



Massachusetts Conservation Restriction Stewardship Manual

A Handbook for Land Trusts and Conservation Commissions



Endorsed by the Massachusetts Association
of Conservation Commissions and
the Massachusetts Land Trust Coalition



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Section 1

Introduction

The conservation restriction (“CR”) (known in most other states as a conservation easement) has become a vital land protection tool. Since receiving legislative recognition in 1969, tens of thousands of acres have been protected by CRs held by municipal conservation commissions, land trusts and state agencies in Massachusetts.

CRs divide interests in land among two or more parties with the landowner retaining ownership of the property and the land conservation organization, such as a land trust or a public agency, holding the CR. The conservation organization is responsible for enforcing the terms of the CR to ensure that the conservation values of the property are protected in perpetuity.

Conservation organizations sometimes accept CRs without adequate consideration of the extent of the responsibility that is involved in long-term stewardship of these restrictions. Since CRs are less than a full ownership interest in land, they were thought to entail less responsibility for management. In fact, CRs carry significant stewardship obligations that are becoming more evident with the passage of time.

Good stewardship of CRs by conservation organizations requires both initial documentation and annual monitoring of the resources on the property. The national Land Trust Alliance’s “Standards and Practices” for land trusts include guiding principles for CR stewardship. These Standards and Practices are reprinted in the margins of this Manual and can be found in further detail on the Land Trust Alliance website.

This Manual has been developed to take these “best practices” one step further, providing conservation organizations with a useful reference guide addressing the various aspects of CR stewardship. This Manual is the first of its kind— a detailed reference guide focused on issues surrounding CR stewardship. The Manual is intended both for users who are just beginning a program of CR stewardship, as well as for those who are seeking to upgrade their approach to the stewardship of their restricted lands. It is not intended to mandate how things should be done but to present useful practices, and in some cases alternative approaches, to achieve CR stewardship goals. This Manual cannot substitute for individualized legal advice, and conservation organizations are encouraged to consult counsel wherever possible in designing and implementing a CR stewardship program.

Section 2

Overview of Conservation Restrictions

What is a Conservation Restriction?

A CR is a legal document by which a landowner (or “Grantor” in legal terms) conveys a partial interest in land to a qualified conservation organization (known as a “Grantee” or “holder” of the CR). By granting a CR, a landowner agrees to forgo or limit future development and use of the property to preserve identified Purposes and Conservation Values; these might include the protection of wildlife habitat, scenic views, agricultural land, watershed protection lands or other important resources.

A CR is recorded in the chain of title of a property at the appropriate Registry of Deeds or Land Court, so all present and future owners have notice that the property is subject to the CR and that they are required to comply with its terms. Any subsequent owner of the property must follow the terms the original grantor agreed to. The landowner continues to own the property and can sell or convey the property to anyone at any time, subject to the terms and conditions of the CR. The conservation organization, as “holder” of the restriction, assumes the responsibility of periodically monitoring the property to safeguard the conservation values and assure compliance with the terms of the CR.

A Flexible Tool for Land Protection

CRs have significant benefits as a method of protecting land. They are particularly useful when the landowner wishes to continue to own or use the property but wants to ensure that the conservation values will be protected in perpetuity. In addition, a CR is highly adaptable to the needs and wishes of the landowner and the conservation resources of the property. For example, if a landowner wishes to develop and maintain trails throughout their property, this can be written into the “reserved rights” section of the CR. It then can be decided whether the landowner can conduct these activities outright, or whether notice and approval will be required by the holding organization.

A CR may be written to prohibit all activities that may alter the natural condition of the property, or it may allow agriculture, forestry or other uses that are consistent with protection of the conservation values of the property. It may even permit limited development (such as an additional house or construction of a barn), but typically specifies the type, extent and location of such development. For example, if a new structure or septic system is to be permitted within the CR, a suitable building envelope must be identified within the restricted area. The specific terms of each CR must be tailored to the property that is being protected.

Landowners who place CRs on their property are not required to allow public access or public use of the land unless they wish to do so, or unless access is required by a granting agency.

CRs are generally placed on land in one of three ways:

1. A landowner who wishes to see their property preserved in perpetuity may donate a CR to a qualified conservation organization.
2. A qualified conservation organization may purchase a CR from a landowner. In some cases, only the restriction is purchased, leaving the fee ownership of the property in the hands of the original owner. In other cases – for example, in an agreement between a land trust and a public agency to protect a property – one entity may acquire ownership of the property (the fee interest) while the other acquires the CR.
3. A developer or landowner may be required by a municipal or state permitting process to place a CR on a portion of a parcel that is being developed. For example, the open space in an open space residential development (also known as a cluster development) may be subject to a CR. CRs are also required on all lands that are acquired through Community Preservation Act Funding. The Natural Heritage and Endangered Species Program also often requires a CR on sensitive portions of a property as mitigation for development impacts elsewhere.

Tax Benefits for the Landowner

When a CR is donated outright or purchased for less than its fair market value (called a “bargain sale”), the landowner may be eligible for a federal income tax deduction. To qualify as a tax-deductible gift, a CR must be written to be effective in perpetuity and be accepted and recorded by a qualified conservation organization. In addition, the CR must provide at least one of the following public benefits listed in **Section 170(h) of the Internal Revenue Code**:

- Protection of relatively natural habitat of fish, wildlife or plants, or similar ecosystem.
- Preservation of open space, including farmland and forestland, for the scenic enjoyment of the general public, or pursuant to a clearly delineated governmental conservation policy.
- Preservation of land for outdoor recreation by, or the education of, the general public.
- Preservation of historically important land or certified historic structures.

The value of a donated CR is typically eligible for a charitable deduction if it meets these requirements, as further described in the Internal Revenue Service (IRS) regulations. The value of the CR is calculated as the difference between the value of the land before and after the imposition of the restriction. For example, a lot worth \$100,000 may only be worth \$20,000 if a CR is placed on it that prohibits construction of any kind. The value of the gift would then be the value before the restriction minus the value with the restriction, or \$80,000. These values must be determined by a qualified appraiser in a manner that meets IRS requirements. Note that CRs that are required as the result of a regulatory process or enforcement action are typically not eligible for a charitable deduction.

In addition to these potential income tax benefits, landowners who protect their land with a CR may be eligible for local property tax reductions (by reducing the assessed value of the

land) as well as estate tax benefits (by reducing the value of their estate). A detailed discussion of tax benefits is beyond the scope of this Manual; landowners who are interested in the tax benefits of protecting their land should be encouraged to consult with tax and land use professionals to determine the extent of such benefits as applied to their particular situation and ensure that they meet the legal requirements to qualify for tax benefits.

Authorizing Legislation

The legislation authorizing CRs in Massachusetts (MGL Chapter 184, Sections 31 to 33) was adopted in 1969. The law requires that all CRs held by land trusts and municipalities must be approved by the Secretary of the Executive Office of Energy and Environmental Affairs (EEA). Prior to obtaining signatures from the landowner and holder, a CR must be sent to the Massachusetts EEA for review to ensure that it meets the statutory requirements for the Secretary's signature. CRs held by land trusts or municipalities must also be approved by the municipality's executive body (generally the Board of Selectmen, or City Council and Mayor/Town Manager). After the landowner and holder (and any local officials) sign the document, it receives final approval and signature by the EEA. CRs held by state agencies do not require local approval.

This local and state approval process is unique to Massachusetts - no other state requires such approvals for landowners and conservation organizations to enter into conservation easements. Restrictions granted prior to 1969, and those that do not go through the approval process outlined above, including deed restrictions, require periodic re-recording (after 30 years, and thereafter every 20 years) to maintain their enforceability. For this reason, any restriction that is intended to be permanent - and any restriction for which the landowner intends to claim a charitable deduction - must go through the applicable state and local approval process. EEA maintains a list of all CRs that have been approved in Massachusetts showing grantor, holder, date, acreage and registry recording information.

Other Types of Restrictions

In addition to CRs, Chapter 184 also authorizes several other types of permanent restrictions, including Agricultural Preservation Restrictions approved by the Department of Agricultural Resources, Watershed Preservation Restrictions approved by the Department of Conservation and Recreation, Historic Preservation Restrictions approved by the Massachusetts Historical Commission and Affordable Housing Restrictions approved by the Executive Office of Housing and Livable Communities. While a detailed discussion of each of these types of restrictions is beyond the scope of this Manual, it should be noted that they also require documentation and monitoring as described below.

Section 3

Elements of Stewardship

What are the Elements of Conservation Restriction Stewardship?

Conservation organizations that hold CRs have assumed the responsibility of ensuring that the conservation values of the property are protected and that the terms of the restriction are enforced in perpetuity. The best way to do this is through a sound stewardship program which includes documentation of the conservation values and man-made features on the property that are being protected by the restriction at the time the restriction is signed, regular property monitoring and development of a strong working relationship with owners of restricted properties.

CR stewardship, including creating Baseline Documentation Reports (BDRs) and conducting monitoring visits for each CR held by your organization, may seem like an overwhelming task. But as with any big job, it is helpful to break the task into pieces. Start by gathering good records on the CRs held by your conservation organization. Develop policies and procedures to ensure that baseline documentation is completed on new CRs as they are accepted, aiming to have the Baseline Documentation Report completed 2 to 4 months before closing. Then go back and begin to tackle the older restrictions.

A good stewardship program includes a number of elements, and this Manual contains tips and strategies designed to address each of the following components:

- Preparation of Baseline Documentation Reports
- Development of a regular monitoring program
- Cultivation of strong and ongoing relationships with landowners
- Creation of policies for the enforcement and amendment of CRs
- Establishment of a Stewardship Endowment, or source of funds, for carrying out CR stewardship responsibilities including monitoring and enforcement

Land Trust Alliance Standards and Practices

The Land Trust Alliance requires that member land trusts adopt the 12 Land Trust Standards and Practices as the guiding principles for their operations, indicating a commitment to upholding the public trust and the credibility of the land trust community as a whole. The Land Trust Alliance encourages all land trusts to implement Land Trust Standards and Practices at a pace appropriate for the size of the organization and the scope of its conservation activities. Applicable Standards and Practices can be found highlighted throughout this Manual, while a full list of the 12 Standards and Practices and associated resources can be found at www.landtrustalliance.org.



Land Trust Alliance Standards & Practices

Standard 11: Conservation Easement Stewardship

Land trusts have a program of responsible stewardship for their conservation easements.

Practice 11B: Baseline Documentation Report.

1. For each conservation easement, have a baseline documentation report, with written descriptions, maps and photographs, that documents:

- a. The conservation values protected by the easement
- b. The relevant conditions of the property as necessary to monitor and enforce the easement

2. Prepare the report prior to closing and have it signed by the landowner and land trust at or prior to closing

- a. In the event that seasonal conditions prevent the completion of a full baseline documentation report by closing, the landowner and land trust sign a schedule for finalizing the full report and an acknowledgement of interim data [that for donations and bargain sales meets Treasury Regulation §1.170A-14(g)(5)(i)] at closing

3. When there are significant changes to the land or the conservation easement (such as a result of an amendment or the exercise of a permitted right), document those changes in an appropriate manner, such as through monitoring reports, a baseline supplement or current conditions report

What is Baseline Documentation?

Baseline documentation is a critically important tool for ensuring that the terms of the CR are honored. A Baseline Documentation Report is a written report that accurately portrays the condition of the property as of the date that the CR was recorded and serves as a benchmark for comparison against future conditions. It contains a description of the property, site maps, photographs and other materials that reflect the conservation values of the CR. Much of this information is normally gathered during the process of considering whether to accept the CR. For good measure, the landowner, holder and preparer each should attest to the accuracy of the Baseline Documentation Report by signing affidavits. The Baseline Documentation Report is signed by the landowner at or just prior to closing, and is maintained as a permanent record of the condition of the land as of the date of the CR.

Baseline documentation serves other purposes as well. The IRS requires that a landowner seeking an income tax deduction for a donated CR provide the holder with a “natural resources inventory” that describes the condition of the property at the time of the gift.

More specifically Section 1.170A-14 of the Treasury regulations read, in part:

“the donor must make available to the donee, prior to the time the donation is made, documentation sufficient to establish the condition of the property at the time of the gift. Such documentation is designed to protect the conservation interests associated with the property, which although protected in perpetuity by the easement, could be adversely affected by the exercise of the reserved rights. Such documentation may include:

(A) *The appropriate survey maps from the United States Geological Survey, showing the property line and other contiguous or nearby protected areas;*

(B) *A map of the area drawn to scale showing all existing man-made improvements or incursions (such as roads, buildings, fences, or gravel pits), vegetation and identification of flora and fauna (including, for example, rare species locations, animal breeding and roosting areas, and migration routes), land use history (including present uses and recent past disturbances), and distinct natural features (such as large trees and aquatic areas);*

(C) An aerial photograph of the property at an appropriate scale taken as close as possible to the date the donation is made; and

(D) On-site photographs taken at appropriate locations on the property. If the terms of the donation contain restrictions with regard to a particular natural resource to be protected, such as water quality or air quality, the condition of the resource at or near the time of the gift must be established. The documentation, including the maps and photographs, must be accompanied by a statement signed by the donor and a representative of the donee clearly referencing the documentation and in substance saying "This natural resources inventory is an accurate representation of [the protected property] at the time of transfer."

Although the IRS regulations place the burden of providing a natural resource inventory on the landowner (at least for those transactions where a tax deduction will be claimed), many CR holders offer to prepare a full Baseline Documentation Report for the landowner (which is likely to be more expansive than what is required by the IRS) to ensure that it is done in a manner that meets the standards and future needs of the holder for baseline documentation. In those cases where weather or other circumstances prevent completion of a Baseline Documentation Report prior to the closing, a basic inventory that meets the IRS requirements can be signed at closing, with follow up afterwards to complete the full Baseline Documentation Report.

The Baseline Documentation Report is used as the primary reference during subsequent monitoring visits and provides important data for property management and for evidence to defend the conservation values of the property in the event of a violation. Without a comprehensive and timely Baseline Documentation Report it is much more difficult, and sometimes impossible, to identify violations, or to prove that a violation occurred after the restriction was recorded.

Conservation organizations that hold CRs for which Baseline Documentation Reports were never prepared should prioritize the development of such reports, typically referred to as a "Current Conditions Report" which is described in more detail on **Page 29**. Preparation of an original Baseline Documentation Report is discussed in **Section 5** of this Manual and a sample Baseline Documentation Report can be found in **Appendix C**.

What is Conservation Restriction Monitoring?

Upon the acceptance and recording of a CR, the conservation organization that holds a restriction assumes the responsibility for ensuring enforcement of the terms of the restriction in perpetuity. In addition to preparing a Baseline Documentation Report, the holder should also monitor the property annually, either in person or through remote monitoring, or more frequently if necessary. The principal purposes of monitoring are:

- 1.** To ensure that the conservation values of the CR are being upheld.
- 2.** To discover and document any violations that have occurred.
- 3.** To cultivate a strong working relationship with the landowner.

The more frequent the monitoring, the earlier any violations will be detected. Detecting violations soon after they occur may enable the holder to limit their extent, to quickly remediate any damage and to ensure restoration of the property.

The monitoring process also creates the opportunity to develop an ongoing relationship with the landowner and provide information and resources regarding land management and protection. The monitoring visit offers the chance to ask the landowner questions about their land management goals, and to provide clarity around which activities are allowed and which require approval and advance notice. This is particularly important for successor owners who acquired the property after the CR was in place and were not involved in crafting the terms of the restriction. Regular monitoring also helps to prevent unintentional violations by maintaining the landowner's awareness of the restriction, and by letting neighbors and others know that the land is being regularly inspected.

In order to build a useful record of property conditions over time, monitoring should be conducted using consistent practices and procedures from one year to the next. These practices are discussed in **Section 6**. Remember that these practices can be improved upon over time, especially as new technologies become available, but creating clear protocols to follow will aid in developing a successful CR stewardship program.

Section 4

Researching Land Records & Recordkeeping

The first step in good CR stewardship is to ensure that you have basic information about each of the CRs that your organization holds. You may be starting out with excellent, current records, or you may need to “start from scratch.”

If you do not have information about the CRs that you currently hold, you will need to begin by doing some research to identify existing CRs, obtain legal documents and boundary descriptions or surveys and find out who currently owns the land.

The first step is to compile a definitive list of all CRs held by your organization. All CRs should be on record at the Registry of Deeds or Land Court Registry District for your area. You can also consult the town’s assessing office, your community’s most recent Open Space and Recreation Plan or the Massachusetts Division of Conservation Services (DCS) within the EEA.

This section of the Manual contains information about basic land records that can be found online and in municipal offices, as well as how to navigate the Registry of Deeds. A list of key documents that should be in each CR file can be found below. The decision about where to start with research should be made by the holder of the CRs and is a function of the geographic scope of your organization or agency. Municipalities or land trusts that are based in one community are likely to find that the easiest starting place is the municipal assessing office’s website. Regional or statewide organizations may find it more efficient to gather information from the Registry, particularly where information is available online. In some cases, a combination of both will be needed. While this Manual is not intended to be a comprehensive guide to title research, the basic information here should enable most CR holders to locate the necessary documents that are needed for CR stewardship.

Creating Permanent Conservation Files

As a starting point, every organization should have a primary file for each CR that it holds. The following items are essential components of each file:

- A copy of the CR with all signatures
- A copy of the Grantor’s deed and/or current landowner’s deed
- A copy of any surveys or plans of the property
- A copy of the assessor’s map
- A document listing the current landowner name and contact information
- A copy of the Baseline Documentation Report
- Copies of any monitoring reports
- Any other relevant documents (title reports, notes from meetings with landowners, landowner correspondence, etc.)



Deeds, CRs and Other Instruments of Conveyance

A deed is the instrument of record of the transfer of title (ownership) to land. There are other “instruments of conveyance” that are used to record the transfer of interests in land, including restrictions, CRs, easements, mortgages and wills. In order to be valid, each instrument of conveyance must be placed on record, or “recorded,” so that it is available for public inspection. Once recorded, these instruments put the public on notice that an interest in property has been created or changed hands (in legal terms, this is known as “constructive notice”).

These instruments may be recorded at one of the Commonwealth’s Registries of Deeds or the Land Court. Other instruments affecting title to land may be found at the Registries of Probate. These are often, but not always, housed together at the Commonwealth’s Registry of Deeds offices. Each of the Registries have a digital system that allows users to access many documents electronically. A list of counties with their applicable Registries and websites can be found in the margin on **Page 14**.

Registries of Deeds and Recorded Land

Most land records are located at the Registries of Deeds. The Registries were created to safeguard and make available legal instruments pertaining to rights to real property (e.g., deeds, mortgages, liens, easements, rights of way and deed restrictions), and supporting documents such as surveys and plans. The Massachusetts Registries’ archives go back as far as the early 1640s and are current to within several hours of the present.

Registry clerks examine each instrument to ensure that it meets Registry recording standards. All instruments are bound in record books in the order they are received. The Registry assigns a document number, records the book and page number and the time and date of recording and indexes the instrument based on the names of the grantor and grantee and the property address.

The Land Court and Registered Land

The Land Court Department of the Trial Court (generally referred to as the Land Court) has jurisdiction over the registration of title to real property and over title disputes throughout the Commonwealth. When the Land Court is asked to settle a title claim, it researches the history of ownership up to the present using Land Court and Registry archives, and interviews parties with knowledge of the property.

The Land Court may issue a Certificate of Title that guarantees both the title and boundaries of the property, which is then referred to as registered land (as compared to recorded land). Information about registered land may be found at the Land Registration Department within each of the Registries.

Registry of Probate and Land Transferred by Will or Intestate Succession

When a landowner dies, title to their land may be passed to others either via a written will, or by the “rules of intestacy” which provide for the disposition of an estate’s assets absent of a

Current Massachusetts Registry of Deeds Websites

All Counties

www.masslandrecords.com

All Counties

www.massrods.com

Statewide Information

www.sec.state.ma.us

Barnstable

www.barnstabledeeds.org

Berkshire North

www.berkshirenorthdeeds.com

Berkshire Middle

www.berkshiremiddleddeeds.com

Berkshire South

www.berkshiresouthdeeds.com

Bristol Fall River

www.fallriverdeeds.com

Bristol North

www.tauntondeeds.com

Bristol South

www.newbedforddeeds.com

Dukes

www.dukescountydeeds.com

Essex North

www.lawrencedeeds.com

Essex South

www.salemdeeds.com

Franklin

www.franklindeeds.com

Hampden

www.hampdendeeds.com

Hampshire

www.massrods.com/hampshire

Middlesex North

www.lowelldeeds.com

Middlesex South

www.middlesexsouthregistry.com

Norfolk

www.norfolkresearch.org

Plymouth

www.plymouthdeeds.org

Suffolk

www.suffolkdeeds.com

Worcester

www.worcesterdeeds.com

Worcester North

www.fitchburgdeeds.com

will. When title is passed to the landowner's heirs by either means, the transfer will be recorded at the county Registry of Probate and may not be reflected in the records at the Registry of Deeds. Generally, it is necessary to visit the Registry of Probate in order to view this information as it is not always available online.

Registry of Deeds Research

Records at the Registries of Deeds and Land Court may generally be searched by the name of the grantor (the party conveying an interest, such as a seller, or the landowner that conveyed the CR), name of the grantee (the party receiving the interest, such as a buyer or the holder of the CR), book and page number, document number, street address or municipality. Land Court records can also be searched by certificate of title and court case number. The Registry of Probate indexes its records by name of the deceased ("decedent") and a probate number.

Note that the indexes for the Registry of Deeds, Land Court and Registry of Probate are separate. Unless you have a specific Land Court certificate number (usually shown as Cert# or C.O.T. in the reference) or probate number (usually a reference beginning with a P) for a document you are seeking, it almost always makes sense to begin your research at the Registry of Deeds and then search elsewhere if you are unsuccessful.

CRs should contain a reference to the grantor's deed (e.g. "For title reference, see deed from John Smith to Robert Jones dated July 14, 2021 and recorded at the Worcester District Registry at Book 13570 Page 90"). This is a good starting place for research, as many of the other instruments of interest such as maps, plans, easements or rights of way will be referenced in the deed. If there is no such reference, begin your research using the name of the grantor of the restriction. If you don't know the exact name of the grantor, it is possible to "back search" for the document using the name of the grantee – the holder of the CR.

Finding Subsequent Owners

Search under your grantor's name from the date of the CR forward to see if they have been the grantor on any subsequent deeds. Review those deeds to see if they apply to the property subject to the CR. If your grantor is deceased and no deed can be found, search under their name at the Registry of Probate.

For older CRs, it may be necessary to consult the hard copy grantor/grantee index.

Finding a Boundary Description

Start by locating the grantor's deed to see if there is a "metes and bounds" (distances and directions) description of the property. If not, find that grantor's deed reference, and then examine that document. As you "chain back" through title to the property, be mindful that some prior deeds may convey a larger parcel that contains the property subject to the CR. If there is no recorded description, it may be possible to compile one based on the boundary descriptions of abutting parcels. As your organization acquires new CRs, it is good practice to conduct an official survey of the property which is then included as an exhibit of the recorded CR.

Finding a Map or a Plan

Use the technique described above to see if there is a reference to a plan in any deed, or search the recorded and registered plans based on the property address or current and prior owners. As above, it may be possible to compile a map based on maps of abutting parcels. Note that plans are generally not recorded in the same books as deeds and other instruments, but in a separate set of oversized plan books and listed separately on the Registry website. They are also indexed separately at the Registry and Land Court. As an example, Plan Book 30, Page 4 is not the same as Book 30, Page 4. Plan Books are often in a separate section of the Registry but are also available for inspection.

Finding Easements or Other Encumbrances

Any easements or encumbrances over a property should be recited in each subsequent deed or in a title report, but often they are not. Search the records using the current and previous owners as grantors to uncover these instruments. It is important to research easements that were recorded prior to the CR as they may affect the activities that can take place within the restricted area. For example, if an abutting landowner has an access easement over land subject to the CR, they may have the right to build an access road across the CR even if new roads are specifically prohibited under the terms of the restriction.

Tips for Registry Database Searches

Your organization may appear several different ways in the database, and often exact match is required. Try entering less information, for example "Audubon" rather than "Massachusetts Audubon Society."

When asked to select a type of document, one option is other "restrictions." Be aware, however that sometimes CRs are incorporated into deeds. In other situations, the Registry may not have coded the document as a "restriction." When in doubt, cast a broader net based on the name of the landowner or conservation organization or agency.

If searching for a restriction held by a municipality, try searching just on the name of the Town rather than the more specific holder of the restriction, for example "Lincoln" rather than "Lincoln Conservation Commission."



Municipal Records Regarding CRs

Town Assessing Offices

Perhaps the most accessible and useful place to start to gather information about land subject to CRs (particularly at the local level) is at the municipal Assessing Office for the community where the restriction is located. These offices are the repositories for information required to calculate and collect property taxes and, as a result, are likely to have information about parcels subject to CRs. The assessors' tax maps show each property indexed by map, parcel and lot number. In some communities these maps are more detailed and may even show land subject to CRs. MassMapper is a helpful online mapping tool developed by the Executive Office of Technology Services and Security's (EOTSS) Bureau of Geographic Information Systems (MassGIS) where you can find accessible assessor's data. Further notes regarding MassMapper can be found on **Page 22**. Note that the assessor's maps are designed to show the general location of properties in relationship to one another and are not a substitute for survey plans when it comes to locating boundaries in the field.

Assessors also maintain a listing of all property owners in the town. Using either the owner's name or the map, parcel and lot number, you can access the information in property listing books and/or field cards maintained by the assessor. The field cards typically include the following information:

- Owner's name and mailing address
- Property address
- Owner's title reference (the Registry book and page reference for the owner's deed)
- Date of purchase
- Improvements, if any, and the date they were made
- Acreage
- Assessed value of land and improvements
- Taxes assessed
- Tax status (e.g. Chapter 61, 61A or 61B)

Assessing offices also generally have copies of deeds for properties in their community. Obtaining this information prior to visiting the Registry website can save a great deal of time in searching, since you will be able to begin your search with the current owner's name, deed reference (and possibly a boundary survey reference) and date of conveyance already in hand, and use this information to locate the CR and other information that is on record at the Registry.

The Assessing Office is also a handy place to quickly gather contact information about the current owner of a restricted property as well as similar information about abutting landowners. This can be helpful if you are trying to identify the name of an abutter who might be responsible for encroachment on land subject to a CR or to find surveys of abutting land.

If you are not able to find what you need in the digital files, staff at assessing offices are generally very helpful and knowledgeable about lands in their town and may also be able to assist in identifying land subject to CRs. In smaller communities, assessors' offices may only

Land Trust Alliance Standards & Practices

Standard 09: Ensuring Sound Transactions

Practice 9G: Recordkeeping

1. Adopt a written records policy that governs how and when organization and transaction records are created, collected, retained, stored and destroyed
2. Keep originals of all documents essential to the defense of each real property transaction in a secure manner and protected from damage or loss
3. Create and keep copies of these documents in a manner such that both originals and copies are not destroyed in a single calamity

be open one or a few days a week, and only during certain hours. Call or visit the town's website for this information.

