



MassWildlife

Commonwealth of Massachusetts

Division of Fisheries & Wildlife

Wayne F. MacCallum, *Director*

DRAFT

MA ENDANGERED SPECIES ACT (G.L. c.131A) CONSERVATION AND MANAGEMENT PERMIT

DATE:	
CONSERVATION PERMIT NO.:	
NHESP FILE NO.	06-21061
PERMIT HOLDER:	Stephens Way Nominee Trust
PROJECT:	25 Stephens Way

Pursuant to the authority granted in the Massachusetts Endangered Species Act ("MESA") (G.L. c. 131A) and its implementing regulations (see in particular 321 CMR 10.23), the Director of the Massachusetts Division of Fisheries & Wildlife (the "Division") hereby issues a Conservation and Management Permit to Stephens Way Nominee Trust (the "Permit Holder"). This permit authorizes the "taking" of Broom Crowberry (*Corema conradii*), which is listed as "Special Concern" pursuant to the MESA, arising out of the construction of a single family home and associated appurtenances at 25 Stephens Way in Truro, Massachusetts (the "Project").

The project site consists of +/- 9.49 acres, east of Cape Cod Bay and west/northwest of Stephens Way in the town of Truro, Massachusetts (Book 618, Page 79, Barnstable County Registry of Deeds; the "Property").

Under the authority granted by and in accordance with MGL c.131A § 3 and 321 CMR 10.23, the Director may permit the taking of a State-listed Species for conservation and management purposes provided that there is a long-term Net Benefit to the conservation of the impacted species. If the Director determines that the applicant for a permit has avoided, minimized and mitigated impacts to the State-listed Species consistent with the following Performance Standards, then the Director may issue a conservation and management permit, provided:

- (a) The applicant has adequately assessed alternatives to both temporary and permanent impacts to State-listed Species;
- (b) An insignificant portion of the local population would be impacted by the Project or Activity, and;
- (c) The applicant agrees to carry out a conservation and management plan that provides a long-term Net Benefit to the conservation of the State-listed Species that has been approved by the Director, as provided in 321 CMR 10.23(5), and shall be carried out by the applicant.

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Division of Fisheries and Wildlife

Field Headquarters, 1 Rabbit Hill Road, Westborough, MA 01581 (508) 389-6300 Fax (508) 389-7890

An Agency of the Department of Fish and Game

The Director has determined that the applicant for this Permit has met the above-noted Performance Standards and that the associated Conservation & Management Permit Application and the conservation and management plan as described and further conditioned in this permit, provide a long-term Net Benefit to the conservation of Broom Crowberry.

Under this conservation and management plan,

(a) +/- 6.58 acres of the Property will be protected in perpetuity as open space and State-listed species habitat through an Executive Office of Energy & Environmental Affairs-Division of Conservation Services ("EOEEA-DCS") approved Conservation Restriction or some other means of permanent legal habitat protection acceptable to the Division;

(b) long-term management & monitoring of Broom Crowberry habitat on the Property will be implemented in order to prevent trees, shrubs, and invasive species from shading and outcompeting Broom Crowberry;

(c) a portion of the Broom Crowberry within the work zone will be transplanted to an adjacent area on the Property which provides suitable habitat;

(d) research will be funded and implemented in order to improve understanding of optimal fire and vegetation management techniques for Broom Crowberry habitat; and

(e) off-site fire and vegetation management will be funded and implemented within appropriate Broom Crowberry habitat. Broom Crowberry occupies early successional (un-forested) habitats that require active management (fire and/or mechanical vegetation management) in order to maintain suitable habitat for this species.

Therefore, the Project can be permitted pursuant to the MESA. This Conservation and Management Permit is issued to condition the Project and to provide a long-term Net Benefit to Broom Crowberry.

In accordance with the documents submitted to the Division entitled:

- "Conservation and Management Permit Application" (dated 11/5/07, prepared Oxbow Associates, Inc.; the "Application");
- Proposed Site and Sewage Disposal System Plan (revised 10/19/07, prepared by Coastal Engineering, Inc.; the "Project Plan"; Attachment 1);
- "Declaration of Restriction" (Attachment 2);
- "Conservation Restriction Plan of Land in Truro Made for Stephens Way Nominee Trust" (dated 11/1/07, prepared by Slade Associates, Inc.; the "CR Plan"; Attachment 3);
- "Conservation Restriction" (Attachment 4);
- "Transplant and Heathland Management on the Project Site for Conservation & Management Permit" (prepared by Oxbow Associates, Inc., the "On-site Transplantation & Management Plan"; Attachment 5);
- "Research Component for Conservation and Management Permit On- and Off-site" (prepared by Oxbow Associates, Inc., the "Research Plan"; Attachment 6);
- "Implementing Heathland Management at Off-site Locations for Conservation & Management Permit" (prepared by Oxbow Associates, Inc., the "Off-site Management Plan"; Attachment 7);

and any other plans and documents referenced herein, this Conservation and Management Permit is issued with the following conditions:

General Conditions:

1.	The Project authorized by this Conservation and Management Permit shall be completed within three (3) years from the date of issuance. If needed, the Permit Holder shall submit a written request to the Division for an extension of time to complete the Project, and the Division will review the Project pursuant to MESA for any new impacts to State-listed Species found subsequent to the issuance of this Permit.
2.	This Permit shall not preclude the Division's review of future projects on the Property that are subject to the Wetlands Protection Act regulations (310 CMR 10.37, 10.58(4)(b), 10.59), as applicable, by the Natural Heritage & Endangered Species Program ("NHESP") of the Division.
3.	The work authorized by this Permit involves the construction of a single-family home and associated appurtenances as shown on the Project Plan (the "Work"; Attachment 1). The Work also includes any other on-site activity required by the Division as a condition of this permit.
4.	Division representatives shall have the right to enter and inspect the Property subject to this Permit at reasonable hours to evaluate Permit compliance and require the submittal of any reasonable information not otherwise required pursuant to this Permit deemed necessary by the Division.
5.	Any proposed change and or addition to any Plan associated with this Conservation and Management Permit and the Application shall be submitted by the Permit Holder to the Division in writing and the Division shall determine whether the proposed change is significant enough to require the filing of a new Conservation and Management Permit application and/or requires additional long-term "Net Benefit" mitigation for affected state-listed species populations. The Division retains the right to require the submittal of additional, reasonable information to evaluate the plan change.
6.	This Conservation and Management Permit shall apply to, and inure to the benefit of, the Permit Holder and any successor-in-interest of the Permit Holder, or to a subsequent successor-in-control of the Property or portion thereof subject to this Conservation and Management Permit should the Permit Holder convey record ownership of the Property to said successor-in-control, as well as to any contractor or other person performing work conditioned by this Conservation and Management Permit. Within three days of the transfer of an interest in the property or a portion thereof, any successor-in-interest or subsequent successor-in-control [ie, subsequent owners or operators] of the Property or a portion thereof shall provide the Division with a letter indicating (1) that the successor is the successor-in-interest of the Permit Holder or the successor-in-control [ie, current owner or operator] of the Property or a portion thereof, and (2) that said successor understands, and will perform the obligations of the Permit Holder as set forth in this Conservation and Management Permit.
7.	<u>Prior to the start of work</u> , the Permit Holder shall notify the Division in writing of the name, address, business and home telephone numbers of the project supervisor(s) and/or contractor(s) responsible for compliance with this Conservation and Management Permit. The Permit Holder is also required to provide updated information in writing to the Division should new or additional project supervisors and/or contractors be hired after Work has commenced.
8.	<u>Prior to the start of Work</u> , the text of this Conservation and Management Permit shall be recorded by the Permit Holder in the Registry of Deeds or the Land Court for the district in which the Property is located so as to become a record part of the chain of title of the Property. In the case of recorded land, the Conservation and Management Permit shall be noted in the Registry's Grantor Index under the name of the owner of the Property upon which the proposed Work is to be done. In the case of registered land, the Conservation and Management Permit shall be noted on the Land Court Certificate of Title of the owner of the Property upon which the proposed Work is done. The Permit Holder shall submit to the Division a date-stamped and signed copy of said recorded Permit showing the date and book and page of recording of said Permit within 5 days after recording and/or filing, as

