

**COMMITTEE ITEMS**

# Committee Items- March 8, 2021

## Budget & Finance

### **Budget & Finance**

#### *In Committee:*

ORDR132A_07_15_19	Fuller Field Track Renovation Phase 2
ORDR136_08_19_19	Fuller Track Phase II Loan Order
COMM189_09_09_19	CPC Revised Recommendation for FY2020 Appropriations
ODNC063_09_29_2020	Financial and Fiscal Procedures as it relates to Transfers and Bond Order
ORDR216_10_13_2020	Supplemental Budget Charter Sec. 2-4
COMM284_01_27_2021	Ltr. from Susanne Gallagher

*BTF*  
*COTW*  
*RE SUBMIT*  
*9-25-19*

CITY OF NEWBURYPORT



IN CITY COUNCIL

ORDERED:

That the City Council appropriates from the Community Preservation Act FY 2020 estimated revenues, in accordance with the provisions of M.G.L. Chapter 44B, for the following projects, based upon the Community Preservation Committee's recommendation, the total amount of **\$1,250,803**. The source of funds shall be FY2020 estimated revenues in the amount of \$1,048,493.01 and Community Preservation Fund Balance in the amount of \$304,611. Each project listed below shall be considered a separate appropriation or reservation in the amount indicated for that project. Any conditions or stipulations indicated within the Community Preservation Committee's recommendation, incorporated herein, shall be considered a condition of this appropriation and subsequent grant award.

Project No.	Project Title	Applicant	Request	Recommendation
1	NHS Exterior Woodwork Restoration Phase 3	Newburyport Public Schools	\$110,903	\$110,903
2	Kelleher Gardens Siding Project	Newburyport Housing Authority	\$325,000	\$325,000
3	Gateway Trees 2	Newburyport Tree Commission	\$13,000	\$13,000
4	Cushing House Electrical System	Historic Society of Old Newbury	\$59,430	\$59,430
5	Bartlet Mall Historic Restoration-Walkway Improvements	Newburyport Parks Department and Commission	\$118,925	\$83,000
6	Custom House Maritime Museum: Interior Climate Control Systems Upgrade	Newburyport Maritime Society, Inc.	\$100,000	\$75,000
7	NHS Exterior Woodwork Restoration Phase 4	Newburyport Public Schools	\$84,000	\$84,000
8	Open Space Reserve Fund	Newburyport Open Space	\$170,000	\$100,000
9	Fuller Field Track Renovation Phase 2	Newburyport Parks Department and Commission	\$694,820	Full Bond

*Refer BTF/COTW*  
*AT RE 50*

10	Riverfront Trail Gap Project/Clipper City Rail Trail Phase 2	Newburyport Planning Office	\$250,000	\$250,000
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Total: \$1,926,078 \$1,100,333

11	NHS Stadium Bond Payment	123,080
12	Cherry Hill Soccer Field Bond Payment	\$12,540
13	Administrative Costs	\$12,000

Total: \$150,470

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Councillor Charles F. Tontar

Approve:  
Date:

Attest:

**NEWBURYPORT COMMUNITY PRESERVATION COMMITTEE  
RECOMMENDATIONS FOR FY20 APPROPRIATIONS**

The Newburyport Community Preservation Committee recommends that the City Council appropriate **\$1,250,803** from Community Preservation Fund Revenues for the projects and bond payments, in the amounts, in the categories, and subject to the conditions hereinafter described.

The following CONDITIONS are common to recommended projects #1 through #11:

- A. Each recipient of funds is required to submit to the CPC a written report on the status of the project by each October 15, January 15, April 15 and July 15 following appropriation and until final completion of the project.
- B. If a project is not completed within twelve (12) months of appropriation, the grantee must submit a written request to the CPC for an extension of the grant. Otherwise, funds may be subject to rescission and returned to Community Preservation Fund Reserves (applicable to appropriations, not to reservations).
- C. Full funding is conditioned upon the receipt of state matching funds, estimated to be 11.5% of local revenue, expected in November 2019.

Attached are:

1. A draft Council Order and table summarizing all CPC recommendations.
2. Recommendations for appropriation numbers 1-14, with summaries for each.
3. Criteria for project evaluation adopted and published by the CPC.

Estimated Community Preservation Fund Revenues available for appropriation or reservation in FY 2020 total **\$1,353,104.01**. This figure includes estimated receipts of the local CPA surcharge through fiscal year end 2019, accumulated interest, the anticipated 11.5% state matching funds expected to be received in November 2019, current uncommitted and unreserved funds, and the returned funds from completed and closed-out projects.

Applications for all projects are available for review in the Office of Planning & Development. Applications received, including those recommended for funding, are also available for viewing on the City website at the following URL:

<https://www.cityofnewburyport.com/community-preservation-committee>

Respectfully submitted by:

Community Preservation Committee Members

Michael Dissette, Chair	Jane Healey, Vice Chair
Mark Rosen	Paul Healy
Daniel Koen	Don Walters
Don Little	Ronald Ziemba
Karen Popken	

**PROJECT NO. 8**  
**OPEN SPACE RESERVE FUND**

The CPC recommends the reservation of \$100,000 from the FY 2020 Estimated Revenues to the Open Space Reserve Fund.

The CPA category for this reservation is Open Space.

**Project Summary:** Since 2014, through appropriations from the Open Space Reserve Fund, the City successfully protected 10+ acres of land on Curzon Mill Road and a significant portion of the Colby Farm land on Low Street (pending). The existence of the Reserve allowed the City to take the opportunities when they were presented. Recent CPC funding rounds have restored the Reserve to its current balance of \$729,966. The OSC continues to work on conserving open space based on goals and priorities described in the City's Master Plan and Open Space and Recreation Plan. This application is a "placeholder," with the intention of submitting supplementary application(s) about specific projects, as agreements are reached, outside funding and project partners identified, and we are otherwise able to provide the project-specific details for your consideration. No funds will be appropriated from the Open Space Reserve Fund without the CPC's review and recommendation, and City Council's approval of the specific projects.

