



Town of Barnstable Town Council

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Original posted
11/17/2020 @ 3:59
pm Updated on
11/18/2020 @ 11:54
am to add
Appointments to a
Board/Committee/
Commission

MEETING AGENDA November 19, 2020 7:00 PM

The November 19, 2020 meeting of the Barnstable Town Council shall be physically closed to the public to avoid group congregation

Remote Participation Instructions

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

1. The meeting will be televised via Channel 18 and may be accessed the Channel 18 website at:

<http://streaming85.townofbarnstable.us/CablecastPublicSite/watch/1?channel=1>

2. Real-time public comment can be addressed to the Barnstable Town Council utilizing the Zoom link or telephone number and access code for remote access below

Join Zoom Meeting <https://zoom.us/j/91892052743> Meeting ID: 918 9205 2743

1-888 475 4499 US Toll-free Meeting ID: 918 9205 2743

PUBLIC SESSION

1. ROLL CALL
2. PLEDGE OF ALLEGIANCE
3. MOMENT OF SILENCE
4. PUBLIC COMMENT (For Public Comment please call (508-862-4610))
5. COUNCIL RESPONSE TO PUBLIC COMMENT
6. TOWN MANAGER COMMUNICATIONS
7. ACT ON MINUTES (Including Executive Session)
8. COMMUNICATIONS- from elected officials, boards, committees, staff commission reports, correspondence and announcements
 - Presentation from the Economic Development Task Force
9. ORDERS OF THE DAY

A. Old Business

B. New Business

10. ADJOURNMENT

NEXT REGULAR MEETING: December 3, 2020

Councillors:

Paul Hebert
President
Precinct 3

Jessica Rapp Grassetti
Vice President
Precinct 7

Gordon Starr
Precinct 1

Eric R. Steinhilber
Precinct 2

Nikolas Atsalis
Precinct 4

David W. Bogan
Precinct 5

Paul C. Neary
Precinct 6

Debra S. Dagwan
Precinct 8

Tracy Shaughnessy
Precinct 9

Matthew Levesque
Precinct 10

Kristine Clark
Precinct 11

Paula Schnepf
Precinct 12

Jennifer L. Cullum
Precinct 13

Administrator:
Cynthia A. Lovell

Administrative
Assistant:
Kelly Crahan

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Approve Minutes; November 5, 2020

Please Note: The list of matters, are those reasonably anticipated by the council president, which may be discussed at the meeting. Not all items listed may in fact be discussed and other items not listed may in fact 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 Council may go into executive session. The Council may also act on items in an order other than they appear on this agenda. Persons interested are advised, that in the event any matter taken up at the meeting remains unfinished at the close of the meeting, may be put off to a continued session of this meeting, and with proper notice. Anyone requiring hearing assistance devices please inform the Town Clerk at the meeting.

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

BARNSTABLE TOWN COUNCIL

ITEM# 2021-023

INTRO: 10/15/2020, 11/19/2020

2021-023 APPROPRIATION AND TRANSFER ORDER IN THE AMOUNT OF \$320,000 OF COMMUNITY PRESERVATION FUNDS FOR THE ACQUISITION OF 28 FALCON ROAD ON WHICH WILL BE PLACED A CONSERVATION RESTRICTION TO BE HELD BY BARNSTABLE LAND TRUST

ORDERED: That pursuant to the provisions of the Community Preservation Act, G.L.c. 44B and the Conservation Restriction statute, G.L.c. 184, Sections 31-33, the sum of Three Hundred Twenty Thousand Dollars (**\$320,000**) be appropriated and transferred from the amount set aside for open space and recreation in the Community Preservation Open Space/Recreation Funds for the acquisition by the Town of the open space resource consisting of 15.96 acres located at 28 Falcon Road, West Barnstable, shown on Barnstable Assessors Map 195 as Parcel 038, representing a portion of the total amount of Three Hundred Forty-Seven Thousand, Five Hundred Dollars (\$347,500) for the acquisition. The property will have a Conservation Restriction allowing for open space and recreation thereon, said Restriction to be held by the Barnstable Land Trust which is contributing \$27,500 in both funding and in kind contributions. That Conservation Restriction is subject to approval by the Secretary of the Commonwealth of Massachusetts Executive Office 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 are authorized to execute, receive, deliver and record any written instruments for the stated purposes.

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

DATE	ACTION TAKEN
<u>10/15/2020</u>	<u>Refer to Public Hearing 11/19/2020</u>

- _____ Read Item
- _____ Motion to Open Public Hearing
- _____ Rationale
- _____ Public Hearing
- _____ Close Public Hearing
- _____ Council Discussion
- _____ Move/Vote

BARNSTABLE TOWN COUNCIL

ITEM# 2021-023

INTRO: 10/15/2020, 11/19/2020

SUMMARY

TO: Town Council
FROM: Mark Ells, Town Manager
THROUGH: Lindsey Counsell, Chairman, Community Preservation Committee
DATE: September 15, 2020
SUBJECT: Appropriation and Transfer Order in the amount of **\$320,000** Community Preservation Open Space/Recreation Funds for the acquisition of the Open Space Resource consisting of 15.96 acres located at 28 Falcon Road, West Barnstable, Map 195, Parcel 038

BACKGROUND: At the August 17, 2020 Community Preservation Committee (CPC) meeting, the eight members present voted unanimously by roll call vote to recommend to the Town Council through the Town Manager, The Town of Barnstable's amended funding request for \$320,000 in Community Preservation Open Space/Recreation Funds for the acquisition of the open space resource consisting of 15.96 acres located at 28 Falcon Road, West Barnstable. The amended CPC application for the larger amount of \$320,000 represents a portion of the total purchase price of \$347,500. Barnstable Land Trust will hold the Conservation Restriction and is contributing \$27,500 in cash and in kind contributions. The Town of Barnstable had originally planned to pursue a drinking water grant for this property. Since the first read of the Council Order on October 15, the Town and BLT have redirected that application to another property (Wakeby Road). There is only one application per grant cycle for this source of funding assistance allowed per Town. The drinking water rights will still be part of the Conservation Restriction rights to be held by the Town. The CPC has requested that the Conservation Restriction reflecting Barnstable Land Trust as the holder, be approved by the Legal Department.

ANALYSIS: This land acquisition would satisfy many Barnstable Open Space Plan and Community Preservation Act goals related to water supply protection, natural resource preservation as well as passive recreation.

FISCAL IMPACT: This appropriation has no impact on the general fund since the entire amount is appropriated and transferred from the community preservation fund.

TOWN MANAGER RECOMMENDATION: Mark S. Ells, Town Manager upon recommendation of the Community Preservation Committee.

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

**28 FALCON ROAD CONSERVATION RESTRICTION
BARNSTABLE MA**

Grantor: Town of Barnstable
Grantee: Barnstable Land Trust, Inc.
Property Address: 28 Falcon Road, Barnstable, Massachusetts
Grantor's Title: Barnstable County Registry of Deeds in Book _____, Page _____
(pending).

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"), in consideration of Ten Thousand and 00/100 (\$10,000) Dollars, acting pursuant to Sections, 31, 32, and 33 of Chapter 184 of the Massachusetts General Laws, grants to **BARNSTABLE LAND TRUST, INC.** (Federal ID #22-2483963), a Massachusetts charitable corporation with an office at 1540 Main Street, West Barnstable, MA 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 15.96 acres more or less, located in the Village of West Barnstable, Town of Barnstable, County of Barnstable, Commonwealth of Massachusetts, said parcel being described in Exhibit A and shown in Exhibit B, both 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 _____2020, on Agenda Item 2020-_____, 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 purpose of this Restriction is to assure that the Premises, while permitting the acts and uses described in Article III herein, will be retained in perpetuity predominately in its natural, scenic and open condition; to protect and promote the conservation of water supplies, native vegetation, wetlands, soils, natural watercourses, habitat and wildlife thereon; to protect and enhance the value of the abutting conservation areas; to allow and maintain appropriate public access for enjoyment of the wildlife and open space

Property location: 28 Falcon Road, West Barnstable

resources and for passive recreation consistent with potential wellfield use and wellfield security. The conservation and permanent protection of the Premises will yield a significant public benefit for the following reasons (hereinafter, the “conservation values”):

- A. The Premises consist of approximately 15.96 acres of Statewide Wildlife Action Plan species of greatest conservation need in pine-oak upland forest, over 75% of which is Prime Forest Land, a defined MassGIS map layer based on USDA Natural Resources Conservation Service soil data, which reflect high potential for white pine and black oak forest development, wetlands, and riparian area presence. Fox, coyote, and deer, Eastern Box Turtle, migratory warblers, and bobwhites are among the species that prefer to inhabit the forested upland.
- B. The Premises are proximal to 120 acres of Town of Barnstable conservation land, former cranberry bogs and three freshwater kettlehole ponds: Garrets Pond, No Bottom Pond, and Spruce Pond. In addition, the Premises is within 500 feet of two certified vernal pools, a distance deemed critical for salamander migration and breeding patterns. The Premises is 95% within a Statewide Land Conservation Plan area which is high priority for protection, and is adjacent to Massachusetts Natural Heritage and Endangered Species Program (“NHESP”) BioMap2 designated Critical Natural Landscape. 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. Therefore, the protection of the Premises aligns with the NHESP’s wildlife and habitat protection objectives and would ensure perpetual protection for each of these state-recognized habitats.
- C. The preservation of the Premises will further reduce alterations to the natural character thereof, will further protect and enhance the recreational and ecological attributes in an area where any further residential development would immeasurably and unacceptably compromise this parcel and neighboring Town conservation land. By conserving the Premises, locally important wetlands are also protected.
- D. The Premises is located 100% within the Old Kings Highway Regional Historic District which was established on the northern shore of Barnstable County pursuant to Chapter 740 of the 1973 Massachusetts Acts. An ancient carpath runs along the southern boundary of the Premises, perhaps originally a Native American regional east-west trail, but certainly a colonial carpath. This carpath has been identified as important to the Cape Cod Pathways regional trail system, as mapped by the Town of Barnstable.
- 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), which identified a proposed Regional Open Space Greenbelt, including the Scorton Creek Marshes, and which identified Marine Water Recharge Areas that are nitrogen-sensitive, including the Barnstable Harbor/Great Marshes embayment. The Premises are within this Recharge Area.

