

**TOWN OF HARVARD
CONSERVATION COMMISSION AGENDA
THURSDAY JULY 6, 2023 @7:00PM**

Pursuant to Chapter 2 of the Acts of 2023, An Act Making Appropriations for the Fiscal Year 2023 to Provide for Supplementing Certain Existing Appropriations and for Certain Other Activities and Projects, and signed into law on March 29, 2023, this meeting will be conducted via remote participation. Interested individuals can listen in and participate by phone and/or online by following the link and phone number below.

UpperTH ProWebinar is inviting you to a scheduled Zoom meeting.

Join Zoom Meeting

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Dial by your location

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Meeting ID: 827 0170 2926

Find your local number: <https://us02web.zoom.us/j/kZ7cNerlC>

New Business:

1. Harvard Conservation Trust Conservation Restriction Municipal Certification – 32 Mettacomett Path & Jacob Gates Road
2. Update on the Plant Removal at the Bare Hill Pond Beach
3. Discuss Recent Mowing at Eastview Conservation Land on Ayer Road
4. Approve Use of Stone Land, Old Mill Road, for Bromfield Cross-Country Fall 2023 meets
5. Approve Minutes
6. Approve Invoices – Nitsch Engineering \$248 (Pine Hill Village)
MACC \$869
Turner Lane Association Road Dues \$260
Liz Allard \$126.35 (3rd & 4th Quarter Mileage)

Public Hearings:

- 7:30pm **Continuation of a Notice of Intent Hearing – Bare Hill Pond Watershed Management Committee, Harvard#0523-03**, for the drawdown of Bare Hill Pond in accordance with the Massachusetts Lake & Pond General Environmental Impact Report to control phosphorus and invasive plant species

Old Business:

1. Review Proposed Chapter 125-35 Open Space Residential Development Bylaw
2. Discuss Strategic Planning Session
3. Update on Enforcement Order – 320 Ayer Road
4. Pine Hill Village Status Update
5. Update on 90 Warren Ave, DEP#177-719, Harvard#1122-02

NEXT MEETING: JULY 20, 2023

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

GRANTOR: Nahid Rathore, as Trustee of the Nahid Rathore 2012 Revocable Trust u/d/t dated February 7, 2012, as amended

GRANTEE: Trustees of Harvard Conservation Trust
ADDRESS OF PREMISES: 32 Mettacomett Path and Jacob Gates Road, Harvard, Worcester County, MA 01451

FOR GRANTOR'S TITLE SEE: 32 Mettacomett Path: Worcester County Registry of Deeds Registered Land Department, Certificate of Title 16673 at Book 84 Page 73, Instrument No. 121486, Trustee Certificates dated December 9, 2022, filed as Document Nos. 121484 and 121485 and Jacob Gates Road: Recorded Land Department at Book 68830 Page 49, Trustees Certificate dated December 9, 2022, Recorded Land Department at Book 68830, Page 46.

**GRANT OF CONSERVATION RESTRICTION
AND
EASEMENT**

I. STATEMENT OF GRANT

Nahid Rathore, as Trustee of the Nahid Rathore 2012 Revocable Trust u/d/t February 7, 2012, as amended, evidenced by a Trustee's Certificate filed herewith, being the sole owner of the Premises as defined herein, constituting the only owner of the Premises as defined herein, for my successors and assigns ("Grantor"), acting pursuant to Sections 31, 32, and 33 of Chapter 184 of the Massachusetts General Laws, grant, with QUITCLAIM COVENANTS, to Michael Morton, Abbe Alpert, Gina Ashe, John Lee, Shannon R. Kelley, David Burney, Matthew Cronin, Peter Foley, Robert Douglas, Anya Kane, Will Kemeza, Margaret Coyle Nestler, Lynn Thornton, Richard E. Pride and Benjamin Urquhart, as Trustees of Harvard Conservation Trust, u/d/t June 16, 1973 and recorded with the Worcester District Registry of Deeds at Book 5356, Page 462 and registered as Document No. 35112, as amended of record and having an address of 102 Prospect Hill Road, Harvard, Worcester County, Massachusetts 01451, their permitted successors and assigns ("Grantee"), for Three Hundred and Sixty-Five Thousand Dollars and No Cents (\$365,000.00), IN PERPETUITY AND EXCLUSIVELY FOR CONSERVATION PURPOSES, the following Conservation Restriction on approximately 26.29 acres of land located at 32 Mettacomett Path and Jacob Gates Road, in Harvard ("Premises"), which Premises is more particularly described in Exhibit A and shown in the attached reduced copy of a survey plan (the "Plan") in Exhibit B, both of which are incorporated herein and attached hereto. Specifically excluded from the Premises and therefore not subject to this Conservation Restriction is the approximately 6.68-acre area shown on said Plan as the "Excluded Building Area".

II. PURPOSES:

This Conservation Restriction is defined in and authorized by Sections 31, 32, and 33 of Chapter 184 of the Massachusetts General Laws and otherwise by law. The purposes of this Conservation Restriction (“Purposes”) are to ensure that the Premises will be maintained in perpetuity in its natural, scenic, or open condition and available for forestry and passive outdoor recreational uses, and to prevent any use or change that would materially impair the Conservation Values (as defined below).

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

- Open Space. The Premises contribute to the protection of the scenic and natural character of Harvard and the protection of the Premises will enhance the open-space value of these and nearby lands. The Premises abuts land already conserved, including the 110-acre Eastern Greenway Conservation Land now owned by the Harvard Conservation Trust, and beyond to the adjacent 44-acre Tripp Land, and the Stephenson, Perini and Slattery Land, totaling 216 acres of contiguous conservation land.
- Public Trail Access. Protection of Premises will provide for public access by right and allow hikers, cross country skiers, horseback riders, bird watchers and other outdoor enthusiasts to pass to and from other conservation lands as an important link in the trail systems in the Town of Harvard.
- Protection of Wildlife Habitat. The Premises contains a varied array of habitat types from forested wetland and upland forest, adjacent to a 216-acre complex of existing conservation lands. The Premises is identified by The Nature Conservancy and Massachusetts Audubon Society’s *Mapping and Prioritizing Parcels* as a “medium priority” parcel for protection based on “critical linkages priority” and “resilient sites for conservation”.
- Habitat Connectivity and Ecosystem Integrity. The Premises includes areas identified by the UMass Conservation Assessment and Prioritization System (CAPS) as Medium Priority Parcels with an IEI index of greater than 50% for the forested landscape. CAPS measures the ecosystem integrity of land and can be used to demonstrate the value of land as having outstanding unfragmented habitat value. The woodland is entirely Prime forest land (Prime 1, Prime 2 and Prime 3) in MassGIS.

III. PROHIBITED and PERMITTED ACTS AND USES

A. Prohibited Acts and Uses

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

1. Structures and Improvements. Constructing, placing, or allowing to remain any temporary or permanent structure including without limitation any building, tennis court, landing strip, mobile home, swimming pool, asphalt or concrete pavement, graveled area, roads, sign, fence, gate, billboard or other advertising, antenna, utilities

or other structures, utility pole, tower, solar panel, solar array, conduit, line, septic or wastewater disposal system, storage tank, or dam;

2. Extractive Activities/Uses. Mining, excavating, dredging, withdrawing, or removing soil, loam, peat, gravel, sand, rock, surface water, ground water, or other mineral substance or natural deposit, or otherwise altering the topography of the Premises;
3. Disposal/Storage. Placing, filling, storing or dumping of soil, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, tree and other vegetation cuttings, liquid or solid waste or other substance or material whatsoever;
4. Adverse Impacts to Vegetation. Cutting, removing, or destroying trees, shrubs, grasses or other vegetation;
5. Adverse Impacts to Water, Soil, and Other Features. Activities detrimental to drainage, flood control, water conservation, water quality, erosion control, soil conservation, natural habitat, archaeological conservation, or ecosystem function;
6. Introduction of Invasive Species. Planting or introducing any species identified as invasive by the Massachusetts Invasive Plant Advisory Group or identified as invasive in such recognized inventories as the Massachusetts Introduced Pests Outreach Project, the Northeast Aquatic Nuisance Species Panel, or other such inventories, and any successor list as mutually agreed to by Grantor and Grantee;
7. Motor Vehicles. Using, parking, or storing motorized vehicles, including motorcycles, mopeds, all-terrain vehicles, off-highway vehicles, motorboats or other motorized watercraft, snowmobiles, launching or landing aircraft, or any other motorized vehicles, acknowledging that vehicles necessary for public safety (i.e., fire, police, ambulance, other government officials) may have a legal right to enter the Premises;
8. Subdivision. Subdividing or conveying a part or portion of the Premises (as compared to conveyance of the Premises in its entirety which shall be permitted), it being the Grantor's and Grantee's intention to maintain the entire Premises under unified ownership;
9. Use of Premises for Developing Other Land. Using the Premises towards building or development requirements on this or any other parcel;
10. Adverse Impacts to Stone Walls, Boundary Markers. Disrupting, removing, or destroying stone walls, granite fence posts, or any other boundary markers;
11. Residential or Industrial Uses. Using the Premises for residential or industrial purposes;
12. Inconsistent Uses. Using the Premises for commercial purposes that are inconsistent with the Purposes or that would materially impair the Conservation Values, or for any

other uses or activities that are inconsistent with the Purposes or that would materially impair the Conservation Values.

B. Permitted Acts and Uses

Notwithstanding the Prohibited Acts and Uses described in Paragraph III.A., the Grantor may conduct or permit the following acts and uses on the Premises, provided they do not materially impair the Purposes and/or Conservation Values. In conducting any Permitted Act and Use, Grantor shall minimize impacts to the Conservation Values to ensure any such impairment thereto is not material.

1. Septic. With prior written approval of the Grantee, the installation, maintenance, repair, and replacement of a septic system for the residence located within the Excluded Building Area. Said approval shall only be granted upon a showing that the Grantor's existing septic system has failed and that by reason of soil limitations, ground or surface water limitations, topography, or geology, no practical alternative site exists within said Excluded Building Area.
2. Water Supply. With prior written approval of the Grantee, the construction, maintenance, repair, and replacement of one (1) drilled or driven well outside of the Excluded Building Area for the residence located within the Excluded Building Area, for use as residential water supply, including domestic agricultural purposes, and the installation, maintenance, repair, and replacement of related underground utility lines. Any above-ground well structure shall be kept to the minimum size allowed under the Town of Harvard By-Laws, Part III, Regulations, Ch. 145, Board of Health, Article II: Private Wells.
3. Vegetation Management. Maintaining vegetation, including pruning, trimming, cutting, and mowing, and removing brush, all to prevent, control, and manage hazards, disease, insect or fire damage, and/or in order to maintain the condition of the Premises as documented in the Baseline Report (see Paragraph XV.);
4. Non-native, Nuisance, or Invasive species. Removing non-native, nuisance, or invasive species, interplanting native species, and controlling species in a manner that minimizes damage to surrounding, non-target species and preserves water quality;
5. Composting. Stockpiling and composting stumps, trees, brush, limbs, and similar biodegradable materials originating on the Premises.
6. Natural Habitat and Ecosystem Improvement. With prior written approval of the Grantee, conducting measures designed to restore native biotic communities, or to maintain, enhance or restore wildlife, wildlife habitat, ecosystem function, or rare or endangered species including planting native trees, shrubs, and other vegetation;
7. Trails. Maintaining and constructing trails as follows:

- a. Trail Maintenance. Conducting routine maintenance of trails, which may include widening trail corridors up to six (6) feet in width overall, with a treadway up to three (3) feet in width.
 - b. New Trails. With prior written approval of the Grantee, constructing new trails or relocating existing trails, provided that any construction or relocation results in trails that conform with the width limitations above.
 - c. Trail Features. With prior written approval of the Grantee, constructing bog bridging, boardwalks, footbridges, railings, steps, culverts, benching, cribbing, contouring, or other such features, together with the use of motorized equipment to construct such features;
8. Signs. Constructing, installing, maintaining, and replacing signs and informational kiosks with respect to the Permitted Acts and Uses, the Purposes, the Conservation Values, trespass, public access, identity and address of the Grantor, sale of the Premises, the Grantee's interest in the Premises, boundary and trail markings, any gift, grant, or other applicable source of support for the conservation of the Premises;
9. Motorized Vehicles. The use of motorized vehicles in conjunction with the Permitted Acts and Uses described in this Paragraph III.B. No part of this Paragraph III.B shall be interpreted or understood to allow for the use of motorized vehicles solely for recreational purposes.
10. Outdoor Passive Recreational and Educational Activities. Hiking, cross-country skiing, snowshoeing, ice-skating, nature observation, nature and educational walks and outings, outdoor educational activities, and other non-motorized outdoor recreational and educational activities;
11. Forest Management.
 - a. Permitted Activities. Conducting sound silvicultural uses of the Premises, including the right to conduct forest management activities, reestablish historic woods roads and establish new woods roads, and the use of motorized vehicles, all as necessary to conduct such activities (“Forestry Activities”), provided that any Forestry Activities are carried out pursuant to a Forest Stewardship Plan (as defined below). All Forestry Activities shall avoid any stone structures or historical and cultural resources and shall prevent damage thereto to the extent feasible. Forestry Activities shall leave a 50’ buffer between any public trail and any cutting operations. All cutting operations shall be supervised by a licensed forester.
 - b. Requirement of a Forest Stewardship Plan. Before any Forestry Activities occur on the Premises, Grantor shall submit a Forest Stewardship Plan to the Grantee, the Massachusetts Department of Conservation and Recreation (“DCR”) or appropriate successor agency, and to any other required state agencies for their approval. The Forest Stewardship Plan shall:
 - i. be prepared by a forester licensed through DCR and shall follow the “Directions for the Preparation of the Chapter 61 Forest Management

Plans and Forest Stewardship Plans” (as such guidelines may be amended by DCR or its successor agency) and such statutes, regulations and directions in effect at the time of the approval of said Forest Stewardship Plan; and

- ii. include provisions designed to comply with the recommended activities and guidelines and required best management practices established in the Massachusetts Forestry Best Management Practices Manual (Catanzaro, Fish & Kittredge, University of Massachusetts, Amherst & DCR; 2013) and subsequent versions as may be approved by the Massachusetts Bureau of Forest Fire Control and Forestry (“Forestry BMPs”); and
- iii. be intended to increase forest health, improve wildlife habitat, restore old-growth characteristics, increase carbon sequestration, or improve forest resiliency; and
- iv. address how the Forest Stewardship Plan complies with this Paragraph II.B.11; and
- v. be effective for a ten (10) year period and shall be resubmitted once every ten (10) years as necessary if additional Forestry Activities are desired.

C. Site Restoration

Upon completion of any Permitted Acts and Uses, any disturbed areas shall be restored substantially to the conditions that existed prior to said activities, including with respect to soil material, grade, and vegetated ground cover.

D. Compliance with Permits, Regulations, Laws

The exercise of any Permitted Acts and Uses under Paragraph III.B. shall be in compliance with all applicable federal, state and local laws, rules, regulations, zoning, and permits, and with the Constitution of the Commonwealth of Massachusetts. The inclusion of any Reserved Right requiring a permit, license or other approval from a public agency does not imply that the Grantee or the Commonwealth takes any position whether such permit, license, or other approval should be issued.