**PROJECT NO. 9**  
**FULLER FIELD TRACK RENOVATION- PHASE 2**

The CPC recommends to fully bond the continued renovation of the track and field facility at the Bradley Fuller Athletic Field on Low Street in the amount of \$694,820 on the condition that the annual debt service not exceed \$55,000.

The CPA category for this appropriation is Recreation.

**Project Summary:** Phase 1 of this project saw construction of a new, collegiate level track and multipurpose sports field at the existing track facility on Low Street. Phase 2 got underway with the installation of a new fence that allows gating off the facility in order to charge admissions for events. Continuation of the project includes installation of a 500 to 1,000-person grandstand, completion of electrical connections throughout the facility for the sound and timing systems, installation of a new sound system, and renovation of the interior of the existing field house to include expanded restroom facilities. Future phases include improving the parking and drop off area, and installing new concrete walkways and lighting and upgrade of the turf infield.

**PROJECT NO. 10**  
**RIVERFRONT TRAIL GAP PROJECT/ CLIPPER CITY RAIL TRAIL- PHASE 2**

The CPC recommends the appropriation of \$250,000 from the FY 2020 Estimated Revenues to the City of Newburyport Office of Planning & Development for the construction phase of the Riverfront Trail Gap Project.

The CPA category for this appropriation is Recreation.

**Project Summary:** The construction phase of the Clipper City Rail Trail's Riverfront Trail Gap Project will establish a crucial trail link along a 1,200' section of the former B&M railroad corridor along the Merrimack River shoreline, and fill a critical gap in this well-used trail network. The project will clean up soil contamination and significantly improve the resilience of this unprotected stretch of shoreline to sea level rise and storm surge events. The riverfront trail section between Joppa Park and the American Yacht Club will connect over three miles of the City's existing Rail Trail/Harborwalk network. The trail will be raised several feet above existing grade in order to be at or above the

*Bot  
re submit  
9/20/19*

## CITY OF NEWBURYPORT



IN CITY COUNCIL

ORDERED:

August 19, 2019

THAT, upon the recommendation of the Community Preservation Committee, \$694,820 is appropriated to pay costs of the continuation of Phase 2 of the Bradley Fuller Athletic Facility renovation project, including the installation of a 500 to 1,000-person grandstand, completion of electrical connections throughout the facility for the sound and timing systems, installation of a new sound system, and renovation of the interior of the existing field house to include expanded restroom facilities, and including the payment of all costs incidental and related thereto; and that to meet this appropriation, the Treasurer with the approval of the Mayor, is authorized to borrow \$694,820 under and pursuant to M.G.L. c.44B, of the General Laws (the Community Preservation Act), M.G.L. c.44 or pursuant to any other enabling authority, and to issue bonds or notes of the City therefor. Any premium received upon the sale of any bonds or notes approved by this order, less any such premium applied to the payment of the costs of issuance of such bonds or notes, may be applied to the payment of costs approved by this vote in accordance with M.G.L. c. 44, §20, thereby reducing the amount authorized to be borrowed to pay such costs by a like amount.

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Councillor Charles F. Tontar

NEWBURYPORT COMMUNITY PRESERVATION COMMITTEE  
REVISED RECOMMENDATION FOR FY20 APPROPRIATIONS

PROJECT NO. 9  
FULLER FIELD TRACK RENOVATION- PHASE 2

The CPC recommends to fully bond the continued renovation of the track and field facility at the Bradley Fuller Athletic Field on Low Street in the amount of \$694,820.

The CPA category for this appropriation is Recreation.

**Project Summary: Project Summary:** Phase 1 of this project saw construction of a new, collegiate level track and multipurpose sports field at the existing track facility on Low Street. Phase 2 got underway with the installation of a new fence that allows gating off the facility in order to charge admissions for events. Continuation of the project includes installation of a 500 to 1,000-person grandstand, completion of electrical connections throughout the facility for the sound and timing systems, installation of a new sound system, and renovation of the interior of the existing field house to include expanded restroom facilities. Future phases include improving the parking and drop off area, and installing new concrete walkways and lighting and upgrade of the turf infield.





# Museum of Old Newbury

98 High Street • Newburyport, MA 01950  
www.NewburyHistory.org • 978.462.2681



September 3, 2019

Dear Newburyport City Councilors,

The Historical Society of Old Newbury (HSON) is pleased to offer its support for Phases 3 and 4 of Newburyport High School's (NHS) project to restore its historic woodwork and cupola.

The HSON has reviewed a draft preservation restriction for NHS, and has found its guidelines sufficient to ensure preservation of the building's historic integrity. The preservation restriction stipulates that the building's historic, cultural, and architectural features will not be significantly altered during restoration or routine maintenance. Repair work will be undertaken with sensitivity to the building's historic nature and in accordance with *The Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Building*.

Phases 3 and 4 of the NHS's current restoration project fall within the guidelines of the preservation restriction. Based on plans provided by NHS, the work will not compromise any historic elements in the building's façade or cupola. Rather, the work will address deterioration issues that threaten to irreparably damage the building's exterior and that would alter its appearance significantly if allowed to happen. The work includes restoration of existing elements where appropriate, and replacement with comparable materials when necessary.

With these considerations in mind, the HSON offers its support for the NHS restoration project and its request for funding from the Newburyport Community Preservation Committee.

Sincerely,

Susan Edwards  
Executive Director



CITY OF NEWBURYPORT  
HISTORICAL COMMISSION  
60 PLEASANT STREET • P.O. BOX 550  
NEWBURYPORT, MA 01950  
(978) 465-4400  
WWW.CITYOFNEWBURYPORT.COM

To: Newburyport Planning Department, Newburyport Community Preservation Committee, etc.

Re: Funding for the Cushing House Museum Electrical Upgrade Project

The Newburyport Historical Commission (NHC) wishes to convey its strong support for the proposal made by the Historical Society of Old Newbury (HSON), to undertake a major upgrade to the electrical system for the Cushing House Museum, and their request for FY 2020 CPA funding.

The Cushing House Museum (CHM) is currently under a Preservation Restriction (PR) between the Massachusetts Historic Commission (MHC) and the Historical Society of Old Newbury (HSON), owner of the property. This PR is for a period of ten years, starting in 2017, and includes the standard language stating that major work must be reviewed and approved by the MHC. We explained to HSON staff that a new PR will be drawn up which will be substantially similar to the existing PR except it will be between the HSON and the NHC, and will remain in effect in perpetuity.

