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June 27, 2016

Stephen Crane, Town Manager
Town of Longmeadow
20 Williams Street
Longmeadow, MA 01106

Re: Use of Wolf Swamp Fields as DPW Site

Dear Mr. Crane:

By way of background, the Town of Longmeadow (the "Town") is considering using a portion of the Wolf Swamp Fields (the "Property") for a new DPW site. The Property was conveyed to the Town in a Deed recorded in the Hampden County Registry of Deeds at Book 4485, Page 111 (the "Deed"). The Property is contained within Parcel A in a plan recorded in the Hampden County Registry of Deeds in Plan Book 173, Page 16. The Property, as with the balance of Parcel A, is to be held for "recreational purposes" and "Recreation purposes" according to the Deed.

We have been asked by you to provide answers to two questions posed by members of the DPW Facility Committee regarding the Property: 1) why the language in the Deed that the Property is to be held for "recreational purposes" and "Recreation purposes" does not amount to a real property restriction or condition under Massachusetts real property law; and 2) whether replacement of the portion of the Property to be converted to a DPW site would be required under the Commonwealth's Executive Office of Energy and Environmental Affairs EEA Article 97 Land Disposition Policy (the "Policy").

Regarding the former, and put as simply as possible, the language in the Deed that the Property "be held for recreational purposes" does not create a condition or restriction under real property law in the Commonwealth of Massachusetts. The mere recital in a deed of the purpose

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for which land is to be used is not in itself sufficient to impose any limitation or restriction on the land granted. *See Selectmen of Town of Nahant v. United States*, 293 F. Supp. 1076 (D. Mass.).¹

Regarding the latter question, and based solely upon my June 23, 2016 conversation with Bob O'Connor of EEA, EEA most likely would require the Town to provide replacement field space of equal acreage and recreational value in order to support use of the Property as a DPW site.

Given that finding space of equal acreage and recreational value could involve subjective qualitative judgments by EEA and given that the Policy also provides, "[T]hat compliance with this policy by municipalities shall be determined by the EEA secretary, based on recommendations by the EEA Interagency Lands Committee...", the Town should keep EEA apprised of its plans for the transfer of the Property for use as a DPW site to ensure EEA support for any such bill introduced in the General Court.

Very truly yours,



Michael S. Schneider

MSS/sb

¹ If, for example, the grantors that joined in the Deed had wished to create a possibility of reverter, the Deed would have stated that the Property would be held: *while, during, until, so long as, or as long as* the Property was used for recreational purposes. *See Markey v. Smith*, 301 Mass. 64 (1938); Restatement, Property, §44. Similarly, had the grantors wished to create a condition subsequent, the Deed would have stated that Property would be held: *upon express condition that, on condition that, provided that, or if* the Property was used for recreational purposes. *See id.* Last, had the grantors of the Deed been in a position to impose a restrictive covenant on the Property - i.e. if all had owned land directly neighboring the Property - and wished to do so the Deed would have included an express promise from the Town to take some action or refrain from taking some action on the land. No such promise exists in the Deed. One possibly could have been imposed had the Deed stated the Property was to be used for recreational purposes *only*, for example. *See e.g., Snow v. Dam*, 291 Mass. 477 (1935).