Conservation Commissions, Planning Boards and Boards of Selectmen

Within a municipality, the first place to start gathering records about existing CRs is with the local Conservation Commission which may already have existing files and/or may have information about restrictions in the most recent copy of the municipal Open Space and Recreation Plan if there is one.

It is also worth a visit to the Planning Board office to see if it has any records about CRs. In many communities, such restrictions may have been required as part of the permitting process for subdivisions (e.g., open space or "cluster" subdivisions) or other development. Municipalities have online Geographic Information System maps, along with MassMapper, which may be useful in producing Baseline Documentation Reports and assisting with other CR stewardship responsibilities.

Recordkeeping & File Storage

Creating and managing records is central to CR stewardship. Record keeping is critical for meeting the needs of legal and contractual obligations, to track and evaluate activities over time and to defend property interests.

In establishing a policy for record keeping, you must consider the size and scope of your organization, and the nature and complexity of your organization's mission, finances and programs. According to the Land Trust Alliance, establishing a clear policy on record keeping can assist in providing organizational consistency and continuity, efficiency in locating information and admissibility of evidence in judicial proceedings. Despite your organization's size or nature, all recordkeeping policies should address the following elements:

- Purpose or philosophy of recordkeeping
- Document and data creation
- Document maintenance and storage
- Document retention periods and destruction

As part of your record keeping policy, your organization must decide what information to collect and keep. Protocols may pertain to handling copies versus originals, naming and filing of documents and identifying authors and dates of creation or revision. Your policy should further address accessibility of

records (who and how often will records need to be accessed), how records will be organized, where records will be stored and location security, cost of storing records (time, dollars and space) as well as contingency planning for backing up files.

Organizations should store all permanent files in storage areas that are safe from fire, flood and tampering by individuals. For accredited land trusts, the Land Trust Alliance requires that land trusts must retain originals of specific documents, which can be found in more detail as part of their Standards and Practices. Permanent files that should be stored in order to defend each CR held by your organization include:

- Deeds
- Surveys
- Appraisals
- Recorded CRs
- CR amendments
- Baseline Documentation Reports
- CR monitoring reports
- Critical landowner correspondence (e.g. notifications, approvals, enforcement, exercise of reserved rights, conversations regarding legal matters etc.)
- 8283 Forms (for CRs where the landowner claimed a federal tax deduction)

Storing Electronic Records

Many organizations store both paper and electronic copies of records. There are various software and cloud-based storage options available for storing electronic copies of records. Storing records digitally does provide some benefits which include ease of access, protection against physical damage and integration into searchable database systems. For organizations that choose to store originals of their records in an electronic format, the originals must meet the requirements of applicable federal and state laws and must be saved in a format that cannot be altered. Policies must be established for safeguarding digital records such as saving originals to non-rewritable discs and limiting access to cloud-based originals as read only or only to those with permission. Further guidance for establishing recordkeeping policies regarding both paper and electronic files can be found as part of **Standard 9 of the Land Trust Alliance's Standards and Practices.**

Section 5

The Baseline Documentation Report

Preparing the Baseline Documentation Report

Much of the information required to prepare a Baseline Documentation Report may have been gathered as part of the pre-acquisition review of a CR. The Baseline Documentation Report can be prepared by either a trained staff person or volunteer of your organization, or by a hired consultant. Typically, preparation of a “basic” Baseline Documentation Report requires a day in the field to verify boundaries, take photographs and document the property’s resources as well as any relevant areas related to the CR’s conservation values or reserved rights. While in the field, it is great to include the landowner during this site visit as they are most familiar with the property and provides a chance to point out any problematic areas and to form a stronger relationship with the landowner. Further time is needed to gather the additional information that is incorporated into the report. Large or complicated properties will take more time. It is generally preferable to prepare the report when there is no snow cover and when leaves are off the trees. Such conditions make it easier to find and photograph property boundaries and to locate man-made features like trails and roads.

Organizations will need to consider how best to ensure that Baseline Documentation Reports are prepared in a timely fashion. As mentioned in **Section 3**, it is ideal to conduct your Baseline Documentation site visit 2 to 4 months before closing of the CR. Sometimes various factors, such as weather or legal due diligence, may impact the timing of your baseline fieldwork. If your Baseline Documentation site visit is conducted longer than 6 months prior to closing, it is best to make an additional visit to the property to confirm whether there have been any major changes to the property since the initial visit and to update the Baseline Documentation Report if necessary. If your fieldwork was conducted longer than one year prior to closing, or if there have been major changes to the property, it is best practice to redo the fieldwork portion of the Baseline Documentation Report, focusing on addressing particular portions of the Report that are related to any changes to the property (e.g. photographs or conditions observed).

It is also important to weigh the option of having your Baseline Documentation Reports done “in house” versus hiring a consultant; factors to take into consideration include the availability of funds, volunteer suitability, staff capacity and the desirability of having such reports prepared in a consistent format. If an organization or agency prepares many Baseline Documentation Reports each year, it may make sense to have a trained staff person who will do this work and acquire the needed equipment. Where the need for Baseline Documentation Reports is occasional, contracting this work to a consultant or a volunteer may be more efficient. Whatever the approach, it is important to consider preparation of a baseline as an essential part of the project – just as with legal review or survey work.

This section describes the process of preparing for a baseline documentation site visit, navigating the property, taking and documenting photos and gathering data to be used in the Baseline Documentation Report. It also includes a discussion of how to compile the Report itself and considerations for creating after-the-fact baselines for older CRs.

Baseline Documentation Site Visit Preparation

It is important that the Baseline Documentation Report is tailored to the specific terms of the CR. The purposes, prohibitions and reserved rights listed in the CR may give rise to particular baseline documentation requirements. Reviewing the terms of the CR prior to the baseline documentation visit is vital to establish what particular areas of the property should be visited and documented while out in the field.

For example, a prohibition against construction of any kind requires that all existing structures on the property be documented. Without this information it may be difficult to determine if a structure pre-dated or post-dated the CR – and thus to determine whether its construction is a violation of the terms of the CR. Similarly, a prohibition against the construction of new roads requires that all existing roads be mapped and the size and type documented. If the purpose is to “protect views of the Charles River from Washington Street,” then the Baseline Documentation Report should contain representative photos of these views. If the purpose is to protect one of the few occurrences of an endangered plant species, then photos of the areas of the property where these plants occur should be included, along with maps and information on how best to find and monitor the local population of this species. If the restriction limits expansion of an existing structure, it is important to document the exterior of the structure and its dimensions, so that when the property is monitored in the future there is a reliable baseline for what existed at the time the restriction was imposed. Similarly, any reserved building envelopes and general reserved rights should also be documented. For example, if the landowner reserved the right to maintain existing trails on the property, be sure to document the existing trails through photos and maps.

Contents of the Baseline Documentation Report

The Baseline Documentation Report is a comprehensive record of the CR. A sample table of contents appears below, and a sample report is included in **Appendix C**:

1. CR Abstract/Summary
2. Preparers' Qualifications
3. CR History and Chronology
4. Directions to Site
5. Site Maps
6. Property Conditions Report

7. Table of Photopoint Locations
8. Photolog
9. Executed CR
10. Affidavits
11. Appendices (related management plans and reports)

Creating a CR Abstract

The purpose of the CR Abstract is to summarize the information contained in the restriction into one or two pages that can easily be referred to in the field. **It is important to note that a CR Abstract is merely just a summary for reference, and any authorizations or determinations should refer directly to the official CR document.** Some organizations find the Abstract to be a very helpful and convenient reference, while others prefer to skip this step and to always refer to the full CR.

The CR Abstract – Summary of Restrictions

For baseline documentation and monitoring, the key sections of the CR are 1) the purposes of the CR, 2) the identification of the conservation values to be protected, and 3) the prohibited uses and reserved rights of the property. These key sections should be summarized and entered in the “Summary of Restrictions” section of the CR Abstract.

The purposes may be enumerated in a separate “Purposes” section of the CR or contained in the first few paragraphs of the document. The purposes section lays out the essential intent of the restriction, such as *“The grantors, in order to ensure preservation of the property in its natural, open and scenic condition, hereby grant to the Land Trust of Arlington, a Massachusetts not-for-profit corporation having its principal office in Arlington, Middlesex County, Massachusetts, a perpetual CR pursuant to Chapter 184, Section 31 et seq. of the General Laws of Massachusetts”*. In this case the purposes include “preservation of the property in its natural, open and scenic condition.”

The conservation values of the CR, often included in the description of the purposes or listed just below, are the specific features of the property that the CR is designed to protect. These may be specific resources on the property (e.g., “The Premises include two areas identified as BioMap Core Habitat by the state’s Natural Heritage and Endangered Species Program...”), or the public benefit to be derived from the protection of the premises (e.g., “Conservation of the Premises will contribute to the protection of the scenic landscape which is visible from Piedmont Street.”).

The prohibited uses and reserved rights section of a CR spells out a) activities and uses that are prohibited by the CR (e.g., destruction of vegetation, construction of any kind), b) reserved rights that would otherwise be prohibited by the terms of the restriction (e.g., cutting of vegetation to maintain trails, or construction of a shed not to exceed 800 square feet in footprint) and c) specific uses that require the prior review and approval of the holder (e.g.,

commercial forestry pursuant to an approved forest cutting plan, or construction of an accessory garage within the building envelope shown on the attached plan).

The “Site Visit Notice” section of the Abstract should summarize the amount of notice (if any) that must be given to the landowner for monitoring the CR (this may be spelled out in a section titled “Access” or contained elsewhere in the CR). There may be special access provisions, such as the right of the landowner or their representative to be present during property inspections. If the CR is silent on this subject, note the fact that notice is not required (although as noted in **Section 5**, it is always a good idea to advise the landowner even if notice is not expressly required by the CR).

The Abstract section of the CR can be tailored to your organization’s needs. As mentioned, some organizations choose to not include the full CR Abstract and may only include a summary of pertinent CR information (e.g. landowner and holder contact information, CR recording information and references to any related plans). The CR Abstract included in the sample Baseline Documentation Report in **Appendix C** is a condensed version of what is described above.

Directions

Consult a map (e.g. Google Maps) for detailed driving instructions to the property. Use the property maps or plans to locate an access point. Use this information to prepare Directions to the site.

Property Maps

Gather existing maps of the property that will help you understand the features of the property and its boundaries, including any available survey plans and assessors’ maps. Create maps that highlight the property boundaries, conservation values to be protected and any man-made features.

MassMapper

MassMapper is a free, interactive online tool where users can access assessor’s parcel information and hundreds of map layers housed in the MassGIS database. MassGIS is the Commonwealth’s Office of Geographic and Environmental Information, which develops and maintains a statewide database of spatial information for environmental planning and management. MassGIS has a number of datalayers and images that are particularly useful for baseline documentation and monitoring. Such datalayers include Natural Heritage Data (such as BioMap, Ecoregions and Priority Habitats of Rare Species) Open Space Data (including data by level of protection and ownership), hydrology and vernal pool data, historical aerial photos and much more.

MassMapper users have the capability to draw, add text to maps and save and print PDFs of maps they create. MassMapper can be accessed at:

<https://maps.massgis.digital.mass.gov/MassMapper/MassMapper.html>



Create maps that include the property boundaries utilizing available software, such as ArcGIS, or online mapping tools, such as MassMapper. LIDAR maps can also be a helpful tool for denoting property boundaries, which utilize remote sensing technologies to examine the

What to Bring in the Field

- Directions to the site
- A reduced survey plan or map of the boundaries and monuments with distances and directions of boundary lines
- Property descriptions of any areas that are in question
- A recent aerial photograph and USGS topographical map with the property boundaries drawn by hand or digitized using GIS
- Compass
- Clipboard, paper and writing instruments
- Plastic sleeves for important documents
- If available, GPS with external antenna and fully charged batteries
- Smart phone, tablet or camera with charged batteries and a backup external battery
- Boundary flagging or a pointer
- A copy of the CR and relevant notes

earth's surface and can clearly show stonewalls and monuments. Prepare a navigation map showing the corner monuments and the distances and directions of all boundary lines. When you visit the property, follow these directions and make sure they are clear.

Contacting the Landowner

Prior to visiting the property for your baseline documentation visit, you should contact the landowner by either email, letter or telephone to let the landowner know that you will be doing the baseline documentation site visit, when you will be there and what kind of information you will be gathering. Find out in advance whether the landowner would like to accompany you on the visit and whether they would like to be contacted while you are on the property. In most cases, the landowner will be in the process of finalizing the terms of the CR, so they are likely to be of assistance in pointing out areas of the property that require special documentation (e.g., building envelopes or areas where future clearing is proposed). Be aware however, that landowners may not always be clear on the exact locations of property boundaries. When in doubt always check measurements against the survey plan or property description. **It is important to note that if the baseline preparer is a volunteer or outside consultant, the terms of the CR should not be discussed with the landowner.** Any questions that arise during the baseline documentation visit should be directed to the appropriate staff at your organization.

Photography and Note Taking in the Field

Photos are a visual record of the property conditions at or near the time a CR is recorded. The Baseline Documentation Report should include photos of the property boundaries as well as the conservation values to be protected and any man-made features.

As you prepare for the field visit to the property, plan a route of travel that will encompass critical areas to visit such as important natural features related to conservation values, existing infrastructure (including trails and roads), boundaries and reserved areas for new construction (generally referred to as building envelopes). Try to organize your route in a logical sequence. This will make it easier to keep photos organized and for future monitors to relocate your photopoints.

All photos should be tied to accurate GPS points or permanent features to allow them to be reliably relocated by property

monitors in the future. It is helpful to establish photopoints at physical features that can easily be located and identified in the field, such as intersections of stonewalls, trails, boundary markers or large trees.

For efficiency, take several photos at each photopoint. For example, take photos in opposing directions along the boundary line, and then one or more into the restricted area from the same point. All photopoints should have an associated compass bearing as part of the Baseline Documentation Report. There are various photo-taking apps available for smartphones and tablets that capture related azimuth information for each photo. An up-to-date list of recent technologies useful for CR Stewardship can be found online on the MLTC Resource Library. If you do not have access to a GPS camera app or GIS software in the field, you can find the compass bearing of each photo by pointing a compass in the direction the picture was taken, and then moving the bezel to align the north arrow with 0 degrees. Read the azimuth (or compass bearing) at the mark along the centerline of the compass while it is in line with the center of the photograph.

Photos

If the boundary is not marked or well monumented, locate and photograph the boundary first, then move on to photograph other areas. When following a boundary without line markers such as stonewalls or blazes, locate two boundary markers and then go back and take photos of the property boundary between them. These techniques will ensure that all photos are taken within the subject property.

Boundary photos should be spaced to give an accurate representation of the property conditions along the boundary. It is not necessary to document the entire boundary with a series of overlapping photos. In open areas, one photograph can document several hundred feet. In dense cover or hilly areas, look for vantage points that will allow each photograph to contain as much of the boundary line as possible.

Be sure to document areas of the boundary where future encroachment is likely such as along public roads, where woods roads and trails enter the property and where an abutting property is actively used up to or near the boundary. Remember that lands that are undeveloped today may be subdivided in the future, so unless abutting land is protected, it is reasonable to assume that encroachments may occur in the future.

Take photos of the interior to give an accurate representation of the undeveloped portions of the property, to show man-made features (such as buildings, roads and bridges), to document any areas relevant to the conservation values as well as any areas significant to the reserved rights and prohibited uses identified in the CR.

As you take photos, in some locations it may be helpful to mark the boundary or a particular item of interest in the photo with a pointer or flagging tape so that it may be more clearly seen in the photo.

Also note and photograph any areas where encroachments from adjacent properties or dumping has occurred on the property. Follow up with the landowner through an official letter, including photos and locations of the identified encroachments, to make sure that they are aware of the situation and will take steps to eliminate the problem. Be sure to save any related correspondence to your Permanent Conservation Files. **Note that your**

organization should require the landowner to address any issues on the property before the CR closes. It is best practice to address issues prior to closing so that your organization is not taking on stewardship of a CR that has issues from the start.

Photography Field Notes

Having two people conducting the Baseline Documentation site visit is especially helpful for taking photos and capturing notes for each photo. You can consider having one person tasked with taking photos and dictating notes, while the other person writes notes associated with each photo.

For each photo, record the date, a photopoint number (e.g., the waypoint number if using GPS), the photograph number (the JPEG number if using a digital camera, smart phone or photo-taking app), azimuth or compass bearing of the photograph and any nearby boundary marker such as a corner pin or bound, wall, blaze or fence. There are various photo-taking apps and software available for smart phones and tablets that will annotate your photos for you, but it is helpful to still capture description notes that will later be added to your Photolog. Some holders take photos of boundary monuments with enough context in the photo to make them easier to locate next time, especially if a GPS is not being used.

Baseline preparers who are not using GPS and GIS will want to annotate a map of the property with photopoint numbers and arrows showing the direction of each photograph. The goal is to have a reference map that allows future property monitors to easily relocate the point from which each photograph was taken in the field.

For each photo, you will need to write a brief but detailed annotation, or if your camera permits sound recording, record a brief annotation for each photograph as you take the photo. For example, a photograph along a boundary might be labeled “View north along boundary looking toward the northwest corner, restricted area is to the right of the tree blaze in the photograph”. Such details facilitate error checking and correction during the creation of the Photolog. **It is critical to make these notes in the field as the photos are taken, otherwise deciphering the contents of each photo in the office can be extremely challenging, particularly if you are taking photos in a heavily wooded area.**

When walking the property, also take note of the dominant tree and shrub species, notable natural features and any wildlife sightings. This information will be used in the Property Conditions Report to provide information on the habitats found on the property.

Wrapping Up the Field Visit

Before leaving the property, make note of any items that will be helpful as you write up your report. Include items such as: wildlife observed, interesting features to visit in the future, boundary conditions (e.g. “the northeast boundary line follows a wire fence for most of its length” or “the northeast corner needs permanent identification”) or information gleaned from discussions with the landowner or neighbors. Other important items to note include areas of concern due to current land use or likelihood of future encroachments.

If the landowner did not join you and lives on the property, you should consider stopping by to let the owner know that you have completed your work for the day and see if they have any questions or concerns regarding your site visit. In preparation of the baseline documentation

visit, or at the start of the visit, you can ask the landowner if they'd like you to check in with them before you leave. Some landowners may want to check in, while others may not.

Make sure to sit down and organize your field notes, photopoints and photos as soon as possible after the field visit, while the property is fresh in your mind.

Compiling the Baseline Documentation Report

Once the field visit is complete, the next step is to write and compile the remaining sections of the Baseline Documentation Report. The following sections are keyed to the sample Table of Contents at the beginning of this section:

Preparer's Qualifications identifies who prepared the Baseline Documentation Report, along with their credentials and experience.

The CR History and Chronology should be prepared by someone familiar with the history of the negotiation of the terms of the CR. The intent of the History and Chronology is to provide context by chronicling key milestones in the development of the CR from first contact with the landowner to final negotiations over the terms of the CR. It is helpful in documenting the intent of the landowner and the holder, and the resolution of any issues that may have come up in the course of negotiations. It is also a good place to record the rationale behind any unusual provisions in the document. Some preparers also like to include information about the history of the land, its prior uses and landowner wishes for the land in this section of the report.

The CR/Summary Abstract and Directions to Site are generally prepared prior to the Baseline Documentation Site Visit, as already discussed above.

Site Maps should be included in the Baseline Documentation Report, including:

- **Ortho Imagery Map** - A map of the parcel boundaries over an aerial photograph taken near the date of the recording of the restriction.
- **Topographic Map** - A map showing the boundaries on a USGS topographic map.
- **Monitoring Map** - A map showing all notable manmade structures and features.
- **Survey** - Any available surveys or site plans, or a navigation map that shows the corner monuments and the distances and directions of all boundary lines.
- **Natural Feature Maps** - Site-specific maps that highlight natural features such as forest cover maps, hydrology maps (including FEMA flood zone maps) and soil maps.
- **Conservation Value Maps** - Site-specific maps that highlight conservation purposes such as MassWildlife's Natural Heritage & Endangered Species Program data, including BioMap and habitat of rare species, climate change resiliency and surrounding protected areas.
- **Environmental Justice Maps** - Maps that highlight potential environmental justice impacts related to conservation of the property. These could include maps that highlight demographic data to reveal which neighboring communities face the greatest burden from environmental injustice and climate change. Incorporating this information can help identify how the CR will potentially reduce these disproportionate impacts.

Note that all maps included in your Baseline Documentation Report should include a north arrow, legend, information regarding what data layers were used, date of creation as well as a statement that the map is not a survey and cannot be used for conveyancing purposes.

The Property Conditions Report is a narrative description of the property and its condition at the time of the recording. This information should be tailored to the specific purposes and conservation values of the CR. **Note that not all organizations choose to put this level of detail into the Baseline Documentation Report.** Many of these property conditions can also be portrayed through the maps and data layers you include in your Report, or also in the CR Abstract.

- **Introduction** briefly describes the subject property and the circumstances of the grant of the CR.
- **Regional Setting** places the property into the appropriate Ecoregion and Subcoregion (Ecoregions are areas of relatively homogeneous topography, geology, soils, plant and animal habitats as designated by the Massachusetts Ecological Regions Project for the US Environmental Protection Agency and the Massachusetts Department of Environmental Protection). This section can also include pertinent information regarding surrounding communities and to acknowledge any impacts the conservation of the property will have on environmental justice communities.
- **Manmade Features** lists and describes any significant construction, roads, utilities, clearings fences, stone walls, and the boundary monuments.
- **Water Resources** describes lakes, ponds, streams or wetlands on the property or fed by its drainage, as well as drinking water resources.
- **Geology, Topography and Soils** describes the topography and aspect of the site, as well as soils capabilities.
- **Land Use** characterizes the use of the property itself and that of surrounding lands, and may include references to nearby scenic lands or protected and recreational open space.
- **Natural Communities** - If sensitive natural communities have been identified on the property, it is important to note in this section whether permitted activities could negatively impact these sensitive areas (e.g. a trail causing erosion into a wetland).
- **Important Habitat** highlights attributes of the property that are most critical for habitat including rare plant and animal species.
 - Habitats of rare plant and animal species can be identified via data provided by the Natural Heritage & Endangered Species Program, which is accessible through MassMapper online.
 - Landowners may also have a listing of species that occur on the property for reference.
 - If invasive species are present that could threaten the conservation values of the property, this is a good place to note the species that pose a potential threat to the property and any management recommendations.

Photopoint Map shows the location of each photopoint and may also include the direction of each photo. A sample Photopoint Map made using GPS and GIS appears in **Appendix C**.

Table of Photopoint Locations highlighting each photopoint number, photo number, photo description and associated azimuth information. If photopoints have been gathered using a GPS unit, print out a list of photopoint locations in latitude and longitude or Universal Transverse Mercator (UTM) coordinates so that the photopoints can be manually entered into a GPS receiver and relocated in the future. If the photopoints have been exported to GIS, save a copy of the file so that these points can be easily uploaded to a GPS receiver for future monitoring.

Photolog is comprised of the baseline site visit photos captioned with the photopoint number, photograph number, compass bearing and a brief description. The first page of the Photolog should bear the legend “All photos taken on (date) by (name), (title)”. A photograph caption might read: “Photopoint 7, JPEG 32, Azimuth 50 Degrees: View northeast along boundary wall, showing woods road entering property from the west. The restricted area is to the left of the wall.” An example of a Photolog can be found in the sample Baseline Documentation Report in **Appendix C**.

A Photolog can easily be prepared by importing the digital image files (e.g., JPEGs) into a word processing program, then adding a caption to each photo. Digital image files should be downloaded from the camera directly into a folder with the property name, and then written to a non-rewriteable compact disk signed by the photographer. This compact disk should be stored along with the archived original Baseline Documentation Report (**see Baseline Documentation Report Distribution and Storage subsection below**).

Executed CR included in the Report for ease of reference.

Affidavits are written statements, generally sworn to in the presence of someone authorized to administer an oath such as a notary public. Affidavits are typically signed by the photographer of the Baseline Documentation Report, while some organizations also choose to include signed affidavits by the preparer of the Baseline Documentation Report, the landowner and the holder, so that all parties have acknowledged the accuracy of the Baseline Documentation Report (examples of these affidavits are included in Appendix C). They attest that the materials in the report accurately depict the condition of property at the time of the recording of the CR. It is also in good practice to include a sentence in your affidavits noting that the Baseline Documentation Report was prepared in the usual course of business for your organization and not in anticipation of litigation.

Affidavits may be used to support the validity of a Baseline Documentation Report in future litigation especially if the grantor, preparer or photographer are not available to testify. It is important to establish a policy for your organization regarding which affidavits you will include in your Baseline Documentation Reports. Sample Affidavits appear in **Appendix C**.

Appendices can be added at the end of your Baseline Documentation Report to include any relevant management plans, ecological reports or relevant local/regional plans pertinent to the CR. Some organizations do not choose to include such appendices, and simply store these plans in their Permanent Conservation Files and/or Field Notebook; while others choose to include such reports for ease of reference.

Internal Review and Approval Process

Before the Baseline Documentation Report is sent for the landowner's or grantor's signature, each section should be thoroughly reviewed by another individual conversant with CRs and familiar with the property. Any errors or inconsistencies in the report, however minor, may be used to undermine its authority in the event of litigation over a violation. It is particularly important to review the Photolog and Photopoint Map to see that the captions accurately describe the location and direction of the photos.

After internal review, send the draft Baseline Documentation Report to the landowner(s) for review and signature. The holder's, preparer's and photographer's affidavits contained in the draft should be signed and notarized to demonstrate that the holder is willing to be held to the same standards. These affidavits may be signed digitally or in-person; the process of gathering signatures should follow organizational procedures and guidelines and should meet any necessary federal or programmatic requirements (e.g. should meet Land Trust Alliance standards if you are an accredited land trust). Follow up on any outstanding reports to be sure they are returned in a timely manner, and if the landowner refuses to acknowledge the report, try to find out why, and include that in the report (of course, if the landowner points out a deficiency or error, it should be corrected).

Baseline Documentation Report Distribution and Storage

Once the Baseline Documentation Report has been completed and signed, it should be retained permanently by the holder of the CR. To ensure that it is not accidentally lost, the original signed document should be printed on archival paper and stored in a secure, waterproof, fireproof file cabinet. In addition, an electronic copy of the Baseline Documentation Report should be written to a non-rewritable CD or other electronic media and placed - along with the original CD of digital photographs - in a separate but similarly secure storage area. Your organization also may store originals and copies of the Baseline Documentation Report and photos digitally through secure cloud storage, and all originals should be saved so that they cannot be altered or tampered with. Copies, either physical or digital, should be sent to the landowner and any co-holders of the CR. A copy of the final Baseline Documentation Report should be kept by the holder in a Field Notebook for use in future monitoring and in the field. As discussed in the next Section of the Manual, the Field Notebook (which can be a physical notebook or a digital folder with files that will be accessible in the field) serves as dynamic record of the property and will be updated from time to time with monitoring reports, additional photos taken during monitoring visits and documentation of various landowner contacts.

