

**DRAFT**  
**REPORT OF THE**  
**SAINT MARK'S GOLF COURSE**  
**CONSERVATION RESTRICTION COMMITTEE**

**Executive Summary**

The Golf Course Conservation Restriction Committee submits this Report to the Board of Selectmen as required in our charge and with extensive assistance from the public, its two ex-officio members and Sudbury Valley Trustees has prepared the accompanying Draft Conservation Restriction. The committee believes that given our tight deadline and with the information available to the committee that this document honors the vote taken under Warrant Article 1 at the March 8, 2017 Southborough Special Town Meeting.

As required in our charge the Committee makes the recommendation that the Sudbury Valley Trustees be the grantee and sole holder of the Conservation Restriction.

**Membership**

Voting Members:

Frederica Gillespie, Chair	Open Space Preservation Commission Representative
Benjamin Smith, Vice-Chair	Conservation Commission Representative
Andre Fortin	Golf Course Committee Representative
Ed Pearson	At-Large Community Representative
David Candela	Recreation Commission Representative

Ex-Officio (Non-Voting) Members:

Beth Rosenblum	Conservation Commission Administrator
Aldo Cipriano	Town Counsel
Luke Legere	Special Counsel

Assisting

Christa Collins	Sudbury Valley Trustees, Director of Land Protection
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**Materials Reviewed**

1. March 8, 2017 Special Town Meeting Article 1 and Amendment 1, True Attest Copy from Town Clerk dated 6/14/17
2. Golf Course Conservation Restriction Committee Charge, Southborough Board of Selectmen, October 3, 2017, 1 page.
3. Draft Conservation Restriction, prepared by Aldo Cipriano, Town Counsel, June 14, 2017, 19 pages.

4. Grant of Conservation Restriction, City of Newton Board of Aldermen, March 23, 2009, 42 pages.
5. Draft Grant of Conservation Restriction, Luke Legere, Special Counsel, November 17, 2017, 34 pages.
6. Letter, "Re: Southborough Conservation Commission as Principal Co-Holder CR, Golf Course," from Aldo Cipriano, Town Counsel, to Mark Possematto, Chairman, Southborough Conservation Commission, November 16, 2017, 2 pages.
7. Information regarding George Peabody Gardener, provided by the Southborough Historical Society, undated, 2 pages.
8. "Southborough Open Space and Recreation Plans' References to the St Mark's Golf Course," undated, 2 pages.
9. Letter, "Re: Conservation Commission as Principal Co-Holder CR, Golf Course," from Aldo Cipriano, Town Counsel, to Frederica Gillespie, Chairperson, Golf Course Conservation Restriction Committee, November 16, 2017, 2 pages.
10. Email, "RE: St. Marks," from Aldo Cipriano, Town Counsel, to Beth Rosenblum, Conservation Administrator, November 21, 2017, 1 page.
11. Draft Grant of Conservation Restriction, Luke Legere, Special Counsel, November 30, 2017, 37 pages.
12. Email, "Re: Golf Course CR Committee," from Whitney Beals, President, Southborough Open Land Foundation board, December 4, 2017, 1 page.
13. Draft Grant of Conservation Restriction, Luke Legere, Special Counsel, December 7, 2017, 39 pages.
14. Draft Grant of Conservation Restriction, Luke Legere, Special Counsel, December 14, 2017, 41 pages.
15. Draft Grant of Conservation Restriction (Single Grantee), Luke Legere, Special Counsel, December 15, 2017, 43 pages.
16. Draft Grant of Conservation Restriction (Co-Holder Grantees), Luke Legere, Special Counsel, December 15, 2017, 43 pages.
17. "SVT Expenses and Revenues," Sudbury Valley Trustees, received by the Committee on December 18, 2017, 2 pages.
18. Plan of land, "ALTA/NSPS Land Title Survey, 26 Cordaville Road, Southborough, Mass.," Feldman Land Surveyors, November 24, 2017, 1 sheet.
19. Plan of land, "Conceptual Rerouting Plan," The Northeast Golf Company, December 5, 2017, 1 sheet.

