

July 22, 2021

Board of Selectpersons
Town of Harwich
Harwich Town Hall
732 Main Street
Harwich, MA 02645

RE: Chloe's Path 40B Proposal

Dear members of the board,

I am the owner of 195 Sisson Road and after a community meeting held on Tuesday evening, July 20th, I have significant concerns about the scope and scale of the proposed development on Chloe's path.

I was born and grew up on Cape Cod and I am intimately familiar with the challenges of finding affordable and stable rental housing in this community. One of the reasons I decided to buy rather than rent was because I wanted control and stability over my living situation. I realize I was incredibly fortunate to have that option. I am for creating more rental housing that fits within the fabric of our towns and villages. However the claims made at the meeting on Tuesday night that this 96 unit, 300 person occupancy development will be a gift to the housing market on Cape are disingenuous at best. It does not take an expert to see through the veil of offering only 24 "affordable" units out of 96, which are not guaranteed to go to people already living, working, and in dire need of housing on Cape as an excuse for the owner and developers to maximize their profits while offering a minimal return benefit for the community. This is financial greed disguised as altruism.

The massive size of this development poses traffic risks on an already busy street with the entrance to Chloe's Path directly across from a school drop off entrance and exit at the community center, connecting to a major road to the south (rt 28) and to the already dangerous intersection of Sisson, Main street and 124. Compound this with traffic from the new mini golf constructed on Sisson, the grocery store on Sisson and people coming and going from the school and highway, this seems like a recipe for a traffic nightmare. Not to mention the congestion that would hinder the first responders coming and going at the police and fire station. At this community meeting the developers admitted no traffic studies had been done, and that on their current timeline they would not be done until the fall which would not take into account the dramatic rise in traffic in the summer months.

There were also no privacy or safety considerations for current direct abutters on Sisson. Five homes would be directly backing up onto this development. As a single female that lives alone and a survivor of sexual assault in my own living space at the time, the idea of 300 plus people and their visitors, delivery drivers, utility workers etc coming and going on a daily basis with direct sight and access to my backyard is horrifying. I have spoken with homeowners who live near the apartment complex in Yarmouth on 28 on the site of the former Cavalier motel and they

say that there is an immense spillover effect into the surrounding residential neighborhoods of constant foot traffic of smokers, littering of cigarette butts, nip bottles, and general loitering to the extent that it harms business in the nearby plaza. When we think of the proximity of this site to Harwich Elementary School, does this sound responsible? When we think of attracting tourist dollars to our town, does this sound like the kind of environment people are expecting when they visit Cape Cod? This sounds like it belongs in Boston or the surrounding neighborhoods, not next to a small residential coastal village.

The plan of 7 duplexes as mentioned in the May 24th selectmen's meeting sounds much more sustainable and within reason to fit into the existing space and neighborhood, making space for families and taxpayers invested in keeping their neighborhood safe without such a strain on services or safety. The transition to an apartment complex of this scale is baffling and can only be explained by financial gain for the developers and owners.

I am all for building rental housing that fits the needs of our community. But this development in its current state will irrevocably change the footprint of this community while offering little benefit to the people that need reliable housing the most. Overdevelopment in such a small area already burdened with delicate infrastructure is not the answer to the Cape's housing crisis. The assertion by Andrew Singer, the lawyer representing the development, that this would help the town achieve its affordable housing quota or goal, while it may be a legal loophole, is a misrepresentation of the reality of how this would impact the community with little benefit to those who need affordable housing the most.

I question why the town would be so permissive with a proposal of this scale, when it would not add to the tax base and long term financial health of the town in any real way. I am also concerned as to why there was no representation from the BoS at this community meeting. How could you accurately ascertain the interest or concerns of a community if you are not present to do so?

Please consider asking the developers at Monday night's meeting to pause this project until further information and data regarding traffic, safety, wastewater and community impact can be studied, with real answers and solutions delivered to the current residents in this area as well as asking them to reconsider the overall size and scale, which in its current form does not sound sustainable or safe.

Sincerely,

Karen Beaty

Board of Selectmen
Town Administrator
732 Main Street
Harwich MA 02645



Katherine Brownell
7 Old Campground Road
Harwich Port MA 02646

August 15, 2021

I'm writing with comments on the Chloe's Path development being proposed. I am strongly opposed to it, for the following reasons.

- The traffic is already terrible in this area- I live off Gilbert Lane and cannot believe how bad the traffic has gotten on Sisson Road. The road can't support any more homes.
- The project is way too big for the site. I read about the wildlife and water impacts, and the fact that the developers never put the promised plan for box turtles in place. Terrible and just not a good fit.
- It's not actually affordable! The prices are NOT reasonable for working people and that's supposed to be the point.

I read about the town's interest in developing affordable housing at two other sites, including the Marceline property on Route 124. We need affordable housing badly and I agree that it's better to control it ourselves rather than giving a big handout to developers and not getting much in return, besides a traffic mess and further impacts to our water and wildlife.

I urge you to reject this proposal, in the true interests of our town.

Sincerely,

A handwritten signature in blue ink that reads "Katherine Brownell".

Katherine Brownell

From: Contact form at Harwich MA
Sent: Friday, July 23, 2021 3:25 PM
To: Joe Powers
Subject: [Harwich MA] Chloe's Path Proposal (Sent by Robert Clobridge, perceptualmoment@gmail.com)

Hello jpowers,

Robert Clobridge (perceptualmoment@gmail.com) has sent you a message via your contact form (<https://www.harwich-ma.gov/user/1733/contact>) at Harwich MA.

If you don't want to receive such e-mails, you can change your settings at <https://www.harwich-ma.gov/user/1733/edit>.

Message:

I live at 225 Sisson Road and am a direct abutter to the proposed Chloe's Path project. I am in full agreement with the letter submitted by Peter Gori et al. I would like to offer that I believe that it would be highly irresponsible for our town leadership to endorse this plan without more in-depth analysis. Of particular concern are traffic/safety and environmental/water issues. There is no question that affordable housing is needed on the Cape, but the scope of this project demands more review. Thank you for your service to the town.

Robert Clobridge
PO Box 606
West Harwich MA 02671

From: Kathy Clobridge

Sent: Sunday, March 6, 2022 3:38 PM

To: mbusby@masshousing.com; Jessica Malcolm >; Nancy McDonald

Cc: Joe Powers

Subject: Chloe's Path, Harwich MA

To Michael Busby, Jessica Malcolm, and Nancy McDonald at MassHousing;

My name is Kathy Clobridge and I have lived next door to the property now called Chloe's Path for over 32 years. In relation to this property, I've at times acted as the eyes and ears of the neighborhood when town employees didn't appear to have the latest data, failed to understand or implement current regulatory guidelines, or simply were unaware of goings on. It has been an interesting 20 years.

You should also know that I believe in and support programs designed to assist those whose financial status denies them access to basic needs, including affordable housing. I have spent many volunteer hours giving back to the community and am retired from a career in public service. I recognize the difficulty of your jobs, and I want to thank you for your service to the Commonwealth and to your commitment to the mission of your organization.

"MassHousing will confront the housing challenges facing the Commonwealth to improve the lives of its people."

In reading the mission statement of MassHousing, I wonder about the challenges facing those of you reviewing these projects. I believe that your jobs put you directly in the position of confronting housing challenges, but "improving the lives of [Massachusetts'] people" is probably the far more complicated part of what you do.

It is unlikely that you had a role in crafting the laws and rules that define our 40B processes. But I'm guessing that if you could, you might change some of them- in order to make it simpler to determine what projects will ultimately show a *net improvement* in the lives of the people here in the Commonwealth. This project, to my way of seeing it, is not that.

It is a project that would certainly provide housing- in a community that desperately needs accessible housing. Harwich has been a working class town for a very long time. Now the trend is toward fewer year-round residents, more luxury and second-homes and a very low stock of land left to be developed, while prices continue to climb. There are few options for those who serve our (now) largely-affluent community. Hardest hit, of course, are those in the lowest paying service jobs. But even those who have seemingly stable jobs with benefits (such as health care workers, educators and some tradespersons) are simply not making enough money to buy or even rent a decent home in this community.

In Harwich, we have one small and one potentially large affordable housing project in the pipeline. These projects would provide real, long-term relief for local workers. And then we have Chloe's Path. This project would improve the lives of its proponents, one of whom appears to have miscalculated on this investment. That shouldn't be our problem. Others involved have made fortunes already, but are happy to destroy and pollute a very fragile area for further gain.

The technicalities of potential watershed impacts should be enough to stop this project, as I hope DEP will do, if you do not, or cannot.. The traffic concerns are more than serious, given the location and proximity to our emergency services and a school. These too, in a reasonable world, would stop the project.

The site, as you've undoubtedly heard from others, has been home to multiple species. There are some fauna that I've not seen since the clearing of a good portion of the site over five years ago. *Five long years with no promised restoration of habitat for Eastern box turtles*, most of whom spend their entire lives in an area less than 2 acres. Box turtles can easily live for 30 years in the wild- but I fear many of them on that site are dead. Since the clearing, I can name at least four species who have disappeared or been severely reduced, as evidenced by observations of those species on my abutting property over decades. This is, I suppose, the price of "progress"... but when someone promises to restore a fragile habitat (as documented in the deed restrictions), and they do not, this is to me infuriating as well as heartbreaking. *It is an unforgivable breach of the public trust.*

I do hope that you look carefully at the issues surrounding this proposal and understand that there is little about it that seeks to improve the lives of Massachusetts' people, with the exception of a hundred or so luxury renters and half a dozen developers. The 30 or so folks who might rent the "affordable units" might have some measure of relief from housing woes, but will they be able to "get ahead" while paying the proposed rents? Not many of them.

But ultimately, it is the environmental toll, which has been so grievously underestimated and downplayed by the proponents, that would cast the longest shadow on this community. Please understand that our town has its challenges but we also have strong, capable leadership. We will move forward with our other projects and we will find solutions, but to force this one would be a great disservice to Harwich and its citizens, as well as to this fragile and precious peninsula.

Thank you for your time and your consideration of my comments.

Kathy Clobridge

From: Peter Gori

Sent: Monday, February 14, 2022 9:53 AM

From: Kathy Clobridge <blackcrowbluesky@gmail.com>

Sent: Sunday, October 31, 2021 5:01 PM

To: Michael D. MacAskill; Larry Ballantine; Don Howell; Mary Anderson; Julie Kavanagh; Joe Powers; Meggan Eldredge; Jon Idman; Elaine Banta; Amy Usowski; superintendent@harwichwater.com; commissioners@harwichwater.com; Sarah.Peake@mahouse.gov; Julian.Cyr@masenate.gov

Subject: Chloe's Path

To our Harwich and Massachusetts leadership;

This letter is to weigh in on the proposed development at Chloe's Path, which is adjacent to my property. I have been following the story of this site for about 20 years. I know many of my neighbors and, to a person, we are in support of affordable housing projects. But all of us feel that this project, as is, is completely unacceptable.

I surveyed abutters' households, and received 8 responses. It was a three question survey and the results are as follows:

- 3 of 8 said no more than 7 homes on the site would be acceptable, 2 said up to 20 would be acceptable, and 3 said up to 35 would be acceptable. So half of us consider 20 to be the maximum acceptable number, and 37.5% think that up to 35 would be acceptable.
- 6 of 8 said that grouped townhomes would be the best choice for style of home, and 2 said single family would be best. Knowing that the state or town may approve more than 7 single families, we seem to feel that the next best thing would be townhome-style units.
- 5 of 8 said the town should not endorse the project and allow the proponents to make their case with the state (unfriendly 40B). 3 felt the town should work with the developers to reach a compromise. No one who responded felt the project should be green-lighted, as is.

The proposed project is so obviously out of scale for the site. 96 units, 150 cars, 52' high on just over 9 delicate acres. The watershed and traffic impacts alone should render it out of the question. And what of the non-compliance to the agreements in the deed restrictions- completely in violation of and counter to the protections afforded by the state? This must all be considered.

Given the events of the past year, it seems that we are at a crossroads in Harwich. We need to decide what is important to us as a community. We know that there is an urgent need for housing, but we need to balance that with our water and environmental issues on this fragile peninsula. In the 32 years I've lived in this house, I personally have witnessed the decline (in some cases the obliteration) of certain species. These include quail, foxes, owls, box and snapping turtles and salamanders. I know that we can't control all of this, but if our town leadership can't protect some of it, maybe the town's priorities are wrong.

We need to align the town leadership, particularly the department heads, with a strategic direction that takes into account the characteristics and true needs of the town. The town has in the past been too obsequious to those who would exploit our natural resources for their own gain. We have a good chance here to bring the vision closer to home, closer to what is reasonable. We need to control the destiny of Harwich- and our current leadership can get us there- I sincerely believe this. There should be a way to work with the deed restrictions and

make more housing- but no more than 30 or so homes, with strict requirements for nitrogen output. And ideally, more than 25% should be "affordable".

The town should be working to secure the Chloe's Path deed restrictions by communicating their importance to the state- where is our Conservation Agent on this? Every department head should be expected to carefully examine this project and give a true accounting of the costs versus benefits of it as written. And best practices should be identified in order to fast track the other two truly affordable housing projects (Marceline and Sisson/Parallel), so that we can provide a wider range of options and relief for the intensive housing pressure.

We shouldn't be responsible for ensuring that developers (who have clearly prospered, historically) get a good return on their investments. This is a dangerous premise. If someone paid too much for it, or miscalculated the potential profits, so be it. Every single person reading this has to pay for a bad decision, or wrong guess.

Please hold the line for all that is beautiful in our town and don't sell it out for ersatz affordability. Thank you for your consideration of my comments and for your service to Harwich, and to Cape Cod.

Kathy Clobridge
508.241.8595

180 Forest St.
Harwich, MA 02645
July 26, 2021

Board of Selectman
Town of Harwich
732 Main Street
Harwich, MA 02645

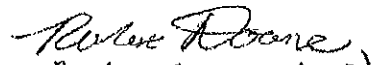
Dear Selectman,

We are abutters to the proposed Chloe's Path Apartments and writing to express our concerns:

1. The plans totally ignore the "Limit of Disturbance" zone as previously negotiated with the Massachusetts Division of Fisheries & Wildlife under the Natural Heritage & Endangered Species Program memorialized in the Cloe's Path Declaration of Protective Covenants and filed with the Registry of Deeds. Book 29940 Page 256 with reference to Book 29940 Page 272 – copies attached. In the LIP application, while the map showing the subdivision (Book 666 Page 20) indicating "By RIGHT – Subdivision Plan APPROVED", maps from Page 21 and 22 (attached) are not included which shows the Limit of Disturbance (highlighted). Areas beyond the Disturbance zone are considered "Forever Wild" and must not be disturbed. Clearly the buildings and roadway around the structures encroach on that area.
2. In conjunction with the Protective Covenants Mr. Donovan has failed to fulfill the 2016 Eastern Box Turtle Nesting Habitat & Management Plan as specified in Book 29940 Page 272.
3. We are concerned about the potentially high nitrogen loading from the sewer treatment of 300+ residents. The area of discharge goes through Grassy Pond to the Cold Brook Bog and out to Saquatucket Harbor. There is a Nitrogen Attenuation project in Cold Brook to alleviate the already high nitrogen in the discharge waters.
4. The very high density of people in such a small area will mean the Forever Wild and wetlands protected area will certainly be disturbed. We believe people and pets will spill over into our wooded property and will make a "short cut" to Forest Street.
5. The buildings are too tall for the character of Harwich. Being on a hill and above the tree line means they will be obtrusively visible from Forest Street and Sisson Road.
6. The high density will create excessive vehicle noise and tailpipe emissions. The noise level from the apartments will be substantial when windows are open.

While we support affordable housing (I am a director of Mid Cape Church Homes) we believe the very high impact of this project does not warrant the only 25% of affordable housing. The Harwich Housing Trust is already working towards an affordable solution on Sisson Road and the recently purchased Marceline property will give Harwich many more affordable options.

Sincerely,


Andrea Doane (RD)

Robert Doane and Andrea Doane

CC:

Joseph Powers, Town Administrator
Jonathan Idman, Town Planner
Harwich Conservation Commission
Brian Bush, Kemah Apartments LLC
Atty Andrew Singer

Attachments:

Bk 29940 Pg 256	Chloe's Path Declaration of Protective Covenants
Bk 29940 Pg 272	Division of Fisheries & Wildlife Letter
Bk 666 Pg 21	Chloe's Path, definitive Subdivision Plan (highlighted)
Bk 666 Pg 22	Chloe's Path, definitive Subdivision Plan (highlighted)

09-19-2016 @ 11:17a

NOT AN OFFICIAL COPY
Locus: Chloe's Path, Harwich, MA
NOT AN OFFICIAL COPY

NOT AN OFFICIAL COPY
CHLOE'S PATH
NOT AN OFFICIAL COPY

HARWICH, MASSACHUSETTS

DECLARATION OF PROTECTIVE COVENANTS

DECLARATION made this 16th day of SEPTEMBER, 2016 by Peter B. Donovan, Manager of HFH DEVELOPMENT, LLC, with a mailing address of P.O. Box 612, North Chatham, MA 02650 (hereinafter called "DECLARANT").

WITNESSETH:

WHEREAS, DECLARANT is the owner of land situated in Harwich, Barnstable County, Massachusetts, hereinafter described, and is desirous of creating an attractive residential community; encouraging harmonious and pleasing homes, assuring a high quality of community appearance; preserving and protecting the natural character of the land, conserving the trees, shrubbery and other natural features for the benefit of all property owners; preventing nuisances, to maintain the desired tone of the community and to thereby secure to each site owner the full benefit and enjoyment of his home, with no greater restrictions upon the free and undisturbed use of his site than is necessary to insure the same advantages to the other site owners; and

WHEREAS, DECLARANT desires to provide and insure the preservation of the values in said community and, to this end, desires to subject the real property together with such additions as may hereinafter be made thereto to the covenants, restrictions, easements, and liens hereinafter set forth, each of which is and are to be for the benefit of said property and each owner thereof;

WHEREAS, DECLARANT desires to provide and insure that the development of the land will continue to provide habitat used by a variety of wildlife including, but not limited to the Eastern Box Turtle (*Terrapene carolina*), in perpetuity.

NOW, THEREFORE, DECLARANT declares that the land in Harwich, Barnstable County, Massachusetts, shown as lots 1, 2, 3, 4, 5, 6, 7, and 9 and the fee in Chloe's Path as shown on a definitive subdivision plan entitled, "Chloe's Path, Definitive Subdivision Plan of Land in Harwich, Massachusetts for HFH Development, LLC, J.M. O'Reilly & Associates, Inc., December 14, 2015" and recorded with the Barnstable County Registry of Deeds in Plan Book 666, Page 20-22 (Plan), and such additions thereto as may hereinafter be made is and

shall be held, transferred, sold, conveyed, and occupied subject to and with the benefit of the covenants, restrictions, easements, charges, hereinafter set forth (the Property);

1. Definitions

- a. **Hazardous Material:** shall mean any material or substance that, whether by its nature or use, is now or hereafter defined as a pollutant, dangerous substance, toxic substance, hazardous waste, hazardous material, hazardous substance or contaminant under any environmental law, or which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic or otherwise hazardous and which is now or hereafter regulated under any environmental law.
- b. **Pervious:** shall mean built of materials consisting of unconsolidated minerals such as sand, dirt or gravel, or natural materials such as wood chips or grass.
- c. **Structure:** (whether or not said term is capitalized) shall mean anything constructed or erected which requires permanent or temporary location on, in, over or under the ground or permanent or temporary attachment to something which is erected or placed on the ground and designed, intended or arranged for the housing, shelter, enclosure and/or structural support of persons, animals or property of any kind, including but not limited to houses, mobile homes, tents, barns, sheds, greenhouses, treehouses, and other buildings of any kind; silos and cribs; swimming pools; playing courts; outdoor riding rings; fences; pads; patios and decks; docks; bridges; roads; driveways and parking areas (whether surfaced with macadam, brick, paving stones, gravel, clay or other material); artificially surfaced walkways; solar panels; satellite dishes and antennae; signs and billboards; storage tanks; windmills and wind turbines; and water, sewer, power, fuel, gas and communication lines, other utility systems and related facilities.
- d. **Passive recreation:** activities that are non-consumptive uses of resources and do not require prepared facilities like sports fields and pavilions. Passive recreation activities place minimal stress on the site's resources and are compatible with the Conservation Values. Examples include hunting, hiking, wildlife viewing, observing and photographic nature, picnicking, walking, bird watching, running/jogging, star gazing, and fishing. Passive recreation excludes mountain bikes, use of motorized vehicles, and horse-back riding, unless specified herein.

2. Subdivision of Lots and Use.

- A. No Lot shall be further subdivided so as to create two or more building sites nor shall any Lot be used as access to any adjoining land except another Lot. Notwithstanding the above, a 4' wide easement for foot and bicycle traffic along the common boundary line of Lot 1 and Lot 2 is permitted for the benefit of and appurtenant to the adjoining land of Robert W. Doane and Andrea E. Doane located at 180 Forest Street, Harwich, MA and described in deeds recorded in Book 1286 Page 654 and Book 1412 Page 465 and deed for Parcel B-1 recorded herewith.

B. There shall be no more than one (1) principal house or a two (2) family house that meets the requirements of the Harwich Zoning By-Law and such other buildings and structures permitted by the Town of Harwich Zoning By-Law on a Lot.

C. The Property shall not be used for business, professional, or industrial purposes that would require the storage of materials or public display of goods for sale shall be made, nor shall any advertising display be permitted. In no event shall the property be used for any purpose which might be or become detrimental to the neighborhood as a desirable residential area.

D. The back portions of each of Lots 1-7, as demarcated on the Plan with the line called "Limit of Disturbance", shall be maintained as habitat and open space providing habitat for the conservation of species listed pursuant to G.L. c.131A et. seq., which shall be considered the most important conservation purpose for which this land is to be protected in perpetuity (hereinafter "Forever Wild Areas").

a. **Prohibited Acts and Uses.** Within the Forever Wild Areas, the following acts and uses are prohibited:

- i. Constructing, placing, or allowing to remain any Structure on, above, or below the surface of the Forever Wild Area;
- ii. Mining, excavating, dredging or removing of soil, loam, peat, gravel, sand, rock or other mineral resource or natural deposit;
- iii. Placing, filling, storing or dumping of soil, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, tree cuttings, waste or Hazardous Material or other substance or material whatsoever, whether or not generated on the Forever Wild Area;
- iv. Removing, cutting, pruning or destroying vegetation (native or non-native), including, but not limited to trees or plants, understory, grasses and ground covers, except as allowed in writing by the Grantee and Division to remove hazards to users;
- v. The application or use on the Forever Wild Area of fertilizers, fungicides, herbicides or pesticides in any quantity;
- vi. The planting, release, cultivation, maintenance, or other activity that would result in the introduction of plant or animal species that pose a substantial risk of being invasive or are otherwise detrimental to the native plant and animal community on the Forever Wild Area, as determined by the Division. A list of plant species deemed to be invasive, as of the time of this grant, is provided in the Massachusetts Prohibited Plant List, which is updated and maintained by the Massachusetts Department of Agricultural Resources;
- vii. Activities detrimental to drainage, flood control, erosion control, water or soil conservation, archaeological resources or the quality of ground water and wetlands;

- viii. Animal penning^{N O T} or grazing; holding horses, pets, livestock, or domestic animals within a paddock^{A N}; horseback riding, causing or permitting any domestic or livestock to be unattended or to roam or be at large on the Property; and the storage or dumping of manure or other animal wastes; any agricultural use;
- ix. The use, parking or storage of motorized vehicles, including, but not limited to, trucks, trail bikes, motorized or non-motorized, all-terrain vehicles, dune buggies, boats, trailers, and snowmobiles, except as necessary by the police, fire fighters or other governmental agents in carrying out their lawful duties; and except for motorized wheelchairs or scooters used by physically challenged parties;
- x. The disruption, removal, or destruction of any stone walls or granite fences;
- xi. Conveyance of a part or portion of the Forever Wild Area alone, or division or subdivision of the Forever Wild Area (as compared to conveyance of the Forever Wild Area in its entirety which shall be permitted);
- xii. The disturbance in any fashion of the natural surface of the ground, including the organize litter layers of the soil, including downed trees and branches and rocks.

b. **Reserved Rights.** Notwithstanding any provisions herein to the contrary, Declarant reserves to itself and its successors and assigns the right to:

- 1. Establish, enforce, waive, alter and amend such additional rules, regulations, covenants, conditions and restrictions governing use of the Forever Wild Areas as not otherwise prohibited by these Protective Covenants and as allowed by applicable federal, state or local law or regulation;
- 2. Conduct or permit the following activities in the Forever Wild Areas if such acts do not materially impair significant conservation interest:
 - i. Selective cutting or pruning of trees and vegetation to maintain access to and over footpaths existing at the time of the recordation of this Protective Covenant and located thereon;
 - ii. For protection of persons and property from imminent risks or harm or damage to persons and structures;
 - iii. Construction fences or necessary boundary markers on Forever Wild Areas; and
 - iv. Creation of a 4' wide foot path located along the common boundary line of Lot 1 and Lot 2. Further, the Declarant shall be able to maintain the footpath through the selective cutting or pruning of trees and vegetation, the use of gravel, and the installation of a split rail fence along the sides of the above referenced footpath. The Declarant may mow within the area of the footpath between October 15th and April 15th and may use a string trimmer within the area of the footpath from August 1st to May 31st.

c. **Monuments and Signage.** The Declarant and the Declarant's Successors shall maintain in good condition any, bounds, monuments, markers and signs shown on the Plan, demarcating the boundaries of the Forever Wild Areas, and shall repair and or

replace said monuments and signage on an as needed basis. Bounds, monuments, markers and signs shall not be removed, covered, obstructed, or altered without review and written approval by the MA Division of Fisheries and Wildlife, Natural Heritage Endangered Species Program (ATTN: Regulatory Review, NHESP 06-20086, 1 North Drive, Rabbit Hill Road, Westborough, MA 01581) (the "Division").

d. **Enforceability.** The Declarant and the Declarant's Successors and assigns shall have the authority and right to enforce these restrictions.

e. **Incorporation Into Deeds, Mortgages, Leases and Instruments of Transfer.**

Declarant and Declarants successors and assigns, including all subsequent owners of the Forever Wild Areas, shall incorporate these restrictions, in full or by reference, into all deeds, easements, mortgages, leases, licenses, occupancy agreements or any other instrument of transfer by which an interest in and/or a right to use the Forever Wild Areas or any portion thereof is conveyed. Any such deed, mortgage, or other interest purporting to convey any portion of the Forever Wild Areas without including these restrictions in full or by reference shall be deemed and taken to include these restrictions in full even though said restrictions is not expressly described or referenced therein.

3. **Building Approval.** No structure of any kind, whether residence, accessory building, tennis court, swimming pool, or other improvements of any kind, name or nature shall be erected, constructed, moved onto, maintained, or allowed to stand or be in or on any Lot, nor shall any additions to or alteration to the exterior of a structure be made unless complete architectural and site plans, including specifications and plot plans therefore, showing the exterior design, height, building material, and color scheme thereof, the location of the structure plotted horizontally and vertically, the location and size of driveways, the location of and the general plan of landscaping, fencing, walls and windbreaks, grading plan, the location of all gas, water, and other utility lines or wires and the location of all proposed sewage disposal systems and all components therefore on the Lot shall have been submitted to and approved in writing by the DECLARANT or Donovan Building Corp., as agent for the DECLARANT. It is the intent of this to require that structures be in good taste, in harmony with the quality of nearby structures, and that they fit the site. The approval of building plans is solely the decision of the DECLARANT or Donovan Building Corp. Cape Cod or modified Cape Cod style architecture shall be required.
4. **Exclusive Homebuilder.** It is intended that houses in Chloe's Path shall be constructed only by Donovan Building Corp. Lots may be sold to individuals, corporations, and/or partnerships, but all homes must be constructed by Donovan Building Corp.
5. **Utilities.** There is reserved to the DECLARANT the right to install or maintain or have installed and maintained all public utilities in, over, under, along and upon the Road as shown on the Plan; reserving also to the DECLARANT the right to grant easements to public service corporations for the installation and maintenance of such public utilities (water, sewer, telephone, electricity, gas, cable television and other utilities) and anchors and guys to support lines in said Road and on land adjacent thereto; and reserving also to

the DECLARANT the right to grant an easement to the Town of Harwich to lay, relay, construct, maintain, operate, inspect, repair, and replace and remove water mains, service pipes, and appurtenances thereto in, under, through, and over the said Road.

6. Roof Shingles. Shall be CERTAINTED brand, LANDMARK Architectural style, WEATHERWOOD color on all buildings.
7. Road(s). Except as otherwise provided herein, every owner shall have a right of way and an easement of enjoyment for all purposes for which Roads are commonly used in the Town of Harwich, with all others who are or may become lawfully entitled thereto, in, over, and upon the Road, without rights of parking motor vehicles thereon, which right and easement shall be appurtenant and shall pass with the title to every Lot, subject to this Declaration. Lot Owners and their guests may on a temporary short-term basis, but in no event overnight, park motor vehicles on the Road in the area immediately adjacent to the Lot Owner's Lot.
8. Boats, Automobiles, Trailers, Campers, & Commercial Vehicles. No boats exceeding twenty (20') feet in length, no unregistered automobiles, automobile parts, mobile homes, trailers, or campers shall be placed or stored on or about any lot unless garaged and unexposed to public view. No repair work on any vehicle of any nature is to be undertaken except within a garage and to the extent permitted in accordance with the Town of Harwich By-Laws. Except for service deliveries and contractors or repairmen and then only on a temporary basis while working at a Lot, no commercial vehicles shall be parked on any Lot or the Road unless parked within an enclosed garage or basement.
9. Animals. No animals of any kind may be kept or maintained except domestic household pets, unless with the written approval of the DECLARANT or Donovan Building Corp., and confined within the area of the Lot.
10. Trees. No live trees of more than four (4") inches in diameter at a four (4') foot height shall be removed without approval of the DECLARANT, except as necessary for building construction and the footpath along the common boundary of Lot 1 and Lot 2.
11. Trash. All garbage, trash, and rubbish placed outdoors shall be kept in covered containers, screened from public view. No garbage, trash, or rubbish shall be burned on any lot outside of the confines of any building. The burning of leaves outdoors is prohibited.
12. Laundry. All exterior laundry drying facilities shall be screened from public view by suitable enclosures, screens, or planting(s).
13. Fuel Storage. No tank for the storage of fuel may be maintained in, on, or under any lot unless contained in a structure and in a location approved in writing by the DECLARANT and further only to the extent permitted by law. Tanks used to fuel outdoor grills will be excluded from this restriction.

14. Building Materials. No building material of any kind or character shall be placed or stored upon any Lot until the Lot Owner is ready, willing, and able to commence construction.

15. Miscellaneous Restrictions.

a. No mechanical, mercantile, or manufacturing business or trade of any kind shall be carried on or upon any Lot nor within any structure on a Lot and no hospital, rest home, club, social organization, group home, day care, or educational institution of any kind, whether for elderly or children, shall be established or maintained thereon or therein; nor shall any illegal or offensive activity be carried on in or upon any building, Lot or the Road adjacent to any Lot, in said subdivision; nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood. The practice of a profession or the maintenance of a home office as provided for in paragraph 1.B. shall include the service of the residents of the property only and no more than one non-resident employee, shall be conducted entirely within a structure on a Lot incidental and subordinate to the residential use and without in any manner changing the residential character of the Property or a building or buildings on a Lot.

b. No antennas, satellite dishes, so called, and windmills, shall be attached to any structure, including the roofs thereof, moved onto or maintained on or upon any Lot or on or from any structure on a Lot unless first approved in writing by the DECLARANT.

16. Signs. Without the written approval of the DECLARANT, no sign of any kind shall be displayed to the public view on any building or Lot except one (1) sign of not more than two (2) square feet in size denoting only the name of any resident living on such Lot and, on a temporary basis only, one (1) "For Sale"/real estate sign of not greater than four (4) square feet in dimension.

17. Exterior Lighting. Any exterior lighting installed on any Lot shall either be indirect or of such controlled focus and intensity as not to disturb the residents of the adjacent property.

18. Excavations. Without the written approval of the DECLARANT, no excavation for stone, gravel, sand, or earth shall be made on any building Lot, except for the purpose of building previously approved improvements, grading, and landscaping, provided however, that the DECLARANT shall have the right to excavate and grade on any building Lots then owned by the DECLARANT and to remove material or deposit material thereon in connection with the work of laying out and improving the same.

19. Maintenance. Each Lot and each home, together with accessory structures and grounds, shall be maintained in a neat appearing manner by the owner.

20. Setback Restriction. Any house or garage built on Lot 1 or Lot 2 shall be located a minimum of thirty-five (35') feet from the property line of the abutting property owned

by Robert W. Doane and Andrea E. Doane, and located at 180 Forest Road, Harwich, Massachusetts and described in deeds recorded in the Barnstable Registry of Deeds in Book 1412 Page 465 and Book 1286 Page 654 (the "Doane Property"). This restriction shall be for the benefit of and appurtenant to the Doane Property and shall be enforceable by Robert W. Doane and Andrea E. Doane, and their successors and assigns.

21. Term of Restriction. The Covenants and Restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of DECLARANT, or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors, and assigns for a term of thirty (30) years from the date this Declaration is recorded.

The Covenants and Restrictions of the Declaration associated with the Forever Wild Areas shall run with the Forever Wild Area, as defined herein, in perpetuity from the date of recordation in the Barnstable District Registry of Deeds and shall be binding upon Declarant, Declarant's successors and assigns, and any other party having an ownership interest in said Forever Wild Areas or claiming to have an interest with respect to said Forever Wild Areas as tenants, invitees, licensees or otherwise, and all of the respective heirs, successors, grantees, mortgages, assigns, agents, contractors, subcontractors and employees of the foregoing.

Furthermore, the terms and provisions and requirements of the Declaration of Restrictions ("Declaration") made by HFH Development, LLC dated August 9/9, 2016, and recorded herewith in the Barnstable Registry of Deeds in Book 29940, Page 267 with the attached Land Management Plan burdening Parcel B-1 shown on the plan recorded in Barnstable Plan Book 29940, Page 272 and owned by Robert W. Doane and Andrea E. Doane, shall be assumed by and be binding upon the Declarant and the Declarant's successor and assigns, at its sole cost and expense. The Declarant, its heirs, successors and assigns shall fully indemnify and save Robert W. Doane and Andrea E. Doane, and their successors and assigns, harmless from any and all costs, expenses, losses or damages, including but not limited to attorney fees, arising out of or in consequence of the Declarant's responsibility to comply with the terms and provisions of the Declaration including the Land Management Plan. The Declarant shall have no right to amend, release or waive this provision without the written consent of Robert W. Doane and Andrea E. Doane, their successors and assigns.

This Declaration of Restriction is hereby intended and declared to be in perpetuity and no re-recordation of this Declaration of Restriction under G.L. c. 184, ss. 23-30 or any other law shall ever be necessary in order to maintain the full legal effect and authority hereof and Declarant and its successors and assigns, including but not limited to all subsequent owners of the Open Space, hereby waive all their legal right to and shall forego any action in law or equity of any kind whatsoever attempting to contest the validity of any provision of this Declaration of Restriction and shall not, in any enforcement action, raise the invalidity of any provision of this Declaration of Restriction.

Notwithstanding anything inconsistent or to the contrary set forth above, the Division is hereby authorized to record and file any notices and/or instruments that the Division deems appropriate to assure the legal validity and enforceability in perpetuity of this Declaration of Restriction and the Declarant, on behalf of itself and its successors and assigns, hereby appoints the Division as its and their attorney-in-fact to execute, acknowledge, deliver and record any such notice or instrument on its and/or their behalf. Without limiting the foregoing, the Declarant and its successors and assigns agree to execute any such notices and instruments upon request of the Division.

22. Amendments, Waivers, and Assignments of Rights. With the exception of 1.E (Forever Wild Area), the DECLARANT, from time to time, shall have the right to waive, alter, or amend any of the remaining provisions of these Restrictions, except the restrictions for the benefit of the Doane Property, if the DECLARANT, in DECLARANT's sole judgment, deems it necessary or equitable to do so; and any such waiver, alteration or amendment may apply to one or more of all of the Lots as the DECLARANT in any such waiver, alteration, or amendment states. When the DECLARANT owns no Lots, these Restrictions, except for the restrictions benefitting the Doane Property, may be amended by recording at the Barnstable County Registry of Deeds a certificate of vote certifying that these Restrictions have been amended by the Owners of 2/3 or more of the Lots as shown on the Plan.

Waiver, alteration, amendment or the like of 1.E (Forever Wild Area) may only occur by the DECLARANT with assent in writing by the MA Division of Fisheries and Wildlife, Natural Heritage Endangered Species Program (ATTN: Regulatory Review, NHESP 06-20086, 1 North Drive, Rabbit Hill Road, Westborough, MA 01581). The MA Division of Fisheries and Wildlife's has the right to refuse any declarations that does not forward the purposes of the MA Endangered Species Act. Any waiver approved by the Division shall be recorded at the Barnstable County Registry of Deeds in the chain of title on the relevant portion of the Property.

23. Remedies. These Protective Covenants are made for the benefit of the DECLARANT, its successors and assigns, (and where applicable for the benefit of Robert W. Doane and Andrea E. Doane) and after the DECLARANT owns no Lots, then for the benefit of any and all persons or legal entities who may own any of the Lots and who shall derive title from or through the DECLARANT, its successors and assigns. The DECLARANT, and after the DECLARANT owns no Lots, the Association, shall specifically have the right to prevent or stop the violation of any restriction by injunction or other lawful remedy, and to recover any damages resulting from such violation. Further, Robert W. Doane and Andrea E. Doane shall have the right to enforce the restrictions that are for the benefit of the Doane Property.

24. Invalidity. If any easement, covenant, restriction, or agreement or part thereof, or any charge herein contained should be held invalid by any court, such invalidity shall in no way affect any other covenant, restriction, agreement or charge herein contained.

25. Development. ^{N O T} These restrictions shall not operate in any way nor shall they be ^{N O T} interpreted to restrict DECLARANT or any person, firm, or corporation acting on behalf of said DECLARANT in the development and sale of the lots contained in the Plan, or in any enlargements to the parcel, inclusive of the right to erect signs and offices.

26. Enforcement By Declarant. ^{N O T} The DECLARANT ^{N O T} may appoint or delegate an agent, agents, corporation, or association to carry out any and all of the foregoing restrictions as to enforcement, approval, privileges, rights and other matters, said appointment to be in writing duly recorded in the Registry of Deeds for Barnstable County. The DECLARANT may delegate or assign all responsibility relating to the foregoing restrictions as to enforcement, approval, privileges, rights, and other matters, to any individual or association without recourse provided, however, that the members of the association include, or the individual be, an owner of one of the Lots which is subject to the terms of these restrictions.

