

Town of Barnstable  
Town Council  
James H. Crocker Jr. Hearing Room  
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Original posted  
on 8/15/2023.  
Updated on  
8/17/2023 to  
add Item 2024-  
033 (Letter of  
Support)

## TOWN COUNCIL MEETING AGENDA

August 17, 2023

7:00pm

The August 17, 2023 Meeting of the Barnstable Town Council shall be conducted in person at 367 Main Street 2<sup>nd</sup> 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](mailto:Cynthia.lovell@town.barnstable.ma.us)

1. The meeting will be televised live via Xfinity Channel 8 or High Definition Channel 1072 or may be accessed via the Government Access Channel 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/81026857423> Meeting ID: 810 2685 7423/ 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 (Pre-Recorded)

#### 7. ACT ON PUBLIC SESSION MINUTES

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

#### Workshop Discussion of Town Provided Health Insurance

#### Presentation from Local Comprehensive Planning Committee members on Phase One of the Local Comprehensive Plan

#### 9. ORDERS OF THE DAY

- A. Old Business
- B. New Business

#### 10. ADJOURNMENT

**NEXT REGULAR MEETING: September 07, 2023**

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**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.

**A. OLD BUSINESS (May be acted upon) (Majority vote)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2024-001**

**INTRO: 07/20/2023, 08/17/2023**

**2024-001 AUTHORIZATION TO REALLOCATE THE REMAINING \$36,714 OF COMMUNITY PRESERVATION HISTORIC PRESERVATION FUNDS GRANTED UNDER APPROPRIATION ORDER 2022-035 FOR THE RESTORATION WORK AT STURGIS LIBRARY TO BE USED FOR THE REPLACEMENT OF THE FAILING CLIMATE CONTROL SYSTEM AT STURGIS LIBRARY**

**RESOLVED:** That the remaining portion in the amount of Thirty-Six Thousand Seven Hundred Fourteen Dollars (**\$36,714**) in Community Preservation Historic Preservation Funds appropriated under Town Council Order 2022-035 for restoration work at Sturgis Library be reallocated for the replacement of the failing climate control system located at Sturgis Library, 3090 Main Street/Route 6A, Barnstable

**SPONSOR:** Mark S. Ells, Town Manager

DATE	ACTION TAKEN
<u>07/20/2023</u>	<u>Continued to 08/17/2023</u>
_____	_____

- \_\_\_\_ Read Item
- \_\_\_\_ Rationale
- \_\_\_\_ Council Discussion
- \_\_\_\_ Vote

# BARNSTABLE TOWN COUNCIL

ITEM# 2024-001  
INTRO: 07/20/2023, 08/17/2023

## SUMMARY

**TO:** Town Council  
**FROM:** Mark S. Ells, Town Manager  
**THROUGH:** Lindsey Counsell, Chair, Community Preservation Committee on behalf of the Community Preservation Committee  
**DATE:** July 20, 2023  
**SUBJECT:** Authorization to reallocate the remaining **\$36,714** of Community Preservation Historic Preservation Funds granted under appropriation order 2022-035 for the restoration work at Sturgis Library to be used for the replacement of the failing climate control system at Sturgis Library

**BACKGROUND:** On November 4, 2021, the Barnstable Town Council appropriated \$165,000 in Community Preservation Historic Preservation Funds for restoration of the Sturgis Library building. The completed restoration work included in the Community Preservation Application cost less than the original budget, resulting in \$36,714 of unspent grant funds.

At the June 26, 2023 Community Preservation Committee meeting, the 8 members present voted unanimously to support and recommend Sturgis Library's request to use the remaining portion of their Community Preservation Historic Preservation grant in the amount of \$36,714 for replacement of their failing climate control system.

**ANALYSIS:** The use of Community Preservation Historic Preservation funds for replacement of the climate control system is an eligible use of Community Preservation Act funds.

**FISCAL IMPACT:** Approval of this request will result in the remaining appropriation being expended for the requested purpose; otherwise, the funds will revert to the Community Preservations Fund's reserve balance.

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

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

**A. OLD BUSINESS (Public Hearing) (Roll Call 2/3 Full Council)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2024-003  
INTRO: 07/20/2023, 08/17/2023**

**2024-003 APPROPRIATION AND LOAN ORDER IN THE AMOUNT OF \$1,400,000 FOR THE PURPOSE OF FUNDING SEWER LATERAL RISER CONSTRUCTION**

**ORDERED:** That the sum of **\$1,400,000** be appropriated for the purpose of funding sewer lateral riser construction, including the payment of costs incidental or related thereto; and that to meet this appropriation, that the Town Treasurer, with the approval of the Town Manager, is authorized to borrow \$1,400,000 under and pursuant to M.G.L. c. 44, §§7 or 8, M.G.L. c. 29, or pursuant to any other enabling authority, and to issue bonds or notes of the Town therefor; and that in accordance with M.G.L. c. 44, §20, any premium received by the Town upon the sale of any bonds or notes authorized by this order, less any such premium applied to the payment of the costs of issuance of such bonds and notes, may be applied to pay such project costs, thereby reducing the amount authorized to be borrowed by this order by a like amount; and that the Town Manager is authorized to contract for and expend the appropriation made available for these purposes.

**SPONSOR:** Mark S. Ells, Town Manager

DATE	ACTION TAKEN
<u>07/20/2023</u>	<u>Referred to Public Hearing 08/17/2023</u>

\_\_\_\_\_

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

# BARNSTABLE TOWN COUNCIL

ITEM# 2024-003  
INTRO: 07/20/2023, 08/17/2023

## SUMMARY

**TO:** Town Council  
**FROM:** Mark S. Ells, Town Manager  
**THROUGH:** Daniel W. Santos, P.E., Director of Public Works  
**DATE:** July 20, 2023  
**SUBJECT:** Appropriation and Loan Order in the amount of **\$1,400,000** for purpose of funding Sewer Lateral Riser Construction

**BACKGROUND:** The Town has completed sewer construction of the Strawberry Hill Road Sewer Expansion Project. The project was designed and executed in coordination with the Vineyard Wind project. As a result of the sizeable Vineyard Wind duct bank, it was necessary to install the sewer laterals to the properties deeper than they are traditionally constructed. Concerns of the additional cost to homeowners to connect to the deeper laterals were identified. Department of Public Works (DPW) has identified the installation of riser pipes as the technical resolution to improve convenience and reduce the cost of connection.

**ANALYSIS:** Upon order to connect, property owners along the sewer expansion project route will be required to hire a contractor to connect their property to the sewer lateral installed for their property. Deeper laterals have the technical benefit of maximizing a property's ability to connect via gravity, ultimately limiting the number of properties that will need grinder pumps. However, connecting to deeper laterals is expected to increase cost to the homeowner and may limit the number of contractors that can perform the work. For these reasons, it was determined that installing riser pipes on the laterals would improve convenience and reduce the cost of connection. DPW sought a proposal from the project contractor and felt the price was too high, so will be competitively bidding this work with the goal of minimizing the cost of this effort.

**FINANCIAL IMPACT:** This project will be funded with a bond issue. Future debt service payments will be included in the Sewer Enterprise Fund Operating Budgets with a corresponding transfer from dedicated sewer expansion program funds so the ratepayers are not impacted by this expense. If determined to be eligible, State Revolving Loan funding (SRF) and corresponding principal subsidy from both SRF and the Cape and Islands Water Protection Fund will be pursued.

**TOWN MANAGER RECOMMENDATION:** Mark S. Ells, Town Manager, recommends approval of this appropriation order.

**STAFF ASSISTANCE:** Daniel W. Santos, P.E., Director of Public Works

**A. OLD BUSINESS (May be acted upon) (Majority vote)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2024-004**  
**INTRO: 07/20/2023, 08/17/2023**

**2024-004 APPOINTMENTS TO A BOARD/COMMITTEE/COMMISSION**

**RESOLVED:** That the Town Council appoints the following individuals to a multiple-member Board/Committee/Commission: **Historical Commission:** Robert Frazee, as a Regular Member to a term expiring 06/30/2026; **Human Services Committee:** Sheree Kay, as a regular member to a term expiring 06/30/2024

**SPONSORS:** Appointments Committee Members: Councilor Paula Schnepf, Chair; Councilor Tracy Shaughnessy; Councilor Jeffrey Mendes; Councilor Nikolas Atsalis; and Councilor Gordon Starr

DATE	ACTION TAKEN
<u>07/20/2023</u>	<u>Referred to Second Reading 08/17/2023</u>

\_\_\_\_\_

- \_\_\_ Read Item
- \_\_\_ Rationale
- \_\_\_ Council Discussion
- \_\_\_ Vote

**A. OLD BUSINESS (May be acted upon) (Majority vote)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2024-005**

**INTRO: 07/20/2023, 08/17/2023**

**2024-005 REAPPOINTMENTS TO A BOARD/COMMITTEE/COMMISSION**

**RESOLVED:** That the Town Council reappoints the following individuals to a multiple-member Board/Committee/Commission: **Human Services Committee:** Steven Xiarhos as a regular member to a term expiring 06/30/2026; **Hyannis Main Street Waterfront Historic District Commission:** Kevin Matthews as an alternate member to a term expiring 06/30/2026; **Waterways Committee:** Paul Everson as a regular member to a term expiring 06/30/2026

**SPONSORS:** Appointments Committee Members: Councilor Paula Schnepf, Chair; Councilor Tracy Shaughnessy; Councilor Jeffrey Mendes; Councilor Nikolas Atsalis; and Councilor Gordon Starr

DATE	ACTION TAKEN
<u>07/20/2023</u>	<u>Referred to Second Reading 08/17/2023</u>

\_\_\_\_\_

- \_\_\_ Read Item
- \_\_\_ Rationale
- \_\_\_ Council Discussion
- \_\_\_ Vote

**A. OLD BUSINESS (Public Hearing) (Roll Call 2/3 Full Council)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2024-010  
INTRO: 07/20/2023, 08/17/2023**

**2024-010 APPROPRIATION AND LOAN ORDER IN THE AMOUNT OF \$75,000 FOR TEMPORARY REPAIRS TO ROSEWOOD LANE IN THE VILLAGE OF COTUIT PURSUANT TO TEMPORARY REPAIRS TO PRIVATE ROADS PROGRAM FOR CERTAIN PRIVATE WAYS**

**ORDERED:** That the sum of **\$75,000** be appropriated for the purposes of making temporary repairs to Rosewood Lane, a private road in the village of Cotuit within the Town of Barnstable, and that to meet this appropriation, the Town Treasurer, with the approval of the Town Manager, be authorized to borrow \$75,000 under and pursuant to Chapter 174 of the Acts of 1994, as amended by Chapter 350 of the Acts of 2014, or pursuant to any other enabling authority, and to issue bonds or notes of the Town therefor; and that in accordance with M.G.L. c. 44 §20, any premium received by the Town upon the sale of any bonds or notes authorized by this Order, less any premium applied to the payment of the costs of issuance of such bonds and notes, may be applied to pay such project costs, thereby reducing the amount authorized to be borrowed by this Order by a like amount; and that the Town Manager is authorized to contract for and expend the appropriation made available for these purposes, and for these purposes to assess betterments in accordance with M.G.L. c. 80.

**SPONSOR:** Mark S. Ells, Town Manager

DATE	ACTION TAKEN
<u>07/20/2023</u>	<u>Referred to Public Hearing 08/17/2023</u>

\_\_\_\_\_

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

# BARNSTABLE TOWN COUNCIL

ITEM# 2024-010  
INTRO: 07/20/2023, 08/17/2023

## SUMMARY

**TO:** Town Council  
**FROM:** Mark S. Ells, Town Manager  
**THROUGH:** Daniel W. Santos, P.E., Director, Department of Public Works  
**DATE:** July 20, 2023  
**SUBJECT:** Appropriation and Loan Order in the amount of **\$75,000** for the purpose of funding temporary repairs to Rosewood Lane in the Village of Cotuit pursuant to Temporary Repairs to Private Roads Program for Certain Private Roads

**BACKGROUND:** Chapter 174 of the Acts of 1994, as amended by Chapter 350 of the Acts of 2014, authorized the Town to borrow funds to repair and improve private roads within the Town. Under this Program, the abutters to roads being repaired can be charged betterment assessments for 100% of the actual costs of repairs which they can elect to pay in one lump sum or over a period of up to 20 years (with interest). This road will not be taken by the Town of Barnstable and will remain a private road. A majority of the property abutters to Rosewood Lane in the Village of Cotuit have expressed an interest in having repairs made to their private road and 100% of the abutters have signed a Consent and Acknowledgement Agreement for Betterment Assessment. The proposed work includes a 2 inch asphalt overlay of the roadway.

**FINANCIAL IMPACT:** There is no cost to the Town, as all costs will be recovered by betterments assessed to the abutters. The Town will issue a bond to cover the cost of the repairs and use the revenue collected from the betterment assessments to make the annual loan repayments on the bond.

**TOWN MANAGER RECOMMENDATION:** Mark S. Ells, Town Manager, recommends approval of this appropriation and loan order.

**STAFF ASSISTANCE:** Daniel W. Santos, P.E., Director, Department of Public Works

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

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2024-012  
INTRO: 08/17/2023**

**2024-012 ACCEPTANCE OF THE PROVISIONS OF SECTION 7A OF CHAPTER 32B OF THE MASSACHUSETTS GENERAL LAWS**

**RESOLVED:** That, effective December 1, 2023, the provisions of section 7A of Chapter 32B of the Massachusetts General Laws are hereby accepted by reference as a part of the general ordinances of the Town.

**SPONSOR:** Jennifer L. Cullum, Town Council Vice President

DATE	ACTION TAKEN
_____	_____
_____	_____

- Read Item
- Rationale
- Council Discussion
- Vote

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

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2024-013  
INTRO: 08/17/2023**

**2024-013 DELEGATION OF AUTHORITY AND DETERMINATION UNDER SECTION 19 OF THE CONFLICT OF INTEREST LAW REGARDING PARTICIPATION IN DECISIONS RELATING TO A POTENTIAL INCREASE IN THE TOWN’S PERCENTAGE CONTRIBUTION TO HEALTH INSURANCE COSTS OF ITS EMPLOYEES**

**RESOLVED:** That the Town Council does hereby delegate authority to Town Manager Mark Ells to make decisions in accordance with the provisions of M.G.L. c. 32B, section 7A, relating to a potential increase in the percentage amount of the Town’s contributions to the total monthly cost of contracts of insurance for its employees authorized by sections 3 and 11C of said Chapter 32B, which would result in the Town making payment of more, but not less, than fifty percent of the total monthly cost for such insurance, and determines that the financial interest of Mark Ells in such decisions, as described in Mr. Ells’ disclosure form presented to the Town Council at this meeting in accordance with M.G.L. c. 268A, § 19, is not so substantial as to be deemed likely to affect the integrity of the services which the Town may expect from Mr. Ells in his role as Town Manager, provided that any decision by Mr. Ells to increase the percentage amount of the Town’s monthly insurance costs shall not take effect until on or after December 1, 2023; and further authorizes and directs the President of the Town Council to make such determination on Mr. Ells’ disclosure form on behalf of the Town Council.

**SPONSOR:** Jennifer L. Cullum, Town Council Vice President

DATE	ACTION TAKEN
_____	_____
_____	_____

- \_\_\_ Read Item
- \_\_\_ Rationale
- \_\_\_ Council Discussion
- \_\_\_ Vote

# BARNSTABLE TOWN COUNCIL

ITEM# 2024-012, 2024-013  
INTRO: 08/17/2023

## SUMMARY

**TO:** Members of the Town Council  
**FROM:** Karen L. Nober, Town Attorney  
**DATE:** August 17, 2023  
**SUBJECT:** **ITEMS 2024-012 and 2024-013:** Acceptance of the Provisions of Section 7A of Chapter 32B of the Massachusetts General Laws, Delegation of Authority and Determination Under Section 19 of G.L. c. 268A of the Conflict of Interest Law Regarding Participation in Decisions Relating to a Potential Increase in the Town's Percentage Contribution to Health Insurance Costs

**BACKGROUND:** Section 19 of G.L. c. 268A, the state conflict of interest law, prohibits a municipal employee from participating in a particular matter in which he or she has a financial interest, unless the employee's appointing authority makes a determination that the financial interest is not so substantial as to be deemed likely to affect the integrity of the services which the Town may expect from the employee. Section 19 requires that an employee who wishes to participate in such a matter file a disclosure with the employee's appointing authority of the nature and circumstances of the particular matter and make full disclosure of the employee's financial interest prior to participating. If the appointing authority makes such a determination, then the employee may participate in the matter, notwithstanding his or her financial interest.

The percentage amount of health insurance contributions made by the Town and by its employees, respectively, is currently set by statute at a 50/50 split (G.L. c. 32B, sec. 7). If the Town accepts the provisions of G.L. c. 32B, section 7A, the Town may pay more, but not less, than 50% of the total monthly cost of such insurance for its employees. As set forth in the attached disclosure, Mr. Ells seeks authorization from the Council, consistent with c. 32B, section 7A, to review and potentially increase, if appropriate, the percentage of health insurance contributions made by the Town.

If the Council were to accept section 7A of c. 32B, effective December 1, 2023, and if it were to provide such authorization to Mr. Ells, he would first commence negotiations with the unions and then implement any agreed upon change across the board for all employees of the Town. However, unlike other employee benefits which are not afforded to Town Councilors, many of the members of the Town Council obtain their health insurance through the Town. Accordingly, those Councilors would have a financial interest in any decisions to increase the Town's contribution, thereby decreasing the amount of the employee health insurance contribution, including any decision to authorize Mr. Ells to make such decisions. (Town Councilors are considered "municipal employees" for purposes of the conflict of interest law.) Because Councilors are elected and do not have an appointing authority who can give them permission to participate in this matter, Mr. Ells proposes that any change he makes would not be effective before December 1, 2023, after the next Town election in November 2023. Since all Councilor seats are up for election in November, a decision by Councilors today to authorize Mr. Ells to change the health insurance contributions effective after the upcoming election is not a matter in which the Council members have a reasonably foreseeable financial interest, as there is no way to know who will and will not be re-elected. The proposed vote contemplates that Mr. Ells would make this decision and would

not bring it back to the Council for approval. This is because any such future Council vote would require that there be at least 9 members of the Council (a quorum) who do not get health insurance through the Town. With this in mind, the Council's role in this matter as proposed would be limited to budget approval, since the Council is legally required to approve a budget each year.

It should be noted that these agenda items do not include any changes to the Town's contributions to the monthly costs of retiree health care. Any proposed changes to retiree health care costs will be brought forward separately at a later date, along with any necessary conflict of interest disclosures. We would also need to determine whether any Councilors have a financial interest in any such change, such that they would be prohibited from participating in such matters.

**FINANCIAL IMPACT:** There is no immediate and direct fiscal impact on the Town's operating budget as a result of this action. Any potential change to the health insurance contribution rate would increase the operating costs for the town's future budget and would have to be provided for in future budgets.

**STAFF ASSISTANCE:** Karen L. Nober, Town Attorney; William Cole, Director of Human Resources; Mark Milne, Director of Finance

**DISCLOSURE BY NON-ELECTED MUNICIPAL EMPLOYEE OF FINANCIAL INTEREST  
AND DETERMINATION BY APPOINTING AUTHORITY  
AS REQUIRED BY G. L. c. 268A, § 19**

<b>MUNICIPAL EMPLOYEE INFORMATION</b>	
Name:	Mark S. Ells
Title or Position:	Town Manager
Municipal Agency:	Town of Barnstable
Agency Address:	Town Hall 367 Main Street Hyannis, MA 02601
Office Phone:	508-862-4610
Office E-mail:	Mark.ells@town.barnstable.ma.us
	My duties require me to participate in a particular matter, and I may not participate because of a financial interest that I am disclosing here. I request a determination from my appointing authority about how I should proceed.
<b>PARTICULAR MATTER</b>	
Particular matter  E.g., a judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, or finding.	Please describe the particular matter.  The percentage amount of health insurance contributions made by the Town and by its employees, respectively, is currently set by statute at a 50/50 split. If the Town, acting through its Town Council, accepts the provisions of G.L. c. 32B, section 7A, the Town may pay more, but not less, than 50% of the total monthly cost of such insurance.
Your required participation in the particular matter:  E.g., approval, disapproval, decision, recommendation, rendering advice, investigation, other.	Please describe the task you are required to perform with respect to the particular matter.  I am seeking authorization from the Town Council to allow me to review and potentially increase, if appropriate, the percentage of the monthly health insurance contributions made by the Town for its employees, which would result in the Town paying more, but not less, than 50%. If the Town Council votes to accept the provisions of G.L. c. 32B, sec. 7A, and if they provided such authorization to me, I would first commence negotiations with the unions and then implement any agreed upon change across the board for all employees of the Town. Because a number of the members of the Town Council obtain health insurance through the Town, those members would have a financial interest in any decisions to decrease the health insurance contributions of employees as well as in any decision to authorize me to make such decisions. They would also have a financial interest in any decision to accept section 7A of Chapter 32B. I am, therefore, proposing that any authorization for me to make such decisions require that any change I make not be effective before December 1, 2023, after the next Town election in November 2023, when all Councilor seats are up for election.

