

Town of Franklin

355 East Central Street
Franklin, Massachusetts 02038-1352



Phone: (508) 520-4949
www.franklinma.gov

OFFICE OF THE TOWN ADMINISTRATOR

Memorandum

March 13, 2020

To: Town Council

From: Jamie Hellen, Town Administrator

Re: Resolution 20-17: Well 3A Conservation Restriction

I am requesting approval of this Conservation Restriction (CR), which will help protect the drinking water supply for Well 3A as part of the new Water Treatment Plant and well rehabilitation projects.

The amount of land is slightly more than a half acre. A map is attached at the end of the packet.

The CR has been approved by the Commonwealth of Massachusetts and all parties. This is the final action.

I am happy to answer any questions you may have.



TOWN OF FRANKLIN RESOLUTION 20-17

Acceptance of and Authorization for Town Administrator to Execute Conservation Restriction on a Portion of Unimproved Land Located at Grove

Street Parcel 322-001-001

WHEREAS, the Town of Franklin (hereinafter: "Town") owns property located at 352 Grove Street and operates Franklin Well No. 3A therein, being a component of the Town's public drinking water supply, and Massachusetts Department of Environmental Protection's regulations require that said well be protected by a four hundred foot radius Wellhead Protection Zone, and

WHEREAS, Franklin Property Owner, LLC is the owner of a parcel of unimproved land located at Grove Street Parcel 322-001-001, immediately abutting the Town's above described property at 352 Grove Street, title reference: deed recorded at Norfolk County Registry of Deeds in Book 32948 at page 250, and is willing to grant Town a conservation restriction on an approximately 26,804.29 square foot (0.61 acre) portion of said land for public water supply (wellhead) protection, for nominal consideration, and has executed the "Conservation Restriction" a true copy of which is attached hereto as "Exhibit 1", and

WHEREAS, The Town Council hereby approves of said "Conservation Restriction" in the public interest pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws,

NOW THEREFORE, BE IT ORDERED that the Town of Franklin, acting by and through its Town Council acting as its Board of Water Commissioners, accepts the grant to the Town of a conservation restriction on the above-described unimproved parcel of land, said conservation restriction being on approximately 26,804.29 square feet (0.61 acre) of said parcel for public water supply (wellhead) protection as further described in "Conservation Restriction" attached hereto as "Exhibit 1" and it is further ordered that the Franklin Town Administrator is hereby authorized to execute the original copy of said grant of conservation restriction on the Franklin Town Council's behalf and that an attested copy of this resolution be recorded with the original grant of conservation restriction at Norfolk County Registry of Deeds.

This Resolution shall become effective according to the provisions of the Town of Franklin Home Rule Charter.

DATED: _____, 2020

VOTED:

UNANIMOUS: _____

YES: _____ **NO:** _____

ABSTAIN: _____

ABSENT: _____

A True Record Attest:

**Teresa M. Burr, CMC
Town Clerk**

**Glenn Jones, Clerk
Franklin Town Council**

GRANTOR: Franklin Property Owner, LLC

GRANTEE: Town of Franklin

ADDRESS OF
RESTRICTED PREMISES: Assessor's Parcel Number 322-001-001-000, Grove Street,
Franklin, Massachusetts

FOR GRANTOR'S TITLE SEE: Norfolk County, Registry of Deeds, Plan 32948, Page 250

CONSERVATION RESTRICTION

Franklin Property Owner, LLC, with an address of 133 Pearl Street, Boston, MA, 02110, being the sole owner of the Restricted Premises as defined herein, and for its successors and assigns ("Grantor"), acting pursuant to Sections 31, 32, and 33 of Chapter 184 of the Massachusetts General Laws, and otherwise by law, grants with QUITCLAIM COVENANTS to the Town of Franklin acting by and through its Town Council acting as its Board of Water Commissioners by authority of Sections 38, 39B, 39E, and 41 of Chapter 40 of the Massachusetts General Laws, with an address of 355 East Central Street, Franklin MA 02038, their permitted successors and assigns ("Grantee"), for nominal consideration, IN PERPETUITY AND EXCLUSIVELY FOR PUBLIC DRINKING WATER SUPPLY PROTECTION AND CONSERVATION PURPOSES, the following Conservation Restriction on a 0.61-acre portion of a 5.94-acre parcel of land in Franklin, Massachusetts ("Restricted Premises"), which Restricted Premises is more particularly described in Exhibit A and shown on the reduced copy of a plan attached hereto in Exhibit B entitled: "Well 3A Conservation Restriction Sketch Plan" prepared by the Town of Franklin dated April 12, 2019 (the "Plan"), both of which are attached hereto and incorporated herein.

This Conservation Restriction shall apply exclusively to the Restricted Premises and not to any of the remaining unrestricted portions of the Grantor's property abutting the Restricted Premises.

