



Town of Barnstable  
Town Council  
James H. Crocker Jr. Hearing Room  
367 Main Street, 2<sup>nd</sup> floor,  
Hyannis, MA 02601  
Office 508.862.4738 • Fax 508.862.4770  
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## TOWN COUNCIL MEETING AGENDA

July 18, 2024

6:00 pm

### Councillors:

Felicia Penn  
President  
Precinct 13

Craig Tamash  
Vice President  
Precinct 4

Gordon Starr  
Precinct 1

Dr. Kristin Terkelsen  
Precinct 2

Betty Ludtke  
Precinct 3

John Crow  
Precinct 5

Paul C. Neary  
Precinct 6

Seth Burdick  
Precinct 7

Jeffrey Mendes  
Precinct 8

Charles Bloom  
Precinct 9

Matthew P. Levesque  
Precinct 10

Kris Clark  
Precinct 11

Paula Schnepf  
Precinct 12

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

The July 18, 2024 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.

1. The meeting will be televised live via Xfinity Channel 8 or 1070 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/TownCouncil/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/87490030847> Meeting ID: 874 9003 0847  
US Toll-free • 888 475 4499

## PUBLIC SESSION

### 1. ROLL CALL

### 2. PLEDGE OF ALLEGIANCE

### 3. MOMENT OF SILENCE

### 4. PUBLIC COMMENT

### 5. COUNCIL RESPONSE TO PUBLIC COMMENT

- Presentation by Thomas B. Irwin, DO, SM, ChE, Paint Stewardship Program

### 6. TOWN MANAGER COMMUNICATIONS (Pre-Recorded)

### 7. MINUTES

- **ACT ON PUBLIC SESSION MINUTES: June 27, 2024**
- **ANNOUNCEMENT REGARDING EXECUTIVE SESSION MINUTES**

Town Council President's announcement on the review and determinations on the following Executive Session minutes:

- April 4, 2024, litigation strategy regarding Park City Wind LLC's proposed offshore renewable wind project in the Town
- June 6, 2024, litigation strategy regarding Park City Wind LLC's proposed offshore renewable wind project in the Town
- June 13, 2024, litigation strategy regarding Park City Wind LLC's proposed offshore renewable wind project in the Town

### 8. DELEGATION OF OPEN MEETING LAW COMPLAINT

**Proposed Vote:** To delegate to the Town Attorney responsibility for responding to the Open Meeting Law Complaint submitted to the Town Council President and Town Clerk on July 02, 2024

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

- Update on Comprehensive Wastewater Management Plan Financing; Mark A. Milne, Director of Financing

**10. ORDERS OF THE DAY**

- A. Old Business**
- B. New Business**

**11. ADJOURNMENT**

**NEXT REGULAR MEETING: August 15, 2024**

ITEM NO.	INDEX TITLE	PAGE
<b>A. OLD BUSINESS</b>		
2024-235	Appropriation and Transfer Order in the amount of <b>\$250,000</b> in Community Preservation Act Open Space Funds for the acquisition by Barnstable Land Trust of a 5.84-acre parcel located at 4609 Falmouth Road, Cotuit, shown on Assessors Map 024, Parcel 042 and the creation of a Conservation Restriction to be granted to the Town of Barnstable <b>(Public Hearing) (Roll Call Majority Full Council)</b> .....	4-30
2024-236	Order authorizing the Town Manager to enter into and execute on behalf of the Town an amendment to the employment contract between the Town and Mark A. Milne <b>(May be acted upon) (Majority Vote)</b> .....	31
2024-237	Appropriation Order in the amount of <b>\$37,000</b> for the purpose of funding the Town’s share of the costs related to the installation of up to 37 electric vehicle charging stations in public parking lots in and around the Village of Hyannis <b>(Public Hearing) (Roll Call Majority Full Council)</b> .....	32-37
2024-240	Appropriation Order in the amount of <b>\$1,150,000</b> in Community Preservation Act Open Space/Recreation and Undesignated Funds for the Acquisition of 211 Cedar Tree Neck Road, Marstons Mills for Open Space and Recreation <b>(Public Hearing) (Roll Call Majority Full Council)</b> .....	38-39
<b>B. NEW BUSINESS</b>		
2025-001	Appropriation and Loan Order in the amount of <b>\$227,000</b> for the purpose of funding Temporary Repairs to Harbor View Road in the Village of Barnstable pursuant to Temporary Repairs to Private Roads Program for Certain Private Roads <b>(Refer to Public Hearing 08/15/2024)</b> .....	40-41
2025-002	Appropriation and Loan Order in the amount of <b>\$321,000</b> for temporary repairs to Otter Lane in the Village of Barnstable pursuant to Temporary Repairs to Private Roads Program for Certain Private Ways <b>(Refer to Public Hearing 08/15/2024)</b> .....	42-43
2025-003	Resolve to Approve the Appointment of John Curran Jr. as the Director of Assessing for the Town of Barnstable <b>(May be acted upon) (Majority Vote)</b> .....	44-45
2025-004	Authorization to contract for and expend a State Fiscal Year 2024 and State Fiscal Year 2025 Regional Public Safety Answering Point and Regional Emergency Communication Center Development Grants in the combined amount of <b>\$611,544</b> from the Massachusetts Executive Office of Public Safety and Security <b>(May be acted upon) (Majority Vote)</b> .....	46-48
2025-005	Order authorizing a Housing Development Incentive Program Tax Increment Exemption Agreement between the Town of Barnstable and BRATT, LLC for 36 new market rate residential rental units located at 199 Barnstable Road, Hyannis, MA 02601 <b>(First Reading) (Refer to Second Reading 08/15/2024)</b> .....	44-60
2025-006	Supplemental Appropriation Order in the amount of <b>\$35,000</b> for the purpose of paying outside counsel expenses of the Legal Department <b>(Refer to Public Hearing 08/15/2024)</b> .....	61-62

**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# 2024-235**

**INTRO: 06/27/2024, 07/18/2024**

**2024-235 APPROPRIATION AND TRANSFER ORDER IN THE AMOUNT OF \$250,000 IN COMMUNITY PRESERVATION FUNDS FOR THE PURPOSE OF ACQUIRING A CONSERVATION RESTRICTION ON A 5.84-ACRE OPEN SPACE PARCEL LOCATED AT 4609 FALMOUTH ROAD, COTUIT, AND SHOWN ON ASSESSORS MAP 024, PARCEL 042**

**ORDERED:** That, pursuant to the provisions of the Community Preservation Act, G. L. c 44B, the sum of **Two Hundred and Fifty Thousand Dollars (\$250,000)** shall be appropriated and transferred from the amount set-aside for Open Space and Recreation within the Community Preservation Fund to the Barnstable Land Trust for the purpose of acquiring a Conservation Restriction (“CR”) on property located at 4609 Falmouth Road, Cotuit, and shown on Assessors Map 024, Parcel 042, and on a plan of land entitled “Plan of Land in Santuit, Barnstable, Mass For Theodore Nigro,” dated May 1973, prepared by Robert H. Waite, Registered Land Surveyor, and recorded at the Barnstable County Registry of Deeds in Plan Book 278, at Page 18, pursuant to G.L. c. 184, sections 31-32 for open space and conservation and passive recreation purposes to be granted to the Town of Barnstable, acting through the Town Manager, as the primary grantee and the Cotuit Water District acting through its Board of Water Commissioners as the secondary grantee, said CR in substantially the form attached hereto, subject to minor changes to be made by the Secretary of the Executive Office of Energy and Environmental Affairs. This Order authorizes the Town Council President to sign the CR on the Town Council’s behalf. It further authorizes the Town Manager to expend the amount appropriated on behalf of the Town for the acquisition of the CR, subject to oversight by the Community Preservation Committee, and to accept, negotiate, 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>06/27/2024</u>	<u>Referred to Public Hearing 07/18/2024</u>

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

# BARNSTABLE TOWN COUNCIL

ITEM# 2024-235

INTRO: 06/27/2024, 07/18/2024

## SUMMARY

**TO:** Town Council  
**FROM:** Mark S. Ells, Town Manager  
**THROUGH:** Lindsey Counsell, Chair, Community Preservation Committee on Behalf of Community Preservation Committee  
**DATE:** June 27, 2024  
**SUBJECT:** Appropriation and Transfer Order in the amount of **\$250,000** in Community Preservation Act Open Space Funds for the acquisition by Barnstable Land Trust of a 5.84 acre parcel located at 4609 Falmouth Road, Cotuit, shown on Assessors Map 024, Parcel 042 and the creation of a Conservation Restriction to be granted to the Town of Barnstable

**BACKGROUND:** The Barnstable Land Trust, Inc. (BLT) is seeking approval from the Town Council, upon recommendation of the Town Manager, for Community Preservation Open Space Funds in the amount of \$250,000 for the acquisition of a conservation restriction (CR) by the Town of Barnstable from the Barnstable Land Trust, Inc., on 5.84 acres± of open space located at 4609 Falmouth Road, Cotuit, Barnstable, shown as Assessors Map 024, Parcel 042. The Cotuit Water District, acting through its Board of Water Commissioners, will co-hold the CR as the secondary grantee.

Further, the Town Manager is seeking approval from the Town Council to accept the CR, subject to the approval of the CR by the Massachusetts Secretary of Energy and Environmental Affairs (EEA). The proposed CR has been reviewed by Town staff, the Conservation Commission, and will be submitted to Massachusetts Department of Environmental Protection (MassDEP) and the EEA Division of Conservation Services for review and approval. It is anticipated that EEA approval of the CR will be completed in spring 2025 in time for a project closing by June 2025. This request is that the project be considered by the Town Council for approval of the funding request, and acceptance of the CR, in substantially the form attached hereto, for Town Council approval.

At the May 20, 2024, Community Preservation Committee meeting, the seven Committee members present voted unanimously to recommend to the Town Council through the Town Manager, BLT's request for \$250,000 in Community Preservation Open Space/Recreation Funds for the acquisition of a 5.84-acre parcel addressed 4609 Falmouth Road, Cotuit, Map 024, Parcel 042. The total purchase price of the parcel is \$590,000. An application will be made to EEA for a Conservation Partnership grant for \$300,000 to be submitted in July 2024. \$50,000 has been approved by the Cotuit Fire District, acting through its Board of Water Commissioners, in support of the project. The parcel has frontage on Falmouth Road and abuts a BLT 5.9-acre conservation area to the south. Public access would be off Santuit-Newtown Road. The Town of Barnstable would be granted a conservation restriction on the property and the property would be managed by the BLT.

**ANALYSIS:** This acquisition would create almost 12 acres of contiguous open space, conserving high value natural resources and recreation access as well as protecting nearby drinking water wells (or within water protection zone or Zone II). 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 local Resource Protection Overlay District and the Well Protection District, as well as the state designated Zone II Wellhead Protection Area. The property borders state-

designated Priority Habitat of Rare Species, BioMap Rare Species Core Habitat, Wetland Core Habitat and Wetland Core Buffer and includes a vernal pool currently being certified by the Natural Heritage Endangered Species Program. The property includes state designated Prime Forest Land and Prime Farmland soils. A public trail is proposed on the property and will connect with the existing Barnstable Land Trust property to the south, where public parking will be provided on Santuit-Newton Road.

