

**THE COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF THE TRIAL COURT**

MIDDLESEX, ss.

LAND COURT

**Case Nos.: 15 MISC 000369 KCL
15 MISC 000370 KCL**

**THE COLLINGS FOUNDATION, THE
COLLINGS FOUNDATION, INC.,
ROBERT COLLINGS and CAROLINE
COLLINGS,**

Plaintiffs,

v.

**ZONING BOARD OF APPEALS OF
THE TOWN OF STOW; and
EDWARD TARNUZZER, CHARLES
BARNEY, WILLIAM BYRON, BRUCE
FLETCHER, RUTH KENNEDY
SUDDUTH, MICHELLE
SHOEMAKER, ANDREW J.
DEMORE, LEE HERON, and MARK
JONES, as they are the members of the
Zoning Board of Appeals of the Town of
Stow,**

Defendants.

**AGREEMENT
FOR JUDGMENT**

The parties in the above-captioned matters hereby assent to the Court's entry of a Judgment incorporating the terms and conditions of that certain Settlement Agreement dated as of October 1, 2021, attached hereto.

**THE COLLINGS FOUNDATION, THE
COLLINGS FOUNDATION, INC.,
ROBERT COLLINGS and CAROLINE
COLLINGS**

By their attorney,

/s/ Thomas A. Mullen

Thomas A. Mullen (BBO No. 360315)
40 Salem Street, Suite 12
Lynnfield, Massachusetts 01940
(781) 245-2284
tmullen@thomasamullenpc.com

**ZONING BOARD OF APPEALS OF
THE TOWN OF STOW**

By its attorney,

/s/ George X. Pucci

George X. Pucci (BBO No. 555346)
KP Law, P.C.
101 Arch Street, 12th Floor
Boston, MA 02110-1109
(617) 556-0007
gpucci@k-plaw.com

Date: October 13, 2021

Certificate of Service

The undersigned hereby certifies that he caused a true copy of the foregoing document to be served this day, October 13, 2021, by email, on all counsel of record and on all parties appearing pro se.

/s/ Thomas A. Mullen

Thomas A. Mullen

c:\Collings\Agreement for Judgment

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

LAND COURT CASE NOS:

15 MISC. 000369 (DRR)

15 MISC. 000370 (DRR)

THE COLLINGS FOUNDATION, THE
COLLINGS FOUNDATION, INC., ROBERT
COLLINGS and CAROLINE COLLINGS,

Plaintiffs

v.

ZONING BOARD OF APPEALS OF THE
TOWN OF STOW; and EDWARD
TARNUZZER, CHARLES BARNEY,
WILLIAM BYRON, BRUCE FLETCHER,
RUTH KENNEDY SUDDUTH, MICHELLE
SHOEMAKER, ANDREW J. DEMORE, LEE
HERON, and MARK JONES, as they are the
members of the ZONING BOARD OF
APPEALS OF THE TOWN OF STOW,

Defendants

SETTLEMENT AGREEMENT

This Agreement is made this 1st day of October, 2021, by and between the Collings Foundation, the Collings Foundation, Inc., Robert Collings, and Caroline Collings (collectively, “Plaintiffs”) and the Zoning Board of Appeals of the Town of Stow, Massachusetts and its Members in their Official Capacities Only (“Zoning Board”), together with the Select Board of the Town of Stow, Massachusetts (“Select Board”), in the Select Board’s capacity as the executive authority of the Town of Stow (“Town”), with sole authority to prosecute, defend, or settle litigation in which a Town board or official is a party (collectively, “Parties”).

RECITALS

WHEREAS, the Plaintiffs own or control approximately 103 acres of land located at 137 Barton Road in Stow, Massachusetts, along with an additional 9.19 abutting acres of land in Hudson, Massachusetts (“Property”), on which the Collings Foundation operates an American Heritage Museum to support living history, including historic aircraft, tanks, vehicles, and other artifacts;

WHEREAS, the Property includes a grass airfield which the Plaintiffs seek to use to enhance and support its living history events, exhibitions, and demonstrations related to the museum use;

WHEREAS, by decision dated March 26, 2015, the Town’s Building Commissioner ordered the Plaintiffs to cease and desist from using the airfield, which decision was upheld by the Zoning Board on appeal;

WHEREAS, by decisions dated May 13, 2015 and June 3, 2015, the Building Commissioner denied the Plaintiffs’ requests to rescind the cease and desist order for the use of the airfield, which decision was again upheld by the Zoning Board on appeal;

WHEREAS, the Plaintiffs filed claims in the above-captioned litigation, appealing from the Zoning Board’s decisions upholding the Building Commissioner’s orders and determinations regarding use of the airfield, which has resulted in protracted and expensive litigation which the Parties are desirous of resolving by agreement, not only to limit further time and expense, but also to avoid the uncertainty of trial, and likely further appeals following trial;

WHEREAS, the Select Board recognizes that the Zoning Board has exclusive jurisdiction over the appeal of the zoning decisions at issue in this lawsuit, the Zoning Board recognizes that the Select Board has sole executive authority to prosecute, defend, or settle litigation in which a

Town board or official is a party; the Select Board has determined that settlement of the lawsuit under the terms and conditions set forth herein is in the Town's best interest and the Zoning Board has agreed to be bound by the terms and conditions of this agreement;

NOW THEREFORE, in consideration of the promises and conditions set forth herein and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

AGREEMENT

The Parties hereby agree to be bound by the terms of this agreement, as well as by Exhibits A and B attached hereto and expressly incorporated herein ("Agreement"), as follows:

1. The Plaintiffs accept the following limitations upon their Dover-use zoning exemption claims under G.L. c. 40A, § 3 and Section 9.9 of the Stow Zoning Bylaw, shall not seek to expand their use of the Property for educational purposes beyond these agreed-to limitations (and those allowed in the Planning Board settlement referenced below), and agree that the Town's Zoning Bylaw shall otherwise remain in full force and effect as related to the Property.
2. The Collings Foundation may use the airfield for flights¹ in exclusive connection with the non-profit educational use of the American Heritage Museum for:
 - a. passenger flights, exhibitions, and demonstrations, provided that such flights shall occur no more than four (4) weekends per year from April 1 to October 31,² for a total of eight (8) days per season, and further provided that such flights shall occur only at the "Major Events" or "Demonstrations / Exhibitions," as those terms are defined in the Agreement between the Plaintiff and the Planning Board of the Town of Stow, attached hereto as **Exhibit A**, and provided further that the

¹ A flight includes both the takeoff from the airfield and the landing on the airfield.

