

**END OF CONSENT AGENDA
BEGINNING OF REGULAR AGENDA**

COMMUNICATIONS

Parliamentary procedure

Parliamentary procedure, also called **rules of order**, the generally accepted rules, precedents, and practices commonly employed in the governance of deliberative assemblies. Such rules are intended to maintain decorum, to ascertain the will of the majority, to preserve the rights of the minority, and to facilitate the orderly transaction of the business of an assembly.

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Origins and development

Rules of order originated in the early British Parliaments. In the 1560s Sir Thomas Smith wrote an early formal statement of procedures in the House of Commons, which was published in 1583. *Lex Parliamentaria* (1689; "Parliamentary Law") was a pocket manual for members of Parliament and included many precedents that are now familiar. Drawing from the *Journal* of the House of Commons, it included points such as the following:

1. One subject should be discussed at a time (adopted 1581).
2. The chair must always call for the negative vote (1604).
3. Personal attacks and indecorous behaviour are to be avoided in debate (1604): "He that digresseth from the Matter to fall upon the Person ought to be suppressed by the Speaker....No reviling or nipping words must be used."
4. Debate must be limited to the merits of the question (1610): "A member speaking, and his speech, seeming impertinent, and there being much hissing and spitting, it was conceived for a Rule, that Mr. Speaker may stay impertinent speeches."

Depending heavily on procedures developed in the British Parliament, colonists in America governed under written charters and grants, an experience that influenced the framing of state constitutions and the Constitution of the United States (1787). The first work to interpret and define parliamentary principles for the new American government was *A Manual of Parliamentary Practice* (1801), written by Thomas Jefferson, the third president of the United States.

The modern system of general parliamentary law and practice is, in many respects, at wide variance with the current systems of procedure of both the British Parliament and the U.S. Congress. Rules designed for legislatures that use a bicameral system with paid memberships, that meet in continuous session, that require a majority for a quorum, and that delegate their duties largely to committees address special legislative requirements. They are, as a whole, unsuited to the needs of an ordinary assembly.

An early attempt in the United States to serve “assemblies of every description...especially...those not legislative in their character” was the *Manual of Parliamentary Practice* (1845), by Luther S. Cushing (1803–56), a jurist and clerk of the Massachusetts House of Representatives. *Robert’s Rules of Order* (1876), codified by U.S. Army officer General Henry M. Robert (1837–1923), which has gone through various editions and reprintings and continues to be published in periodic editions, has had a lasting impact on the development of parliamentary procedure.

Rules of parliamentary procedure

According to *Robert’s Rules*, a “deliberative assembly,” to which parliamentary law is ordinarily applied, has the following characteristics: it is an independent or autonomous group convened to determine actions of the group in free discussion; its size is sufficiently large that formal proceedings are necessary; its members are free to act, and each member’s vote has equal weight; failure to agree “does not constitute withdrawal from the body”; and members who are present act for the entire membership “subject only to such limitations as may be established by the body’s governing rules.”

The will of such a deliberative assembly is expressed by its action on proposals submitted for consideration in the form of motions or resolutions offered by members. In order to make a motion, a member ordinarily must rise and address the chair and secure recognition. If the motion is considered in order and is seconded by another member, it is “stated” by the presiding officer and then is subject to the action of the assembly.

Motions may be classified as main motions, which introduce a proposition, or as secondary motions, which are designed to affect the main motion or its consideration. A main motion is in order only when there is no other business before an assembly. It yields in precedence to all other questions.

Secondary motions may be subdivided into (1) subsidiary, (2) incidental, and (3) privileged. Subsidiary motions are applicable to other motions for the purpose of modifying the main question or affecting its consideration and disposition. The subsidiary motion to lay on the table is, in American usage, a motion to suspend consideration of the question until such time as the assembly may determine to take it from the table for further consideration. The motion is not debatable and may not be amended, postponed, committed, divided, or reconsidered. The purpose of the motion for the previous question is to close debate peremptorily and bring the assembly to an immediate vote on the pending question. It precludes both debate and amendment and requires a two-thirds vote for passage under general parliamentary procedure. The motions to commit, recommit, and refer are practically equivalent.

Motions to amend, which call for changes in the text or terms of the proposition, require a second and must be reduced to writing if requested by the chair. There is no limit to the number of amendments that may be proposed, and new amendments may be offered as rapidly as the pending amendment is disposed of. Motions to amend generally are not entertained unless germane or relevant to the main question.

Incidental motions include questions arising incidentally in the consideration of other questions and decided before disposition of the one to which they are incident. They comprise motions to suspend the rules, withdraw motions, read papers, raise the question of consideration, raise questions of order and appeal, reconsider, take up out of order, determine the method of procedure, divide pending questions, and raise questions relating to nominations. Points of order may be made while another has the floor and when the question concerns the use of unparliamentary language. The question must be raised at the time the proceeding giving rise to the objection occurs.

Privileged motions relate to matters of such urgent importance that they temporarily supersede pending business. They take precedence over all other motions and may be offered while other questions are pending. In this class of motions are the motions to fix the time at which to adjourn, to adjourn, to take a recess, and to raise questions of privilege, all of which are undebatable.

Motions to take from the table, to discharge a committee, to accept the report of a committee, to rescind, to repeal, to annul, to expunge, and to permit a member to resume the floor after having been called to order for words spoken in debate are unclassified.

To debate a question, a member must be recognized by the presiding officer. The presiding officer first recognizes the mover of a proposition or the member of a committee presenting a report and endeavours to alternate recognitions between those favouring and those opposing a question. Under general parliamentary procedure, a member securing the floor may speak without limit, though it is customary to adopt a rule limiting debate to a specified number of minutes. In debate a member must confine remarks to the question under consideration, must avoid personalities, and must not arraign motives. A presiding officer who is a member of the assembly has the right to debate and to participate in the proceedings but generally calls another to the chair before taking the floor and does not resume it again until the pending question has been decided.

Voting may be by ballot, by division (i.e., a rising, or standing, vote), by *viva voce* (a voice vote), by show of hands, by tellers who may take the count in various ways, and by yeas and nays (the clerk calling the roll and recording each vote). If there is doubt as to the result of a voice vote, any member may request that a formal vote be taken. Only members in attendance may vote, unless provision has been made for proxy votes. A tie vote defeats an affirmative motion. The presiding officer, if a member of the assembly, may vote to break a tie or to make one.

The committee of the whole consists of the entire assembly acting as a general committee. It affords greater freedom of consideration, but in bodies other than legislative assemblies it is rarely used.

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Deliberative assembly

A **deliberative assembly** is a gathering of members (of any kind of collective) who use parliamentary procedure to make decisions.

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Etymology

In a speech to the electorate at Bristol in 1774, Edmund Burke described the British Parliament as a "deliberative assembly," and the expression became the basic term for a body of persons meeting to discuss and determine common action.^{[1][2]}

Characteristics

Robert's Rules of Order Newly Revised describes the following characteristics of a deliberative assembly:^[3]

- A group of people meets to discuss and make decisions on behalf of the entire membership.
- They meet in a single room or area or under equivalent conditions of simultaneous oral communication.
- Each member is free to act according to their own judgement.
- Each member has an equal vote.
- The members at the meeting act for the entire group, even if there are members absent.

Rights of members

A member of a deliberative assembly has the right to attend meetings, and make motions, speak in debate, and vote.^[4] Organizations may have different classes of members (such as regular members, active members, associate members, and honorary members), but the rights of each class of membership must be defined (such as whether a "member" in a class has the right to vote).^{[4][5]} There may also be ex-officio members, or persons who are members by virtue of some other office or position they hold.^[6] Ex-officio members have the same rights as other members.^[6]

Types

Robert's Rules of Order Newly Revised identifies several types of deliberative assemblies.

Mass meeting

A *mass meeting*, which is an unorganized group meeting open to all individuals in a sector of the population who are interested in deliberating about a subject proposed by the meeting's sponsors. Examples include meetings to discuss common political concerns or community interests.^[7]

Local assembly of an organized society

A *local assembly of an organized society*, which is a membership meeting of a local chapter or branch of a membership organization.^[8] Examples include local chapter meetings of organizations like the Sierra Club.

Convention

A *convention*, which is a meeting of delegates who represent constituent units of a population. Conventions are not permanently established bodies, and delegates are normally elected for only one term. A convention may be held by an organized society, where each local assembly is represented by a delegate.^[9]

Legislative body

A *legislative body*, which is a legally established public lawmaking body. It consists of representatives chosen by the electorate. Examples include national legislatures such as parliaments, and local government councils such as state legislatures, regional assemblies and city councils.^[10]

Board

A *board*, which is an administrative, managerial, or quasi-judicial body. A board derives its power from an outside authority that defines the scope of its operations. Examples include an organized society's or company's board of directors and government agency boards like a board of education.^[11]

Committees

A *committee* is a body of one or more persons subordinate to a deliberative assembly. A committee is not itself considered to be a form of assembly.^[12]

See also

- Deliberation
- Deliberative democracy
- Direct democracy
- Meeting (parliamentary procedure)
- Voting methods in deliberative assemblies
- Legislative assembly

A **city council**, **town council**, **town board**, or **board of aldermen** is the legislative body that governs a city, town, municipality, or local government area.

References

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6. "Frequently Asked Questions about RONR (Question 2)" (<http://www.robertsrules.com/faq.html#2>). *The Official Robert's Rules of Order Web Site*. The Robert's Rules Association. Retrieved 2015-12-04.
7. *Robert* 2011, pp. 5-6
8. *Robert* 2011, pp. 6-7
9. *Robert* 2011, pp. 7-8
10. *Robert* 2011, p. 8
11. *Robert* 2011, pp. 8-9
12. *Robert* 2011, p. 489

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- Burke, Edmund (1854). *The Works of the Right Honourable Edmund Burke, Volume 1* (<https://books.google.com/books?id=nOxxcN2GDPQC&pg=PA447>). London, England: Henry G. Bohn.
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State Library of Massachusetts

Monday, October 28, 2013

Parliamentary Procedure: Manuals and Rules Congress, State Legislatures, Organizations

Parliamentary procedure, sometimes called parliamentary practice, is applied to a code of reference, a book or manual, that contains parliamentary rules that are adopted for use by varying organizations. Three distinct groups use this form of practice as described below.

Manual of Parliamentary Practice for the Use of the Senate of the United States was written by Thomas Jefferson in 1801. This is the first American book on parliamentary procedure. Jefferson studied parliamentary procedure at the College of William and Mary.

In 1828, the Senate published a version of "Jefferson's Manual," eliminating the Senate Rules. Then starting in 1888 through 1977, the *Senate Manual* included Jefferson's *Manual* in the biennial editions. The Senate removed Jefferson's *Manual* because their manual was growing in a section entitled "General and Permanent Laws Relating to the United States Senate."

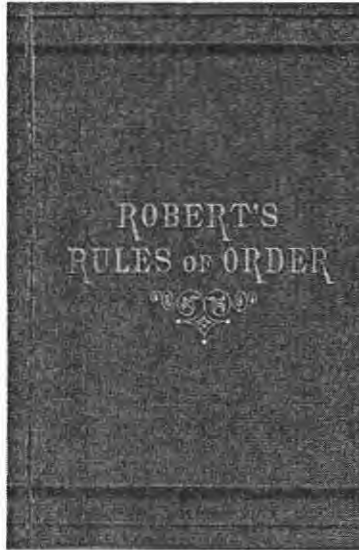
The House of Representatives incorporated Jefferson's *Manual* into its rules starting in 1837. The House prints an abridged version entitled *Constitution, Jefferson's Manual and Rules of the House of Representatives*. This version is online starting with the 104th Congress in 1995 to the present time. The State Library has the current paper edition at the Reference Desk.

Mason's Manual of Legislative Procedure is the only publication designed for state legislature. It is published by NCSL (National Conference of State Legislatures) and is divided into ten parts: including Parliamentary Law and Rules; Rules Governing Particular Motions; Quorum, Voting and Elections; Conduct of Business and Investigations and Public Order.

Mason's is available for purchase from the NCSL bookstore, information about the publication can be found here. The State Library has a copy at the Reference Desk.

Robert's Rules of Order, Newly Revised, was originally published in 1876 by General Henry Martyn Robert who was involved in church and civic organizations and had studied parliamentary law. Its original title was: *Pocket Manual of Rules for Deliberative Assemblies*. There has been 11 revised editions of the rules starting in 1876.

The cover states that *Robert's* is "the only current and authorized edition of the classic work on parliamentary procedure." The book is primarily designed for societies. The most current edition recognized that technology has created change. The index has references to emails, videoconferences and teleconferences.



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Posted by State Library Staff at 10:51 AM



Labels: [Jefferson's Manual](#); [Mason's Manual](#); [Robert's Rules of Order](#).

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To: Richard Jones

Subject: [Ext]RE: [Ext]RE: Question on Serial Communications - Follow-up

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Good Afternoon Mr. Jones,

Technically, if less than a quorum of Council members discuss Council business outside of a properly posted meeting, then the Open Meeting Law might not be implicated. As Attorney Monahan explained, deliberation is defined as "an oral or written communication through any medium, including electronic mail, between or among a quorum of a public body on any public business within its jurisdiction." Fewer than a quorum of a body's members may discuss matters within that body's jurisdiction without that communication being a deliberation. However, if you have 5 members (less than a quorum) discussing a matter and one of those members separately reaches out to one more member, then you have reached a quorum in a serial fashion and have likely deliberated outside of a properly posted meeting. Moreover, anytime you have multiple members discussing Council business outside of a meeting, even if the discussion involves less than a quorum of members, there is always the appearance of impropriety and therefore any discussions involving Council business are best done in a properly posted meeting. I attach a determination involving a similar issue that might provide additional instruction and guidance.

Sincerely,

Kerry Kilcoyne

Assistant Attorney General

Division of Open Government

Office of the Massachusetts Attorney General

One Ashburton Place, 20th Floor

Boston, MA 02108

Ph: (617) 963-2540

openmeeting@state.ma.us

From: Richard Jones <RJones@CityofNewburyport.com>

Sent: Thursday, January 28, 2021 1:24 PM

To: OpenMeeting (AGO) <OpenMeeting@MassMail.State.MA.US>

Subject: RE: [Ext]RE: Question on Serial Communications - Follow-up

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Hi Attorney Monahan,

We had a Council meeting last night and your opinion was discussed. I wonder if I might ask you to clarify one point. Is it permissible for an original sponsor to contact up to four more Councillors (we have an eleven member council) and ask if they wish to be added as a sponsor? In other words, what type of contact is permissible and may the Councillors discuss the substance of the Resolution.

Also, I wanted you to know that Councillor Eigerman contacted you about a separate issue – the use of email addresses by Councillors.

Thank you,

Richard

Richard B. Jones
City Clerk
City of Newburyport
60 Pleasant Street
Newburyport, MA 01950

978.465.4407

From: OpenMeeting (AGO) [<mailto:openmeeting@state.ma.us>]
Sent: Wednesday, January 27, 2021 4:24 PM
To: Richard Jones
Cc: envirocom50@gmail.com
Subject: [Ext]RE: Question on Serial Communications

external e-mail use caution opening

Hello Mr. Jones,

Thank you for contacting the Division of Open Government. I also received your voicemail and a voicemail from the Newburyport City Council President about this question. Please forward this email to the President, if he is not already copied.

As you know, the Open Meeting Law prohibits deliberation between or among a quorum of public body members outside of an open meeting. "Deliberation" is defined as "an oral or written communication through any medium, including electronic mail, between or among a quorum of a public body on any public business within its jurisdiction." The expression of an opinion of one public body member on issues within the public body's jurisdiction to a quorum of the public body is deliberation, even if no other public body member responds. For purposes of the Open Meeting Law, a quorum is a simple majority of the members of a public body.

In your case, it would be permissible for the Clerk to send an email to all Councilors asking if they would like to sponsor a resolution (we recommend using "bcc" so that the Councilors are not tempted to reply-all). The Councilors can then individually reply to the Clerk with their sponsorship decisions. The Clerk can compile the sponsorship list, which will contain Councilors' opinions on a matter of Council business. The Clerk may then share the list with less than a quorum of the Council (for example the Chair and sponsor). On the other hand, the Clerk should NOT send the compiled list to more than a quorum of the Council (and certainly not the whole Council). Finally, the Clerk can announce the outcome at the Council's next posted meeting.

Please let us know if you have any further questions.

Sincerely,

Sarah Monahan
Assistant Attorney General
Division of Open Government
Massachusetts Office of the Attorney General
One Ashburton Place
Boston, MA 02108
Phone: 617-963-2540
Pronouns: she/her/hers

From: Richard Jones <RJones@CityofNewburyport.com>
Sent: Wednesday, January 27, 2021 2:15 PM
To: OpenMeeting (AGO) <OpenMeeting@MassMail.State.MA.US>
Cc: envirocom50@gmail.com
Subject: Question on Serial Communications

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Hello,

I am the writing on behalf of the Newburyport City Council and myself with respect to procedure and the OML. On occasion, Resolutions filed with the City Council seek the sponsorship of all 11 Council members. If more than 5 Councillors discuss the Resolution, it would be at least a serial communication outside of the meeting of the Council. In order to obtain 11 sponsors, is it permissible for the Clerk to send the Resolution to the individual Councillors and ask if they wish to sponsor it? The Clerk would not take any changes back to the President or original sponsor as that would be the beginning of a deliberation.

Any thoughts?

Thank you,

Richard

Richard B. Jones
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June 4, 2013

OML 2013 – 75

David J. Rushford
City Clerk
City Hall, Room 206
455 Main St.
Worcester, MA 01608

RE: Open Meeting Law Complaint

Dear Mr. Rushford:

This office received two Open Meeting Law complaints from Nicole Apostola and Kevin Ksen, respectively, both dated September 20, 2012, alleging that the Worcester City Council (the “Council”) violated the Open Meeting Law, G.L. c. 30A, §§ 18-25. Ms. Apostola’s complaint alleges that the Council discussed an item during its June 26, 2012 meeting that was reasonably anticipated by the Chair 48 hours before the meeting, but was not included in the Council’s meeting notice. The complaint was filed with the Council on July 11, 2012. The Council responded by letter dated November 2, 2012. Mr. Ksen’s complaint alleges that on the morning prior to the Council’s June 26, 2012 meeting, the Mayor’s office sent an email to the entire Council regarding a proposed panhandling resolution, asking the Councilors if they “wish to sign onto this for tonight.” The complaint was filed with the Council on July 11, 2012. The Council responded by letter dated November 26, 2012.

Following our review, we find that a quorum of the Council did not deliberate on a proposed resolution, called an order, over email ahead of its June 26, 2012 meeting. Furthermore, we find that the Council did not violate the Open Meeting Law by voting on the order at its June 26, 2012 meeting, even though it was not listed in the meeting’s notice. In reaching this determination, we reviewed the two July 11, 2012 complaints filed with the Council; the September 20, 2012 complaints filed with our office; an October 22, 2012 letter from the Worcester City Solicitor to the City Manager; and the Council’s November 26, 2012 response to the complaint. Finally, we interviewed by telephone the Mayor’s Chief Secretary, Michael Lanava, on January 3, 2013.

