Premises will protect these habitats. The Premises also comprise part of a scenic landscape associated with a natural, undisturbed environment. The preservation of the approximately 4.6 acre Premises will further protect and enhance the area's scenic and open space attributes and the recreational, human enjoyment and ecological value of the conservation land and open space in the vicinity of the Premises. The majority of the Premises lies within the 100-year floodplain of Poplis Harbor. The protection of this floodplain will ensure the continued availability of this flood storage during major storm events. The CR also helps to protect Nantucket's sole-source aquifer.

Activities prohibited within the Premises include the construction of buildings or other structures; excavation and removal of soils, sand, gravel; storing or dumping of soil, debris, or trash, cutting or removing of trees, grasses, and other vegetation, activities detrimental to drainage or flood control, parking or storage of motorized vehicles, except for public safety vehicles, subdivision of the Premises, or use of the Premises for business, residential or industrial use. The Premises may be used for the installation of a septic system in the location shown on the Restriction Plan, removal of non-native or invasive flora consistent with the Land Management Plan attached as Exhibit C, and the maintenance of the Premises in accordance with the Land Management Plan and the Nantucket Conservation Commission Order of Conditions SE48-2577 dated August 21, 2013.

NLC and NHESP have the right to enforce compliance with the terms of the CR, and certain activities within the Premises (such as the removal or control of non-native and invasive species) are permitted only with the prior approval of NLC and NHESP. The CR does not grant any enforcement authority to the Town, nor does the CR grant any public right of access to the Premises. The CR runs with the land, in perpetuity. The terms of the CR are to be incorporated in any deed conveying an interest in the Premises.

Where the CR is to be held by, NLC, a charitable corporation and not by the Town itself, G.L. c. 184, §32 requires that the CR must be approved by the Select Board, as well as by the



Hon. Dawn E. Hill Holdgate and
Members of the Select Board
January 2, 2020
Page 3

Secretary, as being in the public interest. For this reason, the CR is being submitted to the Select Board for approval and signatures. After you have approved and signed the CR, it will then be submitted to the Secretary by NLC and, upon the Secretary's approval, will be filed with the Registry District of the Land Court.

Please feel free to contact me if you have any questions concerning this matter.

Very truly yours,

A handwritten signature in blue ink that reads "Vicki S. Marsh".

Vicki S. Marsh

VSM/dmm

Enc.

cc: Town Manager
Emily Molden (Nantucket Land Council, Inc.)

707897/NANT19718/0025

TOWN OF NANTUCKET NATURAL RESOURCES DEPARTMENT

JEFF CARLSON, NATURAL RESOURCES DIRECTOR
2 BATHING BEACH ROAD
NANTUCKET, MA 02554

JCARLSON@NANTUCKET-MA.GOV
508-228-7230



August 24, 2021

Theodore Lambrecht
PO Box 3319
Nantucket, MA 02584

Dear Mr. Lambrecht:

Following the Select Board meetings of May 12, 2021 and July 7, 2021 when your continued non-compliance with Town regulations and requirements associated with the private aquaculture licenses held by you was considered, the Natural Resources Department has again reviewed the status of compliance and makes the findings as described below.

In reviewing your private shellfish aquaculture licenses (license number 12, issued on January 22, 2015 and license 12b issued May 1, 2015) issued by the Town of Nantucket and pursuant to the Town of Nantucket Shellfish Regulations adopted on March 4, 2015 and amended April 20, 2016 the Natural Resources Department (NRD) has found a number of requirements with which you are not in compliance, necessitating the need to pursue revocation of the licenses as follows:

In accordance with Section 5, Additional Conditions, paragraph (g) of your license:

"This license may be terminated by the town upon its reasonable determination that:

- (i) *The Licensee has failed to make substantial use of the License Granted hereby constituting an abandonment of the license; or*
- (ii) *The Licensee has failed to cure a breach of any of the terms and conditions of this License promptly after written notice thereof."*

After evaluating the information that you provided in writing on June 10, 2020 the Natural Resources Department finds that you have not made substantial use of the license as required; therefore, the license requires revocation pursuant to the regulations and terms described below.

Section 5.16 - Minimum Levels Production

There shall be minimum level of shellfish production required in order to retain an aquaculture license. This shall be: a minimum inventory maintained of 10,000 shellfish per acre. These standards are subject for review by the Select Board or its designee and may be amended.

There is no documentation on file demonstrating your compliance with this condition and based upon physical inspection of the license areas over the past three consecutive seasons the Natural Resources Department, again, finds that you are not in compliance with this regulation.

TOWN OF NANTUCKET NATURAL RESOURCES DEPARTMENT

JEFF CARLSON, NATURAL RESOURCES DIRECTOR
2 BATHING BEACH ROAD
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Section 5.17 - Failure to Meet Production Levels

Failure of the licensee/s to meet the specified production level for any three (3) consecutive years may result in the forfeit of the aquaculture license and licensed area, as stated in MGL Chapter 130; Section 65.