E. Notice and Approval

1. Notifying Grantee. Whenever notice to or approval by Grantee is required, Grantor shall notify or request approval from Grantee, by a method requiring proof of receipt, in writing not less than sixty (60) days prior to the date Grantor intends to undertake the activity in question, unless a different time period is specified herein. The notice shall:
 - a. Describe the nature, scope, design, location, timetable and any other material aspect of the proposed activity;

- b. Describe how the proposed activity complies with the terms and conditions of this Conservation Restriction, and will not materially impair the Purposes and/or Conservation Values;
 - c. Identify all permits, licenses, or approvals required for the proposed activity, and the status of any such permits, licenses, or approvals.
 - d. Describe any other material aspect of the proposed activity in sufficient detail to permit the Grantee to make an informed judgment as to its consistency with the Purposes and Conservation Values.
2. Grantee Review. Where Grantee's approval is required, Grantee shall grant or withhold approval in writing within sixty (60) days of receipt of Grantor's request, except that in the case of an emergency, including but not limited to septic system or well failure, fire, flood, weather, climate-related impacts, and earth movement, Grantor may take any prudent action necessary without the required notice to the Grantee. In the event of an emergency, notice shall be given as soon practicable after discovery of the emergency. Grantee's approval shall only be granted upon a showing that the proposed activity will minimize impacts to the Conservation Values and will not materially impair the Purposes and/or Conservation Values. Grantee may require Grantor to secure expert review and evaluation of a proposed activity by a mutually agreed upon party.
3. Resubmittal. Grantee's failure to respond within sixty (60) days of receipt shall not constitute approval of the request. Grantor may subsequently submit the same or a similar request for approval.

IV. INSPECTION AND ENFORCEMENT

A. Entry onto the Premises

The Grantor hereby grants to the Grantee, and its duly authorized agents or representatives, the right to enter the Premises upon reasonable notice and at reasonable times, for the purpose of inspecting the Premises to determine compliance with or to enforce this Conservation Restriction.

B. Legal and Injunctive Relief

1. Enforcement. The rights hereby granted shall include the right to enforce this Conservation Restriction by appropriate legal proceedings and to obtain compensatory relief, and equitable relief against any violations, including, without limitation, injunctive relief and relief requiring restoration of the Premises to its condition prior to the time of the injury (it being agreed that the Grantee will have no adequate remedy at law in case of an injunction). The rights hereby granted shall be in addition to, and not in limitation of, any other rights and remedies available to the Grantee for the enforcement of this Conservation Restriction.
2. Notice and Cure. In the event the Grantee determines that a violation of this Conservation Restriction has occurred and intends to exercise any of the rights

described herein, the Grantee shall, before exercising any such rights, notify the Grantor in writing of the violation. The Grantor shall have thirty (30) days from receipt of the written notice to halt the violation and remedy any damage caused by it, after which time Grantee may take further action, including instituting legal proceedings and entering the Premises to take reasonable measures to remedy, abate or correct such violation, without further notice. Provided, however, that this requirement of deferment of action for thirty (30) days applies only if Grantor immediately ceases the violation and Grantee determines that there is no ongoing violation. In instances where a violation may also constitute a violation of local, state, or federal law, the Grantee may notify the proper authorities of such violation.

3. Reimbursement of Costs and Expenses of Enforcement. Grantor covenants and agrees to reimburse to Grantee all reasonable costs and expenses (including counsel fees) incurred by the Grantee in enforcing this Conservation Restriction or in taking reasonable measures to remedy, abate or correct any violation thereof. In the event of a dispute over the boundaries of the Conservation Restriction, Grantor shall pay for a survey by a Massachusetts licensed professional land surveyor and to have the boundaries permanently marked.

C. Non-Waiver

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

D. Disclaimer of Liability

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

E. 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 natural causes beyond the Grantor's control, including but not limited to fire, flood, weather, climate-related impacts, and earth movement, or from any prudent action taken by the Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Premises resulting from such causes. In the event of any such occurrence, the Grantor and Grantee will cooperate in the restoration of the Premises, if desirable and feasible.

V. PUBLIC ACCESS – GRANT OF EASEMENT

The Grantor grants a non-exclusive perpetual easement (the “Trail Easement”) to the Grantee and the public to enter upon a portion of the Premises shown as “Trail Area” on the Plan attached as Exhibit B (“Trail Area”). The Grantee shall have the right to construct and maintain two trails within said Trail Area areas in accordance with Paragraph III.B.7 above.

The Trail Easement granted to the Grantee and the public pursuant to this Conservation Restriction is granted subject to and upon the following conditions: (i) public access is limited to daylight hours, i.e. from dawn to dusk each day, (ii) public use is limited to the uses set forth in Paragraph III.B.10, (iii) public access is limited to the area shown as “Trail Area” on the Plan, which Trail Area includes presently existing trails as shown on the Baseline Report (see Paragraph XV) and which Trail Area may include trails created by the Grantee in the future; and (iv) Grantee may maintain and construct trails within the Trail Area pursuant to and subject to the limitations described in Paragraph III.B.7, and shall be responsible for maintenance and repair of said trails.

The Grantee may post on the Premises signage prohibiting any use by the public that results in material impairment of the Conservation Values. This Trail Easement is solely for the purposes described in Section 17C of Chapter 21 of the Massachusetts General Laws and the Grantor and Grantee hereto express their intent to benefit from exculpation from liability to the extent provided in such section.

VI. TERMINATION/RELEASE/EXTINGUISHMENT

A. Procedure

If circumstances arise in the future that render the Purposes impossible to accomplish, this Conservation Restriction can only be terminated, released, or extinguished, whether in whole or in part, by a court of competent jurisdiction under applicable law after review and approval by the Secretary of Energy and Environmental Affairs of the Commonwealth of Massachusetts, or successor official (“Secretary”), and any other approvals as may be required by Section 32 of Chapter 184 of the Massachusetts General Laws.

B. Grantor’s and Grantee’s Right to Recover Proceeds

If any change in conditions ever gives rise to termination, release, or extinguishment of this Conservation Restriction under applicable law, then 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 VI.C., subject, however, to any applicable law which expressly provides for a different disposition of the proceeds, and after complying with the terms of any gift, grant, or funding requirements. The Grantee shall use its share of any proceeds in a manner consistent with the Purposes or the protection of the Conservation Values.

C. Grantee’s Receipt of Property Right

Grantor and Grantee agree that the conveyance of this Conservation Restriction gives rise to a real property right, immediately vested in the Grantee, with a fair market value that is at least equal to the proportionate value that this Conservation Restriction bears to the value of the

unrestricted Premises. The proportionate value of the Grantee's property right will be determined as of the date of termination, release, or extinguishment.

D. Cooperation Regarding Public Action

Whenever all or any part of the Premises or any interest therein is taken by public authority under power of eminent domain or other act of public authority, then the Grantor and the Grantee shall cooperate in recovering the full value of all direct and consequential damages resulting from such action. All related expenses incurred by the Grantor and the Grantee shall first be paid out of any recovered proceeds, and the remaining proceeds shall be distributed between the Grantor and Grantee in accordance with Paragraph VI.B. and Paragraph VI.C. 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 any proceeds in a manner consistent with the Purposes or the protection of the Conservation Values.

VII. DURATION and ASSIGNABILITY

A. Running of the Burden

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

B. Execution of Instruments

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

C. Running of the Benefit

The benefits of this Conservation Restriction shall run to the Grantee, shall be in gross and shall not be assignable by the Grantee, except when all of the following conditions are met:

1. the Grantee requires that the Purposes continue to be carried out;
2. the assignee is not an owner of the fee in the Premises;
3. the assignee, at the time of the assignment, qualifies under and 26.U.S.C. 170(h), and applicable regulations thereunder, if applicable, and is eligible to receive this Conservation Restriction under Section 32 of Chapter 184 of the Massachusetts General Laws; and
4. the assignment complies with Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, if applicable.

VIII. SUBSEQUENT TRANSFERS

A. Procedure for Transfer

The Grantor agrees to incorporate by reference the terms of this Conservation Restriction in any deed or other legal instrument which grants any interest in all or a portion of the Premises, including a leasehold interest and to notify the Grantee not less than twenty (20) days prior to the effective date of such transfer. Failure to do any of the above shall not impair the validity or enforceability of this Conservation Restriction. If the Grantor fails to reference the terms of this Conservation Restriction in any deed or other legal instrument which grants any interest in all or a portion of the Premises, then the Grantee may record, in the applicable registry of deeds, or registered in the applicable land court registry district, and at the Grantor's expense, a notice of this Conservation Restriction. Any transfer will comply with Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, if applicable.

B. Grantor's Liability

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

IX. ESTOPPEL CERTIFICATES

Upon request by the Grantor, the Grantee shall, within sixty (60) days execute and deliver to the Grantor any document, including an estoppel certificate, which certifies the Grantor's compliance or non-compliance with any obligation of the Grantor contained in this Conservation Restriction.

X. 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 following the terms set forth in Paragraph VII.C to ensure that merger does not occur and that this Conservation Restriction continues to be enforceable by a non-fee owner.

XI. AMENDMENT

A. Limitations on Amendment

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

1. affect this Conservation Restriction's perpetual duration;
2. be inconsistent with or materially impair the Purposes;

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

B. Amendment Approvals and Recording

No amendment shall be effective unless documented in a notarized writing executed by Grantee and Grantor, approved by the Town of Harvard and by the Secretary in the public interest pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws, and recorded in the applicable registry of deeds or registered in the applicable land court registry district.

XII. 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 Massachusetts General Laws have been obtained, and it has been recorded in the applicable registry of deeds or registered in the applicable land court registry district.

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 via e-mail or first class mail, postage pre-paid, addressed as follows:

To Grantor: Nahid Rathore, as Trustee
32 Mettacomett Path
Harvard, MA 01451
e-mail: rathore.family.ma@gmail.com

To Grantee: Harvard Conservation Trust
P.O. Box 31
Harvard, MA 01451
e-mail: info@harvardconservationtrust.org

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

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 order to effect the Purposes and the policy and purposes of Sections 31, 32, and 33 of Chapter 184 of the Massachusetts General Laws. If any provision in this instrument is found to be ambiguous, any interpretation consistent with the Purposes that would render the provision valid shall be favored over any interpretation that would render it invalid.

C. Severability

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

D. Entire Agreement

This instrument sets forth the entire agreement of the Grantor and Grantee 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.

XV. BASELINE DOCUMENTATION REPORT

The Conservation Values, as well as the natural features, current uses of, and existing improvements on the Premises, such as, but not limited to, trails, woods roads, structures, meadows or other cleared areas, agricultural areas, and scenic views, as applicable, are described in a Baseline Documentation Report (“Baseline Report”) prepared by Grantee with the cooperation of the Grantor, consisting of maps, photographs, and other documents and on file with the Grantee and included by reference herein. The Baseline Report (i) is acknowledged by Grantor and Grantee to be a complete and accurate representation of the condition and values of the Premises as of the date of this Conservation Restriction, (ii) is intended to fully comply with applicable Treasury Regulations, (iii) is intended to serve as an objective information baseline for subsequent monitoring of compliance with the terms of this Conservation Restriction as described herein, and (iv) may be supplemented as conditions on the Premise change as allowed over time. Notwithstanding the foregoing, the parties may utilize any evidence of the condition of the Premises at the time of this grant in addition to the Baseline Report.

XVI. MISCELLANEOUS

A. Pre-existing Public Rights

Approval of this Conservation Restriction pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws by any municipal officials and by the Secretary, 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. Release of Homestead

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

C. No Surety Interest

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

D. Executory Limitation

If Grantee shall cease to exist or to be qualified to hold conservation restrictions pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws, or to be qualified organization under 26 U.S.C. 170(h), and applicable regulations thereunder, if applicable, and a prior assignment is not made pursuant to Paragraph VII, then Grantee's rights and obligations under this Conservation Restriction shall vest in such organization as a court of competent jurisdiction shall direct pursuant to the applicable Massachusetts law and with due regard to the requirements for an assignment pursuant to Paragraph VII.

E. Prior Encumbrances

This Conservation Restriction shall be in addition to and not in substitution of any other restrictions or easements of record affecting the Premises.

F. The following signature pages are included in this Grant:

Grantor
Grantee Acceptance

Approval of Select Board

Approval of the Secretary of Energy and Environmental Affairs of the Commonwealth of Massachusetts.

G. The following exhibits are attached and incorporated herein:

Exhibit A: Legal Description of Premises

Exhibit B: Reduced Copy of Recorded Plan of Premises

WITNESS our hands and seal this ____ day of _____, 202____,

Nahid Rathore, Trustee
of the Nahid Rathore 2012 Revocable Trust, as amended

_____ County, ss:

On this _____ day of _____, 2023, before me, the undersigned notary public, personally appeared Nahid Rathore as Trustee of the Nahid Rathore 2012 Revocable Trust, as amended, 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 s/he signed it voluntarily for its stated purpose as aforesaid.

Notary Public
My Commission Expires:

ACCEPTANCE OF GRANT

The foregoing Conservation Restriction from Nahid Rathore, Trustee of the Nahid Rathore 2012 Revocable Trust u/d/t dated February 7, 2012, as amended, was accepted by the Trustees of Harvard Conservation Trust this _____ day of _____, 2023.

By: _____
Michael Morton

Its: President, duly authorized

THE COMMONWEALTH OF MASSACHUSETTS

_____ County, ss:

On this _____ day of _____, 2023, before me, the undersigned notary public, personally appeared _____, and proved to me through satisfactory evidence of identification which was _____ to be the person whose name is signed on the proceeding or attached document, and acknowledged to me that s/he signed it voluntarily for its stated purpose.

Notary Public
My Commission Expires:

APPROVAL OF TOWN OF HARVARD SELECT BOARD

We the undersigned, being a majority of the Select Board of the Town of Harvard, hereby certify that at a public meeting duly held on _____, 2023, the Select Board voted to approve the foregoing Conservation Restriction from Nahid Rathore, Trustee of the Nahid Rathore 2012 Revocable Trust u/d/t dated February 7, 2012, as amended, to the Trustees of Harvard Conservation Trust in the public interest pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws.

TOWN OF HARVARD SELECT BOARD

Donald Ludwig

Richard D Maiore

Erin McBee

Kara Minar

Charles Oliver

THE COMMONWEALTH OF MASSACHUSETTS

Worcester County, ss:

On this _____ day of _____, 2023, before me, the undersigned notary public, personally appeared _____, _____, _____, _____, and _____, and proved to me through satisfactory evidence of identification which was _____ to be the persons whose names are signed on the proceeding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose.

Notary Public
My Commission Expires:

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

The undersigned, Secretary of Energy and Environmental Affairs of the Commonwealth of Massachusetts, hereby approves the foregoing Conservation Restriction from Nahid Rathore, Trustee of the Nahid Rathore 2012 Revocable Trust u/d/t dated February 7, 2012, as amended, to the Trustees of Harvard Conservation Trust, in the public interest pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws.

Dated: _____, 2023

Rebecca L. Tepper
Secretary of Energy and Environmental Affairs

THE COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss:

On this _____ day of _____, 2023, before me, the undersigned notary public, personally appeared Rebecca L. Tepper, and proved to me through satisfactory evidence of identification which was _____ to be the person whose name is signed on the proceeding or attached document, and acknowledged to me that she signed it voluntarily for its stated purpose.

Notary Public
My Commission Expires:

EXHIBIT A

Description of the Premises

The land in Harvard, Worcester County, Commonwealth of Massachusetts shown as “Conservation Area = 26.29 Acres” on plan entitled “Conservation Restriction Plan of Land In Harvard, Mass. Prepared for The Nahid Rathore 2012 Revocable Trust” dated February 2023, prepared by David E. Ross Associates, Inc., and marked Job No. 34122, Plan No. L-14623 which plan is recorded with the Worcester District Registry of Deeds in Plan Book _____, Plan _____. Specifically excluded from the Premises is the \pm 6.68-acre area shown on said plan as “Excluded Building Area”.

