



“Forever-Proof” Your Conservation Land: CRs and Other Tools to Permanently Protect Land



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Learning Objectives

2 Methods to Permanently Preserve Land: Conservation Restrictions (CR) & Fee Ownership

- CR – what is it? how to read, approval process, management
- Fee Simple – Article 97 & how to ensure land is protected under Article 97

Due diligence: What to know before you accept land / CR

Case Studies

Q&A



Conservation: The Role of Conservation Commissions

“Conservation commissions are the municipal environmental agencies in Massachusetts. They are responsible for protecting the land, water, and biological resources of their communities. . .

The first powers given to conservation commissions in the Conservation Commission Act focused on ‘promotion and development of natural resources.’ Under these powers commissions undertake planning, acquiring, and managing open space and encouraging and monitoring conservation and agricultural preservation restrictions.”

- MACC homepage

When might Conservation Commission Have
to Accept, Grant, or Approve a CR?

When might Conservation Commission Have to Accept, Grant, or Approve a CR?

- Acquisition of CR with state grant
 - **Required** to be held in the care & custody of Conservation Commission or Ag Commission (LAND grant max of \$500,000!)
- Acquisition of land with CPA: **requires** grant of CR
- Development permit may require conserved land via fee or CR.
- Land trust acquires land with state grant: **requires** grant of CR
- ANY CR in the municipality - municipalities must approve **all** CRs!

What is a Conservation Restriction?

A legal agreement that permanently limits uses of land to protect its conservation values.



- Does not change land ownership
- Tied to land: All future landowners are bound to CR
- Does not automatically open land to public

CRs in a Nutshell. . .

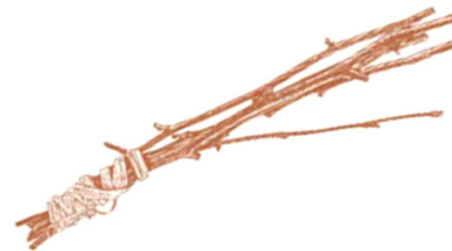
1st - Prohibited Uses

takes away every right
the landowner has in the
property.

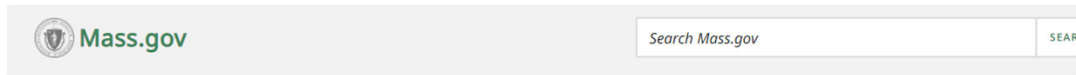


2nd - Permitted Acts & Uses

gives some rights back to
the landowner.



MA Model CR



Home > EEA > Division of Conservation Services

OFFERED BY Division of Conservation Services | Executive Office of Energy and Environmental Affairs

Conservation Restriction Review Program

Find details here on the Conservation Restriction (CR) Review Program, including the DCS Model CR and Submission Form, and links to other resources you may find helpful in preparing your CR for review.

A conservation restriction is a legally enforceable agreement whose purpose is to ensure permanent protection of specific conservation values while permitting limited land uses consistent with the protection of said conservation values. Different from term-limited restrictions, conservation restrictions, as defined in Sections 31-33 of Chapter 184 of the Massachusetts General Laws, are permanent restrictions that require the approval "in the public interest" of the Secretary of Energy and Environmental Affairs. DCS manages all reviews for CRs that will be held by charitable corporations/trusts, or municipalities.

CONTACT

Contact Information

Online

Email:

CRreview.DCS@mass.gov

www.mass.gov/info-details/conservation-restriction-review-program

Resources:

1. [EEA-DCS Model Conservation Restriction](#)
2. [EEA, DCS Conservation Restriction Submission Form April 2023](#)



Additional Resources

OLIVER – Mass GIS online data viewer



Plans, Policies, Programs, Helpful in Demonstrating Public Benefit (English, PDF 9.43 KB)



CR Review Process and Expectations November 2021 (English, PDF 487.73 KB)

GRANTOR:
GRANTEE:
ADDRESS OF PREMISES:
FOR GRANTOR'S TITLE SEE: _____ County
Registry of Deeds at Book _____, Page _____.

GRANT OF CONSERVATION RESTRICTION

I. STATEMENT OF GRANT

[Enter Grantor name(s), marital status if applicable, address, County (and state or country if not in MA)], being the [enter ownership – sole, joint, etc...] owner of the Premises as defined herein, constituting all of the owner(s) of the Premises as defined herein, for my successors and assigns ("Grantor"), acting pursuant to Sections 31, 32, and 33 of Chapter 184 of the Massachusetts General Laws, grant, with QUITCLAIM COVENANTS, to [enter Grantee(s) legal name and address. If more than one Grantee, specify Primary Grantee and Secondary Grantee (see Paragraph III for further references to CRs with two grantees). If the Grantee is a municipality, insert name of municipality, acting by and through its Conservation Commission by authority of Section 8C of Chapter 40 of the Massachusetts General Laws, if Grantee is a Water Commission, then by authority of Section 41 of Chapter 40 of the Massachusetts General Laws, or if held by another government body then it must be eligible to hold a CR and add citation to the relevant statutory authority.], their permitted successors and assigns ("Grantee"), for [Enter the amount of the consideration or enter "for nominal consideration" or "for charitable consideration" if this conveyance is to be considered and characterized as a gift [in accordance with 26 U.S.C. Section 170(h)] but DO NOT use "and other valuable consideration"], IN PERPETUITY AND EXCLUSIVELY FOR CONSERVATION PURPOSES, the following Conservation Restriction on land located in [Name of City or Town] containing [Enter either: "the entirety of a XX-acre parcel of land" OR "a XX-acre portion of a XX-acre property"] ("Premises"), which Premises is more particularly described in Exhibit A¹ and shown in the attached reduced copy of a survey plan in Exhibit B², both of which are incorporated herein and attached hereto. [Use the following sentence if the CR has two Grantees: As used herein, the terms "Grantee" and "Grantees" shall refer to the Primary Grantee and the Secondary Grantee collectively.]

