



Town of Barnstable
Town Council
James H. Crocker Jr. Hearing Room
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Hyannis, MA 02601
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1 DEC '25 PM 1:43
BARNSTABLE TOWN CLERK

TOWN COUNCIL MEETING AGENDA
Including Joint Meeting with the School Committee
December 04, 2025

6:00 pm

Councillors:

Craig Tamash
President
Precinct 4

Kris Clark
Vice President
Precinct 11

Gordon Starr
Precinct 1

Thomas Keane
Precinct 2

Betty Ludtke
Precinct 3

John Crow
Precinct 5

William Crocker
Precinct 6

Seth Burdick
Precinct 7

Lisa DaLuz
Precinct 8

Charles Bloom
Precinct 9

Matthew P. Levesque
Precinct 10

Barry Sheingold
Precinct 12

Felicia Penn
Precinct 13

The December 04, 2025 Meeting of the Barnstable Town Council shall be conducted in person at 367 Main Street 2nd Floor James H. Crocker Jr. Hearing Room, Hyannis, MA. The public may attend in person or participate remotely in Public Comment or during a Public Hearing via the Zoom link listed below.

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 that will be distributed to the entire Town Council may be submitted to:
<https://tobweb.town.barnstable.ma.us/boardscommittees/towncouncil/Town Council/Agenda -Comment.asp>

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

Join Zoom Meeting <https://townofbarnstable-us.zoom.us/j/83805869809> Meeting ID: 838 0586 9809
US Toll-free • 888 475 4499

PUBLIC SESSION

1. ROLL CALL

2. PLEDGE OF ALLEGIANCE

3. MOMENT OF SILENCE

4. PUBLIC COMMENT

5. COUNCIL RESPONSE TO PUBLIC COMMENT

6. JOINT MEETING WITH SCHOOL COMMITTEE

School Committee Meeting – Call to Order and Roll Call

- Joint meeting of the Town Council and School Committee to review the financial condition of the town, revenue and expenditure forecasts and other relevant information in order to develop a coordinated budget

Adjournment of School Committee Meeting

7. TOWN MANAGER COMMUNICATIONS (Pre-Recorded and available on Video on Demand on the Town website)

8. MINUTES

- ACT ON PUBLIC SESSION MINUTES: November 20, 2025

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

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

- **Recognition of Inside Barnstable Town Government - Sue French, Meg Loughran, Arthur Caiado, and Deb Brunelle**
- **Presentation by Frank Frederickson, Barnstable County Delegate, on the County Home Sales Tax Proposal**
- **Presentation by Doug Crook, Chair, Shellfish Committee**

10. ORDERS OF THE DAY

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

11. TOWN COUNCIL NOMINATIONS OF 2026 OFFICERS

- **President**
- **Vice President**

12. ADJOURNMENT

NEXT REGULAR MEETING: December 11, 2025

ITEM NO.	INDEX TITLE	PAGE
A.	OLD BUSINESS	
2026-050	Allocation of Tax Levy Fiscal Year 2026 – Tax Factor (Public Hearing) (Majority Vote)	5-7
2026-051	Allocation of Tax Levy Fiscal Year 2026 – Residential Exemption (May be acted upon) (Majority Vote)	8-9
2026-058	Appropriation Order in the amount of \$721,935 and borrowing authorization reduction for the Hyannis Golf Course Club House Restoration Project (Public Hearing) (Roll Call Majority Vote Full Council)	10-11
2026-059	Appropriation Order in the amount of \$1,000,000 to complete the Culinary Kitchen Project at Barnstable High School (Public Hearing) (Roll Call Majority Vote Full Council)	12-13
2026-060	Appropriation Order in the amount of \$200,000 for the purpose of funding a shortfall in the Insurance Premium and Deductible Budget for Fiscal Year 2026 (Public Hearing) (Roll Call Majority Vote Full Council)	14-15
2026-061	Appropriation Order in the amount of \$400,000 for the purpose of funding outside counsel expenses of the Legal Department (Public Hearing) (Roll Call Majority Vote Full Council)	16-17
2026-062	Order authorizing and approving a Conservation Restriction to be granted by the Town to Barnstable Land Trust, Inc. upon 1.05± acres of property at 71 Harju Road in Centerville (May be acted upon) (Majority Vote)	18-39
2026-063	Order Authorizing and approving a Conservation Restriction to be granted by the Town to Barnstable Land Trust, Inc. upon 2.57± acres of property at 111 Prince Avenue in Marstons Mills (May be acted upon) (Majority Vote)	40-63
B.	NEW BUSINESS	
2026-065	Authorization to contract for and expend a Fiscal Year 2026 911 Department Support and Incentive Grant in the amount of \$270,026 from the Commonwealth of Massachusetts, Executive Office of Public Safety and Security for the Barnstable Police Department personnel expenses (May be acted upon) (Majority Vote)	64-65
2026-066	Authorization to contract for and expend a Fiscal Year 2026 Municipal Road Safety Grant in the amount of \$64,699.53 from the Commonwealth of Massachusetts, Executive Office of Public Safety and Security for traffic enforcement, equipment and driver education (May be acted upon) (Majority Vote)	66-67
2026-067	Authorization to contract for and expend a Fiscal Year 2026 State 911 Department Emergency Medical Dispatch Grant in the amount of \$21,202.50 from the Commonwealth of Massachusetts, Executive Office of Public Safety and Security for the purpose of funding emergency dispatch expenses in the Barnstable Police Department (May be acted upon) (Majority Vote)	68-69
2026-068	Appropriation and Loan Order in the amount of \$350,000 for a feasibility study and schematic design for the Roof Replacement Project at Barnstable High School (Refer to Public Hearing 12/11/2025)	70-71

2026-069	Appropriation and Loan Order in the amount of \$350,000 for a feasibility study and schematic design for the Roof Replacement Project at Barnstable Intermediate School (Refer to Public Hearing 12/11/2025)	72-73
2026-070	Resolve appointing Paula Hersey to the Regional District School Committee for the Cape Cod Regional Technical High School District (First Reading) (Refer to Second Reading 12/11/2025)	74-75

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) (Majority Vote)

BARNSTABLE TOWN COUNCIL

ITEM# 2026-050

INTRO: 10/23/2025, 11/06/2025, 11/20/2025, 12/04/2025

2026-050 ALLOCATION OF TAX LEVY FISCAL YEAR 2026 – TAX FACTOR

RESOLVED: That the Town Council hereby votes to classify the Town of Barnstable under M.G.L. c. 40, § 56 at a Residential Factor of 1 (one) for the Fiscal Year 2026.

SPONSOR: Mark S. Ells, Town Manager

DATE	ACTION TAKEN
<u>10/23/2025</u>	<u>Refer to Public Hearing 11/06/2025</u>
<u>11/06/2025</u>	<u>Open and continued Public Hearing to 11/20/2025</u>
<u>11/20/2025</u>	<u>Open and continued to Public Hearing to 12/04/2025</u>

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

BARNSTABLE TOWN COUNCIL

ITEM# 2026-050

INTRO: 10/23/2025, 11/06/2025, 11/20/2025, 12/04/2025

SUMMARY

TO: Town Council
FROM: Mark S. Ells, Town Manager
THROUGH: Mark A. Milne, Finance Director
DATE: October 16, 2025
SUBJECT: Allocation of Tax Levy Fiscal Year 2026 – Tax Factor

BACKGROUND: Under Massachusetts General Laws, c. 40, § 56, the Town Council is annually charged with determining the Allocation of Local Property Taxes by the adoption of a Minimum Residential Factor. This tax levy-shifting tool will not change the overall amount of the tax levy to be raised in Fiscal Year 2026; rather it allows the town to shift a portion of the tax levy between classes of property. The residential factor, commonly referred to as the “Split Tax Rate”, allows the Town Council to create separate tax rates; one for residential property owners and a separate one for commercial, industrial, and personal property (CIP) owners. Under a Residential Factor of 1, all property owners would pay taxes at the same rate per \$1,000 of valuation. For Fiscal Year 2026 the single tax rate is \$5.96 (tax levy of \$156,203,458 divided by total valuation of \$26,208,414,825 x \$1,000). The maximum permissible shift would increase the CIP tax rate by 150%, which would result in a CIP tax rate of \$8.95. Since 2007, the Town Council’s policy has been to select a Residential Factor of 1.

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

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

Class	Assessed Valuation	% Share	Combined RES/OS, CIP
Residential	\$23,570,993,873	89.9367%	
Open Space	\$0	0.0000%	89.9367%
Commercial	\$1,990,367,522	7.5944%	
Industrial	\$113,308,100	0.4323%	
Personal Property	\$533,745,330	2.0365%	10.0633%
Total	\$26,208,414,825	100.0000%	100.0000%

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

The Maximum Share of Levy for Commercial/Industrial/Personal Property: $150\% \div 10.0633\% = 14.9056\%$ (Max % Share).

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

Minimum Share of Levy for Residential: 100% - 14.9056% (Max CIP % Share) = 85.0944% (Min % Share)

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

Minimum Residential Factor (MRF): 85.0944% (Min % Share) ÷ 89.9367% = 94.6159% (Minimum Residential Factor)

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

MINIMUM RESIDENTIAL FACTOR: 94.6159%; G. L. Chapter 58, Section 1A mandates a minimum residential factor of not less than 65 percent.

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

FISCAL IMPACT: A factor greater than one (1) would shift more of the tax levy to the commercial, industrial, and personal property (CIP) tax classifications. For example, every 5% shift would result in over \$786,000 being shifted from the Residential class to the CIP class: with a tax rate reduction of \$0.03 to \$0.04 in the residential rate and an increase of about \$0.30 in the CIP tax rate. The tax rates and tax levies for each class of property are illustrated in the table below using 5% shifts.

CIP Shift	Levy Amounts					Estimated Tax Rates			
	Res LA	Comm LA	Ind LA	PP LA	Total LA	Res ET	Comm ET	Ind ET	PP ET
1.0000	140,568,652	11,869,813	675,727	3,183,059	156,297,251	6.67	5.96	5.96	5.96
1.0500	139,782,222	12,463,303	709,514	3,342,212	156,297,251	6.63	6.26	6.26	6.26
1.1000	138,995,792	13,056,794	743,300	3,501,365	156,297,251	6.60	6.56	6.56	6.56
1.1500	138,209,362	13,650,284	777,087	3,660,518	156,297,251	6.56	6.86	6.86	6.86
1.2000	137,422,932	14,243,775	810,873	3,819,671	156,297,251	6.52	7.16	7.16	7.16
1.2500	136,636,502	14,837,266	844,659	3,978,824	156,297,251	6.49	7.45	7.45	7.45
1.3000	135,850,072	15,430,756	878,446	4,137,977	156,297,251	6.45	7.75	7.75	7.75
1.3500	135,063,642	16,024,247	912,232	4,297,130	156,297,251	6.41	8.05	8.05	8.05
1.4000	134,277,213	16,617,738	946,018	4,456,282	156,297,251	6.37	8.35	8.35	8.35
1.4500	133,490,783	17,211,228	979,805	4,615,435	156,297,251	6.34	8.65	8.65	8.65
1.5000	132,704,353	17,804,719	1,013,591	4,774,588	156,297,251	6.30	8.95	8.95	8.95

STAFF ASSISTANCE: John Curran, Director of Assessing, Mark A. Milne, Finance Director

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

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

BARNSTABLE TOWN COUNCIL

ITEM# 2026-051

INTRO: 10/23/2025, 11/06/2025, 11/20/2025, 12/04/2025

2026-051 ALLOCATION OF TAX LEVY FISCAL YEAR 2026 – RESIDENTIAL EXEMPTION

RESOLVED: That the Town Council hereby votes to adopt a Residential Exemption of twenty-five percent (25%) for Fiscal Year 2026.

SPONSOR: Mark S. Ells, Town Manager

DATE	ACTION TAKEN
<u>10/23/2025</u>	<u>First Reading</u>
<u>11/06/2025</u>	<u>Continue to 11/20/2025</u>
<u>11/20/2025</u>	<u>Continued to 12/04/2025</u>

____ Read Item
____ Rationale
____ Council Discussion
____ Vote

BARNSTABLE TOWN COUNCIL

ITEM# 2026-051

INTRO: 10/23/2025, 11/06/2025, 11/20/2025, 12/04/2025

SUMMARY

TO: Town Council
FROM: Mark S. Ells, Town Manager
THROUGH: Mark A. Milne, Finance Director
DATE: October 16, 2025
SUBJECT: Allocation of Tax Levy Fiscal Year 2026 – Residential Exemption

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

ANALYSIS: The exemption is calculated on the average residential parcel value, which is \$916,696 in Fiscal Year 2026. Using a 25% exemption (amount voted in FY25) the value of the exemption in FY26 would be \$229,174. The assessed property value is then reduced by the value of the exemption before the tax rate is applied to determine the tax bill amount. Since the exemption removes an amount of the taxable residential property value subject to taxation, and the tax levy paid by the residential class remains the same, the tax rate for this class of property increases. The lower the property value the greater the tax savings for a qualifying property. All non-qualifying properties pay more. This is illustrated in the table below.

Assessed Value	25% Residential Exemption	Taxable Value	Tax Rate no Exemption	Tax Rate 25% Exemption	Qualifying Property			Tax Bill Non-Qualifying Property	Additional Tax
					Tax Bill no Exemption	Tax Bill 25% Exemption	Savings (Additional Tax)		
\$500,000	\$229,174	\$270,826	\$5.96	\$6.67	\$2,980	\$1,806	\$1,174	\$3,335	\$355
\$750,000	\$229,174	\$520,826	\$5.96	\$6.67	\$4,470	\$3,474	\$996	\$5,003	\$533
\$1,000,000	\$229,174	\$770,826	\$5.96	\$6.67	\$5,960	\$5,141	\$819	\$6,670	\$710
\$1,250,000	\$229,174	\$1,020,826	\$5.96	\$6.67	\$7,450	\$6,809	\$641	\$8,338	\$888
\$1,500,000	\$229,174	\$1,270,826	\$5.96	\$6.67	\$8,940	\$8,476	\$464	\$10,005	\$1,065
\$1,750,000	\$229,174	\$1,520,826	\$5.96	\$6.67	\$10,430	\$10,144	\$286	\$11,673	\$1,243
\$2,000,000	\$229,174	\$1,770,826	\$5.96	\$6.67	\$11,920	\$11,811	\$109	\$13,340	\$1,420
\$2,208,883	\$229,174	\$1,979,709	\$5.96	\$6.67	\$13,165	\$13,205	-\$40	\$14,733	\$1,568
\$2,500,000	\$229,174	\$2,270,826	\$5.96	\$6.67	\$14,900	\$15,146	-\$246	\$16,675	\$1,775

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

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

BARNSTABLE TOWN COUNCIL

ITEM#2026-058
INTRO: 11/20/25, 12/04/2025

2026-058 APPROPRIATION ORDER IN THE AMOUNT OF \$721,935 AND FURTHER REDUCTION IN BORROWING AUTHORIZATION FOR THE HYANNIS GOLF COURSE CLUB HOUSE RESTORATION PROJECT

ORDERED: That the insurance proceeds received by the Town in the amount of **\$721,935** be appropriated for the purpose of funding the Hyannis Golf Course Club House Restoration Project, and that the borrowing authorization under Town Council Order 2024-138 approved on May 02, 2024 in the amount of **\$2,950,000**, which was reduced on June 26, 2025 under Town Council Order 2025-190 by the amount of **\$583,242** to **\$2,366,759**, be further reduced to **\$1,644,824**

SPONSOR:Mark S. Ells, Town Manager

DATE	ACTION TAKEN
<u>11/20/2025</u>	<u>Refer to Public Hearing 12/04/2025</u>

_____	Read Item
_____	Rationale
_____	Public Hearing
_____	Close Public Hearing
_____	Council Discussion
_____	Vote

BARNSTABLE TOWN COUNCIL

ITEM#2026-058

INTRO: 11/20/25, 12/04/2025

SUMMARY

TO: Town Council
FROM: Mark Ells, Town Manager
DATE: November 20, 2025
SUBJECT: Appropriation Order in the amount of **\$721,935** and borrowing authorization reduction for the Hyannis Golf Course Club House Restoration Project

BACKGROUND: The Hyannis Golf Course club house sustained extensive damage due to flooding resulting from a ruptured water pipe in the winter of 2023. Due to the extent of damage, the existing building needed to be brought up to code as part of the reconstruction. The town has been working with the insurance company for a settlement which will cover a portion of the construction costs. As the town continued to negotiate the insurance settlement an appropriation and borrowing authorization for \$2,950,000 was approved by the Town Council under order 2024-138 in order to proceed with the reconstruction.