27. Special Provisions Associated with the Forever Wild Areas for the MA Division of Fisheries and Wildlife.

a. Enforcement. The MA Division of Fisheries and Wildlife acting through its Natural Heritage & Endangered Species Program shall, jointly with the DECLARANT or severally, enforce any provision of this restriction that applies to the Forever Wild Area; and are a benefitted party.

b. Access. The Division shall have the right to enter the Forever Wild Areas, in a reasonable manner and at reasonable times, for the purposes of (i) inspecting the area to determine compliance with this Chloe Path Protective Covenants; (ii) enforcing this Chloe Path Protective Covenants; and (iii) taking any other action which may be necessary or appropriate.

The Division shall have the right to bring proceedings at law or equity against any party or parties violating or attempting to violate the terms of this Declaration of Restriction to enjoin them from so doing and to cause any such violation to be remedied, including but not limited to restoration of the portion of the Forever Wild Area adversely affected, after providing written notice to such party or parties and all mortgagees of record if the names and addresses of such parties and mortgagees have been provided in writing to the Town and the Division.

c. Severability. If any court or other tribunal of competent jurisdiction determines that any provision of this Chloe Path Protective Covenants is invalid or unenforceable, such provision shall be deemed to have been modified automatically to conform to the requirements for validity and enforceability as determined by such court or tribunal. In the event the provision invalidated is of such a nature that it cannot be so modified, the provision shall be deemed deleted from this instrument as though it had never been included herein. In either case, the remaining provisions of this instrument shall remain in full force and effect.

d. **Non-Waiver.** Any election by the Town and/or the Division as to the manner and timing of its right to enforce this Chloe Path Protective Covenants or otherwise exercise its rights hereunder shall not be deemed or construed to be a waiver of such rights.

e. **Amendment and Release.** No amendment or release of this Chloe Path Protective Covenants that relates to the Forever Wild Area shall be effective unless it has been approved in writing by the Division [hereinafter the Division Approval and said amendment or release and the requisite Division Approval has been recorded with the appropriate Registry of Deeds and/or Land Registration Office.

28. **DECLARANT.** HFH DEVELOPMENT, LLC shall have all of the rights of enforcement, waiver, and any and all other rights, as the DECLARANT in and under the Declaration of Protective Covenants.

In witness whereof, I, Peter B. Donovan, Manager of HFH DEVELOPMENT, LLC, hereunto set my hand and seal this 16 day of September, 2016.

HFH DEVELOPMENT, LLC

By: Peter B. Donovan, Manager

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss.

On this 16th day of September, 2016 before me, the undersigned notary public, personally appeared Peter B. Donovan, Manager as aforesaid, proved to me through satisfactory evidence of identification, which was MA Driver License, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose and who swore or affirmed to me that the contents of the document are truthful and accurate to the best of his knowledge and belief.



Notary Public - William F. Riley
My Commission Expires: 5-11-23

Page Left Intentionally Blank



MassWildlife

Commonwealth of Massachusetts

Division of Fisheries & Wildlife

NOT

NOT

Jack Buckley, Director

AN

AN

OFFICIAL
COPYOFFICIAL
COPY

July 22, 2016

HFH Development LLC
PO Box 612
North Chatham, MA 02650

Quivet Neck Realty Trust
c/o Louis Seminara
Seminara Construction Co., Inc.
Box 1219
South Dennis, MA 02660

Applicant: Peter Donovan, HFH Development LLC
Project Location: 0 Forest Street, Harwich (between 211 & 225 Sisson Road)
Barnstable Registry of Deeds, Book 17492, Page 70
(the "Property")
Project Description: Construction of a proposed residential subdivision (7 houses)
NHESP File No.: 06-20086

Dear Applicant:

The Massachusetts Division of Fisheries & Wildlife's Natural Heritage & Endangered Species Program (the "Division") previously received a MESA Project Review Checklist, project plans, and other required materials for review pursuant to the Massachusetts Endangered Species Act (MGL c.131A) and its implementing regulations (321 CMR 10.00) (MESA).

The Division has determined that the proposed project is located within the mapped *Priority Habitat* of the Eastern Box Turtle (*Terrapene carolina*), state-listed as "Special Concern" according to the Massachusetts Natural Heritage Atlas (13th Edition). This species and its habitats are protected pursuant to the MESA. A Fact Sheet for this species can be found on our website, www.mass.gov/nhesp.

The Division issued a determination for an eight-lot cluster subdivision on this Property (issued October 27, 2009). The Applicant recently submitted revised, preliminary site plans to the Division for review pursuant to the MESA, in which the project has been revised to a conventional seven-lot subdivision (Attachment 1). The Applicant also proposes the permanent protection of Lot 9 and Lot 8 as open space and wildlife habitat. Lots 8 will be conveyed to the Harwich Conservation Commission. Parcel B-1 (Attachment 3) will be conveyed to an abutter subject to a Division-approved Declaration of Restriction. The Division has determined that the revised seven-lot conventional subdivision, as shown on the revised preliminary site plans (Attachment 1), must be conditioned in order to avoid a prohibited "take" of state-listed species (321 CMR 10.18(2)(a)). The following conditions must be met:

1. Final Site Plan(s): Prior to the start of work, the Applicant shall submit final site plan(s) for the Division's review and approval for the entire property. Final site plan(s) shall include Lots 1-9 and

www.mass.gov

Division of Fisheries and Wildlife
Field Headquarters, One Rabbit Hill Road, Westborough, MA 01581 (508) 389-6300 Fax (508) 389-7891
An Agency of the Department of Fish & Game

Parcel B-1. The final site plan(s) shall show proposed permanent and visible monuments/bounds along the approved limits of work, including monument locations and design details (e.g., granite post, iron stake, cement post, etc., measurement, height above ground, etc.). Signs shall be located between the individual house lots and the open space parcels.

(a) Prior to sale, transfer or change in ownership from the Applicant, the monuments/bounds and signs shall be installed as indicated in the Division-approved monumentation plan and detail. Said monuments shall be maintained and repaired or replaced by the owner of the residential lot as necessary.

(b) Prior to sale, transfer or change in ownership from the Applicant, the signs between the lots and open space shall be installed.

2. Recordation: Prior to the start of work, the Applicant shall record the below-indicated documents in the Barnstable County Registry of Deeds or the Land Court for the district in which the Property is located. The Applicant shall provide the Division with proof of said recordation within five (5) business days of recording.

(a) MESA Determination: This determination shall be recorded so as to become a record part of the chain of title for the Property.

(b) Final Site Plan: After review and approval by the Division, the final site plan(s) shall be recorded so as to become a record part of the chain of title for the Property.

(c) Deed for Lot 8: The Applicant shall record the deed, as approved by the Division by email on May 20, 2016, showing proof of conveyance of Lot 8 to the Harwich Conservation Commission.

(d) Deed and Declaration of Restriction for Parcel B-1: The Applicant has elected to convey Parcel B-1 to an abutter, but we note this was not a Division requirement. If the Applicant does, in fact, elect to convey Parcel B-1 to the abutter, then the Applicant shall:

- Provide proof of recording the Division-approved deed and Declaration of Restriction, last reviewed by email on 6/28/2016, and final site plan(s) so as to become a record part of the chain of title for Parcel B-1. The final site plan for Parcel B-1 shall be consistent with Attachment 3 referenced below.
- The Division notes that the Declaration of Restriction allows, for a limited time, for the limited planting of native shrubs as well as limited vegetation management around the pump house and within the "Native Shrub Area."

(e) Chloe's Path Protective Covenants: The Applicant shall submit a final draft of the "Chloe's Path Protective Covenants" (last revision reviewed by the Division dated 4-6-2016, edited and sent from the Division to Attorney Norcross on May 11, 2016) to the Division for review and approval. Upon receiving written approval by the Division, the Applicant shall provide proof of recording said Covenants so as to become a record part of the chain of title for the Property, excluding Parcel B-1.

3. Turtle Protection Plan (Attachment 2): All work shall be conducted in compliance with the 2016 Eastern Box Turtle Nesting Habitat Improvement & Management Plan referenced below (Attachment 2), unless otherwise approved in writing by the Division.

4. Symbolic Flagging: Prior to the start of work, symbolic flagging shall be erected around the limits of work shown on the revised preliminary site plans (Attachment 1; which is cross-hatched and labeled as "Limits of Potential Disturbance") and maintained throughout the construction period. Upon completion of all construction activities and site stabilization, said flagging shall be removed and properly disposed of. Permanent bounds, see Condition 1, shall be installed.

5. Compliance Report: Within thirty (30) days of completing construction of each of the seven (7) residential house lots, the Applicant shall file a brief written report to the Division confirming that all exterior work is complete on the indicated lot.

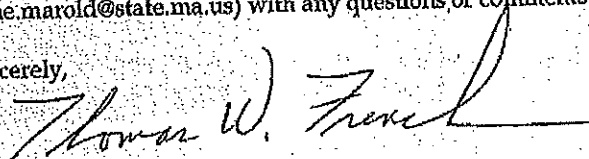
6. This determination shall not preclude the review of future projects on the Property that are subject to the Wetlands Protection Act (WPA) Regulations (310 CMR 10.37, 10.58(4)(b), 10.59). If the Conservation Commission Requires additional Notice of Intent filings (e.g., for each house lot), the Division must receive a copy of those filings for review pursuant to the rare wildlife provisions of the WPA (310 CMR 10.59).

Provided the above-noted conditions are adhered to and there are no changes to the final, Division-approved site plans and associated work, this Project will not result in a "take" of state-listed species. The Division notes that any future projects or activities proposed on the Property which are (a) located outside of the approval of the limit of Work shown on the site plan, (b) not exempt from review pursuant to 321 CMR 10.14, and (c) located within mapped Priority Habitat as indicated in the Massachusetts Natural Heritage Atlas, will require review by the Division pursuant to MESA. Furthermore, 321 CMR 10.16 provides that projects shall not be segmented or phased to evade or defer the review requirements under MESA. If the Division determines, based on the considerations provided for in 321 CMR 10.16, that a future project or activity proposed on the Property is part of a larger common project or scheme, it may evaluate the cumulative impacts of the existing and proposed segments of the common project when reviewing the future proposed project or activity pursuant to MESA.

This determination is a final decision of the Division of Fisheries and Wildlife pursuant to 321 CMR 10.18. Any changes to the proposed project or any additional work beyond that shown on the plans referenced above may require an additional filing with the Division pursuant to the MESA. This project may be subject to further review if no physical work is commenced within five years from the date of issuance of this determination, or if there is a change to the project.

Please do not hesitate to contact Misty-Anne R. Marold, Senior Review Biologist, at (508) 389-6356 (misty-anne.marold@state.ma.us) with any questions or comments you may have.

Sincerely,


Thomas W. French, Ph.D.
Assistant Director

cc: William A. Manganiello, Law Offices of William A. Manganiello (lawyerone@tmlp.com)
Scott Egan, AECOM

Documents Attached:

Attachment 1:	PRELIMINARY GRID SUBDIVISION PLAN SHOWING PROPOSED LIMIT OF ACTIVITY, Conceptual Plan of Land in Harwich, Massachusetts for Donovan Building Corporation, prepared by J. M. O'Reilly & Associates, Inc., 1 sheet, dated 9/25/2015 (revised 12/21/2015).
Attachment 2:	2016 Eastern Box Turtle Nesting Habitat Improvement & Management Plan, Sisson Road, April 5, 2016
Attachment 3:	Approval Not Required Plan of Land in Harwich Massachusetts for Donovan Building Corporation, prepared by J. M. O'Reilly & Associates, Inc., 1 sheet, dated 9/25/2015 (revised 12/21/2015). Parcel B-1 will be reserved for limited use by the landowner for planting and management of native shrubs.

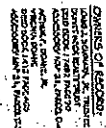
NOT
On this 22nd day of July, 2016, before me, the undersigned notary public, personally appeared Thomas W. French, Ph.D., Assistant Director, proved to me through satisfactory evidence of identification, which was personal knowledge, to be the person whose name is signed on the preceding or attached document, and who swore or affirmed to me that the contents of the document are truthful and accurate to the best of his/her knowledge and belief.

NOT
AN
OFFICIAL
COPY

NOT
AN
OFFICIAL
COPY



Emily Melissa Holt, Notary Public
My Commission expires: July 28, 2017

[illegible]

NOT
AN
OFFICIAL
COPY

NOT
AN
OFFICIAL
COPY

AREA CALCULATIONS:

TOTAL FACEL AREA	375,420 sq ft	13.3 AC
TOTAL WETLAND AREA	172,120 sq ft	6.25 AC
TOTAL UPLAND AREA	475,190 sq ft	10.72 AC
AREA OF LOTS 1-2 (FOR HOUSES)	144,440 sq ft	3.27 AC
AREA OF LOT 3	50,187 sq ft	1.15 AC
AREA OF ROAD	28,769 sq ft	0.66 AC
AREA OF TEMPORARY IMPROVEMENTS	22,450 sq ft	0.51 AC
TOTAL OF DISTURBED LOTS AND ROAD		5.59 AC

TOTAL OPER SPACE PROVIDED AFTER REVESTIGATION DUE TO OPERATOR ACTIONS
574,150 - 194,525 = 379,625 SF

Q7485=6624

UNLAWFUL SPACE PROVIDED:
#403.90 - 294.669 - 205.50457 =
#059421 - 865178

• TOTAL BREAST AREA LIES IN PHYSICAL STATE
• INCLUDES PERMANENT AND TEMPORARY ALTERATIONS; ○

N
405,130-223,450-N773257E
41745-96745E
E.C.

10

IF ACTA OF EFFICIENCY, UTILITY, AND COST CONSTRUCTION ASSOCIATED GIVING FOR THE

INVESTING IN THE UNITED STATES
800-455-5777

100

AREA OF TEMPORARY DISTURBANCE ASSOCIATED WITH THE ROAD CONSTRUCTION TO BE

FOR THE UNITED STATES DEPARTMENT OF JUSTICE

Figure 1. The effect of the number of trials on the number of correct responses. The number of correct responses was significantly higher than the number of incorrect responses for all groups. The number of correct responses was significantly higher than the number of incorrect responses for all groups. The number of correct responses was significantly higher than the number of incorrect responses for all groups.

100

100

100

100

.....

100

1. The first step in the process of identifying a problem is to recognize that a problem exists. This is often done by comparing current performance with a desired state or goal.

1. *Phragmites australis* (Cav.) Trin. ex Steud.

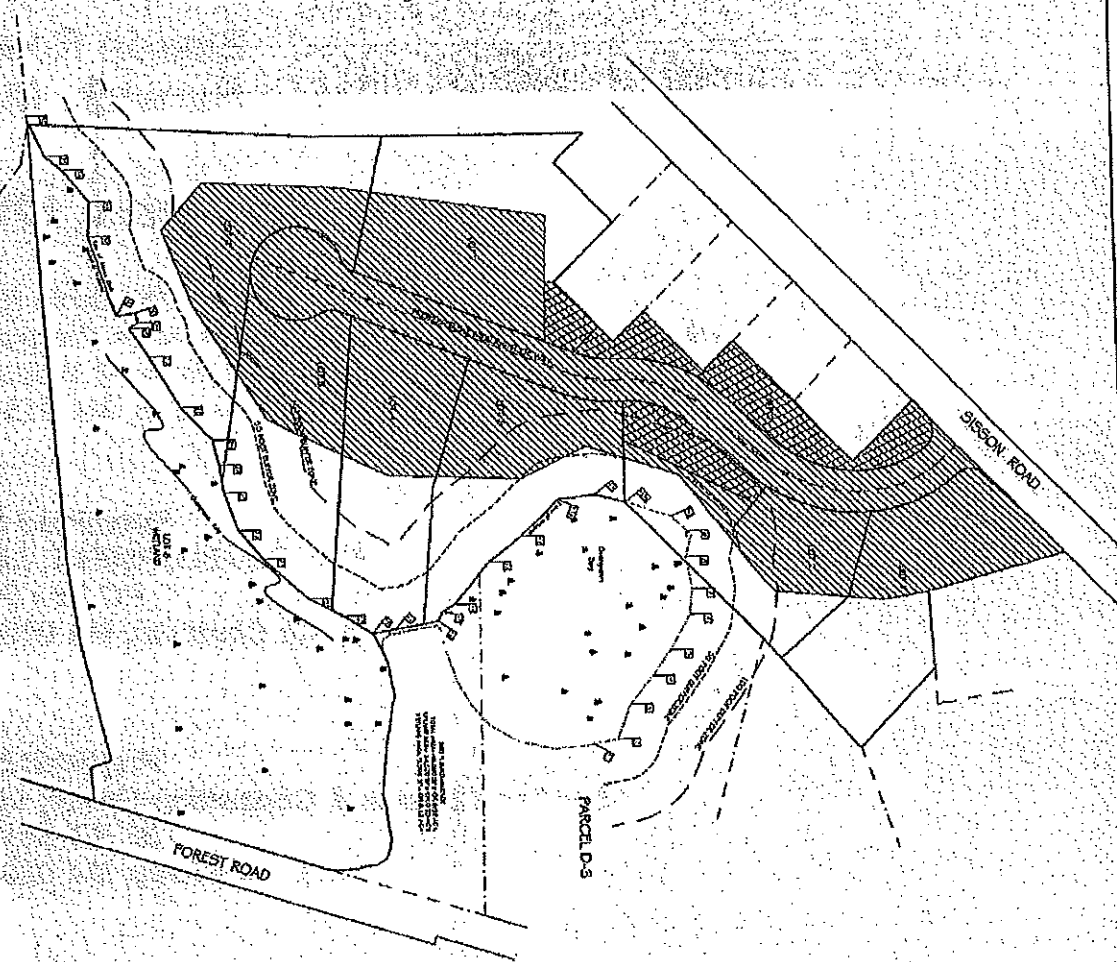
1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674, 2675, 2676, 2677, 2678, 2679, 2680, 26

1000

100

100

CONCLUSIONS



DOHOVAN BUILDING CORPORATION
INC.
0 40 120 140
SUNSHED
1000 BROADWAY, NEW YORK 10, N.Y.
CORPORATION IN N.Y.
INCORPORATED IN N.Y.
NO. 1000 BROADWAY, NEW YORK 10, N.Y.
NO. 1000 BROADWAY, NEW YORK 10, N.Y.
NO. 1000 BROADWAY, NEW YORK 10, N.Y.

PRELIMINARY GROUND SUBMISSION PLAN
SHOWING PROPOSED LIMIT OF ACTIVITY

FRANKLIN COUNTY, GA, TEL. 404-682-2200 (18-1-15-44) AUG 5 1964

NOT
OFFICIAL COPY

2016 EASTERN BOX TURTLE NESTING HABITAT
IMPROVEMENT & MANAGEMENT PLAN

NOT
OFFICIAL COPY

NOT
AN
OFFICIAL
COPY

NOT
AN
OFFICIAL
COPY

Sisson Road

**Sisson Road
Harwich, MA**

April 5, 2016

Prepared for:
Natural Heritage & Endangered Species Program
Massachusetts Division of Fisheries & Wildlife
North Drive, Westborough, MA 01581

Submitted to:
HFH DEVELOPMENT, LLC
PO Box 612
North Chatham, MA 02650

Prepared by:
EcoTerra Design & Consulting Group, LLC
26 Hill Street
Medway, MA 02053



N O T
A N
O F F I C I A L

1. MESA History

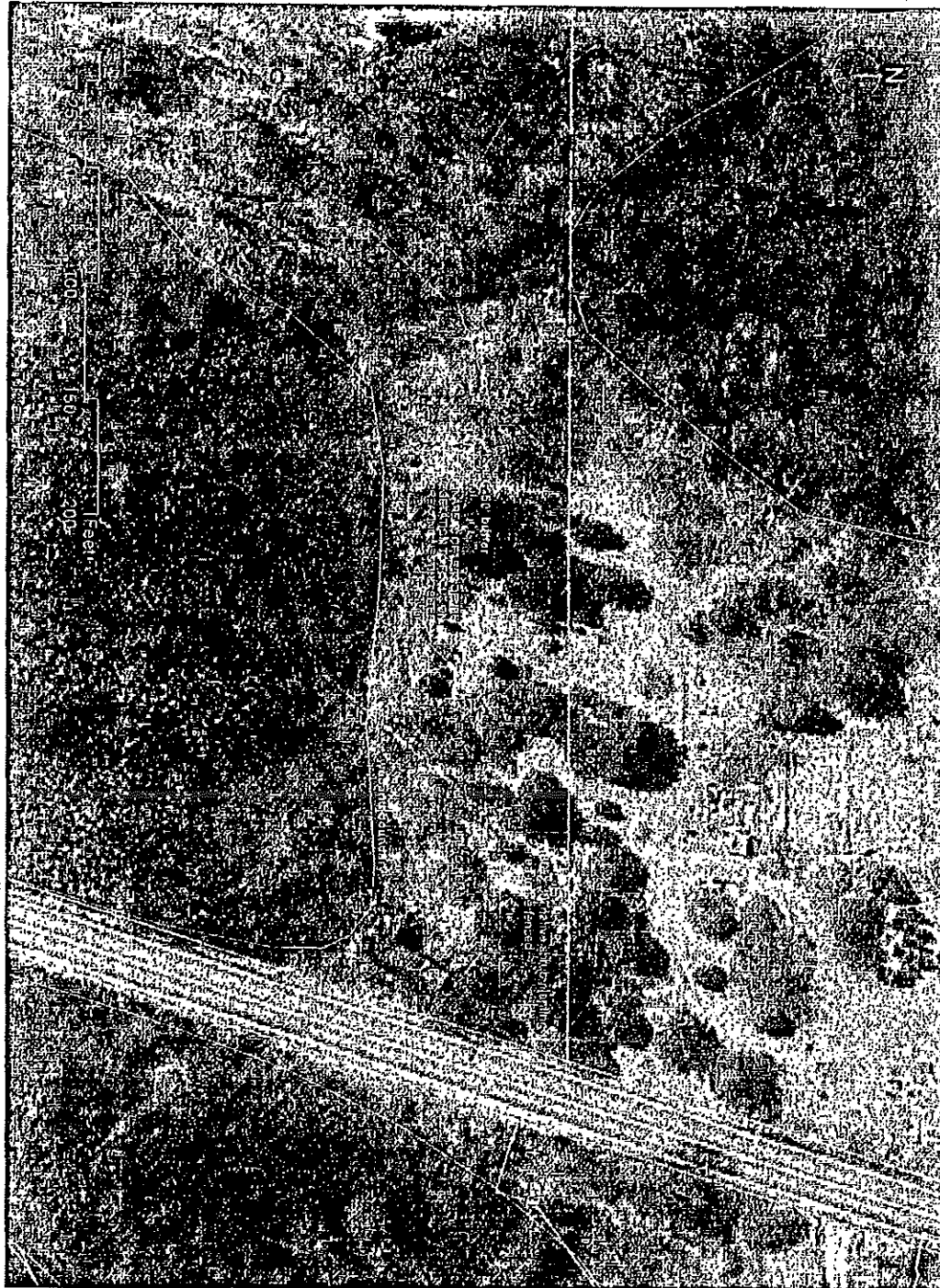
The proposed development project has a history dating back to 2006, whereby the Owner's consultants (ENSR) engaged in habitat evaluations and subsequent negotiations with the MA NHESP in order to develop a suitable conservation plan associated with the proposed housing development plan that would ensure a net benefit to the Eastern Box Turtle (*Terrapene carolina*). In 2009, the Owner's consultants (AECOM) worked with NHESP review biologists in order to further define this plan to avoid a "take" of rare species as defined in the Massachusetts Endangered Species Act regulations (MESA; 321 CMR 10.18(2)(a)). At that time the NHESP had determined that the submittal of an Eight Lot cluster Subdivision had sufficiently avoided and minimized impacts to allow for a "no take" decision provided that certain conditions were met including developing and conducting a one-time management of the areas shown on the plan as "pump house" area to improve nesting habitat for the eastern box turtle.

2. Site Description

The project site is located off of Sisson Road in Harwich, Massachusetts and falls within NHESP Priority Habitat (PH 1424) and Estimated Habitat (EH 19) for the state-listed species of Special Concern, the Eastern Box Turtle (*Terrapene carolina*). The site totals approximately 13.2 acres of predominantly pine-oak forest with significant forested wetland areas. The area of interest pertaining to the proposed nesting habitat improvements is located adjacent to Forest Street, with a large palustrine scrub-shrub wetland bordering it to the south. The area is best described as old-field and upland scrub-shrub habitat. This plan proposes to enhance the old-field and scrub-shrub area located off of Forest Street in order to make the habitat a more favorable nesting area for turtles. And while there are some portions of the habitat with suitable exposures and soils, the area is rapidly succeeding to old-field growth that would eventually render much of the habitat unsuitable for nesting turtles. Plant succession is a naturally occurring ecological process in most habitat types, however old-field habitats tend to succeed at rapid rates and the habitat can change significantly over a relatively short period of time. This can result in the rapid loss of areas once suitable for turtle nesting sites. A vegetation management plan will be implemented and turtle nesting sites will be created at various locations throughout the area in order to provide enhanced or new nesting habitat for turtles more conducive to the proposed project design.

3. Habitat Improvement

The Eastern Box turtle is a habitat generalist and regularly utilizes a variety of habitats throughout their annual life cycle to meet feeding, nesting, hibernation, dispersal and thermoregulation / hydration needs. One of the more important, and often scarce, habitat types required for successful life-history completion is the presence of early successional habitats with sparse grasses, shrubs and sandy/gravelly soils devoid of



**SISSON ROAD DEVELOPMENT
HARWICH, MA**

SCALE: AS NOTED

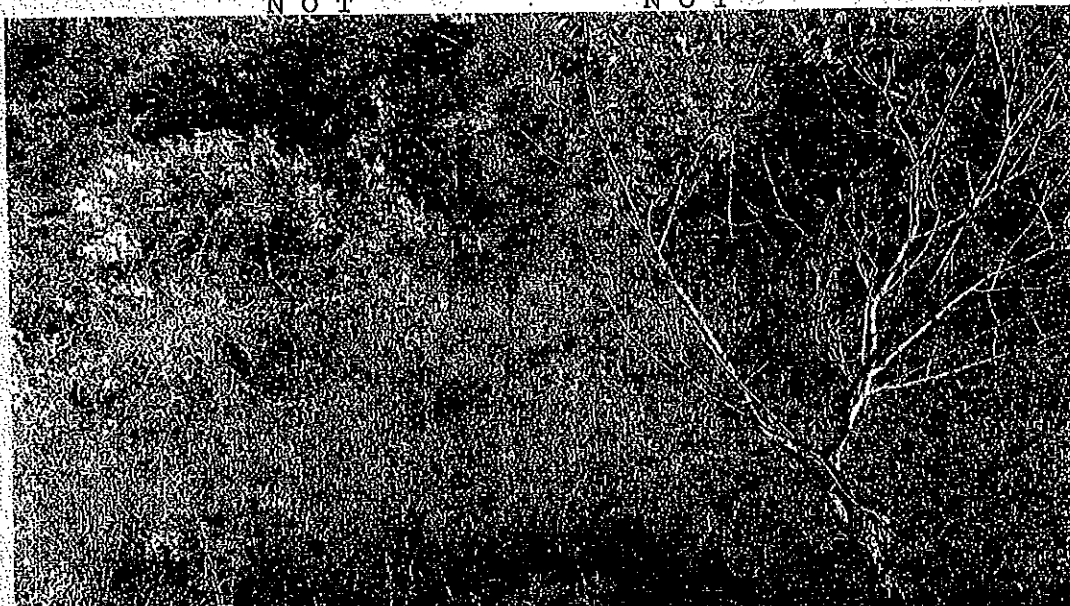
PROPOSED NESTING HABITAT MANAGEMENT PLAN

EcoTerra Design & Consulting, LLC
26 Hill Street / Medway MA 02053

Data Courtesy MassGIS 2009 / NAD83 Massachusetts Mainland

N O T

N O T



View of typical Zone 2 vegetative cover.



Close up view of Zone 2 ground cover including Little Bluestem clumps.

N O T

N O T

Within Zone 2 there is a proposed planting area (See figure) that will be allocated to the landowner donating the land to this restriction. This area will be approximately 30-foot by 100-foot and will begin at the northeast corner of the management parcel. The boundaries will run along the Owner's northern property line, Forest Street, and two lines within the management parcel (See figure, plan). The area is proposed for planting of native shrub species by the Owner, and will be fenced upon completion with a post-and-rail type fence in order to demarcate the area. Though native, some shrub species such as *Rosa rugosa* can be very aggressive with a propensity to spread through runners. Any of the planted native shrubs that are grown within the fenced garden area will be subject to mowing or management should they spread outside the fenced area. The area within the fence garden area will not be subject to mowing or management other than as listed in this Plan and the Declaration of Restriction. There is also an existing pump house / shed within this area that will remain on the property. The structure most likely dates back to the historic cranberry bog operation. While it is not clear at this time, there appears to be a water source that continually flows through the plumbing in the structure; possible as part of a stormwater management structure. A 10-foot vegetative clearing buffer will be maintained around the structure.

4. Management Practices / Turtle Protection

Techniques

There are several methods typically utilized for vegetation management during restoration work. These include both manual and mechanical methods. The amount and/or size of vegetative cover to be removed will determine which methods are utilized. Saplings and larger shrubs will initially be removed with chainsaws, while smaller shrubs and grasses can often be mowed or cut with hand tools prior to scarification of the soil surface. Small shrubs will also be removed mechanically with lightweight low impact machinery such as a small excavator or tractor. Shrubs can either be chained and pulled, or sometimes removed with a thumb on the excavator bucket. All vegetative debris removed will be hauled from the area and properly disposed of.

Where scarification of the soil surface is required (primarily Zone 1), small areas will be cleared of root masses and vegetation. These areas will vary in size, though the general strategy will be to create several smaller nesting areas throughout Zone 1 so as to potentially help with predator avoidance. This will be accomplished with either a York rake pulled behind a tractor, or sometimes with careful stripping of the top layer with the bucket of an excavator. Scarification of the ground surface will remove any remaining organic debris such as leaf litter and accumulated topsoil, thus providing the bare sandy/gravelly soils preferred for turtle nesting areas. Final locations and sizes of the turtle nesting sites shall be dictated by the existing topography and location suitability, and determined after field visits with EcoTerra LLC, wildlife biologists. It is not anticipated that additional soils will need to be placed on the site, as the existing soils appear to be very suitable for nesting habitat.

Zone 1 (0-50 foot)

Zone 2 (50-100+ foot)

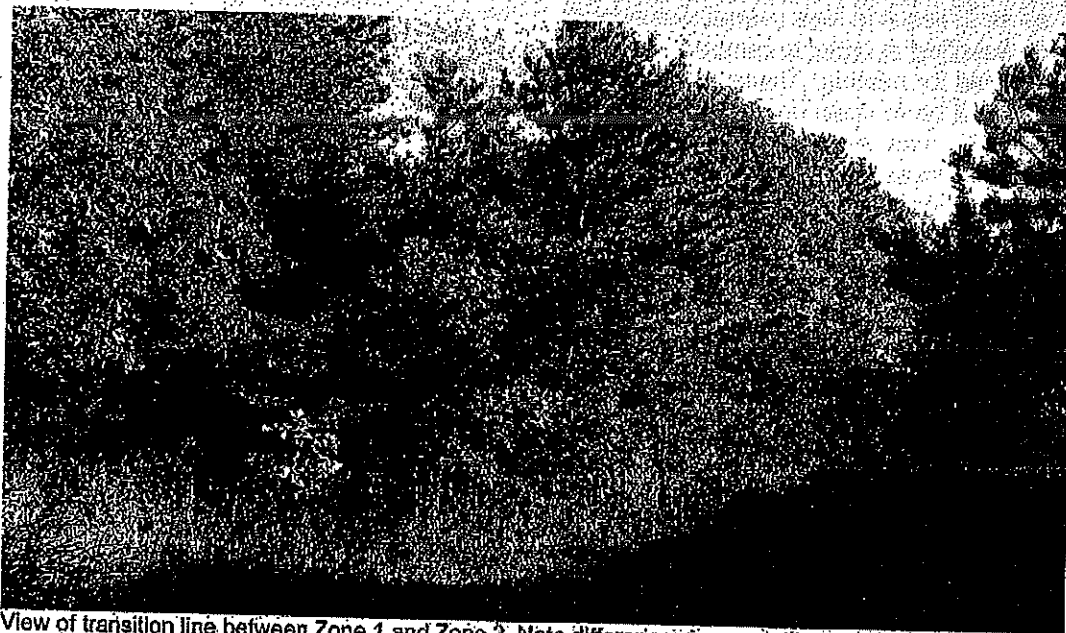
This zone already contains suitable soils for nesting habitat and does contain many open exposed areas already. There are stands of successional tree species such as the eastern red cedar and pitch pine, along with field grasses such as little bluestem. Since this region generally provides the best nesting habitat potential, efforts will be focused within this region and the level of enhancement will be greater given the distance from the wetland resource. Based on current recommendations from the MA NHESP, the total cover including native grasses, sedges, and low growing shrubs should not exceed 50% of the nesting area. Furthermore, woody shrubs should not comprise greater than 10% of the nesting area or be allowed to exceed 24 inches in height. Management guidelines recommend an open-canopy area; therefore all shrubs and trees (< 4 inch diameter) will be removed from Zone 2. Scarification of soils should not be necessary in this zone as there are ample areas with exposed soils already. Should it be determined during the fieldwork that any areas would benefit from soil scarification, this would be conducted at that time.

N O T

N O T



View of dense vegetation more typical of Zone 1



View of transition line between Zone 1 and Zone 2. Note differences in vegetation.

N. O. T.

A, N

...the ...

1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674, 2675, 2676, 2677, 2678, 26

100



100

• **• • • • •**

Page Left Intentionally Blank

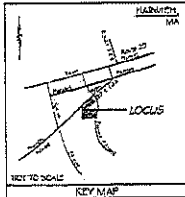
OFFICIAL OFFICIAL
OFFICIAL OFFICIAL

DATE: August 14, 2016
Barry H. Donnette
 CLERK OF THE TOWN OF HARMON, HEREBY CERTIFY THAT THE
 NOTICE OF APPROVAL OF THIS PLAN BY THE PLANNING BOARD
 HAS BEEN RECEIVED AND RECORDED AT THIS OFFICE AND NO
 NOTICE OF APPEAL HAS BEEN RECEIVED DURING THE TWENTY DAYS
 NEXT AFTER SUCH RECEIPT AND RECORDING OF SAID NOTICE.
Barry H. Donnette
 TOWN CLERK

FOR REGISTRY USE ONLY
 I CERTIFY THAT THIS PLAN WAS PREPARED
 IN ACCORDANCE WITH THE RULES AND
 REGULATIONS OF THE REGISTRY OF
 DEEDS EFFECTIVE JANUARY 1, 1976 AND
 AMENDED JANUARY 7, 1986.

DATE: 8/14/16
[Signature]
 PROFESSIONAL LAND SURVEYOR

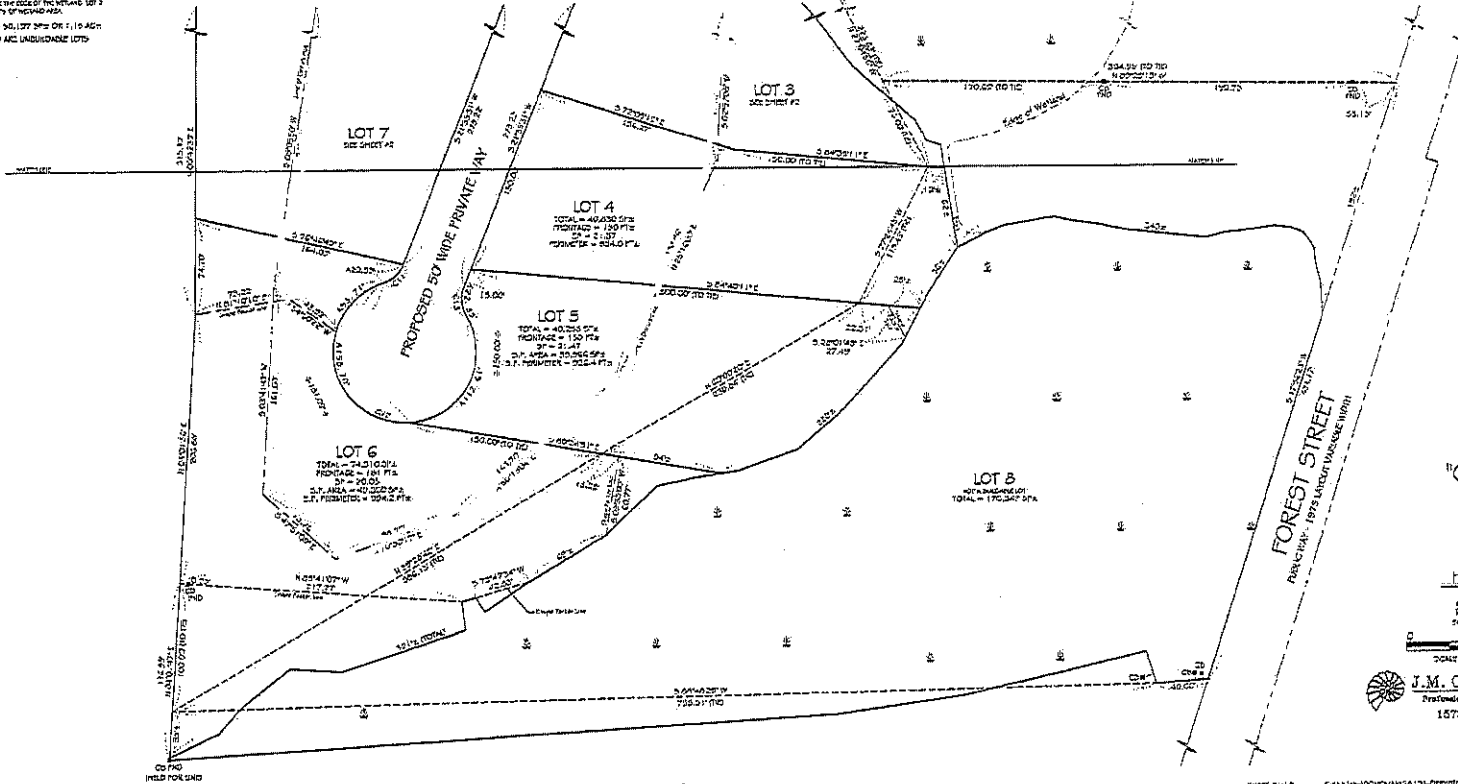
PRELIMINARY PLAN
 DATE OF APPLICATION: 06/27/16
 DATE OF APPROVAL: 07/13/16
 DEFINITIVE PLAN
 DATE OF APPLICATION: 07/13/16
 DATE OF APPROVAL: 07/13/16
 DATE OF SIGNING: 07/13/16



ZONING CLASSIFICATION
 ZONE: R-1 RESIDENTIAL-1
 MINIMUM AREA: 40,000 SQ. FT.
 MINIMUM FRONTAGE: 100 FEET
 FRONT YARD SETBACK: 25 FEET
 SIDE AND REAR YARD SETBACK: 20 FEET
 MAXIMUM BUILDING COVERAGE: 15%
 MAXIMUM SHADE FACTOR: 22

NOTE: OF NEW LAND PARCELS (A-1 AND REARPORT, CT) IN
 APPROXIMATE TOTAL AREA = 579,320 SQ. FT. OR 13.21 AC.
 APPROXIMATE UPLAND AREA = 405,190 SQ. FT. OR 9.26 AC.
 APPROXIMATE WETLAND AREA = 174,130 SQ. FT. OR 3.95 AC.
 WHEN LOTS 3 THROUGH 6 JOINED TO INCLUDE AREA, THE
 PROPOSED PARCELS WOULD BE THE TOTAL OF THE WETLAND LOT 2
 COVERING 1,170 SQ. FT. OF WETLAND AREA.
 *TOTAL UPLAND AREA = 565,177 SQ. FT. OR 12.94 AC.
 NOTE: LOTS 5 AND 6 ARE UNDEVELOPED LOTS.

