

TOWN OF FALMOUTH
SELECT BOARD
REVISED AGENDA
MONDAY, JANUARY 10, 2022 – 6:30 P.M.
SELECT BOARD MEETING ROOM
TOWN HALL
59 TOWN HALL SQUARE, FALMOUTH, MA 02540

6:30 p.m. OPEN SESSION

6:30 p.m. EXECUTIVE SESSION

1. M.G.L. c.30A, s.21(a)(1) – To review the draft minutes of executive session of November 8, 2021

7:00 p.m. OPEN SESSION

1. Call to Order
2. Pledge of Allegiance
3. Recognition
4. Announcements
5. Public Comment

7:15 p.m. SUMMARY OF ACTIONS

1. Administrative Orders
 - a. Approve Eversource petition to install one (1) 1-3" PVC conduit and cable of approximately 37' feet under town road, Nickerson Street, approximately 901' (feet) east of Maravista Avenue, southerly from handhole 384/H6-A at the base of pole 384/6. This work is to be done to provide electric service to #49 Nickerson Street, Falmouth.
 - b. Approve Eversource petition to install approximately 55' feet of conduit and cable under town road near the intersection of Bridge Street and Menauhant Road and to install one (1) new handhole labeled 235/H15 in public ROW on westerly side of road. This work is to be done to provide electric service to #2 Bridge Street, Falmouth.
 - c. Vote to approve letter of support of Woods Hole Diversity Action Committee's grant proposal for NSF INCLUDES
 - d. Vote to approve request from The 300 Committee for a Conservation Restriction for the Florence Sylvia Woodland, 0 Millstone Street, Falmouth, MA 02556
 - e. Vote to waive fees for Conservation Commission 'Request for Determination' applications for eleven osprey pole installations by the Osprey Project and Together We Can at various locations
 - f. Vote to approve application to MA Department of Housing and Community Development for Local Initiative Program for Local Action Units and related documents consistent with Special Permit approved by the Zoning Board of Appeals for 533-539 Woods Hole Road
 - g. Vote to increase the spending limit for the Senior Services revolving account to \$250,000 for FY2022
 - h. Vote to sign Petition to the General Court to effectuate the vote on Art. 18 of the November, 2021 Annual Town Meeting to remove the Falmouth Police Department from Civil Service
 - i. Authorize the Town Manager to transmit a letter of support for a grant for the Friends of Nobska Light from the Massachusetts Cultural Commission
 - j. Authorize the Town Manager to transmit a letter of support for a grant proposal by the Woods Hole Diversity Advisory Committee

7:30 p.m. PUBLIC HEARINGS

1. Wetlands/Dock Hearing – Nina's Marina Realty Trust – Install new vinyl sheet pile bulkhead adjacent to and landward of existing licensed timber bulkheads, and removal of existing tongue and groove timber sheathing, located at 306 Scranton Avenue, in the waters of Falmouth Inner Harbor, continued from December 6, 2021 (15 minutes)

7:45 p.m. BUSINESS

1. COVID-19 update and recommendation – Scott McGann **(10 minutes)**
- 7:55 p.m. 2. Vote to adopt FY2023 budget and submit it to the Finance Committee **(10 minutes)**
- 8:05 p.m. 3. Status Report/Update on Fresh Pond Well and PFAS issues **(10 minutes)**
- 8:15 p.m. 4. Interview, vote and appoint committee members
 - a. Human Services Committee – Tanya Kohli **(5 minutes)**
 - b. Steamship Authority Board of Governors – Peter James Jeffrey **(5 minutes)**
- 8:25 p.m. 5. Discussion on disposition of Police Department weapons **(10 minutes)**
- 8:35 p.m. 6. Status report on Woods Hole Oceanographic Institution (WHOI) CWATER Project **(10 minutes)**
- 8:45 p.m. 7. Eversource status update **(10 minutes)**
- 8:55 p.m. 8. Status update on Old Burying Ground **(10 minutes)**
- 9:05 p.m. 9. Review and Vote to Approve Minutes of Meetings **(5 minutes)**
 - a. Public Session – December 20, 2021
 - b. Executive Session – November 8, 2021
- 9:10 p.m. 10. Individual Select Board Members' reports **(10 minutes)**
- 9:20 p.m. 11. Town Manager's report **(5 minutes)**
- 9:25 p.m. 12. Adjourn

Douglas C. Brown, Chair
Select Board

OPEN SESSION

SUMMARY OF ACTIONS

1. Administrative Orders

- a. Approve Eversource petition to install one (1) 1-3" PVC conduit and cable of approximately 37' feet under town road, Nickerson Street, approximately 901' (feet) east of Maravista Avenue, southerly from handhole 384/H6-A at the base of pole 384/6. This work is to be done to provide electric service to #49 Nickerson Street, Falmouth.



Town of Falmouth

Department of Public Works - Engineering Division

416 Gifford Street, Falmouth, MA 02540
Office: 508-457-2543, Fax: 508-548-1537

Nicholas Croft, Engineering Technician

nicholas.croft@falmouthma.gov

Date: January 6, 2022

To: Board of Selectmen

From: Nicholas Croft, Hearing Officer

Subject: **Eversource – Petition to install $\pm 37'$ of Conduit on Nickerson Street**

A petition was submitted by Eversource to install $\pm 37'$ of 1"-3" underground conduit to provide service for a customer at 49 Nickerson Street.

The Engineering recommendation is to approve the request as submitted on Plan No. 7298032, W/O #7298032, dated December 13, 2021.

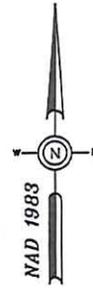
Eversource Reminder: All Street Openings require a permit obtained from the Engineering Office.

Thank you,

Nicholas Croft
Engineering Technician
DPW Engineering Division

39 09 032 139
46 NICKERSON ST
N/F
DWYER KEVIN M
DWYER DIANA L

39 09 033 138
50 NICKERSON ST
N/F
FERREIRA JR TRUSTEE EDWARD A
EDWARD A FERREIRA JR TRUST



← APPROX 901'± TO
MARAVISTA AVE

NICKERSON STREET

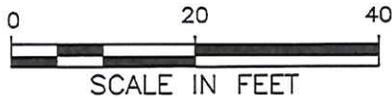
39 10 008 163
43 NICKERSON ST
N/F
HALBERT SHIRLEY E

APPROX. PT.
OF PICKUP

39 10 007 164
49 NICKERSON ST
N/F
TENCA TIMOTHY J
TENCA MARY BETH

LEGEND

- ⊕ Proposed Hand Hole
- ⊗ Existing Hand Hole
- Proposed Conduit
- - - Existing Conduit
- Proposed Pole
- Existing Pole



BY YOUR USE OF THE INFORMATION CONTAINED IN THIS MAP, YOU AGREE THAT NO WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, IS GIVEN WITH RESPECT TO THE INFORMATION. NEITHER NSTAR ELECTRIC COMPANY, NSTAR GAS COMPANY NOR ITS PARENTS, AFFILIATES, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES OR AGENTS (COLLECTIVELY THE "NSTAR ENTITIES") SHALL BE LIABLE FOR ANY LOSS OR INJURY CAUSED IN WHOLE OR IN PART BY USE OF THIS INFORMATION OR IN RELIANCE UPON IT, TO THE MAXIMUM EXTENT ALLOWED BY LAW, YOU AGREE BY YOUR ACCEPTANCE OF THE INFORMATION TO RELEASE, INDEMNIFY AND HOLD THE NSTAR ENTITIES HARMLESS FROM ANY SUCH LOSS OR INJURY.

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MASS. LAW

REQUIRES 72 HOURS ADVANCE NOTICE TO UTILITY COMPANIES BEFORE DIGGING BY ANYONE. CALL DIG-SAFE 1-888-344-7233

Plan #	7298032
Ward #	
Work Order #	7298032
Surveyed by:	N/A
Research by:	JC
Plotted by:	JC
Proposed Structures:	JC
Approved:	T THIBAUT
P#	



1165 MASSACHUSETTS AVE. DORCHESTER, MASS. 02125

Plan of NICKERSON STREET	
FALMOUTH	
Showing PROPOSED CUSTOMER CONDUIT LOCATION	
Scale	1"=20'
Date	12/13/21
SHEET	1 of 1

December 14, 2021

Town of Falmouth
59 Town Hall Square
Falmouth, MA 02540

Dear Nicholas Croft,

Enclosed is a petition to install approximately thirty-seven (37) feet of conduit in Nickerson Street, Falmouth.

This proposed location is required to provide underground electrical service to customer at #49 Nickerson Street. This petition will require a notice to abutters and a hearing.

Will you please present this petition before the Board for customary action and approval?

If you have any questions, please email Jessica.elder@eversource.com .

Warm Regards,

Jessica Elder

Jessica Elder
Right of Way Agent
NSTAR Electric
d/b/a EVERSOURCE ENERGY

WO# 7298032
NICKERSON STREET
FALMOUTH, MA

39 09 032 139
46 NICKERSON ST
N/F
DWYER KEVIN M
DWYER DIANA L
46 NICKERSON ST
EAST FALMOUTH, MA 02536

39 09 033 138
50 NICKERSON ST
N/F
FERREIRA JR TRUSTEE EDWARD A
EDWARD A FERREIRA JR TRUST
155 HIGHLAND ST
TAUNTON, MA 02780

39 10 007 164
49 NICKERSON ST
N/F
TENCA TIMOTHY J
TENCA MARY BETH
11301 WILLOW DALE DR
GERMANTOWN, MA 02876

39 10 008 163
43 NICKERSON ST
N/F
HALBERT SHIRLEY E
43 NICKERSON ST
TEATICKET, MA 02536-6519

**PETITION FOR
UNDERGROUND CABLE AND CONDUIT LOCATIONS
WO#7298032**

Barnstable, Massachusetts
To the Select Board of Falmouth, Massachusetts.

December 13, 2021

NSTAR ELECTRIC COMPANY d/b/a EVERSOURCE ENERGY

request permission to locate underground cables, conduits and manholes, including the necessary sustaining and protecting fixtures, in, under, along and across the following public way or ways:

Nickerson Street, Falmouth

To install approximately 37' (feet) of conduit and cable under town road approximately 901' (feet) east of Maravista Avenue

This work is to be done to provide underground electric service to #49 Nickerson Street.

Wherefore it prays that after due notice and hearing as provided by law, it be granted a location for and permission to install and maintain underground cables, conduits, and manholes, together with such sustaining and protecting fixtures as it may find necessary, said underground cables, conduits, and manholes to be installed in accordance with the plan files herewith marked Plan No. 7298032 Dated December 13, 2021.

**NSTAR ELECTRIC COMPANY
d/b/a EVERSOURCE ENERGY**

By *Jessica Elder*

Right of Way Agent
Jessica S. Elder

FORM OF ORDER FOR
UNDERGROUND CABLE AND CONDUIT LOCATIONS
WO#7298032

SELECT BOARD FOR THE TOWN OF FALMOUTH, MASSACHUSETTS.

Notice having been given and a public hearing held, as provided by law,
IT IS HEREBY ORDERED: that the NSTAR ELECTRIC COMPANY d/b/a EVERSOURCE ENERGY be and it is hereby granted a location for and permission to install and maintain underground cables, conduits and manholes, together with such sustaining and protecting fixtures as said Company may deem necessary, in, under, along and across the public way or ways hereinafter referred to, as requested in petition of said Company dated the 13th day of December, 2021.

All construction under this order shall be in accordance with the following conditions:

Cables, conduits, and manholes shall be installed substantially at the point indicated upon the plan marked Plan No.7298032 Dated December 13, 2021 filed with said petition. The following are the public ways or parts of ways under, along and across which the cables above referred to may be installed under this order.

Nickerson Street, Falmouth

Southerly from handhole 384/H6-A at base of pole
384/6, to install approximately 37' (feet) of conduit

One (1) 1-3" PVC Conduit

I hereby certify that the foregoing order was adopted at a meeting of the Select Board of the Town of Falmouth, Massachusetts held on the 10th day of January 2021.

Phyllis A Downey
Clerk of Select Board

_____, Massachusetts _____ 2021.

Received and entered in the records of location orders of the Town of Falmouth
Book _____ Page _____.

Attest:

Town Clerk

We hereby certify that on January 6th 2021, at 2:00 o'clock,
P. M. at Falmouth Town Hall a public hearing was held on the
petition of the

NSTAR ELECTRIC COMPANY d/b/a EVERSOURCE ENERGY

for permission to install and maintain the underground cables, conduits, manholes and fixtures described in the order herewith recorded, and that we mailed at least seven days before said hearing a written notice of the time and place of said hearing to each of the owners of real estate (as determined by the last preceding assessment for taxation) along the ways or parts of ways upon which the Company is permitted to install underground cables, conduits, manholes and fixtures under said order. And that thereupon said order was duly adopted.

Select Board for the Town of
Falmouth, Massachusetts

CERTIFICATE

I hereby certify that the foregoing is a true copy of a location order and certificate of hearing with notice adopted by the Select Board of the Town of Falmouth, Massachusetts, on the _____ day of _____ 2021, and recorded with the records of location orders of said Town, Book _____, Page _____.

This certified copy is made under the provisions of Chapter 166 of General Laws and any additions thereto or amendments thereof.

Attest:

Town Clerk.



TOWN OF FALMOUTH

Office of the Town Manager & Select Board

59 Town Hall Square, Falmouth, Massachusetts 02540

Telephone (508) 495-7320

Fax (508) 457-2573

PUBLIC HEARING NOTICE

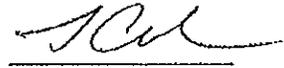
You are hereby notified that a hearing will be held at Falmouth Town Hall in the Small Conference Room at 2:00 p.m. on Thursday, January 6, 2022, upon the petition of NSTAR Electric Company d/b/a Eversource Energy to install One (1) 1-3" PVC conduit and cable of approximately 37' feet under town road, Nickerson Street, approximately 901' (feet) east of Maravista Avenue, southerly from handhole 384/H6-A at the base of pole 384/6. This work is to be done to provide electric service to #49 Nickerson Street, Falmouth.

Per Order of the Falmouth Select Board

Publication Date: Friday, December 24, 2021, Falmouth Enterprise

46 & 49 NICKERSON ST

CERTIFIED

A handwritten signature in black ink, appearing to read 'BCB', is written over a horizontal line.

Bruce Cabral
Assistant Assessor
Town of Falmouth, MA
December 15, 2021

SUMMARY OF ACTIONS

1. Administrative Orders

- b. Approve Eversource petition to install approximately 55' feet of conduit and cable under town road near the intersection of Bridge Street and Menauhant Road and to install one (1) new handhole labeled 235/H15 in public ROW on westerly side of road. This work is to be done to provide electric service to #2 Bridge Street, Falmouth.



Town of Falmouth

Department of Public Works - Engineering Division

416 Gifford Street, Falmouth, MA 02540
Office: 508-457-2543, Fax: 508-548-1537

Nicholas Croft, Engineering Technician

nicholas.croft@falmouthma.gov

Date: January 6, 2022

To: Board of Selectmen

From: Nicholas Croft, Hearing Officer

Subject: Eversource – Petition to install ±55' of Conduit and one handhole on Bridge Street

A petition was submitted by Eversource to install ±55' of underground conduit and one (1) handhole to provide service for a customer at 2 Bridge Street.

The Engineering recommendation is to approve the request as submitted on Plan No. 5034172, W/O #5034172, dated December 4, 2021.

Eversource Reminder: All Street Openings require a permit obtained from the Engineering Office.

Thank you,

Nicholas Croft
Engineering Technician
DPW Engineering Division

Plan to accompany petition of EVERSOURCE ENERGY to install new Handhole #235/H15 and 55'± conduit to provide electric service to 2 Bridge Street.