¹ The Legal Description of a CR must contain metes and bounds measurements pursuant to MGL c. 184 s. 26(c) – this requirement can be satisfied with a narrative metes and bounds description OR with a reference to a recorded plan that contains metes and bounds measurements. When using a plan, identify the following: the name or label for the pertinent parcel or CR area, the title of the plan, etc.

² If a recorded plan is being used as the legal description, attach a reduced copy of the recorded plan in Exhibit B. The CR area and any excluded areas or building envelopes must be clearly marked.

EEA-DCS Model Conservation Restriction May 2022

The [fee interest in the Premises or Conservation Restriction] was acquired utilizing, in part, Community Preservation Act funds pursuant to Chapter 44B of the Massachusetts General Laws, which funds were authorized for such purposes by a vote of the [enter municipality name] Town Meeting [or City Council Meeting] held on [enter date of Town Meeting or City Council Meeting that authorized used of CPA funds], an attested copy of which vote is attached hereto as Exhibit C (the "CPA Vote"). Pursuant to Section 12(b) of Chapter 44B of the Massachusetts General Laws, and pursuant to the CPA Vote, the fee interest in the Premises, and therefore the management of the Premises, is under the care, custody, and control of the Conservation Commission of the City/Town of _____.

I. Statement of Grant

- Who's giving what to whom
- MA enabling statutes (creating CR, authority to hold / grant CR)
- Purchase Price
- Defines property included in CR
- CPA

II. Purposes & Conservation Values

What are the public benefits of the CR?

II. PURPOSES:

This Conservation Restriction is defined in and authorized by Sections 31, 32, and 33 of Chapter 184 of the Massachusetts General Laws and otherwise by law. The purposes of this Conservation Restriction (“Purposes”) are to ensure that the Premises will be maintained in perpetuity in its natural, scenic, or open condition [and, if applicable, choose which may apply, and available for agricultural use, forestry use, passive outdoor recreational use, or community park use], and to prevent any use or change that would materially impair the Conservation Values (as defined below).

II: Conservation Values

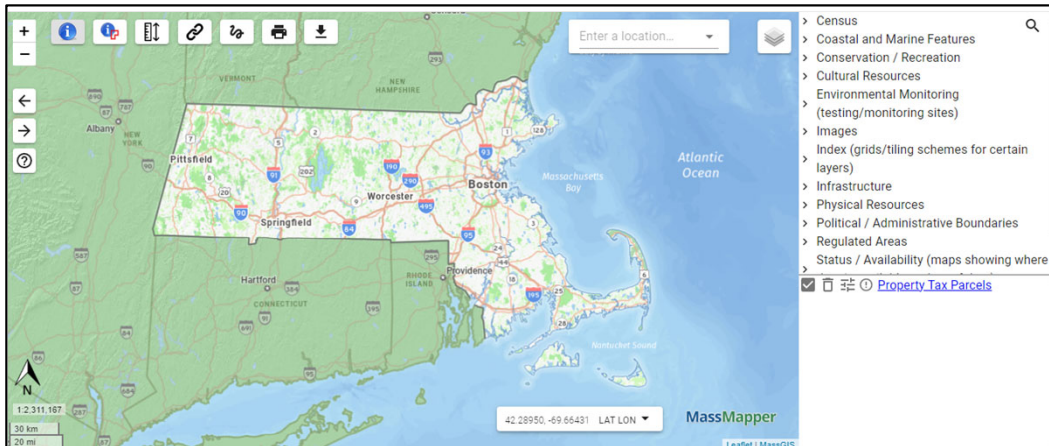
- Describes in detail the conservation values being protected by CR
- Tailored to each property!
- Guides how to interpret permitted uses 500 years from now

The Conservation Values protected by this Conservation Restriction include the following:

Adapt the following to the specific characteristics of each CR:

- A. **Open Space**
 - A general statement tying to the Federal IRS list of public benefit. Describe nearby / adjacent protected land and how this contributes to “open space” in the area.
- B. **Wildlife Habitat**
 - I often combine this with BioMap. This generally refers to Priority Habitat, which is a regulatory designation.
 - Use only if there is public access.
- C. **Biodiversity**
 - Describe all Biomap components on property.
- D. **Habitat Connectivity and Ecosystem Integrity**
 - Use maps, UMass CAPS data
- E. **Water Quality**
 - Can combine with “Wetlands” as they go hand-in-hand.
- F. **Water Supply** – Drinking water protection.
- G. **Wetlands**
 - Wetlands on the premises & why important
- H. **Floodplain** – refer to FEMA maps.
- I. **Public Access**
- J. **Soils and Soil Health**
 - This may be redundant with “Working Farmland and/or Forest Land” below. Combine as appropriate.
- K. **Working Farmland and/or Forest Land**
 - This is primarily for Prime & State Important Farmland Soils
 - Can also put Prime Forest Land here
- L. **Climate Change Resiliency**
 - This ends up being redundant with a lot of the above, but redundancy is OK.
- M. **Historic and Archaeological Resources**
 - I’ve never used this (archeological resources are not typically public information)
- N. **Indigenous Cultural Landscape**
 - I’ve never used this; not sure how we would have access to this information.
- O. **Heritage Landscape Inventory** – dated, rarely use.
- P. **Consistency with Clearly Delineated Federal, State, or Local Governmental Conservation Policy**
 - Look at municipal Open Space & Recreation Plan and specify which goals are being met
 - Look at other local, regional, state studies and demonstrate how conservation values are furthering those goals
 - This section is especially important if landowner is taking a federal income tax deduction.
 - Where you mention scenic value to the public, e.g. scenic byway designation