LEGEND
 #00 CONCRETE BOUNDARY
 #100 TANGLED CONCRETE BOUNDARY
 #10 FENCE
 A WETLAND



"CHLOE'S PATH"

DEFINITIVE SUBDIVISION
 PLAN OF LAND
 IN
 HARMON, MASSACHUSETTS
 FOR
 HIGH DEVELOPMENT, LLC

SCALE 1"=40'
 SCALE 1"=40' 200' 400' 600' 800'

DATE: 11-12-2015
 REVISION: 07-2016
 J.M. O'REILLY & ASSOCIATES, INC.
 Professional Engineering & Land Surveying Services
 1573 Main Street - Route 6A
 P.O. Box 1773
 Brewster, MA 02631
 (508) 896-8801
 (508) 896-0002

Does not show Row



1

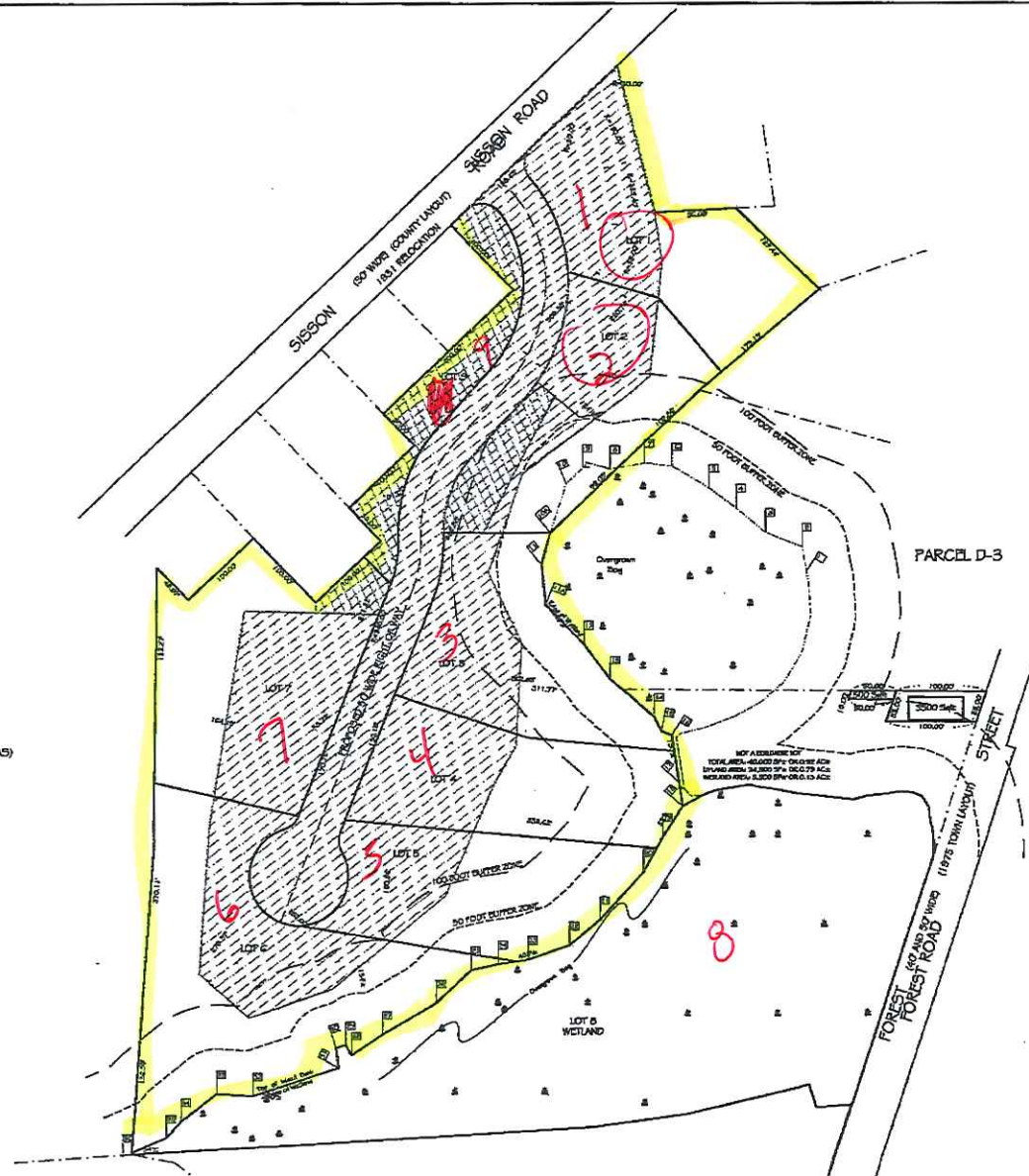
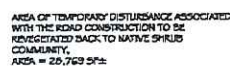
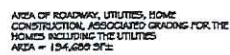
ZONE	PL RESIDENTIAL-LOW DENSITY
MINIMUM AREA	42,000 SF
MINIMUM FRONTAGE	150 FEET
FRONT YARD SETBACK	25 FEET
SIDE AND REAR YARD SETBACK	20 FEET
MAXIMUM BUILDING COVERAGE	15%
MAXIMUM BUILDING HEIGHT	30 FEET

TOTAL PARCEL AREA	575,320 SF±	(13.21 AC±)
TOTAL WETLAND AREA	172,130 SF±	(3.95 AC±)
TOTAL UPLAND AREA	403,190 SF±	(9.26 AC±)
AREA OF LOTS 1-7 (FOR HOMES)	144,492 SF±	(7.74 AC±)
AREA OF ROAD	50,197 SF±	(1.15 AC±)
AREA OF TEMPORARY DISTURBANCE	28,769 SF±	(0.66 AC±)
TOTAL OF DISTURBED LOTS AND ROAD	223,458 SF±	(5.13 AC±)

TOTAL OPEN SPACE PROVIDED: (AFTER REVEGETATION OF TEMPORARY AREAS)
575,320 - 194,689 = 380,631 SF±
8.74 AC± OR 66.2 %

UPLAND OPEN SPACE PROVIDED:
403,190 - 194,689 = 208,501 SF±
4.79 AC± OR 51.7 %

TOTAL UPLAND AREA LEFT IN NATURAL STATE
(INCLUDES PERMANENT AND TEMPORARY ALTERATIONS)
403,190 - 223,458 = 179,732 SF±
4.13 AC± OR 44.6%




PRELIMINARY GRID SUBDIVISION PLAN
SHOWING PROPOSED LIMIT OF ACTIVITY

CONCEPTUAL
PLAN OF LAND
IN
HARWICH, MASSACHUSETTS
FOR
DONOVAN BUILDING CORPORATION



REVISED 12-21-2015; ADJUSTED NUMBER OF HOUSE LO

 **J.M. O'REILLY & ASSOCIATES, INC.**
Professional Engineering & Land Surveying Services
1573 Main Street - Route 2A
P.O. Box 1773
Brewster, MA 01831
(508) 836-6001

407.62'
N 70°13'54" W

TCS
FND

0.63

REMAINDER OF PARCEL A

TOTAL AREA: 135,540 SF± OR 3.11 AC±
UPLAND AREA: 78,230 SF± OR 1.80 AC±
WETLAND AREA: 57,310 SF± OR 1.31 AC±

206.92'

665.97'
S 89°25'15" E

181.13'

CB
FND

404.13' (TO TIE)

500 SF±

50'

3500 SF±

33.12'

100'

CB
FND

PARCEL B-1

TOTAL AREA: 40,000 SF± OR 0.92 AC±
UPLAND AREA: 34,500 SF± OR 0.79 AC±
WETLAND AREA: 5,500 SF± OR 0.13 AC±

3.43±

Edge of Wetland

292.13'
N 86°47'14" W

150.00' (TO TIE)
191±

135±

407.62'
N 70°13'54" W

TCB
FND

0.68

REMAINDER OF PARCEL A

TOTAL AREA: 135,540 SF± OR 3.11 AC±
UPLAND AREA: 78,230 SF± OR 1.80 AC±
WETLAND AREA: 57,310 SF± OR 1.31 AC±

206.92'

665.97'
S 89°25'15" E

181.13'

404.98' (TO TIE)

100'

CB
FND

CB
FND

500 SF±

3500 SF±

33.12'

PARCEL B-1

TOTAL AREA: 40,000 SF± OR 0.92 AC±
UPLAND AREA: 34,500 SF± OR 0.79 AC±
WETLAND AREA: 5,500 SF± OR 0.13 AC±

150.00' (TO TIE)
191'

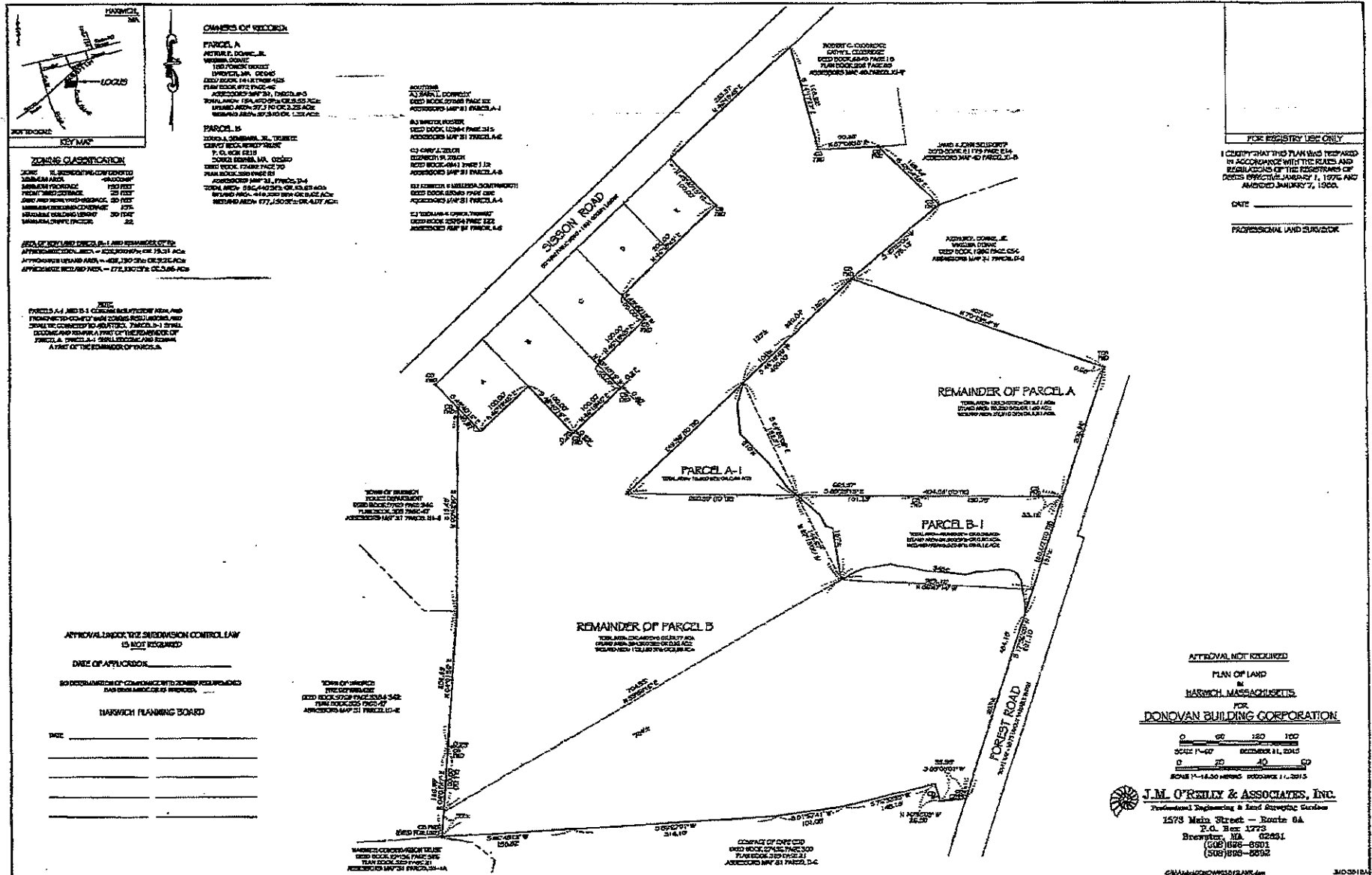
135'

343±

Edge of Wetland

292.13'
N 86°47'14" W

Does not show Row



To: Michael Busby

Cc: misty-anne.marold@state.ma.us; mmacaskill@townofharwich.us; jpowers@town.harwich.ma.us; kbosse@mhp.net; Sarah.Peake@mahouse.gov; Cyr, Julian (SEN) <julian.cyr@masenate.gov>; Ashley Benson <ashley.benson@masenate.gov>; jidman@townofharwich.us

Subject: Follow Up re: Chloe's Path

February 4, 2022

Mr. Michael Busby

Relationship Manager

MassHousing

VIA EMAIL

RE: Chloe's Path, Harwich

Dear Mr. Busby,

First, I wanted to thank you for taking the time to visit with me and my neighbor Judy Underwood a few weeks ago at our property following the conclusion your site visit with the Town and the proponents of the Chloe's Path 40B. I noted that the media attended, so we will be sure to attend all future site walks and presentations by the proponents as they are clearly meant to be open to the public.

I also wanted to thank you and MassHousing for extending the comment period until March 8th, 2022. This additional time will be extremely helpful for the neighborhood and other concerned citizens, as well as Town departments and committees to update their comments to you. We are also consulting with legal counsel ourselves, our State elected officials, and several other agencies of the Commonwealth whom we expect you will hear from over the next few months as this proposal gets the scrutiny it requires. As you will see below, we feel that an even greater extension is required now.

But as we work on our comments, which are voluminous, we wanted to check in with you on four key areas which we touched on when we met each is critical to our concerns and our developing an accurate set of comments to what appears to be, at best, an incomplete application and, at works, a hastily-assembled cutting-and-pasting of prior filings which has been submitted to your office for formal consideration of eligibility.

Namely, these four areas of concern are:

1. OWNERSHIP STATUS & DEED RESTRICTIONS - Has MassHousing conducted a comprehensive legal review of the proponents' application as it relates to representations made as to current owners' and the applicants' current or future property rights and the nature of the proponents' current "site control"? These include, but are not limited to, at least two (2) known and material deed restrictions which use the terms "*forever wild*" and "*in perpetuity*" and which include multiple maps and supporting documentation registered with the Barnstable County Registrar of Deed (Doane/Town of Harwich and MESA/Town of Harwich). Our understanding of encumbrances would also include the circumstances surrounding and legal status the proposed transfer(s) of land to the care of the Town of Harwich and any agreements surrounding that

transfer of rights or responsibilities. Finally, we are curious if there remain any lien(s) attached to the property which would also complicate title. Specifically, related to the above:

- a. Has MassHousing Legal Counsel reviewed the proponents' purported flexibility with regard to their ownership interest(s) and, specifically, has MHP Legal Counsel advised you and your department as to same?
 - b. In any event, have MassHousing and its Legal Counsel consulted with the Commonwealth's EEA, Divisions of Fisheries and Wildlife, and specifically its MESA office and their respective Legal Counsel as to same?
2. OPEN PERMITS - Has MassHousing reviewed the current status, nature, applicability, and compliance by the owners' and proponents' team as to all permits or approvals for the land, including but not limited to any and all applications or agreements made with the Town of Harwich or Commonwealth whether currently open, expired, in violation, suspended, or in any other state? We understand that no application can be or will heard by the Commonwealth's MESA office, nor do we feel any such application(s) should be heard by your office or the Town of Harwich until such time as the property and all permits and approvals are brought into compliance with current regulations and/or conditions. These include but are not limited to made-safe conditions including the civil engineering of existing roadway(s) and road beds, any and all drainage systems or structures, and any underground or above ground utility or other site work which may have been conducted since at least 2016, as well as the MESA-directed habitat restoration programs and/or facilities. We also, therefore, request that you examine any certification or proof of completion of such work *and inspection thereof* by all relevant departments of the Town of Harwich, DEP, and, of course, MESA and its sister departments within the MA Division of Fisheries and Wildlife.
3. INCOMPLETE SUBMITTAL - Has MassHousing yet reviewed the proponents entire submittal package – the version available to the public and Town agencies – in its entirety, for its completeness, legibility, and accuracy? We have to note, at a minimum, that there are multiple sections in the version available to us which are either incomplete, cut-off, or otherwise illegible, meaning that the application for review by public agencies and the public at large is, in fact, incomplete. Furthermore, the application does not state – in any area that we can see – that the proponent had, in fact, committed to the Town of Harwich Select Board that they would alter their proposal to the Commonwealth by providing an alternative “affordability” ratio including additional “workforce” units. This commitment appears nowhere. Should not the proponent be asked to refile this entire application properly as to form and content before your office can give it the level of review that is required for such massive proposal on an extremely sensitive site?
4. Lastly, and much more generally: When you and I met, we discussed certain elements of the proposal which seem integral to your office's review and possible issuance of a housing eligibility or suitability form letter. While we understand that this is an anachronistic function of the Commonwealth's 40B regulations, we feel that it is critical that you review . . . now . . . the many representations that the owners and proponents team have made for consistency, transparency, and accuracy *before* any such eligibility letter is considered.

It smacks of inefficiency and, frankly, an entirely irresponsible use of State resources, including your own time, and a waste of MHP technical assistance dollars, our Town's precious fiscal and human resources, and our neighbors' time and energy to discuss a project that almost certainly is not anywhere near the project that *may, or may not* ultimately be approved by our Town through the comprehensive permit process and our Zoning Board of Appeals, let alone the one that gets built.

These include such critical elements described publicly that cannot or most certainly will not be built as currently described within the constraints of the site and normal construction techniques used on Cape Cod and within clear setbacks to our own Public Safety, School, and Town-owned Conservation areas. These include, among others, the cartoonish "fire lane", rendered in an area of extremely soft and sandy soils and abutting the project's own structural garage which, even to a lay person, is an entirely infeasible and thus baseless, even silly "commitment" by the proponent to gain "support" from our Fire Department. This is just one item, however, joining many other even more critical "*features*" of the proposal which would render a project of this size and its design entirely infeasible physically or, practically, never by financed by any responsible institution including a fictitious septic plan which has no basis in reality, legally or from an engineering perspective. And of course, let us not forget mitigation for threatened and endangered species protected, by law, by MESA.

Until these many questions are at least partially answered, we respectfully request that you ask the proponents to go back to the drawing board and provide much more complete design and development program details, engineering, permitting, and construction methods, and of course some sort of answers to my detailed questions above.

I thank you again for you time and your close attention to this incredibly important matter.

Sincerely yours,



Peter D. Gori

226 Sisson Road, on behalf of over 40 neighbors to the project and other concerned citizens

petegori@yahoo.com

(617) 279-9466

From: Peter Gori <pete@bostoncrp.com>

Sent: Thursday, March 3, 2022 6:39 PM

To: mbusby@masshousing.com; Jessica Malcolm; Nancy McDonald

Cc: misty-anne.marold@state.ma.us; Michael D. MacAskill; Joe Powers; kbosse@mhp.net;

Sarah.Peake@mahouse.gov; Cyr, Julian (SEN); Ashley Benson; Jon Idman; Amy Usowski; Don Howell

Subject: Chloe's Path, Harwich

March 3, 2022

RE: Chloe's Path, Harwich

Dear Ms. Malcolm and Mr. Busby,

As you now know, I write to you today on behalf of a group of more than 50 residents and property owners, many of whom directly abut the Chloe's Path site and will have standing in any future legal challenges to this proposal and the decisions made by your office or others.

But I also write to you again on behalf of our neighbors across Harwich and entire the Lower Cape who are now just becoming aware of the sheer scale of this proposal and the existential threat that it poses to our way of life in our small town, the quality of our properties and of our homes and, most importantly, the value of our natural environment including the precious Monomoy Lens Sole Source Aquifer and the ponds, marshes, and creeks feeding it and which lead to Nantucket Sound.

We remain hopeful that your office will find, as our Town has done previously, that this project does not come anywhere close to reaching several, if any, of the eligibility thresholds required for a 40B project on a known environmentally-sensitive site, let alone this monstrosity of scale and suburban commodity housing design which seems to have been cut-and-pasted from a Boston ex-urb. But having already stated the obvious, we also trust that the eligibility thresholds managed by you in order to enable the creation of affordable housing across the state must also protect the citizens of the Commonwealth from harm.

So, as you read this, please know that this is not simply about the Eastern Box Turtle and the Deed Restrictions held *in perpetuity* by the Commonwealth over the site. Yet these are the matters which remain the most simple and unambiguous reasons to deny eligibility for this project with prejudice.

In executing your implied charge to protect the citizens of the Commonwealth by utilizing sound judgement and issuing thoughtful decisions which can stand the test of time and near-certain court challenges, we implore you to look even more closely at the *nature* of this application and its contents. With so many glaring omissions of fact and obvious vagaries of detail contained therein, we also hope that MassHousing and all State agencies will execute their duty with an eye toward a shared role in protecting the public and *the process* by dealing in truth when faced with such an outrageously erroneous series of assertions being made by the proponent in its filing

As you will see below in a forwarded email from MESA and the attachments hereto containing, finally, both of the Deed Restrictions and most all of their associated maps, there is nothing formal or seemingly informal before the Commonwealth's MESA office which would suggest in any manner whatsoever, that the proponent of this project is in compliance with the standing MESA order(s) for the site - facts that are in direct contradiction to its application to your office. And, further, there is no formal or informal request for relief from or relinquishment of the Deed Restriction(s) held by the Commonwealth over the proponents' land before MassWildlife or MESA. Nothing.

7

This second point, we believe, makes your decision quite simple: The proponent does not hold unencumbered property rights to build anything near what has been described in their initial filings to your office, as disingenuously presented as they have been. The buildings and parking areas cannot be sited where shown. The septic package plant cannot be built where it would need to go. Interestingly, there is not even an acknowledgement of any normative set-back to the rear of the site for a building of this size to adjacent to property owned by the Town of Harwich and which itself could be redeveloped at some point in the future.

It is truly quite astonishing that this package was submitted to you this way, but we are actually happy for it, as it lays bare so many of the fundamental flaws of the proposal itself while exposing the proponents' lack of care for our community and its direct neighbors, while sparing any semblance of decent architecture, site planning acumen, or good sense for all the public to see.

But back to the main point: Because the attached Deed Restrictions are held by the Registrar of Deeds in Barnstable County, we feel strongly that this project, as presented, should move no further until the proponent has reconciled both that most critical matter . . . its ownership of the site . . . as well as the now publicly-confirmed compliance gaps with agencies of the Commonwealth and the Town of Harwich which, we add, date back at least 2017, if not before. It certainly should not be deemed "*eligible*". It should instead be deemed ineligible on its face.

Further, we are confident that you will learn through your exhaustive research of Title and, hopefully, a simple phone call or two to the Town of Harwich, DEP, or the MESA office that the proponent and its partners are also in violation several Orders of Condition set forth by the Commonwealth's Department of Environmental Protection and the Town of Harwich Conservation Agent, all fairly straightforward conditions which follow on those set forth by MESA. These violations, too, are in direct contradiction to the proponents' application to your office.

When you contact MESA, and we hope that you do, we expect you will learn as we have, that there are in fact many matters that the proponents could not rectify in 2022 even if they wanted to, due to the seasonality of the nesting and migratory patterns of the Eastern Box Turtle and prohibitions of certain types of this work during many parts of the year. This means that if the proponent had any intention of resolving a single compliance violation, let alone the several we are aware of, we might be looking at this time next year, earliest, before MESA could even assess the site for future modifications of its order(s) or, of course, the Deed Restriction(s).

The Proponent has had many years . . . season after season, after season, to do anything on the site to comply with the Town/DEP Orders of Conditions and the MESA directives. To our knowledge the proponents have barely given the site any mind at all, other than to draw some fanciful sketches of a project that they and we all know will never be built and, if your office explored the practicalities of the site alone, *cannot* be built, even if the Deed Restrictions were to be improperly modified. But they have chosen to submit this farcical application to you nonetheless while in direct violation of both the DEP and MESA orders.

Lastly, and we expect that you will also hear from members of the Town's staff, and hopefully multiple other interested parties that, despite what may have been drawn or described during a site walk with staff, such a project is neither in keeping with our Town's character nor is it safe. As we have pointed out before, the project abuts Town-owned land on three sides including a state-regulated Route, yet the project's conceptual architecture propose feats of engineering, accessibility, and lot-line license which would render the site a wonder in any of the Commonwealths' 350 other cities and towns.

Half of what is shown just simply cannot be done.

It does not take a wastewater engineer to determine that the project cannot introduce additional nitrogen into the Town's (adjacent) wetlands and that the septic cannot be sited in the same area as an underground garage or on even a re-distributed Turtle Habitat area, which is conveniently missed in any plan that the Town or public has seen.

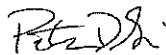
Similarly, it should not take a traffic engineer to determine that the site in its context, with its proximity to the Town's only elementary school and the Town's Police and Fire Headquarters, cannot handle the additional traffic and that there is absolutely no way 400+ new automobile trips per day will not wreak havoc on an already dangerous and congested district. It also should not take a group of lay neighbors to point out that there doesn't need to be a "bus stop" where there is no BUS ROUTE – the CCRTA hasn't used this stretch of Sisson Road for almost a decade. It also strains credulity that the proponent would then change its description of the "bus stop" to be for school busses, when the school is, in fact less than 100 yards away. And if not, let's ask an even more ridiculous question: how could the proponent propose - and attempt to get credit for - a bus stop across the street from its site on land it does not own.

At this point you may all ask yourselves, "what does this have to do with affordable housing?" The answer is, quite literally, nothing. This entire project is nothing more than an out-of-scale, out-of-town cash grab of market rate housing masquerading as an "affordable" 40B.

Do not be fooled.

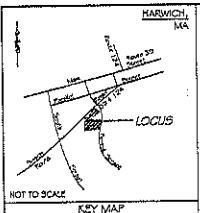
Please poll some of the school teachers, firefighters, nurses, who live on Sisson Road and please ask them if they find a \$2,300.00/month two bedroom seems "affordable" to them. The answer is clear. Chloe's Path is not for Harwich, and Harwich is not for Chloe's Path. Please support our Town's denial of this project's eligibility and let us all move on with our lives.

Thank you,



Peter Gori
226 Sisson Road, Harwich
On behalf of over fifty of my neighbors

OFFICIAL OFFICIAL OFFICIAL OFFICIAL



OWNERS OF RECORD:
 LOUIS J. BONNARA, JR., TRUSTEE
 QUIET HILL REALTY TRUST
 DEED BOOK 17492 PAGE 70
 PLAN BOOK 388, PAGE 21
 ASSESSORS' MAP 31, PARCEL D-4
 ARTHUR P. DONNE, JR.
 VIRGINIA DONNE
 DEED BOOK 1412 PAGE 465
 ASSESSORS' MAP 31, PARCEL D-3

CURVE TABLE:

CURVE	RADIUS	LENGTH	CHORD	DELTA	DELTA/2	DELTA/2 SINE	DELTA/2 COSINE
C1	22.50'	1.41'	1.41'	90.00°	45.00°	1.00'	0.99'
C2	112.50'	14.14'	14.14'	90.00°	45.00°	10.00'	9.99'
C3	150.00'	19.63'	19.63'	90.00°	45.00°	14.14'	14.13'
C4	175.00'	22.91'	22.91'	90.00°	45.00°	16.77'	16.76'
C5	125.00'	15.71'	15.71'	90.00°	45.00°	11.18'	11.17'
C6	175.00'	22.91'	22.91'	90.00°	45.00°	16.77'	16.76'
C7	125.00'	15.71'	15.71'	90.00°	45.00°	11.18'	11.17'
C8	125.00'	15.71'	15.71'	90.00°	45.00°	11.18'	11.17'
C9	175.00'	22.91'	22.91'	90.00°	45.00°	16.77'	16.76'
C10	125.00'	15.71'	15.71'	90.00°	45.00°	11.18'	11.17'

LEGEND
 ■ CB CONCRETE BOUND
 ▲ TC TRIANGLE CONCRETE BOUND
 ● PND POND
 ■ WETLAND

ZONING CLASSIFICATION
 ZONE RL RESIDENTIAL-LOW DENSITY
 MINIMUM AREA 40,000 SF
 MINIMUM FRONTAGE 150 FEET
 FRONT YARD SETBACK 25 FEET
 SIDE AND REAR YARD SETBACK 20 FEET
 MAXIMUM BUILDING COVERAGE 15%
 MAXIMUM BUILDING HEIGHT 30 FEET
 MAXIMUM SHAPE FACTOR 22

AREA OF NEW LAND PARCEL (A-1) AND REMAINDER OF D-1:
 APPROXIMATE TOTAL AREA = 575,380 SF OR 13.21 AC.
 APPROXIMATE UPLAND AREA = 403,100 SF OR 9.26 AC.
 APPROXIMATE WETLAND AREA = 172,150 SF OR 3.95 AC.
 NOTE: LOTS 5 THROUGH 6 CONTAIN NO WETLAND AREA, THE PROPERTY LIES AT THE EDGE OF THE WETLAND. LOT 2 CONTAINS 1,799 SF OF WETLAND AREA.
 TOTAL ROAD AREA = 50,197 SF OR 1.15 AC.
 NOTE: LOTS 6 AND 9 ARE UNDEVELOPABLE LOTS.

BOARD OF ZONING ADJUSTMENTS:
 THE BOARD OF ZONING ADJUSTMENTS OF THE TOWN OF HARWICH, MASSACHUSETTS, HAS REVIEWED THE ABOVE SUBDIVISION PLAN AND HAS APPROVED THE SAME FOR RECORDING AND FOR THE PURPOSES OF THE ZONING BYLAW, AS AMENDED JANUARY 26, 2016, TO THE FOLLOWING DEVELOPMENT, LLC.

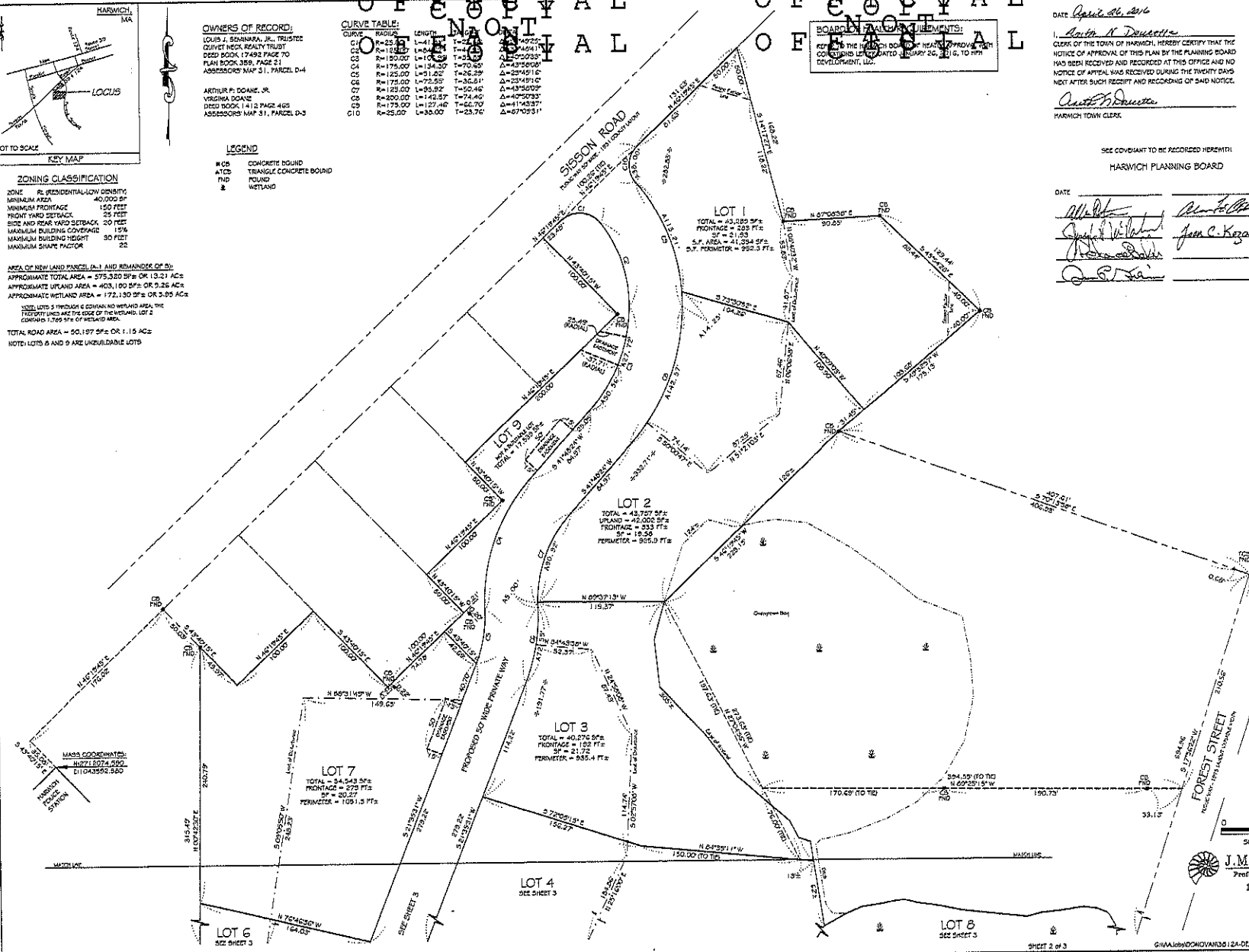
DATE April 26, 2016
 I, Arthur N. Donnell
 CLERK OF THE TOWN OF HARWICH, HEREBY CERTIFY THAT THE NOTICE OF APPROVAL OF THIS PLAN BY THE PLANNING BOARD HAS BEEN RECEIVED AND RECORDED AT THIS OFFICE AND NO NOTICE OF APPEAL WAS RECEIVED DURING THE TWENTY DAYS NEXT AFTER SUCH RECEIPT AND RECORDING OF SAID NOTICE.
Arthur N. Donnell
 HARWICH TOWN CLERK

SEE COVENANT TO BE RECORDED HEREWITH
 HARWICH PLANNING BOARD

DATE April 26, 2016
Arthur N. Donnell
James C. Kegan
James C. Kegan
James C. Kegan

FOR REGISTRY USE ONLY
 I CERTIFY THAT THIS PLAN WAS PREPARED IN ACCORDANCE WITH THE RULES AND REGULATIONS OF THE REGISTRARS OF DEEDS EFFECTIVE JANUARY 1, 1976 AND AMENDED JANUARY 7, 1998.
 DATE April 26, 2016
 PROFESSIONAL LAND SURVEYOR
 JAMES C. KEGAN
 12500
 12500

PRELIMINARY PLAN
 DATE OF APPLICATION 10-30-2015
 DATE OF APPROVAL 11-11-2015
DEFINITIVE PLAN
 DATE OF APPLICATION 12-15-2015
 DATE OF APPROVAL 12-15-2015
 DATE OF SIGNING 12-15-2015



"CHLOE'S PATH"

DEFINITIVE SUBDIVISION
 PLAN OF LAND
 IN
 HARWICH, MASSACHUSETTS
 FOR
 HFH DEVELOPMENT, LLC

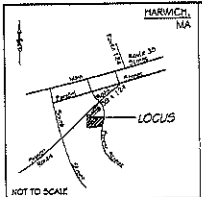
SCALE 1"=40' DECEMBER 14, 2015
 SCALE 1"=12.50 METERS DECEMBER 14, 2015
 REVISION 3-7-2016

J.M. O'REILLY & ASSOCIATES, INC.
 Professional Engineering & Land Surveying Services
 1573 Main Street - Route 6A
 P.O. Box 1773
 Brewster, MA 02631
 (508)898-8801
 (508)898-8802

12500
 12500

12500
 12500

OFFICIAL
OFFICIAL
OFFICIAL
OFFICIAL



OWNERS OF RECORD:
LOUIS J. DONAHUE, JR., TRUSTEE
OLIVET TRUST, REALTY TRUST
DEED BOOK 17482 PAGE 70
PLAN BOOK 353, PAGE 51
ASSESSORS MAP 31, PARCEL D-4

ARTHUR P. DONAHUE, JR.
VIRGINIA DONAHUE
DEED BOOK 1412 PAGE 425
ASSESSORS MAP 31, PARCEL D-3

CURVE TABLE:

CURVE	ANGLE	RADIUS	CHORD	ARC LENGTH
C1	110.00°	100.00'	61.18'	62.16'
C13	110.00°	100.00'	61.18'	62.16'

BOARD OF PLANNING:
THE BOARD OF PLANNING HAS REVIEWED THE PLAN AND HAS RECOMMENDED THAT THE PLAN BE APPROVED FOR RECORDING. THE BOARD OF PLANNING HAS REVIEWED THE PLAN AND HAS RECOMMENDED THAT THE PLAN BE APPROVED FOR RECORDING.

DATE April 24, 2016
By: Arthur P. Donahue, Jr.
CLERK OF THE TOWN OF HARMICH, HEREBY CERTIFY THAT THE NOTICE OF APPEAL OF THIS PLAN BY THE PLANNING BOARD HAS BEEN RECEIVED AND ACCORDED AT THIS OFFICE AND NO NOTICE OF APPEAL WAS RECEIVED DURING THE THIRTY DAYS NOT AFTER SUCH RECEIPT AND RECORDING OF SAID NOTICE.