NHC staff met with representatives of the HSON to tour the property and discuss the planned work. NHC staff were favorably impressed by the knowledge of the HSON staff and their sensitivity to the need to ensure that all work that is done has minimal adverse affect on the historical attributes of the structure, including the interior, which is key to the historic value of this property. We discussed the requirement that the NHC review the project in detail, and approve alterations prior to the start of work. The urgent need for the proposed electrical work was amply confirmed during this inspection. The staff shared their plans as to how they will execute the work with minimal adverse affect on the historical attributes of the structure.

The Cushing House is a unique cultural asset, being such a well preserved example of 19<sup>th</sup> century life in Newburyport. In addition, the museum has an extensive collection of artifacts representing local history and items from the extensive maritime trade to and from Newburyport. So not only the structure itself, but also these many artifacts are are risk from danger of fire the inadequate wiring currently in place. The museum also cannot supply effective lighting for many of the displays, nor adequately power office equipment used for museum administration.

Therefore, the NHC strongly supports this project and the request for FY2020 CPA funds required to accomplish it. We will review the final plans before work commences and continue to monitor the project.

Sincerely,

Glenn Richards, Chair  
Newburyport Historical Commission

10/1

# CITY OF NEWBURYPORT



IN CITY COUNCIL

ORDERED:

September 29, 2020

## AN ORDINANCE REGARDING FINANCIAL AND FISCAL PROCEDURES AS IT RELATES TO TRANSFERS AND BOND ORDERS APPROVED BY THE CITY COUNCIL

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

WHEREAS, section 6-7 of the City of Newburyport Home Rule Charter provides that: (1) except as otherwise may be provided by law, no official of the City shall knowingly and intentionally expend in any fiscal year any sums in excess of the appropriations, duly made in accordance with law, or involve the City in any contract for the future payment of money in excess of these appropriations; (ii) it is the intention of such section that section thirty-one of chapter forty-four of the General Laws shall be strictly enforced; and (iii) any official who violates such section shall be personally liable to the City for any amounts so expended to the extent that the City does not recover these amounts from the person to whom the sums were paid.

NOW, THEREFORE, the Code of Ordinances, City of Newburyport, Massachusetts, is hereby amended by adding a section, to be numbered 2-45, which section reads as follows:

### Sec. 2-45. - Budget Transfers

(a) Any expenditure pursuant to an appropriation of money by the city council, whatever its amount, for whatever purpose, and howsoever designated, including, without limitation, as a "transfer," shall be strictly limited to the lesser of: (i) the amount of such appropriation; and (ii) the amount actually necessary for the specified purpose of such appropriation.

(b) Any unexpended money appropriated by the City Council, whatever its amount, for whatever purpose, and howsoever designated, including, without limitation, as a "transfer," shall be returned to the fund from which it was appropriated or to free cash upon the earliest of: (i) thirty (30) days after completion of the specified purpose of such appropriation; (ii) 365 calendar days following such appropriation; and (iii) a date certain or occurrence specified by the City Council in connection with its having made such appropriation.

(c) In the case of Bond Orders, authority granted by the City Council to bond shall be considered void upon the earliest of: (i) 365 calendar days following a vote to grant bonding authority or (ii) a date certain or occurrence specified by the City Council in connection with its having approved such bond order.

(d) As part of the duties of the city auditor under section 2-175 to examine and audit the accounts of the city treasurer/collector and to see that they are correctly cast and properly vouched, the city auditor shall monitor compliance with this section 2-45, and, moreover, as part of the city auditor's direct responsibility to the

mayor and city council for the faithful discharge of his or duties under section 2-176, the city auditor shall report to the mayor and city council any irregularities or errors in the books or accounts of the city treasurer/collector or other city officer with respect to any failure of compliance with this section 2-45.

This Ordinance shall go into effect for any appropriation made on or after the date of its final passage and shall not apply retroactively to any previous appropriation.

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Councillor Sharif I. Zeid

October 13, 2020

**THAT** the City Council of the City of Newburyport approves the Mayor's **Fiscal Year 2021 Supplemental Budget Request** in the total amount of \$42,000, to be appropriated as follows:

<b>Org</b>	<b>Object</b>	<b>Account Description</b>	<b>Amount</b>
01111001	51101	CCN SAL COUNCIL	\$42,000.00

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Councillor Charles F. Tontar

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Councillor Afroz Khan

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

Motion to refer to Budget & Finance by Councillor Tontar, seconded by Councillor Khan. Roll call vote. 7 yes, 3 no (Zeid, Devlin, McCauley), 1 abstain (Eigerman). Motion passes.

BGF

COMM284\_01\_27\_2021

Susanne Gallagher  
3 Garnet Street  
Newburyport, MA 01950

January 15, 2021

City Council  
60 Pleasant Street  
Newburyport, MA 01950

Members of Newburyport City Council:

I am writing to all of you because I am concerned about the possible purchase of State owned land on Low Street. It is my opinion that if the Council approves the purchase you will be doing a very large disservice to the residents of the city. \$220,000 may not seem like a lot of money to spend but the Council should also be looking at the amount of money that will have to be spent to make it possible for Newburyport Youth Services to use it. The land is on wetlands and is contaminated and will require millions of dollars to bring it up to the necessary specks prior to building anything on it. I don't believe spending millions of dollars is fiscally responsible at this time.

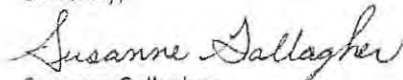
We are in the midst of a pandemic that has affected the income the city receives which will probably result in an increase of taxes and fees the residents have to pay. Money is tight for everyone, especially for the seniors who are on a fixed income. Asking the residents to pay more will probably result in some being forced to leave the city. I am a senior on a fixed income who has lived in this city my entire life and I really don't want to be forced out because I can no longer afford to live here.

The Brown school has served Newburyport Youth Services for several years and I would rather see some money spent on improving that facility rather than starting all over. There is one other reason the Brown school should be kept, it is the polling place for Ward 2 voters. If the school is sold where will the polling place move to and at what cost?