II. Purposes & Conservation Values



MassMapper

maps.massgis.digital.mass.gov/MassMapper/MassMapper.html

PLANS, POLICIES, AND PROGRAMS HELPFUL IN DEMONSTRATING STATE AND LOCAL PUBLIC BENEFIT

1. Municipal Open Space and Recreation Plans
2. Municipal Comprehensive Plans
3. Regional Open Space Plans (Regional Planning Authorities)
4. Massachusetts Statewide Comprehensive Outdoor Recreation Plan
5. BioMap2 (Natural Heritage and Endangered Species Program)
<https://www.mass.gov/service-details/biomap2-conserving-the-biodiversity-of-massachusetts-in-a-changing-world>
6. State Wildlife Action Plan (Division of Fisheries and Wildlife)
<https://www.mass.gov/service-details/state-wildlife-action-plan-swap>
7. Massachusetts Forest Action Plan
<http://www.mass.gov/eea/agencies/dcr/conservation/forestry-and-fire-control/ma-forest-resources-assessment-and-strategy.html>
8. Areas of Critical Environmental Concern - designated areas
9. Coastal Zone Management Plan - Significant Resource Areas
10. The Heritage Landscape Inventory (Department of Conservation and Recreation) -
<http://maps.massgis.state.ma.us/dcr/hli/>
11. The Massachusetts Scenic Landscape Inventory (DCR) – available on Mass GIS' online mapping tool, OLIVER - http://maps.massgis.state.ma.us/map_ol/oliver.php
12. Historic Districts
13. Flood Disaster Protection Act of 1973, land within flood lines. See also P.L. 566 Small Watershed Projects.
14. National Natural Landmarks (i.e. Gay Head Cliffs, Lynnfield Marsh)
15. Town well-fields (existing and proven reserves and reservoirs)
16. Wetlands Restrictions Program
17. Executive Orders
18. Department of Environmental Protection Great Pond Inventory

III. A&B. Prohibited & Permitted Acts & Uses

A. Prohibited Uses

takes away every right
the landowner has in the
property.



B. Permitted Acts & Uses

gives some rights back to
the landowner.



III. PROHIBITED and PERMITTED ACTS AND USES

A. Prohibited Acts and Uses

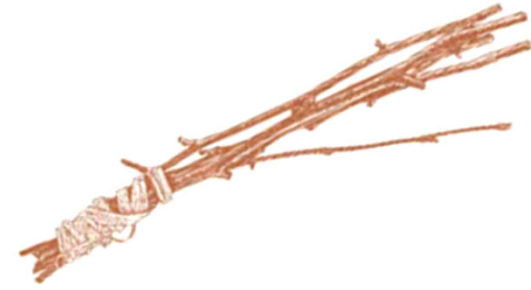
The Grantor will not perform or allow others to perform the following acts and uses which are prohibited on, above, and below the Premises:

1. Structures and Improvements. Constructing, placing, or allowing to remain any temporary or permanent structure including without limitation any building, tennis court, landing strip, mobile home, swimming pool, asphalt or concrete pavement, graveled area, roads, sign, fence, gate, billboard or other advertising, antenna, utilities or other structures, utility pole, tower, solar panel, solar array, conduit, line, septic or wastewater disposal system, storage tank, or dam;
2. Extractive Activities/Uses. Mining, excavating, dredging, withdrawing, or removing soil, loam, peat, gravel, sand, rock, surface water, ground water, or other mineral substance or natural deposit, or otherwise altering the topography of the Premises;
3. Disposal/Storage. Placing, filling, storing or dumping of soil, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, tree and other vegetation cuttings, liquid or solid waste or other substance or material whatsoever;
4. Adverse Impacts to Vegetation. Cutting, removing, or destroying trees, shrubs, grasses or other vegetation;
5. Adverse Impacts to Water, Soil, and Other Features. Activities detrimental to drainage, flood control, water conservation, water quality, erosion control, soil conservation, natural habitat, archaeological conservation, or ecosystem function;
6. Introduction of Invasive Species. Planting or introducing any species identified as invasive by the Massachusetts Invasive Plant Advisory Group or identified as invasive in such recognized inventories as the Massachusetts Introduced Pests Outreach Project, the Northeast Aquatic Nuisance Species Panel, or other such inventories, and any successor list as mutually agreed to by Grantor and Grantee;
7. Motor Vehicles. Using, parking, or storing motorized vehicles, including motorcycles, mopeds, all-terrain vehicles, off-highway vehicles, motorboats or other motorized watercraft, snowmobiles, launching or landing aircraft, or any other motorized vehicles, acknowledging that vehicles necessary for public safety (i.e., fire, police, ambulance, other government officials) may have a legal right to enter the Premises;
8. Subdivision. Subdividing or conveying a part or portion of the Premises (as compared to conveyance of the Premises in its entirety which shall be permitted), it being the Grantor's and Grantee's intention to maintain the entire Premises under unified ownership;



