

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. _____
)	
IDLEWILD ACRES, LLC, and)	
PETER M. WILD,)	
)	
Defendants.)	
)	

CONSENT DECREE

WHEREAS, the Plaintiff, the United States of America, on behalf of the United States Environmental Protection Agency (“EPA”), filed a Complaint herein against Defendants Idlewild Acres, LLC, and Peter M. Wild (collectively, “Defendants”), alleging that Defendants violated Section 301(a) of the Clean Water Act (“CWA”), 33 U.S.C. § 1311(a);

WHEREAS, the Complaint alleges that Defendants violated CWA Section 301(a) by discharging dredged or fill material and/or controlling and directing the discharge of dredged or fill material into approximately 14.7 acres of wetlands, depicted on Attachment 1 (the “Site”), comprising waters of the United States located at 46 Roos Road in the Town of Sandwich, Massachusetts, as depicted in Attachment 1 and as more fully described in the Complaint, without authorization by the United States Department of the Army Corps of Engineers (the “Corps”);

WHEREAS, the Complaint seeks (1) to enjoin any further discharge of pollutants into waters of the United States by the Defendants except as in compliance with CWA Section 301(a), 33 U.S.C. § 1311(a); (2) to require Defendants, at their own expense and at the direction of EPA, to restore and/or mitigate the damages caused by their activities; and (3) to require Defendants to pay civil penalties as provided in 33 U.S.C. § 1319(d);

WHEREAS, the Defendants have agreed to place a use restriction on the Site limiting the use of the Site to agriculture or horticulture, and have agreed to limit the use of the restored wetland areas to wetland agriculture or horticulture;

WHEREAS, this Consent Decree is intended to constitute a complete and final settlement of the United States' claims under the CWA set forth in the Complaint regarding the Site;

WHEREAS, Defendants neither admit nor deny any liability for the claims set forth in the Complaint;

WHEREAS, the United States and Defendants agree that settlement of this case is in the public interest and that it is in the parties' interest to resolve the United States' claims under the CWA against Defendants by entry of this Consent Decree; and

WHEREAS, the Court finds that this Consent Decree is a reasonable and fair settlement of the United States' claims against Defendants in this case, and that this Consent Decree adequately protects the public interest in accordance with the CWA and all other applicable federal law.

THEREFORE, without further adjudication of any issue of fact or law, and upon consent of the parties hereto by their authorized representatives, it is hereby ORDERED, ADJUDGED and DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of these actions and over the parties pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Section 309(b) of the CWA, 33 U.S.C. § 1319(b).

2. Venue is proper in the District of Massachusetts pursuant to CWA Section 309(b), 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1391(b) and (c), because the Defendants conduct business in this District, the subject Site is located in this District, and the causes of action alleged herein arose in this District.

3. The Complaint states claims upon which relief can be granted pursuant to Sections 301, 309 and 404 of the CWA, 33 U.S.C. §§ 1311, 1319 and 1344.

II. APPLICABILITY

4. The obligations of this Consent Decree, its Attachments or Appendices, and the approved work plans referenced in the Attachments or Appendices (collectively, the “Consent Decree”) shall apply to, and be binding upon Defendants, their officers, directors, agents, employees and servants, and their successors and assigns, whether or not such person has notice of this Consent Decree. In any action to enforce this Consent Decree against a Defendant, the Defendant shall not raise as a defense the failure of any of its officers, directors, agents, employees, successors or assigns or any person, firm or corporation acting in concert or participation with any Defendant, to take any actions necessary to comply with the provisions hereof.

5. The transfer of ownership or other interest in the Site, as described in Paragraph 1 of the Complaint, and as depicted in Attachment 1 to the Complaint, shall not alter or relieve

Defendants of their obligation to comply with all of the terms of this Consent Decree. At least thirty (30) calendar days prior to any transfer of ownership or other interest in the Site, the Defendant(s) making such transfer shall provide written notice and a copy of this Consent Decree to its/their successor(s) in interest and shall simultaneously notify EPA and the United States Department of Justice at the addresses specified in Section XI below that such notice has been given. As a condition to any such transfer, the Defendant(s) making the transfer shall reserve all rights necessary to comply with the terms of this Consent Decree.

III. SCOPE OF CONSENT DECREE

6. This Consent Decree shall constitute a complete and final settlement of all civil claims for injunctive relief and civil penalties alleged in the Complaint against the Defendants under CWA Section 301 concerning the Site.

7. It is the express purpose of the parties in entering this Consent Decree to further the objectives set forth in CWA Sections 101 and 404, 33 U.S.C. §§ 1251, 1344. All plans, studies, construction, remedial maintenance, monitoring programs, and other obligations in this Consent Decree or resulting from the activities required by this Consent Decree shall have the objective of causing Defendants to achieve and maintain full compliance with, and to further the purposes of, the CWA.

8. Defendants' obligations under this Consent Decree are joint and several.

9. Except as in accordance with this Consent Decree, Defendants and Defendants' agents, successors and assigns are enjoined from discharging any pollutant into waters of the United States, unless such discharge complies with the provisions of the CWA and its

implementing regulations, including (but not limited to) any individual or general permit which may be required under CWA section 404, 33 U.S.C. § 1344.

10. This Consent Decree is not and shall not be interpreted to be a permit or modification of any existing permit issued pursuant to Sections 402 or 404 of the CWA, 33 U.S.C. §§ 1342 or 1344, or any other law. Nothing in this Consent Decree shall limit the ability of the United States Army Corps of Engineers to issue, modify, suspend, revoke or deny any individual permit or any nationwide or regional general permit, nor shall this Consent Decree limit the EPA's ability to exercise its authority pursuant to Section 404(c) of the CWA, 33 U.S.C. § 1344(c).

11. This Consent Decree in no way affects or relieves Defendants of their responsibility to comply with any applicable federal, state, or local law, regulation or permit.

12. This Consent Decree in no way affects the rights of the United States as against any person not a party to this Consent Decree.

13. The United States reserves any and all legal and equitable remedies available to enforce the provisions of this Consent Decree and applicable law.

14. Except as set forth in Paragraphs 1, 2 and 3, nothing in this Consent Decree shall constitute an admission of fact or law by any party.

IV. CIVIL PENALTIES

15. Defendants shall pay a civil penalty to the United States in the amount of twenty-two thousand dollars (\$22,000.00), within 60 days of entry of this Consent Decree.

16. Defendants shall make the above-referenced payments by FedWire Electronic Funds Transfer ("EFT") or wire transfer to the U.S. Department of Justice account in accordance

with current electronic funds transfer procedures, referencing USAO file number 2016V00663, EPA Region I and DOJ case number DJ # 90-5-1-1-19681. Payment shall be made in accordance with instructions provided to the Defendants by the Financial Litigation Unit of the United States Attorney's Office for the District of Massachusetts. Any payments received by the Department of Justice after 4:00 P.M. (Eastern Time) will be credited on the next business day.

17. Upon submission of the civil penalty required by this Consent Decree, Defendants shall provide written notice, at the addresses specified in Section XI of this Consent Decree, that such payment was made in accordance with Paragraph 16.

18. Civil penalty payments pursuant to this Consent Decree (including stipulated penalty payments under Section X) are penalties within the meaning of Section 162(f) of the Internal Revenue Code, 26 U.S.C. § 162(f), or of 26 C.F.R. § 1.162-21 and are not tax deductible expenditures for purposes of federal law.

V. WETLAND RESTORATION

19.a. Defendants shall perform wetland restoration (the "Restoration Work") described in and under the terms and conditions stated in Attachment 2 to this Consent Decree, and in accordance with the Detailed Restoration Work Plan, as approved by EPA ("Work Plan"), required in Attachment 2. The Restoration Work described in Attachment 2 and the Work Plan as approved by EPA are incorporated herein by reference. The parties acknowledge and agree that the objective of such restoration is to restore wetlands and replace the ecological functions of the filled and disturbed wetlands described in the Complaint.

b. Defendants shall submit the Work Plan to EPA for review and approval, as described in Attachment 2.

c. Defendants shall perform post-restoration monitoring in accordance with Attachment 2 and the approved Work Plan.