	I will also need to make Section 19 determinations for other employees of the Town who may need to assist me in this effort.
<b>FINANCIAL INTEREST IN THE PARTICULAR MATTER</b>	
<b>Write an X by all that apply.</b>	<input checked="" type="checkbox"/> I have a financial interest in the matter. <input type="checkbox"/> My immediate family member has a financial interest in the matter. <input type="checkbox"/> My business partner has a financial interest in the matter. <input type="checkbox"/> I am an officer, director, trustee, partner or employee of a business organization, and the business organization has a financial interest in the matter. <input type="checkbox"/> I am negotiating or have made an arrangement concerning future employment with a person or organization, and the person or organization has a financial interest in the matter.
Financial interest in the matter	Please explain the financial interest and include a dollar amount if you know it.  Any decision I make to increase the percentage amount of the monthly cost that the Town pays for health insurance costs would decrease the monthly amounts that employees, including me, would pay for health insurance, and therefore that is a decision in which I have a financial interest. The dollar amount cannot be determined at this time.
Employee signature:	<i>[Handwritten Signature]</i>
Date:	<i>8/15/2023</i>

**DETERMINATION BY APPOINTING OFFICIAL**

	<b>APPOINTING AUTHORITY INFORMATION</b>
Name of Appointing Authority:	
Title or Position:	
Agency/Department:	
Agency Address:	
Office Phone:	
Office E-mail	
	<b>DETERMINATION</b>

Determination by appointing authority:	As appointing official, as required by G.L. c. 268A, § 19, I have reviewed the particular matter and the financial interest identified above by a municipal employee. I have determined that the financial interest is not so substantial as to be deemed likely to affect the integrity of the services which the municipality may expect from the employee.
Appointing Authority signature:	
Date:	
Comment:	

Attach additional pages if necessary.

The appointing authority shall keep this Disclosure and Determination as a public record.

Form revised February, 2012

**B. NEW BUSINESS (May be acted upon) (Roll Call Majority)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2024-017  
INTRO: 08/17/2023**

**2024-017 AUTHORIZATION TO EXPEND A FISCAL YEAR 2024 911 DEPARTMENT SUPPORT AND INCENTIVE GRANT IN THE AMOUNT OF \$330,026 FROM THE COMMONWEALTH OF MASSACHUSETTS, EXECUTIVE OFFICE OF PUBLIC SAFETY AND SECURITY**

**RESOLVED:** That the Town Council does hereby authorize the Town Manager to contract for and expend a Fiscal Year 2024 911 Department Support and Incentive Grant from the Commonwealth of Massachusetts, Executive Office of Public Safety and Security in the amount of **\$330,026** for the purpose of funding personnel costs and a fifth dispatcher console outfitted by the State 911 Department.

**SPONSOR:** Mark S. Ells, Town Manager

DATE	ACTION TAKEN
_____	_____
_____	_____

- \_\_\_ Read Item
- \_\_\_ Rationale
- \_\_\_ Council Discussion
- \_\_\_ Vote

# BARNSTABLE TOWN COUNCIL

ITEM# 2024-017  
INTRO: 08/17/2023

## SUMMARY

**TO:** Town Council  
**FROM:** Mark S. Ells, Town Manager  
**THROUGH:** Matthew K. Sonnabend, Chief of Police  
**DATE:** August 17, 2023  
**SUBJECT:** Authorization to expend a Fiscal Year 2024 911 Department Support and Incentive Grant in the amount of **\$330,026** from the Commonwealth of Massachusetts, Executive Office of Public Safety and Security

**BACKGROUND:** The Police Department applied for and was awarded a 911 Support and Incentive Grant from the Commonwealth of Massachusetts, executive Office of Public Safety and Security, State 911 Department in the amount of \$330,026.00. The Barnstable Police Department serves as a primary Public Safety Answering Point (PSAP) in that it receives all categories of 911 calls (Fire, Police & Medical Emergency) and then dispatches to the appropriate service according to the type of call. Additionally, Emergency Medical Dispatch continues to be administered by the Barnstable Police Department throughout the duration of the call, in keeping with State 911 regulations. Eligible entities for this grant are primary, regional and regional secondary PSAPS and Regional Emergency Communications Centers (RECC). Additional monies are available under the grant guidelines pertinent to this grant, because the Barnstable Police Department serves as a Primary PSAP and also takes cell phone calls as well as dispatches a clinician. The Barnstable Police Department proposes that this funding be used to fund personnel costs incurred in the operation of the department's 911 Telecommunications Center.

**ANALYSIS:** The acceptance of this grant will allow the Department to place qualified personnel in the communications center in order to provide adequate staffing to that area without incurring undo personnel expenses. As approved in the FY23 personnel budget this grant will fund the base pay and/or overtime of 911 EMD certified civilian dispatchers up to the funding limit of \$330,026.

**FISCAL IMPACT:** This is a reimbursement grant for personnel costs and fifth console implementation. The town must expend the funds upfront and subsequently submit for reimbursement. The elimination of this source of grant funding would have a direct impact on future General Fund budgets, as the cost would still remain a mandatory recurring operational expense and therefore would have to be replaced with general fund revenue. All costs associated with this grant contract must be completed by June 30, 2024.

**TOWN MANAGER RECOMMENDATION:** Mark S. Ells, Town Manager, recommends acceptance of this grant.

**STAFF ASSISTANCE:** Matthew K. Sonnabend, Chief, Barnstable Police; Anne Spillane, Finance and Support Services Director; Lena Bevilacqua, Administrative Assistant to Investigative Services / Police Grant Coordinator

**B. NEW BUSINESS (May be acted upon) (Roll Call Majority)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2024-018  
INTRO: 08/17/2023**

**2024-018 AUTHORIZATION TO EXPEND A FISCAL YEAR 2024 STATE 911 DEPARTMENT TRAINING GRANT IN THE AMOUNT OF \$30,876.66 FROM THE COMMONWEALTH OF MASSACHUSETTS, EXECUTIVE OFFICE OF PUBLIC SAFETY AND SECURITY**

**RESOLVED:** That the Town Council does hereby authorize the Town Manager to contract for and expend a Fiscal Year 2024 State 911 Department Training award in the amount of **\$30,876.66** from the Commonwealth of Massachusetts, Executive Office of Public Safety and Security for the purpose of funding costs associated with the mandatory training of all 911 dispatchers who perform emergency dispatch operations.

**SPONSOR:** Mark S. Ells, Town Manager

DATE	ACTION TAKEN
_____	_____
_____	_____

- Read Item
- Rationale
- Council Discussion
- Vote

# BARNSTABLE TOWN COUNCIL

ITEM# 2024-018  
INTRO: 08/17/2023

## SUMMARY

**TO:** Town Council  
**FROM:** Mark S. Ells, Town Manager  
**THROUGH:** Matthew K. Sonnabend, Chief of Police  
**DATE:** August 17, 2023  
**SUBJECT:** Authorization to expend a Fiscal Year 2024 State 911 Department Training Grant in the amount of **\$30,876.66** from the Commonwealth of Massachusetts, Executive Office of Public Safety and Security

**BACKGROUND:** The Department has been awarded a grant in the amount of **\$30,876.66** relative to our role as a primary Public Safety Answering Point (PSAP) to fund the training and certification of enhanced 911 telecommunicators, including emergency medical dispatch (EMD).

This grant will fund 16 hours each of continuing education courses as required by law in such areas as CPR, EMD Recertification and specialized dispatch training on other topics including active shooter, domestic violence and suicide for 14 telecommunicators. Only telecommunicators who are trained/certified in basic telecommunications and EMD can work in the dispatch area and must complete 16 hours of continuing education annually. The grant will also fund the training costs associated with the initial training of newly hired civilian dispatchers.

**ANALYSIS:** Acceptance of this grant will enable the department to fulfill their training obligations as a primary PSAP as mandated by State 911.

**GRANT DETAIL:** \$30,876.66 will be directed to pay for class fees and personnel costs associated with the training.

**FISCAL IMPACT:** This is a reimbursement grant for all training costs, materials and overtime. The town must expend the funds upfront and subsequently submit for reimbursement. The elimination of this source of grant funding would have a direct impact on future General Fund budgets, as the cost would still remain a mandatory recurring operational expense and therefore would have to be replaced with general fund revenue. All costs associated with this grant contract must be completed by June 30, 2024.

**TOWN MANAGER RECOMMENDATION:** Mark S. Ells, Town Manager, recommends acceptance of this grant.

**STAFF ASSISTANCE:** Matthew K. Sonnabend, Chief, Barnstable Police; Anne Spillane, Finance and Support Services Director; Lena Bevilacqua, Administrative Assistant to Investigative Services / Police Grant Coordinator

**B. NEW BUSINESS (May be acted upon) (Roll Call Majority)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2024-019  
INTRO: 08/17/2023**

**2024-019 AUTHORIZATION TO EXPEND A FISCAL YEAR 2024 STATE 911 DEPARTMENT EMERGENCY MEDICAL DISPATCH GRANT IN THE AMOUNT OF \$17,343.60 FROM THE COMMONWEALTH OF MASSACHUSETTS, EXECUTIVE OFFICE OF PUBLIC SAFETY AND SECURITY**

**RESOLVED:** That the Town Council does hereby authorize the Town Manager to contract for and expend a Fiscal Year 2023 State 911 Department Emergency Medical Dispatch Grant in the amount of **\$17,343.60** from the Commonwealth of Massachusetts, Executive Office of Public Safety and Security for the purpose of funding costs associated with emergency dispatch operations.

**SPONSOR:** Mark S. Ells, Town Manager

DATE	ACTION TAKEN
_____	_____
_____	_____

- Read Item
- Rationale
- Council Discussion
- Vote

# BARNSTABLE TOWN COUNCIL

ITEM# 2024-019  
INTRO: 08/17/2023

## SUMMARY

**TO:** Town Council  
**FROM:** Mark S. Ells, Town Manager  
**THROUGH:** Matthew K. Sonnabend, Chief of Police  
**DATE:** August 17, 2023  
**SUBJECT:** Authorization to expend a Fiscal Year 2024 State 911 Department Emergency Medical Dispatch Grant in the amount of **\$17,343.60** from the Commonwealth of Massachusetts, Executive Office of Public Safety and Security

**BACKGROUND:** This grant will fund an annual software maintenance contract with PowerPhone in the amount of \$319.60; an annual Emergency Medical Dispatch medical director contract with Cape & Islands Emergency Medical Services in the amount of \$6,500; and the costs of 160 hours of overtime to complete quality assurance oversight and call review as required by State 911 in the amount of \$9,764.86. The total value of the grant is \$17,343.60.

**ANALYSIS:** Acceptance of this grant will enable the department to fulfill their obligations as a primary PSAP relative to the performance of Emergency Medical Dispatch, as mandated by State 911.

**FISCAL IMPACT:** This is a reimbursement grant for all contract costs and overtime. The town must expend the funds upfront and subsequently submit for reimbursement. The elimination of this source of grant funding would have a direct impact on future General Fund budgets, as the cost would still remain a mandatory recurring operational expense and therefore would have to be replaced with general fund revenue. All costs associated with this grant contract must be completed by June 30, 2024.

**TOWN MANAGER RECOMMENDATION:** Mark S. Ells, Town Manager, recommends acceptance of this grant.

**STAFF ASSISTANCE:** Matthew K. Sonnabend, Chief, Barnstable Police; Anne Spillane, Finance and Support Services Director; Lena Bevilacqua, Administrative Assistant, Investigative Services / Police Grant Coordinator

**B. NEW BUSINESS (May be acted upon) (Roll Call Majority)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2024-021  
INTRO: 08/17/2023**

**2024-021 AUTHORIZATION TO EXPEND A GRANT IN THE AMOUNT OF \$32,819.95 FROM THE STANTON FOUNDATION FOR CAPITAL IMPROVEMENTS AT THE BARNSTABLE DOG PARK**

**RESOLVED:** That the Town Council does hereby authorize the Town Manager to contract for and expend a grant from the Stanton Foundation in the amount of **\$32,819.95** for the purpose of funding capital improvements at the Barnstable Dog Park.

**SPONSOR:** Mark S. Ells, Town Manager

DATE	ACTION TAKEN
_____	_____
_____	_____

- Read Item
- Rationale
- Council Discussion
- Vote

# BARNSTABLE TOWN COUNCIL

**ITEM# 2024-021**  
**INTRO: 08/17/2023**

## SUMMARY

**TO:** Town Council  
**FROM:** Mark S. Ells, Town Manager  
**THROUGH:** Nina Z. Coleman Director of Natural Resources/Sandy Neck Park Manager  
**DATE:** August 17, 2023  
**SUBJECT:** Authorization to expend a grant in the amount of **\$32,819.95** from the Stanton Foundation for capital improvements at the Barnstable Dog Park

**RATIONALE:** The Stanton Foundation supports areas related to canine research, international and nuclear safety, and informed citizens. Under the canine welfare category, grants support K9 Programs, mobile adoption vans, and dog parks. After satisfying the foundations requirements a check in the amount of \$32,819.95 was graciously granted to the Town of Barnstable for capital improvements to the Barnstable Dog Park.

After having many discussions with local Barnstable Dog Park patrons it was decided that the most popular requests for Capital Improvements were benches on the far inside of the large and small play areas, and for shade structures. After researching all possibilities it was decided that benches with shade structures attached would be the best solution to accommodate these requests.

The Final quote from Belson Outdoors was provided for three Dual Pedestal Canopies with attached benches; thermoplastic coated with powder-coated frame, perforated pattern and in ground mounts in the amount of \$14,819.95. A final quote was also provided by The Town of Barnstable Dept. of Public works Contractor; Paqcon for installation of the three benches in the amount of \$18,000.00. These benches with shade will provide patrons with some relief while they supervise their dogs as they enjoy playtime with other visitors.

**FISCAL IMPACT:** There is no immediate financial impact to the Town's operating budget as a result of accepting this grant. Future maintenance of the capital assets acquired with the grant will be part of the existing operating budget.

**STAFF ASSISTANCE:** Cynthia Sherman, Town of Barnstable Animal Control Officer

**B. NEW BUSINESS (May be acted upon) (Majority Vote)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2024-022  
INTRO: 08/17/2023**

**2024-022 RESOLVE TO APPROVE THE APPOINTMENT OF CHRISTOPHER GONNELLA AS THE DIRECTOR OF COMMUNITY SERVICES FOR THE TOWN OF BARNSTABLE**

**RESOLVED:** That the Town Council, in accordance with Section 10-7(k) (1) of the Barnstable Charter, hereby approves the Town Manager’s appointment of Christopher Gonnella as the Director of Community Services effective August 18, 2023.

**SPONSOR:** Mark S. Ells, Town Manager

DATE	ACTION TAKEN
_____	_____
_____	_____

- Read Item
- Rationale
- Council Discussion
- Vote

**B. NEW BUSINESS (May be acted upon) (Majority Vote)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2024-023  
INTRO: 08/17/2023**

**2024-023 AUTHORIZATION TO EXPEND A FISCAL YEAR 2023 GRANT IN THE AMOUNT OF \$100,000 FROM THE UNITED STATES DEPARTMENT OF AGRICULTURE NATURAL RESOURCES CONSERVATION SERVICE FOR THE EVALUTION AND DESIGN OF LONG POND LOWER CHANNEL FISH PASSAGE IMPROVEMENTS**

**RESOLVED:** That the Town Council does hereby authorize the Town Manager to contract for and expend a Fiscal Year 2023 Grant in the amount of **\$100,000** from the United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) for evaluation and design of the Long Pond Lower Channel Fish Passage Improvements Project.

**SPONSOR:** Mark S. Ells, Town Manager

DATE	ACTION TAKEN
_____	_____
_____	_____

- Read Item
- Rationale
- Council Discussion
- Vote

# BARNSTABLE TOWN COUNCIL

**ITEM# 2024-023**  
**INTRO: 08/17/2023**

## SUMMARY

**TO:** Town Council  
**FROM:** Mark S. Ells, Town Manager  
**THROUGH:** Daniel W. Santos, P.E., Director of Public Works  
**DATE:** August 17, 2023  
**SUBJECT:** Authorization to expend a Fiscal Year 2023 grant in the amount of **\$100,000** from the United States Department of Agriculture Natural Resources Conservation Service for the evaluation and design of Long Pond Lower Channel Fish Passage Improvements

**BACKGROUND:** The Town of Barnstable has been awarded a \$100,000 grant from the United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS). This grant will provide funding for the evaluation and design, totaling up to \$100,000.

**ANALYSIS:** The Long Pond Lower Channel is the portion of the Centerville River that extends from Pine Street to the Centerville River estuary. Anecdotally, this channel was hand dug around the late 1800s for the purposes of providing fish passage into Lake Wequaquet. This portion of the channel is roughly 1,500-ft long with very steep sides and at some points a steep grade that can pose an issue for passing fish. NRCS, working with the Marine and Environmental Affairs staff, view this channel as important for conveying fish into Long Pond and Lake Wequaquet. The funding from NRCS would allow the Town to further evaluate this run and develop designs for any fish passage improvements, where needed. The Natural Resources Conservation Service contacted the Town with funding available to support the project, totaling up to \$100,000. There are no matching funds required for this grant. It is anticipated the additional grant funding from NRCS and other agencies will be pursued to fund future phases of work for this project.

**FINANCIAL IMPACT:** This is a reimbursement grant for \$100,000. The Town must expend the funds upfront and subsequently submit for reimbursement.

**TOWN MANAGER RECOMMENDATION:** Mark S. Ells, Town Manager, recommends approval to contract for and expend this grant.

**STAFF ASSISTANCE:** Daniel W. Santos, P.E., Director of Public Works

**B. NEW BUSINESS (May be acted upon) (Majority Vote)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2024-024  
INTRO: 08/17/2023**

**2024-024 AUTHORIZATION TO EXPEND A FISCAL YEAR 2024 MASSTRAILS GRANT IN THE AMOUNT OF \$300,000 FROM THE COMMONWEALTH OF MASSACHUSETTS FOR PRELIMINARY DESIGN OF THE CAPE COD RAIL TRAIL PHASE 4 EXTENSION IN THE TOWN OF BARNSTABLE**

**RESOLVED:** That the Town Council does hereby authorize the Town Manager to contract for and expend a Fiscal Year 2024 MassTrails Grant award in the amount of **\$300,000** from the Commonwealth of Massachusetts for the purpose of funding the preliminary design of the Cape Cod Rail Trail Phase 4 extension in the Town of Barnstable.

**SPONSOR:** Mark S. Ells, Town Manager

DATE	ACTION TAKEN
_____	_____
_____	_____

- Read Item
- Rationale
- Council Discussion
- Vote

# BARNSTABLE TOWN COUNCIL

ITEM# 2024-024  
INTRO: 08/17/2023

## SUMMARY

**TO:** Town Council  
**FROM:** Mark S. Ells, Town Manager  
**THROUGH:** Daniel W. Santos, P.E., Director, Department of Public Works  
**DATE:** August 17, 2023  
**SUBJECT:** Authorization to expend a Fiscal Year 2024 MassTrails grant in the amount of **\$300,000** from the Commonwealth of Massachusetts for preliminary design of the Cape Cod Rail Trail Phase 4 extension in the Town of Barnstable

**BACKGROUND:** The Town of Barnstable was awarded a \$300,000 MassTrails grant from the Commonwealth of Massachusetts on June 14, 2023. The purpose of this grant is to fund preliminary design services for the Cape Cod Rail Trail Phase 4 extension. This supplements a \$500,000 MassTrails grant awarded to the Town in 2022 for the same purpose.

**ANALYSIS:** The Cape Cod Rail Trail is a 12-foot wide paved shared use path serving pedestrians and bicyclists. Phase 4 is proposed to extend the trail from Mary Dunn Road near the Hyannis Ponds Wildlife Management Area entrance to Service Road at the Barnstable/Sandwich town line, a distance of approximately ten miles. The ultimate goal is to create a continuous regional shared use path spanning the full length of Cape Cod, from the canal to Provincetown.

**FISCAL IMPACT:** The Town is responsible for a 25% local match in the amount of **\$100,000** (calculated based on the total project cost, as required). Previous land acquisition and design expenditures by the Town of Barnstable for the Cape Cod Rail Trail Phase 3 Extension (Old Town House Road in Yarmouth to Mary Dunn Road in Barnstable, currently at 100% design) will be used for the local match. Therefore, there will be no fiscal impact associated with the acceptance of this grant.

