



Town of Barnstable
Town Council
James H. Crocker Jr. Hearing Room
367 Main Street, 2nd floor,
Hyannis, MA 02601
Office 508.862.4738 • Fax 508.862.4770
E-mail: council@town.barnstable.ma.us

TOWN COUNCIL MEETING AGENDA

January 19, 2023

7:00 PM

The January 19, 2023 Meeting of the Barnstable Town Council shall be conducted in person at 367 Main Street 2nd Floor James H. Crocker Jr. Hearing Room, Hyannis, MA. The public may attend in person or participate remotely in Public Comment or during a Public Hearing via the Zoom link listed below.

Councillors:

Matthew Levesque
President
Precinct 10

Jennifer Cullum
Vice President
Precinct 13

Gordon Starr
Precinct 1

Eric R. Steinhilber
Precinct 2

Betty Ludtke
Precinct 3

Nikolas Atsalis
Precinct 4

Paul Cusack
Precinct 5

Paul C. Neary
Precinct 6

Jessica Rapp Grasseti
Precinct 7

Jeffrey Mendes
Precinct 8

Tracy Shaughnessy
Precinct 9

Kristine Clark
Precinct 11

Paula Schnepf
Precinct 12

Administrator:
Cynthia A. Lovell
Cynthia.Lovell@town.barnstable.ma.us

1. The meeting will be televised live via Comcast Channel 18 or may be accessed via the Channel 18 live stream on the Town of Barnstable's website:

<http://streaming85.townofbarnstable.us/CablecastPublicSite/watch/1?channel=1>

2. Written Comments may be submitted to:

https://tobweb.town.barnstable.ma.us/boardscommittees/towncouncil/Town_Council/Agenda-Comment.asp

3. Remote Participation: The public may participate in Public Comment or Public Hearings by utilizing the Zoom video link or telephone number and access meeting code:

Join Zoom Meeting <https://townofbarnstable-us.zoom.us/j/81198628140>

Meeting ID: 811 9862 8140 US Toll-free 888 475 4499

PUBLIC SESSION

1. ROLL CALL

2. PLEDGE OF ALLEGIANCE

3. MOMENT OF SILENCE

4. PUBLIC COMMENT

5. COUNCIL RESPONSE TO PUBLIC COMMENT

6. TOWN MANAGER COMMUNICATIONS

- Update on Fiscal Year 2023 Tax Bills, Mark A. Milne, Director, Finance

7. ACT ON PUBLIC SESSION MINUTES

- Approve Public Session Minutes: December 15, 2022

8. COMMUNICATIONS - from elected officials, boards, committees, and staff, commission reports, correspondence and announcements

- Report of the Town Manager Performance Review

9. ORDERS OF THE DAY

- A. Old Business
- B. New Business

10. WORKSHOP

Financial update on the Comprehensive Wastewater Management Plan
Mark Milne, Director, Finance

11. ADJOURNMENT

NEXT REGULAR MEETING: February 02, 2023

ITEM NO.	INDEX TITLE	PAGE
A.	OLD BUSINESS	
	None	
B.	NEW BUSINESS	
2023-068	Authorizing an Intergovernmental Agreement with the Commonwealth of Massachusetts Department of Children and Families to provide police detail services (First Reading) (Refer to Second Reading 02/02/2023)	4-5
2023-069	Appropriation Order in the amount of \$125,000 in Community Preservation Historic Preservation Funds for the Phase III Exterior Access Project at Olde Colonial Courthouse, 3046 Main Street, Barnstable (Refer to Public Hearing on 02/02/2023)	6-7
2023-070	Approving the Conservation Restriction between Barnstable Land Trust (Grantor) and The Compact of Cape Cod Conservation Trusts (Grantee) for the following parcels: Map 187, Parcel 079 , Lot 002 (0 Beech Leaf Island Road); 0.61 acres; Map 187, Parcel 080 , Lot 002 (0 Beech Leaf Island Road); 0.53 acres; Map 187, Parcel 034 (0 South Main Street); 2.0 acres; Map 186, Parcel 092 , Lot 0 (0 Beech Leaf Island Road); 17.2 acres; Map 186, Parcel 086 , Lot 0 (0 Bay Lane); 1.16 acres and Map 186, Parcel 088 , Lot 002 (0 Thornberry Road) 0.91 acres (May be acted upon) (Majority vote)	8-34
2023-071	Approval of the Appointments to the Appointments Committee (May be acted upon) (Majority vote)	35-36

Please Note: The lists of matters are those reasonably anticipated by the Council President which may be discussed at the meeting. Not all items listed may be discussed and other items not listed may be discussed to the extent permitted by law. It is possible that if it so votes, the Council may go into executive session. The Council may also act on items in an order other than as they appear on this agenda. Persons interested are advised that in the event any matter taken up at the meeting remains unfinished at the close of the meeting, it may be continued to a future meeting, and with proper notice.

B. NEW BUSINESS (First Reading) (Refer to Second Reading 02/02/2023)

BARNSTABLE TOWN COUNCIL

**ITEM# 2023-068
INTRO: 01/19/2023**

2023-068 AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT WITH THE COMMONWEALTH OF MASSACHUSETTS DEPARTMENT OF CHILDREN AND FAMILIES TO PROVIDE POLICE DETAIL SERVICES

ORDERED: That the Town Council authorizes the execution and delivery by the Town Manager of an Intergovernmental Agreement between the Town of Barnstable and the Commonwealth of Massachusetts Department of Children and Families (DCF), under which the Town of Barnstable will provide police detail services to DCF on an as needed basis and subject to availability of Barnstable Police Department staff, and will be reimbursed for same by DCF. The initial term of this Agreement shall be for eleven (11) years, subject to renewal by mutual agreement, for a maximum term not to exceed twenty-five (25) years.

SPONSOR: Mark S. Ells, Town Manager

DATE	ACTION TAKEN
_____	_____
_____	_____

- ___ Read Item
- ___ Rationale
- ___ Council Discussion
- ___ Vote

BARNSTABLE TOWN COUNCIL

ITEM# 2023-068
INTRO: 01/19/2023

SUMMARY

TO: Town Council
FROM: Mark S. Ells, Town Manager
THROUGH: Matthew Sonnabend, Chief of Police
DATE: January 05, 2023
SUBJECT: Authorizing an Intergovernmental Agreement with the Commonwealth of Massachusetts Department of Children and Families to provide police detail services

BACKGROUND: The Massachusetts Department of Children and Families (DCF) has been using Barnstable Police Department police details at its offices for about four (4) hours weekly for some time and was recently advised that it needed contracts with each municipality from which it gets such details. The police details are fully reimbursed by DCF. The Town has been provided a state contract from DCF that provides for Police Detail Services for approximately four hours per week on average with work completed on overtime outside of Town of Barnstable normal work hours. The service is subject to the availability of the Barnstable Police Department employee and neither DCF nor the Town can compel the employee to undertake the work. The initial term of this Agreement shall be for eleven (11) years, subject to renewal by mutual agreement, for a maximum term not to exceed twenty-five (25) years.

FISCAL IMPACT: The Town of Barnstable will be reimbursed for all police services and expenses to provide the subject services.

TOWN MANAGER RECOMMENDATION: Mark S. Ells, Town Manager, requests favorable action by the Town Council.

STAFF ASSISTANCE: Matthew Sonnabend, Chief of Police; Kate Connolly, Assistant Town Attorney

BARNSTABLE TOWN COUNCIL

**ITEM# 2023-069
INTRO: 01/19/2023**

**2023-069 APPROPRIATION ORDER IN THE AMOUNT OF \$125,000 IN
COMMUNITY PRESERVATION HISTORIC PRESERVATION FUNDS
FOR PHASE III EXTERIOR ACCESS RESTORATION WORK TO THE
OLDE COLONIAL COURTHOUSE, 3046 MAIN STREET, BARNSTABLE,
MA**

ORDERED: That, pursuant to the provisions of the Community Preservation Act, G.L. c. 44B, the amount of One Hundred and Twenty-Five Thousand Dollars (**\$125,000**), representing a portion of the estimated total project cost of \$372,497, be appropriated and transferred from the amount set aside for Historic Preservation within the Community Preservation Fund for the purpose of funding Phase III exterior access restoration and rehabilitation work on the Olde Colonial Courthouse located at 3046 Main Street, Barnstable, and shown on Town of Barnstable Assessor’s Map 279 as Parcel 071. It is further ordered that the Town Manager is authorized to contract for and expend the appropriation made available for this purpose, subject to oversight by the Community Preservation Committee, and to receive, execute, deliver, and record any written instruments for the purposes set forth herein.

