

**SUDBURY BOARD OF SELECTMEN – AGENDA**  
**TUESDAY, JUNE 17, 2014**

**8:00 AM, Flynn Building, Silva Conference Room, 278 Old Sudbury Road**

1. **Executive Session:** Open meeting in Flynn Building, Silva Room, and immediately vote to go into Executive Session to discuss strategy with respect to land negotiations if an open meeting may have a detrimental effect on the bargaining position of the public body and the chair so declares.
2. Vote to end Executive Session and reconvene in Open Session.
3. Vote to sign Inter-Municipal Agreement for Regional Housing Services Office for FY15 and update on RHSO activities.
4. Presentation of Sudbury Housing Trust's 7<sup>th</sup> Home Preservation House.
5. Vote to approve Conservation Restriction for 54 Moore Road at the request of Debbie Dineen, Conservation Coordinator.
6. As the Licensing Authority for the Town of Sudbury, vote to approve a new Entertainment License for Subway of Sudbury, 435 Boston Post Road, with new Owner/Manager Ritesh R. Patel, as requested in an application dated June 12, 2014, said license to expire December 31, 2014.
7. Report on IRS Payroll Audit of Town/SPS independent contractors.
8. Discussion of draft agreement between Town of Sudbury and Lincoln-Sudbury Youth Baseball NOTE: discussion only. Vote on approval of agreement will occur at Board of Selectmen meeting of 6/25/14.

**AGENDA REQUEST – Item #3**  
**BOARD OF SELECTMEN**

**Requestor's Section**

**Application Name:** *Regional Housing Services Office Inter-Municipal Agreement*

**Date of request:** *May 29, 2014*

**Requestor:** *Jody Kablack, Director of Planning and Community Development*

**Action requested (Who, what, when, where and why):**

*VOTE to sign Inter-Municipal Agreement for the Regional Housing Services Office for FY15*

**Financial impact expected:**

**Background information (if applicable, please attach if necessary):**

*Memo and IMA Attached*

**Recommendations/Suggested Motion/Vote:**

*VOTE to sign the Inter-Municipal Agreement for the Regional Housing Services Office for FY14*

**Person(s) expected to represent Requestor at Selectmen's Meeting:**

*Jody Kablack, Elizabeth Rust*

**Selectmen's Office Section**

**Date of Selectmen's Meeting:**            **6/17/14**

**Board's action taken:**

**Follow-up actions required by the Board of Selectmen or Requestor:**

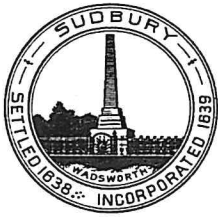
**Future Agenda date (if applicable):**

**Distribution:**

**Town Counsel approval needed?**

**Yes ( X )**

**No ( )**



# Town of Sudbury

Planning and Community Development Department

Jody A. Kablack, Director

Flynn Building  
278 Old Sudbury Rd  
Sudbury, MA 01776  
978-639-3387  
Fax: 978-443-0756

<http://www.sudbury.ma.us/services/planning>  
[kablackj@sudbury.ma.us](mailto:kablackj@sudbury.ma.us)

TO: Board of Selectmen  
FROM: *JAK* Jody Kablack, Director of Planning and Community Development  
RE: Regional Housing Services Office Inter-Municipal Agreement  
DATE: May 29, 2014

In order to familiarize the Selectmen with the Regional Housing Services Office (RHSO), in anticipation of your vote to continue to support the program and execute the Inter-Municipal Agreement (IMA) in June with the member towns, I thought I would recap the program and its purpose.

The RHSO was established in 2011 between the Towns of Sudbury, Concord, Weston, Lexington, Bedford, and Lincoln. The premise of the RHSO was to pool existing staff resources to monitor existing affordable housing in the member towns so that units created would be retained on each community's Subsidized Housing Inventory. The program was conceived to perform administrative tasks, manage the inventory, monitor the units, develop programs and assist with town-specific projects.

The RHSO functions under an Inter-Municipal Agreement signed by each member town's Board of Selectmen. Base fees are assessed according to the number of affordable units in each town, and additional fees are assessed based on the number of extra hours sought for work on additional projects and programs. The total FY14 budget for the RHSO was \$166,800. Funds are collected from the member communities and spent out of a Revolving Fund authorized by the Annual Town Meeting each year. The budget includes staffing expense, administrative fee to the lead community, Program funds, and equipment (phones, computers, furnishings, etc.). Rent free space is arranged in a municipal building. The lead community is paid a fee of ~10% of the budget each year to compensate for use of town copiers, phone lines, electricity, postage and other day to day office items.

Decisions on membership, rates, and budget are made by the member Town Managers, who are guided by an Advisory Committee made up of the responsible housing person in each town (typically this is a planner). There have been no issues raised by member Towns since its inception, and the members enthusiastically support continuing the program. Each community has realized tangible benefits and the model has been replicated in other collaborations in the area. The RHSO was awarded the MMA Kenneth Pickard Municipal Innovation Award in 2011.

In 2012, the town of Lincoln decided it did not need the services of the RHSO, and dropped its membership. The town of Acton joined in 2012. There is some discussion to add another community in FY16.

The RHSO is currently staffed by consultants who work for the Lead Community. Sudbury has been the Lead Community since the inception of the RHSO, and as of July 1, 2014, Concord will take on this responsibility. The Director of Planning in the Lead Community manages the personnel and work product of the RHSO.

The new IMA anticipates a 3 year term in Concord, with another move to one of the other participating communities at the end of the term.

## AGREEMENT

THIS AGREEMENT is entered into by and between the Towns of Acton, Bedford, Concord, Lexington, Sudbury and Weston, hereafter referred to collectively as the "Municipalities," this \_\_\_ day of \_\_\_\_\_ 2014, as follows:

WHEREAS, the Municipalities desire to share the services and costs of a common Regional Housing Services Office; and

WHEREAS, the Town of Concord is willing and capable of hosting a Regional Housing Services Office; and

WHEREAS, each of the Municipalities has authority to enter into this Agreement pursuant to G.L. c. 40, s. 4A;

NOW, THEREFORE, the Municipalities, in mutual consideration of the covenants contained herein, intending to be legally bound, agree under seal as follows:

1. Term. The term of this Agreement shall commence on July 1, 2014 and shall expire after a term of three years on June 30, 2017, unless earlier terminated as set forth herein. Any municipality may withdraw from the Agreement as defined below. The Agreement may be renewed for additional three-year terms as voted by each municipality through its respective Board of Selectmen by January 1 of the year of the expiring term.

2. Lead Municipality. During the Term of this Agreement, the Town of Concord shall act as the lead municipality. The Town of Concord shall perform or provide the following:

- a. Issue Requests for Proposals for Consultants to provide housing administrative services described in Exhibit A: Core Housing Services, attached and incorporated herein, for all the Municipalities;
- b. Enter into contracts with Consultants to provide said housing administrative services;
- c. Manage the Consultant contracts;
- d. Receive invoices from the Consultants and make payments in a timely manner for services rendered;
- e. Provide office space and related utilities for the Consultants to operate the Regional Housing Services Office;
- f. Administer the collection, accounting and use of funds provided by the Municipalities to fund the Consultant contracts;
- g. Provide overall program oversight and related administration;
- h. Provide conflict resolution in accordance with Section 10 below.

3. Duties of the Regional Housing Services Office. During the Term of this Agreement, the Regional Housing Services Office shall perform the housing administrative services as described in Exhibit A: Core Housing Services for an annual allocation of hours as indicated in Exhibit B: Fee Structure, attached and incorporated herein.

4. Funding Structure and Payment. The Town of Concord shall annually request funds from the Municipalities for the upcoming year by July 1 with payment due within 30 days of the written request and the Municipalities shall provide annual funding to the Town of Concord pursuant to the Fee Structure, attached as Exhibit B: Fee Structure. Funding for supplemental services not included in Exhibit A: Core Housing Services and for additional hours in excess of the allotted hours in Exhibit B: Fee Structure shall be requested separately, at the discretion of the Town of Concord and the individual municipality. The Town of Concord shall hold all funds in a separate revolving fund account in trust for each Municipality and shall not disburse such funds for any purpose other than payment of invoices from the contracted Consultants for services rendered and other program expenses. Any municipality may borrow or lend hours to other Municipalities upon written agreement between the impacted municipalities, provided that the total number of hours available to the Regional Housing Services Office remains constant.

5. Subsequent Year Adjustments. The annual allocation of hours in Exhibit B: Fee Structure shall be reviewed and adjusted, if necessary, annually, three (3) months prior to end of each year of the Term of this Agreement. The Town of Concord shall provide to all Municipalities a record of the actual hours of services provided to each municipality and propose an amended Exhibit B in order to make any adjustments necessary for the following year of the Term, which shall be adopted as the Municipalities may agree, in accordance with Section 14.

6. Transfer of Funds between Lead Communities. Remaining funds in the Sudbury account as of the close-out of the fiscal year shall be transferred to Concord for the purposes intended under this agreement.

7. Indemnification. Notwithstanding the final sentence of G.L. c. 40, §4A, to the extent permitted by law, each Municipality (the "Indemnifying Municipality") separately agrees to indemnify the Town of Concord, including all officials, officers, employees, agents, servants and representatives, from and against any claim arising out of the duties performed by the Regional Housing Services Office pursuant to the Agreement in or on behalf of the Indemnifying Municipality for any claim of liability, loss, damages, costs and expenses for personal injury or damage to real or personal property by reason of any negligent act or omission by the Regional Housing Services Office while performing services for the Indemnifying Municipality. As to any claim or occurrence, the express indemnification set forth above shall be town-specific: Acton's obligations shall be limited to the services provided for Acton; Bedford's obligations shall be limited to the services provided for Bedford; Concord's obligations shall be limited to the services provided for Concord; Lexington's obligations shall be limited to the services provided for Lexington; Sudbury's obligations shall be limited to the services provided for Sudbury; and Weston's obligations shall be limited to the services provided for Weston. The Indemnifying Municipality's obligation to indemnify under this Section shall be limited to and benefited by the immunities and the limits on liability that would be applicable under M.G.L. c. 258 and any other law or statute limiting the liabilities of municipalities as if the negligent act or omission had been made by an employee of the Indemnifying Municipality. Furthermore, the Indemnifying Municipalities shall not be liable for any claims arising from:

- a. Violations of state or federal civil rights statutes;
- b. Violations of state or federal discrimination statutes;
- c. Wrongful termination claims;
- d. Violations of any state or federal statute dealing with employment practices;
- e. Claims that are covered by any insurance policy.

8. Termination. (Subsection A) Any Municipality, by a vote of its respective Board of Selectmen, may withdraw from and terminate this Agreement at the end of any year with the provision of at least two months prior written notice to the Town of Concord. No such termination shall affect any obligation of indemnification that may have arisen hereunder prior to such termination. Upon such termination, the Town of Concord shall prepare full statements of outstanding unpaid financial obligations under this Agreement and present the same to the terminating Municipality for payment within thirty (30) days thereafter. The Town of Concord, by a vote of its respective Board of Selectmen, may terminate this Agreement upon the provision of at least one month prior written notice to the participating Municipalities. After termination of this Agreement, the Town of Concord shall remain liable to the participating Municipalities for any portion of the payments received not earned. (Subsection B) Any Municipality may withdraw at the end of any fiscal year in which the municipal legislative body has not appropriated funds sufficient to support that municipality's participation in the subsequent fiscal year, provided that in such an event, the municipality shall give as much notice to other subscribers to this Inter-Municipal Agreement as the circumstances allow.