**FISCAL IMPACT:** This appropriation is provided from the set-aside for Open Space and Recreation Funds within the Community Preservation Fund which has an available balance of \$403,390. There is no impact on the general fund operating budget.

**APPROVALS:** 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 May 20, 2024. The Conservation Commission voted its support for CPA funding of the CR acquisition on June 4, 2024. The Open Space Committee voted its support for CPA funding of the CR acquisition on June 10, 2024.

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

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

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

**PRIMARY GRANTEE: Town of Barnstable**

**SECONDARY GRANTEE: Cotuit Fire District**

**ADDRESS OF PREMISES: 4609 Falmouth Road, Village of Cotuit, Barnstable, MA**

**FOR GRANTOR'S TITLE SEE: Barnstable County Registry of Deeds at Book \_\_\_\_\_, Page \_\_\_\_\_.**

**FOR GRANTOR'S PLAN SEE: Barnstable County Registry of Deeds at Plan Book 278, Page 18.**

## **GRANT OF CONSERVATION RESTRICTION**

### **I. STATEMENT OF GRANT**

**BARNSTABLE LAND TRUST, INC.**, a Massachusetts nonprofit corporation with an office and mailing address at 1540 Main Street, West Barnstable, MA 02668, being the sole owner of the Premises as defined herein, for its successors and assigns (“Grantor”), acting pursuant to Sections 31, 32, and 33 of Chapter 184 of the Massachusetts General Laws, grant, with QUITCLAIM COVENANTS, IN PERPETUITY AND EXCLUSIVELY FOR CONSERVATION PURPOSES, to the **TOWN OF BARNSTABLE**, a Massachusetts municipal corporation with principal offices at Town Hall, 367 Main Street, Hyannis, Barnstable County, Massachusetts 02601-3907, acting by and through its TOWN MANAGER, its successors and assigns (“Primary Grantee”), for consideration of Two Hundred and Fifty Thousand and 00/100 Dollars (\$250,000.00) paid, and to the **COTUIT FIRE DISTRICT**, a Massachusetts municipal corporation duly organized pursuant to Chapter 328 of the Acts of 1926, with a principal place of business at 64 High Street, Cotuit, Massachusetts 02635, acting by and through its BOARD OF WATER COMMISSIONERS, its permitted successors and assigns (“Secondary Grantee”), for consideration of Fifty Thousand and 00/100 Dollars (\$50,000.00) paid, the following Conservation Restriction on land located in the Town of Barnstable, Barnstable County, Commonwealth of Massachusetts containing 5.84 acres (“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. of the Massachusetts General Laws (the “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 which vote is attached hereto as Exhibit C (the “CPA Vote”).

The Secondary Grantee acquired this Conservation Restriction, pursuant to authority granted by vote of the Cotuit Fire District on Article 13 of the Cotuit Fire District Annual Meeting held on May 29, 2024, an attested copy of which vote is attached hereto as Exhibit D (the “Cotuit Fire District Vote”). The Cotuit Fire District acquires this Restriction subject to approval of the Department of Environmental Protection (“DEP”) pursuant to Massachusetts General Laws Chapter 40, Section 41, which approval is attached hereto as Exhibit E.

### **II. PURPOSES:**

This Conservation Restriction is defined in and authorized by Sections 31-32 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, for the protection of the Station 1, Station 2, and Station 4 Cotuit Fire District Water Department wells (“Wells”) approved by MassDEP as a source of public drinking water (Source ID

4020003) and available for passive outdoor recreational use, and to prevent any use or change that would materially impair the Conservation Values (as defined below).

**Conservation Partnership.** The fee interest in the Premises was acquired utilizing, in part, assistance from the Conservation Partnership program which requires, pursuant to Section 2A of Chapter 286 of the Acts of 2014 the conveyance of this Conservation Restriction.

**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 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 5.9-acre± Barnstable Land Trust owned conservation area to the south and the 7.25-acre conservation restriction protected “Miceli Property” abutting across Falmouth Road to the north.
- Soils and Soil Health. The Premises includes 4.1 acres± of Prime Farmland Soils and 4.6 acres± of Prime Forest Land and Forest of Statewide Importance as identified by the USDA Natural Resources Conservation Service (source MassGIS MassMapper). The protection of the Premises will promote healthy soils and healthy soils practices as such terms are defined in Section 7A of Chapter 128 of the Massachusetts General Laws.
- Wildlife Habitat. The Premises is proximate to areas 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”, the protection of which aligns with NHESP’s wildlife and habitat protection objectives. The Premises includes a certified vernal pool providing important habitat for a wide variety of wildlife for breeding, feeding, migration and shelter habitat.
- Public Access. Public access to the Premises will be allowed for passive outdoor recreation, education, and nature study. The Premises connects to existing conservation open space owned by Barnstable Land Trust and provides the potential for an approximately half-acre trail loop to provide close-to-home recreational opportunities for the public.
- Biodiversity. The Premises is proximate to areas designated as BioMap Wetland Core Habitat and Critical Natural Landscape Wetland Buffer, as defined by the Massachusetts Natural Heritage and Endangered Species Program. BioMap, last updated in 2022, was designed to guide strategic biodiversity conservation in Massachusetts 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. The Premises lies within the watershed to the Santuit River, Shoestring Bay and Popponesset Bay. Protection of intact natural forested landscapes can help maintain water quality for public drinking water and the health of coastal embayment’s.
- Wetlands. The potential vernal pool wetlands on the Premises provide valuable habitat for a diverse array of wildlife species as well as provide the many other public benefits of wetlands protection recognized by the Commonwealth of Massachusetts (Section 40 of Chapter 131 of the Massachusetts General Laws).



- Water Supply. The Premises includes Zone II Wellhead Protection Areas as identified by the MA Department of Environmental Protection, the protection of which is critical to maintaining the public drinking water supply.
- 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, as amended), 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, “the 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 Premises’ 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 is in close proximity to NHESP Priority Habitat of Rare Species and BioMap Core Habitat and Critical Natural Landscape areas. The Open Space Goal will be advanced because the Premises abuts 4.9 acres of existing conservation land and will expand passive recreation opportunities for the public.

- 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 2024-2025 identified the goal to “Conserve and protect areas in the town that are most significant as natural and historical resources for water supply, visual quality, outdoor recreation, public access, 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 will provide the opportunity for new recreational trails for use by the public.

- 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 2023 Statewide Comprehensive Outdoor Recreation Plan (SCORP):
  - 1.3) Support the acquisition of land that will protect water supply and also be open for recreation;
  - 4.2. Acquire new blocks of land with preference to those parcels that are designated as an Urban Area by the 2020 US Census, in Environmental Justice Census blocks, or the trailhead is within a half-mile of a transit stop;

The protection of the Premises will preserve land within the Zone II Wellhead protection Area while also provide new trails for passive recreation. The location of the Premises on Falmouth Road, a major transit route for Cape Cod, provides new recreational opportunities for the broader community.

- 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 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. 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;
8. 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;
9. Hunting. Using the Premises for hunting;
10. Use of Premises for Developing Other Land. Using the Premises towards building or development requirements on this or any other parcel;

11. Adverse Impacts to Stone Walls, Boundary Markers Disrupting, removing, or destroying stone walls, granite fence posts, or any other boundary markers;
12. Residential or Industrial Uses. Using the Premises for residential or industrial purposes;
13. 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 or composting shall take place within 100 feet of any wetland;
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 Grantee, 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. 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;

### **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 Grantee 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 Grantees to make an informed judgment as to its consistency with the Purposes and Conservation Values.
2. Grantee Review. Where Grantee's 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. Grantee 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 determine that a violation of this Conservation Restriction has occurred and intend 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 determines 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 their 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 Grantee’s 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 the 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. Grantee’s 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 42 %<sup>1</sup>. The proportionate value of the Secondary Grantee’s property right as of the Effective Date (See Paragraph XII) was determined to be 8 %<sup>2</sup>. Such proportionate value of the Grantees’ property right shall remain constant.

### **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.

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<sup>1</sup> Town CPA funds: \$250k /\$590k = 42%

<sup>2</sup> Cotuit Fire District funds: \$50k /\$590k = 8%



## **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.

### **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 attorneys-in-fact to execute, acknowledge and deliver any such instruments on its behalf. Without limiting the foregoing, the Grantor and its successors and assigns agree themselves to execute any such instruments upon request.

### **C. Running of the Benefit**

The benefits of this Conservation Restriction shall run to the 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 Grantee not less than twenty (20) days prior to the effective date of such transfer. Any transfers shall receive prior approval by the Grantee to assure that the Premises is transferred to a qualified conservation organization. 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 it 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.

### **C. Grantees' Liability**

The Grantor and its successors and assigns shall each be liable under this section for any such violations of this restriction as may exist during their respective periods of ownership of the premises. Any new owner may be held responsible for any continuing violations existing during his or her period of ownership.

By acceptance of this 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 Grantee or its agents.

## **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: Barnstable Land Trust, Inc.  
1540 Main Street  
Barnstable, MA 02668

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

To Secondary Grantee: Cotuit Fire District, c/ Board of Water Commissioners  
64 High Street,  
Cotuit, Massachusetts 02635

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 effect 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”) “Santuit Woodland Conservation Restriction Baseline Report”, and dated prepared by Grantees with the cooperation of 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. No Surety Interest**

The Grantor attests that there is no mortgage, promissory note, loan, lien, equity credit line, refinance assignment of mortgage, lease, financing statement or any other agreement which gives rise to a surety interest affecting the Premises.

#### **C. 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. If both Grantees 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 their rights and obligations under this Conservation Restriction shall run to the Town of Barnstable Conservation Commission. If the Town of Barnstable Conservation Commission is no longer in existence at the time the rights and obligations under this Conservation Restriction would otherwise vest in it, or if the Town of Barnstable Conservation Commission is not qualified or authorized to hold conservation restrictions as provided for assignments pursuant to Paragraph VII, or if it shall refuse such rights and obligations, then the rights and obligations under this Conservation Restriction shall vest in such organization as a court of competent jurisdiction shall direct pursuant to the applicable Massachusetts law and with due regard to the requirements for an assignment pursuant to Paragraph VII.

#### **D. 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.

**E.** The following signature pages are included in this Grant:

Grantor – Barnstable Land Trust, Inc.

Primary Grantee Acceptance – Town of Barnstable Town Manager

Secondary Grantee Acceptance – Cotuit Fire District Board of Water Commissioners

Approval of Town of Barnstable Town Council

Approval of Department of Environmental Protection

Approval of the Secretary of Energy and Environmental Affairs of the Commonwealth of Massachusetts.

**F.** 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: Town Council Order Authorizing the Use of CPA Funds

Exhibit D: Cotuit Fire District Vote Authoring Funds

Exhibit E: Massachusetts Department of Environmental Protection Approval

WITNESS my hand and seal this \_\_\_\_ day of \_\_\_\_\_, 2025 as authorized by vote of the Barnstable Land Trust, Inc., at a meeting duly held on \_\_\_\_\_, 2025, authorizing grant of the foregoing Conservation Restriction to the Town of Barnstable and the Board of Water Commissioners of the Cotuit Fire District.

Barnstable Land Trust, Inc.

\_\_\_\_\_  
Leigh Townes, President,  
Barnstable Land Trust, Inc.

\_\_\_\_\_  
Jill McCleary, Treasurer  
Barnstable Land Trust, Inc.