SPONSOR: Mark S. Ells, Town Manager, upon recommendation of the Community Preservation Committee

DATE	ACTION TAKEN
_____	_____
_____	_____

- ___ Read Item
- ___ Motion to Open Public Hearing
- ___ Rationale
- ___ Public Hearing
- ___ Close Public Hearing
- ___ Council Discussion
- ___ Vote

BARNSTABLE TOWN COUNCIL

ITEM# 2023-069
INTRO: 01/19/2023

SUMMARY

TO: Town Council
FROM: Mark S. Ells, Town Manager
THROUGH: Lindsey Counsell, Chair, Community Preservation Committee
DATE: January 05, 2023
SUBJECT: Appropriation Order in the amount of **\$125,000** in Community Preservation Historic Preservation Funds for the Phase III Exterior Access Project at Olde Colonial Courthouse, 3046 Main Street, Barnstable

BACKGROUND: Tales of Cape Cod is requesting **\$125,000** in Community Preservation Historic Preservation Funds for their Phase III Exterior Access Project at the Olde Colonial Courthouse located at 3046 Main Street, Barnstable. This funding request represents a portion of the estimated cost of the \$372,497 project, with \$120,000 of matching funds provided from a Massachusetts Cultural Facilities Fund grant and \$147,497 in additional grants and private donations. At the November 21, 2022, Community Preservation Committee (CPC) meeting, the seven (7) Committee members present voted unanimously by roll call vote to recommend to the Town Council through the Town Manager. The historic preservation and restoration work for this project includes the provision of accessibility to the building by installing a lift leading to a new accessible entrance on the east side of the building and regrading to create an accessible walkway to the building. Because the cost of Phase II restoration of the first-floor framing exceeded 30% of the assessed value of the building, Massachusetts law requires that the building be made compliant with regulations relating to building access for persons with disabilities.

ANALYSIS: The Olde Colonial Courthouse is one of the most historic buildings on Cape Cod. The property is listed in the National Register of Historic Places as a contributing element of the Old King's Highway Historic District and is also listed on the Massachusetts Register of Historic Places and is a contributing property in the Barnstable Village Cultural District. Originally built in 1763, the Olde Colonial Courthouse is the second courthouse constructed in Barnstable County and is one of the only two colonial-era courthouses remaining in the Commonwealth of Massachusetts. The building today provides a rich historical and cultural experience to Cape Cod's residents and visitors, helping to preserve and enhance the character of the region. Additionally, the building provides a venue for multiple programs, meetings and events held by Tales of Cape Cod in collaboration with other local organization. There is an existing Preservation Restriction recorded for the Olde Colonial Courthouse.

FISCAL IMPACT: This appropriation is provided from the set-aside for Historic Preservation within the Community Preservation Fund which has an available balance of \$471,486. There is no impact on the General Fund Operating Budget.

TOWN MANAGER RECOMMENDATION: Mark S. Ells, Town Manager, upon recommendation of the Community Preservation Committee

VOLUNTEER STAFF ASSISTANCE: Lindsey Counsell, Chair, Community Preservation Committee

B. NEW BUSINESS (May be acted upon) (Majority vote)

BARNSTABLE TOWN COUNCIL

**ITEM# 2023-070
INTRO: 01/19/2023**

**2023-070 APPROVING THE CONSERVATION RESTRICTION BETWEEN
BARNSTABLE LAND TRUST (GRANTOR) AND THE COMPACT OF CAPE
COD CONSERVATION TRUSTS (GRANTEE)**

RESOLVED: That, pursuant to G.L. c.184, §§ 31-33, the Town Council hereby approves and authorizes the Town Council President and the Town Manager to sign on behalf of the Town the Conservation Restriction (CR) between Barnstable Land Trust (BLT) (grantor), and The Compact of Cape Cod Conservation Trusts, Inc. (grantee), over approximately 22.41 acres of vacant land in Centerville, as shown on the Town Assessors' Maps as:

- Map 187, Parcel 079, Lot 002 (0 Beech Leaf Island Road); 0.61 acres
- Map 187, Parcel 080, Lot 002 (0 Beech Leaf Island Road); 0.53 acres
- Map 187, Parcel 034 (0 South Main Street); 2.0 acres
- Map 186, Parcel 092, Lot 0 (0 Beech Leaf Island Road); 17.2 acres
- Map 186, Parcel 086, Lot 0 (0 Bay Lane); 1.16 acres and
- Map 186, Parcel 088, Lot 002 (0 Thornberry Road); 0.91 acres.

Said parcels were donated to the BLT for the purposes of preserving open space, water quality, environmental education and rare species habitat. This vote approves the CR in substantially the form attached hereto. Said CR is subject to approval by the Secretary of Energy and Environmental Affairs, who may make minor revisions thereto.

SPONSOR: Nikolas Atsalis, Councilor, Precinct 4

DATE	ACTION TAKEN
_____	_____
_____	_____

- ___ Read Item
- ___ Rationale
- ___ Council Decision
- ___ Vote

GRANTOR: Barnstable Land Trust, Inc.

GRANTEE: The Compact of Cape Cod Conservation Trusts, Inc.

ADDRESS OF PREMISES: 0 Beech Leaf Island Road, 0 Bay Lane, 0 South Main Street, and 0 Thornberry Lane, Barnstable, MA 02632

**FOR GRANTOR'S TITLE SEE: Barnstable County Land Registry District,
Land Court Certificate No. _____; and, Deeds Book
_____ Page _____**

FOR PLAN OF RECORD SEE: Land Court Plan No. 41630A

CONSERVATION RESTRICTION

BARNSTABLE LAND TRUST, INC., Federal tax identification #22-2483963, a Massachusetts charitable corporation with an office at 1540 Main Street, West Barnstable, Barnstable County, Massachusetts 02668, being the sole owner, for its successor and assigns (“Grantor”), acting pursuant to Sections 31, 32, and 33 of Chapter 184 of the Massachusetts General Laws, grants with QUITCLAIM COVENANTS to **THE COMPACT OF CAPE COD CONSERVATION TRUSTS, INC.**, a Massachusetts charitable corporation with an office at 36 Red Top Road, Brewster, Barnstable County, Massachusetts 02631 and a mailing address at P.O. Box 443, Barnstable, Barnstable County, Massachusetts 02630, its permitted successors and assigns (“Grantee”), for nominal consideration, IN PERPETUITY AND EXCLUSIVELY FOR CONSERVATION PURPOSES, the following Conservation Restriction on land located in the Town of Barnstable, Commonwealth of Massachusetts, containing the entirety of multiple registered and unregistered parcels of land totaling approximately 22.41 acres (“Premises”), which Premises is more particularly described in Exhibit A and shown in the attached sketch plan in Exhibit B, both of which are incorporated herein and attached hereto.

I. PURPOSES:

This Conservation Restriction is defined in and authorized by Sections 31-33 of Chapter 184 of the General Laws and otherwise by law. The purpose of this Conservation Restriction is to assure that the Premises will be maintained in perpetuity for conservation purposes, in a natural, scenic and undeveloped condition, and to prevent any use or change that would impair or interfere with its conservation and preservation values (“conservation values”).

The Premises was acquired in fee simple utilizing, in part, the Conversation Land Tax Credit Program authorized under the Chapter 509 Acts of 2008 Sections 1-4 as amended by Chapter 409 Acts of 2010 Sections 4-13 of the Massachusetts General Court.

The conservation values include the following:

- Open Space Protection. The Premises contributes to the protection of the scenic and natural character of the Village of Centerville in the Town of Barnstable and the protection of the Premises will enhance the open-space value of these and nearby lands. The Premises abuts land already conserved, including Town-owned and open space at the northern border, which is part of Centerville Elementary School, and open space owned by the Grantor at the southern border.
- Flood Plain Protection. The entirety of the Premises lies within the 100-year floodplain. The protection of this floodplain will ensure the continued availability of this flood storage during major storm events.

