



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

December 07, 2023

7:00pm

The December 07, 2023 Meeting of the Barnstable Town Council shall be conducted in person at 367 Main Street 2nd Floor James H. Crocker Jr. Hearing Room, Hyannis, MA. The public may attend in person or participate remotely in Public Comment or during a Public Hearing via the Zoom link listed below.

Councillors:

Matthew Levesque
President
Precinct 10

Vice President

Gordon Starr
Precinct 1

Dr. Kristin Terkelsen
Precinct 2

Betty Ludtke
Precinct 3

Craig Tamash
Precinct 4

John Crow
Precinct 5

Paul C. Neary
Precinct 6

Seth Burdick
Precinct 7

Jeffrey Mendes
Precinct 8

Charles Bloom
Precinct 9

Kris Clark
Precinct 11

Paula Schnepf
Precinct 12

Felicia Penn
Precinct 13

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/83874240382> Meeting ID: 838 7424 0382
US Toll-free • 1-888- 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

9. ORDERS OF THE DAY

A. Old Business

B. New Business

- Town Council Nominations of 2024 Officers

President

Vice President

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

10. ADJOURNMENT

NEXT REGULAR MEETING: December 21, 2023

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2024-076	Authorization to contract for and expend a Federal Fiscal Year 2023 COPS Hiring Program Grant in the amount of \$250,000 from the U.S. Department of Justice, Office of Community-Oriented Policing Services (May be acted upon) (Majority Vote)	39-40
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2024-079	Authorization to contract for and expend a Fiscal Year 2024 Grant in the amount of \$15,097.80 from the Massachusetts Department of Environmental Protection to acquire three electric vehicle charging stations (May be acted upon) (Majority Vote)	46-47
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2024-084	Resolve Approving a Letter in Support of Senate Bill 1315 (May be acted upon) (Majority Vote)	56-58

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 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 (Public Hearing) (Roll Call Majority)

BARNSTABLE TOWN COUNCIL

ITEM# 2024-067
INTRO: 11/16/2023, 12/07/2023

2024-067 ALLOCATION OF TAX LEVY FISCAL YEAR 2024 – RESIDENTIAL EXEMPTION

RESOLVED: That the Town Council hereby votes to adopt a Residential Exemption of twenty percent (20%) for Fiscal Year 2024.

SPONSOR: Mark S. Ells, Town Manager

DATE	ACTION TAKEN
<u>11/16/2023</u>	<u>Refer to Public Hearing 12/07/2023</u>

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

BARNSTABLE TOWN COUNCIL

ITEM# 2024-067
INTRO: 11/16/2023, 12/07/2023

SUMMARY

TO: Town Council
FROM: Mark S. Ells, Town Manager
THROUGH: Mark A. Milne, Finance Director
DATE: November 16, 2023
SUBJECT: Allocation of Tax Levy Fiscal Year 2024 – Residential Exemption

BACKGROUND: According to Massachusetts General Laws, Chapter 59, Section 5C, the Town Council may adopt a Residential Exemption as part of determining the allocation of the tax levy between residential property owners. This tax levy shifting option will not change the overall amount of property taxes raised through the residential class of property. It allows communities to shift a portion of the residential property tax levy between residential property owners based on statutory criteria. The maximum exemption allowed is 35 percent of the average assessed value of all Class One (Residential) parcels. This exemption would be applied to all residential parcels which are qualified by the Town Assessor as the principal residence of the taxpayer. Principal residence is a taxpayer’s domicile, that is, their fixed place of habitation, permanent home, and legal residence, as used for federal and state income tax purposes. This option shifts property taxes between residential taxpayers only and does not affect the Commercial, Industrial and Personal Property class of taxpayers.

ANALYSIS: The exemption is calculated on the average residential parcel value which is \$857,277 in Fiscal Year 2024. The assessed property value is then reduced by the value of the exemption before the tax rate is applied to determine the tax bill amount. Since the exemption removes an amount of the taxable residential property value subject to taxation, and the tax levy paid by the residential class remains the same, the tax rate for this class of property increases. The projected savings in Fiscal Year 2024 for the median residential assessed value of \$575,200 using different residential exemption percentages is illustrated as follows:

Exemption %	Exemption Amount	Taxable Value	Tax Rate	Tax Bill	Savings
0%	\$ -	\$ 575,200	\$ 5.92	\$ 3,406	\$ -
5%	\$ 42,864	\$ 532,336	\$ 6.06	\$ 3,225	\$ 181
10%	\$ 85,728	\$ 489,472	\$ 6.20	\$ 3,035	\$ 371
15%	\$ 128,592	\$ 446,608	\$ 6.35	\$ 2,837	\$ 569
20%	\$ 171,455	\$ 403,745	\$ 6.51	\$ 2,628	\$ 778
25%	\$ 214,319	\$ 360,881	\$ 6.68	\$ 2,409	\$ 997
30%	\$ 257,183	\$ 318,017	\$ 6.85	\$ 2,179	\$ 1,227
35%	\$ 300,047	\$ 275,153	\$ 7.03	\$ 1,936	\$ 1,470

A. OLD BUSINESS (Public Hearing) (Roll Call Majority)

BARNSTABLE TOWN COUNCIL

ITEM# 2024-068

INTRO: 11/16/2023, 12/07/2023

2024-068 ALLOCATION OF TAX LEVY FISCAL YEAR 2024 – TAX FACTOR

RESOLVED: That the Town Council hereby votes to classify the Town of Barnstable under M.G.L. c. 40, § 56, the Classification Act, at a Residential Factor of 1 (one) for the Fiscal Year 2024.

SPONSOR: Mark S. Ells, Town Manager

DATE	ACTION TAKEN
<u>11/16/2023</u>	<u>Refer to Public Hearing 12/07/2023</u>

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

BARNSTABLE TOWN COUNCIL

ITEM# 2024-068
INTRO: 11/16/2023, 12/07/2023

SUMMARY

TO: Town Council
FROM: Mark S. Ells, Town Manager
THROUGH: Mark A. Milne, Finance Director
DATE: November 16, 2023
SUBJECT: Allocation of Tax Levy Fiscal Year 2024 – Tax Factor

BACKGROUND: According to Massachusetts General Laws, c. 40, § 56, the Town Council is annually charged with determining the Allocation of Local Property Taxes by the adoption of a Minimum Residential Factor. This tax levy-shifting tool will not change the overall amount of the tax levy to be raised in Fiscal Year 2024; rather it allows the town to shift a portion of the tax levy between classes of property. The residential factor, commonly referred to as the “Split Tax Rate”, allows the Town Council to create separate tax rates; one for residential property owners and a separate one for commercial, industrial, and personal property (CIP) owners. Under a residential “Factor of 1”, all property owners would pay taxes at the same rate per \$1,000 of valuation. For Fiscal Year 2024 the single tax rate is \$5.92 (tax levy of \$145,205,501 divided by total valuation of \$24,524,518,817 x \$1,000). The maximum permissible shift would increase the CIP tax rate by 150% which would result in a CIP tax Rate of \$8.88 for Fiscal Year 2024, ($\$5.92 \times 1.5 = \8.88). Since 2007, the Town Council’s policy has been to select a Residential Factor of “1”.

ANALYSIS: The Minimum Residential Factor is used to make sure the shift of the tax burden complies with the law (M.G.L. c. 58, § 1A). Residential taxpayers must pay at least 65% of their full and fair cash value share of the levy. Commercial/Industrial/Personal Property taxpayers cannot pay more than 150% of their full and fair cash value share of the levy.

If the calculated Minimum Residential Factor is less than 65%, a community cannot make the maximum shift and must use a Commercial/Industrial/Personal Property factor less than 150%.

<u>A. Class</u>	<u>B. Valuation</u>	<u>C. Percentage Share</u>	<u>D. Combined Res/OS, CIP</u>
1. Residential	22,037,156,878	89.8577%	89.8577%
2. Open Space	0	0.0000%	
3. Commercial	1,865,999,379	7.6087%	10.1423%
4. Industrial	106,189,700	0.4330%	
5. Personal Property	<u>515,172,860</u>	<u>2.1006%</u>	
TOTALS	24,524,518,817	100.0000%	

The "Percentage Share" is based on the "Full and Fair Cash Valuation" of each class, which is affected by the level of assessment for each class.

The Maximum Share of Levy for Commercial/Industrial/Personal Property: 150% * 10.1423% (Lines 3C + 4C + 5C) = 15.2135% (Max % Share).

This calculation shows the maximum percentage share of the levy allowed for the full and fair cash value of the combined Commercial, Industrial and Personal Property classes (150% of the combined shares.) NOTE: Shift impact is reduced as the Max % Share decreases.

Minimum Share of Levy for Residential: 100% - 15.2135% (Max CIP % Share) = 84.7865% (Min % Share)

This calculation shows the minimum percentage share of the levy allowed for the full and fair cash value of the Residential class. This is computed by subtracting the Maximum Share for Industrial/Commercial/Personal Property from 100%.

Minimum Residential Factor (MRF): 84.7865% (Min % Share) / 89.8577% (Lines 1C + 2C) = 94.3564% (Minimum Residential Factor)

This calculates the Minimum Residential Factor: divide the minimum percentage share for Residential by the actual percentage share for Residential.

MINIMUM RESIDENTIAL FACTOR: 94.3564% Chapter 58, Section 1A mandates a minimum residential factor of not less than 65 percent.

When the Minimum Residential Factor is multiplied by the percentage share of the Residential full and fair cash value, it reduces the Residential share to its minimum percentage share of the Levy as calculated above.

FISCAL IMPACT: A factor greater than one (1) would shift more of the tax levy to the commercial, industrial, and personal property (CIP) tax classifications. For example, every 5% shift would result in over \$700,000 being shifted from the Residential class to the CIP class: with a tax rate reduction of \$0.03 in the residential rate and an increase of \$0.10 in the CIP tax rate.

STAFF ASSISTANCE: Mark A. Milne, Finance Director

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

BARNSTABLE TOWN COUNCIL

**ITEM# 2024-074
INTRO: 12/07/2023**

2024-074 RESOLVE AUTHORIZING THE TOWN TO CONVEY PROPERTY AT 259 BARNSTABLE ROAD, HYANNIS TO RONALD BOURGEOIS

WHEREAS, on July 20, 2023, by Town Council Item 2024-006, the Town Council authorized the Town to dispose of the surplus property at 259 Barnstable Road, as shown on Assessors Map 310, Parcel 171, to Bass River Properties Management Corp., Inc. for the highest bid received of \$220,000; and

WHEREAS, Ronald Bourgeois, President of Bass River Properties Management Corp., Inc. seeks to have the property conveyed to him individually, instead of to the corporation, for the bid price of \$220,000;

THEREFORE, BE IT RESOLVED: That the Town Council hereby authorizes the Town to dispose of the property at 259 Barnstable Road to Ronald Bourgeois, individually, instead of to Bass River Properties Management Corp., Inc., and as otherwise authorized by Item 2024-006, and further authorizes the Town Manager to execute, deliver and record any documents necessary to effectuate this Resolve.

SPONSOR: Mark S. Ells, Town Manager

DATE	ACTION TAKEN
_____	_____
_____	_____

- _____ Read Item
- _____ Rationale
- _____ Council Discussion
- _____ Vote

BARNSTABLE TOWN COUNCIL

ITEM#2024-074
INTRO: 12/07/2023

SUMMARY

TO: Town Council
FROM: Mark S. Ells, Town Manager
THROUGH: David Anthony, Director, Asset Management
DATE: December 07, 2023
SUBJECT: Resolve authorizing the Town to convey property at 259 Barnstable Road, Hyannis to Ronald Bourgeois

On July 20, 2023, by Item 2024-006, the Town Council voted to authorize the sale of a surplus parcel of land at 259 Barnstable Road, Hyannis, as shown as Assessors Map 310, Parcel 171, to Bass River Properties Management Corp., Inc. The successful bid was submitted by “Ronald Bourgeois, President of Bass River Properties Management Corp, Inc.” Mr. Bourgeois has requested to purchase the property in his own name, individually, instead of the corporate entity.

