

TOWN OF BARNSTABLE

NOTICE OF MEETINGS OF TOWN DEPARTMENTS AND ALL TOWN BOARDS
As Required by Chapter 28 of the Acts of 2009, amending MGL Chapter 30A

NAME OF PUBLIC BODY - COMMITTEE, BOARD OR COMMISSION:

REGULAR MEETING AGENDA COMMUNITY PRESERVATION COMMITTEE

23 FEB '23 PM 12:56
BARNSTABLE TOWN CLERK

DATE OF MEETING: Monday, February 27, 2023

TIME: 5:30 p.m.

PLACE: The Community Preservation Committee (CPC) meeting will be held by remote participation methods and will be closed to the public pursuant to the passage of legislation extending certain COVID-19 measures adopted during the state of emergency in the Commonwealth of Massachusetts.

Alternative public access to this meeting will be provided in the following manner:

1. The meeting will be televised via Channel 18 and may be accessed through the Channel 18 website at <https://streaming85.townofbarnstable.us/CablecastPublicSite/>
2. Real-time public comment can be addressed to the Community Preservation Committee utilizing the Zoom link or telephone number and access code for remote access below.
Link: <https://zoom.us/j/84590250313>
Or by calling the US Toll-free Telephone Number: 888-475-4499
Meeting ID: 845 9025 0313
3. Applicants, their representatives, and individuals required or entitled to appear before the Community Preservation Committee may appear remotely and are not permitted to be physically present at the meeting and may participate through the link or telephone number provided above. Documentary exhibits and/or visual presentations should be submitted in advance of the meeting to Sarah.Beal@town.barnstable.ma.us so that they may be displayed for remote public access viewing.

Meeting materials will be available at <https://www.townofbarnstable.us/boardscommittees/communitypreservationcommittee/> prior to the meeting.

Please note that tonight's meeting is recorded and broadcast on Channel 18 and, in accordance with MGL Chapter 30A, s. 20, the Chair must inquire whether anyone is taping this meeting and to please make their presence known

Call to Order:

Minutes:

- Approval of the Draft Community Preservation Committee Regular Meeting Minutes from January 23, 2023.

Letters of Intent:

None received.

Applications:

- Application from the Department of Public Works requesting \$999,755 in Community Preservation Open Space/Recreation funds for the design and installation of a new playground, sidewalks, shade structure, parking and retaining wall located at 93 West Bay Road, Osterville, Map 116, Parcel 053. Capital Improvement Funding (CIP) to be provided in the amount of \$363,207.

Restriction Review:

- Bowles Field Lot 13 Conservation Restriction review.
- 230 Old Colony Road Conservation Restriction review.

Correspondence Received:

- Letter from Massachusetts Historical Society – Cotuit Federated Church Appeal
- Letter of support from W. Barnstable Water Commission for purchase of 18 acre parcel of land in West Barnstable for protection of groundwater resources.
- Letter dated 1/23/2023 from The Trustees of Reservations attorney John J. Caughlin to Assistant Town Attorney Kate Connelly hand-delivered to CPC by the Trustees' Elizabeth Keary-Soule.

Member Discussion:

- Discussion of potential restriction(s) on Armstrong-Kelley Park, Osterville property.
- Discussion of Cotuit Federated Church preservation restriction.
- Federated Church Burial Ground Project – Discussion of proposal for subsequent consultant to complete project.
- Meeting Format for March 20, 2023 CPC meeting.
- Annual Community Preservation Committee Meeting date discussion.

Project Updates:

- The Tales of Cape Cod CPC Application was approved at the February 2, 2023 Town Council public hearing.
- Four CPC Applications approved and recommended at the January 23, 2023 CPC meeting have been referred for inclusion on a Town Council agenda in March, 2023: DPW CCRT Phase 3 & Phase 4; Unitarian Church of Barnstable; COMM Water Department.

Public Comment:

General Discussion:

Adjournment:

Next Regularly Scheduled CPC Meeting March 20, 2023

Please Note: The list of matters is those reasonably anticipated by the chair, which may be discussed at the meeting. Not all items listed may be discussed and other items not listed may also be brought up for discussion to the extent permitted by law. It is possible that if it so votes, the Committee may go into executive session. The Committee may also act on items in an order other than they appear on this agenda. Public files are available for viewing during normal business hours at the Community Preservation office located at 367 Main Street, Hyannis, MA

For your information the section of the M.G.L. that pertains to postings of meetings is as follows: Except in an emergency, in addition to any notice otherwise required by law, a public body shall post notice of every meeting at least 48 hours prior to such meeting, excluding Saturdays, Sundays and legal holidays. In an emergency, a public body shall post notice as soon as reasonably possible prior to such meeting. Notice shall be printed in a legible, easily understandable format and shall contain: the date, time and place of such meeting and a listing of topics that the chair reasonably anticipates will be discussed at the meeting. Meetings of a local public body, notice shall be filed with the municipal clerk, and posted in a manner conspicuously visible to the public at all hours in or on the municipal building in which the clerk's office is located.



Town of Barnstable
COMMUNITY PRESERVATION COMMITTEE



www.town.barnstable.ma.us/CommunityPreservation

Email: CommunityPreservationCommittee@town.barnstable.ma.us

Committee Members

Lindsey B. Counsell – Chair • Tom Lee – Vice Chair • Marilyn Fifield – Historical Commission • Terry Duenas – At Large • Katherine Garofoli – At Large
 Stephen Robichaud– Planning Board • Tom Lee – Conservation Commission • James Tenaglia – Recreation Commission
 Deborah Converse – Housing Authority • Farley Lewis – At Large • Jessica Rapp Grassetti – Town Council Liaison

Monday, January 23, 2023
Regular CPC Meeting DRAFT Minutes
Remote Access Meeting via Zoom Link: <https://zoom.us/j/87122267429>
5:30 PM

Lindsey Counsell – Chair	Present
Marilyn Fifield – Clerk	Present
Terry Duenas	Present after 5:50 p.m.
Tom Lee-Vice Chair	Absent
Katherine Garofoli	Present
James Tenaglia	Present
Deborah Converse	Present
Stephen Robichaud	Present
Farley Lewis	Present
Jessica Rapp Grassetti – TC Liaison	Present

With a quorum present, Chair Lindsey Counsell called the meeting to order at 5:30 pm and read: “Please note that tonight’s meeting is recorded and broadcast on Channel 18 and, in accordance with MGL Chapter 30A, s.20, I must inquire whether anyone is taping this meeting and to please make their presence known.” No one present was recording the meeting.

Call to Order (Roll Call)

Present: Marilyn Fifield – **yes**, Katherine Garofoli – **yes**, James Tenaglia – **yes**, Deb Converse – **yes**, Stephen Robichaud – **yes**, Farley Lewis – **yes**, and Lindsey Counsell - **yes**. Absent: Tom Lee, Terry Duenas until 5:50pm.

Minutes

The motion of Deb Converse was seconded by Katherine Garofoli to approve the November 21, 2022, Community Preservation Committee Meeting Minutes as submitted. Motion carried with a roll call vote: **Yes – 7, No – 0.**

Letters of Intent

None received.

Applications:

- **Application from the Unitarian Church of Barnstable requesting \$300,000 in Community Preservation Historic Preservation funds for the restoration and preservation of the church tower, pavilion, and nave. Total cost of this project is \$471,010.80 with a Massachusetts Historical Commission grant**

for \$70,000 and \$100,000 in private donations provided as matching funds. There is an existing Historic Preservation Restriction recorded on this property.

Stephen Robichaud recused himself from review of the Unitarian Church of Barnstable's Application.

Ms. Crystal Gipps, Principal Architect Shawn Willett, and Lynne Spencer of the Preservation Group presented the Unitarian Church Application. Mr. Willett narrated a PowerPoint presentation and said that his firm had performed a conditions assessment and master plan to identify areas of the church that needed repair and restoration, noting specific concern for the cupola. He described the building as a c.1907 colonial Greek Revival building designed by the notable architect Guy Lowell, who also designed the Museum of Fine Arts building in Boston and many other noteworthy buildings. He mentioned that he fortunately had access to the original blueprints to use as the basis for the drawings, with this Application's focus on the cupola and dome which has leaks and water infiltration and considerable deterioration of the woodwork, especially below the clock. He also noted interior structural concerns with the tower framing, saying that the work done over the years to address this is now failing.

Mr. Willett outlined the work that is included in this funding request: restoration of the weathervane, copper dome and interior wood framing of the belfry; replacement of copper flashings, downspouts and gutters, replacement of some siding, wood trim, moldings, and urns and repair of the belfry louvers; re-gilding of three sides of the clock. He said that after the bidding process, the lowest qualified bidder, Village Green Restoration, was chosen from 3 qualified contractors, and he reported that they have entered into a contract with them.

Ms. Gipps reviewed the bids received and budget for the project, noting that the total budget of \$680,225.80 includes both the immediate work and long-term work needed within the next 10 years. She explained that they are asking the Community Preservation Committee for a grant of \$300,000, with matching funds of \$70,000 from a Massachusetts Historical Commission grant and Church funds of \$380,000 from their ongoing capital campaign.

Ms. Gipps confirmed that the Unitarian Church of Barnstable anticipates that they will raise the funds required to complete the entire project without a need to return to the Community Preservation Committee for additional funding. CPC members expressed their support and congratulations for the Church's detailed presentation, their chosen contractor and receipt of a grant award and guidance from Massachusetts Historical Commission.

PUBLIC COMMENT: None

Motion made by Deb Converse was seconded by Katherine Garofoli to approve and recommend through the Town Manager the Unitarian Church of Barnstable Application for \$300,000 for the restoration and preservation of the church tower, pavilion and nave, with \$261,000 to come from the amount set aside for Historic Preservation and \$39,000 to come from the Community Preservation Undesignated Fund. Roll Call Vote: Marilyn Fifield – yes;

Deb Converse – yes; Katherine Garofoli – yes; Farley Lewis – yes; James Tenaglia – yes; Lindsey Counsell – yes. Yes – 6, No – 0. Motion carried.

Chair Counsell reminded that the Application will be forwarded to the Town Council for public hearing and vote to appropriate the funds.

- **Application from the Centerville-Osterville-Marstons Mills (COMM) Water Department requesting \$100,000 to fund the professional services necessary to quickly respond to properties that may become available for the protection of the COMM Water District drinking water supply.**

COMM Water Department Superintendent Craig Crocker was present, and Chair Counsell noted that this Application is like a previous CP grant to the Hyannis Water District. Deb Converse called the map COMM provided in the Application very interesting and helpful in indicating the location of the water fields, and she added that COMM is progressive in asking for this money before it is needed.

PUBLIC COMMENT:

Town Councilor Kris Clark said that she supported the COMM Water District Application and reminded that the number one reason for purchasing open space has been and still is for municipal water.

Motion made by Deb Converse was seconded by Katherine Garofoli to approve and recommend through the Town Manager the Centerville-Osterville-Marstons Mills (COMM) Water Department Application for \$100,000 from the amount set aside for Open Space/Recreation to enable COMM to obtain professional services needed to respond quickly to properties that could protect their drinking water supply. Roll Call Vote: Marilyn Fifield – yes; Deb Converse – yes; Katherine Garofoli – yes; Farley Lewis – yes; Stephen Robichaud – yes; James Tenaglia – yes; Lindsey Counsell – yes. Yes – 7, No – 0. Motion carried.

- **Application from the Department of Public Works requesting \$300,000 in Open Space/Recreation Funds for Cape Cod Rail Trail Phase 4 pre-25% design services, with matching funds of \$500,000 provided by a MassTrails grant.**

DPW Senior Project Manager Paul Graves explained that CCRT Phase 4 will continue the Rail Trail - a 12-ft.-wide paved, off-road, shared-use path for pedestrians and non-motorized transportation vehicles - nearly 10 miles along the approved route from the termination of phase 3 at Mary Dunn Road in Barnstable to the Barnstable/Sandwich Town Line on the Service Road, with numerous attractions along the route. He said the 10-mile Phase 4 is being shown in three phases because typically when State TIP funding is requested there is a limit on how much can be provided per cycle. He added that Phase 4 will close a critical gap in the Cape Cod Rail Trail that is proposed to extend from the Cape Cod Canal to Provincetown, with much of the trail already existing in several of the towns east of Barnstable. He explained that CPC approval of the \$300,000 sought could leverage as much as \$20M in future construction costs. He said that MassDOT will not commit the construction funds until plans are far enough along, and

he anticipated that MassDOT would likely commit the funds for construction after completion of the pre-25% design, depending also upon the TIP process results. Reporting receipt of a \$500,000 MassTrails grant after seeking grants totaling \$800,000, Mr. Graves noted the need to supplement the \$500,000 grant for land surveying and engineering services to make up for not receiving \$300,000 in MassTrails grant funds. He reminded that, during his presentation of the Letter of Intent for this project on November 21, 2022, CPC members requested that the Department of Public Works apply for the \$300,000 in the next MassTrails grant round, and he reported that that application will be submitted this week, although he felt that a repeat award in this next grant cycle was unlikely. He said if CPC approved the Application and MassTrails did award funds, DPW would be able to return the Town funds to the CP Fund. Mr. Graves stressed the importance of funding the current stage of the project with approval of the CPC Application for \$300,000, and CPC noted extensive public interest in this project. Mr. Graves provided a more detailed outline of the Mass DOT approval process and the different stages of design which will eventually result in a 100% design and final bid documents, noting that this process will take several years to complete.

Motion of James Tenaglia was seconded by Katherine Garofoli to approve and recommend through the Town Manager the Department of Public Works Application for \$300,000 from the amount set aside for Open Space and Recreation for the Cape Cod Rail Trail Phase 4 pre-25% design services, with supplementary MassTrails grant application to be submitted. Roll Call Vote: Terry Duenas – yes; Marilyn Fifield – yes; Deb Converse – yes; Katherine Garofoli – yes; Farley Lewis – yes; Stephen Robichaud – yes; James Tenaglia – yes; Lindsey Counsell – yes. Yes – 8, No – 0. Motion carried.

Application from the Department of Public Works seeking \$195,000 in Open Space/Recreation Funds for Cape Cod Rail Trail Phase 3 engineering services, with MassDOT commitment of \$12.3 million for construction of Barnstable and Yarmouth sections.

