



Town of Barnstable  
Town Council  
James H. Crocker Jr. Hearing Room  
367 Main Street, 2<sup>nd</sup> floor,  
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**TOWN COUNCIL MEETING AGENDA**  
**December 21, 2023**  
**7:00pm**

The December 21, 2023 Meeting of the Barnstable Town Council shall be conducted in person at 367 Main Street 2<sup>nd</sup> Floor James H. Crocker Jr. Hearing Room, Hyannis, MA. The public may attend in person or participate remotely in Public Comment or during a Public Hearing via the Zoom link listed below.

Councillors:

Matthew Levesque  
President  
Precinct 10

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

Administrator:  
Cynthia A. Lovell  
[Cynthia.lovell@town.barnstable.ma.us](mailto:Cynthia.lovell@town.barnstable.ma.us)

1. The meeting will be televised live via Xfinity Channel 8 or High-Definition Channel 1072 or may be accessed via the Government Access Channel live stream on the Town of Barnstable's website: <http://streaming85.townofbarnstable.us/CablecastPublicSite/watch/1?channel=1>

2. Written Comments may be submitted to:  
<https://tobweb.town.barnstable.ma.us/boardscommittees/towncouncil/Town Council/Agenda-Comment.asp>

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

Join Zoom Meeting: <https://townofbarnstable-us.zoom.us/j/89868096876> Meeting ID: 898 6809 6876  
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 Election of 2024 Officers

President  
Vice President

- Approval of Town Council Calendar of Meetings for 2024

**10. ADJOURNMENT**

**NEXT REGULAR MEETING: January 04, 2024**

ITEM NO.	INDEX TITLE	PAGE
<b>A. OLD BUSINESS</b>		
2024-075	Appropriation Order in the amount of <b>\$905,000</b> 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 <b>\$488,700</b> to defray the cost of said conservation restriction <b>(Public Hearing) (Roll Call Majority Full Council)</b> .....	3-30
2024-077	Appropriation and Loan Order in the amount of <b>\$770,000</b> for the purpose of funding the Bearse’s Way Vacuum Sewer Replacement Project <b>(Public Hearing) (Roll Call 2/3 Full Council)</b> .....	31-32
2024-082	Order authorizing an intergovernmental agreement between the Town of Barnstable and Barnstable County for dredging services <b>(May be acted upon) (Majority Vote)</b> .....	33-34
2024-083	Appropriation Order in the amount of <b>\$100,000</b> 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 <b>(Public Hearing) (Roll Call Majority Full Council)</b> .....	35-36
<b>B. NEW BUSINESS</b>		
2024-085	Acquisition of an easement for sewer purposes at 944 Shootflying Hill Road in Centerville <b>(May be acted upon) (Majority Vote)</b> .....	37-39
2024-086	Order authorizing the award and execution of a five-year contract with Axon Enterprise, Inc. for the purchase of body worn cameras and the associated licensing and storage of all data to establish a Body Worn Camera Program for the Barnstable Police Department <b>(First Reading) (Refer to Second Reading 01/04/2024)</b> .....	40-41
2024-087	Appropriation Order in the amount of <b>\$73,654</b> for the Barnstable Police Department Fiscal Year 2024 Operating Budget for the purpose of funding the initial operating expenses for the hiring of 9 patrol officers <b>(Refer to Public Hearing 01/04/2024)</b> .....	42-44

**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 Full Council)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2024-075  
INTRO: 12/07/2023, 12/21/2023**

**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
<u>12/07/2023</u>	<u>Refer to Public Hearing 12/21/2023</u>
_____	_____

- \_\_\_ 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, 12/21/2023

## 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 **\$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%<sup>1</sup>. 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.