	applicable. No Work shall begin on the Property until the Permit is recorded and said recorded copy is submitted to the Division except as otherwise approved by the Division in writing.
9.	<u>At the completion of Work</u> the Permit Holder shall submit a written request for a Certificate of Permit Compliance to the Division including as-built plans and other supporting materials demonstrating the completion of Work and compliance with all conditions herein.
10.	Any land protected to achieve a long-term Net Benefit associated with this Permit shall remain undeveloped and protected as habitat in perpetuity.
11.	The Permit Holder shall comply with all Conditions and Special Conditions contained within this Permit and complete the Project consistent with all Division-approved plans and supporting documents provided to the Division except as otherwise approved by the Division in writing.
12.	A violation of any condition of this Conservation and Management Permit will result in an unauthorized Take pursuant to M.G.L. c. 131A and may be subject to civil and or criminal penalties pursuant to M.G.L. c. 131A.

Special Conditions:

13.	<u>Authorized Construction and Uses:</u> This Conservation and Management Permit authorizes construction and uses on the Property as described above. All Work shall be confined to the area of the site within the limits of work shown on the Project Plan (Attachment 1).
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Permanent Habitat Protection

14.	<u>Declaration of Restriction:</u> Prior to the start of any work, the Permit Holder shall record a Declaration of Restriction in the Registry of Deeds or the Land Court for the district in which the Property is located so as to become a record part of the chain of title of the Property. Said Declaration shall be in substantially the same form as shown in Attachment 2. Any changes in the form of said Declaration other than typographical or grammatical changes must be approved in writing by the Division. Prior to the start of work, the Permit Holder shall provide the Division with proof of recording of said Declaration.
15.	<u>Conservation Restriction:</u> The Permit Holder shall execute an EOEEA-DCS approved Conservation Restriction on +/-6.58 acres of land described as "Conservation Restriction A" on the "CR Plan" referenced above and shown in Attachment 3. The Conservation Restriction shall be in substantially the same form as shown in Attachment 4 and shall be granted by the Permit Holder to a qualified land trust, nonprofit organization, or governmental entity approved in writing by the Division. Any changes in the form of said Conservation Restriction other than typographical or grammatical changes must be approved in writing by the Division before said Conservation Restriction is submitted to the Secretary of the Executive Office of Energy & Environmental Affairs for approval. If the Executive Office of Energy & Environmental Affairs requires changes that substantially expand the permitted activities in said Conservation Restriction, the Permit Holder shall immediately notify the Division in writing of the requested changes so that the Division can review said proposed changes for compliance with the terms and provisions of this Permit. If the Division determines that said proposed changes to the Conservation Restriction are inconsistent with the purposes of this Conservation and Management Permit, the Division shall have 60 days after receipt of said Notice to discuss said proposed changes with said Executive Office in order to seek deletion or modification of the requested changes. Said Conservation Restriction and associated CR Plan shall be executed and recorded in the

	<p>Registry of Deeds or the Land Court for the district in which the Property is located so as to become a record part of the chain of title of the Property, no later than nine (9) months from the initiation of Work associated with this Permit. Work shall cease if said Conservation Restriction is not recorded and copies thereof received by the Division by this date, provided, however, that the Division may extend this date from time to time if the failure to execute and record said Conservation Restriction results from circumstances beyond the control of the Permit Holder and so long as the Permit Holder continues in good faith to seek to execute and record said Conservation Restriction.</p>
16.	<p>Conservation Restriction Boundaries: Prior to the initiation of any other Work, the boundaries of "Conservation Restriction A" shall be permanently monumented as shown on the "Monumentation Plan" included in the Application. Said permanent bounds shall be maintained in good condition by the Permit Holder, and repaired or replaced, as necessary.</p>

Broom Crowberry Transplantation

17.	<p>Broom Crowberry Transplantation & Monitoring: The Permit Holder shall retain a qualified botanist/horticulturalist to transplant +/-100 square feet of the affected Broom Crowberry on the Property in accordance with the Division-approved protocol (Attachment 5). As described in the protocol, all necessary precautions will be taken to minimize disturbance to the plants and soil around their root systems. A Division-approved botanist shall be on-site during all transplantation efforts. Watering and four years of follow-up monitoring shall be conducted in accordance with the protocol. If at any time during the four-year monitoring program it becomes clear that the transplantation is failing, as defined in the protocol, the Division shall be notified immediately and the contingency plan outlined below or an alternate Division-approved plan shall be initiated to address the failure. A map showing the transplantation area (surveyed or GPS referenced) shall be submitted to the Division.</p>
18.	<p>Contingency Plan for Transplant Failure: If the transplantation of the Broom Crowberry is not successful, as defined in the On-site Transplantation & Management Plan, the Permit Holder shall make every effort to replace the lost plants through seed collection and propagation as described in the contingency plan section of the protocol (Attachment 5). Reserve plants, seeds, or propagules shall not be used for introduction to any other location without the prior written approval from the Division.</p>

On-site Habitat Management

19.	<p>The Permit Holder shall implement long-term management of Broom Crowberry habitat on the Property on a five-year cycle as described in Attachment 5. To maintain existing Broom Crowberry habitat, selective clearing of encroaching trees and shrubs shall be conducted under the direction of a Division-approved qualified botanist or ecologist familiar with this species.</p>
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Broom Crowberry Conservation Research

20.	<p>The Permit Holder shall provide \$10,000 for a tri-seasonal burn plot study and \$2,000 for a ten-year follow-up burn-site evaluation study as described in the Research Plan (Attachment 6). Prior to the start of Work, the Permit Holder shall provide the Division with a detailed research proposal and budget for Division review and written approval. The proposal shall include an itemized budget, payment schedule, and final and interim reporting requirements. Prior to the start of Work, the Permit Holder shall deposit \$12,000 into an escrow fund, subject to an escrow agreement approved in writing in advance by the Division. The escrow agreement shall contain a payment schedule requiring Division approval of interim and final reports prior to the disbursement of funds.</p>
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Off-site Broom Crowberry Habitat Management

21.	<p>The Permit Holder shall provide \$10,000 for off-site habitat management for Broom Crowberry as described in the Off-site Management Plan (Attachment 7). Prior to the start of Work, the Permit Holder shall deposit \$10,000 into an escrow fund, subject to an escrow agreement approved in writing in advance by the Division. The escrow agreement shall require that the Division approve in</p>
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	writing all detailed site-specific burn plans, vegetation management plans, and associated budgets prior to the disbursement of funds.
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Other Conditions

