

# Worcester District Registry of Deeds - 20/20 Perfect Vision i2 Document Detail Report

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Doc#	Document Type	Town	Book/Page	File Date	Consideration
55502	CONSERVATION RESTRICTION		60556/132	06/17/2019	
<b>Property-Street Address and/or Description</b>					
18 ELM ST PL BK 149 - 113					
<b>Grantors</b>					
UPTON TOWN, METACOMET LAND TRUST INC					
<b>Grantees</b>					
<b>References-Book/Pg Description Recorded Year</b>					
40195/291 DEED 2006					
<b>Registered Land Certificate(s)-Cert# Book/Pg</b>					



2019 00055502

Bk: 60556 Pg: 132

Page: 1 of 21 06/17/2019 10:02 AM WD

21

**Grantor:** Town of Upton

**Grantee:** Metacomet Land Trust, Inc.

**Address of Property:** 18 Elm Street, Upton, Massachusetts

**Title Reference:** Worcester District Registry of Deeds,  
Book 40195, Page 291

## CONSERVATION RESTRICTION

### Heritage Park, Upton

The Town of Upton, acting by and through its Board of Selectmen, having an address of 1 Main Street, Box 1, Upton, Massachusetts 01568, being the sole owner, for its successors and assigns ("Grantor"), acting pursuant to Sections 31, 32 and 33 of Chapter 184 of the Massachusetts General Laws, hereby grants, with quitclaim covenants, to **Metacomet Land Trust, Inc.**, a Massachusetts non-profit corporation, with a mailing address of P.O. Box 231, Franklin, Massachusetts 02038 and its permitted successors and assigns ("Grantee"), for consideration of One Dollar (\$1.00) Dollar, in perpetuity and exclusively for conservation purposes, the following Conservation Restriction on the entirety of two (2) parcels of land located on Elm Street in the Town of Upton, Worcester County, Massachusetts totaling approximately 7.94 acres, more or less, and described in a deed to the Grantor, recorded with the Worcester District Registry of Deeds in Book 40195, Page 291, and further described at Exhibit A attached hereto (the "Premises").

#### 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, while permitting certain acts and uses hereof, the Premises will be subject to the prohibitions described in Section II.A hereof, so that the Premises will be maintained in perpetuity for historic preservation, passive recreation and conservation purposes, in a scenic and natural condition, and to prevent any use or change that would materially impair or interfere with its conservation and historic preservation values as defined herein below.

The Premises were purchased in part using Massachusetts Community Preservation Act funds (G.L. Chapter 44B) and a copy of the Town Vote authorizing the use of such funds is attached hereto as Exhibit B.

The Premises contain outstanding qualities, including a historic stone chamber, stone walls, open fields, a stream, a pond shoreline, forested habitat, and wetlands, the protection of which will be of benefit to the public (the “Purposes”). These conservation and historic preservation values are further described below and hereinafter referred to as the “conservation values”:

- **Historic Preservation.** The Premises contain historic and archaeological assets included in the Massachusetts Historical Commission’s Inventory of Historic and Archaeological Assets of the Commonwealth (MHC #UPT.HA.15). Preservation of the parcel in accordance with this Conservation Restriction assists to protect and preserve the significant historic and archaeological qualities and characteristics of the historic and archaeological assets. Separately, the Premises is the site of ceremonial stone landscapes, including a stone cave (*hassunnegk*), all of which are components of a ceremonial landscape (the “Ceremonial Stone Landscape”) with particular cultural significance to the member tribes of the United South and Eastern Tribes, Inc. The Ceremonial Stone Landscape includes an underground cave, made of dry, loose stones. Entrance to the cave is through a 14 foot tunnel, which leads to a beehive shaped, domed chamber, approximately 10 feet high and 12 feet wide (the “Chamber”). Preservation of the Premises in accordance with this Conservation Restriction assists to protect and preserve the qualities of cultural significance of the Premises to the member tribes.
- **Passive Recreation and Public Access Trails.** The Premises include open meadows and established trails. General public trail access for the purpose of passive recreation includes, but is not limited to, walking, fishing, and nature observation. The Premises provide public access to Mill Pond and have a small public parking area.
- **Education.** The Premises provide opportunities for interpretive programs related to the stone chamber and nature study.
- **Protection of Wildlife Habitat and Water Quality.** The Premises contain several acres of forested wetland and upland, and meadow habitat. An intermittent stream flows through the Premises and the Conservation Restriction will protect a portion of its riparian corridor and water quality.
- **Furtherance of Government Policy.** Protection of the Premises furthers the stated goals and objectives of the Town of Upton’s 2005 Master Plan and 2011 Open Space and Recreation Plan as follows:

**Master Plan:** The Town of Upton’s Master Plan (2005) refers to the Upton Chamber as “one of the most unusual historic structures in Upton” and lists it as a “cultural and historic area” worthy of preservation. (Town of Upton Master Plan, 6.5.3, p. 79). The Master Plan also notes that open fields and meadows, of which the Heritage Park property has several, are currently far less common than forest in the Town, underscoring the property’s particular significance. (Town of Upton Master Plan, 6.2 and 6.4.4, pp. 70 and 74.)

The preservation of Heritage Park furthers each of these general expressed Master Plans Goals.

**Natural Resources Goal:** Ensure Upton has a good and ample amount of publicly accessible, multi-use open space land that provides both passive and active recreational opportunities, as well as aesthetic enjoyment, wildlife protection, and watershed protection. Create and maintain plans to safeguard Upton's many scenic and recreation lands, undeveloped parcels, fragile water resources, and wildlife habitats. Objectives:

1. Protect water resources.
2. Protect and manage critical natural resources.
3. Preserve significant land for open space and recreation.

**Land Use Goal:** Maintain and enhance Upton's rural, small town character and limit commercial, industrial, and residential growth to what is appropriate to Upton's character and supportable by the available infrastructure, while being environmentally responsible.

**Open Space and Recreation Plan:** The 2011 Open Space and Recreation Plan lists the following eight goals (2011 Town of Upton Open Space and Recreation Plan, p. 2):

Goal One: Preserve Upton's rural, small-town character

Goal Two: Preserve open space

Goal Three: Preserve cultural and historical resources and landscapes

Goal Four: Expand and improve active and passive recreational facilities

Goal Five: Protect Upton's water resources

Goal Six: Promote the stewardship of town-owned open space and conservation lands for natural resource protection and open space recreation

Goal Seven: Improve Upton's trail system

Goal Eight: Promote and encourage environmental education and awareness

The preservation of Heritage Park furthers each of these expressed goals.

These and other conservation values of the Premises, as well as its current uses and state of improvement, shall be described in a Baseline Documentation Report ("Baseline Report") to be prepared by Grantee with the cooperation of the Grantor, to consist of maps, photographs, and other documents and to be kept on file with the Grantee and referenced herein. The Baseline Report (i) shall be completed within six (6) months of the recording of this Conservation Restriction, (ii) shall be acknowledged by Grantor and Grantee to be a complete and accurate representation of the condition and values of the Premises at the time the Baseline Report is completed; 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 not be available 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 allow 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, indoor riding ring, landing strip, mobile home, swimming pool, golf driving range, 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, above or under the Premises;
- (2) Mining, excavating, dredging or removing of soil, loam, peat, gravel, sand, rock or other mineral resource or natural deposit or otherwise making topographical changes to the area;
- (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;
- (4) Cutting, removing or otherwise destroying trees, grasses or other vegetation, including leaf litter;
- (5) Activities detrimental to wildlife habitat, drainage, flood control, water conservation, water quality, erosion control, soil conservation, or archaeological conservation;
- (6) Use, parking or storage of vehicles including motorcycles, mopeds, all-terrain vehicles, trail bikes, or any other motorized vehicles, except for vehicles necessary for public safety (i.e., fire, police, ambulance, other government officials in the performance of their duties);
- (7) The disruption, removal, or destruction of historical cellar holes (i.e., building foundations), or other historical and archaeological features, artifacts, or deposits, except with the approval of the Massachusetts Historical Society ("MHC") pursuant to the procedure set forth in Section II(B)(3);
- (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 building or development requirements on this or any other parcel;
- (9) The use of the Premises for more than *de minimis* commercial recreation, business, residential or industrial use;
- (10) Any other use of the Premises or activity thereon which is inconsistent with the purposes of this Conservation Restriction or which would materially impair its conservation values.