- F. The Premises is located within BioMap2 Core Habitat, the most critical wildlife habitat to protect in the state, according to the Massachusetts Natural Heritage and Endangered Species Program (2010).
- G. The Premises has been identified as a potential source of drinking water supply for the Town of Barnstable by the Department of Public Works and its protection may enable the development of a water supply source.
- H. 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, public access, wildlife habitat, and cultural history.

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

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

- I. Consistency with Clearly Delineated Federal Conservation Policy. Protection of the Premises meets the definition of "conservation purposes" as defined in 26 CFR 1.170A-14(d)(1), because its conservation would: protect the land for outdoor recreation by the general public; reserve the land for education regarding the natural world; protect wildlife

habitats; and it would contribute to the preservation of open space because it is proximate to several other parcels already conserved.

J. Consistency with Clearly Delineated State Conservation Policy. 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.

K. These and other conservation values of the Premises, as well as its current uses, conditions, and state of improvement, are described in a Baseline Documentation Report (“Baseline Report”) prepared by Grantee with the cooperation of the Grantor, consisting of maps, photographs, and other documents and stored at the office of the Grantor. The Baseline Report (i) is acknowledged by Grantor and Grantee to be a complete and accurate representation of the condition and values of the Premises as of the date of this Conservation Restriction, and (ii) is intended 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.

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

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 aforesated purposes 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 land form 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.
- D. The maintenance and use of the existing unpaved way, and trails on the Premises substantially in their present condition, and with the prior approval of the Grantee, the relocation or construction of new trails, provided that all applicable federal, state, regional and local approvals are obtained in advance, and that any relocated trails or new trails are no wider than eight (8) feet.
- E. The erection and maintenance of signs identifying ownership of the Premises, the property boundaries, the Premises' status as a conservation reservation, the restrictions on the use of the Premises, the identity or location of trails, areas of interest, natural features or other characteristics of the Premises, or for providing other like information. Also the erection of signs, fencing or other barriers consistent with endangered species protection.
- F. Minimal cutting or removal of trees, shrubs and other vegetation and 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.
- G. 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.

- H. Archaeological investigations consisting of site inspections and subsurface excavations subject to and in accordance with an Archaeological Field Investigation Permit issued by the State Archaeologist under G.L. c. 9, §26A, and associated regulations, and Grantee's written approval in accordance with Article IV, below.
- I. With prior approval of the Grantee, the exploration, development, and construction of well(s), water lines, one (1) pumphouse, one (1) access road, gates, fencing, lighting, and security systems in support of a public groundwater withdrawal facility. The construction of water treatment facilities and other structures not described in this Article III.I. are specifically prohibited.
- 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 III. I. or 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 supercedes 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

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 and Approvals – Town of Barnstable: Town of Barnstable Town Council & Town Manager

Grantee Acceptance – Barnstable Land Trust, Inc.

Approval: Secretary of Energy and Environmental Affairs

Exhibits:

- A. Description of the Premises
- B. Reduced Copy of Recorded Plan of the Premises
- C. Town Council Order

APPROVAL OF THE GRANT

**TOWN OF BARNSTABLE
TOWN COUNCIL**

At a public meeting duly held on _____2020, the Town Council of the Town of Barnstable, Massachusetts, voted to approve and grant the foregoing Conservation Restriction to the Barnstable Land Trust, Inc., pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws and hereby grants the foregoing Conservation Restriction.

TOWN COUNCIL

PRESIDENT:_____

Paul Hebert

Barnstable, ss COMMONWEALTH OF MASSACHUSETTS

On the ____ day of _____, 2020, before me, the undersigned notary public, personally appeared **Paul Hebert**, 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:

APPROVAL OF TOWN MANAGER

I, Mark S. Ells, as Town Manager of the Town of Barnstable, Massachusetts, hereby 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

Barnstable, ss

On the ____ day of _____, 2020, 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 _____, 2020.

By: _____
Joseph Hawley

Its: President, duly authorized

By: _____
Deborah Reuman

Its: Treasurer, duly authorized

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss:

On this day of _____, 2020, before me, the undersigned notary public, personally appeared Joseph Hawley, and proved to me through satisfactory evidence of identification which was personal knowledge to be the person whose name is signed on the proceeding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose on behalf of the corporation.

Mark H. Robinson, Notary Public
My Commission Expires:

8 July 2027

**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: _____, 2020
KATHLEEN A. THEOHARIDES
Secretary of Energy and Environmental Affairs

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss:

On this day of , 2020, before me, the undersigned notary public, personally appeared KATHLEEN A. THEOHARIDES, and proved to me through satisfactory evidence of identification which was _____ to be the person whose name is signed on the proceeding or attached document, and acknowledged to me that she signed it voluntarily for its stated purpose.

Notary Public
My Commission Expires:

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

EXHIBIT A

Description of the Premises

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

Containing an area of 15.96 acres, more or less, and being shown as **LOT 1** on a plan of land entitled: "Plan of Land in (West) Barnstable, Mass. prepared for Howard W. Woolard, being a re-subdivision of a portion of a plan made for "Eagle Realty Trust", recorded in Plan Book 317, Page 34, the portion of said plan within Lots 1, 2 and 3 shown above is hereby rescinded, Scale: 1" = 80', August 13, 1980, Down Cape Engineering, Civil Engineers, Land Surveyors, Route 6A, Yarmouth, Mass.," which plan is recorded at the Barnstable County Registry of Deeds, **Plan Book 346, Page 95.**

Street Address: 28 Falcon Road (West) Barnstable MA

EXHIBIT C
TOWN COUNCIL ORDER

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

BARNSTABLE TOWN COUNCIL

ITEM# 2021-024

INTRO: 10/15/2020, 11/19/2020

2021-024 APPROPRIATION AND TRANSFER ORDER IN THE AMOUNT OF \$500,000 OF COMMUNITY PRESERVATION FUNDS FOR THE ACQUISITION OF 830 WAKEBY ROAD ON WHICH WILL BE PLACED AN OPEN SPACE/RECREATION CONSERVATION RESTRICTION TO BE HELD BY BARNSTABLE LAND TRUST

ORDERED: That pursuant to the provisions of the Community Preservation Act, G.L.c. 44B and the Conservation Restriction statute, G.L.c. 184, Sections 31-33, the sum of Five Hundred Thousand Dollars (\$500,000) be appropriated and transferred from the amount set aside for open space and recreation in the Community Preservation Open Space/Recreation Funds for the acquisition by the Town of the open space resource consisting of 15.74 acres located at 830 Wakeby Road, Marstons Mills, shown on Barnstable Assessors Map 013 as Parcel 003, representing a portion of the total amount of Five Hundred Twenty-Five Thousand, Six Hundred Eighty Dollars (\$525,680) for the acquisition. The property will have a Conservation Restriction allowing for open space and recreation thereon, said Restriction to be held by the Barnstable Land Trust which is contributing \$25,680 in both funding and in kind contributions. Said Restriction is subject to approval by the Secretary of the Commonwealth of Massachusetts Executive Office 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.

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

DATE	ACTION TAKEN
<u>10/15/2020</u>	<u>Refer to Public Hearing 11/19/2020</u>

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

BARNSTABLE TOWN COUNCIL

ITEM# 2021-024

INTRO: 10/15/2020, 11/19/2020

SUMMARY

TO: Town Council
FROM: Mark Ells, Town Manager
THROUGH: Lindsey Counsell, Chairman, Community Preservation Committee
DATE: September 15, 2020
SUBJECT: Appropriation and Transfer Order in the amount of **\$500,000** of Community Preservation Open Space/Recreation Funds for the acquisition of the Open Space Resource consisting of 15.74 acres located at 830 Wakeby Road, Marstons Mills

BACKGROUND: At the August 17, 2020 Community Preservation Committee (CPC) meeting, the eight members present voted unanimously by roll call vote to recommend to the Town Council through the Town Manager, The Town of Barnstable's amended request for \$500,000 in Community Preservation Open Space/Recreation Funds for the acquisition of the open space resource consisting of 15.74 acres located at 830 Wakeby Road, Marstons Mills. The amended CPC application for the larger amount of \$500,000 represents a portion of the total purchase price of \$525,680. Barnstable Land Trust will hold the Conservation Restriction on the property and is contributing \$25,680 in both funding and in kind contributions. The Town had sought but did not receive an award of a reimbursement land grant from the State for matching funds in the amount of \$250,000. Since the first read of the Council order on October 15, the Town and BLT have redirected a drinking water grant application to this property. Only one application per grant cycle is allowed for this source of funding assistance. If awarded, the grant award would be returned to the Community Preservation Fund. The CPC has requested that the Conservation Restriction reflecting Barnstable Land Trust as the holder and other usual conditions, be reviewed and approved by the Barnstable Legal Department.

ANALYSIS: This land acquisition would satisfy many Town planning and Community Preservation Act goals, as well as the Town's Open Space Plan related to scenic and natural resource protection as well as passive recreation. The partnership with Barnstable Land Trust and the leveraging the Drinking Water Grant creates an advantageous cost-benefit value for the Town and Barnstable Land Trust.

FISCAL IMPACT: This appropriation has no impact on the general fund since the entire amount is appropriated and transferred from the community preservation fund.

TOWN MANAGER RECOMMENDATION: Mark S. Ells, Town Manager upon recommendation of the Community Preservation Committee.