20. Upon completion of the Restoration Work described in Attachment 2, Defendants may continue to undertake agricultural or horticultural activities at the Site, as follows:

The nursery will be operated in a sustainable manner, with the intent of designing and maintaining a horticulturally productive system that is close to the diversity, stability, and resilience of a natural system. Typical practices will include, but not be limited to:

- Minimizing overall environmental and human health impacts in operation of the nursery facility;
- Growing a variety of plant species and types to be used as landscape nursery plants, fruit or nut-bearing plants, edible crops, etc., and that may also serve other on-site functions (e.g., erosion control, soil enhancement,);
- Replenishing and maintaining long-term soil fertility by promoting biological activity within the soil;
- Reliance on compost, vermicompost (i.e., worm castings), mycorrhizae inoculations, natural mulching, and recycling of plant waste to provide soil nutrients and promote beneficial soil properties;
- Rotating crops and use of cover crops
- Use of Integrated Pest Management principles; and.
- Minimizing energy use in operation of the facility, with priority on conserving energy.

These activities shall be subject to and performed in compliance with the requirements of the Clean Water Act, and other applicable federal, state and local law. Defendants shall not otherwise dredge, excavate, fill, dewater, drain or otherwise disturb any of the wetlands that Defendants have created or restored at the restoration areas identified pursuant to Attachment 2, except as authorized under Section 404 of the Clean Water Act.

21. Defendants shall submit periodic reports to EPA documenting the progress of the development and implementation of the Work Plan, in accordance with the requirements and schedules specified in Attachment 2.

22. To ensure that all parcels of land identified in Attachment 2 remain in horticultural or agricultural use, Defendants shall:

a. Within fifteen (15) days of entry of this Consent Decree, record a certified copy of this Consent Decree with the Registry of Deeds in Barnstable County, Massachusetts (Registered Land). Thereafter, each deed, title, or other instrument conveying an interest in the Site or any portion thereof, shall contain a notice stating that the Site is subject to this Consent Decree.

b. Within one (1) year of entry of this Consent Decree, record a permanent conservation restriction running with the land in favor of the Farm Bureau Preservation Foundation, Inc., substantially in the form attached as Attachment 3 to this Consent Decree, restricting the future use of the Site to agricultural or horticultural operations. Within thirty (30) days of such recordation, Defendants shall provide the United States with copies of such recordation as required in Sections VI (Notices and Other Submissions) and XI (Addresses).

23. Where any compliance obligation under this Section requires Defendants to obtain a federal, state, or local permit or approval, Defendants shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals. Defendants may seek relief under the provisions of Section IX of this Consent Decree (Force Majeure) for any delay in the performance of any such obligation resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, if

Defendants have submitted timely and complete applications and have taken all other actions necessary to obtain all such permits or approvals.

VI. NOTICES AND OTHER SUBMISSIONS

24. Following entry of the Consent Decree and until the monitoring period is completed, Defendants shall provide the United States with written progress reports regarding Restoration Work at the addresses specified in Section XI of this Consent Decree, in accordance with the requirements of and schedule in Attachment 2.

25. In all notices, documents or reports submitted to the United States pursuant to this Consent Decree, the Defendants shall sign and certify such notices, documents and reports as follows:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering such information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

Signature by any one Defendant shall satisfy this requirement on behalf of all Defendants.

VII. RETENTION OF RECORDS AND RIGHT OF ENTRY

26. Until ten (10) years after entry of this Consent Decree, Defendants shall each preserve and retain all records and documents now in their possession or control or which come into their possession or control that relate in any manner to the performance of the tasks in Attachment 2, regardless of any corporate retention policy to the contrary. Until ten (10) years after entry of this Consent Decree, Defendants shall also instruct their contractors and agents to

preserve all documents, records, and information of whatever kind, nature or description relating to the performance of the tasks in Attachment 2.

27. At the conclusion of the document retention period, Defendants shall notify the United States at least 90 days prior to the destruction of any such records or documents, and, upon request by the United States, Defendants shall make available any such records or documents to EPA. The Defendants may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the United States requests Defendants' records or documents and the Defendants assert a privilege over such documents, they shall provide the United States with the following information concerning the privileged documents: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Defendants. However, no documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

28.a. Until termination of this Consent Decree, the United States and its authorized representatives and contractors shall have authority at all reasonable times and upon at least 24 hours prior notice to enter the Property to:

- 1) Monitor the Site and the Restoration Work, and oversee and measure compliance with the terms and conditions of this Consent Decree;
- 2) Verify any data or information submitted to the United States;

- 3) Obtain samples;
- 4) Inspect and evaluate Defendants' Restoration Work; and
- 5) Inspect and review any records required to be kept under the terms and conditions of this Consent Decree and the CWA.

b. This provision of this Consent Decree is in addition to, and in no way limits or otherwise affects, the statutory authorities of the United States to conduct inspections, to require monitoring, and to obtain information from the Defendants as authorized by law.

VIII. DISPUTE RESOLUTION

29.a. This Section shall govern all disputes arising with respect to the meaning or requirements of this Consent Decree, with the exception of disputes concerning EPA's comments on, modification of, approval of, or disapproval of the Work Plan and other items required to be submitted under Attachment 2, which are governed by the dispute resolution procedures in Attachment 2.

b. Any dispute that arises with respect to the meaning or the requirements of this Consent Decree shall be, in the first instance, the subject of informal negotiations between the United States and Defendants affected by the dispute to attempt to resolve such dispute. The period for informal negotiations shall not extend beyond thirty (30) days beginning with written notice by one party to the other affected party or parties that a dispute exists, unless agreed to in writing by those parties. If a dispute between the United States and Defendants cannot be resolved by informal negotiations, then the position advanced by the United States shall be considered binding unless, within twenty-one (21) days after the end of the informal negotiations period, the Defendants file a motion with the Court seeking resolution of the dispute. The

motion shall set forth the nature of the dispute and a proposal for its resolution. The United States shall have thirty (30) days to respond to the motion and propose an alternate resolution. In resolving any such dispute, the Defendants shall bear the burden of proving by a preponderance of the evidence that the United States' position is not in accordance with the objectives of this Consent Decree and the CWA, and that the Defendants' position will achieve compliance with the terms and conditions of this Consent Decree and the CWA.

30. If the United States believes that a dispute is not a good faith dispute, or that a delay would pose or increase a threat of harm to the public or the environment, it may move the Court for a resolution of the dispute prior to the expiration of the thirty (30) day period for informal negotiations. The Defendants shall have twenty-one (21) days to respond to the motion and propose an alternate resolution. In resolving any such dispute, the Defendants shall bear the burden of proving by a preponderance of the evidence that the United States' position is not in accordance with the objectives of this Consent Decree, and that the Defendants' position will achieve compliance with the terms and conditions of this Consent Decree and the CWA.

31. The filing of a motion asking the Court to resolve a dispute shall not extend or postpone any obligation of Defendants under this Consent Decree, except as provided in Paragraph 52 below regarding payment of stipulated penalties.

IX. FORCE MAJEURE

32. Defendants shall perform the actions required under this Consent Decree within the time limits set forth or approved herein, unless the performance is prevented or delayed solely by events which constitute a Force Majeure event. A Force Majeure event is defined as any event arising from causes beyond the control of Defendants, including their employees, agents,

consultants and contractors, which could not be overcome by due diligence and which delays or prevents the performance of an action required by this Consent Decree within the specified time period. A Force Majeure event does not include, inter alia, increased costs of performance, changed economic circumstances, changed labor relations, normal precipitation or climate events, changed circumstances arising out of the sale, lease or other transfer or conveyance of title or ownership or possession of the Property, or failure to obtain necessary federal, state or local permits unless, as described in Paragraph 23, Defendants have submitted timely and complete applications and have taken all other actions necessary to obtain all such permits or approvals.

33. If Defendants believe that a Force Majeure event has affected Defendants' ability to perform any action required under this Consent Decree, Defendants shall notify the United States in writing within twenty-one (21) calendar days after the event at the addresses listed in Section XII. Such notice shall include a discussion of the following:

- A. what action has been affected;
- B. the specific cause(s) of the delay;
- C. the length or estimated duration of the delay; and
- D. any measures taken or planned by the Defendants to prevent or minimize the delay and a schedule for the implementation of such measures.

Defendants may also provide to the United States any additional information that they deem appropriate to support their conclusion that a Force Majeure event has affected their ability to perform an action required under this Consent Decree. Failure to provide timely and complete notification to the United States shall constitute a waiver of any claim of Force Majeure as to the event in question.