FACTS

The Council is a public body consisting of eleven Councilors. The Mayor is a member, and Chair, of the Council. The notice for the Council's June 26, 2012 meeting listed 14 anticipated topics for discussion, including "New Business Under Suspension of Rules." The notice did not include a topic regarding panhandling.

On the morning of June 26, 2012, Michael Lanava, the Mayor's Chief Secretary, sent an email to the members of the Council. Mr. Lanava is not a member of the Council. The subject of the email was "panhandling," and Mr. Lanava wrote: "[t]he Mayor has asked that I forward you the language below. Please indicate by email if you wish to sign onto this for tonight. Please let me know by 4PM if possible." The language included in the email read: "Request City Manager develop a comprehensive resolution to the significant public safety issues from standouts and panhandling on medians, exit ramps, intersections, and within public rights of way and present this to City Council for further action at the July 17 City Council Meeting." Seven Council members replied to Mr. Lanava regarding his email. None of the recipients "replied to all." Two more Council members signed on to the order on the floor during the June 26, 2012 Council meeting.

According to a letter from the City Solicitor, dated October 22, 2012, and drafted in response to the two complaints, the Mayor "advised me that he decided to place [the panhandling order] before the city council 'under suspension' of the rules on June 26 because he was aware that the city council would [be] meeting only monthly in July and August (the next meeting was three weeks away, July 17) and that he did not want to wait until then to initiate a request to the city manager for a report into what appeared to be a public safety issue." According to Mr. Lanava, the Mayor decided during the weekend prior to the June 26, 2012 meeting to submit an order to the Council requesting a report from the City Manager regarding panhandling, following a sudden, significant increase in the presence of people engaging in the activity within the City.

DISCUSSION

The Open Meeting Law defines "deliberation" as "an oral or written communication through any medium, including electronic mail, between or among a quorum of a public body on any public business within its jurisdiction; provided, however, that 'deliberation' shall not include the distribution of a meeting agenda, scheduling information or distribution of other procedural meeting [material] or the distribution of reports or documents that may be discussed at a meeting, provided that no opinion of a member is expressed." G.L. c. 30A, § 18.

Mr. Ksen's complaint alleges that the Council deliberated over email when a member of the Mayor's staff sent an email on the Mayor's behalf to the entire membership of the Council. Generally, sending an email with proposed language for an order to be considered at an upcoming meeting is not deliberation because it constitutes distribution of "reports or documents that may be discussed at a meeting." G.L. c. 30A, § 18. Although this email additionally asked Council members to "[p]lease indicate by email if you wish to sign onto this for tonight," thereby

soliciting the opinions of the members as to whether or not they supported the order, we find there was no deliberation because there was no communication between or among a quorum of the Council. The email was sent by a person who was not a member of the Council, and the councilors responded to him individually. Had the Mayor sent the email himself, or used his secretary as a conduit for serial deliberation between members, the email would have been a violation of the Open Meeting Law. See OML 2013-27; OML 2012-84.¹ In the present instance, however, while the email was sent on the Mayor's behalf, we do not find sufficient evidence that he communicated with a quorum of the Council's members about the issue.

We caution that responses to the type of request sent by Mr. Lanava, if they were to reach a quorum of a body's members, would violate the Open Meeting Law. Mr. Lanava's email contained a request for the opinions of members, namely whether they wished to "sign onto" the order, in effect expressing their support for the measure. This type of poll over email is analogous to the impermissible practice of a member asking the other members for their votes over email. See OML 2011-35. Furthermore, while it did not occur here, this type of open-ended request could easily lead to an inadvertent or intentional reply to all recipients containing a public body members' opinion on the matter under review.

City Solicitor David Moore writes in his October 22, 2012 memorandum to the City Manager that "[c]o-sponsoring items is a centuries-old legislative practice. On its face there is no attempt to solicit opinions or provoke a series of emails discussing the merits of the order. There is only an attempt to offer councilors the opportunity to co-sponsor the introduction of an item to the legislative body." While we acknowledge that this practice has been in effect for many years, to the extent that such practice reaches a quorum of a body's members, it does not comply with the current Open Meeting Law. If the Council wishes to announce the sponsors of an order at the time it is introduced, an individual who is not part of the Council, rather than a Councilor, may make the request for sponsorship. For example, the City Clerk or a Council administrator could send an email, blind carbon copying the Council members, attaching a specific piece of legislation and requesting sponsorships. That same staff person could then compile the sponsorships, and announce the result during a meeting. The results should not be made public prior to the meeting, however, including in a publicly-posted meeting notice. While the change is admittedly minor, it would enable the Council to compile sponsorship information without members conducting an improper poll outside of a meeting (which is deliberation). See OML 2011-35. Alternatively, a Council member who introduces an order can request sponsors during a meeting, or at a prior meeting before the order is introduced.

We next address Ms. Apostola's complaint, which alleges that the Council discussed a topic during its June 26, 2012 meeting that was reasonably anticipated by the Chair 48 hours before the meeting, but was not included in the Council's meeting notice. The Open Meeting Law, G.L. c. 30A, § 20(b), states in relevant part that, "[e]xcept in an emergency, in addition to any notice otherwise required by law, a public body shall post notice of every meeting at least 48

¹ Open Meeting Law determinations may be found at the Attorney General's website, www.mass.gov/ago/openmeeting.

hours prior to such meeting, excluding Saturdays, Sundays and legal holidays... Notice shall be printed in a legible, easily understandable format and shall contain the date, time and place of such meeting and a listing of topics that the chair reasonably anticipates will be discussed at the meeting." Any topic for discussion that is reasonably anticipated by the chair of the public body 48 hours in advance of a meeting must be listed in a meeting notice. G.L. c. 30A, § 20(b). Here, it appears that the Mayor did not anticipate introducing the panhandling order until the weekend prior to the June 26, 2012 meeting – fewer than 48 hours in advance, excluding Saturdays and Sundays. Therefore, we find that the Council did not violate the Open Meeting Law by considering a topic that was not listed on the meeting notice. However, our office encourages public bodies to update their meeting notices or postpone discussion of topics that arise fewer than 48 hours before a meeting, so that members of the public may be given advance notice of agenda items. See OML 2012-19; OML 2012-3.

CONCLUSION

We find that a quorum of the Council did not deliberate on a proposed order over email ahead of its June 26, 2012 meeting. Furthermore, we find that the Council did not violate the Open Meeting Law by voting on the order at its June 26, 2012 meeting, even though it was not listed in the meeting's notice.

We appreciate the patience and cooperation of the parties during this investigation, and now consider this matter closed. Please contact me if you have any questions regarding this letter.

Sincerely,



Jonathan Sclarsic
Assistant Attorney General
Division of Open Government

cc: David Moore, City Solicitor
Worcester City Council
Nicole Apostola
Kevin Ksen

This determination was issued pursuant to G.L. c. 30A, § 23(c). A public body or any member of a body aggrieved by this order may obtain judicial review through an action filed in Superior Court pursuant to G.L. c. 30A, § 23(d). The complaint must be filed in Superior Court within twenty-one days of receipt of this order.



December 18, 2020

Christine Berry
Land Protection Specialist
Department of Conservation and Recreation
Bradley Palmer State Park
40 Asbury Street
Topsfield, MA 01983

Via Email

RE: SUPPLEMENTAL LETTER

Conservation Easement Rights in 34± acres of Vacant, Residentially-Zoned Land Located on Middle Street, West Newbury, Essex County, Massachusetts

Dear Christine:

At your request and in accordance with our agreement, I have re-inspected and reviewed my previously-completed appraisal of the above-referenced property (hereinafter, the "subject property") in the Town of West Newbury, Massachusetts for the purpose of developing a current opinion of market value of conservation easement rights in the subject property.

The effective valuation date of this re-appraisal is December 4, 2020, the date of my most recent re-inspection (curbside) of the subject property. The scope of this Supplemental Letter should be considered as an update to my previous appraisal of the subject property's fee simple market value and easement rights effective as of January 3, 2020 (report date of January 17, 2020). This original appraisal (referenced as the "Original Report") is incorporated herein by reference.

The fee simple market value opinion *prior to* the proposed conservation easement encumbrance which was fully developed in the Original Report was \$1,240,000, based on a combined Approval-Not-Required and Definitive Subdivision of thirteen lots, excluding wetlands.

The subject property's highest and best use *following* the conservation easement called for passive recreation and habitat protection. The estimated market value as though encumbered by a perpetual conservation easement was \$100,000. Accordingly, the indicated market value of restricted residential development rights as developed via the before-and-after methodology as of January 3, 2020 and was \$1,140,000.

This Supplemental Letter accounts for any significant changes to the subject property's physical condition, pertinent land use regulations and real estate market fluctuations over the 336-day (.92± year) update period.

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The primary focus of this Supplemental Letter report is to provide support for a current/updated opinion of market value of the fee simple interest in the property as well as value diminution resulting from the encumbrance of the subject property with a (contemplated) perpetual conservation easement (CE).

This Supplemental Letter has been completed in conformity with the reporting standards outlined in the Specifications for Analytical Narrative Appraisal Reports (2015 edition, Section III – “Revisions and Updates”) promulgated by the Commonwealth of Massachusetts Executive Office of Energy and Environmental Affairs (EEA). No Extraordinary Assumptions or Hypothetical Conditions are assumed, other than the imposition of the contemplated conservation easement. The intended users of this report include the Commonwealth of Massachusetts Executive Office of Energy and Environmental Affairs, the Essex County Greenbelt Association and authorized assigns.

It is my understanding that this re-appraisal/update will be used to support a contemplated purchase of the subject property’s development rights using various forms of public and private funding sources. The contemplated CE is assumed to take the form of a cash sale of the property’s residential development rights and no charitable gift is anticipated. Hence, this Supplemental Report is not intended as a “*qualified appraisal*” for charitable gift purposes.

1. Current Unencumbered Fee Valuation

Property Condition and Title Ownership Changes

Based on my most recent curbside inspection on December 4 2020, the subject property is in essentially the same condition as it was when initially appraised as of January of this year. Additionally, there are no recent or pending entitlements. As of the effective valuation date, fee simple title to the subject property was held by:

Preston E. Rogers and Debora M. Rogers
(As Joint Tenants)

No changes in ownership occurred over the update period.

2. Regulatory Overview/Highest & Best Use

There were no zoning or subdivision regulation changes or amendments over the .92 year update period. Accordingly, the highest and best use conclusion (i.e. 13-lot OSPD development) outlined in the Original Report remains valid.

3. Real Estate Market Overview/Update

My review of real estate market activity and trends over the nearly 11 month update period did not indicate any significant changes. The median residential market in West Newbury is best characterized

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as stable, with modest price appreciation resulting in part from diminishing sales volume. The median value and sales volume from 2018 – December of 2020 is summarized below:

Year	Median Single-Family Value	% Chg.	Sales Volume	% Chg.
2019	\$605,669	--	60 (5/mo.)	--
2020*	\$588,000	-2.9%	43 (4.3/mo.)	-28.4%

Source: The Warren Group

The partial year (10 months) median value trend is essentially idle for the update period and sales volume is down from an average of 5/units per month to roughly 4.3 units per month. This decline in inventory is consistent with the regional market trend tied to the Covid 19 pandemic.

There were only three closed residential lot/land sales in West Newbury over the update period, summarized as follows:

- **58 Ash Street, West Newbury:** 3.5 acre lot – sold for \$282,000 on 2/24/20;
- **13 Norino Drive, West Newbury:** 2.1 acre lot sold for \$350,000 on 4/8/20;
- **18 Norino Drive, West Newbury:** 4 acre *riverfront* lot sold for \$760,000 on 11/16/20.

One additional large acreage lot with Merrimack River frontage and an existing residence sold for \$1,160,000 on 12/17/20. The river frontage is bisected from the main body of the lot and the property abuts an overhead electric transmission line. It was purchased for development.

One notable development tract sale did close over the update period. An 89.8± acre tract comprised on three separate parcels at 430 Wethersfield Street in the nearby Town of Rowley closed on 8/11/20. The property sold with full approvals to develop 49 residential building lots under the town's Open Space Residential Development provision. The purchase price was \$2,500,000, or approximately \$51,020 per approved lot and \$27,839 per gross acre. These relatively low unit values reflect the inordinately extensive amount of new subdivision road required to access and service the subdivided lots. The property was also significantly constrained by various types of freshwater wetlands. It is notable that the approval process took nearly 2.5 years from start to finish. This sale is mentioned only because it was the only notable subdivision tract sale in the local market over the update period. It is not considered directly comparable – but inferior to the subject in terms of market location, projected lot pricing and very high infrastructure costs.

As outlined above, the market trend over the update period does not indicate any discernable market trend – either positive or negative – that would warrant adjustments to the retail lot pricing projections outlined in the Original Report. Lot pricing projections of \$330,000 for Tier 1 lots and \$285,000 for Tier II lots remain unadjusted and projected lot sales revenue remains at \$4,020,000.

Discounted cash flow assumptions included in the Original Report remain valid. The only input value subject to change over this relatively short update period would be developer yield/profit requirements. The overall discount rate used in the Original Report was 25%. My review of updated (Q4 2020) profit requirements for residential subdivisions in the New England region published by

RealtyRates indicates an average actual (survey) rate range of 16.92% - 34.89%, with an average of 25.39%. Accordingly, no adjustment is warranted for developer profit.

Based on this updated market analysis, there have been no measurable changes in local and/or regional real estate market dynamics that would cause me to adjust to my original estimate of fee simple market value. Accordingly, based on the additional market analyses performed, it is my opinion that the *unencumbered* fee simple market value of the subject property as of 12/04/20 was **\$1,240,000**.

4. Conservation Easement Rights Valuation

Conservation easement (CE) rights are calculated via the “before-and-after” approach whereby the property is first appraised as unencumbered and available for development to highest and best use. The property is then re-appraised *as though encumbered* by a perpetual CE and the value differential indicated by the two appraisals is considered to be the market value of residential development rights relinquished via the CE. In this regard, the “before” value of \$1,240,000 serves as a benchmark value in the analysis of the property’s CE rights.

The only factors to be considered in the updated valuation of the subject property in its post-easement condition include any revised/updated language regarding prohibited activities and reserved rights and market conditions affecting the value of easement-encumbered acreage. None have been reported and the primary use to be extinguished via the CE are residential development rights.

The “as encumbered” valuation outlined in my Original Report was based on an average unit value \$3,000 per restricted acre (34± acres), resulting in a contributory component value of \$100,000. My market research for additional encumbered/limited-utility acreage sales in the local and regional market occurring over the update period did not yield any new, directly pertinent data – and none that would warrant an adjustment to my earlier estimate. This segment of the market generally indicates very limited value volatility over time as this property type is considered a “limited market” product.

Accordingly, based on the additional market analyses performed, it is my opinion that the *as though encumbered* fee simple market value of the subject property as of 12/04/20 was **\$100,000**.

Based on the additional analyses completed, it is my opinion that the market value of residential development rights relinquished via the encumbrance of 34± acres of the subject property with a perpetual conservation easement is calculated and reaffirmed as follows:

Valuation	Highest & Best Use	Market Value*
Pre-Easement	13-Lot OSPD Residential Subdivision	\$1,240,000
Post-Easement	Passive recreation, forestry, open space & habitat protection	<u>\$100,000</u>
Indicated Market Value of CE Rights in 34± acres:		\$1,140,000



(ONE MILLION ONE HUNDRED FORTY THOUSAND DOLLARS)

Additional information in support of the above-outlined market value opinion is contained in my working file.

Thank you for this opportunity to provide the Essex County Greenbelt with professional planning and appraisal services and please do not hesitate to call with any questions.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "James E. Monahan". The signature is fluid and cursive, with a large, stylized initial "J" and "M".

James E. Monahan, Senior Advisor
LandVest, Inc – Real Estate Consulting Group (MA C.G. #3481)

CERTIFICATION OF VALUE

I hereby certify that:

1. I have made a personal inspection of the property that is the subject of this Supplemental Letter.
2. To the best of my knowledge and belief, the statements of fact and the opinions contained in this Supplemental Letter are true and correct.
3. The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and are my personal, unbiased professional analyses, opinions, and conclusions.
4. I have no present or prospective interest in the property that is the subject of this Supplemental Letter, and I have no personal interest or bias with respect to the parties involved.
5. My compensation is not contingent upon the reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value estimate, the attainment of a stipulated result, or the occurrence of a subsequent event.
6. This Supplemental Letter was not based on a requested minimum valuation, specific valuation or approval of a loan.
7. My analyses, opinions and conclusions were developed, and this report has been prepared, in conformity with the requirements of the Code of Professional Ethics and Standards of Professional Practice of The Appraisal Institute, as well as the Uniform Standards of Professional Appraisal Practice of the Appraisal Foundation. I am currently licensed as a Certified General Appraiser in **Massachusetts (CG #3481)**.
8. The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.
9. No one provided significant professional assistance to the person(s) signing this report.

Appraiser: _____

James E. Monahan



Date: December 18, 2020

Horsley Witten Group

Sustainable Environmental Solutions

113 R2 Water Street • Exeter, NH • 03833
603-658-1660 • horsleywitten.com



MEMORANDUM

To: Newbury Select Board and Newburyport City Council
From: Ellie Baker, Project Manager, Horsley Witten Group
Date: February 2, 2020
Re: Project Update: *Plum Island: Exploring Fiscal Implications of Sea Level Rise*
cc: Newbury Conservation Commission, Planning Board and Zoning Board
 Newburyport Conservation Commission, Planning Board and Zoning Board

On behalf of our Project Team, I am pleased to inform you about an important project we are undertaking with the Town of Newbury and the City of Newburyport, entitled *Plum Island: Exploring Fiscal Implications of Sea Level Rise*. This project aims to develop new information that can support the important decision-making that is underway in both communities to improve resilience and adapt to sea level rise impacts on Plum Island. This project is supported by a FY20-21 Municipal Vulnerability Preparedness (MVP) Action Grant awarded to the Town of Newbury from the Commonwealth of Massachusetts.

An overview of our project is provided on the following page. More information and updates will follow later this spring, and we hope to have your participation and input during our public engagement effort, currently in the planning stages for April. In the meantime, if you have questions or would like to know more about the project, please contact your municipal representative on our Project Team:

Newbury:	Martha Taylor, Planning Director
Newburyport:	Andy Port, Director of Planning and Development
	Julia Godtfredsen, Conservation Administrator

Our Project Consultant Team, contracted through the Town of Newbury, includes Camoin 310, who is leading the economic analysis, and the Consensus Building Institute, who is facilitating our advisory committee and will be guiding our public outreach effort. On behalf of our Team, we thank both communities for the opportunity to work with you on this project. We look forward to updating you later this winter.

