



JOSEPH A. CURTATONE
MAYOR



CITY OF SOMERVILLE, MASSACHUSETTS
COMMUNITY PRESERVATION COMMITTEE
MINUTES
DECEMBER 13, 2016

MEMBERS

Dick Bauer, Chair
Michael Fager, Vice Chair
Michael A. Capuano
Elizabeth Duclos-Orsello
Arn Franzen
Ezra Glenn
James McCallum
Uma Murugan

STAFF

Kristen Stelljes

The Community Preservation Committee (CPC) held a regular meeting at 6:30pm in the third floor community room at the Visiting Nurse Association, 259 Lowell Street, Somerville, MA 02144. An audio recording of the meeting is available upon request.

Members Present Chair Dick Bauer, Vice Chair Michael Fager, Elizabeth Duclos-Orsello, Arn Franzen, Ezra Glenn, James McCallum and Uma Murugan

Members Absent Michael Capuano

Staff Present Kristen Stelljes

Mr. Fager, acting as chair, opened the meeting at 6:32p.m.

Agenda item 1: Public comment period

No members of the public were present.

Agenda item 2: Approve minutes from November 29 meeting

Upon a motion by Mr. Glenn, seconded by Mr. Franzen, the Committee voted 6-0 to approve the minutes with corrections.

Agenda item 3: Approve budget submission to Board of Aldermen

Ms. Stelljes described the transfers that are necessary to make between the CPA reserves in order to ensure the funding the reserves matches the minimum allocations established in Community Preservation Plan and to allocate the additional \$31,819 received in the state match on the FY16 revenue.

Because the Committee recommended funding in FY16 that surpassed the minimums for all three CPA categories (affordable housing, historic resources, and open space/recreation), all additional FY16 revenue, including the FY16 City appropriation, can remain in the undesignated fund balance.

Ms. Stelljes also requested the CPC recommend the Board of Aldermen make the annual appropriation to the Affordable Housing Trust Fund. The total appropriation for FY16 is \$880,416.

[Ms. Murugan joined the meeting at 6:45]

Upon a motion by Ms. Duclos-Orsello, seconded by Mr. Bauer, the Committee voted 7-0 to recommend that the Board of Aldermen transfer CPA funds totaling \$889,961 from the CPA Fund Budgeted Reserve to designated CPA reserves including:

- a. \$101,006 from the Budgeted Reserve to the Open Space/Recreation Reserve
- b. \$101,006 from the Budgeted Reserve to the Historic Resources Reserve
- c. \$687,950 from the Budgeted Reserve to the Community Housing Reserve

Upon a motion by Mr. Bauer, seconded by Mr. Glenn, the Committee voted 7-0 to recommend that the Board of Aldermen appropriate \$880,416 from the CPA Fund Community Housing Reserve to the Affordable Housing Trust Fund.

Agenda item 4: Discuss funding available for FY17 projects

Ms. Stelljes reviewed the funding available for CPA projects in FY17. Funding available is:

- Historic Resources: \$365,547
- Open Space/Recreation: \$293,472
- Undesignated: \$1,337,492
- Total: \$1,970,722

The total being requested for FY17 for all 12 projects is \$2,898,099, which is \$927,377 more than is available.

Ms. Stelljes also reviewed the FY17 bonding capacity. Assuming the CPC wanted to maintain 5% in funding for admin and a 45% allocation for housing, they could recommend up to \$8.3 million in bonding for FY17, which would be 100% of the net surcharge revenue.

Agenda item 5: Initial conversation on applications

Mr. Fager disclosed that he is on the board of the Mystic River Watershed Association, which is applying for funding for design services for the Blessing of the Bay Boathouse Park. Ms. Stelljes advised him to discuss how to handle this conflict with the City Solicitor's office.

If Mr. Fager is not able to participate in the discussions around the Blessing of the Bay application, the Committee requested that someone from the Conservation Commission attend MyWRA's presentation to provide their expertise to the conversation.

Ms. Stelljes noted that her son attends the day care in the Grace Baptist Church building.

Mr. Franzen noted that the City is requesting funds for the acquisition of land adjacent to the Healey School and that those funds could potentially be taken from the \$750,000 earmark for land acquisition, freeing up project funding for other projects.

Ms. Stelljes noted that the budget for the Grace Baptist Church project has changed because the Somerville Hispanic Association for Community Development is now requesting only funding for the first phase and changed the salary number after gaining a clearer understanding of what CPA funds could support.

Mr. Bauer asked Ms. Stelljes for her assessment of the capacity of the Somerville Hispanic Association for Community Development to manage the proposed project. Ms. Stelljes said that she will need to follow this project closely both for the project management and for adherence to the US Secretary of the Interior Standards. She noted that the project manager they selected has experience managing historic rehabilitations of churches and their selected contractor has historic restoration experience. She visited the project with Sarah White, City Preservation Planner, and also connected SHA4CD with the Preservation Massachusetts Eastern Massachusetts Circuit Rider, which provides free advice on historic preservation. Mr. Franzen requested that a representative from Folan, the contractor SHA4CD has selected for the project, attend the January presentation.

Ms. Stelljes also noted that the Friends of the Community Growing Center did not include a letter of approval from the City for their proposed project with their application as requested by the CPC.

Mr. Glenn asked the Committee if it should consider requiring conservation restrictions on large open space/recreation rehabilitation projects that would not be protected by a restriction because they are not acquisitions. Without a restriction, in ten years spaces rehabilitated with CPA funds could be converted to other uses and no longer be open space. For FY17, this could apply to both ArtFarm and the Winter Hill Schoolyard because in a sense the CPA funds will be creating open space where it doesn't already exist.

Ms. Duclos-Orsello said that Somerville residents passed CPA because in part because they wanted to increase the amount of open space in the City. She also suggested that one alternative would be to require a land swap if a CPA project is developed for a use other than open space.

Mr. Franzen said if it is an existing City recreation facility then there is an obligation to maintain it as open space. However, if there is no guarantee that a project is meant to be open space in perpetuity, then by creating open space, even if it isn't permanent, it changes the language of the neighborhood. This is a consideration for ArtFarm because there are many unknowns with the projects, such as how it will be impacted by the grounding of McGrath and future development plans for Brickbottom. He suggested another option would be to ask for a restriction on a portion of the ArtFarm site to preserve part of it as open space even if the use changes.

Ms. Stelljes will ask the administration for their reaction to the proposal to require preservation restrictions on ArtFarm and the Winter Hill Schoolyard.

Mr. Franzen noted that the City is continuing to look for a complete survey of the Community Path so may be able to withdraw that application.

Ms. Stelljes informed the group that she discussed the schedule for the January meeting with Mr. Bauer and they are proposing that Ms. Stelljes give a brief presentation on CPA and funding available. Presenters would each receive five minutes to present and five minutes for questions from the CPC. Public comments would be taken after the end of each of the presentations.

Mr. Glenn asked if comments should be taken after each session. Mr. Bauer responded that was the approach used in the first year of the CPA, but the CPC found that the comments were duplicative because participants felt the need to comment on each project individually and then provide overall comments at the end.

Mr. Glenn proposed that more time be allotted for the Committee to ask questions of larger projects.

Ms. Duclos-Orsello requested the Committee consider how to manage the community comment period should a large number of people want to comment.

Agenda item 6: Review revised draft agreement for City implemented projects

Ms. Stelljes reviewed the changes requested at the previous Committee meeting to the general conditions for City implemented projects, including a requirement that project-specific conditions apply as well as the general conditions and clarifying that CPC approval is required for an extension.

Upon a motion by Ms. Duclos-Orsello, seconded by Mr. Bauer, the Committee voted 7-0 to approve the general conditions for memorandum of agreements for City implemented CPA projects.

Agenda item 7: Review model preservation and conservation restrictions

Ms. Stelljes shared the model preservation and conservation restrictions with the Committee for their information and asked for any questions.

Mr. Fager asked when conservation restrictions would be used. Ms. Stelljes responded that the CPA legislation only requires conservation restrictions be placed on a property when it is acquired with CPA funds.

Agenda item 8: Review results from CPA surveys

Ms. Stelljes shared that she surveyed the FY15 and FY16 project applicants and project implementers. Both surveys received a response rate in the 30% range. Going forward the survey will be administered annually.

Mr. Fager asked Ms. Stelljes if there were any helpful results. Ms. Stelljes responded two responses struck her- one was a comment noting CPC members were frequently absent from meetings and another noting a feeling that it was easier for City departments to apply for funding than community organizations. Ms. Stelljes noted that the City and community applicants have the same requirements in the application process, but City staff can complete their applications as part of their work day and many community organizations are staffed by volunteers which need to find time to apply during their free

time. She did note that the reporting requirements are much less for City implemented projects because the financial accountability controls are integrated into the City's purchasing process.

Mr. Franzen noted that it can be easier for City staff to communicate with the CPA Manager. Ms. Stelljes noted that she is considering offering to provide feedback community applications in FY18 if they are submitted early. She also noted that all respondents reported frequent communications with the CPA Manager during the application and implementation periods.

Ms. Duclos-Orsello noted the importance of acknowledging the perception that it is easier for City applicants and the Committee should consider how to address this. The application process for any grant can be daunting for groups that do not have much grant writing experience.

Ms. Murugan noted that because of the limited open space in Somerville it will be less common for community groups to apply for open space projects. She suggested the communications around the CPA focus on how it is improving the quality of life of Somerville residents.

Mr. Franzen noted outreach is very important to make sure the community is aware of CPA.

Ms. Stelljes noted that she is developing an outreach list for the FY18 application process and as part of her discussions around placemaking in Somerville, she is exploring how to strengthen civil society in Somerville. Even though the steps in the application process are the same, if an organization is all-volunteer and doesn't have grantwriting experience, the process will be inherently more difficult.

Mr. Glenn noted that all of the affordable housing funding goes to community organizations. He noted the importance of encouraging community organizations to work with the City to implement projects. Community organizations are not always able to implement a project on their own but through the CPA process they can be connected with the relevant department to help them implement it. He also noted that CPA funding is much more difficult for the City to access than other funding options they have.

Mr. Franzen noted that community groups proposing projects on City land may not receive the support from the City because the limited staff need to focus on City-wide priorities. Ms. Duclos-Orsello said the Committee needs to consider how to celebrate what CPA is supporting without being discouraging.

Mr. Fager said his observation is that the City is often requesting CPA funds, which are special funds, to fund projects that the City should be funding in other ways. Mr. Franzen responded that the City proposed projects are all important projects and there often isn't enough funding to get everything done. The City proposed projects are designed to serve the greater good and often have a greater impact than a smaller project might. Mr. Glenn added that these funds are now allowing the City to do more open space projects because they had to use existing funds to cover other priorities like police and fire.

Ms. Stelljes added that the Community Path and the two Healey proposed projects started as community proposed projects but are now being managed by the City.

Ms. Murugan requested that in the future City proposed projects include letters of support. Mr. Franzen said that the City proposed projects are based on SomerVision and the Open Space and Recreation Plan. Ms. Duclos-Orsello said that enough time has passed since SomerVision that it is important for the City to continue to show community support for proposed projects.

Agenda item 9: Discussion on connections between CPA and support to immigrant communities

Ms. Murugan shared that she has been considering how CPA can be used to support Somerville's sanctuary city status.

Mr. Fager said he said that he only saw affordable housing as a possible way to support immigrants. Ms. Stelljes noted she asked the City's housing director about possibilities for using CPA funding to provide housing for undocumented immigrants. He informed her that the projects in Somerville receive federal funds, which come with documentation requirements that do not allow them to accept undocumented immigrants. If the City were to violate these requirements, the project could be closed and funding could be taken away and it would alert authorities to the location of undocumented immigrants.

Ms. Stelljes had identified non-English speaking church communities in historic buildings as a potential community to do outreach with for potential applicants. The SomerViva liaisons helped Ms. Stelljes let these institutions know about CPA for the FY17 funding round. The Somerville Hispanic Association for Community Development applied as part of this outreach.

Mr. Glenn said that the Committee could consider funding emergency shelters. Ms. Murugan said an option is to create emergency shelters in religious institutions, which are recognized sanctuaries. These sanctuaries could be located outside of Somerville. Ms. Stelljes noted that there is no geographic limitation for CPA projects to encourage regional projects.

Ms. Stelljes said she would invite representatives from the Somerville Housing Coalition and the Affordable Housing Trust Fund to the CPC's April meeting.

Agenda item 10: Emerging opportunities to connect with Arts Council and placemaking.

Ms. Stelljes shared with the Committee that she is having conversations with the Somerville Arts Council around ways to support placemaking in Somerville as part of a potential application for funding from the Barr Foundation. This funding could help support CPA projects to maintain and provide programming for their spaces after CPA funding ends.

Mr. Fager asked for an explanation of placemaking. Ms. Duclos-Orsello responded that placemaking transforms undifferentiated spaces into places. Union Square is an example of this in practice.

Ms. Stelljes asked the Committee if they had any objections or concerns to her continuing conversations with the Arts Council and the Barr Foundation. The Committee gave their consent for Ms. Stelljes to consider these conversations. Ms. Duclos-Orsello said she would be interested in contributing to these conversations and noted that she is aware of a group of Somerville residents that share a similar interest.

Ms. Stelljes will return to the Committee once she has more information about directions for this work.

Next meeting: The CPC will meet on January 11 and January 31, both at 7:00pm at the Visiting Nurse Association for FY17 applicant presentations.

Meeting Adjournment

Upon motion from Mr. Bauer, seconded by Ms. Duclos-Orsello, the Committee voted 7-0 to adjourn at approximately 8:30.