34. If the United States determines that the conditions constitute a Force Majeure event, then the deadline for the affected action shall be extended by the amount of time of the delay caused by the Force Majeure event. Defendants shall coordinate with EPA to determine when to begin or resume the operations that had been affected by any Force Majeure event.

35. If the parties are unable to agree whether the conditions constitute a Force Majeure event, or whether the length of time for fulfilling the provision of the Consent Decree at issue should be extended, any party may seek a resolution of the dispute under the procedures in Section VIII of this Consent Decree.

36. Defendants shall bear the burden of proving (1) that the noncompliance at issue was caused by circumstances entirely beyond the control of Defendants and any entity controlled by Defendants, including their contractors and consultants; (2) that Defendants or any entity controlled by Defendants could not have foreseen and prevented such noncompliance; and (3) the number of days of noncompliance that were caused by such circumstances.

X. STIPULATED PENALTIES

37. After entry of this Consent Decree, if Defendants fail to timely fulfill any requirement of the Consent Decree (including Attachment 2), the Defendants shall pay a stipulated penalty to the United States for each violation of each requirement of this Consent Decree as follows:

- | | | |
|----|--|-----------------|
| A. | For day 1 up to and including day 30 of non-compliance | \$500 per day |
| B. | For day 31 up to and including 60 of non-compliance | \$750 per day |
| C. | For day 61 and beyond of non-compliance | \$1,500 per day |

Such payments shall be made without demand by the United States on or before the last day of the month following the month in which the stipulated penalty accrued. The method of payment shall be in accordance with the provisions of Paragraph 42 below.

38. Any disputes concerning the amount of stipulated penalties, or the underlying violation that gives rise to the stipulated penalties, that cannot be resolved by the parties pursuant to the Dispute Resolution provisions in Section VIII or the Force Majeure provisions in Section IX shall be resolved upon motion to this Court as provided in Section VIII.

39. The filing of a motion requesting that the Court resolve a dispute shall stay Defendants' obligation to pay any stipulated penalties with respect to the disputed matter pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall continue to accrue from the first day of any failure or refusal to comply with any term or condition of this Consent Decree. In the event that Defendants do not prevail on the disputed issue, stipulated penalties shall be paid by Defendants as provided in this Section.

40. To the extent Defendants demonstrate to the Court that a delay or other non-compliance was due to a Force Majeure event (as defined in Paragraph 32 above) or otherwise prevail on the disputed issue, the Court shall excuse the stipulated penalties for that delay or non-compliance.

41. In the event that a stipulated penalty payment is applicable and not made on time, interest will be charged in accordance with the statutory judgment interest rate provided for in 28 U.S.C. § 1961. The interest shall be computed daily from the time the payment is due until the date the payment is made. The interest shall also be compounded annually.

42. Defendants shall make any payment of a stipulated penalty by FedWire Electronic Funds Transfer (“EFT” or wire transfer) to the U.S. Department of Justice account in accordance with current electronic funds transfer procedures, referencing USAO file number 2016V00663, EPA Region 1 and the DOJ case number 90-5-1-1-19681. Payment shall be made in accordance with instructions provided to the Defendants by the Financial Litigation Unit of the United States Attorney’s Office for the District of Massachusetts. Any payments received by the Department of Justice after 4:00 P.M. (Eastern Time) will be credited on the next business day. Further, upon payment of any stipulated penalties, Defendants shall provide written notice of the payment to the United States and EPA, at the addresses specified in Section XI of this Decree.

43. The United States may, in its sole and unreviewable discretion, suspend, mitigate, or waive any stipulated penalty owed under this Section.

44. Nothing in this Decree, including but not limited to the provisions of this Section, shall be construed to preclude or limit the right of the United States to seek sanctions for contempt of this Decree or any order to enforce this Decree.

XI. ADDRESSES

45. All notices and communications required under this Consent Decree shall be made to the parties through each of the following persons and addresses:

A. TO EPA:

- (1) Joanna Jerison, Esq.
U.S. Environmental Protection Agency, Region 1
5 Post Office Square
Suite 100, OES04-2
Boston, MA 02114
Jerison.Joanna@epa.gov

(2) Denise Leonard
Wetlands Enforcement Section
U.S. Environmental Protection Agency, Region 1
5 Post Office Square
Suite 100, OES05-1
Boston, MA 02114
Leonard.Denise@epa.gov

B. TO THE UNITED STATES DEPARTMENT OF JUSTICE

Chief, Environmental Defense Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044
Re: DJ #90-5-1-1-19681

IF VIA OVERNIGHT MAIL

601 D Street NW, Room 8000
Washington, DC 20004

George B. Henderson, II
Assistant U.S. Attorney
District of Massachusetts
John J. Moakley Courthouse
1 Courthouse Way
Boston, MA 02110

D. TO DEFENDANTS:

Francis A. Di Luna
Murtha Cullina
600 Unicorn Park Drive
Woburn, MA 01801
781-897-4981
fdiluna@murthalaw.com

XII. COSTS OF SUIT

46. Each party to this Consent Decree shall bear its own costs and attorneys' fees in this action. Should Defendants subsequently be determined by the Court to have violated the terms or conditions of this Consent Decree, Defendants shall be liable for any costs or attorneys' fees incurred by the United States in any action against Defendants for noncompliance with or enforcement of this Consent Decree.

XIII. PUBLIC COMMENT

47. The parties acknowledge that after the lodging and before the entry of this Consent Decree, final approval by the United States is subject to the requirements of 28 C.F.R. § 50.7, which provides for public notice and comment. The United States reserves the right to withhold or withdraw its consent to the entry of this Consent Decree if the comments received disclose facts which lead the United States to conclude that the proposed judgment is inappropriate, improper, or inadequate. The Defendants agree not to withdraw from, oppose entry of, or to challenge any provision of this Consent Decree, unless the United States has notified the Defendants in writing that it no longer supports entry of the Consent Decree.

XIV. CONTINUING JURISDICTION OF THE COURT

48. This Court shall retain jurisdiction over this action in order to enforce or modify the Consent Decree consistent with applicable law or to resolve all disputes arising hereunder as may be necessary or appropriate for construction or execution of this Consent Decree. Nothing in this Consent Decree shall be construed to preclude a remedy to cure a contempt found by the Court.

XV. MODIFICATION

49. Upon its entry by the Court, this Consent Decree shall have the force and effect of a final judgment. Any modification of this Consent Decree shall be in writing. With the exception of modifications to the Work Plan prepared in accordance with Attachment 2, any modification of this Consent Decree shall not take effect unless signed by both the United States and the Defendants and approved by the Court.

XVI. TERMINATION

50. Except for the permanent injunction required by Paragraph 20, this Consent Decree may be terminated by either of the following:

A. Defendants and the United States may at any time make a joint motion to the Court for termination of this Decree or any portion of it; or

B. Defendants may make a unilateral motion to the Court to terminate this Decree after each of the following has occurred:

1. Defendants have attained and maintained compliance with all provisions of this Consent Decree and completed the work described in Attachment 2, including the post-restoration monitoring described therein;

2. Defendants have paid all penalties and other monetary obligations hereunder and no penalties or other monetary obligations are outstanding or owed to the United States;

3. Defendants have certified compliance pursuant to subparagraphs 1 and 2 above to the Court and all Parties; and

4. Within forty-five (45) days of receiving such certification from the Defendants, EPA has not contested in writing that such compliance has been achieved. If EPA disputes Defendants' full compliance, this Consent Decree shall remain in effect pending resolution of the dispute by the Parties or the Court.

XVII. ATTACHMENTS

51. The Attachments to this Consent Decree are:

- Attachment 1: Map of the Site (also Attachment 1 to the Complaint)
- Attachment 2: Scope of Work for Wetland Restoration, including Figure A (Restoration Area)
- Attachment 3: Conservation Easement

IT IS SO ORDERED.

Dated and entered this _____ day of _____, 2016.