- Soils. The Premises falls almost entirely within an area designated Farmland of Statewide Importance. Additionally, the Premises contains Prime Forest Land, including Prime Forest Land of Local Importance as well as a Local Importance Wetland area.
- Protection of Wildlife Habitat. The Premises contains Massachusetts Department of Environmental Protection (“MassDEP”) Wooded Swamp Deciduous Wetland containing maple and cedar swamps. The Massachusetts State Wildlife Action Plan (“SWAP”) indicates that forested swamp habitats contain up to 42 Species of Greatest Conservation Need. SWAP further notes that maple and cedar swamps are especially important to populations of Marbled Salamander and Blue Spotted Salamander (Chapter 4, p. 218).
- Public Access. Public access to the Premises will be permitted at the Grantor’s discretion. The Premises will be available for passive outdoor recreation, education, and nature study, and will provide a particular benefit to the students of the abutting Centerville Elementary School. The Premises also will add needed close-to-home open space access for Barnstable residents and visitors and will provide needed close-to-home open space access for Brewster residents and visitors.
- BioMap2. The Premises fall almost entirely within a Massachusetts Natural Heritage and Endangered Species Program (“NHESP”) BioMap2 Critical Natural Landscape area containing the Coastal Adaptation Analysis Component. BioMap2, published in 2010, was designed to guide strategic biodiversity conservation in Massachusetts over the next decade by focusing land protection and stewardship on the areas that are most critical for ensuring the long-term persistence of rare and other native species and their habitats, exemplary natural communities, and a diversity of ecosystems. BioMap2 is also designed to include the habitats and species of conservation concern identified in the SWAP.
- Consistency with Clearly Delineated Barnstable County Conservation Policy. Protection of the Premises will assist in achieving Barnstable County conservation goals. In July 1991, the Barnstable County Assembly of Delegates, pursuant to the Cape Cod Commission Act (Chapter 716 of the Acts of 1989), adopted a *Regional Policy Plan* (“RPP”), amended in 1996, 2002, 2009, 2012, and 2018, which provided, *inter alia* (references are to the 2018 RPP):
 - “To ... protect, preserve, or restore the ecological integrity of Cape Cod’s fresh and marine surface water resources” (Water Resources Goal, p. 54);
 - “To protect, preserve, or restore the quality and natural values and functions of inland and coastal wetlands and their buffers” (Wetland Resources Goal, p. 55);
 - “To protect, preserve, or restore wildlife and plant habitat to maintain the region’s natural diversity” (Wildlife and Plant Habitat Goal, p. 55).
 - In reference to this Wildlife and Plant Habitat Goal, the RPP states, “For many years habitat loss due to development has been the primary threat to the region’s habitats” (p. 32);
 - “To conserve, preserve, or enhance a network of open space that contributes to the region’s natural and community resources and systems” (Open Space Goal, pp. 55).
 - In reference to this Open Space Goal, the RPP states, “[t]he open space of the Cape is critical to the health of the region’s natural systems, economy, and population. Open space provides habitat for the region’s diverse species and protection of the region’s drinking water supply” (p. 30); and,

- “To protect and preserve the significant cultural, historic, and archaeological values and resources of Cape Cod” (Cultural Heritage Goal, p. 58).

Granting this Conservation Restriction will advance each of these objectives. The Water Resources Goal and the Wetland Resources Goal will be served because the wetlands contained on the Premises will be protected from further human development in perpetuity. The Wildlife and Plant Habitat Goal will be advanced because the Premises, which constitutes a significant expanse of uninterrupted open space, serves as an important habitat for wildlife and plants. The Open Space Goal will be served because the property will constitute a significant expanse of open space, a majority of which falls within NHESP BioMap2 Critical Natural Landscape, indicating the richness of the Premises’ habitats and the its potential to support ecological systems for the long-term. The Cultural Heritage Goal will be advanced because the ecologically sensitive area contained within the Premises will remain undeveloped in perpetuity, contributing to maintaining the historically rural character of the region.

- Consistency with Clearly Delineated Town of Barnstable Conservation Policy. Protection of the Premises will further the Town of Barnstable’s documented goals regarding conservation of land. The Town outlined its conservation goals in the 2018 update of its *Open Space and Recreation Plan* (1984, amended 1987, 1998, 2005, 2010, and 2018), identifying goals, policies, and actions to guide conservation efforts, among them:
 - Goal 1. “Protect and maintain a maximum amount of open space to enhance environmental protection, recreational opportunities and community character” (pp. 104);
 - Goal 2. “Plan, coordinate and execute open space protection measures that compliment community efforts to protect water supply, protect fresh and marine surface waters, [and] preserve historic, scenic and cultural resources ...” (p. 104);
 - Goal 3. “Provide diverse recreational opportunities and access throughout Barnstable and ensure that the current and future needs of all user groups are met appropriately” (pp. 105); and,
 - Goal 5. “Promote greater coordination and communication about community open space and recreation needs within government and among stakeholder groups in the Town.”

In addition to the goals outlined in the *Open Space and Recreation Plan*, the Town further articulated its objectives regarding conserving land in its 2010 *Comprehensive Plan*, elaborating on the value of preserving wetland areas, stating:

“Wetlands function to ‘polish’ water quality effectively by retaining nutrients and sediments, by storing and attenuating floodwaters, and by providing fish and wildlife habitat. Many significant open space vistas are provided by wetlands. The greatest conflict in wetland protection in Barnstable arises from development pressure on private property” (Chapter 2, p. 2).

The *Comprehensive Plan* also articulated a goal to “[p]revent loss or degradation of critical wildlife plant habitat, minimize the impact of new development on wildlife and plant habitat, maintaining existing populations of species diversity, and maintain areas which will support wildlife’s natural breeding, feeding and migration patterns” (Chapter 2, p. 10).

Moreover, in 1981, the Town of Barnstable adopted a Conservation Restriction Program consisting of policies and guidelines, in particular and *Open Space Policy*, approved by the Town Council, Assessors, and Conservation Commission, which encourages the use of conservation restrictions in perpetuity to protect natural resources in accordance with the purposes of the *Open Space and Recreation Plan*, and which further specified that purposes of a conservation restriction could include the following:

- preserve scenic view;
- preserve open space;

- to protect a trail;
- preserve important natural habitats of fish, wildlife or plants; and,
- limit or prevent construction on land of natural resource value.

For reasons previously stated above, implementation of this Conservation Restriction will advance each of these goals articulated by the Town.

- Consistency with Clearly Delineated Federal Conservation Policy. Protection of the Premises meets the definition of “conservation purposes” as defined in 26 CFR 1.170A-14(d)(1), because its conservation would: protect the land for outdoor recreation by the general public; reserve the land for education regarding the natural world; protect wildlife and wetland habitats; and it would contribute to the preservation of open space because it will constitute a significant expanse of undisturbed open space and is proximate to several other parcels already conserved.
- Wetlands Protection. The entirety of the Premises constitutes a MassDEP Wooded Swamp Deciduous Wetland, containing maple and cedar swamp wetlands. This Conservation Restriction will ensure that this critical wetland area is permanently protected from further human development.

These and other conservation values of the Premises, as well as its current uses and state of improvement, are described in a Baseline Documentation Report (“Baseline Report”) prepared by Grantee with the cooperation of the Grantor, consisting of maps, photographs, and other documents and on file with the Grantee and referenced herein. The Baseline Report (i) is acknowledged by Grantor and Grantee to be a complete and accurate representation of the condition and values of the Premises as of the date of this Conservation Restriction, (ii) is intended to fully comply with applicable Treasury Regulations, and (iii) is intended to serve as an objective information baseline for subsequent monitoring of compliance with the terms of this Conservation Restriction as described herein. Notwithstanding the foregoing, the parties may utilize any evidence of the condition of the Premises at the time of this grant other than the Baseline Report, should the Baseline Report be unavailable or if it does not adequately address the issues presented.

II. PROHIBITED ACTS AND USES, EXCEPTIONS THERETO, AND PERMITTED USES

A. Prohibited Acts and Uses

Subject to the exceptions set forth herein, the Grantor will not perform or allow others to perform the following acts and uses which are prohibited on, above, and below the Premises:

- (1) Constructing, placing or allowing to remain any temporary or permanent building, tennis court, landing strip, mobile home, swimming pool, asphalt or concrete pavement, sign, fence, billboard or other advertising display, wind turbine, antenna, utility pole, tower, solar panel, solar array, conduit, line or other temporary or permanent structure or facility on, above or under the Premises;
- (2) Mining, excavating, dredging or removing from the Premises of soil, loam, peat, gravel, sand, rock or other mineral resource or natural deposit or otherwise making topographical changes to the area;
- (3) Placing, filling, storing or dumping of soil, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, tree and other vegetation cuttings generated off-site, waste or other substance or material whatsoever or the installation of underground storage tanks;
- (4) Cutting, removing or otherwise destroying trees, grasses or other vegetation;

- (5) Activities detrimental to drainage, flood control, water conservation, water quality, erosion control, soil conservation, wildlife habitat, or archaeological conservation;
- (6) Hunting, trapping, or camping;
- (7) Use, parking or storage of vehicles including motorcycles, mopeds, all-terrain vehicles, trail bikes, or any other motorized vehicles on the Premises except for vehicles necessary for public safety (i.e., fire, police, ambulance, other government officials) in carrying out their official duties or as necessary for the mobility impaired;
- (8) Subdivision or conveyance of a part or portion of the Premises alone, or division or subdivision of the Premises (as compared to conveyance of the Premises in its entirety which shall be permitted), and no portion of the Premises may be used towards building or development requirements on this or any other parcel.
- (9) The use of the Premises for business, residential or industrial use, or commercial recreation;
- (10) Any other use of the Premises or activity which is inconsistent with the purpose of this Conservation Restriction or which would impair its conservation values.