Grantee acquires this Conservation Restriction subject to the approval of the Massachusetts Department of Environmental Protection pursuant to Massachusetts General Laws

Chapter 40 Sections 39B and 41 and subject to the approval of the Secretary of Energy and Environmental Affairs pursuant to Massachusetts General Laws Chapter 184, Section 32. The Town of Franklin Town Council voted to accept and approve this Conservation Restriction at a Town Council meeting held on _____, 2020, and a copy of the resolution authorizing such acceptance and providing the Town Council's approval of this Conservation Restriction in the public interest pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws is attached hereto as Exhibit C.

For Grantor's title to said land, see deed dated March 9, 2015, recorded in the Norfolk County Registry of Deeds in Book 32948, Page 250.

I. PURPOSES

This Conservation Restriction is defined in and authorized by Sections 31, 32, and 33 of Chapter 184 of the General Laws, and otherwise by law. The purpose of this Conservation Restriction is to protect the public drinking water supply and quality of the Franklin Well No. 3A ("Well") approved by the Massachusetts Department of Environmental Protection ("MassDEP") as a source of public drinking water, PWS Source ID 2101000-13G, to ensure the protection of the four-hundred (400) foot radius surrounding the Well, and to ensure that the Restricted Premises will be retained and maintained in perpetuity for conservation purposes, in their natural, scenic, open and undeveloped condition, and to prevent any use of the Restricted Premises that would materially impair or interfere with its conservation and preservation values ("Conservation Values").

The Conservation Values include the following:

1. Drinking Water Supply Protection. The Restricted Premises is located partially in the Zone I of the Well. This land area is identified by MassDEP as the immediate protection area around the wellhead that must be owned or controlled by the public water supplier pursuant to Massachusetts Drinking Water Regulations 310 CMR 22.00.
2. Adjacency to Conserved Land. The Restricted Premises is adjacent to permanently conserved land owned by the Town of Franklin, including land identified as being within the 100-year flood plain of Mine Brook. The protection of the Restricted Premises will add to the existing network of conserved land and further protect the floodplain of Mine Brook.

II. PROHIBITED ACTS AND USES, EXCEPTIONS THERETO, AND PERMITTED USES

A. Prohibited Acts and Uses

- (1) Subject to the exceptions set forth in Section II.B, all activities and uses of the Restricted Premises are prohibited.

- (2) Any use of the Restricted Premises or activity which is inconsistent with the purpose of this conservation restriction for public drinking water supply purposes or would materially impair its conservation values is prohibited.

B. Reserved Rights and Exceptions

The Grantor reserves the right to conduct or permit the following activities and uses on the Restricted Premises, but only if such uses and activities do not materially impair the conservation values or purposes of this Conservation Restriction:

- (1) Activities conducted by the Town of Franklin which are necessary and incidental to the construction, installation, operation, maintenance, inspection, repair, replacement and protection of the Well and associated infrastructure necessary and incidental to the use of the Well as a public water supply consistent with the requirements of Massachusetts Drinking Water Regulations 310 CMR 22.00.
- (2) Within the Restricted Premises there is an access road shown on the Plan in Exhibit B as "Financial Park" in which the Grantor reserves the right to conduct or permit the following activities and uses:
 1. The right to use, maintain, repair, or replace such existing access road.
- (3) The exercise of any right reserved by Grantor under this Paragraph B 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.

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 Restricted Premises to their condition prior to the time of the injury complained of (it being agreed that the Grantee will have no adequate remedy at law). The rights hereby granted shall be in addition to, and not in limitation of, any other rights and remedies available to the Grantee for the enforcement of this Conservation Restriction. Grantee agrees to cooperate for a reasonable period of time prior to resorting to legal means in resolving issues concerning violations provided Grantor ceases objectionable actions and Grantee determines there is no ongoing diminution of the conservation values of the Conservation Restriction.

Grantor covenants and agrees to reimburse to Grantee all reasonable costs and expenses (including reasonable counsel fees) incurred in enforcing this Conservation Restriction or in

taking reasonable measures to remedy, abate or correct any violation thereof, provided that a violation of this Conservation Restriction is acknowledged by Grantor or determined by a court of competent jurisdiction to have occurred. In the event of a dispute over the boundaries of the 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 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 Restricted 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 Restricted Premises resulting from causes beyond the Grantor's control, including but not limited to fire, flood, stone and earth movement, or from any prudent action taken by the Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Restricted Premises resulting from such causes. In the event of any such occurrence, the Grantor and Grantee will cooperate in the restoration of the Restricted Premises, if desirable and feasible.