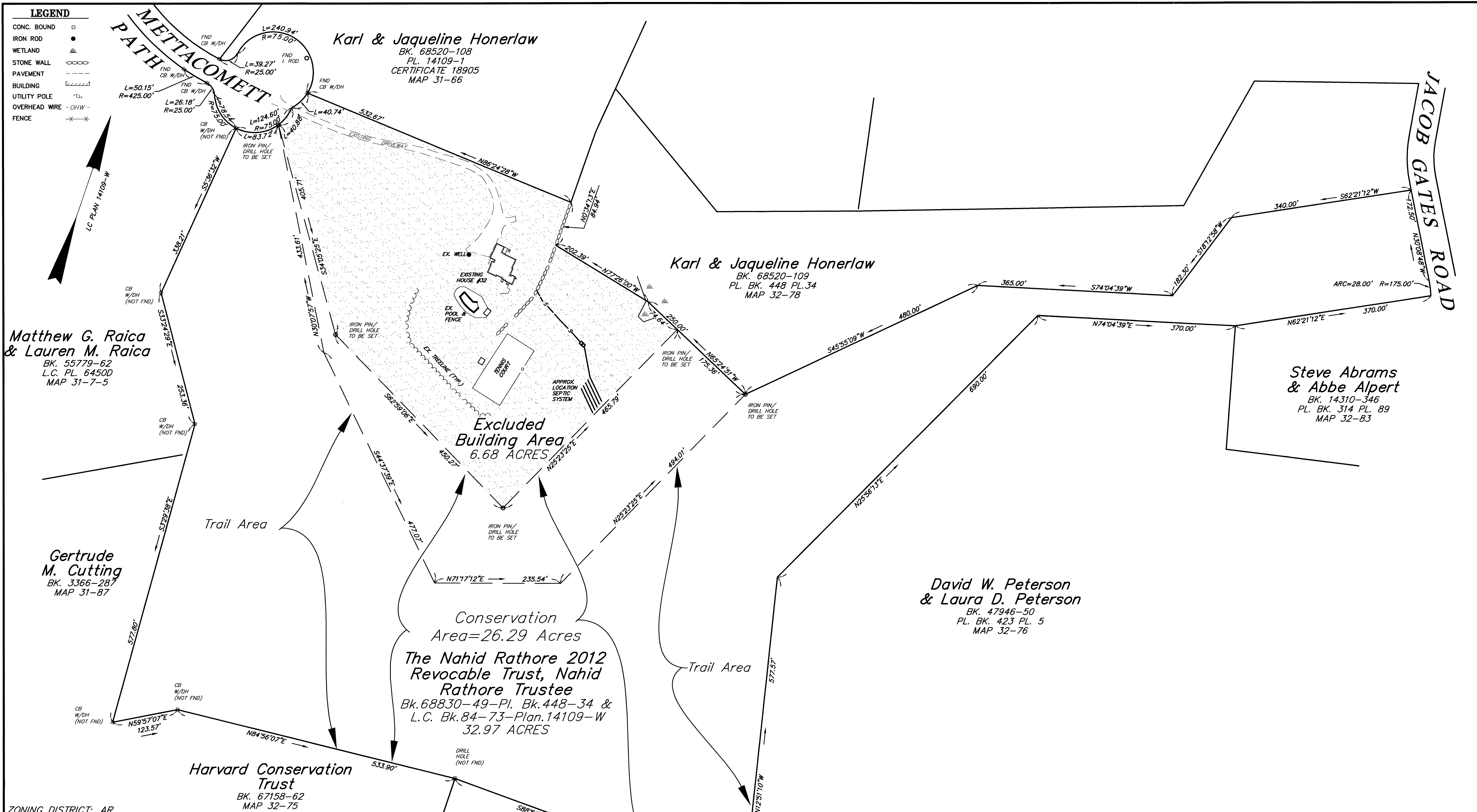
A portion of the land is described as Lot 48 on Land Court Plan No. 14109-W, originally filed with Certificate #8614.

EXHIBIT B

Plan of Premises

LEGEND

- CONC. BOUND
- IRON ROD
- WETLAND
- STONE WALL
- PAVEMENT
- BUILDING
- UTILITY POLE
- OVERHEAD WIRE
- FENCE



ZONING DISTRICT: AR

M.G.L. C41 S81-X Surveyor's Certificate
I HEREBY CERTIFY THAT THE PROPERTY LINES SHOWN ON THIS PLAN ARE THE LINES DIVIDING EXISTING OWNERSHIP AND THE LINES OF THE STREETS AND WAYS SHOWN ARE THOSE OF PUBLIC OR PRIVATE STREETS OR WAYS ALREADY ESTABLISHED AND THAT NO NEW LINES FOR THE DIVISION OF EXISTING OWNERSHIP OR FOR NEW STREETS OR WAYS ARE SHOWN.

2/22/2023
DATE

Robert T. Conway
SURVEYOR

SURV: GSN CALC: SPM DRAFTED: SPM CK'D: RTC NB: 839/70 DEED: 6436-228 REF: L-12949

1"=80'

0 40 80 120 160 200 240
FEET

0 15 30 45 60 75
METERS

I CERTIFY THAT THIS PLAN CONFORMS WITH THE RULES AND REGULATIONS OF THE REGISTERS OF DEEDS.

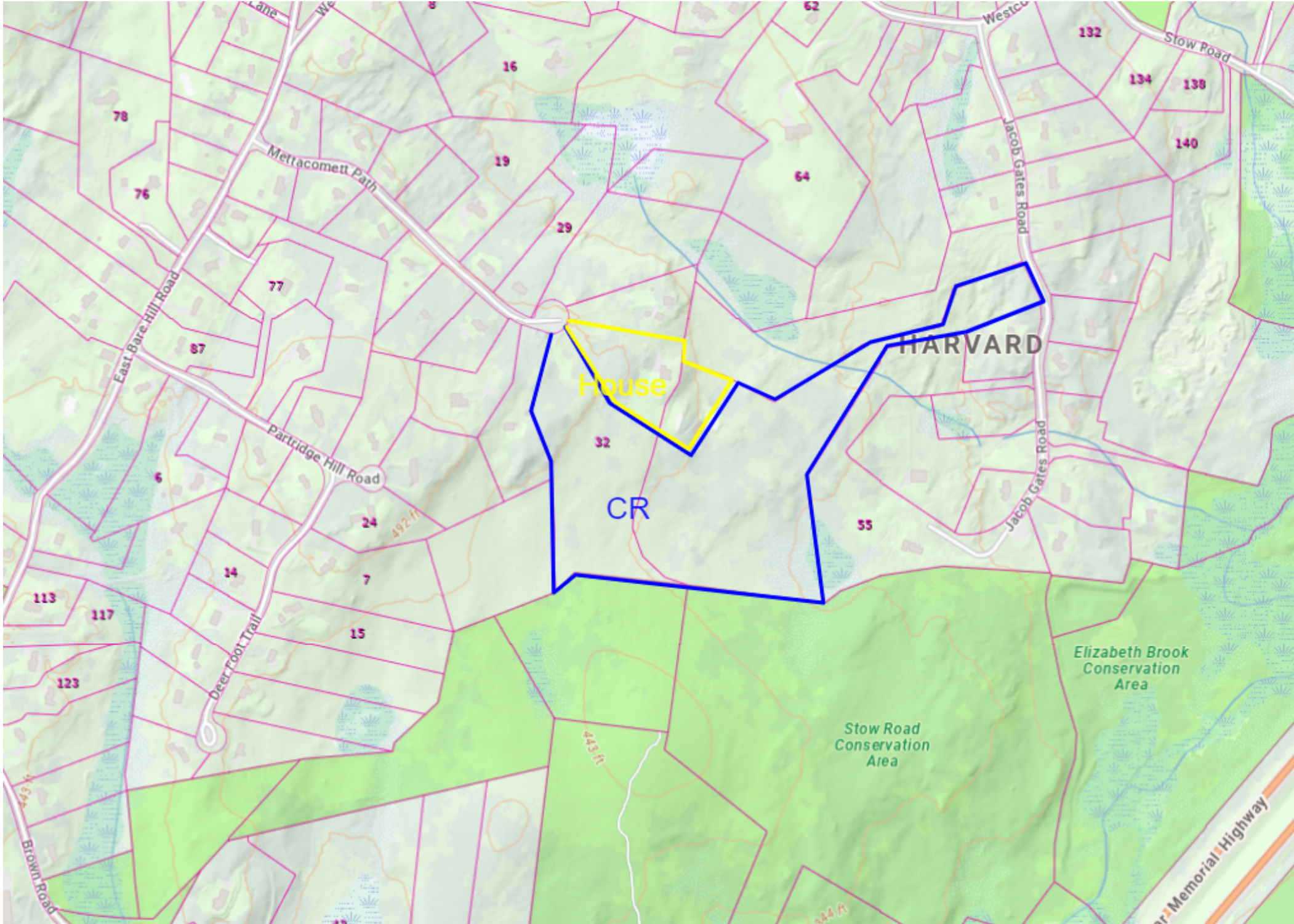
2/22/2023
DATE

Robert T. Conway
SURVEYOR

CONSERVATION RESTRICTION PLAN OF LAND IN
Harvard, Mass.
PREPARED FOR
The Nahid Rathore 2012 Revocable Trust
SCALE: 1"=80' FEBRUARY 2023

David E. Ross Associates, Inc.
CIVIL ENGINEERS - LAND SURVEYORS
ENVIRONMENTAL CONSULTANTS
PO BOX 795-6 LANCASTER COUNTY RD, HARVARD, MA 01451
(TEL. NO. 978-772-6232)
JOB NO. 34122 SHEET 1 OF 1 PLAN NO. L-14623

Rathore Conservation Restriction



Property Tax Parcels

MUNICIPAL CERTIFICATION

We, the undersigned Conservation Commission of the Town of Harvard, hereby certify that the proposed conservation restriction is in the public interest in that:

- 1) The Premises contributes to the protection of the scenic and natural character of Harvard, and the protection of the Premises will enhance the open-space value of these and nearby lands, to include: the Town-owned Tripp Conservation Area and Elizabeth Brook Conservation Area, and nine protected parcels owned by the Harvard Conservation Trust (the so-called Eastern Greenway Central).

- 2) The protection of the Premises will help meet multiple goals listed in the Town of Harvard’s Open Space & Recreation Plan, 2016-2023. Using criteria developed from Harvard’s 2016 Open Space & Recreation Plan, the Harvard Open Space Committee evaluated all unprotected open space to identify the highest priority land for protection, and the Premises ranked in the “Highest Priority” category, based on its areas of ecological significance, connectivity to protected open space, and its wetlands.

- 4) The Premises will allow for trail connections to the existing trail systems on the adjacent Eastern Greenway Central land and the Tripp Conservation Area, and the Premises has the potential to provide additional trail connections to other open space to the north in the future. These connections will improve public access to existing conservation lands while maintaining the ecological integrity of sensitive areas.

Date: _____ Signed: _____

XC home meet schedule FALL 2023

Marisa Steele

Thu 06/22/23 8:19 AM

To:Liz Allard <lallard@harvard-ma.gov>

Cc:Matt Lynde <mlynde@psharvard.org>;twachtelhausen@psharvard.org <twachtelhausen@psharvard.org>

Liz,

Here is the schedule for Bromfield's XC home meets. (There are more meets as Middle School races have been separated from the High School Races

Wed Sept 13

Fri Sept 29

Wed Oct 4

Wed Oct 11

Fri Oct 13

Thur Oct 19

Tues Oct 24

Thur Oct 26

As Always, we will be mowing the perimeter of the field once in late August and possibly one more time based on growing conditions. I will send advance notice of when we plan to mow.

Marisa Steele

**HARVARD CONSERVATION COMMISSION
MINUTES OF MEETING
MARCH 16, 2023**

Chair Don Ritchie called the meeting to order at 7:01pm, virtually, pursuant to Chapter 107 of the Acts of 2022, An Act Relative to Extending Certain COVID-19 Measures Adopted during the State of Emergency, and signed into law on July 16, 2022, under MGL Chapter 131 §40 Wetland Protection Act and Code of the Town of Harvard Chapter 119 Wetland Protection Bylaw

Members Present: Don Ritchie, Eve Wittenberg, Jaye Waldron, Joanne Ward, Jim Burns (arrived at 7:19pm), Mark Shaw, and John Iacomini (Associate Member)

Others Present: Liz Allard (Conservation Agent), Peter Dorward (Open Space Committee), John Lee (Harvard Conservation Trust), Bruce Ringwall (GPR, Inc.), Luke Kirkland, Steve Moeser, Valerie Hurley (Harvard Press), Connie & Michael Woolcock, Walter Ericson, Maureen Herald (Norse Environmental Services, Inc.), Vicki Lociatto, Daniel Carr (Stamski & McNary), Benjamin Thomas, and Rainer Park

Open Space Committee (OSC) Update – Delinquent Tax List

Peter Dorward, chair of the Open Space Committee, stated the Corbett land is no longer tax delinquent and has been removed from the list. There are two parcels adjacent to conservation land on Brown Road that have been added to the tax delinquent list. The OSC has sent an inquiry to the Select Board for the Westchester, Hemphill, O’Donnell, Erickson, and Wildman Realty parcels. Eve Wittenberg asked if the land is taken for free in lieu of back taxes. Mr. Dorward stated that was a good question, but he was unsure of the answer. Ms. Wittenberg asked if any of the parcels have environmental issues? Mr. Dorward was not aware of any. In the past the Commission had been told the back taxes would have to be paid, but recently told that is not the case. Mr. Dorward wanted to confirm that Commission would be willing to be the managers of these lots should they be taken by the Town. Joanne Ward stated another concern would be any outside liens against the properties. Liz Allard asked what the total acreage would be preserved as open space with the taking of these parcels. Mr. Dorward did not have that amount calculated. Mr. Dorward stated there a number of parcels that appear to have no owner information associated with them; some of these parcels have conservation value; no answer yet on how to take these parcels for conservation purposes. Don Ritchie volunteered to help with the necessary research of these parcels.

Joanne Ward made a motion stating the Commission would be willing to manage the parcels described above should they be taken by the Town for unpaid taxes. Eve Wittenberg seconded the motion. The vote was unanimously in favor of the motion by a roll call, Jaye Waldron, aye; Mark Shaw, aye; Joanne Ward, aye; Eve Wittenberg, aye; and Don Ritchie, aye. Note: Jim Burns was not present for this vote.

Violation of the Order of Conditions – 175 Littleton County Road, DEP#177-694, Harvard#0820-04

Bruce Ringwall, of GPR, Inc., representing Luciano Manganella, who sent his sincere apologies for not obtaining the appropriate approval for the installation of the stonewall at the driveway entrance. Mr. Manganella understands he needs permission for activity within 200’ of the pond, but felt with the existing driveway in place and the erosion controls he was not in violation of Order of Conditions. Mr. Manganella realizes he cannot conduct unpermitted activity within the resource areas or their associated buffer zones. Mr. Ringwall stated Mr. Manganella has no problem paying the fine, but is seeking to maintain the stonewalls in their current location, within 75’ of a wetland resource area, by installing additional plantings around the pond. Mr. Ringwall explained the cost associated with the removal of the stonewalls; he asserted that having Mr. Manganella enhance the property with plantings would be more beneficial than removing the stonewalls. Mr. Ringwall added that he believed the upgrades that have been made on the property (e.g., the replacement of an old stone culvert) should carry some weight with the decision of the Commission to remove the stonewalls. Mr. Ringwall stated he would hate to see Mr. Manganella have to go to court to appeal the Enforcement Order.

