

# Town of Sudbury

## Community Preservation Committee

RECEIVED

9/29/21

Flynn Building  
278 Old Sudbury Road  
Sudbury, MA 01776  
978-639-3387  
Fax: 978-639-3314

cpc@sudbury.ma.us

www.sudbury.ma.us/cpc

### PROJECT SUBMISSION FORM

Applicant: Lori Capone, Conservation Coordinator

Submission Date: September 29, 2021

Group or Committee Affiliation (if any): Sudbury Conservation Commission

Applicant Address:

275 Old Lancaster Road, Sudbury, MA

Applicant Email & Phone Number:

caponel@sudbury.ma.us

978-440-5470

Purpose (please select all that apply):

- Open Space & Recreation
- Community Housing
- Historic Resource

Project Manager Email & Phone Number:

Project Name: Libby-Dickson Conservation Restriction Monitoring Funds

Project Description:

In 2003, the Town of Sudbury purchased the Dickson property on Water Row, which sits between the Town of Sudbury Conservation Area known as King Phillip Woods, and the Sudbury Historical Commission's Haynes Garrison site. It was one of Sudbury's first CPA purchases, and though required by the CPA statute, at the time the Town was not in the habit of placing CR's on land acquired with CPA funds.

Two years later, Town Meeting approved the purchase of a much larger, nearby property from the Libby family. These two properties together made terrific additions to the block of conservation land off Route 27 anchored by King Philips' Woods.

When the Town was awarded a LAND grant for the purchase of Pantry Brook Farm in 2012, the State stipulated the award on having CR's put on all CPA lands, and the Town agreed to follow through on that obligation by asking Sudbury Valley Trustees (SVT) to hold the CR on the Libby and Dickson properties. This CR was executed in 2021.

Typically, when SVT is involved with land acquisitions and/or CR acceptances, they conduct fund raising to cover their legal and monitoring costs. As holders of the CR, SVT will be required to monitor these properties for compliance at least annually. On behalf of the Town and Sudbury Valley Trustees, I am requesting a one-time payment of \$9,454 to offset costs to monitor this 25.9-acre CR, in perpetuity.

Costs:

Fiscal Year	Total Project Cost	CPC Funds Requested	Other Funding Sources (Amount and Source)
2023	\$9,454	\$9,454	
2024			
2025			
2026			
2027			
<b>Total</b>			

**How does this project meet the General Criteria and Category Specific Criteria for Community Preservation Committee projects (see attached)?**

Since these lands were purchased with CPA funds and it is a direct requirement of CPA acquisitions that a CR be placed on these lands, held by an independent entity, use of CPA funds for the required monitoring component is in accordance with the CPA legislation. Had the CR development occurred at the time of acquisition, these funds would have been included in the CPA requests for acquisition. Permanent protection of the Libby and Dickson properties, with their varied topography, a diverse wildlife habitat, and miles of trails, in addition their historical significance, ensuring these lands are managed in compliance with the CR is critical for the long-term protection of one of Sudbury's most significant holdings. Ensuring the preservation of the Town's open space and historic assets is consistent with Town planning documents and initiatives.

SVT accepted the CR with the understanding that these fees were dedicated by CPC as an administrative cost, but no information is in the file regarding this, so I am filing a new request for this one-time expenditure. For comparison, a similar project in Acton, recently required \$30,000 monitoring fee; CPA CR's in Southborough and Northborough required \$14,000 and \$16,000. SVT has provided the Town a reasonable cost to partly defray their cost to accept the management of this CR in perpetuity. As stated above, if not for the untimeliness of this CR, SVT would have performed fundraising to offset this cost. The Town has no other funding sources for this request. SVT was generous to accept this responsibility to preserve this Town asset with dedicated funding undetermined.

**Does this project fall within the jurisdiction or interest of other Town Boards, Committees, Commissions, or Departments? If so, please list the boards, committees, commissions, or departments, whether applications and/or presentations have been made, and what input or recommendations have been given.**

This project falls within the purview of the Conservation Commission and they are in support of this application. Historical assets also benefit from this monitoring program. The Conservation Commission discussed this matter at their September 13, 2021 meeting and supports this application for CPA funding. Located partly in the Old Sudbury Historic District and adjacent to the Haynes Garrison House, ensuring this land will always be managed consistent with the Conservation Restriction will ensure the historical landscape is maintained in perpetuity.

For Community Preservation Committee Use:

Form Received On: \_\_\_\_\_

Project Presented to CPC On: \_\_\_\_\_

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

Determination: \_\_\_\_\_

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**GRANTOR:** Town of Sudbury  
**GRANTEE:** Sudbury Valley Trustees, Inc.  
**ADDRESS OF PREMISES:** Water Row and off Water Row, Sudbury, Massachusetts 01776  
**FOR GRANTOR'S TITLE SEE:** Middlesex South Registry of Deeds Book 39630 Page 344, and Middlesex South District of the Land Court Book 1310 Page 144, Land Court Certificate #235399