Again, there is no documentation on file demonstrating compliance with this condition and based upon physical inspection of the license areas over the past three consecutive seasons the Natural Resources Department finds that you are not in compliance with this regulation.

Matters of non-compliance relating to the Private Shellfish Aquaculture License:

Section 5, Additional Conditions, paragraph (b). *"The Licensee shall submit to the Department reports of its activities including the total number of bushels of each type of shellfish planted, produced or marketed in or from the Licensed Area along with an estimate of the total number of bushels of each type of shellfish planted or growing thereon along with such information as the Department shall request. The reports shall be filed in writing and shall be submitted quarterly within 30 days after the end of each calendar quarter. The filing of such reports shall constitute the Licensee's representation and warranty that the information contained therein is true and correct."*

The Natural Resources Department has not received any reports from you since 2015. The failure to provide these reports further demonstrates that the license is being substantially used as required.

Section 6, Insurance. *"The Licensee, its contractors, agents, representatives, shall maintain sufficient public liability insurance, with coverage for bodily injury, wrongful death, and property damage in amounts reasonable satisfactory to the Town but not less than \$1,000,000 per occurrence and \$3,000,000 cumulative. The licensee shall provide such other insurance coverage as the Town may reasonably require in connection herewith. The Licensee shall provide the Town with a certificate of such public liability insurance annually. The Licensee's contractors, agents and representatives shall supply bonding certificates for any construction or rehabilitation contemplated hereby showing compliance with foregoing provisions and/or the provisions of all construction contracts associated with this project."*

You have not provided current proof of insurance since 2015. This time period is the entire length of the license.

Section 8, Conduct, paragraph (c). *"Licensee shall observe and obey directives from the Marine Superintendent and or other authorized representatives of the Town with respect to all applicable laws, statutes, ordinances, regulations and permitting of the License."*

You are not in compliance with the license or the guidelines noted in the license (attached) by failing to meet the above listed requirements.

This letter is intended to serve as formal written notice that you are not in compliance with the terms of the license and regulations, and that you have failed to substantially make use of the license as granted

TOWN OF NANTUCKET NATURAL RESOURCES DEPARTMENT

JEFF CARLSON, NATURAL RESOURCES DIRECTOR
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by the license. The Natural Resources Department will be seeking revocation of these licenses at the September 8, 2021 meeting of the Select Board. If you wish to forfeit the licenses prior to that time, please do so in writing and the need for public meetings will not be necessary.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jeff Carlson", is written over the word "Sincerely,".

Jeff Carlson
Natural Resources Director

GUIDELINES FOR LEASE OF BOTTOM LAND FOR AQUACULTURE

Purpose: The purpose of the lease is to provide the lease holder with the exclusive rights to plant, grow, dig and harvest shellfish by the appropriate means within the leased area subject to the conditions herein and further subject to all applicable federal, state, and municipal laws, regulations, and ordinances.

1. The term of the lease (initial) is to be for three (3) years (or as mandated by the State), and will be renewable upon review of the Marine & Coastal Resources Department.
2. The site of lease is to be chosen from areas qualified by the State and Marine & Coastal Resources Dept. for commercial aquaculture.
3. The size of each lease site shall be a minimum of two (2) acres and a maximum of ten (10) acres based on the lease holder's demonstrated needs. Lease holders will be allowed to lease only one site the first year. Additional sites in succeeding years will be allotted upon review of the Marine & Coastal Resources Department.
4. The applicant for the lease shall submit a written shellfish production plan along with the lease application including: acreage requested, shellfish cultivation method, type of equipment deployed on lease, amount of seed purchased for cultivation for year 1, and a grow-out density plan.
5. Applicant should also include a list of qualifications for shellfish cultivation for the Marine Department to review to determine if the applicant can provide the best "use" of the requested aquaculture lease. Selections will be awarded to the most qualified applicant.
6. The lease holder agrees to actively work the lease site. If, at any time, it is determined that the lease holder is not actively working the site, the lease may be revoked and the lease holder will promptly remove all equipment and vacate the site.
7. It will be the responsibility of the lease holder to maintain the lease site in a neat and environmentally responsible manner. In addition, it will be the responsibility of the lease holder to plainly mark the area in accordance with any other stipulations set forth by the Marine & Coastal Resources Department.
8. The lease holder will make the site available to the Town, or its designee, for the purpose of determining activity at the site and its impact on the surrounding areas.

9. The lease holder will provide the Marine & Coastal Resources Department with quarterly reports of its activities including the number of bushels of each type of shellfish planted, produced, and marketed along with an estimate of the remaining number of shellfish still growing at the site and shall include accounts of predators (species, quantity, size). These reports shall be filed within 30 days of the end of each quarter, beginning on January 1.

