BOARD OF SELECTMEN, LIBRARY BOARD OF TRUSTEES, & SANDWICH HOUSING AUTHORITY BOARD OF COMMISSIONERS AGENDA

July 7, 2022 – 7:00 P.M.
Sandwich Town Hall – 130 Main Street

1. Convene Open Session Meeting in Auditorium
2. Pledge of Allegiance
3. Public Comment
4. Review & Approval of Minutes – 6/23/22
5. Town Manager Report
6. Correspondence / Statements / Announcements / Future Items / Follow-up
7. Staff Meeting
   Joint Meeting with Library Board of Trustees – Appointment to Fill Vacancy Through 5/4/23 Town Election – Colleen Clabault
   Joint Meeting with Sandwich Housing Authority Board of Commissioners – Appointment to Fill Vacancy Through 5/4/23 Town Election – Joan Martinelli
   Director of Public Heath Dave Mason & Director of Natural Resources Dave DeConto – Shawme Pond Algae Bloom
8. Old Business
   • Conservation Restriction for 297 & 300 Meiggs-Backus Way – Approve & Authorize Execution with Town Counsel Consent
   • Service Road Shared Use Path – Dedication of the Town Parcels & Plan
   • License Agreement for 115 Route 6A – Massachusetts Military Support Foundation, Inc.
   • Disposition of Deacon Eldred House – Deed, Closing Documents, Land Development Agreement, Easement Agreement
   • Overview of Temporary Repairs to Private Ways & Betterment Process
   • Other Matters Not Reasonably Anticipated by the Chairman
9. New Business
   • Other Matters Not Reasonably Anticipated by the Chairman
10. Public Comment
11. Closing Remarks
12. Adjournment

**NEXT MEETING:** Thursday, 7/21/22, 7:00 P.M., Town Hall

[Signature]
7/5/22
Present: S. Hoctor, C. Holden, M. Miller, B. George, P. Ellis
G. Dunham, Town Manager; H. Harper, Assistant Town Manager
Others Present: W. Jennings, Finance Director; Ralph Vitacco, Director of Planning and Economic Development; Leanne Drake, Town Planner; B. Brides, Inspection.

Mr. Hoctor opened the meeting at 7:00 PM.

PLEDGE OF ALLEGIANCE

PUBLIC COMMENT
Sarah Colvin, Communication Manager Cape Cod Commission, announced that the annual One Cape Summit will be held on August 2. Housing and fresh-water quality will be discussed. There is a breakfast for municipal leaders at 7:30 AM.

Jonathan Finn, Chair of the Local Comprehensive Plan Steering Committee has a comment related to the Green Communities. This is the time to get it moving. Three years ago, Town Meeting wanted this to happen, but it has been ignored. He encouraged Board members to look at minutes of LCP meetings and comments from the public through forums. The public wants the Green Community designation with tax benefits and a green environment.

Judith Holt reports that 85% of Massachusetts towns have approved the Green Communities designation. They all are benefitting from grant monies. These grants are important to Sandwich because of school projects. She has information on building codes if wanted.

REVIEW AND APPROVAL OF MINUTES
Mr. Miller moved to approve the minutes of June 9, 2022. Seconded by Mr. Holden. Approved unanimously.

TOWN MANAGER REPORT
1. Meetings -The finance Committee will meet on June 27th to consider Reserve Fund transfers, mainly for fire overtime. The Board’s next meeting will be on July 7th. He said he will review the plan for financial reorganization with the Finance Committee.
2. We have applied for the County allotment of ARPA money ($850,000). They keep asking for more information. Hopefully, the funds will be released soon.
3. The State has a free giveaway of home covid tests. The Town has 3,700 tests. People can pick them up for free through the Board of Health; each contains two test kits.
4. There has been publicity nationally and by the State about the opioid settlement. We were one of the towns in the state that filed the appropriate information. Over a 15-
year period we will be receiving about $1,040,000 with direction as to what the funds can be used for. The first allotment should be coming in the next few months.

5. We have not received the second allotment of ARPA funds; they should be coming soon.

Questions/Comments from the Board: Mr. Hoctor thanked the Town managers for all their work in applying for millions from ARPA, getting the test kits, and being on top of the opioid issue. Mr. George asked about the Wing School project. Ms. Harper said it remains a fine project. For the most recent funding cycle, 100 applied, 50 for the second round; another round is coming up. SCG is doing architectural designs and expects to submit them to the State by fall. They do not expect funding until 2023. Things are not as fast as we would like but it is a fundable project, which can go slowly. They have been through the appropriate boards and have permits. The roof of the old police station is done, just gutter work in the back needs to be finished. We received a donation from Home Depot for the materials and hired a roofing contractor to do the work. The agreement with the Massachusetts Military Foundation has been finalized and should be coming back to be approved.

Mr. Dunham reported that the DEP is considering new Title 5 restrictions; these are not yet formulated. There is a meeting next Tuesday. This could relate to our regional wastewater effort. It will force everyone to move faster on approvals but might be positive in the long run. Mr. Miller asked about the algae in Shawme pond; this is a returning phenomenon, but it seems worse this year. Mr. Dunham said it is related to road runoff; recommended treatment from a report done years ago was not done. We are attempting to use money from the WIIF to work on drainage of both ponds. The odor is very bad. Mr. Ellis said the pond is actually flooded meadow, but there has been more development, and increased use of lawn fertilizer. There was a suggested alternative at one point to drain the ponds during the winter months. This would work well, but winters are warmer now. The algae are not harmful and the Board of Health is aware of the issue.

CORRESPONDENCE/STATEMENTS/ANNOUNCEMENTS

Mr. Holden reported that the Bikeways and Pedestrian Committee had a presentation of options proposed for Service Road to Canal connector. He also reported that the School Committee positively received Mr. McNamara's bullying plan; the Safety Committee views this as a priority. Mr. Holden participated in the initial Boardwalk plank return; reactions from some of the people was moving. Mr. Miller reminded the Board that last July 4th the parking lot at the beach was closed so people could not use the beach. He would like people with resident stickers to be able to use the beach. Mr. Dunham will check to see what the plans are.

STAFF MEETING

Town Planner Leanne Drake – Potential Adoption of Green Communities Act & Required Follow-up

Ms. Drake provided an overview of where Sandwich stands in the Green Communities process (slides are in the agenda packet). There are five criteria necessary - #1 as of right siting for energy solutions; the Town satisfies this criterion; # 2 – adopt expedited permitting (no more than a year to acquire the permit); we feel confident we can abide by this. It requires a letter
from Town Counsel; #3 – create an energy reduction plan; this requires more work. Cape Light Compact can help with this plan; we need to evaluate for current function then plan how to reduce consumption by 20% over five years; #4 - adopt a fuel-efficient vehicle (mainly electric) purchase policy; some of this has been done; and #5 – adopt the stretch code, which would require a Town Meeting vote as it is a by-law adoption. Currently we work off the base code, which is similar to the stretch code, but the stretch code has a higher standard for energy efficiency. Currently, the State is updating the stretch code, but this is not replacing the base code; it should be ready by summer. Timeline - this round of applications opens July 1st and closes December 30th. It is possible that we could make the December time and then be funded early in 2023.

Mr. Hoctor commented that the base code and the stretch code are pretty close; he said that it does add cost. Mr. Miller asked if we get the solar panels, could the $500,000 to $600,000 savings be applied toward the 5-year energy reduction - yes. Mr. Hoctor commented that the Green Communities grant money is not guaranteed money. His concern is about the regulations, such as imposed by the MSBA, which essentially increased the cost of a project far more than if the Town did it independently. A concern would be if the Town adopts the Green Communities designation, but, for example, doesn’t meet the 5-year energy reduction, would that eliminate the opportunity for grants. Ms. Drake said that they would not ask for money back and would work with the Town to meet the requirement; it is possible that we would miss that year’s grant allocation. A town receives the initial grant amount, which is an annual amount, then can apply for more. Another issue is that the Town cannot recycle vehicles, the cost is not to the first cycle but the second or third cycle. There is a cost to add charging stations and other equipment and we would be forced to buy new vehicles instead of recycling them. Ms. Drake said that if the Town is buying a vehicle and if an electric vehicle is available, we must buy that vehicle. Mr. Hoctor said he would need more information. Mr. Miller asked what if power goes out during a storm, there would be no way to charge an electric vehicle, unlike hybrid vehicles that can run on gas. Mr. Ellis said that because of the three-year delay in doing this, we would have given up $170,000 annually already. There are 200 communities that have been in favor of this. We cannot continue to use oil. Mr. Holden is not concerned with the way #4 is written. Mr. George asked if there is an option to buy hybrid vehicles – yes. Mr. Miller said the public needs to understand that there are regulations that are attached to this process, and we would be committed to the process over time.

Mr. Brides said we are working on the base code, and it is similar to the stretch code. There are a few variables but not anything of great substance; there are some trade-offs that compensate at the end, but the costs should be similar. There is a question about the Wing school project being affected by this; the State requires a high standard anyway. This applies only to new construction, not renovations. Mr. Dunham asked about whether new buildings with much larger square footages that are energy efficient but cost more are affected. The calculation is based off square footage for the energy efficiency. None of this applies until we join the Green Communities. If Town Meeting does not approve the stretch code, we cannot have the Green Community designation.
Mr. Holden moved that the Board proceed with the application process. Mr. Ellis seconded. Passed unanimously.

Director of Planning and Economic Development Ralph Vitacco – Draft Comments to State Department of Housing and Community Development – Village Green 1
Mr. Vitacco reviewed comments proposed to be forwarded to Mass Housing. He talked about the process of the developers applying for the Village Green development. In April, there was a letter sent to Mass Housing explaining the town’s reservations about supporting the development due to non-payment of back taxes. This situation has been resolved. This letter summarizes major issues associated with the project. The project is complex with regional impact, and developers will be advised to hire consultants for various aspects. The total development represents significant effect of wastewater on watersheds, including ponds and the Poponesset estuary. There will be important considerations for building design, traffic and traffic patterns. The Town wants a project that is in keeping with the Town and is successful. Mr. Hoctor asked about a projected timeline. Mr. Vitacco estimates the permitting will take in excess of two years, then obtaining funding for construction, so it will probably be 5 to 10 years before completion if everything goes well. Mr. George moved to send the letter to Mass Housing after it is seen by Town Counsel. Seconded by Mr. Miller. Approved unanimously.

OLD BUSINESS

Acquisition of 297 & 300 Meiggs-Backus Rd. – Acceptance of Deed and Settlement Statement
The goal is to close by June 30th. There has been lots of correspondence because of so many different groups being involved. We are buying two pieces of land for open space for about $454,000, working through the Compact of Conservation Trust, which provided a 50% State grant to offset the acquisition. This is a great project. Mr. Miller moved to accept the recommended land agreement and purchase and sales agreement on lots 297 & 300 Meiggs-Backus Rd., Sandwich. Seconded by Mr. Holden. Approved unanimously.

Disposition of Deacon Eldred House – License Agreement, Closing Documents, Land Development Agreement
We received an Email from Atty. Marsh. Things are going well with the owners. We continue to work on closing documents and easements. The owners are working with a historic preservation architect for submission to the State; it is 90% done. The location of the septic needs to be approved by a State archeologist, for which the Town will pay. A temporary license agreement began today to allow them to do preliminary filming. They are working on the restoration plan. Interior and exterior restoration will be according to State expectations.

Proposed First Amendment to In Good Health Host Community Agreement for Adult Retail Marijuana Sales
Mr. David Noble is here to answer any questions. The proposed amendment to the original Host Community Agreement will allow for adult recreational cannabis co-use. Mr. Noble is going through the process of getting a permit through the Cannabis Commission. Most of this is boilerplate language. A couple of details need to be filled in. There are three outstanding issues that are policy decisions:
1. p. 5 at the bottom Legal Fees and Costs – recommend deleting. Costs are not substantial. We are receiving 3% as part of the medical agreement and there has been no impact on Town services.

2. p.11 Traffic Mitigation rewrite - The ZBA process already has traffic requirements. The number of cars this would add is very small. If traffic problems arise, In Good Health will participate in coming up with a solution.

3. p. 3 bottom Community Impact Fee. They report to the Cannabis Control yearly what the impact is. There is no financial impact. There is a movement to change the law – towns cannot charge impact fees without an actual major impact. There is an agreement to include 3% for recreation sales but if the law changes, they will work out an agreement to contribute to some program rather than paying an impact fee.

Mr. Noble said this is going to be one collocated business. There is no change in use for the business, just in who is allowed to come in. If the 3% goes away, town loses about 1/3, but In Good Health is willing to fund some community programs instead. Mr. Dunham read a revised version. This is voluntary and it needs to be looked at to keep it going. Mr. Hcoctor expressed concern that the actual money will be less then estimated. Mr. Noble thinks it will do well and $750,000 is reasonable because we are in a unique area. He is looking to be operational in October/November. Mr. George moved to proceed forward with Counsel for amendment language if impact fees become invalid. Seconded by Mr. Miller. Approved unanimously.

Selectmen Meeting Schedule
This is the current schedule. It can always be changed.

Other Matters Not Reasonably Anticipated for Old Business
There was a question about handicapped parking at the new town hall. There are three concepts, and we will go ahead with the first. If there are violation penalties, we need to set up the account after the first ticket comes in.

NEW BUSINESS
Authorization to Award Contract to Sandwich Hollows Golf Club Irrigation System & Corresponding Bond Strategy
The Charter allows the Town Manager to approve up to one million dollars but needs approval for anything greater. The recommended low bidder is NMP Golf Construction with a bid of $2,047,000. This is an excellent bid; the next highest was $2.3 million. Mr. Ellis moved that the Board allow the Town Manager to sign the contract for the recommended bid. Seconded by Mr. George. Approved unanimously.

Mr. Jennings and Mr. Dunham talked about potential changes in funding the project. There is an interesting email about the economy and federal reserve changes. We were looking to get a low interest rate, but interest costs have increased. The question is how much we should borrow. They are recommending borrowing $2.5 million and not the whole $3.5 million; the equipment could be purchased later. If we borrow the whole amount, it would be $50,000 more annually. The other issue is that Eversource might be looking to charge costs associated with installing solar and that might offset some of the savings expected at the golf course. The increase in interest rates by the Federal Reserve is unprecedented and completely
unpredictable. It is more prudent to go with the $2.5 million rather than $3.5. We are trying to beat when the Federal Reserve might raise rates again. We won’t know the interest rate until we sell the bonds; it could be 4%.

**Board of Selectmen Liaison Assignments**
Mr. Miller will do Wastewater and Golf; he will also do Upper Cape Tech. Mr. George, the Senior Management Board, and Mr. Hoctor the Winter Roads.

**Annual Board & Committee Appointments**
The list is in the packet. Mr. Miller moved to accept the appointments as presented and add Ms. Harper to the Emergency Management Committee. Seconded by Mr. Holden. Approved unanimously.

**Recommended New Board & Committee Appointments (F = Full, A = Alternate)**
- Historic District Committee – Lisa Hassler (F)
- Sandwich Cultural Council – Carol Coteus (F)
- Zoning Board of Appeals – Mary Foley (F) & Bob Jensen (A)
- Golf Advisory Committee – Kevin Ducie (F) & John Hurley (F)
- Sandwich Historical Commission – Mary Lynch (F) & June Murphy (A)

Mr. Ellis moved to approve the slate as presented. Mr. George seconded. Approved unanimously.

**Other Matters Not Reasonably Anticipated for new Business**
None.

**PUBLIC COMMENT**
Judith Holt – some towns on the Cape have approved the Green Communities designation and have saved money. Also, you can build a home in the stretch code for less than the base code.