**B. Reserved Rights and Exceptions**

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 or purposes of this Conservation Restriction:

- (1) Recreational Activities. Walking, hiking, cross-country skiing, fishing, and other non-motorized outdoor passive recreational and educational activities that do not materially alter the landscape or degrade environmental quality. Motorized wheelchairs or similar equipment reasonably necessary to enable handicapped members of the public to access the Premises are permitted.
- (2) Preservation and Maintenance of the Ceremonial Stone Structures. Subject to the approval of the Grantee pursuant to the notice and approval requirements of Section II.C, below, preservation, restoration and/ or repair measures to maintain the historic appearance of the Ceremonial Stone Landscape, consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties (36 C.F.R. Part 68), by the Upton Board of Selectmen, after consultation with the Upton Historical Commission, and one or more of the regional Tribal Historic Preservation Offices (which may include one or more of the Massachusetts recognized tribes).
- (3) Archaeological Investigations. The conducting of archaeological Non-Destructive Field Investigations or Destructive Field Investigations (950 CMR 70.04) undertaken by a qualified archaeological Principal Investigator and Research Team (950 CMR 70.01) in accordance with a suitable Research Design (950 CMR 70.04, 70.11(2)(c)) approved by the State Archaeologist pursuant to Massachusetts General Laws Chapter 9, Sections 26A(4) and 27C and 950 CMR 70.00 et seq. Destructive Field Investigations proposed on the Premises shall require prior consultation by the archaeological Principal Investigator (950 CMR 70.04) with official designees of the Wampanoag Tribe of Gay Head (Aquinnah), the Mashpee Wampanoag Tribe, the Nipmuc Nation, and the Massachusetts Commission on Indian Affairs to seek their recommendations. The methods and materials proposed to implement recommendations offered by official designees who choose to participate in the consultation shall be explicated by the Principal Investigator in the proposed Research Design of the archaeological investigation. The Research Design shall be provided in draft form to the participating official designees for their review and comment to the Principal Investigator who shall then finalize the Research Design in a manner that addresses any participating official designee's comments prior to its submittal to the State Archaeologist pursuant to 950 CMR 70.12. Grantor and Grantee shall make every reasonable effort to prohibit any person from conducting archaeological field investigation including metal detecting, digging, or artifact collecting in contravention of the Applicable Laws, and shall promptly report any such prohibited activity to the State Archaeologist. Grantor and Grantee shall include the prohibition against digging, artifact collecting, or metal detecting in any rules and regulations for visitors to the Premises.
- (4) Trails. The marking, clearing and periodic maintenance of unpaved trails and walking paths, and, subject to the approval of the Grantee pursuant to the notice and approval requirements of Section II.C, below, the creation of new unpaved trails and walking paths provided that no new trails or walking paths exceed a width of six (6) feet.

(5) Vegetation and Forest Management. In accordance with generally accepted management practices, selective removal of trees and shrubs, pruning and cutting to prevent, control or remove hazards, disease, insect or fire damage, or to preserve the present condition of the Premises, including vistas as documented in the Baseline Report, woods roads, fence lines and trails and meadows, or to protect the Chamber.

(6) Additional Meadow and View Areas. Subject to the approval of the Grantee pursuant to the notice and approval requirements of Section II.C, below, and in accordance with generally accepted management practices consistent with the conservation values and Purposes of this Conservation Restriction, the selective clearing of forested or overgrown upland areas to create additional meadow habitat and/or view sheds.

(7) Non-native or nuisance species. The removal of non-native or invasive species, the inter-planting of native species, and the control of species in a manner that minimizes damage to surrounding, non-target species and preserves water quality;

(8) Wildlife Habitat Improvement. Subject to the approval of the Grantee pursuant to the notice and approval requirements of Section II.C below, measures designed to restore native biotic communities, or to maintain, enhance or restore wildlife, wildlife habitat, including installation of nest boxes, selective planting of native trees, shrubs and plant species.

(9) Infrastructure. Subject to the approval of the Grantee pursuant to the notice and approval requirements of Section II. C, below, the installation, use, maintenance, repair, renovation or replacement of a pervious surfaced parking area with capacity for no more than 10 cars, informational kiosks and other signage, plank boardwalks inside the Chamber, other boardwalks or bridges outside the Chamber, benches, picnic tables, canoe/kayak launch areas, and a storage shed not to exceed 150 square feet. Maintenance or replacement of the existing culvert stream crossing with an open bottomed culvert or bridge is permitted without approval of the Grantee.