45 14 000 042
1 BRIDGE STREET
N/F
BONOLI, STEVEN R.
BONOLI, DENISE

PROPOSED HANDHOLE
235/H15

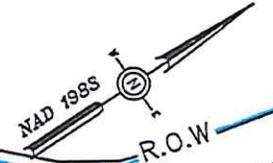
JO-ES
235/15

PROPOSED CONDUIT
TL=55'±

CUSTOMER TO INSTALL HANDHOLE

BRIDGE ST

MENAUHANT RD
ACAPESKET RD



R.O.W

EOP

APPROX. EDGE OF PAVEMENT(EOP)

APPROX. RIGHT OF WAY(R.O.W)

APPROX. R.L

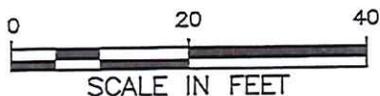
45 09 000 040
8 BRIDGE STREET
N/F
8 BRIDGE ST HOLDINGS LLC.
C/O BETTY WATANABE

45 09 000 041
2 BRIDGE STREET
N/F
CATALDO, RALPH J.
CATALDO, MICHELLE C.

JO-ES
69/67

LEGEND

- ⊕ Proposed Hand Hole
- Proposed Conduit
- Existing Pole



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MASS. LAW

REQUIRES 72 HOURS ADVANCE NOTICE TO UTILITY COMPANIES BEFORE DIGGING BY ANYONE. CALL DIG-SAFE 1-888-344-7233

Plan #	5034172
Ward #	
Work Order #	5034172
Surveyed by:	N/A
Research by:	JC
Plotted by:	SJ
Proposed Structures:	SJ
Approved:	T THIBAUT
P#	

NSTAR EVERSOURCE <small>1165 MASSACHUSETTS AVE. DORCHESTER, MASS. 02125</small>	
Plan of	BRIDGE STREET
	FALMOUTH
Showing PROPOSED HANDHOLE AND CONDUIT LOCATIONS	
Scale	1"=20'
Date	December 4, 2021
SHEET	1 of 1

December 7, 2021

Town of Falmouth
59 Town Hall Square
Falmouth, MA 02540

Dear Nicholas Croft,

Enclosed is a petition to install approximately thirty (55) feet of conduit and one (1) handhole in Bridge Street, Falmouth.

This proposed location is required to provide electrical service to customer at #2 Bridge Street. This petition will require a notice to abutters and a hearing.

Will you please present this petition before the Board for customary action and approval?

If you have any questions, please email Jessica.elder@eversource.com.

Warm Regards,

Jessica Elder

Jessica Elder
Right of Way Agent
NSTAR Electric
d/b/a EVERSOURCE ENERGY



WO# 5034172
BRIDGE STREET
FALMOUTH, MA.

45 14 000 042
1 BRIDGE STREET
N/F
BONOLI, STEVEN R.
BONOLI, DENISE
P.O. BOX 991
EAST FALMOUTH, MA. 02536

45 09 000 041
2 BRIDGE STREET
N/F
CATALDO, RALPH J.
CATALDO, MICHELLE C.
33 DRY RUN RD.
EAST FALMOUTH, MA. 02536

45 09 000 040
8 BRIDGE STREET
N/F
8 BRIDGE ST HOLDINGS LLC.
C/O BETTY WATANABE
30231 CHERET PL.
RANCHO PALOS, CA. 90275

**PETITION FOR
UNDERGROUND CABLE AND CONDUIT LOCATIONS
WO#5034172**

Barnstable, Massachusetts
To the Select Board of Falmouth, Massachusetts.

December 6, 2021

NSTAR ELECTRIC COMPANY d/b/a EVERSOURCE ENERGY

request permission to locate underground cables, conduits, and manholes, including the necessary sustaining and protecting fixtures, in, under, along and across the following public way or ways:

Bridge Street, Falmouth

To install approximately 55' feet of conduit and cable under town road near the intersection of Bridge Street and Menauhant Road

To install (1) new handhole labeled 235/H15 in public ROW on westerly side of road

This work is to be done to provide electric service to #2 Bridge Street.

Wherefore it prays that after due notice and hearing as provided by law, it be granted a location for and permission to install and maintain underground cables, conduits, and manholes, together with such sustaining and protecting fixtures as it may find necessary, said underground cables, conduits, and manholes to be installed in accordance with the plan files herewith marked Plan No. 5034172 Dated December 4, 2021.

**NSTAR ELECTRIC COMPANY
d/b/a EVERSOURCE ENERGY**

By *Jessica Elder*

Right of Way Agent
Jessica S. Elder

FORM OF ORDER FOR
UNDERGROUND CABLE AND CONDUIT LOCATIONS
WO#5034172

SELECT BOARD FOR THE TOWN OF FALMOUTH, MASSACHUSETTS.

Notice having been given and a public hearing held, as provided by law,
IT IS HEREBY ORDERED: that the NSTAR ELECTRIC COMPANY d/b/a EVERSOURCE ENERGY be and it is hereby granted a location for and permission to install and maintain underground cables, conduits and manholes, together with such sustaining and protecting fixtures as said Company may deem necessary, in, under, along and across the public way or ways hereinafter referred to, as requested in petition of said Company dated the 6th day of December, 2021.

All construction under this order shall be in accordance with the following conditions:

Cables, conduits, and manholes shall be installed substantially at the point indicated upon the plan marked Plan No.5034172 Dated December 4, 2021 filed with said petition. The following are the public ways or parts of ways under, along and across which the cables above referred to may be installed under this order.

Bridge Street, Falmouth

Easterly from new handhole 235/H15 at base of pole 235/15, to install approximately 55' (feet) of conduit

One (1) 55' Conduit
One (1) Handhole #235/H15

I hereby certify that the foregoing order was adopted at a meeting of the Select Board of the Town of Falmouth, Massachusetts held on the 10th day of January 2021.

Shyles A Downey
Clerk of Select Board

_____, Massachusetts _____ 2021

Received and entered in the records of location orders of the Town of Falmouth
Book _____ Page _____.

Attest:

Town Clerk

We hereby certify that on January 6 2021, at 2:00 o'clock,
P. M. at Falmouth Town Hall a public hearing was held on the
petition of the

NSTAR ELECTRIC COMPANY d/b/a EVERSOURCE ENERGY

for permission to install and maintain the underground cables, conduits, manholes and fixtures described in the order herewith recorded, and that we mailed at least seven days before said hearing a written notice of the time and place of said hearing to each of the owners of real estate (as determined by the last preceding assessment for taxation) along the ways or parts of ways upon which the Company is permitted to install underground cables, conduits, manholes and fixtures under said order. And that thereupon said order was duly adopted.

Select Board for the Town of
Falmouth, Massachusetts

CERTIFICATE

I hereby certify that the foregoing is a true copy of a location order and certificate of hearing with notice adopted by the Select Board of the Town of Falmouth, Massachusetts, on the 10th day of January 2021, and recorded with the records of location orders of said Town, Book _____, Page _____.

This certified copy is made under the provisions of Chapter 166 of General Laws and any additions thereto or amendments thereof.

Attest:

Town Clerk.



TOWN OF FALMOUTH

Office of the Town Manager & Select Board

59 Town Hall Square, Falmouth, Massachusetts 02540
Telephone (508) 495-7320
Fax (508) 457-2573

PUBLIC HEARING NOTICE

You are hereby notified that a hearing will be held at Falmouth Town Hall in the Small Conference Room at 2:00 p.m. on Thursday, January 6, 2022, upon the petition of NSTAR Electric Company d/b/a Eversource Energy to install approximately 55' feet of conduit and cable under town road near the intersection of Bridge Street and Menauhant Road and to install (1) new handhole labeled 235/H15 in public ROW on westerly side of road. This work is to be done to provide electric service to #2 Bridge Street, Falmouth.

Per Order of the Falmouth Select Board

Publication Date: Friday, December 24, 2021, Falmouth Enterprise

Account #2056

SUMMARY OF ACTIONS

1. Administrative Orders

- c. Vote to approve letter of support of Woods Hole Diversity Action Committee's grant proposal for NSF INCLUDES

Diane Davidson

From: Kayleah Griffen <kgriffen@whoi.edu>
Sent: Tuesday, December 21, 2021 8:52 AM
To: Falmouth Selectboard
Cc: Onjale Scott Price
Subject: Request for letter of support in DEI issues

Hello Falmouth Select Board,

My name is Kayleah Griffen and I am reaching out on behalf of the Woods Hole Diversity Advisory Committee because we are preparing a grant proposal for NSF INCLUDES which would further diversity, equity and inclusion within the geoscience community. We are requesting that you help us bring our proposal to reality by writing us a letter of support.

Our program proposal includes creating a network between ourselves and underrepresented minority serving institutions which allows networking, educational research, provides NSF resources, and connections to Cape Cod organizations to bring together students and ambassadors from URMs with our community. We will measure progress in engaging, training and professionalizing students as well as identifying and addressing hiring barriers. We will measure the scale of our strategies, leadership developing, and an increase in institutional capacity. We will keep the community apprised of our results through social media, informing the INCLUDES National network as well as creating publications and attending conference sessions.

As Falmouth has recently hired a town DEI Officer, and is actively striving to be more diverse and inclusive supporting us in this proposal would feed back into improving the town DEI initiatives as the science institutions in Woods Hole are one of the largest employers in Falmouth. Supporting this proposal could entail sending the Town DEI Officer to workshops, trainings, and events that we host or recommend and paying for their time to attend such activities.

I am happy to answer any questions you may have or direct you to someone who can answer, Onji is ccd as a great resource to ask questions to, otherwise other points of contact are also listed below. I request this to be an agenda item for your January 10 meeting, and that a letter of support could be voted on and approved at that meeting. I request that if the select board decides to write a letter of support, you have it to me by January 11. This way I can consolidate all the letters of support we receive to be included in time for the proposal deadline.

Thank you and Happy Holidays!
Kayleah

NSF INCLUDES Proposal team
Lauren Mullineaux - lmullineaux@whoi.edu
Onjalé Scott Price - onjale.scottprice@whoi.edu
Samuel Laney - slaney@whoi.edu
Adam Subhas - asubhas@whoi.edu

SUMMARY OF ACTIONS

1. Administrative Orders

- d. Vote to approve request from The 300 Committee for a Conservation Restriction for the Florence Sylvia Woodland, 0 Millstone Street, Falmouth, MA 02556

GRANTOR: The 300 Committee Land Trust, Inc.
GRANTEE: Town of Falmouth, Conservation Commission
ADDRESS OF PREMISES: 0 Millstone Street, Falmouth, MA 02556
FOR GRANTOR'S TITLE SEE: Barnstable County Registry of Deeds, Book 32735, Page 281
FOR PLANS OF RECORD SEE: Barnstable County Registry of Deeds, Plan Book 310 Page 25; Plan Book 684, Page 71; Plan Book 684 Page 92

CONSERVATION RESTRICTION

THE 300 COMMITTEE LAND TRUST, INC., a Massachusetts charitable corporation, formed pursuant to Chapter 180 of the Massachusetts General Laws, having an office and mailing address at 157 Locust Street, Town of Falmouth, Barnstable County, Commonwealth of Massachusetts, 02540, being the sole owner of the Premises as defined herein, for its successors and assigns ("Grantor"), acting pursuant to Sections 31, 32, and 33 of Chapter 184 of the Massachusetts General Laws, grant with QUITCLAIM COVENANTS to the **TOWN OF FALMOUTH**, a Massachusetts municipal corporation with a principal place of business at 59 Town Hall Square, Town of Falmouth, Barnstable County, Commonwealth of Massachusetts 02540, acting by and through its Conservation Commission, by authority of Section 8C of Chapter 40 of the Massachusetts General Laws, its permitted successors and assigns ("Grantee"), in consideration of Two Hundred Thousand Dollars and 00/100 (\$200,000.00), IN PERPETUITY AND EXCLUSIVELY FOR CONSERVATION PURPOSES, the following Conservation Restriction on land located in the Town of Falmouth, County of Barnstable, Commonwealth of Massachusetts consisting of the entirety of three parcels totaling approximately 9.31 acres, known locally as the *Florence Sylvia Woodland* ("Premises"), which Premises is more particularly described in Exhibit A and shown in the attached sketch plans in Exhibit B, which are incorporated herein and attached hereto.

I. PURPOSES:

This Conservation 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 purpose of this Conservation Restriction is to assure that the Premises will be maintained in perpetuity for conservation purposes, in a natural, scenic and undeveloped condition, and to prevent any use or change that would impair or interfere with its conservation and preservation values ("conservation values").

Barnstable County Community Preservation Act. The conveyance of this Conservation Restriction is made pursuant to the vote of the Town of Falmouth Special Town Meeting, at a duly called meeting held on June 28th, 2021, as Warrant Article __, to appropriate funds for the purpose of acquiring the Premises for conservation and passive outdoor recreation purposes as defined in the Community Preservation Act, Section 1 of Chapter 44B of the Massachusetts General Laws, et seq. as applied pursuant to Section 298 of Chapter 149 of the Acts of 2004, as amended by Sections 129-133 of Chapter 352 of the Acts of 2004 (the so called "Barnstable County Community Preservation Act" or "CPA"). An attested copy of the Spring Town Meeting vote is attached hereto as Exhibit C.

The conservation values include the following:

- **Open Space Protection.** The Premises contributes to the protection of the scenic and natural rural character of North Falmouth and the protection of the Premises will enhance the open-space value of these and surrounding conservation lands. The Premises is adjacent to a 1.023-acre parcel permanently protected by The 300 Committee Land Trust, Inc. ("The 300 Committee") and in the vicinity of 30.89 acres of Town-owned land on Old Main Street (surrounding the North Falmouth Elementary School). Conservation of the Premises will benefit the adjoining property and offer recreational opportunities. The Premises is also upgradient of Dam Pond and Conservation Commission-owned open space around Dam Pond, as well as open space owned by The 300 Committee Land Trust, Inc. (T3C) west of Quaker Road. Dam Pond is a spawning area for river herring and there is a herring run between Dam Pond and Buzzards Bay. Protection of the Premises will protect water quality of Dam Pond and the herring run.
- **BioMap2.** The Premises consists of approximately 9.31 acres which falls approximately 98% within a Massachusetts Natural Heritage and Endangered Species Program ("NHESP")-designated BioMap2 Core Habitat containing Species of Conservation Concern. The protection of the Premises aligns with NHESP's goals of wildlife and habitat protection. BioMap2, published in 2010, was designed to guide strategic biodiversity conservation in Massachusetts over the next decade 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 and species of conservation concern identified in the State Wildlife Action Plan.
- **Soils.** The Premises contains about 95% Farmland soils of Statewide Importance, and about 50% Prime Forest Land soils. Permanent protection of the Premises with this Conservation Restriction will ensure that these soils will remain undisturbed in perpetuity.
- **Protection of Wildlife Habitat.** The 9.31-acre parcel is large enough to support native wildlife including coyotes, foxes, deer, opossum, rabbits, wild turkeys, and raccoons, among other animals common to Cape Cod woodlands. The Premises is located within 0.5 miles of a NHESP identified Priority Area for Rare Species to the north. The Premises is also comprised of pitch pine-oak upland forest, a SWAP-designated Large-Scale Habitat

containing up to 46 Species of Greatest Conservation Need (Chapter 4, p. 170). The Premises is also located near a freshwater pond (Dam Pond) which supports fish and wildlife and which is protected as a conservation parcel.

- Protection of Native Plant Habitat. The Premises consists of a mature native species landscape, including pitch pine-oak upland forest, in addition to white pine, black oak, black locust, and American beech. The Premises also contains other important native plant species, such as sassafras, bayberry, goldenrod, wintergreen, and American holly. Based on information obtained during a site visit, the undergrowth consists of flora which indicate the parcel has been largely undisturbed for many years, making it unusual among Falmouth parcels.
- Public Access. Public access to the Premises will be permitted. The Premises will be available for passive outdoor recreation, education, and nature study. It will add needed close-to-home open space access for Falmouth residents and visitors.
- Consistency with Clearly Delineated Barnstable County Conservation Policy. 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 conserve, preserve, or enhance a network of open space that contributes to the region’s natural and community resources and systems” (Open Space Goal, p. 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” (p. 30); and,
 - “To protect, preserve, or restore wildlife and plant habitat to maintain the region’s natural diversity” (Wildlife and Plant Habitat Goal, p. 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” (p. 32).