On June 26, 2025, the Town Council under order 2025-190, approved a partial insurance settlement appropriation order of \$583,241 to offset the \$2,950,000 borrowing amount. The final settlement money associated with this order will further lower the required total borrowing for the project to \$1,644,824.

RATIONALE: On September 26, 2025, the town received a final insurance loss reimbursement for \$721,935. In accordance with Massachusetts General Laws Chapter 44, section 53, insurance reimbursements of \$150,000 and greater must be appropriated. This represents a total cash settlement of \$1,305,176. In addition to the cash sent to the Town, there was a total of \$476,018.12 in payments made directly to contractors and vendors as part of the claim, bringing the global settlement amount for this claim to \$1,781,193.96.

FINANCIAL IMPACT: The total appropriation for the club house renovation will remain at \$2,950,000. This appropriation will not add to the project's budget but will reduce the borrowing authorization to \$1,644,824. The Town anticipates issuing the loan for this project in Fiscal Year 2026. Beginning in fiscal year 2027, the Golf Enterprise Fund Operating Budget will include an annual loan payment for this project which is estimated to be around \$121,000 per year for 20 years.

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

STAFF ASSISTANCE: Mark A. Milne, Director of Finance, David Anthony, Director of Asset Management.

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

BARNSTABLE TOWN COUNCIL

ITEM# 2026-059
INTRO: 11/20/2025, 12/04/2025

2026-059 APPROPRIATION ORDER IN THE AMOUNT OF \$1,000,000 FOR THE CULINARY KITCHEN PROJECT AT BARNSTABLE HIGH SCHOOL

ORDERED: That the amount of **\$1,000,000** be appropriated from the General Fund Reserves for the purpose of funding the Barnstable High School Culinary Kitchen Project as outlined in the Fiscal Year 2026 – Fiscal Year 2030 Capital Improvement Plan, including the payment of costs incidental or related thereto; and that the School Committee is authorized to contract for and expend the appropriation made available for these purposes.

SPONSORS: Mark S. Ells, Town Manager, and Superintendent Sara Ahern, at the request of the School Committee

DATE	ACTION TAKEN
<u>11/20/2025</u>	<u>Refer to Public Hearing 12/04/2025</u>

- _____ Read Item
- _____ Rationale
- _____ Public Hearing
- _____ Close Public Hearing
- _____ Council Discussion
- _____ Vote

BARNSTABLE TOWN COUNCIL

ITEM# 2026-059

INTRO: 11/20/2025, 12/04/2025

SUMMARY

TO: Town Council
FROM: Mark S. Ells, Town Manager and Sara Ahern, Superintendent, Barnstable Public Schools
THROUGH: Chris Dwelley, Deputy Finance Director for School Operations; Doug Boulanger, Director of School Facilities
DATE: November 06, 2025
SUBJECT: Appropriation Order in the amount of **\$1,000,000** to complete the Culinary Kitchen Project at Barnstable High School

BACKGROUND: \$550,000 was appropriated as part of the Fiscal Year 2026 – Fiscal Year 2030 Capital Improvement Plan to complete the Culinary Kitchen Project at the Barnstable High School. The project is the installation of a full-service commercial / culinary arts type kitchen, complete with HVAC, commercial exhaust equipment and all necessary equipment. The project was put out to bid in August using a cost estimate produced by the project architects. Unfortunately, bids received were higher than expected, necessitating additional funds to complete the project. The School Committee on November 5, 2025, voted to recommend the use of school savings to meet this appropriation and complete this project.

FINANCIAL IMPACT: Funding for this appropriation is recommended to be provided from the General Fund Reserves from the portion dedicated to the School Savings account. The General Fund Reserves were last certified on July 1, 2025 at \$36.2 million, and \$14.7 million is dedicated to the School Savings account. We do not anticipate the need for future appropriations. A financial breakdown of the project is as follows:

\$399,770 – Original Appropriation Fiscal Year 2023 CIP
\$550,000 – Phase II Appropriation Fiscal Year 2026 CIP
\$1,000,000 – Appropriation Request

\$1,949,770 – Total Project Funds

\$1,751,700 – Lowest responsive and responsible bidder

\$198,070 – Project Balance (Includes Project Contingencies)

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

STAFF ASSISTANCE: Chris Dwelley, Deputy Finance Director for School Operations; Doug Boulanger, Director of School Facilities

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

BARNSTABLE TOWN COUNCIL

ITEM#2026-060
INTRO: 11/20/2025, 12/04/2025

2026-060 APPROPRIATION ORDER IN THE AMOUNT OF \$200,000 FOR THE PURPOSE OF FUNDING A SHORTFALL IN THE INSURANCE PREMIUM AND DEDUCTIBLE BUDGET FOR FISCAL YEAR 2026

ORDERED: That the amount of **\$200,000** be appropriated from the General Fund Reserves for the purpose of funding the additional premium and deductible costs associated with the Town's casualty insurance policies in Fiscal Year 2026.

SPONSOR: Mark S. Ells, Town Manager

DATE	ACTION TAKEN
<u>11/20/2025</u>	<u>Refer to Public Hearing 12/04/2025</u>

____ Read Item
____ Rationale
____ Public Hearing
____ Close Public Hearing
____ Council Discussion
____ Vote

BARNSTABLE TOWN COUNCIL

ITEM#2026-060

INTRO: 11/20/2025, 12/04/2025

SUMMARY

TO: Town Council
FROM: Mark Ells, Town Manager
THROUGH: David Anthony, Director of Asset Management
DATE: November 20, 2025
SUBJECT: Appropriation Order in the amount of **\$200,000** for the purpose of funding a shortfall in the Insurance Premium and Deductible Budget for Fiscal Year 2026

BACKGROUND: The Town purchases Insurance Coverage for its assets and its liabilities each year. These policies provide catastrophic protection against major losses and claims against the Town. Coverage includes the School and Airport operations.

RATIONALE: The Town procures premium based liability, property, casualty, automobile, specialty and fire insurance on all its land, building, and equipment. These policies also carry deductibles that must first be met before insurance coverage kicks in. The total listed value of the town's "fixed asset" holdings exceeds \$800 million. In addition, specialty coverages, including Public Officials Liability, School Board Legal Liability, Aviation Liability, limited pollution coverage, police accident and health insurance, are secured each year to protect the activities and employees of the town, school, and enterprise operations. Many of these coverages extend over to the boards and commissions, and the many volunteers who annually participate in local municipal operations.

During budget development each fall, market conditions are analyzed to try and project the cost of renewal of the Town's standard insurance policies as of the following July 1. The approved budget for Fiscal Year 2026 is \$2,800,000 for all property, specialty, umbrella and cyber coverages. This does not include any deductibles for which the Town may be responsible. The actual premiums for renewal require an additional \$100,000 of funding for Fiscal Year 2026. A number of factors contributed to the higher-than-expected renewal costs for insurance. Several pump stations, including the one at Phinney's Lane and Route 28, were added for the full year in Fiscal Year 2026; the value of our building assets due to mechanical improvements increase each year; additional assets (vehicles and equipment, etc.) are added each year, replacements of older equipment generally result in higher values to insure, and market conditions. Our cyber liability and exposure as well has increased at a higher-than-expected rate due to the cost to correct and recover data in a post cyber-attack scenarios.

This request also includes \$100,000 to fund the deductible associated with a loss at the Barnstable Adult Community Center that occurred on Sunday, December 15, 2024. The total value of this loss is expected to be between \$130,000 and \$160,000. Insurance coverage will pay for the costs in excess of the Town's \$100,000 deductible. Funding for the deductible was appropriated in Fiscal Year 2025 but since a contract was not executed by June 30, 2025, for the repairs the appropriation lapsed and the funds were returned to the General fund surplus.

FISCAL IMPACT: Funding for this appropriation will be provided from the General Fund reserves which were last certified by the state on July 1, 2025, for \$36.2 million. This increase is expected to be carried forward into the Fiscal Year 2027 budget development due to the rising cost of insurance.

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

STAFF ASSISTANCE: David Anthony, Director of Asset Management.

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

BARNSTABLE TOWN COUNCIL

ITEM# 2026-061

INTRO: 11/20/2025, 12/04/2025

2026-061 APPROPRIATION ORDER IN THE AMOUNT OF \$400,000 FOR THE PURPOSE OF FUNDING OUTSIDE COUNSEL EXPENSES OF THE LEGAL DEPARTMENT

ORDERED:That the amount of **\$400,000** be appropriated from the General Fund Reserves for the purpose of paying operating expenses of the Legal Department for the services of the law firm of Anderson & Kreiger LLP, which is serving as outside counsel to the Town with respect to the lawsuit filed against the Town in July 2024 by the Conservation Law Foundation (CLF) and the November 6, 2025 Notice of Intent to file suit under state law sent by CLF to the Town.

SPONSOR: Mark S. Ells, Town Manager

DATE	ACTION TAKEN
<u>11/20/2025</u>	<u>Refer to Public Hearing 12/04/2025</u>

_____	Read Item
_____	Rationale
_____	Public Hearing
_____	Close Public Hearing
_____	Council Discussion
_____	Vote

BARNSTABLE TOWN COUNCIL

ITEM# 2026-061

INTRO: 11/20/2025, 12/04/2025

SUMMARY

TO: Town Council
FROM: Mark S. Ells, Town Manager
THROUGH: Karen L. Nober, Town Attorney
DATE: November 20, 2025
SUBJECT: Appropriation Order in the amount of **\$400,000** for the purpose of funding outside counsel expenses of the Legal Department

BACKGROUND: In February 2021, the Conservation Law Foundation (“CLF”) filed a lawsuit against the Town of Barnstable alleging violation of the federal Clean Water Act for operating the Town’s wastewater treatment facility without obtaining a National Pollutant Discharge Elimination System permit for discharges from the facility to groundwater. In October 2021, the Town filed a motion to dismiss the Clean Water Act lawsuit, and in July 2022, U.S. District Court Judge Burroughs granted the Town’s motion and issued an Order of Dismissal. CLF then filed a motion for reconsideration, which Judge Burroughs denied in January 2023. However, she amended her Order of Dismissal to be a dismissal without prejudice, meaning that CLF could file a new lawsuit against the Town.

In February 2023, CLF sent the Town a new Notice of Intent to Sue, and on July 2024, CLF filed a new suit in federal district court against the Town for alleged violations of the Clean Water Act. The Town filed a motion to dismiss, and on June 5, 2025, the Town’s motion was granted in part and denied in part. On July 31, 2025, Judge Burroughs denied the Town’s motion for an interlocutory appeal, and the lawsuit is now in the discovery phase.

On November 6, 2025, CLF sent the Town a Notice of Intent to Sue for environmental claims under state law. The funding in this requested appropriation order would be used to continue to pay the discovery-related costs for the Clean Water Act litigation for the first quarter of 2026 as well as the costs associated with responding to the new threatened state law claims.

FISCAL IMPACT: The relief and penalties sought by CLF under the Clean Water Act would have a potentially substantial financial impact on the Town, and it is therefore critically important that the Town continue to have the benefit of representation by counsel with significant experience and expertise in these types of matters. It is unclear at this time what the financial impact would be of the relief sought under any state law claims.

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

STAFF ASSISTANCE: Karen L. Nober, Town Attorney

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

BARNSTABLE TOWN COUNCIL

ITEM# 2026-062

INTRO: 11/20/2025, 12/05/2025

2026-062 ORDER AUTHORIZING AND APPROVING A CONSERVATION RESTRICTION TO BE GRANTED BY THE TOWN TO BARNSTABLE LAND TRUST, INC. UPON 1.05± ACRES OF PROPERTY AT 71 HARJU ROAD IN CENTERVILLE

ORDERED: That, pursuant to M.G.L. c. 184, section 32, the Town Council hereby approves the Conservation Restriction (“CR”) substantially in the form attached hereto to be granted by the Town of Barnstable to Barnstable Land Trust, Inc. (“BLT”) upon 1.05± acres of property located at 71 Harju Road in Centerville, shown as Assessors Map 147, Parcel 079, and acquired by the Town for open space and recreation purposes in accordance with Item No. 2014-060, passed February 27, 2014, and a deed recorded at the Barnstable County of Registry of Deeds in Book 28077, Page 269. It is further ordered that the Town Manager is authorized to negotiate and finalize the terms of the CR, subject to the approval of the Secretary of Energy and Environmental Affairs, and to execute, receive, deliver and record any written instruments to effectuate this Order and complete the grant of the CR to BLT consistent with the intent of said Item No. 2014-060; and that the Town Council President is authorized to sign the CR on the Town Council’s behalf.

SPONSOR: Mark S. Ells, Town Manager

DATE	ACTION TAKEN
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_____	_____
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_____	_____
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_____	Read Item
_____	Rationale
_____	Council Discussion
_____	Vote

BARNSTABLE TOWN COUNCIL

ITEM# 2026-062

INTRO: 11/20/2025, 12/04/2025

SUMMARY

TO: Town Council
FROM: Mark S. Ells, Town Manager
THROUGH: Thomas J. LaRosa, First Assistant Town Attorney
DATE: December 4, 2025
SUBJECT: Order authorizing and approving a Conservation Restriction to be granted by the Town to Barnstable Land Trust, Inc. upon 1.05± acres of property at 71 Harju Road in Centerville

BACKGROUND: Pursuant to Item No. 2014-060, passed February 27, 2014, the Town Council appropriated \$125,000 in Community Preservation Act (“CPA”) funds, as recommended by the Community Preservation Committee, and authorized the Town Manager to use those CPA funds to acquire land consisting of 1.05± acres and located at 71 Harju Road in Centerville. The Town followed through on that authorization and acquired the land under a deed recorded on April 9, 2014, at the Barnstable County of Registry of Deeds in Book 28077, Page 269.