² Consistent with **Exhibit A**, the museum has a six (6) month season for Major Events and Demonstrations / Exhibitions.

Select Board, or its designee, shall receive no less than fourteen (14) days' notice in advance of such events;

- b. inspection and maintenance activities, and pilot training and proficiency, for the approved aircraft identified in the list attached hereto as Exhibit B, provided that such flights are necessary and incidental to the passenger flights, exhibitions, and demonstrations specified above, but may occur any time throughout the calendar year; and,
- c. travel to air shows for educational purposes, provided that such flights shall not exceed eight (8) per calendar year;

3. In no event shall the total number of flights combined under all three of the categories listed in subsections (a) through (c) exceed 200 per calendar year. The Plaintiffs shall assist the Town in monitoring this requirement by submitting quarterly (per calendar year) reports or logs to the Town Administrator showing the number of flights for the previous quarterly period, within two weeks into the new quarterly period, i.e. the quarterly report for January-March shall be produced by April 14, and so on, for each quarterly period through the remainder of the calendar year.

4. The Plaintiffs shall notify the Select Board, or its designee, of any additions or substitutions to the approved aircraft in Exhibit B, which aircraft shall be of comparable nature to the aircraft in Exhibit B and are historically significant and are capable of landing at the airfield, provided that a third-party report demonstrating historical comparability, safety, and full FAA compliance shall be provided with said notification. Aircraft that are donated or otherwise acquired to be stored in the museum or hangar, but which will not be flown, are not subject to this paragraph unless and until such time as the Plaintiffs seek to fly the aircraft.

5. Except as provided in this section and below for an emergency, and consistent with Exhibit A, flights shall occur only during the hours of 9:00 a.m. to 6:00 p.m., seven (7) days a week. If the Collings Foundation seeks to operate a flight outside of these hours, it may

seek an exception from the Town Administrator for the Town of Stow, not to be unreasonably withheld. If travel time back from an air show or maintenance activity which was planned in good faith to have landed by 6:00 p.m. is delayed and does not permit Collings Foundation to obtain advance notice from the Town Administrator to operate outside of these hours, Collings Foundation may land an approved aircraft after 6:00 p.m., provided that such landings shall not occur more than five (5) times per year.

6. The hours of operation and flight limits described above shall not apply to emergency events such as unforeseen and unplanned weather conditions, mechanical failure, or medical issues. The airfield may be used for an emergency at any time.

7. To the extent consistent with any flight paths otherwise approved by the Federal Aviation Administration ("FAA"), and subject also to the conditions set forth in paragraphs 2 and 3 above, the Plaintiffs shall not fly over residences in Stow below 1,000 feet above ground level, with the exception of ascent during takeoffs and descent during landings. The Plaintiffs may perform the following flights without passengers over their own Property: (a) flights authorized by FAA exemptions and waivers, provided that FAA inspectors are present; (b) flight instruction for rejected landings and balked landings; (c) demonstrations and exhibitions except for aerial combat involving multiple aircraft; and (d) go-arounds and low approaches to avoid wildlife. Otherwise, the Plaintiffs shall not use aircraft taking off from or landing on the airfield on their Property to make low passes or high speed passes or flyovers over residences in Stow, unusual attitude flying, dog fights, aerial acrobatics, aerial pyrotechnics, mock or actual aerial gunfire, or other displays of aerial combat, chase, or evasion maneuvers.

8. The Plaintiffs and any and all of the Plaintiffs' officers, employees, agents, servants, independent contractors, volunteers, representatives, attorneys, legal representatives,

assigns, heirs, principals, shareholders, directors, predecessors, successors, divisions, subsidiaries, affiliates, related companies, transferees, partners, underwriters, managers, members, stockholders, and/or parent companies shall comply with all applicable federal, state, and local laws, standards, regulations, agreements, and certifications relative to the use of the museum and the airfield, with the exception of the expressly agreed exemptions and activities allowed under this Agreement.

9. The Plaintiffs shall work in good faith and with due diligence to ensure public safety at all times, and shall furnish the Select Board, or its designee, with a mutually agreeable expert to advise and educate the Select Board, or its designee, as to all federal and state safety regulations, requirements, decrees, or orders applicable to the airfield at issue, the aircraft listed in Exhibit B, and the flight operations otherwise agreed to under this Agreement, to help interpret the reports described below and to compile a checklist of applicable regulations and requirements that can be used for year to year review. All pilots and aircraft shall be inspected by an independent third party on an annual basis, or otherwise as FAA regulations require, and copies of all reports from such equipment inspections and pilot examinations demonstrating compliance with all applicable FAA requirements shall be produced to the Select Board, or its designee, no later than fourteen (14) days prior to the first flight that year of each aircraft or pilot.

10. Nothing in this Agreement shall be deemed to preclude the Plaintiffs from applying for any necessary permits or licenses from any federal, state, or local governmental body for any work to occur on the Property, except for work related to any proposed expansion of the uses otherwise agreed to by the Planning Board as set forth in Exhibit A or the Select Board or Zoning Board in this Agreement, which the Plaintiffs agree are the limit of their agreed zoning exemptions.

11. Upon approval of this Agreement, the Parties, by and through counsel, shall promptly join in filing a joint motion for entry of judgment incorporating and endorsing the conditions of this Agreement, enforceable as an order and final judgment of the Court, with the parties to bear their own costs and attorneys fees, and all rights to appeal waived.

12. In consideration of the promises and covenants set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree and recognize that this Agreement is a compromise of disputed claims, and that nothing in this Agreement is to be construed in any way to be an admission of liability or wrongdoing in any way by either Party.

13. The Parties understand and acknowledge that this Agreement contains the entire agreement between them, and the terms of this Agreement are contractual. If any part of this Agreement should be determined to be invalid, it shall not affect the validity of the remainder of the Agreement. The laws of Massachusetts shall be used for any interpretation or construction of this Agreement. This Agreement shall be interpreted in a manner consistent with the Planning Board Agreement, set forth in **Exhibit A**, with all definitions used therein applicable hereto.