The City Council should represent the entire city, not just a small segment of the city. The streets and sidewalks are in deplorable shape forcing people to walk in the street rather than take a chance on tripping on the sidewalk. If the money is burning a hole in your pocket then spend some on repairing the streets and sidewalks which serves the entire city.

Thank you for listening.

Sincerely,

  
Susanne Gallagher

# Committee Items- March 8, 2021 Planning & Development

## *In Committee:*

### Consent Agenda

COMM297_02_08_2021	Land Vest Appraisal Off Middle St, W.Newbury & Nbpt
ORDR238_02_08_2021	Conservation Restriction & Easement ECGB
COMM303_02_22_2021	Ltr. From Craig Douglas
COMM305_02_22_2021	Artichoke River Memo and Aerial Photo

### Regular Agenda

APPT231_02_08_2021	Walter Chagnon	Zoning Board of Appeals
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# LandVest

LUXURY PROPERTIES | TIMBERLAND | CONSULTING

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.



# LandVest

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

# LandVest

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

# LandVest

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

# LandVest

(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 prominent loop at the end.

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

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 4I 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

EXHIBIT B

Plan of Premises

EXHIBIT C

Sketch Plan of Premises and Water Supply Zone

EXHIBIT D

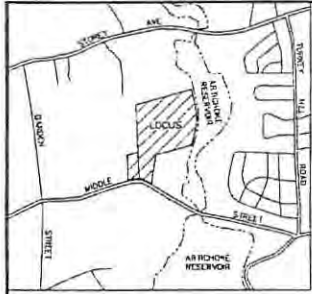
City of Newburyport City Council Vote

EXHIBIT E

Town of West Newbury Town Meeting Vote

Return to:

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



**WEST NEWBURY, MA  
PLANNING BOARD**

APPROVAL UNDER THE SUBDIVISION  
CONTROL LAW NOT REQUIRED

DATE \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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

**LOCUS MAP**  
SCALE: 1" = 1,200'

- 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.P.E. | IRON PIPE      | M  | MAPLE   |
| D.H.     | DRILL HOLE     | H  | HICKORY |
| I.R.     | IRON ROD       | CH | CHERRY  |
| FD.      | FOUND          | A  | APPLE   |
| BLD      | BUILDING       |    |         |
| —        | STONE WALL     |    |         |
| —        | UTILITY POLE   |    |         |
| —        | WETLAND SYMBOL |    |         |

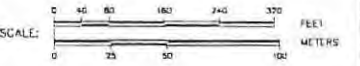
**TREES**

- |    |         |
|----|---------|
| M  | MAPLE   |
| H  | HICKORY |
| CH | CHERRY  |
| A  | APPLE   |

**LOT 2**  
1,866,779 S.F.  
38.264 Acres  
BK. 6703 PG. 590  
MAP R27 LOTS 28, 28A, & 29

**LOT 1**  
133,315 S.F.  
3.080 Acres  
BK. 6703 PG. 590  
MAP R27 LOT 27

**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

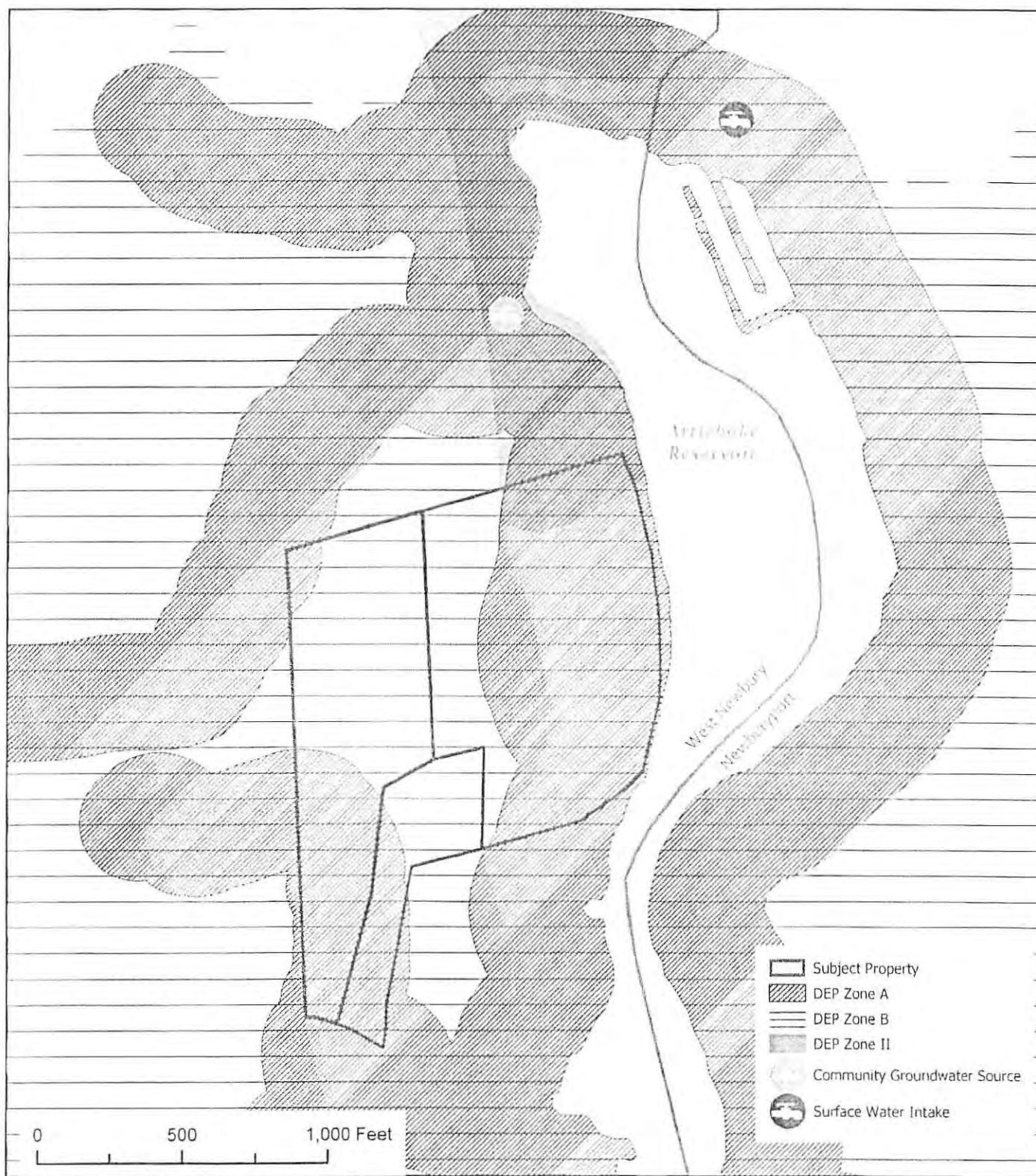
THIS PLAN IS BOTH A DIVISION & RECONFIGURATION OF THE  
LAND DESCRIBED IN DEED BK. 6703 PG. 590, & THE LAND  
DESCRIBED IN DEED BK. 6547 PG. 419, RESULTING IN TWO  
NEW LOTS - LOT 1, WHICH GENERALLY CORRESPONDS TO  
ASSESSOR'S LOT R27-27 & LOT 2, WHICH GENERALLY  
CORRESPONDS TO ASSESSOR'S LOTS R27-28,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