To facilitate the request, this authorization is necessary to link the Town Council authorization with the name of the buyer so that the records of the Barnstable County Registry of Deeds make clear the chain of title.

FINANCIAL IMPACT: N/A

TOWN MANAGER RECOMMENDATION: Mark S. Ells, Town Manager, recommends approval of this Resolve.

STAFF ASSISTANCE: David Anthony, Director, Asset Management, Thomas J. LaRosa, First Assistant Town Attorney; Charles S. McLaughlin, Jr., Senior Counsel

B. NEW BUSINESS (Refer to Public Hearing 12/21/2023)

BARNSTABLE TOWN COUNCIL

**ITEM#2024-075
INTRO: 12/07/2023**

2024-075 APPROPRIATION ORDER IN THE AMOUNT OF \$905,000 IN COMMUNITY PRESERVATION FUNDS FOR THE PURPOSE OF ACQUIRING A CONSERVATION RESTRICTION ON 5.5 ACRES OF OPEN SPACE AT 150 WHEELER ROAD, MARSTONS MILLS, BARNSTABLE; AND AUTHORIZATION TO EXPEND A FISCAL YEAR 2024 LOCAL ACQUISITIONS FOR NATURAL DIVERSITY (LAND) GRANT FROM THE COMMONWEALTH OF MASSACHUSETTS IN THE AMOUNT OF \$488,700 TO DEFRAY THE COST OF SAID CONSERVATION RESTRICTION

ORDERED: That pursuant to the provisions of the Community Preservation Act, G.L. c. 44B, the amount of Nine Hundred and Five Thousand Dollars (**\$905,000**) be appropriated from the Undesignated Fund within the Community Preservation Fund for the purpose of the Town acquiring a Conservation Restriction (CR) on 5.5± acres of land located at 150 Wheeler Road, Barnstable, shown as a portion of Assessors Map 103, Parcel 109/002, and as also shown on a sketch plan of land titled “*Concept ANR Plan of Land Located at 150 & 178 Wheeler Rd, Martons Mills, MA*”, prepared for Barnstable Land Trust, dated 7/24/2023, by Down Cape Engineering, Inc., for conservation and passive outdoor recreation purposes, pursuant to G.L. c. 184, sections 31-32 and G.L. c. 40, section 8C, and subject to Article 97 of the Amendments to the Massachusetts Constitution, said restriction to be granted to the Town of Barnstable as primary grantee and The Compact of Cape Cod Conservation Trusts, Inc. as the secondary grantee. The Town Manager is hereby authorized to expend the amount appropriated on behalf of the Town for the acquisition of the CR. Pursuant to G.L. c. 184, section 32, the Town Council hereby approves the CR, authorizes the Town Manager to negotiate the terms of the final CR, and authorizes the Town Council President to sign the Conservation Restriction on the Town Council’s behalf.

It is further ordered that the Town Manager is authorized to contract for and expend any funds that may be provided by the Commonwealth or other public or private sources to defray all or a portion of the costs of said acquisition, including, but not limited to, grants and/or reimbursement to the Community Preservation Fund from the Commonwealth under the Local Acquisitions for Natural Diversity (LAND) program (formerly known as the Self-Help program), pursuant to G.L. c. 132A, Section 11, including a LAND grant in the amount of Four Hundred and Eighty Eight Thousand, Seven Hundred Dollars (**\$488,700**), which grant and/or funds so received shall be used to repay all or a portion of the amount transferred from the Community Preservation Fund hereunder. The Town Manager is hereby authorized to negotiate, accept, approve, execute, receive, deliver, and record any written instruments to effectuate this Order and complete this transaction.

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

DATE	ACTION TAKEN
_____	_____
_____	_____

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

BARNSTABLE TOWN COUNCIL

ITEM# 2024-075
INTRO: 12/07/2023

SUMMARY

TO: Town Council
FROM: Marks S. Ells, Town Manager
THROUGH: Lindsey Counsell, Chair, Community Preservation Committee
DATE: December 07, 2023
SUBJECT: Appropriation Order in the amount of **\$905,000** in Community Preservation Funds for the purpose of acquiring a conservation restriction on 5.5 acres of open space at 150 Wheeler Road, Marstons Mills, Barnstable; and authorization to expend a Fiscal Year 2024 Local Acquisitions for Natural Diversity (LAND) Grant from the Commonwealth of Massachusetts in the amount of **\$488,700** to defray the cost of said conservation restriction

BACKGROUND: The Barnstable Land Trust, Inc. (BLT) is seeking approval from the Town Council for Community Preservation Undesignated Funds in the amount of \$905,000 for the acquisition of a conservation restriction (CR) by the Town of Barnstable from the current property owner, Wheeler Realty Trust, on 5.5± acres of open space located at 150 Wheeler Road, Barnstable, shown as a portion of Assessors Map 103, Parcel 109, Lot 002. Following the acquisition of the CR by the Town, the Wheeler Realty Trust will transfer the property title to Barnstable Land Trust, who will become the owner and manager of the property, with the Town remaining as the primary holder of the CR, and the Compact of Cape Cod Conservation Trusts (the “The Compact”) as the secondary holder.

This item seeks Town Council approval of the conservation restriction and authorization for the President of the Town Council to sign the final CR on behalf of the Town Council to meet the requirements of G.L. c. 184, section 32. Attached to this summary is a draft of the proposed CR, which has been reviewed by Town staff, the Conservation Commission, BLT, and The Compact, and has been submitted to the Secretary of Energy and Environmental Affairs (EEA) for review and approval. It is anticipated that EEA’s review of the CR may result in minor edits to the CR, which is standard practice, and that their approval of the CR will be completed in spring 2024 in time for a project closing in June 2024. Accordingly, this item also seeks Town Council authorization for the Town Manager to negotiate the terms of the final CR.

The Community Preservation Application funding is part of a larger 9.5-acre conservation project named the Wheeler Holly Preserve Conservation Project in which BLT will purchase two properties at 150 and 178 Wheeler Road in Marstons Mills Village. The Wheeler family has generously agreed to sell the property to BLT for less than its fair market value, at a total acquisition price of \$1,825,000. The two properties are being divided into three parcels for the purposes of the project:

- Lot 1: A 2 acre± parcel will be acquired by BLT with the support of an EEA Conservation Partnership Grant. A separate CR required under the grant program, which is not part of this approval request, will be granted to The Compact.
- Lot 2: A 2 acre± parcel, which includes an existing single-family dwelling will be acquired by BLT with the structure retained and used for caretaker housing.

- Lot 3 and 4: A 5.5 acre± parcel with the CR that is the subject of the present approval request being acquired from the current owner (Wheeler Realty Trust) by the Town using CPA and LAND grant funding. The ownership of the parcel will then be transferred to BLT, subject to the CR. The acquisition price of the CR using CPA funds is \$905,000 with \$488,700 to be reimbursed through the LAND grant.

Finally, because in July 2023 the Town applied for and was awarded a Local Acquisitions for Natural Diversity (LAND) grant in the amount of \$488,700 to defray a portion of the cost of the CR acquisition (54% reimbursement of the acquisition cost), Town Council approval is requested to contract for and expend the grant. The Town Manager is seeking approval from the Town Council to contract for and expend any funds that may be provided by the Commonwealth or other public or private sources to defray the cost of the CR acquisition.

ANALYSIS: Acquisition of the CR is consistent with the Local Comprehensive Plan, Open Space Plan, and other planning documents and preserves community character. The property is within the Resource Protection Overlay District and the Groundwater Protection Overlay District. Large portions of the property lie within state-designated Priority Habitat for Rare Species, BioMap Rare Species Core Habitat and Aquatic Core Habitat. The remainder of the property is located within BioMap Aquatic Core Buffer. The property also includes state designated Prime Forest Land and Prime Farmland soils. A public trail is proposed across the property to connect with existing trails on the Barnstable Land Trust's Fuller Farm property where there is existing public access and parking.

APPROVALS: The Conservation Commission voted its support for CPA funding of the CR acquisition on July 11, 2023, and voted its support for the proposed CR on October 31, 2023. The Land Acquisition and Preservation Committee voted to support and recommend town funding of the project on July 10, 2023. The Community Preservation Committee (CPC) voted unanimously to support and recommend the application for appropriation of Community Preservation Act Funds for the acquisition of the CR on July 17, 2023.

FISCAL IMPACT: Funding for the acquisition of the CR will be provided from the Community Preservation undesignated fund. The acquisition cost of the CR using CPA funds is \$905,000, with \$488,700 to be reimbursed through the LAND grant, resulting in a net cost of \$416,300.

Wheeler Holly Preserve Conservation Restriction Lots 3 and 4, Barnstable MA

GRANTOR: Emily Wheeler, Susan K. Wheeler, Sarah B. Wheeler, and Thomas A. Wheeler, as Trustees of Wheeler Realty Trust

PRIMARY GRANTEE: Town of Barnstable

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

ADDRESS OF PREMISES: (Lots 3 and 4), 150 Wheeler Road, Barnstable, Massachusetts

FOR GRANTOR'S TITLE SEE: Barnstable County Registry of Deeds at Book 866, Page 556.

GRANT OF CONSERVATION RESTRICTION

I. STATEMENT OF GRANT

EMILY WHEELER, SUSAN K. WHEELER, SARAH B. WHEELER, AND THOMAS A. WHEELER, as TRUSTEES OF WHEELER REALTY TRUST established under a Declaration of Trust dated March 26, 1953, and recorded in the Barnstable County Registry of Deeds in Book 862, Page 550, as amended and restated by that certain Restatement of Trust dated October 1, 1975, recorded in said Registry in Book 2285, Page 114, with a mailing address of 150 Wheeler Road, Marstons Mills, Barnstable, MA 02648, constituting all of the owner(s) of the Premises as defined herein, for our successors and assigns (“Grantor”), acting pursuant to Sections 31, 32, and 33 of Chapter 184 of the Massachusetts General Laws, grant, with QUITCLAIM COVENANTS, to the **INHABITANTS OF THE TOWN OF BARNSTABLE**, a Massachusetts municipal corporation with principal offices at Town Hall, 367 Main Street, Hyannis, Barnstable County, Massachusetts 02601-3907, their permitted successors and assigns (“**Primary Grantee**”), for consideration paid of Nine Hundred and Five Thousand Dollars and 00/100 (\$905,000.00) from Community Preservation Act Funds, and to **THE COMPACT OF CAPE COD CONSERVATION TRUSTS, INC.**, a Massachusetts charitable corporation with an office address at 36 Red Top Road, Brewster, MA 02631 and a mailing address of P.O. Box 443, Barnstable, MA 02630, its permitted successors and assigns (“**Secondary Grantee**”), for nominal consideration, **IN PERPETUITY AND EXCLUSIVELY FOR CONSERVATION PURPOSES**, the following Conservation Restriction on land located in the Town of Barnstable, Barnstable County, Commonwealth of Massachusetts containing the entirety of a 5.5-acre parcel of land (“Premises”), which Premises is more particularly described in Exhibit A and shown in the attached reduced copy of a survey plan in Exhibit B, both of which are incorporated herein and attached hereto. As used herein, the terms “Grantee” and “Grantees” shall refer to the Primary Grantee and the Secondary Grantee collectively. The Primary Grantee acquired this Conservation Restriction utilizing, in part, Community Preservation Act funds pursuant to Chapter 44B § 1 et seq. as applied pursuant to Chapter 149, §298 of the Acts of 204, as amended by Chapter 352, §129-133 of the Acts of 2004 (the so called “Barnstable County Community Preservation Act” or “CPA”), which funds were authorized for such purposes by a vote of the Barnstable Town Council at a duly called meeting held on , on Agenda Item. An attested copy of the Town Council Order is attached hereto as Exhibit C.