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

Grantor: Town of Barnstable
Grantee: Barnstable Land Trust, Inc.
Property Address: 830 Wakeby Road, (Village of Marstons Mills), Barnstable,
Massachusetts,
Grantor's Title: Barnstable County Registry of Deeds in Book _____, Page_____

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 ID #22-2483963), a Massachusetts charitable corporation with an office at 1540 Main Street, West Barnstable, MA 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 15.80 acres more or less, located in the Village of Marstons Mills, Town of Barnstable, County of Barnstable, Commonwealth of Massachusetts, said parcel being described in Exhibit A and shown in Exhibit B, 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 _____2020, on Agenda Item 2020-_____, to authorize the Town to grant this Restriction on the Premises in compliance with the provisions set forth herewithin, 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 purpose of this Restriction is to assure that the Premises, while permitting the acts and uses described in Article III herein, will be retained in perpetuity predominately in its natural, scenic and open condition; to protect and promote the conservation of water supplies, native vegetation, soils, forestland 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 (hereinafter, the "conservation values"):

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

- A. The Premises falls 100% within a Zone 2 Area of Contribution to Public Water Supply. Protection of the Premises from further development with this Conservation Restriction will assist in maintaining the quantity and quality of a public water supply.

Property location: 830 Wakeby Road, Barnstable

- B. The Premises consist of approximately 15.80 acres of Statewide Wildlife Action Plan species of greatest conservation need in pine-oak upland forest, approximately 95% of which is Prime Forest Land, a defined MassGIS map layer based on USDA soil data which reflect high potential for white pine and red oak forest development, wetlands and riparian area presence. Fox, coyote, and deer, eastern box turtle, migratory warblers, bobwhites are among the species that prefer to inhabit this type of forested upland.
- C. The Premises is 95% within a Statewide Land Conservation Plan area, a high priority for protection, and contains 100% Massachusetts Natural Heritage and Endangered Species Program (“NHESP”) BioMap2 designated Critical Natural Landscape, Landscape Block. BioMap2, published in 2010, guides strategic biodiversity conservation in Massachusetts by focusing land protection and stewardship on the areas that are most critical for ensuring the long-term persistence of rare and other native species and their habitats, exemplary natural communities, and a diversity of ecosystems. The Critical Natural Landscape, and specifically Landscape Blocks, identifies large areas of high quality intact and predominately natural vegetation. BioMap2 is also designed to include the habitats and species of conservation concern identified in the State Wildlife Action Plan. 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.
- D. 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):
- “To maintain a sustainable supply of high quality untreated drinking water and protect, preserve, or restore the ecological integrity of Cape Cod’s fresh and marine surface water resources” (Water Resources Goal, pp. 54);
 - “To protect, preserve, or restore wildlife and plant habitat to maintain the region’s natural diversity” (Wildlife and Plant Habitat Goal, pp. 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” (pp. 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, pp. 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” (pp. 30).

Granting this Conservation Restriction will advance each of these goals outlined in the RPP. The Water Resources Goal will be served because the Premises falls entirely within a Zone II Area of Contribution to a Public Water Supply, and implementing this Conservation Restriction will aid in maintaining drinking water quality in the area. The 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 proximate to several other open space parcels, including Town of Sandwich

Conservation Land abutting, and Town of Barnstable's Santuit Pond Conservation Area across Wakeby Road.

E. Protection of the Premises will help to maintain the natural and rural character of the village of Marstons Mills within the Town of Barnstable with this added protected open space. To the south, the Town of Barnstable's and Mashpee's 287-acre Santuit Pond Reserve, and to the west, Sandwich's Boudreau Conservation Area totals almost one square mile.

F. Consistency with Clearly Delineated Town of Barnstable Conservation Policy.

Protection of the Premises will further the Town of Brewster'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, public access, wildlife habitat, and cultural history.

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

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

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. 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.
- I. Historical Purposes. The Premises is included in a landscape historically devote to farming. This section of Marstons Mills was also known as “Farmersville,” owing to the Prime Agricultural Soil (Enfield A) and the extensive agricultural holdings in the area. Permanent protection of the Premises with this Conservation Restriction will ensure that these valuable historical assets endure.
- J. 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 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.
- K. 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.

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 aforestated purposes 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, dune, 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.
- D. The maintenance and use of the existing trails substantially in their present condition and, with the prior 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 new relocated or new trails are no wider than eight (8) feet.
- E. The erection and maintenance of signs identifying ownership of the Premises, the property boundaries, the Premises' status as a conservation reservation, the restrictions on the use of the Premises, the identity or location of trails, areas of interest, natural features or other characteristics of the Premises, or for providing other like information. Also the erection of signs, fencing or other barriers consistent with endangered species protection.
- F. Minimal cutting or removal of trees, shrubs and other vegetation and 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 pine-oak upland forest, or coastal plain pond ecosystems, or to improve or protect wildlife habitat.
- G. 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.

- H. Archaeological investigations consisting of site inspections and subsurface excavations subject to and in accordance with an Archaeological Field Investigation Permit issued by the State Archaeologist under Section 26A Chapter 9 of the Massachusetts General Laws, and associated regulations, and Grantee's written approval in accordance with Article IV, below.
- I. Such other non-prohibited activities or uses of the Premises may be permitted with the prior approval of the Grantee provided that the Grantee has made a finding, such finding to be documented in writing and kept on file at the office of the Grantee, that such activities are consistent with the Reserved Rights, do not impair the conservation values and purposes of this 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 water 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 laws. 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 III.I, in which case 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.
3. 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. 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.

IX. 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.

X. 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.

XI. 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.

XII. 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.

XIII. 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..

XIV. 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 XIV.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 and the Project Agreement.

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 XIV.B., after complying with the terms of any law, gift, grant, or funding requirements, including any requirements of the CPA and the Project Agreement. 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.

XV. NON MERGER: Grantee agrees that it will not take title to any part of the Premises without having first assigned this Restriction, pursuant to Article IX, 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.

XVI. 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.

XVII. 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 supercedes 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

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 appropriate 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.

XVIII. 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 Section 32 of Chapter 184 of the Massachusetts General Laws have been affixed hereto.

Attached hereto and incorporated herein are the following:

Signatures:

Grantor and Approvals – Town of Barnstable: Town of Barnstable Town Council & Town Manager

Grantee Acceptance – Barnstable Land Trust, Inc.

Approval: Secretary of Energy and Environmental Affairs

Exhibits:

- A. Description of the Premises
- B. Reduced Copy of Recorded Plan of the Premises
- C. Town Council Order
- D. LAND Project Agreement (*if applicable*)

APPROVAL OF THE GRANT

**TOWN OF BARNSTABLE
TOWN COUNCIL**

At a public meeting duly held on _____2020, the Town Council of the Town of Barnstable, Massachusetts, voted to approve and grant the foregoing Conservation Restriction to the Barnstable Land Trust, Inc., pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws and hereby grants the foregoing Conservation Restriction.

TOWN COUNCIL

PRESIDENT:_____

Paul Hebert

Barnstable, ss COMMONWEALTH OF MASSACHUSETTS

On the ____ day of _____, 2020, before me, the undersigned notary public, personally appeared **Paul Hebert**, 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:

APPROVAL OF TOWN MANAGER

I, Mark S. Ells, as Town Manager of the Town of Barnstable, Massachusetts, hereby 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

Barnstable, ss

On the ____ day of _____, 2020, 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 _____, 2020.

By: _____
Joseph Hawley

Its: President, duly authorized

By: _____
Deborah Reuman

Its: Treasurer, duly authorized

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss:

On this day of _____, 2020, before me, the undersigned notary public, personally appeared Joseph Hawley, and proved to me through satisfactory evidence of identification which was personal knowledge to be the person whose name is signed on the proceeding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose on behalf of the corporation.

Mark H. Robinson, Notary Public
My Commission Expires:

8 July 2027

**APPROVAL BY 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: _____, 2020
KATHLEEN A. THEOHARIDES
Secretary of Energy and Environmental Affairs

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss:

On this day of , 2020, before me, the undersigned notary public, personally appeared KATHLEEN A. THEOHARIDES, and proved to me through satisfactory evidence of identification which was _____ to be the person whose name is signed on the proceeding or attached document, and acknowledged to me that she signed it voluntarily for its stated purpose.

Notary Public
My Commission Expires:

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

EXHIBIT A

Description of the Premises

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

All of **Lot 2** as shown on a plan of land entitled, "Plan of Land of LaFlam Property at Meiggs-Backus Road and Wakeby Road, Sandwich MA & Barnstable MA, prepared for Barbara LaFlam, Trustee, Date: January 20, 2020, down cape engineering, inc. civil engineers, land surveyors, 939 Main Street (Rte. 6A), Yarmouthport MA 02675," and recorded herewith in the Barnstable County Registry of Deeds in Plan Book _____ Page _____.

Containing 15.80 acres, more or less, per land survey.

For Grantor's Title: *(pending: LaFlam, Trustee, to Town of Barnstable)*

Town of Barnstable Assessor Map 013, Lot 003 (portion)

Street Address: 830 Wakeby Road, Marstons Mills, MA 02648.