**Greenbelt**  
Essex County's Land Trust



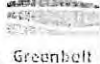
- Artichoke River Woods (38 acres +/-)
-  Community Groundwater Source
-  Surface Water Intake
- West Newbury Municipal Land
- W. Newbury Water Well Easement
- Newburyport Municipal Land
-  DCR-State Parks & Recreation
- Greenball Property
- CR

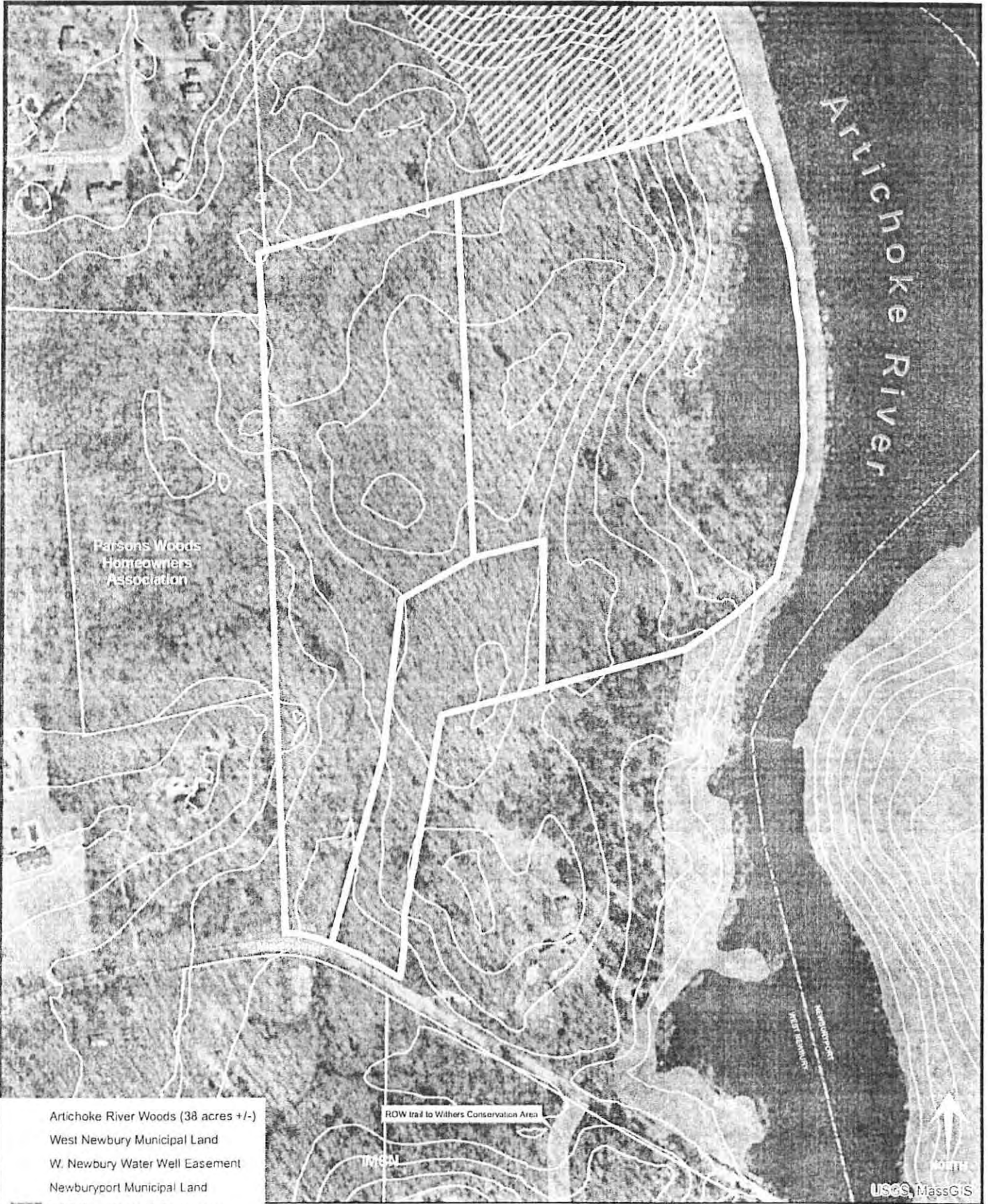
**Artichoke River Woods**  
**38 +/- acres**  
**Open Space Context**

USGS MassGIS

0      750      1,500 Feet

Map for illustrative purposes only. Boundaries are approximate and based on most currently-available assessor's data 2013 Orthophotos, 1:5,000. All data other than Greenbelt properties from MassGIS. Map by Greenbelt, dated 1-6-20

 Greenbelt



- 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

0 250 500 Feet

Map for illustrative purposes only. Boundaries are approximate and based on most currently-available assessor's data, 2013 Orthophotos, 1:5,000. All data other than Greenbelt properties from MassGIS. Map by Greenbelt, dated 1-6-20

USGS, MassGIS

Greenbelt



*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, 9<sup>th</sup> 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 (AEF), 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/oaef](http://www.mass.gov/oaef) under Guidance For Vendors - Forms or [www.mass.gov/oaef](http://www.mass.gov/oaef) under OSD Forms.