9. Advisory Committee. There shall exist an Advisory Committee comprised of one (1) representative from each municipality, whom shall be appointed by the Town Manager/Administrator of the municipality. The Advisory Committee shall meet on a quarterly basis in July, October, January and April. The Town of Concord shall prepare and send to each municipality a quarterly status report prior to the quarterly meeting.

10. Conflict Resolution. The Advisory Committee may hold additional meetings to discuss and resolve any conflicts that may arise including, but not limited to, disagreements regarding the needs of each municipality and changes to the annual allocation of hours as indicated in Exhibit B: Fee Structure. Any recommendations made to the Director of the Regional Housing Services Office must be made by a majority vote. Any unresolved issues shall be decided by the Town Manager of the Town of Concord.

11. Additional Communities. At any time after July 1, 2015, the Advisory Committee may meet and, by unanimous vote and approval of the Lead Municipality, amend this Agreement to admit an additional municipality. The Advisory Committee may admit no more than three (3) additional municipalities and any such additional municipality must be adjacent to at least one municipality participating in this Agreement unless waived by a majority of the Town Manager's of the originally participating communities.

12. Financial Safeguards. The Town of Concord shall maintain separate, accurate and comprehensive records of all services performed for each of the Municipalities hereto, and

all funds received from the Municipalities. The Town of Concord shall issue a financial report for each fiscal year to each of the Municipalities by December 31 of the following fiscal year.

13. Assignment. None of the Municipalities shall assign or transfer any of its rights or interests in or to this Agreement, or delegate any of its obligations hereunder, without the prior written consent of all of the other Municipalities.

14. Amendment. This Agreement may be amended only in writing signed by all Municipalities duly authorized thereunto.

15. Severability. If any provision of this Agreement is held by a court of appropriate jurisdiction to be invalid, illegal or unenforceable, or if any such term is so held when applied to any particular circumstance, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, or affect the application of such provision to any other circumstances, and the remaining provisions hereof shall not be affected and shall remain in full force and effect.

16. Governing Law. This Agreement shall be governed by, construed, and enforced in accordance with the laws of the Commonwealth of Massachusetts.

17. Headings. The paragraph headings herein are for convenience only, are no part of this Agreement and shall not affect the interpretation of this Agreement.

18. Notices. Any notice permitted or required hereunder to be given or served on any Municipality shall be in writing signed in the name of or on behalf of the Municipality giving or serving the same. Notice shall be deemed to have been received at the time of actual receipt of any hand delivery or three (3) business days after the date of any properly addressed notice sent by mail as set forth below:

Town of Acton  
Steven Ledoux, Town Manager  
472 Main Street  
Acton, MA 01720

Town of Bedford  
Richard Reed, Town Manager  
10 Mudge Way  
Bedford, MA 01730

Town of Concord  
Christopher Whelan, Town Manager  
Town House, P.O. Box 535  
22 Monument Square  
Concord, MA 01742

Town of Lexington

Carl F. Valente, Town Manager  
1625 Massachusetts Avenue  
Lexington, MA 02420

Town of Sudbury

Maureen G. Valente, Town Manager  
278 Old Sudbury Road  
Sudbury, MA 01776

Town of Weston

Donna S. VanderClock, Town Manager  
P.O. Box 378  
Weston, MA 02493

19. Complete Agreement. This Agreement constitutes the entire Agreement between the Municipalities concerning the subject matter hereof, superseding all prior agreements and understandings. There are no other agreements or understandings between the Municipalities concerning the subject matter hereof. Each Municipality acknowledges that it has not relied on any representations by any other Municipality or by anyone acting or purporting to act for another Municipality or for whose actions any other Municipality is responsible, other than the express, written representations set forth herein.



Exhibit A  
Core Housing Services

1. Monitoring
  - Monitoring Database of Affordable Housing Developments and residents
  - Annual monitoring of ownership units
  - Annual monitoring of rental developments
  - Reconcile municipal inventory records with the Subsidized Housing Inventory maintained by the Department of Housing and Community Development
  - Add new units to the inventory as required
  
2. HOME administration
  - Assist in the preparation of the Annual Action Plan and Annual CAPER documents
  - Consult on HOME funded projects
  
3. Local Support
  - Meet on-site with staff and housing entities
  - Consult on projects
  - Prepare and Review project documents
  
4. Regional Activities
  - Assist communities with regional linkages
  - Provide programs to residents
  - Administer the Program on behalf of all communities

## Exhibit B Fee Structure

The participating municipalities will proportionally share the total cost of operating the Regional Housing Services Office. The proportional share is determined based on the percentage of hours planned to support each municipality for core services as represented in the fee schedule.

	Hours	Pro rata \$	Pro rata %
Acton	370	\$25,090	17%
Bedford	400	\$27,124	18%
Concord	425	\$28,820	19%
Lexington	400	\$27,124	18%
Sudbury	455	\$30,854	21%
Weston	145	\$9,833	7%
total	2,195	\$148,845	100%

This fee structure does not include payment for supplemental services which will be proposed and invoiced outside of this agreement or payment for additional hours in excess of the allotted hours.

WITNESS OUR HANDS AND SEALS as of the first date written above.

TOWN OF SUDBURY  
By its Board of Selectmen

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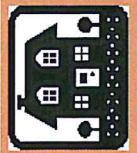
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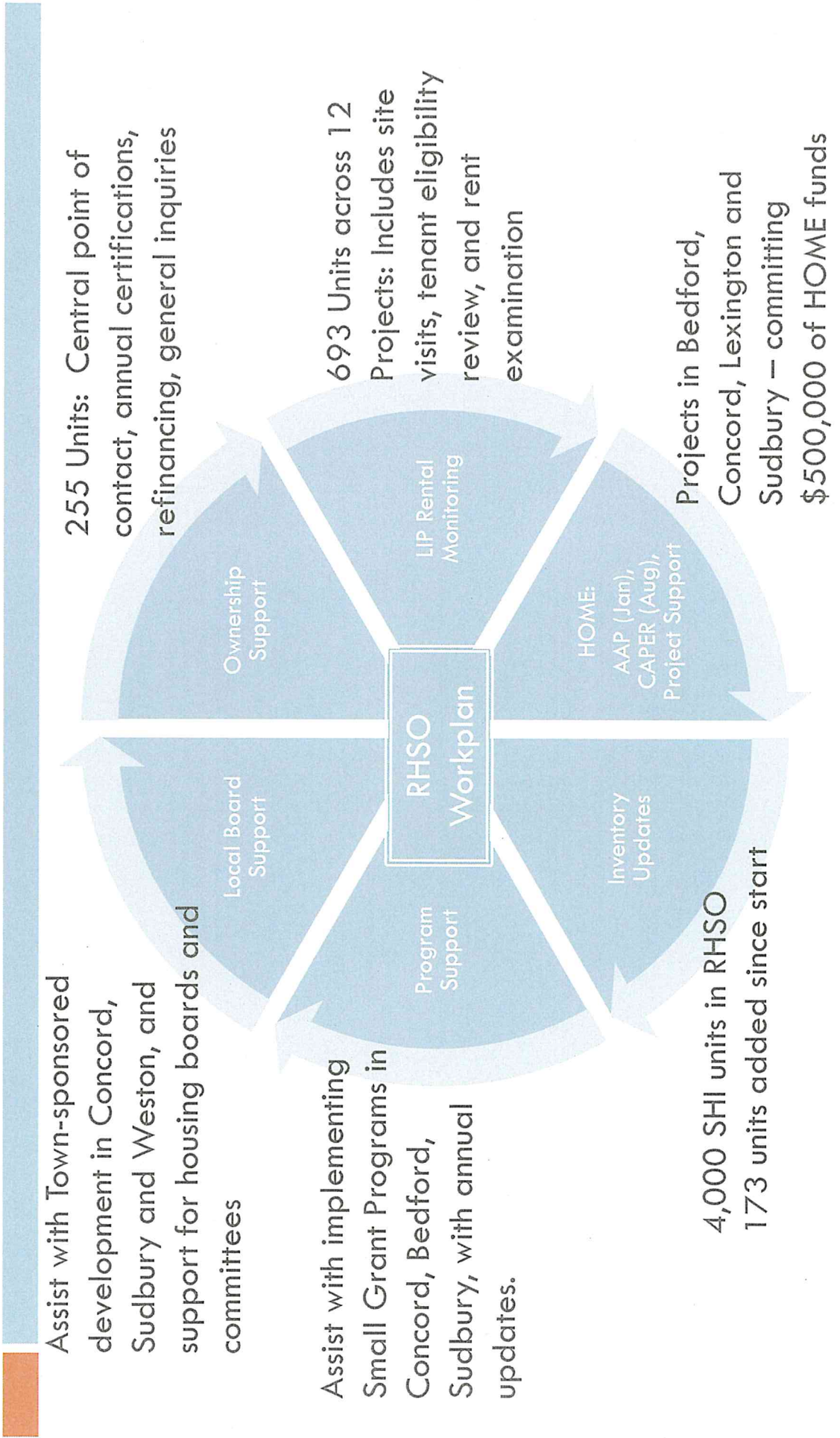
# REGIONAL HOUSING SERVICES OFFICE

Sudbury Update: June 17, 2014



*Regional Agreement between Acton, Bedford, Concord, Lexington,  
Sudbury, and Weston*

# RHSO FY14 Program Review




# Sudbury Specific Projects



- Housing Trust support
  - Home Preservation Program
  - Small Grants Program
- Coolidge Project
  - HOME Funding
  - Tenant Selection
- Other
  - Monitoring – resident assistance, refinancing
  - SHI support – new units and updates

# RHSO FY15 Update



- Lead Community Shift
  - ▣ From Sudbury to Concord, effective 7/1
  - ▣ Concord responsible for contracting consultants
  - ▣ Concord to establish and manage revolving fund
    - Sudbury to close out its fund, transfer funds to Concord
- Inter-Municipal Agreement
  - ▣ Three Year Term
- RHSO Move
  - ▣ Physical and Virtual
- Services and Funding Model unchanged

