

# CITY OF NEWBURYPORT



\_\_\_\_\_  
IN CITY COUNCIL

ORDERED:

November 8, 2021

**AN ORDER (1) AUTHORIZING PURCHASE OF A 2.7-ACRE PORTION OF 57 LOW STREET, (2) APPROPRIATING \$225,000 TO PURCHASE AND REMEDIATE SUCH PROPERTY FOR IMMEDIATE OCCUPANCY BY YOUTH SERVICES, (3) ASSIGNING CUSTODY TO YOUTH SERVICES, AND (4) APPROPRIATING \$200,000 TO REOPEN THE BROWN SCHOOL GYMNASIUM**

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

- 1) The City Council approves and authorizes the purchase of that portion of the real property commonly known as 57 Low Street, depicted in the attached plan as Lot A-1, for the sale price of Two-Hundred and Twenty Thousand Dollars and (\$220,000): (a) for general municipal purposes, with the exception of that portion of Lot A-1 to be reserved for open space and conservation purposes; and (b) for open space and conservation purposes as to that portion of Lot A-1 depicted in the attached "Area of Conservation Restriction.
- 2) The City Council appropriates the sum of **Two-Hundred and Twenty-Five Thousand Dollars (\$225,000)** from Special Revenue Fund No. 2760 (Sale of Municipal Buildings) to pay the costs (a) to purchase Lot A-1, and (b) to remediate mold and otherwise prepare, as soon practicable, the building at Lot A-1 for safe occupancy by the Newburyport Youth Services department.
- 3) Upon acquisition of Lot A-1, pursuant to M.G.L c. 40, § 15A, the City Council authorizes transfer of care, custody, management, and control of such Lot A-1 to the Youth Services department.
- 4) The City Council appropriates the sum of **Two-Hundred Thousand Dollars (\$200,000)** from Special Revenue Fund No. 2760 (Sale of Municipal Buildings), to pay the costs to repair and/or improve: (a) the gymnasium of the former Brown School to enable its reopening for municipal purposes (including installation of a heating system), as soon as practicable; and (b) to secure the remainder the former Brown School, now unoccupied, against weather, trespass, and damage.
- 5) The remaining balance in Special Revenue Fund No. 2760 (Sale of Municipal Buildings) of **Two-Hundred and Sixty-Eight Thousand, Five Hundred Dollars (\$268,500)** shall remain available for future appropriation by vote of the City Council.

---

Councillor Sharif I. Zeid, Ward 1

---

Councillor Jared J. Eigerman, Ward 2



CITY OF NEWBURYPORT



\_\_\_\_\_  
IN CITY COUNCIL

November 8, 2021

ORDERED:

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

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

\_\_\_\_\_  
Councillor Heather L. Shand

\_\_\_\_\_  
Councillor Charles F. Tontar

\_\_\_\_\_  
Councillor Bruce L. Vogel

\_\_\_\_\_  
Councillor Barry N. Connell



**DRAFT**

**RELEASE DEED**

THE COMMONWEALTH OF MASSACHUSETTS, acting by and through the Commissioner of its DIVISION OF CAPITAL ASSET MANAGEMENT AND MAINTENANCE, having an address at One Ashburton Place, Boston, Massachusetts 02108 (the "Grantor"), acting under the authority of Massachusetts General Laws Chapter 33, Section 126, for consideration of Two Hundred Twenty Thousand Dollars (\$220,000.00), the receipt and sufficiency of which the Grantor hereby acknowledges, does hereby grant and release to the CITY OF NEWBURYPORT, with a mailing address of 60 Pleasant Street, Newburyport, Massachusetts 01950 (the "Grantee"), without covenants, a certain parcel of land, known as Lot A-1, with existing improvements located thereon (the "Premises"), located at 57 Low Street, Newburyport, Massachusetts, containing 2.17± acres, more or less, and being shown on that certain plan entitled "Plan of Land located in Newburyport, Massachusetts (Essex County), Prepared for the City of Newburyport", Scale 1" = 80', dated June 5, 2019 and prepared by Meridian Associates, Inc., 500 Cummings Center, Suite 5950, Beverly, MA 01915, and recorded herewith at the Southern Essex District Registry of Deeds in Plan Book \_\_\_\_\_ Plan \_\_\_\_\_ (the "Plan").

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

The Premises are conveyed subject to the restriction that the Premises shall be used for general municipal purposes. If the Premises cease to be used for general municipal purposes, title to the Premises shall, upon the Commonwealth's recording of a notice with the Southern Essex District Registry of Deeds, revert to the Commonwealth of Massachusetts.

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

[SIGNATURE PAGE FOLLOWS]

57 Low Street (Lot A-1), Newburyport, MA

IN WITNESS WHEREOF, the Commonwealth of Massachusetts has executed this Release Deed as a sealed instrument as of the \_\_\_\_\_ day \_\_\_\_\_, 2020.

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

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

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

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

**THE COMMONWEALTH OF MASSACHUSETTS**

Suffolk, ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, 2020, before me, the undersigned notary public, personally appeared Carol W. Gladstone, proved to me through satisfactory evidence of identification, which were personally known to me, to be the person whose name is signed on the preceding document, and acknowledged to me that she signed it voluntarily, in her capacity as Commissioner of the Division of Capital Asset Management and Maintenance, for its stated purpose.

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

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



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

CHARLES D. BAKER  
GOVERNOR

KARYN E. POLITO  
LIEUTENANT GOVERNOR

*Boston, Massachusetts 02108*

*Tel: (617) 727-4050*

*Fax: (617) 727-5363*

MICHAEL J. HEFFERNAN  
SECRETARY  
ADMINISTRATION & FINANCE

CAROL W. GLADSTONE  
COMMISSIONER

July 10, 2020

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

Dear Mayor Holaday:

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

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

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

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

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

Thank you.

Sincerely,

Warren A. Madden  
Project Manager  
Office of Real Estate Management

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







CITY OF NEWBURYPORT

ORDR302\_11\_08\_2021  
Late File



---

IN CITY COUNCIL

ORDERED:

November 8, 2021

AN ORDER TO DESIGNATE A STOP SIGN AT THE INTERSECTION OF  
RAWSON AVE. AND HIGHLAND AVE.

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

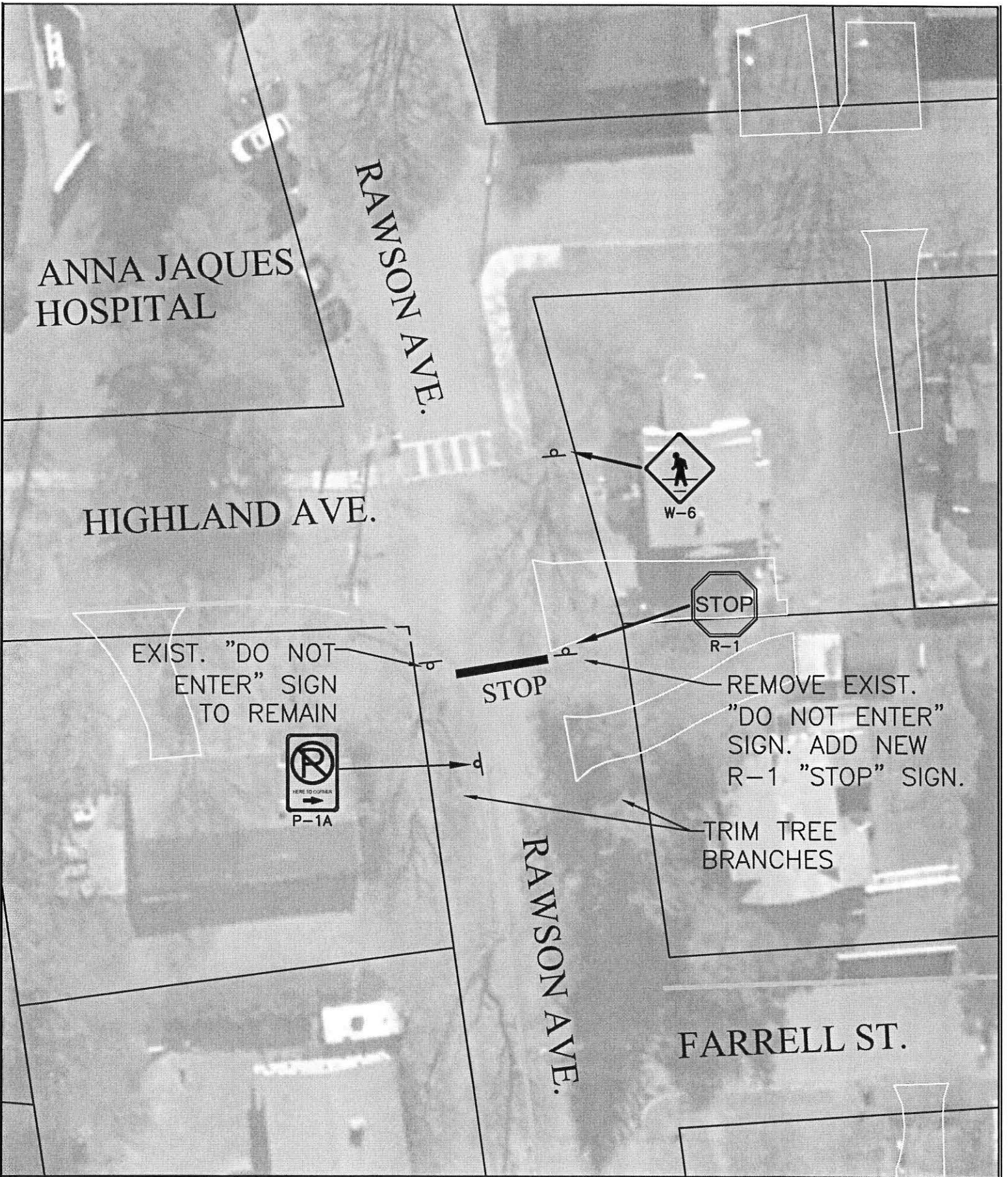
Chapter 13	Traffic and Motor
Article 4	Vehicles Specific Street
Division 4	Schedules Stop and Yield
Section 13-136	Intersections Stop signs designated.

Pursuant to Section 13-136 of the Newburyport Code, the list of stop signs shall amended to include Rawson Avenue at the intersection of Highland Avenue as shown on Sheet: Traffic Signage Plan Rawson Ave. @ Highland Ave and dated 09-21-2021 and marked 'Attachment A'.

Furthermore the Do Not Enter sign shall be removed.

---

Councillor Christine E Wallace



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

RAWSON AVE. @ HIGHLAND AVE.

DATE ISSUED:  
 09-21-21

TRAFFIC SIGNAGE PLAN

SCALE: NTS

CITY OF NEWBURYPORT



---

IN CITY COUNCIL

ORDERED:

November 8, 2021

**THAT**, the City Council of the City of Newburyport votes to accept the provisions of M.G.L. c.60, §23B relative to a fee schedule for the issuance of municipal lien certificates by the collector of taxes.

---

Councillor Afroz K. Khan

CITY OF NEWBURYPORT



\_\_\_\_\_  
IN CITY COUNCIL

ORDERED:

November 8, 2021

**THAT** the City Council of the City of Newburyport hereby approve and authorize the acceptance of a perpetual Conservation Restriction (CR) between the City, acting through the Newburyport Conservation Commission ("Grantee"), and Evergreen Commons, LLC ("Grantor"), as owners of 22.816 acres of property in the City of Newburyport, being bounded and described in Exhibit A therein, said CR to be substantially in the form attached hereto; and

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

\_\_\_\_\_  
Councillor Heather L. Shand



**GRANTOR:** Evergreen Commons, LLC  
**GRANTEE:** City of Newburyport  
**ADDRESS OF PREMISES:** 18 Boyd Drive and 5 Brown Avenue  
**FOR GRANTOR'S TITLE SEE:** Essex South Registry of Deeds at Book 36573, pages 88 and 92.

## **CONSERVATION RESTRICTION**

Evergreen Commons, LLC, of 487 Groton Road, Suite A, Westford, Middlesex County, Commonwealth of Massachusetts, 01886, a Limited Liability Corporation, being the sole owner of the below described Premises, and intending hereby to bind itself and its successors and assigns (“Grantor”), acting pursuant to Sections 31, 32, and 33 of Chapter 184 of the Massachusetts General Laws, and in furtherance of the Newburyport Zoning Ordinance Section XIV-I (vii) (1), hereby grants, with QUITCLAIM COVENANTS to the City of Newburyport, a municipal corporation duly organized under the laws of the Commonwealth of Massachusetts and located in Essex County, Massachusetts, at 60 Pleasant Street, Newburyport, Massachusetts 01950, acting by and through its Conservation Commission by authority of Section 8C of Chapter 40 of the Massachusetts General Laws, and its successors and permitted assigns (“Grantee”), for consideration of less than \$100.00 (one hundred dollars), IN PERPETUITY AND EXCLUSIVELY FOR CONSERVATION PURPOSES, the following Conservation Restriction on a parcel of land in Newburyport consisting of approximately 22.816 acres, being bounded and described in Exhibit A, which exhibit is attached hereto and incorporated herein, and shown collectively as “Open Space 1,” “Open Space 2,” and “Open Space 3” on a plan of land entitled “Plan of Land in Newburyport, Massachusetts Surveyed For Evergreen Commons, LLC” prepared by Design Consultants Inc., 68 Pleasant Street, Newburyport, MA 01950, dated May 22, 2017 and recorded in Plan Book 464, Page 53 in the Essex South Registry of Deeds, a reduced copy of which is attached hereto as Exhibit B and incorporated herein (the “Premises”).

The Grantor has previously hereto recorded in the Essex South Registry of Deeds at Book 36573 Page 163 a Declaration of Restriction (“Declaration”) which specifically contemplated and which by its terms is superseded by the execution and recording of this Conservation Restriction. The Declaration incorporates an Open Space Conservation Restriction Use Plan, dated December 18, 2017, which is recorded in the Essex South Registry of Deeds at Book 36573, Page 173 and which is attached hereto and incorporated as Exhibit C.

This Conservation Restriction shall supersede and replace the Declaration.

### **I. PURPOSES:**

This Conservation Restriction is defined in and authorized by Sections 31-33 of Chapter 184 of the Massachusetts General Laws and otherwise by law. The purpose of this Conservation Restriction is to assure that the Premises will be maintained in perpetuity for conservation purposes, in a natural, scenic, and undeveloped condition, and to prevent any use or change that would impair or interfere with its conservation and preservation values (“conservation values”).

This Conservation Restriction is required by the following permits:

- 1) Newburyport Planning Board, XIV OSRD Special Permit, File No. 2016-SP-03a, recorded in the Essex South Registry of Deeds at Book 36573, Page 94 (“OSRD Special Permit”), for an Open Space Residential Development;
- 2) Newburyport Planning Board, Definitive Subdivision Plan, File No. 2017-DEF-01, dated January 30, 2018 and recorded in the Essex South Registry of Deeds at Book 36573, Page 115, for a 38 lot subdivision (“Subdivision Approval”); and
- 3) Newburyport Planning Board, XIX Water Resource Protection District Special Permit, File No. 2017-SP-05, recorded in the Essex South Registry of Deeds at Book 36573, Page 128 (“Water Resource Protection District Special Permit”); and
- 4) Newburyport Conservation Commission Order of Conditions, DEP File Number 051-0973, dated February 6, 2018 and recorded in the Essex South Registry of Deeds at Book 36573, Page 141 (“Order”), allowing construction of a 38-home subdivision within a Zone II Wellhead Protection Area.