CONTRACTOR LEGAL NAME: (and d/b/a): <u>City of Newburyport</u>		COMMONWEALTH DEPARTMENT NAME: <u>Energy and Environmental Affairs (EEA)</u> MMARS Department Code: <u>ENV</u>	
Legal Address: (W-9, W-4,T&C): <u>60 Pleasant Street Newburyport, MA 01950</u>		Business Mailing Address: <u>100 Cambridge St., Suite 900, Boston, MA 02114</u>	
Contract Manager: <u>Geordie Vining</u>		Billing Address (if different):	
E-Mail: <u>gvining@cityofnewburyport.com</u>		Contract Manager: <u>Nathaniel Thomas</u>	
Phone: <u>(978) 465-4400</u>	Fax:	E-Mail: <u>nathaniel.thomas1@mass.gov</u>	
Contractor Vendor Code: <u>7560015115</u>		Phone: <u>(617) 626-1187</u>	Fax: <u>(617) 626-1181</u>
Vendor Code Address ID (e.g. "AD001"): <u>AD001</u> (Note: The Address ID Must be set up for EFT payments.)		MMARS Doc ID(s): <u>DWSPNEWBURYPORTART20</u>	
<input checked="" type="checkbox"/> <b>NEW CONTRACT</b>		<input type="checkbox"/> <b>CONTRACT AMENDMENT</b>	
PROCUREMENT OR EXCEPTION TYPE: (Check one option only) <input type="checkbox"/> Statewide Contract (OSD or an OSD-designated Department) <input type="checkbox"/> Collective Purchase (Attach OSD approval, scope, budget) <input checked="" type="checkbox"/> Department Procurement (includes State or Federal grants 815 CMR 2.00) (Attach RFR and Response or other procurement's supporting documentation) <input type="checkbox"/> Emergency Contract (Attach justification for emergency, scope, budget) <input type="checkbox"/> Contract Employee (Attach Employment Status Form, scope, budget) <input type="checkbox"/> Legislative/Legal or Other (Attach authorizing language/justification, scope and budget)		Enter Current Contract End Date Prior to Amendment: <u>    </u> , 20 <u>    </u> . Enter Amendment Amount: \$ <u>    </u> (or "no change") AMENDMENT TYPE: (Check one option only. Attach details of Amendment changes.) <input type="checkbox"/> Amendment to Scope or Budget (Attach updated scope and budget) <input type="checkbox"/> Interim Contract (Attach justification for Interim Contract and updated 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 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"/> 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"/> 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 <u>    </u> % PPD. Payment issued within 15 days <u>    </u> % PPD. Payment issued within 20 days <u>    </u> % PPD. Payment issued within 30 days <u>    </u> % PPD. If PPD percentages are left blank, identify reason: <input checked="" type="checkbox"/> agree to standard 45 day cycle <u>    </u> statutory/legal or Ready Payments ( <u>    </u> c. 22, § 23A) <u>    </u> only initial payment (subsequent payments scheduled to a standard EFT 45 day payment cycle. See Primer: Pay Discounts Policy)			
BRIEF DESCRIPTION OF CONTRACT PERFORMANCE or REASON FOR AMENDMENT: <u>Drinking Water Supply Protection Grant Program award for the acquisition of a Conservation Restriction over 36+ acres of land in the Town of West Newbury, known as the Antelope 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.</u>			
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 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 <u>    </u> , 20 <u>    </u> , 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 <u>June 30, 2021</u> , 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: X: <u>Barbara D. Hefaday</u> Date: <u>    </u> (Signature and Date Must Be Handwritten At Time of Signature) Print Name: <u>Barbara D. Hefaday</u> Print Title: <u>Mayor</u>		AUTHORIZING SIGNATURE FOR THE COMMONWEALTH: X: <u>    </u> Date: <u>11/10/20</u> (Signature and Date Must Be Handwritten At Time of Signature) Print Name: <u>    </u> Print Title: <u>Director of Capital Planning</u>	

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

PARTICIPANT

BY Danna D. Holaday  
Danna 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.

**From:** Craig Douglas [cdouglas.architects@gmail.com]  
**Sent:** Thursday, February 11, 2021 4:38 PM  
**To:** Heather Shand  
**Subject:** [Ext]Environmental Restrictions Statement

*external e-mail use caution opening*

Dear Councillor Shand,

It is important to clarify a few items related to environmental restrictions as they pertain to 57 Low Street.

Article 97 is not a vehicle to initiate environmental restrictions – it is an Article of MA Law to mandate protection of vehicles of conservation. It is Intended to be a legislative ‘check’ to ensure that lands acquired for conservation purposes are not converted to other inconsistent uses.

One of these vehicles is a Conservation Restriction (CR) Acquisition. In the MA Conservation Restriction Handbook it is defined as follows: a conservation restriction...is a means...to limit the use of land in order to protect...the natural, scenic or open condition of the land. It is not intended to be initiated to protect wetlands. It is a permanent restriction. It is initiated by the City Council.

The restriction to protect wetlands is call a “Wetlands Restriction” (WR) and is defined as follows: “The restriction orders provide added protection for selected wetlands by prohibiting certain activities in advance of any work being proposed.” It is also a permanent restriction. It is initiated by the Conservation Commission (Con Com). It is rarely used because Con Com is already legally obligated under The Wetlands Protection Act to oversee work with 100 feet of any wetlands. Work within these areas require permitting through Con Com and review at both the state and local level.

As the many people who have developed properties containing wetlands over the years can attest, Con Com’s permitting process is rigorous and robust. It often takes months to complete permitting and years to achieve final certification. Most importantly, Con Com’s permitting process is very technical and not in any way controversial. It is also exceedingly common in MA.