II. PURPOSES:

This Conservation Restriction is defined in and authorized by Sections 31, 32, and 33 of Chapter 184 of the Massachusetts General Laws and otherwise by law. The purposes of this Conservation Restriction (“Purposes”) are to ensure that the Premises will be maintained in perpetuity in its natural, scenic, or open condition and available for conservation and passive outdoor recreational use, and to prevent any use or change that would materially impair the Conservation Values (as defined below). **LAND Grant.** The Conservation Restriction was acquired utilizing, in part, assistance from the Local Acquisitions for Natural Diversity (LAND) program pursuant to Section 11 of Chapter 132A of the Massachusetts General Laws and Section 2A of Chapter 286 of the Acts of 2014, and therefore the Premises is subject to a LAND Grant Project Agreement (“Project Agreement”) recorded at the Barnstable County Registry of Deeds in Book ____ Page ____.

The Conservation Values protected by this Conservation Restriction include the following:

- Open Space. The Premises contributes to the protection of the scenic and natural character of the Town of Barnstable and the protection of the Premises will enhance the open space value of these and nearby lands. The Premises abuts land already conserved, including the 22+-acre Fuller Farm Conservation Area owned by the Barnstable Land Trust, and is in close proximity to the 23-acre William and Hilma Danforth Town Recreation Area.
- Soils and Soil Health. The Premises includes 5 acres± of Prime Farmland Soils, including 0.5 acres± of Farmland of Statewide Importance and 4.5 acres± of Prime Farmland. The Premises also includes 4 acres± of Prime Forest Land as identified by the USDA Natural Resources Conservation Service at MassGIS MassMapper. The protection of the Premises will promote healthy soils and healthy soils practices as such terms are defined in Chapter 358 of the Acts of 2020, which added definitions of these terms to Section 7A of Chapter 128 of the Massachusetts General Laws.
- Wildlife Habitat. The Premises includes 0.4± acres designated by the MA Division of Fisheries and Wildlife acting by and through its Natural Heritage and Endangered Species Program (NHESP) as “Priority Habitats of Rare and Endangered Species”, including two mussel species of special concern and one vascular plant species of special concern, the protection of which aligns with NHESP’s wildlife and habitat protection objectives.
- Public Access. Public access to the Premises will be allowed for passive outdoor recreation, education, nature study. Protection of the Premises will enable the creation and permanent retention of a public walking trail that will connect to the existing one-mile trail loop on Fuller Farm.
- Biodiversity. The Premises includes areas designated as BioMap Core Habitat and Critical Natural Landscape, as defined by the Massachusetts Natural Heritage and Endangered Species Program, including 2± acres designated as Aquatic Core Habitat, 0.4± acres designated as Rare Species Core Habitat, and 3.5± acres designated as Aquatic Core Buffer. BioMap, published in 2010, and updated in 2022 was designed to guide strategic biodiversity conservation in Massachusetts over the next decade by focusing land protection and stewardship on the areas that are most critical for ensuring the long-term persistence of rare and other native species and their habitats, exemplary natural communities, and a diversity of ecosystems. BioMap is also designed to include the habitats and species of conservation concern identified in the

State Wildlife Action Plan.

- Water Quality. Groundwater beneath the Premises and all of the surface water on the slopes of the Premises flow south to Middle Pond and impact the water quality of the pond. Middle Pond is a Great Pond with a Town swim beach at its southern end and is a spawning area for rare mussels and anadromous fish, so its quality is important for habitat and public health. This area of Barnstable will likely remain on septic systems for the rest of this century, owing to relatively lower population density, so protecting the Premises from additional septic leachate is important for the water quality of the pond.

- Wetlands. The pond shoreline on the Premises provides both valuable habitat for a diverse array of wildlife species as well as the many other public benefits of wetlands protection recognized by the Commonwealth of Massachusetts (Section 40 of Chapter 131 of the Massachusetts General Laws).

- Climate Change Resiliency. The Premises is identified as an area of average Terrestrial Resilience according to The Nature Conservancy's (TNC) Resilient Land Mapping Tool, including average Landscape Diversity. TNC's Resilient Land Mapping Tool was developed in order to map "climate-resilient" sites that are "more likely to sustain native plants, animals, and natural processes into the future." The protection of these climate resilient sites is an important step in both reducing human and ecosystem vulnerability to climate change and adapting to changing conditions.

- 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):

- "To protect, preserve, or restore the quality and natural values and functions of inland and coastal wetlands and their buffers." (Wetland Resources Goal, p. 55).
- "To protect, preserve, or restore wildlife and plant habitat to maintain the region's natural diversity" (Wildlife and Plant Habitat Goal, p. 55).
- In reference to this Wildlife and Plant Habitat Goal, the RPP states, "For many years habitat loss due to development has been the primary threat to the region's habitats" (p. 32); and
- "To conserve, preserve, or enhance a network of open space that contributes to the region's natural community resources and systems" (Open Space Goal, p. 55). In reference to this Open Space Goal, the RPP states, "[t]he open space of the Cape is critical to the health of the region's natural systems, economy, and population. Open space provides habitat for the region's diverse species and protection of the region's drinking water supply" (p. 30).

Granting this Conservation Restriction will advance each of these goals outlined in the RPP. The Wetlands Goal will be addressed in protecting the quality of Middle Pond pond shore wetland resources and their upland buffer zone. The Wildlife and Plant Habitat Goal will be served because the Premises contains a host of important plant and wildlife species and falls

Wheeler Holly Preserve Conservation Restriction Lots 3 and 4, Barnstable MA

within an NHESP BioMap Core Habitat and Critical Natural Landscape area. The Open Space Goal will be advanced because the Premises abuts more than twenty acres of existing conservation land.

- 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*):

- 1) "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;
- 2) 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:

- 1) "To protect and maintain the maximum amount of open space to enhance environmental protection, recreational opportunities, and community character, and;
- 2) "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, 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;
- prevent disturbance of wetlands;
- preserve a shoreline;
- prevent the cutting of trees or forests;
- preserve open space;
- preserve important natural habitats of fish, wildlife or plants; and,
- limit or prevent construction on land of natural resource value.

The Town of Barnstable promotes the Cape Cod Pathways program intended to create a series of looped and through-routes in the town and beyond for public walking and scenic enjoyment. The Premises connects to existing public walking trails on the abutting Fuller Farm property.

- Consistency with Clearly Delineated State Conservation Policy. The Premises possesses significant open space, natural, aesthetic, ecological, plant and wildlife habitat, solid and water resource quality, watershed, and scenic values (collectively “conservation values”) of great importance to the Grantees and the people of Barnstable and the Commonwealth of Massachusetts, including the advancement of the following goals of the State’s 2017 Statewide Comprehensive Outdoor Recreation Plan (SCORP):
 - 2.1) Support the acquisition of land and development of new open spaces that can provide a trail network;
 - 2.2) Fill in the gaps in existing trail networks;
- 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: reserve the land for education regarding the natural world; protect wildlife habitats; and it would contribute to the preservation of open space because it is proximate to several other parcels already conserved.

III. PROHIBITED and PERMITTED ACTS AND USES

A. Prohibited Acts and Uses

The Grantor will not perform or allow others to perform the following acts and uses which are prohibited on, above, and below the Premises:

1. Structures and Improvements. Constructing, placing, or allowing to remain any temporary or permanent structure including without limitation any building, tennis court, landing strip, mobile home, swimming pool, asphalt or concrete pavement, graveled area, roads, sign, fence, gate, billboard or other advertising, antenna, utilities or other structures, utility pole, tower, wind turbine, solar panel, solar array, conduit, line, septic or wastewater disposal system, storage tank, or dam;
2. Extractive Activities/Uses. Mining, excavating, dredging, withdrawing, or removing soil, loam, peat, gravel, sand, rock, surface water, ground water, or other mineral substance or natural deposit, or otherwise altering the topography of the Premises;
3. Disposal/Storage. Placing, filling, storing or dumping of soil, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, tree and other vegetation cuttings, liquid or solid waste or other substance or material whatsoever;
4. Adverse Impacts to Vegetation. Cutting, removing, or destroying trees, shrubs, grasses or other vegetation;
5. Adverse Impacts to Water, Soil, and Other Features. Activities detrimental to drainage, flood control, water conservation, water quality, erosion control, soil conservation, natural habitat, archaeological conservation, or ecosystem function;
6. Introduction of Invasive Species. Planting or introducing any species identified as invasive

by the Massachusetts Invasive Plant Advisory Group or identified as invasive in such recognized inventories as the Massachusetts Introduced Pests Outreach Project, the Northeast Aquatic Nuisance Species Panel, or other such inventories, and any successor list as mutually agreed to by Grantor and Grantees;

7. Non-Native Species. 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;
8. Hunting. Using the Premises for hunting;
9. Motor Vehicles. Using, parking, or storing motorized vehicles, including motorcycles, mopeds, all-terrain vehicles, off-highway vehicles, motorboats or other motorized watercraft, snowmobiles, launching or landing aircraft, or any other motorized vehicles, acknowledging that vehicles necessary for public safety (i.e., fire, police, ambulance, other government officials) may have a legal right to enter the Premises;
10. Subdivision. 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 Grantees' intention to maintain the entire Premises under unified ownership;
11. Use of Premises for Developing Other Land. Using the Premises towards building or development requirements on this or any other parcel;
12. Adverse Impacts to Stone Walls, Boundary Markers. Disrupting, removing, or destroying stone walls, granite fence posts, or any other boundary markers;
13. Residential or Industrial Uses. Using the Premises for residential or industrial purposes;
14. Inconsistent Uses. Using the Premises for commercial purposes that are inconsistent with the Purposes or that would materially impair the Conservation Values, or for any other uses or activities that are inconsistent with the Purposes or that would materially impair the Conservation Values.

B. Permitted Acts and Uses

Notwithstanding the Prohibited Acts and Uses described in Paragraph III.A., the Grantor may conduct or permit the following acts and uses on the Premises, provided they do not materially impair the Purposes and/or Conservation Values. In conducting any Permitted Act and Use, Grantor shall minimize impacts to the Conservation Values to ensure any such impairment thereto is not material.

1. Vegetation Management. Maintaining vegetation, including pruning, trimming, cutting, and mowing, and removing brush, all to prevent, control, and manage hazards, disease, insect or fire damage, and/or in order to maintain the condition of the Premises as documented in the Baseline Report (see Paragraph XV).

2. Non-native, Nuisance, or Invasive species. Removing non-native, nuisance, or invasive species, interplanting native species, and controlling species in a manner that minimizes damage to surrounding, non-target species and preserves water quality;
3. Composting. Stockpiling and composting stumps, trees, brush, limbs, and similar biodegradable materials originating on the Premises, provided that no stockpiling occur within 100 feet of Middle Pond or any wetlands;
4. Natural Habitat and Ecosystem Improvement. With prior written approval of the Grantees, conducting measures designed to restore native biotic communities, or to maintain, enhance or restore wildlife, wildlife habitat, ecosystem function, or rare or endangered species including planting native trees, shrubs, and other vegetation;
5. Archaeological Investigations. Conducting archaeological activities, including without limitation archaeological research, surveys, excavation and artifact retrieval, but only in accordance with an archaeological field investigation plan, which plan shall also address restoration following completion of the archaeological investigation, prepared by or on behalf of the Grantor and approved in advance of such activity, in writing, by the Massachusetts Historical Commission State Archaeologist (or appropriate successor official) and by the Grantees. A copy of the results of any such investigation on the Premises is to be provided to the Grantees;
6. Trails. Maintaining and constructing trails as follows:
 - a. Trail Maintenance. Conducting routine maintenance of trails, which may include widening trail corridors up to eight (8) feet in width overall, with a treadway up to five (5) feet in width.
 - b. New Trails. With prior written approval of the Grantees, constructing new trails or relocating existing trails, provided that any construction or relocation results in trails that conform with the width limitations above.
 - c. Trail Features. With prior written approval of the Grantees, constructing bog bridging, boardwalks, footbridges, railings, steps, culverts, benching, cribbing, contouring, or other such features, together with the use of motorized equipment to construct such features;
7. Signs. Constructing, installing, maintaining, and replacing signs and informational kiosks with respect to the Permitted Acts and Uses, the Purposes, the Conservation Values, trespass, public access, identity and address of the Grantor, sale of the Premises, the Grantees interest in the Premises, boundary and trail markings, any gift, grant, or other applicable source of support for the conservation of the Premises;
8. Motorized Vehicles. The use of motorized vehicles is allowed within the designated driveway for the purposes of the deeded easement access to Lot 2 and for access to the Barn Structure referenced in Paragraph II.B.10 by the Grantor. Using motorized vehicles by persons with mobility impairments and as otherwise permitted herein.
9. Outdoor Passive Recreational and Educational Activities. Hiking, horseback riding, cross country, skiing, snowshoeing, nature observation, nature and educational walks and outings, outdoor educational activities, and other non-motorized outdoor recreational and

educational activities.

