



# TOWN OF TRURO

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## REVISED - POLICY MEMORANDUM #6

Date: December 21, 1999; revised September 13, 2022

\*This policy was revised at the September 13, 2022 Select Board meeting solely to reflect the titles used in the Town Charter for the Town Manager and Select Board and to modify language to be gender neutral. No changes were made to the content of the Policy at that meeting.

Subject: **CONSERVATION RESTRICTIONS**

WHEREAS, the protection of the environment, including clean air, pure ground water, marine waters, ponds and other water resources, scenic areas, open space, natural habitat of fish, shellfish, wildlife and plants, is a primary concern of the Town of Truro; and

WHEREAS, the Town has prepared a Local Comprehensive Plan (1994); Harbor Management Plan (1994); Open Space Plan (1984, amended 1990) and a Water Resources Protection Plan (1985); and Truro Conservation Trust has prepared a Pamet River Greenway Management Plan (1987); and the Army Corps of Engineers has prepared the Pamet River Investigation by the Army Corps of Engineers (1998); all of which identified strategies to protect the conservation values cited above; and

WHEREAS, conservation restrictions pursuant to M.G.L. Chapter 184, Sections 31-33 are a proper means to implement appropriate objectives of the protection plans cited above; and

WHEREAS, the Select Board and the Conservation Commission must evaluate the extent to which a conservation restriction proposed for a particular property will yield significant public benefits by protecting the conservation values cited above and/or providing scenic enjoyment, outdoor recreation and education of the public;

NOW, THEREFORE, the Select Board declare the following policies to guide the use of conservation restrictions in the Town:

1. The Town of Truro should accept and/or approve proposed conservation restrictions that provide significant public benefit as enumerated above; approval of all conservation restrictions by the Select Board is and shall be conclusive confirmation that the same yields significant public benefits envisioned by Section 170(h) of the Internal Revenue Code; approval of each proposed restriction is discretionary by the Board on a case by case basis, after evaluating the benefits to the community of each proposal.

2. Pursuant to the provisions of General Laws, Chapter 184, Section 32, Conservation Restrictions may be held by the Town of Truro and administered by the Truro Conservation Commission upon approval by the Select Board in accordance with the provisions of this Policy. If the Town is purchasing the conservation restriction from a landowner, then a vote of Town Meeting is also required (a majority vote is required if funding is already appropriated; a two-thirds majority vote is required if funding must be raised and appropriated by loan or otherwise). Conservation Restrictions may also be held by state and federal environmental agencies, including the U. S. Department of the Interior for lands within the Cape Cod National Seashore. Town approval of conservation restrictions held by these state and/or federal agencies is not statutorily required, however, the Select Board requests the courtesy of reviewing proposed restrictions to determine consistency with town interests and goals.
3. Conservation restrictions may also be held by the Truro Conservation Trust, Massachusetts Audubon Society, or other qualified conservation organizations within the meaning of Section 170 of the Internal Revenue Code; while the Town is not responsible for enforcing conservation restrictions held by a charitable organization or trust, pursuant to General Laws, Chapter 184, Section 32, the restriction must be approved by the Select Board or Town Meeting of the Town.
4. The Truro Board of Assessors must be furnished with a full copy of the approved and recorded restriction along with a registered survey depicting the metes and bounds of the parcel or portion of a parcel that will be held in a conservation restriction. This survey will be recorded with the restriction.

Guidelines for the Approval of Conservation Restrictions in the Town of Truro are attached hereto, incorporated herein, and labeled Exhibit A. These Guidelines and the policies set forth above are intended to remain in effect until modified by a majority vote of a quorum of the Select Board after a duly noticed public hearing. Future modifications of same will not affect any conservation restrictions already approved under the policies in effect at the time.



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Kristen Reed, Chair



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John Dundas, Clerk



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Stephanie Rein



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Robert Weinstein, Vice Chair



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Susan Areson

Select Board  
Town of Truro

Date of signing: September 13, 2022

**EXHIBIT A**  
**GUIDELINES FOR APPROVAL OF CONSERVATION RESTRICTIONS**  
**FOR THE TOWN OF TRURO**

**A. GENERAL INFORMATION**

The following Guidelines shall be used by the Truro Select Board when considering whether or not to approve conservation restrictions on land in the Town of Truro in accordance with the Massachusetts Conservation Restrictions Act, General Laws, Chapter 184, Sections 31-33.