The three Open Space parcels comprising the Premises provide a range of conservation values (as further described below) that provide a general public benefit that will be protected by this Conservation Restriction.

**The conservation values include the following:**

- Open Space Protection. The protection of the Premises contributes to the protection of the scenic and natural character of the City of Newburyport and will enhance the open-space value of these and nearby lands. The Premises is located near existing trail networks and provides a destination for residents utilizing those trails. Open Space 1 contains extensive open space for passive recreation, including trails that both loop and connect through the Premises, connecting the Brown Avenue neighborhood to the north with the Boyd Drive neighborhood to the south.
- Flood Plain Protection. Portions of Open Space 1 are considered Isolated Land Subject to Flooding, containing flood waters generated on site and in surrounding catchment areas composed of residential city streets. The protection of this floodplain will ensure the continued availability of this flood storage during major storm events.
- Protection of Wildlife Habitat. The Premises consists of pollinator meadow habitat. Pollinator habitat is of increasing importance to a healthy and biologically diverse ecosystem. Additionally, the Premises contains approximately 2 acres of isolated wetland consisting of open marsh habitat, which is frequented by waterfowl.
- Public Access. Public access to the Premises will be allowed for recreational activities. The Premises includes trails which, once a planned connection is completed, will provide access to the Garrison Trail, a multi-use trail in the City of Newburyport that connects to a broader coastal trail network.

- Water Quality Protection.
  - Wellhead Protection. The Premises is located within the Zone 2 of a Wellhead Protection Area, as designated by the Massachusetts Department of Environmental Protection.
  - Stormwater Wetlands Protection. Open Space 1 includes a large stormwater wetland that treats municipal stormwater from a drainage system that enters through Boyd Drive and five additional rain gardens that treat stormwater from Duffy Drive and Gabaree Court. The isolated wetland provides further water quality protection. Open Space 2 and Open Space 3 further contribute to the protection of groundwater quality by preserving open space within the aquifer.

These and other conservation values of the Premises, as well as its current uses and state of improvement, are described in a Baseline Documentation Report (“Baseline Report”) prepared by Grantee with the cooperation of the Grantor, consisting of maps, photographs, and other documents and on file with the Grantee and referenced herein. The Baseline Report (i) is acknowledged by Grantor and Grantee to be a complete and accurate representation of the condition and values of the Premises as of the date of this Conservation Restriction, (ii) is intended to fully comply with applicable Treasury Regulations, and (iii) is intended to serve as an objective information baseline for subsequent monitoring of compliance with the terms of this Conservation Restriction as described herein. Notwithstanding the foregoing, the parties may utilize any evidence of the condition of the Premises at the time of this grant other than the Baseline Report, should the Baseline Report be unavailable or if it does not adequately address the issues presented.

## **II. PROHIBITED ACTS AND USES, EXCEPTIONS THERETO, AND PERMITTED USES**

### **A. Prohibited Acts and Uses**

Subject to the exceptions set forth in Paragraph II.B below, the Grantor will neither perform nor allow others to perform the following acts and uses which are prohibited in, on, under, and over the Premises:

- (1) Constructing or placing or allowing to remain any temporary or permanent building, structure, facility, or improvement, including but not limited to tennis courts, landing strips or pads, greenhouses, mobile homes, swimming pools, fences, asphalt, concrete or other forms of impervious pavement, billboards or other advertising displays, antennae or dishes, utility poles, towers, conduits, lines, solar panels or solar arrays, storage tanks, or any other temporary or permanent building, structure, facility, or improvement;
- (2) Mining, excavating, dredging, cutting, destroying or removing from any portion of the Premises or bodies of water thereon, of soil, loam, peat, gravel, sand, rock or other mineral resource or natural deposit or otherwise making topographical changes to the area;
- (3) Placing, filling, storing or dumping of soil, refuse, trash, yard wastes such as lawn clippings, leaves, branches (other than those naturally deposited in the area), vehicle bodies

or parts, rubbish, debris, junk, tree and other vegetation cuttings generated off-site, waste or other substance or material whatsoever;

- (4) Cutting, removing or otherwise destroying trees, shrubs, grasses or other vegetation;
- (5) Subdivision or conveyance of a part or portion of the Premises;
- (6) Using any portion of the Premises hereafter towards building or development requirements on this or any other parcel;
- (7) Conducting activities detrimental to drainage, flood control, water conservation, water quality, erosion control, soil conservation, archaeological conservation, plants, or wildlife habitat;
- (8) Using the Premises for residential, commercial, or industrial purposes;
- (9) Using, parking, or storage of motorized vehicles, including motorcycles, mopeds, all-terrain vehicles, recreational vehicles, trail bikes or snowmobiles;
- (10) The disruption, removal or destruction of the stone walls or granite fence posts on the Premises;
- (11) Using herbicides, fungicides, and pesticides;
- (12) Hunting and trapping except as may be permitted by the Grantee for ecosystem protection, preservation of flood storage capacity, and management purposes;
- (13) Any other use of the Premises or activity which is inconsistent with the purpose of this Conservation Restriction or which would materially impair its conservation values.

#### **B. Reserved Rights and Exceptions to Otherwise Prohibited Acts and Uses**

Notwithstanding the Prohibited Acts and Uses described in Paragraph II.A, the Grantor reserves the right to conduct or expressly permit in writing, except as provided in Paragraph IV, the following acts and uses on the Premises, but only if such acts or uses do not materially impair the conservation values or purposes of this Conservation Restriction:

- (1) Vegetation management. In accordance with best management practices, selective pruning and cutting of trees and other vegetation to control or remove hazards, invasive species, or damage caused by disease, insects, or fire, or to preserve the present condition of the Premises;
- (2) Required Property Maintenance. Maintenance of the Premises in accordance with the Operations and Maintenance Plan dated May 7, 2017, last revised April 14<sup>th</sup>, 2021 as approved by the Order, attached hereto as Exhibit D. Such maintenance shall be consistent with the Open Space Maintenance requirements of the OSRD Special Permit.

- (3) Signs. The erection, maintenance and replacement of signs by the Grantor with respect to ownership, boundaries, trails, natural features, flora and fauna, regulations governing public use and the protected conservation values;
- (4) Minor Educational and Recreational Structures. With prior written notice to and written approval by the Grantee, the construction, maintenance, repair, and replacement of “Minor Structures” for use by the public for educational and recreational purposes, including but not limited to the structures and other improvements shown on Exhibit C, including the playground structure, water feature, interpretive signs, exhibits, benches, and the patio, pergola, and fire pit in the Central Green (Open Space 3) (collectively “Minor Structures”);
- (5) Recreational and Educational Activities. Walking, hiking, horseback riding, nature study and other non-motorized outdoor recreational and educational activities that do not materially alter the landscape, nor degrade environmental quality, nor involve commercial recreational use. Limited to the area depicted on Exhibit C as the Central Green (Open Space 3), organized or pick-up recreational and athletic activities, such as soccer games, ultimate frisbee, and other team sports events.
- (6) Special Events. Limited to the area depicted on Exhibit C as the Central Green (Open Space 3), and with prior written notice to and written approval by the Grantee, special events including concerts, gatherings, and formal organized activities such as dances, weddings, and the like;
- (7) Composting. With prior written notice to and written approval by the Grantee, stockpiling and composting of stumps, trees brush limbs and similar biodegradable materials originating on the Premises, in locations where the presence of such materials will not materially impair the conservation values;
- (8) Permit Compliance. Activities necessary to comply with the Order, the Subdivision Approval, the OSRD Special Permit, and the Water Resource Protection District Special Permit;
- (9) Trails, Stone Walls, and Gates. The construction, maintenance, and marking of trails for pedestrian and emergency vehicle use, provided that the Grantor shall provide written notice to the Grantee prior to initiating any new trail construction. The maintenance and repair of existing stone walls on the Premises, and the placement, maintenance, repair, and replacement of gates to control unauthorized access to the Premises.
- (10) Wildlife Habitat Management and Improvement. With prior written notice to and written approval by Grantee, measures designed to restore native biotic communities, or to maintain, enhance or restore wildlife, wildlife habitat, or rare or endangered species;
- (11) Archaeological Investigations. The conduct of archaeological activities, including without limitation survey, excavation, and artifact retrieval, following submission of an archaeological field investigation plan and its approval in writing by the State Archaeologist of the Massachusetts Historical Commission (or appropriate successor official).

- (12) Stormwater Control Facilities. The maintenance of the stormwater facilities located on the Premises in accordance with the approved Stormwater Management Operation and Maintenance Plan approved as part of the OSRD Special Permit, the Subdivision Approval, the Water Resource Protection District Special Permit, and the Order, including the use of heavy equipment such as a backhoe and dump truck;
- (13) Flood Storage Maintenance or Improvements. With prior written notice to and written approval by the Grantee, activities designed to maintain or improve existing flood storage capacity;
- (14) Environmental Restoration or Improvement Projects. With prior written notice to and written approval by the Grantee, all acts and uses which are necessary to restore any environmental damage or degradation and/or improve the Premises to more fully align with the purposes hereunder;
- (15) Non-native or nuisance species. The removal of non-native or invasive species, the interplanting of native species, and the control of nuisance species, all in a manner that minimizes damage to surrounding, non-target species and preserves water quality. No activities under this subsection may be conducted unless, prior to initiating any such activities, the Grantor shall provide written notice to the Grantee for its review and receive written approval therefor. Activities authorized under this subsection may include the use of herbicides or other chemicals, provided that Grantor shall provide additional written notice, at the same time as notice is provided to Grantee, to the City of Newburyport Water and Sewer Commission for its review and to the City of Newburyport Department of Public Services, Water Division, for its review and written approval by the Water Superintendent, and that no such activities shall occur without approval by the Water Superintendent;
- (16) Forestry and Cutting. Conducting or permitting others to conduct sound silvicultural uses of the Premises, including the right to commercially harvest forest products (as such term may be defined from time to time in Section 1 of Chapter 61 of the Massachusetts General Laws, or successor law) and the establishment of new woods roads in accordance with prudent and sound silvicultural practices that conform at least to the minimum standards set forth in the Massachusetts Forest Cutting Practices Act (Chapter 132 of the Massachusetts General Laws, or its successor) and carried out pursuant to a Forest Management Plan.

Before any harvest of forest products occurs on the Premises, Grantor shall submit a Forest Management Plan to the Grantee, the Massachusetts Department of Conservation and Recreation (or appropriate successor agency) and to any other required state agencies for their approval. The Forest Management Plan shall be prepared by a forester licensed through the Massachusetts Department of Conservation and Recreation in conformance with the “Directions for the Preparation of the Chapter 61 Forest Management Plans and Forest Stewardship Plans” and such statutes, regulations and directions in effect at the time of the approval of said Forest Management Plan. The Forest Management Plan shall include provisions designed to minimize soil erosion, conserve surface and groundwater

quality, scenic views, wildlife habitat, and to protect the conservation values of this Conservation Restriction.

The Forest Management Plan shall be effective for a ten (10) year period and shall be resubmitted once every ten (10) years as necessary if additional timber harvests occur. All cutting plans and designated access routes shall avoid any stone structures or historical and cultural resources and shall be reasonably required to prevent any damage thereto. All cutting operations shall be supervised by a licensed forester.

- (17) Motorized Vehicles. The use of motorized vehicles for the following purposes:
- a. Access to the Premises by fire, police, ambulance, or other government officials in carrying out their official duties;
  - b. As necessary for activities related to the Grantor's maintenance and upkeep of the Premises; and
  - c. As necessary for persons with mobility impairments
- (18) Other. Such other non-prohibited activities requested by the Grantor and expressly approved in writing by the Grantee, in its sole and exclusive discretion, which permission may only be given if the Grantee expressly finds that the activity is consistent with, and does not materially impair, the purposes or conservation values of the Premises.

### **C. Permits, Regulations, Laws**

The exercise of any right reserved by Grantor under Paragraph II(B) shall be in compliance with the Order, the Special Permit, zoning, the Wetlands Protection Act, and all other applicable federal, state and local laws, rules, regulations, and permits. The inclusion of any reserved right requiring a permit from a public agency does not imply that the Grantee or the Commonwealth takes any position whether such permit should be issued.

### **D. Monuments and Signage**

The Grantor and its successors and assigns shall maintain in good condition any bounds, monuments, markers, and signs shown on Exhibit B, demarcating the boundaries of the Premises, and shall repair and or replace said monuments and signage on an as needed basis.

### **E. Notice and Approval**

1. Whenever notice to or approval by Grantee is required, Grantor shall notify Grantee, by a method requiring proof of receipt, in writing not less than 60 days prior to the date Grantor intends to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit the Grantee to make an informed judgment as to its consistency with the purposes of this Conservation Restriction. Where Grantee's approval is required, Grantee shall grant or withhold approval in writing within 60 days of receipt of Grantor's request. Grantee's approval shall not be

unreasonably withheld but shall only be granted upon a showing that the proposed activity shall not impair the purposes of this Conservation Restriction.

2. Subject to any applicable law or regulation, failure of Grantee to respond in writing within 60 days shall be deemed to constitute approval by Grantee of the request as submitted, so long as the request sets forth the provisions of this section relating to deemed approval after 60 days in the notice, the requested activity is not prohibited herein, and the activity will not impair the conservation values or purposes of this Conservation Restriction. This Paragraph II(E)(2) shall not apply to Paragraph II(B)(18), in which case the failure of Grantee to respond in writing within 60 days shall be deemed to constitute denial of the request as submitted.

### **III. LEGAL REMEDIES OF THE GRANTEE**

#### **A. Legal and Injunctive Relief**

The rights hereby granted shall include the right to enforce this Conservation Restriction 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 their condition prior to the time of the injury complained of (it being agreed that the Grantee will have no adequate remedy at law). The rights hereby granted shall be in addition to, and not in limitation of, any other rights and remedies available to the Grantee for the enforcement of this Conservation Restriction. Grantee agrees to cooperate for a reasonable period of time prior to resorting to legal means in resolving issues concerning violations provided Grantor ceases objectionable actions and Grantee determines there is no ongoing diminution of the conservation values of the Conservation Restriction.

Grantor covenants and agrees to reimburse to Grantee all reasonable costs and expenses (including reasonable counsel fees) incurred in enforcing this Conservation Restriction or in taking reasonable measures to remedy, abate or correct any violation thereof, provided that a violation of this Conservation Restriction is acknowledged by Grantor or determined by a court of competent jurisdiction to have occurred. In the event of a dispute over the boundaries of the Conservation Restriction, Grantor shall pay for a survey and to have the boundaries permanently marked.

#### **B. Non-Waiver**

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

#### **C. Disclaimer of Liability**

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



#### **D. Acts Beyond the Grantor's Control**

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

#### **IV. ACCESS**

The Grantor hereby grants to the Grantee, or its duly authorized agents or representatives, the right to enter the Premises upon reasonable notice and at reasonable times, for the purpose of inspecting the Premises to determine compliance with or to enforce this Conservation Restriction. The Grantor also grants to the Grantee, after notice of a violation and failure of the Grantor to cure said violation, the right to enter the Premises for the purpose of taking any and all actions with respect to the Premises as may be necessary or appropriate to remedy or abate any violation hereof, including but not limited to the right to perform a survey of boundary lines.

