



April 12, 2023

Federal Express/Email (rgendreau@sturbridge.gov)

Sturbridge Conservation Commission
301 Main Street
Sturbridge, MA 01566

**Re: DEP File #CE300-1156
Blueberry Hill Estates
Lot 3 Berry Farms Road
Sturbridge, Massachusetts**

[LEC File #: MCEI\20-002.04]

Dear Members of the Commission:

On behalf of the Applicant, Justin Stelmok, LEC Environmental Consultants, Inc., (LEC) is submitting updated materials in response to Commission feedback received during the March 30, 2023 Public Hearing. The Applicant is proposing the following revisions as depicted on the accompanying conceptual plan revision sheets C12, C13, and C14, prepared by McClure Engineering, Inc., dated April 11, 2023 (Attachment A):

- Eliminate Lot 56 and reconfigure Unit 57, associated grading, and stormwater management at the Road B cul-de-sac to remove the permanent disturbance within the 200-foot Buffer Zone to the northerly A-series Vernal Pool.
- Reconfigure Lots 20 and 21 at the Road D cul-de-sac to reduce the permanent and temporary disturbance within the 200-foot Buffer Zone to the E-series Vernal Pool.
- Relocate rain garden outfall behind Unit 65 to maximize setback to southerly A-series Vernal Pool.
- Plant one (1) additional tree per lot for a total of one hundred and thirty-four (134).

Proposed Revisions at Drive B Cul-De-Sac

The Applicant is proposing to eliminate Lot 56 at the terminus of the Proposed Drive B cul-de-sac within the 200-foot Buffer Zone to the northerly A-series Vernal Pool. Unit 57 has been reduced in size, the attached garage eliminated, and dwelling reconfigured outside of the 200-foot Vernal Pool Buffer Zone. The proposed retaining wall and rain garden have been eliminated within the 200-foot Vernal Pool Buffer Zone. The rain garden will be reconfigured outside of the 200-foot Vernal Pool Buffer Zone. The temporary disturbances within the 200-foot Buffer Zone will be revegetated as previously described (e.g., New England Wetland Plants Roadside Upland Matrix Seed Mix or Conservation-approved similar containing native grasses, wildflowers, and shrub species to facilitate the slopes revegetating into forested upland). Additional slope stabilization measures will be implemented as previously detailed

LEC Environmental Consultants, Inc.

www.lectenvironmental.com

12 Resnik Road
Suite 1
Plymouth, MA 02360
508.746.9491

380 Lowell Street
Suite 101
Wakefield, MA 01880
781.245.2500

100 Grove Street
Suite 302
Worcester, MA 01605
508.753.3077

P.O. Box 590
Rindge, NH 03461
603.899.6726

680 Warren Avenue
Suite 3
East Providence, RI 02914
401.685.3109

PLYMOUTH, MA

WAKEFIELD, MA

WORCESTER, MA

RINDGE, NH

EAST PROVIDENCE, RI



(hydroseeding with tackifier and biodegradable erosion control blankets, etc., as necessary, to supplement erosion control barriers. All barriers will be maintained throughout construction and until the slopes are fully stable and vegetated.

Proposed Revisions at Drive D Cul-De-Sac

Units 20 and 21 have been reconfigured to minimize the disturbance within the 200-foot Buffer Zone to the E-series Vernal Pool. Specifically, the garages on both lots have been eliminated and the dwellings have been reduced in size and shifted further away from the Vernal Pool. The entire Limit of Work has been relocated to the east, thus significantly reducing the slope to be revegetated (see above) and eliminating the retaining wall behind Unit 20. The revisions avoid disturbance to the steeper slopes on Lots 20 and 21 as observed at the March 22, 2023 on-site meeting.

Proposed revisions at the Drive B & D cul-de-sacs have provided significant eliminations and reductions in permanent and temporary disturbances within the 200-foot Vernal Pool Buffer Zone as reviewed within the updated table:

Vernal Pool	Total Proposed 100-200 Foot VP Buffer Disturbance (Upland SF)	Total Proposed Impervious Structure, Driveway, Road, Rain Garden, Lawn (Upland SF)	Proposed Revegetation (Upland SF)	Total VP Buffer Protected (Upland SF)
A-series Vernal Pool (South)	19,800	12,200 (9.3%)*	7,600	130,761
A-series Vernal Pool (north)	2,495	0	2,495	225,968
E-series Vernal Pool	7,375	5,290 (4.3%)*	2,085	123,252
TOTAL	29,670	17,490 (3.6%)*	12,180	479,981 (11.02± acres)

*Proposed Impervious Structure, Driveway, Road, Rain Garden, Lawn/Total VP Buffer Protected.

Rain Garden Outlet Behind Unit 65

A proposed rain garden level spreader/outlet behind Unit 65 has been relocated to maximize setback to southerly A-series Vernal Pool. As proposed, the outlet will be located approximately 140± linear feet away from the Vernal Pool. However, it should be noted that discharge from this outlet is not directed towards the Vernal Pool, but further to the north based on existing topography.

Supplemental Trees

As requested, the Applicant is proposing to plant an additional sixty-seven (67) native trees within the development (one additional per lot).



In summary, the proposed project eliminates or significantly reduces the proposed disturbances within the 200-foot Buffer Zone to Vernal Pools. The project will cumulatively disturb, including impervious structures, driveways, roadways, rain gardens, and lawn/landscaped area (permanent disturbance), a total of 17,490± s.f. (0.4± acres) within the 200-foot Buffer Zone, in comparison to permanently protecting 479,981± s.f. (11.02± acres) of upland within 200 feet of the Vernal Pools. The cumulative 3.6% of permanent disturbance within the 200-foot Vernal Pool Buffer Zone, in comparison to upland Open Space to be protected within 200 feet of Vernal Pools, represents an insignificant impact. The proposed 24.2± acre Open Space will also protect an additional 6.0± acres of wetlands and 7.2± acres of upland beyond 200 feet. A draft copy of the Declaration of Restriction is concurrently being submitted as discussed during the March 30 meeting along with the March 30, 2023 confirmation email from MA Department of Fish & Game (Attachment B).