DPW Senior Project Manager Paul Graves explained that Phase 3 will extend the Rail Trail from Old Town House Road in Yarmouth to Mary Dunn Road in Barnstable. He noted that the green section of the displayed map shows an existing shared-use path in Yarmouth that will be reconstructed to meet Cape Cod Rail Trail standards. He said that the red line on the map represents the new shared-use path which will be 12 ft. wide to accommodate multiple users. He added that Phase 3 is 4.5 miles long and roughly half in Barnstable and half in Yarmouth, with the portion in Barnstable entirely within the Hyannis Ponds Wildlife Management area and cross-country except at the endpoint where it meets Mary Dunn Road. He added that the consultant is currently preparing the 100% design to submit to MassDOT this spring. He noted that \$195,000 is for environmental services that did not arise until later in the project, as well as for several MassDOT and other requirements that have increased over the years since the project started, along with legal fees for various ROW requirements and some engineering required in the construction phase, as well. With this phase scheduled to commence construction in February 2024, he expected to be in construction for two years.

PUBLIC COMMENT:

None

Motion of James Tenaglia was seconded by Stephen Robichaud to approve and recommend through the Town Manager the Department of Public Works Application for \$195,000 from the amount set aside for Open Space and Recreation for the Cape Cod Rail Trail Phase 3 engineering services. Roll Call Vote: Terry Duenas – yes; Marilyn Fifield – yes; Deb Converse – yes; Katherine Garofoli – yes; Farley Lewis – yes; Stephen Robichaud – yes; James Tenaglia – yes; Lindsey Counsell – yes. Yes – 8, No – 0. Motion carried.

- **Review of draft Recreation Restriction associated with the CPC Application from The Trustees of Reservations requesting \$286,866 in Community Preservation Recreation funds for the new children’s play area and renovation of the existing pathways to meet ADA regulations in the Armstrong-Kelley Park, Osterville.**

Chair Counsell explained that the Community Preservation Committee had asked for this Application to have a perpetual Recreation Easement. He said that just before the commencement of this meeting he received a letter from the attorney representing the Trustees asking if the Committee would consider a shorter period, with the suggestion of 30 years, with a second option for consideration of a claw back of funds to the Community Preservation Fund if the Trustees decided to do something else with the property in the future. Chair Counsell explained that this property has no other permanent restriction and is left to a vote of the Board of Trustees if a change of use or limitation of public access was a change they wanted to make. He added that, with the grant of funds for this project, CPC must ensure that there will be perpetual public access. Chair Counsell also noted legal questions contained in the letter that will be forwarded to the Legal Department. Following discussion regarding consideration of a shorter restriction period as well as the option to receive a return of the full amount of funding granted should the use change in the future, it was decided that the matter would be taken up at the next CPC meeting in February, after review by the Legal Department.

Correspondence Received:

None received.

Project Updates:

Chair Counsell provided the following updates:

- Application from the Department of Public Works for Phase I restoration work on the Zion Union Historic Museum was approved at Town Council public hearing December 15, 2022.
- Town Council public hearing for Tales of Cape Cod CPC Application is scheduled for February 2, 2023.
- Application from the Department of Public Works for restoration of the Osterville Recreation Playground is anticipated for a future CPC meeting. Chair Counsell noted that there may be additional funding through the CIP process.
- James Tenaglia noted that there is a meeting scheduled on January 31, 2023, at :

4:30 for the community to help finalize equipment selection for the Centerville Playground project funded by CPC, and he alluded to concern over circulation of misinformation about a field there being paved for a parking lot which is not accurate.

Public Comment:

None

General Discussion:

None

Member Discussion:

- Community Preservation Coalition Dues 2023.
 - After discussion, CPC Members agreed to continue membership.
Motion of James Tenaglia was seconded by Katherine Garofoli to pay the membership dues for the Community Preservation Coalition of \$7,900 from the CP Administration Fund to continue membership for 2023. Roll Call Vote: Terry Duenas – yes; Marilyn Fifield – yes; Deb Converse – yes; Katherine Garofoli – yes; Farley Lewis – yes; Stephen Robichaud – yes; James Tenaglia – yes; Lindsey Counsell – yes. Yes – 8, No – 0. Motion carried.
- 2023 Community Preservation Committee Meeting Schedule
Motion of Chair Counsell was seconded by Terry Duenas to approve the proposed 2023 Community Preservation Committee Meeting Schedule. Roll Call Vote: Terry Duenas – yes; Marilyn Fifield – yes; Deb Converse – yes; Katherine Garofoli – yes; Farley Lewis – yes; Stephen Robichaud – yes; James Tenaglia – yes; Lindsey Counsell – yes. Yes – 8, No – 0. Motion carried.
- CPC Handbook Updates. Chair Counsell reminded that updates in the historic procedures section would specify beginning the review process with Town Historical Commission approval in lieu of State Register listing, then Mass. Historical Commission determination of eligibility for the required Historic Preservation Restriction before CPC consideration.
- February 27, 2023, CPC Meeting. After brief discussion, CPC agreed that the meeting format would be remote for the next CPC meeting scheduled for February 27, 2023.
- Katherine Garofoli reported that she is the Program Manager for AmeriCorps of Cape Cod, a County program that recruits young people every year for environmental and disaster preparedness work with a variety of town departments and non-profits, with a March placement application deadline, and she welcomed sharing this information with appropriate town departments.
- An Affordable Housing Trust report should be available for the February CPC meeting. Deb Converse reported that the Trust has reduced the number of meetings per month and that they will be asking the Trust Administrator to speak at the CPC Annual Meeting.

- Marilyn Fifield asked if there was an update on the Cotuit Federated Church appeal to Mass. Historical Commission. Town Council Liaison Jessica Rapp-Grassetti reported that this is still pending.

Adjournment:

Motion was made by James Tenaglia and seconded by Katherine Garofoli to adjourn. Roll Call Vote: Terry Duenas – yes; Marilyn Fifield – yes; Deb Converse – yes; Katherine Garofoli – yes; Farley Lewis – yes; Stephen Robichaud – yes; James Tenaglia – yes; Lindsey Counsell – yes. Yes – 8, No – 0. Motion carried. Meeting adjourned at 6:29 p.m.

Next Regularly Scheduled CPC Meeting February 27, 2023

List of documents/exhibits used by the Committee at the meeting:

- Exhibit 1 –CPC Agenda, January 23, 2022.
- Exhibit 2 –Draft CPC Regular Meeting Minutes from the November 21, 2022, meeting.
- Exhibit 3 – Application -Unitarian Church of Barnstable
- Exhibit 4 - PowerPoint presentation – Unitarian Church of Barnstable
- Exhibit 5 - Application – Centerville-Osterville-Marstons Mills Water Department
- Exhibit 6 - Application – Department of Public Works – Cape Cod Rail Trail Phase 4
- Exhibit 7 - Application – Department of Public Works – Cape Cod Rail Trail Phase 3
- Exhibit 8 - Draft Recreation Restriction – Armstrong Kelley Park, Osterville
- Exhibit 9 - Community Preservation Coalition Membership Dues Invoice for 2023
- Exhibit 10 – 2023 Community Preservation Committee Meeting Schedule

Respectfully submitted,
Ellen M. Swiniarski
Community Preservation Coordinator
Planning & Development Department
and edited by CPC Clerk Marilyn Fifield

Please Note: The list of matters is those reasonably anticipated by the chair, which may be discussed at the meeting. Not all items listed may be discussed and other items not listed may also be brought up for discussion to the extent permitted by law. It is possible that if it so votes, the Committee may go into executive session. The Committee may also act on items in an order other than they appear on this agenda.

*** Public files are available for viewing during normal business hours at the Community Preservation office located at 367 Main Street, Hyannis, MA**

CPC APPLICATION (PAGE 1)

Appropriated CPA funds require one or more deed restrictions (conservation / historic preservation / housing). Sample restrictions are available at the Official Website of the Town of Barnstable www.town.barnstable.ma.us. Applicants must provide the first draft of their restriction to the CPC Project Coordinator. The Town of Barnstable Legal Department and Legal Consultant shall review and approve the restriction prior to the final commitment of the CPA funds to the project.

Submission Date: February 8, 2023

Project Title: Osterville Playground

Project Map/Parcel Number: 116 / 053

Estimated Start Date: Fall 2023

Estimated Completion Date: Summer 2024

Purpose (please circle all that apply):

Open Space

Community Housing

Historic

Recreation

Town Affiliation

Public

Private

Non-Profit

Partnership (Describe below #3)

(*Applications must be approved by the Town Manager prior to submission)

Applicant Contact:

Name: Mark Marinaccio, AIA, Town Architect

Organization (if applicable): Town Of Barnstable Department Of Public Works

Address: 800 Pitcher's Way, Hyannis

Mailing Address:

Daytime Phone #: 508-328-5064

E-mail Address: mark.marinaccio@town.barnstable.ma.us

Primary Contact (if different from applicant contact):

Name:

Address:

Mailing Address:

Daytime Phone #:

E-mail Address:

CPC APPLICATION (PAGE 2)

Appropriated CPA funds require one or more deed restrictions (conservation / historic preservation/ housing). Sample restrictions are available at the Official Website of the Town of Barnstable www.town.barnstable.ma.us. Applicants must provide the first draft of their restriction to the CPC Project Coordinator. The Town of Barnstable Legal Department and Legal Consultant shall review and approve the restriction prior to the final commitment of the CPA funds to the project.

Budget Summary:

Total budget for project: \$1,362,336

CPA funding request: \$ 999,755

Matching funds (committed/under consideration): Capital Improvement Funding: \$363,207

Please address the following questions:

1. Project summary (description and goals): Design and Installation of a new playground, sidewalks, shade structure, parking, retaining wall.
2. How does this project help preserve Barnstable's character? This playground replaces an outdated playground that was removed years ago.
3. Partnership(s) Description: The design will be developed in partnership with the local Civic Association and citizens of Osterville.
4. Provide a detailed project timeline: Design: Summer 2023. Construction: Spring 2024
5. How does this project meet the General Criteria and Category Specific Criteria for CPC projects? This is a recreation project that will serve a significant number of residents. The project will promote the collaboration of Civic and user groups. It will provide equal access to all residents.
6. Provide a detailed budget, including the following information, as applicable: (Fiscal Year, Total Cost, CPC Funds Requested, Other Sources of Funding sought and received, and cost estimates/quotes received): Detailed budget is attached to this application.

7. Assessors office identification map and map and parcel number: 116 / 053



Signature of Applicant

02/08/2023

Date

Signature of Applicant Partnership

Date

**Additional information may be provided as well as requested.



The Town of Barnstable

Department of Public Works

382 Falmouth Road, Hyannis, MA 02601
508.790.6400



Mark R. Marinaccio, AIA
Town Architect

MEMO

Date: October 19, 2021

From: Mark R. Marinaccio, AIA, Town Architect

To: Mark S. Ells, Town Manager 

Copy: Daniel W. Santos, P.E., DPW Director
Lindsey Counsell, Chairman, Community Preservation Committee

Subject: **Project Eligibility Letter of Interest to the Community Preservation Committee**
Centerville recreation playground

Dear Mr. Counsell:

Please accept this Letter of Interest for a new playground at the Osterville Recreation Building.

As you and the committee are aware a new playground in Osterville is much needed. The existing playground was removed for safety reason a few years ago, and repurposed playground equipment with wood fiber surfacing was relocated to the site. A new accessible playground with a theme developed by the community would be preferred. This would be part of a continued restoration of the site for recreational use.

We are proposing grading an area near the new tennis courts in order to create accessibility from the parking area and West Bay Road. Work will also include installation of new playground equipment as coordinated with the community, shade structure, benches, tables, patio, assessable surfacing, , retaining wall, landscaping, sidewalk, water bottle filling station, and accessible path.

The Department Of Public Works is seeking funding in the amount of \$1,352,336 for the installation of a new playground. We are estimating completion of the project in the spring of 2023.

Thank you for your consideration of this request and please contact us if you have any questions or if we can provide any additional information.


Mark S. Ells, Town Manager

CONSTRUCTION DETAIL			CONSTRUCTION DETAIL (CONTINUED)		
Element	Cd	Description	Element	Cd	Description
Style	94	Outbuildings			
Model	00	Vacant			
Grade:					
Stories					
Exterior Wall 1					
Exterior Wall 2					
Roof Structure					
Roof Cover					
Interior Wall 1					
Interior Wall 2					
Interior Floor 1					
Interior Floor 2					
Heat Fuel					
Heat Type					
AC Type					
Bedrooms					
Full Baths					
Half Baths					
Extra Fixtures					
Total Rooms					
Bath Style					
Kitchen Style					
Occupancy					
Accessory Apt					
Foundation					
Rms Prts					
Bath Split					
CONDO DATA					
Parcel Id		C	Owne	0.0	
			B	S	
Adjust Type	Code	Description	Factor%		
Condo Flr					
Condo Unit					
COST / MARKET VALUATION					
Building Value New			0		
Year Built			0		
Effective Year Built			0		
Depreciation Code					
Remodel Rating					
Year Remodeled					
Depreciation %			0		
Functional Obsol			0		
External Obsol			0		
Trend Factor			1		
Condition					
Condition %			100		
Percent Good			65		
RCNLD			0		
Dep % Ovr					
Dep Ovr Comment					
Misc Imp Ovr					
Misc Imp Ovr Comment					
Cost to Cure Ovr					
Cost to Cure Ovr Comment					