(10) Events. Subject to the approval of the Grantee pursuant to the notice and approval requirements of Section II.C, below, in connection with charitable and/or civic fundraising and other social events (not to exceed ten (10) days in each calendar year), Grantor may erect and place tents and other temporary facilities, including portable toilets, portable furnishings and lighting, and permit the parking of vehicles, so long as no vehicles may be parked within 50 feet of the Chamber and no tents or temporary facilities as defined herein may be erected within 50 feet of the Chamber. Following any Events, any tents and other temporary structures described herein shall be removed from the Premises and the Premises shall be restored to the extent feasible to its prior condition before the Event.

(11) Signs. Subject to the approval of the Grantee pursuant to the notice and approval requirements of Section II. C, below, the erection, maintenance, and replacement of signs by Grantor or Grantee for the following purposes: information about allowed and prohibited uses, educational/interpretative information; trail location, distance and directional signs; property name, ownership, and property boundaries.

(12) Gate; Fencing. The installation of a gate at the entrance of the driveway to the Premises, at Elm Street, to control access to the Premises during night time and other such times to protect the conservation values and historic features located thereon. Subject to the approval of the Grantee pursuant to the notice and approval requirements of Section II.C, below, the installation and maintenance of sight-previous fences that do not interfere with the conservation values of this Conservation Restriction.

(13) Mill Pond Restoration. Subject to the approval of the Grantee pursuant to the notice and approval requirements of Section II.C, below, the temporary disruption of the Premises that may result in the restoration of Mill Pond, including sediment excavation from the pond, provided that no other practicable access to Mill Pond is available, and meadow and wooded habitat, banks, trails, fencing and other features of the Premises are restored, to the extent feasible to its condition prior to the commencement of any work undertaken pursuant to this section, as a component of any pond restoration project. No material excavated from Mill Pond may be permanently disposed on the Premises and no impacts whatsoever, temporary or permanent, shall occur to the Chamber or stone walls.

(14) Management Plan. A Management Plan for the Premises shall be prepared by the Grantor and approved by the Grantee, which approval shall not be unreasonably withheld. The Management Plan for the Premises shall be completed within three (3) years from the date this Conservation Restriction is recorded at the Worcester South District Registry of Deeds. The Management Plan shall provide for management of the Premises in a manner consistent with generally accepted "Best Management Practices" for conservation and historic preservation land as those practices are identified by the Department of Conservation and Recreation, Commonwealth of Massachusetts, and in a manner not wasteful of soil resources or detrimental to water quality or conservation, and in a manner that is consistent with the terms, purposes, and conservation values of this Conservation Restriction. The Management Plan shall be updated periodically, particularly if new information or new knowledge is obtained that promotes or enhances the management of the Premises, but no less frequently than every ten (10) years.

(15) Permits. The exercise of any right reserved by Grantor under this Paragraph B or for which approval is granted 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. All acts and uses not explicitly permitted by Section II, Paragraph B are prohibited.

C. Notice and Approval. Whenever notice to or approval by Grantee is required under the provisions of Paragraph A or B of this Section II, Grantor shall notify Grantee as specified above, by certified mail, return receipt requested, in writing not less than forty-five (45) days prior to the date Grantor intends to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable and any other material aspect of the proposed activity in sufficient detail to permit the Grantee and/or others to make an informed judgment as to its consistency with the purposes of this Conservation Restriction. Where Grantee's approval is required, Grantee shall grant or withhold approval in writing within forty-five (45) days of Grantor's request. Grantee's approval shall not be unreasonably withheld, but shall only be

granted upon a showing that the proposed activity shall not materially impair the purposes of this Conservation Restriction. Failure of the Grantee to respond in writing within forty-five (45) days shall be deemed to constitute approval by Grantee of the request as submitted, so long as the request sets forth the provisions of this Section II.C relative to deemed approval after forty-five (45) days in the notice, the requested activity is not prohibited herein, and the activity will not materially interfere with or impair the purposes or conservation values of the Premises.

### **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 the condition prior to the time of the injury complained of (it being agreed that the Grantee has 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, and Grantee is authorized to pursue non-party violators. 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 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 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 the 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. The parties will co-operate in restoring 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. 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.

