

11/17

Monterey Town Administrator

From: Adam Galambos <agalambos@bnrc.org>
Sent: Wednesday, November 10, 2021 9:00 AM
To: Monterey Town Administrator
Cc: Robert Hoogs; bidwellhouse@gmail.com; Narain Schroeder; jsylbert@mac.com
Subject: Bidwell House Conservation Restriction - Select Board Meeting Agenda 11/17
Attachments: Bidwell House Conservation Restriction - Selectboard Submission 11.9.2021.pdf; Selectboard Signature Page.pdf

Hi Melissa,

The attached proposed conservation restriction is respectfully submitted to the Town of Monterey Select Board for inclusion on the agenda for the upcoming meeting scheduled for November 17th at 6:00pm. I plan on attending via Zoom – please send me the link at your convenience prior to the meeting.

Attached are the following items: Cover Letter, Conservation Restriction, Select Board Signature Page (separated out for convenience).

Once signed and notarized, please send me a scanned copy of the executed document as a PDF and I will arrange pickup of the original.

If there are any questions or concerns, please reach out.

Thank you,

Adam

Adam Galambos
Land Conservation Associate
Berkshire Natural Resources Council
(413) 499-0596 x11

November 9, 2021

Adam Galambos
Berkshire Natural Resources Council, Inc.
20 Bank Row
Pittsfield, MA 01201
(413) 499-0596 x 11

Mr. Steve Weisz, Chair
Town of Monterey Select Board
435 Main Road
P.O. Box 308
Monterey, MA 01245

Dear Chairman Weisz and Members of the Monterey Select Board,

The enclosed proposed conservation restriction is being presented to you and the other members of the Richmond Select Board for review and approval as required by the Executive Office of Energy and Environmental Affairs pursuant to MGL c. 184 §32. I respectfully request this item be included on the agenda for your planned select board meeting on Wednesday November 17th at 6:00 PM. I will attend the meeting via ZOOM to present the project and address any questions, concerns, or comments.

The proposed conservation restriction will be conveyed to Berkshire Natural Resources Council, Inc. from The Bidwell House, Inc., both being 501(c)(3) charitable corporations, on land located at 100 Art School Road. The conservation restriction will encumber a +/- 179-acre portion of the +/- 196-acres of land described in Book 694 Page 337 in the Berkshire South District Registry of Deeds, also described on the Monterey Tax Map 213 as Lot 014.

The purpose of this conservation restriction is to ensure that the Premises will be maintained in perpetuity in its natural, scenic, or open condition, and to prevent any use or change that would materially impair the Conservation Values as defined within the document.

Sincerely,



Adam Galambos
Land Conservation Associate

Cc: Robert Hoogs & Heather Kowalski, Bidwell House



BERKSHIRE
Natural Resources Council

THE LANDKEEPERS

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Tim Crane, Chairman
Pat Callahan, Vice Chairman
Kim Seward, Secretary
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Ron Shaw
Brian Tobin
Elena Traister

20 Bank Row
Pittsfield MA 01201
413 499 0596
bnrc.org

WHEREAS, a preservation restriction agreement affecting the Premises titled "Preservation Restriction Agreement between the Commonwealth of Massachusetts by and through the Massachusetts Historical Commission and The Bidwell House, Inc." was recorded with the Berkshire Southern District Registry of Deeds in Book 1031, Page 202 on September 26, 1997 ("Preservation Restriction"), which Preservation Restriction remained in effect at the time of this Conservation Restriction's Effective Date (see Paragraph XI). This Conservation Restriction shall be supplementary and subservient to said Preservation Restriction so long as said Preservation Restriction remains in effect.

WHEREAS, The Bidwell House Museum, located on Exclusion Parcel A and operated by Bidwell House, Inc., is a New England heritage site providing a personal encounter with history, early American home life, Native American history, and the Berkshire landscape through its land, house, and collection. Bidwell House, Inc., is a non-profit educational institution for the benefit of the community and today's audiences of all ages, dedicated to the preservation, scholarship, and enjoyment of the landmark site.

WHEREAS, BNRC is a charitable corporation formed to promote and protect the natural resources of Berkshire County to the end that said County shall be more livable and more attractive; to strive to eliminate pollution of streams and lakes, preserve open spaces for recreation and scenery, and discourage unsightly development in the interest of the County as a whole; to take an active interest in local and regional planning and zoning, pollution abatement programs, roadside beautification, and the conservation of selected fields and forests for recreational use, for livability, for protection, and for beauty; to acquire, hold, manage and dispose of land and interests in land within and adjacent to Berkshire County in accordance with generally accepted conservation objectives and practices; to work closely with the many groups concerned with allied issues and to coordinate and supplement the activities of such groups as they relate to the natural resources of Berkshire County and its immediate environs.

WHEREAS, MPLT is a charitable corporation formed to be a voice for all who seek to guard the natural resources and rural character of Monterey as it develops; to preserve significant tracts of land which enhance the quality of life for all who live, work or visit Monterey; and to work in concert with Town and Regional agencies to attain these goals and to engage in any activity consistent with these purposes.

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. The purpose of this Conservation Restriction is to assure that the Premises will be maintained in perpetuity for conservation

Natural Landscape” being defined within said document as “acres complementing Core Habitat, including large natural Landscape Blocks that provide habitat for wide-ranging native species, support intact ecological processes, maintain connectivity among habitats, and enhance ecological resilience; and includes buffering uplands around coastal, wetland and aquatic Core Habitats to help ensure their long-term integrity” (BioMap2, DFG and TNC, 2010), and the protection of the Premises will contribute to the preservation of some of the Commonwealth’s most viable natural communities and habitat for rare plants and animals.

- o TNC Resilient Land: Portions of the Premises are located within an area identified as a “climate corridor” in The Nature Conservancy (TNC) Resilient Lands mapping tool being defined as a narrow conduit in which plants and animals become highly concentrated, and also identified as “slightly above average terrestrial resilience” being defined as the areas capacity to maintain species diversity and ecological function as the climate changes and protection of the Premises will protect this important corridor.