<sup>1</sup> 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

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

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2024-077  
INTRO: 12/07/2023, 12/21/2023**

**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
<u>12/07/2023</u>	<u>Refer to Public Hearing 12/21/2023</u>
_____	_____

- \_\_\_ 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, 12/21/2023

## 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



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

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2024-082**

**INTRO: 12/07/2023, 12/21/2023**

**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
<u>12/07/2023</u>	<u>Refer to Second Reading 12/21/2023</u>
_____	_____

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

# BARNSTABLE TOWN COUNCIL

**ITEM# 2024-082**  
**INTRO: 12/07/2023, 12/21/2023**

## 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

**A. OLD BUSINESS (Public Hearing) (Roll Call Majority Full Council)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2024-083  
INTRO: 12/07/2023, 12/21/2023**

**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
<u>12/07/2023</u>	<u>Refer to Public Hearing 12/21/2023</u>

- 
- 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, 12/21/2023

## 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# 2024-085  
INTRO: 12/21/2023**

**2024-085 ACQUISITION OF AN EASEMENT FOR SEWER PURPOSES ON LAND AT  
944 SHOOTFLYING HILL ROAD IN CENTERVILLE**

**RESOLVED:** That the Town Council hereby authorizes the Town Manager, on behalf of the Town, as part of a negotiated transaction, to take or acquire for sewer purposes, including the construction and operation of a sewer pump station, a perpetual easement on a portion of the land located at 944 Shootflying Hill Road in Centerville, with said land described in deed registered at the Barnstable Land Registration Office as Document No 1,143,800 from which Certificate of Title No. 191898 was issued. The easement area consists of 3,765± square feet as shown on a “Sewer Easement Exhibit Plan”, captioned “944 Shootflying Hill Road (Centerville Village) Barnstable, Massachusetts,” dated October 10, 2023, and prepared by the Department of Public Works. The Town Manager is authorized to negotiate, accept, sign, deliver and record any documents for the purposes necessary to effectuate this resolve and complete the transaction.

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

DATE	ACTION TAKEN
_____	_____
_____	_____

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

# BARNSTABLE TOWN COUNCIL

**ITEM# 2024-085**  
**INTRO: 12/21/2023**

## SUMMARY

**TO:** Town Council  
**FROM:** Mark S. Ells, Town Manager  
**THROUGH:** Daniel W. Santos, P.E., Director of Public Works  
**DATE:** December 21, 2023  
**SUBJECT:** Acquisition of an easement for sewer purposes at 944 Shootflying Hill Road in Centerville

**BACKGROUND:** The Department of Public Works (DPW) continues to advance implementation of the Comprehensive Wastewater Management Plan (CWMP). Sewer expansion along Shootflying Hill Road and the adjacent neighborhoods is identified in Phase 1 of the CWMP. Sewer expansion in this area will address nitrogen impairment of the Centerville River Embayment and improve water quality of Lake Wequaquet. In order to support sewer expansion in this area, it is necessary to construct a sewer pump station in the area of 944 Shootflying Hill Road.

**ANALYSIS:** DPW vetted possible properties where the proposed sewer pump station would be technically achievable. The property owner at 944 Shootflying Hill Road owns multiple properties in the target area, including the preferred property (944 Shootflying Hill Road). DPW approached the property owner about the possibility of securing an easement on one of the properties. The property owner is supportive of the proposed location of the sewer pump station. Construction of the sewer expansion and this pump station is currently anticipated to commence in the fall of 2024. Failure to secure the pump station site will result in a large section of Shootflying Hill Road not being able to receive sewer expansion via gravity sewers, necessitating grinder pumps on every property in the area. The proposed easement is shown on the attached “sewer easement exhibit plan.”

**FINANCIAL IMPACT:** The easement area was appraised and valued at \$11,000. The easement will be paid for under the existing appropriation (No. 2022-044) for the design of the sewer expansion.