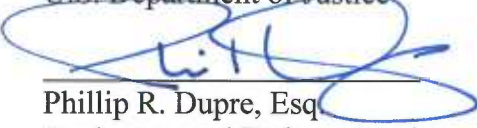
United States District Judge

ON BEHALF OF THE UNITED STATES:

Date: 9/23/2016

JOHN C. CRUDEN
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice


By:


Phillip R. Dupre, Esq.
Environmental Defense Section
P.O. Box 7611
Washington, D.C. 20044
(202) 616-7501

CARMEN M. ORTIZ
United States Attorney
District of Massachusetts

George B. Henderson, II
Assistant United States Attorney
John J. Moakley Courthouse
1 Courthouse Way
Boston, MA 02110
(617) 748-3272

Date: 9/20/16



Susan Shinkman
Director
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20460

Date: 09/19/2016

Susan Studlien

Susan Studlien, Director
Office of Environmental Stewardship
U.S. Environmental Protection Agency, Region 1
5 Post Office Square
Suite 100, OES04-2
Boston MA 02109

Date: 9/19/16

Joanna Jerison

Joanna Jerison, Esq.
Legal Enforcement Manager
U.S. Environmental Protection Agency, Region 1
5 Post Office Square
Suite 100, OES04-2
Boston MA 02109

FOR THE DEFENDANTS:

Dated: 9/12/16




Idlewild Acres, LLC
By: Peter M. Wild, Member

Dated: 9/12/16



Peter M. Wild

Dated: 9/12/16



Francis A. Di Luna, Esq.
Murtha Cullina
600 Unicorn Park Drive
Woburn, MA 01801

Attachment 1: Idlewild Acres LLC Site, Violation Area (14.7 Acres)



Legend

ATTACHMENT 2

To Consent Decree

United States v. Idlewild Acres, LLC, et al.
(D. Mass.)

SCOPE OF WORK FOR WETLAND RESTORATION

A. **GENERAL PROVISIONS, RESTORATION GOALS, TECHNICAL SPECIFICATIONS, AND POST-RESTORATION REQUIREMENTS.**

This Attachment generally describes the activities comprising wetland restoration (“Restoration Work”) referred to in Section V of the Consent Decree in the matter of United States v. Idlewild Acres, LLC, et al. (D. Mass.) (the “Consent Decree”). It provides the requirements for the restoration and monitoring work to be performed by Idlewild Acres, LLC, and Peter Wild (hereinafter collectively referred to as “Idlewild”) at 46 Roos Road, Sandwich, Massachusetts. Approximately 14.7 acres of the property, which formerly contained commercially-farmed cranberry beds, are herein referred to as the “Site.” The portions of the Site subject to the monitoring and restoration requirements of this Scope of Work, are shown in Attachment 1 to the Consent Decree.

1. Within the approximately 14.7 acre Site, Idlewild may retain 2 acres as upland. Idlewild shall restore to wetland, through the removal and associated re-grading of fill, and the placement and re-grading of suitable topsoils, the remaining areas of the Site (as generally depicted in Figure A), that, based on the results of pre-restoration hydrology monitoring, are neither permanently ponded nor vegetated wetland (hereinafter called the “Restoration Area”).

2. The goal of the wetlands restoration work (“Restoration”) shall be the successful re-establishment of wetlands and replacement of a level of ecological function, as determined by EPA, similar to that of the former cranberry beds that were altered at the Site.
3. After Restoration has been completed (other than post-Restoration monitoring), Idlewild may continue to use the Site for the operation of a plant nursery, consistent with the terms of the Consent Decree and the restrictions in paragraph 20 of the Consent Decree. Those restrictions are as follows:

The nursery will be operated in a sustainable manner, with the intent of designing and maintaining a horticulturally productive system that is close to the diversity, stability, and resilience of a natural system. Typical practices will include, but not be limited to:

- Minimizing overall environmental and human health impacts in operation of the nursery facility.
- Growing a variety of plant species and types to be used as landscape nursery plants, fruit or nut-bearing plants, edible crops, etc., and that may also serve other on-site functions (e.g., erosion control, soil enhancement)
- Replenishing and maintaining long-term soil fertility by promoting biological activity within the soil.
- Reliance on compost, vermicompost (i.e., worm castings), mycorrhizae inoculations, natural mulching, and recycling of plant waste to provide soil nutrients and promote beneficial soil properties.
- Rotating crops and use of cover crops.
- Use of Integrated Pest Management Principles.

4. Upon completion of the post-Restoration monitoring, the restored wetland areas (including both restored areas and areas of existing altered wetlands at the Site) shall, at a minimum, meet the federal technical standard for wetland criteria outlined in the Corps of Engineers Wetlands Delineation Manual, January 1987, the Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Northcentral and Northeast Region (January 2012), and the performance standards in paragraph A.6 below.

5. The following **technical specifications** shall be met for the Restoration:
 - a. Areas where fill material is to be removed shall be over-excavated, then backfilled to the selected ground surface elevations with suitable soils for planting media, which are to be taken from the following locations: from peat/organic soils excavated from Pond 2, and from the over-excavated fill which contains organic material. The Workplan shall provide for estimates of the volume of suitable peat/organic soils within Pond 2 and in areas to be over-excavated in Figure A.
 - b. All wetland areas restored in accordance with this Restoration shall be seeded following fill removal and associated re-grading and maintained in a vegetated state consistent with operating an organic nursery.
 - c. Appropriate erosion and sedimentation controls shall be implemented and maintained to prevent the transport of soil or sediments from the Site.
 - d. The elevation of on-Site water control structures and the top of the board shall be surveyed. The boards in the water control structures shall be fixed and not lowered below the surveyed elevation. The boards may be raised on a short-term basis (e.g., 24 – 48 hours) following an extreme rain or melting event to protect the downstream cranberry operations of the adjoining landowner.
 - e. Post-Restoration monitoring shall be conducted for five (5) full growing seasons following planting.

6. The **performance standards** for the restoration are:
 - a. Successful establishment or maintenance of approximately 12.7 acres of freshwater wetlands and ponds.
 - b. Technical documentation of the presence of wetland hydrology. After the completion of fill removal and associated re-grading, the areas to be restored to, or retained as, wetlands shall support wetland vegetation and contain wetland hydrology (i.e., groundwater within 12 inches of the surface for at least 14 consecutive days, 5 out of 10 years during the growing season.¹
 - c. Eighty-five percent (85%) overall areal cover of vegetation (except for the four ponds as seen on Attachment 1).
 - d. At the end of the monitoring period, the restored wetlands shall not have in total more than 10% areal cover, and monotypic stands greater than 500 square feet in size, of the following non-native, aggressive invasive plant species: common reed (*Phragmites australis*), purple loosestrife (*Lythrum salicaria*), oriental bittersweet (*Celastrus orbiculatus*), multiflora rose (*Rosa multiflora*), Japanese knotweed (*Fallopia japonica*), Morrow's honeysuckle (*Lonicera morrowii*), smooth and common buckthorns (*Frangula alnus*, *Rhamnus cathartica*), Russian and autumn olives (*Elaeagnus angustifolia*, *E. umbellata*); and black locust (*Robinia pseudoacacia*).

¹ According to the Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Northcentral and Northeast Region, January 2012, the beginning of the growing season in a given year is indicated by whichever of two conditions occurs earlier, and the end of the growing season is indicated by whichever of those conditions persists later. .

- f. Within the Restoration Area, Idlewild may plant upland cover crops for purposes of soil enrichment, but only those annual crops that must be reseeded yearly.
- g. A permanent conservation restriction shall be placed on the 14.7 acre Site, allowing the use of the Site for agriculture or horticulture, but preventing other uses.

B. WORK PLANS AND OTHER SUBMISSIONS

1. Wetland Restoration Work Plan.

- a. No later than 30 days from entry of the Consent Decree, Idlewild shall submit to EPA for review and approval a “DRAFT Wetland Restoration Work Plan” (Work Plan’). The DRAFT Work Plan shall include a preliminary design for wetlands Restoration, including but not limited to, a proposal for the ground elevations to be established where wetlands are to be restored, with the goal of restoring wetlands that will meet the performance standards in Section A.6 and are sustainable in the long-term, considering landscape setting, hydrology, and Idlewild’s anticipated use of the wetlands for a nursery operation.
- b. Within 60 days of receipt, if feasible, EPA shall provide comments on the DRAFT Work Plan.
- c. Within 30 days of receipt of EPA’s comments, Idlewild shall make revisions, as necessary, and submit a DRAFT FINAL Work Plan. Following receipt, EPA shall either (i) approve the DRAFT FINAL Work Plan, in whole or in part; (ii) approve it upon specified conditions, in whole or in part; (iii) modify it, in whole or in part, to cure deficiencies; (iv) disapprove it, in whole or in part; or (v) any combination of the above.