Arthur P. Donahue, Jr.
HARMICH TOWN CLERK

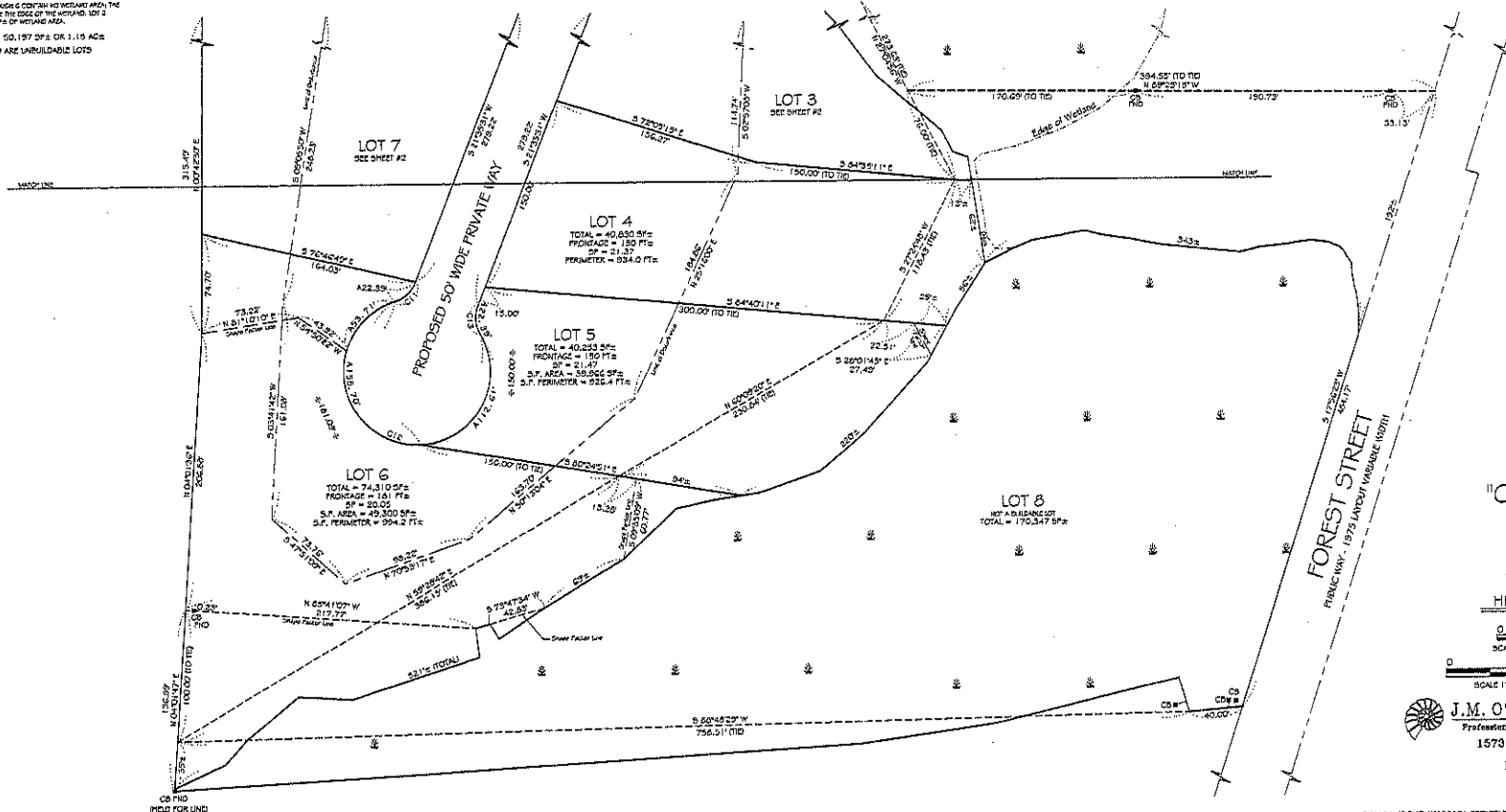
LEGEND

- CD CONCRETE SOUND
- ATD TRIANGLE CONCRETE SOUND
- FND FOUND
- W WETLAND

ZONING CLASSIFICATION

ZONE RL RESIDENTIAL-LOW DENSITY
MINIMUM AREA 40,000 SF
MINIMUM FRONTAGE 150 FEET
FRONT YARD SETBACK 25 FEET
SIDE AND REAR YARD SETBACK 20 FEET
MAXIMUM BUILDING COVERAGE 15%
MAXIMUM SHAPE FACTOR 22

AREA OF NEW LAND PARCEL (A-1) AND REMAINDER OF D-1
APPROXIMATE TOTAL AREA = 375,520 SF OR 8.51 AC
APPROXIMATE UPLAND AREA = 403,150 SF OR 9.26 AC
APPROXIMATE WETLAND AREA = 172,150 SF OR 3.95 AC
NOTE: LOTS 3 THROUGH 6 CONTAIN WETLANDS WITHIN THE PROPERTY LINES AND THE BOUNDARY LINES OF THE LOT 3 CONTAIN 1,295 SF OF WETLAND AREA.
TOTAL ROAD AREA = 10,197 SF OR 1.15 AC
NOTE: LOTS 6 AND 9 ARE UNBUILDABLE LOTS



SEE COVENANT TO BE RECORDED HEREAFTER
HARMICH PLANNING BOARD

DATE April 24, 2016
By: Arthur P. Donahue, Jr.
CLERK OF THE TOWN OF HARMICH, HEREBY CERTIFY THAT THE NOTICE OF APPEAL OF THIS PLAN BY THE PLANNING BOARD HAS BEEN RECEIVED AND ACCORDED AT THIS OFFICE AND NO NOTICE OF APPEAL WAS RECEIVED DURING THE THIRTY DAYS NOT AFTER SUCH RECEIPT AND RECORDING OF SAID NOTICE.

Arthur P. Donahue, Jr.
HARMICH TOWN CLERK

FOR REGISTRY USE ONLY

I CERTIFY THAT THIS PLAN WAS PREPARED IN ACCORDANCE WITH THE RULES AND REGULATIONS OF THE REGISTRARS OF DEEDS EFFECTIVE JANUARY 1, 1975 AND AMENDED JANUARY 7, 1980.

DATE April 24, 2016
PROFESSIONAL ENGINEER AND LAND SURVEYOR
J.M. O'REILLY & ASSOCIATES, INC.
NO. 49903

PRELIMINARY PLAN
DATE OF APPLICATION 10-26-2014
DATE OF APPROVAL 11-11-2015
DEFINITIVE PLAN
DATE OF APPLICATION 12-15-2015
DATE OF APPROVAL 12-15-2015
DATE OF SIGNING 12-15-2015

"CHLOE'S PATH"

DEFINITIVE SUBDIVISION
PLAN OF LAND
FOR
HARMICH, MASSACHUSETTS
HFM DEVELOPMENT, LLC

SCALE 1"=40' 0" 40' 80' 120'
SCALE 1"=20' 0" 20' 40' 60' 80' 100' 120'
SCALE 1"=10.20 METERS
REVISION 3-7-2016
DECEMBER 14, 2015

J.M. O'REILLY & ASSOCIATES, INC.
Professional Engineering & Land Surveying Services
1573 Main Street - Route 6A
P.O. Box 1773
Brewster, MA 02631
(508)898-6801
(508)898-6802

09-19-2016 @ 11:17a

NOT AN OFFICIAL COPY
 Locus: Chloe's Path, Harwich, MA
 NOT AN OFFICIAL COPY

NOT AN OFFICIAL COPY
 CHLOE'S PATH
 NOT AN OFFICIAL COPY

HARWICH, MASSACHUSETTS

DECLARATION OF PROTECTIVE COVENANTS

DECLARATION made this 16th day of SEPTEMBER, 2016 by Peter B. Donovan, Manager of HFH DEVELOPMENT, LLC, with a mailing address of P.O. Box 612, North Chatham, MA 02650 (hereinafter called "DECLARANT").

WITNESSETH:

WHEREAS, DECLARANT is the owner of land situated in Harwich, Barnstable County, Massachusetts, hereinafter described, and is desirous of creating an attractive residential community; encouraging harmonious and pleasing homes, assuring a high quality of community appearance; preserving and protecting the natural character of the land, conserving the trees, shrubbery and other natural features for the benefit of all property owners; preventing nuisances, to maintain the desired tone of the community and to thereby secure to each site owner the full benefit and enjoyment of his home, with no greater restrictions upon the free and undisturbed use of his site than is necessary to insure the same advantages to the other site owners; and

WHEREAS, DECLARANT desires to provide and insure the preservation of the values in said community and, to this end, desires to subject the real property together with such additions as may hereinafter be made thereto to the covenants, restrictions, easements, and liens hereinafter set forth, each of which is and are to be for the benefit of said property and each owner thereof;

WHEREAS, DECLARANT desires to provide and insure that the development of the land will continue to provide habitat used by a variety of wildlife including, but not limited to the Eastern Box Turtle (*Terrapene carolina*), in perpetuity.

NOW, THEREFORE, DECLARANT declares that the land in Harwich, Barnstable County, Massachusetts, shown as lots 1, 2, 3, 4, 5, 6, 7, and 9 and the fee in Chloe's Path as shown on a definitive subdivision plan entitled, "Chloe's Path, Definitive Subdivision Plan of Land in Harwich, Massachusetts for HFH Development, LLC, J.M. O'Reilly & Associates, Inc., December 14, 2015" and recorded with the Barnstable County Registry of Deeds in Plan Book 666, Page 20-22 (Plan), and such additions thereto as may hereinafter be made is and

shall be held, transferred, sold, conveyed, and occupied subject to and with the benefit of the covenants, restrictions, easements, charges, hereinafter set forth (the Property);

1. Definitions

- a. Hazardous Material: shall mean any material or substance that, whether by its nature or use, is now or hereafter defined as a pollutant, dangerous substance, toxic substance, hazardous waste, hazardous material, hazardous substance or contaminant under any environmental law, or which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic or otherwise hazardous and which is now or hereafter regulated under any environmental law.
- b. Pervious: shall mean built of materials consisting of unconsolidated minerals such as sand, dirt or gravel, or natural materials such as wood chips or grass.
- c. Structure: (whether or not said term is capitalized) shall mean anything constructed or erected which requires permanent or temporary location on, in, over or under the ground or permanent or temporary attachment to something which is erected or placed on the ground and designed, intended or arranged for the housing, shelter, enclosure and/or structural support of persons, animals or property of any kind, including but not limited to houses, mobile homes, tents, barns, sheds, greenhouses, treehouses, and other buildings of any kind; silos and cribs; swimming pools; playing courts; outdoor riding rings; fences; pads; patios and decks; docks; bridges; roads; driveways and parking areas (whether surfaced with macadam, brick, paving stones, gravel, clay or other material); artificially surfaced walkways; solar panels; satellite dishes and antennae; signs and billboards; storage tanks; windmills and wind turbines; and water, sewer, power, fuel, gas and communication lines, other utility systems and related facilities.
- d. Passive recreation: activities that are non-consumptive uses of resources and do not require prepared facilities like sports fields and pavilions. Passive recreation activities place minimal stress on the site's resources and are compatible with the Conservation Values. Examples include hunting, hiking, wildlife viewing, observing and photographic nature, picnicking, walking, bird watching, running/jogging, star gazing, and fishing. Passive recreation excludes mountain bikes, use of motorized vehicles, and horse-back riding, unless specified herein.

2. Subdivision of Lots and Use.

- A. No Lot shall be further subdivided so as to create two or more building sites nor shall any Lot be used as access to any adjoining land except another Lot. Notwithstanding the above, a 4' wide easement for foot and bicycle traffic along the common boundary line of Lot 1 and Lot 2 is permitted for the benefit of and appurtenant to the adjoining land of Robert W. Doane and Andrea E. Doane located at 180 Forest Street, Harwich, MA and described in deeds recorded in Book 1286 Page 654 and Book 1412 Page 465 and deed for Parcel B-1 recorded herewith.

B. There shall be ^{N O T}no more than one (1) principal house or a two (2) family house that meets the requirements of the Harwich Zoning By-Law and such other buildings and structures ^{N O T}permitted by the Town of Harwich Zoning By-Law on a Lot.

C. The Property shall not be used for business, professional, or industrial purposes that would require the storage of materials or public display of goods for sale shall be made, nor shall any advertising display be permitted. In no event shall the property be used for any purpose which might be or become detrimental to the neighborhood as a desirable residential area.

D. The back portions of each of Lots 1-7, as demarcated on the Plan with the line called "Limit of Disturbance", shall be maintained as habitat and open space providing habitat for the conservation of species listed pursuant to G.L. c.131A et. seq., which shall be considered the most important conservation purpose for which this land is to be protected in perpetuity (hereinafter "Forever Wild Areas").

a. **Prohibited Acts and Uses.** Within the Forever Wild Areas, the following acts and uses are prohibited:

- i. Constructing, placing, or allowing to remain any Structure on, above, or below the surface of the Forever Wild Area;
- ii. Mining, excavating, dredging or removing of soil, loam, peat, gravel, sand, rock or other mineral resource or natural deposit;
- iii. Placing, filling, storing or dumping of soil, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, tree cuttings, waste or Hazardous Material or other substance or material whatsoever, whether or not generated on the Forever Wild Area;
- iv. Removing, cutting, pruning or destroying vegetation (native or non-native), including, but not limited to trees or plants, understory, grasses and ground covers, except as allowed in writing by the Grantee and Division to remove hazards to users;
- v. The application or use on the Forever Wild Area of fertilizers, fungicides, herbicides or pesticides in any quantity;
- vi. The planting, release, cultivation, maintenance, or other activity that would result in the introduction of plant or animal species that pose a substantial risk of being invasive or are otherwise detrimental to the native plant and animal community on the Forever Wild Area, as determined by the Division. A list of plant species deemed to be invasive, as of the time of this grant, is provided in the Massachusetts Prohibited Plant List, which is updated and maintained by the Massachusetts Department of Agricultural Resources;
- vii. Activities detrimental to drainage, flood control, erosion control, water or soil conservation, archaeological resources or the quality of ground water and wetlands;

- viii. Animal penning or grazing; holding horses, pets, livestock, or domestic animals within a paddock; horseback riding, causing or permitting any domestic or livestock to be unattended or to roam or be at large on the Property; and the storage or dumping of manure or other animal wastes; any agricultural use;
- ix. The use, parking or storage of motorized vehicles, including, but not limited to, trucks, trail bikes, motorized or non-motorized, all-terrain vehicles, dune buggies, boats, trailers, and snowmobiles, except as necessary by the police, fire fighters or other governmental agents in carrying out their lawful duties; and except for motorized wheelchairs or scooters used by physically challenged parties;
- x. The disruption, removal, or destruction of any stone walls or granite fences;
- xi. Conveyance of a part or portion of the Forever Wild Area alone, or division or subdivision of the Forever Wild Area (as compared to conveyance of the Forever Wild Area in its entirety which shall be permitted);
- xii. The disturbance in any fashion of the natural surface of the ground, including the organize litter layers of the soil, including downed trees and branches and rocks.

b. **Reserved Rights.** Notwithstanding any provisions herein to the contrary, Declarant reserves to itself and its successors and assigns the right to:

- 1. Establish, enforce, waive, alter and amend such additional rules, regulations, covenants, conditions and restrictions governing use of the Forever Wild Areas as not otherwise prohibited by these Protective Covenants and as allowed by applicable federal, state or local law or regulation;
- 2. Conduct or permit the following activities in the Forever Wild Areas if such acts do not materially impair significant conservation interest:
 - i. Selective cutting or pruning of trees and vegetation to maintain access to and over footpaths existing at the time of the recordation of this Protective Covenant and located thereon;
 - ii. For protection of persons and property from imminent risks or harm or damage to persons and structures;
 - iii. Construction fences or necessary boundary markers on Forever Wild Areas; and
 - iv. Creation of a 4' wide foot path located along the common boundary line of Lot 1 and Lot 2. Further, the Declarant shall be able to maintain the footpath through the selective cutting or pruning of trees and vegetation, the use of gravel, and the installation of a split rail fence along the sides of the above referenced footpath. The Declarant may mow within the area of the footpath between October 15th and April 15th and may use a string trimmer within the area of the footpath from August 1st to May 31st.

c. **Monuments and Signage.** The Declarant and the Declarant's Successors shall maintain in good condition any, bounds, monuments, makers and signs shown on the Plan, demarcating the boundaries of the Forever Wild Areas, and shall repair and or

replace said monuments and signage on an as needed basis. Bounds, monuments, markers and signs shall not be removed, covered, obstructed, or altered without review and written approval by the MA Division of Fisheries and Wildlife, Natural Heritage Endangered Species Program (ATTN: Regulatory Review, NHESP 06-20086, 1 North Drive, Rabbit Hill Road, Westborough, MA 01581) (the "Division").

d. **Enforceability.** The Declarant and the Declarant's Successors and assigns shall have the authority and right to enforce these restrictions.

e. **Incorporation Into Deeds, Mortgages, Leases and Instruments of Transfer.**

Declarant and Declarants successors and assigns, including all subsequent owners of the Forever Wild Areas, shall incorporate these restrictions, in full or by reference, into all deeds, easements, mortgages, leases, licenses, occupancy agreements or any other instrument of transfer by which an interest in and/or a right to use the Forever Wild Areas or any portion thereof is conveyed. Any such deed, mortgage, or other interest purporting to convey any portion of the Forever Wild Areas without including these restrictions in full or by reference shall be deemed and taken to include these restrictions in full even though said restrictions is not expressly described or referenced therein.

3. **Building Approval.** No structure of any kind, whether residence, accessory building, tennis court, swimming pool, or other improvements of any kind, name or nature shall be erected, constructed, moved onto, maintained, or allowed to stand or be in or on any Lot, nor shall any additions to or alteration to the exterior of a structure be made unless complete architectural and site plans, including specifications and plot plans therefore, showing the exterior design, height, building material, and color scheme thereof, the location of the structure plotted horizontally and vertically, the location and size of driveways, the location of and the general plan of landscaping, fencing, walls and windbreaks, grading plan, the location of all gas, water, and other utility lines or wires and the location of all proposed sewage disposal systems and all components therefore on the Lot shall have been submitted to and approved in writing by the DECLARANT or Donovan Building Corp., as agent for the DECLARANT. It is the intent of this to require that structures be in good taste, in harmony with the quality of nearby structures, and that they fit the site. The approval of building plans is solely the decision of the DECLARANT or Donovan Building Corp. Cape Cod or modified Cape Cod style architecture shall be required
4. **Exclusive Homebuilder.** It is intended that houses in Chloe's Path shall be constructed only by Donovan Building Corp. Lots may be sold to individuals, corporations, and/or partnerships, but all homes must be constructed by Donovan Building Corp.
5. **Utilities.** There is reserved to the DECLARANT the right to install or maintain or have installed and maintained all public utilities in, over, under, along and upon the Road as shown on the Plan; reserving also to the DECLARANT the right to grant easements to public service corporations for the installation and maintenance of such public utilities (water, sewer, telephone, electricity, gas, cable television and other utilities) and anchors and guys to support lines in said Road and on land adjacent thereto; and reserving also to

the DECLARANT the right to grant an easement to the Town of Harwich to lay, relay, construct, maintain, operate, inspect, repair, and replace and remove water mains, service pipes, and appurtenances thereto in, under, through, and over the said Road.

6. Roof Shingles. Shall be CERTAINEED brand, LANDMARK Architectural style, WEATHERWOOD color on all buildings.
7. Road(s). Except as otherwise provided herein, every owner shall have a right of way and an easement of enjoyment for all purposes for which roads are commonly used in the Town of Harwich, with all others who are or may become lawfully entitled thereto, in, over, and upon the Road, without rights of parking motor vehicles thereon, which right and easement shall be appurtenant and shall pass with the title to every Lot, subject to this Declaration. Lot Owners and their guests may on a temporary short-term basis, but in no event overnight, park motor vehicles on the Road in the area immediately adjacent to the Lot Owner's Lot.
8. Boats, Automobiles, Trailers, Campers, & Commercial Vehicles. No boats exceeding twenty (20') feet in length, no unregistered automobiles, automobile parts, mobile homes, trailers, or campers shall be placed or stored on or about any lot unless garaged and unexposed to public view. No repair work on any vehicle of any nature is to be undertaken except within a garage and to the extent permitted in accordance with the Town of Harwich By-Laws. Except for service deliveries and contractors or repairmen and then only on a temporary basis while working at a Lot, no commercial vehicles shall be parked on any Lot or the Road unless parked within an enclosed garage or basement.
9. Animals. No animals of any kind may be kept or maintained except domestic household pets, unless with the written approval of the DECLARANT or Donovan Building Corp., and confined within the area of the Lot.
10. Trees. No live trees of more than four (4") inches in diameter at a four (4') foot height shall be removed without approval of the DECLARANT, except as necessary for building construction and the footpath along the common boundary of Lot 1 and Lot 2.
11. Trash. All garbage, trash, and rubbish placed outdoors shall be kept in covered containers, screened from public view. No garbage, trash, or rubbish shall be burned on any lot outside of the confines of any building. The burning of leaves outdoors is prohibited.
12. Laundry. All exterior laundry drying facilities shall be screened from public view by suitable enclosures, screens, or planting(s).
13. Fuel Storage. No tank for the storage of fuel may be maintained in, on, or under any lot unless contained in a structure and in a location approved in writing by the DECLARANT and further only to the extent permitted by law. Tanks used to fuel outdoor grills will be excluded from this restriction.

14. Building Materials. ^{N O T} No building material of any kind or character shall be placed or stored upon any Lot until the Lot Owner is ready, willing, and able to commence construction. ^{O F F I C I A L} ^{O F F I C I A L}

C O P Y

C O P Y

15. Miscellaneous Restrictions.

^{N O T}

^{N O T}

a. No mechanical, mercantile, or manufacturing business or trade of any kind shall be carried on or upon any Lot nor within any structure on a Lot and no hospital, rest home, club, social organization, group home, day care, or educational institution of any kind, whether for elderly or children, shall be established or maintained thereon or therein; nor shall any illegal or offensive activity be carried on in or upon any building, Lot or the Road adjacent to any Lot, in said subdivision, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood. The practice of a profession or the maintenance of a home office as provided for in paragraph 1.B. shall include the service of the residents of the property only and no more than one non-resident employee, shall be conducted entirely within a structure on a Lot incidental and subordinate to the residential use and without in any manner changing the residential character of the Property or a building or buildings on a Lot.

b. No antennas, satellite dishes, so called, and windmills, shall be attached to any structure, including the roofs thereof, moved onto or maintained on or upon any Lot or on or from any structure on a Lot unless first approved in writing by the DECLARANT.

16. Signs. Without the written approval of the DECLARANT, no sign of any kind shall be displayed to the public view on any building or Lot except one (1) sign of not more than two (2) square feet in size denoting only the name of any resident living on such Lot and, on a temporary basis only, one (1) "For Sale"/real estate sign of not greater than four (4) square feet in dimension.

17. Exterior Lighting. Any exterior lighting installed on any Lot shall either be indirect or of such controlled focus and intensity as not to disturb the residents of the adjacent property.

18. Excavations. Without the written approval of the DECLARANT, no excavation for stone, gravel, sand, or earth shall be made on any building Lot, except for the purpose of building previously approved improvements, grading, and landscaping, provided however, that the DECLARANT shall have the right to excavate and grade on any building Lots then owned by the DECLARANT and to remove material or deposit material thereon in connection with the work of laying out and improving the same.

19. Maintenance. Each Lot and each home, together with accessory structures and grounds, shall be maintained in a neat appearing manner by the owner.

20. Setback Restriction. Any house or garage built on Lot 1 or Lot 2 shall be located a minimum of thirty-five (35') feet from the property line of the abutting property owned

by Robert W. Doane and Andrea E. Doane, and located at 180 Forest Road, Harwich, Massachusetts and described in deeds recorded in the Barnstable Registry of Deeds in Book 1412 Page 465 and Book 1286 Page 654 (the "Doane Property"). This restriction shall be for the benefit of and appurtenant to the Doane Property and shall be enforceable by Robert W. Doane and Andrea E. Doane, and their successors and assigns.

21. Term of Restriction. The Covenants and Restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of DECLARANT, or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors, and assigns for a term of thirty (30) years from the date this Declaration is recorded.

The Covenants and Restrictions of the Declaration associated with the Forever Wild Areas shall run with the Forever Wild Area, as defined herein, **in perpetuity** from the date of recordation in the Barnstable District Registry of Deeds and shall be binding upon Declarant, Declarant's successors and assigns, and any other party having an ownership interest in said Forever Wild Areas or claiming to have an interest with respect to said Forever Wild Areas as tenants, invitees, licenses or otherwise, and all of the respective heirs, successors, grantees, mortgages, assigns, agents, contractors, subcontractors and employees of the foregoing.

Furthermore, the terms and provisions and requirements of the Declaration of Restrictions ("Declaration") made by HFH Development, LLC dated August 9/8, 2016, and recorded herewith in the Barnstable Registry of Deeds in Book 29940, Page 267 with the attached Land Management Plan burdening Parcel B-1 shown on the plan recorded in Barnstable Plan Book 29940, Page 272 and owned by Robert W. Doane and Andrea E. Doane, shall be assumed by and be binding upon the Declarant and the Declarant's successor and assigns, at its sole cost and expense. The Declarant, its heirs, successors and assigns shall fully indemnify and save Robert W. Doane and Andrea E. Doane, and their successors and assigns, harmless from any and all costs, expenses, losses or damages, including but not limited to attorney fees, arising out of or in consequence of the Declarant's responsibility to comply with the terms and provisions of the Declaration including the Land Management Plan. The Declarant shall have no right to amend, release or waive this provision without the written consent of Robert W. Doane and Andrea E. Doane, their successors and assigns.

This Declaration of Restriction is hereby intended and declared to be in perpetuity and no re-recordation of this Declaration of Restriction under G.L. c. 184, ss. 23-30 or any other law shall ever be necessary in order to maintain the full legal effect and authority hereof and Declarant and its successors and assigns, including but not limited to all subsequent owners of the Open Space, hereby waive all their legal right to and shall forego any action in law or equity of any kind whatsoever attempting to contest the validity of any provision of this Declaration of Restriction and shall not, in any enforcement action, raise the invalidity of any provision of this Declaration of Restriction.

Notwithstanding anything inconsistent or to the contrary set forth above, the Division is hereby authorized to record and file any notices and/or instruments that the Division deems appropriate to assure the legal validity and enforceability in perpetuity of this Declaration of Restriction and the Declarant, on behalf of itself and its successors and assigns, hereby appoints the Division as its and their attorney-in-fact to execute, acknowledge, deliver and record any such notice or instrument on its and/or their behalf. Without limiting the foregoing, the Declarant and its successors and assigns agree to execute any such notices and instruments upon request of the Division.

22. Amendments, Waivers, and Assignments of Rights. With the exception of 1.E (Forever Wild Area), the DECLARANT, from time to time, shall have the right to waive, alter, or amend any of the remaining provisions of these Restrictions, except the restrictions for the benefit of the Doane Property, if the DECLARANT, in DECLARANT's sole judgment, deems it necessary or equitable to do so; and any such waiver, alteration or amendment may apply to one or more of all of the Lots as the DECLARANT in any such waiver, alteration, or amendment states. When the DECLARANT owns no Lots, these Restrictions, except for the restrictions benefitting the Doane Property, may be amended by recording at the Barnstable County Registry of Deeds a certificate of vote certifying that these Restrictions have been amended by the Owners of 2/3 or more of the Lots as shown on the Plan.

Waiver, alteration, amendment or the like of 1.E (Forever Wild Area) may only occur by the DECLARANT with assent in writing by the MA Division of Fisheries and Wildlife, Natural Heritage Endangered Species Program (ATTN: Regulatory Review, NHESP 06-20086, 1 North Drive, Rabbit Hill Road, Westborough, MA 01581). The MA Division of Fisheries and Wildlife's has the right to refuse any declarations that does not forward the purposes of the MA Endangered Species Act. Any waiver approved by the Division shall be recorded at the Barnstable County Registry of Deeds in the chain of title on the relevant portion of the Property.

23. Remedies. These Protective Covenants are made for the benefit of the DECLARANT, its successors and assigns, (and where applicable for the benefit of Robert W. Doane and Andrea E. Doane) and after the DECLARANT owns no Lots, then for the benefit of any and all persons or legal entities who may own any of the Lots and who shall derive title from or through the DECLARANT, its successors and assigns. The DECLARANT, and after the DECLARANT owns no Lots, the Association, shall specifically have the right to prevent or stop the violation of any restriction by injunction or other lawful remedy, and to recover any damages resulting from such violation. Further, Robert W. Doane and Andrea E. Doane shall have the right to enforce the restrictions that are for the benefit of the Doane Property.
24. Invalidity. If any easement, covenant, restriction, or agreement or part thereof, or any charge herein contained should be held invalid by any court, such invalidity shall in no way affect any other covenant, restriction, agreement or charge herein contained.

25. Development. These restrictions shall not operate in any way nor shall they be interpreted to restrict DECLARANT or any person, firm, or corporation acting on behalf of said DECLARANT in the development and sale of the lots contained in the Plan, or in any enlargements to the parcel, inclusive of the right to erect signs and offices.
26. Enforcement By Declarant. The DECLARANT may appoint or delegate an agent, agents, corporation, or association to carry out any and all of the foregoing restrictions as to enforcement, approval, privileges, rights and other matters, said appointment to be in writing duly recorded in the Registry of Deeds for Barnstable County. The DECLARANT may delegate or assign all responsibility relating to the foregoing restrictions as to enforcement, approval, privileges, rights, and other matters, to any individual or association without recourse provided, however, that the members of the association include, or the individual be, an owner of one of the Lots which is subject to the terms of these restrictions.
27. Special Provisions Associated with the Forever Wild Areas for the MA Division of Fisheries and Wildlife.

- a. **Enforcement.** The MA Division of Fisheries and Wildlife acting through its Natural Heritage & Endangered Species Program shall, jointly with the DECLARANT or severally, enforce any provision of this restriction that applies to the Forever Wild Area; and are a benefitted party.
- b. **Access.** The Division shall have the right to enter the Forever Wild Areas, in a reasonable manner and at reasonable times, for the purposes of (i) inspecting the area to determine compliance with this Chloe Path Protective Covenants; (ii) enforcing this Chloe Path Protective Covenants; and (iii) taking any other action which may be necessary or appropriate.

The Division shall have the right to bring proceedings at law or equity against any party or parties violating or attempting to violate the terms of this Declaration of Restriction to enjoin them from so doing and to cause any such violation to be remedied, including but not limited to restoration of the portion of the Forever Wild Area adversely affected, after providing written notice to such party or parties and all mortgagees of record if the names and addresses of such parties and mortgagees have been provided in writing to the Town and the Division.

- c. **Severability.** If any court or other tribunal of competent jurisdiction determines that any provision of this Chloe Path Protective Covenants is invalid or unenforceable, such provision shall be deemed to have been modified automatically to conform to the requirements for validity and enforceability as determined by such court or tribunal. In the event the provision invalidated is of such a nature that it cannot be so modified, the provision shall be deemed deleted from this instrument as though it had never been included herein. In either case, the remaining provisions of this instrument shall remain in full force and effect.

- d. **Non-Waiver.** Any election by the Town and/or the Division as to the manner and timing of its right to enforce this Chloe Path Protective Covenants or otherwise exercise its rights hereunder shall not be deemed or construed to be a waiver of such rights.
- e. **Amendment and Release.** No amendment or release of this Chloe Path Protective Covenants that relates to the Forever Wild Area shall be effective unless it has been approved in writing by the Division [hereinafter the Division Approval and said amendment or release and the requisite Division Approval has been recorded with the appropriate Registry of Deeds and/or Land Registration Office.

28. **DECLARANT.** HFH DEVELOPMENT, LLC shall have all of the rights of enforcement, waiver, and any and all other rights, as the DECLARANT in and under the Declaration of Protective Covenants.

In witness whereof, I, Peter B. Donovan, Manager of HFH DEVELOPMENT, LLC, hereunto set my hand and seal this 6 day of September, 2016.

HFH DEVELOPMENT, LLC

By: Peter B. Donovan, Manager

COMMONWEALTH OF MASSACHUSETTS

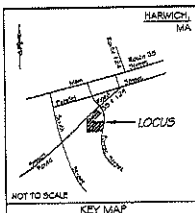
Barnstable, ss.

On this 06th day of September, 2016 before me, the undersigned notary public, personally appeared Peter B. Donovan, Manager as aforesaid, proved to me through satisfactory evidence of identification, which was MA Driver License, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose and who swore or affirmed to me that the contents of the document are truthful and accurate to the best of his knowledge and belief.



Notary Public - William F. Riley
My Commission Expires:

5-11-23



OWNERS OF RECORD:
 LOUIS J. DONAGUE, JR. TRUSTEE
 DEED BOOK 17402 PAGE 70
 PLAN BOOK 385, PAGE 21
 ASSESSORS MAP 31, PARCEL D-4

ARTHUR P. DONAGUE, JR.
 VIRGINIA DONAGUE
 DEED BOOK 1412 PAGE 465
 ASSESSORS MAP 31, PARCEL D-3

LEGEND

WETLAND

ZONING TABLE

ZONING: RESIDENTIAL - LOW DENSITY - (HARWICH REQUIREMENTS)										
SUBJECT	REQUIRED	LOT #1	LOT #2	LOT #3	LOT #4	LOT #5	LOT #6	LOT #7	LOT #8	LOT #9
MINIMUM LOT AREA	40,000	43,255	43,255	40,276	40,276	40,276	40,276	40,276	40,276	40,276
MINIMUM LOT WIDTH	25 FEET	NA	NA	NA	NA	NA	NA	NA	NA	NA
MINIMUM LOT DEPTH	20 FEET	NA	NA	NA	NA	NA	NA	NA	NA	NA
MINIMUM LOT AREA	40,000	43,255	43,255	40,276	40,276	40,276	40,276	40,276	40,276	40,276
MINIMUM LOT WIDTH	25 FEET	NA	NA	NA	NA	NA	NA	NA	NA	NA
MINIMUM LOT DEPTH	20 FEET	NA	NA	NA	NA	NA	NA	NA	NA	NA
MINIMUM LOT AREA	40,000	43,255	43,255	40,276	40,276	40,276	40,276	40,276	40,276	40,276
MINIMUM LOT WIDTH	25 FEET	NA	NA	NA	NA	NA	NA	NA	NA	NA
MINIMUM LOT DEPTH	20 FEET	NA	NA	NA	NA	NA	NA	NA	NA	NA
MINIMUM LOT AREA	40,000	43,255	43,255	40,276	40,276	40,276	40,276	40,276	40,276	40,276
MINIMUM LOT WIDTH	25 FEET	NA	NA	NA	NA	NA	NA	NA	NA	NA
MINIMUM LOT DEPTH	20 FEET	NA	NA	NA	NA	NA	NA	NA	NA	NA

AREA OF NEW LAND PARCELS D-1 AND REMAINDER OF D-1:
 APPROXIMATE TOTAL AREA = 975,350 SF OR 22.1 AC.
 APPROXIMATE UPLAND AREA = 403,190 SF OR 9.2 AC.
 APPROXIMATE WETLAND AREA = 170,130 SF OR 3.9 AC.
 NOTE: LOTS 3 THROUGH 6 CONTAIN NO WETLAND AREA. THE
 PROPERTY LINES ARE THE EDGE OF THE WETLAND. LOT 2
 CONTAINS 1,759 SF OF WETLAND AREA.
 TOTAL ROAD AREA = 50,187 SF OR 1.15 AC.
 NOTE: LOTS 8 AND 9 ARE UNBUILDABLE LOTS.

BOARD OF HEALTH REQUIREMENTS:

NOTE: TO THE BOARD OF HEALTH, THE BOARD OF HEALTH APPROVES THE
 SUBDIVISION MAP AND THE SUBDIVISION MAP IS FILED WITH THE
 REGISTRAR, LLC.

DATE: 06/06/2016

1. Re: H. Donague
 CLERK OF THE TOWN OF HARWICH, HEREBY CERTIFY THAT THE
 NOTICE OF APPROVAL OF THIS PLAN BY THE PLANNING BOARD
 HAS BEEN RECEIVED AND RECORDED AT THIS OFFICE AND NO
 NOTICE OF APPEAL WAS RECEIVED DURING THE TWENTY DAYS
 NEXT AFTER SUCH RECEIPT AND RECORDING OF SAID NOTICE.

Quinn Donague
 HARWICH TOWN CLERK

SEE COVENANT TO BE RECORDED HERewith
 HARWICH PLANNING BOARD

DATE: 06/06/2016
Walter A. Donague
Walter A. Donague
Walter A. Donague
Walter A. Donague

OFFICIAL
 OFFICIAL
 OFFICIAL
 OFFICIAL

ADJUTANT
 A) SAKA L. DONNELLY
 DEED BOOK 27496 PAGE 32
 ASSESSORS MAP 31, PARCEL A-1

B) WALTER POSTER
 DEED BOOK 12304 PAGE 319
 ASSESSORS MAP 31, PARCEL A-2

C) GARY J. ZELCH
 ELIZABETH D. ZELCH
 DEED BOOK 40641 PAGE 112
 ASSESSORS MAP 31, PARCEL A-3

D) KENNETH A. MULLISSA SOUTHWORTH
 DEED BOOK 25353 PAGE 302
 ASSESSORS MAP 31, PARCEL A-4

E) THOMAS J. GARDI THEBET
 DEED BOOK 25754 PAGE 132
 ASSESSORS MAP 31, PARCEL A-5

BOOK 1666 PAGE 20
 OFFICIAL
 OFFICIAL
 OFFICIAL
 OFFICIAL

ROBERT C. GUDEN
 KATHAL GUDEN
 DEED BOOK 6040 PAGE 10
 PLAN BOOK 320 PAGE 60
 ASSESSORS MAP 40 PARCEL X1-7

JAMES J. JOHN SELLORFF
 DEED BOOK 31178 PAGE 214
 ASSESSORS MAP 40 PARCEL X1-8

ARTHUR P. DONAGUE, JR.
 VIRGINIA DONAGUE
 DEED BOOK 1266 PAGE 654
 ASSESSORS MAP 31, PARCEL D-2

ARTHUR P. DONAGUE, JR.
 VIRGINIA DONAGUE
 DEED BOOK 1412 PAGE 465
 ASSESSORS MAP 31, PARCEL D-3

TOWN OF HARWICH
 POLICE DEPARTMENT
 DEED BOOK 9769 PAGE 346
 PLAN BOOK 305 PAGE 47
 ASSESSORS MAP 31, PARCEL H1-3

TOWN OF HARWICH
 FIRE DEPARTMENT
 DEED BOOK 9769 PAGE 346
 PLAN BOOK 305 PAGE 47
 ASSESSORS MAP 31, PARCEL H1-2

HARWICH CONSERVATION TRUST
 DEED BOOK 27496 PAGE 332
 PLAN BOOK 325 PAGE 21
 ASSESSORS MAP 31, PARCEL D-1A

COMPACT OF CAPE COD
 DEED BOOK 27496 PAGE 300
 PLAN BOOK 325 PAGE 21
 ASSESSORS MAP 31, PARCEL D-6

FOR REGISTRY USE ONLY
 I CERTIFY THAT THIS PLAN WAS PREPARED
 IN ACCORDANCE WITH THE RULES AND
 REGULATIONS OF THE REGISTRARS OF
 DEEDS EFFECTIVE JANUARY 1, 1970 AND
 AMENDED JANUARY 7, 1995.