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

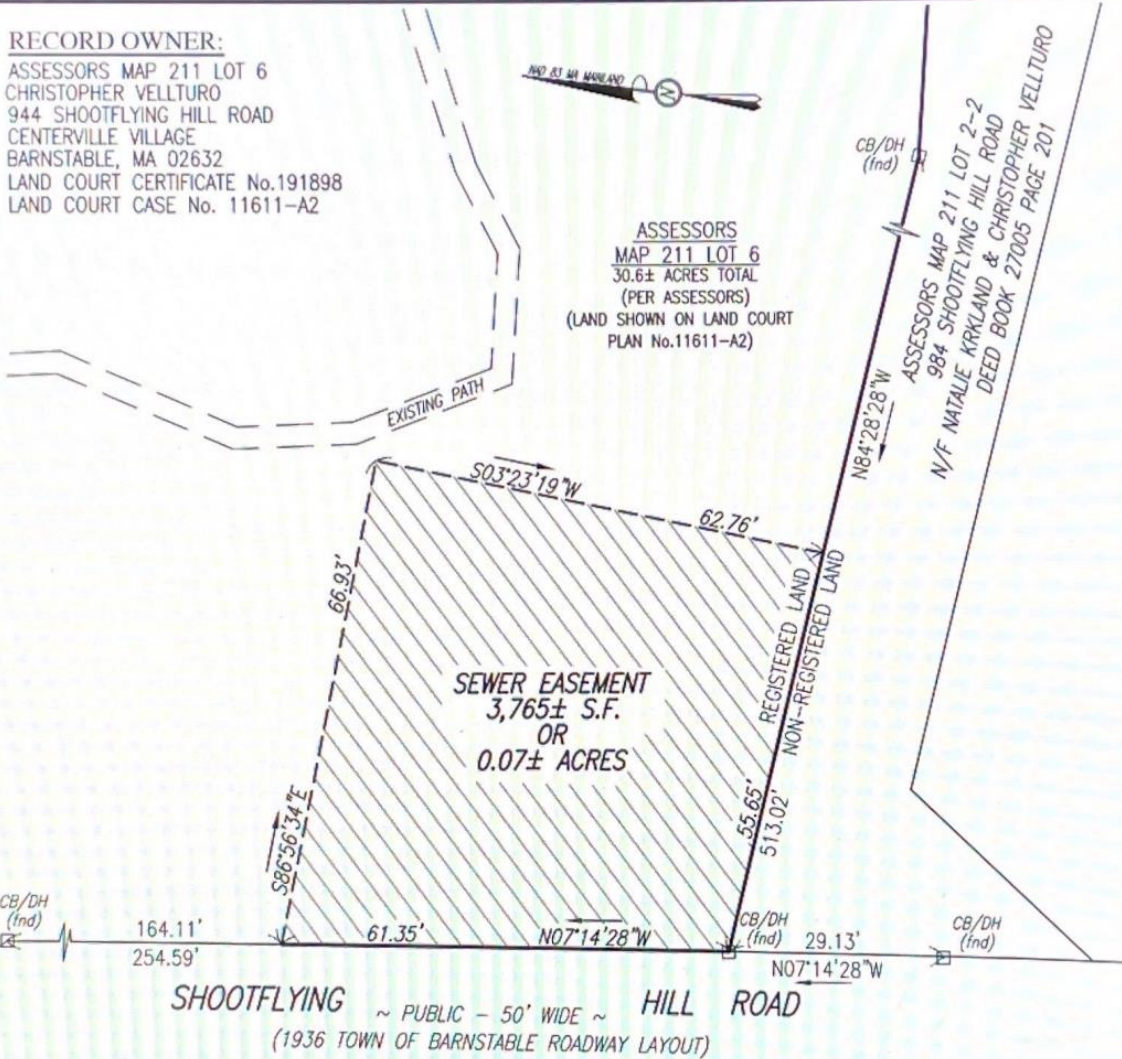
**STAFF ASSISTANCE:** Daniel W. Santos, P.E., Director of Public Works; Thomas J. LaRosa, First Assistant Town Attorney

# SEWER EASEMENT EXHIBIT PLAN

**RECORD OWNER:**  
 ASSESSORS MAP 211 LOT 6  
 CHRISTOPHER VELLTURO  
 944 SHOOTFLYING HILL ROAD  
 CENTERVILLE VILLAGE  
 BARNSTABLE, MA 02632  
 LAND COURT CERTIFICATE No.191898  
 LAND COURT CASE No. 11611-A2