**COMMONWEALTH OF MASSACHUSETTS**

Barnstable, ss. \_\_\_\_\_ 2025

Then personally appeared the above-named Leigh Townes, President, Barnstable Land Trust, Inc. and Jill McCleary, Treasurer, Barnstable Land Trust, Inc., the corporation named in the foregoing instrument, and proved to me through satisfactory evidence of identification, which was personal knowledge of identity, to be the persons whose names are signed on the document, and each acknowledged she is duly authorized to act on behalf of said corporation, and each further acknowledged the foregoing instrument to be the free act and deed of said corporation, before me.

Notary Public  
My commission expires:

**ACCEPTANCE AND APPROVAL OF TOWN MANAGER**

I, Mark S. Ells, as Town Manager of the Town of Barnstable, Massachusetts, hereby approve in the public interest pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws and accept the foregoing Conservation Restriction from the Barnstable Land Trust, Inc. to the Town of Barnstable and the Board of Water Commissioners of the Cotuit Fire District.

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

Barnstable, ss

On the day of , 2025, before me, the undersigned notary public, personally appeared Mark S. Ells, 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 as the Town Manager of the Town of Barnstable.

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

**ACCEPTANCE OF THE GRANT BY THE BOARD OF WATER COMMISSIONERS OF THE  
COTUIT FIRE DISTRICT**

We, the undersigned, being a majority of the Board of Water Commissioners of the Cotuit Fire District hereby certify that at a public meeting duly held on \_\_\_\_\_, 2025, acting pursuant to the authority granted under Article 13 of the Cotuit Fire District Annual Meeting held on May 29, 2024, voted to approve and accept the foregoing Conservation Restriction from Barnstable Land Trust, Inc.

**COTUIT WATER DISTRICT**

By a majority of the Board of Water Commissioners:

Scott Horsley

Mark Robinson

David Churbuck

**COMMONWEALTH OF MASSACHUSETTS**

Barnstable, ss:

On this day of , 2025, before me, the undersigned notary public, personally appeared , , and , and proved to me through satisfactory evidence of identification which was \_\_\_\_\_ to be the persons whose names are signed on the proceeding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose.

\_\_\_\_\_  
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 the Barnstable Land Trust, Inc. to the Town of Barnstable and the Board of Water Commissioners of the Cotuit Fire District in the public interest pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws and hereby certifies approval of the foregoing Conservation Restriction. An attested copy of the vote of the Town Council is attached hereto and included herein as Exhibit C.

**TOWN COUNCIL PRESIDENT:**

\_\_\_\_\_  
Felicia R. Penn

**COMMONWEALTH OF MASSACHUSETTS**

**Barnstable, ss**

On the day of , 2024, before me, the undersigned notary public, personally appeared **Felicia R. Penn**, 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 as the President of and on behalf of the Town Council of the Town of Barnstable.

\_\_\_\_\_  
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 the Barnstable Land Trust, Inc. to the Town of Barnstable and the Board of Water Commissioners of the Cotuit Fire District in the public interest pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws.

Dated: \_\_\_\_\_, 2025

Rebecca L Tepper

Secretary of Energy and Environmental Affairs

THE COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss:

On this day of , 2025, 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**

### Description of the Premises

The land in Barnstable, Massachusetts, containing 5.84 acres, +/-, shown on a plan of land titled "Plan of Subdivision of Land in Santuit, Barnstable, Mass, for Theodore Nigro, Scale: 1 inch = 40 Feet", dated May 21, 1973, by Robert H. Waite, registered land surveyor, West Yarmouth, Mass., recorded at the Barnstable County Registry of Deeds in Plan Book 278, Page 18.

For Grantors Title see Barnstable County Registry of Deeds at Book , Page .

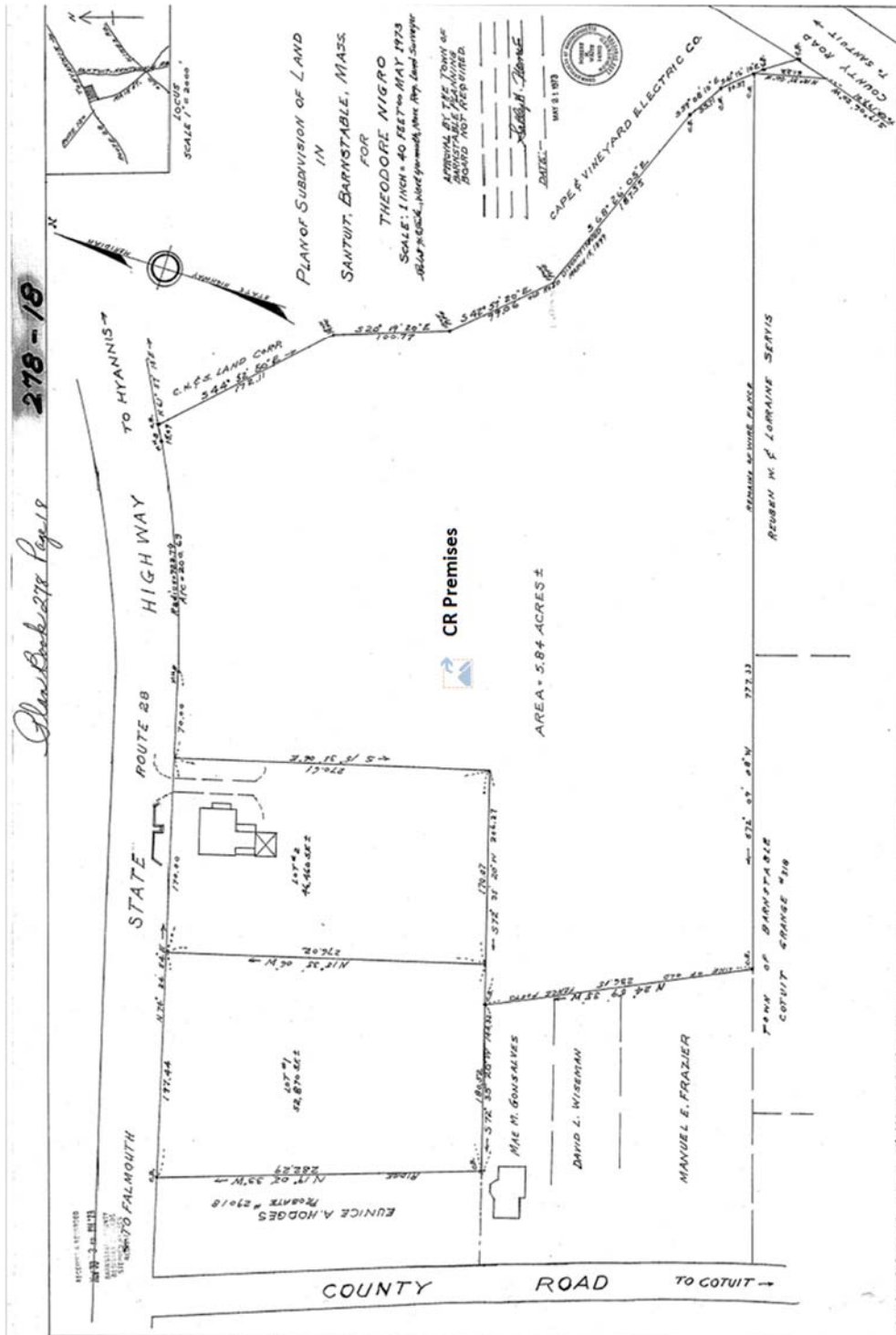
Town Barnstable Assessors Map 024, Parcel 042

Street Address: 4609 Falmouth Road (Route 28), Village of Cotuit, Barnstable MA 02635

EXHIBIT B

Reduced Copy of Plan of Premises

For official full size plan see Barnstable County Registry of Deeds Plan Book 278 Page 18.



**EXHIBIT C**

Town Council Order

**EXHIBIT D**

Cotuit Fire District Vote Authoring Funds

**EXHIBIT E**

Massachusetts Department of Environmental Protection Approval

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

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2024-236**

**INTRO: 06/27/2024, 07/18/2024**

**2024-236 ORDER AUTHORIZING THE TOWN MANAGER TO ENTER INTO AND EXECUTE ON BEHALF OF THE TOWN AN AMENDMENT TO THE EMPLOYMENT CONTRACT BETWEEN THE TOWN AND MARK A. MILNE**

**ORDERED:** That the Town Council hereby authorizes the Town Manager to enter into and execute on behalf of the Town an amendment to the employment contract between the Town and Mark A. Milne (“Milne”) entered into on July 1, 2021, under which Milne serves as the Town’s Director of Finance, to: (a) extend the term of the contract for an additional year, ending on June 30, 2027; (b) authorize Milne to work in a remote capacity on a full-time basis for a period commencing as of July 1, 2024 and ending on June 30, 2027; and (c) provide that if Milne’s employment is terminated due to the Town Manager’s determination that allowing him to work remotely is no longer feasible for the Town, that Milne shall continue to be paid his regular salary on a bi-weekly basis through the end of the fiscal year in which notice of such termination was provided or shall be paid a lump sum payment of 6 months’ salary, whichever is greater, with all other terms and conditions the same as those in the employment contract currently in effect between the parties.

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

DATE	ACTION TAKEN
<u>06/27/2024</u>	<u>Referred to Second Reading 07/18/2024</u>

\_\_\_\_\_

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

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

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2024-237  
INTRO: 06/27/2024, 07/18/2024**

**2024-237 APPROPRIATION ORDER IN THE AMOUNT OF \$37,000 FOR THE PURPOSE OF FUNDING THE TOWN'S SHARE OF THE COSTS RELATED TO THE INSTALLATION OF UP TO 37 ELECTRIC VEHICLE CHARGING STATIONS IN PUBLIC PARKING LOTS IN AND AROUND THE VILLAGE OF HYANNIS**

**ORDERED:** That the amount of **\$37,000** be appropriated from the General Fund Reserves for the purpose of funding the Town's share of the costs related to the installation of up to thirty-seven (37) Electric Vehicle Charging stations in public parking lots in and around the Village of Hyannis.

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

DATE	ACTION TAKEN
<u>06/27/2024</u>	<u>Referred to Public Hearing 07/18/2024</u>

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



# BARNSTABLE TOWN COUNCIL

ITEM# 2024-237

INTRO: 06/27/2024, 07/18/2024

## SUMMARY

**TO:** Town Council  
**FROM:** Mark S. Ells, Town Manager  
**THROUGH:** David W Anthony, Director of Asset Management  
**DATE:** June 27, 2024  
**SUBJECT:** Appropriation Order in the amount of **\$37,000** for the purpose of funding the Town's share of the costs related to the installation of up to 37 electric vehicle charging stations in public parking lots in and around the Village of Hyannis

**BACKGROUND:** On December 7, 2023 the Town Council authorized the Town Manager to contract for and to expend two grants associated with this project, a \$264,409 reimbursement grant under the Massachusetts Electric Vehicle Incentive Program (MassEVIP) Public Access Charging (PAC) Program to acquire thirty-four electric vehicle charging station(s) and a \$15,097.80 reimbursement grant under the Massachusetts Electric Vehicle Incentive Program (MassEVIP) Public Access Charging (PAC) Program to acquire three electric vehicle charging station(s) for Fleet vehicles at 225 South Street (Armory) in Hyannis.