The Wildlife and Plant Habitat Goal will be served because the Premises falls almost entirely within an NHESP BioMap2 Core Habitat area which provides over nine acres of area for wildlife to roam, feed, and reproduce. Proximity to other nearby conservation areas and a freshwater pond increases the habitat value of the Premises.

Granting this Conservation Restriction will advance each of these objectives.

- Consistency with Clearly Delineated Town of Falmouth Conservation Policy. Protection of the Premises will further the Town of Falmouth’s documented goals regarding conservation of land. The *2014 Falmouth Open Space and Recreation Plan* guides efforts in the Town of Falmouth to protect the most sensitive natural resources and acquire the largest tracts of land that remain as open space. The Town values the establishment of green

corridors where open space can be linked, and partners with The 300 Committee and other land conservation organizations in Falmouth to achieve its goals. The number one goal of the Open Space Plan is to “acquire 30% of Falmouth’s total land area as high quality, permanently protected open space” (Goal 1, p. 77), and “all open space owned by the Town shall allow for public access.” The conservation of the Premises will increase protected open space and will allow for public access and passive recreation (Goals 2 and 3 of the Open Space Plan, pp. 77-78).

In 1991, the Town of Falmouth adopted a *Conservation Restriction Policy*, consisting of policies and guidelines approved by the Board of Selectmen, Assessors and Conservation Commission (updated and reaffirmed in 2001), which encourages the use of conservation restrictions in perpetuity as a means of “preserving open space . . . and providing scenic enjoyment . . .” and:

- to permanently protect open space;
- to limit or prevent construction on land of natural resource value; and
- to add to existing restricted land which is contiguous to the land proposed to be restricted.

Implementing this Conservation Restriction will assist in achieving each of the objectives of the Conservation Restriction Policy by permanently protecting 9.31 acres of natural woodlands and the rural character in the village of North Falmouth.

- 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)(1-4), because its conservation would: promote protection of neighboring state-recognized habitats as well as the ecosystem contained on and contiguous to the Premises; preserve open space and maintain the scenic and rural character of the vicinity for enjoyment by the public.
- Consistency with Clearly Delineated State Conservation Policy. The Premises possesses significant open space, natural, aesthetic, ecological, plant and wildlife habitat, land and water resource quality, watershed, and scenic values are of great importance to the Grantee and the people of Falmouth and the Commonwealth of Massachusetts.

For similar reasons to those listed above, each of these goals will be advanced by implementing this Conservation Restriction.

These and other conservation values of the Premises, as well as its current uses and state of improvement, are described in a Baseline Documentation Report (“Baseline Report”) prepared by Grantee with the cooperation of the Grantor, consisting of maps, photographs, and other documents and on file with the Grantee and referenced herein. The Baseline Report (i) is acknowledged by Grantor and Grantee to be a complete and accurate representation of the condition and values of the Premises as of the date of this Conservation Restriction, (ii) is intended to fully comply with applicable Treasury Regulations, and (iii) is intended to serve as an objective information baseline for subsequent monitoring of compliance with the terms of this Conservation Restriction as described herein. Notwithstanding the foregoing, the parties

may utilize any evidence of the condition of the Premises at the time of this grant other than the Baseline Report, should the Baseline Report be unavailable or if it does not adequately address the issues presented.

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

A. Prohibited Acts and Uses

Subject to the exceptions set forth herein, the Grantor will not perform or allow others to perform the following acts and uses which are prohibited on, above, and below the Premises:

- (1) Constructing, placing or allowing to remain any temporary or permanent building, tennis court, landing strip, mobile home, swimming pool, asphalt or concrete pavement, sign, fence, billboard or other advertising display, wind turbine, antenna, utility pole, tower, solar panel, solar array, conduit, line, septic system, subsurface leaching facility, stormwater system, or other temporary or permanent structure or facility on, above or under the Premises;
- (2) Mining, excavating, dredging or removing from the Premises of soil, loam, peat, gravel, sand, rock or other mineral resource or natural deposit or otherwise making topographical changes to the area;
- (3) Placing, filling, storing or dumping of soil, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, tree and other vegetation cuttings generated off-site, waste or other substance or material whatsoever or the installation of underground storage tanks;
- (4) Cutting, removing or otherwise destroying trees, grasses or other vegetation;
- (5) Activities detrimental to drainage, flood control, water conservation, water quality, erosion control, soil conservation, wildlife habitat, or archaeological conservation;
- (6) Use, parking or storage of vehicles including motorcycles, mopeds, all-terrain vehicles, motorized trail bikes, or any other motorized vehicles on the Premises except for vehicles necessary for public safety (i.e., fire, police, ambulance, other government officials) in carrying out their official duties or as necessary for the mobility impaired;
- (7) Subdivision or conveyance of a part or portion of the Premises alone, or division or subdivision of the Premises (as compared to conveyance of the Premises in its entirety which shall be permitted), and no portion of the Premises may be used towards building or development requirements on this or any other parcel;
- (8) The use of the Premises for business, residential or industrial use, or commercial recreation;
- (9) Any other use of the Premises or activity which is inconsistent with the purpose of this Conservation Restriction or which would impair its conservation values.

B. Reserved Rights and Exceptions

The Grantor reserves the right to conduct or permit the following activities and uses on the Premises, but only if such uses and activities do not impair the conservation values or purposes of this Conservation Restriction.

- (1) Vegetation Management. The selective removal of brush, pruning and cutting to prevent, control or remove hazards, disease, insect or fire damage, to control or remove invasive non-native plants, or to preserve the present condition of the Premises, including vistas as documented in the Baseline Report, trails and meadows;
- (2) Non-Native or Nuisance Species. The removal and control of non-native or invasive plant, animal, or insect species, the interplanting of native plant species in a manner that minimizes damage to surrounding, non-target species and preserves water quality. With the prior written approval of the Grantee, humane trapping and removal of animals for pest control;
- (3) Wildlife Habitat Improvement. With the prior written approval of the Grantee, measures designed to restore native biotic communities, or to maintain, enhance or restore wildlife, wildlife habitat, or rare or endangered species including selective planting of native trees, shrubs and plant species; regrading; removal or improvement of rock walls to facilitate wildlife passage; or replacement of existing non-native vegetation with suitable native species;
- (4) Archaeological Investigations. The right to conduct archaeological activities, including archaeological research, surveys, excavation and artifact retrieval, but only (a) after written notification to and approval by Grantee, and (b) in accordance with an archaeological field investigation plan prepared by or on behalf of the Grantor and approved in advance of such activity, in writing, by the Massachusetts Historic Commission ("MHC") State Archaeologist as required by Massachusetts General Laws. A copy of the results of any scientific investigation on the Premises is to be provided to the Grantee. Plans for restoration of the site of any archaeological activity shall be submitted to the Grantee in advance of restoration, and such restoration shall be conducted only in accordance with a plan approved by the Grantee.

Activities that might be regarded as affecting archaeological and historic resources, including but not limited to earth moving and the alteration of stone walls/cellar holes/features, shall not be deemed to be detrimental to archaeological and historic resources if a description of the proposed activity and its location is submitted in writing (e.g., on a Project Notification Form) with a plan of land (or assessors map) and a USGS map with the Premises outlined thereon, to MHC and MHC issues a letter stating that the proposed activity is not within a resource area or is determined to not have an adverse effect on said resources. Grantor and Grantee shall make every reasonable effort to prohibit any person from conducting archaeological field investigation on the Premises, including metal detecting, digging, or artifact collecting, without approval of the MHC State Archaeologist

(or appropriate successor official), and shall promptly report any such prohibited activity to the MHC State Archaeologist (or appropriate successor official). Grantor and Grantee shall include the prohibition against digging, artifact collecting, or metal detecting in any list of rules for visitors to the Premises;

- (5) Signs and Boundary Markers. The installation of temporary and permanent boundary monuments delineating the Premises; and the erection, maintenance and replacement of signs and educational kiosks with respect to hunting, trespass, trail access, identity and address of the Grantor and Grantee, sale of the Premises, the protected conservation values, any gift, grant or other applicable source of support for the conservation of the Premises, and similar signs, so long as such signage is consistent with Reserved Rights and purposes of this Conservation Restriction. Signage may be subject to any applicable regional and local approvals;
- (6) Trails. The marking, clearing and maintenance of existing trails as shown in the Baseline Report. With prior written approval of the Grantee, the construction of new trails or the relocation or alteration of existing trails, provided no such construction, relocation, or alteration results in trails that are wider than eight (8) feet. A wheelchair accessible trail no wider than eight (8) feet may be allowed extending from the auxiliary parking lot (see Section II(B)(7)), and may be paved as needed to meet universal accessibility requirements.
- (7) Parking. In accordance with the rights denoted in Grantor's deed of record (Barnstable County Registry of Deeds Book 32735, Page 281), Grantor may install a parking area to the southwest of the dirt drive extending from Millstone Street shown on the plan recorded at the Barnstable County Registry of Deeds as Plan Book 684, Page 71, and within eighty-five feet (85') of the westerly sideline of Millstone Street, and a trailhead kiosk on Parcel A and/or its immediate vicinity on Lot B (see Exhibit B.3). Grantor may also install an auxiliary parking area in the area on Lot B west of Lot 3 (as shown on Exhibit B.4) for up to four (4) additional vehicles. One or both of these parking areas may be paved as needed to enhance public access, provided measures are taken to limit stormwater runoff.
- (8) Fences. With the prior written approval of the Grantee, the construction, and thereafter without the prior written approval of the Grantee, the maintenance, of open-faced (i.e., sight-pervious) fences, such as wooden split rail, for property boundary delineation, safety reasons, and trail demarcation, so long as the dimensions and design of said fences do not impede free wildlife passage, or the public scenic view across the Premises;
- (9) Outdoor Passive Recreational Activities. Members of the public are permitted to conduct non-commercial, passive recreational uses of the Premises, subject to reasonable regulation by the Grantor. Passive outdoor recreation activities may include walking, jogging, cross-country skiing, bird watching, hiking, wildlife observation, bicycling, photography, fishing, sketching, painting, and other similar activities that do not conflict with the conservation values and that are permitted by law;

- (10) Permits, Regulations, Laws. The exercise of any right reserved by Grantor under this Section II(B) shall be in compliance with zoning, and all applicable federal, state and local laws, rules, regulations, and permits. The inclusion of any reserved right requiring a permit from a public agency does not imply that the Grantee or the Commonwealth takes any position whether such permit should be issued.
- (11) Best Management Practices. The exercise of any right reserved by Grantor under this Section II(B) shall follow established, up to date, and regionally-applicable Best Management Practices or similar standards developed by a governmental agency or other entity with known expertise in the area of practice and designed to protect the natural features potentially affected by the action(s).

D. Notice and Approval.

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

Grantee agrees to use reasonable diligence to respond to Grantor's request within sixty (60) days of delivery. Grantee's failure to respond within the sixty (60) day period shall be deemed a denial of the request (hereinafter, a "Deemed Denial"). A Deemed Denial is not final or binding on Grantee, and Grantor may submit the same or a similar request for approval.

III. LEGAL REMEDIES OF THE GRANTEE

A. Legal and Injunctive Relief.

The rights hereby granted shall include the right to enforce this Conservation Restriction by appropriate legal proceedings and to obtain injunctive and other equitable relief against any violations, including, without limitation, relief requiring restoration of the Premises to their condition prior to the time of the injury complained of (it being agreed that the Grantee will have no adequate remedy at law). The rights hereby granted shall be in addition to, and not in limitation of, any other rights and remedies available to the Grantee for the enforcement of this Conservation Restriction. Grantee agrees to cooperate for a reasonable period of time prior to resorting to legal means in resolving issues concerning violations provided Grantor ceases objectionable actions and Grantee determines there is no ongoing diminution of the conservation values. Prior to resorting to legal means to enforce any violations of this Conservation Restriction, the Grantee shall first notify the Grantor and request the Grantor to remedy the violation. The Grantor shall cease the violation immediately upon receipt of notice of the violation and make a good faith effort to

remedy the violation. If the violation is not remedied within sixty (60) days of receipt of notice but the Grantor has complied with its obligations under the preceding sentence, then the parties shall make a good faith effort to mediate the dispute before the Grantee commences litigation. If the Grantor has failed to comply with its obligations under this paragraph and the violation has not been remedied within sixty (60) days of receipt of notice, the Grantee may commence litigation without engaging in mediation.

Grantee shall not, however, have the right to bring an action against Grantor with respect to a violation of this Conservation Restriction by trespassers or other third persons whose entry on the Premises is not authorized or not voluntarily acquiesced in by Grantor; Grantor agrees that Grantor will not voluntarily acquiesce in any violation of this Conservation Restriction by trespassers or such other third persons; and Grantor further agrees that Grantor will make reasonable efforts to deter such activities and to remedy the violation and will cooperate with Grantee to enforce this Conservation Restriction against trespassers and such other third persons.

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

B. Non-Waiver.

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

C. Disclaimer of Liability

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

D. Acts Beyond the Grantor's Control

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

IV. ACCESS

The Grantor hereby grants to the Grantee, or its duly authorized agents or representatives, the right to enter the Premises (i) after reasonable notice and at reasonable times and in a reasonable manner, for the purpose of inspecting the Premises to determine compliance with or to enforce this Conservation Restriction; and, (ii) after sixty (60) days prior written notice, except in an emergency in which case notice shall be given as soon as is practicable, 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, abate or enforce any violation hereof unless the Grantor has prior to the expiration of said sixty (60) days given written notice to the Grantee reasonably addressing all alleged violations and setting forth a reasonable plan to remedy any such alleged violation and has made reasonable efforts to cease the activity or to begin remediation.

The Grantor grants access to the Premises to the general public, but only for the activities described in Section II(B)(9), subject to the Grantor's reserved right to establish reasonable rules, regulations, and restrictions on such permitted recreational use by the general public for the protection of the purposes and conservation values of this Conservation Restriction. Grantor has the right to control, limit, or prohibit by posting and other reasonable means activities or uses of the Premises not authorized in Section II(B)(9). The Grantor's right to grant public access across the Premises is subject to the restrictions described in this Conservation Restriction. Any public use which is permitted by the terms of this Conservation Restriction constitutes permission to use the Premises for purposes described in Section 17C of Chapter 21 of the Massachusetts General Laws and the Grantor and Grantee hereto benefit from exculpation from liability to the extent provided in such section. The Grantee may require the Grantor to post the Premises against any use that may result in creation of ruts and gullies or erosion or other damage to the natural resources of the Premises.

V. EXTINGUISHMENT

A. If circumstances arise in the future such as render the purpose of this Conservation Restriction impossible to accomplish, this 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. If any change in conditions ever gives rise to extinguishment or other release of the Conservation Restriction under applicable law, then Grantee, on a subsequent sale, exchange, or involuntary conversion of the Premises, shall be entitled to a portion of the proceeds in accordance with Section V(B), subject, however, to any applicable law which expressly provides for a different disposition of the proceeds and after complying with the terms of any gift, grant, or funding requirements, including any such requirements of the Barnstable County Community Preservation Act. Grantee shall use its share of the proceeds in a manner consistent with the conservation purpose set forth herein.

B. Proceeds. The Grantor and Grantee agree that the donation of this Conservation Restriction gives rise to a real property right, immediately vested in the Grantee, with a value that is equal to

thirty-three percent (33%) of the fair market value of the unrestricted Premises at the time.¹ For the purposes of this paragraph, said proportionate value shall remain constant.

C. Grantor/Grantee Cooperation Regarding Public Action. Whenever all or any part of the Premises or any interest therein is taken by public authority under power of eminent domain or other act of public authority, then the Grantor and the Grantee shall cooperate in recovering the full value of all direct and consequential damages resulting from such action. All related expenses incurred by the Grantor and the Grantee shall first be paid out of any recovered proceeds, and the remaining proceeds shall be distributed between the Grantor and Grantee in accordance with Section V(B), after complying with the terms of any law, gift, grant, or funding requirements, including any such requirements of the Barnstable County Community Preservation Act. If a less than fee interest is taken, the proceeds shall be equitably allocated according to the nature of the interest taken. The Grantee shall use its share of the proceeds like a continuing trust in a manner consistent with the conservation purposes of this grant.