Plum Island: Exploring Fiscal Implications of Sea Level Rise Project Overview

Context

Newbury and Newburyport MA share commercial and residential areas on the barrier island of Plum Island. The severity and frequency of erosion and flooding on Plum Island is expected to get increasingly worse in coming years, and both communities identified resilience planning for the island among their highest priority recommendations in their 2019 Municipal Vulnerability Preparedness (MVP) Planning Workshops.

Purpose

The project's goal is to lay the groundwork to better enable both communities to make thoughtful decisions regarding the challenges for long-term planning for Plum Island. Under the guidance of a multi-stakeholder advisory group from both communities and State and Federal agencies, the Technical Team (made up of Camoin310, the Horsley Witten Group, the Consensus Building Institute and planning staff from both communities) is gathering economic and fiscal information to help the towns evaluate long term management options for Plum Island. How can both communities responsibly manage the island, with all the public services that accompany that responsibility, and how can both communities prepare for change?

Outcomes

By June 2021, at the end of this project, Newbury and Newburyport will have analysis that lays out the economic and fiscal implications of Plum Island for the municipalities today and under possible future scenarios with different levels of sea level rise and management and policy conditions. This information can augment other types of information to assist municipalities in the coming years to make thoughtful decisions about planning and investment on Plum Island.

Project Elements

1. **Draft a baseline of the current fiscal and economic benefits and costs associated with Plum Island.** The fiscal analysis includes costs of providing services during normal conditions, considers costs of storms/flooding/erosion, and includes revenue from property taxes and other miscellaneous fiscal revenue from residents and visitors. The economic analysis looks at jobs, wages, sales, and both direct and indirect economic impacts of spending by Plum Island residents and visitors.
2. **Establish an advisory group of local representatives to oversee and guide the project.** The role of this group, representative of a variety of perspectives and types of expertise across the two communities, is to steer the project by reviewing technical approaches, helping to shape the questions being asked, and ensure that the results will be useful to the communities. They are also helping to guide the public engagement effort.
3. **Analyze several different future scenarios.** The technical team will analyze the expected fiscal and economic benefits and costs in future target years considering sea level rise in combination with outcomes from possible management and policy decisions.
4. **Engage the public and seek input on preliminary findings and next steps.** The technical team, with the advisory group's guidance, will plan to gather public comments on the initial findings of the project, and solicit input on how this information can be integrated into decision-making, what other information would be useful for decision-makers, and what next steps they envision for Plum Island planning.
5. **Share results.** After being reviewed by the advisory group, project results will be shared with community members and leaders in both municipalities.

Funding Support

This project is supported by a FY20-21 Municipal Vulnerability Preparedness (MVP) Action Grant awarded to the Town of Newbury from the Commonwealth of Massachusetts.

Phillips Drive Neighborhood Committee
C/O 21 Phillips Dr., Newburyport MA 01950

February 4, 2021

Mayor Donna Holaday & City Council
60 Pleasant Street
Newburyport MA 01950
Via email

Dear Mayor Holaday and Council Members:

We hope this letter finds you well in these turbulent times.

The residents of the Phillips Drive Neighborhood continue to be in close contact with our Ward Councilor, Byron Lane, and other City Councilors to ensure that our critically urgent infrastructure needs remain a **priority** with the City. As we await the engineering report from BSC which you are currently reviewing, we respectfully remind you of your pledges since 2017 to make our critically urgent infrastructure needs a budgetary priority.

We have faith that our actions to meet with you, the City Council, other members of the Neighborhoods and City Services department, and our State Senators will result in dedicated funding to remediate the decades-long infrastructure issues. We are aware that the NYS and west end Fire Department are in need of funding, but our issues have been ignored for decades and the need is critical. As noted in your email to us on May 2, 2017, "It would be unconscionable for the city not to make an effort to provide some relief for the residents of Phillips Drive."

Thank you for your attention and for your commitment to follow through on your pledges for designated funding to fully address the infrastructure needs.

Sincerely,

Kathleen Brittan, Philip Cootey, Richard Goulet, Cynthia Palladino, Melissa Welch
The Phillips Drive Neighborhood Committee

Cc: Neighborhoods and City Services Department
Sen. Diane DiZoglio
Sen. James Kelcourse

**APPOINTMENTS
SECOND READING**

SECOND READING APPOINTMENTS

Appointments

- APPT218_01_27_2021 Colin Sarff 23 Charter St. Comm. On Disabilities 2/28/2024
- APPT219_01_27_2021 Charles Griffin 3 Vernon St. Comm.Preservation Act Comm. 2/1/2024
- APPT227_01_27_2021 Glenn Richards 6 Kent St. Comm.Preservation Act Comm. 2/1/2022
- APPT221_01_27_2021 Paula Burke 23 Blueberry Ln. Topsfield Council on Aging 2/28/2024

Re-Appointment

- APPT224_01_27_2021 Mark Rosen 20 Fair St. Comm.Preservation Act Comm. 2/1/2024
- APPT225_01_27_2025 Michael Disette 44 Jefferson St. Comm.Preservation Act Comm. 3/1/2024

In City Council January 27, 2021:

Motion to approve the Consent Agenda amended by Councillor Zeid, seconded by Councillor Tontar. So voted.

ORDERS

CITY OF NEWBURYPORT

ORDR238_02_08_2021



IN CITY COUNCIL

ORDERED:

February 8, 2021

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

THAT the City Council of the City of Newburyport hereby approves and authorizes the acceptance of a Conservation Restriction and Easements ("CRE") between the City, acting through the Board of Water and Sewer Commissioners ("BOWSC"), and Essex County Greenbelt Association, Inc. for the property located off Middle Street, West Newbury. Said CRE to be substantially in the form submitted to and approved by vote of this Council at its meeting on [], 2021; and

Further, that the Mayor of the City of Newburyport, the City Council President and City Clerk are hereby authorized to sign the subject CRE as may be required, to act on behalf of the City and enter into any and all instruments, including acceptance of said CRE in accordance with Section 41 of Chapter 40 and Section 32 of Chapter 184 of the Massachusetts General Laws, and to take any other actions necessary to execute this acceptance and the associated CRE accordingly.

Councilor Heather L. Shand

Grantor: Essex County Greenbelt Association, Inc.

Grantees: Massachusetts Department of Conservation and Recreation
City of Newburyport
Town of West Newbury

Property Address: Off Middle Street, West Newbury

Grantor's Title: Book _____, Page _____

CONSERVATION RESTRICTION
AND EASEMENTS

Property: Off Middle Street, West Newbury Massachusetts

ESSEX COUNTY GREENBELT ASSOCIATION, INC., a Massachusetts non-profit corporation having an address of 82 Eastern Avenue, Essex, Massachusetts 01929, being the sole owner of the Premises as defined herein, and for its successors and assigns ("Grantor"), for consideration paid of **Eight Hundred Seventy Five Thousand and 00/100 Dollars (\$875,000.00)**, the receipt and sufficiency of which are hereby acknowledged, hereby grants, with QUITCLAIM COVENANTS, to the **CITY OF NEWBURYPORT**, a Massachusetts municipal corporation having an address of 60 Pleasant Street, Newburyport, Massachusetts 01950 ("City"), acting by and through its Board of Water and Sewer Commissioners ("BOWSC") under G.L. c. 40, section 41, having paid \$525,000 of the consideration, and the **COMMONWEALTH OF MASSACHUSETTS**, acting by and through its Department of Conservation and Recreation ("DCR") pursuant to Massachusetts General Laws ("G.L.") chapter 132A, section 3, having an address of 251 Causeway Street, Boston, Massachusetts 02114 and having paid \$175,000 of the consideration, and the **TOWN OF WEST NEWBURY**, a Massachusetts municipal corporation having an address of 381 Main Street, West Newbury, Massachusetts 01985 ("Town"), acting by and through its Conservation Commission pursuant to G.L. c. 40, section 8C, having paid \$175,000 of the consideration, and all their successors and assigns (collectively, the "Grantee"), **IN PERPETUITY AND FOR DRINKING WATER SUPPLY PROTECTION AND CONSERVATION PURPOSES** and for the purposes set forth in Article XCVII of the Amendments to the Constitution of the Commonwealth of Massachusetts ("Article 97"), a Conservation Restriction ("CR"), as defined by G.L. c. 184, section 31 and in accordance with G.L. c. 184, section 32 and G.L. c. 44B, section 12, upon land located northerly off Middle Street in West Newbury, Massachusetts and consisting of approximately thirty eight (38) acres± and being further described in Exhibit A and shown on Exhibit B (collectively, the "Premises"), which Premises are also described by the deed to Grantee recorded at the Essex County Registry Deeds Southern District ("Registry") herewith. A sketch plan of the Premises and Water Supply Protection Zones is attached as Exhibit C. All exhibits are attached hereto and incorporated herein by reference.

I. PURPOSES

This CR is defined in and authorized by G.L. c. 184, §§ 31-33 and otherwise by law. The purposes of this CR are to ensure that the Premises will be retained in perpetuity for water supply protection purposes (but not water supply purposes) and for conservation purposes in a natural, scenic, open and undeveloped condition, and to protect and preserve natural, cultural and recreational resources and to prevent any use of the Premises that will significantly impair or interfere with their conservation and preservation values (collectively, the “conservation values”). The protected conservation values and the public benefits resulting from the permanent protection of the Premises include, without limitation, the following:

A. Watershed and Groundwater Protection: the protection of the Zone A and Zone B watershed areas of the Artichoke River and the Artichoke Reservoir 3206000-01S, and the Zone II recharge area of West Newbury public well 3324000-01G;

B. Wetlands and Water Courses: the protection and conservation of wetlands, natural watercourses, ponds, water quality, surface water, soils, and natural resources and materials;

C. Wildlife Habitat and Ecological Value: the protection, promotion and conservation of biological diversity, wildlife habitat and wildlife, including but not limited to flora and fauna and the natural communities they compose and areas that may be identified by the Massachusetts Natural Heritage and Endangered Species Program as providing potential habitat for rare species at the Premises and adjacent lands;

D. Nature Education & Passive Recreation: the provision to the general public of access to the Premises for passive recreation and nature education, including the use of trails, and enjoyment of wildlife and their habitat, open space resources and scenic views of and from the Premises, compatible with the conservation values;

E. Protection of Scenic Values: the protection and enhancement of scenic landscape and the scenic and natural character of the Town and the open-space value of nearby lands and natural resources;

F. Historic and Archaeological Resources: the conservation, protection and appropriate management of preserving historic and archaeological resources within the Premises, including but not limited to foundations, stone walls, historic property bounds and other sensitive archaeological resources; and

G. Furtherance of Government Policy: the furtherance of government policy and goals to protect and preserve open space, habitat, natural resources, passive recreational opportunities and scenic values, as enumerated by (1) the City’s 2017 Master Plan adopted by the City’s City Council and Planning Board, including specifically the four goals listed in Chapter 8 of such Master Plan, (2) the 2020 Newburyport Open Space and Recreation Plan, including specifically Goal 1 to protect lands of public conservation and recreational interest to provide essential wildlife habitat and drinking water protection, (3) the 2018 West Newbury Open Space and Recreation Plan, specifically Goal 1 to preserve the natural and historic rural character of West Newbury, and Goal 2 to protect

natural resources areas that include water and large, undeveloped contiguous areas, including the protection of surface and deep-water resources and climate resiliency.

The City purchased this CR and its interests in the Premises using a Drinking Water Supply Protection (DWSP) grant through the DWSP grant program pursuant to Section 2A of Chapter 312 of the Acts of 2008 and as such the City's interest in the Premises is subject to a DWSP grant program Project Agreement ("Project Agreement"). The City covenants that it shall cause the Project Agreement to be promptly recorded at the Registry in accordance with the Project Agreement.

The City and Town also purchased this CR and their interests in the Premises using their respective Community Preservation Funds under the Community Preservation Act (G.L. c. 44B). A certified copy of the vote by the City, acting by and through its City Council on the recommendation of its Community Preservation Committee, to authorize the use of its Community Preservation Fund for this CR is attached hereto as Exhibit D. A certified copy of the vote by the Town, acting on the recommendation of its Community Preservation Committee, at its Annual Town Meeting held on June 27, 2020 to authorize the use of its Community Preservation Fund for this CR is attached hereto as Exhibit E.

The Grantor and Grantee agree that the specific conservation values of the Premises shall be documented in a report to be maintained in the records of the Grantor and Grantee (hereinafter the "Baseline Documentation Report"). The Baseline Documentation Report shall consist of documentation that the Grantor and Grantee agree provides a complete and accurate representation of the condition and the conservation values of the Premises at the time this CR is recorded and which is intended to serve as an objective informational baseline for monitoring compliance with the terms of this CR and shall be binding upon the Grantor and Grantee; provided, however, Grantor or Grantee may present any evidence of the condition of the Premises at the time of this grant other than the Baseline Documentation Report to the extent that the Baseline Documentation Report may be unavailable or fail to address the issues presented adequately.

II. PROHIBITED ACTIVITIES

The Grantor covenants that the Premises shall at all times be held, used and conveyed subject to and not in violation of this CR. The Grantor shall not perform or permit any activity which shall be inconsistent with the conservation values or purposes of this CR or which is detrimental to water quality, soil conservation, wildlife conservation, scenic landscape protection, or which is otherwise wasteful of the natural resources of the Premises. Without limiting the generality of the foregoing, subject only to the exceptions expressly set forth herein, the Grantor will not perform or allow others to perform the following acts and uses, which are prohibited on, above, and below the Premises:

A. Construction: Constructing, placing or allowing to remain any temporary or permanent building, dwelling, mobile home, tennis court, ballfield or playground, swimming pool, artificial water impoundment, billboard, sign or advertising display, landing strip or pad, golf course or driving range, parking area, roadway, asphalt or concrete pavement, antenna, utility pole, tower, solar panel, solar array, conduit, line or equipment, fences, walls or other barriers, telecommunication tower or equipment, satellite dish, windmill or wind turbine,

well, aboveground or underground storage tank, sewage or waste disposal system, water or fuel tank, facility, or mechanism, including without limitation hydraulic fracturing or deep-well injection system, or any other temporary or permanent structure in, on, above, or below the Premises;

B. Dumping: Dumping, placing, storing or stockpiling of soil, tree stumps, slash, yard waste or other vegetative debris; sand, stone, rock or other mineral substance, plowed snow or ice, equipment, machinery or parts, mobile home, trailer, or automotive vehicle or parts, or refuse, trash, debris, junk or waste, including without limitation solid, liquid, radioactive or hazardous waste or materials;

C. Clearing or Cutting: Cutting, removing or otherwise destroying trees, shrubs, saplings or other natural vegetation, including but not limited to cutting for firewood or commercial harvesting or lumbering activities or for ways, trails or paths, or removal or movement of soil;

D. Excavation: Excavating, mining, drilling, dredging or removing any soil, loam, peat, gravel, sand, rock or other mineral, substance, deposit or resource from the Premises, including but not limited to gas or other fuel or fuel source, or the making of any topographical changes or altering of any natural contours or features whatsoever;

E. Alteration: Pollution, alteration of natural flora, fauna, soil or terrain, depletion, diversion, channelization, damming, draining or extraction of soils or surface water, natural water courses, marshes, vernal pools, subsurface water or any other water bodies, or any activities detrimental to drainage, flood control, water conservation, surface water or groundwater quality, erosion control, soil conservation, wildlife habitat or archaeological conservation;

F. Planting or Introduction: Planting, introducing, or nurturing of any species or animals or plants that are not native to Essex County, as defined by current published lists of native species, including *The Vascular Plants of Massachusetts: A County Checklist, First Revision* by Melissa Dow Cullina, Bryan Connolly, Bruce A. Sorrie and Paul Somers, published by the Massachusetts Division of Fisheries and Wildlife Natural Heritage & Endangered Species Program (2011) or as amended from time to time or contained in a similar professionally acceptable publication available in the future;

G. Motorized Vehicles: Use, parking or storage of motorized or power-driven vehicles of any kind, including but not limited to automobiles, trucks, motorcycles, motorized trail bikes, motorbikes, snowmobiles or all-terrain vehicles;

H. Commercial, Industrial, or Residential Use: Commercial or industrial use of any kind, including but not limited to commercial camping, commercial fishing or aquaculture or commercial trapping; residential use of any kind;

I. Chemical Substances: The application, storage, mixing, preparation or other use of pesticides, herbicides, insecticides, fungicides or other chemicals or similar substances;

J. Agriculture: Agricultural activities, including the tillage of soil or grazing, pasturing or sheltering of animals or livestock;

K. Hunting: Hunting activities of any kind;

L. Swimming: Swimming, wading or bathing in the Artichoke Reservoir or its tributaries;

M. Water Supply Protection Regulations: Activities and uses prohibited under Massachusetts' Surface Water Supply Protection Regulations, 310 CMR 22.20C;

N. Development Calculations: Any use or allocation of any dimensions, area, or other physical characteristics of any part of the Premises towards any building or development requirements or calculations, including but not limited to permissible building density, lot coverage, lot yield, area, frontage, water, drainage or septic system requirements or open space requirements;

O. Division or Subdivision: Division, subdivision or conveyance of a portion of the Premises alone (as distinguished from the conveyance of the Premises in its entirety, which is permitted), it being the intent that the Premises shall remain and only be conveyed as a single unit, whether or not the Premises are comprised of more than one separate legal parcel as of the date of this CR;

P. Taking or Diverting Water: Taking or diverting any waters from the Artichoke Reservoir or its tributaries;

Q. Archaeology: Archaeological investigations or activities, or the dislocation, removal, filling in or alteration of stone walls, stone foundations, cellar holes or other landscape features on the Premises or the collection, alteration or removal of archaeological and historical artifacts or resources; and

R. Inconsistent Uses: Any other use of the Premises or activity that is inconsistent with any purpose of this CR that would impair the conservation values or that is prohibited by federal, state or local law or regulation.

III. PERMITTED ACTIVITIES

Notwithstanding the foregoing Article II and subject to the requirements of this Article III, the Grantor reserves to itself the right to conduct or permit the following activities and uses on the Premises, provided that they are conducted in accordance with this Article III, are carried out in a reasonable manner consistent with the purposes of this CR, and do not impair the conservation values:

A. Passive Recreation: Passive, non-commercial, low-impact and other non-motorized recreational activities and use of the Premises by Grantor and Grantor's invitees, such as hiking, snowshoeing, cross-country skiing, bird and wildlife observation, fishing, bicycling and educational activities and nature study; provided that (i) such use or activity, alone or together with other uses or activities, does not materially alter the landscape or degrade environmental quality.

B. Improvements: The use and maintenance of the existing unpaved footpaths, ways, trails and other improvements, if any, identified by the Baseline Documentation Report substantially in their current condition and location and, if reasonably required to facilitate public enjoyment of the natural features of the Premises or to protect the conservation values, the making, maintenance and use of new similar improvements, including trails, bridges with necessary culverts and boardwalks for pedestrian use, benches, exhibits, observation and teaching platforms and blinds, provided that (i) any relocation of any existing improvement or making, enlargement or extension of any other improvement shall be subject to prior written approval of the Grantee in each instance pursuant to Article IV below, (ii) all work on trails, footpaths, and ways shall be completed in accordance with DCR's *Trails Guidelines and Best Practices Manual (2014)*, as the same may be amended from time to time, and (iii) the design, location, maintenance and use of such improvements shall not impair the conservation values (including the scenic values) of this CR.