## **Process**

Six meetings of the Committee were held at 7:00 PM at Cordaville Hall, 9 Cordaville Road, on the following dates:

November 6, 2017  
November 13, 2017  
November 20, 2017  
December 4, 2017  
December 11, 2017, Public Forum  
December 18, 2017

In accordance with the Committee's charge and the Massachusetts Open Public Meeting statute, agendas for each meeting were posted at least 48 hours in advance at the Town House, and all meetings of the Committee were open to the public. Selectman Brian Shea attended the first meeting on November 6, 2017 to present the Selectmen's charge to the Committee.

The Committee was charged with conducting at least one public hearing to receive comments from the public on the terms of the Conservation Restriction (CR). Accordingly, a public forum was held on December 11, 2017. To encourage public participation, in addition to promoting the forum on the town website, a press release was distributed to Metrowest Daily News, mysouthborough.com, the Southborough Open Land Foundation, and the Sudbury Valley Trustees. The Southborough Recreation Department in turn emailed a press release to its large database of Southborough residents to further publicize the forum. Twenty-three members of the public attended the forum, including Selectmen Bonnie Phaneuf and Lisa Braccio, and SOLF board members Deb Costine, Ralph Ellis and Sally Watters.

Town Counsel Aldo Cipriano attended the November 6 and December 4 meetings and Special Counsel Luke Legere attended every meeting except the first. Attorney Cipriano presented the Committee with legal counsel regarding the CR generally and provided recommendations for the naming of grantees for the CR. Special Counsel Legere provided extensive counsel on the crafting of a CR. Based on comments from the Committee at its November 13<sup>th</sup> hearing, Attorney Legere prepared a draft CR document and updated this draft after each successive meeting of the Committee. At the invitation and under the direction of the Committee, SVT's Director of Land Protection Christa Collins attended meetings, provided support to the committee with expert information and details on conservation restrictions and valuable input on conservation restriction requirements and the approval process of the Massachusetts Executive office of Energy and Environmental Affairs.

Agendas and minutes of each meeting of the Committee are available for review at the Town of Southborough website, southboroughtown.com.

On December 19, 2017 the Board of Selectmen voted to extend the appointment term of the Committee to January 2, 2018. It is anticipated that a seventh meeting of the Committee will take place on that date immediately prior to the Selectmen's meeting that evening.

## **Recommendations**

### Draft Conservation Restriction:

The result of the Committee's meetings and deliberations, advice of Town and Special Counsel, and comments received at the public forum is the Draft Conservation Restriction dated December 21, 2017. The Committee's over-arching goal throughout the process was to prepare a draft CR that honors the intent of Warrant Article 1 of the March 8, 2017 Southborough Special Town Meeting.

The resulting draft CR:

- Accommodates the construction of a Public Safety Facility on an approximate 6-acre portion of the existing golf course, and specifically allows for the construction of a septic system to accommodate the needs of the new Public Safety Facility, the Woodward School, and the Golf course;
- Protects the Town's right to successfully operate a municipal golf course on the property, and specifically allows for a reconfiguration of the northern portion of the course to accommodate the proposed Public Safety Facility;
- Preserves the site in its natural, scenic and open condition in perpetuity.

### Proposed Holder of the Conservation Restriction:

Much of the Committee's time was spent addressing the second duty listed in the Selectmen's charge to the Committee: recommendation of grantee to hold the CR. At its December 18, 2017 meeting, the Committee voted unanimously to recommend that the CR be granted to and held by the Sudbury Valley Trustees.