These and other conservation values of the Premises, as well as its current uses and state of improvement, are described in a Baseline Documentation Report (“Baseline Report”) prepared by Grantee with the cooperation of the Grantor, consisting of maps, photographs, and other documents and on file with the Grantee and referenced herein. The Baseline Report (i) is acknowledged by Grantor and Grantee to be a complete and accurate representation of the condition and values of the Premises as of the date of this Conservation Restriction, (ii) is intended to fully comply with applicable Treasury Regulations, and (iii) is intended to serve as an objective information baseline for subsequent monitoring of compliance with the terms of this Conservation Restriction as described herein. Notwithstanding the foregoing, the parties may utilize any evidence of the condition of the Premises at the time of this grant other than the Baseline Report, should the Baseline Report be unavailable or if it does not adequately address the issues presented.

II. PROHIBITED ACTS AND USES, EXCEPTIONS THERETO, AND PERMITTED USES

A. Prohibited Acts and Uses

Subject to the exceptions set forth herein, the Grantor will not perform or permit others to perform the following acts and uses which are prohibited on, above, and below the Premises:

- 1) Constructing, placing or allowing to remain any temporary or permanent building, tennis court, landing strip, mobile home, swimming pool, asphalt or concrete pavement, sign, non-sight-pervious fence, billboard or other advertising display, antenna, utility pole, tower, solar

values or purposes of this Conservation Restriction, and the Grantor has complied with the terms of the Preservation Restriction, as applicable:

- 1) Agriculture. In accordance with a Farm Conservation Plan ("Farm Plan") that is created in consultation with the USDA Natural Resources Conservation Service (NRCS) (or appropriate successor agency), is consistent with the purposes of this Conservation Restriction, includes provisions to avoid material impairment to the Conservation Values, and is approved by the Grantee and updated every ten (10) years or less, the right to conduct agricultural activities, such agricultural activities to include the following:
 - a. The cultivation and harvest of non-invasive crops such as, but not limited to: vegetable crops, fruit trees, nut trees, Christmas trees, berry bushes, non-invasive ornamental trees or plants, flowers and hay;
 - b. Sugar maple tree sap collection;
 - c. The bringing in of topsoil, loam, manure, and other soil enhancements;
 - d. Animal husbandry and animal grazing;
 - e. The installation of sight-pervious fencing;
 - f. The installation and maintenance of an irrigation system;
 - g. The expansion and improvement of agricultural fields including clearing and grading, provided that no gravel, soil or minerals are removed from the site and provided that no expansion occurs on greater than one (1) acre in aggregate over a five (5) year period without a Farm Conversion Plan, which if required by the terms of this Paragraph II(B)(1)(g) shall be made part of the Farm Plan;
 - h. The construction, use, maintenance, repair, replacement, and relocation of non-residential, temporary structures, without cement or subsurface foundations, for agricultural purposes only, including but not limited to: three-sided sheds, moveable chicken coops, hoop-houses and temporary barns, provided that said structures shall, in aggregate, not be greater than 10,000 square feet, and shall not be served by septic disposal systems.
- 2) Wells. The right to maintain and use existing wells, springs and water lines, and the right to drill new wells and install water lines pertinent thereto to serve the allowed uses of the Premises and the structures located on Exclusion Parcel A and Exclusion Parcel B, provided that all such wells, springs, and water lines shall be for the sole benefit of the Grantor.
- 3) Structures: The right to maintain, repair, restore, and replace existing structures on their existing footprint for purposes consistent with this Conservation Restriction, provided said structures shall be maintained, repaired, restored, or replaced in period appropriate character of the Bidwell House Museum;

Massachusetts Forest Cutting Practices Act (Chapter 132 of the Massachusetts General Laws, or its successor) and carried out pursuant to a Forest Stewardship Plan;

Before any cutting or harvest of forest products occurs on the Premises pursuant to this Paragraph II(B)(8), Grantor shall submit a Forest Stewardship Plan to the Grantee, the Massachusetts Department of Conservation and Recreation (or appropriate successor agency) and to any other required state agencies for their approval. The Forest Stewardship Plan shall be prepared by a forester licensed through the Massachusetts Department of Conservation and Recreation in conformance with the "Directions for the Preparation of the Chapter 61 Forest Management Plans and Forest Stewardship Plans" and such statutes, regulations and directions in effect at the time of the approval of said Forest Stewardship Plan. The Forest Stewardship Plan shall include provisions designed to minimize soil erosion, conserve surface and groundwater quality, scenic views, wildlife habitat, and to protect the conservation values of this Conservation Restriction.

The Forest Stewardship Plan shall be effective for a ten (10) year period and shall be resubmitted once every ten (10) years as necessary if additional timber harvests occur. All cutting plans shall be consistent with the approved Forest Stewardship Plan and designated access routes shall avoid any stone structures or historical and cultural resources and shall be reasonably required to prevent any damage thereto. All cutting operations shall be supervised by a licensed forester;

- 9) Harvesting for Grantor's Use. The cutting of trees to provide non-commercial firewood and lumber for the Grantor's use, *i.e.*, not for sale, is permitted, provided that any such cutting shall follow the recommended activities and guidelines and required best management practices established in the Massachusetts Forestry Best Management Practices Manual (Catanzaro, Fish & Kittredge, University of Massachusetts, Amherst & DCR; 2013) and subsequent versions as may be approved by the Massachusetts Bureau of Forest Fire Control and Forestry, and further provided that said cutting for firewood does not exceed 10 cords and said cutting for lumber does not exceed 5,000 board feet during any consecutive twelve-month period;

10) General Property Management.

- a. Selective removal of brush, pruning and cutting to prevent, control or remove hazards, disease, insect or fire damage, or to preserve the present condition of the Premises;
- b. The right to repair, replace, and maintain existing vistas, viewing platforms, benches, and other related amenities, stone walls, fence lines, and meadows, all as documented in the Baseline Report.