# RHSO Financials

	FY12		FY13 (amended for Lincoln)		FY14			FY15 - Proposal		
	Budget	Actual	Budget	Actual	Budget	Actual (estimated)	Difference	Budget	Actual	Difference
<b>Income</b>										
Starting Balance	\$0	\$0								
Acton	\$0									
Bedford	\$24,368	\$24,368	\$21,953	\$21,953	\$21,953	\$18,305	\$3,648	\$25,090	\$18,305	\$6,785
Concord	\$17,474	\$17,474	\$26,126	\$26,126	\$26,126	\$21,031	\$5,096	\$27,124	\$21,031	\$6,093
Lexington	\$23,289	\$23,289	\$23,268	\$23,268	\$23,268	\$23,225	\$43	\$28,820	\$23,225	\$5,595
Lincoln	\$11,450	\$11,450	\$23,698	\$23,698	\$23,698	\$22,797	\$900	\$27,124	\$22,797	\$4,327
Sudbury	\$0	\$0	\$10,936	\$2,615	\$10,936	\$0	\$10,936	\$0	\$10,936	\$0
Weston	\$11,420	\$11,420	\$29,146	\$29,146	\$10,373	\$10,373	\$0	\$30,854	\$10,373	\$20,481
Contingency Amounts										
Adjustments/Refunds										
<b>Expenses</b>										
Total	\$88,001	\$88,001	(\$8,321)	\$262	\$137,441	\$108,702	\$28,739	\$127,998	\$108,702	\$19,296
Staffing	\$69,434	\$64,061	\$120,722	\$108,670	\$146,849	\$85,000	\$61,849	\$130,845	\$85,000	\$45,845
Program expenses	\$6,500	\$2,863	\$8,357	\$3,942	\$5,000	\$6,000	(\$1,000)	\$3,000	\$6,000	(\$3,000)
Administrative Cost	\$13,200	\$9,300	\$14,600	\$18,500	\$14,961	\$14,961	\$0	\$15,000	\$14,961	\$300
<b>Total Expenses</b>	\$89,134	\$76,224	\$143,679	\$131,112	\$166,810	\$105,961	\$60,849	\$148,845	\$105,961	\$42,884
Ending Balance	(\$1,133)	\$11,777	(\$0)	\$18,106	\$0	\$20,847	(\$20,847)	\$0	\$20,847	(\$20,847)
Billing Rate	\$60.68		\$56.28	\$55.49	\$70.00	\$69.99		\$67.81	\$69.99	

	Rate	Annual Hrs	Annual \$	Weekly Hrs
Manager	\$65	1233	\$80,145	24
Specialist	\$60	520	\$31,200	10
Specialist	\$50	338	\$16,900	7
Assistant	\$25	104	\$2,600	2
	\$59.61	2195	\$130,845	42



**AGENDA REQUEST – Item #4**  
**BOARD OF SELECTMEN**

**Requestor's Section**

**Date of request:** June 11, 2014

**Requestor:** *Jody Kablack, Director of Planning and Community Development*

**Action requested (Who, what, when, where and why):**

*Presentation of Sudbury Housing Trust's 7<sup>th</sup> Home Preservation House*

**Financial impact expected:** N/A

**Background information (if applicable, please attach if necessary):**

*Memo Attached*

**Recommendations/Suggested Motion/Vote:**

*Presentation only; no vote.*

**Person(s) expected to represent Requestor at Selectmen's Meeting:**

*Jody Kablack, Elizabeth Rust*

**Selectmen's Office Section**

**Date of Selectmen's Meeting:** 6/17/14

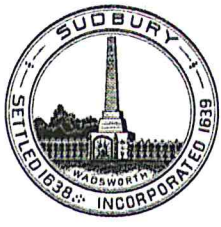
**Board's action taken:**

**Follow-up actions required by the Board of Selectmen or Requestor:**

**Future Agenda date (if applicable):**

**Distribution:**

**Town Counsel approval needed?                      Yes ( )                      No ( X )**



# Town of Sudbury

## Sudbury Housing Trust

Flynn Building  
278 Old Sudbury Rd  
Sudbury, MA 01776  
978-639-3387

<http://www.sudbury.ma.us>  
[Housing@town.sudbury.ma.us](mailto:Housing@town.sudbury.ma.us)

June 11, 2014

To: Board of Selectmen  
From: Elizabeth Rust, Agent for the Sudbury Housing Trust  
Re: Home Preservation Program; Home Purchase #7

The Sudbury Housing Trust has selected the seventh home under the Home Preservation Program and is providing this information to the Board of Selectmen for review.

While the declaration of Trust for the Sudbury Housing Trust requires Board of Selectmen approval for the purchase or sale of property, the Trust is neither the buyer nor seller in the Home Preservation Program transactions. The Trust selects the property, negotiates the sales price, and then presents the home to the buyer, selected from a lottery held for this purpose. While not required, it is the custom of the Trust to review these purchases with the Board.

### Home Selection Process:

As with the previous Home Preservation homes (sold on 2/08, 8/08, 4/09, 9/10, 8/11, 7/13), this property was selected after reviewing all candidate houses on the market for under \$450,000.

The target property for this program is a well maintained 2 or 3-bedroom, 1.5 or 2-bath home with a sales price of under \$400,000, depending on the extent of repairs required.

The Trust selected the subject house after reviewing all homes for sale in the target price range for two months. The Trust was outbid on one home in this process, and agrees with real estate market opinions that homes at this price point are selling in a matter of days. This property had been on the market 3 days when the Trust made its offer of \$384,900 which was accepted.



### Buyer Selection Process:

The buyer for this property was selected via a lottery held in May 2014. As is the custom, the Trust holds an annual lottery for all affordable housing opportunities in Sudbury. This is an efficient manner to create a ranked list of eligible purchasers. This lottery offered homes in the new Landham Crossing development and the Home Preservation Program.

The lottery had ten eligible applicants. The family that is proceeding to purchase this home is a single mother with two children ages two and six, who grew up and is currently living in Sudbury.

### Closing Process:

The home will be sold at \$198,200 as regulated by the Department of Housing and Community Development.

The Trust will provide the purchase subsidy at closing (difference between sales price and affordable purchase price). Additionally the Trust provide a subsidy for the difference in property taxes (\$2,500), and the Trust plans to spend \$10,000 on repairs after the closing.

The buyer and seller are due to sign a Purchase and Sale agreement by June 25, and closing is planned for August.



Commonwealth of Massachusetts  
**DEPARTMENT OF HOUSING &  
COMMUNITY DEVELOPMENT**

Deval L. Patrick, Governor ♦ Aaron Gornstein, Undersecretary

June 11, 2014

Charles C. Woodard  
Chair, Board of Selectmen  
Flynn Building  
278 Old Sudbury Road  
Sudbury, MA 01776

RE: LIP Local Action Unit Approval – 162 Pratts Mill Road in Sudbury

Dear Mr. Woodard:

The Local Initiative Program recently received information identifying 162 Pratts Mill Road as the seventh local action unit (LAU) to be purchased by an income-eligible first-time homebuyer under the town's Home Preservation Program. I am pleased to inform you that the unit has been approved.

The buyer's signed Purchase and Sale Agreement, the buyer's loan commitment letter and contact information for the closing attorney should be sent to Elsa Campbell in our office at least 15 days prior to closing. We will prepare a deed rider and resale price certificate for the closing.

The unit will be added to the Subsidized Housing Inventory when the deed rider is recorded and a copy is submitted to us with this approval letter. See the enclosed SHI instructions.

Let me congratulate you on your continued efforts to bring affordable housing to Sudbury. If you have any questions please feel free to contact Janice Lesniak at (617) 573-1327.

Sincerely,

A handwritten signature in black ink, appearing to read "Catherine Racer".

Catherine Racer  
Associate Director

cc: Maureen Valente, Town Manager  
Jody Kablack, Director, Planning and Community Development  
Liz Rust, Sudbury Community Housing Specialist

# AGENDA REQUEST – Item #5

## BOARD OF SELECTMEN

### **Requestor's Section**

**Date of request:** 6/11/14

**Requestor:** Debbie Dineen, Conservation Coordinator

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**Action requested:** Vote of approval and signature on a perpetuity conservation restriction at 54 Moore Road

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**Financial impact expected:** none

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**Background information (if applicable, please attach if necessary):** This is a CR, pending since 2006, that was required for a major house addition at 54 Moore Road. The property owners are selling their house and the Conservation Commission cannot issue a Certificate of Compliance for the wetland work (which has all been completed satisfactorily) until the CR is recorded. The CR covers approximately 5 acres on 2 parcels of land. The CR contains a pond used for rearing trout and teaching fly-fishing, a trout stream, bordering vegetated wetland, and an upland meadow. Current activities may continue as part of the CR. (Attorney Arthur Andersen sent a draft to Town Counsel to review several weeks ago.)

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**Recommendations/Suggested Motion/Vote:**

Vote to approve the Conservation Restriction as shown on plan referenced in the CR document.

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**Person(s) expected to represent Requestor at Selectmen's Meeting:**  
Debbie Dineen

### **Selectmen's Office Section**

**Date of Selectmen's Meeting:** 6/17/14

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**Board's action taken:**

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**Follow-up actions required by the Board of Selectmen or Requestor:**

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**Future Agenda date (if applicable):**

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**Town Counsel approval needed?** Yes (  ) No (  )

Grantor: Charles H. Detwiller, III, and Constance N. Detwiller

Grantee: Town of Sudbury.  
Conservation Commission

Address of Property: 54 Moore Rd. (Parcel B1), Sudbury, MA 01776  
For title see: deeds recorded with the Middlesex South Registry of Deeds at  
Book 21541, Page 427, Book 28637, Page 375 and Book 48179, Page 228

TOWN OF SUDBURY  
CONSERVATION  
RESTRICTION  
(Property Address: land off Arboretum Way,  
Sudbury, MA) Sudbury CR# 104

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We, Charles H. Detwiller, III and Constance N. Detwiller, as husband and wife, tenants by the entirety, of 54 Moore Road, Sudbury, Middlesex County, Massachusetts, for themselves, their successors and assigns (hereinafter "Grantors"), for nominal consideration paid (less than \$100.00 paid), grant to the Town of Sudbury through its Conservation Commission, having its principal office at 275 Old Lancaster Road, Sudbury, Massachusetts, 01776, and its successors and permitted assigns by authority of or pursuant to M.G.L. Ch. 40, Section 8C (hereinafter "Grantee"), with Quitclaim Covenants, in perpetuity and exclusively for Conservation purposes, the following described Conservation Restriction on two certain parcels of land which together define "the Premises" as follows:

**Parcel I**

That certain parcel of land situated in Sudbury, Middlesex County, Massachusetts being shown as Parcel B on a plan of land entitled, "Plan of Land in Sudbury, Mass., prepared for Robert Quirk, by Acton Survey and Engineering dated April 27, 1998 and recorded in book 28637 at Page 366-367, to which plan reference is hereby made for a more particular description of said parcel.

Said parcel contains 2.44 acres of land +/- according to said Plan. For title of Grantor see Deed dated September 14, 2006 and recorded in Middlesex South District Registry of Deeds in Book 48179, Page 228.

**Parcel II**

A portion of that certain parcel of other land of Grantor in Sudbury, Middlesex County, Massachusetts being shown as a part of Lot 2 on a plan entitled "Plan of Land in Sudbury, Mass., owned by Dorothy H. Chhuy, 54 Moore Road, Sudbury, Mass." by Colburn engineering, Inc., 433 Main Street, Hudson, Mass. dated December 5, 1990 and recorded with Middlesex South Registry of Deeds at Plan #897 of 1991 recorded at Book 21541, Page 426.

Said Lot 2 contains 104,600 square feet, more or less, according to said Plan.

For title see Deed dated November 15, 1991 and recorded in Middlesex South District Registry of Deeds at Book 21541, Page 427.

Excepting however that certain portion of Lot 2 situated on Moore Road in Sudbury, Middlesex County, Massachusetts being shown as Parcel A on a Plan of Land entitled "Plan of Land in Sudbury, Mass., prepared for Robert Quirk" by Acton Survey & engineering, dated April 28, 1998 which is recorded in the Middlesex South District Registry of Deeds as Plan #565, (2 of 2) of 1998 at Book 28637, Page 366-367 and to which plan reference is made for a more particular description of said Parcel A. For deed of said Parcel A see Deed dated May 28, 1998 and recorded with Said Deeds at Book 28637, Page 375.