The minutes of the Committee's six meetings show the extensive care and deliberation devoted to this issue throughout the Committee's appointment. Town Counsel has recommended to the Committee that the CR should be jointly held by the Southborough Conservation Commission as Principal Co-Holder and the Southborough Open Land Foundation as Junior Co-Holder. The Committee respectfully and reluctantly disagrees with this recommendation for the reasons given below:

- The purpose of the Conservation Restriction (CR) is to give up a subset of the development and ownership rights in the St. Mark's Golf Course parcel. The most effective way to achieve this is to define those rights as clearly as is possible in the CR and then grant them to an independent land trust to protect them in perpetuity;
- Sudbury Valley Trustees (SVT) is a professional land trust staffed by full time employees who are experts in the field of managing open space and have been for over 70 years. SVT is quite capable to meet all of the demands placed on them by the terms of the draft CR without any need for a co-holder. Among SVT's qualifications are:
  - SVT is hired annually by the Southborough Conservation Commission to provide the required Annual Monitoring and Reserved Rights reviews of Chestnut Hill Farm to comply with the CR on that property;
  - SVT currently holds 6 CR's in Southborough totaling 223.63 acres;
  - SVT owns 6 properties in Southborough totaling 34.4 acres;
  - SVT currently holds 22 CR's on more than 2,500 acres in 21 surrounding towns;
  - SVT owns 89 reservations consisting of 2,300 acres in 18 surrounding towns;

- SOLF is a much smaller all-volunteer local land trust without any full-time professional staff and currently does not hold any CR's;
- SOLF indicated in writing and at public meetings of the Committee and the Conservation Commission of its preference for SVT to be the sole holder of the Golf Course CR;
- The Conservation Commission does not currently have the personnel (or budget) to adequately manage this CR as a Principal Co-Holder and will likely have to hire outside help to meet the requirements of the CR;
- Any land trust granted this CR will require an endowment to cover costs which include: preparation of baseline documentation, Annual Monitoring inspections, Reserved Rights reviews, and legal defense of the CR. SVT estimates a required endowment of \$37,598 to cover these costs in perpetuity. It is extraordinarily unlikely that the Conservation Commission would be able to provide the same services for less than this estimate;
- Any land trust granted this CR as a co-holder would still require an endowment to cover the costs of the obligations and responsibility of co-holding, likely the same amount as that to be sole holder;
- While having the Conservation Commission as a co-holder of the CR might not create a legal conflict, it would however, create a practical one. It is not difficult to imagine scenarios involving either the Public Safety Facility or the golf course management staff that would require Conservation to: (1) exercise its enforcement authority under the Wetlands Protection Act, and (2) exercise its enforcement authority under the CR, while at the same time not wanting to harm (or even appear to harm) the Town's ability to provide public safety services or successfully operate a municipal golf course. Enforcement actions by Conservation can be appealed and end up in court, leading to a situation where the Town ends up on both sides of the resulting litigation;
- Additional conflict could arise if ever the Town, either in its operations of the golf course or the Public Safety Facility inadvertently violated the requirements of the Conservation Restriction. Creating another situation where the Town potentially could be on both sides of resulting litigation;
- A single grantee provides for a much cleaner administrative arrangement. With a single holder, there are no questions about jurisdiction, responsibilities or tie-breaking in the event of disagreement between co-holders;
- The CR must pass a review by the Massachusetts Executive Office of Energy and Environmental Affairs (EOEEA). This review typically takes six months to complete. Given that the Town Meeting Warrant article requires that the CR be recorded in the Worcester County Registry of Deeds no later than July 1, 2018, time is tight and it is critical that the CR pass this review. If Conservation is designated the "Principal Co-holder" of the CR, this may be seen as a backdoor attempt to subvert the purpose of the CR and lead to a rejection by EOEEA, which in turn will lead to a failure by the Town to meet the schedule set by the Town Meeting warrant article;
- A single CR holder also eliminates the need for potentially protracted negotiations between co-holders to establish a Memorandum of Understanding (MOU). An MOU would be required by EOEEA to clearly establish and identify each of the co-holder's areas of jurisdiction and responsibility for overseeing the terms of the CR. These negotiations would add complexity and additional timing to the tight process timelines;
- At the Public Forum on December 11, 2017, every member of the public who offered an opinion on the holder of the CR was in favor of naming SVT sole holder. No member of the public spoke in favor of nominating the Conservation Commission and SOLF as co-holders or the Conservation Commission and SVT as co-holders.