The Grantor grants access to the Premises to the general public and agrees to take no action to prohibit or discourage access to and use of the Premises by the general public, but only for daytime use and only as described in Paragraph II(B)(5) provided that such agreement by Grantor is subject to the Grantor's reserved right to establish reasonable rules, regulations, and restrictions on such permitted recreational use by the general public for the protection of the purposes and conservation values of this Conservation Restriction. Grantor has the right to control, limit, or prohibit by posting and other reasonable means activities or uses of the Premises not authorized in Paragraph II(B)(5). The Grantor's right to grant public access across the Premises is subject to the restrictions described in this Conservation Restriction. Any public use which is permitted by the terms of this Conservation Restriction constitutes permission to use the Premises for purposes described in the Massachusetts General Laws Chapter 21, Section 17C and the Grantor and Grantee hereto benefit from exculpation from liability to the extent provided in such section. The Grantee may require the Grantor to post the Premises against any use that may result in rutting or erosion or other damage to the natural resources of the Premises.

#### **V. EXTINGUISHMENT**

- A.** If circumstances arise in the future such as render the purpose of this Conservation Restriction impossible to accomplish, this restriction can only be terminated or extinguished, whether in whole or in part, by a court of competent jurisdiction under applicable law after review and approval by the Massachusetts Secretary of Energy and Environmental Affairs. If any change in conditions ever gives rise to extinguishment or other release of the Conservation Restriction under applicable law, then Grantee, on a subsequent sale, exchange, or involuntary conversion of the Premises, shall be entitled to a portion of the proceeds in accordance with Paragraph V(B), subject, however, to any

applicable law which expressly provides for a different disposition of the proceeds and after complying with the terms of any gift, grant, or funding requirements. Grantee shall use its share of the proceeds in a manner consistent with the conservation purpose set forth herein.

- B. Proceeds. Grantor and Grantee agree that the conveyance of this Conservation Restriction gives rise to a real property right, immediately vested in the Grantee, with a fair market value that is at least equal to the proportionate value that this Conservation Restriction bears to the value of the unrestricted property. Such proportionate value of the Grantee's property right shall remain constant. Any proceeds will be distributed only after complying with the terms of any gift, grant, or other funding requirements.
- C. Grantor/Grantee Cooperation Regarding Public Action. Whenever all or any part of the Premises or any interest therein is taken by public authority under power of eminent domain or other act of public authority, then the Grantor and the Grantee shall cooperate in recovering the full value of all direct and consequential damages resulting from such action. All related expenses incurred by the Grantor and the Grantee shall first be paid out of any recovered proceeds, and the remaining proceeds shall be distributed between the Grantor and Grantee in accordance with Paragraph V(B), after complying with the terms of any law, gift, grant, or funding requirements. If a less than fee interest is taken, the proceeds shall be equitably allocated according to the nature of the interest taken. The Grantee shall use its share of the proceeds like a continuing trust in a manner consistent with the conservation purposes of this grant.

## VI. DURATION & ASSIGNABILITY

- A. Running of the Burden. The burdens of this Conservation Restriction shall run with the Premises in perpetuity and shall be enforceable against the Grantor and the successors and assigns of the Grantor holding any interest in the Premises.
- B. Execution of Instruments. The Grantee is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Conservation Restriction; the Grantor, on behalf of itself and its successors and assigns, appoints the Grantee their attorney-in-fact to execute, acknowledge and deliver any such instruments on its behalf. Without limiting the foregoing, the Grantor and its successors and assigns agree themselves to execute any such instruments upon request.
- C. Running of the Benefit. The benefits of this Conservation Restriction shall run to the Grantee, shall be in gross and shall not be assignable by the Grantee, except in the following instances:

As a condition of any assignment, the Grantee shall require that the purpose of this Conservation Restriction continues to be carried out; that the assignee is not an owner of the fee in the Property, and the assignee, at the time of the assignment, qualifies under Section 170(h) of the Internal Revenue Code of 1986, as amended, and applicable regulations thereunder, and is a donee eligible to receive this Conservation Restriction under Section 32 of Chapter 184 of the Massachusetts

General Laws. Any assignment will comply with Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, if applicable.

## **VII. SUBSEQUENT TRANSFERS**

The Grantor agrees to incorporate by reference the terms of this Conservation Restriction in any deed or other legal instrument which grants any interest in all or a portion of the Premises, including a leasehold interest and to notify the Grantee not less than twenty (20) days prior to the execution of such transfer. Failure to do any of the above shall not impair the validity or enforceability of this Conservation Restriction. Any transfer will comply with Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, if applicable.

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

## **VIII. ESTOPPEL CERTIFICATES**

Upon request by the Grantor, the Grantee shall, within sixty (60) days execute and deliver to the Grantor any document, including an estoppel certificate, which certifies the Grantor's compliance or non-compliance with any obligation of the Grantor contained in this Conservation Restriction.

## **IX. NON-MERGER**

The parties intend that any future acquisition of the Premises shall not result in a merger of the Conservation Restriction into the fee. The Grantor agrees that it will not grant, and the Grantee agrees that it will not take title, to any part of the Premises without having first assigned this Conservation Restriction to a non-fee owner that is qualified under Section 170(h) of the Internal Revenue Code of 1986, as amended, and applicable regulations thereunder and is eligible to receive this Conservation Restriction under Section 32 of Chapter 184 of the Massachusetts General Laws in order to ensure that merger does not occur and that this Conservation Restriction continues to be enforceable by a non-fee owner.

## **X. AMENDMENT**

If circumstances arise under which an amendment to or modification of this Conservation Restriction would be appropriate, Grantor and Grantee may jointly amend this Conservation Restriction; provided that no amendment shall be allowed that will affect the qualification of this Conservation Restriction or the status of Grantee under any applicable laws, including Section 170(h) of the Internal Revenue Code of 1986, as amended, or Sections 31-33 of Chapter 184 of the Massachusetts General Laws. Any amendments to this conservation restriction shall occur only in exceptional circumstances. The Grantee will consider amendments only to correct an error or oversight, to clarify an ambiguity, or where there is a net gain in conservation value. All expenses of all parties in considering and/or implementing an amendment shall be borne by the persons or

entity seeking the amendment. Any amendment shall be consistent with the purposes of this Conservation Restriction, shall not affect its perpetual duration, shall be approved by the Secretary of Energy and Environmental Affairs and if applicable, shall comply with the provisions of Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, and any gifts, grants or funding requirements. Any amendment shall be recorded in the Essex South Registry of Deeds.

#### **XI. EFFECTIVE DATE**

This Conservation Restriction shall be effective when the Grantor and the Grantee have executed it, the administrative approvals required by Section 32 of Chapter 184 of the General Laws have been obtained, and it has been recorded in a timely manner in the Essex South Registry of Deeds.

#### **XII. NOTICES**

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

To Grantor: Evergreen Commons, LLC  
487 Groton Road, Suite A  
Westford, MA 01886

To Grantee: City of Newburyport  
Attn: Conservation Commission  
60 Pleasant Street  
Newburyport, MA 01950

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

#### **XIII. GENERAL PROVISIONS**

- A. Controlling Law. The interpretation and performance of this Conservation Restriction shall be governed by the laws of the Commonwealth of Massachusetts.
- B. Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Conservation Restriction shall be liberally construed in favor of the grant to effect the purpose of this Conservation Restriction and the policy and purposes of Sections 31, 32, and 33 of Chapter 184 of the Massachusetts General Laws. If any provision in this instrument is found to be ambiguous, any interpretation consistent with the purpose of this Conservation Restriction that would render the provision valid shall be favored over any interpretation that would render it invalid.

- C. Severability. If any provision of this Conservation Restriction or the application thereof to any person or circumstance is found to be invalid, the remainder of the provision of this Conservation Restriction shall not be affected thereby.
- D. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to this Conservation Restriction and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Conservation Restriction, all of which are merged herein.

**XIV. MISCELLANEOUS**

- A. Pre-existing Public Rights. Approval of this Conservation Restriction pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws by any municipal officials and by the Secretary of Energy and Environmental Affairs is not to be construed as representing the existence or non-existence of any pre-existing rights of the public, if any, in and to the Premises, and any such pre-existing rights of the public, if any, are not affected by the granting of this Conservation Restriction.
- B. Subordination. The Grantor shall record at the appropriate Registry of Deeds simultaneously with this Conservation Restriction all documents necessary to subordinate any mortgage, promissory note, loan, lien, equity credit line, refinance assignment of mortgage, lease, financing statement or any other agreement which gives rise to a surety interest affecting the Premises.
- C. Non-Exclusive Construction Easement. This Conservation Restriction does not affect the rights conveyed to the City of Newburyport in a Non-Exclusive Construction Easement recorded in the Essex South Registry of Deeds immediately prior hereto.
- D. Attached hereto and incorporated herein by reference are the following:

Signature pages:

Grantor  
Grantee Acceptance  
Approval by City Council and Mayor  
Approval of the Secretary of Energy and Environmental Affairs.

Exhibits:

Exhibit A: Legal Description of Premises  
Exhibit B: Reduced Copy of Plan of the Premises  
Exhibit C: Open Space Conservation Restriction Plan of the Premises  
Exhibit D: Operations and Maintenance Plan

WITNESS my hand and seal this \_\_\_\_ day of \_\_\_\_\_, 2021,

Evergreen Commons, LLC  
by its Managers

\_\_\_\_\_  
Howard Johnstone Hall, Manager

COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss:

On this \_\_\_\_ day of \_\_\_\_\_, 2021, before me, the undersigned notary public, personally appeared Howard Johnstone Hall, Manager of Evergreen Commons, LLC, and proved to me through satisfactory evidence of identification which was \_\_\_\_\_ to be the person whose name is signed on the proceeding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose on behalf of Evergreen Commons, LLC.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

**ACCEPTANCE OF GRANT BY CITY OF NEWBURYPORT CONSERVATION  
COMMISSION**

We, the undersigned, being a majority of the Conservation Commission of the City of Newburyport, 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 Evergreen Commons, LLC 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.

NEWBURYPORT CONSERVATION  
COMMISSION:

_____	_____
_____	_____
_____	_____
_____	_____

COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss:

On this \_\_\_\_ day of \_\_\_\_\_, 2021, before me, the undersigned notary public, personally appeared \_\_\_\_\_, and proved to me through satisfactory evidence of identification which was \_\_\_\_\_ to be the person whose name is signed on the proceeding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

**APPROVAL BY MAYOR OF CITY OF NEWBURYPORT**

The undersigned, Mayor of the City of Newburyport, Massachusetts, hereby approve the foregoing Conservation Restriction from Evergreen Commons, LLC, to the City of Newburyport, acting by and through its Conservation Commission, in the public interest pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws.

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

Donna Holaday, Mayor

**COMMONWEALTH OF MASSACHUSETTS**

ESSEX, ss:

On this \_\_\_\_\_ day of \_\_\_\_\_, 2021, before me, the undersigned notary public, personally appeared, Donna Holaday, 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:



**APPROVAL BY CITY COUNCIL OF CITY OF NEWBURYPORT**

We, the undersigned, being a majority of the City Council of the City of Newburyport, Massachusetts, hereby certify that at a public meeting duly held on \_\_\_\_\_, 2021, the City Council voted to approve the foregoing Conservation Restriction from Evergreen Commons, LLC, to the City of Newburyport, acting by and through its Conservation Commission, in the public interest pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws.

NEWBURYPORT CITY COUNCIL:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**COMMONWEALTH OF MASSACHUSETTS**

ESSEX, ss:

On this \_\_\_\_\_ day of \_\_\_\_\_, 2021, before me, the undersigned notary public, personally appeared, \_\_\_\_\_

\_\_\_\_\_, and proved to me through satisfactory evidence of identification which was \_\_\_\_\_ to be the persons whose names are signed on the proceeding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose.

\_\_\_\_\_  
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 Evergreen Commons, LLC to 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, 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

#### **Open Space Parcel 1**

Beginning at a point on the sideline of Boyd Drive as shown on Plan Book 464 Plan 53, thence;

By Boyd Drive on a curve turning to the left with an arc length of 20.10', with a radius of 63.00' to land N/F Blanchette, thence;

N 68°49'26" W a distance of 76.30' by land N/F Blanchette, thence;

S 18°25'35" W a distance of 246.76' by N/F Blanchette to land N/F Advance Investment Properties, thence;

N 68°48'36" W a distance of 664.87' by land N/F Advance Investment Properties and land N/F The Village at Newburyport Condominium, thence;

S 11°41'16" W a distance of 394.52' by land N/F The Village at Newburyport Condominium to the sideline of the State Highway Layout for US Route 95 Northbound, thence;

By the state highway layout with a curve turning to the right with an arc length of 493.17', with a radius of 5239.49', thence;

N 00°05'52" W a distance of 1082.42' by the state highway layout, thence;

N 29°23'05" E a distance of 250.76' by the state highway layout to land N/F Hall, thence;

S 85°52'10" E a distance of 106.16' by land N/F Hall to land N/F McCarthy, thence;

S 89°03'30" E a distance of 71.35' by land N/F McCarthy, thence;

N 08°59'40" E a distance of 139.73' by land N/F McCarthy to land N/F Walsh, thence;

S 46°27'13" E a distance of 110.00' by land N/F Walsh, thence;

N 28°59'50" E a distance of 164.19' by land N/F Walsh to Brown Avenue, thence;

S 72°20'35" E a distance of 13.24' by Brown Avenue to Duffy Drive, thence;

By Duffy Drive with a curve turning to the right with an arc length of 24.19', with a radius of 15.00', thence;

S 20°03'16" W a distance of 14.25' by Duffy Drive, thence;

By Duffy Drive with a curve turning to the right with an arc length of 44.49', with a radius of 130.00', thence;

S 39°39'49" W a distance of 101.34' by Duffy Drive, thence;

S 39°39'49" W a distance of 31.82' by Duffy Drive, thence;

By Duffy Drive with a curve turning to the left with an arc length of 216.29', with a radius of 145.00', thence;

S 45°48'05" E a distance of 81.32', thence;

By Duffy Drive with a curve turning to the right with an arc length of 24.87', with a radius of 380.00' to lot 24, thence;

S 51°07'13" W a distance of 109.47' by lot 24, thence;

S 32°54'55" E a distance of 81.02' by lot 24 to lot 23, thence;

S 30°11'08" E a distance of 92.60' by lot 23 to lot 22, thence;

S 39°41'51" E a distance of 95.22' by lot 22 to lot 21, thence;

S 40°03'10" E a distance of 80.56' by lot 21, thence;

N 67°26'28" E a distance of 112.57' by lot 21 to Duffy Drive, thence;

By Duffy Drive with a curve turning to the right with an arc length of 10.01', with a radius of 230.00' to Lot 20, thence;

S 67°26'28" W a distance of 113.59' by lot 20, thence;

S 12°44'42" E a distance of 90.52' by lot 20 to lot 19, thence;

S 17°00'28" E a distance of 107.68' by lot 19 to lot 17, thence;

S 16°31'50" W a distance of 115.13' by lot 17, thence;

S 73°30'41" E a distance of 108.71' by lot 17 to Duffy Drive, thence;

By Duffy Drive with a curve turning to the left with an arc length of 10.01', with a radius of 145.00' to lot 16, thence;

N 73°30'41" W a distance of 108.37' by lot 16, thence;

S 16°49'54" W a distance of 134.10' by lot 16 to lot 14, thence;

S 57°01'55" W a distance of 110.54' by lot 14 to lot 13, thence;  
S 33°21'31" W a distance of 149.83' by lot 13 to lot 12, thence;  
S 20°58'58" E a distance of 170.24' by lot 12 to lot 11, thence;  
S 74°47'49" E a distance of 167.04' by lot 11 to lot 10, thence;  
N 48°50'58" E a distance of 145.95' by lot 10 to lot 9, thence;  
N 12°29'22" E a distance of 99.99' by lot 9 to lot 8, thence;  
S 69°20'18" E a distance of 100.32' by lots 8 and lot 7 to lot 3, thence;  
S 10°31'16" W a distance of 79.87' by lot 3, thence;  
S 65°20'06" E a distance of 128.02' by lot 3 to the point of beginning.  
Having an area of 827,454 square feet, 18.997 acres.