The portion of said Parcel II which is covered by this Conservation Restriction and does therefore, together with Parcel I, define "the Premises" covered by this Conservation Restriction is defined by a line six (6) feet to the west of the Southerly and Southwesterly edge of the pond and running parallel to same as it exists at the time of the grant of this Conservation Restriction, and as shown on a Plan attached as Exhibit "A" said line marked by metal rods as boundary markers, said rods sunk into the earth along said bound, said line continuing as a line six (6) feet parallel to the edge of the stream to the west of the said pond as the edge of the stream exists at the time of the grant of this Conservation Restriction and as shown on said Plan attached as Exhibit "A", said line marked by metal rods as boundary markers, said rods sunk into the earth along said bound.

#### **I. Purposes.**

This Conservation Restriction is defined in and authorized by Sections 31-33 of Chapter 184 of the Massachusetts General Laws and otherwise by law. Its purpose is to assure that the Premises will be retained in perpetuity predominantly in their natural, scenic and open condition and to prevent any use of the Premises that will materially impair or interfere with the conservation values of the Premises. The Grantors and the Grantee acknowledge and agree that the Premises provide protection of significant scenic and aesthetic wildlife habitat, and in the present state thereof as a natural area comprised of a perennial cold water trout stream and trout pond, associated riparian areas, a small meadow, and bordering vegetated wetlands; the protection of which in their present condition will be of benefit both to the public and local wildlife and fisheries. The Grantors and the Grantee share the common purpose of conserving the conservation values of the Premises for the present generation and future generations. This Conservation Restriction shall be a perpetual restriction that permits future generations to share the environmental assets they believe too valuable to lose. This restriction is also required under DEP File 301-815 and DEP File 301-816.

#### Conditions in Perpetuity contained under DEP File 301-815 are as follows:

The following conditions shall continue in perpetuity. Owners of this property shall be made aware of restrictions in perpetuity on the activities allowed on this property. If the property owner has good cause to request an amendment to the conditions in perpetuity, he/she shall have the right to make a request for an amendment to the issuing authority. If, in the judgment of the issuing authority, the proposed activities will not detrimentally impact the wetland resource area functions, the Wetland's Order or the Certificate of Compliance shall be amended.

- a. Wetlands are located on this property that are subject of the Massachusetts Protection Act (Chapter 131, section 40) and the Sudbury Wetlands Administration By-Law. Any work within a wetland resource area (including the riverfront area) or within 100' of a wetland resource area requires review and approval by the Sudbury Conservation Commission prior to the commencement of such work.
- b. Only calcium or magnesium based de-icing chemicals shall be used on surfaces where runoff/drainage will discharge into the wetland or the 100' buffer zone.
- c. Fertilization of lawn and landscaped areas can be a significant source of excess nutrient loading in adjoining water bodies. Fertilizers may only be a low nitrogen variety and may only be used in the spring of each year. No fall fertilization is allowed of any area within 100' of the wetland resource areas or within the 200' riverfront area.
- d. No pesticides or herbicides are allowed within a wetland resource area, including the riverfront area.
- e. Underground storage of petroleum products is prohibited within a wetland resource area.
- f. The area to be placed under a perpetual Conservation Restriction that is currently lawn area shall be planted with native species. The non-lawn area in the Restriction shall be augmented with native species.

Conditions in Perpetuity contained under DEP File 301-816 are as follows:

The following conditions shall continue in perpetuity. Owners of this property shall be made aware of restrictions in perpetuity on the activities allowed on this property. If the property owner has good cause to request an amendment to the conditions in perpetuity, he/she shall have the right to make a request for an amendment to the issuing authority. If, in the judgment of the issuing authority, the proposed activities will not detrimentally impact the wetland resource area functions, the Wetland's Order or Certificate of Compliance shall be amended.

- a. Wetlands are located on this property that are subject of the Massachusetts Protection Act (Chapter 131, section 40) and the Sudbury Wetlands Administration By-Law. Any work within a wetland resource area (including the riverfront area) or within 100' of a wetland resource area requires review and approval by the Sudbury Conservation Commission prior to the commencement of such work.
- b. Only calcium or magnesium-based de-icing chemicals shall be used on surfaces where runoff/drainage will discharge into the wetland or the 100' wetland buffer zone.
- c. Fertilization of lawn and landscaped areas can be a significant source of excess nutrient loading in adjoining water bodies. Fertilizers may only be of the low nitrogen variety and may only be used in the spring of each year. No

fall fertilization is allowed of any area within 100' of the wetland resource areas or within the 200' riverfront area.

- d. No pesticides or herbicides are allowed within a wetland resource area, including the riverfront area.
- e. Underground storage of petroleum products is prohibited with the wetland resource area.

## II. Prohibited Activities and Uses.

*Except as otherwise permitted in paragraph III below*, the Grantors, their heirs, devisees, successors or assigns shall neither perform nor permit others to perform any of the following activities or uses which are prohibited, on, above or below the Restricted Area; and the Grantors hereby grant to the Grantee the right to enforce these restrictions against all persons:

- (a) Constructing or placing of any temporary or permanent building, tennis court, landing strip, mobile home, fences, swimming pool, asphalt or concrete pavement, sign, billboard or other advertising display, antenna, utility pole, tower, conduit, line or other temporary or permanent structure or facility on, above or below the ground;
- (b) Mining, excavating, or removal of soil, loam, peat, gravel, sand, rock or other mineral substances or natural deposit;
- (c) Placing, filling, or dumping of soil or other substances on the ground, landfill or dumping of refuse, trash, vehicle bodies or parts, rubbish, debris, junk, solid or chemical waste or other unsightly or offensive substance or material whatsoever;
- (d) Removal, disturbance or destruction of living, upright trees, shrubs, other vegetation, leaf litter, logs, or any other natural woody debris;
- (e) Use, parking, or storage of motorized vehicles of any nature or kind, including but not limited to cars, trucks, motorcycles, all-terrain vehicles, and skimobiles;
- (f) Activities detrimental to wildlife habitat including habitat of state-listed species and trout, drainage, flood control, water conservation, erosion control, or soil conservation;
- (g) Subdivision or other division of the Restricted Area and the Premises cannot be used towards further building requirements on this or any other land;
- (h) Use of any fertilizer, herbicide, pesticide, or other organic or non-organic chemical or substance;
- (i) Planting of non-native or invasive species;
- (j) Any other use or activity which would materially impair



conservation interests unless necessary in an emergency for the protection of the conservation interests that are identified as purposes of the Conservation Restriction or other significant conservation interests, and with prior written permission of the Grantee, or permission as soon as practicable after the emergency.

### III. Reserved Rights

*Notwithstanding anything contained in Paragraph II hereof*, the Grantors reserve the right to conduct or permit the following activities and uses in the Restricted Area provided such uses or acts do not materially impair the conservation interests protected by this Conservation Restriction:

- (a) This Restriction does not relieve the Grantor from obligations to obtain state, local or federal permits for work allowed under this Conservation Restriction.
- (b) There shall be no subdivision or other division of the Premises for purposes of building requirements except by written permission of the Grantee.
- (c) Passive outdoor recreation activities such as fishing, non-motorized boating swimming, nature study, ice skating, walking and photography.
- (d) The ongoing maintenance and mowing of walking paths, and mowing of the field each year after the first frost and before nesting season. Access to the field for mowing shall not be over any wetland resource areas.
- (e) The maintenance of 10 existing fishing and access openings (none to exceed 4 feet in width) at the approximate locations as noted on the attached Exhibit B, used to access the pond for boating, swimming, or fishing in their present condition by trimming growth which impedes passage.
- (f) The trimming of the height of brambles and other growth near the fishing access ways so as to permit fly casting.
- (g) The right to maintain, repair or replace but not enlarge existing dock and inflow/outflow/overflow structures adjacent to the pond for flood and fish control as noted on the attached Exhibit "B". Changes to the water level of the pond do not affect the area covered by this Conversation Restriction.
- (h) Structures may be allowed to include bird nesting houses (in addition to those existing), catwalks where necessary for walking trails (of which there are existing), and beehives with written Grantee approval;
- (i) The installation and operation of a hydroelectric generator and associated piping and wiring with prior written approval of the Grantee and the issuance of all appropriate permits.
- (j) Selective minimal pruning and cutting of trees and shrubs to control

or remove hazards, disease, invasive plant species, insect or storm damage, provided the planting of new native trees or shrubs to further enhance the purposes of this Conservation Restriction is accomplished if any trees or shrubs are wholly removed;

(k) Posting of signs and installation of sight pervious fencing when and where necessary to prohibit trespass or to provide safety for children and/or pets with prior written approval of the Grantee and only if the fencing does not impede the passage of wildlife.

(l) Maintenance and possible expansion of an on-site (presently 6' diameter tank) re-circulating trout rearing (and 10'X1' fish hatchery raceway) facility in compliance with pre-existing and current state regulations provided under Commonwealth of Massachusetts Class I Propagator Permit and any other necessary state or town permits.

(m) Any other needs, desires, or requests for non-prohibited uses that further the purposes of this Restriction, same to be discussed on an item by item basis with written approval of the Grantee, which said approval shall not be unreasonably withheld.

(n) The removal of leaf, stream inflow sediment and other normal pond maintenance as necessary is allowed with the consent of the Grantee.

(o) The use of herbicides, pesticides or any other chemical or substance to control invasive, non-native, or nuisance species, designed and applied in a manner to affect the target species but not nearby non-target species, or water quality and only with the specific written permission of the Grantee.

#### **IV. COMPLIANCE WITH APPLICABLE LAW**

The exercise of any right reserved by GRANTOR shall be in compliance with the then-current Wetland Administration By-Law of the Town of Sudbury, the state Wetlands Protection Act (Massachusetts General Laws Chapter 131, Section 40), and all other applicable federal, state, and local law. The inclusion of any reserved right requiring a permit from a public agency does not imply that GRANTEE or The Commonwealth of Massachusetts takes any position on whether such permit should be issued.

#### **V. ACCESS:**

The Conservation Restriction hereby conveyed does not grant to the Grantee, to the general public, or to any other person any right to enter upon the Premises except as is granted to the Grantee with 15 days written prior notice and with the consent of Grantor, which consent shall not be unreasonably withheld, the right to enter the premises at reasonable times and in a manner reasonably to the purposes of inspecting same to determine compliance herewith. In the event consent is not received within the said 15 day period after written notice is given to the Grantor, Grantee may give notice in writing to the Grantor that Grantee intends to enter upon the premises for purposes of inspection, such entrance to be no sooner than 30 days from the delivery to Grantor of the original written notice to the Grantor in which the Grantee sought access to the premises for inspection.

## **VI. Legal Remedies of the Grantee**

### **(a) Legal and Injunctive Relief**

The rights hereby granted shall include the right to enforce this Conservation Restriction by appropriate legal proceedings and to obtain injunctive and other equitable relief against any violations, including, without limitation, relief requiring restoration of the Premises to its condition prior to the time of the injury complained of (it being agreed that the GRANTEE shall have no adequate remedy at law), and shall be in addition to, and not in limitation of, any other rights and remedies available to the Grantee.