VI. DURATION & ASSIGNABILITY

A. Running of the Burden. The burdens of this Conservation Restriction shall run with the Premises in perpetuity, and shall be enforceable against the Grantor and the successors and assigns of the Grantor holding any interest in the Premises.

B. Execution of Instruments. The Grantee is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Conservation Restriction; the Grantor, on behalf of itself and its successors and assigns, appoints the Grantee their attorney-in-fact to execute, acknowledge and deliver any such instruments on its behalf. Without limiting the foregoing, the Grantor and its successors and assigns agree themselves to execute any such instruments upon request.

C. Running of the Benefit. The benefits of this Conservation Restriction shall run to the Grantee, shall be in gross and shall not be assignable by the Grantee, except in the following instances:

As a condition of any assignment, the Grantee shall require that the purpose of this Conservation Restriction continues to be carried out; that the assignee is not an owner of the fee in the Premises, and the assignee, at the time of the assignment, qualifies under Section 170(h) of the Internal Revenue Code of 1986, as amended, and applicable regulations thereunder, and is a donee eligible to receive this Conservation Restriction under Section 32 of Chapter 184 of the Massachusetts General Laws. Any assignment will comply with Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, if applicable.

VII. SUBSEQUENT TRANSFERS

¹ The 300 Committee Land Trust, Inc. (Grantor) purchased the Premises for \$600,000; the Town of Falmouth has purchased the development rights in the Premises (i.e., the Conservation Restriction) from Grantor for consideration of \$200,000, which is 33% (rounded) of \$600,000.

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

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

VIII. ESTOPPEL CERTIFICATES

Upon request by the Grantor, the Grantee shall, within 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.

IX. NON MERGER

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

X. AMENDMENT

If circumstances arise under which an amendment to or modification of this Conservation Restriction would be appropriate, Grantor and Grantee may jointly amend this Conservation Restriction; provided that no amendment shall be allowed that will affect the qualification of this Conservation Restriction or the status of Grantee under any applicable laws, including Section 170(h) of the Internal Revenue Code of 1986, as amended, or Sections 31, 32 and 33 of Chapter 184 of the Massachusetts General Laws. Any amendments to this conservation restriction shall occur only in exceptional circumstances. The Grantee will consider amendments only to correct an error or oversight, to clarify an ambiguity, or where there is a net gain in conservation value. All expenses of all parties in considering and/or implementing an amendment shall be borne by the persons or entity seeking the amendment. Any amendment shall be consistent with the purposes of this Conservation Restriction, shall not affect its perpetual duration, shall be approved by the Secretary of Energy and Environmental Affairs and if applicable, shall comply with the provisions of Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, and

any gifts, grants or funding requirements. Any amendment shall be recorded in the Barnstable County Registry of Deeds.

XI. EFFECTIVE DATE

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

XII. NOTICES

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

To Grantor: The 300 Committee Land Trust, Inc.
157 Locust Street
Falmouth, MA 02540

To Grantee: Town of Falmouth, Conservation Commission
59 Town Hall Square
Falmouth, MA 02540

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

XIII. GENERAL PROVISIONS

A. Controlling Law. The interpretation and performance of this Conservation Restriction shall be governed by the Laws of the Commonwealth of Massachusetts.

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

C. Severability. If any provision of this Conservation Restriction or the application thereof to any person or circumstance is found to be invalid, the remainder of the provision of this Conservation Restriction shall not be affected thereby.

D. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to this Conservation Restriction and supersedes all prior discussions, negotiations, understandings or agreements relating to the Conservation Restriction, all of which are merged herein.

XIV. MISCELLANEOUS

A. Pre-Existing Public Rights. Approval of this Conservation Restriction pursuant to Sections 31, 32, and 33 of Chapter 184 of the Massachusetts General Laws by any municipal officials and by the Secretary of Energy and Environmental Affairs is not to be construed as representing the existence or non-existence of any pre-existing rights of the public, if any, in and to the Premises, and any such pre-existing rights of the public, if any, are not affected by the granting of this Conservation Restriction.

B. Subordination. The Grantor shall record at the appropriate Registry of Deeds simultaneously with this Conservation Restriction all documents necessary to subordinate any mortgage, promissory note, loan, lien, equity credit line, refinance assignment of mortgage, lease, financing statement or any other agreement which gives rise to a surety interest affecting the Premises.

C. Prior Encumbrances. At the time of this Conservation Restriction's Effective Date, the Premises was subject to an access easement recorded in the Barnstable County Registry of Deeds in Book 32735, Page 281, benefitting the owner of Lot 1, and shown on the plan recorded in the Barnstable County Registry of Deeds in Plan Book 684, Page 71, as the "Access Easement Over Lot B & Parcel A".

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

Signature pages:

Grantor – The 300 Committee Land Trust, Inc.
Grantee Acceptance – Town of Falmouth, Conservation Commission
Approval by the Town of Falmouth Select Board
Approval of the Secretary of Energy and Environmental Affairs

Exhibits:

Exhibit A: Description of Premises
Exhibits B.1, B.2, B.3, and B.4: Sketch Plans of Premises
Exhibit C: Copy of 2021 Annual Town Meeting Vote

*FLORENCE SYLVIA WOODLAND CONSERVATION RESTRICTION
FALMOUTH, MA*

At a meeting duly held _____ 2021, The 300 Committee Land Trust, Inc. voted to grant the foregoing Conservation Restriction to the Town of Falmouth, acting by and through its Conservation Commission, and hereby grants the foregoing Conservation Restriction to the Town of Falmouth, acting by and through its Conservation Commission.

Grantor:

Anne-Marie Runfola, President

Gary Vostok, Treasurer

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss

_____ 2021

Then personally appeared the above named Anne-Marie Runfola, President of The 300 Committee Land Trust, Inc. and Gary Vostok, Treasurer of The 300 Committee Land Trust, Inc. named in the forgoing instrument, and proved to me through satisfactory evidence of identification, which was personal knowledge of identity, to be the persons whose names are signed on the document and acknowledged they are duly authorized to act on behalf of said corporation, and forgoing instrument to be the free act and deed of the corporation, before me.

Jessica Whritenour, Notary Public
My commission expires:

**ACCEPTANCE OF GRANT BY THE TOWN OF FALMOUTH
CONSERVATION COMMISSION**

We, the undersigned, being a majority of the Conservation Commission of the Town of Falmouth, Massachusetts, hereby certify that at a public meeting duly held on _____, 2021 the Conservation Commission voted to approve and accept the foregoing Conservation Restriction from The 300 Committee Land Trust, Inc. pursuant to Section 32 of Chapter 184 and Section 8C of Chapter 40 of the Massachusetts General Laws and do hereby accept the foregoing Conservation Restriction.

TOWN OF FALMOUTH
CONSERVATION COMMISSION:

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss:

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

Notary Public
My Commission Expires:

APPROVAL OF SELECT BOARD

We, the undersigned, being a majority of the Select Board of the Town of Falmouth, hereby certify that at a public meeting duly held on _____, 2021, the Select Board voted to approve the foregoing Conservation Restriction from The 300 Committee Land Trust, Inc. to the Town of Falmouth, acting by and through its Conservation Commission, in the public interest pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws.

**TOWN OF FALMOUTH
SELECT BOARD:**

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss:

On this _____ day of _____ 2021, before me, the undersigned notary public, personally appeared _____ Chair, 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:

**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 300 Committee Land Trust, Inc. to the Town of Falmouth, acting by and through its Conservation Commission, has been approved in the public interest pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws.

Dated: _____, 2021

KATHLEEN A. THEOHARIDES
Secretary of Energy and Environmental Affairs

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss:

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

Notary Public
My Commission Expires:

EXHIBIT A

Description of the Premises

The Premises subject to this Conservation Restriction is the entirety of three parcels located in the Town of Falmouth, Barnstable County, Commonwealth of Massachusetts, containing a total of 9.31 acres, more or less, herein collectively referred to as "Premises," described as follows:

Parcel 1: Lot B shown on the plan entitled "Plan of Lots B, C & D of George W. Sylvia in North Falmouth," Scale 1" = 80', date: Nov. 10, 1976, prepared by Newell B. Snow, R.L.S., Buzzards Bay, Mass.," which plan is recorded in Barnstable County Registry of Deeds at Plan Book 310 Page 25. Said Lot B contains 7.0 acres, more or less. See Exhibit B.2.

Parcels 2 and 3:

Parcel A, containing 2,639 square feet, more or less, and **Parcel B**, containing 2.25 acres, more or less, both shown on a plan entitled "Plan of Land prepared for Gerald Sylvia, Millstone Street, North Falmouth, Massachusetts" Scale: 1"=40', date: Jan. 16, 2020, prepared by BSS Design, Inc.," which plan is recorded in Barnstable County Registry of Deeds at Plan Book 684, Page 71. See Exhibit B.3.

Within Lot B and Parcel A, there is an "Access Easement" for the benefit of Lot 1 as shown on Plan Book 684 Page 92, as described in the deed of record in Deeds Book 32735 Page 281, which is not affected by the terms of this Conservation Restriction. See Exhibit B.4.

Street Address: 0 Millstone Street, Falmouth, Massachusetts, 02556.

EXHIBIT B.1

Reduced Sketch of Premises (“Parcel A,” “Parcel B” and “Lot B”)

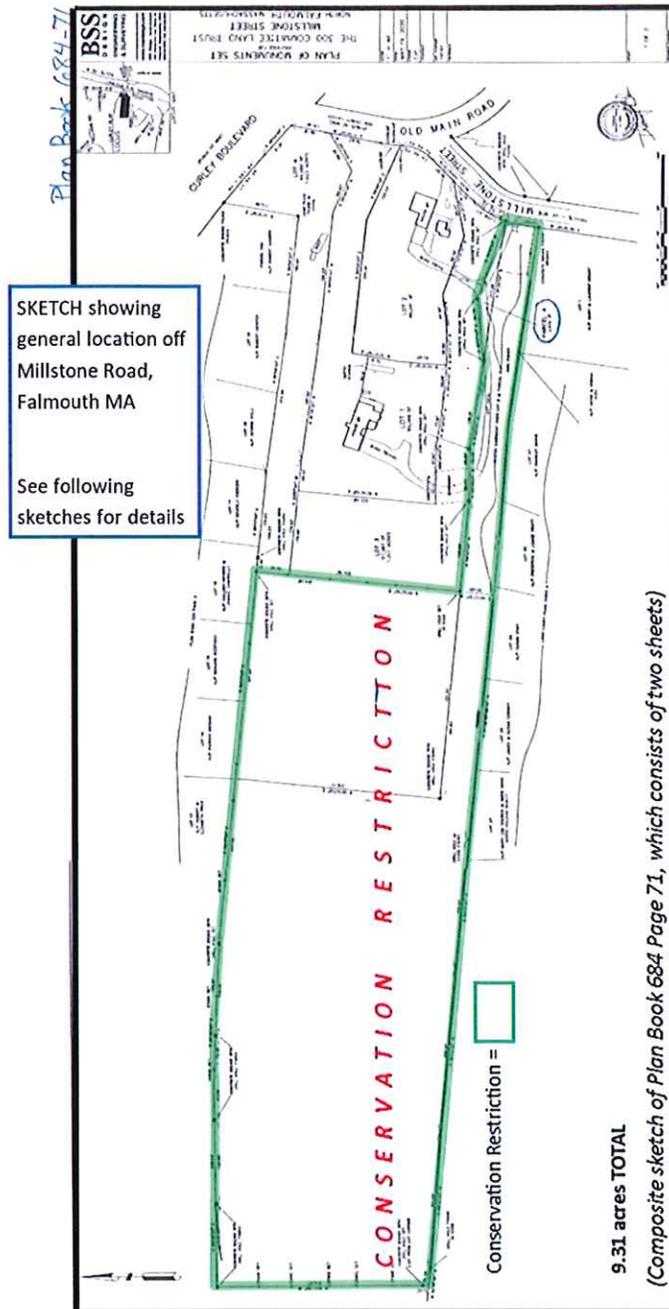


EXHIBIT B.2

Reduced Sketch of Premises ("Lot B") Plan Book 310-25

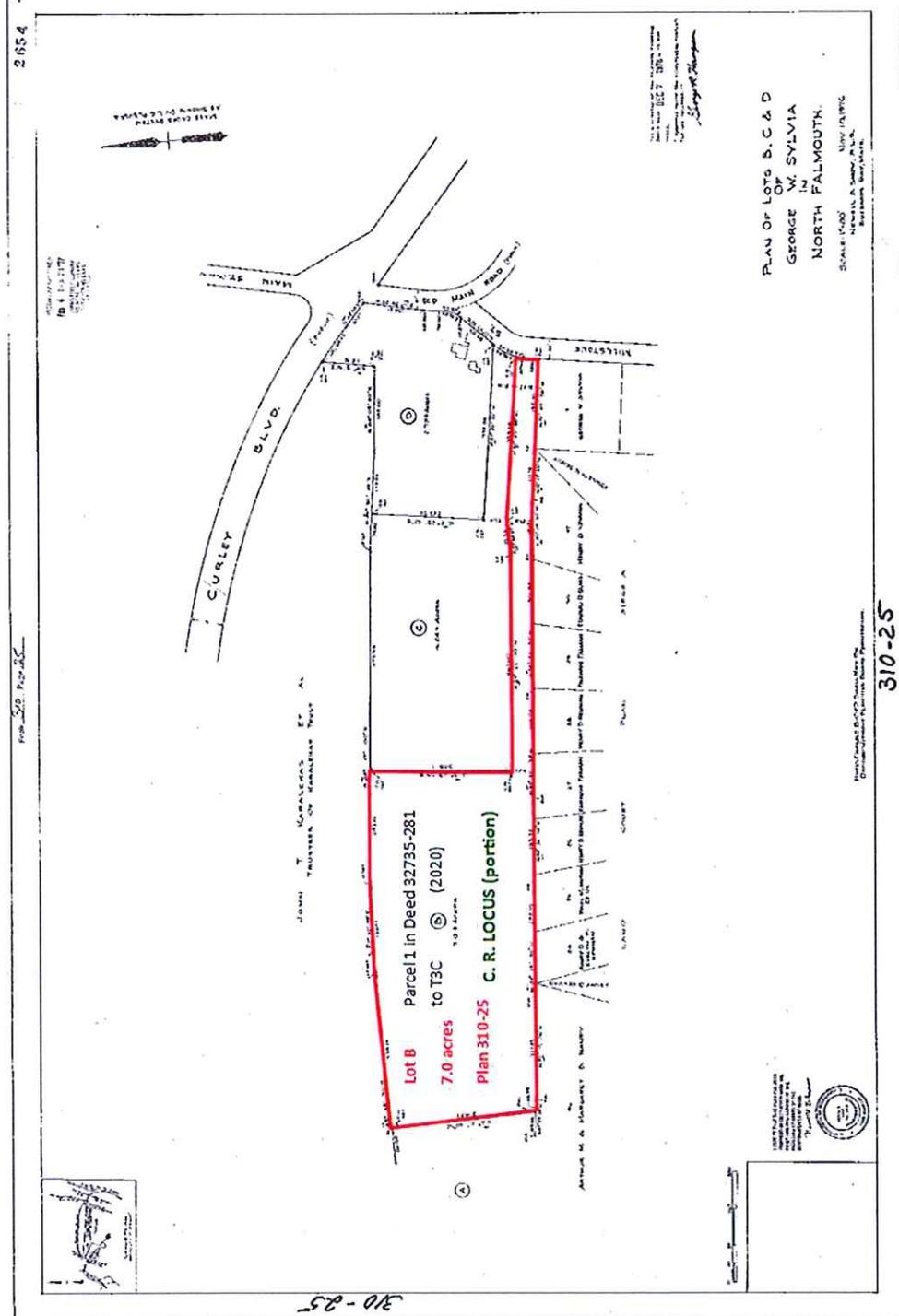
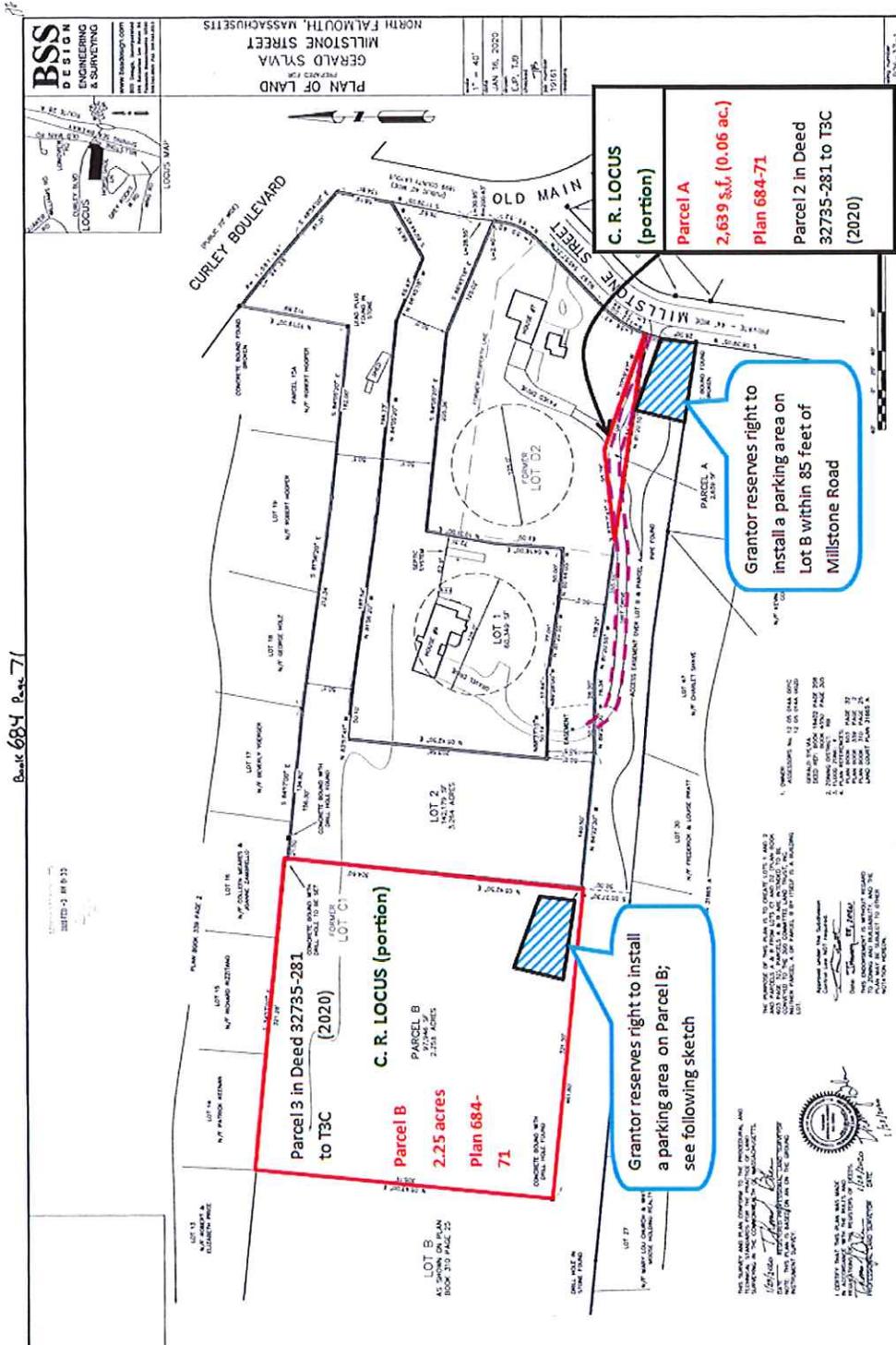


