

# Town of Sandwich

THE OLDEST TOWN ON CAPE COD

130 MAIN STREET  
SANDWICH, MA 02563

TEL: 508-888-4910 AND 508-888-5144  
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BOARD OF  
SELECTMEN

TOWN  
MANAGER

## BOARD OF SELECTMEN & FINANCE COMMITTEE AGENDA

April 2, 2015 – 7:00 P.M.

Sandwich Town Hall – 130 Main Street

1. Pledge of Allegiance
2. Review & Approval of Minutes (*Vote*)
3. Public Forum (*15 Minutes*)
4. Town Manager Report
5. Correspondence / Statements / Announcements / Future Items / Follow-up (*10 Minutes*)
6. Staff Meeting (*60 Minutes*)
  - 7:30 P.M. Public Hearing: Package Store License Transfer (*Vote*)  
Sandwich Package Store, 118 Route 6A – Neelkrish Corporation  
Purshottamdas Patel, Proposed Manager
  - Finance Committee – FY'16 Budget & Role of Finance Committee
7. Old Business (*45 Minutes*)
  - FY'16 Budget
  - May 4, 2015 Annual Town Meeting – Draft of List of Articles
  - 2015 Long Range Plan Update
  - Update on Army Corps Canal Dredging & Section 204 Study, Etc.
  - Other
8. New Business (*15 Minutes*)
  - Seasonal Liquor License Renewal – Horizons Restaurant (*Vote*)
  - Accept Conservation Restriction on Ox Pasture / Theroux Property (*Vote*)
  - Other
9. Public Forum (*15 Minutes*)
10. Closing Remarks
11. Executive Session  
(If Needed)
12. Adjournment

**NEXT MEETING:** Thursday, April 9, 2015, 7:00 P.M., Town Hall

**SANDWICH BOARD OF SELECTMEN  
PUBLIC HEARING**

In accordance with M.G.L. Ch. 138, the Sandwich Board of Selectmen will hold a public hearing on Thursday, April 2, 2015 at 7:30 p.m. in the Sandwich Town Hall, 130 Main Street, Sandwich, MA to consider the transfer of the Annual All Alcoholic Package Goods Store License of Shree Ashapuri, LLC d/b/a Sandwich Package Store, Mukesh V. Shah, Manager to Neelkrish Corporation, d/b/a Sandwich Package Store, Purshottamdas Patel, Manager, 118 route 6A. Licensed premises 1056 sq. feet. 2 door cooler, display shelves, exit, entrance, ice cooler and restroom along right wall. Storage in the rear, 7 door walk-in cooler and display case along the left wall. Five display cases in the front of the store and check-out counter/POS and lottery terminal in the front with exit entrance. Anyone wishing to be heard on the subject will be afforded an opportunity at that time.

Ralph Vitacco, Chairman  
Board of Selectmen



Commonwealth of Massachusetts  
 Alcoholic Beverages Control Commission  
 239 Causeway Street, First Floor  
 Boston, MA 02114

PETITION FOR TRANSFER OF OWNERSHIP, TRANSFER OF STOCK, NEW OFFICER(S),  
 DIRECTOR(S), STOCKHOLDER(S) AND LLC MANAGER(S)

107400029

ABCC License Number

Sandwich

City/Town

The licensee A. Shree Ashapuri LLC and the proposed transferee B. Neelkrish Corporation respectfully petition the Licensing Authorities to approve the following transfer of ownership. Any Corporation, LLC or Association, Partnership, Individual, Sole Proprietor Listed in box (A.) must submit a certificate of good standing from the Massachusetts Department of Revenue (DOR).



Is the PRESENT licensee a Corporation/LLC listed in box (A.), duly registered under the laws of the Commonwealth of Massachusetts?

Yes  No If YES, please list the officers, directors and stockholders, their residences, and shares owned by each.

Name	Title	Address	Stock or % Owned
Mukesh V. Shah	Manager	118 Route 6A, Sandwich MA 02563	50%
Sangita Shah	Manager	118 Route 6A, Sandwich MA 02563	50%

Is the PROPOSED transferee a Corporation/LLC listed in box (B.), duly registered under the laws of the Commonwealth of Massachusetts?

Yes  No

TO: (Place an \* before the name of each DIRECTOR/LLC Manager.)

Name	Title	Address	Stock or % Owned
Shitel Patel	President, Treasurer	425 Elm Street, Kingston, MA 02364	59%
Tejas Patel	Vice President/Secretary	425 Elm Street, Kingston, MA 02364	41%
Purshottamdas Patel	Director	425 Elm Street, Kingston, MA 02364	

The above named proposed transferee hereby joins in this petition for transfer of said license.

> SIGNATURE OF LAST-APPROVED LICENSEE: [Signature]

(If a Corporation/LLC, by its authorized representative)

Date Signed

> SIGNATURE OF PROPOSED TRANSFEREE: Shitel Patel

### APPLICATION FOR RETAIL ALCOHOLIC BEVERAGE LICENSE

City/Town

Sandwich

#### 1. LICENSEE INFORMATION:

A. Legal Name/Entity of Applicant:(Corporation, LLC or Individual) Neelkrish Corporation

B. Business Name (if different) : Sandwich Package Store

C. Manager of Record: Purshottamdas Patel

D. ABCC License Number (for existing licenses only) : 107400029

E. Address of Licensed Premises: 118 Route 6A

City/Town: Sandwich

State: MA

Zip: 02563

F. Business Phone: (508) 888-0075

G. Cell Phone: (781) 689-5353

H. Email: tejascorp@yahoo.com

I. Website:

J. Mailing address (if different from E.): 118 Route 6A

City/Town: Sandwich

State: MA

Zip: 02563

#### 2. TRANSACTION:

- New License
- New Officer/Director
- Transfer of Stock
- Issuance of Stock
- Pledge of Stock
- Transfer of License
- New Stockholder
- Management/Operating Agreement
- Pledge of License

The following transactions must be processed as new licenses:

- Seasonal to Annual
- (6) Day to (7)-Day License
- Wine & Malt to All Alcohol

**IMPORTANT ATTACHMENTS (1): The applicant must attach a vote of the entity authorizing all requested transactions, including the appointment of a Manager of Record or principal representative.**

#### 3. TYPE OF LICENSE:

- §12 Restaurant
- §12 Hotel
- §12 Club
- §12 Veterans Club
- §12 General On-Premises
- §12 Tavern (No Sundays)
- §15 Package Store

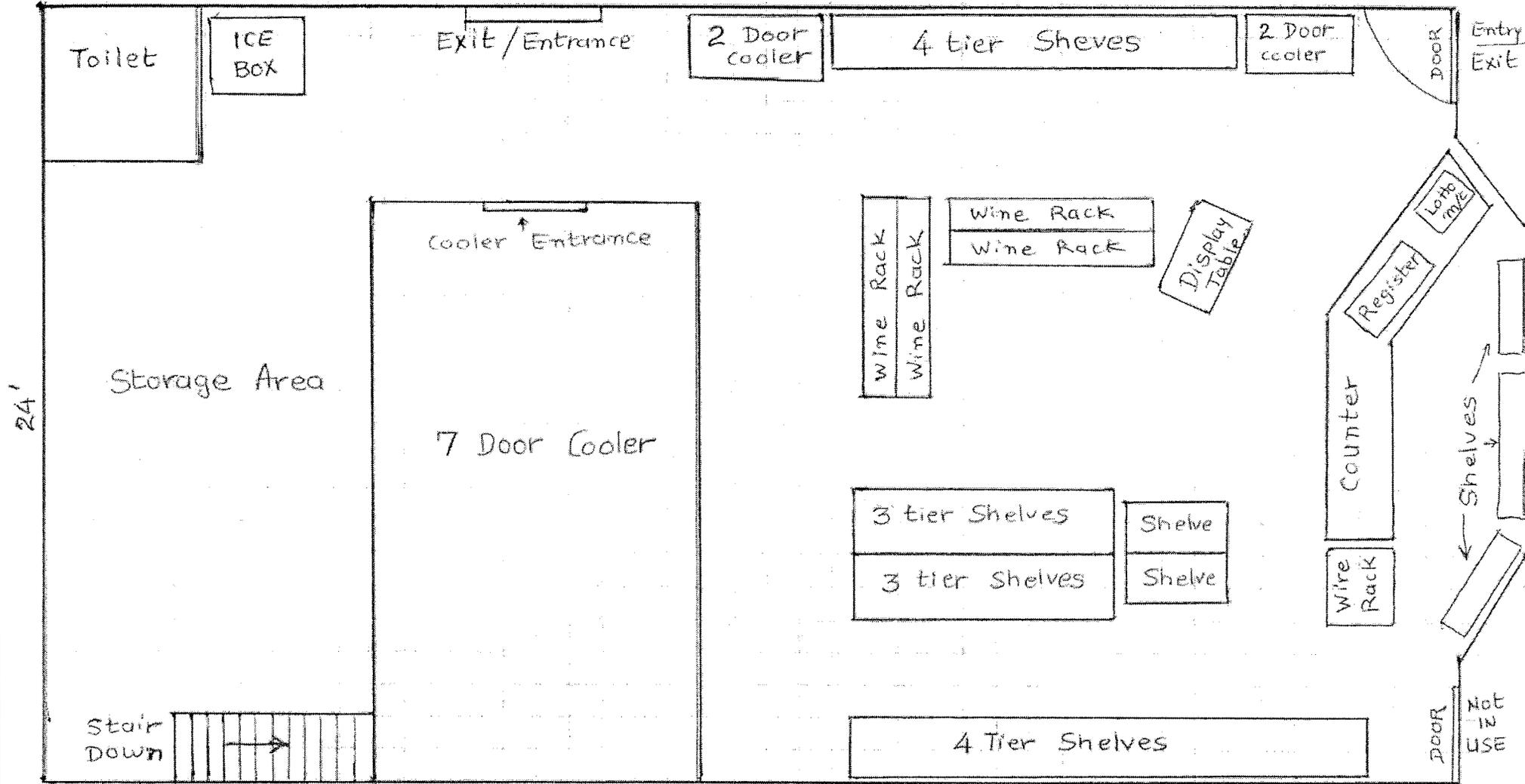
#### 4. LICENSE CATEGORY:

- All Alcoholic Beverages
- Wine & Malt Beverages Only
- Wine or Malt Only
- Wine & Malt Beverages with Cordials/Liqueurs Permit

#### 5. LICENSE CLASS:

- Annual
- Seasonal

Sandwich Package Store  
118 Route 6A  
Sandwich, MA 02563



44'  
24'  
1<sup>st</sup> Floor Plan

# TOWN OF SANDWICH



## Town Charter

**As Adopted by Town Meeting May 2013 and approved  
by the Legislature February 2014**

**Taylor D. White  
Town Clerk**

manager and the assistant town manager at the same time, the board of selectmen shall appoint an acting town manager for the duration of any such disability or until appointment of a permanent town manager or assistant town manager. No member of the board of selectmen shall serve as acting town manager.

Section 5.2 TOWN COUNSEL

The board of selectmen shall appoint a competent and duly qualified and licensed attorney practicing in the commonwealth to be the counsel for the town. Town counsel shall receive such compensation for services as may be fixed by the board of selectmen and shall hold office at the pleasure of the board. The town counsel shall be the legal adviser of all of the offices and departments of the town and shall represent the town in all litigation and legal proceedings; provided however, that the board of selectmen may retain special counsel at any time the board deems appropriate and necessary. The town counsel shall review and concur or dissent upon all documents, contracts and legal instruments in which the town may have an interest. The town counsel shall perform other duties prescribed by this charter, town by-law or as directed by the board of selectmen. No employee, committee or board, elected or appointed, other than the board of selectmen, shall contact or otherwise interact with the town or labor counsel in a manner inconsistent with the policy relative to access to counsel established by the Town Manager. This provision shall not limit the school committee from retaining its own legal counsel.

**ARTICLE VI  
COMPLIANCE WITH LAW - PUBLIC RECORDS, OPEN MEETINGS, AND  
CONFLICT OF INTEREST**

All officers or employees of any agency, office, department, board, commission, bureau, division or authority of the town shall comply with clause twenty-six of section 7 of chapter 4 of the General Laws and Section 10 of chapter 66 of the General Laws.

All employees of the town, as defined in Section 1 of chapter 269A of the General Laws, shall comply with the requirements of chapter 268A.

All boards, committees and commissions shall comply with the requirements of sections 18 to 25, inclusive, of chapter 30A, of the General Laws, the open meeting law.

All board members, committee members and employees shall comply with chapter 268A of the General Laws, the ethics law.

**ARTICLE VII  
FINANCIAL PROVISIONS AND ADMINISTRATION**

Section 7.1 SUBMISSION OF BUDGET AND BUDGET MESSAGE

(a) The town manager and school superintendent shall meet within 10 business days of state certification of surplus revenue or finalization of October 1 enrollment, whichever occurs later. Within 10 business days of that meeting, the town manager and school superintendent shall submit a draft budget in a mutually agreed format to the board of selectmen, school committee and finance committee.

- (b) Annually, before November 1, the town manager shall establish and issue a budget schedule that shall set forth the calendar dates for developing the annual budget for the next fiscal year.
- (c) On or before December 15, the board of selectmen shall meet in joint session with the school committee. At this meeting, the board of selectmen shall set guidelines for the preparation of the annual budget.
- (d) On or before February 1, the town manager and school committee shall each submit to the board of selectmen and Finance Committee a proposed line item budget and accompanying message.
- (e) The budget shall provide a complete financial plan of all town funds and activities, including details on debt and debt service, anticipated income, and proposed expenditures. The budget shall include proposals for capital improvements for the next 5 years. The budget message shall begin with a clear general summary of its content and explain in both fiscal terms and program objectives, proposed expenditures for each department, capital expenditures, and the projected tax rate.
- (f) The board of selectmen shall review the proposed town budget and refer it, including the school department budget and recommendations, to the finance committee, on or before March 1.
- (g) After the annual town meeting, but before June 15, the board of selectmen shall meet in joint session with the finance committee to review the assumptions used to project budgets for the next 2 fiscal years. If necessary, the board of selectmen shall vote to reset any of those assumptions.