Creating Current Conditions Reports

In the past, the importance of preparing such comprehensive baseline documentation for CRs was not widely recognized and little information was gathered beyond that needed for review and approval by the EEA Division of Conservation Services. With the increased emphasis on the importance of this information to long-term stewardship of CRs, many holders of CRs have recently completed baseline documentation for restrictions that were recorded in the past.

Organizations will create a **“Current Conditions Report”** for properties where there is no original baseline documentation report. This report will capture the current conditions of the property and will contain all of the contents as a Baseline Documentation Report (written descriptions of the property and its current conditions, relevant maps and surveys, photographs and notarized affidavits). Your organization should still get the current landowner to sign an affidavit attesting to the accuracy of the Current Conditions Report.

It can be helpful to include information in the Current Conditions Report, if available, regarding the property conditions near the date of the original grant. This may be an aerial photograph taken near the date of the original grant, as well as other plans that may be helpful in establishing the original condition of the property, including older plans recorded at the Registry of Deeds, farm or forest management plans and similar documents.

When to Update a Baseline Documentation Report

Some circumstances may require an update to the original Baseline Documentation Report, typically through a Current Conditions Report. These circumstances may include:

- If the original Baseline Documentation Report is insufficient (e.g. pertinent information or maps were not included, or if it is not useful in supporting stewardship and monitoring needs).
- When the CR has been subdivided (this would require a specific Current Conditions Report for each subdivision).
- Upon the exercise of a major, one-time extinguished reserved right (e.g. if the CR allows for the construction of one barn, a Current Conditions Report should be created to capture that one-time construction).
- Following a major violation (e.g. unapproved clearcutting of a forest on the CR).
- If there has been amendment to the CR. This requirement is only specific to the terms of the amendment. For example, an amendment addressing a typo in the original CR likely does not require an updated Report; however an amendment that alters the boundaries of a building envelope should require an updated Report to identify these changes.

Circumstances that do not require an updated Baseline Documentation Report include violations (except for major violations), exercise of reserved rights (except for major, one-time extinguished reserved rights) or major natural changes. Thorough monitoring reports should document these conditions and serve as a historical record of minor violations, exercise of reserved rights and natural changes. It is helpful for your organization to develop a policy regarding Current Conditions Reports to identify which circumstances require the creation of such reports and which can be simply captured through annual monitoring reports.

Section 6

Conservation Restriction Monitoring

As noted in **Section 3** of this Manual, regular monitoring of CRs is an essential component of sound CR stewardship. The monitoring process creates the opportunity to develop a relationship with the landowner, educate them about land stewardship, to learn whether land has changed hands and to help educate successor owners about the terms of the CR. Regular monitoring also helps prevent violations by maintaining the landowner's awareness of the restriction, and by letting neighbors and others know that the land is being periodically inspected through in-person conversations or via letters sent in advance of monitoring visits. The more frequent the monitoring, the earlier any violations will be detected. These violations may be the result of actions (intentional or unintentional) by the landowner, by abutters or by third parties. Detecting violations soon after they occur may enable the holder to minimize harm to the conserved resources and allows the landowner to more easily restore the property to its required condition.

Monitoring should occur regularly, at least once per year for each property. In order to build a useful record of property conditions over time, monitoring must be conducted using consistent practices and documentation procedures from one year to the next. Of course these practices can be improved upon over time, but maintaining consistencies from one year to the next will allow for successful long-term stewardship. A helpful checklist highlighting steps to take prior, during and after monitoring visits can be found on **Page 35**, while this Section will go into further detail regarding these steps.

Remote Monitoring

CR monitoring is typically conducted through on-the-ground visits, however organizations are also utilizing remote monitoring opportunities. Remote monitoring can be a great solution for organizations who need to monitor a large number of properties with limited staff or volunteers. Technologies available for remote monitoring include utilizing satellites, drones and historical imagery. Remote monitoring can be accepted for land trust accreditation needs, however on-the-ground monitoring is required at least every five years. Further information regarding remote monitoring practices can be accessed through the Land Trust Alliance's Resource Center. For this Manual, the following monitoring protocols will focus on on-the-ground monitoring.



Land Trust Alliance Standards & Practices

Standard 11: Conservation Easement Stewardship

Land trusts have a program of responsible stewardship for their conservation easements.

Practice 11C: Conservation Easement Monitoring

1. Adopt a written policy and/or procedure for monitoring conservation easements that establishes consistent monitoring protocols and recordkeeping procedures

2. Monitor each conservation easement property at least once per calendar year

- If the land trust uses aerial monitoring, conduct on-the-ground monitoring at least once every five years
- Promptly document the annual monitoring activities for each easement

Practice 11D: Landowner Relationships

1. Maintain regular contact with owners of conservation easement properties to maintain relationships and avoid potential easement conflicts

2. Establish systems to track changes in land ownership

3. When the property changes hands, attempt to meet with the new owner or property manager and provide information in writing about the conservation easement and the land trust's stewardship policies and procedures

Preparing for Monitoring Visits

First determine which properties are due for a monitoring visit. Depending on the size and location of the properties involved, it may be possible to group properties to monitor several properties in a single day and to minimize travel time. Also determine who will be conducting each monitoring visit, whether it will be done by staff, volunteers or outside consultants. If monitoring visits will be conducted by volunteers or consultants, it is important that any relevant questions or issues that are identified during the visit be directed to the appropriate staff at the holding organization.

Contact each landowner by mail, email or phone one month prior to the intended visit date, or in accordance with the notification provision in the CR. A sample Annual Monitoring Notice Letter, which can be tailored to meet the needs of your organization, can be found on **Page 34**. Save a digital copy of the notice letter in your organization's Permanent Conservation Files or print and add a hard copy of the letter to your Field Notebook.

If the recipient calls to report a change of ownership, or the letter is returned due to change of address, identify the new owners via the town assessor's office or Registry of Deeds. Note the new owners in your Permanent Conservation Files and/or Field Notebook and contact them by mail. Before contacting your CR landowners, it may be worth conducting a Google search, checking the assessors map via MassMapper or searching obituaries to have a better understanding of your CRs' current landowners.

Review the CR, Baseline Documentation Report and recent Monitoring Reports to prepare for the monitoring visit. Note whether there were any issues from the last monitoring visit that require follow up. Look at the latest available aerial photographs and compare them to the aerial photos in your Permanent Conservation Files or Field Notebook and note any apparent changes.

Make a list of areas to visit such as important natural features, boundaries subject to trespass or encroachment, areas of concern from the last monitoring report, changes noted in the latest aerial photograph, changes learned from the landowner and reserved areas or building envelopes.

For large properties, consider rotating which areas you monitor each year. Focusing on areas of concern or past issues is always important; however, you may consider walking

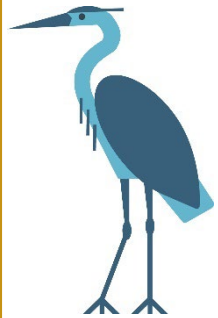
external boundaries one year, and focusing on internal trails the next. You may also consider visiting the property in different seasons; you may notice rare plants in the spring, or more easily find boundary markers in the winter.

Plan a route that will encompass the list of areas to visit and as much of the boundary, high traffic areas and areas of concern as possible. Download a map of the CR to your tablet or smartphone using appropriate GIS software and apps, or bring a printed map of the property on which you will record your route of travel and any photopoints.

Monitoring Field Work

Monitoring Safety Tips

Prior to going out in the field, it is important to consider your safety and to be as well prepared as possible to protect both yourself and any landowners or colleagues that may be joining you. Always check the weather conditions (take note of whether there will be high winds if you will be walking in forested areas), be aware of hunting seasons and wear appropriate field dress (such as wearing long sleeves and tucking in your clothing to help for tick prevention). It is good practice to wear high visibility clothing as well as branded clothing that easily identifies you in relation to your organization. Don't go out into the field empty-handed and consider bringing along a backpack including a water bottle, bug spray, sunscreen and first aid kit (along with any additional supplies and documents that will be useful for your monitoring tasks).



If the landowner lives on or near the property, stop by to let them know that you are on site before you begin. If they are not home, leave a note on their door or on your car letting them know that you are on the property. **As you talk with landowners before or after the site visit, it is advisable to avoid making any definitive statements about the condition of the property.** The annual monitoring visit is an opportunity to meet and talk with the landowner to see if they have any questions about the CR or management of the property. The landowner may want to discuss plans for exercise of a reserved right, may be unclear about boundaries or may be planning to transfer ownership of the property. The landowner can also be helpful in sharing any natural or man-made changes they've seen on the property, notable wildlife sightings or other pertinent observations.

As you walk the boundary of the area to be monitored, you should set your GPS receiver so that it will document your route of travel by automatically recording waypoints at fixed time or distance intervals. There are many apps and software available today for smart phones or tablets that can help to track your route of travel and photopoints during a monitoring visit. If you don't have access to a GPS, trace your route of travel on a map of the property.

Take photos of any suspected violations. Use the GPS receiver, appropriate software and apps or your map to record the location of each photograph. Note any violation or change you are documenting along with the photopoint number, JPEG and GPS coordinates or compass bearing in the same manner as discussed in **Section 5**.

Exhibit A – Sample Annual Monitoring Notice Letter



<Date>

<Landowner Name>

<Street Address>

<City, State, Zip>

Dear <Landowner Name>,

As you know, Mass Audubon holds a permanent Conservation Restriction on your property located in <Town>. Each year, Mass Audubon inspects parcels on which it holds Conservation Restrictions to ensure the long-term protection of the land consistent with the terms of each individual restriction. I am currently planning to visit your property for our annual monitoring visit on <Date and Time>, weather permitting.

The monitoring visit will involve myself and possibly a colleague walking around the property and taking some photos. If it fits with your schedule, you are more than welcome to accompany me on my visit, and I would encourage you to do so if possible, although it is not necessary. If the date and time suggested is not suitable, please contact me and we can reschedule the visit for a more convenient time.

I will plan to follow up with you 2 weeks in advance of the visit if I do not hear from you before then.

If you are contemplating any major projects on your property in the coming year, my visit would be a good opportunity to discuss whether the Conservation Restriction will affect your plans in any way. Also, if you have transferred any part of the property subject to the Conservation Restriction in the last year, please let me know so that we can update our records and get in touch with the new owners.

Please call or email if you have any questions. Thank you in advance for your cooperation and your support of our land conservation efforts. Please feel free to contact me at (phone number) or (email) with any questions.

Sincerely

<Name>

<Title>

Conservation Restriction Monitoring Checklist

Prior to Visit

- Contact the landowner
- Review CR, Baseline Documentation Report and past monitoring reports
- Gather materials:
 - Field notebook or tablet or smartphone with access to CR documents, maps and surveys
 - Clipboard and writing implements
 - Camera, smartphone or tablet with additional batteries
 - Compass and 100' measuring tape
 - Flagging tape
 - GPS

During the Visit

- Check in with the landowner
- Walk areas of greatest concern:
 - Boundaries with abutters
 - Areas of previous issues or violations
 - Interior trails or roads
 - Buildings included in the restricted portion of the property
 - Boundaries of excluded areas or building envelopes
 - Other easily accessed areas
- Photograph any potential violations and any changes in the property

After the Visit

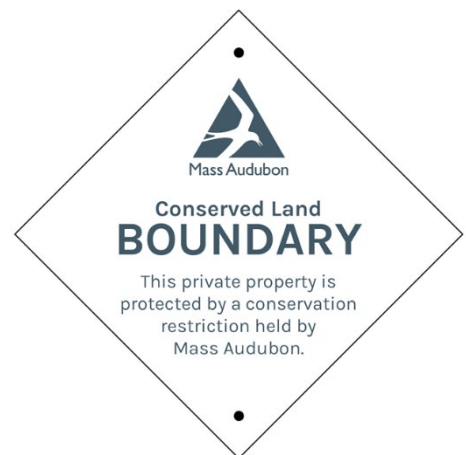
- Prepare the monitoring report
- Document and label photos
- File materials as appropriate
- Follow up with landowner

Some holders take a small number of representative photos at prior photopoints on each monitoring visit to serve as historical record of the property over time. Others only take photos if there appears to be a violation or change in the condition of the property that requires documentation. Developing clear monitoring procedures for your organization is important to identify the types of photos you intend to gather at your annual monitoring visits.

Maintaining Boundaries

Clearly marked boundaries facilitate monitoring and reduce trespassing and encroachment, and therefore the potential for violations of the CR. In accordance with the terms of the CR and with prior permission from the landowner, minor boundary maintenance can be done as part of annual monitoring fieldwork.

Plastic flagging can be used to mark blazed trees, the remnants of wire fencing and corner pins. Flagging is inexpensive, easy to carry and usually remains visible for two to three years unless removed. Biodegradable flagging can also be used and is an environmentally-friendly option, but may not be as long-lasting as plastic flagging tape. Paint can also be used to refresh old blazes. If the terms of the CR allow it, and with the landowner's consent, signs may be posted along the boundary lines indicating the property's protected status, as well as the holder's name and contact information. An example boundary sign is shown above.



After the Monitoring Visit

Preparing Monitoring Reports

It is important to prepare a brief report for each CR as soon as possible after your monitoring visits. **It is good practice to write each report within two weeks of your monitoring visit, or within 3 months at the latest.** Establishing a monitoring report template will be helpful in streamlining and standardizing the information you collect for each CR. The monitoring report should include:

- Notes regarding any conversations had with the landowner regarding recent or planned activities on the property.
- A narrative of where you walked and what you observed.
- Details regarding any exercise of reserved rights.
- Notes regarding any issues observed (e.g. encroachments, invasive species, or man-made changes to the property).
- Recommendations for follow-up.
- A map showing the route of travel during the monitoring visit along with photopoint locations for any photos taken.
- Photos taken during the visit.

After your visit, you should download the route of travel and any photopoints from the GPS receiver and export it to the GIS. This can be done automatically when utilizing specific software and apps on your tablet or smartphone. Using GIS or a hand drawn map, create a map showing the CR boundaries, route of travel and photopoint locations.

An example Monitoring Report including a route of travel/photopoint map and affidavit can be found at the end of this Section in **Exhibit B**. **Note that some organizations choose to include affidavits signed by the preparer and photographer of the monitoring report to attest to the report’s accuracy, while other organizations choose to omit such affidavits.**

Prepare a final copy of the CR Monitoring Report and file a copy of the report, maps, photos and signed copies of associated affidavits in your Conservation Files. As mentioned above, some organizations choose to include a Preparer’s Affidavit (a sample is included in **Exhibit C**), other organizations choose only to include a Photographer’s Affidavit (a sample is included in **Exhibit D**) or some organizations choose to not include any affidavits. Establishing whether or not your organization will include signed affidavits as part of your annual monitoring reports will need to be established as part of your organization’s monitoring protocols. Although the Land Trust Alliance does not require monitoring report affidavits to be notarized, some organizations choose to do so. Store the originals of your monitoring reports in the same place as the original Baseline Documentation Report for safekeeping. Many organizations save their files digitally to a cloud-based drive, and digital copies of Monitoring Reports are often locked so no future edits can be made. Further information regarding recordkeeping can be found in **Section 4** as well as on the Land Trust Alliance’s website.

Sharing Monitoring Reports

*Note that some CR holders send copies of monitoring reports to landowners upon request. Others do not because of concern that these reports may be considered to be a form of estoppel certificates (as discussed in **Section 7**), which may make it difficult to correct a violation overlooked in one monitoring visit and discovered during a subsequent visit. It is good practice to send monitoring reports to any co-holders of the CR, so that co-holding organizations are aware of the current condition of property, including any issues. If your organization does share monitoring reports with your landowners, it is helpful to keep a running list of who wishes to receive reports so that you can be sure to send the completed reports in a timely manner.*



If no issues were noted during a monitoring visit, it is best to include in the Monitoring Report notes that “no issues were observed” to defend any future questions regarding violations. If the landowner was not present at the monitoring visit, write a follow up letter letting the owner know that you completed your annual monitoring visit of the property, noting whether any issues were observed. It is important to be clear in your follow-up regarding where exactly on the property issues were observed and is best to send along accompanying photos and photopoint locations for clarity. When sending follow-up letters to landowners, it is also best for staff of your organization or agency to write and send these letters, even if it was a volunteer or consultant who conducted the monitoring visit.

Tracking Baselines and Monitoring Reports

A simple spreadsheet or database program can be used to track the progress of the preparation of Baseline Documentation Reports and Monitoring Reports. Some key fields to track are shown below:

CR Information

- Date of Recording (date)
- CR Recording Reference (book, page) and Deed and Plan References (book, page)
- Town or City Tax Map Reference (map, lot)
- EEA CR Number
- Current Landowners and/or Monitoring Contacts (name, address, phone)

Baseline Preparation Tracking Checklist

- CR Abstract Completed
- Directions to Site Completed
- Site Map or Plan
- USGS Topographical Map
- Aerial Photograph (date flown)
- Manmade Features Map
- Resource Maps
- Date Report Due (anticipated completion date)
- Landowner Site Visit Notice Sent (date)
- Landowner Contact Comments (e.g. “left message 12/31/05”)
- Site Visit Date (date)
- Photolog Completed
- Property Conditions Completed
- Baseline Documentation Sent for Internal Review (recipients initials, date)
- Baseline Documentation Sent for Signature (date)
- Baseline Signed
- Baseline Archived
- Required Follow Up (e.g. northeastern boundary should be repainted)

Monitoring Tracking Checklist

- Monitoring Visit Deadline (generally one year from last visit date)

- Landowner Site Visit Notice Sent (date)
- Landowner Contact Comments (e.g. “left voicemail on 04/15/23”)
- Monitoring Visit Date (date)
- Monitoring Report Archived (date)
- Summary of any Issues with Required Follow Up (e.g. follow up re clearing along western boundary)
- Date of Required Follow Up
- Estoppel Requested (date) (See **Section 7**)
- Estoppel Sent (date)
- Notice of Action (date, describe)
- Response to Notice (date, describe)

Organizational Tip: Using a consistent convention for naming files also facilitates project tracking. A hierarchy such as town/grantor/contents works well (e.g. the Westfield_Smith CR folder contains Westfield_Smith_Photos, Westfield_Smith_PropertyConditionsReport, Westfield_Smith_MonitoringReport_2023 etc.).

Exhibit B – Sample Annual Monitoring Report



Mass Audubon Monitoring Field Report

Property Information

Property Number	Last Site Visit
CR-Williamsburg-01	11/05/2021
Property Address	Report Completed
Williamsburg, MA	11/16/2022

Site Visit Overview

Reviewed CR, baseline, monitoring reports, and recent correspondence before visit?	Date of Visit:
Yes	11/03/2022
Weather at time of visit:	
Sunny	
Mass Audubon staff present:	
Nicole Marcotte - Conservation Restriction Specialist	
Were there any other parties present at the visit? If yes, state their name and relation to the property.	
No other parties present.	

Landowner Information

When planning the monitoring visit, who did you attempt to contact? State their name and relation to the property.
Landowner
How did you attempt to contact the landowner/CR representative?
Email
Letter
Did you successfully contact the landowner/CR representative before the visit? Were they present at monitoring visit?
Successfully contacted landowner/representative before monitoring
Met landowner/representative at monitoring site
Include any changes in contact information, or relevant notes regarding contact.
No notes.
Are you aware of any changes or potential changes in fee ownership? If yes, describe the change in ownership.
None known.
Did you discuss any pertinent information about the property with the landowner/representative? Please describe.
Discussed with the landowner regarding a third-party violation on her property from 2021, involving her neighbor clearing ground and establishing a garden on the CR. Actions were taken in 2021 by the landowner with support from Mass Audubon to end the neighbor's use of the property for gardening. This is the first visit back to the property since actions were taken in 2021.

Conditions Observed at Visit

Summarize your visit. Include relevant areas covered, difficulties encountered, and overall conditions:

Began the monitoring visit at the landowner's residence. Met with the landowner and discussed an issue from 2021 when her neighbor previously trespassed on her property and cleared an area for a garden. Follow up had been made with the neighbor in 2021 regarding the violation, and the landowner did not note any further activity from her neighbor on the CR. Started walking east from the northwest corner of the CR along the northern boundary line, and cut south to view the areas of the noted garden. The garden area seemed to be grown over with no recent activity (Waypoint 1). From the garden, we continued to walk east near the northern boundary line. Near the northeastern corner we continued south along the eastern boundary line, noting several iron pipe boundary monuments along this line. Continued south past the central eastern external corner towards the southeastern corner. Cut west and continued walking along the southern boundary line, marked by a stone wall. Near the center of the southern boundary line, noted a hunting tree stand within the CR (Waypoint 2). There seemed to be a social trail cutting from the southern neighbor over the stone wall into the CR, which may be where the person who is utilizing the tree stand is entering the property from. We continued west along the southern boundary line near the southern field, and cut north through the forest after hitting a wall of brambles. Continued north near the western boundary line back to the landowner's residence. Ended the visit and checked in with the landowner and mentioned the tree stand, and she said that no one from her family had set it up, so she was planning to talk with her neighbors to get more information regarding who is entering her property. Hunting is allowed on the CR, however the landowner does not approve public access on her property.

Did you observe any issues or points of concern that may require follow up from Mass Audubon staff?

If the landowner wishes, may be useful to post signage along the boundary to limit third-party use of the CR.

Did you observe any natural changes on the property?

No changes observed based on previous records

Comments on natural changes to the property, including invasive species of note (if any):

No comments.

Did you observe any changes to infrastructure on the property?

No changes observed based on previous records

Comments on changes to infrastructure, including location and details:

No comments.

Did you observe any additional man-made changes to the property?

No changes observed based on previous records

Comments on additional man-made changes to property:

No comments.

Did you observe any changes to land use or management?

No changes observed based on previous records.

Comments on changes to land use or management:

No comments.

Did you observe or learn of any third-party activities that affect or could affect the property?

Trespassing

Comments on third-party activities:

Hunting tree stand on CR (Waypoint 2)

Describe any previously unnoted boundary evidence (pins, flagging, paint, stone walls, etc.)

No changes observed based on previous records.

Signature of Monitor



Nicole Marcotte

Documentary Photographs

Waypoint

1

Photo 1



Facing east, photo at location of third-party violation where the property neighbor had cleared space for a garden in 2021.

Waypoint

2

Photo 2



Facing west, photo of tree stand near southern boundary line of the CR. Tree stand is on the CR.

List of Waypoints and Photographs

Camera Device and Software App: Galaxy Tablet Active3 using the SurveyCam App

GPS Make and Model: Bad Elf GNSS Surveyor

Photographer: Nicole Marcotte

GPS Operator: Nicole Marcotte

Coordinate Systems: GCS WGS 1984

Date	Waypoint Number	Photo Number	Photo File Name
11/03/2022	1	1	E_19102022_104537
11/03/2022	2	2	W_19102022_112556






Williamsburg-01

Waypoints & Route Traveled 2022

Created By Nicole Marcotte
November 16, 2022
Basemap - ArcGIS Map Service
This map is for planning purposes
only and is not a survey.

Legend

-  Mass Audubon Conservation Restriction Boundary
-  CR Monitoring Route 2022
-  CR Monitoring Waypoints 2022

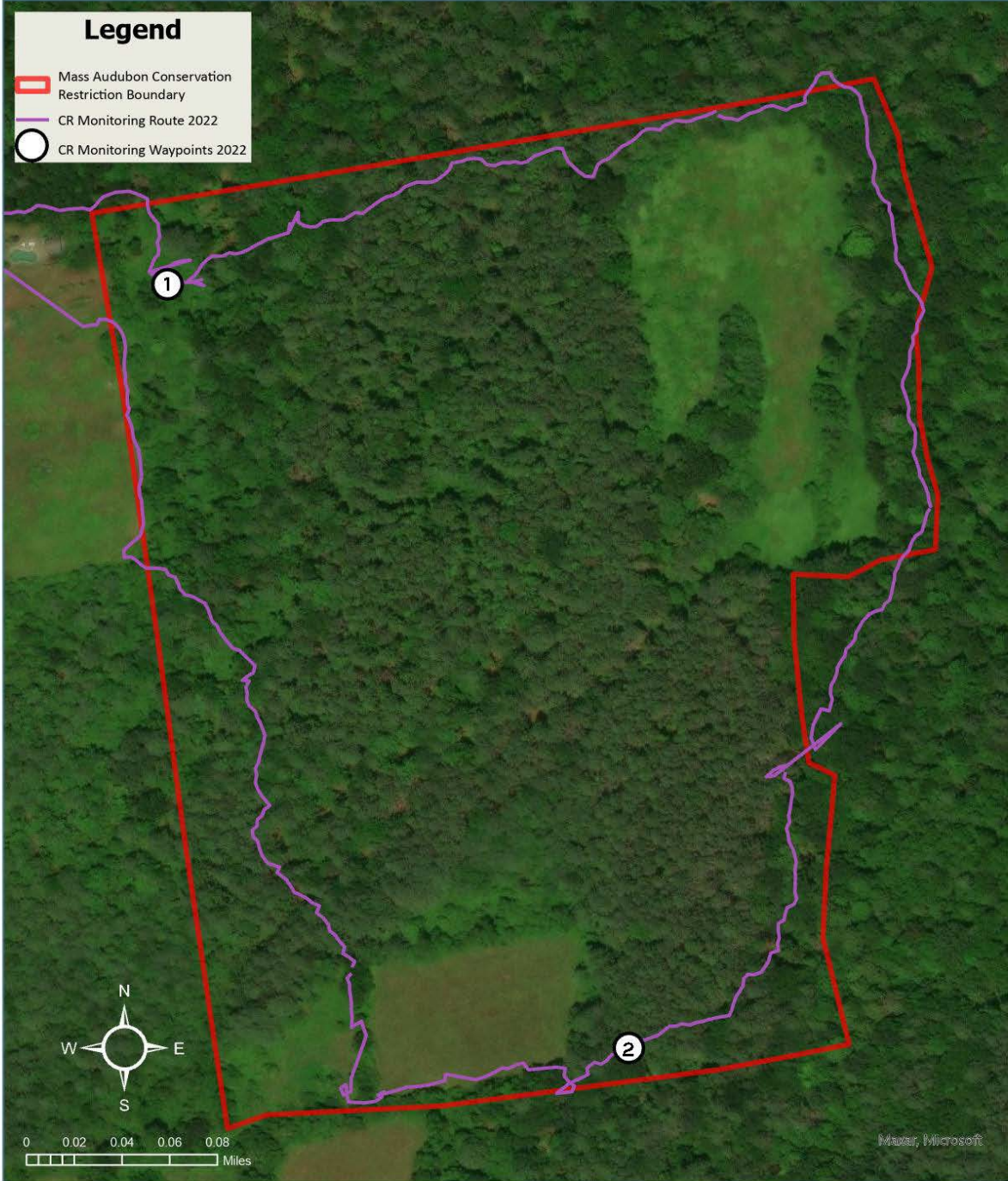


Exhibit C – Sample Affidavit of Preparer of Monitoring Report



Property: _____

**AFFIDAVIT OF PREPARER OF
MONITORING REPORT**

The undersigned hereby certifies 1) that she prepared the accompanying Monitoring Report dated _____ pertaining to the above-described Property, protected under a Conservation Restriction recorded on _____ in the _____ Registry of Deeds in Book/Page _____, and 2) that based on all the information cited in the Report, the Report is an accurate representation of the Property and its condition as of the date of the monitoring visit.