1. A conservation restriction is a property interest which limits the future use of the land in order to retain it in its natural, scenic or open condition, or in agricultural or forest use. The landowner relinquishes certain development rights in exchange for tax advantages. A conservation restriction is the same as a conservation easement, as it is sometimes called.
2. There is no standard form for a conservation restriction. Please consult The Massachusetts Conservation Restriction Handbook, published by the state Division of Conservation Services (tel. 617-727-9800 x 290).
3. A conservation restriction is a voluntary, yet legally binding agreement between a landowner and the designated holder of the restriction as selected by the landowner. In Truro, the holder can be the Town, the Truro Conservation Trust, the Commonwealth of Massachusetts, the United States Department of the Interior, or other qualified conservation organizations. The holder is responsible to ensure that the landowner keeps the promise not to develop the property. Penalties for violating the agreement can include injunctions and/or money damages.
4. The owner continues to hold title to the property and has the right to use the restricted land in ways that are not detrimental to the conservation values of the parcel.

**B. LAND PROTECTION CRITERIA**

Pursuant to the provisions of General Laws, Chapter 184, Section 32, when considering whether to approve a conservation restriction on land, the Select Board shall determine whether the restriction is in the public interest. In determining whether a restriction is in the public interest, the Board shall take into consideration the public

interest in such conservation restriction and any national, state, regional and local program in furtherance thereof, any public state, regional or local comprehensive land use or development plan affecting the land, and any known proposal by a governmental body for the use of the land. MGL c. 184, s. 32. Lands proposed for restriction may be presumed to be in the public interest if those lands will contribute to the protection of the community's natural resources as identified in the following list:

1. **1984 Truro Open Space Plan**

a. **Unique Features**

- (1) Pamet River
- (2) Beach Point
- (3) High Head (Pilgrim Heights)
- (4) Pilgrim Lake

b. **Natural Resources**

- (1) Agriculture
- (2) Forests and Woodlands
- (3) Ponds
- (4) Beaches, Barrier Beaches, Dunes and Coastal Areas
- (5) Rare Species, Shellfish and other Wildlife
- (6) Water Resources: ground water and surface water
- (7) Historical Sites, esp. S. Truro Meetinghouse area
- (8) Scenic Roads, Public Views and Rural Character
- (9) Water Supply Areas
- (10) Flood plains
- (11) Wetlands
- (12) Greenbelts, particularly along Route #6

2. **1985 Water Resources Protection Plan for the Town of Truro**

- a. Water Supply Protection Districts, N. Truro (fig. 5)
- b. Pamet River recharge area (fig. 5)

3. **1987 Pamet River Greenway Management Plan**

- a. Pamet River recharge area (fig. 12)

4. **1989 Truro/Provincetown Aquifer Assessment and Groundwater Protection Plan**

- a. Potential Water Supply Sites 1-5, particularly Sites 4 & 5 (fig. 14)

5. **1994 Local Comprehensive Plan**

- a. To maintain land use patterns currently in use and encourage healthy villages.
- b. To preserve and enhance agricultural areas.
- c. To enhance the Capewide open space/greenbelt network.
- d. To maintain or decrease building density on Beach Point.
- e. To protect current and future water supplies.
- f. To protect marine recharge areas and shellfish areas.
- g. To protect wetlands, including vernal pools.
- h. To maintain scenic views, including high points, roadways and others that are unique to Truro.
- I. To facilitate bikeway paths.
- j. To facilitate recreation, both active and passive.
- k. To protect wildlife and habitat for both flora and fauna.
- l. To limit development in high hazard areas subject to wind and wave erosion.
- m. To provide access by handicapped and disabled to community facilities.
- n. To preserve historic and/or archeologically significant sites.
- o. Key open areas and hilltops (LU-38)
- p. Land in or near the Capewide open space/greenbelt network identified in the Regional Policy Plan (OR-1).
- q. Parcels south of Fisher Beach and north of the Hopper Studio (OR-9, HP-9).
- r. Views to the shore from surrounding areas (HP-3).

6. **Pamet River Investigation by the Army Corps of Engineers.**

- a. Pamet River recharge area (Appendix B).
- b. Pamet River ecosystem (Appendix B).

Lands proposed for restriction may also be presumed to be in the public interest if those lands will contribute to the protection of the following natural resource areas:

- 1. Significant geological areas: hollows, kettle holes, marine scarps, hilltops, steep slopes.
- 2. Rare Biological habitats: heathlands, sand plain grasslands.
- 3. Public recreation areas.
- 4. Lands in or abutting the Cape Cod National Seashore.