### **Open Space Parcel 2**

Beginning at a point on the sideline of Brown Avenue and Duffy Drive as shown on Plan Book 464 Plan 53, thence;

S 72°20'35" E a distance of 16.70' by Brown Avenue to land N/F Asprogiannis, thence;  
S 29°20'30" W a distance of 208.98' by land N/F Asprogiannis, thence;  
S 46°27'13" E a distance of 142.70' by land N/F Asprogiannis and land N/F of Chambers, thence;  
S 45°30'50" E a distance of 214.28' by land N/F of Chambers and land N/F of Matthews to land N/F City of Newburyport, thence;  
S 52°16'58" E a distance of 74.75' by land N/F City of Newburyport to parcel A, thence;  
S 19°45'53" E a distance of 99.28' by parcel A, thence;  
S 36°15'48" E a distance of 131.24' by parcel A, thence;  
S 54°58'06" E a distance of 114.71' by parcel A, thence;  
S 72°21'16" E a distance of 114.64' by parcel A, thence;  
S 84°10'08" E a distance of 84.94' by parcel A to land N/F City of Newburyport, thence;

S 52°16'58" E a distance of 140.21' by land N/F City of Newburyport to land N/F Bailly, thence;  
S 17°46'08" E a distance of 142.47' by land N/F Bailly to land N/F Soares, thence;  
S 40°07'14" W a distance of 146.53' by land N/F Soares and land N/F Koen to lot 37, thence;  
N 14°03'02" E a distance of 125.94' by lot 37 to lot 36, thence;  
N 26°35'46" W a distance of 141.04' by lot 36 to lot 35, thence;  
N 51°49'21" W a distance of 132.67' by lot 35 to lot 34, thence;  
N 84°50'09" W a distance of 125.67' by lot 34 to lot 33, thence;  
S 77°49'24" W a distance of 109.95' by lot 33 to lot 31, thence;  
N 15°33'20" W a distance of 71.89 by lot 31 to lot 30, thence;  
N 18°17'20" W a distance of 98.49' by lot 30 to lot 29, thence;  
N 34°49'19" W a distance of 98.43' by lot 29 to lot 28, thence;  
N 42°37'44" W a distance of 88.94' by lot 28 to lot 27, thence;  
N 32°51'28" W a distance of 88.52' by lot 27 to lot 26, thence;  
N 32°56'37" W a distance of 93.79' by lot 26 to lot 25, thence;  
N 61°35'20" W a distance of 130.27' by lot 25, thence;  
S 46°52'35" W a distance of 76.25' by lot 25 to Duffy Drive, thence;  
N 45°48'05" W a distance of 18.32' by Duffy Drive, thence;  
By Duffy Drive with a curve turning to the right with an arc length of 156.62', with a radius of 105.00', thence;  
N 39°39'49" E a distance of 29.11' by Duffy Drive, thence;  
N 39°39'49" E a distance of 104.06' by Duffy Drive, thence;  
By Duffy Drive with a curve turning to the left with an arc length of 58.18', with a radius of 170.00', thence;  
N 20°03'16" E a distance of 17.18' by Duffy Drive, thence;

By Duffy Drive with a curve turning to the right with an arc length of 22.93', with a radius of 15.00' to the point of beginning;

Having an area of 77,410 square feet, 1.777 acres.

### **Open Space Parcel 3**

Beginning at a point on the sideline of Duffy Drive opposite the tee from Boyd Drive as shown on Plan Book 464 Plan 53, thence;

S 38°44'07" W a distance of 136.66' by Duffy Drive, thence;

By Duffy Drive with a curve turning to the right with an arc length of 178.63', with a radius of 105.00', thence;

N 43°47'26" W a distance of 41.11' by Duffy Drive, thence;

By Duffy Drive with a curve turning to the right with an arc length of 181.78', with a radius of 105.00', thence;

N 55°24'01" E a distance of 34.08' by Duffy Drive, thence;

By Duffy Drive with a curve turning to the left with an arc length of 50.15', with a radius of 220.00', thence;

N 42°20'22" E a distance of 102.19' by Duffy Drive, thence;

By Duffy Drive with a curve turning to the right with an arc length of 168.44', with a radius of 105.00', thence;

S 45°44'50" E a distance of 11.61' by Duffy Drive, thence;

By Duffy Drive with a curve turning to the right with an arc length of 154.82', with a radius of 105.00', thence;

S 38°44'07" W a distance of 74.64' to the point of beginning.

Having an area of 88,941 sf, 2.042 acres.

**EXHIBIT B**

Reduced Copy of Plan of Premises (see attached)

For official full size plan see South Essex Registry of Deeds Plan Book 464 Page 53



52  
466 (6/2018)

**PLAN BOOK NO. PLAN 5**  
 TITLE: PORT PLACE  
 DATE: 2/16/18  
 DRAWN BY: J. BOGARD  
 CHECKED BY: J. BOGARD  
 DESIGNED BY: J. BOGARD  
 REGISTERED PROFESSIONAL ENGINEER  
 MASS. REG. NO. 10111

RESERVED FOR REGISTER USE ONLY

**NOTES**

THE PURPOSE OF THIS PLAN IS TO SHOW THE PRELIMINARY LOT LAYOUT FOR A DEFINITIVE SUBDIVISION OFF BOYD DRIVE AND LAUREL ROAD IN NEWBURYPORT, MASSACHUSETTS. IT IS THE RESULT OF AERIAL MAPPING PERFORMED IN 2013 BASED ON 2013 PLANTS AS SHOWN BY AN ACTUAL ON THE GROUND SURVEY PERFORMED BETWEEN NOVEMBER 2013 AND SEPTEMBER 2014 AND ROADWAY AND LOT LAYOUT BY DESIGN CONSULTANTS, INC. IN SEPTEMBER 2016.

OWNERSHIP INFORMATION USED IN THE PREPARATION OF THIS PLAN WAS OBTAINED FROM THE CLIENT AND THE CITY OF NEWBURYPORT ASSESSOR'S OFFICE IN NOVEMBER 2016.

ALL PLUM AND SEWER REFERENCES REFER TO THE SOUTHWEST ESSEX DISTRICT REGISTRY OF DEEDS.

UTILITIES SHOWN HEREON ARE BASED ON RECORD PLANS OBTAINED FROM THE RESPECTIVE UTILITY OWNERS WHEREAS ARE BASED ON ACTUAL FIELD MEASUREMENTS.

THE LOCUS PROPERTY IS LOCATED IN ZONE X AREA OF MINIMAL FLOODING, AS GRAPHICALLY SHOWN ON FEMA FLOOD INSURANCE RATE MAP (FIRM) 250000000W WITH AN EFFECTIVE DATE OF 07/24/2012. THE FLOOD ZONE DETERMINATION WAS MADE BY GRAPHIC PLOTTING ONLY AND NO FIELD SURVEYING WAS COMPLETED TO MAKE THIS DETERMINATION.

SEE COVER SHEET FOR LIST OF WARNERS REQUIRED.

I CERTIFY THAT THE SURVEY INFORMATION TO PREPARE THIS PLAN CONFORMED TO THE PROCEDURAL AND TECHNICAL STANDARDS FOR AN ON-THE-GROUND CASUALTY SURVEY IN ACCORDANCE WITH COMMONWEALTH OF MASSACHUSETTS 250 CMR SECTION 8.01 AND THAT THE CERTIFICATION SHOWN HEREON IS INTENDED TO MEET REQUIREMENTS OF DEED REQUIREMENTS AND IS NOT A CERTIFICATION TO THE TITLE OR OWNERSHIP OF THE PROPERTY SHOWN.

I CERTIFY THAT THIS PLAN WAS PREPARED IN CONFORMANCE WITH THE RULES FOR RECORDS ADOPTED BY THE REGISTRY OF DEEDS.

FILE # 2/16/18

EVERETT J. CHAMBERLAIN, P.L.L.C.  
 MASS REGISTRATION NO. 47383

**LOCAL TITLE INFORMATION**

18 BOYD DRIVE, "EVERGREEN COMMONS"

OWNER: EGM LLC

DEED REFERENCE: BOOK 29288 PAGE 376

ASSESSORS: MAP 110 PARCEL 30

5 BROWN AVENUE

OWNER: HOWARD J. HALL

DEED REFERENCE: BOOK 23708 PAGE 385

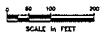
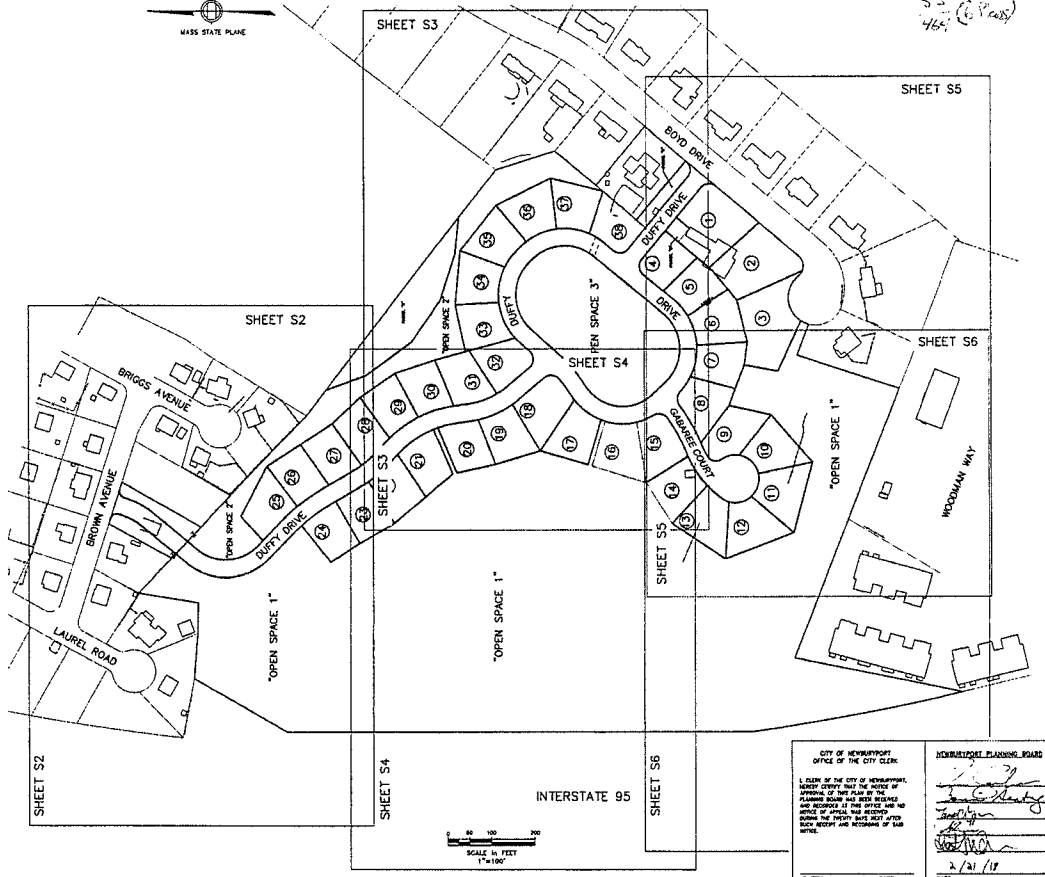
ASSESSORS: MAP 111 PARCEL 117

Copyright 2017 Winter GEC, LLC  
 Copyright 2017 Design Consultants, Inc. DC PROJ. NO. 2018-063

**Design Consultants, Inc.**  
 Consulting Engineers and Surveyors

130 WOODLEY AVENUE  
 NEWBURYPORT, MA 01950  
 978-778-3300

69 PLEASANT STREET  
 NEWBURYPORT, MA 01950  
 978-354-7112



CITY OF NEWBURYPORT  
 OFFICE OF THE CITY CLERK

NEWBURYPORT PLANNING BOARD

I, CLERK OF THE CITY OF NEWBURYPORT, HAVE REVIEWED THIS PLAN BY APPROVING OF THIS PLAN BY SIGNING HEREON AND HAVE RECORDED AND RECORDED IN THIS OFFICE AND NO OTHER RECORDS OF THIS PLAN HAVE BEEN RECORDED IN THIS OFFICE. THE CITY OF NEWBURYPORT HAS RECEIVED AND RECORDED THIS PLAN.

CLERK: \_\_\_\_\_ DATE: 2/16/18

Winter GEC, LLC  
 34 WINTER STREET  
 NEWBURYPORT, MA 01950  
 978-270-8628

NO.	DATE	BY	REVISIONS
1	1/16/18	JCB	CONSERVATION COMMISSION PLANS
2	1/16/18	JCB	CHANGES PER REVIEW COMMENTS
3	2/16/18	JCB	REVIEW COMMENTS

FIELD: EG  
 CALC: EG  
 CHECKED: EG  
 APPROVED: EG

**LOT LAYOUT KEY PLAN**

**PORT PLACE**  
 18 BOYD DRIVE & 5 BROWN AVENUE

PLAN OF LAND IN  
 NEWBURYPORT, MASSACHUSETTS  
 SURVEYED FOR  
 EVERGREEN COMMONS, LLC

PROJECT NO. 18001  
 DATE: MAY 22, 2017

SHEET NO. **S1**  
 1 OF 5

**EXHIBIT C - Open Space Conservation Restriction Plan**  
L0 OM plan 4-14-21 RENDERED



**LEGEND**

-  Open Space (Active Recreation)
-  Open Space (Passive Recreation)
-  Open Space (Conservation Area)
-  Existing No Cut Woodland Zone
-  Land Conveyed to City of Newburyport

FOR REGISTRY OF DEEDS USE ONLY

N  
NORTH



**DCi**  
Design Consultants Inc.  
Somerville • Quincy • Newburyport  
www.dci-ma.com


PROJECT TEAM

18 BOYD DRIVE,  
SUBDIVISION  
NEWBURYPORT, MA

PREPARED FOR  
EVERGREEN  
COMMONS, LLC

PROJECT REF

REV	DESCRIPTION	DATE



STAMP

**OPEN SPACE  
CONSERVATION  
RESTRICTION  
USE PLAN**

CITY OF NEWBURYPORT  
OFFICE OF THE TOWN CLERK

I, CLERK OF THE CITY OF NEWBURYPORT,  
HEREBY CERTIFY THAT THE NOTICE OF  
APPROVAL OF THIS PLAN BY THE  
PLANNING BOARD HAS BEEN RECEIVED  
AND RECORDED AT THIS OFFICE AND NO  
NOTICE OF APPEAL WAS RECEIVED  
DURING THE TWENTY DAYS NEXT AFTER  
SUCH RECEIPT AND RECORDING OF SAID  
NOTICE.