9. Use of Premises for Developing Other Land. Using the Premises towards building or development requirements on this or any other parcel;
10. Adverse Impacts to Stone Walls, Boundary Markers. *[Add, delete, or edit, if applicable]* Disrupting, removing, or destroying stone walls, granite fence posts, or any other boundary markers;
11. *[Add any other prohibited acts or uses on the Premises;]*
12. Residential or Industrial Uses. Using the Premises for residential or industrial purposes;
13. Inconsistent Uses. Using the Premises for commercial purposes that are inconsistent with the Purposes or that would materially impair the Conservation Values, or for any other uses or activities that are inconsistent with the Purposes or that would materially impair the Conservation Values.

III.B. Permitted Acts & Uses

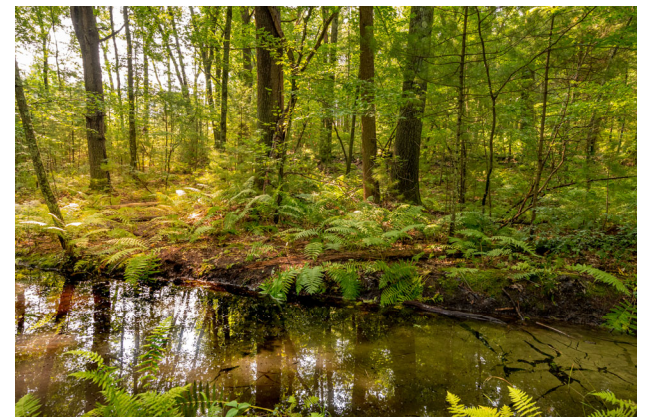


Gives back rights that are consistent with preserving the conservation values:

“Notwithstanding the Prohibited Acts and Uses described in Paragraph III.A., the Grantor may conduct or permit the following acts and uses on the Premises, **provided they do not materially impair the Purposes and/or Conservation Values.** In conducting any Permitted Act and Use, Grantor shall minimize impacts to the Conservation Values to ensure any such impairment thereto is not material.”

III.B. Permitted Acts & Uses

1. Vegetation Management
2. Removing non-native, nuisance, or invasive species
3. Composting
4. Natural Habitat and Ecosystem Improvement
5. Indigenous Cultural Practices
6. Maintaining & Constructing Trails
7. Signs
8. Motorized Vehicles
9. Outdoor Passive Recreational and Educational Activities
10. Forest Management
11. Agricultural Activities
12. Archaeological Investigations
13. Green Energy
14. Special Use Areas: areas of more intense use /residential structure



CR Stewardship Responsibility: Monitoring

How will you ensure the terms of the CR are being upheld?

Annual (best practice) Monitoring

- Has land ownership changed?
- Encroachments? Trespassing?
- Is the land being used in a way that's not permitted by the CR?
- Strong & continuous landowner relationships = less violations



CR Approval Process

Massachusetts is the only state that requires municipal & state approval of CRs!

Grantor & Grantee agree on draft CR



EEA-DCS CR Review



CR Signed



CR recorded at Registry of Deeds



This contract just won't do, good God a CHILD could understand it.

The CR *does not exist* if it is not recorded!!!



GRANTOR: Essex County Greenbelt Association, Inc
GRANTEE: Town of West Newbury
ADDRESS OF PREMISES: Off Coffin and Main Streets, West Newbury
FOR GRANTOR'S TITLE SEE: Southern Essex District Registry of Deeds at Book 41307 Page 313.

CONSERVATION RESTRICTION

ESSEX COUNTY GREENBELT ASSOCIATION, INC, a Massachusetts not-for-profit corporation having its principal office at 82 Eastern Ave., Essex, Massachusetts, being the sole owner of the Premises as defined herein, for its successors and assigns ("Grantor"), acting pursuant to Sections 31, 32, and 33 of Chapter 184 of the Massachusetts General Laws, grants, with QUITCLAIM COVENANTS, to the TOWN OF WEST NEWBURY, a Massachusetts municipal corporation, acting by and through its Conservation Commission by authority of Section 8C of Chapter 40 of the Massachusetts General Laws, having its principal office at 381 Main Street, West Newbury, Massachusetts, its permitted successors and assigns ("Grantee"), for eighty-seven thousand five-hundred dollars (\$87,500.00), IN PERPETUITY AND EXCLUSIVELY FOR CONSERVATION PURPOSES, the following Conservation Restriction on land located in West Newbury containing the entirety of a 32.49-acre parcel of land ("Premises"), which Premises is more particularly described in Exhibit A and shown in the attached reduced copy of a survey plan in Exhibit B, both of which are incorporated herein and attached hereto.

I. PURPOSES:

This Conservation Restriction is defined in and authorized by Sections 31, 32, and 33 of Chapter 184 of the Massachusetts General Laws and otherwise by law. The purposes of this Conservation Restriction ("Purposes") are to ensure that the Premises will be maintained in perpetuity in its

Fee Land Ownership: Article 97*

Article 97 of the Articles of Amendments to the Constitution of the Commonwealth of Massachusetts

“...establishes a right to a clean environment including its natural, scenic, historical, and aesthetic qualities for the citizens of the Commonwealth. Art. 97 also declares the conservation of natural resources a public purpose and provides that land or easements subject to Art. 97 shall not be used for other purposes or disposed of without a two-thirds roll call vote of the Legislature.”