22.	<p>Construction Measures to Protect State-listed species: The Permit Holder shall implement the following impact avoidance and minimization measures prior to and during construction. Prior to the start of any other Work, other than the placement of permanent bounds, as required by Condition 16 of this Permit: (1) a barrier consisting of drift or snow fencing will be placed at the limit of work shown on the Project Plan, (2) said barrier shall be inspected by a Division-approved botanist or ecologist to verify proper placement and installation, and (3) said botanist or ecologist shall provide written verification to the Division that said barrier has been properly installed to protect Broom Crowberry. The barrier shall be maintained throughout construction and shall be inspected by the construction supervisor on a weekly basis. In addition, the barrier shall be inspected every three months throughout the construction period by a Division-approved botanist or ecologist. Any breach of the construction barrier shall be reported to the Division within 24 hours of detection. All inspections shall be documented in a construction log, to be made available to the Division upon request. All construction, landscaping, and other sub-contractors associated with the Project shall be informed in writing of the presence of State-listed species on the Property and the measures that should be implemented to minimize direct harm to State-listed species.</p>
23.	<p>The Division shall be notified, in the form of a Rare Animal or Plant Observation Form, within 10 day of the observation of any State-listed Species other than Broom Crowberry within or outside the limits of work. These forms are available from the NHESP website www.nhesp.org</p>
24.	<p>Notice of Appeal Rights: This Determination is a final decision of the Division of Fisheries and Wildlife pursuant to 321 CMR 10.23. Any person aggrieved by this decision shall have the right to an adjudicatory hearing at the Division pursuant to M.G.L. c. 30A, s.11 in accordance with the procedures for informal hearings set forth in 801 CMR 1.02 and 1.03.</p> <p>Any notice of claim for an adjudicatory hearing shall be made in writing and be accompanied by a filing fee in the amount of \$500.00. The notice of claim shall be sent to the Division by certified mail, hand delivered or postmarked within 21 days of the date of the Division's Determination to:</p> <p style="text-align: center;">Wayne MacCallum Director Division of Fisheries and Wildlife Field Headquarters One Rabbit Hill Road Westborough, MA 01581</p> <p>Any notice of claim for an adjudicatory hearing shall include the following information:</p> <ol style="list-style-type: none"> 1. The file number for the project; 2. The complete name, address and telephone number of the person filing the request, and the name, address and telephone number of any authorized representative; 3. The specific facts that demonstrate that a party filing a notice of claim satisfies the requirements of an "aggrieved person," including but not limited to (a) how they have a definite interest in the matters in contention within the scope of interests or area of concern of M.G.L. c. 131A or the regulations at 321 CMR 10.00 and (b) have suffered an actual injury which is special and different from that of the public and which has resulted from violation of a duty owed to them by the Division; 4. A clear statement that an adjudicatory hearing is being requested; 5. A clear and concise statement of facts which are grounds for the proceeding, the specific objections to the actions of the Division and the basis for those objections; and the relief sought through the adjudicatory hearing; and a statement that a copy of the request has been sent by certified mail or hand delivered to the applicant and the Record Owner, if different from the applicant.

Wayne MacCallum, Director
Massachusetts Division of Fisheries & Wildlife

On this ___ day of ___, ___, before me, the undersigned notary public, personally appeared Wayne MacCallum, Director, proved to me through satisfactory evidence of identification, which was personal knowledge, to be the person whose name is signed on the preceding or attached document, and who swore or affirmed to me that the contents of the document are truthful and accurate to the best of his/her knowledge and belief.

Amanda Carolyn Veinotte, Notary Public
My Commission expires: October 26, 2012

Conservation Permit 007-XXX.DFW

Issued this ___ day of _____

Work must be completed by: _____

ACKNOWLEDGEMENT AND ACCEPTANCE OF ALL TERMS OF THIS CONSERVATION PERMIT

The undersigned below agrees that commencement of any work authorized by and described in this Conservation and Management Permit constitutes acknowledgement and acceptance of all terms of this permit.

Signatory 1
Organization

COMMONWEALTH OF MASSACHUSETTS

On this _____ day of _____, 2007, before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory evidence of identification which was _____ to be the person whose name is signed on the preceding or attached document, and who swore or affirmed to me that the contents of the document are truthful and accurate to the best of his/her knowledge and belief.

Notary Public

SEAL

My commission expires: _____

Distribution List

Richard Nylen, Jr., Lynch, DeSimone & Nylen, LLP
Brian Butler, Oxbow Associates, Inc.
Truro Board of Selectmen
Truro Conservation Commission
Truro Planning Board
Holly Johnson, MEPA

Attachment 1

Proposed Site and Sewage Disposal System Plan (revised 10/19/07, prepared by Coastal Engineering, Inc.)

Supplement to Proposed Site and Sewage Disposal System Plan (revised 10/19/07, prepared by Coastal Engineering, Inc.) entitled Supplement to Figure 3 (revised 11/05/07, Oxbow Associates, Inc.)

**ATTACHMENT 2
DECLARATION OF RESTRICTION**

THIS DECLARATION OF RESTRICTION (hereinafter the "Declaration") is made this _____ day of _____ 2007, by Stephens Way Nominee Trust, 8 Cardinal Lane, Orleans, Barnstable County, MA 02653 (hereinafter the "Declarant").

WITNESSETH

WHEREAS, Declarant is the owner of that certain parcel of land off Stephens Way (hereinafter the "Restricted Parcel") located in the Town of Truro, Barnstable County, Massachusetts (hereinafter the "Property"), shown on "Conservation Restriction Plan Of Land In Truro Made For The Stephens Way Nominee Trust," dated November 1, 2007, prepared by Slade Associates, Inc., Wellfleet, MA and to be recorded in the Barnstable County District Registry of Deeds at Plan Book _____ as Plan _____ (the "Plan"); and

WHEREAS, the Property contains over wintering, feeding, nesting, and breeding habitat and migration routes for the Eastern Box Turtle (*Terrapene carolina*), a state-protected species listed as a Species of Special Concern pursuant to the Massachusetts Endangered Species Act (MESA); Northern Harrier (*Circus cyaneus*) a threatened species, and eastern spadefoot toad (*Scaphiopus holbrookii*), a threatened species; under M.G.L. c. 131A, §3 and 321 CMR 10.23; and

WHEREAS, a conservation restriction will protect and promote the conservation and enhancement of broom crowberry (*Corema conradii*), a plant species of special concern listed on the Natural Heritage Endangered Species List; and

WHEREAS, the Property is subject to the terms and provisions of a Conservation and Management Permit pursuant to MESA issued by the Commonwealth of Massachusetts Division of Fisheries and Wildlife; and

WHEREAS, Declarant will voluntarily protect a significant contiguous area of state-listed plant and species habitat as an integral part of the development of the Property consisting of approximately 6.58 acres of land (the "Premises"); and

NOW, THEREFORE, Declarant hereby voluntarily declares and imposes **in perpetuity** upon the Restricted Parcel the following covenants, conditions and restrictions on the Restricted Parcel for the benefit of Declarant, its successors and assigns, the Town of Truro Conservation Commission [hereinafter the "Commission"], and the Commonwealth of Massachusetts Division of Fisheries and Wildlife, its successors and assigns [hereinafter the "Division"], and said Restricted Parcel shall be held, transferred, sold, conveyed, occupied and used subject to the covenants, conditions, and restrictions hereinafter set forth.

- I. **Restricted Parcel.** Declarant will place an Executive Office of Energy and Environmental Affairs Division of Conservation Services (EOEA-DCS) approved Conservation Restriction pursuant to M.G.L., c. 184, §§31-33 in perpetuity on the Restricted Parcel as shown on the Plan, the purposes of which shall be 1) wildlife habitat protection, including that of the state-listed Eastern Box Turtle, Northern Harrier, Eastern Spade Foot Toad; 2) protection of broom crowberry, 3) scenic landscape preservation, 4) water quality protection, 5) protection of nearby natural areas, and 6) furtherance of government policy. Said Conservation Restriction shall be recorded within three (3) months of the approval of the EOEEA-DCS.

Said Conservation Restriction shall include permitted and prohibited uses consistent with said purposes.