10. Barn Structure. Using, maintaining, repairing, removing, and/or replacing the existing barn structure, as documented in the Baseline Report, with the same footprint at grade of 500 square feet and a maximum height of any part of the dwelling of 20 feet, provided that the structure shall not include habitable space. Use of the barn structure will support the purposes of this conservation restriction, for example, storage of vegetation management equipment, and educational displays;
11. Shed. Using, maintaining, repairing, removing, and/or replacing the existing shed structure, as documented in the Baseline Report, with the same footprint at grade of 100 square feet and a maximum height of any part of the dwelling of 10 feet. Use of the shed structure will support the purposes of this conservation restriction, for example, storage of vegetation management equipment, and educational displays;
12. Driveway and Parking. Constructing, using, maintaining, repairing, improving, or replacing, the existing driveway, and parking area, (“Improvements”), provided that these Improvements serve only the permitted barn structure and/or the deeded access easement as shown in Exhibit B attached hereto.
13. Other. Such other non-prohibited activities or uses of the Premises may be permitted with the prior approval of the Grantees provided that the Grantees have made a finding, such finding to be documented in writing and kept on file at the offices of the Grantees, that such activities are consistent with the Permitted Acts and Uses, do not impair the conservation values and purposes of this Conservation Restriction, and, where feasible, result in a net gain in conservation value of the Premises.

C. Site Restoration

Upon completion of any Permitted Acts and Uses, any 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.

D. Compliance with Permits, Regulations, Laws

The exercise of any Permitted Acts and Uses under Paragraph III.B. 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 Grantees or the Commonwealth takes any position whether such permit, license, or other approval should be issued.

E. Notice and Approval

1. Notifying Grantees. Whenever notice to or approval by Grantees is required, Grantor shall notify or request approval from Grantees, 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.
2. Grantee Review. Where Grantees' approval is required, the Secondary Grantee, within thirty (30) days of receipt of Grantor's request, shall notify the Primary Grantee of the Secondary Grantee's decision. Within sixty (60) days of the Primary Grantee's receipt of Grantor's request, the Primary Grantee shall either affirm, amend or reverse the decision of the Secondary Grantee, shall notify the Secondary Grantee thereof in writing, and shall issue its decision to the Grantor in writing. The Primary Grantee's decision shall in all cases be the final and controlling decision binding on both Grantees. In the event that no decision is received from the Secondary Grantee within thirty (30) days, the Primary Grantee shall proceed to issue its decision within sixty (60) days 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. Grantees may require Grantor to secure expert review and evaluation of a proposed activity by a mutually agreed upon party.
3. Resubmittal. Grantees' 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.

IV. INSPECTION AND ENFORCEMENT

A. Entry onto the Premises

The Grantor hereby grants to the Grantees, and their duly authorized agents or representatives, the right to enter the Premises upon reasonable notice and at reasonable times, for the purpose of inspecting the Premises to determine compliance with or to enforce this Conservation Restriction.

B. Legal and Injunctive Relief

1. Enforcement. The rights hereby granted shall include the right to enforce this Conservation Restriction by appropriate legal proceedings and to obtain compensatory relief, including without limitation, compensation for interim losses (i.e., ecological and public use service losses that occur from the date of the violation until the date of restoration) and equitable relief against any violations, including, without limitation, injunctive relief and relief requiring restoration of the Premises to its condition prior to the time of the injury (it being agreed that the Grantees will have no adequate remedy at law in case of an injunction). The rights hereby granted shall be in addition to, and not in limitation of, any other rights and remedies available to the Grantees for the enforcement of this Conservation Restriction.

2. Notice and Cure. In the event the Grantees determines that a violation of this Conservation Restriction has occurred and intends to exercise any of the rights described herein, the Grantees shall, before exercising any such rights, notify the Grantor in writing of the violation. The Grantor shall have thirty (30) days from receipt of the written notice to halt the violation and remedy any damage caused by it, after which time Grantees may take further action, including instituting legal proceedings and entering the Premises to take reasonable measures to remedy, abate or correct such violation, without further notice. Provided, however, that this requirement of deferment of action for thirty (30) days applies only if Grantor immediately ceases the violation and Grantees determine that there is no ongoing violation. In instances where a violation may also constitute a violation of local, state, or federal law, the Grantees may notify the proper authorities of such violation.

3. Reimbursement of Costs and Expenses of Enforcement. Grantor covenants and agrees to reimburse to Grantees all reasonable costs and expenses (including counsel fees) incurred by the Grantees in enforcing this Conservation Restriction or in taking reasonable measures to remedy, abate or correct any violation thereof. 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.

4. Coordination between Primary and Secondary Grantee. Whenever there is a question of whether there is a violation of this Conservation Restriction, or how to proceed in addressing the violation, the Primary Grantee shall consult with the Secondary Grantee. The Primary Grantee shall then determine whether there is a violation and how to proceed in addressing the violation. The Primary Grantee's decision shall in all cases be the final and controlling decision binding on both Grantees. In the event that no response is received from the Secondary Grantee within thirty (30) days, the Primary Grantee shall notify Grantor and proceed as provided in Paragraph IV.B.2.

C. Non-Waiver

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

D. Disclaimer of Liability

By acceptance of this Conservation Restriction, the Grantees do 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 Grantees or their agents.

E. Acts Beyond the Grantor's Control

Nothing contained in this Conservation Restriction shall be construed to entitle the Grantees to bring any actions 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, weather, climate-related impacts, and earth movement, or from any prudent action taken by the Grantor under emergency

conditions to prevent, abate, or mitigate significant injury to the Premises resulting from such causes. In the event of any such occurrence, the Grantor and Grantees will cooperate in the restoration of the Premises, if desirable and feasible.

V. PUBLIC ACCESS

Subject to the provisions of this Conservation Restriction, the Grantor hereby grants access to the Premises to the general public and agrees to take no action to prohibit or discourage access to and use of the Premises by the general public, but only for daytime use and only as described in Paragraph III.B.9 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.B.9. The Grantees 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 Grantees hereto express their intent to benefit from exculpation from liability to the extent provided in such section.

VI. TERMINATION/RELEASE/EXTINGUISHMENT

A. Procedure

If circumstances arise in the future that render the Purposes impossible to accomplish, this Conservation 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 Secretary of Energy and Environmental Affairs of the Commonwealth of Massachusetts, or successor official ("Secretary"), and any other approvals as may be required by Section 32 of Chapter 184 of the Massachusetts General Laws.

B. Grantor's and Grantees' Right to Recover Proceeds

If any change in conditions ever gives rise to termination, release, or extinguishment of this Conservation Restriction under applicable law, then Grantees, on a subsequent sale, exchange, or involuntary conversion of the Premises, shall be entitled to a portion of the proceeds in accordance with Paragraph VI.C., 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. The Grantees shall use their share of any proceeds in a manner consistent with the Purposes or the protection of the Conservation Values.

C. Grantees' Receipt of Property Right

Grantor and Grantees agree that the conveyance of this Conservation Restriction gives rise to a real property right, immediately vested in the Grantees, with a fair market value that is at least equal to the proportionate value that this Conservation Restriction, determined at the time of the conveyance, bears to the value of the unrestricted Premises. The proportionate value of the Primary Grantee's property right as of the Effective Date (see Paragraph XII) was determined to be 72%¹. Such proportionate value of the Primary Grantee's property right shall remain constant. The Secondary Grantee shall not share in any recovered proceeds.

D. Cooperation Regarding Public Action

Whenever all or any part of the Premises or any interest therein is taken by public authority under power of eminent domain or other act of public authority, then the Grantor and the Grantees shall cooperate in recovering the full value of all direct and consequential damages resulting from such action. All related expenses incurred by the Grantor and the Grantees shall first be paid out of any recovered proceeds, and the remaining proceeds shall be distributed between the Grantor and Grantees in accordance with Paragraph VI.B. and Paragraph VI.C. If a less than fee interest is taken, the proceeds shall be equitably allocated according to the nature of the interest taken. The Grantees shall use their share of any proceeds in a manner consistent with the Purposes or the protection of the Conservation Values.

VII. DURATION and ASSIGNABILITY

A. Running of the Burden

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

¹ Appraised property value \$1,250,000, CPA funding for CR \$905,000, equals 72%

B. Execution of Instruments

The Grantees are authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Conservation Restriction. The Grantor, on behalf of itself and its successors and assigns, appoints the Grantees its 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 to execute any such instruments upon request.

C. Running of the Benefit

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

1. the Grantees require that the purposes continue to be carried out;
2. the assignee is not an owner of the fee in the premises;
3. the assignee, at the time of the assignment, qualifies under and 26.U.S.C. 170(h), and applicable regulations thereunder, if applicable, and is eligible to receive this Conservation Restriction under Section 32 of Chapter 184 of the Massachusetts General Laws; and
4. the assignment complies with Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, if applicable.

VIII. SUBSEQUENT TRANSFERS

A. Procedure for Transfer

The Grantor agrees to incorporate by reference the terms of this Conservation Restriction in any deed or other legal instrument which grants any interest in all or a portion of the Premises, including a leasehold interest and to notify the Grantees not less than twenty (20) days prior to the effective date

of such transfer. 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 Grantees may record, in the Barnstable County Registry of Deeds, and at the Grantor's expense, a notice of this Conservation Restriction. Any transfer will comply with Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, if applicable.

B. Grantor's Liability

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

IX. ESTOPPEL CERTIFICATES

Upon request by the Grantor, the Grantees shall, within sixty (60) days execute and deliver to the Grantor any document, including an estoppel certificate, which certifies the Grantor's compliance or non-compliance with any obligation of the Grantor contained in this Conservation Restriction.

X. NON MERGER

The parties intend that any future acquisition of the Premises shall not result in a merger of the Conservation Restriction into the fee. The Grantor agrees that it will not grant, and the Grantees agree that they will not take title, to any part of the Premises without having first assigned this Conservation Restriction following the terms set forth in Paragraph VII.C to ensure that merger does not occur and that this Conservation Restriction continues to be enforceable by a non-fee owner.