C. Signs and Informational Kiosks: The installation, maintenance and replacement of permanent or temporary signs, no larger than two feet by two feet, and informational kiosks, consisting of two informational panels no larger than three feet by five feet, for the purposes of identifying ownership interests of Grantor and Grantee, the status of the Premises as a conservation area, the conservation values, the restrictions or regulations governing the use of the Premises (including signs related to hunting and fishing), trails, areas of interest, natural features or other characteristics of the Premises, including historical and archaeological information, marking property boundaries, and for providing other like information or any gift, grant, or other applicable source of support for the conservation of the Premises. All signs and kiosks shall be non-illuminated. Grantor shall be required to provide Grantee only notice, as set forth in Article IV, of the number, design, content and location of boundary markers and signs. Installation or relocation of kiosks shall be subject to prior written approval of the Grantee as set forth in Article IV.

D. Vegetation Management: The selective minimal cutting, pruning, mowing and removal of trees, shrubs, grass and other vegetation as necessary to prevent, control or remove hazards, blight, disease, insect infestation or damage, fire damage, to prevent threat of injury or damage to persons or property, to preserve the current condition of the Premises as documented in the Baseline Documentation Report (including trails, stone walls and scenic landscapes), provided any such work or activity is pursuant to Best Management Practices, as defined below, and minimizes impacts on wildlife and habitat, including but not limited to timing work or activities, to avoid disturbance of wildlife, such as grassland birds and turtles, or habitat, including but not limited to fields, during breeding seasons for grassland birds and four-month peak field-use time for turtles or other critical period for any species that are endangered, threatened or of special concern.

E. Natural Habitat Management: In accordance with an approved Forest Stewardship Plan (as defined below in Paragraph G of Article III) or with prior written approval of the Grantee, measures designed to restore native biotic communities, or to maintain, benefit, enhance or restore wildlife, wildlife habitat, or any endangered, threatened or special concern species listed or protected by the Massachusetts Endangered Species Act or similar law or any regulations issued thereunder, including but not limited to selective (i) removal of vegetation, (ii) planting of native trees, shrubs and plant species,

and (iii) hunting for such purposes, provided no hunting activity shall occur or be allowed without the prior written approval of Grantee in each instance in accordance with Article IV below.

F. Invasive Species and Pest Control: Except in Zone A, the minimal use and application of pesticides, herbicides, insecticides, fungicides or other chemicals, but not the storing, mixing or preparation for use thereof, on the Premises in compliance with all existing state and federal laws and regulations, to prevent or mitigate pest infestation, blight or disease, to control, manage or eradicate species not native to Massachusetts, or to carry out permitted forest management as permitted by Paragraph G of Article III below; provided that such application: (i) in Zone II is not a product on the Massachusetts Department of Agriculture's "Groundwater Protection List," (ii) is consistent with Massachusetts Pesticide Board rights of way management regulations (333 CMR 11.00), (iii) is based on prudent and sound silvicultural, horticultural and ecological principles and is consistent with the conservation values of this CR, (iv) is in strict conformance with all manufacturers' directions, and (v) minimizes adverse impacts to and contact with streams, vernal pools, wetlands, lakes and any other water bodies. Application of such substances impacting greater than one (1) acre or occurring within one hundred feet (100') of any stream, pond or wetland as such terms are defined by Massachusetts' Wetlands Protection Regulations (310 CMR 10.00) shall require prior written approval of the Grantee or be in accordance with an approved Forest Stewardship Plan, or other plan approved in advance by the Grantee. No hunting activity to control, manage or eradicate species not native to Massachusetts shall only occur or be allowed with the prior written approval of Grantee in each instance in accordance with Article IV below.

G. Forestry: Non-commercial forest management, including cutting, trimming and removal, for the purposes of protecting and promoting the conservation values, provided such management activities are conducted in compliance with: (a) prudent and sound forest management practices, using all required Best Management Practices and, to the extent possible, recommended guidelines pursuant to the Massachusetts Forestry Best Management Practices Manual (Catanzaro, Fish, Kittredge, 2013) and subsequent versions as may be approved by the Grantee (hereinafter "Forestry BMPs"); (b) a Forest Stewardship Plan, prepared in accordance with "Directions for the preparation of new Chapter 61 Forest Management and Forest Stewardship/Green Certification Plans" and subsequent versions as may be approved by the Grantee, and approved in writing by the State Forester; and (c) a Forest Cutting Plan, consistent with the approved Forest Stewardship Plan and with the purposes and terms of this CR, prepared by a forester licensed pursuant to 302 CMR 16.00, et seq. in accordance with G.L. c. 132, §§ 40-46, as amended ("Licensed Forester"), and approved in writing by the State Forester, if any proposed cutting/harvesting exceeds ten thousand board feet or 20 cords of wood during any rolling 12-month period, notwithstanding the thresholds described by G.L. c. 132, § 44. With the prior written approval of Grantee pursuant to Article IV, Grantor shall have the option to sell marketable timber produced as a byproduct of an approved forest health or habitat improvement effort.

A copy of this CR shall accompany the Grantor's application, proposed Forest Stewardship Plan and/or proposed Cutting Plan to the State Forester for approval, together with a statement in writing from the Licensed Forester, signed by Grantor, that the proposed

Forest Stewardship Plan and/or Cutting Plan is consistent with the terms and purposes of this CR.

H. Landscape Features: The maintenance, repair and replacement of stone walls, stone foundations, cellar holes or other landscape features on the Premises, substantially in their present condition and location or restored to their historic dry-laid condition or as reasonably necessary for the current uses thereof or herein permitted, and with the prior written approval of the Grantee, the construction of new stone walls.

I. Sugarbush Operations: The seasonal tapping of maple trees and temporary collection of sap (but not boiling or other activities other than seasonal tapping and temporary collection) in the locations on the Premises as described by the Baseline Documentation Report (the "Sugarbush Area"); provided that (i) all such collection and tapping activities are performed using Best Management Practices to maintain tree health and otherwise do not impair the conservation values, (ii) upon any relocation of any portion of the Sugarbush Area, the total aggregate area for all tapping and collection activities shall not exceed one (1) acre, (iii) there shall be no lease or property right given by Grantor to any party to use any portion of the Premises for sugarbush purposes or activities; and (iv) such activities shall be subservient to the rights and easements granted to Grantee herein and shall not materially interfere with Grantee's exercising of such rights and easements to any portion of the Premises.

J. Parking: The construction, routine maintenance, marking and use of a single unpaved parking area with gravel or other pervious surface to provide off-street parking associated with the public recreational use of the Premises for up to six (6) passenger vehicles, the design, size, specific location and materials for which shall minimize the impacts on the conservation values and shall, other than routine maintenance and marking, be subject to the prior written approval of the Grantee.

K. Use of Motor Vehicles and Equipment: Use by Grantor or its employees and agents of motorized or power-driven vehicles or equipment as reasonably necessary to carry out uses and activities on the Premises permitted by this Article III; use by persons with a disability of motorized or power-driven mobility devices provided such use does not raise a legitimate safety concern and provided any other use of motorized vehicles by the general public shall be limited to the parking areas on the Premises described by Paragraph J of Article III; use by Grantee of vehicles to inspect the Premises or otherwise exercise its rights and responsibilities under this CR; and use by police, fire fighters and other government or emergency personnel to carry out their lawful duties.

L. Future Access for Maintenance of Public Water Supply. The right of Grantor, but not the obligation, to grant to the City and its employees, agents and contractors a temporary, non-exclusive license (but not an easement or other property interest) to use a portion of the Premises for an access way (the "Access Area") to the Lower Artichoke Reservoir and the land adjacent to the Lower Artichoke Reservoir owned by the City (collectively, the "Reservoir") from the existing access way from Main Street, all on such terms as Grantor and the City may agree pursuant to this Paragraph L of Article III without

further amendment to this CR, subject however to the Town's and DCR's prior written approval; and provided:

1. the Access Area shall be no more than fifteen feet (15') wide;
2. the Access Area shall only be located directly adjacent to the Reservoir except in such instances, as determined by Grantor, when the location or relocation of the Access Area, would better protect the Premises, wildlife, habitat or the conservation values;
3. the Access Area shall not be paved or improved with any asphalt, gravel or any other permanent or impermeable material;
4. the Access Area shall be used solely for temporary access, by foot and by vehicle, to and from the Reservoir in connection with the use and maintenance of the Reservoir as a public water supply, including but not limited to raising the height of the berm on City-owned land, provided no portion of the Premises shall be dammed, improved, flooded, flowed or otherwise used as a reservoir;
5. the Access Area shall not be used for any parking, staging, storing of vehicles, equipment, materials or tools or for any construction activities;
6. Grantor shall have no obligation to make any improvements or alterations to any portion of the Premises in connection with granting the City a license to use the Access Area, it being acknowledged that there has been no consideration given to Grantor for such license or use;
7. any damage or disturbance arising from any license or any use by the City or its employees, agents and contractors of the Access Area shall be promptly restored by the City, at the City's sole cost, as near as practicable to the conditions that existed immediately prior to such damage or disturbance;
8. the Access Area is designed, constructed, maintained and used so as to minimize adverse impacts to the conservation values protected by this CR and in conformance with Best Management Practices; and
9. no use of the Access Area shall impair the conservation values of any portion of the Premises located outside the Access Area.

M. Archaeology: Conducting archaeological field investigations, including surveys, systematic excavation, and removal of archaeological samples and specimens, provided that such research is undertaken in accordance with a research design and methodology permitted and formally approved by the Massachusetts State Archaeologist of the Massachusetts Historical Commission or successor official, in accordance with G. L. c. 9, Section 27C, and 950 CMR 70.00, or as amended, and the approval of the Grantee pursuant to the procedures set forth in Article IV below.

N. Human Remains: Notwithstanding the foregoing permitted activities, if any human remains are discovered during any activities on the Premises, then the activities resulting in such discovery shall cease immediately. Grantor shall notify Office of the Chief Medical Examiner, the Massachusetts State Archaeologist and the Grantee immediately, and shall follow the procedures delineated under the Massachusetts Unmarked Burial Law (G.L. Chapter 38, Section 6; Chapter 9, Sections 26A and 27C and Chapter 7, Section 38A, as amended).

O. Other Rights: Any activity or use not expressly reserved in this Article III is prohibited unless the Grantor receives the prior written approval of the Grantee stating that such activity or use is not inconsistent with the purposes of this CR.

The exercise of any right reserved by Grantor under this Article III shall be in full compliance with all applicable federal, state and local laws, rules, regulations, orders, permits and approvals, including but not limited to the Wetlands Protection Act, the Massachusetts Endangered Species Act, the Natural Heritage and Endangered Species Program, Massachusetts Department of Environmental Protection regulations, Zoning Bylaws and Conservation Commission regulations and orders. 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 take any position whether such permit, license or other approval should be issued.

The exercise of any right reserved by Grantor under this Article III shall follow, when available and if applicable, established, up-to-date, and regionally-applicable guidance and recommended best practices for the protection of natural resources and conservation values, as may be provided or updated from time to time by DCR or such other governmental agency with known expertise in the area of practice designed to protect the natural features and conservation values of the Premises ("Best Management Practices"). In the absence of such available or applicable Best Management Practices, the exercise of any right reserved by Grantor under this Article III shall be consistent with the guidance and recommended practices approved by or in consultation with Grantee.

Any work undertaken in conjunction with the reserved rights described in this Article III shall seek to minimize disturbance to the conservation values and other natural features within the Premises that may be affected as a result of exercising of any of the reserved rights. Upon completion of any work at the Premises, any disturbed areas shall be restored as near as possible to the conditions with respect to soil material, grade, and vegetated ground cover as documented in the Baseline Documentation Report, as applicable, or in conformance with the conditions with respect to soil material, grade, and vegetated ground cover that existed prior to said work, if said work is done in any area not documented in the Baseline Documentation Report.

IV. NOTICE AND APPROVAL PROCEDURE

A. Notice. Unless otherwise provided herein or by law, Grantor shall notify each Grantee in writing, sent certified mail, return receipt requested, no less than sixty (60) days before allowing, undertaking or restricting any uses or activities on the Premises that require the approval of Grantee under the terms of this CR. Grantor shall also in the same manner notify the Grantee before allowing or undertaking any uses or activities that may impair the conservation values or may be contrary to

the purposes of this CR and about which Grantor seeks guidance from Grantee. Grantor shall submit to Grantee its request and shall provide a detailed description of the proposed acts and uses for which approval or guidance is sought, and such other information as Grantee shall reasonably require, including the nature, scope, design, location, timetable, and any other material aspects of the proposed use or activity in sufficient detail to permit the Grantee to make an informed decision as to the consistency of the use or activity with the purposes and terms of the CR and make a determination whether approval of the requested acts and uses is appropriate. All communications in this regard shall be mailed to the following persons at the stated address, as such person or address may be modified by the respective party by written notification to the others:

GRANTOR:

Essex County Greenbelt Association, Inc.
82 Eastern Avenue
Essex, MA 01929
Attn: Director of Stewardship

GRANTEE:

DCR

Commissioner
Department of Conservation and Recreation
251 Causeway Street, Suite 900
Boston, MA 02114

With a courtesy copy via first class mail for informational purposes only to:

Land Protection Program
Department of Conservation and Recreation
136 Damon Road
Northampton, MA 01060

City of Newburyport

City of Newburyport
City Hall
60 Pleasant Street
Newburyport, MA 01950
Attn: Board of Water and Sewer Commissioners

With a courtesy copy via first class mail or email for informational purposes only to:

City of Newburyport
City Hall
60 Pleasant Street

Newburyport, MA 01950
Attn: Mayor

City of Newburyport
City Hall
60 Pleasant Street
Newburyport, MA 01950
Attn: Office of Planning and Development

Town of West Newbury

Town of West Newbury
Town Hall
381 Main Street
West Newbury, MA 01985
Attn: Conservation Commission

B. Approval for General Requests. With respect to those activities or uses requiring Grantee's approval, Grantee shall grant or withhold its approval in writing only after Grantee's receipt of Grantor's written request therefor or of any additional information requested by Grantee. Grantee's approval may be withheld only upon a reasonable determination by Grantee that the action as proposed would be inconsistent with the purposes of this CR, would materially impair the conservation values, or would violate any statute, ordinance, bylaw, rule or regulation. Said approval, if granted, may include appropriate conditions to ensure that the proposed acts and uses will not impair the conservation values and the restrictions and other rights granted hereunder.

C. Approval of Requests affecting the City Water Supply. Notwithstanding the foregoing Paragraph B, in the event Grantor makes a written request to Grantee under this Article IV for approval for improvements to or uses of the Premises (each a "Request"), then the BOWSC shall have fifteen (15) days from the date it receives such Request ("Request Determination Period") to determine whether or not the quality or condition of the City's water supply at the Lower Artichoke Reservoir would likely be directly and materially harmed by a particular improvement to or particular use of the Premises as described by such Request.

In the event that the BOWSC determines during the Request Determination Period that the quality or condition of the City's water supply at the Lower Artichoke Reservoir would likely be directly and materially harmed by a particular improvement to or particular use of the Premises as described by such Request (each a "Request Determination"), then the City, acting through its BOWSC, shall:

(1) be the primary grantee and primarily responsible and empowered to approve or deny such particular improvement to or particular use of the Premises to the extent necessary to protect the quality or condition of the City's water supply at the Lower Artichoke Reservoir, and the Town, acting through its Conservation Commission, and DCR shall each be a secondary grantee and secondarily responsible and empowered to grant or deny approval for such requested improvement or use with respect to such Request;

(2) within seven (7) days of making the Request Determination, provide Grantor, the Town and DCR with written notice of such Request Determination, together with copies of any applicable votes by the BOWSC and materials used in connection with such Request Determination;

(3) within thirty (30) days of the date by when both the Town and DCR have received notice of the Request Determination and copies of applicable votes and materials, and before making any findings or decision with regard to the Request, consult with the Town and DCR and consider any information and recommendations provided by the Town and DCR to the BOWSC in considering the Request; and

(4) within sixty (60) days of the BOWSC's receipt of the Request and after such consultation and consideration with the Town and DCR, make its decision to approve or deny such particular improvement to or particular use of the Premises as described by the Request (each a "Decision") and issue its Decision to Grantor, with a copy of the Decision to the Town and DCR.

Provided the BOWSC has adhered to this Paragraph C in making its Decision to approve or deny a Request and such Decision is not arbitrary or capricious, as part of any such Decision, the BOWSC may affirm, amend or reverse a decision made by the Town or DCR under this CR with respect to such Request to the extent necessary to protect the quality or condition of the City's water supply at the Lower Artichoke Reservoir and such Decision shall be the final and controlling decision binding on the Town and DCR regarding such Request. The BOWSC's failure to issue any Decision within such sixty (60) days shall be deemed (i) a denial of the Request if neither the Town or DCR has issued a decision regarding such Request, or (ii) an affirmation of any decision regarding the Request made by the Town or DCR.

In the event that the BOWSC determines during the Request Determination Period that the quality or condition of the City's water supply at the Lower Artichoke Reservoir would not likely be directly or materially harmed by a particular improvement to or particular use of the Premises as described by such Request or the BOWSC otherwise fails to make a Determination during the Request Determination Period, then the BOWSC, Town and DCR shall each remain equal co-grantees under this CR and empowered to approve or deny any such Request as the BOWSC, Town and DCR may agree with each other.

Notwithstanding any provision in this Paragraph C to the contrary, in making any Decision to approve or deny any Request in whole or in part under this Paragraph C, the BOWSC shall make every effort to avoid or to minimize to the greatest extent possible any limitations on the use of the Premises by the public for passive recreational purposes, it being acknowledged and agreed that the Grantor and Grantees intend for this CR to be granted and accepted for public passive recreational purposes, including but not limited to the construction and use of trails throughout the Premises and a public parking area, in addition to the water supply protection and conservation purposes of this CR, and that the recreational purposes of this CR shall not be diminished by a Decision by the BOWSC except in circumstances when a particular improvement or use by the general public would create a clear and imminent threat to the public water supply in the Lower Artichoke Reservoir.

D. Emergency Action by Grantor. In the event of any emergency posing immediate risk of environmental degradation or ecological damage or to public health and safety, Grantor may take reasonable measures to avert such environmental degradation, ecological damage or risk to public health and safety; provided Grantor shall notify Grantee within twenty-four (24) hours of the risk and measures taken.