No Sketch

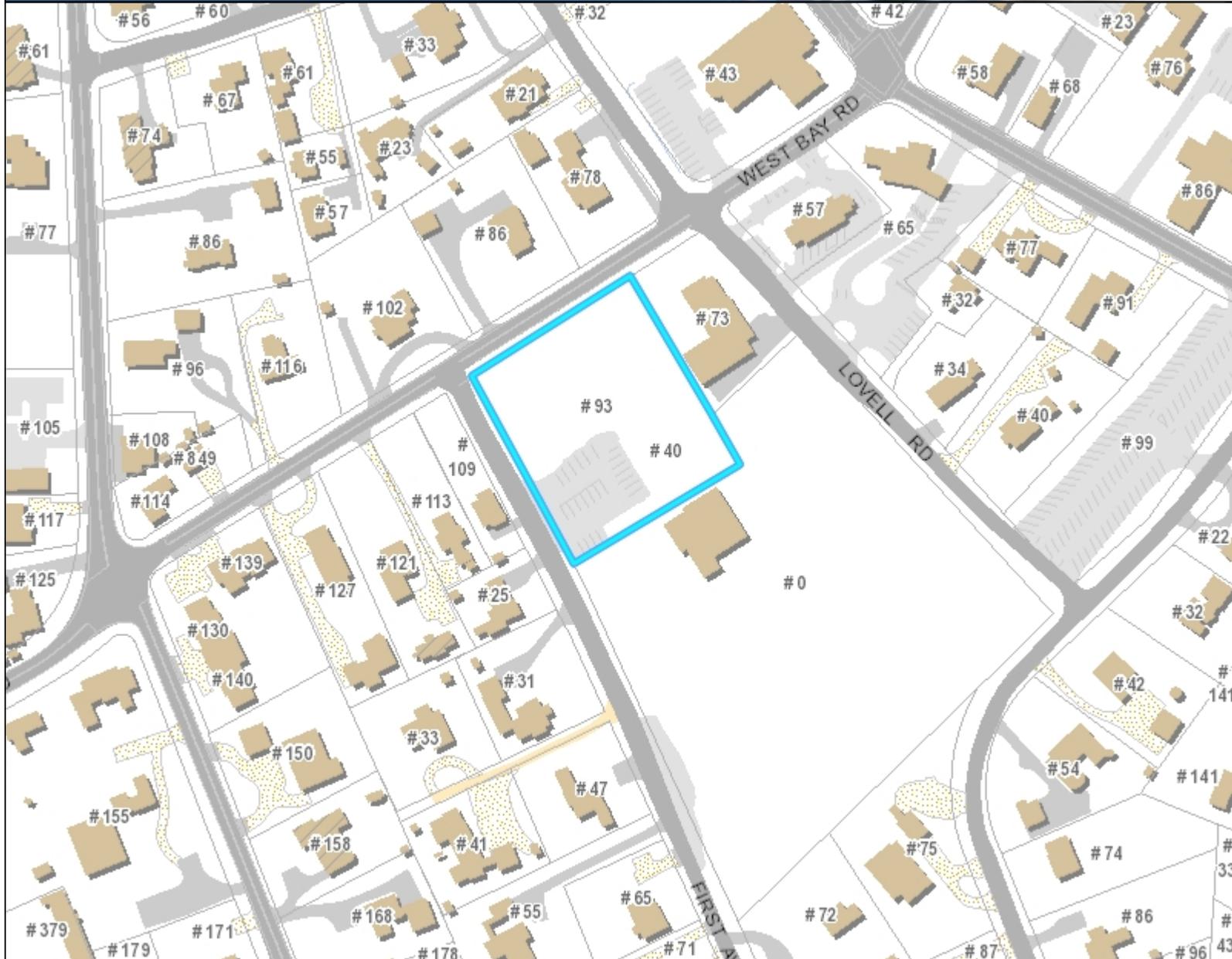
OB - OUTBUILDING & YARD ITEMS(L) / XF - BUILDING EXTRA FEATURES(B)

Code	Description	L/B	Units	Unit Price	Yr Blt	Cond. Cd	% Gd	Grade	Grade Adj.	Appr. Value
PAV1	PAVING-ASP	L	6,800	3.00	2017		96		0.00	19,600
TEN	Tennis Court 7	L	14,40	6.84	2017		96	C	1.00	94,600
FNC5	FENCE-10'CH	L	448	34.35	2017		96		0.00	14,800
FNC9	Fence Gate 10	L	2	810.42	2017		96		0.00	1,600
PAT1	Patio- Average	L	125	5.89	2017		98		0.00	800

BUILDING SUB-AREA SUMMARY SECTION

Code	Description	Living Area	Floor Area	Eff Area	Unit Cost	Undeprec Value
Ttl Gross Liv / Lease Area		0	0	0		0





Legend

- Parcels
- ▬ Town Boundary
- + Railroad Tracks
- Buildings
- Approx. Building
- Buildings
- Painted Lines
- Parking Lots
- Paved
- Unpaved
- Driveways
- Paved
- Unpaved
- Roads
- Paved Road
- Unpaved Road
- ▨ Bridge
- Paved Median
- Streams
- Marsh
- Water Bodies

Map printed on: 8/3/2022



Approx. Scale: 1 inch = 167 feet



This map is for illustration purposes only. It is not adequate for legal boundary determination or regulatory interpretation. This map does not represent an on-the-ground survey. It may be generalized, may not reflect current conditions, and may contain cartographic errors or omissions.

Parcel lines shown on this map are only graphic representations of Assessor's tax parcels. They are not true property boundaries and do not represent accurate relationships to physical objects on the map such as building locations.



Town of Barnstable GIS Unit

367 Main Street, Hyannis, MA 02601

508-862-4624

gis@town.barnstable.ma.us

FILE PATH: O:\Vertical Construction\ACTIVE PROJECTS\Osterville Recreation Building\New Recreation Building\Drawing\Osterville Field Restroom 100422.dwg
 PRINTED: Thursday, November 17, 2022
 LAST SAVED BY: MARINACM

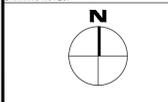


TOWN OF BARNSTABLE
 Department of Public Works
 Administration & Technical Support
 800 Pitchers Way, Hyannis, MA 02601

OSTERVILLE FIELD IMPROVEMENTS
 1954 LOVELL ROAD
 OSTERVILLE, MA

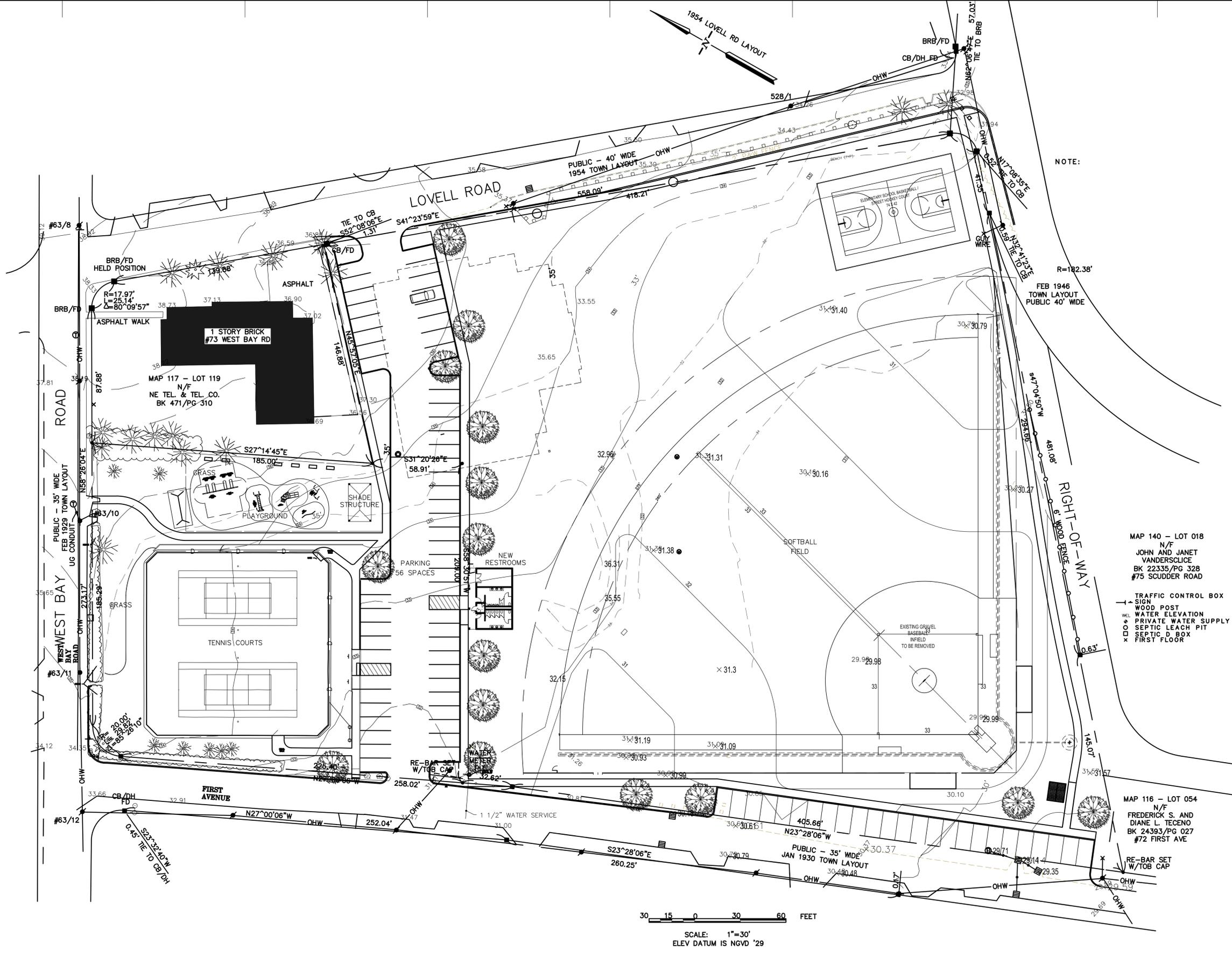
DRAWING TITLE
MASTER SITE PLAN

NO.	DATE	COMMENTS
1		
2		
3		
4		
5		



DRAWN BY: MFM
 PROJECT NO: 17086
 SCALE: AS NOTED
 DATE: 10/4/22
 SHEET NO.:

C3.1



SCALE: 1"=30'
 ELEV DATUM IS NGVD '29

PROPOSED SITE PLAN - BATH HOUSE VERSION
 1"=30'

NOTE:

- MAP 140 - LOT 018
N/F
JOHN AND JANET
VANDERSCLICE
BK 22335/PG 328
#75 SCUDDER ROAD
- TRAFFIC CONTROL BOX
- SIGN
- WOOD POST
- WATER ELEVATION
- PRIVATE WATER SUPPLY
- SEPTIC LEACH PIT
- SEPTIC D BOX
- FIRST FLOOR

MAP 116 - LOT 054
 N/F
 FREDERICK S. AND
 DIANE L. TECENO
 BK 24393/PG 027
 #72 FIRST AVE

Osterville Playground

Hard Costs	area	cost	Construction	CIP	CPC
Site clearing	1	8000	\$ 8,000		\$ 8,000
Playground Equipment	1	350000	\$ 350,000		\$ 350,000
Playground Surface	1	250000	\$ 250,000		\$ 250,000
Benches	8	2000	\$ 16,000		\$ 16,000
Shade Structure	1	35000	\$ 35,000		\$ 35,000
Sidewalks	100	50	\$ 5,000	\$ 5,000	
Plaza	1500	8	\$ 12,000	\$ 12,000	
Fence	326	100	\$ 32,600		\$ 32,600
Landscape	1	10000	\$ 10,000		\$ 10,000
Retaining Wall	120	200	\$ 24,000	\$ 24,000	
Solar Trash Compactor	1	12000	\$ 12,000	\$ 12,000	
Parking	1	100000	\$ 100,000	\$ 100,000	
Subtotal			\$ 854,600	\$ 153,000	\$ 701,600
General Conditions	7-12%	15%	\$ 128,190	\$ 22,950	\$ 105,240
Subtotal			\$ 982,790	\$ 175,950	\$ 806,840
Contingency	15%	10%	\$ 98,279	\$ 17,595	\$ 80,684
Total Estimated Construction Hard Cost			\$ 1,081,069	\$ 193,545	\$ 887,524
Soft Costs					
			Design	CIP	CPC
Design Fees	8-12%	10%	\$ 108,106.90	\$ 19,355	\$ 88,752
Other Fees			\$ 1,000	\$ 1,000	
Project Management	5%	5%	\$ 54,053	\$ 54,053	
Contingency	10%	10%	\$ 108,106.90	\$ 19,355	\$ 88,752
Total Estimated Project Soft Cost			\$ 271,267	\$ 93,762	\$ 177,505
Total Estimated Project Cost			\$ 1,352,336	\$ 287,307	\$ 1,065,029

PROPERTY ADDRESS: Lot 13, Commerce Road, Barnstable, MA

GRANTOR: Barnstable Land Trust, Inc.

GRANTEE: Town of Barnstable

ADDRESS OF PREMISES: Commerce Road, (Lot 13), Barnstable, Massachusetts

FOR GRANTOR’S TITLE SEE: Barnstable County Registry of Deeds at Land Court Certificate of Title # (pending)

Grantor’s Plan: Land Court Plan 4686-G

GRANT OF CONSERVATION RESTRICTION

I. STATEMENT OF GRANT

BARNSTABLE LAND TRUST, INC. (Federal ID #22-2483963), a Massachusetts charitable corporation with an office at 1540 Main Street, Barnstable, Barnstable County, Massachusetts 02668, being the sole owner of the Premises as defined herein, its successors and assigns (“Grantor”), acting pursuant to Sections 31, 32, and 33 of Chapter 184 of the Massachusetts General Laws, grant, with QUITCLAIM COVENANTS, to the **INHABITANTS OF THE TOWN OF BARNSTABLE**, a Massachusetts municipal corporation with principal offices at Town Hall, 367 Main Street, Hyannis, Barnstable County, Massachusetts 02601-3907, their permitted successors and assigns (“Grantee”), for consideration paid of One Hundred and Fifty Thousand and 00/100 (\$150,000.00), IN PERPETUITY AND EXCLUSIVELY FOR CONSERVATION PURPOSES, the following Conservation Restriction on land located in Town of Barnstable, County of Barnstable, Commonwealth of Massachusetts containing the entirety of a 2.3-acre parcel of land (“Premises”), which Premises is more particularly described in Exhibit A and shown in the attached reduced copy of a survey plan in Exhibit B, both of which are incorporated herein and attached hereto.

The Conservation Restriction was acquired utilizing, in part, Community Preservation Act funds pursuant to Chapter 44B § 1 et seq. as applied pursuant to Chapter 149, §298 of the Acts of 2004, as amended by Chapter 352, §129-133 of the Acts of 2004 (the so called “Barnstable County Community Preservation Act” or “CPA”), which funds were authorized for such purposes by a vote of the Barnstable Town Council at a duly called meeting held on November 17, 2022, on Agenda Item 2023-049. A copy of the Town Council Ordinance is attached hereto as Exhibit C.