Meg Keegan asked if there is any liaison to the Commission on Disability. She also applauded the Board for going forward with the Green Communities application and thanked Ms. Drake for her work on it.

Paul Coteus – there is something called a pluggable hybrid, which are very affordable and get high mileage. Regarding the window rating, he thinks the price could be lower for more efficiency.

**CLOSING REMARKS**
Mr. George read the times for the July 4th activities. They are on the Recreation Department home page.

Mr. Holden would like to continue to remember those under attack in the war in eastern Europe as world peace is threatened. As we plan for the return of an active Independence Day on July 4th, we should count our blessings and protect our independence. Mr. Hoctor commented that people have been coming into Town early; so far things seem to be moving smoothly. Mr. Dunham said that the Grist Mill and Hoxie House have reopened; the number of
days open is related to the number of available volunteers. There are still some shortages in seasonal laborers.

ADJOURNMENT
Mr. Holden moved to adjourn the meeting. Seconded by Mr. Miller. Approved unanimously.
The meeting adjourned at 9:25 PM
Next meeting: Thursday July 7, 2022, 7:00 PM Town Hall

Note: Board of Selectmen meetings are recorded and available for viewing in their entirety on the Sandwich Community Television website: https://sandwichcommunitytv.org

Respectfully submitted,

Susan James

Supporting Documents:
Minutes (6 pages)
Green Communities (4 pages plus slides)
Village Green (4 pages)
Meiggs-Backus Deed (7 pages)
Deacon Eldred House (2 pages)
Host Agreement (1 page)
Selectmen Meeting Schedule (1 page)
Golf Course Irrigation (6 pages)
Committee Liaisons (1 page)
Committee Appointments (2 pages)
Committee Recommendations (5 pages)
PART I ADMINISTRATION OF THE GOVERNMENT
TITLE VII CITIES, TOWNS AND DISTRICTS
CHAPTER 41 OFFICERS AND EMPLOYEES OF CITIES, TOWNS AND DISTRICTS

Section 11 Appointment to fill vacancy in town office

Section 11. As used in this section, the term "vacancy" includes a failure to elect. If a vacancy occurs in any town office, other than the office of selectman, town clerk, treasurer, collector of taxes or auditor, the selectmen shall in writing appoint a person to fill such vacancy. If there is a vacancy in a board consisting of two or more members, except a board whose members have been elected by proportional representation under chapter fifty-four A, the remaining members shall give written notice thereof, within one month of said vacancy, to the selectmen, who, with the remaining member or members of such board, shall, after one week's notice, fill such vacancy by roll call vote. The selectmen shall fill such vacancy if such board fails to give said notice within the time herein specified. A majority of the votes of the officers entitled to vote shall be necessary to such election. The person so appointed or elected shall be a registered voter of the town and shall perform the duties of the office until the next annual meeting or until another is qualified.
June 24, 2022

To: Sandwich Town Manager Bud Dunham

From: Robert Thomson, Sandwich library board chair

Bud,

I’d like to present Colleen Clabault to the select board for appointment to fill the next year of the unexpired term created by the resignation of Christine Brown in May. Colleen was nominated unanimously at the June 14 meeting of the library trustees, who asked me to forward her name for the interim appointment.

We understand that this appointment would end May 4, 2023, at which time Colleen may seek election to fill the last remaining year of Christine’s original three-year term.

I’ve attached a letter of intent from Colleen.

Thank you,

Robert Thomson
Colleen Clabault  
43 Blackthorn Path  
Forestdale, MA  02644

June 20, 2022

To Whom it May Concern,

Please consider me for the open seat on the Sandwich Public Library Board of Trustees. I have lived and taught in Sandwich for twenty-six years. My current position is eighth grade English teacher at the STEM Academy. Leadership roles have included the following:

- Middle School Literacy Coach
- PTA Teacher Liaison
- Teacher Mentor
- School Council (past and current)
- Diversity, Equity, and Inclusion Lead Teacher at STEM (current)

I love all things about reading and books, and wish to expand my involvement with the Sandwich Public Library. For several years, I volunteered on Sandwich Reads Together events, and have enjoyed numerous author talks and events. I also hope that my role as a teacher will be beneficial in furthering the partnership between the schools and the library. Now more than ever, I believe a robust library is crucial for our community.

Thank you for your consideration.

Sincerely,

Colleen Clabault
Hi Bud-----

Hope you're enjoying the summer so far-----and that you'll be moving into your new "digs" before the end of the year!

In May, we welcomed our first tenant Board member, Ed Carlier, thanks to his appointment by the Board of Selectmen in April. Now, we have another proposed change-up on our Board with long time board member, Barbara Hadley, stepping down, leaving a vacancy on the SHA Board in August. In anticipating this vacancy, our Board voted in June to recommend Joan Martinelli to fill this spot. Joan had to step down as a Board member in April to make room for Mr. Carlier.

To complete this switch, we're requesting that the Sandwich BOS affirm Joan Martinelli as our new board member at the next meeting of the BOS on Thursday, July 7th.

Please let me know if you need any additional information or language to make this happen-----or if you need to move this agenda item to a later meeting in July or early August. Our August meeting is on August 11th so anytime before that date would work for us.

Thanks!
Paula
DIAGNOSTIC/FEASIBILITY STUDY
UPPER & LOWER SHAWME PONDS
SANDWICH, MASSACHUSETTS

FINAL REPORT

PROJECT #W-500-97

DATE: FEBRUARY 12, 1998

PREPARED BY:
R. ERIC BETKE
LIMNOLIGIST

LEE D. LYMAN
PRESIDENT/PROJECT MANAGER

LYCOTT ENVIRONMENTAL, INC.
600 CHARLTON STREET
SOUTHBRIDGE, MASSACHUSETTS 01550
(508) 765-0101 FAX (508) 765-1352
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APPENDICES

Appendix A - Soils Description

Appendix B - Soils Physical & Chemical Properties

Appendix C - Representative Client Reference List (Lake & Pond Management)

BIBLIOGRAPHY
EXECUTIVE SUMMARY

Upper and Lower Shawme Ponds, like many ponds throughout Massachusetts, are experiencing advanced eutrophication. As a result of the Diagnostic/Feasibility study, Lycott would like to recommend the following:

1. Repair the Outlet Structure at Upper Shawme Pond. The outlet structure at Upper Shawme Pond is unsafe and it should be repaired or reconstructed. If left unattended, it may fail in the near future. This would be detrimental to both ponds, not to mention the damage the release of such a significant volume of water would cause. A more detailed discussion can be found in the Final Report and other reports associated with this dam’s condition. (The Gannett Fleming report discusses the costs associated with the task.)

2. Undertake herbicide/algicide treatments. Various aquatic plant species, including Milfoil (*Myriophyllum heterophyllum*) have been identified in Upper and Lower Shawme Ponds. To improve the ecological balance within the two water bodies, we would recommend the use of US EPA registered and state-approved herbicides and algicides. Prior to undertaking a treatment program, the Town will need to acquire an Order of Conditions from the Conservation Commission as well as a license/permit from the Department of Environmental Protection (DEP), Division of Watershed Management. The treatment will need to be undertaken by a licensed aquatic biologist. The cost to manage the current Milfoil infestation would be approximately $1,200. The cost to manage 80% of the aquatic vegetation in both ponds would be approximately $14,000.

3. Flush Lower Shawme Pond. The Town may want to consider flushing Lower Shawme Pond during the spring and fall. This will assist with the removal of the nutrients and management of the aquatic vegetation. The cost to undertake this task, with the assistance of a consultant and involvement by the Town, would be approximately $1,000.

4. Periodic Sampling Program. The storm drains and tributaries of the ponds should be sampled periodically (at least twice a year) for Nitrogen and Phosphorus. Further evaluation should be undertaken to identify sources of elevated levels of these nutrients in the watershed. The cost to undertake a sampling program twice a year at five sampling locations would be approximately $2,000/year.

5. Annual Budget. An annual budget of approximately $10,000 should be appropriated to continue monitoring, sampling, and managing Upper and Lower Shawme Ponds.

6. Alum Treatments. An alum treatment to both Upper and Lower Shawme Ponds would help reduce the nutrient loading in the water column and subsequently reduce the recycling of nutrients in the sediments. The cost to undertake an alum treatment to the ponds would be approximately $20,000.
7. Watershed Protection. Currently there is a considerable amount of open space (wooded land) and undeveloped property in the watershed of both ponds. This land should be preserved as much as possible to assist in protecting the rate of eutrophication of the ponds.

In order to undertake Items 1, 2, 3 & 6 above, a Notice of Intent will need to be filed with the Department of Environmental Protection and the Conservation Commission to acquire an Order of Conditions. Although municipalities are exempt from the fees associated with the Notice of Intent filing, we would estimate a cost figure of $1,000 to assist the Town with the filing and to attend the public hearings.
Comprehensive Water Resource Management Plan

2018 Investigations of Twelve Sandwich Ponds – April 25, 2019

Outline

- CWRMP Background
- Summary of 2018 Pond Investigations
- Next Steps
- Discussion
CWRMP

- Started in Feb 2011
- Completed in Dec 2017
- Town-wide plan to:
  - Identify water quality needs
  - Identify options/solutions
  - Recommend capital improvements
  - Identify funding/financing mechanisms
- Received CCC 208 Consistency Determination

WQAC

- Town residents, volunteers, staff
- Appointed by the Select Board:
  - Select Board
  - Board of Health
  - Planning Board
  - Conservation Commission
  - Sandwich Water District
  - Finance Committee
  - Sandwich Economic Initiative Corporation
  - Interested public
CWRMP – Water Quality Protection

Drinking Water  Freshwater Ponds  Coastal Waters

Pond Investigations

- Upper Shawme Pond
- Lower Shawme Pond
- Hoxie Pond
- Lawrence Pond
- Spectacle Pond
- Triangle Pond
- Upper Hog Pond
- Lower Hog Pond
- Peters Pond
- Pimlico Pond
- Snake Pond
- Weeks Pond

2018 Investigation of Twelve Sandwich Ponds

BY WATER RESOURCE SERVICES, INC.
MARCH 2019

WRS
Current Threats to Water Quality

- Wastewater (nutrients)
- Stormwater (nutrients, sediment, bacteria)
- Agriculture - Cranberry Bogs (nutrients, sediment)
- Fertilizer (nutrients)
- Invasive species
- Climate change (temperature, stormwater)
- Internal recycling (release of P from anoxic sediment)

Conclusions

- Studied ponds represent a range of area, depth and uses. For the most part they are meeting their designated uses, but in some cases there are signs of current impairment or indications of larger problems in the not too distant future
- Alkalinity and pH are naturally low in these ponds
- Rooted plant nuisances and algae mats are only excessive within Lower Shawme Pond, but 5 ponds have peripheral growths of invasive species that should be addressed while the infestations are small
- Lawrence Pond exhibited a mild cyanobacteria bloom that impaired clarity and appearance but did not involve typically toxic or odorous species
- Pimlico Pond exhibited a bloom of golden algae that make the water murky but do not represent a health or ecological threat
Conclusions

- Hoxie Pond exhibited low oxygen in deeper water and a mild cyanobacteria bloom late in summer, and trout stocking has been discontinued due to limited access.
- Peters Pond has an invasive clam and by far the most boat traffic; turbidity can be moderate at times and low oxygen is observed in deeper water, but water quality is generally acceptable.
- The cold water in Upper Shawme Pond represents an opportunity to create a trout fishery.
- Snake Pond exhibits outstanding quality and is a great pond, but is not stocked with trout by the Commonwealth.

Recommendations

- Consider use goals and access needs for all public ponds; develop management plans accordingly.
- Control invasive Phragmites and Lythrum around Upper and Lower Shawme, Peters, Pimlico and Weeks Ponds before coverage increases.
- Establish a boat washing station near Peters Pond but encourage use for all boats going onto Sandwich ponds.
- Address algae blooms in Lawrence Pond and possibly Pimlico Pond, most likely with phosphorus inactivation.
- Control plants and algae mats in the lower portion of Lower Shawme Pond; multiple means are available.
Recommendations

- Consider stocking Upper Shawme Pond with trout and request that the DFW stock Snake Pond if there is interest in expanding cold water fisheries
- Monitor success of alewife migration into and out of the Shawme Ponds
- Continue monitoring these ponds on an annual basis, focusing on clarity, oxygen, phosphorus, nitrogen, algae and rooted plants
- Conduct outreach to residents and visitors with regard to property management to minimize impacts on water resources

Next Steps

- Develop a brochure for residents on their role in preserving water quality
- Develop and utilize an algae report form
- Consider conducting surveys regarding public desire for access to great ponds in Sandwich
- Discuss trout stocking options with DFW
- Plan for P control in Lawrence Pond ($100,000±)
- Budget $50,000 for invasive plant control around 5 ponds
- Budget $75,000 for boat inspection and washing station
- Budget $20,000 for annual monitoring or establish relationship with PALS for more pond surveys
From: Vicki Marsh <VMarsh@k-plaw.com>
Sent: Tuesday, July 5, 2022 12:43 PM
To: Dunham, George
Cc: Deconto, Dave; John Giorgio
Subject: (EXTERNAL) Meiggs Backus Road Conservation Restriction
Attachments: KP-#812125-v1-SAND_Conervation_Restriction_297-300_Meiggs_Backus_Road_revised_by_EOEEA_DOCX

Bud-

Enclosed please find the latest version of the Conservation Restriction to be placed on the property at 297 and 300 Meiggs-Backus Road. The State and the Fire District are both giving their final approvals to this Conservation Restriction. Hopefully this will be approved soon and then can be executed by the Board of Selectmen. Please have the Board of Selectmen vote to approve of the Conservation Restriction subject to Town Counsel approval and then when we receive the final version of the Conservation Restriction I can approve of it.

If you have any questions concerning this matter, please do not hesitate to contact me.

Vicki

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GRANTOR: Town of Sandwich
PRIMARY GRANTEE: Centerville-Osterville-Marstons Mills Fire District (Board of Water Commissioners)
SECONDARY GRANTEE: Barnstable Land Trust, Inc.
ADDRESS OF PREMISES: 297 & 300 Meiggs-Backus Road, Sandwich
FOR GRANTOR'S TITLE SEE: Barnstable County Registry of Deeds Book ___ Page ___
(pending, 2022)

CONSERVATION RESTRICTION FOR WATER SUPPLY PROTECTION

I. PREAMBLE

The TOWN OF SANDWICH, a Massachusetts municipal corporation with principal offices at Town Hall, 130 Main Street, Sandwich, Barnstable County, Massachusetts 02563, acting by and through its Conservation Commission, its successors and assigns, ("Grantor"), acting pursuant to Sections 31, 32, and 33 of Chapter 184 of the Massachusetts General Laws for the purposes of providing and promoting exclusive and perpetual protection of soil, water and other natural resources within the Premises hereinafter described and limiting, subject to the terms and conditions in Sections II and III below, the Grantor’s activities and uses of the real estate of the Grantor located in Barnstable, Barnstable County, Massachusetts, as a gift for nominal consideration, grants WITH QUITCLAIM COVENANTS, to the BOARD OF WATER COMMISSIONERS OF THE WATER DEPARTMENT OF THE CENTERVILLE-OSTERVILLE-MARSTONS MILLS FIRE DISTRICT, (said Department having been authorized and created by Chapter 169 of the Acts of 1937 for the purpose, inter alia of delivering public water supply), having an address of 1138 Main Street, P.O. Box 369, Osterville, MA 02655 (the "Department") a component of the CENTERVILLE-OSTERVILLE-MARSTONS MILLS FIRE DISTRICT, a fire district organized and existing under General Laws Chapter 40, Section 60, et seq. of the Commonwealth of Massachusetts and By-laws promulgated as Chapter 259 of the Acts of 1993, as amended, having an address of 1875 Route 28/Falmouth Road, Centerville, MA 02632 (the “District”), its successors and assigns, as provided by authority of Section 41 of Chapter 40 of the Massachusetts General Laws, and acting pursuant to authority granted by vote of the District on Article 4 of the Special District Meeting held on October 7, 2021, a copy of
which Vote is attached hereto as Exhibit D, and their successors and permitted assigns ("Primary Grantee"), and to the **BARNSTABLE LAND TRUST, INC.** (Federal ID #22-2483963) (the "BLT"), a Massachusetts charitable corporation with an office at 1540 Main Street, West Barnstable, MA 02668, and its successors and permitted assigns ("Secondary Grantee"), (together, the "Co-Grantees"), **IN PERPETUITY** and exclusively for **DRINKING WATER SUPPLY PROTECTION AND CONSERVATION PURPOSES**, the following described **CONSERVATION RESTRICTION** in gross (hereinafter referred to as the "Restriction"), on two parcels of vacant land totaling 21.5 acres, more or less, located in the Village of South Sandwich, Town of Sandwich, County of Barnstable, Commonwealth of Massachusetts, said parcels being described in Exhibit A and shown in Exhibit B and C as "Premises and Water Supply Protection Zone," which are attached hereto and made a part hereof (the "Premises"). The Co-Grantees, their successors and assigns, are bound by and subject to the terms and conditions of this Restriction.