**CONSERVATION RESTRICTION**

**THE TOWN OF SUDBURY**, a Massachusetts municipal corporation having an address of 322 Concord Road, Sudbury, Middlesex County, Massachusetts, 01776, ("Grantor" which expression includes their successors and legal assigns) acting pursuant to M.G.L. Chapter 184 §31-33 and acting by and through its Conservation Commission by authority of M.G.L. c. 40, sec. 8C as it may hereafter be amended, for nominal consideration, hereby grants, with quitclaim covenants, to **SUDBURY VALLEY TRUSTEES, INC.**, a Massachusetts not-for-profit corporation organized under the provisions of M.G.L. Chapter 180, with a mailing address of 18 Wolbach Road, Sudbury, Middlesex County, Massachusetts, 01776 ("Grantee", which expression includes its permitted successors and assigns), in perpetuity and exclusively for conservation and passive recreation purposes, the following described Conservation Restriction ("Conservation Restriction") on the following parcels of land:

Parcel 1: The entirety of a parcel of land located on Water Row in the Town Sudbury, Massachusetts, constituting approximately 2.39 acres, said parcel having been purchased by the Grantor for the protection of open space and historic resources as described in the Town Vote authorizing such purchase, a copy of which is attached hereto as Exhibit D-1, and further as described in a deed recorded in the Middlesex South Registry of Deeds (the "Registry") at Book 39630, Page 344 and shown as "Parcel C" on a plan of land entitled "Compiled Plan of Land in Sudbury, Mass Owned by Brenton H. Dickson et al" prepared by Thomas Land Surveyors, Inc. dated August 16<sup>th</sup> 1987, recorded with the Registry as Plan 1678 of 1987 and attached hereto in reduced form as Exhibit A;

Parcel 2: The entirety of a parcel of land located off Water Row in the Town of Sudbury, Massachusetts, constituting approximately 23.49 acres, said parcel having been purchased by the

235399-191A-144

Grantor for the preservation of open space as described in a Town Vote authorizing such purchase, a copy of which is attached hereto as Exhibit D-2, and further described in a deed filed with the Middlesex South District of the Land Court at Book 1310, Page 144, Land Court Certificate #235399 and shown as Lot 22 on Land Court Plan 442-I. and attached hereto in reduced form as Exhibit B;

Together Parcel 1 and Parcel 2 are hereinafter known as the "Premises".

## I. PURPOSES:

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

The Premises was acquired using M.G.L. c. 44B Community Preservation Act funds, and copies of the Town Meeting Votes authorizing the use of such funds for such purpose are attached hereto as Exhibit D-1 and D-2.

### The conservation values include the following:

- Open Space Protection. The Premises contributes to the protection of the scenic and natural character of Sudbury and the protection of the Premises will enhance the open-space value of these and nearby lands. The Premises abuts land already conserved, including the 81-acre King Philip Conservation Land and the 70-acre Piper Farm Conservation Land. Also in the vicinity are the 3800 acre Great Meadows National Wildlife Refuge, Sudbury Valley Trustees' 44-acre Wolbach Farm reservation, and a 9-acre conservation restriction on privately owned land.
- Soils. The Premises includes approximately 23 acres of Prime Forest Land.
- Protection of Wildlife Habitat. The Premises consists of approximately 25 acres designated as "Priority Habitats of Rare Species" as defined by the Massachusetts Natural Heritage and Endangered Species Program (NHESP), the protection of which aligns with NHESP's wildlife and habitat protection objectives.
- Public Access. Public access to the Premises will be allowed for non-motorized passive outdoor recreation, education, and nature study.
- BioMap2. The Premises consists of approximately 25.88 acres of BioMap2 Core Habitat for the Blue-spotted Salamander (*Ambystoma laterale*), a Species of Special Conservation Concern as defined by the Massachusetts Natural Heritage and Endangered Species Program. BioMap2, published in 2010, was designed to guide strategic biodiversity conservation in Massachusetts over the next decade by focusing land protection and stewardship on the areas that are most critical for ensuring the long-term

persistence of rare and other native species and their habitats, exemplary natural communities, and a diversity of ecosystems. *BioMap2* is also designed to include the habitats and species of conservation concern identified in the State Wildlife Action Plan.

- Water Quality Protection. Protection of the Premises will maintain water quality in an unnamed stream and associated wetlands on the property which flows to the Sudbury River.
- Heritage Landscape Inventory. The Premises is located within a Massachusetts Department of Conservation and Recreation (DCR) Priority Heritage Landscape, as determined by the DCR Heritage Landscape Inventory of 2012. Heritage Landscapes are vital to the history, character, and quality of life of communities. Heritage landscapes are the result of human interaction with the natural resources of an area, which influence the use and development of land and contain both natural and cultural resources, such as cemeteries, parks, estates, and agricultural properties. Further, the Premises has frontage on Water Row, which has been identified in the Massachusetts Heritage Landscape Inventory as a designated scenic road along a Native American trail.
- Massachusetts Scenic Landscape Inventory. The Premises is identified as “Noteworthy” in the Massachusetts Department of Conservation and Recreation’s Scenic Landscape Inventory, identifying landscapes that should be protected to conserve and protect natural, cultural, and recreational resources across the Commonwealth.
- Historical Purposes. The Dickson property (Parcel 1 as described above) falls within the Town of Sudbury’s Sudbury Centre Historic District, and is adjacent to the Haynes Garrison House site, one of six fortified structures that existed in Sudbury in 1676 and the site of a significant battle in the King Philip’s War.