53 Don Ritchie stated this is not the first time the Commission has issued an Enforcement Order to Mr.
54 Manganella. Each time a violation occurs Mr. Manganella states he will not do it again and receives a
55 virtual slap on the wrist and then he does something again. Mr. Ringwall attempted to review the
56 previous Enforcement Orders issued to Mr. Manganella; Mr. Ritchie declined hearing the list reviewed.
57

58 After debating the previous decision of the Commission, Eve Wittenberg made a motion requiring the
59 property owner at 175 Littleton County Road to remove the stonewalls that were constructed within the
60 75' no structure wetland buffer zone. Joanne Ward made a friendly amendment, that was accepted by
61 Ms. Wittenberg, that there is to be no disruption to the pond during the removal of the stonewalls. Jaye
62 Waldron seconded the motion. The vote was in favor of the motion by a roll call, Jaye Waldron, aye; Jim
63 Burns, aye; Mark Shaw, nay; Joanne Ward, aye; Eve Wittenberg, aye; and Don Ritchie, aye.
64

65 **Request for Determination of Applicability Hearing- Michael & Connie Woolcock, 24 Littleton Road,**
66 **Harvard#0223-02.** Opened at 7:35pm
67

68 **Abbreviated Notice of Resource Area Delineation Hearing - Juno Development corner of Old Mill and**
69 **Ayer Roads (Map 4 Parcels 52, 52.1, 52.2, 53), Harvard#0323-01.** Opened at 7:40pm
70

71 **Continuation of a Notice of Intent Hearing –Rainer Park, 7 Peninsula Road, Harvard#0223-01.** Opened at
72 7:54pm
73

74 **Continuation of a Notice of Intent Hearing – Yvonne Chern, 203 Ayer Road, DEP#177-711,**
75 **Harvard#0322-01.** Opened at 8:14pm.
76

77 **Planning Board Request for Comments - § 125-60. Smart Growth Overlay District**

78 Liz Allard had provided the Commission questions, comments, and suggestions to the proposed Smart
79 Growth Overlay District. Most comments pertain to the processes regulated by the Planning Board,
80 however should provisions associated with Stormwater, Environmental, and Open Space be revised the
81 Commission would request an opportunity to review prior to any final determination by the Planning
82 Board. Members of the Commission wanted clarification as to whether or not wetlands would be
83 counted toward the open space within this district. In addition, it should be clear that additional
84 stormwater should not be directed to the existing systems constructed for Harvard Green.
85

86 Jaye Waldron made a motion to provide the Planning Board the questions, comments, and suggestions to
87 the proposed Smart Growth Overlay District as provided to the Commission this evening. Eve Wittenberg
88 seconded the motion. The vote was unanimously in favor of the motion by a roll call, Jaye Waldron, aye;
89 Jim Burns, aye; Mark Shaw, aye; Joanne Ward, aye; Eve Wittenberg, aye; and Don Ritchie, aye.
90

91 **Allocation of Funding for “Developing an Invasive Plant Management Program” Training**

92 Joanne Ward made a motion to approve the allocation of \$95.00 for Wendy Sisson to attend the above
93 mentioned training session. Eve Wittenberg seconded the motion. The vote was unanimously in favor of
94 the motion by a roll call, Jaye Waldron, aye; Jim Burns, aye; Mark Shaw, aye; Joanne Ward, aye; Eve
95 Wittenberg, aye; and Don Ritchie, aye.
96

97 **Approve Minutes**

98 Eve Wittenberg made a motion to accept the minutes of December 15, 2022 and March 2, 2023 as
99 amended. Mark Shaw seconded the motion The vote was unanimously in favor of the motion by a roll
100 call, Jaye Waldron, aye; Jim Burns, aye; Mark Shaw, aye; Joanne Ward, aye; Eve Wittenberg, aye; and Don
101 Ritchie, aye.
102

103 **Approve Invoices**

104 There were no invoices for approval this evening.
105

106 **Review Amendments of the Memorandum of Understanding for Ann Lees Field from Parks &**
107 **Recreation Commission**

108 After discussing the suggested revisions from the Parks & Recreation Commission, Jim Burns made a
109 motion to accept the Memorandum of Understanding (MOU) for Ann Lees Field as revised. Jaye Waldron
110 seconded the motion. The vote was unanimously in favor of the motion by a roll call, Jaye Waldron, aye;
111 Jim Burns, aye; Mark Shaw, aye; Joanne Ward, aye; Eve Wittenberg, aye; and Don Ritchie, aye.

112
113 The MOU will be shared with P&R with an invite to the April 6th meeting to finalize.

114
115 **Pine Hill Village Update**

116 Liz Allard reported that recent snow has not be stored in approved areas on the site, nor was the site
117 plowed yesterday. Ms. Allard is awaiting confirmation on the material being used within the constructed
118 wetland. Responses to the recent review of the as-built plans and site inspection by Nitsch Engineering
119 was submitted this afternoon. Both the Conservation Agent and the Building Commissioner have a long
120 list of items that need to be addressed prior to the sign-off of Certificates of Occupancy.

121
122 **Adjournment**

123 Jaye Waldron made a motion to adjourn the meeting at 8:48pm. Jim Burns seconded the motion. The
124 vote was unanimously in favor of the motion by a roll call, Jaye Waldron, aye; Jim Burns, aye; Mark Shaw,
125 aye; Joanne Ward, aye; Eve Wittenberg, aye; and Don Ritchie, aye.

126
127 Respectfully submitted,

128
129
130 Liz Allard,
131 Conservation Agent

132
133 **EXHIBITS & OTHER DOCUMENTS**

- 134
135
- 136 • Conservation Commission Agenda, dated March 16, 2023
 - 137 • Delinquent Tax Parcel Recommendations, updated 4/30/2022
 - 138 • Undated photo of driveway entrance at 175 Littleton County Road
 - 139 • Request for Determination of Applicability 24 Littleton Road Harvard, Massachusetts site plan,
140 prepared by Ducharme & Dillis Civil Design Group, Inc., dated 9-12-16
 - 141 • Abbreviated Notice of Resource Area Existing Conditions Old Mill Road, Harvard, MA, prepared
142 for Walter Eriksen 92 Middlesex Road, Tyngsboro, MA 01879 Job 211140 prepared by GRP, Inc.,
November 29, 2021
 - 143 • Sewage Disposal Plan, Rainer Park, 7 Peninsula Road Harvard, MA Map 13 Parcel 26, Job No. SM-
144 6915, prepared by Stamski & McNary, Inc., Feb 13, 2023
 - 145 • Diagram of Tress to be Removed – 7 Peninsula Road, undated
 - 146 • § 125-60 Smart Growth Overlay District
 - 147 • Memorandum of Understanding between the Harvard Conservation Commission and
148 Harvard Parks and Recreation Commission for Ann Lees Field, November 19, 2020
- 149
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Harvard Conservation Commission

158 **Request for Determination of Applicability Meeting Minutes**
159 **Michael & Connie Woolcock, 24 Littleton Road, Harvard#0223-02**
160

161 The public hearing was opened at 7:35pm by Chair Don Ritchie under MGL Chapter 131 §40 Wetland
162 Protection Act and the Code of the Town of Harvard Chapter 119 Wetland Protection Bylaw virtually,
163 pursuant to Chapter 107 of the Acts of 2022, An Act Relative to Extending Certain COVID-19 Measures
164 Adopted during the State of Emergency, and signed into law on July 16, 2022.
165

166 **Members Present:** Don Ritchie, Eve Wittenberg, Jaye Waldron, Joanne Ward, Jim Burns, Mark Shaw, and
167 John Iacomini (Associate Member)
168

169 **Others Present:** Liz Allard (Conservation Agent), and Connie & Michael Woolcock
170

171 This hearing is for a request for Determination of Applicability filed by Michael & Connie Woolcock for the
172 construction of landscaped and hardscaped areas around the existing dwelling within the 100' wetland
173 buffer zone and the 200' riverfront area at 24 Littleton Road, Harvard
174

175 Connie Woolcock detailed the project which will include the installation of the circular and rectangular
176 patio shown on the submitted plan. Although the plan details additional work on the site, this application
177 is only intended to be for the two patios and plantings.
178

179 After clarifying the intent of the application and the acknowledgement of activity with an already
180 disturbed area (lawn) Joanne Ward made a motion to allow for a waiver for the two patios within the 75'
181 no structure setback under the Wetland Protection Bylaw. Eve Wittenberg seconded the motion. The
182 vote was unanimously in favor of the motion by a roll call, Jaye Waldron, aye; Jim Burns, abstained; Mark
183 Shaw, aye; Joanne Ward, aye; Eve Wittenberg, aye; and Don Ritchie, aye.
184

185 Mark Shaw made a motion to close the hearing and issue a Negative #3 Determination of Applicability
186 with the condition that the erosion control barrier shall be inspected by the Conservation Agent or a
187 member of the Commission prior to the commencement of activity. Joanne Ward seconded the motion.
188 The vote was unanimously in favor of the motion by a roll call, Jaye Waldron, aye; Jim Burns, abstained;
189 Mark Shaw, aye; Joanne Ward, aye; Eve Wittenberg, aye; and Don Ritchie, aye.
190

191 Respectfully submitted,
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194 Liz Allard,
195 Conservation Agent
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Harvard Conservation Commission

**Abbreviated Notice of Resource Area Delineation Meeting Minutes
Juno Development corner of Old Mill and Ayer Roads
(Map 4 Parcels 52, 52.1, 52.2, 53), Harvard#0323-01.**

The public hearing was opened at 7:54pm by Chair Don Ritchie under MGL Chapter 131 §40 Wetland Protection Act and the Code of the Town of Harvard Chapter 119 Wetland Protection Bylaw virtually, pursuant to Chapter 107 of the Acts of 2022, An Act Relative to Extending Certain COVID-19 Measures Adopted during the State of Emergency, and signed into law on July 16, 2022.

Members Present: Don Ritchie, Eve Wittenberg, Jaye Waldron, Joanne Ward, Jim Burns, Mark Shaw, and John Iacomini (Associate Member)

Others Present: Liz Allard (Conservation Agent), Walter Ericson, Maureen Herald (Norse Environmental Services, Inc.), and Vicki Lociatto

This hearing is for an Abbreviated Notice of Resource Area Delineation filed on behalf of Juno Development, for the confirmation of the delineation of a Bordering Vegetated Wetland and the Mean Annual High Water of Bower's Brook at corner of Old Mill and Ayer Roads (Map 4 Parcels 52, 52.1, 52.2, 53), Harvard

Maureen Herald, from Norse Environmental, was present to introduced the project and schedule a site visit to review the delineated wetland. Ms. Herald stated the property is made up of four parcels totaling 11.3 acres; the site contains a perennial stream, Bower's Brook, bank, pond, bordering vegetated wetlands (BVW), riverfront area and floodplain. Ms. Herald has flagged the bank, BVW, and 200' riverfront area throughout the property, with the BVW and bank being well defined. A site walk was scheduled for April 8, 2023 at 9:00am.

Joanne Ward made a motion to continue the hearing to April 20, 2023 at 7:30pm. Jaye Waldron seconded the motion. The vote was unanimously in favor of the motion by a roll call, Jaye Waldron, aye; Jim Burns, aye; Mark Shaw, aye; Joanne Ward, aye; Eve Wittenberg, aye; and Don Ritchie, aye.

Respectfully submitted,

Liz Allard,
Conservation Agent

Harvard Conservation Commission

**Continuation of a Notice of Intent Hearing
Rainer Park, 7 Peninsula Road, Harvard#0223-01
March 16, 2023**

The public hearing was opened at 8:02pm by Chair Don Ritchie under MGL Chapter 131 §40 Wetland Protection Act and the Code of the Town of Harvard Chapter 119 Wetland Protection Bylaw virtually, pursuant to Chapter 107 of the Acts of 2022, An Act Relative to Extending Certain COVID-19 Measures Adopted during the State of Emergency, and signed into law on July 16, 2022.

Members Present: Don Ritchie, Eve Wittenberg, Jaye Waldron, Joanne Ward, Jim Burns, Mark Shaw, and John Iacomini (Associate Member)

Others Present: Liz Allard (Conservation Agent), Daniel Carr (Stamski & McNary), and Rainer Park

This hearing was continued from March 2, 2023 for a Notice of Intent filed on behalf of Rainer Park for the replacement of a single-family home, removal of excess pavement, replacement septic system, and removal of barn within the 100' wetland buffer zone and 200' of Bare Hill Pond, at 7 Peninsula Road, Harvard

Daniel Carr, from Stamski & McNary, stated the Department of Environmental Protection has issued a file number and the Fire Department has provided a plan of the trees to be removed for the controlled burn. Mr. Carr stated the difference between the trees that have been suggested to be removed for safety reasons and the ones necessary to be removed for the burn is five. Mr. Carr noted this does not include the trees behind the garage, which also are of a safety concern. When asked about the requested removal of the turn-around on the driveway, Mr. Carr stated the applicant would like to keep it in light of the proposed reduction of impervious areas on the site. After briefly discussing, it was suggested the turn-around within the 50' wetland buffer zone be eliminated and the existing turn-around north of the garage be expanded. Mr. Carr stated there is a tree in the suggested expansion area but agreed to remove the turn-around within the 50' wetland resource buffer zone. As for the comments received from DEP comments, the applicant is removing the proposed dock from the plan; it was requested the Notice of Intent be updated to reflect this update.

Eve Wittenberg made a motion to grant a waiver to the 50' no disturb zone to allow for the removal of the existing barn and storage trailer. Jaye Waldron seconded. The vote was unanimously in favor of the motion by a roll call, Jaye Waldron, aye; Jim Burns, aye; Mark Shaw, aye; Joanne Ward, aye; Eve Wittenberg, aye; and Don Ritchie, aye.

Joanne Ward made a motion to close the hearing and issue an Order of Conditions with the standard special conditions. Mark Shaw seconded the motion. The vote was unanimously in favor of the motion by a roll call, Jaye Waldron, aye; Jim Burns, aye; Mark Shaw, aye; Joanne Ward, aye; Eve Wittenberg, aye; and Don Ritchie, aye.

Respectfully submitted,

Liz Allard,
Conservation Agent

317 **Harvard Conservation Commission**
318 **Continuation of a Notice of Intent Hearing**
319 **Yvonne Chern, 203 Ayer Road, DEP#177-711, Harvard#0322-01**
320 **March 16, 2023**

321
322 The public hearing was opened at 8:14pm by Chair Don Ritchie under MGL Chapter 131 §40 Wetland
323 Protection Act and the Code of the Town of Harvard Chapter 119 Wetland Protection Bylaw virtually,
324 pursuant to Chapter 107 of the Acts of 2022, An Act Relative to Extending Certain COVID-19 Measures
325 Adopted during the State of Emergency, and signed into law on July 16, 2022.

326
327 **Members Present:** Don Ritchie, Eve Wittenberg, Jaye Waldron, Joanne Ward, Jim Burns, Mark Shaw, and
328 John Iacomini (Associate Member)

329
330 **Others Present:** Liz Allard (Conservation Agent)

331
332 This hearing was continued from March 2, 2023 for a Notice of Intent filed on behalf of Yvonne Chern for
333 the construction of commercial structures with associated parking, grading, and drainage within the 100'
334 wetland buffer zone at 203 Ayer Road, Harvard

335
336 At the request of the applicant's representative, Bruce Ringwall, Jim Burns made a motion to continue the
337 hearing to April 6, 2023 at 7:30pm. Jaye Waldron seconded the motion. The vote was unanimously in
338 favor of the motion by a roll call, Jaye Waldron, aye; Jim Burns, aye; Mark Shaw, aye; Joanne Ward, aye;
339 Eve Wittenberg, aye; and Don Ritchie, aye.

340
341 Respectfully submitted,

342
343
344 Liz Allard,
345 Conservation Agent

**HARVARD CONSERVATION COMMISSION
MINUTES OF MEETING
APRIL 6, 2023**

Vice Chair Eve Wittenberg called the meeting to order at 7:00pm, virtually, pursuant to Chapter 2 of the Acts of 2023, An Act Relative to Extending Certain COVID-19 Measures Adopted during the State of Emergency, and signed into law on March 29, 2023, under MGL Chapter 131 §40 Wetland Protection Act and Code of the Town of Harvard Chapter 119 Wetland Protection Bylaw

Members Present: Eve Wittenberg, Paul Willard, Jaye Waldron, Mark Shaw, and John Iacomini (Associate Member)

Others Present: Liz Allard (Conservation Agent), Bob O’Shea (Parks & Recreation Commission), John McCormack (Planning Board Master Plan Liaison), Marisa Steel (Parks & Recreation Commission), Sam Evonuk, Sean & Collin (Chestnut Tree & Landscape) and William Buckley

Amend Enforcement Orders – 175 Littleton County Road to include deadlines on required actions

Jaye Waldron made a motion to amend the Enforcement Order at the above-mentioned location to include a deadline of May 6, 2023 for the removal of the stonewall. Paul Willard seconded the motion. The vote was unanimously in favor of the motion by a roll call, Mark Shaw, aye; Jaye Waldron, aye; Eve Wittenberg, aye; and Paul Willard, aye.