IV. ACCESS

The Grantor hereby grants to the Grantee, or its duly authorized agents or representative, a permanent easement of access to enter the Restricted Premises for the purpose stated in this Conservation Restriction and to permit personnel from MassDEP, a duly constituted agency organized under the laws of the Commonwealth of Massachusetts, with prior notice to the Grantor, to enter the Restricted Premises for the purpose of inspecting the same to determine compliance with Massachusetts Drinking Water Regulations 310 CMR 22.00. The Grantor hereby grants to the Grantee, or its duly authorized agents or representatives, the right to enter the Restricted Premises upon reasonable notice and at reasonable times, for the purpose of inspecting the Restricted 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 Restricted Premises for the purpose of taking any and all actions with respect to the Restricted 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.

V. EXTINGUISHMENT

A. If circumstances arise in the future such as render the purpose of this Conservation Restriction impossible to accomplish, this restriction can only be terminated or extinguished, whether in whole or in part, by a court of competent jurisdiction under applicable law after review and approval by the 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 Restricted Premises, shall be entitled to a portion of the proceeds in accordance with Paragraph V(B) below, subject, however, to any applicable law which expressly provides for a different disposition of the proceeds and after complying with the terms of any gift, grant, or funding requirements. Grantee shall use its share of the proceeds in a manner consistent with the conservation purpose set forth herein.

B. Proceeds.

Grantor and Grantee agree that the conveyance 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, determined at the time of the conveyance, 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

C. Grantor/Grantee Cooperation Regarding Public Action.

Whenever all or any part of the Restricted 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 accordance with Paragraph V(B), above, after complying with the terms of any law, gift, grant, or funding requirements. If a less than fee interest is taken, the proceeds shall be equitably allocated according to the nature of the interest taken. The Grantee shall use its share of the proceeds in a manner consistent with the conservation purposes of this grant.

VI. ASSIGNABILITY

A. Running of the Burden.

The burdens of this Conservation Restriction shall run with the Restricted Premises in perpetuity, and shall be enforceable against the Grantor and the successors and assigns of the Grantor holding any interest in the Restricted Premises.

B. Execution of Instruments.

The Grantee is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Conservation Restriction; the Grantor, on behalf of itself and its successors and assigns, appoints the Grantee its attorney-in-fact to execute, acknowledge and deliver any such instruments on its behalf. Without limiting the foregoing, the Grantor and its successors and assigns agree themselves to execute any such instruments upon request.

C. Running of the Benefit.

The benefits of this Conservation Restriction shall run to the Grantee, shall be in gross and shall not be assignable by the Grantee, except in the following instances:

As a condition of any assignment, the Grantee shall require that the purpose of this Conservation Restriction continues to be carried out; that the Assignee is not an owner of the fee in the Property, 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 which grants any interest in all or a portion of the Restricted 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 any of the above 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 Restricted 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 sixty (60) days 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 Restricted 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 Restricted Premises without having first assigned this Conservation Restriction to a non-fee owner that is 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, 32, and 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 value. All expenses of all parties in considering and/or implementing an amendment shall be borne by the persons or entity seeking the amendment. Any amendment shall be consistent with the purposes of this Conservation Restriction, shall not affect its perpetual duration, shall be approved by the Secretary of Energy and Environmental Affairs and if applicable, shall comply with the provisions of Art. 97 of the Amendments to the Massachusetts Constitution, and any gifts, grants or funding requirements. Any amendment shall be recorded in the Norfolk County Registry of Deeds.

XI. EFFECTIVE DATE

This Conservation Restriction shall be effective when the Grantor and the Grantee have executed it, the administrative approvals required by Section 32 of Chapter 184 of the General Laws have been obtained, and it has been recorded in a timely manner in the Norfolk County Registry of Deeds.

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 first class mail, postage pre-paid, addressed as follows:

To Grantor: Franklin Property Owner, LLC
133 Pearl Street
Boston, MA 02110

To Grantee: Town Administrator
Town of Franklin
355 East Central Street
Franklin, MA 02038

or to such other address as any of the above parties shall designate from time to time by written notice to the other or, if notice is returned to sender, to an address 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, 32, and 33. If any provision in this instrument is found to be ambiguous, any interpretation consistent with the purpose of this Conservation Restriction that would render the provision valid shall be favored over any interpretation that would render it invalid.

C. Severability.

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

D. Entire Agreement.

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

XIV. MISCELLANEOUS

A. Pre-existing Public Rights.

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

B. Subordination.

The Grantor shall record at the appropriate Registry of Deeds simultaneously with this Conservation Restriction all documents necessary to subordinate any mortgage, promissory note,

loan, lien, equity credit line, refinance assignment of mortgage, lease, financing statement or any other agreement which gives rise to a surety interest affecting the Restricted Premises.

D. Attached hereto and incorporated herein by reference are the following:

Signature pages:

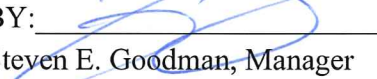
Grantor – Franklin Property Owner, LLC
Approval by Town of Franklin Town Administrator
Approval of the Secretary of Energy and Environmental Affairs.