#### Section 7.2 FINANCE COMMITTEE

- (a) There shall be a permanent committee known as the finance committee, composed of 9 registered voters of the town appointed by the moderator. They shall serve for 3-year terms, which shall be staggered. Members shall serve without compensation and no member shall be an employee of the town nor hold an elected or appointed town position during their term of office, excluding ex-officio positions.
- (b) The finance committee shall conduct a detailed line-item review of the town and school budgets and submit a written budget report to the annual town meeting and a written report to the annual town meeting and any special town meeting with its advisory recommendations on all financial warrant articles and the projected tax impact consistent with its recommendations.
- (c) The finance committee may require that the town manager, school committee, any town department, office, board, commission or committee furnish appropriate additional financial information, as needed. This request shall be made in writing and include a reasonable deadline for submission of the additional information.
- (d) The finance committee shall elect a chairman and such other officers from among its members and form subcommittees as it deems necessary to accomplish its duties.

#### Section 7.3 PUBLIC NOTICE AND PUBLIC HEARING

- (a) The finance committee shall, within 60 days following the submission of the draft budget by the town manager, review the proposed budget and return it to the board of selectmen with its recommendations.

(b) The board of selectmen shall conduct at least 2 public hearings. The first shall be held in February to consider budget matters generally and notice of the time, date and place therefor shall be posted in town hall and on the town website and published in a daily newspaper of general circulation in the Town.

An additional public hearing shall be held prior to town meeting on the proposed budget, including the school budget and finance committee recommendations. Notice of such hearing shall be published as described above and included: the times and places where copies of the message and budget are available for inspection by the public.

#### Section 7.4 BUDGET ADOPTION

Town meeting shall adopt the annual operating budget, with or without amendments, before the beginning of the fiscal year.

#### Section 7.5 ANNUAL AUDIT

At the close of each fiscal year, and at such times as it may be deemed necessary, the board of selectmen shall cause an independent audit to be made of all accounts of the town by a certified public accountant. The certified public accountant so selected shall have no personal interest, directly or indirectly, in the financial affairs of the town or any of its offices. Upon completion of the audit, the results in a summary form, shall be placed on file in the town clerk's office and on the town website as a public record and in the sandwich public library for public information.

#### Section 7.6 EMERGENCY APPROPRIATIONS, REDUCTIONS, and TRANSFERS

Any and all emergency appropriations, reductions and transfers shall be made in accordance with the General Laws and the town by-laws.

### **ARTICLE VIII RECALL**

#### Section 8.1 RECALL

A holder of an elected office in the town of sandwich may be recalled therefrom by the qualified voters of the town as provided in chapter 408 of the acts of 1987 for reasons which shall include, but are not limited to the following: embezzlement; influence peddling; refusal to comply with clause Twenty-six of section 7 of chapter 4 of the General Laws, section 10 of chapter 66 of the General Laws, sections 23A to 23C, inclusive, of chapter 39 of the General Laws or chapter 268A of the General Laws or any rules and regulations thereto, and the by-laws of the town of sandwich that pertain to the same; destruction or alteration of public records; nepotism; conviction for a felony; failure to perform the duties of the elected office; or other willful acts of omission or commission which betray the public trust.

#### Section 8.2 RECALL PETITION

A recall petition shall be initiated by request of 10 qualified voters. The recall petition shall be signed by 25 per cent of the qualified voters and returned within 20 days in accordance with chapter 408 of the acts of 1987.

## Dunham, George

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**From:** John Giorgio <JGiorgio@k-plaw.com>  
**Sent:** Friday, May 18, 2012 8:34 AM  
**To:** Dunham, George  
**Subject:** Role of Finance Committee In CPA Appropriations

Dear Mr. Dunham;

This is in response to the request from the Chairman of the Board of Selectmen for clarification of the role of the Finance Committee in making recommendations to Town Meeting on projects funded under the Community Preservation Act.

As you know, G.L. c. 44B of the General Laws, known as the Community Preservation Act, authorizes the appropriation of money to fund certain open space, recreation, community housing, and historic preservation projects. Under the CPA program, Town Meeting cannot appropriate CPA funds for any project unless the appropriation is recommended by the Community Preservation Committee, established in accordance with G.L. c. 44B, sec. 5(a) and Section 2.02 of the Town's General Bylaws. The statute makes clear, therefore, that unless the CPC recommends a particular project, Town Meeting may not appropriate any funds for an otherwise qualified CPA project.

In addition, G.L. c. 44B, sec 5(b)(1) provides that the CPC shall study the CPA needs of the Town, including consultation with municipal boards such as the conservation commission, the historical commission, the planning board, the board of park commissioners and the housing authority, or persons acting in those capacities or performing like duties, in conducting such studies. Further, as part of the study, the CPC is required to hold "one or more public informational hearings on the needs, possibilities and resources of the city or town regarding community preservation possibilities and resources" for which notice must be posted and published in a newspaper of general circulation in the Town. Thus, the plain language of the CPA requires the CPC to evaluate the community preservation needs of the Town and use this information in making recommendations on particular CPA project requests.

While the CPA does not provide any specific role for the Finance Committee to play with respect to appropriations from the CPA, the Article VII, Section 7.2(b) of the Charter and Section 2.00 of the Bylaws require the Finance Committee to consider and make recommendations with respect to all financial warrant articles. Where the CPA articles involve the expenditure of funds, they are necessarily "financial articles", in my opinion, the Finance Committee is required by the Town Charter and Bylaws to consider and make a recommendation with respect thereto.

In reviewing these separate legislative schemes together for the purposes of creating a holistic approach to such articles, I come to the following conclusions. Based on the relevant statutes, the Town Charter, and the General Bylaws, I am of the opinion that the authority and responsibility of the CPC is to survey the substantive needs of the Town with respect to community preservation, and to consider in detail requests for CPA funding. These legislative purposes are further in several ways. One is that the make-up of the Committee is meant to provide broad representation of various interests on the CPC, through the "lens" of the Town. In other words, persons serving on the CPC are either elected or appointed representatives of those bodies required by statute to be represented on the CPC, and those additional representatives Town Meeting deemed appropriate for inclusion thereon. Second is that the survey and public hearing requirements ensure that other persons interested in any of the three purposes of the CPA have an opportunity to lobby for their particular interest and allow the CPC to independently investigate and assess the community preservation needs of the Town. Third, the application

process, i.e., the process of coming before the CPC with a specific project application/request for funds, provides the CPC with an opportunity to consider the merits of each particular project and make a determination as to whether the project fits within the goals it identified through its survey of the Town's community preservation needs. If, and only if, the CPC believes that the project is worthwhile (in that the project proponent demonstrates that the purpose and cost of the project are reasonable and the CPC votes to support the same), may Town Meeting consider funding it using CPA funds. Generally, at Town Meeting, the CPC will explain the request and its reasons for funding it, and/or defer to the project proponent.

Thus, it can fairly be inferred from G.L. c. 44B, sec. 5, that the Legislature intended to grant exclusively to the CPA the responsibility to consider all CPA applications and to decide, when making recommendations to Town Meeting, which projects best meet the open space, recreation, community housing, and historic resources of the Town. By implication, the statute necessarily requires the CPC, in making such recommendations, to consider the competing needs of the Town for CPA related projects and to make certain judgment calls as to which projects are more worthy than others. This view is bolstered by the fact that the CPA expressly limits the ability of Town Meeting to appropriate CPA funds only for projects recommended by the CPC.

Once the article is on the warrant, then, in my opinion, the Finance Committee has a role to play with regard to the same. The expenditure of CPA funds is a fiscal matter within the meaning of the Charter and Bylaws because such expenditures involve an appropriation of funds. The Finance Committee has a clear responsibility to consider the fiscal implications of any CPA related appropriation, and it would be appropriate for the Finance Committee to point out to Town Meeting whether there are sufficient CPA funds for the proposed project, comment on the merits of using a particular CPA financing source and on what the implications of such a decision might be, as well as on what the impact might be on CPA revenues in the future. If the Finance Committee goes beyond traditional financial considerations by making substantive recommendations on particular CPA projects, it will be up to Town Meeting to balance the Finance Committee's recommendation with that of the CPC, the entity specifically authorized by law to consider the Town's community preservation needs. Note that this result is similar in nature to the result where the Conservation Commission seeks funding to acquire a particular easement or property for conservation purposes. The Conservation Commission is authorized by law to acquire land for such purposes, and its function is to protect open space and other natural resources. The Conservation Commission is therefore the substantive expert. However, the Finance Committee may have a strong feeling about whether the expenditure of funds for that purpose is a good idea based upon financial considerations. At that point, Town Meeting must weigh the view of the Finance Committee against the view of the Conservation Commission and make a decision as to whether expenditure of the funds at issue is in the best interests of the Town. In fact, this is precisely what happened at the 2012 Annual Town Meeting when Town Meeting approved the CPA appropriation to repair the retaining wall next to Town Hall even though the Finance Committee did not recommend.

Please let me know if you have any further questions about this matter.

John

John W. Giorgio, Esq.  
Kopelman and Paige, P.C.  
101 Arch Street  
12th Floor  
Boston, MA 02110  
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**PROJECTED REVENUES AND EXPENSES - FY'16**

**REVENUES**

<u>FY'16 Tax Levy:</u>		
FY'15 Levy Limit	52,158,738	
2.5% Increase	1,303,968	
Est. New Growth	500,000	
Excess Levy Reserve Est.	0	
Overrides / Exclusions	0	
County Assess. Outside 2.5: CCC	162,847	
Debt Outside 2.5 (- Non-Levy & SBA)	1,022,574	55,148,128
 <u>Other Revenue:</u>		
Land Bank / CPA Debt	1,252,561	
Marina Debt	210,000	
School Building Authority Funding	1,279,534	
State Aid: Discretionary (-9.05%)	1,886,891	
State Ch. 70 Aid: School (0.00%)	6,665,593	
Est. Local Receipts ( <u>Includes</u> Meals Tax)	4,400,000	
Surplus Revenue / Free Cash	1,741,440	
Overlay Release	100,000	
Transfer from Stabilization Fund	0	<u>17,536,019</u>
<b>Total Estimated Revenues</b>		<b>72,684,147</b>

**EXPENSES**

<u>ReCap Sheet Items:</u>		
State Assess: Tuition Assess (1.67%)	3,100,000	
State Assess: All Other (4.00%)	546,382	
Abatements / Overlay	400,000	4,046,382
 <u>Town Meeting Items:</u>		
Group Health Insur.+ Mitig. Plan (5.98%)	9,300,000	
County Retirement Assess. (5.38%)	3,147,347	
Property & Liability Insurance (3.03%)	850,000	
Medicare (6.00%)	623,778	
Unemployment Account	100,000	
Debt: Long Term	4,221,147	
Debt: Short Term	50,000	
Reserve Fund	500,000	
Capital Budget - Net	924,575	
Transfer to Stabilization Fund	250,000	
OPEB Trust Fund	150,000	
FY'15 Snow & Ice Deficit	225,000	20,341,847
 <u>Operating Budgets:</u>		
School Budget: Local (-1.56%)	24,250,000	
Ch. 70 (0.00%)	6,665,593	30,915,593
UCCRVTS Budget (12.07%)		2,049,172
General Gov't. Budget (4.25%)		<u>15,345,157</u>
<b>Total Estimated Expenses</b>		<b>72,698,151</b>

<b><u>Stabilization Fund Balance:</u></b>	
Actual Balance on 1/1/15:	1,022,450
Proposed Transfer From/To Stabilization Fund:	<u>250,000</u>
Projected Post ATM Balance:	1,272,450

**ESTIMATED FY'16 BUDGET BALANCE** -14,005

## FY'16 BUDGET TOTALS

NO.	DEPARTMENT	FY15 APPROP	FY16 SALARY	FY16 OPER	FY16 TOTAL	% CHANGE
114	Moderator	450	450	0	450	0.00%
123	Select./Manager	451,549	405,919	61,350	467,269	3.48%
	Personnel Expen.	252,254	244,875	0	244,875	-2.93%
131	Finance Comm.	3,400	2,000	1,400	3,400	0.00%
135	Accounting	217,367	206,060	20,750	226,810	4.34%
141	Assessing	373,800	359,893	24,925	384,818	2.95%
145	Treasurer	190,328	213,832	-7,950	205,882	8.17%
146	Tax Collector	193,336	150,900	50,900	201,800	4.38%
147	Tax Title	25,000	0	35,000	35,000	40.00%
151	Legal	275,000	0	300,000	300,000	9.09%
152	Human Resour.	161,271	162,163	8,000	170,163	5.51%
161	Town Clerk	158,168	162,677	3,000	165,677	4.75%
162	Elect. & Regist.	77,250	8,500	52,250	60,750	-21.36%
171	Natural Resour.	245,608	243,576	27,100	270,676	10.21%
175	Plan. & Devel.	202,623	201,174	21,125	222,299	9.71%
190	Facilities Mgmt.	502,862	199,955	322,500	522,455	3.90%
195	Town Reports	11,000	0	11,000	11,000	0.00%
196	Bind Records	6,000	0	6,000	6,000	0.00%
197	Info. Technology	492,219	171,829	357,500	529,329	7.54%
	<b>Total 100s</b>	<b>3,839,485</b>	<b>2,733,803</b>	<b>1,294,850</b>	<b>4,028,653</b>	<b>4.93%</b>
210	Police Dept.	3,479,919	3,779,429	318,835	4,098,264	17.77%
220	Fire Dept.	3,264,912	3,674,410	-463,200	3,211,210	-1.64%
241	Inspections	257,631	249,212	16,105	265,317	2.98%
244	Sealer of W & M	200	0	200	200	0.00%
291	Emerg. Mgmt.	11,500	3,000	8,500	11,500	0.00%
294	Forest Warden	1,500	0	1,500	1,500	0.00%
297	Bourne Shellfish	4,000	0	4,000	4,000	0.00%
299	Greenhead Fly	2,000	0	2,000	2,000	0.00%
	<b>Total 200s</b>	<b>7,021,662</b>	<b>7,706,051</b>	<b>-112,060</b>	<b>7,593,991</b>	<b>8.15%</b>
300	School Dept.	31,358,436	31,358,436	0	30,915,593	-1.41%
313	UCCRVTS	1,828,435	2,034,929	0	2,049,172	12.07%
	<b>Total 300s</b>	<b>33,186,871</b>	<b>33,393,365</b>	<b>0</b>	<b>32,964,765</b>	<b>-0.67%</b>

(Note: School Dep't. amount includes Ch. 70 aid.)