XI. AMENDMENT

A. Limitations on Amendment

Grantor and Grantees may amend this Conservation Restriction only to correct an error or oversight, clarify an ambiguity, maintain or enhance the overall protection of the Conservation Values, or add real property to the Premises, provided that no amendment shall:

1. affect this Conservation Restriction's perpetual duration;
2. be inconsistent with or materially impair the Purposes;
3. affect the qualification of this Conservation Restriction as a "qualified conservation contribution" or "interest in land" under any applicable laws, including 26 U.S.C. Section 170(h), and related regulations;
4. affect the status of Grantees as "qualified organizations" or "eligible donees" under any applicable laws, including 26 U.S.C. Section 170(h) and related regulations, and Sections 31, 32, and 33 of Chapter 184 of the Massachusetts General Laws; or
5. create an impermissible private benefit or private inurement in violation of federal tax law, as determined by an appraisal, conducted by an appraiser selected by the Grantees, of the economic impact of the proposed amendment; or
6. alter or remove the provisions described in Paragraph VI (Termination/Release/Extinguishment); or
7. cause the provisions of this Paragraph XI to be less restrictive; or

8. cause the provisions described in Paragraph VII.C (Running of the Benefit) to be less restrictive.

B. Amendment Approvals and Recording

No amendment shall be effective unless documented in a notarized writing executed by Grantees and Grantor, approved by the Town of Barnstable and by the Secretary in the public interest pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws, and recorded in the Barnstable County Registry of Deeds.

XII. EFFECTIVE DATE

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

XIII. 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: Wheeler Realty Trust
150 Wheeler Road
Marstons Mills, MA 02648

To Primary Grantee: Town of Barnstable, c/o Town Manager
367 Main Street
Hyannis, MA 02601-3907

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

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

XIV. GENERAL PROVISIONS

A. Controlling Law

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

B. Liberal Construction

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

C. Severability

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

D. Entire Agreement

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

XV. BASELINE DOCUMENTATION REPORT

The Conservation Values, as well as the natural features, current uses of, and existing improvements on the Premises, such as, but not limited to, trails, woods roads, structures, meadows or other cleared areas, agricultural areas, and scenic views, as applicable, are described in a Baseline Documentation Report (“Baseline Report”) titled “Baseline Report for Wheeler Holly Preserve Conservation Restriction”, dated prepared by the Secondary Grantee with the cooperation of the Primary Grantee and the Grantor, consisting of maps, photographs, and other documents and on file with the Grantees and included by reference herein. The Baseline Report (i) is acknowledged by Grantor and Grantees to be a complete and accurate representation of the condition and values of the Premises as of the date of this Conservation Restriction, (ii) is intended to fully comply with applicable Treasury Regulations, (iii) is intended to serve as an objective information baseline for subsequent monitoring of compliance with the terms of this Conservation Restriction as described herein, and (iv) may be supplemented as conditions on the Premise change as allowed over time. Notwithstanding the foregoing, the parties may utilize any evidence of the condition of the Premises at the time of this grant in addition to the Baseline Report.

XVI. MISCELLANEOUS

A. Pre-existing Public Rights

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

B. Release of Homestead

The Grantor hereby agrees to waive, subordinate, and release any and all Homestead rights pursuant to Chapter 188 of the Massachusetts General Laws it may have in favor of this Conservation Restriction with respect to any portion of the Premises affected by this Conservation Restriction, and hereby agrees to execute, deliver and/or record any and all instruments necessary to effectuate such waiver, subordination and release. In all other respects, the Grantor reserves and retains any and all Homestead rights, subject to this Conservation Restriction, pursuant to Section 10(e) of Chapter 188 of the Massachusetts General Laws.

C. No Surety Interest

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

D. Executory Limitation

If either Grantee shall cease to exist or to be qualified to hold conservation restrictions pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws, or to be qualified organization under 26 U.S.C. 170(h), and applicable regulations thereunder, if applicable, and a prior assignment is not made pursuant to Paragraph VII, then that Grantee’s rights and obligations under this Conservation Restriction shall run to the other Grantee.

E. Prior Encumbrances

This Conservation Restriction shall be in addition to and not in substitution of any other restrictions or easements of record affecting the Premises.

F. The following signature pages are included in this Grant:

Grantor – Emily Wheeler, Susan K. Wheeler, Sarah B. Wheeler, and Thomas A. Wheeler, Trustees
Primary Grantee Acceptance – Town of Barnstable Town Manager
Secondary Grantee Acceptance – The Compact of Cape Cod Conservation Trusts, Inc.
Approval – Town of Barnstable Town Council
Approval of the Secretary of Energy and Environmental Affairs of the Commonwealth of Massachusetts.

G. The following exhibits are attached and incorporated herein:

Exhibit A: Legal Description of Premises
Exhibit B: Reduced Copy of Recorded Plan of Premises
Exhibit C-1: Town Council Order Authorizing the Use of CPA Funds
Exhibit C-2: Town Council Order Approving the Conservation Restriction

WITNESS my hand and seal this ____ day of _____, 2024

GRANTOR:

Wheeler Realty Trust u/d/t March 26, 1953

Emily Wheeler, Trustee, and not Individually

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss.

On this _____ day of _____ 2024, before me, the undersigned notary public, personally appeared Emily Wheeler, Trustee, 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, on behalf of the Trust.

, Notary Public

My commission expires:

WITNESS my hand and seal this ____ day of _____, 2024

GRANTOR:

Wheeler Realty Trust u/d/t March 26, 1953

Susan K. Wheeler, Trustee, and not Individually

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss.

On this _____ day of _____ 2024, before me, the undersigned notary public, personally appeared Susan K. Wheeler, Trustee, 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, on behalf of the Trust.

, Notary Public

My commission expires:

WITNESS my hand and seal this ____ day of _____, 2024

GRANTOR:

Wheeler Realty Trust u/d/t March 26, 1953

Sarah B. Wheeler, Trustee, and not Individually

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss.

On this _____ day of _____ 2024, before me, the undersigned notary public, personally appeared Sarah B. Wheeler, Trustee, 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, on behalf of the Trust.

, Notary Public

My commission expires:

WITNESS my hand and seal this ____ day of _____, 2024

GRANTOR:

Wheeler Realty Trust u/d/t March 26, 1953

Thomas A. Wheeler, Trustee, and not Individually

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss.

On this _____ day of _____ 2024, before me, the undersigned notary public, personally appeared Thomas A. Wheeler, Trustee, 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, on behalf of the Trust.

, Notary Public

My commission expires:

TRUSTEES' CERTIFICATE

Wheeler Realty Trust u/d/t March 26, 1953 was formed in 1953 and recorded with the Barnstable County Registry of Deeds in Book 862, Page 550, as amended and restated by instruments recorded in Book 1188, Page 24, Book 1456, Page 1026, Book 1534, Page 322, Book 2285, Page 114, Book 9462, Page 82, Book 10414, Page 178, and Book 33672, Page 135, and is currently in full force and effect and has not been revoked.

The current Co-Trustees are Emily Wheeler, Susan K. Wheeler, Sarah B. Wheeler, and Thomas A. Wheeler.

Insofar as it may be required by the instrument, the beneficiaries have consented to the transfer of a Conservation Restriction on Lots 3 and 4, 150 Wheeler Road, (Marstons Mills), Barnstable, MA to the Town of Barnstable and The Compact of Cape Cod Conservation Trusts, Inc. on or about the _____ day of _____ 2024.

The beneficiaries are of full age and competent.

The Trustees and beneficiaries hereby agree to waive, subordinate, and release any and all Homestead rights pursuant to Chapter 188 of the Massachusetts General Laws it may have in favor of this Conservation Restriction with respect to any portion of the Premises affected by this Conservation Restriction, and hereby agree to execute, deliver and/or record any and all instruments necessary to effectuate such waiver, subordination and release. In all other respects, the Trustees and beneficiaries reserve and retain any and all Homestead rights, subject to this Conservation Restriction, pursuant to Section 10(e) of Chapter 188 of the Massachusetts General Laws.

WITNESS my hand and seal this _____ day of _____, 2024.

Wheeler Realty Trust u/d/t March 26, 1953

BY:

Emily Wheeler, Trustee, and not Individually

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss.

On this _____ day of _____ 2024, before me, the undersigned notary public, personally appeared Emily Wheeler, Trustee, 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, on behalf of the Trust.

, Notary Public
My commission expires:

WITNESS my hand and seal this _____ day of _____, 2024.

Wheeler Realty Trust u/d/t March 26, 1953

BY:

Susan K. Wheeler, Trustee, and not Individually

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss.

On this _____ day of _____ 2024, before me, the undersigned notary public, personally appeared Susan K. Wheeler, Trustee, 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, on behalf of the Trust.

, Notary Public
My commission expires:

WITNESS my hand and seal this _____ day of _____, 2024.

Wheeler Realty Trust u/d/t March 26, 1953

BY:

Sarah B. Wheeler, Trustee, and not Individually

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss.

On this _____ day of _____ 2024, before me, the undersigned notary public, personally appeared Sarah B. Wheeler, Trustee, 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, on behalf of the Trust.

, Notary Public

My commission expires:

WITNESS my hand and seal this _____ day of _____, 2024.

Wheeler Realty Trust u/d/t March 26, 1953

BY:

Thomas A. Wheeler, Trustee, and not Individually

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss.

On this _____ day of _____ 2024, before me, the undersigned notary public, personally appeared Thomas A. Wheeler, Trustee, 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, on behalf of the Trust.

, Notary Public

My commission expires:

ACCEPTANCE OF GRANT

The foregoing Conservation Restriction from Emily Wheeler, Susan K. Wheeler, Sarah B. Wheeler, and Thomas A. Wheeler, Trustees, Wheeler Realty Trust was accepted by The Compact of Cape Cod Conservation Trusts, Inc. this _____ day of _____, 2024.

By: _____

Leonard W. Johnson

Its: President, duly authorized

By: _____

Henry Lind

Its: Treasurer, duly authorized

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss:

On this _____ day of _____, 2024, before me, the undersigned notary public, personally appeared Leonard W. Johnson, President of The Compact of Cape Cod Conservation Trusts, Inc., and Henry Lind, Treasurer of The Compact of Cape Cod Conservation Trusts, Inc., and proved to me through satisfactory evidence of identification which was personal knowledge to be the persons whose names are signed on the proceeding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose.

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

ACCEPTANCE AND APPROVAL OF TOWN MANAGER

I, Mark S. Ells, as Town Manager of the Town of Barnstable, Massachusetts, authorized by a vote of the Barnstable Town Council at a duly called meeting held on 2024 on Agenda Item _____, a copy of the Town Council Order being attached hereto as Exhibit C, hereby approve and accept the foregoing Conservation Restriction from Emily Wheeler, Susan K. Wheeler, Sarah B. Wheeler, and Thomas A. Wheeler, Trustees, Wheeler Realty Trust to the Town of Barnstable and The Compact of Cape Cod Conservation Trusts, Inc. pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws.

TOWN OF BARNSTABLE

TOWN MANAGER: _____
Mark S. Ells

Barnstable, ss

On this _____ day of _____, 2024, before me, the undersigned notary public, personally appeared Mark S. Ells, the person whose name is signed on the document and proved to me through satisfactory evidence of identification, which was _____ and who being by me duly sworn did say that he is the Town Manager of the Town of Barnstable; that he is duly authorized to act on behalf the Town of Barnstable and he acknowledged the foregoing instrument to be his free act and deed.

Notary Public
My Commission Expires

APPROVAL OF THE TOWN OF BARNSTABLE

TOWN COUNCIL

At a public meeting duly held on _____2024, the Town Council of the Town of Barnstable, Massachusetts, voted to approve the foregoing Conservation Restriction from Emily Wheeler, Susan K. Wheeler, Sarah B. Wheeler, and Thomas A. Wheeler, Trustees, Wheeler Realty Trust to the Town of Barnstable and The Compact of Cape Cod Conservation Trusts, Inc.in the public interest pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws.

TOWN COUNCIL PRESIDENT:

Matthew P. Levesque

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss

On this _____ day of _____, 2024, before me, the undersigned notary public, personally appeared Matthew Levesque, the person whose name is signed on the document and proved to me through satisfactory evidence of identification, which was _____, and who being by me duly sworn did say that he is the President of the Town Council of the Town of Barnstable; that he is duly authorized to act on behalf the Town Council; and he acknowledged the foregoing instrument to be the free act and deed of Town of Barnstable Town Council.