Section 12(a) of the CPA, Chapter 44B of the General Laws, requires that a real property interest acquired with CPA funds shall be bound with a permanent deed restriction meeting the requirements of sections 31 and 32 of Chapter 184 of the General Law. In furtherance of meeting this statutory requirement, the 2014 vote included a general authorization “to grant conservation restrictions to government entities and non-profit organizations.” However, the vote did not name the organization to which the CR would be granted or specify a process for identifying the organization to hold the CR. The present vote would further the intent of the 2014 vote by specifically authorizing the Town Manager to finalize and grant the CR to BLT. Finalizing and granting the CR would fulfill the Town’s obligation under Section 12(a) of the CPA.

Section 32 of Chapter 184 of the General Laws requires that a CR held by a land trust, such as BLT, must be approved by the Secretary of Energy and Environmental Affairs, the Town Manager and the Town Council so that the CR may have a perpetual duration and otherwise have the protections afforded under section 32. This Item would provide the Town Council’s required approval of the CR and authorize the Town Council President to sign the CR on behalf of the Town Council.

FISCAL IMPACT: No fiscal impact

GRANTOR: TOWN OF BARNSTABLE

GRANTEE: BARNSTABLE LAND TRUST, INC.

PROPERTY ADDRESS: 71 Harju Road, (Centerville Village), Barnstable, Massachusetts

GRANTOR'S TITLE: Barnstable County Registry of Deeds in Book 28077, Page 269

GRANT OF CONSERVATION RESTRICTION

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**, pursuant to Item No. 2026- of the Barnstable Town Council, passed , for its successors and assigns ("Grantor"), being the sole owner of the Premises as defined herein, for nominal consideration, acting pursuant to Sections 31 and 32 of Chapter 184 of the Massachusetts General Laws, grants, with quitclaim covenants, to **BARNSTABLE LAND TRUST, INC.**, a Massachusetts charitable corporation with an address of 1540 Main Street, West Barnstable, Massachusetts 02668, its successors and permitted assigns ("Grantee"), IN PERPETUITY and exclusively for conservation purposes, the following described CONSERVATION RESTRICTION, (hereinafter referred to as "Restriction"), on the entirety of a parcel of land totaling approximately 1.05 acres, located in the Town of Barnstable (Centerville), County of Barnstable, Commonwealth of Massachusetts ("Premises"), said Premises being more particularly described in Exhibit A and shown on the sketch plan in Exhibit B, both of which are attached hereto, and made a part hereof. The Grantor and Grantee, their successors and assigns, are bound by and subject to the terms and conditions of this Restriction.

The conveyance of this Restriction is made pursuant to the vote of the Barnstable Town Council, in Item No. 2026-, passed _____, 2025 A copy of the Town Council authorization is attached hereto as Exhibit C. The fee interest in the Premises was acquired by Grantor, as authorized by the Barnstable Town Council pursuant to Item No. 2014-060, passed February 27, 2015, using funds appropriated under the Community Preservation Act, G.L. c. 44B, which requires the conveyance of this Restriction.

I. PURPOSES:

This 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 Restriction are to assure that the Premises, while permitting the acts and uses described in Article III herein, will be retained in perpetuity predominately in its natural, scenic and open condition; to protect and promote the conservation of water supplies, native vegetation, wetlands, soils, natural watercourses, habitat and wildlife thereon; to protect and enhance the value of the abutting areas; to allow and maintain appropriate public access for enjoyment of the wildlife and open space resources and for passive recreation. The conservation and permanent protection of the Premises will yield a significant public benefit for the following reasons (hereafter, the "conservation values"):

- A. The Premises contains 1.05 acres of pitch pine woodland, approximately. Adjacent to the Premises to the southwest and to the east across Harju Road, are approximately 35 acres of town-owned, publicly accessible conservation land, the Lumbert Pond Conservation Area. Conservation of the Premises will help maintain the scenic and natural character of the Village of Centerville, and preserve open space clearly described in Federal, State,

and local government policies. A trail crossing the Premises is part of a larger half-mile trail system, frequented by neighbors and visitors who enjoy the pine woods, birdwatching, pond views and nature walks in this area.

- B. The entire Premises is designated as Rare Species Core Habitat, as defined by the Massachusetts Department of Fisheries and Wildlife, acting by and through its Natural Heritage and Endangered Species Program (NHESP). The Premises contains suitable habitat for the eastern box turtle, a state-listed species of special concern.
- C. The Premises was designated by NHESP as Core Habitat in BioMap. BioMap, published in 2010, and 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.
- D. The Premises falls within the Massachusetts River Protection Act-designated Riverfront Area of Lumbert Mill Pond on the Skunknett River. The protection of the Premises will assist in the health of the Skunknett River watershed that feeds into the Bumps River and East Bay as a part of the Town's Skunknett River Wetland Corridor, a 319-acre greenbelt of protected land of the Town of Barnstable, Barnstable Land Trust, Massachusetts Audubon and the Centerville Osterville Marston Mills (COMM) Fire District.
- E. Maintaining the Premises as open space will contribute to long-term water quality protection for not only Lumbert Mill Pond and the Skunknett River but also associated public water supplies. The Premises is 100% within Zone II Areas of Contribution to Public Water Supplies, specifically, Lumbert Mill Wells #5 and #9, and is entirely within the Town of Barnstable Wellhead Protection District.
- F. By conserving the Premises and preventing additional housing development, and related septic inputs within the Town of Barnstable's Resource Protection District and Saltwater Estuary Protection District, this Restriction will protect a Centerville watershed identified by the Town of Barnstable as an area requiring a decrease in overall nitrogen discharges to meet state-mandated total maximum daily loads.
- G. Consistency with Clearly Delineated Barnstable County Conservation Policy. Protection of the Premises will assist in achieving Barnstable County conservation goals. In 1991, the Barnstable County Assembly of Delegates, pursuant to the Cape Cod Commission Act, Chapter 716 of the 1989, as amended, adopted a Regional Policy Plan (as amended in 1996, 2002, 2009, 2012, 2018 and 2021), which identifies the following goals (*references are to the 2018 RPP, amended March 2021 Plan*):
- "Locate development away from sensitive resource areas and habitats" (p. 61);
 - "To protect, preserve, or restore the quality and natural values and functions of inland and coastal wetlands and their buffers" (Wetland Resources Goal, p. 61);
 - "Protect wetlands and their buffers from vegetation and grade changes."

- “To protect, preserve, or restore wildlife and plant habitat to maintain the region’s natural diversity” (Wildlife and Plant Habitat Goal, p. 61);
- “Maintain existing plant and wildlife populations and species diversity.”
- “To conserve, preserve, or enhance a network of open space that contributes to the region’s natural and community resources and systems” (Open Space Goal, p. 61);
- “Protect and preserve natural, cultural, and recreational resources;”
- “Maintain or increase the connectivity of open space;”
- “Protect or provide open space appropriate to context.” (Open Space Goal, p. 61).

Granting this Restriction will advance each of these goals. The protection of the Premises will assist in the health of the Skunknett River watershed that feeds into the Bumps River and East Bay as a part of the Town’s Skunknett River Wetland Corridor (Wetland Resources Goal), protect important BioMap wildlife and plant habitat (Wildlife and Plant Habitat Goal), and expand existing protected open space area (Open Space Goal).

H. Consistency with Clearly Delineated Town of Barnstable Conservation Policy. The Town of Barnstable holds the Premises for open space purposes and already makes the Premises available for appropriate public access, which will be subject to the Restriction. 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, and 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 2021-2022 identified under the Environment and Natural Resources priority area the goal to “(c)onserve 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” (p. 6).

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;
- protect groundwater quality for drinking purposes;
- preserve open space;
- to protect a trail;
- preserve important natural habitats of fish, wildlife or plants; and,
- limit or prevent construction on land of natural resource value.

Conservation of the Premises will advance each of these goals articulated by the Town of Barnstable by creating open space available for passive outdoor recreation, protecting land within a wellhead protection area and preserving wetland and upland wildlife habitat.

- I. Consistency with Clearly Delineated Federal Conservation Policy. Protection of the Premises meets the definition of “conservation purposes” as defined in 26 CFR 1.170A-14(d)(1), because its conservation would: protect the land for outdoor recreation by the general public; reserve the land for education regarding the natural world; protect wildlife habitats; and it would contribute to the preservation of open space because it is proximate to several other parcels already conserved.
- J. Consistency with Clearly Delineated State Conservation Policy. Protection of the Premises will further goals of Massachusetts Division of Fisheries 2015 Massachusetts State Wildlife Action Plan by protecting species and habitat in greatest need of conservation. Section 6B. of the State Wildlife Action Plan, “*Proactive Habitat Protection*” states “*For almost every species and habitat in greatest need of conservation in Massachusetts, this Plan recommends that appropriate areas be protected from development and managed for the long-term conservation of these species and habitats*”. Protection of the Premises will meet this goal by protecting an area of NHESP BioMap Core Habitat, containing habitat suitable for eastern box turtle, a state listed species of special concern, from development.
- K. These and other conservation values of the Premises, as well as its current uses, conditions, and state of improvement, are described in a Baseline Documentation Report (“Baseline Report”) prepared by Grantee with the cooperation of the Grantor, consisting of maps, photographs, and other documents and stored at the office of the Grantor. The Baseline Report (i) is acknowledged by Grantor and Grantee to be a complete and accurate representation of the condition and values of the Premises as of the date of this Restriction, and (ii) is intended to serve as an objective information baseline for subsequent monitoring of compliance with the terms of this Restriction as described herein. Notwithstanding the foregoing, the parties may utilize any evidence of the condition of the Premises at the time of this grant other than the Baseline Report, should the Baseline Report be unavailable or if it does not adequately address the issues presented.
- L. Therefore, preservation of the Premises will advance the open space, resource management and passive recreational goals and objectives of the Town of Barnstable and the Commonwealth of Massachusetts.

II. PROHIBITED 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:

- A. Construction or placing of any building, residential dwelling, mobile home, tennis court, ball fields, benches, swimming pool, artificial water impoundment, billboard, or other advertising display, landing strip or pad, roadway, asphalt or concrete pavement, antenna, utility pole, tower, wind turbine, solar array, aboveground or underground storage tank, or any other temporary or permanent structure or facility on, under or above the Premises.
- B. Placing, storing or dumping of equipment, mobile home, trailer, automotive vehicle or parts, soil, rock, sand, stumps, slash, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, waste, radioactive waste, or hazardous waste or other substance or material whatsoever.
- C. Mining, excavation, dredging or removal of any loam, peat, gravel, soil, sand, rock or other mineral substance, or natural deposit from the Premises or otherwise making topographical changes to the Premises.
- D. Pollution, alteration, depletion, diversion, channelization, damming, draining, or extraction of surface water, natural water courses, marshes, potential or certified vernal pools, subsurface water, or any other water bodies.
- E. Removal, destruction or cutting of trees, grasses, shrubs or other natural vegetation, including cutting for firewood or commercial harvesting and lumbering activities.
- F. Introduction of species of animals or plants that are not native to Barnstable County, as defined by current published lists of native species, including The Vascular Plants of Massachusetts: A County Checklist, by Bruce A. Sorrie and Paul Somers, published by the Massachusetts Division of Fisheries and Wildlife Natural Heritage & Endangered Species Program (1999) or as amended or contained in a similar professionally acceptable publication available in the future.
- G. Use of motorized or power-driven vehicles of any kind, including without limitation snowmobiles, motorbikes or all-terrain vehicles.
- H. Camping, hunting, or trapping unless for a proven nuisance to wildlife.
- I. Conveyance of a part or portion of the Premises alone or division or subdivision of the Premises or use or assignment of the dimensions, area or acreage of the Premises for purposes of subdivision or development of unrestricted land whether or not such land is owned by the Grantor, its successors and assigns, it being intended to keep the Premises in single ownership. (Conveyance of the Premises in its entirety shall be permitted.)
- J. Activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or wildlife habitat.

- K. The excavation of landscape features on the Premises with the intent of collecting or otherwise removing archaeological artifacts (prehistoric and/or historic) except by formal approval of the Massachusetts Historic Commission (MHC) through submission, with the concurrence of the Grantee, of a Project Notification Form (PNF) in accordance with Section 27C of Chapter 9 of the Massachusetts General Laws, and associated regulations, as amended.
- L. No portion of the Premises may be used towards any building, septic system or other development requirements on any other parcel outside the Premises.
- M. Any commercial, residential, or industrial uses.
- N. Any other use of the Premises or activity which is inconsistent with the purpose of this Restriction or which would materially impair its conservation values, or which is prohibited by federal, state or local law or regulation.

III. PERMITTED ACTIVITIES AND RESERVED RIGHTS: The Grantor reserves the right to conduct or permit the following activities on the Premises, but only if such uses and activities do not materially impair the conservation values and are not inconsistent with the purposes of this Restriction:

- A. Measures, such as the installation of fencing and signage, taken in order to prevent unauthorized vehicle entry and dumping, vandalism or other acts destructive to the Premises.
- B. With the prior approval of the Grantee, measures taken in order to protect landform stability (i.e., to maintain a naturally occurring feature on the land's surface, e.g., bank or hill from erosion.)
- C. The use of the Premises for passive recreational activities such as hiking, snowshoeing, cross-country skiing, hunting, nature study or research, and other like activities, including access by motorized wheelchairs or an Other Power-Driven Mobility Device (OPDMD).
- D. The maintenance and use of the existing unpaved way and trails on the Premises substantially in their present condition; and with the prior written approval of the Grantee, the relocation or construction of new trails, provided that all applicable federal, state, regional and local approvals are obtained in advance, and that any relocated trails or new trails are no wider than eight (8) feet.
- E. The erection and maintenance of signs identifying ownership of the Premises, the property boundaries, the Premises' status as a conservation reservation, the restrictions on the use of the Premises, the identity or location of trails, areas of interest, natural features or other characteristics of the Premises, or for providing other like information. The erection of signs, fencing or other barriers consistent with endangered species protection.
- F. Minimal cutting or removal of trees, shrubs and other vegetation and/or planting of native trees, shrubs and other vegetation for storm cleanup and public safety, to maintain or improve the Conservation Values protected by this Restriction; to prevent threat of injury or damage to persons or property; to prevent or mitigate pest infestation, blight or disease; to control, manage or eradicate non-native or invasive species not native to the wetland or forest; or to improve or protect wildlife habitat.

- G. The use of motorized vehicles (1) by persons with mobility impairments, including OPDMD, (2) by the Grantor as reasonably necessary to carry out activities permitted under this Restriction, (3) for access by Grantee for purposes set forth in Article VI, below, and (4) for access by police, fire, emergency, public works, or other governmental personnel carrying out their official duties. The use of motorized vehicles for the purposes described herein shall be limited to the existing trails or those trails that may be approved and installed pursuant to Article III.D; provided however, this limitation shall not apply to persons with mobility impairments using an OPDMD on the Premises. Notwithstanding the foregoing, the use of motorized vehicles for recreational purposes, such as dirt bikes, all-terrain vehicles, off-highway vehicles, and the like, is not permitted.
- H. Archaeological investigations consisting of site inspections and subsurface excavations subject to and in accordance with an Archaeological Field Investigation Permit issued by the State Archaeologist under G.L. c. 9, §26A, and associated regulations, and Grantee's written approval in accordance with Article IV, below.
- I. Such other non-prohibited activities or uses of the Premises may be permitted with the prior approval of the Grantee provided that the Grantee has made a finding, such finding to be documented in writing and kept on file at the office of the Grantee, that such activities are consistent with the Reserved Rights, do not impair the Conservation Values and Purposes of this Restriction, and, where feasible, result in a net gain in conservation value of the Premises.