EXHIBIT B.3

Reduced Sketch of Premises ("Parcel A," "Parcel B") Plan Book 684-71

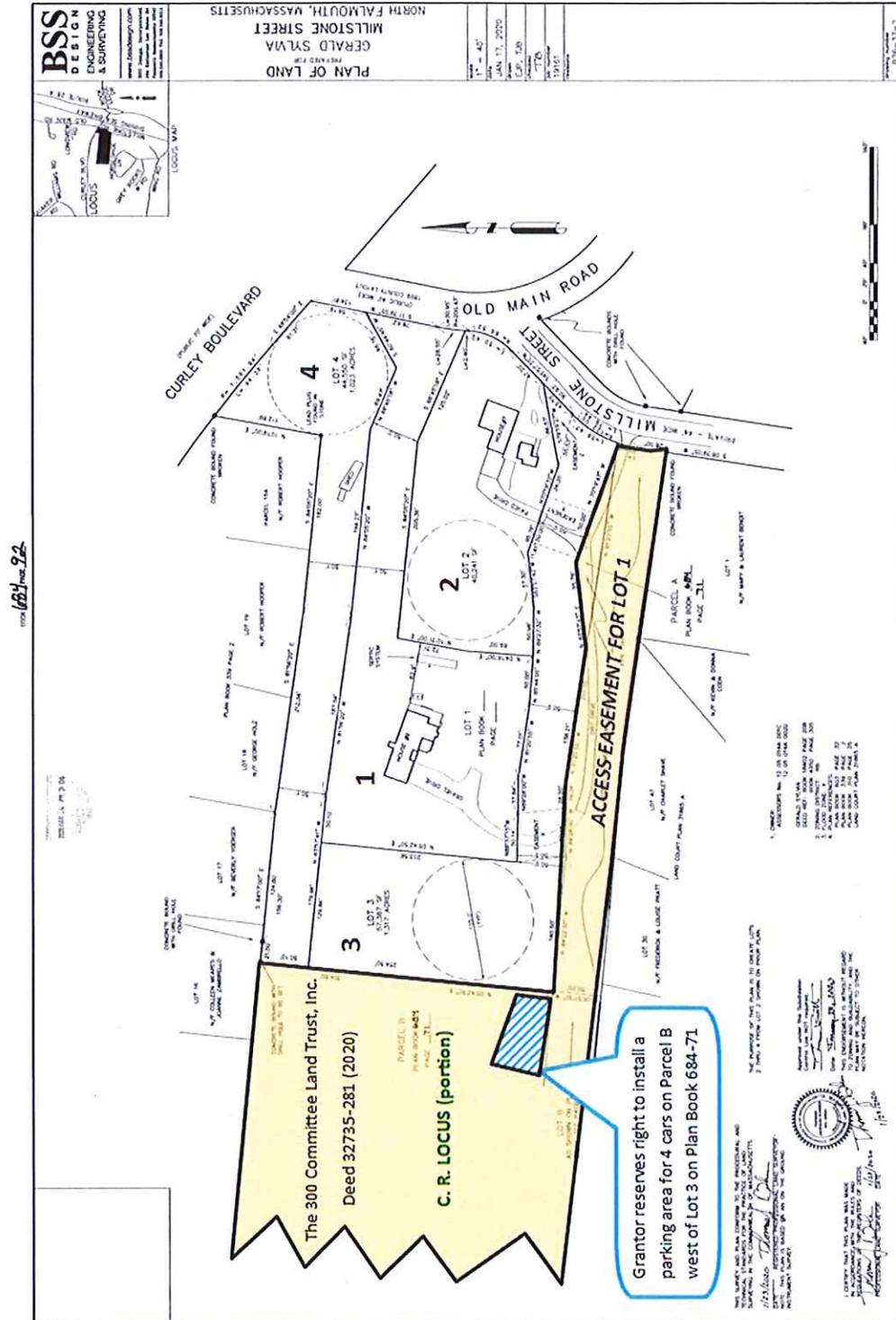


Book 684 Page 71

684-71

EXHIBIT B.4

Reduced Sketch of Premises (Parking Area Detail on Plan Book 684-92)



*FLORENCE SYLVIA WOODLAND CONSERVATION RESTRICTION
FALMOUTH, MA*

EXHIBIT C
2021 Town Meeting Vote
[pending]

SUMMARY OF ACTIONS

1. Administrative Orders

- e. Vote to waive fees for Conservation Commission 'Request for Determination' applications for eleven osprey pole installations by the Osprey Project and Together We Can at various locations

To: The Falmouth Select Board

From: Kevin Friel and Barbara Schneider, co-sponsors of The Osprey Project

12/15/21

We are writing to you on behalf of The Osprey Project to make two requests that exist under your purview. First, we ask for your permission to raise an Osprey nesting structure on a parcel of Town land. This parcel is on the "old route 28" in Waquoit, along the Child's River. A current nest is on top of a telephone pole just to the south of Rt. 28 and will be removed early this spring. The proposed new location is roughly 75 feet from the problem nest along the edge of the Child's River, overlooking the old Edward's Boatyard, currently Bosun's. This platform will be a part of our town-wide effort to relocate Osprey from utility poles to safe alternative structures. The location we have chosen for this nesting structure will also be cleared of a few Black Locust trees, further enhancing the local ecosystem. Attached is a map showing the current location of the problematic Osprey nest and the location we have proposed to erect a safe alternative. The Osprey Project will erect this structure at no cost to the Town thanks to private donations and will maintain the pole to ensure the birds' safety.

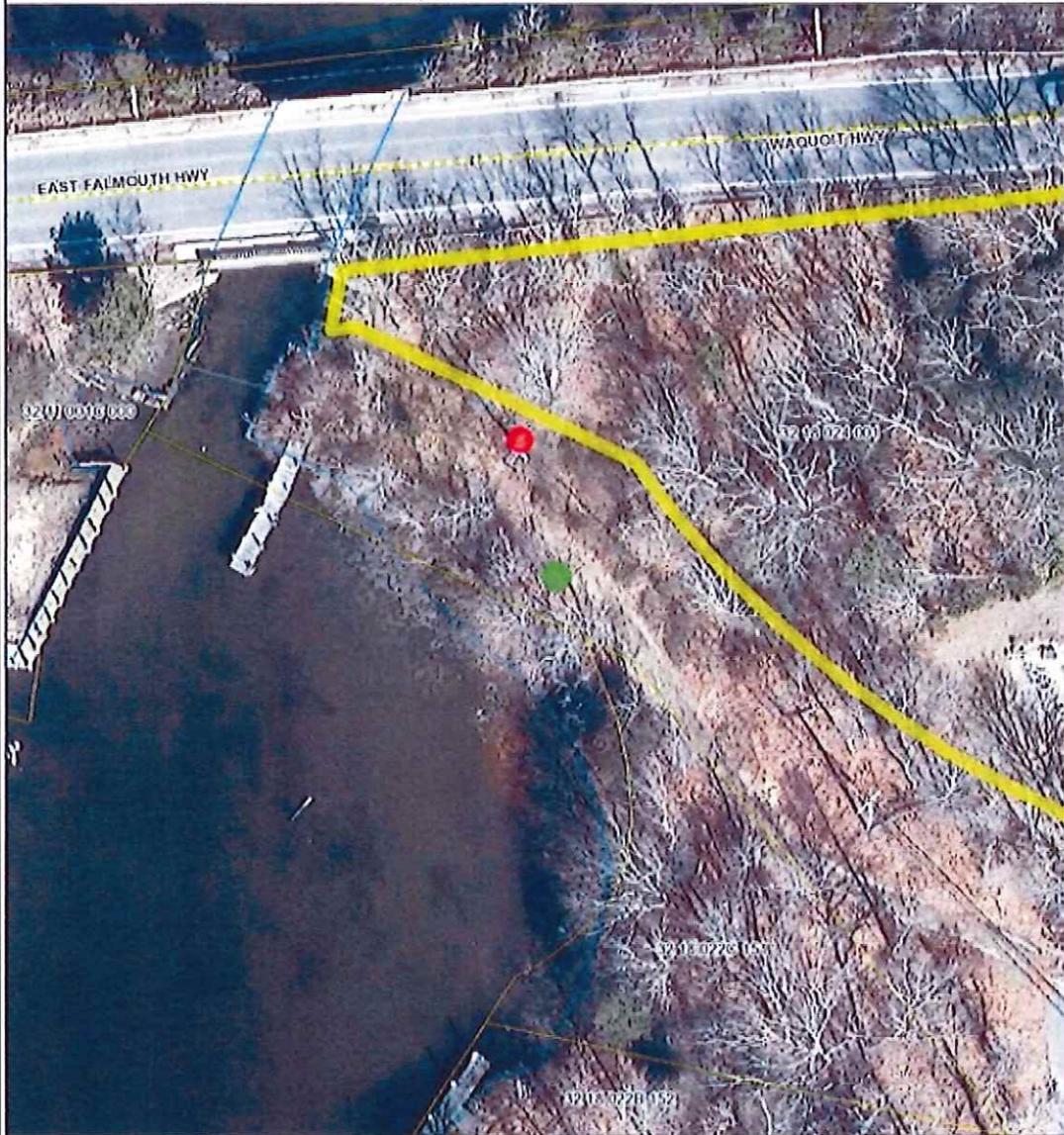
Second, we need to submit 11 RDAs for permitting, the normal fee for which is \$116 each. Those permits will allow us to place safer alternative osprey nesting sites close to current problematic ones. We ask that the Select Board waives these fees as we are doing this in an attempt to stop power outages and fires as well as electrocution of a number of these birds all over the Town of Falmouth.

Thank you for consideration of our two requests and for your support in our efforts to make all of our lives safer. Each nest we raise will potentially prevent a fire and/or power outage, while possibly even saving a few of these magnificent summer residents we all have grown to love.

Sincerely,

Kevin Friel and Barb Schneider

The Osprey Project



1" = 35 ft

- Parcel
- Road Ownership
 - all other values
 - COUNTY, TOWN
 - PRIVATE
 - STATE
- Water Features
 - () POND
 - () STREAM

RED CIRCLE = utility pole nest

GREEN CIRCLE = proposed new nest pole site

Disclaimer
 The Town of Falmouth makes no claims, no representations and no warranties, express or implied, concerning the utility (accuracy or implied), the reliability or the accuracy of the GIS data and/or GIS products furnished by the Town, including the implied validity of any use of such data. Parcel lines are graphical representations only.
 Planimetric features derived from 305 Aerials.
 Prepared by Falmouth GIS.

SUMMARY OF ACTIONS

1. Administrative Orders

- f. Vote to approve application to MA Department of Housing and Community Development for Local Initiative Program for Local Action Units and related documents consistent with Special Permit approved by the Zoning Board of Appeals for 533-539 Woods Hole Road

SEB Housing LLC

257 Hillside Ave
Needham, MA 02494

August 26, 2021

Douglas C. Brown
Select Board Chair
59 Town Hall Square
Falmouth, MA 02540

Re: Lighthouse Station at Woods Hole, Falmouth, MA– Submission of Local Action Unit Application to the Department of Housing and Community Development

Dear Mr. Brown:

SEB Housing, LLC has been retained by Woods Hole Partners, LLC, the developer of Lighthouse Station at Woods Hole, located at 533-539 Woods Hole Road, Falmouth. As such, we are assisting our client and the Town of Falmouth in the preparation of the Local Action Unit (LAU) application so that the four (4) affordable rental units within Lighthouse Station will count on the Town's Subsidized Housing Inventory.

In reviewing this package, please note that the affordable unit rental figures and calculations included within may be subject to change if the AMI changes prior to the start of marketing. The final materials will include all of the affordable rents as approved by DHCD and the Town that are current to the time when the affirmative marketing begins.

Please find included in the binder the following:

1. Completed (but unsigned) Local Initiative Program Application for Local Action Units.
2. Documentation of municipal action (Special Permits)
3. Marked-up version of the Regulatory Agreement and Declaration of Restrictive Covenants for the project showing all developer-proposed edits to the DHCD provided form.
4. Woods Hole Partners, LLC's certifications and representations
5. Woods Hole Partners, LLC's authorization to execute all documents
6. MEPA (Massachusetts Environmental Policy Act) environmental notification form (ENF).
7. All DHCD-required documents that relate to the administration of the affordable units and the lottery process in general including:
 - a. Copy of the Affirmative Marketing Plan
 - b. Tenant selection plan (including eligibility requirements)
 - c. Program application
 - d. Information packet
 - e. Sample advertisement

These documents contain all of the affirmative fair marking and DHCD lottery requirements.