**TOWN MANAGER RECOMMENDATION:** Mark S. Ells, Town Manager, recommends approval to expend this grant.

**STAFF ASSISTANCE:** Daniel W. Santos, P.E., Director, Department of Public Works

**B. NEW BUSINESS (Refer to Public Hearing on 09/07/2023)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2024-025  
INTRO: 08/17/2023**

**2024-025 APPROPRIATION ORDER IN THE AMOUNT OF \$141,655 TO  
SUPPLEMENT FUNDING FOR THE DEMOLITION OF THE OSTERVILLE  
RECREATION BUILDING LOCATED AT 93 WEST BAY ROAD, OSTERVILLE**

**ORDERED:** That the amount of **\$141,655** be appropriated and provided from the Capital Trust Fund Reserves the purpose of providing supplemental funding for the demolition of the Osterville recreation building located at 93 West Bay Road, Osterville; and that the Town Manager is authorized to contract for and expend this appropriation for this purpose.

**SPONSOR:** Mark S. Ells, Town Manager

DATE	ACTION TAKEN
_____	_____
_____	_____

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

# BARNSTABLE TOWN COUNCIL

**ITEM# 2024-025**  
**INTRO: 08/17/2023**

## SUMMARY

**TO:** Town Council  
**FROM:** Mark S. Ells, Town Manager  
**DATE:** August 17, 2023  
**SUBJECT:** Appropriation Order in the amount of **\$141,655** to supplement funding for the demolition of the Osterville Recreation Building located at 93 West Bay Road, Osterville, MA

**BACKGROUND:** The Osterville Recreation Building currently lies within the 275-foot outfield of the new Osterville softball field, interfering with the limits of left field. The building was slated to be demolished in 2017 and building conditions since then have further deteriorated. Demolition of this building will allow continued rehabilitation of the site and allow removal of the leaching pit septic system.

**ANALYSIS:** As part of the Fiscal Year 2015 Capital Improvement plan, the Town Council appropriated \$900,444 for the demolition of both the Osterville Bay School and the Osterville recreation building. The project was bid in June, 2017. The base bid included work to demolish the Bay School, while alternate bid pricing included cost to demolish the recreation building. At the request of town leadership at the time only the base bid was awarded as part of the demolition contract, preserving the existence of the recreation building for the time being and demolishing only the Bay School.

Project 16112 expenditures were as follows:

Original appropriation	\$900,444
Demolition of Bay School	\$629,109
Remaining Funds	\$271,335

In June of 2022 the demolition of the recreation building was re-initiated and updated bid documents prepared. Bids for the project were received in July of 2023. The lowest bid price of is \$413,000, which exceeds the funding remaining in the project, thus a budget increase of \$141,665 is needed to supplement existing funding for the project.

**FISCAL IMPACT:** Funding for this appropriation will be provided from the Capital Trust Fund reserves which have a current balance of \$13,352,605.

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

**STAFF ASSISTANCE:** Daniel W. Santos, P.E., Director Department of Public Works;  
Mark Marinaccio, Town Architect

**B. NEW BUSINESS (May be acted upon) (Majority Vote)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2024-026  
INTRO: 08/17/2023**

**2024-026 AUTHORIZATION TO CONTRACT FOR AND EXPEND A FISCAL YEAR 2023  
GRANT IN THE AMOUNT OF \$400,000 FROM THE UNITED STATES  
DEPARTMENT OF AGRICULTURE NATURAL RESOURCES  
CONSERVATION SERVICE FOR THE DESIGN AND CONSTRUCTION OF  
THE ROSA LANE FISH PASSAGE IMPROVEMENTS**

**RESOLVED:** That the Town Council does hereby authorize the Town Manager to contract for and expend a Fiscal Year 2023 Grant in the amount of **\$400,000** from the United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) for design and construction of the Rosa Lane Fish Passage Improvements Project.

**SPONSOR:** Mark S. Ells, Town Manager

DATE	ACTION TAKEN
_____	_____
_____	_____

- Read Item
- Rationale
- Council Discussion
- Vote

# BARNSTABLE TOWN COUNCIL

**ITEM# 2024-026**  
**INTRO: 08/17/2023**

## SUMMARY

**TO:** Town Council  
**FROM:** Mark S. Ells, Town Manager  
**THROUGH:** Daniel W. Santos, P.E., Director of Public Works  
**DATE:** August 17, 2023  
**SUBJECT:** Authorization to contract for and expend a Fiscal Year 2023 grant in the amount of **\$400,000** from the United States Department of Agriculture Natural Resources Conservation Service for the design and construction of the Rosa Lane Fish Passage Improvements

**BACKGROUND:** The Town of Barnstable has been awarded a \$400,000 grant from the United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS). This grant will provide funding for the design and 75% of the construction cost, totaling up to \$400,000. The Town is responsible for the permitting and 25% of construction costs, totaling up to \$225,000.

**ANALYSIS:** NRCS, working with the Marine and Environmental Affairs staff, identified the Rosa Lane Culvert as a point of restriction impacting fish passage. In the FY24-FY28 Capital Improvement Plan, the Town Council voted to fund permitting and design of fish passage improvements to replace the Rosa Lane culvert. The Natural Resources Conservation Service contacted the Town with funding available to support the project, totaling up to \$400,000. The Town is responsible for the permitting and 25% of the construction costs, totaling up to \$225,000. The Town's match funds for this grant were previously appropriated under order 2023-078. It is anticipated that additional grant funding from other agencies will be pursued to offset the Town's required match for this project.

**FINANCIAL IMPACT:** This is a reimbursement grant for \$400,000. The Town must expend the funds upfront and subsequently submit for reimbursement.

**TOWN MANAGER RECOMMENDATION:** The Town Manager recommends approval to contract for and expend this grant.

**STAFF ASSISTANCE:** Daniel W. Santos, P.E., Director of Public Works

**B. NEW BUSINESS (Refer to a Public Hearing on 09/07/2023)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2024-027  
INTRO: 08/17/2023**

**2024-027 APPROPRIATION ORDER IN THE AMOUNT OF \$20,000 AND THE AUTHORIZATION TO EXPEND A GRANT IN THE AMOUNT OF \$72,000 FROM THE NATURAL RESPOURCE CONSERVATION SERVICE FOR THE PURPOSE OF FUNDING STORMWATER IMPROVEMENTS ON CLAMSHELL COVE ROAD**

**ORDERED:** That the amount of **\$20,000** be appropriated and provided from the Capital Trust Fund reserves, representing the local match requirement for a grant from the Natural Resource Conservation Service in the amount of **\$72,000**, and that the Town Manager is authorized to contract for and expend the grant for the purpose of funding the design and construction of Stormwater Improvements on Clamshell Cove Road, including the payment of costs incidental or related thereto.

**SPONSOR:** Mark S. Ells, Town Manager

DATE	ACTION TAKEN
_____	_____
_____	_____

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

# BARNSTABLE TOWN COUNCIL

**ITEM# 2024-027**  
**INTRO: 08/17/2023**

## SUMMARY

**TO:** Town Council  
**FROM:** Mark S. Ells, Town Manager  
**THROUGH:** Daniel W. Santos, P.E., Director of Public Works  
**DATE:** August 17, 2023  
**SUBJECT:** Appropriation Order in the amount of **\$20,000** and Acceptance of a grant from the Natural Resource Conservation Service in the Amount of **\$72,000** for Stormwater Improvements on Clamshell Cove Road

**BACKGROUND:** This project will fund the design and construction of Stormwater improvements within the public roadway near 140 Clamshell Cove Road to improve infiltration of stormwater and reduce direct runoff to Shoestring Bay. The Natural Resources Conservation Service (NRCS) will provide 100% funding for the design (\$18,000) and 75% of the construction costs (\$54,000), for a total of \$72,000. The Town is responsible for 25% of construction costs, or \$18,000. The request is for \$20,000 to provide for contingencies.

**ANALYSIS:** Untreated stormwater can carry excess nutrients and bacteria that degrade water quality in shellfishing areas. The Natural Resources Conservation Service, with Town staff, has identified stormwater inputs to a nearby shellfishing area in Shoestring Bay coming from the public roadway. NRCS contacted the Town with funding available in their current fiscal year budget to fund design and construction work, totaling up to \$72,000. The additional \$20,000 appropriation request is for the purposes of funding the Town's required match for 25% of the total construction cost and other non-applicable expenses related to the project.

**FINANCIAL IMPACT:** This is a reimbursement grant for \$72,000. The Town must expend the funds upfront and subsequently submit for reimbursement. The Town's match funds in the amount of \$20,000 for this project will be provided from the Capital Trust Fund which has an available balance of \$13,352,605.

**TOWN MANAGER RECOMMENDATION:** The Town Manager recommends approval of this appropriation order.

**STAFF ASSISTANCE:** Daniel W. Santos, P.E., Director of Public Works

**B. NEW BUSINESS (Refer to a Public Hearing on 9/7/2023)**

**BARNSTABLE TOWN COUNCIL**

**ITEM # 2024-028  
INTRO: 08/17/2023**

**2024-028 APPROPRIATION ORDER IN THE AMOUNT OF \$130,000 AND THE AUTHORIZATION TO EXPEND A GRANT IN THE AMOUNT OF \$625,000 FROM THE NATURAL RESPOURCE CONSERVATION SERVICE FOR THE PURPOSE OF FUNDING THE LAKE ELIZABETH FISHWAY DESIGN, PERMITTING AND CONSTRUCTION PROJECT**

**ORDERED:** That the amount of **\$130,000** be appropriated and provided from the Capital Trust Fund reserves, representing the local match requirement for a grant from the Natural Resource Conservation Service in the amount of **\$625,000**, and that the Town Manager is authorized to contract for and expend this appropriation and grant for the purpose of funding the Lake Elizabeth fishway design, permitting and construction project, including the payment of costs incidental or related thereto.

**SPONSOR:** Mark S. Ells, Town Manager

DATE	ACTION TAKEN
_____	_____
_____	_____

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

# BARNSTABLE TOWN COUNCIL

**ITEM # 2024-028**  
**INTRO: 08/17/2023**

## SUMMARY

**TO:** Town Council  
**FROM:** Mark S. Ells, Town Manager  
**THROUGH:** Daniel W. Santos, P.E., Director of Public Works  
**DATE:** August 17, 2023  
**SUBJECT:** Appropriation order in the amount of **\$130,000** and the Authorization to expend a grant in the amount of **\$625,000** from the Natural Resource Conservation Service for the purpose of funding the Lake Elizabeth Fishway Design, Permitting and Construction Project

**BACKGROUND:** This project will fund the design, permitting, and construction of fish passage improvements into Lake Elizabeth and Red Lily Pond for the purposes of improving the conveyance of river herring into and out of the pond. NRCS approached the Town about providing funding to support the project. This project will be completed in partnership with the United States Department of Agriculture Natural Resources Conservation Service (NRCS). NRCS will provide funding for the design and 75% of the construction costs, totaling up to \$625,000. The Town is responsible for the permitting and 25% of construction costs, totaling up to \$255,000.

**ANALYSIS:** The Department of Marine Fisheries has labeled Lake Elizabeth as a historic fish passage spawning area in need of fish passage restoration. In the FY24-FY28 Capital Improvement Plan, the Town Council voted to fund permitting and design of fish passage improvements to restore fish passage into this historic herring spawning area. The Natural Resources Conservation Service has contacted the Town with funding available to support the project, totaling up to \$625,000. The Town is responsible for the permitting and 25% of construction costs, totaling up to \$255,000. The additional \$130,000 appropriation request is for the purposes of funding the Town's required match for 25% of the anticipated total construction cost.

**FINANCIAL IMPACT:** This is a reimbursement grant for \$625,000. The Town must expend the funds upfront and subsequently submit for reimbursement. The Town's match funds for this project will be provided from the Capital Trust Fund which has an available balance of \$13,352,605.

**TOWN MANAGER RECOMMENDATION:** The Town Manager recommends approval of this appropriation order and grant expenditure.

**STAFF ASSISTANCE:** Daniel W. Santos, P.E., Director of Public Works

**B. NEW BUSINESS (May be acted upon) (Majority Vote)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2024-029  
INTRO: 08/17/2023**

**2023- 029 APPROVING A CONSERVATION RESTRICTION ON 17± ACRES  
OF LAND AT 0, 946 & 948 RIVER ROAD IN MARSTONS MILLS  
BETWEEN THREE BAYS PRESERVATION, INC. (GRANTOR) AND  
BARNSTABLE LAND TRUST, INC. (GRANTEE)**

**RESOLVED:** That, pursuant to G.L. c. 184, sections 31-33, the Restriction statute, the Town Council does hereby approve and authorize the Town Council President to sign on behalf of the Town Council, and authorize the Town Manager to sign and approve on behalf of the Town of Barnstable, a Conservation Restriction (“CR”) between Three Bays Preservation, Inc. (Grantor) and Barnstable Land Trust, Inc. (Grantee), over approximately 17 acres of land and buildings at 0, 946 & 948 River Road in Marstons Mills Village on property owned by Three Bays Preservation, Inc. (d/b/a Barnstable Clean Water Coalition) as shown on:

1. Assessors Map 045, Parcel 016-004 (0 River Road),
2. Assessors Map 045, Parcel 026 (946 River Road), and
3. Assessors Map 045, Parcel 011 (948 River Road)

said CR to be donated to the Barnstable Land Trust, Inc. for the purposes of preserving open space, wellfield and watershed resources, including restoration of wetlands, and allowing public access for passive recreation and environmental education. 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 hereto. It is further ordered that the Town Manager is authorized to execute, receive, deliver and record any written instruments necessary to effectuate the purposes set forth herein.

**SPONSOR:** Councilor Paula Schnepf, Precinct 12

DATE	ACTION TAKEN
_____	_____
_____	_____

- \_\_\_ Read Item
- \_\_\_ Rationale
- \_\_\_ Council Discussion
- \_\_\_ Vote

**GRANTOR: Three Bays Preservation, Inc. (dba Barnstable Clean Water Coalition)**

**GRANTEE: Barnstable Land Trust, Inc.**

**ADDRESS OF PREMISES: 0, 946 & 948 River Road, (Village of Marstons Mills), Barnstable, MA**

**GRANTOR’S TITLE: Barnstable County Registry of Deeds, Book 35866, Page 176**

## CONSERVATION RESTRICTION

**THREE BAYS PRESERVATION, INC.**, (dba Barnstable Clean Water Coalition), a Massachusetts nonprofit corporation with an office address at 864 Main Street, Osterville, Massachusetts 02655, constituting all of the owners of the Premises as defined herein, for its successors and assigns (“Grantor”), for charitable consideration, as this conveyance is to be considered and characterized as a gift, acting pursuant to Sections 31, 32, and 33 of Chapter 184 of the Massachusetts General Laws, grants to **BARNSTABLE LAND TRUST, INC.** (Federal ID # 22-2483963), a Massachusetts nonprofit corporation with an office at 1540 Main Street, West Barnstable, Massachusetts 02668, its permitted successors and assigns (“Grantee”), with quitclaim covenants, IN PERPETUITY and exclusively for conservation purposes, the following described CONSERVATION RESTRICTION (hereinafter referred to as “Restriction”), three (3) parcels of land with buildings together totaling 17.17 acres, more or less, located in the Village of Marstons Mills, Town of Barnstable, County of Barnstable, Commonwealth of Massachusetts (“Premises”), which Premises is more particularly described in Exhibit A and shown on the recorded plan in Exhibit B, both of which are attached hereto and made a part hereof, The Grantor, its successors and assigns, and the Grantee, its permitted successors and assigns, are bound by and subject to the terms and conditions of this Restriction.

### I. PURPOSES:

This Restriction is defined in and authorized by Sections 31-33 of Chapter 184 of the Massachusetts General Laws, and otherwise by law. The purpose of this Restriction is to assure that the Premises, will be retained in perpetuity in its natural, scenic and open condition; to protect and promote the Conservation Values,; to ensure permanent protection of the public water supplies, native vegetation, soils, and natural watercourses; to restore the functions of the natural freshwater wetland habitat and the wildlife thereon; to protect and enhance the value of the abutting conservation areas; to ensure permanent protection of aquatic resources and upland buffers on the Premises, and to allow and maintain public access for passive outdoor recreation and education of open space resources. The conservation and permanent protection of the Premises will yield a significant public benefit for the following reasons (hereinafter, the “Conservation Values”):

Public Funding. The Premises was acquired utilizing, in part, assistance from the Massachusetts Cranberry Bog Acquisition for Restoration Program, as authorized by chapter 209 of the Acts of 2018 (BID# BD-23-1042-ENV-ENV01-87312), which requires the conveyance of this Restriction. The ecological restoration of the bogs on the Premises will enhance aquatic resource and values by restoring “natural-functioning wetland habitat and provision of broader ecosystem services.”

### The conservation values include the following:

Consistency with the Town of Barnstable Comprehensive Wastewater Management Plan. Protection of the Premises will advance a specific objective of the “Proposed Solutions” to reduce nutrient loading to the Three Bays estuary as part of the 2019 Town of Barnstable Comprehensive Wastewater Management Plan, which proposes that the Town “continue to support partners . . . “in pursuit of projects to convert the cranberry bogs in the upper end of the Marstons Mills River system to nutrient removal practices.” (Section 5.2.4.2)

Open Space Protection. The Premises contributes to the protection of the scenic and natural character of Marstons Mills, and the protection of the Premises will enhance the open-space value of these and nearby lands. The Premises is part of an 80+ acre eco-restoration project, wherein the Grantor and Grantee are working in partnership with Town, State and Federal agencies to acquire, protect and restore the natural wetlands at the headwaters of the Marstons Mills River, the Town of Barnstable's most prolific herring run.

Public Water Supply Protection. The Premises is entirely within a Department of Environmental Protection (DEP) Zone II of Contribution to a the Public Water Supply operated by the Centerville-Osterville-Marstons Mills Water Department. Preserving the Premises from development will enhance the quality of drinking water from these wells. The eco-restoration of the bogs into a natural freshwater wetland will also enable nitrogen attenuation from upgradient effluent sources before nutrients and other compounds can infiltrate to the aquifer.

Protection and Restoration of Wildlife Habitat. The Premises consists of freshwater wetlands that had been cut over and drained between 100-150 years ago in the creation of a major complex of cultivated cranberry bogs. While the commercial bogs provided some surface water for waterfowl and amphibians, the disturbance of natural habitat and monoculture created resulted in net habitat loss over the years. The restoration of the bog by exposing original wetland soils, resprouting the native freshwater seed bank, and enhancing the Premises with deliberate native plantings will provide a renewal of the freshwater wet meadow and shrub swamp that originally existed here and benefit many more aquatic and terrestrial species.

Biodiversity. The Marstons Mills River, downstream of the Premises, is identified as a BioMap Core Habitat, the top-rated classification of rare species habitats in Massachusetts. Restoring the freshwater habitat and improving the water quality in the headwater stream will enhance the value of the River's Core Habitat and anadromous fish run. The presence of functioning wetlands also strengthens the climate resilience of the Premises.

Historical and Cultural Values. Permanent protection of the Premises with this Conservation Restriction will preserve the historical and cultural attributes of this land in perpetuity. The Grantor recognizes the impacts of human presence on this and neighboring lands, and seeks to preserve, and conserve in perpetuity the ecological, historic and cultural Conservation Values that this land possesses. The Marstons Mills River is an important cultural landmark for the Mashpee Wampanoag Tribe, owing to the importance of herring runs as a traditional food source. Protection of the Premises is also consistent with the purposes of the Native Land Conservancy, Inc. to protect traditional cultural landscapes, which include the flora and fauna that have a unique historical meaning and value to the Native American community.

Scenic Value. The Premises fronts on River Road, designated in 1983 as a Scenic Road, listed in the Town of Barnstable Code, Chapter 180. This Restriction will preserve the scenic beauty of this rural area the Town of Barnstable.

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 RRP, amended in 2021 to accommodate climate change goals and objectives):

- “To protect, preserve, or restore the quality and natural values and functions of inland and coastal wetlands and their buffers” (Wetland Resources Goal, p. 61);
  - “Protect wetlands and their buffers from vegetation and grade changes”
  - “Protect wetlands from changes in hydrology”
  - “Protect wetlands from stormwater discharges”
- "To protect, preserve, or restore wildlife and plant habitat to maintain the region's natural diversity" (Wildlife and Plant Habitat Goal, p. 61); and
  - "Maintain existing plant and wildlife populations and species diversity."
- "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, p. 61);
  - "Protect and preserve natural, cultural, and recreational resources;"
  - "Maintain or increase the connectivity of open space;"
  - "Protect or provide open space appropriate to context."
- “To prevent or minimize human suffering and loss of life and property or environmental damage resulting from storms, flooding, erosion, and relative sea level rise, including but not limited to that associated with climate change” (Coastal Resiliency Goal, p.62); and
  - “Minimize development in the floodplain”
  - “Plan for sea level rise, erosion, and floods”
  - “Reduce vulnerability of built environment to coastal hazards”

Conservation of the Premises also supports the Barnstable Town Council's Strategic Plan FY2015 which seeks to promote the preservation and protection of significant natural resources for visual quality, outdoor recreation, public access, and wildlife habitat.