## **Outstanding Issues**

To meet the provisions of M.G.L. c.184 and the requirements of the Executive Office of Energy and Environmental Affairs (EOEEA), several items need to be prepared to accompany the CR:

- Baseline documentation: The baseline, or existing, conditions of the golf course property need to be documented to the standards of the EOEEA. At Chestnut Hill Farm, Sudbury Valley Trustees was paid to prepare this documentation. Baseline documentation typically includes photographs, textual descriptions, property survey information, and historical information, and is different than the existing conditions survey that the Town's consultant is currently believed to be preparing;
- An existing conditions survey: It is believed by the Committee that this document is currently being prepared by the Town's engineering and survey consultant, and should contain:
  - Property lines with bearings and distances;
  - Planimetric data including buildings, utilities, drainage, roadways, drives, paths and signage;
  - Vegetation by broad type (grass, brush, forest);
  - Golf facilities including the edges of fairways, tees, bunkers and greens;
  - Wetlands, water courses and water bodies as delineated by a Professional Wetland Scientist;
  - Contours at 2' intervals;
- Envelope plan: Certain activities proposed on the parcel are inconsistent with a CR and must be excluded from its provisions. These include: relocation of the golf clubhouse and parking area, reconfiguration of certain golf tees, fairways and greens to accommodate the Public Safety Facility, and construction of a new septic system. A plan must be prepared that accurately identifies the footprint of each of these activities. Each footprint must be identified on a plan with an outline labeled with bearings and distances;
- Public Safety Complex –Town Counsel advised Committee that the Complex would be on a separate ANR lot, while others have advised there will be no subdivision of the lot. Either way, accommodations for the Complex will need to be addressed on the Plan;
- Subdivision plan: The ANR plan that separates the public safety facility onto its own lot must be prepared. The status of the ANR lot needs to be confirmed.

These materials will serve as exhibits to the final CR. The draft CR contains placeholder references to these materials in anticipation of their completion.

It is anticipated that the finalization of the Conservation Restriction will involve several steps:

- Completion of the accompanying supporting exhibits listed above;
- Potential requested changes to the CR based on the ongoing work of the Public Safety Building Committee and the Golf Course Committee;
- Negotiation of the CR terms with the Board of Selectmen's chosen grantee, which will necessarily require revision of the document;
- Incorporation of EOEEA comments and requests generated during their review process.

During its term, the Saint Mark's Golf Course Conservation Restriction Committee has gathered an incredible amount of knowledge from Southborough residents, legal consultants, and experts in the creation and ongoing support of conservation restrictions. We believe that this expertise and the good will that we have built with the various golf course stakeholder individuals and groups can be a valuable

resource to the Selectmen and the Town as the golf course CR is finalized. For these reasons we respectfully request that the Selectmen extend our charge until June 30, 2018 or the date that the CR is recorded in the Worcester County Registry of Deeds, so that we may provide input and recommendations and assist you as needed with the completion of this important document.

At our December 18, 2017 meeting the Committee unanimously voted to recommend that the BOS apply to the CPC as soon as possible, to support a warrant article requesting \$37,568 to cover SVT's endowment costs to hold the Golf Course CR, and also voted unanimously that the Committee encourages and supports the BOS to explore all avenues for continuing golf course operations, per the intent of the Special Town Meeting warrant article.

This Report respectfully submitted to the Board of Selectmen by the Golf Course Conservation Restriction Committee for presentation at their January 2, 2018 meeting.

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