These and other conservation values of the Premises, as well as its current uses and state of improvement, are described in a Baseline Documentation Report (“Baseline Report”) prepared by Grantee with the cooperation of the Grantor, consisting of maps, photographs, and other documents and on file with the Grantee and referenced herein. The Baseline Report (i) is acknowledged by Grantor and Grantee to be a complete and accurate representation of the condition and values of the Premises as of the date of this Conservation Restriction, (ii) is intended to fully comply with applicable Treasury Regulations, and (iii) is intended serve as an objective information baseline for subsequent monitoring of compliance with the terms of this Conservation Restriction as described herein. Notwithstanding the foregoing, the parties may utilize any evidence of the condition of the Premises at the time of this grant other than the Baseline Report, should the Baseline Report be unavailable or if it does not adequately address the issues presented.

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

### **A. Prohibited Acts and Uses**

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

- (1) Constructing, placing or allowing to remain any temporary or permanent building, tennis court, landing strip, mobile home, swimming pool, asphalt or concrete pavement, sign, fence, billboard or other advertising display, antenna, utility pole, tower, solar panel, solar array, 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 making topographical changes to the area;
- (3) Placing, filling, storing or dumping of soil, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, tree and other vegetation cuttings generated off-site, waste or other substance or material whatsoever or the installation of underground storage tanks;
- (4) Cutting, removing or otherwise destroying trees, grasses or other vegetation;
- (5) Activities detrimental to drainage, flood control, water conservation, water quality, erosion control, soil conservation, wildlife habitat, or archaeological conservation;
- (6) Use, parking or storage of vehicles including motorcycles, mopeds, all-terrain vehicles, trail bikes, or any other motorized vehicles on the Premises except for vehicles necessary for public safety (i.e., fire, police, ambulance, other government officials) in carrying out their official duties or as necessary for the mobility impaired;
- (7) Subdivision or conveyance of a part or portion of the Premises alone, or division or subdivision of the Premises (as compared to conveyance of the Premises in its entirety which shall be permitted), and no portion of the Premises may be used towards building or development requirements on this or any other parcel;
- (8) The use of the Premises for business, residential or industrial use or commercial recreation;
- (9) The disruption, removal, or destruction of the stone walls on the Premises;
- (10) Any other use of the Premises or activity which is inconsistent with the purpose of this Conservation Restriction or which would impair its conservation values.

**B. Reserved Rights and Exceptions**

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 impair the conservation values or purposes of this *Conservation Restriction*.

- (1) Vegetation Management. The selective minimal 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 limited vistas, woods roads, fence lines and trails and meadows.
- (2) Historic Vista Clearing. With the prior written permission of Grantee and exclusively within the area identified on Exhibit C as "Vista Clearing Area", the removal of trees and shrubs to create vistas and a view to the Sudbury River, provided that the cleared area does not exceed 2,500 square feet;
- (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 surrounding, non-target species and preserves water quality. The use of herbicides is permitted to accomplish the activities described in this Paragraph II(B)(3) only with the prior approval of the Grantee;
- (4) Composting. The stockpiling and composting of stumps, trees, 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 impair the conservation values (including scenic values) of this Conservation Restriction. No such activities will take place closer than one hundred (100) feet from any wetland, or two hundred (200) feet of a waterbody or stream. All exercise of this reserved right shall take into account sensitive areas and avoid harm to nesting species during nesting season;
- (5) Wildlife Habitat Improvement. 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; and Forestry and Cutting in accordance with Paragraph II(B)(11).
- (6) Archaeological Investigations. 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).
- (7) Trails. The marking, clearing and maintenance of existing footpaths as shown in the Baseline Report, including the construction, use, maintenance, repair and replacement of bridges and boardwalks. With prior approval of the Grantee, the construction of new trails or the relocation or alteration of existing trails, provided that any construction, relocation, or alteration results in trails that are no wider than eight feet;
- (8) Stone Walls. The maintenance, repair, and temporary relocation, but not the removal, of existing stone walls on the Premises.

- (9) Signs. The erection, maintenance and replacement of signs, including kiosks, with respect to trespass, trail access, identity and address of the occupants, the Grantee's interest in the Premises, any gift, grant, or other applicable source of support for the conservation of the Premises, and the protected conservation values.
- (10) Outdoor Passive Recreational Activities. Hiking, horseback riding, cross-country skiing and other non-motorized outdoor recreational activities that do not materially alter the landscape, do not degrade environmental quality. Hunting is permitted only with a permit from the Sudbury Conservation Commission.
- (11) Forestry and Cutting. Conducting or permitting others to conduct sound silvicultural uses of the Premises, including the right to commercially harvest forest products (as such term may be defined from time to time in General Laws, Ch. 61, Sec. 1, or successor law) and the temporary establishment of new woods roads in accordance with prudent and sound silvicultural practices that conform at least to the minimum standards set forth in the Massachusetts Forest Cutting Practices Act (General Laws, Ch. 132, or its successor) and carried out pursuant to a Forest Stewardship Plan.