Thank you for consideration of this supplemental information. Please do not hesitate to contact me if you have any questions in advance of the April 20, 2023 Public Hearing.

Sincerely,

LEC Environmental Consultants, Inc.

A handwritten signature in black ink, appearing to read "Brian T. Madden".

Brian T. Madden

Senior Wildlife/Wetland Scientist

Attachment A

Conceptual Plan Revision Sheets C12, C13, and C14,
prepared by McClure Engineering, Inc., dated April 11, 2023

NOTE:
 ALL DISTURBED AREAS SHALL BE STABILIZED WITH A MIN. 4" LOAM AND SEED. SEED SHALL BE A MIXTURE OF CREEPING RED FESCUE AND PERENNIAL RYE GRASS. AREAS OUTSIDE OF PROPOSED LAWN AREAS AND ON STEEP SLOPES SHALL BE SEEDED WITH NEW ENGLAND WETLAND PLANTS UPLAND. ROADSIDE MATRIX PER MANUFACTURER'S SPECS. SLOPES GREATER THAN 3:1 SHALL BE STABILIZED WITH EROSION CONTROL BLANKETS AS SPECIFIED ON TE DETAILS SHEET.

- GENERAL CONSTRUCTION NOTES:
1. THE LOCATION OF EXISTING UNDERGROUND UTILITIES AND STRUCTURES ARE APPROXIMATE ONLY. THE ENGINEER DOES NOT GUARANTEE THEIR ACCURACY OR THAT ALL UTILITIES AND SUBSURFACE STRUCTURES ARE SHOWN. THE CONTRACTOR SHALL VERIFY SIZE, LOCATION AND INVERT ELEVATIONS OF THE UTILITIES AND STRUCTURES, AS REQUIRED PRIOR TO THE START OF CONSTRUCTION. ANY DISCREPANCIES WITH RECORD DATA SHALL BE REPORTED TO THE ENGINEER IMMEDIATELY. THE CONTRACTOR IS CAUTIONED TO CONTACT DIG SAFE (1-888-344-7233) 72 HOURS BEFORE DIGGING.
 2. ALL MATERIALS AND CONSTRUCTION PRACTICES SHALL BE IN CONFORMANCE WITH THE TOWN OF STURBRIDGE SPECIFICATIONS AND DETAILS OR IN THE ABSENCE OF APPROPRIATE STANDARDS, THE LATEST EDITION OF THE MASSACHUSETTS DEPARTMENT OF TRANSPORTATION (MASSDOT) CONSTRUCTION STANDARDS AND THE MDPW "STANDARD SPECIFICATIONS FOR HIGHWAYS AND BRIDGES", SHALL APPLY.
 3. ELECTRIC, GAS, TELEPHONE AND CATV UTILITY CONNECTIONS AND SERVICES SHALL BE INSTALLED IN ACCORDANCE WITH THE REQUIREMENTS OF THE RESPECTIVE UTILITY.
 4. IT SHALL BE THE RESPONSIBILITY OF THE CONTRACTOR TO COORDINATE HIS WORK WITH THE APPROPRIATE HIGHWAY & UTILITY DEPARTMENTS. CONTRACTOR SHALL MAINTAIN ALL EXISTING AND NEWLY INSTALLED UTILITIES IN GOOD WORKING ORDER AND SHALL PROTECT THEM FROM DAMAGE AT ALL TIMES UNTIL THE WORK IS COMPLETED AND ACCEPTED.
 5. THE CONTRACTOR SHALL UTILIZE ALL MEASURES AND MATERIALS NECESSARY TO ENSURE THE SAFETY OF ALL PERSONS AND PROPERTIES AT THE SITE DURING CONSTRUCTION. ALL EXCAVATIONS SHALL CONFORM TO CURRENT OSHA STANDARDS.
 6. UNLESS OTHERWISE NOTED, ALL DISTURBED AREAS SHALL BE DRESSED WITH A MINIMUM OF FOUR INCHES (4") OF LOAM AND SHALL BE SEEDED WITH AN APPROVED GRASS MIX. SLOPES EXCEEDING 2:1 SHALL BE LOAMED AND STABILIZED WITH PEGGED SOD OR APPROVED EROSION CONTROL BLANKETS UNLESS OTHERWISE NOTED. SEE DETAILS.

REV	DATE	TOWN, DEP. PEER ENG. COMMENTS	MADE (APVD)
1	11.10.22		PE
2	4.11.23		PE

PETER C. ENGLE, P.E.
 PROFESSIONAL ENGINEER
 MA LIC. NO. 53736

McCLURE
 ENGINEERING, INC
 119 Worcester Road
 Charlton, MA 01507
 Tel: (508) 248-2005
 Fax (508) 248-4887
 Email: peng@mcclureengineers.com

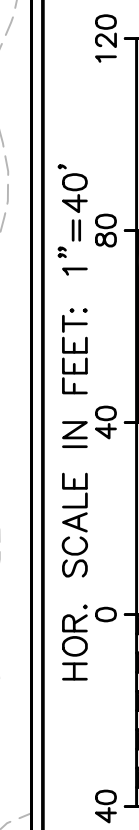
SPECIAL PERMIT AND SITE PLAN
 "BLUEBERRY HILL ESTATES"
 LOT 3 BERRY FARMS ROAD
 STURBRIDGE, MA 01566
 PREPARED FOR
 JUSTIN STELMOK
 WORCESTER, MA 01607