II. Prohibited Acts and Uses. Subject to the exceptions and rights reserved to the Grantor, its successors, and assigns pursuant to Section III below, the Grantor will not perform or give permission to others to perform the following acts or uses at the Premises:

- A. alteration or removal of vegetation;
- B. construction or placement of any building or structure;
- C. excavation, dredging, or removal of soil, loam, peat, gravel, sand, rock, or other mineral resource or natural deposit in such manner as to significantly affect the surface thereof;
- D. placement, filling, storing, or dumping of soil, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, waste, or other substance or material whatsoever;
- E. activities detrimental to drainage, flood control, water quality, water conservation, erosion control, soil conservation, or wildlife habitats;
- F. use of motorcycles, motorized trail bikes, snowmobiles, and all other motor vehicles;
- G. construction of bridges, fences, stone walls or paved surfaces;
- H. use of pesticides or biocides, including but not limited to insecticides, fungicides, rodenticides, and herbicides; and
- I. other uses of the Premises or activities which would significantly impair the Purposes of this Conservation Restriction, or which applicable federal, state, or local laws or regulations prohibit.

III. Permitted Activities and Uses. Notwithstanding the provisions of Section II above, the following general acts and uses are permitted on the Premises, provided that all such activities and uses must be in full conformity with all applicable federal, state, and local environmental regulations, including MESA:

- A. maintenance and modification of the vegetation or excavation, dredging, or removal of soil, loam, peat, gravel, sand, rock, or other mineral resource or natural deposits on the Premises for conservation and scientific purposes and to implement disease prevention measures all of the above with the prior written approval of the Division;

- B. maintenance, repair, reconstruction, and use of existing easements, utilities, driveways and rights of way, if any;
- C. maintenance, repair and use of the Property as shown on the Conservation Restriction Plan;
- D. maintenance, repair, reconstruction, and use of existing ways, trails, fences, bridges, gates, sheds, boardwalks, and stone walls on the Premises or as shown on the Conservation Restriction Plan, substantially in their present condition, or as reasonably necessary for the current uses thereof or herein permitted; including the use, improvement of and maintenance of Trail A or Path A approximately four (4') feet in width as shown on the Conservation Restriction Plan to access the beach area;
- E. Construction of fences, bridges, boardwalks, gates, and stone walls, so long as such use is not significantly detrimental to the Purposes protected by this Conservation Restriction, with the written approval of the Division;
- F. use of motor vehicles to pass and repass over the existing ways for emergency ingress and egress to and from the Premises as required by the police, fire department, or other governmental agents in carrying out their lawful duties;
- G. erection and maintenance of signs identifying ownership of the Premises; its status as a conservation reservation; and the restrictions on the use of the Premises, if necessary;
- H. cutting, removal, burning, transplanting and planting of trees, shrubs, and other vegetation and the removal of obstacles, such as downed, dead, or dying trees, brush, shrubs, debris, or trash for normal maintenance of the Premises or to prevent threat of injury or damage to persons or property;
- I. cutting of trees and vegetation and burning in accordance with a plan approved by the Division, prepared by a natural resources professional, that is designed to protect or enhance the conservation values of the Premises, including without limitation, wildlife habitat, plant habitat and scenic values;
- J. use of pesticides or biocides, including but not limited to insecticides, fungicides, rodenticides, and herbicides only as absolutely necessary to preserve rare or endangered plant or animal species and subject to prior written approval and agreement of the Grantee and the Division;
- K. use of the Premises for passive recreational activity such as walking on designated Trail A only, nature study; and use of the beach and dune portion of the Premises for sunbathing, walking, swimming, fishing and other purposes for which beaches are used;

- L. drainage from adjoining land;
- M. scientific research, including but not limited to a broom crowberry burn program and regeneration and transplant program, subject to the prior written approval of Division;
- N. erection of wildlife migration barriers;
- O. trapping to control nuisance wildlife species in accordance with Massachusetts General
- P. Laws, Chapter 131, Section 80A; and
- Q. any other use not otherwise prohibited by this Conservation Restriction or by applicable federal, state, or local laws or regulations that will not interfere with the purposes of the Restriction.

IV. Term - Binding Effect In Perpetuity. This Declaration of Restriction and its provisions herein set forth shall run with the Restricted Parcel as shown on said Plan in perpetuity from the date of recordation in the Barnstable District Registry of Deeds and shall be binding upon Declarant, Declarant's successors and assigns, and any other party having an ownership interest in said Restricted Parcel or claiming to have an interest with respect to said Restricted Parcel as tenants, invitees, licenses or otherwise, and all of the respective heirs, successors, grantees, mortgages, assigns, agents, contractors, subcontractors and employees of the foregoing unless and until the above-referenced EOEEA Restriction is approved, executed and recorded against the Restricted Parcel and a written release is executed and recorded pursuant to Section XI, below.

This Declaration of Restriction is hereby intended and declared to be in perpetuity and no re-recordation of this Declaration of Restrictions under M.G.L. c. 184, §§23-30 or any other law shall ever be necessary in order to maintain the full legal effect and authority hereof and Declarant and its successors and assigns, including but not limited to, all subsequent owners of the Restricted Parcel, hereby waive all their legal right to and shall forego any action in law or equity of any kind whatsoever attempting to contest the validity of any provision of this Declaration of Restriction and shall not, in any enforcement action, raise the invalidity of any provision of this Declaration of Restriction.

Notwithstanding anything inconsistent or to the contrary set forth above, the Commission and the Division are hereby authorized, jointly and severally, to record and file any notices and/or instruments that the Commission and/or the Division deem appropriate to assure the legal validity and enforceability in perpetuity of this Declaration of Restriction and the Declarant, on behalf of itself and its successors and assigns, hereby appoints the Commission and the Division as its and their attorney-in-fact to jointly or severally execute, acknowledge, deliver and record any such notice or instrument on its and/or their behalf. Without limiting the forgoing, the Declarant and its successors and assigns agree to execute any such notices and instruments upon request of the Commission or the Division.

V. Enforceability. The Commission and the Division, jointly and severally, shall have the authority and right to enforce this Declaration of Restriction.

The Commission and the Division, jointly and severally, shall have the right to enter the Restricted Parcel, in a reasonable manner and at reasonable times, for the purposes of (i) inspecting the Premises to determine compliance with this Declaration of Restriction; (ii) enforcing this Declaration of Restriction; and (iii) taking any other action which may be necessary or appropriate and as authorized by law.

The Commission and the Division, jointly and severally, shall have the right to bring proceedings at law or equity against any party or parties violating or attempting to violate the terms of this Declaration of Restriction to enjoin them from so doing and to cause any such violation to be remedied, including but not limited to restoration of the Premises adversely affected, after providing written notice to such party or parties and all mortgagees of record if the names and addresses of such parties and mortgagees have been provided in writing to the Commission and the Division.

- VI. Severability.** If any court or other tribunal of competent jurisdiction determines that any provision of this Declaration of Restriction is invalid or unenforceable, such provision shall be deemed to have been modified automatically to conform to the requirements for validity and enforceability as determined by such court or tribunal. In the event the provision invalidated is of such a nature that it cannot be so modified, the provision shall be deemed deleted from this instrument as though it had never been included herein. In either case, the remaining provisions of this instrument shall remain in full force and effect.
- VII. Non-Waiver.** Any election by the Commission and/or the Division as to the manner and timing of its right to enforce this Declaration of Restriction or otherwise exercise its rights hereunder shall not be deemed or construed to be a waiver of such rights.
- VIII. Access.** This Declaration of Restriction does not grant to the Commission, the Division, the general public, or to any other person or entity any right to enter upon the Restricted Parcel except the right of the Commission and the Division to enter the Restricted Parcel at reasonable times and in a reasonable manner for the purpose of inspecting the same to determine compliance herewith, enforcing this Declaration of Restriction as set forth in Section V above, and for all purposes as defined in the Conservation Restriction.
- IX. Incorporation Into Deeds, Mortgages, Leases and Instruments of Transfer.** Declarant and Declarant's successors and assigns, including all subsequent owners of the Restricted Parcel, shall incorporate this Declaration of Restriction, in full or by reference, into all deeds, easements, mortgages, leases, licenses, occupancy agreements or any other instrument of transfer by which an interest in and/or a right to use the Restricted Parcel or any portion thereof is conveyed. Any such deed, mortgage or other interest purporting to convey any portions of the Restricted Parcel without including this Declaration of Restriction in full or by reference shall be deemed and taken to include said Declaration of Restriction in full even though said Declaration of Restriction is not expressly described or referenced therein.
- X. Recordation/Registration.** Declarant shall record and/or register this Declaration of Restriction with the appropriate Registry of Deeds and/or Land Registration Office upon the later of (i) thirty (30) days of its date of execution or (ii) the conveyance of any portion of the Restricted Parcel shown on the Plan to a *bona fide* purchaser.
- XI. Amendment, Termination and Release.** No amendment, termination or release of this Declaration of Restriction shall be effective unless it has been approved in writing by the Division [hereinafter the "Division Approval"] and said amendment, termination or release and the requisite Division Approval has been recorded with the appropriate Registry of Deeds and/or Land Registration Office.

IN WITNESS WHEREOF, Duane P. Landreth, Trustee of Stephens Way Nominee Trust, has caused these presents to be signed, acknowledged and delivered in its name and behalf this ____ day of November, 200-.

STEPHENS WAY NOMINEE TRUST

By: _____
Duane P. Landreth, Trustee

COMMONWEALTH OF MASSACHUSETTS

_____, ss. _____, 200_

On this day before me, the undersigned notary public, personally appeared Duane P. Landreth, Trustee, and proved to me through satisfactory evidence of identification, which was photographic identification with signature issued by a federal or state governmental agency, oath or affirmation of a credible witness, personal knowledge of the undersigned, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

SEAL

Notary Public
My Commission Expires: _____

Attachment 3

**Conservation Restriction Plan of Land in Truro Made for
Stephens Way Nominee Trust” (dated 11/1/07, prepared by
Slade Associates, Inc.)**

Attachment 4 CONSERVATION RESTRICTION

I. Grant of Conservation Restriction.

Stephens Way Nominee Trust, a Massachusetts real estate trust with a principal place of business at 8 Cardinal Lane, Orleans, Massachusetts, 02653 (the "Grantor", which term includes the Grantor's successors and assigns with respect to the ownership of the Premises described below), in consideration of One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby grants to the holder, _____, a _____ with its principal place of business at _____ (the "Grantee") under the authority of Massachusetts General Laws, Chapter 184, Sections 31-33 and Massachusetts General Laws, Chapter 132A, Section 3, a Conservation Restriction in gross and perpetuity on ±6.58 acres of land (the "Premises") in Truro shown as "Conservation Restriction A" on a plan entitled "Conservation Restriction Plan Of Land In Truro Made For The Stephens Way Nominee Trust" dated November 1, 2007 "prepared by Slade Associates, Inc., Wellfleet, MA (hereinafter the "Plan"), which Plan is attached as Exhibit A hereto and made a part hereof, and which Plan is to be recorded herewith. Reference is hereby made to said Conservation Restriction Plan for a more particular description of the Premises.

II. Purposes.

The Premises that are the subject of this Conservation Restriction have certain unusual, unique, or outstanding qualities, the preservation of which in their predominately natural or open condition would be a benefit to the public. Therefore, the purposes of this Conservation Restriction are to:

- A. retain the Premises predominantly in its current natural condition, a combination of heathland, coastal beaches and dunes, low scrub forest, and old field community with scattered shrubs and trees;
- B. prevent the use or development of the Premises for any purpose or in any manner which would conflict with the maintenance of the Premises predominantly in its current natural condition;
- C. protect and promote the conservation of priority wildlife habitat, including the habitat for endangered or rare species populations such as northern harrier (*Circus cyaneus*, threatened species); eastern box turtle (*Terrapene c. carolina*, species of special concern); and eastern spadefoot toad (*Scaphiopus holbrookii*, threatened species), on the Premises;
- D. protect and promote the conservation and enhancement of broom crowberry (*Corema conradii*), a plant species of special concern listed on the Natural Heritage Endangered Species Program list;
- E. protect and enhance the value of abutting conservation areas; and
- F. allow limited access to the Premises for educational and scientific purposes.

Furthermore, the granting of this Conservation Restrictions is intended as a donation of property which will be referenced in Conservation Permit No. _____ issued by the Commonwealth of Massachusetts Division of Fisheries and Wildlife (the "Division". The Natural Heritage and Endangered Species Program of the Commonwealth of Massachusetts Division of Fisheries and Wildlife (the "NHESP") is the state entity that enforces and administers the Massachusetts Endangered Species Act, Massachusetts General Laws, Chapter 131A, as it may be amended ("MESA").

III. Prohibited Acts and Uses.

Subject to the exceptions and rights reserved to the Grantor, its successors, and assigns pursuant to Section IV below, the Grantor will not perform or give permission to others to perform the following acts or uses at the Premises:

- A. alteration or removal of vegetation;
- B. construction or placement of any building or structure;
- C. excavation, dredging, or removal of soil, loam, peat, gravel, sand, rock, or other mineral resource or natural deposit in such manner as to significantly affect the surface thereof;
- D. placement, filling, storing, or dumping of soil, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, waste, or other substance or material whatsoever;
- E. activities detrimental to drainage, flood control, water quality, water conservation, erosion control, soil conservation, or wildlife habitats;
- F. use of motorcycles, motorized trail bikes, snowmobiles, and all other motor vehicles;
- G. construction of bridges, fences, stone walls or paved surfaces;
- H. use of pesticides or biocides, including but not limited to insecticides, fungicides, rodenticides, and herbicides; and
- I. other uses of the Premises or activities which would significantly impair the Purposes of this Conservation Restriction, or which applicable federal, state, or local laws or regulations prohibit.

IV. Permitted Activities and Uses.

Notwithstanding the provisions of Section 0 above, the following general acts and uses are permitted, provided that all such activities and uses must be in full conformity with all applicable federal, state, and local environmental regulations, including MESA:

- A. maintenance and modification of the vegetation or excavation, dredging, or removal of soil, loam, peat, gravel, sand, rock, or other mineral resource or natural deposits on the Premises for conservation and scientific purposes and to implement disease prevention measures all of the above with the prior written approval of the NHESP, its successors and assigns (hereinafter, the "NHESP");
- B. maintenance, repair, reconstruction, and use of existing easements, utilities, driveways and rights of way, if any;
- C. maintenance, repair and use of the Property as shown on the Conservation Restriction Plan;
- D. maintenance, repair, reconstruction, and use of existing ways, trails, fences, bridges, gates, sheds, boardwalks, and stone walls on the Premises or as shown on the Conservation Restriction Plan, substantially in their present condition, or as reasonably necessary for the current uses thereof or herein permitted; including the use, improvement of and maintenance of Trail A or Path A approximately four (4') feet in width as shown on the Conservation Restriction Plan to access the beach area;
- E. Construction of fences, bridges, boardwalks, gates, and stone walls, so long as such use is not significantly detrimental to the Purposes protected by this Conservation Restriction, with the written approval of the NHESP;
- F. use of motor vehicles to pass and repass over the existing ways for emergency ingress and egress to and from the Premises as required by the police, fire department, or other governmental agents in carrying out their lawful duties;
- G. erection and maintenance of signs identifying ownership of the Premises; its status as a conservation reservation; and the restrictions on the use of the Premises, if necessary;
- H. cutting, removal, burning, transplanting and planting of trees, shrubs, and other vegetation and the removal of obstacles, such as downed, dead, or dying trees, brush, shrubs, debris, or trash for normal maintenance of the Premises or to prevent threat of injury or damage to persons or property;
- I. cutting of trees and vegetation and burning in accordance with a plan approved by the NHESP, prepared by a natural resources professional, that is designed to protect or enhance the conservation values of the Premises, including without limitation, wildlife habitat, plant habitat and scenic values;
- J. use of pesticides or biocides, including but not limited to insecticides, fungicides, rodenticides, and herbicides only as absolutely necessary to preserve rare or endangered plant or animal species and subject to prior written approval and agreement of the Grantee and the NHESP;
- K. use of the Premises for passive recreational activity such as walking on designated Trail A only, nature study; and use of the beach and dune portion of the Premises for sunbathing, walking, swimming, fishing and other purposes for which beaches are used;
- L. drainage from adjoining land;
- M. scientific research, including but not limited to a broom crowberry burn program and regeneration and transplant program, subject to the prior written approval of NHESP;
- N. erection of wildlife migration barriers;
- O. trapping to control nuisance wildlife species in accordance with Massachusetts General Laws, Chapter 131, Section 80A; and

- P. any other use not otherwise prohibited by this Conservation Restriction or by applicable federal, state, or local laws or regulations that will not interfere with the purposes of the Restriction.

V. Rights of Grantee, The Division and Grantor.

- A. Legal and Injunctive Relief; Enforceability. In the event that a breach of these restrictions by the Grantor or by a third party acting under permission granted by the Grantor comes to the attention of the Grantee, or the Division of Fisheries and Wildlife, its successors and assigns (collectively, the "Division"), the Grantee or the Division shall notify the Grantor in writing of such a breach. The Grantor shall have thirty (30) days after receipt of such notice to undertake actions, including the restoration of the Premises to its condition prior to the time of the breach complained of, that are reasonably calculated to correct swiftly the conditions constituting such a breach, provided, however, that the Grantor shall have no obligation to restore conditions in existence prior to the effective date of this Conservation Restriction and the Grantor's obligation to remedy any such breach shall be limited to conditions resulting from a breach by the Grantor of these restrictions or by a third party acting under permission granted by the Grantor. If the Grantor fails to take such corrective action, the Grantee or the Division shall at their discretion undertake such actions, including appropriate legal proceedings, including obtaining injunctive and other equitable relief, as are reasonably necessary to remedy any such breach, and the cost of such corrections shall be paid by the Grantor, provided the Grantor is determined to be responsible for the breach.
- B. Acts Beyond the Grantor's Control. Nothing contained in this Conservation Restriction shall be construed to entitle the Grantee or the Division to bring any action against Grantor for any injury to or change in the Premises resulting from causes beyond the Grantor's control, including but not limited to fire, flood, storm, earth movement, trespass, other actions of third parties not under Grantor's control, or from any prudent action taken by Grantor in event of an emergency.
- C. Grantee's Disclaimer of Liability. By its acceptance of this Conservation Restriction, the Grantee or the Division do not undertake any liability or obligation relating to the condition of the Premises.
- D. Grantor's Rights. Except as expressly provided herein, Grantor shall not have any obligation to maintain the Premises but shall have the right to do so if it so elects in accordance with this Conservation Restriction.
- E. Non-Waiver. Any election by the Grantee or the Division 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.

VI. Access.

The Conservation Restriction hereby conveyed does not grant to the Grantee, to the general public, or to any other person any right to enter upon the Premises, except there is hereby:

- A. granted to the Grantee, the Division and Grantor a permanent easement to access and utilize any passive recreation trails existing or developed in accordance with Section IV hereof.
- B. granted to the Grantee, the Division and the Grantor the right to enter the Premises at reasonable times and in a reasonable manner with forty-eight (48) hours prior notice for the purpose of:
 - 1. inspecting the Premises to determine compliance with the requirements of this Conservation Restriction;
 - 2. exercising their rights herein; and
 - 3. conducting scientific research and special wildlife and plant habitat preservation activities.

The liability of Grantor with respect to any such access to the Premises shall be subject to the provisions of Massachusetts General Laws, Chapter 21, §17C. Notwithstanding the above access provision, nothing in this Conservation Restriction shall be construed to limit the Division's authority pursuant to G.L. c. 131, §§4 and 11 to access the Premises.

VII. Assignability.

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

The Grantee and the Division are authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Conservation Restriction. The Grantor and its successors and assigns agree to execute any such instruments upon request.

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

- A. As condition of any assignment, the Grantee obtains the approval of Grantor and NHESP, and requires that the Purposes of this Conservation Restriction be carried out;
- B. The assignee, at the time of the assignment, qualifies under Section 170 (h) of the United States Internal Revenue Code of 1954, as amended, and the applicable regulations thereunder, and under Massachusetts General Laws, Chapter 184, Section 32 as an eligible grantee to receive this Conservation Restriction directly; and
- C. any assignment shall comply with the provisions of Article 97 of the Amendments to the State Constitution.

VIII. Subsequent Transfers.

The Grantor agrees to refer to the terms of this Conservation Restriction in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Premises. Notwithstanding anything contained herein, to the extent permitted under applicable law, upon the transfer by a party of its entire interest in the Premises, the rights and obligations of such party under this Conservation Restriction shall terminate. In the event of a transfer by a party of a partial interest in the Premises, the rights and obligations of such party under this Conservation Restrictions shall terminate with respect to the portion transferred.

IX. Estoppel Certificates.

Upon request by the Grantor, the Grantee shall within twenty (20) days execute and deliver to the Grantor any document, including an estoppel, which certifies the Grantor's compliance with any obligation of the Grantor contained in this Conservation Restriction and which otherwise evidences the status of this Conservation Restriction as may be requested by Grantor.

X. Effective Date.

This Conservation Restriction shall be effective after all of the following have occurred: (i) when executed by the Grantor and the Grantee, (ii) when the Division has issued a Conservation Management Permit and all appeal periods have run, (iii) when the administrative approvals required by Massachusetts General Laws, Chapter 184, Section 32 have been obtained: and (iv) when it has been recorded in Barnstable County District Registry of Deeds.

XI. Recordation.

The Grantor shall record this instrument in the Barnstable County District Registry of Deeds. This instrument is exempt from documentary stamp exercise taxes pursuant to Massachusetts General Laws, Chapter 64D, Section 1. For Grantor's title, reference is made to the deed recorded in Barnstable County District Registry of Deeds in Book _____, Page _____.

XII. Notice and Approval.

Whenever notice to or approval by the Grantee, NHESP or the Division is required under the provisions of this Conservation Restriction, except in the case of an emergency, the Grantor shall give written notice by certified mail, return receipt requested, to the Grantee, NHESP or the Division, not less than thirty (30) days prior to the date the Grantor intends to undertake any proposed activity that requires any such notice or approval. The notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit the Grantee or the Division to make an informed judgment as to its consistency with the Purposes of this Conservation Restriction and to monitor the proposed activity. Where the Grantee's or the Division approval is required, the Grantee or the Division shall grant or withhold its approval by written notice, by certified mail, return receipt requested, to the Grantor within thirty (30) days of receipt of the written request therefore. If the Grantee or the Division does not respond to the Grantor's request within said thirty (30) days in accordance with the provisions of this paragraph, the Grantor's request shall be deemed approved by the party that did not respond.

Any notice that either party desires or is required to give to the other shall be sent addressed as follows:

To the Grantor: Stephens Way Nominee Trust
Duane Landreth, Trustee
8 Cardinal Lane
Orleans, MA 02653

To the Grantee: [Name of Grantee]
[mailing address]

To the NHESP or the Division: Natural Heritage Endangered Species Program
Massachusetts Division of Fisheries & Wildlife
1 Rabbit Hill Road
Westborough, MA 01581

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

XIII. Miscellaneous.

- A. Construction and Validity. Notwithstanding any general rule of construction to the contrary, this Conservation Restriction shall be liberally construed in a manner consistent with the Purposes of this Conservation Restriction. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the Purposes of this Conservation Restriction that would render the provision valid shall be favored over any interpretation that would render it invalid. If any provision of this Conservation Restriction or the application thereof to any person or circumstances is found to be invalid, the remainder of the provisions of this Conservation Restriction and their application to other persons and circumstances shall not be affected thereby.
- B. Costs and Taxes; Liability. The Grantor agrees to pay and discharge when and if due any and all real property taxes and other assessments levied by competent authority with respect to the Premises and attributable to the period of the Grantor's ownership of the Premises.
- C. Extinguishment; Eminent Domain. The Grantor and the Grantee agree that the grant of this Restriction gives rise to a property right that vests immediately in the Grantee and which has a fair market value that is equal to the value by which the Restriction reduces, at the time of the grant, the value of the property as a whole.