The undersigned acknowledges 1) that the condition of the Property documented in the Monitoring Report does not necessarily represent the condition of the Property allowed or required by the Conservation Restriction, and 2) that Mass Audubon does not in any manner waive any rights of Mass Audubon, either at law or in equity, to enforce the provisions of the Conservation Restriction.

The undersigned further states and affirms 1) that she took any photographs contained in the accompanying Monitoring Report, and 2) that said photographs fairly and accurately depict the Property as it appeared on the date that the photographs were taken.

Signed and sealed under the pains and penalties of perjury.

By: _____

Name

Date

Title

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

On this day, _____, before me, the undersigned notary public, personally appeared the above-named _____, proved to me through satisfactory evidence of identification which was MA license and personally known to be the person whose name is signed on the preceding document, and acknowledged to me that she signed it in her stated capacity, duly authorized, and voluntarily for its stated purpose.

Seal

Notary Public

My commission expires:

Exhibit D – Sample Affidavit of Photographer of Monitoring Report



Property: _____

**AFFIDAVIT OF PHOTOGRAPHER OF
MONITORING REPORT**

The undersigned hereby states and affirms 1) that she took the photographs contained in the accompanying Monitoring Report dated _____ pertaining to the above-described Property, protected under a Conservation Restriction recorded on _____ in the _____ Registry of Deeds in Book/Page _____, and 2) that the photographs illustrate and document an accurate representation of the Property and its condition as of the date of the monitoring visit. Unaltered originals of these photographs were recorded on a non-rewriteable compact disc signed by her, labeled with the property name that appears above, and in the possession of Mass Audubon, the holder of the Conservation Restriction.

Signed and sealed under the pains and penalties of perjury.

By: _____

Name

Date

Title

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

On this day, _____, before me, the undersigned notary public, personally appeared the above-named _____, proved to me through satisfactory evidence of identification which was MA license and personally known to be the person whose name is signed on the preceding document, and acknowledged to me that she signed it in her stated capacity, duly authorized, and voluntarily for its stated purpose.

Seal

Notary Public

My commission expires:

Section 7

Administering Your Stewardship Program & Cultivating Landowner Relationships

To reduce the likelihood of violations, it is important to be in regular contact with landowners via monitoring visits, telephone, email and mail. Such regular contact will remind landowners of the restrictions on their property and more quickly identify transfers of restricted properties. These contacts also help to foster the long-term relationship between the organization that holds the CR and the landowner, who is ultimately responsible for the day-to-day stewardship of the land.

This section of the Manual addresses a variety of topics that relate to administration of a CR stewardship program and long-term outreach and communication with owners of restricted properties. These include exercise of reserved rights that require approval, handling suspected violations, addressing requests for amendments and securing funding for the stewardship and defense of CRs.

Stewardship Options: Staff, Volunteers or Consultants?

As organizations develop more formalized stewardship programs, they will need to consider the best method for addressing CR stewardship needs. The three principal options are utilizing dedicated staff, volunteers or consultants. **The best choice will depend on the number of CRs held by the organization, the availability of funds and the level of expertise of volunteers or staff.** In some cases, a combination of options will be best. Some questions that should be taken into consideration in making this decision are:

- How will stewards be trained? Who will ensure that work that is done is of sufficient quality and consistency? Who will recruit, screen and train volunteers, and review the work that is done?
- Does an existing volunteer or staff member have the needed technical skills to do this work (or will they learn them), or would it be more efficient and cost-effective to hire someone to do this work?
- What is the best way to ensure consistency and continuity, both in relationships with landowners and in the quality of the work? For example, the amount of time needed for monitoring is likely less if the same individual is doing this work every year and does not have to become familiar with the property boundaries and issues each year.
- Might dividing the work be an option? For example, a consultant could be hired for the time-intensive work needed to produce Baseline Documentation Reports, with a staff member or volunteer responsible for annual monitoring. Or perhaps a volunteer might do some of the legwork to gather information, handle correspondence with landowners or input information into a database to reduce the amount of consulting assistance that is needed.

Many land trusts and conservation commissions rely solely on volunteers to accomplish their work. Many larger organizations and agencies have trained staff that are responsible for CR stewardship. The best solution needs to be individually determined by each organization as they consider which approach, or combination of approaches, offers the best “fit” given budgetary, personnel and time considerations.

New Landowner Contacts

Landowners often don’t inform holders when land subject to a CR changes hands, even though this is required by the terms of most CRs. Typically, changes of ownership are discovered when annual monitoring visit notice letters are returned. To avoid this, conducting some proactive research by reviewing assessor parcel information on MassMapper, searching the landowner’s name in the Registry of Deeds or researching obituaries before sending your annual monitoring notices can avoid any awkward interactions. New landowners are usually made aware that there is a CR on their property as a result of title research prior to purchase – but they may not fully understand what this means and may inadvertently violate the terms of the restriction as a result.

Some organizations routinely remind landowners to notify the holder if they have any plans to sell their properties. This can occur as part of the annual monitoring notice letter. Be sure to review the language of the CR, as some CRs require notice of property sale.

When a new landowner is identified, they should be sent a letter introducing the organization that holds the CR, along with a copy of the CR itself and the Baseline Documentation Report (see an example letter in **Exhibit E**). The letter should briefly summarize the key terms of the CR, refer them to the actual CR for details and describe the annual monitoring process. It is helpful to send along additional materials with this initial letter, which could include helpful land management guides, trail maps to nearby conservation areas or other materials that can welcome the landowner to the area and provide an opportunity to learn more about your organization.

It is a good idea to meet with the landowner during, or in advance of, the next scheduled monitoring visit to ensure that they fully understand the terms of the CR and understand that it will result in an ongoing relationship with the organization that holds the restriction. The new landowner should be invited to contact the holder if they have any questions or concerns about the terms of the CR, or to inquire about whether certain activities are allowed prior to undertaking them.

Exhibit E – Sample New Landowner Letter



<Date>

<Landowner Name>

<Street Address>

<City, State, Zip>

Dear <Landowner Name>,

Congratulations on the purchase of your new property! As you may know, Mass Audubon holds a permanent Conservation Restriction (CR) on a portion of your property located at <Address>. A CR is a legally binding agreement in which certain development rights to the property are extinguished to protect the land's conservation values. The CR does not impact your home, but only a certain section of the land around it as is shown on the attached maps.

Enclosed with this letter you will find a copy of the CR, along with two different documents related to the CR on your land.

The first is the Baseline Documentation Report ("Baseline"). A Baseline, in case you are unfamiliar, is a document that is meant to capture an objective snapshot of the condition of the property and its associated conservation values. It is completed around the time the CR closed, and it meant to serve as a common point of reference for us as the property changes over time. The second is a copy of our new owner's brochure which will give you a basic overview of our CR program and may answer some initial questions that you may have for us.

I serve as your link to Mass Audubon regarding your CR. Part of my role is to answer your questions and provide information and feedback that can help you manage your property in accordance with the terms of the CR.

Once a year, you should expect to receive a letter notifying you of Mass Audubon's plans for visiting your property to monitor compliance with the terms of the CR. You are always welcome to join us for this annual field visit, and we will work with you to determine a time that will be mutually agreeable. During each visit, I walk the property, take notes and pictures and touch base with you if possible.

Prior to this year's monitoring visit, I'd welcome the opportunity to schedule a time to sit down and review the Conservation Restriction with you, walk the land and answer any questions you might have about the restriction. Please feel free to call or email me to schedule a time that we can meet. I look forward to speaking with you soon.

Sincerely,

<Name>

<Title>

<Email and Phone Number>

Land Trust Alliance Standards & Practices

Standard 11: Conservation Easement Stewardship

Practice 11E: Conservation Easement Enforcement

1. Adopt a written policy and develop written procedures for documenting and responding to potential conservation easement violations
2. Investigate potential violations in a timely manner and promptly document all actions taken
3. Involve legal counsel as appropriate to the severity of the violation and the nature of the proposed resolution

Practice 11F: Approvals and Permitted Rights

1. Respond to landowner required notices or requests for interpretation or approvals in a timely and consistent manner, as specified in the conservation easement deed or in a written procedure
2. Establish written procedures to guide the land trust's decision-making if using discretionary approvals or if conservation easement deeds contain such clauses
3. Maintain permanent record of all notices, approvals, denials, interpretations and the exercise of any significant permitted rights

Estoppel Certificates

An estoppel certificate is a document in which a holder of a CR certifies to a potential buyer or lender that the condition of a restricted property is in conformance with the terms of the CR. The landowner might request an estoppel certificate just prior to a sale of the property, or after some significant change in property conditions (e.g. construction within a building envelope) even if the landowner is not selling the property. CRs often have a provision requiring the holder to issue such a certificate within a specified period of time after the request by the landowner. Estoppel certificates should only be issued after a site visit and careful review of the Baseline Documentation Report and any monitoring reports (and consultation with counsel if necessary) because, by issuing it, the holder waives its right to claim any violations based on conditions prior to its issuance. An updated monitoring report form should be completed, signed by the preparer and filed along with the estoppel certificate in your Permanent Conservation Files and/or Field Notebook. A sample Estoppel Certificate appears as **Exhibit F**.

Approvals of Permitted Activities

Many restrictions require landowners to notify the organization that holds the CR before a certain activity or use can occur on the property. Some restrictions require an additional step of approval by the holder of the restriction for certain activities. These are called “notice” and “notice and approval” provisions. An example might be “creation of additional hayfields provided that 30 days notice is given to grantee” or “cutting of timber pursuant to a forest management plan approved by the grantee.”

When a **notice** is received, the CR should be reviewed to verify that the planned activity is allowed. A reply should be sent to the landowner acknowledging receipt of the notice and asking for clarification of the proposed activity if necessary. A site visit may be needed to verify that the proposed activity will not be in violation of the terms of the CR. Any photos taken during such visits should be documented as during baseline documentation and monitoring field visits. The notice, reply and any photos should be filed permanently in your Permanent Conservation Files and/or Field Notebook. If the activity being proposed is not allowed by the CR, or will adversely affect the conservation values of the property, the landowner should be sent a certified letter noting that the proposed activity or use

is not consistent with the terms of the CR. An explanatory call in advance of the letter being sent may be helpful in terms of maintaining a good working relationship with the landowner. In the event that the activity is permitted by the CR, a response is not required, but may be desirable in the interest of maintaining strong lines of communication with the landowner, confirming the limits of the activity, letting the owner know that the holding organization takes its stewardship responsibilities seriously and documenting the exercise of this right for your records.

In the event of a **notice and request for approval** (as opposed to a simple notice), a written response is required, generally within a timeframe specified in the CR (often 30-60 days). The organization that holds the CR should carefully evaluate the request and its consistency with the terms of the CR. A site visit is likely necessary to review the location of the proposed activity and how it may affect the land protected by the CR. The response to the landowner should specify how the decision addresses the protection of the conservation values of the property, and any conditions being placed on the action in conjunction with the approval to protect these values. The reply should also include a map of where the activities are to take place and photos documenting the area especially if restoration will be required. If questions arise, or more information or clarification is needed, this should also be communicated to the landowner. Be sure to keep any deadlines in mind, particularly if the CR specifies that if no response is received within a specified period of time, the activity is deemed approved. As above, copies of the request and response to the request should be filed in your Permanent Conservation Files for the CR and/or the Field Notebook. A follow up site visit may be needed to ensure that the work was done in accordance with the approval, or it may be possible to incorporate this review into the annual monitoring visit.

Violations

Violations range from those that are inadvertent and generally innocuous (e.g., temporary storage of brush within a restricted area) to deliberate and damaging (e.g., filling of wetlands or construction of structures not allowed by the CR). They may result from the activities of the owner of the restricted property, an abutter encroaching over the property line, a third party who is unaware of the terms of the CR (such as a landscaping company or ATV user) or an unanticipated incident such as a plane crash or release of hazardous materials.

Some violations are discovered during annual monitoring visits, while other potential violations may come to the attention of the holder by the report of a neighbor or other third party. All potential violations should be investigated to determine whether an actual violation has occurred. Sometimes a second opinion may be helpful in making this determination, particularly if the wording of the CR is ambiguous. A majority of violations can be handled by a cooperative effort between the landowner and holder, while others may only be resolved through litigation. **As suggested by the Land Trust Alliance Standards and Practices, your organization or agency should adopt a written procedure for how to document and respond to potential CR violations.** The appropriate reaction by the holder depends on the written procedure as well as the severity of the violation and the threat that it poses to the conservation values that are protected by the restriction. However, wherever feasible, the goal of enforcement should

be to protect the conservation values of the property while maintaining a positive working relationship with the landowner.

All possible violations, no matter how minor, should be addressed systematically according to written procedures and policies and by the individual at the holding organization with authority to handle potential violations. These procedures should address the process that will be followed for resolution of violations and related issues such as contact with the press. **Information on development of an Enforcement Policy is contained in Appendix B.** If a violation is identified but not formally resolved, such inaction may later be interpreted by a court as a waiver of the holder's right to enforce certain terms of that restriction. Other landowners may look at an organization's "pattern of conduct" in enforcement; inconsistent handling of violations may undermine that organization's credibility or its case in an enforcement action.

Terrafirma Risk Retention Group LLC

Terrafirma is a full-service conservation defense liability insurance company that helps its member owners uphold lasting conservation. Terrafirma was formed by the Land Trust Alliance to help land trusts defend their conserved lands from legal challenge. It is owned by its members to ensure the costs of upholding conservation easements and fee lands held for conservation purposes when they have been violated or are under legal attack, and to provide information on risk management to those land trusts. The Standards and Practices developed by the Land Trust Alliance include certain enrollment prerequisites for Terrafirma members that can be referenced on the Land Trust Alliance's website. More information regarding Terrafirma can be found at www.terrafirma.org.



When a potential violation is found, it should be documented as thoroughly as possible. If your organization is enrolled with Terrafirma, you will need to file a placeholder claim as soon as possible. Your organization should have a specific policy in place for deciding which violations to file a placeholder claim based on the violation's severity. Your organization should consider the overall threat to conservation values, who caused the violation (e.g. third party or landowner), your organization's cooperative relationship with the landowner as well as the potential for future violation.

If previous photos of the affected area were taken at the time the Baseline Documentation Report was prepared or during a previous monitoring visit, relocate these points and take photos at the same compass bearing and scale; this creates "before" and "after" documentation of the violation. Take additional photos to thoroughly document the surrounding area and to provide context (e.g., photograph an area of dumping and the apparent means of access as well). Document all photos as described in earlier sections. Once the site documentation of the possible violation has been prepared, it may be necessary to interview neighbors as well as the landowner (or past landowners) to determine who is responsible. Briefly document each conversation in a memorandum, make note of every attempt to contact the various parties and keep copies of all correspondence. Make note of any deadlines for compliance agreed to by the violator.



Estoppel Certificate

This is to certify that on [date], I [title], of the [name of Agency/Organization], conducted a physical inspection of land subject to a conservation restriction, described in a Conservation Restriction on [name of property; location] from [grantor] to [owner], dated, and recorded on [date], in Book [#], Page [#] at the [County] Registry of Deeds. Accompanying me on this site inspection was [name/title].

I am familiar with the terms and restrictions of said conservation restriction, which is to my knowledge in full force and effect and neither amended nor released. Upon such inspection I found the premises to be in compliance with the terms and conditions of the aforementioned conservation restriction, except, [list any problems found], subject only to any breach which would not be apparent by an on-site visual inspection of the surface of the premises, and excepting:

1. any conveyances, liens, restrictions, proceedings or other facts affecting the premises which would be revealed by an examination of the record title of the premises;
2. any unrecorded conveyances affecting the premises, or any proceedings in bankruptcy or eminent domain affecting the premises;
3. any unpaid real estate taxes on the premises, due and payable;
4. any debts incurred on the premises which might ripen into liens; and
5. any breach of the conservation restriction of which the owner [name] has actual knowledge. The original Grantor and Owner prepared and certified as accurate on [date], an inventory of the Premise’s relevant features and conditions (the “Baseline Documentation Report”) as of the date of the grant, on file with Owner, and incorporated herein by this reference. This certificate indicates that no material changes have occurred on the Premises since that time.

OR

Material changes that have occurred since that time are documented in a Monitoring Report Form, prepared and certified by the current owner as an accurate representation of the condition of the Premises as of the date of the above-mentioned inspection. This estoppel certificate is based on the condition of the Premises as documented in the Baseline Documentation Report, as revised by the Monitoring Report Form, incorporated herein by this reference.

[Agency/Organization] By its: [Name/Title] [Date]

Land Trust Alliance Standards & Practices

Standard 11: Conservation Easement Stewardship

Practice 11A: Conservation Easement Stewardship

1. Estimate the long-term stewardship and enforcement expenses of each conservation easement transaction
2. Track stewardship and enforcement costs

Practice 11H: Amendments

1. Adopt and follow a written policy or procedure addressing conservation easement amendments that is consistent with the Land Trust Alliance Amendment Principles
2. Evaluate all conservation easement amendment proposals with due diligence sufficient to satisfy the Amendment Principles
3. If an amendment is used to adjust conservation easement boundaries (such as to remedy disputes or encroachment) and result in a *de minimis* extinguishment, document how the land trust's actions address the terms of Practice 11J

Standard 12: Fee Land Stewardship

Practice 12A: Funding Land Stewardship

1. Determine the immediate financial and management implications of each conservation property acquisition and estimate the long-term implications
2. Anticipate and track costs associated with long-term land management, stewardship and enforcement of conservation properties

Whenever possible, violations should be resolved without going to court. Litigation is expensive, time consuming, potentially damaging to the relationship between a landowner and CR holder, may take years to resolve and has an uncertain outcome. Where it is possible to maintain the conservation values by other means such as mitigation by the responsible party or a negotiated resolution, these are preferable solutions. However, litigation by the holder of the CR may be necessary to defend the conservation values of the property if other reasonable means have been exhausted and the landowner has been notified of non-compliance and refused a demand for corrective action.

When the violation has been resolved, write a memorandum that describes the violation and how it was resolved. Put a copy in your Permanent Conservation Files and/or Field Notebook.

Amendments

Amendments to CRs should be rare and not undertaken lightly. Landowners and holders should assume that the terms of the CR are perpetual. A CR may be amended only with the approval of the grantor or landowner, holder, municipality and the EEA. In some cases, approval of the municipality's legislative body and a 2/3 vote of the state legislature will also be needed pursuant to Article 97 of the Massachusetts Constitution. The EEA's policy is to only approve amendments that will strengthen the original CR and have no adverse impact on the restriction's purposes or qualification under applicable laws (including section 170 (h) of the Internal Revenue Code, Article 97 of the Massachusetts Constitution or sections 31-33 of Chapter 184 of the General Laws of Massachusetts).

Experience has shown that it is important for organizations that hold CRs to have clear written policies specifying under what circumstances an amendment might be considered, and what the process is for processing requests for amendments. If an amendment is to be granted, the holding organization should prepare a letter of approval, including a detailed explanation of how the requested amendment meets the criteria above. Early consultation with the EEA Division of Conservation Services is advisable when any amendment is being considered. Approved amendments should be recorded at the appropriate Registry, and a copy put in your Conservation Files.

Staffing and Funding CR Stewardship

In order to carry out stewardship obligations and to identify and resolve future violations, it is critical that every organization that holds CRs ensures that it has – or is committed to providing – the funds to adequately carry out its stewardship and enforcement obligations. No organization should accept the stewardship obligations of a CR without having a plan in place to ensure that the short-term, long-term and unexpected stewardship obligations of the CR will be met. Where the conservation values of a property merit acquisition of a CR, every effort should be made to secure resources for long-term protection of this land.

CR Stewardship Costs

Each organization's stewardship costs differ, as they are a function of many factors including staffing, geographic dispersion of restrictions and the nature of the restrictions. For every organization, the primary elements that comprise stewardship costs include:

- Baseline Documentation
- Monitoring
- Administration
- Enforcement

Baseline documentation is a one-time cost per restriction, while the other three are ongoing, and should be estimated separately. An organization might choose to place the budgeted stewardship amount in an endowment, but to use the funds for preparation of the Baseline Documentation Report to pay a consultant to perform this work.

Monitoring and administration costs can be estimated based on fairly simple assumptions. Some of the administration costs are largely fixed, such as recordkeeping, writing a landowner newsletter or developing policies and procedures. While some monitoring costs are variable based on the size of the CR, surrounding land use and travel distance from the organization's office. Others vary with the number of CRs, such as landowner contacts before and after a visit and responding to requests for approval of permitted activities, amendments and estoppel certificates. While the cost of resolving minor violations can be provided for in the stewardship budget, the costs of resolving major violations, those requiring extended negotiations or litigation, can be very significant and are difficult to estimate.

Where Will the Funds Come From?

Every organization that holds CRs should identify a source of funds for stewardship. Many organizations have worked creatively to identify sources of stewardship funds for their CRs. Some possibilities include:

- The landowner who grants the CR may be asked to contribute endowment funds for stewardship of the CR. These endowment funds are generally pooled by the holder and invested, and the interest used to fund stewardship activities.
- The holder can engage in fundraising to cover the costs of CR stewardship, either on a project by project basis or as part of an overall "stewardship endowment" campaign.

- The holder may be able to budget for annual stewardship costs from an existing conservation fund or annual appropriation (but beware of changing fiscal circumstances).
- The cost of stewardship may be contributed annually, for example through condominium association dues.
- A real estate transfer fee could be considered that would generate a source of income to the holder from the sale of one or more nearby developed properties.

Determining How Much is Needed for Stewardship

There are three basic approaches to determine the amount needed for CR stewardship:

- Estimated cost based on property specific factors
- A percentage of the value of the property
- A flat fee

The **Property Specific Factors** endowment approach attempts to estimate stewardship costs based on property specific factors. Most organizations that use this approach rely on a spreadsheet to help calculate property specific stewardship costs. **Several examples can be found on the Land Trust Alliance’s website, including references to a “Stewardship Calculator and Handbook” developed by The Nature Conservancy.**

The two principal advantages of this approach are 1) each request is tied to estimated expenses, so over time this technique should end up fully funding variable monitoring costs, and 2), the spreadsheet itself is a useful tool for making the request, as the potential donor can plainly see the basis for the amount of the endowment request.

Projected costs are principally a function of estimated hours. Estimating hours requires experience with stewardship and some knowledge of the property and the terms of the restriction. Factors determining cost will include: the size of the parcel, the ease of access, the terrain (hills, wetlands), the boundaries (complexity, number of abutters) the conservation values to be monitored and the complexity of the CR itself (particularly the prohibitions and the reserved rights). Additional time will be required for preparing for the site visit (reviewing the baseline and previous monitoring visit reports, contacting the landowner), compiling the monitoring visit report and resolving any minor violations.

Factor in additional administrative hours if there are multiple landowners or one or more co-holders of the restriction.

The Percentage of Value approach is based on a percentage of the property’s market value. For example, the TNC Conservation Easement Working Group recommends “20% of the land interest’s fair market value.” The percentage of value could be based on the property’s unencumbered value, the value of the restriction itself or the restricted property value. For donated restrictions, calculating the percentage based on the restriction’s donation value ties the amount of the stewardship endowment request to the value of the grantor’s income tax deduction.

A drawback of this method is that it is not tied to the real cost of monitoring a given CR. For example, a very large and ecologically significant tract in the western part of the state may

have a lower fair market value but much higher stewardship costs than a small and ecologically insignificant tract in the suburbs.

The Flat Fee approach is typically based on the holder's average cost of stewardship per restriction per year, converted into an endowment request using an assumed rate of return. For example, if annual stewardship costs were \$50,000 and the holding organization has 70 CRs in their portfolio, then the average cost of stewardship would be \$715.00 per CR. To generate this amount each year at a 5% rate of return, the required stewardship endowment per CR would be \$14,300.

To be fair, this calculation should be made using only the recurring and variable costs of stewardship, as fixed costs don't increase directly with the number of CRs held. Unless all staff involved with stewardship keep careful track of their time, it can be difficult to separate out one-time costs (e.g. baseline documentation) and fixed costs (e.g. sending annual monitoring notices) from total stewardship costs.

Some organizations apply multipliers or add-on costs to the flat fee where circumstances warrant. For example, the base amount might be increased for large properties, properties with unusual reserved rights, properties with current or future building sites or properties with unusual boundary configurations or in a setting with high risk of encroachment.

Appendix A

Resource Libraries

CR stewardship may seem like a daunting task, but it's important to remember that there is a community of organizations to lean on and learn from, both on a local and national level. Outside of this Manual, there are innumerable resources available regarding CR stewardship, many of which can be easily accessed online.

Below is information regarding two helpful online resources where you can find supporting documents, policy samples and webinars to learn from peers to help advance your CR stewardship program.

Massachusetts Land Trust Coalition

Land Trust Resource Library

The Massachusetts Land Trust Coalition (MLTC) works to advance land conservation across Massachusetts by providing education, tools, networking and advocacy for land trusts and their partners. The MLTC website is home to a Land Trust Resource Library. Created by MLTC and fellow conservation professionals, these resources include guidance on operations, conservation mechanisms, stewardship, legal issues, advocacy and more. To find resources relevant to Conservation Restriction Stewardship, use the Library's filter-by-topic function:

1. Navigate to the Massachusetts Land Trust Coalition website at <https://massland.org>
2. Navigate to "Land Trust Resource Library" under "Resources" in the main menu
3. At the top of the Resource Library page, navigate to the dropdown menu under "Topics"
4. Scroll down to the list of "Stewardship" topics
5. Select "Conservation Restriction Stewardship"
6. Click "Apply"

If you have any questions, comments, concerns or resources you would like to see in the MLTC resource library, please email info@massland.org.

Land Trust Alliance

Resource Center

The Land Trust Alliance Resource Center is a one-stop shop for volunteers, staff and board members of land trusts and other conservationists to learn, connect and grow. The Resource Center holds thousands of documents, courses, events and more. Explore resources based on topics and regions, filter information based on level of expertise from basic to advanced and

even sort resources related to the specific Land Trust Standards and Practices, which were highlighted throughout this Manual. Many resources are free, while others come at a fee and are discounted for Land Trust Alliance members.

The Resource Center also includes a space to connect with your peers and to join in on conversations related to specific topics. The Resource Center provides a discussion forum where members can post questions (e.g. How to address issues of hunting on conservation restrictions?) and other members can respond with their experience and expertise.

The Land Trust Alliance Resource Center can be accessed online at **<https://landtrustalliance.org/resources>**, while the discussion forum can be accessed at **<https://connect.landtrustalliance.org>**.

Appendix B

Sample Enforcement Policy

This following sample Enforcement Policy is provided by the Land Trust Alliance as part of Land Trust Standards and Practices. This example can be used as a starting point to create a policy for your organization, but should be altered as necessary to reflect your organization's unique circumstances.

If you are using this material for accreditation purposes, see the Land Trust Accreditation Commission website for additional information.