- 14) Signs. The erection, maintenance and replacement of signs with respect to trespass, trail access, historic, educational and interpretive signage and exhibits, identity and address of the occupants, sale of the Premises, the Grantee's interest in the Premises, any gift, grant, or other applicable source of support for the conservation of the Premises, the Reserved Rights, and the protected conservation values;
- 15) Subdivision. With the prior written approval of the Grantee, the right to convey a part or portion of the Premises, or to divide or subdivide the Premises in order to convey said part or portion of the Premises to a conservation organization for conservation purposes, provided that the subdivided and conveyed portion of the Premises remain subject to this Conservation Restriction and, as applicable, the Preservation Restriction, and that the conveyance, division, or subdivision complies with the conditions of the Preservation Restriction and the Grantor seeks review by the MHC of a subdivision plan for such conveyance, division, or subdivision and complies with any conditions or opinions which MHC shall provide to avoid and minimize impacts to the historical value of the Premises.
- 16) Site Restoration. Any work undertaken in conjunction with the Reserved Rights described in this Paragraph II(B) shall seek to minimize disturbance to the conservation values and other natural features within the Premises that may be impacted as a result of exercising any of the Reserved Rights described herein. Upon completion of any site work performed in conjunction with the Reserved Rights described in this Paragraph II(B), any disturbed areas shall be restored substantially in conformance with the conditions with respect to soil material, grade, and vegetated ground cover that existed prior to said work;
- 17) Permits, Regulations, Laws. The exercise of any right reserved by Grantor under this Paragraph II(B) shall be in compliance with zoning, the Wetlands Protection Act, and all other applicable federal, state and local laws, rules, regulations, and permits. The inclusion of any reserved right requiring a permit from a public agency does not imply that the Grantee or the Commonwealth takes any position whether such permit should be issued;
- 18) Best Management Practices. The exercise of any right reserved by Grantor under this Paragraph II(B) shall follow, when available and if applicable, established, up to date, and regionally applicable Best Management Practices or similar standards developed by a governmental agency or other entity with known expertise in the area of practice and designed to protect the natural features potentially affected by the action(s).

C. Notice and Approval

1. Notifying Grantee. Whenever notice to or approval by Grantee is required, Grantor shall notify or request approval from Grantee, by a method requiring proof of receipt,

Grantor covenants and agrees to reimburse to Grantee all reasonable costs and expenses (including reasonable counsel and survey fees) incurred in enforcing this Conservation Restriction or in taking reasonable measures to remedy, abate or correct any violation thereof, provided that a violation of this Conservation Restriction is acknowledged by Grantor or determined by a court of competent jurisdiction to have occurred. In the event of a dispute over the boundaries of the Conservation Restriction, Grantor shall pay for a survey and to have the boundaries permanently marked.

- B. Non-Waiver. Enforcement of the terms of this Conservation Restriction shall be at the discretion of Grantee. Any election by the Grantee as to the manner and timing of its right to enforce this Conservation Restriction or otherwise exercise its rights hereunder shall not be deemed or construed to be a waiver of such rights.
- C. Disclaimer of Liability. By acceptance of this Conservation Restriction, the Grantee does not undertake any liability or obligation relating to the condition of the Premises pertaining to compliance with and including, but not limited to, hazardous materials, zoning, environmental laws and regulations, or acts not caused by the Grantee or its agents.
- D. Acts Beyond the Grantor's Control. Nothing contained in this Conservation Restriction shall be construed to entitle the Grantee to bring any actions against the Grantor for any injury to or change in the Premises resulting from causes beyond the Grantor's control, including but not limited to fire, flood, storm and earth movement, or from any prudent action taken by the Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Premises resulting from such causes. If such an event occurs, the parties will cooperate in the restoration of the Premises, if desirable and if feasible.

IV. ACCESS

- A. The Grantor hereby grants to the Grantee, or its duly authorized agents or representatives, the right to enter the Premises upon reasonable notice and at reasonable times, for the purpose of inspecting the Premises to determine compliance with or to enforce this Conservation Restriction. The Grantor also grants to the Grantee, after notice of a violation and failure of the Grantor to cure said violation, the right to enter the Premises for the purpose of taking any and all actions with respect to the Premises as may be necessary or appropriate to remedy or abate any violation hereof, including but not limited to the right to perform a survey of boundary lines.
- B. The Grantor grants access to the Premises to the general public for such activities described in Paragraph II(B)(4), subject to the Grantor's reserved right to establish and

terms of any law, gift, grant, or funding requirements. If a less than fee interest is taken, the proceeds shall be equitably allocated according to the nature of the interest taken. The Grantee shall use its share of the proceeds as a continuing trust in a manner consistent with the conservation purposes of this grant.

VI. DURATION & ASSIGNABILITY

- A. Running of the Burden. The burdens of this Conservation Restriction shall run with the Premises in perpetuity, and shall be enforceable against the Grantor and the successors and assigns of the Grantor holding any interest in the Premises.
- B. Execution of Instruments. The Grantee is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Conservation Restriction; the Grantor, on behalf of itself and its successors and assigns, appoints the Grantee its attorney-in-fact to execute, acknowledge and deliver any such instruments on its behalf. Without limiting the foregoing, the Grantor and its successors and assigns agree to themselves execute any such instruments upon request.
- C. Running of the Benefit. 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:

As a condition of any assignment, the Grantee shall require that the purpose of this Conservation Restriction continues to be carried out; that the assignee is not an owner of the fee in the Premises; and the assignee, at the time of the assignment, qualifies under Section 170(h) of the Internal Revenue Code of 1986, as amended, and applicable regulations thereunder, and is a donee eligible to receive this Conservation Restriction under Section 32 of Chapter 184 of the Massachusetts General Laws. Any assignment will comply with Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, if applicable.