Consistency with Clearly Delineated Town of Barnstable Conservation Policy. Protection of the Premises will further the Town of Barnstable’s documented goals regarding conservation land. The Town outlined its conservation goals in its *Open Space and Recreational Plan* (1984, amended 1987, 1998, 2005, 2010, 2018), identifying goals, policies, and actions to guide conservation efforts, among them the goal of preserving “quality open spaces throughout the Town which protect and enhance its visual heritage.” Additional objectives include (*references are to the 2018 Plan*):

- "Preservation of open space for protection of drinking water resources, and for protection of other natural, historic and scenic resources is a community-wide priority; and
- Protection of open space should continue to be an integral component of the Town's efforts." (p. 6).

To achieve this vision, the Plan sets several goals for the town including:

- "To protect and maintain the maximum amount of open space to enhance environmental protection, recreational opportunities and community character, and

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- “Plan, coordinate and execute open space protection measures that complement community efforts to protect water supply, protect fresh and marine surface waters, [and] preserve historic, scenic and cultural resources...” (pp. 10-11).

Additionally, the Barnstable Town Council’s Strategic Plan for fiscal year 2015 identified the goal to preserve and protect significant natural and historic resources for visual quality, outdoor recreation, wildlife habitat, and cultural history.

Moreover, in 1981, the Town of Barnstable adopted a Conservation Restriction Program consisting of policies and guidelines, in particular an Open Space Policy, approved by the Board of Selectmen, Board of Assessors, and the 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;
- 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 Restriction will advance each of these goals articulated by the Town of Barnstable, ensuring that the Premises will stay as open space and reduce the negative impacts of development on surrounding water resources (e.g., Marstons Mills River).

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.

Consistency with Clearly Delineated State Conservation Policy. Protection of the Premises is consistent with the mission of the Massachusetts Division of Ecological Restoration (“DER”) is to restore and protect the health and integrity of the Commonwealth’s rivers, wetlands and watersheds for the benefit of people, fish and wildlife. DER is an active partner with the Grantor and Grantee in restoring more than 80 acres of cranberry bogs in the Marstons Mills River watershed to natural stream flow and freshwater wetland habitat.

These and other Conservation Values of the Premises, as well as its current uses, conditions, 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 stored at the office of the Grantor and Grantee. 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 Restriction, and (ii) is intended to serve as an objective information baseline for subsequent monitoring of compliance with the terms of this 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.

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Therefore, preservation of the Premises will advance the open space, resource management and passive recreational goals and objectives of the Town of Barnstable and the Commonwealth of Massachusetts.

## II. PROHIBITED ACTIVITIES:

In order to carry out the purposes set forth in Paragraph I above, the Grantor covenants for itself and its legal representatives, successors and assigns that the Premises will at all times be held, used and conveyed subject to and not in violation of this Restriction. The Grantor shall refrain from and will not permit any activity which shall be inconsistent with the Purposes of this Restriction or which materially impairs water quality, soil conservation, wildlife conservation, scenic landscape protection or which is otherwise wasteful of the natural resources of the Premises.

Subject to the exceptions set forth in Paragraph III below, prohibited activities on, above and below the Premises shall include, but shall not be limited to, the following activities, which the Grantor shall not perform or allow others to perform:

- A. Construction or placing of any building, residential dwelling, mobile home, tennis court, ball fields, benches, swimming pool, artificial water impoundment, billboard, or other advertising display, landing strip or pad, roadway, asphalt or concrete pavement, road, trails, wind turbine, antenna, utility pole, tower, solar array, aboveground or underground storage tank, or any other temporary or permanent structure or facility on, under or above the Premises.
- B. Placing, storing or dumping of equipment, mobile home, trailer, automotive vehicles or parts, soil, rock, sand, stumps, slash, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, waste, radioactive waste, or hazardous waste or other substance or material whatsoever.
- C. Mining, excavation, dredging or removal of any loam, peat, gravel, soil, sand, rock, surface water, ground water, or other mineral substance or natural deposit from the Premises, or otherwise making topographical changes to the Premises.
- D. Pollution, alteration, depletion, diversion, channelization, damming, draining, or extraction of surface water, natural water courses, marshes, potential or certified vernal pools, subsurface water, or any other water bodies.
- E. Removal, destruction or cutting of trees, grasses, shrubs or other natural vegetation, including cutting for firewood or commercial harvesting and lumbering activities.
- F. Introduction of species of animals or plants that are not native to Barnstable County, as defined by current published lists of native species, including *The Vascular Plants of Massachusetts: A County Checklist*, by Bruce A. Sorrie and Paul Somers, published by the Massachusetts Division of Fisheries and Wildlife Natural Heritage & Endangered Species Program (1999) or as amended or contained in a similar professionally acceptable publication available in the future.
- G. Use, parking or storage of motorized or power-driven vehicles of any kind, including without limitation snowmobiles, motorbikes or off-highway vehicles, or watercraft, acknowledging that vehicles necessary for public safety (i.e., fire, police, ambulance, other government officials) may have a legal right to enter the Premises.
- H. Camping, hunting or trapping unless for a proven nuisance to wildlife. The discharge of fireworks, firearms, arrows or any other projectiles is prohibited.  
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- I. Subdividing or conveying a part or portion of the Premises (as compared to conveyance of the Premises in its entirety, which shall be permitted), it being the Grantor's and Grantee's intention to maintain the entire Premises under unified ownership.

- J. Activities detrimental to drainage, flood control, water conservation, water quality, erosion control, soil conservation, or ecosystem function.
- K. The excavation of landscape features on the Premises or collecting, disturbing or otherwise removing archaeological artifacts (prehistoric and/or historic).
- L. Using the Premises towards building or development requirements on this or any other parcel, including using any portion of the Premises towards any building, septic system or other development requirements on any other parcel outside the Premises.
- M. Any commercial, residential, industrial uses, including commercial agriculture.
- N. Any other use of the Premises or activity which is inconsistent with the purpose of this Restriction, or which would materially impair its conservation values, or which is prohibited by federal, state or local law or regulation.

### **III. PERMITTED ACTIVITIES AND RESERVED RIGHTS:**

The Grantor reserves the right to conduct or permit the following activities on the Premises, but only if such uses and activities do not materially impair the Conservation Values and are not inconsistent with the Purposes of this Restriction:

- A. The selective removal 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, wood roads, fence lines, trails and meadows.
- B. Measures, such as the installation of sight pervious fencing and signage, taken in order to prevent trespass, unauthorized vehicle entry and dumping, vandalism or other acts destructive to the Premises. Fencing must not impede the passage of wildlife.
- C. With the prior approval of the Grantee, measures taken in order to protect the stability of a naturally occurring feature on the land's surface (e.g., bank or hill from erosion).
- D. The use of the Premises for passive recreational activities such as hiking, snowshoeing, cross-country skiing, nature study or research, and other like activities, including access by motorized wheelchairs or other mobility assistance devices.
- E. The erection and maintenance of signs identifying ownership of the Premises, the property boundaries, the Premises' status as a conservation restriction, the restrictions on the use of the Premises, the identity or location of trails, areas of interest, natural features or other characteristics of the Premises, or for providing other like information.
- F. Minimal cutting or removal of trees, shrubs and other vegetation and planting of native trees, shrubs and other vegetation to maintain or improve the conservation values protected by this Restriction;

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and collection of storm damaged trees to prevent threat of injury or damage to persons or property; to prevent or mitigate pest infestation, blight or disease; to control, manage or eradicate non-native or invasive species not native to the wetland or forest; or to improve or protect wildlife habitat all in a manner to avoid or minimize harm to native species.

- G. The use of motorized vehicles (1) by the Grantor as reasonably necessary to carry out activities permitted under this Restriction, including mowing and maintenance, (2) by persons with mobility impairments as otherwise allowed by the Restriction, and (3) for access by police, fire, emergency, public works, or other governmental personnel carrying out their official duties. With the exception of mobility assistance devices by persons with mobility impairments, the use of motorized vehicles for the purposes described herein shall be limited to the roads, driveway and carpaths now in existence or that may be approved and installed, as shown on the baseline report. Notwithstanding the foregoing, the use of motorized vehicles for recreational purposes, such as dirt bikes, all-terrain vehicles, off-highway vehicles, and the like, is not permitted, except for the use of mobility assistance devices by persons with mobility impairments. The maintenance, use and, with prior written approval of the Grantee, improvement of the existing driveway serving the Premises from River Road and the existing bog perimeter carpaths for safe vehicular passage, proper drainage, and fire control.
- H. With prior approval by Grantee, measures, such as the installation of fencing and signage, taken in order to prevent unauthorized vehicle entry and dumping, vandalism or other acts destructive to the Premises.
- I. The maintenance and improvement, including utilities but not any septic system (except portable restrooms), of the existing cranberry shed on the north side of the bogs in its current dimensions as described in the Baseline Report; the use of said shed for storage, research and educational displays.
- J. With the prior written approval of Grantee and in compliance with a plan approved in advance by DER, such plan to be kept on file by Grantor, conducting or permitting others to conduct ecological restoration of the existing cranberry bogs as shown in the Baseline Report for the purposes of enhancing, restoring, or recreating the natural functions and values that the Premises provided before it was farmed. This includes but is not limited to removal of sand dikes and berms, regrading, alteration of vegetation, and installation of temporary fencing and signage as public safety and erosion control measures during active construction. The use and storage of construction equipment, vehicles, trailers, and portable restrooms on the Premises solely for the purpose of ecological restoration. With prior written approval of the Grantee, adaptive management, including but not limited to modifications of drainage channels and additional plantings of native species, to further enhance the initial restoration of the bogs may be conducted as needed.
- K. With the prior written approval of Grantee, the installation of equipment, structures and measures intended to reduce or remove nutrients and other potential contaminants from the wetland recharge and watershed area of the Premises.
- L. The installation of a tent or open-air pavilion, no more than twice per year, for educational purposes and gatherings related to the mission of the Grantor, for periods not to exceed three (3) weeks at a time in the area north of the bogs, so long as all participant parking is confined to areas south of the bogs.

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- M. Informal parking in the areas south of the bogs and in the Building Envelope defined below, including fencing or other demarcations to prevent disturbance of the wetlands by the parking use.
- N. Archaeological investigations, including without limitation archaeological research, surveys, excavation and artifact retrieval, subject to and 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 and Grantee.

Notwithstanding the foregoing permitted activities, any proposed modifications to the landscape, including but not limited to the creation of trails, management of vegetation and wetland resources, and installation of signage and educational kiosks, shall not be undertaken if they disturb, remove, damage or destroy archaeological resources or artifacts on the Premises.

- O. The right for the Grantor and Grantee to allow access to the Premises to local indigenous groups for cultural land ceremonial uses that are consistent with the Conservation Values. Cultural practices are defined, for the purposes of this Restriction, as including traditional spiritual ceremonies, seasonal celebrations, offerings, and cultural/education/interpretation programs. With prior written approval of the Grantor persons designated by the Grantor may harvest plant-life using sustainable methods, including regrowth and replanting, for traditional cultural practices and non-commercial purposes. Harvesting may be conducted using only hand tools and only in traditionally customary quantities. Harvesting shall not be conducted in areas that have undergone ecological restoration until more than five (5) years after restoration is completed.

**Site Restoration.** Upon completion of any Permitted Acts and Uses, all disturbed areas shall be restored substantially to the conditions that existed prior to said activities, including with respect to soil material, grade, and vegetated ground cover.

**Compliance with Permits, Regulations, Laws.** The exercise of any Permitted Acts and Uses under Paragraph III shall be in compliance with all applicable federal, state and local laws, rules, regulations, zoning, and permits, and with the Constitution of the Commonwealth of Massachusetts. The inclusion of any Reserved Right requiring a permit, license or other approval from a public agency does not imply that the Grantee or the Commonwealth takes any position whether such permit, license, or other approval should be issued.

#### **IV. SPECIAL USE AREA.**

The Grantor reserves the right to conduct or permit the following activities and uses only within the area described in Exhibit A as the "Building Envelope" and as shown on the sketch plan included herein and attached hereto in Exhibit C.1 and Exhibit C.2, in addition to the Permitted Acts and Uses described in Paragraph III.B, and otherwise subject to this Restriction:

- A. Subject to the regulations of the Town of Barnstable and all other applicable laws or regulations, and with prior written approval of the Grantee, the Grantor may use, rebuild, reconstruct, repair, maintain, replace and expand the one (1) existing dwelling and install and maintain utilities relevant thereto, including wells and subsurface sewage disposal systems, so long as the dwelling, whether newly constructed, expanded, or replaced, meet the following dimensional limitations and other conditions in this Paragraph IV:

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- a. The footprint of said dwelling, as expanded or relocated, including all attached stairs, patios, decks, garage aprons, and accessory items shall be located wholly within the defined Building Envelope.
- b. Said dwelling shall not exceed, at any point in time, a cumulative gross floor area, as defined hereinbelow, of Fifteen Hundred and 00/100 (1500.00) square feet. 1

- c. Said dwelling may be used as (1) a residence for a caretaker, researcher or other staff of the Grantor, or allied non-profit conservation organizations, (2) educational and exhibit space relating to the eco-restoration project of the bogs or other mission-related work of the Grantor, or (3) as a research space including laboratory work, but in no event shall the dwelling be leased out commercially.
- B. “Gross floor area”, for the purposes of this Restriction, shall be defined as the sum of the gross horizontal area located on one (1) ground floor only of all buildings on the Premises as measured from the exterior face of exterior walls, without deduction for hallways, stairs, closets, thickness of walls, columns or other features, which are capable of being used for human occupancy, including living, sleeping, cooking, eating, or heated storage purposes. Finished portions of attic, garage, or other outbuilding space (but not basements) that meet these definitions shall be included in the calculation of total gross floor area.
- C. The Grantor agrees to and shall submit to the Grantee in its notice required by Paragraph V.A sufficient stamped engineered plans and other materials necessary for the Grantee to make an informed judgment as to compliance of the work with the dimensional limitations and other applicable limitations of this Restriction.
- D. Grantor agrees to remove any former dwelling and its debris from the Premises within six (6) months of the issuance of the occupancy permit for any new dwelling, so that the effect will be to maintain no more than one (1) dwelling in the Building Envelope on the Premises.
- E. Subject to local permitting authority and other applicable laws and regulations, there is no limit on the number or size or use of other structures within the Building Envelope, provided, however, that such structures (other than the one dwelling) shall contain no habitable space, and must support the scientific or educational mission of the Grantor, or allow for passive enjoyment of the Premises.
- F. Installation of solar panels and associated lines and equipment on any allowed structure in the Building Envelope, but panels may not be mounted on or elevated above the ground.
- G. Grantor may use, maintain and repair any permitted structure within the Building Envelope without notice to or approval by Grantee, so long as there is no expansion or relocation of said structure.
- H. The use, storage, and parking of vehicles, trailers and boats limited to those of the Grantor and its agents is permitted within the Building Envelope.
- I. The Building Envelope shall not be used for the purpose of calculating the amount of Grantor’s land or any other person’s land for subdivision, permissible lot or residential units yield beyond the units described hereinabove, nor shall the Building Envelope be used as off-site open space or nitrogen mitigation credit for development projects.

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<sup>1</sup> In 2023 the existing dwelling on its poured concrete slab was measured at 32.5 feet by 25 feet square feet, or 812.5 square feet in gross floor area.

## **V. NOTICE AND APPROVAL:**

A. Notifying Grantee. Whenever notice to or approval by Grantee is required, Grantor shall notify or request approval from 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, unless a different time period is specified herein. The notice shall:

- a. Describe the nature, scope, design, location, timetable and any other material aspect of the proposed activity;
- b. Describe how the proposed activity complies with the terms and conditions of this Conservation Restriction, and will not materially impair the Purposes and/or Conservation Values;
- c. Identify all permits, licenses, or approvals required for the proposed activity, and the status of any such permits, licenses, or approvals.
- d. Describe 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 and Conservation Values.

B. Grantee Review. 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 only be granted upon a showing that the proposed activity will minimize impacts to the Conservation Values and will not materially impair the Purposes and/or Conservation Values. Grantee may require Grantor to secure expert review and evaluation of a proposed activity by a mutually agreed upon party.

C. Resubmittal. Grantee's failure to respond within sixty (60) days of receipt shall not constitute approval of the request. Grantor may subsequently submit the same or a similar request for approval.

## **VI. LEGAL REMEDIES OF THE GRANTEE; WAIVER:**

- A. The rights hereby granted shall include the right to enforce this Restriction by appropriate legal proceedings including obtaining compensatory, injunctive and other equitable relief against any violations, including, without limitation, relief requiring restoration of the Premises to its condition prior to the time of the injury complained of, it being agreed that the Grantee will have no adequate remedy at law, and shall be in addition to and not in limitation of any other rights and remedies available to the Grantee for the enforcement of this Restriction.
  - B. Notwithstanding the foregoing, the Grantee agrees to provide written notice to Grantor of any violation of this Restriction and to cooperate for a reasonable period of time, not to exceed sixty (60) days, to allow Grantor to remedy the violation, prior to resorting to legal or equitable means in resolving issues concerning alleged violations provided Grantor has ceased objected-to actions and is making a good faith effort to remedy the violation and Grantee reasonably determines there is no ongoing diminution of the Conservation Values of the Restriction.
  - C. The Grantor and its successors and assigns shall each be liable under this section for any such violations of this Restriction as may exist during their respective periods of ownership of the Premises. Any new owner may be held responsible for any continuing violations existing during his or her period of ownership.
- Marstons Mills River Headwaters – I Conservation Restriction Barnstable, MA*
- D. By acceptance of this 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.
  - E. If Grantee prevails in any action to enforce the terms of this Restriction, the Grantor or Grantor's heirs, successors and assigns, as the case may be, shall reimburse the Grantee for reasonable costs and expenses, including reasonable attorney's fees, incurred in enforcing this Restriction or in taking reasonable measures to remedy or abate any violation thereof.

F. Enforcement of the terms of this Restriction shall be at the discretion of the Grantee. Any election or forbearance by the Grantee as to manner and timing of its right to enforce this Restriction or otherwise exercise its rights hereunder shall not be deemed or construed to be a waiver of such rights. In the event of a dispute over the boundaries of the Conservation Restriction, Grantor shall pay for a survey by a Massachusetts licensed professional land surveyor and to have the boundaries permanently marked.

#### **ACCESS;**

A. The Restriction hereby grants to the Grantee, and its duly authorized agents or representatives the right to enter upon the Premises at reasonable times and in a reasonable manner for the following purposes:

1. to perform a survey of boundary lines;
2. To inspect the Premises to determine compliance within provisions of this Restriction; or
3. for the purpose of taking any and all actions with respect to the Premises, at Grantor's cost, as may be necessary or appropriate to remedy or abate or enforce any violation hereof provided that Grantee adheres to Paragraph VI.B. first gives Grantor notice of the violation, and upon failure of the Grantor to cure the violation within sixty (60) days of receiving said notice, Grantee then gives Grantor further written notice of its intention to enter the Premises to take such actions at least fifteen (15) days following the date of such further written notice. The requirements for providing notice to the Grantor prior to entering the Premises shall not apply in emergency situations where delayed action may result in ongoing harm to the Premises.

B. The Restriction hereby conveyed includes the grant of the right to the general public to enter upon the Premises, and to use the Premises thereon for the purposes set forth in Paragraph III. D above for daytime use, 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. 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 III.D. The Grantee may require the Grantor to post the Premises against any use by the public that results in material impairment of the Conservation Values. This grant of public access to the Premises is solely for the purposes described in Section 17C of Chapter 21 of the Massachusetts General Laws and the Grantor and Grantee hereto express their intent to benefit from exculpation from liability to the extent provided in such section.

*Marstons Mills River Headwaters – I Conservation Restriction Barnstable, MA*

#### **VII. ACTS BEYOND GRANTOR'S CONTROL:**

Nothing contained in this Restriction shall be construed to entitle the Grantee to bring any action against the Grantor for any injury to or change in the Premises resulting from natural causes beyond the Grantor's control, including but not limited to fire, flood, storm, natural erosion or from any prudent action taken by the Grantor under emergency conditions to abate, prevent, or mitigate significant injury to or alteration of the Premises resulting from such natural causes. The parties to this Restriction agree that in the event of damage to the Premises from acts beyond the Grantor's control, that if it is desirable that the Premises be restored, the parties will cooperate in attempting to restore the Premises, if feasible.

### **VIII. COSTS AND TAXES:**

Grantor agrees to pay and discharge when and if due any and all real property taxes and other assessments levied by competent authority on the Premises.