NO.	DEPARTMENT	FY15 APPROP	FY16 SALARY	FY16 OPER	FY16 TOTAL	% CHANGE
410	DPW - Engineer.	184,212	178,945	9,800	188,745	2.46%
420	DPW	1,449,207	909,533	558,025	1,467,558	1.27%
421	Snow & Ice	250,013	12,523	237,491	250,014	0.00%
424	Streetlights	30,000	0	30,000	30,000	0.00%
435	DPW - Sanitation	250,058	416,611	-416,611	0	-100.00%
<b>Total 400s</b>		2,163,490	1,517,612	418,705	1,936,317	-10.50%
510	Health Dept.	177,515	177,205	10,125	187,330	5.53%
522	Nursing Dept.	132,121	116,042	29,700	145,742	10.31%
540	Social Services	21,200	0	35,000	35,000	65.09%
541	COA	198,448	207,269	10,500	217,769	9.74%
543	Veterans	44,006	0	45,500	45,500	3.39%
<b>Total 500s</b>		573,290	500,516	130,825	631,341	10.13%
610	Library	985,336	739,303	204,714	944,017	-4.19%
630	Recreation	108,320	139,412	16,375	155,787	43.82%
650	DPW - Parks	13,850	0	20,850	20,850	50.54%
671	Hoxie / Grist Mill	0	20,000	0	20,000	#DIV/0!
693	Memorial Day	1,200	0	1,200	1,200	0.00%
694	Historic District	13,000	1,500	11,500	13,000	0.00%
<b>Total 600s</b>		1,121,706	900,215	254,639	1,154,854	2.96%
<b>GEN. GOVT. TOTAL</b> (no School)		14,719,633	13,358,198	1,986,959	15,345,157	4.25%
Gen. Gov't. Budget @ 4.25% =			15,345,157	Adjustment Needed =	0	
<b>GRAND TOTAL</b> (incl. School)		47,906,504	46,751,563	1,986,959	48,309,922	0.84%

**FY'16 RECOMMENDED GENERAL GOVERNMENT BUDGET  
Summary of Significant Budget Changes (+/- \$5,000)**

*(Contracted & Estimated Wage Increases Included in Appropriate Operating Budgets)*

<u>Acct.</u>	<u>Budget - Description</u>	<u>Change</u>
<b>ALL</b>	52.4 Weeks in Fiscal Year vs. Usual 52.2 Weeks	39,660
147	Tax Title - Increase Due to Activity (Generates Revenue)	10,000
151	Legal - Contracted Professional Services	25,000
162	Elections & Registrations - Down Year in Normal Cycle	-16,500
171	Natural Resources - Loss of Waterways Revenue Transfer	7,500
190	Facilities Department - Town Hall Monitor Expenses	5,000
197	IT - Contracted Support Services	25,000
210	Police - More Realistically Fund Expenses	23,000
210	Police - (1) Detective	65,500
220	Fire - (4) EMS / Firefighters & OT (\$11,326 Above Original Est.)	279,326
210 & 220	Joint, Public Safety Civilian Dispatch (Net, Both Budgets)	99,714
435	Sanitation - Reduce Town Appropriation to Enterprise Fund	-250,058
522	PH Nurse - Increase Innoculation Purchases (Generates Revenue)	10,000
540	Social Services - Increase Grants; Add Local Funding Source	13,800
541	Council on Aging - Part-time Van Driver	12,500
610	Library - Reinstate Weston Memorial Fund Transfer; Actual vs. Est.	-12,500
630	Recreation - New Program Coordinator Position	41,600
650	DPW - Parks - Net Increase Tree Warden Expenses	7,000
671	Hoxie House / Grist Mill - Offset Decrease in Carryover Funds	20,000

**FY'16 CAPITAL BUDGET SUMMARY**  
Presented to Capital Improvement Planning Committee: March 23, 2015

<u>DEPARTMENT</u>	<u>ITEM</u>	<u>COST</u>
<b>PROJECTS &gt;\$10,000</b>		
<u>General Government:</u>		
141 ASSESSING	Vehicle Replacement (Ford Escape 4x4)	\$23,150
171 NATURAL RESOURCES	Replace John Deere Tractor	\$39,000
190 FACILITIES DEPT.	Repairs to Town Buildings	\$125,000
190 FACILITIES DEPT.	(30) AEDs for Town Facilities	\$44,000
190 FACILITIES DEPT.	Town Neck Restroom/Concession Feasibility Study	\$25,000
294 EMERGENCY MGMT.	Battery Back-Up System for Emergency Communications	\$20,000
210 POLICE DEPARTMENT	Replace (4) Mobile Radios	\$20,000
210 POLICE DEPARTMENT	New Telephone System for Police & Fire	\$50,000
220 FIRE DEPARTMENT	(4) Automatic Chest Compression Systems (Amb. Fund)	\$60,000
220 FIRE DEPARTMENT	(4) Stretcher Lift Systems (Amb. Fund)	\$100,000
241 INSPECTIONS	Replace Vehicle (Ford Explorer 4x4)	\$32,500
410 ENGINEERING	Boardwalk & Beach Access Repairs	\$60,000
420 DPW - HIGHWAY	Replace 2005 International Dump Truck with Plow	\$150,000
420 DPW - HIGHWAY	Replace 2003 Chipper	\$50,000
510 HEALTH DEPARTMENT	Vehicle Replacement (Ford Escape 4x4)	\$23,150
522 & 541 NURSING & COA	Shared Vehicle (Ford Escape 4x4) (Donation Acct.)	\$23,150
610 LIBRARY	Elevator Improvements	\$85,000
610 LIBRARY	Fire Alarm System Upgrade	\$11,875
630 RECREATION	Vehicle Replacement (Ford 15-Person Passenger Van)	\$30,000
630 RECREATION	Replace Sailing Rescue Boat, Motor, Trailer	\$10,000
650 DPW - PARKS	Replace 1999 F-350 1-Ton Dump Truck w/ Plow	\$70,000
650 DPW - PARKS	Replace 2005 F-350 1-Ton Dump Truck w/ Plow	\$70,000

**TOTAL > \$10,000 CAPITAL EXPENSES      \$1,121,825**

**PROJECTS <\$10,000**

<u>General Government:</u>		
123 SELECTMEN/MANAGER	Restoration of Town Hall Piano	\$10,000
171 NATURAL RESOURCES	Buoy Replacements - 2014 Damage	\$3,000
171 NATURAL RESOURCES	Conservation Lands Maintenance & Improvements	\$8,500
171 NATURAL RESOURCES	Equipment Upgrades (Mobile Radios, 800 MHz, UHF)	\$9,900
171 NATURAL RESOURCES	Replace Equipment Trailer & Related Accessories	\$10,000
210 POLICE DEPARTMENT	Replace Portable Radio Batteries	\$8,000
210 POLICE DEPARTMENT	Replace ATV	\$6,000
630 RECREATION	Oak Crest Cove Tennis Court Maintenance	\$8,800
630 RECREATION	Oak Crest Cove Retaining Wall Repairs	\$6,700
630 RECREATION	Purchase Kayaks	\$5,000

**TOTAL < \$10,000 CAPITAL EXPENSES      \$75,900**

**TOTAL RECOMMENDED FY'16 CAPITAL EXPENSES      \$1,197,725**

**LESS SANITATION AMBULANCE FUND TRANSFER      (\$160,000)**  
**LESS SHAWME HEIGHTS DONATION ACCOUNT TRANSFER      (\$23,150)**  
**LESS LIBRARY HVAC BALANCE REAPPROPRIATION      (\$90,000)**

**TOTAL FY'16 CAPITAL MINUS TRANSFERS      \$924,575**

\*CAPITAL RESERVE FUND      \$0

**TOTAL FY'16 CAPITAL EXPENSES      \$924,575**

\*Funds to be held for emergency/reserve purposes until released by CIPC and Town Manager.

## INDEX OF WARRANT ARTICLES

### May 4, 2015 Annual Town Meeting

1. Report of Town Officials & Long Range Plan Overview (p. \_\_\_\_)
2. FY'16 Budget (p. \_\_\_\_)
3. FY'16 DPW – Sanitation Division Operating Budget (p. \_\_\_\_)
4. FY'16 Golf Department Operating Budget (p. \_\_\_\_)
5. FY'16 Revolving Fund Appropriation Limits ( p. \_\_\_\_)
6. FY'16 Capital Budget (p. \_\_\_\_)
7. School Department Cell Tower Lease Transfer and Appropriation of Funds (p. \_\_\_\_)
8. Transfer to Stabilization Fund (p. \_\_\_\_)
9. FY'15 Snow & Ice Deficit Appropriation (p. \_\_\_\_)
10. Sandwich Promotions Fund Appropriation (p. \_\_\_\_)
11. Ch. 90 State Aid to Highways Program (p. \_\_\_\_)
12. Establish Variable Interest Rate for FY'16 Tax Deferral Program (p. \_\_\_\_)
13. Beach Renourishment Appropriation (p. \_\_\_\_)
14. Accept Easements for Army Corps of Engineers Town Neck Beach Project (p. \_\_\_\_)
15. CPA Fund Expenditure – Administrative Costs & 10% Allocations (p. \_\_\_\_)
16. CPA Project: Printing Sandwich: A Cape Cod Town (p. \_\_\_\_)
17. Establish Revolving Fund for Sale of Sandwich: A Cape Cod Town (p. \_\_\_\_)
18. CPA Project: Civil War Memorial Plaque (p. \_\_\_\_)
19. CPA Project: Rescind Forestdale Village Affordable Housing Appropriation (p. \_\_\_\_)
20. Zoning By-laws: Section 2410 – Use Abandonment (p. \_\_\_\_)
21. Zoning By-laws: Section 4126 – Exterior Storage (p. \_\_\_\_)
22. Zoning By-laws: Section 8000 – Medical Marijuana (p. \_\_\_\_)
23. Zoning By-laws: Definitions (p. \_\_\_\_)
24. Town Bylaws: Section 2.01 – Capital Improvement Planning Committee (p. \_\_\_\_)
25. Town Hall Piano Restoration (p. \_\_\_\_)
26. Elect Officers (p. \_\_\_\_)

### Reference Material & Volunteer Service Form:

1. Article 1 – Board of Selectmen – 2015 Long Range Plan (p. \_\_\_\_)
2. Article 2 – FY'16 Projected Revenues & Expenses (p. \_\_\_\_)
3. A Glossary of Commonly Used Terms (p. \_\_\_\_)
4. Table of Basic Points of Motions (p. \_\_\_\_)
5. Volunteer Service Form (p. \_\_\_\_)

**NOTE:** Petition articles have been printed as submitted and may contain typographic and other errors.

## **LONG RANGE PLAN – BOARD OF SELECTMEN 2015 UPDATE**

### **MISSION STATEMENT**

The government of the Town of Sandwich will provide the public with the highest, most efficient and effective level of service with the resources available in a manner that exemplifies honesty, integrity and a commitment to public service while honoring our rich history, protecting our environment and responsibly planning for our future.

### **SUMMARY OF LONG RANGE PLAN**

The purpose of the Long Range Plan (LRP) is to annually project the future needs of the Town and identify the primary issues and projects on which the Town will focus, and to report this to Town Meeting (Section 4.2.5(i) of Town Charter). The vision that forms the basis for the LRP is articulated in detail in the Local Comprehensive Plan (LCP) approved by Town Meeting in May 2009. The document below is long range in the sense that it takes us further than just one budget cycle. It is meant to define the next few steps of the journey to the vision set forth in the LCP and the other planning documents identified in the Attachments below. The Board of Selectmen and Town Meeting have already initiated many of these efforts, with progress continuing to be made on many fronts. Several of the items found in the Action Plan will also be voted on at the May 4, 2015 Annual Town Meeting and are addressed in the recommended FY'16 budget.