Documents and Exhibits

1. Agenda
2. Draft minutes from November 29 meeting
3. Presentation on budget submission to Aldermen
4. Summary of FY17 funding requests and funding available
5. Summary of FY17 CPA bonding capacity
6. FY17 applications with accompanying review sheet
7. Revised Standard City MOA General Conditions
8. Model Historic Preservation Restriction
9. Model Conservation Restriction
10. Summary of responses from CPA applicant and CPA project implementer surveys



JOSEPH A. CURTATONE
MAYOR

Somerville CPA



CITY OF SOMERVILLE, MASSACHUSETTS COMMUNITY PRESERVATION COMMITTEE AGENDA

DATE: Tuesday, December 13, 2016
TIME: 6:30pm
PLACE: Visiting Nurse Association, Third Floor Community Room
259 Lowell St.

1. Public comment period (10 minutes)
2. Approve minutes from November 29 meeting (5 minutes)
3. Approve budget submission to Board of Aldermen (10 minutes)
4. Discuss funding available for FY17 projects (10 minutes)
5. Initial conversation on applications (30 minutes)
6. Review revised draft agreement for City implemented projects (5 minutes)
7. Review model preservation and conservation restrictions (10 minutes)
8. Review results from CPA surveys (15 minutes)
9. Discussion on connections between CPA and support to immigrant communities (20 minutes)
10. Emerging opportunities to connect with Arts Council and placemaking (5 minutes)
11. Other business
12. Next meeting: Wednesday, January 11 at 7:00 and Tuesday, January 31 at 7:00

MEMBERS

Dick Bauer, Chair
Michael Fager, Vice Chair
Michael A. Capuano
Elizabeth Duclos-Orsello
Arn Franzen
Ezra Glenn
James McCallum
Uma Murugan

STAFF

Kristen Stelljes



JOSEPH A. CURTATONE
MAYOR

Somerville CPA



CITY OF SOMERVILLE, MASSACHUSETTS COMMUNITY PRESERVATION COMMITTEE MINUTES NOVEMBER 29, 2016

MEMBERS

Dick Bauer, Chair
Michael Fager, Vice Chair
Michael A. Capuano
Elizabeth Duclos-Orsello
Arn Franzen
Ezra Glenn
James McCallum
Uma Murugan

STAFF

Kristen Stelljes

The Community Preservation Committee (CPC) held a regular meeting at 6:30pm in the third floor community room at the Visiting Nurse Association, 259 Lowell Street, Somerville, MA 02144. An audio recording of the meeting is available upon request.

Members Present Chair Dick Bauer, Vice Chair Michael Fager, Michael Capuano, Elizabeth Duclos-Orsello, and Ezra Glenn

Members Absent Arn Franzen, James McCallum and Uma Murugan

Staff Present Kristen Stelljes

The chair opened the meeting at 6:43p.m. without a quorum.

Agenda item 1: Public comment period

No members of the public were present.

Agenda item 2: Discuss potential restrictions for community gardens project at Mystic Housing

Ms. Stelljes told the Committee that the Mystic Tenants Association was potentially interested in applying for CPA funding to create additional community gardens in the housing community, but has reservations about opening the plots to the broader Somerville community.

Mr. Fager informed the Committee that if the plots were open to everyone in Somerville, they would need to be managed by the Conservation Commission, which would open the plots to the existing City-wide community garden waiting list. He added that currently people put their names on waiting lists for specific gardens, but this may change to a system where everyone is on one City-wide list.

Members of the committee were in agreement that if CPA funds are used to create garden plots then the plots should be open to any Somerville resident. Because CPA monies are public funds, all Somerville residents should have the opportunity to benefit from CPA projects.

Agenda item 3: Review Somerville Museum project finances

Ms. Stelljes shared the latest financial report from the FY15 grant and the updated budget for the FY16 project.

Agenda item 4: CPA Manager's semi-annual report

Ms. Duclos-Orsello asked for an explanation for the low rates of disbursement for projects to date. Mr. Bauer responded that there has been progress since the annual report and it was a learning process for him how long it takes for CPA projects to be completed. Ms. Stelljes added that the City's small staff and large workloads contribute to the delays in spending. Because of the community dialogue and procurement processes City projects need to follow, it is often the case that a lot of work is done before any funds are spent.

Mr. Capuano asked why there were no disbursements for the Affordable Housing Trust Fund project. Ms. Stelljes responded that the Trust grants are paid on a reimbursement basis and are often made for a specific portion of the project. This means that projects are well underway before Trust funds are disbursed.

[Ezra Glenn arrived at 7:03, creating a quorum]

The Committee provided edits to Ms. Stelljes to incorporate into the final version of the report.

Mr. Capuano raised his concern about funding hypothetical planning projects without all stakeholders being on board from the beginning of the project using the example of the Mystic Tenants Association's concerns about the Healey+Mystic Master Plan.

Ms. Duclos-Orsello added that all stakeholders need to be signatories on projects. Without all stakeholders being in agreement at the beginning, it is inevitable that there will be disagreement. Mr. Bauer added that the CPC has learned a lot about the need to involve all stakeholders from the beginning of the application process.

Mr. Glenn said that the CPC required a public process on that project and had been encouraging community groups to propose projects, even if there wasn't a lot of initial buy-in, as long as they did not try to steamroll the other stakeholders. The hope was this would incentivize public processes around important topics with the understanding that these processes take time.

Mr. Bauer noted to the Committee that the state match rate has been dropping and now that Boston and 10 other municipalities have adopted CPA, the Community Preservation Coalition is working to make sure the state trust fund is sustainably funded. Ms. Stelljes added that the Metro Mayors are also discussing this issue.

Agenda item 6: Approve minutes from October 26 meeting

Upon a motion by Mr. Glenn, seconded by Ms. Duclos-Orsello, the Committee voted 2-0 to approve the minutes with corrections, with Mr. Capuano, Ms. Duclos-Orsello, and Mr. Fager abstaining.

Agenda item 7: Treatment of out of cycle historic preservation requests

Ms. Stelljes shared with the Committee that she is regularly receiving requests for historic CPA funding out of cycle and asked the Committee for their guidance on how to respond to these requests. Mr. Bauer added that he wanted to get the opinion of the Committee on this matter and his opinion is that the Committee should adhere to its annual funding cycle and acknowledges that there may be some cases that would warrant being considered out of cycle, such as the 83 Belmont project which is not a local historic district and the owners were willing to accept a preservation restriction. Smaller projects for local historic district properties should apply to the Local Historic District Property Owners Small Grant Fund once it is established.

Mr. Fager agreed that projects should be considered through the annual cycle, which includes additional opportunities for public comment on applications.

Mr. Glenn asked what the role of the CPA Manager would be in this process and if staff said the project could not apply out of cycle, if there was an appeal process because the Committee can consider emergency out of cycle applications.

Mr. Bauer said that when Ms. Stelljes presents requests for out of cycle consideration, he is often of the opinion that it should be brought to the Committee for input by all members.

Ms. Stelljes summarized the decision of the Committee that she would let individuals requesting funding know that the CPC does not typically consider requests for funding out of cycle, but if the potential applicant would like to make the case that the project is a sufficient emergency to warrant out of cycle consideration, they should send her an email describing what needs to be done and why it is an emergency. If they submit this email, she will share it with the CPC chair for their consideration and recommendations for next steps. Ms. Stelljes' communication with the potential applicant will include an explanation of the timeline for funding so potential applicants are aware that the process will take two months.

Agenda item 8: Announcements

Ms. Stelljes gave the following announcements:

- Ms. Murugan has been reappointed to the CPC for her second three-year term
- 15 individuals applied for the open CPC seat. Five are being interviewed on December 15 by the review committee. The committee will make their recommendation to the Mayor, who submits the nomination to the Board of Aldermen.
- The Somerville High School graphic design class will be developing a new CPA logo

Agenda item 9: Discuss January project presentation meetings

Because there are many more open space applications this year, the Committee agreed that the presentations will be evenly divided between the two evenings.

The Committee decided the meetings will be January 11 and January 31 at 7:00pm.

The Committee also discussed their regular meeting time and agreed that the meeting time would be fixed from 6:30-8:30pm.

Agenda item 10: Review new agreement for City implemented projects and new template for Affordable Housing Trust Fund grant

City agreement

Ms. Duclos-Orsello requested that the section on duration include language clarifying that the CPC can reject the revised scope of work and timeline if it is not satisfactory to the Committee and if this were to happen, the project funds should be returned to the CPA fund.

Mr. Glenn inquired as to the difference between the termination and duration sections and asked if they should be merged.

Mr. Bauer requested that the general conditions reference that the implementers must comply with both the general conditions and the project specific conditions placed on the project by the CPC.

Ms. Stelljes will discuss the Committee's suggestions with the City's legal counsel and bring a revised draft agreement to the December meeting.

Affordable Housing Trust Fund agreement

Ms. Stelljes asked the Committee for their thoughts on the necessity for CPA awareness signs on projects such as the 100 Homes projects, which are single two and three family homes. Ms. Duclos-Orsello said she feels strongly that there should be CPA awareness signs on all affordable housing projects if there are signs on any of them.

Mr. Glenn suggested there could be a CPA awareness sign for 100 Homes as a project rather than signs on the individual properties.

[Mr. Capuano and Ms. Duclos-Orsello depart, there is no longer a quorum.]

Meeting Adjournment

Mr. Bauer declared the meeting adjourned at 8:29.

Next meeting: The next CPC meeting will be held at 6:30pm on December 13, 2016.

Documents and Exhibits

1. Agenda
2. Minutes from October 26 meeting
3. Somerville Museum FY15 and FY16 financial report
4. CPA semi-annual report

5. Draft CPP Monitoring and Evaluation Plan
6. Draft Affordable Housing Trust Fund memorandum of agreement
7. Draft City implemented project memorandum of agreement
8. Model historic preservation restriction
9. Model conservation restriction

Somerville CPA



Community Preservation Committee

December 13, 2016

FY17 CPA Fund revenue

	FY17 Budget	Update	Difference
FY17 Estimated Revenue	\$1,924,661	\$1,956,480	\$31,819
Surcharge revenue	\$1,535,799	\$1,535,799	\$0
City appropriation	\$0	\$0	\$0
State match of FY16 local revenue	\$388,862	\$420,681	\$31,819

↑
Appropriated to
Budgeted Reserve
by BOA on
11/22/16

FY17 CPA New Funds Adjustments (Budget v. CPP)

	FY17 Budget		CPP allocation* New FY17 (%,\$)		Difference
Admin	5%	\$96,233	5%	\$96,233	\$0
Open Space/Rec Reserve	10%	\$192,466	15%	\$293,472	\$101,006
Historic Resources Reserve	10%	\$192,466	15%	\$293,472	\$101,006
Community Housing Reserve	10%	\$192,466	45%	\$880,416	\$687,950
Budgeted Reserve	65%	\$1,251,030	20%	\$392,887	-\$858,143
Total	100%	\$1,924,661	100%	\$1,956,480	\$31,819

*includes additional state match on FY16 revenue

▶ 3

Unappropriated FY16 funds available for FY17

Funding source	Amount
FY16 City Appropriation	\$510,844
Additional FY16 income	\$135,560
Assessment revenue difference	\$127,537.31
Tax title redeemed	\$3,007.53
Tax title interest	\$459.01
CPA interest	\$1,918.40
Investment income	\$2,638.00
Total	\$646,404

▶ 4

FY16 Actual Allocations

FY16 Total Revenue	Amount
Budgeted	\$1,890,020
Additional state match on FY15 funds	\$358,097
City appropriation	\$510,844
Additional Revenue	\$135,560
Total	\$2,894,521

CPA Category	Awarded- FY16	Percent Allocated
Affordable Housing	\$1,834,675	63%
Historic Resources	\$600,288	21%
Open Space/Recreation	\$695,160	24%

► 5

Total reserve adjustments

	FY17 (CPP)	FY16 (Extra revenue)	Total
Open Space/Rec Reserve	\$101,006	\$0	\$101,006
Historic Resources Reserve	\$101,006	\$0	\$101,006
Community Housing Reserve	\$687,949	\$0	\$687,949
Total	\$889,961	\$0	\$889,961
Undesignated Fund Balance	-\$866,097	\$646,404	-\$219,693

BOA
vote
#1

► 6

Affordable Housing Trust Appropriation

	Amount
Jun. 2016 initial reserve	\$192,466
FY17 CPP addition	\$687,949
Jan. 2017 additional reserve	\$0
Total	\$880,415

BOA
vote
#2

▶ 7

Board of Aldermen requests

- I. Vote: recommend that the Board of Aldermen transfer CPA funds totaling \$889,961 from the CPA Fund Budgeted Reserve and the CPA Fund Undesignated Fund Balance to designated CPA reserves, including:
 - a. \$101,006 from the Budgeted Reserve to the Open Space/Recreation Reserve
 - b. \$101,006 from the Budgeted Reserve to the Historic Resources Reserve
 - c. \$687,949 from the Budgeted Reserve to the Community Housing Reserve
- I. Vote: recommend that the Board of Aldermen appropriate \$880,415 from the CPA Fund Community Housing Reserve to the Affordable Housing Trust Fund

▶ 8

Total available for FY17 by CPA category

	FY17	FY16	Returns	Total
Open Space/Rec Reserve	\$293,472	\$0	\$0	\$293,472
Historic Resources Reserve	\$293,472	\$0	\$72,075	\$365,547
Community Housing Reserve	\$880,415	\$0	\$0	\$880,415
Undesignated	\$392,887	\$646,404	\$298,201*	\$1,337,492
Admin	\$96,233	\$0	\$0	\$96,223
Total	\$1,956,479	\$646,404	\$370,276	\$2,973,159