**830 WAKEBY ROAD CONSERVATION RESTRICTION
BARNSTABLE MA**

EXHIBIT B

Sketch of the Premises, 2020

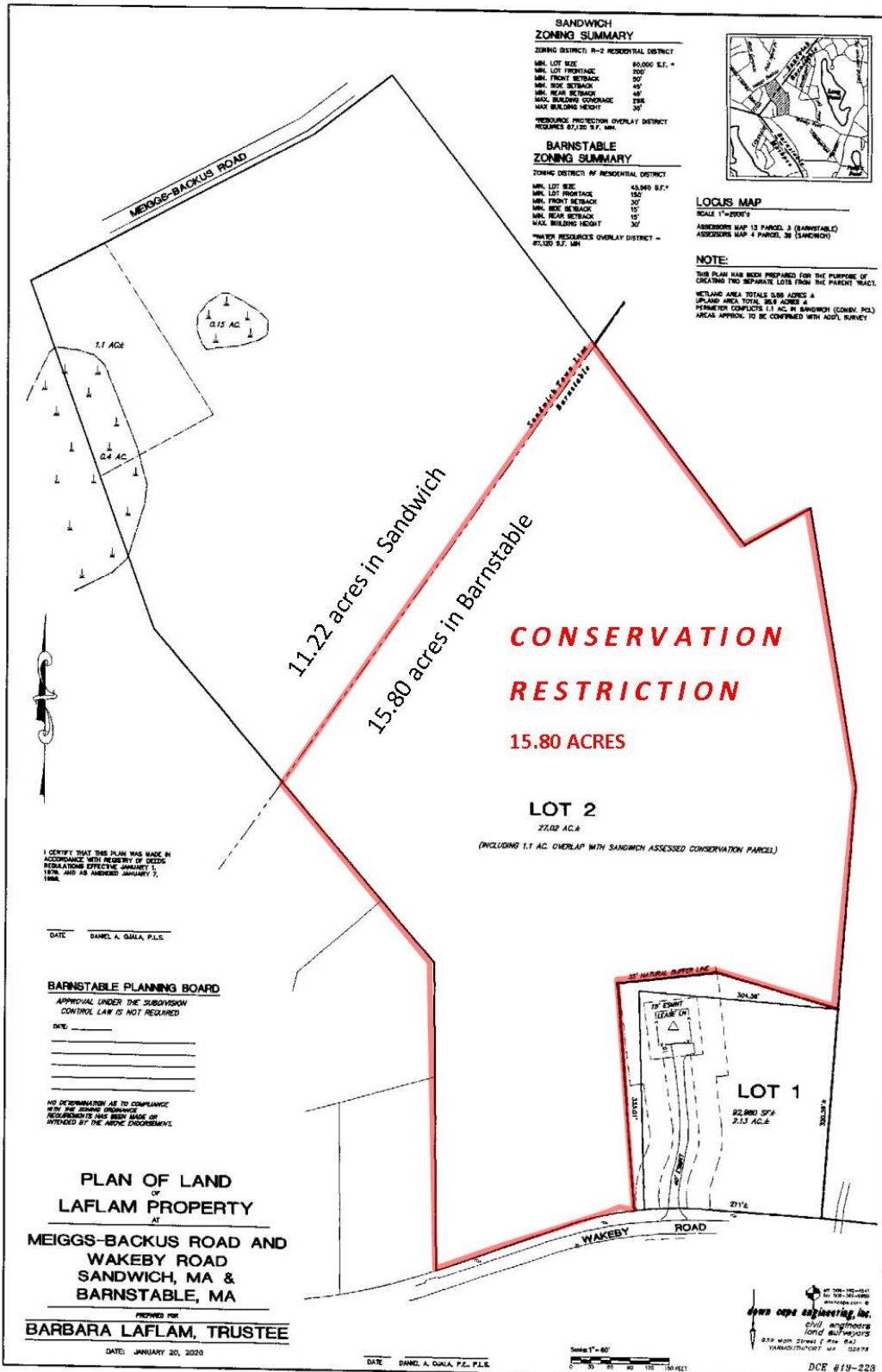


EXHIBIT C
TOWN COUNCIL ORDER

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

BARNSTABLE TOWN COUNCIL

ITEM# 2021-029
INTRO: 10/29/2020, 11/19/2020

2021-029 ALLOCATION OF TAX LEVY FISCAL YEAR 2021 – TAX FACTOR

RESOLVED, that the Town Council hereby votes to classify the Town of Barnstable under the Classification Act at a Factor of 1 (one) for the Fiscal Year 2021.

SPONSOR: Mark S. Ells, Town Manager

DATE	ACTION TAKEN
<u>10/29/2020</u>	<u>Refer to Public Hearing 11/19/2020</u>

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

BARNSTABLE TOWN COUNCIL

ITEM# 2021-029
INTRO: 10/29/2020, 11/19/2020

SUMMARY

TO: Town Council
FROM: Mark S. Ells, Town Manager
THROUGH: Mark A. Milne, Finance Director
DATE: October 29, 2020
SUBJECT: Allocation of Tax Levy Fiscal Year 2021 – Tax Factor

BACKGROUND: According to Massachusetts General Law, Chapter 40, Section 56, of the Acts of 1982 and Chapter 79 of the Acts of 1983, the Town Council is annually charged with determining the Allocation of Local Property Taxes by the adoption of a Residential Factor. This tax levy-shifting tool will not change the overall amount of money that will be raised through property taxes; rather it allows the town to shift a portion of the tax levy between classes of property. The residential factor commonly referred to as the “Split Tax Rate” allows the Town Council to create separate tax rates; one for residential property owners and a separate one for commercial, industrial and personal property (CIP) owners. Under a residential “Factor of 1”, all property owners would pay taxes at the same rate per \$1,000 of valuation. The maximum permissible shift would increase the CIP tax rate by 175%. Since 2007, the Town Council’s policy has been to select a Residential Factor of “1”.

STAFF ASSISTANCE: Mark Milne, Finance Director; Edward O’Neil, Director of Assessing

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

BARNSTABLE TOWN COUNCIL

ITEM# 2021-030
INTRO: 10/29/2020, 11/19/2020

2021-030 ALLOCATION OF TAX LEVY FISCAL YEAR 2021 – RESIDENTIAL EXEMPTION

RESOLVED, that the Town Council hereby votes to adopt a Residential Exemption of twenty percent (20%) for fiscal year 2021.

SPONSOR: Mark S. Ells, Town Manager

DATE	ACTION TAKEN
<u>10/29/2020</u>	<u>Refer to Public Hearing 11/19/2020</u>

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

BARNSTABLE TOWN COUNCIL

ITEM# 2021-030
INTRO: 10/29/2020, 11/19/2020

SUMMARY

TO: Town Council
FROM: Mark S. Ells, Town Manager
THROUGH: Mark A. Milne, Finance Director
DATE: October 29, 2020
SUBJECT: Allocation of Tax Levy Fiscal Year 2021– Residential Exemption

BACKGROUND: According to Massachusetts General Law, Chapter 40, Section 56, of the Acts of 1982 and Chapter 79 of the Acts of 1983, the Town Council may adopt a Residential Exemption as part of determining the allocation of the tax levy between residential property owners. This tax levy-shifting tool will not change the overall amount of property taxes raised through the residential class of property. It allows the town to shift a portion of the residential property tax levy between residential property owners based on statutory criteria. The maximum exemption allowed is 35 percent of the average assessed value of all Class One (Residential) parcels. This exemption would be applied to all residential parcels which are qualified as the principal residence of the taxpayer. Principal residence is a taxpayer's domicile, that is, their fixed place of habitation, permanent home, and legal residence, as used for federal and state income tax purposes. This option shifts property taxes between residential taxpayers only and does not affect the Commercial, Industrial and Personal Property class of taxpayers. The Town Council has voted to adopt a 20% residential exemption for the past 15 fiscal years.

STAFF ASSISTANCE: Mark Milne, Finance Director; Edward O'Neil, Director of Assessing

B. NEW BUSINESS (Refer to Public Hearing 12/03/2020)

BARNSTABLE TOWN COUNCIL

**ITEM# 2021-036
INTRO: 11/19/2020**

2021-036 APPROPRIATION AND TRANSFER ORDER IN THE AMOUNT OF \$522,569 IN OPEN SPACE/RECREATION COMMUNITY PRESERVATION FUNDS FOR INCREASED COSTS FOR CONSTRUCTION OF 10 NEW DEDICATED PICKLEBALL COURTS AND 2 TENNIS COURTS WITH PICKLEBALL OVERLAY LINES LOCATED AT 760 OSTERVILLE WEST BARNSTABLE ROAD, MARSTONS MILLS, MA

ORDERED: That, pursuant to the provisions of the Community Preservation Act, G. L. c 44B, the sum of Five Hundred and Twenty Two Thousand Five Hundred Sixty Nine and 00/100 (\$522,569) Dollars be Appropriated and Transferred from the amount set aside for open space and recreation within the Community Preservation Fund for the purpose of constructing 10 new Pickleball courts and 2 Tennis courts with Pickleball overlay lines located at 760 Osterville West Barnstable Road, Marstons Mills, MA and that the Town Manager is authorized to contract for and expend the appropriation made available for this purpose, subject to oversight by the Community Preservation Committee.

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

DATE ACTION TAKEN

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

BARNSTABLE TOWN COUNCIL

ITEM# 2021-036
INTRO: 11/19/2020

SUMMARY

TO: Town Council
FROM: Mark Ells, Town Manager
THROUGH: Lindsey Counsell, Chairman, Community Preservation Committee
DATE: November 19, 2020
SUBJECT: Appropriation and Transfer Order in the amount of **\$522,569** in Open Space/Recreation Community Preservation Funds for increased costs for construction of 10 new dedicated Pickleball courts and 2 tennis courts with Pickleball overlay lines located at 760 Osterville West Barnstable Road, Marstons Mills, MA Marstons Mills, MA

BACKGROUND: At the September 21, 2020 Community Preservation Committee (CPC) meeting, the six members present voted unanimously by roll call vote to recommend to the Town Council through the Town Manager, the Department of Public Work's request for \$522,569 in Community Preservation Open Space/Recreation Funds to cover increased costs for the construction of 10 new dedicated Pickleball courts and 2 tennis courts with Pickleball overlay lines, provision of handicap parking and a storage shed located at 760 Osterville West Barnstable Road, Marstons Mills, MA. This funding request represents a portion of the total project cost of \$1,142,569 with \$620,000 to be provided by Capital Improvement Plan (CIP) Funding. The need and public interest for dedicated Pickleball courts in the Town of Barnstable has previously been expressed by the community and was demonstrated by strong public support at the CPC meetings for the project.

ANALYSIS: Increased public interest and need for dedicated Pickleball courts was identified in the recent comprehensive field study, and also recognized by the Town Council during the Capital Improvement Plan process for the project.

FISCAL IMPACT: This appropriation will be provided from the amount set aside within the Community Preservation Fund for open space and recreation. The current balance in the set aside is \$1,067,196.

TOWN MANAGER RECOMMENDATION: Mark S. Ells, Town Manager upon recommendation of the Community Preservation Committee.