CLERK \_\_\_\_\_ DATE \_\_\_\_\_

NEWBURYPORT PLANNING BOARD

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

DATE \_\_\_\_\_

SHEET NAME

**OS1**

SHEET NO.

CHK BY: SGS

PROJ NO: 2015-063

DATE: Dec 18, 2017

SCALE: HORIZ 1"=80'

**EXHIBIT D – Operations and Maintenance Plan (see attached)**



	AREA 1 WETLAND	AREA 2 RESTORATION	AREA 3 STORMWATER	AREA 4 POLLINATOR MEADOW	AREA 5 OPEN/MANAGED LAWN	AREA 6 MANICURED AND BUFFER AREAS
<b>PLANT MATERIAL</b>	NATIVE	NATIVE	NATIVE	NATIVE	NATIVE	NATIVE & CULTIVATED
	NE Wetmix, native shrubs and trees	NE Roadside Matrix Upland Seed Mix, NE Conservation/Wildlife Mix, shrubs and trees	NE Roadside Matrix Upland Seed Mix	Showy NE Native Wildflower or equivalent seed mix	Fescue blend	Lawn, trees, evergreens, ornamentals
<b>ACCESS</b>	NONE	PUBLIC	PUBLIC	PUBLIC	PUBLIC	PRIVATE
<b>MANAGEMENT</b>	ANNUAL	BI-ANNUAL	SEE STORMWATER O&M	ANNUAL	BI-WEEKLY	WEEKLY & AS NEEDED
	Inspect annually. Maintenance limited to restoration and plant health, including invasive removal and replanting of native plants as needed. Herbicides to be used only in accordance with a City approved plan.	Inspect spring and fall. Maintenance limited to plant health, including invasive removal and replanting of native plants as needed. Herbicides to be used only in accordance with a City approved plan.	Limited to functional issues and plant health, including measures in Stormwater O&M manual, including invasive removal and replanting of native plants as needed. Herbicides to be used only in accordance with a City approved plan.	Inspect spring and fall, maintenance limited to maintaining meadow health. After establishment, mowing annually in the spring and invasive removal or reseeding efforts. See the separate protocol for meadow seeding and initial mowing guidelines. Herbicides to be used only in accordance with a City approved plan.	Bi-weekly mowing during the growing season. Best management practices including organic lawn fertilizer and organic controls. Overseeding in spring and fall as needed. Invasive removal and replanting of native plants as needed. Herbicides to be used only in accordance with a City approved plan.	Weekly mowing of lawn areas during the growing season. Regular application of organic lawn fertilizer. Required maintenance of vegetation including organic controls. Pruning as needed.
<b>RESOURCE VALUE</b>	NATURAL RESOURCE	NATURAL RESOURCE	STORMWATER	NATURAL RESOURCE	NATURAL RESOURCE	NATURAL RESOURCE
	Wildlife, flood storage, visual	Wildlife, visual	Wildlife, visual	Wildlife, visual	Wildlife, visual	Visual
<b>USE</b>	PASSIVE	PASSIVE	PASSIVE	PASSIVE	PASSIVE AND ACTIVE	PASSIVE AND ACTIVE
	Visual enjoyment Nature study	Visual enjoyment Nature study	Visual enjoyment Nature study Water quality	Visual enjoyment Nature study	Visual enjoyment Nature study Recreation	Visual enjoyment Recreation Group & family activities

NOTE MAINTAIN TRANSITIONAL MEADOW AREA AT SAME TIME AS POLLINATOR MEADOW. NOTE IN ALL AREAS MOW AROUND SHRUBS AND TREES. REVISED 4-16-21





CITY OF NEWBURYPORT



\_\_\_\_\_  
IN CITY COUNCIL

ORDERED:

November 8, 2021

**THAT** the City Council of the City of Newburyport hereby approve and authorize the acceptance of land by deed to the City on the so-called "Evergreen Commons" property or "Cottages at Port Place" development, identified as Parcel A on the attached Quitclaim Deed and recorded plan referenced therein, and containing 29,776 square feet, more or less, as requested by the Newburyport Department of Public Services (DPS) Water Division, and consistent with an Open Space Residential Development (OSRD) Subdivision and Special Permit issued by the Newburyport Planning Board; and

Further, that the Mayor of the City of Newburyport is hereby authorized to act on behalf of the City and enter into any and all instruments, including acceptance of a deed to the property, substantially in the form attached hereto, and to take any other actions necessary to execute this acceptance accordingly; and

Further, that upon recording of the subject deed to the City, said property (adjacent to the so-called "Well # 2" property at 75 Ferry Road) shall be transferred to the Newburyport Water Department for further care and custody.

\_\_\_\_\_  
Councillor Heather L. Shand

---

## QUITCLAIM DEED

Evergreen Commons LLC, a Massachusetts limited liability corporation, having an address of 25 Storey Avenue, Newburyport, Massachusetts 01950 (the “Grantor”), for nominal consideration of less than One Hundred and 00/100 Dollars (<\$100.00)

Grants to

The City of Newburyport, a municipal corporation, having an address of 60 Pleasant Street, Newburyport, Massachusetts 01950, acting by and through its Department of Public Services Water Division,

with QUITCLAIM COVENANTS

The land in Newburyport, Essex County, Massachusetts shown as **Parcel A** on a plan of land entitled “Plan of Land in Newburyport, Mass. Surveyed for Evergreen Commons LLC”, dated May 2, 2017, prepared by Design Consultants, Inc., Consulting Engineers and Surveyors, 120 Middlesex Avenue, Somerville, MA 02145, and recorded with Southern Essex District Registry of Deeds in Plan Book 464, Plan 53. Said **Parcel A** contains 29,776 square feet, more or less, according to said Plan.

Being a portion of the premises conveyed to the Grantor by deed recorded with Southern Essex District Registry of Deeds in Book 365737, Page 88 and Book 36573 Page 92.



Executed as a sealed instrument this \_\_\_\_ day of \_\_\_\_\_, 2021.

Evergreen Commons LLC

\_\_\_\_\_  
By:  
Its: Manager

**COMMONWEALTH OF MASSACHUSETTS**

Essex, ss.

On this \_\_\_\_ day of \_\_\_\_\_, 2021, before me, the undersigned notary, personally appeared \_\_\_\_\_, proved to me through satisfactory evidence of identification, which was \_\_\_\_\_, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose as Manager of Evergreen Commons LLC.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

GRANTEE: CITY OF NEWBURYPORT

By: \_\_\_\_\_  
Donna D. Holaday, Mayor

**COMMONWEALTH OF MASSACHUSETTS**

Essex County, ss.

On this \_\_\_\_ day of \_\_\_\_\_, 2021, before me, the undersigned Notary Public, personally appeared the above-named Donna Holaday, proved to me by satisfactory evidence of

identification, being (check whichever applies):  driver's license or other state or federal governmental document bearing a photographic image,  oath or affirmation of a credible witness known to me who knows the above signatory, or  my own personal knowledge of the identity of the signatory, to be the person whose name is signed above, and acknowledged the foregoing to be signed by him voluntarily for its stated purpose.

\_\_\_\_\_  
(Print Name of Notary Public): \_\_\_\_\_

My commission expires: \_\_\_\_\_

CITY OF NEWBURYPORT



\_\_\_\_\_  
IN CITY COUNCIL

ORDERED:

November 8, 2021

**THAT** the City Council of the City of Newburyport hereby approve and authorize the acceptance of land by deed to the City on the so-called "Evergreen Commons" property or "Cottages at Port Place" development, identified as Parcel C on the attached Quitclaim Deed and recorded plan referenced therein, and containing 1,597 square feet, more or less, and including a new sewer lift station constructed in accordance with City requirements for the applicable new neighborhood; and

Further, that the Mayor of the City of Newburyport is hereby authorized to act on behalf of the City and enter into any and all instruments, including acceptance of a deed to the property, substantially in the form attached hereto, and to take any other actions necessary to execute this acceptance accordingly; and

Further, that upon recording of the subject deed to the City, said property shall be transferred to the Newburyport Department of Public Services for further care and custody.

\_\_\_\_\_  
Councillor Heather L. Shand

---

## QUITCLAIM DEED

Evergreen Commons LLC, a Massachusetts limited liability corporation, having an address of 25 Storey Avenue, Newburyport, Massachusetts 01950 (the “Grantor”), for nominal consideration of less than One Hundred and 00/100 Dollars (<\$100.00)

Grants to

The City of Newburyport, a municipal corporation, having an address of 60 Pleasant Street, Newburyport, Massachusetts 01950, acting by and through its Department of Public Services Sewer Division,

with QUITCLAIM COVENANTS

The land and building thereon in Newburyport, Essex County, Massachusetts shown as **Parcel C** on a plan of land entitled “Plan of Land in Newburyport, Mass. Surveyed for Evergreen Commons LLC”, dated May 2, 2017, prepared by Design Consultants, Inc., Consulting Engineers and Surveyors, 120 Middlesex Avenue, Somerville, MA 02145, and recorded with Southern Essex District Registry of Deeds in Plan Book 464, Plan 53. Said Parcel C contains 1,597 square feet, more or less, according to said Plan.

Being a portion of the premises conveyed to the Grantor by deed recorded with Southern Essex District Registry of Deeds in Book 365737, Page 88 and Book36573 Page 92.

Executed as a sealed instrument this \_\_\_\_ day of \_\_\_\_\_, 2021.

Evergreen Commons LLC

\_\_\_\_\_  
By:  
Its: Manager

**COMMONWEALTH OF MASSACHUSETTS**

Essex, ss.

On this \_\_\_\_ day of \_\_\_\_\_, 2021, before me, the undersigned notary, personally appeared \_\_\_\_\_, proved to me through satisfactory evidence of identification, which was \_\_\_\_\_, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose as Manager of Evergreen Commons LLC.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

GRANTEE: CITY OF NEWBURYPORT

By: \_\_\_\_\_  
Donna D. Holaday, Mayor

**COMMONWEALTH OF MASSACHUSETTS**

Essex County, ss.

On this \_\_\_\_ day of \_\_\_\_\_, 2021, before me, the undersigned Notary Public, personally appeared the above-named Donna Holaday, proved to me by satisfactory evidence of

identification, being (check whichever applies):  driver's license or other state or federal governmental document bearing a photographic image,  oath or affirmation of a credible witness known to me who knows the above signatory, or  my own personal knowledge of the identity of the signatory, to be the person whose name is signed above, and acknowledged the foregoing to be signed by him voluntarily for its stated purpose.

\_\_\_\_\_  
(Print Name of Notary Public): \_\_\_\_\_

My commission expires: \_\_\_\_\_

CITY OF NEWBURYPORT



---

IN CITY COUNCIL

ORDERED:

November 8, 2021

**THAT** the City Council of the City of Newburyport hereby approve and authorize the acceptance of a Non-Exclusive Construction Easement to the City for future trail construction on the so-called "Evergreen Commons" property or "Cottages at Port Place" development, identified as "Easement Area" in the attached Non-Exclusive Construction Easement and plan referenced therein, and containing 21,467 square feet, more or less, consistent with an Open Space Residential Development (OSRD) Subdivision and Special Permit issued by the Newburyport Planning Board; and

Further, that the Mayor of the City of Newburyport is hereby authorized to act on behalf of the City and enter into any and all instruments, including acceptance of said Non-Exclusive Construction Easement, substantially in the form attached hereto, and to take any other actions necessary to execute this acceptance accordingly.

---

Councillor Heather L. Shand

## NON- EXCLUSIVE CONSTRUCTION EASEMENT

This Non-Exclusive Construction Easement (the “Easement”) is granted this \_\_\_ day of \_\_\_\_\_, 2021 by Evergreen Commons, LLC, being duly authorized to do business in the Commonwealth of Massachusetts, and having a mailing address of 25 Storey Avenue, Essex County, Commonwealth of Massachusetts, 01950, a Limited Liability Corporation as declarant for the Port Place Home Owner’s Association, recorded in the Essex South Registry of Deeds Book 37023 Page 029 as amended by that First Amendment recorded in said Registry at Book 40031 and Page 406 (“Grantor”), as the owner of those parcels of land in Newburyport consisting of approximately 22.816 acres, and shown as “Open Space 1”, “Open Space 2” and “Open Space 3” on a plan recorded in said Registry at Plan Boo, 464 Plan 53 prepared by Design Consultants Inc., 68 Pleasant Street, Newburyport, MA 01950, dated May 22, 2017 (the “Grantor’s Property”), to the City of Newburyport, an municipal corporation duly organized under the laws of the Commonwealth of Massachusetts and located in Essex County, Massachusetts, located at 60 Pleasant Street, Newburyport, Massachusetts, 01950 (together with its successors and assigns, “Grantee”).

WHEREAS, Grantor is the owner of the Grantor’s Property;

WHEREAS, pursuant to a Newburyport Planning Board, XIV OSRD Special Permit, File No. 2016-SP-03a, recorded in the Essex South Registry of Deeds at Book 36573, Page 94 (“Special Permit”), for an Open Space Residential Development, Finding No. 8 specified that the Project would include 5,700 linear feet of bike and walking paths “that will connect to the City’s multi-use path that runs adjacent and parallel to Interstate 95” (the “Garrison Trail”);

WHEREAS, pursuant to Newburyport Conservation Commission Order of Conditions, DEP File Number 051-0973, dated February 6, 2018 and recorded in the Essex South Registry of Deeds at Book 36573, Page 141 (“Order”), allowing construction of a 38-home subdivision within a Zone II Wellhead Protection Area and anticipating connection to the Garrison trail (the “Bike Path Connection”);

WHEREAS, the Order of Conditions and Special Permit have been amended and no longer require the Grantor to construct a connection to the City’s multi-use path that runs adjacent to Interstate 95 however, require the creation of a plan to provide for said connection. (the “Easement Area”) said Easement Area shown on Exhibit A attached hereto and grant said easement to the Grantee.

WHEREAS, this Non-Exclusive Construction Easement is to authorize and enable the City of Newburyport to construct the bike path connection in the future, once permission is secured from all pertinent landowners, consistent with the path proposed and approved in the Order and Special Permit;



NOW THEREFORE, for nominal consideration the receipt and sufficiency of which is hereby acknowledged and for the promises set forth below, Grantor does hereby grant to Grantee the following rights and easement:

1. Grant of a Non-Exclusive Construction Easement. Grantor does hereby grant to Grantee the following non-exclusive construction easement to run with the land as follows:

(a) The right for the City of Newburyport, its assigns, contractors and successor, to construct a bike path connection consistent that that shown on Exhibit A in the Easement Area consisting of 21,467 square feet +/- . This Construction Easement and conditions provided herein shall be perpetual and irrevocable and shall be deemed to be covenants running with the land and shall inure to the benefit of and be binding upon the Grantee and the Grantor and their respective successors and assigns.