10. The lease is not transferable.

11. The lease holder will be required to meet the same residency requirements as those required for a commercial shellfish license, not limited to maintaining a domicile and providing visual certification and verification of all seed to be grown on the site. Verification will also be made by the State Division of Marine Fisheries.

12. The lease holder will provide the town with certificates of insurance against environmental damage and general liability in the amount of One Million (\$1,000,000) dollars.

13. The lease holder will pay to the Town an annual fee per acre (or part thereof) due and payable upon the date of the commencement of the lease and on each anniversary thereof. The fee shall be as set by the Board of Selectmen, but will not exceed the maximum allowed by the State. This fee will be adjusted on an annual basis to reflect changes in the statute. All fees and monies from this lease will accrue to the Town's Shellfish Propagation Fund. In addition, the lease holder will be required to provide the Town, as an amendment to the original lease, agreed to in writing, shellfish seed or services for the purposes of augmenting the Town's propagation programs.

14. All stipulations of this lease will be subject to review and amendment by the Board of Selectmen at the time of renewal.

TOWN OF NANTUCKET NATURAL RESOURCES DEPARTMENT

JC JOHNSEN, SHELLFISH CONSTABLE
2 BATHING BEACH ROAD
NANTUCKET, MA 02554

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7-16-2021

On July 16, 2021 at approximately 11:00am Jeff Carlson and I went to NT5 Wauwinet the head of the Harbor to do compliance checks on the oyster leases. Jeff and I checked Matt Herr and saw that one of Simon Edwardes boats were working on his lease so, after checking Matt Herr we proceeded over towards Simons boat and noticed that it was Chuck Connors. As we were checking Mr. Connors he had explained to us that Ted Lambrecht had pulled three cages up of his wintering site and was pressure washing them to the point of almost catching his boat on fire. Mr. Connors also explained that he had multiple bags of oysters on his boat that had been there for three days baking in the sun and asked if we would go check them out. After finishing up with Mr. Connors, Jeff and I headed to Polpis Harbor to see if Ted Lambrecht's boat was on his mooring. As we entered Polpis Harbor we saw Ted's boat and pulled up alongside his vessel and immediately saw six bags of oysters stacked in the back of his boat it was 77 degrees and 80% humidity out with little wind and no shading or ice on the oyster bags. I contacted Christian Petipas at the Division of Marine Fisheries who oversees the oyster program and explained the situation and asked if Mr. Lambrecht had an offsite culling permit which she indicated that he did not. Ms. Petipas added Gabe Lundgren to the call who also works with her in the oyster program. I asked Ms. Petipas how she would like me to proceed with this situation and Ms. Petipas asked me to confiscate the oysters, destroy them and provide documentation that the oysters had been destroyed. She then clarified to first verify that this is the proper procedure with the Massachusetts Environmental Police. I contacted Sgt. Dave Wright and explained the situation to him and he asked me to contact Lt. Gus. I told Mr. Wright that I had left Lt. Gus a message but hadn't heard back from him and Mr. Wright said he might be off today so contact the Environmental Police radio room and see if they can put you in contact with someone from the Cape. I contacted the radio room and they put me in contact with Mr. Patrick Grady I explained the situation to Mr. Grady and explained what Ms. Petipas had requested. Mr. Grady contacted his boss and they both confirmed to confiscate the oysters and to destroy them. Jeff and I removed 9 bags of oysters with approximately 150 oysters per bag and brought them to the landfill and destroyed them.

On June 30, 2020 the Natural Resources Department sent Mr. Lambrecht a certified letter regarding the status of his leases. The Town of Nantucket informed him that due to not meeting the required minimum levels of production and failure to meet those required production levels that the Town would be pursuing revocation of his leases with the Town. We had documented greater than three years of inactivity and to date Mr. Lambrecht has never picked up the required logbook to meet the Commonwealth's

TOWN OF NANTUCKET NATURAL RESOURCES DEPARTMENT

JC JOHNSEN, SHELLFISH CONSTABLE
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reporting requirements. Over the next few months the local Harbor and Shellfish Advisory Board issued a deadline to Mr. Lambrecht to get back into compliance, which was not met, leading to the Board's recommendation to the local Select Board to revoke his leases. The Select Board has since had two hearings one granting Mr. Lambrecht 45 days to get back into compliance which was not met and has scheduled a public hearing for the revocation of the leases 60 days from that deadline. That sixty days is currently running. Copies of these letters and these meetings are available as public record and we can provide them directly if you wish to review them. We have significant concerns on Mr. Lambrecht's ability to properly operate these leases given the inactivity and improper handling of these oysters.