The distribution of funds and chargers from these grants are planned as follows:

- \$34,117.00 for ten ports at 744 West Main Street, Hyannis, MA
- \$42,647.00 for ten ports at 895 Falmouth Road, Hyannis, MA
- \$42,647.00 for ten ports at 18 North Street, Hyannis, MA
- \$34,117.00 for ten ports at 243 North Street, Hyannis, MA
- \$42,647.00 for ten ports at 25 Ocean Street, Hyannis, MA
- \$34,117.00 for ten ports at 367 Main Street, Hyannis, MA
- \$34,117.00 for eight ports at 141 Bassett Lane, Hyannis, MA
- \$15,098 for six ports at 225 South Street, Hyannis, MA

This program is closely tied to an Eversource initiative that funds and contracts directly for the installation of make-ready heavy infrastructure to install these EV Chargers. Eversource funds 100% of the costs for survey, design, contracting and installation of heavy cable from power points to the installed concrete pads in our parking lots where the actual EV Chargers funded by MASS EVIP will be installed. The total value of this Eversource funded work is expected to be \$1,246,059.

The identification of these locations was preliminarily completed through the work of Sean Hogan, Environmental and Sustainability Manager, and Eversource based on power availability and identified locations of public parking lots. The selection of equipment was a partnered decision taking into account durability, dependability, availability and consistency with other Town Installations. The oversight of all the EV charging stations will be administered through the Environmental and Sustainability Manager as part of the Asset Management Operations.

There is a small balance, not to exceed \$37,000, that the Town is responsible for related to this project. It represents less than 3% of the overall project cost. There is a possibility that as many as eight (8) level three charging stations will be folded into this program, which will lower the Towns cost as these will be free of charge, but the appropriation order is requested to cover the roughly 3% of the total project costs without those chargers in the plans.

**ANALYSIS:** This project, begun in 2022 to enhance and expand the Public's access to Electric vehicle charging stations in the Town, when fully installed, will include a total of 37 chargers (74 charging ports) over eight locations in the Town.

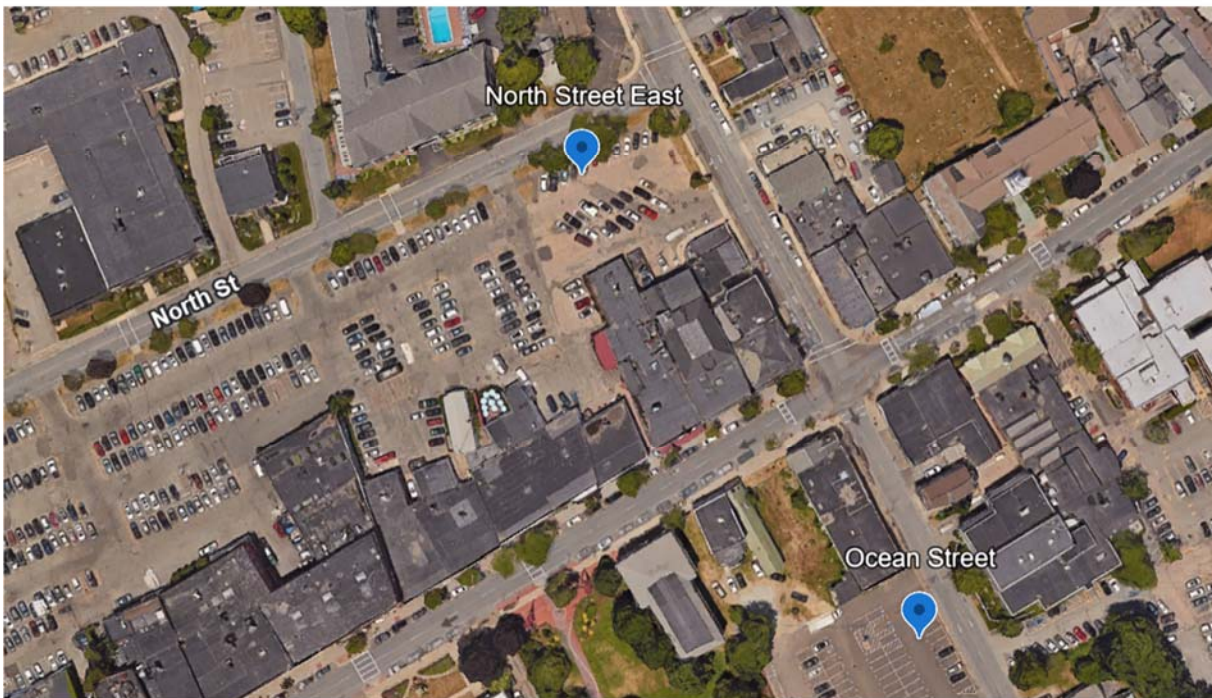
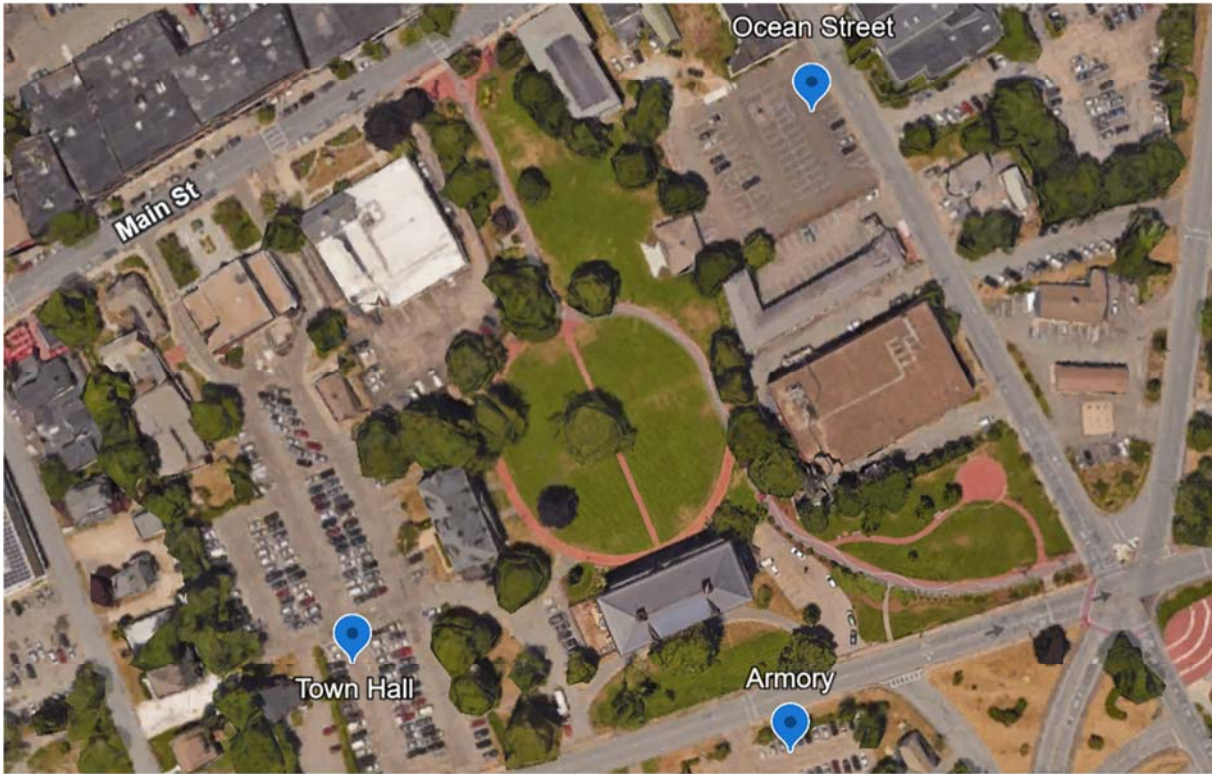
**FISCAL IMPACT:** The Town Manager has set charging fees through public fee hearings in 2023 so that when these chargers come online, the cost for the electricity will be paid by the users of these charging stations. A fractional amount is included in the per Kilowatt charge for future maintenance. The management of these stations will be through the Environmental and Sustainability Manager. The municipalities on Cape Cod, through the Cape Light Compact, are looking into a regional contract for EV Charger maintenance, with Barnstable taking a leading role in this contract development as we will have the highest number of EV chargers installed on Municipal lots on Cape when this is done. The funding provided by this request will not be included in the base operating budget going forward. This is a one-time request associated with the Town's portion of the project outside of the grant dollars. The General Fund Reserves will be used to fund these costs.

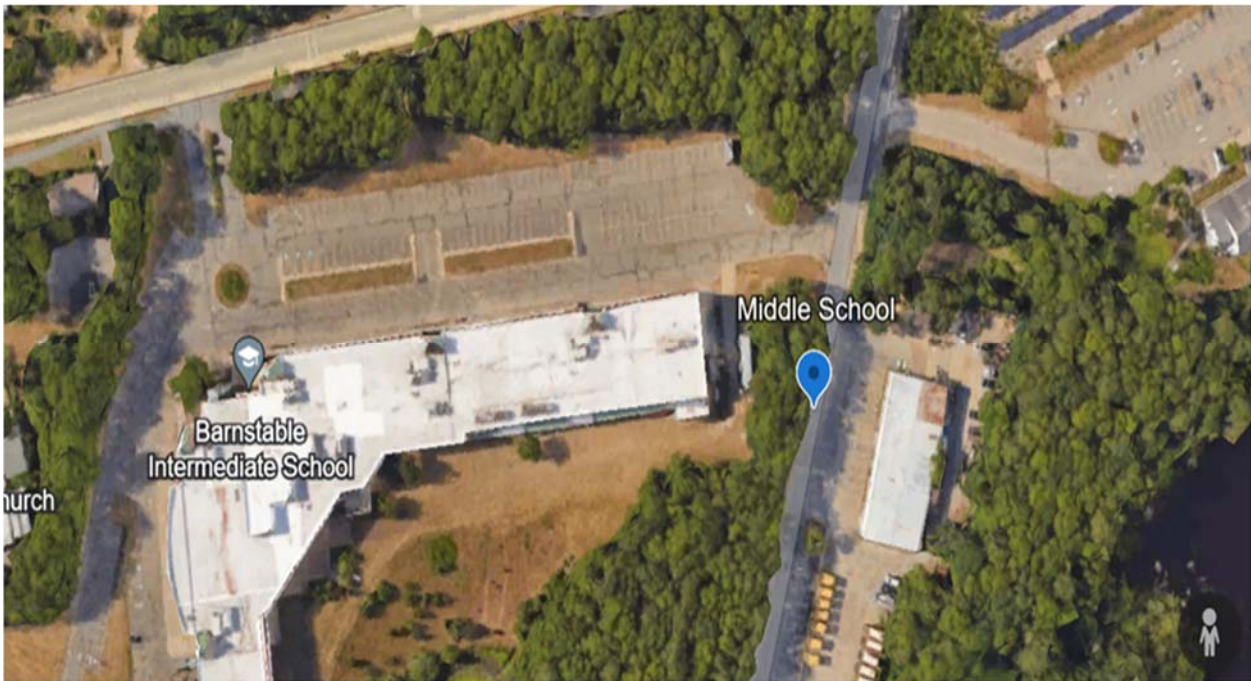
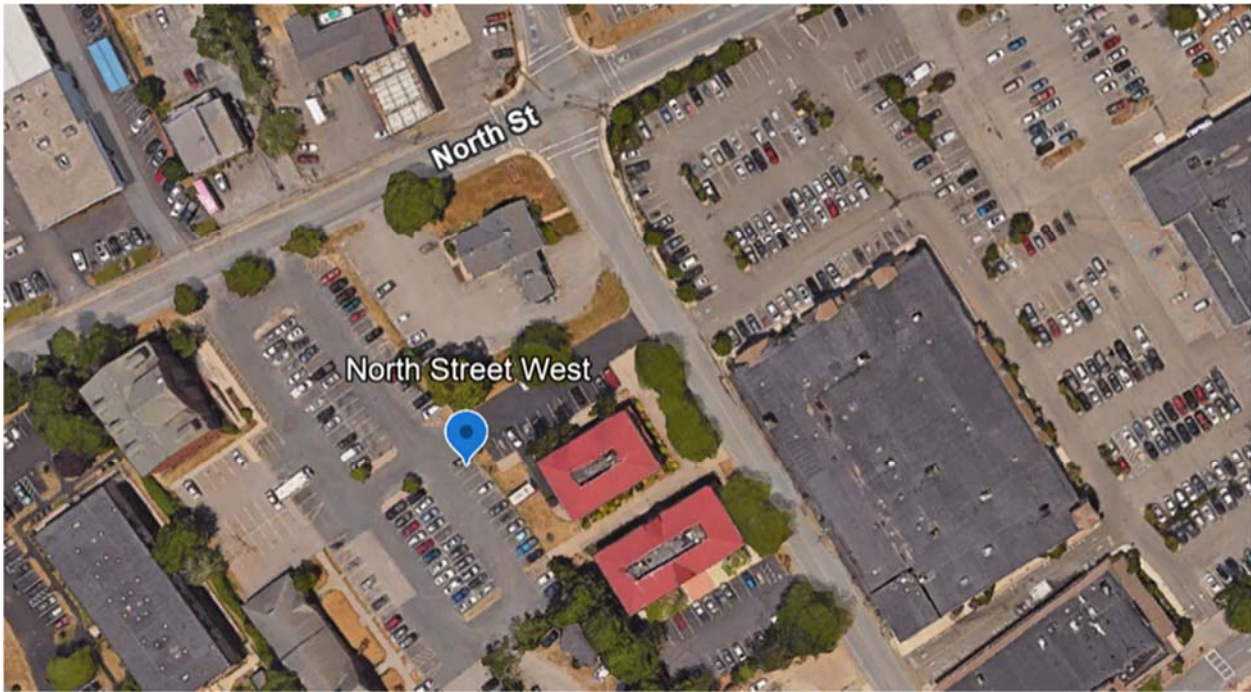
**TOWN MANAGER RECOMMENDATION:** Mark S. Ells, Town Manager, recommends approval of this supplemental appropriation request.