2. Limitations and Restrictions. The rights and easements granted in Section 1 above shall become effective only if and when Grantor has recorded the Plan. The rights and easements granted in Section 1 hereof shall be limited to use of the Easement Area, including access thereto over the land of the Grantor's Open Space Area for construction of the bike path connection.

The rights and easements granted in Section 1 in no way curtail or nullify the rights granted to the City of Newburyport Conservation Commission in that certain Conservation Restriction recorded immediately hereafter.

Nothing in this Grant of Easements shall limit the ability of the Grantor and Grantee to avail themselves of the protections provided by any applicable law affording immunity to either party including, to the extent applicable, M.G.L. c 21, §17C(a), the so-called "Recreational Use Statute". This Grant of Easements is made for the express purpose of permitting the Grantee to construct a bike path connection which will in turn enable members of the public to use such land for recreational purposes, at their own risk, without the imposition of a charge or fee therefor, and neither Grantor nor Grantee shall at any time impose a charge or fee on members of the public for the use of the public bike path to be created on the Easements or for any other purpose.

3. Maintenance.

(a) Maintenance of the Easement Area. Grantor shall be responsible for maintaining the Easement Area and improvements thereon at Grantor's sole cost and expense.

4. Insurance. Prior to exercising any rights under this Agreement, Grantee shall obtain, and thereafter shall maintain in effect, a policy of public liability insurance insuring against claims on account of loss of life, bodily injury or property damage that may arise from, or be occasioned by, the use and/or exercise of rights and/or obligations under this Agreement, including but not limited to use, construction of the bike bath connection and access to and from. Such insurance policy shall name Grantor (and following notice, any holders of mortgages on

Grantor's Land), as an additional insured. Said insurance shall be carried by a financially responsible insurance company or companies qualified to do business in the Commonwealth of Massachusetts and having a single limit for loss of life or bodily injury and for property damage of not less than \$3,000,000. Grantee shall furnish to Grantor a certificate of insurance evidencing the existence of the insurance required to be carried pursuant hereto. Such policy shall contain a provision that it shall not be cancelled or terminated without at least thirty (30) days advance written notice to each insured.

5. No Liability: The Grantor does not assume any responsibility to the Grantee, the general public, or anyone else in connection with its or their use of this Non-Exclusive Construction and Maintenance Easement which use shall be at its and their discretion and risk.

6. No Representations or Warranties. Grantor makes no representation or warranty, either express or implied, with respect to the condition of any portion of Grantor's Land or the improvements now or hereafter constructed thereon.

7. Compliance with Law. In the performance of its obligations hereunder, Grantee shall comply promptly with all laws, regulations and governmental permits and approvals and matters of record existing prior to the recording of this Agreement.

8. Amendment. Except as otherwise expressly set forth in this Agreement, no amendments or modifications of this Agreement shall be effective without the prior written consent of each party at the time of such amendment or modification.

9. Severability. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be declared to be invalid or unenforceable, then the remainder of this Agreement shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

10. Governing Law. This Agreement shall be construed and interpreted under the laws of the Commonwealth of Massachusetts.

11. Notices. Unless otherwise specified herein, any notice to be given hereunder shall be in writing and shall be deemed to have been given (a) when delivered by hand, or (b) when mailed by registered or certified mail return receipt requested, or (c) when sent by overnight delivery (such as FedEx), or (d) when sent by daytime courier, addressed as follows:

If to Grantor: Trustee  
Port Place Homeowners Association Trust  
25 Storey Ave.  
Newburyport MA 01950

If to Grantee: City of Newburyport  
Mayor

City Hall  
60 Pleasant Street  
Newburyport, MA 01950

Each party's notice address may change upon twenty (20) days prior written notice to the other party. Notices shall be deemed delivered on the date received or rejected or on the date noted that the addressee has refused delivery, or on the date that the notice is returned to sender due to the inability of the postal authorities to deliver.

Port Place Homeowners Association Trust  
By Evergreen Commons LLC  
Its Original Declarant

By: \_\_\_\_\_  
Howard Johnstone Hall

**COMMONWEALTH OF MASSACHUSETTS**

\_\_\_\_\_, ss

On this \_\_\_\_ day of \_\_\_\_\_, 2021, before me, the undersigned notary public, personally appeared Howard Johnstone Hall, proved to me through satisfactory evidence of identification, which were driver's licenses, to be the persons whose name is signed on the preceding or attached document, and acknowledged to me that he signed it in his capacity, and that by his signature on the instrument, the individual, or the person upon whose behalf of which the individual acted, executed the instrument voluntarily for its stated purpose.

\_\_\_\_\_  
Notary Public:  
My Commission Expires:

GRANTEE: CITY OF NEWBURYPORT

By: \_\_\_\_\_  
Donna Holaday, Mayor

COMMONWEALTH OF MASSACHUSETTS

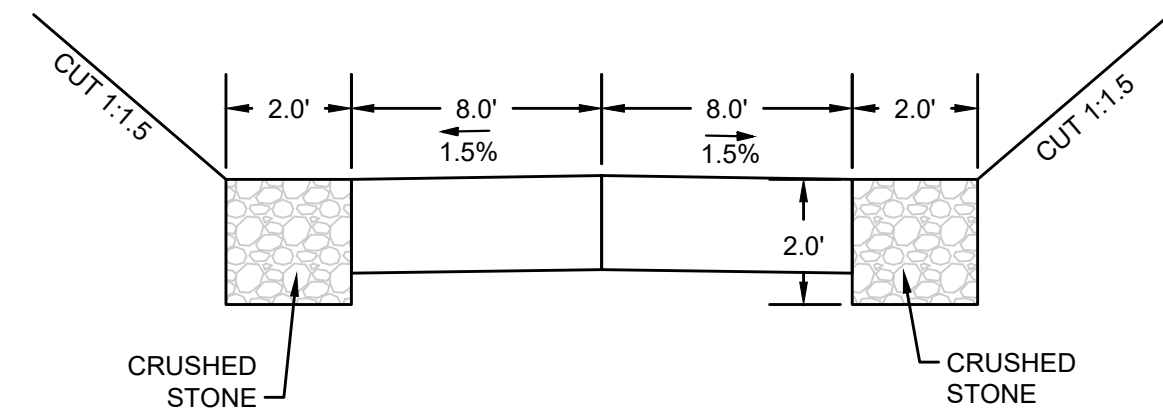
Essex County, ss.

On this \_\_\_\_ day of \_\_\_\_\_, 2021, before me, the undersigned Notary Public, personally appeared the above-named Donna Holaday, proved to me by satisfactory evidence of identification, being (check whichever applies):  driver's license or other state or federal governmental document bearing a photographic image,  oath or affirmation of a credible witness known to me who knows the above signatory, or  my own personal knowledge of the identity of the signatory, to be the person whose name is signed above, and acknowledged the foregoing to be signed by him voluntarily for its stated purpose.

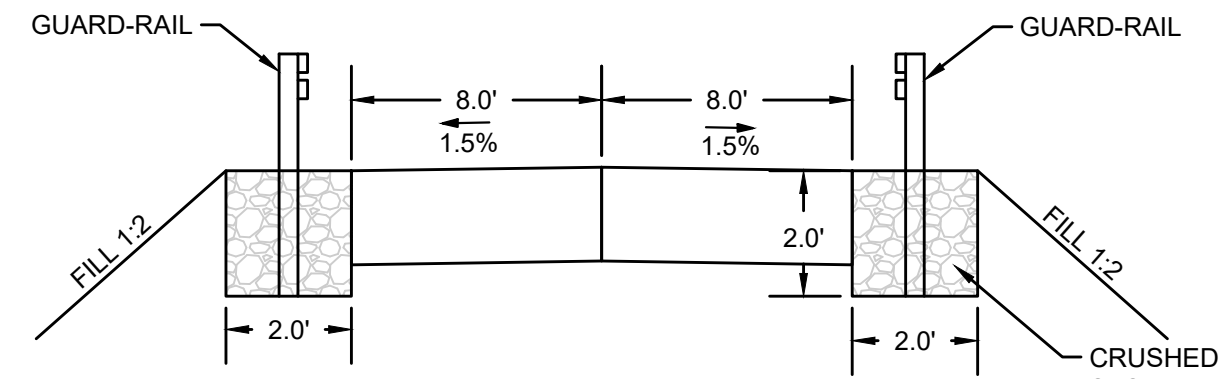
\_\_\_\_\_  
(Print Name of Notary Public): \_\_\_\_\_  
My commission expires: \_\_\_\_\_

**EXHIBIT A**

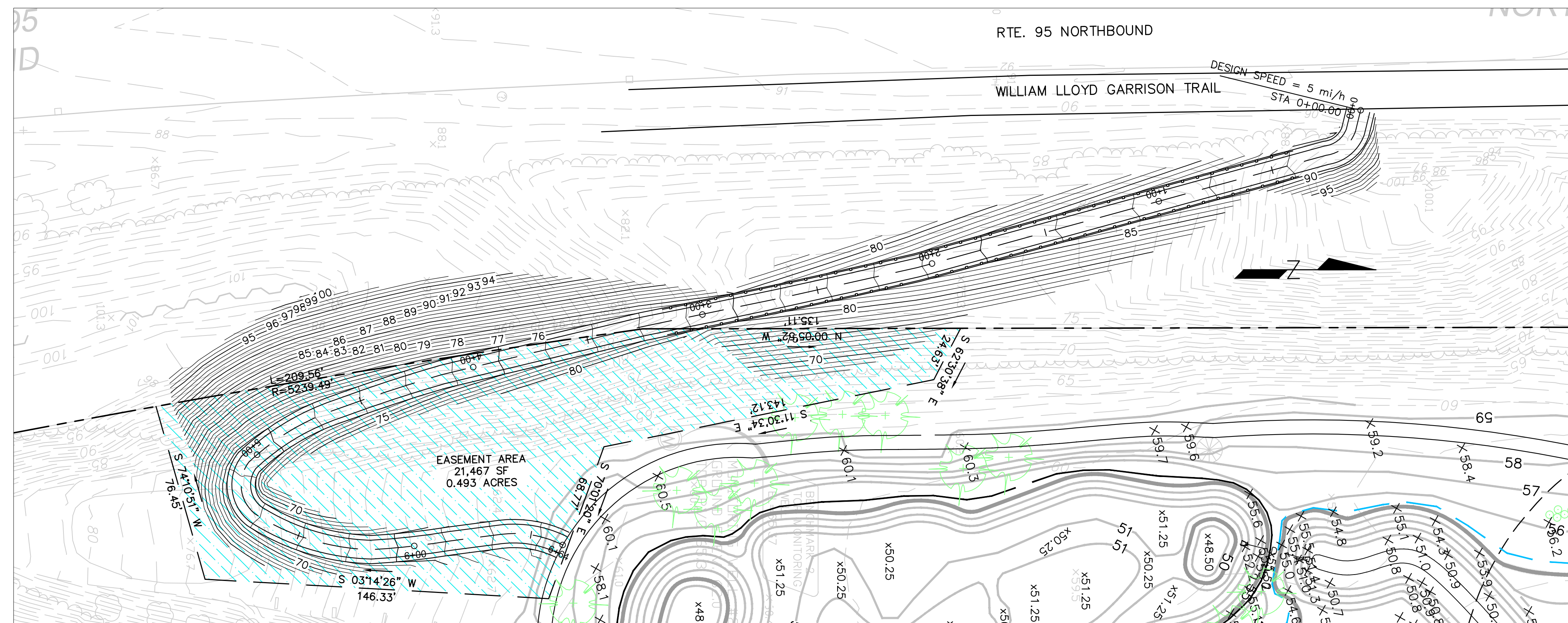




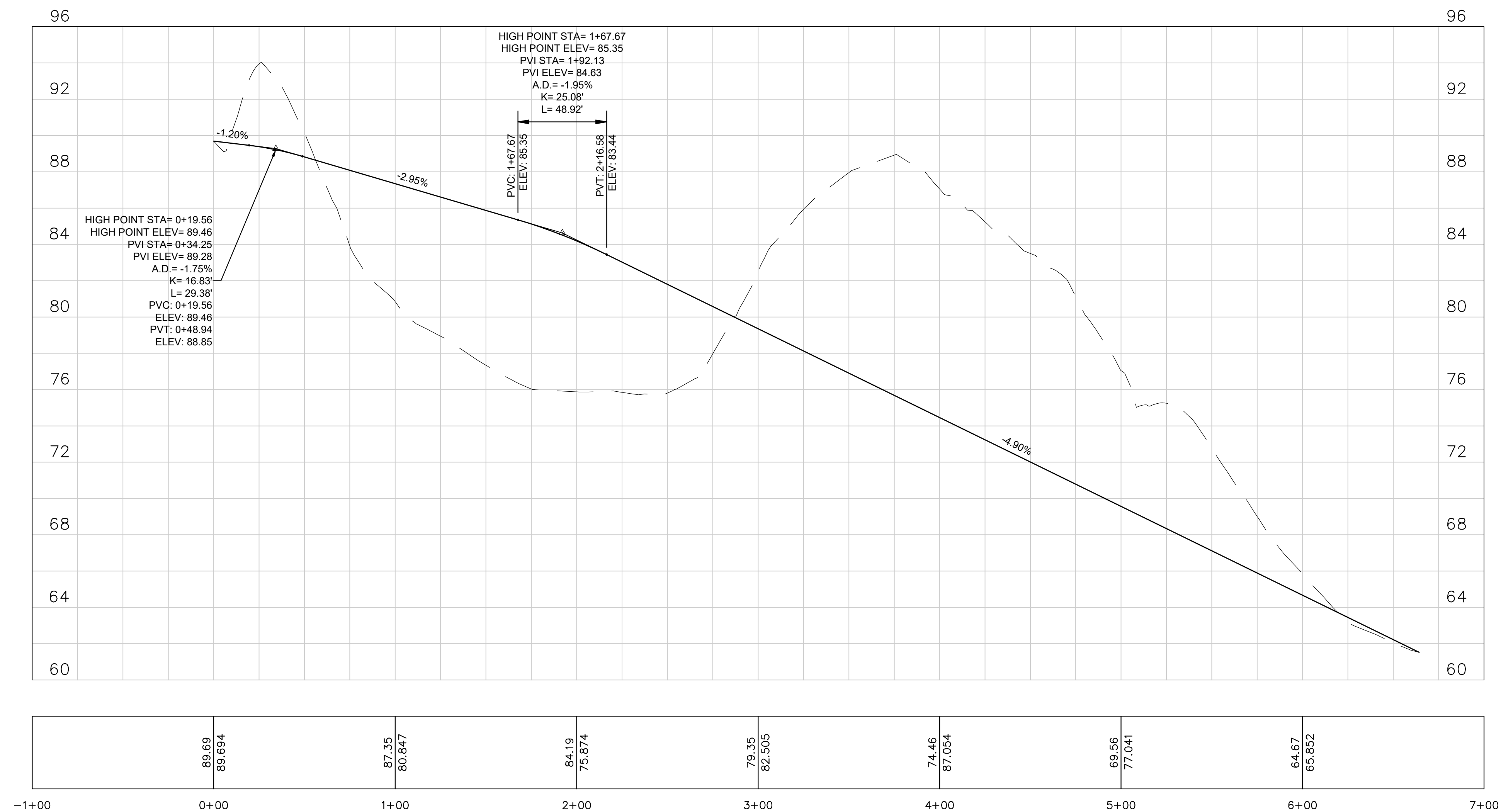
SHARE PATH-CROSS SECTION  
NOT TO SCALE



SHARE PATH-CROSS SECTION  
NOT TO SCALE



SHARE PATH-PLAN VIEW  
SCALE 1"=30'



SHARE PATH-PROFILE VIEW  
H 1"=40'  
V 1"=4'



PROJECT TEAM

18 BOYD DRIVE,  
SUBDIVISION  
NEWBURYPORT, MA

PREPARED FOR  
EVERGREEN  
COMMONS, LLC

PROJECT INFO

REV	DESCRIPTION	DATE
1.	ADD EASEMENT INFO	9/14/21



STAMP:

SHARE PATH  
PLAN &  
PROFILE VIEW

SHEET NAME:

**C101**

SHEET NO:

PROJ NO: 2015-063  
DATE: JUNE 16, 2021

CITY OF NEWBURYPORT



---

IN CITY COUNCIL

ORDERED:

November 8, 2021

**THAT** the City Council of the City of Newburyport hereby approve and authorize the acceptance of an Easement to the City for emergency access to any and all stormwater facilities and private ways within the so-called "Evergreen Commons" property or "Cottages at Port Place" development, pursuant to the attached Easement Agreement and plan referenced therein, consistent with an Open Space Residential Development (OSRD) Subdivision and Special Permit issued by the Newburyport Planning Board; and

Further, that the Mayor of the City of Newburyport is hereby authorized to act on behalf of the City and enter into any and all instruments, including acceptance of said Easement Agreement, substantially in the form attached hereto, and to take any other actions necessary to execute this acceptance accordingly.