This Conservation Restriction also grants to the general public the right to enter upon the Premises for passive outdoor recreational purposes including, but not limited to, hiking, wildlife observation, cross-country skiing, mountain biking, horseback riding, and other non-motorized, passive outdoor recreational and educational activities (motorized wheelchairs or similar equipment reasonably necessary to enable handicapped members of the public to access the Premises or as otherwise outlined in Section II of this Conservation Restriction shall be allowed). Hunting is permitted on the Premises. Grantor and Grantee may impose rules and regulations from time to time governing the use by the public of the Premises, such rules and regulations shall be consistent with the terms of this Conservation Restriction.

#### **V. EXTINGUISHMENT**

A. If circumstances arise in the future such as render the purpose of this Conservation Restriction impossible to accomplish, this Conservation 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 Massachusetts 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, after complying with the terms of any gift, grant or funding requirements, including G.L. c. 44B. Grantee shall use its share of the proceeds in a manner consistent with the conservation values and Purposes 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. Such proportionate value of the Grantee's property right shall

remain constant. Any proceeds will be distributed only after complying with the terms of any gift, grant, or other funding requirements, including the Community Preservation Act.

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 as described in Section V(B), above, after compliance with the terms of any gift, grant or funding requirements, including G.L. c. 44B, the Community Preservation Act. If less than a 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 in the manner of a trust consistent with the conservation values and 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 agrees itself 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, 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 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 not less than twenty (20) days prior to the execution 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 its ownership. Liability for any acts or omissions occurring prior to any transfer and liability for any transfer if in violation of this Conservation Restriction 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 from the date of the request, execute and deliver to the Grantor any document, including an estoppel certificate, which certifies the Grantor's compliance with any obligation of the Grantor contained in this Conservation Restriction.

#### 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. 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 qualified under Section 170(h) of the Internal Revenue Code of 1986, as amended, and applicable regulations thereunder and is eligible to receive this Conservation Restriction under Section 32 of Chapter 184 of the General Laws of Massachusetts in order 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 values. 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 Massachusetts Constitution, and any gifts, grants or funding requirements. Any amendment shall be recorded in the Worcester South 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 General Laws have been obtained, and it has been recorded in a timely manner in the Worcester South District Registry of Deeds. Within thirty (30) days of the recording of this instrument, the Grantee shall provide as-recorded paper copies of this instrument by US mail or by hand delivery to all those entities listed in Section XII.

#### 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 U.S. Postal Service, Certified Mail, Return Receipt Requested, addressed as follows:

To Grantor:	Town of Upton Board of Selectmen 1 Main Street Box 1 Upton, MA 01568 Attention: Town Manager
With A Copy to:	Katharine Lord Klein, Esq., KP Law, P.C. 101 Arch Street Boston, MA 02110
To Grantee:	Metacomet Land Trust, Inc. P.O. Box 231 Franklin, MA 02038 Attention: President Lisa Mosczynski
With A Copy to:	Deborah A. Eliason, Esq. 63 Middle Street Gloucester, MA 01930
Copies of All Notices To:	State Archaeologist Massachusetts Historical Commission Massachusetts Archives Building 220 Morrissey Boulevard Boston, MA 02125

or to such other address as any of the above parties shall designate from time to time by written notice to the other or that 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 provisions 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

**Pre-existing Public Rights.** Approval of this Conservation Restriction pursuant to 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:

Signatory Pages:

Grantor: Town of Upton

Grantee: Metacomet Land Trust, Inc.

Approval: Secretary of the Office of Energy and Environmental Affairs Pursuant to G.L. c.  
184, §32

Exhibit A: Legal Description

Exhibit B: Town Meeting Vote

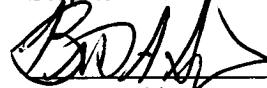
We, the undersigned, being a majority of the Board of Selectmen of the Town of Upton, Massachusetts, hereby certify that at a public meeting duly held on May 17, 2019, the Board of Selectmen voted to approve and grant the foregoing Conservation Restriction to the Metacomet Land Trust, Inc., pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws and do hereby grant the foregoing Conservation Restriction.

TOWN OF UPTON,  
By Its Board of Selectmen

Gary Daugherty



Stephen A. Matellian



Brett A. Simas

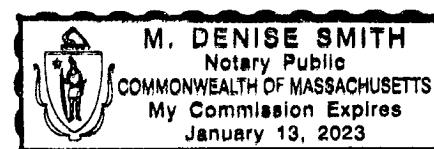
COMMONWEALTH OF MASSACHUSETTS

Worcester, ss.