V. **REMEDIES; WAIVER**

A. Legal and Injunctive Relief: The rights hereby granted shall include the right to enforce this CR by appropriate legal proceedings and to obtain injunctive and other equitable relief against any violations, including, without limitation, relief requiring restoration of the Premises to its condition prior to the time of the injury complained of (it being agreed that Grantee will have no adequate remedy at law), and shall be in addition to and not in limitation of any other rights and remedies available to Grantee.

B. Grantee Consultation and Enforcement on Violations: Each Grantee shall reasonably promptly notify every other Grantee other as soon as is practical whenever a possible violation has been observed in order to determine whether such violation may impair the water supply protection purposes of this CR and otherwise how to proceed.

C. Enforcement of Violations of CR related to City Water Supply. In the event there is a violation of this CR (each a "Violation"), then the BOWSC shall have fifteen (15) days from the date it received notice of the Violation ("Violation Determination Period") to determine whether or not the quality or condition of the City's water supply at the Lower Artichoke Reservoir has been, is being or would likely be directly and materially harmed by such Violation.

In the event that the BOWSC determines during the Violation Determination Period that the quality or condition of the City's water supply at the Lower Artichoke Reservoir has been, is being or would likely be directly and materially harmed by a particular Violation (each a "Violation Determination"), then the City, acting through its BOWSC, shall:

(1) be the primary grantee and primarily responsible and empowered to enforce this CR with respect to such Violation, and the Town, acting through its Conservation Commission, and DCR shall each be a secondary grantee and secondarily responsible and empowered to enforce such Violation;

(2) within seven (7) days of making the Violation Determination, provide Grantor, the Town and DCR with written notice of such Violation Determination, together with copies of any applicable votes by the BOWSC and materials used in connection with such Violation Determination;

(3) within thirty (30) days of the date by when both the Town and DCR have received notice of the Violation Determination and copies of applicable votes and materials, and before making any findings or decision with regard to the Violation, consult with the Town and DCR and consider any information and recommendations provided by the Town or DCR to the BOWSC; and

(4) within sixty (60) days of the BOWSC's receipt of the Request and after such consultation and consideration with the Town and DCR, make its decision to enforce this CR with respect to such Violation (each an "Enforcement Decision") and issue its Enforcement Decision to Grantor, the Town and DCR.

Provided the BOWSC has adhered to this Paragraph C in making its Enforcement Decision and such Enforcement Decision is not arbitrary or capricious, as part of any such Enforcement Decision, the BOWSC may affirm, amend or reverse an enforcement decision made by the Town or DCR under this CR with respect to such Violation to the extent reasonably necessary to protect the quality or condition of the City's water supply at the Lower Artichoke Reservoir, and such Enforcement Decision shall be the final and controlling decision binding on the Town and DCR regarding such Violation, provided such Enforcement Decision and enforcement actions arising from such Enforcement Decision do not prohibit or materially interfere with or adversely affect any public access to the Premises or easement rights granted to the Town or DCR. The BOWSC's failure to issue any Enforcement Decision within such sixty (60) days shall be deemed an affirmation of any enforcement decision regarding the Violation made by the Town or DCR.

In the event that the BOWSC determines during the Violation Determination Period that a particular Violation has not directly or materially harmed, is not directly or materially harming, or would not likely directly or materially harm the quality or condition of the City's water supply at the Lower Artichoke Reservoir or the BOWSC otherwise fails to make a Violation Determination during the Determination Period, then the BOWSC, Town and DCR shall each remain equal co-grantees under this CR and empowered to enforce any Violation as the BOWSC, Town and DCR may agree with each other.

For any enforcement action of any Violation taken by the BOWSC as primary grantee, the BOWSC shall undertake and carry out, at its sole expense, all reasonable actions in a timely manner to enforce this CR with respect to such Violation and otherwise to protect the conservation values in accordance with this CR. Notwithstanding the foregoing, nothing in this CR shall prohibit the Town or DCR from enforcing this CR with respect to any and all violations of this CR should the BOWSC fail to act in a reasonable or timely manner to enforce this CR or to protect the conservation values.

D. No Effect on Governmental Authority. Notwithstanding any provision of this CR to the contrary, nothing herein shall be deemed to waive, modify, diminish or otherwise affect the power, responsibility, authority or jurisdiction any governmental body may have with respect to the Premises under any applicable law, regulation, ordinance or bylaw, including but not limited to the Town's Conservation Commission's authority to issue orders under or otherwise enforce the Wetlands Protection Act (G.L. c. 131, § 40) and regulations issued thereunder (310 CMR 10.000) or authority that the BOWSC may have to protect the public water supply in the event of an emergency.

E. Non-Waiver: This CR shall be enforced by Grantee in its sole discretion. Nothing herein shall impose upon the Grantee any affirmative obligation or liability relating to this CR or to the condition of the Premises. Any election or failure by the Grantee to enforce any provision or condition set forth herein, or to exercise any rights hereby conveyed, shall not constitute a release or waiver of any such right or condition.

F. Disclaimer of Liability: By acceptance of this CR, 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 authorized agents.

VI. RIGHTS OF ACCESS; MANAGEMENT; INSPECTION

A. The Grantor hereby grants to Grantee and their agents, successors and assigns the perpetual right and easement to enter upon and use, and to permit the general public to enter upon and use, the Premises for non-commercial, low-impact, passive outdoor recreational and educational activities consistent with Paragraph A of Article III above, provided that such activities (1) do not involve the use of motorized vehicles, except power driven mobility devices when used by a person with a disability and provided such use does not raise a legitimate public safety concern; (2) are not inconsistent with the purposes of this CR or in violation of the terms of this CR; (3) do not unreasonably interfere with Grantor's permitted uses of the Premises, and (4) comply with such reasonable rules of use that the Grantor may establish as are reasonably necessary to protect the purposes of the CR, public safety and the conservation values, and to promote compatible recreational and educational uses of the Premises; and provided further use by the general public of motorized vehicles on the Premises shall be limited to designated parking areas on the Premises as described by Paragraph J of Article III above. The Grantor agrees to take no action to prohibit or discourage access to and use of the Premises by the general public.

B. The Grantor and Grantee acknowledge that G.L. c. 21, section 17C affords Grantor and Grantee with protection from liability for access by the public to the Premises for recreational purposes, provided no charge or fee is imposed. Any public use that is permitted by the terms of this CR without a charge or fee constitutes permission to use the Premises for purposes described by G.L. c. 21, section 17C.

C. This CR also includes the grant to Grantee and its successors and assigns of the perpetual right and easement to enter upon the Premises and to permit personnel of the Massachusetts Department of Environmental Protection, a duly constituted agency established under the laws of the Commonwealth of Massachusetts, in a reasonable manner and at reasonable times for the purpose of inspecting the Premises to determine compliance with Massachusetts Drinking Water Regulations (310 CMR 22.00). In the event of any violation, Grantee must notify Grantor thereof and request Grantor to remedy such violation. If the violation is not remedied within a reasonable time, Grantee may enter upon the Premises in order to remedy or abate such violation, with or without order of court, in which event, the Grantor, its successors and assigns, covenants and agrees to reimburse the Grantee for all reasonable costs and expenses incurred by Grantee in remedying or abating any violation of this CR, provided that such violation is acknowledged by Grantor or determined by a court of competent jurisdiction to have occurred. Grantor, its successors and assigns, shall be required to reimburse Grantee solely for violations that occur during Grantor's respective periods of ownership. The provisions of this paragraph shall not preclude any other remedies available at law or in equity.

D. Grantee shall have the right but not the obligation to erect signs on the Premises in conjunction with public access to and use of the Premises, in posting notice of ownership of the Premises along the boundaries of the Premises, and in posting notice of ownership and use of the

Premises at any public access point to the Premises. The Grantee shall coordinate its activities in designing and erecting signs with any similar activities of the Grantor to avoid duplication and unnecessary signs on the Premises.

VII. COSTS AND TAXES

Grantor retains all responsibilities and shall bear all costs of any kind related to the ownership, operation, upkeep and maintenance of the Premises, including the payment of all taxes and other assessments levied on the Premises by competent authority, and conformance with all applicable federal, state, and local laws and regulations.

VIII. BINDING EFFECT; RELEASE; RECORDATION

The burden of this CR shall run with the Premises in perpetuity, and shall be enforceable against the Grantor and the Grantor's successors and assigns holding any interest in the Premises. This CR may only be released, in whole or in part, by the Grantee pursuant to the procedures established by G.L. c. 184, section 32 and in accordance with Article 97.

The Grantee is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this CR. The Grantor, for itself and its successors and assigns, appoint the Grantee its attorney-in-fact, coupled with an interest, to execute, acknowledge and deliver any such instruments on its behalf. Without limiting the foregoing, the Grantor and its successors and assigns agree to execute any such instrument upon request.

IX. ASSIGNMENT

The benefits of this CR shall be in gross and shall not be assignable by the Grantee, its successors and assigns, unless the assignee is a "qualified organization" as defined in Section 170(h)(3) of the Internal Revenue Code of 1986, as amended, including, without limitation, a government entity, provided that, as a condition of such assignment, the assignee is required to hold this CR and enforce its terms for conservation purposes. Grantee shall also have the right to assign the right to enforce this CR, so long as the assignee is a governmental body, charitable corporation or charitable trust, or other entity which at the time of such assignment would be qualified to hold this CR. Unless expressly stated otherwise in the instrument of assignment, no such assignment of the right to enforce the CR shall diminish the rights or benefits held by the Grantee pursuant to this CR, and the Grantee, jointly or severally, shall retain the equivalent right to enforce this CR. The Grantee shall notify the Grantor in writing at least sixty (60) days before it assigns this CR or the right to enforce the CR.

X. SUBSEQUENT TRANSFERS

The Grantor agrees to incorporate the terms of this CR, in full or by reference, in any deed or other legal instrument by which Grantor conveys or transfers any interest in all or a portion of the Premises, including without limitation, a mortgage or leasehold interest. If the Grantor fails to reference the terms of this CR in any deed or other legal instrument which grants any interest in all or a portion of the Premises, then the Grantee may record, in the applicable registry of deeds and at the Grantor's expense, a notice of this CR. The Grantor shall notify the Grantee in writing at least thirty (30) days before conveying or transferring the Premises or any part thereof or interest therein

(including but not limiting any lease). Failure to do any of the above shall not impair the validity or enforceability of this CR. Any transfer shall comply with Article 97, if applicable.

XI. EXTINGUISHMENT; EMINENT DOMAIN

The Grantor and Grantee agree that the grant of this CR gives rise to a property right that vests immediately in the Grantee and which has a fair market value that is equal to the value by which the CR reduces, at the time of the grant, the value of the property as a whole. Grantor and Grantee stipulate that the proportionate values of the Grantee's property rights at the time of the grant are 77.7 percent of the total value of the Premises, and this proportionate value shall remain constant.

Should this CR be extinguished over all or any portion of the Premises by judicial decree or by act of public authority, the Grantee shall be entitled to a portion of the proceeds equal to the proportionate value of the CR and to their proportionate share of that proportionate value based on each Grantee's contribution toward the purchase price of this CR (i.e., 20% for DCR, 60% for the City and 20% for the Town), subject, however, to any applicable law which expressly provides for a different disposition of proceeds. If the conservation interests protected hereby are unaffected by the taking, and the only interest taken by public authority is the Grantor's interest, and recovered proceeds are awarded on the basis of the value of the Premises as restricted by this CR, then the proceeds from such taking shall be payable in their entirety to Grantor.

Whenever all or any part of the Premises or any interest therein is taken by a public authority other than the Commonwealth of Massachusetts under power of eminent domain, or if all or any part of this CR is extinguished by act of public authority other than the Commonwealth of Massachusetts and without approval by or recommendation of the Commonwealth of Massachusetts, then the Grantor and Grantee shall cooperate in recovering the full value of all direct and consequential damages resulting from such action. If the public authority taking the Premises is the Commonwealth, of Massachusetts or if the taking has been approved or recommended by the Commonwealth of Massachusetts, then Grantor and Grantee shall pursue their remedies separately, and the Grantee shall not be entitled to any portion of the proceeds from such taking.

XII. AMENDMENT

If circumstances arise under which an amendment to or a modification of this CR would be appropriate, Grantor and Grantee may jointly amend this CR, provided that any amendment shall (i) occur only in exceptional circumstances, (ii) be consistent with the purposes of this CR, (iii) not affect its perpetual duration, (iv) not have an adverse effect on the conservation values or purposes of this CR, and (v) be approved by the Secretary of Energy and Environmental Affairs and in accordance with any applicable statutes in effect at the time of the proposed amendment and Article 97. Any such amendment shall be recorded at the Registry in the chain of title of the Premises.

XIII. SEVERABILITY

If any section or provision of this CR shall be held to be unenforceable by any court of competent jurisdiction, the CR shall be construed as though such section had not been included in it. If any section or provision of the CR shall be susceptible of two constructions, one of which would render such section or provision invalid, then such section or provision shall be given the construction that would render it valid. If any section or provision of this instrument is ambiguous, it shall be

interpreted in accordance with the policies and provisions expressed in G.L. c. 184, sections 31 and 32, G.L. c. 132A, and G.L. c. 21A.

XIV. TERMINATION OF RIGHTS AND OBLIGATIONS

Notwithstanding anything to the contrary contained herein, the rights and obligations under this CR of any party holding an interest in the Premises will terminate upon transfer of that party's interest, except that (a) liability for acts or omissions of the party that occurred prior to transfer shall survive the transfer, and (b) liability for the transfer itself if the transfer is in violation of this CR shall survive the transfer. Any new owner shall cooperate in the restoration of the Premises or removal of violations caused by any prior owner(s) and may be held responsible for any continuing violations.

XV. GENERAL PROVISIONS

A. Controlling Law. The interpretation and performance of this CR shall be governed by the laws of the Commonwealth of Massachusetts.

B. Construction. Any general rule of construction to the contrary notwithstanding, this CR shall be liberally construed in favor of the grant to effectuate the purposes of this CR and the policy and purposes of Article 97, G.L. c. 132A and G.L. c. 184, sections 31, 32, and 33. If any provision in this instrument is found to be ambiguous, any interpretation consistent with the purpose of this CR that would render the provision valid shall be favored over any interpretation that would render it invalid. The captions in this CR are inserted only for the purpose of convenient reference and in no way define, limit or prescribe the scope of this CR or any part hereof. The terms of this CR shall be considered the workmanship of all parties and shall not be construed against the drafting party. No provision of this CR shall waive, bar, diminish or in any way affect any limitations on liability afforded to a body politic of the Commonwealth of Massachusetts.

C. No Legal Relationship. Nothing in this CR shall be deemed or construed to create any legal relationship of principal and agent or of partnership, or of joint venture, or of any association, among any of the parties to this CR.

D. Severability. If any section or provision of this CR shall be held to be unenforceable by any court of competent jurisdiction, then the remainder of this CR shall not be affected thereby, and this CR shall be construed as though such section or provision had not been included in it.

E. Notices Related to Conservation Restriction. Grantee may, at its expense, cause a notice of any violation of this CR or any other agreement between Grantor and Grantee regarding this CR to be recorded at the Registry in the chains of title for any parcels comprising the Premises. Grantee is additionally authorized to record or file at the Registry any notices or instruments appropriate to ensure the perpetual duration and enforceability of this CR.

F. Entire Agreement. This instrument sets forth all the terms of this CR and supersedes all prior discussions, negotiations, understandings or agreements relating to the CR, all of which are merged herein.

G. Multiple Counterparts. This CR may be executed in several counterparts and by each party on a separate counterpart, each of which when so executed and delivered shall be an original, and all of which together shall constitute one instrument.

XVI. MISCELLANEOUS

A. No Excise Tax. No Massachusetts deed excise tax stamps are required by G.L. c. 64D, section 1, as the Commonwealth of Massachusetts and City and Town are parties to this instrument.

B. Pre-existing Public Rights. Approval of this CR by the Secretary of Energy and Environmental Affairs pursuant to G.L. c. 184, section 32 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.

C. No Mortgage. The Grantor attests that there is no 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. Title Matters. This CR is conveyed subject to matters of record at the Registry.

E. Signature Pages and Exhibits. Attached hereto and incorporated herein by reference are the following signature pages and exhibits:

Grantor – Essex County Greenbelt Association, Inc.

Grantee – City of Newburyport Board of Water and Sewer Commissioners

Grantee – City of Newburyport Mayor

Grantee – Town of West Newbury Conservation Commission

Grantee – Town of West Newbury Board of Selectmen

Approval of the Secretary of Energy and Environmental Affairs

Exhibit A: Legal Description of Premises

Exhibit B: Plan of Premises

Exhibit C: Sketch Plan of Premises and Water Supply Protection Zones

Exhibit D: City of Newburyport City Council Vote

Exhibit E: Town of West Newbury Town Meeting Vote

F. Title Reference. For Grantor's title, see the deed recorded at the Registry herewith and also see the deeds recorded at the Registry in Book 6547, Page 419 and Book 6703, Page 590.

[Remainder of page intentionally left blank. Signature(s) follow on next page(s).]

EXECUTED under seal as of the _____ day of _____, 2021.

ESSEX COUNTY GREENBELT
ASSOCIATION, INC.

By: _____
Katherine Bowditch, its duly authorized
President

By: _____
Kent Wosepka, its duly authorized Treasurer

Commonwealth of Massachusetts
Essex County, SS.

On this _____ day of _____, 2021, before me, the undersigned Notary Public, personally appeared Katherine Bowditch, as President of Essex County Greenbelt Association, Inc., proved to me through satisfactory evidence of identification, which was ☐ photographic identification with signature issued by federal or state governmental agency, ☐ oath or affirmation of credible witness, ☐ personal knowledge of the undersigned, to be the person whose name is signed on the preceding document, and acknowledged to me that she signed it voluntarily for its stated purposes, as President of Essex County Greenbelt Association, Inc.

Notary Public
My commission expires:

Commonwealth of Massachusetts
Essex County, SS.

On this _____ day of _____, 2021, before me, the undersigned Notary Public, personally appeared Kent Wosepka, as Treasurer of Essex County Greenbelt Association, Inc., proved to me through satisfactory evidence of identification, which was ☐ photographic identification with signature issued by federal or state governmental agency, ☐ oath or affirmation of credible witness, ☐ personal knowledge of the undersigned, to be the person whose name is signed on the preceding document, and acknowledged to me that he signed it voluntarily for its stated purposes, as President of Essex County Greenbelt Association, Inc.

Notary Public
My commission expires:

**ACCEPTANCE OF GRANT BY THE CITY OF NEWBURYPORT
BOARD OF WATER AND SEWER COMMISSIONERS**

We, the undersigned, being a majority of the Board of Water and Sewer Commissioners of the City of Newburyport, Massachusetts ("Board"), hereby certify that at a public meeting duly held on _____, 2021, the Board voted to approve and accept the foregoing Conservation Restriction from Essex County Greenbelt Association, Inc. pursuant to Section 41 of Chapter 40 and Section 32 of Chapter 184 of the Massachusetts General Laws and do hereby accept the foregoing Conservation Restriction.