I ask that the Councillors leave the process of wetland conservation and protection to the experts at the Conservation Commission and instead listen and let their opinion inform the City Council’s work at hand – Should City Council appropriate \$220k for the purchase of 57 Low Street?

Regards,  
Craig Douglas

2 Moseley Ave  
Ward 4



CITY OF NEWBURYPORT  
 60 PLEASANT STREET • P.O. BOX 550  
 NEWBURYPORT, MA 01950  
 (978) 465-4400 • (978) 465-4452 (FAX)

DONNA D. HOLADAY  
 MAYOR

MEMORANDUM

TO: NEWBURYPORT CITY COUNCIL  
 FROM: TOM CUSICK, WATER TREATMENT SUPERINTENDENT, & GEORDIE VINING, SENIOR PROJECT MANAGER  
 CC: DONNA HOLADAY, MATT COOGAN, ANDY PORT, KATELYN SULLIVAN  
 SUBJECT: ARTICHOKE RIVER WOODS WATERSHED PROTECTION PROJECT: CPA FUNDED CONSERVATION RESTRICTION  
 DATE: 2/16/2021

We are writing to request the City Council's approval of the Conservation Restriction that will permanently protect 38 acres of woodland and watershed land adjacent to Newburyport's Artichoke Reservoir from development. The closing on the property must occur by the end of March, 2021.

The City Council approved CPA funding of \$225,000 on 6/29/20 in support of this project along with a \$300,000 reimbursable state Drinking Water Supply Protection Grant. The Artichoke River Woods property is located directly adjacent to other watershed land owned by the City of Newburyport. The City's interconnected surface water reservoirs provide 86% of Newburyport's drinking water, and over 1,000 feet of this property is adjacent to the Artichoke Reservoir. The majority of the property is within MassDEP's Surface Water Supply Protection Zone A and the rest is in Zone B. The property is across from the intake that pumps all the water from the interconnected surface reservoirs to the City's Water Treatment Plant.

The City has negotiated the language and terms of the Conservation Restriction during the past few months with multiple stakeholders including the MA Department of Environmental Protection, the MA Department of Conservation and Recreation (DCR), the MA Executive Office of Environmental Affairs Division of Conservation Services (EEA), the Town of West Newbury, and the Essex County Greenbelt Association. All Conservation Restrictions in Massachusetts must be approved by the Commonwealth and structured in a typical format, including a listing of goals and purposes, blanket prohibitions against development, and then the reserved rights. The City's Water & Sewer Commission will be the primary grantee of the Conservation Restriction, which will also be co-held with the Town of West Newbury and DCR. The restricted fee simple interest will be owned by Greenbelt who will manage the property for open space, watershed protection, habitat, and passive public recreation. The Town of West Newbury is providing \$175,000 toward the CR acquisition, DCR is contributing \$175,000 toward the CR acquisition, and Greenbelt is providing \$110,000 toward the fee simple acquisition plus covering all transaction and due diligence costs. This is a bargain (below fair market value) sale based on appraised value. Please note that the Conservation Restriction has been reviewed and approved by the City Solicitor Kopelman & Paige. The Water & Sewer Commission is voting on the Conservation Restriction at their 2/17/21 meeting. The CR is currently in final review by EEA, and approval to proceed with signatures is expected imminently.

Materials previously submitted to the City Council at the 2/8/21 meeting include:

- The Conservation Restriction for the property;
- The Plan of Land for the property by Donohoe Survey, Inc., dated 1/22/21;
- Supplemental Letter Updating Appraisal as of 12/4/20;
- Drinking Water Supply Protection grant information; and
- Locus and watershed maps.

Thank you for your support of this important public project.





CITY OF NEWBURYPORT  
OFFICE OF THE MAYOR  
DONNA D. HOLADAY, MAYOR

60 PLEASANT STREET - P.O. BOX 550  
NEWBURYPORT, MA 01950  
978-465-4413 PHONE  
978-465-4402 FAX

RECEIVED  
CITY CLERK'S OFFICE  
NEWBURYPORT, MA  
2021 FEB -3 PM 3:21

*Donna D. Holaday*

To: President and Members  
of the City Council  
  
From: Donna D. Holaday, Mayor  
  
Date: February 2, 2021  
  
Subject: Re-Appointment

I hereby re-appoint, subject to your confirmation, the following  
named individual as an associate member of the Zoning Board of  
Appeals. This term will expire on March 31, 2026.

Walter Chagnon  
43 Lime Street  
Newburyport, MA 01950

**Walter J "Bud" Chagnon**  
43 LINE STREET, NEWBURYPORT, MA 01860'S OFFICE  
E-MAIL: BUDCHAGNON@GMAIL.COM NEWBURYPORT, MA  
PHONE: 781-248-3505

---

**OBJECTIVE**

2020 MAR -3 PM 3:11

Part to full time position local to Newburyport, MA.

---

**SKILL HIGHLIGHTS**

- More than 30 years of experience in the Power Industry
- Developed and led new organizations within GE to capture expanding markets
- Successfully integrated a controls services business following the acquisition of Woodward Controls.
- Successfully managed and grew the service business in New England across gas, steam and hydro segments.
- Successfully managed a major sales territory for an expanding market segment which grew more than 250% in four years.
- Strong customer centric mindset.

---

**CORE ACCOMPLISHMENTS**

Individual sales responsibility for all GE Services in New England. Business segment was in excess of \$100MM annually. Grew assigned business unit by more than 13% a, two years in a row. Last annual orders awarded exceeded \$250 MM including long term services contracts.

Sales responsibility for New England Power Controls business. Met or exceeded assigned annual budget for seven consecutive years, 2006 through 2013. Captured 75% of all GE installed power generating equipment in New England with new advanced digital controls.

Success as Business Development Manager for Hydro Services Market. Increased Annual sales 80% in first four years. Developed business plans and market strategy to concentrate on new organization's strengths.

Project Manager for large short-cycle power generation installation project. Managed all engineering, labor, and installation contractors to install 160MW of gas turbine utility units at a greenfield site. The short cycle project was from award of contract, to all contractual MW's operating in 60 days.