### **IX. DURATION, BINDING EFFECT, RELEASE AND RECORDATION:**

The burdens of this Restriction shall run with the Premises IN PERPETUITY and shall be enforceable against the Grantor and the Grantor's successors and assigns holding any interest in the Premises. The Grantee is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this 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 instrument upon reasonable request.

### **X. RUNNING of THE BENEFIT ASSIGNMENT:**

The benefits of this Restriction shall run to the Grantee, shall be in gross and shall not be assignable by the Grantee, their successors and assigns, except when all of the following conditions are met:

- A. The assignee, at the time of assignment is a "qualified organization" as defined in Section 170(h)(3) of the Internal Revenue Code of 1986, as amended, including, without limitation, a government entity, and is eligible to receive this Conservation Restriction under Section 32 of Chapter 184 of the Massachusetts General Laws;
- B. The Grantee requires that the assignee shall hold this Restriction and enforce its terms such that the Purposes continue to be carried out;
- C. The assignee is not an owner of the fee in the Premises;
- D. The assignment complies with the provisions required by Article 97 of the amendments to the Constitution of the Commonwealth of Massachusetts, if applicable;
- E. The Grantee shall notify the Grantor in writing at least thirty (30) days before assigning this Restriction and the Grantor shall have thirty (30) days from the date of such notice to approve the assignment in writing, which approval shall not be unreasonably withheld. Failure of the Grantor to respond to the notice of assignment within thirty (30) days shall be deemed approval thereof.

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### **XI. ESTOPPEL CERTIFICATES:**

Upon request by the Grantor, the Grantee shall, within twenty (20) days, execute and deliver to the Grantor any document, including an estoppel certificate, which certifies the Grantor's compliance with any obligation of the Grantor contained in this Restriction, and which otherwise evidences the status of this Restriction as may be requested by the Grantor.

### **XII. SUBSEQUENT TRANSFERS:**

The Grantor agrees to incorporate this Restriction, in full or by reference, in any deed or other legal instrument by which Grantor conveys or transfers any interest in all or a portion of the Premises, including, without limitation, a leasehold interest. The Grantor further agrees to notify the Grantee in

writing at least thirty (30) days before conveying or transferring the Premises, or any part thereof or interest therein, including a leasehold interest. Any transfer shall comply with Article 97 of the amendments to the Constitution of the Commonwealth of Massachusetts, if applicable. Failure to do any of the above shall not impair the validity or enforceability of this Conservation Restriction. If the Grantor fails to 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, then the Grantee may record, in the applicable registry of deeds, or registered in the applicable land court registry district, and at the Grantor's expense, a notice of this Conservation Restriction.

### **XIII. TERMINATION OF RIGHTS AND OBLIGATIONS:**

Notwithstanding anything to the contrary contained herein, the rights and obligations under this Restriction of any party holding an interest in the Premises, terminate upon transfer of that party's interest, except that liability for acts or omissions occurring prior to the transfer, and liability for the transfer itself if the transfer is a violation of this 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.

### **XIV. AMENDMENT:**

If circumstances arise under which an amendment to or modification of this Restriction would be appropriate, the Grantor and the Grantee may by mutual consent amend this 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 General laws of Massachusetts. Any amendments to this 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 values. 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 Restriction, shall not affect its perpetual duration, shall be approved by the Town of Barnstable and, the Secretary of Energy and Environmental Affairs and if applicable, shall comply with the provisions of Article 97 of the Amendments to the Massachusetts Constitution, and any gifts, grants or funding requirements. Any amendment shall be recorded in the Barnstable County Registry of Deeds.

### **XV. EXTINGUISHMENT:**

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- A. If circumstances arise in the future such as render the purpose of this Conservation Restriction impossible to accomplish, this restriction can only be terminated, or released 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 termination, release, or extinguishment 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 XV.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 Purpose and protection of the Conservation Values set forth herein.
- B. Proceeds. Grantor and Grantee agree that the conveyance of this Conservation Restriction gives rise to a real property right, immediately vested in the Grantee, with a fair market value that is equal to five percent (5%) of the fair market value of the unrestricted Premises. Such proportionate value of the Grantee's

property right shall remain constant. Any proceeds resulting from an extinguishment or other release of this Restriction will be distributed only after complying with the terms of any gift, grant, or other funding requirements.

- C. Grantor/Grantee Cooperation Regarding Public Action. Whenever all or 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 Grantee shall cooperate in recovering full value or all direct and consequential damages resulting from such action.

All related expenses incurred by the Grantor and Grantee under this section shall first be paid out of any recovered proceeds, and the remaining proceeds shall be distributed between the Grantor and Grantee in accordance with Article XV.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 Purposes or the protection of Conservation Values.

#### **XVI. NONMERGER:**

Grantee agrees that it will not take title to any part of the Premises without having first assigned this Restriction, pursuant to Article X, to a non-fee holder to ensure that merger does not occur and that this Restriction continues to be enforceable by a non-fee owner.

#### **XVII. SEVERABILITY:**

If any court of competent jurisdiction shall hold that any section or provision of this Restriction is unenforceable, the remainder of this Restriction shall not be affected.

#### **XVIII. MISCELLANEOUS PROVISIONS:**

- A. Controlling Law: The interpretation and performance of this 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 Restriction shall be liberally construed in favor of the grant to affect the purposes of this Restriction and the policies and purposes of Sections 31- 33 of Chapter 184 of the Massachusetts General Laws. If any provision in

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this instrument is found to be ambiguous, an interpretation consistent with the purposes of this Restriction that would render the provision valid shall be favored over any interpretation that would render it invalid.

- C. Entire Agreement: This instrument sets forth the entire agreement of the parties with respect to the Restriction and supersedes all prior discussions, negotiations, understandings, or agreements related to the Restriction, all of which are merged herein.
- D. Pre-existing Public Rights. Approval of this 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.
- E. 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: Three Bays Preservation Inc.  
dba Barnstable Clean Water Coalition  
P.O. Box 215  
Osterville MA 02655

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

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.

**XIX. EFFECTIVE DATE:**

This Restriction shall be recorded in a timely manner. Grantor and Grantee intend that the restrictions arising hereunder take effect on the day and year this Restriction is signed by the Grantor and Grantee and recorded in the official records of the Barnstable County Registry of Deeds, after all signatures required by Massachusetts General Law, Chapter 184, Section 32 have been affixed hereto.

**XX. SUBORDINATION:**

The Grantor shall record at the applicable registry of deeds or shall register in the applicable land court registry district 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. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction of interpretation.

*[the remainder of this page left intentionally blank]*

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Included herein are the following: Signature pages:

Grantor – Three Bays Preservation, Inc.  
Grantee Acceptance – Barnstable Land Trust, Inc.  
Approval by Barnstable Town Council  
Approval by Barnstable Town Manager  
Approval of the Secretary of Energy and Environmental Affairs.

Attached hereto and incorporated are the following:

Exhibits:

Exhibit A: Legal Description of Premises  
Exhibit B: Recorded Plans of Premises  
Exhibit C.1, C.2: Sketch of Building Envelope  
Exhibit D: Town Council Vote

*[the remainder of this page left intentionally blank]*

WITNESS our hands and seals this \_\_\_\_\_ day of \_\_\_\_\_, 2023,

**THREE BAYS PRESERVATION, INC.**

BY:

\_\_\_\_\_  
Michael Egan, President

\_\_\_\_\_  
Laureen Pfizenmaier, Treasurer

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss:

On this \_\_\_\_\_ day of \_\_\_\_\_, 2023, before me, the undersigned notary public, personally appeared, Michael Egan, President and Laureen Pfizenmaier, Treasurer, and proved to me through satisfactory evidence of identification which was \_\_\_\_\_ 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  
My Commission Expires:

**ACCEPTANCE OF GRANT**

This Conservation Restriction from Three Bays Preservation Inc. was accepted by the Barnstable Land Trust, Inc. this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

By: \_\_\_\_\_  
Leigh Townes  
Its: President, duly authorized

By: \_\_\_\_\_  
Jill McCleary  
Its: Treasurer, duly authorized

**COMMONWEALTH OF MASSACHUSETTS**

Barnstable, ss:

On this \_\_\_\_\_ day of \_\_\_\_\_, 2023, before me, the undersigned notary public, personally appeared, Leigh Townes, President, and Jill McCleary, Treasurer, of the 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.

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

**APPROVAL OF TOWN COUNCIL**

The undersigned, President of the Town Council of the Town of Barnstable, hereby certifies that at a public meeting duly held on \_\_\_\_\_, 2023, the Council voted to approve the foregoing Conservation Restriction from Three Bays Preservation, Inc. to the Barnstable Land Trust, Inc. in the public interest pursuant to Section 32 of Chapter 184 of the General Laws of Massachusetts.

TOWN COUNCIL:

\_\_\_\_\_  
Matthew P. Levesque, President

**COMMONWEALTH OF MASSACHUSETTS**

Barnstable, ss:

On this day of \_\_\_\_\_, 2023, before me, the undersigned notary public, personally appeared Matthew P. Levesque, President, Barnstable Town Council, 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 he signed it voluntarily for its stated purpose.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

**APPROVAL OF TOWN MANAGER**

I, the undersigned, Town Manager of the Town of Barnstable, hereby certify that I approve the foregoing Conservation Restriction from Three Bays Preservation, Inc. to the Barnstable Land Trust, Inc. in the public interest pursuant to Section 32 of Chapter 184 of the General Laws of Massachusetts.

\_\_\_\_\_  
TOWN MANAGER:  
Mark S. Ells

**COMMONWEALTH OF MASSACHUSETTS**

Barnstable, ss:

On this \_\_\_\_\_ day of \_\_\_\_\_, 2023, before me, the undersigned notary public, personally appeared Mark S. Ells, Barnstable Town Manager, 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 he signed it voluntarily for its stated purpose.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

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

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

Dated: \_\_\_\_\_, 2023

\_\_\_\_\_  
Rebecca L. Tepper  
Secretary of Energy and Environmental Affairs

**COMMONWEALTH OF MASSACHUSETTS**

SUFFOLK, ss:

On this day of \_\_\_\_\_, 2023, before me, the undersigned notary public, personally appeared Rebecca L. Tepper 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 Premises

The Premises subject to this Conservation Restriction is the entirety of three (3) parcels of land and buildings located in the Town of Barnstable in the County of Barnstable, Commonwealth of Massachusetts, containing a total of 17.17+ acres, more or less. See also sketches of boundaries, collectively attached herein as Exhibit B.

The Premises is more particularly bounded and described as follows:

Those certain parcels of land, together with the buildings thereon, located in Barnstable (Marstons Mills), Barnstable County, Massachusetts, now known and numbered as 0, 946 and 948 River Road, bounded and described as follows:

**PARCEL 1**

That certain parcel of land located in Barnstable (Marstons Mills), Barnstable County, Massachusetts, now known and numbered as 0 River Road, being Lot 4 on plan dated January 31, 1987, by Edward E. Kelly, R.L.S., entitled, "Plan of Land in Barnstable (Marstons Mills), Mass. for Alton D. Smith and John F. Hamblin," recorded with the Barnstable County Registry of Deeds in Plan Book 433, Page 59.

**PARCEL 2**

That certain parcel of land, bounded and described as follows:

- |                            |   |
|----------------------------|---|
| NORTHERLY                  | by a stream and land of Seth R. Hamblin by various courses, as shown on plan hereinafter referenced, five hundred eighty-two (528) feet, more or less;  |
| NORTHEASTERLY and EASTERLY | by other land of Seth R. Hamblin, as shown on plan hereinafter referenced, four hundred sixty-six (466) feet, more or less;   |
| SOUTHERLY                  | by land of Julia & Lucia Nardolillo, as shown on plan hereinafter referenced, three hundred forty and 53/100 (340.53) feet; and<br>by land of William F. Sommer, as shown on plan hereinafter referenced, one hundred sixty-two and 02/100 (162.02) feet; |
| EASTERLY                   | by land now or formerly of William F. Sommer, as shown on plan hereinafter referenced, two hundred eighty-three and 55/100 (283.55) feet;   |
| SOUTHERLY                  | by River Road, twenty and 22/100 (20.22) feet; and  |
| WESTERLY                   | by land now or formerly of Marian F. Savery, as shown on plan hereinafter referenced, five hundred fifty-six and 74/100 (556.74) feet.  |

Containing 1.9 acres of cranberry bog and 2.1 acres of upland, said land is shown as Parcel 2 on plan dated November 1, 1969, by Charles N. Savery Inc., entitled "Plan of Land in Newtown, Barnstable, Mass., for Marian F. Savery," recorded with the Barnstable County Registry of Deeds in Plan Book 242, Page 145.

**PARCEL 3**

That certain parcel of bog land situated southerly of School Street, bounded and described as follows:

Beginning at a point 800 feet southerly of said School Street at the southeast corner of land now or formerly of Charles E. Hamblin, and the northeasterly corner of the within described premises;

Thence, Southerly by land now or formerly of James Crocker to the River;

Thence Southwesterly by said River to land now or formerly of F.L. Whitcomb;

Thence Northerly by land now or formerly of said Whitcomb to the Northwesterly corner of the within described premises and the Southwest corner of land now or formerly of the said Hamblin, said point being 1,000 feet Southerly from School Street;

Thence Northeasterly by land now or formerly of said Hamblin land to the point of beginning.

Containing 4 acres, more or less.

Also a certain piece, or parcel, of swamp and upland known as part of the Jabez Jones property, bounded and described as follows:

SOUTHERLY by land now or formerly of Jose Moniz;

WESTERLY by land now or formerly of Carlton C. Hallett and by the River;

NORTHERLY by a ditch and land now or formerly of A.D. Makepeace Company;

EASTERLY and NORTHERLY by land now or formerly of said A.D. Makepeace Company; and

EASTERLY by the bog road, about eighty-five (85) feet, more or less.

Within said Premises described hereinabove, there is a Special Use Area, (so-called, "Building Envelope"), reserved for residential and other uses as described in Paragraph IV hereinabove and depicted on the sketch plan attached hereto as Exhibit C.1 and C.2. The Building Envelope is included in and not excluded from the Premises.

The Building Envelope is more particularly bounded and described as follows:

BEGINNING at a concrete bound marked "H" in the northwest corner of Lot 1 as shown on a plan of land entitled, "Plan of Land, Bog Road – Barnstable, Mass., Owned and Prepared for Helen Petrovits, 15 Bog Road, Marstons Mills, MA Scale: 1" = 40', Date: July 14, 1989, The BSC Group- Norwell, Inc., 293 Washington Street, P.O. Box 185, Norwell MA 02061," and recorded with the Barnstable County Registry of Deeds in Plan Book 461 Page 99; thence running,

WESTERLY along a line bearing S 82° 28' 06" E a distance of Eighty and 00/100 (80.00') feet to a point; thence turning and running

NORTHERLY along a line perpendicular to the aforesaid line bearing S 82° 28' 06" E, a distance of Sixty-three and 00/100 (63.00') feet, to a point; thence turning and running

EASTERLY along a line perpendicular to the line referenced immediately above, a distance of Two Hundred Forty-two and 02/100 (242.02') feet to a point; thence turning and running

SOUTHERLY along a line perpendicular to the line referenced immediately above, a distance of Sixty-three and 00/100 (63.00') feet to a concrete bound; thence turning and running

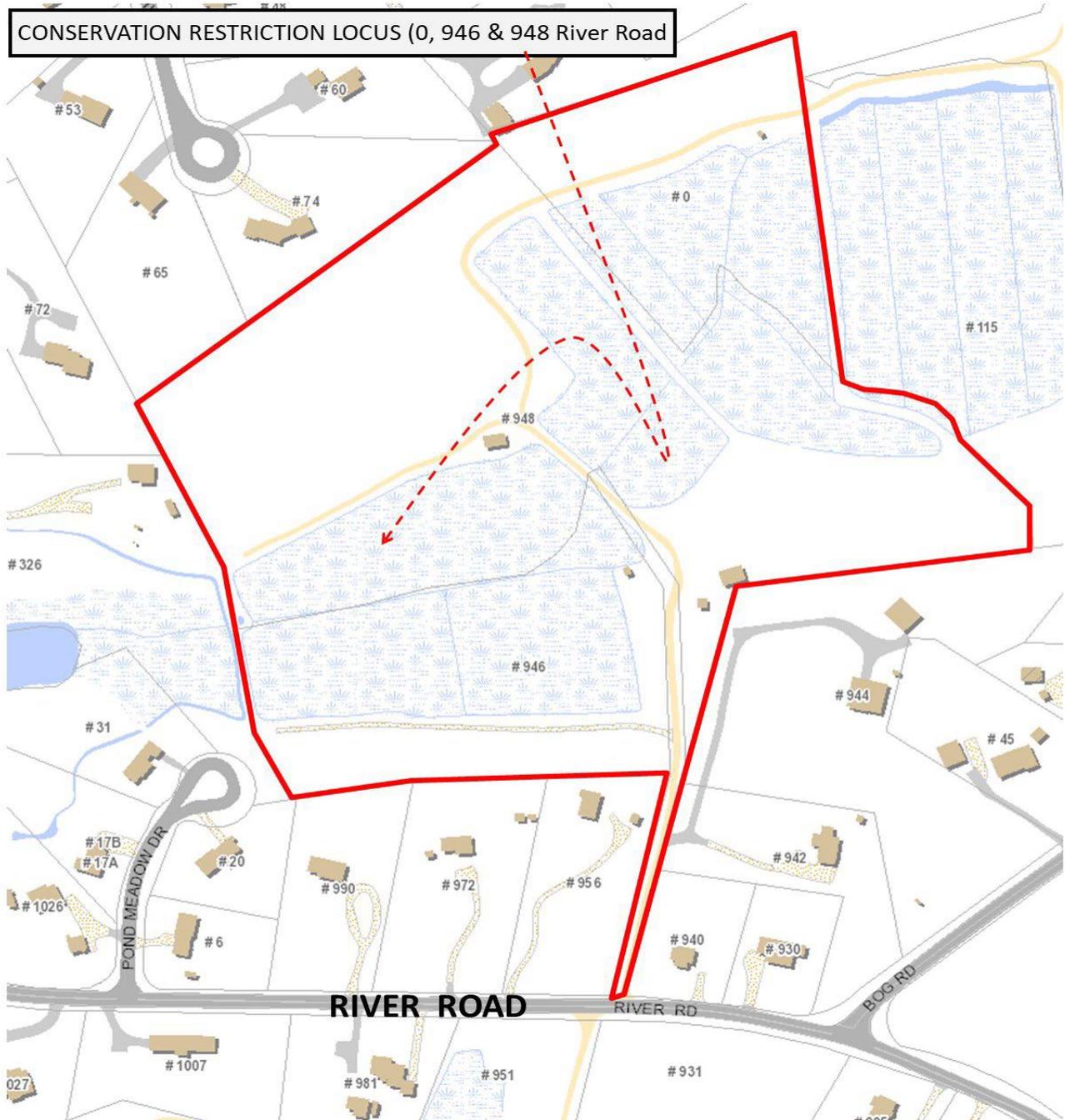
WESTERLY along a line bearing S 82° 28' 06" E a distance of One Hundred Sixty-two and 02/100 (162.02') feet, more or less, to the point of beginning.

Said Building Envelope being shown on a sketch entitled, "SKETCH OF EXCERPT OF PLAN BOOK 461 PAGE 99 showing Building Envelope within Conservation Restriction Premises at #948 River Road, (Marstons Mills) Barnstable MA, prepared for Three Bays Preservation, Inc., *dba Barnstable Clean Water Coalition*, by M. H. Robinson, 23 April 2023; scale as noted," attached hereto as Exhibit C.

For title see deed dated June 29, 2023 in Deeds Book 35866, Page 176 recorded in the Barnstable County Registry of Deeds.