VII. SUBSEQUENT TRANSFERS

The Grantor agrees to incorporate by reference the terms of this Conservation Restriction in any deed or other legal instrument by which he divests himself of any interest in all or a portion of the Premises, including a leasehold interest, and to notify the Grantee not less than twenty (20) days prior to the effective date of such transfer. Failure to do any of the above shall not impair the validity or enforceability of this Conservation Restriction. Any transfer will comply with Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, if applicable.

X. AMENDMENT

If circumstances arise under which an amendment to or modification of this Conservation Restriction would be appropriate, Grantor and Grantee may jointly amend this Conservation Restriction; provided that no amendment shall be allowed that will affect the qualification of this Conservation Restriction or the status of Grantee under any applicable laws, including Section 170(h) of the Internal Revenue Code of 1986, as amended, or Sections 31-33 of Chapter 184 of the Massachusetts General Laws. Any amendments to this conservation restriction shall occur only in exceptional circumstances. The Grantee will consider amendments only to correct an error or oversight, to clarify an ambiguity, or where there is a net gain in conservation value. All expenses of all parties in considering and/or implementing an amendment shall be borne by the persons or entity seeking the amendment. Any amendment shall be consistent with the purposes of this Conservation Restriction, shall not affect its perpetual duration, shall be approved by the Secretary of Energy and Environmental Affairs and if applicable, shall comply with the provisions of Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, and any gifts, grants or funding requirements. Any amendment shall be recorded in the Berkshire Southern District Registry of Deeds.

XI. EFFECTIVE DATE

This Conservation Restriction shall be effective when the Grantor and the Grantee have executed it, the administrative approvals required by Section 32 of Chapter 184 of the Massachusetts General Laws have been obtained, and it has been recorded in a timely manner with the Berkshire Southern District Registry of Deeds.

XII. NOTICES

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 served personally or sent by first class mail, postage pre-paid, addressed as follows:

To Grantor: Bidwell House, Inc.
100 Art School Road, Monterey, MA 01245

To Grantee: Berkshire Natural Resources Council, Inc.
20 Bank Row, Pittsfield MA 01201

To Grantee: Monterey Preservation Land Trust, Inc.
P.O. Box 504, Monterey, MA 01245

C. Executory Limitation. If either Grantee shall cease to exist or to be a qualified organization under Section 170(h) of the Internal Revenue Code of 1986, as amended, or to be authorized to acquire and hold conservation restrictions under the statutes of the Commonwealth of Massachusetts, and a prior assignment is not made pursuant to Paragraph VI, then that Grantee's rights and obligations under this Conservation Restriction shall run to the other Grantee. If both Grantees shall cease to exist or to be a qualified organization under Section 170(h) of the Internal Revenue Code of 1986, as amended, or to be authorized to acquire and hold conservation easements under the statutes of the Commonwealth of Massachusetts, and a prior assignment is not made pursuant to Paragraph VI, then their rights and obligations under this Conservation Restriction shall run to the Town of Monterey Conservation Commission. If the Town of Monterey Conservation Commission is no longer in existence at the time the rights and obligations under this Conservation Restriction would otherwise vest in it, or if the Town of Monterey Conservation Commission is not qualified or authorized to hold conservation restrictions as provided for assignments pursuant to Paragraph VI, or if it shall refuse such rights and obligations, then the rights and obligations under this Conservation Restriction shall vest in such organization as a court of competent jurisdiction shall direct pursuant to the applicable Massachusetts law and with due regard to the requirements for an assignment pursuant to Paragraph VI.

D. Attached hereto and incorporated herein by reference are the following:

Signature pages:

Grantor – Bidwell House Inc.

Grantee Acceptance – Berkshire Natural Resources Council, Inc.

Grantee Acceptance – Monterey Preservation Land Trust, Inc.

Approval by Town of Monterey Select Board

Approval of the Secretary of Energy and Environmental Affairs.

Exhibits:

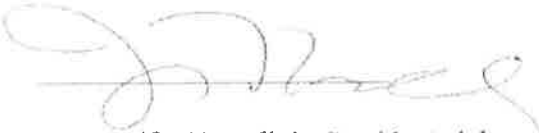
Exhibit A: Legal Description of Premises

Exhibit B: Reduced Copy of Survey Plan of Exclusion Parcel A and Exclusion Parcel B

Exhibit C: Sketch Map Showing Historic Structures on the Premises

ACCEPTANCE OF GRANT

This Conservation Restriction from BIDWELL HOUSE, INC. was accepted by BERKSHIRE NATURAL RESOURCES COUNCIL, INC. this 8 day of November, 2021.



By: Jennifer Hansell, its President, duly authorized

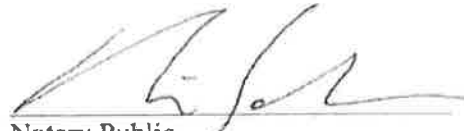


By: Thomas Curtin, its Treasurer, duly authorized

COMMONWEALTH OF MASSACHUSETTS

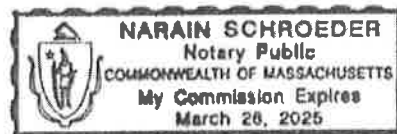
BERKSHIRE,ss.

On this 8 day of November, 2021, before me, the undersigned notary public, personally appeared Jennifer Hansell, President of the Berkshire Natural Resources Council, Inc., and Thomas Curtin, Treasurer of the Berkshire Natural Resources Council, Inc., and proved to me through satisfactory evidence of identification which was personal knowledge to be the persons whose names are signed on the proceeding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose.



Notary Public

My Commission Expires: 3.28.2025



APPROVAL BY SELECTBOARD OF TOWN OF MONTEREY

We, the undersigned, being a majority of the Select Board of the Town of MONTEREY, hereby certify that at a public meeting duly held on _____, 2021, the Select Board voted to approve the foregoing Conservation Restriction from BIDWELL HOUSE, INC., to BERKSHIRE NATURAL RESOURCES COUNCIL, INC. and MONTEREY PRESERVATION LAND TRUST, INC., in the public interest pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws.