B. Reserved Rights and Exceptions

The Grantor reserves the right to conduct or permit the following activities and uses on the Premises, but only if such uses and activities do not impair the conservation values or purposes of this Conservation Restriction:

- (1) Vegetation Management. The selective minimal removing of brush, pruning and cutting to prevent, control or remove hazards, disease, insect or fire damage, or to preserve the present condition of the Premises, including vistas as documented in the Baseline Report, woods roads, fence lines and trails and meadows;
- (2) Non-Native or Nuisance Species. The removal of non-native or invasive species, the interplanting of native species, and the control of species in a manner that minimizes damage to surrounding, non-target species and preserves water quality;
- (3) Wildlife Habitat Improvement. With the prior written approval of the Grantee, measures designed to restore native biotic communities, or to maintain, enhance or restore wildlife, wildlife habitat, or rare or endangered species including selective planting of native trees, shrubs and plant species;
- (4) Pest Control. With the prior written approval of the Grantee, trapping and removal of animals for pest control purposes;
- (5) Archaeological Investigations. Conducting archaeological activities, including without limitation archaeological research, surveys, excavation and artifact retrieval, but only in accordance with an archaeological field investigation plan, which plan shall also address restoration following completion of the archaeological investigation, prepared by or on behalf of the Grantor and approved in advance of such activity, in writing, by the Massachusetts Historical Commission State Archaeologist (or appropriate successor official) and by the Grantee. A copy of the results of any such investigation on the Premises is to be provided to the Grantee;
- (6) Trails. The marking, clearing and maintenance of existing trails as shown in the Baseline Report. With the prior written approval of the Grantee, the construction of new trails or the

relocation or alteration of existing trails, provided that any construction, relocation, or alteration results in trails that are no wider than six (6) feet;

- (7) Right to Maintain Boardwalk and Install Resting Benches.
 - a. The Grantor reserves the right to maintain, replace (in situ) and use the existing wooden elevated boardwalk to Thacher's Island;
 - b. The Grantor reserves the right to install several resting benches for enjoyment by the public, provided such installation causes no more than minimal disturbance on the Premises and does not negatively impact its conservation values;
- (8) Signs. The erection, maintenance and replacement of signs with respect to trespass, trail access, identity and address of the occupants, sale of the Premises, the Grantee's interest in the Premises, any gift, grant, or other applicable source of support for the conservation of the Premises, the Reserved Rights, and the protected conservation values;
- (9) Fences. With the prior written approval of the Grantee, the installation and, thereafter without the prior written approval of the Grantee, the maintenance, of open-faced (i.e., sight-pervious) fences, such as wooden split rail, for property boundary delineation, safety reasons, and trail demarcation, so long as the dimensions and design of said fences do not impede free wildlife passage;
- (10) Parking. The right of the Grantor to park no more than two (2) cars on the layout of Beech Leaf Island Road;
- (11) Outdoor Passive Recreational Activities. Members of the public are permitted to conduct non-commercial, passive recreational uses of the Premises during daylight hours, subject to reasonable regulation by the Grantor. Passive outdoor recreation activities may include walking, jogging, cross-country skiing, bird watching, hiking, wildlife observation, bicycling, photography, fishing, sketching, painting, and other similar activities that do not conflict with the conservation values and that are permitted by law. Horseback riding, bicycling, and other non-pedestrian access may be limited per the Grantor's rules (see Section IV) due to wetlands, wildlife habitat, and erosion concerns;
- (12) Site Restoration. Any work undertaken in conjunction with the Reserved Rights described in this Paragraph II.B. shall seek to minimize disturbance to the conservation values and other natural features within the Premises that may be impacted as a result of exercising of any of the Reserved Rights described herein. Upon completion of any site work performed in conjunction with the Reserved Rights described in this Paragraph II.B., any disturbed areas shall be restored substantially to the conditions with respect to soil material, grade, and vegetated ground cover as documented in the Baseline Report, as applicable, or in conformance with the conditions with respect to soil material, grade, and vegetated ground cover that existed prior to said work, if said work is done in any area not documented in the Baseline Report;
- (13) Permits, Regulations, Laws. The exercise of any right reserved by Grantor under this Paragraph II.B. shall be in compliance with zoning, the Wetlands Protection Act, and all other applicable federal, state and local laws, rules, regulations, and permits. The inclusion of any reserved right requiring a permit from a public agency does not imply that the Grantee or the Commonwealth takes any position whether such permit should be issued; and,
- (14) Best Management Practices. The exercise of any right reserved by Grantor under this Paragraph II.B shall follow, when available and if applicable, established, up to date, and regionally-applicable Best Management Practices or similar standards developed by a governmental agency or other entity with known expertise in the area of practice and designed to protect the natural features potentially affected by the action(s).

C. Notice and Approval.

Whenever notice to or approval by Grantee is required, Grantor shall notify Grantee, by a method requiring proof of receipt, in writing not less than sixty (60) days prior to the date Grantor intends to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable and any other material aspect of the proposed activity in sufficient detail to permit the Grantee to make an informed judgment as to its consistency with the purposes of this Conservation Restriction. Where Grantee's approval is required, Grantee shall grant or withhold approval in writing within sixty (60) days of receipt of Grantor's request. Grantee's approval shall not be unreasonably withheld, but shall only be granted upon a showing that the proposed activity shall not impair the purposes of this Conservation Restriction.

Subject to any applicable law or regulation, failure of Grantee to respond in writing within sixty (60) days shall be deemed to constitute approval by Grantee of the request as submitted, so long as the request sets forth the provisions of this section relating to deemed approval after sixty (60) days in the notice, the requested activity is not prohibited herein, and the activity will not impair the conservation values or purposes of this Conservation Restriction.

III. LEGAL REMEDIES OF THE GRANTEE

A. Legal and Injunctive Relief.

The rights hereby granted shall include the right to enforce this Conservation Restriction by appropriate legal proceedings and to obtain injunctive and other equitable relief against any violations, including, without limitation, relief requiring restoration of the Premises to their condition prior to the time of the injury complained of (it being agreed that the Grantee will have no adequate remedy at law). The rights hereby granted shall be in addition to, and not in limitation of, any other rights and remedies available to the Grantee for the enforcement of this Conservation Restriction. Grantee agrees to cooperate for a reasonable period of time prior to resorting to legal means in resolving issues concerning violations provided Grantor ceases objectionable actions and Grantee determines there is no ongoing diminution of the conservation values of the Conservation Restriction. Prior to resorting to legal means to enforce any violations of this Conservation Restriction, the Grantee shall first notify the Grantor and request the Grantor to remedy the violation. The Grantor shall cease the violation immediately upon receipt of notice of the violation and make a good faith effort to remedy the violation. If the violation is not remedied within sixty (60) days of receipt of notice but the Grantor has complied with its obligations under the preceding sentence, then the parties shall make a good faith effort to mediate the dispute

before the Grantee commences litigation. If the Grantor has failed to comply with its obligations under this paragraph and the violation has not been remedied within sixty (60) days of receipt of notice, the Grantee may commence litigation without engaging in mediation.

Grantee shall not, however, have the right to bring an action against Grantor with respect to a violation of this Conservation Restriction by trespassers or other third persons whose entry on the Premises is not authorized or not voluntarily acquiesced in by Grantor; Grantor agrees that Grantor will not voluntarily acquiesce in any violation of this Conservation Restriction by trespassers or such other third persons; and Grantor further agrees that Grantor will make reasonable efforts to deter such activities and to remedy the violation and will cooperate with Grantee to enforce this Conservation Restriction against trespassers and such other third persons.

Grantor covenants and agrees to reimburse to Grantee all reasonable costs and expenses (including reasonable counsel fees) incurred in enforcing this Conservation Restriction or in taking reasonable measures to remedy, abate or correct any violation thereof, provided that a violation of this Conservation Restriction is acknowledged by Grantor or determined by a court of competent jurisdiction to have

occurred. In the event of a dispute over the boundaries of the Conservation Restriction, Grantor shall pay for a survey and to have the boundaries permanently marked.

B. Non-Waiver.

Enforcement of the terms of this Conservation Restriction shall be at the discretion of Grantee. Any election by the Grantee as to the manner and timing of its right to enforce this Conservation Restriction or otherwise exercise its rights hereunder shall not be deemed or construed to be a waiver of such rights.

C. Disclaimer of Liability

By acceptance of this Conservation Restriction, the Grantee does not undertake any liability or obligation relating to the condition of the Premises pertaining to compliance with and including, but not limited to, hazardous materials, zoning, environmental laws and regulations, or acts not caused by the Grantee or its agents.

D. Acts Beyond the Grantor's Control

Nothing contained in this Conservation Restriction shall be construed to entitle the Grantee to bring any actions against the Grantor for any injury to or change in the Premises resulting from causes beyond the Grantor's control, including but not limited to fire, flood, storm and earth movement, or from any prudent action taken by the Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Premises resulting from such causes. In the event of any such occurrence, the Grantor and Grantee will cooperate in the restoration of the Premises, if desirable and feasible.