Notary Public
My Commission Expires:

APPROVAL OF SECRETARY OF ENERGY AND ENVIRONMENTAL AFFAIRS OF THE COMMONWEALTH OF MASSACHUSETTS

The undersigned, Secretary of Energy and Environmental Affairs of the Commonwealth of Massachusetts, hereby approves the foregoing Conservation Restriction from Emily Wheeler, Susan K. Wheeler, Sarah B. Wheeler, and Thomas A. Wheeler, Trustees, Wheeler Realty Trust to the Town of Barnstable and The Compact of Cape Cod Conservation Trusts, Inc. in the public interest pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws.

Dated: _____, 2024

Rebecca L Tepper
Secretary of Energy and Environmental Affairs

THE COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss:

On this _____ day of _____, 2024, 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 land in the Town of Barnstable, Barnstable County, Massachusetts shown as _____ on a plan entitled _____, dated _____, by _____ and recorded at the Barnstable County Registry of Deeds at Plan Book _____, _____ Page . Containing 5.5 acres, more or less, per survey. For Grantor's Title see Barnstable County Registry of Deeds at Book 862, Page 556. Town of Barnstable Assessor Map 103, Parcel 109, (portion) Street Address: 150 Wheeler Road, Barnstable, MA 02648

Wheeler Holly Preserve Conservation Restriction Lots 3 and 4, Barnstable MA

EXHIBIT B

Reduced Copy of Plan of Premises

For official full-size plan see Barnstable Registry of Deeds Plan Book _____ Page _____

EXHIBIT C-1

Town Council Order Authorizing the Use of CPA Funds

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

BARNSTABLE TOWN COUNCIL

**ITEM# 2024-076
INTRO: 12/07/2023**

2024-076 AUTHORIZATION TO CONTRACT FOR AND EXPEND A FEDERAL FISCAL YEAR 2023 COPS HIRING PROGRAM GRANT IN THE AMOUNT OF \$250,000 FROM THE U.S. DEPARTMENT OF JUSTICE, OFFICE OF COMMUNITY-ORIENTED POLICING SERVICES

RESOLVED: That the Town Council does hereby authorize the Town Manager to contract for and expend a Federal Fiscal Year 2023 COPS Hiring Program Grant in the amount of **\$250,000** from the U.S. Department of Justice, Office of Community-Oriented Policing Services for the purpose of funding two additional career law enforcement officers.

SPONSOR: Mark S. Ells, Town Manager

DATE	ACTION TAKEN
_____	_____
_____	_____

- Read Item
- Rationale
- Council Discussion
- Vote

BARNSTABLE TOWN COUNCIL

ITEM# 2024-076
INTRO: 12/07/2023

SUMMARY

TO: Town Council
FROM: Mark S. Ells, Town Manager
THROUGH: Jean B Challies, Acting Chief of Police
DATE: December 07, 2023
SUBJECT: Authorization to contract for and expend a Federal Fiscal Year 2023 COPS Hiring Program Grant in the amount of **\$250,000** from the U.S. Department of Justice, Office of Community-Oriented Policing Services

BACKGROUND: The Police Department applied for and was awarded a Federal fiscal year 2023 COPS Hiring Program Grant in the amount of \$250,000 from the U. S. Department of Justice, Office of Community Oriented Policing Services.

In March of 2022 a staffing study was completed by Municipal Resources, Inc. (MRI). The company aided the Town of Barnstable in researching, analyzing, and recommending police staffing needs. The final report of this study concluded that the level of sworn staff has not kept pace with the volume of calls for service nor the complexity of many of the types of calls. It was also suggested that the department risks becoming a reactive police agency without time to engage in community-oriented policing, which is at the heart of a good police agency. MRI stated that if we could increase our headcount by at least 2 additional sworn officers it would enable the department to continue to offer community-oriented programs without posing a shortage on the patrol shifts.

ANALYSIS: This grant will provide partial funding for a period of three years for two career law enforcement officers, with the understanding that at the end of the three years the Town agrees to continue to fund the two positions by increasing the budgeted headcount from 118 officers to 120 officers. This funding will enable us to place a School Resource Office back into Barnstable United Elementary School, as that position was returned to the patrol lines in previous years to ensure adequate coverage in general patrol. The other position gained through this grant will be placed in general patrol.

FISCAL IMPACT: The COPS Hiring Program award will provide funding up to seventy-five percent (75%) of the base salary and fringe benefits (Medicare, health insurance and county retirement) for each of the two positions. The estimated salary and benefit costs for an officer is \$97,472, or \$194,944 for two positions. The grant would cover \$146,208 (75%) of this cost in the initial year the positions are brought on board and the local share would be \$48,736. The balance of the grant (\$103,792) would be expended in the second year the positions are on board, and by the third year, the full cost of the new positions would be absorbed in the General Fund operating budget.

There are other costs associated with these positions that are not covered by the grant and include educational incentive pay, shift differential, AED stipends and clothing allowances. For each position these are estimated at \$19,000 for a total of \$38,000 in the initial year they are brought on board. This would result in a total operating budget impact of \$86,736 in the initial year, \$129,202 in year 2 and \$232,994 by the third year when the positions are fully absorbed into the operating budget. We anticipate the additional positions to be brought on board in the fiscal year 2024 operating budget.

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

STAFF ASSISTANCE: Jean B Challies, Acting Chief of Police; Anne Spillane, Finance & Support Services Director; Lena Bevilacqua Police, Grant Coordinator

B. NEW BUSINESS (Refer to a Public Hearing on 12/21/2023)

BARNSTABLE TOWN COUNCIL

**ITEM# 2024-077
INTRO: 12/07/2023**

2024-077 APPROPRIATION AND LOAN ORDER IN THE AMOUNT OF \$770,000 FOR THE PURPOSE OF FUNDING THE BEARSE’S WAY VACUUM SEWER REPLACEMENT PROJECT

ORDERED: That the amount of **\$770,000** be appropriated for the purpose of funding the Bearse’s Way Vacuum Sewer Replacement Project, 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 **\$770,000** under and pursuant to M.G.L. c. 44, §§7 or 8, 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
_____	_____
_____	_____

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

BARNSTABLE TOWN COUNCIL

ITEM# 2024-077
INTRO: 12/07/2023

SUMMARY

TO: Town Council
FROM: Mark S. Ells, Town Manager
THROUGH: Daniel W. Santos, P.E., Director of Public Works
DATE: December 07, 2023
SUBJECT: Appropriation and Loan Order in the amount of **\$770,000** for the purpose of funding the Bearse's Way Vacuum Sewer Replacement Project

BACKGROUND: The project includes replacement of the vacuum sewer system on Bearse's Way from Route 132 to Enterprise Drive with a new gravity sewer. This project is scheduled to be implemented as a part of a MassDOT project for the Bearse's Way Shared Use Path. Bids were opened by MassDOT for the project and the sewer component of the project was over the existing appropriated budget of \$1,125,000 under Town council order 2019-133.

ANALYSIS: The project provides the Town with an opportunity to work in conjunction with the MassDOT construction project to replace an extremely vulnerable component of the Town's sewer collection system. Currently, the Town utilizes a vacuum sewer system to convey wastewater flows from Bearse's Way and a portion of Route 28 to the Water Pollution Control Facility (WPCF). The vacuum sewer system is a vulnerable system approaching the end of its useful life. This system accounts for nearly 40% of the WPCF emergency response calls. This project will replace approximately half of the vacuum sewer system.

FINANCIAL IMPACT: The revised total appropriated cost for this project is \$1,895,000. This project will be financed with a loan through the State Revolving Loan Program. The project is listed on the 2023 Clean Water State Revolving Fund Intended Use Plan and is eligible for a low interest loan and principal subsidy from the Trust. In addition, the Town anticipates that the project will be eligible for a subsidy through the Cape Cod and Islands Water Protection Fund. Completion of the project is anticipated to reduce call outs and maintenance for the WPCD. Future sewer enterprise fund operating budgets will include the principal and interest payments on the loan payback which is estimated to be \$90,000 per year for 20 years. Sewer utility rates may need to be adjusted to ensure adequate revenue is generated to provide funding for this new loan.

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

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

BARNSTABLE TOWN COUNCIL

**ITEM# 2024-078
INTRO: 12/07/2023**

2024-078 AUTHORIZATION FOR SALE OF LAND AT 164 ROUTE 149 (COTUIT ROAD), MARSTONS MILLS, MA

WHEREAS, on November 17, 2022, the Town Council, in Item No. 2023-062, approved the change in purpose of the property located at 164 Route 149, Marstons Mills, as shown on Assessors Map 078, Parcel 074 (the “Property”), to provide that the Property shall remain in the care, custody, management and control of the Town Manager for the purpose of disposition by sale, provided it is appropriately restricted for affordable housing; and provided further, that the Town Manager shall obtain Town Council approval prior to any such disposition; and

WHEREAS, the Town Manager declared the Property to be surplus property and, through the Town’s Asset Management Program, issued a Request for Proposals (“RFP”) for the disposition of the Property for affordable housing purposes; and

WHEREAS, the Town received one responsive proposal in response to the RFP;

NOW, THEREFORE, BE IT RESOLVED: That the Town Council hereby authorizes the Town Manager to dispose of all rights, title, and interest in the Property to Habitat for Humanity of Cape Cod, Inc. for a price of **Ten Dollars (\$10.00)** for the development of two permanently deed restricted single-family homes affordable to individuals or households at or below 80% of the Area Median Income, as defined by the Executive Office of Housing and Livable Communities; and further authorizes the Town Manager to execute and deliver any and all documents necessary to effectuate the disposition authorized herein.

SPONSOR: Mark S. Ells, Town Manager

DATE	ACTION TAKEN
_____	_____
_____	_____

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

BARNSTABLE TOWN COUNCIL

ITEM#2024-078
INTRO: 12/07/2023

SUMMARY

TO: Town Council
FROM: Mark S. Ells, Town Manager
THROUGH: Elizabeth S. Jenkins, Director of Planning & Development
David Anthony, Director of Asset Management
DATE: December 07, 2023
SUBJECT: Authorization for sale of land at 164 Route 149 (Cotuit Road), Marstons Mills, MA

BACKGROUND: The subject property is located at 164 Route 149 (Cotuit Road) in the Village of Marstons Mills, as shown on Assessor's Map 078 as Parcel 074. The parcel is 0.85+/- acres in area, has approximately 200+/- feet of frontage on Route 149, and is located in the heart of the Marstons Mills Village Center. It is zoned Marstons Mills Village District (MMVD).

The subject property was purchased by the Town in 2016. The intention for the property was to develop a surface parking lot to serve the village center. Subsequent preliminary engineering design efforts showed the topography of the property made development of the lot for parking challenging and costly. In November 2022, potential uses of the property were discussed with the Marstons Mills Village Association and the village was supportive of low-density affordable residential development. On November 17, 2022, the Barnstable Town Council voted unanimously to change the purpose for which the property was acquired to affordable housing (TC Item No. 2023-062), voting that the property "shall remain in the care, custody, management and control of the Town Manager for the purpose of disposition by sale, provided it is appropriately restricted for affordable housing; and, provided further, that the Town Manager shall obtain Town Council approval prior to any such disposition." The Town Manager has declared the property surplus.