Before any harvest of forest products occurs on the Premises, Grantor shall submit a Forest Stewardship Plan to the Grantee, the Massachusetts Department of Conservation and Recreation (or appropriate successor agency) and to any other required state agencies for their approval, unless a plan is already approved and in effect. The Forest Stewardship Plan shall be prepared by a forester licensed through the Massachusetts Department of Conservation and Recreation in conformance with the "Directions for the Preparation of the Chapter 61 Forest Management Plans and Forest Stewardship Plans" and such statutes, regulations and directions in effect at the time of the approval of the Forest Stewardship Plan. The Forest Stewardship Plan shall include provisions designed to minimize soil erosion, conserve surface and groundwater quality, scenic views, wildlife habitat, and to protect the conservation values of this Conservation Restriction.

The Forest Stewardship Plan shall be effective for a ten (10) year period and shall be resubmitted once every ten (10) years as necessary if additional timber harvests occur. All cutting plans and designated access routes shall avoid any stone structures or historical and cultural resources and shall be reasonably required to prevent any damage thereto. All cutting operations shall be supervised by a licensed forester;

- (12) Site Restoration. Any work undertaken in conjunction with the Reserved Rights described in this Paragraph II(B) shall seek to minimize disturbance to the Conservation Values and other natural features within the Premises and to the unnamed stream and associated wetlands that may be impacted as a result of exercising of any of the Reserved Rights described herein. Upon completion of any site work performed in conjunction with the Reserved Rights described in this Paragraph II(B), any disturbed areas shall be restored substantially to the conditions with respect to soil material, grade, and vegetated ground cover as documented in the Baseline Report, as applicable, or in conformance with the conditions with respect to soil material, grade, and vegetated ground cover, with



the exception of removal of non-native or nuisance species, that existed prior to said work, if said work is done in any area not documented in the Baseline Report.

- (13) Permits, Regulations, Laws. The exercise of any right reserved by Grantor under this Paragraph II(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.
- (14) Best Management Practices. The exercise of any right reserved by Grantor under this Paragraph II(B) shall follow, when available and if applicable, established, up to date, and regionally-applicable Best Management Practices or similar standards developed by a governmental agency or other entity with known expertise in the area of practice and designed to protect the natural features potentially affected by the action(s).

### **C. Notice and Approval.**

Whenever notice to or approval by Grantee is required, Grantor shall notify Grantee, by a method requiring proof of receipt, in writing not less than 30 days prior to the date Grantor intends to undertake the activity in question, unless the activity is in response to an immediate safety or environmental condition, in which case notification shall be given as soon as is reasonably possible following the action taken. 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 30 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 impair the purposes of this Conservation Restriction.

Subject to any applicable law or regulation, failure of Grantee to respond in writing within 30 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 30 days in the notice, the requested activity is not prohibited herein, and the activity will not impair the conservation values or purposes of this Conservation Restriction.

## **III. LEGAL REMEDIES OF THE GRANTEE**

### **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. Grantee agrees to cooperate for a reasonable period of time prior to resorting to legal means in resolving issues concerning violations provided Grantor ceases objectionable actions and Grantee determines there is no ongoing diminution of the conservation values of the Conservation Restriction.

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

**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.

**D. Acts Beyond the Grantor's Control**

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

**IV. ACCESS**

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

This Conservation Restriction also grants to the general public the right to enter upon the Premises for passive outdoor recreational purposes as described herein and on established trails for said purpose including, but not limited to, hiking, wildlife observation, cross-country skiing, horseback riding, and other non-motorized, passive outdoor recreational and environmental educational activities (except for motorized wheelchairs or similar equipment reasonably necessary for persons with disabilities or as otherwise outlined in Section II.B of this Conservation Restriction, which shall be allowed). With prior approval of Grantee, trails may be relocated or closed temporarily as needed to undertake permitted management activities.

## V. EXTINGUISHMENT

A. If circumstances arise in the future such as render the purpose of this Conservation Restriction impossible to accomplish, this restriction can only be terminated or extinguished, whether in whole or in part, by a court of competent jurisdiction under applicable law after review and approval by the Massachusetts Secretary of Energy and Environmental Affairs. If any change in conditions ever gives rise to extinguishment or other release of the Conservation Restriction under applicable law, then Grantees, on a subsequent sale, exchange, or involuntary conversion of the Premises, shall be entitled to a portion of the proceeds in accordance with Paragraph V(B), subject, however, to any applicable law which expressly provides for a different disposition of the proceeds and after complying with the terms of any gift, grant, or funding requirements. Grantees 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 bears to the value of the unrestricted property. Such proportionate value of the Grantee's property right shall remain constant. Any proceeds will be distributed only after complying with the terms of any gift, grant, or other funding requirements. The Town of Sudbury shall use its share of the proceeds in a manner consistent with the conservation purposes of this grant by replacing the proceeds in the Town of Sudbury's Community Preservation Fund for open space purposes (see M.G.L. c. 44B). If the Town of Sudbury no longer has a Community Preservation Fund, then the proceeds shall be placed in a similar fund to be used in a manner consistent with the purposes of this Conservation Restriction.