DRAWN BY: WCN
 DATE: 4/12/22
 CHK BY: CPH
 SCALE: 1"=40'
 PROJ. NO. 287-2118K

GRADING & DRAINAGE PLAN
 SHEET C12 OF 31

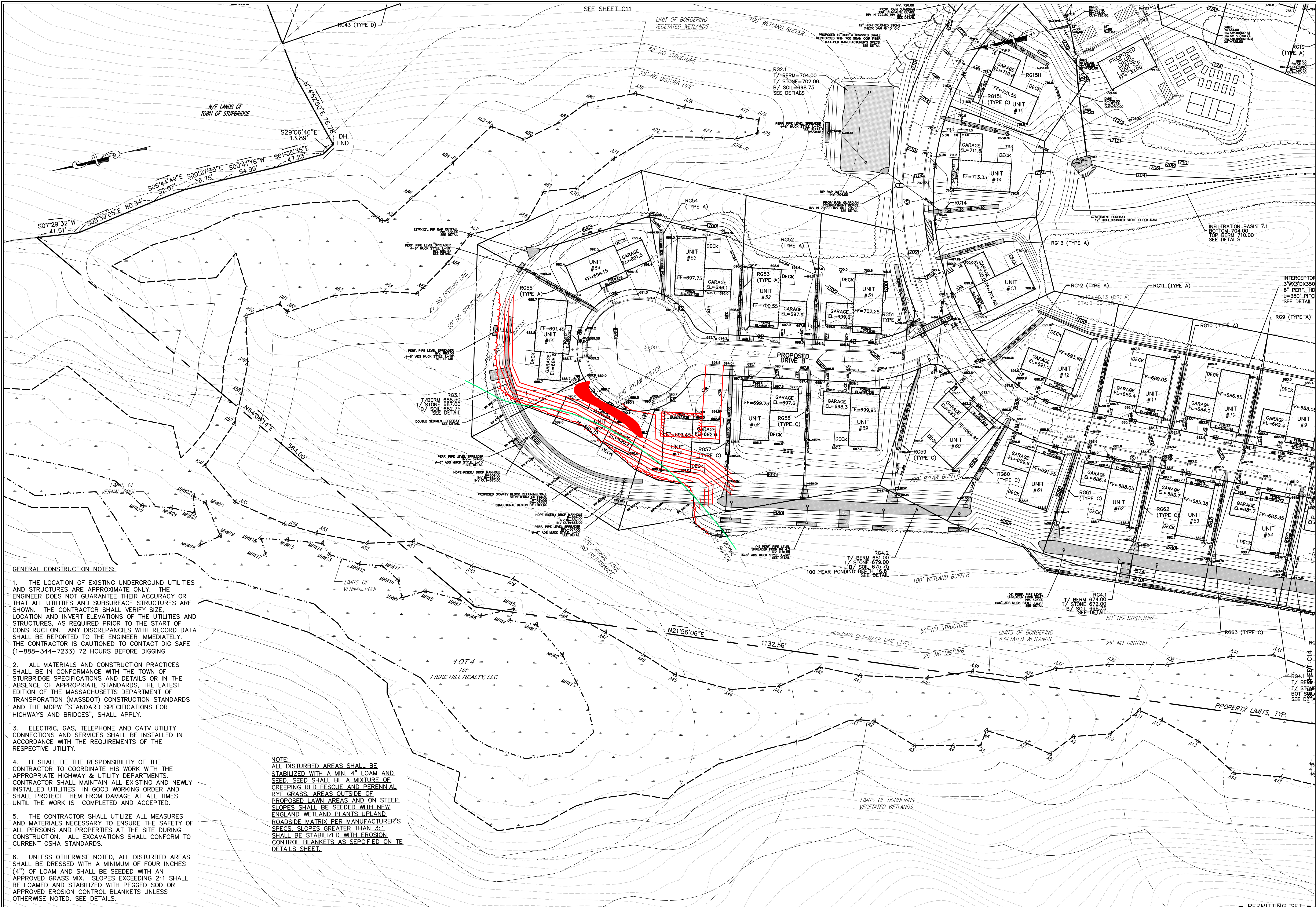


SEE SHEET C11



1"=40'

PERMITTING SET



GENERAL CONSTRUCTION NOTES:

1. THE LOCATION OF EXISTING UNDERGROUND UTILITIES AND STRUCTURES ARE APPROXIMATE ONLY. THE ENGINEER DOES NOT GUARANTEE THEIR ACCURACY OR THAT ALL UTILITIES AND SUBSURFACE STRUCTURES ARE SHOWN. THE CONTRACTOR SHALL VERIFY SIZE, LOCATION AND INVERT ELEVATIONS OF THE UTILITIES AND STRUCTURES, AS REQUIRED PRIOR TO THE START OF CONSTRUCTION. ANY DISCREPANCIES WITH RECORD DATA SHALL BE REPORTED TO THE ENGINEER IMMEDIATELY. THE CONTRACTOR IS CAUTIONED TO CONTACT DIG SAFE (1-888-344-7233) 72 HOURS BEFORE DIGGING.
2. ALL MATERIALS AND CONSTRUCTION PRACTICES SHALL BE IN CONFORMANCE WITH THE TOWN OF STURBRIDGE SPECIFICATIONS AND DETAILS OR IN THE ABSENCE OF APPROPRIATE STANDARDS, THE LATEST EDITION OF THE MASSACHUSETTS DEPARTMENT OF TRANSPORTATION (MASSDOT) CONSTRUCTION STANDARDS AND THE MDPW "STANDARD SPECIFICATIONS FOR HIGHWAYS AND BRIDGES", SHALL APPLY.
3. ELECTRIC, GAS, TELEPHONE AND CATV UTILITY CONNECTIONS AND SERVICES SHALL BE INSTALLED IN ACCORDANCE WITH THE REQUIREMENTS OF THE RESPECTIVE UTILITY.
4. IT SHALL BE THE RESPONSIBILITY OF THE CONTRACTOR TO COORDINATE HIS WORK WITH THE APPROPRIATE HIGHWAY & UTILITY DEPARTMENTS. CONTRACTOR SHALL MAINTAIN ALL EXISTING AND NEWLY INSTALLED UTILITIES IN GOOD WORKING ORDER AND SHALL PROTECT THEM FROM DAMAGE AT ALL TIMES UNTIL THE WORK IS COMPLETED AND ACCEPTED.
5. THE CONTRACTOR SHALL UTILIZE ALL MEASURES AND MATERIALS NECESSARY TO ENSURE THE SAFETY OF ALL PERSONS AND PROPERTIES AT THE SITE DURING CONSTRUCTION. ALL EXCAVATIONS SHALL CONFORM TO CURRENT OSHA STANDARDS.
6. UNLESS OTHERWISE NOTED, ALL DISTURBED AREAS SHALL BE DRESSED WITH A MINIMUM OF FOUR INCHES (4") OF LOAM AND SHALL BE SEEDDED WITH AN APPROVED GRASS MIX. SLOPES EXCEEDING 2:1 SHALL BE LOAMED AND STABILIZED WITH PEGGED SOIL OR APPROVED EROSION CONTROL BLANKETS UNLESS OTHERWISE NOTED. SEE DETAILS.