The Select Board may seek the recommendation of the Truro Conservation Commission when determining the conservation value of land proposed for the restriction. In determining whether the restriction is in the public interest, the Conservation Commission and the Select Board should consider the location and size of the restricted area (to determine whether its location and size will serve to contribute to the protection of the resources identified) and the terms of the restriction (to determine whether the language sufficiently acts to protect the resources identified).

## **C. BENEFITS OF CONSERVATION RESTRICTIONS**

### **1. BENEFITS TO THE TOWN**

- a. Restrictions can help the Town to achieve its land protection objectives without having to buy expensive properties.
- b. The land remains privately held, stays on the tax rolls (at a reduced rate) and is maintained by the landowner, saving the town costs and liability associated with municipal land ownership.
- c. Many fiscal impact analyses have shown that land left undeveloped, in effect, subsidizes the local tax rate because land not built on does not require the costly municipal services, such as schools, landfill, fire and police, that developed residential land needs.
- d. Protected open space enhances real estate market values of nearby properties in a town.

### **2. BENEFITS TO THE LANDOWNER**

- a. The landowner is compensated for the decrease in value of the land placed under a conservation restriction through tax relief. The primary tax advantages are as follows:
  - (1) *Property Tax Policy* - The Truro Board of Assessors will separately assess as a separate parcel real estate permanently restricted under a Conservation Restriction and adjust the real estate tax by a certain percentage of the assessed value, which percentage shall be determined in accordance with the A Town of Truro Board of Assessors Property Tax Policy, @ a copy of which is attached hereto, incorporated herein, and labeled Exhibit B. These adjustments are for any parcel or portion thereof that has been submitted and approved by the Truro Select Board.
  - (2) *Income Tax Deduction* - Perpetual conservation restrictions are eligible as charitable deductions for federal income tax purposes. A

qualified appraisal must support the lost value claimed as a donation. Many other states also allow a state income tax deduction for conservation restrictions; Massachusetts does not.

(3) *Estate Tax Reduction* - Conservation restrictions may also help to reduce the value of a family estate in determining state and federal inheritance taxes. Large estates can pay as much as 60 per cent in inheritance taxes and conservation restrictions can reduce that burden.

- b. The landowner keeps title to the land, can continue to enjoy and maintain the land, can retain privacy rights, and can sell or give the property to family or others. The restriction runs with the land and any new owners must abide by its terms.
- c. A conservation restriction can work to reassure the landowner that the property will remain intact and in its natural state long after the landowner has passed on.

#### **D. SIZE REQUIREMENTS**

A conservation restriction may be proposed for lots of any size. It may include the entire lot or a portion of the lot. It can include lots already partially developed, such as the back land to a house and yard. The Select Board, in consultation with the Conservation Commission, shall determine whether the proposed size of the restricted area is sufficient to protect the identified resources in the area.

#### **E. ACCESS**

Public access is not required for approval of conservation restrictions. The Town recognizes that most landowners will not wish to allow public access as part of the conservation restriction. Landowners who do allow public access for passive or active recreation on their lands, however, will meet the significant public benefit test for conservation restriction approval.

All restricted properties must allow on-foot access to officials of the holder of the restriction in order to monitor compliance with the terms of the restriction. In the case of the Town as the holder of the restriction, the Conservation Commission will be the monitoring agency. The Town will not be responsible for monitoring the restrictions held by other groups, such as the Truro Conservation Trust, but, on a case by case basis, may negotiate as part of the restriction, authorization for municipal agencies or officials to access the property for purposes of assisting in enforcement.

**F. RELEASE OF CONSERVATION RESTRICTIONS**

In order for the community to make proper and accurate land use decisions for the future, it must be able to ensure that protected open space remains protected. For that reason, conservation restrictions are intended to be in effect in perpetuity. Only in cases of demonstrated extreme hardship, and after a public hearing, will the town consider releasing any restriction. The town will follow established procedures including:

1. If the conservation restriction is held by the Town, a two-thirds majority vote of Town Meeting is required; and
2. If the conservation restriction is held by the Town, a duly noticed public hearing of the Truro Conservation Commission and the approval of that Commission as evidenced by a majority vote is required; and
3. If the conservation restriction is held by the Town, a two-thirds roll-call vote of each branch of the Massachusetts General Court is required; and
4. If the conservation restriction is held by a charitable organization or trust, the approval of the Truro Select Board as evidenced by a majority vote is required; and
5. Conservation restrictions held by either the Town or by a charitable organization or trust may not be released until such time as the Secretary of Environmental Affairs, after review under the Massachusetts Environmental Policy Act, has issued its approval.