Review Construction Sequence for 90 Warren Ave, DEP#177-719, Harvard#1122-02

As required by the Order of Conditions a construction sequence for 90 Warren Ave has been submitted for the Commission’s review. After briefly discussing, the Commission requested an update on this project be provided at each meeting moving forward.

Review Amendments of the Memorandum of Understanding (MOU) for Ann Lees Field with Parks & Recreation Commission

Bob O’Shea, chair of the Parks & Recreation (P&R) Commission, was present to discuss the final version of the MOU between P&R and the Conservation Commission (ConCom). The ConCom had suggested the item addressing the weed management be removed from the MOU. Mr. O’Shea explained watering is the biggest problem with this field and the need to outcompete weeds in order to maintain a health playing field. Marisa Steel shared information from Matt Benway pertaining to a previous request to draw water from the pond at Ann Lees field for watering purposes. Ms. Steel explained the watering of an arch area behind the bases within the outfield from April to June this year; the overseeding for the rest of the field will be addressed this winter. Weather will dictate the number of times a week the area would need to be watered. Once the seed takes hold watering will stop. After discussing, it was agreed this was not an item to be addressed under the MOU, but part of the generic Order of Conditions previously issued to P&R.

Paul Willard made a motion to approve the Memorandum of Understanding for Ann Lees Field with Parks & Recreation Commission as discussed this evening, dated April 6, 2023. Mark Shaw seconded the motion. The vote was unanimously in favor of the motion by a roll call, Mark Shaw, aye; Jaye Waldron, aye; Eve Wittenberg, aye; and Paul Willard, aye.

Mark Shaw made a motion to allow the use of water from the pond at the Ann Lees field to water the in-field arch area up to four times week for an hour each time. Paul Willard seconded the motion. The vote was in favor of the motion by a roll call, Mark Shaw, aye; Jaye Waldron, aye; Eve Wittenberg, nay; and Paul Willard, aye. Eve Wittenberg made a friendly amendment to the motion requiring watering stop should a drought be declared. Jaye Waldron seconded the amendment. The vote was not in favor of the motion by a roll call, Mark Shaw, nay; Jaye Waldron, aye; Eve Wittenberg, aye; and Paul Willard, nay.

54 **Continuation of a Notice of Intent Hearing – Yvonne Chern, 203 Ayer Road, DEP#177-711,**
55 **Harvard#0322-01.** Opened at 7:44pm.

56
57 **Pine Hill Village Review of Phase 1 & 2 Construction Sequence to allow work within Phase 3**

58 The member reviewed the memorandum provided by the Conservation Agent, with Peter Cricones
59 providing an update to the outstanding items.

60
61 Jaye Waldron made a motion to approve the removal of the tress within Phase 3 with the following
62 conditions: cutting shall take place after the mud season (early to mid-May), as required by the Order of
63 Conditions, and approval of the Conservation Agent prior to the commencement of activity. Paul Willard
64 seconded the motion. The vote was unanimously in favor of the motion by a roll call, Mark Shaw, aye;
65 Jaye Waldron, aye; Eve Wittenberg, aye; and Paul Willard, aye.

66
67 **Request for Determination of Applicability Hearing – Kristin Scarlet Evonuk, 99 Ayer Road,**
68 **Harvard#0323-02.** Opened at 8:00pm

69
70 **Discuss and Ratify Enforcement Order – 320 Ayer Road**

71 Liz Allard detailed the activity at 320 Ayer Road conducted by Chestnut Tree & Landscape, which included
72 more clearing of the site than the original intent when a Special Permit was issued by the Planning Board
73 for this location causing encroachment on the 200' wetland buffer zone of a pond; and activity within the
74 wetland resource area and the 100' wetland resource buffer zone. Violations are against both the
75 Wetland Protection Act and the Harvard Wetland Protection Bylaw. The Enforcement Order issued by Ms.
76 Allard required the fill be pulled back to install an erosion control barrier. Eve Wittenberg added the fill
77 does contain hazard substances visible within the 100' buffer zone including gas cans and what appeared
78 to be round-up. John Iacomini, an abutter, stated he is concerned with a recent oil slick on his pond and
79 where that water is headed beyond him. Mr. Iacomini's understanding was that Chestnut Tree &
80 Landscape would just be storing equipment on the site; which seems to be exceeded. Mr. Iacomini stated
81 the contamination of the buffe zone needs to be looked at in depth; the members agreed.

82
83 Sean, a representative from Chestnut Tree & Landscape, stated Grant McClean, the owner of Chestnut
84 Tree & Landscape, was not available this evening. Sean as he understands it Mr. McClean and Liz Allard
85 have conducted a review of the site detailing what is not allowed and how to rectify the current
86 violations. Sean acknowledged encroachment beyond the original scope presented to the Planning
87 Board. Work to remove fill material has begun and an erosion control barrier has been installed,
88 however not correctly, but progress is being made to address it. In regard to chemicals on-site, that falls
89 on Chestnut Tree & Landscape as they should be stored properly. Mr. Willard stated it is illegal not to
90 have them properly stored. Ms. Wittenberg stated the landscape material stored in the parking area along
91 Ayer Road is within close proximity to the pond, which has been brought to the attention of Mr. McClean
92 previously and not addressed. Ms. Wittenberg is looking for assurance that things will be addressed.
93 Sean stated he understands the severity here and will put forth a work order to get things cleaned up and
94 stored properly; adding this is not how we want to run things. Sean added now that the buffer zone is well
95 marked we are better aware of the areas in which activity cannot occur.

96
97 Liz Allard recommended a Licensed Site Professional be engaged to determine the extent of
98 contamination on the property. Ms. Allard detailed the fines that could be applied for the violations that
99 have and continue to occur on the site. The Commission discussed the requirements of a more stringent
100 Enforcement Order. John McCormack, a member of the Planning Board, indicated this matter has not
101 been referred to Board as of yet, therefore the question of the Commission is are they going to forward
102 information on to the Planning Board. Ms. Allard stated the chair, vice chair and the Town Planner are
103 aware of these events.

105 Paul Willard made a motion to ratify the Enforcement Order issued by the Conservation Agent on March
106 31, 2023. Jaye Waldron seconded the motion. The vote was unanimously in favor of the motion by a roll
107 call, Mark Shaw, aye; Jaye Waldron, aye; Eve Wittenberg, aye; and Paul Willard, aye.
108

109 Paul Willard made motion to issue a new Enforcement Order requiring within 30-days of receipt of the
110 Order a Licensed Site Professional shall provide to the Conservation Commission a written assessment
111 and recommendation to remediate the site. Activity on the site is limited to personal and business-
112 related vehicles only. There shall be no addition or removal of stored material except for the landscape
113 material on the parking lot between Ayer Road and the pond, which shall be removed within 7-days of
114 receipt of the Order. Jaye Waldron seconded the motion. The vote was unanimously in favor of the
115 motion by a roll call, Mark Shaw, aye; Jaye Waldron, aye; Eve Wittenberg, aye; and Paul Willard, aye.
116

117 **Zoning Board of Appeals Request for Comments – 247 Littleton County Road**

118 The Commission had no comments pertaining to this application.
119

120 **Draft Impact Report (DEIR) for Proposed Research/Industrial Park at 1414 Massachusetts Avenue,**
121 **Boxborough**

122 Liz Allard has not had an opportunity to review the material pertaining to this proposed development as
123 of yet and will ask Joanne Ward if she would be interested in taking the lead on this matter for the
124 Commission.
125

126 **Approve Minutes**

127 Minutes were not available for approval this evening
128

129 **Approve Invoices**

130 There were no invoices for approval this evening.
131

132 **Pine Hill Village Status Update**

133 Liz Allard has followed up with Town Counsel in the introduction of invasive plants at the Pine Hill Village
134 site. Attorney Lanza has stated there is a clear violation of the Order of Conditions that states “The seed
135 stock to be used to restore disturbed areas shall complement or contain native flora and be of proven
136 value to local wildlife and shall be approved by the Conservation Commission prior to its use on the
137 project”. The first step in preventing the developer from fully addressing the matter is to issue an
138 Enforcement Order. As time allows, Ms. Allard will draft an enforcement order for the review and
139 approval of the Commission.
140

141 **Adjournment**

142 Paul Willard made a motion to adjourn the meeting at 9:06pm. Mark Shaw seconded the motion. The
143 vote was unanimously in favor of the motion by a roll call, Mark Shaw, aye; Jaye Waldron, aye; Eve
144 Wittenberg, aye; and Paul Willard, aye.
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146 Respectfully submitted,
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149 Liz Allard,
150 Conservation Agent
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EXHIBITS & OTHER DOCUMENTS

- Conservation Commission Agenda, dated April 6, 2023
- Envision Homes – 90 Warren Ave Construction Sequence Phase I, 4/3/223
- Memorandum of Understanding between the Harvard Conservation Commission and Harvard Parks and Recreation Commission for Ann Lees Field, November 19, 2020
- Email from Marisa Steel, to Liz Allard, Subject: Fwd: water/irrigation numbers ONE CORRECTION, 04/06/2023
- Memorandum to Harvard Conservation Commission from Conservation Agent, Subject: Pine Hill Village Request Proceed with Phase 3, April 5, 2023
- Rough Outline prepared by Sam Evonuk, 03/07/2023
- Photos from 320 Ayer Road

DRAFT

Harvard Conservation Commission
Continuation of a Notice of Intent Hearing
Yvonne Chern, 203 Ayer Road, DEP#177-711, Harvard#0322-01
April 6, 2023

The public hearing was opened at 7:44pm by Vice Chair Eve Wittenberg under MGL Chapter 131 §40 Wetland Protection Act and the Code of the Town of Harvard Chapter 119 Wetland Protection Bylaw virtually, pursuant to Chapter 2 of the Acts of 2023, An Act Relative to Extending Certain COVID-19 Measures Adopted during the State of Emergency, and signed into law on March 29, 2023.

Members Present: Eve Wittenberg, Paul Willard, Jaye Waldron, Mark Shaw and John Iacomini (Associate Member)

Others Present: Liz Allard (Conservation Agent)

This hearing was continued from March 16, 2023 for a Notice of Intent filed on behalf of Yvonne Chern for the construction of commercial structures with associated parking, grading and drainage within the 100' wetland buffer zone at 203 Ayer Road, Harvard

At the request of the applicant's representative, Bruce Ringwall, Jaye Waldron made a motion to continue the hearing to April 20, 2023 at 8:30pm. Mark Shaw seconded the motion. The vote was unanimously in favor of the motion by a roll call, Jaye Waldron, aye; Mark Shaw, aye; Paul Willard, aye; and Eve Wittenberg, aye.

Respectfully submitted,

Liz Allard,
Conservation Agent

Harvard Conservation Commission
Request for Determination of Applicability Meeting Minutes
Kristin Scarlet Evonuk, 99 Ayer Road, Harvard#0323-02
April 6, 2023

The public hearing was opened at 8:00pm by Vice Chair Eve Wittenberg under MGL Chapter 131 §40 Wetland Protection Act and the Code of the Town of Harvard Chapter 119 Wetland Protection Bylaw virtually, pursuant to Chapter 2 of the Acts of 2023, An Act Relative to Extending Certain COVID-19 Measures Adopted during the State of Emergency, and signed into law on March 29, 2023.

Members Present: Eve Wittenberg, Paul Willard, Jaye Waldron, Mark Shaw and John Iacomini (Associate Member)

Others Present: Liz Allard (Conservation Agent) and Sam Evonuk

This hearing is for a Request for Determination of Applicability filed by Kristin Scarlet Evonuk for the installation of a fence, plantings, and removal of two trees within the 200' riverfront area within the 100' wetland buffer zone and the 200' riverfront area at 99 Ayer Road, Harvard

Sam Evonuk explained a site visit with the Commission took place some time ago, with not much change from that visit to the proposed plan. Pertaining to the request to remove two trees, one is dead and leaning towards the roadway, and the other, at the driveway entrance, is not well, but Mr. Evonuk is happy to leave it until it becomes a problem. Additionally, bushes have been added to fill in the privacy gap on the north side of the driveway. Liz Allard mentioned a comment received from the Department of Environmental Protection pertaining to work within the floodplain. Ms. Allard further discussed these comments with the Building Commission, who agreed the fence, as proposed, would not impede the flow of water during a flooding situation.

Jaye Waldron made a motion to close the hearing and issue a Negative #3 Determination of Applicability with the condition that the Conservation Agent be notified when the tree(s) are to be removed. Mark Shaw seconded the motion. The vote was unanimously in favor of the motion by a roll call, Mark Shaw, aye; Jaye Waldron, aye; Paul Willard, aye; and Eve Wittenberg, aye.

Respectfully submitted,

Liz Allard,
Conservation Agent

**HARVARD CONSERVATION COMMISSION
MINUTES OF MEETING
JUNE 15, 2023**

Chair Don Ritchie called the meeting to order at 7:00pm, virtually, pursuant to Chapter 2 of the Acts of 2023, An Act Relative to Extending Certain COVID-19 Measures Adopted during the State of Emergency, and signed into law on March 29, 2023, under MGL Chapter 131 §40 Wetland Protection Act and Code of the Town of Harvard Chapter 119 Wetland Protection Bylaw

Members Present: Don Ritchie, Eve Wittenberg, Jaye Waldron, Joanne Ward, Jim Burns (7:17pm), and Mark Shaw

Others Present: Liz Allard (Conservation Agent), Bob Douglas (Deer Management Subcommittee), Saulo Stewart and Danya Sclar

Discuss Strategic Planning Session

A strategic planning session has been suggested to be scheduled for the month of July. Members have been asked to provide dates they are not available during the month of July by the end of next week. Liz Allard will narrow-down possible dates and times in a doodle poll to be sent out the last week of June.

Land Stewardship Re-appointments – Jim Burns & Brian McClain

Joanne Ward made a motion to re-appoint Jim Burns and Brian McClain to the Land Stewardship Subcommittee each for a three-year term to expire June 30, 2026. Jaye Waldron seconded the motion. The vote was unanimously in favor of the motion by a roll call, Mark Shaw, aye; Jaye Waldron, aye; Joanne Ward, aye; Eve Wittenberg, aye; and Don Ritchie, aye.

Approve Minutes

Jaye Waldron made a motion to approve the minutes of February 16, 2023 as amended. Mark Shaw seconded the motion. The vote was unanimously in favor of the motion by a roll call, Mark Shaw, aye; Jaye Waldron, aye; Joanne Ward, aye; and Eve Wittenberg, aye.

Approve Invoice

Eve Wittenberg made a motion to approve the following invoices:

- Beals & Thomas, \$5886.25 (March & May)
- Blue Seal Feeds & Needs, \$611.92 (Haskell Land seed)

Jaye Waldron seconded the motion. The vote was unanimously in favor of the motion by a roll call, Mark Shaw, aye; Jaye Waldron, aye; Joanne Ward, aye; and Eve Wittenberg, aye.

Continuation of a Notice of Intent Hearing – Bare Hill Pond Watershed Management Committee, Harvard#0523-03. This item was on the agenda in error; the hearing was actually continued to July 6, 2023 at 7:30pm

Request for Determination of Applicability Hearing – Saulo Stewart, 99 Depot Road, Harvard#0523-05. Opened at 7:35pm

Review Proposed Chapter 125-35 Open Space Residential Development Bylaw

Members have not fully reviewed the proposed amendments as of yet, but will do so for discussion at the July 6th meeting.