*FY16 admin roll over

CPA Non-bonded FY17 Funding Reserve Allocations by Project

Updated 11/17/16

	Open space/Recreation	Historic Preservation	Undesignated	Total
Total Available	\$293,472	\$365,547	\$1,369,311	\$2,028,330
Central Library Mold		\$21,279		
83 Belmont St.		\$4,510		
Remaining Funds	\$293,472	\$339,758	\$1,369,311	\$2,002,541

Funds held for land acquisition

Source	FY16 Allocations
FY16 Open Space	\$340,945
FY16 Undesignated	\$409,055
FY17 Study Fund allocation	-\$40,000
Total	\$710,000

Maximum Bonding Capacity of Somerville CPA- FY17

Total annual funds available for new debt service payments	
Annual Estimated Local CPA Revenue	\$1,500,000
Annual payment on existing bonds (historic resources)	-\$157,000
Annual admin budget	-\$75,000
Annual housing allocation (10% minimum)	-\$150,000
Funds available for new debt service (10% housing)	\$1,118,000
Annual housing allocation (45% trend)	-\$675,000
Funds available for new debt service (45% housing)	\$593,000

*Current % of annual revenue dedicated to debt service= 10%

Annual Debt Service with 10% housing allocation- % of net revenue				
% of Net Surcharge Revenue	Amount	Interest Rate	Loan Term (years)	Supportable Debt
100%	\$1,118,000	5%	25	\$15,757,030
75%	\$838,500	5%	25	\$11,817,773
50%	\$559,000	5%	25	\$7,878,515
25%	\$279,500	5%	25	\$3,939,258
15%	\$167,700	5%	25	\$2,363,555
10%	\$111,800	5%	25	\$1,575,703
5%	\$55,900	5%	25	\$787,852

Annual Debt Service with 45% housing allocation- % of net revenue				
% of Net Surcharge Revenue	Amount	Interest Rate	Loan Term (years)	Supportable Debt
100%	\$593,000	5%	25	\$8,357,709
75%	\$444,750	5%	25	\$6,268,282
50%	\$296,500	5%	25	\$4,178,855
25%	\$148,250	5%	25	\$2,089,427
15%	\$88,950	5%	25	\$1,253,656
10%	\$59,300	5%	25	\$835,771
5%	\$29,650	5%	25	\$417,885

Annual Debt Service- amount borrowed				
Amount Borrowed	Interest Rate	Loan Term (years)	Amount	As % of Net Surcharge Revenue
\$10,000,000	5%	25	\$709,525	63%
\$5,000,000	5%	25	\$354,762	32%
\$2,000,000	5%	25	\$141,905	13%
\$1,000,000	5%	25	\$70,952	6%
\$500,000	5%	25	\$35,476	3%

FY17 CPA Application Review Sheet

Blended

Milk Row Cemetery Open Space Master Plan

<i>Questions/Concerns</i>	<i>Reactions</i>
<i>Merits funding:</i> Y N	<i>If yes:</i> Full Partial

Historic Resources

Grace Baptist Church Restoration

<i>Questions/Concerns</i>	<i>Reactions</i>
<i>Merits funding:</i> Y N	<i>If yes:</i> Full Partial

Somerville Museum Accessibility

<i>Questions/Concerns</i>	<i>Reactions</i>
<i>Merits funding:</i> Y N	<i>If yes:</i> Full Partial

Open Space/Recreation Land

ArtFarm Construction

<i>Questions/Concerns</i>	<i>Reactions</i>
<i>Merits funding:</i> Y N	<i>If yes:</i> Full Partial

Blessing of the Bay Park Design

<i>Questions/Concerns</i>	<i>Reactions</i>
<i>Merits funding:</i> Y N	<i>If yes:</i> Full Partial

Butterfly Garden Pocket Park at Morse Kelly

<i>Questions/Concerns</i>	<i>Reactions</i>
<i>Merits funding:</i> Y N	<i>If yes:</i> Full Partial

Community Growing Center Design Implementation

<i>Questions/Concerns</i>	<i>Reactions</i>
Merits funding: Y N	If yes: Full Partial

Community Path Survey

<i>Questions/Concerns</i>	<i>Reactions</i>
Merits funding: Y N	If yes: Full Partial

Healey Lot Acquisition

<i>Questions/Concerns</i>	<i>Reactions</i>
<i>Merits funding:</i> Y N	<i>If yes:</i> Full Partial

Healey Design

<i>Questions/Concerns</i>	<i>Reactions</i>
<i>Merits funding:</i> Y N	<i>If yes:</i> Full Partial

Henry Hansen Park Design

<i>Questions/Concerns</i>	<i>Reactions</i>
Merits funding: Y N	If yes: Full Partial

Winter Hill Schoolyard Construction

<p><i>Questions/Concerns</i></p>	<p><i>Reactions</i></p>
<p>Merits funding: Y N</p>	<p>If yes: Full Partial</p>



JOSEPH A. CURTATONE
MAYOR

Somerville CPA



CITY OF SOMERVILLE, MASSACHUSETTS

COMMUNITY PRESERVATION ACT

COMMUNITY PRESERVATION COMMITTEE/COMMUNITY PRESERVATION ACT

STANDARD CITY MOA GENERAL CONDITIONS

AMENDED DECEMBER 8, 2016

Text source key:

Times New Roman: new text from Non-City General Conditions

Calibri: text from original AHTF grant agreement

1. Requirements for Release of Funds. The Department hereby acknowledges and expressly agrees that all disbursements of CPA funds to the Department shall comply with the conditions outlined in this Memorandum of Agreement, including the conditions included in this appendix and any project specific conditions placed on the project by the CPC.
2. Project Liaison. The CPA Manager will serve as the Project Liaison for the Agreement. The Project Liaison shall serve as the agent of the CPC for the purpose of monitoring Project compliance with the terms of this MOA and shall periodically report to the CPC regarding the progress of the Project and the compliance of the Department with the terms of this MOA.
3. Release of Funds. Once the appropriation is approved by the Board of Aldermen, the Liaison will create a budget for the project under the CPA Fund equaling the amount approved by the Board of Aldermen. The City of Somerville Finance Department will provide the appropriate Department contact with access to these funds. The Department is responsible for submitting a budget to Finance and the CPA Liaison in order to establish the necessary line items for the Project, which Finance will establish. The Department will follow all City of Somerville processes and procedures for encumbering and spending CPA funds. The CPA Liaison will provide approvals for all requisitions submitted for the use of CPA funds.
4. Liability of the Project. In the event the Department does not comply with the terms established above, the Department is responsible for reimbursing the CITY with non-CPA funds for an

amount equal to the total amount of CPA funds expended on CPA- ineligible activities. The reimbursed funds shall be deposited into the CPA Fund account from which the Funds were originally appropriated.

5. Compliance with Laws and Agreement. The Department understands and agrees that Projects funded through this MOA are made pursuant to and must comply with the requirements of the Community Preservation Act, M.G.L. c. 44B. The Department also agrees to comply with all requirements of this MOA. The Department shall comply with all applicable federal and state laws and city ordinances and regulations which in any manner affect the performance of this MOA.
6. Permits and Licenses. It is the obligation of the Department to obtain all permits and licenses necessary for implementation of the Project. No local permit or license is waived by awarding this funding. The CPA liaison will support the Department to secure preservation restrictions, accessibility waivers for historic resources, or other necessary approvals to comply with the Community Preservation Act as appropriate.
7. Record Keeping. The Department shall keep such records with respect to the utilization of the Funds as are kept in the normal course of business and such additional records as may be required by the CPC. Should the Project have multiple funding sources, the Department shall track specific expenditures of the Funds separate from other funding sources. The CPC shall have full and free access to such records and may examine and copy such records. The Department further agrees to meet from time to time with the CPC or its designee(s), upon reasonable request, to discuss expenditures of the Funds.
8. Reporting. The Department shall provide the CPC with a written update in a form satisfactory to the CPC on the progress toward completion of the Project annually in March until Project completion as an input to the CPA annual report. If a report is outstanding, the Project Liaison will not approve additional requisitions until the report is received. The Department shall also provide a written final report at the conclusion of the Project. The Department is responsible for tracking Project progress through high-resolution digital photographs which must be made available to the Committee upon request. Construction projects should submit photos at 0%, 25%, 50% and 100% completion of the Project. Design Projects should submit baseline photos and photos of the public process and submit any final designs/reports/etc. along with the final report.
9. Deed restrictions. Pursuant to M.G.L. c.44B Section12 every Project that involves the acquisition of any interest in real property with CPA funds shall be bound by a permanent deed restriction that meets the requirements of M.G.L. c.184, limiting the use of the interest to the purpose for which it was acquired. Where applicable, the Department agrees to the imposition of such deed restriction in a form acceptable to the CPC.

10. Community Preservation Act Awareness. Upon commencement of the Project, and when required by the CPC or its Project Liaison, the Department agrees to post a sign stating that the Project was funded through the City of Somerville's Community Preservation Act program. A temporary sign may be used during construction, but a permanent sign, plaque, or similar marker is ultimately required upon completion of construction. Payment, design, and location of the sign will be agreed upon by the Department and the Project Liaison. The Department shall also identify that the Project was funded through the City of Somerville's Community Preservation Act program in its written materials about the Project, including press releases, brochures, etc.
11. Replacement of City Funds. Consistent with the provisions of M.G.L. c. 44B Section 6, the Funds shall not replace existing City operating funds nor reimburse the City for services provided to the Project.
12. Duration. This Memorandum of Agreement shall terminate upon the Department's expenditure and/or upon the Department's notification to the Committee that the Project is closed out and the delivery of copies of any restrictions recorded pursuant to paragraph 9 hereof. Upon completion of the Project, any funds granted to the Department under this MOA and not yet expended shall be returned forthwith to the CPA fund from which the funds were originally appropriated without further expenditure thereof.

If by three years after the Board of Aldermen approved the Project, no Project funds have been spent by the Department on the Project, the Department must present a Project update and revised scope of work and Project timeline to confirm that funds are still needed for the Project as recommended by the CPC and approved by the Board of Aldermen to the CPC for approval. If the Department does not provide a revised scope and timeline or the CPC does not approve the revised timeline and scope, the CPA funds shall be returned to the CPA Fund account from which the funds were originally appropriated.
13. Breach. In the event that the CPC alleges that the Department has failed to fulfill its obligations under the terms of this Memorandum of Agreement and is in breach, the CPC shall deliver written notice to the Department indicating such, and the Department shall have ninety days, or a reasonable time as agreed by the parties, to cure the breach. In the event the Department requires further time to correct the breach and demonstrates a good faith effort to do so, the Department and the CPC may extend the time to correct in writing by mutual agreement. If the Department fails to do so, the CPC shall have the right, in its sole discretion, to terminate this Memorandum of Agreement upon written notice to the Department. Upon receipt of such notice, the Department shall refund all undisbursed Funds to the CITY, and such funds shall be returned to the CPA Fund account from which the Funds were originally appropriated. All returned funds shall be deposited into the CPA Fund and shall be made available for future projects for other recipients. Notwithstanding the foregoing, upon immediate notification to the CPC, the Department shall not be deemed to be in breach for failure or delay in performance due to Acts of God or other causes factually beyond its control and without its fault or negligence.

14. Severability. If any term or condition of this Grant Agreement or any application thereof shall to any extent be held invalid, illegal or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining terms and conditions of this Grant Agreement shall not be deemed affected thereby unless one or both parties would be substantially or materially prejudiced.
15. Governing Law. This Grant Agreement shall be governed by, construed and enforced in accordance with the laws of the Commonwealth of Massachusetts.

HISTORIC PRESERVATION RESTRICTION

THIS HISTORIC PRESERVATION RESTRICTION is made this ____ day of _____, 2003, by and between THE NANTUCKET ATHENEUM, a nonprofit Massachusetts corporation, of One India Street, P.O. Box 808, Nantucket, Massachusetts 02554 (hereinafter "Grantor") and the NANTUCKET PRESERVATION TRUST, INC., a nonprofit Massachusetts corporation with a mailing address of P.O. Box 2999, Nantucket, Massachusetts 02584 (hereinafter "Grantee").

WITNESSETH:

WHEREAS, Grantor is owner of certain real property located at One India Street in the Town and County of Nantucket, Commonwealth of Massachusetts, more particularly described in Exhibit A attached hereto and incorporated herein (hereinafter "the Property"), said Property includes the following structure:

a wood-frame, two story Greek Revival structure built in 1847, the masterpiece of architect Frederick Coleman, currently housing a portion of the Town's public library, and known as the "Atheneum" (hereinafter "the Building").