The Primary Grantee acquires this Conservation Restriction subject to the approval of the Massachusetts Department of Environmental Protection ("MassDEP") pursuant to Sections 38, 39B and 41 of Chapter 40 of the Massachusetts General Laws, and subject to the approval of the Secretary of Energy and Environmental Affairs pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws.

**II. PURPOSES**

This Restriction is defined in and authorized by Sections 31, 32, and 33 of Chapter 184 of the Massachusetts General Laws and otherwise by law. The purposes of this Restriction ("Purposes") are to ensure that the Premises will be maintained in perpetuity for the protection of the Primary Grantee’s so-called Hayden Wellfield ("Well") approved by MassDEP as a source of public drinking water [source: 4020002:0AG, 11G, 12G, 14G, 15G, 18G and 19G], in its natural, scenic condition, and to prevent any use or change that would materially impair the conservation values as defined below.

The conveyance of this Restriction is made pursuant to the vote of the Annual Meeting of the Town of Sandwich, at a duly called meeting held on May 3, 2021, acting on Article 17 to authorize the Town to grant this Restriction on the Premises in compliance with the provisions set forth herein, and pursuant to the vote of the Special Town Meeting, at a duly called meeting held on November 15, 2021 of Article 3, and as defined in the Community Preservation Act, Massachusetts General Laws Chapter.44B Section 1 et seq. as applied pursuant to Chapter 149, Section 298 of the Acts of 2004, as amended by Chapter 352, Sections129-133 of the Acts of 2004 (the so-called "Barnstable County Community Preservation Act" or "CPA"). A copy of the Town Meeting Votes are attached hereto as Exhibit C.

The conveyance of this Restriction is also made pursuant to a vote of the District at a duly called meeting held on October 7, 2021, on Article #4 to authorize the District to accept this Restriction on the Premises in compliance with the provisions set forth herein; see Exhibit D attached hereto.
The Conservation Restriction was acquired utilizing, in part, assistance from the FY21 Drinking Water Supply Protection Grant Program pursuant to Chapter 312 of the Acts of 2008, Section 2A, 2200-7017 in the amount of $226,387.50 and is subject to a Project Grant Agreement recorded with the Barnstable County Registry of Deeds in Book ______, Page _____ (approved in 2021)

The Grantor covenants for itself, its legal representatives, successors and assigns, that the Premises will at all times be held, and conveyed subject to, and not used in violation of, this Restriction.

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

Drinking Water Quality. The Premises is located in the MassDEP approved protection Zone II for public drinking water supplies. This Zone are defined by 310 CMR 22.00 as an area of land which must be protected to ensure public health and which are further described in Exhibit C.

A. The Premises consist of approximately 11 acres of Statewide Wildlife Action Plan species of greatest conservation need in pine-oak upland forest, approximately 95% of which is Prime Forest Land, a defined MassGIS map layer based on USDA soil data which reflect high potential for white pine and red oak forest development, wetlands and riparian area presence. Fox, coyote, and deer, eastern box turtle, migratory warblers, bobwhites are among the species that prefer to inhabit this type of forested upland.

B. Half of the Premises is within a Massachusetts Natural Heritage and Endangered Species Program (“NHESP”) BioMap2 designated Critical Natural Landscape, Landscape Block. BioMap2, published in 2010, guides strategic biodiversity conservation in Massachusetts by focusing land protection and stewardship on the areas that are most critical for ensuring the long-term persistence of rare and other native species and their habitats, exemplary natural communities, and a diversity of ecosystems. The Critical Natural Landscape, and specifically Landscape Blocks, identifies large areas of high quality intact and predominately natural vegetation. BioMap2 is also designed to include the habitats and species of conservation concern identified in the State Wildlife Action Plan. Protection of the Premises, therefore, aligns with the NHESP’s wildlife and habitat protection objectives and would ensure perpetual protection for each of these state-recognized habitats.

C. Protection of the Premises will assist in achieving Barnstable County conservation goals. In July 1991, the Barnstable County Assembly of Delegates, pursuant to the Cape Cod Commission Act (Chapter 716 of the Acts of 1989), adopted a Regional Policy Plan (RPP), amended in 1996, 2002, 2009, 2012, and 2018, which provided, inter alia (references are to the 2018 RPP):

- “To maintain a sustainable supply of high quality untreated drinking water and protect, preserve, or restore the ecological integrity of Cape Cod’s fresh and marine surface water resources” (Water Resources Goal, pp. 54);
- “To protect, preserve, or restore wildlife and plant habitat to maintain the region’s natural diversity” (Wildlife and Plant Habitat Goal, pp. 55).
- In reference to this Wildlife and Plant Habitat Goal, the RPP states, “For many years habitat loss due to development has been the primary threat to the region’s habitats” (pp. 32); and
Meiggs-Backus Road Conservation Restriction
Sandwich MA

- “To conserve, preserve, or enhance a network of open space that contributes to the region’s natural community resources and systems” (Open Space Goal, pp. 55). In reference to this Open Space Goal, the RPP states, “[t]he open space of the Cape is critical to the health of the region’s natural systems, economy, and population. Open space provides habitat for the region’s diverse species and protection of the region’s drinking water supply” (pp. 30).

Granting this Conservation Restriction will advance each of these goals outlined in the RPP. The Water Resources Goal will be served because the Premises falls entirely within a Zone II Area of Contribution to a Public Water Supply, and implementing this Conservation Restriction will aid in maintaining drinking water quality in the area. The Wildlife and Plant Habitat Goal will be served because the Premises contains a host of important plant and wildlife species, and falls within an NHESP BioMap2 Critical Natural Landscape area. The Open Space Goal will be advanced because the Premises is proximate to several other open space parcels, including Town of Sandwich Conservation Land abutting, and Town of Barnstable’s Santuit Pond Preserve across Wakeby Road.

B. D. Consistency with Clearly Delineated Town of Sandwich Conservation Policy. In 2009 Sandwich adopted its first Local Comprehensive Plan to guide growth and resource protection. The Plan stated:

Inter-town cooperation is needed to manage the quantity and quality of this aquifer. Sandwich’s ground water protection overlay zoning district, for instance, helps to protect the zone of contribution to the Centerville-Osterville-Marstons Mills Water District’s wellfields off Race Lane. While Sandwich’s public supply wells draw groundwater from within its own municipal borders, all of Sandwich’s neighboring towns rely on Sandwich groundwater to supply some of their wells. Cooperative regional management of ground water quality is therefore essential. (p. 2-11, 2009)

The Plan included Goal NR-1: Protect surface and groundwater water resources to ensure a sustainable supply of drinking water and to preserve and restore ecological integrity. (10.2). In 2017 Sandwich completed its first Comprehensive Water Resources Management Plan which posited a need of “Protecting Private and Public Water Supplies—preventing contaminants from reaching private or public drinking water sources,” and recognizing that “It is important to note that some of the Zone II area in Sandwich is for water supply well(s) located in Barnstable... (p. 3-11).

The Town of Sandwich developed an Open Space and Recreation Plan (1999), which identified the town’s natural resource needs and established goals, including:

- Protect and enhance Sandwich’s fragile environmental resources, including water quality, scenic beauty and unique habitats; (p. 95)
- Preserve and manage sufficient areas to maintain a healthy natural environment, provide habitat for wildlife, encourage outdoor recreation and retain community character; (p. 95)
- Protect lands within or adjacent to designated protected open space; (p. 108), and,
Meiggs-Backus Road Conservation Restriction
Sandwich MA

- Protect lands within or adjacent to fresh and saltwater bodies, beaches, wetlands, (marshes, swamps, bogs, meadows, ponds, and creeks), and floodplains. (p. 108);

Moreover, in 1987, the Town of Sandwich adopted a Conservation Restriction Program consisting of policies and guidelines, in particular an Open Space Policy, approved by the Board of Selectmen, Assessors, and Conservation Commission, which encourages the use of conservation restrictions in perpetuity to protect natural resources in accordance with the purposes of the Open Space and Recreation Plan, and which further specified that purposes of a conservation restriction could include the following:
- preserve scenic view;
- preserve open space;
- to protect a trail;
- preserve important natural habitats of fish, wildlife or plants; and,
- limit or prevent construction on land of natural resource value.

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

F. Consistency with Clearly Delineated State Conservation Policy. As referenced here- inabove, the Premises possesses significant natural, scenic, watershed, historic, soil and water resource quality and esthetic of great importance to the Co-Grantees and the people of Sandwich and the Commonwealth of Massachusetts, who have the right to clean air and water, and freedom from excessive and unnecessary noise. The protection of the people in their right to the conservation, development and utilization of the agricultural, mineral, forest, water, air and other natural resources is hereby declared to be a public purpose.

I. Historical Purposes. The Premises is included in a landscape historically devoted to farming. This section of South Sandwich/Wakeby was also known as “Farmersville,” owing to the Prime Agricultural Soil (Enfield A) and the extensive agricultural holdings in the area. Permanent protection of the Premises with this Conservation Restriction will ensure that these valuable historical assets endure.

J. These and other conservation values of the Premises, as well as its current uses, conditions, and state of improvement, are described in a Baseline Documentation Report (“Baseline Report”) prepared by Co-Grantees with the cooperation of the Grantor, consisting of maps, photographs, and other documents and stored at the office of the Grantor. The Baseline Report (i) is acknowledged by Grantor and Co-Grantees to be a complete and accurate representation of the condition and values of the Premises as of the date of this Restriction, and (ii) is intended serve as an objective information baseline for subsequent monitoring of compliance with the terms of this 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.

K. Therefore, preservation of the Premises will advance the open space, water and other natural resource management and passive recreational goals and objectives of the Town of Sandwich, Barnstable County, and the Commonwealth of Massachusetts.

III. PROHIBITED AND PERMITTED ACT AND USES

A. Prohibited Acts and Uses in the Zone II (the Premises)

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

1. Structures and Improvements. Constructing, placing or allowing to remain any temporary or permanent structure including without limitation any building, tennis court, landing strip, mobile home, swimming pool, asphalt or concrete pavement, sign, fence, billboard or other advertising display, antenna, utility pole, tower, solar panel, solar array, conduit, line, septic or waste water disposal system, storage tank, dam or underground or above-ground fuel storage tanks;

2. Extractive Activities/Uses. Mining, excavating, dredging, withdrawing or removing soil, loam, peat, gravel, sand, rock, surface water, including the cutting or taking of ice from surface waters or its tributaries, groundwater or other mineral substance or natural deposit or otherwise altering the topography of the Premises;

3. Disposal/Storage. Placing, filling, storing, dumping of, soil, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, tree and other vegetation cuttings, and the dumping or disposal of liquid or solid waste or toxic or hazardous substances or material;

4. Adverse Impacts to Water, Soil, and Other Features. Activities detrimental to drainage, flood control, water conservation, water quality, erosion control, soil conservation, natural habitat, archaeological conservation, or ecosystem function;

5. Introduction of Invasive Species. Planting or introducing any species identified as invasive by the Massachusetts Invasive Plant Advisory Group or identified as invasive in such recognized inventories as the Massachusetts Introduced Pests Outreach Project, the Northeast Aquatic Nuisance Species Panel, or other such inventories, and any successor list as mutually agreed to by Grantor and Grantee;

6. Motor Vehicles. Using, parking, or storing motorized vehicles, including motorcycles, mopeds, all-terrain vehicles, off-highway vehicles, motorboats, other motorized watercraft, snowmobiles, launching or landing aircraft, or any other motorized vehicles, acknowledging
that vehicles necessary for public safety (i.e., fire, police, ambulance, other government officials) have a legal right to enter the Premises;

7. **Subdivision.** Subdividing or conveying a part or portion of the Premises (as compared to conveyance of the Premises in its entirety which shall be permitted), it being the Grantor’s and Grantee’s intention to maintain the entire Premises under unified ownership;

8. **Use of Premises for Developing Other Land.** Using the Premises towards building or development requirements on this or any other parcel;

9. **Fertilizers/Pesticides.** Storing or applying fertilizers as defined in Section 64 of Chapter 128 of the Massachusetts General Laws, storing or applying animal manure; and storing or applying pesticides defined by the Federal Insecticide, Fungicide and Rodenticide Act and those listed on the Massachusetts Department of Agriculture’s ‘Groundwater Protection List’;

10. **Adverse Impacts to Stone Walls, Boundary Markers.** Disrupting, removing, or destroying stone walls, granite fence posts, or any other boundary markers;

11. **Other Uses.** Using the Premises for residential, commercial or industrial purposes or other municipal purposes and camping, hunting, or trapping unless for a proven nuisance to wildlife;

12. **Vegetation Removal.** Removing native species, trees or grasses except for occasional removal activities related to the protection of the water supply or the conservation of the Premises;

13. **Inconsistent Uses.** Using the Premises for purposes, uses or activities that are inconsistent with the Purposes of this Conservation Restriction or that would materially impair the Conservation Values.

**B. Permitted Acts and Uses**

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

1. **Vegetation Management.** Maintaining vegetation, including pruning, trimming, cutting, mowing, and removing brush to prevent, control, and manage hazards, disease, insect or fire

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damage, and to maintain the condition of the Premises as documented in the ‘Baseline Report’ in Paragraph XV;

2. **Non-native, Nuisance, or Invasive species.** Removing non-native, nuisance, or invasive species, interplanting native species, and controlling species in a manner that minimizes damage to surrounding, non-target species and preserves water quality;

3. **Composting.** Stockpiling and composting stumps, trees, brush, limbs, and similar biodegradable materials originating on the Premises at least 100’ from wetlands, surface water bodies or tributaries;

4. **Archaeological Investigations.** Conducting archaeological activities, including without limitation archaeological research, surveys, excavation to within 4 feet of the historical highwater table, and artifact retrieval, but only in accordance with an archaeological field investigation plan, which plan shall also address restoration following completion of the archaeological investigation, prepared by or on behalf of the Grantor and approved in advance of such activity, in writing, by the Massachusetts Historical Commission State Archaeologist or appropriate successor official, and by the Grantee. A copy of the results of any such investigation on the Premises is to be provided to the Grantee;

5. **Motorized Vehicles.** Using motorized vehicles on established public access trails by persons with mobility impairments;

6. **Signs.** Constructing, installing, maintaining signs and informational kiosks with respect to the Permitted Acts and Uses, the Purposes, the Conservation Values, trespass, public access, identity and address of the Grantor, sale of the Premises, the Grantee's interest in the Premises, boundary and trail markings, any gift, grant, or other applicable source of support for the conservation of the Premises;

7. **Public Recreational Activities.** The use of the Premises for passive recreational activities such as hiking, snowshoeing, cross-country skiing, nature study or research, and other like activities, including access by motorized wheelchairs or other disabled assistance devices;

8. **Trails.** The maintenance and use of the existing trails substantially in their present condition and, with the prior approval of the Co-Grantees, the relocation or construction of new trails, provided that all applicable federal, state, regional and local approvals are obtained in advance, and that new relocated or new trails are no wider than eight (8) feet.

