

Illegal Cutting and Environmental Destruction
at Harvard Forest -- a Non Profit Research and Educational Institution in Petersham

Fact Sheet

The Harvard Forest (the “Forest”) is a 100-year-old non profit research and education institution that maintains a 3500-acre outdoor classroom and laboratory in Petersham. Illegal cutting of nearly 100 trees occurred on Forest property one year ago and resulted in significant environmental damage that will impact future research and education at the Forest. Significant black cherry, oak, red maple and white pine trees were removed from the Forest, and an ecologically sensitive and fragile vernal pool was significantly damaged.

On behalf of the Harvard Forest, Attorney Richard C. Van Nostrand of the Worcester law firm, Mirick, O’Connell, DeMailee & Lougee LLP, has filed a lawsuit in the Worcester Superior Court. The named defendants include Forward Enterprises, Inc., and its owner, Paul Davis, of Oakham, who performed the unlawful cutting and removal, and the Petersham Country Club, whose land abuts the Forest property and who hired Forward Enterprises, Inc. Petersham Country Club operates a golf course on its property. It was our hope that the overtures made to the Country Club and Forward Enterprises in efforts to find a mutually beneficial remediation would be successful, but unfortunately Harvard Forest has been forced to seek a legal remedy to this trespass and environmental destruction.

In response to the illegal cutting, the Department of Conservation and Recreation issued a Stop Order. The environmental destruction has also drawn the considerable attention of the public and the Selectboard of the Town of Petersham, the Town’s Tree Warden and Conservation Commission, and the Mount Grace Land Conservation Trust (which is charged with monitoring the Country Club’s compliance with a conservation restriction on the property). These parties share the view that the significant environmental damage that occurred impacts the many who benefit from the research and education mission of the Harvard Forest and its activities within the surrounding region.

The recently filed suit follows unsuccessful efforts by the Forest to engage the Country Club and Forward Enterprises in discussions that would rectify this situation. After informal efforts met with no success, counsel for the Forest sent a formal request to the Country Club and Forward Enterprises that as of this date has been ignored. Harvard Forest has no remaining recourse to ensure that the destruction is addressed, other than through the courts. The Forest’s intention in filing suit is to bring the defendants to the table and negotiate a broad settlement that will both compensate it for the damage done and — more importantly — establish greater responsibility by the Petersham Country Club and Forward Enterprises for the very important natural resources of Petersham. The Forest also seeks to establish broader safeguards to prevent similar occurrences in the future.

The Forest’s lawsuit seeks approximately \$850,000 in damages from the Country Club and Forward Enterprises, and it requests that the court place an attachment in that amount on Country

Club's property. The sum includes the costs of repairing damage to the Forest's stone boundary wall, restoring the vernal pool, and replacing the 19 largest of nearly 100 trees that were unlawfully cut and removed from the Forest's property. A consultant, using standard tree replacement calculations, estimates the cost of replacing these 19 trees alone at over \$274,000. Massachusetts law takes acts of timber trespass and destruction very seriously and calls for violators to pay three times the value of trees they have destroyed. The Forest has elected not to pursue treble or even single damages for the more than 75 smaller trees on its land that were cut or destroyed by the Country Club and its contractor Forward Enterprises.

History and Background:

Several months prior to the cutting, the Petersham Country Club had requested that the Forest remove twelve mature trees on Forest property, in order to improve sunlight to one of the greens on the Country Club's golf course. The Forest expressed a willingness to work with the Country Club but noted that the request as presented exceeded the cutting intensity legally allowed under the state Wetland Protection Act within the immediate vicinity of the abutting wetland and vernal pool. The Forest therefore proposed to do a reduced cutting that would include removal of some smaller trees and the pruning of branches on the Country Club side of a number of the larger trees, provided that the Forest's own trained tree care staff perform the cutting, due to the sensitive environmental concerns within the affected area. The only other condition placed on that offer was that the Country Club make a small donation to the Mount Grace Land Conservation Trust, a private land trust charged with the monitoring and enforcement of a conservation restriction in force on the Country Club's property. Regrettably, the Petersham Country Club rejected this collaborative approach.