NOTE:
 ALL DISTURBED AREAS SHALL BE STABILIZED WITH A MIN. 4" LOAM AND SEED. SEED SHALL BE A MIXTURE OF CREEPING RED FESCUE AND PERENNIAL RYE GRASS. AREAS OUTSIDE OF PROPOSED LAWN AREAS AND ON STEEP SLOPES SHALL BE SEEDDED WITH NEW ENGLAND WETLAND PLANTS UPLAND ROADSIDE MATRIX PER MANUFACTURER'S SPECS. SLOPES GREATER THAN 3:1 SHALL BE STABILIZED WITH EROSION CONTROL BLANKETS AS SPECIFIED ON THE DETAILS SHEET.

SEE SHEET C11

REV	DATE	TOWN DEP. PEER ENG. COMMENTS	REV 2	PROGRESS
1	11.10.22		PE	PE
2	4.11.23		PE	PE

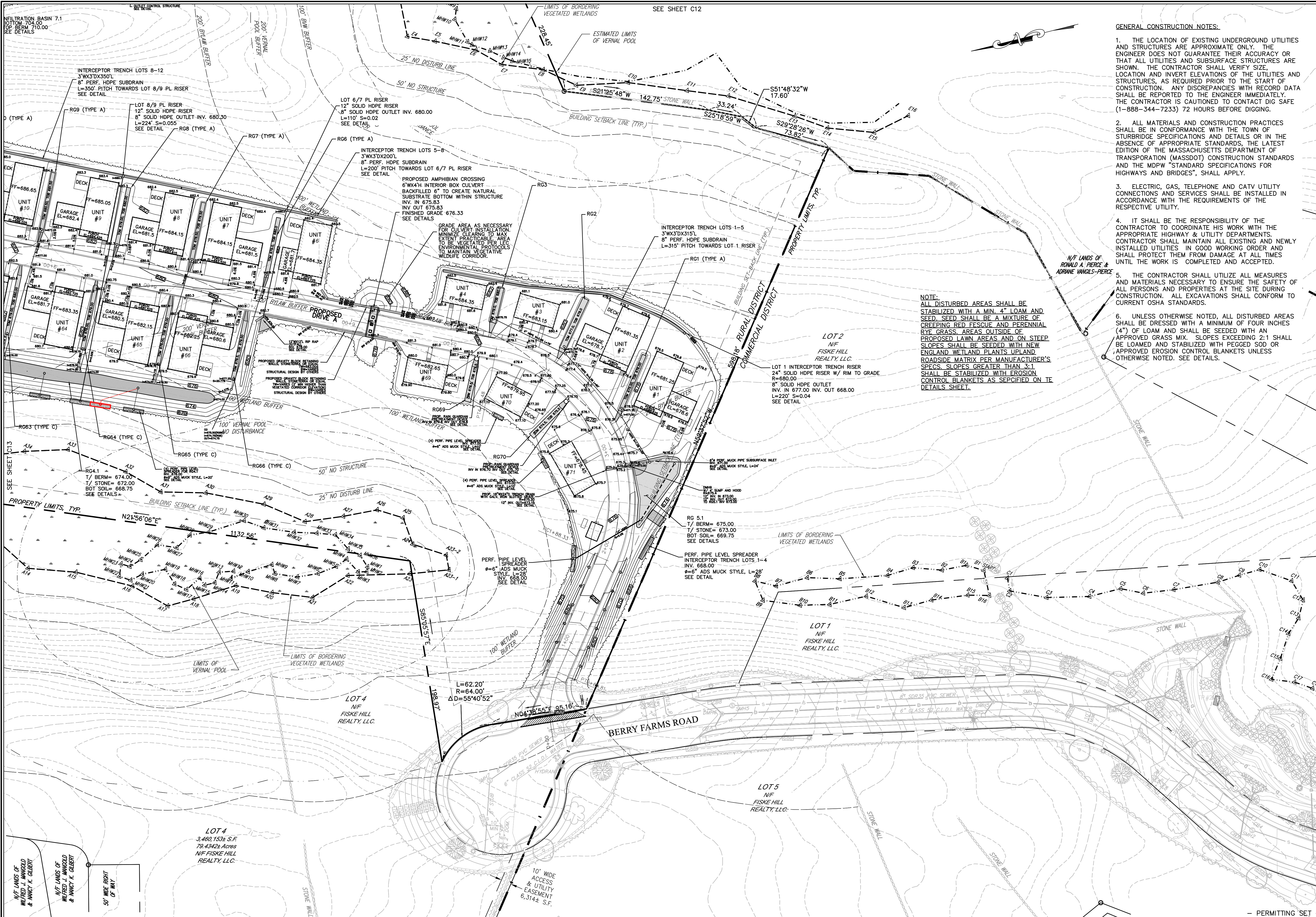
PETER C. ENGLE, P.E.
 PROFESSIONAL ENGINEER
 MA LIC. NO. 53736

McCLURE
 ENGINEERING, INC
 119 Worcester Road
 Charlton, MA 01507
 Tel: (508) 248-2005
 Fax: (508) 248-4887
 Email: pengle@mcclureengineers.com

SPECIAL PERMIT AND SITE PLAN
 "BLUEBERRY HILL ESTATES"
 LOT 3 BERRY FARMS ROAD
 STURBRIDGE, MA 01566
 PREPARED FOR
 JUSTIN STELMOK
 WORCESTER, MA 01607