9 Oyster Bags as found on the vessel
in Polpis Harbor (NT 4.0)
7/16/2021 11:36 AM



Close up of oyster bags as found on the vessel in Polpis Harbor (NT 4.0); clearly containing oysters
7/16/2021 11:36 AM



9 oyster bags as confiscated by
Shellfish Constable JC Johnsen
in Polpis Harbor (NT 4.0)
7/16/2021 2:55 PM



Contents of 9 oyster bags
(approx. 150 oysters per bag)
7/16/2021 3:54 PM



Destroyed contents of 9 oyster bags
7/16/2021 3:57 PM



Destroyed contents of 9 oyster bags
7/16/2021 3:57 PM



Final disposal of oyster bags
7/16/2021 4:01 PM

police officers. She asked if there is a plan for this. Chief Pittman said this is one of the action steps being worked on and that a challenge is the isolation of the island. He noted a critical incident stress team is being formulated on the Cape, to which Nantucket will have access. He spoke about some programs other towns have used to provide emotional support services. Ms. Ferrantella asked about the collection of data with respect to community relations with the Police Department. Chief Pittman reviewed how this is being addressed, noting that the COVID pandemic has caused this to be delayed. He said there is nothing in the legislation requiring the collection of this sort of data but that community input is taken very seriously by the department. Ms. Ferrantella commented on practicing "procedural justice" as had been discussed in the webinar. Chief Pittman responded that the legislation does address this and that it mostly relates to communications and ensuring that officers are thoroughly trained to de-escalate issues. Some discussion followed as to the action items the Chief is working on. Chair Bridges thanked the Chief for the explanations and review.

4. Natural Resources Department: Update on Aquaculture Licensee (Ted Lambrecht) Compliance

(Continued from May 12, 2021). Ms. Gibson introduced Natural Resources Director Jeff Carlson to review the current status of the aquaculture license conditions that were the subject of a hearing in May. Mr. Carlson said that the 45 days Mr. Lambrecht was given to achieve compliance ended on June 27th; and an inspection since then revealed that no significant changes have occurred. Mr. Lambrecht said that he has a mechanical issue that he has not been able to resolve in a timely manner. He added that it is going to "take some time" for him to achieve compliance. Chair Bridges asked for comments from the Board. Ms. Murphy asked what time frame Mr. Lambrecht feels he needs. Mr. Lambrecht said he really cannot say and commented that he was delayed because he "was not allowed" to work on the situation last winter. Mr. Carlson noted that the situation has been proceeding for over four years at this point, without much resolution. Mr. Fee said he is torn because Mr. Lambrecht cannot provide a time frame but wants to allow him specific time to comply. He said it is "severe" to pull the license. Mr. Lambrecht said he will "guarantee significant improvement in 60 days". Ms. Holdgate asked Mr. Carlson about any downside to allowing this. Mr. Carlson said that it is too late in the season at this point to have someone else initiate a new license this summer; however, the permitting process, which can be lengthy, could begin. Some discussion followed about the licensed area. Mr. Carlson said there are people on a waiting list for the area. Mr. Fee said he is leaning toward a 60-day extension. Chair Bridges asked what the Board's criteria for what an accomplishment in 60 days would be would look like. Ms. Holdgate said she would want to see a full set-up for a harvest next season; and, if that is not accomplished, no further extension. Ms. Ferrantella said she feels the extension has already been given. Mr. Carlson noted that another hearing would have to be scheduled for revocation. Some discussion followed as to how it takes to have a successful harvest. Ms. Holdgate suggested that a hearing be scheduled, during which time compliance could be pursued and the Board decide at a hearing in 60 days. Ms. Murphy agreed. Mr. Fee said he supports this idea. Mr. Lambrecht said that even if someone else was given approval today, they would not have a harvest in even a year because his equipment would still have to be removed and theirs installed. He said if he can "get something done in 60 days" he should have a harvest by next fall (2022); or, the following spring (2023). Discussion continued as to an extension. Ms. Holdgate moved to schedule a public hearing in 60 days as to revocation, unless substantial progress has been made, to be determined by the Board; seconded by Mr. Fee. Chair Bridges asked about criteria for progress. Mr. Carlson suggested removal of the gear from the water and restored to good working order or properly cleaned; and, lease areas properly marked; Ms. Holdgate amended the motion to reflect Mr. Carlson's suggestion; seconded by Mr. Fee. So voted by roll call vote: Chair Bridges – Yes; Mr. Fee – Yes; Ms. Ferrantella – Yes; Ms. Holdgate – Yes; Ms. Murphy – Yes.

b) Renewal of Private Shellfish Aquaculture License held by Pocomo Meadows, LLC.

Chair Holdgate opened the public hearing. Natural Resources Director Jeff Carlson introduced the item, noting a staff recommendation for renewal. There being no further public comment, Chair Holdgate closed the hearing. Mr. Fee asked about trends in reports received by the two licensees. Mr. Carlson explained. Some discussion followed about environmental conditions in the areas. Mr. Fee moved approval of both licenses; seconded by Ms. Ferrantella. So voted by roll call vote. Chair Holdgate – Yes; Mr. Bridges – Yes; Mr. Fee – Yes; Ms. Ferrantella – Yes; Ms. Murphy – Yes.