IV. ACCESS

The Grantor hereby grants to the Grantee, or its duly authorized agents or representatives, the right to enter the Premises (i) after reasonable notice and at reasonable times and in a reasonable manner, for the purpose of inspecting the Premises to determine compliance with or to enforce this Conservation Restriction; and, (ii) after sixty (60) days prior written notice, except in an emergency in which case notice shall be given as soon as is practicable, to take any and all actions with respect to the Premises as may be necessary or appropriate, with or without order of court, to remedy, abate or enforce any violation hereof unless the Grantor has prior to the expiration of said sixty (60) days given written notice to the Grantee reasonably addressing all alleged violations and setting forth a reasonable plan to remedy any such alleged violation and has made reasonable efforts to cease the activity or to begin remediation.

The Grantor grants access to the Premises to the general public and agrees to take no action to prohibit or discourage access to and use of the Premises by the general public, but only for daytime use and only as described in Paragraph II.B.10 provided that such agreement by Grantor is subject to the Grantor's reserved right to establish reasonable rules, regulations, and restrictions on such permitted recreational use by the general public for the protection of the purposes and conservation values of this Conservation Restriction. Grantor has the right to control, limit, or prohibit by posting and other reasonable means activities or uses of the Premises not authorized in Paragraph II.B.10. The Grantor's right to grant public access across the Premises is subject to the restrictions described in this Conservation Restriction. Any public use which is permitted by the terms of this Conservation Restriction constitutes permission to use the Premises for purposes described in Section 17C of Chapter 21 of the Massachusetts General Laws and the Grantor and Grantee hereto benefit from exculpation from liability to the extent provided in such section. The Grantee may require the Grantor to post the Premises against any use that may result in rutting or erosion or other damage to the natural resources of the Premises.

V. EXTINGUISHMENT

A.If circumstances arise in the future such as render the purpose of this Conservation Restriction impossible to accomplish, this Conservation Restriction can only be terminated or extinguished, whether in whole or in part, by a court of competent jurisdiction under applicable law after review and approval by the Massachusetts Secretary of Energy and Environmental Affairs. If any change in conditions ever gives rise to extinguishment or other release of the Conservation Restriction under applicable law, then Grantee, on a subsequent sale, exchange, or involuntary conversion of the Premises, shall be entitled to a portion of the proceeds in accordance with Paragraph V.B., subject, however, to any applicable law which expressly provides for a different disposition of the proceeds and after complying with the terms of any gift, grant, or funding requirements. Grantee shall use its share of the proceeds in a manner consistent with the conservation purpose set forth herein.

B.Proceeds. Grantor and Grantee agree that the donation of this Conservation Restriction gives rise to a real property right, immediately vested in the Grantee, with a value that is equal to ten percent (10%) of the fair market value of the unrestricted Premises. For the purposes of this paragraph, said proportionate value shall remain constant.

C.Grantor/Grantee Cooperation Regarding Public Action. Whenever all or any part of the Premises or any interest therein is taken by public authority under power of eminent domain or other act of public authority, then the Grantor and the Grantee shall cooperate in recovering the full value of all direct and consequential damages resulting from such action. All related expenses incurred by the Grantor and the Grantee shall first be paid out of any recovered proceeds, and the remaining proceeds shall be distributed between the Grantor and Grantee in accordance with Paragraph V.B., after complying with the terms of any law, gift, grant, or funding requirements. If a less than fee interest is taken, the proceeds shall be equitably allocated according to the nature of the interest taken. The Grantee shall use its share of the proceeds like a continuing trust in a manner consistent with the conservation purposes of this grant.

VI. DURATION & ASSIGNABILITY

A.Running of the Burden. The burdens of this Conservation Restriction shall run with the Premises in perpetuity, and shall be enforceable against the Grantor and the successors and assigns of the Grantor holding any interest in the Premises.

B.Execution of Instruments. The Grantee is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Conservation Restriction; the Grantor, on behalf of itself and its successors and assigns, appoints the Grantee their attorney-in-fact to execute, acknowledge and deliver any such instruments on its behalf. Without limiting the foregoing, the Grantor and its successors and assigns agree themselves to execute any such instruments upon request.

C.Running of the Benefit. The benefits of this Conservation Restriction shall run to the Grantee, shall be in gross and shall not be assignable by the Grantee, except in the following instances:

As a condition of any assignment, the Grantee shall require that the purpose of this Conservation Restriction continues to be carried out; that the assignee is not an owner of the fee in the Premises, and the assignee, at the time of the assignment, qualifies under Section 170(h) of the Internal Revenue Code of 1986, as amended, and applicable regulations thereunder, and is a donee eligible to receive this Conservation Restriction under Section 32 of Chapter 184 of the Massachusetts General Laws. Any assignment will comply with Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, if applicable.

VII. SUBSEQUENT TRANSFERS

The Grantor agrees to incorporate by reference the terms of this Conservation Restriction in any deed or other legal instrument which grants any interest in all or a portion of the Premises, including a leasehold

interest and to notify the Grantee not less than twenty (20) days prior to the execution of such transfer. Failure to do any of the above shall not impair the validity or enforceability of this Conservation Restriction. Any transfer will comply with Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, if applicable.

The Grantor shall not be liable for violations occurring after their ownership. Liability for any acts or omissions occurring prior to any transfer and liability for any transfer if in violation of this Conservation Restriction shall survive the transfer. Any new owner shall cooperate in the restoration of the Premises or removal of violations caused by prior owner(s) and may be held responsible for any continuing violations.

VIII. ESTOPPEL CERTIFICATES

Upon request by the Grantor, the Grantee shall, within thirty (30) days execute and deliver to the Grantor any document, including an estoppel certificate, which certifies the Grantor's compliance or non-compliance with any obligation of the Grantor contained in this Conservation Restriction.

IX. NON MERGER

The parties intend that any future acquisition of the Premises shall not result in a merger of the Conservation Restriction into the fee. The Grantor agrees that it will not grant, and the Grantee agrees that it will not take title, to any part of the Premises without having first assigned this Conservation Restriction to a non-fee owner that is qualified under Section 170(h) of the Internal Revenue Code of 1986, as amended, and applicable regulations thereunder and is eligible to receive this Conservation Restriction under Section 32 of Chapter 184 of the Massachusetts General Laws in order to ensure that merger does not occur and that this Conservation Restriction continues to be enforceable by a non-fee owner.

X. AMENDMENT

If circumstances arise under which an amendment to or modification of this Conservation Restriction would be appropriate, Grantor and Grantee may jointly amend this Conservation Restriction; provided that no amendment shall be allowed that will affect the qualification of this Conservation Restriction or the status of Grantee under any applicable laws, including Section 170(h) of the Internal Revenue Code of 1986, as amended, or Sections 31-33 of Chapter 184 of the Massachusetts General Laws. Any amendments to this Conservation Restriction shall occur only in exceptional circumstances. The Grantee will consider amendments only to correct an error or oversight, to clarify an ambiguity, or where there is a net gain in conservation value. All expenses of all parties in considering and/or implementing an amendment shall be borne by the persons or entity seeking the amendment. Any amendment shall be consistent with the purposes of this Conservation Restriction, shall not affect its perpetual duration, shall be approved by the Secretary of Energy and Environmental Affairs and if applicable, shall comply with the provisions of Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, and any gifts, grants or funding requirements. Any amendment shall be recorded in the Barnstable County Registry of Deeds.

XI. EFFECTIVE DATE

This Conservation Restriction shall be effective when the Grantor and the Grantee have executed it, the administrative approvals required by Section 32 of Chapter 184 of the Massachusetts General Laws have been obtained, and it has been recorded in a timely manner in the Barnstable County Registry of Deeds.

XII. NOTICES

Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage pre-paid, addressed as follows:

To Grantor: Barnstable Land Trust, Inc.
1540 Main Street
West Barnstable, MA 02668

To Grantee: The Compact of Cape Cod Conservation Trusts, Inc.
P.O. Box 443
Barnstable, MA 02630

or to such other address as any of the above parties shall designate from time to time by written notice to the other or, if notice is returned to sender, to an address that is reasonably ascertainable by the parties.

XIII. GENERAL PROVISIONS

A. Controlling Law. The interpretation and performance of this Conservation Restriction shall be governed by the laws of the Commonwealth of Massachusetts.

B. Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Conservation Restriction shall be liberally construed in favor of the grant to affect the purpose of this Conservation Restriction and the policy and purposes of Sections 31, 32, and 33 of Chapter 184 of the Massachusetts General Laws. If any provision in this instrument is found to be ambiguous, any interpretation consistent with the purpose of this Conservation Restriction that would render the provision valid shall be favored over any interpretation that would render it invalid.

C. Severability. If any provision of this Conservation Restriction or the application thereof to any person or circumstance is found to be invalid, the remainder of the provision of this Conservation Restriction shall not be affected thereby.

D. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to this Conservation Restriction and supersedes all prior discussions, negotiations, understandings or agreements relating to the Conservation Restriction, all of which are merged herein.