Street addresses: 0, 946 & 948 River Road (Marstons Mills), Barnstable MA

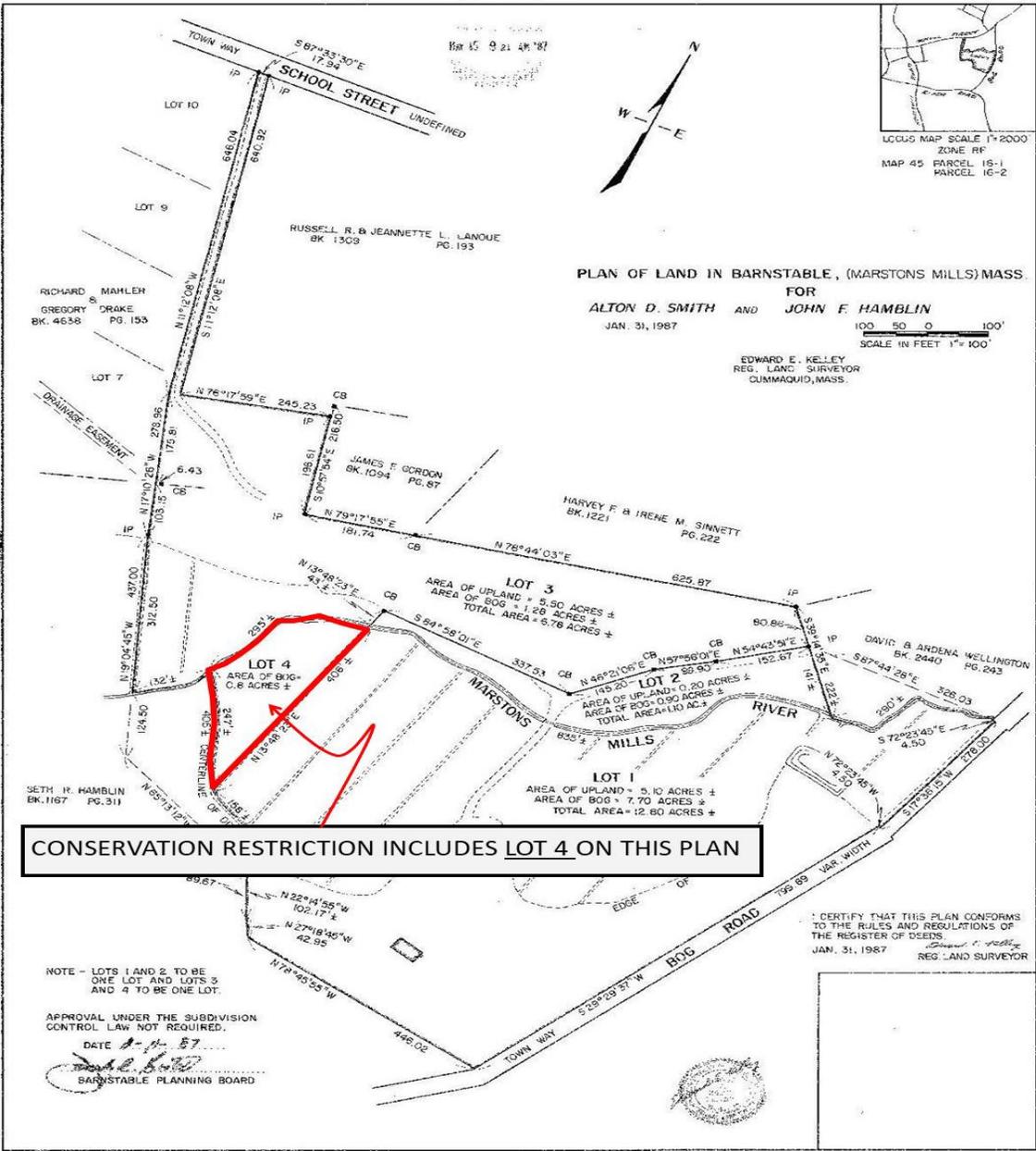
**EXHIBIT B.1**  
**Locus Sketch of Premises (Barnstable Assessors' GIS Map, 2023)**



**EXHIBIT B.2**  
**Reduced Copy of Plan of Premises**  
Plan Book 242 Page 145



**EXHIBIT B.3**  
**Reduced Copy of Plan of Premises**  
Plan Book 433 Page 59



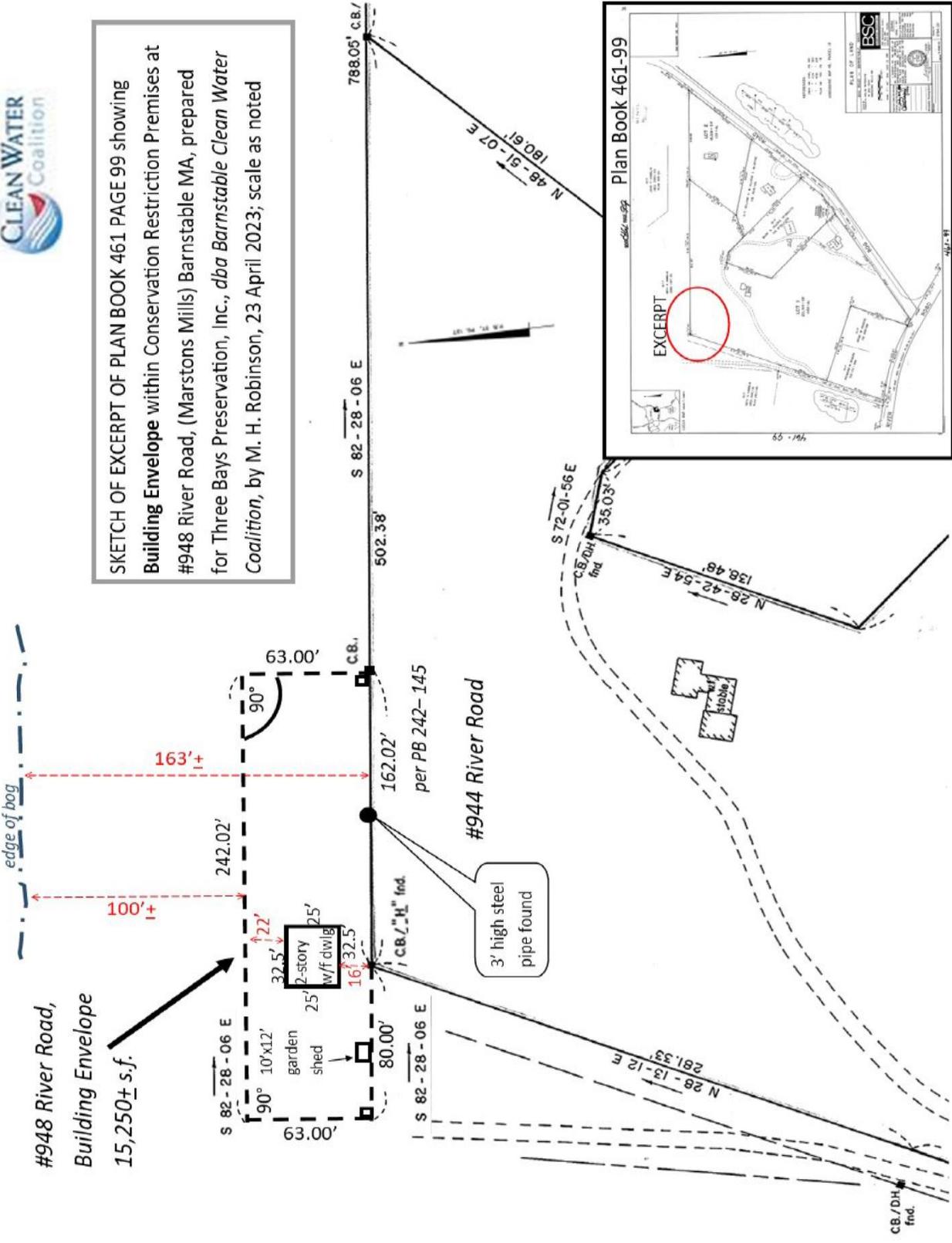
Block 433 59

**EXHIBIT C.1**  
**Sketch of Building Envelope within Premises**

SKETCH OF EXCERPT OF PLAN BOOK 461 PAGE 99 showing **Building Envelope** within Conservation Restriction Premises at #948 River Road, (Marstons Mills) Barnstable MA, prepared for Three Bays Preservation, Inc., *dba Barnstable Clean Water Coalition*, by M. H. Robinson, 23 April 2023; scale as noted; see detail in Exhibit C.2



SKETCH OF EXCERPT OF PLAN BOOK 461 PAGE 99 showing **Building Envelope** within Conservation Restriction Premises at #948 River Road, (Marstons Mills) Barnstable MA, prepared for Three Bays Preservation, Inc., dba *Barnstable Clean Water Coalition*, by M. H. Robinson, 23 April 2023; scale as noted



#948 River Road,  
Building Envelope  
15,250± s.f.

#944 River Road



**EXHIBIT D.**  
Town Council Vote  
*(to be added)*

# BARNSTABLE TOWN COUNCIL

ITEM# 2024-029  
INTRO: 08/17/2023

## SUMMARY

**TO:** Town Council  
**FROM:** Kate Connolly, Assistant Town Attorney  
**DATE:** August 17, 2023  
**SUBJECT:** Approving a Conservation Restriction on 17± acres of land at 0, 946 & 948 River Road in Marstons Mills between Three Bays Preservation, INC. (GRANTOR) and Barnstable Land Trust, INC. (GRANTEE)

1. Assessors Map 045, Parcel 016-004 (0 River Road),
2. Assessors Map 045, Parcel 026 (946 River Road), and
3. Assessors Map 045, Parcel 011 (948 River Road)

said Conservation Restriction to be donated to the Barnstable Land Trust for the purposes of preserving open space, wellfield and watershed resources, including restoration of wetlands, and allowing public access for passive recreation and environmental education.

**BACKGROUND:** This item has been placed on the agenda for the Council's approval of a Conservation Restriction (CR) to be granted by the nonprofit Three Bays Preservation, Inc. (doing business as Barnstable Clean Water Coalition) and to be held by the Barnstable Land Trust over approximately 17 acres of land on River Road in the Indian Ponds neighborhood of Marstons Mills. BCWC is in the process of acquiring significant portions (80+ acres) of bogland in this vicinity to reclaim the natural flow of the headwaters to the Marstons Mills River and restore the original route of the herring run into Middle Pond. This ecorestoration project will also provide a naturalized freshwater wetland to attenuate nitrogen and other contaminants entering the river system via upgradient septic system discharge from residential areas. The Town, State and USEPA and US Dept. of Agriculture Natural Resources Conservation Services are all in support of this restoration project.

**ANALYSIS:** This CR is required as part of the FY23 grant agreement between the State and BCWC for the acquisition of this property. This proposed CR 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 CR offers the following public benefits and will:

- preserve open space,
- link to other conservation land,
- preserve important natural habitats of wildlife or plants,
- prevent construction on land of natural resource value,
- preserve scenic views and a culturally significant landscape,
- provide public access for passive recreation and environmental education.

All CRs held by non-profits must be approved by the Town (and the State) under G.L. Ch. 184, ss. 31-33. Town Council action is needed for the Town to approve the CR.

**FISCAL IMPACT:** No fiscal impact. The property is already owned by a tax-exempt organization (BCWC).

**STAFF ASSISTANCE:** Kate Connolly, Assistant Town Attorney

**B. NEW BUSINESS (May be acted upon) (Majority Vote)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2024-030  
INTRO: 08/17/2023**

**2024- 030 APPROVING A CONSERVATION RESTRICTION ON 46.92 ACRES OF LAND AT 110 BOG ROAD IN MARSTONS MILLS BETWEEN THREE BAYS PRESERVATION, INC. (GRANTOR) AND BARNSTABLE LAND TRUST, INC. (GRANTEE) AS SHOWN ON A PORTION OF ASSESSORS MAP 045, PARCEL 017-001**

**RESOLVED:** That, pursuant to G.L. c. 184, sections 31-33, the Restriction statute, the Town Council does hereby approve and authorize the Town Council President to sign on behalf of the Town Council, and authorize the Town Manager to sign and approve on behalf of the Town of Barnstable, a Conservation Restriction (“CR”) between Three Bays Preservation, Inc. (Grantor) and Barnstable Land Trust, Inc. (Grantee), over approximately 46.92 acres of land and buildings at 110 Bog Road in Marstons Mills Village as shown on:

A portion of Assessors Map 045, Parcel 017-001, shown as  
That certain parcel of land, containing 46.92 acres, more or less, being all of the land shown as “Lot B” on a plan of land entitled, “Hamblin Bogs, 110 Bog Road, Barnstable (Marstons Mills), Massachusetts, Map 45 Lot 17-1” (sheets 1-5) , prepared for Barnstable Clean Water Coalition, 864 Main Street, Osterville MA, Scale: 1” = 120’, Date: June 12, 2023 and recorded in the Barnstable County Registry of Deeds in Plan Book 700 Page 81 - 85.

Said CR to be donated to the Barnstable Land Trust, Inc. for the purposes of preserving open space, wellfield and watershed resources, including restoration of wetlands, and allowing public access for passive recreation and environmental education. 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. It is further ordered that the Town Manager is authorized to execute, receive, deliver and record any written instruments necessary to effectuate the purposes set forth herein.

**SPONSOR:** Councilor Paula Schnepf, Precinct 12

DATE	ACTION TAKEN
_____	_____
_____	_____

- \_\_\_ Read Item
- \_\_\_ Rationale
- \_\_\_ Council Discussion
- \_\_\_ Vote

**GRANTOR: Three Bays Preservation, Inc. (dba Barnstable Clean Water Coalition)**

**GRANTEE: Barnstable Land Trust, Inc.**

**ADDRESS OF PREMISES: 110 Bog Road, (Village of Marstons Mills), Barnstable, MA**

**GRANTOR’S TITLE: Barnstable County Registry of Deeds, Book 35867, Page 72**

**Barnstable County Registry of Deeds, Plan Book 700, Page 81-85**

## **CONSERVATION RESTRICTION**

**THREE BAYS PRESERVATION, INC.**, (dba Barnstable Clean Water Coalition), a Massachusetts nonprofit corporation with an office address at 864 Main Street, Osterville, Massachusetts 02655, constituting all of the owners of the Premises as defined herein, for its successors and assigns (“Grantor”), for charitable consideration, as this conveyance is to be considered and characterized as a gift, acting pursuant to Sections 31, 32, and 33 of Chapter 184 of the Massachusetts General Laws, grants to **BARNSTABLE LAND TRUST, INC.** (Federal ID # 22-2483963), a Massachusetts nonprofit corporation with an office at 1540 Main Street, West Barnstable, Massachusetts 02668, its permitted successors and assigns (“Grantee”), with quitclaim covenants, **IN PERPETUITY AND EXCLUSIVELY FOR CONSERVATION PURPOSES**, the following described **CONSERVATION RESTRICTION** (hereinafter referred to as “Restriction”), on a parcel of land containing 46.92 acres, more or less, located in the Village of Marstons Mills, Town of Barnstable, County of Barnstable, Commonwealth of Massachusetts (“Premises”), which Premises is more particularly described in Exhibit A and shown in the sketch plan in Exhibit B, both of which are attached hereto and made a part hereof. The Grantor, its successors and assigns, and the Grantee, its permitted successors and assigns, are bound by and subject to the terms and conditions of this Restriction.

### **I. PURPOSES:**

This Restriction is defined in and authorized by Sections 31-33 of Chapter 184 of the Massachusetts General Laws, and otherwise by law. The Purpose of this Restriction is to assure that the Premises, will be maintained in perpetuity in its natural, scenic and open condition; to protect and promote the conservation of the public water supplies, native vegetation, soils, and natural watercourses; to restore the functions of the natural freshwater wetland habitat and the wildlife thereon; to protect and enhance the Conservation Values or Purposes of the abutting conservation areas; to ensure permanent protection of the aquatic resources and upland buffers on the Premises, and to allow and maintain public access for passive outdoor recreation and education of open space resources. The conservation and permanent protection of the Premises will yield a significant public benefit for the following reasons (hereinafter, the “Conservation Values”):

Public Funding. The Premises was acquired utilizing, in part, assistance from the Massachusetts Cranberry Bog Acquisition for Restoration Program, as authorized by chapter 209 of the Acts of 2018 (BID# BD-23-1042-ENV-ENV01-87312), which requires the conveyance of this Restriction. The ecological restoration of the bogs on the Premises will enhance aquatic resource and values by restoring “natural-functioning wetland habitat and provision of broader ecosystem services.”

### **The conservation values include the following:**

Consistency with the Barnstable Comprehensive Wastewater Management Plan. Protection of the Premises will advance a specific objective of the “Proposed Solutions” to reduce nutrient loading to the Three Bays

estuary as part of the 2019 Town of Barnstable Comprehensive Wastewater Management Plan, which proposes that the Town “continue to support partners ([Barnstable Clean Water Coalition and others) in pursuit of projects to convert the cranberry bogs in the upper end of the Marstons Mills River system to nutrient removal practices . . . .” (Section 5.2.4.2).

Open Space Protection. The Premises contributes to the protection of the scenic and natural character of Marstons Mills, and the protection of the Premises will enhance the open-space value of these and nearby lands. The Premises is part of an 80+ acre eco-restoration project, wherein the Grantor and Grantee are working in partnership with town, state and federal agencies to acquire, protect and restore the natural wetlands at the headwaters of the Marstons Mills River, the Town of Barnstable’s most prolific herring run.

Public Water Supply Protection. The Premises is entirely within a Department of Environmental Protection (DEP) Designated Zone II, which is associated with the Public Water Supply operated by the Centerville-Osterville-Marstons Mills Water Department. Preserving the Premises from development will enhance the quality of drinking water from these wells. The eco-restoration of the bogs into a natural freshwater wetland will also enable nitrogen attenuation from upgradient effluent sources before nutrients and other compounds can infiltrate to the aquifer.

Protection and Restoration of Wildlife Habitat. The Premises consists of freshwater wetlands that were cut over and drained between 100-150 years ago in the creation of a major complex of cultivated cranberry bogs. While the commercial bogs provided some surface water for waterfowl and amphibians, the disturbance of natural habitat and monoculture created resulted in net habitat loss. The restoration of the bog by exposing original wetland soils, resprouting the native freshwater seed bank, and enhancing the Premises with deliberate native plantings will provide a renewal of the freshwater wet meadow and shrub swamp that originally existed here and benefit many more aquatic and terrestrial species.

Biodiversity. The Marstons Mills River, downstream of the Premises, is identified as a BioMap Core Habitat, the top-rated classification of rare species habitats in Massachusetts. Restoring the freshwater habitat and improving the water quality in the headwater stream will enhance the value of the River’s Core Habitat and anadromous fish run. The presence of functioning wetlands also strengthens the climate resilience of the Premises.

Historical and Cultural Values. Permanent protection of the Premises with this Restriction will preserve the historical and cultural attributes of this land in perpetuity. The Grantor recognizes the impacts of human presence on this and neighboring lands, and seeks to preserve, and conserve in perpetuity the ecological, historic and cultural values that this land possesses. The Marstons Mills River is an important cultural landmark for the Mashpee Wampanoag Tribe, owing to the importance of herring runs as a traditional food source. Protection of the Premises is also consistent with the purposes of the Native Land Conservancy, Inc. to protect traditional cultural landscapes, which include the flora and fauna that have a unique historical meaning and value to the Native American community.

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, amended in 2021 to accommodate climate change goals and objectives):

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- “To protect, preserve, or restore the quality and natural values and functions of inland and coastal wetlands and their buffers” (Wetland Resources Goal, p. 61);
  - “Protect wetlands and their buffers from vegetation and grade changes”
  - “Protect wetlands from changes in hydrology”
  - “Protect wetlands from stormwater discharges”
  
- "To protect, preserve, or restore wildlife and plant habitat to maintain the region's natural diversity" (Wildlife and Plant Habitat Goal, p. 61); and
  - "Maintain existing plant and wildlife populations and species diversity."
  
- "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, p. 61);
  - "Protect and preserve natural, cultural, and recreational resources;"
  - "Maintain or increase the connectivity of open space;"
  - "Protect or provide open space appropriate to context."
  
- “To prevent or minimize human suffering and loss of life and property or environmental damage resulting from storms, flooding, erosion, and relative sea level rise, including but not limited to that associated with climate change” (Coastal Resiliency Goal, p.62); and
  - “Minimize development in the floodplain”
  - “Plan for sea level rise, erosion, and floods”
  - “Reduce vulnerability of built environment to coastal hazards”

Conservation of the Premises also supports Barnstable Town Council's Strategic Plan FY2015 which seeks to promote the preservation and protection of significant natural resources for visual quality, outdoor recreation, public access, and wildlife habitat.

Consistency with Clearly Delineated Town of Barnstable Conservation Policy. Protection of the Premises will further the Town of Barnstable’s documented goals regarding conservation land. The Town outlined its conservation goals in its *Open Space and Recreational Plan* (1984, amended 1987, 1998, 2005, 2010, 2018), identifying goals, policies, and actions to guide conservation efforts, among them the goal of preserving “quality open spaces throughout the Town which protect and enhance its visual heritage.” Additional objectives include (*references are to the 2018 Plan*):

- "Preservation of open space for protection of drinking water resources, and for protection of other natural, historic and scenic resources is a community-wide priority; and
- Protection of open space should continue to be an integral component of the Town's efforts." (p. 6).

To achieve this vision, the Plan sets several goals for the town including:

- "To protect and maintain the maximum amount of open space to enhance environmental protection, recreational opportunities and community character, and
- “Plan, coordinate and execute open space protection measures that complement community efforts to protect water supply, protect fresh and marine surface waters, [and] preserve historic, scenic and cultural resources..." (pp. 10-11).