Review Deer Management Annual Process and Procedures

Don Ritchie stated the process and procedures as drafted may be over-management of the Deer Management Subcommittee (DMS). Joanne Ward stated the meetings, as scheduled, have been a bit

53 erratic; recently two meetings were scheduled on back-to-back evenings making it difficult for members
54 to attend. Mark Shaw suggested the members of DMS should be asked their opinion of the meeting
55 scheduled. Eve Wittenberg stated the development of this document was a reaction to the events that
56 occurred in late 2022 pertaining to the sharing of information with the Conservation Agent. Ms. Ward
57 agreed, adding issues with the process or procedures should be brought to the Conservation Commission
58 first and then, if unresolvable, to the Select Board.

59
60 In regard to record keeping, Mr. Ritchie does not think the Conservation Commission (ConCom) needs all
61 of the information on the hunters within the program. Jaye Waldron disagreed, stating the ConCom
62 should have all of the information for their records. Ms. Wittenberg and Ms. Ward agreed, with Ms.
63 Wittenberg stating she was not interested maintain a record of each hunter's qualifying information but
64 the additional information on the hunters should be maintained with the Town via the ConCom staff. Ms.
65 Ward inquired about the requirements for re-qualifying to participate in the program.

66
67 The submittal of the updated annual checklist reflecting the schedule for activities for the upcoming year
68 was discussed at length; conclusion was that the March 31st date for final submittal of the checklist with
69 dates was accurate, and completion of items would proceed from that date forward through to the
70 following year. The mission of the DMS was discussed, which brought to the attention of the ConCom
71 that it should be revised to reflect the on-going program as opposed to the development of the program.

72
73 A revised draft, as discussed this evening, will be provided to the DMS for an opportunity to discuss as a
74 Subcommittee, with a joint meeting with the ConCom to follow. Information about the re-qualification
75 process will be requested from DMS as well.

76 77 **Update on Enforcement Order – 320 Ayer Road**

78 Grant McClean is discussing with the property owner the possibility of sharing the cost to have the
79 wetland delineation surveyed for the development of a site plan. Mr. McClean has not filed an
80 application with the Planning Board as of yet. The logs that were to the right of the access road have
81 been split, presumably for chipping.

82 83 **Pine Hill Village Status Update**

84 Peter Cricones had requested the Phase 3 clearing begin this week, however with rain predicted for most
85 of the week this request was denied. Mr. Cricones will begin clearing for Phase 3 this coming week, but
86 has been informed he may be delayed on Tuesday as there is a potential for rain on Monday evening.
87 With Monday June 19th being a holiday, the clearing cannot start until Tuesday.

88 89 **Adjournment**

90 Jim Burns made a motion to adjourn the meeting at 8:13pm. Mark Shaw seconded the motion. The vote
91 was unanimously in favor of the motion by a roll call, Jim Burns, aye; Mark Shaw, aye; Jaye Waldron, aye;
92 Joanne Ward, aye; Eve Wittenberg, aye; and Don Ritchie, aye.

93
94 Respectfully submitted,

95
96
97 Liz Allard,
98 Land Use Administrator/
99 Conservation Agent

100 101 **EXHIBITS & OTHER DOCUMENTS**

- 102 • Conservation Commission Agenda, dated June 15, 2023
- 103 • Harvard Conservation Commission Policies and Procedures for Deer Management Subcommittee
- 104 Draft for Discussion Purposes, May 30, 2023

- Conservation Commission & Deer Management Subcommittee 2022 Annual Checklist

Harvard Conservation Commission
Request for Determination of Applicability Hearing Meeting Minutes
Saulo Stewart, 99 Depot Road, Harvard#0523-05
June 15, 2023

The public hearing was opened at 7:35pm by Chair Don Ritchie under MGL Chapter 131 §40 Wetland Protection Act and the Code of the Town of Harvard Chapter 119 Wetland Protection Bylaw virtually, pursuant to Chapter 2 of the Acts of 2023, An Act Relative to Extending Certain COVID-19 Measures Adopted during the State of Emergency, and signed into law on March 29, 2023.

Members Present: Don Ritchie, Eve Wittenberg, Jaye Waldron, Joanne Ward, Jim Burns, and Mark Shaw

Others Present: Liz Allard (Conservation Agent), Saulo Stewart and Danya Sclar

This hearing is for a Request for Determination of Applicability filed by Saulo Stewart, for the replacement of an existing deck within the 100' wetland buffer zone at 99 Depot Road, Harvard

Saulo Stewart detailed the plan to remove the existing deck and replace it with new deck within the same footprint. New footings will be installed as the existing ones are not conforming to building code. A site walk was conducted last week with members of the Commission.

Jim Burns motion to close the hearing and issue a Negative #2 Determination. Jaye Waldron seconded the motion. The vote was unanimously in favor of the motion by a roll call, Jim Burns, aye; Mark Shaw, aye; Jaye Waldron, aye; Joanne Ward, aye; and Eve Wittenberg, aye.

Respectfully submitted,

Liz Allard,
Conservation Agent



2 Center Plaza, Suite 430
 Boston, MA 02108-1928
 T: 617-338-0063
 F: 617-338-6472
www.nitscheng.com

Chris Tracey
 Town of Harvard
 Zoning Board of Appeals
 13 Ayer Road
 Harvard, MA 01451

June 13, 2023
 Project No: 12808.
 Invoice No: 82038

Project 12808. 40B - Pine Hill Villge
 Provide review and comment in Field Report on As-Built plans for Phases 1 and 2
Professional Services from April 30, 2023 to May 27, 2023

Task 002 Construction Administration 50%

Fee			
Total Fee	24,800.00		
Percent Complete	99.00	Total Earned	24,552.00
		Previous Fee Billing	24,304.00
		Current Fee Billing	248.00
		Total Fee	248.00
		Total this Task	\$248.00
		Total this Invoice	\$248.00

Massachusetts Association of Conservation Commissions

**10 Juniper Road
Belmont, MA 02478**

MACC ANNUAL DUES Fiscal Year 2024

Date	Invoice #
7/1/2023	FY240125

Harvard Conservation Commission
13 Ayer Road
Harvard, MA 01451

Description	Amount
<p>MACC Dues for Fiscal Year July 1, 2023 to June 30, 2024</p> <p>Please pay upon receipt.</p> <p>The invoiced amount provides MACC membership for all voting conservation commissioners, including those commissioners who join the commission during the year. It does not include MACC Membership for associate commissioners or commission staff.</p> <p>You may add MACC membership for associate commissioners and commission staff at \$60 per person. Those memberships are transferable if staff or associate membership changes during the year.</p> <p>Conservation commission dues are based on a formula derived from your municipality's median family income and population. Dues are unrelated to the number of commissioners.</p> <p>Membership benefits will be suspended if payment is not made by August 30, membership will be reinstated when dues are paid.</p> <p>Thank You!</p>	809.00
<p>ADD \$60 FOR EACH ADDITIONAL PERSON (ASSOCIATE COMMISSIONERS & STAFF)</p>	Subtotal \$809.00
<p>ADD \$20 FOR EACH E-HANDBOOK SUBSCRIPTION Please notify staff@macweb.org of subscribers' names and email addresses.</p>	<p>Amount for additional Memberships</p> <p>Subscription Amount</p> <p>Total</p>

TURNER LANE ASSOCIATION
Harvard, MA

June 26, 2023

Town of Harvard
Conservation Commission
13 Ayer Road
Harvard, MA 01451

January 1, 2023 Turner Lane Road Assessment \$260.00

As of June 13, 2023 we have a balance in our Santander account of \$5,331.24. We have a bill from Lazaro for Fine Grade and Compact in the amount of \$3,200. There are 20 properties including the Town of Harvard, Girl Scouts, Turner Family and Minister's Island that use the road.

So \$3,200 divided by 20 is \$160. Adding another \$100 to save toward hot top makes \$260 the 2023 road maintenance fee.

The hot top needs some attention so,,if you would like to have a meeting, please let us know.

Very truly yours,



Jane L. Sawyer, Treasurer
P O Box 39
Berlin, MA 01503

978-838-0376

jls

TOWN OF HARVARD

Expense, Travel and Conference Reimbursement Request

Name: Liz Allard DEPARTMENT: Land Use DATE: 06/30/2023

CONFERENCE REIMBURSEMENT INSTRUCTIONS

- 1) Please attach an agenda summary with event dates; required for overnight reimbursement.
- 2) Please attach itemized cash and credit card receipts.
- 3) Do not include non-conference local travel; see bottom section.
- 4) Advance payment by personal credit card not permitted.

DATE: _____ LOCATION: _____

PURPOSE/EVENT: _____

Date:	Mon	Tue	Wed	Thu	Fri	Sat	Sun	Total
Hotel								\$ -
Registration								\$ -
Breakfast								\$ -
Lunch								\$ -
Dinner								\$ -
Taxi-Limousine								\$ -
Public Transportation								\$ -
Mileage (@ 48.5 cents)								\$ -
Telephone (Business Only)								\$ -
Parking and Tolls								\$ -
Air Fare								\$ -
Other								\$ -
CONFERENCE SUBTOTAL								\$ -

EXPENSE REIMBURSEMENT

Vendor:	Purpose:				
	Purpose:		\$		-
Vendor:	Purpose:		\$		-
Vendor:	Purpose:		\$		-
EXPENSE SUBTOTAL					\$ -

LOCAL TRAVEL REIMBURSEMENT

(for local, non-conference travel only)

Purpose: Site Walks & Inspections	Location/Date: See Attached	192.9	Miles @ .655¢	\$	126.35
Purpose:	Location/Date:	0	Miles @ .655¢	\$	-
Purpose:	Location/Date:	0	Miles @ .655¢	\$	-
Purpose:	Location/Date:		Miles @ .655¢	\$	-
Purpose:	Location/Date:		Miles @ .655¢	\$	-
LOCAL TRAVEL SUBTOTAL					\$ 126.35

TOTAL REIMBURSEMENT: \$ 126.35

Signature: _____
Traveler

Approved: _____
Supervisor

Mileage Log



Total mileage recorded: 192.9

Date	Location	Purpose	From	To	To	Commission/ Board	Mileage
1/4/2023	94 Ayer Road	Certificate of Compliance Inspection	13 Ayer Road	94 Ayer Road	13 Ayer Road	ConCom	1.6
1/10/2023	Various	Site Review & Inspections	13 Ayer Road	99 Ayer Road	30 Cruft Lane	ConCom	2.5
			30 Cruft Lane	Pine Hill Way	13 Ayer Road	ConCom	8.5
1/12/2023	Harvard Park	Site Review	13 Ayer Road	Lancaster County Road - McCurdy Track	13 Ayer Road	ConCom	4.2
1/24/2023	99 Ayer Road	Site Walk	13 Ayer Road	99 Ayer Road	13 Ayer Road	ConCom	1.6
1/24/2023	7 peninsula Road	Site Review	13 Ayer Road	7 Peninsula Road	13 Ayer Road	ConCom	4.0
2/1/2023	134 Old Littleton County Rd	Erosion Conrol Inspection	13 Ayer Road	134 Old Littleton Rd	13 Ayer Road	ConCom	3.0
2/9/2023	Various	Site Review	13 Ayer Road	79 Whitney Road	7 Peninsula Rd	ConCom	4.3
			7 Peninsula Road	13 Ayer Road		ConCom	2.0
2/13/2023	55 Warren Ave	Site Walk	13 Ayer Road	55 Warren Ave	13 Ayer Road	ConCom	2.2
2/16/2023	Pine Hill Village	Site Inspection	13 Ayer Road	Pine Hill Way	13 Ayer Road	ConCom	7.2
3/1/2023	90 Warren Ave	Site walk	13 Ayer Road	90 Ayer Road	13 Ayer Road	ConCom	1.4
3/8/2023	175 Littleton County Road	Site Inspection	13 Ayer Road	175 Littleton County Road	13 Ayer Road	ConCom	5.8
3/13/2023	24 Littleton Road	Site walk	13 Ayer Road	24 Littleton Road	13 Ayer Road	ConCom	0.8
3/16/2023	32 Whitman Road	Site review	13 Ayer Road	32 Whitman Road	13 Ayer Road	ConCom	1.4
3/23/2023	115 Clinton Shore Drive	Tree Inspection	13 Ayer Road	115 Clinton Shore Drive	13 Ayer Road	ConCom	6.8
3/29/2023	Varoius	Site Review & Erosion Control Inspection	13 Ayer Road	Lancaster County Road - McCurdy Track	24 Littleton Road	ConCom	4.7
			24 Littleton Road	13 Ayer Road		ConCom	0.4
3/31/2023	Varoius	Site Inspections & Wetland Violation	13 Ayer Road	320 Ayer Road	73 Bolton Road	ConCom	7.0
			73 Bolton Road	13 Ayer Road		ConCom	1.2
4/3/2023	320 Ayer Road	Wetland Violation	13 Ayer Road	320 Ayer Road	13 Ayer Road	ConCom	5.8
4/5/2023	Various	Site Inspevtions & Wetland Violation	13 Ayer Road	Pine Hill Way	320 Ayer Road	ConCom	10.1
			320 Ayer Road	13 Ayer Road		ConCom	2.9
4/6/2023	90 Warren Ave	Pre-construction meeting	13 Ayer Road	90 Warren Ave	13 Ayer Road	ConCom	3.0
4/10/2023	90 Warren Ave	Erosion Conrol Inspection	13 Ayer Road	90 Warren Ave	13 Ayer Road	ConCom	3.0
4/13/2023	43 Brown Road	Site Walk	13 Ayer Road	43 Brown Road	13 Ayer Road	ConCom	6.0
4/19/2023	Pine Hill Village	Water Sampling	13 Ayer Road	Pine Hill Way	13 Ayer Road	ConCom	7.2
5/8/2023	Pine Hill Village	Site Inspection	13 Ayer Road	Pine Hill Way	13 Ayer Road	ConCom	7.2
5/9/2023	Various	Site & Tree Inspections	13 Ayer Road	90 Warren Ave	12C Trail Ridge way	ConCom	6.6
			12C Trail Ridge	13 Ayer Road		ConCom	3.1
5/15/2023	Various	Site Walks	13 Ayer Road	320 Ayer Road	30 Cruft Lane	ConCom	5.9
			13 Ayer Road			ConCom	1.6
5/16/2023	79 Whitney Road	Erosion Conrol Inspection	13 Ayer Road	79 Whitney Road	13 Ayer Road	ConCom	2.2
#	Various	Erosion Conrol Inspection	13 Ayer Road	7 Peninsula Road	131 Bolton Rd	ConCom	2.8
			131 Bolton Road	13 Ayer Road		ConCom	1.7
5/24/2023	Various	Site & Erosion Control Inspections	13 Ayer Road	7 Peninsula Road	90 Warren Ave	ConCom	2.3
			90 Warren Ave	13 Ayer Road		ConCom	1.5
5/30/2023	67 Warren Ave	Tree Inspection	13 Ayer Road	67 Warren Ave	13 Ayer Road	ConCom	2.6
6/1/2023	Pine Hill Village	Erosion Conrol Inspection	13 Ayer Road	Pine Hill Way	13 Ayer Road	ConCom	7.2
6/6/2023	Various	Site Reviw & Walk	13 Ayer Road	53 Turner Lane	99 Depot Road	ConCom	3.6
			99 Depot Road	13 Ayer Road		ConCom	1.2
6/9/2023	15 Woodchuck Hill Rd	Tree Inspection	13 Ayer Road	15 Woodchuck Hill Rd	13 Ayer Road	ConCom	1.6
6/9/2023	320 Ayer Road	Enforcement Compliance	13 Ayer Road	320 Ayer Road	13 Ayer Road	ConCom	5.8
6/15/2023	175 Littleton County Road	COC Inspection	13 Ayer Road	175 Littleton County Road	13 Ayer Road	ConCom	5.8
6/26/2023	Pine Hill Village	Site Inspection	13 Ayer Road	Pine Hill Way	13 Ayer Road	ConCom	7.2
6/27/2023	Pine Hill Village	Site Inspection	13 Ayer Road	Pine Hill Way	13 Ayer Road	ConCom	7.2
6/30/2023	Pine Hill Village	Site Inspection	13 Ayer Road	Pine Hill Way	13 Ayer Road	ConCom	7.2

ARTICLE XX: AMEND CHAPTER 125-352, DEFINITIONS, OF THE PROTECTIVE BYLAW-Open Space and Conservation – Planned Residential Development (OSC-PRD)
To see if the Town will vote to amend Chapter 125-35-2, Definitions, Open Space and Conservation – Planned Residential Development (OSC-PRD)
of the Protective Bylaw, by making the following revisions thereto, or pass any vote or votes in relation thereto.
 [Key to revisions: underlining = additions; ~~strike~~through = deletions]

§ 125-35. Open Space and Conservation - Planned Residential Development (OSC-PRD).