II. PURPOSES:

This Conservation Restriction is defined in and authorized by Sections 31, 32, and 33 of Chapter 184 of the Massachusetts General Laws and otherwise by law. The purposes of this Conservation Restriction (“Purposes”) are to ensure that the Premises will be maintained in perpetuity in its natural, scenic, or open condition, and to prevent any use or change that would materially impair the Conservation Values (as defined below).

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

The fee interest in the Premises was acquired utilizing, in part, the Conversation Land Tax Credit Program authorized under the Chapter 509 Acts of 2008 Sections 1-4 as amended by Chapter 409 Acts of 2010 Sections 4-13 of the Massachusetts General Court.

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

- ACEC. The Commonwealth of Massachusetts, through the authority of the Secretary of Energy and Environmental Affairs under General Law c. 21A, s. 2(7), designated the Barnstable Harbor/Sandy Neck ecosystem as an Area of Critical Environmental Concern (ACEC) in 1978. The Premises is proximate to ACEC in the north, east and south.
- Open Space. The Premises contributes to the protection of the scenic and natural character of The Town of Barnstable and the protection of the Premises will enhance the open-space value of these and nearby lands. The Premises abuts land already conserved, including 26 acres of conservation restricted land owned or monitored by the Barnstable Land Trust, and 8.65 acres owned by Massachusetts Audubon Society.
- Soils and Soil Health. The Premises includes a majority of Farmland of Statewide Importance, as identified by the USDA Natural Resources Conservation Service. The protection of the Premises will promote healthy soils and healthy soils practices as such terms are defined in Chapter 358 of the Acts of 2020, which added definitions of these terms to Section 7A of Chapter 128 of the Massachusetts General Laws.
- Biodiversity. The Premises is proximal to areas designated Core Habitat and Critical Natural Landscape as defined by the Massachusetts Natural Heritage and Endangered Species Program. BioMap2, published in 2010, was designed to guide strategic biodiversity conservation in Massachusetts over the next decade by focusing land protection and stewardship on the areas that are most critical for ensuring the long-term persistence of rare and other native species and their habitats, exemplary natural communities, and a diversity of ecosystems. *BioMap2* is also designed to include the habitats and species of conservation concern identified in the State Wildlife Action Plan. The Premises’ northern boundary is proximal to Critical Natural Landscape, Coastal Adaptation, and Tern Foraging areas. The Critical Natural Landscape, and specifically the Coastal Adaptation and Tern Foraging areas, support a diversity of wildlife, including migratory shorebirds and waterfowl including Snowy Egrets, Black Ducks, and Least Terns. Protection of the Premises, therefore, aligns

with the NHESP’s wildlife and habitat protection objectives and would ensure perpetual protection for each of these state-recognized habitats.

The Premises is wholly within a statewide important and critically imperiled sandplain grassland, and includes a stand of native little bluestem grass. The Premises was formerly used for agriculture, and now is maintained as an open grassland habitat. The Premises is surrounded by and proximal to approximately 26 acres of conservation restricted land owned or monitored by the Barnstable Land Trust. Conservation of the Premises will therefore enhance a protected open-space assemblage.

- Historic and Archaeological Resources. Conservation and appropriate management of the Premises has an important public benefit by preserving historic and archeological resources within the Premises. The Premises is identified by the Massachusetts Historical Commission as being within the Old King’s Highway District listed in the State Register of Historic Places, a local historic district, and adjacent to the Dillingham House. Ancient Native American and historical period archeological sites are recorded elsewhere in proximity along Maraspin Creek in similar environments to the Premises. The site is favorable for ancient and historical period land use and occupation. Evidence of ancient and historical period Native American activities, colonial period agricultural, industrial and residential activities may be present within undisturbed portions of the property.
- Climate Change Resiliency. The Premises is identified as an area of slightly above average Terrestrial Resiliency according to The Nature Conservancy’s (TNC) Resilient Land Mapping Tool, including slightly above average Landscape Diversity and slightly above average Local Connectedness. TNC’s Resilient Land Mapping Tool was developed in order to map ‘climate-resilient’ sites that are ‘more likely to sustain native plants, animals, and natural processes into the future.’ The protection of these climate resilient sites is an important step in both reducing human and ecosystem vulnerability to climate change and adapting to changing conditions.
- Protection of the Premises will assist in achieving Barnstable County conservation goals. In July 1991, the Barnstable County Assembly of Delegates, pursuant to the Cape Cod Commission Act (Chapter 716 of the Acts of 1989), adopted a *Regional Policy Plan* (RPP), amended in 1996, 2002, 2009, 2012, and 2018, which provided, *inter alia* (references are to the 2018 RPP, amended in 2021 to accommodate climate change goals and objectives):
 - “To protect, preserve, or restore the quality and natural values and functions of inland and coastal wetlands and their buffers.” (Wetland Resources Goal, p. 55).
 - “To protect, preserve, or restore wildlife and plant habitat to maintain the region’s natural diversity” (Wildlife and Plant Habitat Goal, p. 55).
 - In reference to this Wildlife and Plant Habitat Goal, the RPP states, “For many years habitat loss due to development has been the primary threat to the region’s habitats” (p. 32); and
 - “To conserve, preserve, or enhance a network of open space that contributes to the region’s natural community resources and systems” (Open Space Goal, p. 55). In reference to this Open Space Goal, the RPP states, “[t]he open space of the Cape is critical to the health of the region’s natural systems, economy, and population. Open space provides habitat for the region’s diverse species and protection of the region’s drinking water supply” (p. 30).

Granting this Conservation Restriction will advance each of these goals outlined in the RPP. The Wetlands Goal will be addressed in protecting areas that will be affected by inland migration of marine wetlands with sea level rise and other climate change impacts. Wildlife and Plant Habitat Goal will be served because the Premises contains a host of important plant and wildlife species, and falls within an NHESP BioMap2 Critical Natural Landscape area. The Open Space Goal will be advanced because the Premises is proximal to several conservation restricted parcels.

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

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

1) "Preservation of open space for protection of drinking water resources, and for protection of other natural, historic and scenic resources is a community-wide priority; and 2) Protection of open space should continue to be an integral component of the Town's efforts." (p. 6)

To achieve this vision, the Plan sets several goals for the town including: 1) "To protect and maintain the maximum amount of open space to enhance environmental protection, recreational opportunities and community character, and 2) "Plan, coordinate and execute open space protection measures that complement community efforts to protect water supply, protect fresh and marine surface waters, [and] preserve historic, scenic and cultural resources..." (pp. 10-11).

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

Moreover, in 1981, the Town of Barnstable adopted a Conservation Restriction Program consisting of policies and guidelines, in particular an *Open Space Policy*, approved by the Board of Selectmen, Assessors, and Conservation Commission, which encourages the use of conservation restrictions in perpetuity to protect natural resources in accordance with the purposes of the *Open Space and Recreation Plan*, and which further specified that purposes of a conservation restriction could include the following:

- preserve scenic view;
- preserve open space;
- preserve important natural habitats of fish, wildlife or plants; and,
- limit or prevent construction on land of natural resource value.

The Town of Barnstable promotes the Cape Cod Pathways program, intended to create a series of looped and through-routes in the town and beyond for public walking and scenic enjoyment.

The Premises is located on Commerce Road part of the harbor walking loop identified in the Cape Cod Pathways plan for the Town of Barnstable (date).

- Consistency with Clearly Delineated Federal Conservation Policy. Protection of the Premises meets the definition of “conservation purposes” as defined in 26 CFR 1.170A-14(d)(1), because its conservation would: reserve the land for education regarding the natural world; protect wildlife habitats; and it would contribute to the preservation of open space because it is proximate to several other parcels already conserved.
- 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, including the protection of a State ACEC and Regional Historic District
- Therefore, preservation of the Premises will advance the open space, water and other natural resource management and passive recreational goals and objectives of the Town of Barnstable, Barnstable County, and the Commonwealth of Massachusetts.

III. PROHIBITED and PERMITTED ACTS AND USES

A. Prohibited Acts and Uses

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

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

6. Introduction of Invasive Species. Planting or introducing any species identified as invasive by the Massachusetts Invasive Plant Advisory Group or identified as invasive in such recognized inventories as the Massachusetts Introduced Pests Outreach Project, the Northeast Aquatic Nuisance Species Panel, or other such inventories, and any successor list as mutually agreed to by Grantor and Grantee;
7. Non-Native Species. Introduction of species of animals or plants that are not native to Barnstable County, as defined by current published lists of native species, including The Vascular Plants of Massachusetts: A County Checklist, by Bruce A. Sorrie and Paul Somers, published by the Massachusetts Division of Fisheries and Wildlife Natural Heritage & Endangered Species Program (1999) or as amended or contained in a similar professionally acceptable publication available in the future.
8. Motor Vehicles. Using, parking, or storing motorized vehicles, including motorcycles, mopeds, all-terrain vehicles, off-highway vehicles, motorboats or other motorized watercraft, snowmobiles, launching or landing aircraft, or any other motorized vehicles, acknowledging that vehicles necessary for public safety (i.e., fire, police, ambulance, other government officials) may have a legal right to enter the Premises;
9. Camping; hunting, or trapping, unless for a proven nuisance to wildlife.
10. Subdivision. Subdividing or conveying a part or portion of the Premises (as compared to conveyance of the Premises in its entirety which shall be permitted), it being the Grantor's and Grantee's intention to maintain the entire Premises under unified ownership;
11. Use of Premises for Developing Other Land. Using the Premises towards building, septic system, or development requirements on this or any other parcel;
12. Adverse Impacts to Boundary Markers Disrupting, removing, or destroying granite fence posts, or any other boundary markers;
13. Excavation. 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.
14. Residential, Agricultural, or Industrial Uses. Using the Premises for residential, agricultural, or industrial purposes;
15. Inconsistent Uses. Using the Premises for commercial purposes that are inconsistent with the Purposes or that would materially impair the Conservation Values, or for any other uses or activities that are inconsistent with the Purposes or that would materially impair the Conservation Values.

B. Permitted Acts and Uses

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

1. Vegetation Management. Maintaining vegetation, including pruning, trimming, cutting, and mowing, and removing brush, all to prevent, control, and manage hazards, disease, insect or fire damage, and/or in order to maintain the condition of the Premises as documented in the Baseline Report (see Paragraph XV), particularly related to the public scenic view and sandplain grassland habitat maintenance. Mowing, stockpiling, burning or otherwise clearing of vegetation, but only in the months between November and April, in order to maintain the sandplain grassland habitat and the public scenic view.
2. Non-native, Nuisance, or Invasive species. Removing non-native, nuisance, or invasive species, interplanting native species, and controlling species in a manner that minimizes damage to surrounding, non-target species and preserves water quality;
3. Native Plants. The non-commercial propagation of herbaceous native plants referenced hereinabove in Section III A.7.
4. Natural Habitat and Ecosystem Improvement. With prior written approval of the Grantee, conducting measures designed to restore native biotic communities, or to maintain, enhance or restore wildlife, wildlife habitat, ecosystem function, or rare or endangered species including planting native trees, shrubs, and other vegetation;
5. Archaeological Investigations. Conducting archaeological activities, including without limitation archaeological research, surveys, excavation and artifact retrieval, but only in accordance with an archaeological field investigation plan, which plan shall also address restoration following completion of the archaeological investigation, prepared by or on behalf of the Grantor and approved in advance of such activity, in writing, by the Massachusetts Historical Commission State Archaeologist (or appropriate successor official) and by the Grantee. A copy of the results of any such investigation on the Premises is to be provided to the Grantee;
6. Fencing. Measures, such as the installation of sight-permeable fencing taken in order to prevent unauthorized vehicle entry and dumping, vandalism or other acts destructive to the Premises. Also the erection of fencing or other barriers consistent with endangered species protection. Any fences shall not detract from the public's view across the Premises from the adjoining town road;
7. Signs. Constructing, installing, maintaining, and replacing signs with respect to the Permitted Acts and Uses, the Purposes, the Conservation Values, trespass, public access, identity and address of the Grantor, sale of the Premises, the Grantee's interest in the Premises, boundary and trail markings, any gift, grant, or other applicable source of support for the conservation of the Premises, Also the erection of signs, consistent with

endangered species protection. Any signs shall not detract from the public's view across the Premises from the adjoining town road.

8. Landform protection. 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, dune, hill, from erosion).
9. Motorized Vehicles. The use of motorized vehicles (1) by the Grantor as reasonably necessary to carry out activities permitted under this Restriction, (2) for access by Grantee for purposes set forth in Article IV, below, and (3) for access by police, fire, emergency, public works, or other governmental personnel carrying out their official duties. 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.
10. Other. 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 Conservation Restriction, and, where feasible, result in a net gain in conservation value of the Premises.

C. Site Restoration

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

D. Compliance with Permits, Regulations, Laws

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

E. Notice and Approval

1. Notifying Grantee. Whenever notice to or approval by Grantee is required, Grantor shall notify or request approval from Grantee, by a method requiring proof of receipt, in writing not less than sixty (60) days prior to the date Grantor intends to undertake the activity in question, unless a different time period is specified herein. The notice shall:
 - a. Describe the nature, scope, design, location, timetable and any other material aspect of the proposed activity;
 - b. Describe how the proposed activity complies with the terms and conditions of this Conservation Restriction, and will not materially impair the Purposes and/or Conservation Values;

- c. Identify all permits, licenses, or approvals required for the proposed activity, and the status of any such permits, licenses, or approvals.
 - d. Describe any other material aspect of the proposed activity in sufficient detail to permit the Grantee to make an informed judgment as to its consistency with the Purposes and Conservation Values.
2. Grantee Review. Where Grantee's approval is required, Grantee shall grant or withhold approval in writing within sixty (60) days of receipt of Grantor's request. Grantee's approval shall only be granted upon a showing that the proposed activity will minimize impacts to the Conservation Values and will not materially impair the Purposes and/or Conservation Values. Grantee may require Grantor to secure expert review and evaluation of a proposed activity by a mutually agreed upon party.
3. 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.
4. Emergencies. In the event the activity proposed is necessary to address an emergency situation, either to avert environmental degradation, ecological damage, or risk to public health and safety, Grantee shall respond forthwith.

IV. INSPECTION AND ENFORCEMENT

A. Entry onto the Premises

The Grantor hereby grants to the Grantee, and its duly authorized agents or representatives, with or without the presence of an employee or employees of the Grantor the right to enter the Premises upon reasonable notice and at reasonable times, for the purpose of inspecting the Premises to determine compliance with or to enforce this Conservation Restriction.