In plain language. . .

Land cannot be changed to a non-conservation use or disposed of without 2/3 local vote + 2/3 vote of the MA Legislature.

No Net Loss

- Alternatives analysis
- Replacement land of equal to or greater conservation and monetary value, or
- Payment in lieu of replacement land

Fee Land Ownership: Ensuring Article 97 Protection

*Language is important!**

Sample Deed Language

Land is granted to the Town/City “acting by and through its Board of Selectmen/City Council and to be held under the care and custody of the Conservation Commission for open space and recreation purposes pursuant to G.L. c. 40 Section 8C and is hereby subject to the protections afforded under Article 97 of the Amendments to the Massachusetts Constitution. . .”

- ✓ Intended use is conservation / open space / recreation / park / drinking water protection
- ✓ References authority to hold conservation land Conservation Commission Act, Park Commission Act (MGL Ch. 45 Section 3) or Select Board/City Council/Water Board authority (MGL Ch. 41 Section 40)
- ✓ References Article 97

Town Meeting Article or City Council Vote Language MUST:

- State that land is being purchased for conservation / open space / watershed protection / recreation purposes
- Designate care, custody & control to appropriate entity (Cons Comm, Parks Commission, Drinking water authority)
- Reference authorizing statutes
- State that land is being acquired for the purposes under Article 97

Due Diligence & Conservation Land

Buyer Beware!

Title Exam

- How do you know the seller is/are the record owner(s)? The sole owner? Is there a mortgage?

OWNERS: Andrew Chooljian, individually, and as Personal Representative of the Estate of Martin Almas Chooljian, and as Trustee of the Martin Almas Chooljian Revocable Trust as tenant in common with Ann Chooljian and Cynthia Jost, devisees of the Estate of Martin A. Chooljian a/k/a Martin Almas Chooljian, Essex County Probate No. 21P-3227 as tenant in common with Charles S. Margosian a/k/a Charles S. Margosian, Sr., Charlene Nickson and Craig Bergstrom, by virtue of a deed from Charles S. Margosian, Gary L. Bergstrom and Charles G. Nickson, Trustees of Satineg C. Walden Trust 2005 u/d/t dated August 29, 2005, as evidenced by Certificate recorded with said Deeds, Book 33976, Page 589, as set forth in deed dated April 3, 2015, recorded with said Deeds, Book 33976, Page 593.

Title to the property was conveyed to H. Robert Chooljian and Martin A. Chooljian by deed dated August 2, 2007, recorded with said Deeds, Book 27120, Page 381. They held as tenants in common, each as to an undivided one-half interest.

H. Robert Chooljian died March 2, 2011, Essex County Probate No. 11P-0977EA, and devised the property to Martin A. Chooljian and Satineg Walden. At this point Martin A. Chooljian held a three-quarter undivided interest and Satineg Walden held a one-quarter undivided interest.

Satineg C. Walden conveyed the one-quarter interest to Charles S. Margosian, Trustee of the Satineg C. Walden Trust 2005 u/d/t dated August 29, 2005. A trustee's certificate of the Satineg C. Walden Trust 2005 was recorded at Book 26322, Page 526. The original trustees were Gary L. Bergstrom and Charles G. Nickson. Charles S. Margosian accepts his appointment as trustee by instrument dated April 3, 2015, recorded with said Deeds, Book 33976, Page 584. A new trustee's certificate is recorded at Book 33976, Page 589, together with a deed of the one-quarter interest held by the Satineg C. Walden Trust 2005 to Charles S. Margosian a/k/a Charles S. Margosian, Sr. (1/12th), Charlene Nickson (1/12th) and Craig Bergstrom (1/12th).

The three-fourths undivided interest held by Martin H. Chooljian passes through his estate, see Essex County Probate No. ES21P227E. Martin Chooljian died testate leaving three children, Andrew Chooljian, Anne Chooljian and Cynthia Jost. Andrew Chooljian was appointed Personal Representative on November 1, 2021.

Due Diligence & Conservation Land

Buyer Beware!

Title Exam

- How do you know the seller is/are the record owner(s)? The sole owner? Is there a mortgage?

Appraisal

- If municipal \$\$

OWNERS: Andrew Chooljian, individually, and as Personal Representative of the Estate of Martin Almas Chooljian, and as Trustee of the Martin Almas Chooljian Revocable Trust as tenant in common with Ann Chooljian and Cynthia Jost, devisees of the Estate of Martin A. Chooljian a/k/a Martin Almas Chooljian, Essex County Probate No. 21P-3227 as tenant in common with Charles S. Margosian a/k/a Charles S. Margosian, Sr., Charlene Nickson and Craig Bergstrom, by virtue of a deed from Charles S. Margosian, Gary L. Bergstrom and Charles G. Nickson, Trustees of Satineg C. Walden Trust 2005 u/d/t dated August 29, 2005, as evidenced by Certificate recorded with said Deeds, Book 33976, Page 589, as set forth in deed dated April 3, 2015, recorded with said Deeds, Book 33976, Page 593.