The Property also includes two recent additions (the "Kynett Wing" built in the 1960s and the "Weezie Children's Wing" built in 1996), which are located on the easterly side of the original 1847 structure, as shown on the attachments hereto, and a fence that is attached to the Building, which are not part of the Building;

WHEREAS, the Building stands as a highly significant example of mid-nineteenth century Greek Revival style of architecture in Nantucket, Massachusetts, illustrates aesthetics of craftsmanship and setting, and possesses integrity of materials and workmanship;

WHEREAS, Grantee is authorized to accept historic preservation restrictions to protect property significant in national and state history and culture under the provisions of M.G.L. chapter 184, sections 31, 32, and 33 (hereinafter "the Act");

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

WHEREAS, the Property is located in the core historic district of the Town of Nantucket, an area distinguished by its total reconstruction after the devastating fire of 1846, including the Building which was the first structure to be built in the aftermath of the fire;

WHEREAS, the Building, built in 1847, has been determined to be a contributing property to the Nantucket National Historic Landmark District by the Nantucket Historic District Commission and the Massachusetts Historical Commission;

WHEREAS, because of its architectural, historic, and cultural significance the Building was listed in the National Register of Historic Places in 1966 and is an historically important structure under Section 170(h)(4)(B) of the Code;

WHEREAS, accordingly, the Building is a "certified historic structure" as that term is defined in Sections 170(h)(4)(A)(iv) and 170(h)(4)(B) of Code;

WHEREAS, Grantee and the Nantucket Historic District Commission are concerned about the incremental erosion of the architectural and cultural resources of the Island of Nantucket through inappropriate renovation of significant historic structures;

WHEREAS, preservation of the Building in its current state will contribute to the preservation and maintenance of the scale and character of this important and historic part of Nantucket Island for the enjoyment of the general public;

WHEREAS, it is the policy of the Town of Nantucket as stated in its Comprehensive Plan of 2001 and the Commonwealth of Massachusetts (as shown by the new Community Preservation Act and by laws authorizing owners to create historic preservation and conservation restrictions) to encourage preservation of historic properties on Nantucket Island;

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

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

WHEREAS, the Baseline Documentation shall consist of the following: (1) Historic American Buildings Survey report and plans, dated July 1971 (2) historic and recent photographs, collected from the archives of The Nantucket Atheneum; (3) Plot plan of the property drawn by John J. Shugrue, Surveyor, dated April 4, 1996; and (4) Massachusetts Historical Commission Inventory Form B of the Property, prepared by Patricia A. Butler, dated August 2002.

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

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

NOW, THEREFORE, in consideration of the above and the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to M.G.L. chapter 184, sections 31, 32, and 33, Grantor does hereby voluntarily grant and convey unto the Grantee this preservation restriction (hereinafter "the Restriction") in gross in perpetuity over the exterior of the Building on the Property.

PURPOSE

1. **Purpose.** It is the Purpose of this Restriction to assure that the exterior architectural, historic, and cultural features of the Building will be retained and maintained forever substantially in their current condition for conservation and preservation purposes, and to prevent any change to the exterior of the Building that will significantly impair or interfere with the Building's preservation values.

GRANTOR'S COVENANTS

2.1 **Grantor's Covenants: Covenant to Maintain.** Grantor agrees at all times to maintain the exterior of the Building in the sound structural condition and good state of repair in accordance with the terms of this paragraph. It is Grantor's intent that the exterior of the Building shall be maintained in a physical appearance and composition that is as close to its original appearance and composition as is reasonably possible. Grantor's obligation to maintain shall require replacement, repair, and reconstruction by Grantor whenever necessary to preserve the exterior of the Building in sound structural condition and a good state of repair. Subject to the casualty provisions of paragraphs 7 and 8, this obligation to maintain shall require replacement, rebuilding, repair, and reconstruction of the Building whenever necessary in accordance with *Building*

with Nantucket in Mind, and the policies and procedures of the Nantucket Historic District Commission and in accordance with *The Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring and Reconstructing Historic Buildings* (36 C.F.R. 67 and 68), as these may be amended from time to time (hereinafter "the Historic District Commission Guidelines and the Secretary's Standards").

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

(a) the Building or any part thereof shall not be demolished, removed, or razed (by affirmative action or through neglect or failure to repair and maintain) except as provided in paragraphs 7 and 8; and

(b) no additional aboveground utility transmission lines may be created by the Grantor on the Property.

2.3 Grantor's Covenants: New Construction. Grantor agrees that all new construction to the exterior of the Building, the Kynett Wing, and the Weezie Children's Wing, and the construction of new structures on the Property shall preserve historic materials, features, and spatial relationships that characterize the Building and the Property. To protect the integrity of the Building and its immediate environment, all new exterior construction shall be compatible with the historic materials, features, size, scale, proportion and massing of the Building and shall be in strict compliance with the Historic District Commission Guidelines and the Secretary's Standards. In addition to any submission required under paragraphs 3.1 and 3.3, Grantor shall submit to Grantee information, including plans, specifications, designs, and Nantucket Historic District Commission application and materials where appropriate, and a timetable of activity, for all proposed new exterior construction on the Property no later than forty-five (45) days before commencing work.

GRANTOR'S CONDITIONAL RIGHTS

3.1 Conditional Rights Requiring Approval by Grantee. Without the prior express written approval of the Grantee, which approval may not be unreasonably withheld but which may be subject to such reasonable conditions as Grantee in its discretion may determine, Grantor shall not make any changes to the exterior (including fenestration and roof) of the Building, including the alteration, partial removal, construction, remodeling, or other physical or structural change to the exterior and any change in material or color and the footprint, size, mass, ridgeline and rooflines of the Building. Activities by Grantor to maintain the exterior of the Building which are not intended to

change the exterior appearance of the Building and which are intended to be performed in accordance with provisions of section 2.1 shall not require the prior approval of Grantee.

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

3.3 Review of Grantor's Requests for Approval. Grantor shall submit to Grantee for Grantee's approval of those conditional rights set out at paragraph 3.1 two copies of information (including plans, specifications and designs, and Nantucket Historic District Commission application and materials where appropriate) identifying the proposed activity with reasonable specificity. In connection therewith, Grantor shall also submit to Grantee a timetable for the proposed activity sufficient to permit Grantee to monitor such activity. Within forty-five (45) days of receipt of Grantee's receipt of any plan or written request for approval hereunder, Grantee shall certify in writing that (a) it approves the plan or request, or (b) it disapproves the plan or request as submitted, in which case Grantee shall provide Grantor with written suggestions for modification or a written explanation for Grantee's disapproval. Any failure by Grantee to act within forty-five (45) days of receipt of Grantor's submission or resubmission of plans or requests shall be deemed to constitute approval by Grantee of the plan or request as submitted and to permit Grantor to undertake the proposed activity in accordance with the plan or request submitted.

4. Standards for Review. In exercising any authority created by the Restriction to inspect the Property; to review any construction, alteration, repair or maintenance; or to review casualty damage or to reconstruct or approve reconstruction of the Building following casualty damage, Grantee shall apply the Historic District Commission Guidelines and the Secretary's Standards.

5. Public Access. This Restriction does not require public access.

GRANTOR'S RESERVED RIGHTS

6. Grantor's Reserved Rights Not Requiring Further Approval by Grantee. Subject to the provisions of paragraphs 2.1, 2.2, and 3.1, the following rights, uses, and activities of or by Grantor on, over, or under the Property are permitted by this Restriction and by Grantee without further approval by Grantee:

(a) the right to engage in all those activities and uses that: (i) are permitted by governmental statute or regulation; and (ii) are not inconsistent with the Purpose of this Restriction;

(b) the right to maintain and repair the exterior of the Building strictly according to the Historic District Commission Guidelines and the Secretary's Standards, provided that the Grantor use in-kind materials and colors, applied with workmanship comparable to that which was used in the construction or application of those materials being repaired or maintained, for the purpose of retaining in good condition the appearance and construction of the Building. Changes in appearance, materials, colors or workmanship from that existing prior to the maintenance and repair requires the prior approval of the Grantee in accordance with the provisions of paragraphs 3.1 and 3.2;

(c) the right to make changes of any kind to the interior of the Building, the Kynett Wing and the Weezie Children's Wing; and

(d) the right to make changes and construct additions to the exterior of the Kynett Wing and the Weezie Children's Wing, and build additional structures on the Property, provided however that any such change, addition, or new structure shall comply strictly with the Grantor's Covenants set forth in Paragraph 2.3 herein.

CASUALTY DAMAGE OR DESTRUCTION; INSURANCE

7. Casualty Damage or Destruction. In the event that the exterior of the Building or any part thereof shall suffer major damage or destruction by fire, flood, windstorm, hurricane, earth movement, or other casualty, Grantor shall notify Grantee in writing within fourteen (14) days of the damage or destruction or such reasonable time thereafter, depending upon the circumstances of the damage or destruction, such notification including what, if any, emergency work has already been completed. No repairs or reconstruction of any type, other than temporary emergency work to prevent further damage to the Building and to protect public safety, shall be undertaken by Grantor without Grantee's prior written approval. Within ninety (90) days of the date of damage or destruction, if required by Grantee, Grantor at its expense shall submit to the Grantee a written report prepared by a qualified restoration architect and an engineer who are acceptable to Grantor and Grantee, which report shall include the following:

(a) an assessment of the nature and extent of the damage;

(b) a determination of the feasibility of the restoration of the Building and/or reconstruction of damaged or destroyed portions of the Building; and

(c) a report of such restoration/reconstruction work necessary to return the Building to the condition existing as of the date hereof.

8. Review After Casualty Damage or Destruction. If, after reviewing the report provided in paragraph 7 and assessing the availability of insurance proceeds after satisfaction of any mortgagee's/lender's claims under paragraph 9, Grantor and Grantee agree that the Purpose of the Restriction will be served by such restoration/reconstruction, Grantor and Grantee shall establish a schedule under which Grantor shall complete the restoration/reconstruction of the Building in accordance with plans and specifications consented to by the parties up to at least the total of the casualty insurance proceeds available to Grantor.

If, after reviewing the report and assessing the availability of insurance proceeds after satisfaction of any mortgagee's/lender's claims under paragraph 9, Grantor and Grantee agree that restoration/reconstruction of the Building is impractical or impossible, or agree that the Purpose of the Restriction would not be served by such restoration/reconstruction, Grantor may, with the prior written consent of the Grantee, alter, demolish, remove, or raze the Building, and/or construct new improvements on the Property. Grantor and Grantee may then agree to extinguish this Restriction in whole or in part in accordance with the laws of the Commonwealth of Massachusetts and paragraph 21.1 hereof.

If, after reviewing the report and assessing the availability of insurance proceeds after satisfaction of any mortgagee's/lender's claims under paragraph 9, Grantor and Grantee are unable to agree that the Purpose of the Restriction will or will not be served by such restoration/reconstruction, the matter may be referred by either party to binding arbitration and settled in accordance with the Commonwealth of Massachusetts's arbitration statute then in effect.

9. Insurance. Grantor shall keep the Building insured by an insurance company rated "A1" or better by Best's for the full replacement value against loss from perils commonly insured under standard fire and extended coverage policies and comprehensive general liability insurance against claims for personal injury, death, and property damage. Property damage insurance shall include change in condition and building ordinance coverage, in form and amount sufficient to replace fully the damaged Building without cost or expense to Grantor or contribution or coinsurance from Grantor. Grantor shall deliver to Grantee, within ten (10) business days of Grantee's written request thereof, certificates of such insurance coverage. Provided, however, that whenever the Property is encumbered with a mortgage or deed of trust, nothing contained in this paragraph shall jeopardize the prior claim, if any, of the mortgagee/lender to the insurance proceeds.

INDEMNIFICATION; TAXES

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

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

ADMINISTRATION AND ENFORCEMENT

12. **Written Notice.** Any notice which either Grantor or Grantee may desire or be required to give to the other party shall be in writing and shall be delivered by one of the following methods - by overnight courier postage prepaid, facsimile transmission, registered or certified mail with return receipt

requested, or hand delivery; if to Grantor, at P.O. Box 808, Nantucket, Massachusetts 02554, and if to Grantee, then at P.O. Box 2999, Nantucket, Massachusetts 02584.

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

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

14. Inspection. With the consent of Grantor, representatives of Grantee shall be permitted at reasonable times to inspect the Building each May on an annual basis at the convenience of both Grantor and Grantee. Grantor covenants not to withhold unreasonably its consent in determining dates and times for such inspections.

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

In the event Grantor is found to have violated any of its obligations, Grantor shall reimburse Grantee for any reasonable costs or documented expenses incurred in connection with Grantee's enforcement of the terms of this Restriction, including court costs, and attorney's, architectural, engineering, and expert witness fees.

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

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

16. **Notice from Government Authorities.** Grantor shall deliver to Grantee copies of any notice of violation or lien relating to the Property received by Grantor from any government authority within five (5) days of receipt by Grantor. Upon request by Grantee, Grantor shall promptly furnish Grantee with evidence of Grantor's compliance with such notice or lien where compliance is required by law.

17. **Plaque.** Grantor agrees that Grantee at Grantee's expense may provide and maintain a plaque or marker on the Building, which plaque or marker shall not exceed 6 inches by 24 inches in size, giving notice of the significance of the Building and the existence of this Restriction. The plaque or marker shall be approved by Grantor prior to installation, such approval not to be unreasonably withheld and shall be placed in a location visible to the public to be determined by the Grantor.

BINDING EFFECT; ASSIGNMENT

18. **Runs with the Land.** Except as provided in paragraphs 8 and 21.1, the obligations imposed by this Restriction shall be effective in perpetuity and shall be deemed to run as a binding servitude with the Property. This Restriction shall extend to and be binding upon Grantor and Grantee, their respective successors in interest and all persons hereafter claiming under or through Grantor and Grantee, and the words "Grantor" and "Grantee" when used herein shall include all such persons. Any right, title, or interest herein granted to Grantee also shall be deemed granted to each successor and assign of Grantee and each such following successor and assign thereof, and the word "Grantee" shall include all such successors and assigns.

Grantor agrees to incorporate by reference the terms of this Restriction in any deed or other legal instrument by which Grantor transfers any interest in all or a portion of the Property, including without limitation a leasehold interest for a term greater than one year.