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

The exercise of any right or obligation reserved by the Grantor under this Article III shall be in compliance with all applicable federal, state and local law. The inclusion of any Reserved Right in this Article III requiring a permit from a public agency does not imply that the Grantee or the Commonwealth takes any position on whether such permit should be issued.

IV. NOTICE AND APPROVAL:

- A. Notifying Grantee. Whenever notice to or approval by Grantee is required, Grantor shall notify or request approval from Grantee, by a method requiring proof of receipt, in writing not less than sixty (60) days prior to the date Grantor intends to undertake the activity in question, unless a different time period is specified herein. The notice shall:
1. Describe the nature, scope, design, location, timetable and any other material aspect of the proposed activity;
 2. Describe how the proposed activity complies with the terms and conditions of this Restriction, and will not materially impair the Purposes and/or Conservation Values;
 3. Identify all permits, licenses, or approvals required for the proposed activity, and the status of any such permits, licenses, or approvals; and
 4. Describe any other material aspect of the proposed activity in sufficient detail to permit the Grantee to make an informed judgment as to its consistency with the Purposes and Conservation Values.

- B. Grantee Review. Where Grantee's approval is required, Grantee shall grant or withhold approval in writing within sixty (60) days of receipt of Grantor's request. Grantee's approval shall not be unreasonably withheld but will only be granted upon a showing that the proposed activity will minimize impacts to the Conservation Values and will not materially impair the Purposes and/or Conservation Values. Grantee may require Grantor to secure expert review and evaluation of a proposed activity by a mutually agreed upon party.
- C. Resubmittal. Grantee's failure to respond within sixty (60) days of receipt shall not constitute approval of the request. Grantor may subsequently submit the same or a similar request for approval.

V. LEGAL REMEDIES OF THE GRANTEE; WAIVER:

- A. The rights hereby granted shall include the right to enforce this Restriction by appropriate legal proceedings including obtaining injunctive and other equitable relief against any violations, including, without limitation, relief requiring restoration of the Premises to its condition prior to the time of the injury complained of, it being agreed that the Grantee may have no adequate remedy at law, and shall be in addition to and not in limitation of any other rights and remedies available to the Grantee for the enforcement of this Restriction.
- B. Notwithstanding the foregoing, Grantee agrees to provide written notice to Grantor of any violation of this Restriction and to cooperate for a reasonable period of time, not to exceed sixty (60) days, to allow Grantor to remedy the violation, prior to resorting to legal or equitable means in resolving issues concerning alleged violations provided Grantor has ceased objectionable actions and is making a good faith effort to remedy the violation and Grantee reasonably determines there is no ongoing diminution of the conservation values of the Restriction.
- C. The Grantor and its successors and assigns shall each be liable under this section for any such violations of this Restriction as may exist during their respective periods of ownership of the Premises. Any new owner may be held responsible for any continuing violations existing during his or her period of ownership.
- D. By acceptance of this Restriction, the Grantee does not undertake any liability or obligation relating to the condition of the Premises pertaining to compliance with and including, but not limited to, hazardous materials, zoning, environmental laws and regulations, or acts not caused by the Grantee or its agents.
- E. If Grantee prevails in any action to enforce the terms of this Restriction, the Grantor or Grantor's heirs, successors and assigns, as the case may be, shall reimburse the Grantee for all reasonable costs and expenses, including reasonable attorney's fees, incurred in enforcing this Restriction or in taking reasonable measures to remedy or abate any violation thereof. If Grantor prevails in any action brought by Grantee to enforce the terms of this Restriction, the Grantee or its heirs, successors and assigns, as the case may be, shall, to the extent allowed by law, reimburse the Grantor for all reasonable costs and expenses, including attorney's fees,

incurred in defending such action to enforce this Restriction, provided the Grantee's action is deemed by the court or by other competent authority to be unreasonable or arbitrary and capricious.

- F. Enforcement of the terms of this Restriction shall be at the discretion of the Grantee. Any election or forbearance by the Grantee as to manner and timing of its right to enforce this Restriction or otherwise exercise its rights hereunder shall not be deemed or construed to be a waiver of such rights.
- G. The Grantor's financial obligations under this Restriction, including the payment of any costs or expenses or incurring any liabilities, are subject to appropriation by the Barnstable Town Council. The Grantor agrees to reasonably seek in good faith appropriations necessary to fulfill such obligations without borrowing money. Nothing in this Restriction shall allow or require any indemnification obligations or pledge the credit of Grantor.

VI. GRANTEE'S RIGHT OF ACCESS; INSPECTION:

The Restriction hereby conveyed does not grant to the Grantee any right to enter upon the Premises except at reasonable times and in a reasonable manner for the following purposes:

- A. To perform a survey of boundary lines;
- B. To inspect the Premises to determine compliance within provisions of this Restriction;
- C. To enter the Premises with or without the presence of an employee or employees of the Grantor for the purpose of taking any and all actions with respect to the Premises, at Grantor's cost, as may be necessary or appropriate to remedy or abate or enforce any violation hereof provided that Grantee first give Grantor notice of the violation, and upon failure of the Grantor to cure the violation within sixty (60) days of receiving said notice, Grantee then gives Grantor further written notice of its intention to enter the Premises to take such actions at least fifteen (15) days following the date of such further written notice. The requirements for providing notice to the Grantor prior to entering the Premises shall not apply in emergency situations where delayed action may result in irreparable harm to the Premises.
- D. The Restriction hereby conveyed includes the right to allow the general public to enter upon the Premises, and to use the Premises and the trails thereon for the purposes set forth in Article III.C above, subject to ordinances, rules and regulations of the Grantor.

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

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

IX. DURATION, BINDING EFFECT, RELEASE AND RECORDATION: The burdens of this Restriction shall run with the Premises IN PERPETUITY and shall be enforceable against the Grantor and the Grantor's successors and assigns holding any interest in the Premises. The Grantee is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Restriction. Without limiting the foregoing, the Grantor and its successors and assigns agree themselves to execute any such instrument upon reasonable request.

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

- A. The assignee is a "qualified organization" as defined in Section 170(h)(3) of the Internal Revenue Code of 1986, as amended, including, without limitation, a government entity;
- B. The assignee is required to hold this Restriction and enforce its terms for conservation purposes;
- C. The assignee is not an owner of the fee in the Premises;
- D. The assignment complies with the provisions required by Article 97 of the amendments to the Constitution of the Commonwealth of Massachusetts, if applicable;
- E. The Grantee shall notify the Grantor in writing at least thirty (30) days before assigning this Restriction and the Grantor shall have thirty (30) days from the date of such notice to approve the assignment in writing, which approval shall not be unreasonably withheld. Failure of the Grantor to respond to the notice of assignment within thirty (30) days shall be deemed approval thereof.
- F. No such assignment of the right to enforce the Restriction shall diminish the rights or benefits held by the Grantee or its successors pursuant to this Restriction, and the Grantee shall retain the equivalent right to enforce this Restriction.

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

XII. SUBSEQUENT TRANSFERS: The Grantor agrees to incorporate the terms of this Restriction, in full or by reference, in any deed or other legal instrument by which Grantor conveys or transfers any interest in all or a portion of the Premises, including, without limitation, a leasehold interest. The Grantor further agrees to notify the Grantee in writing at least thirty (30) days before conveying or transferring the Premises, or any part thereof or interest therein, including a leasehold interest. Any transfer shall comply with Article 97 of the amendments to the Constitution of the Commonwealth of Massachusetts, if applicable.

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

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

XV. EXTINGUISHMENT:

- A. If circumstances arise in the future such as render the purpose of this Restriction impossible to accomplish, this restriction can only be terminated or extinguished, whether in whole or in part, by a court of competent jurisdiction under applicable law after review and approval by the Massachusetts Secretary of Energy and Environmental Affairs. If any change in conditions ever gives rise to extinguishment or other release of the Restriction under applicable law, then Grantee, on a subsequent sale, exchange, or involuntary conversion of the Premises, shall be entitled to a portion of the proceeds in accordance with Article XV.B, subject, however, to any applicable law which expressly provides for a different disposition of the proceeds and after complying with the terms of any gift, grant, or funding requirements. Grantee shall use its share of the proceeds in a manner consistent with the conservation purpose set forth herein.
- B. Proceeds. Grantor and Grantee agree that the conveyance of this Restriction gives rise to a real property right, immediately vested in the Grantee, with a fair market value that is equal to five percent (5%) of the fair market value of the unrestricted Premises. Such proportionate value of the Grantee's property right shall remain constant. Any proceeds resulting from an extinguishment or other release of this Restriction will be distributed only after complying with the terms of any gift, grant, or other funding requirements, including any requirements of the CPA.
- C. Grantor/Grantee Cooperation Regarding Public Action. Whenever all or part of the Premises or any interest therein is taken by public authority other than Grantor under power of eminent

domain or other act of other public authority, then the Grantor and Grantee shall cooperate in recovering full value or all direct and consequential damages resulting from such action.

All related expenses incurred by the Grantor and Grantee under this section shall first be paid out of any recovered proceeds, and the remaining proceeds shall be distributed between the Grantor and Grantee in accordance with Article XV.B., after complying with the terms of any law, gift, grant, or funding requirements, including any requirements of the CPA. If a less than fee interest is taken, the proceeds shall be equitably allocated according to the nature of the interest taken. The Grantee shall use its share of the proceeds like a continuing trust in a manner consistent with the conservation purposes of this grant.

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

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

XVIII. MISCELLANEOUS PROVISIONS:

- A. Controlling Law: The interpretation and performance of this Restriction shall be governed by the laws of the Commonwealth of Massachusetts.
- B. Liberal Construction: Any general rule of construction to the contrary notwithstanding, this Restriction shall be liberally construed in favor of the grant to affect the purposes of this Restriction and the policies and purposes of Sections 31-32 of Chapter 184 of the Massachusetts General Laws. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purposes of this Restriction that would render the provision valid shall be favored over any interpretation that would render it invalid.
- C. Entire Agreement: This instrument sets forth the entire agreement of the parties with respect to the Restriction and supersedes all prior discussions, negotiations, understandings, or agreements related to the Restriction, all of which are merged herein.
- D. Pre-existing Public Rights. Approval of this Restriction pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws by any municipal officials and by the Secretary of Energy and Environmental Affairs is not to be construed as representing the existence or non-existence of any pre-existing rights of the public, if any, in and to the Premises, and any such pre-existing rights of the public, if any, are not affected by the granting of this Restriction.
- E. Notices. Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage pre-paid, addressed as follows:

To Grantor: Town of Barnstable, c/o Town Manager

367 Main Street
Hyannis MA 02601-3907

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

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

- F. Subordination: The Grantor shall record at the Barnstable Registry of Deeds simultaneously with this Restriction all documents necessary to subordinate any mortgage, promissory note, loan, lien, equity credit line, reference assignment of mortgage, lease, financing statement or any other agreement which gives rise to a surety interest affecting the Premises.
- G. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction of interpretation.

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

Attached hereto and incorporated herein are the following:

Signatures:

Grantor Approval and CR Grant – Town of Barnstable by and through its Town Manager
Grantee Acceptance – Barnstable Land Trust, Inc.
Approval – Town of Barnstable Town Council
Approval: Secretary of Energy and Environmental Affairs

Exhibits:

- A. Description of the Premises
- B. Excerpt Sketch Plan of the Premises
- C. Town Council Authorization – CR Grant and Approval

GRANT AND APPROVAL BY 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 grant the foregoing Conservation Restriction from the Town of Barnstable to the Barnstable Land Trust, Inc.

BARNSTABLE

TOWN OF

BY ITS TOWN MANAGER:

Mark S. Ells

THE COMMONWEALTH OF MASSACHUSETTS

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 preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose as Town Manager of the Town of Barnstable.

Notary Public
My Commission Expires

ACCEPTANCE OF GRANT

This Conservation Restriction from Town of Barnstable was accepted by the Barnstable Land Trust, Inc. this _____ day of _____, 2025.

By: _____
Leigh Townes
Its: President, duly authorized

By: _____
Jill McCleary
Its: Treasurer, duly authorized

THE COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss:

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

Notary Public
My Commission Expires:

APPROVAL OF THE GRANT

**TOWN OF BARNSTABLE
TOWN COUNCIL**

At a public meeting duly held on _____ 2025 on agenda Item No. 2026-, the Town Council of the Town of Barnstable, Massachusetts, voted to approve the foregoing Conservation Restriction from the Town of Barnstable to the Barnstable Land Trust, Inc., 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 D.

TOWN COUNCIL PRESIDENT:

Craig Tamash

THE COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss

On the ____ day of _____, 2025, before me, the undersigned notary public, personally appeared Craig Tamash, and proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose as the President of the Barnstable Town Council.

Notary Public
My Commission Expires:

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

The undersigned, Secretary of Energy and Environmental Affairs of the Commonwealth of Massachusetts, hereby certifies that the foregoing Conservation Restriction from the Town of Barnstable to the Barnstable Land Trust, Inc., has been approved 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:

CONSERVATION RESTRICTION
ON LAND OWNED BY
TOWN OF BARNSTABLE
IN BARNSTABLE, MASSACHUSETTS
in Barnstable (Centerville), Massachusetts

EXHIBIT A

Description of the Premises

A parcel of land in the Village of Centerville, Town of Barnstable, County of Barnstable, Commonwealth of Massachusetts, containing approximately 1.05 acres, more or less, bounded and described as follows:

All of the land shown as **Parcel 3** on a plan of land entitled "Plan of Subdivision of a Portion of Land of Lillian E. Marchant, Ruth H. Murray, Allen A. Harju & Andrew T. Harju in Barnstable" dated Aug. 23, 1969 and recorded in Barnstable Registry of Deeds in Plan Book 243 Page 121.

For Grantor's Title, see deed recorded in Barnstable County Registry of Deeds in Book 28077, Page 269.