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

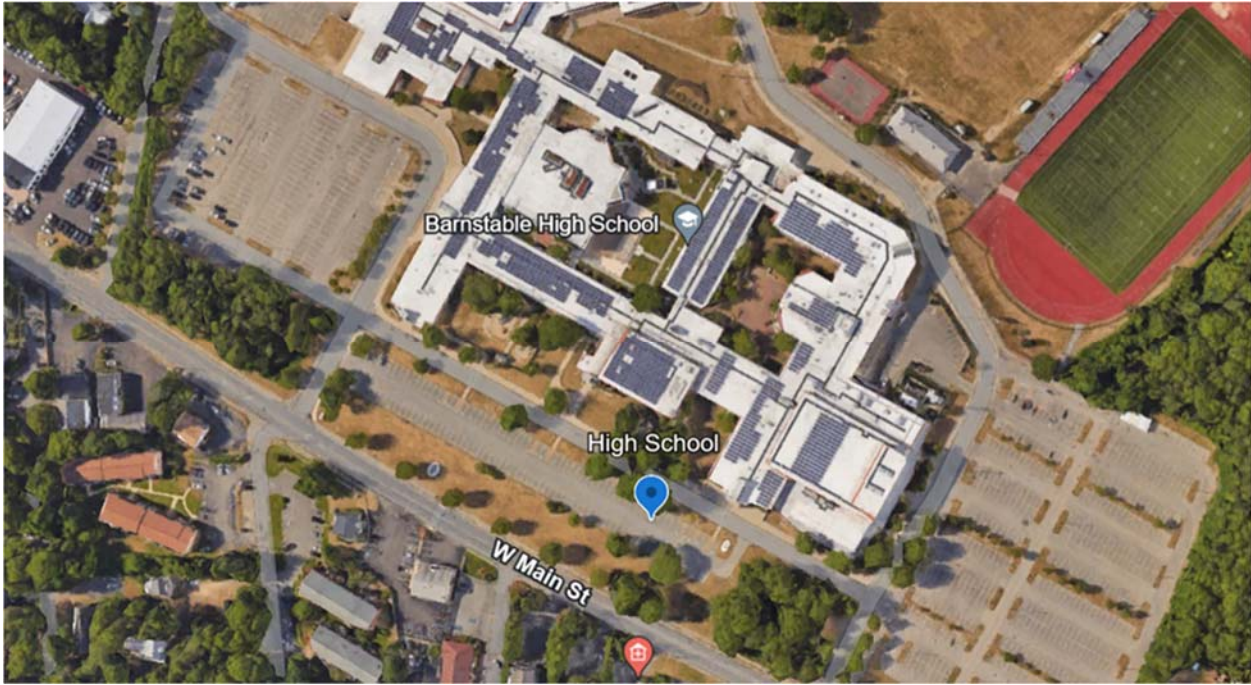
Potential EV Charger Sites

Location Exhibit in support of Town Council Appropriation Request





Asset Mgmt 6 27 24



Asset Mgmt 6 27 24

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

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2024-240**

**INTRO: 06/27/2024, 07/18/2024**

**2024-240 APPROPRIATION ORDER IN THE AMOUNT OF \$1,150,000 IN COMMUNITY PRESERVATION ACT FUNDS AUTHORIZING THE ACQUISITION OF PROPERTY LOCATED AT 211 CEDAR TREE NECK ROAD, MARSTONS MILLS, FOR OPEN SPACE AND RECREATION PURPOSES**

**ORDERED:** That, pursuant to the provisions of the Community Preservation Act, G. L. c 44B, the amount of Four Hundred and Fifty Thousand Dollars (**\$450,000**) be appropriated from the amount set-aside for Open Space and Recreation and the amount of Seven Hundred Thousand Dollars (**\$700,000**) be appropriated from the Undesignated Fund within the Community Preservation Fund for the purpose of acquiring property located at 211 Cedar Tree Neck Road, Marstons Mills, Assessors’ Map 076, Parcel 025 (the “Property”), for open space and recreation purposes. Funds not used for the purchase of the Property will be returned to the Community Preservation Act Fund. Further, it is ordered that the Town Manager, on behalf of the Town, is hereby authorized to expend the amounts appropriated and to take or acquire the Property, through a negotiated transaction, subject to oversight by the Community Preservation Committee, and to negotiate, accept, approve, execute, receive, deliver and record any written instruments to effectuate this Order and complete the transaction.

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

DATE	ACTION TAKEN
<u>06/27/2024</u>	<u>Referred to Public Hearing 07/18/2024</u>

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

# BARNSTABLE TOWN COUNCIL

ITEM# 2024-240  
INTRO: 06/27/2024, 07/18/2024

## SUMMARY

**TO:** Town Council  
**FROM:** Mark S. Ells, Town Manager  
**THROUGH:** Lindsey Counsell, Chair, Community Preservation Committee on Behalf of Community Preservation Committee  
**DATE:** June 27, 2024  
**SUBJECT:** Appropriation Order in the amount of **\$1,150,000** in Community Preservation Act Open Space/Recreation and Undesignated Funds for the Acquisition of 211 Cedar Tree Neck Road, Marstons Mills for Open Space and Recreation

**BACKGROUND:** At the June 17, 2024, Community Preservation Committee meeting, the six Committee members present voted unanimously to recommend to the Town Council through the Town Manager, the Marina Enterprise Fund's request for a total of \$1,150,000 in Community Preservation Act Funds to be transferred first from the Open Space/Recreation Fund and the remaining balance to be transferred from the Undesignated Fund for the acquisition of 211 Cedar Tree Neck Road, Marstons Mills, Assessors' Map 076, Parcel 025. The property directly abuts the Marina at Prince Cove that is owned by the Town of Barnstable and would allow for a phased expansion of the Marina providing additional public access to the water, supporting multiple recreational uses, and maximizing the Town-owned Marina. Funds not used for the purchase of the property will be returned to the Community Preservation Act Fund. Funding for any future expansions will be provided by the Marina Enterprise Fund.

**ANALYSIS:** This acquisition would allow expansion of the abutting Marina owned by the Town of Barnstable and provide residents and visitors with additional public access to the water and recreation opportunities.

**FISCAL IMPACT:** This appropriation is provided from the amount set aside within the Community Preservation Act Fund for Open Space/Recreation which has an available balance of \$450,000 and the Undesignated Fund within the Community Preservation Fund which has an available balance of \$10,866,000. There is no impact on the General Fund Operating Budget.

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

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

**B. NEW BUSINESS (Refer to Public Hearing 08/15/2024)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2025-001  
INTRO: 07/18/2024**

**2025-001 APPROPRIATION AND LOAN ORDER IN THE AMOUNT OF \$227,000 FOR TEMPORARY REPAIRS TO HARBOR VIEW ROAD IN THE VILLAGE OF BARNSTABLE PURSUANT TO TEMPORARY REPAIRS TO PRIVATE ROADS PROGRAM FOR CERTAIN PRIVATE WAYS**

**ORDERED:** That the sum of **\$227,000** be appropriated for the purposes of making temporary repairs to Harbor View Road in the village of Barnstable, a private road within the Town of Barnstable, and that to meet this appropriation, the Town Treasurer, with the approval of the Town Manager, be authorized to borrow \$227,000 under and pursuant to Chapter 174 of the Acts of 1994, as amended by Chapter 350 of the Acts of 2014 or pursuant to any other enabling authority, and to issue bonds or notes of the Town therefore; and that the Town Manager is authorized to contract for and expend the appropriation made available for these purposes, and for these purposes assess betterments in accordance with M.G.L. c. 80, and further that the Town Manger is authorized to access any grants or gifts in relation thereto.

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

DATE	ACTION TAKEN
_____	_____
_____	_____

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



# BARNSTABLE TOWN COUNCIL

**ITEM# 2025-001**  
**INTRO: 07/18/2024**

## SUMMARY

**TO:** Town Council  
**FROM:** Mark S. Ells, Town Manager  
**THROUGH:** Daniel W. Santos, P.E., Director of Public Works  
**DATE:** July 18, 2024  
**SUBJECT:** Appropriation and Loan Order in the amount of **\$227,000** for the purpose of funding Temporary Repairs to Harbor View Road in the Village of Barnstable pursuant to Temporary Repairs to Private Roads Program for Certain Private Roads

**BACKGROUND:** Chapter 174 of the Acts of 1994, as amended by Chapter 350 of the Acts of 2014, authorized the Town to borrow funds to repair and improve private roads within the Town. Under this Program, the abutters to roads being repaired can be charged betterment assessments for 100% of the actual costs of repairs which they can elect to pay in one lump sum or over a period of up to 20 years (with interest). This road will not be taken by the Town of Barnstable and will remain a private road. Most of the property abutters to Harbor View Road in the Village of Barnstable have expressed an interest in having repairs made to their private road and 80% of the abutters have signed a Consent and Acknowledgement Agreement for Betterment Assessment. The proposed work includes engineering design, installation of new drainage structures, removal and replacement of the existing roadway pavement, cleaning of existing drainage structures and final restoration.