Anything contained herein to the contrary notwithstanding, an owner of the Property shall have no obligation pursuant to this instrument where such owner shall cease to have any ownership interest in the Property by reason of a bona fide transfer. The restrictions, stipulations, and covenants contained in this Restriction shall be inserted by Grantor, by express reference, in any subsequent deed or other legal instrument by which Grantor divests itself of either the fee simple title to or any lesser estate in the Property or any part hereof, including by way of example and not limitation, a lease of all or a portion of the Property, but excluding any lease with a term of fewer than ninety (90) days.

19. **Assignment.** Grantee may convey, assign, or transfer this Restriction to a unit of federal, state, or local government or to a similar local, state, or national organization that is a "qualified organization" that qualifies under the Act as an eligible donee whose purposes, *inter alia*, are to promote preservation or conservation of historical, cultural, or architectural resources, provided that any such conveyance, assignment, or transfer requires that the Purpose for which the Restriction was granted will continue to be carried out as a condition of the transfer. Grantor shall give prior written approval of such conveyance, assignment, or transfer by Grantee, such approval not to be unreasonably withheld.

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

EXTINGUISHMENT

21.1 **Extinguishment.** Grantor and Grantee hereby recognize that circumstances may arise that may make impossible the continued ownership or use of the Building in a manner consistent with the Purpose of this Restriction and necessitate extinguishment of the Restriction. Such circumstances may include, but are not limited to, partial or total destruction of the Building resulting from casualty. Extinguishment must be the result of a judicial proceeding in a court of competent jurisdiction and shall meet the requirements of the Act for extinguishment. In the event of any sale of all or a portion of the Property (or of any other property received in connection with an exchange or involuntary conversion of the Property), the proceeds of such sale shall be paid to Grantor.

21.2 **Condemnation.** If all or any part of the Property is taken under the power of eminent domain by public, corporate, or other authority, or otherwise acquired by such authority through a purchase in lieu of a taking, Grantor and Grantee shall join in appropriate proceedings at the time of such taking to recover the full value of those interests in the Property that are subject to the taking and all incidental and direct damages resulting from the taking. Such recovered proceeds shall be paid to Grantor.

INTERPRETATION

22. **Interpretation.** The following provisions shall govern the effectiveness, interpretation, and duration of the Restriction.

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

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

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

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

AMENDMENT

23. **Amendment.** If circumstances arise under which an amendment to or modification of this Restriction would be appropriate, Grantor and Grantee may by mutual written agreement jointly amend this Restriction, provided that no amendment shall be made that will adversely affect the qualification of the Restriction or the status of Grantee under the laws of the Commonwealth of Massachusetts. Any such amendment shall be consistent with the protection of the preservation values of the Building and the Purpose of this Restriction; shall not affect its perpetual duration; shall not permit any private inurement to any person or entity; and shall not adversely impact the overall architectural, historic,

natural habitat, and open space values protected by this Restriction. Any such amendment shall be effective when the requirements of the Act with respect to amendments have been met and the amendment is recorded in the land records of the County of Nantucket. Nothing in this paragraph shall require Grantor or Grantee to agree to any amendment or to consult or negotiate regarding any amendment.

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

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

IN WITNESS WHEREOF, Grantor and Grantee have set their hands this ____ day of _____, 2003.

GRANTOR:

GRANTEE:

The Nantucket Atheneum

Nantucket Preservation Trust, Inc.

BY: _____
Elizabeth W. Winship, Chair

BY: _____
Georgia U. Raysmann, President

BY: _____
W. Curtis Livingston, Treasurer

BY: _____
Richardson T. Merriman,
Treasurer

COMMONWEALTH OF MASSACHUSETTS

Nantucket, ss. _____, 200__

Then personally appeared the above named Elizabeth W. Winship, President of The Nantucket Atheneum, and acknowledged the foregoing instrument to be her free act and deed and the free act and deed of The Nantucket Atheneum, before me,

Notary Public
My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

Nantucket, ss. _____, 2003

Then personally appeared the above named Georgia U. Raysmann, in her capacity as President of the Nantucket Preservation Trust, Inc. and acknowledged the foregoing instrument to be her free act and deed and the free act and deed of Nantucket Preservation Trust, Inc., before me,

Notary Public
My Commission Expires:

APPROVAL BY SELECTMEN OF THE TOWN OF NANTUCKET

We, the undersigned being a majority of the members of the Board of Selectmen of the Town of Nantucket, Massachusetts, hereby certify that at a meeting held on _____, 2003, we voted to approve the foregoing Historic Preservation Restriction by The Nantucket Atheneum to the Nantucket Preservation Trust, Inc., pursuant to Massachusetts General Laws, chapter 184, section 32, and also hereby certify at said meeting we made a finding that this Restriction is in the public interest.

Board of Selectmen
of the Town of Nantucket

COMMONWEALTH OF MASSACHUSETTS

Nantucket, ss. _____, 2003

Then personally appeared the above named _____
and acknowledged the foregoing instrument to be his free act and deed, as
Selectman, before me,

Notary Public
My Commission Expires:

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

The undersigned Executive Director and Clerk of the Massachusetts Historical Commission hereby certifies that foregoing preservation restriction has been approved pursuant to Massachusetts General Law, chapter 184, section 32.

Date: _____

Cara H. Metz
Executive Director and Clerk
Massachusetts Historical Commission

COMMONWEALTH OF MASSACHUSETTS

_____, ss. _____, 2003

Then personally appeared the above named Cara H. Metz and acknowledged the foregoing instrument to be her free act and duly authorized deed of the Massachusetts Historical Commission, before me,

Notary Public
My Commission Expires:

SCHEDULE OF EXHIBITS

- A. Legal Description**
- B. Property Description**
- C. Site Plan of the Property**
- D. Photographs of the Property**

January 2015

Be sure to leave a 3" margin on the right above the heading for recording information.

Grantor:

Grantee:

Address of Premises:

For title see:

If there is a mortgage, a subordination must be recorded prior to the CR (see sample) The Grantor must state marital status, and on signature page that any Homestead rights are waived or subordinated to the CR and any spouse/benefited parties must also sign that they are waiving or subordinating their Homestead rights to the CR

CONSERVATION RESTRICTION

(when sending drafts, date the draft and number pages)

(be certain to include the bold provisions)

_____ and _____, husband and wife as tenants by the entirety (state marital status and ownership status), (address), Massachusetts, and _____, for our successors and assigns ("Grantor"), grant with Quitclaim Covenants to _____ [name & address] _____ [or, if to a municipality, "the Town of _____, [address] acting by and through its Conservation Commission, by authority of Chapter 40 Section 8C], and its permitted successors and assigns ("Grantee"), for (state the consideration), in perpetuity and exclusively for conservation purposes, the following Conservation Restriction on a parcel of land constituting approximately _____ acres [OR "a _____ acre portion of a _____ acre parcel" if the CR is over a portion of one or more parcels] ("Premises") located in the Town of _____, (address), Massachusetts, more particularly described in Exhibit A and attached plan/sketch plan. ("the Premises"). (add additional title, probate information, or plans you want to reference that is not in the title block at the top of the page.)

[If the CR was required as part of a permit, mention the permit, including recording information..]

[If there are building envelopes or exclusions, mentioned them; they must be defined by a metes and bounds description; a survey and boundary markers or alternate legal language is necessary.]

[If the CR is for a charitable deduction,, make sure you have included IRS language, make sure the purposes and prohibited acts comply with IRS requirements and are not inconsistent]

I. PURPOSES:

This Conservation Restriction is defined in and authorized by Sections 31-33 of Chapter 184 of the

In all cases except where the Conservation Commission is the Grantee, the Conservation Commission's certificate must be obtained to give notice to them that the land will be protected.

WRONG: Conservation Easement
RIGHT: Conservation Restriction OR
Conservation Restriction and Easement

ALL owners must be listed and sign the CR.
All those who may have the benefit of a Homestead, whether or not they are an owner, must subordinate their Homestead rights to the CR. (MA is an automatic Homestead law state)

"successors and assigns" must **precede** "Grantor" and "successors and permitted assigns" must **precede** "Grantee".

Town CRs must be held by the Conservation Commission or other agency **whose purposes include holding conservation or recreation lands**. A town cannot hold a CR over its own property, as that leaves no one to enforce the CR.

Area of CR must be stated and whether the CR is over all or a portion of one or more parcels.

Must have an Exhibit A metes and bounds legal description or a recorded or registered plan showing boundaries (see M.G.L. c. 184 sec. 26(c)). The restricted area on plans must be labeled as a Conservation Restriction.

BASELINE SURVEYS apply to Conservation

<p>General Laws and otherwise by law. The purpose of this Conservation Restriction is to assure that the Premises will be maintained in perpetuity for conservation purposes, predominantly in a natural, scenic and undeveloped condition, and to prevent any use or change that would materially impair or interfere with its conservation and preservation values.</p> <p><i>[State if the CR was purchased with or required by a grant or Community Preservation Act ("CPA") funds. If so, include the statutory reference/authority (i.e., M.G.L. c. 44B for the CPA) and an attested copy of any town meeting votes showing the purpose of the purchase as an exhibit. Town meeting votes should include authorization for the granting of a CR. A vote for a CPA purchase should state that the purchase is for specific categories within "open space", rather than just "open space purposes," to avoid later disputes over the intended uses, such as active vs. passive recreation.]</i></p> <p>These values include the following: [THIS SHOULD REFLECT THE ATTRIBUTES OF YOUR CR AND SHOULD BE SPECIFIC TO THE CR PREMISES]:</p> <p>Examples of values:</p> <ul style="list-style-type: none"> • Open Space Preservation. <i>[Mention if this ties in to an Open Space Plan. Example:]</i> The protection of the Premises contributes to the protection of the scenic and natural character of _____ and the protection of the Premises will enhance the open-space value of these lands. • Scenic Protection. The Premises are located within the 1992 Massachusetts Landscape Inventory listed as being important for its natural, scenic, and historic features. • Flood Plain Protection. The majority of the Premises lies within the 100-year floodplain. The protection of this floodplain will ensure the continued availability of this flood storage during major storm events. • Protection of Wildlife Habitat. The entire Premises falls within an area designated as "Priority Habitat for State-Protected Rare Species" by the Massachusetts Natural Heritage Program. The Premises contains approximately 3 acres of wooded wetlands and an approximately 1/2-acre vernal pool. • Furtherance of Government Policy. Protection of the Premises furthers the Town of xxx's 2014 Open Space and Recreation Plan: the protection of the Town's scenic landscape (Objective 2a), the protection of forest and farmland (Objective 2b), the protection of the Town and Region's water resources (Objectives 3a & 5a), and provides extra protection to the Town's most fragile resources (Objective 3b). <i>[If the CR is a charitable deduction, it should identify any federal, state, regional or local initiatives or policies; i.e., the BioMap2, Natural Heritage, Living Waters, etc.]</i> • Public access trails for passive recreation, education, and nature study. 	<p>Commissions as well as land trusts, to be completed prior to the grant.</p> <p>PURPOSES</p> <p>Need to identify the specific attributes of the CR that are being protected. If the CR is required as a condition of a permit, the permit restrictions and items that are listed as needing protection should be incorporated into the CR, and a copy of the permits provided with the draft CR. If the CR is a charitable donation or bargain sale for which a tax deduction will be sought, listing any state or local government programs that have identified the area, or local, state or federal investment in or grants that have assisted with the protection of nearby areas is strongly advised]</p> <p>The Conservation Commission certification is some evidence of furtherance of local initiatives or policies. (not required if the Conservation Commission is the Grantee)</p> <p>If trails and passive recreation are for the</p>
--	---

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

A. Prohibited Acts and Uses

Subject to the exceptions set forth herein, the Grantor will not perform or permit the following acts and uses which are prohibited on, above, and below the Premises:

- (1) Constructing, placing or allowing to remain any temporary or permanent building, tennis court, landing strip, mobile home, swimming pool, asphalt or concrete pavement, sign, fence, billboard or other advertising display, antenna, utility pole, tower, conduit, line or other temporary or permanent structure or facility on, above or under the Premises;
- (2) Mining, excavating, dredging or removing from the Premises of soil, loam, peat, gravel, sand, rock or other mineral resource or natural deposit or otherwise make topographical changes to the area;
- (3) Placing, filling, storing or dumping on the Premises of soil, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, waste or other substance or material whatsoever or the installation of underground storage tanks;
- (4) Cutting, removing or otherwise destroying trees, grasses or other vegetation;
- (5) Activities detrimental to drainage, flood control, water conservation, water quality, erosion control, soil conservation, or archaeological conservation;
- (6) Use, parking or storage of vehicles including motorcycles, mopeds, all-terrain vehicles, trail bikes, or any other motorized vehicles on the Premises except for public safety vehicles necessary in carrying out their official duties;
- (7) The disruption, removal, or destruction of the stone walls or granite fence posts on the Premises *[if applicable]*;
- (8) Subdivision; conveyance of a part or portion of the Premises alone, or division or subdivision of the Premises (as compared to conveyance of the Premises in its entirety which shall be permitted), and no portion of the Premises may be used towards building or development requirements on this or any other parcel.

benefit of the owner, but not the public, it goes in the "reserved rights" section, not in the purposes section, since private use is not a public benefit.

Prohibited Acts
Acts must explicitly be listed as "prohibited on, above and below the Premises."