- d. If EPA either approves, or approves with conditions, the DRAFT FINAL Work Plan, Idlewild shall, within forty-five (45) days of EPA's approval, submit a FINAL Work Plan for restoring the wetlands and performing post-Restoration monitoring, consistent with any EPA conditions and with this Scope of Work.
- e. If the DRAFT FINAL Work Plan is modified by EPA, Idlewild shall take all actions required by the modified submission, unless Idlewild disputes the modifications or portions thereof, in which case Idlewild shall invoke the dispute resolution provisions of Section C of this Scope of Work for the disputed modifications.
- f. If the DRAFT FINAL Work Plan is disapproved in whole or in part, Idlewild shall, within 30 days or such other time as the Parties agree to in writing, correct all deficiencies and resubmit the submission for approval, in accordance with the preceding Paragraphs, unless Idlewild disputes the basis for the disapproval, in which case Idlewild shall invoke the dispute resolution provisions of Section C of this Scope of Work. The 30-day period to cure applies only to deficiencies identified by EPA in accordance with this Paragraph. If the resubmission is approved in whole or in part, Idlewild shall proceed in accordance with Paragraph B.1.d. If a resubmitted DRAFT FINAL Work Plan, or portion thereof, is disapproved in whole or in part, EPA may again require Idlewild to correct any deficiencies, in accordance with the preceding Paragraphs, or may itself correct any deficiencies, subject to Idlewild's right to invoke dispute resolution provisions of this Scope of work.
- g. Once all deficiencies and conditions, if any, have been addressed and the FINAL

Work Plan has been modified to address those deficiencies and conditions, if any, EPA shall approve the FINAL Work Plan.

2. Content of the Work Plan. All provisions and specifications in the Work Plan shall conform, to the extent appropriate and applicable, to the U.S. Army Corps of Engineers-New England District Compensatory Mitigation Guidance, available at

<http://www.nae.usace.army.mil/Portals/74/docs/regulatory/Mitigation/CompensatoryMitigationGuidance.pdf>. The Work Plan shall consist of the following: (i) a wetland restoration plan

designed to achieve the restoration goals and performance standards for the Site described in Section A above; (ii) a schedule for implementing the restoration work; and (iii) a post-construction monitoring plan to evaluate whether the restoration work is meeting the performance standards. The Work Plan shall outline a monitoring program for the period of construction and post-restoration designed to assess the success of the Restoration Work in relation to the goals and performance standards set out above. Data from the groundwater monitoring wells will continue to be collected during the construction and post-restoration monitoring period. The Work Plan shall provide that Idlewild shall submit to EPA the following reports:

A. Monthly Construction Status Reports: During the active construction phase of the project, Idlewild shall submit a description of work undertaken during the reporting period, photographs depicting the work, a description of any problems encountered, and a description of and schedule for actions taken, or to be taken, to address problems encountered. Alternatively, status reports required under this section may be provided on any other schedule proposed by Idlewild and accepted in writing (including via electronic transmission) by EPA.

B. As-built plans. Within one month after completion of active construction measures, Idlewild shall submit as-built plans to EPA indicating the areal extent and overall topography of restored/re-graded areas of the Site, and location of groundwater monitoring wells to be used for post-construction monitoring.

C. Annual Reports During the Post-Construction Monitoring Period. The hydrology within the Restoration Area shall be monitored for the first five growing seasons following construction. Documented (written and photographed) observations shall occur two times during the growing season, once in late spring/early summer and again in late summer/early fall, for the initial two years, then once during the growing season in the late spring/early summer for years 3-5. Idlewild shall submit annual monitoring reports to EPA by December 15 of each monitoring year, for the 12.7 acres of existing and restored wetlands at the Site (i.e., excluding the 2 acres of the Site allowed to remain as upland). The annual monitoring reports shall include:

- i. an overall evaluation of the hydrology in all wetland areas, including the restored areas, as determined by groundwater monitoring data and observations of wetland hydrology indicators on the ground surface;
- ii. data, including underlying raw data, and illustrations or figures showing groundwater and surface water elevations during the growing season (in relation to the ground surface);
- iii. if aggressive non-native invasive plants (as listed in Section A.6.d. above) appear to be exceeding the performance standards listed in Section A.6.d, an

assessment of the problematic plant species, and recommendations for its/their control, if necessary;

- iv. photographs showing representative areas of the wetland restoration;
- v. a general description of the plant species present, along with their estimated percent cover; and a vegetation cover map; wetland data sheets or a comparable document recording hydric indicators such as redoximorphic features in the soils of the restored wetlands.;
- vi. a map or plan showing areas, if any, not meeting the performance standards for wetland hydrology, wetland plant coverage, and invasive plants, during the monitoring period,

vii. suggested corrective measures, if any are recommended or needed, and a proposed schedule by which such measures will be implemented. Should measures be required within two years of the end of the original monitoring period, the monitoring period may, at EPA's discretion, be extended one additional year to monitor the success of remedial work. Control methods for invasive plant species must be currently accepted methods for long-term management.

3. Final Assessment Report. A final assessment of the condition of the Restoration Area shall be performed by an independent wetland consultant at the end of the final year of monitoring. To ensure objectivity, the wetland consultant or firm who prepared the annual monitoring reports shall not perform this assessment without prior approval from EPA. This assessment shall summarize the original or modified restoration goals and performance standards and discuss the level of attainment of these throughout the Restoration Areas. EPA shall review

and (i) approve the Final Assessment report in whole or in part; (ii) approve it upon specified conditions, in whole or in part, (iii) modify it, in whole or in part, to cure deficiencies; (iv) disapprove it, in whole or in part; or (v) any combination of the above, and the procedures set forth in paragraph B.(1)(b) through (g) [“Wetland Restoration Work Plan”] shall also apply to the Final Assessment Report.

C. TECHNICAL DISPUTES

1. If Idlewild objects to any of EPA’s actions in response to the DRAFT, DRAFT FINAL, or FINAL Work Plan, or any other item submitted for approval as described in Section C, above, or if Idlewild or EPA objects to any subsequently proposed modification of the approved DRAFT, DRAFT FINAL, or FINAL Work Plan, or other submission, Idlewild and EPA shall employ the dispute resolution provisions set forth in the remainder of this Section. The procedures outlined in this Section shall constitute Idlewild’s sole means of objecting to, or disputing, any response from EPA regarding any work plan or other technical submission, and shall constitute Idlewild’s and EPA’s sole means of objecting to or disputing any subsequent proposed modification of such items submitted to EPA for approval. Accordingly, the Dispute Resolution provisions contained in Section VIII of the Consent Decree do not apply to any objections or disputes described in this Section.
2. If Idlewild wishes to invoke Dispute Resolution concerning any work plan or other item submitted to EPA for approval, Idlewild shall notify EPA in writing, at the addresses specified in Section XI of the Consent Decree, of its objection(s) within ten (10) business days of receipt of the disputed EPA comment, modification, disapproval, or other action. Idlewild’s written

notice (“Idlewild’s Objection Letter”) shall describe the substance of the objection(s) and shall invoke this Section of Attachment 2 to the Consent Decree.

3. Upon EPA’s receipt of Idlewild’s Objection Letter, the parties shall conduct negotiations for up to ten (10) business days, during which time Idlewild has the right to meet with the appropriate Manager of the Technical Enforcement Office, or his or her designee, within EPA New England’s Office of Environmental Stewardship; provided, however, that if said Manager or his or her designee is not available during that time, the 10 day period shall be extended for another 10 days to allow for a meeting. If there is no agreement at the conclusion of the ten day period, but both parties agree that further negotiation would be beneficial, the parties may agree to continue dispute resolution for a period of time specifically agreed to in writing by EPA and Idlewild.

4. Any mutual resolution reached by the parties pursuant to Paragraph C.3. above shall be incorporated in writing into the appropriate work plan or other submission, and shall become effective without further action by the parties or the Court.

5. If the parties have not resolved the dispute by the conclusion of the dispute resolution period specified in Paragraph C.3. above (including any agreed-upon extensions), then the Technical Enforcement Manager shall render a decision. Idlewild shall abide by the decision of the Technical Enforcement Manager, and such decision shall be incorporated in writing into the appropriate plan or submission, and shall become effective without further action by the parties or the Court.