Practice 11E – Sample 2

Conservation Easement Enforcement Policy

Conservation Easement Enforcement Policy [LAND TRUST]

Adopted by the Board of Directors on [DATE]

I. Policy

[LAND TRUST] monitors each conservation easement that it holds on a periodic basis to ensure that activities occurring within each protected area are consistent with the restrictions, covenants and reserved rights set forth in the corresponding recorded conservation easement deed. Prior to these routine monitoring visits, [LAND TRUST] contacts each property owner to ask about recent activities within or near the easement area and about the owner's foreseeable plans for the property. When [LAND TRUST] suspects that an activity or action that violates the terms of an easement has occurred, is ongoing or may occur in the future, [LAND TRUST] will follow a systematic approach to document and address the perceived violation, to limit impacts to natural resources within the easement area and to restore conservation values that have been diminished or harmed by such violation. [LAND TRUST] must secure and maintain adequate financial resources to enforce and defend the terms of all conservation easements that it holds.

II. Purposes

[LAND TRUST] intends for this policy to conform to all requirements of law, *Land Trust Standards and Practices* and all other [LAND TRUST] policies. The purpose of this document is to outline [LAND TRUST]'s policy for addressing easement violations and to guide related [LAND TRUST] practices. The long-term effectiveness of conservation easements to protect valuable lands depends upon [LAND TRUST]'s ability and willingness to enforce the terms of its easements. Strong enforcement builds public confidence in easements as a land protection tool. Moreover, in order to accept tax-deductible gifts and to qualify for tax-exempt status under Internal Revenue Service (IRS) regulations, [LAND TRUST] must commit to uphold the

terms of all conservation easements it holds and to maintain its financial capability to defend and enforce the restrictions.

III. Objectives

Each easement violation presents a unique situation and requires a tailored approach. [LAND TRUST] will seek to address each violation and to develop a strategy to remedy the situation in accordance with the following general objectives:

- A. To maintain the conservation purpose(s) of the conservation easement.
- B. To maintain public confidence in [LAND TRUST]'s ability to enforce easement restrictions generally and in part as a deterrent to other potential violators.
- C. To protect [LAND TRUST]'s legal rights and economic investment in the conservation easement.
- D. To maintain the most constructive working relationship possible with the property owner.
- E. To evaluate each suspected violation thoroughly prior to formulating a response strategy and to ensure that communication with a property owner regarding a violation reflects the only official position of the organization.
- F. To maintain professionalism and integrity.
- G. Where consistent with the foregoing objectives, to balance the harm caused by the violation with the cost/benefit of the selected enforcement response.
- H. To maintain consistent responses to similar conservation easement violations.
- I. To enter into litigation as a last resort and only when there is a meritorious legal basis for judicial action.

IV. Illustrative Examples

The following are examples of possible violations of conservation easements held by [LAND TRUST]. These hypothetical examples represent a broad spectrum of possible violations that could arise and should not be interpreted as an exhaustive list:

- A. A conservation easement deed prohibits subdivision of the property subject to the easement. A surveyor, hired by the property owner, records a subdivision plat dividing the property into multiple parcels. The property owner then sells a resulting parcel to a neighbor.
- B. A conservation easement deed prohibits commercial forestry within a "Stream Buffer Zone" (SBZ), which is designated in the deed. Standing timber within the SBZ is included in a timber sale administered by a forester hired by the property owner. Logging equipment enters the SBZ and the logger cuts and removes standing timber in accordance with his contract with the property owner.

- C. A conservation easement deed stipulates that any new structures built on the property must be placed within a predetermined “Building Zone,” which is designated in the deed. The property owner obtains necessary permits from local officials to begin construction of a new garage. The garage is constructed outside the designated Building Zone.
- D. In a conservation easement deed, the property owner reserves the right to conduct commercial timber harvesting activities on the property. The conservation easement deed stipulates that harvesting must be done in accordance with a “Forest Management Plan” prepared by a professional forester. A Forest Management Plan has not been prepared but a 45-acre stand of timber is sold to a local wood products mill.
- E. A conservation easement prohibits dumping of trash or refuse on a property. The property is wooded and adjoins a rural public road. An individual enters the property via a gravel road and dumps several appliances in the woods.

V. Roles

- A. Board of Directors. The board of directors is ultimately responsible for ensuring that [LAND TRUST] defends and enforces all conservation easements that it holds. The board must ensure that [LAND TRUST] secures and maintains adequate financial resources to cover future anticipated enforcement and defense costs. Through reports at its regularly scheduled meetings, the board relies on the executive director and staff to keep abreast of ongoing monitoring activities and any potential and actual violations of easements that are encountered. The board receives and considers the advice of the executive director and general counsel when weighing options to remedy such violations. The board must approve any monetary settlement proposed by a property owner or third party to remedy a violation before the executive director may act upon the terms. If the executive director recommends an amendment to the conservation easement deed as a remedy to a violation, the board must evaluate and consider such a proposed amendment in accordance with its Conservation Easement Amendment Policy. The board must pass a resolution authorizing the executive director to pursue litigation to address a violation before such course-of-action may be pursued, except in instances where the executive director concludes that a request for a temporary restraining order is the only viable option to prevent immediate, irreparable harm to the natural resources protected by a conservation easement.
- B. Committees of the Board. The board may opt to assign its duties outlined above to one or more standing or special committees when such action would best serve the organization.
- C. Staff. Monitoring of conservation easements held by [LAND TRUST] is done by or under the supervision of [LAND TRUST] staff. Staff maintains contact with property owners and gathers information about recent and future activities on protected properties, which may provide the first opportunity for [LAND TRUST] to become aware of actual or potential violations. The staff informs the board of any violations

through reports at regularly scheduled board meetings. The executive director or a delegated staff member is responsible for negotiating settlements and remedies to easement violations but must obtain approval from the board when outcomes involve monetary payments and/or amendments to easement deeds. If staff members encounter difficulty during discussions or negotiations with a property owner, the executive director may request the participation of a board or committee member.

- D. Volunteers. A volunteer may assist a [LAND TRUST] staff member during the monitoring of a conservation easement or may be assigned the independent responsibility for monitoring a property. When a volunteer suspects that a violation of an easement has occurred or is likely to occur in the future, the volunteer is responsible for reporting the situation to the supervising staff member or to the executive director. Although volunteers are important ambassadors for [LAND TRUST] to maintain relationships with owners of conservation easement properties and to inspect easement conditions on the ground, a volunteer must refrain from discussing potential violations with a property owner unless expressly authorized by the executive director.
- E. Partners. Individuals with other nongovernmental organizations and government agencies, neighbors, new property owners or other members of the general public may encounter possible violations of [LAND TRUST]'s conservation easements. These partners are encouraged to report suspected violations to the executive director for investigation and action.

VI. Procedures to Address Violations

- A. Review the Easement Terms. A potential violation may first be discovered during a regularly scheduled monitoring visit by a [LAND TRUST] staff member or volunteer. In some instances, a violation may initially become apparent through a phone conversation with a property owner or contact by a third party. When a violation is suspected, the staff member will first review all pertinent documentation, including the conservation easement deed, baseline documentation report and monitoring reports, to determine if an easement violation has occurred, its exact nature and when it likely took place. The staff member should consult general counsel for interpretation if necessary.
- B. Document the Violation. A staff member who discovers a suspected conservation easement violation must first notify the executive director and general counsel and must promptly document the known facts when a suspected violation becomes apparent. When the violation involves altered conditions on the property, a [LAND TRUST] staff member should thoroughly document conditions in the field that demonstrate a violation has taken place. The violation must be described in detail using photos, maps and written summaries. Locations of photos should be documented in the field using GPS equipment and shown on an aerial photo map. Quantitative measurements of the violation should be noted when appropriate (e.g. size of land area impacted; number, size and species of trees damaged or removed; size of structures involved; or length of stream frontage impacted). Field notes

should be signed and dated by the person conducting the field inspection. If the landowner does not grant the staff member permission to enter the property, the general counsel will be consulted on how to proceed. All data gathered and documents prepared to summarize a violation are considered confidential documents and may only be released to outside parties, including the property owner, with approval of the general counsel. Staff members must refrain from discussing potential violations or negotiating remedies with a property owner unless expressly authorized by the executive director.

- C. Contact and Dialogue with the Landowner. [LAND TRUST] will schedule a meeting with the property owner in person to discuss the violation. [LAND TRUST] will listen to the property owner's explanation, ask questions and take notes to document the conversation. [LAND TRUST] will ask the property owner to voluntarily correct the violation or at least to cease any further activity until the matter can be reviewed by [LAND TRUST]'s board of directors. [LAND TRUST] will document all meetings and write a follow-up letter (sent via certified mail with return receipt requested) to the landowner confirming any agreements made during the meeting about the restoration of the property and compliance deadlines.
- D. Voluntary Remediation. If the property owner agrees to restore the property or otherwise correct a violation, a follow-up letter will be signed by the executive director and sent to the property owner as soon as possible reflecting the nature and extent of the restoration work or other follow-up actions and the agreed-upon timetable for completion. A [LAND TRUST] staff member should revisit the property on the deadline date to document any restoration work using photographs, narrative description and quantitative measurements. A follow-up letter will be sent to the property owner (via certified mail with return receipt requested) attesting to the satisfactory completion of the work or otherwise, as appropriate.
- E. Noncooperation. If the property owner refuses to voluntarily restore the property or otherwise correct a violation, the executive director will consult with general counsel and the board of directors to discuss the violation and determine an appropriate enforcement strategy.
- F. Litigation. As a course of last resort, [LAND TRUST] will use litigation or other legal means to address a conservation easement violation. Enforcement through court action is expensive and time consuming and may produce an undesirable outcome. Litigation may cause irreparable damage to the relationship between the property owner and [LAND TRUST]. Nevertheless, court enforcement may be necessary to defend an easement, prevent or stop damaging activities or obtain restoration of a site. When the board of directors determines that litigation must be pursued, the executive director and general counsel will work closely with outside counsel to prepare and present the strongest possible case.

VII. Third-Party Violations

[LAND TRUST] views its relationship with owners of conserved land as a partnership. This relationship is based on the belief that we share a common interest in good stewardship of the conserved land. When third parties cause a violation of a conservation easement, [LAND TRUST] will seek the cooperation of the owner to address the actions of the third party and to fix any damage caused to the property. [LAND TRUST] reviews each third-party violation of a conservation easement on a case-by-case basis when deciding what responses and remedies are necessary. If the third party is unwilling to cooperate with the property owner and [LAND TRUST], then the board of directors may explore judicial or other legal remedies.

VIII. Reserve Funding for Legal Defense

[LAND TRUST] will maintain a dedicated reserve fund to cover costs of defending its conservation easements as such costs are incurred over time. At the time of the adoption of this policy, this fund is known as the “Conservation Lands Defense Fund” (“Defense Fund”). The Defense Fund also serves to defend against condemnation actions, trespass, encroachment and other activities or actions by third parties that threatened the conservation values of land owned in fee by [LAND TRUST]. [LAND TRUST] will grow the size of the Defense Fund over time to an adequate size determined by the board of directors following guidance issued by the Land Trust Alliance. With each new conservation easement or property that it acquires, [LAND TRUST] will raise necessary cash (or establish a plan to secure such cash) to deposit into the Defense Fund. Monies recovered through legal enforcement actions, paid initially out of the Defense Fund, will be reimbursed to the Defense Fund.

Appendix C

Sample Baseline Documentation Report

**Chapin Scantic CR
Hampden, MA**

BASELINE DOCUMENTATION REPORT



SAMPLE

Baseline Report Completed: May 8, 2023

Conservation Restriction Recorded: August 23, 2023

Prepared By: Nicole Marcotte, CR Stewardship Specialist
Massachusetts Audubon Society

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Part I: Property Overview

Conservation Restriction Abstract

Property Information

Property Name: Chapin-Scantic CR
County: Hampden **Municipality:** Hampden
Street Address: 119 Chapin Road
Sanctuary (if any): Laughing Brook Wildlife Sanctuary
Total Restriction Acreage: 64+/- acres
Tax Parcel References: Tax Map 14, portion of Lot 10

Conservation Restriction

Grantor Name: Massachusetts Audubon Society, Inc.
Contact: Director of Land Conservation
Mailing Address: 208 South Great Road
Town: Lincoln
State: MA **Zip:** 01773
Telephone: 781-259-2155 **Email:** land@massaudubon.org

Purchase Amount (if any): \$240,000 **Source:** ILF grant and TNC Mitigation grant

Grantee Name: Conservation Commission of the Town of Hampden
Contact: Conservation Commission Chair
Mailing Address: 625 Main Street
Town: Hampden
State: MA **Zip:** 01036
Telephone: (413) 566-2151 (ext. 110) **Email:** conservation@hampdenma.gov

CR Recording Date: 08/23/2023
CR Recording References Book/Page: 25127/212
Deed Recording References Book/Page: 25049/14
CR Recording Location: Hampden County Registry of Deeds
EOEEA number (if any): CR 17247, CR #15

The Grantor and Grantee have signed a Memorandum of Understanding outlining specific monitoring and enforcement responsibilities, noting that the Hampden Conservation Commission will only be responsible for monitoring the CR on a three-year basis while Mass Audubon will be monitoring the property on an annual basis due to grant requirements.

Preparer's Qualifications

Nicole Marcotte, Conservation Restriction Stewardship Specialist, Mass Audubon

Nicole holds a B.A. in Environmental Studies from Saint Michael's College. She has 10 years of experience working in the conservation field, including working with various nonprofits on ecological restoration and environmental monitoring projects. She currently works as a Conservation Restriction Stewardship Specialist with Mass Audubon, focusing on annual monitoring and stewardship of conservation restriction properties in western and central Massachusetts.

Conservation Restriction History and Chronology

Laughing Brook Wildlife Sanctuary is a small portion of a large, relatively intact forest block, which supports a population of wide-ranging species including bobcat (*Felis rufus*), coyote (*Canis latrans*), and white-tailed deer (*Odocoileus virginianus*). The protection of additional lands in this block is an important regional conservation goal. Based on a data release from the Natural Heritage and Endangered Species Program (NHESP) in January 2010, three currently state-listed rare species have been documented at Laughing Brook Wildlife Sanctuary. These species are all listed as Species of Special Concern in Massachusetts. Additionally, brook trout (*Salvelinus fontinalis*) have been observed in the Scantic River. The Bedrock Financial (aka Moran) parcel is shown on the 2005 Land Protection Plan for Laughing Brook Wildlife Sanctuary as a Secondary Sanctuary Priority. It abuts the existing Wildlife Sanctuary on the southern end of the Wildlife Sanctuary. The back acreage of the parcel also includes two lengths of the Scantic River.

On March 8, 2019, Bedrock Financial, owned by Al Joyce of Rose-Bud Builders, purchased the 77-acre Moran property for \$389,000. It was originally listed by the Moran family for \$589,000 in the fall of 2017. The owners were not interested in the Mass Audubon time frame of a year to close and always wanted more than was offered. After his purchase Mr. Joyce was notified that Mass Audubon was still interested in owning the backland along the Scantic River.

Al Joyce plans to develop the frontage of the 77-acre parcel along Chapin Road. Because of the NHESP, Joyce was required to restrict approximately 11 acres as mitigation for the development. Joyce asked Mass Audubon to hold the Conservation Restriction on those 11 acres and said he would sell us the back 64+/- acres. Mass Audubon agreed to hold the CR so long as we had an Agreement to purchase the back 64+/- acres and a commitment to fund a stewardship contribution of \$11,000 for the CR. Joyce has approval from NHESP (Conservation and Management Permit [CMP]) and he recorded a Declaration of Restriction for the CR area of 11 acres which was required by NHESP before he started the building work. The Declaration of Restriction will be “replaced” by a CR to be held by Mass Audubon.

The Agreement for the purchase of the 64 acres provides for an October 2021 closing, extended to June 30, 2023. Joyce did the survey in connection with his subdivision plan. Mass Audubon procured the survey of the back 64 acres. The funding for the purchase price for the back acres is from a grant program administered by The Nature Conservancy to protect box turtle habitat, and from an In Lieu Fee (ILF) program grant administered by the Massachusetts Department of Fish and Wildlife. The grant applications have been approved and awarded. Usual stewardship costs are included in the overall budget for this project. The ILF grant requires preparation of a long-term management plan (LTMP) and a Mitigation Project Plan. The LTMP contemplates an effort to reduce the deer population on the property and to reduce or eliminate the invasive plant species. Both grants required a CR over the property, and both grants had specific language to include in the CR.

The Hampden Conservation Commission has agreed to hold the CR on the 64 acres in exchange for a stewardship contribution of \$6,000, and some assistance from Mass Audubon in the field.

Part II: Maps

Driving Directions

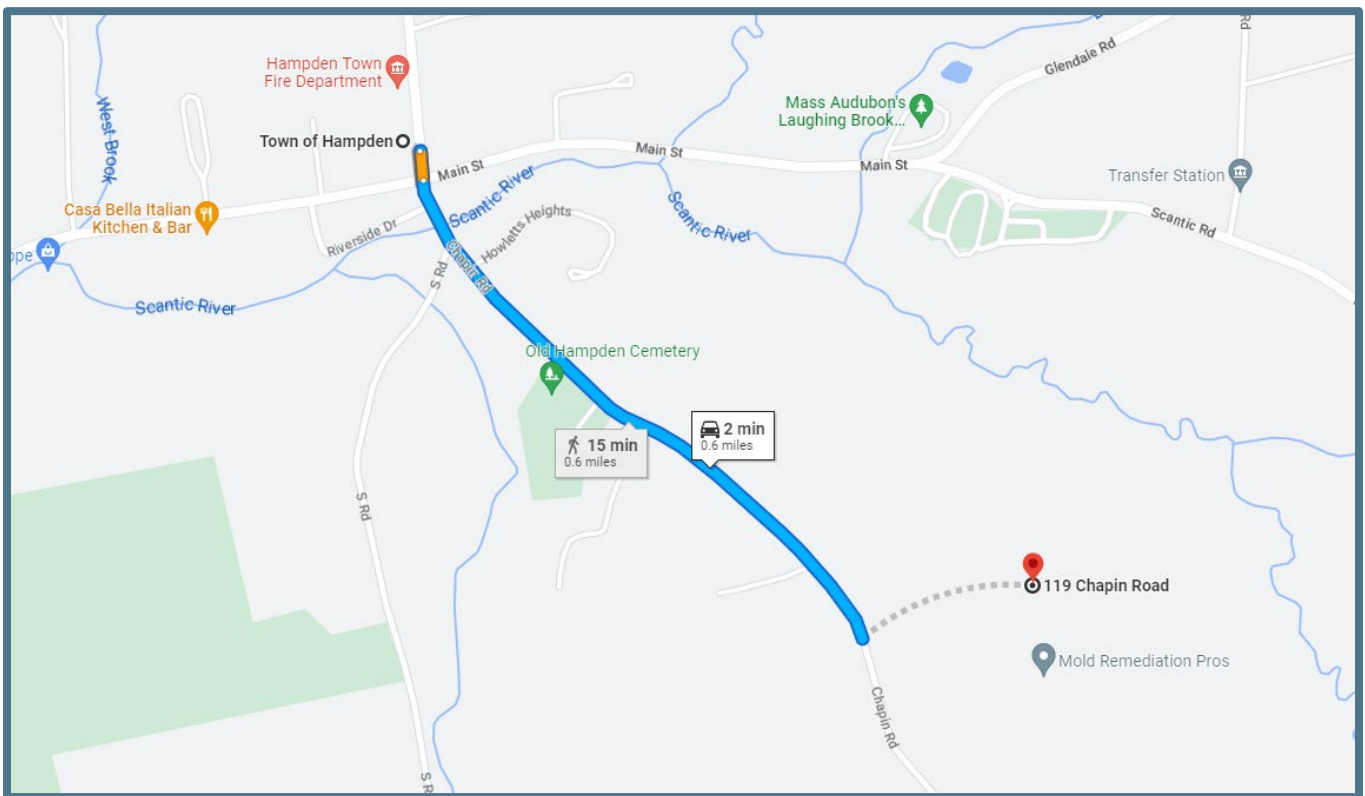
Start: Town of Hampden Town Hall, 625 Main Street, Hampden, MA 01036

0.6 Miles via Chapin Road (approximately 2 minutes)

- Head south on North Road toward Main Street
- Continue straight onto Chapin Road

End: 119 Chapin Road, Hampden, MA 01036

Parking: Plan to park along Chapin Road. There is a small pull off area available near the start of the transmission lines.

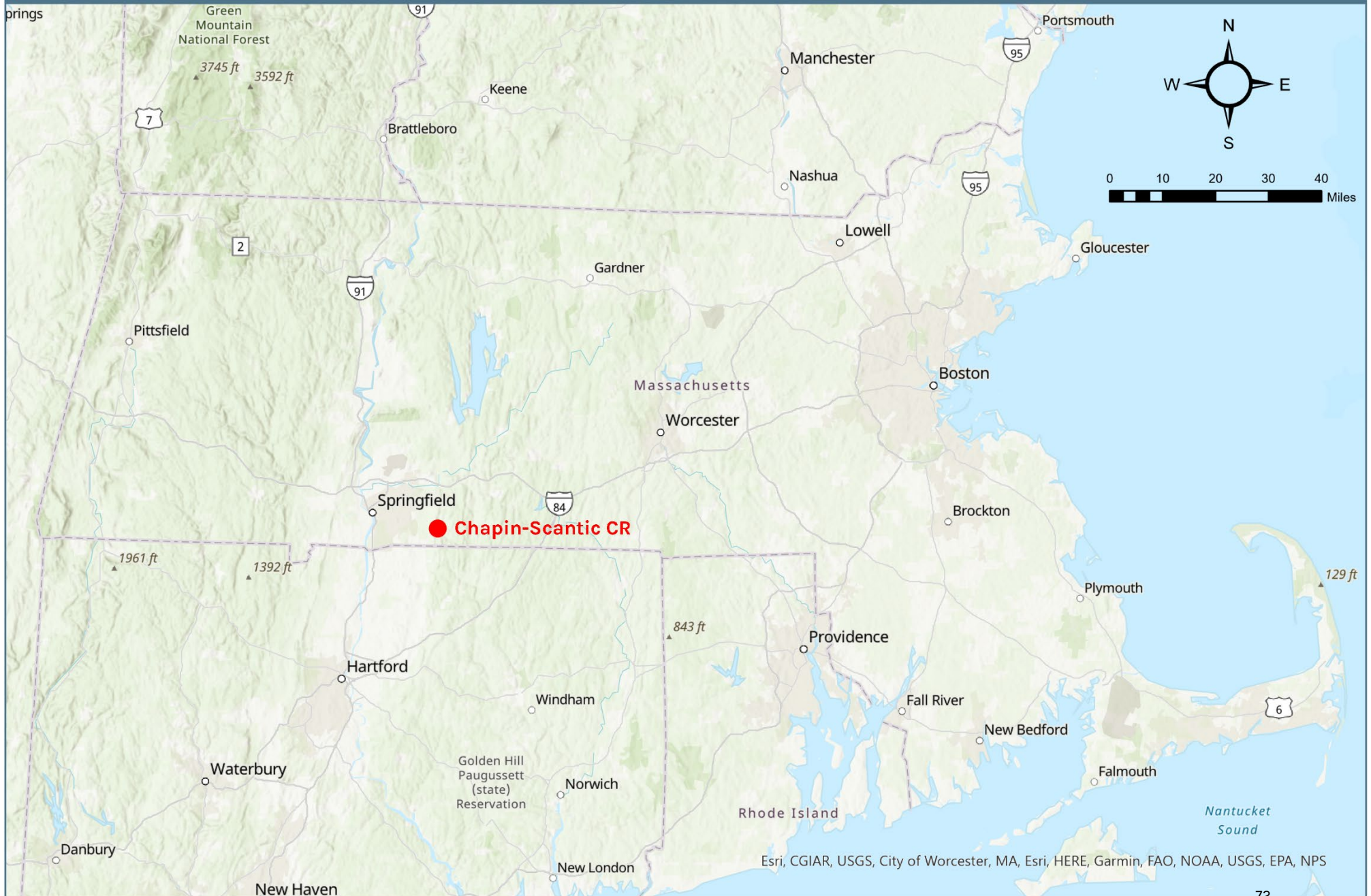




Chapin-Scantic CR

Locus Map

Created By Nicole Marcotte
April 12, 2023
Basemap - ArcGIS Data Service
This map is for planning purposes only
and is not a survey



Esri, CGIAR, USGS, City of Worcester, MA, Esri, HERE, Garmin, FAO, NOAA, USGS, EPA, NPS

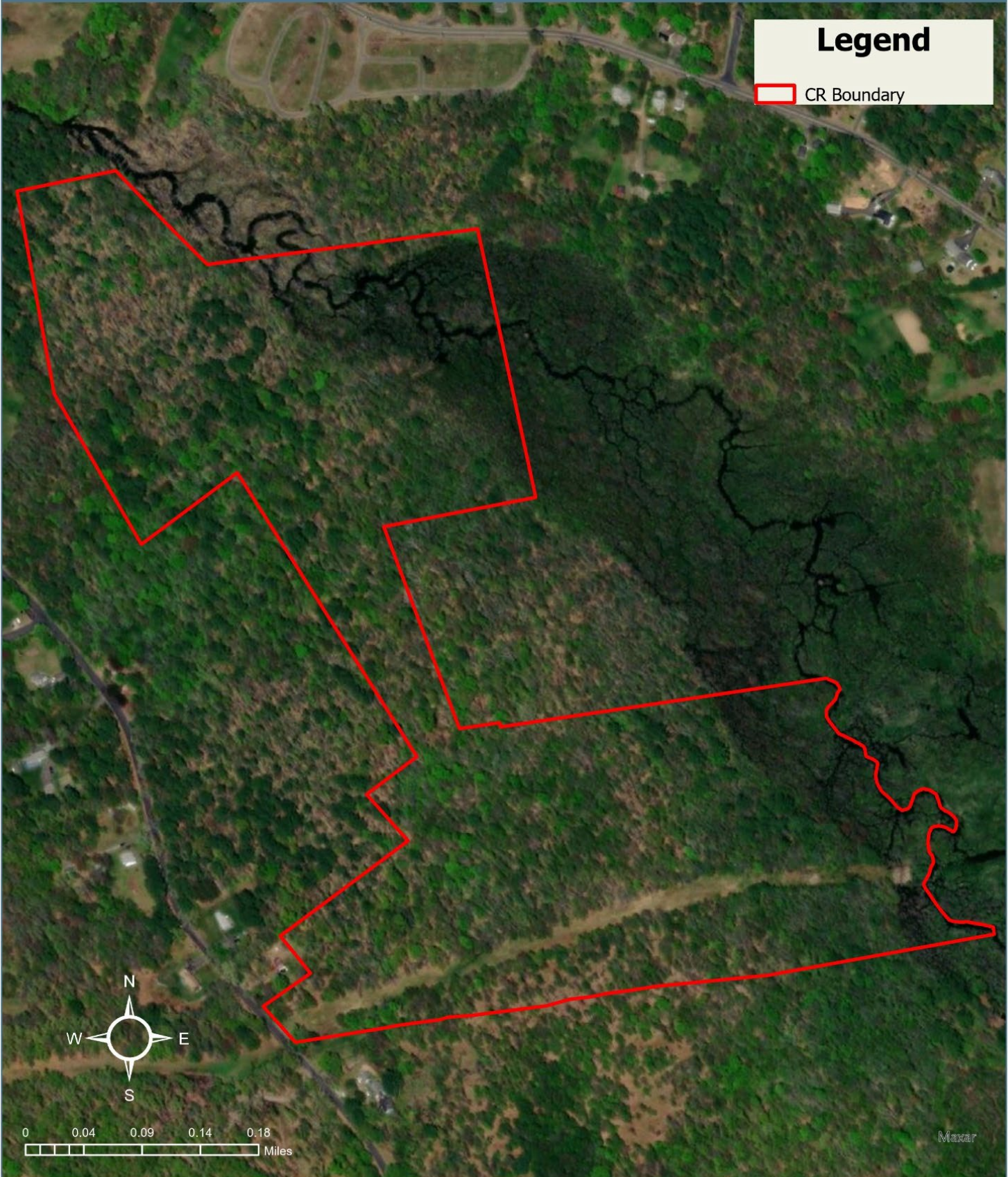


Chapin-Scantic CR Ortho Imagery Map

Created By Nicole Marcotte
April 12, 2023
Basemap - ArcGIS Map Service
This map is for planning purposes only
and is not a survey