Subscribed and sworn to this ____ day of _____, 2021.

Justin Makuc, Member

Stephen Weisz, Member

John Weingold, Member

COMMONWEALTH OF MASSACHUSETTS

BERKSHIRE,ss

On this ____ day of _____, 2021, before me, the undersigned notary public, personally appeared _____, and proved to me through satisfactory evidence of identification which was _____ to be the person whose name is signed on the proceeding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

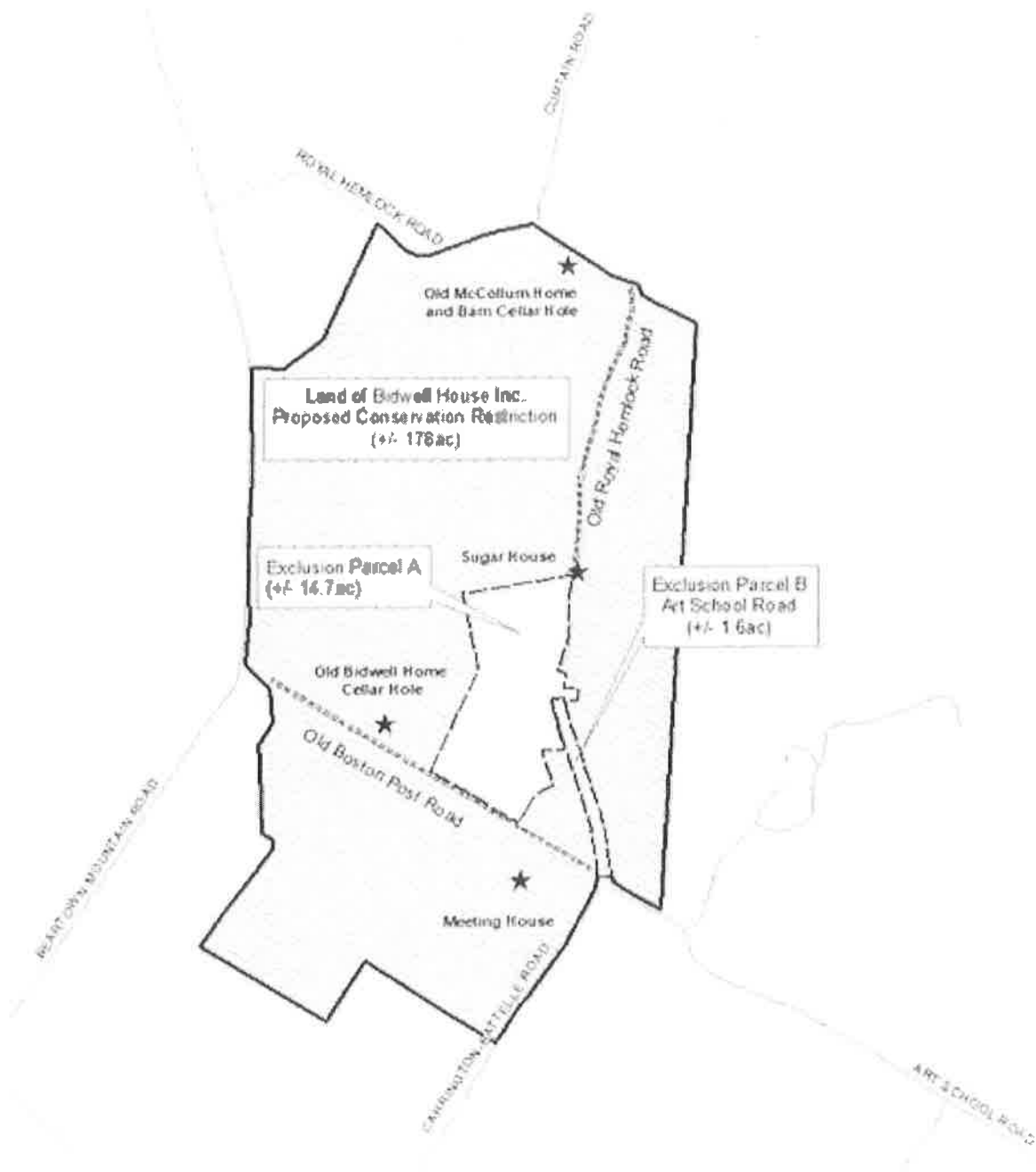
Notary Public
My Commission Expires: _____

EXHIBIT A

Land of Grantor subject to the foregoing Conservation Restriction is the Property described in the Grantor's deed, recorded with the Berkshire Southern District Registry of Deeds in Book 694, Page 337, but not including the portion of land described in said deed that is described as Exclusion Parcel A and Exclusion Parcel B on a plan of land recorded in the Berkshire Southern District Registry of Deeds in Plan Book _____, Page _____, and not including the portions of roadways described in said deed as boundaries of the Property and owned in fee by Grantor.

EXHIBIT C

Sketch map of the historic features located on the Premises, as referenced in Paragraph II(B)3.



APPROVAL BY SELECTBOARD OF TOWN OF MONTEREY

We, the undersigned, being a majority of the Select Board of the Town of MONTEREY, hereby certify that at a public meeting duly held on _____, 2021, the Select Board voted to approve the foregoing Conservation Restriction from BIDWELL HOUSE, INC., to BERKSHIRE NATURAL RESOURCES COUNCIL, INC. and MONTEREY PRESERVATION LAND TRUST, INC., in the public interest pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws.

Subscribed and sworn to this ____ day of _____, 2021.