CITY OF NEWBURYPORT,
By its Board of Water and Sewer Commissioners

John Tomasz, Chair

Robert Cook, Vice Chair

Roger Jones, Commissioner

Commonwealth of Massachusetts
Essex County, SS.

On this _____ day of _____, 2021, before me, the undersigned Notary Public, personally appeared John Tomasz, Robert Cook and Roger Jones, as the members of the City of Newburyport Board of Water and Sewer Commissioners, proved to me through satisfactory evidence of identification, which was ☐ photographic identification with signature issued by federal or state governmental agency, ☐ oath or affirmation of credible witness, ☐ personal knowledge of the undersigned, to be the person whose name is signed on the preceding document, and acknowledged to me that they signed it voluntarily for its stated purposes, as the City of Newburyport Board of Water and Sewer Commissioners.

Notary Public
My Commission expires:

APPROVAL BY THE MAYOR OF THE CITY OF NEWBURYPORT

I, the undersigned Mayor of the City of Newburyport ("City"), hereby approve the grant of the foregoing Conservation Restriction from Essex County Greenbelt Association, Inc. to the City's Board of Water and Sewer Commissioners.

CITY OF NEWBURYPORT

Donna D. Holaday, Mayor

Commonwealth of Massachusetts
Essex County, SS.

On this _____ day of _____, 2021, before me, the undersigned Notary Public, personally appeared Donna D. Holaday, as the Mayor of the City of Newburyport, proved to me through satisfactory evidence of identification, which was ☐ photographic identification with signature issued by federal or state governmental agency, ☐ oath or affirmation of credible witness, ☐ personal knowledge of the undersigned, to be the person whose name is signed on the preceding document, and acknowledged to me that she signed it voluntarily for its stated purposes, as the Mayor of the City of Newburyport.

Notary Public
My Commission expires:

**ACCEPTANCE OF GRANT BY THE TOWN OF WEST NEWBURY
CONSERVATION COMMISSION**

We, the undersigned, being a majority of the Conservation Commission of the Town of West Newbury, Massachusetts, hereby certify that at a public meeting duly held on _____, 2021, the Conservation Commission voted to approve and accept the foregoing Conservation Restriction from Essex County Greenbelt Association, Inc. pursuant to Section 8C of Chapter 40 and Section 32 of Chapter 184 of the Massachusetts General Laws and do hereby accept the foregoing Conservation Restriction.

TOWN OF WEST NEWBURY,
By its Conservation Commission

Dawne Fusco, Chair

Wendy Reed, Clerk

Thomas M. Atwood

Margaret Hawkins

Judith Mizner

Commonwealth of Massachusetts
Essex County, SS.

On this _____ day of _____, 2021, before me, the undersigned Notary Public, personally appeared Dawne Fusco, Wendy Reed, Thomas M. Atwood, Margaret Hawkins and Judith Mizner, as the members of the Town of West Newbury Conservation Commission, proved to me through satisfactory evidence of identification, which was ☐ photographic identification with signature issued by federal or state governmental agency, ☐ oath or affirmation of credible witness, ☐ personal knowledge of the undersigned, to be the person whose name is signed on the preceding document, and acknowledged to me that they signed it voluntarily for its stated purposes, as the Town of West Newbury Conservation Commission.

Notary Public
My Commission expires:

**APPROVAL BY THE BOARD OF SELECTMEN
OF THE TOWN OF WEST NEWBURY**

We, the undersigned Board of Selectmen of the Town of West Newbury ("Town"), hereby approve the grant of the foregoing Conservation Restriction from Essex County Greenbelt Association, Inc. to the Town's Conservation Commission.

TOWN OF WEST NEWBURY,
By its Board of Selectmen

David W. Archibald, Chairman

Glenn A. Kemper, Member

Richard Parker, Member

Commonwealth of Massachusetts
Essex County, SS.

On this _____ day of _____, 2021, before me, the undersigned Notary Public, personally appeared David W. Archibald, Glenn A. Kemper and Richard Parker, as the Board of Selectmen of the Town of West Newbury, proved to me through satisfactory evidence of identification, which was ☐ photographic identification with signature issued by federal or state governmental agency, ☐ oath or affirmation of credible witness, ☐ personal knowledge of the undersigned, to be the person whose name is signed on the preceding document, and acknowledged to me that they signed it voluntarily for its stated purposes, as the Board of Selectmen of the Town of West Newbury.

Notary Public
My Commission expires:

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

The undersigned, Secretary of Energy and Environmental Affairs of the Commonwealth of Massachusetts, hereby certifies that the foregoing Conservation Restriction from the Essex County Greenbelt Association, Inc. to the Commonwealth of Massachusetts, acting by and through its Department of Conservation and Recreation, the Town of West Newbury, acting by and through its Conservation Commission, and the City of Newburyport, acting by and through its Conservation Commission, has been approved in the public interest pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws.

Dated: _____, 2021

Kathleen A. Theoharides
Secretary of Energy and Environmental
Affairs

Commonwealth of Massachusetts

Suffolk County, SS.

On this _____ day of _____, 2021, before me, the undersigned Notary Public, personally appeared Kathleen A. Theoharides, and proved to me through satisfactory evidence of identification which was _____ to be the person whose name is signed on the proceeding or attached document, and acknowledged to me that she signed it voluntarily for its stated purpose.

Notary Public
My Commission Expires

EXHIBIT A

Legal Description of Premises

DRAFT

EXHIBIT B

Plan of Premises

DRAFT

EXHIBIT C

Sketch Plan of Premises and Water Supply Zone

DRAFT

EXHIBIT D

City of Newburyport City Council Vote

DRAFT

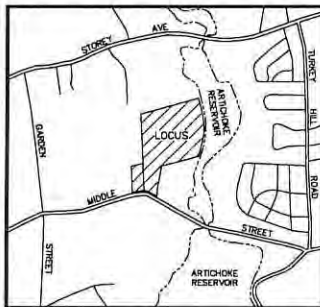
EXHIBIT E

Town of West Newbury Town Meeting Vote

DRAFT

Return to:

Louis M. Ross
Department of Conservation and Recreation
251 Causeway Street, Suite 600
Boston, MA 02114



LOCUS MAP
SCALE: 1" = 1,200'

WEST NEWBURY, MA
PLANNING BOARD
APPROVAL UNDER THE SUBDIVISION
CONTROL LAW NOT REQUIRED

THE PLANNING BOARD'S ENDORSEMENT OF
THE PLAN AS NOT REQUIRING APPROVAL
UNDER THE SUBDIVISION CONTROL LAW
DOES NOT GIVE LOTS OR PARCELS ANY
STANDING UNDER THE ZONING BY-LAW OF
THE TOWN OF WEST NEWBURY.

DATE

ZONING DISTRICTS: RESIDENCE A
& GROUNDWATER PROTECTION II & III
ASSESSORS: MAP R27 LOTS 27, 28, 28A, & 29

REFERENCES:

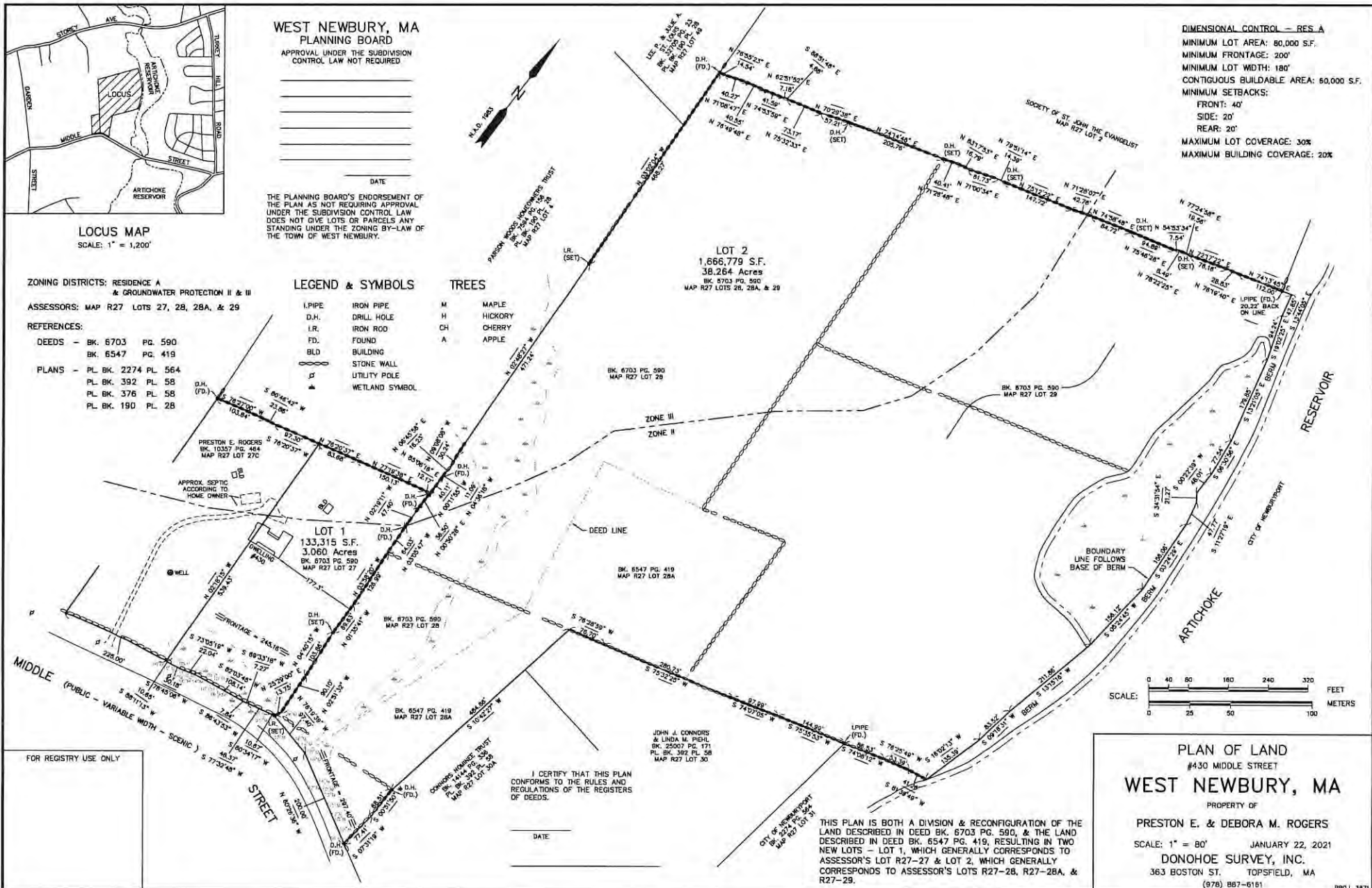
DEEDS - BK. 6703 PG. 590
BK. 6547 PG. 419
PLANS - PL. BK. 2274 PL. 564
PL. BK. 392 PL. 58
PL. BK. 376 PL. 58
PL. BK. 190 PL. 28

LEGEND & SYMBOLS

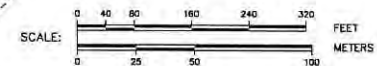
I.P.I.P.E. IRON PIPE
D.H. DRILL HOLE
I.R. IRON ROD
F.D. FOUND
BLD BUILDING
STONE WALL
UTILITY POLE
WETLAND SYMBOL

TREES

M MAPLE
H HICKORY
CH CHERRY
A APPLE



DIMENSIONAL CONTROL - RES. A
MINIMUM LOT AREA: 80,000 S.F.
MINIMUM FRONTAGE: 200'
MINIMUM LOT WIDTH: 180'
CONTIGUOUS BUILDABLE AREA: 60,000 S.F.
MINIMUM SETBACKS:
FRONT: 40'
SIDE: 20'
REAR: 20'
MAXIMUM LOT COVERAGE: 30%
MAXIMUM BUILDING COVERAGE: 20%



PLAN OF LAND
#430 MIDDLE STREET
WEST NEWBURY, MA
PROPERTY OF

PRESTON E. & DEBORA M. ROGERS

SCALE: 1" = 80' JANUARY 22, 2021

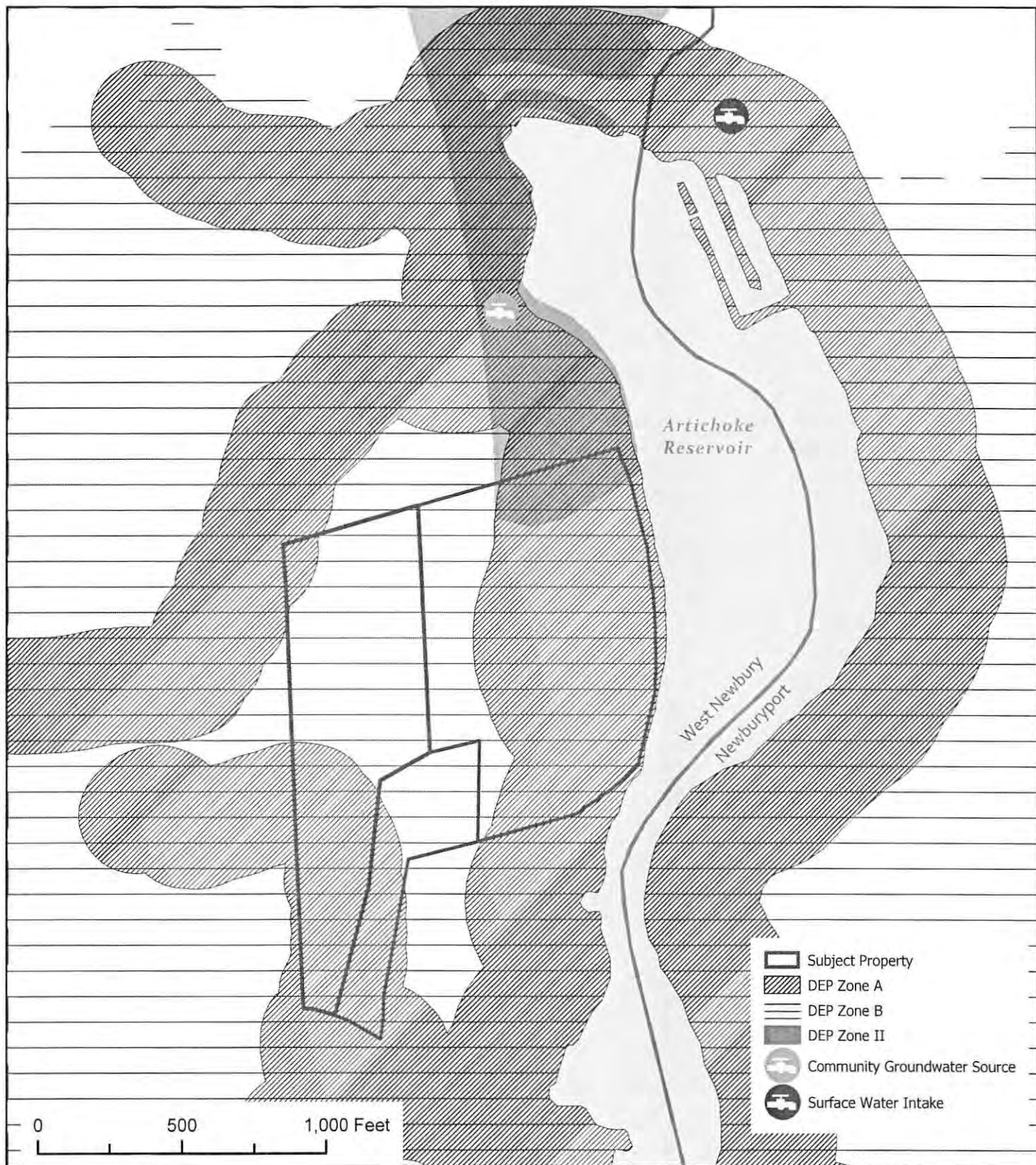
DONOHUE SURVEY, INC.
363 BOSTON ST.
TOPSFIELD, MA
(978) 887-6161

THIS PLAN IS BOTH A DIVISION & RECONFIGURATION OF THE
LAND DESCRIBED IN DEED BK. 6703 PG. 590, & THE LAND
DESCRIBED IN DEED BK. 6547 PG. 419, RESULTING IN TWO
NEW LOTS - LOT 1, WHICH GENERALLY CORRESPONDS TO
ASSESSOR'S LOT R27-27 & LOT 2, WHICH GENERALLY
CORRESPONDS TO ASSESSOR'S LOTS R27-28, R27-28A, &
R27-29.

I CERTIFY THAT THIS PLAN
CONFORMS TO THE RULES AND
REGULATIONS OF THE REGISTERS
OF DEEDS.