6. If EPA objects to any proposed modification made by Idlewild to the

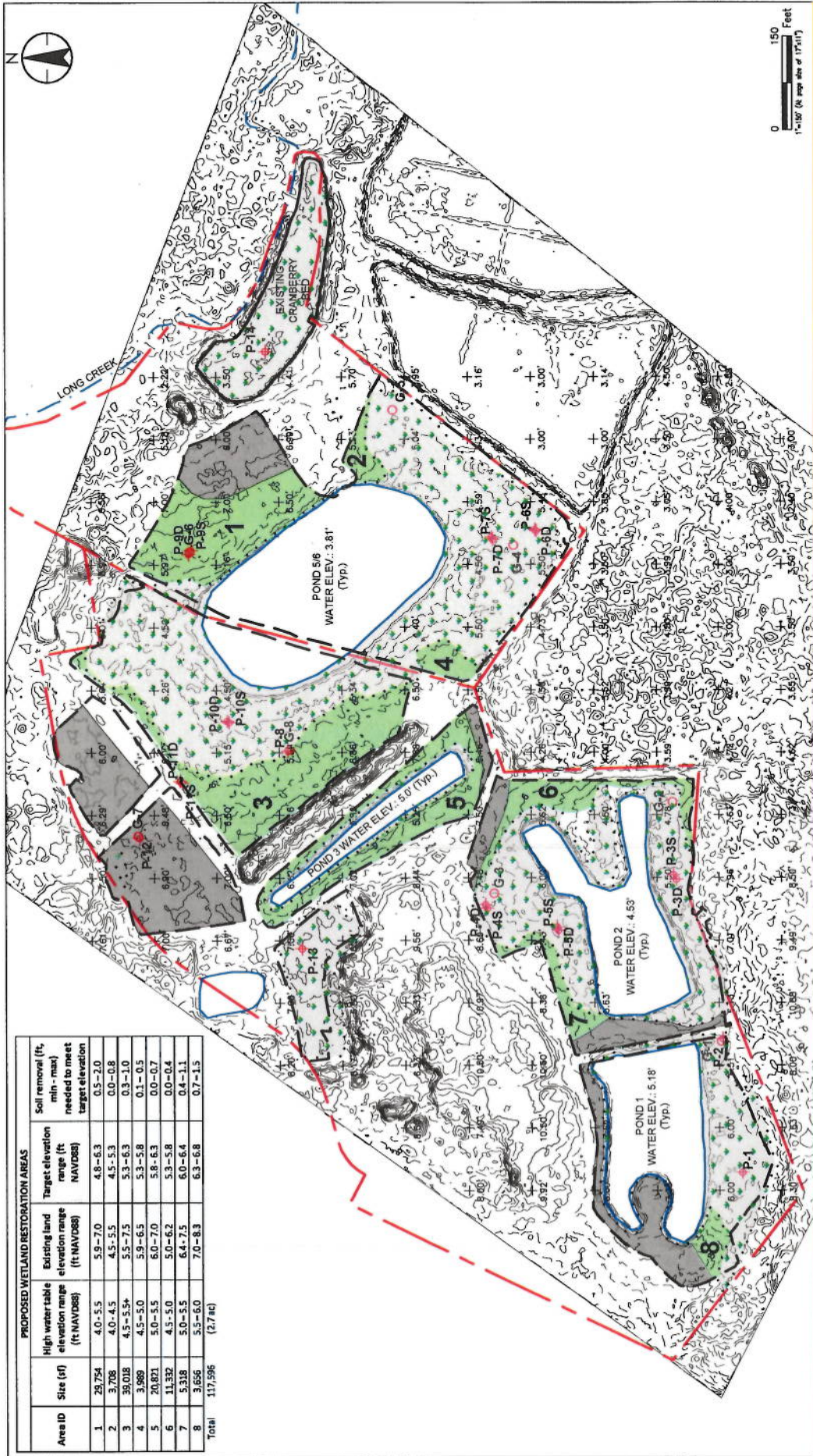
approved DRAFT, DRAFT FINAL, or FINAL Work Plan, or other submission, EPA staff shall notify Idlewild in writing of the objection(s) within ten (10) business days of receipt of the proposed modification. The notice (“EPA’s Objection Letter”) shall describe the substance of the objections and shall invoke this Section of Attachment 2 to the Consent Decree. Upon Idlewild’s receipt of EPA’s objection letter, EPA and Idlewild shall follow the procedures and requirements set forth in Paragraphs C.3. through C.5, above.

D. PERFORMANCE OF WORK AND MODIFICATION OF THE WORK PLAN

1. Within fifteen (15) days of EPA’s approval of the FINAL Work Plan, Idlewild shall commence the wetland Restoration described in this Attachment 2 in accordance with the approved FINAL Work Plan and in accordance with the schedule as approved by EPA, and any subsequently incorporated modifications to the Work Plan and schedule.

2. At any time after EPA approves the Work Plan, EPA or Idlewild may propose modifications to the FINAL Work Plan. Modifications may be incorporated into the Work Plan upon agreement of the parties and shall become effective under the Consent Decree without further action by the parties or the Court. The parties shall resolve any disputes regarding proposed modifications to the approved Work Plan, including but not limited to any disputes regarding any proposed modifications designed to attain and/or maintain any of the performance standards identified in this Scope of Work, in accordance with the dispute resolution procedures set out in Section C. above. Accordingly, the Dispute Resolution provisions in Section VIII of the Consent Decree do not apply to any disputes described in this Paragraph.

Figure A: Restoration Area, including areas where fill removal/restoration is required.



PROPOSED WETLAND RESTORATION AREAS			
Area ID	Size (±f)	Existing land elevation range (ft NAVD88)	Target elevation range (ft NAVD88)
1	29.754	4.0-5.5	5.9-7.0
2	3.708	4.0-4.5	4.5-5.5
3	39.018	4.5-5.5*	5.3-6.3
4	3.989	4.5-5.0	5.9-6.5
5	20.871	5.0-5.5	6.0-7.0
6	11.332	4.5-5.0	5.0-6.2
7	5.318	5.0-5.5	6.4-7.5
8	3.656	5.5-6.0	7.0-8.3
Total	117.596		

(2.7 ac)

Client/Project: IDEWILD ACRES SANDWICH, MA
 Figure No.:
 Title: PROPOSED CONCEPTUAL WETLAND RESTORATION PLAN

Notes:
 1. HALF-FOOT LIDAR CONTOUR INFORMATION DERIVED FROM THE "SANDY PROJECT" (ACQUIRED 2013-2014) TERRAIN DATASET, PROVIDED BY MASSGIS.
 2. INSTALLED WELLS, PIEZOMETER, GEOPROBE LOCATIONS PROVIDED BY DAVID C. THULIN, PE, PLS.

Legend:
 - HALF-FOOT CONTOURS FROM LIDAR (2013-2014)
 - EXISTING STREAM/BROOK
 - TAX PARCEL LINE
 - 2015 INSTALLED PIEZOMETER
 - 2015 GEOPROBE LOCATIONS

Legend:
 - UPLAND AREAS TO BE RETAINED (2.0 AC.)
 - PROPOSED WETLAND RESTORATION AREAS (2.7 AC.)
 - 2014 WETLAND OCCUPATION BY STATEC (10.7 AC. INCLUDES NAMED PONDS)
 - FORMER CRANBERRY BOG (14.7)



30 Park Drive
 Topsham, ME USA 04086
 Tel. (207) 729-1199

MapInfo V11.006/2016/1/15/150608201.dwg/MapInfo/2016 MapInfo/10/08/2016 09/30/2016 WetlandRestoration.dwg Plotted: 6/3/16 at 1:20pm

ATTACHMENT 3
To Consent Decree
U.S. v. Idlewild Acres, LLC, et al. (D. Mass.)

Grantor: Idlewild Acres, LLC

Grantee: Farm Bureau Preservation Foundation, Inc.