GRANTOR, and its successors and assigns covenant and agree to reimburse GRANTEE all reasonable costs and expenses (including without limitation reasonable counsel fees) incurred in enforcing this Conservation Restriction or in taking reasonable measures to remedy or abate any violation thereof, provided that a court of competent jurisdiction determines that there has been a violation of this Conservation Restriction or GRANTOR admits the violation. By its acceptance of this Conservation Restriction, GRANTEE does not undertake any liability or obligation relating to the condition of the Premises not caused by Grantee or its agents. Enforcement of the terms of this Conservation Restriction shall be at the discretion of GRANTEE, and any forbearance by GRANTEE to exercise its rights under this Conservation Restriction shall not be deemed or construed to be a waiver.

In the event of a dispute over the boundaries of the Conservation Restriction, the GRANTOR will be responsible for surveying and placement of monuments along the boundaries of this Conservation Restriction.

## **VII. DURATION AND ASSIGNABILITY**

The burdens of this Conservation Restriction shall run with the Premises and shall be enforceable against GRANTOR and his/her successors and assigns holding any interest in the Premises in perpetuity. GRANTEE is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Conservation Restriction. The benefits of this Conservation Restriction shall run to the Grantee, shall be in gross and shall not be assignable by the GRANTEE, except in the following instances and from time to time: (1) as a condition of any assignment, GRANTEE requires that the purpose of this Conservation Restriction continue to be carried out, and (2) the assignee, at the time of assignment, qualifies under Section 32 of Chapter 184 of the General Laws as an eligible GRANTEE to receive this Conservation Restriction directly, and (3) GRANTEE agrees to comply with the provisions of Article 97 of the amendments of the state constitution, give written notice to GRANTOR and its successors and assigns of any such assignment at least twenty (20) days prior to the same, but failure to do so shall not impair the validity of this Conservation Restriction or limit its enforceability in any way.

### VIII. SUBSEQUENT TRANSFERS

GRANTOR, for itself and its successors and assigns, agrees to incorporate by reference the terms of this Conservation Restriction in any deed or other legal instrument by which GRANTOR conveys any interest in all or a portion of the Premises, including, without limitation, a leasehold interest. Failure to do so shall not impair this Conservation Restriction or its enforceability in any manner. GRANTOR and each such successor in title shall not be liable hereunder for breaches of this Conservation Restriction arising after its period of ownership, but shall be liable for breaches of this Conservation Restriction occurring or existing during its respective period of ownership.

### IX. EXTINGUISHMENT

Grantee's Receipt of Property and Development Rights.

The Grantor and the Grantee agree that if any occurrence ever gives rise to extinguishment or other release of the Conservation Restriction under applicable law after review and approval by the Secretary of The Executive Office of Energy and Environmental Affairs, Commonwealth of Massachusetts EEA, then the Grantee, on a subsequent sale, exchange or involuntary conversion of the Premises, shall not be entitled to any portion of the proceeds of such sale, exchange or conversion.

### X. MISCELLANEOUS

- (a) Controlling Law. The interpretation and performance of this Conservation Restriction shall be governed by the laws of The Commonwealth of Massachusetts.
- (b) Liberal Construction Any general rule of construction to the contrary notwithstanding, this Conservation Restriction shall be construed liberally in favor of the grant to effect the purpose of this Conservation Restriction and the policy and purpose of Massachusetts General Laws Chapter 184, Sections 31-33. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Conservation Restriction that would render the provisions valid shall be favored over any interpretation that would render it invalid.
- (c) Severability If any provision of this Conservation Restriction shall to any extent be held invalid, the remainder shall not be affected.
- (d) Entire Agreement This instrument sets forth the entire agreement of the parties with respect to the Conservation Restriction and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Conservation Restriction, all of which are merged herein.
- (e) Effective Date This Conservation Restriction shall be effective when the Grantor and the Grantee have executed this instrument, the administrative approvals required by Section 32 of Chapter 184 of the General Laws have been obtained, and this instrument is recorded at the Middlesex South Registry of Deeds. Grantor certifies that at

the time of recording Grantor will have paid in full or will be in the process of paying in full any and all mortgages encumbering Grantor's property and no mortgage lender shall need to subordinate its mortgage to this instrument.

(f) Estoppel Certificates GRANTEE acknowledges and certifies that as of the date of the execution hereof GRANTOR is in compliance with the obligations contained herein. In the future, upon request of the GRANTOR, the GRANTEE shall within forty-five (45) days of the Grantor's request for same, execute and deliver to the GRANTOR any document, including an estoppel certificate, which certifies the GRANTOR's compliance with any obligation of the GRANTOR contained in this Conservation Restriction, provided that GRANTOR is in compliance therewith. If the GRANTOR is not in compliance, the estoppel certificate shall describe the noncompliance.

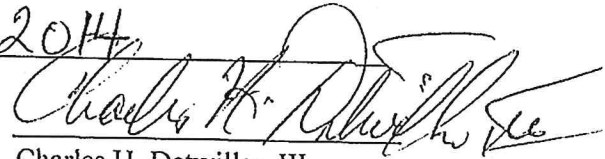
(g) Miscellaneous Approval of this Conservation Restriction pursuant to M.G.L. chapter 184, Section 32 by any municipal officials and by the Secretary of Energy and Environmental Affairs is not to be construed as representing the existence or non-existence of any pre-existing rights of the public, if any, in and to the Premises, and any such pre-existing rights of the public, if any, are not affected by the granting of this Conservation Restriction.

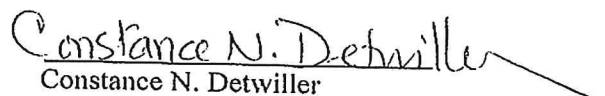
(h) Non-merger of Title Grantor and Grantee agree that neither shall convey nor accept any interest in the Premises that result in merger of title (the fee interest and the interests given in this Conservation Restriction being held by the same entity). Prior to any such merger it is agreed that the Grantee shall first assign its interest to a non-fee owner to assure continuing enforceability of the Conservation Restriction by the non-fee owner.

Attached hereto and incorporated herein are the following:

1. Signature pages as follows:
  - a. Execution by Grantors
  - b. Acceptance of Grant, Sudbury Conservation Commission
  - c. Approval by Selectmen, Town of Sudbury
  - d. Approval by Secretary of the Executive Office of Energy and Environmental Affairs, Commonwealth of Massachusetts
2. Exhibit A – Legal description and “sketch plan” of Premises.
3. Exhibit B – Sketch plan showing fishing access, dock, etc. approximate locations, any votes to accept, other.

Executed under seal this 11<sup>th</sup> day of June, 2014

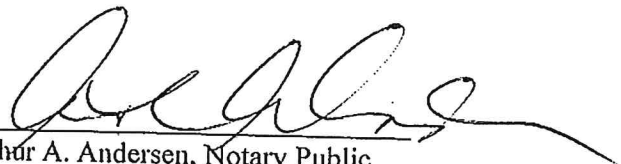
  
Charles H. Detwiller, III

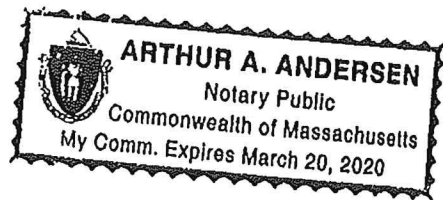
  
Constance N. Detwiller

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss:

On this 11<sup>th</sup> day of JUNE, 2014 before me, the undersigned notary public, personally appeared the above-named Charles H. Detwiller, III and Constance N. Detwiller proved to me through satisfactory evidence of identification, which were: MA Driver's Licenses to be the persons whose name is executed on the preceding or attached document, and acknowledged to me that they executed it voluntarily for its stated purpose.

  
Arthur A. Andersen, Notary Public  
My Commission Expires: 3/20/2020



ACCEPTANCE OF GRANT

At a public meeting held on \_\_\_\_\_, the Sudbury Conservation Commission voted to accept the above Conservation Restriction granted by Charles H. Detwiller III and Constance N. Detwiller to Town of Sudbury under M.G.L. Chapter 40 section 8C, which is accepted, this \_\_\_ day of \_\_\_\_\_ 2014

TOWN OF SUDBURY  
by its Conservation Commission:

\_\_\_\_\_  
Greg Topham

\_\_\_\_\_  
Elizabeth Armstrong

\_\_\_\_\_  
Rob Elkind

\_\_\_\_\_  
Tom Friedlander

\_\_\_\_\_  
Charles Russo

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

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

COMMONWEALTH OF MASSACHUSETTS

Middlesex County, ss.

On this \_\_\_ day of \_\_\_\_\_, 2014 before me, the undersigned notary public, personally appeared Greg Topham, proved to me through satisfactory evidence of identification, which were \_\_\_\_\_, to be the persons whose name is executed on the preceding or attached document, and acknowledged to me that they executed it voluntarily for its stated purpose before me, as Chairman of the Town of Sudbury Conservation Commission.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
My Commission Expires:

APPROVAL BY SELECTMEN OF TOWN OF SUDBURY

We, the undersigned, being a majority of the Selectmen of the Town of Sudbury, Massachusetts, hereby certify that at a public meeting duly held on \_\_\_\_\_, 2014 the Selectmen voted to approve the foregoing Conservation Restriction to the Conservation Commission pursuant to M.G.L. Ch. 184, 32 and M.G.L Chapter 40, section 8C.

\_\_\_\_\_  
PATRICIA BROWN

\_\_\_\_\_  
ROBERT C. HAARDE

\_\_\_\_\_  
LAWRENCE W. O'BRIEN

\_\_\_\_\_  
LEONARD A. SIMON

\_\_\_\_\_  
CHARLES WOODARD

COMMONWEALTH OF MASSACHUSETTS

Middlesex County, ss.

On this \_\_\_ day of \_\_\_\_\_, 2014 before me, the undersigned notary public, personally appeared the above-named PATRICIA BROWN, ROBERT C. HAARDE and LAWRENCE W. O'BRIEN, LEONARD A. SIMON and CHARLES WOODARD proved to me through satisfactory evidence of identification, which were \_\_\_\_\_ to be the persons whose names are executed on the preceding or attached document, and acknowledged to me that they executed it voluntarily for its stated purpose before me, as Members of the Town of Sudbury Board of Selectmen:

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
My Commission Expires:



**APPROVAL BY SECRETARY OF THE EXECUTIVE OFFICE OF  
ENERGY AND ENVIRONMENTAL AFFAIRS COMMONWEALTH  
OF MASSACHUSETTS**

The undersigned, Secretary of the Executive Office of Energy and Environmental Affairs of the Commonwealth of Massachusetts, hereby certifies that the foregoing Conservation Restriction from Charles H. Detwiller III and Constance N. Detwiller, as husband and wife, to Town of Sudbury acting by and through its Conservation Commission has been approved in the public interest pursuant to Massachusetts General Laws, Chapter 184, Section 32.

\_\_\_\_\_, Secretary Executive  
Office of Energy and Environmental  
Affairs

**COMMONWEALTH OF MASSACHUSETTS**

, SS.