DATE: 06/06/2016
 PROFESSIONAL SURVEYOR
 J.M. O'REILLY & ASSOCIATES, INC.

PRELIMINARY PLAN
 DATE OF APPLICATION: 06/06/2016
 DATE OF APPROVAL: 06/06/2016
 DEFINITIVE PLAN
 DATE OF APPLICATION: 06/06/2016
 DATE OF APPROVAL: 06/06/2016
 DATE OF SIGNING: 06/06/2016

"CHLOE'S PATH"

DEFINITIVE SUBDIVISION
 PLAN OF LAND
 IN
 HARWICH, MASSACHUSETTS
 FOR
 HFH DEVELOPMENT, LLC

SCALE 1"=60' DECEMBER 14, 2015
 SCALE 1"=10.00 METERS DECEMBER 14, 2015
 REVISED 3-7-2016

J.M. O'REILLY & ASSOCIATES, INC.
 Professional Engineering & Land Surveying Services
 1579 Main Street - Route 8A
 P.O. Box 1773
 Brewster, MA 02631
 (508)886-6801
 (508)886-6802

09-19-2016 @ 11:17a

NOT
AN
OFFICIAL
COPY

NOT
AN
OFFICIAL
COPY

NOT
AN
OFFICIAL
COPY

NOT
AN
OFFICIAL
COPY



Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands
WPA Form 5 – Order of Conditions
Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

Provided by MassDEP:
SE 32-2248

MassDEP File #

808432

eDEP Transaction #

HARWICH

City/Town

TOWN OF HARWICH

A. General Information WETLAND PROTECTION BYLAW

Please note:
this form has
been modified
with added
space to
accommodate
the Registry
of Deeds
Requirements

1. From: TOWN OF HARWICH
Conservation Commission
2. This issuance is for (check one): a. ☒ Order of Conditions b. ☐ Amended Order of Conditions
3. To: Applicant:

Important:
When filling
out forms on
the
computer,
use only the
tab key to
move your
cursor - do
not use the
return key.



a. First Name HFH Development LLC b. Last Name _____

c. Organization PO Box 612

d. Mailing Address North Chatham e. City/Town MA f. State 02650 g. Zip Code

4. Property Owner (if different from applicant):

a. First Name Louis b. Last Name Seminara

c. Organization Quivet Neck R.T.

d. Mailing Address PO Box 1219

e. City/Town South Dennis f. State MA g. Zip Code 02660

5. Project Location:

a. Street Address Sisson Road and Forest Street b. City/Town Harwich

c. Assessors Map/Plat Number 31 d. Parcel/Lot Number D4

Latitude and Longitude, if known:

d. Latitude d m s e. Longitude d m s



Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands
WPA Form 5 - Order of Conditions
Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

Provided by MassDEP:
SE 32-2248
MassDEP File #
808432
eDEP Transaction #
HARWICH
City/Town

N O T

N O T

A. General Information (cont.)

A N

6. Property recorded at the Registry of Deeds for (attach additional information if more than one parcel):

BARNSTABLE

a. County

17492

c. Book

b. Certificate Number (if registered land)

70

d. Page

7. Dates: 12/21/2015 2/17/2016 2-18-2016

a. Date Notice of Intent Filed

b. Date Public Hearing Closed

c. Date of Issuance

8. Final Approved Plans and Other Documents (attach additional plan or document references as needed):

Preliminary Grid Subdivision Plan Showing Proposed Limit of Activity-Conceptual Plan of Land in Harwich MA for Donovan Building Corporation

JM O'Reilly & Associates

John M. O'Reilly, PE

b. Prepared By

c. Signed and Stamped by

rev. 12/21/2015

1" = 60'

d. Final Revision Date

e. Scale

Chloe's Path Roadway Plan & Profile 1" = 40' John M. O'Reilly PE

1" = 40'

f. Additional Plan or Document Title

g. Date

B. Findings

1. Findings pursuant to the Massachusetts Wetlands Protection Act:

Following the review of the above-referenced Notice of Intent and based on the information provided in this application and presented at the public hearing, this Commission finds that the areas in which work is proposed is significant to the following interests of the Wetlands Protection Act (the Act). Check all that apply:

- a. ☐ Public Water Supply b. ☐ Land Containing Shellfish c. ☒ Prevention of Pollution
d. ☐ Private Water Supply e. ☐ Fisheries f. ☒ Protection of Wildlife Habitat
g. ☐ Groundwater Supply h. ☒ Storm Damage Prevention i. ☒ Flood Control

2. This Commission hereby finds the project, as proposed, is: (check one of the following boxes)

Approved subject to:

- a. ☒ the following conditions which are necessary in accordance with the performance standards set forth in the wetlands regulations. This Commission orders that all work shall be performed in accordance with the Notice of Intent referenced above, the following General Conditions, and any other special conditions attached to this Order. To the extent that the following conditions modify or differ from the plans, specifications, or other proposals submitted with the Notice of Intent, these conditions shall control.



NOT
 Massachusetts Department of Environmental Protection
 Bureau of Resource Protection - Wetlands
WPA Form 5 - Order of Conditions
 C O P Y
 Massachusetts Wetlands Protection Act M.G.L. E. 261, §40

Provided by MassDEP:
 SE 32-2248
 MassDEP File #
 808432
 eDEP Transaction #
 HARWICH
 City/Town

NOT
B. Findings (cont.)
 OFFICIAL
 Denied because
 C O P Y

- NOT
 AN
 OFFICIAL
 C O P Y
- b. ☐ the proposed work cannot be conditioned to meet the performance standards set forth in the wetland regulations. Therefore, work on this project may not go forward unless and until a new Notice of Intent is submitted which provides measures which are adequate to protect the interests of the Act, and a final Order of Conditions is issued. **A description of the performance standards which the proposed work cannot meet is attached to this Order.**
- c. ☐ the information submitted by the applicant is not sufficient to describe the site, the work, or the effect of the work on the interests identified in the Wetlands Protection Act. Therefore, work on this project may not go forward unless and until a revised Notice of Intent is submitted which provides sufficient information and includes measures which are adequate to protect the Act's interests, and a final Order of Conditions is issued. **A description of the specific information which is lacking and why it is necessary is attached to this Order as per 310 CMR 10.05(6)(c).**
3. ☒ Buffer Zone Impacts: Shortest distance between limit of project disturbance and the wetland resource area specified in 310 CMR 10.02(1)(a) 0
 a. linear feet

Inland Resource Area Impacts: Check all that apply below. (For Approvals Only)

Resource Area	Proposed Alteration	Permitted Alteration	Proposed Replacement	Permitted Replacement
4. <input type="checkbox"/> Bank	a. linear feet	b. linear feet	c. linear feet	d. linear feet
5. <input type="checkbox"/> Bordering Vegetated Wetland	a. square feet	b. square feet	c. square feet	d. square feet
6. <input type="checkbox"/> Land Under Waterbodies and Waterways	a. square feet e. c/y dredged	b. square feet f. c/y dredged	c. square feet	d. square feet
7. <input type="checkbox"/> Bordering Land Subject to Flooding	a. square feet	b. square feet	c. square feet	d. square feet
Cubic Feet Flood Storage	e. cubic feet	f. cubic feet	g. cubic feet	h. cubic feet
8. <input type="checkbox"/> Isolated Land Subject to Flooding	a. square feet	b. square feet		
Cubic Feet Flood Storage	c. cubic feet	d. cubic feet	e. cubic feet	f. cubic feet
9. <input type="checkbox"/> Riverfront Area	a. total sq. feet	b. total sq. feet		
Sq ft within 100 ft	c. square feet	d. square feet	e. square feet	f. square feet
Sq ft between 100-200 ft	g. square feet	h. square feet	i. square feet	j. square feet



NOT
 Massachusetts Department of Environmental Protection
 Bureau of Resource Protection - Wetlands
WPA Form 5 - Order of Conditions
 Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

Provided by MassDEP:
 SE 32-2248
 MassDEP File #
 808432
 eDEP Transaction #
 HARWICH
 City/Town

NOT
B. Findings (cont.)

OFFICIAL

NOT
 A N

OFFICIAL

Coastal Resource Area Impacts: Check all that apply below. (For Approvals Only)

	Proposed Alteration	Permitted Alteration	Proposed Replacement	Permitted Replacement
10. <input type="checkbox"/> Designated Port Areas	Indicate size under Land Under the Ocean, below			
11. <input type="checkbox"/> Land Under the Ocean	a. square feet	b. square feet		
	c. c/y dredged	d. c/y dredged		
12. <input type="checkbox"/> Barrier Beaches	Indicate size under Coastal Beaches and/or Coastal Dunes below			
13. <input type="checkbox"/> Coastal Beaches	a. square feet	b. square feet	c. nourishment cu yd	d. nourishment cu yd
14. <input type="checkbox"/> Coastal Dunes	a. square feet	b. square feet	c. nourishment cu yd	d. nourishment cu yd
15. <input type="checkbox"/> Coastal Banks	a. linear feet	b. linear feet		
16. <input type="checkbox"/> Rocky Intertidal Shores	a. square feet	b. square feet		
17. <input type="checkbox"/> Salt Marshes	a. square feet	b. square feet	c. square feet	d. square feet
18. <input type="checkbox"/> Land Under Salt Ponds	a. square feet	b. square feet		
	c. c/y dredged	d. c/y dredged		
19. <input type="checkbox"/> Land Containing Shellfish	a. square feet	b. square feet	c. square feet	d. square feet
20. <input type="checkbox"/> Fish Runs	Indicate size under Coastal Banks, Inland Bank, Land Under the Ocean, and/or inland Land Under Waterbodies and Waterways, above			
	a. c/y dredged	b. c/y dredged		
21. <input type="checkbox"/> Land Subject to Coastal Storm Flowage	a. square feet	b. square feet		
22. <input type="checkbox"/> Riverfront Area	a. total sq. feet	b. total sq. feet		
Sq ft within 100 ft	c. square feet	d. square feet	e. square feet	f. square feet
Sq ft between 100-200 ft	g. square feet	h. square feet	i. square feet	j. square feet



NOT
 Massachusetts Department of Environmental Protection
 Bureau of Resource Protection - Wetlands
WPA Form 5 - Order of Conditions
 MASSACHUSETTS WETLANDS PROTECTION ACT M.G.L. c. 131, §40

Provided by MassDEP:
 SE 32-2248
 MassDEP File #
 808432
 eDEP Transaction #
 HARWICH
 City/Town

NOT
B. Findings (cont.)
 OFFICIAL
 COPY

* #23. If the project is for the purpose of restoring or enhancing a wetland resource area in addition to the square footage that has been entered in Section B.5.c (BVW) or B.17.c (Salt Marsh) above, please enter the additional amount here.

23. ☐ Restoration Enhancement *

a. square feet of BVW

b. square feet of salt marsh

24. ☐ Stream Crossing(s):

a. number of new stream crossings

b. number of replacement stream crossings

C. General Conditions Under Massachusetts Wetlands Protection Act

The following conditions are only applicable to Approved projects.

1. Failure to comply with all conditions stated herein, and with all related statutes and other regulatory measures, shall be deemed cause to revoke or modify this Order.
2. The Order does not grant any property rights or any exclusive privileges; it does not authorize any injury to private property or invasion of private rights.
3. This Order does not relieve the permittee or any other person of the necessity of complying with all other applicable federal, state, or local statutes, ordinances, bylaws, or regulations.
4. The work authorized hereunder shall be completed within three years from the date of this Order unless either of the following apply:
 - a. The work is a maintenance dredging project as provided for in the Act; or
 - b. The time for completion has been extended to a specified date more than three years, but less than five years, from the date of issuance. If this Order is intended to be valid for more than three years, the extension date and the special circumstances warranting the extended time period are set forth as a special condition in this Order.
 - c. If the work is for a Test Project, this Order of Conditions shall be valid for no more than one year.
5. This Order may be extended by the issuing authority for one or more periods of up to three years each upon application to the issuing authority at least 30 days prior to the expiration date of the Order. An Order of Conditions for a Test Project may be extended for one additional year only upon written application by the applicant, subject to the provisions of 310 CMR 10.05(11)(f).
6. If this Order constitutes an Amended Order of Conditions, this Amended Order of Conditions does not extend the issuance date of the original Final Order of Conditions and the Order will expire on 2/18/2019 unless extended in writing by the Department.
7. Any fill used in connection with this project shall be clean fill. Any fill shall contain no trash, refuse, rubbish, or debris, including but not limited to lumber, bricks, plaster, wire, lath, paper, cardboard, pipe, tires, ashes, refrigerators, motor vehicles, or parts of any of the foregoing.



Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands
WPA Form 5 - Order of Conditions
Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

Provided by MassDEP:
SE 32-2248
MassDEP File #
808432
eDEP Transaction #
HARWICH
City/Town

N O T

N O T

C. General Conditions Under Massachusetts Wetlands Protection Act

O F F I C I A L

O F F I C I A L

8. This Order is Official until all administrative appeal periods from this Order have elapsed, or if such an appeal has been taken, until all proceedings before the Department have been completed.
9. No work shall be undertaken until the Order has become final and then has been recorded in the Registry of Deeds or the Land Court for the district in which the land is located, within the chain of title of the affected property. In the case of recorded land, the Final Order shall also be noted in the Registry's Grantor Index under the name of the owner of the land upon which the proposed work is to be done. In the case of the registered land, the Final Order shall also be noted on the Land Court Certificate of Title of the owner of the land upon which the proposed work is done. The recording information shall be submitted to the Conservation Commission on the form at the end of this Order, which form must be stamped by the Registry of Deeds, prior to the commencement of work.
10. A sign shall be displayed at the site not less than two square feet or more than three square feet in size bearing the words,

"Massachusetts Department of Environmental Protection" [or, "MassDEP"]
"File Number SE 32-2248 "
11. Where the Department of Environmental Protection is requested to issue a Superseding Order, the Conservation Commission shall be a party to all agency proceedings and hearings before MassDEP.
12. Upon completion of the work described herein, the applicant shall submit a Request for Certificate of Compliance (WPA Form 8A) to the Conservation Commission.
13. The work shall conform to the plans and special conditions referenced in this order.
14. Any change to the plans identified in Condition #13 above shall require the applicant to inquire of the Conservation Commission in writing whether the change is significant enough to require the filing of a new Notice of Intent.
15. The Agent or members of the Conservation Commission and the Department of Environmental Protection shall have the right to enter and inspect the area subject to this Order at reasonable hours to evaluate compliance with the conditions stated in this Order, and may require the submittal of any data deemed necessary by the Conservation Commission or Department for that evaluation.
16. This Order of Conditions shall apply to any successor in interest or successor in control of the property subject to this Order and to any contractor or other person performing work conditioned by this Order.



Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands
WPA Form 5 - Order of Conditions
Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

Provided by MassDEP:
SE 32-2248
MassDEP File #
808432
eDEP Transaction #
HARWICH
City/Town

N O T

N O T

C. General Conditions Under Massachusetts Wetlands Protection Act (cont.)

17. Prior to the start of work, and if the project involves work adjacent to a Bordering Vegetated Wetland, the boundary of the wetland in the vicinity of the proposed work area shall be marked by wooden stakes or flagging. Once in place, the wetland boundary markers shall be maintained until a Certificate of Compliance has been issued by the Conservation Commission.

18. All sedimentation barriers shall be maintained in good repair until all disturbed areas have been fully stabilized with vegetation or other means. At no time shall sediments be deposited in a wetland or water body. During construction, the applicant or his/her designee shall inspect the erosion controls on a daily basis and shall remove accumulated sediments as needed. The applicant shall immediately control any erosion problems that occur at the site and shall also immediately notify the Conservation Commission, which reserves the right to require additional erosion and/or damage prevention controls it may deem necessary. Sedimentation barriers shall serve as the limit of work unless another limit of work line has been approved by this Order.

19. The work associated with this Order (the "Project")
- (1) ☒ is subject to the Massachusetts Stormwater Standards
 - (2) ☐ is NOT subject to the Massachusetts Stormwater Standards

If the work is subject to the Stormwater Standards, then the project is subject to the following conditions:

a) All work, including site preparation, land disturbance, construction and redevelopment, shall be implemented in accordance with the construction period pollution prevention and erosion and sedimentation control plan and, if applicable, the Stormwater Pollution Prevention Plan required by the National Pollution Discharge Elimination System Construction General Permit as required by Stormwater Condition 8. Construction period erosion, sedimentation and pollution control measures and best management practices (BMPs) shall remain in place until the site is fully stabilized.

b) No stormwater runoff may be discharged to the post-construction stormwater BMPs unless and until a Registered Professional Engineer provides a Certification that:

- i. all construction period BMPs have been removed or will be removed by a date certain specified in the Certification. For any construction period BMPs intended to be converted to post construction operation for stormwater attenuation, recharge, and/or treatment, the conversion is allowed by the MassDEP Stormwater Handbook BMP specifications and that the BMP has been properly cleaned or prepared for post construction operation, including removal of all construction period sediment trapped in inlet and outlet control structures;
- ii. as-built final construction BMP plans are included, signed and stamped by a Registered Professional Engineer, certifying the site is fully stabilized;
- iii. any illicit discharges to the stormwater management system have been removed, as per the requirements of Stormwater Standard 10;



Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands
WPA Form 5 - Order of Conditions
Massachusetts Wetlands Protection Act M.G.L. E. 131, §40

Provided by MassDEP:
SE 32-2248
MassDEP File #
808432
eDEP Transaction #
HARWICH
City/Town

NOT

NOT

C. General Conditions Under Massachusetts Wetlands Protection Act (cont.)

O F F I C I A L O F F I C I A L

iv. all post-construction stormwater BMPs are installed in accordance with the plans (including all planting plans) approved by the issuing authority, and have been inspected to ensure that they are not damaged and that they are in proper working condition;

v. any vegetation associated with post-construction BMPs is suitably established to withstand erosion.

c) The landowner is responsible for BMP maintenance until the issuing authority is notified that another party has legally assumed responsibility for BMP maintenance. Prior to requesting a Certificate of Compliance, or Partial Certificate of Compliance, the responsible party (defined in General Condition 18(e)) shall execute and submit to the issuing authority an Operation and Maintenance Compliance Statement ("O&M Statement") for the Stormwater BMPs identifying the party responsible for implementing the stormwater BMP Operation and Maintenance Plan ("O&M Plan") and certifying the following:

i.) the O&M Plan is complete and will be implemented upon receipt of the Certificate of Compliance, and

ii.) the future responsible parties shall be notified in writing of their ongoing legal responsibility to operate and maintain the stormwater management BMPs and implement the Stormwater Pollution Prevention Plan.

d) Post-construction pollution prevention and source control shall be implemented in accordance with the long-term pollution prevention plan section of the approved Stormwater Report and, if applicable, the Stormwater Pollution Prevention Plan required by the National Pollution Discharge Elimination System Multi-Sector General Permit.

e) Unless and until another party accepts responsibility, the landowner, or owner of any drainage easement, assumes responsibility for maintaining each BMP. To overcome this presumption, the landowner of the property must submit to the issuing authority a legally binding agreement of record, acceptable to the issuing authority, evidencing that another entity has accepted responsibility for maintaining the BMP, and that the proposed responsible party shall be treated as a permittee for purposes of implementing the requirements of Conditions 18(f) through 18(k) with respect to that BMP. Any failure of the proposed responsible party to implement the requirements of Conditions 18(f) through 18(k) with respect to that BMP shall be a violation of the Order of Conditions or Certificate of Compliance. In the case of stormwater BMPs that are serving more than one lot, the legally binding agreement shall also identify the lots that will be serviced by the stormwater BMPs. A plan and easement deed that grants the responsible party access to perform the required operation and maintenance must be submitted along with the legally binding agreement.

f) The responsible party shall operate and maintain all stormwater BMPs in accordance with the design plans, the O&M Plan, and the requirements of the Massachusetts Stormwater Handbook.



NOT
 Massachusetts Department of Environmental Protection
 Bureau of Resource Protection - Wetlands
WPA Form 5 - Order of Conditions
 NOT
 Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

Provided by MassDEP:
 SE 32-2248
 MassDEP File #
 808432
 eDEP Transaction #
 HARWICH
 City/Town

NOT

NOT

C. General Conditions Under Massachusetts Wetlands Protection Act (cont.)

OFFICIAL

OFFICIAL

g) The responsible party shall:

COPY

1. Maintain an operation and maintenance log for the last three (3) consecutive calendar years of inspections, repairs, maintenance and/or replacement of the stormwater management system or any part thereof, and disposal (for disposal the log shall indicate the type of material and the disposal location);
 2. Make the maintenance log available to MassDEP and the Conservation Commission ("Commission") upon request; and
 3. Allow members and agents of the MassDEP and the Commission to enter and inspect the site to evaluate and ensure that the responsible party is in compliance with the requirements for each BMP established in the O&M Plan approved by the issuing authority.
- h) All sediment or other contaminants removed from stormwater BMPs shall be disposed of in accordance with all applicable federal, state, and local laws and regulations.
- i) Illicit discharges to the stormwater management system as defined in 310 CMR 10.04 are prohibited.
- j) The stormwater management system approved in the Order of Conditions shall not be changed without the prior written approval of the issuing authority.
- k) Areas designated as qualifying pervious areas for the purpose of the Low Impact Site Design Credit (as defined in the MassDEP Stormwater Handbook, Volume 3, Chapter 1, Low Impact Development Site Design Credits) shall not be altered without the prior written approval of the issuing authority.
- l) Access for maintenance, repair, and/or replacement of BMPs shall not be withheld. Any fencing constructed around stormwater BMPs shall include access gates and shall be at least six inches above grade to allow for wildlife passage.

Special Conditions (if you need more space for additional conditions, please attach a text document):

20. For Test Projects subject to 310 CMR 10.05(11), the applicant shall also implement the monitoring plan and the restoration plan submitted with the Notice of Intent. If the conservation commission or Department determines that the Test Project threatens the public health, safety or the environment, the applicant shall implement the removal plan submitted with the Notice of Intent or modify the project as directed by the conservation commission or the Department.



NOT
 Massachusetts Department of Environmental Protection
 Bureau of Resource Protection - Wetlands
WPA Form 5 - Order of Conditions
 Massachusetts Wetlands Protection Act M.G.L. E. 261, §40

Provided by MassDEP:
 SE 32-2248
 MassDEP File #
 808432
 eDEP Transaction #
 HARWICH
 City/Town

NOT

NOT

D. Findings Under Municipal Wetlands Bylaw or Ordinance

OFFICIAL

OFFICIAL

1. Is a municipal wetlands bylaw or ordinance applicable? ☒ Yes ☐ No

2. The Harwich hereby finds (check one that applies):
 Conservation Commission

- a. ☐ that the proposed work cannot be conditioned to meet the standards set forth in a municipal ordinance or bylaw, specifically:

1. Municipal Ordinance or Bylaw

2. Citation

Therefore, work on this project may not go forward unless and until a revised Notice of Intent is submitted which provides measures which are adequate to meet these standards, and a final Order of Conditions is issued.

- b. ☒ that the following additional conditions are necessary to comply with a municipal ordinance or bylaw:

Town of Harwich Wetland Protection Bylaw/Regulations

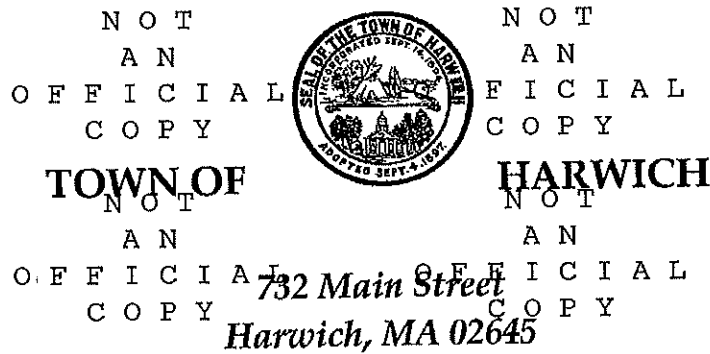
1. Municipal Ordinance or Bylaw

2. Citation

3. The Commission orders that all work shall be performed in accordance with the following conditions and with the Notice of Intent referenced above. To the extent that the following conditions modify or differ from the plans, specifications, or other proposals submitted with the Notice of Intent, the conditions shall control.

The special conditions relating to municipal ordinance or bylaw are as follows (if you need more space for additional conditions, attach a text document):

see attached special conditions



CONSERVATION COMMISSION

(508)430-7538 FAX (508)430-7531

TOWN OF HARWICH CONSERVATION COMMISSION
ORDER OF CONDITIONS

DEP FILE # SE 32-2248

NAME: HFH Development LLC.

LOCATION: Sisson Road – Forest Street, Map 31, Parcel D4

PLAN TITLE: 1. Preliminary Grid Subdivision Plan Showing Proposed Limit of Activity – Conceptual Plan of Land in Harwich Massachusetts for Donovan Building Corporation

2. Chloe's Path Roadway Plan and Profile

DATE: 1. Revised 12-21-2015
2. 12/14/2015

Scale: 1. 1" = 60'
2. 1" = 40'

PREPARED BY: J.M. O'Reilly & Associates, Inc.

SIGNED/STAMPED BY: John M. O'Reilly, P.E.

RESOURCE: Within the 100' buffer zone to a Vegetated Wetland.

This permit allows for the placement of fill so as to provide the required side slopes for a proposed roadway. The necessary clearing and proposed grading are the only activities within the 100' buffer zone to the Vegetated Wetland. Disturbed areas are to be revegetated.

The provision of the Harwich By-Law Article VII which also applies is hereby certified to be complied with and is part of this ruling.

General Conditions 1 – 15 Issued by the State Department of Environmental Protection on the preceding pages should be read and followed.

O F F I C I A L O F F I C I A L

C O P Y **GENERAL CONDITIONS** P Y

1. No work shall commence on this project until the ten (10) business day appeal period has passed. This period shall begin on the day the Order of Conditions is hand delivered or postmarked, as appropriate. O F F I C I A L
2. The Order must be registered at the Barnstable County Registry of Deeds prior to commencement of any work and notice filed with the Commission.
3. The applicant or representative shall inform the Commission in writing of the name, address, and telephone number of the project contractor who will be responsible for on-site compliance with this order at least 72 hours in advance.
4. Members and Agent of the Harwich Conservation Commission shall have the right to enter and inspect the premises to evaluate compliance with the conditions stated in this Order, the Act, and 310 CMR 10.00.
5. This Order of Conditions applies only to the work permitted by this Order.
6. If any alteration of the Wetland/Resource Area does occur, the Commission shall impose measures, as it finds necessary to protect and restore those areas.
7. The construction site shall be left in a stable condition at the close of each day. Construction refuse and debris shall be controlled daily. Erosion and sedimentation controls shall be inspected, maintained, and reinforced if necessary daily.
8. Erosion and sediment control measures, as set forth in the referenced plan, shall be installed and kept in place for the duration of construction on the site and until permanent vegetative cover is established.
9. It is the responsibility of the applicant to procure all other applicable federal, state and local permits and approvals associated with this project.
10. Any refuse material from the site shall be disposed of at an approved location, and in no case will these materials be buried or disposed of in or near a Resource Area/Wetland.
11. This Order of Conditions shall apply to any successor in interest or assigns of the property.
12. **This Order of Conditions shall expire on 2/18/2019.** For an extension to be granted, the Commission must receive a written request 30 days prior to the expiration of this Order.
13. All work will be done in strict conformity with the plans approved by the Commission under this Order of Conditions. Failure to obtain the Commission's approval before deviating in any way from the approved plans shall constitute a violation of this Order of Conditions and permit.
14. If any unforeseen problem occurs during construction which affects any of the statutory interests of the Wetland Protection Act or Harwich By-Law Article VII, upon discovery, the Conservation Commission, or its Agent shall notify the developer immediately to determine the correct measures to be employed.
15. Failure to comply with all the conditions of this Order shall result in enforcement action by the Harwich Conservation Commission, which may include fines not to exceed \$300.00 per day/per violation.

SPECIAL CONDITIONS

- 1.) There shall be an onsite pre-construction meeting between the contractor, Engineer, and conservation administrator.
- 2.) Limit of work shall be straw wattles backed by staked silt fence. No activity is to occur beyond the limit of work. An adequate supply of extra erosion control measures shall be onsite at all times in case there is a need to replace a section.
- 3.) Plantings must survive at least 2 growing seasons prior to requesting a Certificate of Compliance.
- 4.) There is to be no permanent underground irrigation or fertilization within the 100' wetland buffer.
- 5.) Above ground drip irrigation may be used for up to 2 growing seasons after plants are installed to assist with their establishment, and then must be removed.
- 6.) Photos of the site shall be taken before and after the project is finished. These photos may be submitted electronically to the Conservation Administrator.
- 7.) A certified 'As-built' plan signed by the engineer shall be provided when requesting a Certificate of Compliance.
- 8.) Drainage facilities must be constructed as per the approved plan, and catch basins must be maintained to prevent backup of runoff.
- 9.) This project location is within mapped Priority Habitat for Eastern Box Turtle. The applicant must furnish all materials requested by NHESP and the Conservation Department, and obtain approval from NHESP for the whole project from them prior to starting any work. These items include the following:
 - Updated impact calculations as detailed in email from Misty-Anne Marold (Division) to Mark Cooperman on 9/15/2015.
 - Box Turtle Protection Plan
 - Proposed Box Turtle nesting habitat creation on Parcel D-3.
 - Proposed mechanism of funding nesting habitat management and maintenance.
 - Proposed draft instruments to create easements and deed restrictions for the areas outside the limits of work.
 - A recordable monumentation and signage plan.



Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands
WPA Form 5 - Order of Conditions
Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

Provided by MassDEP:
SE 32-2248
MassDEP File #
808432
eDEP Transaction #
HARWICH
City/Town

NOT

NOT

E. Signatures

OFFICIAL

OFFICIAL

This Order is valid for three years, unless otherwise specified as a special condition pursuant to General Conditions #4, from the date of issuance.

Please indicate the number of members who will sign this form.

This Order must be signed by a majority of the Conservation Commission.

The Order must be mailed by certified mail (return receipt requested) or hand delivered to the applicant. A copy also must be mailed or hand delivered at the same time to the appropriate Department of Environmental Protection Regional Office, if not filing electronically, and the property owner, if different from applicant.

Signatures:

[Handwritten signatures]

[Handwritten signature]

☐ by hand delivery on

☒ by certified mail, return receipt requested, on

Date

Date

2-18-2016

1. Date of Issuance

4

2. Number of Signers


F. Appeals

The applicant, the owner, any person aggrieved by this Order, any owner of land abutting the land subject to this Order, or any ten residents of the city or town in which such land is located, are hereby notified of their right to request the appropriate MassDEP Regional Office to issue a Superseding Order of Conditions. The request must be made by certified mail or hand delivery to the Department, with the appropriate filing fee and a completed Request for Departmental Action Fee Transmittal Form, as provided in 310 CMR 10.03(7) within ten business days from the date of issuance of this Order. A copy of the request shall at the same time be sent by certified mail or hand delivery to the Conservation Commission and to the applicant, if he/she is not the appellant.

Any appellants seeking to appeal the Department's Superseding Order associated with this appeal will be required to demonstrate prior participation in the review of this project. Previous participation in the permit proceeding means the submission of written information to the Conservation Commission prior to the close of the public hearing, requesting a Superseding Order, or providing written information to the Department prior to issuance of a Superseding Order.

The request shall state clearly and concisely the objections to the Order which is being appealed and how the Order does not contribute to the protection of the interests identified in the Massachusetts Wetlands Protection Act (M.G.L. c. 131, § 40), and is inconsistent with the wetlands regulations (310 CMR 10.00). To the extent that the Order is based on a municipal ordinance or bylaw, and not on the Massachusetts Wetlands Protection Act or regulations, the Department has no appellate jurisdiction.

FOR REGISTRY USE ONLY

DATE 2-23-16
 PROFESSIONAL LAND SURVEYOR

A circular seal for a Professional Land Surveyor. The outer ring contains the text "PROFESSIONAL LAND SURVEYOR" at the top and "COUNTY OF SHERIDAN" at the bottom. The center of the seal contains the text "M. OFFICERLY REG. 40798".

666 19

ZONING CLASSIFICATION

AREA OF NEW LAND PARCEL (A-1) AND REMAINDER OF B):
APPROXIMATE TOTAL AREA = 875,320 SF ± OR 13.21 AC ±
APPROXIMATE UPLAND AREA = 403,190 SF ± OR 9.26 AC ±
APPROXIMATE WETLAND AREA = 172,130 SF ± OR 3.95 AC ±

NOTE
PARCELS A-1 AND B-1 CONTAIN INSUFFICIENT AREA AND
PRORATE TO COMPLY WITH ZONING REGULATIONS AND
SHALL BE CONVEYED TO ADJUTERS. PARCEL B-1 SHALL
BECOME AND REMAIN A PART OF THE REMAINDER OF
PARCEL A. PARCEL A-1 SHALL BECOME AND REMAIN
A PART OF THE REMAINDER OF PARCEL B.

PARCEL B
LOUIS J. SEMINARA, JR., TRUSTEE
QUIVET NECK REALTY TRUST
P. O. BOX 1219
SOUTH DINWIDDY, MA 02660
DEED BOOK 17492 PAGE 70
PLAN BOOK 353 PAGE 21
ADDRESSES: MAP 31, PARCEL D-4
TOTAL AREA 356,440 S.F. OR 18.45 AC±
UPLAND AREA 418,810 S.F. OR 9.61 AC±
WETLAND AREA 177,630 S.F. OR 4.06 AC±

A.) SARA L. DONNELLY
DEED BOOK 27883 PAGE 33
ASSESSORS MAP 31 PARCEL A-1

B.) WALTER FOSTER
DEED BOOK 12304 PAGE 315
ASSESSORS MAP 31 PARCEL A-2

C.) GARY J. ZELCH
ELIZABETH D. ZELCH
DEED BOOK 494 | PAGE 112
ASSESSORS MAP 31 | PARCEL A-5

C.) KENNETH + MELISSA SOUTHWORTH
DEED BOOK 26353 PAGE 262
APPROX. MAP 11 PARCEL A-A

E.) THOMAS & CAROL THIBERT
DEED BOOK 25754 PAGE 122
ASSESSORS AMP 3 | PARCEL A-5

TOWN OF MARION
POLICE DEPARTMENT
DEED BOOK 3769 PAGE 346
PLAN BOOK 303 PAGE 47
ASSESSORS MAP 31 PARCEL 11-3

TOWN OF MARWICH
FIRE DEPARTMENT
DEED BOOK 5769 PAGE 335 & 342
PLAN BOOK 505 PAGE 47
ASSESSORS MAP 31 PARCEL M1-2

APPROVAL UNDER THE SUBDIVISION CONTROL LAW
IS NOT REQUIRED

DATE OF APPLICATION January 13, 2016

NO DETERMINATION OF COMPLIANCE WITH ZONING REQUIREMENTS
HAS BEEN MADE OR IS INTENDED.

HARVICH PLANNING BOARD

DATE February 22, 2016

[Handwritten signature]

Juan C. Kogar _____

Allen Peterson

[Signature]

REMAINDER OF PARCEL B

TOTAL AREA: 556,440 SF ± OR 12.77 AC ±
UPLAND AREA: 354,310 SF ± OR 8.02 AC ±
WETLAND AREA: 172,130 SF ± OR 3.93 AC ±

REMAINDER OF PARCEL A

TOTAL AREA: 135,340 SF ± OR 3.11 AC±
 UPLAND AREA: 70,230 SF ± OR 1.60 AC±
 WETLAND AREA: 57,310 SF ± OR 1.31 AC±

PARCEL B-1

TOTAL AREA: 40,000 SF ± OR 0.92 AC±
UPLAND AREA: 34,500 SF ± OR 0.79 AC±
WETLAND AREA: 5,500 SF ± OR 0.13 AC±

3437

APPROVAL NOT REQUIRED

PLAN OF LAND

HARWICH, MASSACHUSETTS

FOR
CHILD DEVELOPMENT 11

[illegible]

SCALE | 1-50 DECEMBER 11, 2015

1. **Q1:** What is the main purpose of the study?



J.M. O'REILLY & ASSOCIATES, INC.
Professional Engineering & Land Surveying Services

1573 Main Street - Route 6A
P.O. Box 1773
Brewster, MA 02631
(508)898-6601
(508)898-8802

G:\AA\Job\DOONOVAN\3012\APR.docg

JMO-3512A

N D E C L A R A T I O N
A N A N

THIS DECLARATION OF RESTRICTION (hereinafter the "Declaration") is made this day of September, 2016, by HFH Development LLC with an address of 39 George Ryder Road, Chatham, MA 02633 (hereinafter the "Declarant").

N O T N O T
A N W I T N E S S E T H A N

WHEREAS, Declarant is the owner of that certain parcel of land located in the Town of Harwich, Barnstable County, Massachusetts (hereinafter the "Property"), shown on as Parcel B-1 on the plan entitled "Approval Not Required Plan of Land in Harwich, Massachusetts for Donovan Building Corporation" dated December 11, 2015, prepared by J.M. O'Reilly & Associates, Inc., and recorded in the Barnstable County District Registry of Deeds at Plan Book 666 as Plan 20-22 (the "Plan"); and

WHEREAS, the Property contains important habitat, breeding sites, and migration routes for wildlife including the Eastern Box Turtle (*Terrapene Carolina*) which at the time of this recording is listed as endangered pursuant to the Massachusetts Endangered Species Act (MESA) (G.L. c. 131A:3 and 321 CMR 10.23); and

WHEREAS, Declarant desires to protect a significant contiguous area of this rare species habitat as an integral part of the development of the Property; and

WHEREAS, the Property is subject to the terms and provisions of MA Endangered Species Act [G.L. c. 131A]; and

WHEREAS, Declarant desires and agrees that Parcel B-1, which contains approximately 40,000 square feet as shown on said Plan, shall be maintained in perpetuity as habitat and open space, subject to the Prohibited Acts and Uses and Reserved Rights set forth below;

NOW, THEREFORE, Declarant hereby voluntarily declares and imposes in perpetuity upon the Parcel the following covenants, conditions and restrictions for the benefit of Declarant, the Town of Harwich [hereinafter the "Town"], and the Commonwealth of Massachusetts Division of Fisheries and Wildlife [hereinafter the "Division"], and said Property shall be held, transferred, sold, conveyed, occupied and used subject to the covenants, conditions, and restrictions hereinafter set forth.