### **INTRODUCTION**

Guiding principles followed in developing the LRP include:

- Adequate staffing takes precedence over new buildings
- Realistic limitations of a large population & small tax base need to be considered
- Proposition 2.5 funding limitations need to guide wage / compensation packages
- Funding sources & tax impacts of proposed actions will be identified during the planning phase

**ACTION PLAN**

(\* = proposed action item leader)

**1. Improved Delivery of Existing Services**

a. Complete consolidation & unification of financial systems with School & Town –School Director of Finance & Business Operations\*, Information Technology Director\*, Finance Director\*, Town Treasurer / Collector, Director of Assessing, School Information Technology Staff

i. Assessing Department implements new software program – July 2015

b. Outline & prioritize General Government staffing & reorganization implementation plan – 2015 & Beyond – Board of Selectmen & Town Manager\*

i. Continue to assess effectiveness of delivery of services when vacancies occur & make appropriate organizational changes when prudent

ii. Prioritize positions not requiring override or substantial reallocation of funds to implement

iii. Prioritize positions requiring override or substantial reallocation of funds to implement

iv. Present & fund reorganization plan to address organizational chart deficiencies

v. Identify & fund chronically underfunded operating budget accounts to more closely match expenses

c. Continued review of Pay-As-You-Throw Program – 2015& Beyond – Director of Public Works\*

i. Eliminate tax subsidized operation to a full fee for service operations and recommend fees changes, when appropriate – May 2015 & Beyond

ii. Work with Upper Cape towns to set actual closing date and any future use of Upper Cape Regional Transfer Station on Joint Base Cape Cod – 2015 & Beyond

d. Continue progress on recreational facilities & Sandwich Hollows Recreation Master Plan – 2015 & Beyond – Town Manager’s Office\*, Recreation Director, Golf Director

e. Continue prioritization of Tax Title Redemption & Foreclosure Process – Board of Selectmen, Town Treasurer/Collector\*

f. Continue Substance Abuse Prevention Committee efforts & focus on regional grant request to federal Drug Free Community program – 2015 – Substance Abuse Prevention Committee\*, Barnstable County, Board of Selectmen, School Committee, Public Health Nurse

- g. Continue to support the implementation of STEM Program – 2015 & Beyond – School Committee\*, Superintendent of Schools
- h. Implement relevant recommendations from Beach Management Plan – 2015 & Beyond – Recreation Director\*, Natural Resources Director, Director of Public Works, Public Facilities Director
  - i. Appropriate funding for recommended capital improvements – May 2015 & Beyond
  - ii. Initiate maintenance plan for beach parking lots & cleanliness of beach areas with implementation contingent upon proper funding – 2015 & Beyond

## **2. Capital Asset Management**

- a. Refocus public safety planning efforts – 2015 – Board of Selectmen\*, Public Safety Planning Group, Consultants
  - i. Conduct public process on chosen alternative(s) - including website outreach, public feedback, public outreach & listening meetings, etc. – 2015
  - ii. Present public safety building infrastructure & personnel plan supported by Board of Selectmen to future Town Meeting(s) – Fall 2015
  - iii. Successfully implement public safety civilian dispatch locally – FY'16
  - iv. Continue to participate in ongoing discussion about regional efforts for joint 911 dispatch services for Barnstable County – 2015 & Beyond – Board of Selectmen, Town Manager, Chief of Police, Fire Chief
- b. Public roads and public infrastructure improvements – 2015 & Beyond – Board of Selectmen, Director of Public Works
  - i. Determine recommended capital funding alternative(s) & present to Town Meeting & voters – 2015 & Beyond
  - ii. Lobby Governor & State House for additional Ch. 90 appropriations & more timely release of approved Ch. 90 funds – 2015 & Beyond
  - iii. Provide sufficient additional funding to DPW Budget to maintain roads & infrastructure at higher standard
  - iv. Implement private road taking process for action at 2015 & future Annual Town Meetings
- c. Evaluate the developing School District Master Plan & adopt School Committee recommendation(s) – 2015 & Beyond – School Committee\*

- i. Assist School Committee in implementing recommended actions from School District Master Plan – May 2015 & Beyond – School Committee, Board of Selectmen
  - ii. Support the decommissioning of the Henry T. Wing School for school purposes; School Department continued oversight of Wing School until any municipal services are relocated to the Wing School
  - iii. Continue professional re-living analysis of the Henry T. Wing School with associated public outreach & input– 2015 & Beyond – Board of Selectmen, Capital Improvement Planning Committee, Consultants
  - iv. Present recommended decision & associated funding to future Town Meeting – 2015 & Beyond
- d. Follow-up on Long Range Capital Plan (LRCP) & recommendations presented to Board of Selectmen – 2015 & Beyond – Board of Selectmen\*, School Committee, Finance Committee, Capital Improvement Planning Committee
- i. Consider warrant article(s) to fund relevant portions of the LRCP – 2015 & Beyond
  - iv. Review LRCP for future changes and updates – 2015 & Beyond – Town Manager\*, CIPC
- e. Revisit future of Clark-Haddad Building & Deacon Eldred House with Consultant report & input to determine course of action for these properties – Board of Selectmen, Capital Improvement Planning Committee, Community Preservation Committee, Consultants – 2015 & Beyond
- i. Seek appropriate funding when recommended course(s) of action determined – 2015 & Beyond

### **3. Economic Development (Commercial Tax Base Growth & Job Creation)**

- a. Continue to achieve Comprehensive Water Resources Management Plan (CWRMP) milestones – per wastewater consultant’s schedule – 2015 & Beyond – Health Director\*, Water Quality Advisory Committee, Wastewater Consultant
- i. Proceed with recommendations of Interim Solutions plan and implement appropriate action items, where possible – 2015 & Beyond
  - ii. Actively participate in Barnstable County Section 208 planning efforts & implement watershed recommendations where possible, while representing the interests of the Town of Sandwich
  - iii. Educate public on Federal and State Section 208 requirements and consequences of inaction – 2015 & Beyond
  - iv. Work with relevant private developers in meeting local CWRMP goals & regional Section 208 requirements

- b. Continue to assist successful South Sandwich Village Center (SSVC) developer in permitting efforts & any potential zoning changes – 2015 & Beyond
- c. Continue to foster positive working relations with NRG ownership of Canal Station power plant and assist NRG with any potential development / redevelopment and related infrastructure efforts – May 2015 & Beyond – Town Manager\*, Director of Assessing, Town Planner, Town Meeting
- d. Continue to focus on economic development efforts – 2015 & Beyond – Board of Selectmen, Town Manager’s Office, Planning & Economic Development Director\*, Director of Assessing, Sandwich Economic Initiative Corporation
  - i. Continue on-going RESET efforts with Cape Cod Commission (CCC) – 2015 & Beyond – Town Manger’s Office, Appropriate Town Staff
    - 1. Town land in SSVC – RFP
    - 2. Private land in SSVC – CCC permitting efforts
    - 3. Sandwich Industrial Park – Ch. H relevance, thresholds & locations
    - 4. South Shore YMCA Property – open space & wastewater credits
  - ii. Continue MassDevelopment master planning effort for Town Marina and adjoining property– 2015 & Beyond
- e. Implement appropriate Town staffing to further assist economic development efforts & review success of staffing to implement economic development goals; adjust as deemed appropriate – 2015 & Beyond
- f. Continue to explore infrastructure improvement efforts for enhanced economic development, considering all of the legal options available on a local, regional, state, and federal basis – 2015 & Beyond

#### **4. Preserve and Protect Historic Character and Natural Resources**

- a. Continue extensive efforts to address beach erosion issues & lobby county, state, federal officials accordingly – 2015 & Beyond – Board of Selectmen, Town Manager, Natural Resources Director\*, Woods Hole Group
  - i. Continue active participation with Army Corps of Engineers on Section 111 & Section 204 studies, various permitting & funding efforts – 2015 & Beyond
  - ii. Lobby state & federal officials for access to future sources of sand & proceed with Coastal Zone Management grant to permit nearshore sediment borrow source for future renourishment efforts – 2015 & Beyond
  - iii. Work with federal and state delegation to secure funding for completion of Beach Renourishment Project, including funding of Hurricane Sandy & Tropical Storm Nemo

FEMA requests, release of State Environmental Bond Bill funds, and coastal resiliency grant efforts – 2015 & Beyond

iv. Work with federal and state delegation to secure funding for future completion of Old Harbor Inlet Stabilization Project – 2015 & Beyond

b. Warrant articles for Community Preservation Committee recommendations with Selectmen pre-authorization prior to submission of Town-related & owned requests, particularly with limited funding available – 2015 & Beyond – Board of Selectmen\*, Community Preservation Committee

c. Meet with Sandwich Housing Authority to discuss progress on George Fernandes Way expansion project & ways to address Sandwich Affordable Housing Plan; continue joint efforts with Habitat for Humanity to construct home(s) in Sandwich, – Summer 2015 & Beyond – Board of Selectmen, Sandwich Housing Authority\*

d. Continue to review open space purchase priority list, particularly if large, desirable parcels become available – 2015 & Beyond – Board of Selectmen, Natural Resources Director\*, Conservation Commission, Community Preservation Committee

### **ATTACHMENTS**

Many of the action items and concepts expressed above are also addressed with much more specificity in numerous documents like the Local Comprehensive Plan, our annual multi-year financial projections, and various planning documents covering specific issue areas. A listing of all these documents – and the documents themselves – can be found on the Town's website ([www.sandwichmass.org](http://www.sandwichmass.org)) or viewed at the Office of the Board of Selectmen & Town Manager, Town Hall, 130 Main Street, Sandwich, MA 02563.

## BEACH EROSION MEETING AGENDA TOPICS

- Appeal of FEMA Sandy & Nemo Denials
  
- Army Corps of Engineers – Cape Cod Canal Dredging & Section 204 Study
  - Mass Maritime Academy project
  
- Army Corps of Engineers – Section 111 Study
  
- Beach Reconstruction Plan Permitting
  
- Old Harbor Inlet Stabilization Project
  
- Coastal Zone Management Grant
  
- Woods Hole Group Contracts & Balances

# **2015 LICENSE RENEWALS**

## **SEASONAL LICENSES**

**April 1, 2015 – January 15, 2016**

### **COMMON VICTUALLER – ALL ALCOHOLIC**

Sam's Family Restaurant, Inc. d/b/a **SEAFOOD SAM'S**, Jeffrey C. Lewis, Manager  
Coast Guard Road, Box 1129, Sandwich 508-888-4629

**Horizons on Cape Cod Bay**, Frank Kelleher Manager, 98 Town Neck Road, Sandwich, MA

### **COMMON VICTUALLER – WINE AND MALT**

The Casual Gourmet, Inc. d/b/a **MAGNOLIA CAFE**, Olive Chase, manager, 67 Grove  
Street, Sandwich, MA 02563 508-775-4946  
Olive@thecasualgourmet.com

### **RETAIL PACKAGE GOODS STORE - WINE AND MALT**

MZ Sons, Inc. d/b/a **SANDWICH FOOD MART**, Zahid Rashid, Manager, 298 Route 130,  
Sandwich, MA 02563. 508-888-8266

Lawrence Pond Market, Inc. d/b/a **LAWRENCE POND MARKET**, Diane J. Cotter,  
Manager, 45 Great Hill Road, South Sandwich, MA 428-6225  
RMC5282@comcast.net

### **RETAIL PACKAGE GOOD STORE – ALL ALCOHOLIC**

Cellar 55 Wine Merchant's Inc. d/b/a **CELLAR 55 WINE MERCHANTS**, Kristen M.  
Buzzell, Manager, 101A Route 6A, Sandwich, MA P.O. Box 813, East Sandwich 02537  
Kris@cellar55winemERCHANTS.com

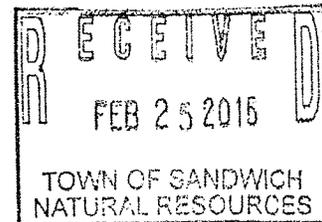


## THE COMPACT

OF CAPE COD CONSERVATION TRUSTS, INC.

February 18, 2015

Mr. Mark Galkowski  
Director of Natural Resources  
Town of Sandwich  
16 Jan Sebastian Drive  
Sandwich, MA 02563



Re: Conservation Restriction - Sandwich  
Eugene Theroux and Colleen Pankratz Theroux to  
The Compact of Cape Cod Conservation Trusts, Inc.

Dear Mr. Galkowski:

On behalf of The Compact and Mr. and Ms. Theroux, I am pleased to enclose a copy of the above-referenced conservation restriction (CR) on 71.3 acres in Sandwich for the Conservation Commission's review and recommendation to the Board of Selectmen.

This large tract is comprised of almost 22 acres of wooded upland and about 49 acres of salt marsh tidal wetlands that provide valuable feeding grounds for least and common terns, both state-listed rare species. The property is located within the Old Harbor Creek/Springhill estuarine watershed and tidal floodplain, and is bordered on the north, east and west by Old Harbor Creek, Pine Island Creek and Ox Pasture Creek, connecting with hundreds of acres of land owned and protected for conservation by the Town and the Sandwich Conservation Trust. The property provides a public scenic vista of open marshes and woodland, an archetypal Cape Cod landscape, from both the railroad right of way and the creeks. The land lies within an MNHESP Priority Habitat for Rare Species, a BioMap2 Critical Natural Landscape area, and the Old Kings Highway Regional Historic District.

**It is very important that this CR be recorded this Spring.** To that end, the Conservation Commission's review of the documents at its earliest convenience would be most appreciated. We hope you will seek a positive recommendation from the Conservation Commission *by the end of March*, so that we then can approach the Board of Selectmen and seek their approval of the document. Please ask the Conservation Commission to complete and sign the enclosed municipal certification form for the property and to forward the signed form to Irene Del-Bono at the Division of Conservation Services in Boston.

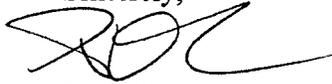


*THE COMPACT OF CAPE COD CONSERVATION TRUSTS, INC.*

Thank you for your assistance. As I will be away until March 10, please contact Mark Robinson, The Compact's Executive Director, at 508-362-2565, if you have any questions between now and then. He also can be reached at [mark@thecompact.net](mailto:mark@thecompact.net). We would be happy to appear before the Conservation Commission if necessary; just let us know.