Alternate language **Grantor will not perform, and will take reasonable actions to prevent others from performing the following acts and uses, which are prohibited, on above or below the Premises"**

or

"Grantor will not allow, either by explicit permission or tacit approval"

Parties to the CR may want to add other prohibitions, tailored to their circumstances. If the parties want to allow a use that is prohibited in this section, it should go in the Reserved Rights section, rather than here. So, if forestry and cutting cordwood is allowed, you would still leave item #4 here, and then just allow the desired activity, tailored to the agreement of the parties, in the reserved rights section.

The parties may want to consider whether or not to allow bicycles, snowmobiles, etc.

(9) The use of the Premises for more than *de minimis* commercial recreation, business, residential or industrial use of the Premises.

(10) The conduct of archaeological activities, including without limitation survey, excavation, and artifact retrieval, following submission of an archaeological field investigation plan and its approval in writing by Grantee and the State Archaeologist of the Massachusetts Historical Commission (or appropriate successor official).

(11) Any other use of the Premises or activity thereon which is inconsistent with the purpose of this Conservation Restriction or which would materially impair its conservation interests.

B. Reserved Rights and Exceptions

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

[Insert appropriate reservations of rights, such as the following examples]

(1) Recreational Activities. Hiking, horseback riding, cross-country skiing and other non-motorized outdoor passive recreational activities that do not materially alter the landscape, do not degrade environmental quality; (if for an IRS post mortem tax deduction, add "or do not involve more than *de minimis* use for commercial recreational activities"

(2) Vegetation Management. In accordance with generally accepted forest management practices, selective *de minimis* removing of brush, pruning and cutting to prevent, control or remove hazards, disease, insect or fire damage, or to preserve the present condition of the Premises, including vistas, woods roads, fence lines and trails and meadows; [*Visitas and woods roads needs to be defined to prevent clear cutting for a 360° vista. multiple 50' wide woods roads, etc. – tie in to a defined area, by using language such as "as shown on Baseline Survey" (make sure the survey exists)*]

[*If forestry is to be allowed, must be conducted in accordance with a forest management plan and Forest Cutting Plan approved by The Department of Conservation and Recreation acting by and through its State Forester (or any successor agency) and designed to protect and enhance the conservation values of the Premises, including, without limitation, water quality, water features, scenic views, wildlife habitat, etc.*]

(3) Non-native or nuisance species. The removal of non-native or invasive species, the interplanting of native species, and the control of species in a manner that minimizes damage to

Subdivision

If the CR is required as part of a permit process, the wording would be "no portion of the Premises may be used towards **further** building or development requirements on this or any other parcel." Or "no portion of the Premises may be used towards building or development requirements on this or any other parcel other than those required by the permits mentioned herein."

Preferred:

"All acts and uses not specifically allowed are prohibited."

Alternate:

"All acts and uses not prohibited herein are permissible, **but only if such uses and activities do not materially impair the purpose of this Conservation Restriction or other significant conservation interests.**"

If allowed activities will involve the use of motor vehicles (such as forestry or agriculture) and the parties wish to make it clear that vehicles used for these purposes are allowed: Use of motorized vehicles only as necessary (1) to conduct [the permitted activities such as forestry, agriculture, etc.] but not including recreational activities, and provided such use is not detrimental to water quality, wetland integrity, fragile habitat, and soil, wildlife, and plant conservation, and that such use is

<p>surrounding, non-target species and preserves water quality.</p> <p>(4) <u>Composting</u>. The stockpiling and composting of stumps, trees and brush limbs and similar biodegradable materials originating on the Premises, provided that such stockpiling and composting is in locations where the presence of such activities will not have a deleterious impact on the purposes (including scenic values) of this Restriction;</p> <p>(5) <u>Wildlife Habitat Improvement</u>. With the prior written permission of Grantee, measures designed to restore native biotic communities, or to maintain, enhance or restore wildlife, wildlife habitat, or rare or endangered species including selective planting of native trees, shrubs and plant species;</p> <p>(6) <u>Archaeological Investigations</u>. The conduct of archaeological activities, including without limitation survey, excavation and artifact retrieval, following submission of an archaeological field investigation plan and its approval in writing by Grantee and the State Archaeologist of the Massachusetts Historical Commission or appropriate successor official;</p> <p>(7) <u>Trails</u>. The marking, clearing, maintenance and construction of not more than 2 unpaved footpaths Trails are to be not wider than ____ feet;</p> <p>(8) <u>Signs</u>. The erection, maintenance and replacement of signs with respect to hunting, trespass, trail access, identity and address of the occupants, sale of the Premises, the Grantee's interest in the Premises, and the protected conservation values; and,</p> <p>If the CR is for the MA Conservation Land Tax Credit, need to add:</p> <p>Safeguarding Historic and Archaeological Resources:</p> <p>(9) New construction, demolition, or rehabilitation activity in support of permitted uses, and any other activity in support of permitted uses that proposes disturbance to the surface or subsurface of the ground, shall require prior approval of the Massachusetts Historical Commission (or appropriate successor official) to prepare a protocol and procedures to identify, evaluate, and adopt feasible alternatives to avoid, minimize, or mitigate any adverse effects to historic and archaeological assets.</p> <p>(10) Grantor and Grantee shall make every reasonable effort to prohibit any person from conducting archaeological field investigation including metal detecting, digging, or artifact collecting without approval of the State Archaeologist of the Massachusetts Historical Commission (or appropriate successor official), and shall promptly report any such prohibited activity to the State Archaeologist</p>	<p>restricted to designated areas such as roads or trails designated as suitable with approval of Grantee. (Where appropriate) (2) to allow Grantee to carry out inspection of the Premises.</p> <p>To allow maximum flexibility for unforeseen circumstances or needs, you may want to consider:</p> <p>"Such other non-prohibited activities requested by the Grantor and expressly approved in writing by the Grantee, in its sole and exclusive discretion, which permission may only be given if the Grantee expressly finds that the activity is consistent with, and does not materially impair, the purposes or conservation values of the Premises."</p> <p><u>Consent for prohibited activities will generally require an amendment which must be approved by the Secretary of EOEEA and recorded (to avoid title issues and later claims of violations).</u></p>
--	--

of the Massachusetts Historical Commission (or appropriate successor official). Grantor and Grantee shall include the prohibition against digging, artifact collecting, or metal detecting in any list of rules for visitors to the Premises.

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

C. Notice and Approval. Whenever notice to or approval by Grantee is required under the provisions of paragraphs A or B, Grantor shall notify Grantee in writing not less than 60 days prior to the date Grantor intends to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable and any other material aspect of the proposed activity in sufficient detail to permit the Grantee to make an informed judgment as to its consistency with the purposes of this Conservation Restriction. Where Grantee's approval is required, Grantee shall grant or withhold approval in writing within 60 days of receipt of Grantor's request. Grantee's approval shall not be unreasonably withheld, but shall only be granted upon a showing that the proposed activity shall not materially impair the purposes of this Conservation Restriction. Failure of Grantee to respond in writing within 60 days shall be deemed to constitute approval by Grantee of the request as submitted, so long as the request sets forth the provisions of this section relating to deemed approval after 60 days in the notice but only on the condition that the requested actions are not prohibited under Section II and the actions will not materially impair the purposes or conservation values of this CR.

III. LEGAL REMEDIES OF THE GRANTEE

A. Legal and Injunctive Relief

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

Notice and Approval

Any provisions requiring notice to and approval by the Grantee must allow a minimum of 60 days if the Grantee is a governmental entity.

If there are co-holders of the CR, there generally must be a primary, ultimate decision maker – "tie-breaker". There are various ways to do this – the secondary holder may have 30 days to respond to the primary decision maker, who can adopt the secondary's decision, amend it, or decide something entirely different. In the case of a Community Preservation Act CR, where the municipality owns the land, and the CR is co-held by the Conservation Commission and a land trust, the land trust must be the primary decision maker. Otherwise, enforceability is a problem because the Conservation Commission is under the municipality and is unlikely to be able to use municipal counsel to enforce the CR against the municipality or hire their own counsel to do so.

Legal Remedies.

There are some good mandated mediation clauses in the alternative provisions list that may also be used.

If the CR is over a portion of a parcel, permanent boundary markers must be installed. In the event that is not possible, the following language must be used:

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

B. Non-Waiver

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

C. Disclaimer of Liability

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

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 causes beyond the Grantor's control, including but not limited to fire, flood, storm and earth movement, or from any prudent action taken by the Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Premises resulting from such causes. The parties to this Conservation Restriction agree that in the event of damage to the Premises from acts beyond the Grantor's control, that if it is desirable and feasible to restore the Premises, the parties will cooperate in attempting to do so. \

D. Survey Disputes

In the event of a dispute over the location of the boundaries, the Grantor shall be responsible for a survey and the placement of permanent boundary markers delineating the boundaries of the Conservation Restriction.

"In the event of a dispute over the boundaries of the Conservation Restriction, Grantor shall pay for a survey and permanent monumentation of the boundaries.

Language that suggests the Grantee has no obligation to enforce the CR is unacceptable; a Grantee must have the ability and obligation to monitor and enforce CRs.

IV. ACCESS

The Grantor hereby grants to the Grantee, or its duly authorized agents or representatives, the right to enter the Premises upon reasonable notice and at reasonable times, for the purpose of inspecting the Premises to determine compliance with or to enforce this Conservation Restriction. The right of access includes the right to use any roads, easements, or rights of way the Grantor has, to access the Premises. The Grantor also grants to the Grantee, after notice of a violation and failure of the Grantor to cure said violation, the right to enter the Premises for the purpose of taking any and all actions with respect to the Premises as may be necessary or appropriate to remedy or abate any violation hereof, including but not limited to the right to perform a survey of boundary lines.

V. EXTINGUISHMENT

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

B. Proceeds. Grantor and Grantee agree that the donation of this Conservation Restriction gives rise to a real property right, immediately vested in the Grantee, with a fair market value that is at least equal to the proportionate value that this Conservation Restriction, [determined at the time of the gift][use bracketed language only if a charitable deduction or tax credit is being sought], bears to the value of the unrestricted property [at that time. Such proportionate value of the Grantee's property right shall remain constant.] The distribution of any proceeds will occur only after complying with the terms of any gift, grant, or funding requirements. [The Grantor has provided (or will provide) the Grantee with a copy of the appraisal or other evidence of the proportional values which Grantee will keep on file as evidence of same.]

C. Grantor/Grantee Cooperation Regarding Public Action

Whenever all or any part of the Premises or any interest therein is taken by public authority

Access: Check to see if the Grantee needs an access easement over unrestricted land to get to the restricted area. If so, the grant of that access should be included in the access section..

Any public access and limitations on public access should go here.

If the CR Grantor will seek a deduction for their gift or bargain sale, or there is a grant requiring this, the provision for a proportional value "determined at the time" of the gift for distribution of proceeds is required (based on an appraisal done at the time of the gift). Otherwise, the proportional value can be determined at the time of the extinguishment or eminent domain taking, or the parties can decide between themselves who gets what % or a specific amount.

Where the CR is both required by or for the purposes of obtaining a permit AND it is imposed on portions of house lots (as opposed to an entirely separate open space lot), the percentage that goes to the Grantee is often minimal, so the homeowner will be able to relocate if their land is taken or destroyed. The homeowner should not be left

under power of eminent domain or other act of public authority, then the Grantor and the Grantee shall cooperate in recovering the full value of all direct and consequential damages resulting from such action. All related expenses incurred by the Grantor and the Grantee shall first be paid out of any recovered proceeds, and the remaining proceeds shall be distributed between the Grantor and Grantee in shares equal to such proportionate value proceeds after complying with the terms of any gift, grant, or funding requirements. If a less than fee interest is taken, the proceeds shall be equitably allocated according to the nature of the interest taken. The Grantee shall use its share of the proceeds like a continuing trust in a manner consistent with the conservation purposes of this grant.

VI. ASSIGNABILITY

A. Running of the Burden

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

B. Execution of Instruments

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

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 in the following instances:

As a condition of any assignment, the Grantee shall require that the purpose of this Conservation Restriction continues to be carried out; and the Assignee, at the time of the assignment, qualifies under Section 170(h) of the Internal Revenue Code of 1986, as amended, and applicable regulations thereunder, and is a donee eligible to receive this Conservation Restriction under Section 32 of Chapter 184 of the General Laws of Massachusetts. Any assignment will comply with article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, if applicable.

VII. SUBSEQUENT TRANSFERS

with insufficient funds to acquire a new home..

Do not say "for purposes of this paragraph" - G.L. c. 184 sec. 32 says "conservation restrictions are interests in land" - for ALL purposes.

Under certain conditions, it may be appropriate to state that in the event of an extinguishment or eminent domain taking, the Grantee receives nothing, or if the Grantee has contributed monies, this section can also provide for reimbursement to the Grantee of their contributions.

If improvements to the property are allowed, the parties may want to agree to take into account any increased value due to the improvements by using "equal to such proportionate value exclusive of any improvements" or "subsequent improvements", as applicable.

The Grantor agrees to incorporate by reference the terms of this Conservation

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

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

VIII. ESTOPPEL CERTIFICATES

Upon request by the Grantor, the Grantee shall, within thirty (30) days, execute and deliver to the Grantor any document, including an estoppel certificate, which certifies the Grantor's compliance or non-compliance with the terms of this Conservation Restriction.

IX. NON MERGER

The parties intend that any future acquisition of the Premises shall not result in a merger of the Conservation Restriction into the fee. The Grantor agrees that it will not grant, and the Grantee agrees that it will not take title, to any part of the Premises without having first assigned this Conservation Restriction to a non-fee owner to ensure that merger does not occur and that the Conservation Restriction will continue to be enforceable. No grant will be effective until this Conservation Restriction is assigned to avoid merger and preserve enforcement of the terms of this Conservation Restriction by a non-fee owner.