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

D. Compliance with Permits, Regulations, Laws

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

E. Notice and Approval

1. Notifying Grantee. Whenever notice to or approval by Grantee is required, Grantor shall notify or request approval from Grantee, by a method requiring proof of receipt, in writing not less than sixty (60) days prior to the date Grantor intends to undertake the activity in question, unless a different time period is specified herein. The notice shall:
   a. Describe the nature, scope, design, location, timetable and any other material aspect of the proposed activity;
   b. Describe how the proposed activity complies with the terms and conditions of this Conservation Restriction, and will not materially impair the Purposes and/or Conservation Values;
   c. Identify all permits, licenses, or approvals required for the proposed activity, and the status of any such permits, licenses, or approvals.
   d. Describe any other material aspect of the proposed activity in sufficient detail to permit the Grantee to make an informed judgment as to its consistency with the Purposes and Conservation Values.

2. Grantee Review. Where Primary Grantee’s approval is required, the Secondary Grantee, within thirty (30) days of receipt of Grantor’s request, shall notify the Primary Grantee of the Secondary Grantee’s decision. Within sixty (60) days of the Primary Grantee’s receipt of Grantor’s request, the Primary Grantee shall either affirm, amend or reverse the decision of the Secondary Grantee, shall notify the Secondary Grantee thereof in writing, and shall issue its decision to the Grantor in writing. The Primary Grantee’s decision shall in all cases be the final and controlling decision binding on the Co-Grantees. In the event that no decision is received from the Secondary Grantee within thirty (30) days, the Primary Grantee shall proceed to issue its decision within sixty (60) days of the request. Co-Grantees’ approval shall only be granted upon a showing that the proposed activity will minimize impacts to the Conservation Values and will not materially impair the Purposes and/or Conservation Values. Grantee may require Grantor to secure expert review and evaluation of a proposed activity by a mutually agreed upon party.
3. **Resubmittal.** Co-Grantees’ failure to respond within sixty (60) days of receipt shall be conclusively deemed a denial of the request. Grantor may subsequently submit the same or a similar request for approval.

**IV. INSPECTION AND ENFORCEMENT**

**A. Entry onto the Premises**

The Grantor hereby grants to the Co-Grantees, and their 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.

**B. Legal and Injunctive Relief**

1. **Enforcement.** The rights hereby granted shall include the right to enforce this Conservation Restriction by appropriate legal proceedings and to obtain compensatory relief, including without limitation, compensation for interim losses, and equitable relief against any violations, including, without limitation, injunctive relief and relief requiring restoration of the Premises to its condition prior to the time of the injury (it being agreed that the Grantee will have no adequate remedy at law in case of an injunction). The rights hereby granted shall be in addition to, and not in limitation of, any other rights and remedies available to the Co-Grantees for the enforcement of this Conservation Restriction.

2. **Notice and Cure.** In the event the Co-Grantees determine that a violation of this Conservation Restriction has occurred and intends to exercise any of the rights described herein, the Co-Grantees shall, before exercising any such rights, notify the Grantor in writing of the violation. The Grantor shall have thirty (30) days from receipt of the written notice to halt the violation and remedy any damage caused by it, after which time Co-Grantees may take further action, including instituting legal proceedings and entering the Premises to take reasonable measures to remedy, abate or correct such violation, without further notice. Provided, however, that this requirement of deferment of action for thirty (30) days applies only if Grantor immediately ceases the violation and Co-Grantees determine that there is no ongoing violation. In instances where a violation may also constitute a violation of local, state, or federal law, the Co-Grantees may notify the proper authorities of such violation.

3. **Reimbursement of Costs and Expenses of Enforcement.** Grantor covenants and agrees to reimburse to Co-Grantees all reasonable costs and expenses (including counsel and experts’ fees) incurred by the Co-Grantees in enforcing this Conservation Restriction or in taking reasonable measures to remedy, abate or correct any violation thereof. In the event of a dispute over the boundaries of the Conservation Restriction, Grantor shall pay for a survey by a Massachusetts licensed professional land surveyor and to have the boundaries permanently marked.
4. Coordination between Primary and Secondary Grantee. Whenever there is a question of whether there is a violation of this Conservation Restriction, or how to proceed in addressing the violation, the Co-Grantees shall consult with each other. The Primary Grantee shall then determine whether there is a violation and how to proceed in addressing the violation. The Primary Grantee’s decision shall in all cases be the final and controlling decision binding on both Grantees and the Grantor. In the event that no response is received from the Secondary Grantee within thirty (30) days, the Primary Grantee shall notify Grantor and proceed as provided in Paragraph IV.B.2.

C. Non-Waiver

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

D. Disclaimer of Liability

By acceptance of this Conservation Restriction, the Co-Grantees do 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 Co-Grantees or its agents.

E. Acts Beyond the Grantor’s Control

Nothing contained in this Conservation Restriction shall be construed to entitle the Co-Grantees 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 Co-Grantees will cooperate in the restoration of the Premises, if desirable and feasible.

V. RIGHTS OF ACCESS; INSPECTION

The Restriction hereby conveyed grants the right to enter upon the Premises at reasonable times and in a reasonable manner for the following purposes:

A. To the Co-Grantees:
   a. To perform a survey of boundary lines;
   b. To inspect the Premises to determine compliance within provisions of this Restriction;
   c. To enter the Premises with or without the presence of an employee or employees of the Grantor for the purpose of taking any and all actions with respect to the Premises, at Grantor’s cost, as may be necessary or appropriate to remedy or abate or enforce any violation hereof.
provided that Co-Grantees first give Grantor notice of the violation, and upon failure of the Grantor to cure the violation within sixty (60) days of receiving said notice, Co-Grantees then give Grantor further written notice of its intention to enter the Premises to take such actions at least fifteen (15) days following the date of such further written notice. The requirements for providing notice to the Grantor prior to entering the Premises shall not apply in emergency situations where delayed action may result in irreparable harm to the Premises.

B. To the Drinking Water Program: Personnel from the Massachusetts Department of Environmental Protection, a duly constituted agency organized under the laws of the Commonwealth of Massachusetts, or its successors, may enter the Premises in its entirety at any time for the purposes of inspecting the same to determine compliance with the provisions of this Restriction or to take any and all actions with respect to the Premises as may be necessary or appropriate with or without order of court, to remedy or abate any violation.

C. C. To the general public: 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 for the activities described in Section III.D., 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. Grantor has the right to control, limit, or prohibit by posting and other reasonable means activities or uses of the Premises not authorized in Section III.D. The Grantor’s right to grant public access across the Premises is subject to the restrictions described in this Conservation Restriction. The Co-Grantees may require the Grantor to post the Premises against any use by the public that results in material impairment of the Conservation Values. Any public use which is permitted by the terms of this Conservation Restriction constitutes permission to use the Premises for the purposes described in Section 17C of Chapter 21 of the Massachusetts General Laws and the Grantor and Co-Grantees hereto benefit from exculpation from liability to the extent provided in such section.

VI. TERMINATION/RELEASE/EXTINGUISHMENT

A. Procedure

If circumstances arise in the future that render the Purposes impossible to accomplish, this Conservation Restriction can only be terminated 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 of the Commonwealth of Massachusetts, or successor official (“Secretary”), and any other approvals as may be required by Section 32 of Chapter 184 of the Massachusetts General Law, and by MassDEP pursuant to Section 15B of Chapter 40 of the Massachusetts General Laws.

B. Grantor’s and Co-Grantees’ Right to Recover Proceeds

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

C. Co-Grantees’ Receipt of Property Right

Grantor and Co-Grantees agree that the conveyance of this Conservation Restriction gives rise to a real property right, immediately vested in the Co-Grantees, for the purpose of enforcing this Conservation Restriction, but does not entitle Grantee, upon extinguishment, release, or termination, to any proceeds received by the Grantor from the subsequent sale, exchange or involuntary conversion of the Premises. Any proceeds that result from any such extinguishment, release, or termination will be distributed only after complying with the terms of any gift, grant, or other funding requirements, including any requirements of the CPA and the Project Agreement.

D. Cooperation Regarding Public Action.

Whenever all or any part of the Premises or any interest therein is taken by public authority under power of eminent domain or other act of public authority other than Grantor, then the Grantor and the Co-Grantees 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 Co-Grantee shall first be paid out of any recovered proceeds, and the remaining proceeds shall be distributed between the Grantor and the Co-Grantees in accordance with Paragraph VI.B and Paragraph VI.C. If a less than fee interest is taken, the proceeds shall be equitably allocated according to the nature of the interest taken. The Grantee shall use its share of any proceeds in a manner consistent with the Purposes or the protection of the Conservation Values.

I. 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 Co-Grantees are authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Conservation Restriction. Without limiting the foregoing, the Grantor and their 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 Co-Grantees, shall be in gross and shall not be assignable by the Co-Grantees, except when all of the following conditions are met:

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

VIII. SUBSEQUENT TRANSFERS

A. Procedure for Transfer

The Grantor agrees to incorporate by reference the terms of this Conservation Restriction in any deed or other legal instrument which grants any interest in all or a portion of the Premises, including a leasehold interest and to notify the Co-Grantees not less than twenty (20) days prior to the effective date of such transfer. Failure to do any of the above shall not impair the validity or enforceability of this Conservation Restriction. If the Grantor fails to reference the terms of this Conservation Restriction in any deed or other legal instrument which grants any interest in all or a portion of the Premises, then the Co-Grantees may record, in the applicable registry of deeds, or registered in the applicable land court registry district, and at the Grantor’s expense, a notice of this Conservation Restriction. Any transfer will comply with Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, if applicable.

B. Grantor’s Liability

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

IX. ESTOPPEL CERTIFICATES

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

X. NON-MERGER
The parties intend that any future acquisition of the Premises shall not result in a merger of the Conservation Restriction into the fee. The Grantor agrees that it will not grant, and the Co-Grantees agree that they will not take title, to any part of the Premises without having first assigned this Conservation Restriction following the terms set forth in Paragraph VII.C to ensure that merger does not occur and that this Conservation Restriction continues to be enforceable by a non-fee owner. If one of the Co-Grantees remains as a holder of this Restriction, no merger shall take place and the Restriction shall be enforceable by the remaining Co-Grantee.

XI. AMENDMENT

A. Limitations on Amendment

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

1. affect this Conservation Restriction’s perpetual duration;
2. be inconsistent with or materially impair the Purposes;
3. affect the qualification of this Conservation Restriction as a “qualified conservation contribution” or “interest in land” under any applicable laws, including 26 U.S.C. Section 170(h), and related regulations;
4. affect the status of each of the Co-Grantees as a “qualified organization” or “eligible donee” under any applicable laws, including 26 U.S.C. Section 170(h) and related regulations, and Sections 31, 32, and 33 of Chapter 184 of the Massachusetts General Laws; or
5. create an impermissible private benefit or private inurement in violation of federal tax law, as determined by an appraisal, conducted by an appraiser selected by the Co-Grantees, of the economic impact of the proposed amendment; or
6. alter or remove the provisions described in Paragraph VI (Termination/Release/Extinguishment); or
7. cause the provisions of this Paragraph XI to be less restrictive; or
8. cause the provisions described in Paragraph VII.C (Running of the Benefit) to be less restrictive.

B. Amendment Approvals and Recording

No amendment shall be effective unless documented in a notarized writing executed by Co-Grantees and Grantor, approved by the Town of Sandwich and by the Secretary of Energy and Environmental Affairs and the Department of Environmental Protection in the public interest pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws, and recorded in the Barnstable County Registry of Deeds.

XII. EFFECTIVE DATE
Meiggs-Backus Road Conservation Restriction
Sandwich MA

This Conservation Restriction shall be effective when the Grantor and the Co-Grantees have executed it, the administrative Approvals required by Section 32 of Chapter 184 of the Massachusetts General Laws have been obtained, and it has been recorded in a timely manner in the Barnstable Registry of Deeds.

XIII. NOTICES

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

To Grantor: Town of Sandwich
130 Main Street
Sandwich MA 02563
Attention: Conservation Commission

To Primary Grantee: Centerville-Osterville-Marstons Mills Fire District
Board of Water Commissioners
P.O. Box 369
Osterville MA 02655

To Secondary Grantee: Barnstable Land Trust, Inc.
1540 Main Street
West Barnstable MA 02668

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

XIV. GENERAL PROVISIONS

A. Controlling Law

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

B. Liberal Construction

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

C. Severability

If any provision of this Conservation Restriction or the application thereof to any person or circumstance is found to be invalid, the remainder of the 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.

XV. BASELINE DOCUMENTATION REPORT

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

XVI. MISCELLANEOUS

A. Pre-existing Public Rights

Approval of this Conservation Restriction pursuant to Section 32 of Massachusetts General Law Chapter 184 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 Barnstable County 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. No Surety Interest

The Grantor attests that there is no mortgage, promissory note, loan, lien, equity credit line, refinance assignment of mortgage, lease, financing statement or any other agreement which gives rise to a surety interest affecting the Premises.

D. Prior Encumbrances

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

E. Administration. This Restriction shall be administered, enforced and under control of the Board of Water Commissioners.

F. Attached hereto and incorporated herein by reference are the following:

Signature pages

- Grantor: Town of Sandwich, Conservation Commission
- Grantee Acceptance: Centerville-Osterville-Marstons Mills Fire District
  Board of Water Commissioners; and,
  Barnstable Land Trust, Inc.
- Approval by Board of Selectmen
- Approval by MassDEP
- Approval of the Secretary of Energy and Environmental Affairs

Exhibits:

- Exhibit A: Legal Description of Premises
- Exhibit B: Sketch Plans of the Premises and Reduced Copy of Recorded Plans
- Exhibit C: Premises and Water Supply Protection Zone Map
- Exhibit D: Town Meeting Votes
WITNESS our hands and seals this ___ day of _______ 2022.

GRANTOR: Town of Sandwich, Conservation Commission

__________________________, duly authorized

__________________________, duly authorized

__________________________, duly authorized

__________________________, duly authorized

__________________________, duly authorized

__________________________, duly authorized

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss:

On this_______ day of _________ 2022 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 s/he signed it voluntarily for its stated purpose.

_________________________
Notary Public
My Commission Expires:
ACCEPTANCE OF GRANT

The CENTERVILLE-OSTERVILLE-MARSTONS MILLS FIRE DISTRICT, acting by and through its Board of Water Commissioners, voted to accept the foregoing Restriction for Water Supply Protection from the Town of Sandwich pursuant to Massachusetts General Laws, Chapter 40 Section 41, and Chapter 184 Section 32, this ______ day of _________, 2022.

BOARD OF WATER COMMISSIONERS

By:  
Scott E. Crosby, Chair, duly authorized

By:  
Peter Hansen, Commissioner, duly authorized

By:  
Kevin Medeiros, Commissioner, duly authorized

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss:

On this _____ day of __________________ , 2022, before me, the undersigned notary public, personally appeared Scott E. Crosby, Chair of the Board of Water Commissioners, and proved to me through satisfactory evidence of identification which was personal knowledge 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 the District.