DRAWN BY:	WCH
DATE:	4/1/23
CHK BY:	OPH
SCALE:	1"=40'
PROJ. NO.:	287-2118K

GRADING & DRAINAGE PLAN



- GENERAL CONSTRUCTION NOTES:**
1. THE LOCATION OF EXISTING UNDERGROUND UTILITIES AND STRUCTURES ARE APPROXIMATE ONLY. THE ENGINEER DOES NOT GUARANTEE THEIR ACCURACY OR THAT ALL UTILITIES AND SUBSURFACE STRUCTURES ARE SHOWN. THE CONTRACTOR SHALL VERIFY SIZE, LOCATION AND INVERT ELEVATIONS OF THE UTILITIES AND STRUCTURES, AS REQUIRED PRIOR TO THE START OF CONSTRUCTION. ANY DISCREPANCIES WITH RECORD DATA SHALL BE REPORTED TO THE ENGINEER IMMEDIATELY. THE CONTRACTOR IS CAUTIONED TO CONTACT DIG SAFE (1-888-344-7233) 72 HOURS BEFORE DIGGING.
 2. ALL MATERIALS AND CONSTRUCTION PRACTICES SHALL BE IN CONFORMANCE WITH THE TOWN OF STURBRIDGE SPECIFICATIONS AND DETAILS OR IN THE ABSENCE OF APPROPRIATE STANDARDS, THE LATEST EDITION OF THE MASSACHUSETTS DEPARTMENT OF TRANSPORTATION (MASSDOT) CONSTRUCTION STANDARDS AND THE MDPW "STANDARD SPECIFICATIONS FOR HIGHWAYS AND BRIDGES", SHALL APPLY.
 3. ELECTRIC, GAS, TELEPHONE AND CATV UTILITY CONNECTIONS AND SERVICES SHALL BE INSTALLED IN ACCORDANCE WITH THE REQUIREMENTS OF THE RESPECTIVE UTILITY.
 4. IT SHALL BE THE RESPONSIBILITY OF THE CONTRACTOR TO COORDINATE HIS WORK WITH THE APPROPRIATE HIGHWAY & UTILITY DEPARTMENTS. CONTRACTOR SHALL MAINTAIN ALL EXISTING AND NEWLY INSTALLED UTILITIES IN GOOD WORKING ORDER AND SHALL PROTECT THEM FROM DAMAGE AT ALL TIMES UNTIL THE WORK IS COMPLETED AND ACCEPTED.
 5. THE CONTRACTOR SHALL UTILIZE ALL MEASURES AND MATERIALS NECESSARY TO ENSURE THE SAFETY OF ALL PERSONS AND PROPERTIES AT THE SITE DURING CONSTRUCTION. ALL EXCAVATIONS SHALL CONFORM TO CURRENT OSHA STANDARDS.
 6. UNLESS OTHERWISE NOTED, ALL DISTURBED AREAS SHALL BE DRESSED WITH A MINIMUM OF FOUR INCHES (4") OF LOAM AND SHALL BE SEEDED WITH AN APPROVED GRASS MIX. SLOPES EXCEEDING 2:1 SHALL BE LOAMED AND STABILIZED WITH PEGGED SOD OR APPROVED EROSION CONTROL BLANKETS UNLESS OTHERWISE NOTED. SEE DETAILS.

NOTE:
ALL DISTURBED AREAS SHALL BE STABILIZED WITH A MIN. 4" LOAM AND SEED. SEED SHALL BE A MIXTURE OF CREEPING RED FESCUE AND PERENNIAL RYE GRASS. AREAS OUTSIDE OF PROPOSED LAWN AREAS AND ON STEEP SLOPES SHALL BE SEEDED WITH NEW ENGLAND WETLAND PLANTS UPLAND ROADSIDE MATRIX PER MANUFACTURER'S SPECS. SLOPES GREATER THAN 3:1 SHALL BE STABILIZED WITH EROSION CONTROL BLANKETS AS SPECIFIED ON THE DETAILS SHEET.

REV	DATE	TOWN, DEP. PEER ENG. COMMENTS	MADE (APVD)
1	11.10.22		PE
2	4.11.23		PE

PETER C. ENGLE, P.E.
PROFESSIONAL ENGINEER
MA LIC. NO. 53736

McCLURE ENGINEERING, INC
119 Worcester Road
Charlton, MA 01507
Tel: (508) 248-2005
Fax (508) 248-4887
Email: pengle@mcclureengineers.com

SPECIAL PERMIT AND SITE PLAN
"BLUEBERRY HILL ESTATES"
LOT 3 BERRY FARMS ROAD
STURBRIDGE, MA 01566
PREPARED FOR
JUSTIN STELMOK
WORCESTER, MA 01607

DRAWN BY:	WCH
DATE:	4/1/22
CHK BY:	CPH
SCALE:	1"=40'
PROJ. NO.:	287-2118K

GRADING & DRAINAGE PLAN
SHEET **C14** OF **31**
- PERMITTING SET -

Attachment B

Draft Declaration of Restriction

March 30, 2023 MA Department of Fish & Game Email

DECLARATION OF RESTRICTION

THIS DECLARATION OF RESTRICTION (hereinafter the "Declaration") is made this _____ day of _____, 20____, by Fiske Hill Realty Trust and Fiske Hill East Realty Trust, 97 Arnold Road, Fiskdale, MA 01518 (hereinafter the "Grantor").