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

B. NEW BUSINESS (Refer to Public Hearing 12/03/2020)

BARNSTABLE TOWN COUNCIL

**ITEM # 2021-037
INTRO: 11/19/2020**

2021-037 APPROPRIATION ORDER IN THE AMOUNT OF \$200,000.00 FOR THE PURPOSE OF FUNDING THE EVALUATION OF DENITRIFICATION IMPROVEMENTS AT THE WATER POLLUTION CONTROL FACILITY

ORDERED: That the sum of **\$200,000.00** be appropriated from the Sewer Enterprise Fund reserves for the purpose of funding an evaluation of denitrification improvements at the Water Pollution Control Facility, including the payment of costs incidental or related thereto; and that the Town Manager is authorized to contract for and expend the appropriation made available for these purposes.

SPONSOR: Mark S. Ells, Town Manager

DATE ACTION TAKEN

_____ _____

_____ _____

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

BARNSTABLE TOWN COUNCIL

ITEM # 2021-037
INTRO: 11/19/2020

SUMMARY

TO: Town Council
FROM: Mark S. Ells, Town Manager
THROUGH: Daniel W. Santos, P.E., Director of Public Works
DATE: November 19, 2020
SUBJECT: Appropriation Order in the amount of **\$200,000** for the Evaluation of Denitrification Improvements at the Water Pollution Control Facility

BACKGROUND: The Water Pollution Control Facility (WPCF) reduces nitrogen concentrations to an annual average of approximately 6 mg/L of Total Nitrogen which is below the maximum allowable concentration (10 mg/L) in the facility's Groundwater Discharge Permit. Though a relatively low concentration, in combination with the amount of flow being treated at the WPCF, this can still equate to a significant nitrogen load entering the environment. In order to reduce the nitrogen load within the Lewis Bay Watershed, the Comprehensive Wastewater Management Plan proposes to improve denitrification technology at the WPCF to reduce concentrations in the treated effluent to 3 mg/L or lower.

ANALYSIS: The WPCF discharges treated effluent via the on-site rapid infiltration beds at an average Total Nitrogen concentration of 6 mg/L. The WPCF discharge is located within the Lewis Bay Watershed which is a nitrogen sensitive watershed with a nitrogen Total Maximum Daily Load (TMDL) which has been exceeded. As a result, it is necessary to remove additional nitrogen from the system. Reduction of the effluent load from 6 mg/L to 3 mg/L will reduce the nitrogen load from the WPCF by 50%, a reduction of approximately 6,900 kg/year of TN entering the Lewis Bay Watershed (at current annual average daily flows of 1.67 MGD). As a result, denitrification improvements at the WPCF have been included in Phase 1 of the Comprehensive Wastewater Management Plan.

FINANCIAL IMPACT: This project will be funded from the Sewer Enterprise Fund reserves which were recently certified at \$9,942,322 resulting in no impact on rate payers.

TOWN MANAGER RECOMMENDATION: The Town Manager recommends approval of this appropriation order.

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

B. NEW BUSINESS (May be acted upon)(Roll Call Majority)

BARNSTABLE TOWN COUNCIL

**ITEM # 2021-038
INTRO: 11/19/2020**

2021-038 TRANSFER ORDER OF \$27,465.00 FROM THE TOWN COUNCIL'S OPERATING RESERVE FUND TO THE FISCAL YEAR 2021 MARINA ENTERPRISE FUND OPERATING CAPITAL BUDGET FOR THE PURPOSE OF FUNDING THE PIER REPAIRS AT BISMORE PARK MARINA.

ORDERED: That the sum of **\$27,465.00** be transferred from the Town Council's Operating Reserve Fund to the Fiscal Year 2021 Marina Enterprise Fund Operating Budget for pier repairs at the Bismore Park Marina.

SPONSOR: Mark S. Ells, Town Manager

DATE	ACTION TAKEN
_____	_____
_____	_____

- Read Item
- Rationale
- Council Discussion
- Move/Vote

BARNSTABLE TOWN COUNCIL

ITEM # 2021-038
INTRO: 11/19/2020

SUMMARY

TO: Town Council
FROM: Mark S. Ells, Town Manager
THROUGH: Derek Lawson, Director of Marine & Environmental Affairs
DATE: November 19, 2020
SUBJECT: Transfer Order of **\$27,465.00** from the Town Council's Operating Reserve Fund to the Fiscal Year 2021 Marina Enterprise Fund Operating Capital Budget for the purpose of Funding the Pier Repairs at Bismore Park Marina.

BACKGROUND: On October 27, 2020, a commercial fishing vessel which was located at Bismore Park Marina damaged a fixed pier while exiting a transient slip. The vessel damaged the end of the fixed pier rendering two slips unusable while also creating a hazard to navigation.

ANALYSIS: Repair and replace a damaged fixed pier located at Bismore Park Marina in Hyannis. The proposed work will bring the pier back to its initial constructed conditions with all new structural material required to be replaced.

Including:

- Mobilization of materials and equipment
- Removal and disposal of damaged piles
- Supply and installation of two new piles
- Supply and installation of pressure treated framing members
- Refastening existing deck section
- Demobilization of all equipment and disposal of excess material and debris

An emergency waiver has been approved by the Division of Capital Asset Management and Maintenance. Emergency Waiver No. 3759 granted by State of Massachusetts.

FISCAL IMPACT: Funding for this unforeseen expense is being requested from the Town Council's Fiscal Year 2021 Operating Reserve in the General Fund which was budgeted for \$250,000. This will allow for the immediate repair to the facility. Any remaining funds in the Town Council's reserve will close to the General Fund's surplus at the end of the fiscal year. The proposed budget for the Marina Enterprise Fund in fiscal year 2022 will include funds to reimburse the General Fund. There have been no other transfers requested to date from the reserve fund this fiscal year. Recovery of this expense is being pursued through the party responsible for the damage. The Marina Enterprise Program is losing revenue as this pier waits to be repaired.

TOWN MANAGER RECOMMENDATION: Mark S. Ells, Town Manager recommends approval of the transfer order.

STAFF ASSISTANCE: Derek Lawson, Director of Marine & Environmental Affairs

B. NEW BUSINESS (May be acted upon)(Roll Call Majority)

BARNSTABLE TOWN COUNCIL

**ITEM # 2021-039
INTRO: 11/19/2020**

2021-039 TRANSFER ORDER IN THE AMOUNT OF \$25,940 FROM THE FISCAL YEAR 2021 DEPARTMENT OF PUBLIC WORKS OPERATING BUDGET FOR SALARIES TO THE FISCAL YEAR 2021 LICENSING DEPARTMENT OPERATING BUDGET FOR SALARIES

ORDERED: That the sum of **\$25,940** be transferred from the Fiscal Year 2021 Department of Public Works operating budget for salaries to the Fiscal Year 2021 Licensing Department operating budget for salaries for the purpose of funding salaries for additional staff support.

SPONSOR: Mark S. Ells, Town Manager

DATE	ACTION TAKEN
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- ___ Read Item
- ___ Rationale
- ___ Council Discussion
- ___ Move/Vote

BARNSTABLE TOWN COUNCIL

ITEM # 2021-039
INTRO: 11/19/2020

SUMMARY

TO: Town Council
FROM: Mark S. Ells, Town Manager
THROUGH: Richard Scali, Licensing Director
DATE: November 19, 2020
SUBJECT: Transfer Order in the amount of **\$25,940** from the Fiscal Year 2021 Department of Public Works Operating Budget for salaries to the Fiscal Year 2021 Licensing Department Operating Budget for salaries.

BACKGROUND: The Licensing Assistant for the Licensing Department, was out on FMLA from June through October, 2020. Another staff member, from the Weights and Measures division, applied for the temporary position to fill the vacancy and duties. Also, additional staff was needed to assist the Licensing Assistant upon their return through the end of the calendar year, to advise them on the upgrades and changes due to Covid-19, credits and bills to licensees and renewals of all licenses by the end of 2020 for 2021. In addition, this staff will need to work on files to be scanned into the new data system for remote access and to convert and input data for a new OpenGov system.

ANALYSIS: In analyzing the needs and costs for this temporary staff member, the Licensing operations needed to continue the costs for the permanent staff member that was out under FMLA. The temporary position was at the same grade level 9 as the Licensing Assistant working 37.5 hours per week at \$28.12 per hour for 622.50 hours from July to October, 2020 and an additional 300 hours from November to December 31, 2020. Total cost would be \$25,940.70.

FISCAL IMPACT: Funds will be provided from the Department of Public Works salary budget which has accumulated budget savings to date due to vacancies in personnel. This transfer does not increase the overall FY 2021 operating budget and only shifts budget dollars between departments.

STAFF ASSISTANCE: Richard Scali, Licensing Director

B. NEW BUSINESS (May be acted upon)(Roll Call Majority)

BARNSTABLE TOWN COUNCIL

**ITEM # 2021-040
INTRO: 11/19/2020**

2021-040 REAFFIRMATION OF THE TOWN’S GRANT OF AN EASEMENT TO VINEYARD WIND LLC IN A PORTION OF COVELL’S BEACH

RESOLVED: That the Town Council hereby reaffirms the Town’s grant of an easement to Vineyard Wind LLC in Covell’s Beach as shown on Assessor’s Map 225 as Parcel 006 and as previously authorized and approved in Town Council Item **2019-036**, and assents to the recording of the easement at the Barnstable County Registry of Deeds, and further authorizes the Town Manager to execute and record any and all instruments and documents in connection therewith.

SPONSOR: Mark S. Ells, Town Manager.

DATE	ACTION TAKEN
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_____	_____

- Read Item
- Rationale
- Council Discussion
- Move/Vote

BARNSTABLE TOWN COUNCIL

ITEM # 2021-040
INTRO: 11/19/2020

SUMMARY

TO: Town Council
FROM: Mark S. Ells, Town Manager
THROUGH: Charles S. McLaughlin, Jr., Assistant Town Attorney
DATE: November 19, 2020
SUBJECT: Reaffirmation of the Town's grant of an easement to Vineyard Wind LLC in a portion of Covell's Beach

RATIONALE: The Town Council previously voted to grant an easement in Covell's Beach to Vineyard Wind, LLC in Item No. 2019-036 in October 2018. The grant of the easement was to take effect upon the recording of an instrument or instruments after the effective date of the enactment of Article 97 legislation by the state legislature. The legislature enacted the Article 97 legislation more than six months after the Council vote. Because the Land Court requires an easement to be recorded within six months of the Town Council vote, it has become necessary to reaffirm the grant of the easement and re-authorize the Town Manager to execute the easement so that Vineyard Wind, LLC may record the easement within the new, six-month window of this vote.

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

STAFF ASSISTANCE: Charles S. McLaughlin, Jr., Assistant Town Attorney

B. NEW BUSINESS (May be acted upon) (Roll Call Majority)

BARNSTABLE TOWN COUNCIL

**ITEM # 2021-041
INTRO: 11/19/2020**

2021-041 AUTHORIZATION FOR VINEYARD WIND LLC TO RECORD CHAPTER 91 LICENSE AND OTHER LICENSES AND APPROVALS ISSUED TO VINEYARD WIND

RESOLVED: that the Town of Barnstable, a Massachusetts municipal corporation, acting by and through its Town Council, as owner of the land located at 857 Craigville Beach Road, Barnstable Massachusetts, known as Covell’s Beach and described in (i) Certificate of Title 59198 and shown as Lot 3 on L.C. Plan 12134-D, and (ii) a deed recorded in Book 1892, Page 142 and shown on a plan recorded in Plan Book 272, Page 99, hereby assents to the filing with the Barnstable Registry District of the Land Court and the recording with the Barnstable Registry of Deeds of the following documents issued to Vineyard Wind LLC: (a) Massachusetts Department of Environmental Protection Chapter 91 Waterways License # 15011; (b) Barnstable Conservation Commission Order of Conditions (MassDEP File No. SE 3-5681); and (c) Massachusetts Department of Environmental Protection Superseding Order of Conditions (MassDEP File No. SE 3-5681). The Town Manager is authorized to execute and deliver all documents for the stated purposes.

SPONSOR: Mark S. Ells, Town Manager.

DATE	ACTION TAKEN
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_____	_____

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

BARNSTABLE TOWN COUNCIL

ITEM # 2021-041
INTRO: 11/19/2020

SUMMARY

TO: Town Council
FROM: Mark S. Ells, Town Manager
THROUGH: Charles S. McLaughlin, Jr., Assistant Town Attorney
DATE: November 19, 2020
SUBJECT: Authorization for Vineyard Wind LLC to record Chapter 91 license and other licenses and approvals issued to Vineyard Wind

BACKGROUND: Vineyard Wind LLC has obtained approvals from the Commonwealth for a Chapter 91 license to install cables from its offshore wind project under Covell's Beach. It has also obtained an Order of Conditions from the Barnstable Conservation Commission and a Superseding Order of Conditions from the Massachusetts Department of Environmental Protection with respect to such cables. Each of these licenses must be recorded at the Barnstable County Registry of Deeds and at the Land Court's Barnstable Registry District. The Land Court requires that an assent from the Town dated within six (6) months of the prospective date of recording accompany the documents to be recorded. This assent authorizes such recordings.

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

STAFF ASSISTANCE: Charles S. McLaughlin, Jr., Assistant Town Attorney

B. NEW BUSINESS (May be acted upon) (Roll Call Majority)

BARNSTABLE TOWN COUNCIL

**ITEM # 2021-042
INTRO: 11/19/2020**

**2021-042 APPROVING THE NAMING OF THE NEW MAHER WATER TREATMENT
PLANT AS THE HAROLD E. TOBEY FILTRATION PLANT**

RESOLVED: That the Town Council hereby approves the naming of the new Maher water treatment plant in Hyannis as the “Harold E. Tobey Filtration Plant”.

SPONSOR: Mark S. Ells, Town Manager.

DATE	ACTION TAKEN
_____	_____
_____	_____

- Read Item
- Rationale
- Council Discussion
- Move/Vote

BARNSTABLE TOWN COUNCIL

ITEM # 2021-042
INTRO: 11/19/2020

SUMMARY

TO: Town Council
FROM: Mark S. Ells, Town Manager
THROUGH: Daniel W. Santos, P.E., Director of Public Works
DATE: November 19, 2020
SUBJECT: Approving the naming of the new Maher Water Treatment Plant as the Harold E. Tobey Filtration Plant.

BACKGROUND: Harold E. Tobey, 1936-2020, was the first African American officer in the Barnstable Police Department and served the Town of Barnstable as Town Councilor from 1989 to 2009, member of the Licensing Authority from 1991-2001, and as a member of the Hyannis Water Board from 2016 to 2018,. In addition, he served on numerous boards and committees over his many years of active public service.

On June 16, 2020 the Hyannis Water Board voted unanimously to recommend naming the new treatment plant in his honor commemorating his tireless efforts over many years to the service of his community.

FISCAL IMPACT: There is no direct fiscal impact resulting from the resolve

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

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

B. NEW BUSINESS (First Reading) (Refer to Second Reading 12/03/2020)

BARNSTABLE TOWN COUNCIL

**ITEM # 2021-043
INTRO: 11/19/2020**

2021-043 GRANT OF EASEMENT TO VINEYARD WIND LLC IN CERTAIN STREETS AND WAYS, INCLUDING PORTIONS OF CRAIGVILLE BEACH ROAD, STRAWBERRY HILL ROAD, WEQUAQUET LANE, PHINNEY’S LANE, ATTUCKS LANE, AND INDEPENDENCE DRIVE

ORDERED: That pursuant to the Host Community Agreement between the Town and Vineyard Wind LLC with respect to the wind generating facility to be developed by Vineyard Wind LLC in federal waters south of Martha’s Vineyard (the “Project”), the Town grants easements to Vineyard Wind LLC, and its successors and assigns, for the purpose of constructing, installing, inspecting, operating, maintaining, repairing and replacing subsurface high voltage electric power transmission lines, along with associated subsurface appurtenances, including, but not limited to, telecommunications lines, conduits, duct banks, bays and vaults, and together with surface appurtenances for access, in connection with the Project, namely, such portions of Craigville Beach Road, Strawberry Hill Road, Wequaquet Lane, Phinney’s Lane, Attucks Lane, and Independence Drive as comprise the in-road cable route for the Project as approved by the Energy Facilities Siting Board in its Final Decision in EFSB 17-05 dated May 10, 2019, and as shown on the plans on file with the Town Council, and that the aforesaid grant of easements shall take effect upon recording of an instrument or instruments with the Barnstable County Registry of Deeds.

SPONSOR: Mark S. Ells, Town Manager

DATE ACTION TAKEN

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

BARNSTABLE TOWN COUNCIL

ITEM # 2021-043
INTRO: 11/19/2020

SUMMARY

TO: Town Council
FROM: Mark S. Ells, Town Manager
THROUGH: Charles S. McLaughlin, Jr., Assistant Town Attorney
DATE: November 19, 2020
SUBJECT: Grant of an easement to Vineyard Wind LLC in certain streets and ways, including portions of Craigville Beach Road, Strawberry Hill Road, Wequaquet Lane, Phinney's Lane, Attucks Lane, and Independence Drive

BACKGROUND: Pursuant to the 2018 Host Community Agreement (HCA) between the Town and Vineyard Wind LLC, the Town agreed to grant an easement in portions of Craigville Beach Road, Strawberry Hill Road, Wequaquet Lane, Phinney's Lane, Attucks Lane, and Independence Drive. This route comprises the in-road cable route for the Project as approved by the state Energy Facilities Siting Board (EFSB) in its Final Decision in EFSB 17-05 dated May 10, 2019.

This proposed easement is on file with the Town Council as are plans which show the entire route. The installation will be subsurface for its entire length except for manhole access at various points along the route. The entire installation will comply with the detailed review and requirements imposed by the EFSB and will meet all design and safety requirements. The EFSB approved this cable route in early 2019, in a formal 179-page written decision, following a year-long process that involved a multi-week public hearing in which the Town participated as an intervenor.

It is sufficient for Town Council to grant the requested easement on the basis of the plans on file with the Town Council, which show the portions of rights-of-way which Vineyard Wind intends to utilize. As is standard practice in such circumstances, the precise location of the infrastructure itself within the right-of-ways will depend on factors that are inherently unknowable until construction has commenced (e.g., the specific location of other utilities within the right-of-way, soil conditions, etc.). Once Vineyard Wind completes installation of its infrastructure, Vineyard Wind will file "as-built" plans with the DPW showing the exact location of its installed infrastructure, and record those plans with the Barnstable County Registry of Deeds, thereby fixing the location of the easement to reflect the "as-built" locations.

After completion of the Host Community Agreement, the Town and Vineyard Wind agreed to cooperate in the parallel and simultaneous design and installation of much-needed Town sewers. Vineyard Wind will pay for excavation, closure, and repaving for the full length of the installation, saving the Town at least an estimated \$3,000,000 in the process. The coordinated effort will also avoid the impact to neighborhoods and roadways that would result from separate installation and construction activities.

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

STAFF ASSISTANCE: Charles S. McLaughlin, Jr., Assistant Town Attorney

B. NEW BUSINESS (May be acted upon) (Roll Call Majority)

BARNSTABLE TOWN COUNCIL

**ITEM # 2021-044
INTRO: 11/19/2020**

**2021-044 ADOPTION OF TOWN COUNCIL STRATEGIC PLAN FOR FISCAL YEARS
2021-2022**

RESOLVED: That the Town Council hereby approves and adopts the Town Council Strategic Plan for Fiscal Years 2021-2022 as presented to the Council at this meeting.

SPONSOR: Paul E. Hebert, Town Council President, Precinct 3; Jessica Rapp Grasseti, Town Council Vice President, Precinct 7

DATE	ACTION TAKEN
_____	_____
_____	_____

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

TOWN of BARNSTABLE
TOWN COUNCIL STRATEGIC PLAN
FISCAL YEARS 2021-2022

MISSION STATEMENT

Our mission is to protect the Town of Barnstable's quality of life and unique character, engage our citizens, and enact policies that respond to and anticipate the needs of our community.

GUIDING PRINCIPLES

We believe in our oath of office:

I will perform my duties as a Town Councilor for the Town of Barnstable to the best of my ability, keeping uppermost in my mind the rules and laws that govern my office and my responsibility to the citizens of the Town of Barnstable.