XIV. MISCELLANEOUS

A. Pre-Existing Public Rights. Approval of this Conservation Restriction pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws by any municipal officials and by the Secretary of Energy and Environmental Affairs is not to be construed as representing the existence or non-existence of any pre-existing rights of the public, if any, in and to the Premises, and any such pre-existing rights of the public, if any, are not affected by the granting of this Conservation Restriction.

B. Subordination. The Grantor shall record at the appropriate Registry of Deeds simultaneously with this Conservation Restriction all documents necessary to subordinate any mortgage, promissory note, loan, lien, equity credit line, refinance assignment of mortgage, lease, financing statement or any other agreement which gives rise to a surety interest affecting the Premises.

C. Attached hereto and incorporated herein by reference are the following:

Signature pages:

Grantor – Barnstable Land Trust, Inc.

Grantee Acceptance – The Compact of Cape Cod Conservation Trusts, Inc.

Approval by Town Council of the Town of Barnstable
Approval by Town Manager of the Town of Barnstable
Approval of the Secretary of Energy and Environmental Affairs.

Exhibits:

Exhibit A: Legal Description of Premises

Exhibit B: Sketch Plan of Premises

Exhibit C: Town Council Order

WITNESS our hands and seals this ____ day of January 2023,

GRANTOR:

BARNSTABLE LAND TRUST, INC.

By: _____
Leigh Townes

Its: President, duly authorized

By: _____
Jill McCleary

Its: Treasurer, duly authorized

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss:

On this day of January 2023, before me, the undersigned notary public, personally appeared Leigh Townes, President of Barnstable Land Trust, Inc., and Jill McCleary, Treasurer of Barnstable Land Trust, Inc., and proved to me through satisfactory evidence of identification which was personal knowledge to be the persons whose names are signed on the proceeding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose on behalf of the corporation.

Notary Public: Mark H. Robinson
My Commission Expires: 8 July 2027

ACCEPTANCE OF GRANT

This Conservation Restriction from Barnstable Land Trust, Inc., was accepted by The Compact of Cape Cod Conservation Trusts, Inc., this _____ day of January 2023.

By: _____
Leonard W. Johnson

Its: President, duly authorized

By: _____
Henry Lind

Its: Treasurer, duly authorized

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss:

On this day of January 2023, before me, the undersigned notary public, personally appeared Leonard W. Johnson, President of The Compact of Cape Cod Conservation Trusts, Inc., and Henry Lind, Treasurer of The Compact of Cape Cod Conservation Trusts, Inc., and proved to me through satisfactory evidence of identification which was Personal knowledge to be the persons whose names are signed on the proceeding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose.

Mark H. Robinson, Notary Public
My Commission Expires: 8 July 2027

APPROVAL OF TOWN COUNCIL

At a public meeting duly held on _____ 2023, the Town Council of the Town of Barnstable, Massachusetts, voted to approve the foregoing Conservation Restriction from Barnstable Land Trust Inc., to The Compact of Cape Cod Conservation Trusts, Inc., in the public interest pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws and hereby approves said Conservation Restriction.

**TOWN OF BARNSTABLE
TOWN COUNCIL**

Matthew P. Levesque, President, duly authorized

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss:

On this day of _____ 2023, then personally appeared the above-named Matthew P. Levesque, the person whose name is signed on the document and proved to me through satisfactory evidence of identification, which was personal knowledge of identity, and who being by me duly sworn did say that he is the President of the Town Council of the Town of Barnstable, the municipal corporation named in the foregoing instrument; that he is duly authorized to act on behalf of said corporation; and he acknowledged the foregoing instrument to be the free act and deed of said municipal corporation.

Notary Public:

My Commission Expires:

APPROVAL OF TOWN MANAGER

The undersigned, Town Manager of the Town of Barnstable, Massachusetts hereby approves the foregoing Conservation Restriction from the Barnstable Land Trust, Inc., to the Compact of Cape Cod Conservation Trusts, Inc., in the public interest pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws.

**TOWN OF BARNSTABLE
TOWN MANAGER**

Mark Ells, duly authorized

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss. _____, 2023

Then personally appeared the above-named Mark Ells and proved to me through satisfactory evidence of identification, which was personal knowledge of identity, to be the person whose name is signed on the document, and acknowledged the foregoing instrument to be his free act and deed, before me.

Notary Public
My commission expires:

**APPROVAL BY SECRETARY OF ENERGY AND ENVIRONMENTAL AFFAIRS
COMMONWEALTH OF MASSACHUSETTS**

The undersigned, Secretary of Energy and Environmental Affairs of the Commonwealth of Massachusetts, hereby certifies that the foregoing Conservation Restriction from Barnstable Land Trust, Inc., to The Compact of Cape Cod Conservation Trusts, Inc., has been approved in the public interest pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws.

Dated: _____, 2023

Secretary of Energy and Environmental Affairs

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss:

On this day of , 2023, before me, the undersigned notary public, personally appeared _____, and proved to me through satisfactory evidence of identification which was _____ to be the person whose name is signed on the proceeding or attached document, and acknowledged to me that she signed it voluntarily for its stated purpose.

Notary Public:

My Commission Expires:

EXHIBIT A

Legal Description of the Premises

Certain parcels of land situated in Barnstable (Village of Centerville), Massachusetts, shown on the Town of Barnstable Assessors Maps 186 and 187, and totaling 22.41 acres of registered and unregistered land, and further bounded and described as follows:

Registered Land

Two (2) certain parcels of land situated in Barnstable, in the County of Barnstable, and Commonwealth of Massachusetts bounded and described as follows:

LOT 1 and LOT 2
LAND COURT PLAN NO. 41630

**PROPERTY ADDRESSES:0 Beech Leaf Island Road, Centerville, Massachusetts 02632
0 Beech Leaf Island Road, Centerville, Massachusetts 02632**

Containing 0.53 and 0.61 acres, respectively, according to assessing records.

For title see Certificate of Title No. _____.

Unregistered Land

PARCEL I:

Certain parcels of land situated in Barnstable (Centerville), Barnstable County, Massachusetts, shown on the Town of Barnstable Assessors Maps 186 and 187, so-called “cedar swamp” or “Great Cedar Swamp,” more particularly bounded and described as follows:

Beginning at the southwest corner of Lot 4 on Land Court Plan 41630-A; thence
Easterly along a line bearing N 82° 48’ 22” W a distance Two Hundred and Seventy-Three and 01/100 (273.01’) along the southern boundary of Lot 4 on Land Court Plan 41630-A to the southwest corner of Lot 5 on Land Court Plan 41630-A; thence,
Northeasterly and Easterly along the edge of upland on the southern boundary of Lot 5 on Land Court Plan 41630-A to the southwest corner of Lot 6 on Land Court Plan 41630-A; thence,
Southeasterly along the edge of upland on the southern boundary of Lot 6 on Land Court Plan 41630-A to the southwest corner of Lot 7 on Land Court Plan 41630-A; thence,
Southerly along the edge of upland on the southern boundary of Lot 7 on Land Court Plan 41630-A to a point in the range of land owned now or formerly of Christopher M. Lothrop (Deed 33750 Page 78); thence,

Southerly along the edge of upland in the range of said Lothrop a distance of One Hundred and Seventy-Seven (177') feet, more or less to point; thence,

Southwesterly along the edge of upland in the range of said Lothrop a distance of Twenty-Seven and 96/100 (27.96') feet, more or less to a steel rod in 16495-B; thence,

Westerly,
Southwesterly,
Southeasterly, and
Easterly along the cedar swamp owned by the Grantor described hereinbelow in Parcel II, Beech Leaf Island, so-called, to the northwest corner of the lot marked as "A.M. 186 Parcel 49, John Greene" on Plan Book 611, Page 58; thence,

Southeasterly along a line bearing S 20° 32' 14" E a distance of Three Hundred Twenty (320') feet, more or less, to the edge of upland; thence,

Southwesterly along the edge of upland in the range of land now or formerly of Edmund E. Schmegner (Deeds Book 20906 Page 283) to land now or formerly of Maria Eftimiades (Deeds Book 17488 Page 184); thence,

Southwesterly along the edge of upland a distance of Fifty-Two (52) feet, more or less, in the range of said Eftimiades to a ditch in the northeast corner of land now or formerly of Amanda Desroches (Deeds Book 28163 Page 95) shown as Lot 2 on Plan Book 205 Page 61 (Fr.1); thence,

Southwesterly along a line bearing N 66° 31' 50" E a distance of Two Hundred Fifty-One and 11/100 (251.11') feet to the corner of a ditch located at the northwest corner of Lot 1 on said Plan Book 205 Page 61 (Fr. 1); thence,

Westerly,
Southwesterly, and
Southerly along the edge of upland in the range of land now or formerly of Samir David (Deeds Book 33441 Page 19), a distance of Two Hundred and Ninety-Five (295') feet, more or less, to a ditch in land now or formerly of Jason Gomes et al (Deeds Book 32885 Page 128) at the northeast corner of Lot 4 shown on Plan Book 363 Page 67; thence,