2. Public Hearing to Consider the Revocation of Private Shellfish Aquaculture Licenses held by Theodore Lambrecht.

Chair Holdgate opened the hearing. Mr. Carlson introduced the item. Mr. Carlson explained that the licenses are not in compliance and that the Harbor and Shellfish Advisory Board (SHAB) has also recommended revocation; and, to re-issue them, noting there are three people on a waiting list. Mr. Ted Lambrecht stated that he "ran into difficulties" for a period of time and is now "ready to go". Following questions by Board members, Mr. Carlson spoke on additional time that had been provided to the licensee in order to come into compliance, but it was not achieved. Mr. Lambrecht commented on being told "not to work" last year. Mr. Fee asked who told him not to work. Mr. Lambrecht said it was because of COVID and said he has been working on gaining compliance but has not been able to meet the deadlines. Some discussion followed as to the number of licenses held by Mr. Lambrecht and their status. Mr. Carlson said that at least one of the licenses was not renewed by Mr. Lambrecht. Mr. Lambrecht said he was not aware of that and did not know the licenses were staggered. Mr. Carlson reviewed the renewal process, noting that the process was not followed by Mr. Lambrecht. Mr. Fee suggested giving Mr. Lambrecht one year to come into compliance for the remaining two licenses that he currently holds, noting the other has expired as explained by Mr. Carlson. Some discussion followed. Mr. Carlson reviewed the location of these licenses and said there is gear that should have been removed four years ago that was not, despite repeated requests; and, that is a main reason for the revocation recommendation. Additional discussion followed as to the history of the lack of gear removal. Mr. Lambrecht spoke about health issues he experienced a few months ago and his plans to address the gear issue. Some discussion followed. Mr. Fee reiterated his suggestion, citing understanding for health issues. There being no further public comment, Chair Holdgate closed the hearing. Mr. Fee moved to continue the licenses for one year and if compliance has not been achieved to re-visit; seconded by Mr. Bridges. Ms. Ferrantella suggested a deadline for addressing the gear equipment, noting the recommendation from SHAB. She asked Mr. Carlson what a reasonable amount of time would be. Mr. Carlson suggested 30 days. Mr. Fee asked if Mr. Lambrecht could accomplish this in 30 days. Mr. Lambrecht said he is not sure what "total compliance" means. He said he could "get some stuff done in 30 days". Chair Holdgate suggested 45 or 60 days.

Ms. Murphy left the meeting due to technical difficulties at 6:20 PM.

Mr. Bridges suggested specificity as to what compliance means. Mr. Carlson provided a description as to compliance, that he can provide to Mr. Lambrecht in writing. Discussion continued as to the timeframe. Mr. Fee withdrew his motion with the consent of Mr. Bridges. Ms. Ferrantella suggested a 45-day timeframe for the gear to be in compliance and if it is, to continue the licenses for one year and if not, another revocation hearing to be scheduled; seconded by Mr. Fee. So voted by roll call vote. Chair Holdgate – Yes; Mr. Bridges – Yes; Mr. Fee – Yes; Ms. Ferrantella – Yes.

X. TOWN MANAGER'S REPORT

Ms. Gibson said that public access restrictions to Town offices, put in place due to the COVID pandemic will be lifted as of Monday, May 17, 2021 and that safety measures will be in place at all public buildings,



Airport Enterprise Fund

Quarterly Financial Report

Fourth Fiscal Quarter

Ended June 30, 2021



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Airport Financial Highlights

Airport Revenues

As of Q4 FY2021, total revenue is overall up 3% (\$525k) over YTD FY2020. A major part of this is the result of a decrease that we made to the Fuel Revolver Cap from \$5.2M to \$4M. This was done based on projections at the time related to the pandemic. However, while we decreased the cap by \$1.2M, our actual fuel sales exceeded the revised cap by \$1.6M which went to our operating revenue. This results in a net increase of \$433k in fuel sales YTD. PFC's are down \$302k (55%) and Fee Income is down \$378K (26%) over this time last year due to the impact of the COVID-19 pandemic. Off-setting these decreases are increase such as FBO sales up \$574k (19%) over FY20 as well as rental income up \$290k (14%)

Total operations and enplanements are down 12% and 33% respectively, over this time last year.

Airport Expenses

As of Q4 FY2021, total expense is overall down 31% (\$3.8M) over YTD FY2020. The main driver is the decrease in payroll expenses due to reimbursements from the CARES Act. Total payroll is down 75% (\$3.6M) over this time last year. Nantucket Airport has submitted and been reimbursed a total of \$3,470,390 in CARES Act reimbursements that are not reflected in the expenses in the quarterly analysis.