X. AMENDMENT

If circumstances arise under which an amendment to or modification of this Conservation Restriction would be appropriate, Grantor and Grantee may jointly amend this Conservation Restriction; provided that no amendment shall be allowed that will affect the qualification of this Conservation Restriction or the status of Grantee under any applicable laws, including Section 170(h) of the Internal Revenue Code of 1986, as amended, or Sections 31-33 of Chapter 184 of the General laws of Massachusetts. Any amendments to this conservation restriction shall occur only in

The requirement to reference the CR and its recording information in any deeds, easements, or other grants is frequently overlooked, but it is a violation to fail to do so. An attorney's affidavit should be recorded in the chain of title, referencing that the deed is subject to the CR, with the recording information for both so they will be properly indexed. A buyer and seller, engaging in appropriate due diligence, can allocate among themselves an escrow, sales price adjustment, or other method to resolve violations, whereas a land trust (and the public) would be left with little ability and great expense in resolving any violations in the case of Grantor who sells.

exceptional circumstances. The Grantee will consider amendments only to correct an error or oversight, to clarify an ambiguity, or where there is a net gain in conservation value. All expenses of all parties in considering and/or implementing an amendment shall be borne by the persons or entity seeking the amendment. Any amendment shall be consistent with the purposes of this Conservation Restriction, shall not affect its perpetual duration, shall be approved by the Secretary of Energy and Environmental Affairs and if applicable, shall comply with the provisions of Art. 97 of the Amendments to the Massachusetts Constitution, and any gifts, grants or funding requirements. Any amendment shall be recorded in the _____ Registry of Deeds.

XI. EFFECTIVE DATE

This Conservation Restriction shall be effective when the Grantor and the Grantee have executed it, the administrative Approvals required by Section 32 of Chapter 184 of the General Laws have been obtained, and it has been recorded in the _____ Registry of Deeds. The Grantee shall record this instrument in timely manner in the _____ Registry of Deeds.

XII. NOTICES

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

To Grantor:

To Grantee:

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

XIII. GENERAL PROVISIONS

A. Controlling Law

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

B. Liberal Construction

Amendment

The Amendment clause is optional. If included, it should be made clear that an amendment requires far more than the agreement of the parties, and may not be allowed by one or more of the Sec. 32 approvals. The fact that other land may be offered "in trade" for the CR does not guarantee approval; CRs are perpetual and not freely amendable.

The Grantor and Grantee may be required to obtain additional approvals to comply with the terms of any funding, grants, donations, or permits if the CR was required as a condition of a permit; if there is a mortgage on the property a subordination will be necessary.

If the CR was donated, a bargain sale, or bequeathed, and a charitable trust was established, the permission of a court of competent jurisdiction after consultation and advice of the Massachusetts Attorney General may be required.

Any provisions requiring notice to and approval by the Grantee should allow a minimum of 60 days if the Grantee is a governmental entity, but 30 days is acceptable if the governmental entity agrees.

<p>Any general rule of construction to the contrary notwithstanding, this Conservation Restriction shall be liberally construed in favor of the grant to effect the purpose of this Conservation Restriction and the policy and purposes of Massachusetts General Laws Chapter 184, Sections 31-33. If any provision in this instrument is found to be ambiguous, any interpretation consistent with the purpose of this Conservation Restriction that would render the provision valid shall be favored over any interpretation that would render it invalid.</p> <p>C. Severability</p> <p>If any provision of this Conservation Restriction or the application thereof to any person or circumstance is found to be invalid, the remainder of the provision of this Conservation Restriction shall not be affected thereby.</p> <p>D. Entire Agreement</p> <p>This instrument sets forth the entire agreement of the parties with respect to this Conservation Restriction and supersedes all prior discussions, negotiations, understandings or agreements relating to the Conservation Restriction, all of which are merged herein.</p> <p>E. Homestead</p> <p>The Grantor(s) and any benefitted parties, by their signatures hereto, subordinate and waive any Homestead Act rights and benefits they may have to this Conservation Restriction. The Grantor(s) certify and attest under penalties of perjury that: (check with DCR as to which of these or other provisions or affidavits are needed)</p> <p>_____ the Grantor is single and has no ex-spouse or children who are benefitted by the Homestead Act</p> <p>_____ There are parties benefitted by the Homestead Act who reside or intend to reside on or near the Premises, and they have affixed their signatures below, subordinating and waiving their Homestead rights and benefits as to this Conservation Restriction.</p> <p>XIV. MISCELLANEOUS</p> <p>A. Pre-existing Public Rights. Approval of this Conservation Restriction pursuant to M.G.L. Chapter 184, Section 32 by any municipal officials and by the Secretary of Energy and</p>	<p>Executed mortgage subordinations or assents must be included in the final CR sent to EOEEA, unless there is a representation that there is no lien on the Premises. Grantee should not rely on Grantor's representation – Grantee should check for the existence of any liens of record.</p> <p>Suggested language:</p> <p>Grantor represents that the Premises are free from any mortgage, promissory note, loan, equity credit line, refinance assignment of mortgage, lease, financing statement or any other agreement which gives rise to a surety interest affecting the Property by any third party.</p>
---	--

Environmental Affairs is not to be construed as representing the existence or non-existence of any pre-existing rights of the public, if any, in and to the Premises, and any such pre-existing rights of the public, if any, are not affected by the granting of this Conservation Restriction.

B.

Included herewith and incorporated herein are the following:

1. Signatures of the Grantor, Grantee, Selectmen of the Town of _____, and the MA Secretary of Energy and Environmental Affairs
2. Exhibit A legal description
3. Exhibit B "Sketch Plan"
4. Exhibit C Town Meeting Vote approving the acquisition of the restricted land and expenditure of Community Preservation Act Funds in its purchase
5. MA Executive Office of Energy and Environmental Affairs LAND Grant agreement

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

Name(s) & signatures (of ALL owners)

Name(s) & signatures (of spouse or occupant of the
Premises who is entitled to Homestead Act benefits)

If the Grantor is a trust, must show authority to convey the CR, either by having all trustees sign and stating that they are all the trustees, or by attaching a vote allowing the grant, or if a recorded trust document provides the authority, reference it and its recording information.

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss:

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

Notary Public
My Commission Expires: _____

ACCEPTANCE OF GRANT

Grantor signature

If the Grantor or Grantee is signing on behalf of an organization or trust, authorization must be shown. For instance, "duly authorized" or "duly authorized by vote" & attach vote, if required by organization

Use the "new" notary language. All signatures on the CR must be properly notarized.

The above Conservation Restriction was accepted by _____
this _____ day of _____, 20__.

OR (if applicable):

At a public meeting duly held on _____, 20__, the Conservation Commission of the Town of _____ voted to accept the above Conservation Restriction.

By: _____

Its: _____, duly authorized

(INSERT NOTARIZATION)

APPROVAL OF SELECT BOARD

We, the undersigned, being a majority of the Select Board of the Town of _____, hereby certify that at a public meeting duly held on _____, 20__, the Select Board voted to approve the foregoing Conservation Restriction to the _____ pursuant to Section 32 of Chapter 184 of the General Laws of Massachusetts. (If the CR is to the Conservation Commission, the Selectmen must also vote to accept the CR pursuant to M.G.L. c. 40 sec. 8C.)

Select Board

(INSERT NOTARIZATION)

APPROVAL BY SECRETARY OF ENERGY AND ENVIRONMENTAL AFFAIRS COMMONWEALTH OF MASSACHUSETTS

The undersigned, Secretary of Executive Office of Energy and Environmental Affairs of the Commonwealth of Massachusetts, hereby certifies that the foregoing Conservation Restriction to the Town of _____ has been approved in the public interest pursuant to Massachusetts General Laws, Chapter 184, Section 32.

Dated: _____, 20__

Secretary of Energy and Environmental Affairs

(INSERT NOTARIZATION)

Exhibit A

Legal, metes and bounds description, and/or a reference to a recorded or registered plan showing the boundaries. If there is a recorded plan, state where it is recorded, or, "to be filed herewith". Attach an 8 1/2 x 11 copy of the plan as an Exhibit, labeled as "sketch plan." "As further shown on the Plan/Sketch Plan, attached hereto."

Mention area of CR; "all of a 6 acre lot" or if it is a portion of a lot, say "an _____ acre portion of a _____ acre lot". For building envelopes or exclusions, a legal description of the exclusion(s) is needed, and show on the plan.

Said land is subject to *(mention any easements and or mortgages and their recording information)*. Said land has the benefit of *(mention any easements or other benefits and where they are recorded)*. *(A general statement that the CR is "subject to all rights, easements and restrictions of record, so far as still in force and effect" is insufficient)*

Other Exhibits, as appropriate: Survey or metes and bounds plan of any exclusions, Town Meeting Vote, Subordination Agreement, Baseline Survey, Forestry Plan, etc.

Exhibit A

Exhibit A should be the metes and bounds description. If none is available, a reduced copy of a survey plan, with a reference to the plan's recording information, is adequate.

If the CR is over a portion of a parcel, copying the metes and bounds description from the original deed is not acceptable; a metes and bounds description of the portion that is subject to the CR is required.

For all CRs, attach a plan or sketch plan showing the location of the CR. If there is no survey or other plan, use an assessors map showing the lot and the CR. The words "Conservation Restriction" must be used to label the CR ("Conservation Restriction Area" or "Conservation Restriction Open Space" are also acceptable).

If the CR references a driveway, or a tool shed that is restricted from being relocated or enlarged, draw it in and label it as "approximate location" or noting its dimensions (if you don't have a survey plan showing the exact location.). If changes in the size of structures are restricted, the dimensions must be shown or referenced in the CR and/or in Exhibit A.

(Sample) Subordination of Mortgage

I/we, ____, Present holder(s) of a mortgage on property located at ____ Massachusetts ("Premises") from __ to __ dated __ and recorded with ____ Registry of Deeds in Book __, Page __, hereby approve of, and subordinate the Mortgage and the obligations secured thereby to the Conservation Restriction covering all/a portion of the Premises to be recorded, to the same extent as if the Conservation Restriction had been executed and recorded before the execution and recording of the Mortgage.

In Witness Whereof, the said ____ has caused its corporate seal to be hereto affixed and these presents to be signed in its name and behalf by ____ its ____ this ____ day of __, 20__.

by:

_____, 20__

[Attach acknowledgement certificate/notarization here]

It is a good idea to record the Baseline Documentation referred to in the CR, or an excerpt of the relevant pages with a copy of a sketch plan showing the location of "fixed" items that the parties have mentioned in the CR will also helpful in 100 years – things like roads, stone walls, structures, etc.

Any other agreements, management plans, etc. that are desired to be binding on future owners/successors and assigns, should also be recorded, even if they contemplate the ability to periodically review and revise.

Subordination should be a separate document, recorded prior to or simultaneous with, the CR.

Some banks may have their own form, but this is one example.

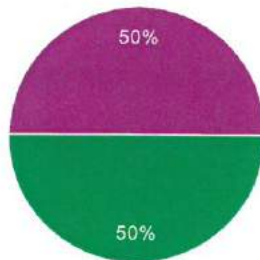
8 responses

[View all responses](#)[Publish analytics](#)

Summary

Application Experience

In your experience, how clear were the requirements of the application process?

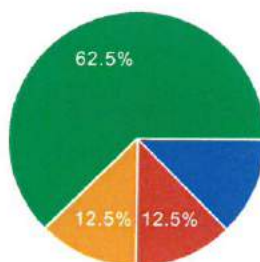


Very difficult to understand	0	0%
Somewhat difficult to understand	0	0%
In between	0	0%
Fairly clear	4	50%
Very clear	4	50%

How can we improve the clarity of the application process?

Not needed.

In your experience, how easy/difficult was the application process?



Very difficult	1	12.5%
Somewhat difficult	1	12.5%
In between	1	12.5%
Fairly easy	5	62.5%
Very easy	0	0%

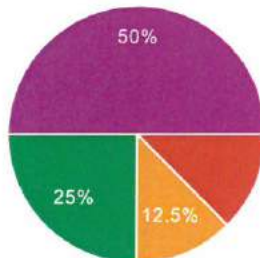
How can we increase the ease of the application process?

Don't require applications to be submitted as PDFs.

compared to other gov't grant applications, quite reasonable process.

hold an application information workshop?

In your experience, how useful was the feedback you received during the application process?

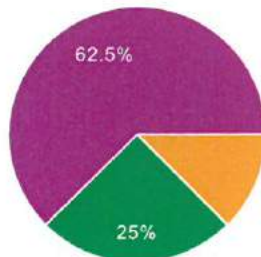


Not at all useful	0	0%
Somewhat useful	1	12.5%
In between	1	12.5%
Fairly useful	2	25%
Very useful	4	50%

How can we increase the usefulness of the feedback you receive during the application process?

not needed.

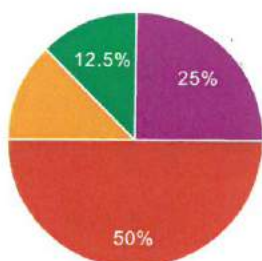
In your experience, how transparent was the application process?



Not at all transparent	0	0%
Somewhat transparent	0	0%
In between	1	12.5%
Fairly transparent	2	25%
Very transparent	5	62.5%

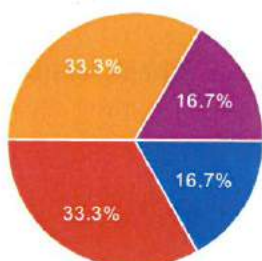
How can we increase the transparency of the application process?