After March 10, you may reach me at (508) 362-3422, or [paula@thecompact.net](mailto:paula@thecompact.net).

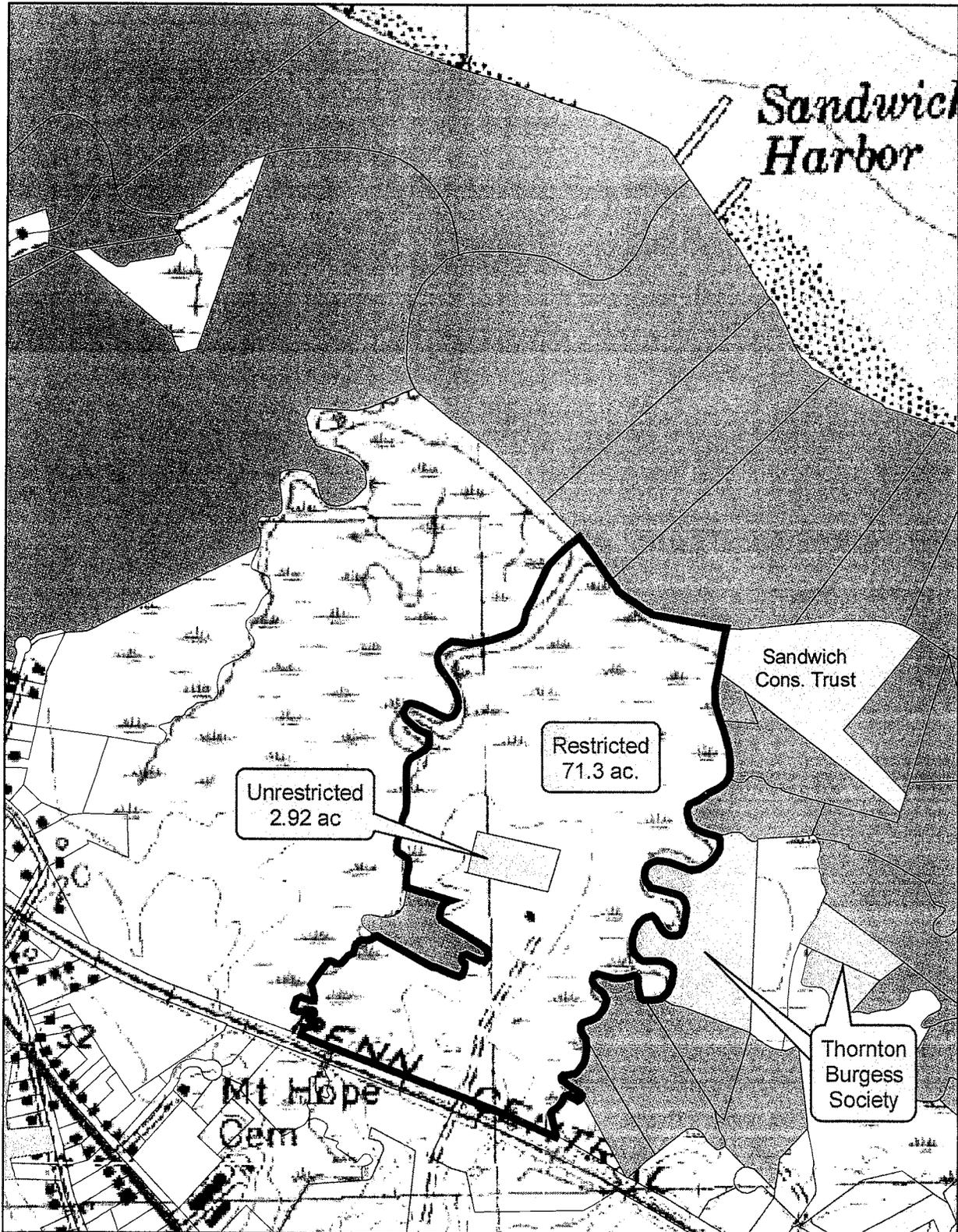
Sincerely,

A handwritten signature in black ink, appearing to read 'P. Pariseau', with a long horizontal flourish extending to the right.

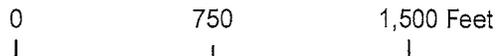
Paula S. Pariseau  
Senior Land Protection Specialist

Enclosures

THEROUX PROPERTY  
SANDWICH MA  
Protected Open Space in Vicinity Map



Sandwich Quadrangle

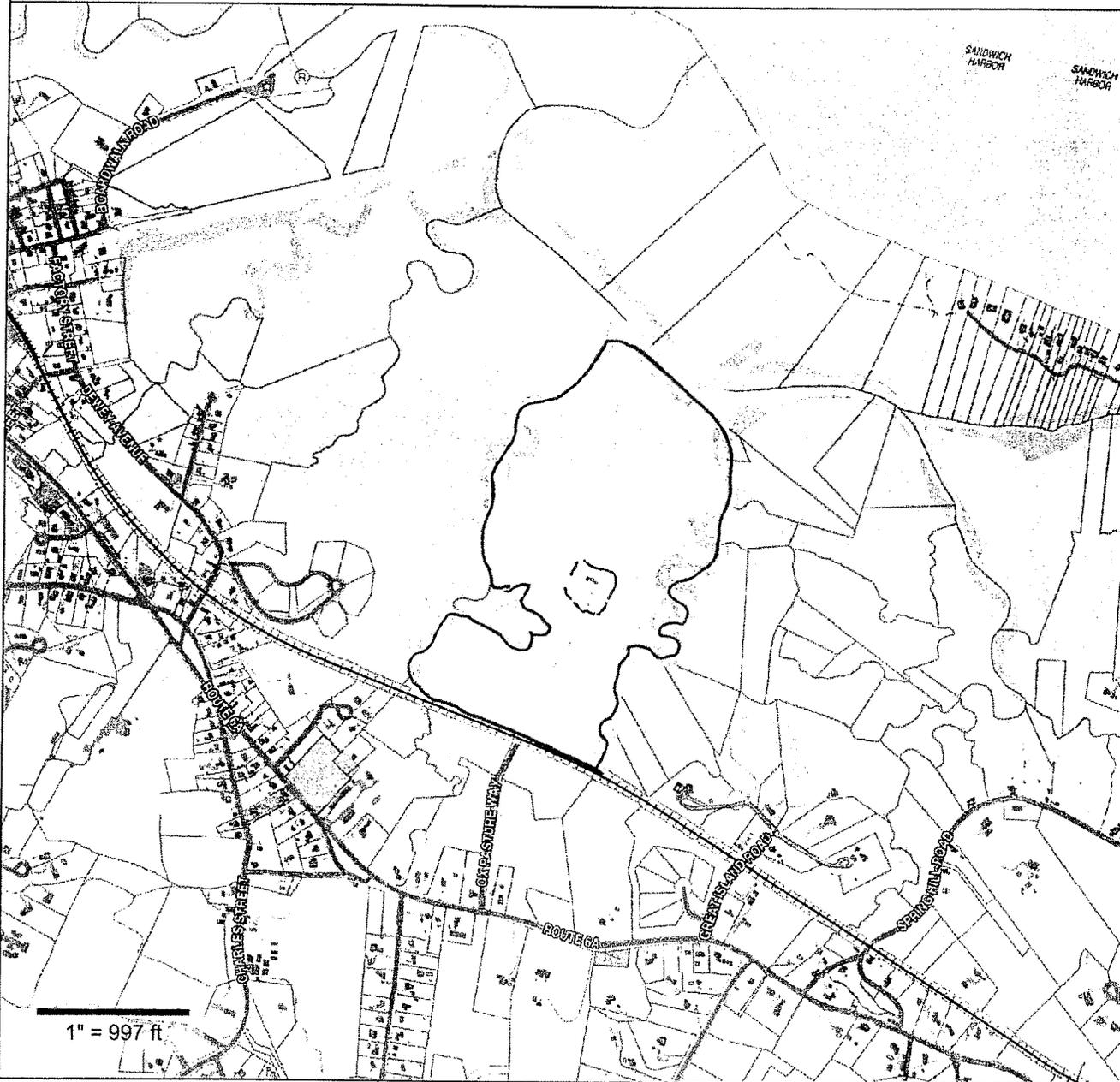


 CR: 71.3 acres

 Town Conservation/Land Bank

Map prepared August 2014  
Data provided by MassGIS  
Parcel layer provided by Cape Cod Commission

# theroux



1" = 997 ft

**Property Information**

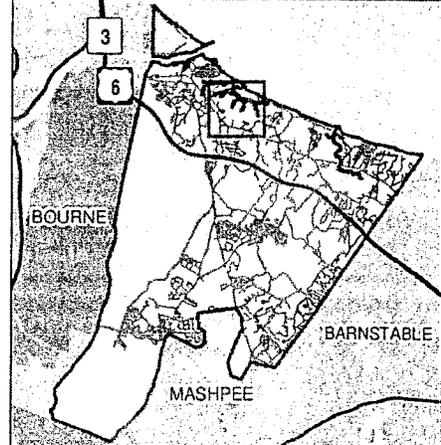
Property ID 75-002-  
 Location 207 ROUTE 6A  
 Owner THEROUX, EUGENE & COLLEEN



**MAP FOR REFERENCE ONLY  
 NOT A LEGAL DOCUMENT**

The Town makes no claims and no warranties, expressed or implied, concerning the validity or accuracy of the GIS data presented on this map.

Parcels updated January 1, 2012







**Grantor: Eugene Theroux and Colleen Pankratz Theroux**  
**Grantee: The Compact of Cape Cod Conservation Trusts, Inc.**  
**Property Address: 207 Route 6A, Sandwich MA**  
**Grantor's title: Book 8102 Page 276 in Barnstable County Registry of Deeds**

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### CONSERVATION RESTRICTION

**EUGENE THEROUX and COLLEEN PANKRATZ THEROUX**, husband and wife, as tenants by the entirety, of 37893 Long Lane, Lovettsville VA , their successors and assigns holding any interest in the Premises as hereinafter defined ("Grantor"), for no consideration, grant to **THE COMPACT OF CAPE COD CONSERVATION TRUSTS, INC.**, a Massachusetts charitable corporation with an office at 3220 Main Street, Barnstable, MA 02630 and a mailing address of P.O. Box 443, Barnstable MA 02630, its successors and permitted assigns ("Grantee"), with quitclaim covenants, IN PERPETUITY and exclusively for conservation purposes, the following described **CONSERVATION RESTRICTION**, on approximately 71.31 acres of an approximately 75.25-acre parcel of unregistered land, located in the Town of Sandwich, County of Barnstable, Commonwealth of Massachusetts, said land being described in Exhibit "A" and shown on Exhibit "A-1" both of which are attached hereto, said land hereinafter referred to as the "Premises." The Grantor and Grantee, their successors and assigns, are bound by and subject to the terms and conditions of this Conservation Restriction.

**Purposes:** This Conservation Restriction is defined in and authorized by Sections 31-33 of Chapter 184 of the General Laws and otherwise by law. Its purpose is to assure that the Premises will be retained in perpetuity substantially in its natural, scenic and open condition as set forth herein; and to prevent any use that would materially impair or interfere with the conservation values of the Premises. The conservation of the Premises will yield a significant public benefit because the Premises' protection will advance the following policies and objectives:

WHEREAS, the Great and General Court of Massachusetts established the Old Kings Highway Regional Historic District on the northern shore of Barnstable County through Chapter 740 of the Acts of 1973; and,

WHEREAS, The Massachusetts Endangered Species Act, M.G.L. c. 131A protects rare species and their habitats, and the Massachusetts Natural Heritage and Endangered Species Program ("MNHESP") has designated as Priority Habitats the known geographical extent of habitat for state-listed rare plant and animal species; and,

WHEREAS, in 2010, the Massachusetts Department of Fish and Game and The Nature Conservancy's Massachusetts Program published a report entitled *BioMap2: Preserving the*

*Diversity of Massachusetts in a Changing World*, which identified Core Habitat areas “critical for the long-term persistence of rare species and other Species of Conservation Concern, as well as a wide diversity of natural communities and intact ecosystems across the Commonwealth;” and identified Critical Natural Landscape areas that complement Core Habitat areas; and,

WHEREAS, in 1998, MNHESP published a report entitled *Our Irreplaceable Heritage: Protecting Biodiversity in Massachusetts*, which stated, “We believe that [there are] eight ecosystem types or natural community assemblages [that are] the most important targets for biodiversity conservation. They represent the most threatened or ecologically essential areas for rare plants and animals in Massachusetts,” (p. 29) and specifically identified coastal natural communities as standing out “as some of the most biologically diverse lands in the Commonwealth” and singled out salt marsh in particular as important to conserve and restore (p. 30); and,

WHEREAS, in 2003, the Statewide Land Conservation Plan was drafted, which identifies the most significant available, undeveloped and unprotected open space lands needed to protect, among other things, biodiversity habitats; and the Premises is identified a such land; and,

WHEREAS, in July 1991, the Barnstable County Assembly of Delegates, pursuant to the Cape Cod Commission Act (Chapter 716 of the Acts of 1989), adopted a *Regional Policy Plan*, amended in 1996, 2002 and 2009, which provided, *inter alia* (references are to the 2009 Plan),

- Wetlands Goal to “preserve and restore the quality and quantity of inland and coastal wetlands and their buffers on Cape Cod” (p. 52);
- Wildlife and Plant Habitat Goal to “prevent loss or degradation of critical wildlife and plant habitat...and to maintain existing populations and species diversity” (WPH1), stating that “renewed commitment to protect the most ecologically sensitive undeveloped lands through land acquisition and other permanent conservation measures is also warranted;”
- Open Space and Recreation Goal to “preserve and enhance the availability of open space that provides wildlife habitat...and protects the region’s natural resources and character” (OS1) stating that priority should be given “to the protection of significant natural and fragile areas as identified on the Cape Cod Significant Natural Resource Areas map; and with a recommended Town Action of working with “local land conservation organizations to identify, acquire by fee simple or conservation restriction, and manage open space to meet projected community needs;”
- Heritage Preservation and Community Character Goal to “protect and preserve the important historic and cultural features of Cape Cod’s landscape...that are critical components of the region’s heritage and economy” (HPCC1); and,