The Town Manager's Office, through the Asset Management Program, issued a request for proposals (RFP) for the disposition of the property under M.G.L. Chapter 30B, Section 16 ("the Uniform Procurement Act") on July 10, 2023. The RFP sought a developer/owner with experience and capacity to acquire, redevelop, restrict, market and resell the property for affordable housing purposes. The terms of the RFP proposed renovation of the existing unit and/or redevelopment of the site with up to two dwelling units to be resold to qualified affordable buyers; a building type and design that reflected the surrounding single-family residential land use pattern; architecture that reflected the local character; and energy efficient and sustainable design features. The RFP required the resulting units to be permanently deed restricted units affordable to individuals or households at or below 80 percent of the Area Median Income and eligible for inclusion on the Town's Subsidized Housing Inventory. The potential for redevelopment costs to exceed revenue was recognized, along with the value of creating affordable homeownership opportunities for the community, and thus the minimum bid price was set at One Dollar (\$1).

The Town conducted a title search prior to acquiring the property in 2016 and it was determined that the Town held a good, clear marketable title to the Premises, free from all encumbrances. After the Town Council voted on November 17, 2022, to dedicate this property to affordable Housing, the RFP was issued assuming little to no compensation to the Town to help ensure affordable housing goals could be met. M.G.L. c. 30B requires that the Town determine the value

of the property before it may be disposed of. The State Inspector General’s guidance on the requirements of M.G.L. c. 30B instructs that municipalities can rely on the assessed value instead of conducting a market appraisal. The value of the land was most recently assessed by the Town of Barnstable at \$158,000. The IG Guidance further provides that the Town must define a valid public purpose to be achieved, such as the creation of affordable housing, if it intends to dispose of the property for less than fair market value. Upon approval of this disposition by the Town Council, the Town will post a notice in the Central Register explaining the reasons for the disposition of the property for less than fair market value and disclosing the difference between the property value and the price to be received, as required by Chapter 30B.

Proposals were due on October 11, 2023, and two proposals were submitted. One proposal was deemed non-responsive. The other proposal was from Habitat for Humanity of Cape Cod, Inc. (HHCC) and was deemed to be highly advantageous. The proposal is for the development of two single-family, two-story traditional Cape Cod style, three-bedroom, two-bathroom, homes on separate lots. The project is proposed to be permitted through a “friendly” 40B process (as a Local Initiative Project). HHCC will convey the homes in fee simple to income eligible pre-selected families earning no more than 80% of the Area Median at affordable prices Income as defined by the Executive Office of Housing and Livable Communities (EOHLC). The current price for these 3-bedroom homes is \$235,100. Habitat for Humanity of Cape Cod is a 501(c)(3) not-for-profit that has built over 180 homes across the region since they were founded in 1988.

ANALYSIS: This project paired two ongoing Town efforts: first, to evaluate and dispose of municipal assets where appropriate; and, second to evaluate opportunities to use municipal property for affordable housing. Affordable homeownership housing is a community need, and this project will add two three-bedroom units within a walkable village center.

This item authorizes the Town Manager to dispose of all right, title, and interest in the surplus parcel of land; and to execute and deliver any and all documents necessary in accordance with the terms of this Resolve.

FISCAL IMPACT: This sale of this property will return the property to a taxable status which will generate General Fund tax revenue.

TOWN MANAGER RECOMMENDATION: Mark S. Ells, Town Manager, recommends the sale of this property.

STAFF ASSISTANCE: Amber Patterson, Chief Procurement Officer; Jim Kupfer, Assistant Director of Planning & Development

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

BARNSTABLE TOWN COUNCIL

**ITEM# 2024-079
INTRO: 12/07/2023**

2024-079 AUTHORIZATION TO CONTRACT FOR AND EXPEND A FISCAL YEAR 2024 GRANT IN THE AMOUNT OF \$15,097.80 FROM THE MASSACHUSETTS DEPARTMENT OF ENVIRONMENTAL PROTECTION TO ACQUIRE THREE ELECTRIC VEHICLE CHARGING STATIONS

RESOLVED: That the Town Council does hereby authorize the Town Manager to contract for and expend a grant in the amount of **\$15,097.80** to acquire and deploy three Level 2 Massachusetts Electric Vehicle Incentive Program-funded electric vehicle charging stations for a total of six charging ports at 225 South Street, Hyannis.

SPONSOR:Councilor Gordon Starr, Precinct 1

DATE	ACTION TAKEN
_____	_____
_____	_____

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

BARNSTABLE TOWN COUNCIL

ITEM# 2024-079
INTRO: 12/07/2023

SUMMARY

TO: Town Council
FROM: Mark Ells, Town Manager
DATE: December 07, 2023
SUBJECT: Authorization to contract for and expend a Fiscal Year 2024 Grant in the amount of **\$15,097.80** from the Massachusetts Department of Environmental Protection to acquire three electric vehicle charging stations

BACKGROUND: Due to the work of Sean Hogan, Environmental and Sustainability Manager for the Town of Barnstable, the Massachusetts Department of Environmental Protection (MassDEP) has awarded a grant to the Town of \$15,097.80 to acquire three electric vehicle charging station(s) under the Massachusetts Electric Vehicle Incentive Program (MassEVIP) Workplace & Fleet (WPF) Charging Program at 225 South Street, Hyannis, MA (Armory parking lot).

This grant is a required part of an Eversource Make Ready EV expansion. Installation of the grant funded fleet chargers will be contingent on infrastructure upgrades by Eversource. Normally cities have 6 months to purchase equipment after a MassEVIP grant but allowances are made given the complexities of working with Eversource on infrastructure upgrades.

RATIONALE: The Massachusetts Electric Vehicle Incentive Program (MassEVIP) Public Access Charging (PAC) program is funded through the Climate Protection and Mitigation Expendable Trust (CMT). The CMT was established in 2018 in concert with MassDEP regulation 310 CMR 7.74 (Reducing CO2 Emissions from Electricity Generating Facilities) and 310 CMR 7.75 (Clean Energy Standard). Funds are generated for the CMT through the auction of CO2 allowances under 310 CMR 7.74 and the submittal of alternative compliance payments (ACP) under 310 CMR 7.75. MassDEP administers the auction and collects the ACP payments. CMT funds support programs or projects that reduce greenhouse gas emissions to mitigate the impacts of climate change, to support adaptation to the impacts of climate change, and for the administration of the program. This Agreement is for the purpose of reducing NOx and greenhouse gas emissions in Massachusetts, and to electrify the Massachusetts transportation network.

With the proliferation and expanded availability of functional electric vehicles to local government the need to improve and expand the EV charging station infrastructure is required to meet our expectations. While current electric vehicle technology is mostly limited to smaller passenger size and light truck models, there are a number of potential technology break throughs on the horizon for full size pickup trucks, electric equipment, and heavy-duty vehicles. In anticipation of having a safe, accessible location for these vehicles to charge up, this Town vehicle only charging location is anticipated. Other locations will follow as the green vehicle fleet expands.

FISCAL IMPACT: Funding for the electricity to operate the charging stations will be included in the General Fund operating budget and should be offset by a reduction in the fuel budget when the fleet is converted.

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

STAFF ASSISTANCE: David Anthony, Director of Asset Management; and Sean Hogan, Environmental and Sustainability Manager.

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

BARNSTABLE TOWN COUNCIL

**ITEM# 2024-080
INTRO: 12/07/2023**

2024-080 AUTHORIZATION TO CONTRACT FOR AND EXPEND A FISCAL YEAR 2024 GRANT IN THE AMOUNT OF \$264,409 FROM THE MASSACHUSETTS DEPARTMENT OF ENVIRONMENTAL PROTECTION TO ACQUIRE THIRTY-ONE ELECTRIC VEHICLE CHARGING STATIONS

RESOLVED: That the Town Council does hereby authorize the Town Manager to contract for and expend a grant in the amount of **\$264,409** to acquire and deploy up to thirty-one Level 2 Massachusetts Electric Vehicle Incentive Program-funded electric vehicle charging stations for a total of sixty-two charging ports. The distribution of funds and chargers is planned as follows:

- \$34,117.00 for eight ports at 744 West Main Street, Hyannis, MA
- \$42,647.00 for ten ports at 895 Falmouth Road, Hyannis, MA
- \$42,647.00 for ten ports at 18 North Street, Hyannis, MA
- \$34,117.00 for eight ports at 243 North Street, Hyannis, MA
- \$42,647.00 for ten ports at 26 Ocean Street, Hyannis, MA
- \$34,117.00 for eight ports at 367 Main Street, Hyannis, MA
- \$34,117.00 for eight ports at 141 Bassett Lane, Hyannis, MA

SPONSOR: Councilor Gordon Starr, Precinct 1

DATE	ACTION TAKEN
_____	_____
_____	_____

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

BARNSTABLE TOWN COUNCIL

ITEM# 2024-080
INTRO: 12/07/2023

SUMMARY

TO: Town Council
FROM: Mark Ells, Town Manager
DATE: December 07, 2023
SUBJECT: Authorization to contract for and expend a Fiscal Year 2024 Grant in the amount of **\$264,409** from the Massachusetts Department of Environmental Protection to acquire thirty-one electric vehicle charging stations

BACKGROUND: Due to the work of Sean Hogan, Environmental and Sustainability Manager for the Town of Barnstable, the Massachusetts Department of Environmental Protection (MassDEP) has awarded the Town a grant of \$264,409 to acquire thirty-one electric vehicle charging station(s) under the Massachusetts Electric Vehicle Incentive Program (MassEVIP) Public Access Charging (PAC) Program.

This grant is a required part of an Eversource Make Ready EV expansion. Installation of the grant funded fleet chargers will be contingent on infrastructure upgrades by Eversource. Normally cities have 6 months to purchase equipment after a MassEVIP grant but allowances are made given the complexities of working with Eversource on infrastructure upgrades.

RATIONALE: The Massachusetts Electric Vehicle Incentive Program (MassEVIP) Public Access Charging (PAC) program is funded through the Climate Protection and Mitigation Expendable Trust (CMT). The CMT was established in 2018 in concert with MassDEP regulation 310 CMR 7.74 (Reducing CO2 Emissions from Electricity Generating Facilities) and 310 CMR 7.75 (CleanEnergy Standard). Funds are generated for the CMT through the auction of CO2 allowances under 310 CMR 7.74 and the submittal of alternative compliance payments (ACP) under 310 CMR 7.75. MassDEP administers the auction and collects the ACP payments. CMT funds support programs or projects that reduce greenhouse gas emissions to mitigate the impacts of climate change, to support adaptation to the impacts of climate change, and for the administration of the program. This Agreement is for the purpose of reducing NOx and greenhouse gas emissions in Massachusetts, and to electrify the Massachusetts transportation network.

With the proliferation and expanded availability of functional electric vehicles to local government the need to improve and expand the EV charging station infrastructure is required to meet our expectations. While current electric vehicle technology is mostly limited to smaller passenger size and light truck models, there are a number of potential technology break throughs on the horizon for full size pickup trucks, electric equipment, and heavy-duty vehicles. In anticipation of having a safe, accessible location for these vehicles to charge up, this Town vehicle only charging location is anticipated. Other locations will follow as the green vehicle fleet expands.

FISCAL IMPACT: These charging stations will provide charging to the public, and the electricity cost will be paid from the General Fund budget. The Town will be able to charge for the electricity and maintenance costs to offset the expense and will provide an incentive for visitors to spend time in nearby businesses.

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

STAFF ASSISTANCE: David Anthony, Director of Asset Management; and Sean Hogan, Environmental and Sustainability Manager.

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

BARNSTABLE TOWN COUNCIL

**ITEM# 2024-081
INTRO: 12/07/2023**

2024-081 AUTHORIZATION TO CONTRACT FOR AND EXPEND A FISCAL YEAR 2024 GRANT IN THE AMOUNT OF \$242,424 FROM THE COMMONWEALTH OF MASSACHUSETTS, EXECUTIVE OFFICE OF ELDER AFFAIRS TO SUPPORT STAFF SALARIES AND PROGRAMS OF THE BARNSTABLE COUNCIL ON AGING DIVISION

RESOLVED: That the Town Council does hereby authorize the Town Manager to contract for and expend a Fiscal Year 2024 grant in the amount of **\$242,424** from the Commonwealth of Massachusetts, Executive Office of Elder Affairs for the purpose of funding staff salaries and program expenses of the Barnstable Council on Aging Division.