Airport Summary

TOWN OF NANTUCKET AIRPORT - ENTERPRISE FUND

Operating Revenues and Expenses for the Twelve Months Ended Jun 30, 2021

	Budget	Twelve Months Ended Jun 30	
	FY2021	FY2021	FY2020
Revenue - Includes Airport Revolving Fund	\$ 9,530,300	\$ 15,729,720	\$ 15,204,713
Expenses - Includes Airport Revolving Fund	9,955,458	9,568,335	13,598,488
Net Earnings	(425,158)	6,161,385	1,606,225
Transfer from Retained Earnings	-	-	-
Net Earnings after Retained Earnings Transfer	\$ (425,158)	\$ 6,161,385	\$ 1,606,225
Net Sources / (Uses):			
Article #- GF Subsidy	\$ -	\$ -	\$ -
Encumbrance Carryforwards	25,158	25,158	61,293
Fuel Revolver Fund Balance Unavailable for Retained Earnings Calculation	-	-	(984,202)
Transfer from Special Revenue Funds (Fuel Revolver)	-	-	-
Transfer from Passenger Facility Charge Reserve (Retained Earnings)	400,000	400,000	400,000
Transfer from Stabilization Fund	-	-	-
Surplus(Deficit)	(0)	\$ 6,586,543	\$ 1,083,316

Certified Retained Earnings As of July 01, 2020 \$ 2,889,419

Less: Amount Allocated Article 16 ATM 2021 Capital Expenditures (201,678)

Less: Amount Allocated Article 17 ATM 2021 Transfers to Capital (1,861,741)

Less: Amount Allocated Article 30 ATM 2021 Stabilization Fund for Airport Employee Accrued Liabilities (100,000)

Less: Amount Allocated Article 17 ATM 2021 Airport Operating Budget Funding (250,000)

Less: Passenger Facility Charge Reserve - Retained Earnings (251,333)

Plus: Current Surplus as of June 30, 2021 \$ 6,586,543

Projected Balance as of Jun 30, 2021 ⁽¹⁾⁽²⁾ \$ 6,811,210

****The large deduction in expenses is due to the \$3.4M in CARES Act reimbursed for FY21 payroll expenses.**

(1) Revenues remain a projection, until certified by the Department of Revenue, therefore this is only a projection as of this point in time, until Retained Earnings go through the Certification process.

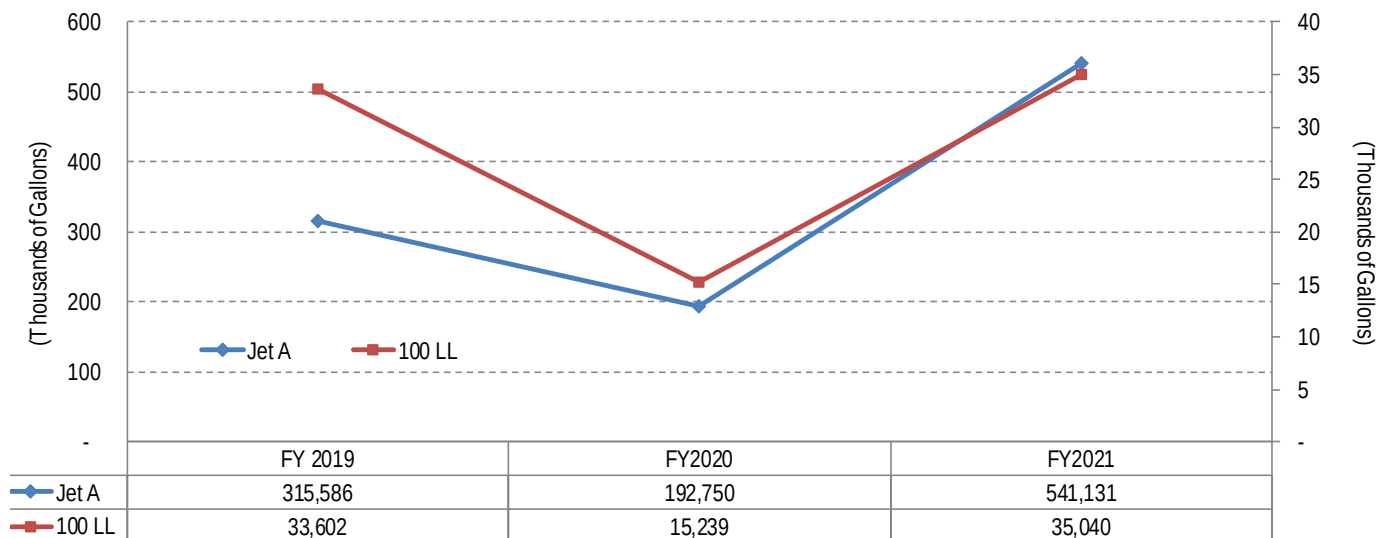
(2) Actual balance will be lower due to encumbrances that are carried forward

Airport Revenues

Where does the money come from?