WHEREAS, the 2009 *Regional Policy Plan* included a map identifying Significant Natural Resource Areas (Map SNRA); and,

WHEREAS, in 2003, The Compact of Cape Cod Conservation Trusts, Inc. completed its *Cape Cod Wildlife Conservation Project* (“Wildlife Project”), a wildlife habitat analysis and parcel ranking for all vacant or underdeveloped parcels on Cape Cod, Massachusetts; and,

THE ROUX CONSERVATION RESTRICTION  
Sandwich, MA

WHEREAS, in 2001, the Association for the Preservation of Cape Cod (APCC) produced a map of upper Cape Cod depicting, among other things, land of 2.5 acres or more on which a potential conservation restriction could be placed; and,

WHEREAS, in 1996, the Town of Sandwich drafted a *Local Comprehensive Plan*, updated in May 2009, which identified goals and policies, including the following (references are to the 2009 update):

- *Natural Resources Protection:*
  - *Goal NR-3:* Protect Sandwich's unique natural features to maintain biological diversity and preserve the Town's scenic character, including a policy of protecting and preserving the value of lands for wildlife habitat, rare plants and animals, unfragmented woodlands and historic resources, farms and bogs, and scenic areas through regulatory and non-regulatory means, and a policy of protecting significant historical sites or areas by acquiring or protecting lands ...which contribute to the unique Cape Cod character of the town; and,
  - *Goal NR-9:* Prevent loss or degradation of critical wildlife and plant habitat.
- *Open Space:*
  - *Goal OSR-6:* Plan and coordinate protection of lands of conservation interest, with a policy of acquiring or protecting, through regulatory and non-regulatory mechanisms, lands in or near sensitive natural or unique areas, open space lands and historic and/or natural landscapes identified in this plan, and an action plan of establishing criteria for determining which lands to prioritize for protection including the following: lands adjacent to ponds, lands containing contiguous wildlife habitat or which provide refuge to federally or state listed species, and lands providing wildlife corridors.
- *Historic Resources:*
  - *Goal HP-3:* Protect the historic character of Sandwich, including a policy of protecting important cultural landscapes; and,

WHEREAS, in 2005, the Town of Sandwich updated its *Open Space and Recreation Plan*, which identified the town's natural resource needs and established goals, objectives and action plans including:

- a *Conservation Goal* to protect and enhance Sandwich's fragile environmental resources, including water quality, scenic beauty and unique habitats, and *Conservation Objectives* of preserving coastal water quality, protecting freshwater and wetland resources, protecting and preserving lands for wildlife habitat, rare plants and animals, unfragmented woodlands and historic resources, farms and bogs, and scenic areas through regulatory and non-regulatory means (pp. 72-73); and,
- an *Open Space Goal* to preserve and manage sufficient areas to maintain a healthy natural environment, provide habitat for wildlife, encourage outdoor recreation and retain community character (p. 73); and *Open Space Objectives* including protecting land in or near sensitive natural or unique areas and open space lands, protecting the Town's scenic resources including protecting lands which contribute to the unique Cape Cod character of the Town, and using cost-effective land protection tools such as conservation restrictions; and,

WHEREAS, the Town of Sandwich has adopted a Conservation Restriction Program, consisting of policies and guidelines approved by the Board of Selectmen, Assessors and Conservation

THE ROUX CONSERVATION RESTRICTION  
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Commission in 1987, which established, among other things, property tax benefits for landowners making voluntary applications for conservation restrictions; and,

WHEREAS, preservation of the Premises satisfies each of these objectives enumerated above because the Premises:

1. is a large tract, comprised of almost 22 acres of wooded upland and about 49 acres of salt marsh tidal wetlands, that provides valuable feeding grounds for least and common terns, both state-listed rare species;
2. preserves land within the Old Harbor Creek/Springhill estuarine watershed and tidal floodplain;
3. is located within the *Old Kings Highway Regional Historic District*;
4. is within an MNHESP *Priority Habitat for Rare Species*;
5. is within an MNHESP BioMap2 *Critical Natural Landscape* area;
6. is included within the *Statewide Land Conservation Plan*;
7. is within a *Significant Natural Resources Area* of the 2009 Regional Policy Plan;
8. is within the 200 foot buffer under the *Rivers Protection Act*;
9. abuts and enhances the conservation values of hundreds of acres of land owned and protected for conservation by the Town of Sandwich and Sandwich Conservation Trust;
10. provides a public scenic vista of open marshes and woodland, an archetypal Cape Cod landscape, from the railroad right of way;
11. is ranked “Maximum” for wildlife habitat value and “High” for habitat protection priority in the Cape Wildlife Project;
12. is identified by APCC as land on which a conservation restriction could be placed;
13. is a substantial contributing element to the overall scenic character of the area by maintaining the land predominantly in its natural condition; and,

WHEREAS, accordingly, the Premises possess significant open, natural, scenic and historic values (collectively, “conservation values”) of great importance to the Grantee and the people of Sandwich and the Commonwealth of Massachusetts; and,

WHEREAS, accordingly, the Premises constitutes a significant natural area which qualifies as a “...relatively natural habitat of wildlife, or plants, or similar ecosystem,” and protection of the Premises will meet the requirements of Section 170(h)(4)(A)(ii) of the Code; and,

WHEREAS, accordingly, protection of the Premises will preserve open space pursuant to clearly delineated Federal, State and local government policies and will yield a significant public benefit, and will therefore meet the requirements of Section 170(h)(4)(A)(iii)(II) of the Code; and,

WHEREAS, accordingly, the Premises provides for the “scenic enjoyment of the general public” and protection of the Premises will therefore meet the requirements of Section 170(h)(4)(A)(iii)(I) of the Code; and,

WHEREAS, development of the Premises would lead to or contribute to the degradation of the scenic and natural character of the area; and,

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WHEREAS, the Town of Sandwich has in recent years come under increasing pressure for development, and such development can destroy or otherwise severely impact the open character, natural resources, and scenic beauty of the area; and,

WHEREAS, the Grantee is a publicly-supported, tax-exempt non-profit organization whose purpose is to preserve and conserve natural areas for aesthetic, scientific and educational purposes; and,

WHEREAS, the Grantee has received a letter from the Internal Revenue Service, dated August 14, 2009, a copy of which is on file at the offices of the Grantee, to the effect that the Grantee is not a private foundation within the meaning of Section 509(a) of the Internal Revenue Code; and,

WHEREAS, the Grantor intends, as owner of the Premises, to convey to the Grantee the right to preserve and protect the above-mentioned conservation values of the Premises in perpetuity, by retaining the Premises predominantly in their natural, scenic or open condition; and,

WHEREAS, the Grantee agrees by accepting this grant to honor the intentions of the Grantor stated herein and to preserve and protect in perpetuity the above-mentioned Conservation Values of the Premises for the benefit of this generation and the generations to come.

NOW, THEREFORE, in consideration of the above and the mutual covenants, terms, conditions, and restrictions contained herein, the Grantor and the Grantee voluntarily agree that the CONSERVATION RESTRICTION described herein is an appropriate means to achieve the community's open space goals and objectives and to protect and enhance natural and scenic values of Cape Cod.

The terms of this Conservation Restriction are as follows:

A. Prohibited Uses. Except as to reserved rights set forth in Section B. below, the Grantor will not perform or permit the following acts or uses in, on, over or under the Premises:

1. Construction or placing or allowing to remain any temporary or permanent building, structure, facility or improvement on, over or under the Premises, including but not limited to any dwelling unit or habitable living space, tennis court, landing strip or helipad, mobile home, boats, swimming pool, active recreational facility, outdoor decorative spotlighting, parking area, fence, shed or storage box, gazebo, utilities, fuel storage tank, wells, asphalt or concrete pavement, antenna, satellite receiving dish, tower, windmill, sewage or septage disposal system, or other temporary or permanent structure or facility, or improvements of any kind on, under or above the Premises;
2. Construction of any roads, maintained trails or paths through or on the Premises, or the clearing of vegetation, or the addition, removal or movement of soil for such purpose;
3. Mining, excavating, or removing from the Premises of soil, loam, peat, gravel, sand, rock or other mineral resource or natural deposit;

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4. Placing, filling, storing or dumping on the Premises of soil, refuse, trash, vehicle bodies or parts, boats, trailers, rubbish, debris, junk, wood chips, tree cuttings, waste or other substance or material whatsoever;
5. Creation of a cultivated (i.e., seeded, fertilized, and maintained) lawn or formal or cultivated gardens; application or use of fertilizers, fungicides, herbicides or pesticides in any quantity;
6. Any commercial recreation, aquaculture or agricultural or industrial use; any animal husbandry or horse paddocking or stables, paddocks, grazing areas or other enclosures, and the storage or dumping of manure or other animal wastes;
7. Cutting, removing or otherwise destroying grasses or other vegetation;
8. Activities detrimental to drainage, water or soil conservation, erosion control or the quality of surface or ground water; any removal of soil off-site;
9. The use, parking or storage of motorized trail bikes, all-terrain vehicles, snowmobiles, or any motorized vehicle except as necessary for emergency police, fire or public safety vehicles in pursuit of official duties;
10. 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);
11. Any other use of the Premises or activity thereon which is inconsistent with the purposes of this Conservation Restriction or which would materially impair other significant conservation values unless necessary in an emergency for the protection of the conservation values that are the subject of this Conservation Restriction; and,
12. All development rights in the Premises are terminated and extinguished by this Conservation Restriction; and the Premises may not be used for the purpose of calculating the amount of Grantor's or any other land available for additional subdivision or calculating the building requirements on this or any other land owned by the Grantor or any other person.

B. Reserved Rights. The following uses and activities are permitted, but only if such uses and activities do not materially impair the conservation values or purposes of this Conservation Restriction, subject to any limitations noted below:

1. Installation of temporary and permanent boundary monuments delineating the Premises; and erection and maintenance of small signs with respect to hunting, trespass, identity of Grantor and Grantee, the protected conservation values, and similar signs, so long as such signage is consistent with the purposes of this Conservation Restriction;
2. Erection and maintenance of open-faced fences, such as wooden split rail, for property boundary delineation, so long as the dimensions and design of said fences do not impede

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- free wildlife passage; maintenance and repair of the existing approximately four-foot high old 'cow fencing' located along a portion of the southern boundary of the Premises;
3. Maintenance, repair and replacement of the two four-foot high poles and steel cow gate at the entrance to the Premises;
  4. In accordance with best silvicultural management practices, the control and removal of invasive plant species in a manner designed to affect the targeted species and to avoid damage to the non-target species and water quality including controlling poison ivy and other potentially hurtful plant life and other species that threaten indigenous or protected species anywhere within the Premises, including use of spot-applied herbicides, fungicides and pesticides, so long as surrounding vegetation is not materially disturbed;
  5. The cutting of live timber only as follows: as necessary to control or prevent an identified disease, infestation or other hazard to the health of the trees, for storm clean-up, for safety reasons to prevent injury to persons or damage to property, and for trail maintenance;
  6. In conjunction with Paragraphs B. 4 and 5, storing timber or vegetative debris originating on the Premises;
  7. The cutting and collecting dead or downed timber for personal consumption as firewood; stacking, in upland areas no closer than 50 feet of a wetland edge, of firewood collected on the Premises;
  8. Use, maintenance, and continued mowing of (a) the existing dirt drive in its present location as shown on Exhibit A-1 and in an unpaved, pervious condition, (b) the existing footpaths, approximately four to six feet in width, extending from the Unrestricted Area northward to the edge of the marsh, (c) the pre-existing approximately 40' wide swath extending from the east side of the Unrestricted Area to the marsh to the east, and the right to store canoes, kayaks and other hand-carried watercraft in that area, and (d) areas as defined in the Baseline Documentation Report narrative, to be attached hereto as Exhibit B;
  9. Using, maintaining, repairing, and replacing utility lines, overhead or underground, to serve residential structures within the area marked 'Unrestricted' on Exhibit A-1; to the extent practicable, location of said lines shall not disturb extensive areas of vegetation;
  10. Conducting archaeological activities, including without limitation archaeological research, surveys, excavation and artifact retrieval, but only (a) after written notification to and approval by Grantee, and (b) in accordance with an archaeological field investigation plan prepared by or on behalf of the Grantor and approved in advance of such activity, in writing, by the MHC State Archaeologist as required by Massachusetts General Laws. A copy of the results of any scientific investigation on the Premises is to be provided to the Grantee. Plans for restoration of the site of any archaeological activity shall be submitted to the Grantee in advance of restoration, and such restoration shall be conducted only in accordance with a plan approved by the Grantee;

11. Activities detrimental to archeological and historic resources, including but not limited to earth moving and other disturbances to the surface or subsurface of the ground, and any alteration of historic stone walls/cellar holes/features, shall not be deemed to be detrimental to archeological and historic resources if a description of the proposed activity and its location is submitted in writing with a plan of land (or assessors map) and a USGS map with the Premises outlined thereon, to Massachusetts Historic Commission ("MHC") and MHC issues a letter stating that the proposed activity is not within a resource area or is determined to not have an adverse effect on said resources. Grantor and Grantee shall make every reasonable effort to prohibit any person from conducting archeological field investigations including metal detecting, digging or artifact collecting, without MHC approval;
12. Subject to local regulation, the right to create and maintain a viewshed to Old Harbor Creek and Sandwich Harbor from the northern side of the existing dwelling located within the Unrestricted area, as such viewshed generally is shown on Exhibit A-1, by the selective cutting, trimming, pruning and limbing of trees and other woody vegetation on the Premises through the use of hand-held manual and power equipment, it being agreed that heavy machinery and equipment is inappropriate for use for such purpose and is thus prohibited; provided, that any such trimming, pruning or limbing is non-injurious to the survival of any tree, and provided further that Grantor must obtain Grantee's prior written permission if any such removal will involve the cutting of trees more than six inches (6") in diameter;
13. Use, maintenance, repair and replacement of the existing approximately 12' x 18' platform/deck, which is approximately 4' off the ground, in the northern area of the Premises, as shown on Exhibit A-1, and the right to continue mowing the approximately 25' x 25' area in and around the platform/ deck;
14. Conveying the Premises in its entirety; and,
15. Any work undertaken in conjunction with the reserved rights mentioned above in this Section B. shall seek to minimize disturbance within the Premises. Upon completion of any site work performed in conjunction with this Section B., any disturbed areas shall be restored substantially to match the conditions with respect to soil material, grade, and vegetated ground cover that existed prior to said work.