Please note that the Town has prepared the local preference justification letter which is included in this binder.

After the Town signs the Application (Tab 2, page #2), I would ask that you scan a copy of the signed Tab 2, page #2 to me at david@sebhousing.com.

We are happy to answer any questions you might have on this application or the process in general.

Sincerely,

David Cashman
SEB Housing, LLC
257 Hillside Ave.
Needham, MA 02494
617 782 2300 x210

cc: Woods Hole Partners, LLC

Community Support Narrative, Project Description and Documentation

Please provide a description of the project, including a summary of the project's history and the ways in which the community fulfilled the local action requirement.

The proposed project contemplates the redevelopment of a 5.4 acre parcel of land located by Woods Hole Partners, LLC ("Developer") at 533 Woods Hole Road into a 43 unit residential complex consisting of thirty nine (39) market rate age restricted homeownership units located within five buildings, and four (4) affordable rental units located within two separate buildings on site. The site contains a geodesic dome designed by Buckminster Fuller and a hotel, and the proponent seeks to rehabilitate the dome and demolish the hotel.

Developer filed an application for a special permit with the Falmouth Zoning Board of Appeals ("ZBA") on December 11, 2018. A hearing was opened in January of 2019 and continued on several additional dates. Over the course of the public hearings, there was substantial engagement by abutters, neighbors, and members of the surrounding community, in addition to substantial submissions into the record.

After a careful consideration of all of the facts and evidence, the Falmouth ZBA voted in favor of granting the special permit. Among its findings in support of that decision, the ZBA noted that the property is in deplorable condition, with collapsing roofs and buildings, and is generally unsafe, and that there is consensus that the site is in desperate need of attention. The proposed project will greatly improve the visual character of the property. Additionally, the proposed project will add four family rental units to the supply of affordable housing in Falmouth, with said units to be added to the SHI upon DHCD approval. More generally, the Board found that the beneficial effects of granting a permit outweighed any negative effects, and that granting a permit would be in harmony with the purpose and intent of the Zoning By-Law. The Permit was granted by the Board by a margin of 5-0.

The Developer has retained SEB Housing, an affordable housing lottery agent with ample experience, to assist it in marketing and running a lottery for the four affordable rental units.

Signatures of Support for the Local Action Units Application

Chief Executive Officer:

defined as the mayor in a city and the board of selectmen in a town, unless some other municipal officer is designated to be the chief executive officer under the provisions of a local charter

Signature: _____

Print Name: Douglas C. Brown

Date: _____

Chair, Local Housing Partnership:

(as applicable)

Signature: _____

Print Name:

Date: _____

LOCAL INITIATIVE PROGRAM

REGULATORY AGREEMENT
AND
DECLARATION OF RESTRICTIVE COVENANTS
FOR
RENTAL PROJECT
Local Action Units

This Regulatory Agreement and Declaration of Restrictive Covenants (the "Agreement") is made this _____ day of _____, 20__ by and among the Commonwealth of Massachusetts, acting by and through the Department of Housing and Community Development ("DHCD") pursuant to G.L. c.23B §1 as amended by Chapter 19 of the Acts of 2007, the Town of __Falmouth____ (the "Municipality"), and __Woods Hole Partners, LLC____, a Massachusetts limited liability company], having an address at _____367_____ Main _____ Street, _____ Falmouth, _____ MA 02540_____, and its successors and assigns ("Developer").

WITNESSETH:

WHEREAS, pursuant to G.L. c. 40B, §§ 20-23 (the "Act") and the final report of the Special Legislative Commission Relative to Low and Moderate Income Housing Provisions issued in April 1989, regulations have been promulgated at 760 CMR 56.00 (the "Regulations") which establish the Local Initiative Program ("LIP") and *Comprehensive Permit Guidelines: M.G.L. Chapter 40B Comprehensive Permit Projects - Subsidized Housing Inventory* have been issued thereunder (the "Guidelines");

WHEREAS, the Developer intends to construct a rental housing development known as __Lighthouse Station at Woods Hole____ at a __5.3__ -acre site on 533 Woods Hole _____ Road in the Municipality, more particularly described in Exhibit A attached hereto and made a part hereof (the "Project");

WHEREAS, such Project is to consist of a total number of __43__ dwellings (the "Units"), 39 of which will be market rate homeownership units, and 4 of which will be rentals. The __4__ rental Units will be rented at rents specified in this Agreement to Eligible Tenants as specified in paragraph two of this Agreement (the "Low and Moderate Income Units");

WHEREAS, the Chief Executive Officer of the Municipality (as that term is defined in the Regulations) and the Developer have made application to DHCD to certify that the units in the Project are Local Action Units (as that term is defined in the Guidelines) within the LIP Program; and

WHEREAS, in partial consideration of the execution of this Agreement, DHCD has issued or will issue its final approval of the Project within the LIP Program and has given and will give technical and other assistance to the Project;

September 2, 2016

NOW, THEREFORE, in consideration of the agreements and covenants hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which each of the parties hereto hereby acknowledge to the other, DHCD, the Municipality, and the Developer hereby agree and covenant as follows:

1. Construction. The Developer agrees to construct the Project in accordance with plans and specifications approved by the Municipality (the "Plans and Specifications"). In addition, all Low and Moderate Income Units to be constructed as part of the Project must be indistinguishable from other Units in the Project from the exterior (unless the Project has an approved "Alternative Development Plan" as set forth in the Guidelines and must contain complete living facilities including but not limited to a stove, refrigerator, kitchen cabinets, plumbing fixtures, and washer/dryer hookup, all as more fully shown in the Plans and Specifications.

_____ 4 _____ of the Low and Moderate Income Units shall be two bedroom units;

_____ .

All Low and Moderate Income Units to be occupied by families must contain two or more bedrooms. Low and Moderate Income Units must have the following minimum areas:

two bedroom units - 900 square feet

During the term of this Agreement, the Developer covenants, agrees, and warrants that the Project and each Low and Moderate Income Unit will remain suitable for occupancy and in compliance with all federal, state, and local health, safety, building, sanitary, environmental, and other laws, codes, rules, and regulations, including without limitation laws relating to the operation of adaptable and accessible housing for the handicapped. The Project must comply with all similar local codes, ordinances, and by-laws.

2. Affordability.

(a) Throughout the term of this Agreement, each Low and Moderate Income Unit will be rented for no more than the rental rates set forth herein to an Eligible Tenant. An Eligible Tenant is a Family whose annual income does not exceed eighty percent (80%) of the Area median income adjusted for family size as determined by the U.S. Department of Housing and Urban Development ("HUD"). A "Family" shall mean two or more persons who will live regularly in the Low and Moderate Income Unit as their primary residence and who are related by blood, marriage, or operation of law or who have otherwise evidenced a stable inter-dependent relationship; or an individual. The "Area" is defined as the ___Barnstable Town _____ MSA/

(b) The monthly rents charged to tenants of Low and Moderate Income Units shall not exceed an amount equal to thirty percent (30%) of the monthly adjusted income of a
September 2, 2016

Family whose gross income equals eighty percent (80%) of the median income for the Area, with adjustment for the number of bedrooms in the Unit, as provided by HUD. In determining the maximum monthly rent that may be charged for a Low and Moderate Income Unit under this clause, the Developer shall include an allowance for any utilities and services (excluding telephone) to be paid by the resident. Annual income shall be as defined in 24 C.F.R. 5.609 (or any successor regulation) using assumptions provided by HUD. The initial maximum monthly rents and utility allowances for the Low and Moderate Income Units are set forth in Exhibit B attached hereto. If the rent for a Low and Moderate Income Unit is subsidized by a state or federal rental subsidy program, then the rent applicable to the Low and Moderate Income Unit may be limited to that permitted by such rental subsidy program, provided that the tenant's share of rent does not exceed the maximum annual rental expense as provided in this Agreement.

Annually as part of the annual report required under Subsection 2(e) below, the Developer shall submit to the Municipality and DHCD a proposed schedule of monthly rents and utility allowances for all Low and Moderate Income Units in the Project. Such schedule shall be subject to the approval of the Municipality and DHCD for compliance with the requirements of this Section. Rents for Low and Moderate Income Units shall not be increased without the Municipality's and DHCD's prior approval of either (i) a specific request by Developer for a rent increase or (ii) the next annual schedule of rents and allowances. Notwithstanding the foregoing, rent increases shall be subject to the provisions of outstanding leases and shall not be implemented without at least 30 days' prior written notice by Developer to all affected tenants. If an annual request for a new schedule of rents for the Low and Moderate Income Units as set forth above is based on a change in the Area median income figures published by HUD, and the Municipality and DHCD fail to respond to such a submission within thirty (30) days of the Municipality's and DHCD's receipt thereof, the Municipality and DHCD shall be deemed to have approved the submission. If an annual request for a new schedule of rents for the Low and Moderate Income Units is made for any other reason, and the Municipality and DHCD fail to respond within thirty (30) days of the Municipality's and DHCD's receipt thereof, the Developer may send DHCD and the Municipality a notice of reminder, and if the Municipality and DHCD fail to respond within thirty (30) days from receipt of such notice of reminder, the Municipality and DHCD shall be deemed to have approved the submission.

Without limiting the foregoing, the Developer may request a rent increase for the Low and Moderate Units to reflect an increase in the Area median income published by HUD between the date of this Agreement and the date that the Units begin to be marketed or otherwise made available for rental pursuant to Section 4 below; if the Municipality and DHCD approve such rent increase in accordance with this subsection, the Initial Maximum Rents and Utility Allowances for Low and Moderate Income Units in Exhibit B of the Agreement shall be deemed to be modified accordingly.

(c) If, after initial occupancy, the income of a tenant of a Low and Moderate Income Unit increases and, as a result of such increase, exceeds the maximum income permitted hereunder for such a tenant, the unit will be deemed a Low and Moderate Income Unit so long as the unit continues to be rent-restricted and the tenant's income does not exceed 140% of the maximum income permitted. If the tenant's income exceeds 140% of the maximum income permitted at the time of annual income determination, the unit will be deemed a Low and Moderate Income Unit until the tenant's one-year lease term expires. When the over-income tenant voluntarily vacates the unit and when the unit is again rented to an Eligible Tenant, the

September 2, 2016

unit will be deemed a Low and Moderate Income Unit and included in the Subsidized Housing Inventory upon the Municipality's application to DHCD.

(d) If, after initial occupancy, the income of a tenant in a Low and Moderate Income Unit increases, and as a result of such increase, exceeds one hundred forty percent (140%) of the maximum income permitted hereunder for such a tenant, at the expiration of the applicable lease term, the rent restrictions shall no longer apply to such tenant.

(e) Throughout the term of this Agreement, the Developer shall annually determine whether the tenant of each Low and Moderate Income Unit remains an Eligible Tenant. This determination shall be reviewed by the Municipality and certified to DHCD as provided in section 2(g), below.

(f) The Developer shall enter into a written lease with each tenant of a Low and Moderate Income Unit which shall be for a minimum period of one year and which provides that the tenant shall not be evicted for any reason other than a substantial breach of a material provision of such lease.

(g) Throughout the term of this Agreement, the Chief Executive Officer shall annually certify in writing to DHCD that each of the Low and Moderate Income Units continues to be Low and Moderate Income Unit as provided in sections 2 (a) and(c), above; and that the Project and the Low and Moderate Income Units have been maintained in a manner consistent with the Regulations and Guidelines and this Agreement.

3. Subsidized Housing Inventory.

(a) The Project will be included in the Subsidized Housing Inventory upon the occurrence of one of the events described in 760 CMR 56.03(2). Only Low and Moderate Income Units] will be deemed low and moderate income housing to be included in the Subsidized Housing Inventory.

(b) Units included in the Subsidized Housing Inventory will continue to be included in the Subsidized Housing Inventory in accordance with 760 CMR 56.03(2) for as long as the following three conditions are met: (1) this Agreement remains in full force and effect and neither the Municipality nor the Developer are in default hereunder; (2) the Project and each of the Low and Moderate Income Units continue to comply with the Regulations and the Guidelines as the same may be amended from time to time and (3) each Low and Moderate Income Unit remains a Low and Moderate Income Unit as provided in section 2(c), above.

4. Marketing. Prior to marketing or otherwise making available for rental any of the Units, the Developer must obtain DHCD's approval of a marketing plan (the "Marketing Plan") for the Low and Moderate Income Units. Such Marketing Plan must describe the tenant selection process for the Low and Moderate Income Units and must set forth a plan for affirmative fair marketing of Low and Moderate Income Units to protected groups underrepresented in the Municipality, including provisions for a lottery, as more particularly described in the Regulations and Guidelines. At the option of the Municipality, and provided that the Marketing Plan demonstrates (i) the need for the local preference (e.g., a disproportionately low rental or ownership affordable housing stock relative to need in

comparison to the regional area), and (ii) that the proposed local preference will not have a disparate impact on protected classes, the Marketing Plan may also include a preference for local residents for up to seventy percent (70%) of the Low and Moderate Income Units, subject to all provisions of the Regulations and Guidelines and applicable to the initial rent-up only. When submitted to DHCD for approval, the Marketing Plan should be accompanied by a letter from the Chief Executive Officer of the Municipality (as that term is defined in the Regulations) which states that the tenant selection and local preference (if any) aspects of the Marketing Plan have been approved by the Municipality and which states that the Municipality will perform any aspects of the Marketing Plan which are set forth as responsibilities of the Municipality in the Marketing Plan. The Marketing Plan must comply with the Regulations and Guidelines and with all other applicable statutes, regulations and executive orders, and DHCD directives reflecting the agreement between DHCD and the U.S. Department of Housing and Urban Development in the case of NAACP, Boston Chapter v. Kemp. **If the Project is located in the Boston-Cambridge-Quincy MA-NH Metropolitan Statistical Area, the Developer must list all Low and Moderate Income Units with the City of Boston's MetroList (Metropolitan Housing Opportunity Clearing Center), at Boston City Hall, Fair Housing Commission, Suite 966, One City Hall Plaza, Boston, MA 02201 (671-635-3321).** All costs of carrying out the Marketing Plan shall be paid by the Developer. A failure to comply with the Marketing Plan by the Developer or by the Municipality shall be deemed to be a default of this Agreement. The Developer agrees to maintain for five years following the initial rental of the last Low and Moderate Income Unit and for five years following all future rentals, a record of all newspaper advertisements, outreach letters, translations, leaflets, and any other outreach efforts (collectively "Marketing Documentation") as described in the Marketing Plan as approved by DHCD which may be inspected at any time by DHCD. All Marketing Documentation must be approved by DHCD prior to its use by the Developer or the Municipality. The Developer and the Municipality agree that if at any time prior to or during the process of marketing the Low and Moderate Income Units, DHCD determines that the Developer, or the Municipality with respect to aspects of the Marketing Plan that the Municipality has agreed to be responsible for, has not adequately complied with the approved Marketing Plan, that the Developer or Municipality as the case may be, shall conduct such additional outreach or marketing efforts as shall be determined by DHCD.

5. Non-discrimination. Neither the Developer nor the Municipality shall discriminate on the basis of race, creed, color, sex, age, handicap, marital status, national origin, sexual orientation, familial status, genetic information, ancestry, children, receipt of public assistance, or any other basis prohibited by law in the selection of tenants; and the Developer shall not so discriminate in connection with the employment or application for employment of persons for the construction, operation or management of the Project.

6. Inspection. The Developer agrees to comply and to cause the Project to comply with all requirements of the Regulations and Guidelines and all other applicable laws, rules, regulations, and executive orders. DHCD and the Chief Executive Officer of the municipality shall have access during normal business hours to all books and records of the Developer and the Project in order to monitor the Developer's compliance with the terms of this Agreement.

