

EXECUTIVE OFFICE OF ENERGY and ENVIRONMENTAL AFFAIRS
DIVISION OF CONSERVATION SERVICES
100 Cambridge St., 9th fl.
Boston, MA 02114-2150
(617) 626-1011

For agency use only
DATE: _____
MUNICIPALITY (list all): _____
NUMERIC ASSIGNMENT(S): ____/____

CONSERVATION RESTRICTION APPLICATION FORM

Pursuant to the provisions of M.G.L. ch. 184. §32. the Executive Secretary of Energy and Environmental Affairs is hereby requested to approve a perpetual conservation restriction as described below:

A. GENERAL INFORMATION (please indicate contact person for CR review)

1. GRANTOR(S) (must list all owners)
The Massachusetts Land Conservation Trust
(Name(s))
830 Drift Rd Westport MA 02790
(Address)
508-636-4693 ext 108 FAX: 508-636-0587 Kelley Whitmore
(Telephone & fax No.) (Contact Person)

*MLCT address is: 572 Essex Street Beverly MA 01915

2. GRANTEE(S): City of New Bedford through the Conservation Commission
(Name(s))
133 William St - Rm 304 - New Bedford, MA 02740
(Address)
TEL: 508-991-6188 FAX: 508-961-3045 Sarah Porter
(Telephone & fax No.) (Contact Person)

3. ARE THERE ONE OR MORE MORTGAGES ON THE PROPERTY? Yes No
(Assent of mortgagee(s) is required and must be recorded with the restriction.)

4. IS THE RESTRICTION IN MORE THAN ONE MUNICIPALITY? Yes No

5. TYPE OF RESTRICTION: a. Conservation Only:
b. Joint Restriction:
Type: _____
(agricultural, historical, watershed)

6. STATE OR FEDERAL FUNDS INVOLVED Yes No
 CPA (attach attested copy of town meeting vote(s) as an exhibit)
 Grant (type) (attach as an exhibit) – LWCF and City of New Bedford CDBG
 Other (attach) Gateway Cities
 Is there a deadline for completing restriction (reason)? June 30, 2014

NOTE: (A full package must be submitted for CR review, even if all or some of the materials were submitted as part of the grant process, as the grant programs are separate)

7. PUBLIC OFFICIALS: State Representative(s) Project is in Rep. Christopher Markey's district.

State Senator(s) Sen. Mark Montigny, Other involved Official(s) Other New Bedford state representatives include Rep. Antonio Cabral, Rep. Paul Schmid, Rep. Robert Koczera, and Rep. William Straus. The mayor of New Bedford is Jonathan Mitchell.

NOTES:

If the grantee is a non-profit charitable corporation or trust, DCS may require proof that it is a qualified charitable organization in accordance with M.G.L. c.180 §4(a) or (l) and the I.R.S. Code Section 501(c) (3) that qualifies as a M.G.L. c.184 §32 holder, and reserves the right to review the organization's by-laws and list of officers.

Regardless of whether the grantee is a qualified private non-profit organization or a city or town or commission, authority, or other instrumentality thereof, the local conservation commission must define the reasons for preserving the property and certify that the restriction is in the public interest (please refer to page 6).

A conservation restriction is a voluntary limitation on the use of land designed to preserve it from adverse future change. But it should be distinguished at the outset from an agricultural preservation restriction which is approved by the Commissioner of Food and Agriculture for the Commonwealth, 251 Causeway Street, Boston, MA 02114-2150, and from an historical preservation restriction, which is approved by the Massachusetts Historical Commission 80 Boylston Street, Rm. 310, Boston, MA 02116, and from a state watershed preservation restriction which is approved by the Commissioner of the Department of Conservation and Recreation, 251 Causeway St., Boston, MA 02114-2150.

It is possible for a restriction to fit into more than one category, requiring more than one approval. If this is a joint restriction, has the approval process been started with the joint holder, including the Commissioners of Food and Agriculture, DCR, the Massachusetts Historical Commission, etc.? Yes No

8. GRANTOR'S INTENT

- a. Charitable contribution: Yes No
Do you intend to claim an IRS income tax deduction? Yes No
- b. Granted or required as part of municipal or state permitting process? Yes No
1. Is this restriction required by a M.G.L. C.40A §9 special permit? Yes No
(Please attach a copy of the permit(s) as an exhibit)
2. Required by M.G.L. C.131, §40 Wetlands Order of Conditions? Yes No
(Please attach a copy of the Order of Conditions)
3. Other? Yes No (please explain)

Land and Water Conservation Funds were awarded to Grantor for conveyance of CR to City of New Bedford Conservation Commission.

c.. Other: Please explain (for example, sale of a C.R. to a public agency):

The City of New Bedford was awarded the federal Land and Water Conservation Fund grant for the purchase of a conservation restriction on the Haskell Community Park, a property to become a Trustees of Reservations (TTOR) property. Massachusetts Land Conservation Trust (MLCT), TTOR's wholly owned transactional affiliate, purchased the property in June 2013. MLCT will convey the CR to the City, which will ensure permanent public access and preservation of the property's conservation and historical values. The property will be conveyed to TTOR later in 2014. The CR is also a condition of Gateway Cities grant program funding.

d. Is this a perpetual restriction? Yes No If less than permanent, for how many years: _____
(It is the policy of DCS not to approve less than permanent restrictions except in exceptional circumstances. Please discuss the restriction with DCS before submitting a non-permanent CR)