Street Address: 71 Harju Road, (Centerville Village), Barnstable MA

EXHIBIT B

Excerpt Sketch Plan of the Premises

For full-sized plan see Barnstable County Registry of Deeds Plan Book 243, Page 121

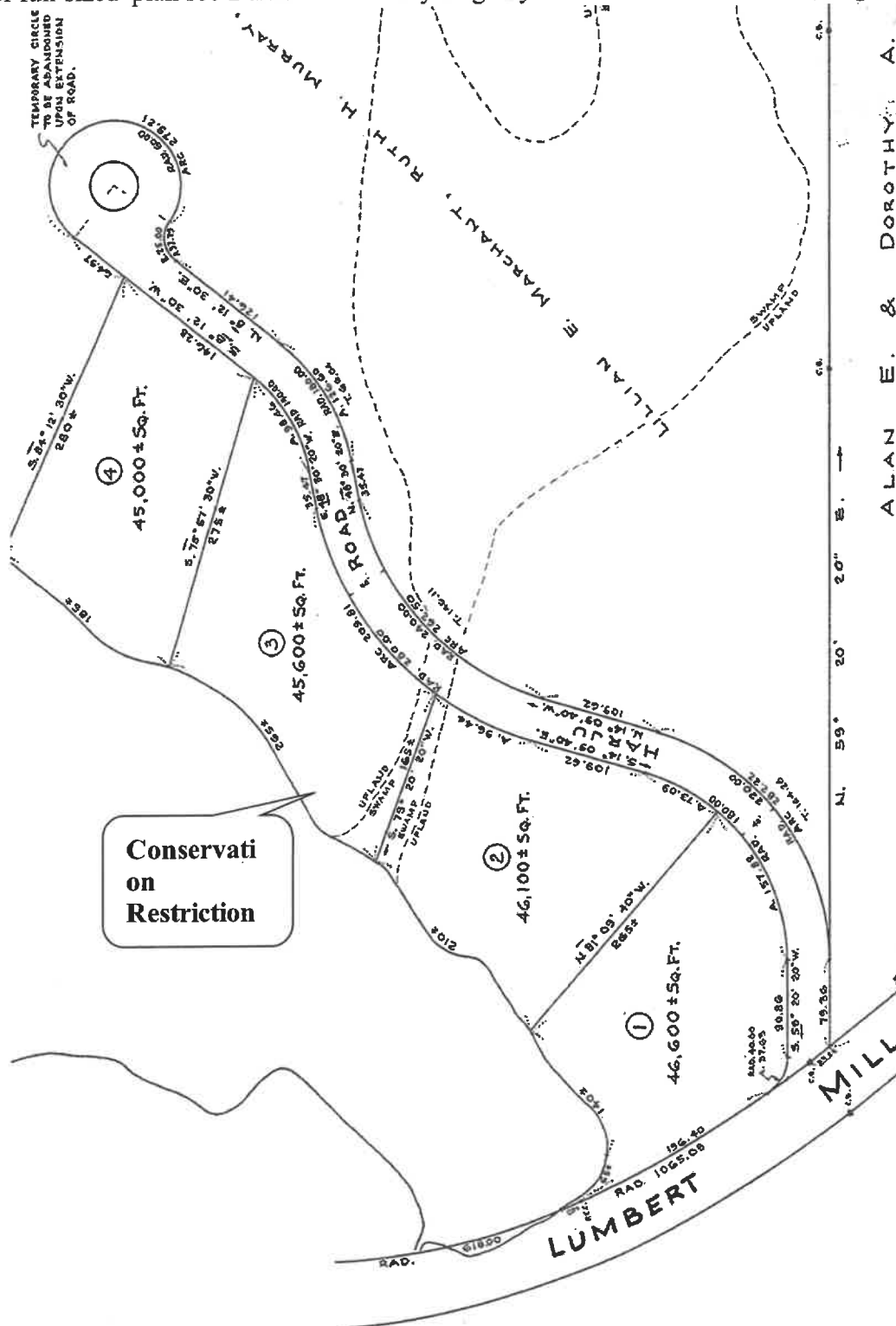


EXHIBIT C
Town Council Authorization – CR Grant and Approval

Following

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

BARNSTABLE TOWN COUNCIL

ITEM# 2026-063

INTRO: 11/20/2025, 12/04/2025

2026-063 ORDER AUTHORIZING AND APPROVING A CONSERVATION RESTRICTION TO BE GRANTED BY THE TOWN TO BARNSTABLE LAND TRUST, INC. UPON 2.57± ACRES OF PROPERTY AT 111 PRINCE AVENUE IN MARSTONS MILLS

ORDERED: That, pursuant to M.G.L. c. 184, section 32, the Town Council hereby approves the Conservation Restriction (“CR”) substantially in the form attached hereto to be granted by the Town of Barnstable to Barnstable Land Trust, Inc. (“BLT”) upon 2.57± acres of property located at 111 Prince Avenue in Marstons Mills, shown as Assessors Map 076, Parcel 036, and acquired by the Town for open space and recreation purposes in accordance with Item No. 2015-138, passed May 7, 2015, and a deed recorded at the Barnstable County of Registry of Deeds in Book 29046, Page 215. It is further ordered that the Town Manager is authorized to negotiate and finalize the terms of the CR, subject to the approval of the Secretary of Energy and Environmental Affairs, and to execute, receive, deliver and record any written instruments to effectuate this Order and complete the grant of the CR to BLT consistent with the intent of said Item No. 2015-138; and that the Town Council President is authorized to sign the CR on the Town Council’s behalf.

SPONSOR: Mark S. Ells, Town Manager, and Councilor John Crow, Precinct 5

DATE	ACTION TAKEN
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_____	_____
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_____	_____
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_____	Read Item
_____	Rationale
_____	Council Discussion
_____	Vote

BARNSTABLE TOWN COUNCIL

ITEM# 2026-063
INTRO: 11/20/2025

SUMMARY

TO: Town Council
FROM: Mark S. Ells, Town Manager
THROUGH: Thomas J. LaRosa, First Assistant Town Attorney
DATE: December 4, 2025
SUBJECT: Order authorizing and approving a Conservation Restriction to be granted by the Town to Barnstable Land Trust, Inc. upon 2.57± acres of property at 111 Prince Avenue in Marstons Mills

BACKGROUND: Pursuant to Item No. 2015-138, passed May 7, 2015, the Town Council appropriated \$275,000 in Community Preservation Act (“CPA”) funds, as recommended by the Community Preservation Committee, and authorized the Town Manager to use those CPA funds to acquire land consisting of 2.57± acres and located at 111 Prince Avenue in Marstons Mills. The Town followed through on that authorization and acquired the land under a deed recorded on July 30, 2015, at the Barnstable County of Registry of Deeds in Book 29046, Page 215.

Section 12(a) of the CPA, Chapter 44B of the General Laws, requires that a real property interest acquired with CPA funds shall be bound with a permanent deed restriction meeting the requirements of sections 31 and 32 of Chapter 184 of the General Law. In furtherance of meeting this statutory requirement, the 2015 vote included a general authorization “to grant restrictions pursuant to the Community Preservation Act.” However, the vote did not name the organization to which the CR would be granted or specify a process for identifying the organization to hold the CR. The present vote would further the intent of the 2015 vote by specifically authorizing the Town Manager to finalize and grant the CR to BLT. Finalizing and granting the CR would fulfill the Town’s obligation under Section 12(a) of the CPA.

Section 32 of Chapter 184 of the General Laws requires that a CR held by a land trust, such as BLT, must be approved by the Secretary of Energy and Environmental Affairs, the Town Manager and the Town Council so that the CR may have a perpetual duration and otherwise have the protections afforded under section 32. This Item would provide the Town Council’s required approval of the CR and authorize the Town Council President to sign the CR on behalf of the Town Council.

FISCAL IMPACT: No fiscal impact.

STAFF ASSISTANCE: Thomas J. LaRosa, First Assistant Town Attorney

GRANTOR: TOWN OF BARNSTABLE

GRANTEE: BARNSTABLE LAND TRUST, INC.

PROPERTY ADDRESS: 111 Prince Avenue, Barnstable, Massachusetts

GRANTOR'S TITLE: Barnstable County Registry of Deeds in Book 29046, Page 215

PLAN OF RECORD: Barnstable County Registry of Deeds in Plan Book 272 Pages 29, 30 (Lot 1)

GRANT OF CONSERVATION RESTRICTION

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**, pursuant to Item No. 2026-_____ of the Barnstable Town Council, passed _____ its successors and assigns, ("Grantor"), for nominal consideration, acting pursuant to Sections 31 and 32 of Chapter 184 of the Massachusetts General Laws, grants, with quitclaim covenants, to **BARNSTABLE LAND TRUST, INC.**, a Massachusetts charitable corporation, with an address of 1540 Main Street, West Barnstable, Massachusetts 02668, its successors and permitted assigns ("Grantee"), IN PERPETUITY and exclusively for conservation purposes, the following described CONSERVATION RESTRICTION (hereinafter referred to as "Restriction"), on a parcel of vacant land totaling approximately 2.57 acres located in the Town of Barnstable (Marstons Mills), County of Barnstable, Commonwealth of Massachusetts (hereinafter referred to as "Premises"), said Premises being described in Exhibit A and shown as Lot 1 on a plan of land entitled "Plan of Land, Marstons Mills, Barnstable, Mass. for Old Post Landing (a limited Partnership) dated May 7, 1973, drawn by Charles N. Savery, Inc." and recorded in the Barnstable County Registry of Deeds (the "Registry") in Plan Book 272, Pages 29 and 30, sketches of which plan are attached hereto in Exhibit B1 and Exhibit B2, all of which exhibits are attached hereto and made a part hereof. The Grantor and Grantee, their successors and assigns, are bound by and subject to the terms and conditions of this Restriction.

The conveyance of this Restriction is made pursuant to the vote of the Barnstable Town Council in Item No. 2026-, passed _____, 2025. A copy of the Town Council authorization is attached hereto as Exhibit C. The fee interest in the Premises was acquired by Grantor, as authorized by the Barnstable Town Council pursuant to Item No. 2015-138, passed May 7, 2015, using funds appropriated under the Community Preservation Act, G.L. c. 44B, which requires the conveyance of this Restriction.

I. PURPOSES

This 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 Restriction are to assure that the Premises, while permitting the acts and uses described in Article III herein, will be retained in perpetuity predominately in its natural, scenic and open condition; to protect and promote the conservation of water supplies, native vegetation, wetlands, soils, natural watercourses, habitat and wildlife thereon; to protect and enhance the value of the abutting conservation areas; to allow and maintain appropriate public access for enjoyment of the wildlife and open space resources and for passive recreation. The Premises is to be preserved primarily in its natural state and to improve public access to recreational opportunities at the Prince Cove Town Landing, a deep water landing that provides a safe place to launch and haul out recreational and other vessels ("Prince Cove Town Landing"). The conservation and permanent protection of the Premises will yield a significant public benefit for the following reasons (hereinafter, the "conservation values"):

A. The Premises contains 2.57 acres of pine-oak upland forest which hosts Statewide Wildlife Action Plan species of greatest conservation need. Fox, coyote, and deer, Eastern Box Turtle, migratory warblers, and bobwhite quail are among the species that prefer to inhabit the forested upland.

B. The Premises contains Prime Forest Land, a defined MassGIS map layer based on USDA Natural Resources Conservation Service soil data, which reflect high potential for white pine and black oak forest development, wetlands, and riparian area presence. 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.

C. Consistency with Clearly Delineated Barnstable County Conservation Policy. Protection of the Premises will assist in achieving Barnstable County conservation goals. In 1991, the Barnstable County Assembly of Delegates, pursuant to the Cape Cod Commission Act, Chapter 716 of the 1989, as amended,, adopted a *Regional Policy Plan* (as amended in 1996, 2002, 2009, 2012, 2018 and 2021), which identifies the following goals (*references are to the 2018 RPP, amended March 2021 Plan*):

- “To protect, preserve, or restore the quality and natural values and functions of ocean resources” (Ocean Resources Goal, p. 61).
- “Locate development away from sensitive resource areas and habitats” (p. 61);
- “To protect, preserve, or restore the quality and natural values and functions of inland and coastal wetlands and their buffers” (Wetland Resources Goal, p. 61);
- “Protect wetlands and their buffers from vegetation and grade changes.”
- “To protect, preserve, or restore wildlife and plant habitat to maintain the region’s natural diversity” (Wildlife and Plant Habitat Goal, p. 61);
- “Maintain existing plant and wildlife populations and species diversity.”
- “To conserve, preserve, or enhance a network of open space that contributes to the region’s natural and community resources and systems” (Open Space Goal, p. 61);
- “Protect and preserve natural, cultural, and recreational resources;”
- “Maintain or increase the connectivity of open space;”
- “Protect or provide open space appropriate to context.” (Open Space Goal, p. 61).

Granting this Restriction will advance each of these goals. The Ocean Resources Goal will be served in that by allowing the Premises to remain undeveloped, and help protect the water quality of the nearby Marstons Mills River (across Prince Avenue) which empties into Prince Cove and leads eventually to Nantucket Sound. Conservation of the Premises will buffer and protect the wetlands along the Marstons Mills River (Wetland Resources Goal), and therefore protect wildlife that forage, nest and reproduce in the Riverfront Area along the river, and within the Premises’ 2.7 acres of pine-oak upland forest (Wildlife and Plant Habitat Goal). In addition, the Premises will enhance public access for passive recreation such as walking and nature study, connecting with trails on conservation land across Prince Avenue and allow parking for the launching of kayaks, canoes and other non-motorized craft (Open Space Goal).

D. The Premises is within the 200-foot wide Riverfront Area of the Marstons Mills River, a perennial stream and estuary. This Area, as defined in the Wetlands Protection Act, Section 40 of Chapter 131 of the Massachusetts General Laws, supports the eight interests of the Wetlands Protection Act: protection of public and private water supply, protection of groundwater supply, protection of land containing shellfish, protection of wildlife habitat, flood control, storm damage prevention, prevention of pollution,

and protection of fisheries. The law also establishes the policy of the state to protect the natural integrity of rivers and to encourage and establish open space along rivers. The Marstons Mills River supports an active anadromous fish run for alewife and river herring and the state-listed rare bridle shiner is found in the Mill Pond, just upstream of the Premises.

E. The Premises is proximate to and will enhance the value of large parcels of protected open space owned by the Town of Barnstable and the Barnstable Land Trust, Inc., the local non-profit land conservation organization, particularly within the Marstons Mills River Corridor across the street. There are approximately 13 acres to the north, and 20+ acres to the south along the river that comprise the Marstons Mills River Conservation Area.

F. Consistency with Clearly Delineated Town of Barnstable Conservation Policy. The Town of Barnstable holds the Premises for open space purposes and already makes the Premises available for appropriate public access, which will be subject to the Restriction. 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* (OSRP) (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."

In this plan, concerns about open space protection, maintaining public access to fresh and marine waterfront areas were listed. The Plan's guiding principles include: "Preservation of open space for protection of drinking water resources, and for the protection of other natural, historic and scenic resources is a community-wide priority..." The plan also provides guidance on public access to fresh and marine waterways. (p.6) The OSRP's goals include: "Goal 1: Protect and maintain a maximum amount of open space to enhance environmental protection, recreational opportunities and community character; Goal 2: Plan, coordinate and execute open space protection measures that complement community efforts to protect water supply, protect fresh and marine surface waters, preserve historic, scenic and cultural resources, and provide opportunities for farming and agriculture; Goal 3: Provide diverse recreational opportunities and access throughout Barnstable and ensure that the current and future needs of all user groups are met appropriately; and Goal 4: Provide adequate public access to and safe enjoyment of the Town's open space and recreational resources and programs, particularly its shoreline areas and fresh and marine waterways. Access should be provided in balance with resource sustainability." (pp. 104-105). Through protection of the Premises, an additional 2.57 acres of open space are conserved that support public access to the conservation land across the street (13 acres on the river) where the public may access Marstons Mills River for recreational purposes, including kayaking, canoeing, birdwatching, and other passive recreation and water-based activities.

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*.

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

G. Consistency with Clearly Delineated Federal Conservation Policy. Protection of the Premises meets the definition of “conservation purposes” as defined in 26 CFR 1.170A-14(d)(1), because its conservation would: protect the land for outdoor recreation by the general public; reserve the land for education regarding the natural world; protect wildlife habitats; and it would contribute to the preservation of open space.