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

**TOWN MANAGER RECOMMENDATION:** Mark S. Ells, Town Manager, recommends approval of this Appropriation and Loan Order.

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

**B. NEW BUSINESS (Refer to Public Hearing 08/15/2024)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2025-002  
INTRO: 07/18/2024**

**2025-002 APPROPRIATION AND LOAN ORDER IN THE AMOUNT OF \$321,000 FOR TEMPORARY REPAIRS TO OTTER LANE IN THE VILLAGE OF BARNSTABLE PURSUANT TO TEMPORARY REPAIRS TO PRIVATE ROADS PROGRAM FOR CERTAIN PRIVATE WAYS**

**ORDERED:** That the sum of **\$321,000** be appropriated for the purposes of making temporary repairs to Otter Lane in the village of Barnstable, a private road within the Town of Barnstable, and that to meet this appropriation, the Town Treasurer, with the approval of the Town Manager, be authorized to borrow \$321,000 under and pursuant to Chapter 174 of the Acts of 1994, as amended by Chapter 350 of the Acts of 2014 or pursuant to any other enabling authority, and to issue bonds or notes of the Town therefore; and that the Town Manager is authorized to contract for and expend the appropriation made available for these purposes, and for these purposes assess betterments in accordance with M.G.L. c. 80, and further that the Town Manger is authorized to access any grants or gifts in relation thereto.

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

DATE	ACTION TAKEN
_____	_____
_____	_____

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

# BARNSTABLE TOWN COUNCIL

**ITEM# 2025-002**  
**INTRO: 07/18/2024**

## SUMMARY

**TO:** Town Council  
**FROM:** Mark S. Ells, Town Manager  
**THROUGH:** Daniel W. Santos, P.E., Director of Public Works  
**DATE:** July 18, 2024  
**SUBJECT:** Appropriation and Loan Order in the amount of **\$321,000** for temporary repairs to Otter Lane in the Village of Barnstable pursuant to Temporary Repairs to Private Roads Program for Certain Private Ways

**BACKGROUND:** Chapter 174 of the Acts of 1994, as amended by Chapter 350 of the Acts of 2014, authorized the Town to borrow funds to repair and improve private roads within the Town. Under this Program, the abutters to roads being repaired can be charged betterment assessments for 100% of the actual costs of repairs which they can elect to pay in one lump sum or over a period of up to 20 years (with interest). This road will not be taken by the Town of Barnstable and will remain a private road. Most of the property abutters to Otter Lane in the Village of Barnstable have expressed an interest in having repairs made to their private road and 83% of the abutters have signed a Consent and Acknowledgement Agreement for Betterment Assessment. The proposed work includes engineering design, installation of new drainage structures, removal and replacement of the existing roadway pavement, cleaning of existing drainage structures and final restoration.

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

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

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

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

**BARNSTABLE TOWN COUNCIL ITEM**

**ITEM# 2025-003  
INTRO: 07/18/2024**

**2025-003 RESOLVE TO APPROVE THE APPOINTMENT OF JOHN CURRAN JR., AS  
THE DIRECTOR OF ASSESSING FOR THE TOWN OF BARNSTABLE**

**RESOLVED:** That the Town Council hereby approves the appointment by the Town Manager of John Curran Jr. as the Director of Assessing.

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

DATE	ACTION TAKEN
_____	_____
_____	_____

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

## BARNSTABLE TOWN COUNCIL ITEM

**ITEM# 2025-003**  
**INTRO: 07/18/2024**

### SUMMARY

**TO:** Town Council  
**FROM:** Mark Ells, Town Manager  
**THROUGH:** Mark Milne, Director of Finance  
**DATE:** July 18, 2024  
**SUBJECT:** Resolve to Approve the Appointment of John Curran Jr. as the Director of Assessing for the Town of Barnstable

**BACKGROUND:** An interview team comprised of the Director of Finance, Human Resources Director, Town Attorney and Building Commissioner conducted the interviews. Mr. Curran was unanimously recommended for the position.

**ANALYSIS:** Mr. Curran has over 10 years of experience in the assessment administration field, most recently working as the Town Assessor for Westwood, MA for the past 6 years and Norfolk, MA and Wrentham, MA prior to that. In addition, he has extensive real estate appraisal experience having operated his own real estate appraisal business. Mr. Curran is also actively involved in the Massachusetts Association of Assessing Officers, continuously enhancing his professional development, and possesses a B.A. degree in Business Management from Boston College.

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

**STAFF SUPPORT:** Mark Milne, Director of Finance

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

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2025-004  
INTRO: 07/18/2024**

**2025-004 AUTHORIZATION TO CONTRACT FOR AND EXPEND FISCAL YEAR 2024 AND FISCAL YEAR 2025 PUBLIC SAFETY ANSWERING POINT AND REGIONAL EMERGENCY COMMUNICATION CENTER DEVELOPMENT GRANTS IN THE TOTAL AMOUNT OF \$611,544 FROM THE COMMONWEALTH OF MASSACHUSETTS, EXECUTIVE OFFICE OF PUBLIC SAFETY AND SECURITY**

**RESOLVED:** That the Town Council does hereby authorize the Town Manager to contract for and expend a Fiscal Year 2024 grant in the amount of **\$373,090** and a Fiscal Year 2025 grant in the amount of **\$238,454** from the Commonwealth of Massachusetts, Executive Office of Public Safety and Security, State 911 Department, for the purpose of funding the costs of planning associated with the architectural and engineering services necessary for the creation of a Regional Emergency Communications Center in the Town of Barnstable, which will include 911 services covering the Towns of Barnstable, Yarmouth and Sandwich.

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

DATE	ACTION TAKEN
_____	_____
_____	_____

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

# BARNSTABLE TOWN COUNCIL

ITEM# 2025-004  
INTRO: 07/18/2024

## SUMMARY

**TO:** Town Council  
**FROM:** Mark S. Ells, Town Manager  
**THROUGH:** Jean B Challies, Chief of Police  
**DATE:** July 18, 2024  
**SUBJECT:** Authorization to contract for and expend a State Fiscal Year 2024 and State Fiscal Year 2025 Regional Public Safety Answering Point and Regional Emergency Communication Center Development Grants in the combined amount of **\$611,544** from the Massachusetts Executive Office of Public Safety and Security

**BACKGROUND:** There are many benefits to the regionalization of emergency 911 call taking and dispatch services within a community. Currently the Towns of Barnstable, Yarmouth and Sandwich are geographically connected and yet each have their own stand-alone communications centers. Each of these towns agree to form a partnership in the creation of a regional emergency communications center to collectively serve all three towns. Some of the benefits to this regionalization of 911 Emergency Communications is to better integrate and improve communications by housing 911 call-taking under one roof in a centralized Regional Emergency Communications Center and an enhanced ability to have access to funding that is only available to regional dispatch centers. Other benefits are improved communications between partner municipalities; access to grant funding for improved equipment; better operational efficiency in dispatching emergency services; and better ability to communicate with regional stakeholders. In this endeavor, each town has the full support of all components of emergency services within their respective towns including police, fire and emergency medical services and have signed an intermunicipal agreement.

On behalf of those named in this partnership, the Town of Barnstable Police Department applied for and was awarded a State Fiscal Year 2024 and a State Fiscal Year 2025 Regional Public Safety Answering Point and Regional Emergency Communication Center Development Grant in the amounts of \$373,090 and \$238,454 respectively, which provides a total combined funding amount of \$611,544. The Town of Barnstable Police Department will serve as the Grant Manager for this grant funding, and Barnstable shall, in its own name, procure and contract for the construction or renovation of the facility in which the dispatch center will operate.

**ANALYSIS:** The Town of Barnstable will follow the Massachusetts Office of the Inspector General Model Designer Selection Procedures. The funding will cover the costs of the selected architectural and engineering firm for the creation of specifications, blueprints, floor plans and facility requirements to build a Regional Emergency Communications Center. This phase of the project timeline is estimated to take approximately one year.

**FISCAL IMPACT:** The Barnstable Police Department will serve as the grant manager on behalf of this regional grant that includes the Barnstable Police & Hyannis Fire Departments; Yarmouth Police and Fire Departments; and Sandwich Police and Fire Departments, all located on Cape Cod in the Commonwealth of Massachusetts. Expenses will be charged against the grant project. Requests for reimbursement of expenses associated with this project will be submitted in a timely manner to State 911.

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

**STAFF ASSISTANCE:** Jean B Challies, Chief of Police; Lena Bevilacqua, Grants Coordinator; Anne Spillane, Director of Finance & Support Services – Barnstable Police Department



**B. NEW BUSINESS (First Reading) (Refer to Second Reading 08/15/2024)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2025-005  
INTRO: 07/18/2024**

**2025-005 ORDER AUTHORIZING A HOUSING DEVELOPMENT INCENTIVE PROGRAM TAX INCREMENT EXEMPTION AGREEMENT BETWEEN THE TOWN OF BARNSTABLE AND BRATT, LLC FOR 36 NEW MARKET RATE RESIDENTIAL RENTAL UNITS LOCATED AT 199 BARNSTABLE ROAD, HYANNIS, MA 02601**

**ORDERED:** That the Town Council hereby authorizes a Tax Increment Exemption (TIE) Agreement between the Town of Barnstable and BRATT, LLC pursuant to the Housing Development Incentive Program, M.G.L. c. 40V and the regulations promulgated thereunder at 760 CMR 66.00, for thirty-six (36) market rate residential units located at 199 Barnstable Road, Hyannis, MA 02601 substantially in the form presented to the Town Council at this meeting, and further authorizes the Town Manager to execute the TIE Agreement and submit it to the Massachusetts Executive Office of Housing and Livable Communities for approval.

**SPONSOR:** Town Council Tax Incentive Committee: Town Council Vice President Craig A. Tamash, Precinct 4; Councilor John R. Crow, Precinct 5; Councilor Paul C. Neary, Precinct 6

DATE	ACTION TAKEN
_____	_____
_____	_____

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

# BARNSTABLE TOWN COUNCIL

ITEM# 2025-005  
INTRO: 07/18/2024

## SUMMARY

**TO:** Town Council  
**FROM:** Mark S. Ells, Town Manager  
**THROUGH:** James Kupfer, Interim Planning & Development Director  
**DATE:** July 18, 2024  
**SUBJECT:** Order Authorizing a Housing Development Incentive Program Tax Increment Exemption Agreement between the Town of Barnstable and BRATT, LLC for 36 new market rate residential rental units located at 199 Barnstable Road, Hyannis, MA 02601

**RATIONALE:** The Tax Incentive Committee of the Town Council recommends approval of the Housing Development Incentive Program Tax Increment Exemption request from developer BRATT, LLC (Brad Sprinkle and Tim Telman) for the property located at 199 Barnstable Rd, Hyannis. In addition to the thirty-six (36) market rate units, nine (9) units are proposed to be permanently deed-restricted affordable; the project has a total of forty-five (45) units.