B. PUBLIC BENEFIT

1. Is the restriction for the preservation of land areas for outdoor recreation by, or the education of, the general public (will there be public access)? Yes No
 2. Is the restriction for the protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystems? Yes No
 3. Is the restriction for the preservation of open space (including farmland and forest land) where such preservation is:
 - a. pursuant to a clearly delineated federal, state, local governmental policy, and will yield a significant public benefit? Yes No
 - b. for the scenic enjoyment of the general public and will yield a significant public benefit? Yes No
 4. Is the property historically significant or meets National Register Criteria or is within a registered historic district or contributes to the integrity of an historic building or property? Yes No
 5. Other public benefit? Yes No (if yes, please explain)
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NOTES:

The Secretary will find sufficient evidence of the "public interest," if the applicant can show that the restriction meets any of the tests for deductibility under the Internal Revenue Service Code Section 170(h) and the Regulations promulgated thereunder, or a private letter ruling by the Internal Revenue Service shall be deemed sufficient for establishing such deductibility, or the applicant makes an independent showing of eligibility for deductibility. The letter ruling or documentation demonstrating eligibility for deductibility should be attached along with this application

Regardless of the intent of the grantor's gift, the Secretary's determination of public interest will be dependent upon how well the applicant demonstrates public interest; however, grantors should be advised that the Secretary reserves the right to require modifications to the conservation restriction where in his/her opinion the retained rights adversely impact the public interest or natural resource values of the property or when the document is improperly drafted.

C. SITE DATA

1. Location:
 1. Municipality New Bedford Street Location Loftus and Shawumut
 2. Grantor's Registry of Deeds Book 10818 Page 129 and Book 10818 Page 72 (New Bedford Registry)
 3. Assessors Map # 89 Lot # 27, 264, 344, 347, 348,
 4. New Site?: Yes Addition to existing restricted area: No (please specify)
2. Zoning: Commercial Industrial Residential (check all that apply)
3. Title: Does applicant have clear title? Yes No
If no, please explain:

4. Encumbrances: Is the property encumbered by any easement(s)? Yes No
Is the property encumbered by any mortgages(s)? Yes No
Please explain and attach copy of easement, mortgage subordination, etc.:

5. Geographic Information (if restriction is located in 2 municipalities, fill out separate page for each):
1. Total acres: ~ 5.4 Acres covered by restriction: 5.2 Total unrestricted areas .2
 2. Cover: acres in A. Upland Forest 0 B. Open (field, pasture, etc.) _____
C. Vegetated Wetland 0 D. Water 0 E. Other – gardens - ~1.75 acres
 3. Topography: acres in A. Flat 5.4 B. Hilly _____
C. Rolling _____ D. Mountains _____
 4. Water front: feet on A. Ocean 0 B. River 0
C. Stream 0 D. Lake 0
- Please identify waterbody: n/a _____

6. General information:

Are there any improvements existing on the property, or to be permitted after execution of the C.R.? Yes No If yes, please describe in detail:

See attached list of structures and Reserved Rights paragraphs (Paragraphs B5, B6, B7, B8) in CR dealing with these structures. Also, much work will be done gardens and green houses, which is all allowed under the Reserved Rights of this CR. Improvements to occur after execution of CR and which may need approval of Grantee are not currently identified.

7. Is the property currently under any of the preferential real estate tax assessment programs?

Yes No If yes, which one: c.61 c.61A c. 61B

NOTE:

If the restriction lies in more than one community, separate Site Data forms, Selectmen and Conservation Commission approvals must be completed for that portion of the restriction within each community

8. If the property is under agricultural use, is the soil considered prime or of statewide agricultural significance? (** note: property will have agriculture use, but no prime or statewide significant soils are identified)
 Yes No (If yes, USDA Soil Conservation Service data must be provided)
9. Is the property adjacent to any public or quasi-public land or buildings? Yes No
Describe briefly: The subject property is near (but not adjacent) affordable housing developments. These buildings are presumed to have some public funding, and therefore quasi-public.
10. Does the property lie within an historic district, include an archaeological or rare species site, fall within a Department of Conservation and Recreation designated scenic landscape, river, or within an Executive Office of Energy and Environmental Affairs designated Area of Critical Environmental Concern, a Zone II of a public water supply etc.? Please explain:
The property consists of the historic John Hathaway House, but this is not a historic district.
11. Will public access be allowed? Yes No If yes, explain any limitations, type, etc.:

Prepared by: Kelley Whitmore

Address: 830 Drift Road Westport MA 02790

cell: 617-792-9112 office: 508-636-4693 ext 108

fax: 508-636-0587 email: kwhitmore@ttor.org

ATTACHMENTS:

- | | | | |
|----|---|---|--|
| a. | Draft Conservation Restriction (required) | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| b. | USGS Topographic map with conservation restriction outlined and identified thereon (required) | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| c. | Survey, plotmap, or sketch plan (required) | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| d. | Natural resource inventory, (if available) | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| e. | Wetlands Order of Conditions C.131.§40, (if applicable) | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| f. | Zoning, C. 40A, §9 Special Permit, etc. (if applicable) | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| g. | I.R.S. letter ruling, (if applicable & not previously provided) | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| h. | Charitable status documentation,(if applicable & not previously provided) | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| i. | Assent of mortgagee(s) (if applicable) | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| j. | USDA Soil Data, (if applicable) | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| k. | Other (please specify) (court orders, settlement agreements, votes, grant agreement, contracts, etc.) | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |

City Council vote for LWCF grant
List of structures

NOTES:

The applicant is highly advised to follow the Model Conservation Restriction and submit a draft of the conservation restriction for a determination as to whether it is acceptable for approval by the Secretary. All required attachments must be submitted for review.

The final conservation restriction must be prepared in a form suitable for recording and be approved and signed by the grantor, grantee, and municipal official(s), have all final Exhibits attached, and a subordination, if applicable, to be recorded prior to the conservation restriction.

Please check your local Registry of Deeds for their requirements, particularly as to first page spacing.