14. The Parties further state that they have carefully read the foregoing Agreement and fully understand the contents thereof, and that the signatories hereto are duly authorized to sign this Agreement on behalf of the respective Parties and that each signs and executes this Agreement as his, her, or their free act and deed.

15. The Parties hereby acknowledge that no promise or inducement which is not herein expressed has been made, and in executing this Agreement, the Parties do not rely upon any statement or representation made by any person, firm, or entity other than those set forth in this Agreement.

16. This Agreement may not be varied in its terms by an oral agreement or representation or otherwise, except that the list of approved aircraft specified in **Exhibit B** may be amended from time to time in accordance with the procedures described above, and none of the terms hereof may be waived, except by an instrument in writing of subsequent date hereof executed by all of the Parties.

17. This Agreement may be executed in counterparts, each of which shall be an original but all of which together shall constitute one and the same instrument. Electronic signatures shall be considered as valid signatures as of the date thereof.

Exhibits Attached:

- A. Planning Board Agreement and Exhibits A-C Thereto
- B. List of Approved Aircraft

IN WITNESS WHEREOF, the signatories below for each Party confirm that they have the authority to bind such Party and have set their hands and seal to this Agreement as of the date first written above.

SIGNATURE PAGES TO FOLLOW

TOWN OF STOW ZONING BOARD OF APPEALS

and ITS MEMBERS,

By:

Ando Wilson

William Brown

Dated: 10/12/2021

TOWN OF STOW SELECT BOARD,

By:

Jeff Scott

Jim Dunn

Ellen Sturges

Curtis Freckha

Dated: 10/12/2021

THE COLLINGS FOUNDATION, INC.

By:

Dated: _____

THE COLLINGS FOUNDATION

By:

Dated: _____

ROBERT COLLINGS,

TOWN OF STOW ZONING BOARD OF APPEALS
and ITS MEMBERS,
By:


Dated: _____

TOWN OF STOW SELECT BOARD,
By:

Dated: _____

THE COLLINGS FOUNDATION, INC.


By: *ROBERT COLLINGS*



Dated: *OCT 7 2021*

THE COLLINGS FOUNDATION

By:



Dated: *OCT 7 2021*

ROBERT COLLINGS,

Robert Collings

Oct 7, 2021

Dated:

CAROLINE COLLINGS,

Caroline Collings

OCT. 7, 2021

Dated:

EXHIBIT A

(SEAL)

COMMONWEALTH OF MASSACHUSETTS

LAND COURT
FILED

2017 JUN 28 PM 12:24

MIDDLESEX, SS

LAND COURT DEPARTMENT
Misc. Case No: 2015-000374 (KCL)

THE COLLINGS FOUNDATION, INC.

Plaintiff

v.

LORI CLARK, STEPHEN QUINN, ERNEST
DODD, LEONARD GOLDER, and
MARGARET COSTELLO, as they are
members of the STOW PLANNING BOARD;
and,

THE TOWN OF STOW, and,

CHARLES KERN, JAMES H. SALVIE, BRIAN
P. BURKE, DONALD P. HAWKES and
THOMAS E. RYAN, III, as they are members of
the STOW BOARD OF SELECTMEN

Defendants

ALLOWED AND
SO ORDERED.

Robert J. T.
24 July 2017.

AGREEMENT FOR JUDGMENT

The Parties in the above captioned matter hereby assent to the Court's entry of a Judgment
incorporating the terms and conditions of that certain Settlement Agreement dated as of June __,
2017, attached hereto as Exhibit A.

Dated as of June __, 2017

PLAINTIFF

THE COLLINGS FOUNDATION, INC.

By its Attorney



Christopher C. Tsouros, Esq.

BBO# 503580

Posternak, Blankstein & Lund LLP

Prudential Tower

800 Boylston Street

Boston, MA 02199

617.973.6141

ctsouros@pbl.com

DEFENDANTS

LORI CLARK, STEPHEN QUINN, ERNEST DODD,
LEONARD GOLDER, AND MARGARET COSTELLO,
AS THEY ARE MEMBERS OF THE STOW PLANNING BOARD

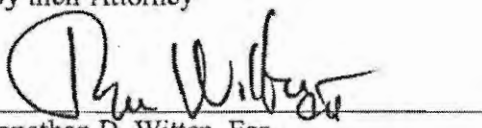
and

CHARLES KERN, JAMES H. SALVIE, BRIAN P. BURKE,
DONALD P. HAWKES, AND THOMAS E. RYAN III, AS THEY
ARE MEMBERS OF THE STOW BOARD OF SELECTMEN

and

TOWN OF STOW

By their Attorney



Jonathan D. Witten, Esq.

BBO # 636337

Huggins & Witten, LLC

156 Duck Hill Road

Duxbury, MA 02332

jon@hugginsandwitten.com

781.934.0084

A TRUE COPY
ATTEST:


RECORDED

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT ("Settlement Agreement") is entered into as of the latest date of the signatures set forth below (the "Effective Date"), by and between:

- A. The Collings Foundation, Inc., a non-profit corporation organized under the laws of the Commonwealth of Massachusetts with a principal address of 137 Barton Road Stow, MA (herein, the "Collings Foundation"), as it is Plaintiff under the Litigation (defined below); and
- B. Lori Clark, Stephen Quinn, Ernest Dodd, Leonard Golder, and Margaret Costello, as they are members of the Stow Planning Board, with a principal address c/o Stow Planning Board, Stow Town Building 380 Great Road Stow, MA (herein, collectively the "Planning Board"), as it is a Defendant under the Litigation (defined below); and,
- C. The Town of Stow, a Massachusetts municipal corporation, with a principal address c/o Town of Stow, Stow Town Building 380 Great Road Stow, MA (herein, the "Town"), as it is a Defendant under the Litigation (defined below); and,
- D. Ingeborg Hegemann, James H. Salvie, Brian P. Burke, Donald P. Hawkes, and Thomas E. Ryan III, as they are members of the Stow Board of Selectmen, with a principal address c/o Stow Board of Selectmen, Stow Town Building 380 Great Road Stow, MA (herein, collectively the "Selectmen"), as it is a Defendant under the Litigation (defined below).

The Collings Foundation, Inc., the Planning Board, the Town, and the Selectmen are all collectively referred to herein as the "Parties".