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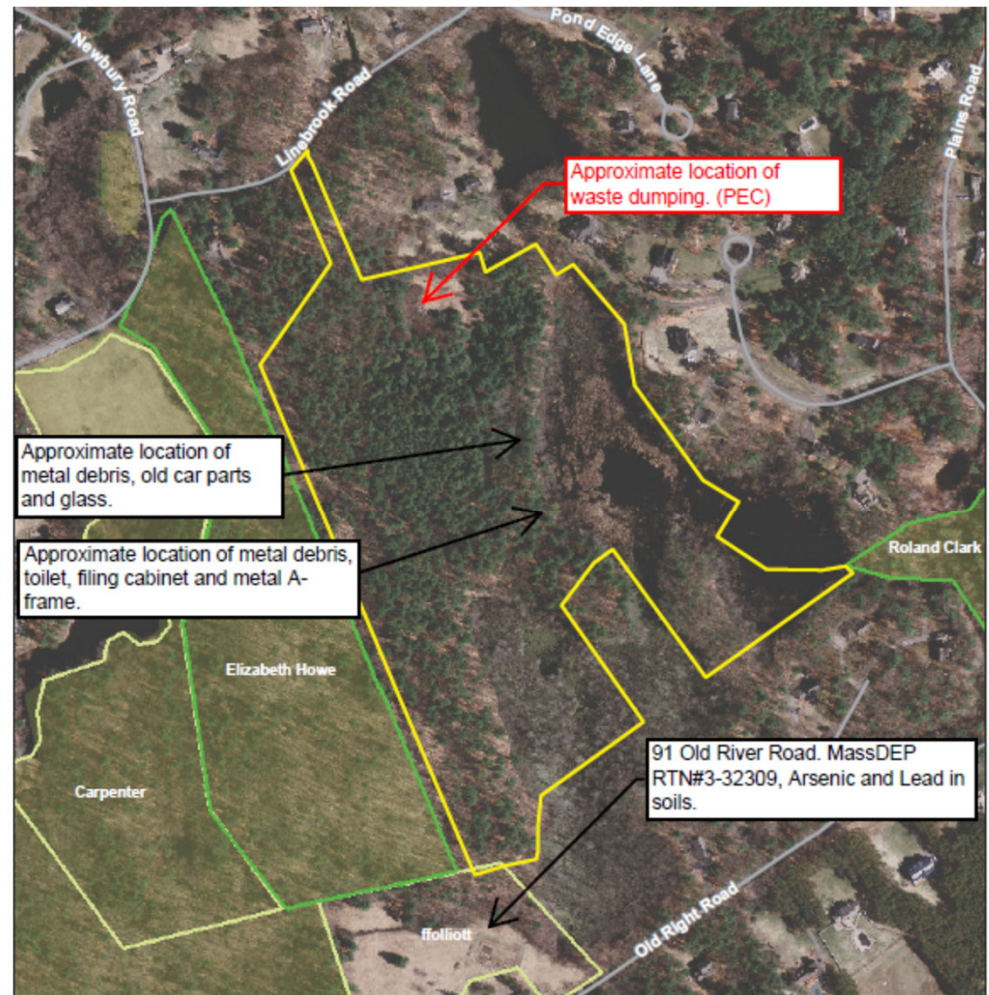
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Due Diligence & Conservation Land

Buyer Beware!

Environmental Site Assessment (Phase I)

- How do you know the property doesn't have hazardous waste? A history of contamination?

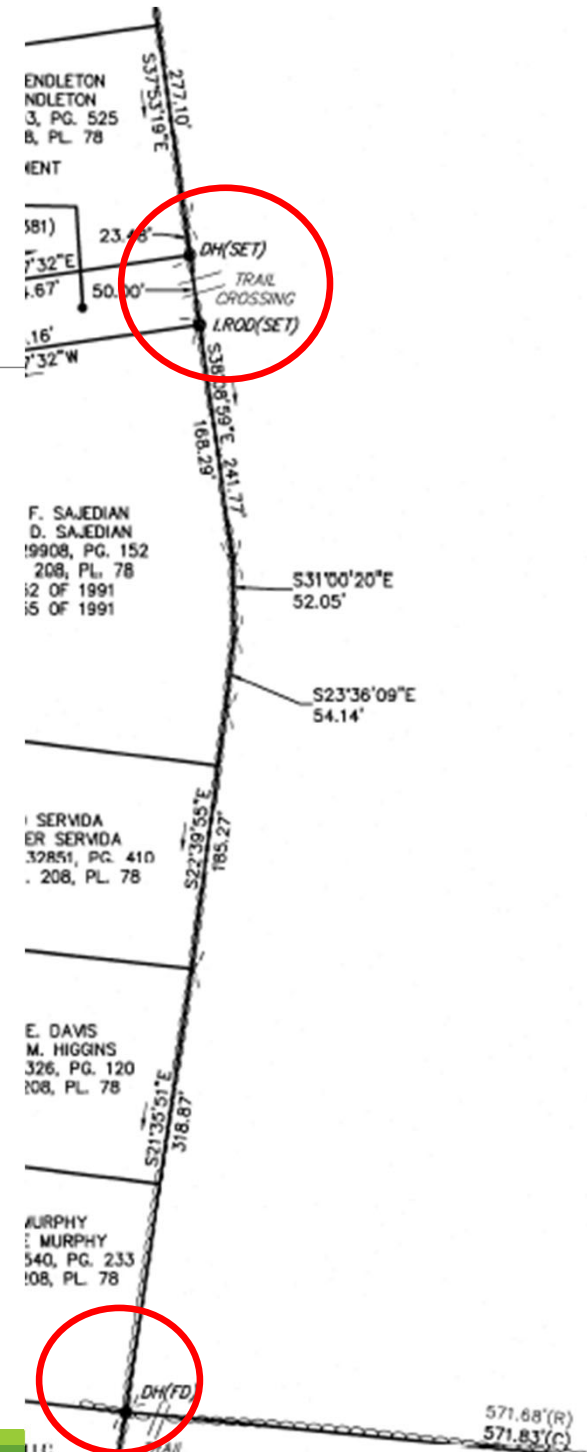


Due Diligence & Conservation Land

Buyer Beware!