---

**AWARDS RECEIVED**

GE Energy Sales, Regional Excellence Award, 2010, 2011, 2012, and 2016  
GE Energy Services, Regional Managerial Awards, 1988, 1992, 1998  
GE Energy Services, General Manager's Excellence Award, 1997  
GE Energy, CEO GE Energy, Engineering Award, 1997

---

**PROFESSIONAL EXPERIENCE**

Various positions within GE-  
Field Engineer, Project Engineer Project Manager, Service Manager, Business Development Manager, Global Site Services Leader, Sales Manager and Account Manager.

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**COMMUNITY SERVICE**

Chelmsford Youth Soccer, Little League Baseball, and girl's basketball coach. Boy Scout Troop Committee Chairman.  
All Saint's Episcopal Church, Vestry member, Finance Committee Chairman, and Treasurer  
Chelmsford Zoning Board of Appeals, 2011 through 2017.  
Kayla Estates Condominium Organization, Chelmsford, MA., Committee Chairman, 1996 through 2010

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**EDUCATION**

University of Massachusetts, Amherst, MA. BS Mechanical Engineering

REFERENCES AVAILBLE UPON REQUEST

**Committee Items-March 8, 2021**  
**Public Utilities**

ORDR230\_1\_11\_2021

Water Sewer Fees

**Removal from Committee Form**

**Instructions:** Remit to [rjones@cityofnewburyport.com](mailto:rjones@cityofnewburyport.com); [pbarker@cityofnewburyport.com](mailto:pbarker@cityofnewburyport.com); [KSullivan@cityofnewburyport.com](mailto:KSullivan@cityofnewburyport.com) by Wednesday, 5 PM preceding Council meeting

**Committee Name:** Committee on Public Utilities

**Committee Chair:** Tontar

	Measure Identifier	Measure Title	Amended in Committee? (if yes, attach final version)	Consent Agenda or Regular Agenda?
1.	ORDR230_01_11_2021	Water and Sewer Fees	No	Consent
2.				
3.				
4.				
5.				
6.				
7.				
8.				
9.				
10.				
11.				
12.				
13.				



CITY OF NEWBURYPORT



IN CITY COUNCIL

ORDERED:

January 11, 2021

THAT the City Council of the City of Newburyport hereby amends the following fees for Department of Public Services' Water and Sewer Division, as recommended and approved by the Water and Sewer Commission on October 28, 2020:

Water Service Charges	Approved June 1, 2013	Proposed
Emergency Call	\$300	\$400
Water On/Off	\$30	\$50
Water off, Meter Out Water on, Meter In	\$60	\$75
Labor – Water	\$60	\$75
Cut & Cap Water Service	\$300	\$400
Water Reconnect	\$300	\$400
Property Transfer	\$50	\$60
Hydrant Flow Test	\$100	\$150
Hydrant Charge	\$200	\$400
Hydrant Charge Newbury	\$65	\$75
Inspection	\$50	\$60

Tap Fees	Approved June 1, 2013	Proposed
Tap 1 - 2 inch	\$300	\$400
Tap 4 - 6 inch	\$550	\$650
Tap 8 inch	\$750	\$800
8 Inch or greater	\$1,000	\$1,200

Connection Fees	Approved June 1, 2013	Proposed
1 Inch	\$1,400	\$2,500
2 Inch	\$4,270	No Change
4 Inch	\$7,140	No Change
6 Inch	\$10,000	No Change

Water Main Connections	Approved June 1, 2013	Proposed
8 Inch	\$13,000	No Change
12 Inch	\$16,000	No Change
16 Inch	\$20,000	No Change

Meter Charge	Approved June 1, 2013	Proposed
5/8 Inch	\$270	Market Cost (Variable)*
1 Inch	\$400	Market Cost (Variable)*
Greater than 1 inch	Cost	Market Cost (Variable)*
Meter horns fittings	No Charge	Market Cost (Variable)*
Meter Test	\$100	\$150
Valve Repair	\$75	\$100
Tamper Fine	\$300	\$500 First offense \$1,000 per subsequent offense

Sewer Connection Fees	Approved June 1,2013	Proposed
Cut & Cap Service	\$1,000	\$1,500
Sewer Reconnect	\$225	\$225
Property Transfer	\$50	\$60
I/I Fee	\$300	No Change

\*Market Cost (Variable) refers to market fluctuations in the cost of brass, copper and steel, which has a direct impact on price changes for equipment and infrastructure.

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Councillor Charles F. Tontar



CITY OF NEWBURYPORT  
DEPARTMENT OF PUBLIC SERVICES

16A PERRY WAY  
NEWBURYPORT, MA 01950  
TEL: 978-465-4463 EXT. 1701

ANTHONY J. FURNARI, DIRECTOR  
JAMIE ILLICOLO, DEPUTY DIRECTOR/DIRECTOR OF OPERATIONS

TO: Mayor Holaday  
FROM: Julie Spurr Knight, DPS Business Manager  
DATE: December 30, 2020  
SUBJECT: Proposed Updates to Water and Sewer Service Fees

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The Department of Public Services recently conducted an analysis on the current Water and Sewer service fee structure. The fees were last updated and approved by the Water Commission in July of 2013. Many of the fees have not changed since July of 2006.

The analysis of the current fee schedule indicated that many fees are no longer covering the associated costs, as intended. Labor rates, time and material and vehicle fuel consumption were used to calculate the updated fee amounts.

Bringing these service fees in line with the associated costs will help to offset future increases to rates and fees for all users. Continuing to provide services with fees that do not cover the direct cost of labor and materials will continue to reduce retained earnings and drive further rate increases.

In late November of 2020 the Water & Sewer Divisions developed a rate study team. A scope of work was outlined and quotes were solicited. The Department is moving forward with the rate study and will have the study completed prior to July 1, 2021. The study will review water and sewer historic usage, estimate population growth and performs an asset valuation on the current water/sewer facilities and infrastructure. The engineering firm will provide projected rate structures, fees and projected revenue requirements. The last major rate study was conducted approximately ten years ago prior to the upgrades to the two treatment plants.

We look forward to sharing the results of the rate study. In the meantime, it is our hope that bringing these service fees in line with the associated costs will help to mitigate increases for all ratepayers in the future.

Thank you for your consideration.