Should this Restriction be extinguished over all or any portion of the Premises by judicial decree or by act of public authority, the Grantee shall be entitled to a portion of the proceeds equal to the proportionate value of the Restriction, subject, however, to any applicable law which expressly provides for a different disposition of proceeds. If the conservation interests protected hereby are unaffected by the taking, and the only interest taken by public authority is the Grantor's interest, and recovered proceeds are awarded on the basis of the value of the Premises as restricted by this Restriction, then the proceeds from such taking shall be payable in their entirety to Grantor.

Whenever all or any part of the Premises or any interest therein is taken by a public authority other than the Commonwealth under power of eminent domain, or if all or any part of this Restriction is extinguished by act of public authority other than the Commonwealth, then the Grantor and the Grantee shall cooperate in recovering the full value of all direct and consequential damages resulting from such action. If the public authority is the Commonwealth, the Grantor and the Grantee shall pursue their remedies separately.

If circumstances arise in the future such as to render the Purposes of this Conservation Restriction impossible to accomplish, this Conservation Restriction can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction and with the approval of the Secretary of the Executive Office of Energy and Environmental Affairs in accordance with Massachusetts General Laws, Chapter 184, Section 32.

- D. Cumulative Rights. The rights hereby granted shall be in addition to, and not in limitation of, any other rights and remedies available to the Grantee for enforcement of this Conservation Restriction.
- E. Amendments. This Conservation Restriction may be amended with the consent of the Grantor, the Grantee, and the Secretary of the Executive Office of Energy and Environmental Affairs.
- F. Governing Law. This Restriction shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts.

SIGNED as a sealed instrument this _____ day of _____, 200_.

Grantor

Grantee

**ACCEPTANCE OF RIGHTS AND ENFORCEMENT RESPONSIBILITIES UNDER CONSERVATION
RESTRICTION**

The rights and enforcement responsibilities granted in the above Conservation Restriction by
Stephens Way Nominee Trust to the Commonwealth are accepted this ___ day of _____, 200_.

**COMMONWEALTH OF MASSACHUSETTS
DIVISION OF FISHERIES AND WILDLIFE**

By: _____
Its: _____

COMMONWEALTH OF MASSACHUSETTS

_____, ss _____, 200_

On this day before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory evidence of identification which was _____ to be the person whose name is signed on the preceding document, and acknowledged to me that he signed it in his stated capacity, duly authorized and voluntarily, as _____ of the Massachusetts Division of Fisheries and Wildlife, for its stated purpose.

Notary Public
My Commission Expires: _____

SEAL

APPROVAL BY SELECTMEN

We, the undersigned, being a majority of the Board of Selectmen of the Town of Truro, Massachusetts, hereby certify that at a meeting duly held on [date], the Board voted to approve the foregoing Conservation Restriction as being in the public interest pursuant to Massachusetts General Laws, Chapter 184, Sections 31-33.

COMMONWEALTH OF MASSACHUSETTS

_____, ss _____, 200_

On this day before me, the undersigned notary public, personally appeared the signatories above, proved to me through satisfactory evidence of identification which was _____ to be the Selectmen of the Town of Truro whose names are signed on the preceding document, and acknowledged to me that they signed it in their stated capacity, duly authorized and voluntarily, on behalf of the Town of Truro for its stated purpose.

Notary Public
My Commission Expires: _____

SEAL

APPROVAL BY SECRETARY OF ENERGY AND ENVIRONMENTAL AFFAIRS
COMMONWEALTH OF MASSACHUSETTS

The undersigned, Secretary of the Executive Office of Energy and Environmental Affairs of the Commonwealth of Massachusetts, hereby certifies that the foregoing Conservation Restriction to [name of grantee] has been approved in the public interest pursuant to Massachusetts General Laws, Chapter 184, Section 32.

Date: _____, 200_

Secretary of Energy and Environmental Affairs

COMMONWEALTH OF MASSACHUSETTS

_____, ss

_____, 200_

On this day before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory evidence of identification which was _____ to be the Secretary of the Executive Office of Energy and Environmental Affairs of the Commonwealth of Massachusetts whose name is signed on the preceding document, and acknowledged to me that he signed it in his stated capacity, duly authorized and voluntarily, for its stated purpose.

Notary Public

My Commission Expires: _____

SEAL

Exhibit A

PROPERTY DESCRIPTION

Exhibit B

CONSERVATION AND MANAGEMENT PERMIT

ATTACHMENT 5

Transplant and Heathland Management On the Project Site for Conservation and Management Permit NHESP File #06-21061

Pre Transplant Site Evaluation and Selection

- The botanist shall investigate and document soil characteristics and the surrounding vegetation community at the location of the impacted broom crowberry.
- The botanist shall investigate soil characteristics and the surrounding vegetation community at the proposed location(s) of the transplant
- The results of this comparison, including photographs, shall be presented to the NHESP.

Pre Construction Fencing and Monitoring

- All broom crowberry plants/colonies located within or near the construction zone, but not to be impacted (i.e., transplanted) shall be surrounded with construction fencing to avoid an accidental "take" during the construction process.
- After transplanting, the area around the re-located plants will be staked in at each corner for future reference. Construction fence will not be needed because the relocated area is far from any construction work area.
- Construction crews shall be alerted to the locations of the broom crowberry within and in proximity to the construction zone.
- Prior to excavating any impacted broom crowberry, the dedicated transplant site shall be excavated enough for the transplanted mats of broom crowberry.
- An inert polymer wetting agent shall be applied to the surface of the subsoil (where transplanted roots will come in contact with the subsoil) to prevent desiccation after planting. Just prior to transplanting the wetting agent will be activated with a gentle watering.

Transplanting Protocol

Transplantation will be restricted to an area of relict cart road, currently supporting predominantly heathland vegetation (bearberry) and having a generally level aspect (so as to avoid erosion of the soil surface). Approximately one hundred square feet of crowberry, selected from the project footprint and for positive transplantation attributes will be translocated to the cart road located west of the building site (See Appendix A.3). This component of the habitat management is not intended as an in-kind, 1:1 replacement to impact of broom crowberry. The purpose of this effort is to select some of the healthiest crowberry for relocation to establish a new patch of the species and monitor the success over time.

- Using a low-disturbance (track vehicle) excavating machine equipped with a specialized 36-inch transplanting scoop (or larger if available), several mats of crowberry will be cut to a depth of approximately 8-10 inches and moved from the construction area. The transplantation location shall be within the cart road located west of the building site (Appendix A.3). The botanist shall direct all transplantation and excavation activities and may adjust the excavation depth and/or area based on site conditions.
- Excavation will begin 12-18 inches away from the leading and following edge of the plant and extend the full width of 36 inches along the length of the specimen so that as much lateral rhizomes will be included in the transplant. The objective of the transplant will be to move the plants carefully taking all precautions to minimize disturbance to the plants and soil around their root systems. This will be accomplished by supporting the root systems with a wooden frame throughout the transplant

process. Then the plants will be relocated to the transplant location and carefully deposited in the planting hole, which was previously excavated and prepared with a suitable wetting agent. The time from initial excavation will be less than 30 minutes per section of plant.