Additionally, the Barnstable Town Council’s Strategic Plan for fiscal year 2015 identified the goal to preserve and protect significant natural and historic resources for visual quality, outdoor recreation, wildlife habitat, and cultural history.

Moreover, in 1981, the Town of Barnstable adopted a Conservation Restriction Program consisting of policies and guidelines, in particular an Open Space Policy, approved by the Board of Selectmen, Board of 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;
- 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 Restriction will advance each of these goals articulated by the Town of Barnstable, such as ensuring that the Premises will stay as open space and reduce the negative impacts of development on surrounding water resources (e.g., Marstons Mills River).

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.

Consistency with Clearly Delineated State Conservation Policy. Protection of the Premises is consistent with the mission of the Massachusetts Division of Ecological Restoration (“DER”) to restore and protect the health and integrity of the Commonwealth's rivers, wetlands and watersheds for the benefit of people, fish and wildlife. DER is an active partner with the Grantor and Grantee in restoring more than 80 acres of cranberry bogs in the Marstons Mills River watershed to natural stream flow and freshwater wetland habitat.

These and other Conservation Values of the Premises, as well as its current uses, conditions, 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 stored at the office of the Grantor and Grantee. 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 Restriction, and (ii) is intended to serve as an objective information baseline for subsequent monitoring of compliance with the terms of this 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.

Therefore, preservation of the Premises will advance the open space, resource management and passive recreational goals and objectives of the Town of Barnstable and the Commonwealth of Massachusetts.

## **II. PROHIBITED ACTIVITIES:**

In order to carry out the purposes set forth in Paragraph I above, the Grantor covenants for itself and its legal representatives, successors and assigns that the Premises will at all times be held, used and conveyed subject to and not in violation of this Restriction. The Grantor shall refrain from and will not permit any activity which shall be inconsistent with the Purposes of this Restriction or which materially impairs water quality, soil conservation, wildlife conservation, scenic landscape protection or which is otherwise wasteful of the natural resources of the Premises.

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Subject to the exceptions set forth in Paragraph III below, prohibited activities on, above and below the Premises shall include, but shall not be limited to, the following activities, which the Grantor shall not perform or allow others to perform:

- A. Construction or placing or allowing to remain any building, residential dwelling, mobile home, tennis court, ball fields, swimming pool, artificial water impoundment, billboard, or other advertising display, landing strip or pad, wind turbine, antenna, utility pole, tower, solar array, aboveground or underground storage tank, or any other temporary or permanent structure or facility on, under or above the Premises.
- B. Placing, storing or dumping of equipment, mobile home, trailer, automotive vehicle or parts, soil, rock, sand, stumps, slash, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, waste, radioactive waste, or hazardous waste or other substance or material whatsoever.
- C. Mining, excavation, dredging or removal of any loam, peat, gravel, soil, sand, rock, surface water, ground water, or other mineral substance or natural deposit from the Premises, or otherwise making topographical changes to the Premises.
- D. Pollution, alteration, depletion, diversion, channelization, damming, draining, or extraction of surface water, natural water courses, marshes, potential or certified vernal pools, subsurface water, or any other water bodies.
- E. Removal, destruction or cutting of trees, grasses, shrubs or other natural vegetation, including cutting for firewood or commercial harvesting and lumbering activities.
- F. Introduction of species of animals or plants that are not native to Barnstable County, as defined by current published lists of native species, including *The Vascular Plants of Massachusetts: A County Checklist*, by Bruce A. Sorrie and Paul Somers, published by the Massachusetts Division of Fisheries and Wildlife Natural Heritage & Endangered Species Program (1999) or as amended or contained in a similar professionally acceptable publication available in the future.
- G. Use, parking or storage of motorized or power-driven vehicles of any kind, including without limitation snowmobiles, motorbikes, off-highway vehicles, or watercraft, acknowledging that vehicles necessary for public safety (i.e., fire, police, ambulance, other government officials) may have a legal right to enter the Premises.
- H. Camping, hunting or trapping unless for proven nuisance wildlife. The discharge of fireworks, firearms, arrows or any other projectiles is prohibited.
- I. Subdividing or conveying a part or portion of the Premises (as compared to conveyance of the Premises in its entirety which shall be permitted), it being the Grantor's and Grantee's intention to maintain the entire Premises under unified ownership;
- J. Activities detrimental to drainage, flood control, water conservation, water quality, erosion control, soil conservation, or ecosystem function.
- K. The excavation of landscape features on the Premises or collecting, disturbing or otherwise removing archaeological artifacts (prehistoric and/or historic).

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- L. Using the Premises towards building or development requirements on this or any other parcel, including using any portion of the Premises towards any building, septic system or other development requirements on any other parcel outside the Premises.
- M. Any commercial, residential, industrial uses, including commercial agriculture.
- N. Any other use of the Premises or activity which is inconsistent with the purpose of this Restriction, or which would materially impair its Conservation Values, or which is prohibited by federal, state or local law or regulation.

### **III. PERMITTED ACTIVITIES AND RESERVED RIGHTS:**

The Grantor reserves the right to conduct or permit the following activities on the Premises, but only if such uses and activities do not materially impair the Conservation Values and are not inconsistent with the Purposes of this Restriction:

- A. The selective removal 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, wood roads, fence lines, trails and meadows;
- B. Measures, such as the installation of sight-pervious fencing and signage, taken in order to prevent trespass, unauthorized vehicle entry and dumping, vandalism or other acts destructive to the Premises. Fencing must not impede the passage of wildlife;
- C. With the prior approval of the Grantee, measures taken in order to protect the stability of a naturally occurring feature on the land's surface (e.g., protect a bank or hill from erosion);
- D. The use of the Premises for passive recreational activities such as hiking, snowshoeing, cross-country skiing, nature study or research, and other like activities, including by means of motorized wheelchairs or other mobility assistance devices;
- E. With prior approval of the Grantee, construction and maintenance of trails, bridges, boardwalks, blinds, kiosks, observation decks and other related structures needed to facilitate the approved public uses;
- F. The erection and maintenance of signs identifying ownership of the Premises, the property boundaries, the Premises' status as a conservation restriction, the restrictions on the use of the Premises, the identity or location of trails, areas of interest, natural features or other characteristics of the Premises, or for providing other like information;
- G. Minimal cutting or removal of trees, shrubs and other vegetation and planting of native trees, shrubs and other vegetation to maintain or improve the conservation values protected by this Restriction; and collection of storm damaged trees to prevent threat of injury or damage to persons or property; to prevent or mitigate pest infestation, blight or disease; to control, manage or eradicate non-native or invasive species not native to the wetland or forest; or to improve or protect wildlife habitat all in a manner to avoid or minimize harm to native species;

- H. The use of motorized vehicles (1) by the Grantor as reasonably necessary to carry out activities permitted under this Restriction, including mowing and maintenance, (2) by persons with mobility impairments as otherwise allowed by the Restriction, and (3) for access by police, fire, emergency, public works, or other governmental personnel carrying out their official duties. With the exception of mobility assistance devices by persons with mobility impairments, the use of motorized vehicles shall be limited to the roads, driveway and carpaths on the Premises, now or in the future. Notwithstanding the foregoing, the use of motorized vehicles for recreational purposes, such as dirt bikes, all-terrain vehicles, off-highway vehicles, and the like, is not permitted, except for the use of motorized mobility assistance devices by persons with mobility impairments;
- I. The maintenance, use and improvement for safe vehicular passage, proper drainage, and fire control of: (i) the existing driveway serving the Premises from Bog Road; and (ii) the existing bog perimeter carpaths as shown in the Baseline Report
- J. With prior approval by Grantee, active measures to prevent unauthorized vehicle entry and dumping;
- K. With the prior written approval of Grantee and in compliance with a plan approved in advance by DER, such plan to be kept on file by Grantor, conducting or permitting others to conduct ecological restoration of the existing cranberry bogs as shown in the Baseline Report for the purposes of enhancing, restoring, or recreating the natural functions and values that the Premises provided before it was farmed. This includes but is not limited to removal of sand dikes and berms, regrading, alteration of vegetation, and installation of temporary fencing and signage as public safety and erosion control measures during active construction;
- L. The use and storage of construction equipment, including vehicles, trailers, and portable restrooms, on the Premises solely for the purpose of ecological restoration.
- M. With prior written approval of the Grantee, adaptive management, including but not limited to modifications of drainage channels and additional plantings of native species, to further enhance the initial restoration of the bogs;
- N. With the prior written approval of Grantee, the installation of equipment, structures and measures intended to reduce or remove nutrients and other potential contaminants from the wetland recharge and watershed area of the Premises;
- O. Informal parking related to allowed public uses and Grantor's mission within 150 feet of Bog Road alongside the Premises, including fencing or other demarcations to prevent disturbance of the wetlands by parking use;
- P. With the prior written approval of Grantee, the installation of equipment, structures and measures intended to recreate an anadromous fish run from the Marstons Mills River to Middle Pond;
- Q. Archaeological investigations, including without limitation archaeological research, surveys, excavation and artifact retrieval, subject to and 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, and Grantee;

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Notwithstanding the foregoing permitted activities, any proposed modifications to the landscape, including but not limited to the creation of trails, management of vegetation and wetland resources,

and installation of signage and educational kiosks, shall not be undertaken if they disturb, remove, damage or destroy archaeological resources or artifacts on the Premises; and

- R. The right for the Grantor to allow access to the Premises to local indigenous groups for cultural land ceremonial uses that are consistent with the Conservation Values. Cultural practices are defined, for the purposes of this Restriction, as including traditional spiritual ceremonies, seasonal celebrations, offerings, and cultural/education/interpretation programs. With the written approval of Grantor, persons designated by Grantor may harvest plant-life using sustainable methods, including regrowth and replanting, for traditional cultural practices and non-commercial purposes. Harvesting may be conducted using only hand tools and only in traditionally customary quantities deemed sustainable in the sole judgment of the Grantor. Harvesting shall not be conducted in areas that have undergone ecological restoration until more than five (5) years after restoration is completed.
- S. **Site Restoration.** Upon completion of any Permitted Acts and Uses, all disturbed areas shall be restored substantially to the conditions that existed prior to said activities, including with respect to soil material, grade, and vegetated ground cover.
- T. **Compliance with Permits, Regulations, Laws.** The exercise of any Permitted Acts and Uses or Reserved Rights shall be in compliance with all applicable federal, state and local laws, rules, regulations, and permits, including zoning, and with the Constitution of the Commonwealth of Massachusetts. The inclusion of any Reserved Right requiring a permit, license or other approval from a public agency does not imply that the Grantee or the Commonwealth takes any position whether such permit, license, or other approval should be issued.

#### IV. NOTICE AND APPROVAL:

- A. Notifying Grantee. Whenever notice to or approval by Grantee is required, Grantor shall notify or request approval from 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, unless a different time period is specified herein. The notice shall:
- a. Describe the nature, scope, design, location, timetable and any other material aspect of the proposed activity;
  - b. Describe how the proposed activity complies with the terms and conditions of this Restriction, and will not materially impair the Purposes and/or Conservation Values;
  - c. Identify all permits, licenses, or approvals required for the proposed activity, and the status of any such permits, licenses, or approvals.
  - d. Describe 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 and Conservation Values.
- B. Grantee Review. 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 only be granted upon a showing that the proposed activity will minimize impacts to the Conservation Values and will not materially impair the Purposes and/or Conservation Values. Grantee may require

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Grantor to secure expert review and evaluation of a proposed activity by a mutually agreed upon party.

- C. Resubmittal. Grantee's failure to respond within sixty (60) days of receipt shall not constitute approval of the request. Grantor may subsequently submit the same or a similar request for approval.

**V. LEGAL REMEDIES OF THE GRANTEE; WAIVER:**

- A. The rights hereby granted shall include the right to enforce this Restriction by appropriate legal proceedings including obtaining compensatory, injunctive and other equitable relief against any violations, including, without limitation, relief requiring restoration of the Premises to its condition prior to the time of the injury complained of, it being agreed that the Grantee will have no adequate remedy at law, and shall be in addition to and not in limitation of any other rights and remedies available to the Grantee for the enforcement of this Restriction.
- B. Notwithstanding the foregoing, the Grantee agrees to provide written notice to Grantor of any violation of this Restriction and to cooperate for a reasonable period of time, not to exceed sixty (60) days, to allow Grantor to remedy the violation, prior to resorting to legal or equitable means in resolving issues concerning alleged violations provided Grantor has ceased objected-to actions and is making a good faith effort to remedy the violation and Grantee reasonably determines there is no ongoing diminution of the Conservation Values of this Restriction.
- C. The Grantor and its successors and assigns shall each be liable under this section for any such violations of this Restriction as may exist during their respective periods of ownership of the Premises. Any new owner may be held responsible for any continuing violations existing during his or her period of ownership.
- D. By acceptance of this 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.
- E. If Grantee prevails in any action to enforce the terms of this Restriction, the Grantor or Grantor's heirs, successors and assigns, as the case may be, shall reimburse the Grantee for reasonable costs and expenses, including reasonable attorney's fees, incurred in enforcing this Restriction or in taking reasonable measures to remedy or abate any violation thereof.
- F. Enforcement of the terms of this Restriction shall be at the discretion of the Grantee. Any election or forbearance by the Grantee as to manner and timing of its right to enforce this Restriction or otherwise exercise its rights hereunder shall not be deemed or construed to be a waiver of such rights. In the event of a dispute over the boundaries of the Restriction, Grantor shall pay for a survey by a Massachusetts licensed professional land surveyor and to have the boundaries permanently marked.

## **VI. ACCESS**

- A. The Restriction hereby grants to the Grantee, and its duly authorized agents or representatives, the right to enter upon the Premises at reasonable times and in a reasonable manner for the following purposes:
1. to perform a survey of boundary lines;
  2. to inspect the Premises to determine compliance within provisions of this Restriction; or
  3. for the purpose of taking any and all actions with respect to the Premises, at Grantor's cost, as may be necessary or appropriate to remedy or abate or enforce any violation hereof provided that Grantee first gives Grantor notice of the violation, and upon failure of the Grantor to cure the violation within sixty (60) days of receiving said notice, Grantee then gives Grantor further written notice of its intention to enter the Premises to take such actions at least fifteen (15) days following the date of such further written notice. The requirements for providing notice to the Grantor prior to entering the Premises shall not apply in emergency situations where delayed action may result in ongoing harm to the Premises.
- B. The Restriction hereby conveyed includes the grant of the right to the general public to enter upon the Premises, and to use the Premises thereon for the purposes set forth in Paragraph III. D above for daytime use, 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. 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 III.D. The Grantee may require the Grantor to post the Premises against any use by the public that results in material impairment of the Conservation Values. This grant of public access to the Premises is solely for the purposes described in Section 17C of Chapter 21 of the Massachusetts General Laws and the Grantor and Grantee hereto express their intent to benefit from exculpation from liability to the extent provided in such section.

## **VII. ACTS BEYOND GRANTOR'S CONTROL:**

Nothing contained in this Restriction shall be construed to entitle the Grantee to bring any action against the Grantor for any injury to or change in the Premises resulting from natural causes beyond the Grantor's control, including but not limited to fire, flood, storm, natural erosion or from any prudent action taken by the Grantor under emergency conditions to abate, prevent, or mitigate significant injury to or alteration of the Premises resulting from such natural causes. The parties to this Restriction agree that in the event of damage to the Premises from acts beyond the Grantor's control, that if it is desirable that the Premises be restored, the parties will cooperate in attempting to restore the Premises, if feasible.

## **VIII. COSTS AND TAXES:**

Grantor agrees to pay and discharge when and if due any and all real property taxes and other assessments levied by competent authority on the Premises.

## **IX. DURATION, BINDING EFFECT, RELEASE AND RECORDATION:**

The burdens of this Restriction shall run with the Premises IN PERPETUITY and shall be enforceable against the Grantor and the Grantor's successors and assigns holding any interest in the Premises. The Grantee is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Restriction; the Grantor, on behalf of itself and its successors and assigns, appoints the *Marstons Mills River Headwaters –II (ex-E. Hamblin) Conservation Restriction Barnstable, MA*

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 instrument upon reasonable request.

#### **X. RUNNING OF THE BENEFIT; ASSIGNMENT:**

The benefits of this Restriction shall run to the Grantee, shall be in gross and shall not be assignable by the Grantee, their successors and assigns, except when all of the following conditions are met:

- A. The assignee, at the time of the assignment, is a "qualified organization" as defined in Section 170(h)(3) of the Internal Revenue Code of 1986, as amended, including, without limitation, a government entity, and is eligible to receive this Conservation Restriction under Section 32 of Chapter 184 of the Massachusetts General Laws;
- B. The Grantee requires that the assignee shall hold this Restriction and enforce its terms such that the Purposes continue to be carried out;
- C. The assignee is not an owner of the fee in the Premises;
- D. The assignment complies with the provisions required by Article 97 of the amendments to the Constitution of the Commonwealth of Massachusetts, if applicable;
- E. The Grantee shall notify the Grantor in writing at least thirty (30) days before assigning this Restriction and the Grantor shall have thirty (30) days from the date of such notice to approve the assignment in writing, which approval shall not be unreasonably withheld. Failure of the Grantor to respond to the notice of assignment within thirty (30) days shall be deemed approval thereof.

#### **XI. ESTOPPEL CERTIFICATES:**

Upon request by the Grantor, the Grantee shall, within twenty (20) days, execute and deliver to the Grantor any document, including an estoppel certificate, which certifies the Grantor's compliance with any obligation of the Grantor contained in this Restriction, and which otherwise evidences the status of this Restriction as may be requested by the Grantor.

#### **XII. SUBSEQUENT TRANSFERS:**

The Grantor agrees to incorporate this Restriction, in full or by reference, in any deed or other legal instrument by which Grantor conveys or transfers any interest in all or a portion of the Premises, including, without limitation, a leasehold interest. The Grantor further agrees to notify the Grantee in writing at least thirty (30) days before conveying or transferring the Premises, or any part thereof or interest therein, including a leasehold interest. Any transfer shall comply with Article 97 of the amendments to the Constitution of the Commonwealth of Massachusetts, if applicable. Failure to do any of the above shall not impair the validity or enforceability of this Conservation Restriction. If the Grantor fails to 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, then the Grantee may record, in the applicable registry of deeds, or registered in the applicable land court registry district, and at the Grantor's expense, a notice of this Conservation Restriction.

### **XIII. TERMINATION OF RIGHTS AND OBLIGATIONS:**

Notwithstanding anything to the contrary contained herein, the rights and obligations under this Restriction of any party holding an interest in the Premises, terminate upon transfer of that party's interest, except that liability for acts or omissions occurring prior to the transfer, and liability for the transfer itself if the transfer is a violation of this 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.

### **XIV. AMENDMENT:**

If circumstances arise under which an amendment to or modification of this Restriction would be appropriate, the Grantor and the Grantee may by mutual consent amend this 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 General laws of Massachusetts. Any amendments to this 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 values. 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 Restriction, shall not affect its perpetual duration, shall be approved by the Town of Barnstable and the Secretary of Energy and Environmental Affairs, and, if applicable, shall comply with the provisions of Article 97 of the Amendments to the Massachusetts Constitution, and any gifts, grants or funding requirements. Any amendment shall be recorded in the Barnstable County Registry of Deeds.

### **XV. EXTINGUISHMENT:**

- A. If circumstances arise in the future such as render the purpose of this Conservation Restriction impossible to accomplish, this restriction can only be terminated, released, 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 termination, release, or extinguishment 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 XV.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 Purpose and protection of the Conservation Values set forth herein.
- B. Proceeds. Grantor and Grantee agree that the conveyance of this Conservation Restriction gives rise to a real property right, immediately vested in the Grantee, with a fair market value that is equal to five percent (5%) of the fair market value of the unrestricted Premises. Such proportionate value of the Grantee's property right shall remain constant. Any proceeds resulting from an extinguishment or other release of this Restriction will be distributed only after complying with the terms of any gift, grant, or other funding requirements.
- C. Grantor/Grantee Cooperation Regarding Public Action. Whenever all or 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 Grantee shall cooperate in recovering full value or all direct and consequential damages resulting from such action.

All related expenses incurred by the Grantor and Grantee under this section shall first be paid out of any recovered proceeds, and the remaining proceeds shall be distributed between the Grantor and Grantee in accordance with Article XV.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 Purposes or the protection of the Conservation Values.

#### **XVI. NONMERGER:**

Grantee agrees that it will not take title to any part of the Premises without having first assigned this Restriction, pursuant to Article X, to a non-fee holder to ensure that merger does not occur and that this Restriction continues to be enforceable by a non-fee owner.

#### **XVII. SEVERABILITY:**

If any court of competent jurisdiction shall hold that any section or provision of this Restriction is unenforceable, the remainder of this Restriction shall not be affected.