Legend

 CR Boundary




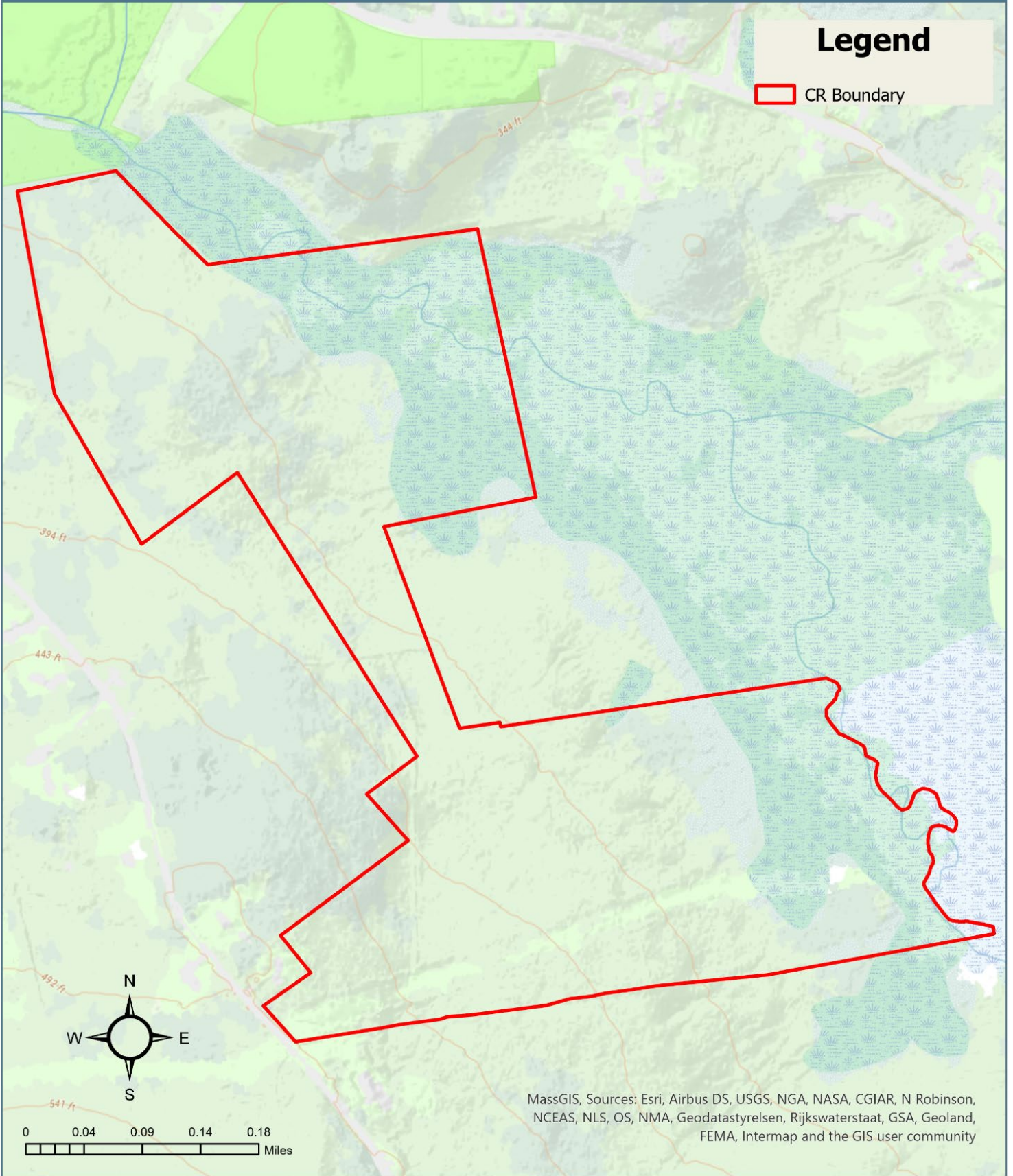


Chapin-Scantic CR Topography Map

Created By Nicole Marcotte
April 12, 2023
Basemap - MassGIS Data
This map is for planning purposes only
and is not a survey

Legend

 CR Boundary



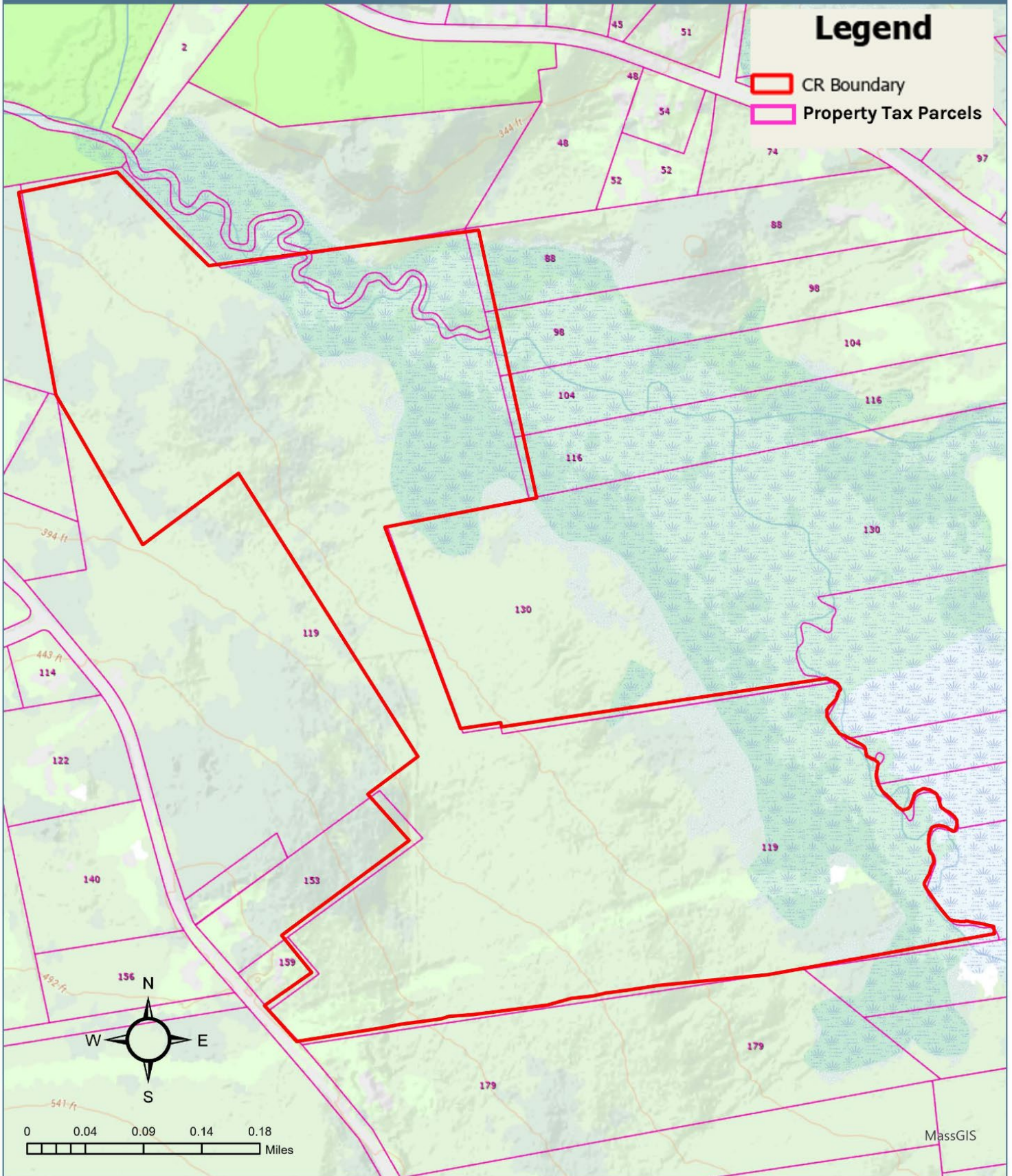
MassGIS, Sources: Esri, Airbus DS, USGS, NGA, NASA, CGIAR, N Robinson, NCEAS, NLS, OS, NMA, Geodatastyrelsen, Rijkswaterstaat, GSA, Geoland, FEMA, Intermap and the GIS user community

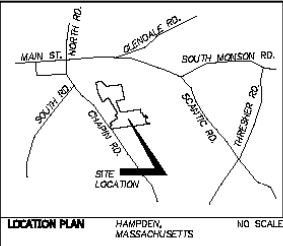


Chapin-Scantic CR

Property Tax Parcels

Created By Nicole Marcotte
April 12, 2023
Basemap - MassGIS Data
This map is for planning purposes only
and is not a survey





LOCATION PLAN HAMPDEN, MASSACHUSETTS NO SCALE

**LOCUS IS LAND OF
BEDROCK FINANCIAL, LLC
AS TRUSTEE OF THE CUMBERLAND BLUES REALTY TRUST
A PORTION OF
BOOK 22579 PAGE 582
TAX MAP 14 LOT 10
TOTAL AREA = 64± ACRES**

FOR REGISTRY USE ONLY

CERTIFICATION

THE PROPERTY LINES SHOWN ARE THE LINES DIVIDING EXISTING OWNERSHIPS, AND THE LINES OF STREETS AND WAYS SHOWN ARE THOSE OF PUBLIC OR PRIVATE STREETS OR WAYS ALREADY ESTABLISHED, AND NO NEW LINES FOR DIVISION OF EXISTING OWNERSHIP OR FOR NEW WAYS ARE SHOWN.

I CERTIFY THAT THIS PLAN HAS BEEN PREPARED IN CONFORMITY WITH THE RULES AND REGULATIONS OF THE REGISTERS OF DEEDS OF THE COMMONWEALTH OF MASSACHUSETTS.

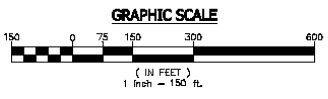
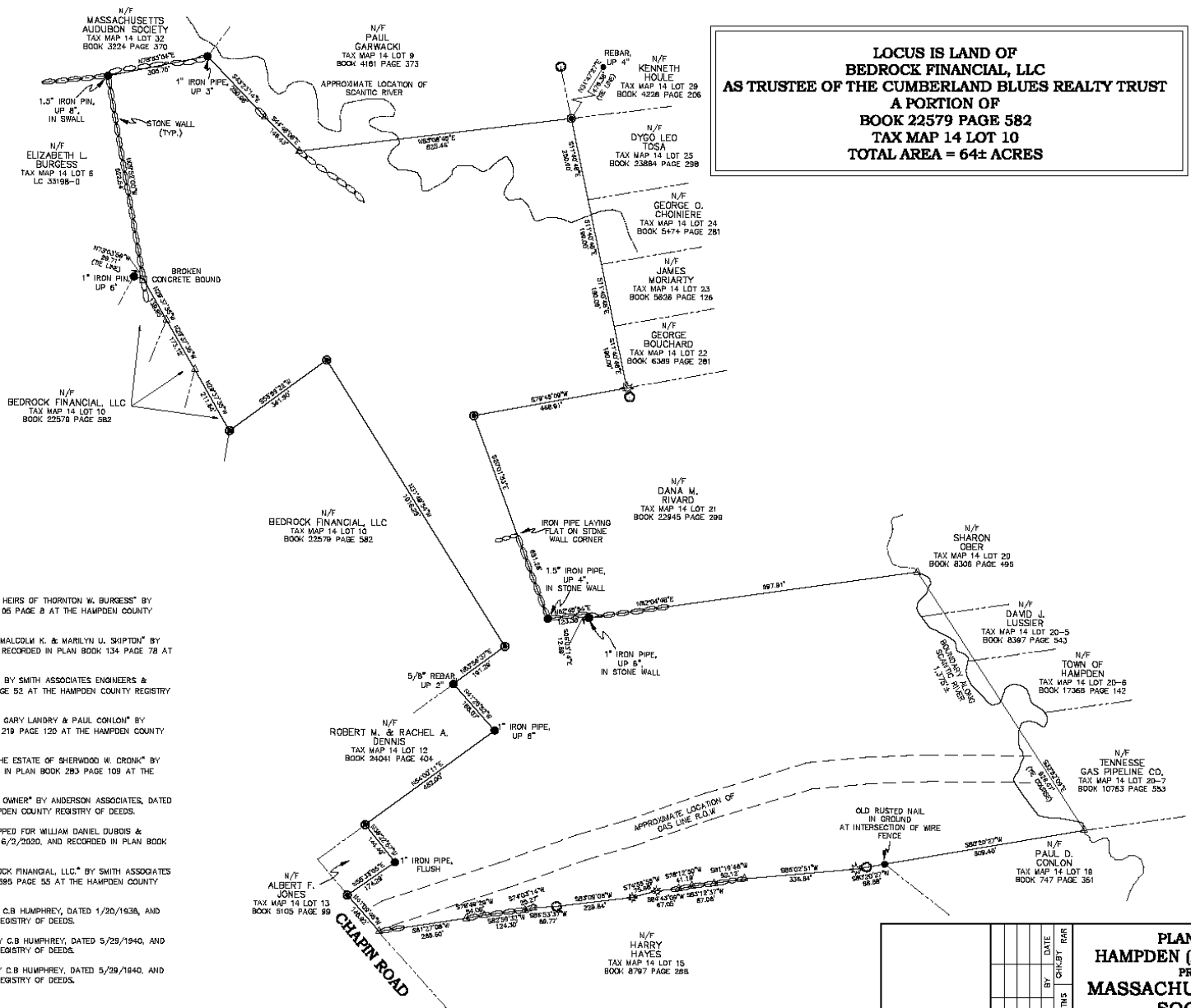
RICHARD A. ROBERGE, P.L.S. DATE

MAP REFERENCES

- "PLAN OF PROPERTY ON MAIN STREET HAMPDEN, MASS. OWNED BY HEIRS OF THORNTON W. BURGESS" BY HAROLD HELBERG, DATED 9/2/1966, AND RECORDED IN PLAN BOOK 106 PAGE 8 AT THE HAMPDEN COUNTY REGISTRY OF DEEDS.
- "PLAN OF LAND ON CHAPIN ROAD HAMPDEN MASSACHUSETTS FOR MALCOLM K. & MARLYN U. SKIPTON" BY SMITH & WALLEN ENGINEERING COMPANY INC., DATED 5/4/1972, AND RECORDED IN PLAN BOOK 134 PAGE 78 AT THE HAMPDEN COUNTY REGISTRY OF DEEDS.
- "PLAN OF LAND SCANTIC ROAD—HAMPDEN, MA. FOR A. DUTIL, INC." BY SMITH ASSOCIATES ENGINEERS & SURVEYORS, DATED 11/29/82, AND RECORDED IN PLAN BOOK 208 PAGE 52 AT THE HAMPDEN COUNTY REGISTRY OF DEEDS.
- "PLAN OF LAND ON SCANTIC ROAD HAMPDEN MASSACHUSETTS FOR GARY LANDRY & PAUL CONLON" BY RONALD R. HUOT, DATED 10/15/1984, AND RECORDED IN PLAN BOOK 219 PAGE 120 AT THE HAMPDEN COUNTY REGISTRY OF DEEDS.
- "PLAN OF LAND SCANTIC ROAD HAMPDEN, MASS. PREPARED FOR THE ESTATE OF SHERWOOD W. CRONK" BY SMITH ASSOCIATES SURVEYORS, INC., DATED 12/9/92, AND RECORDED IN PLAN BOOK 283 PAGE 109 AT THE HAMPDEN COUNTY REGISTRY OF DEEDS.
- "PLAN OF PROPERTY IN HAMPDEN, MASSACHUSETTS, GARY LANDRY OWNER" BY ANDERSON ASSOCIATES, DATED 3/1/1999, AND RECORDED IN PLAN BOOK 329 PAGE 37 AT THE HAMPDEN COUNTY REGISTRY OF DEEDS.
- "PLAN OF LAND IN HAMPDEN, MASSACHUSETTS SURVEYED AND MAPPED FOR WILLIAM DANIEL DUBOIS & JENNIFER LORNE DUBOIS BY R. LEVESQUE ASSOCIATES, INC., DATED 6/2/2020, AND RECORDED IN PLAN BOOK 389 PAGE 10 AT THE HAMPDEN COUNTY REGISTRY OF DEEDS.
- "PLAN OF LAND 119 CHAPIN ROAD HAMPDEN, MA OWNED BY BEDROCK FINANCIAL, LLC." BY SMITH ASSOCIATES SURVEYORS, INC., DATED 4/30/2019, AND RECORDED IN PLAN BOOK 385 PAGE 55 AT THE HAMPDEN COUNTY REGISTRY OF DEEDS.
- "COPY OF PART OF PLAN FILED IN LAND REGISTRATION OFFICE" BY C.B HUMPHREY, DATED 1/20/1938, AND RECORDED IN LAND COURT PLAN 16733A AT THE HAMPDEN COUNTY REGISTRY OF DEEDS.
- "COPY OF PART OF PLAN FILED IN LAND REGISTRATION OFFICE" BY C.B HUMPHREY, DATED 5/29/1940, AND RECORDED IN LAND COURT PLAN 16733B AT THE HAMPDEN COUNTY REGISTRY OF DEEDS.
- "COPY OF PART OF PLAN FILED IN LAND REGISTRATION OFFICE" BY C.B HUMPHREY, DATED 5/29/1940, AND RECORDED IN LAND COURT PLAN 16733C AT THE HAMPDEN COUNTY REGISTRY OF DEEDS.

NOTES

- THIS PLAN IS BASED ON A SURVEY PERFORMED DURING THE MONTHS OF AUGUST & SEPTEMBER 2022, AND IS MADE TO THE STANDARD CARE OF PROFESSIONAL LAND SURVEYORS PRACTICING IN THE COMMONWEALTH OF MASSACHUSETTS. (M.G.L.250 CMR 6.00)
- THE BEARINGS ON THIS PLAN ARE REFERENCED TO THE MASSACHUSETTS STATE PLANE COORDINATE SYSTEM (M.S.P.C.S.).
- CHAPIN ROAD LAID OUT PER CHAPTER 86, SECTION 2 OF MASSACHUSETTS GENERAL LAWS.



LEGEND

- PROPERTY LINE
- ABUTTER LINE
- UNMARKED POINT
- CAPPED REBAR SET
- TREES WITH WIRE



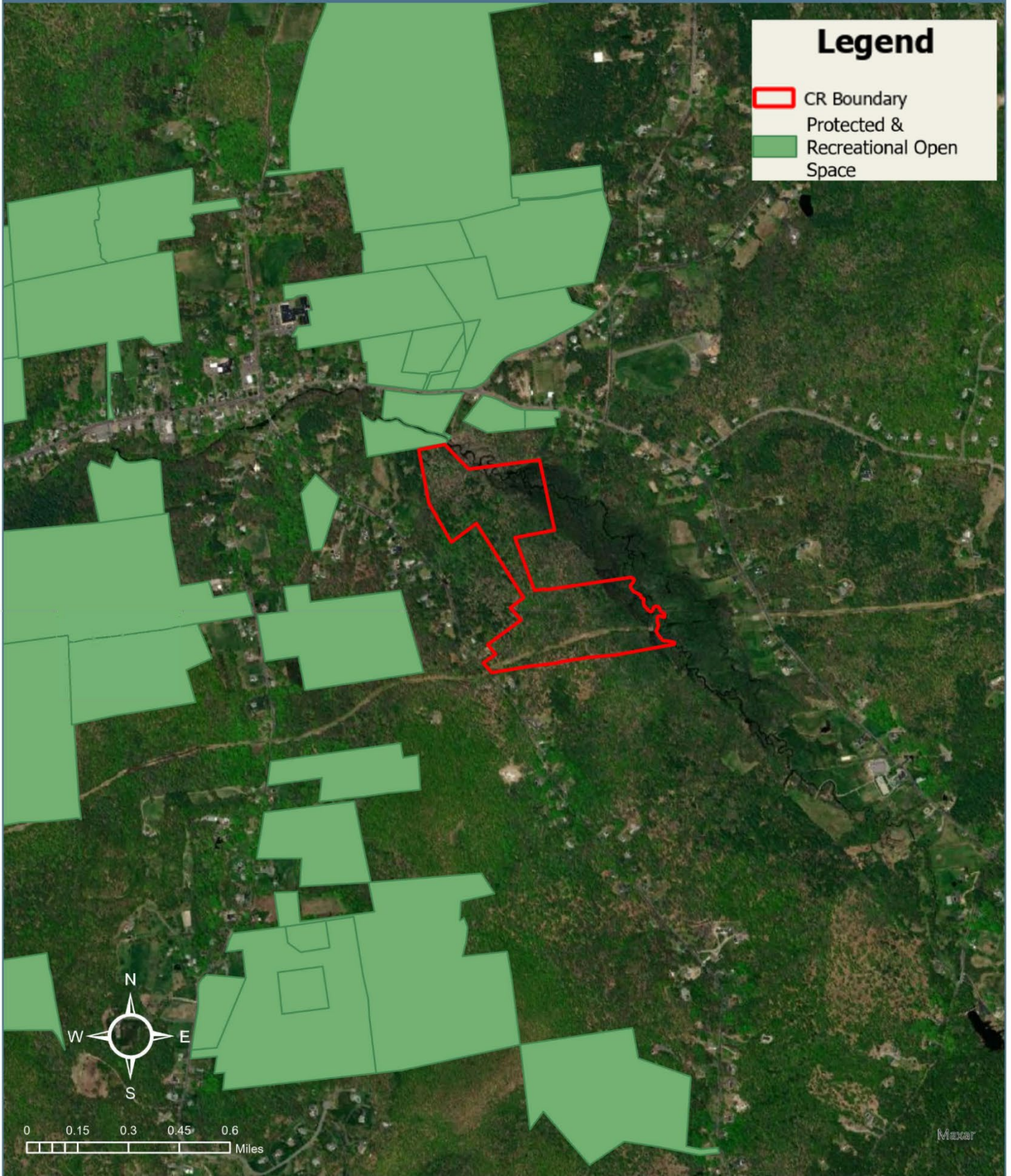
NO.	DRAWN BY	REVISION	DATE	BY	CHKD BY	RDR	PLAN OF LAND IN HAMPDEN (HAMPDEN CO.), MA PREPARED FOR MASSACHUSETTS AUDUBON SOCIETY, INC.		
							HILLTOWN LAND SURVEYS 26 MAIN STREET CUMMINGTON, MA 01026 (413) 634-0244	C 2028	
DATE	11/20/22	SCALE	1"=150'	PROJ.	BEDROCK	SHEET	1	OF	1



Chapin-Scantic CR

Protected Open Space Map

Created By Nicole Marcotte
April 12, 2023
Basemap - ArcGIS Map Service,
MassGIS Data
This map is for planning purposes only
and is not a survey

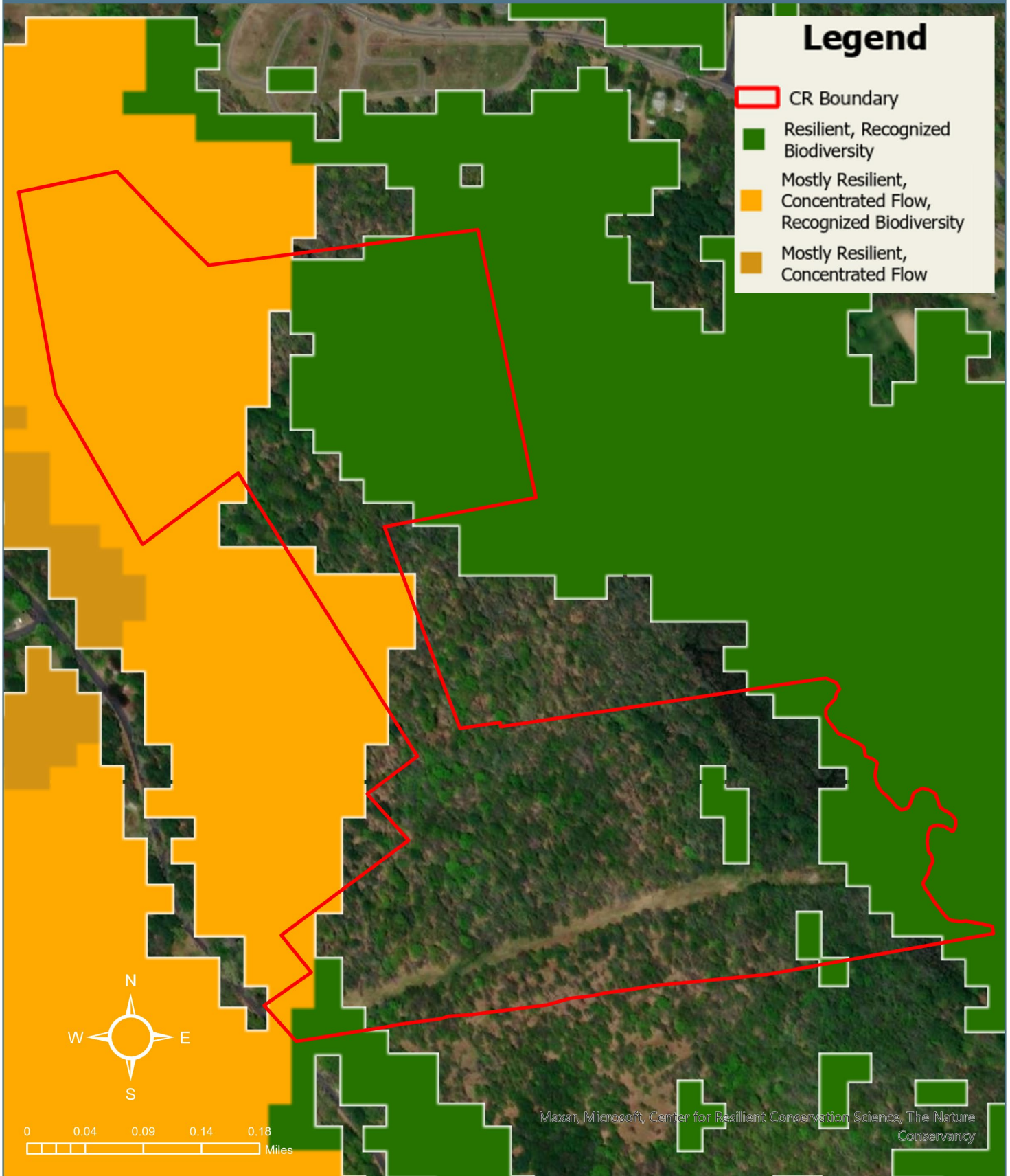




Chapin-Scantic CR

Resilient & Connected Networks Map

Created By Nicole Marcotte
April 12, 2023
Basemap - ArcGIS Map Service,
The Nature Conservancy
This map is for planning
purposes only and
is not a survey