WITNESSETH

WHEREAS, collectively, Grantor is the owner of that certain subdivision of land known as Lot 3 & 4 Berry Farms Road located in the Town of Sturbridge, Worcester County, Massachusetts (hereinafter the "Premises"), shown on _____ [Title of recordable plan] dated _____ [date and last revision date of plan], prepared by McClure Engineering, Inc., and recorded in the Worcester County Registry of Deeds at Plan Book _____ as Plan _____ (the "Plan"); and

WHEREAS, the Grantor desires and agrees, that Grantor shall record this Declaration in order to protect in perpetuity, as implemented in accordance with the requirements of MGL. c. 184 §§ 23-30, +/- 78 acres of the Premises as shown on the Plan (the "Open Space"); and

WHEREAS, the Premises contains important wetlands, including vernal pools, and uplands that provide habitat for diverse array of wildlife species and provide many other public benefits of wetlands protection recognized by the Commonwealth of Massachusetts (Section 40 of Chapter 131 of the Massachusetts General Laws); and

WHEREAS, Grantor desires and agrees that this Declaration shall run in perpetuity, as implemented in accordance with the requirements of G.L. c. 184 §§ 23-30, or until such time the Open Space is transferred to the Division of Fisheries and Wildlife and/or a Conservation Restriction signed by the Executive Office of Energy and Environmental Affairs - Division of Conservation Services ("EEA-DCS") is recorded on the Open Space; and

NOW, THEREFORE, Grantor hereby voluntarily declares and imposes in perpetuity upon the Open Space, as implemented in accordance with the requirements of MGL. c. 184 §§ 23-30, the following covenants, conditions and restrictions for the benefit of the Grantor and the Division, and said Open Space shall be held, transferred, sold, conveyed, occupied and used subject to the covenants, terms, conditions, and restrictions contained herein.

1. **Definitions.**

- a. **Hazardous Material**: shall mean any material or substance that, whether by its nature or use, is now or hereafter defined as a pollutant, dangerous substance, toxic substance, hazardous waste, hazardous material, hazardous substance or contaminant under any environmental law, or which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic or otherwise hazardous and which is now or hereafter regulated under any environmental law.
- b. **Pervious**: shall mean built of materials consisting of unconsolidated minerals such as sand, dirt or gravel, or natural materials such as wood chips or grass.

- c. Structure: (whether or not said term is capitalized) shall mean anything constructed or erected which requires permanent or temporary location on, in, over or under the ground or permanent or temporary attachment to something which is erected or placed on the ground and designed, intended or arranged for the housing, shelter, enclosure and/or structural support of persons or animals of any kind, including but not limited to houses, mobile homes, tents, barns, sheds, greenhouses, treehouses, and other buildings of any kind; silos and cribs; swimming pools; playing courts; outdoor riding rings; fences; pads; patios and decks; docks; bridges; roads; driveways and parking areas (whether surfaced with macadam, brick, paving stones, gravel, clay or other material); artificially surfaced walkways; solar panels; satellite dishes and antennae; signs and billboards; storage tanks; windmills and wind turbines; and water, sewer, power, fuel, gas and communication lines, other utility systems and related facilities.
- d. Passive Recreation: activities that are non-consumptive uses of resources and do not require prepared facilities like sports fields and pavilions. Passive recreation activities place minimal stress on the site's resources and are compatible with the conservation values. Examples include hunting, hiking, wildlife viewing, observing and photographic nature, picnicking, walking, bird watching, running/jogging, stargazing, and fishing. Passive recreation excludes mountain bikes, use of motorized vehicles, and horseback riding, unless specified herein.

2. **Prohibited Uses.** Except as to reserved rights set forth in Section 3 below, the Grantor shall not perform or permit others to perform the following acts or uses, which are prohibited, in, on, above or below the Open Space:

- a. Structures. Constructing, placing, or allowing to remain any Structure;
- b. Extractive Activities and Uses. Mining, excavating, dredging or removing soil, loam, peat, gravel, sand, rock or other mineral resource or natural deposit, or changing existing topography;
- c. Disposal and Storage. Placing, filling, storing or dumping of soil, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, tree and other vegetation cuttings, waste or Hazardous Material or other substance or material whatsoever, whether or not generated on the Open Space, or the installation of underground storage tanks;
- d. Impacts to Vegetation. Removing, cutting, pruning or destroying vegetation (native or non-native), including, but not limited to trees, shrubs, grasses and ground covers, except as allowed in writing by the Division to remove hazards to users;
- e. Pesticides. Applying or using fertilizers, fungicides, herbicides or pesticides in any quantity, unless otherwise specified below;
- f. Introduction of Non-Native Species. Planting, releasing, cultivating, maintaining, or engaging in any other activity that introduces plant or animal species that pose a substantial risk of being invasive or are otherwise detrimental to the native plant and animal community, as determined by the Division. A list of plant species deemed to be invasive is provided in the Massachusetts Prohibited Plant List, which is updated and maintained by the Massachusetts Department of Agricultural Resources;

- g. Impacts to Water, Soil and Other Natural Features. Activities detrimental to drainage, flood control, erosion control, water or soil conservation, archaeological resources or the quality of ground water and wetlands;
 - h. Domestic Animals and Livestock. Animal penning or grazing; holding horses, pets, livestock, or domestic animals within a paddock; horseback riding, causing or permitting any domestic or livestock to be unattended or to roam or be at large; and storing or dumping of manure or other animal wastes; any agricultural use;
 - i. Motor Vehicles. The use, parking or storage of motorized vehicles, including, but not limited to, trucks, trail bikes, motorized or non-motorized, all-terrain vehicles, dune buggies, boats, trailers, and snowmobiles and parts of these vehicles, except as necessary by the police, fire fighters, ambulance services, or other governmental agents in carrying out their lawful duties; and except for motorized wheelchairs or scooters used by physically challenged parties;
 - j. Stone Walls or Markers. Disrupting, removing, or destroying of any stone walls, historical stone monuments, granite fences, granite posts, or boundary markers;
 - k. Damage or Disturbance. Damaging, disturbing, removing or harming any part or portion of the Open Space or any or resource, real, natural, personal, cultural or historic, except through hunting, fishing, or trapping where permitted and carried out in accordance with regulations issued by the Division of Fisheries and Wildlife; and
 - l. Inconsistent Uses. The use of the Open Space for business, residential or industrial purposes, or for more than de minimis commercial passive recreation, or any other use or activity which is inconsistent with or which would otherwise shall not impair the conservation values of the Open Space and the purposes of this Declaration.
3. **Reserved Rights:** The Grantor reserves the right to conduct or permit the following activities in the Open Space, provided they do not materially impair the conservation values or purposes of this Declaration or other significant interests
- a. Passive Recreational Uses. To conduct non-commercial, Passive Recreational uses of the Open Space, such as nature study, birding, wildlife observation, walking on existing trails, and similar passive recreation activities, provided such uses do not alter the topography, including, but not limited to the landscape or environmental qualities of the Open Space;
 - b. Fences, Monuments and Signs. The right to install temporary or permanent boundary monuments and the right to erect and maintain wildlife friendly fences, such as wooden split rail or other open-faced fences, or low hedges of native species, in addition to small signs that provide information, including identifying the Open Space;
 - c. Vegetation Management. The right to remove or control hazardous trees, invasive or nuisance species, insect infestations, diseases, and other types of pests by methods, including but not limited to, the use of spot-applied herbicides, fungicides and pesticides in a manner that minimizes damage to surrounding, non-target species and preserves water quality;