Address of Property: 46 Roos Road, Sandwich, Massachusetts

**For title see: Barnstable County Registry of Deeds at Book 18513, Page 89,
Land Court Certificate No. _____**

CONSERVATION RESTRICTION

Idlewild Acres, LLC, Peter M. Wild, its Manager, with an address at 99 Blueberry Hill Road, Woburn, Middlesex County, Massachusetts, being the sole owner, for its successors and assigns (“Grantor”), hereby grants with Quitclaim covenants, to Farm Bureau Preservation Foundation, Inc, 249 Lakeside Avenue, Marlborough, Middlesex County, Massachusetts, 01752 its permitted successors and assigns (“Grantee”), for \$1.00, pursuant to Sections 31, 32, and 33 of Chapter 184 of the Massachusetts General Laws, in perpetuity and exclusively for conservation purposes, the following Conservation Restriction on a certain portion of the land **[include metes and bound description or survey plan, including latitude/longitude coordinates]** and improvements thereon located in the Town of Sandwich, Barnstable County, described in a deed to Idlewild Acres, LLC, dated April 28, 2004, and recorded with the Barnstable County Registry of Deeds at Book 18513, Page 89, as said portion is denoted as a Conservation Restriction Area on a certain plan (the “Plan”) attached to a Consent Decree approved by the Court in United States v. Idlewild Acres, LLC and Peter M. Wild, Civil Action No. _____ (D. Mass) on _____.

Said Plan is attached hereto and incorporated herein as Exhibit A. The area on Exhibit A marked as Conservation Restriction Area shall hereinafter be referred to as the Conservation Restriction Area (the “Restricted Area” or “Premises”) and the grantor convenants in accordance with the following terms and conditions:

I. PURPOSES:

This Conservation Restriction is defined in and authorized by Sections 31-33 of Chapter 184 of the General Laws and otherwise by law. The purpose of this Conservation Restriction is to assure that the Premises will be maintained in perpetuity and exclusively for conservation and agricultural/horticultural purposes, and to prevent any use or change that would materially impair or interfere with its conservation and agricultural/horticultural values. These values include the following:

1. Protection of wetland resources;
2. Protection of a freshwater wetlands/upland complex in close proximity to a tidal and marine waters ecosystem;
3. Protection of water quality; and
4. Use of the property for agriculture and/or horticulture.

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 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, residence, tennis court, landing strip, mobile home, artificial swimming pool, asphalt or concrete pavement, sign, fence, billboard or other advertising display, antenna, utility pole, tower, conduit, line or other temporary or permanent structure or facility on or under the Premises;
- (2) Mining, excavating, dredging or removing from the Premises of soil, loam, peat, gravel, sand, rock or other mineral resource or natural deposit or otherwise make topographical changes to the area, except as in compliance with a permit issued by the Army Corps of Engineers ("Corps") under Section 404 of the Clean Water Act, 33 U.S.C. 1344 (the "CWA"), or as otherwise authorized under the CWA;
- (3) Placing, filling, storing or dumping of soil, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, waste or other substance or material whatsoever or the installation of underground storage tanks, except as in compliance with a permit issued by the Army Corps of Engineers ("Corps") under Section 404 of the Clean Water Act, 33 U.S.C. 1344 (the "CWA"), or as otherwise authorized under the CWA;
- (4) Cutting or removing trees, grasses or other vegetation, other than in the course of conducting horticultural or agricultural activities or managing invasive plant species;
- (5) Application or use of fertilizers or pesticides inconsistent with accepted practices of integrated pest management;
- (6) Activities detrimental to drainage, preservation of wetland hydrology, water conservation, water quality, erosion control, soil conservation, good agricultural or horticultural practices, or which are otherwise wasteful of the natural resources of the Commonwealth;
- (7) Use, parking or storage of vehicles including trucks, tractors, motorcycles, automobiles, or any other motorized vehicles on the Premises, except for those necessary for conducting horticultural or agricultural activities or for public safety entities (i.e., fire, police, ambulance, other government officials) in carrying out their lawful duties;
- (8) Subdivision or conveyance of a part or portion of the Premises alone, or division or subdivision of the Premises (as compared to conveyance of the Premises in its entirety which shall be permitted), and no portion of the Premises may be used towards future building or development requirements on this or any other parcel;
- (9) The use of the Premises for business, commercial or industrial uses other than an agricultural or horticultural operation;
- (10) Any other use of the Premises or activity thereon which is or would be inconsistent with the intent of this grant, being the preservation of wetland and upland resources.

B. Reserved Rights and Exceptions [Include a Baseline Report to establish the location and condition of features]

The Grantor reserves the right to conduct or permit the following activities and uses on the Premises, but only if such uses and activities do not materially impair the conservation values and/or the agricultural and horticultural purposes, of this Conservation Restriction, and are conducted in compliance with Section 404 of the Clean Water Act, 33 U.S.C. 1344:

- (1) Agricultural and horticultural activities, including the operation of a commercial plant nursery. All agricultural and horticultural activities will be operated in a sustainable manner, with the intent of designing and maintaining an agriculturally productive system that is close to the diversity, stability and resilience of a natural wetlands system, and minimizing overall environmental and human health impacts of such activities;
- (2) The maintenance and use of any existing trails and farm and wood roads in the Restricted Area substantially in their present condition;
- (3) The construction or placing in uplands of buildings, fences or structures, including solar arrays or wind turbines, necessary for horticultural or agricultural purposes only. Such structures (other than the solar arrays or wind turbines) shall not be more than 36 feet high or exceed 5,000 square feet in total footprint;
- (4) Vegetation Management, including Harvesting Plant Species or Crops. Plants and crops grown as part of the permitted agricultural or horticultural operation may be harvested in a sustainable manner, and cover crops may be incorporated into soils. In addition, in accordance with generally accepted forest management practices, there may be selective *de minimis* removing 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, including woods roads, fence lines, trails and meadows;
- (5) Nuisance or invasive species. The control or removal of nuisance or invasive species in a manner that minimizes damage to surrounding, non-target species and preserves water quality;
- (6) Composting. The stockpiling and composting of stumps, trees and brush limbs and similar biodegradable materials, provided that such stockpiling and composting is undertaken in compliance with the requirements of the Clean Water Act, 33 U.S.C. 1344, in locations where the presence of such activities will not have a deleterious impact on the purposes or conservation values of this Restriction;
- (7) Wildlife Habitat Improvement. With the prior written permission of Grantee, measures designed to restore biotic communities, or to maintain, enhance or restore wildlife, wildlife habitat, including selective planting of trees, shrubs and plant species and, in consultation with MA Natural Heritage and Endangered Species, alteration or restoration of rare or endangered species habitat;
- (8) Signs. The erection, maintenance and replacement of signs with respect to hunting, trespass, trail access, identity and address of the occupants, sale of the Premises, the Grantee's interest in the Premises, and the protected conservation and agricultural/horticultural values;
- (9) Any work undertaken in conjunction with the reserved rights shall seek to minimize disturbance within the Restricted Area. Upon completion of any site work performed in conjunction with the reserved rights, any disturbed areas shall be restored substantially to match the conditions that existed prior to said work;
- (10) Permits. The exercise of any right reserved by Grantor under this Paragraph B shall be in compliance with zoning, the Wetlands Protection Act, the Clean Water Act, and all other applicable federal, state and local laws, rules, regulations, and permits, and the Consent Decree referenced

herein. 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.

III. LEGAL REMEDIES OF THE GRANTEE

A. Legal and Injunctive Relief

The rights hereby granted shall include the right to enforce this Conservation Restriction by appropriate legal proceedings and to obtain injunctive and other equitable relief against any violations, including, without limitation, relief requiring restoration of the Premises to their condition prior to the time of the injury complained of (it being agreed that the Grantee will have no adequate remedy at law). The rights hereby granted shall be in addition to, and not in limitation of, any other rights and remedies available to the Grantee for the enforcement of this Conservation Restriction. Grantee agrees to cooperate for a reasonable period of time prior to resorting to legal means in resolving issues concerning violations provided Grantor ceases objectionable actions and Grantee determines there is no ongoing diminution of the conservation values of the Conservation Restriction. Grantor covenants and agrees to reimburse to Grantee all reasonable costs and expenses (including reasonable counsel 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 Premises, the Grantor shall be responsible for a survey and the placement of permanent boundary markers.

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.

E. 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

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, including the right to cross other property owned by the Grantor in order to get access to the Premises. 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 (and the right to cross other property owned by the Grantor in order to get access to 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.

Except as provided herein, this Conservation Restriction does not convey to the public, or any other person any general rights to enter upon the Premises of the Restricted Area or exercise other rights.