1. **Prohibited Acts and Uses.** Subject to the exceptions set forth in Section 2 below, the following acts and uses are prohibited in the Parcel:
 - A. Construction or placing of any building, tennis court, landing strip, mobile home, swimming pool, fences, asphalt or concrete pavement, sign, billboard or other advertising display, antenna, tower, or other temporary or permanent structure or facility in, on, above or below said Parcel.
 - B. Mining, excavating, dredging or removing soil, loam, peat, gravel, sand, rock or other mineral resource or natural deposit.

- C. Placing, filling, storing or dumping of soil, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, waste or other substance of material whatsoever or the installation of underground storage tanks.
- D. Cutting, removing or otherwise destroying trees, grasses or other vegetation or disturbance of shrubs, ground, forest floor or leaf litter.
- E. The use of motorized vehicles of any kind, except as required by the police, fire department or any other governmental agents in carrying out their lawful duties.
- F. Activities substantially detrimental to drainage, flood control, water conservation, erosion control or soil conservation.
- G. Any other use of or activity on the Parcel which would materially impair significant conservation interests thereon unless necessary for the protection of the conservation interest that are the subject of this restrictive covenant.

2. **Reserved Rights.** Notwithstanding any provisions herein to the contrary, Declarant reserves to itself and its successors and assigns the right to:

- A. establish, enforce, waive, alter and amend such additional rules, regulations, covenants, conditions and restrictions governing use of the Parcel as are not otherwise prohibited by this Declaration of Restriction as agreed to in writing by the Division and allowed by applicable federal, state or local law or regulation, and
- B. conduct or permit the following activities in the Parcel if such acts do not materially impair significant conservation interests:
 - 1) Selective cutting or pruning of trees and vegetation to maintain access to and over existing footpaths located thereon and for protection of persons and property from imminent risks of harm or damage to persons and structures.
 - 2) Construct fences or necessary boundary markers on the Parcel upon written consent by the Division, such consent not to be unreasonably withheld.
 - 3) Habitat management activities, including forestry, may be permissible with prior written approval from the Natural Heritage and Endangered Species Program of the Division of Fisheries and Wildlife (the "Division"), its successors and assigns;

3. **Monuments and Signage.** The Declarant and the Declarant's Successors shall maintain in good condition any, bounds, monuments, markers and signs shown on the Plan,

demarcating the boundaries of the Parcel, and shall repair and or replace said monuments and signage on an as needed basis.

O F F I C I A L O F F I C I A L

4. **Term - Binding Effect In Perpetuity.** This Declaration of Restriction and its provisions herein set forth shall run with the Parcel as shown on said Plan in perpetuity from the date of recordation in the Barnstable County Registry of Deeds and shall be binding upon Declarant, Declarant's successors and assigns, and any other party having an ownership interest in said Parcel or claiming to have an interest with respect to said Parcel as tenants, jointers, licenses or otherwise, and all of the respective heirs, successors, grantees, mortgages, assigns, agents, contractors, subcontractors and employees of the foregoing.

This Declaration of Restriction is hereby intended and declared to be in perpetuity and no re-recordation of this Declaration of Restriction under G.L. c. 184, ss. 23-30 or any other law shall ever be necessary in order to maintain the full legal effect and authority hereof and Declarant and its successors and assigns, including but not limited to all subsequent owners of the Parcel, hereby waive all their legal right to and shall forego any action in law or equity of any kind whatsoever attempting to contest the validity of any provision of this Declaration of Restriction and shall not, in any enforcement action, raise the invalidity of any provision of this Declaration of Restriction.

Notwithstanding anything inconsistent or to the contrary set forth above, the Town and the Division are hereby authorized, jointly and severally, to record and file any notices and/or instruments that the Town and/or the Division deem appropriate to assure the legal validity and enforceability in perpetuity of this Declaration of Restriction and the Declarant, on behalf of itself and its successors and assigns, hereby appoints the Town and the Division as its and their attorney-in-fact to jointly or severally execute, acknowledge, deliver and record any such notice or instrument on its and/or their behalf. Without limiting the foregoing, the Declarant and its successors and assigns agree to execute any such notices and instruments upon request of the Town or the Division.

5. **Enforceability.** The Town and the Division, jointly and severally, shall have the authority and right to enforce this Declaration of Restriction and are a benefitted parties.

The Town and the Division, jointly and severally, shall have the right to enter the Parcel, in a reasonable manner and at reasonable times, for the purposes of (i) inspecting the Parcel to determine compliance with this Declaration of Restriction; (ii) enforcing this Declaration of Restriction; and (iii) taking any other action which may be necessary or appropriate.

The Town and the Division, jointly and severally, shall have the right to bring proceedings at law or equity against any party or parties violating or attempting to violate the terms of this Declaration of Restriction to enjoin them from so doing and to cause any such violation to be remedied, including but not limited to restoration of the portion of the Parcel adversely affected, after providing written notice to such party or parties and all mortgagees of record if the names and addresses of such parties and mortgagees have been provided in writing to the Town and the Division.

N O T

N O T

6. **Severability.** If any court or other tribunal of competent jurisdiction determines that any provision of this Declaration of Restriction is invalid or unenforceable, such provision shall be deemed to have been modified automatically to conform to the requirements for validity and enforceability as determined by such court or tribunal. In the event the provision invalidated is of such a nature that it cannot be so modified, the provision shall be deemed deleted from this instrument as though it had never been included herein. In either case, the remaining provisions of this instrument shall remain in full force and effect.
7. **Non-Waiver.** Any election by the Town and/or the Division as to the manner and timing of its right to enforce this Declaration of Restriction or otherwise exercise its rights hereunder shall not be deemed or construed to be a waiver of such rights.
8. **Access.** This Declaration of Restriction does not grant to the Town, the Division, the general public, or to any other person or entity any right to enter upon the Parcel except the right of the Town and the Division to enter the Parcel at reasonable times and in a reasonable manner for the purpose of inspecting the same to determine compliance herewith and enforcing this Declaration of Restriction as set forth in Section 5 above.
9. **Incorporation Into Deeds, Mortgages, Leases and Instruments of Transfer.** Declarant and Declarant's successors and assigns, including all subsequent owners of the Parcel, shall incorporate this Declaration of Restriction, in full or by reference, into all deeds, easements, mortgages, leases, licenses, occupancy agreements or any other instrument of transfer by which an interest in and/or a right to use the Parcel. Any such deed, mortgage or other interest purporting to convey any portion of the Parcel without including this Declaration of Restriction in full or by reference shall be deemed and taken to include said Declaration of Restriction in full even though said Declaration of Restriction is not expressly described or referenced therein.
10. **Recordation/Registration.** Declarant shall record and/or register this Declaration of Restriction with the appropriate Registry of Deeds and/or Land Registration Office within thirty (30) days of its date of execution.
11. **Amendment and Release.** No amendment or release of this Declaration of Restriction shall be effective unless it has been approved in writing by the Division [hereinafter the Division Approval] and said amendment or release and the requisite Division Approval has been recorded with the appropriate Registry of Deeds and/or Land Registration Office.

IN WITNESS WHEREOF, PETER B. DONOVAN, Manager of HFH Development, LLC
has caused these presents to be signed, acknowledged and delivered in its name and behalf this
16th day of SEPT., 2016.

NOT
AN
OFFICIAL
COPY

By: Peter B. Donovan, Manager
NOT
OFFICIAL
COPY

COMMONWEALTH OF MASSACHUSETTS

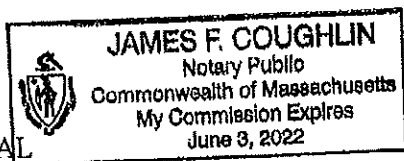
BARNSTABLE NOT
AN, ss.

NOT
AN 9/19, 2016

OFFICIAL

OFFICIAL

On this day before me the undersigned notary public, personally appeared (name),
proved to me through satisfactory evidence of identification, which was ☐ photographic
identification with signature issued by a federal or state governmental agency, ☐ oath or
affirmation of a credible witness, ☒ personal knowledge of the undersigned, to be the person
whose name is signed on the preceding or attached document, and acknowledged to me that he
signed it voluntarily for its stated purpose.



SEAL

[Signature]
Notary Public

My Commission Expires: 6/3/22

BARNSTABLE REGISTRY OF DEEDS
John F. Meade, Register

Bk 30065 Pg 94 #57558
11-04-2016 @ 01:00p

Property Address: Chloe's Path
Harwich, MA

NOT
A N
O F F I C I A L
C O P Y

NOT
A N
O F F I C I A L
C O P Y

QUITCLAIM DEED

HFH DEVELOPMENT, LLC, a Massachusetts Limited Liability Company with an address of 39 George Ryder Road, Chatham, Massachusetts 02633,

For consideration of ONE DOLLAR (\$1.00) paid,

Grants and conveys to the **TOWN OF HARWICH**, a duly organized municipal corporation, with a principal place of business at 732 Main Street, Harwich, Massachusetts 02645, acting by and through its Conservation Commission, for conservation and passive recreation purposes, including but not limited to, the conservation of species listed pursuant to G.L. c.131A et. seq., which shall be considered the most important conservation purpose for which this land is to be protected in perpetuity, with quitclaim covenants,

A parcel of vacant land located on Chloe's Path (off Forest Street and Sisson Road) in Harwich, Barnstable County, Massachusetts, shown as "Lot 8" on the plan entitled "Chloe's Path Definitive Subdivision, Plan of Land in Harwich, Massachusetts for HFH DEVELOPMENT, LLC, J.M. O'Reilly & Associates, Inc." dated December 14, 2015 and revised March 7, 2016. Said plan is recorded with the Barnstable County Registry of Deeds in Plan Book 666, Page 22.

Said property is conveyed subject to Massachusetts Endangered Species Act (G.L. c.131A) and its implementing regulations (321 CMR 10.00), requiring said property to remain undeveloped and protected as habitat for the state-listed species, including but not limited to the Special Concern Eastern Box Turtle (*Terrapene Carolina*), in perpetuity. All future work on said property, with the exception of maintaining boundary markers and trails in existence at the time of the conveyance, including but not limited to vegetation clearing, soil disturbance, habitat

management, new trail construction and forestry shall require prior written approval from the
Division of Fisheries and Wildlife acting through its Natural Heritage & Endangered Species
Program.

Said property is further conveyed subject to and with the benefit of any and all rights, rights of
way, easements, reservations, restrictions or other matters of record, insofar as the same remain
in force and applicable.

The Grantor hereby certifies that this is not Homestead property and is not the principal
residence of any person. The Grantor further certifies that it is not classified as a corporation for
federal tax purposes for the current taxable year, and that this property does not constitute all or
substantially all of its assets in Massachusetts.

The Town's Acceptance of Deed is attached hereto and incorporated herein.

For Grantor's title, see the deed recorded with the Barnstable County Registry of Deeds in Book
29940, Page 204.

[signature page follows]

Executed as a sealed instrument under the pain and penalties of perjury this 20th day of October 2016
NOT AN OFFICIAL COPY NOT AN OFFICIAL COPY

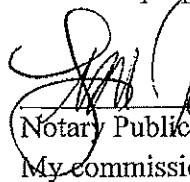
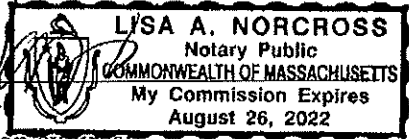
NOT AN OFFICIAL COPY HFH Development, LLC NOT AN OFFICIAL COPY

By: Peter B. Donovan, Manager

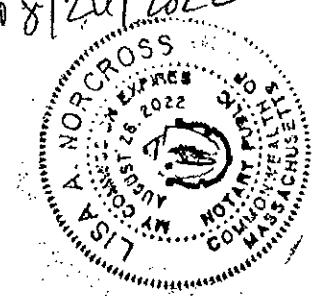
COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss.

On this 20th day of OCTOBER, 2016 before me, the undersigned notary public, personally appeared Peter B. Donovan, Manager of HFH Development, LLC, proved to me through satisfactory evidence of identification, which was personal knowledge to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose on behalf of HFH Development, LLC.

 
Notary Public
My commission expires: 8/26/2022

555548/HARW/0001

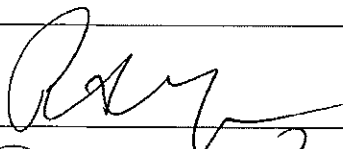
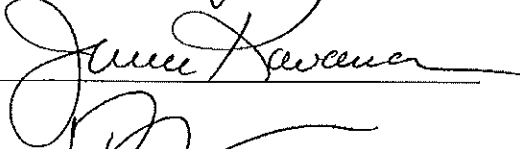
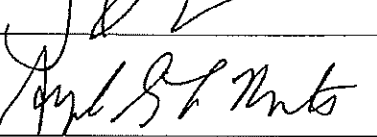



N O T A N
A P P R O V A L O F A C C E P T A N C E

On this 17th day of October, 2016, the Town of Harwich, acting by and through its Board of Selectmen, hereby approves of the Harwich Conservation Commission's acceptance of the foregoing deed to property located on Chloe's Path, Harwich, for conservation and passive recreation purposes under the provisions of G.L. c. 40, § 8C.

O F F I C I A L
C O P Y

T O W N O F H A R W I C H
By its Board of Selectmen

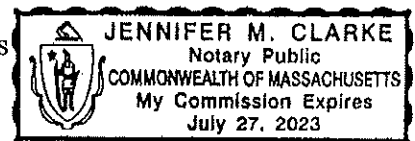
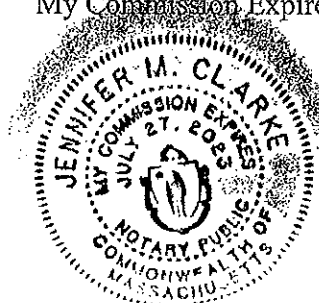





COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss.

On this 17th day of October, 2016, before me, the undersigned Notary Public, personally appeared Peter Hughes, member of the Harwich Board of Selectmen, as aforesaid, who proved to me through satisfactory evidence of identification, which was personally known, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she/they signed it voluntarily for its stated purpose on behalf of the Board of Selectmen.


Notary Public
My Commission Expires



N O T N O T
A N ACCEPTANCE OF DEED A N

On this 5th day of October 2016, the Town of Harwich, acting by and through its Conservation Commission pursuant to G.L. c.40, §8C, hereby accepts the foregoing deed to property located on Chloe's Path, Harwich, for conservation and passive recreation purposes.

A N
O F F I C I A L
C O P Y

A N
O F F I C I A L
TOWN OF HARWICH,
By its Conservation Commission

Carolyn O'Leary
Eric J. O'Leary
Walter Diggs
B. M. Clarke

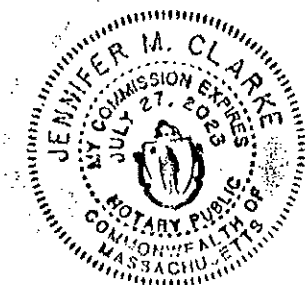
COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss.

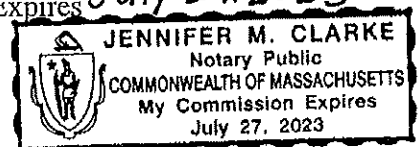
On this 6th day of October, 2016, before me, the undersigned Notary Public, personally appeared Walter Diggs, member of the Harwich Conservation Commission, as aforesaid, who proved to me through satisfactory evidence of identification, which was personally known, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she/they signed it voluntarily for its stated purpose on behalf of the Town of Harwich.

555548/HARW/0001

BARNSTABLE REGISTRY OF DEEDS
John F. Meade, Register



J. Clarke
Notary Public
My Commission Expires July 27, 2023



March 7, 2022

Town of Harwich
Board of Selectmen and Town Administrator
c/o Administrator Powers
VIA EMAIL

RE: Chloe's Path 3/7/22 BoS Follow-Up

Dear Mr. Powers and Members of the Board,

Thank you all and to the Town's staff for putting so much time and effort into innumrating the many areas that will require further study before a project at Chloe's Path can be thoughtfully evaluated by the Town's ZBA and by the public. I think most of us in Harwich agree that, while we need housing inventory here, this project is not anywhere near ready for a proper vetting by MassHousing or the ZBA, and hopefully MassHousing concurs.

I add MassHousing staff again here because we are very concerned that their "eligibility" thresholds are being skirted when the proponent has seemingly no interest in resolving its property rights, expired permits, outstanding violations, or the actual environmental impacts that this proposal would have, many of which seem to extremely difficult or impossible to be overcome. All for a project which – with the multitude outstanding encumbrances - would likely never be financeable by a traditional lender, let alone MHP or the other subsidizing agencies.

Just because a site is "good for housing" does not mean that the site is "good" for over 100,000 square feet of development. And just because a Town needs market rate rental housing stock - along with a pittance of 24 "affordable" units - does not mean that nearly 100 units should be shoe-horned into an environmentally sensitives site that is overlaid with multiple deed restrictions to protect that same environment.

We put this note into the record now so that these items rise to the top of your team's list and so that they may be discussed again across departments and then further studied by Staff and the Zoning Board through the Comprehensive Permit process, if not before. But we also hope that some of these themes can be flagged in the Town's Letter to MassHousing or your discussions with them going forward.

As we see it, there remain several matters that even the most recent staff submissions to you do not fully examine, specifically:

DEED RESTRICTIONS – We feel compelled to remind the Town that it is a formal party to the Deed Restrictions held by the Commonwealth through MESA/NHESP and that the Town of Harwich and its Conservation function are named throughout each document. This is not something that the Town entered into lightly, along with the acceptance of the wetland parcel (Lot #8) at Chloe's Path. It was not simply done for the benefit of the immediately surrounding neighborhood or abutters but for the entire Town.

The Town received Title to the Lot #8 wetlands area and is specifically named in multiple deed restrictions for the benefit of the entire Town, its citizens, and the natural environment of Harwich and, ultimately, of Cape Cod. The Deed Restrictions are clearly meant to protect the natural environment

including threatened species habitat, but also to allow for other species of flora and fauna to thrive, while specifically limiting disruption of soils and destruction of old growth woodlands, limiting overall construction and development on the constrained site, prohibition of non-native landscaping, and – at seven single-family houses – a clear and important limit on overall wastewater created and its resultant Nitrogen loading, and the management of storm water including the reduction of overall impervious areas.

Like with any project in Harwich, the Town and, ultimately, its ZBA must study the details of this taking into consideration all aspects of the proposal, not just the introduction of much-needed housing.

It should also be noted that the Deed Restrictions which use terms like “in perpetuity” and “forever wild” were meant to protect the Town’s environment, its ground water, the Saquatucket Harbor Watershed and also, importantly, the adjoining properties owned by the Town as well as dozens of private homes. The process to get to those Deed Restrictions placed on the land was a labored one of many, many years, through multiple owners and developers looking at the site, through several Town Administrator regimes, Select Boards, Planning Boards and Staff, and Conservation Commission and Trust members, all in close collaboration with the Commonwealth. The constant, however, are the neighbors and other citizens who participated in the process and expect that the Town – as named party to the Deed Restrictions – will look at the totality of the *history of the site* as we understand MESA/NHESP and MassWildlife must do themselves by their enabling.

Just because the Owners may want to change the Deed Restrictions does not mean that the parties to such agreement, including our Town, should agree to such changes. At the very least, there should be a transparent debate, including well-publicized negotiations about what modifications to the Deed Restrictions would mean for the Town long-term and to precedent relative to other Deed Restrictions held by governmental bodies now or in the future. A wholesale release of such Deed Restrictions, we believe, would be a breach of the public trust. We are confident that the courts will agree.

COMMENTS SHOULD BE SOLICITED FROM CONSERVATION COMMISSION, CONSERVATION TRUST, HOUSING TRUST, AND PLANNING BOARD – We believe that the Town should solicit feedback from other Town Boards and, importantly, the Conservation Trust which is responsible for adjacent natural areas and is charged with the protection of those lands. No review of this project by the ZBA should move forward without, at a minimum, informal or “advisory” presentations by the proponents of this project to each and every one of the Town’s Boards or agencies. This should be done voluntarily or at the request of the ZBA as has happened in other communities across the Commonwealth faced with 40Bs.

We feel strongly that the Planning Board, Wastewater Commission, Conservation Commission and Trust should each hear this matter in conjunction with the ZBA’s Comprehensive Permit process, if only in an advisory capacity again and to help uncover and debate the details of the proposal and its many impacts. It was telling that the Cape Cod Commission was named as an advisory body in your package, but not these other Boards who certainly have something to add to the dialogue and who should understand exactly what is being proposed are not. This, we contend, is for Town-wide planning, environmental, and housing context along with the precedents which are being created in terms of process and public vetting, or lack thereof. We know of no legal or statutory reason that this project and all its warts should not be presented to these bodies formally informally as has happened many other times for many other projects, including for land acquisitions for Conservation purposes including at Chloe’s Path.

PROPERTY IS CURRENTLY IN VIOLATION OF MULTIPLE ORDERS – It should be noted to the State that this property is currently in violation of multiple orders of conditions from both the Harwich Conservation department and DEP, and MassWildlife/NHESP/MESA. I believe that the Administrator's summary to the BoS yesterday regarding "conservation" notes this, but does not put any sort of "clock" on the Owner/Developers to spur them to compliance with the law. Further, it seems incredible that the proponent has remained mute as to these multiple violations and/or expiration of other permits governing its right to conduct work on the site. We feel strongly that the violations and expirations should be dealt with first, the property and its owners must be brought into compliance by the Town and the State, or the appropriate fines should be levied at once, retroactively and cumulatively to any and all violations to laws, codes, or ordinance. The fact that we are still talking about these violations so many months later is an anathema to us as residents, tax payers, and property owners ourselves who would never dare be so bold as to ignore these glaring violations while in pursuit other approvals from the Town or Commonwealth.

FIRE "ACCESS ROAD" VIABILITY, LOCATION, AND IMPACTS TO LOT COVERAGE CALCULATION AND ADJACENT TOWN-OWNED LAND - The Town must seek to understand - now, not later - the nature and detailed specifications of the project's proposed "access road" behind the buildings which has been purported to be for the purpose of emergency vehicle access, specifically for Harwich Fire Department apparatus. It would seem that the only critical apparatus needed for a building of this size would be a ladder truck given the height of the building, especially in the rear, but for this critique we can include Fire Engine(s) which similarly would not be supported by an access road which is not structural in nature and which cannot accommodate the necessary turning radius "swings" of either type (piece) of equipment, let alone the other necessary geometric requirements to fight a fire in a 53' building or in the woods behind the site.

It is altogether unlikely that this artistically-rendered "access road" can be practically designed, built, or maintained at this site without a superstructure beneath, a superstructure that would be inordinately expensive to build, but also which would require – at a minimum - significant excavation and, likely, shoring along the Town's Public Safety Complex lot line and along the wetlands buffer to Lot #8. This type of work and shoring would never be allowed in any other part of town, and especially not next to fragile wetlands.

Besides the obvious lack of detail provided by the proponent as to the specifics of this so-called "access road", we can also point out that the such a "road", if it were to be real and viable, would contribute directly to Lot Coverage, Lot Line/Setback encroachment, and direct irreversible encroachment on the Wetlands and Lot #8 buffer(s), and critically, that this would create a significant amount of additional impervious area on this already sensitive and delicate site. While these matters will no doubt be raised and debated at the ZBA, our understanding is that HFD and MassHousing are being made to believe that this "access road" is a completely baked idea, without any understanding of the subtleties and complexity of such an engineering endeavor and if it is, in fact, feasible.

And, because we do not believe that it can, in fact, be built to accommodate a ladder truck's average 50,000+ lb. weight, or its outriggers, or its turning radii, or that such a road built on an extremely steep topography of soft, sandy soils, will allow for the necessary maneuverability of a ladder truck to deploy those outriggers or the ladder itself to effectively combat a fire in the building, we feel again that this entire project and the fantastical renderings should be called out for what they are: pretty pictures untethered to reality.

This is not really debatable. And absent any explanation of how our observations are not relevant at this time, someone from the Town should ask the proponents how they propose to accomplish all of this to protect their own property and residents, let alone how they propose to build against the far rear of their property contending with all that we explain above, with underlying zoning and wetlands buffering as it is.

Therefore, and with due respect to our capable Chief and his Department, we believe that the HFD's current comments cannot be completely summarized by highlighting only the need to keep the "access road" clear at all times. If the access road cannot, in fact, be built as and where shown, the entire consideration should be thrown out and the proponent must propose a fire and life-safety solution that actually makes sense.

Thank you again for your continued leadership in this very important and public debate facing our Town.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Peter Gori".

Peter Gori

226 Sisson Road

On Behalf of over 50 residents, tax payers, and neighbors to Chloe's Path

**Peter D. Gori
226 Sisson Road
Harwich, MA 02645**

November 9, 2021

Board of Selectmen
Town of Harwich
Harwich Town Hall
VIA EMAIL

RE: Chloe's Path 40B Project

Chairman MacAskil and Members of the Board,

Thank you for this opportunity to submit comments and some new questions of the developers and of you regarding the Chloe's Path LIP and any subsequent applications by the proponent to the Town or to the Commonwealth.

But first, I ask: Why are we still discussing this proposal as a "friendly" 40B? This is not a "friendly" proposal at this scale and with the veiled threat of a hostile project staring at us some months from now.

A friendly development would have already taken the substantial public comments to heart and would have agreed to dramatically downsize the project. A friendly proponent would have proactively conducted comprehensive and scientific assessments of the septic discharge and traffic impacts of their proposal. Assessments we have asked for repeatedly. A friendly proponent would have enumerated the *benefits* of this project and volunteered any number of mitigation strategies and investments prior to asking for your support here again. A friendly development team would have answered questions that were posed to them in July instead of simply rehashing the same old trite arguments about inventory and supply solving the Cape's housing crisis.

Because this is anything but friendly, we believe that this is your opportunity to draw a line in the sand and make a firm statement about how business should be done here.

We believe that when developers make agreements with our Town and State government, they should be held to those agreements. We believe that developers should work within those agreements and should implement measures that are prescribed by governmental bodies while satisfying expectations and meeting deadlines. None of that appears to have been done here.

Ultimately, my neighbors and I believe that this is about our Town's direction with an eye toward appropriately scaled development across Harwich. It is about our Town's character and its future. It's about thoughtful and comprehensive planning and establishing policies that protect that character and our future.

As I have said and written before, this is not about affordable housing. This is a maneuver by a development partnership to gain a foothold of nearly 75 luxury apartments in our small town. They

Peter D. Gori
226 Sisson Road
Harwich, MA 02645

have said it themselves. When developers talk about elevator buildings with “amenity packages” and “on-site leasing” offices, what they are really saying is that the entire project is geared toward the incredibly well-paid or well-heeled who can afford to rent at \$2000 per month and more, plus additional fees and utilities including electric heat and hot water, and parking charges that have yet to even be defined. All under the guise of an “affordable” project to garner approvals.

It should also be noted that “on-site leasing” is a technique used by developers to fill units and stabilize revenue as fast as humanly possible in order to maximize returns and then, most often, market the site for sale. Most buildings of this size across the country that have on-site leasing offices do so for a year or less. Further, very few buildings of this size - even in cities like Boston - have full-time management on an on-going basis. It is just not cost effective after the first few years of operations.

This should also give you pause when developers commit to be present and active members of the community after they get permits and build their projects. The lack of continual on-site management begs for future problems with parking, loading, rubbish, and the management and mitigation of any tenant-related issues that we might hope to be managed by the developers and that you have focused on in these hearings. These include, among others: maximum per unit tenant count, neighbor and neighborhood relations, tenant behavior, prohibitions on non-registered guests and short-term rentals such as Air BnB, as well as general maintenance, and the safety, security, and privacy of our own properties and nearby Town facilities including the elementary school and public safety complex.

Next, we all know that this proposal is not and has never been about the local “workforce”. And this surely is not about people starting families here, that much is clear. At least I could understand home ownership as a reason to be talking about this monstrosity as a benefit to our community and for young families starting out. But because we are talking about mostly luxury rental apartments, I will say it again: this proposal is not a solution to the existential housing crisis for local residents and our community’s workforce.

This type of housing is not appropriate here. It isn’t going to solve anything. In fact, it could set a precedent that lumps us in with towns that are very, very different from Harwich in terms of character. We are not Plymouth, or Bridgewater, or Bellingham, or Hudson. And we are certainly not Hyannis, as one of you so eloquently pointed out recently, nor do we want to be.

But, instead, we are still discussing a project that has no business being built, let alone proposed on this site. They know it. You know it. We certainly know it. This project is too big by half . . . at least. And even if this project were 50% affordable, it would mean a nearly 50-unit luxury apartment building on a key environmentally sensitive site that was deemed so five years ago by multiple town boards and by my neighbors who thought they were done talking about it then.

It was deemed environmentally sensitive by our own Planning Board and Conservation Commission, and by the Commonwealth of Massachusetts. The owners themselves acknowledged that the site was environmentally sensitive in 2015 and 2016 because they agreed to deed restrictions on the

Peter D. Gori
226 Sisson Road
Harwich, MA 02645

property to protect threatened species, their habitat, and the environment in general. They also knew they needed to do so in order to get just the seven (!) house lots approved.

But when we look at the proposal before you now, we can all agree that even a 50-unit project would never be approved for this site without the obsolete tool of 40B. In fact, it is my firm belief that most boards of this Town would outright dismiss such a proposal for what it is: far too large. I also believe that the Town's staff should have done so back in the spring of 2021 when the proponents first came in to test the waters. And I feel strongly that each and every department should be part of the detailed conversations again now. So I urge you to reengage with department heads and key staff before any votes are taken as you recently did with the wastewater team.

For these reasons, I ask again: Why are we really here?

It seems to me that we are here because a home developer and his investor-development partner are looking for a golden egg.

I don't believe that this Town should be the goose.

Why does this project need to be this large? The answer appears to be that it is the only way the current owners can more than double their money on a property they evidently paid too much for to begin with.

Why else are we here? It seems that we have been hearing from only part of the team. Capable and responsible developers, we are told. And I have no reason to believe otherwise. However, the men who negotiated environmental conditions, land swaps, deed restrictions, and planning and environmental commitments with my neighbors, this Town, and the State some years ago are sitting back quietly hoping to make a massive, above-market return on the backs our community and our quality of life.

This town and your sister boards in Town government went through lengthy and very public process back then, and agreements were made. While agreements made five years ago may need to be revisited from time to time, they should only be revisited for justifiable reasons and with an appropriately transparent and non-threatening approach. That is the nature of real estate, government, and capitalism. But to go from seven single-family homes to 96 units? 72 luxury? Honestly, this whole endeavor and their approach is outrageous.

But this is not a renegotiation of those agreements. It is worse. This is an owner-developer saying, "just kidding . . . we didn't mean any of that. We didn't mean anything we told you before about our intentions for the property." Now they want your support for a massive financial windfall. A windfall, by the way, that *someone else*, their "partners" are going to build, lease up, and then likely sell as they did in their other 40B project in Hudson.

We believe that the current owner should not be rewarded by this Board for not doing the right thing over the past five years. They should build what they promised, or they should come back

Peter D. Gori
226 Sisson Road
Harwich, MA 02645

with something more appropriate for this site. Whether 40B or not, this project's scale should be reduced by a meaningful amount and completely reconceived with its impacts on our infrastructure clearly and openly assessed.

Specifically, along with all the other impacts that I and others have mentioned before and will outline below, I want to drill down on aspects of our quality of life that we have not focused on yet, and how this massive project will affect them. I also want to mention our property values.

First, I am not speaking about property values related to the affordable units and their future residents, lest I be mistaken for someone who cares who lives on Chloe's Path or how much money they make. But having just bought my home in a neighborhood of largely year-round residents for which our homes are our singular most important asset, property values and the quality of our lives here matter.

Over the past several months more than one broker and several developers have told me that our section of Sisson Road and several nearby streets will likely not appreciate along with the rest of Harwich and most of Cape Cod if Chloe's Path is developed at this scale. That is because of the obvious direct impacts of such a huge project, but also because the current proposal is grossly out of character with our town and the nearby historic Harwich Center commercial district where we chose to live.

This project, if approved, will fundamentally and permanently change the *character* of this part of town. And while it is also an awful precedent to set relative to density and architecture – massing, height, context, materials, etc. – it is also poor planning for a town struggling with a comprehensive look at our future.

Further, the impacts of a construction project of this size will drastically impact our street and that of Forest, South, Parallel, and beyond for not less than two years based on the extent and methods of construction required. We are talking about massive physical impacts to soft soils, our water table, nearby roadways, wetlands, and utility infrastructure. Materials and equipment deliveries and dozens and dozens of tradespeople will also descend on the site daily with associated noise and disruption to an already sensitive area that also abuts our public safety and grammar school complexes. These impacts are not really up for debate.

This project will continue to impact us in the neighborhood for the better part of the next 5 years and well into the future when we will also have to deal with hundreds of new residents and vehicle trips, light, noise, and waterway and aquifer pollution. All while the Town plans a sewer project in the same area that will similarly disrupt our lives in the aftermath of Chloe's Path.

But the proponents ask us to just wait for the Zoning Board of Appeals to assess the impacts of their proposal. I work in this industry and, frankly, that is not how development works. I believe that projects should be reviewed based on their merits and the transparent assessment of their impacts up front. Unfortunately, this project has next to no benefits and impacts that will last a generation.

Peter D. Gori
226 Sisson Road
Harwich, MA 02645

Lastly, even if we were to see a vastly redesigned and downsized project on November 15th, are we really going to discuss a Memorandum of Agreement and "conditions" with a group that made voluntary or negotiated conditions previously to gain approvals and basically did nothing that they agreed to do?

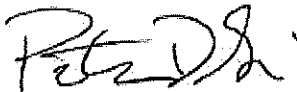
Why would we negotiate with owners that clearly had no intention of living up to any prior agreements made with this very same Town and to our State governments' environmental watchdogs?

It is quite clear, we should not.

Therefore, I feel strongly that this Board should not only vote against supporting the LIP, but I believe that this Board and the Town should actively oppose this project. You should oppose it at the State's Department of Environmental Affairs, and you should put the equity and debt markets on notice that this project and others like it – projects that attempt to use 40B to build luxury housing that they will no doubt then sell to the highest bidder – will not be supported here in Harwich. Not now, and not ever.

Thank you for all that you do for this town. My formal questions are attached hereto.

Sincerely yours,



Peter D. Gori

CC: Joseph Powers, Town Administrator
Meggan Eldridge, Asst. Town Administrator
Harwich Board of Appeals
Harwich Conservation Commission
Amy Usowski, Conservation Commission
Senator Julian Cyr
Representative Sarah Peake

Peter D. Gori
226 Sisson Road
Harwich, MA 02645

Questions for Messers. Donovan, Terry, and Singer

1. Has the team chosen to avoid answering any of the technical questions that have been raised by this Board and our neighbors over the past five months?
2. Would the owners consider a renegotiation of their terms with Heritage in order to affect a smaller proposal that would reduce the glaring impacts of this proposal?
3. Has the development team committed to doing a comprehensive traffic study of the project using actual summer "peak" weekday and weekend counts (not simply "seasonal adjustments") and actual school-time drop-off and pick-up data from the post-Covid school year? Will you commit to doing such a study before the LIP is formally considered? When will such a study be conducted and when could it be completed?
4. Has the owner requested a removal or extinguishing of the deed restriction negotiated with the Commonwealth's NHESP and MESA offices? Will they? And if so when?
5. Has the owner implemented the habitat management plan prescribed in the agreements and conditions set forth by the NHESP and MESA? Why or why not?
6. Has the development team and its architect rendered the "new" project site against the protected habitat plans attached, titled Preliminary Grid Subdivision Plan Showing Proposed Limit of Activity, (J.M. O'Reilly) dated October 2, 2015?
7. Has the development team done work outside the permitted "Limit of Work"? Was this work done in accordance with the NHESP permit(s).
8. Has the owner obtained permits and/or certification(s) of their work in these areas from the Town of Harwich?
9. Has the owner certified that the construction methods and civil and structural engineering of the current Chloe's Path "roadway" meets or exceeds the requirements set by the Town of Harwich and/or any standards of civil engineering and construction methods that should have been implemented previously?
10. Has the development team and its architect rendered the "new" project site against the registered deed restriction(s) plans for either the NHESP or any land swaps with abutters or the Town?
11. Has the owner implemented any of the requirements or conditions placed on the property by the Town of Harwich Conservation Commission, Conservation Agent(s), or the Commonwealth NEHSP, MESA, and DEP?
12. Will the owner enumerate those conditions and clearly spell out all work that was, or was not done, including how, when, and who performed such work? Will engineers and the required botanists attest to the work being done consistent with those conditions and state and local design standards?
13. Will the owner confirm the status of any and all permits granted or deadlines met or missed related to agreements made or permits or approvals granted by the Town or State and associated with this property since 2015?
14. Have the developers advanced any discussion of accelerating a sewerage project for Sisson Road and its environs to avoid drastic and permanent impacts on our waterways and aquifer?

Peter D. Gori
226 Sisson Road
Harwich, MA 02645

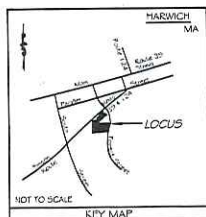
15. Was HFH Development involuntarily dissolved by court order or other government procedure in June of 2019? (MA Sec. of State Corporations Division)
16. Can you describe the lien held by Mrs. Nancy B. Spear on the property? What is the nature of such lien? Does it compromise your title or affect your ability to sell the property to Heritage?

For Mr. Bush:

1. Can you tell us how many 40Bs you have developed? Where are they located?
2. Regarding the Hudson Matrix project, when did you build that project and when did you sell it?
3. Can you tell us if you plan to sell this project less than 2 years of developing it?
4. Will you commit to holding the project for longer than 5 years? Longer than 10 years?
5. Will you commit to owning and actively managing the site – with full-time, on-site management, maintenance, and security throughout your ownership and that of any successors and assigns?
6. Do you know how many residential apartment buildings in Harwich have on-site leasing?
7. How many rental apartments buildings in Harwich have elevators?
8. How many rental apartment buildings in Harwich have underground, garage parking?
9. Do you know how many non-governmental or church buildings in town are larger than 51' high? How many buildings of this scale are located east of Dennis?
10. How many market rate apartment buildings east of Dennis are larger than 72 units? How many are larger than 90 units?

To the Board:

1. Will you urge the current owner to only come back to the town with a project of fewer than 40 units?
2. If you vote to not support the LIP, will you also go on record in opposition to any project larger than 40 units on this site?
3. Will you go on record with the Town ZBA, Commonwealth DEP, MESA, NHESP, the Cape Cod Commission, and our state elected officials that this project is grossly oversized and inappropriate in every way and that this sensitive environmental site is too important to our water quality, sensitive waterways, and threatened species?