DATE

FOR REGISTRY USE ONLY

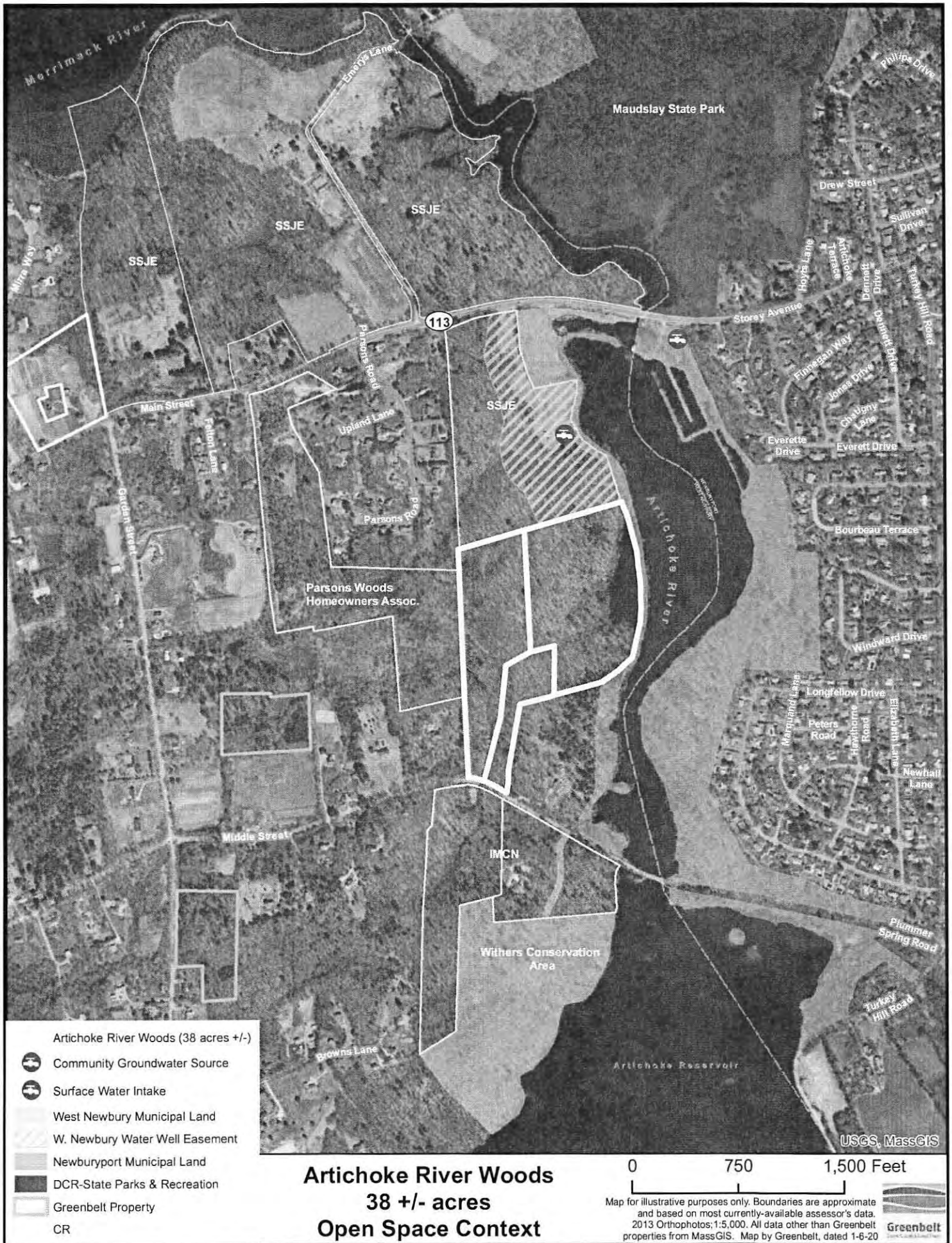


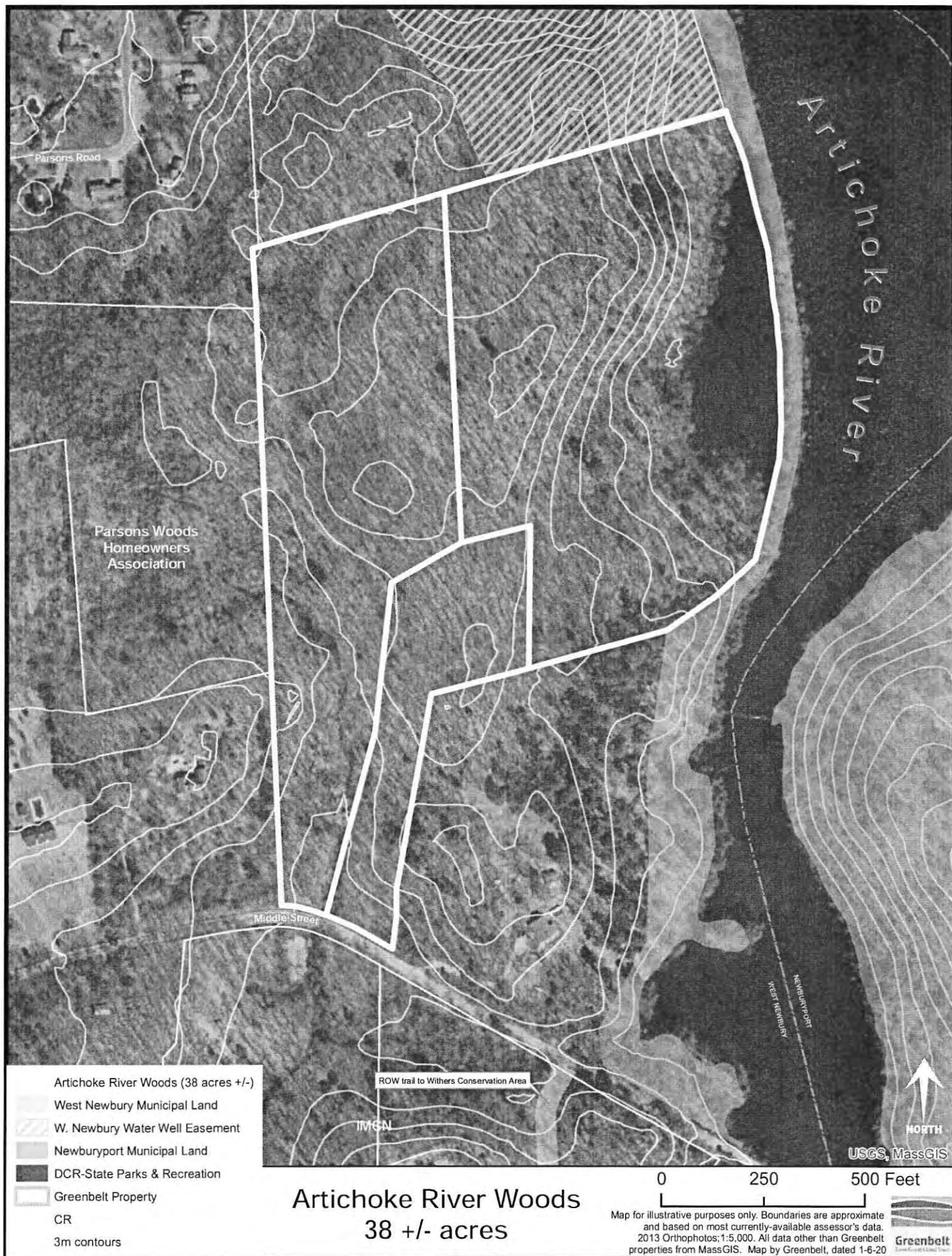
Map Produced 12/20/19 By:
Essex County Greenbelt

Artichoke River Woods 38± acres, West Newbury Drinking Water Resources Map

Source data obtained from survey plans, Mass GIS and Global Positioning Systems (GPS).
Orthophotos 2013 / 2014. Boundary lines are approximate and are to be used for
informational purposes only. Boundaries based on assessors data.







- Artichoke River Woods (38 acres +/-)
- West Newbury Municipal Land
- W. Newbury Water Well Easement
- Newburyport Municipal Land
- DCR-State Parks & Recreation
- Greenbelt Property
- CR
- 3m contours

Artichoke River Woods 38 +/- acres



The Commonwealth of Massachusetts
Executive Office of Energy and Environmental Affairs
100 Cambridge Street, Suite 900
Boston, MA 02114

Charles D. Baker
GOVERNOR

Karyn E. Polito
LIEUTENANT GOVERNOR

Kathleen A. Theoharides
SECRETARY

Tel: (617) 626-1000
Fax: (617) 626-1181

May 13, 2020

Geordie Vining
City of Newburyport
60 Pleasant Street
Newburyport, MA 01950

Drinking Water Supply Protection Grant Award Letter

Re: Artichoke River Woods Conservation Project – Award Amount \$300,000

Dear Mr. Vining,

I am pleased to inform you that your application to the Fiscal Year 2020 Drinking Water Supply Protection (DWSP) Grant Program for the Artichoke River Woods Conservation Project has been selected by the Executive Office of Energy and Environmental Affairs (EEA) to receive up to \$300,000 in funding assistance.

Project deadline is June 30, 2021

The project must be completed by June 30, 2021. If you anticipate any difficulties in meeting this spending deadline, please contact me immediately. I can be reached at: 100 Cambridge Street, 9th floor, Boston, MA 02114, (617) 626-1187 or Nathaniel.Thomas1@mass.gov.

Conditions of your award

Your reimbursement payment is contingent upon your satisfactory completion of the following:

- Adherence to all contract specifications
- Certification of clear title
- Installation of a sign acknowledging receipt of DWSP funds
- Department of Environmental Protection (DEP) approval of the acquisition
- Completion of a Baseline Documentation Report and Land Management Plan
-

Next steps

Sign and return the following forms by June 1, 2020:

- **State Standard Contract.** This document allows our fiscal department to establish an account for your project.

- **DWSP Project Agreement.** Review the agreement to ensure that your project is correctly described. Your Chief Executive Officer and a majority of your Water Commissioners (or Select board acting as such) must sign two copies. Return both to EEA.
- **Contractor Authorized Signatory form** (both pages). Authorizes the person who signs your contract and Project Agreements to sign on behalf of your organization. Must be notarized.
- **Certified copy of municipal or board of water commissioners vote authorizing the purchase.** Send the draft language to me for review.

After EEA has received the above forms:

- **EEA signs and executes the contract.** Only expenses incurred after this execution date are eligible for reimbursement. Do not close on the property until you have been notified that your Standard Contract has been executed by EEA. If you purchase the property before your contract has been executed, you will not be reimbursed.
- **DEP approval of acquisition.** Your grant award does not waive your obligation to comply with all relevant DEP requirements. You must obtain DEP approval for your acquisition by submitting a form BRP WS 26 *Sale or Acquisition of Land for Water Supply Purposes*, and holding a public hearing at the appropriate DEP regional office. The form and instructions are available online at <http://www.mass.gov/eea/agencies/massdep/service/approvals/brp-ws-26.html>. The application fee will be waived; applicants should indicate that they have received a DWSP grant award.
- **Central Register Notice.** You must file a notice with the Central Register prior to closing on your property, in accordance with MGL Ch. 30B (Uniform Procurement Act), unless you are using Community Preservation Act funds.

Deed language requirement

Your property deed(s) must state the following purpose of the acquisition:

[Property description, including location, survey area, and registry information of any plans] is acquired "*for the purposes of drinking water supply protection and land conservation.*"

Reimbursement procedures

You may request reimbursement after you have purchased the property, completed any necessary cleanup or site remediation, and met all conditions of your grant award. Your reimbursement request must include payment documentation, which will be outlined more fully when your executed contract is returned.

Legally and permanently protected conservation land

By accepting grant funding, you agree to keep the property undeveloped as water supply land, and open to the general public for appropriate passive recreation in perpetuity. It may not be converted to other uses or developed. You must abide by Article 97 of the Articles of Amendment to the State Constitution, as well as the terms of the DWSP Project Agreement.

Congratulations on your successful application to the DWSP program, and best wishes for a speedy completion of your project.

Sincerely,



Nathaniel Thomas
Regional Conservation Planner, Division of Conservation Services

COMMONWEALTH OF MASSACHUSETTS ~ STANDARD CONTRACT FORM



This form is jointly issued and published by the Executive Office for Administration and Finance (ANF), the Office of the Comptroller (CTR) and the Operational Services Division (OSD) as the default contract for all Commonwealth Departments when another form is not prescribed by regulation or policy. Any changes to the official printed language of this form shall be void. Additional non-conflicting terms may be added by Attachment. Contractors may not require any additional agreements, engagement letters, contract forms or other additional terms as part of this Contract without prior Department approval. Click on hyperlinks for definitions, instructions and legal requirements that are incorporated by reference into this Contract. An electronic copy of this form is available at www.mass.gov/osc under Guidance For Vendors - Forms or www.mass.gov/osd under OSD Forms.

CONTRACTOR LEGAL NAME: (and d/b/a): City of Newburyport		COMMONWEALTH DEPARTMENT NAME: Energy and Environmental Affairs (EEA)	
Legal Address: (W-9, W-4, T&C): 60 Pleasant Street Newburyport, MA 01950		MMARS Department Code: ENV	
Contract Manager: Georgie Vining		Business Mailing Address: 100 Cambridge St., Suite 900, Boston, MA 02114	
E-Mail: gvining@cityofnewburyport.com		Billing Address (if different):	
Phone: (978) 465-4400 Fax:		Contract Manager: Nathaniel Thomas	
Contractor Vendor Code: VC6000192119		E-Mail: nathaniel.thomas1@mass.gov	
Vendor Code Address ID (e.g. "AD001"): AD 001. (Note: The Address ID must be set up for EFT payments.)		Phone: (617) 626-1187 Fax: (617) 626-1181	
MMARS Doc ID(s): DWSNEWBURYPORTART20		RFR/Procurement or Other ID Number: ENV 20 DCS 06	
X NEW CONTRACT		CONTRACT AMENDMENT	
PROCUREMENT OR EXCEPTION TYPE: (Check one option only)		Enter Current Contract End Date Prior to Amendment _____. 20 ____.	
<input type="checkbox"/> Statewide Contract (OSD or an OSD-designated Department)		Enter Amendment Amount: \$ _____. (or "no change")	
<input type="checkbox"/> Collective Purchase (Attach OSD approval, scope, budget)		AMENDMENT TYPE: (Check one option only. Attach details of Amendment changes.)	
<input checked="" type="checkbox"/> X Department Procurement (Includes State or Federal grants 815 CMR 2.00) (Attach RFR and Response or other procurement supporting documentation)		<input type="checkbox"/> Amendment to Scope or Budget (Attach updated scope and budget)	
<input type="checkbox"/> Emergency Contract (Attach justification for emergency, scope, budget)		<input type="checkbox"/> Interim Contract (Attach justification for Interim Contract and updated scope/budget)	
<input type="checkbox"/> Contract Employee (Attach Employment Status Form, scope, budget)		<input type="checkbox"/> Contract Employee (Attach any updates to scope or budget)	
<input type="checkbox"/> Legislative/Legal or Other: (Attach authorizing language/justification, scope and budget)		<input type="checkbox"/> Legislative/Legal or Other: (Attach authorizing language/justification and updated scope and budget)	
The following COMMONWEALTH TERMS AND CONDITIONS (T&C) has been executed, filed with CTR and is incorporated by reference into this Contract.			
<input checked="" type="checkbox"/> X Commonwealth Terms and Conditions <input type="checkbox"/> Commonwealth Terms and Conditions For Human and Social Services			
COMPENSATION: (Check ONE option): The Department certifies that payments for authorized performance accepted in accordance with the terms of this Contract will be supported in the state accounting system by sufficient appropriations or other non-appropriated funds, subject to intercept for Commonwealth owed debts under 815 CMR 9.00.			
<input type="checkbox"/> Rate Contract (No Maximum Obligation. Attach details of all rates, units, calculations, conditions or terms and any changes if rates or terms are being amended.)			
<input checked="" type="checkbox"/> X Maximum Obligation Contract Enter Total Maximum Obligation for total duration of this Contract (or new Total if Contract is being amended). \$ <u>300,000</u> .			
PROMPT PAYMENT DISCOUNTS (PPD): Commonwealth payments are issued through EFT 45 days from invoice receipt. Contractors requesting accelerated payments must identify a PPD as follows: Payment issued within 10 days ____ % PPD; Payment issued within 15 days ____ % PPD; Payment issued within 20 days ____ % PPD; Payment issued within 30 days ____ % PPD. If PPD percentages are left blank, identify reason: <input checked="" type="checkbox"/> agree to standard 45 day cycle <input type="checkbox"/> statutory/legal or Ready Payments (G.L. c. 29, § 23A) <input type="checkbox"/> only initial payment (subsequent payments scheduled to support standard EFT 45 day payment cycle. See Prompt Pay Discounts Policy.)			
BRIEF DESCRIPTION OF CONTRACT PERFORMANCE OR REASON FOR AMENDMENT: Drinking Water Supply Protection Grant Program award for the acquisition of a Conservation Restriction over 38+ acres of land in the Town of West Newbury, known as the Arichoke River Woods Conservation Project, for permanent water supply protection and land conservation purposes, in accordance with all rules and regulations established by the Executive Office of Energy and Environmental Affairs, Division of Conservation Services.			
ANTICIPATED START DATE: (Complete ONE option only) The Department and Contractor certify for this Contract, or Contract Amendment, that Contract obligations:			
<input type="checkbox"/> 1. may be incurred as of the Effective Date (latest signature date below) and no obligations have been incurred prior to the Effective Date .			
<input checked="" type="checkbox"/> 2. may be incurred as of July 1, 2020 , a date LATER than the Effective Date below and no obligations have been incurred prior to the Effective Date .			
<input type="checkbox"/> 3. were incurred as of _____, 20____, a date PRIOR to the Effective Date below, and the parties agree that payments for any obligations incurred prior to the Effective Date are authorized to be made either as settlement payments or as authorized reimbursement payments, and that the details and circumstances of all obligations under this Contract are attached and incorporated into this Contract. Acceptance of payments forever releases the Commonwealth from further claims related to these obligations.			
CONTRACT END DATE: Contract performance shall terminate as of June 30, 2021 , with no new obligations being incurred after this date unless the Contract is properly amended, provided that the terms of this Contract and performance expectations and obligations shall survive its termination for the purpose of resolving any claim or dispute, for completing any negotiated terms and warranties, to allow any close out or transition performance, reporting, invoicing or final payments, or during any lapse between amendments.			
CERTIFICATIONS: Notwithstanding verbal or other representations by the parties, the "Effective Date" of this Contract or Amendment shall be the latest date that this Contract or Amendment has been executed by an authorized signatory of the Contractor, the Department, or a later Contract or Amendment Start Date specified above, subject to any required approvals. The Contractor makes all certifications required under the attached Contractor Certifications (incorporated by reference if not attached hereto) under the pains and penalties of perjury, agrees to provide any required documentation upon request to support compliance, and agrees that all terms governing performance of this Contract and doing business in Massachusetts are attached or incorporated by reference herein according to the following hierarchy of document precedence, the applicable Commonwealth Terms and Conditions , this Standard Contract Form including the Instructions and Contractor Certifications , the Request for Response (RFR) or other solicitation, the Contractor's Response, and additional negotiated terms, provided that additional negotiated terms will take precedence over the relevant terms in the RFR and the Contractor's Response only if made using the process outlined in 801 CMR 21.07, incorporated herein, provided that any amended RFR or Response terms result in best value, lower costs, or a more cost effective Contract.			
AUTHORIZING SIGNATURE FOR THE CONTRACTOR:		AUTHORIZING SIGNATURE FOR THE COMMONWEALTH:	
X: <u>Dana D. Hoday</u> Date: _____ (Signature and Date Must Be Handwritten At Time of Signature)		X: <u>Byron Hightower</u> Date: <u>11/16/20</u> (Signature and Date Must Be Handwritten At Time of Signature)	
Print Name: <u>Dana D. Hoday</u>		Print Name: <u>Byron Hightower</u>	
Print Title: <u>Mayor</u>		Print Title: <u>Director of Capital & Trust Planning</u>	

**THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS
DIVISION OF CONSERVATION SERVICES**

Drinking Water Supply Protection Grant Program

PROJECT AGREEMENT

Made this _____ day of _____, 20____, between the **City of Newburyport**, with an address of 60 Pleasant Street Newburyport, MA 01950 hereinafter referred to as the **PARTICIPANT**, and the Commonwealth of Massachusetts acting by and through the Secretary of the Executive Office of Energy and Environmental Affairs, hereinafter referred to as the **COMMONWEALTH** with an address of 100 Cambridge Street, Suite 900, Boston, MA, 02114.

Premises: Approximately 38± acres of land (Assessor's Map R27, Parcels 28, 28A and 29) in the Town West Newbury, Essex County, Massachusetts. For PARTICIPANT's Title, see;

Book /Page _____ or

Land Court Certificate _____.

