



January 26, 2023

Adam Turner, Executive Director
Martha's Vineyard Commission
The Olde Stone Building
33 New York Avenue
Oak Bluffs, MA 02557

Re: Open Space Protection – Southern Tier affordable Housing Development (**DRI 730**)
Assessor's Map 50, Parcel 31, 85 Edgartown Vineyard Haven Road, Oak Bluffs, MA

Dear Mr. Turner:

On behalf of the Project Proponents, Affirmative Investments, Inc. and Island Housing Trust (IHT), the Horsley Witten Group, Inc. (HW) is providing the Martha's Vineyard Commission (MVC) with the following clarification regarding the preservation of open space at the referenced site. As MVC is aware, the project underwent MESA Project Review with the Massachusetts Natural Heritage and Endangered Species Program (NHESP 21-40189) for work within mapped Priority Habitat of the state-Threatened Imperial Moth (*Eacles imperialis*). The project received a conditional "no take" approval from NHESP on October 20, 2022 (attached).

As the reviewing agency, NHESP is charged with protecting the habitat for state protected species under in accordance with the Massachusetts Endangered Species Act (M.G.L. Ch. 131A) or MESA. Primary habitat for this species includes pitch pine (*Pinus rigida*); the Priority Habitat mapping follows the dense areas of concentrated pitch pine growth at this site and is contiguous with abutting conservation lands to the north (Southern Woodlands Reservation). Adjacent unaltered habitat at the site and the surrounding forested land also provides interstitial habitat for this species.

As part of the MESA review process, and in response to feedback from NHESP, the Project Proponents modified the initial project design to avoid and minimize impacts to the greatest extent practicable within both mapped habitat and within adjacent interstitial habitat by maintaining total site disturbance of currently unaltered forest to less than five acres. This resulted in the clustered development that is specifically designed to reduce habitat fragmentation.

In accordance with the Town's RFP, the overall project design also includes potential future development of an access road leading to lands to the north of this site where the Town's 2017 Housing Production Plan and 2019 Master Plan identify the potential for additional housing development. As discussed with NHESP, this potential future project to the north is separate from the currently proposed Southern Tier plan. This future development is also predicated on long-term upgrades to the Town's wastewater treatment system. However, the MESA regulations at 321 CMR 10.16, prohibit the segmentation or phasing of a project in order to avoid project permitting. Thus, if NHESP determines that a future proposed project or activity is part of a larger

common project or scheme, this regulatory provision allows the agency to evaluate the cumulative impacts of the existing and proposed segments of the common project when reviewing the future proposed project.

The final project layout concentrates development to the southern and western portions of the Southern Tier site, occupying 212,112 SF (4.87 acres) for the full buildout (both Phases I and II) and allows for preservation of a portion of the existing forested habitat (1.87 ac) as protected open space, while also acknowledging the potential future town-planned housing development to the north.

Placement of this portion of woodland under permanent habitat protection will allow additional protection of an area of contiguous wildlife habitat, will further the interests of habitat protection, and contribute to the overall protection of habitat for the Imperial Moth. To help illustrate the benefits of the proposed project design with respect to providing contiguous wildlife habitat, HW prepared an Open Space Figure, dated January 25, 2023 (as shown in the image below).