Exhibits:

A: Legal Description of Restricted Premises
B: Conservation Restriction Plan
C: Town Council Resolution

WITNESS my hand and seal this 7th day of March, 2020.

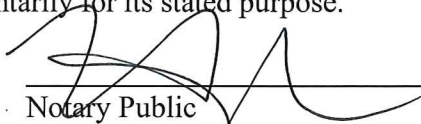
Franklin Property Owner, LLC

BY: 
Steven E. Goodman, Manager

COMMONWEALTH OF MASSACHUSETTS

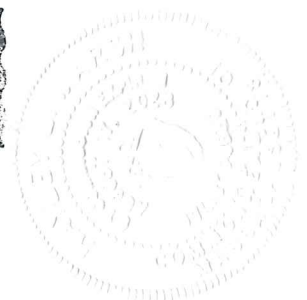
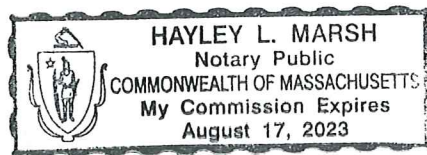
Suffolk ss. _____

On this 2nd day of March, 2020, before me, the undersigned notary public, personally Steven E. Goodman, Manager of Franklin Property Owner, LLC, and proved to me through satisfactory evidence of identification which was MA drivers license to be the person whose name is signed on the proceeding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.



Notary Public

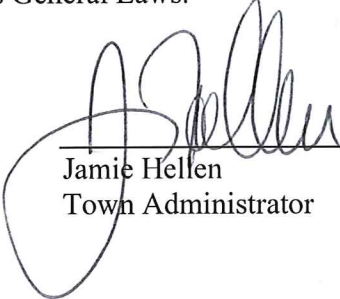
My Commission Expires: August 17, 2023



APPROVAL OF TOWN ADMINISTRATOR

The undersigned, Jamie Hellen, the Town Administrator of the Town of Franklin, pursuant to a unanimous resolution of the Town of Franklin Town Council dated _____, an attested copy of which is attached hereto as Exhibit C (the "Resolution"), hereby certifies that the foregoing Conservation Restriction from Franklin Property Owner, LLC, to the Town of Franklin acting by and through its Town Council acting as the Town's Board of Water Commissioners has been approved in the public interest pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws, and further certifies that, pursuant to the Resolution, the Town Council has approved of the foregoing Conservation Restriction in the public interest pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws.

Dated: March 5, 2020

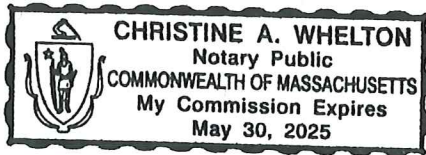


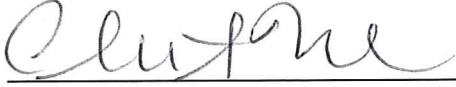
Jamie Hellen
Town Administrator

COMMONWEALTH OF MASSACHUSETTS

Norfolk County, ss.

On this 5 day of March, 2020, before me, the undersigned notary public, personally appeared Jamie Hellen, and proved to me through satisfactory evidence of identification which was Personally Known, 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.





Notary Public

My Commission Expires: 5-30-2025

**APPROVAL BY SECRETARY OF ENERGY AND ENVIRONMENTAL AFFAIRS
COMMONWEALTH OF MASSACHUSETTS**

The undersigned, Secretary of Energy and Environmental Affairs of the Commonwealth of Massachusetts, hereby certifies that the foregoing Conservation Restriction from Franklin Property Owner, LLC, to the Town of Franklin acting by and through its Town Council acting as the Town's Board of Water Commissioners has been approved in the public interest pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws.

Dated: _____, 2020

Kathleen A. Theoharides
Secretary of Energy and Environmental Affairs

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss:

On this ____ day of _____, 2020, before me, the undersigned notary public, personally appeared Kathleen A. Theoharides, and proved to me through satisfactory evidence of identification which was _____ to be the person whose name is signed on the proceeding or attached document, and acknowledged to me that she signed it voluntarily for its stated purpose.

Notary Public
My Commission Expires

EXHIBIT A

Legal Description of Restricted Premises

The land subject to this Conservation Restriction, referred to herein as the Restricted Premises, is shown as the hatched-marked area on "Exhibit B": Well 3A Conservation Restriction Sketch Plan, dated April 12, 2019, attached hereto, said area described on "Exhibit B" as "Area Subject to Conservation Restriction approximately 26,804.29 SF 0.61 acres" (being a portion of Franklin Assessors Map parcel #322-001-001-000).

EXHIBIT B - Conservation Restriction Plan