V. EXTINGUISHMENT

A. If circumstances arise in the future such as render the purpose of this Conservation Restriction impossible to accomplish, this restriction can only be terminated or extinguished, whether in whole or in part, by a court of competent jurisdiction under applicable law after review and approval by the Secretary of Energy and Environmental Affairs. If any change in conditions ever gives rise to extinguishment or other release of the Conservation Restriction under applicable law, then Grantee, on a subsequent sale, exchange, or involuntary conversion of the Premises, shall be entitled to a portion of the proceeds in accordance with paragraph B below, subject, however, to any applicable law which expressly provides for a different disposition of the proceeds, and after complying with the terms of any gift, grant, or funding requirements or the permits or Consent Decree referenced herein. Grantee shall use its share of the proceeds in a manner consistent with the conservation purpose set forth herein.

B. Proceeds.

Grantor and Grantee agree that the grant of this Conservation Restriction gives rise to a real property right, immediately vested in the Grantee, with a fair market value that is at least equal to the proportionate value that this Conservation Restriction, bears to the value of the unrestricted property.

C. Grantor/Grantee Cooperation Regarding Public Action

Whenever all or any part of the Premises or any interest therein is taken by public authority under power of eminent domain or other act of public authority, then the Grantor and the Grantee shall cooperate in recovering the full value of all direct and consequential damages resulting from such action. All related expenses incurred by the Grantor and the Grantee shall first be paid out of any recovered proceeds, and the remaining proceeds shall be distributed between the Grantor and

Grantee in shares equal to such proportionate value after complying with the terms of any gift, grant, or funding requirements or any permits or the Consent Decree referenced herein. 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 like a continuing trust in a manner consistent with the conservation purposes of this grant.

VI. 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 themselves to 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; 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 General Laws of Massachusetts. 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 it divests itself of any interest in all or a portion of the Premises, including a leasehold interest and to notify the Grantee within 20 days of such transfer. Failure to do either 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.

The Grantor shall not be liable for violations occurring after his or her ownership. Liability for any acts or omissions occurring prior to any transfer and liability for any transfer if in violation of this CR shall survive the transfer. Any new owner shall cooperate in the restoration of the Premises or

removal of violations caused by prior owner(s) and may be held responsible for any continuing violations.

VIII. ESTOPPEL CERTIFICATES

Upon request by the Grantor, the Grantee shall, within thirty (30) days, execute and deliver to the Grantor any document, including an estoppel certificate, which certifies the Grantor's compliance or non-compliance with any obligation of the Grantor contained in this Conservation Restriction.

IX. NON MERGER

The parties intend that any future acquisition of the Premises shall not result in a merger of the Conservation Restriction into the fee or be unenforceable on that account. The Grantor agrees that it will not grant, and the Grantee agrees that it will not take title, to any part of the Premises without having first assigned this Conservation Restriction to a non-fee owner to ensure that merger does not occur and that this Conservation Restriction continues to be enforceable by a non-fee owner.

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 General laws of Massachusetts. 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 or agricultural 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 Art. 97 of the Amendments to the Massachusetts Constitution, and any gifts, grants or funding requirements, permits and the Consent Decree referenced herein. Any amendment shall be recorded in the Barnstable County 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 General Laws have been obtained, and it has been timely recorded in the Barnstable County Registry of Deeds (registered land).

XII. NOTICES

Any notice, demand, request, consent, 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: Idlewild Acres, LLC,
Peter M. Wild, Manager,
P.O. Box 1561,
46 Roos Road
Sandwich, Massachusetts, 02563

To Grantee: Farm Bureau Preservation Foundation, Inc,
249 Lakeside Avenue,
Marlborough, Massachusetts, 01752

or to such other address as any of the above parties shall designate from time to time by written notice to the other. If the notice is returned to sender as undeliverable, notice shall be re-sent to as current an address as is reasonably ascertainable by the parties.

XIII. GENERAL PROVISIONS

A. Controlling Law

The interpretation and performance of this Conservation Restriction shall be governed by the laws of the Commonwealth of Massachusetts.

B. Liberal Construction

Any general rule of construction to the contrary notwithstanding, this Conservation Restriction shall be liberally construed in favor of the grant to effect the purpose of this Conservation Restriction and the policy and purposes of Massachusetts General Laws Chapter 184, Sections 31-33. If any provision in this instrument is found to be ambiguous, any interpretation consistent with the purpose of this Conservation Restriction that would render the provision valid shall be favored over any interpretation that would render it invalid.

C. Severability

If any provision of this Conservation Restriction or the application thereof to any person or circumstance is found to be invalid, the remainder of the provision of this Conservation Restriction shall not be affected thereby.

D. Entire Agreement

This instrument sets forth the entire agreement of the parties with respect to this Conservation Restriction and supersedes all prior discussions, negotiations, understandings or agreements relating to the Conservation Restriction, all of which are merged herein.

XIV. MISCELLANEOUS

A. Pre-existing Public Rights.

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

Attached hereto and incorporated herein are the following:

Signature pages:

Grantor _____

Grantee _____

Town of Sandwich, MA, Selectboard

Approval of the Secretary of Energy and Environmental Affairs

Exhibit A – Legal Description, “sketch plan” and subordination of mortgage

WITNESS my hand and seal this _____ day of _____, 201_.

Idlewild Acres, LLC
Peter M. Wild, its Manager

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss:

On this day of _____, 20__, before me, the undersigned notary public, personally appeared _____, 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/she signed it voluntarily for its stated purpose.

Notary Public

My Commission Expires:

ACCEPTANCE OF GRANT

The above Conservation Restriction from Idlewild Acres, LLC to Farm Bureau Preservation Foundation, Inc. was accepted by _____ this _____ day of _____, 20__.

By: _____
Its: _____, duly authorized
(INSERT NOTARIZATION)

APPROVAL OF SELECT BOARD

We, the undersigned, being a majority of the Select Board of the Town of Sandwich, MA, hereby certify that at a public meeting duly held on _____, 20__, the Select Board voted to accept and approve the foregoing Conservation Restriction from _____ to _____ pursuant to Section 8C of Chapter 40 and Section 32 of Chapter 184 of the General Laws of Massachusetts.

Select Board

(INSERT NOTARIZATION)

APPROVAL BY SECRETARY OF ENERGY AND ENVIRONMENTAL AFFAIRS
COMMONWEALTH OF MASSACHUSETTS

The undersigned, Secretary of Executive Office of Energy and Environmental Affairs of the Commonwealth of Massachusetts, hereby certifies that the foregoing Conservation Restriction from Idlewild Acres, LLC to Farm Bureau Preservation Foundation, Inc. in the Town of Sandwich has been approved in the public interest pursuant to Massachusetts General Laws, Chapter 184, Section 32.

Secretary of Energy and Environmental Affairs

Dated: _____, 20__

(INSERT NOTARIZATION)

Exhibit A

Legal, metes and bounds description, and/or a reference to a recorded or registered plan showing the boundaries, including latitude/longitude coordinates. Mention plan if there is one, and where it is recorded, or, "to be filed herewith". Attach an 8 ½ x 11 copy of the plan as an Exhibit ("sketch plan"). "As further shown on the Plan/Sketch Plan, attached hereto."

Mention area of CR; "all of a 6 acre lot" or if it is a portion of a lot, say "an ____ acre portion of a ____ acre lot". For building envelopes or exclusions, a legal description of the exclusion(s) is needed, and show on the plan.

Said land is subject to (mention any easements and or mortgages and their recording information). Said land has the benefit of (mention any easements or other benefits and where they are recorded).

Other Exhibits, as appropriate: Town Meeting Vote, Subordination Agreement, Baseline Survey.

Subordination of Mortgage

I/we, _____, Present holder(s) of a mortgage on property located at 46 Roos Road, Sandwich, Massachusetts ("Premises") from ___ to ___ dated ___ and recorded with _____ Registry of Deeds in Book____, Page____, hereby approve of, and subordinate the Mortgage and the obligations secured thereby to the Conservation Restriction covering all/a portion of the Premises to be recorded, to the same extent as if the Conservation Restriction had been executed and recorded before the execution and recording of the Mortgage.

In Witness Whereof, the said _____ has caused its corporate seal to be hereto affixed and these presents to be signed in its name and behalf by _____ its _____ this ___ day of _____, 20__.

_____ by:

_____, 20_____

[Attach acknowledgement certificate/notarization here]