Aviation Fuel Revolving Fund - FY2021 vs. FY2020

	FY2021	FY2020
Fuel Sales	\$ 7,952,775	\$ 7,520,046
Less: Fuel Purchases	(4,000,000)	(4,215,798)
Gross Profit	3,952,775	3,304,248
Revolver Purchase Cap *	4,000,000	5,200,000
Less: Purchases	(4,000,000)	(4,215,798)
Unallocable Portion of Gross Profit	-	984,202
Profit to be Applied to Op Budget	\$ 3,952,775	\$ 2,320,046





Airport Revenues

Operating Revenue for the Quarter Ended Jun 30, 2021

REVENUE	Quarter Ended Jun 30		QTR/QTR		FY2021 Budget Quarter
	FY2021	FY2020	\$ Change	% Change	
Fixed Base Operations (FBO)	\$ 875,305	\$ 424,661	\$ 450,644	106%	\$ 435,750
Revolver: Fuel Sales	-	-	-	na	1,000,000
Jet Fuel Sales in Excess of Revolving Fund	2,838,150	832,993	2,005,157	241%	114,500
Passenger Facility Charge	103,930	36,682	67,247	183%	56,750
Rental Income	746,627	492,654	253,973	52%	516,500
Fee Income	160,501	75,925	84,576	111%	173,250
Vehicle Income	35,650	14,741	20,908	142%	18,000
Interest on Investments	8,931	14,940	(6,009)	(40%)	6,250
Other Income	83,703	60,190	23,514	39%	61,575
Total Revenue*	\$ 4,852,797	\$ 1,952,787	\$ 2,900,010	149%	\$ 2,382,575

OTHER FINANCING SOURCES	FY2021	FY2020	\$ Change	% Change	Quarter
General Fund Subsidy	\$ -	\$ -	\$ -	na	\$ -
FinCom Transfer	-	-	-	na	-
Transfer from Special Revenue Funds (Fuel Revolver)	-	-	-	na	-
Transfer from Passenger Facility Charge Reserve (Retained Earnings)	-	-	-	na	-
Transfer from Stabilization Fund	-	-	-	na	-
Encumbrance Carryforward	18,500	-	18,500	na	-
Fuel Revolver Fund Balance Unavailable for R/E Calculation (YTD Only)	-	-	-	na	-
Voted Use of Certified Retained Earnings - Operations	-	-	-	na	-
Total Other Financing Sources	\$ 18,500	\$ -	\$ 18,500	na	\$ -

TOTAL REVENUE AND OTHER FINANCING SOURCES	\$ 4,871,297	\$ 1,952,787	\$ 2,918,510	149%	\$ 2,382,575
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Airport Revenues

Operating Revenue for the Twelve Months Ended Jun 30, 2021

REVENUE	Twelve Months Ended Jun 30		YR/YR		FY2021 Budget Annual w/ Carryfwd	% of Budget Used
	FY2021	FY2020	\$ Change	% Change		
Fixed Base Operations (FBO)	\$ 3,551,459	\$ 2,977,186	\$ 574,273	19%	\$ 1,743,000	204%
Revolver: Fuel Sales	4,000,000	5,200,000	(1,200,000)	(23%)	4,000,000	100%
Jet Fuel Sales in Excess of Revolving Fund	3,952,775	2,320,046	1,632,729	70%	458,000	863%
Passenger Facility Charge	251,333	552,848	(301,514)	(55%)	227,000	111%
Rental Income	2,400,267	2,110,143	290,124	14%	2,066,000	116%
Fee Income	1,084,789	1,462,663	(377,874)	(26%)	693,000	157%
Vehicle Income	106,815	128,817	(22,002)	(17%)	72,000	148%
Interest on Investments	46,575	93,135	(46,559)	(50%)	25,000	186%
Other Income	335,707	359,877	(24,169)	(7%)	246,300	136%
Total Revenue*	\$ 15,729,720	\$ 15,204,713	\$ 525,007	3%	\$ 9,530,300	165%

OTHER FINANCING SOURCES	FY2021	FY2020	\$ Change	% Change	FY2021 Budget	Budget Used
General Fund Subsidy	\$ -	\$ -	\$ -	na	\$ -	na
FinCom Transfer	-	-	-	na	-	na
Transfer from Special Revenue Funds (Fuel Revolver)	-	-	-	na	-	na
Transfer from Passenger Facility Charge Reserve (Retained Earnings)	400,000	400,000	-	0%	400,000	100%
Transfer from Stabilization Fund	-	-	-	na	-	na
Encumbrance Carryforward	25,158	61,293	(36,135)	(59%)	25,158	100%
Fuel Revolver Fund Balance Unavailable for R/E Calculation (YTD Only)	-	(984,202)	984,202	(100%)	-	na
Voted Use of Certified Retained Earnings - Operations	-	-	-	na	-	na
Total Other Financing Sources	\$ 425,158	\$ (522,909)	\$ 948,067	(181%)	425,158	100%
TOTAL REVENUE AND OTHER FINANCING SOURCES	\$ 16,154,878	\$ 14,681,804	\$ 1,473,074	10%	\$ 9,955,458	162%