OWNERS OF RECORD:
 LOUIS J. DONOVAN, JR., TRUSTEE
 QUIVET NECK REALTY TRUST
 DEED BOOK 17492 PAGE 70
 ADJESSORS' MAP 31, PARCEL D-4
 ARTHUR P. DOANE, JR.
 VIRGINIA DOANE
 DEED BOOK 1412 PAGE 465
 ADJESSORS' MAP 31, PARCEL D-3

ZONING CLASSIFICATION
 ZONE R1 (RESIDENTIAL-LOW DENSITY)
 MINIMUM AREA 40,000 SF
 MINIMUM FRONTAGE 150 FEET
 FRONT YARD SETBACK 25 FEET
 SIDE AND REAR YARD SETBACK 20 FEET
 MAXIMUM BUILDING COVERAGE 15%
 MAXIMUM BUILDING HEIGHT 20 FEET


AREA CALCULATIONS:


TOTAL PARCEL AREA	576,920 SF±	(13.24 AC±)
TOTAL WETLAND AREA	170,660 SF±	(3.91 AC±)
TOTAL UPLAND AREA	406,260 SF±	(9.33 AC±)
AREA OF LOTS 1-8 (FOR HOMES)	143,064 SF±	(3.28 AC±)
AREA OF ROAD	50,196 SF±	(1.15 AC±)
AREA OF TEMPORARY DISTURBANCE	30,197 SF±	(0.69 AC±)
TOTAL OF DISTURBED LOTS AND ROAD	223,458 SF±	(5.13 AC±)


TOTAL OPEN SPACE PROVIDED: (AFTER REVEGETATION OF TEMPORARY AREAS)
 576,920 - 193,260 = 383,660 SF±
 8.80 AC± OR 66.5 %

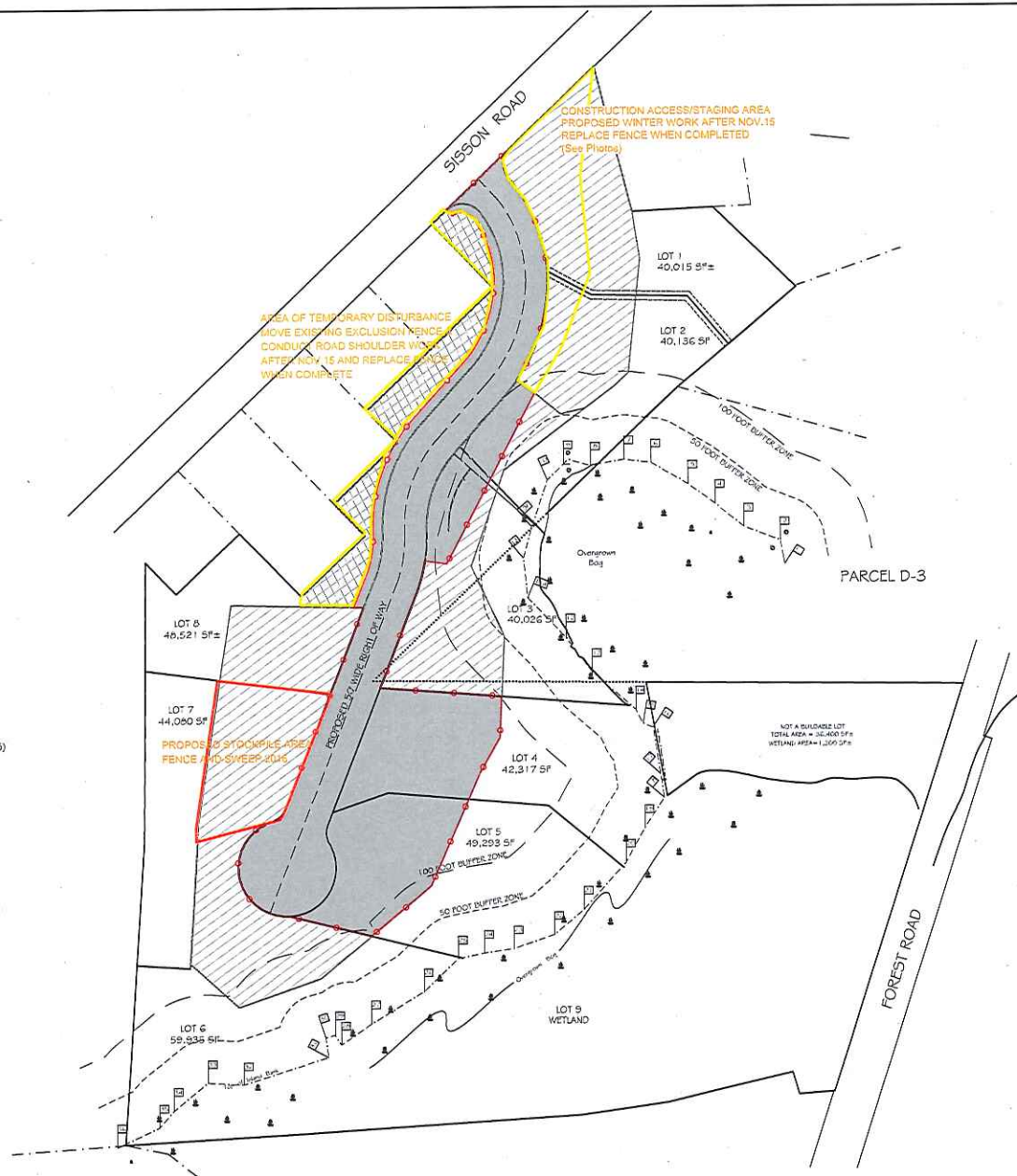
UPLAND OPEN SPACE PROVIDED:
 406,260 - 193,260 = 213,000 SF±
 4.89 AC± OR 52.4 %

TOTAL UPLAND AREA LEFT IN NATURAL STATE
 (INCLUDES PERMANENT AND TEMPORARY ALTERATIONS)
 406,260 - 223,458 = 182,802 SF±
 4.20 AC± OR 45.0 %

 AREA OF ROADWAY, UTILITIES, HOME CONSTRUCTION, ASSOCIATED GRADING FOR THE HOMES INCLUDING THE UTILITIES
 AREA = 167,153 SF±

 AREA OF TEMPORARY DISTURBANCE ASSOCIATED WITH THE ROAD CONSTRUCTION TO BE REVEGETED BACK TO NATIVE SHRUB COMMUNITY.
 AREA = 30,197 SF±

 AREA OF TURTLE PROTECTION AREA
 AREA = 101,100 SF±



TURTLE PROTECTION AREA OCTOBER 2, 2015

PRELIMINARY GRID SUBDIVISION PLAN
 SHOWING PROPOSED LIMIT OF ACTIVITY

CONCEPTUAL
 PLAN OF LAND

IN
 HARWICH, MASSACHUSETTS

FOR

DONOVAN BUILDING CORPORATION

0 60 120 180
 SCALE 1"=60' OCTOBER 2, 2015



J.M. O'REILLY & ASSOCIATES, INC.
 Professional Engineering & Land Surveying Services
 1579 Main Street - Route 6A
 P.O. Box 1773
 Brewster, MA 02831
 (508)696-8801

GRAALSHYDONOVAN3612A-PREL MODIFIED GRID ENVELOPS.dwg

JMO-S612A

From: thomas jones <permitfly@comcast.net>
Sent: Tuesday, November 9, 2021 3:31 PM
To: Michael D. MacAskill; Don Howell; Mary Anderson; Julie Kavanagh;
meldridge@townofharwich.us; Joe Powers
Cc: Jon Idman; Amy Usowski; Sarah.Peake@mahouse.gov; julian.cyr@masenate.gov;
Georgene Riedl; petegori@yahoo.com; blackcrowbluesky@gmail.com
Subject: Chloe's Path Project

Sirs and Ma'ns,

This letter is in opposition to the currently proposed project for subject land use.

I am no attorney, so will not argue the presumed legalese, nor even debate whether the Town should hold developers to earlier agreements.

But we as year-round residents and taxpaying voters believe that the design currently under review is inconsistent with the character of Harwich/Harwich Port, insensitive to a Commonwealth and Town designated environmentally sensitive area, deaf and dumb to the obvious traffic congestion that would result both during and post-construction, and essentially a structural ruse under the guise of 'affordable housing'. This is, as all real estate development projects are, a way to make money, and the more and faster the better (hence, on-site leasing).

Two years ago a not dissimilar project was proposed at Parallel and Bank Sts in the former Royal Arms. Among the nay evidence was a requirement that high density projects could not be approved within a certain distance of similar existing condo/multi-unit developments. It is observed that such latter residences exist currently on South Street just south of Sisson Road, and slightly farther southwest at Harold and Doane Road. Sisson Road is the main pathway serving both these neighborhoods. It is also the address for the existing former elementary school, now an arts center, and the headquarters for Harwich Public Safety, both Police and Fire/Emergency. This large project under consideration will pour volumes of resident and service traffic from and onto Sisson, no doubt interfering sooner or later with emergency responsiveness and traffic safety.

We understand the need for housing, and for affordable housing. In this case, that is being used as a lever to construct a density blight on land already exposed to environmental concerns. It is but economic ravaging of the land.

The essential character of the Harwiches is a Trust of you who govern. Your decisions in matters such as this are what decides the future of this Trust. There is no more land coming to Cape Cod...what remains is precious, and should be treated thusly. We encourage you to be mindful of your deep obligations as you decide what is in the better interests of this little jewel of land, and of Harwich and Harwich Port. Thank you.

Maura and Thomas Jones
14 Harold Street 11F
Harwich Port

From: **Marilyn Kavaleski** mimikavaleski@hotmail.com
Subject: **Chloe's Path Proposal**
Date: **August 18, 2021 at 11:40 PM**
To: <https://www.harwich-ma.gov/board-of-selectmen>

Town of Harwich
Board of Selectmen

We are writing to you today to voice our concerns with the current Chloe's Path proposal. Several years ago Mr. Donovan approach the Town of Harwich to build nine homes on this site. The Chief of Police at that time suggested nine homes would generate too much traffic and suggested it be scaled down to seven. We understand Mr. Donovan and company now want to construct two buildings with 48 units apiece for a total of 96 units. A development of this magnitude, in our opinion, would have a negative impact not only on Sisson Road, but all the surrounding streets as well.

This would also effect the wildlife living there, the endangered species, the conservation land, and the wetlands just below the site. We recognize the need for affordable housing and are not against it, if Mr. Donovan were to stick to the agreement of seven homes. Thank you for your time and consideration towards our concerns.
William and Marilyn Kavaleski



To: Jessica Malcolm

Cc: misty-anne.marold@state.ma.us; Michael D. MacAskill; Joe Powers; Sarah.Peake@mahouse.gov; julian.cyr@masenate.gov; ashley.benson@masenate.gov; Jon Idman; Michael Busby; Nancy McDonald

Subject: Re: Follow Up re: Chloe's Path

Thank you very much for this thorough and clear response.

We appreciate your role and the complexity of such review(s) so we are happy to have your office and Mr. Busby at the helm from the MassHousing side.

If we have additional questions, I will reach out.

In the meantime, we will also package up the rest of our substantive comments and supporting materials prior to the comment deadline.

With our sincere thanks,

Peter Gori

On Feb 14, 2022, at 9:44 AM, Jessica Malcolm <JMalcolm@masshousing.com> wrote:

Mr. Gori,

We appreciate you reaching out with comments and concerns regarding the above-captioned 40B proposal.

Our review of this Application is currently in progress. To the extent we require additional information from the Applicant to make our Project Eligibility findings, including information regarding any Restriction or Encumbrance, we will ask that the Applicant share any supplemental material with the town.

As a general matter, any process for permits, reviews, and/or approvals required by State environmental agencies must be initiated prior to the Application of a Comprehensive Permit and are outside the scope of a Subsidizing Agency's review at this stage.

Please be assured that take our role as Subsidizing Agency very seriously and therefore intend to address all outstanding matters relative to our review.

If you'd like to discuss further, please do not hesitate to contact me at the phone number below.

Best,

Jessica Malcolm

From: Peter Gori

Sent: Friday, February 04, 2022 1:31 PM

From: patrick otton

Sent: Friday, August 6, 2021 8:37 PM

To: Michael D. MacAskill ; Don Howell ; Larry Ballantine ; Mary Anderson ; Danielle Delaney ;patrick otton

Subject: P. Otton Comments Chloe's Path affordable housing development

August 6, 2021

Harwich Board of Selectmen

re: Local Initiative Program (LIP) for Chloe's Path affordable housing development

After attending via Channel 18 the Selectmen's meeting Monday July 26th and listening to attorney Singer's presentation here are my thoughts and concerns for the proposed Chloe's Path development. Submitted for the record. Thank you.

If you really are the Gallant Heroes you pretend to be - Saving Harwich and improving 401b status, why just 23 units out of 96?

If you really are the Gallant Heroes you pretend to be - why not make the entire development a 401b?

If you really are the Gallant Heroes you pretend to be - Why not listen to the neighbors and put in a development that suits the neighborhood and fits in to the rest of Harwich?

Gallant Heroes - Do 401b occupants get to pick and choose where they want to live ? Which apartment they get?

Gallant Heroes - Which apartments are the most desirable? and Which apartments are designated as 401b?

Gallant Heroes – Why is it that you want to rezone the wetlands and protected areas? Don't you care about Wildlife? Don't you care about Cape Cod? Or is it only your bank account that you really truly care about?

Gallant Heroes - Are all Apartments built to exactly the same standard? For example: All with granite counter tops? All will with tiled floors, etc.?

Gallant Heroes - Why don't you really truly do something wonderful for Harwich put in a complete 100% 401b complex – all units? And who knows you may even get a chance to call Bush/Singer Towers.

Harwich sees this schema again and again: A developer going to do wonderful things for Harwich under the guise of a 401b label. If Harwich truly wants to address housing, both over-development and as well future “affordable” housing why not apply a 50% sales tax on all

property sold for development and put that money towards affordable housing and/or purchasing land for conservation – never to be developed?

Thank you,

Patrick Otton
49 Kendrick Rd

From: dan pierce <buzzarooski@hotmail.com>

Sent: Sunday, October 31, 2021 7:10 PM

To: Michael D. MacAskill; Larry Ballantine; Don Howell; Mary Anderson; Julie Kavanagh; Joe Powers; Meggan Eldredge; Jon Idman; Elaine Banta; Amy Usowski; superintendent@harwichwater.com; commissioners@harwichwater.com; Sarah.Peake@mahouse.gov; Julian.Cyr@masenate.gov; misty-anne.marold@mass.gov; eve.schluter@mass.gov; jesse.leddick@mass.gov

Subject: Chloe's Path Affordable Housing Project

Hello, My name is Daniel Pierce. I own and live year-round in a house located at 233 Sission Road in Harwich. Mass. I am writing you in regards to the Chloe's Path Housing Project. The entrance to Chloe's Path is located approximately 300 yards from my property. Thank you for taking the time to read my letter and considering the concerns I have listed below.

First off, I would like to state that I believe in affordable housing, including at this site, but due the developers' lack of adherence to earlier commitments to neighbors and to the town, and because of the sheer size of the proposal I oppose this project. He is a list of some of the other reasons why I am NOT for it.

- * The size/scale of project (96 units on 9.29 acres)
- * The fact that only 24 of the 96 units will be "affordable", and they cannot be guaranteed for locals over time
- * The effect on aquifer (proximity to Grassy Pond, which flows to Saquatucket)
- *The traffic impacts this will have on Sisson Road (already a problematic area, plus school drop-offs and proximity to police/fire/rescue)
- *The impact to wildlife (and prior non-adherence to covenants negotiated with NHESP)
- *The fact that two TRULY affordable projects are on the horizon for Harwich (Marceline property and old Community Center at Sisson and Parallel)

Thank You again for your time, Sincerely Daniel Pierce

From: Georgene Riedl

Sent: Sunday, March 6, 2022 4:53 PM

To: Jessica Malcolm

Cc: Michael D. MacAskill Joe Powers; Sarah.Peake@mahouse.gov; Cyr, Julian (SEN)

ashley.benson@masenate.gov; Jon Idman Michael Busby ; Nancy McDonald

Subject: Objection to proposal for large development on "Chloe's Path" in Harwich

Dear Ms. Malcolm,

I am writing to you today to express my objection to the large-scale development on Chloe's Path in Harwich. This is not a new objection. I have spoken out and have been extremely concerned with any kind of development on this environmentally sensitive land since 2016 when it was first proposed to be developed into 7 house lots. I am not a neighbor of the project, but my family and I have lived or had a business in Harwich for 54 years. I am a taxpayer who is extremely concerned with the degradation of our water quality and other natural resources.

In addition to my concerns about the dangers of this project to the quality of our water, I am concerned with its large-scale and its negligible benefit to the housing needs in Harwich/Cape Cod as well as the prospect of congestion on Sisson Road that such a totally out-of-character development will create. I am attaching two letters which I have previously sent to the Harwich Board of Selectman in 2021 and the Harwich Planning Board in 2016 which illuminate my concerns.

This development will have detrimental affects, with no benefit, on the future of the environment and the quality of life for not only the citizens of the Town of Harwich, but for all of Cape Cod.

Please do not approve this project.

Sincerely,

Georgene Riedl
486 Route 28
Harwich Port, MA. 02646

From: Georgene Riedl [<mailto:riedlgeorgene@gmail.com>]

Sent: Monday, November 1, 2021 12:21 PM

To: Sarah.Peake@mahouse.gov; Julian.Cyr@masenate.gov; Michael D. MacAskill <mmacaskill@townofharwich.us>; Larry Ballantine <lballantine@townofharwich.us>; Don Howell <dhowell@townofharwich.us>; Mary Anderson <manderson@townofharwich.us>; Julie Kavanagh <jkavanagh@townofharwich.us>; Joe Powers <jpowers@town.harwich.ma.us>; Meggan Eldredge <meldredge@town.harwich.ma.us>; Jon Idman <jidman@town.harwich.ma.us>; Elaine Banta <ebanta@town.harwich.ma.us>; Amy Usowski <ausowski@town.harwich.ma.us>

Subject: Opposition to large project at "Chloe's Path", Harwich, MA.

RE: "Chloe's Path".  [chloes_path_apartments_-_full_lip_application_-_july_14_2021.pdf](#)

Hello,

I am attaching two letters which I have written in opposition to the above referenced development in Harwich. One was written in January 2016 when a development for 9 houses was proposed on this environmentally sensitive land. Unfortunately, approval was given for 7 houses with a stipulation that there would be mitigation for the endangered species located there including a "Forever Wild Area".

Unfortunately, none of these stipulations were honored by the purchaser/current owner and he is now proposing an extremely large project which makes a travesty of his original approval with its detrimental effects on the environment, traffic situation and quality of life in Harwich. My second letter written in July 26th, reiterates these concerns and my opposition to development on this site, especially because of its large impact.

Please consider the negative effects that this project will have on our community without any positive effects, i.e. substantially increasing our affordable housing options on Cape Cod and do whatever you can do to stop this project.

Historically, there have been too many projects which have been approved by previous elected official which have created negative consequences for all of us living here today. We do not need to look any further than Cyanobacteria blooms in local ponds or shellfish/swimming areas closed among many examples. The time is now for you to begin to protect our environment and quality of life so that Cape Cod will be able to sustain a healthy environment for all in the future.

Thank you for your attention and your continued work to preserve the quality of life in Harwich and Cape Cod.

Sincerely,

Georgene Riedl
486 Route 28
Harwich Port, MA. 02646

July 26, 2021

To the Harwich Board of Selectmen,

I am writing to object to the proposal being presented to you tonight to construct a very large apartment building on "Chloe's Path" off Sisson Road with 96 units which has the potential to house 300 people.

My primary objection and biggest concern is that this land is and always has been an environmentally sensitive area where groundwater, discharge, etc. percolates down into the adjacent wetland which feeds into Grassy Pond, ultimately into Nantucket Sound. I am attaching a letter which I wrote to pertinent Harwich Town Boards concerning this land's environmental sensitivity and its status as a documented endangered turtle nesting area when it was 1st being proposed for 7 house lots in 2015/2016. This proves that my concerns are not new. However, my concerns about this property are even greater now because time has revealed the repercussions of allowing developments that affect wetlands that have been allowed by Cape town boards in the past. As our knowledge about the fragility of the Cape Cod environment has increased, this town, along with others Cape-wide are seeing many examples of the results of development that adversely affect fragile wetlands. We need to look no further than the toxic Cynobacteria blooms in West Reservoir, John Josephs Pond and Seymour pond that are happening in Harwich as I write this.

There is no doubt that there is a need for affordable housing in Harwich, as well as all of Cape Cod, Massachusetts and beyond. This development is not geared to working families as 15 of the 24 "affordable rate" apartments are 1 bedroom. A development like this with 72 market rate apartments increases the density of the town more than the affordable housing supply. There are other more suitable sites, away from vital wetlands, which could accommodate affordable housing in smaller projects that would just increase the affordable housing supply, not the population of the town. My other concerns are (1) This massive building does not favorably reflect the character of residential Harwich (2) traffic problems created by 300 + people going in and out of this development onto Sisson Road near the Elementary School/Harwich Center every day will be a nightmare (3) a development of this magnitude will increase burdens on our police/ fire/rescue department.

But first, most importantly, please consider the negative environmental impact any development on this critical land, especially one of this magnitude, will do to the health of our wetlands. If we all don't stay vigilant and protect our environment now ---our water, our air, our quality of life---- none of us will be able to live here or anywhere, affordable or not.

Respectfully submitted,

Georgene Riedl
486 Route 28, Harwich Port
CC-- Attachment

25 January 2016

To the Harwich Planning Board

I have walked the site of the proposed development between Sisson Road and Forest Street. I object to the development of homes which are proposed for this area because it is such a critically sensitive environment. There is a wetland with standing water adjacent to it which ultimately feeds into Grassy Pond and into Nantucket Sound.

I hope you will consider, first of all, that the extreme contours of the land will require massive excavation which will disrupt the Eastern Box Turtle habitat as well as other wildlife in this area. Secondly, that any new homeowners living at this proposed development will utilize, as most homeowners do these days, fertilizers, pesticides, and herbicides---all of which will percolate into the adjacent wetland. Thirdly, any additional clearing of vegetation, dumping of brush, etc. by the homeowners in the development will be difficult to monitor by town officials, requiring extra funding, etc. by the taxpayers of Harwich. Self-monitoring by a homeowners' association in the development would have no oversight. As the land exists now, it is a wild and an almost impenetrable area which is not susceptible to dumping, etc. (I disagree with David Callaghan of the Real Estate and Open Space Committee who is quoted in the Chronicle as saying "a heck of a lot of trash ends up in that area along Forest Street". I have driven and walked along Forest Street for almost 50 years and do not consider it a "trashy" area.)

I hope that the Planning Board will keep my concerns in mind when they consider this proposal and I hope that more consideration be made by you and other Town Boards to preserve this entire 13.2 acre parcel as conservation: forever wild for the quality of water and for the quality of life in Harwich.

Respectfully submitted,

Georgene Riedl

Harwich Port

CC: Harwich Conservation Commission, Harwich Conservation Trust, Real Estate and Open Space Committee, Harwich Board of Selectmen

Ellen Powell

From: Joe Powers
Sent: Monday, January 24, 2022 8:16 AM
To: lunaseacreation@comcast.net
Cc: Ellen Powell; Danielle Delaney
Subject: RE: [harwichma] Chloe's Path project (Sent by Rosanne Shapiro, lunaseacreation@comcast.net)

Good morning Roseanne:

Thank you for sharing your thoughts and comments regarding the proposed development project known as Chloe's Path. I will incorporate your thoughts in the town's draft response to Mass Housing which is due now in early March, 2022.

I encourage you to follow the process if it leads to the Zoning Board of Appeals (ZBA) during which you could add any commentary to the public record (during their public hearing component) once a formal application is sent to the ZBA.

Thank you,
Joe

Joseph F. Powers, ICMA-CM, MCPPO

Town Administrator
Town of Harwich
732 Main Street
Harwich, MA 02645
Office: (508) 430-7513
Mobile: (774) 801-8202

From: Contact form at harwichma [mailto:cmsmailer@civicplus.com]
Sent: Sunday, January 23, 2022 4:30 PM
To: Joe Powers <jpowers@town.harwich.ma.us>
Subject: [harwichma] Chloe's Path project (Sent by Rosanne Shapiro, lunaseacreation@comcast.net)

Hello jpowers,

Rosanne Shapiro (lunaseacreation@comcast.net) has sent you a message via your contact form (<https://www.harwich-ma.gov/user/1733/contact>) at harwichma.

If you don't want to receive such e-mails, you can change your settings at <https://www.harwich-ma.gov/user/1733/edit>.

Message:

Hi - I read the latest article in the Chronicle regarding the above-named project. I noted some areas of concern that need to be addressed as the "vetting" process continues:

1. the issue of a Massachusetts Endangered Species Act deeded restriction on a portion of the land which Attorney Singer says "will be addressed" - I watched the BOS meeting at which this issue was raised, and that was quite a few months ago. Why has it taken so long to address this concern - I find Attorney Singer's comment very unsubstantial & vague - perhaps he's holding back on specifics until the next time this project is discussed, perhaps to disarm the BOS & other concerned parties?
 2. I question the veracity of the statement by Jeff Bush explaining the use of market rates from off-Cape towns, i.e., that there is not enough market rate housing information from the Cape. What does that say about the reliability of this information, i.e., Cape & off-Cape rates may (& probably do) differ?
 3. In discussing the proposed "full traffic study," Singer noted that there would be a bus stop and sidewalks that would go into Harwich Center. As a regular rider on CCRTA buses (since I no longer have a car) I am quite familiar with the bus routes. There is currently NO bus route that goes up Sisson Road, the street that intersects Chloe's Path (the Flex route). Is Kemah Apartments planning to negotiate a change in the current Flex route with the CCRTA in order to have a bus stop available to residents of the proposed development????
- OK - I've said my piece & I hope my concerns & questions will be part of the material presented the next time this project is reviewed. Thank you for your attention

SISSON ROAD – CHLOE’S PATH ABUTTERS

July 21, 2021

Board of Selectmen
Town of Harwich
Harwich Town Hall
732 Main Street
Harwich, MA 02645

RE: Chloe’s Path 40B Proposal

Dear Chairman MacAskill and Members of the Board,

My name is Peter Gori, and while I grew up in Harwich many years ago, my family and I recently returned to town, having recently purchased a home at 226 Sisson Road. As a real estate professional and former resident who has been exploring the purchase of a home here for several years, I have followed the many and several prior schemes for the development of Chloe’s Path for some time.

I appreciate the opportunity to submit the following introductory comment letter on behalf of myself and my fiancée and co-owner, Lesley Cannon, as well as several of our neighbors. We believe this initial feedback echoes many, but by no means all, of the comments and sentiments posed by community members, neighbors, and direct abutters to the proposed project site last night, Tuesday, July 20, 2021, during the proponents’ first open “community” forum. We will follow this letter with a more detailed list of the many issues which were raised last night and multitude questions that we feel must be answered by the proponents through the public review of the proposed project and before any further actions are taken by either the Town, the State, or the proponents.

First, we want to state publicly and emphatically that many of our households support affordable housing broadly and, specifically, that we support the creation of *mixed-income* housing of all sorts, including multifamily rental apartments whenever and wherever appropriate, including across the Town of Harwich, along Sisson Road, and even at Chloe’s Path. I have personally spent most of my professional career in commercial real estate and development, and I spent a decade working as a Senior Manager at the urban planning and development agency of the City of Boston. I am, in no way, shape, or form, anti-development, anti-affordable housing, or a NIMBY, nor are my new neighbors. Many of us also consider ourselves well-informed as to the need for significant numbers of new housing units to be built across the Cape and the Islands to help stem the affordability and inventory crisis that we see today.

However, this project in its current form has been poorly rolled-out and it is poorly conceived. The project, at 96 units, over 150 parking spaces, and a projection of upwards of 300 new residents is simply entirely too large for the site itself, and out of scale with its neighborhood and environmental context. In addition, the proponents have skillfully but somewhat disingenuously presented this project as at the *beginning* of a lengthy permitting and development arc, while also submitting to this Board a request for a formal endorsement of its project to the Commonwealth with little-to-no meaningful community engagement and even less concrete, but no less necessary data as to the obvious and certain impacts of the proposal on our own immediate neighborhood, the nearby school and the Monomoy District as a

SISSON ROAD – CHLOE’S PATH ABUTTERS

whole, the Harwich Center Historic District, other nearby cultural and natural resources, or to the larger year-round and seasonal community and our quality of life.

It is also glaring, for a more than \$27,000,000.00 for-profit development project, that the proponents have not identified a single community benefit or – more sensibly – an overarching mitigation package to begin with, one that they no doubt should have teased or unveiled in these first several public forums. This lack of preparedness and seeming disinterest in the many other needs of the community, including the neighboring school, or otherwise, is simultaneously flabbergasting and frustrating to us as neighbors and observers of similarly sized developments across the Cape and beyond.

For these reasons and the detailed criticisms and questions to follow, we therefore urge the Selectmen and the Town Administrator’s office to reject the proposal in its current form without prejudice. We urge this Board to ask the proponents to voluntarily withdraw all applications to the Town or State immediately and go back to the drawing board. Further, we request that the proponents voluntarily slow their current trajectory and timeline(s) until they are willing and able to fully and publicly describe and present - and then conduct - a comprehensive and transparent community and permitting process. We request that this include a wholesale rethinking of the design, scale, and nature of their proposal including – most importantly – the completion and presentation of a series of studies of the significant potential and likely transportation and environmental impacts of what is undoubtedly the largest residential development proposal of its kind in this area for a generation.

These studies, in our opinion, must be undertaken in the light of day, and with public input and scrutiny from residents, abutters, nearby businesses, and area affordable housing advocates, among others. They should be scoped by the Town staff and line departments, presented more deliberately with the public and this Board as well as other State and Local agencies which ultimately may have jurisdiction of a project of this size and importance. These local departments and Boards need no further enumeration here but, at the very least, the Town and proponent should come together to acknowledge that the nature of the site should require a complete and exhaustive review by the Mass Department of Environmental Protection, MassDOT, and, perhaps, the Cape Cod Commission, among others.

Given my experience and the experience and interests of my neighbors, we respect the Town’s own challenge in stimulating interest in the development of affordable housing in Harwich and the challenging balance you face in identifying and sorting through the many issues that must be honestly and thoughtfully addressed by both the public review agencies, staff, and elected and appointed Boards responsible for harnessing and managing growth. We also acknowledge how projects must be financed and executed by the private sector to help deliver new, modern, and accessible housing to our communities. We further respect the Town Administrator’s office’s efforts to date and its direction to the proponent(s) to have their presentation aired publicly at the BoS as an informational presentation back in May before the airing of the project began, “on social media”.

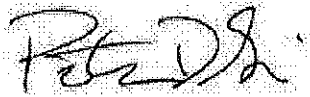
However, due to the lack of meaningful and proactive communications by the proponent or the Town to unveil and plainly explain such a massive proposal for a neighborhood cul-de-sac prior to last night, we feel that this entire process to date has proceeded out of sequence. Further, because of a series of reported missteps by prior developers and an inability or unwillingness by either to rectify any number of civil engineering, construction, environmental permitting, and communications issues that occurred before, we again feel that the proposal should be rejected without prejudice and a complete and total review be conducted of what preceded this current proposal and how a multifamily project of any scale might be built safely on this site.

SISSON ROAD – CHLOE’S PATH ABUTTERS

We respectfully submit this letter on behalf of, the following neighbors, on this 21st day of July, 2021:

Peter Gori and Lesley Cannon, 226 Sisson Road
Tom and Carol Thibert, 221 Sisson Road
Karen Beaty, 195 Sisson Road
David and Anna Lafebvre, 210 Sisson Road
Sara Zuspan and Ian Macinnis-Barker, 228 Sisson Road
Jay and Mary Walpole, 214 Sisson Road
Kathy Clobridge and Michael Tuck, 225 Sisson Road

Sincerely yours,

A handwritten signature in black ink, appearing to read "Peter Gori". The signature is stylized with a large "P" and "G".

CC: Joseph Powers, Town Administrator
Meggan Eldridge, Asst. Town Administrator
Harwich Board of Appeals
Harwich Conservation Commission
Amy Usowski, Conservation Commission
Senator Julian Cyr
Representative Sarah Peake



August 8, 2021
26 Pleasant Lake Ave
Harwich, Ma

Town of Harwich
Select Board Members
Dear Elected Officials:

I am writing to let you know that I agree with your firm actions in past months and presently. You have upheld Covid regulations, took a positive position on noise and alcohol statutes, Completed the Harwich Center Sidewalk project as per the Grant terms.

The sidewalk project has been positive. I see the effects daily. Traffic is still excessively heavy and I await the results and recommendation from the study done this last week of RTE 124. and the next phase for the center.

I am in agreement with the opposition to the 92 unit "friendly 40b" for Chloes Path off Sisson Road. It is not a true affordable plan and even if it were, the traffic and environmental concerns would make it not desirable. The Halls Path East Harwich fiasco was well handled. I think someone should be paying a big fine!!

Our Town Manager is visible, vocal, and seems to work hand in glove with all of you. Nice change and good choice.

Thank you for getting us through the year so far. I encourage you to remain fiscally prudent as you go about managing OUR TOWN.

Most sincerely,

PATRICIA STACKHOUSE

Harwich Board of Selectmen

RE: Chloe's path + 96 units

July 24, 2021

Dear Selectmen,

Please consider rejecting The proposal for Chloe's path.

A development this big has no place in Harwich. It's just too much density intensity for any area to handle.

Maybe more suitable for Yarmouth or Waltham, but not in Harwich, please.

Possibly 10-12 units would be acceptable for a lot this size. This is a town, not a city.

Thank you,

Robert Thomasan
77 Oliver Snow Rd.
Harwich Port.



From: Retired Carpenter <mrtuckv6@gmail.com>

Sent: Sunday, October 31, 2021 5:27:43 PM

To: Michael D. MacAskill; Larry Ballantine; Don Howell; Mary Anderson; Julie Kavanagh; Joe Powers; Meggan Eldredge; Jon Idman; Elaine Banta; Amy Usowski; superintendent@harwichwater.com; commissioners@harwichwater.com; Sarah.Peake@mahouse.gov; Julian.Cyr@masenate.gov

Subject: Chloe's Path

Dear Ladies and Gentlemen,

As a "wash ashore" from California it has been my privilege to visit Cape Cod many times over the last few years. I relish my time here, enjoying all the Cape and the Town of Harwich have to offer, and on more than one occasion I have wished that I'd had the opportunity to grow up here rather than in southern California.

At 65 years of age, I am just old enough to remember when southern California had some of the amenities I enjoy here on the Cape. Small farms. Open space. Two lane roads. Few stop lights. A pervasive sense of friendly "neighborhood". It is, quite honestly, a "pinch myself" experience to visit Cape Cod and towns like Harwich.

With regards to the most recent proposal that would see a three story, 53' tall 96 unit apartment building erected on a parcel next door to where I stay when I am on Cape, I have to say that it is the beginning of the end.

The previously approved seven single family dwellings - or even seven duplex homes - could be absorbed easily by Harwich and the surrounding communities. But not such a huge structure encompassing 96 "all electric" units, the accompanying vehicles and their impact on roadways that are already strained during the summer season. And all for only 24 "affordable" units.

I urge you to see this attempt to bend the 40B rule for what it is: a scheme to create profits for the property owner and developers at the expense of the Town of Harwich and Barnstable County, and the people who love the Cape - natives, long time residents, and "wash ashores" like myself.

Thank you for your time and consideration on this matter as well as all you contribute to make Cape Cod such a special place.

Sincerely,

Michael Tuck
225 Sisson Rd.
Harwich, MA

Judith Underwood
220 Sisson Road
Harwich, MA 02645

November 15, 2021

Board of Selectmen Town
of Harwich
Harwich Town Hall
VIA EMAIL

RE: Chloe's Path 40B Project

Chairman MacAskil and Members of the Board,

I live at 220 Sisson Road, directly across from Chloe's Path. In full disclosure I serve as a Harwich Water & Wastewater Commissioner and as a Trustee on the Harwich Affordable Housing Trust, and I am an enormous advocate for both Clean Water and Affordable Housing. I write this letter with a heavy heart and a lot of anxiety for my children and the Town's future – so I will make my points concise and direct. It's caused me enormous agita every time I try to write so please accept my letter with great appreciation for all you do.

- 1) First, and with all due respect Chairman MacAskil you are incorrect in believing that the Forever Wild Covenant declared in the Barnstable Registry of Deeds Bk 29940 Pg 256 can be amended – it cannot. According to **#22 Ammendments, Waivers, and Assignments of Rights**. **“With the exception of 1.E (Forever Wild Area) the DECLARANT, from time to time, shall have the right to waive, alter, or amend...there is NO exception for the Forever Wild Covenant”** – it is as it is stated, and as Attorney Ford has stated. There are “from time to time” amendments that can be made but **NOT** the Forever Wild Covenant. Please do not bring the Town of Harwich into a litigious situation.
- 2) The stabilization design that Engineer O'Reilly presented to the Planning Board was NOT carried out. Indeed, the developer ceased the employment of Engineer O'Reilly right after the Planning Board Meeting so he had no oversight, and the Town offices that were contacted to come and observe the dumping that was being done at the sight did not show. I, and others, maintain that the hill there is not stabilized correctly and could wash away, or worse create a landslide (which we have seen out of California in similar situations), and injure or kill anyone in its path.
- 3) Sisson Road in front of my house is a 40 mile an hour road. The cars already back up from the elementary school pickup making a single lane which is dangerous for the police and fire fighters to do their work. Having 200 – 250 cars going in and out of there are a lot of headlights on my front rooms, anytime a right-hand turn is made out of Chloe's Path. A left hand turn out of Chloe's Path, any time of year, is dangerous as the driver's (40 miles an hour) cannot see

**Judith Underwood
220 Sisson Road
Harwich, MA 02645**

coming up the hill from Town Center. From May through September, we cannot take left hand turns out of our property because the traffic is so heavy. How will adding an additional 200 – 250 cars help the already challenging traffic situation in the Town Center? Lastly, how will this impact the ability of our Police and Fire Departments to do their jobs quickly and safely?

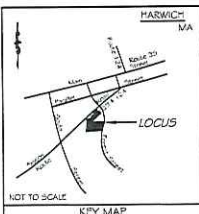
- 4) The developers still have not identified where on the property the Turtle protection will be. I would like you all to see the attached proposal submitted by Engineer O'Reilly in October of 2016. Please note the Turtle Protection Area – it's now been cleared and the soil, plowed...
- 5) Lastly, with regards to the Waste-Water Management. While I believe they could obtain the permit needed (it is a 40B), it will come at a cost in some part of the area. I do not believe they can afford in their business plan to have a zero nitrogen system put in place – they are extremely costly. Instead, it appears from Engineer O'Reilly's remarks that they will either purchase/lease additional land that is unused and do a nitrogen credit swap. In some areas this might be appealing, in this location however it will not keep down the eutrophication process. On paper they will be "doing the right thing" but in reality, that nitrogen will head right to Saquatucket Harbor.