Survey

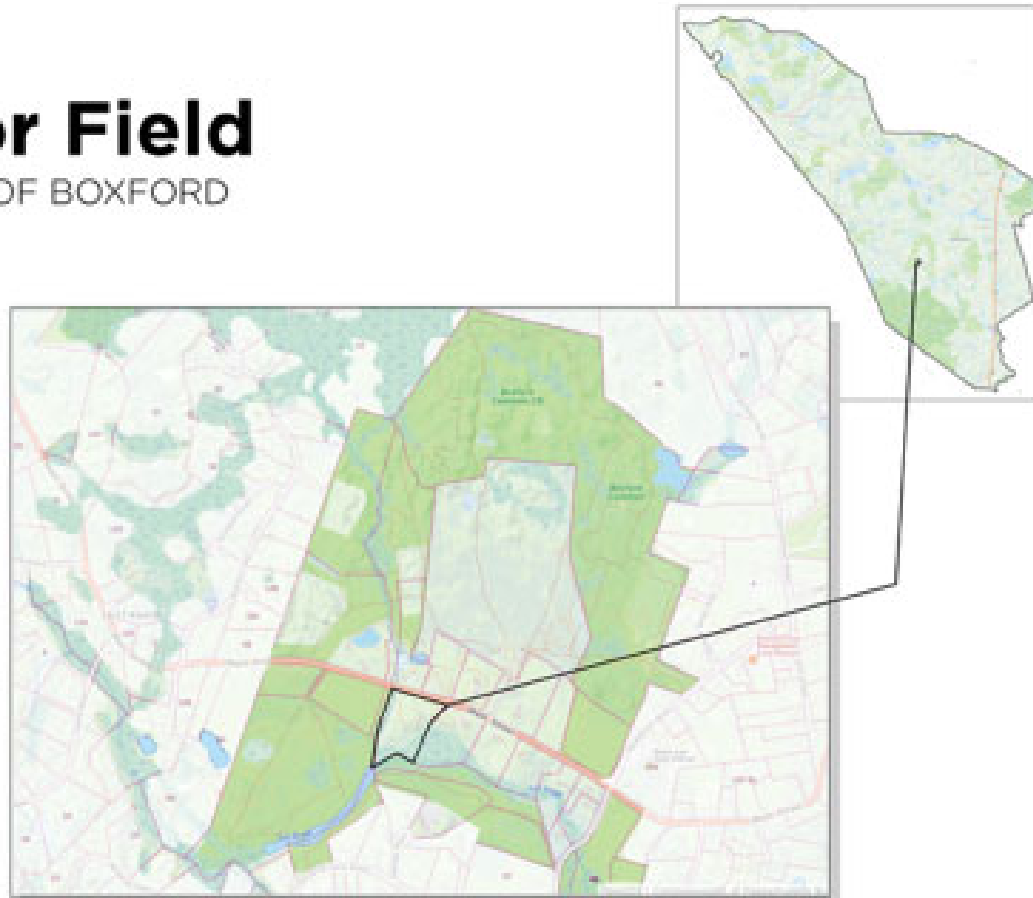
- Where are your property boundaries?
Are they marked? Are there encroachments?



Davis Pollinator Field

4.5 ACRES | OWNED BY TOWN OF BOXFORD

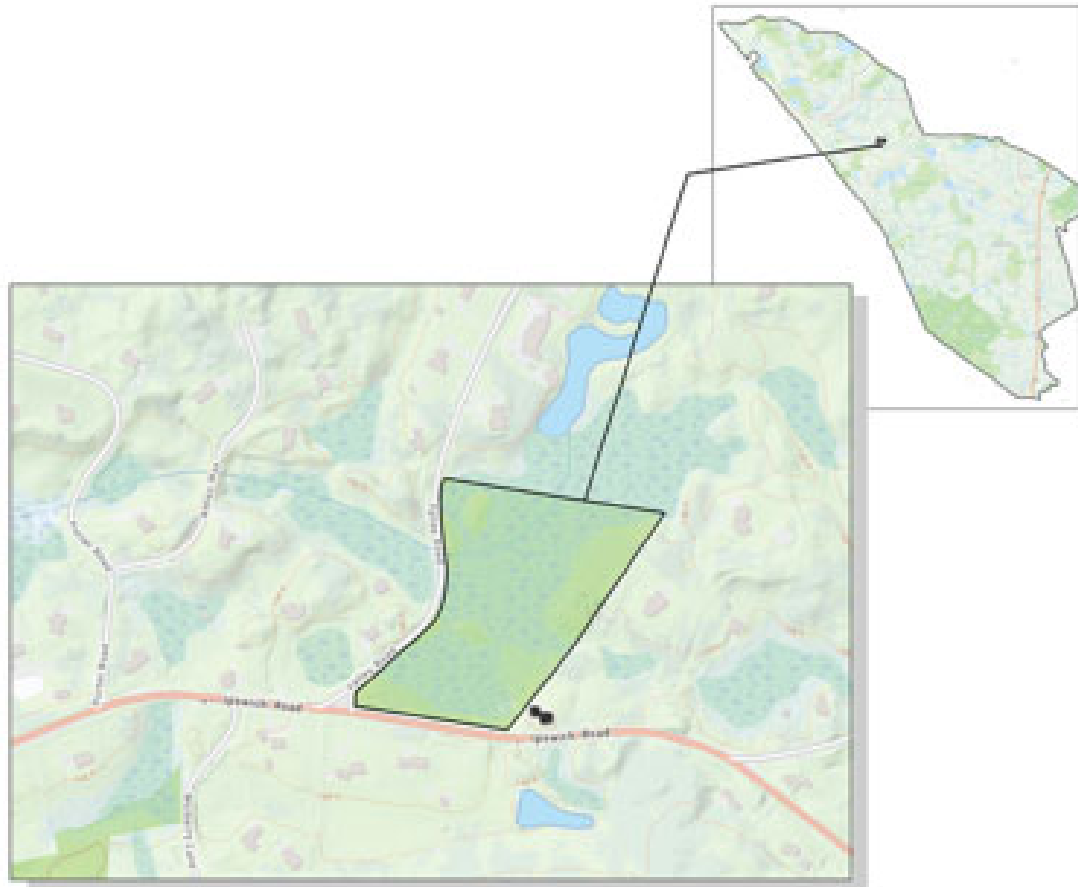
CR held by BTA/BOLT
as requested by Select Board
and under Art. 97