__________________________________________
Notary Public  
My Commission Expires:
ACCEPTANCE OF GRANT
SECONDARY GRANTEE

This Conservation Restriction from the Town of Sandwich was accepted by the Barnstable Land Trust, Inc. this _________ day of _________, 2022.

By: ________________________________
    Karen Weston Hanesian
    Its: President, duly authorized

By: ________________________________
    Deborah Reuman
    Its: Treasurer, duly authorized

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss:

On this _____ day of __________________________, 2022, before me, the undersigned notary public, personally appeared Karen Weston Hanesian, and proved to me through satisfactory evidence of identification which was personal knowledge 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 on behalf of the Barnstable Land Trust, Inc..

Mark H. Robinson, Notary Public
My Commission Expires: 8 July 2027
APPROVAL OF TOWN OF SANDWICH BOARD OF SELECTMEN

The undersigned, Chair of the Town of Sandwich Board of Selectmen, hereby certifies that at a public meeting duly held on _______________ 2022 the Board of Selectmen voted to approve the foregoing Conservation Restriction from the Town of Sandwich to the Centerville-Osterville-Marstons Mills Fire District Board of Water Commissioners and Barnstable Land Trust, Inc. in the public interest pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws.

TOWN OF SANDWICH
BOARD OF SELECTMEN

Chair, duly authorized

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss:

On this ___ day of ___________________ 2022, before me, the undersigned notary public, personally appeared ________________________ Chair of the Town of Sandwich Board of Selectmen and 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/she signed it voluntarily for its stated purpose on behalf of the Town of Sandwich Board of Selectmen.

Notary Public
My Commission Expires:
APPROVAL BY SECRETARY OF ENERGY AND ENVIRONMENTAL AFFAIRS
COMMONWEALTH OF MASSACHUSETTS

The undersigned, Secretary of Energy and Environmental Affairs of the Commonwealth of Massachusetts, hereby certifies that the foregoing Conservation Restriction from the Town of Sandwich to the the Centerville-Osterville-Marstons Mills Fire District, acting by and through its Board of Water Commissioners, and to the Barnstable Land Trust, Inc., has been approved in the public interest pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws.

Dated: ________________, 2022

_________________________________
Secretary of Energy and Environmental Affairs

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss:

On this _____ day of ________________________, 2022, 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 she signed it voluntarily for its stated purpose.

_________________________________
Notary Public
My Commission Expires:
CONSERVATION RESTRICTION
ON LAND OWNED BY
TOWN OF SANDWICH
IN
SANDWICH, MASSACHUSETTS
EXHIBIT A

Description of the Premises

The Premises subject to this Conservation Restriction are two vacant tracts of land located in the Town of Sandwich, Barnstable County, Commonwealth of Massachusetts, more particularly bounded and described as follows:

Tract One: All of the vacant parcel of land in Sandwich south of Meiggs-Backus Road, aka Asa Meiggs Road, shown on a plan of land entitled, "Plan of Land in Barnstable & Sandwich, Mass., Scale: 1 in. = 100 ft., Date: May 8, 1974, Charles N. Savery Inc. Registered Engineers Surveyors, Hyannis Mass.," and recorded in the Barnstable County Registry of Deeds in Plan Book 288 Page 41, containing 11.22 acres, more or less.

See Exhibit B.1 following.

Street Address: 297 Meiggs-Backus Road, Sandwich.

Tract Two: All of the vacant parcel of land in Sandwich north of Meiggs-Backus Road shown as "Richard Stevens et al" on Land Court Plan No. 36266A, more particularly bounded and described as follows:

SOUTHERLY

by Meiggs-Backus Road, two hundred sixty-six and 97/100 (266.97) feet;

SOUTHWESTERLY

by Lot 1, five hundred eighty and 83/100 (580.83) feet;

WESTERLY

by Lot 1, four hundred two and 55/100 (402.55) feet;

NORTHERLY

by Lot 1, two hundred ninety-seven and 73/100 (297.73) feet;

NORTHEASTERLY

by Lot 1, five hundred forty-eight and 61/100 (548.61) feet;
EASTERLY by Lot 1, thirty-three and forty (33.40) feet; by land now or formerly of Philip M. Boudreau et ux one hundred seventy-eight and 44/100 (178.44) feet; by Lot 2 two hundred twenty-eight and 62/100 (228.62) feet to the point of beginning.

(Note: This parcel is not registered land, but rather is surrounded by registered land and defined by it. No extant survey plan of record is available for this parcel.)

Containing, 10.35 acres of land, more or less, according to assessors maps.
See Exhibit B.2 following.

Street Address: 300 Meiggs-Backus Road, Sandwich.

For title see deed dated __________ 2022 recorded in the Barnstable County Registry of Deeds in Deeds Book _____ Page _____. (pending: LaFlam to Town of Sandwich)
CONSERVATION RESTRICTION
ON LAND OWNED BY
TOWN OF SANDWICH IN
SANDWICH, MASSACHUSETTS
EXHIBIT B.1
Reduced Copy of Plan of Record (Plan Book 288 Page 41)

SKETCH PLAN showing land under Zone II Conservation Restriction for Drinking Water Supply Protection, Locus: 297, 300 Meiggs-Backus Road, Sandwich MA
Notes: 1) This Conservation Restriction is acquired for water supply protection pursuant to M.G.L c.40 s.39B, s.41 and Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts and is under the custody of the Town of Sandwich, subject to the control of the Board of Water Commissioners of the Centerville-Osterville-Marstons Mills (COMM) Fire District, pursuant to M.G.L c.40 s.39B.
2) Massachusetts Department of Environmental Protection approval is required before any portion of this Conservation Restriction can be transferred to a different ownership or control, changed to a different use, or used for activities other than for the purpose it was acquired, pursuant to M.G.L. c. 40, s. 15B.
3) All of the land shown in in this map is within the Zone II to COMM Wells.
CONSERVATION RESTRICTION 
ON LAND OWNED BY 
TOWN OF SANDWICH IN 
SANDWICH, MASSACHUSETTS 
EXHIBIT B.2 
Reduced Copy of Sketch Plan (see Land Court Plan 36266A)

SKETCH PLAN showing land under Zone II Conservation Restriction for Drinking Water Supply Protection, Locus: 297, 300 Meiggs-Backus Road, Sandwich MA

Notes: 1) This Conservation Restriction is acquired for water supply protection pursuant to M.G.L. c.40 s.39B, s.41 and Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts and is under the custody of the Town of Sandwich, subject to the control of the Board of Water Commissioners of the Centerville-Osterville-Marstons Mills (COMM) Fire District, pursuant to M.G.L. c.40 s.39B.

2) Massachusetts Department of Environmental Protection approval is required before any portion of this Conservation Restriction can be transferred to a different ownership or control, changed to a different use, or used for activities other than for the purpose it was acquired, pursuant to M.G.L. c. 40, s. 15B.

3) All of the land shown in this map is within the Zone II to COMM Wells.
SKETCH PLAN showing land under Zone II Conservation Restriction for Drinking Water Supply Protection, Locus: 297, 300 Meiggs-Backus Road, Sandwich MA

Notes: 1) This Conservation Restriction is acquired for water supply protection pursuant to M.G.L. c.40 s.39B, s.41 and Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts and is under the custody of the Town of Sandwich, subject to the control of the Board of Water Commissioners of the Centerville-Osterville-Marstons Mills (COMM) Fire District, pursuant to M.G.L. c.40 s.39B.

2) Massachusetts Department of Environmental Protection approval is required before any portion of this Conservation Restriction can be transferred to a different ownership or control, changed to a different use, or used for activities other than for the purpose it was acquired, pursuant to M.G.L. c. 40, s. 15B.

3) All of the land shown in in this map is within the Zone II to COMM Wells.
CONSERVATION RESTRICTION
ON LAND OWNED BY
TOWN OF SANDWICH IN
SANDWICH, MASSACHUSETTS
EXHIBIT C
Attested Town Meeting Votes

TOWN OF SANDWICH
THE OLDEST TOWN ON CAPE COD

TOWN CLERK

I, Taylor D. White, Town Clerk of the Town of Sandwich, hereby certify that the below stated Article 17 and Vote taken thereon is a true record from the Annual Town Meeting held in Sandwich on May 3, 2021.

ARTICLE 17
To see if the Town will vote to authorize the Board of Selectmen to acquire by gift, purchase or eminent domain, or otherwise, on such terms and conditions as the Board of Selectmen deems in the best interests of the Town, for open space and water protection purposes pursuant to the Community Preservation Act, all or a portion of the fee simple interest or lesser interest in two certain parcels of land off Meigs-Backus Road shown on Assessor's Map 4 as Parcels 11 and 39, containing approximately 21.6 acres, and further that said land shall be under the care, custody and control of the Conservation Commission, and as funding therefor to transfer and appropriate from the Community Preservation Fund the sum of $455,000.00, or any other amount, and further to authorize the Board of Selectmen to grant a conservation restriction on said property, pursuant to G.L. c. 44B, sec. 12 and G.L. c. 184, secs. 31-33, and to execute any and all instruments as may be necessary on behalf of the Town to effect said purchase, or take any other action relative thereto.

UNANIMOUSLY VOTED: That the Town authorize the Board of Selectmen to acquire by gift, purchase or eminent domain, or otherwise, on such terms and conditions as the Board of Selectmen deems in the best interests of the Town, for open space and water protection purposes pursuant to the Community Preservation Act, all or a portion of the fee simple interest or lesser interest in two certain parcels of land off Meigs-Backus Road shown on Assessor's Map 4 as Parcels 11 and 39, containing approximately 21.6 acres; and

that said land shall be under the care, custody and control of the Conservation Commission; and

transfer and appropriate from the Community Preservation Fund undesignated fund balance the sum of $455,000, to be expended under the direction of the Board of Selectmen, for the purpose of acquiring the parcels described above; and

authorize the Board of Selectmen to grant a conservation restriction on said property, pursuant to G.L. c. 44B, sec. 12 and G.L. c. 184, secs. 31-33, and to execute any and all instruments as may be necessary on behalf of the Town to effect said purchase.

This was a voice vote and declared carried unanimously by the required two-thirds majority by the Moderator.

A TRUE COPY ATTEST

Taylor D. White, Town Clerk
ARTICLE 3
To see if the Town will vote to decrease the $455,000.00 appropriation made at the May 3, 2021 Annual Town Meeting under Article 17 for the purchase of two parcels of land off Meiggs-Backus Road shown on Assessor's Map 4 as Parcels 11 and 39, containing approximately 21.6 acres, from the Community Preservation Fund undesignated fund balance by $226,387.50, with said decrease being transferred to the undesignated fund balance due to the award of a grant from the Commonwealth of Massachusetts' Drinking Water Supply Grant Program;

And further,

to see if the Town will vote to accept a deed restriction on said parcels as a condition of the Commonwealth's Drinking Water Supply Protection Grant Program which states:

(i) This property is acquired for water supply protection pursuant to Massachusetts General Laws Chapter 40, Sections 39B, 41 and 15B, and Article 97 of the Amendments to the Massachusetts Constitution and is under the control of the Conservation Commission of the Town of Sandwich, subject to the Conservation Restriction held by the Centerville-Osterville-Marstons Mills Fire District and the Barnstable Land Trust, Inc.; and,

(ii) Massachusetts Department of Environmental Protection approval is required before any portion of this property can be transferred to a different ownership or control, or before the property can be changed to a different use.

And further,

to authorize the Town of Sandwich Conservation Commission to grant a conservation restriction on said parcels of land pursuant to Massachusetts General Laws Chapter 184, Section 31-33;

or take any action relative thereto.

Recommended by the Board of Selectmen and Finance Committee.
CONSERVATION RESTRICTION
ON LAND OWNED BY
TOWN OF SANDWICH IN
SANDWICH, MASSACHUSETTS
EXHIBIT D.
October 7, 2021 Vote
Centerville-Osterville-Marstons Mills Fire District

DISTRIBUTION
From the office of: PRUDENTIAL COMMITTEE
CLERK/TREASURER

DISTRICT VOTE
October 7, 2021

Telephone (508) 957-8235
Fax (508) 790-2398

Attested copy of Article #4

ARTICLE #4. Upon a motion duly made and seconded, it was unanimously voted, as amended, to authorize and direct the Board of Water Commissioners, acting with the approval of the Prudential Committee, to accept and hold as a gift from the Town of Barnstable and the Town of Sandwich, for no consideration, the grant of a Conservation Restriction in perpetuity and in gross (the “CR”), for conservation and watershed protection purposes as defined in MGL Ch. 184, §31, with all rights, duties and obligations set forth MGL Ch. 184, § 31, 32 and 33, to be held either sole or jointly with the Barnstable Land Trust on 38.9 acres, more or less, or any portions thereof, of the land nominally located at 830 Wakeby Rd., Marstons Mills, Town of Barnstable and 297 and 300 Meiggs-Backus Road, Town of Sandwich Ma. such Barnstable parcel being more particularly described as Lot 2 on plan recorded in Barnstable Registry of Deeds Book 691, Page 82 (a portion of Barnstable Assessors map 013 parcel 003) and such Sandwich parcels being shown as parcels 11 and 39 on Sandwich Assessors Map 4; and furthermore, to authorize and direct the said Board and Committee to sign, seal, acknowledge and deliver any and all documents or instruments necessary and appropriate to accept such grant. Copies of the plans of the subject parcels and the CR as substantially proposed are available for viewing at the Office of the District Clerk, 1875 Falmouth Rd., Rte. 28, Centerville, Ma 02632.

A TRUE COPY
ATTESTED BY: Krysta Abrams, Clerk/Treasurer
Centerville-Osterville-Marstons Mills Fire District
Hi Vicki,

That’s good news! We also need to record the Project Agreement (signed by Town, State and COMM), which Melissa Cryan of EEA sent back to the Town after EEA signed it. Please let me know when it is recorded.

For the grant compliance documentation, I need a copy of the settlement statement and an attorney’s certificate of good title letter through the recording date of the deed.

I also just put you in touch with the COMM attorney on the CR.

Bud, I will send you the Treasurer’s statement and billing form that is needed for documentation too. You should also put on the agenda for the July Selectmen meeting “Approval of the CR for 297 & 300 Meiggs-Backus Road”. It needs Select Board approval in July to get to EEA for final signature by August 1st. The Conservation Dept. is holding the signature pages for the ConCom, which I met with this month.

I look forward to finishing this up with all of you.

Mark Robinson
The Compact

From: Vicki Marsh <VMarsh@k-plaw.com>
Sent: Tuesday, June 28, 2022 12:30 PM
To: 'Dunham, George' <gdunham@sandwichmass.org>
Cc: Deconto, Dave <ddeconto@sandwichmass.org>; Mark Robinson <mark@thecompact.net>; John Giorgio <JGiorgio@k-plaw.com>
Subject: 297 and 300 Meiggs-Backus Road

Bud-

I am pleased to inform you that the Deed to the Town of the property at 297 and 300 Meiggs-Backus Road, Sandwich was recorded today with the Barnstable County Registry of Deeds in Book 35215, Page 42. The only outstanding issue with this closing is for the State to approve of the Conservation Restriction. Once the Conservation Restriction is recorded then the Town will be able to submit for reimbursement from the State’s Drinking Water Grant Program.

If you have any questions, please do not hesitate to contact me.