In the _____ (Essex County Registry of Deeds/ Land Court Registry District)

WHEREAS, the PARTICIPANT has made an application to the COMMONWEALTH for assistance under the Massachusetts Drinking Water Supply Protection (DWSP) Grant Program pursuant to 2008 Massachusetts Acts and Resolves, Chapter 312, §2A, 2200-7017, for a project briefly described as follows: **the acquisition of a Conservation Restriction over 38± acres of land in the Town of West Newbury, known as the Artichoke River Woods Conservation Project, for the purpose of permanent drinking water supply protection and land conservation, hereinafter referred to as the PROJECT.**

WHEREAS the COMMONWEALTH has reviewed said application and found the PROJECT to be in conformance with the purposes of 2008 Massachusetts Acts and Resolves, Chapter 312 §2A, 2200-7017, and the DWSP Program.

WHEREAS, the COMMONWEALTH has approved said application and has obligated certain funds in the amount of **three hundred thousand dollars (\$300,000)**, which funds are authorized and subject to 2008 Massachusetts Acts and Resolves, Chapter 312.

NOW THEREFORE:

1. The COMMONWEALTH and the PARTICIPANT mutually agree to perform the terms and conditions of this Agreement in accordance with the Massachusetts DWSP Program, its policies and applicable statutes, including Massachusetts General Laws Chapter 40, §§ 38, 39 and 41, and 2008 Massachusetts Acts and Resolves, Chapter 312, §2A, 2200-7017.
2. The PARTICIPANT agrees to perform the PROJECT described previously by authorizing and directing its WATER DEPARTMENT to manage, maintain, and operate the PROJECT in accordance with the terms, conditions and obligations contained in the PARTICIPANT'S application(s), as approved, including any promises, conditions, plans, specifications, estimates, procedures, project proposals, maps, and assurances made a part thereof, and furthermore, in accordance with any special terms and conditions attached to and incorporated in this Agreement. No significant deviations from the PROJECT shall be undertaken without advance approval by the COMMONWEALTH.
3. The PARTICIPANT agrees that the area of the PROJECT outside of a designated Zone I Drinking Water Supply Area or those areas containing wells, pumps, or other necessary infrastructure for approved drinking water supply protection or wastewater discharge, shall be open to the general public for appropriate passive use and shall not be limited to residents of the PARTICIPANT. The PARTICIPANT shall display on the PROJECT a sign indicating that the PROJECT received DWSP funds, and setting forth the terms of public access.
4. The PARTICIPANT hereby covenants and agrees that the Project, including the property and any and all associated facilities and improvements, shall be devoted to drinking water supply protection and conservation purposes in perpetuity, within the meaning of Article 97 of the Commonwealth's Declaration of Rights, and shall not be used for other purposes or otherwise disposed of except in accordance with the provisions of said Article 97. The PARTICIPANT hereby agrees that any property or facilities composing the PROJECT will not be used for purposes other than those stipulated herein or otherwise disposed of unless the PARTICIPANT receives the appropriate authorization from the General Court, and the approval of the Secretary of Energy & Environmental Affairs.
5. The PARTICIPANT acknowledges that receipt of funding from the DWSP does not constitute final approval to establish new public water sources or wastewater discharge facilities, or other infrastructure, and agrees to obtain the advice and approval of the Department of Environmental Protection for the location, arrangement, and development of all wells, filter galleries, filtration or pumping facilities, under Massachusetts General Laws Chapter 40, §39B, provided that no dams, reservoirs, or treatment plants may be established on the property. With any necessary approvals, the PARTICIPANT shall have the right to allow for the physical expansion of flow onto the acquired property in the future.

6. The PARTICIPANT agrees that, should the property not be suitable for or serve the purposes of water supply protection, the PARTICIPANT shall manage the property for conservation and public passive recreation purposes, or transfer management and/or title to the conservation commission of the municipality in which it is located, or to a nonprofit, charitable corporation or trust which has power to acquire interest in land and whose purposes include conservation of land or water areas or of a particular such area, or to the COMMONWEALTH, acting through its Department of Fish and Game, or Department of Conservation and Recreation, to be managed for watershed protection, conservation, and public passive recreation purposes. In the event of such a transfer, the PARTICIPANT must adhere to the requirements of Article 97 and this Agreement.
7. The PARTICIPANT further agrees that despite any such authorization and approval, in the event the property or facilities composing the PROJECT are used for purposes other than those described herein, the PARTICIPANT shall provide other property and facilities of equal value and utility to be available for water supply protection and conservation purposes, provided that the equal value and utility and the proposed use of said other property and facilities is specifically agreed to by the Secretary of Energy & Environmental Affairs.
8. Failure by the PARTICIPANT to comply with the terms and conditions of this Agreement or the policies or applicable statutes of the DWSP Grant Program may, at the sole option of the COMMONWEALTH, suspend or terminate all obligations of the COMMONWEALTH hereunder.
9. PARTICIPANT and COMMONWEALTH acknowledge that the benefit desired by the COMMONWEALTH from the full compliance by the PARTICIPANT is the permanent protection of the quality and quantity of drinking water supplies, and the existence, protection, and the net increase of conservation land, and furthermore that such benefit exceeds to an immeasurable and unascertainable extent the dollar value of the funding provided by this Agreement, and, therefore, in recognition of said disparity, the PARTICIPANT agrees that payment of money damages by the PARTICIPANT to the COMMONWEALTH would be an inadequate remedy for a breach of this Agreement by the PARTICIPANT, and, therefore, the COMMONWEALTH may enforce the terms and conditions of this Agreement by requiring specific performance of the PARTICIPANT'S obligations.
10. The PARTICIPANT agrees to record a copy of this agreement at the appropriate Registry of Deeds or Land Court Registry District and to provide proof of such recording to the COMMONWEALTH. Said proof of recording of this Project Agreement shall include evidence that the Project Agreement has been marginally noted on or permanently referenced to any prior deed, restriction, conveyance or other instrument affecting the Project area. Failure to do so shall not impair the validity or enforcement of this agreement.

COMMONWEALTH OF MASSACHUSETTS

BY

Kathleen A. Theoharides, Asst. Sec.
on behalf of
Kathleen A. Theoharides, Secretary
or Designee
Executive Office of Energy and
Environmental Affairs

PARTICIPANT

BY

Donna D. Holaday
Donna D. Holaday, Mayor
Type or Print Name and Title

City of Newburyport
Chief Executive Officer

DATE: _____

BY

Board of Water Commissioners

DATE: _____

Attach hereto evidence of authority to execute this contract on behalf of the PARTICIPANT. In the case of a municipality, a certified copy of the vote or votes of the governing body authorizing the PROJECT, appropriating municipal funds therefor, and authorizing execution of this Project Agreement by the Officer, Board, or Commission whose signature(s) appears above.

COMMONWEALTH OF MASSACHUSETTS

County, ss:

On this _____ day of _____, 20__ before me, the undersigned notary public, personally appeared _____ proved to me through satisfactory evidence of identification which was personal knowledge to be the person whose name is signed on the processing or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose

Notary Public

My Commission Expires:

CITY OF NEWBURYPORT



IN CITY COUNCIL

ORDERED:

THAT the City Council of the City of Newburyport hereby orders that Rule 7 entitled "Committees and Committee Business" and Rule 10B entitled "Gaining the Floor" of the Newburyport City Council Rules (2021) be amended to read as follows, with deletions ~~stricken-through~~ and in bold, and additions double-underlined and in bold.

COMMITTEES AND COMMITTEE BUSINESS

Rule 7. The President, **no later than its next Inaugural Meeting,** shall appoint all members to all City Council Committees, both standing and ad hoc, designate the Chair of each such Committee, who shall serve as its presiding officer, and fill any vacancies thereon as they arise. Likewise, the President may establish, dissolve, and/or reconfigure ad hoc Committees in ~~his or her~~ **their** discretion, provided that such ad hoc Committees shall be re-established, **as needed,** each two-year legislative session. Ad hoc committees may include members other than members of the Council for purposes of deliberation, but they may not vote. Except as otherwise provided in Rule 12, the Council shall, by a majority vote, refer each matter newly introduced through the Council agenda (Agenda) to a single Committee, either standing or ad hoc, for review at a public meeting of such Committee, before such matter may be acted upon again by the Council. Notwithstanding the foregoing, a Councillor may make all parliamentary motions, including a motion to receive and file the newly introduced matter.

GAINING THE FLOOR

Rule 10B. No Councillor shall speak a second time on any motion until each Councillor has the opportunity to speak once, however the President may permit a Councillor to speak out of turn to respond to questions directed to ~~him or her~~ **them** by another Councillor. **A Councillor shall be allowed to speak no more than three (3) times on any one subject for a period not to exceed fifteen (15) minutes. For matters coming before the Council in the first instance**

not being referred to committee and/or requiring a question-and-answer period, the foregoing limitations shall not apply. A Councillor shall be allowed an additional five (5) minutes to speak after every other Councillor choosing to speak has spoken.

Councillor Afroz Khan



COVID-19 Victims and Survivors Memorial Day Resolution

WHEREAS, the first Monday in March, has been designated as COVID-19 Victims and Survivors Memorial Day; and

WHEREAS, COVID-19 (SARS-CoV-2) is an illness caused by a virus that can transmit from person to person and has spread across the world, creating a global pandemic that is having catastrophic effects on human life, our community, and our economy; and

WHEREAS, To mitigate the spread of COVID-19, observance of public health orders to social distance and stay at home have created challenges for small businesses, workers, and schools which are working to comply with limited resources; and

WHEREAS, School districts, teachers, students, and parents are grappling with the challenges of distance learning and working to prevent any potential learning loss due to not being in-person; and

WHEREAS, Local and state governments, health departments, and public servants have taken bold actions to protect residents, support struggling local economies, and find innovative ways to provide services; and

WHEREAS, In response to rapid spread of COVID-19 and stay-at-home orders, essential workers have stepped up to provide critical services to help protect our communities and save lives, sacrificing their own health and safety; and

WHEREAS, COVID-19 has had a disproportionate impact on low-income communities and communities of color, exacerbating inequities already prevalent in our systems that we must address as a nation; and

WHEREAS, The symptoms and severity of COVID-19 can vary dramatically by individual and the long-term health implications for survivors is largely unknown, as many survivors suffer with lingering side-effects of the disease long after they no longer test positive; and

WHEREAS, More than 2.32 million people worldwide, and 475,000 in the United States have lost their lives due to COVID-19, and, in Massachusetts over 15,000 people and here in Newburyport 32 lives have been lost to this deadly virus; and

WHEREAS, Each life lost to COVID-19 mattered and leaves a hole in the hearts of loved ones, family members, and surrounding community; and

WHEREAS, Public health guidance and policies targeted at prevention, such as social distancing, wearing masks in public, and staying home help mitigate the spread of COVID-19, prevent illness, and lessen the burden on individuals and society,

NOW, THEREFORE, BE IT RESOLVED that the City of Newburyport supports the United States Conference of Mayors designation of the first Monday in March as "COVID-19 Memorial Day" and that the City of Newburyport designates the first Monday in March as "COVID-19 Memorial Day", in remembrance of those who have lost their lives and in honor of those who continue to suffer from the impact of this virus and to commemorate them in an appropriate manner each year on that day.

BE IT FURTHER RESOLVED that the City of Newburyport urges all to continue taking preventative measures such as social distancing and following public health orders to mitigate spread of this virus, in tribute to essential workers and those who rose in service to protect the public.



Given under my hand and seal this 8th day of February in the year two thousand and twenty one

Donna D. Holaday
Donna D. Holaday, Mayor

Jared. J. Eigerman
Sponsor

COMMITTEE ITEMS

Committee Items- February 8, 2021

Budget & Finance

Budget & Finance

In Committee:

ORDR228_01_11_2021

Central Cong Church Amended Award to 50K

COMM264_09_29_2020 LATE FILE

Colleen Turner Letter

BT

From: Colleen Turner [turnstyler@gmail.com]
Sent: Tuesday, September 29, 2020 12:28 PM
To: Jared Eigerman
Cc: zeid@cityofnewburyport.com; Heather Shand; Christine Wallace; James McCauley; Byron Lane; Envirocom50@gmail.com; Charles Tontar; Joseph Devlin; Bruce Vogel; Afroz Khan
Subject: [Ext]RE: Proposed RE Tax Increases - VOTE NO

Dear Council President Eigerman, et al:

I've just learned that one of your fellow council members has stated, "Please note that we have received almost no comment on tax rate." Also: "We're setting up the taxpayers for the full load while also poised to give full raises."

The City can not and should not try to balance its budget on the backs of homeowners who are struggling themselves to stay gainfully employed, pay mortgages, feed their families and come out the other side of this pandemic in one fiscal piece. City employees, like all of us, need to learn to balance their fiscal responsibilities on a no-increase level. If anyone is to receive a modest increase, it should only be the hardworking first responders (police and fire). Not teachers. Not city administrators and employees.

Like everyone, the City of Newburyport's budget should not be increased, but must be frozen and existing line items trimmed.

We are living in a new era...it is neither the time to raise taxes nor give raises.

Please vote no on an increased tax rate.

Please, also, confirm receipt of this email and its inclusion in the public record for tonight's meeting.

Sincerely yours,

Colleen
Colleen Turner Secino
15 Otis Place - Unit 1
Newburyport, MA 01950

colleen@btc-boston.com
617.429.2217

CITY OF NEWBURYPORT

ORDR228_01_11_2021



IN CITY COUNCIL

ORDERED:

December 14, 2020

As Amended 1/28/21

That the City council appropriation of Community Preservation Act (CPA) FY'2018 revenues for Project #5 entitled "Central Congregational Church Steeple Project" enumerated in Council Order ORDR041_06_26_17 is hereby amended by reducing the final approved appropriation from \$75,000 to \$50,000. This reduction, to the amount already reimbursed to the applicant, is based on errors in the process that drove the replacement of historic windows prior to the PR being approved. Accordingly, no further funds under this grant award shall be reimbursed to the applicant.

Councillor Heather L. Shand

In City Council January 11, 2021:

Motion to refer to Budget & Finance by Councillor Shand, seconded by Councillor Tontar. So voted.

Committee Items
February 8, 2021
General Government

ORDR237_01_27_2021 Resolution January 6, 2021 COTW

CITY OF NEWBURYPORT



IN CITY COUNCIL

ORDERED:

Whereas, Wednesday, January 6th, 2021 marked a day in our history that must never be forgotten and;

Whereas, on January 6, a mob clearly encouraged by the President of the United States, stormed the capital building in Washington DC, our seat of government, and attempted to disrupt the process of certifying an election. This was a clear attempt to take away our rights and freedom as a free people to choose our own elected leaders through free and fair elections, and;

Whereas, we as the elected leaders of the City of Newburyport join with other mayors, city councils and other elected leaders throughout the country in condemning these actions in the strongest way possible;

Whereas, the First Amendment to the Constitution of the United States of America establishes a sacred right to free speech and peaceful assembly and peaceful protest. Those who stormed the capital building and those who incited them went far beyond anything that is protected by the First Amendment, and;

Whereas, it is the duty of honorable people of all elected officials to speak out and condemn this outrage and to show that those who invaded our capital building and those who encouraged them do not represent America. America is represented by millions of free people throughout our land who continue to cherish our land, our freedoms and our right to choose our own leaders, and;

Whereas, Donald John Trump, President of the United States, was impeached on January 11, 2021 for high crimes and misdemeanors by inciting violence against the Government of the United States;

Therefore, be it resolved that we the elected leaders of the City of Newburyport do hereby join with millions of Americans in condemning in the strongest possible terms the attack on our capital building and this assault on our democracy. We call upon our elected leaders in Washington DC to launch a full and fair investigation on how this could occur and how it can be prevented from ever happening again in the future;

Be it further resolved that the City Clerk send a copy of this resolution to U.S. Senator Elizabeth Warren, U.S. Senator Edward Markey, and U.S. Congressman Seth Moulton.

Co-sponsors

Councillor Barry N. Connell
Councillor Jared J. Eigerman
Councillor Afroz Khan
Councillor Byron J. Lane
Councillor Heather L. Shand
Councillor Charles F. Tontar
Councillor Bruce L. Vogel
Councillor Christine E. Wallace

PLANNING & DEVELOPMENT

Committee Items February 8, 2021 Planning & Development

Second Reading – Pt.1

Appointments

APPT201_12_14_2020	Jennifer Blanchet	4 Island Ln., Newbury	Zoning Admin.	12/31/2022
APPT208_01_11_2021	Marc Cendron	91 High St.	Historical Comm.	01/31/2023
APPT210_01_11_2021	Michael Sullivan	41 Summit Pl.	Waterfront Trust	01/01/2025
APPT216_01_11_2021	Carole Wagan	9 Olive St.	Conservation Comm.	01/31/2023

Re-Appointments

APPT217_01_11_2021	Cornelia D. Walsh	102 Water St.	Conservation Comm.	01/31/2023
APPT220_01_27_2021	Daniel P. Warchol	47 Plummer Ave.	Conservation Comm.	02/28/2024

Second Reading – Pt.2

Confirmatory Appointment

APPT215_01_11_2021	Robert Ciampitti	552 Merrimac St.	ZBA	02/01/2026
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Appointments

APPT222_01_27_2021	Gregory L. Benik	15 Woodland St.	ZBA	02/28/2026
APPT223_01_27_2021	Steven G. DeLisle	195 High St.	ZBA	05/31/2025

Re-Appointments

APPT228_01_27_2021	Ken Swanton	10 Tremont St.	ZBA	02/28/2026
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Orders

ORDR234_01_27_2021	Preservation Restriction 190 High Street
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Planning & Development

Second Reading-Pt.1

Appointments

APPT201_12_14_2020	Jennifer Blanchet	4 Island Ln., Newbury	Zoning Admin.	12/31/2022
APPT208_01_11_2021	Marc Cendron	91 High St.	Historical Comm.	01/31/2023
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Planning & Development

Second Reading-Pt.2

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APPt223_01_27_2021	Stephen G. DeLisle	195 High St.	ZBA	05/31/2025

Re-Appointments

APPT228_01_27_2021	Ken Swanton	10 Tremont St.	ZBA	02/28/2026
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CITY OF NEWBURYPORT

ORDR234_01_25_2021



IN CITY COUNCIL

ORDERED:

January 25, 2021

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 acceptance of a perpetual Preservation Restriction (PR) between the City, acting through the Newburyport Historical Commission (NHC), and Theodore R. and Jenny K. Nelson as Trustees of 190 High Street Nominee Trust II, for the property located at 190 High Street, said PR to be substantially in the form submitted to and approved by vote of the NHC at its meeting on December 10, 2020, and as further reviewed and approved by the Massachusetts Historical Commission (MHC).

; and

Further, that the Mayor of the City of Newburyport, the City Council President and City Clerk are hereby authorized to sign the subject Preservation Restriction as may be required, to act on behalf of the City and enter into any and all instruments, including acceptance of said Preservation Restriction in accordance with Massachusetts General Laws Chapter 184, and to take any other actions necessary to execute this acceptance and the associated Preservation Restriction accordingly.

Councilor Heather L. Shand

In City Council January 27, 2021:

Motion to refer to Planning & Development by Councillor Shand, seconded by Councillor Tontar. So voted.