Without consulting with the Forest, Petersham Country Club went on to hire Forward Enterprises, Inc to undertake substantial cutting on Country Club property. The contract between the parties called for Forward to pay \$20,000 to the Country Club in return for the right to remove and sell the timber cut on Country Club property. The more valuable the timber removed, the more profitable this contract would be to Forward.

Forward's cutting left substantial portions of the golf course in an unsightly condition and has drawn strong negative reaction and response from the local and state officials. Robert Clark, Chair of the Petersham Conservation Commission, noted: "When we inspected the property along with the state DEP, we documented a number of violations of the Wetland Protection Act. Of particular concern were the clear cutting of trees to the edge of wetlands communities with resulting erosion and silting as well as slash dropped into wetlands including a vernal pool. The DEP has taken jurisdiction of enforcement of the remediation to be undertaken. We hope some action is taken soon to remedy the violations."

Forward's cutting went well beyond the Country Club property. Forward trespassed unlawfully on both Town and Forest land and cut approximately 240 additional trees. In the process of accessing the Country Club's cutting site and facilitating removal of the timber, Forward Enterprises cut a number of trees on land along a scenic way owned by the Town of Petersham, without notice to or permission from the Town. Michael Leonard, Petersham Tree Warden and a licensed forester, noted: "In January of 2008, Forward Enterprises cut 142 town owned trees

without permission from the town along Poor Farm Public Footpath which runs through the Petersham Country Club. Since little thought was given to why or how these trees were cut, it has had a severe negative impact on the scenic beauty of this area which was one of the most scenic areas in the town of Petersham. The cutting of these town owned trees was in essence the destruction of public property. Since these trees had significant landscape value, as the Petersham Tree Warden they should be appraised accordingly.”

In the course of its cutting, Forward Enterprises, Inc. also crossed the Country Club’s boundary with the Harvard Forest property — which was marked by a very visible stone wall — and illegally cut and removed or destroyed nearly 100 trees, including the most high-value trees that had been the subject of the earlier discussions between the Country Club and the Forest. Forward Enterprises, Inc removed only high-value trees, including several located on Forest property hundreds of feet away from the area of originally marked trees, and left untouched seven of the trees previously marked by the Country Club during its discussions with the Forest.

In addition to the valuable timber that was taken, Forward Enterprises also smashed or uprooted other trees and left the area where the work was done in a deplorable condition. Considerable slash (tops and branches of trees) was left strewn about the cutting area on Forest property. The stone boundary wall was destroyed in several places, suggesting that Forward Enterprises dragged the felled trees across it to facilitate their removal. The ecologically sensitive and fragile vernal pool located on Forest property was disturbed and possibly permanently damaged by the fallen or cut debris.

At a fact-finding meeting conducted by the Massachusetts Department of Conservation and Recreation shortly after the incident, Forward’s Paul Davis said he walked the property with Country Club officials on a regular basis as the work was progressing. Forward Enterprises, Inc’s depredations on Forest and Town land went on unimpeded by the Country Club. Forward’s work was stopped only after Forest staff discovered the illegal cutting.

“We were extremely upset when we discovered that the Country Club went ahead with the cutting after we ended our discussions with them. Our proposal in 2007 was designed to provide them what they desired, but with the safeguard of the environment by our control of the cutting process. Instead, we now have had logging equipment trespass onto our land, selectively remove very high-value trees and irresponsibly leave that very sensitive habitat in a damaged and highly fragile condition. It will take decades to undo the considerable damage.”

-- David Foster, Director of the Harvard Forest.

The Harvard Forest, a department of Harvard University, was established in 1907 and its landholdings include one of the oldest and most intensively studied forests in North America. The Forest consists of nearly 3500 acres of forest, streams and wetlands. The Forest also includes a number of natural habitats for many animals, amphibians, fish and fowl, including vernal pools critical to the forest ecosystem. Research scientists, students and academicians utilize the Forest’s natural resources to study and develop new means to better preserve and conserve our natural resources. Through collaborative efforts with land trusts, such as the Mount Grace Land Conservation Trust, the Massachusetts Audubon Society, The Trustees of

Reservation, The Nature Conservancy, federal and state agencies and local cities and towns and with an eye toward respect and responsibility for the fragile environment, the Forest seeks to leverage its work for the greater good.

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