- Immediately following transplant, the entire area will be soaked with water to minimize any trapped air within the soil.
- An irrigation drip line will be set on a timer to be adjusted as needed throughout the first two growing seasons.

Estimated Budget for Transplanting Broom Crowberry: \$2,500

Transplant Monitoring

- Monitoring will occur at a minimum of every 2 weeks for the first growing season, then three times per growing season (April, July, October) for the following 3 years.
- The transplant will only be considered successful if >50% of the transplanted specimens survive through 3 complete growing seasons.
- Monitoring reports will be submitted to the NHESP by December 31 for each season of monitoring. Reports should include photographs and detailed observations regarding plant morphology, general vigor for each transplanted patch, and general seasonal weather patterns.

Contingency

Good faith efforts will be made by the restoration ecologist to conduct the transplanting during the late fall-early winter (November - December), or when the ground is not frozen and the immediate forecast allows for sunny conditions above freezing during, and several days following, the planting. If further delays from permit review or construction scheduling result in the necessity to transplant material in January or February, the area of transplanted material will be doubled to a total of 200 square feet, the thickness of transplanted root mat will be increased to 12 inches (from 8-10 inches), and clear plastic sheets (2-3 mil) will be secured with ground staples over freshly transplanted material to minimize any frost damage for 10-20 days. The plastic will provide some enhanced solar radiation that could benefit root growth, but the plastic will not be sealed entirely to the ground surface so that it does not become too warm. This area will be monitored once per day, to ensure the plastic is secure, during the construction period or until the weather is warm enough to remove the plastic sheets.

Up to 50% of any ripe seed available from the transplanted plants can be taken under a Scientific Collection Permit and held in a reserve seedbank, nursery, greenhouse, etc. The storage and propagation facility and method(s) for these reserve plants, seeds or propagules shall be approved by NHESP as part of this Contingency Plan. All persons collecting and propagating this plant material shall be pre-approved by NHESP and shall hold a valid Scientific Collection Permit from the Division of Fisheries and Wildlife.

On-site habitat management

• Initial Treatment

During the first growing season (June-October) following the start of work (2008 anticipated), selective clearing of trees and shrubs currently encroaching upon extant crowberry patches will be conducted under the direction of a qualified NHESP-approved botanist or ecologist familiar with heathland plant communities. On the project site, there are a number of areas where trees and shrubs are actively shading Broom Crowberry, killing the crowberry or resulting in crowberry plants of poor vigor. In addition, there are portions of the site, where dense shrub or tree growth appears to be impeding the spread of Broom Crowberry. As a

first step in the management process, the management target areas where shading or dense vegetation is impeding the growth of Broom Crowberry will be flagged in the field by the qualified botanist. The botanist will then supervise the removal of competing trees and shrubs. The methods employed will be determined in the field and may include saw cutting, utilization leveraging tools, spot application of topical herbicide or other methods. This effort will include the removal of invasive species not typical of heathland communities (e.g. Black Locust within the heathland).

By December 31 of the calendar year in which the initial vegetation management is conducted, the qualified botanist will provide the NHESP with a detailed report describing the management activities and methods of vegetation removal. The report will include a plan showing approximate GPS coordinates of flagged areas where vegetation management was implemented, an estimate of the total area managed, photographs representative of pre- and post-treatment conditions, and future management recommendations.

- **Long-term Management**

At five (5) year intervals, commencing in 2010 and every five years thereafter (2015, 2020, 2025...), the site will be examined by a qualified botanist or other individual approved by NHESP and management and reporting shall be conducted as described above ("Initial Treatment"). In all cases, first priority will be to avoid actual or potential damage to extant broom crowberry on the site. The applicant will make every attempt to implement the specific management recommendations made by the qualified botanist. Any recommendations that deviate from the specific management techniques and procedures described herein, shall be approved in writing by the NHESP.

Estimated Budget for selective removal of competing vegetation and preparation of a 5-year vegetative management plan: \$3,000

ATTACHMENT 6

Research Component for Conservation and Management Permit On- and Off-site NHESP File #06-21061

Introduction --- An NHESP-approved professional will implement prescribed burns with three (3) burn treatments (spring, summer, and fall) on four (4) different sites to determine the relative affects of burning during different seasons on the vegetative characteristics and species competition in the heathland community.

Tri-Seasonal Burn Plot Study

Methods.---In the proposed study, each burn action will occur in 20 x 20 m plots (3 plots per site) at 4 different sites (4 replicates per treatment). A portion of each plot will contain at least some live broom crowberry. One of the study sites will be within the subject site off Stephen's Way, two will be in nearby Cape Cod heathlands, and a fourth site will be on Nantucket.

Burn Schedule

May 2008 - one plot burned in the spring (Treatment 1)

July-August 2008 – one plot burned in the summer (Treatment 2)

October-November 2008 – one plot burned in the fall (Treatment 3)

Vegetative Monitoring.--- Vegetative re-growth (species composition, percent cover) will be quantified using quadrat sampling for 3 growing seasons (April to October) . Because broom crowberry typically does sprout during the first season after a burn, it is important that monitoring occur during year 2. Furthermore, since our proposed burning will be staggered throughout the growing season, sprouting may also be staggered during the second and third growing seasons. Thus, it is important that monitoring occur during each consecutive growing season and not to skip years to extend the monitoring period. The differential response of the affected species and colonizing species will be assessed and quantified for analysis between the three treatment regimes as well as among the seasonal replicates. The results of this experiment, in this particular application will potentially provide preferred seasonal burn conditions for maintenance and enhancement of broom crowberry.

Estimated Budget for tri-seasonal burn plot study: \$10,000

Ten-Year Burn-Site Evaluation

In 1998 prescribed burns were conducted on Cape Cod including areas of broom crowberry. A five-year, post-burn monitoring study of heathland plant community recovery from prescribed burns in heathlands that included broom crowberry was conducted (ENSR, 2005). In the intervening period, no critical evaluation has been made of the resulting recovery within these burn plots.

A qualified, NHESP-approved biologist will revisit the same study plots to quantify the species composition and species density in the heathland plant community 10 years later (1998-2008). A report summarizing the results of these methods, findings, and analysis will be submitted to NHESP.

Estimated Budget for 10-year Heathland Monitoring: \$2,000

ATTACHMENT 7

Implementing Heathland Management at Off-site Locations For Conservation and Management Permit NHESP File #06-21061

Once the results of the three-season programs are analyzed and the longer-term quantification of how different burn management techniques influence heathlands, the project ecologists will develop a prescribed burn plan to implement heathland management on a larger scale. Any prescribed burns will need approval from the local, state, and/or federal authorities, thus we will work with a local expert in the field, in good faith, to obtain the necessary permits. Stephens Way Nominee Trust will provide funding directed at prescribed burns to benefit senescing populations of broom crowberry, where the species is documented to require some management, specifically, Cape Cod and Nantucket. The details of this management plan will depend on the results of the field research and the ability to obtain the proper permits and permission at the time of the prescribed burns. •

Additional funding in the amount of \$17,500 will be provided to support heathland habitat management. Management will target areas inhabited by broom crowberry through prescribed burns (off site), transplanting (on site), and selective clearing (on site). As stated previously, the appropriate authorities must approve any fire management

Although the management budget includes an applied research component, the majority of these funds will be directly applied to either onsite or offsite mitigation.

The offsite mitigation component budget is listed below:

Estimated budget to develop a burn plan based on the proposed research and existing scientific literature, permitting, and coordination for future heathland management on Cape Cod and Nantucket: **\$5,000**

Estimated budget to conservation organization located on Nantucket for management activities including general costs for experimental and landscape-scale burning, vegetative monitoring, data analysis, and report preparation: **\$5,000**