C. Grantor/Grantee Cooperation Regarding Public Action. Whenever all or any part of the Premises or any interest therein is taken by public authority under power of eminent domain or other act of public authority, then the Grantor and the Grantee shall cooperate in recovering the full value of all direct and consequential damages resulting from such action. All related expenses incurred by the Grantor and the Grantee shall first be paid out of any recovered proceeds, and the remaining proceeds shall be distributed between the Grantor and Grantee in accordance with Paragraph V(B), after complying with the terms of any law, gift, grant, or funding requirements. If a less than fee interest is taken, the proceeds shall be equitably allocated according to the nature of the interest taken. The Grantee shall use its share of the

proceeds like a continuing trust in a manner consistent with the conservation purposes of this grant.

## **VI. DURATION & ASSIGNABILITY**

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

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

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

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

## **VII. SUBSEQUENT TRANSFERS**

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

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

## **VIII. ESTOPPEL CERTIFICATES**

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

#### **IX. NON MERGER**

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

#### **X. AMENDMENT**

If circumstances arise under which an amendment to or modification of this Conservation Restriction would be appropriate, Grantor and Grantee may jointly amend this Conservation Restriction; provided that no amendment shall be allowed that will affect the qualification of this Conservation Restriction or the status of Grantee under any applicable laws, including Section 170(h) of the Internal Revenue Code of 1986, as amended, or Sections 31-33 of Chapter 184 of the General Laws of Massachusetts. Any amendments to this conservation restriction shall occur only in exceptional circumstances. The Grantee will consider amendments only to correct an error or oversight, to clarify an ambiguity, or where there is a net gain in conservation 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 Middlesex South Registry of Deeds or, if registered land, in the Middlesex Registry District of the Land Court.

#### **XI. EFFECTIVE DATE**

This Conservation Restriction shall be effective when the Grantor and the Grantee have executed it, the administrative approvals required by Section 32 of Chapter 184 of the General Laws have been obtained, and it has been recorded in a timely manner in the Middlesex South Registry of Deeds or, if registered land, in the Middlesex Registry District of the Land Court.

#### **XII. NOTICES**

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

To Grantor: Town of Sudbury  
Town Manager  
278 Old Sudbury Road  
Sudbury, MA 01776

With a copy to: Town Counsel  
278 Old Sudbury Road  
Sudbury, MA 01776

Sudbury Conservation Commission  
275 Old Lancaster Rd.  
Sudbury MA 01776

To Grantee: Sudbury Valley Trustees, Inc.  
18 Wolbach Road  
Sudbury, MA 01776

With a copy to the Grantee's Counsel:

Deborah Eliason, Esq.  
Eliason Law Office, LLC  
63 Middle Street  
Gloucester, MA 01930

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

### **XIII. GENERAL PROVISIONS**

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

B. Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Conservation Restriction shall be liberally construed in favor of the grant to effect the purpose of this Conservation Restriction and the policy and purposes of Chapter 184, Sections 31, 32, and 33 of the Massachusetts General Laws. If any provision in this instrument is found to be ambiguous, any interpretation consistent with the purpose of this Conservation Restriction that would render the provision valid shall be favored over any interpretation that would render it invalid.

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

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

**XIV. MISCELLANEOUS**

- A. Pre-existing Public Rights. Approval of this Conservation Restriction pursuant to Chapter 184, Section 32 of the Massachusetts General Laws by any municipal officials and by the Secretary of Energy and Environmental Affairs is not to be construed as representing the existence or non-existence of any pre-existing rights of the public, if any, in and to the Premises, and any such pre-existing rights of the public, if any, are not affected by the granting of this Conservation Restriction.
- B. Subordination. The Grantor attests that there is no mortgage, promissory note, loan, lien, equity credit line, refinance assignment of mortgage, lease, financing statement or any other agreement which gives rise to a surety interest affecting the Premises
- C. Attached hereto and incorporated herein by reference are the following:

Signature pages:

Grantor: The Town of Sudbury by its Conservation Commission  
Grantee: Sudbury Valley Trustees, Inc.  
Approval of Sudbury Board of Selectmen  
Approval of Secretary of Energy and Environmental Affairs

Exhibits:

Exhibit A: Plan of Premises, Parcel 1  
Exhibit B: Plan of Premises, Parcel 2  
Exhibit C: Sketch Map Showing Vista Clearing Area  
Exhibit D-1: Town Meeting Vote For Parcel 1 of the Premises  
Exhibit D-2: Town Meeting Vote For Parcel 2 of the Premises

We, the members of the Conservation Commission of the Town of Sudbury, hereby certify that at a meeting duly held on December 14, 2020, the Conservation Commission voted to grant the foregoing Conservation Restriction to Sudbury Valley Trustees, Inc. pursuant to Massachusetts General Laws, Chapter 184, Section 32 and Chapter 40, Section 8C.

Executed under seal this 14<sup>th</sup> day of December, 2020.