On this 17 day of May, 2019, before me, the undersigned notary public, personally appeared Stephen A. Matellian, member of the Upton Board of Selectmen, proved to me through satisfactory evidence of identification which was personal knowledge, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.



Notary Public  
My Commission Expires: 1-13-2023



### ACCEPTANCE OF GRANT

Metacomet Land Trust, Inc. accepts the above Conservation Restriction from the Town of Upton acting by and through its Board of Selectmen this 6<sup>th</sup> day of May, 2019.

Metacomet Land Trust, Inc.

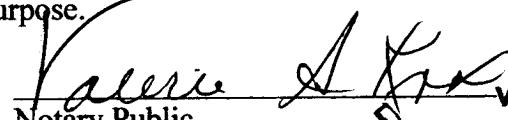
By: Lisa Mosczynski  
Lisa Mosczynski  
President

By: Susan P Speers  
Name: SUSAN P SPEERS  
Treasurer

### COMMONWEALTH OF MASSACHUSETTS

Worcester, ss.

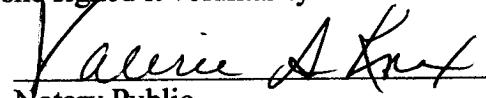
On this 6 day of May, 2019, before me, the undersigned notary public, personally appeared Lisa Mosczynski, President of Metacomet Land Trust, Inc., proved to me through satisfactory evidence of identification which was MASS RMV LICENSE to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she signed it voluntarily for its stated purpose.

  
VALERIE A. KNOX  
Notary Public  
My Commission Expires:  November 20, 2020  
Commonwealth of Massachusetts

### COMMONWEALTH OF MASSACHUSETTS

Worcester, ss.

On this 6 day of May, 2019, before me, the undersigned notary public, personally appeared SUSAN P SPEERS, Treasurer of Metacomet Land Trust, Inc., proved to me through satisfactory evidence of identification which was MASS RMV LICENSE to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose.

  
VALERIE A. KNOX  
Notary Public  
My Commission Expires:  November 20, 2020  
Commonwealth of Massachusetts

**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 the Town of Upton, acting by and through its Board of Selectmen, to the Metacomet Land Trust, Inc. has been approved in the public interest pursuant to Massachusetts General Laws, Chapter 184, Section 32.

Dated: 6/7, 2019

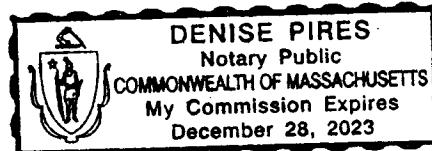
*K. Theoharides*  
KATHLEEN A. THEOHARIDES  
Secretary of Energy and Environmental Affairs

**COMMONWEALTH OF MASSACHUSETTS**

SUFFOLK, ss:

On this 28 day of JUNE, 2018, before me, the undersigned notary public, personally appeared KATHLEEN A. THEOHARIDES, and proved to me through satisfactory evidence of identification which was personal knowledge to be the person whose name is signed on the proceeding or attached document, and acknowledged to me that she signed it voluntarily for its stated purpose.

*Denise Pires*  
Notary Public  
My Commission Expires: 12/28/23



**Exhibit A**

**Description of Premises**

**PARCEL ONE:**

A certain tract of land, with any and all improvements thereon, situated on the northwesterly side of Elm Street, in said Upton, bounded and described as follows:

Beginning at point on said road at land now or formerly of Forbush;

THENCE Westerly by said Forbush land, 11 and 91/100 rods to corner of walls;  
THENCE N. 24 degrees E., by said Forbush land 5 and 8/100 rods to a corner at land now or formerly of J. E. Ward;  
THENCE by said Ward's land, westerly 20 and 84/100 rods to a corner;  
THENCE S. 7 and 2/3 degrees E., by said Ward land, 12 and 36/100 rods to land now or formerly of Rockwood;  
THENCE by said Rockwood land 14 and 36/100 rods to a corner;  
THENCE by said Rockwood land 11 and 91/100 rods to said road;  
THENCE by said road 6 and 72/100 rods to the place of the beginning.