7. Recording. Upon execution, the Developer shall immediately cause this Agreement and any amendments hereto to be recorded with the Registry of Deeds for the County where the Project is located or, if the Project consists in whole or in part of registered land, file

this Agreement and any amendments hereto with the Registry District of the Land Court for the County where the Project is located (collectively hereinafter, the "Registry of Deeds"), and the Developer shall pay all fees and charges incurred in connection therewith. Upon recording or filing, as applicable, the Developer shall immediately transmit to DHCD and the Municipality evidence of such recording or filing including the date and instrument, book and page or registration number of the Agreement.

8. Representations. The Developer hereby represents, covenants and warrants as follows:

(a) The Developer (i) is a LLC _____ duly organized under the laws of the Commonwealth of Massachusetts, and is qualified to transact business under the laws of this State, (ii) has the power and authority to own its properties and assets and to carry on its business as now being conducted, and (iii) has the full legal right, power and authority to execute and deliver this Agreement.

(b) The execution and performance of this Agreement by the Developer (i) will not violate or, as applicable, has not violated any provision of law, rule or regulation, or any order of any court or other agency or governmental body, and (ii) will not violate or, as applicable, has not violated any provision of any indenture, agreement, mortgage, mortgage note, or other instrument to which the Developer is a party or by which it or the Project is bound, and (iii) will not result in the creation or imposition of any prohibited encumbrance of any nature.

(c) The Developer will, at the time of execution and delivery of this Agreement, have good and marketable title to the premises constituting the Project free and clear of any lien or encumbrance (subject to encumbrances created pursuant to this Agreement, any loan documents relating to the Project the terms of which are approved by DHCD, or other permitted encumbrances, including mortgages referred to in paragraph 17, below).

(d) At the time the Developer seeks approval to begin marketing, there shall be no action, suit or proceeding at law or in equity or by or before any governmental instrumentality or other agency pending, or, to the knowledge of the Developer, threatened against or affecting it, or any of its properties or rights, which, if adversely determined, would materially impair its right to carry on business substantially as now conducted (and as now contemplated by this Agreement) or which would materially adversely affect its financial condition.

9. Transfer Restrictions. Except for rental of Units to Low or Moderate Income Tenants as permitted by the terms of this Agreement, and except as provided in Section (e) below, the Developer will not sell, transfer, lease, or exchange the Project or any portion thereof or interest therein (collectively, a "Sale") or (except as permitted under Section (d) below) mortgage the Property without the prior written consent of DHCD and the Municipality.

(a) A request for consent to a Sale shall include:

- A signed agreement stating that the transferee will assume in full the Developer's obligations and duties under this Agreement, together with a certification by the attorney or title company that it will be held in escrow

September 2, 2016

and, in the case of any transfer other than a transfer of Beneficial Interests, recorded in the Registry of Deeds with the deed and/or other recorded documents effecting the Sale;

- The name of the proposed transferee and any other entity controlled by or controlling or under common control with the transferee, and names of any affordable housing developments in the Commonwealth owned by such entities;
- A certification from the Municipality that the Development is in compliance with the affordability requirements of this Agreement.

(b) Consent to the proposed Sale shall be deemed to be given unless DHCD or the Municipality notifies the Developer within thirty (days) after receipt of the request that either

- The package requesting consent is incomplete, or
- The proposed transferee (or any entity controlled by or controlling or under common control with the proposed transferee) has a documented history of serious or repeated failures to abide by agreements of affordable housing funding or regulatory agencies of the Commonwealth or the federal government or is currently in violation of any agreements with such agencies beyond the time permitted to cure the violation, or
- The Project is not being operated in compliance with the affordability requirements of this Agreement at the time of the proposed Sale.

(c) The Developer shall provide DHCD and the Municipality with thirty (30) day's prior written notice of the following:

- (i) any change, substitution or withdrawal of any general partner, manager, or agent of Developer; or
- (ii) the conveyance, assignment, transfer, or relinquishment of a majority of the Beneficial Interests (herein defined) in Developer (except for such a conveyance, assignment, transfer or relinquishment among holders of Beneficial Interests as of the date of this Agreement).
- (iii) the sale, mortgage, conveyance, transfer, ground lease, or exchange of Developer's interest in the Project or any party of the Project.

For purposes hereof, the term "Beneficial Interests" shall mean: (i) with respect to a partnership, any partnership interests or other rights to receive income, losses, or a return on equity contributions made to such partnership; (ii) with respect to a limited liability company, any interests as a member of such company or other rights to receive income, losses, or a return on equity contributions made to such company; or (iii) with respect to a company or corporation, any interests as an officer, board member or stockholder of such company or corporation to receive income, losses, or a return on equity contributions made to such company or corporation.

September 2, 2016

(d) Notwithstanding the above, DHCD's consent under this Section 9 shall not be required with respect to the grant by the Developer of any mortgage or other security interest in or with respect to the Project to a state or national bank, state or federal savings and loan association, cooperative bank, mortgage company, trust company, insurance company or other institutional lender made at no greater than the prevailing rate of interest or any exercise by any such mortgagee of any of its rights and remedies (including without limitation, by foreclosure or by taking title to the Project by deed in lieu of foreclosure), subject, however to the provisions of Section 14 hereof.

Developer hereby agrees that it shall provide copies of any and all written notices received by Developer from a mortgagee exercising or threatening to exercise its foreclosure rights under the mortgage.

(e) Also, notwithstanding the above, DHCD's consent under this Section 9 shall not be required with respect to (i) the conveyance or sale by the Developer or any successor owner(s) of any of the 39 market rate homeownership units within the condominium, nor (ii) the conveyance or sale of any of the four (4) rental Units, subject to the terms of this Regulatory Agreement and Declaration of Restrictive Covenants for Rental Project, to the present holder of the Beneficial Interests in the Developer, or to an entity in which such present holder of the Beneficial Interests maintains a majority ownership interest, provided that the Developer or its successor complies with the notice requirements of Section (c) above.

10. Casualty; Demolition; Change of Use.

(a) The Developer represents, warrants, and agrees that if the Project, or any part thereof, shall be damaged or destroyed or shall be condemned or acquired for public use, the Developer (subject to the approval of the lender(s) which has provided financing) will use its best efforts to repair and restore the Project to substantially the same condition as existed prior to the event causing such damage or destruction, or to relieve the condemnation, and thereafter to operate the Project in accordance with this Agreement.

(b) The Developer shall not, without prior written approval of DHCD and the Municipality and an amendment to this Agreement, change the type or number of Low and Moderate Income Units. The Developer shall not demolish any part of the Project or substantially subtract from any real or personal property of the Project, or permit the use of the dwelling accommodations of the Project for any purpose except residences and any other uses permitted by the applicable zoning then in effect;

11. Governing Law. This Agreement shall be governed by the laws of the Commonwealth of Massachusetts. Any amendments to this Agreement must be in writing and executed by all of the parties hereto. The invalidity of any clause, part, or provision of this Agreement shall not affect the validity of the remaining portions hereof.

12. Notices. All notices to be given pursuant to this Agreement shall be in writing and shall be deemed given when delivered by hand or when mailed by certified or registered mail, postage prepaid, return receipt requested, to the parties hereto at the addresses set forth below, or to such other place as a party may from time to time designate by written notice:

September 2, 2016

DHCD: Department of Housing and Community Development
Attention: Local Initiative Program Director
100 Cambridge Street, 3rd Floor
Boston, MA 02114

Municipality:

Developer: Woods Hole Partners, LLC
Attn: Mike Ciolino
367 Main Street, Falmouth, MA 02540

13. Term.

(a) This Agreement and all of the covenants, agreements and restrictions contained herein shall be deemed to be an affordable housing restriction as that term is defined in G.L. c. 184, § 31 and as that term is used in G.L. c.184, § 26, 31, 32 and 33. This Agreement shall bind, and the benefits shall inure to, respectively, Developer and its successors and assigns, and DHCD and its successors and assigns and the Municipality and its successors and assigns. DHCD has determined that the acquiring of such affordable housing restriction is in the public interest. The term of this Agreement, the rental restrictions, and other requirements provided herein shall be perpetual.

(b) The Developer intends, declares and covenants on behalf of itself and its successors and assigns (i) that this Agreement and the covenants, agreements and restrictions contained herein shall be and are covenants running with the land, encumbering the Project for the term of this Agreement, and are binding upon the Developer's successors in title, (ii) are not merely personal covenants of the Developer, and (iii) shall bind the Developer, its successors and assigns and enure to the benefit of DHCD and the Municipality and their successors and assigns for the term of the Agreement. Developer hereby agrees that any and all requirements of the laws of the Commonwealth of Massachusetts to be satisfied in order for the provisions of this Agreement to constitute restrictions and covenants running with the land shall be deemed to be satisfied in full and that any requirements of privity of estate are also deemed to be satisfied in full.

14. Lender Foreclosure. The rights and restrictions contained in this Agreement shall not lapse if the Project is acquired through foreclosure or deed in lieu of foreclosure or similar action, and the provisions hereof shall continue to run with and bind the Project.

September 2, 2016

15. Further Assurances. The Developer and the Municipality each agree to submit any information, documents, or certifications requested by DHCD which DHCD shall deem necessary or appropriate to evidence the continuing compliance of the Project Sponsor and the Municipality with the terms of this Agreement.

16. Default.

(a) The Developer and the Municipality each covenant and agree to give DHCD written notice of any default, violation or breach of the obligations of the Developer or the Municipality hereunder, (with a copy to the other party to this Agreement) within seven (7) days of first discovering such default, violation or breach (a "Default Notice"). If DHCD becomes aware of a default, violation, or breach of obligations of the Developer or the Municipality hereunder without receiving a Default Notice from Developer or the Municipality, DHCD shall give a notice of such default, breach or violation to the offending party (with a copy to the other party to this Agreement) (the "DHCD Default Notice"). If any such default, violation, or breach is not cured to the satisfaction of DHCD within thirty (30) days after the giving of the Default notice by the Developer or the Municipality, or if no Default Notice is given, then within thirty (30) days after the giving of the DHCD Default Notice, then at DHCD's option, and without further notice, DHCD may either terminate this Agreement, or DHCD may apply to any state or federal court for specific performance of this Agreement, or DHCD may exercise any other remedy at law or in equity or take any other action as may be necessary or desirable to correct non-compliance with this Agreement.

(b) If DHCD elects to terminate this Agreement as the result of a breach, violation, or default hereof, which breach, violation, or default continues beyond the cure period set forth in this Section 16, then the Low and Moderate Income Units and any other Units at the Project which have been included in the Subsidized Housing Inventory shall from the date of such termination no longer be deemed low and moderate income housing for the purposes of the Act and shall be deleted from the Subsidized Housing Inventory.

(c) The Developer acknowledges that the primary purpose for requiring compliance by the Developer with the restrictions provided herein is to create and maintain long-term affordable rental housing, and by reason thereof the Developer agrees that DHCD or the Municipality or any prospective, present, or former tenant shall be entitled for any breach of the provisions hereof, and in addition to all other remedies provided by law or in equity, to enforce the specific performance by the Developer of its obligations under this Agreement in a state court of competent jurisdiction. The Developer further specifically acknowledges that the beneficiaries of its obligations hereunder cannot be adequately compensated by monetary damages in the event of any default hereunder. In the event of a breach of this Agreement, the Developer shall reimburse DHCD for all costs and attorney's fees associated with such breach.

17. Mortgagee Consents. The Developer represents and warrants that it has obtained the consent of all existing mortgagees of the Project to the execution and recording of this Agreement and to the terms and conditions hereof and that all such mortgagees have executed the Consent and Subordination of Mortgage to Regulatory Agreement attached hereto and made a part hereof.

September 2, 2016

[REMAINDER OF PAGE INTENTIONALLY BLANK]

September 2, 2016

Executed as a sealed instrument as of the date first above written.

DEVELOPER

By: _____
Its:

DEPARTMENT OF HOUSING AND
COMMUNITY DEVELOPMENT

By: _____
Its:

MUNICIPALITY

By: _____
Its Chief Executive Officer

Attachments: Exhibit A - Legal Property Description
Exhibit B - Rents for Low and Moderate Income Units

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF _____, ss. _____, 20__

On this _____ day of _____, 20__, before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory evidence of identification, which were _____, to be the person whose name is signed on the preceding document, as _____ of the _____ [Developer], and acknowledged to me that he/she signed it voluntarily for its stated purpose.

Notary Public
Print Name:
My Commission Expires:

September 2, 2016

SUMMARY OF ACTIONS

1. Administrative Orders

- g. Vote to increase the spending limit for the Senior Services revolving account to \$250,000 for FY2022

SUMMARY OF ACTIONS

1. Administrative Orders

- h. Vote to sign Petition to the General Court to effectuate the vote on Art. 18 of the November, 2021 Annual Town Meeting to remove the Falmouth Police Department from Civil Service

**TOWN OF FALMOUTH
OFFICE OF TOWN COUNSEL
MEMORANDUM**

TO: JULIAN SUSO, TOWN MANAGER
FROM: FRANK K. DUFFY, TOWN COUNSEL
SUBJECT: PETITION TO THE GENERAL COURT
DATE: 1/5/2022
CC:



I enclose herewith the Petition To The General Court regarding Article 18 of the November Annual Town Meeting. Please have the Select Board sign it and return to this office. Thank you.

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss.

Town of Falmouth

PETITION
TO
THE GENERAL COURT

We, the undersigned members of the Select Board of the Town of Falmouth, in the County of Barnstable and Commonwealth of Massachusetts, hereby submit this petition to the General Court to adopt the special legislation as approved by Article 18 of the November 15, 2021 Annual Town Meeting and authorize the Select Board to Petition the Massachusetts General Court for a special act to remove all personnel of the Falmouth Police Department from the provisions of Massachusetts General Laws Chapter 31, § 1 et seq. the Civil Service Law. Further the Board authorizes the General Court to make minor changes upon the recommendation of legislative counsel to effectuate or improve upon the stated purposes of the Town Meeting vote.

Attachments:

1. Article 18 November 15, 2021 Annual Town Meeting
2. Explanation for Article 18
3. Draft legislation

Dated this _____ day of January, 2022

Town of Falmouth
By its Select Board

Doug C. Brown, Chair

Nancy R. Taylor, Vice Chair

Samuel H. Patterson

Megan English Braga

Onjalé B. Scott Price

**ARTICLE 18
AND THE VOTE THEREON AT
THE ANNUAL TOWN MEETING
CONVENED IN FALMOUTH, MASSACHUSETTS
NOVEMBER 16, 2021**

ARTICLE 18: To see if the Town will vote to authorize the Select Board to petition the Massachusetts General Court for a special act to remove all personnel of the Falmouth Police Department from the provisions of Massachusetts General Laws, Ch. 31, s. 1 et seq., the Civil Service Law, or do or take any other action on the matter. On request of the Select Board.

VOTED: By a declared majority vote, a quorum being present on Tuesday, November 16, 2021 the Town voted Article 18 as printed.

A TRUE COPY ATTEST



**MICHAEL PALMER, TOWN CLERK
FALMOUTH, MASSACHUSETTS**



EXPLANATION: The Falmouth Police Department has an acute challenge with respect to filling vacant positions. Removing the Police Department from the state Civil Service will remove unnecessary delays in the exam and recruitment process and afford the Town greater local control over hiring, promotion and discipline. This change has been negotiated with the three police unions.

The civil service hiring process, adopted by Falmouth in 1936, is administered by a state agency that is chronically understaffed. The exams that individuals must take to be hired as a patrol officer or promoted to a supervisory position are offered only once every two years. There is then a delay of several months to get the results. Recently, there have not been enough qualified candidates available on the civil service list to fill existing vacancies which has left vacancies unfilled for over a year in some cases.

Many Massachusetts communities have removed their police departments from civil service. The Town has consulted with 10 towns that exited civil service since 2015 and all report that the change has been positive. Other towns including Brewster, Harwich, Mashpee, and Yarmouth were never in the civil service system. These communities that are not part of the civil service system are able to offer exams as often as they need. There are qualified professional firms that administer exams which meet all state and federal requirements and are able to provide the test results within days instead of months. Non-civil service police departments are able to fill positions more quickly. The Town has negotiated promotion and discipline policies that will replace Civil Service and ensure that the process is impartial and affords due process to the officers.