RECITALS

WHEREAS, the Collings Foundation, Inc. as Plaintiff, on September 18, 2015 filed a certain action in the Land Court Department of the Trial Court (Middlesex), Case No. 2015 Misc., 000374 (the "Litigation"), against the Defendants seeking certain relief from findings and actions of the Planning Board denying the application of the Collings Foundation to construct and operate a "Museum" on property owned/controlled by the Collings Interests as further described herein;

WHEREAS, the Defendants appeared in defense of said Litigation; and,

WHEREAS, the Parties now seek to resolve their differences to allow the Museum to be constructed and operated on the property owned/controlled by the Collings Interests, subject however to certain mutually agreed upon restrictions as set forth specifically herein; and,

WHEREAS, the parties wish to avoid the additional expense, delay, and uncertainty of further litigation, settle all claims between and among them as to the issues presented herein, and avoid any future potential litigation over such issues;

NOW THEREFORE, in consideration of the covenants and mutual promises and agreements contained in this Settlement Agreement, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties' agreement is set forth below.

DEFINITIONS

"Application" means the set of applications filed by the Collings Foundation, Inc. with the Planning Board, dated February 11, 2015 (as supplemented of record); inclusive of those plans, documents and filings identified in Exhibit A attached hereto.

"Collings Interests" (alternatively, "Collings") means the Collings Foundation, Inc., its principals (and spouses to the extent owners of any land or holders of any interests in and to any portion of the Site), and affiliates, and the Collings Foundation, a separate Massachusetts legal entity.

"Collings Museum" (alternatively, "Museum") means the museum as owned /controlled / operated by the Collings Foundation, Inc. or the Collings Interests conducting Museum Activities in and from the Museum Structures and on the Site;

"Demonstrations / Exhibitions" means Museum sponsored events, presentations, re-enactments, demonstrations, exhibitions and activities, conducted outdoors, involving an assembly of a group or groups of individuals, as further defined by the limitations set forth in Section A.3 hereof.

"Existing Buildings" means: (a) existing hangar/car barn/museum buildings consisting of approximately 44,000 square feet of interior space; (b) an existing museum building consisting of approximately 7,500 square feet of interior space; and (c) certain existing residential structures; all located on the Site;

"Gunfire" means loud noise generated by a device when an explosive charge or propellant is used to launch a projectile, including by way of example handguns, rifles, machine guns, and cannons, as cannons are commonly defined.

"Improvements" means all the infrastructure, landscaping, sitework, water management, and other such work attendant to the New Museum Construction as contemplated in the Application, along with site work and road work on the Site for access and egress (consistent with this Settlement Agreement);

"Major Events" means Museum sponsored events, presentations, re-enactments, demonstrations, exhibitions and activities, conducted outdoors, involving an assembly of a group or groups of individuals, as further defined by the limitations set forth in Section A.2 hereof.

"Museum Activities" means (a) those allowed uses set forth in Section A.1 below, subject to the restrictions also set forth therein; (b) Demonstrations / Exhibitions as defined herein, subject to the corresponding restrictions relative thereto set forth herein; (c) Major Events as defined herein, subject to the corresponding restrictions relative thereto set forth herein; and (d) the related historic activities that have been conducted from the Site by the Collings Foundation.

"Museum Structures" means (a) the Existing Buildings (aside from the existing residential structures); and (b) the buildings and structures to be constructed pursuant to the "Collings Foundation Site Development Plan" dated January 20, 2015 prepared by Andrews Survey and Engineering, Inc. and revised May 18, 2015 and other materials referenced in Exhibit A.

"New Museum Construction" means the site work and construction to build an approximately 67,000 +/- square foot structure for the Museum and primary access road from Hudson on the Hudson Land, along with the Improvements, as contemplated in the Application and as shown on the Site Plan;

"Noise Generating" means activities conducted outdoors that create noise.

"Noise Specifications" means, as applied to Noise Generating activities, that the noise must be at reasonable sound levels as measured at the Barton Road property line of the Site. Such noise shall be deemed reasonable so long as it is consistent with the sound levels typically generated by residential type uses (e.g. motorcycles, leaf blowers, lawn mowers) and other activities in the vicinity (e.g. motorboats, general road noise, amplified sound systems, etc.).

"Property" means the Site and all current buildings and structures thereon, as well as the buildings and structures described in the Application.

"Pyrotechnics" means explosives not contained in the chamber or barrel of a gun or cannon which require a permit issued by the Massachusetts Fire Marshall under state law.

"Site" means the land owned and/or controlled by the Collings Interests, consisting of approximately 90.78 acres of land located at 137 Barton Road in the Town of Stow, Massachusetts (the "Stow Land"), along with an additional 9.19 abutting acres of land located in the Town of Hudson, Massachusetts with access from Main Street in Hudson (the "Hudson Land"); as shown on the survey plans prepared by Andrews Survey & Engineering, Inc. dated January 20, 2015 and revised through May 19, 2015 (the "Site Plan");

A. AGREED RESTRICTIONS ON COLLINGS' USES UNDER G.L. c. 40A §3

The Parties hereby agree on the following restrictions on the Collings Foundation Inc.'s use of the Property as the Collings Museum. The Collings Foundation, Inc., on behalf of itself and the Collings Interests, agrees that it accepts these limitations upon its rights claimed pursuant to G.L. c. 40A, s. 3 to "educational use" of the property; and agrees that it will not seek to expand its use of the Property beyond these limitations upon its rights claimed pursuant to G.L. c. 40A, s. 3:

1. Allowed uses on the Site are activities for educational programs, presentations and exhibits related to the Collings Museum; specifically:
 - (a) Docent tours
 - (b) Talks and presentations by speakers

- (c) Tours, studies, presentations and meetings for individuals, school groups and other groups
- (d) Seminars
- (e) Car club meetings and programs and events
- (f) Air club meetings and programs and events
- (g) Audio/Visual productions & presentations
- (h) Public Viewing
- (i) Display and management of artifacts and related functions:
 - (i) exhibition
 - (ii) storage
 - (iii) maintenance
 - (iv) repair and restoration
 - (v) instruction and operation
 - (vi) practical experiences
 - (vii) instructional experiences
 - (viii) demonstrations
 - (ix) conservation/preservation
- (j) Non-profit daily/weekend overnights (such as Boy Scout, history group, or school group camp outs), associated with Museum programs, Demonstrations / Exhibitions, or Major Events
- (k) Activities in which museums typically engage as a venue provided that no activity shall include outdoor amplified music:
 - (i) corporate functions
 - (ii) weddings
 - (iii) family parties and
 - (iv) other income generating activities consistent with the above in scope, duration, and intensity
- (l) Accessory activities
 - (i) a museum shop
 - (ii) catered food/beverage served on the Site
 - (iii) Office and administrative functions for the Collings Foundation
 - (iv) Library, Audio-Visual displays, and conference center
 - (v) Parking for the Museum (consistent with the Application)