[Added 3-29-2003 ATM by Art. 32¹]

This section establishes and regulates Open Space and Conservation Planned Residential Development (OSC-PRD). Development under this section is pursuant to a special permit granted by the Planning Board.

A. Purpose and intent. The purpose and intent of the OSC-PRD provision is to permit high-quality residential development that preserves open space, water resources, wetlands, habitat, prime agricultural land, scenic landscapes and natural features, reduces infrastructure and site development cost, and promotes a diversity of housing opportunities within the Town, while respecting and enhancing neighborhoods, and promoting attractive standards of appearance and aesthetics consistent with Town character.

- (1) A further purpose of the OSC-PRD provision is to reduce the anticipated negative fiscal impact on the Town associated with conventional residential development.
- (2) The OSC-PRD provision is designed to encourage the siting of homes in a manner that clusters units together in well-designed village settings, on buildable portions of the site, as a distinct alternative to the more arbitrary siting associated with ~~lot-by-lot~~lot-by-lot development typically reflected in plans submitted pursuant to Massachusetts General Laws Chapter 41, Sections 81K through 81GG, the Subdivision Control Law.
- (3) The OSC-PRD will aid the Town in developing sustainable housing and associated infrastructure in harmony, where feasible as much as possible, with the Town's Climate Action Plan.

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¹ Editor's Note: This article also repealed former § 125-35. Cluster development for open space conservation, added 3-31-1990 ATM by Art. 18, as amended.

B. Applicability. The Planning Board may grant a special permit for an OSC-PRD on an Agricultural-Residential (AR) zoned tract of land ~~that is at least 4.5 acres of land area~~ with definite boundaries ascertainable from a recorded or registered deed(s) or recorded or registered plan(s). Existing public and private ways need not constitute boundaries of the tract, but the area within such ways shall not be counted in determining tract size.

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(1) **Permitted uses in Open Space and Conservation Planned Residential Development.** Permitted uses include the following:

- (a) Single-family detached dwellings.
- (b) ~~Attached units, not to exceed 6 or more units in any single building.~~
Multi-family dwellings.
- (c) Agriculture and horticultural uses including but not limited to orchards, vineyards, forestry, farming for fruits and vegetables.
- (d) Open space.
- (e) Trails.
- (f) Passive outdoor recreation, cf. 301 Mass. Reg. 5.02, as defined by 301 CMR 5.02. ~~Passive recreation~~
- (g) Educational and religious uses and other uses not mentioned above which are exempt from regulation by zoning under Massachusetts General Laws Chapter 40A, Section 3.
- (h) Accessory residential recreational uses (e.g., tennis court, pool, playground).
- (i) Active outdoor recreation, cf. 301 Mass. Reg. 5.02as defined by 301 CMR 5.02.

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C. Requirements and process for approval. An applicant who is the owner (or with the permission of the owner) ~~of a 4.5 acre or larger tract~~ of land in the AR District as described above, may submit to the Planning Board a plan and application for a special permit for an OSC-PRD in accordance with the provisions of this section, excepting the building lots or lot shown on such plans from the lot area and other dimensional requirements specified in other sections of this Bylaw. While a subdivision plan is not required to be submitted in conjunction with the provisions of this section, in the event that a subdivision plan is being proposed by the applicant, such plan shall be submitted to the Planning Board in accordance with

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the Subdivision Rules and Regulations of the Planning Board, [Chapter 133 of the Code of the Town of Harvard](#).

- (1) **Submittal requirements.** Prior to the granting of a special permit pursuant to this section, a duly submitted application for said special permit shall be submitted together with a site plan to the Planning Board, in accordance with § 125-38, Site plans, of the Bylaw, and any Site Plan Rules and Regulations adopted by the Planning Board, [Chapter 133 of the Code of the Town of Harvard](#). For purposes of this Bylaw, a landscape architect, architect, land surveyor, and professional engineer must participate in the preparation of such site plan, which shall include the following:
- (a) The location of the proposed development.
 - (b) The size of the site in acres.
 - (c) The total number of the proposed buildings and/or lots, and the size of each in square feet.
 - (d) The acreage and proposed use of permanent open space.
 - (e) A statement on the disposition or manner of ownership of the proposed open space.
 - (f) The lots or areas which are to be used as building areas or lots, and the lots or areas which are to remain as permanent open space.
 - (g) Lines showing yard and setbacks as required by this Bylaw, within which dwellings or structures must lie.
 - (h) Sufficient detail of proposed built and natural features as described in § 125-35D and § 125-35E to enable the Planning Board to make the required determinations of § 125-35C(3).
 - (i) A landscape preservation plan sheet(s) to be included with the site plan, reflecting the existing, natural features to be preserved and proposed landscape features and details.²
 - (i) Site Development Climate Mitigation Plan. All features which are sustainable and designed to help mitigate climate impact should be included in this plan. This plan should specifically address, but not be limited to, the following areas.

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² Editor's Note: See Ch. 130, Subdivision Control.

[1]. Heating and Cooling. How the development will be heated and cooled. The plans to use heat pumps or a geothermal system to heat and cool the buildings. Electrification of all systems and appliances.

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[2]. Energy Generation. Solar panels should be considered to the maximum extent. Include how much power they will provide both in absolute kilowatt-hours and as a percentage of the total electricity requirements.

[3]. Energy Use and Resource Use Minimization. Roofing, insulation and windows that minimize heat loss and cooling loss. LED lights should be installed in all common areas. Water-saving fixtures should be installed in units as well as for landscaping.

[4]. Parking. Electric Vehicle chargers installed with infrastructure to expand capacity based on anticipated growth. Include percentage of the anticipated automobile population that will be served by the chargers and the anticipated expansion readiness. Parking to be pervious to reduce runoff.

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[5]. Landscaping. Any trees removed from the site to be replaced with trees of equal size or compensated by more trees than removed. Shade trees be planted in areas to offset heat from parking areas. Drought-tolerant and native plants to be used in the landscaping.

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[6]. Site Infrastructure. Composting and recycling stations available to all residents. Rain water collection site to reduce water usage.

(2) **Submittal of preliminary plan.** ~~In order to assist the Planning Board in making a determination, pursuant to § 125-35C(3)(d), that an OSC-PRD is superior to a conventional subdivision development,~~ An applicant must submit a plan of the required form and content standards as a "Preliminary Plan" in accordance with the Massachusetts General Laws Chapter 41, Section 81S and ~~the "Rules and Regulations of the~~ Harvard Planning Board ~~Relative to Subdivision Control."~~ governing laws for Subdivision Plans. Chapter 130 of the Code of the Town of Harvard. Such plan, although not a formal subdivision plan filing, and submitted for conceptual purposes only, shall include a perimeter survey prepared by a registered land surveyor, location of wetlands ~~delineated by a wetlands~~ ~~specialist,~~ and topography based upon the most recent United States Geological Survey map. The applicant shall demonstrate to the satisfaction of the Board that a subdivision plan, if formally filed, would be buildable without reliance on significant waivers of the subdivision regulations. ~~and without extraordinary engineering techniques. Further, the applicant must demonstrate and provide sufficient evidence, to the satisfaction of the Planning Board, that each of the lots reflected on the "Preliminary Plan"~~

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~~submitted are capable of being served by an individual sewage system that would comply with the regulations of the Board of Health.~~

- (3) **Approval criteria.** After notice and a public hearing in accordance with Massachusetts General Laws Chapter 40A, Section 9, 11, and 15 and after following the procedure outlined in this Bylaw, the Planning Board may grant such a special permit with any conditions, safeguards, and limitations, if it determines:
 - (a) That the application form and content referred to in § 125-35C(1), herein is properly completed.
 - (b) That the site plan referred to in § 125-35C(1) is properly completed.
 - (c) That all the other requirements of this Section and Bylaw are fully met.
 - (d) That the design and layout of the proposed OSC-PRD ~~is superior to a conventional subdivision plan in~~ preserves open space for conservation and recreation; that it preserves natural features of the land; allows more efficient provision of streets, utilities and other public services; and, that it provides a high degree of design quality, based on the criteria and considerations enumerated herein in § 125-35E.
 - (e) That if development of single family homes is being proposed on separate lots, as opposed to a clustered village concept that is a major objective of this Bylaw, exemplary site planning is demonstrated, and other determinations in § 125-35D, are met.

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^[2]
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D. Design criteria. In its consideration of an OSC-PRD, the Planning Board shall give particular attention to, and shall use as a basis for its decision, all of the following:

- (1) Lots, streets, off-street parking, sidewalks, pathways and buildings which achieve the harmonious integration of the proposed development with surrounding properties.
- (2) Overall layout and design that achieves the ~~best possible~~ relationship between the proposed development and the land under consideration.
- (3) Appropriately sized and configured open spaces for active or passive recreation, and where possible, links to adjoining common open space areas.

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- (4) Protection of natural features such as streams, mature trees or clusters of trees, rock outcrops, bluffs, slopes, high points, views, vistas, and historic or archeological features.
- (5) Provision of buffer areas, composed of existing vegetation, to surround building groupings and building envelope areas, to discourage site clearing and encourage preservation of existing land cover and mature vegetation.
- (6) Provision of ~~access to open spaces for the physically handicapped, elderly, and children~~ accessibility to open spaces for all, consistent with Massachusetts Architectural Access Board 521 CMR Accessibility Guidelines.
- (7) Use of open spaces for preserving, enhancing, or providing scenic vistas; preservation and protection of historic resources.
- (8) Adequacy of provisions for public safety, protection from fire and flood, and maintenance of public facilities, streets, utilities, and open space.
- (9) Consistent with the Town of Harvard Climate Action Plan, with sufficient conservation and sustainability in the design of the development.

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E. Design quality. Project design for an OSC-PRD shall be reviewed by the Planning Board with input from Town officials, any review consultant(s), and others as appropriate. This section is to be interpreted as guidelines to be applied flexibly by the Planning Board as appropriate to the situation under review, including factors such as foundation and soil characteristics and other extraordinary site constraints. While these guidelines apply to all site improvements and buildings and structures, it is not the intent of this section to prescribe or proscribe use of materials or methods of construction regulated by the state building code, but rather to enhance the appearance of the built environment within an OSC-PRD.

- (1) **Building and structure placement.** The placement of buildings and structures in an OSC-PRD should:
 - (a) Provide for maximum buffering of buildings and structures to adjoining properties either within the proposed OSC-PRD or to adjacent land uses. Such buffering includes, but is not limited to: landscaping, screening materials, natural barriers, fencing, and related measures.
 - (b) Preserve attractive views from major vantage points, especially from major thoroughfares and residential neighborhoods.
 - (c) Avoid regular spacings and building placements that will be viewed as continuous walls from important vantage points, which may be identified in an OSC-PRD pre-application conference.

- (d) Avoid the placement of structures, common area facilities, and private space related to individual units in a manner that eclipses views or access to open space areas described in § 125-35K.
- (e) Ensure that ~~10% of all units are fully accessible to the disabled and that a majority of units have at least one accessible entrance and bathroom on a first floor~~, an appropriate number of units, as detailed below, are designed to be fully accessible consistent with Massachusetts Architectural Access Board 521 CMR Accessibility Guidelines.
 - [1] If greater than 4 but fewer than 10 units, one unit must be accessible.
 - [2] If greater than 10 and fewer than 19, two units must be made accessible.
 - [3] For more than 20 units, 10% must be made accessible.
- (2) **Building massing/articulation.** The massing/articulation of buildings should:
 - (a) Avoid unbroken building facades longer than 50 feet.
 - (b) Provide human-scale features, especially for pedestrians and at lower levels.
 - (c) Avoid unarticulated and monotonous building facades and window placement.
- (3) **Building appearance and treatment.** To the extent not inconsistent with or pre-empted by the state building code, the following should be considered as applicable:
 - (a) Materials and building treatments that reduce the visibility of the buildings from distant vantage points, and that are compatible with backgrounds and surroundings.
 - (b) Materials and colors compatible with other quality buildings of similar scale in the vicinity.
 - (c) Green building technologies and materials, wherever possible, to minimize adverse environmental impacts.
- (4) **Roofline articulation.** The design of buildings should:
 - (a) Provide a variety of building heights and varied roofline articulation that stresses New England vernacular architecture.

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- (b) Locate taller buildings away from major streets, abutting and off-site single-family residential areas and homes.

(5) **Lighting.** Any lighting in the proposed development shall comply with Lighting Bylaw §125-40.

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~~(6)~~ **Landscaping.** Landscaping criteria are as follows:

- (a) All open areas, exclusive of areas to remain in an existing natural state within an OSC-PRD, should be landscaped in an appropriate manner, utilizing both natural and man-made materials such as indigenous grasses, trees, shrubs, and ~~attractive paving materials and outdoor furniture, other appropriate elements.~~
- (b) Deciduous trees should be placed along new and existing streets and ways. Outdoor lighting should be considered in the landscaping plan, and should be designed to complement both man-made and natural elements of the OSC-PRD and adjacent areas. ~~Appropriate methods (such as cutoff shields) should be used to avoid glare, light spillover onto abutting property.~~
- (c) Intensive, high-quality landscaping or preservation of existing vegetation should be provided within the OSC-PRD where it abuts major streets, existing residential areas, and along internal drives.
- (d) Preservation of existing vegetation or tree-lined areas should be maintained.
- (e) Parking areas and lots should use landscaping and terracing to break up large areas of pavement and to enhance residential flavor and appearance; trees and shrubs should be used to the maximum extent feasible.
- (f) Features such as shade trees, forest trees, and expansive planting areas should be preserved and/or introduced along external property boundaries and on the perimeter of the OSC-PRD itself, to buffer the site from adjoining parcels.

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~~(g) Any lighting in the proposed development shall comply with Lighting Bylaw §125-40.~~

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~~**6) Pedestrian amenities and recreation.** In this category, the design should include the following components/characteristics, appropriate to the land under consideration,~~

~~(a) Accessible pedestrian oriented features such as walkways, pergolas, outdoor sitting plazas, landscaped open space, drop off areas, and recreational facilities should be emphasized.~~

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~~(b) Tree lined or otherwise appropriately landscaped pedestrian paths and walkways should link together areas designated as open space within the site, and wherever possible, to adjoining public areas.~~

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~~(c) Passive and active recreational facilities should be of a size and scale appropriate for the number of units proposed.~~

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F. **Utilities.** To the maximum extent feasible, all utilities should be located underground.

G. **Signage.** ~~At each principal entrance to the site, one sign only shall be permitted; it should be of a maximum signboard area of three square feet, with content limited to identifying the name and address of the development.~~ All signs shall comply with Protective Bylaw § 125-41. However, within the development, signs, not to exceed two square-feet each, of a number and location to be approved as part of the OSC-PRD, may be permitted for the sole purposes of orientation and direction, and of identifying common building spaces.