By its Conservation Commission:

*Thomas Friedlander*  
Thomas Friedlander, Chair

\_\_\_\_\_  
Bruce Porter

\_\_\_\_\_  
Mark Sevier

*Kathleen Rogers*  
Kathleen Rogers

*Richard A. Morse*  
Richard A. Morse

*David Henkels*  
David Henkels

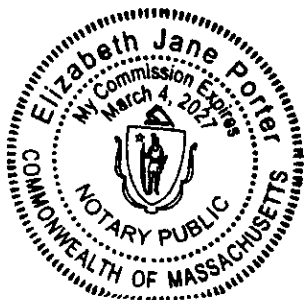
*Kenneth Holtz*  
Kenneth Holtz

COMMONWEALTH OF MASSACHUSETTS, Middlesex County

On this 14 day of Dec, 2020 before me, the undersigned Notary Public, personally appeared the above-named Thomas Friedlander,

proved to me by satisfactory evidence of identification, being (check whichever applies):  
 driver's license or other state or federal governmental document bearing a photographic image,  
 oath or affirmation of a credible witness known to me who knows the above signatories, or  
 my own personal knowledge of the identity of the signatories, to be the persons whose names are signed above, and acknowledged the foregoing to be signed by them voluntarily for its stated purpose as members of the Town of Sudbury Conservation Commission.

*Elizabeth J. Porter*  
Notary Public:  
My Commission Expires:





ACCEPTANCE OF GRANT:

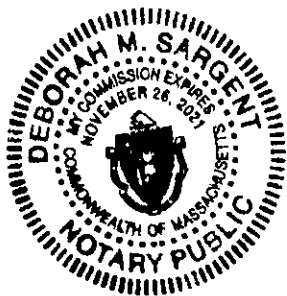
Sudbury Valley Trustees, Inc. at a meeting held on June 17, 2015 voted to accept, and hereby accepts the foregoing Conservation Restriction this 11<sup>th</sup> day of ~~Nov~~ December 2020, by:

L. Vernegaard  
Lisa Vernegaard, *Executive Director*  
*Duly Authorized*

COMMONWEALTH OF MASSACHUSETTS, Middlesex County

On this 11<sup>th</sup> day of December, 2020 before me, the undersigned Notary Public, personally appeared the above-named Lisa Vernegaard, Executive Director of Sudbury Valley Trustees, Inc., proved to me by satisfactory evidence of identification, being (check whichever applies):  driver's license or other state or federal governmental document bearing a photographic image,  oath or affirmation of a credible witness known to me who knows the above signatory, or  my own personal knowledge of the identity of the signatory, to be the person whose name is signed above, and acknowledged the foregoing to be signed by her voluntarily for its stated purpose.

Deborah M Sargent  
Notary Public: Deborah M Sargent  
My Commission Expires: 11/26/2021



**APPROVAL OF BOARD OF SELECTMEN**

We, the undersigned, being a majority of the Board of Selectmen of the Town of Sudbury, hereby certify that at a public meeting duly held on January 5, 2021, the Board of Selectmen voted to approve the foregoing Conservation Restriction from the Town of Sudbury acting by and through its Conservation Commission to Sudbury Valley Trustees, Inc. in the public interest pursuant to Massachusetts General Laws, Chapter 184, Section 32.

**BOARD OF SELECTMEN:**

*Janie W. Dretler*  
Janie W. Dretler, Chair

*Daniel E. Carty*  
Daniel E. Carty

*Jennifer Roberts*  
Jennifer Roberts

*Charles Russo*  
Charles Russo

*William J. Schineller*  
William Schineller

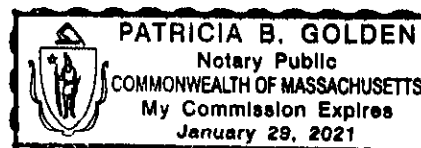
**COMMONWEALTH OF MASSACHUSETTS**

MIDDLESEX, ss:

On this 5th day of January, 2021, before me, the undersigned notary public, personally appeared the Sudbury Board of Selectmen, and proved to me through satisfactory evidence of identification which was personal knowledge to be the people whose names are signed on the proceeding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose.

*Patricia B. Golden*  
Notary Public


My Commission Expires:



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

The undersigned, Secretary of Energy and Environmental Affairs of the Commonwealth of Massachusetts, hereby certifies that the foregoing Conservation Restriction from the Town of Sudbury, acting by and through its Conservation Commission to Sudbury Valley Trustees, Inc. has been approved in the public interest pursuant to Massachusetts General Laws, Chapter 184, Section 32.

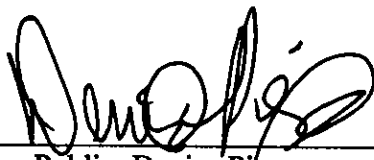
Dated: February 26<sup>th</sup>, 2021

  
\_\_\_\_\_  
Kathleen A. Theoharides  
Secretary of Energy and Environmental Affairs

**COMMONWEALTH OF MASSACHUSETTS**

Middlesex, ss:

On this 26th day of February, 2021, before me, the undersigned notary public, personally appeared Kathleen A. Theoharides, and proved to me through satisfactory evidence of identification which was personal knowledge to be the person whose name is signed on the proceeding or attached document, and acknowledged to me that she signed it voluntarily for its stated purpose.