The exercise of any right or obligation reserved by the Grantor under this Section B shall be in compliance with all permitting requirements, the then-current Zoning By-Laws of the Town of Sandwich, and all other applicable federal, state and local law. The inclusion of any reserved right in this Section B requiring a permit from a public agency does not imply that the Grantee or the Commonwealth takes any position on whether such permit should be issued.

C. Notice and Approval. Whenever notice to or approval by the Grantee is required under the provisions herein, the Grantor shall notify the Grantee in writing, by a method requiring receipt, not less than sixty (60) days prior to the date the 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 and performance standards of this Conservation Restriction. Where the Grantee's approval is required, the Grantee shall grant or withhold its approval in writing within sixty days (60) days of receipt of the Grantor's written request therefore. Failure of Grantee to deliver a written response to Grantor in accordance with the prescribed timeframe shall be deemed to constitute written approval by Grantee of any request submitted for approval that is not contrary to the express restrictions hereof and that will not materially impair the purposes of this Conservation Restriction, provided that Grantor's request sets forth in substance the provisions of this section relating to deemed approval after the passage of time.

D. Extinguishment. If circumstances arise in the future such as to render the purpose of this Conservation Restriction impossible to accomplish, this Conservation Restriction can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction, 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 the Grantee, on a subsequent sale, exchange or involuntary conversion of the Premises, shall be entitled to a portion of the proceeds in accordance with Section D.1. below, subject, however, to any applicable law that expressly provides for a different disposition of the proceeds or to the terms of any gift, grant, or funding requirements. The Grantee shall use its share of the proceeds in a manner consistent with the conservation purposes set forth herein.

D.1. Proceeds. The Grantor and the Grantee agree that donation of this Conservation Restriction gives rise to a real property right, immediately vested in the Grantee, with a fair market value that is at least equal to the proportionate value that this Conservation Restriction, determined at the time of the gift, bears to the value of the entire property as unencumbered at that time. For the purposes of this Section, the ratio of the value of this Conservation Restriction to that value of the Premises unencumbered by this Conservation Restriction shall remain constant. To establish this proportionate value, Grantor shall provide Grantee with a complete copy of any qualified appraisal performed for Grantor (at the time of donation of this Conservation Restriction) as required under Internal Revenue Code Sec. 170(h).

D.2. Grantor/Grantee Cooperation Regarding Public Action. Whenever all or 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 under this Section shall first be paid out of any recovered proceeds, and the remaining proceeds shall be distributed between the Grantor and the Grantee in shares equal to such proportionate value, as noted in Section D.1, above, subject to the terms of any gift, grant or funding requirements. The Grantee shall use its share of the proceeds in a manner consistent with the purposes of this grant.

E. Access. The Conservation Restriction hereby conveyed does not grant to the Grantee, to the public generally, or to any other person any right to enter upon the Premises, except the Grantee and its representatives are granted the right to enter the Premises:

1. after reasonable notification, at reasonable times and in a reasonable manner for the

purpose of inspecting the same to determine compliance with the provisions of this Conservation Restriction; and

2. (b) after thirty (30) days prior written notice, to take any and all actions with respect to the Premises as may be necessary or appropriate, with or without order of court, to remedy, abate or enforce any violation hereof unless the Grantor has prior to the expiration of said thirty (30) days given written notice to the Grantee reasonably addressing all alleged violations and setting forth a reasonable plan to remedy any such alleged violation and has made reasonable efforts to cease the activity or to begin remediation; and,

F. Legal Remedies of the Grantee. 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 its condition at the time of this grant (it being agreed that the Grantee shall have no adequate remedy at law), and shall be in addition to, and not in limitation of, any other rights and remedies available to the Grantee. Prior to instituting litigation to enforce any violations of this Conservation Restriction, however, the Grantee shall first notify the Grantor and request the Grantor to remedy the violation; if the violation is not remedied within sixty (60) days, then the parties shall make a good faith effort to mediate the dispute before litigation is commenced, provided the Grantor has ceased the violative activity and is making good faith efforts to remedy the violation.

Grantee shall not, however, have the right to bring an action against Grantor with respect to a violation of this Conservation Restriction by trespassers or other third persons whose entry on the Property is not authorized or voluntarily acquiesced in by Grantor; Grantor agrees that Grantor will not voluntarily acquiesce in any violation of this Conservation Restriction by trespassers or such other third persons; and Grantor further agrees that, at the request of Grantee, Grantor will make reasonable efforts to deter such activities and to remedy the violation and will cooperate with Grantee to enforce this Conservation Restriction against trespassers and such other third persons.

In the event of a dispute over the boundaries of the Premises, the Grantor shall pay for a survey and permanent boundary markers delineating the Premises.

The Grantor, its successors and assigns, agree to reimburse the Grantee for all reasonable costs and expenses (including without limitation reasonable attorney's fees) incurred in enforcing this Conservation Restriction or in taking reasonable measures to remedy or abate any violation thereof. The Grantor, its successors and assigns shall each be liable under this Section for only such violations of this Conservation Restriction as may exist during its respective periods of ownership of the Premises, and any new owner may be held responsible for any violations existing during his or her ownership.

By its acceptance, the Grantee does not undertake any liability or obligation relating to the condition of the Premises, including with respect to compliance with hazardous materials or other environmental laws and regulations, or for acts not caused by the Grantee or its agents. Enforcement of the terms of this Conservation Restriction shall be at the discretion of the Grantee, and 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.

G. Acts Beyond Grantor's Control. Nothing contained in this Conservation Restriction shall be construed to entitle the Grantee to bring any action 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, natural erosion, 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. Grantor and Grantee agree that in the event of damage to the Property from acts beyond Grantor's control, that if Grantor and Grantee mutually agree that it is desirable that the Property be restored, Grantor and Grantee will cooperate in attempting to restore the Property if feasible. Notwithstanding the foregoing, nothing herein shall preclude Grantor's and Grantee's rights to pursue any third party for damages to the Premises from vandalism, trespass, or any other violation of the terms of this Conservation Restriction.

H. Duration and Assignability. The burdens of this Conservation Restriction shall run with the Premises in PERPETUITY and shall be enforceable against the Grantor, its successors and assigns holding any interest in the Premises. The Grantee is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Conservation Restriction; and the Grantor on behalf of its successors and assigns, appoints the Grantee as its attorney-in-fact to execute, acknowledge and deliver any such instruments on its behalf. Without limiting the foregoing, the Grantor and its successors and assigns agree themselves to execute any such instrument upon request.

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 from time to time:

1. as a condition of any assignment, the Grantee requires that the purpose of this Conservation Restriction continue to be carried out,
2. the assignee, at the time of assignment, qualifies under Section 170(h) of the Internal Revenue Code of 1986, as amended, and applicable regulations thereunder, and under Section 32 of Chapter 184 of the General Laws as a donee eligible to receive this Conservation Restriction directly; and,
3. the Grantee complies with the provisions required by Article 97 of the amendments to the Constitution of the Commonwealth of Massachusetts, if applicable.

I. Subsequent Transfers. The Grantor agrees to incorporate by reference the terms of this Conservation Restriction in any deed or other recordable legal instrument by which Grantor conveys any interest in all or a portion of the Premises, including, without limitation, a leasehold interest. Grantor further agrees to give written notice to the Grantee of the transfer of any interest at least twenty (20) days prior to the date of such transfer. Failure of the Grantor to do either shall not impair the validity of this Conservation Restriction or limit its enforceability in any way.

J. Termination of Rights and Obligations. Notwithstanding anything to the contrary contained herein, the rights and obligations under this Conservation Restriction of any party holding an interest in the Premises terminate upon transfer of that party's interest, except that liability for

acts or omissions occurring prior to the transfer, and liability for the transfer itself if the transfer is a violation of this Conservation Restriction, shall survive the transfer.

K. Estoppel Certificates. Upon request by the Grantor, the Grantee shall, upon twenty (20) days notice, execute and deliver to the Grantor any document, including an estoppel certificate, which certifies the Grantor's compliance with any obligation of the Grantor contained in this Conservation Restriction, and which otherwise evidences the status of this Conservation Restriction as may be requested by the Grantor.

L. Amendment. If circumstances arise under which an amendment to or modification of this CR would be appropriate, Grantor and the Grantee may by mutual consent amend in writing the applicable term or provision hereof provided that the amendment complies with the applicable requirements of Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, Massachusetts General Law, Ch. 184, sec. 31-33, or any successors thereto, and provided that any such amendment, together with any approvals necessary to its effectiveness, including that of the Massachusetts Secretary of Energy and Environmental Affairs, shall be recorded with the Barnstable County Registry of Deeds. Any amendment shall be consistent with the purposes of this Conservation Restriction, shall not diminish the conservation values of the Premises and shall not affect its perpetual duration.

In addition, the Grantee shall not consider any amendment to this Conservation Restriction UNLESS all of the following conditions are met:

1. The minimum amount of amendment, as to terms, land area or structural dimensions, activity, or level of use, is proposed to accommodate the proposal;
2. Whenever possible, mitigation measures of like kind be proposed and the substitution be more advantageous to the cause of conservation;
3. There will be a net gain to conservation values offered through mitigation to the affected parcel or its immediate vicinity; and,
4. Cash values of items or areas proposed for release, amendment or mitigation may be disregarded by Grantee in the equation to determine net gain to conservation values; and
5. The then-Grantor agrees to pay all costs involved in the amendment process.

M. Non-Merger: The parties intend that the doctrine of merger shall not apply to this conveyance, and that no transfer of Grantor's or Grantee's interest in the Premises and no acquisition of any additional interest in the Premises by Grantor or Grantee shall cause this Conservation Restriction to merge with the fee or have the effect of causing any of the terms hereof to be rendered unenforceable by reason of the so-called doctrine of merger. No deed shall be effective until this Conservation Restriction has been assigned to a non-fee owner or other action taken to avoid a merger and preserve the terms and enforceability of this Conservation Restriction by a non-fee owner. It is the intent of the parties that the Premises will be subject to the terms of this Conservation Restriction in perpetuity.

N. Miscellaneous Provisions

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

2. Construction. Any general rule of construction to the contrary notwithstanding, this Conservation Restriction shall be liberally construed in favor of its purposes. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purposes of this Conservation Restriction that would render the provision valid shall be favored over any interpretation that would render it invalid.
3. Severability. If any provision of this Conservation Restriction shall to any extent be held invalid, the remainder shall not be affected.
4. Entire Agreement. This obligation sets forth the entire agreement of the parties with respect to the Conservation Restriction and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Conservation Restriction, all of which are merged herein.
5. Joint Obligation. The obligations imposed by this Conservation Restriction upon the parties that together comprise "Grantor" shall be joint and several.
6. Captions. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

O. Effective Date. Grantor and Grantee intend that the restrictions arising hereunder take effect on the day and year this Conservation Restriction is recorded in the official records of the Barnstable County Registry of Deeds, after all signatures required by Section 32, Chapter 184 of the General Laws of Massachusetts have been affixed hereto. This document shall be recorded in a timely manner upon execution by all parties.

P. Homestead. The Grantors are married and own adjacent property (the Unrestricted Area shown on Exhibit A-1 and A-2) which has a seasonal home not used or intended to be used as a principal residence by Grantors or their children.

No documentary stamps are required as this Conservation Restriction is a gift.

Attached hereto and incorporated herein are the following:

Signatures:

Grantor – Eugene Theroux and Colleen Pankratz Theroux  
Grantee – The Compact of Cape Cod Conservation Trusts, Inc.  
Town of Sandwich Board of Selectmen  
Secretary, MA Executive Office of Energy and Environmental Affairs

Exhibits:

- A. Legal Description of the Premises
- A-1. CR Sketch Plan
- A-2. Sketch of Unrestricted Area
- B. Baseline Documentation Report

**Grantor:**

\_\_\_\_\_  
**Eugene Theroux**

\_\_\_\_\_  
**Colleen Pankratz Theroux**

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss. \_\_\_\_\_, 2015

Then personally appeared the above-named Eugene Theroux and Colleen Pankratz Theroux, and proved to me through satisfactory evidence of identification, which was \_\_\_\_\_, to be the persons whose names are signed on the document and acknowledged the foregoing instrument to be their free act and deed, before me.

\_\_\_\_\_  
Notary Public:  
My commission expires:

ACCEPTANCE OF GRANT

At a meeting duly held on \_\_\_\_\_ 2014, The Compact of Cape Cod Conservation Trusts, Inc. voted to accept the foregoing Conservation Restriction from Eugene Theroux and Colleen Pankratz Theroux.