Vicki

Vicki S. Marsh, Esq.
KP | LAW
101 Arch Street, 12th Floor
Boston, MA 02110
O: (617) 556 0007
THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS
DIVISION OF CONSERVATION SERVICES

Drinking Water Supply Protection Grant Program

PROJECT AGREEMENT

Made this __________ day of ________________________, 20____, between the
Town of Sandwich, with an address of 130 Main Street, Sandwich, MA 02563,
hereinafter referred to as the PARTICIPANT, and the Commonwealth of Massachusetts
acting by and through the Secretary of the Executive Office of Energy and Environmental
Affairs, hereinafter referred to as the COMMONWEALTH with an address of 100
Cambridge Street, Suite 900, Boston, MA, 02114.

Premises: Approximately 21.55± acres of land (Assessor's Map 4, Lots 39.0 and 11.0) in
the Town of Sandwich, Barnstable County, Massachusetts. For PARTICIPANT's Title,
see;

Book /Page __________________________ or

Land Court Certificate __________________________.

In the __________________________________ (Barnstable County
Registry of Deeds/ Land Court Registry District)

WHEREAS, the PARTICIPANT has made an application to the COMMONWEALTH
for assistance under the Massachusetts Drinking Water Supply Protection (DWSP) Grant
Program pursuant to 2008 Massachusetts Acts and Resolves, Chapter 312, §2A, 2200-7017, for a project briefly described as follows: the fee simple acquisition of 21.55±
acres of land in the Town of Sandwich, known as the Meiggs-Backus Road Aquifer
Protection Project, for the purpose of permanent drinking water supply protection
and land conservation, hereinafter referred to as the PROJECT.

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

WHEREAS, the COMMONWEALTH has approved said application and has obligated
certain funds in the amount of Two hundred twenty-six thousand three hundred
eighty-seven thousand dollars and fifty cents ($226,387.50), which funds are authorized and subject to 2008 Massachusetts Acts and Resolves, Chapter 312.

NOW THEREFORE:

1. The COMMONWEALTH and the PARTICIPANT mutually agree to perform the terms and conditions of this Agreement in accordance with the Massachusetts DWSP Program, its policies and applicable statutes, including Massachusetts General Laws Chapter 40, §§ 38, 39 and 41, and 2008 Massachusetts Acts and Resolves, Chapter 312, §2A, 2200-7017.

2. The PARTICIPANT agrees to perform the PROJECT described previously by authorizing and directing its CONSERVATION COMMISSION to manage, maintain, and operate the PROJECT in accordance with the terms, conditions and obligations contained in the PARTICIPANT’S application(s), as approved, including any promises, conditions, plans, specifications, estimates, procedures, project proposals, maps, and assurances made a part thereof, and furthermore, in accordance with any special terms and conditions attached to and incorporated in this Agreement. No significant deviations from the PROJECT shall be undertaken without advance approval by the COMMONWEALTH.

3. The PARTICIPANT agrees that the area of the PROJECT outside of a designated Zone I Drinking Water Supply Area or those areas containing wells, pumps, or other necessary infrastructure for approved drinking water supply protection or wastewater discharge, shall be open to the general public for appropriate passive use and shall not be limited to residents of the PARTICIPANT. The PARTICIPANT shall display on the PROJECT a sign indicating that the PROJECT received DWSP funds, and setting forth the terms of public access.

4. The PARTICIPANT hereby covenants and agrees that the Project, including the property and any and all associated facilities and improvements, shall be devoted to drinking water supply protection and conservation purposes in perpetuity, within the meaning of Article 97 of the Commonwealth’s Declaration of Rights, and shall not be used for other purposes or otherwise disposed of except in accordance with the provisions of said Article 97. The PARTICIPANT hereby agrees that any property or facilities composing the PROJECT will not be used for purposes other than those stipulated herein or otherwise disposed of unless the PARTICIPANT receives the appropriate authorization from the General Court, and the approval of the Secretary of Energy & Environmental Affairs.

5. The PARTICIPANT acknowledges that receipt of funding from the DWSP does not constitute final approval to establish new public water sources or wastewater discharge facilities, or other infrastructure, and agrees to obtain the advice and approval of the Department of Environmental Protection for the location, arrangement, and development of all wells, filter galleries, filtration or pumping facilities, under Massachusetts General Laws Chapter 40, §39B, provided that no dams, reservoirs, or treatment plants may be established on the property.

6. The PARTICIPANT agrees that, should the property not be suitable for or serve the purposes of water supply protection, the PARTICIPANT shall manage the property for conservation and public passive recreation purposes, or transfer management and/or title to the conservation commission of the municipality in
which it is located, or to a nonprofit, charitable corporation or trust which has
time to acquire interest in land and whose purposes include conservation of
land or water areas or of a particular such area, or to the COMMONWEALTH,
acting through its Department of Fish and Game, or Department of Conservation
and Recreation, to be managed for watershed protection, conservation, and public
passive recreation purposes. In the event of such a transfer, the PARTICIPANT
must adhere to the requirements of Article 97 and this Agreement.

7. The PARTICIPANT further agrees that despite any such authorization and
approval, in the event the property or facilities composing the PROJECT are used
for purposes other than those described herein, the PARTICIPANT shall provide
other property and facilities of equal value and utility to be available for water
supply protection and conservation purposes, provided that the equal value and
utility and the proposed use of said other property and facilities is specifically
agreed to by the Secretary of Energy & Environmental Affairs.

8. Failure by the PARTICIPANT to comply with the terms and conditions of this
Agreement or the policies or applicable statutes of the DWSP Grant Program
may, at the sole option of the COMMONWEALTH, suspend or terminate all
obligations of the COMMONWEALTH hereunder.

9. PARTICIPANT and COMMONWEALTH acknowledge that the benefit desired
by the COMMONWEALTH from the full compliance by the PARTICIPANT is
the permanent protection of the quality and quantity of drinking water supplies,
and the existence, protection, and the net increase of conservation land, and
furthermore that such benefit exceeds to an immeasurable and unascertainable
extent the dollar value of the funding provided by this Agreement, and, therefore,
in recognition of said disparity, the PARTICIPANT agrees that payment of
money damages by the PARTICIPANT to the COMMONWEALTH would be an
inadequate remedy for a breach of this Agreement by the PARTICIPANT, and,
therefore, the COMMONWEALTH may enforce the terms and conditions of this
Agreement by requiring specific performance of the PARTICIPANT’S
obligations.

10. The PARTICIPANT agrees to record a copy of this agreement at the appropriate
Registry of Deeds or Land Court Registry District and to provide proof of such
recording to the COMMONWEALTH. Said proof of recording of this Project
Agreement shall include evidence that the Project Agreement has been
marginally noted on or permanently referenced to any prior deed, restriction,
conveyance or other instrument affecting the Project area. Failure to do so shall
not impair the validity or enforcement of this agreement.

11. The PARTICIPANT has secured the approval of the WATER SUPPLIER
benefitting from this PROJECT to serve as the Primary Grantee of a
Conservation Restriction as required for compliance by this grant.
COMMONWEALTH OF MASSACHUSETTS

BY
Kathleen A. Theoharides, Secretary
or Designee
Executive Office of Energy and
Environmental Affairs

DATE: ______________________

PARTICIPANT

BY

Type or Print Name and Title
Town of Sandwich
Chief Executive Officer

DATE: ______________________

BY
Centerville-Osterville-Marstons Mills Fire
District Water Commission

__________________________
__________________________
__________________________

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

I am drafting the Dedication for the Town Parcels by the Board of Selectmen which was going to be executed at their meeting on Thursday. If one is not ready for this meeting, the Board are meeting again on July 21 at which time they could execute the Dedication. In our previous discussions, it was agreed that there would be a recordable plan to show these dedicated parcels. Has one been prepared yet that I can reference in the Dedication?

If you have any questions, please do not hesitate to contact me. If you wish to speak with me, I am available at 978-821-1409.

Vicki

Vicki S. Marsh, Esq.
KP | LAW
101 Arch Street, 12th Floor
Boston, MA 02110
O: (617) 556 0007
F: (617) 654 1735
vmash@k-plaw.com
www.k-plaw.com

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Bud-

Enclosed please find the draft of the Dedication of Municipal Parcels for the Service Road Shared Use Path Project. I am just waiting for the plan to be prepared for recording with the Registry of Deeds for the Dedication.

If you have any questions, please feel free to contact me.

Vicki

Vicki S. Marsh, Esq.
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Boston, MA  02110
O: (617) 556 0007
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COMMONWEALTH OF MASSACHUSETTS

BARNSTABLE, SS. 

TOWN OF SANDWICH

DEDICATION OF MUNICIPAL PARCELS

We, the undersigned Board of Selectmen of the Town of Sandwich, duly authorized, pursuant to the vote taken under Article 2 of the November 15, 2021 Special Town Meeting, a certified copy of which is attached hereto and incorporated herein, hereby dedicate the following parcels of land for the Service Road Shared Use Path Project, for the purpose stated below, said parcel depicted as “Permanent Easements ______________,” containing ______________ S.F., on a plan entitled “_______________________,” dated ______________, prepared by ______________, recorded with the Barnstable County Registry of Deeds in Plan Book ____ , Plan ____ , for the purpose of construction, installation, maintenance, improvement, repair, replacement and/or relocation and for providing public access of rights of way, sidewalks, drainage, utilities, driveways, guardrails, slopes, grading, rounding, landscaping, parking areas and other appurtenances and/or facilities, in, on, over, across, under and along all or any portions of the certain parcels of land located on or near Service Road and Round Hill Road as shown on said Plan.

The above-described parcels are located upon land of the Town of Sandwich described in a deed recorded with the Barnstable Registry District of the Land Court as Document No. 773917, noted on Certificate of Title No. 154145 and recorded with Barnstable County Registry of Deeds in Book 12437, Page 342 and a deed recorded with Barnstable County Registry of Deeds in Book ______, Page ________.

[Signature Page Follows]
IN WITNESS WHEREOF, we, the duly elected and qualified Board of Selectmen of the Town of Sandwich have hereunto set our hands and seals on this _____ day of _____, 2022.

TOWN OF SANDWICH,
By its Board of Selectmen

__________________________
Shane Hoctor

__________________________
Charles Holden

__________________________
Michael J. Miller

__________________________
Robert J. George

__________________________
R. Patrick Ellis

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss.

On this _____ day of _________, 2022, before me, the undersigned notary public, personally appeared ______________________, member of the Town of Sandwich Board of Selectmen, as aforesaid, who proved to me through satisfactory evidence of identification, which was ______________________, to be the person whose name is signed on the preceding document, and acknowledged to me that he signed it voluntarily for its stated purpose on behalf of the Town of Sandwich

__________________________
Notary Public
My Commission Expires:

821003SAND/ 0298
PLAN OF LAND IN THE TOWN OF SANDWICH, MASSACHUSETTS BARNSTABLE COUNTY SHOWING LOCATION OF EASEMENTS FOR THE PURPOSE OF CONSTRUCTING THE SERVICE ROAD SHARED USE PATH FOR THE TOWN OF SANDWICH DATE: MARCH 13, 2022 SCALE: 20 FEET TO THE INCH
Hi Vicki,

We met with Don Cox this morning. With your blessing these documents are ready to proceed to the July 7, 2022 meeting of the board. Please let us know if you recommend anything further.

THANK YOU!!

Heather

From: Harper, Heather
Sent: Wednesday, June 22, 2022 10:59 AM
To: Vicki Marsh
Cc: Dunham, George; Carroll, Melissa
Subject: FW: MMSFI

Hi Vicki,

The roof has been repaired! The MMSFI donated materials over the winter and Brian had a crew install the new roof. We’ve received updated materials from MMSFI and are ready to go. You’d asked a question at one point about lawn mowing – I am confirming with Public Works but have suggested we retain mowing responsibility because it is essentially part of our adjacent fire station site.

The scope of work for the building has significantly diminished and you can see the attached note from the Building Commissioner. Our Team have reviewed and do not have any further concerns. Would you be willing to pass your eyes over this one last time? I will attached the RFP and MMSFI response to the license for reference as well. MSFI has reviewed and approved these drafts as well.

I plan to schedule a conference call with Don and our team in the next week or so and hope to finalize with the Selectmen on June 23 or July 7th.

We are knocking these off Vicki! Thank you!

Heather
Heather B. Harper
Assistant Town Manager
Town of Sandwich
(508) 888-5144 or 4910
hharper@sandwichmass.org
LICENSE AGREEMENT

THIS LICENSE AGREEMENT (this "License") is entered into on this _____ day of _______, 2022, by and between the Town of Sandwich (the "Town"), acting by and through its Board of Selectmen, having an address of Sandwich Town Hall, 130 Main Street, Sandwich, Massachusetts 02563, and Massachusetts Military Support Foundation, Inc., ("Licensee"), having an address of 1015 S. Inner Road, Buzzards Bay, MA 02542.

WHEREAS, the Town is the owner of property located at 115 Route 6A in Sandwich, Massachusetts, more particularly described in a deed recorded with the Barnstable County Registry of Deeds in Book 881, Page 27 (the “Property”). The Premises, which is the subject of this License, containing 7 acres, more or less, consists of that portion of the Property shown on the plan, attached hereto as Exhibit A;

WHEREAS, Licensee has requested the Town to grant Licensee a license allowing Licensee to renovate, operate and maintain Military Support Programs; and

WHEREAS, the Town is amenable to granting Licensee permission to install, construct, operate and maintain Military Support Programson the Premises, subject to the terms set forth herein.

NOW, THEREFORE, for good and valuable consideration, the parties agree as follows:

1. USE, PURPOSE, TERM. The Town hereby grants Licensee and its agents, representatives, employees and invitees a license to renovate, operate, use and maintain the Military Family and Veteran’s Support programs at the Premises for the use of the Licensee, representatives and agents of the Licensee, and members of the public.

The Town shall reserve the exclusive use of the enclosed impound area for the storage of Town public safety vehicles. The Licensee will also provide office space in the building for the Fire Department’s volunteer Chaplain and access to the building as needed for him to provide his services. The parking spaces along the westside of the building will be shared with the Sandwich Fire Department.

The Term of this License shall commence on July 1, 2022, and continue for a term of five (5) years until June 30, 2027, unless sooner terminated in accordance with the provisions of Section 10 below (the “Term”). The Term of the License may be extended at the sole option of the Town. Such entry and use shall be further limited by the provisions of this Agreement.

2. CONSIDERATION. In consideration for this License, the Licensee shall not pay rent during the Term of this License, but shall bear all costs and expenses associated with the exercise of the rights granted hereunder, together with the observation and performance by
Licensee of all the obligations and covenants set forth within this License to the reasonable satisfaction of the Town. As additional consideration for the Town’s grant of this License, the Licensee shall replace the roof, conduct mold remediation and hazardous materials testing as may be needed and renovate the interior of the Premises for its use. If the License is extended for an additional term, then the Town at its option may assess rent at an agreed amount for the extended term of the License.

3. **CONDITION OF THE PREMISES.** Licensee accepts the Premises, in its “as is” condition for the purpose of this License, and acknowledges and agrees that the Town has made no representations or warranties regarding the fitness of the Premises or its suitability for the intended use thereof. In no event shall the Town be responsible or liable for the condition of the Premises or the Property, including security; the Military Support Program shall at all times be the sole responsibility of Licensee. The provisions of this Section shall survive the termination of this License.

4. **LICENSEE’S CONDUCT.** During the exercise of the rights hereby granted, Licensee shall at all times observe and obey directives of the Town and its duly designated representatives, as well as all applicable state, federal and local laws, statutes, by-laws, regulations and permitting or licensing requirements. Licensee agrees to obtain all necessary permits and approvals prior to the commencement of any work on the Premises. Licensee agrees to make the Premises handicap accessible in accordance with all applicable state, federal and local laws and regulations. Although Licensee may engage volunteers to construct the project, the Licensee agrees that it will comply with all state and federal procurement standards and wage rates. Licensee’s failure to comply with state, federal and local laws, statutes, by-laws, regulations and permitting or licensing requirements may be deemed a default under the terms of the License. Licensee shall not disturb or damage the Premises, any improvements thereon, and shall repair any and all damage to the Premises and/or any improvements caused by the act, omission or negligence of Licensee, its contractors, agents, representatives, employees, invitees and/or permittees (collectively, with Licensee, the “Licensee’s Parties”). This obligation shall survive the expiration or termination of this License.