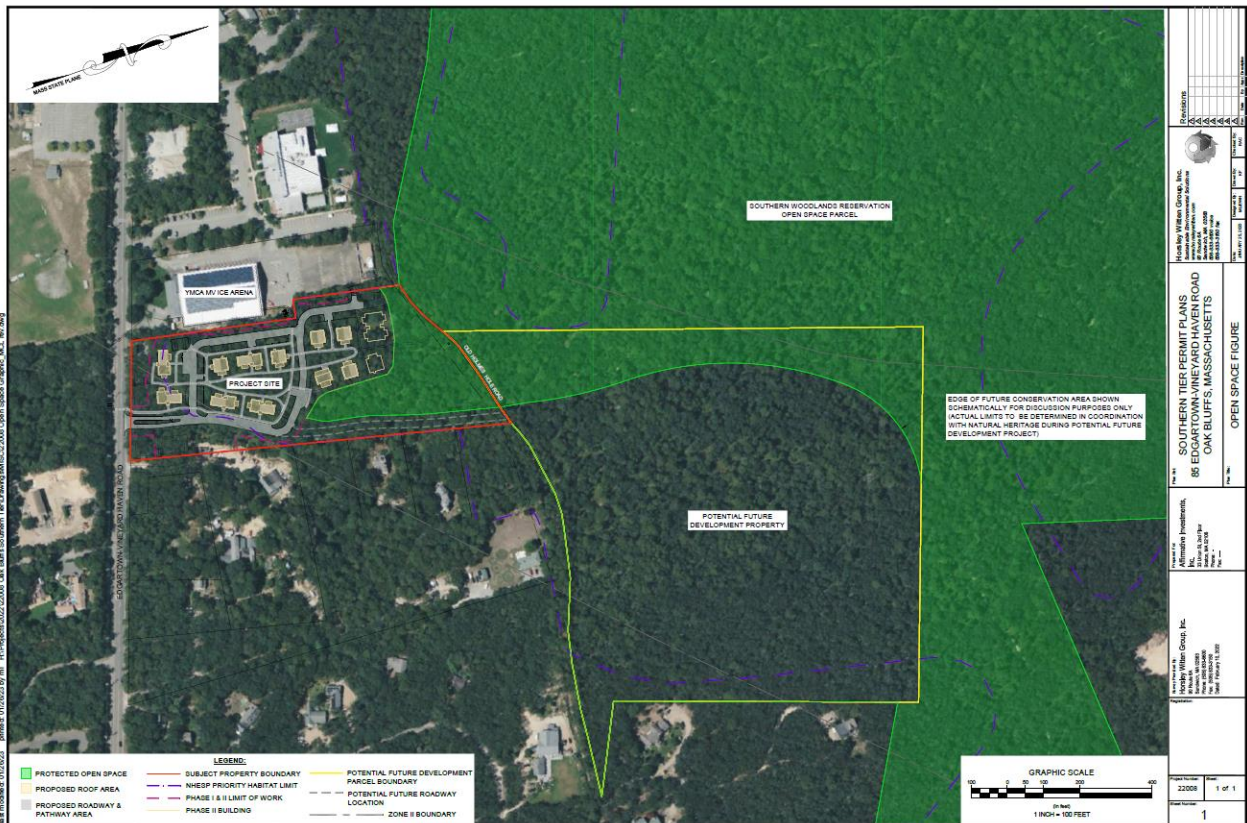


Figure 1. Image of open space plan illustrating the contiguous nature of open space between the Southern Tier property and the Southern Woodlands Reservation to the north.

The location of the future access road was strategically placed along the eastern property line to allow this project to provide on-site habitat preservation of 1.87 acres of the existing pitch pine-oak forest as conservation land and to maintain connectivity with the Southern Woodlands

Reservation, which is also mapped Priority Habitat. Alternative locations for this road would have fragmented this contiguous habitat and would not have met the objectives or requirements set forth in the conditional approval by NHESP. Further, placement of the roadway in an alternate location would result in fragmenting the contiguous habitat, which would then likely result in NHESP considering the fragmented portion as part of the development (i.e., lost habitat). In turn, the project would require additional NHESP review and permitting and would require additional mitigation in the form of land preservation. The current placement of the future road preserves the viability of the contiguous, unfragmented habitat that allowed for NHESP approval.

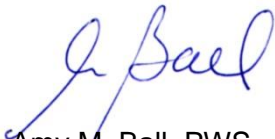
The design and the habitat preservation are conditions of the NHESP approval, along with permanent monumentation along the boundary of the open space which will be permanently protected under Article 97 provisions.

As noted, any changes to the proposed project are likely to require additional review and potential permitting through NHESP. During the MESA Project Review this potential future development was discussed at length with NHESP. It is understood that any future development within or adjacent to the Southern Woodlands Reservation, including development of the access road, will require a Conservation and Management Permit from NHESP, which will require at a minimum additional habitat preservation intended to benefit this species.

Thank you for your continued review of this important affordable housing project. Please do not hesitate to contact me directly at (508) 833-6600 or at aball@horsleywitten.com with any questions.

Sincerely,

Horsley Witten Group, Inc.