H. 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 Grantee and the people of Barnstable and the Commonwealth of Massachusetts. Protection of the Premises will protect 2.57 acres of pine-oak upland forest habitat which is home to Statewide Wildlife Action Plan species of greatest conservation need. Fox, coyote, deer, Eastern Box Turtle, migratory warblers, and bobwhite quail, among other important species. The Premises is within the 200-foot wide Riverfront Area of the Marstons Mills River, as defined in the Wetlands Protection Act, Section 40 of Chapter 131 of the Massachusetts General Laws, and supports the protection of public and private water supply, protection of groundwater supply, protection of land containing shellfish, protection of wildlife habitat, flood control, storm damage prevention, prevention of pollution, and protection of fisheries.

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

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

II. PROHIBITED 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:

A. Construction or placing of any building, residential dwelling, mobile home, tennis court, ball fields, benches, swimming pool, artificial water impoundment, billboard, or other advertising display, landing strip or pad, roadway, asphalt or concrete pavement, trail, wind turbine, antenna, utility pole, tower, wind turbine, solar array, aboveground or underground storage tank, or any other temporary or permanent structure or facility on, under or above the Premises.

B. Placing, storing or dumping of equipment, mobile home, trailer, automotive vehicle or parts, soil, rock, sand, stumps, slash, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, waste, radioactive waste, or hazardous waste or other substance or material whatsoever.

- C. Mining, excavation, dredging or removal of any loam, peat, gravel, soil, sand, rock or other mineral substance, or natural deposit from the Premises or otherwise making topographical changes to the Premises.
- D. Pollution, alteration, depletion, diversion, channelization, damming, draining, or extraction of surface water, natural water courses, marshes, potential or certified vernal pools, subsurface water, or any other water bodies.
- E. Removal, destruction or cutting of trees, grasses, shrubs or other natural vegetation, including cutting for firewood or commercial harvesting and lumbering activities.
- F. Introduction of species of animals or plants that are not native to Barnstable County, as defined by current published lists of native species, including *The Vascular Plants of Massachusetts: A County Checklist*, by Bruce A. Sorrie and Paul Somers, published by the Massachusetts Division of Fisheries and Wildlife Natural Heritage & Endangered Species Program (1999) or as amended or contained in a similar professionally acceptable publication available in the future.
- G. Use of motorized or power-driven vehicles of any kind, including without limitation snowmobiles, motorbikes or all-terrain vehicles.
- H. Camping, hunting, or trapping unless for a proven nuisance to wildlife.
- I. Conveyance of a part or portion of the Premises alone or division or subdivision of the Premises or use or assignment of the dimensions, area or acreage of the Premises for purposes of subdivision or development of unrestricted land whether or not such land is owned by the Grantor, its successors and assigns. (Conveyance of the Premises in its entirety shall be permitted.)
- J. Activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or wildlife habitat.
- K. The excavation of landscape features on the Premises with the intent of collecting or otherwise removing archaeological artifacts (prehistoric and/or historic) except by formal approval of the Massachusetts Historic Commission (MHC) through submission, with the concurrence of the Grantee, of a project notification form (PNF) in accordance with Section 27C of Chapter 9 of the Massachusetts General Laws, and associated regulations, as amended.
- L. Subdivision or conveyance of a part or portion of the Premises, it being intended to keep the Premises in single ownership.
- M. No portion of the Premises may be used towards any building, septic system or other development requirements on any other parcel outside the Premises.
- N. Any commercial, residential, industrial or other municipal uses.
- O. Any other use of the Premises or activity which is inconsistent with the purpose of this Restriction or which would materially impair its Conservation Values, or which is prohibited by federal, state or local law or regulation.

III. PERMITTED ACTIVITIES AND RESERVED RIGHTS: The Grantor reserves the right to conduct or permit the following activities on the Premises, but only if such uses and activities do not materially impair the Conservation Values and are not inconsistent with the purposes of this Restriction:

- A. Measures, such as the installation of fencing and signage, taken in order to prevent unauthorized vehicle entry and dumping, vandalism or other acts destructive to the Premises.
- B. With the prior written approval of the Grantee, measures taken in order to protect landform stability (i.e., to maintain a naturally occurring feature on the land's surface, e.g., bank or hill from erosion).
- C. The use of the Premises for passive recreational activities such as hiking, snowshoeing, cross-country skiing, hunting, nature study or research, and other like activities, including access by motorized wheelchairs or an Other Power-Driven Mobility Device as defined in federal law (OPDMD).
- D. The maintenance and use of trails on the Premises and with the prior written approval of the Grantee, the relocation or construction of new trails, provided that all applicable federal, state, regional and local approvals are obtained in advance, and that any relocated trails or new trails are no wider than eight (8) feet.
- E. The installation, maintenance and use of an unpaved parking area and standard accessory items, such as signing, curbing, and plantings, but not lighting, trash receptacles or portable toilets, on approximately one-half acre of the 2.57-acre Premises. Said parking area may be used by the general public to access the Premises for passive recreational uses, and to access the Prince Cove Town Landing. The specific dimensions of the parking area are defined in the sketch attached hereto in Exhibit D. Trees may be pruned but not felled on the slope if said trees endanger the public safety or interfere with the convenience of the parking area. Grantor shall not install the parking area without the prior written approval of the Grantee.
- F. The erection and maintenance of signs identifying ownership of the Premises, the property boundaries, the Premises' status as a conservation reservation, the restrictions on the use of the Premises, the identity or location of trails, areas of interest, natural features or other characteristics of the Premises, or for providing other like information.
- G. Minimal cutting or removal of trees, shrubs and other vegetation and/or planting of native trees, shrubs and other vegetation for storm cleanup and public safety, to maintain or improve the Conservation Values protected by this Restriction; to prevent threat of injury or damage to persons or property; to prevent or mitigate pest infestation, blight or disease; to control, manage or eradicate non-native or invasive species not native to the wetland or forest; or to improve or protect wildlife habitat.
- H. The use of motorized vehicles (1) by persons with mobility impairments, including an OPDMD, (2) by the Grantor as reasonably necessary to carry out activities permitted under this Restriction, (3) for access by Grantee for purposes set forth in Article VI, below, (4) for access by police, fire, emergency, public works, or other governmental personnel carrying out their official duties, and (5) by the public for use of a parking area installed pursuant to Article III.E. The use of motorized vehicles for the purposes described herein shall be limited to the existing trails or those trails that may be approved and installed pursuant to Article III.D; provided however, this limitation shall not apply to persons with mobility impairments using an OPDMD on the Premises. Notwithstanding the foregoing, the use of motorized

vehicles for recreational purposes, such as dirt bikes, all-terrain vehicles, off-highway vehicles, and the like, is not permitted.

I. Archaeological investigations consisting of site inspections and subsurface excavations subject to and in accordance with an Archaeological Field Investigation Permit issued by the State Archaeologist under G.L. c. 9, §26A, and associated regulations, and Grantee's written approval in accordance with Article IV, below.

J. Such other non-prohibited activities or uses of the Premises may be permitted with the prior approval of the Grantee provided that the Grantee has made a finding, such finding to be documented in writing and kept on file at the office of the Grantee, that such activities are consistent with the Reserved Rights, do not impair the Conservation Values and purposes of this Restriction, and, where feasible, result in a net gain in Conservation Value of the Premises.

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

The exercise of any right or obligation reserved by the Grantor under this Article III shall be in compliance with all applicable federal, state and local law. The inclusion of any Reserved Right in this Article III requiring a permit from a public agency does not imply that the Grantee or the Commonwealth takes any position on whether such permit should be issued.

IV. NOTICE AND APPROVAL:

A. Notifying Grantee. Whenever notice to or approval by Grantee is required, Grantor shall notify or request approval from Grantee, by a method requiring proof of receipt, in writing not less than sixty (60) days prior to the date Grantor intends to undertake the activity in question, unless a different time period is specified herein. The notice shall:

- 1Describe the nature, scope, design, location, timetable and any other material aspect of the proposed activity;
- 2Describe how the proposed activity complies with the terms and conditions of this Restriction, and will not materially impair the Purposes and/or Conservation Values;
- 3Identify all permits, licenses, or approvals required for the proposed activity, and the status of any such permits, licenses, or approvals; and
- 4Describe any other material aspect of the proposed activity in sufficient detail to permit the Grantee to make an informed judgment as to its consistency with the Purposes and Conservation Values.

B. Grantee Review. Where Grantee's approval is required, Grantee shall grant or withhold approval in writing within sixty (60) days of receipt of Grantor's request. Grantee's approval shall not be unreasonably withheld but will only be granted upon a showing that the proposed activity will minimize impacts to the Conservation Values and will not materially impair the Purposes and/or Conservation Values. Grantee may require Grantor to secure expert review and evaluation of a proposed activity by a mutually agreed upon party.

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

V. LEGAL REMEDIES OF THE GRANTEE; WAIVER:

A. The rights hereby granted shall include the right to enforce this Restriction by appropriate legal proceedings including obtaining injunctive and other equitable relief against any violations, including, without limitation, relief requiring restoration of the Premises to its condition prior to the time of the injury complained of, it being agreed that the Grantee may have no adequate remedy at law, and shall be in addition to and not in limitation of any other rights and remedies available to the Grantee for the enforcement of this Restriction.

B. Notwithstanding the foregoing, Grantee agrees to provide written notice to Grantor of any violation of this Restriction and to cooperate for a reasonable period of time, not to exceed sixty (60) days, to allow Grantor to remedy the violation, prior to resorting to legal or equitable means in resolving issues concerning alleged violations provided Grantor has ceased objectionable actions and is making a good faith effort to remedy the violation and Grantee reasonably determines there is no ongoing diminution of the Conservation Values of the Restriction.

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

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

E. If Grantee prevails in any action to enforce the terms of this Restriction, the Grantor or Grantor's heirs, successors and assigns, as the case may be, shall reimburse the Grantee for all reasonable costs and expenses, including reasonable attorney's fees, incurred in enforcing this Restriction or in taking reasonable measures to remedy or abate any violation thereof. If Grantor prevails in any action brought by Grantee to enforce the terms of this Restriction, the Grantee or its heirs, successors and assigns, as the case may be, shall, to the extent allowed by law, reimburse the Grantor for all reasonable costs and expenses, including attorney's fees, incurred in defending such action to enforce this Restriction, provided the Grantee's action is deemed by the court or by other competent authority to be unreasonable or arbitrary and capricious.

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

G. The Grantor's financial obligations under this Restriction, including the payment of any costs or expenses or incurring any liabilities, are subject to appropriation by the Barnstable Town Council. The Grantor agrees to reasonably seek in good faith appropriations necessary to fulfill such obligations without borrowing any money. Nothing in this Restriction shall allow or require any indemnification obligation or pledge the credit of the Grantor.

VI. GRANTEE'S RIGHT OF ACCESS; INSPECTION:

The Restriction hereby conveyed does not grant to the Grantee any right to enter upon the Premises except at reasonable times and in a reasonable manner for the following purposes:

A.To perform a survey of boundary lines;

B.To inspect the Premises to determine compliance within provisions of this Restriction;

C.To enter the Premises with or without the presence of an employee or employees of the Grantor for the purpose of taking any and all actions with respect to the Premises, at Grantor's cost, as may be necessary or appropriate to remedy or abate or enforce any violation hereof provided that Grantee first give Grantor notice of the violation, and upon failure of the Grantor to cure the violation within sixty (60) days of receiving said notice, Grantee then gives Grantor further written notice of its intention to enter the Premises to take such actions at least fifteen (15) days following the date of such further written notice. The requirements for providing notice to the Grantor prior to entering the Premises shall not apply in emergency situations where delayed action may result in irreparable harm to the Premises.

D.The Restriction hereby conveyed includes the right to allow the general public to enter upon the Premises, and to use the Premises for the purposes set forth in Articles III.C and III.H above, subject to the ordinances, rules and regulations of the Grantor.

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

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

IX.DURATION, BINDING EFFECT, RELEASE AND RECORDATION: The burdens of this Restriction shall run with the Premises IN PERPETUITY and shall be enforceable against the Grantor and the Grantor's successors and assigns holding any interest in the Premises. The Grantee is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Restriction. Without limiting the foregoing, the Grantor and its successors and assigns agree themselves to execute any such instrument upon reasonable request.

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

A. The assignee is a "qualified organization" as defined in Section 170(h)(3) of the Internal Revenue Code of 1986, as amended, including, without limitation, a government entity;

B. The assignee is required to hold this Restriction and enforce its terms for conservation purposes;

C. The assignee is not an owner of the fee in the Premises;

D. The assignment complies with the provisions required by Article 97 of the amendments to the Constitution of the Commonwealth of Massachusetts, if applicable;

E. The Grantee shall notify the Grantor in writing at least thirty (30) days before assigning this Restriction and the Grantor shall have thirty (30) days from the date of such notice to approve the assignment in writing, which approval shall not be unreasonably withheld. Failure of the Grantor to respond to the notice of assignment within thirty (30) days shall be deemed approval thereof.

F. No such assignment of the right to enforce the Restriction shall diminish the rights or benefits held by the Grantee or its successors pursuant to this Restriction, and the Grantee shall retain the equivalent right to enforce this Restriction.

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

XII. SUBSEQUENT TRANSFERS: The Grantor agrees to incorporate the terms of this Restriction, in full or by reference, in any deed or other legal instrument by which Grantor conveys or transfers any interest in all or a portion of the Premises, including, without limitation, a leasehold interest. The Grantor further agrees to notify the Grantee in writing at least thirty (30) days before conveying or transferring the Premises, or any part thereof or interest therein, including a leasehold interest. Any transfer shall comply with Article 97 of the amendments to the Constitution of the Commonwealth of Massachusetts, if applicable.

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

XIV. AMENDMENT: If circumstances arise under which an amendment to or modification of this Restriction would be appropriate, the Grantor and the Grantee may by mutual consent amend this Restriction provided that no amendment shall be allowed that will affect the qualification of this Restriction or the status of Grantee under any applicable laws, including Section 170(h) of the Internal Revenue Code of 1986, as amended, or Sections 31-32 of Chapter 184 of the General laws of Massachusetts. Any amendments to this Restriction shall occur only in exceptional circumstances. The Grantee will consider amendments only to correct an error or oversight, to clarify an ambiguity, or where there is a net gain in conservation values. All expenses of all parties in considering and/or implementing an amendment shall be borne by the persons or entity seeking the amendment. Any amendment shall be consistent with the purposes of this Restriction, shall not affect its perpetual duration, shall be approved by the Secretary of Energy and Environmental Affairs and if applicable, shall comply with the provisions of Article 97 of the Amendments to the Massachusetts Constitution, and any gifts, grants or funding requirements. Any amendment shall be recorded in the Barnstable County Registry of Deeds.

XV. EXTINGUISHMENT:

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

B. Proceeds. Grantor and Grantee agree that the conveyance of this Restriction gives rise to a real property right, immediately vested in the Grantee, with a fair market value that is equal to five percent (5%) of the fair market value of the unrestricted Premises. Such proportionate value of the Grantee's property right shall remain constant. Any proceeds resulting from an extinguishment or other release of this Restriction will be distributed only after complying with the terms of any gift, grant, or other funding requirements, including any requirements of the CPA.