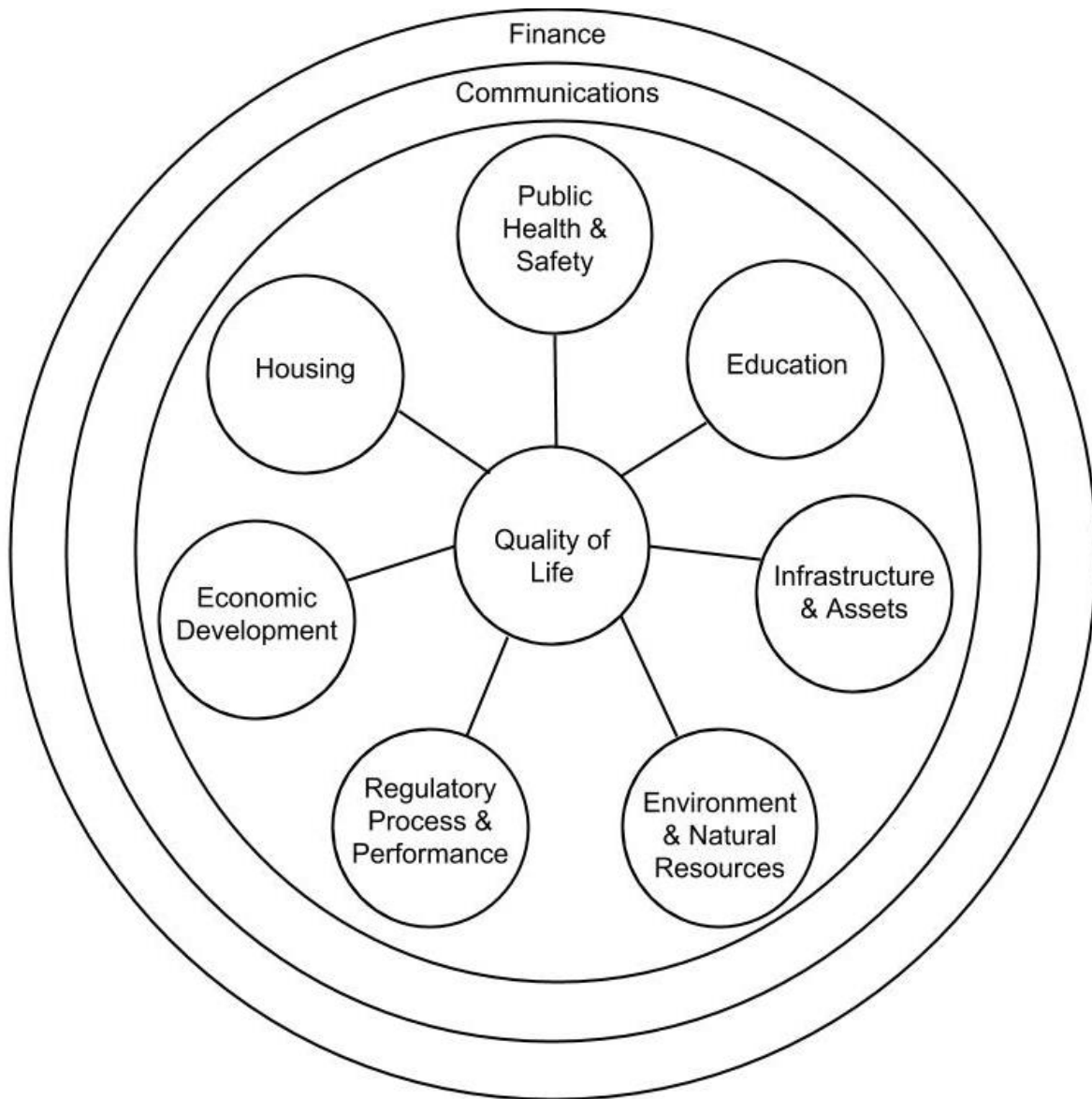
We also believe in:

- ✓ Involving residents in the decision-making process
- ✓ Modeling ethical behavior
- ✓ Protecting citizen rights
- ✓ Protecting the health and safety of citizens
- ✓ Being fiscally responsible
- ✓ Being accountable
- ✓ Being respectful of the people and the process
- ✓ Giving the highest priority to the rules and laws that govern the office of the Town Council
- ✓ Operating fairly, predictably and efficiently
- ✓ Providing a consistent process
- ✓ Operating creatively and with flexibility
- ✓ The manager's job to manage the staff
- ✓ Preserving the integrity of the Town of Barnstable
- ✓ Each council member's stake in the betterment of the community
- ✓ Listening and respecting each other's contributions
- ✓ The right to disagree
- ✓ Being accessible and keeping the process open
- ✓ Decisions being made in the best interest of the whole Town of Barnstable

PRIORITY AREAS

We have identified a single goal and several strategies in nine priority areas. For each, it is understood that the Town Council will formulate and enact policy, the Town Manager and staff will implement and manage programs to achieve the policy goals, and the Town Council and Town Manager will communicate frequently to ensure accountability to the residents of the Town of Barnstable.

TOWN of BARNSTABLE
TOWN COUNCIL STRATEGIC PLAN
FISCAL YEARS 2021-2022



Shaped like a wheel, the strategic plan diagram shows *Quality of Life* at the hub, surrounded by seven priority areas: *Economic Development*, *Regulatory Process and Performance*, *Housing*, *Public Health and Safety*, *Environment and Natural Resources*, *Infrastructure*, and *Education*. These areas function like lug nuts, securing a high quality of life for Barnstable residents regardless of circumstances beyond their control (or “bumps in the road”). Finance and Communication support and protect the wheel like tires – if they deflate, any or all areas may be compromised.

TOWN of BARNSTABLE
TOWN COUNCIL STRATEGIC PLAN
FISCAL YEARS 2021-2022

Finance

Goal: Provide a viable financial plan for meeting the operational and capital needs of the town with a balanced budget that includes ongoing cost reductions, maintaining reserves, and aggressively pursuing new growth dollars and revenue sources.

Strategies:

- Ensure adherence to a sound financial plan to meet short- and long-term priorities of the operating and capital needs of the town.
- Evaluate and assess, on an on-going basis, alternative methods to decrease the cost of services by exploring the financial benefits of regionalization, consolidation, privatization and collective bargaining.
- Explore and create new growth dollars and revenue sources (including grants) for the town and schools to alleviate strain on municipal and school budgets, continue to perform operational auditing to ensure that financial priorities are reflected, advance greater energy efficiency, and stimulate new growth.
- Support and promote more transparency in the Open Budget. Support and promote contactless financial transactions and the transition to digital information.

Sept. 2020 Town Council Guidance on Finance

- *Impacts of COVID-19:* The COVID-19 pandemic and its resulting economic contraction should lead to an examination of the Town's top financial priorities and motivate the Town to remain as affordable as possible by avoiding tax increases where possible. Despite the extraordinary circumstances, small local businesses stepped up during the pandemic, and the Town should consider exploring more incentives and supports for local businesses.
- *New Business Growth:* The Town should consider that future business growth may include a departure from traditional brick and mortar businesses, which could both open up an opportunity for more housing and increase the need for support for home businesses (zoning, permitting, etc.). Additionally, the Town should explore new growth opportunities from the redevelopment of underperforming parcels, PILOT opportunities, and the "grey" economy.
- *Auditing Best Practices:* The Town should hire independent organizations to evaluate spending and department operations; those audits should be available as a tool for Town decision-making.
- *Cost-Sharing:* The Town should explore cost-sharing opportunities between its schools and its municipal operations; operational audits could be used as a tool to surface potential opportunities.
- *Cost Savings:* The question was posed whether independent fire and water districts could be a place where cost savings could be pursued. If so, the Town should determine the correct forum to start this conversation.
- *Equitable Resource Allocation:* The Town should explore what an equitable allocation of resources should look like between villages.

TOWN of BARNSTABLE
TOWN COUNCIL STRATEGIC PLAN
FISCAL YEARS 2021-2022

Communications

Goal: Improve communication between the Town Council and Town Manager and his staff; between Town Councilors; between the Town and its residents, boards, commissions, volunteers and visitors to foster participation and positive results that are geared toward meeting the needs of the community.

Strategies:

- Provide regular opportunities for Town Council members to receive briefings or updates on Town initiatives and other important topics from the Town Manager and department heads.
- Use the council liaison system to improve communication between Town committees and commissions.
- Utilize existing communication boards and partner media outlets to make public service announcements. Work with community groups to disseminate information to their members. Develop tactics to effectively solicit public input and promote active engagement.
- Communicate Town information to non-English speaking community members.
- Utilize the Town website, Facebook page & Twitter feed, Town newsletter, Citizen's Leadership Academy, Channel 18 (municipal television station), and local newspaper and radio stations as outlets to communicate with the public. Specifically:
 - Encourage all boards and commissions to record their proceedings so they can be viewed on Channel 18.
 - Reach out to citizens in all seven villages to increase resident involvement in Town government; improve citizen understanding of Town services and government structure, and improve public confidence in the Town.
 - Coordinate and consolidate information distribution with other town, county, and state officials and legislative delegations whenever possible.

TOWN of BARNSTABLE
TOWN COUNCIL STRATEGIC PLAN
FISCAL YEARS 2021-2022

Sept. 2020 Town Council Guidance on Communications

Desired Outcome: The professional credibility of the Town’s government should be well regarded by its residents and stakeholders. The Town’s citizenry should be active, involved, and feel heard; Town decisions should be made with community buy-in.

- *New Town Government Positions:* The Town should explore creating a volunteer coordinator position as well as a grants coordinator position.
- *Role of Town Council:* The Town should consider developing guidance for what it means to serve in the role as Town Councilor. The Council itself should have clarity on its role versus the role of Town management, especially as it pertains to community engagement and communications.
- *Audience for Town Communications:* The Town should examine any gaps in the audiences it is currently reaching, such as generational gaps, and target its communications to reach those missing constituencies. Focus groups could be a tool to design tailored messages for missing audiences, as could partnerships with civic associations, the formation of a Community Engagement Committee, and/or the formation of a task force with residents on communications. The Town should also be cognizant of economic gaps among its residents that may increase barriers to online access and virtual participation for some households.
- *Additional Modes of Communication:* Some options for additional modes of communication the Town could capitalize on include a mailer about Town Council updates distributed through the schools, increased utilization of the popular Town Manager video updates, and posting recorded meetings and applications to Town RFPs online for public access. The Town’s web presence more generally should be made more accessible and user-friendly. Additionally, the Annual Report could be an opportunity to provide residents with an overview of the Town’s structure, roles, and goals and achievements. The Town Council could also use feel-good communication opportunities, like Channel 18 programs on volunteer opportunities, to highlight the strength of the Barnstable community.
- *Town Council Accessibility and Participation:* Holding special, issue-focused Town Council workshops and holding Town Council meetings on Saturday at least once per year could increase accessibility and participation. Promoting and accepting remote participation in Council proceedings could also help increase citizen involvement, and the Town should explore any legal or procedural barriers to allowing remote participation.

Economic Development

Goal: Town Council and Town Manager to support and grow a vibrant economy with a diversity of businesses, both for-profit and non-profit, and a strong labor force.

Strategies:

- Continue to support Zoning and Regulatory Committee to determine any zoning changes that may require legislative action, as well as the Economic Development Task Force to address economic resiliency
- Identify and encourage redevelopment of underutilized and/or blighted properties.

TOWN COUNCIL STRATEGIC PLAN
FISCAL YEARS 2021-2022

- Town Manager to work proactively to retain and/or expand existing businesses and to attract new ones using innovative approaches, such as:
 - Provide economic incentives that increase business diversity in Barnstable and promote desirable economic activity, such as clean industries and smart growth.
 - Create marketing specifically to attract desirable new businesses to Barnstable.
 - Create or deepen connections between local educational institutions and businesses.
- Support efforts to grow the arts and culture sector to contribute to the Town’s overall economic development.

Sept. 2020 Town Council Guidance on Economic Development

- *Economic Development Task Force:* As part of its disaster preparedness and economic resilience strategy, the Town should support the Economic Development Task Force and conduct scenario planning.
- *Support for Residents:* The Town should support its residents working from home – for example, through ensuring adequate broadband connection. Additionally, the Town should consider using Town money to subsidize early childcare for its residents.
- *Relationship with Community College:* The Town should leverage and improve its relationship with the Community College to increase local job opportunities.

Environment and Natural Resources

Goal: Conserve and protect areas in the town that are most significant as natural and historical resources for water supply, visual quality, outdoor recreation, public access, wildlife habitat and cultural history.

Strategies:

- Implement the comprehensive dredge plan.
- Investigate innovative, cost-effective techniques for invasive species control.
- Investigate innovative techniques and legislative options to address beach erosion and otherwise prepare for and adapt to extreme weather events.
- Support programs that emphasize environmental protection while ensuring economic development as articulated in the Regional Policy Plan.
- Raise awareness of conservation areas and Town-owned open space.
- Establish management and maintenance plans for conservation areas and Town-owned open space.

TOWN of BARNSTABLE
TOWN COUNCIL STRATEGIC PLAN
FISCAL YEARS 2021-2022

- Work in conjunction with federal, state, regional, and local agencies to protect critical environmental areas, including fragile coastlines, marine embayment areas, and all water bodies vulnerable to nitrogen loading.

Regulatory Process and Performance

Goal: Work with Town Manager and staff to have an efficient, customer-friendly, predictable regulatory process.

Strategies:

- Re-evaluate the permitting process, including policies, rules and regulations, personnel, customer/citizen experience, and impact on economic growth. Identify necessary changes.

Public Health and Safety

Goal: Protect and promote the health, safety, and high quality of life of all town residents and visitors.

Strategies:

- Support collaborative action to protect and expand our drinking water supply, including (but not limited to) ongoing monitoring for existing and emerging contaminants.
- Develop and implement a substance use prevention plan in collaboration with key stakeholders.
Focus on:
 - Prevention through educating youth in schools, working with YMCA Young Achievers, and leveraging recreation programs.
 - Collaboration among community stakeholders working on substance use from a range of perspectives.
 - Establishing appropriate oversight and support for programs and entities in Barnstable that offer treatment.
- Support village-based and community-oriented public safety agencies, and joint programs that police/school/youth/seniors/disabled/homeless and other vulnerable populations' programs.

Housing

Goal: Identify needs, and develop, promote, and monitor town-wide initiatives for income-equitable, affordable, workforce, senior, and rental housing to meet the needs of residents and increase the overall quality of housing in Barnstable.

Strategies:

- Review zoning issues identified by the Council and the Zoning Board of Appeals to determine how best to achieve housing goals through zoning and regulatory changes. Proactively engage

- stakeholders with influence over this issue. Review the Housing Production Plan to support this goal.
- Work in partnership with developers so they can take advantage of the available resources, funding, and assets to initiate housing projects.
- Explore housing solutions, including regional collaboration and creative financing, to address homelessness, housing insecurity, and lack of available and affordable housing in Barnstable.
- Explore the possibility of using town assets to create affordable private housing opportunities.
 - Pursue innovative structures and formats, and use of town-owned land, to expand quality workforce housing.

Sept. 2020 Town Council Guidance on Housing

- *Representative Zoning Committee:* The Town should either explore forming a new committee to address zoning issues, with representatives from each of the 7 villages, or amend the membership of the existing committee.
- *Priority Housing Types:* The Town should prioritize quality, affordable workforce housing as well as single-room apartments. There may be incentives to consider through the property tax system to increase affordable housing. The Town should consider promoting home ownership through the prioritization of smaller housing over larger developments, but 2-acre zoning may be a regulatory barrier.
- *Creativity to Navigate Barriers:* Where the cost of land and labor can act as a barrier, the Town can eliminate the cost of land barrier by providing its assets, as demonstrated in Seattle with long-term leases with below market rate restrictions. There are opportunities for the Town to be creative with its assets (e.g., tiny homes with a community garden), and developer partners should be sought with creative solutions in mind. Moreover, the Town can explore reducing the cost of construction through streamlining regulations.
- *Alternative Wastewater Solutions:* There may be Town support for alternative wastewater processes in areas that will not be sewered in the near- or medium-term. The CWMP should address these needs and options.

Town Infrastructure & Assets

Goal: Maintain and improve existing infrastructure, capital assets, and aquatic resources, make improvements when necessary, and ensure town assets are managed, maintained, and disposed of to serve the highest and best uses moving forward.

Strategies:

- Facilitate comprehensive infrastructure improvement planning for municipal roads, buildings, facilities, sewers, transportation systems, communication systems, information infrastructure, water and wastewater systems, historical properties, and other capital assets, with an eye toward permit-ready and shovel-ready projects.
- Support the exploration of traditional and non-traditional methods for comprehensive water management and monitoring of implementation efforts.
- Continue to inventory and evaluate the status of Town assets and dispose of or acquire assets as appropriate.

- Evaluate options for effective and economical development of renewable energy resources, energy conservation programs, and solid waste and recycling programs.
- Support efforts to build resiliency of the Town’s natural and built resources.

Sept. 2020 Town Council Guidance on Town Infrastructure & Assets

Desired Outcome: The Town should have more infrastructure leading up to and on the water, and its deployment of energy resources should be consistent with state targets.

- Acknowledge climate change and the need to reduce greenhouse gas emissions by utilizing renewables in accordance with the Global Warming Solutions Act.

Education

Goal: Support the provision of a safe, high-quality public education for all students in an increasingly diverse student body, in partnership with local, state, and federal entities.

Strategies:

- Work cooperatively with the School Department to approve a budget that adheres to standard municipal accounting practices, is clear and understandable for all residents, and meets the short- and long-term operating and capital needs of the school system and the municipality.
- Work in conjunction with the School Department to deliver a substance use prevention model for grades PreK-12.
- Strive to reduce the impact of unfunded state and federal mandates in addition to the revised Chapter 70 funding and make public aware of impact of same.
- Support efforts to amend Chapter 70 Funding Formulas in order to provide more resources to the Town.
- Work cooperatively with school administration to develop plans for administrative and infrastructure consolidation. Conduct periodic assessments of consolidated services.
- Support initiatives to create a culturally-diverse educational environment for all public school students.

B. NEW BUSINESS (May be acted upon) (Roll Call Majority)

BARNSTABLE TOWN COUNCIL

**ITEM # 2021-045
INTRO: 11/19/2020**

2020-045 ADOPTION OF POLICY TO REDUCE NET GREENHOUSE GAS EMISSIONS

RESOLVED: That due to the threat posed by global climate change to the health, safety and economic security of the residents of the Town of Barnstable, including rising seas, deadly storms, dangerous heat waves, acidifying oceans and melting ice sheets, and in recognition that this climate emergency is driven by human energy consumption and land use practices, the Town of Barnstable hereby adopts as its policy the objective of reducing net greenhouse gas emissions from human activity within and by the Town to zero to the extent technically and economically feasible; and the Town Manager is hereby directed, in consultation with the officers and departments of the Town, to identify and recommend to the Council measures that may be taken by the Town to facilitate such policy and objective.

SPONSOR: Councilor Gordon Starr, Precinct 1

DATE

ACTION TAKEN

- Read Item
- Rationale
- Council Discussion
- Move/Vote

**B. NEW BUSINESS (First Reading) (Refer to Second Reading
12/03/2020)**

BARNSTABLE TOWN COUNCIL

**ITEM # 2021-046
INTRO: 11/19/2020**

2021-046 APPOINTMENTS TO A BOARD/COMMITTEE/COMMISSION:

RESOLVED: That the Town Council appoints the following individuals to a multiple-member board/committee/commission: **Licensing Authority:** Aaron Webb, as a regular member to a term expiring 6/2022; **Recreation Commission:** George Bent, as a regular member to a term expiring 6/2022

SPONSOR: Appointments Committee

DATE	ACTION TAKEN
_____	_____
_____	_____

- Read Item
- Rationale
- Council Discussion
- Move/Vote