Amy M. Ball, PWS
Senior Ecologist

Enclosures

cc: David Ennis, Affirmative Investments, Inc.
Craig Nicholson, Affirmative Investments, Inc.
Derrill Bazy, Island Housing Trust
Phillippe Jordi, Island Housing Trust
Deborah Potter, Oak Bluffs Town Administrator



DIVISION OF FISHERIES & WILDLIFE

1 Rabbit Hill Road, Westborough, MA 01581
p: (508) 389-6300 | f: (508) 389-7890
MASS.GOV/MASSWILDLIFE

October 20, 2022

David Ennis, Affirmative Investments, Inc.
33 Union Street, 2nd Floor
Boston, MA 02108

RE: Applicant: David Ennis, Affirmative Investments, Inc. (in collaboration with the
Island Housing Trust)
Location: 85 Edgartown Vineyard Haven Road, Oak Bluffs
ASSESSOR'S MAP 50, PARCEL 31; BOOK 350/PAGE 190, BOOK 320/PAGE 52,
DUKES COUNTRY REGISTRY OF DEEDS
Project Description: Construction of Planned Residential Development
NHESP File No.: 21-40189

Dear Applicant:

The Natural Heritage & Endangered Species Program of the Massachusetts Division of Fisheries & Wildlife (the "Division") received the MESA Review Checklist with the site plan entitled PLANNED RESIDENTIAL DEVELOPMENT SOUTHERN TIER PROPERTY OAK BLUFFS, MASSACHUSETTS ("Site Plan with Area Summary," 1 sheet; dated July 15, 2022, revised through October 12, 2022; prepared by Horsley Witten Group, Inc.; the "Plan") and supporting documentation for review pursuant to the MA Endangered Species Act Regulations (321 CMR 10.18).

The MESA is administered by the Division, and prohibits the Take of state-listed species. The Take of state-listed species is defined as "in reference to animals...harm...kill...disrupt the nesting, breeding, feeding or migratory activity...and in reference to plants...collect, pick, kill, transplant, cut or process...Disruption of nesting, breeding, feeding, or migratory activity may result from, but is not limited to, the modification, degradation, or destruction of Habitat" of state-listed species (321 CMR 10.02).

The Division has determined that this project, as currently proposed, will occur **within** the actual habitat of the Imperial Moth (*Eacles imperialis*), state-listed as "Threatened." This species and its habitats are protected in accordance with the rare species provisions of the MESA. A Fact Sheet for these species can be found on our website, www.mass.gov/nhesp.

The project, as proposed, includes the construction of a planned affordable residential housing development ("Southern Tier Property"), utilities, landscaping and associated site work resulting in ±4.95 acres of habitat disturbance (hereinafter, the "Work"; labeled "Area A" on the Plan) on a ±7.78-acre parcel owned by the Oak Bluffs Resident Homesite Committee. As an integral part of the project, the Applicant has proposed to permanently protect ±1.87 acres of the property (labeled "Protected Open Space" on the Plan) as open space and state-listed species habitat through fee transfer or donation of a conservation restriction to a qualified conservation entity.

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Area A (Southern Tier Property):

Based on the information provided and the information contained in our database, the Division finds that this project, as currently proposed, **must be conditioned in order to avoid a prohibited Take of state-listed species (321 CMR 10.18(2)(a))**. To avoid a prohibited Take of state-listed species, the following conditions must be met:

1. **Recordation:** Prior to the Start of Work, the Applicant shall record this determination letter and the Plan in the Dukes County Registry of Deeds so as to become a record part of the chain of title for the property. Prior to the start of Work, the Applicant shall provide the Division with written proof of said recordation.
2. **Symbolic Fencing:** Prior to the start of Work, symbolic fencing shall be erected along the "Limit of Work (Phase I & II)" shown on the Plan and maintained throughout the construction period. No work or activity shall occur on the property outside the "Limit of Work (Phase I & II)" shown on the Plan.
3. **Monumentation:** Prior to the start of Work, the Applicant shall submit a plan to permanently monument the "Protected Open Space" shown on the Plan. Prior to the start of Work or as otherwise approved by the Division, monumentation shall be installed pursuant to the Division-approved plan. Said monumentation shall be maintained in good condition and repaired or replaced, as necessary.
4. **Compliance Report:** Within thirty (30) days of the completion of work or as otherwise approved by the Division, the Applicant shall submit written confirmation to the Division documenting compliance with the conditions outlined herein.
5. **Habitat Protection:** Within one (1) year of the start of Work and prior to recording any instrument to transfer or protect the "Protected Open Space" shown on the Plan, the Applicant shall provide the Division with a plan for permanently protecting the "Protected Open Space" as open space and state-listed species habitat pursuant to Article 97 provisions.

