



Town Council Meeting
August 17, 2023



A quorum being duly present, Vice President Jen Cullum called the August 17, 2023, Town Council meeting to order at 7:01PM.

An announcement was made by Vice President Cullum regarding the meeting being televised live and questioning if anyone was actively taping the session to please make their presence known. This session is recorded and broadcast on Channel 8 or High Definition Channel 1072.

PRESENT: Nikolas Atsalis, Kristine Clark, Jennifer Cullum, Paul Cusack, Jessica Rapp Grasseti, Matthew Levesque, Betty Ludtke, Jeffrey Mendes, Paul Neary, Paula Schnepf, Tracy Shaughnessy, Gordon Starr **Absent:** Matthew Levesque, Paul Neary, Eric Steinhilber

The Pledge of Allegiance was led by Councilor Cusack followed by a moment of silence and our deepest sympathies for the families of Kathy Pina and J. Paul Lanza.

PUBLIC COMMENT:

Susanne Conley shared the concern of the proposed Avangrid landing at Dowses Beach, with new information. Radio and print ads that continue to further Avangrids project of wildly inflated claims. Open houses meant to relieve us of our anxiety only serve to amplify it. She has a binder filled with signatures of residents of the Town of people in opposition to a transmission line proposed at Dowses Beach. This is not an appropriate site for electrical infrastructure of this magnitude.

Paul Phalen following up about the possible closing of the airport and in its place light industrial, senior housing and affordable housing, we have 1000 units "in the hopper," we don't want to flood the area with housing. We are not a regional airport but a commercial airport, which there are five on Cape Cod and the Islands. He had many suggestions; the Airport Commission needs to be respectful of the Town Council, and asks the Council to consider merging the airport with an air, land and sea plan.

Maryann Barbosa low income people work two and three jobs to live on the cape. Many low income people are educated; we have been here for generations. We have a very good rapport with the Police, with an open door policy. We need a community meeting with all the different departments.

Cheryl Powell is here to support the members of the Local Comprehensive Plan Committee (LCPC), and to support those that have gone before the Appointments Committee.

Garrett Ruffin applied for housing, waited 9 years, and just got my housing certificate. I have two months to find a place, I need some assistance. Waited too long to lose this opportunity.

ZOOM:

Asia Graves so glad to see the public at the meeting. We need immediate housing; we are struggling to find housing on the cape. We need a list of all the housing that is affordable. Busses stop at 5:30 to 6 PM in the evening. We need to have regular everyday people on the committees. We have a problem; we need more than a thousand affordable units. We need to do something now.

Close Public Comment

COUNCIL RESPONSE TO PUBLIC COMMENT:

(Shaughnessy) Susanne, thank you for your continued updates; Mr. Phalen we absolutely have a housing shortage, nationwide; Mr. Ruffin it sounds absurd for you to have 60 days to lock in a location; Cheryl-important as the chair of a committee to support your people; Maryann-thank you for your power and voice. (Atsalis) Garret thank you for speaking tonight just unacceptable to have only 60 days to find a place to live; we will try to help you (Mendes) Everything Maryann said is absolutely true; a lot of people look at the housing issue as a black/white issue it is not; most of the locals are being priced out of this market. We need affordable housing; we need to worry about the people who grew up here. (Clark) Appreciate all of you for taking the time to come here; and I am sensitive to the housing issue. (Ludtke) Focusing on the people who live here, that the property taxes we need to be reminded these folks are paying the bills; only 14% of our land is available for development; relocating the airport, right in the heart of Hyannis, why wouldn't we study that to look at a joint solution. Look at alternatives. Susanne you bring so much to the table; the windfarms in the North Atlantic, they landed in industrial areas; they go out of their way not land on the beaches. Maryann you are always entertaining, Asia is talking about a renter's legal assistance, an asset to our community; the beauty was here and has been taken away. (Schnepp) many of you have been here before, focus in on the housing issue, challenging time for all of us; what I would like to suggest, there are ways that you can extend the original 60 days. New housing takes a lot of time; there will be some American Rescue Plan Act (ARPA) funds available for housing. Right now it is tough, we need to provide housing. (Cullum) Appreciate everyone being here, our new District Attorney is fighting for equality, if you need to reach us individually; all the vacancies are listed for boards and committees.

ACT ON PUBLIC SESSION MINUTES:

Upon a motion duly made and seconded it was to accept the minutes of July 20, 2023 as presented.

VOTE: PASSES UNANIMOUS

TOWN MANAGER'S COMMUNICATIONS: (Pre-Recorded) (Cullum) The Town Manager's report has been prerecorded and the written form will be available to all on the Town Manager's page on the website. (Exhibit A)

Update on the budget action calendar

Update on lifeguards schedule

Second Public Hearing on proposed Grant of Location

Massachusetts Department of Environmental Protection tentative denial of Holtec's application

Beach Management Plan for Piping Plovers

Cape Cod Commission and consultants CTC Technology and Energy

The changes in the channel lineup

My Barnstable APP

Councilor questions and comments:

(Clark) Thanked Kelly Collopy for the update. (Starr) Thanked Nina Coleman for her hard work and the beach update (Ludtke) Thanked the town for taking beach raking on, and coming up with a management plan. (Schnepp) Summer celebration do we know what time the fireworks are going to start? Trolley stop here at the town parking lot? (Cullum) is there location for the route (Poyant) gave the information about the sunset, and the public transit will be available on the website of the Cape Cod Regional Transit Authority (Cape Cod RTA) (Ells) all the information, you can reach out to us or look at the website (Shaughnessy) The Telecom industry and placement of wireless, will we be working on this? (Ells) those areas that we have control we will work with the legal department (Clark) can we put link to the Cape Cod RTA on our website (Ells) yes

COMMUNICATIONS from elected officials, boards committees, and staff, commission reports,

(Clark) Appreciate work by emergency preparedness/response for the tornado that ripped through Marstons Mills, appreciate the clean-up; Saturday is the West Barnstable Village Festival; District Attorney Galibois will be in the dunk tank; (Starr) Comprehensive Wastewater Management Plan (CWMP) as we open up the sewer connections, we need to pay attention, to know the capacity as we

develop housing; we are Gateway City, maybe the Finance Department can do a workshop (Schnepp) We added an agenda item; a support letter requesting money from the federal government for our bridges, appreciate your support.

- Presentation from Local Comprehensive Planning Committee members on Phase One of the Local Comprehensive Plan (LCP) Felicia Penn gave the overview utilizing a power point program; there are many people in the audience that are on the committee.

Councilor questions and comments:

(Clark) What is the process for filling those four positions, (Penn) some people have submitted their names, you could forward names to Councilor Schnepp, or Town Manager Mark Ells (Ludtke) has had people ask about being on the committee, please identify the best way for them to go (Schnepp) Thanked the members of the committee, the outreach to the community and the staff. (Clark) for these vacancies is there a time line for people to apply (Penn) that will be communicated to the Town Council when we figure that out. (Cullum) it is important to get the process down. Thank you all for the effort.

- Workshop Discussion of Town Provided Health Insurance: Town Manager Mark Ells gave a brief introduction: Town Attorney Karen Nober, regarding the conflict of interest; Human Resource Director, Bill Cole and Finance Director Mark Milne.

Councilor questions and comments:

(Ludtke) we can vote now because we don't know the future, wouldn't it be better to wait (Nober) to vote on something that won't be effective until after the election; if you know you are running unopposed, you are prohibited for acting on a matter. (Ludtke) it is the uncertainty that makes it viable (Rapp Grasseti) Retirees-Councilor retiring are we included (Nober) the Councilor's who are vested in the health insurance, we can take that up after the election (Schnepp) Currently isn't an item on our agenda that would require Town Council vote, (Nober) there are two votes on the agenda first and second items; delegation under the 32B, the second vote delegation and determination to allow the Town Manager to proceed, (Schnepp) will there be discussions with staff in this workshop? (Nober) this is to make sure you know what we can and cannot do, we won't to get to the point that the Council wants to say you should do X, that would have to go to Executive Session (Ludtke) meeting on the strategy, we had a comment about cost cutting, does that get you where you need to be; will that strategy document factor into the discussion (Ells) the strategic plan we look at the an annual operations, sound financial management, we would look at the cost cutting where possible; we try to balance. (Cullum) Aggressively looking at new tax growth dollars, to support the projects we have going on in the town (Nober) 32B Section 7 to modify the current insurance costs; we have to accept the provision of 32B section 7A. (Schnepp) 12 bargaining units are you able to cross the units (Cole) we do have a process called coalition bargaining. (Cullum) We (the leadership) went to the staff, we need the most qualified people; we need to be the best (Starr) this doesn't include the fire districts (Cole) not a direct competitor (Ludtke) School teachers struggle like crazy; I'd like to see a workshop on cost cutting (Cullum) no Councilor had asked before to examine these numbers (Ludtke) This is a long time coming (Rapp Grasseti) None of the departments require the people to live in the town (Schnepp) A lot of the towns have 75% (Cole) that is the rate that the towns moved up to that percentage, the majority are not in Group Insurance Plan (GIC) (Schnepp) were there previous conversation on which insurance we should take (Cole) the Council voted to go to a "GIC like" plan rather than join a GIC. (Schnepp) How does that look (Cole) the plans that were offered, GIC had limited plans; the plan we have was more advantageous to us. (Schnepp) would you be open to go with GIC (Cole) the town is always looking at opportunities (Shaughnessy) the heart of the strategic plan is the quality of life; when the Barnstable Police brought up the short staff; part of the issue is the 50/50 split; (Mendes) we are in constant competition, we have to start thinking as a business; we have competitors (Clark) can you refresh me what is GIC (Cole) Group Insurance Plan (Clark) can we pool our resources with the County (Cole) joint purchase group, each individual entity can set their own split. (Starr) Premium holidays, why do you do that, (Milne) by law we are 50/50, it was to improve our cost share (Schnepp) the variables I would like to see the swing; school budget does not show in the

budget; shifting back to the schools (Milne) we used to do that within each of the departments, the cost should be a fixed cost, that is how we have been presenting it the past several years (Schnepp) is there a reason why you didn't choose 75/25 (Milne) I can do that (Mendes) wouldn't we be better off doing the 70/30 and not be short staffed (Milne) this issue has been cited as a decision factor; we have had employees leave to get better insurance (Mendes) save money on the back end it makes it easier to pay your mortgage (Cullum) this Council has been very proactive in looking for housing (Shaughnessy) the premium holidays would drop out at the 70/30, (Milne) Yes, we would have to negotiate; (Mendes) premium holidays is great but not enough (Starr) the numbers that you have up for the 70/30 split doesn't include the number of people who might want the insurance (Milne) I can run those numbers, we are not setting the rate tonight. (Starr) May be you can flesh out those numbers for another meeting (Cullum) when people come to work for the town they are building a better Barnstable, instead of thinking about it as a cost, it is building a better community (Schnepp) Bigger question, larger the number it could effect a tradeoff, that is a bigger discussion; when would be the earliest we could implement this change; (Milne) part of the collective bargaining negotiations (Cullum) we are under a time pressure now (Schnepp) we need to do this sooner than later (Milne) we could have to come back to the Council for a supplemental budget. (Schnepp) Can you do collective bargaining in the middle of a contract (Cole) short answer is yes, even if they are in existence we have the ability to negotiate. (Atsalis) Benefits package is a big attraction and retaining what you have; our employees to stay, we need to offer the best benefits package that we can.

5 minute break:

Jump to: 2024-012

2024-012 ACCEPTANCE OF THE PROVISIONS OF SECTION 7A OF CHAPTER 32B OF THE MASSACHUSETTS GENERAL LAWS INTRO: 08/17/2023

Karen Nober, Town Attorney gave the rationale

Upon a motion duly made and seconded it was

RESOLVED: That, effective December 1, 2023, the provisions of section 7A of Chapter 32B of the Massachusetts General Laws are hereby accepted by reference as a part of the general ordinances of the Town.

VOTE: PASSES UNANIMOUS

2024-013 DELEGATION OF AUTHORITY AND DETERMINATION UNDER SECTION 19 OF THE CONFLICT OF INTEREST LAW REGARDING PARTICIPATION IN DECISIONS RELATING TO A POTENTIAL INCREASE IN THE TOWN'S PERCENTAGE CONTRIBUTION TO HEALTH INSURANCE COSTS OF ITS EMPLOYEES INTRO: 08/17/2023

Upon a motion duly made and seconded it was

RESOLVED: That the Town Council does hereby delegate authority to Town Manager Mark Ells to make decisions in accordance with the provisions of M.G.L. c. 32B, section 7A, relating to a potential increase in the percentage amount of the Town's contributions to the total monthly cost of contracts of insurance for its employees authorized by sections 3 and 11C of said Chapter 32B, which would result in the Town making payment of more, but not less, than fifty percent of the total monthly cost for such insurance, and determines that the financial interest of Mark Ells in such decisions, as described in Mr. Ells' disclosure form presented to the Town Council at this meeting in accordance with M.G.L. c. 268A, § 19, is not so substantial as to be deemed likely to affect the integrity of the services which the Town may expect from Mr. Ells in his role as Town Manager, provided that any decision by Mr. Ells to increase the percentage amount of the Town's monthly insurance costs shall not take effect until on or after December 1, 2023; and further authorizes and directs the President of the Town Council to make such determination on Mr. Ells' disclosure form on behalf of the Town Council.

VOTE: PASSES UNANIMOUS

Jump to 2024-022

2024-022 RESOLVE TO APPROVE THE APPOINTMENT OF CHRISTOPHER GONNELLA AS THE DIRECTOR OF COMMUNITY SERVICES FOR THE TOWN OF BARNSTABLE INTRO: 08/17/2023

Assistant Town Manager, Andy Clyburn gave the rationale

Councilor questions and comments:

(Atsalis) Chris Gonnella has been excellent to work with on the Centerville Playground

Upon a motion duly made and seconded it was

RESOLVED: That the Town Council, in accordance with Section 10-7(k) (1) of the Barnstable Charter, hereby approves the Town Manager's appointment of Christopher Gonnella as the Director of Community Services effective August 18, 2023.

VOTE: PASSES UNANIMOUS

2024- 029 APPROVING A CONSERVATION RESTRICTION ON 17± ACRES OF LAND AT 0, 946 & 948 RIVER ROAD IN MARSTONS MILLS BETWEEN THREE BAYS PRESERVATION, INC. (GRANTOR) AND BARNSTABLE LAND TRUST, INC. (GRANTEE) INTRO: 08/17/2023

Zenas Crocker gave the rationale

Council questions and comments:

(Ludtke) this speaks to what we heard earlier, if this all comes together it's a perfect example to help all of us; (Cusack) This is wildly important, thank you for the future generations (Schnepp) it is going to be so exciting to see a return to a natural environment.

Upon a motion duly made and seconded it was

RESOLVED: That, pursuant to G.L. c. 184, sections 31-33, the Restriction statute, the Town Council does hereby approve and authorize the Town Council President to sign on behalf of the Town Council, and authorize the Town Manager to sign and approve on behalf of the Town of Barnstable, a Conservation Restriction ("CR") between Three Bays Preservation, Inc. (Grantor) and Barnstable Land Trust, Inc. (Grantee), over approximately 17 acres of land and buildings at 0, 946 & 948 River Road in Marstons Mills Village on property owned by Three Bays Preservation, Inc. (d/b/a Barnstable Clean Water Coalition) as shown on:

1. Assessors Map 045, Parcel 016-004 (0 River Road),
2. Assessors Map 045, Parcel 026 (946 River Road), and
3. Assessors Map 045, Parcel 011 (948 River Road)

said CR to be donated to the Barnstable Land Trust, Inc. for the purposes of preserving open space, wellfield and watershed resources, including restoration of wetlands, and allowing public access for passive recreation and environmental education. This vote approves the CR in substantially the form attached hereto. Said CR is subject to approval by the Secretary of Energy and Environmental Affairs, who may make minor revisions hereto. It is further ordered that the Town Manager is authorized to execute, receive, deliver and record any written instruments necessary to effectuate the purposes set forth herein.

VOTE: PASSES UNANIMOUS

GRANTOR: Three Bays Preservation, Inc. (dba Barnstable Clean Water Coalition)

GRANTEE: Barnstable Land Trust, Inc.

ADDRESS OF PREMISES: 110 Bog Road, (Village of Marstons Mills), Barnstable, MA

GRANTOR'S TITLE: Barnstable County Registry of Deeds, Book 35867, Page 72

Barnstable County Registry of Deeds, Plan Book 700, Page 81-85

CONSERVATION RESTRICTION

THREE BAYS PRESERVATION, INC., (dba Barnstable Clean Water Coalition), a Massachusetts nonprofit corporation with an office address at 864 Main Street, Osterville, Massachusetts 02655, constituting all of the owners of the Premises as defined herein, for its successors and assigns (“Grantor”), for charitable consideration, as this conveyance is to be considered and characterized as a gift, 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 nonprofit corporation with an office at 1540 Main Street, West Barnstable, Massachusetts 02668, its permitted successors and 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 land containing 46.92 acres, more or less, located in the Village of Marstons Mills, Town of Barnstable, County of Barnstable, Commonwealth of Massachusetts (“Premises”), which Premises is more particularly described in Exhibit A and shown in the sketch plan in Exhibit B, both of which are attached hereto and made a part hereof. The Grantor, its successors and assigns, and the Grantee, its permitted successors and assigns, are bound by and subject to the terms and conditions of this Restriction.

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, will be maintained in perpetuity in its natural, scenic and open condition; to protect and promote the conservation of the public water supplies, native vegetation, soils, and natural watercourses; to restore the functions of the natural freshwater wetland habitat and the wildlife thereon; to protect and enhance the Conservation Values or Purposes of the abutting conservation areas; to ensure permanent protection of the aquatic resources and upland buffers on the Premises, and to allow and maintain public access for passive outdoor recreation and education of open space resources. The conservation and permanent protection of the Premises will yield a significant public benefit for the following reasons (hereinafter, the “Conservation Values”):

Public Funding. The Premises was acquired utilizing, in part, assistance from the Massachusetts Cranberry Bog Acquisition for Restoration Program, as authorized by chapter 209 of the Acts of 2018 (BID# BD-23-1042-ENV-ENV01-87312), which requires the conveyance of this Restriction. The ecological restoration of the bogs on the Premises will enhance aquatic resource and values by restoring “natural-functioning wetland habitat and provision of broader ecosystem services.”

The conservation values include the following:

Consistency with the Barnstable Comprehensive Wastewater Management Plan. Protection of the Premises will advance a specific objective of the “Proposed Solutions” to reduce nutrient loading to the Three Bays

estuary as part of the 2019 Town of Barnstable Comprehensive Wastewater Management Plan, which proposes that the Town “continue to support partners ([Barnstable Clean Water Coalition and others) in pursuit of projects to convert the cranberry bogs in the upper end of the Marstons Mills River system to nutrient removal practices” (Section 5.2.4.2).

Open Space Protection. The Premises contributes to the protection of the scenic and natural character of Marstons Mills, and the protection of the Premises will enhance the open-space value of these and nearby lands. The Premises is part of an 80+ acre eco-restoration project, wherein the Grantor and Grantee are working in partnership with town, state and federal agencies to acquire, protect and restore the natural wetlands at the headwaters of the Marstons Mills River, the Town of Barnstable’s most prolific herring run.

Public Water Supply Protection. The Premises is entirely within a Department of Environmental Protection (DEP) Designated Zone II, which is associated with the Public Water Supply operated by the Centerville-Osterville-Marstons Mills Water Department. Preserving the Premises from development will enhance the quality of drinking water from these wells. The eco-restoration of the bogs into a natural freshwater wetland will also enable nitrogen attenuation from upgradient effluent sources before nutrients and other compounds can infiltrate to the aquifer.

Protection and Restoration of Wildlife Habitat. The Premises consists of freshwater wetlands that were cut over and drained between 100-150 years ago in the creation of a major complex of cultivated cranberry bogs. While the commercial bogs provided some surface water for waterfowl and amphibians, the disturbance of natural habitat and monoculture created resulted in net habitat loss. The restoration of the bog by exposing original wetland soils, resprouting the native freshwater seed bank, and enhancing the Premises with deliberate native plantings will provide a renewal of the freshwater wet meadow and shrub swamp that originally existed here and benefit many more aquatic and terrestrial species.

Biodiversity. The Marstons Mills River, downstream of the Premises, is identified as a BioMap Core Habitat, the top-rated classification of rare species habitats in Massachusetts. Restoring the freshwater habitat and improving the water quality in the headwater stream will enhance the value of the River’s Core Habitat and anadromous fish run. The presence of functioning wetlands also strengthens the climate resilience of the Premises.

Historical and Cultural Values. Permanent protection of the Premises with this Restriction will preserve the historical and cultural attributes of this land in perpetuity. The Grantor recognizes the impacts of human presence on this and neighboring lands, and seeks to preserve, and conserve in perpetuity the ecological, historic and cultural values that this land possesses. The Marstons Mills River is an important cultural landmark for the Mashpee Wampanoag Tribe, owing to the importance of herring runs as a traditional food source. Protection of the Premises is also consistent with the purposes of the Native Land Conservancy, Inc. to protect traditional cultural landscapes, which include the flora and fauna that have a unique historical meaning and value to the Native American community.

Consistency with Clearly Delineated Barnstable County Conservation Policy.

Protection of the Premises will assist in achieving Barnstable County conservation goals. In July 1991, the Barnstable County Assembly of Delegates, pursuant to the Cape Cod Commission Act (Chapter 716 of the Acts of 1989), adopted a *Regional Policy Plan* (“RPP”), amended in 1996, 2002, 2009, 2012, and 2018, which provided, *inter alia* (references are to the 2018 RPP, amended in 2021 to accommodate climate change goals and objectives):

Marstons Mills River Headwaters –II (ex-E. Hamblin) Conservation Restriction Barnstable, MA

- “To protect, preserve, or restore the quality and natural values and functions of inland and coastal wetlands and their buffers” (Wetland Resources Goal, p. 61); “Protect wetlands and their buffers from vegetation and grade changes”
 - “Protect wetlands from changes in hydrology”
 - “Protect wetlands from stormwater discharges”

- “To protect, preserve, or restore wildlife and plant habitat to maintain the region's natural diversity” (Wildlife and Plant Habitat Goal, p. 61); and
 - “Maintain existing plant and wildlife populations and species diversity.”

- “To conserve, preserve, or enhance a network of open space that contributes to the region's natural and community resources and systems” (Open Space Goal, p. 61); “Protect and preserve natural, cultural, and recreational resources;”
 - “Maintain or increase the connectivity of open space;”
 - “Protect or provide open space appropriate to context.”

- “To prevent or minimize human suffering and loss of life and property or environmental damage resulting from storms, flooding, erosion, and relative sea level rise, including but not limited to that associated with climate change” (Coastal Resiliency Goal, p.62); and “Minimize development in the floodplain”
 - “Plan for sea level rise, erosion, and floods”
 - “Reduce vulnerability of built environment to coastal hazards”

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

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

- "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
- 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:

- "To protect and maintain the maximum amount of open space to enhance environmental protection, recreational opportunities and community character, and
- “Plan, coordinate and execute open space protection measures that complement community efforts to protect water supply, protect fresh and marine surface waters, [and] preserve historic, scenic and cultural resources...” (pp. 10-11).

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

Marstons Mills River Headwaters –II (ex-E. Hamblin) Conservation Restriction Barnstable, MA

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,

Board of Assessors, and Conservation Commission, which encourages the use of conservation restrictions in perpetuity to protect natural resources in accordance with the purposes of the Open Space and Recreation Plan, and which further specified that purposes of a conservation restriction could include the following:

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

For reasons previously stated above, implementation of this Restriction will advance each of these goals articulated by the Town of Barnstable, such as ensuring that the Premises will stay as open space and reduce the negative impacts of development on surrounding water resources (e.g., Marstons Mills River).

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 and wetland habitats; and it would contribute to the preservation of open space because it will constitute a significant expanse of undisturbed open space and is proximate to several other parcels already conserved.

Consistency with Clearly Delineated State Conservation Policy. Protection of the Premises is consistent with the mission of the Massachusetts Division of Ecological Restoration (“DER”) to restore and protect the health and integrity of the Commonwealth's rivers, wetlands and watersheds for the benefit of people, fish and wildlife. DER is an active partner with the Grantor and Grantee in restoring more than 80 acres of cranberry bogs in the Marstons Mills River watershed to natural stream flow and freshwater wetland habitat.

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 and Grantee. The Baseline Report (i) is acknowledged by Grantor and Grantee to be a complete and accurate representation of the condition and values of the Premises as of the date of this Restriction, and (ii) is intended to serve as an objective information baseline for subsequent monitoring of compliance with the terms of this Restriction as described herein. Notwithstanding the foregoing, the parties may utilize any evidence of the condition of the Premises at the time of this grant other than the Baseline Report, should the Baseline Report be unavailable or if it does not adequately address the issues presented.

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

II. PROHIBITED ACTIVITIES:

In order to carry out the purposes set forth in Paragraph I above, the Grantor covenants for itself and its legal representatives, successors and assigns that the Premises will at all times be held, used and conveyed subject to and not in violation of this Restriction. The Grantor shall refrain from and will not permit any activity which shall be inconsistent with the Purposes 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.

Marstons Mills River Headwaters –II (ex-E. Hamblin) Conservation Restriction Barnstable, MA

Subject to the exceptions set forth in Paragraph III below, prohibited activities on, above and below the Premises shall include, but shall not be limited to, the following activities, which the Grantor shall not perform or allow others to perform:

- A. Construction or placing or allowing to remain any building, residential dwelling, mobile home, tennis court, ball fields, swimming pool, artificial water impoundment, billboard, or other advertising display, landing strip or pad, wind turbine, antenna, utility pole, tower, 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, surface water, ground water, 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, parking or storage of motorized or power-driven vehicles of any kind, including without limitation snowmobiles, motorbikes, off-highway vehicles, or watercraft, acknowledging that vehicles necessary for public safety (i.e., fire, police, ambulance, other government officials) may have a legal right to enter the Premises.
- H. Camping, hunting or trapping unless for proven nuisance wildlife. The discharge of fireworks, firearms, arrows or any other projectiles is prohibited.
- I. Subdividing or conveying a part or portion of the Premises (as compared to conveyance of the Premises in its entirety which shall be permitted), it being the Grantor's and Grantee's intention to maintain the entire Premises under unified ownership;
- J. Activities detrimental to drainage, flood control, water conservation, water quality, erosion control, soil conservation, or ecosystem function.
- K. The excavation of landscape features on the Premises or collecting, disturbing or otherwise removing archaeological artifacts (prehistoric and/or historic).

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- L. Using the Premises towards building or development requirements on this or any other parcel, including using any portion of the Premises towards any building, septic system or other development requirements on any other parcel outside the Premises.
- M. Any commercial, residential, industrial uses, including commercial agriculture.
- N. Any other use of the Premises or activity which is inconsistent with the purpose of this Restriction, or which would materially impair its Conservation Values, or which is prohibited by federal, state or local law or regulation.

III. PERMITTED ACTIVITIES AND RESERVED RIGHTS:

The Grantor reserves the right to conduct or permit the following activities on the Premises, but only if such uses and activities do not materially impair the Conservation Values and are not inconsistent with the Purposes of this Restriction:

- A. The selective removal of brush, pruning, and cutting to prevent, control or remove hazards, disease, insect or fire damage, or to preserve the present condition of the Premises, including vistas as documented in the Baseline Report, wood roads, fence lines, trails and meadows;
- B. Measures, such as the installation of sight-pervious fencing and signage, taken in order to prevent trespass, unauthorized vehicle entry and dumping, vandalism or other acts destructive to the Premises. Fencing must not impede the passage of wildlife;
- C. With the prior approval of the Grantee, measures taken in order to protect the stability of a naturally occurring feature on the land's surface (e.g., protect a bank or hill from erosion);
- D. 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 by means of motorized wheelchairs or other mobility assistance devices;
- E. With prior approval of the Grantee, construction and maintenance of trails, bridges, boardwalks, blinds, kiosks, observation decks and other related structures needed to facilitate the approved public uses;
- F. The erection and maintenance of signs identifying ownership of the Premises, the property boundaries, the Premises' status as a conservation restriction, the restrictions on the use of the Premises, the identity or location of trails, areas of interest, natural features or other characteristics of the Premises, or for providing other like information;
- G. Minimal cutting or removal of trees, shrubs and other vegetation and planting of native trees, shrubs and other vegetation to maintain or improve the conservation values protected by this Restriction; and collection of storm damaged trees 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 all in a manner to avoid or minimize harm to native species;

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- H. The use of motorized vehicles (1) by the Grantor as reasonably necessary to carry out activities permitted under this Restriction, including mowing and maintenance, (2) by persons with mobility impairments as otherwise allowed by the Restriction, and (3) for access by police, fire,

emergency, public works, or other governmental personnel carrying out their official duties. With the exception of mobility assistance devices by persons with mobility impairments, the use of motorized vehicles shall be limited to the roads, driveway and carpaths on the Premises, now or in the future. 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, except for the use of motorized mobility assistance devices by persons with mobility impairments;

- I. The maintenance, use and improvement for safe vehicular passage, proper drainage, and fire control of: (i) the existing driveway serving the Premises from Bog Road; and (ii) the existing bog perimeter carpaths as shown in the Baseline Report
- J. With prior approval by Grantee, active measures to prevent unauthorized vehicle entry and dumping;
- K. With the prior written approval of Grantee and in compliance with a plan approved in advance by DER, such plan to be kept on file by Grantor, conducting or permitting others to conduct ecological restoration of the existing cranberry bogs as shown in the Baseline Report for the purposes of enhancing, restoring, or recreating the natural functions and values that the Premises provided before it was farmed. This includes but is not limited to removal of sand dikes and berms, regrading, alteration of vegetation, and installation of temporary fencing and signage as public safety and erosion control measures during active construction;
- L. The use and storage of construction equipment, including vehicles, trailers, and portable restrooms, on the Premises solely for the purpose of ecological restoration.
- M. With prior written approval of the Grantee, adaptive management, including but not limited to modifications of drainage channels and additional plantings of native species, to further enhance the initial restoration of the bogs;
- N. With the prior written approval of Grantee, the installation of equipment, structures and measures intended to reduce or remove nutrients and other potential contaminants from the wetland recharge and watershed area of the Premises;
- O. Informal parking related to allowed public uses and Grantor's mission within 150 feet of Bog Road alongside the Premises, including fencing or other demarcations to prevent disturbance of the wetlands by parking use;
- P. With the prior written approval of Grantee, the installation of equipment, structures and measures intended to recreate an anadromous fish run from the Marstons Mills River to Middle Pond;
- Q. Archaeological investigations, including without limitation archaeological research, surveys, excavation and artifact retrieval, subject to and in accordance with an archaeological field investigation plan, which plan shall also address restoration following completion of the archaeological investigation, prepared by or on behalf of the Grantor and approved in advance of such activity, in writing, by the Massachusetts Historical Commission State Archaeologist, and Grantee;

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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; and

- R. The right for the Grantor to allow access to the Premises to local indigenous groups for cultural land ceremonial uses that are consistent with the Conservation Values. Cultural practices are defined, for the purposes of this Restriction, as including traditional spiritual ceremonies, seasonal celebrations, offerings, and cultural/education/interpretation programs. With the written approval of Grantor, persons designated by Grantor may harvest plant-life using sustainable methods, including regrowth and replanting, for traditional cultural practices and non-commercial purposes. Harvesting may be conducted using only hand tools and only in traditionally customary quantities deemed sustainable in the sole judgment of the Grantor. Harvesting shall not be conducted in areas that have undergone ecological restoration until more than five (5) years after restoration is completed.
- S. **Site Restoration.** Upon completion of any Permitted Acts and Uses, all disturbed areas shall be restored substantially to the conditions that existed prior to said activities, including with respect to soil material, grade, and vegetated ground cover.
- T. **Compliance with Permits, Regulations, Laws.** The exercise of any Permitted Acts and Uses or Reserved Rights shall be in compliance with all applicable federal, state and local laws, rules, regulations, and permits, including zoning, and with the Constitution of the Commonwealth of Massachusetts. The inclusion of any Reserved Right requiring a permit, license or other approval from a public agency does not imply that the Grantee or the Commonwealth takes any position whether such permit, license, or other approval should be issued.

IV. NOTICE AND APPROVAL:

- A. Notifying Grantee. Whenever notice to or approval by Grantee is required, Grantor shall notify or request approval from Grantee, by a method requiring proof of receipt, in writing not less than sixty (60) days prior to the date Grantor intends to undertake the activity in question, unless a different time period is specified herein. The notice shall:
- a. Describe the nature, scope, design, location, timetable and any other material aspect of the proposed activity;
 - b. Describe how the proposed activity complies with the terms and conditions of this Restriction, and will not materially impair the Purposes and/or Conservation Values;
 - c. Identify all permits, licenses, or approvals required for the proposed activity, and the status of any such permits, licenses, or approvals.
 - d. Describe any other material aspect of the proposed activity in sufficient detail to permit the Grantee to make an informed judgment as to its consistency with the Purposes and Conservation Values.
- B. Grantee Review. Where Grantee's approval is required, Grantee shall grant or withhold approval in writing within sixty (60) days of receipt of Grantor's request. Grantee's approval shall only be granted upon a showing that the proposed activity will minimize impacts to the Conservation Values and will not materially impair the Purposes and/or Conservation Values. Grantee may require

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Grantor to secure expert review and evaluation of a proposed activity by a mutually agreed upon party.

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

V. LEGAL REMEDIES OF THE GRANTEE; WAIVER:

A. The rights hereby granted shall include the right to enforce this Restriction by appropriate legal proceedings including obtaining compensatory, 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 will 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, the 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 objected-to 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 this 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 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.

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. In the event of a dispute over the boundaries of the Restriction, Grantor shall pay for a survey by a Massachusetts licensed professional land surveyor and to have the boundaries permanently marked.

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VI. ACCESS

A. The Restriction hereby grants to the Grantee, and its duly authorized agents or representatives, the right to enter upon the Premises at reasonable times and in a reasonable manner for the following purposes:

1. to perform a survey of boundary lines;
2. to inspect the Premises to determine compliance within provisions of this Restriction;

or

3. 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 gives 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 ongoing harm to the Premises.

- B. The Restriction hereby conveyed includes the grant of the right to the general public to enter upon the Premises, and to use the Premises thereon for the purposes set forth in Paragraph III. D above for daytime use, provided that such agreement by Grantor is subject to the Grantor's reserved right to establish reasonable rules, regulations, and restrictions on such permitted recreational use by the general public for the protection of the Purposes and Conservation Values. Grantor has the right to control, limit, or prohibit by posting and other reasonable means activities or uses of the Premises not authorized in Paragraph III.D. The Grantee may require the Grantor to post the Premises against any use by the public that results in material impairment of the Conservation Values. This grant of public access to the Premises is solely for the purposes described in Section 17C of Chapter 21 of the Massachusetts General Laws and the Grantor and Grantee hereto express their intent to benefit from exculpation from liability to the extent provided in such section.

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 to or change in the Premises resulting from natural 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 is 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; the Grantor, on behalf of itself and its successors and assigns, appoints the

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Grantee their attorney-in-fact to execute, acknowledge and deliver any such instruments on its behalf. Without limiting the foregoing, the Grantor and its successors and assigns agree themselves to execute any such instrument upon reasonable request.

X. RUNNING OF THE BENEFIT; 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, at the time of the assignment, 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, and is eligible to receive this Conservation Restriction under Section 32 of Chapter 184 of the Massachusetts General Laws;
- B. The Grantee requires that the assignee shall hold this Restriction and enforce its terms such that the Purposes continue to be carried out;
- 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.

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 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. Failure to do any of the above shall not impair the validity or enforceability of this Conservation Restriction. If the Grantor fails to reference the terms of this Conservation Restriction in any deed or other legal instrument which grants any interest in all or a portion of the Premises, then the Grantee may record, in the applicable registry of deeds, or registered in the applicable land court registry district, and at the Grantor's expense, a notice of this Conservation Restriction.

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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. Any new owner shall cooperate in the restoration of the Premises or removal of violations caused by prior owner(s) and may be held responsible for any continuing violations.

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 Town of Barnstable and 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, released, 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 termination, release, or extinguishment 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 Paragraph 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 Purpose and protection of the Conservation Values 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.
- C. Grantor/Grantee Cooperation Regarding Public Action. Whenever all or part of the Premises or any interest therein is taken by public authority under power of eminent domain or other act of public

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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. 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 Purposes or the protection of the Conservation Values.

XVI. NONMERGER:

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

XVII. SEVERABILITY:

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

XVIII. MISCELLANEOUS PROVISIONS:

- A. Controlling Law: The interpretation and performance of this Restriction shall be governed by the laws of the Commonwealth of Massachusetts.
- B. Liberal Construction: Any general rule of construction to the contrary notwithstanding, this Restriction shall be liberally construed in favor of the grant to affect the purposes of this Restriction and the policies and purposes of Sections 31- 33 of Chapter 184 of the Massachusetts General Laws. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purposes of this Restriction that would render the provision valid shall be favored over any interpretation that would render it invalid.
- C. Entire Agreement: This instrument sets forth the entire agreement of the parties with respect to the Restriction and supersedes all prior discussions, negotiations, understandings, or agreements related to the Restriction, all of which are merged herein.
- D. 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.
- E. Notices. Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage pre-paid, addressed as follows:

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To Grantor: Three Bays Preservation Inc.
dba Barnstable Clean Water Coalition
864 Main Street
Osterville MA 02655

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.

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 signed by the Grantor and Grantee and 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.

XX. SUBORDINATION:

The Grantor shall record at the applicable registry of deeds or shall register in the applicable land court registry district simultaneously with this Restriction all documents necessary to subordinate any mortgage, promissory note, loan, lien, equity credit line, refinance assignment of mortgage, lease, financing statement or any other agreement which gives rise to a surety interest affecting the Premises.

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.

Included herein are the following: Signature pages:

Grantor – Three Bays Preservation, Inc.

Grantee Acceptance – Barnstable Land Trust, Inc.

Approval by Barnstable Town Council

Approval by Barnstable Town Manager

Approval of the Secretary of Energy and Environmental Affairs.

Attached hereto and incorporated are the following: Exhibits:

Exhibit A: Legal Description of Premises

Exhibit B: Reduced size copy of Recorded Plan of the Premises

Exhibit C. Town Council Vote

[the remainder of this page left intentionally blank]

WITNESS our hands and seals this _____ day of _____, 2023,

THREE BAYS PRESERVATION, INC.

BY:

Michael Egan, President

Laureen Pfizenmaier, Treasurer

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss:

On this _____ day of _____, 2023, before me, the undersigned notary public, personally appeared, Michael Egan, President and Laureen Pfizenmaier, Treasurer, and proved to me through satisfactory evidence of identification which was _____ to be the persons whose names are signed on the proceeding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose, on behalf of the corporation.

Notary Public

My Commission Expires:

ACCEPTANCE OF GRANT

This Conservation Restriction from Three Bays Preservation Inc. was accepted by the Barnstable Land Trust, Inc. this _____ day of _____, 2023.

By: Leigh Townes
Its: President, duly authorized

By: Jill McCleary
Its: Treasurer, duly authorized

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss:

On this _____ day of _____, 2023, before me, the undersigned notary public, personally appeared, Leigh Townes, President, and Jill McCleary, Treasurer, of the Barnstable Land Trust, Inc., and proved to me through satisfactory evidence of identification which was personal knowledge to be the persons whose names are signed on the proceeding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose on behalf of the corporation.

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

APPROVAL OF TOWN COUNCIL

The undersigned, President of the Town Council of the Town of Barnstable, hereby certifies that at a public meeting duly held on _____, 2023, the Council voted to approve the foregoing Conservation Restriction from Three Bays Preservation, Inc. to the Barnstable Land Trust, Inc. in the public interest pursuant to Section 32 of Chapter 184 of the General Laws of Massachusetts.

TOWN COUNCIL:

Matthew P. Levesque, President

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss:

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

Notary Public
My Commission Expires:

APPROVAL OF TOWN MANAGER

I, the undersigned, Town Manager of the Town of Barnstable, hereby certify that I approve the foregoing Conservation Restriction from Three Bays Preservation, Inc. to the Barnstable Land Trust, Inc. in the public interest pursuant to Section 32 of Chapter 184 of the General Laws of Massachusetts.

TOWN MANAGER:

Mark S. Eills

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss:

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

Notary Public
My Commission Expires:

APPROVAL BY SECRETARY OF ENERGY AND ENVIRONMENTAL AFFAIRS COMMONWEALTH OF MASSACHUSETTS

The undersigned, Secretary of Executive Office of Energy and Environmental Affairs of the Commonwealth of Massachusetts, hereby certifies that the foregoing Conservation Restriction from Three Bays Preservation, Inc. to the Barnstable Land Trust, Inc. has been approved in the public interest pursuant to Massachusetts General Laws, Chapter 184, Section 32.

Dated: _____, 2023

Rebecca L. Tepper
Secretary of Energy and Environmental Affairs

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss:

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

Notary Public
My Commission Expires:

EXHIBIT A

Legal Description of Premises

That certain parcel of land located east of Bog Road in Barnstable (Marstons Mills), Barnstable County, Massachusetts, more particularly bounded and described as follows:

That certain parcel of land, containing 46.92 acres, more or less, being all of the land shown as “Lot B” on a plan of land entitled, “Hamblin Bogs, 110 Bog Road, Barnstable (Marstons Mills), Massachusetts, Map 45 Lot 17-1” (sheets 1-5) , prepared for Barnstable Clean Water Coalition, 864 Main Street, Osterville MA, Scale: 1” = 120’, Date: June 12, 2023 and recorded in the Barnstable County Registry of Deeds in Plan Book 700 Page 81 - 85.

A reduced copy of said plan is attached hereto as Exhibit B.

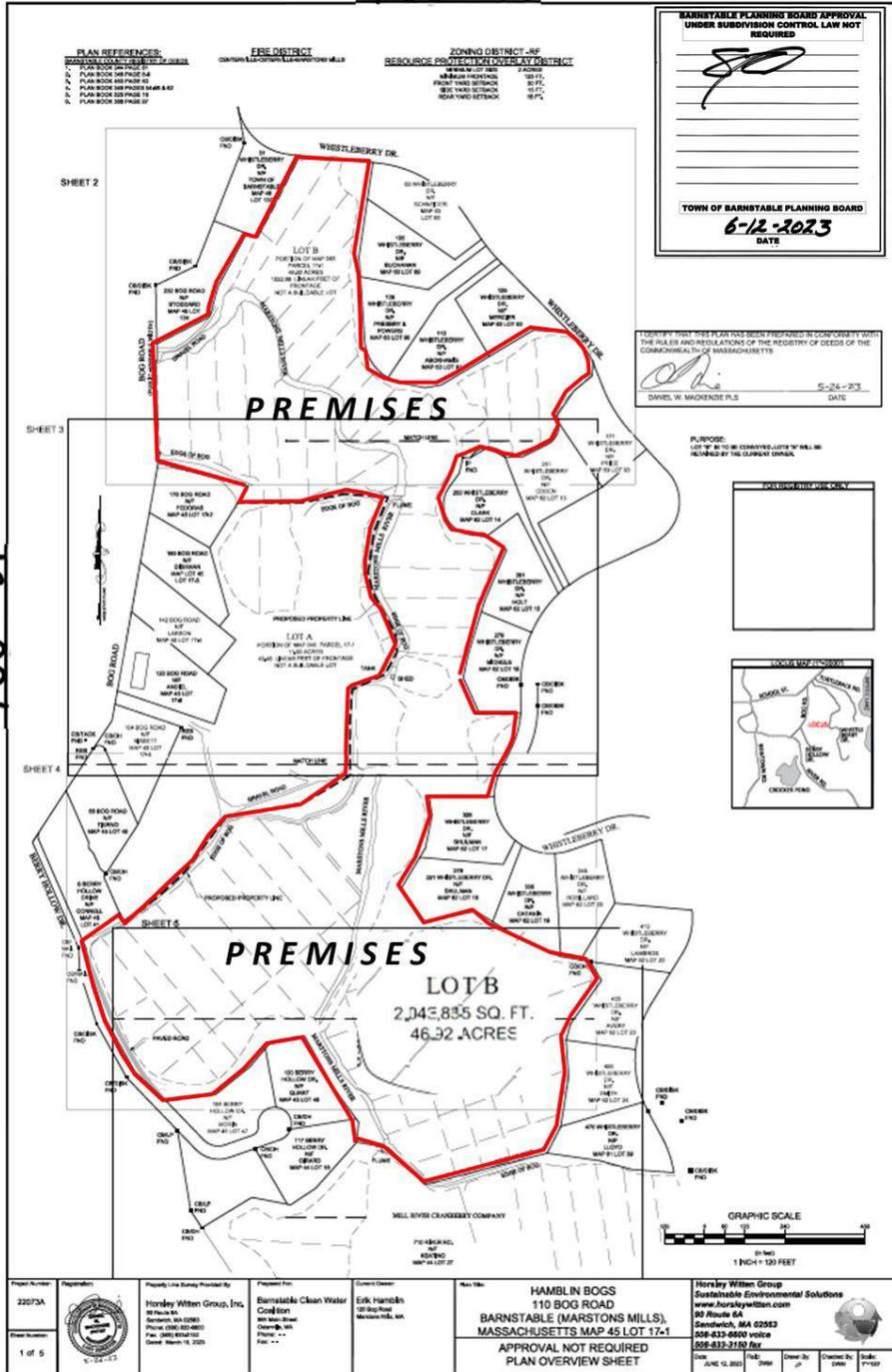
For title see deed dated _____ 2023 in Deeds Book 35867, Page 72.

Street address: 110 Bog Road (Marstons Mills), Barnstable MA

**EXHIBIT B. Reduced Copy of Recorded Plan of Premises
PLAN BOOK 700 PAGES 81 – 85**

700-81

700-18



**EXHIBIT C.
Town Council Vote
(to be added)**

2024- 030 APPROVING A CONSERVATION RESTRICTION ON 46.92 ACRES OF LAND AT 110 BOG ROAD IN MARSTONS MILLS BETWEEN THREE BAYS PRESERVATION, INC. (GRANTOR) AND BARNSTABLE LAND TRUST, INC. (GRANTEE) AS SHOWN ON A PORTION OF ASSESSORS MAP 045, PARCEL 017-001 INTRO: 08/17/2023

Zenas Crocker gave the rationale

Upon a motion duly made and seconded it was

RESOLVED: That, pursuant to G.L. c. 184, sections 31-33, the Restriction statute, the Town Council does hereby approve and authorize the Town Council President to sign on behalf of the Town Council, and authorize the Town Manager to sign and approve on behalf of the Town of Barnstable, a Conservation Restriction (“CR”) between Three Bays Preservation, Inc. (Grantor) and Barnstable Land Trust, Inc. (Grantee), over approximately 46.92 acres of land and buildings at 110 Bog Road in Marstons Mills Village as shown on:

A portion of Assessors Map 045, Parcel 017-001, shown as

That certain parcel of land, containing 46.92 acres, more or less, being all of the land shown as “Lot B” on a plan of land entitled, “Hamblin Bogs, 110 Bog Road, Barnstable (Marstons Mills), Massachusetts, Map 45 Lot 17-1” (sheets 1-5) , prepared for Barnstable Clean Water Coalition, 864 Main Street, Osterville MA, Scale: 1” = 120’, Date: June 12, 2023 and recorded in the Barnstable County Registry of Deeds in Plan Book 700 Page 81 - 85.

Said CR to be donated to the Barnstable Land Trust, Inc. for the purposes of preserving open space, wellfield and watershed resources, including restoration of wetlands, and allowing public access for passive recreation and environmental education. This vote approves the CR in substantially the form attached hereto. Said CR is subject to approval by the Secretary of Energy and Environmental Affairs, who may make minor revisions thereto. It is further ordered that the Town Manager is authorized to execute, receive, deliver and record any written instruments necessary to effectuate the purposes set forth herein.

VOTE: PASSES UNANIMOUS

2024-001 AUTHORIZATION TO REALLOCATE THE REMAINING \$36,714 OF COMMUNITY PRESERVATION HISTORIC PRESERVATION FUNDS GRANTED UNDER APPROPRIATION ORDER 2022-035 FOR THE RESTORATION WORK AT STURGIS LIBRARY TO BE USED FOR THE REPLACEMENT OF THE FAILING CLIMATE CONTROL SYSTEM AT STURGIS LIBRARY INTRO: 07/20/2023, 08/17/2023

Lindsey Counsell, Chairman of the Community Preservation Committee gave the rationale

Council questions and comments:

(Schnepf) This is for the climate control and the items being preserved (Counsell) Yes (Starr recused)

Upon a motion duly made and seconded it was

RESOLVED: That the remaining portion in the amount of Thirty-Six Thousand Seven Hundred Fourteen Dollars (\$36,714) in Community Preservation Historic Preservation Funds appropriated under Town Council Order 2022-035 for restoration work at Sturgis Library be reallocated for the replacement of the failing climate control system located at Sturgis Library, 3090 Main Street/Route 6A, Barnstable.

VOTE: PASSES 9 YES, (Starr recused)

2024-003 APPROPRIATION AND LOAN ORDER IN THE AMOUNT OF \$1,400,000 FOR THE PURPOSE OF FUNDING SEWER LATERAL RISER CONSTRUCTION INTRO: 07/20/2023, 08/17/2023

Dan Santos, Director of Public Works gave the rationale and stated the bids came in significantly lower therefore it is the Town Managers recommendation to amend this motion.

Open public hearing seeing no one, no one close the public hearing

Upon a motion duly made and seconded it was to amend the \$1,400,000 to \$850,000

VOTE: PASSES UNANIMOUS

Councilor questions and comments:

(Atsalis) the sewer is where it is due to topography, is it because of the duct bank. (Santos) no we chose this to save money (Atsalis) please clarify the amount will not be more than 10,000 (Santos) that is correct (Ludtke) this is for this portion are we going to do the risers (Santos) we have decided to do the risers as part of the project. (Rapp Grassetti) why we amended it to \$850,000, have you opened the bids (Santos) Yes yesterday, we proceeded to get the bids sooner. (Schnepp) Design to include the risers sounds consistent

Upon a motion duly made and seconded it was

ORDERED: That the sum of **\$850,000** be appropriated for the purpose of funding sewer lateral riser construction, including the payment of costs incidental or related thereto; and that to meet this appropriation, that the Town Treasurer, with the approval of the Town Manager, is authorized to borrow \$1,400,000 under and pursuant to M.G.L. c. 44, §§7 or 8, M.G.L. c. 29, or pursuant to any other enabling authority, and to issue bonds or notes of the Town therefor; and that in accordance with M.G.L. c. 44, §20, any premium received by the Town upon the sale of any bonds or notes authorized by this order, less any such premium applied to the payment of the costs of issuance of such bonds and notes, may be applied to pay such project costs, thereby reducing the amount authorized to be borrowed by this order by a like amount; and that the Town Manager is authorized to contract for and expend the appropriation made available for these purposes.

VOTE: AS AMENDED-PASSES 10 YES

ROLL CALL: Atsalis, Clark, Cullum, Cusack, Rapp Grassetti, Ludtke, Mendes, Schnepp, Shaughnessy, Starr

Jump to 2024-010

2024-010 APPROPRIATION AND LOAN ORDER IN THE AMOUNT OF \$75,000 FOR TEMPORARY REPAIRS TO ROSEWOOD LANE IN THE VILLAGE OF COTUIT PURSUANT TO TEMPORARY REPAIRS TO PRIVATE ROADS PROGRAM FOR CERTAIN PRIVATE WAYS INTRO: 07/20/2023, 08/17/2023
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Dan Santos, Director of Public Works gave the rationale

Open public hearing:

Jerome Friedman spoke in support of this project from Rosewood Lane, thanked the Town Engineer, Shane for all his help walking him through the process.

No one on zoom, close public hearing

Councilor questions and comments:

(Starr) what needs to be done if the road is in bad shape, is that a 2 inch overlay (Santos) we do fillers first, then level if necessary (Ludtke) so many private roads in need of repair, could we do a video, where we share how to walk through the process. (Santos) fine idea (Rapp Grassetti) this program requires 51% of the owners to agree, will this bid out (Santos) contracted out

Upon a motion duly made and seconded it was

ORDERED: That the sum of **\$75,000** be appropriated for the purposes of making temporary repairs to Rosewood Lane, a private road in the village of Cotuit within the Town of Barnstable, and that to meet this appropriation, the Town Treasurer, with the approval of the Town Manager, be authorized to borrow \$75,000 under and pursuant to Chapter 174 of the Acts of 1994, as amended by Chapter 350 of the Acts of 2014, or pursuant to any other enabling authority, and to issue bonds or notes of the Town therefor; and that in accordance with M.G.L. c. 44 §20, any premium received by the Town upon the

sale of any bonds or notes authorized by this Order, less any premium applied to the payment of the costs of issuance of such bonds and notes, may be applied to pay such project costs, thereby reducing the amount authorized to be borrowed by this Order by a like amount; and that the Town Manager is authorized to contract for and expend the appropriation made available for these purposes, and for these purposes to assess betterments in accordance with M.G.L. c. 80.

VOTE: PASSES 10 YES

ROLL CALL: Atsalis, Clark, Cullum, Cusack, Rapp Grassetto, Ludtke, Mendes, Schnepf, Shaughnessy, Starr

2024-004 APPOINTMENTS TO A BOARD/COMMITTEE/COMMISSION INTRO: 07/20/2023, 08/17/2023

Upon a motion duly made and seconded it was to amend under historic commission, Robert Frazee from a regular member to an alternate member

VOTE: PASSES UNANIMOUS

Upon a motion duly made and seconded it was

RESOLVED: That the Town Council appoints the following individuals to a multiple-member Board/Committee/Commission: **Historical Commission:** Robert Frazee, as an Alternate Member to a term expiring 06/2026; **Human Services Committee:** Sheree Kay, as a regular member to a term expiring 06/2024

VOTE: AS AMENDED PASSES UNANIMOUS

2024-005 REAPPOINTMENTS TO A BOARD/COMMITTEE/COMMISSION INTRO: 07/20/2023, 08/17/2023

Upon a motion duly made and seconded it was

RESOLVED: That the Town Council reappoints the following individuals to a multiple-member Board/Committee/Commission: **Human Services Committee:** Representative Steven Xiarhos as a regular member to a term expiring 06/2026; **Hyannis Main Street Waterfront Historic District Commission:** Kevin Matthews as an alternate member to a term expiring 06/2026; **Waterways Committee:** Paul Everson as a regular member to a term expiring 06/2026

VOTE: PASSES UNANIMOUS

2024-017 AUTHORIZATION TO EXPEND A FISCAL YEAR 2024 911 DEPARTMENT SUPPORT AND INCENTIVE GRANT IN THE AMOUNT OF \$330,026 FROM THE COMMONWEALTH OF MASSACHUSETTS, EXECUTIVE OFFICE OF PUBLIC SAFETY AND SECURITY INTRO: 08/17/2023

Chief Sonnabend of Barnstable Police Department gave the rationale

Upon a motion duly made and seconded it was

RESOLVED: That the Town Council does hereby authorize the Town Manager to contract for and expend a Fiscal Year 2024 911 Department Support and Incentive Grant from the Commonwealth of Massachusetts, Executive Office of Public Safety and Security in the amount of **\$330,026** for the purpose of funding personnel costs and a fifth dispatcher console outfitted by the State 911 Department.

VOTE: PASSES UNANIMOUS

2024-018 AUTHORIZATION TO EXPEND A FISCAL YEAR 2024 STATE 911 DEPARTMENT TRAINING GRANT IN THE AMOUNT OF \$30,876.66 FROM THE COMMONWEALTH OF MASSACHUSETTS, EXECUTIVE OFFICE OF PUBLIC SAFETY AND SECURITY INTRO: 08/17/2023

Chief Sonnabend of Barnstable Police Department gave the rationale

Councilor questions and comments:

(Schnepp) is there specific training for Dispatch and when and how to use Clinicians, (Sonnabend) Not specific training, but there is other training for when to use Clinicians

Upon a motion duly made and seconded it was

RESOLVED: That the Town Council does hereby authorize the Town Manager to contract for and expend a Fiscal Year 2024 State 911 Department Training award in the amount of **\$30,876.66** from the Commonwealth of Massachusetts, Executive Office of Public Safety and Security for the purpose of funding costs associated with the mandatory training of all 911 dispatchers who perform emergency dispatch operations.

VOTE: PASSES UNANIMOUS

2024-019 AUTHORIZATION TO EXPEND A FISCAL YEAR 2024 STATE 911 DEPARTMENT EMERGENCY MEDICAL DISPATCH GRANT IN THE AMOUNT OF \$17,343.60 FROM THE COMMONWEALTH OF MASSACHUSETTS, EXECUTIVE OFFICE OF PUBLIC SAFETY AND SECURITY INTRO: 08/17/2023

Chief Sonnabend of Barnstable Police Department gave the rationale

Upon a motion duly made and seconded it was

RESOLVED: That the Town Council does hereby authorize the Town Manager to contract for and expend a Fiscal Year 2023 State 911 Department Emergency Medical Dispatch Grant in the amount of **\$17,343.60** from the Commonwealth of Massachusetts, Executive Office of Public Safety and Security for the purpose of funding costs associated with emergency dispatch operations.

VOTE: PASSES UNANIMOUS

2024-021 AUTHORIZATION TO EXPEND A GRANT IN THE AMOUNT OF \$32,819.95 FROM THE STANTON FOUNDATION FOR CAPITAL IMPROVEMENTS AT THE BARNSTABLE DOG PARK INTRO: 08/17/2023

Derek Lawson, Director of Marine and Environmental Affairs gave the rationale

Upon a motion duly made and seconded it was

RESOLVED: That the Town Council does hereby authorize the Town Manager to contract for and expend a grant from the Stanton Foundation in the amount of **\$32,819.95** for the purpose of funding capital improvements at the Barnstable Dog Park.

VOTE: PASSES UNANIMOUS

2024-023 AUTHORIZATION TO EXPEND A FISCAL YEAR 2023 GRANT IN THE AMOUNT OF \$100,000 FROM THE UNITED STATES DEPARTMENT OF AGRICULTURE NATURAL RESOURCES CONSERVATION SERVICE FOR THE EVALUATION AND DESIGN OF LONG POND LOWER CHANNEL FISH PASSAGE IMPROVEMENTS INTRO: 08/17/2023

Dan Santos, Director of Public Works gave the rationale

Councilor questions and comments:

(Starr) does it go through private land (Santos) for the most part we get rights and easements (Atsalis) is this the one near the guardrail (Santos) yes

Upon a motion duly made and seconded it was

RESOLVED: That the Town Council does hereby authorize the Town Manager to contract for and expend a Fiscal Year 2023 Grant in the amount of **\$100,000** from the United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) for evaluation and design of the Long Pond Lower Channel Fish Passage Improvements Project.

VOTE: PASSES UNANIMOUS

2024-024 AUTHORIZATION TO EXPEND A FISCAL YEAR 2024 MASSTRAILS GRANT IN THE AMOUNT OF \$300,000 FROM THE COMMONWEALTH OF MASSACHUSETTS FOR PRELIMINARY DESIGN OF THE CAPE COD RAIL TRAIL PHASE 4 EXTENSION IN THE TOWN OF BARNSTABLE INTRO: 08/17/2023

Dan Santos, Director of Public Works gave the rationale

Councilor questions and comments:

(Starr) is this still just preliminary design (Santos) Yes (Starr) would it be possible to break this into two sections and connect to the Sandwich Town line (Santos) to date all the funds have been provided by the state; we would like to get on the state slate for the entire amount of funding (Starr) is this part of the Transportation Improvement Program (TIP) (Santos) Yes, but it is funded separately.

Upon a motion duly made and seconded it was

RESOLVED: That the Town Council does hereby authorize the Town Manager to contract for and expend a Fiscal Year 2024 MassTrails Grant award in the amount of **\$300,000** from the Commonwealth of Massachusetts for the purpose of funding the preliminary design of the Cape Cod Rail Trail Phase 4 extension in the Town of Barnstable.

VOTE: PASSES UNANIMOUS

2024-025 APPROPRIATION ORDER IN THE AMOUNT OF \$141,655 TO SUPPLEMENT FUNDING FOR THE DEMOLITION OF THE OSTERVILLE RECREATION BUILDING LOCATED AT 93 WEST BAY ROAD, OSTERVILLE INTRO: 08/17/2023

Upon a motion duly made and seconded it was

ORDERED: That the amount of **\$141,655** be appropriated and provided from the Capital Trust Fund Reserves the purpose of providing supplemental funding for the demolition of the Osterville recreation building located at 93 West Bay Road, Osterville; and that the Town Manager is authorized to contract for and expend this appropriation for this purpose.

VOTE: TO A PUBLIC HEARING ON 9-7-2023 UNANIMOUS

2024-026 AUTHORIZATION TO CONTRACT FOR AND EXPEND A FISCAL YEAR 2023 GRANT IN THE AMOUNT OF \$400,000 FROM THE UNITED STATES DEPARTMENT OF AGRICULTURE NATURAL RESOURCES CONSERVATION SERVICE FOR THE DESIGN AND CONSTRUCTION OF THE ROSA LANE FISH PASSAGE IMPROVEMENTS INTRO: 08/17/2023

Dan Santos, Director of Public Works gave the rationale

Upon a motion duly made and seconded it was

RESOLVED: That the Town Council does hereby authorize the Town Manager to contract for and expend a Fiscal Year 2023 Grant in the amount of **\$400,000** from the United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) for design and construction of the Rosa Lane Fish Passage Improvements Project.

VOTE: PASSES UNANIMOUS

2024-027 APPROPRIATION ORDER IN THE AMOUNT OF \$20,000 AND THE AUTHORIZATION TO EXPEND A GRANT IN THE AMOUNT OF \$72,000 FROM THE NATURAL RESOURCE CONSERVATION SERVICE FOR THE PURPOSE OF FUNDING STORMWATER IMPROVEMENTS ON CLAMSHELL COVE ROAD INTRO: 08/17/2023

Upon a motion duly made and seconded it was

ORDERED: That the amount of **\$20,000** be appropriated and provided from the Capital Trust Fund reserves, representing the local match requirement for a grant from the Natural Resource Conservation Service in the amount of **\$72,000**, and that the Town Manager is authorized to contract for and expend the grant for the purpose of funding the design and construction of Stormwater Improvements on Clamshell Cove Road, including the payment of costs incidental or related thereto.

VOTE: TO A PUBLIC HEARING ON 9-7-2023 UNANIMOUS

2024-028 APPROPRIATION ORDER IN THE AMOUNT OF \$130,000 AND THE AUTHORIZATION TO EXPEND A GRANT IN THE AMOUNT OF \$625,000 FROM THE NATURAL RESOURCE CONSERVATION SERVICE FOR THE PURPOSE OF FUNDING THE LAKE ELIZABETH FISHWAY DESIGN, PERMITTING AND CONSTRUCTION PROJECT INTRO: 08/17/2023

Upon a motion duly made and seconded it was

ORDERED: That the amount of **\$130,000** be appropriated and provided from the Capital Trust Fund reserves, representing the local match requirement for a grant from the Natural Resource Conservation Service in the amount of **\$625,000**, and that the Town Manager is authorized to contract for and expend this appropriation and grant for the purpose of funding the Lake Elizabeth fishway design, permitting and construction project, including the payment of costs incidental or related thereto.

VOTE: TO A PUBLIC HEARING ON 9-7-2023 UNANIMOUS

2024-031 APPOINTMENTS TO A BOARD/COMMITTEE/COMMISSION INTRO: 08/17/2023

Upon a motion duly made and seconded it was

RESOLVED: That the Town Council appoints the following individuals to a multiple-member Board/Committee/Commission: **Disability Commission:** Patricia Erickson-Taylor, as a Regular member to a term expiring 06/30/2025; **Zoning Board of Appeals:** Emanuel Alves, as an Associate member to a term expiring 06/30/2024

VOTE: TO A 2ND READ ON 9-7-2023 UNANIMOUS

2024-032 REAPPOINTMENTS TO A BOARD/COMMITTEE/COMMISSION INTRO: 08/17/2023

Upon a motion duly made and seconded it was

RESOLVED: That the Town Council reappoints the following individuals to a multiple-member Board/Committee/Commission: **Council on Aging:** Ella Rollins, as a regular member to a term expiring 06/30/2026; **Historical Commission:** Barbara DeBiase from an alternate member to a full member position to a term expiring 06/30/2026

VOTE: TO A 2ND READ ON 9-7-2023 UNANIMOUS

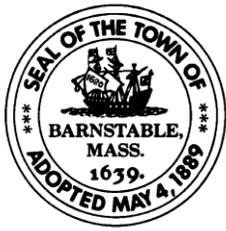
2024-033 RESOLVE APPROVING A LETTER TO THE HONORABLE PETE BUTTIGIEG, U.S. DEPARTMENT OF TRANSPORTATION, IN SUPPORT OF THE MASSACHUSETTS DEPARTMENT OF TRANSPORTATION'S APPLICATION FOR FUNDING THROUGH THE MULTIMODAL PROJECT DISCRETIONARY GRANT PROGRAM'S NATIONAL INFRASTRUCTURE PROJECT ASSISTANCE (MEGA) AND INFRASTRUCTURE FOR REBUILDING AMERICA PROGRAM (INFRA) OPPORTUNITIES INTRO: 08/17/2023

Councilor Schnepf gave the rationale

Upon a motion duly made and seconded it was

RESOLVED: That the Town Council does hereby approve sending a letter of support, substantially in the form as presented to the Town Council at this meeting, to the Honorable Pete Buttigieg, Secretary of Transportation, U.S. Department of Transportation, in support of the Massachusetts Department of Transportation's application for funding through the Multimodal Project Discretionary Grant Program's National Infrastructure Project Assistance (MEGA) and Infrastructure for Rebuilding America Program (INFRA) opportunities, and authorizes the President or Vice President of the Town Council to sign such letter of support on behalf of the Town Council.

VOTE: PASSES UNANIMOUS



**Town of Barnstable
Town Council**
367 Main Street, Village of Hyannis, MA 02601
508-862-4738 • 508-862-4770
E-mail: council@town.barnstable.ma.us
www.town.barnstable.ma.us

Councilors:

Matthew Levesque
President
Precinct 10

Jennifer Cullum
Vice President
Precinct 13

Gordon Starr
Precinct 1

Eric R. Steinhilber
Precinct 2

Betty Ludtke
Precinct 3

Nikolas Atsalis
Precinct 4

Paul Cusack
Precinct 5

Paul C. Neary
Precinct 6

Jessica Rapp Grassetti
Precinct 7

Jeffrey Mendes
Precinct 8

Tracy Shaughnessy
Precinct 9

Kristine Clark
Precinct 11

Paula Schnepf
Precinct 12

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

The Honorable Pete Buttigieg
Secretary of Transportation
U.S. Department of Transportation
1200 New Jersey Avenue, SE
Washington, DC 20590

Dear Secretary Buttigieg,

On behalf of the Barnstable Town Council, this letter is to express our strong support of the Massachusetts Department of Transportation’s (MassDOT) application for funding through the Multimodal Project Discretionary Grant Program’s National Infrastructure Project Assistance (MEGA) and Infrastructure for Rebuilding America Program (INFRA) opportunities. This proposal seeks to replace the vitally important but aging Bourne and Sagamore Bridges that connect Cape Cod and the rest of Massachusetts across the Cape Cod Canal. The Cape Cod Bridges Program (Program) will deliver immense social, economic, public safety and environmental benefits for a nationally significant and iconic region and ultimately resolve an outstanding federal responsibility for the maintenance and safety of the Cape Cod Bridges.

The Bourne and Sagamore Bridges—currently owned and maintained by the U.S. Army Corps of Engineers (USACE)—are vital assets for the Cape Cod economy and surrounding communities, and serve as the gateway to Cape Cod for more than 250,000 Cape and Islands residents and over 5 million visitors annually. With more than 35 million vehicles crossing the canal each year, the bridges are the sole access point for vehicular traffic to and from Cape Cod and serve as essential routes for general transportation, tourism, and evacuation in case of an emergency. However, the current bridges are nearly 90 years old, functionally obsolete, require increasingly costly maintenance, and need major rehabilitation. In 2020, USACE estimated that the full rehabilitation of both bridges would cost approximately \$395 million and would include both extensive lane closures and full bridge closures with consequences to traffic and the local economy.¹¹ The bridges’ structural deficiencies—a USACE responsibility—present an enormous risk to the accessibility and economic stability of the Cape Cod region and a long term financial liability for the federal government.

Over the last decade, the Commonwealth, USACE, and other stakeholders have partnered and worked in consultation with the U.S. Department of

Transportation to develop a comprehensive plan for replacing both the Bourne and Sagamore Bridges and the associated highway approaches. Under the Healey-Driscoll Administration, the Commonwealth has developed a rigorous sequencing plan that will lead to the replacement of both bridges and commence with the replacement of the Sagamore Bridge. To further buttress the plan, the Healey-Driscoll Administration has committed \$700 million to the Program and agreed to financially backstop this initial phase of the project. With these new commitments and the existing Memorandum of Understanding between the Commonwealth and USACE, the project will lead to contemporary bridges that vastly improve travel conditions, meet modern safety standards for vehicle and pedestrian travel, and provide vastly improved multimodal options.

With the strong leadership of the Healey-Driscoll Administration and the deep support of the Biden Administration, the partnership between the Commonwealth and USACE is prepared to capitalize on the historic funding opportunities provided by President Biden's Bipartisan Infrastructure Law. To address the need for further federal commitments, we recently secured \$350 million in federal funding in the Senate's *Fiscal Year 2024 Energy and Water Development Appropriations Act*, which reflects a major step forward to fulfill President Biden's request in his Fiscal Year 2024 budget to provide an initial \$350 million toward a minimum total commitment of \$600 million from USACE for the Program. The Massachusetts Congressional delegation will continue to work hand-in-glove with the Healey administration, the Army Corps of Engineers, and the Biden Administration to deliver essential federal funding, which will not only get construction underway on the bridges replacement project and ensure the safety of residents and visitors, but also deliver good-paying union construction jobs for our workers and create greener, more sustainable transit options for the Cape.

The Cape Cod Bridges Program is a prototypical project that the Bipartisan Infrastructure Law was designed to fund, and is a key to modernizing Massachusetts' physical infrastructure to meet the economic, social, and environmental challenges of the 21st Century. We are proud to support the Commonwealth's application for funding. We appreciate your fair and full consideration of this important project.

Sincerely,

Matthew P. Levesque, President
Barnstable Town Council

¹¹¹U.S. Army Corps of Engineers New England District. Major Rehabilitation Evaluation Report and Environmental Assessment: Cape Cod Canal Highway Bridges, Bourne, Massachusetts. March 2020.
<https://www.nae.usace.army.mil/Portals/74/docs/Topics/Cape%20Cod%20Canal%20Bridges/Reports/FinalMRERDdocument.pdf>

**VOTED TO ADJOURN:
VOTE: PASSES UNANIMOUS**

Adjourned at 10:50 PM
Respectfully submitted,

Ann M. Quirk
Town Clerk

NEXT MEETING: September 7, 2023

Exhibits
A Town Manager's update