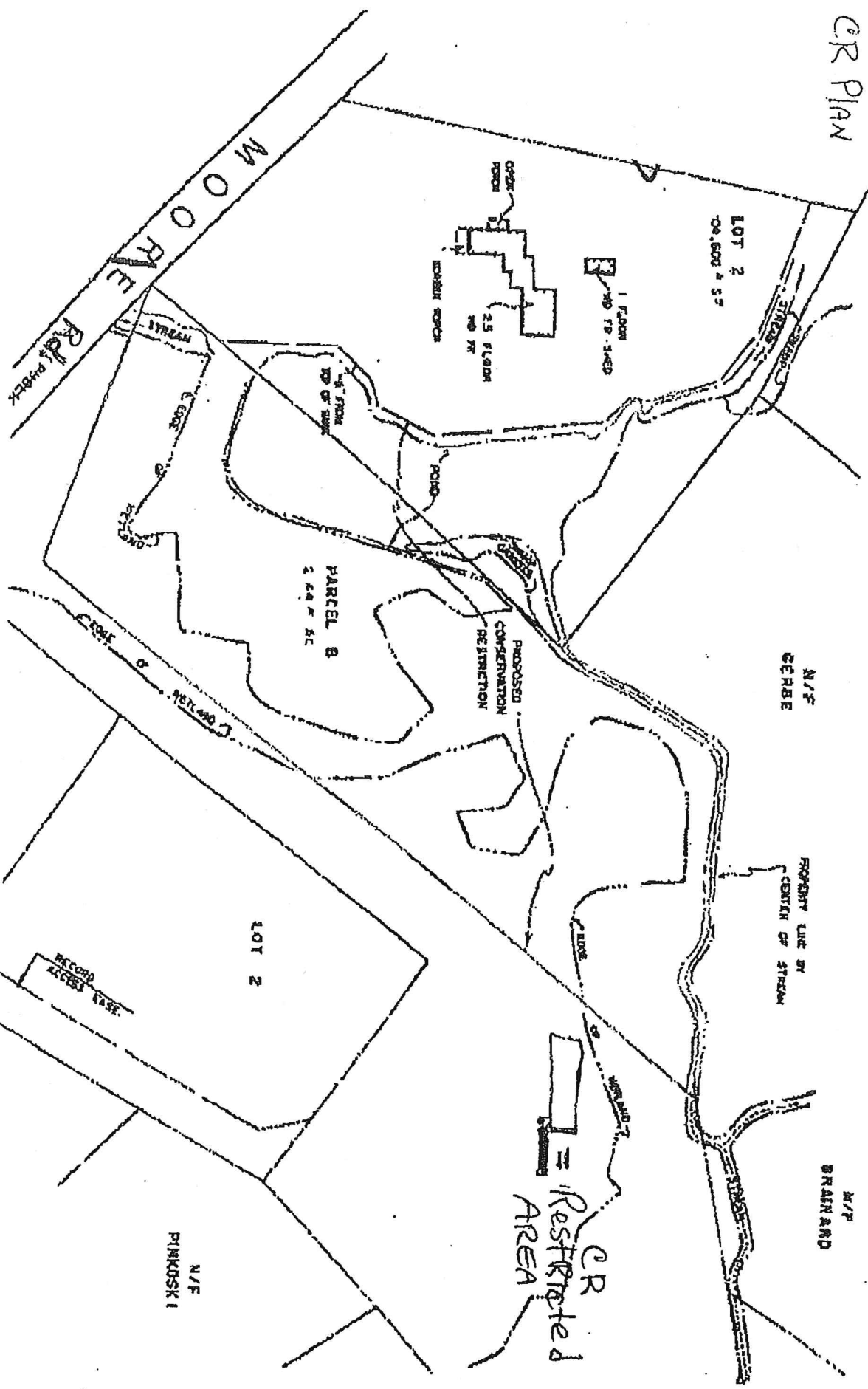
On this \_\_\_ day of \_\_\_\_\_, 2014 before me, the undersigned notary public, personally appeared the above-named \_\_\_\_\_, proved to me through satisfactory evidence of identification, which were \_\_\_\_\_, to be the person whose name is executed on the preceding or attached document, and acknowledged to me that he executed it voluntarily for its stated purpose as Secretary of the Executive Office of Energy and Environmental Affairs, before me,

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

NOTE THAT THIS PLAN HAS BEEN PREPARED IN  
COMPLIANCE WITH THE RULES & REGULATIONS OF  
THE BOARD OF REGISTRY OF PROFESSIONAL  
PLANNERS IN THE STATE OF MASSACHUSETTS

EXHIBIT "A"

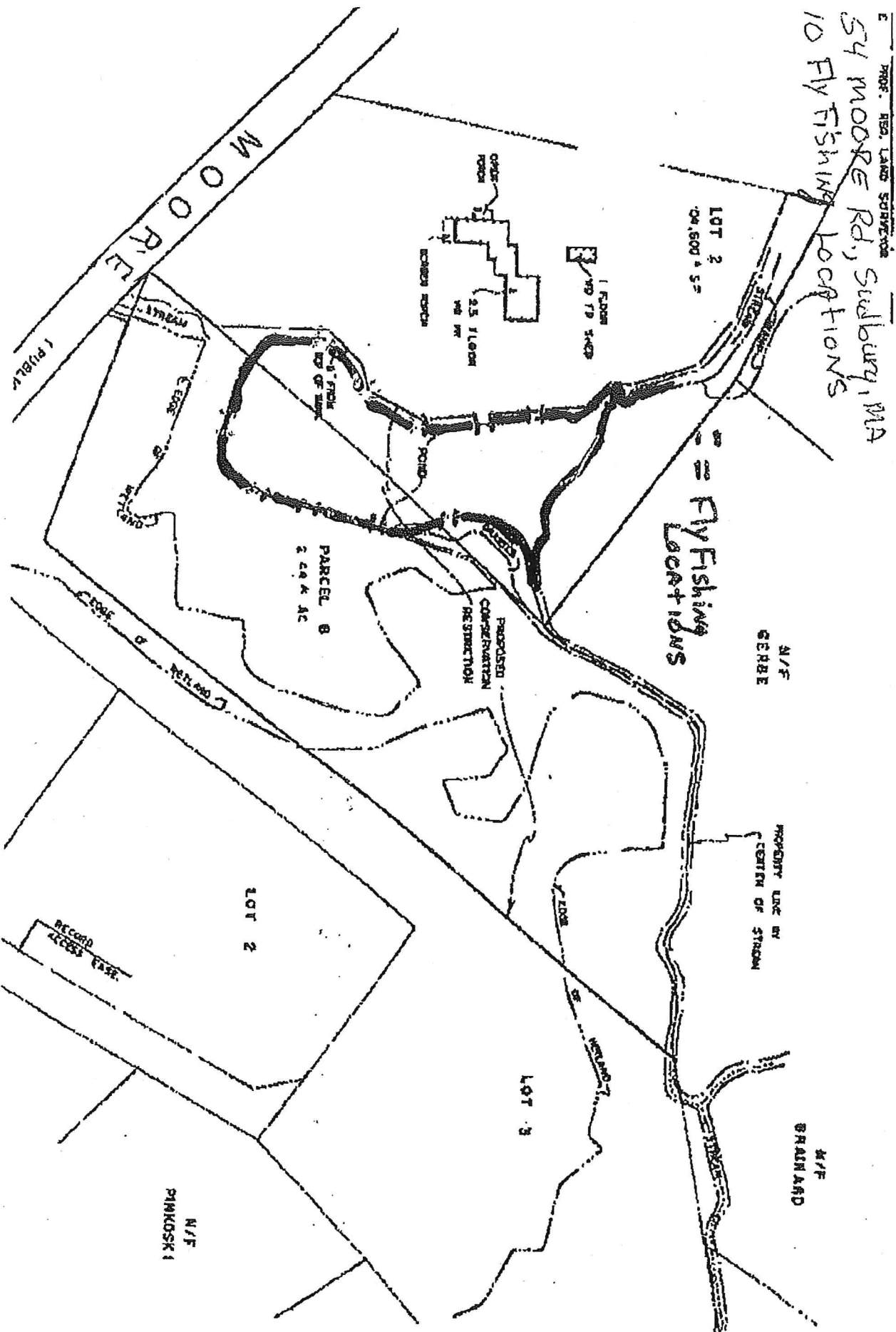
PROF. REC. LAND SURVEYOR  
54 MOORE RD, Sudbury, MA  
CR PLAN



NOTY THAT THIS PLAN HAS BEEN PREPARED IN  
CONJUNCTION WITH THE RULES & REGULATIONS OF  
RESIDENTS OF DECID OF THE COMMONWEALTH  
MASSACHUSETTS

EXHIBIT "B1"

PROF. RES. LAND SERVICE  
54 MOORE RD, Sudbury, MA  
10 Fly Fishing Locations



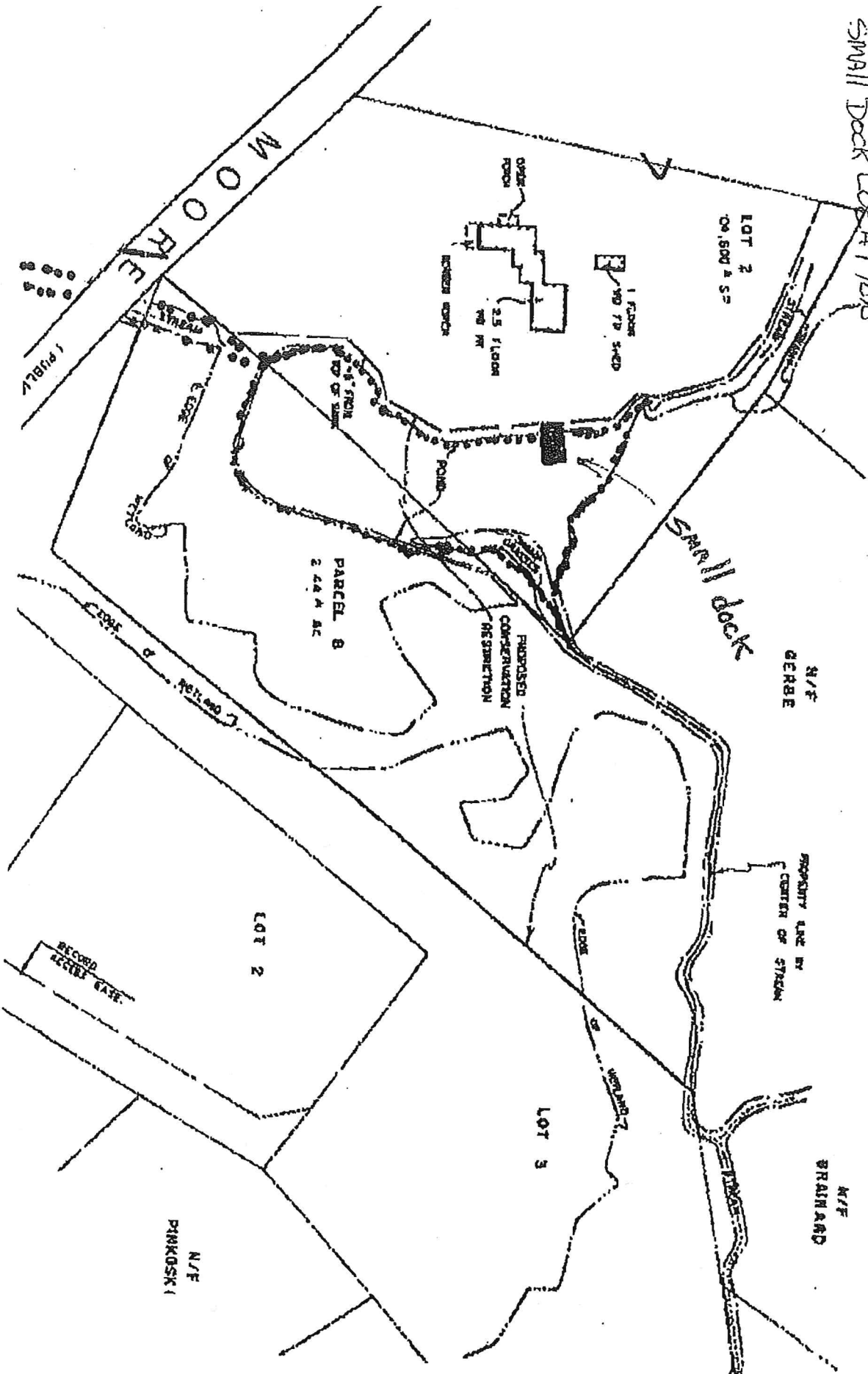
N/F  
PINKOSKI

NOTED THAT THIS PLAN HAS BEEN PREPARED IN  
 CONJUNCTION WITH THE RULES & REGULATIONS OF  
 THE BOARD OF HEALTH OF THE COMMONWEALTH  
 OF MASSACHUSETTS