---

Councillor Heather L. Shand

---

## EASEMENT AGREEMENT

Evergreen Commons LLC, a Massachusetts limited liability corporation, having an address of 25 Storey Avenue, PMB 319, Newburyport, Massachusetts (the “Grantor”), for nominal consideration of less than One Hundred and 00/100 Dollars (<\$100.00)

grants to

The City of Newburyport, a Massachusetts municipal corporation, having an address of 60 Pleasant Street, Newburyport, Massachusetts 01950, acting by and through its Department of Public Services (the “Grantee”),

The perpetual right and easement to enter upon land of the grantor as shown upon plan entitled “Plan of Land in Newburyport, Mass. Surveyed for Evergreen Commons LLC”, dated May 2, 2017, prepared by Design Consultants, Inc., Consulting Engineers and Surveyors, 120 Middlesex Avenue, Somerville, MA 02145, for the purpose of emergency access to any and all stormwater facilities and private ways both during and after construction within the subdivision known as Port Place by Evergreen Commons LLC subdivision (the “Subdivision”). Said Plan is recorded with Southern Essex District Registry of Deeds in Plan Book 464, Plan 53.

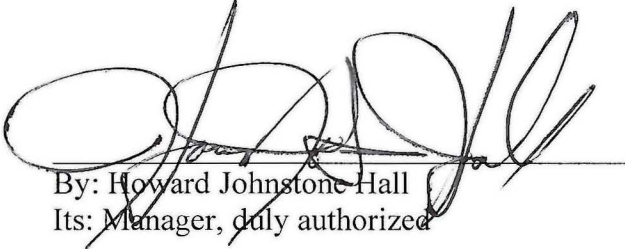
In return for the perpetual easements granted herein the Grantee agrees that any area disturbed by Grantee’s exercise of its rights herein will be restored, as near as possible to its original condition, at the Grantee’s expense, and the Grantee further agrees to the extent permitted by law, indemnify and hold harmless the Grantor, its successors and/or assigns for any action of Grantee pursuant to the exercise of its rights hereunder. The Grantee further agrees to provide the Grantor, its successors and/or assigns, an annual Certificate of Insurance naming the Grantor, its successors and/or assigns as a loss payee thereon.

For Grantor’s title, see deeds recorded with Southern Essex District Registry of Deeds in Book 36573, Pages 88 and 92.



Executed as a sealed instrument this 10<sup>th</sup> day of September, 2020.

Evergreen Commons LLC

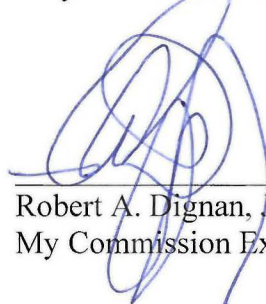


By: Howard Johnstone Hall  
Its: Manager, duly authorized

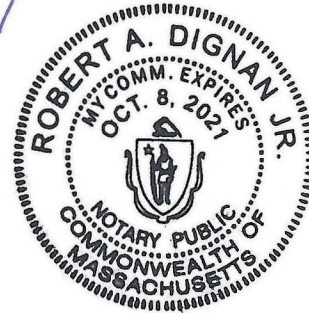
**COMMONWEALTH OF MASSACHUSETTS**

Essex, ss.

On this 10<sup>th</sup> day of September, 2020 before me, the undersigned notary, personally appeared Howard Johnstone Hall, proved to me through satisfactory evidence of identification, which was personal knowledge, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose as Manager of Evergreen Commons LLC.



Robert A. Dignan, Jr., Notary Public  
My Commission Expires: October 8, 2021



GRANTEE: CITY OF NEWBURYPORT

By: \_\_\_\_\_  
Donna D. Holaday, Mayor

COMMONWEALTH OF MASSACHUSETTS

Essex County, ss.

On this \_\_\_\_ day of \_\_\_\_\_, 2020, before me, the undersigned Notary Public, personally appeared the above-named Donna Holaday, proved to me by satisfactory evidence of identification, being (check whichever applies):  driver's license or other state or federal governmental document bearing a photographic image,  oath or affirmation of a credible witness known to me who knows the above signatory, or  my own personal knowledge of the identity of the signatory, to be the person whose name is signed above, and acknowledged the foregoing to be signed by her voluntarily for its stated purpose.

\_\_\_\_\_  
(Print Name of Notary Public): \_\_\_\_\_  
My commission expires: \_\_\_\_\_  
Qualified in the Commonwealth of Massachusetts

CITY OF NEWBURYPORT



\_\_\_\_\_  
IN CITY COUNCIL

November 8, 2021

ORDERED:

**AN ORDER (1) AUTHORIZING PURCHASE OF A 2.7-ACRE PORTION OF 57 LOW STREET,  
(2) APPROPRIATING \$900,000 TO PURCHASE SUCH PROPERTY, REMOVE THE EXISTING STRUCTURE,  
AND CONSTRUCT A 5000SF METAL GARAGE (WITH CONCRETE PAD) FOR USE BY THE DEPARTMENT OF  
PUBLIC SERVICES,**

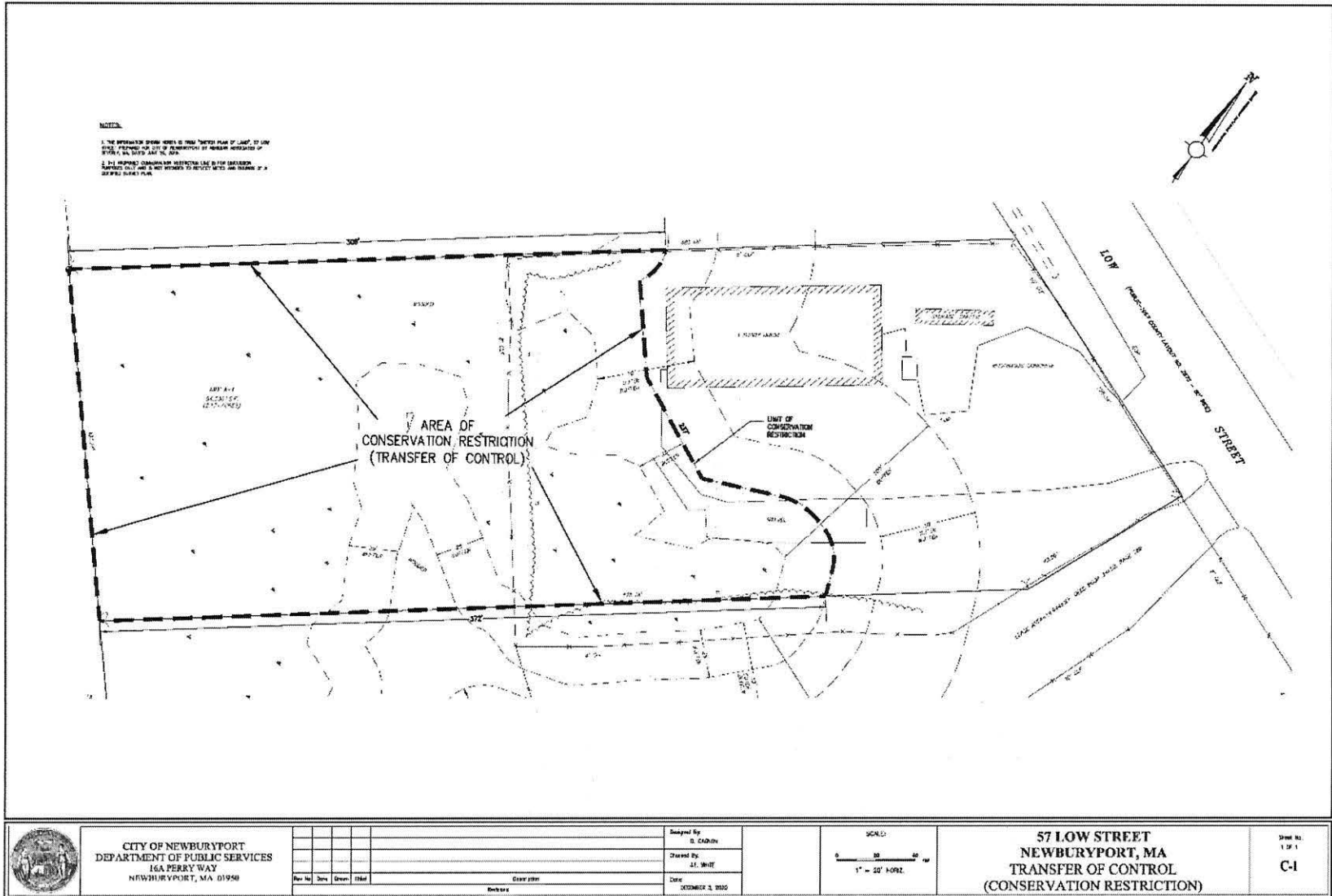
Be it ordained by the City Council of the City of Newburyport as follows:

- 1) The City Council approves and authorizes the purchase of that portion of the real property commonly known as 57 Low Street, depicted in the attached plan as Lot A-1, for the sale price of Two-Hundred and Twenty Thousand Dollars and (\$220,000): (a) for general municipal purposes, with the exception of that portion of Lot A-1 to be reserved for open space and conservation purposes; and (b) for open space and conservation purposes as to that portion of Lot A-1 depicted in the attached "Area of Conservation Restriction.
- 2) The City Council appropriates the sum of Nine Hundred Thousand Dollars (\$900,000) from the sale of a Municipal Bond to pay the costs (a) to purchase Lot A-1, and (b) remove the existing building, and (c) to construct a 5000sf metal building with concrete pad for use as a parking garage for DPS and Parks Dept vehicles.

\_\_\_\_\_  
Councillor James J McCauley, Ward 5

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

ORDR309\_11\_08\_2021  
Late File





# CITY OF NEWBURYPORT FY 2022

RECEIVED  
CITY CLERK'S OFFICE  
NEWBURYPORT, MA

## TRANSFER/APPROPRIATION REQUEST

**Department:** Mayor's Office

**Submitted by:** Donna D. Holaday, Mayor

**Date Submitted:** 11/8/2021

**Transfer From:**

Account Name:	General Fund - Free Cash	Balance:	\$ 2,684,068.00
Account Number:	01-35910	Category:	\$ -
Amount:	\$250,000.00	Trans I/O:	\$ -

**Why Funds Are Available:**

The Massachusetts Department of Revenue certified Free Cash for FY2022 at \$2,684,068. These funds are available for any legal expenditure with the approval of the Mayor and a vote of the City Council.

**Transfer To:**

Account Name:	Compensated Absences Reserve Fund	Balance:	\$ 12,131.23
Account Number:	8270-49700	Category:	\$ -
Amount:	\$250,000.00	Trans I/O:	\$ -

**Why Funds Are Needed:**

To fund the payment of accrued liabilities for compensated absences, such as sick leave and vacation time, that are contractually obligated to be paid upon an employee's separation from the City. An appropriation of \$175,000 was made at the end of FY2021, of which only \$12,131 remains due to a higher than anticipated number of retirements.

Donna D. Holaday, Mayor:

Donna D. Holaday

Date:

11/8/21

Ethan R. Manning, Auditor:

Ethan R. Manning

Date:

11/8/21

Sponsor: Charles F. Tontar, Councillor At-Large

City Council Approval:

# CITY OF NEWBURYPORT



IN CITY COUNCIL

ORDERED:

Introduced November 8, 2021

## AN ORDINANCE OF THE CITY COUNCIL TO UPDATE SECTIONS OF CHAPTER 17 STORMWATER MANAGEMENT

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

**THAT** the Code of Ordinances, City of Newburyport, Massachusetts, is hereby amended for Chapter 17 – Stormwater Management as follows for the specific sections noted here; 17-1 – Authority, Section 17-2 – Definitions (formerly Section 17-3), Section 17-3 – Purposes, Objectives and Intent (formerly Section 17-2), Section 17-4 - Applicability, Section 17-6 - Regulations, Section 17-8 – Prohibited Activities, Section 17-9 - Exemptions, Section 17-11 – Notification of Spills, Section 17-12 – Permit Required, Section 17-13 – Exemptions and Section 17-14 - Waivers. These amendments are to read as follows, with deletions ~~double-stricken through and italicized~~, and additions double-underlined and italicized:

Sec. 17-1. - Authority.

This chapter is adopted under authority granted by the Home Rule Amendment of the Massachusetts Constitution, the Home Rule statutes, and pursuant to M.G.L. c. 83, §§ 1, 10, and 16, as amended by St. 2004, c. 149, §§ 135-140, and pursuant to the regulations of the Federal Clean Water Act (40 CFR 122.34).

Sec. 17-~~23~~. - Definitions.

*Best Management Practice (BMP)* An activity, procedure, restraint, or structural or nonstructural improvement that helps to reduce the quantity or improve the quality of stormwater runoff.

*Certified Professional in Erosion and Sediment Control (CPESC).* A certified specialist in soil erosion and sediment control. This certification program, sponsored by the Soil and Water Conservation Society in cooperation with the American Society of Agronomy, provides the public with evidence of professional qualifications.

*Discharge of pollutants.* The addition from any source of any pollutant or combination of pollutants into ~~a the municipal storm drainage system or into the waters~~ Waters of the United States or Commonwealth of Massachusetts from any source.

*Erosion and Sediment Control Plan.* A document containing narrative, drawings, and details developed by a Massachusetts Registered Professional Engineer (P.E.) or a Certified Professional in



Erosion and Sediment Control (CPESC), which includes BMPs, or equivalent measures designed to control surface runoff, erosion and sedimentation during pre-construction and construction-related land disturbances. The plan is required as part of the application for a stormwater management permit.