- d. Habitat Management and Restoration. The right to monitor, restore, maintain, enhance or otherwise manage biotic communities or habitats for the benefit of native wildlife species that include, but are not limited to, application of herbicide, selective planting of native species, removing of brush, selective de minimis pruning and cutting of trees, brush, and grass, prescribed burning or removal of native vegetation, forestry, and modification of soils;
- e. Trails. The routine maintenance of existing trails for Passive Recreation, as shown on the Plan or specifically referenced in the Authorization. The construction of new trails or the relocation of existing trails for Passive Recreation, provided that any trail construction or relocation results in trails that are no wider than five (5) feet. Maintenance of existing trails and construction of new trails may include the installation and maintenance of trail features to protect the conservation values of the Open Space, such as boardwalks, footbridges, railings, steps, or other such features.
- f. Archaeological Investigations and Activities. Archaeological investigations and activities, including without limitation surveys, excavation, and artifact retrieval conducted under the direction of a qualified organization or person, following submission of an archaeological field investigation plan and written approval thereof by (a) the Commonwealth and (b) the State Archaeologist of the Massachusetts Historical Commission, and in accordance with Massachusetts 950 CMR 70.00; and
- g. Site Restoration. Any work undertaken in conjunction with the reserved rights under Section 3 shall seek to minimize disturbance to the Open Space. Upon completion of any site work performed in conjunction with Section 3, any disturbed areas shall be restored substantially to match the conditions with respect to soil material, grade, and vegetated ground cover that existed prior to said work.

The exercise of any right reserved by the Grantor under Section 3 shall be in compliance with the then-current By-Laws and Regulations of the Town of Sturbridge and all other applicable federal, state, county and local laws, bylaws, rules and regulations, including, but not limited to Massachusetts Historic Commission regulations and local wetland conservation commission bylaws and regulations. The inclusion of any reserved right in Section 3 requiring a permit from a public agency does not imply that the Division takes any position on whether such permit should be issued.

- 4. **Monuments and Signage**. The Grantor shall have the right and obligation to maintain in good condition any, bounds, monuments, markers and signs shown on the Plan and demarcating the boundaries of the Open Space, and shall repair and or replace said monuments and signage on an as needed basis.
- 5. **Benefited Parties**. This Declaration and the protection of the Open Space is hereby intended and declared to benefit the Grantor and the Town. The protection of the Open Space is intended to benefit the Grantor and Town as open space for other conservation purposes that benefit one or more of the parties.
- 6. **Term**. The intent of this Declaration and its provisions are to restrict the Open Space in perpetuity, as implemented in accordance with MGL. c. 184 §§ 23-30. This Declaration shall run with the Open Space, as shown on the Plan, from the date of recordation in the Worcester County Registry of Deeds

for thirty (30) years and in subsequent increments of twenty (20) years upon re-recording in accordance with the requirements of MGL. c. 184 §§ 23-30.

This Declaration of Restriction shall be binding upon the Grantor and any other party having an ownership interest in the Open Space or claiming to have an interest with respect to the Open Space as tenants, invitees, licenses or otherwise, and all of the respective heirs, successors, grantees, mortgages, assigns, agents, contractors, subcontractors and employees of the foregoing.

In the event that any ownership interest in the Premises, or portion thereof is sold, transferred or conveyed to another party or parties, the Grantor reserves the right to record this Declaration as well as an EEA-DCS approved conservation restriction on the Open Space even after said sale, transfer or conveyance occurs.

Grantor hereby waives all their legal right to and shall forego any action in law or equity of any kind whatsoever attempting to contest the validity of any provision of this Declaration and shall not, in any enforcement action, raise the invalidity of any provision of this Declaration.

7. **Right to Re-Record.** The Grantor and the Town are hereby authorized, jointly and severally, to continually re-record and file any notices and/or instruments in accordance with the provisions of MGL. c. 184 §§ 23-30. Without limiting the foregoing, the Grantor agrees to execute any such notices and instruments upon request of the Division within thirty (30) days of said request.
8. **Enforceability.** The Grantor and the Town, jointly and severally, shall have the authority and right to enforce this Declaration. The Division shall have the right to bring proceedings at law or equity, as may be necessary or appropriate, against any party or parties violating or attempting to violate the terms of this Declaration to enjoin them from so doing and to cause any such violation to be remedied, including but not limited to restoration of the portion of the Open Space adversely affected, after providing written notice to such party or parties and all mortgagees of record if the names and addresses of such parties and mortgagees have been provided in writing to the Division.
9. **Severability.** If any court or other tribunal of competent jurisdiction determines that any provision of this Declaration is invalid or unenforceable, such provision shall be deemed to have been modified automatically to conform to the requirements for validity and enforceability as determined by such court or tribunal. In the event the provision invalidated is of such a nature that it cannot be so modified, the provision shall be deemed deleted from this instrument as though it had never been included herein. In either case, the remaining provisions of this instrument shall remain in full force and effect.
10. **Non-Waiver.** Any election by the Town as to the manner and timing of its right to enforce this Declaration or otherwise exercise its rights hereunder shall not be deemed or construed to be a waiver of such rights.
11. **Access.** The Town, or its duly authorized agents or representatives, shall have the right to enter the Open Space, in a reasonable manner and at reasonable times, and after providing the Grantor with reasonable notice, for the purposes of (a) inspecting the Open Space to determine compliance with this Declaration; (b) enforcing this Declaration; and (c) taking any other action which may be necessary or appropriate, in the Divisions' sole judgment, to remedy or abate any violation hereof, including the right to perform a survey of boundary lines.