C. Grantor/Grantee Cooperation Regarding Public Action. Whenever all or part of the Premises or any interest therein is taken by public authority other than Grantor under power of eminent domain or other act of other public authority, then the Grantor and Grantee shall cooperate in recovering full value or all direct and consequential damages resulting from such action.

All related expenses incurred by the Grantor and Grantee under this section shall first be paid out of any recovered proceeds, and the remaining proceeds shall be distributed between the Grantor and Grantee in accordance with Article XV.B., after complying with the terms of any law, gift, grant, or funding requirements, including any requirements of the CPA. If a less than fee interest is taken, the proceeds shall be equitably allocated according to the nature of the interest taken. The Grantee shall use its share of the proceeds like a continuing trust in a manner consistent with the conservation purposes of this grant.

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

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

XVIII. MISCELLANEOUS PROVISIONS:

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

B. Liberal Construction: Any general rule of construction to the contrary notwithstanding, this Restriction shall be liberally construed in favor of the grant to affect the purposes of this Restriction and the policies and purposes of Sections 31-32 of Chapter 184 of the Massachusetts General Laws. If any

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

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

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

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

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

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

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

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

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

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

Attached hereto and incorporated herein are the following:

Signatures:

Grantor: Town of Barnstable by and through its Town Manager

Grantee: Acceptance: Barnstable Land Trust, Inc.

Approval: Town of Barnstable Town Council

Approval: Secretary of Energy and Environmental Affairs

Exhibits:

- A. Description of the Premises
- B.1. Reduced Copy of Recorded Plan of the Premises
- B.2. Excerpt Copy of the Plan of the Premises
- C. Town Council Order – CR Grant and Approval
- D. Sketch Plan of Parking Area

GRANT 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 grant the foregoing Conservation Restriction from the Town of Barnstable to Barnstable Land Trust, Inc.

TOWN OF BARNSTABLE
BY ITS TOWN MANAGER:

Mark S. Ells

THE COMMONWEALTH OF MASSACHUSETTS

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 preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose as Town Manager of the Town of Barnstable.

Notary Public
My Commission Expires

ACCEPTANCE OF GRANT

This Conservation Restriction from Town of Barnstable was accepted by Barnstable Land Trust, Inc. this _____ day of _____, 2025.

By: _____
Leigh Townes

Its: President, duly authorized

By: _____
Jill McCleary

Its: Treasurer, duly authorized

THE COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss:

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

Notary Public
My Commission Expires:

APPROVAL OF THE GRANT

**TOWN OF BARNSTABLE
TOWN COUNCIL**

At a public meeting duly held on _____ 2025 on agenda Item No. 2026-, the Town Council of the Town of Barnstable, Massachusetts, voted to approve the foregoing Conservation Restriction from the Town of Barnstable to Barnstable Land Trust, Inc., 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 D.

TOWN COUNCIL PRESIDENT:

Craig Tamash

THE COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss

On the _____ day of _____, 2025, before me, the undersigned notary public, personally appeared Craig Tamash, and proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose as the President of the Barnstable Town Council.

Notary Public
My Commission Expires:

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

The undersigned, Secretary of Energy and Environmental Affairs of the Commonwealth of Massachusetts, hereby certifies that the foregoing Conservation Restriction from the Town of Barnstable to Barnstable Land Trust, Inc., has been approved 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

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:

**CONSERVATION RESTRICTION ON LAND OWNED BY TOWN OF
BARNSTABLE IN BARNSTABLE, MASSACHUSETTS**

EXHIBIT A

Description of the Premises

All of the vacant land situated in that part of the Town of Barnstable known as Marstons Mills, Barnstable County, Massachusetts, bounded and described as follows:

Being all of Lot 1 on a plan of land entitled, "Plan of Land, Marstons Mills, Barnstable Mass. for Old Post Landing (a Limited Partnership) dated May 7, 1973, drawn by Charles N. Savery, Inc." and recorded in Barnstable County Registry of Deeds in Plan Book 272, Pages 29 and 30.

Street Address: 111 Prince Avenue, (Marstons Mills) Barnstable MA 02648

EXHIBIT B.1

Sketch Plan of the Premises

For full-sized recorded plan see Barnstable County Registry of Deeds
Plan Book 272, Page 29

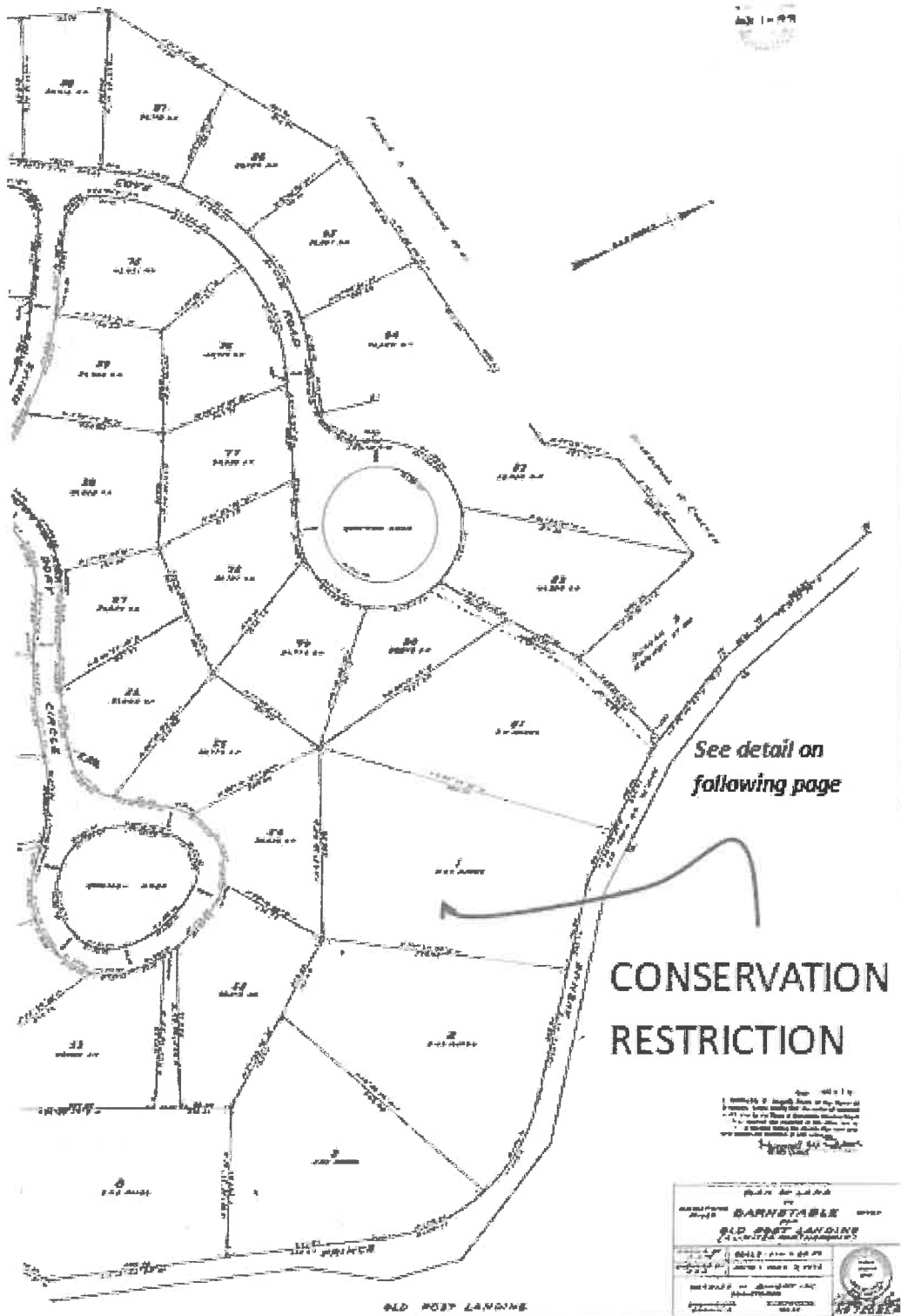


EXHIBIT B.2

Excerpt Copy of Sketch Plan of the Premises

Barnstable County Registry of Deeds Plan Book 272, Page 29

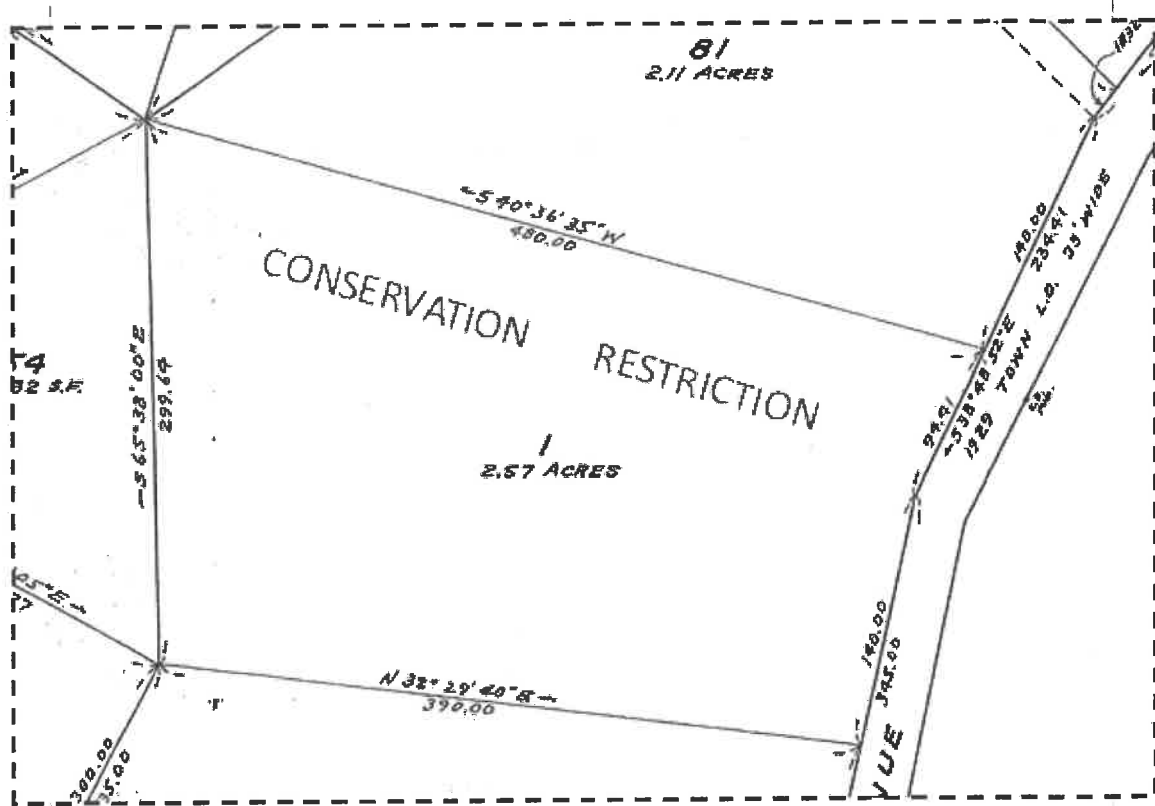


EXHIBIT C
TOWN COUNCIL AUTHORIZATION – CR Grant and Approval

Following

Page 63 of 75

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

BARNSTABLE TOWN COUNCIL

**ITEM# 2026-065
INTRO: 12/04/2025**

**2026-065 AUTHORIZATION TO CONTRACT FOR AND EXPEND A FISCAL YEAR 2026
911 DEPARTMENT SUPPORT AND INCENTIVE GRANT IN THE AMOUNT
OF \$270,026 FROM THE COMMONWEALTH OF MASSACHUSETTS,
EXECUTIVE OFFICE OF PUBLIC SAFETY AND SECURITY FOR THE
BARNSTABLE POLICE DEPARTMENT PERSONNEL EXPENSES**

RESOLVED: That the Town Council does hereby authorize the Town Manager to contract for and expend a Fiscal Year 2026 911 Department Support and Incentive Grant from the Commonwealth of Massachusetts, Executive Office of Public Safety and Security in the amount of \$270,026 for the purpose of funding personnel costs.

SPONSOR: Mark S. Ells, Town Manager

DATE	ACTION TAKEN
_____	_____
_____	_____

____ Read Item
____ Rationale
____ Council Discussion
____ Vote

BARNSTABLE TOWN COUNCIL

ITEM# 2026-065
INTRO: 12/04/2025

SUMMARY

TO: Town Council
FROM: Mark S. Ells, Town Manager
THROUGH: Jean B. Challies, Chief of Police
DATE: December 04, 2025
SUBJECT: Authorization to contract for and expend a Fiscal Year 2026 911 Department Support and Incentive Grant in the amount of **\$270,026** from the Commonwealth of Massachusetts, Executive Office of Public Safety and Security for the Barnstable Police Department personnel expenses

BACKGROUND: The Police Department applied for and was awarded a 911 Support and Incentive Grant from the Commonwealth of Massachusetts, Executive Office of Public Safety and Security, State 911 Department in the amount of \$270,026. The Barnstable Police Department serves as a primary Public Safety Answering Point (PSAP) in that it receives all categories of 911 calls (Fire, Police & Medical Emergency) and then dispatches to the appropriate service according to the type of call. Additionally, Emergency Medical Dispatch continues to be administered by the Barnstable Police Department throughout the duration of the call, in keeping with State 911 regulations. Eligible entities for this grant are primary, regional and regional secondary PSAPS and Regional Emergency Communications Centers (RECC). Additional monies are available under the grant guidelines pertinent to this grant, because the Barnstable Police Department serves as a Primary PSAP and also takes cell phone calls. The Barnstable Police Department proposes that this funding be used to fund personnel costs incurred in the operation of the department's 911 Telecommunications Center.

ANALYSIS: The acceptance of this grant will allow the Department to place qualified personnel in the communications center in order to provide adequate staffing to that area without incurring undue personnel expenses. As approved in the Fiscal Year 2026 Personnel Budget this grant will fund the base pay and/or overtime of 911 EMD certified civilian dispatchers up to the funding limit of \$270,026.

FISCAL IMPACT: This is a reimbursement grant for personnel costs. The town must expend the funds upfront and subsequently submit for reimbursement. The elimination of this source of grant funding would have a direct impact on future General Fund Budgets, as the cost would still remain a mandatory recurring operational expense and therefore would have to be replaced with general fund revenue. All costs associated with this grant contract must be completed by June 30, 2026.

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

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

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

BARNSTABLE TOWN COUNCIL

ITEM# 2026-066
INTRO: 12/04/2025

2026-066 AUTHORIZATION TO CONTRACT FOR AND EXPEND A FISCAL YEAR 2026 MUNICIPAL ROAD SAFETY GRANT IN THE AMOUNT OF \$64,699.53 FROM THE COMMONWEALTH OF MASSACHUSETTS, EXECUTIVE OFFICE OF PUBLIC SAFETY AND SECURITY FOR TRAFFIC ENFORCEMENT, EQUIPMENT AND DRIVER EDUCATION

RESOLVED: That the Town Council does hereby authorize the Town Manager to contract for and expend a Fiscal Year 2026 Municipal Road Safety Grant in the amount of **\$64,699.53** from the Commonwealth of Massachusetts, Executive Office of Public Safety and Security, Highway Safety Division for the purpose of funding the cost of traffic enforcement mobilizations and equipment and driver education for minors.