  
\_\_\_\_\_  
Notary Public: Denise Pires  
My Commission Expires: December 28<sup>th</sup>, 2023

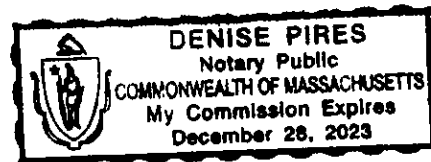
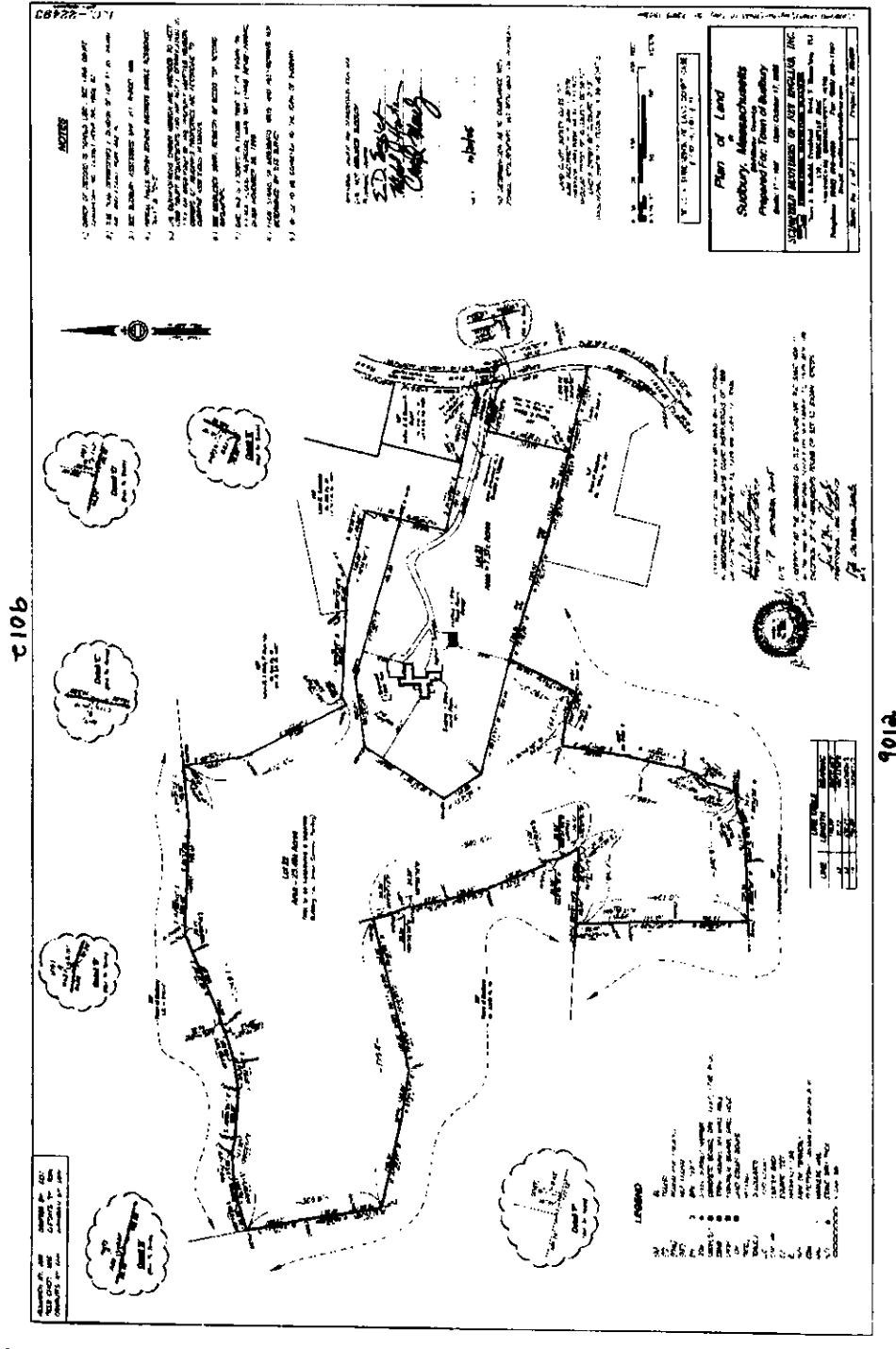