Provided the above-noted conditions are fully implemented and there are no changes to the Plan, this project will not result in a Take of state-listed species. This determination is a final decision of the Division of Fisheries and Wildlife pursuant to 321 CMR 10.18. Any changes to the proposed project or any additional work beyond the "Limit of Work (Phase I & II)" shown on the Plan may require an additional filing with the Division pursuant to the MESA. This project may be subject to further review if no physical work is commenced within five years from the date of issuance of this determination, or if there is a change to the project.

Area B and Future Residential Housing Project (Southern Woodland Reservation):

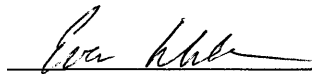
The Applicant and the Island Housing Trust have disclosed that, at some future time, an access road on the property (labeled "Area B" on the Plan) as well as additional affordable residential housing on land immediately north of the property presently owned by the Martha's Vineyard Land Bank ("Southern Woodland Reservation") may be proposed.

The Division notes that any future projects or activities proposed on and adjacent to the property which are (a) located outside of the approved "Limit of Work (Phase I & II)" shown on the Plan, (b) not exempt

from review pursuant to 321 CMR 10.14, and (c) located within mapped Priority Habitat as indicated in the Massachusetts Natural Heritage Atlas, will require review by the Division pursuant to MESA. Furthermore, 321 CMR 10.16 provides that projects shall not be segmented or phased to evade or defer the review requirements under MESA. If the Division determines, based on the considerations provided for in 321 CMR 10.16, that a future proposed project or activity is part of a larger common project or scheme, it may evaluate the cumulative impacts of the existing and proposed segments of the common project when reviewing the future proposed project or activity pursuant to MESA.

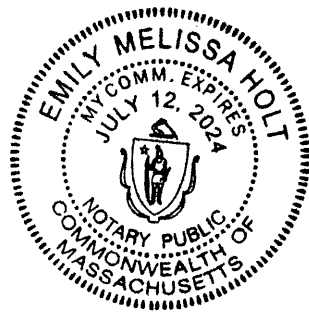
Please note that this determination addresses only the matter of state-listed species and their habitats. If you have any questions regarding this letter please contact Jesse Leddick, Chief of Regulatory Review, at (508) 389-6386 or jesse.lednick@mass.gov.

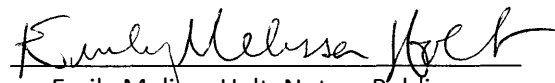
Sincerely,



Everose Schlüter, Ph.D., Assistant Director
Massachusetts Division of Fisheries & Wildlife

On this 20th day of October, 2022, before me, the undersigned notary public, personally appeared Everose Schlüter, Assistant Director, proved to me through satisfactory evidence of identification, which was personal knowledge, to be the person whose name is signed on the preceding or attached document, and who swore or affirmed to me that the contents of the document are truthful and accurate to the best of his/her knowledge and belief.