Justin Makuc, Member

Stephen Weisz, Member

John Weingold, Member

COMMONWEALTH OF MASSACHUSETTS

BERKSHIRE,ss

On this ____ day of _____, 2021, before me, the undersigned notary public, personally appeared _____, and proved to me through satisfactory evidence of identification which was _____ to be the person whose name is signed on the proceeding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

Notary Public

My Commission Expires: _____

Monterey has been afforded funding (\$138k) through the American Rescue Plan Act (ARPA) to invest in our community. As a result, it is imperative that those in the community have the opportunity to make their voices heard on potential uses of funding. Monterey is seeking feedback to develop a comprehensive and inclusive plan to improve our community. All surveys are confidential and no identifying information is tracked for any respondents.

“For all recipients (state or municipal), the following current uses are categorically eligible. **Match requirements are appropriate where the municipality gains an asset or builds its tax base.**

- Expenses to respond to the public health emergency re COVID-19 or its negative economic impacts:
 - COVID-19 mitigation or prevention expenses including:
 - Public health medical expenses;
 - Behavioral health expenses;
 - Public health and safety staff; and
 - Public health program design improvements.

- Assistance to the unemployed such as
 - Backfills for COVID-era government layoffs and
 - Job training.

- Assistance to small business in the form of grants or loans to mitigate financial hardship caused by COVID-19 including:
 - Offsets for declines in revenues;
 - Funds to implement COVID-19 mitigation improvements; or
 - Technical assistance with business planning.

- In-kind or financial assistance to households with documented negative impacts due to COVID-19 including:
 - Food assistance;
 - Rent, mortgage, or utility assistance;
 - Counseling and legal aid to prevent eviction;
 - Access to the internet; or
 - Proportionate cash assistance.

- Assistance in the form of loans or grants to impacted industries, including tourism, travel, and hospitality to implement COVID-19 mitigation or prevention measures such as:
 - Improvements to ventilation;
 - Construction of physical barriers;
 - Signage;
 - Provision of PPE; and
 - Development of safe reopening plans.

- Aid to disproportionately impacted communities
 - Aid must address social determinants of health. For example:
 - Services to address homelessness;
 - Affordable housing development;
 - Housing vouchers;

- Expanded early learning services;
 - Evidence based educational services;
 - Evidence-based mental health services for students;
 - High quality childcare;
 - Home visiting programs; and
 - Services for child welfare involved families.
- These types of assistance are presumed eligible in HUD Qualified Census Tracts; other functionally equivalent geographic or interest-based definitions can be developed, subject to Treasury oversight
- Premium pay to employees providing essential work during the public health emergency
- Revenue replacement and compliance
 - To substitute for lost revenue, FRF can pay for virtually any government service except debt service or transfers to pension or stabilization funds. E.g.: broad-based economic development.
 - Note: Growing local aid, plus growth in property taxes and other local receipts, probably means few municipalities have a significant revenue gap under the federal formula
- Water, sewer, and broadband projects
 - Water and sewer projects are eligible if they meet the criteria for the Clean Water State Revolving Fund or Safe Drinking Water Revolving Fund. Examples include:
 - Centralized or decentralized wastewater treatment;
 - Stormwater;
 - Habitat protection and restoration;
 - Desalination; and
 - Groundwater protection.
 - Broadband projects include any installation that provides symmetrical upload and download speeds of 100 mbps with a priority on underserved areas and last mile connections.”

The funds **cannot** be used for:

1. Tax reductions or cuts.
2. Pension fund payments/deposits.
3. Legal settlements.
4. To meet Federal grant match requirements.
5. Roads and bridges.

Investments in Water, Sewer, and Broadband: The Town focuses on improving our roads to create an easier commute to those that live and work here. The sustainability of our community, through infrastructure and flood mitigation investments that connect with environmental policies does its part to combat the effects of climate change. Investments in roadways, greenspace and reconstruction of aging systems are essential to making the Monterey a better place to live, and ARPA funding will be able to build on the foundation already in place to create lasting change in our community.

Examples:

1. *Investing in sustainable infrastructure to combat climate change*
2. *Evaluating the feasibility of investments in broadband infrastructure to narrow the digital divide*

Assistance to Small Businesses: Small businesses are the heart of our communities. By working with our community partners, we can invest in the recovery of our hardest-hit businesses and increase economic opportunities by connecting businesses and workers.

Examples:

1. *Growing local programs to help businesses improve financial stability, marketing, customer loyalty, and more*
2. *Providing business/workforce development programs for owners and employees in hardest-hit sectors*

Assistance to Households: With ARPA resources, the Town can invest in programs and systems to increase our residents' food security, mobility, and housing stability in the longer term.

Examples:

1. *Create housing programs including rental, mortgage, and utility assistance for renters and homeowners*
2. *Create a central food hub to address food access, food security, and food retail by enhancing residents' access to the food systems*
3. *Developing partnerships to provide financial literacy and credit-building programs for residents including first-time homebuyers*

Economic Recovery: Many have lost their jobs or struggled to keep stable employment during the pandemic. By investing in more local workforce programs, growing our small business community, and reducing barriers, ARPA funds can support both our short and longer term economic development goals for Revere.

Examples:

1. *Partnering with local and regional agencies to increase training and job placement enrollments for Monterey residents*
2. *Investing in Monterey's childcare sector through policy, technical assistance, and subsidies to support working parents*

3. *Providing transportation, childcare, or tuition stipends for people to complete a workforce training program*

Public Health Investments: Public health professionals have always been essential to the safety and well-being of our community. The need for public health has grown in recent years and the time to invest in this sector is now.

Examples:

1. *Investing in hiring public health professionals*
2. *Investing in community policing*
3. *Investing in mental health counselors*

Travel and Tourism: ARPA funds can support the launch of related initiatives that attract tourist dollars, create job opportunities, and support local businesses in Monterey.