5. **CONSTRUCTION AND RENOVATION.** Prior to commencement of construction of the project, the Licensee must submit to the Town a plan, parking and egress and renovation plan by a licensed contractor and stamped professional if structural work is proposed. In addition, Licensee shall construct the project in phases. The Licensee shall provide the Town with plans and specifications of the renovation and obtain the Town’s prior written consent thereof (the “Approved Plans”), which shall be attached hereto as Exhibit B.

A. The Facilities Director and Building Commissioner will issue a notice to proceed with the project.

B. All Licensee volunteers must sign a waiver of liability, in the form attached hereto as Exhibit C, in advance of the performance of any work at the Premises, unless they have insurance that meets the requirements set forth in Paragraph 8 below and delivers to the Town Certificate of Insurance. If volunteers are found to be working at the Premises without a signed waiver or insurance, this is cause for termination of this License.
Licensee shall not permit any mechanics' liens, or similar liens, to remain upon the Premises for labor and material furnished to Licensee or claimed to have been furnished to Licensee in connection with work of any character performed or claimed to have been performed at the direction of Licensee and Licensee shall cause any such lien to be released of record forthwith without cost to the Town. All laborers and materialmen furnishing labor and materials for the work shall release the Town from any and all liability. If Licensee does not perform the work itself, it shall employ responsible contractors to perform the work. Work performed on site will be performed in accordance with Commonwealth of Massachusetts Procurement Act.

6. OPERATION OF The Military Support Program: The following shall govern the operation of the Support Programs

A. Licensee shall be responsible for the operation, maintenance and repair of the Premises. The Licensee also shall be responsible for the snowplowing and ice removal in the parking area and sidewalks.
B. Licensee may fundraise at the site. Licensee shall advise Town prior to any fundraising event, and obtain written approval therefor.
C. Licensee shall meet at least annually or more often as requested by the Facilities Director and Building Commissioner to inspect the building
D. Licensee may use the parking areas and shared egress as agreed.
E. Licensee shall be responsible at its own cost and expense to provide for police details for large events as may be necessary for traffic safety. It is the Licensee's responsibility to review the events and traffic with the Town police directly to assess the traffic concerns.
F. Licensee shall, during the Term of this License and at its sole expense, maintain 115 Route 6A in good and safe order and condition. In the event that the building and premises is not maintained in the condition required herein, and Licensee does not repair the same within thirty (30) days from written notice from the Town, the Town shall have the right to terminate this License.

7. INDEMNIFICATION AND RELEASE. Licensee shall defend, indemnify and hold harmless the Town from and against any and all claims, demands, suits, actions, costs, judgments and liabilities of whatsoever kind or nature, including, without limitation, reasonable attorneys' fees, which may be brought against, imposed upon, incurred by, or asserted against the Town by reason of any failure on the part of Licensee to comply with any provision or term required to be performed or complied with by Licensee under this License, or the terms of any applicable laws, rules, regulations and/or by-laws; for any injury, death and/or property damage suffered by any person in or around the Premises and the Property, relating in any way to Licensee's exercise of its rights under this License, and the negligence or willful misconduct of any of Licensee Parties including its volunteers, and/or the condition of or any defect in the materials installed or improvements made or negligence in the installation or construction of the course.
Licensee releases the Town, its employees, officers, agents, board members, and attorneys from any claims, actions, rights of action, causes of action, damages, costs, loss of services, expenses, compensation, attorneys’ fees or other liability or responsibility for Licensee’s losses or damages related to the condition of the Premises and the Property, and Licensee agrees and covenants that it will not assert or bring, nor cause any third-party to assert or bring, any claim, demand, lawsuit or cause of action against the Town, including, without limitation, claims for property damages, diminution in property value claims, personal injury or death and any other damages relating to, or arising from, Licensee’s use of the Premises and the Property.

Notwithstanding anything to the contrary in this Agreement, Licensee acknowledges that the Town shall not be subject to liability based upon any claim that Licensee’s Parties or any other person who may come into contact with the Property contracted Covid-19 or any other illness or disease as a result of the use of the Property (the “Released Event”), and Licensee on behalf of its successors, assigns and other Licensee’s Parties, hereby releases, waives, discharges and covenants not to sue the Town or its present or future employees, officials, boards, agents, invitees and representatives (the “Town’s Parties”) from any and all liability, claims, demands, actions and causes of action whatsoever, whether known or unknown, in law or in equity, which they have or may have from the execution of this Agreement, or which may accrue thereafter, arising out of or related to the Released Event. Licensee further agrees to defend, indemnify and hold harmless the Town from and against any and all liability, claims, demands, actions, causes of action, whether known or unknown, both in law or in equity, that may be brought against the Town by third parties that is caused by or relates to such third parties contracting Covid-19 or any other illness or disease from any of the Licensee’s Parties or its volunteers.

The provisions of this Section shall survive the expiration or termination of this License.

8. **INSURANCE.** Licensee shall maintain public liability insurance, including coverage for bodily injury, wrongful death and property damage, in the minimum amounts set forth herein to support the obligations of Licensee under the terms of this License to indemnify, defend and hold harmless the Town: General Liability: $1,000,000 bodily injury and property damage per occurrence, and $3,000,000 annual aggregate limit; and umbrella liability of at least $2,000,000 per occurrence and $2,000,000 annual aggregate limit. Licensee shall require the insurer to give at least fifteen (15) days’ written notice of termination, reduction or cancellation of the policy (ices) to the Town. The insurance shall be placed with insurance companies licensed by the Massachusetts Division of Insurance to do business in the Commonwealth of Massachusetts and have a Best’s rating of A- or better. Licensee shall provide the Town with a certificate of insurance prior to entering upon the Premises and at such other times as the Town may reasonably request, in each case indicating the Town is an additional insured on the policy(ies) and showing compliance with the foregoing provisions.

To the extent required by law, Licensee or Licensee’s contractors shall maintain worker’s compensation insurance, during the performance of any work on the Premises until the completion thereof. Licensee agrees that any contractor or volunteer performing work on behalf of Licensee shall carry workers’ compensation insurance, liability insurance, and automobile liability insurance in amounts reasonably acceptable to the Town and shall name the Town as an
additional insured party. Prior to the commencement of any work on the Premises, Licensee shall provide Town with a copy of the contractor’s insurance certificate indicating liability insurance coverage as herein specified, and copies of any approvals, including any permits, necessary or obtained to conduct said work. To the extent possible, Licensee shall obtain, for each policy of insurance secured by it, provisions permitting waiver of any claims against the Town for loss or damage within the scope of the insurance, and Licensee, for itself and its insurers, waives all claims against the Town as to such claims covered by such insurance.

9. RISK OF LOSS. Licensee agrees that it shall enter upon and use the Premises, including the Property, at its own risk, and the Town, its agents, employees, representatives, officers, agents, board members and attorneys shall not be liable to Licensee for any injury or death to persons entering the Premises or the Property pursuant to the License, or loss or damage to vehicles, equipment or other personal property of any nature whatsoever of Licensee, or of anyone claiming by or through Licensee, that are brought upon the Premises or the Property pursuant to the License, except if such injury, death, loss or damage is caused by the willful act or gross negligence of the Town, or its employees, agents or contractors. The provisions of this Section shall survive the expiration or termination of this License.

10. TERMINATION. This License shall be terminated by either party upon written notice of revocation given to the other party at least thirty (30) days prior to the termination date stated within said notice, except in the event of default in Licensee’s obligations, including the insurance obligations, in which case this License shall terminate by written notice given to Licensee seven (7) days prior to the termination date stated in the notice unless Licensee cures the same to the Town’s reasonable satisfaction within said seven (7)-day period.

In the event of the termination of this License by either party, Licensee, at Licensee’s sole cost and expense, shall remove all property used in operating the center and restore and/or repair the Premises to such condition as shall be specified by the Town and in accordance with the Decommissioning Plan approved by the Town by the effective date of such termination. In the event that the Licensee fails to restore the Premises to the condition as set forth in the Decommissioning Plan, then the funds held in escrow by the Town for the restoration of the Premises shall be used by the Town to restore the Premises to the agreed upon condition. In the event that the Licensee’s personal property is not removed on or prior to the termination date, the personal property shall automatically become the Town’s property, without any consideration due from the Town. The provisions hereof shall survive the expiration or termination of this License.

11. NOTICE. For purposes of this License, the parties shall be deemed duly notified in accordance with the terms and provisions hereof, if written notices are hand-delivered, sent by registered or certified mail, postage prepaid, or sent by recognized overnight mail, or sent by confirmed facsimile transmission, to the addresses set forth above, or to such other addresses as may from time to time hereafter be designated by the parties by like notice.

Notice to the Town: Assistant Town Manager
Town of Sandwich
130 Main Street
Sandwich, MA 02563

Notice to Licensee:

12. **ASSIGNMENT.** This License may not be assigned or otherwise transferred.

13. **HAZARDOUS MATERIALS.** Licensee shall not maintain, generate, allow or bring on the Premises or transport or dispose of on or from the Premises any Hazardous Waste, Hazardous Material, Oil or radioactive material. As used herein, the terms “Hazardous Waste”, “Hazardous Material” and “Oil” shall be defined as provided in Section 2 of Chapter 21C, Section 2 of Chapter 21D, and Section 2 of Chapter 21E of the General Laws of Massachusetts, and the regulations promulgated thereunder, as such, laws and regulations may be amended from time to time.

14. **INSPECTIONS.** Without limiting, the Town’s right to access the Premises the Town specifically reserves the right to inspect the Premises annually. The Town shall provide the Licensee with at least twenty-four (24) hours’ notice and not interfere unreasonably with Licensee’s use of the Premises.

15. **MISCELLANEOUS**

A. **No Estate Created.** This License shall not be construed as creating or vesting in Licensee any estate in the Premises, but only the limited right of use as hereinabove stated.

B. **Survival.** All appropriate terms and provisions relating to the restoration of the Premises shall survive the expirations or termination of this License, in addition to the survival of other terms stated herein to so survive.

C. **Modifications.** Modifications or amendments to this License shall be in writing and duly executed by both parties hereto to be effective.

D. **Assignment.** This License, or any of the rights created herein, are personal to those persons listed herein as Licensee, and their agents, employees, contractors and invitees, and may not be assigned or transferred in any manner.

E. **No Waiver.** The failure of either party to seek redress for violation or to insist upon the strict performance of any covenant or condition of this Agreement shall not prevent a subsequent act, which would have originally constituted a violation, from having all the force and effect of a violation. No provision of this Agreement shall be deemed to have been waived by either party unless such waiver is in writing and signed by the party to be bound thereby.

F. **Remedies.** No mention in this License of any specific right or remedy shall preclude the Town or Licensee from exercising any other right, or from having any other remedy, or from maintaining any action to which it may otherwise be entitled either in law or in equity.
G. **Captions.** The captions in this License are inserted for convenience of reference only and in no way define, describe or limit the scope or intent of this License or any of the provisions thereof.

H. **Severability.** If any court determines any provision of this License to be invalid or unenforceable, the remainder of this instrument shall not be affected and each provision of this License shall be valid and enforceable to the fullest extent permitted by law.

I. **Governing Law.** This License shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, and any and all legal actions brought in connection with this License shall be brought in courts within the Commonwealth of Massachusetts.
In Witness Whereof, the parties hereto have caused this License Agreement to be executed on this _______ day of __________, 2021.

TOWN OF SANDWICH,
By Its Board of Selectmen

________________________________________
Shane Hoctor, Chairman

________________________________________
Charles Holden, Vice Chairman

________________________________________
R. Patrick Ellis

________________________________________
Robert J. George

________________________________________
Michael J. Miller,
LICENSEE: Name of Organization

By: ______________________________________

Name: Don Cox
Title: President and Director
Exhibit A

Plan of Premises
Good morning Don:

Thank you for taking the time to meet with Brian and myself yesterday. I would like to offer a brief recap of what we talked about and what is being proposed:

- At this point your plan on replacing carpets and painting only on the first floor as you would like to occupy the building as soon as possible.
- The first floor floor-joists will be supported in the basement as discussed to counter the extra weight created by the canned goods stored overhead.
- No support is necessary for the floor joists in the secondary basement as the area overhead will store light goods only such as children's clothing. Please advise ahead of time if this area is to be used for canned/food storage in the future.
- The cell doors will be secured in the open position or the lock mechanism for these doors will be removed to prevent anyone from being inadvertently locked into the cell.
- The large divots in the rear parking lot will be fill in with hot asphalt.
- Any rotted trim and missing gutters will be replaced and painted in kind.
- Minor modifications to the handicap ramp at the front entrance will be made as discussed.
- Second floor will also receive paint and carpet only.

A building permit will be necessary for the proposed work. Once the work is complete we can walk through on a final inspection and determine an occupancy number for the building. Also, an electrical permit will be necessary for the obvious electrical work that needs to be completed/cleaned up.

Thank you again and good luck with this very worthy endeavor.

Sincerely,

Brendan W. Brides
Building Commissioner
16 Jan Sebastian Drive
Sandwich, MA 02563
P: 508-888-4200
F: 508-833-0018
Exhibit C

Waiver
Volunteer Work Team

Military Support Program – 115 Route 6A

Waiver of Liability

By volunteering as part of a work crew at a proposed Military Support Program at 115 Route 6A in Sandwich MA, a public property, you agree to the following:

To the best of my knowledge, I am in good physical condition and fully able to participate in the construction activity planned at the proposed at the Military Support Program at 115 Route 6A in Sandwich MA. I understand that there are risks associated with participating in this activity such as (but not limited to), personal injury or death, illness (including COVID-19) and damage to property. I voluntarily assume these risks and the associated financial costs, should such losses occur.

I am fully aware of the risks and hazards connected with the participation in this activity, including physical injury or even death, and hereby elect to voluntarily participate in this activity, knowing that the associated physical activity may be hazardous to me and my property. I VOLUNTARILY ASSUME FULL RESPONSIBILITY FOR ANY RISKS OR LOSS, PROPERTY DAMAGE, OR PERSONAL INJURY, INCLUDING DEATH, that may be sustained by me, or loss or damage to property owned by me or by others, as a result of participation in this activity.

I hereby release, waive and discharge and forever release the Town of Sandwich, its officers, employees, representatives and/or agents from any and all liability, claims, demands, actions, causes of action expenses, and attorneys’ fees whatsoever arising out of or related to any loss, damage, illness or injury, including death, that may be sustained by me, or to any property belonging to me, while participating in the aforesaid activities, I shall defend, indemnify and hold harmless the Town of Sandwich, its officers, employees, representatives and/or agents for any loss, liability, damage, costs and expenses (including, without limitation reasonable attorneys’ fees and expenses), causes of action, suits, claims, demands or judgments of any nature whatsoever, in law and in equity, which are or may be brought against the Town arising from or related to the performance of the aforesaid activities, even if occurring by reason of the negligence or willful misconduct of the Town of Sandwich, its officers, employees, representatives and/or agents.

This Waiver of Liability shall extend to and bind my heirs, personal representatives, successors and assigns.

By proceeding to participate in the activity of land clearing, I acknowledge and represent that I HAVE READ THE FOREGOING Waiver of Liability, UNDERSTAND IT AND VOLUNTARILY AGREE to its terms, as my own free act and deed, and I EXECUTE THIS RELEASE FOR FULL, ADEQUATE AND COMPLETE CONSIDERATION FULLY INTENDING TO BE BOUND BY SAME.