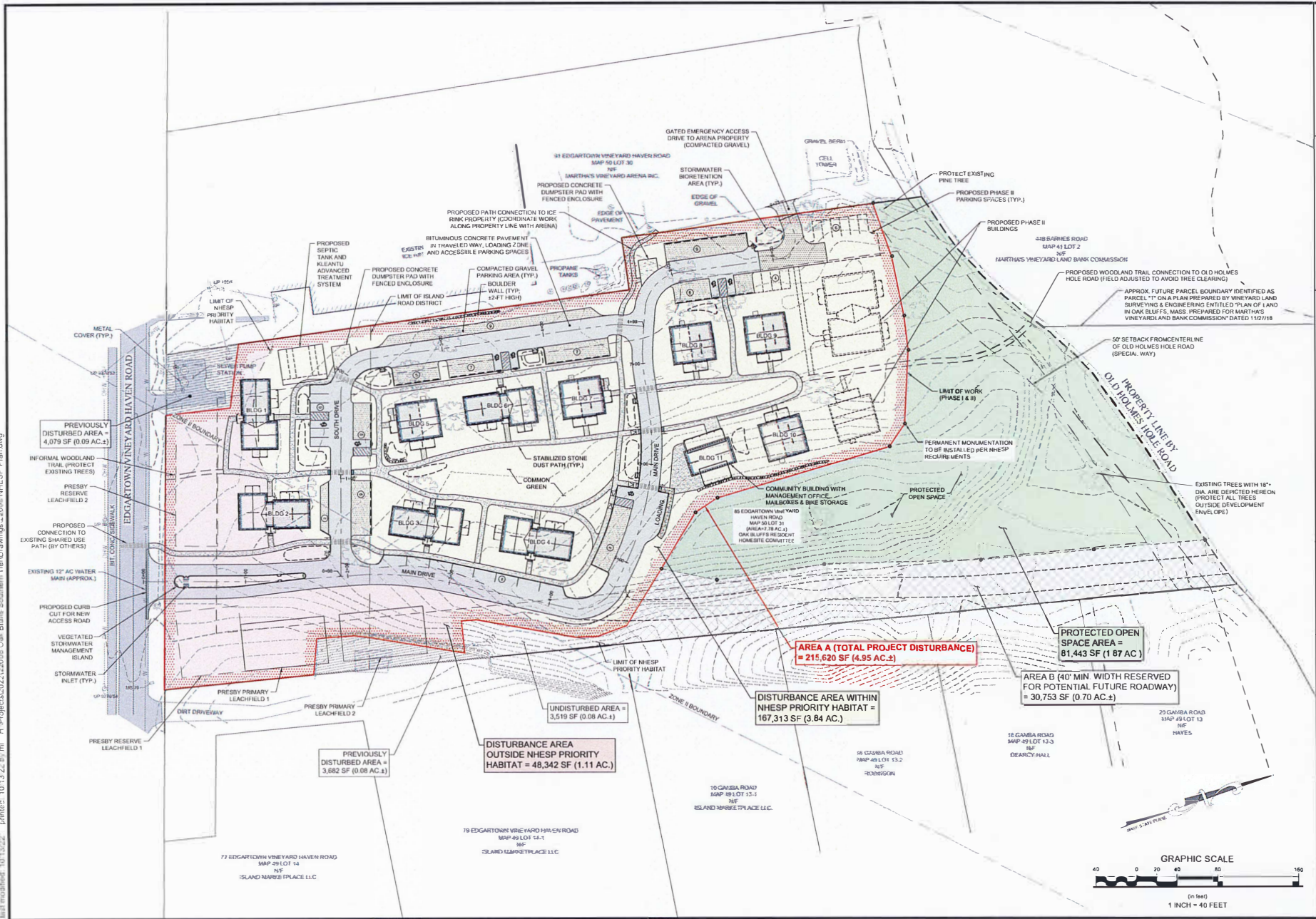




Emily Melissa Holt, Notary Public
My Commission Expires: July 12, 2024

cc: Derrill Bazzy and Phillippe Jordi, Island Housing Trust
Deborah Potter, Oak Bluffs Town Administrator
Amy Ball, Horsley Witten Group, Inc.

last modified: 10/13/2022 printed: 10/13/22 10:31 AM H:\Projects\2022\202208 Oak Bluffs Southern Tier Property\2022 NHESP Plan.dwg



Revisions	
1	10/13/22
2	10/13/22
3	10/13/22
4	10/13/22
5	10/13/22
6	10/13/22
7	10/13/22
8	10/13/22
9	10/13/22
10	10/13/22
Project Information	
Project Name	Planned Residential Development Southern Tier Property Oak Bluffs, Massachusetts
Project Number	22008
Sheet	1 of 1
Scale	1" = 40'
Author	Horsley Witten Group, Inc.
Checker	Horsley Witten Group, Inc.
Engineer	Horsley Witten Group, Inc.
Project Manager	Horsley Witten Group, Inc.
Client	Island Marketplace LLC
Location	77 Edgartown Vineyard Haven Road, Edgartown, MA 02549
Project Description	Planned Residential Development Southern Tier Property Oak Bluffs, Massachusetts
Project Status	Design
Project Start Date	10/13/22
Project End Date	10/13/22
Project Budget	\$1,000,000
Project Risk	Low
Project Complexity	Medium
Project Team	Horsley Witten Group, Inc.
Project Contact	Horsley Witten Group, Inc.
Project Phone	508-548-1000
Project Fax	508-548-1001
Project Email	info@hws.com
Project Website	www.hws.com
Project Social Media	Facebook: Horsley Witten Group, Inc. Twitter: HWS_Group LinkedIn: Horsley Witten Group, Inc. Instagram: HWS_Group YouTube: Horsley Witten Group, Inc.