EXHIBIT B

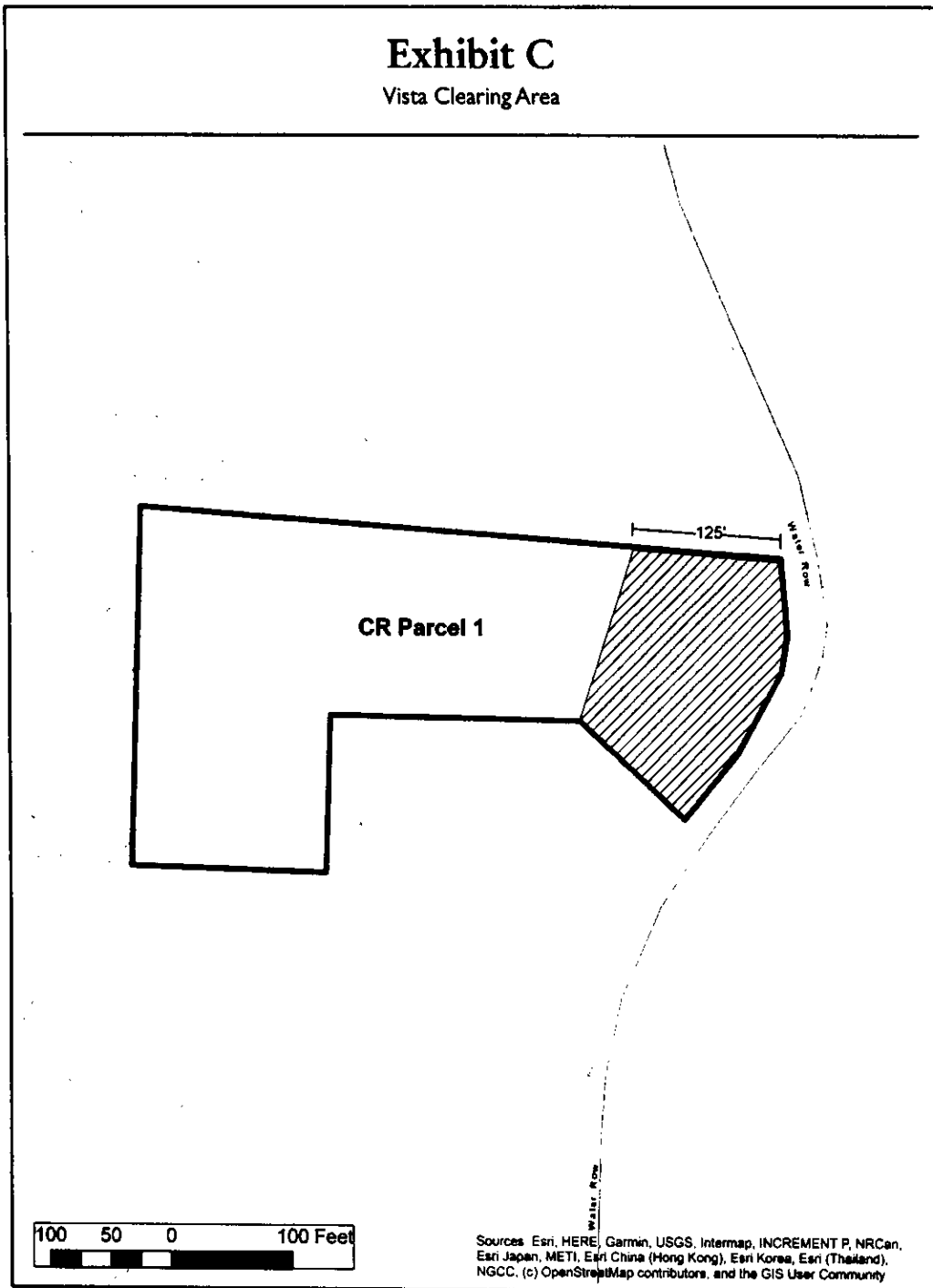
Plan of Land, Parcel 2



1016

1012

**EXHIBIT C – Sketch Map Showing Vista Clearing Area**



**EXHIBIT D-2 - Town Meeting Vote For Parcel 2 of the Premises**



*At a legal meeting of the qualified voters of the Town of Sudbury,*

*held April 11, 2005 the following business was transacted under*

**Article 49 - COMMUNITY PRESERVATION FUND - LIBBY  
PROPERTY OPEN SPACE ACQUISITION**

**UNANIMOUSLY VOTED:**

**Moderator declared a two-third vote**

**To approve the recommendation of the Community Preservation Committee, to appropriate \$2,690,000 from Community Preservation Act funds for the acquisition in fee title of approximately 24.06 acres of land, comprising a portion of property commonly known as the Libby property, located off Water Row, Sudbury, MA, and identified on the Town of Sudbury Assessor Map No. H11, Parcel 400, and more particularly shown on the plan entitled: "Libby Land Acquisition," dated March 15, 2005, prepared by Sudbury Engineering Dept. for the purpose of acquisition and preservation of open space, and for all expenses connected therewith including bond and note issuance expense; and to raise this appropriation the Treasurer, with the approval of the Board of Selectmen, is authorized to borrow \$2,690,000 under M.G.L. c44B, s.11 and M.G.L. c.44, s.7(3) or any other enabling authority; that the Board of Selectmen is authorized to take any other action necessary to carry out this project; and that \$269,000 be appropriated from the Community Preservation Act funds to pay debt service due on any such bonds or notes during FY06. All appropriations shall be allocated to the category of Open Space and the appropriation for debt service funded first from open space restricted reserves, and second from general unrestricted reserves, as necessary.**

**Submitted by the Community Preservation Committee.**

**A true copy, Attest:**

**Barbara A. Silra  
Town Clerk**