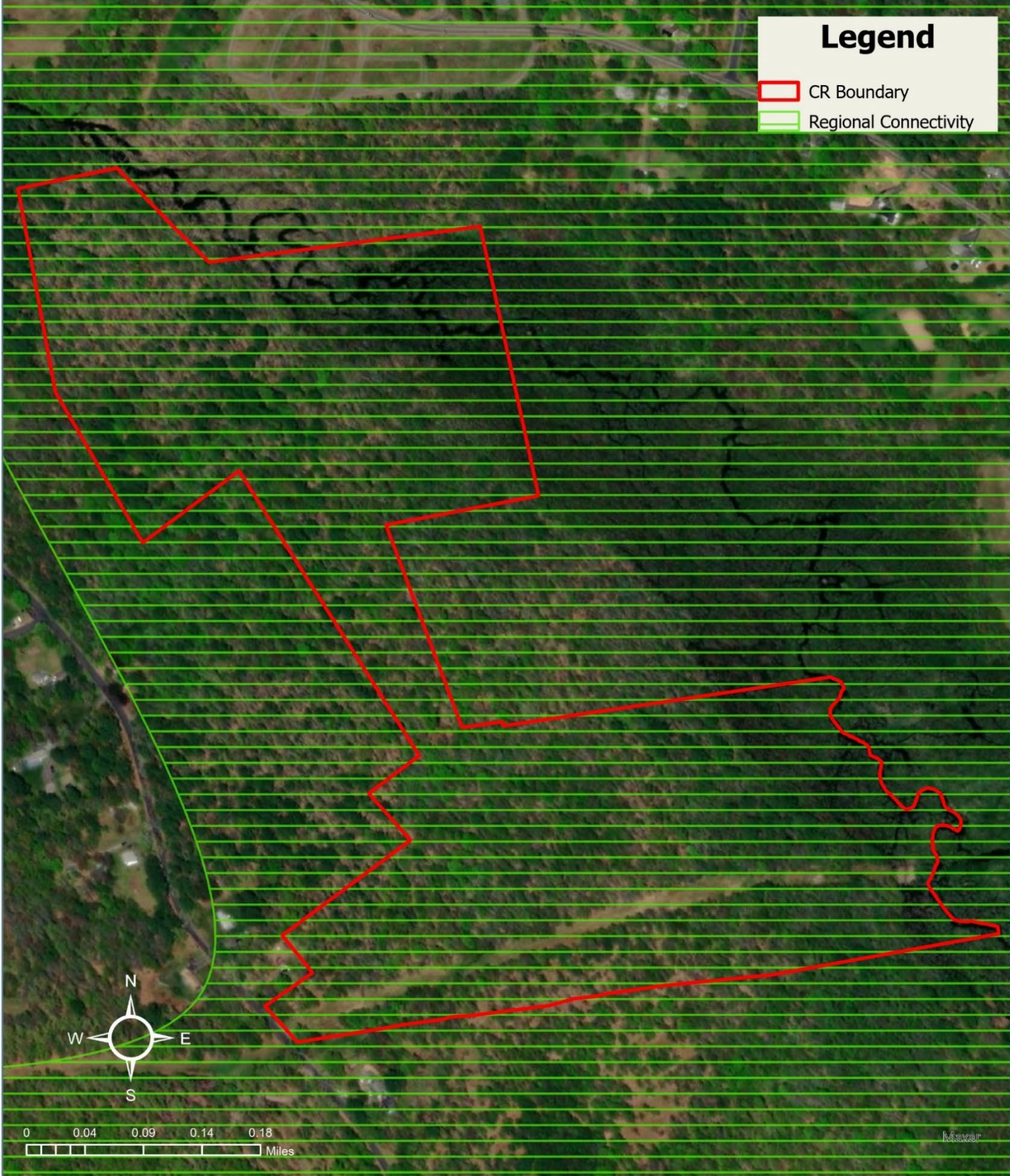
Chapin-Scantic CR

BioMap 3: Regional Connectivity Map

Created By Nicole Marcotte
April 12, 2023
Basemap - ArcGIS Map Service,
NHESP/TNC BioMap
This map is for planning
purposes only and
is not a survey

Legend

-  CR Boundary
-  Regional Connectivity



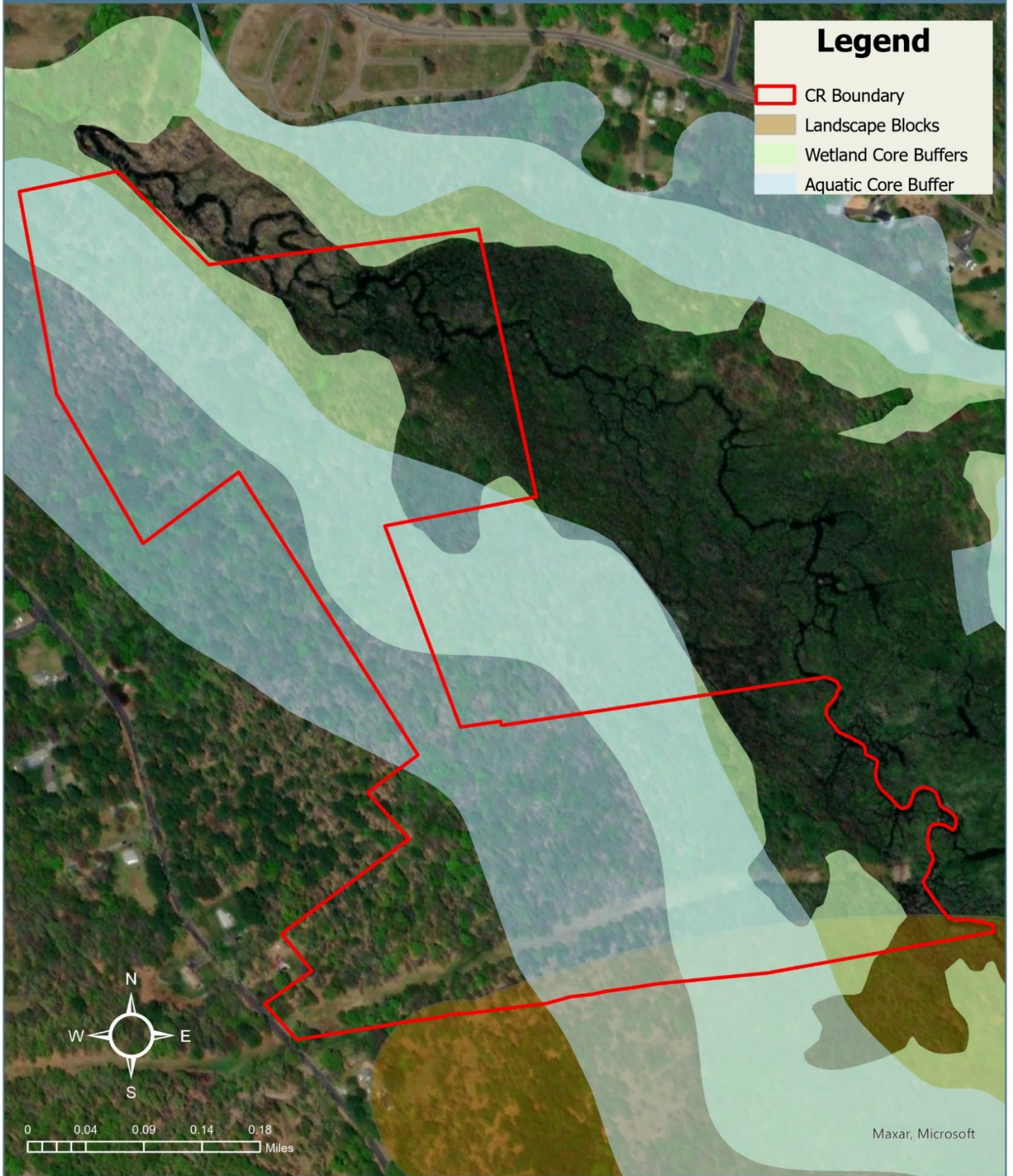
Maxar



Chapin-Scantic CR

BioMap 3: Critical Natural Landscapes

Created By Nicole Marcotte
April 12, 2023
Basemap - ArcGIS Map Service,
NHESP/TNC BioMap
This map is for planning
purposes only and
is not a survey



Legend

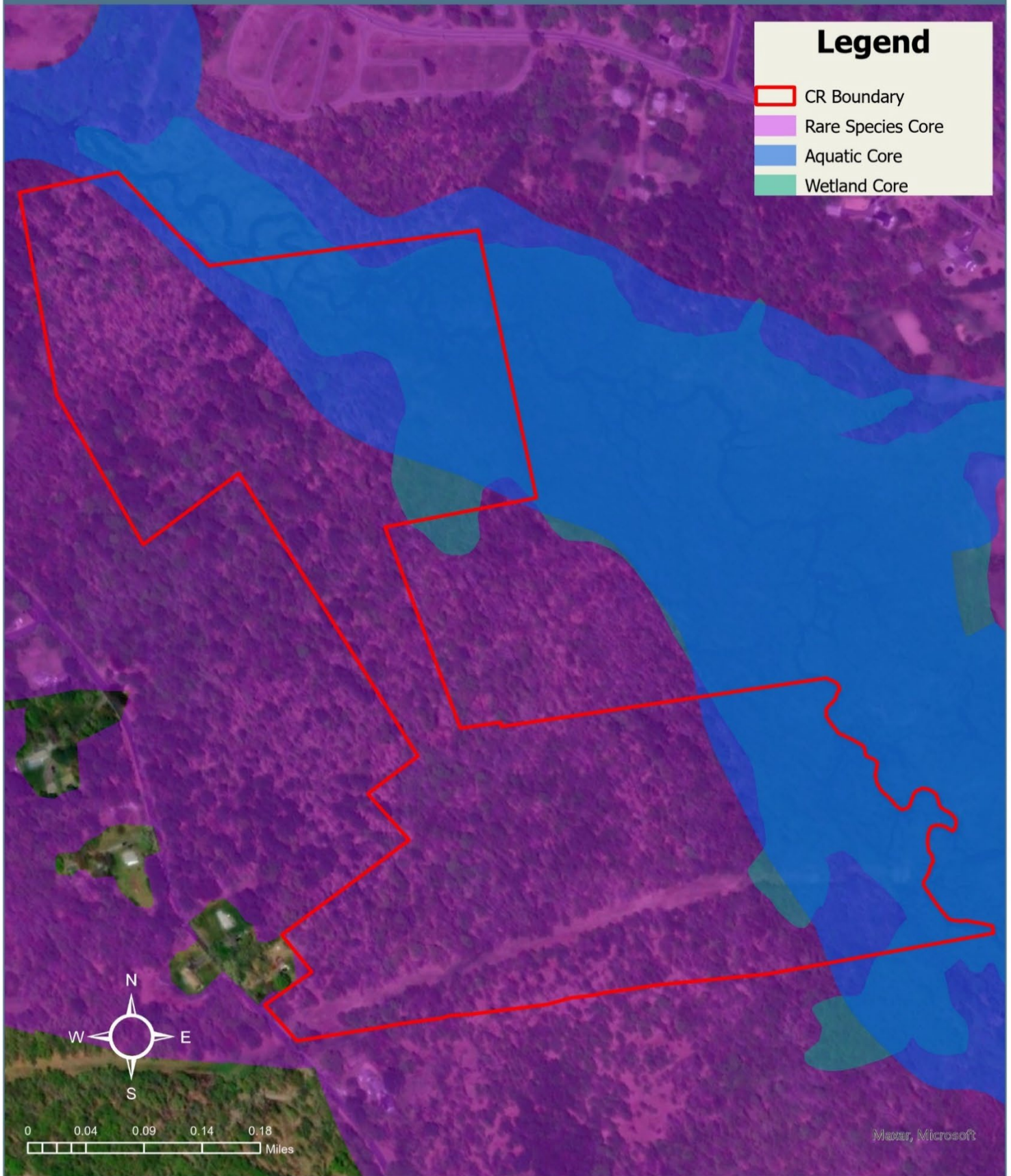
- CR Boundary
- Landscape Blocks
- Wetland Core Buffers
- Aquatic Core Buffer



Chapin-Scantic CR

BioMap 3: Core Habitat Components

Created By Nicole Marcotte
April 12, 2023
Basemap - ArcGIS Map Service,
NHESP/TNC BioMap
This map is for planning
purposes only and is not a survey

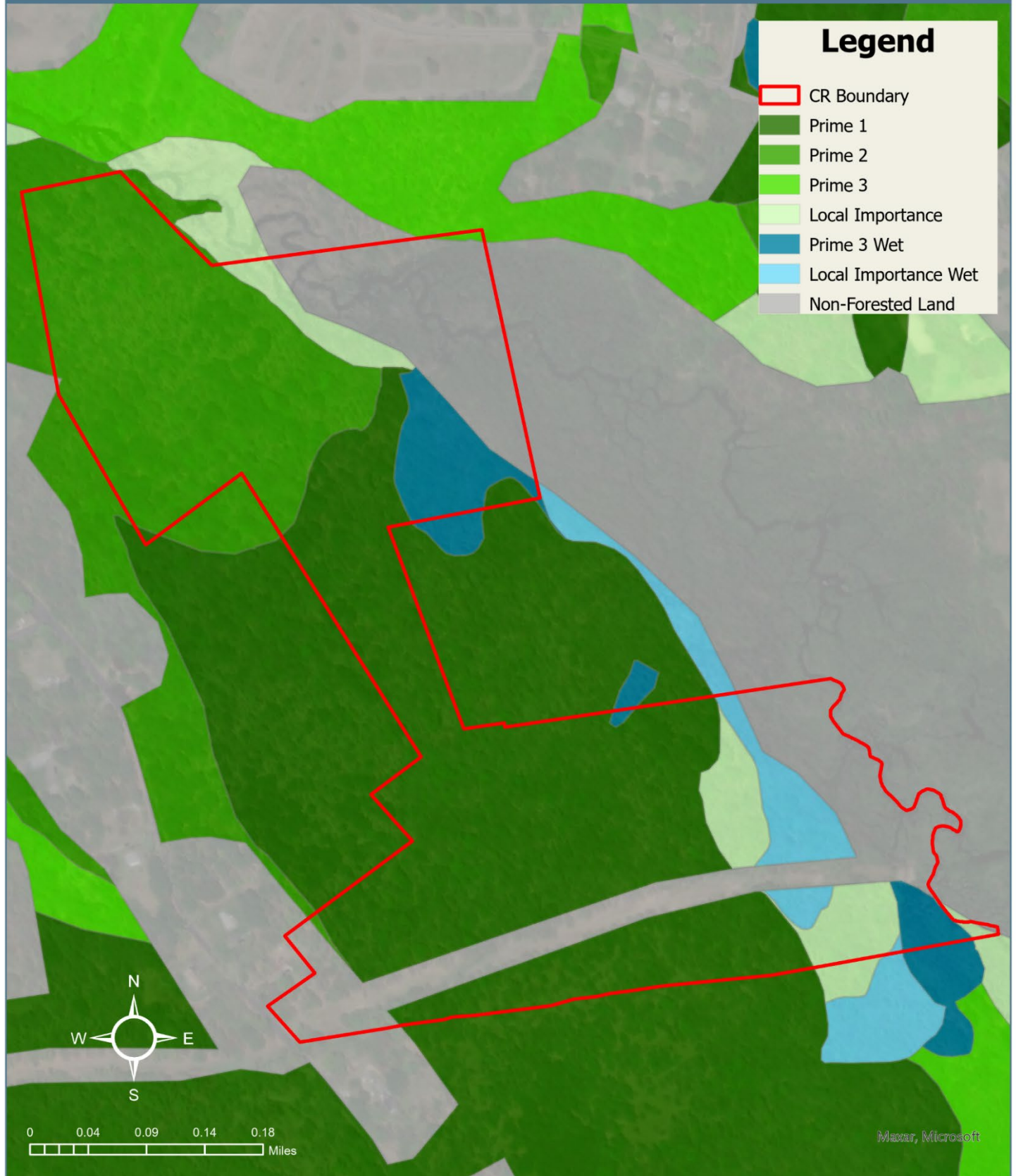




Chapin-Scantic CR

Prime Forest Land Map

Created By Nicole Marcotte
April 12, 2023
Basemap - ArcGIS Map Service,
MassGIS Data
This map is for planning purposes only
and is not a survey

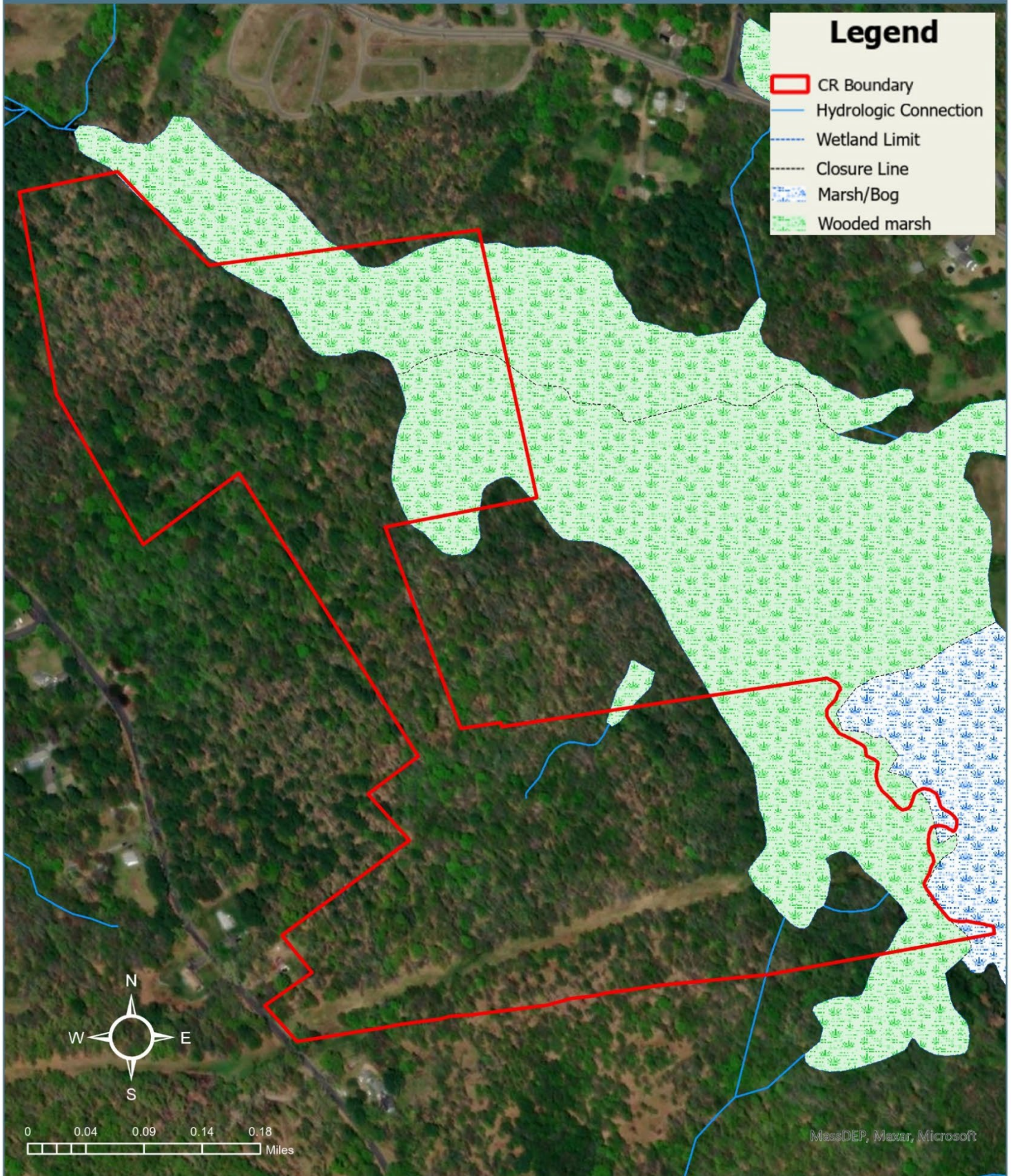




Chapin-Scantic CR

Hydrology & DEP Wetlands Map

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April 12, 2023
Basemap - ArcGIS Map Service,
MassGIS Data
This map is for planning purposes only
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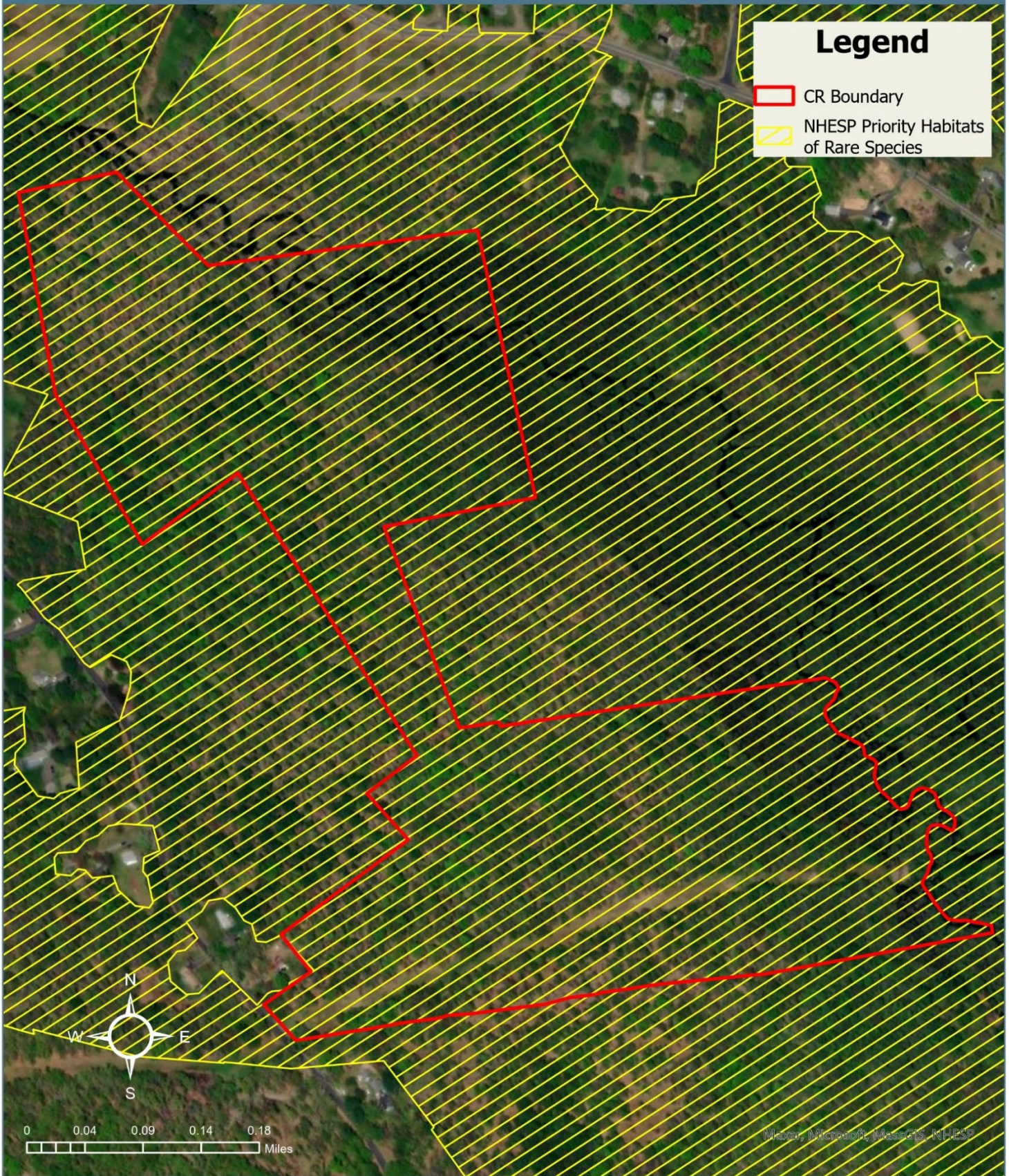




Chapin-Scantic CR

NHESP Priority Habitats Map

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April 12, 2023
Basemap - ArcGIS Map Service,
MassGIS Data
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and is not a survey