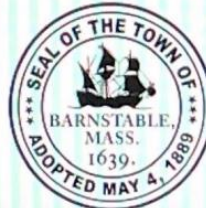


**ASSESSORS**  
 MAP 211 LOT 6  
 30.6± ACRES TOTAL  
 (PER ASSESSORS)  
 (LAND SHOWN ON LAND COURT  
 PLAN No.11611-A2)



944 SHOOTFLYING HILL ROAD (CENTERVILLE VILLAGE)  
 BARNSTABLE, MASSACHUSETTS

**TOWN OF BARNSTABLE**  
 Department of Public Works  
 Administration & Technical Support  
 382 Falmouth Road, Hyannis, MA 02601  
 Phone: (508) 790-6400  
<https://townofbarnstable.us>



SCALE: 1"=20'  
 DATE: 10-10-2023  
 JOB No: 23-009

**B. NEW BUSINESS (First Reading) (Refer to Second Reading 01/04/2024)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2024-086  
INTRO: 12/21/2023**

**2024-086 ORDER AUTHORIZING THE AWARD AND EXECUTION OF A FIVE-YEAR CONTRACT WITH AXON ENTERPRISE, INC. FOR THE PURCHASE OF BODY WORN CAMERAS AND THE ASSOCIATED LICENSING AND STORAGE OF ALL DATA TO ESTABLISH A BODY WORN CAMERA PROGRAM FOR THE BARNSTABLE POLICE DEPARTMENT**

**ORDERED:** That, pursuant to M.G.L. c. 30B, § 12(b), the Town Council does hereby authorize the Town Manager to award and execute on behalf of the Town a five-year contract with Axon for the purchase of Body Worn cameras and the associated licensing and storage of all data to establish a Body Worn Camera program for the Barnstable Police Department.

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

DATE	ACTION TAKEN
_____	_____
_____	_____

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



# BARNSTABLE TOWN COUNCIL

ITEM# 2024-086  
INTRO: 12/21/2023

## SUMMARY

**TO:** Town Council  
**FROM:** Mark S. Ells, Town Manager  
**THROUGH:** Jean Challies, Acting Chief of Police  
**DATE:** December 21, 2023  
**SUBJECT:** Order authorizing the award and execution of a five-year contract with Axon Enterprise, Inc. for the purchase of body worn cameras and the associated licensing and storage of all data to establish a Body Worn Camera Program for the Barnstable Police Department

**BACKGROUND:** In an effort to enhance officer safety, promote transparency, assure accountability, and support timely training, the Department applied for and was awarded a Fiscal Year 2024 Body-Worn Camera Grant on October 3<sup>rd</sup>, 2023, in the amount of \$151,907.42 to assist with the implementation of a Body-Worn Camera (BWC) program. In order to most effectively use these grant funds, we are seeking permission to enter into a five-year contract with Axon Enterprise, Inc. to initiate this program and purchase the cameras and associated hardware. The five-year contract will provide pricing stability over the course of the agreement, as the prices are pre-set for the duration of the agreement. In addition, the contract will ensure that the technology remains up to date with automatic distribution of new products every 30 months, providing consistency among BWC users and assuring that all officers are using the same equipment and software. In addition, the department can store and securely share an unlimited amount of body camera generated data over the contract period. All data remains the property of the Town of Barnstable and can be downloaded locally or migrated for no fee.

**ANALYSIS:** The five-year contract will enable the Town and the Department to avoid any unforeseen price increases associated with technological improvements or market factors. In addition, the five-year program provides new products twice during the pendency of the agreement ensuring that all officers have up-to-date, functional, and uniform equipment. Keeping the equipment updated and uniform also facilitates managing the data that the BWC program will generate. The agreement can be cancelled during either year 4 or year 5 with 30 days' notice should the Town or the Department determine that the BWC program is no longer beneficial.

**FISCAL IMPACT:** The total cost of the 5-year contract for all hardware, licensing and data storage is \$725,990. A grant was received in fiscal year 2024 for \$151,907 which can be applied to the initial acquisition costs of the cameras and other supported hardware resulting in a local contribution of \$574,083. The budget impact in years 2 through 5 of the contract is \$115,848 and will be incorporated into the Police Department's annual Operating Budget. The total savings from entering into a 5-year contract is \$107,315.