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~~(1) Within the development, signs, not to exceed two square-feet each, of a number and location to be approved as part of the OSC-PRD, may be permitted for the sole purposes of orientation and direction, and of identifying common building spaces.~~

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H. **Base development density.** The maximum number of dwelling units per acre permitted in an OSC-PRD shall not exceed ~~one unit per 1.50 acres, two units per acre~~ of land area, and in no event exceed the maximum number of lots or dwelling units obtainable under a conventional subdivision plan for the land area under consideration, except as provided in § 125-35I.

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I. **Development incentive.**

(1) The Planning Board may authorize an increase in lots or dwelling units up to a maximum ~~of 25% above that allowed under § 125-35H of this Bylaw,~~ provided ten units per acre. Increased permissible density will be allocated ~~as if~~ the following conditions are met:

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~~(a) The applicant proposes a significant increase in open space above 50%, and preserves significant natural resources, in the opinion of Planning Board.~~ **Additional Open Space Preservation**

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[1] The applicant proposes a significant increase in open space above 50%, and preserves significant natural resources.

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[2] There is permanent preservation of land devoted or set aside for agricultural use or other unique preservation strategy, including preservation of historic structures or barns, or other special features of the built environment.

(If (a)[1] or (a)[2] above are found to be satisfied, in the opinion of Planning Board, it may authorize a 2 unit per acre increase over base density.)

~~(b) There is permanent preservation of land devoted or set aside for agricultural use or other unique preservation strategy, including preservation of historic structures or barns, or other special features of the built environment.~~

~~(If (a) and (b) above are found to be satisfied, in the opinion of Planning Board, it may authorize a 5% increase in applicable base density.)~~

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The applicant proposes public improvements or amenities that result in substantial benefit to the Town and the general public, provided:

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[1] There are significant improvements to the environmental quality or condition of the site and its surrounding areas, including a decrease in stormwater runoff from what would otherwise result from a conventional subdivision plan.

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[2] There are provisions contributing to off-site public facilities or environmental improvements beyond those necessary to mitigate the impacts of the proposed development.

(If (b)[1] and (b)[2] above are found to be satisfied, in the opinion of Planning Board, it may authorize a 1.5 unit per acre increase over base density.)

~~(c) The applicant proposes public improvements or amenities that result in substantial benefit to the Town and the general public, provided:~~

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~~[1]~~

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~~There are significant improvements to the environmental quality or condition of the site and its surrounding areas, including a decrease in stormwater runoff from what would otherwise result from a conventional subdivision plan.~~

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~~There are provisions contributing to off-site public facilities or environmental improvements beyond those necessary to mitigate the impacts of the proposed development.~~

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~~(If (c) above is found to be satisfied, in the opinion of Planning Board, it may authorize a 5% increase in applicable base density.)~~

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Housing units for senior citizens and persons aged 55 years and over housing is provided. Such units should conform to §125-57E, Age Appropriate Design.

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(If (c) above is found to be satisfied, in the opinion of Planning Board, it may authorize a 1.5 unit per acre increase over base density.)

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- (d) ~~The applicant proposes attached dwellings that include a maximum of two bedrooms per unit, and are developed in the character of a New England Village style of architecture.~~ The applicant sets aside 15% or more of lots or dwelling units on the site for Affordable Housing for purchase or rental by those with households of low or moderate incomes. Such units ~~must shall~~ count toward the Town's Subsidized Housing Inventory, and be in accordance with the provisions of 760 CMR 45.00, as may be amended. The Planning Board shall review and approve the actual percentage distribution of qualifying low versus moderate income units.

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(If (d) above is found to be satisfied, in the opinion of Planning Board, it may authorize a ~~5% increase in applicable base density~~ 2 unit per acre increase over base density.)

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- (e) Units are designed to conform with Passive Haus Design standards.

(If (e) above is found to be satisfied, in the opinion of the Planning Board, it may authorize a ~~5%~~ 3 unit per acre increase ~~in applicable~~ over base density).

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- (f) ~~The applicant sets aside 10% or more of lots or dwelling units on the site for "affordable housing" for purchase or rental by those with households of low or moderate incomes. Such units must count toward the Town's Subsidized Housing Inventory, and be in accordance with the provisions of 760 CMR 45.00, as may be amended. The Planning Board shall review and approve the actual percentage distribution of qualifying low versus moderate income units.~~ The development incorporates at least five elements of environmentally conscious design including, but not limited to heat pump/geothermal climate controls, smart windows, solar panels, smart outlets, LED lighting, substantial use of pervious pavement, conservation-minded landscaping, and low-flow water fixtures.

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(If (f) above is found to be satisfied, in the opinion of Planning Board, it may authorize a ~~20% increase in applicable~~ 1.5 unit per acre increase over base density.)

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Condition	Units per acre	Additional Units per acre
Base Density	2	
(a) Additional Open Space Preservation		2
(b) Substantial Benefit to Town		1.5
(c) Senior Housing		1.5
(d) Affordable Housing		2
(e) Passive Haus		3
(f) Environmentally Conscious		1.5
Maximum Density if all conditions met	10	

~~(2).~~

~~Standards for on-site affordable units. Housing units set aside as affordable housing, as described in § 125-35(1)(f), shall have a gross floor area comparable to market rate units and shall be integrated into the development and not grouped together. When viewed from the exterior, the affordable units shall be indistinguishable from the market rate units in the same development. The developer shall provide adequate guarantee, acceptable to the Planning Board, to ensure the continued availability and affordability of the units in perpetuity; such guarantee must include recorded deed restrictions, recorded restrictive covenants relative to equity limitation, or other acceptable forms of guarantees. No more than 80% of the building permits for the market rate units shall be issued within an OSC-PRD until construction has commenced on all the affordable units; no more than 80% of the certificates of occupancy for the market rate units shall be issued until all of the certificates of occupancy for the affordable units have been issued.~~

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J. Dimensional requirements. The following provisions shall apply:

- (1) The Planning Board may waive the minimum requirements for frontage and/or yard requirements that would normally be applicable to land within the AR District in order to achieve maximum open space area, and may permit more than one single or two-family dwelling be located on a lot in an OSC-PRD, as provided below.

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(2) The parcel proposed for development must have a minimum of 50 feet of frontage on a public way or private way which is open to the public.

(3) ~~Attached units shall contain no more than six units in a single building.~~ The minimum distance between clusters of multiple unit dwellings, shall be 50 feet.

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(4) ~~The minimum distance between clusters of multiple unit dwellings, shall be 50 feet.~~ A minimum width of 150 feet of landscaped area shall be established and maintained between any property adjacent to the OSC-PRD and the nearest dwelling unit or units in the OSC-PRD. [Amended 4-2-2005 ATM by Art. 34]

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(5) ~~A minimum width of 150 feet of green area shall be established and maintained between any property adjacent to the OSC-PRD and the nearest dwelling unit or units in the OSC.~~ [Amended 4-2-2005 ATM by Art. 34]

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The minimum setback from internal roads shall be 25 feet.

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Commented [EA1]: Setback of what? Structures?

(6) ~~The minimum setback from internal roads shall be 25 feet.~~ The maximum height of proposed buildings shall be 35 feet, and which shall not exceed 3 stories.

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(7) ~~The maximum height of proposed buildings shall be 35 feet, and shall not exceed 2 1/2 stories.~~ Except as provided in this Bylaw, any lot in an OSC-PRD shall comply with any other dimensional requirements of the zoning district in which it is located.

(8)

~~Except as provided in this Bylaw, any lot in an OSC-PRD shall comply with any other dimensional requirements of the zoning district in which it is located.~~

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K. Common open space. A minimum of 50% of the OSC-PRD parcel shall be devoted to contiguous open space, completely devoid of any structure, parking, loading and unloading space, access ways thereto, or as private yards, patios, or gardens for the exclusive or principal use by residents of individual dwelling units. To the greatest extent possible, such open space shall be left in its undisturbed natural condition or shall be appropriate in size, shape, dimension, location, and character to assure its use as a conservation area, and where appropriate, a recreational area, and be a visual and natural amenity for the development and the Town. The common open space described herein is in substitution of and supersedes any other reference to common open space that may be described elsewhere in the Bylaw.

(1) **Open space criteria.** The following criteria define open space, and open space that is considered usable for outdoor recreation within an OSC-PRD parcel:

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(a) No more than 25% of common open space in an OSC-PRD shall be wetlands and wetland buffers as defined by M.G.L. c. 131 §40 and the Harvard Wetland Protection Bylaw Chapter 119 of Code of the Town of Harvard.

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(b) Unless approved by the Planning Board, common open space shall not be considered usable if the slope of the finished grade exceeds 33%.

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(c) ~~Unless approved by the Planning Board, the nearest part of the common open space shall not be more than 300 feet in distance from the nearest point of any building that it is proposed to serve.~~ No common open space shall be considered usable unless it is compact and contiguous and has no dimension of less than 50 feet.

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(d) ~~No common open space shall be considered usable unless it is compact and contiguous and has no dimension of less than 50 feet.~~ All usable open space shall be open to the sky and pervious.

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~~(e) All usable open space shall be open to the sky and pervious.~~

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L. Open space conveyance.

(1) The common open space shall be conveyed in the following ways as approved by the Planning Board:

(a) To a corporation or trust comprising a homeowners association whose membership includes the owners of all lots or units contained in the development. The developer shall include in the deed to owners beneficial rights in said open land, and shall grant a perpetual open space restriction to the Town of Harvard or a non-profit corporation or organization over such land to insure that it be kept in an open state and not be built upon for residential use, or developed for accessory uses such as parking or roadways. Such restriction shall be in such form and substance as the Planning Board shall prescribe, and may contain such additional restrictions on development and use of the open space as the Planning Board may deem appropriate.

(b) To a non-profit organization, the principal purpose of which is the conservation of open space. The developer or non-profit organization shall grant an open space restriction as set forth above.

(c) To the Town for a park or open space use, subject to the approval of the Select Board, for management by the Park and Recreation Commission if a park, otherwise by the Conservation Commission, with a clause insuring that it be maintained as open space. [Amended 10-22-2018 STM by Art. 2]

(2) **Multiple conveyance.** To provide flexibility, and when deemed in the public interest, the Planning Board may approve more than one organization to accept the open space conveyance, particularly when it is appropriate that a major portion of such land be conveyed to the Town or a non-profit conservation organization, and another portion of such land is more appropriately conveyed to an owners association.

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M. Passageways. Private roadways and common driveways shall be allowed in OSCPRD parcels. While roadway surface widths may be narrower than widths associated with a traditional subdivision, the durability of passageway surfaces and subsurfaces must be comparable to those in a conventional subdivision. [Amended 4-2-2005 ATM by Art. 34]

(1) **Criteria for passageways.** The following criteria shall guide the development of these passageways:

(a) Cleared widths for traveled ways (excluding on-street parking spaces and passing turnouts) shall not be more than ~~20 feet~~ 22 feet or less than 12 feet. A cleared height of not less than 16 feet above the entire passageway shall be established and maintained.

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Commented [EA3]: FD should be consulted on these widths

(b) Drainage and surface runoff from all passageways must be suitably accommodated by an approved drainage system, using best management practices.

(c) All OSC-PRD plans shall specify that such passageways will not be dedicated to the Town, but are to remain private ways; all deeds or other instruments conveying any portion of land or structure in an OSC-PRD containing such a passageway(s), shall specify that such passage way(s) are and shall remain private way(s); ~~in perpetuity; and~~

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N. Site improvements. Site improvements specific to an OSC-PRD are listed below. To assist the Planning Board's evaluation of site changes and improvements from any OSC-PRD plan, the applicant shall submit said plan to the Town's Conservation Commission and Board of Health for review and recommendations to the Planning Board.

(1) **Water supply.** Each lot and the development in its entirety shall be served by water supply systems.

(2) **Sewage disposal.** Privately owned and maintained on-site sewage disposal or treatment systems may be approved to serve buildings and lots in an OSCPRD, if owned, maintained, operated, and monitored by a residents association, notwithstanding the provisions of § 125-32D of this Bylaw, if such treatment facility or system is approved by the Board of Health and in compliance with the requirements of Title 5, 310 CMR 15.00, or approved in accordance with the requirements of 314 CMR 5.00 (the Ground Water Discharge Permit Program). An approved system may be located on land owned in common by the owners of the building lots or residential units within the development.

(3) **Parking.** Unless otherwise approved by the Planning Board, ~~a minimum and~~ a maximum of 1.5 off-street parking spaces shall be provided for each unit, exclusive of spaces within garages. The Planning Board may also approve, based upon the nature of the development proposed and exclusive of the 1.5 parking space ratio provided, areas for visitor parking.

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(4) **Storm runoff control.** The applicant shall demonstrate that, as compared with the situation that would exist on the site without the development, no phase of the proposed OSC-PRD will result in an increase in the peak rate of storm runoff at the parcel boundary for the OSC-PRD as a whole for the 25-, 50- and 100-year design storms, and that there will be no net loss in flood storage capacity for the 100-year design storm. In making such determinations, any state or local orders or requirements of the Wetlands Protection Act or the Town's Wetlands Protection Bylaw³ shall be assumed in the calculations of runoff and flood storage without the OSC-PRD, but alternative forms of development shall not be assumed.

[3] Editor's Note: See Ch. 119, Wetlands Protection.

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(5) **On-site runoff and erosion control.** The applicant shall demonstrate that any adverse existing off-site runoff and erosion conditions or off-site runoff and erosion conditions which would result from the development of the OSC-PRD, are fully identified and that workable and acceptable mitigation measures are proposed as part of the submission of a final plan, consistent with .§ 125-58 herein of this Bylaw;

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O. Residents association. In order to ensure that common open space and common facilities within the development will be properly maintained, each OSC-PRD shall have a residents association, which may be in the form of a corporation, non-profit organization, or trust, established in accordance with appropriate State law by a suitable legal instrument or instruments properly recorded with the Worcester County Registry of Deeds or registered in the Worcester County Registry District of the Land Court. As part of the final OSC-PRD site plan submission, the

³ Editor's Note: See Ch. 119, Wetlands Protection.

applicant shall supply to the Planning Board copies of such proposed instruments, which shall at a minimum provide the information required by said OSC-PRD submission requirements, § 125-35L of this Bylaw, and Site Plan Rules and Regulations, [Chapter 133 of the Code of the Town of Harvard](#) in effect at the time of final submission.

- (1) **Responsibilities of the residents association.** Said legal instruments pertaining to the residents association shall specify that the residents association shall be solely responsible for all related improvements, and all costs associated with the operation of the development, including:
 - (a) Roadway maintenance.
 - (b) Snow-plowing.
 - (c) Maintenance of street lighting and on-site improvements and utilities.

Commented [EA4]: Plan requirements should include snow storage areas

P. Amendments without public hearing. Following the granting of a special permit pursuant to this Section, the Planning Board may, upon application and for good cause shown, without public hearing, amend the OSC-PRD plan solely to make changes in lot lines shown on the plan, which lot lines are not part of the perimeter of the site, or other minor engineering changes, provided, however, that no such amendment shall:

- (1) Grant any reduction in the size or change in location of the open space as provided in the permit;
- (2) Grant any change in the layout of the ways as provided in the permit;
- (3) Increase the number of lots or units as provided in the permit; or
- (4) Decrease other dimensional requirements of any lot below the minima permitted by the approval of the initial site plan and special permit.

Q. Amendments requiring public hearing. Any proposed change to an existing OSC-PRD special permit considered substantial by the Planning Board, shall require notice and a formal public hearing in accordance with Massachusetts General Laws Chapter 40A, Section 9, 11, and 15 and an amendment to the special permit decision made pursuant to this section.

~~11
Editor's Note: This article also repealed former § 125-35. Cluster development for open space conservation, added 3-31-1990 ATM by Art. 18, as amended.~~

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