**Grantee:**

**THE COMPACT OF CAPE COD  
CONSERVATION TRUSTS, INC.**

By: \_\_\_\_\_  
Richard A. Johnston, President

By: \_\_\_\_\_  
Henry Lind, Treasurer

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss. \_\_\_\_\_, 2015

Then personally appeared the above-named Richard A. Johnston, President, and Henry Lind, Treasurer, of The Compact of Cape Cod Conservation Trusts, Inc., the corporation named in the foregoing instrument, and proved to me through satisfactory evidence of identification, which was personal knowledge of identity, to be the persons whose names are signed on the document and acknowledged they are duly authorized to act on behalf of said corporation, the seal affixed to said instrument is the corporate seal of said corporation, and foregoing instrument to be the free act and deed of the corporation, before me.

\_\_\_\_\_  
Notary Public:  
My commission expires:

APPROVAL OF SELECTMEN

At a public meeting duly held on \_\_\_\_\_, 2015, the Selectmen of the Town of Sandwich, Massachusetts voted to approve, pursuant to M.G.L. Chapter 184, Section 32, the foregoing Conservation Restriction from Eugene Theroux and Colleen Pankratz Theroux to The Compact of Cape Cod Conservation Trusts, Inc.

TOWN OF SANDWICH  
BOARD OF SELECTMEN

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss. \_\_\_\_\_, 2015.

Then personally appeared the above-named \_\_\_\_\_, Chairman of the Town of Sandwich Board of Selectmen, and proved to me through satisfactory evidence of identification, which was personal knowledge of identity, to be the person whose name is signed on the document and acknowledged the foregoing instrument to be his/her free act and deed on behalf of said Town of Sandwich Board of Selectmen, before me.

\_\_\_\_\_  
Notary Public  
My commission expires:

APPROVAL BY SECRETARY OF ENERGY AND ENVIRONMENTAL AFFAIRS  
COMMONWEALTH OF MASSACHUSETTS

The undersigned, Secretary of the Executive Office of Energy and Environmental Affairs of the Commonwealth of Massachusetts, hereby certifies that the foregoing Conservation Restriction from Eugene Theroux and Colleen Pankratz Theroux to The Compact of Cape Cod Conservation Trusts, Inc. has been approved in the public interest pursuant to M.G.L. Chapter 184, Section 32. Said approval 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.

Date: \_\_\_\_\_, 2015.

\_\_\_\_\_  
Matthew A. Beaton, Secretary  
Executive Office of Energy and  
Environmental Affairs

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss. \_\_\_\_\_, 2015.

Then personally appeared the above-named Matthew A. Beaton, Secretary, Executive Office of Energy and Environmental Affairs, and proved to me through satisfactory evidence of identification, which was personal knowledge of identity, to be the person whose name is signed on the document and acknowledged to me that s/he signed it voluntarily as Secretary of Energy and Environmental Affairs for the Commonwealth of Massachusetts, for its stated purpose.

\_\_\_\_\_  
Notary Public  
My commission expires:

CONSERVATION RESTRICTION  
on Land owned by  
Eugene Theroux and Colleen Pankratz Theroux  
in Sandwich, Massachusetts

EXHIBIT A  
Description of the Premises

The Premises subject to this Conservation Restriction is located in the Town of Sandwich, Barnstable County, Commonwealth Massachusetts, and contains 71.31 acres, more or less, and is a portion of the land described in deed from Anne Theroux to Eugene Theroux and Colleen Pankratz Theroux dated June 22, 1992 and recorded in the Barnstable County Registry of Deeds in Book 8102 Page 276.

The Premises subject to this Conservation Restriction further is identified on the sketch plan prepared by Soule Land Surveying dated February 9, 2015 entitled "Plan of Restricted and Unrestricted Land in Sandwich, MA as prepared for Eugene and Colleen P. Theroux," a reduced copy of which is attached hereto as Exhibit A-1. The Premises is shown on said sketch plan as "Restricted." The area shown on said sketch plan as "Unrestricted" is not covered by this Conservation Restriction. The lines dividing the Restricted Area from the Unrestricted Area are shown as dashed lines on said sketch plan. The Unrestricted area is shown in larger detail on the sketch attached as Exhibit A-2.

Town of Sandwich Assessors Map 75, Parcel 2 (portion).

EXHIBIT A-1  
SKETCH OF THE PREMISES

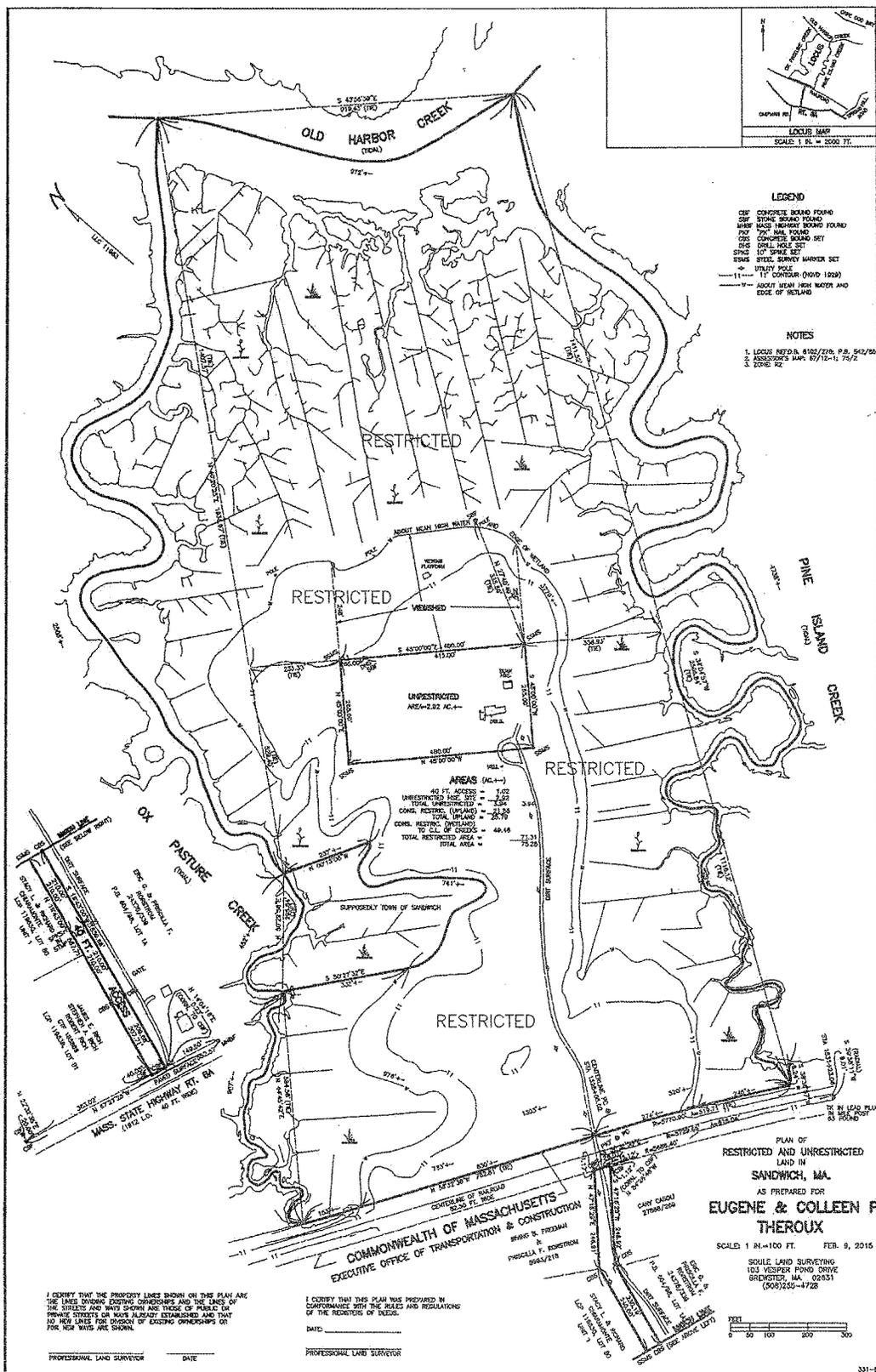
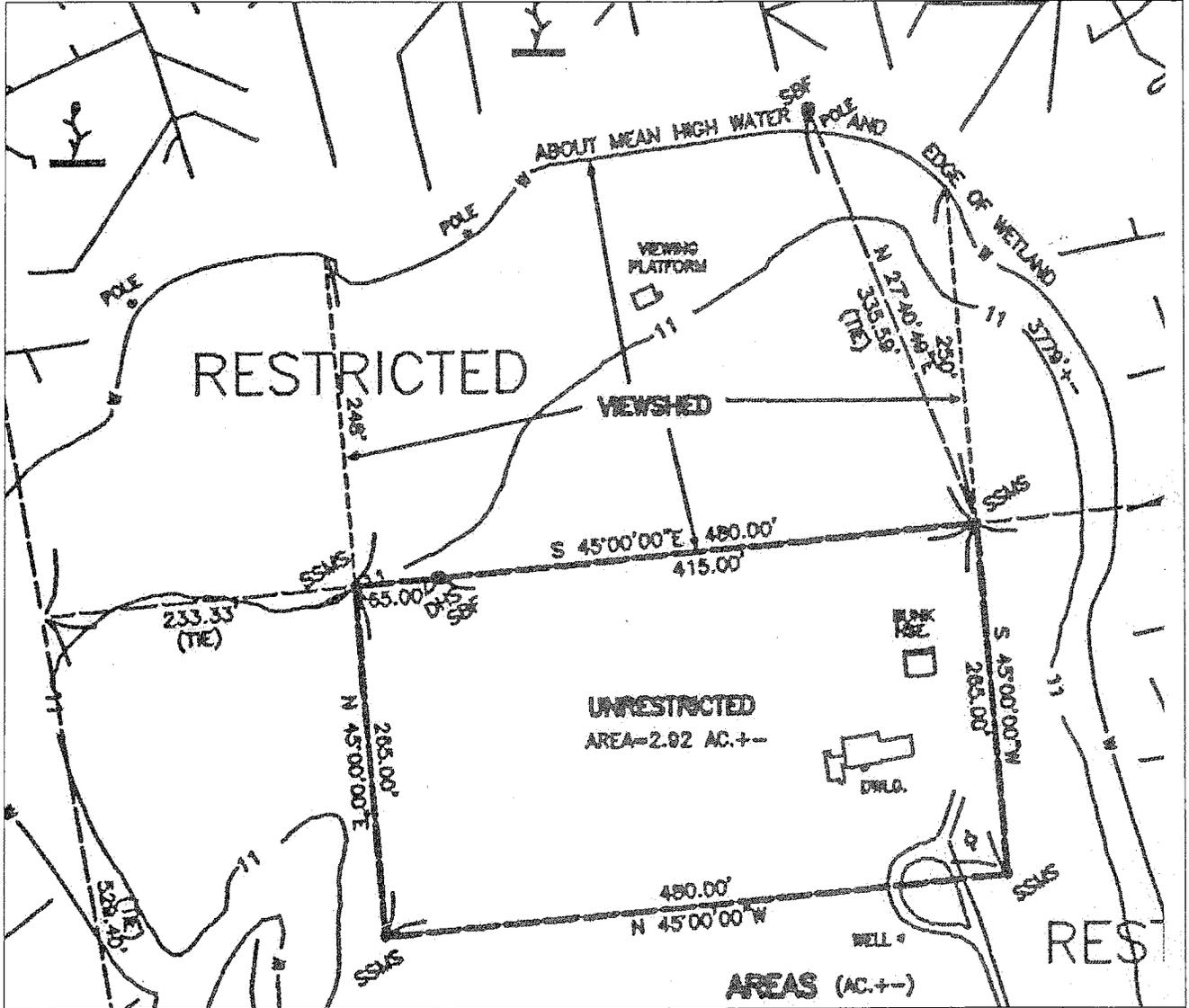


EXHIBIT A-2  
ENLARGED SKETCH OF THE UNRESTRICTED AREA



**EXHIBIT B  
BASELINE DOCUMENTATION REPORT  
(to be inserted prior to recording)**

## Lapp, Doug

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**From:** John J. Goldrosen <JGoldrosen@k-plaw.com>  
**Sent:** Tuesday, March 24, 2015 2:53 PM  
**To:** Dunham, George; Lapp, Doug  
**Cc:** John Giorgio  
**Subject:** Theroux CR (Sandwich)

Bud and Doug:

I have reviewed the proposed Conservation Restriction (“CR”), to be granted by Eugene and Colleen Theroux (“Grantor”) to the Compact of Cade Cod Conservation Trusts, Inc. (“Grantee”). The CR is in proper form. The CR does not grant any rights to the Town or the public to enter or use the restricted parcel. Although the Town is not a party to the CR, G.L. c. 184, sec. 32 requires that the Board of Selectmen of a municipality must approve a proposed perpetual conservation restriction as being in the public interest, before the Secretary of Energy and Environmental Affairs will give final approval to the conservation restriction. The CR, at pages 1-5, provides numerous reasons why the approval of the CR is in the public interest, as the CR serves several important conservation values and is consistent with the Town’s planning objectives.

Please feel free to contact me if you have further questions, or if you believe that the Board of Selectmen will want to have a more detailed analysis of the provisions of the CR.

Very truly yours,

John J. Goldrosen, Esq.  
Kopelman and Paige, P.C.  
101 Arch Street  
12th floor  
Boston, MA 02110  
617-556-0007 (telephone)  
617-654-1735 (facsimile)  
[jgoldrosen@k-plaw.com](mailto:jgoldrosen@k-plaw.com)

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