In considering release, the Town may require the payment of certain consideration, including repayment of saved property taxes plus ten percent interest, or require other forms of compensation, such as the landowner's protection of an equivalent parcel of open space.

**References:**

Town of Truro, MA, Conservation Commission, Open Space Plan, May 1984, 61 pp.

IEP, Inc., (Barnstable, MA) Water Resources Protection Plan for the Town of Truro, Massachusetts, December 1985, 80 pp.



Truro Conservation Trust, (North Truro, MA), Pamet River Greenway Management Plan, March 1987, 150 pp.

Cape Cod Planning and Economic Development Commission (Barnstable, MA)  
Truro/Provincetown Aquifer Assessment and Groundwater Protection Plan, October 1989, 85 pp.

Truro Conservation Trust, A Pamet River Viewshed Analysis October 1990 (draft), 8 pp.

The Truro Comprehensive Plan, 1994

The Massachusetts Conservation Restriction Handbook, 1992. Division of Conservation Services, Boston, MA.

U. S. Army Corps of Engineers, A The Pamet River Investigation A April 1998.

**EXHIBIT B**  
**TOWN OF TRURO**  
**BOARD OF ASSESSORS**  
**PROPERTY TAX POLICY**  
**FOR CONSERVATION RESTRICTIONS**

In 1999, the Truro Select Board, with the support of the Conservation Commission, issued a policy to encourage property owners to consider the use of conservation restrictions as a means to preserve critical open spaces in Truro. The Board of Assessors supports this policy and recognizes that legally-approved conservation restrictions may reduce the economic value of the restricted land.

Therefore, the Assessors will adjust the real property tax on restricted properties to reflect the economic value when the following guidelines are met:

1. **Authority.** Only conservation restrictions approved under M.G.L. c. 184, Section 32 are eligible for tax adjustment under this policy.
2. **Significance.** The Assessors defer to the Select Board to determine the significant public benefit provided by its approval of a conservation restriction. Approval by the Select Board shall constitute conclusive evidence of the significance of the restricted parcel, but by itself does not assure property tax adjustment unless the Assessors' guidelines presented herein are also met.
3. **Size.**
  - a. Vacant parcels, or parcels with no permanent structures can be of any size to be eligible for property tax adjustment if a conservation restriction is approved for the parcel.
  - b. Improved properties, or properties containing permanent structures, are eligible for property tax adjustment on that portion of the property exclusive of the improved portion of the lot or exclusive of the minimum square footage for a building lot (currently, 34,325 square feet), whichever is larger.
4. **Description.** The Board of Assessors must be furnished with a full copy of the approved and recorded restriction along with a registered survey depicting the metes and bounds of the parcel or portion of a parcel that will be held in a conservation restriction. This survey will be recorded with the restriction.

5. **Assessment Period.** The conservation restriction must be recorded at the Barnstable Registry of Deeds prior to January 1 preceding the following fiscal year (July 1 - June 30). Example: conservation restrictions recorded prior to January 1, 1999 will receive a tax bill reflecting the restriction starting in the Fall of 1999. After the restriction is on file with the Assessors, the property tax will be adjusted for each year the restriction remains in effect. There is no need for the landowner to request an adjustment each year. The Assessors must be notified of any recorded modification or release of the restriction.
6. **Tax Policy.** The value of real estate subject to a Conservation Restriction in perpetuity under General Laws, Chapter 184, Section 31 shall be assessed based upon the guidelines established under the provisions of General Laws, Chapter 58, but in no event shall such valuation exceed twenty-five percent of its fair cash value as determined pursuant to Chapter 59 if said restriction does not permit public access or ten percent of its fair cash value as determined pursuant to Chapter 59 if said restriction does permit public access.
7. **Policy Modifications.** This policy and guidelines may be modified by a future Board of Assessors following a publicly-advertised meeting. Modification to this policy and guidelines, however, are not intended to apply to pre-existing approved conservation restrictions.

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Date of Signing: \_\_\_\_\_

Board of Assessors  
Town of Truro