**TOWN MANAGER RECOMMENDATION:** Mark S. Ells, Town Manager, recommends acceptance of the five-year contract.

**STAFF ASSISTANCE:** Jean Challies, Acting Chief of Police; Mark Mellyn, Lieutenant; Anne Spillane, Finance and Support Services Director

**B. NEW BUSINESS (Refer to Public Hearing on 01/04/2024)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2024-087  
INTRO: 12/21/2023**

**2024-087 APPROPRIATION ORDER IN THE AMOUNT OF \$73,654 FOR THE BARNSTABLE POLICE DEPARTMENT FISCAL YEAR 2024 OPERATING BUDGET FOR THE PURPOSE OF FUNDING THE INITIAL OPERATING EXPENSES FOR THE HIRING OF 9 PATROL OFFICERS**

**ORDERED:** That the amount of **\$73,654** be appropriated and added to the Fiscal Year 2024 Police Department General Fund Operating Expense Budget for the purpose of funding the initial expenses related to hiring, training, and uniform, ammunition, and equipment purchases for 9 new police officers.

**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# 2024-087  
INTRO: 12/21/2023

## SUMMARY

**TO:** Town Council  
**FROM:** Mark S. Ells, Town Manager  
**DATE:** December 15, 2023  
**SUBJECT:** Appropriation Order in the amount of **\$73,654** for the Barnstable Police Department Fiscal Year 2024 Operating Budget for the purpose of funding the initial operating expenses for the hiring of 9 patrol officers

**BACKGROUND:** The department has 1 patrol officer recruit currently in the police academy and 2 more who will be starting the Plymouth Police Academy on February 26, 2024. Additionally, the Department has just hired 2 patrol officers through the civil service process with prior experience from other police departments who are already academy-trained. At the time of the preparation and finalization of the Fiscal Year 2024 Budget, the Police Department did not have confirmation on the number of vacancies that could be filled nor knowledge of the availability of police academy seats; therefore, these costs were not included in the Fiscal Year 2024 approved Operating Budget. The costs associated with the hiring of 5 police officers to fill current vacancies and to complete the hiring process (medical & psychological) to fill 4 additional vacancies in the Spring of 2024 for the July 2024 academy requires a supplemental appropriation to the Police Department's Fiscal Year 2024 Budget as follows:

### Academy Bound New Hires

Training (3)	\$ 9,600
Uniform (3)	\$11,948
Equipment (3)	\$ 3,315
Ammunition (3)	\$ 5,731
Firearm (3)	\$ 1,800
Taser Cartridges (1)	\$ 577

### Academy Trained New Hires

Uniforms (2)	\$5,498
Equipment (2)	\$1,526
Ammunition (2)	\$3,525
Taser Cartridges (2)	\$1,154

### Medical & Psychological Assessments

Medical for Recruits (3)	\$3,008
Medical for 1 Recruit – No Hire	\$1,006
Medical for 3 Recruits – in June 2024	\$3,018
Medical for 2 Civil Service Hires	\$2,012
Psych Assessments (9)	\$4,050

### Other Equipment Previously Purchased for New Hires

Taser Simulator	\$ 75
Duty Holsters	\$1,745

Gun Sights	\$ 847
Solosun Reflex Sights	\$4,484
Glock MOS V4 MIL	\$1,470
Probooks (Academy Required)	<u>\$7,265</u>

TOTAL Fiscal Year 2024 Supplemental Budget Request – New Hires \$73,654

**ANALYSIS:** This supplemental appropriation request totals \$73,654 and is comprised of several parts: 1) pre-employment requirements including medical exams and psychological assessments; 2) academy tuition; 3) ammunition 4) equipment including radio and firearm; and 5) uniform. The items listed above will need to be funded in Fiscal Year 2024 in order to complete the hiring components required by the Plymouth Police Academy and enough ordering time for the remaining equipment and uniforms.

**FISCAL IMPACT:** The funding provided by this request will not be included in the Police Department’s base operating budget going forward. This is a one-time request associated with the hiring of this specific round of candidates. The General Fund Reserves will be used to fund these costs which has a current balance of \$29,222,432.

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

**STAFF ASSISTANCE:** Jean B. Challies, Acting Chief of Police; Anne Spillane, Finance and Support Services Director