#### **XVIII. MISCELLANEOUS PROVISIONS:**

- A. Controlling Law: The interpretation and performance of this 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 Restriction shall be liberally construed in favor of the grant to affect the purposes of this Restriction and the policies and purposes of Sections 31- 33 of Chapter 184 of the Massachusetts General Laws. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purposes of this Restriction that would render the provision valid shall be favored over any interpretation that would render it invalid.
- C. Entire Agreement: This instrument sets forth the entire agreement of the parties with respect to the Restriction and supersedes all prior discussions, negotiations, understandings, or agreements related to the Restriction, all of which are merged herein.
- D. Pre-existing Public Rights. Approval of this 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.
- E. 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: Three Bays Preservation Inc.  
dba Barnstable Clean Water Coalition  
864 Main Street  
Osterville MA 02655

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

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.

**XIX. EFFECTIVE DATE:**

This Restriction shall be recorded in a timely manner. Grantor and Grantee intend that the restrictions arising hereunder take effect on the day and year this Restriction is signed by the Grantor and Grantee and recorded in the official records of the Barnstable County Registry of Deeds, after all signatures required by Massachusetts General Law, Chapter 184, Section 32 have been affixed hereto.

**XX. SUBORDINATION:**

The Grantor shall record at the applicable registry of deeds or shall register in the applicable land court registry district simultaneously with this 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.

The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction of interpretation.

Included herein are the following: Signature pages:

Grantor – Three Bays Preservation, Inc.  
Grantee Acceptance – Barnstable Land Trust, Inc.  
Approval by Barnstable Town Council  
Approval by Barnstable Town Manager  
Approval of the Secretary of Energy and Environmental Affairs.

Attached hereto and incorporated are the following: Exhibits:

Exhibit A: Legal Description of Premises  
Exhibit B: Reduced size copy of Recorded Plan of the Premises  
Exhibit C. Town Council Vote

*[the remainder of this page left intentionally blank]*

WITNESS our hands and seals this \_\_\_\_\_ day of \_\_\_\_\_, 2023,

**THREE BAYS PRESERVATION, INC.**

BY:

\_\_\_\_\_  
Michael Egan, President

\_\_\_\_\_  
Laureen Pfizenmaier, Treasurer

**COMMONWEALTH OF MASSACHUSETTS**

Barnstable, ss:

On this \_\_\_\_\_ day of \_\_\_\_\_, 2023, before me, the undersigned notary public, personally appeared, Michael Egan, President and Laureen Pfizenmaier, Treasurer, and proved to me through satisfactory evidence of identification which was \_\_\_\_\_ 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  
My Commission Expires:

**ACCEPTANCE OF GRANT**

This Conservation Restriction from Three Bays Preservation Inc. was accepted by the Barnstable Land Trust, Inc. this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
By: Leigh Townes  
Its: President, duly authorized

\_\_\_\_\_  
By: Jill McCleary  
Its: Treasurer, duly authorized

**COMMONWEALTH OF MASSACHUSETTS**

Barnstable, ss:

On this \_\_\_\_\_ day of \_\_\_\_\_, 2023, before me, the undersigned notary public, personally appeared, Leigh Townes, President, and Jill McCleary, Treasurer, of the 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.

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

**APPROVAL OF TOWN COUNCIL**

The undersigned, President of the Town Council of the Town of Barnstable, hereby certifies that at a public meeting duly held on \_\_\_\_\_, 2023, the Council voted to approve the foregoing Conservation Restriction from Three Bays Preservation, Inc. to the Barnstable Land Trust, Inc. in the public interest pursuant to Section 32 of Chapter 184 of the General Laws of Massachusetts.

**TOWN COUNCIL:**

\_\_\_\_\_  
Matthew P. Levesque, President

**COMMONWEALTH OF MASSACHUSETTS**

Barnstable, ss:

On this \_\_\_\_\_ day of \_\_\_\_\_, 2023, before me, the undersigned notary public, personally appeared Matthew P. Levesque, President, Barnstable Town Council, 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 he signed it voluntarily for its stated purpose.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

**APPROVAL OF TOWN MANAGER**

I, the undersigned, Town Manager of the Town of Barnstable, hereby certify that I approve the foregoing Conservation Restriction from Three Bays Preservation, Inc. to the Barnstable Land Trust, Inc. in the public interest pursuant to Section 32 of Chapter 184 of the General Laws of Massachusetts.

TOWN MANAGER:

\_\_\_\_\_  
Mark S. Ells

**COMMONWEALTH OF MASSACHUSETTS**

Barnstable, ss:

On this day of \_\_\_\_\_, 2023, before me, the undersigned notary public, personally appeared \_\_\_\_\_ Mark S. Ells, Barnstable Town Manager, 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 he signed it voluntarily for its stated purpose.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

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

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

Dated: \_\_\_\_\_, 2023

---

Rebecca L. Tepper  
Secretary of Energy and Environmental Affairs

**COMMONWEALTH OF MASSACHUSETTS**

SUFFOLK, ss:

On this day of \_\_\_\_\_, 2023, before me, the undersigned notary public, personally appeared Rebecca L. Tepper 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 Premises**

That certain parcel of land located east of Bog Road in Barnstable (Marstons Mills), Barnstable County, Massachusetts, more particularly bounded and described as follows:

That certain parcel of land, containing 46.92 acres, more or less, being all of the land shown as “Lot B” on a plan of land entitled, “Hamblin Bogs, 110 Bog Road, Barnstable (Marstons Mills), Massachusetts, Map 45 Lot 17-1” (sheets 1-5) , prepared for Barnstable Clean Water Coalition, 864 Main Street, Osterville MA, Scale: 1” = 120’, Date: June 12, 2023 and recorded in the Barnstable County Registry of Deeds in Plan Book 700 Page 81 - 85.

A reduced copy of said plan is attached hereto as Exhibit B.

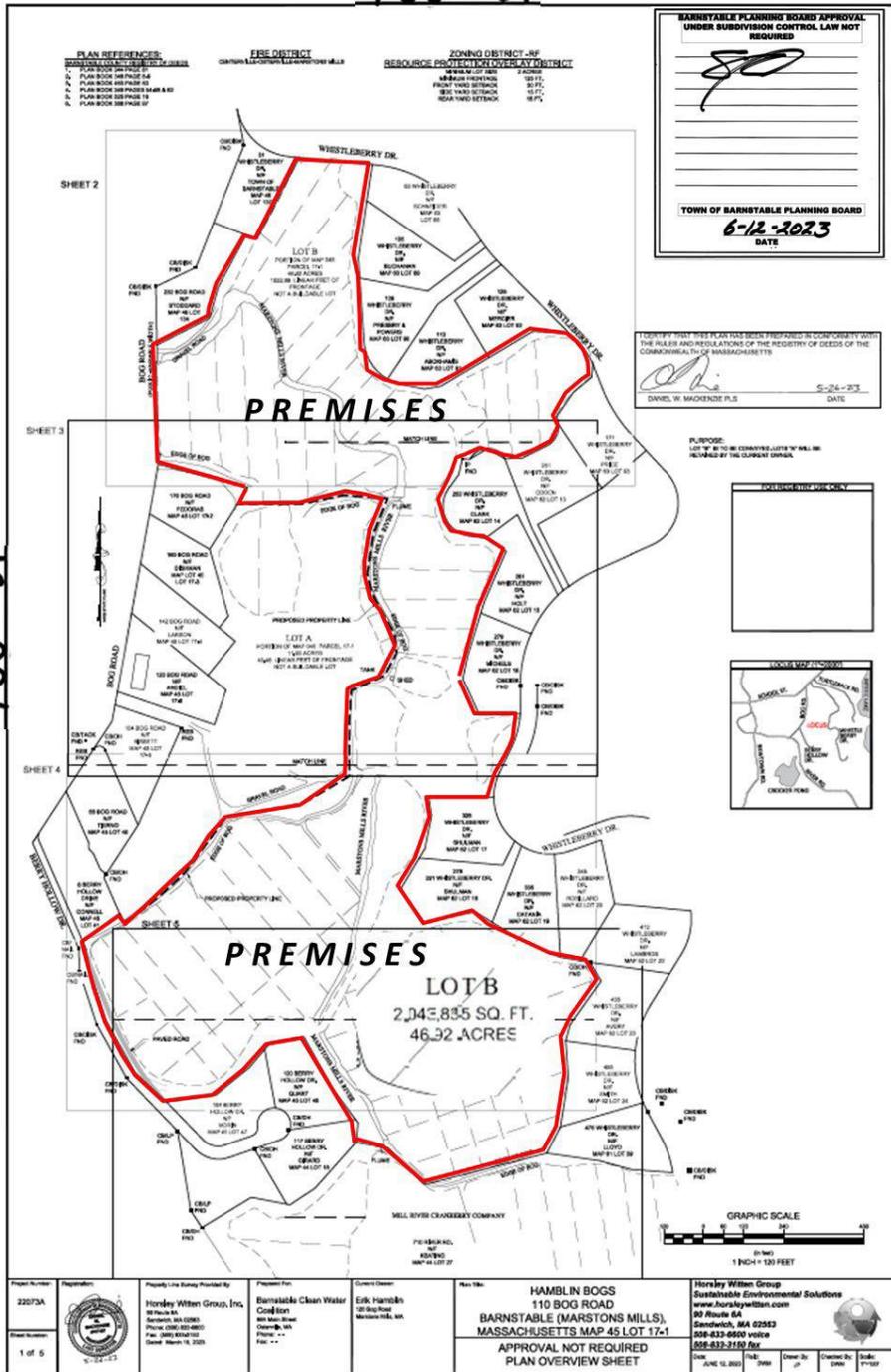
For title see deed dated \_\_\_\_\_ 2023 in Deeds Book 35867, Page 72.

Street address: 110 Bog Road (Marstons Mills), Barnstable MA

**EXHIBIT B. Reduced Copy of Recorded Plan of Premises  
PLAN BOOK 700 PAGES 81 – 85**

700-81

700-0718



**EXHIBIT C.  
Town Council Vote  
(to be added)**

# BARNSTABLE TOWN COUNCIL

ITEM# 2024-030  
INTRO: 08/17/2023

## SUMMARY

**TO:** Town Council  
**FROM:** Councilor Paula Schnepf, Precinct 12  
**DATE:** August 17, 2023  
**SUBJECT:** Approving a Conservation Restriction on 46.92 acres of land at 110 Bog Road in Marstons Mills between Three Bays Preservation, Inc. (GRANTOR) and Barnstable Land Trust, Inc. (GRANTEE) as shown on a portion of Assessors Map 045, Parcel 017-001

A portion of Assessors Map 045, Parcel 017-001, shown as That certain parcel of land, containing 46.92 acres, more or less, being all of the land shown as “Lot B” on a plan of land entitled, “Hamblin Bogs, 110 Bog Road, Barnstable (Marstons Mills), Massachusetts, Map 45 Lot 17-1” (sheets 1-5) , prepared for Barnstable Clean Water Coalition, 864 Main Street, Osterville MA, Scale: 1” = 120’, Date: June 12, 2023 and recorded in the Barnstable County Registry of Deeds in Plan Book 700 Page 81 - 85

Said Conservation Restriction to be donated to the Barnstable Land Trust for the purposes of preserving open space, wellfield and watershed resources, including restoration of wetlands, and allowing public access for passive recreation and environmental education.

**BACKGROUND:** This item has been placed on the agenda for the Council’s approval of a Conservation Restriction (CR) to be granted by the nonprofit Three Bays Preservation, Inc. (doing business as Barnstable Clean Water Coalition, “BCWC”) and to be held by the Barnstable Land Trust over approximately 46.92 acres of land at 110 Bog Road in the Indian Ponds neighborhood of Marstons Mills. BCWC is in the process of acquiring significant portions (80+ acres) of bogland in this vicinity to reclaim the natural flow of the headwaters to the Marstons Mills River and restore the original route of the herring run into Middle Pond. This ecorestoration project will also provide a naturalized freshwater wetland to attenuate nitrogen and other contaminants entering the river system via upgradient septic system discharge from residential areas. The Town, State and USEPA and US Dept. of Agriculture Natural Resources Conservation Services are all in support of this restoration project.

**ANALYSIS:** This conservation restriction is required as part of the FY23 grant agreement between the State and BCWC for the acquisition of this property. 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 CR offers the following public benefits and will:

- preserve open space,
- link to other conservation land,
- preserve important natural habitats of wildlife or plants,
- prevent construction on land of natural resource value,
- preserve scenic views and a culturally significant landscape,
- provide public access for passive recreation and environmental education.

All CRs held by non-profits must be approved by the Town (and the State) under G.L. Ch. 184, ss. 31-33. Town Council action is needed for the Town to approve the CR.

**FISCAL IMPACT:** No fiscal impact. The property is already owned by a tax-exempt organization (BCWC).

**B. NEW BUSINESS (First Reading) (Refer to Second Reading 09/07/2023)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2024-031  
INTRO: 08/17/2023**

**2024-031 APPOINTMENTS TO A BOARD/COMMITTEE/COMMISSION**

**RESOLVED:** That the Town Council appoints the following individuals to a multiple-member Board/Committee/Commission: **Disability Commission:** Patricia Erickson-Taylor, as a Regular member to a term expiring 06/30/2025; **Zoning Board of Appeals:** Emanuel Alves, as an Associate member to a term expiring 06/30/2024

**SPONSORS:** Appointments Committee Members: Councilor Paula Schnepf, Chair; Councilor Tracy Shaughnessy; Councilor Jeffrey Mendes; Councilor Nikolas Atsalis; and Councilor Gordon Starr

DATE	ACTION TAKEN
_____	_____
_____	_____

- \_\_\_ Read Item
- \_\_\_ Rationale
- \_\_\_ Council Discussion
- \_\_\_ Vote

**B. NEW BUSINESS (First Reading) (Refer to Second Reading  
09/07/2023)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2024-032  
INTRO: 08/17/2023**

**2024-032 REAPPOINTMENTS TO A BOARD/COMMITTEE/COMMISSION**

**RESOLVED:** That the Town Council reappoints the following individuals to a multiple-member Board/Committee/Commission: **Council on Aging:** Ella Rollins, as a regular member to a term expiring 06/30/2026; **Historical Commission:** Barbara DeBiase from an alternate member to a full member position to a term expiring 06/30/2026

**SPONSORS:** Appointments Committee Members: Councilor Paula Schnepf, Chair; Councilor Tracy Shaughnessy; Councilor Jeffrey Mendes; Councilor Nikolas Atsalis; and Councilor Gordon Starr

DATE	ACTION TAKEN
_____	_____
_____	_____

- Read Item
- Rationale
- Council Discussion
- Vote

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

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2024-033  
INTRO: 08/17/2023**

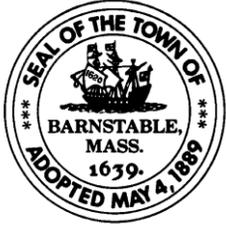
**2024-033 RESOLVE APPROVING A LETTER TO THE HONORABLE PETE BUTTIGIEG, SECRETARY OF TRANSPORTATION, U.S. DEPARTMENT OF TRANSPORTATION, IN SUPPORT OF THE MASSACHUSETTS DEPARTMENT OF TRANSPORTATION’S APPLICATION FOR FUNDING THROUGH THE MULTIMODAL PROJECT DISCRETIONARY GRANT PROGRAM’S NATIONAL INFRASTRUCTURE PROJECT ASSISTANCE (MEGA) AND INFRASTRUCTURE FOR REBUILDING AMERICA PROGRAM (INFRA) OPPORTUNITIES**

**RESOLVED:** That the Town Council does hereby approve sending a letter of support, substantially in the form as presented to the Town Council at this meeting, to the Honorable Pete Buttigieg, Secretary of Transportation, U.S. Department of Transportation, in support of the Massachusetts Department of Transportation’s application for funding through the Multimodal Project Discretionary Grant Program’s National Infrastructure Project Assistance (MEGA) and Infrastructure for Rebuilding America Program (INFRA) opportunities, and authorizes the President or Vice President of the Town Council to sign such letter of support on behalf of the Town Council.

**SPONSOR:** Paula K. Schnepf, Councilor, Precinct 12

DATE	ACTION TAKEN
_____	_____
_____	_____

- \_\_\_ Read Item
- \_\_\_ Rationale
- \_\_\_ Council Discussion
- \_\_\_ Vote



**Town of Barnstable**  
**Town Council**  
367 Main Street, Village of Hyannis, MA 02601  
508-862-4738 • 508-862-4770  
E-mail: [council@town.barnstable.ma.us](mailto:council@town.barnstable.ma.us)  
[www.town.barnstable.ma.us](http://www.town.barnstable.ma.us)

Councilors:

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 Grassetti  
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](mailto:Cynthia.Lovell@town.barnstable.ma.us)

The Honorable Pete Buttigieg  
Secretary of Transportation  
U.S. Department of Transportation  
1200 New Jersey Avenue, SE  
Washington, DC 20590

Dear Secretary Buttigieg,

On behalf of the Barnstable Town Council, this letter is to express our strong support of the Massachusetts Department of Transportation's (MassDOT) application for funding through the Multimodal Project Discretionary Grant Program's National Infrastructure Project Assistance (MEGA) and Infrastructure for Rebuilding America Program (INFRA) opportunities. This proposal seeks to replace the vitally important but aging Bourne and Sagamore Bridges that connect Cape Cod and the rest of Massachusetts across the Cape Cod Canal. The Cape Cod Bridges Program (Program) will deliver immense social, economic, public safety and environmental benefits for a nationally significant and iconic region and ultimately resolve an outstanding federal responsibility for the maintenance and safety of the Cape Cod Bridges.

The Bourne and Sagamore Bridges—currently owned and maintained by the U.S. Army Corps of Engineers (USACE)—are vital assets for the Cape Cod economy and surrounding communities, and serve as the gateway to Cape Cod for more than 250,000 Cape and Islands residents and over 5 million visitors annually. With more than 35 million vehicles crossing the canal each year, the bridges are the sole access point for vehicular traffic to and from Cape Cod and serve as essential routes for general transportation, tourism, and evacuation in case of an emergency. However, the current bridges are nearly 90 years old, functionally obsolete, require increasingly costly maintenance, and need major rehabilitation. In 2020, USACE estimated that the full rehabilitation of both bridges would cost approximately \$395 million and would include both extensive lane closures and full bridge closures with consequences to traffic and the local economy.<sup>[1]</sup> The bridges' structural deficiencies—a USACE responsibility—present an enormous risk to the accessibility and economic stability of the Cape Cod region and a long term financial liability for the federal government.

Over the last decade, the Commonwealth, USACE, and other stakeholders have partnered and worked in consultation with the U.S. Department of Transportation to develop a comprehensive plan for replacing both the Bourne and Sagamore Bridges and the associated highway approaches. Under the Healey-Driscoll Administration, the Commonwealth has developed a rigorous sequencing plan that will lead to the replacement

of both bridges and commence with the replacement of the Sagamore Bridge. To further buttress the plan, the Healey-Driscoll Administration has committed \$700 million to the Program and agreed to financially backstop this initial phase of the project. With these new commitments and the existing Memorandum of Understanding between the Commonwealth and USACE, the project will lead to contemporary bridges that vastly improve travel conditions, meet modern safety standards for vehicle and pedestrian travel, and provide vastly improved multimodal options.

With the strong leadership of the Healey-Driscoll Administration and the deep support of the Biden Administration, the partnership between the Commonwealth and USACE is prepared to capitalize on the historic funding opportunities provided by President Biden's Bipartisan Infrastructure Law. To address the need for further federal commitments, we recently secured \$350 million in federal funding in the Senate's *Fiscal Year 2024 Energy and Water Development Appropriations Act*, which reflects a major step forward to fulfill President Biden's request in his Fiscal Year 2024 budget to provide an initial \$350 million toward a minimum total commitment of \$600 million from USACE for the Program. The Massachusetts Congressional delegation will continue to work hand-in-glove with the Healey administration, the Army Corps of Engineers, and the Biden Administration to deliver essential federal funding, which will not only get construction underway on the bridges replacement project and ensure the safety of residents and visitors, but also deliver good-paying union construction jobs for our workers and create greener, more sustainable transit options for the Cape.

The Cape Cod Bridges Program is a prototypical project that the Bipartisan Infrastructure Law was designed to fund, and is a key to modernizing Massachusetts' physical infrastructure to meet the economic, social, and environmental challenges of the 21<sup>st</sup> Century. We are proud to support the Commonwealth's application for funding. We appreciate your fair and full consideration of this important project.

Sincerely,

Matthew P. Levesque, President  
Barnstable Town Council

<sup>11</sup>U.S. Army Corps of Engineers New England District. Major Rehabilitation Evaluation Report and Environmental Assessment: Cape Cod Canal Highway Bridges, Bourne, Massachusetts. March 2020.  
<https://www.nae.usace.army.mil/Portals/74/docs/Topics/Cape%20Cod%20Canal%20Bridges/Reports/FinalMRERDocument.pdf>