In January 2018, the Town Council approved the proposed Downtown Hyannis HD Zone and Plan and in March 2018 the Town received approval of its Zone from the Department of Housing and Community Development (now EHOLC). Approval of this Zone allows the Town to enter into Tax Increment Exemption Agreements with property owners within the Zone.

The goals of the Housing Development Incentive Program, which authorizes Tax Increment Exemption Agreements, is to increase residential growth, expand diversity of housing supply, support economic development and promote neighborhood stabilization.

The Housing Development Program (HDIP) staff review committee, and the Town Council Tax Incentive Committee reviewed the application from BRATT, LLC and found it to be complete and that the development meets the objectives of the HDIP Plan including increasing residential stock and diversity of housing choice. The Operating Pro Forma is reasonable and in line with industry standards. Based on limited availability of comparable development in the HDIP Zone, the proposed rents, at \$2,100 per month for a 1-bedroom unit, are priced consistently with prevailing rents. The development will have a positive impact on housing supply and, in turn, support economic development

The TIE Agreement is a contract between the property owner and the municipality which sets forth the amount of the tax exemption and the duration of the benefits. The Sponsor has requested, and the Tax Incentive Committee recommends a 100% Tax Exemption for years 1-5, a 85% Tax Exemption for years 6-10 and 55% Tax Exemption on years 11-20 on increased value anticipated to be \$ 1,040,282.51.

If approved by the Town, this project and TIE Agreement must also be approved by the State Executive Office of Housing and Livable Communities.

**FISCAL IMPACT:** The estimated assessed value of the property when developed as proposed is \$9,000,000 resulting in an increase of \$8,141,800 in assessed value. As proposed, the total estimated value of the TIE is \$1,040,282. This includes an estimated \$1,009,983 in property tax savings and \$30,299 in Community Preservation Tax savings for the developer. By approving the TIE Agreement, the Town agrees to forgo this estimated tax revenue over 20 years in exchange for the redevelopment of this property that creates 45 new rental housing units; 36 of which are market rate, 5 affordable units at 65% of Area Median Income, and 4 affordable units at 80% of Area Median Income.

**STAFF ASSISTANCE:** Mark Milne, Finance Director; Pamela Taylor, Acting Director of Assessing; Corey Pacheco, Senior Planner, Planning and Development

**HOUSING DEVELOPMENT INCENTIVE PROGRAM**  
**TAX INCREMENT EXEMPTION (TIE) AGREEMENT**  
between  
**MUNICIPALITY**  
and  
**BRATT, LLC**

This AGREEMENT is made this \_\_\_\_\_ day of \_\_\_\_\_, 2024, by and between the Town of Barnstable (“Municipality”), a Massachusetts municipal corporation, with its primary offices located at 367 Main Street, Hyannis, MA 02601, and Bratt, LLC, a Massachusetts Limited Liability Corporation (“Sponsor”) with an address at 49 Center Street, Suite 1A, Hyannis, MA 02601.

**Section 1 – Agreement**

The Municipality and the Sponsor, for good and valuable consideration, the sufficiency of which is hereby acknowledged, and in consideration of the covenants and agreements herein contained, hereby make this agreement regarding a tax increment exemption pursuant to the Housing Development (HD) Incentive Program, M.G.L. c. 40V and the regulations promulgated thereunder at 760 CMR 66.00 (HD TIE), with respect to the Property as herein defined.

**Section 2 – Definitions**

Each reference in this Agreement to the following terms shall be deemed to have the following meanings:

- Act: M.G.L. c. 40V as may be amended from time to time.
- Completion: Certificates of occupancy have been issued for the entire Project.
- EOHLC: Executive Office of Housing and Livable Communities
- Event of Default: An “Event of Default” as defined in Section 5 below.
- Final Certification: Determination by EOHLC that the Sponsor has completed the new construction or substantial rehabilitation of the Property, consistent with the New Construction or Rehabilitation Plans, including the creation of MRRUs, as set forth in the Act and the Regulations.
- Fiscal Year: An annual period of July 1 through June 30.
- HD Project: A Certified Housing Development Project as defined in the Act and the Regulations.
- HD Zone: The Housing Development Zone adopted by Town of Barnstable on January 18, 2018 and approved by EOHLC (formerly the Department of Housing and Community Development) as evidenced by a Certificate of Approval dated March 9, 2018 and recorded with Barnstable County Registry of Deeds, Book 32703, Page 1. The Zone was amended on January 21, 2021 and approved by EOHLC as evidenced by a Certificate of Approval dated March 2, 2021 and recorded with Barnstable County Registry of Deeds, Book 56252, Page 251.
- Lead Municipality: Town of Barnstable

MRRU: Market Rate Residential Unit(s) as defined at Section 3.B.1.

Property: 199 Barnstable Road, 191 Barnstable Road, 187 Barnstable Road, and 114 Grove Street, Hyannis as shown in Exhibit 1, “Map of Property” and further described in Exhibit 2, “Legal Description of Property”.

Regulations: 760 CMR 66.00.

New Construction or

Rehabilitation Plans: The material submitted for Conditional Certification pursuant to 760 CMR 66.05(3)(a) and approved by EOHLIC.

Sponsor: Bratt, LLC, a Massachusetts Limited Liability Corporation, with an address at 49 Center Street, Suite 1A, Hyannis, MA 02601, its successors and assigns.

### **Section 3 – Sponsor’s Covenants**

A. New Construction or Substantial Rehabilitation of the Property. Sponsor will undertake the new construction or substantial rehabilitation of the Property in accordance with the work and schedule set forth in the New Construction or Rehabilitation Plans.

B. Market Rate Residential Units.

1) There shall be a total of 45 residential rental units created in the Project of which 36 shall be MRRUs comprised of 36 1 bedroom - 1-bathroom units. The monthly rent for such units shall be priced consistently with prevailing rents or sale prices in the Municipality as determined based on criteria established by the Department, as set forth in Exhibit 3, “Market Rate Residential Units – Pricing Plan”.

2) Sponsor shall use good faith efforts to maintain the units as MRRUs for a minimum of 20 years.

C. Marketing. Sponsor shall cause the MRRU to be marketed in a manner that is consistent with the strategies, implementation plan and affirmative fair housing efforts set out in the New Construction or Rehabilitation Plans.

D. HD Project Certification. Sponsor shall take all actions reasonably necessary to obtain Final Certification of the Property as an HD Project including but not limited to submitting applications to DHCD for Conditional Certification and Final Certification consistent with the requirements of the Act and the Regulations.

### **Section 4 – Tax Increment Exemption**

Municipality agrees to grant Sponsor an exemption to the real property taxes due on the Property pursuant to G.L. c. 59 according to the following terms.

A. Base Value. Consistent with 760 CMR 66.06(1)(c), the Base Value is \$858,200 and equal to the assessed value (or aggregate thereof) of the parcel(s) that comprise the property as of the fiscal year in which a HD Tax Increment Exemption Agreement is executed by the Sponsor and the Municipality with respect to the parcel or parcels, as the case may be, and prior to the start of any new construction or Substantial Rehabilitation activities, including demolition, minus the assessed value attributable to any portion of the property that was assessed as other than residential in the applicable fiscal year and remains nonresidential after completion of new construction or Substantial Rehabilitation.

- A. MRRU Percentage. 80 percent (80%) of the total residential units (36) on site. The MRRU Percentage shall be confirmed as required in paragraph F, below.
- B. Exemption Percentage. Commencing on the Effective Date which shall be Fiscal Year 1:  
100% Years 1-5  
85% Years 6-10  
60% Years 11-20
- C. The Increment. As defined at 760 CMR 66.06(1)(b)(1).
- D. Calculation. For each Fiscal Year during the term of this Agreement, the HD TIE shall be determined by applying the Exemption Percentage to the property tax on the Increment.
- E. Confirmation or Amendment of Calculation. Upon Completion, and prior to applying for Final Certification of the Project, the Sponsor and Municipality shall file a “Tax Increment Exemption – Confirmation of Calculation” in the form attached as Exhibit 4 (“TIE Confirmation”). To the extent that the dates or figures in the TIE Confirmation differ from those set forth in this Agreement, the contents of the TIE Confirmation shall control and shall be deemed to have amended this Agreement.

## **Section 5 – Default**

- A. Event of Default. An “Event of Default” shall arise under this Agreement upon the occurrence of any one or more of the following events:
  - 1) Breach of Covenant Prior to Final Certification. Subject to the limitations set forth in the Regulations at section 66.05(4)(b), Sponsor defaults in the observance or performance of any material covenant, condition or agreement to be observed or performed by Sponsor pursuant to the terms of this Agreement, and the continuance of such default for thirty (30) days after written notice thereof from the Municipality; provided, however, that if the curing of such default cannot be accomplished with due diligence within said period of thirty (30) days, then Sponsor shall have such additional reasonable period of time, not to exceed thirty (30) days, to cure such default provided the Sponsor shall have commenced to cure such default within the initial thirty (30) day period, such cure shall have been diligently prosecuted by the Sponsor thereafter to completion.
  - 2) Breach of Covenant Subsequent to Final Certification. Sponsor’s conduct is materially at variance with the representations made in its New Construction or Rehabilitation Plans; such variance is found to frustrate the public purposes that Final Certification was intended to advance, and the continuance of such default for thirty (30) days after written notice thereof from the Municipality; provided, however, that if the curing of such default cannot be accomplished with due diligence within said period of thirty (30) days, then Sponsor shall have such additional reasonable period of time, not to exceed thirty (30) days, to cure such default provided the Sponsor shall have commenced to cure such default within the initial thirty (30) day period, such cure shall have been diligently prosecuted by the Sponsor thereafter to completion.
  - 3) Misrepresentation. Any representation made herein or in any report, certificate, financial statement or other instrument furnished in connection with this Agreement shall prove to be false in any material respect.
- B. Rights on Default.

1) Prior to Final Certification. Upon the occurrence of an Event of Default prior to Final Certification, then this Agreement shall become null and void.

2) Subsequent to Final Certification. Upon the occurrence of an Event of Default subsequent to Final Certification, then:

a. Revocation of Certification. Pursuant to the terms of the Act, the Municipality, may, at its sole discretion, request that EOHLIC revoke the Final Certification of the Project, such revocation to take effect on the first day of the fiscal year in which EOHLIC determines that a material variance commenced.

b. Termination of Agreement. Upon revocation of certification, this Agreement shall become null and void as of the effective date of such revocation.

c. Recoupment of Economic Benefit. Upon revocation of certification, the Municipality may bring a cause of action against Sponsor for the value of any economic benefit received by Sponsor prior to or subsequent to such revocation.

3) Other Remedies. The Municipality's rights upon the occurrence of an Event of Default are in addition to those granted to EOHLIC and the Massachusetts Commissioner of Revenue under the terms of the Act.

## **Section 6 – Miscellaneous**

A. Effective Date. The effective date of the HD TIE shall be July 1st of the first Fiscal Year following EOHLIC's Final Certification of the HD Project pursuant to the requirements of the Act and the Regulations, which date is anticipated to be June 30, 2025. The Effective Date shall be confirmed as required under Section 4.F above.