*Illicit connection.* A surface or subsurface drain or conveyance, which allows an illicit discharge into ~~the municipal~~ a storm drainage system, including without limitation sewage, process wastewater, or wash water and any connections from indoor drains, sinks, or toilets, regardless of whether said connection was previously allowed, permitted, or approved before the effective date of this chapter.

*Illicit discharge.* Direct or indirect discharge to ~~a the municipal~~ storm drainage system that is not composed entirely of stormwater, except as exempted in section 17-9. The term does not include a discharge in compliance with a NPDES Stormwater Discharge Permit or a Surface Water Discharge Permit, or resulting from ~~fire fighting~~ fire fighting activities exempted pursuant to section 17-9.

*Land disturbance.* Any action that causes a change in the position, location, or arrangement of the land such as, soil, sand, rock, gravel, or similar earth material.

Massachusetts DEP Stormwater Management Policy Standards. The ~~policy performance standards~~ as further defined by the Massachusetts Stormwater Handbook, issued by the department of environmental protection, and as amended, that coordinates the requirements prescribed by state regulations promulgated under the authority of the Massachusetts Wetlands Protection Act M.G.L. c. 131 § 40 and Massachusetts Clean Waters Act M.G.L. c. 21, § 23-56. ~~The policy addresses stormwater impacts through implementation of performance standards to reduce prevent or prevent reduce pollutants from reaching water bodies and control the quantity of runoff from a site. In January 2008, this policy was incorporated into the Massachusetts Wetlands Protection Act Regulations (310 CMR 10.00 et seq).~~

MS4 Permit – United States Environmental Protection Agency (EPA) National Pollutant Discharge Elimination System (NPDES) general permits for stormwater discharges from small municipal separate storm sewer systems (MS4) in Massachusetts.

*Municipal separate storm sewer system (MS4) or municipal storm drainage system.* ~~A~~The system of conveyances designed or used for collecting or conveying stormwater, including any road with a drainage system, street, gutter, curb, inlet, piped storm drain, pumping facility, retention or detention basin, natural or man-made or altered drainage channel, reservoir, and other drainage structure that together comprise the storm drainage system owned or operated by the city.

*Nonstormwater discharge.* Discharge to ~~a the municipal~~ storm drainage system not composed entirely of stormwater.

*Operation and maintenance plan.* A plan setting up the functional, financial, and organizational mechanisms for the ongoing operation and maintenance of a stormwater management system to ~~insure~~ensure that it continues to function as designed.

~~Owner~~ A person with a legal or equitable interest in property.

~~Ordinance.~~ Refers to chapter 17, stormwater management ordinance of the "Code of Ordinances of the City of Newburyport, Massachusetts".

*Pollutant.* Any element or property of sewage, agricultural, industrial or commercial waste, runoff, leachate, heated effluent, or other matter whether originating at a point or nonpoint source, that is or may be introduced into ~~any sewage treatment works~~a stormwater drainage system or waters of the Commonwealth of Massachusetts. Pollutants shall include without limitation:

(g) Dissolved and or toxic particulate metals;

(i) Rock, sand, salt, soils, sediment;

*Redevelopment.* Development, rehabilitation, expansion, demolition, construction, land alteration or phased projects that disturb the ground surface, including or increase the impervious area surfaces, on previously developed sites. The creation of new areas of impervious surface or new areas of land disturbing activity on a site constitutes development, not redevelopment, even where such activities are

part of a common plan which also involves redevelopment. Redevelopment includes maintenance and improvement of existing roadways including widening less than a single lane, adding shoulders, correcting substandard intersections, improving existing drainage systems and repaving; and remedial projects specifically designed to provide improved stormwater management such as projects to separate storm drains and sanitary sewers and stormwater retrofit projects. For purposes of this chapter redevelopment shall apply to both upland and land under the jurisdiction of the Wetlands Protection Act.

Storm Drainage System – A stormwater system comprised of all features and components, in its entirety to the final discharge into Waters of the Commonwealth, including, but not limited to, the collection systems (eg. catch basins, gutter inlets), treatment and attenuation systems (eg water quality unit, detention/retention pond, infiltration unit), conveyance systems (eg swales, pipes, culverts, roadway gutters, pumping stations) to the final discharge into Waters of the Commonwealth of Massachusetts.

Stormwater Management Plan. A plan required as part of the application for a stormwater management permit.

~~Stormwater. Stormwater runoff, snow melt runoff, and surface water runoff and drainage.~~

Surface water discharge permit. A permit issued by the department of environmental protection (DEP) pursuant to 314 CMR 3.00 that authorizes the discharge of pollutants to Waters of the Commonwealth of Massachusetts.

Toxic or hazardous material or waste. Any material, which because of its quantity, concentration, chemical, corrosive, flammable, reactive, toxic, infectious or radioactive characteristics, either separately or in combination with any substance or substances, constitutes a present or potential threat to human health, safety, welfare, or to the environment. Toxic or hazardous materials include any synthetic organic chemical, petroleum product, heavy metal, radioactive or infectious waste, acid and alkali, and any substance defined as Toxic or Hazardous under M.G.L. c. 21C and c. 21E, and the regulations at 310 CMR 30.000 and 310 CMR 40.0000.

Waters of the Commonwealth of Massachusetts. All waters within the jurisdiction of the Commonwealth of Massachusetts, including, without limitation, rivers, streams, lakes, ponds, springs, impoundments, estuaries, wetlands, ~~coastal~~ coastal waters, and groundwater.

Wetlands. Coastal and freshwater wetlands, including wet meadows, marshes, swamps, and bogs, as defined and determined pursuant to M.G.L. c. 131, § 40 and 310 CMR 10.00 et seq.

~~Sec. 17-32.~~ - Purposes, objectives and intent.

Increased and contaminated stormwater runoff is a major cause of impairment of water quality and flow in lakes, ponds, streams, rivers, wetlands and groundwater; contamination of drinking water supplies; alteration or destruction of aquatic and wildlife habitat; and flooding. Regulation of illicit connections and discharges to ~~a the municipal~~ storm drainage system is necessary for the protection of the city's water bodies and groundwater, and to safeguard the public health, safety, welfare and the environment.

The purposes, objectives and intent of this chapter are as follows:

(a) *Detection and elimination of illicit discharges, connections and/or obstructions.*

- (1) To minimize adverse impacts resulting from stormwater runoff;
- (2) To prevent pollutants from entering storm drainage systems ~~the city's municipal separate storm sewer system (MS4)~~ and Waters of the Commonwealth of Massachusetts;
- (3) To prohibit illicit discharges, connections and obstructions to ~~the storm drainage systems~~MS4;
- (4) To require the removal of all such illicit discharges, connections and/or obstructions;
- (5) To comply with state and federal statutes and regulations relating to stormwater discharges; and



- (65) To establish the legal authority to ensure compliance with the provisions of this chapter through inspection, monitoring, and enforcement.
- (b) *Control of construction and post-construction run-off.*
  - (4) To ~~encourage~~ require that the use of nonstructural stormwater management practices or (i.e., "low-impact development practices (LID) and numerous related BMPs) are incorporated into the design", wherever practicable;
  - (6) To prevent pollutants from entering the city's municipal separate storm sewer drainage system and Waters of the Commonwealth. (MS4).

Sec. 17-4. - Applicability.

- (1) ~~Municipal separate storm sewer system (MS4)~~ Storm drainage systems and Waters of the Commonwealth of Massachusetts. This chapter shall apply to ~~flows all stormwater entering a storm drainage system or entering, directly or indirectly, into the city's municipal separate storm sewer system (MS4) and the Waters of the Commonwealth of Massachusetts, except as explicitly exempted in this chapter or where the department of public services has issued a waiver in accordance with Sec. 17-14. .~~
- (2) *Construction and post-construction activities.* ~~Any~~ This chapter applies to any construction and/or land-disturbance activity, including clearing, grading, and excavation that will disturb equal to or greater than ten thousand (10,000) square feet of land or will disturb less than ten thousand (10,000) square feet of land but is part of a larger common plan of development or sale that will ultimately disturb equal to or greater than ten thousand (10,000) square feet of land in the City of Newburyport.

After the initial common plan construction activity is completed for a particular parcel, any subsequent development or redevelopment of that parcel would be regarded as a new plan of development. For example, after a house is built and occupied, any future construction on that lot (e.g., reconstructing after fire, adding a pool or parking area, etc.), would stand alone as a new common plan for purposes of calculating area disturbed to determine if a stormwater management permit is required. Construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or the original purpose of the site.

Sec. 17-6. - Regulations.

The department of public services may adopt and periodically amend rules and regulations, not inconsistent herewith, to effectuate the purposes of this chapter. Said regulations may include, but shall not be limited to provisions regarding: Administration; application requirements and fees; permitting procedures and requirements; design standards; surety requirements; inspection and site supervision requirements; waivers and exemptions; and enforcement procedures. ~~Said~~ These regulations shall be adopted within ninety (90) days of the effective date of this chapter in consultation with the stormwater advisory committee appointed by the mayor which must include a representative from the department of public services, the office of planning and development and the health department. Failure by the department of public services to adopt such rules and regulations or a legal declaration of their invalidity by a court of law shall not have the effect of suspending or invalidating this chapter.

Sec. 17-7. - Enforcement.

The department of public services shall enforce this chapter and any regulations, orders, violation notices, enforcement orders and permit conditions on behalf of the ~~city, and~~ city and may pursue all civil and criminal remedies for such violations pursuant thereto.

- (2) Criminal Penalty. Any person who violates any provision of this chapter and/or any regulations, orders, violation notices, enforcement orders and permit conditions issued hereunder, shall be punished by a fine of \$300. Each day or part thereof that such violation occurs or continues to occur by failure to comply with an order or notice from the Department of Public Services shall constitute a separate violation.

~~(32)~~ *Orders.*

- a. The department of public services may issue a written order to enforce the provisions of this chapter and any regulations, orders, violation notices, enforcement orders and permit conditions hereunder, which may include requirements to:
  - (i) Cease and desist from construction or land disturbance until there is compliance with this chapter, and an approved ~~S~~stormwater ~~M~~management ~~P~~permit, including the ~~S~~stormwater ~~M~~management ~~P~~plan and the ~~E~~rosion and ~~S~~ediment ~~C~~ontrol ~~P~~lan;
  - (v) Elimination of illicit discharges, connections and/or obstructions to a storm drainage system~~the MS4~~;
  - (vi) ~~Performance~~ Elimination of discharges to a storm drainage system or, directly or indirectly, into a watercourse or into the waters of the commonwealth~~of monitoring, analyses, and reporting~~;

~~(3) *Criminal Penalty.* Any person who violates any provision of this chapter and/or any regulations, orders, violation notices, enforcement orders and permit conditions issued hereunder, shall be punished by a fine of three hundred dollars (\$300.00). Each day or part thereof that such violation occurs or continues to occur by failure to comply with an order or notice from the department of public services shall constitute a separate violation.~~

(4) *Non-criminal disposition.* As an alternative to criminal prosecution or civil action, the city may elect to utilize the noncriminal disposition procedure set forth in M.G.L. c. 40, § 21D and adopted by the city as a general ordinance <sup>†</sup> in which case the department of public services of the city shall be the enforcing person. The penalty for the 1st violation (failure to comply with an order or notice from the department of public services) shall be one hundred dollars (\$100.00). The penalty for the 2nd violation shall be two hundred dollars (\$200.00). The penalty for the 3rd and subsequent offenses shall be three hundred dollars (\$300.00). Each day or part thereof that such violation occurs or continues to occur shall constitute a separate offense.

(6) *Appeals.* Decisions or orders of the director of public services and department of public services shall be final. Further relief of a decision made under this chapter shall be reviewable in Superior Court in an action filed in accordance with M.G.L. c. 249, § 4.

(7) *Remedies not exclusive.* The remedies listed in this section are not exclusive of any other remedies available under any applicable federal, state or local law.

ARTICLE II. - NON-STORMWATER DISCHARGES, CONNECTIONS AND OBSTRUCTIONS

Sec. 17-8. - Prohibited activities.

- (a) *Illicit discharges.* No person shall dump, discharge, spill, cause or allow to be discharged any pollutant or non-stormwater discharge into ~~the municipal separate storm sewer drainage system (MS4), onto an impervious surface directly connected to a storm drainage system, or, directly or indirectly, into a watercourse, or~~ into the waters of the Commonwealth of Massachusetts.
- (b) *Illicit connections.* No person shall construct, use, allow, maintain or continue any illicit connection to ~~the municipal~~ a storm drainage system, regardless of whether the connection was permissible under applicable law, regulation or custom at the time of connection.
- (c) *Obstruction of municipal storm drainage system.* No person shall obstruct or interfere with the normal flow of stormwater into or out of the municipal storm drainage system without prior written approval from the department of public services.

Sec. 17-9. - Exemptions.

The following exemptions are applicable to section 17-8:

- (a) Discharge or flow resulting from ~~fire fighting~~ fire fighting activities.

- (b) The following non-stormwater discharges or flows are exempt from the prohibition of non-stormwaters provided that the source is not a significant contributor of a pollutant to a the municipal storm drainage system or, directly or indirectly, the Waters of the Commonwealth of Massachusetts:

Sec. 17-11. - Notification of spills.

Notwithstanding other requirements of local, state or federal law, as soon as a person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of or suspects a release of materials at that facility or operation resulting in or which may result in discharge of pollutants to a storm the municipal drainage system or Waters of the Commonwealth of Massachusetts, the person shall take all necessary steps to ensure containment, and cleanup of the release. In the event of a release of oil or hazardous materials, the person shall immediately notify the fire and police departments, health department, and the department of public services. In the event of a release of nonhazardous material, the reporting person shall notify the department of public services no later than the next business day. The reporting person shall provide to the department of public services written confirmation of all telephone, facsimile or in-person notifications within three business days thereafter. If the discharge of prohibited materials is from a commercial or industrial facility, the facility owner or operator of the facility shall retain on-site a written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three (3) years.

ARTICLE III. - CONSTRUCTION AND POST CONSTRUCTION STORMWATER MANAGEMENT OF NEW DEVELOPMENTS AND REDEVELOPMENTS

Sec. 17-12. - Permit required.

No person may undertake any construction and/or land-disturbance activity (as defined stated in subsection 17-4(2), "applicability"), without first obtaining a including clearing, grading, and excavation that will disturb equal to or greater than ten thousand (10,000) square feet of land or will disturb less than ten thousand (10,000) square feet of land but is part of a larger common plan of development or sale that will ultimately disturb equal to or greater than ten thousand (10,000) square feet of land in the City of Newburyport without a stormwater management permit from the department of public services pursuant to this Article this chapter and regulations promulgated hereunder.

Sec. 17-13. - Exemptions.

The following exemptions are applicable to section 17-12:

- (3) Maintenance of existing landscaping, gardens or lawn areas associated with a ~~single family~~ single-family dwelling that will not alter existing terrain or drainage patterns;

Sec. 17-14. - Waivers.

The following exemptions are applicable to section 17-12:

- (a) The director of public services may waive strict compliance with any requirement of section 17-12, or the rules and regulations promulgated hereunder, where:
- (1) allowed by federal, state and local statutes and/or regulations;
  - (2) is such action is in the public interest; and
  - (3) is not inconsistent with the purpose and intent of this chapter, and

---

Councillor Afroz K. Khan