E. PROF. HED. LAND SURVEYOR

54 Moore Rd., Sudbury, MA  
 Small Dock LOSTARTION

EXHIBIT "B2"

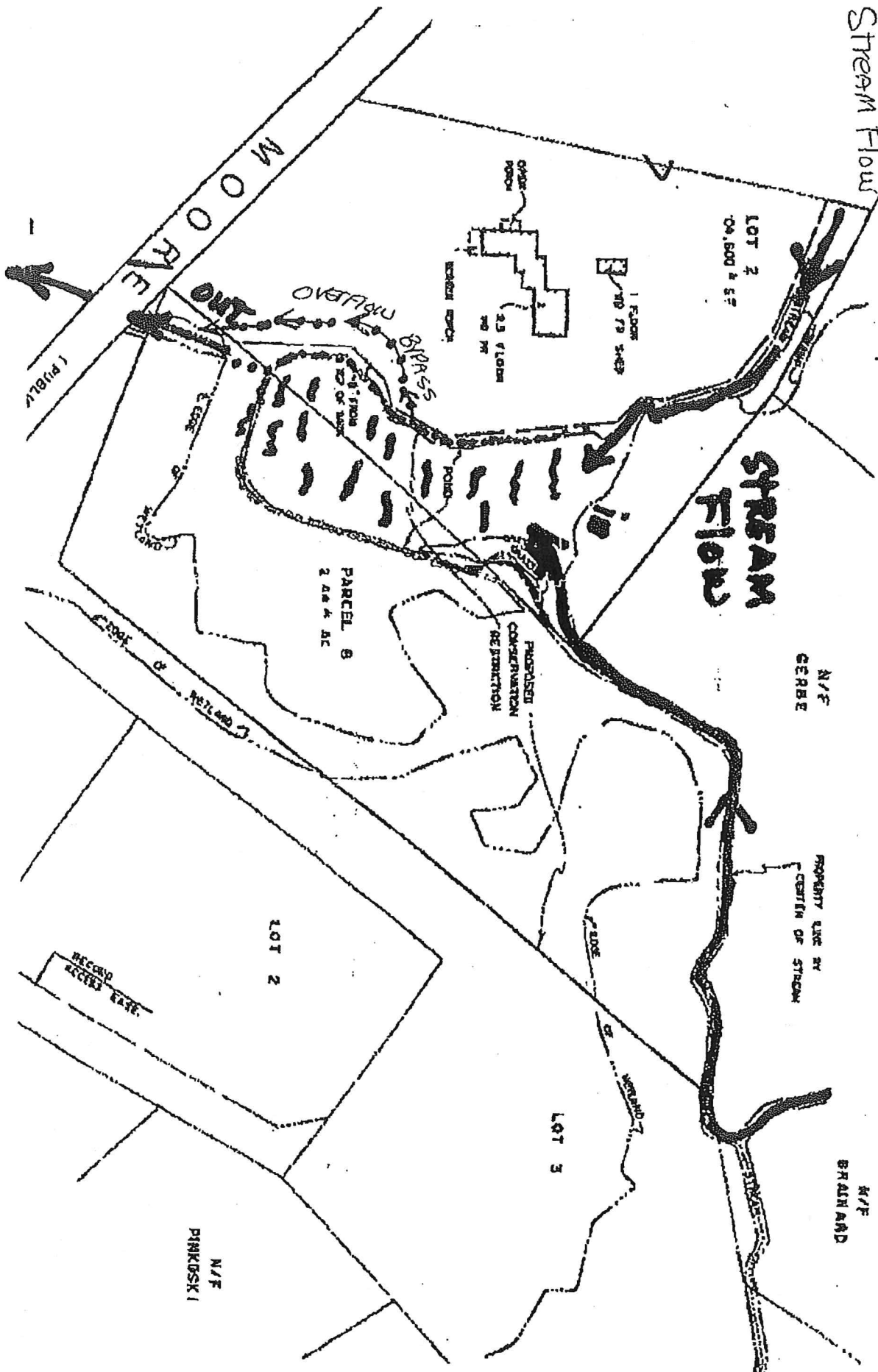


N/E  
 PINKOSKI

NOTE THAT THIS PLAN WAS PREPARED IN ACCORDANCE WITH THE RULES & REGULATIONS OF THE BOARD OF REGISTRY OF DEEDS OF THE COMMONWEALTH OF MASSACHUSETTS

PROF. RES. LAND SURVEYOR  
54 MOORE RD., Sudbury, MA  
Stream Flow

EXHIBIT "B3"



N/F  
GERBE

N/F  
BRAHMAN

N/F  
PINKUSKI

STREAM  
FLOW

LOT 2  
09,600 sq ft

PARCEL B  
2.44 AC

LOT 2

LOT 3

MOORE

1/18/14

RECORD MAP CASE

PROPOSED  
CONSERVATION  
RESTRICTION

PROPERTY LINE BY  
CENTER OF STREAM

1 FLOOR  
10' x 7' 6"

2.5 FLOOR  
40' x 10'

OVERFLOW  
BLISS

OUT

1/18/14

1/18/14

1/18/14

1/18/14

1/18/14

1/18/14

# AGENDA REQUEST – Item #6

## BOARD OF SELECTMEN

### Requestor's Section

**Date of request:** *June 12, 2014*

**Requestor:** *Ritesh Patel, Owner/Manager, Subway of Sudbury*

**Action requested:** *Approval of a new Entertainment License*

**Financial impact expected:** *\$50 Entertainment License Fee*

**Background information (if applicable, please attach if necessary):**

*See attached application.*

**Recommendations/Suggested Motion/Vote:** *As the Licensing Authority for the Town of Sudbury, vote to approve a new Entertainment License for Subway of Sudbury, 435 Boston Post Rd, with new Owner/Manager Ritesh R. Patel, as requested in an application dated June 12, 2013, said license to expire December 31, 2014.*

**Person(s) expected to represent Requestor at Selectmen's Meeting:**

### Selectmen's Office Section

**Date of Selectmen's Meeting:** *June 17, 2014*

**Board's action taken:**

**Follow-up actions required by the Board of Selectmen or Requestor:**

**Future Agenda date (if applicable):**

**Distribution:**

**Town Counsel approval needed?**

Yes ( )

No (X)



# Town of Sudbury

Office of Selectmen  
www.sudbury.ma.us

Flynn Building  
278 Old Sudbury Rd  
Sudbury, MA 01776-1843  
978-639-3381  
Fax: 978-443-0756  
Email: [selectmen@sudbury.ma.us](mailto:selectmen@sudbury.ma.us)

## APPLICATION FOR ENTERTAINMENT LICENSE

Please complete the application form and return to the Selectmen's Office along with all required materials listed below. Please note, entertainment conducted on Sunday, with certain exceptions, requires a separate license issued by the Board of Selectmen and approved by the Department of Public Safety.

TO THE LICENSING AUTHORITY  
SUDBURY, MASSACHUSETTS

Name of applicant: Ritesh R. Patel

Address of applicant: 453 Olive Dr., Northbridge, MA, 01534

Phone: 508-612-5620 Email: \_\_\_\_\_

Business Name: Subway

Business Address: 435 Boston Post Rd, Sudbury, MA 01776

Approved Capacity for patrons in room(s) where entertainment is proposed (per capacity certificate issued by Building Inspector): \_\_\_\_\_

TYPE OF ENTERTAINMENT

RADIO  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

DAYS & HOURS OF ENTERTAINMENT

(List for each type of entertainment)

7 AM - 10 PM  
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\_\_\_\_\_  
\_\_\_\_\_

Document Enclosed:

\$50 Application Fee. Check payable to Town of Sudbury.

Please submit completed application and materials to:

Board of Selectmen  
278 Old Sudbury Rd.  
Sudbury, MA 01776  
Fax: 978-443-0756  
Email: [selectmensoffice@sudbury.ma.us](mailto:selectmensoffice@sudbury.ma.us)

6/12/14  
Date

[Signature]  
Applicant Signature

**AGENDA REQUEST – Item #7**  
**BOARD OF SELECTMEN**

**Requestor's Section**

**Item Name:** *Report on Payroll Audit and Worker Classification*

**Date of request:** *6.13.14*

**Requestor:** *Town Manager Valente*

**Action requested (Who, what, when, where and why):**

*To receive a preliminary report on worker classification findings from IRS*

**Financial impact expected:** *Payment of Medicare and other payroll taxes if determination is made that independent contractors should be classified as employees instead*

**Background information (if applicable, please attach if necessary):**

**Recommendations/Suggested Motion/Vote:**

*Vote to receive preliminary report from Town Manager*

**Person(s) expected to represent Requestor at Selectmen's Meeting:**

*Town Manager Valente*

**Selectmen's Office Section**

**Date of Selectmen's Meeting:** **6/17/14**

**Board's action taken:**

**Follow-up actions required by the Board of Selectmen or Requestor:**

**Future Agenda date (if applicable):**

**Distribution:**

**Town Counsel approval needed?                      Yes (X)                      No ( )**





Maureen G. Valente  
Town Manager

**TOWN OF SUDBURY**  
*Office of the Town Manager*  
[www.sudbury.ma.us](http://www.sudbury.ma.us)

278 Old Sudbury Road  
Sudbury, MA 01776-1843  
978-639-3381  
Fax: 978-443-0756  
Email: [townmanager@sudbury.ma.us](mailto:townmanager@sudbury.ma.us)

June 13, 2014

To: Board of Selectmen

From: Maureen G. Valente, Town Manager

Re: Preliminary Report on IRS audit of worker classification and payroll taxes

CC: Dr. Anne Wilson; Andrea Terkelsen

The Town of Sudbury was audited by the Federal IRS Division of Federal, State and Local Governments to ensure that the Town is paying all employment taxes due for our employees and as a result we are being offered a settlement agreement which involves paying taxes that the IRS has determined are due. The Board of Selectmen, as well as the Sudbury Public School Committee, need to review this information, and if so inclined, vote to authorize the settlement and payment of taxes by June 30, 2014 so that we can pay them by the July 15 deadline. Background on the audit and details of the settlement offer are described below.

This audit was not done in response to any suspected noncompliance issues, but rather is part of an ongoing process by the IRS of conducting audits on a number of municipalities in Massachusetts. As part of that, the IRS agent reviewed files on the status of independent contractors who perform services for the Town and Sudbury Public Schools, as well as checked for the accuracy of our payroll processing in general.