Name: __________________________ Date: ______________

Signature: __________________________

Military Support Program - Volunteer Waiver, June 2022
Temporary Repairs to Private Ways – with Betterment

A. Owners of a way decide that temporary repairs beyond the capacity of individual owners is needed to improve a private way(s) and seek to utilize the Town program to make Temporary Repairs to Private Ways utilizing the Betterment Act.
B. Owners advised to meet with informally with Town Engineer to review project
C. Petitioners are advised to notify all abutters to the way of their intent to utilize the program, of the proposed project scope and potential costs.
D. Petitions including 2/3rds of abutters to improvement area and received no later than July 15 of each year may be considered for taking at the subsequent May Annual Town Meeting
E. Petition (petitioners) certified by the Town Clerk with the Town Assessor
F. Owners Engage a Private Engineer to scope project and estimate costs for public construction.
G. Scope and Cost must be approved by the Town
H. No later than November 15th the Town Engineer will deliver certified mail an Indemnification and Betterment Agreement to All Abutters notifying of estimated costs.
I. No later than January 1st, the Indemnification and Betterment Agreements signed and returned by at least 2/3rds of abutters
J. Betterment Hearing Scheduled and Notices Sent to All Abutters
K. Board of Selectmen Hearing to approve project (or take any other action), vote the cost estimate and apportionment method and adopt Order of Assessment and Estimate of Betterment
L. Board of Selectmen place article on warrant to fund project
M. 1st week in May – Annual Town Meeting (or Special Town Meeting) considers article
N. If Article Approved – Town Records Order of Betterment and files with Town Clerk, and Town Assessor
O. Petitioners Private Engineer prepares technical specifications and scope and works with Town Engineer to support public procurement and oversee construction administration.
P. Town Borrows Funds as needed – Contract awarded
Q. Project Completed
   a. Engineer Certifies the Actual Cost to the Assessor within 6 months of completion
R. Selectmen consider/vote Street Betterment Assessment Order
S. Assessor Commits Betterment – for inclusion on tax bills
T. Owner can pay in full upon receipt of first tax bill or to pay over up to 10 ten years according to policy.
INDEMNIFICATION AND BETTERMENT AGREEMENT
TOWN OF SANDWICH

The undersigned of this Indemnification and Betterment Agreement (the “Agreement”), being the owner of property (the “Owner”) located at ____________________________, Sandwich, Massachusetts (the “Property”), has petitioned the Town of Sandwich with other property owners abutting ____________________________ (the “Way”) pursuant to Town of Sandwich Bylaws, Section 5.20 (the “Bylaw”) to make temporary repairs and improvements to the Way including description of the temporary repairs (the “Project”), all as set forth in detail in the Petition for Temporary Repairs to Private Way.

The Town is amenable to undertaking the Project upon the satisfaction of certain conditions, including, without limitation, appropriation of funds for the Project by Town Meeting, the execution of this Agreement by at least two-thirds (2/3) of the abutting property owners of the Way, and a decision, pursuant to said Town of Sandwich Bylaws, Section 5-20, made by the Board of Selectmen to proceed with the Project. The Owner understands and acknowledges that the Town intends to assess upon all of the properties located on the Way deriving benefit from the repairs (collectively, “the Properties”), a betterment to recover the Total Project Cost (defined below) as set forth in the Town of Sandwich Bylaws, Section 5-20 and, in compliance with G.L. c.80.

The Project is estimated to cost approximately $ ____________________________ as of this date. The Owner acknowledges that the cost of the Project at the time the Town enters into agreements for the construction of the Project may exceed the estimate, and that the total cost of the Project including the costs for the preparation, planning and repairs and borrowing by the Town for such repairs, will be ascertained when the Project has been fully completed (the “Total Project Cost”). The Town shall pay no part of the Total Project Cost. The Board of Selectmen shall assess the betterment for the Total Project Cost to each Owner as listed in the records of the Board of Assessors which benefits from the repairs to the Way on a per lot basis, on a proportion of lot frontage on Way or portion of Way to be repaired to the frontage of said repaired Way, or other proportional method as may be determined by the Board of Selectmen. The Owner agrees to pay the betterment assessed for its respective share of the Total Project Cost.

By signing this Agreement, the Owner, for themselves and their successors and assigns, acknowledge that they have voluntarily entered into this Agreement and agree that they will not contest the validity or the amount of the betterment assessed upon the Properties for the Project or seek an abatement of the assessment, as their respective share is proportionate to the benefit or advantage that the Owners’ Properties will obtain from the Project. The betterments shall be assessed by the Town upon the satisfaction of conditions set forth above, among others, an Order of Assessment and an Estimate of Betterments adopted by the Board of Selectmen ordering the commencement of the Project, which shall be recorded with the Barnstable County Registry of Deeds or Barnstable Registry District of the Land Court, if applicable, and noted against the deed.
to each of the Properties. Upon completion of the Project, the Board of Selectmen will prepare an Order setting forth the final betterment amount and the sum to be paid by each Owner.

This Agreement shall run with each Property and be enforceable by the Town for a period of up to but not including twenty (20) years from the date hereof, or until the assessment upon the Property for this Project is paid in full without protest, whichever is earlier. The provisions of G.L. c.80 and Section 5-20 of the Bylaws shall apply, including those relative to the apportionment, interest and collection of assessments. The Owner further covenants with the Town that until the recording of the Order assessing betterments is recorded with said Deeds, the Owner shall not convey all or any part of their Property nor convey a mortgage upon their Property, without providing the grantee or mortgagee with a true and complete copy of this Agreement as signed by the Owner, and the Owner shall indemnify, defend and hold harmless the Town for any sum of money the Town may be obliged to pay to a new owner or mortgagee as abatement, damages or otherwise relating to said assessment, if the Owner does not provide such copy to the new owner or mortgagee.

The Owner by signing below grants an irrevocable right to the Town and its agents, employees, representatives contractors, subcontractors and invitees (with the Town, the “Town Parties”) to enter upon and pass over the Way, if reasonably necessary for the Project, their Property, by foot and vehicles, including heavy equipment, from time to time and at any time, for the purpose of inspecting and surveying the Way and for making the repairs.

The Owner acknowledges and agrees that the Town shall have no responsibility and liability whatsoever for the Way or the work undertaken, the quality of the work, the materials used therefor and/or any damages or defects therein. The Owner agrees that the Town shall have no legal obligation whatsoever to maintain and make repairs and/or improve the Way upon completion of the temporary repairs, and that it shall be the responsibility and obligation of the abutters to the Way to do so. The Town’s temporary repairs to private ways does not constitute an acceptance by the Town of a private way as a public way. Private ways repaired by the Town may be accepted by the Town by following the Town’s Street Acceptance Procedure.

The Owner for themselves and their successors and assigns releases the Town from any liability hereunder and shall defend, indemnify and hold harmless the Town and all the other Town Parties from and against any and all claims, demands, suits, actions, causes of action, costs, liabilities and judgments whatsoever, and any and all other claims of every kind, nature and description whatsoever, both in law and equity, including reasonable attorneys’ fees, which may be imposed upon, incurred by, or asserted against the Town Parties related to the Project, including, without limitation, for injury or death to person or any other damages suffered to any person, property damage, contract claims, disputes and/or litigation relating in any way to this work, that was not caused as a direct result of the Town’s negligence or willful misconduct.

This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, and any and all legal actions brought in connection with the Agreement shall be brought in courts within the Commonwealth of Massachusetts. This Agreement contains the entire agreement of the parties and there are no other agreements or
understandings between the parties regarding the subject matter of the Agreement. This Agreement may not be modified except in writing, duly executed by both parties.

Notwithstanding any of the foregoing provisions, the Owner acknowledges and agrees that the Board of Selectmen is not obligated to proceed with the Project if the Board of Selectmen, in its sole and exclusive discretion, deems it not to be in the best interests of the Town or fails or declines to make the determinations required by said Bylaw, Section 5-20. Upon notice given, any rights and obligations of the Town hereunder shall cease and this Agreement shall be null and void, except that the provisions of RIGHT OF ENTRY, RELEASE, and NO OBLIGATION shall survive the expiration and/or termination of this Agreement.

Property Owner: ____________________________________________

Signature: ________________________________________________

_________________________________________________________

Property Address: __________________________________________, Sandwich, MA

Date: ______________________________________________________, 2020
TOWN OF SANDWICH – BOARD OF SELECTMEN

, 2022

TEMPORARY REPAIRS TO PRIVATE WAYS POLICY AND PROCEDURE

Introduction

1. Purpose and Authority

This policy is intended to establish procedures that the Board of Selectmen will utilize in processing Petitions for Temporary Repairs to Private Ways (the “Petition”) in accordance with G.L. c. 40, § 6N, Town of Sandwich Bylaws Section 5.20, and Chapter 247 of the Acts of 2018 of the Massachusetts General Court. The Board of Selectmen may waive or modify any portion of these procedures as the Board determines to be in the interest of public necessity.

2. Acceptance of Petitions

Prior to preparation of Petitions and supporting documents, interested parties are encouraged to meet with Engineering Department staff regarding the scope, timing, and potential costs of the envisioned work. It is advised that interested parties provide maps, abutters' lists (non-certified) and expectations of project costs.

Petitions shall be submitted on a yearly basis to the Engineering Department at 16 Jan-Sebastian Drive, Sandwich by July 15. Petitions shall be prepared using the Petition forms provided by the Town. These forms are available on the Town’s website and at the Engineering Department.

The Petition must be signed by at least two-thirds (2/3) of the owners of property abutting the way or portion thereof (the “abutter”) to be repaired and to whom betterments are to be assessed.

Each Petition shall identify a person as the “Applicant.” The Applicant shall serve as the liaison with the Town. Communications between the petitioners and the Town shall be directed through the Applicant.

Each Petition shall include the following items:

1. A non-refundable fee of Five Hundred Dollars ($500.00);
2. A certified list of abutters from the Town of Sandwich Assessor’s Office indicating property owners abutting the roadway petitioning the Town. The Town Clerk shall certify such list.

3. A description of the proposed repairs and anticipated costs.

Within six (6) weeks following acceptance of the Petition by the Town, the Applicant shall submit to the Engineering Department a technical report prepared by a registered professional engineer on behalf of the petitioners. The Petitioners’ engineer shall be experienced in road construction and repair, as well as public construction, and shall be approved by the Engineering Department. The report shall include evaluation of the private way, repair recommendations consistent with the Town Bylaw, and an estimate of costs for the repairs and associated work including recording fees, certified mailing fees, permits, preparation of a full bid package including any drawings, specification, or other technical documents necessary for the Town to procure the repairs, and engineering inspections and certification as described below.

3. Project Scope

Upon receipt of a Petition and/or technical report, the Engineering Department will review the documents and the technical aspects of the proposed project. If the Department has questions regarding the content of the documents, the Department may require a meeting with the Applicant and their engineer. This may be conducted on-site at the subject way or at the Department’s offices.

After the project scope and cost estimate has been agreed to by the Applicant, but no later than by November 15, the Engineering Department shall deliver by certified mail a notice to each abutter of the amount of their apportioned share of the proposed betterment and an Indemnification and Betterment Agreement to be executed by each abutter. Upon the Department’s receipt of an executed Indemnification and Betterment Agreement agreeing to repay the cost of the apportioned share of the betterment from at least two-thirds (2/3) of the abutters, the Department shall issue a report to the Board of Selectmen for review. Should the Department not receive the required percentage of executed signatures by the first business day in January, the project will be canceled. In such instance, a new application must be submitted pursuant to Section 2 of this Policy.

At a meeting of the Board of Selectmen, the Board may take up the Petition and vote whether to accept the Petition and recommend a request for an appropriation for the costs of the project be placed on the upcoming Town Meeting Warrant. The Board of Selectmen shall approve a final list of abutters and adopt an Order of Assessment together with an Estimate of Betterments, as provided under G.L. c. 80, §2 for approved projects. The Board may, in its sole and exclusive discretion, elect to postpone any repair requests or to cancel a project, if it deems the project is not in the best interests of the Town.

Following a favorable vote of the appropriation article by the Town Meeting, the Town shall record the Order of Assessment and Estimate of Betterments at the Barnstable County Registry of Deeds within ninety (90) days from the adoption of said Order pursuant to G.L. c. 80, §2.
The Engineering Department, with assistance from the Petitioners’ Engineer, shall procure the work in accordance with public bidding law, and shall manage the construction contract. The Petitioners’ Engineer shall provide support including:

1. Preparation of drawings, technical specifications, and any other items that may be needed for procurement of a construction contract;

2. Assistance during the bidding process to attend a pre-bid conference, answer questions, and provide interpretation of drawings and/or technical specifications;

3. Coordination with the construction contractor, regular progress inspections of the work, and certification of the work upon completion.

4. Assessment of Betterments and Method of Payment

The abutters of the way who derive a benefit from said repairs shall be assessed a betterment by the Board of Selectmen. The betterment charges for the Project shall be equal to one hundred (100%) percent of the aggregate costs to plan, prepare, repair the private way and including recording fees, certified mailing fees, borrowing of funds and finance charges assessed thereon and Town’s legal fees associated with the Town’s betterment policy herein and the preparation of the necessary documents to complete the repairs, which shall be assessed on a per lot basis or on proportion of lot frontage on way or portion of way to be repaired to the frontage if said repaired way or other proportional method as may be required by the Board of Selectmen.

Within six (6) months of completion of the repairs, the Engineering Department shall calculate the actual cost of the repair and send a list of the betterment assessments for each abutter to the Sandwich Board of Assessors.

The Board of Assessor shall, with the consent of the owner of the land assessed, apportion assessments for the improvements and/or repairs into such number of equal portions pursuant to the following betterment assessment repayment schedule:

<table>
<thead>
<tr>
<th>AMOUNT</th>
<th>PERIOD TO PAY</th>
</tr>
</thead>
<tbody>
<tr>
<td>$0-$499</td>
<td>No apportionment (1 year)</td>
</tr>
<tr>
<td>$500- $1,500</td>
<td>Not to exceed 3 years</td>
</tr>
<tr>
<td>$1,501-$2,000</td>
<td>Not to exceed 5 years</td>
</tr>
<tr>
<td>$2,001 or greater</td>
<td>Not to exceed 10 years</td>
</tr>
</tbody>
</table>

5. Miscellaneous Information

1. Commencement of any work pursuant to this Policy is subject to Engineering Department scheduling.

2. Betterment assessments are a lien on the property, and assessed in accordance with G.L. c. 80.
3. Any maintenance of the completed work and future repairs of any work performed under this policy shall be the sole responsibility of the abutters and not the Town of Sandwich.

4. Abutters’ inquiries and comments (unless in writing) shall be made through the Applicant and not directly to the Engineering Department.

6. **Liability and Indemnification**

   The Town is not liable for any damages to persons or property caused by negligent repair or maintenance of private way. Any requests for subsequent work related to the initial temporary repairs shall be deemed to be a new request and subject to the provisions of the Temporary Repairs to Private Ways Bylaw and this Policy.

   The abutters of the way shall agree to jointly and severally, indemnify and hold harmless the Town for any liability for claims of injury, death or property damage to the abutters or third parties caused by alleged defects in the way, including reasonable attorneys’ fees and costs.
Adopted this _______ day of ____________________, 2022

TOWN OF SANDWICH
BOARD OF SELECTMEN:

________________________
Michael J. Miller

________________________
Robert J. George

________________________
Dave Sampson

________________________
Charles W. Holden

________________________
R. Patrick Ellis