B. Legal and Injunctive Relief

1. Enforcement. The rights hereby granted shall include the right to enforce this Conservation Restriction by appropriate legal proceedings and to obtain compensatory relief, and equitable relief against any violations, including, without limitation, injunctive relief and relief requiring restoration of the Premises to its condition prior to the time of the injury (it being agreed that the Grantee will have no adequate remedy at law in case of an injunction). The rights hereby granted shall be in addition to, and not in limitation of, any other rights and remedies available to the Grantee for the enforcement of this Conservation Restriction.
2. Notice and Cure. In the event the Grantee determines that a violation of this Conservation Restriction has occurred and intends to exercise any of the rights described herein, the Grantee shall, before exercising any such rights, notify the Grantor in writing of the violation. The Grantor shall have thirty (30) days from receipt of the written notice to halt the violation and remedy any damage caused by it, after which time Grantee may take further action, including instituting legal proceedings and entering the Premises to take

reasonable measures to remedy, abate or correct such violation, without further notice. Provided, however, that this requirement of deferment of action for thirty (30) days applies only if Grantor immediately ceases the violation and Grantee determines that there is no ongoing violation. In instances where a violation may also constitute a violation of local, state, or federal law, the Grantee may notify the proper authorities of such violation.

3. Reimbursement of Costs and Expenses of Enforcement. Grantor covenants and agrees to reimburse to Grantee all reasonable costs and expenses (including counsel fees) incurred by the Grantee in enforcing this Conservation Restriction or in taking reasonable measures to remedy, abate or correct any violation thereof. In the event of a dispute over the boundaries of the Conservation Restriction, Grantor shall pay for a survey by a Massachusetts licensed professional land surveyor and to have the boundaries permanently marked.

C. Non-Waiver

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

D. Disclaimer of Liability

By acceptance of this Conservation Restriction, the 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. Acts Beyond the Grantor's Control

Nothing contained in this Conservation Restriction shall be construed to entitle the Grantee to bring any actions against the Grantor for any injury to or change in the Premises resulting from natural causes beyond the Grantor's control, including but not limited to fire, flood, weather, climate-related impacts, and earth movement, or from any prudent action taken by the Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Premises resulting from such causes. In the event of any such occurrence, the Grantor and Grantee will cooperate in the restoration of the Premises, if desirable and feasible.

F. 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.

V. PUBLIC ACCESS

This Conservation Restriction does not grant any right of physical access to the public, owing to the sensitivity of the rare sandplain grassland habitat and the fact that the public can enjoy the open view

across the Premises to adjoining open fields and the fact that a public walking trail is provided on the western adjacent lot.

VI. TERMINATION/RELEASE/EXTINGUISHMENT

A. Procedure

If circumstances arise in the future that render the Purposes impossible to accomplish, this Conservation Restriction can only be terminated, released, or extinguished, whether in whole or in part, by a court of competent jurisdiction under applicable law after review and approval by the Secretary of Energy and Environmental Affairs of the Commonwealth of Massachusetts, or successor official (“Secretary”), and any other approvals as may be required by Section 32 of Chapter 184 of the Massachusetts General Laws.

B. Grantor’s and Grantee’s Right to Recover Proceeds

If any change in conditions ever gives rise to termination, release, or extinguishment of this Conservation Restriction under applicable law, then Grantee, on a subsequent sale, exchange, or involuntary conversion of the Premises, shall be entitled to a portion of the proceeds in accordance with Paragraph VI.C, subject, however, to any applicable law which expressly provides for a different disposition of the proceeds, and after complying with the terms of any gift, grant, or funding requirements. The Grantee shall use its share of any proceeds in a manner consistent with the Purposes or the protection of the Conservation Values.

C. Grantee’s Receipt of Property Right

Grantor and Grantee agree that the conveyance of this Conservation Restriction gives rise to a real property right, immediately vested in the Grantee, with a fair market value that is at least equal to the proportionate value that this Conservation Restriction, determined at the time of the conveyance, bears to the value of the unrestricted Premises. The proportionate value of the Grantee’s property right as of the date of termination, release, or extinguishment (See Paragraph XII) shall be thirty percent (30%)¹, based on Grantee’s contribution towards the purchase price on the Effective Date.

D. Cooperation Regarding Public Action

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

¹ Purchase price of property \$500,000. CPA contribution to project \$150,000 = 30%

VII. DURATION and ASSIGNABILITY

A. Running of the Burden

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

B. Execution of Instruments

The Grantee is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Conservation Restriction. The Grantor, on behalf of itself and its successors and assigns, appoints the Grantee its attorney-in-fact to execute, acknowledge and deliver any such instruments on its behalf. Without limiting the foregoing, the Grantor and its successors and assigns agree themselves to execute any such instruments upon request.

C. Running of the Benefit

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

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

VIII. SUBSEQUENT TRANSFERS

A. Procedure for Transfer

The Grantor agrees to incorporate by reference the terms of this Conservation Restriction in any deed or other legal instrument which grants any interest in all or a portion of the Premises, including a leasehold interest and to notify the Grantee not less than thirty (30) days prior to the effective date of such transfer. Any transfers shall receive prior approval by Grantee to assure that the Premises is transferred to a qualified conservation organization. Failure to do any of the above shall not impair the validity or enforceability of this Conservation Restriction. If the Grantor fails to reference the terms of this Conservation Restriction in any deed or other legal instrument which grants any interest in all or a portion of the Premises, then the Grantee may record, in the Barnstable Registry District of the Land Court, and at the Grantor's expense, a notice of this Conservation Restriction. Any transfer will comply with Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, if applicable.

B. Grantor’s Liability

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

IX. ESTOPPEL CERTIFICATES

Upon request by the Grantor, the Grantee shall, within thirty (30) days execute and deliver to the Grantor any document, including an estoppel certificate, which certifies the Grantor’s compliance or non-compliance with any obligation of the Grantor contained in this Conservation Restriction.

X. NON MERGER

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

XI. AMENDMENT

A. Limitations on Amendment

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

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

B. Amendment Approvals and Recording

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

XII. EFFECTIVE DATE

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

XIII. NOTICES

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

To Grantor: Barnstable Land Trust
1540 Main Street
West Barnstable MA 02668

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

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

XIV. GENERAL PROVISIONS

A. Controlling Law

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

B. Liberal Construction

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

C. Severability

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

D. Entire Agreement

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

XV. BASELINE DOCUMENTATION REPORT

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

XVI. MISCELLANEOUS

A. Pre-existing Public Rights

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

B. Release of Homestead

The Grantor attests that there is no residence on or abutting the Premises (including areas excluded from the Premises) that is occupied or intended to be occupied as a principal residence by a spouse, former spouse, or children of the grantor, or a spouse, former spouse, or children of a beneficiary of the trust, if Premises is owned by a trust.

C. Subordination

The Grantor shall record at the Barnstable Registry District of the Land Courts simultaneously with this Conservation Restriction all documents necessary to subordinate any mortgage, promissory note,

loan, lien, equity credit line, refinance assignment of mortgage, lease, financing statement or any other agreement which gives rise to a surety interest affecting the Premises.

D. Executory Limitation

If Grantee shall cease to exist or to be qualified to hold conservation restrictions pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws, or to be qualified organization under 26 U.S.C. 170(h), and applicable regulations thereunder, if applicable, and a prior assignment is not made pursuant to Paragraph VII, then Grantee's rights and obligations under this Conservation Restriction shall vest in such organization as a court of competent jurisdiction shall direct pursuant to the applicable Massachusetts law and with due regard to the requirements for an assignment pursuant to Paragraph VII.

E. Prior Encumbrances

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

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

Grantor – Barnstable Land Trust, Inc.

Grantee Acceptance – Town of Barnstable Town Manager

Approval - Town of Barnstable Town Council

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

G. The following exhibits are attached and incorporated herein:

Exhibit A: Legal Description of Premises

Exhibit B: Reduced Copy of Recorded Plan of Premises

Exhibit C: Town Council Ordinance

At a meeting duly held on _____, 2023, Barnstable Land Trust, Inc. voted to grant the foregoing Conservation Restriction to the Town of Barnstable.

Grantor:

Barnstable Land Trust, Inc.

Leigh Townes, President,
Barnstable Land Trust, Inc.

Deborah Reuman, Treasurer
Barnstable Land Trust, Inc.

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss. _____ 2023

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

Mark H. Robinson, Notary Public
My commission expires: 8 July 2027

**APPROVAL OF THE TOWN OF BARNSTABLE
TOWN COUNCIL**

At a public meeting duly held on _____ 2023, the Town Council of the Town of Barnstable, Massachusetts, voted to accept the foregoing Conservation Restriction from the Barnstable Land Trust, Inc., to the Town of Barnstable in the public interest pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws.

TOWN COUNCIL

PRESIDENT: _____
Matthew Levesque

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss

On the _____ day of _____, 2023, before me, the undersigned notary public, personally appeared **Matthew Levesque**, the person whose name is signed on the document and proved to me through satisfactory evidence of identification, which was _____, and who being by me duly sworn did say that he is the President of the Town Council of the Town of Barnstable; that he is duly authorized to act on behalf the Town Council; and he acknowledged the foregoing instrument to be the free act and deed of Town of Barnstable Town Council.

Notary Public
My Commission Expires:

APPROVAL OF TOWN MANAGER

I, Mark S. Ells, as Town Manager of the Town of Barnstable, Massachusetts, hereby approve the foregoing Conservation Restriction from the Barnstable Land Trust, Inc. to the Town of Barnstable pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws.

TOWN OF BARNSTABLE
TOWN MANAGER:

Mark S. Ells

Barnstable, ss

On the ____ day of _____, 2023, before me, the undersigned notary public, personally appeared Mark S. Ells, the person whose name is signed on the document and proved to me through satisfactory evidence of identification, which was personal knowledge of identity, and who being by me duly sworn did say that he is the Town Manager of the Town of Barnstable; that he is duly authorized to act on behalf the Town of Barnstable and he acknowledged the foregoing instrument to be his free act and deed.

Notary Public
My Commission Expires

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

The undersigned, Secretary of Energy and Environmental Affairs of the Commonwealth of Massachusetts, hereby approves the foregoing Conservation Restriction from Barnstable Land Trust, Inc. to the Town of Barnstable in the public interest pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws.

Dated: _____, 2023

Rebecca Tepper
Secretary of Energy and Environmental Affairs

THE COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss:

On this _____ day of _____, 2023, before me, the undersigned notary public, personally appeared Rebecca Tepper, and proved to me through satisfactory evidence of identification which was _____ to be the person whose name is signed on the proceeding or attached document, and acknowledged to me that she signed it voluntarily for its stated purpose.

Notary Public
My Commission Expires:

EXHIBIT A

Legal Description of Premises

The Premises subject to this Conservation Restriction is all of a vacant tract of land located in the Village of Barnstable, in the Town of Barnstable, Barnstable County, Commonwealth of Massachusetts, more particularly bounded and described as follows:

The land in Barnstable in Barnstable County, Massachusetts shown as Lot 13 on a plan entitled *Plan of Land of Commerce Road Barnstable, MA, Prepared For Dillingham Properties LLC*, dated 5/18/2022 (Revised), by Daniel A. Ojala, PLS, Down Cape Engineering, Inc, 939 Main Street (Route 6A), YarmouthPort, MA 02675 and filed in the Land Registration Office in Boston as Land Court Plan 4686G.

Containing 2.3 acres, more or less, per survey.

For Grantor's Title: *pending, Thomas Brazelton to Barnstable Land Trust, Inc.*

Town of Barnstable Assessor Map 318, Parcel 025, Lot 002 (portion)

Street Address: Lot 13, Commerce Road, Barnstable, Massachusetts 02630

EXHIBIT B

Sketch Plan of Premises

For official full size plan see Land Court Plan: 4686-G

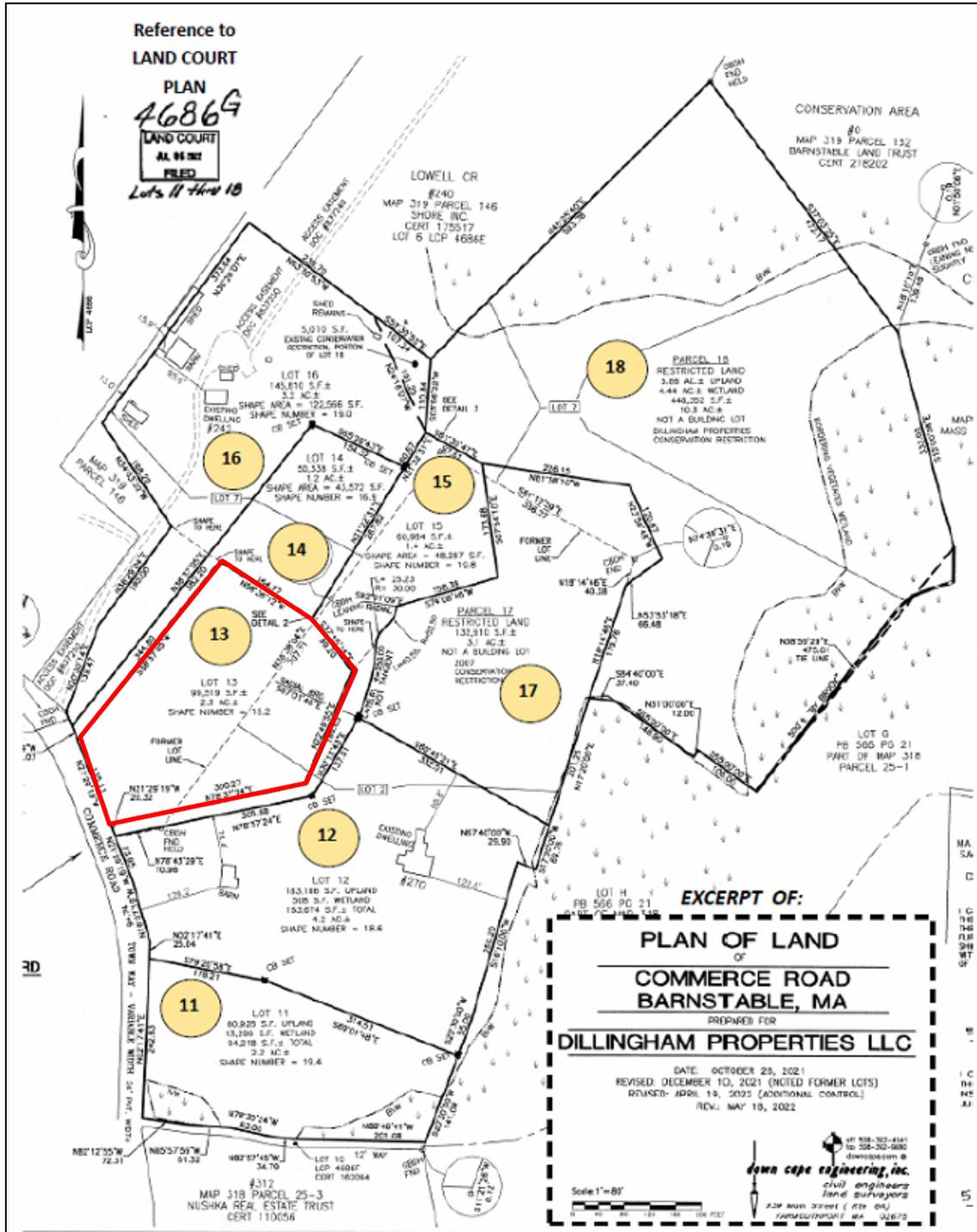


EXHIBIT C

Town Council Ordinance



Town of Barnstable

Office of Town Clerk

367 Main Street, Hyannis MA 02601

Office: 508-862-4044
Fax: 508-790-6326

Ann M. Quirk, CMMC/MMC
Town Clerk

January 26, 2023

To whom it may concern:

Please be advised that the following is a true copy of an item duly passed by the Barnstable Town Council on November 17, 2022:

**2023-049 APPROPRIATION ORDER IN THE AMOUNT OF \$150,000 IN COMMUNITY PRESERVATION FUNDS FOR THE PURPOSE OF ACQUIRING A CONSERVATION RESTRICTION ON 2.3 ACRES OF OPEN SPACE LOCATED AT 242 COMMERCE ROAD, BARNSTABLE, MA, SHOWN AS A PORTION ON ASSESSORS MAP 318, PARCEL 025/001
INTRO: 11/03/2022, 11/17/2022**

Upon a motion duly made and seconded it was

ORDERED: That, pursuant to the provisions of the Community Preservation Act, G.L. c. 44B, the amount of One Hundred and Fifty Thousand Dollars **\$150,000** be appropriated and transferred from the amount set aside for Open Space and Recreation within the Community Preservation Fund for the purpose of acquiring a Conservation Restriction on 2.3 acres of open space located at 242 Commerce Road, Barnstable, shown as a portion of Assessors Map 318, Parcel 025/001. Said Restriction is subject to approval by the Massachusetts Secretary of Energy and Environmental Affairs. Further it is ordered that the Town Manager is authorized to expend the amount appropriated on behalf of the Town for the acquisition subject to oversight by the Community Preservation Committee, and that the Town Manager is authorized to execute, receive, deliver and record any written instruments for the stated purposes.

VOTE: PASSES 11 YES

Roll Call: Atsalis, Clark, Cullum, Cusack, Levesque, Mendes, Neary, Schnepf, Shaughnessy, Starr, Steinhilber

Sincerely,

Ann M. Quirk
Town Clerk/Town of Barnstable



Grantor: Town of Barnstable
Grantee: Barnstable Land Trust, Inc.
Property Address: 230 Old Colony Road, Hyannis, MA 02601
Grantor's Title: Barnstable County Registry of Deeds in Book 29381, Page 262

CONSERVATION RESTRICTION

THE INHABITANTS OF THE TOWN OF BARNSTABLE, a Massachusetts municipal corporation with principal offices at Town Hall, 367 Main Street, Hyannis, Barnstable County, Massachusetts, 02601-3907, its successors and assigns, ("Grantor"), acting pursuant to Sections 31, 32 and 33 of Chapter 184 of the Massachusetts General Laws, for nominal consideration, grants to **BARNSTABLE LAND TRUST, INC.**, (Federal I.D. # 22-2483963), a Massachusetts charitable corporation with an address of 1540 Main Street, West Barnstable, Massachusetts 02668, its successors and permitted assigns, ("Grantee"), with quitclaim covenants, IN PERPETUITY and exclusively for conservation purposes, the following described CONSERVATION RESTRICTION, hereinafter referred to as "Restriction", on a parcel of vacant land totaling approximately 2.11 acres, located in the Village of Hyannis, Town of Barnstable, County of Barnstable, Commonwealth of Massachusetts, said parcel being described in Exhibit A and shown on the sketch map in Exhibit B1 and the sketch plan Exhibit B2, all of which are attached hereto and made a part hereof, (hereinafter referred to the "Premises"). 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, at a duly called meeting held on December 3, 2015, on Agenda Item No. 2016-051, to authorize the Town to grant this Restriction on the Premises in compliance with the provisions set forth herein, and as defined in the Community Preservation Act, G.L. c. 44B § 1 *et. seq.* as applied pursuant to Chapter 149, §298 of the Acts of 2004, as amended by Chapter 352, §§129-133 of the Acts of 2004 (the so-called "Barnstable County Community Preservation Act" or "CPA"). A copy of the Town Council Order is attached hereto as Exhibit C.

I. PURPOSES: This Restriction is defined in and authorized by Sections 31-33 of Chapter 184 of the Massachusetts General Laws, and otherwise by law. The 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 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 conservation and permanent protection of the Premises will yield a significant public benefit for the following reasons (the “conservation values”):

- A. The Premises consist of 2.11 acres of open space which will yield a significant public benefit by allowing public access to Snow’s Creek for passive recreational purposes including the launching of kayaks, canoes and other non-motorized watercraft. The Premises is adjacent to a 6.4-acre Town of Barnstable conservation area, and in the vicinity of the Hidden Harbors conservation restriction held by the Town on 8.6 acres.
- B. Approximately 50% of the Premises is within freshwater marsh habitat frequented by state-identified species of greatest concern buffering upland to Snow’s Creek. Fox, songbirds, osprey, terns, and freshwater amphibians inhabit and forage within this environment. Protection of the Premises will ensure that part of the Town’s Snow’s Creek Wetland Corridor, which feeds fresh water to the Lewis Bay estuary and supports the health of this shared resource of Barnstable and Yarmouth, remains intact and undisturbed from potential development in a densely developed portion of Hyannis.
- C. Portions of the Premises are within the Massachusetts River Protection Act designated Riverfront Area of Snow’s Creek;
- D. Approximately 50% of the Premises is within an area designated as a BioMap2 Critical Natural Landscape - tern foraging component. BioMap2 identifies areas in the state that are most important to conserve for supporting the long-term success of rare and native species. BioMap includes habitats and species of special conservation concern that are highlighted in the State Wildlife Action Plan.
- E. In 1991, the Barnstable Assembly of Delegates, pursuant to the Cape Cod Commission Act, Chapter 716 of the 1988 Massachusetts Acts, adopted a Regional Policy Plan (as amended in 1996, 2002, 2009 and 2015), and identified Marine Water Recharge Areas that are nitrogen-sensitive, including Hyannis Harbor. The Premises are within this Recharge Area.
- F. Consistency with Clearly Delineated Town of Barnstable Conservation Policy. Protection of the Premises will further the Town of Barnstable’s documented goals regarding conservation land. The Town outlined its conservation goals in its *Open Space and Recreational Plan* (1984, amended 1987, 1998, 2005, 2010, 2018), identifying goals, policies, and actions to guide conservation efforts, among them the goal of preserving “quality open spaces throughout the Town which protect and enhance its visual heritage.” Additional objectives include (*references are to the 2018 Plan*):
 - 1) "Preservation of open space...for protection of other natural...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 ...protect fresh and marine surface waters, [and] preserve...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;
- preserve open space;
- 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, and preserving wetland and upland wildlife habitat.

- 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 because it is proximate to several other parcels already conserved.
- H. Consistency with Clearly Delineated State Conservation Policy. Protection of the Premises will further the goals of the Statewide Comprehensive Outdoor Recreation Plan (SCORP).
- Goal 1: Access for Underserved Populations. "Support the acquisition of land and development of new open spaces in area that lack existing useable open spaces, such as Environmental Justice neighborhoods". Protection of the Premises will preserve new open space available for passive recreation within an Environmental Justice neighborhood.
 - Goal 3 Increase the Availability of Water-Based Recreation. "Support the acquisition of land that will provide for water-based recreation". Protection of the Premises will allow public access to Snow's Creek for passive recreational purposes including the launching of kayaks, canoes and other non-motorized watercraft

- 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 Conservation Restriction, and (ii) is intended to serve as an objective information baseline for subsequent monitoring of compliance with the terms of this Conservation 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.

The terms of this Restriction are as follows:

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

Subject to the exceptions set forth in Article III below, prohibited activities shall include, but shall not be limited to, the following:

- 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. (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, or industrial 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 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, nature study or research, and other like activities, including access by motorized wheelchairs or other disabled assistance devices, and launching of kayaks, canoes, and other comparable small, non-motorized craft utilizing only the designated eight (8) foot wide trail access and launch area shown on Exhibit B2.
- 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. With prior written notice to the Grantee, and provided that all applicable federal, state, regional and local approvals are obtained in advance, the installation of a gravel-surfaced parking area on the upland portion of the Premises and along Old Colony Road of a size suitable for no more than three (3) cars, and an eight (8) foot wide access trail for launching of kayaks, canoes, or other small, non-motorized craft. Following initial installation, the Grantor may use, maintain, and repair said parking area and access trail without prior written notice to the Grantee. Said parking area and access trail shall be located within the area shown as "Parking Area" and "Access Trail to Launch Area" on Exhibit B2 and may be used to access the Premises and surrounding conservation land.
- 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. Also the erection of signs, fencing or other barriers consistent with endangered species protection.
- G. Minimal cutting or removal of trees, shrubs and other vegetation and planting of native trees, shrubs and other vegetation to maintain or improve the conservation values protected by this Restriction; 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 the Grantor as reasonably necessary to carry out activities permitted under this Restriction, (2) for access by Grantee for purposes set forth in Article VI, below, and (3) 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. 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 Conservation 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:

- 1. Whenever notice to or approval by Grantee is required under the provisions of this Restriction, Grantor shall notify Grantee in writing not less than sixty (60) days prior to the date Grantor intends to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable and 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 of this Restriction. 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 shall only be granted upon a showing that the proposed activity shall not materially impair the purposes of this Restriction.

2. Failure of Grantee to respond in writing within sixty (60) days shall be deemed to constitute approval by the Grantee of the request as submitted, so long as the request sets forth the provisions of this section relating to deemed approval after sixty (60) days in the notice, provided the requested activity is not expressly prohibited hereunder and the activity will not materially impair the purposes of this Restriction. This Article IV.2 shall not apply to Article Article III.J, in which cases failure of Grantee to respond in writing within sixty (60) days shall be deemed to constitute denial by the Grantee of the request as submitted.

In the event the activity proposed is necessary to address an emergency situation, either to avert environmental degradation, ecological damage or risk to public health and safety, Grantee shall respond forthwith.

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.

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 grant of the right to 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.

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 Conservation Restriction or the status of Grantee under any applicable laws, including Section 170(h) of the Internal Revenue Code of 1986, as amended, or Sections 31-33 of Chapter 184 of the General laws of Massachusetts. Any amendments to this Restriction shall occur only in exceptional circumstances. The Grantee will consider amendments only to correct an error or oversight, to clarify an ambiguity, or where there is a net gain in conservation values. All expenses of all parties in considering and/or implementing an amendment shall be borne by the persons or entity seeking the amendment. Any amendment shall be consistent with the purposes of this Restriction, shall not affect its perpetual duration, shall be approved by the Secretary of Energy and Environmental Affairs and if applicable, shall comply with the provisions of Article 97 of the Amendments to the Massachusetts Constitution, and any gifts, grants or funding requirements. Any amendment shall be recorded in the Barnstable County Registry of Deeds.

XV. EXTINGUISHMENT:

- A. If circumstances arise in the future such as render the purpose of this Conservation Restriction impossible to accomplish, this restriction can only be terminated 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 Conservation Restriction under applicable law, then Grantee, on a subsequent sale, exchange, or involuntary conversion of the Premises, shall be entitled to a portion of the proceeds in accordance with 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 Conservation Restriction gives rise to a real property right, immediately vested in the Grantee, with a fair market value that is equal to five percent (5%) of the fair market value of the unrestricted Premises. Such proportionate value of the Grantee's property right shall remain constant. Any proceeds resulting from an extinguishment or other release of this Restriction will be distributed only after complying with the terms of any gift, grant, or other funding requirements, 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- 33 of Chapter 184 of the Massachusetts General Laws. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purposes of this Restriction that would render the provision valid shall be favored over any interpretation that would render it invalid.
- C. Entire Agreement: This instrument sets forth the entire agreement of the parties with respect to the Restriction and supersedes all prior discussions, negotiations, understandings, or agreements related to the Restriction, all of which are merged herein.
- D. Joint Obligation: The obligations imposed by this Restriction upon the parties that together comprise the "Grantor" and "Grantee" shall be joint and several.
- E. Pre-existing Public Rights. Approval of this Restriction pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws by any municipal officials and by the Secretary of Energy and Environmental Affairs is not to be construed as representing the existence or non-existence of any pre-existing rights of the public, if any, in and to the Premises, and any such pre-existing rights of the public, if any, are not affected by the granting of this

Conservation Restriction.

- F.** 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

- G.** 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.
- H.** 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 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
B1. Sketch Map of the Premises

*OLD COLONY ROAD CONSERVATION RESTRICTION
Hyannis, MA*

- B2. Sketch Plan of the Premises Showing Parking Area
- C. Town Council Orders

GRANT AND APPROVAL OF TOWN MANAGER

I, Mark S. Ells, as Town Manager of the Town of Barnstable, Massachusetts, hereby grant and approve the foregoing Conservation Restriction to Barnstable Land Trust, Inc. pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws.

TOWN OF BARNSTABLE
TOWN MANAGER:

Mark S. Ells

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss

On the _____ day of _____, 2023, before me, the undersigned notary public, personally appeared Mark S. Ells, the person whose name is signed on the document and proved to me through satisfactory evidence of identification, which was personal knowledge of identity, and who being by me duly sworn did say that he is the Town Manager of the Town of Barnstable; that he is duly authorized to act on behalf the Town of Barnstable and she acknowledged the foregoing instrument to be his free act and deed.