*Note: Governments operate on a budgetary basis; therefore revenue earned in excess of the certified budget is not available to offset expenditures in the current fiscal year. Excess revenue and expenditure turnbacks must go through the State of Massachusetts retained



Airport Expenses

Operating Expenses for the Quarter Ended Jun 30, 2021

OPERATING EXPENSES WITHOUT DEBT	Quarter Ended Jun 30		QTR/QTR		FY2021 Budget	
	FY2021	FY2020	\$ Change	% Change	Quarter	
Payroll - Salary	\$ 668,006	\$ 808,069	\$ (140,063)	(17%)	\$	237,540
Medicare P/R Tax Expense	9,422	11,374	(1,952)	(17%)		3,863
Medical Insurance	188,900	218,659	(29,760)	(14%)		74,100
Barnstable County Retirement	-	-	-	na		56,325
Fixed Based Operations	159,515	89,085	70,430	79%		130,080
Revolver: Cost of Fuel	1,494,727	450,998	1,043,729	231%		1,000,000
Jet Fuel Expense in Excess of Revolving Fund	-	-	-	na		-
Operations	28,894	27,398	1,497	5%		22,425
Service & Maintenance	183,632	151,880	31,752	21%		203,699
Administration	468,676	719,177	(250,501)	(35%)		348,362
General Insurance	117,912	115,854	2,058	2%		43,725
Indirect Costs	50,000	50,000	0	0%		50,000
Other	235,621	228,011	7,610	3%		77,655
Total Expenditures - Excluding Debt Service	\$ 3,605,304	\$ 2,870,504	\$ 734,800	26%	\$	2,247,774
DEBT SERVICE	FY2021	FY2020	\$ Change	% Change		Quarter
Principal	\$ 150,000	\$ 150,000	\$ -	0%	\$	151,250
Interest	\$ 63,631	\$ 70,681	(7,050)	(10%)		73,591
Issuance Costs	\$ -	\$ -	-	na		-
BAN Costs, Principal, Interest	-	28,916	(28,916)	(100%)		16,250
Other	-	-	-	na		-
Total Debt Service	\$ 213,631	\$ 249,598	\$ (35,966)	(14%)	\$	241,091
TOTAL OPERATING EXPENSES AND DEBT SERVICE	\$ 3,818,935	\$ 3,120,101	\$ 698,834	22%	\$	2,488,865



Airport Expenses

Operating Expenses for the Twelve Months Ended Jun 30, 2021

OPERATING EXPENSES WITHOUT DEBT	Twelve Months Ended Jun 30		YR/YR		FY2021 Budget Annual w/ Carryfwd	% of Budget Used
	FY2021	FY2020	\$ Change	% Change		
Payroll - Salary	\$ 910,918	\$ 3,219,753	\$ (2,308,835)	(72%)	\$ 950,160	96%
Medicare P/R Tax Expense	12,853	45,958	(33,105)	(72%)	15,450	83%
Medical Insurance	248,385	806,116	(557,731)	(69%)	296,400	84%
Barnstable County Retirement	-	702,699	(702,699)	(100%)	225,300	0%
Fixed Based Operations	688,156	685,878	2,277	0%	520,320	132%
Revolver: Cost of Fuel	4,000,000	4,215,798	(215,798)	(5%)	4,000,000	100%
Jet Fuel Expense in Excess of Revolving Fund	-	-	-	na	-	na
Operations	63,036	58,120	4,916	8%	89,700	70%
Service & Maintenance	606,480	601,532	4,948	1%	814,796	74%
Administration	1,534,137	1,636,789	(102,651)	(6%)	1,393,450	110%
General Insurance	175,256	159,221	16,035	10%	174,900	100%
Indirect Costs	200,000	200,000	-	0%	200,000	100%
Other	235,621	228,011	7,610	3%	310,620	76%
Total Expenditures - Excluding Debt Service	\$ 8,674,840	\$ 12,559,872	\$ (3,885,032)	(31%)	\$ 8,991,095	96%
DEBT SERVICE	FY2021	FY2020	\$ Change	% Change	Annual w/ Carryfwd	% of Budget Used
Principal	\$ 620,000	\$ 680,000	\$ (60,000)	(9%)	\$ 605,000	102%
Interest	\$ 245,955	\$ 316,338	(70,382)	(22%)	294,363	84%
Issuance Costs	\$ -	\$ -	-	na	-	na
BAN Costs, Principal, Interest	27,539	42,279	(14,740)	(35%)	65,000	42%
Other	-	-	-	na	-	na
Total Debt Service	\$ 893,495	\$ 1,038,616	\$ (145,122)	(14%)	\$ 964,363	93%
TOTAL OPERATING EXPENSES AND DEBT SERVICE	\$ 9,568,335	\$ 13,598,488	\$ (4,030,153)	(45%)	\$ 9,955,458	96%