Thank you for your time and please go back to #1 and review very closely. I put myself through NYU Graduate School working for an attorney who was the Pre-Law Dean. He was a stickler for language, and the Forever Wild Areas language is not to be interpreted. It is final in its wording. Attorney Michael Ford is spot on, and as the Town of Harwich is part and parcel to this property (lot 8 Conservation) we must be diligent in our steps forward and support what the Planning Board allowed five years ago.

Thank you,

Judith

CC: Joseph Powers, Town Administrator
Meggan Eldridge, Asst. Town Administrator
Harwich Board of Appeals
Harwich Conservation Commission
Amy Usowski, Conservation Commission
Senator Julian Cyr
Representative Sarah Peake



OWNERS OF RECORD:
 LOUIS J. SOMAKARA, JR., TRUSTEE
 QUIVET NECK REALTY TRUST
 DEED BOOK 17492 PAGE 70
 ASSESSOR'S MAP 31, PARCEL D-4
 ARTHUR P. DOANE, JR.
 VIRGINIA DOANE
 DEED BOOK 1412 PAGE 455
 ASSESSOR'S MAP 31, PARCEL D-3

ZONING CLASSIFICATION

ZONE RL (RESIDENTIAL-LOW DENSITY)
 MINIMUM AREA 40,000 SF
 MINIMUM FRONTAGE 150 FEET
 FRONT YARD SETBACK 25 FEET
 SIDE AND REAR YARD SETBACK 20 FEET
 MAXIMUM BUILDING COVERAGE 15%
 MAXIMUM BUILDING HEIGHT 30 FEET


AREA CALCULATIONS:


TOTAL PARCEL AREA	576,920 SF±	(13.24 AC±)
TOTAL WETLAND AREA	170,660 SF±	(3.91 AC±)
TOTAL UPLAND AREA	406,260 SF±	(9.33 AC±)
AREA OF LOTS 1-8 (FOR HOMES)	143,064 SF±	(3.28 AC±)
AREA OF ROAD	50,196 SF±	(1.15 AC±)
AREA OF TEMPORARY DISTURBANCE	30,197 SF±	(0.69 AC±)
TOTAL OF DISTURBED LOTS AND ROAD	223,458 SF±	(5.13 AC±)


TOTAL OPEN SPACE PROVIDED: (AFTER REVEGETATION OF TEMPORARY AREAS)
 $576,920 - 193,260 = 383,660 \text{ SF} \pm$
 $8.80 \text{ AC} \pm \text{ OR } 66.5 \%$

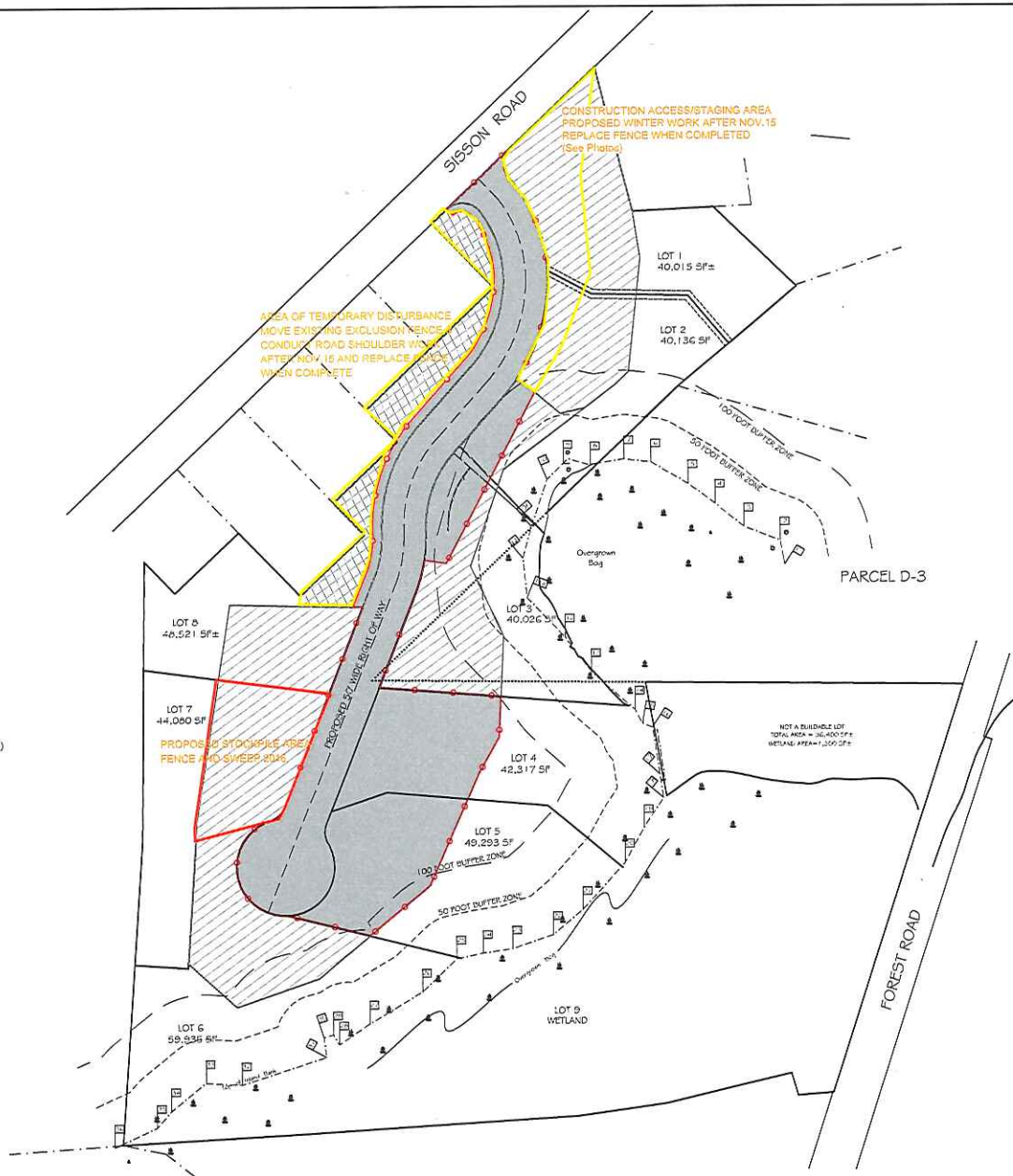
UPLAND OPEN SPACE PROVIDED:
 $406,260 - 193,260 = 213,000 \text{ SF} \pm$
 $4.89 \text{ AC} \pm \text{ OR } 52.4 \%$

TOTAL UPLAND AREA LEFT IN NATURAL STATE
 (INCLUDES PERMANENT AND TEMPORARY ALTERATIONS)
 $406,260 - 223,458 = 182,802 \text{ SF} \pm$
 $4.20 \text{ AC} \pm \text{ OR } 45.0 \%$

 AREA OF ROADWAY, UTILITIES, HOME CONSTRUCTION, ASSOCIATED GRADINGS FOR THE HOMES INCLUDING THE UTILITIES
 AREA = 187,153 SF±

 AREA OF TEMPORARY DISTURBANCE ASSOCIATED WITH THE ROAD CONSTRUCTION TO BE REVEGETED BACK TO NATIVE SHRUB COMMUNITY.
 AREA = 30,197 SF±

 AREA OF TURTLE PROTECTION AREA
 AREA = 101,100 SF±




TURTLE PROTECTION AREA OCTOBER 2, 2015

PRELIMINARY GRID SUBDIVISION PLAN
 SHOWING PROPOSED LIMIT OF ACTIVITY

CONCEPTUAL
 PLAN OF LAND
 IN
 HARWICH, MASSACHUSETTS
 FOR
 DONOVAN BUILDING CORPORATION

0 60 120 180
 SCALE 1"=60' OCTOBER 2, 2015

 **J.M. O'REILLY & ASSOCIATES, INC.**
 Professional Engineering & Land Surveying Services
 1673 Main Street - Route 6A
 P.O. Box 1773
 Brewster, MA 02631
 (508)695-8601

G:\AA\JH\DONOVAN\3512A-PREL-MODIFIED GRID ENVELOPS.dwg

JMO-3612A

09-19-2016 @ 11:17a

NOT AN OFFICIAL COPY
 Locus: Chloe's Path, Harwich, MA
 NOT AN OFFICIAL COPY

NOT AN OFFICIAL COPY
 CHLOE'S PATH
 NOT AN OFFICIAL COPY

HARWICH, MASSACHUSETTS

DECLARATION OF PROTECTIVE COVENANTS

DECLARATION made this 16th day of SEPTEMBER, 2016 by Peter B. Donovan,
 Manager of HFH DEVELOPMENT, LLC, with a mailing address of P.O. Box 612, North
 Chatham, MA 02650 (hereinafter called "DECLARANT").

WITNESSETH:

WHEREAS, DECLARANT is the owner of land situated in Harwich, Barnstable County, Massachusetts, hereinafter described, and is desirous of creating an attractive residential community; encouraging harmonious and pleasing homes, assuring a high quality of community appearance; preserving and protecting the natural character of the land, conserving the trees, shrubbery and other natural features for the benefit of all property owners; preventing nuisances, to maintain the desired tone of the community and to thereby secure to each site owner the full benefit and enjoyment of his home, with no greater restrictions upon the free and undisturbed use of his site than is necessary to insure the same advantages to the other site owners; and

WHEREAS, DECLARANT desires to provide and insure the preservation of the values in said community and, to this end, desires to subject the real property together with such additions as may hereinafter be made thereto to the covenants, restrictions, easements, and liens hereinafter set forth, each of which is and are to be for the benefit of said property and each owner thereof;

WHEREAS, DECLARANT desires to provide and insure that the development of the land will continue to provide habitat used by a variety of wildlife including, but not limited to the Eastern Box Turtle (*Terrapene carolina*), in perpetuity.

NOW, THEREFORE, DECLARANT declares that the land in Harwich, Barnstable County, Massachusetts, shown as lots 1, 2, 3, 4, 5, 6, 7, and 9 and the fee in Chloe's Path as shown on a definitive subdivision plan entitled, "Chloe's Path, Definitive Subdivision Plan of Land in Harwich, Massachusetts for HFH Development, LLC, J.M. O'Reilly & Associates, Inc., December 14, 2015" and recorded with the Barnstable County Registry of Deeds in Plan Book 666, Page 20-27 (Plan), and such additions thereto as may hereinafter be made is and

shall be held, transferred, sold, conveyed, and occupied subject to and with the benefit of the covenants, restrictions, easements, charges, hereinafter set forth (the Property);

1. Definitions

- a. Hazardous Material: shall mean any material or substance that, whether by its nature or use, is now or hereafter defined as a pollutant, dangerous substance, toxic substance, hazardous waste, hazardous material, hazardous substance or contaminant under any environmental law, or which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic or otherwise hazardous and which is now or hereafter regulated under any environmental law.
- b. Pervious: shall mean built of materials consisting of unconsolidated minerals such as sand, dirt or gravel, or natural materials such as wood chips or grass.
- c. Structure: (whether or not said term is capitalized) shall mean anything constructed or erected which requires permanent or temporary location on, in, over or under the ground or permanent or temporary attachment to something which is erected or placed on the ground and designed, intended or arranged for the housing, shelter, enclosure and/or structural support of persons, animals or property of any kind, including but not limited to houses, mobile homes, tents, barns, sheds, greenhouses, treehouses, and other buildings of any kind; silos and cribs; swimming pools; playing courts; outdoor riding rings; fences; pads; patios and decks; docks; bridges; roads; driveways and parking areas (whether surfaced with macadam, brick, paving stones, gravel, clay or other material); artificially surfaced walkways; solar panels; satellite dishes and antennae; signs and billboards; storage tanks; windmills and wind turbines; and water, sewer, power, fuel, gas and communication lines, other utility systems and related facilities.
- d. Passive recreation: activities that are non-consumptive uses of resources and do not require prepared facilities like sports fields and pavilions. Passive recreation activities place minimal stress on the site's resources and are compatible with the Conservation Values. Examples include hunting, hiking, wildlife viewing, observing and photographic nature, picnicking, walking, bird watching, running/jogging, star gazing, and fishing. Passive recreation excludes mountain bikes, use of motorized vehicles, and horse-back riding, unless specified herein.

2. Subdivision of Lots and Use.

- A. No Lot shall be further subdivided so as to create two or more building sites nor shall any Lot be used as access to any adjoining land except another Lot. Notwithstanding the above, a 4' wide easement for foot and bicycle traffic along the common boundary line of Lot 1 and Lot 2 is permitted for the benefit of and appurtenant to the adjoining land of Robert W. Doane and Andrea E. Doane located at 180 Forest Street, Harwich, MA and described in deeds recorded in Book 1286 Page 654 and Book 1412 Page 465 and deed for Parcel B-1 recorded herewith.

B. There shall be no more than one (1) principal house or a two (2) family house that meets the requirements of the Harwich Zoning By-Law and such other buildings and structures permitted by the Town of Harwich Zoning By-Law on a Lot.

C. The Property shall not be used for business, professional, or industrial purposes that would require the storage of materials or public display of goods for sale shall be made, nor shall any advertising display be permitted. In no event shall the property be used for any purpose which might be or become detrimental to the neighborhood as a desirable residential area.

D. The back portions of each of Lots 1-7, as demarcated on the Plan with the line called "Limit of Disturbance", shall be maintained as habitat and open space providing habitat for the conservation of species listed pursuant to G.L. c.131A et. seq., which shall be considered the most important conservation purpose for which this land is to be protected in perpetuity (hereinafter "Forever Wild Areas").

a. **Prohibited Acts and Uses.** Within the Forever Wild Areas, the following acts and uses are prohibited:

- i. Constructing, placing, or allowing to remain any Structure on, above, or below the surface of the Forever Wild Area;
- ii. Mining, excavating, dredging or removing of soil, loam, peat, gravel, sand, rock or other mineral resource or natural deposit;
- iii. Placing, filling, storing or dumping of soil, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, tree cuttings, waste or Hazardous Material or other substance or material whatsoever, whether or not generated on the Forever Wild Area;
- iv. Removing, cutting, pruning or destroying vegetation (native or non-native), including, but not limited to trees or plants, understory, grasses and ground covers, except as allowed in writing by the Grantee and Division to remove hazards to users;
- v. The application or use on the Forever Wild Area of fertilizers, fungicides, herbicides or pesticides in any quantity;
- vi. The planting, release, cultivation, maintenance, or other activity that would result in the introduction of plant or animal species that pose a substantial risk of being invasive or are otherwise detrimental to the native plant and animal community on the Forever Wild Area, as determined by the Division. A list of plant species deemed to be invasive, as of the time of this grant, is provided in the Massachusetts Prohibited Plant List, which is updated and maintained by the Massachusetts Department of Agricultural Resources;
- vii. Activities detrimental to drainage, flood control, erosion control, water or soil conservation, archaeological resources or the quality of ground water and wetlands;

- viii. Animal penning or grazing; holding horses, pets, livestock, or domestic animals within a paddock; horseback riding, causing or permitting any domestic or livestock to be unattended or to roam or be at large on the Property; and the storage or dumping of manure or other animal wastes; any agricultural use;
- ix. The use, parking or storage of motorized vehicles, including, but not limited to, trucks, trail bikes, motorized or non-motorized, all-terrain vehicles, dune buggies, boats, trailers, and snowmobiles, except as necessary by the police, fire fighters or other Governmental Agents in carrying out their lawful duties; and except for motorized wheelchairs or scooters used by physically challenged parties;
- x. The disruption, removal, or destruction of any stone walls or granite fences;
- xi. Conveyance of a part or portion of the Forever Wild Area alone, or division or subdivision of the Forever Wild Area (as compared to conveyance of the Forever Wild Area in its entirety which shall be permitted);
- xii. The disturbance in any fashion of the natural surface of the ground, including the organize litter layers of the soil, including downed trees and branches and rocks.

b. **Reserved Rights.** Notwithstanding any provisions herein to the contrary, Declarant reserves to itself and its successors and assigns the right to:

- 1. Establish, enforce, waive, alter and amend such additional rules, regulations, covenants, conditions and restrictions governing use of the Forever Wild Areas as not otherwise prohibited by these Protective Covenants and as allowed by applicable federal, state or local law or regulation;
- 2. Conduct or permit the following activities in the Forever Wild Areas if such acts do not materially impair significant conservation interest:
 - i. Selective cutting or pruning of trees and vegetation to maintain access to and over footpaths existing at the time of the recordation of this Protective Covenant and located thereon;
 - ii. For protection of persons and property from imminent risks or harm or damage to persons and structures;
 - iii. Construction fences or necessary boundary markers on Forever Wild Areas; and
 - iv. Creation of a 4' wide foot path located along the common boundary line of Lot 1 and Lot 2. Further, the Declarant shall be able to maintain the footpath through the selective cutting or pruning of trees and vegetation, the use of gravel, and the installation of a split rail fence along the sides of the above referenced footpath. The Declarant may mow within the area of the footpath between October 15th and April 15th and may use a string trimmer within the area of the footpath from August 1st to May 31st.

c. **Monuments and Signage.** The Declarant and the Declarant's Successors shall maintain in good condition any, bounds, monuments, makers and signs shown on the Plan, demarcating the boundaries of the Forever Wild Areas, and shall repair and or

replace said monuments and signage on an as needed basis. Bounds, monuments, markers and signs shall not be removed, covered, obstructed, or altered without review and written approval by the MA Division of Fisheries and Wildlife, Natural Heritage Endangered Species Program (ATTN: Regulatory Review, NHESP 06-20086, 1 North Drive, Rabbit Hill Road, Westborough, MA 01581) (the "Division").

d. **Enforceability.** The Declarant and the Declarant's successors and assigns shall have the authority and right to enforce these restrictions.

e. **Incorporation Into Deeds, Mortgages, Leases and Instruments of Transfer.**

Declarant and Declarant's successors and assigns, including all subsequent owners of the Forever Wild Areas, shall incorporate these restrictions, in full or by reference, into all deeds, easements, mortgages, leases, licenses, occupancy agreements or any other instrument of transfer by which an interest in and/or a right to use the Forever Wild Areas or any portion thereof is conveyed. Any such deed, mortgage, or other interest purporting to convey any portion of the Forever Wild Areas without including these restrictions in full or by reference shall be deemed and taken to include these restrictions in full even though said restrictions is not expressly described or referenced therein.

3. **Building Approval.** No structure of any kind, whether residence, accessory building, tennis court, swimming pool, or other improvements of any kind, name or nature shall be erected, constructed, moved onto, maintained, or allowed to stand or be in or on any Lot, nor shall any additions to or alteration to the exterior of a structure be made unless complete architectural and site plans, including specifications and plot plans therefore, showing the exterior design, height, building material, and color scheme thereof, the location of the structure plotted horizontally and vertically, the location and size of driveways, the location of and the general plan of landscaping, fencing, walls and windbreaks, grading plan, the location of all gas, water, and other utility lines or wires and the location of all proposed sewage disposal systems and all components therefore on the Lot shall have been submitted to and approved in writing by the DECLARANT or Donovan Building Corp., as agent for the DECLARANT. It is the intent of this to require that structures be in good taste, in harmony with the quality of nearby structures, and that they fit the site. The approval of building plans is solely the decision of the DECLARANT or Donovan Building Corp. Cape Cod or modified Cape Cod style architecture shall be required
4. **Exclusive Homebuilder.** It is intended that houses in Chloe's Path shall be constructed only by Donovan Building Corp. Lots may be sold to individuals, corporations, and/or partnerships, but all homes must be constructed by Donovan Building Corp.
5. **Utilities.** There is reserved to the DECLARANT the right to install or maintain or have installed and maintained all public utilities in, over, under, along and upon the Road as shown on the Plan; reserving also to the DECLARANT the right to grant easements to public service corporations for the installation and maintenance of such public utilities (water, sewer, telephone, electricity, gas, cable television and other utilities) and anchors and guys to support lines in said Road and on land adjacent thereto; and reserving also to

N O T
A N

the DECLARANT the right to grant an easement to the Town of Harwich to lay, relay, construct, maintain, operate, inspect, repair, and replace and remove water mains, service pipes, and appurtenances thereto in, under, through, and over the said Road.

C O P Y C O P Y

6. Roof Shingles. Shall be CERTAINTED brand, LANDMARK Architectural style, WEATHERWOOD color on all buildings. N O T
A N
7. Road(s). Except as otherwise provided herein, every owner shall have a right of way and an easement of enjoyment for all purposes for which roads are commonly used in the Town of Harwich, with all others who are or may become lawfully entitled thereto, in, over, and upon the Road, without rights of parking motor vehicles thereon, which right and easement shall be appurtenant and shall pass with the title to every Lot, subject to this Declaration. Lot Owners and their guests may on a temporary short-term basis, but in no event overnight, park motor vehicles on the Road in the area immediately adjacent to the Lot Owner's Lot.
8. Boats, Automobiles, Trailers, Campers, & Commercial Vehicles. No boats exceeding twenty (20') feet in length, no unregistered automobiles, automobile parts, mobile homes, trailers, or campers shall be placed or stored on or about any lot unless garaged and unexposed to public view. No repair work on any vehicle of any nature is to be undertaken except within a garage and to the extent permitted in accordance with the Town of Harwich By-Laws. Except for service deliveries and contractors or repairmen and then only on a temporary basis while working at a Lot, no commercial vehicles shall be parked on any Lot or the Road unless parked within an enclosed garage or basement.
9. Animals. No animals of any kind may be kept or maintained except domestic household pets, unless with the written approval of the DECLARANT or Donovan Building Corp., and confined within the area of the Lot.
10. Trees. No live trees of more than four (4") inches in diameter at a four (4') foot height shall be removed without approval of the DECLARANT, except as necessary for building construction and the footpath along the common boundary of Lot 1 and Lot 2.
11. Trash. All garbage, trash, and rubbish placed outdoors shall be kept in covered containers, screened from public view. No garbage, trash, or rubbish shall be burned on any lot outside of the confines of any building. The burning of leaves outdoors is prohibited.
12. Laundry. All exterior laundry drying facilities shall be screened from public view by suitable enclosures, screens, or planting(s).
13. Fuel Storage. No tank for the storage of fuel may be maintained in, on, or under any lot unless contained in a structure and in a location approved in writing by the DECLARANT and further only to the extent permitted by law. Tanks used to fuel outdoor grills will be excluded from this restriction.

14. Building Materials. No building material of any kind or character shall be placed or stored upon any Lot until the Lot Owner is ready, willing, and able to commence construction.

15. Miscellaneous Restrictions.

- a. No mechanical, mercantile, or manufacturing business or trade of any kind shall be carried on or upon any Lot nor within any structure on a Lot and no hospital, rest home, club, social organization, group home, day care, or educational institution of any kind, whether for elderly or children, shall be established or maintained thereon or therein; nor shall any illegal or offensive activity be carried on in or upon any building, Lot or the Road adjacent to any Lot, in said subdivision, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood. The practice of a profession or the maintenance of a home office as provided for in paragraph 1.B. shall include the service of the residents of the property only and no more than one non-resident employee, shall be conducted entirely within a structure on a Lot incidental and subordinate to the residential use and without in any manner changing the residential character of the Property or a building or buildings on a Lot.
- b. No antennas, satellite dishes, so called, and windmills, shall be attached to any structure, including the roofs thereof, moved onto or maintained on or upon any Lot or on or from any structure on a Lot unless first approved in writing by the DECLARANT.

16. Signs. Without the written approval of the DECLARANT, no sign of any kind shall be displayed to the public view on any building or Lot except one (1) sign of not more than two (2) square feet in size denoting only the name of any resident living on such Lot and, on a temporary basis only, one (1) "For Sale"/real estate sign of not greater than four (4) square feet in dimension.

17. Exterior Lighting. Any exterior lighting installed on any Lot shall either be indirect or of such controlled focus and intensity as not to disturb the residents of the adjacent property.

18. Excavations. Without the written approval of the DECLARANT, no excavation for stone, gravel, sand, or earth shall be made on any building Lot, except for the purpose of building previously approved improvements, grading, and landscaping, provided however, that the DECLARANT shall have the right to excavate and grade on any building Lots then owned by the DECLARANT and to remove material or deposit material thereon in connection with the work of laying out and improving the same.

19. Maintenance. Each Lot and each home, together with accessory structures and grounds, shall be maintained in a neat appearing manner by the owner.

20. Setback Restriction. Any house or garage built on Lot 1 or Lot 2 shall be located a minimum of thirty-five (35') feet from the property line of the abutting property owned

by Robert W. Doane and Andrea E. Doane, and located at 180 Forest Road, Harwich, Massachusetts and described in deeds recorded in the Barnstable Registry of Deeds in Book 1412 Page 465 and Book 1286 Page 654 (the "Doane Property"). This restriction shall be for the benefit of and appurtenant to the Doane Property and shall be enforceable by Robert W. Doane and Andrea E. Doane, and their successors and assigns.

21. Term of Restriction. The Covenants and Restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of DECLARANT, or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors, and assigns for a term of thirty (30) years from the date this Declaration is recorded.

The Covenants and Restrictions of the Declaration associated with the Forever Wild Areas shall run with the Forever Wild Area, as defined herein, in perpetuity from the date of recordation in the Barnstable District Registry of Deeds and shall be binding upon Declarant, Declarant's successors and assigns, and any other party having an ownership interest in said Forever Wild Areas or claiming to have an interest with respect to said Forever Wild Areas as tenants, invitees, licenses or otherwise, and all of the respective heirs, successors, grantees, mortgages, assigns, agents, contractors, subcontractors and employees of the foregoing.

Furthermore, the terms and provisions and requirements of the Declaration of Restrictions ("Declaration") made by HFH Development, LLC dated August 7/8, 2016, and recorded herewith in the Barnstable Registry of Deeds in Book 29940, Page 267 with the attached Land Management Plan burdening Parcel B-1 shown on the plan recorded in Barnstable Plan Book 29940, Page 272 and owned by Robert W. Doane and Andrea E. Doane, shall be assumed by and be binding upon the Declarant and the Declarant's successor and assigns, at its sole cost and expense. The Declarant, its heirs, successors and assigns shall fully indemnify and save Robert W. Doane and Andrea E. Doane, and their successors and assigns, harmless from any and all costs, expenses, losses or damages, including but not limited to attorney fees, arising out of or in consequence of the Declarant's responsibility to comply with the terms and provisions of the Declaration including the Land Management Plan. The Declarant shall have no right to amend, release or waive this provision without the written consent of Robert W. Doane and Andrea E. Doane, their successors and assigns.

This Declaration of Restriction is hereby intended and declared to be in perpetuity and no re-recordation of this Declaration of Restriction under G.L. c. 184, ss. 23-30 or any other law shall ever be necessary in order to maintain the full legal effect and authority hereof and Declarant and its successors and assigns, including but not limited to all subsequent owners of the Open Space, hereby waive all their legal right to and shall forego any action in law or equity of any kind whatsoever attempting to contest the validity of any provision of this Declaration of Restriction and shall not, in any enforcement action, raise the invalidity of any provision of this Declaration of Restriction.

Notwithstanding anything inconsistent or to the contrary set forth above, the Division is hereby authorized to record and file any notices and/or instruments that the Division deems appropriate to assure the legal validity and enforceability in perpetuity of this Declaration of Restriction and the Declarant, on behalf of itself and its successors and assigns, hereby appoints the Division as its and their attorney-in-fact to execute, acknowledge, deliver and record any such notice or instrument on its and/or their behalf. Without limiting the foregoing, the Declarant and its successors and assigns agree to execute any such notices and instruments upon request of the Division.

22. Amendments, Waivers, and Assignments of Rights. With the exception of 1.E (Forever Wild Area), the DECLARANT, from time to time, shall have the right to waive, alter, or amend any of the remaining provisions of these Restrictions, except the restrictions for the benefit of the Doane Property, if the DECLARANT, in DECLARANT's sole judgment, deems it necessary or equitable to do so; and any such waiver, alteration or amendment may apply to one or more of all of the Lots as the DECLARANT in any such waiver, alteration, or amendment states. When the DECLARANT owns no Lots, these Restrictions, except for the restrictions benefitting the Doane Property, may be amended by recording at the Barnstable County Registry of Deeds a certificate of vote certifying that these Restrictions have been amended by the Owners of 2/3 or more of the Lots as shown on the Plan.

Waiver, alteration, amendment or the like of 1.E (Forever Wild Area) may only occur by the DECLARANT with assent in writing by the MA Division of Fisheries and Wildlife, Natural Heritage Endangered Species Program (ATTN: Regulatory Review, NHESP 06-20086, 1 North Drive, Rabbit Hill Road, Westborough, MA 01581). The MA Division of Fisheries and Wildlife's has the right to refuse any declarations that does not forward the purposes of the MA Endangered Species Act. Any waiver approved by the Division shall be recorded at the Barnstable County Registry of Deeds in the chain of title on the relevant portion of the Property.

23. Remedies. These Protective Covenants are made for the benefit of the DECLARANT, its successors and assigns, (and where applicable for the benefit of Robert W. Doane and Andrea E. Doane) and after the DECLARANT owns no Lots, then for the benefit of any and all persons or legal entities who may own any of the Lots and who shall derive title from or through the DECLARANT, its successors and assigns. The DECLARANT, and after the DECLARANT owns no Lots, the Association, shall specifically have the right to prevent or stop the violation of any restriction by injunction or other lawful remedy, and to recover any damages resulting from such violation. Further, Robert W. Doane and Andrea E. Doane shall have the right to enforce the restrictions that are for the benefit of the Doane Property.

24. Invalidity. If any easement, covenant, restriction, or agreement or part thereof, or any charge herein contained should be held invalid by any court, such invalidity shall in no way affect any other covenant, restriction, agreement or charge herein contained.

25. Development. These ^{N O T}restrictions shall not operate in any way nor shall they be interpreted to restrict ^{N O T}DECLARANT or any person, firm, or corporation acting on behalf of said DECLARANT in the development and sale of the lots contained in the Plan, or in any enlargements to the parcel, inclusive of the right to erect signs and offices.

26. Enforcement By Declarant. The DECLARANT ^{N O T}may appoint or delegate an agent, agents, corporation, or association to carry out any and all of the foregoing restrictions as to enforcement, approval, privileges, rights and other matters; said appointment to be in writing duly recorded in the Registry of Deeds for Barnstable County. The DECLARANT may delegate or assign all responsibility relating to the foregoing restrictions as to enforcement, approval, privileges, rights, and other matters, to any individual or association without recourse provided, however, that the members of the association include, or the individual be, an owner of one of the Lots which is subject to the terms of these restrictions.

27. Special Provisions Associated with the Forever Wild Areas for the MA Division of Fisheries and Wildlife.

- a. **Enforcement.** The MA Division of Fisheries and Wildlife acting through its Natural Heritage & Endangered Species Program shall, jointly with the DECLARANT or severally, enforce any provision of this restriction that applies to the Forever Wild Area; and are a benefitted party.
- b. **Access.** The Division shall have the right to enter the Forever Wild Areas, in a reasonable manner and at reasonable times, for the purposes of (i) inspecting the area to determine compliance with this Chloe Path Protective Covenants; (ii) enforcing this Chloe Path Protective Covenants; and (iii) taking any other action which may be necessary or appropriate.

The Division shall have the right to bring proceedings at law or equity against any party or parties violating or attempting to violate the terms of this Declaration of Restriction to enjoin them from so doing and to cause any such violation to be remedied, including but not limited to restoration of the portion of the Forever Wild Area adversely affected, after providing written notice to such party or parties and all mortgagees of record if the names and addresses of such parties and mortgagees have been provided in writing to the Town and the Division.

- c. **Severability.** If any court or other tribunal of competent jurisdiction determines that any provision of this Chloe Path Protective Covenants is invalid or unenforceable, such provision shall be deemed to have been modified automatically to conform to the requirements for validity and enforceability as determined by such court or tribunal. In the event the provision invalidated is of such a nature that it cannot be so modified, the provision shall be deemed deleted from this instrument as though it had never been included herein. In either case, the remaining provisions of this instrument shall remain in full force and effect.

d. **Non-Waiver.** Any election by the Town and/or the Division as to the manner and timing of its right to enforce this Chloe Path Protective Covenants or otherwise exercise its rights hereunder shall not be deemed or construed to be a waiver of such rights.

e. **Amendment and Release.** No amendment or release of this Chloe Path Protective Covenants that relates to the Forever Wild Area shall be effective unless it has been approved in writing by the Division [hereinafter the Division Approval and said amendment or release and the requisite Division Approval has been recorded with the appropriate Registry of Deeds and/or Land Registration Office.

28. **DECLARANT.** HFH DEVELOPMENT, LLC shall have all of the rights of enforcement, waiver, and any and all other rights, as the DECLARANT in and under the Declaration of Protective Covenants.

In witness whereof, I, Peter B. Donovan, Manager of HFH DEVELOPMENT, LLC, hereunto set my hand and seal this 16 day of September, 2016.

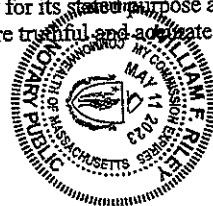
HFH DEVELOPMENT, LLC

By: Peter B. Donovan, Manager

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss.

On this 16th day of September 2016 before me, the undersigned notary public, personally appeared Peter B. Donovan, Manager as aforesaid, proved to me through satisfactory evidence of identification, which was Mass Driver License, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose and who swore or affirmed to me that the contents of the document are truthful and accurate to the best of his knowledge and belief.



Notary Public - William F. Riley
My Commission Expires: 5-11-23

Statement
James Walpole
Board of Selectmen
07/26/2021

I need your help.

My name is James Walpole the joint owner a single level residential home located at 214 Sisson Road in Harwich, Massachusetts.

The driveway, living room, and master bedroom of our home, are located directly across the road from the Chloe's Path Road's entrance and exit, the only access point for the proposed 96-unit apartment complex.

The complex is expected to house as many as 300 people, with an estimated 176 vehicles. In addition, there are deliveries by Postal, FedEx, UPS, Amazon, and school bus traffic etc. There is office staff, maintenance workers landscapers and snow removal that will frequent the complex.

There is a conservative estimate of 400 plus vehicular movements per day. When leaving the complex, the vehicles will not have yet reached optimum operating temperatures. They will accelerate to traffic levels, adding vehicular emissions, light, and noise pollution to the immediate area. The brunt of that pollution will adversely affect our reasonable use of our property.

My wife Mary has significant respiratory illnesses, and she may be unable to be outdoors due to the pollution increase.

It has been suggested that a pedestrian crosswalk may be installed and add to the need for vehicles to stop from either direction, and accelerate when the pedestrian traffic has crossed adding to pollution.

The traffic is further exacerbated by the fact there is currently no public transportation. If added, the Cultural Center should be the off-road planned stop, not Sisson Road. There will be traffic issues in the entire neighborhood and increased traffic on adjacent side roads.

Where in Harwich, is there a complex of this size? Does it fit the plan for the community?

In the past, there was a proposal to add approximately 7 Habit for Humanity homes on this property. Habit for Humanity would be a perfect fit and match the neighborhood and targets the neediest. That would eliminate burdensome traffic and pollution nightmare, from air, light, and noise.

The current proposal is unacceptable. Harwich must require that written mitigation plans be included to protect its' current and future residents. These plans must be enforceable for any project.

As I stated in the beginning, I really need your help.

James Walpole
214 Sisson Road
Harwich, Massachusetts 02645
07/26/2021

Dear Selectman,

The proposed Chloe 96-unit apartment complex is inappropriate for Harwich and will cause irreparable harm to our neighborhood and inhibit the normal use of our properties. There are four types of pollution that will harm our properties and our neighborhood.

1. Air quality pollution
2. Light pollution
3. Noise pollution
4. Traffic pollution - gridlock

The numbers of residents will increase by approximately 300 and a condensed level of vehicle movement to exceed 400 per day. This will change the complexion of the neighborhood, risk health, become a traffic hazard and potential gridlock.

Imagine your neighborhood, your street, and your house, with 400 vehicle movements perpendicular to your driveway, living room, and master bedroom and all the related pollution.

The property is better suited to Habitat for Humanity housing and the placement of approximately 7 individual units serving the needy.

Respectfully,

James Walpole

From: "Gary J. Zelch via Harwich MA"
Date: August 9, 2021 at 3:30:50 PM EDT
To: Jamie Goodwin
Subject: Town
Reply-To: "Gary J. Zelch" <gjzelch@charter.net>

Submitted on Monday, August 9, 2021 - 3:30pm

Submitted values are:

What does this comment regard: Town

Please include any questions or comments: I wish to register my opposition to the "Chloe's Path Housing" project. I am an abutter at 205 Sisson Road. Almost 100 housing units at even 2 people per unit creates a 200 person cluster with 100 cars exiting & entering Sisson Road (only 1 way in and out) three doors away from me every day. Sisson Road is busy to begin with. A red light would be necessary immediately & create a traffic nightmare. If there are kids in this development, they would cut through my yard on the way to school. As is, my yard may fall into the street soon if a sufficient wall is not erected. We would welcome 10 to say 15 houses, but 100 units? It's silly. Sisson Road (top to bottom) probably has less than 100 houses on the entire road now - you want to double it? This is a bad idea. Some builder (eventually) will realize this property would be great for 10 to 15 regular houses, but I get the feeling the town has been holding back any progress with restrictions. Please entice a builder with a realistic plan and don't restrict them out of a rational profit to build something good for the town and the neighbors.

==Please provide the following information==

Name: Gary J. Zelch
Email Address: gjzelch@charter.net
Address: 1 Old Upton Road
City: Grafton, MA
State: Massachusetts
Zip: 01519

Dear Sir,

I have written once before, a few months ago, but I understand this project still has a chance of coming to fruition. I am an abutter to the Choe's Lane Project off Sisson Road. I live at 205 Sisson Road. It's our summer place and we love it, We have been there since 1986.

The project, if I understand correctly, will add 96 units (condo or apartment?) to the Sisson/Center of Town area. I don't believe there are 96 housing units on all of Sisson Road now, so this would double the residents in one fell swoop. That's too big a project. We were happy to hear of the original project, years ago, calling for 8-10 houses. It seemed perfect to "improve" the neighborhood. It would be like a little village near the center of town, perhaps add some more shops on the Main Street, find more uses for the old Middle School Building? But 96 units is virtually another city, and I do mean "city". Sisson is a busy street now. 96 units would make it super busy.

I have not seen details of the plans, but how can 96 units be anything but a large concrete eyesore. Plus, we are wary that our yard would fall into the Chloe Lane "valley" if there is not a proper retaining wall built behind us. I had assumed that such a wall would be built if there were 8 to 10 "owners" who cared about such things. With 96 "owners"/"renters". no one will care about any aesthetics or maintenance of the development. I foresee a mini-slum of sorts.

I care about my property value, and I have a hard time envisioning how a 96 unit project can do anything but lower that value.

Please don't let it happen. Surely there will be other developers with better plans for the town.

Thank You.

Gary & Elizabeth Zelch

205 Sisson Road & 1 old Upton Road

Harwich, MA 508-432-7825 Grafton, MA 508-839-4766