Examples:

1. *Launching new programming and events and expand communications to sell the best of Monterey to a broader regional audience*

Thank you for your participation! If you have any questions please do not hesitate to contact Town Administrator, Melissa Noe at 528-1443 x111 or via email admin@montereyma.gov

ARPA Survey

* Required

Are you a resident of the Town of Monterey? *

Yes
No

What is your age? *

<18 years old
18-25 years old
26-35 years old
36-40 years old
40-50 years old
50-65 years old
>65 years old

Please select three areas (based on eligibility guidance from the Treasury Department) Monterey should invest American Rescue Plan Act (ARPA) funding. *

- Expenses to respond to the public health emergency re COVID-19 or its negative economic impacts, COVID-19 mitigation or prevention expenses including: Public health medical expenses; Behavioral health expenses; Public health and safety staff; and Public health program design improvements.
- Assistance to the unemployed such as; Backfills for COVID-era government layoffs and Job training.
- Assistance to small business in the form of grants or loans to mitigate financial hardship caused by COVID-19 including: Offsets for declines in revenues; Funds to implement COVID-19 mitigation improvements; or Technical assistance with business planning.
- In-kind or financial assistance to households with documented negative impacts due to COVID-19 including: Food assistance; Rent, mortgage, or utility assistance; Counseling and legal aid to prevent eviction; Access to the internet; or Proportionate cash assistance.
- Assistance in the form of loans or grants to impacted industries, including tourism, travel, and hospitality to implement COVID-19 mitigation or prevention measures such as: Improvements to ventilation; Construction of physical barriers; Signage; Provision of PPE; and Development of safe reopening plans.
- Aid to disproportionately impacted communities. Aid must address social determinants of health. For example: Services to address homelessness; Affordable housing development; Housing vouchers; Expanded early learning services; Evidence based educational services; Evidence-based mental health services for students; High quality childcare; Home visiting programs; and Services for child welfare involved families. These types of assistance are

presumed eligible in HUD Qualified Census Tracts; other functionally equivalent geographic or interest-based definitions can be developed, subject to Treasury oversight

- Premium pay to employees providing essential work during the public health emergency.
 - Revenue replacement and compliance to substitute for lost revenue, FRF can pay for virtually any government service except debt service or transfers to pension or stabilization funds. E.g.: broad-based economic development. Note: Growing local aid, plus growth in property taxes and other local receipts, probably means few municipalities have a significant revenue gap under the federal formula
 - Water, sewer, and broadband projects: Water and sewer projects are eligible if they meet the criteria for the Clean Water State Revolving Fund or Safe Drinking Water Revolving Fund. Examples include: Centralized or decentralized wastewater treatment; Stormwater; Habitat protection and restoration; Desalination; and Groundwater protection. Broadband projects include any installation that provides symmetrical upload and download speeds of 100 mbps with a priority on underserved areas and last mile connections.”

If you are comfortable answering this anonymous question it would be helpful to know if COVID-19 had an impact on your household and what has been the level of impact?

- Major negative impact
- Slight negative impact
- No impact
- Slight positive impact
- Major positive impact

Again if you are comfortable answering this anonymous question, if COVID-19 has had a negative impact on your household, what assistance would be most helpful to you? Please choose up to three.

- Food assistance
- Rental assistance
- Mortgage assistance
- Unemployment benefits
- Utility assistance
- Childcare services
- Mental health services
- Internet access
- Counseling services
- Substance use treatment services
- Other:

What is your home-ownership status? *

Homeowner

Renter

Other:

What is your employment status? *

Unemployed

Retired

Part-time employed

Full-time employed

If you are an employer, which of the following statements best describes your current employee situation? *

I am fully staffed and have no difficulties in finding and retaining employees

I am fully staffed, but have had difficulties in finding and retaining employees

I am understaffed and have difficulty finding and retaining employees

Not applicable

Submit

Clear form



Town of Monterey Memorandum

TO: All Departments, Boards and Committees
FROM: Select Board
DATE: 11/10/2021
SUBJ: Contacting Town Counsel

Whereas, the Town of Monterey through its Select Board directs and supervises the use of Town Counsel;

Whereas, the Select Board intends to identify appropriate use of Town Counsel's time with an appropriate protocol;

The Select Board hereby adopts the following policy:

1. The Chair of the Select Board shall act as the liaison to Town Counsel.
2. Department heads and chairs of multimember bodies may request authorization to contact Town Counsel for matters not requiring confidentiality by presenting the same in writing to the Select Board for its approval. Only department heads and Chairs of boards, committees, and commissions may request to contact Town Counsel. Regarding questions from Town multimember bodies, unless a matter requires confidentiality, a majority of the body shall, prior to bringing the issue to the Select Board, approve the question in open session, except in instances of (i) emergency, or (ii) when it would not be timely or practicable to convene the full body of a board, committee or commission, in which instances the Chair of said board, committee and commission may independently bring the issue to the Select Board.
3. For matters that would require the advice of Town Counsel to be requested and/or provided in confidence, and/or are of an emergency nature, the Chair of the Select Board, as liaison to Town Counsel, shall be authorized to approve access to Town Counsel. If the Chair authorizes such action, the Chair shall notify the Select Board of the same at its next meeting; provided, however, if the question was asked in confidence and would be subject to the attorney-client privilege the Chair shall simply inform the Board that a request to contact Counsel was approved.

4. To the extent that a Town government body or official requires additional contact with or advice of Counsel in connection with an approved matter or a matter incidental and related thereto, no further Select Board approval shall be required. Notwithstanding the provisions of the prior sentence, however, the Select Board Chair shall be notified of any additional contact with Town Counsel and shall be copied on any written correspondence to or from Town Counsel, whether formal or informal.
5. The Select Board, at its discretion, and only as necessary or appropriate, may authorize contact with Town Counsel concerning matters outside the requesting board or official's jurisdiction, and/or may authorize the Chair of the Select Board to approve the same. To the extent appropriate the Select Board Chair shall cause notice to be sent to the board with respect to which the question is being asked.
6. Only the Select Board may authorize use of special counsel.
7. Confidential legal advice sought or received by Town government bodies or officials should only be discussed in open session if absolutely necessary, understanding that such action will likely void the protections of the attorney client privilege. Likewise, the Select Board or any government body or official authorized to seek advice from Town Counsel, may only meet in executive session to discuss such matters as permitted by the Open Meeting Law and in strict compliance therewith.
8. Town Counsel has been instructed to forward any requests for legal services to the Chair of the Select Board to ensure that Counsel is properly authorized to reply. If not authorize to reply, the Chair will notify the requester and Town Counsel of the same.
9. Town Counsel may not respond directly to any legal inquiries other than as set forth herein.