2. Allowed uses also include Major Events; all such Major Events to be subject to the following stated restrictions:

- (a) There can be up to but not more than four (4) Major Events in each calendar year
- (b) All four (4) Major Events can be Noise Generating and they do not have to

- (c) meet the Noise Specifications
 - (c) One (1) Major Event focusing on Word War II can have Pyrotechnics applicable to that era (and there can be no other Major Events with Pyrotechnics of the World War II era or later)
 - (d) One (1) other Major Event can have Pyrotechnics (but that Major Event can only have Pyrotechnics applicable to the pre-World War I era)
 - (e) The remaining two (2) Major Events cannot have Pyrotechnics or cannons.
 - (f) Gunfire is allowed (consistent with the above).
- 3. Allowed uses also include Demonstrations / Exhibitions, and all such Demonstrations / Exhibitions shall be subject to the following stated restrictions:
 - (a) There can be an average of two (2) Demonstrations / Exhibitions per month over the Museum's six (6) month season in each calendar year
 - (b) Gunfire is prohibited
 - (c) Pyrotechnics are prohibited
 - (d) A maximum of five (5) heavy armored vehicles (e.g. tanks) are permitted for each Demonstration / Exhibition at any given time
 - (e) They can be Noise Generating but must meet the Noise Specifications

B. SITE RELATED RESTRICTIONS AND PROVISIONS

- 1. Visitor and commercial access to Museum and Site shall be from the Hudson Main Street access road over the Hudson Land. Access from Barton Road would be allowed for residential type traffic and traffic accessory to residential uses, e.g. mail and fedex deliveries, residential guests, etc. The Collings Foundation will be given a reasonable period of time to transition and acclimate unknowing visitors to the Hudson Main Street access.
- 2. The Museum's website and other advertising or public relations publications shall cite the Hudson address as the Museum's primary address.
- 3. The Museum's temporary signage and traffic control for Major Events will be as generally provided by the Collings Foundation historically for its events, and will be coordinated with and enforced by the Town of Stow police department.
- 4. Access to the Site for Site work and construction equipment shall be from the Main Street Hudson access over the Hudson Land. Site work and construction vehicles and equipment that need to pass over and access from Barton Road (i.e. as opposed to the Hudson Main Street access over the Hudson Land) given Site construction requirements shall be kept to a reasonable minimum, be temporary in nature and duration, and shall have access therefrom within generally stated dates and during daylight hours, as set forth on a site work/construction phasing plan to be provided to the Planning Board prior to the start of any such work. Site work necessary for access and road construction shall occur

at the beginning of the phasing schedule. Site work access vehicles or equipment shall not cross the Lake Boon Dam.

5. All outdoor amplified sound systems and public address speakers shall be commensurate with the type of outdoor activity being conducted, and sound shall be within the Noise Specifications (except to the extent associated with Major Events). There will be no amplified outdoor sound other than during daylight hours (i.e. sunrise to sunset).
6. The outdoor areas of the Site shall not be used for any "gun clubs" (organized groups engaging in gun use) or gun firing ranges.
7. The parties agree that additional paving as suggested by the Town Engineer will not be required, and the on-Site parking will be configured and allowed as per the Application.
8. The Collings Foundation, Inc. will comply with the separate requirements of the Stow Conservation Commission, consistent with its Order of Conditions dated June 17, 2015 (No. 299-0588).

C. SPECIAL PROCESSES AND PROCEDURES

1. The Stow Board of Selectmen, police and fire departments, and "Stow Independent" (or other local newspaper in general circulation in the Town) shall each receive descriptive advance notice of the Major Events, not later than fourteen (14) days prior to the date of the Major Event, and said notice to fire department will include a description of the Pyrotechnics to be used at such Major Event.
2. The Town of Stow retains all rights of enforcement against unreasonable noise, as it would as to any other property owner and event in the Town, except as to the four annual Major Events defined above.
3. The Town of Stow retains all rights to enforce the Town Bylaw with respect to private gun use on land, as it would as to any other property owner in the Town; but the foregoing shall not deprive the Museum from Gunfire for Major Events, or for the private use of guns on the Site as would be allowed ordinarily under the Town Bylaw as to any other land in the Town.
4. The Museum's use of Pyrotechnics (and materials comprising the same) where allowed herein on the Site, shall be subject to all state and federal regulations governing transport, storage, use and handling and permitting of the same. The Museum shall demonstrate compliance with such permitting requirements prior to the occurrence of the applicable Major Event.
5. Future building permit applications by the Collings Foundation, Inc. for additional buildings (provided the plans conform with the technical filing requirements of the Stow

building department and Massachusetts building code, and the applicable filing fee is paid) i.e. beyond those contemplated in the current Application, shall be allowed, provided such buildings are consistent with or subordinate and accessory to the Museum Structures and to the Museum's allowed uses as set forth in Section A.1 above (and subject to those restrictions) There shall be no change in use from the existing Collings Foundation mission and proposed Museum mission (i.e., automobile, aircraft and military history) Any other buildings or uses shall be subject to the Stow Zoning Bylaw and other regulatory requirements..

6. The parties agree that Collings will file for a building permit(s) for its New Museum Construction at the earliest practicable time, and is entitled to receive its building permits for its New Museum Construction (provided the plans conform with the technical filing requirements of the Stow building department and Massachusetts building code, and the applicable filing fee is paid) based on the provisions of this Agreement; and that no further proceedings before the Planning Board shall be required for such issuance.
7. Collings shall provide its construction phasing plans to the Town of Stow Building Inspector and Consulting Engineer (and the Planning Board) prior to the start of New Museum Construction. The Town's Consulting Engineer shall review and inspect project construction in accordance with typical construction oversight standards in the Planning Board's Rules and Regulations for Special Permits and Site Plan Approval
8. The parties acknowledge that in prior proceedings before the Planning Board, certain issues were raised and addressed, and those particular concerns are set forth in Exhibit C attached hereto.
9. Collings and the Board of Selectmen will confer in good faith prior to each Major Event, and reach agreement on Collings' compliance with all reasonable public safety, fire and health related issues, consistent with prior practice in the past, in lieu of any requirement as may exist for an entertainment license for the Major Events and/or Demonstrations/Exhibitions.
10. Nothing in this Settlement Agreement waives any obligations pursuant to state law or Town of Stow regulations not otherwise waived or addressed by this Agreement.