Westerly along a ditch bearing N 86° 17' 50" E a distance of One Hundred Forty-Eight and 64/100 (148.64") feet to a point; thence,

Southwesterly along a line bearing N 50° 08' 10" E a distance of One Hundred Forty-Four and 71/100 (144.71') feet and Sixty-Seven and 00/100 (67.00') feet to a point in the range of land now or formerly of Vincent Bradley et ux (Deeds Book 9913 Page 13); thence,

Westerly in the swamp along a line bearing S 76° 57' 10" E a distance of Four Hundred and Six and 33/100 (406.33') feet to a point at the northwest corner of Lot 3 on said Plan Book 363 Page 67; thence,

Westerly in the swamp along a line bearing S 63° 28' 50" E as shown on Plan Book 338 Page 39 to an iron pipe at the southeast corner of Lot 21 on Land Court Plan 41594-A (Sh. 4); thence,

Northeasterly along the eastern boundary of said Lot 21 on a line bearing S 34° 22' 11" W a distance of Three Hundred Thirty-Three (333') feet, more or less, to the end of upland as shown on said Land Court Plan 41594-A (Sh. 4); thence,

Northeasterly along the edge of upland of Lot 21 as shown on said Land Court Plan 41594-A (Sh. 4) to its intersection with the southern boundary of Lot 20 on said said Land Court Plan 41594-A (Sh. 4); thence,

Northeasterly and Northerly along the edge of upland of Lot 20 as shown on said Land Court Plan 41594-A (Sh. 4) to its intersection with the western boundary of Lot 18 on said said Land Court Plan 41594-A (Sh. 4); thence,

Easterly and Northerly along the edge of upland of Lot 18 as shown on said Land Court Plan 41594-A (Sh. 4) to its intersection with the eastern boundary of Lot 17 on said Land Court Plan 41594-A (Sh. 4); thence,

Northerly along the edge of upland of Lot 17 as shown on Land Court Plan 41594-A (Sh. 3) to its intersection with the eastern boundary of Lot 16 on said Land Court Plan 41594-A (Sh. 3); thence,

Northerly along the edge of upland of Lot 16 as shown on said Land Court Plan 41594-A (Sh. 3) to its intersection the layout of Beech Leaf Island Road on said Land Court Plan 41594-A (Sh. 3); thence,

Easterly along the layout of Beech Leaf Island Road on said Land Court Plan 41594-A (Sh. 3) to the western boundary of Lot 15 on said Land Court Plan 41594-A (Sh. 3); thence,

Southeasterly and Northeasterly along the edge of upland of Lot 15 as shown on Land Court Plan 41594-A (Sh. 3) to its intersection with the southern boundary of Lot 2 on Land Court Plan 41630-A thence,

Easterly in the swamp along a line bearing due east a distance of One Hundred Eight-Eight (188') feet, more or less, to the point of beginning.

Parcel I Street Address: 0 Beech Leaf Island Road, (Centerville), Town of Barnstable

Meaning and intending to include within this description of Parcel I:

1. Town of Barnstable Tax Map 186, Parcel 92,
(16.55 acres wetland, 0 Beech Leaf Island Road, Centerville, Town of Barnstable)

and,

2. Parcel 19A as shown on Petitioner's Plan 40391-A-2(Sh. 2) of May 19, 1982, prepared for Silvia & Silvia Associates, Inc. and recorded in the Barnstable County Registry of Deeds.
(0.91 acres wetland; Tax Map 186 Parcel 88-2; 0 Thornberry Lane, Centerville, Town of Barnstable);

and,

3. Parcel 20A as shown on Petitioner's Plan 40391-A-2(Sh. 2) of May 19, 1982, prepared for Silvia & Silvia Associates, Inc. and recorded in the Barnstable County Registry of Deeds. (0.65 acres wetland, no Tax ID, no street address, part of 0 Beech Leaf Island Road, Centerville, Town of Barnstable);

and,

4. Tax Map 186 Parcel 86
(1.16 acres wetland; 0 Bay Lane, Centerville, Town of Barnstable).

The total acreage of Parcel I is $16.55 + 0.91 + 0.65 + 1.16 = \underline{19.27 \text{ acres wetland}}$.

Together with a right of way by vehicle and foot over Beech Leaf Island Road, and the right to use it for which private streets are ordinarily used from Bay Lane, to the granted premises all in common with others entitled thereto.

Subject to and with the benefit of all rights, rights of way, reservations, restrictions, appurtenances, and easements insofar as the same are in force and applicable.

Meaning and intending to convey the premises described in Deed from Melvina Crosby Herberger a/k/a Melvina C. Herberger to Silvia & Silvia Associates, Inc., recorded in Barnstable County Registry of Deeds in Deeds Book 3491, Page 212, and in Deed from Silvia & Silvia Associates, Inc. to School Street Realty Nominee Trust recorded in Barnstable County Registry of Deeds in Deeds Book 9549, Page 340. See also deed recorded to RONALD J. SILVIA and FLOYD J. SILVIA in Deeds Book _____ Page _____.

PARCEL II:

A certain parcel of land situated in Barnstable (Centerville), Barnstable County, Massachusetts, shown on the Town of Barnstable Assessors Map 187, and further described as "Beech Leaf Island," so-called, shown as Town of Barnstable Assessor's Map 187, Parcel 34, consisting of approximately 2.0 acres, according to assessors' records, more particularly bounded and described as follows:

Beginning	at the northeast corner of Beech Leaf Island, so-called, at a steel rod located at the northern corner of Lot 2 on Land Court Plan 16495-B; thence,
N 25° 29' 00" E	a distance of Fifty and 23/100 (50.23') feet in range of said Lot 2 on Land Court Plan 16495-B to a point; thence,
N 22° 48' 10" E	a distance of Eighty-Three and 31/100 (83.31') feet in range of said Lot 2 on Land Court Plan 16495-B to a steel rod as shown on said plan; thence,
Westerly	along a line bearing S 85° 29' 50"E as shown on a plan recorded in Plan Book 611 Page 58, a distance of Ninety-Seven and 60/100 (97.60') feet to the northwest corner of the lot marked as "A.M. 186 Parcel 49, John Greene" on said plan; thence,
Westerly, Northwesterly, Northeasterly, Easterly, and	

Southeasterly along the cedar swamp owned by the Grantor described hereinabove in Parcel I to the point of beginning.

Together with a right of way by vehicle and foot over Beech Leaf Island Road, and the right to use it for which private streets are ordinarily used from Bay Lane, to the granted premises via a 20-foot wide easement extending along the eastern boundary of Lot 4 on Land Court Plan 41630-A all in common with others entitled thereto.

Subject to and with the benefit of all rights, rights of way, reservations, restrictions, appurtenances, and easements insofar as the same are in force and applicable.

Meaning and intending to convey the premises described in Deed from Melvina Crosby Herberger a/k/a Melvina C. Herberger to Siliva & Silvia Associates, Inc., recorded in Barnstable County Registry of Deeds in Deeds Book 3491, Page 212, and in Deed from Silvia & Silvia Associates, Inc. to School Street Realty Nominee Trust recorded in Barnstable County Registry of Deeds in Deeds Book 9549, Page 340. See also deed recorded to RONALD J. SILVIA and FLOYD J. SILVIA in Deeds Book _____ Page _____.

Street Address: 0 South Main Street, (Centerville), Town of Barnstable

For title, see Deed in the Barnstable County Registry of Deeds in Book _____, Page ____.

Town of Barnstable Assessor's Map Information:

- Map 187, Parcel 079, Lot 002 (0 Beech Leaf Island Road);
- Map 187, Parcel 080, Lot 002 (0 Beech Leaf Island Road);
- Map 187, Parcel 034 (0 South Main Street);
- Map 186, Parcel 092, Lot 0 (0 Beech Leaf Island Road);
- Map 186, Parcel 086, Lot 0 (0 Bay Lane); and
- Map 186, Parcel 088, Lot 002 (0 Thornberry Road)