Please feel free to contact us should you have any questions regarding this policy.

Sincerely,

Steve Weisz, Chair
Monterey Select Board

John Weingold

Justin Makuc

Monterey Town Administrator

From: Nancy Tomasovich <Nancy@environmentalltg.com>
Sent: Sunday, November 7, 2021 6:13 AM
To: Monterey Town Administrator; glover@lazanlaw.com; Brian Riley; Lauren F. Goldberg; Brian M. Maser
Cc: John F. Weingold; Justin Makuc; steve@montereyma.gov
Subject: RE: Public Records Request Complaints.

Hello Melissa & BOS,

It has been shared at the public town meeting yesterday Nov. 6th by Don Coburn that he has read all the complaints.

He announced the reading of all the complaints in public and its documented.
Why was he given all the complaints?

John Weingold and Justin Makuc did not provide Don Coburn with any documentation and that is confirmed.

I ask who had access to all the complaints other than Melissa Noe and Steve Weisz!

As an active volunteer on the conservation commission why are the documents not being provide to me, there is no client privilege related to all these complaints ?
Regards,

Nancy Tomasovich

ELI
Environmental Lighting, Inc.

Mailing Address:
PO Box 257 Sloatsburg, NY 10974
Cell: 413-854-7197
Nancy@environmentalltg.com
www.environmentalltg.com

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From: Monterey Town Administrator <admin@montereyma.gov>
Sent: Wednesday, November 3, 2021 11:32 AM
To: Nancy Tomasovich <Nancy@environmentalltg.com>; glover@lazanlaw.com
Subject: RE: Public Records Request Complaints.

Dear Nancy:

The Town received your recent request for copies of records, stated below in your email request dated 10/25/21.

Where permitted by law, however, such records or material contained therein may be withheld or redacted under any of the exemptions to the Public Records Law, other applicable provisions of law, and/or common law privileges, such as the attorney-client privilege. See, e.g., G.L. c. 4, §7(26); Suffolk Construction Co. v. Div. of Capital Asset Mgmt., 449

Friday, November 12, 2021

Mr. Steven Weisz, Mr. John Weingold, and Mr. Justin Makuc,

At town meeting this June I voted in favor of the proposed by-law review committee. When the select board put out a solicitation for members to staff the committee I quickly sent in a letter of interest. In addition, I wrote to ten or so other people in town who would be thoughtful members encouraging them to show interest. It was mentioned at last night's select board meeting that the board has already received more letters of interest than necessary.

This select board meeting this Wednesday (Nov. 10) began with select board member John Weingold raising a point of order, saying that the agenda for the meeting did not list a meeting location, which is required by the Open Meeting Law, and suggesting that thus the meeting was not legal. After some contentious discussion, and his moving twice to remove Steven Weisz as chair because of this error, Mr. Weingold decided to abstain from voting, and soon after left the meeting without explanation.

A team player interested in the real business of the town would have pointed out the error, then suggesting that henceforth the agenda should specify the meeting location (historically the town hall, suspended only during the height of the pandemic) and the meeting could continue with all three board members. A spot check of agendas back to July 2020 shows that meeting locations have not been listed on the agendas during that period. An error? Perhaps, but one borne by the entire board.

Mr. Weingold's sole interest seems to be strict adherence to the laws and not to the business that needs to be conducted. His history to date tells me we shouldn't be surprised if he doesn't file an OML complaint and move to have all decisions made in the past however-long time period be voided because of this technical deficit to the agendas.

Members of all the town boards seem to be under intense scrutiny of OML violations with complaints being filed for procedural errors despite these volunteers trying to do their best to help manage the town. Open Meeting Laws have a definite purpose for the conducting of town business, but should not be used to harass folks.

In addition to the vigilance over OML procedural matters, we now learn that there have been several sweeping document requests in the past few months for a broad range of

4 November 2021

Mr Steven Weisz
Mr Justin Makuc
Mr. John Weingold
Town Hall Monterey
PO Box 308
Monterey MA 01245

RE: Dennis Lynch Select Board agenda item of 27 Oct 2021

Dear Select Board,

I was in attendance at Town Hall for a Select Board meeting on 27 October 2021 where New Business agenda item #5 stated its purpose to "Removal of Dennis Lynch as grant writer."

There was no one in attendance who had put the item on the agenda. There was no one in attendance who knew the purpose of the item. By default the administration of Town Hall and the Selectboard allowed the item, as well as a similar item #6, to proceed into a published Agenda for the Selectboard business. It was published for public consumption and placed on the Town of Monterey website.

During the meeting the two Select Board members present, having a quorum, made a motion and voted to remove the items from the agenda and from discussion during the meeting.

I worked with Dennis Lynch on the Conservation Commission. I believe Dennis to be a reliable, diligent and hard working person. According to simple math he has produced multiples of his cost to the Town in income to the Town from grants written and received. In the current era Towns must rely more on grant income than decades ago, as their unfunded mandates generate cost centers in town where none existed before.

Please recognize that this individual's reputation and good will have been soiled by intended and unintended actions from citizens of our town. The negative information propagates into the inter-web connected world we live in. Concerned about this disfigurement of his good name I request that the Selectboard place on an agenda, to be published, an item that would make clear the current status of Dennis Lynch in the Town Hall operations, our willingness to continue our relation with his grant writing efforts, and acknowledge the benefit accrued to the Town from Dennis' this work.

Thank you,
Christopher Blair
Monterey, MA