D. STATUS OF THE LITIGATION AND THIS SETTLEMENT AGREEMENT

1. The Parties shall simultaneously enter into an Agreement for Judgment, in form and substance attached hereto as Exhibit B, and shall jointly petition the Court for entry of such Judgment on the record.
2. Simultaneously, the Parties shall jointly request a "Nisi Order" from the Court, such that the Judgment will be final upon notice to the Court of the issuance of a building permit by the Town of Stow to the Collings Interests for the New Museum Construction.

3. The Parties agree this Settlement Agreement is deemed to have been prepared jointly by the parties. If any ambiguity exists, it shall not be interpreted against any of the parties by reason of authorship. Each of the Parties hereby represent and warrant to each other that execution of this Settlement Agreement by the signatories appearing below, as to each such Party (a) has been duly authorized by all requisite votes, consents, or other required actions fully empowering the signatory to execute and bind the Party; and (b) no other action is required or necessary for this Settlement Agreement to be binding and enforceable as against such Party so executing.
4. This Settlement Agreement is the entire agreement between the parties and fully supersedes and replaces any and all prior and contemporaneous agreements, representations, promises or understandings of any kind between the parties. No modification, amendment or waiver of any of the provisions of this Settlement Agreement shall be effective unless in writing and signed by the parties. The Parties acknowledge that (a) this Settlement Agreement is the result of good faith negotiations; (b) the parties and their counsel have carefully reviewed and examined this Settlement Agreement; and (c) by signing this Settlement Agreement, no party is relying on any representation by any other party except as otherwise set forth in this Settlement Agreement.
5. This Settlement Agreement and any disputes arising under or in connection with it shall be construed and governed by the laws of Massachusetts.
6. The Parties agree that the terms of this Settlement Agreement are contractual and not merely recital, and that any of the Parties may seek enforcement hereof by commencement of an action in the Land Court Department of the Trial Court.
7. All conditions and restrictions contained herein are intended by the parties to remain in effect and operative for the longest period permitted by law.
8. This Settlement Agreement may be executed in counterparts, each of which shall be an original but all of which together shall constitute one and the same instrument. Facsimile signatures shall be considered as valid signatures as of the date thereof, although the original signature pages shall thereafter be exchanged and appended to this Settlement Agreement.

Exhibits Attached

EXHIBIT A APPLICATION DOCUMENTS

EXHIBIT B AGREEMENT FOR JUDGMENT

EXHIBIT C PRIOR CONCERNS LIST

IN WITNESS WHEREOF, this Settlement Agreement has been executed by the parties as of the date(s) stated below.

THE COLLINGS FOUNDATION, INC.

By: [Signature]

its duly authorized President

THE TOWN OF STOW PLANNING BOARD

[Signature]

Lori Clark, Chair

THE TOWN OF STOW BOARD OF SELECTMEN

[Signature]
Brian P. Burke, Chairman

[Signature]
Donald P. Hawkes

[Signature]
Ingeborg Hegemann

[Signature]
Thomas E. Ryan III

[Signature]
James H. Salvie

THE TOWN OF STOW

by:

[Signature]
William J. Wrigley, Town Administrator

**COLLINGS FOUNDATION, INC. vs. TOWN OF STOW PLANNING BOARD
SETTLEMENT AGREEMENT**

EXHIBIT A – THE APPLICATION

APPLICATION

Plans and associated documents, as part of the Application, originally submitted for the Board's deliberation are identified below.

EXHIBIT 1

1. Plan entitled "The Collings Foundation Site Development Plan", dated January 20, 2015, revised through May 18, 2015, prepared by Andrews Survey and Engineering, Inc., consisting of the following sheets:

Cover Sheet	
C1.0	Overall Plan
C2.1 - C2.6	Site Plan
C3.1 - C3.2	Erosion and Sediment Control Plan
C4.1 - C4.2	Wetland Crossing and Replication Plan
C5.0 - C5.3	Landscape and Lighting Plan
C6.1 - C6.2	Construction Details

2. Plan Sheets entitled "Landscape Plan," dated 5.18.2015
L5.1 - L5.3

EXHIBIT 2

Supplementary documents required by the Rules, consisting of the following:

- Application for Site Plan Approval, by Andrews Survey and Engineering dated February 5, 2015
- Application for Erosion Control Special Permit, by Andrews Survey and Engineering dated February 5, 2015
- Development Impact Statement Form
- Supplement to Development Impact Statement – "Measures to Mitigate Impacts."
- Certified List of Abutters by the Stow Board of Assessors
- Certified List of Abutters by the Hudson board of Assessors

- Stormwater Management Report, by Andrews Survey and Engineering, Inc. dated January 20, 2015, revised April 22, 2015
- Storm Water Pollution Prevention Plan (SWPPP), dated April 22, 2015

EXHIBIT 3 "American Heritage Museum Exhibit Designs"

- Cover Sheet
- Sheet EX 01 – EX 12

EXHIBIT 4 Architectural Floor Plans by AHP Architects, dated April 23, 2014

- A. 101 – First Floor Plans
- A. 102 – Mezzanine Plan
- A. 201 – Exterior Elevations
- A. 202 – Exterior Elevations

COLLINGS FOUNDATION, INC. vs. TOWN OF STOW PLANNING BOARD
SETTLEMENT AGREEMENT

EXHIBIT B – AGREEMENT FOR JUDGMENT

See Document attached hereto

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS

LAND COURT DEPARTMENT
Misc. Case No: 2015-000374 (KCL)

THE COLLINGS FOUNDATION, INC.

Plaintiff

v.

**LORI CLARK, STEPHEN QUINN, ERNEST
DODD, LEONARD GOLDER, and
MARGARET COSTELLO, as they are
members of the STOW PLANNING BOARD;
and,**

THE TOWN OF STOW, and,

**CHARLES KERN, JAMES H. SALVIE, BRIAN
P. BURKE, DONALD P. HAWKES and
THOMAS E. RYAN, III, as they are members of
the STOW BOARD OF SELECTMEN**

Defendants

AGREEMENT FOR JUDGMENT

The Parties in the above captioned matter hereby assent to the Court's entry of a Judgment incorporating the terms and conditions of that certain Settlement Agreement dated as of May ___, 2017, attached hereto as Exhibit A.