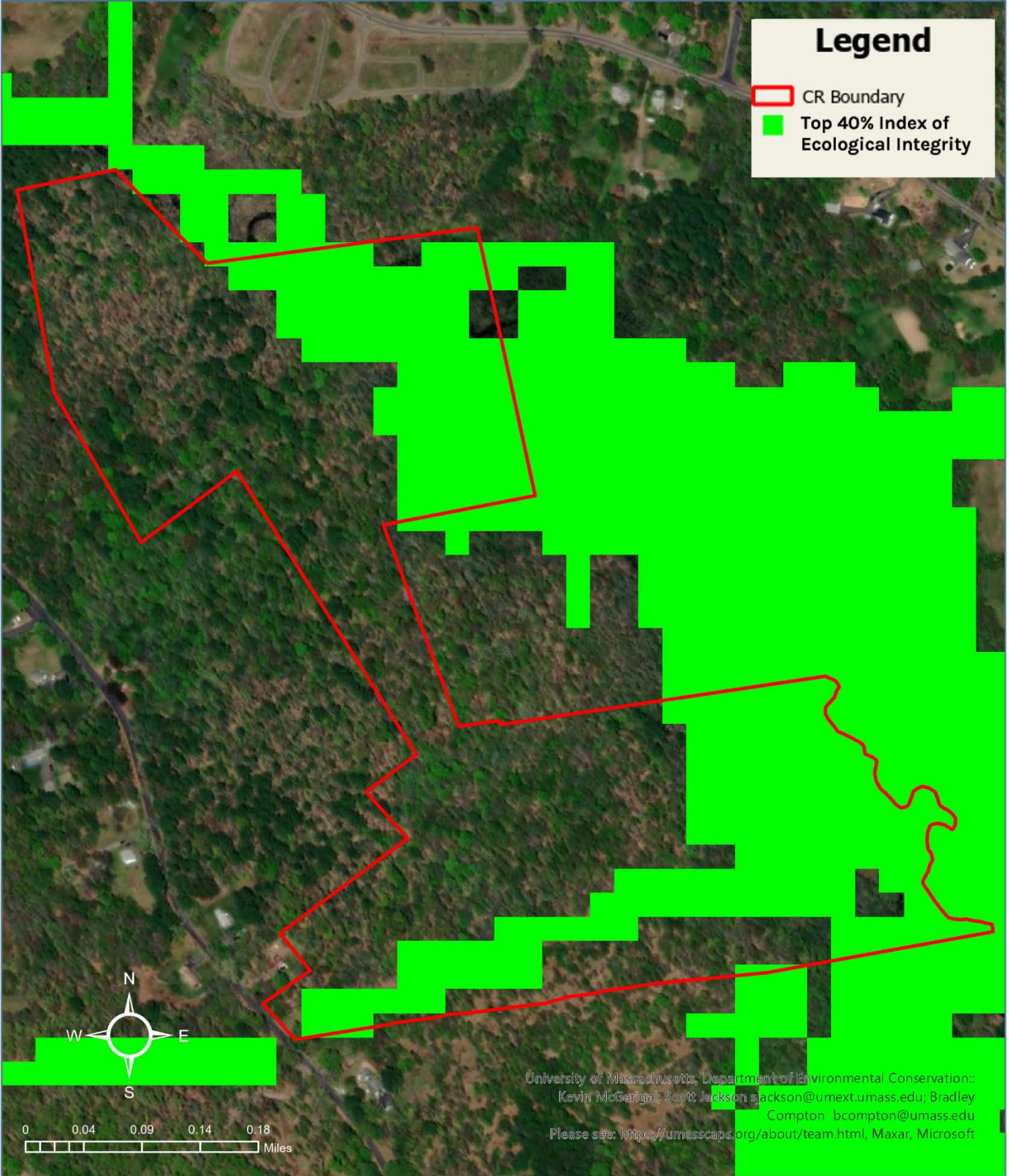




Chapin-Scantic CR

Habitat of Ecological Integrity Map

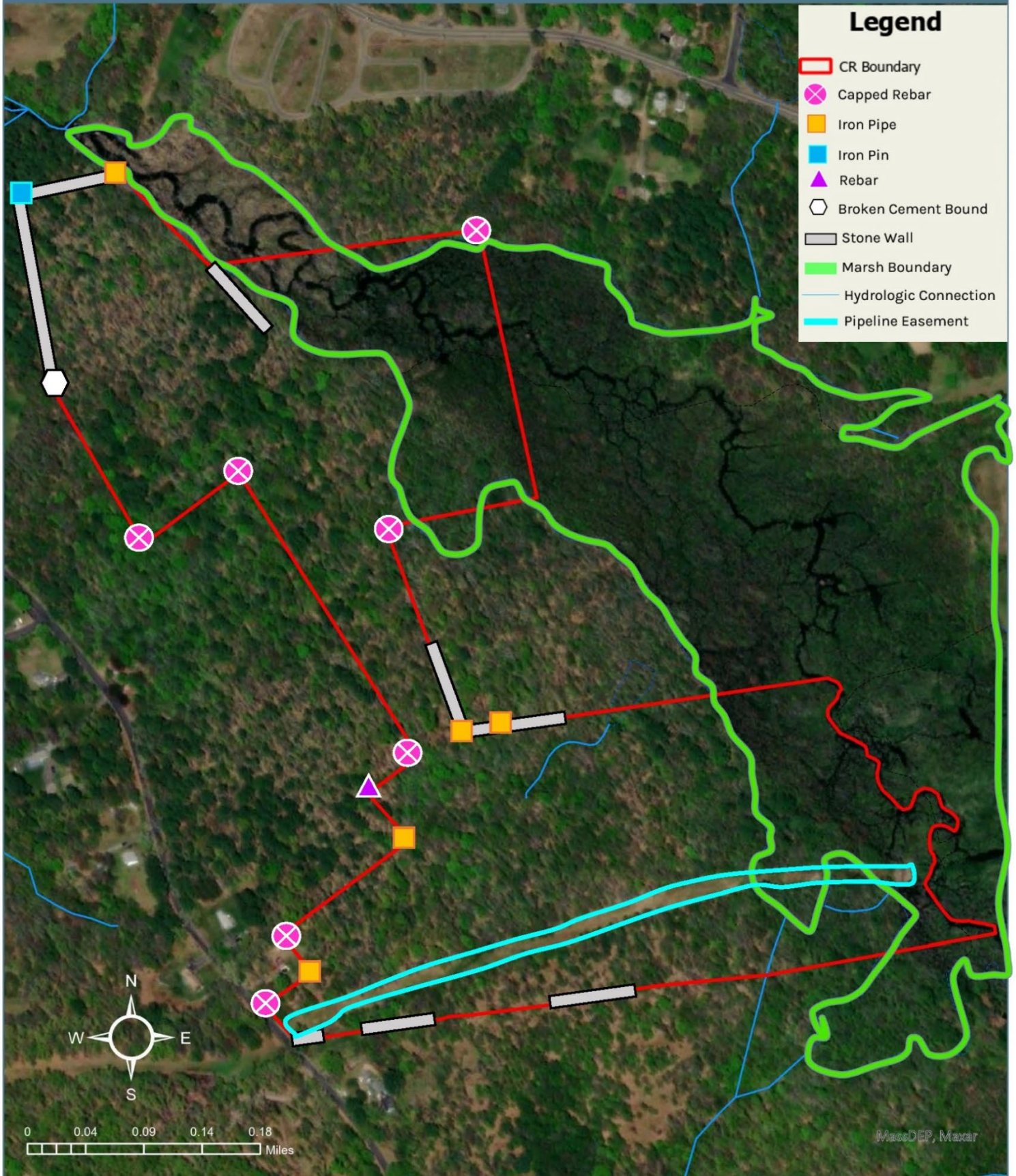
Created By Nicole Marcotte
April 12, 2023
Basemap - ArcGIS Map Service,
MassEQEEA
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only and is not a survey





Chapin-Scantic CR Monitoring Map

Created By Nicole Marcotte
April 13, 2023
Basemap - ArcGIS Map Service,
MassDEP
This map is for planning purposes only
and is not a survey



Part III: Site Visit Report

Site Visit Report

Part A: Current Property Conditions

Date of inspection: April 11, 2023

Time spent on property: 3 hours

Weather and ground conditions: Sunny, 70 degrees, dry conditions in forest

Individuals Present and Relation to Property:

Nicole Marcotte - Mass Audubon CR Stewardship Specialist

Olivia Barksdale - Mass Audubon CR Stewardship Manager

Thomas Page - Hampden Conservation Commission

Ted Zebert - Hampden Conservation Commission

1. Conditions of the Property Relevant to the Conservation Restriction Purposes:

Purpose	Description
Open Space Preservation & Scenic Value	The Chapin-Scantic CR contributes to the protection of the scenic and natural character of the Town of Hampden and the protection of the Premises will enhance the open-space value of these and nearby lands. The Premises abuts land already conserved, including Mass Audubon’s 182-acre Laughing Brook Wildlife Sanctuary.
Protection of Wildlife Habitat	The Chapin-Scantic CR protects habitat for a variety of wildlife, including state-listed species of Special Concern under the Massachusetts Endangered Species Act (MESA), such as the Eastern Box Turtle and Wood Turtle. The entirety of the Premises is mapped as Priority and Estimated Habitat of Rare Species as defined by the Natural Heritage & Endangered Species Program (NHESP). The entirety of the Premises is also identified as Rare Species Core Habitat according to BioMap 3. Rare Species Core Habitat is identified as ‘area critical to the long-term conservation of the most vulnerable species and their habitats.’
Protection of Water Quality	Approximately 15 acres of the Premises lies within the 100-year floodplain of the Scantic River. The protection of this floodplain will ensure the continued availability of this flood storage during major storm events. The approximately 2,300 linear feet of riparian corridor on the Premises, the surrounding wetlands and upland buffer help maintain water quality critical to the Scantic River, a coldwater fishery resource. A portion of the Premises is also identified as Critical Natural Landscape: Aquatic Core Buffer and Wetland Core Buffer as defined by BioMap 3. Aquatic Buffers and Wetland Buffers include intact

	<p>upland areas surrounding Aquatic Cores and Wetland Cores that support habitat function and enable species to move between habitat types. Prime 3 Wetlands as well as Wetlands of Local Importance are included on the CR as defined by the Prime Forest Land classification of forest productivity in Massachusetts.</p>
<p>Landscape Resiliency to Climate Change</p>	<p>The Premises is identified as an area of average Terrestrial Resilience according to the 2016 edition of the Conservancy’s Resilient Land Mapping Tool, including Landscape Diversity and Local Connectedness. The Conservancy’s Resilient Land Mapping Tool was developed in order to map ‘climate-resilient’ sites that are ‘more likely to sustain native plants, animals, and natural processes into the future.’ The protection of these climate resilient sites is an important step in both reducing human and ecosystem vulnerability to climate change and adapting to changing conditions.</p>
<p>Prime Forest Land</p>	<p>The Premises contains portions of Prime 2 Forest according to the Prime Forest Land classification of forest productivity in Massachusetts.</p>
<p>Biodiversity</p>	<p>Protection of the Chapin-Scantic CR provides the opportunity to conserve biological diversity important to the state of Massachusetts. The CR includes area identified as BioMap Core Habitat and Critical Natural Landscape, as well as areas of Priority Habitats of Rare Species defined by MESA.</p>
<p>Habitat Connectivity & Wildlife Corridors</p>	<p>A large portion of the CR is identified as Local Landscape as part of BioMap3. Local Landscapes include the ‘most intact natural areas in each town, including mosaics of forests, wetlands and streams.’ A portion of the southern boundary of the CR is part of a Landscape Block as defined by BioMap 3’s Critical Natural Landscapes. Landscape Blocks are ‘large areas of intact and connected habitat that sustain healthy populations of countless species.’ Also defined by BioMap 3, the entirety of the Premises is identified as an area of Regional Connectivity. Areas of Regional Connectivity are ‘particularly important for maintaining connections among habitats across the Northeast, which will support the shifting ranges of native species.’</p> <p>The Premises also includes areas identified by the UMass Conservation Assessment and Prioritization System (CAPS) as in the top 40% range for Freshwater Wetland and Aquatic ecological integrity and contains habitat of potential regional or statewide importance along the Scantic River. CAPS measures the ecosystem integrity of land and can be used to demonstrate the value of land as having outstanding unfragmented habitat value.</p>

2. Conditions of the Property related to:

Improvements

Improvement Type	Conditions Observed	Photo(s) Taken
Structures	None observed.	0
Roads or Paths	None observed.	0

Man-Made Impacts

Type	Conditions Observed	Photo(s) Taken
Vegetation Management	None observed.	0
Use of Potentially Hazardous Materials	None observed.	0
Excavation	None observed.	0
Dumping or Storage of Materials	There were small areas of dumping noted on the western boundary line of the CR. One old dump, including brush, planting pots and tires was noted bordering the Jones property (Waypoints 4 and 7). There was also a small trash dumping area on the CR bordering the Burgess property (Waypoint 15). A second small dumping area was noted just north of Waypoint 15.	11, 17, 36
Use of Motorized Vehicles	None observed.	0
Invasive Species	Populations of invasive barberry and winged euonymus (burning bush) were noted throughout the interior forest of the CR. The presence of barberry was most robust in the central and southern portions of the CR (Waypoints 3, 4, 8, 22, 23, and 24). The presence of winged euonymus was most robust near the western boundary line bordering the Bedrock Financial Property (Waypoints 11 and 12). Invasive common reed (phragmites) was also noted growing within the pipeline easement near the Scantic River (Waypoint 25).	8, 11, 20, 28, 30, 31, 51, 52, 54, 55, 56, 57

Use of Property By Others

Type	Conditions Observed	Photo(s) Taken
Authorized Public Use	None observed.	0
Trespassing	Two hunting stands were noted on the CR near the pipeline along the southern boundary line of the CR (Waypoints 26 and 27).	58, 59
Encroachments or Potential Encroachments	An encroachment was noted bordering the southern boundary line of the Jones property, which included a small clearing and a trailer parked on the CR	12, 13, 15

	(Waypoint 5). A lawn encroachment was also noted on the Dennis property (Waypoint 6).	
Easements or Rights of Way	A gas pipeline runs from east to west near the southern boundary of the CR (Waypoints 1 and 25).	2, 3, 58

Other Comments on Property Conditions:

A majority of the eastern boundary of the Chapin-Scantic CR lies within wetland areas, making this boundary difficult to visit and monitor. Due to limited on-the-ground access in this area of the CR, utilizing aerial imagery to monitor this boundary may be a consideration in the future.

Suggested Areas to Visit in the Future:

The western boundary of the Chapin-Scantic CR is at the highest risk of encroachments and violations from abutting properties. Small dumping areas as well as a lawn encroachment were noted during the Baseline site visit and should be visited in the future to make note of any changes. The pipeline easement should also be monitored due to easy access from the public and potential use of motorized vehicles in this area (although no signs of motorized vehicle use was noted during the time of the Baseline site visit). Two hunting stands were also noted near the southern boundary of the CR and should be visited in the future. Active development is also happening at the Bedrock Financial property with plans to build housing lots along Chapin Road. It seems that a buffer has been established behind the proposed housing lots to keep from any possible encroachment on to the CR property. However, the boundary with the Bedrock Financial property should be monitored regularly to be aware of any future encroachments.

Site Visit Report

Part B: Description of Boundary Conditions

1. Description of external boundaries:

A majority of the CR property corners are marked by various monuments. All corners along the western boundary of the Chapin-Scantic CR are marked by monuments including capped rebar, iron pipes, rebar, and a broken cement mound. A portion of the western boundary line approaching the northwest corner of the CR is also marked by a rock wall. The northern boundary line bordering the Laughing Brook Wildlife Sanctuary is marked by a rock wall with an iron pin and an iron pipe marking the two most northern corners. The northern boundary line bordering the Garwacki property includes a rock wall and capped rebar marking its corners. The northeastern boundary line includes capped rebar marking its corners. The central-eastern boundary line includes a capped rebar and iron pipes marking its corners, as well as a portion of stone wall marking the boundary line. The southeastern boundary line does not have any corner monuments. The southern boundary does not have corner monuments as well; however, a portion of the boundary line includes stone walls. Further information regarding external boundaries can be noted on the property survey (Page 13), the provided Monitoring Map (Page 22), as well as in the documentary photographs.

2. Description of exclusion and/or building envelope boundaries (if any):

There are no exclusions or building envelopes as part of the Chapin-Scantic CR.

3. Description of abutting property use near the boundary:

The western boundary of the Chapin-Scantic CR includes four abutting residential properties. The southernmost abutter includes the Jones residence, which a small encroachment of a parked trailer and a clearing coming from the Jones residence was noted during the Baseline site visit (Waypoint 5). Also, some small dumping of tires and flower pots was noted on the CR abutting the Jones residence (Waypoint 4). The Dennis property is to the north of the Jones property, and directly neighbors the CR. A lawn encroachment from the Dennis property was noted during the time of the Baseline visit (Waypoint 6), as well as an area of dumping including brush and old tires (Waypoint 7). The Bedrock Financial property abuts the Dennis property to the north, and directly borders the CR. There is current development on the Bedrock Financial property, with the development of seven housing lots along Chapin Road. A CR will be placed on 11 acres of the Bedrock Financial property directly abutting the western boundary line of the Chapin-Scantic CR. This CR will be held by Mass Audubon and will be monitored annually by Mass Audubon staff. To the north of the Bedrock Financial property is the Burgess property which directly abuts the Chapin-Scantic CR. Two areas of trash dumping were noted on

the CR near the western boundary line that borders the Burgess property (Waypoint 15).

The northern boundary of the Chapin-Scantic CR includes two abutters. The westernmost abutter is Mass Audubon land, part of the Laughing Brook Wildlife Sanctuary. To the east is the Garwacki property. Some activity was noted off of the CR on the Garwacki property, as well as the Houle property to the east, including establishment of trails and cutting of trees for firewood.

The eastern boundary of the Chapin-Scantic CR includes 10 abutters. The northernmost abutters include (from north to south) the Houle property, the Tosa property, the Choiniere property, the Moriarity property, and the Bouchard property. The boundary line bordering these five abutters is primarily wetlands. The central portion of the Chapin-Scantic eastern boundary line abuts the Rivard property. The southernmost portion of the eastern CR boundary line abuts four properties, which include (from north to south) the Ober property, the Lussier property, Town of Hampden property, and Tennessee Gas Pipeline Co. property. The entirety of this portion of the eastern boundary is part of a wetland complex and includes the Scantic River.

The southern boundary of the Chapin-Scantic CR abuts two properties, including (from east to west) the Conlon property and the Hayes property. Two hunting stands were noted near the southern boundary of the CR (Waypoints 26 and 27), although it is unclear whether these stands are associated with the two abutting properties.

4. Other comments on boundaries:

There are various interior rock walls within the central portion of the CR that do not directly denote boundaries. During the time of the Baseline visit, there were also various colors of flagging in this portion of the CR, which were not always associated with property boundary lines. For monitoring purposes, it is important to locate boundary monuments described above in order to identify the exact corners of the property.

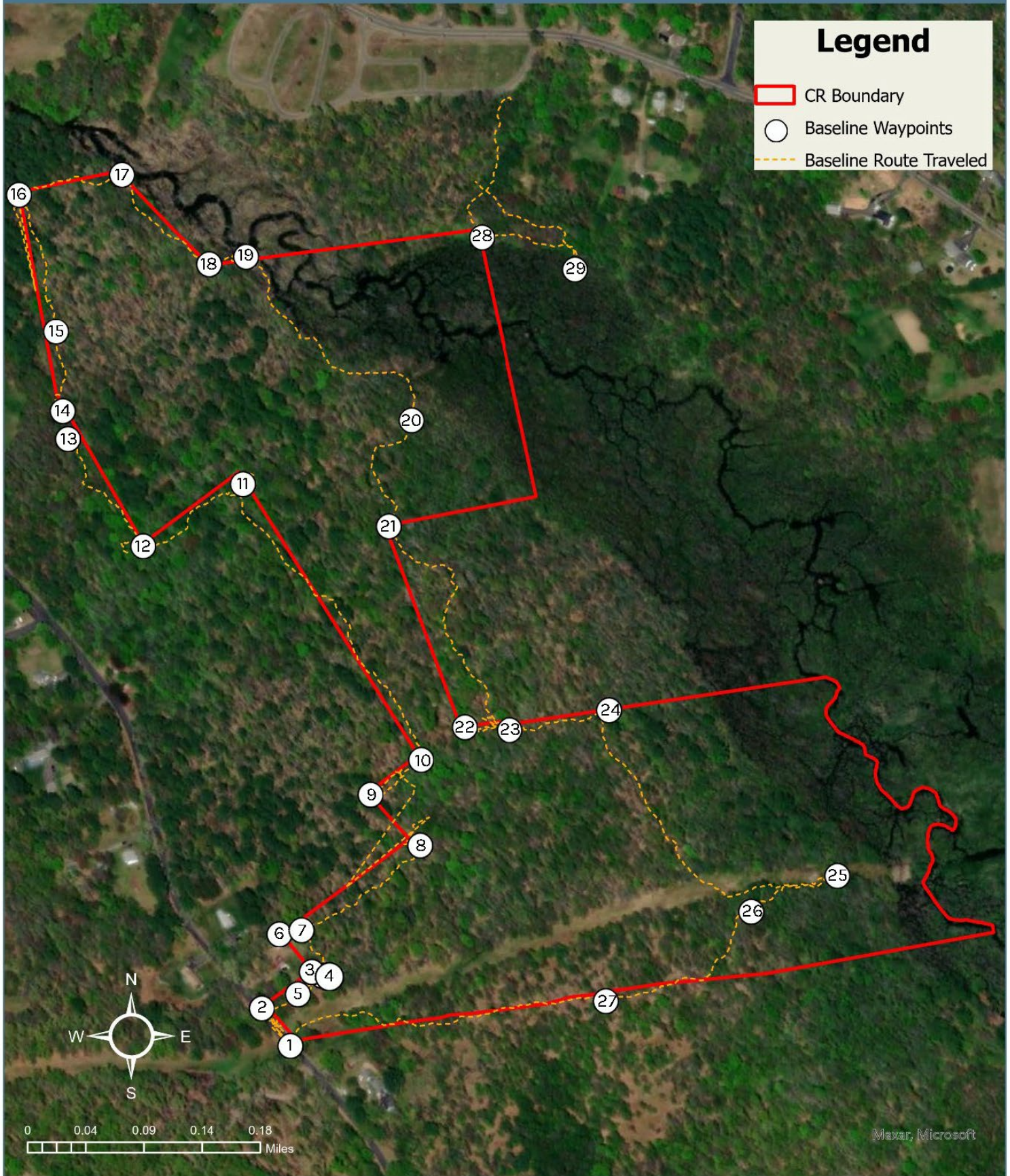
Part IV: Documentary Photographs and Waypoints



Chapin-Scantic CR

Baseline Route Traveled & Waypoints

Created By Nicole Marcotte
April 12, 2023
Basemap - ArcGIS Map Service
This map is for planning
purposes only and
is not a survey



(SAMPLE ONLY CONTAINS ONE PAGE OF THE PHOTOPOINT TABLE)

Photopoint Table

Camera Device and Software app: Samsung Galaxy Tablet Active3 using the SpotLens App

GPS Make and Model: Bad Elf GNSS Surveyor

Photographer: Nicole Marcotte

GPS Operator: Nicole Marcotte

Coordinate System of Photo Stamp: GCS WGS 1984

Date	Waypoint Number	Photo Number	Location Description	Photo File Name	Azimuth in Degrees
April 11, 2023	1	1	Standing at corner. Photo of corner, rock wall and pink flagging visible.	124°SE_11042023_100929	124°
April 11, 2023	1	2	Facing east, standing at corner. Looking along boundary line with the Hayes property to the right and the CR property to the left. Powerline easement visible in left of photo.	68°E_11042023_100942	68°
April 11, 2023	1	3	Facing north, standing at corner. Looking along boundary line with the CR to the right and Chapin Road to the left.	359°N_11042023_100956	359°
April 11, 2023	2	4	Standing at corner, photo showing capped rebar with orange flagging marking property corner.	78°E_11042023_101203	78°
April 11, 2023	2	5	Facing east standing at corner, capped rebar with orange flagging visible in foreground. Looking down boundary line with the CR property to the right and the Jones property to the left.	82°E_11042023_101224	82°
April 11, 2023	2	6	Facing southeast, standing at corner, capped rebar with orange flagging visible in foreground. Looking down boundary line with Chapin Road to the right and CR property to the left.	147°SE_11042023_101301	147°
April 11, 2023	3	7	Standing at corner, photo showing corner marker which is a flush iron pipe with pink flagging.	250°W_11042023_101940	250°

(SAMPLE ONLY CONTAINS ONE PAGE OF PHOTOS)

Documentary Photographs taken on April 3, 2023 by Nicole Marcotte



Photopoint Number 1

Photo Number 1

Description: Standing at corner. Photo of corner, rock wall and pink flagging visible.



Photopoint Number 1

Photo Number 2

Description: Facing east, standing at corner. Looking along boundary line with the Hayes property to the right and the CR property to the left. Powerline easement visible in left of photo.

Part V: Recorded CR and Affidavits
(SAMPLE ONLY INCLUDES UNSIGNED AFFIDAVIT EXAMPLES)



**Property: Chapin-Scantic CR
Hampden**

**AFFIDAVIT OF PHOTOGRAPHER OF
PHOTOGRAPHS CONTAINED IN
BASELINE DOCUMENTATION REPORT**

The undersigned hereby states and affirms 1) that she took the photographs contained in the accompanying Baseline Documentation Report dated _____, 2023 pertaining to the above-described Property, 2) that the photographs illustrate and document the natural and other resources of the Property protected under a Conservation Restriction on the Property recorded in the Hampden County Registry of Deeds on _____, 2023 in Book _____ at Page _____, and 3) that the photographs fairly and accurately depict the Property as it appeared on the date that the photographs were taken. Unaltered originals of these photographs were recorded on a non-rewriteable compact disc signed by her, labeled with the property name that appears above, and in the possession of Mass Audubon.

Signed and sealed under the pains and penalties of perjury.

By: _____
Nicole Marcotte
CR Stewardship Specialist

_____ Date

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

On this _____ day of _____, 2023, before me, the undersigned notary public, personally appeared Nicole Marcotte proved to me through satisfactory evidence of identification which was MA license and personally known to be the person whose name is signed on the preceding document, and acknowledged to me that she signed it in her stated capacity, duly authorized, and voluntarily for its stated purpose.

Seal

Notary Public
My commission expires:



**Property: Chapin-Scantic CR
Hampden**

**AFFIDAVIT OF PREPARER
OF
BASELINE DOCUMENTATION REPORT**

The undersigned hereby certifies 1) that she prepared the accompanying Baseline Documentation Report dated _____, 2023 pertaining to the above-described Property, 2) that the Report describes and documents the natural and other resources of the Property sought to be protected under an Conservation Restriction recorded in the Hampden County Registry of Deeds on _____, 2023 in Book _____ at Page _____, and 3) that based on all the information cited in the Report, the Report is an accurate representation of the Property and its condition as of the date of the site visit for this report.

The undersigned acknowledges 1) that the condition of the Property documented in the Baseline Documentation Report does not necessarily represent the condition of the Property allowed or required by the Conservation Restriction, and 2) that the Town of Hampden Conservation Commission does not in any manner waive any rights of the Town of Hampden Conservation Commission, either at law or in equity, to enforce the provisions of the Conservation Restriction.

Signed and sealed under the pains and penalties of perjury.

By: _____ Date _____
Nicole Marcotte
Conservation Restriction Stewardship Specialist

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

On this _____ day of _____, 2023, before me, the undersigned notary public, personally appeared Nicole Marcotte, proved to me through satisfactory evidence of identification which was MA license and personally known to be the person whose name is signed on the preceding document, and acknowledged to me that they signed it in their stated capacity, duly authorized, and voluntarily for its stated purpose.

Seal

Notary Public
My commission expires:



**Property: Chapin Scantic CR
Hampden**

**ACKNOWLEDGEMENT OF ACCURACY OF
BASELINE DOCUMENTATION REPORT**

The undersigned, being a representative of the owners of the Property described above and of the Grantors of a Conservation Restriction on said Property to Mass Audubon, recorded on _____, 2023 in the Hampden Registry of Deeds in Book _____ at Page _____, hereby certifies to Mass Audubon that the accompanying Baseline Documentation Report dated _____ which describes and documents the natural and other resources of the Property sought to be protected by said Conservation Restriction, is an accurate representation of the Property and its condition as of the date of the site visit for this Report.

The undersigned acknowledge and agree 1) that the condition of the Property documented in the Baseline Documentation Report does not necessarily represent the condition of the Property allowed or required by the Conservation Restriction, and 2) that Mass Audubon does not in any manner waive any rights of Mass Audubon, either at law or in equity, to enforce the provisions of the Conservation Restriction.

Signed: _____
Landowner

Date

COMMONWEALTH OF MASSACHUSETTS

On this ____ day of _____, 2023, 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 for its stated purpose.

Seal

Notary Public
My commission expires: