

**SPECIAL CITY COUNCIL MEETING AGENDA - VERSION 1**  
**PURSUANT TO CHARTER SECTION 2-6(c)(ii)**  
**REMOTE – MEETING DETAILS BELOW**  
**FEBRUARY 25, 2021**

**7:30 PM**

1. Call to Order
2. Public Comment
3. ORDR214\_10\_13\_2021 Low Street Purchase (Pending Motion to Approve)
  - a. ORDR214\_10\_13\_2021 with Amended Language
  - b. Including the following documents
    - i. Letter of Intent 7/10/2020
    - ii. Release Deed
    - iii. Restriction and Transfer of Control Document  
with Exhibit A entitled ‘Lot-A-1 Plan’ and further depicted on detailed plan  
as “Area of Conservation Restriction”
  - c. MEPA agreement
4. Good of the Order
5. Adjournment

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**MEETING DETAILS:**

Please click the link below to join the webinar:

*external e-mail use caution opening*

**Link to join Webinar**

Please click the link below to join the webinar:

<https://us02web.zoom.us/j/87444896875>

Or iPhone one-tap :

US: +19292056099,,87444896875# or +13017158592,,87444896875#

Or Telephone:

Dial: US: +1 929 205 6099

Webinar ID: 874 4489 6875

CITY OF NEWBURYPORT



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IN CITY COUNCIL

ORDERED:

October 13, 2020

Be it ordained by the City Council of the City of Newburyport as follows:

**THAT** the City Council of the City of Newburyport hereby approve and authorize the purchase of a portion of that property located at 57 Low Street (*depicted as Lot A-1 on the attached plan*) for general municipal purposes.

**FURTHER ORDERED THAT**, at the recommendation of the Mayor, \$220,000 is appropriated from free cash to pay costs of purchasing a portion of that property located at 57 Low Street (*depicted as Lot A-1 on the attached plan*), on the terms and conditions contained in the attached Letter of Intent (*dated July 10, 2020*) and draft deed to the City provided by the Commonwealth of Massachusetts Division of Capital Asset Management and Maintenance (DCAMM), for "general municipal purposes," and that the Mayor and the Treasurer are authorized to take any other action necessary or convenient to carry out this Order.

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Councillor Charles F. Tontar  
Chair, Budget & Finance Committee

**In City Council October 13, 2020:**

Motion to refer to Budget & Finance and to Planning & Development by Councillor Tontar, seconded by Councillor Khan. 10 yes, 1 no (Zeid). Motion passes.

**In City Council November 9, 2020:**

Motion to remove from Budget & Finance by Councillor Tontar, seconded by Councillor Khan. So voted. Motion passes.  
Motion to Refer to Budget & Finance, Planning & Development, and Committee of the Whole by Councillor Tontar, seconded by Councillor Khan. So voted.

**In City Council February 22, 2021:**

Motion to approve by Councillor Tontar, seconded by Councillor Khan. Motion to delay to date certain , February 25, 2021 at 7:30 pm by Councillor Tontar, seconded by Councillor Vogel. At 10:20 pm Council President Eigerman steps down, Counillor Connell becomes Council President Pro Tempore. Roll call vote. 8 yes, 3 (BL, SZ, JD). Motion passes. Motion to approve pending.

CITY OF NEWBURYPORT



IN CITY COUNCIL

December 14, 2020

ORDERED:

Be it ordained by the City Council of the City of Newburyport as follows:

**WHEREAS**, the Commonwealth of Massachusetts, acting through its Division of Capital Asset Management and Maintenance ("DCAMM") has offered to convey to the City, for general municipal purposes, an approximately 2.17-acre portion of that certain property known as 57 Low Street in Newburyport, Massachusetts and described in a deed recorded with the Essex South Registry of Deeds in Book 3799, Page 270, which portion is depicted as "Lot A-1" on that plan entitled: "57 Low Street Plan of Land Located in Newburyport, Massachusetts (Essex County) Prepared for City of Newburyport", dated June 5, 2019, prepared by Meridian Associates, a copy of which is attached to this Order; and

**WHEREAS**, Article 97 of the Amendments to the Massachusetts Constitution provides that the people shall have the right to clean air and water, freedom from excessive and unnecessary noise, and the natural, scenic, historic, and esthetic qualities of their environment, and declares those and other rights to be a public purpose; and

**WHEREAS**, the City Council, acting on behalf of the residents of Newburyport, wishes to authorize the acquisition of such land upon the condition that the rearward portion of Lot A-1 depicted as "Area of Conservation Restriction" on Exhibit A to the attached *Restriction and Transfer of Control* (the "Restriction"), which Restriction is adopted by the Council pursuant to its vote under this Order and thereby incorporated herein, be acquired for, held, and forever thereafter dedicated to open space and conservation purposes in accordance with the terms of the Restriction, and by its vote to thereby establish the City's "clear and unequivocal intent", under the meaning of *Smith v. City of Westfield* 478 Mass. 49 (2017), to subject said Area of Conservation Restriction and the City's use thereof to the protections of said Article 97;

**THEREFORE, IT IS ORDERED THAT** the City Council of the City of Newburyport hereby approves and authorizes the purchase of Lot A-1: (a) for open space and conservation purposes in accordance with the terms of the Restriction as to that portion of Lot A-1 depicted in the Restriction as "Area of Conservation Restriction", it being the express intent of the Council by its vote to subject the said "Area of Conservation Restriction" to the protections afforded under Article 97 of the Amendments to the Massachusetts Constitution, and provided further that the Newburyport Conservation Commission shall assume the care, custody, control and management of the Area of Conservation Restriction for the purposes set forth in Massachusetts General Laws Chapter 40 Section 8C and subject to the protections afforded under said Article 97; and (b) for general municipal purposes as to the remainder of Lot A-1 depicted on the aforementioned Exhibit A, provided however that within the twenty-five foot (25') buffer to wetland resource areas (also known under local Wetlands Protection Ordinance as the "No-Disturbance Zone"), also shown on Exhibit A, permanent disturbance of any kind is prohibited, including but not limited to grading, landscaping, vegetation removal,

pruning, cutting, filling, excavation, roadway construction and /or driveway construction and no variances shall be sought from the Newburyport Wetlands Protection Ordinance regarding said 25-Foot No-Disturbance Zone; Vegetation in the no disturb zone shall not be cut or trimmed in any manner unless authorized by the commission as part of regular maintenance required for man-made drainage systems (such as seasonal mowing). Notwithstanding the above limitations, no activity which will result in the alteration of land within the presumptive no disturbance zone shall be permitted by the commission with the following exceptions: (a) Planting of native vegetation or habitat management techniques designed to enhance the wetland values protected by the ordinance; (b) Construction and maintenance of unpaved pedestrian access paths not more than four (4) feet in width; (c) Maintenance of existing structures, utilities, stormwater management structures and paved areas; (d) Construction and maintenance of water dependent structures and uses; (e) Vista pruning and removal of dead and diseased vegetation consistent with conservation commission standards; (f) Construction of new utility lines where the proposed route is the best environmental alternative; (g) Septic system maintenance and, if a system has failed, repair/replacement meeting state/local standards where the maximum feasible buffer is maintained; (h) Where a buffer zone is already altered such that the required buffer cannot be provided without removal of structures and/or pavement, this requirement may be modified by the commission provided that it finds that the proposed alteration will not increase adverse impacts on that specific portion of the buffer area or associated wetland and that there is no technically demonstrated feasible construction alternative; as mitigation, the commission may require the applicant to plant or maintain a naturally vegetated buffer of the maximum feasible width given the size, topography, and configuration of the lot;

**IT IS FURTHER ORDERED THAT**, at the recommendation of the Mayor, the sum of Two-Hundred and Twenty Thousand Dollars (\$220,000) is hereby appropriated from Free Cash for the purchase of Lot A-1 in its entirety; and

**IT IS FURTHER ORDERED THAT** the Mayor and the Treasurer are authorized to take any other action necessary or convenient to carry out this Order, including, without limitation, the negotiation and approval of joint escrow instructions with DCAMM.

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Councillor Charles F. Tontar  
Chair, Budget & Finance Committee

**Plan of Land (June 5, 2019)**

*(attached behind)*

**Letter of Intent (July 10, 2020)**

*(attached behind)*



CHARLES D. BAKER  
GOVERNOR

KARYN E. POLITO  
LIEUTENANT GOVERNOR

*The Commonwealth of Massachusetts*  
*Executive Office for Administration and Finance*  
*Division of Capital Asset Management and Maintenance*  
*One Ashburton Place*

*Boston, Massachusetts 02108*

*Tel: (617) 727-4050*

*Fax: (617) 727-5363*

MICHAEL J. HEFFERNAN  
SECRETARY  
ADMINISTRATION & FINANCE

CAROL W. GLADSTONE  
COMMISSIONER

July 10, 2020

Donna D. Holaday, Mayor  
City of Newburyport  
60 Pleasant Street  
Newburyport, MA 01950

Dear Mayor Holaday:

Pursuant to M.G.L. Chapter 33, Section 126 the Commonwealth of Massachusetts is willing to convey to the City of Newburyport 2.17± acres of state-owned land and improvements located thereon located at 57 Low Street in the city of Newburyport, Massachusetts. The Division of Capital Asset Management and Maintenance ("DCAMM"), as the agency charged with the disposition of surplus state property, is handling this transaction on behalf of the Massachusetts Military Division,

Martha McMahon, Deputy General Counsel, of DCAMM and I will be responsible for the closing for the Commonwealth. I can be contacted at (857) 204-1565 or by e-mail at warren.madden@mass.gov. Martha McMahon can be contacted at (857) 204-1312 or by e-mail at martha.mcmahon@mass.gov.

For the closing, the City of Newburyport will be required to provide the closing funds via a wire transfer or a bank check in the amount of \$220,000 payable to the Commonwealth of Massachusetts. In addition, the City of Newburyport will be required to execute and deliver the following documents to DCAMM:

- Beneficial Interest Disclosure Statement (document to be provided by DCAMM)
- MEPA Agreement (document to be provided by DCAMM)

The closing of this real estate transaction will be scheduled for no later than December 31, 2020.

Thank you.

Sincerely,

*Warren A. Madden*

Warren A. Madden  
Project Manager  
Office of Real Estate Management

Cc: Paul M. Crowley, Deputy Commissioner, DCAMM  
Stephen R. Andrews, Director, DCAMM  
Nicholas J. Tsaparris, Deputy Director - Asset Management, DCAMM  
Martha J. McMahon, Deputy General Counsel, DCAMM  
Colonel Timothy A. Mullen, State Quartermaster, Massachusetts Military Division  
File

**Release Deed**

*(attached behind)*

**DRAFT**

**RELEASE DEED**

THE COMMONWEALTH OF MASSACHUSETTS, acting by and through the Commissioner of its DIVISION OF CAPITAL ASSET MANAGEMENT AND MAINTENANCE, having an address at One Ashburton Place, Boston, Massachusetts 02108 (the "Grantor"), acting under the authority of Massachusetts General Laws Chapter 33, Section 126, for consideration of Two Hundred Twenty Thousand Dollars (\$220,000.00), the receipt and sufficiency of which the Grantor hereby acknowledges, does hereby grant and release to the CITY OF NEWBURYPORT, with a mailing address of 60 Pleasant Street, Newburyport, Massachusetts 01950 (the "Grantee"), without covenants, a certain parcel of land with existing improvements located thereon (the "Premises"), located at 57 Low Street, Newburyport, Massachusetts, containing 2.17± acres, more or less, depicted as "Lot A-1" on that certain plan entitled: "57 Low Street Plan of Land Located in Newburyport, Massachusetts (Essex County) Prepared for City of Newburyport", dated June 5, 2019, prepared by Meridian Associates, 500 Cummings Center, Suite 5950, Beverly, MA 01915, and recorded herewith at the Southern Essex District Registry of Deeds in Plan Book \_\_\_\_\_ Plan \_\_\_\_\_ (the "Plan").

The Premises are conveyed subject to all matters of record to the extent the same are in force and effect and subject to applicable laws, rights, and encumbrances.

The Premises are conveyed subject to the restriction that the Premises shall be used for general municipal purposes, which purposes may include the acceptance, dedication, use, and preservation by Grantee of any part of the land for open space and conservation purposes, subject to the protections of Article 97 of the Amendments to the Massachusetts Constitution, and prohibitions on permanent disturbance within the 25-foot buffer to wetland resource areas. If the Premises cease to be used for general municipal purposes, title to the Premises shall, upon the Commonwealth's recording of a notice with the Southern Essex District Registry of Deeds, revert to the Commonwealth of Massachusetts.

For the Commonwealth's title see Deed recorded with the Southern Essex District Registry of Deeds in Book 3799, Page 270.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Commonwealth of Massachusetts has executed this Release Deed as a sealed instrument as of the \_\_\_\_ day \_\_\_\_\_, 2021.

COMMONWEALTH OF MASSACHUSETTS acting by and through the Commissioner of its Division of Capital Asset Management and Maintenance

By: \_\_\_\_\_  
Carol W. Gladstone, Commissioner

The undersigned certifies under penalties of perjury that I have fully complied with Sections 32 and 38 of Chapter 7C of the Massachusetts General Laws in connection with the property described herein.

By: \_\_\_\_\_  
Carol W. Gladstone, Commissioner, Division of Capital Asset Management and Maintenance

**THE COMMONWEALTH OF MASSACHUSETTS**

Suffolk, ss.

On this \_\_\_\_ day of \_\_\_\_\_, 2021, before me, the undersigned notary public, personally appeared Carol W. Gladstone, proved to me through satisfactory evidence of identification, which were personally known to me, to be the person whose name is signed on the preceding document, and acknowledged to me that she signed it voluntarily, in her capacity as Commissioner of the Division of Capital Asset Management and Maintenance, for its stated purpose.

\_\_\_\_\_  
Notary Public

My Commission Expires \_\_\_\_\_

## ACCEPTANCE OF DEED

The foregoing Release Deed from the Commonwealth of Massachusetts for the land at 57 Low Street depicted as Lot 1-A on the plan recorded therewith, is hereby accepted pursuant to the authority granted by the vote of the Newburyport City Council dated \_\_\_\_\_, an attested copy of which is recorded herewith and any other authority in any way appertaining.

EXECUTED as of this \_\_\_\_ day of \_\_\_\_\_, 2021.

CITY OF NEWBURYPORT

By its Mayor,

\_\_\_\_\_  
Donna D. Holaday

## COMMONWEALTH OF MASSACHUSETTS

Essex, ss.

On this \_\_\_\_ day of \_\_\_\_\_, 2021, before me, the undersigned notary public, personally appeared Donna D. Holaday, Mayor of the City of Newburyport as aforesaid, proved to me through satisfactory evidence of identification, which was \_\_\_\_\_, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she signed it voluntarily for its stated purpose on behalf of the City of Newburyport.

\_\_\_\_\_  
Notary Public:

My Commission Expires:

**Restriction and Transfer of Control**

*(attached behind)*

## **RESTRICTION AND TRANSFER OF CONTROL**

Pursuant to Order 214 approved by the Newburyport City Council on February 22, 2021, the City Council hereby designates the care, custody, management, and control of that certain portion of "Lot A-1" depicted as "Area of Conservation Restriction (Transfer of Control)" on Exhibit A attached hereto to the Newburyport Conservation Commission, to be held, used, and preserved for open space and conservation purposes subject to the terms set forth below, and provided that such purposes shall include the authority to do all things necessary to preserve the land in its natural state and allow for public passive recreation,

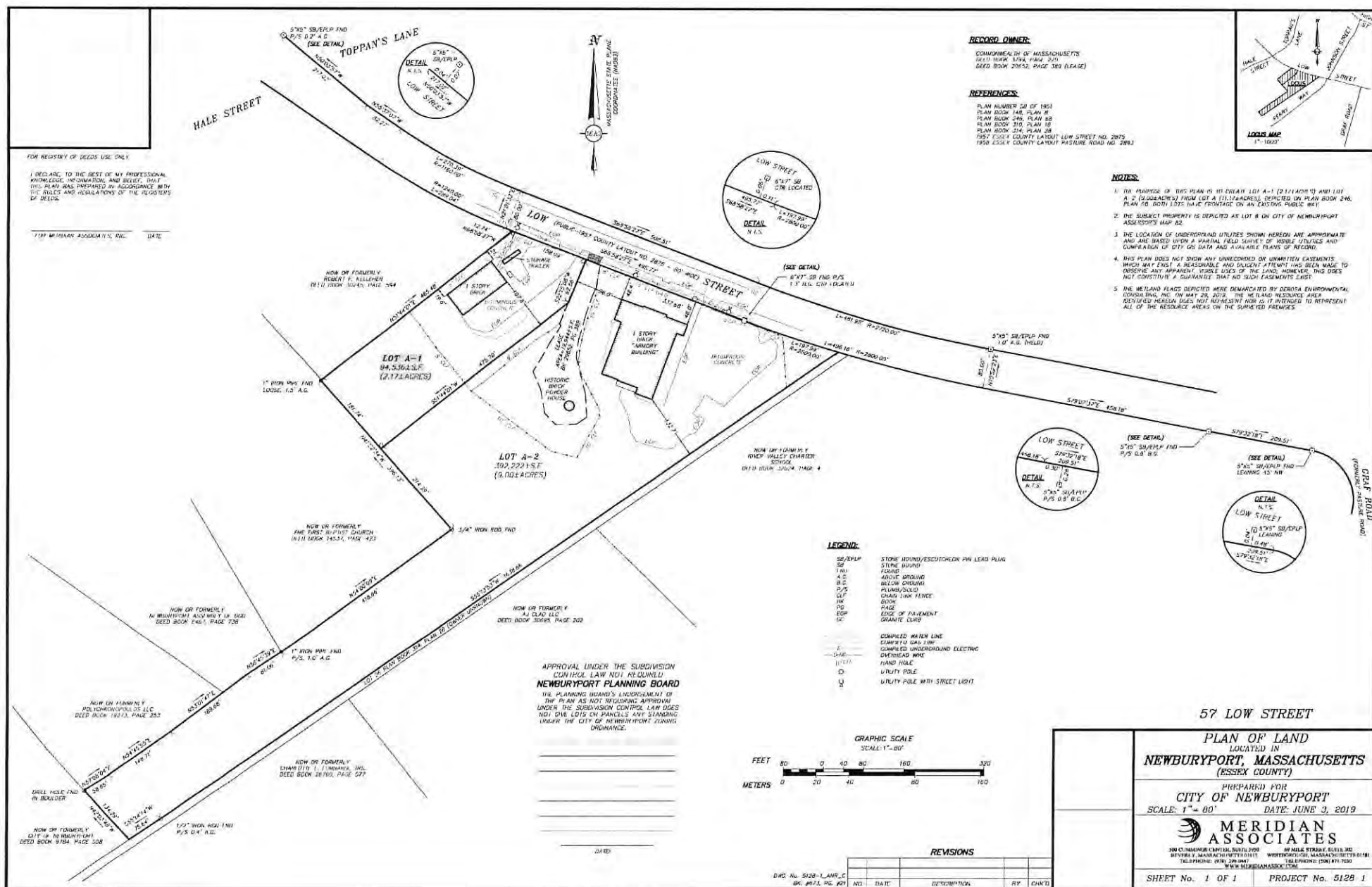
This transfer of the right to administer and control said area is authorized by a vote by the Newburyport City Council, duly moved and seconded, at the City Council meeting held on February 22, 2021, an attested copy of which vote is attached hereto as Exhibit B.

Said area is transferred for the purposes as set forth in Massachusetts General Laws (MGL) Chapter 40, Section 8C and is hereby subject to the protections afforded under Article 97 of the Amendments of the Massachusetts Constitution.

Exhibit A

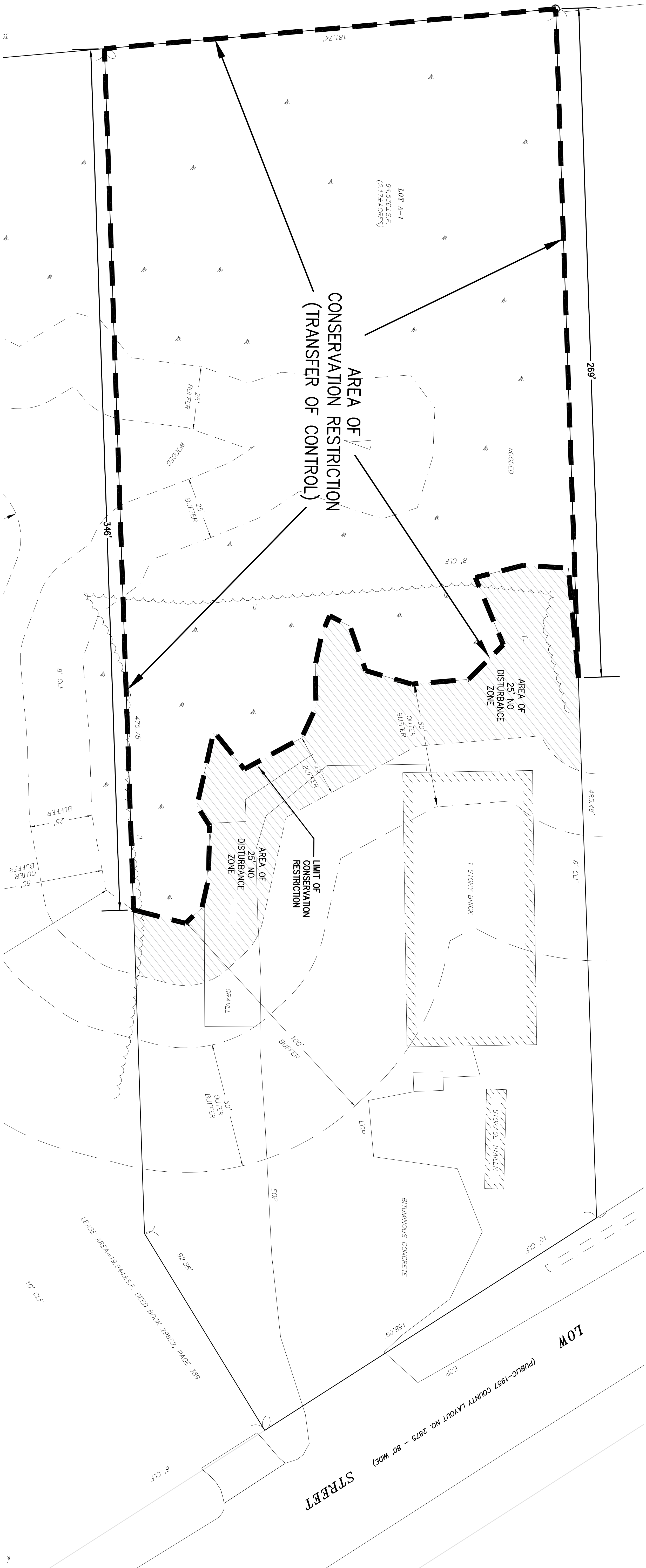
Plan of "Area of Conservation Restriction (Transfer of Control)"

*(inserted behind)*



NOTES:

1. THE INFORMATION SHOWN HEREIN IS FROM "SKETCH PLAN OF LAND", 57 LOW STREET, BEVERLY, MA, DATED JUNE 20, 2019.
2. THE PROPOSED CONSERVATION RESTRICTION LINE IS FOR PRECISION PURPOSES ONLY AND IS NOT INTENDED TO REFLECT METES AND BOUNDS OF A CERTIFIED SURVEY PLAN.
3. THE CONSERVATION RESTRICTION LINE MATCHES THE METE AND BOUNDS LINE AS DEPICTED ON THE "SKETCH PLAN OF LAND", 57 LOW STREET, PREPARED FOR THE CITY OF NEWBURYPORT BY MERIDIAN ASSOCIATES OF BEVERLY, MA, DATED JUNE 20, 2019.



CITY OF NEWBURYPORT  
DEPARTMENT OF PUBLIC SERVICES  
16A PERRY WAY  
NEWBURYPORT, MA 01950

Rev No	Date	Drawn	Chkd	

Designed By:  
D. GAGNON  
Checked By:  
J.E. WHITE  
Date:  
FEBRUARY 23, 2021

SCALE:

0 20 40 FEET

1" = 20' HORIZ.

57 LOW STREET  
NEWBURYPORT, MA  
TRANSFER OF CONTROL  
(CONSERVATION RESTRICTION)

Sheet No.  
1 OF 1  
C-1

Exhibit B

Attested Copy of Vote on Order 214

*(inserted behind)*

## MEPA Agreement

The undersigned in partial consideration and as a condition to the deed of Commonwealth land and improvements, if any, a parcel of state-owned land comprising approximately 2.17± acres , known as Lot A-1, located at 57 Low Street in the city of Newburyport (the "Land") acknowledges and agrees that if there is any work or activities proposed on the Land which meets or exceeds a review threshold under the Massachusetts Environmental Policy Act ("MEPA") regulations at 301 C.M.R. 11.00 et. seq. ("MEPA Regulations"), then prior to "Commencement of Construction" as defined under the MEPA Regulations, the undersigned shall file or cause to be filed with the MEPA Office at the Executive Office of Environmental Affairs, all such documents as are required by the MEPA Regulations in connection with such work or activities and shall complete the MEPA process. In any such filing, the fact that the Land was acquired from the Commonwealth within five years of the acquisition shall be disclosed. The undersigned also acknowledges that the MEPA Regulations provide that the scope of review of a project undertaken on land acquired from the Commonwealth extends to all aspects of the project undertaken on such land that are likely, directly or indirectly, to cause Damage to the Environment, as more specifically provided in the MEPA Regulations. The undersigned also agrees to provide to the Division of Capital Asset Management and Maintenance evidence of satisfaction of these MEPA requirements with respect to any work or activity at the Land occurring within five years after the execution and delivery of the deed.

This agreement survives the delivery of the deed and binds the undersigned and its successors and assigns.

Executed under seal

By \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Received By The Commonwealth of  
Massachusetts Division of Capital Asset  
Management and Maintenance

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_