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 _____, 2023.

By: _____
Karen Weston Hanesian

Its: President, duly authorized

By: _____
Deborah Reuman

Its: Treasurer, duly authorized

THE COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss:

On this _____ day of _____, 2023, before me, the undersigned notary public, personally appeared Karen Weston Hanesian and Deborah Reuman, and proved to me through satisfactory evidence of identification which was personal knowledge to be the persons whose names are signed on the proceeding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose on behalf of the corporation.

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

**APPROVAL OF THE TOWN OF BARNSTABLE
TOWN COUNCIL**

At a public meeting duly held on _____ 2023, the Town Council of the Town of Barnstable, Massachusetts, voted to approve the foregoing Conservation Restriction to the Barnstable Land Trust, Inc. in the public interest pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws, and hereby granted the foregoing Conservation Restriction.

TOWN COUNCIL

PRESIDENT: _____
Matthew Levesque

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss

On the _____ day of _____, 2023, before me, the undersigned notary public, personally appeared **Matthew Levesque**, the person whose name is signed on the document and proved to me through satisfactory evidence of identification, which was personal knowledge of identity, and who being by me duly sworn did say that he is the President of the Town Council of the Town of Barnstable; that he is duly authorized to act on behalf the Town Council; and he acknowledged the foregoing instrument to be the free act and deed of Town of Barnstable Town Council.

Notary Public
My Commission Expires:

*OLD COLONY ROAD CONSERVATION RESTRICTION
Hyannis, MA*

**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: _____, 2023

Rebecca L Tepper
Secretary of Energy and Environmental Affairs

THE COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss:

On this _____ day of _____, 2023, before me, the undersigned notary public, personally appeared Rebecca L Tepper, and proved to me through satisfactory evidence of identification which was _____ to be the person whose name is signed on the proceeding or attached document, and acknowledged to me that she signed it voluntarily for its stated purpose.

Notary Public
My Commission Expires:

*OLD COLONY ROAD CONSERVATION RESTRICTION
Hyannis, MA*

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

EXHIBIT A

Description of the Premises

All of the land described in a deed to The Inhabitants of the Town of Barnstable recorded at the Barnstable County Registry of Deeds at Book 29381, Page 262.

Street Address: 230 Old Colony Road, Hyannis

Barnstable Assessor's Map 325 Parcel 33.

EXHIBIT B1

Sketch Map of the Premises

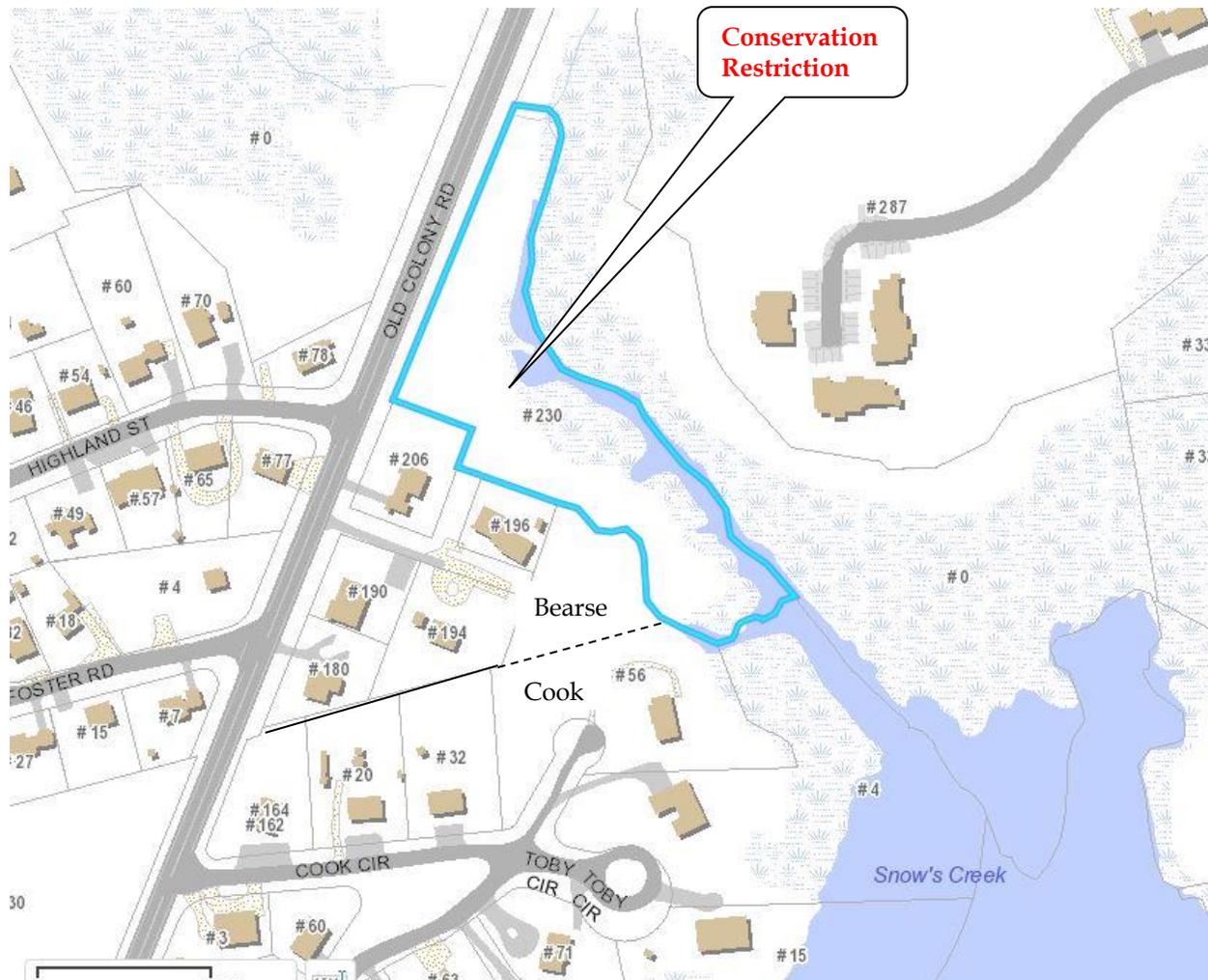


EXHIBIT B2

Sketch Plan of Premises

Proposed Parking - Town of Barnstable, Department of Public Works

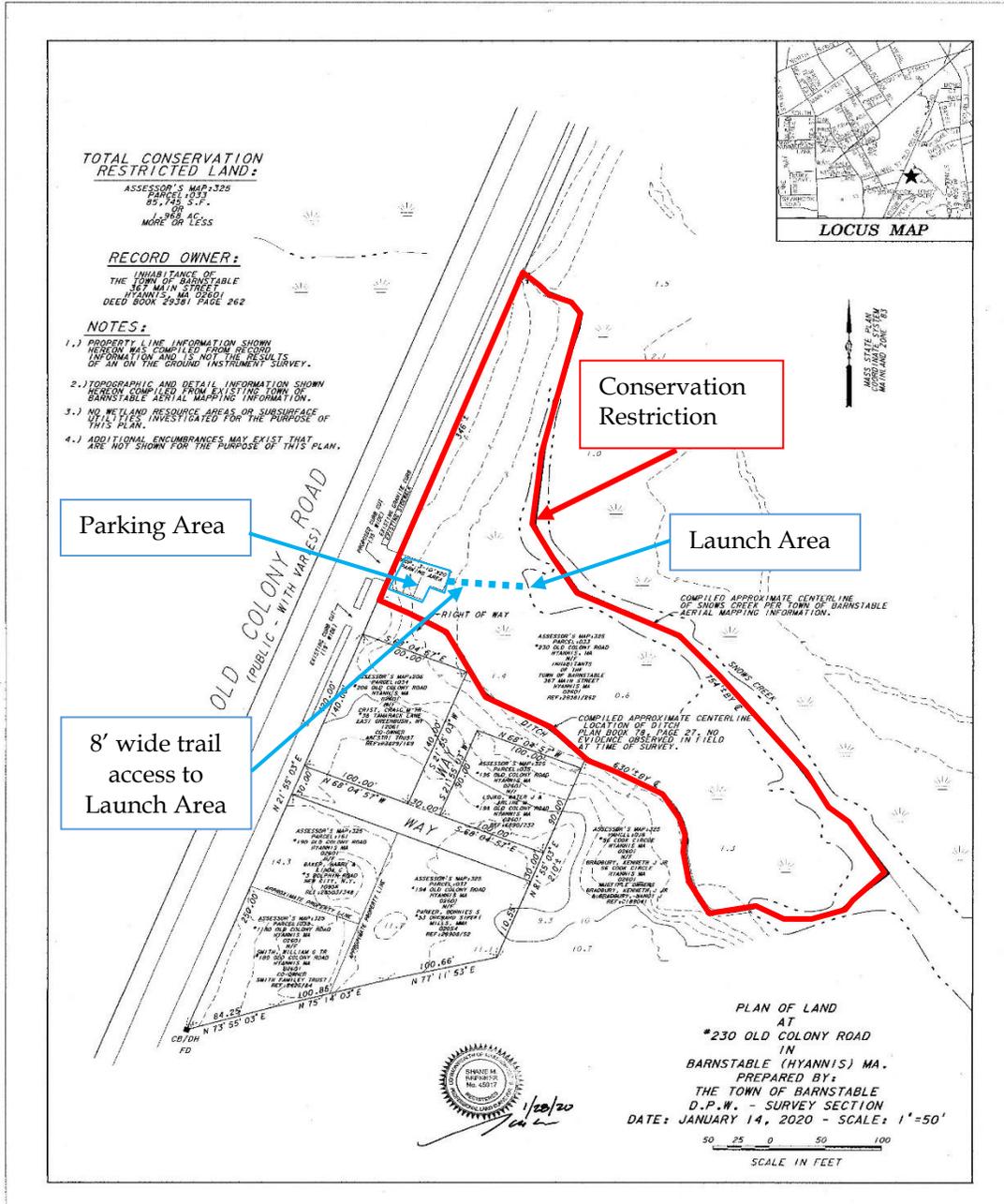


EXHIBIT C
Town Council Votes



Town of Barnstable

Office of Town Clerk

367 Main Street, Hyannis MA 02601

Office: 508-862-4044
Fax: 508-790-6326

Ann M. Quirk, CMC
Town Clerk

January 5, 2016

To Whom It May Concern:

Please be advised that the following is a true copy of an item duly passed by the Barnstable Town Council on December 3, 2015.

2016-051 APPROPRIATION ORDER \$8,000 COMMUNITY PRESERVATION FUNDS FOR ACQUISITION OF OPEN SPACE AND RECREATION LAND AT 230 OLD COLONY ROAD, HYANNIS, MAP 325, PARCEL 33, CONSISTING OF A PARCEL OF 2.11 ACRES MORE OR LESS INTRO: 11/19/15, 12/03/15

ORDERED: That pursuant to the provisions of the Community Preservation Act, G.L. c 44B, the sum of Eight Thousand and No/100 (\$8,000.00) Dollars be appropriated and transferred from the amount set aside for open space in the Community Preservation Fund to be expended for acquisition of open space and recreation land shown on Assessors Map 325 as Parcel 33 with an address of 230 Old Colony Road, Hyannis; and that the Town Manager is authorized to expend the amounts appropriated for the stated purposes by purchase of the land on behalf of the Town and execute, receive, deliver and record any written instruments, subject to prior approval of the grant of a conservation restriction by the Town Council and oversight of the Community Preservation Committee.

VOTE: PASSES 13 YES

Sincerely,

Ann M. Quirk, CMC
Town Clerk/Town of Barnstable



BARNSTABLE REGISTRY OF DEEDS
John F. Meade, Register



The Commonwealth of Massachusetts
William Francis Galvin, Secretary of the Commonwealth
Massachusetts Historical Commission

February 3, 2023

Rev. Angela Menke Ballou
Pastor, Cotuit Federated Church
40 School St
PO Box 436
Cotuit, MA 02635

RE: Preservation Restriction Agreement, 40 School Street (aka Cotuit Federated Church), Cotuit (Barnstable), Massachusetts

Dear Rev. Ballou:

Thank you for providing the Massachusetts Historical Commission (MHC) with additional documentation and supporting information relative to the history of the Cotuit Federated Church building and the recent building expansion project, which we have reviewed. As you are aware, the building is not included in the State Register of Historic Places. In 1987 it was not included in the Cotuit Historic District, which it abuts, when that district was listed in the National Register of Historic Places. The Church building is also not included among the 2452 historic properties that the Barnstable Historical Commission has inventoried over several decades for which records have been filed with the MHC. However in January 2022 the Barnstable Historical Commission voted to recognize the Cotuit Federated Church building as historically significant.

Although the religious history of the Cotuit Federated Church extends to the mid-19th century, and the history of the building on this site begins in 1901, the historic Cotuit Federated Church building as it stood in 2021 substantially represented its Colonial Revival architectural form and appearance that resulted from its redesign in 1941. The architect for the 1941 building, Arlan Dirlam (1905-1979), is notable for his mid-20th century designs for new and renovated churches throughout Massachusetts, including locally his design for the Hyannis Federated Church in 1957. Dr. Dirlam served as president of the Church Architectural Guild of America, and as a director of the Society of Church Architecture. He was awarded the Harleston-Parker gold medal for "outstanding architecture," the highest award given by the Boston Society of Architects. Although modest in scale, the 1941 rebuild of the Cotuit Federated Church was a fine representation of his work.

The character-defining exterior historic architectural features of the historic 1941 Cotuit Federated Church included in particular its modestly-scaled, L-shaped plan and massing, shingle siding, exposed rafter tails, Colonial Revival cupola located at the east end of the sanctuary block, and its east facing primary sanctuary entry – a projecting vestibule on which was centered one of the building's most elaborate decorative elements, a double-leafed entry door flanked by pilasters and surmounted by a Colonial Revival broken-pediment.