Achenbach CR

10 ACRES | PRIVATELY OWNED

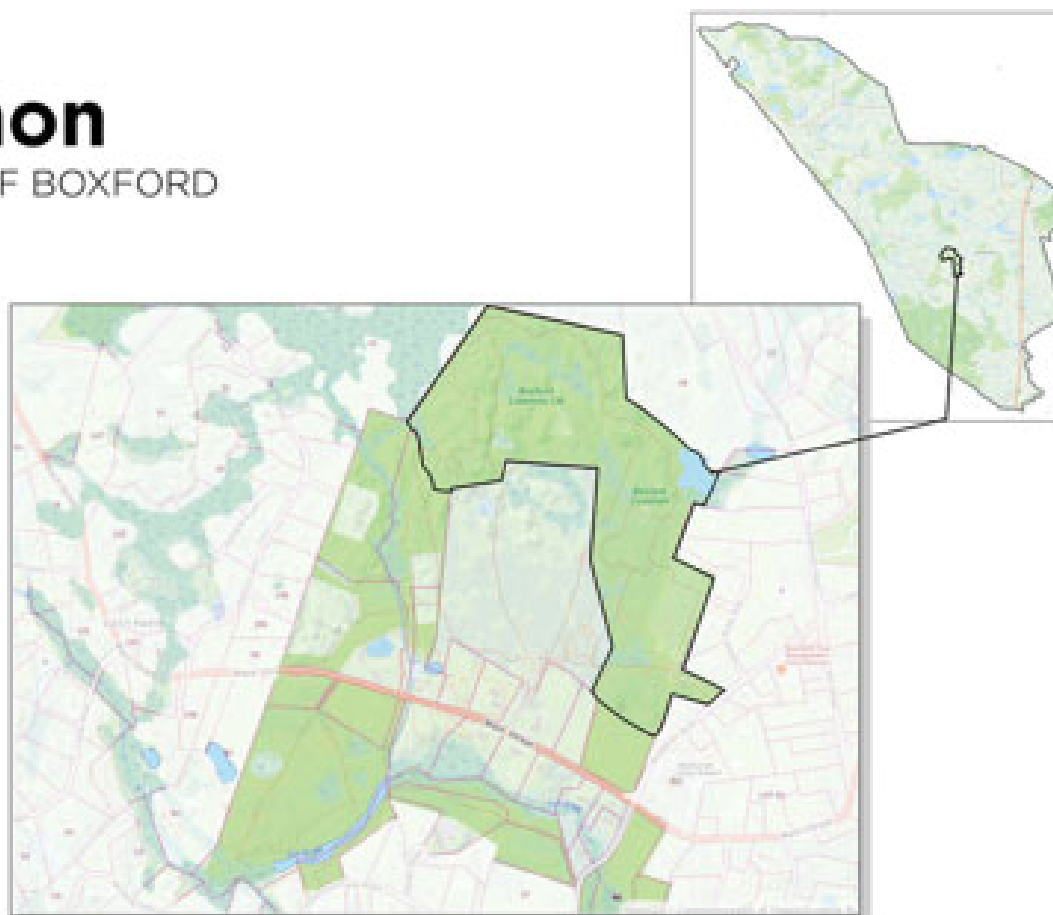
CR held by BTA/BOLT
charitable contribution in 1993



Boxford Common

75 ACRES | OWNED BY TOWN OF BOXFORD

53-acre CR held by BTA/BOLT
as requested by Select Board
and under Art. 97



Resources

Massachusetts Open Space Network

www.massopenspace.org

MA Conservation Restriction Review Program

www.mass.gov/info-details/conservation-restriction-review-program

Resources for Demonstrating Public Benefit

www.mass.gov/doc/plans-policies-programs-helpful-in-demonstrating-public-benefit

MassMapper

maps.massgis.digital.mass.gov/MassMapper/MassMapper.html

Article 97 & the Public Lands Preservation Act

www.mass.gov/info-details/article-97-the-public-lands-preservation-act

Questions?