How much time did you spend in total on the application process?



15-20 hours	1	12.5%
More than 20 hours	2	25%

Where did you hear about the CPA application process?



CPA Newsletter	1	16.7%
City of Somerville social media	2	33.3%
Word of mouth	2	33.3%
Posted flyer	0	0%
Other	1	16.7%

If "other," please describe.

City department application
colleagues

Do you have any other feedback on how to improve the application process?

If you have experience with other grant funding options this application process is relatively simple.

Maybe more clarity about who can apply and what happens if there's a proposal that involves city-owned land.

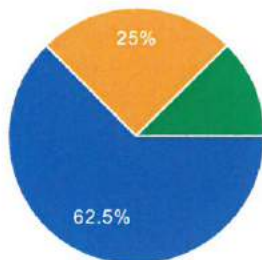
The application process is significantly easier for the City to complete than for organizations outside the City. This gives the City an unfair advantage in terms of the number of applications they can submit in any year. I don't have any ideas on how to improve the situation, but it should be taken into account somehow.

no.

not at this time

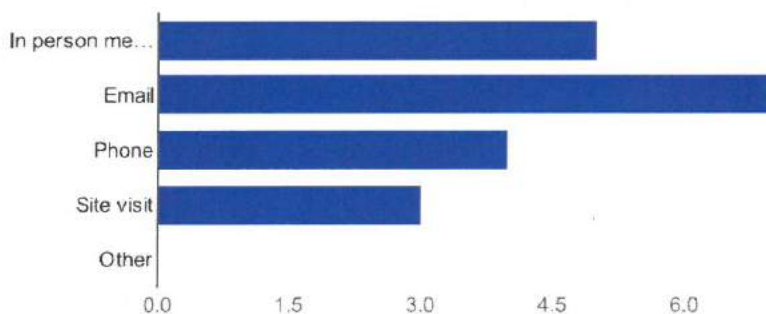
CPA Manager

How frequently did you interact with the CPA Manager while you were developing your application?



1-3 times	5	62.5%
Quarterly	0	0%
Monthly	2	25%
Weekly	1	12.5%

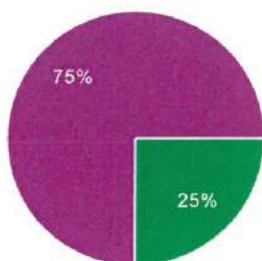
In what formats did you interact with the CPA Manager? (check all that apply)



In person meetings	5	62.5%
Email	7	87.5%
Phone	4	50%
Site visit	3	37.5%
Other	0	0%

If "other," please describe.

In your experience, how useful was the support of the CPA Manager?



Not at all useful	0	0%
Somewhat useful	0	0%
In between	0	0%
Fairly useful	2	25%
Very useful	6	75%

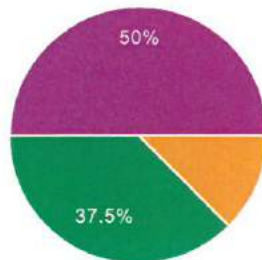
How can the CPA Manager increase the usefulness of support provided to applicants?

doing a great job already!

provided accurate information

Community Preservation Committee (CPC)

As a whole, how knowledgeable did you find the CPC in your project area?



Not at all knowledgeable	0	0%
Somewhat knowledgeable	0	0%
In between	1	12.5%
Fairly knowledgeable	3	37.5%
Very knowledgeable	4	50%

Please share any additional feedback you have for the CPC.

At the meetings I attended, it seems that quite a few of the CPC members were not in attendance.

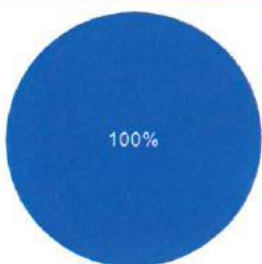
Final feedback

Please share any additional feedback you have for Somerville's CPA Program.

Does not seem like there's enough project management staff to actually do the funded projects.

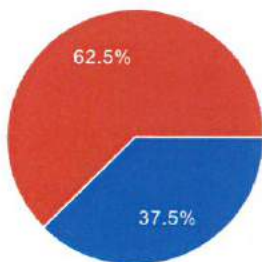
Were you invited to submit a full application?

Yes	8	100%
No	0	0%



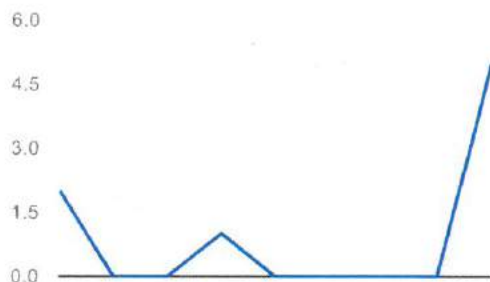
Yes	8	100%
No	0	0%

What type of organization do you represent?



Community organization	3	37.5%
City department	5	62.5%

Number of daily responses



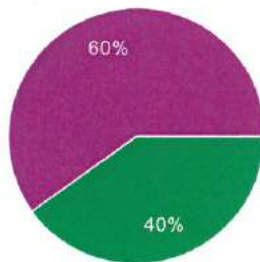
5 responses

[View all responses](#)[Publish analytics](#)

Summary

Project implementation experience

In your experience, how appropriate were the funding conditions placed on your project by the CPC?



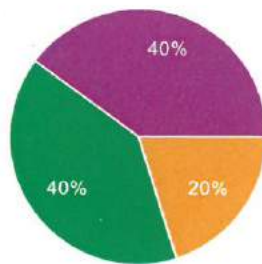
Not at all appropriate	0	0%
Somewhat appropriate	0	0%
In between	0	0%
Fairly appropriate	2	40%
Very appropriate	3	60%

Please share any feedback you have on the funding conditions.

While it would be great to have more funds for open space and historic preservation, it is obvious that the comparable costs of housing require the majority of funds in that bucket.

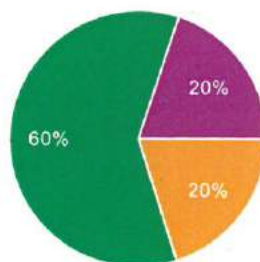
The disbursement schedule was not ideal, but we are grateful for the financial support in any event.

In your experience, how clear were the reporting requirements?



How can we improve the clarity of the reporting process?

In your experience, how easy/difficult was it to access funds for your project?

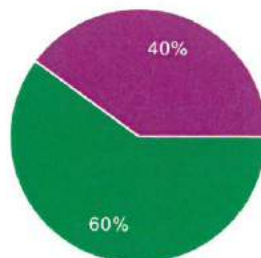


Very difficult	0	0%
Somewhat difficult	0	0%
In between	1	20%
Fairly easy	3	60%
Very easy	1	20%

How can we increase the ease of accessing funds?

The only barrier seems to be a necessary one - the extensive reporting and accounting - we recognize the need for this since these are city funds - it is one of the most thorough reporting processes we go through in all our grants and requires a good investment of time. That said, the advance of 70% of the funds prior to any reporting is an excellent accommodation for smaller projects, especially.

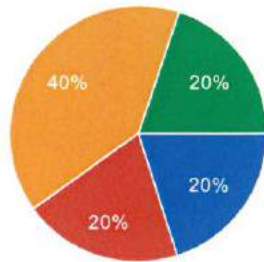
In your experience, how helpful was the reporting process in informing the CPC about your project?



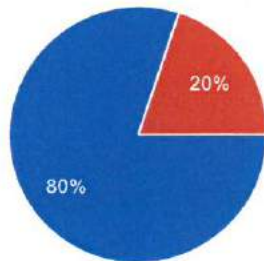
Not at all helpful	0	0%
Somewhat helpful	0	0%
In between	0	0%
Fairly helpful	3	60%
Very helpful	2	40%

Please explain your selection.

This was a great way to provide information to the CPC
Site inspection was quite straight-forward.

How much time did you spend in total reporting on your project this year?

Less than 5 hours	1	20%
5-10 hours	1	20%
10-15 hours	2	40%
15-20 hours	1	20%
More than 20 hours	0	0%

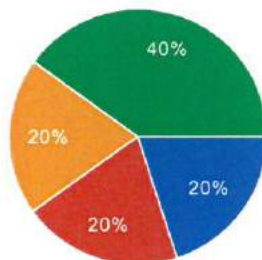
Have you included recognition of CPA funding on your organization's website and/or in other relevant materials?

Yes	4	80%
No	1	20%
Other	0	0%

Do you have any other feedback on how to improve CPA processes?

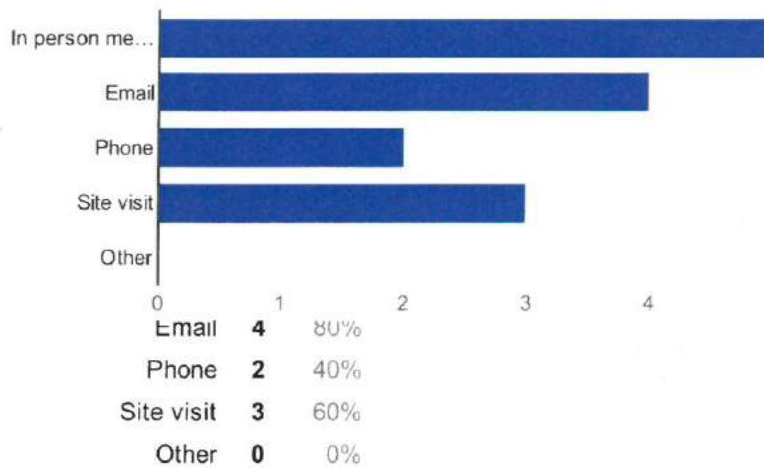
I am just grateful that I was able to speak with Kristin one on one to resolve any issues that arose.

securing more funds for annual distribution!

CPA Manager**How frequently did you interact with the CPA Manager regarding your project in the last year?**

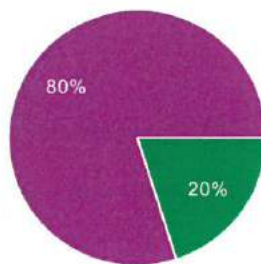
1-3 times	1	20%
Quarterly	1	20%
Monthly	1	20%
Weekly	2	40%

In what formats did you interact with the CPA Manager? (check all that apply)



If "other," please describe.

In your experience, how useful was the support of the CPA Manager?



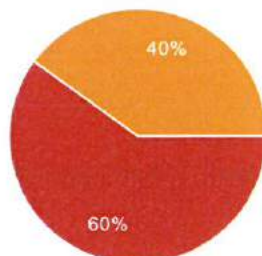
Not at all useful	0	0%
Somewhat useful	0	0%
In between	0	0%
Fairly useful	1	20%
Very useful	4	80%

How can the CPA Manager increase the usefulness of support provided to project implementers?

Other than just doing it for us?
no gripes!

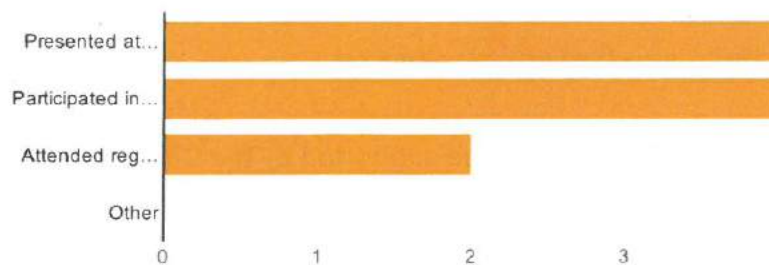
Community Preservation Committee (CPC)

How frequently did you interact with the CPC in the last year?



Once	0	0%
2-3 times	3	60%
More than 3 times	2	40%

In what formats did you interact with the CPC? (check all that apply)



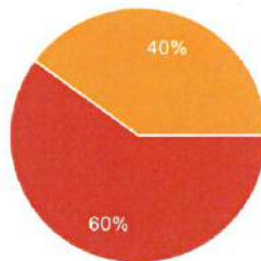
Presented at CPC's request during CPC meeting (not part of application process)	4	100%
Participated in a CPA sponsored event (such as the Prospect Hill Tower opening)	4	100%
Attended regular CPC meeting/hearing	2	50%
Other	0	0%

If "other," please describe.

Please share any additional feedback you have for the CPC.

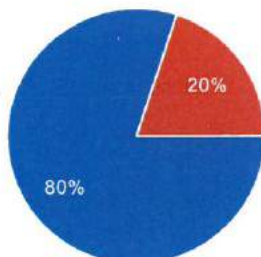
Support to CPA project implementers

Would your CPA funded project have gone forward if it had not received CPA funds?



Yes	0	0%
No	3	60%
Partially	2	40%

Has your organization benefited from being part of the Somerville CPA program beyond receiving funds?



Yes	4	80%
No	1	20%

If "yes," please describe.

Higher visibility for our work.

provided a match to a grant that would not have been available otherwise!

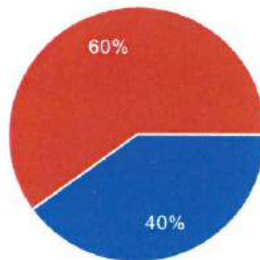
Are there additional ways your organization could be supported by the CPA program in the future?

A Partnership program for longterm funding of certain large capital projects would be great.
more funding available.

Untitled Section

Please share any additional feedback you have for Somerville's CPA Program.

What type of organization do you represent?



Community organization	2	40%
City department	3	60%

Number of daily responses