The Grantor grants access to the Open Space to the general public and agrees to take no action to prohibit or discourage access to and use of the Open Space by the general public for daytime Passive Recreation use as described in Section 3 herein. The Grantor shall have the right and obligation to establish reasonable rules, regulations, and restrictions on Passive Recreation by the general public to protect the conservation values of the Open Space. The Grantor's right to grant public access across the Open Space is subject to the Prohibited Uses and Reserved Rights described in this Declaration. The Town may require the Grantor to take corrective action associated any use that results in damage to the conservation values of the Open Space.

12. **Notice and Approval.** Whenever notice to or approval by the Town is required, Grantor shall notify Town in writing not less than 60 days prior to the date Grantor intends to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit the Town to make an informed judgment as to its consistency with the purposes of this Declaration. The Town may, at its sole discretion, require the submittal of additional information necessary to evaluate the proposed activity. Within 60-days of receiving Grantor's request and any additional information requested by the Town, as applicable, the Town shall grant or withhold approval in writing. The Town's approval shall not be unreasonably withheld, but shall only be granted upon a showing that the proposed activity shall not materially impair the conservation values of the Open Space and the purposes of this Declaration.

Failure of the Town to respond in writing within 60 days shall be deemed to constitute approval by the Town of the request as submitted, so long as the request sets forth the provisions of this section relating to deemed approval after 60 days in the notice, the requested activity is not prohibited herein, is not in violation of any local, state or federal law, and the activity will not materially impair the conservation values of the Open Space or the purposes of this Declaration.

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

To Grantor: Fiske Hill Realty Trust
 Fiske Hill East Realty Trust
 97 Arnold Road
 Fiskdale, MA 01518

To the Town: Town of Sturbridge
 Town Hall
 308 Main Street
 Sturbridge, MA 01566

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

13. **Incorporation Into Deeds, Mortgages, Leases and Instruments of Transfer.** Grantor's successors and assigns, shall incorporate this Declaration, in full or by reference, into all deeds, easements, mortgages, leases, licenses, occupancy agreements or any other instrument of transfer by which an interest in and/or a right to use the Open Space or any portion thereof is conveyed. Any such deed, mortgage or other interest purporting to convey any portion of the Open Space without including this Declaration in full or by reference shall be deemed and taken to include said Declaration in full even though said Declaration is not expressly described or referenced therein.
14. **Recordation/Registration.** Grantor shall record and/or register this Declaration with the appropriate Registry of Deeds and/or Land Registration Office upon the later of (a) thirty (30) days of its date of execution, or (b) prior to the initiation of any work on the Premises by the Grantor.
15. **Amendment and Release.** No amendment or release of this Declaration shall be effective unless it has been approved in writing by the Town and said amendment or release and the requisite approval has been recorded within the appropriate Registry of Deeds and/or Land Registration Office.

Notwithstanding the foregoing, the release of this Declaration shall be effective at such time as the Grantor has recorded a Division-approved conservation restriction signed by EEA-DCS in the chain of title of the Open Space.

16. **Attachments.**
Exhibit A: Easement Plan of Land showing the Open Space
Exhibit B: Trustee Certificate

*Remainder of Page Intentionally Left Blank
Signature Pages to Follow*

GRANTOR

IN WITNESS WHEREOF, _____ [name of signatory, owner of land], has caused these presents to be signed, acknowledged and delivered in its name and behalf this _____ day of _____, 20____.

[Name]

WORCESTER _____, ss. _____, 20____

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

SEAL

Notary Public
Commission Expires: _____



Justin Stelmok <stelmok.j@gmail.com>

Potential Land Donation - Sturbridge MA

McCarthy, James G (FWE)

<james.g.mccarthy@state.ma.us>

To: Justin Stelmok <stelmok.j@gmail.com>

Thu, Mar 30, 2023 at 4:17

PM

Hi Justin,

In regards to your and Matt's meeting tonight with the Town of Sturbridge Conservation Commission, I am writing to confirm that the MA Dept. of Fish and Game's Lands Committee is in the process of reviewing the proposal to accept as a donation the 56-acre area shaded in RED and labeled as "Lot 4" on the sketch survey plan. This land shares substantial length of boundary with MassWildlife's McKinstry Brook Wildlife Management Area and also presents valuable upland and wetland resources which contribute to habitat for many of our native wildlife species. My expectation is that the Lands Committee will vote to approve this donation as an addition to the McKinstry Brook WMA, in which case we can proceed with our due diligence (namely title review and environmental site assessment) and then work towards a closing over the next few months assuming that your project moves forward.

In addition to the area shaded in RED, DFG would also be willing to consider the acceptance of a donation of a portion of the areas shaded in BLUE and PURPLE surrounding the proposed development off Berry Farms Road, provided that this secondary conservation area is directly linked to the area in RED which will directly connect to the WMA. This open-space connection is a very important part of DFG's consideration, as is the ability for the public to be able to access the land for passive recreational purposes.

As we discussed, a requirement for DFG to be able to participate in this secondary conservation component would be that a Permanent Public Access Easement is established and granted to DFG along with the additional conservation land so that members of the public can access the south end of the WMA from Berry Farms Road.

Please advise if there's anything further I can provide at this time. Otherwise I will look forward to discussing with you after your meeting.

Best regards

James McCarthy

James McCarthy, Dept. of Fish & Game Land Agent for the

Central District of MA Division of Fisheries & Wildlife

[211 Temple Street / West Boylston, MA 01583](#)

(508) 835-3607 ext. 14 / cell (978) 549-1543