SPONSOR: Mark S. Ells, Town Manager

DATE	ACTION TAKEN
------	--------------

_____	_____
_____	_____

____ Read Item
____ Rationale
____ Council Discussion
____ Vote

BARNSTABLE TOWN COUNCIL

ITEM# 2026-066
INTRO: 12/04/2025

SUMMARY

TO: Town Council
FROM: Mark S. Ells, Town Manager
THROUGH: Jean B. Challies, Chief of Police
DATE: December 04, 2025
SUBJECT: Authorization to contract for and expend a Fiscal Year 2026 Municipal Road Safety Grant in the amount of **\$64,699.53** from the Commonwealth of Massachusetts, Executive Office of Public Safety and Security for traffic enforcement, equipment and driver education

BACKGROUND: The Department applied for and was awarded this grant in the amount of \$64,699.53. This funding will enable the Traffic Division to participate in five traffic mobilizations designed to target specific areas of concern with motorists as follows:

1. Winter Impaired Driving Focus (December - 2025)
2. Distracted Driving (April 2026)
3. Click It or Ticket (May 2026)
4. Summer Speed (June 2026-July 2026))
5. Summer Impaired Driving Focus (August 2026 – September 2026)

This grant helps to raise awareness of both traffic safety challenges involving drinking and driving, distracted driving, and seatbelt usage. This grant also funds traffic enforcement equipment that is needed by the traffic division, as well as the cost of materials to conduct distracted driver and drunk driver education to junior high and high school students. This MRS grant will also fund the new Child Passenger Seat Safety Program (CPS).

ANALYSIS: Acceptance of this grant will enable the Department to continue to participate in these important traffic safety mobilizations, as we have in previous years. Traffic related concerns continue to remain as one of our top priorities.

GRANT DETAIL: \$39,639.80 of this grant award is allocated entirely to traffic enforcement mobilizations; \$19,757.93 will be allocated for a speed alert radar trailer; and \$3,360.00 will be allocated for pedestrian and bicycle safety enforcement and safety. \$960 will be allocated for non-enforcement CPS activities and training and driver education for minors using a Roadster Pedal Kart and substance consumption goggles, \$981.80 will be allocated for bicycle safety equipment handed out to the community during community events.

FISCAL IMPACT: This grant funds the overtime costs of conducting the five mobilizations, equipment, educational materials, training, and community events. There is no required match and the overtime costs, equipment, and materials of the grant will be reimbursed following the completion of each mobilization and submission of payment for materials and equipment.

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

STAFF ASSISTANCE: Jean B. Challies, Chief of Police; Anne E. Spillane, Finance & Support Services Director

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

BARNSTABLE TOWN COUNCIL

**ITEM# 2026-067
INTRO: 12/04/2025**

2026-067 AUTHORIZATION TO CONTRACT FOR AND EXPEND A FISCAL YEAR 2026 STATE 911 DEPARTMENT EMERGENCY MEDICAL DISPATCH GRANT IN THE AMOUNT OF \$21,202.50 FROM THE COMMONWEALTH OF MASSACHUSETTS, EXECUTIVE OFFICE OF PUBLIC SAFETY AND SECURITY FOR THE PURPOSE OF FUNDING EMERGENCY DISPATCH EXPENSES IN THE BARNSTABLE POLICE DEPARTMENT

RESOLVED: That the Town Council does hereby authorize the Town Manager to contract for and expend a Fiscal Year 2026 State 911 Department Emergency Medical Dispatch Grant in the amount of **\$21,202.50** from the Commonwealth of Massachusetts, Executive Office of Public Safety and Security for the purpose of funding costs associated with emergency dispatch operations.

SPONSOR: Mark S. Ells, Town Manager

DATE	ACTION TAKEN
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_____	_____
_____	_____

____ Read Item
____ Rationale
____ Council Discussion
____ Vote

BARNSTABLE TOWN COUNCIL

ITEM# 2026-067
INTRO: 12/04/2025

SUMMARY

TO: Town Council
FROM: Mark S. Ells, Town Manager
THROUGH: Jean B. Challies, Chief of Police
DATE: December 04, 2025
SUBJECT: Authorization to Contract for and Expend a Fiscal Year 2026 State 911 Department Emergency Medical Dispatch Grant award in the amount of \$21,202.50 from the Commonwealth of Massachusetts Executive Office of Public Safety and Security

BACKGROUND: This grant will fund an annual Emergency Medical Dispatch medical director contract with Cape & Islands Emergency Medical Services in the amount of \$6,500; the costs of 156 hours of overtime to complete quality assurance oversight and call review as required by State 911 in the amount of \$11,891.63; and 16 hours of overtime for CPR instructors to conduct CPR training for dispatchers in the amount of \$2,810.93. The total value of the grant is \$21,202.50.

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

FISCAL IMPACT: This is a reimbursement grant for all contract costs and overtime. The town must expend the funds upfront and subsequently submit for reimbursement. The elimination of this source of grant funding would have a direct impact on future General Fund budgets, as the cost would still remain a mandatory recurring operational expense and therefore would have to be replaced with general fund revenue. All costs associated with this grant contract must be completed by June 30, 2026.

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

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

B. NEW BUSINESS (Refer to Public Hearing 12/11/2025)

BARNSTABLE TOWN COUNCIL

**ITEM# 2026-068
INTRO: 12/04/2025**

**2026-068 APPROPRIATION AND LOAN ORDER IN THE AMOUNT OF \$350,000 FOR A
FEASIBILITY STUDY AND SCHEMATIC DESIGN FOR THE ROOF
REPLACEMENT PROJECT AT BARNSTABLE HIGH SCHOOL**

ORDERED: That the Town of Barnstable appropriate the amount of three hundred and fifty thousand (\$350,000) Dollars for the purpose of paying feasibility study and schematic design costs and associated project management for the potential roof replacement project of the Barnstable High School, located at 744 West Main Street, Hyannis, MA, including the payment of all costs incidental or related thereto (the “Project”), which proposed repair project would materially extend the useful life of the school and preserve an asset that otherwise is capable of supporting the required educational program, and for which the Town of Barnstable has applied for a grant from the Massachusetts School Building Authority (“MSBA”), said amount to be expended under the direction of the Barnstable School Committee. To meet this appropriation the Town Treasurer, with the approval of the Town Council, is authorized to borrow said amount under M.G.L. Chapter 44, or pursuant to any other enabling authority. The Town of Barnstable acknowledges that the MSBA’s grant program is a non-entitlement, discretionary program based on need, as determined by the MSBA, and if the MSBA’s Board of Directors votes to invite the Town to collaborate with the MSBA on this proposed repair project, any project costs the Town of Barnstable incurs in excess of any grant that may be approved by and received from the MSBA shall be the sole responsibility of the Town of Barnstable; and that, if invited to collaborate with the MSBA on the proposed repair project, the amount of borrowing authorized pursuant to this vote shall be reduced by any grant amount set forth in the Project Funding Agreement that may be executed between the Town of Barnstable and the MSBA.

SPONSORS: Mark S. Ells, Town Manager, and Sara Ahern, Superintendent at the request of the School Committee.

DATE	ACTION TAKEN
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_____	_____
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_____	Read Item
_____	Rationale
_____	Public Hearing
_____	Close Public Hearing
_____	Council Discussion
_____	Vote

BARNSTABLE TOWN COUNCIL

ITEM# 2026-068
INTRO: 12/04/2025

SUMMARY

TO: Town Council
FROM: School Committee
THROUGH: Mark Ells, Town Manager and Sara Ahern, Superintendent
DATE: December 04, 2025
SUBJECT: Appropriation and Loan Order in the amount of **\$350,000** for a feasibility study and schematic design for the Roof Replacement Project at Barnstable High School

BACKGROUND: The Town of Barnstable has been invited to participate in the Massachusetts School Building Authority's (MSBA) Accelerated Repair Program to replace the roof of the Barnstable High School. The Accelerated Repair Program exists to support Massachusetts School Districts in replacing eligible roofs, windows, doors, and HVAC systems. Participating in the Accelerated Repair Program makes the Town eligible for an estimated reimbursement between 30% and 40% of total project cost.

The roof at Barnstable High school is over 28 years old and is showing signs of failure. Despite countless attempts to repair it, the roof continues to leak and causes damage to the interior of the building. It is not uncommon for ceiling tiles to be removed and buckets deployed throughout the building in order to catch dripping water. Leaks are disruptive to the learning environment. The Town Council, in conjunction with the School Committee, voted in February 2025 to submit a Statement of Interest to the MSBA for participation in the Accelerated Repair Program for this project.

ANALYSIS: The first step of the Accelerated Repair Program process is to appropriate funds to conduct a feasibility study and schematic design of the project. This allows the Town to better understand the scope of the project as well as determine an estimated final cost. It will also determine the Town's final estimated reimbursement rate. Once this process is complete, the Town will determine if they would like to proceed with construction, and how to fund the project.

FINANCIAL IMPACT: Should the Town decide to move forward after feasibility and schematic design, the total project cost is estimated to be \$13M, exclusive of any MSBA reimbursement.

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

STAFF ASSISTANCE: Chris Dwelley, Deputy Finance Director for School Operations, Doug Boulanger, Director of School Facilities

B. NEW BUSINESS (Refer to Public Hearing 12/11/2025)

BARNSTABLE TOWN COUNCIL

**ITEM# 2026-069
INTRO: 12/04/2025**

**2026-069 APPROPRIATION AND LOAN ORDER IN THE AMOUNT OF \$350,000 FOR A
FEASIBILITY STUDY AND SCHEMATIC DESIGN FOR THE ROOF
REPLACEMENT PROJECT AT BARNSTABLE INTERMEDIATE SCHOOL**

ORDERED: That the amount of **\$350,000** be appropriated for the purpose of paying feasibility study and schematic design costs and associated project management for the potential roof replacement project at the Barnstable Intermediate School, located at 895 Falmouth Road, Hyannis, MA, including the payment of costs incidental or related thereto (the "Project"), which proposed repair project would materially extend the useful life of the school and preserve an asset that otherwise is capable of supporting the required educational program, and for which the Town of Barnstable, through the Barnstable School Committee, has applied for a grant from the Massachusetts School Building Authority ("MSBA"), and that to meet this appropriation, the Town Treasurer is hereby authorized to borrow **\$350,000** under and pursuant to M.G.L. c. 44, § 7 or 8, or pursuant to any other enabling authority, and to issue bonds or notes of the Town therefor; and that the Barnstable School Committee is authorized to contract for and expend the appropriation made available for these purposes and to accept any gifts or grants in relation thereto. The Town of Barnstable acknowledges that the MSBA's grant program is a non-entitlement, discretionary program based on need, as determined by the MSBA, and if the MSBA's Board of Directors votes to invite the Town to collaborate with the MSBA on this proposed repair project, any project costs the Town of Barnstable incurs in excess of any grant that may be approved by and received from the MSBA shall be the sole responsibility of the Town of Barnstable; and that, if invited to collaborate with the MSBA on the proposed repair project, the amount of borrowing authorized pursuant to this vote shall be reduced by any grant amount set forth in the Project Funding Agreement that may be executed between the Town of Barnstable, through the Barnstable School Committee, and the MSBA.

SPONSORS: Mark S. Ells and Superintendent Sara Ahern, at the request of the School Committee

DATE	ACTION TAKEN
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_____	_____
_____	_____

_____	Read Item
_____	Rationale
_____	Public Hearing
_____	Close Public Hearing
_____	Council Discussion
_____	Vote

BARNSTABLE TOWN COUNCIL

ITEM# 2026-069
INTRO: 12/04/2025

SUMMARY

TO: Town Council
FROM: School Committee
THROUGH: Mark S. Ells, Town Manager, and Sara Ahern, Superintendent
DATE: December 04, 2025
SUBJECT: Appropriation and Loan Order in the amount of **\$350,000** for a feasibility study and schematic design for the Roof Replacement Project at Barnstable Intermediate School

BACKGROUND: The Town of Barnstable has been invited to participate in the Massachusetts School Building Authority's (MSBA) Accelerated Repair Program to replace the roof of the Barnstable Intermediate School. The Accelerated Repair Program exists to support Massachusetts School Districts in replacing eligible roofs, windows, doors, and HVAC systems. Participating in the Accelerated Repair Program makes the Town eligible for an estimated reimbursement between 30% and 40% of total project cost.

The roof on the Barnstable Intermediate school is over 20 years old and is showing signs of failure. Despite countless attempts to repair it, the roof continues to leak and cause damage to the interior of the building. Repairs have become costly and issues are disruptive to the learning environment.

The Town Council, in conjunction with the School Committee, voted in February 2025 to submit a Statement of Interest to the MSBA for participation in the Accelerated Repair Program for this project.

ANALYSIS: The first step of the Accelerated Repair Program process is to appropriate funds to conduct a feasibility study and schematic design of the project. This allows the Town to better understand the scope of the project as well as determine an estimated final cost. It will also determine the Town's final estimated reimbursement rate.

Once this process is complete, the Town will determine if they would like to proceed with construction, and how to fund the project.

FINANCIAL IMPACT: Should the Town decide to move forward after feasibility and schematic design, the total project cost is estimated to be \$8M, exclusive of any MSBA reimbursement.

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

STAFF ASSISTANCE: Chris Dwelley, Deputy Finance Director for School Operations, Doug Boulanger, Director of School Facilities

**B. NEW BUSINESS (First Reading) (Refer to Second Reading
12/11/2025)**

BARNSTABLE TOWN COUNCIL

**ITEM# 2026-070
INTRO: 12/04/2025**

**2026-070 RESOLVE APPOINTING PAULA HERSEY TO THE REGIONAL DISTRICT
SCHOOL COMMITTEE FOR THE CAPE COD REGIONAL TECHNICAL
HIGH SCHOOL DISTRICT**

RESOLVED: Upon the recommendation of the Town Manager, the Town Council does hereby appoint Paula Hersey, a resident of Marstons Mills, to serve as a member of the Regional District School Committee for the Cape Cod Regional Technical High School District for a term of three years.

SPONSOR: Mark S. Ells, Town Manager

DATE

ACTION TAKEN

_____	_____
_____	_____

_____	Read Item
_____	Rationale
_____	Council Discussion
_____	Vote

BARNSTABLE TOWN COUNCIL

ITEM# 2026-070
INTRO: 12/04/2025

SUMMARY

TO: Town Council
FROM: Mark S. Ells, Town Manager
THROUGH: Karen L. Nober, Town Attorney
DATE: December 04, 2025
SUBJECT: Resolve appointing Paula Hersey to the Regional District School Committee for the Cape Cod Regional Technical High School District

BACKGROUND: The Cape Cod Regional Technical High School District (the “District”) was established pursuant to an agreement among the member towns, including the Town of Barnstable. The agreement provides that the powers of the District are vested in and exercised by a Regional District School Committee (the “Committee”), which serves as the governing board of the District. Each member town appoints two members to the Committee for a term of three years. Under the agreement, it is the moderator of each town who makes the appointment. The agreement does not address who makes the appointment for a town with a city form of government. Accordingly, the Town Attorney has advised that the Town Council make the appointment after receiving a recommendation from the Town Manager.

FISCAL IMPACT: N/A

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

STAFF ASSISTANCE: Karen L. Nober, Town Attorney