This report is meant to give the Board the preliminary findings of the IRS agent who conducted the audit. Town and SPS staff are now reviewing the report by specific finding to see if we agree with the findings. The process has shown that while the Town and SPS have done all withholding and classifications with over 99% accuracy, there have been instances where the Town/SPS did not handle payroll services according to the IRS interpretation and/or regulations in our accounting system. These fall into three categories:

1. Medicare taxes: One Town and one SPS employee were not set up in the payroll system to have Medicare taxes deducted from their wages (this has now been corrected). The IRS is requiring that the Town make a payment for the Medicare taxes that would otherwise have been paid in 2012 and 2013, but they are not requiring that payment be made for the years prior to this period. We are being required to pay both the employer and employee Medicare tax for this period. (Town: \$5,593.69 and SPS: \$3,224.04). **We agree with this finding.** NOTE: employees hired before 1986 are exempt from Medicare tax, and it appears the hire date was incorrectly entered for these two employees, causing the Medicare tax to be omitted.

2. Code Section 6721 and 6722 Penalties: The audit found that five (5) 1099 forms were not on file and they have assessed \$200 (\$100 for each section of the code) for these five instances, for a total of \$1,000. (Town: \$500 and SPS: \$500). **We agree with this finding.** NOTE: the accounting department maintains over 5,000 active vendor files, so this finding should be made in light of that volume.
3. Independent Contractors (Worker Classification): This is where the Town and SPS have been classifying and paying people as independent contractors but upon review the IRS agent feels many of them should be classified as employees. **We do not agree with the IRS findings in this area.** In all the cases of these independent contractors, the Town and SPS had reviewed the IRS guidelines for the proper status of each individual before bringing them on as contractors to be sure these individuals should not be treated as employees. These contractors have the following characteristics: the services are used intermittently, and/or they have other clients besides Sudbury/SPS, and/or they use their own equipment and vehicles, and/or they maintain their own offices/work locations, and/or they perform the services at times and in a manner of their own choosing, and/or they are not trained by the employer, and/or the employer does not set a time or schedule for the work to be performed. Many of these vendors tend to have multiple towns and/or schools as clients, (or private sector clients). For the Town, there are several contractors related to animal control services, but the rest are mostly individuals who offer specialized classes or services for the Council on Aging or the Recreation Department. For SPS, these are therapists, tutors, instructors, referees and teachers. Dr. Wilson and I have asked our staff and legal services to review these findings to see if there is information we can provide to the IRS to change the preliminary determination. However, if the employee classification made by the IRS stands, the determination is that the Town/SPS owe \$76,121.70 for three types of taxes for these individuals: Medicare taxes (1.74%), federal income tax withholding (1.50%), and social security (OASDI) tax withholding (7.04%). The total of these taxes for 2012 is shown here along with the total that is being assessed by the IRS for all three items. No taxes are being assessed for 2013, nor are there any penalties being assessed for our classification of these workers as independent contractors. The IRS acknowledges that we dispute their interpretation, and this calculation of the taxes is being offered as a settlement of the dispute.

<i>Worker classification Adjustment</i>	
Town	\$ 18,556.11
SPS	\$ 57,565.59
Subtotal	\$ 76,121.70
<i>Medicare Taxes</i>	
Town	\$ 6,433.69
SPS	\$ 3,224.04
Subtotal	\$ 9,657.73
<i>Code Section 6721 and 6722</i>	
Town	\$ 500.00
SPS	\$ 500.00
Subtotal	\$ 1,000.00
<i>Grand Total Tax and Penalty</i>	
Town	\$ 25,489.80
SPS	\$ 61,289.63
Total	\$ 86,779.43

**Dispute Prospects:** Both SPS and the Town are working with our legal counsels to review the IRS determination of independent contractor versus employee. We will spend time next week reviewing the information about many of the independent contractors and put together documentation further illustrating why they should continue to be considered independent contractors. But if we choose to sign the settlement agreement, we will have lost rights to further contesting the IRS determination. And we are told that if we don't sign the settlement document, the dispute process involves going through

Federal appeals court, would be time consuming and expensive, and we don't know what our prospects of success might be or the risk of penalties and interest being added.

Approval and Payment Options: The IRS is requiring that we sign the settlement agreement and pay these taxes by July 15. The Board would have to vote to authorize me to sign for the Town, and the SPS Committee vote to authorize their Chair to sign for SPS. Both the Town and SPS have funds available from existing FY14 budgets to pay these amounts.

Future Plans: Both Dr. Wilson and I are looking closely at these independent contractors and re-evaluating how to provide these services. In some cases, we have already changed the classification to employee. In others, we will have to work closely with the contractor, as either party may have reasons why an employer/employee relationship is not a good option going forward. For the Town/SPS considerations include the cost of paying Medicare taxes as well as other benefits, and exposure for unemployment and worker compensation claims. Right now each of these independent contractors is required by the Town/SPS to have their own insurance coverage. Finally, many of these contractors have other towns or schools as clients, and they are facing the prospect of the IRS making the same determinations for these towns and schools as the IRS continues this process throughout the Commonwealth (we were among the first they conducted this type of audit on). This may force many contractors to change their business model and they might not want to continue working with the Town/SPS going forward.

#### Conclusion

The Town and SPS's payroll and accounting services work very diligently to abide by the many State and Federal tax and payroll laws, and overall the results of the audit for those practices is positive. This question of the worker classification has been met with dismay by the departments that use these intermittent services, as they know this is the standard practice in most Towns, particularly smaller Towns, not just Sudbury/SPS, and it was believed that the classification we had been using met the IRS tests. To prevent future problems, we will use the new information provided by the IRS agent to implement more rigorous decision making on contractor versus employee when considering using individuals for providing services to the Town/SPS. Finally, it is noted that this will have a chilling effect on regionalism efforts. Smaller Towns have been trying to regionalize certain services by contracting with individuals who provides the same service to multiple Towns.

# Attachment

## **CLOSING AGREEMENT ON FINAL DETERMINATION COVERING SPECIFIC MATTERS REGARDING WORKER CLASSIFICATION**

Under section 7121 of the Internal Revenue Code ("I.R.C."), Town of Sudbury, 278 Old Sudbury Road, Sudbury, MA, 01776-1843, Taxpayer Identification Number 04-6001315, ("taxpayer") and the Commissioner of Internal Revenue ("Commissioner") make the following closing agreement:

**WHEREAS**, there is a dispute between the parties as to whether certain workers classified by taxpayer as animal control, physical therapist, occupational therapist, vision consultant, speech pathologist, game officials, special education instructor, recreation program instructors, administrative staff, drivers, van monitors, janitorial staff and school student (hereinafter workers) are independent contractors or employees of taxpayer for purposes of federal income tax withholding, Federal Insurance Contributions Act (FICA) and Federal Unemployment Tax Act (FUTA) taxes ("federal employment tax");

**WHEREAS**, the taxpayer is presently treating the workers as independent contractors;

**WHEREAS**, the taxpayer has timely filed Forms 1099 for each of its animal control, physical therapist, occupational therapist, vision consultant, speech pathologist, game officials, special education instructor, recreation program instructors, administrative staff, drivers, van monitors, janitorial staff and school student for all applicable periods from January 1, 2012, through December 31, 2013, in accordance with the provisions of paragraph 3.02 of Rev. Proc. 85-18, 1985-1 C.B. 518, and Rev. Rul. 81-224, 1981-2 C.B. 197; and

**WHEREAS**, the parties wish to resolve this dispute for all animal control, physical therapist, occupational therapist, vision consultant, speech pathologist, game officials, special education instructor, recreation program instructors, administrative staff, drivers, van monitors, janitorial staff and school student engaged by the taxpayer on or after October 1, 2014.

**NOW IT IS HEREBY DETERMINED AND AGREED** for federal employment tax purposes that:

(1) The Internal Revenue Service will assess and the taxpayer will pay the following amounts to the United States Government in full discharge of any federal employment tax liability it may owe for the periods shown below resulting directly or indirectly from its failure to pay and/or withhold federal income tax, FICA, or FUTA taxes on the payments to its animal control, physical therapist, occupational therapist, vision consultant, speech pathologist, game officials, special education instructor, recreation program instructors, administrative staff, drivers, van monitors, janitorial staff and school student:

**Closing Agreement with**

PERIOD	TYPE OF TAX	AMOUNT TO BE ASSESSED		
2012	941	Tax: \$76,121.70	Penalties:	0
2013	941	Tax: \$0.00	Penalties:	0

(2) The Internal Revenue Service will not disturb taxpayer's classification of such workers for federal employment tax purposes for any period from January 1, 2013 through June 30, 2014.

(3) Beginning July 1, 2014, and for all periods thereafter, animal control, physical therapist, occupational therapist, vision consultant, speech pathologist, game officials, special education instructor, recreation program instructors, administrative staff, drivers, van monitors, janitorial staff and school student and persons performing equivalent duties regardless of taxpayer's job titles will be treated as employees for all federal employment tax purposes.

(4) For purposes of ensuring that the taxpayer properly discharges its obligations pursuant to paragraph (3) of this agreement, any assessments of taxes due from the taxpayer under the provisions of I.R.C. Sections 3101, 3111, 3402, 3509, and 3301, for periods beginning January 1, 2012, and ending June 30, 2014, together with penalties and interest thereon, may be made at any time on or before the later of December 31, 2017 or the date on which the statute of limitations for the period would expire without regard to this closing agreement.

**AGENDA REQUEST – Item #8**  
**BOARD OF SELECTMEN**

**Requestor's Section**

**Item Name:** *Continued discussion and review of draft agreement for Gift to Town to make improvements to Upper Featherland Park*

**Date of request:** *6.13.14*

**Requestor:** *Town Manager Valente*

**Action requested (Who, what, when, where and why):**

*To review the draft gift agreement, as edited to incorporate changes agreed upon at 6/10/14 Board of Selectmen's meeting, after review by Sudbury Town Counsel and LSYB counsel.*

**Financial impact expected:** *Acceptance of gift from LSYB*

**Background information (if applicable, please attach if necessary):**

**Recommendations/Suggested Motion/Vote:**

*Vote to direct staff to finalize the gift agreement and have ready for a vote to sign at the Board's 6/25/14 meeting*

**Person(s) expected to represent Requestor at Selectmen's Meeting:**

*Town Manager Valente*

**Selectmen's Office Section**

**Date of Selectmen's Meeting:**            **6/17/14**

**Board's action taken:**

**Follow-up actions required by the Board of Selectmen or Requestor:**

**Future Agenda date (if applicable):**

**Distribution:**

**Town Counsel approval needed?**

**Yes (X)**

**No ( )**



# Town of Sudbury

## Town Manager's Office

Townmanager@sudbury.ma.us

278 Old Sudbury Road  
Sudbury MA 01776  
978-639-3385  
Maureen G. Valente, Town Manager  
<http://www.sudbury.ma.us>

Date: June 13, 2014  
To: Board of Selectmen  
From: Maureen G. Valente, Town Manager *Maureen*  
Subject: Featherland Gift Agreement Draft

Town Counsel Paul Kenny has reviewed the updated draft I put together based on your edits and he sent that to the attorney for LSYB, Rob Wolkon. Mr. Wolkon said he will review over the weekend and speak to Mike Walsh about the draft document and get that back to Paul on Monday.

I plan to forward it to you once we receive Mr. Wolkon's edits and comments on Monday.