220 Morrissey Boulevard, Boston, Massachusetts 02125
(617) 727-8470 • Fax: (617) 727-5128
www.sec.state.ma.us/mhc

While the recent renovations to, expansions of, and additions to the Cotuit Federated Church may meet the programmatic requirements of the congregation and associated uses of the building, the renovation project has involved the removal or relocation of significant historic fabric and features including the complete removal of the sanctuary's primary facade, alterations of the building's scale and massing, major changes to its historic appearance, and the construction of a large new addition. The result is that the building in its entirety no longer retains integrity of its significant historic architectural form, appearance, and character-defining features by any standards commonly used to evaluate historic architectural integrity, including the Criteria for Eligibility for listing in the National Register of Historic Places of the National Park Service, and the Secretary of the Interior's Standards for the Treatment of Historic Properties. Therefore, the MHC cannot consider the Cotuit Federated Church in its newly renovated form as a historically significant building qualified for preservation restrictions under Massachusetts General Laws, Chapter 184, sections 31-33. The MHC reaffirms its finding as stated in its letter of September 20, 2022.

If the Cotuit Federated Church and the Town of Barnstable wish to place protective restrictions on the exterior architectural features of the renovated building pursuant to the requirements of a Community Preservation Grant award, the MHC recommends that you consider the option of conveying restrictions enabled under the provisions of Massachusetts General Laws, Chapter 184, sections 27-30. Such restrictions, which do not require the approval of the MHC, are legally binding for a period of up to 30 years, and may be further extended periodically by the Town, following the requirements of the sections of the statute related to extensions.

If you would like to discuss further any of these comments, I can be available for a call or Zoom meeting. I am working on a hybrid schedule, and so best reached by email or on my mobile # 978-836-2438.

Sincerely,



Michael Steinitz
Deputy State Historic Preservation Officer
Director, Preservation Planning Division
Massachusetts Historical Commission

Xc: Barnstable Historical Commission
Barnstable Community Preservation Committee
Attorney Barbara Harris
Rep. Kip Diggs
Stuart Saginor, Executive Director, Community Preservation Coalition

WEST BARNSTABLE WATER COMMISSIONERS
Mark Wirtanen, Chair; Lisa Hendrickson; Kris Clark
West Barnstable, MA 02668

February 6, 2023

To: Mark Ells, Barnstable Town Manager
Ann Canedy, Chair, Land Acquisition and Preservation Committee
Lindsey Counsell, Chair, Community Preservation Committee

Dear Mark, Ann and Lindsey,

At our duly advertised meeting on February 6, 2023 at 6:30 PM, the West Barnstable Water Commissioners unanimously voted to send you this letter regarding our support for the purchase of an undeveloped parcel of land in West Barnstable (Barnstable Assessor's Map 155 Parcel 32-001, located on Meetinghouse Way). The parcel is currently for sale and we believe that it should be purchased because of its significant value for the protection of groundwater resources in the Town of Barnstable.

Sincerely,



Mark Wirtanen, Chair
West Barnstable Water Commission

January 23, 2023

Kathleen Connolly
Assistant Town Attorney
Town of Barnstable
367 Main Street
Hyannis, MA 02601

RE: Community Preservation Act - CPC Grant Agreement
The Trustees of Reservations / Armstrong-Kelley Park Project

Dear Attorney Connolly:

I am writing as a follow up to our prior call regarding the draft Grant Agreement for the above referenced CPA Project (a copy is attached for reference).

The grant agreement uses the term “perpetual recreation restriction” and seeks to impose a perpetual restriction on the property. It is my understanding that the only “perpetual” restrictions are those defined under M.G.L. c. 184, § 31 (i.e. Conservation Restriction, Preservation Restriction, Agricultural Preservation Restriction, Watershed Preservation Restriction, and Affordable Housing Restriction) and the only procedure for imposing a perpetual restriction is to follow the formal approval process under M.G.L. c. 184, § 32. There is nothing under c. 184 which allows for a “perpetual recreation restriction” outside of this formal approval process.

In this project, the funds are being used for improvements to the park and not for acquisition of any property. These capital improvements have a useful life but are not perpetual. The Community Preservation Act would only require a perpetual restriction (which would be a Conservation Restriction as opposed to a Recreation Restriction) if the grant funds were being used to acquire the property rather than for improvements to the park.

As presently written, even though it is labeled as “perpetual” the recreation restriction would be limited to thirty years under M.G.L. c. 184, § 23. The Trustees of Reservations is concerned about signing a document that labels the recreation restriction as perpetual even though it would not be considered perpetual under the statute.

The Trustees of Reservations appreciates the grant award and is committed to expending the CPA Funds for this project in accordance with a Grant Agreement and is willing to commit to a restriction for a period of time to ensure that the improvements are available for public use.

To that end, I am writing to request that the CPC consider a change to the draft Grant Agreement to define the recreation restriction as having a term not to exceed thirty years rather than perpetual.

In the alternative, the parties could consider a claw back provision to replace the restriction language whereby the grant funds would be repaid if the improvements are not constructed or do not comply with the Grant Agreement during a defined period of time.

Thank you for your consideration of this matter.

Bogle, DeAscentis & Coughlin, P.C.
Very truly yours,

John J. Coughlin

cc: The Trustees of Reservations

Swiniarski, Ellen

From: Pamela Brown <pam-cpa@comcast.net>
Sent: Thursday, February 9, 2023 2:38 PM
To: Swiniarski, Ellen; Lindsey Counsell
Subject: Universalist Cemetery/Federated Church of Hyannis

Hello Ellen & Lindsey,

I have received a complete written proposal for a Gravestone Condition Assessment from a company in Concord, Fannin-Lehner Preservation Consultants, who also bid on the project for my grant application in 2016.

They spent several hours with me on January 24th, going over documentation prepared by Donna Walcovy and performing an on-site review of the cemetery. Their fee to complete the project is \$13,000. They could begin summer of 2023.

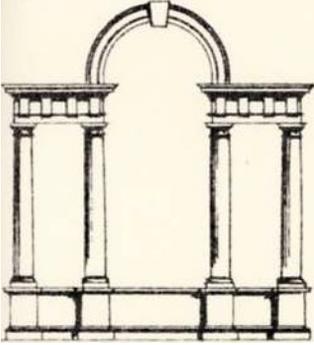
The balance in the grant is \$5,100 and the church holds another \$3,250, for a total of \$8,350 in available funds. The shortfall is \$4,650.

I am happy to meet with you and/or to provide a copy of the written proposal. Please let me know your thoughts.

Thank you for your patience and support,

Pam Brown
508.775.7102

CAUTION: This email originated from outside of the Town of Barnstable! Do not click links, open attachments or reply, unless you recognize the sender's email address and know the content is safe!



FANNIN • LEHNER PRESERVATION CONSULTANTS

UNIVERSALIST CEMETERY

HYANNIS, MASSACHUSETTS

PROPOSAL TO PROVIDE A GRAVESTONE/MONUMENT
CONDITION ASSESSMENT

FEBRUARY 2023

INTRODUCTION

Description of Consultant

Fannin • Lehner is a firm with extensive experience in the field of Historic Preservation consulting. Established in 1984, Fannin • Lehner has served a variety of public and private clients in a wide range of services including National Register of Historic Places individual listings and districts, National Historic Landmark nominations, local historic districts, inventories/surveys of town or city historical and architectural cultural resources, environmental impact reports and a number of other historic preservation services.

Thirty years ago, the firm developed a unique subspecialty in the field of Historic Burial Ground Conservation. Since that time Fannin • Lehner has served public and private cemeteries in the Southern, Midwestern and Eastern United States. In burial ground planning, the firm provides gravestone and monument condition assessment services as well as burial ground preservation and master plans. In burial ground gravestone and monument conservation, the firm performs all types of conservation procedures including cleaning, resetting, adhesive repair, drilling and pinning and many other stone repair techniques. The firm also specializes in tomb and mausoleum rebuilding and restoration.

Minxie J. Fannin • 271 Lexington Road • Concord, MA • 01742-3722 • (978) 369-6703
James C. Fannin, Jr. • 271 Lexington Road • Concord, MA • 01742-3722 • (978) 387-3192

E mail DENTILS@aol.com

fanninlehner.com

In May 2018, Fannin Lehner Preservation Consultants received a Lifetime Achievement Preservation Award from the Massachusetts Historical Commission for outstanding commitment to the conservation of the historic cemeteries of the Commonwealth.

Personnel

Working from the Concord, Massachusetts office, Fannin•Lehner Preservation Consultants is under the direction of Minxie Jensvold Fannin, Managing Principal. James C. Fannin, Jr., Senior Associate, heads up the section focusing on burial ground conservation.

Minxie Jensvold Fannin, Managing Principal, will oversee the Universalist Cemetery Gravestone/Monument Assessment and participate directly in the completion of the work. With an MA in American Studies, Ms. Fannin has broad experience in burial ground documentation, carver research, stone cleaning and preservation planning for historic burial grounds.

James C. Fannin, Jr. has received extensive training in stone conservation and has thirty years of experience in the field. His understanding of the nature and properties of 17th, 18th and 19th century stones and construction techniques for markers and monuments is important in the development of conservation plans and actual treatment of gravestones. He is an associate member of the American Institute for Conservation (AIC) and performs all documentation and conservation in accordance with the AIC Code of Ethics and Standards of Practice.

A word about Gravestone/Monument Condition Assessments

- Most cemeteries only have a condition assessment every 15 to 20 years. Therefore, in our view, an assessment is a serious tool for Cemetery and/or Historical Commissions in developing long range plans for the conservation of their gravestones and monuments. This assessment should address not only the most threatened stones but also stones at risk in the future. In an assessment, each stone requiring conservation is given a priority of treatment. Using the detailed assessment plan, conservation projects can be carefully targeted at specific groups of stones.

- In developing recommendations for stones to be conserved, our firm looks at every stone in a cemetery or section of a cemetery to determine its condition. While time consuming, this exhaustive and hands-on approach is vital to arriving at an accurate condition assessment, suitable to be used in bid documents for conservation, etc. Some gravestones and monuments put on the conservation list may look, to the casual eye, to be perfectly fine. But by examining each monument individually, one discovers many of these monuments are actually loose on their pins/bases, posing a risk to the public, to whom they appear visually secure. Tilted gravestones, more than 1” out of plumb, are included as they will accelerate in their tilt over the coming years.

- To be clear, a Condition Assessment is NOT an inventory. Although all the stones in a burying ground are reviewed, only those stones needing conservation are noted.

Examples of Similar Projects to that proposed at Universalist Cemetery:

Fannin•Lehner has performed gravestone/monument condition assessment planning for numerous burial grounds/cemeteries. The projects listed below are those in which the firm performed gravestone assessments similar to that proposed for the Universalist Cemetery. The condition assessment sets the stage and provides for a carefully planned program of gravestone/monument conservation.

- STURBRIDGE MA: Condition Assessment of the Old Burial Ground and North Cemetery. – 2015. Conservation completed in Old Burial Ground and ongoing in North Cemetery - 2023

- CAMBRIDGE MA: Condition assessment of the oldest cemetery in Cambridge, the Old Burying Ground, on Harvard Square, for the Cambridge Historical Commission (2002). Ongoing conservation of the gravestones and monuments continued until 2022. Now (2023), because the original assessment was done so long ago, our firm is beginning a re-assessment.

- HINGHAM MA: Gravestone/Monument Condition Assessment of Liberty Plain Cemetery (Hingham) completed in 2011. Fourth phase of conservation ongoing in 2023.

UNIVERSALIST CEMETERY
GRAVESTONE/MONUMENT CONDITION ASSESSMENT PROJECT

General Observations:

On January 24, 2023 Fannin•Lehner Preservation Consultants first met with Pam Brown, CPA, Project Director and Bill Donle, volunteer. We then spent over two hours reviewing the Universalist Cemetery to determine the extent of the gravestones and monuments requiring conservation.

The Universalist Cemetery occupies a flat, fenced area behind the Federated Church in the center of Hyannis. There are a few trees and bushes in the cemetery but very limited. This reduces the likelihood of damage from branches and roots. The stones are primarily marble with some slate and a number of granite markers. Maintenance of the grounds appears good and the fence is of recent origin and in excellent shape.

During the on-site review of the Universalist Cemetery, gravestones and monuments were found to be broken, tilted, fallen, delaminating (slate stones), loose on pins and without pins. The marble stones have deteriorated markedly due to breakage and sugar decay.

The work of at least one gravestone carver has already been identified in Universalist Cemetery. It is hoped this assessment will be able to identify more carvers with direct links to specific Universalist Cemetery stones.

In total, approximately 260 markers were identified in Universalist Cemetery which require conservation in order to extend their life span.

Fannin•Lehner Preservation consultants has performed over two dozen condition assessments, ranging from New Hampshire to the Kentucky border. The firm is particularly skilled in working with large numbers of stones requiring conservation.

Fannin•Lehner will carry out the program to develop the Gravestone/Monument Condition Assessment in the following manner:

1. Review of historical documents.
2. Take representative photographs illustrating conservation problems present in the Universalist Cemetery.
3. Take representative photographs of stones of aesthetic significance as well as stones executed by known gravestone carvers.
4. Fannin•Lehner Preservation Consultants will use the “Universalist Cemetery – Hyannis MA” Robotic Survey (Topographix LLC, 2019) to circle all the gravestones and monuments in need of treatment.
5. Rework the existing inventory list to prepare a list of all markers requiring conservation in the Universalist Cemetery.

The information for each marker will include:

- I. Location designation of each stone cited by area, row and number in row
- II. Full name on gravestone
- III. Full date of death
- IV. Material (marble, slate, etc.)
- V. Type of stone (headstone, footstone, monument, etc.)
- VI. Stone Condition
- VII. Gravestone carver (if identified)
- VIII. Recommended treatment
- IX. Priority of repair

Work Product

The work product from this project will be a report covering the findings consisting of the following:

- Table of Contents
- Guide to Gravestone/Monument Assessment/Treatment Lists
- List, ordered by location designation described above, of all Gravestones/Monuments requiring conservation in the Universalist Cemetery
- Location on “Universalist Cemetery” Robotic Survey (2019) of gravestones and monuments requiring treatment
- List of gravestone carvers, with examples of their work in Universalist Cemetery.
- Representative photographs of both conservation problems and gravestone carver identified stones.
- Estimate of Cost of Gravestone/Monument Conservation for the approximately 260 gravestones and monuments, and suggestions for phased conservation.
- Causes of Stone Deterioration
- Gravestone Conservator: Technical Recommendations for Project Completion
- Universalist Cemetery Bibliography
- Selected Glossary

Fee

Professional Fee and all expenses for the above-described work: \$13,000

Respectfully submitted,

Minxie J. Fannin

Minxie Jensvold Fannin
Managing Principal