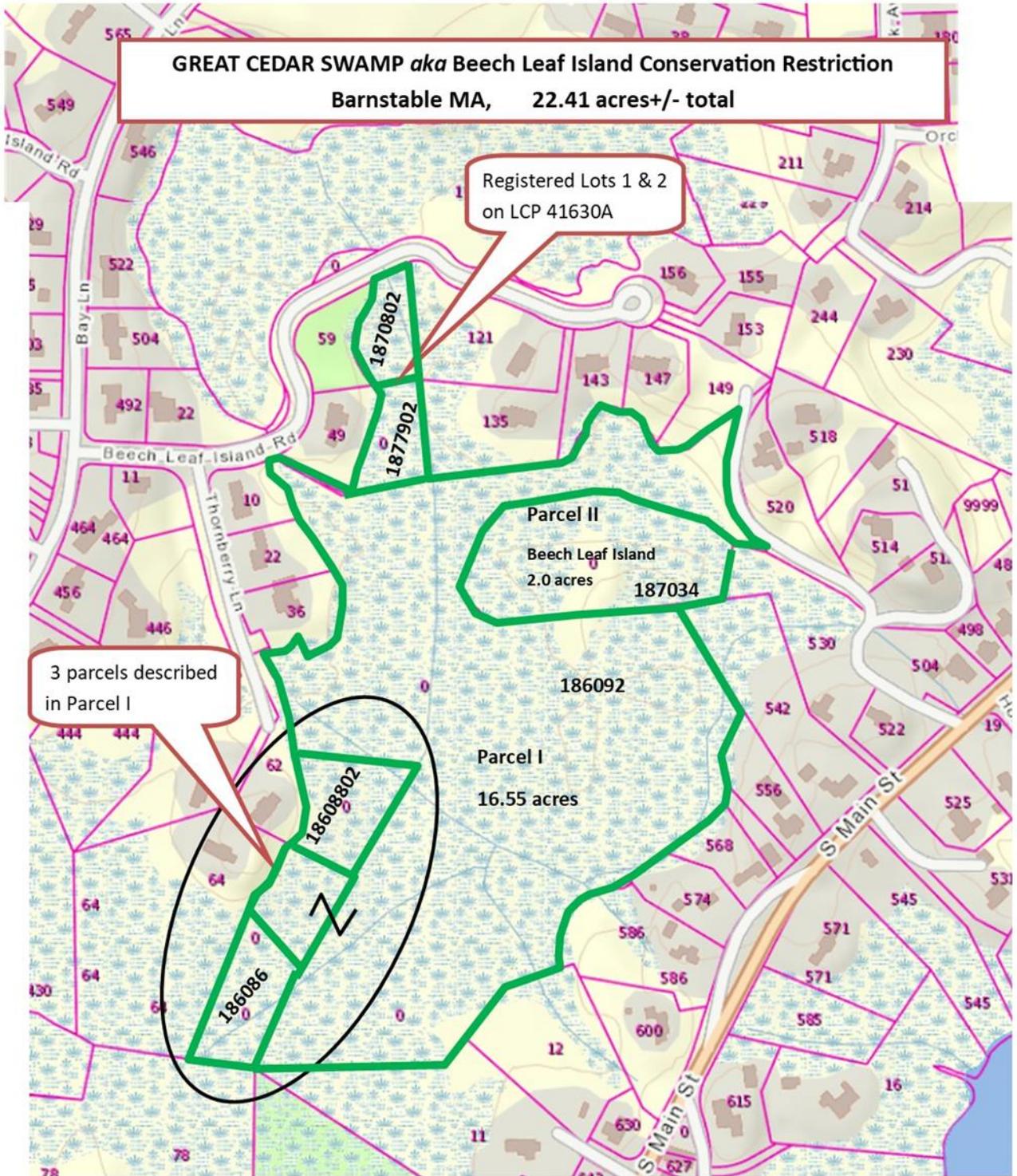


EXHIBIT C

TOWN COUNCIL ORDER

BARNSTABLE TOWN COUNCIL

ITEM# 2023-070
INTRO: 01/19/2023

SUMMARY

TO: Town Council
FROM: Kathleen Connolly, Assistant Town Attorney
DATE: January 19, 2023
SUBJECT: Conservation Restriction on land owned by the Barnstable Land Trust (BLT) to be held by The Compact of Cape Cod Conservation Trusts over approximately 22.41 acres of vacant land in Centerville as shown on Town Assessors' Maps as:

Map 187, Parcel 079; Lot 002 (0 Beech Leaf Island Road); 0.61 acres
Map 187, Parcel 080; Lot 002 (0 Beech Leaf Island Road); 0.53 acres
Map 187, Parcel 034; (0 South Main Street); 2.0 acres
Map 186, Parcel 092; Lot 0 (0 Beech Leaf Island Road); 17.2 acres
Map 186, Parcel 086; Lot 0 (0 Bay Lane); 1.16 acres and
Map 186, Parcel 088; Lot 002 (0 Thornberry Road) 0.91 acres

said parcels were donated to the BLT for the purposes of preserving open space, water quality, environmental education and rare species habitat.

BACKGROUND: All Conservation Restrictions (CRs) held by non-profits must be approved by the Town (and the State) in which the property sits under G.L.c.184, §§31-33. This item has been placed on the agenda for the Council's approval of a CR to be granted by Barnstable Land Trust and to be held by The Compact of Cape Cod Conservation Trusts over approximately 22.41 acres of land off Bay Lane in Centerville to be donated by the current owners to the BLT. The current owners, Ronald J. Silvia and Floyd Silvia, have been deemed eligible to receive a Conservation Land Tax Credit (CLTC) for the donation of this land to Barnstable Land Trust, with the stipulation that a conservation restriction be placed on the land.

ANALYSIS: This conservation restriction preserves unbuildable upland and wetland known historically as the Great Cedar Swamp of Centerville. It will enhance the nearby 10-acre woodland donated to the Town by the Silvia family for outdoor education at the Centerville Elementary School. It will also preserve important wildlife habitat and protect freshwater wetlands. This land is important to protect for plant and animal habitat, public access and recreation, to protect forested open space, and link to other conservation land.

This proposed conservation restriction conforms to the Open Space Policy of the Town, adopted in 1981, which "encouraged...grants of conservation restrictions" which yielded "benefits to the Town," and furthers the Town of Barnstable's Updates to its Open Space & Recreation Plan. Specifically, the Barnstable Land Trust Conservation Restriction offers the following public benefits and will:

- prevent disturbance of wetlands,
- preserve open space,
- link to other conservation land,
- preserve important natural habitats of fish, wildlife or plants,
- prevent construction on land of natural resource value,
- provide public access for passive recreation,
- provide a connection to a boardwalk to enhance existing outdoor education and recreation near the Centerville Elementary School.

Barnstable Land Trust wishes to restrict the use of the 22.41 undeveloped acres of its property to conservation purposes and limited passive recreation. The State has determined that this conservation restriction is required for the prior landowners (Silvia) to receive a State Conservation Land Tax Credit for the donation of the property to Barnstable Land Trust. The tax credit program requires that a non-profit hold a conservation restriction to protect the land for conservation in perpetuity.

APPROVALS: The Conservation Commission voted its support on November 23, 2021. The Land Acquisition and Preservation Committee voted to recommend the Conservation Restriction to Town Council on October 4, 2021. The Town Council voted its support on December 2, 2021. Delays in approving the conservation restriction by the state due to staffing shortages allowed for the addition of one parcel to the land donation and conservation restriction, which constitutes a substantive change and therefore requires a new vote by Town Council. The parcels were deeded to Barnstable Land Trust on December 22, 2022.

FISCAL IMPACT: There is no fiscal impact.

STAFF SUPPORT: Kathleen Connolly, Assistant Town Attorney

B. NEW BUSINESS (May be acted upon) (Majority vote)

BARNSTABLE TOWN COUNCIL

**ITEM# 2023-071
INTRO: 01/19/2023**

**2023-071 APPROVAL OF THE APPOINTMENTS TO THE APPOINTMENTS
COMMITTEE**

RESOLVED: That the Town Council does hereby approve the Town Council President’s appointments of Councilors Nikolas Atsalis, Jeffrey Mendes, Paula Schnepf, Tracy Shaughnessy and Gordon Starr as members of the standing Appointments Committee of the Town Council.

SPONSOR: Matthew P. Levesque, Town Council President

DATE	ACTION TAKEN
_____	_____
_____	_____

- Read Item
- Rationale
- Council Discussion
- Vote

BARNSTABLE TOWN COUNCIL

ITEM# 2023-071
INTRO: 01/19/2023

SUMMARY

TO: Town Council
FROM: Matthew P. Levesque, Council President
DATE: January 19, 2023
SUBJECT: Approval of the Appointments to the Appointments Committee

BACKGROUND: The Appointments Committee is a standing committee of the Town Council which consists of five members. Section 37-3 of Chapter 37 of the Code of the Town of Barnstable provides as follows:

The Councilors serving on the Appointments Standing Committee will be appointed by the President of the Council from a list of names of those Councilors who wish to serve on the Appointments Committee. The total Council will be apprised of the names of those Councilors who are willing to serve. The full Council will have the final vote on all appointments to the Appointments Committee. The following Councilors have indicated their interest in serving on the Appointments Committee:

Kris Clark; Nikolas Atsalis; Jeffrey Mendes; Tracy Shaughnessy; Paula Schnepf; Gordon Starr; and Paul Neary.

After consideration and subject to approval of the full Council, I am appointing the following Councilors to the Appointments Committee: Nikolas Atsalis; Jeffrey Mendes; Paula Schnepf; Tracy Shaughnessy; and Gordon Starr.

STAFF SUPPORT: Karen L. Nober, Town Attorney