COLLINGS FOUNDATION, INC. vs. TOWN OF STOW PLANNING BOARD

SETTLEMENT AGREEMENT

EXHIBIT C – PRIOR CONCERNS ADDRESSED AND TO BE ADDRESSED

See Document attached hereto

EXHIBIT C

[Source Document: Notice of Decision Dated August 26, 2015]

Where noted below that the provision is "Addressed in the Application and the Site Plans", the Parties will cooperate in good faith to ensure compliance.

Provisions Addressed in Section 8.3.4.C:

Due to comments and concerns regarding traffic safety and congestion on Barton Road, the Applicant proposes to construct a variable width access road to the proposed 66,000+/- square foot museum building, an existing 32,000+/- square foot museum building and a 7500+/- square foot barn/office building, beginning at 586 Main Street in Hudson and running approximately 2,222 feet through parcel 3 on Hudson Assessor's Map 35 and 1745' (feet) in Stow, over parcels shown on the Town of Stow Assessor's Map as R-25, parcels 13, 16B and Map U-2, parcel 54.

Resolution: Addressed in the Application and Site Plans

The Town of Hudson Planning Board Decision dated February 12, 2015 for the proposed access road at 568 Main Street contains the following conditions: no salt or de-icing agent will be applied to the road; A lockable gate shall be installed.

Resolution: Addressed in the Application and Site Plans

The Town of Hudson Planning Board Decision dated February 12, 2015 for the proposed access road at 568 Main Street contains the following conditions: no salt or de-icing agent will be applied to the road; A lockable gate shall be installed.

Resolution: Agreed.

Provisions Addressed in Section 8.3.4.D:

An abutter at the Public Hearing raised concern that his home is 200 feet from the event grounds and that the access road will be at grade with his house. The abutter noted at the Hearing that he would be in favor of a landscaped berm higher than the previously proposed 6 foot barrier, and stretching at least 100 feet due to the wide open view of the Applicant's property. The abutter noted that the berm could help mitigate the visual and noise impacts to his property.

Resolution: Addressed in the Application and Site Plans

Provisions Addressed in Section 8.3.4.E

As a result of the site visit, the parties agreed on a plan revision including moving the proposed access road twenty two (22) feet to the west to accommodate an eight foot (8') tall berm proposed east of the access road and just west of the abutting property owner's parcel boundary.

Resolution: Addressed in the Application and Site Plans

Provisions Addressed in Section 8.3.4.F:

Section 7.2.5.2 of the Bylaw requires the remaining spaces to be labeled on the plan and properly designed as an integral part of the parking layout with adequate drainage provided for both the partial and total parking areas.

The remaining spaces marked as reserve, along with adequate drainage designs, are shown on the plans.

Resolution: Addressed in the Application and Site Plans

Section 7.2.5.5 requires a covenant in recordable form and to be recorded at the Registry of Deeds for the construction of future parking.

Resolution: To be recorded upon completion of construction

The Application proposes to construct 70 parking spaces.

- 47 parking spaces are included on a recycled asphalt pavement lot at the north entrance of the museum, including seven (7) handicapped spaces
- 23 parking spaces are labeled as overflow and located on a concrete pad to the south of the museum building.

Resolution: Addressed in the Application and Site Plans

Provisions Addressed in Section 8.3.4.G

Sheet L.5.2 of the Application shows proposed landscaping for the provided museum parking spaces and reserve parking spaces in conformance with Section 7.7.4, 7.7.5, and 7.7.6.

Resolution: Addressed in the Application and Site Plans

The Planning Board finds that the existing forested areas at the site provide sufficient screening for the event parking area, reserve parking area and proposed museum parking areas to conform to Sections 7.7.4, 7.7.5, 7.7.6 of the Zoning Bylaw.

Resolution: As stated

Provisions Addressed in Section 8.3.4.H

A memo from the Board's consulting engineer indicates that additional lighting may be warranted along the access drive to assist entering and exiting drivers in inclement weather.

The Planning Board finds that lighting along the proposed driveway is not necessary.

The Application does not indicate any lighting fixtures in the proposed museum parking area other than two fixtures at the main entrance.

There are no fixtures indicated in the vicinity of the seven (7) handicapped parking spaces.

Resolution: As stated; additionally, there will be no Major Events beyond sunrise to sunset as set forth in the Settlement Agreement.

Provisions Addressed in Section 8.3.4.K

Section 3.8.1.9 of the Bylaw requires that all projects considered under Site Plan Approval shall contain adequate drainage designs to show that pre-development surface water runoff rates and volumes and erosion and sedimentation rates shall not be increased so as to avoid erosion damage, sedimentation or uncontrolled surface water runoff.

Resolution: Addressed in the Application and Site Plans

The Planning Board finds that although the site contains well drained soils and is large enough to reasonably accommodate the required drainage, there are several requirements that have not been met to confirm conformance with Section 3.8.1.9 of the Bylaw, Section 4.13 of the Special Permit Rules and Regulations, and the Planning Board Stormwater Policy, which is meant to both ensure that peak runoff is no greater after the development is completed, and that water quality will meet required Department of Environmental Protection standards:

- No soil testing in the of the Stormwater basins/infiltration areas were provided.
- The Long Term Pollution Prevention Plan does not address all items listed in the DEP checklist for Stormwater Report, Standard 4: Water Quality for Construction, including:
 - Erosion and dust control
 - Maintenance of temporary construction entrance
 - Requirement for stockpiles to be covered or stabilized if not in use for more than 21 days.

Resolution: Will comply with DEP Requirements

Section 3.8.1.10 (7) requires a Stormwater Pollution Prevention Plan where more than one acre or more land will be disturbed.

The Planning Board finds the Applicant has submitted a draft Stormwater Pollution Prevention Plan.

Resolution: Addressed in the aforesaid draft Plan

Provisions Addressed in Section 8.3.6

A septic tank, proposed leach field and proposed leach field reserve area are shown on the Application plans. There is nothing in the record confirming approval of the sewage disposal system in accordance with the Department of Environmental Protection Title V requirements or Stow Board of Health regulations.