B. Term of Agreement. This Agreement shall expire upon the Municipality's acceptance of the annual report, as required below, for the final Fiscal Year for which the Municipality is granting the TIE.

C. Reporting. Sponsor shall submit reports to the Municipality not later than thirty (30) days after June 30 of each Fiscal Year for the term of this Agreement. Each report shall contain the following information:

1) Until Completion, the status of construction in relation to the schedule contained in the New Construction or Rehabilitation Plan

2) Until Completion, the status of marketing in relation to the New Construction or Rehabilitation Plans; and

3) For each MRRU, the number of bedrooms in the unit, whether it was leased as of the end of the most recent fiscal year and the monthly rent charged.

D. Assignment. The Sponsor shall not assign any interest in this Agreement, and shall not transfer any interest in the same, without the prior written consent of the Municipality, which approval shall not be unreasonably withheld or delayed. The foregoing notwithstanding, the rights and obligations of this Agreement shall inure to the benefit of any entity succeeding to the interests of the Sponsor by merger.

E. Notices. In conjunction with concurrent electronic submission as provided for below or, if

reasonable efforts can determine that such information is no longer current, otherwise reasonably obtainable and verifiable electronic contact information, any notice, request, instruction or other document to be given hereunder to either party by the other shall be in writing and delivered personally or sent by recognized overnight courier, receipt confirmed or sent by certified or registered mail, postage prepaid, as follows, and, unless general measures for electronic receipt as a substitute are in place at such time or can otherwise be reasonably assumed due to publicized or immediately foreseeable remote working conditions, shall be conclusively deemed to have been received and be effective on the day on which personally delivered or, if sent by certified or registered mail, three (3) days after the day on which mailed or, if sent by overnight courier, on the day after delivered to such courier.

1) Municipality: Town Manager  
Town of Barnstable  
367 Main Street  
Hyannis, MA 02601  
Email: [mark.ells@town.barnstable.ma.us](mailto:mark.ells@town.barnstable.ma.us)

2) Sponsor: Bratt, LLC  
49 Center Street  
Hyannis, MA 02601  
[ttelman@comcast.net](mailto:ttelman@comcast.net)  
Email: [Bradk\\_sprinkle@comcast.net](mailto:Bradk_sprinkle@comcast.net)

3) Copy to EOHLC: All such notices shall be copied to EOHLC at:

HDIP Program Coordinator  
Department of Housing & Community Development  
100 Cambridge Street, Suite 300  
Boston, MA 02114  
[dhcdhdip@mass.gov](mailto:dhcdhdip@mass.gov)

4) Change of Address. Either party may change the address to which notices are to be sent to it by giving written notice of such change of address to the other party in the manner herein provided for giving notice.

F. Modifications. No modification or waiver of any provision of this Agreement, nor consent to any departure by the Sponsor therefrom shall in any event be effective unless the same shall be in writing, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No failure or delay on the part of Municipality in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

**IN WITNESS WHEREOF**, the Sponsor has caused this Agreement to be duly executed in its name and behalf and its seal affixed by its duly authorized representative, and the Municipality has caused this Agreement to be executed in its name and behalf and its seal duly affixed by its Town Manager as of the day and year first above written.

[SIGNATURES ON NEXT PAGE]



MUNICIPALITYSPONSOR  
**Town of BarnstableBratt, LLC**

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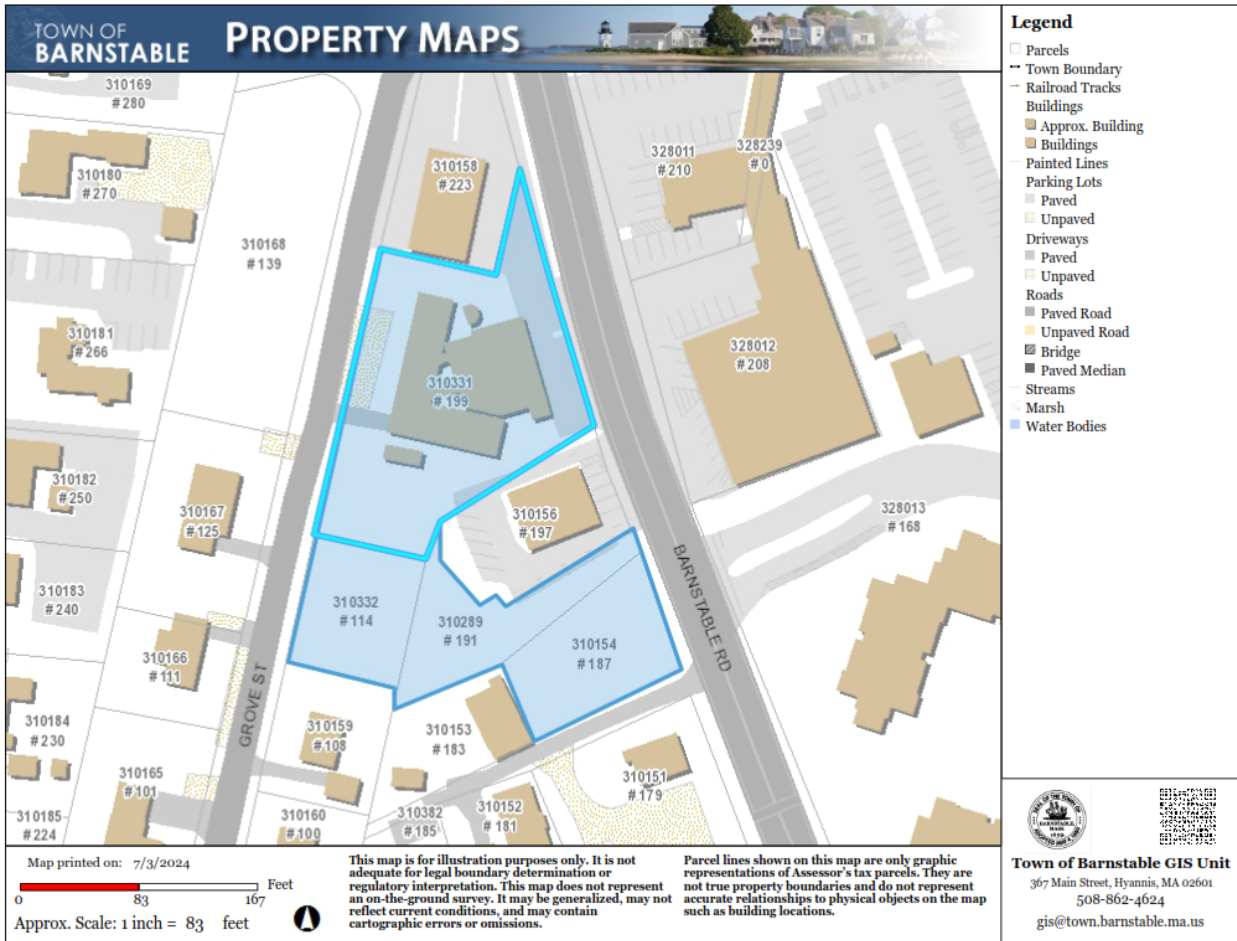
By: Mark S. Ells, Town Manager      Timothy T. Telman, Manager

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Bradley K. Sprinkle, Manager

# EXHIBIT 1

## MAP OF PROPERTY



**EXHIBIT 2**

**DESCRIPTION OF PROPERTY**  
**See Attached Deed**

**EXHIBIT 3**

**MARKET RATE RESIDENTIAL UNITS – PRICING PLAN**

Proposed Initial  
Monthly Rent(s)\*: 1 Bedroom - \$2,100.00

\*units shall be priced in compliance with EOHLC’s HDIP Guidelines and 760 CMR 66.04(2)(f)

**EXHIBIT 4**

**TAX INCREMENT EXEMPTION – CONFIRMATION OF CALCULATION**

**[FORM TO REMAIN BLANK UNTIL PROJECT COMPLETED AND ELIGIBLE FOR FINAL CERTIFICATION]**

In connection with the Tax Increment Exemption Agreement dated \_\_\_\_\_, 20\_\_\_\_ by and between the MUNICIPALITY, and \_\_\_\_\_, a STATE FORM OF ORGANIZATION with an address at \_\_\_\_\_, with respect to the property at \_\_\_\_\_ (the “Agreement”), the parties hereby confirm the following elements of the Agreement. Unless otherwise stated, capitalized terms have the meaning set forth in the Agreement.

1. The effective date of the Agreement is:
2. The MRRU Percentage is:
3. The assessed value of the of the residential portion of the Property upon Completion is:

To the extent that the dates or figures in this “Tax Increment Exemption – Confirmation of Calculation” differ from those set forth in the Agreement, the contents of this document shall control and shall be deemed to have amended the Agreement.

MUNICIPALITY SPONSOR

\_\_\_\_\_  
By: [CHIEF EXECUTIVE OFFICER] By:

\_\_\_\_\_  
By: [LEGISLATIVE BODY] By:

Dated:

**B. NEW BUSINESS (Refer to Public Hearing 08/15/2024)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2025-006  
INTRO: 07/18/2024**

**2025-006 SUPPLEMENTAL APPROPRIATION ORDER IN THE AMOUNT OF \$35,000  
FOR THE PURPOSE OF PAYING OUTSIDE COUNSEL EXPENSES OF THE  
LEGAL DEPARTMENT**

**ORDERED:** That the amount of **\$35,000** be raised from current year revenue and appropriated for the purpose of paying operating expenses of the Legal Department for the services of the law firm of Anderson & Kreiger, as outside counsel to the Town, to support and assist the Town in connection with the Town’s opposition to the New England Wind 2 (formerly, Commonwealth Wind) offshore renewable wind project proposed to come ashore at Dowses Beach in the Town.

**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# 2025-006**  
**INTRO: 07/18/2024**

## SUMMARY

**TO:** Town Council  
**FROM:** Mark S. Ells, Town Manager  
**THROUGH:** Karen L. Nober, Town Attorney  
**DATE:** July 18, 2024  
**SUBJECT:** Supplemental Appropriation Order in the amount of **\$35,000** for the purpose of paying outside counsel expenses of the Legal Department

**BACKGROUND:** The law firm of Anderson & Kreiger (A&K) has been assisting the Town with respect to Park City Wind LLC's proposed offshore renewable wind project in the Town. The Town has a Host Community Agreement (HCA) with Vineyard Wind for its offshore renewable wind project, with its cable landing at Covell's Beach, and has a separate HCA (and side agreement providing additional benefits and protections for the Town) with PCW for its proposed project that would come ashore at Craigville Beach.

A third project, the Commonwealth Wind project, now referred to as New England Wind 2 (NE Wind 2), is proposed to come ashore at Dowses Beach. Unlike the Vineyard Wind and PCW projects, the Town has not entered into an HCA for the NE Wind 2 project. Furthermore, in the Town's written comments on the NE Wind 2 project's Massachusetts Environmental Policy Act (MEPA) filings, the Town expressly stated that it did not support the project.

This supplemental appropriation would pay for additional services of A&K to assist the Town in its efforts to oppose the New England Wind 2 project proposed to come ashore at Dowses Beach.

**FISCAL IMPACT:** Funding for this expense will be provided from the receipts estimated to be raised in the General Fund for Fiscal Year 2025. The Fiscal Year 2025 budget was adopted using a conservative revenue estimate for local receipts to be generated. These receipts will be estimated \$35,000 more in order to fund this request.

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