**PARCEL TWO:**

A certain parcel of land, with any and all improvements thereon, situated on the northerly side of Milford Street, in said Upton, bounded and described as follows:

Beginning at the southwesterly corner of the premises at the southeasterly corner of land now or formerly of C. D. Morse, on Milford Street;

THENCE along a stone wall by land of said C. D. Morse N. 24 degrees 20' E., 313 feet to Mill Pond;  
THENCE running in a northerly direction along the highwater mark of said Pond 710 feet, more or less, to an iron pipe in a brook;  
THENCE easterly by land now or formerly of Vitie Laucies to the northwesterly corner of land now or formerly of W. Pearson;  
THENCE along the wall of said W. Pearson S. 7 degrees 40' E., 203.94 feet to a drill hole in a stone at land now or formerly of W.J. Saunders;  
THENCE along the wall by land of said W.J. Saunders S. 7 degrees 15' W., 147.18 feet;  
THENCE along the stone wall by land of Saunders S. 68 degrees 45' E., 196.12 feet;  
THENCE continuing along a stone wall S. 9 degrees 25' W., 31 feet;  
THENCE S. 31 degrees 30' W. 263 feet, more or less, by land of one William H. Peters;

THENCE N. 35 degrees 15' by other land of said Peters, 16.2 feet;  
THENCE S. 38 degrees 10' W., 159.5 feet by other land of said Peters to  
a stone wall on the northerly side of land of Harry S. Snow;  
THENCE by said wall N. 66 degrees 15' W., 334.50 feet;  
THENCE S. 23 degrees W., 179.50 feet to Milford Street;  
THENCE by Milford Street N. 57 degrees to 35' W., 144.90 feet to the  
point of the beginning.

Containing 7.5 acres more or less. Parcel Two is shown on a plan filed with Worcester Registry of Deeds, Plan Book 149, Plan 113.

EXCEPTING, HOWEVER, from Parcel Two, two certain parcels of land as follows:

1. Premises described in Deed from Rudolph Scholl, et ux. to John L. Martin and Robert F. Ramsey recorded with said Deeds, Book 3535, Page 577, and shown on plan filed in Plan Book 192, Page 106.
2. Premises described in Deed from Robert F. Ramsey et ux. to Raymond A. Benoit et ux., dated September 20, 1978, Book 6574, Page 276, and shown on plan filed in Plan Book 456, Plan 17.

Parcel One and Parcel Two being the same premises described in a deed to the Town of Upton from Robert J. Cotton, Commissioner in Partition, dated November 16, 2006, recorded with the Worcester Registry of Deeds in Book 40195, Page 291.

**Exhibit B**

**Town Meeting Vote**



# TOWN OF UPTON, MASSACHUSETTS

## TOWN CLERK

### CERTIFICATION

At the Special Town Meeting held at 7:30 pm on August 14, 2006 at the Nipmuc Regional Middle/High School, the voters of Upton took the following actions:

**ARTICLE 1:** Upon motion of Barbara Burke, it was moved that the Town vote, pursuant to M.G.L. c. 44B, to transfer the sum of up to Four-hundred thousand dollars (\$400,000.00), from the CPA funds for the purchase of Lot 20, consisting of 5.69 a. +/-, & Lot 28 consisting of 2.25 a. +/-, (Assessors Tax Map #21) at 18 Elm St, Upton. Funds to be transferred are to be applied from the CPA Reserved Account Open Space \$70,000, CPA Reserved Account Historical \$85,000 and the remainder of up to \$245,000 from the CPA Undesignated Funds and further, to grant a perpetual preservation restriction to a nonprofit, charitable corporation or foundation pursuant to G.L. c. 184 Sections 31-33. The purpose of this purchase is to preserve & protect a Historical Landmark, "The Cave", to provide space for recreation purposes, and to provide and protect open space around the shores of our "Mill Pond".

Oversight of the purchase of said Lots 20 & 28, at 18 Elm Street, Upton to be the responsibility of the Upton Historical Commission, with the approval of the Board of Selectmen.

Favorable recommendation from Community Preservation Committee

No recommendation from the Finance Committee. Vote was 2 favorable, 2 unfavorable, 1 Abstention

Upon motion of Robert Fleming, it was moved to question the motion  
**The Moderator declared the motion passed by 2/3 majority**

**The Moderator declared the motion carried by majority.**

A True Copy

Attest:

Kelly A. McElreath  
Town Clerk

Town Clerk

Kelly A. McElreath

One Main Street • Suite 1 • Upton, Ma 01568  
T: 508.529.3566 • F: 508.529.1010

ATTEST: WORC. Kathryn A. Toomey, Register