



Town of Barnstable
Town Council
James H. Crocker Jr. Hearing Room
367 Main Street, 2nd floor,
Hyannis, MA 02601
Office 508.862.4738 • Fax 508.862.4770
E-mail: council@town.barnstable.ma.us
TOWN COUNCIL MEETING AGENDA

Original posted on
11/15/2022@10:52am
Updated on 11/16/2022
@ 2:12pm to add on the
Conservation Restriction
to Item # 2023-049

**November 17, 2022
7:00 PM**

Councillors:

Matthew Levesque
President
Precinct 10

Paula Schnepf
Vice President
Precinct 12

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 Grasseti
Precinct 7

Jeffrey Mendes
Precinct 8

Tracy Shaughnessy
Precinct 9

Kristine Clark
Precinct 11

Jennifer L. Cullum
Precinct 13

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

The November 17, 2022 Town Council Meeting of the Barnstable Town Council shall be conducted remotely and shall be physically closed to the public. Alternative public access shall be provided as set forth below.

1. The meeting will be televised live via Comcast Channel 18 or may be accessed via the Channel 18 live stream on the Town of Barnstable's website:

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

2. Written Comments may be submitted to:

https://tobweb.town.barnstable.ma.us/boardscommittees/towncouncil/Town_Council/Agenda-Comment.asp

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

Join Zoom Meeting <https://zoom.us/j/97126211626> Meeting ID: 971 2621 1626
US Toll-free/888 475 4499

PUBLIC SESSION

1. ROLL CALL

2. PLEDGE OF ALLEGIANCE

3. MOMENT OF SILENCE

4. PUBLIC COMMENT

5. COUNCIL RESPONSE TO PUBLIC COMMENT

6. TOWN MANAGER COMMUNICATIONS

7. ACT ON PUBLIC SESSION MINUTES

- Approve Public Session Minutes: November 03, 2022

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

9. ORDERS OF THE DAY

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

10. ADJOURNMENT

NEXT REGULAR MEETING: December 01, 2022

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A. OLD BUSINESS		
2022-159	Amending the Code of the Town of Barnstable, Part I, General Ordinances, Chapter 240 Zoning, Article III, §240-30(E)(4) by amending the separation requirements of the Medical Marijuana Overlay District (Public Hearing) (Roll Call 2/3 Full Council)	4-5
2023-047	Appointments to a Board/Committee/Commission: Disability Commission: Christopher Bartley, as a regular member to a term expiring 06/30/2024; Housing Committee: Evan Gaudette, as a regular member to a term expiring 06/30/2024; Youth Commission: Madeleine Boyle, as a student member, to a term expiring 06/30/2023; Eric Arabadzhev as a student member to a term expiring 06/30/2023 (May be acted upon) (Roll Call Majority)	6
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2023-049	Appropriation Order in the amount of \$150,000 in Community Preservation Funds for the purpose of acquiring a Conservation Restriction on 2.3 acres of open space located at 242 Commerce Road, Barnstable, MA shown as a portion on Assessors Map 318, Parcel 025/001 (Public Hearing) (Roll Call Majority Full Council)	10-31
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2023-052	Appropriation and Loan Order in the amount of \$2,850,000 for the purpose of funding design and permitting of the Water Pollution Control Facility Headworks Improvement Project (Public Hearing) (Roll Call 2/3 Full Council)	37-38
B. NEW BUSINESS		
2023-057	A resolution that the Town Council petition the County Commissioners of Barnstable County to formally discontinue a section of county highway, namely, Bearse’s Way from Massachusetts Route 132, a/k/a Iyannough Road to Stevens Street (May be acted upon) (Roll Call Majority)	39-40
2023-058	Appropriation Order in the amount of \$45,000 for the Golf Enterprise Fund for the purpose of funding the acquisition of a utility tractor for the Golf Maintenance Operations (Refer to Public Hearing 12/01/2022)	41-42
2023-059	Authorization to expend a Fiscal Year 2023 Housing Choice Grant in the amount of \$75,000 from the Commonwealth of Massachusetts, Department of Housing and Community Development for the Great Streets Downtown Hyannis Project (May be acted upon) (Roll Call Majority)	43-44
2023-060	Authorization to expend a Fiscal Year 2023 Community Planning Grant in the amount of \$75,000 from the Commonwealth of Massachusetts, Department of Housing and Community Development for the development of a Barnstable Adult Community Center Master Plan (May be acted upon) (Roll Call Majority)	45-46

2023-061	Appropriation Order in the amount of \$3,811,500 for the Fiscal Year 2023 Airport Enterprise Fund Operating Expense Budget for the purpose of purchasing Aviation Jet Fuel for resale (Refer to Public Hearing 12/01/2022)	47-49
2023-062	Approval of the change in purpose of the property located at 164 Route 149, Marstons Mills, as shown on Assessors' Map 078, Parcel 074 (May be acted upon) (Roll Call 2/3 Full Council)	50-51

Please Note: The lists of matters are those reasonably anticipated by the Council President which may be discussed at the meeting. Not all items listed may be discussed and other items not listed may be discussed to the extent permitted by law. It is possible that if it so votes, the Council may go into executive session. The Council may also act on items in an order other than as they appear on this agenda. Persons interested are advised that in the event any matter taken up at the meeting remains unfinished at the close of the meeting, it may be continued to a future meeting, and with proper notice.

A. OLD BUSINESS (Public Hearing) (Roll Call 2/3 Full Council)

BARNSTABLE TOWN COUNCIL

ITEM# 2022-159

INTRO: 05/05/2022, 09/15/2022, 10/06/2022, 11/17/2022

2022-159 AMENDING THE CODE OF THE TOWN OF BARNSTABLE, PART I, GENERAL ORDINANCES, CHAPTER 240 ZONING, ARTICLE III, §240-30(E) (4) BY AMENDING THE SEPARATION REQUIREMENTS OF THE MEDICAL MARIJUANA OVERLAY DISTRICT

ORDERED: To amend the Code of the Town of Barnstable, Part I, General Ordinances, Chapter 240 Zoning by deleting §240-30(E)(4) in its entirety and inserting the following new §240-30(E)(4) in its place:

“Separation requirements. The site does not abut a religious institution/place of religious assembly, and is at least 500 feet from any school, day-care center, preschool or afterschool facility or any facility in which children commonly congregate. In no case shall a RMD directly abut another RMD or any medical marijuana use.”

SPONSOR: Mark S. Ells, Town Manager

DATE	ACTION TAKEN
<u>05/05/2022</u>	<u>Refer to Planning Board</u>
<u>09/15/2022</u>	<u>Open and Continued Public Hearing 10/06/2022</u>
<u>10/20/2022</u>	<u>Council voted on 10/20/2022 to reconsider Item No. 2022-159 and re advertise the Public Hearing on the item to be held on November 17, 2022</u>

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

BARNSTABLE TOWN COUNCIL

ITEM# 2022-159

INTRO: 05/05/2022, 09/15/2022, 10/06/2022, 11/17/2022

SUMMARY

TO: Town Council
FROM: Mark S. Ells, Town Manager
THROUGH: Elizabeth Jenkins, Director, Planning & Development Department
DATE: May 05, 2022
SUBJECT: Amending the Code of the Town of Barnstable, Part I, General Ordinances, Chapter 240 Zoning, Article III, §240-30(E)(4) by amending the separation requirements of the Medical Marijuana Overlay District

RATIONALE: Section 5 of M.G.L. c. 40A, the state Zoning Act, provides that “[a]doption or change of zoning ordinances or by-laws may be initiated by the submission to the city council ... of a proposed zoning ordinance ... by ten registered voters in a city ...” Section 5 further provides that the City Council “shall within fourteen days of receipt of such zoning ordinance ... submit it to the planning board for review.”

On May 2, 2022, a proposed amendment to the Town’s zoning ordinance was submitted to the Town Clerk, along with the signatures of ten residents of the Town. On May 2, 2022, the Town Clerk certified that the petition was signed by ten certified voters of the Town. On May 2, 2022, the petition was submitted to the Town Council by one of the proponents of the petition. In accordance with G.L. c. 40A, section 5, the proposed amendment has been placed on this meeting’s agenda for referral to the Planning Board.

FISCAL IMPACT: There is no significant fiscal impact of the proposed zoning amendment.

STAFF SUPPORT: Elizabeth Jenkins, Director, Planning & Development Department; Karen Nober, Town Attorney; James Kupfer, Senior Planner

A. OLD BUSINESS (May be acted upon) (Roll Call Majority)

BARNSTABLE TOWN COUNCIL

ITEM# 2023-047
INTRO: 11/03/2022, 11/17/2022

2023-047 APPOINTMENTS TO A BOARD/COMMITTEE/COMMISSION

RESOLVED: That the Town Council appoints the following individuals to a multiple-member Board/Committee/Commission: **Disability Commission:** Christopher Bartley, as a regular member to a term expiring 06/30/2024; **Housing Committee:** Evan Gaudette, as a regular member to a term expiring 06/30/2024; **Youth Commission:** Madeleine Boyle, as a student member, to a term expiring 06/30/2023; Eric Arabadzhiev as a student member to a term expiring 06/30/2023.

SPONSOR: Appointment Committee Members

DATE	ACTION TAKEN
<u>11/03/2022</u>	<u>Referred to Second Reading 11/17/2022</u>

- Read Item
- Rationale
- Council Discussion
- Vote

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

BARNSTABLE TOWN COUNCIL

ITEM# 2023-048
INTRO: 11/03/2022, 11/17/2022

2023-048 SUPPLEMENTAL APPROPRIATION ORDER FOR THE BARNSTABLE POLICE DEPARTMENT FISCAL YEAR 2023 OPERATING EXPENSE BUDGET IN THE AMOUNT OF \$142,896 FOR THE PURPOSE OF FUNDING THE COSTS ASSOCIATED WITH THE HIRING OF EIGHT (8) PATROL OFFICERS TO FILL CURRENT VACANCIES

ORDERED: That the amount of **\$142,896** be appropriated and added to the Fiscal Year 2023 Police Department General Fund Operating Expense Budget for the purpose of funding expenses related to the hiring of eight (8) new police officers, including costs related to hiring, training, uniforms, ammunition and equipment purchases.

SPONSOR: Mark S. Ells, Town Manager

DATE	ACTION TAKEN
<u>11/03/2022</u>	<u>Referred to Public Hearing 11/17/2022</u>

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

BARNSTABLE TOWN COUNCIL

ITEM# 2023-048
INTRO: 11/03/2022, 11/17/2022

SUMMARY

TO: Town Council
FROM: Mark S. Ells, Town Manager
THROUGH: Matthew K. Sonnabend, Chief of Police
DATE: October 19, 2022
SUBJECT: Supplemental Appropriation Order for the Barnstable Police Department Fiscal Year 2023 Operating Expense Budget in the amount of **\$142,896** for the purpose of funding the costs associated with the hiring of eight (8) patrol officers to fill current vacancies

BACKGROUND: The department has 8 patrol officer vacancies they will fill at this time. We will be enrolling 7 police officer recruits in the Cape Cod Municipal Police Academy starting on January 9, 2023. We will also be hiring 1 new officer who is already academy-trained. At the time of the preparation and finalization of the Fiscal Year 2023 budget, the Police Department did not have confirmation on the number of retirements to take place nor the availability of police academy seats. The costs associated with the hiring of 8 police officers to fill current vacancies require a supplemental appropriation to the Police Department's Fiscal Year 2023 budget as follows:

Academy Bound New Hires

Training	\$24,640
Uniform	\$22,988
Equipment	\$57,973
Ammunition	\$13,697
Hiring Physical	\$6,972
Hiring Psych Eval	\$3,850
Total Academy Bound New Hires	\$130,120

Academy Trained New Hire

Training	\$0
Uniform	\$2,321
Equipment	\$7,070
Ammunition	\$1,839
Hiring Physical	\$996
Hiring Psych Eval	\$550
Total Transfer New Hire	\$12,776

Grand Total **\$142,896**

ANALYSIS: This supplemental appropriation request is comprised of several parts: 1) pre-employment requirements including medical exams and psychological assessments; 2) academy tuition; 3) ammunition 4) equipment including radio and firearm; and 5) uniform. The items listed above will need to be funded in Fiscal Year 2023 in order to complete the hiring components required by the Cape Cod Municipal Police Academy and enough ordering time for the remaining equipment and uniforms.

FISCAL IMPACT: Funding for this appropriation will be provided from the General Fund reserves that are allocated to the Municipal Savings Account which has a current balance of \$8,272,011. This is a one-time cost and the appropriation will not be added to the department's base budget for Fiscal Year 2024 budget planning purposes.

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

STAFF ASSISTANCE: Matthew K. Sonnabend, Chief of Police; Anne Spillane, Finance Director, Barnstable Police Department

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

BARNSTABLE TOWN COUNCIL

**ITEM# 2023-049
INTRO: 11/03/2022, 11/17/2022**

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

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

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

DATE	ACTION TAKEN
<u>11/03/2022</u>	<u>Referred to Public Hearing 11/17/2022</u>

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

BARNSTABLE TOWN COUNCIL

ITEM# 2023-049
INTRO: 11/03/2022, 11/17/2022

SUMMARY

TO: Town Council
FROM: Mark S. Ells, Town Manager
THROUGH: Lindsey Counsell, Chair, Community Preservation Committee
DATE: November 03, 2022
SUBJECT: Appropriation Order in the amount of **\$150,000** in Community Preservation Funds for the purpose of acquiring a conservation restriction on 2.3 acres of open space located at 242 Commerce Road, Barnstable, MA shown as a portion on Assessors Map 318, Parcel 025/001

BACKGROUND: The Barnstable Land Trust, Inc. is seeking approval from the Town Council through the Town Manager for Community Preservation Open Space/Recreation Funds in the amount of One Hundred Fifty Thousand Dollars (\$150,000) for the acquisition of a conservation restriction on 2.3 acres of open space located at 242 Commerce Road, Barnstable, shown as a portion of Map 318, Parcel 025/001. At the May 17, 2021, Community Preservation Committee (CPC) meeting, the seven Committee members present voted unanimously to support and recommend the Application for appropriation. However, the project was put on hold until a Conservation Restriction (“CR”) was drafted so it was not provided to the Town Council for a vote at that time.

The draft CR is now under review for approval by the Massachusetts Secretary of Energy and Environmental Affairs however, that approval has been much delayed as the Commonwealth attempts to replace its main CR reviewer who has departed the position. This request is that the project be considered by the Town Council for approval of the funding request, then later return with the approved CR, in substantially the form attached hereto, so as not to delay the ultimate closing date. This Community Preservation Application for Open Space funds is part of a conservation project named Bowles Field Historic Landscape Project in which Barnstable Land Trust will purchase the property and the Town of Barnstable would hold the Conservation Restriction. The complete project includes preservation of an additional adjacent 2.8 acres owned by the same family, who will donate a Conservation Restriction on those acres to Barnstable Land Trust, Inc. This funding request represents a portion of the total project cost of \$581,200 with \$256,200 to be provided by Barnstable Land Trust, \$175,000 from a Massachusetts Conservation Partnership Grant (to be awarded Fall 2022) and the balance of \$150,000 funded with this authorization.

Conservation of this property will complete a 37.44-acre area extending to Barnstable Harbor connecting with conservation lands owned by the Mass Audubon Society and protect a major contiguous wildlife corridor and view to Barnstable Harbor from Commerce Road forever. Public access is planned by a short walking trail to the field and a seating area. Barnstable Land Trust is allowing ample time for private and public fundraising with the intention to close by January 2023. The project is also dependent on the owner receiving subdivision approval from the Cape Cod Commission (CCC) and the Town, as this parcel was part of a prior CCC Determination of Regional Impact (DRI) for the subdivision of the larger acreage.

ANALYSIS: Acquisition of a Conservation Restriction is consistent with the Local Comprehensive Plan, Open Space Plan, and other planning documents and preserves community character; and protects

land threatened by development. The MA Conservation Land Tax Credit has allowed for a purchase price lower than fair market value. The project serves more than one CPA purpose: land conservation, passive recreation, and historic preservation opportunities.

FISCAL IMPACT: Funding for this appropriation will be provided from the amount set aside for open space and recreation within the Community Preservation Fund which currently has a balance of \$1,549,072.

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

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

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

GRANTOR: Barnstable Land Trust, Inc.

GRANTEE: Town of Barnstable

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

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

Grantor’s Plan: Land Court Plan 4686- ____ (pending)

GRANT OF CONSERVATION RESTRICTION

I. STATEMENT OF GRANT

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

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

II. PURPOSES:

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

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

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

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

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

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

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

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

Open Space Goal will be advanced because the Premises is proximal to several conservation restricted parcels.

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

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

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

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

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

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

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

The Town of Barnstable promotes the Cape Cod Pathways program, intended to create a series of looped and through-routes in the town and beyond for public walking and scenic enjoyment. The Premises is located on Commerce Road part of the harbor walking loop identified in the Cape Cod Pathways plan for the Town of Barnstable (date).

- Consistency with Clearly Delineated Federal Conservation Policy. Protection of the Premises meets the definition of "conservation purposes" as defined in 26 CFR 1.170A-14(d)(1), because its conservation would: reserve the land for education regarding the natural world; protect wildlife habitats; and it would contribute to the preservation of open space because it is proximate to several other parcels already conserved.

- Consistency with Clearly Delineated State Conservation Policy. The Premises possesses significant open space, natural, aesthetic, ecological, plant and wildlife habitat, solid and water resource quality, watershed, and scenic values (collectively “conservation values”) of great importance to the Grantee and the people of Barnstable and the Commonwealth of Massachusetts, including the protection of a State ACEC and Regional Historic District
- Therefore, preservation of the Premises will advance the open space, water and other natural resource management and passive recreational goals and objectives of the Town of Barnstable, Barnstable County, and the Commonwealth of Massachusetts.

III. PROHIBITED and PERMITTED ACTS AND USES

A. Prohibited Acts and Uses

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

1. Structures and Improvements. Constructing, placing, or allowing to remain any temporary or permanent structure including without limitation any building, tennis court, mobile home, swimming pool, shed, asphalt or concrete pavement, graveled area, roads, trails, billboard or other advertising, antenna, utilities or other structures, utility pole, tower, solar panel, solar array, conduit, line, septic or wastewater disposal system, storage tank, or dam;
2. Extractive Activities/Uses. Mining, excavating, dredging, withdrawing, or removing soil, loam, peat, gravel, sand, rock, surface water, ground water, or other mineral substance or natural deposit, or otherwise altering the topography of the Premises;
3. Disposal/Storage. Placing, filling, storing or dumping of soil, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, tree and other vegetation cuttings, liquid or solid waste or other substance or material whatsoever;
4. Adverse Impacts to Vegetation. Cutting, removing, or destroying trees, shrubs, grasses or other vegetation;
5. Adverse Impacts to Water, Soil, and Other Features. Activities detrimental to drainage, flood control, water conservation, water quality, erosion control, soil conservation, natural habitat, archaeological conservation, or ecosystem function;
6. Introduction of Invasive Species. Planting or introducing any species identified as invasive by the Massachusetts Invasive Plant Advisory Group or identified as invasive in such recognized inventories as the Massachusetts Introduced Pests Outreach Project, the Northeast Aquatic Nuisance Species Panel, or other such inventories, and any successor list as mutually agreed to by Grantor and Grantee;
7. Non-Native Species. Introduction of species of animals or plants that are not native to Barnstable County, as defined by current published lists of native species, including The Vascular Plants of Massachusetts: A County Checklist, by Bruce A. Sorrie and Paul Somers, published by the Massachusetts Division of Fisheries and Wildlife Natural Heritage & Endangered Species Program (1999) or as amended or contained in a similar professionally acceptable publication available in the future.

8. Motor Vehicles. Using, parking, or storing motorized vehicles, including motorcycles, mopeds, all-terrain vehicles, off-highway vehicles, motorboats or other motorized watercraft, snowmobiles, launching or landing aircraft, or any other motorized vehicles, acknowledging that vehicles necessary for public safety (i.e., fire, police, ambulance, other government officials) may have a legal right to enter the Premises;
9. Camping; hunting, or trapping, unless for a proven nuisance to wildlife.
10. Subdivision. Subdividing or conveying a part or portion of the Premises (as compared to conveyance of the Premises in its entirety which shall be permitted), it being the Grantor's and Grantee's intention to maintain the entire Premises under unified ownership;
11. Use of Premises for Developing Other Land. Using the Premises towards building, septic system, or development requirements on this or any other parcel;
12. Adverse Impacts to Boundary Markers Disrupting, removing, or destroying granite fence posts, or any other boundary markers;
13. Excavation. The excavation of landscape features on the Premises with the intent of collecting or otherwise removing archaeological artifacts (prehistoric and/or historic) except by formal approval of the Massachusetts Historic Commission (MHC) through submission, with the concurrence of the Grantee, of a project notification form (PNF) in accordance with Section 27C of Chapter 9 of the Massachusetts General Laws, and associated regulations, as amended.
14. Residential, Agricultural, or Industrial Uses. Using the Premises for residential, agricultural, or industrial purposes;
15. Inconsistent Uses. Using the Premises for commercial purposes that are inconsistent with the Purposes or that would materially impair the Conservation Values, or for any other uses or activities that are inconsistent with the Purposes or that would materially impair the Conservation Values.

B. Permitted Acts and Uses

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

1. Vegetation Management. Maintaining vegetation, including pruning, trimming, cutting, and mowing, and removing brush, all to prevent, control, and manage hazards, disease, insect or fire damage, and/or in order to maintain the condition of the Premises as documented in the Baseline Report (see Paragraph XV), particularly related to the public scenic view and sandplain grassland habitat maintenance. Mowing, burning or otherwise clearing of vegetation, but only in the months between November and April, in order to maintain the sandplain grassland habitat and the public scenic view.

2. Non-native, Nuisance, or Invasive species. Removing non-native, nuisance, or invasive species, interplanting native species, and controlling species in a manner that minimizes damage to surrounding, non-target species and preserves water quality;
3. Native Plants. The non-commercial propagation of herbaceous native plants referenced hereinabove in Section III A.7.
4. Natural Habitat and Ecosystem Improvement. With prior written approval of the Grantee, conducting measures designed to restore native biotic communities, or to maintain, enhance or restore wildlife, wildlife habitat, ecosystem function, or rare or endangered species including planting native trees, shrubs, and other vegetation;
5. Archaeological Investigations. Conducting archaeological activities, including without limitation archaeological research, surveys, excavation and artifact retrieval, but only in accordance with an archaeological field investigation plan, which plan shall also address restoration following completion of the archaeological investigation, prepared by or on behalf of the Grantor and approved in advance of such activity, in writing, by the Massachusetts Historical Commission State Archaeologist (or appropriate successor official) and by the Grantee. A copy of the results of any such investigation on the Premises is to be provided to the Grantee;
6. Fencing. Measures, such as the installation of sight-permeable fencing taken in order to prevent unauthorized vehicle entry and dumping, vandalism or other acts destructive to the Premises. Also the erection of fencing or other barriers consistent with endangered species protection. Any fences shall not detract from the public's view across the Premises from the adjoining town road;
7. Signs. Constructing, installing, maintaining, and replacing signs with respect to the Permitted Acts and Uses, the Purposes, the Conservation Values, trespass, public access, identity and address of the Grantor, sale of the Premises, the Grantee's interest in the Premises, boundary and trail markings, any gift, grant, or other applicable source of support for the conservation of the Premises, Also the erection of signs, consistent with endangered species protection. Any signs shall not detract from the public's view across the Premises from the adjoining town road.
8. Landform protection. With the prior approval of the Grantee, measures taken in order to protect landform stability (i.e., to maintain a naturally occurring feature on the land's surface, e.g., bank, dune, hill, from erosion).
9. Motorized Vehicles. The use of motorized vehicles (1) by the Grantor as reasonably necessary to carry out activities permitted under this Restriction, (2) for access by Grantee for purposes set forth in Article IV, below, and (3) for access by police, fire, emergency, public works, or other governmental personnel carrying out their official duties. Notwithstanding the foregoing, the use of motorized vehicles for recreational purposes, such as dirt bikes, all-terrain vehicles, off-highway vehicles, and the like, is not permitted.
10. Other. Such other non-prohibited activities or uses of the Premises may be permitted with the prior approval of the Grantee provided that the Grantee has made a finding, such finding to be documented in writing and kept on file at the office of the Grantee, that such activities are consistent with the Reserved Rights, do not impair the conservation values and purposes

of this Conservation Restriction, and, where feasible, result in a net gain in conservation value of the Premises.

C. Site Restoration

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

D. Compliance with Permits, Regulations, Laws

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

E. Notice and Approval

1. Notifying Grantee. Whenever notice to or approval by Grantee is required, Grantor shall notify or request approval from Grantee, by a method requiring proof of receipt, in writing not less than sixty (60) days prior to the date Grantor intends to undertake the activity in question, unless a different time period is specified herein. The notice shall:
 - a. Describe the nature, scope, design, location, timetable and any other material aspect of the proposed activity;
 - b. Describe how the proposed activity complies with the terms and conditions of this Conservation Restriction, and will not materially impair the Purposes and/or Conservation Values;
 - c. Identify all permits, licenses, or approvals required for the proposed activity, and the status of any such permits, licenses, or approvals.
 - d. Describe any other material aspect of the proposed activity in sufficient detail to permit the Grantee to make an informed judgment as to its consistency with the Purposes and Conservation Values.
2. Grantee Review. Where Grantee's approval is required, Grantee shall grant or withhold approval in writing within sixty (60) days of receipt of Grantor's request. Grantee's approval shall only be granted upon a showing that the proposed activity will minimize impacts to the Conservation Values and will not materially impair the Purposes and/or Conservation Values. Grantee may require Grantor to secure expert review and evaluation of a proposed activity by a mutually agreed upon party.
3. Resubmittal. Grantee's failure to respond within sixty (60) days of receipt shall not constitute approval of the request. Grantor may subsequently submit the same or a similar request for approval.
4. Emergencies. In the event the activity proposed is necessary to address an emergency situation, either to avert environmental degradation, ecological damage, or risk to public health and safety, Grantee shall respond forthwith.

IV. INSPECTION AND ENFORCEMENT

A. Entry onto the Premises

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

B. Legal and Injunctive Relief

1. Enforcement. The rights hereby granted shall include the right to enforce this Conservation Restriction by appropriate legal proceedings and to obtain compensatory relief, and equitable relief against any violations, including, without limitation, injunctive relief and relief requiring restoration of the Premises to its condition prior to the time of the injury (it being agreed that the Grantee will have no adequate remedy at law in case of an injunction). The rights hereby granted shall be in addition to, and not in limitation of, any other rights and remedies available to the Grantee for the enforcement of this Conservation Restriction.
2. Notice and Cure. In the event the Grantee determines that a violation of this Conservation Restriction has occurred and intends to exercise any of the rights described herein, the Grantee shall, before exercising any such rights, notify the Grantor in writing of the violation. The Grantor shall have thirty (30) days from receipt of the written notice to halt the violation and remedy any damage caused by it, after which time Grantee may take further action, including instituting legal proceedings and entering the Premises to take reasonable measures to remedy, abate or correct such violation, without further notice. Provided, however, that this requirement of deferment of action for thirty (30) days applies only if Grantor immediately ceases the violation and Grantee determines that there is no ongoing violation. In instances where a violation may also constitute a violation of local, state, or federal law, the Grantee may notify the proper authorities of such violation.
3. Reimbursement of Costs and Expenses of Enforcement. Grantor covenants and agrees to reimburse to Grantee all reasonable costs and expenses (including counsel fees) incurred by the Grantee in enforcing this Conservation Restriction or in taking reasonable measures to remedy, abate or correct any violation thereof. In the event of a dispute over the boundaries of the Conservation Restriction, Grantor shall pay for a survey by a Massachusetts licensed professional land surveyor and to have the boundaries permanently marked.

C. Non-Waiver

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

D. Disclaimer of Liability

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

E. Acts Beyond the Grantor's Control

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

F. Costs and Taxes

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

V. PUBLIC ACCESS

This Conservation Restriction does not grant any right of physical access to the public, owing to the sensitivity of the rare sandplain grassland habitat and the fact that the public can enjoy the open view across the Premises to adjoining open fields and the fact that a public walking trail is providing on the western adjacent lot.

VI. TERMINATION/RELEASE/EXTINGUISHMENT

A. Procedure

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

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

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

C. Grantee's Receipt of Property Right

Grantor and Grantee agree that the conveyance of this Conservation Restriction gives rise to a real property right, immediately vested in the Grantee, with a fair market value that is at least equal to the proportionate value that this Conservation Restriction, determined at the time of the conveyance, bears to the value of the unrestricted Premises. The proportionate value of the Grantee's property right as of the Effective Date (See Paragraph XII) was determined to be thirty percent (30%). Such proportionate value of the Grantee's property right shall remain constant.

D. Cooperation Regarding Public Action

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

VII. DURATION and ASSIGNABILITY

A. Running of the Burden

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

B. Execution of Instruments

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

C. Running of the Benefit

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

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

VIII. SUBSEQUENT TRANSFERS

A. Procedure for Transfer

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

B. Grantor's Liability

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

IX. ESTOPPEL CERTIFICATES

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

X. NON MERGER

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

XI. AMENDMENT

A. Limitations on Amendment

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

1. affect this Conservation Restriction's perpetual duration;
2. be inconsistent with or materially impair the Purposes;
3. affect the qualification of this Conservation Restriction as a "qualified conservation contribution" or "interest in land" under any applicable laws, including 26 U.S.C. Section 170(h), and related regulations;

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

B. Amendment Approvals and Recording

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

XII. EFFECTIVE DATE

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

XIII. NOTICES

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

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

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

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

XIV. GENERAL PROVISIONS

A. Controlling Law

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

B. Liberal Construction

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

C. Severability

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

D. Entire Agreement

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

XV. BASELINE DOCUMENTATION REPORT

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

XVI. MISCELLANEOUS

A. Pre-existing Public Rights

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

B. Release of Homestead

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

C. Subordination

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

D. Executory Limitation

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

E. Prior Encumbrances

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

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

Grantor – Barnstable Land Trust, Inc.
Grantee Acceptance – Town of Barnstable Town Manager
Approval - Town of Barnstable Town Council
Approval of the Secretary of Energy and Environmental Affairs of the Commonwealth of Massachusetts.

G. The following exhibits are attached and incorporated herein:

- Exhibit A: Legal Description of Premises
- Exhibit B: Reduced Copy of Recorded Plan of Premises
- Exhibit C: Town Council Ordinance

At a meeting duly held on _____, 2022, Barnstable Land Trust, Inc. voted to grant the foregoing Conservation Restriction to the Town of Barnstable.

Grantor:

Barnstable Land Trust, Inc.

Leigh Townes, President,
Barnstable Land Trust, Inc.

Deborah Reuman, Treasurer
Barnstable Land Trust, Inc.

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss. _____ 2022

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

Mark H. Robinson, Notary Public
My commission expires

APPROVAL OF THE TOWN OF BARNSTABLE TOWN COUNCIL

At a public meeting duly held on _____ 2022, the Town Council of the Town of Barnstable, Massachusetts, voted to accept the foregoing Conservation Restriction from the Barnstable Land Trust, Inc., to the Town of Barnstable in the public interest pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws.

TOWN COUNCIL PRESIDENT:

Matthew Levesque

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss

On the _____ day of _____, 2022, before me, the undersigned notary public, personally appeared **Matthew Levesque**, the person whose name is signed on the document and proved to me through satisfactory evidence of identification, which was personal knowledge of identity, and who being by me duly sworn did say that he is the President of the Town Council of the Town of Barnstable; that he is duly authorized to act on behalf the Town Council; and he acknowledged the foregoing instrument to be the free act and deed of Town of Barnstable Town Council.

Notary Public
My Commission Expires:

APPROVAL OF TOWN MANAGER

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

TOWN OF BARNSTABLE
TOWN MANAGER:

Mark S. Ells

Barnstable, ss

On the ____ day of _____, 2022, before me, the undersigned notary public, personally appeared Mark S. Ells, the person whose name is signed on the document and proved to me through satisfactory evidence of identification, which was personal knowledge of identity, and who being by me duly sworn did say that he is the Town Manager of the Town of Barnstable; that he is duly authorized to act on behalf the Town of Barnstable and he acknowledged the foregoing instrument to be his free act and deed.

Notary Public
My Commission Expires

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

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

Dated: _____, 2022
Bethany A. Card

Secretary of Energy and Environmental Affairs

THE COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss:

On this day of , 2022, before me, the undersigned notary public, personally appeared Bethany A. Card, and proved to me through satisfactory evidence of identification which was _____ to be the person whose name is signed on the proceeding or attached document, and acknowledged to me that she signed it voluntarily for its stated purpose.

Notary Public
My Commission Expires:

EXHIBIT A

Legal Description of Premises

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

XX, on Land Court Plan 4686- __ (*pending*)

Containing 2.3 acres, more or less, per survey.

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

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

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

EXHIBIT B

Sketch Plan of Premises

For official full size plan see **Barnstable Registry of Deeds LAND COURT PLAN:**_____

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

BARNSTABLE TOWN COUNCIL

ITEM# 2023-050
INTRO: 11/03/2022, 11/17/2022

2023-050 ALLOCATION OF TAX LEVY FISCAL YEAR 2023 – RESIDENTIAL EXEMPTION

RESOLVED: That the Town Council hereby votes to adopt a Residential Exemption of twenty percent (20%) for Fiscal Year 2023.

SPONSOR: Mark S. Ells, Town Manager

DATE	ACTION TAKEN
<u>11/03/2022</u>	<u>Referred to Public Hearing 11/17/2022</u>
_____	_____

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

BARNSTABLE TOWN COUNCIL

ITEM# 2023-050
INTRO: 11/03/2022, 11/17/2022

SUMMARY

TO: Town Council
FROM: Mark S. Ells, Town Manager
THROUGH: Mark A. Milne, Finance Director
DATE: November 03, 2022
SUBJECT: Allocation of Tax Levy Fiscal Year 2023 – Residential Exemption

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

ANALYSIS: The exemption is calculated on the average residential parcel value which is \$759,556 in Fiscal Year 2023. The assessed property value is then reduced by the value of the exemption before the tax rate is applied to determine the tax bill amount. Since the exemption removes an amount of the taxable residential property value subject to taxation, and the tax levy paid by the residential class remains the same, the tax rate for this class of property increases. The projected savings in Fiscal Year 2023 for the median residential assessed value of \$538,100 using different residential exemption percentages is illustrated as follows:

Exemption %	Exemption Amount	Taxable Value	Tax Rate	Tax Bill	Savings
0%	\$0	\$538,100	\$6.43	\$3,460	\$0
5%	\$37,968	\$500,132	\$6.57	\$3,286	\$174
10%	\$75,936	\$462,164	\$6.73	\$3,110	\$350
15%	\$113,904	\$424,196	\$6.88	\$2,918	\$542
20%	\$151,871	\$386,229	\$7.05	\$2,722	\$738
25%	\$189,839	\$348,261	\$7.22	\$2,514	\$946
30%	\$227,807	\$310,293	\$7.41	\$2,299	\$1,161
35% (Maximum)	\$265,775	\$272,325	\$7.60	\$2,070	\$1,390

FISCAL IMPACT: This is a progressive tax by nature as it offers a greater property tax savings for an owner of a qualifying lower valued residential property. The savings diminishes as the property value increases to a point where the tax paid by the owner of a qualifying property valued at \$1,725,126 pays the same amount of tax with a 20% residential exemption and no exemption. Owners of residential property who qualify for the exemption that exceed a value of \$1,725,126 pay more in property taxes with a 20% residential exemption in place. The Town Council has voted to adopt a 20% residential exemption every year since fiscal year 2006.

STAFF ASSISTANCE: Mark A. Milne, Finance Director

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

BARNSTABLE TOWN COUNCIL

ITEM# 2023-051
INTRO: 11/03/2022, 11/17/2022

2023-051 ALLOCATION OF TAX LEVY FISCAL YEAR 2023 – TAX FACTOR

RESOLVED: That the Town Council hereby votes to classify the Town of Barnstable under M.G.L. c. 40, § 56, the Classification Act, at a Residential Factor of 1 (one) for Fiscal Year 2023.

SPONSOR: Mark S. Ells, Town Manager

DATE	ACTION TAKEN
<u>11/03/2022</u>	<u>Referred to Public Hearing 11/17/2022</u>

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

BARNSTABLE TOWN COUNCIL

ITEM# 2023-051
INTRO: 11/03/2022, 11/17/2022

SUMMARY

TO: Town Council
FROM: Mark S. Ells, Town Manager
THROUGH: Mark A. Milne, Finance Director
DATE: November 03, 2022
SUBJECT: Allocation of Tax Levy Fiscal Year 2023 – Tax Factor

BACKGROUND: According to Massachusetts General Laws, c. 40, § 56, the Town Council is annually charged with determining the Allocation of Local Property Taxes by the adoption of a Minimum Residential Factor. This tax levy-shifting tool will not change the overall amount of money that will be raised through property taxes; rather it allows the town to shift a portion of the tax levy between classes of property. The residential factor, commonly referred to as the “Split Tax Rate”, allows the Town Council to create separate tax rates; one for residential property owners and a separate one for commercial, industrial and personal property (CIP) owners. Under a residential “Factor of 1”, all property owners would pay taxes at the same rate per \$1,000 of valuation. The maximum permissible shift would increase the CIP tax rate by 150% which would result in a CIP tax Rate of \$9.64 for Fiscal Year 2023, ($\$6.43 \times 1.5 = \9.64). Since 2007, the Town Council’s policy has been to select a Residential Factor of “1”.

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

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

<u>A. Class</u>	<u>B. Valuation</u>	<u>C. Percentage Share</u>	<u>D. Combined Res/OS, CIP</u>
1. Residential	19,481,851,049	89.1021%	89.1021%
2. Open Space	0	0.0000%	
3. Commercial	1,879,347,857	8.5954%	10.8979%
4. Industrial	105,764,700	0.4837%	
5. Personal Property	<u>397,666,050</u>	<u>1.8188%</u>	
TOTALS	21,864,629,656	100.0000%	

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

The Maximum Share of Levy for Commercial/Industrial/Personal Property: 150% * 10.8979% (Lines 3C + 4C + 5C) = 16.3469% (Max % Share).

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

Minimum Share of Levy for Residential and Open Space: 100% - 16.3469% (Max CIP % Share) = 83.6531% (Min % Share)

This calculation shows the minimum % share of the levy allowed for the full and fair cash value of the combined Residential and Open Space Property classes. This is computed by subtracting the Maximum Share for Industrial/Commercial/Personal Property from 100%.

Minimum Residential Factor (MRF): 83.6531% (Min % Share) / 89.1021% (Lines 1C + 2C) = 93.8845% (Minimum Residential Factor)

This calculates the Minimum Residential Factor: divide the minimum % share for Residential and Open Space by the actual % share for Residential and Open Space.

MINIMUM RESIDENTIAL FACTOR: 93.8845% Chapter 58, Section 1A mandates a minimum residential factor of not less than 65 percent

When the Minimum Residential Factor is multiplied by % share of the Residential and Open space full and fair cash value, it reduces the Residential and Open Space share to its Minimum % Share of the Levy as calculated above.

FISCAL IMPACT: A factor greater than one (1) would shift more of the tax levy to the commercial, industrial and personal property (CIP) tax classifications. Since residential property comprises over 89% of all property in town, any shift of the levy from this class of taxpayer to the CIP classes would result in minimal savings for a residential taxpayer and a much higher tax bill for CIP property owners.

STAFF ASSISTANCE: Mark A. Milne, Finance Director

A. OLD BUSINESS (Public Hearing) (Roll Call 2/3 Full Council)

BARNSTABLE TOWN COUNCIL

**ITEM# 2023-052
INTRO: 11/03/2022, 11/17/2022**

2023-052 APPROPRIATION AND LOAN ORDER IN THE AMOUNT OF \$2,850,000 FOR THE PURPOSE OF FUNDING DESIGN AND PERMITTING OF THE WATER POLLUTION CONTROL FACILITY HEADWORKS IMPROVEMENT PROJECT

ORDERED: That the sum of **\$2,850,000** be appropriated for the purpose of funding the design and permitting of the Water Pollution Control Facility Headworks Improvement Project, 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 \$2,850,000 under and pursuant to M.G.L. c. 44, §§7 or 8, or pursuant to any other enabling authority, and to issue bonds or notes of the Town therefor; and that 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.

SPONSOR: Mark S. Ells, Town Manager

DATE	ACTION TAKEN
<u>11/03/2022</u>	<u>Referred to Public Hearing 11/17/2022</u>

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

BARNSTABLE TOWN COUNCIL

ITEM# 2023-052
INTRO: 11/03/2022, 11/17/2022

SUMMARY

TO: Town Council
FROM: Mark S. Ells, Town Manager
THROUGH: Daniel W. Santos, P.E., Director of Public Works
DATE: November 03, 2022
SUBJECT: Appropriation and Loan Order in the amount of **\$2,850,000** for the purpose of funding design and permitting of the Water Pollution Control Facility Headworks Improvement Project

BACKGROUND: The purpose of this project is to construct improvements to the headworks station at the Water Pollution Control Facility. The improvements will address the condition, capacity and performance of the headworks building while making necessary upgrades to support the construction of future nitrogen removal improvements. Rehabilitation of the headworks facility was identified in the Comprehensive Wastewater Management Plan. Construction is proposed to be combined with the nitrogen removal improvements project to begin in Fiscal Year 2025 and be completed in Fiscal Year 2027.

ANALYSIS: The headworks building at the Water Pollution Control Facility (WPCF) is the beginning of the wastewater treatment process. Wastewater is screened, grit and debris are removed, and flow is metered at this location. The headworks station includes odor control systems including odor control “scrubbers” and chemical delivery systems. The existing headworks building was originally constructed in 1973 and the building has been expanded and upgraded once since it was put into service. In recent years, the building has shown advanced signs of degradation requiring emergency repair including leaking channel walls, grit system failures, failing concrete and a failing odor control system. The odor control unit is housed in a location with inadequate access to carry out routine maintenance.

The Town recently completed an evaluation of nitrogen removal technologies and the selected alternative requires improvements to the WPCF screening process in order to function properly. This project aims to design improvements to the WPCF headworks building that will extend the useful life of this process by approximately 30 years. This project, coupled with the nitrogen removal improvements upgrade will result in a substantially higher quality treated effluent being discharged from the WPCF.

FINANCIAL IMPACT: Funding for this project will be provided from a bond issue and future years’ operating budgets will include the annual debt service costs. The annual loan payment is estimated to be \$174,000 over a 20 year period.

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

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

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

BARNSTABLE TOWN COUNCIL

**ITEM# 2023-057
INTRO: 11/17/2022**

2023- 057 A RESOLUTION THAT THE TOWN COUNCIL PETITION THE COUNTY COMMISSIONERS OF BARNSTABLE COUNTY TO FORMALLY DISCONTINUE A SECTION OF COUNTY HIGHWAY, NAMELY, BEARSE’S WAY FROM MASSACHUSETTS ROUTE 132, a/k/a IYANNOUGH ROAD, TO STEVENS STREET

RESOLVED: That, pursuant to M.G.L. Chapter 82, Section 5, the Town Council petition the County Commissioners of Barnstable County to formally discontinue a section of County Highway, namely, Bearse’s Way from Massachusetts Route 132, a/k/a Iyannough Road, to Stevens Street as described in 1930 Barnstable County Taking, being recorded in the Barnstable County Registry of Deeds in Book 473, Page 260, dated May 17, 1930, also shown on a Plan of Land recorded in said Registry in Plan Book 41, Pages 43, 45 and 47.

It is the intent thereby to render said sections of the County highway a Town way by operation of G.L. c. 82, § 5; and further, that said petition request that the discontinued sections of said County highway remain a public way, and that the Town Manager be authorized to execute and deliver any documents on behalf of the Town necessary to effectuate this resolve.

SPONSOR: Mark S. Ells, Town Manager

DATE	ACTION TAKEN
_____	_____
_____	_____

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

BARNSTABLE TOWN COUNCIL

ITEM# 2023-057
INTRO: 11/17/2022

SUMMARY

TO: Town Council
FROM: Mark S. Ells, Town Manager
THROUGH: Charles McLaughlin, Senior Counsel
DATE: November 3, 2022
SUBJECT: A resolution that the Town Council petition the County Commissioners of Barnstable County to formally discontinue a section of county highway, namely Bearse's Way from Massachusetts Route 132, a/k/a Iyannough Road to Stevens Street

BACKGROUND: Bearse's Way from Massachusetts Route 132 to Stevens Street in Barnstable was laid out as a county road in 1930 as described in a Barnstable County Taking, being recorded in the Barnstable County Registry of Deeds in Book 473, Page 260, dated May 17, 1930, also shown on a Plan of Land recorded in said Registry in Plan Book 41, Pages 43, 45 and 47. Bearse's Way has not been maintained by the County for generations and, to accommodate the Town's sewer expansion program as well as other potential uses of this road, it is necessary to request that the County abandon it and that the Town take this road over as a public road and that the Town agree to maintain it as such.

ANALYSIS: Bearse's Way from Massachusetts Route 132 to Stevens Street in Barnstable is a vital in-road route for sewer lines that will be installed by the Town. G.L. c. 82, §5 establishes a clear procedure for obtaining this discontinuance via petition by a town to a county requesting that the county discontinue a county way (or a section thereof). A county way discontinued by following this procedure automatically becomes a town way, and, if requested, remains a public way.

FISCAL IMPACT: The Town has operated for years in the belief that Bearse's Way from Massachusetts Route 132 to Stevens Street in Barnstable is owned by the Town. The Town has maintained this road and has budgeted accordingly. There is no impact on the General Fund Operating Budget resulting from the legal formality of transferring this road from the County to the Town's control or from petitioning that this way remain a public way.

STAFF SUPPORT: Charles McLaughlin, Senior Counsel; Griffin Beaudoin, Town Engineer; Shane Brenner, Town Surveyor

B. NEW BUSINESS (Refer to Public Hearing 12/01/2022)

BARNSTABLE TOWN COUNCIL

**ITEM# 2023-058
INTRO: 11/17/2022**

2023-058 APPROPRIATION ORDER IN THE AMOUNT OF \$45,000 FOR THE GOLF ENTERPRISE FUND FOR THE PURPOSE OF FUNDING THE ACQUISITION OF A UTILITY TRACTOR FOR THE GOLF MAINTENANCE OPERATIONS

ORDERED: That the amount of **\$45,000** be appropriated and transferred from the Golf Enterprise Fund surplus for the purpose of funding expenses related to the acquisition of a utility tractor for the Golf Maintenance Operations.

SPONSOR: Mark S. Ells, Town Manager

DATE	ACTION TAKEN
_____	_____
_____	_____

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

BARNSTABLE TOWN COUNCIL

ITEM# 2023-058
INTRO: 11/17/2022

SUMMARY

TO: Town Council
FROM: Mark S. Ells, Town Manager
THROUGH: Madeline Noonan, Director of Community Services
DATE: November 17, 2022
SUBJECT: Appropriation Order in the amount of **\$45,000** for the Golf Enterprise Fund for the purpose of funding the acquisition of a utility tractor for the Golf Maintenance Operations

BACKGROUND: Due to supply chain issues, the current lead time to receive most golf maintenance equipment is over fourteen (14) months from the time a purchase agreement has been executed. We are requesting approval to purchase the tractor so we can obtain the equipment in time for specific cultural practices that are necessary and seasonal in nature.

The number of golf rounds at both facilities has increased dramatically causing more compaction, requiring additional cultural practices to relieve compaction and create a more favorable growing medium. We have also implemented additional maintenance techniques including: annual slice seeding, aerovating, verticutting, and numerous approaches that require the use of a tractor. These cultural practices are an integral part of our environmentally sustainable land management plan. We have also experienced unprecedented drought conditions causing watering restrictions that have further declined the health of turf. These conditions require additional practices to aid in the recovery of turf stands and establishment of new seedlings.

FISCAL IMPACT: The Golf Enterprise Fund surplus was recently certified by the Department of Revenue at \$2,326,507. Approval of the purchase of the tractor using golf surplus funds will allow the golf operations to continue to meet the level of conditions expected from golfers while maintaining an adequate reserve level. We can perform necessary cultural practices more efficiently, thus reducing closing of facilities which would result in lost revenue.

STAFF ASSISTANCE: Chris Gonnella, Assistant Director of Community Services; Jesse Schechtman, Director of Golf; James Bentley, Director of Golf Maintenance

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

BARNSTABLE TOWN COUNCIL

ITEM# 2023-059
INTRO: 11/17/2022

2023-059 AUTHORIZATION TO EXPEND A FISCAL YEAR 2023 HOUSING CHOICE GRANT IN THE AMOUNT OF \$75,000 FROM THE COMMONWEALTH OF MASSACHUSETTS, DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT FOR THE GREAT STREETS DOWNTOWN HYANNIS PROJECT

RESOLVED: That the Town Council does hereby authorize the Town Manager to contract for and expend a Fiscal Year 2023 Housing Choice Grant in the amount of **\$75,000** from the Commonwealth of Massachusetts, Department of Housing and Community Development for the purpose of retaining consultant services to expand project scope for the Great Streets Downtown Hyannis Main Street Transportation Network and Streetscape Plan.

SPONSOR: Mark S. Ells, Town Manager

DATE	ACTION TAKEN
_____	_____
_____	_____

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

BARNSTABLE TOWN COUNCIL

ITEM# 2023-059
INTRO: 11/17/2022

TO: Town Council
FROM: Mark S. Ells, Town Manager
THROUGH: Elizabeth Jenkins, Planning & Development Director
DATE: November 17, 2022
SUBJECT: Authorization to expend a Fiscal Year 2023 Housing Choice Grant in the amount of **\$75,000** from the Commonwealth of Massachusetts, Department of Housing and Community Development for the Great Streets Downtown Hyannis Project

BACKGROUND: The Housing Choice grant program is a Community One Stop grant program that provides designated Housing Choice Communities funding for infrastructure improvements and to meet community planning needs.

ANALYSIS: The Town of Barnstable was awarded a \$75,000 grant from Department of Housing and Community Development's Housing Choice grant program. The funding will be used to expand the scope of the Great Streets Downtown Hyannis project, which seeks to transform streets within our downtown core to prime public spaces. This is realized through promoting three primary objectives: to provide safe streets and multi-modal access for all; promote a vibrant and attractive downtown that supports local businesses and the people who live in and visit Hyannis; and create a functional, enduring, and sustainable streetscape. All of these objectives will be viewed through the lens of enhancing transportation equity in downtown Hyannis.

The project is currently underway, and these funds will be used to expand the project scope and support the deliverables including preliminary designs for the transportation network and key intersections, as well as an urban design plan to guide new development in a manner consistent with the public realm.

FISCAL IMPACT: No funding match is required for this grant and there is no operating budget impact.

STAFF ASSISTANCE: Elizabeth Jenkins, Planning & Development Director; Kate Maldonado, Assistant Director of Planning & Development

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

BARNSTABLE TOWN COUNCIL

**ITEM # 2023-060
INTRO: 11/17/2022**

2023-060 AUTHORIZATION TO EXPEND A FISCAL YEAR 2023 COMMUNITY PLANNING GRANT IN THE AMOUNT OF \$75,000 FROM THE COMMONWEALTH OF MASSACHUSETTS, DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT FOR THE DEVELOPMENT OF A BARNSTABLE ADULT COMMUNITY CENTER MASTER PLAN

RESOLVED: That the Town Council does hereby authorize the Town Manager to contract for and expend a Fiscal Year 2023 Community Planning Grant in the amount of **\$75,000** from the Commonwealth of Massachusetts, Department of Housing and Community Development for the purpose of hiring a consultant for the creation of a Master Plan for Town-owned parcels surrounding the Barnstable Adult Community Center to evaluate the potential for infill development of affordable housing and enhanced recreational amenities.

SPONSOR: Mark S. Ells, Town Manager

DATE	ACTION TAKEN
_____	_____
_____	_____

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

BARNSTABLE TOWN COUNCIL

ITEM# 2023-060
INTRO: 11/17/2022

SUMMARY

TO: Town Council
FROM: Mark S. Ells, Town Manager
THROUGH: Elizabeth Jenkins, Planning & Development Director
DATE: November 15, 2022
SUBJECT: Authorization to expend a Fiscal Year 2023 Community Planning Grant in the amount of **\$75,000** from the Commonwealth of Massachusetts, Department of Housing and Community Development for the development of a Barnstable Adult Community Center Master Plan

BACKGROUND: The Community Planning Grant is a competitive grant program for municipalities that have achieved the Housing Choice designation, part of the Community One Stop for Growth program. These grants fund technical assistance and infrastructure improvements in communities that have shown commitment to advancing sustainable housing production.

ANALYSIS: The Town of Barnstable was awarded a \$75,000 Community Planning Grant from the Department of Housing and Community Development. The funding will be used for the purpose of hiring a consultant to create a master plan for Town-owned parcels surrounding the Barnstable Adult Community Center (BACC). The project will evaluate the potential for infill development of affordable housing targeted to seniors coupled with enhanced outdoor recreational amenities, along with ways to improve pedestrian and recreational connectivity with adjoining properties. The project will be an interdepartmental effort, involving input from users of the BACC facility and the community at large. The deliverables are a preferred development concept and zoning recommendations to allow development of affordable multi-family housing.

FISCAL IMPACT: No funding match is required for this grant and there is no operating budget impact.

STAFF ASSISTANCE: Elizabeth Jenkins, Planning & Development Director; Kate Maldonado, Assistant Director of Planning & Development; Mark Marinaccio, Town Architect, Department of Public Works; Madeline Noonan, Community Services Director

B. NEW BUSINESS (Refer to Public Hearing on 12/01/2022)

BARNSTABLE TOWN COUNCIL

**ITEM#2023-061
INTRO: 11/17/2022**

2023-061 APPROPRIATION ORDER IN THE AMOUNT OF \$3,811,500 FOR THE FISCAL YEAR 2023 AIRPORT ENTERPRISE FUND OPERATING EXPENSE BUDGET FOR THE PURPOSE OF PURCHASING AVIATION JET FUEL FOR RESALE

ORDERED: That the amount of **\$3,811,500** be appropriated and provided from the Airport Enterprise Fund surplus for the purpose of funding the purchase of aviation jet fuel for resale.

SPONSOR: Mark S. Ells, Town Manager

DATE	ACTION TAKEN
_____	_____
_____	_____

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

BARNSTABLE TOWN COUNCIL

ITEM#2023-061
INTRO: 11/17/2022

SUMMARY

TO: Town Council
FROM: Mark S. Ells, Town Manager
THROUGH: Katie R. Servis, Airport Manager
DATE: November 17, 2022
SUBJECT: Appropriation Order in the amount of **\$3,811,500** for the Fiscal Year 2023 Airport Enterprise Fund Operating Expense Budget for the purpose of purchasing Aviation Jet Fuel for resale

SUMMARY: Cape Cod Gateway Airport is requesting an increase in the Fiscal Year 2023 Operating Expense Budget to cover the cost of jet fuel purchases through the end of the Fiscal Year. This request is the result of an increase in the projected fuel sales.

The Airport tracks year-over-year and month-over-month the average fuel loads purchased and sold. This tracking allows the operation to identify the number of fuel loads typically needed year-over-year and month-over-month and is used for forecasting purposes. With the onset of COVID-19, there has been an increase in aviation jet fuel sales with more corporate aircraft utilizing the facility and purchasing fuel in Fiscal Year 2021 and Fiscal Year 2022. We are starting to normalize our sales in Fiscal Year 2023 but the cost of fuel has doubled. Because of this cost increase, by the end of the first quarter and into the second quarter of FY 2023, the airport had surpassed the fuel budget for Fiscal Year 2023.

The Fiscal Year 2023 budget anticipated the sale of 1,250,000 gallons of fuel at the rate of \$2.80 per gallon (cost not retail) or \$3,500,000. As of October 2022, the Airport has purchased over 823,000 gallons this season. The issue is not that the Airport is selling more fuel per say (in fact we are selling slightly less) but the cost to buy fuel, which has nearly doubled; with the average rate per gallons costing \$4.30 per gallon rather than the \$2.80 anticipated. The table below identifies the cost thus far for Fiscal Year 2023.

Month	Actual Gallons Purchased	Average Cost per Gallon	Total Fuel Cost
JULY	257,335	\$4.37	\$ 1,124,616.32
AUGUST	296,921	\$4.07	\$ 1,209,722.94
SEPTEMBER	139,167	\$4.06	\$ 565,004.90
OCTOBER	129,741	\$4.71	\$ 611,123.68
NOVEMBER			
DECEMBER			
JANUARY			
FEBRUARY			
MARCH			
APRIL			
MAY			
JUNE			
TOTALS	823,164		\$ 3,510,467.84

The table below compares the month-to-month sales for Fiscal Year 2022 and Fiscal Year 2023.

GALLONS SOLD			
MONTH	FY2022	FY2023	FY23 vs FY22
JULY	257,418	222,786	-34,632
AUGUST	292,353	264,002	-28,351
SEPTEMBER	166,126	155,922	-10,204
OCTOBER	125,851	128,394	2,543
NOVEMBER	109,134		-109,134
DECEMBER	74,230		-74,230
JANUARY	46,124		-46,124
FEBRUARY	38,352		-38,352
MARCH	49,282		-49,282
APRIL	46,820		-46,820
MAY	111,488		-111,488
JUNE	172,350		-172,350
TOTALS	1,489,528	771,104	-718,424

From November through June, the Airport has historically have purchased 75 fuel loads. The historic average purchase of fuel is outlined below.

ANALYSIS OF HISTORICAL GALLONS SOLD/MONTH			
MONTH	Average Load Purchased/Month	Average Gallons/Load	Total Gallons/Month
NOVEMBER	10	9900	99,000
DECEMBER	10	9900	99,000
JANUARY	6	9900	59,400
FEBRUARY	5	9900	49,500
MARCH	6	9900	59,400
APRIL	6	9900	59,400
MAY	12	9900	118,800
JUNE	20	9900	198,000
TOTALS	75	-	742,500

The cost of this fuel is determined as follows:

- ➔ We will assume the average cost per load is \$5.00 to allow for increases that are likely or currently \$49,500
- ➔ 75 loads x \$49,500 = \$3,712,500.
- ➔ Fuel budget remaining as of November 2022 is \$0
- ➔ Two additional loads to be conservative and as a buffer = \$99,000
- ➔ **Appropriation Request = \$3,811,500.**

Any funds remaining at the end of the fiscal year will be returned to the Airport Enterprise Fund reserves.

FISCAL IMPACT: The sale of jet fuel will replenish the Airport's reserves used to fund this appropriation for fuel. The Airport's reserve fund was certified on of July 1, 2022 at \$8,878,844.

STAFF ASSISTANCE: Katie R. Servis, Airport Manager; Mark A. Milne, Director of Finance

B. NEW BUSINESS (May be acted upon) (Roll Call 2/3 Full Council)

BARNSTABLE TOWN COUNCIL

**ITEM# 2023-062
INTRO: 11/17/2022**

2023-062 APPROVAL OF THE CHANGE IN PURPOSE OF THE PROPERTY LOCATED AT 164 ROUTE 149, MARSTONS MILLS, AS SHOWN ON ASSESSORS' MAP 078, PARCEL 074

ORDERED: That, having received notice that the Town Manager has determined that the property located at 164 Route 149, Marstons Mills, as shown on Assessors' Map 078, Parcel 074 (the "Property"), which is in the care, custody, management and control of the Town Manager, is no longer needed for a parking lot, the purpose for which it was acquired by purchase, as recorded at the Barnstable County Registry of Deeds in Book 29787, Page 40, the Property shall remain in the care, custody, management and control of the Town Manager for the purpose of disposition by sale, provided it is appropriately restricted for affordable housing; and, provided further, that the Town Manager shall obtain Town Council approval prior to any such disposition.

SPONSOR: Mark S. Ells, Town Manager

DATE	ACTION TAKEN
_____	_____
_____	_____

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

BARNSTABLE TOWN COUNCIL

ITEM# 2023-062
INTRO: 11/17/2022

SUMMARY

TO: Town Council
FROM: Mark S. Ells, Town Manager
DATE: November 17, 2022
SUBJECT: Approval of the change in purpose of the property located at 164 Route 149, Marstons Mills, as shown on Assessors' Map 078, Parcel 074

BACKGROUND: The subject property is a parcel located in the center of the Marstons Mills Village. The Town acquired this property in April 2016. The intent had been to demolish the house and put in parking to support Marstons Mills Center. The project included an Americans with Disabilities Act compliant path connection to the Marstons Mills Library so that the additional parking could support the Library activities. The Department of Public Works (DPW) retained a consultant to prepare a feasibility study for the parking lot, which was completed in October 2017.

ANALYSIS: In evaluating construction costs against maximizing the number of parking spaces, the issue of a 20" rise in height from the front to the back of the lot necessitated expensive retaining walls to maximize parking. The 2017 estimate of nearly \$850,000 to produce 52 parking spaces at this site was tabled. A 30 space parking lot at the 2017 price of \$250,000 also was considered, but failed to move forward. For Fiscal Year 2021, the parking lot proposal was revisited, and approximately 28 spaces at a project cost of \$315,000 did not secure priority in the CIP staff review process.

Subsequent discussion with Planning and Development and the Affordable Housing and Economic Development Trust has identified this property as a location for housing.

ACTION REQUESTED: The property was purchased under Town Council Order 2016-087, April 7, 2016, for \$255,000. The appropriation and loan order specifically identified the use as for a parking lot. The quit claim Deed also indicates that the property was purchased for Parking. Asset Management put this parcel through an internal review to all Town Departments to determine the merits of disposal or retention. The only use identified in this internal review was a possibility of affordable housing and this was brought to the Town Manager to make it available for disposition. The Town Council is requested to vote to change the purpose of the property from its current purpose of parking to a new purpose of disposition by sale for affordable housing. This would allow the Town Manager and Town Staff to proceed with the next steps leading to a Request for Proposal (RFP) to put this property out for disposal with that restricted use stated. The details of the affordable housing restriction will be set forth in the RFP documents.

This action supports the Town Council's strategic plan for Housing and Town Infrastructure & Assets.

FISCAL IMPACT: Currently the Town's DPW must occasionally tidy up the property by removing accumulating trash and any fallen trees. The house has been mothballed, and utilities have been shut off. The fiscal impact will be positive when the property is sold and the money is returned to the general fund and when DPW can redirect its resources to other priorities. The land would likely be returned to a taxable status, and the potential development of this parcel will help meet the identified need for additional housing. The land is currently assessed at \$117,100.

STAFF ASSISTANCE: David Anthony, Director of Asset Management