SPONSOR: Mark S. Ells, Town Manager

DATE	ACTION TAKEN
_____	_____
_____	_____

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

BARNSTABLE TOWN COUNCIL

ITEM# 2024-081
INTRO: 12/07/2023

SUMMARY

TO: Town Council
FROM: Mark S. Ells, Town Manager
THROUGH: Chris Gonnella, Director of Community Services
DATE: December 07, 2023
SUBJECT: Authorization to contract for and expend a Fiscal Year 2024 Grant in the amount of **\$242,424** from the Commonwealth of Massachusetts, Executive Office of Elder Affairs to support staff salaries and programs of the Barnstable Council on Aging Division

RATIONALE: The Executive Office of Elder Affairs awards municipalities in Massachusetts an annual formula grant based on the census of residents aged 60 and above in each town. Based on 2020 census data, there were 17,316 residents over the age of 60 in the Town of Barnstable. The FY24 award has been increased to \$14 per older adult, which results in a total award of \$242,424.

Formula grant funding assists the Barnstable Council on Aging Division in maintaining adequate personnel to ensure sustained delivery of our programs and services. This year's grant will fully fund our Program Coordinator, our two new part time-van driver salaries and partially fund our Caregiver Support Services Coordinator and Division Assistant position. Formula grant funds will also be used to offset other operating expenses including newsletter mailings, program supplies, repairs and maintenance of the Barnstable Adult Community Center facility, and repairs and maintenance to our shuttle vans.

We are extremely grateful to the Executive Office of Elder Affairs and the Commonwealth of Massachusetts for their continued support of the needs of older adults in our community.

FISCAL IMPACT: There is no immediate financial impact on the Town's operating budget as a result of accepting this grant. The funds awarded from this grant provide us with the opportunity to support these services. In the event we do not receive these grant funds in the future, the costs would need to be supported by the general fund to support the Council on Aging operating budget, or these services will have to be reduced and, in some cases, eliminated.

STAFF ASSISTANCE: Kelly Howley, Council on Aging Director

B. NEW BUSINESS (Refer to Second Reading 12/21/2023)

BARNSTABLE TOWN COUNCIL

**ITEM# 2024-082
INTRO: 12/07/2023**

**2024-082 ORDER AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT
BETWEEN THE TOWN OF BARNSTABLE AND BARNSTABLE COUNTY
FOR DREDGING SERVICES**

ORDERED: That the Town Council authorizes the execution and delivery by the Town Manager of an Intergovernmental Agreement with Barnstable County under which Barnstable County shall perform dredging work for the Town at the Cotuit Bay Entrance and Embayment Channel for a term not-to-exceed six months in an amount not-to-exceed **\$345,700.**

SPONSOR: Mark S. Ells, Town Manager

DATE	ACTION TAKEN
_____	_____
_____	_____

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

BARNSTABLE TOWN COUNCIL

ITEM# 2024-082
INTRO: 12/07/2023

SUMMARY

TO: Town Council
FROM: Mark S. Ells, Town Manager
THROUGH: Daniel W. Santos, P.E., Director of Public Works
DATE: December 07, 2023
SUBJECT: Order authorizing an intergovernmental agreement between the Town of Barnstable and Barnstable County for dredging services

BACKGROUND: The Cotuit Bay Entrance and Embayment Channels require dredging to maintain safe navigation. Utilizing the Barnstable County's Dredge Program is more cost effective than retaining a private contractor. The County Dredge has scheduled the project to be completed this winter.

FINANCIAL IMPACT: The cost of the Barnstable County Dredge's service will not exceed \$345,700. The Town received a \$300,000 Massachusetts Dredging Grant for this project. The remainder will be funded by an existing capital appropriation (2021-102).

TOWN MANAGER RECOMMENDATION: Mark S. Ells, Town Manager, recommends approval of this item.

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

B. NEW BUSINESS (Refer to Public Hearing 12/21/2023)

BARNSTABLE TOWN COUNCIL

**ITEM# 2024-083
INTRO: 12/07/2023**

2024-083 APPROPRIATION ORDER IN THE AMOUNT OF \$100,000 IN COMMUNITY PRESERVATION OPEN SPACE/RECREATION FUNDS FOR THE PURPOSE OF PROVIDING FUNDING TO THE CENTERVILLE-OSTERVILLE-MARSTONS MILLS (COMM) WATER DEPARTMENT FOR PROFESSIONAL SERVICES TO EVALUATE THE SUITABILITY OF ACQUIRING LANDS OR INTERESTS IN LAND ADJACENT TO OR WITHIN A ZONE II, AS DEFINED BY THE MASSACHUSETTS DEPARTMENT OF ENVIRONMENTAL PROTECTION DRINKING WATER REGULATIONS, AND ADJACENT TO EXISTING COMM WATER DEPARTMENT DRINKING WATER SUPPLIES

ORDERED: That, pursuant to the provisions of the Community Preservation Act, G.L. c. 44B, the amount of **One Hundred Thousand Dollars (\$100,000)** be appropriated from the amount set aside for Open Space/Recreation within the Community Preservation Fund to the Centerville-Osterville-Marstons Mills (COMM) Water Department on a grant reimbursement basis for the purpose of funding professional services to assist COMM in evaluating the suitability of acquiring lands or interests in land adjacent to or within a Zone II, as defined in the Massachusetts Department of Environmental Protection Drinking Water regulations, and adjacent to existing COMM Water Department drinking water supplies. It is further ordered that the Town Manager is authorized to contract for and expend the appropriation made available for this purpose, subject to oversight by the Community Preservation Committee.

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

DATE	ACTION TAKEN
_____	_____
_____	_____

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

BARNSTABLE TOWN COUNCIL

ITEM# 2024-083
INTRO: 12/07/2023

SUMMARY

TO: Town Council
FROM: Mark S. Ells, Town Manager
THROUGH: Lindsey Counsell, Chair, Community Preservation Committee
DATE: December 07, 2023
SUBJECT: Appropriation Order in the amount of **\$100,000** in Community Preservation Open Space/Recreation Funds for the purpose of providing funding to the Centerville-Osterville-Marstons Mills (COMM) Water Department for professional services to evaluate the suitability of acquiring lands or interests in land adjacent to or within a Zone II, as defined by the Massachusetts Department of Environmental Protection Drinking Water Regulations, and adjacent to existing COMM Water Department drinking water supplies

BACKGROUND: At the October 16, 2023, Community Preservation Committee (CPC) meeting, the seven Committee members present voted unanimously to support and recommend the Centerville-Osterville-Marstons Mills (COMM) Water Department's revised CPC Application for appropriation. The COMM Water Department is seeking approval from the Town Council through the Town Manager for Community Preservation Open Space/Recreation Funds in the amount of \$100,000 to enable COMM Water Department to research and quickly respond to potential properties as they become available for the protection of their Drinking Water Supply. This fund of \$100,000 would allow for the commissioning of professional services to evaluate the suitability of acquiring properties adjacent to or within zones of contribution to COMM Water Department's existing groundwater supplies. The demand for drinking water continues to increase and proper planning is essential to increase pumping capacity to meet these future needs.

The estimated timeline to perform the professional services on various properties would vary but would begin in December 2023 and continue until December 2026. The COMM Water Department would seek partnership with MASSDEP and grant funding through State and Federal agencies to acquire necessary properties at the appropriate time.

ANALYSIS: Protecting open space land will preserve the Town's rural character and provide ground water protection to the drinking water supply as well as providing recreation opportunities and preserving wildlife habitat. Acquisition of land for municipal water supply is a priority.

FISCAL IMPACT: This appropriation has no impact on the general fund since the entire amount is appropriated and transferred from the Community Preservation Fund. The current balance in the amount of Community Preservation funds set aside for open space and recreation is \$503,390.

TOWN MANAGER RECOMMENDATION: Mark S. Ells, Town Manager, recommends approval.

VOLUNTEER ASSISTANCE: Lindsey Counsell, Chair, Community Preservation Committee

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

BARNSTABLE TOWN COUNCIL

**ITEM# 2024-084
INTRO: 12/07/2023**

2024-084 RESOLVE APPROVING A LETTER IN SUPPORT OF SENATE BILL 1315

RESOLVED: That the Town Council does hereby approve sending a letter, substantially in the form as presented at this meeting, to the respective clerks of the Massachusetts House and Senate, stating the Council’s support of Senate Bill 1315, An Act relative to municipal equity in Steamship Authority operations, which would amend the enabling legislation of the Steamship Authority to require that when the Dukes County (Martha’s Vineyard) and Nantucket members vote the same way, a vote from one of the other members (Barnstable, Falmouth or New Bedford) is necessary for any action to be taken by the Authority.

SPONSORS: Town Council President Matthew P. Levesque, Precinct 10; and Councilor Betty Ludtke, Precinct 3

DATE	ACTION TAKEN
_____	_____
_____	_____

- Read Item
- Rationale
- Council Discussion
- Vote

BARNSTABLE TOWN COUNCIL

ITEM# 2024-084
INTRO: 12/07/2023

SUMMARY

TO: Town Council
FROM: Town Council President Matthew Levesque and Councilor Betty Ludtke
DATE: December 07, 2023
SUBJECT: Resolve Approving a Letter in Support of Senate Bill 1315

BACKGROUND: The Steamship Authority's enabling legislation was amended in 2002 to provide that the votes of the members of the Authority are weighted as follows: the votes of the Dukes County (Martha's Vineyard) and Nantucket members are each counted as 35%, and the votes of the Barnstable, Falmouth and New Bedford members are each counted as 10%, such that if the Martha's Vineyard and Nantucket members vote the same way, their votes would be sufficient to pass or defeat a motion.

Senate Bill 1315 would further amend this provision to keep the weight of the votes the same but require that when Martha's Vineyard and Nantucket vote the same way, a vote from one of the other members is necessary for any action to be taken by the Authority.

This resolve proposes that the Town Council approve a letter in support of S. 1315 substantially in the form attached hereto.

FISCAL IMPACT: N/A

STAFF ASSISTANCE: Karen Nober, Town Attorney

Proposed Letter

Office of the Clerk of the House
24 Beacon Street, Room 145
State House
Boston, MA 02133

Office of the Clerk of the Senate
24 Beacon Street, Room 335
State House
Boston, MA 02133

Via email: municipalitiescommittee@gmail.com

Dear House and Senate Clerks:

As President of the Barnstable Town Council, I am writing to express the Council's support of Senate Bill 1315, An Act relative to municipal equity in Steamship Authority operations. S. 1315 would amend the enabling act of the Steamship Authority to provide more equitable representation to the towns of Barnstable, Falmouth and New Bedford by requiring that, for any action to be taken by the Authority on a matter in which the towns of Martha's Vineyard and Nantucket vote the same way, there must also be a vote of at least one of the members of Barnstable, Falmouth or New Bedford in agreement with the Martha's Vineyard and Nantucket votes.

The Town of Barnstable, as a host community for the Steamship Authority's operations and service to Nantucket, is impacted on a daily basis by those operations, particularly with respect to increases in traffic and the resulting impacts on the Town's roads. As the transportation, medical and retail hub of the Cape and Islands, the Town of Barnstable is ever mindful of the need to address and mitigate the traffic and density in our harbor and medical districts through alternate traffic and parking solutions. While the Town supports the mission of the Steamship Authority and is sensitive to the needs of the residents of Nantucket, it is critically important that Barnstable be able to have a real voice in the policy decisions of the Steamship Authority to ensure consideration of the real life effects of those decisions on its citizens. Accordingly, passage of S. 1315 will allow all of the affected municipalities to work collaboratively to find equitable solutions to the issues affecting their towns and the quality of life of their residents.

Sincerely,

Matthew P. Levesque
Town Council President