Resolution: Application now pending and will be procured prior to Building Permit

The Planning Board finds no confirmation of the required water quality analyses and pumping test results, in accordance with Department of Environmental Protection regulations 310CMR22, and as noted in the letter from Purnachander Rao, Permit Manager for the Massachusetts Department of Environmental Protection Drinking Water Program.

Resolution: Collings will comply.

Based on input from the Board's consulting engineer, the existing refueling area contains no catchbasin or concrete pad to contain fuel spills, such as is included in the vehicle washing area.

Resolution: Collings will provide spill kit.

The Planning Board finds that the recommendations provided by the Board's consulting engineer, including, but not limited to fueling trainings, spill prevention protocol, and/or supplies to protect against a spill at the refueling area could help mitigate the concerns expressed herein.

Resolution: Collings will provide spill kit.

The Application indicates a fire protection well at the northwest corner of the proposed museum building.

Resolution: Collings will comply

A septic tank, proposed leach field and proposed leach field reserve area are shown on the Application's plans. There is nothing in the record confirming approval of the sewage disposal system in accordance with the Department of Environmental Protection Title V requirements or Stow Board of Health regulations.

Resolution: Application now pending and will be procured prior to Building Permit

The Planning Board agrees with their consulting engineer's recommendation that the planting of large species of evergreens at the southeast corner of the proposed museum would help break up the massing and scale of the building. The Planning Board further finds that the plan was

not modified to include the recommendations.

Resolution: Deemed not necessary – not visible from Barton Road and no main access from Barton Road as per Settlement Agreement

The Planning Board agrees with their consulting engineer's recommendation that the Tree Planting Details be modified to show a slice in the lower sections of burlap on the planted trees to encourage the spread of roots in the dry, sandy soils. The Planning Board further finds that the plan was not modified to include the recommendations.

Resolution: Collings will comply

The Planning Board agrees with their consulting engineer's recommendation of having snow plow operations and overall maintenance procedures in place to address the maintenance of the well landscaped islands and foundations in the proposed parking areas. The Planning Board further finds that the plan was not modified to include the recommendations.

Resolution: No islands/foundations – deemed moot

The Planning Board agrees with their consulting engineer's recommendation that the proposed rhododendron and witch hazel on the landscaped berm may not be able to survive on exposed, sand based soil, and that there are other plants more appropriate for the soil and landscape conditions. The Planning Board further finds that the plan was not modified to include the recommendations.

Resolution: Collings will comply

The Planning Board agrees with their consulting engineer's recommendation that sheets L-5.1 and L5.2 regarding the turf grass parking area do not indicate the separation between full sun and shade varieties of turf to be established.

Resolution: All predominately sun fields – deemed moot

The plan was not revised to show sufficient depth of loam on the landscaped berm for retaining organic matter.

The Application lacks specific identification of slope stabilization materials and maintenance procedures on the landscaped berm.

Resolution: Collings will take all appropriate measures to maintain plantings as circumstances warrant

Provisions Addressed in Section 8.3.7

The Planning Board further finds the Application does not contain mitigating measures as recommended by the Board's consulting engineer, including but not limited to, the creation of spill prevention and cleanup plans, spill notification procedures and inspections.

Resolution: Collings will provide spill kit

The Planning Board further finds that no revisions to the plans were submitted based on the Board's consulting engineer's recommendations that catch-basins along the southerly concrete pad could be made waterproof and affixed with a valve to contain and facilitate the cleanup of spills.

Resolution: Collings will provide spill kit

The Application notes a removable barricaded egress to be used by emergency vehicles but does not include the barricades in the detail sheets or provide indication on whether a public safety plan has been created for the events, or how the barricaded egress will fit into the Fire and Police Department procedures.

The Application shows pedestrian and traffic circulation extending over five properties of varying ownership, but provides no indication of applicable access easements to confirm the ability of emergency vehicles to access the site at different times of the year and for the site plan to function as intended.

A pedestrian circulation path extends along the western end of the grass parking area, but includes no indication of temporary barricades to prohibit exiting vehicles.

A bus turnaround area is located along the pedestrian circulation path, but contains no indication of temporary fencing or barricades to separate buses from pedestrian corridors.

The proposed portable toilet area is shown in the same location as the geo-cell bus parking area.

Resolution: Collings will coordinate the foregoing to the reasonable satisfaction of Stow police, fire department and public safety officials.

There is no visitor entrance to service this overflow area and no indication on the plan that pathways, sidewalks or signage indicating the entrance location exist.

Resolution: Collings will coordinate the foregoing to the reasonable satisfaction of Stow police, fire department and public safety officials.

The Application does not include any easements for the proposed parking located on 137 Barton Road. The Planning Board further finds that it is unable to confirm the parking plan can function as intended without easements over property not owned by the Applicant.

Resolution: Not applicable since main access is not on Barton Road per the Settlement Agreement.

[End of Text]

EXHIBIT B

Make and Model	Attachment "B"		
	Category	Class	Large Aircraft
1. Boeing PT-17	Airplane	SEL	NO
2. Boeing PT-17	Airplane	SEL	NO
3. Cessna UC-78	Airplane	MEL	NO
4. Grumman FM-2 Wildcat	Airplane	SEL	NO
5. Fiesler Storch	Airplane	SEL	NO
6. Wright Model EX	Airplane	SEL	NO
7. Bleriot IX	Airplane	SEL	NO
8. Waco UPF-7	Airplane	SEL	NO
9. Grumman Goose	Airplane	MEL/S	NO
10. Stinson L-5	Airplane	SEL	NO
11. Grumman TBM	Airplane	SEL	YES
12. Curtiss Pusher	Airplane	SEL	NO
13. Curtiss Model F Flying Boat	Airplane	SES	NO
14. Messerschmitt ME 109	Airplane	SEL	NO
15. Grumman F6F	Airplane	SEL	YES
16. Curtiss P-40	Airplane	SEL	NO
17. Piper L-4	Airplane	SEL	NO
18. North American AT-6	Airplane	SEL	NO

FAA Class Definitions

SEL (Single Engine Land)

MEL (Multi Engine Land)

SES (Single Engine Sea)

MEL/S (Multi Engine Land and Sea)

FAA Large Aircraft is defined as have a Max Gross Takeoff Weight (MGTOG) over 12,500 lbs