It is imperative that we take prompt action to minimize hiring delays which compromise the ability of the Police Department to protect public safety and place an undue burden on Falmouth police officers when they are required to work overtime shifts to meet minimum staffing requirements. There are of course other factors in the region and the nation which have caused a decline in applications for police officer vacancies. Removal from Civil Service is no panacea but it affords the Town greater flexibility to meet the challenges which are beyond local control. If this article is approved, the Select Board will then petition the state legislature to approve special legislation to complete the exit from state Civil Service.

**DRAFT LEGISLATION
RELATIVE TO
FALMOUTH POLICE DEPARTMENT**

An Act providing that officers in all positions of the Falmouth Police Department subject to Chapter 31 of the General Laws shall be exempt from the civil service law.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Notwithstanding any general or special law to the contrary, officers in all positions of the police department of the town of Falmouth subject to Chapter 31 of the General Laws shall be exempt from the civil service law.

SECTION 2. Section 1 shall not impair the civil service status of an officer employed on a permanent basis in a civil service position in the police department of the town of Falmouth on the effective date of this act.

SECTION 3. This act shall take effect upon its passage.

SUMMARY OF ACTIONS

1. Administrative Orders

- i. Authorize the Town Manager to transmit a letter of support for a grant for the Friends of Nobska Light from the Massachusetts Cultural Commission

SUMMARY OF ACTIONS

1. Administrative Orders

- ~~j. Authorize the Town Manager to transmit a letter of support for a grant proposal by the Woods Hole Diversity Advisory Committee~~

NOTE: This is a duplicate of Item 1. C.

PUBLIC HEARINGS

1. Wetlands/Dock Hearing – Nina’s Marina Realty Trust – Install new vinyl sheet pile bulkhead adjacent to and landward of existing licensed timber bulkheads, and removal of existing tongue and groove timber sheathing, located at 306 Scranton Avenue, in the waters of Falmouth Inner Harbor, continued from December 6, 2021 (15 minutes)



TOWN OF FALMOUTH

Office of the Town Manager & Select Board

59 Town Hall Square, Falmouth, Massachusetts 02540

Telephone (508) 495-7320

Fax (508) 457-2573

PUBLIC HEARING NOTICE

The Falmouth Select Board will hold a public hearing under Section 240-77 (Wetland Regulations) of the Zoning Bylaws of the Town of Falmouth on Monday, December 6, 2021 at 7:30 p.m. in the Select Board Meeting Room, Falmouth Town Hall, 59 Town Hall Square on the application of Nina's Marina Realty Trust; owner, McKim Trustees, Melissa & William A., for permission to install new vinyl sheet pile bulkhead adjacent to and directly landward of the existing licensed timber bulkheads. The existing tongue and grooved timber sheathing shall be removed after the vinyl sheeting is installed. Location is 306 Scranton Avenue, Falmouth, MA. Area affected is Falmouth Inner Harbor. Interested parties may review the file on this hearing at the Office of the Select Board.

Per Order of the
Select Board

Publication dates: Friday, November 19, 2021 and Friday, November 26, 2021; Falmouth Enterprise.

Diane Davidson

From: Jeffrey Johnson <jjohnson@holmesandmcgrath.com>
Sent: Thursday, January 6, 2022 11:32 AM
To: Diane Davidson
Cc: Michael McGrath; Nathan Goshgarian; bbinc3620550@yahoo.com
Subject: Request for Continuance - 306 Scranton Ave - Nina's Marina
Attachments: Letter to Concom 12-22-2021 Amended Order Letter - McKim.pdf; 87-1-27M REV 12-20-2021 SET SH1-3.pdf

Diane,

The project methodology has been revised that precipitated another filing with Conservation. The Conservation Commission hearing for this revision is scheduled for next Wednesday January 12.

The Select Board hearing is scheduled for Monday January 10.
A copy of the cover letter to Conservation and revised plans are attached.

Please accept this email and enclosures as a request to continue the Select Board hearing for this project to Monday January 31 and please accept the attached letter and plans as part of a revised project description for the Select Board review.

We will submit hard copies of the plans after we receive approval from Conservation.

Please reply if you have any questions or need more information.

Sincerely,

Jeffrey L. Johnson
Professional Wetland Permitting Consultant

holmes and mcgrath, inc.
civil engineers and land surveyors
205 worcester court, suite A4
falmouth, ma 02540
office 508-548-3564
mobile 508-737-0953
jjohnson@holmesandmcgrath.com



civil engineers and land surveyors
205 worcester court • suite a4 • falmouth, ma • 02540
508-548-3564 • 800-874-7373 • fax 508-548-9672
jjohnson@holmesandmcgrath.com



holmes and mcgrath, inc.

civil engineers and land surveyors

205 worcester court · suite a4 · falmouth, ma · 02540

508-548-3564 · 800-874-7373 · fax 508-548-9672

ngoshgarian@holmesandmcgrath.com

December 22, 2021

Falmouth Conservation Commission
Falmouth Town Hall
59 Town Hall Square
Falmouth MA, 02540

Request for Amended Order of Conditions
For Order of Conditions issued to Nina's Marina Realty Trust
#306 Scranton Ave, Falmouth, MA
DEP File Number **25-4611**
Our Job Number 220035

To Ms. Jennifer Lincoln,

This is a request to amend Order of Conditions DEP **25-4611** for the property located at #306 Scranton Avenue in Falmouth.

The original Order of Conditions approved the repair of a bulkhead. The repair involved driving vinyl sheathing behind existing groove timber sheathing and leaving the timber in place. These details are shown on our originally submitted plan dated 01-29-2021. In September 2021, an Amended Order of Conditions was issued to update the proposed vinyl sheathing and to modify the proposed methodology. The methodology described removing all of the existing timber sheathing after the installation of the proposed vinyl sheathing. The contractor has informed us that it is not possible to pull, cut or remove the existing timber sheathing after the proposed wall is in place, without significant damage to the new wall.

The plan has been revised again to modify the proposed construction methodology. The approved plan shows excavation landward of the existing bulkhead down to the MLW line. The intent was to expose, inspect and potentially replace any existing tie rods.

The approved excavation extends just below the tie rods to approximately mean low water. The tie rods are connected to the existing pilings through the lower wale beam. The proposed revision alters Section B-B and Section C-C on the plan to sawcut and remove only that portion of the existing timber wall above the lower wale. The removal of the upper portion of the timber wall will take place after the soil on the landward side has been removed to expose the tie rods, but

before the vinyl sheeting is installed. The lower wale will remain in place, along with that portion of the existing timber wall below the lower wale and will act as a guide to install the vinyl sheeting. This method prevents material from entering the harbor, allows the removal of the timber above MLW so the vinyl is visible and unmarked.

Areas landward of the existing wall will be excavated down in manageable sections to mean low water to expose the and inspect the tie rods. The existing timber sheathing will be cut along the top of the bottom wale, leaving the lower portion of the timber wall attached to the pilings by the bottom wale. Individual tie rods will be removed and replaced, if necessary, as the work progresses.

There is an existing concrete retaining wall separating the upper and lower areas that runs perpendicular to the water from the bulkhead landward. An 8-foot-long portion of this wall closest to the bulkhead will need to be removed to facilitate the installation of the proposed vinyl bulkhead. The wall will be replaced in kind after the bulkhead construction is complete. A note has been added to the plan to indicate its removal and replacement.

A note has also been added to the plan

Please accept this letter and enclosures as a request to amend Order of Conditions DEP **25-4611**. A check to cover the filing fee for this request is also enclosed.

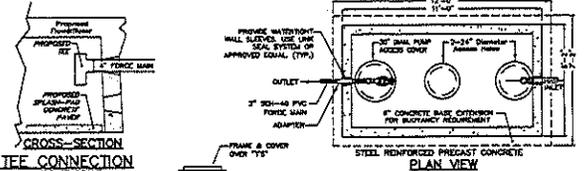
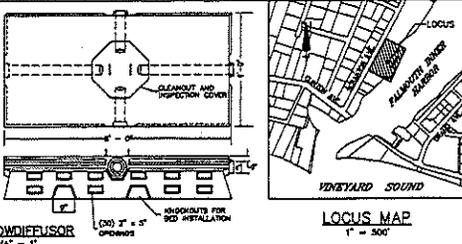
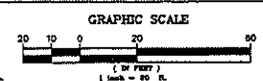
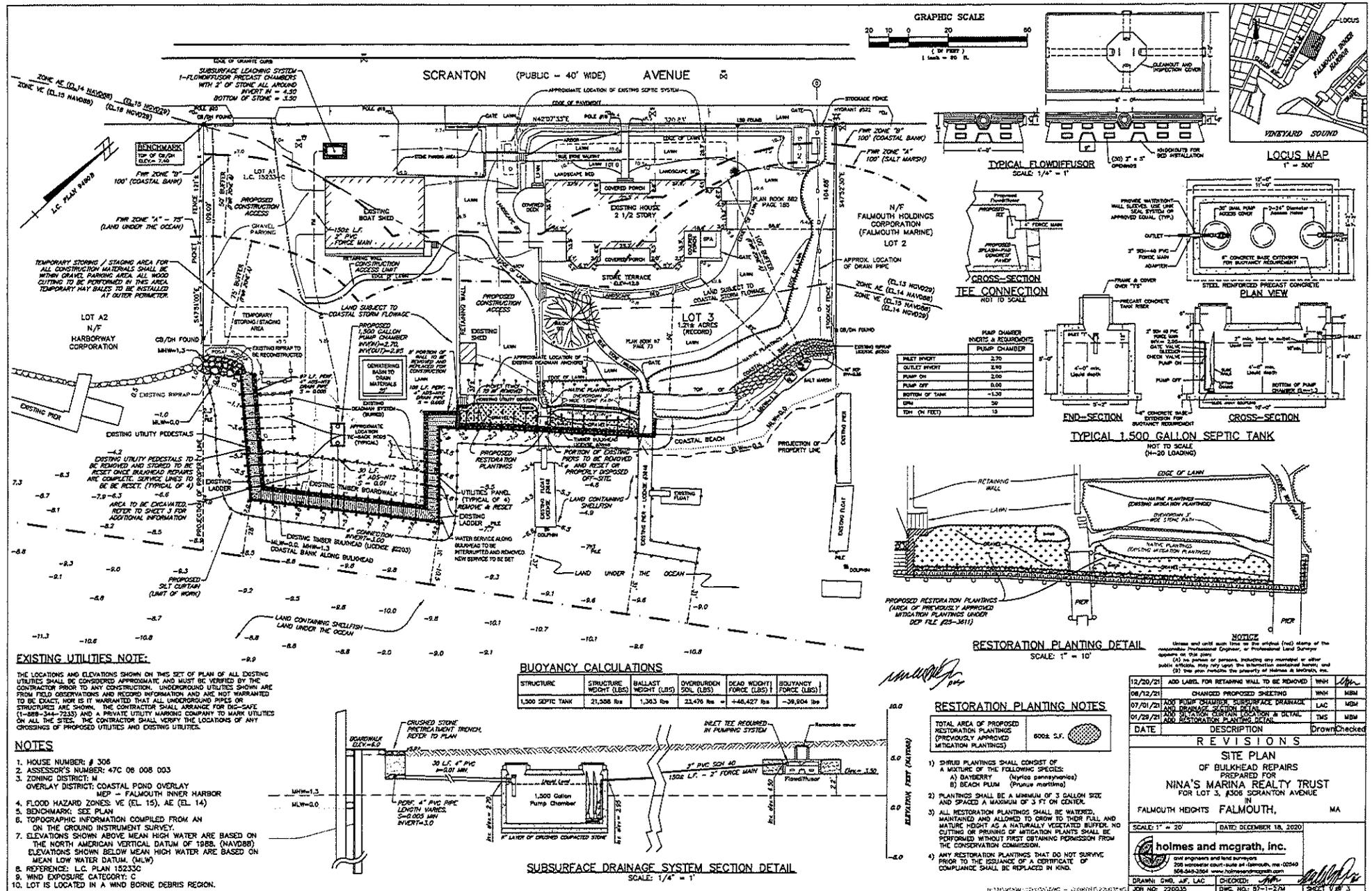
Should you have any questions or concerns, please do not hesitate to contact me.

Sincerely,

Holmes and McGrath Inc.

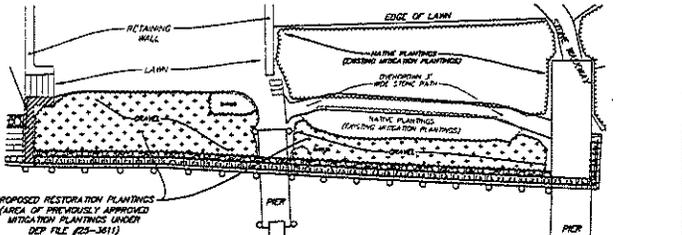
Jeffrey L. Johnson

Cc: client and DEP Lakeville



PUMP CHAMBER NOTE & REQUIREMENTS

ITEM	REQUIREMENT
INLET INCH	2 1/2
OUTLET INCH	3 1/2
PUMP ON	200
PUMP OFF	100
DEPTH OF TANK	1.50
MIN	30
TDH (IN FEET)	15

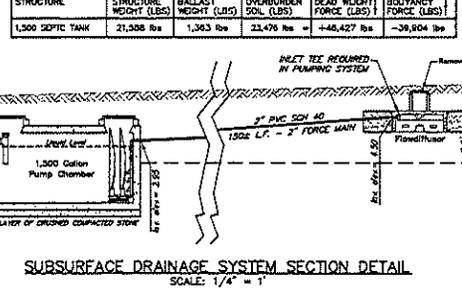


BUOYANCY CALCULATIONS

STRUCTURE	STRUCTURE WEIGHT (LBS)	BALLAST WEIGHT (LBS)	OVERBURDEN SOIL (LBS)	DEAD WEIGHT FORCE (LBS)	BUOYANCY FORCE (LBS)
1,500 GALLON SEPTIC TANK	21,508	1,363	22,476	+46,427	-39,804

RESTORATION PLANTING NOTES

- TOTAL AREA OF PROPOSED RESTORATION PLANTINGS (PREVIOUSLY APPROVED MITIGATION PLANTINGS): 6002 S.F.
- SHRUB PLANTINGS SHALL CONSIST OF A MIXTURE OF THE FOLLOWING SPECIES:
 - A) BAYBERRY (*Nyssa pennsylvanica*)
 - B) BEACH PLUM (*Prunella maritima*)
 - PLANTINGS SHALL BE A MINIMUM OF 3 GALLON SIZE AND SPACED A MAXIMUM OF 3 FT ON CENTER.
 - ALL RESTORATION PLANTINGS SHALL BE WATERED, MAINTAINED AND ALLOWED TO GROW TO THEIR FULL AND MATURE HEIGHT AS A NATURALLY VEGETATED BUFFER. NO CUTTING OR PRUNING OF MITIGATION PLANTS SHALL BE PERFORMED WITHOUT FIRST OBTAINING PERMISSION FROM THE CONSERVATION COMMISSION.
 - ANY RESTORATION PLANTINGS THAT DO NOT SURVIVE PRIOR TO THE ISSUANCE OF A CERTIFICATE OF COMPLIANCE SHALL BE REPLACED IN KIND.



EXISTING UTILITIES NOTE:

THE LOCATIONS AND ELEVATIONS SHOWN ON THIS SET OF ALL EXISTING UTILITIES SHALL BE CONSIDERED APPROXIMATE AND MUST BE VERIFIED BY THE CONTRACTOR PRIOR TO ANY CONSTRUCTION. UNDERGROUND UTILITIES SHOWN ARE FROM FIELD OBSERVATIONS AND RECORD INFORMATION AND ARE NOT WARRANTED TO BE EXACT, NOR IS IT WARRANTED THAT ALL UNDERGROUND PIPES OR STRUCTURES ARE SHOWN. THE CONTRACTOR SHALL ARRANGE FOR DIG-GOATS (1-888-344-7233) AND A PRIVATE UTILITY MARKING COMPANY TO MARK UTILITIES ON ALL THE SITE. THE CONTRACTOR SHALL VERIFY THE LOCATIONS OF ANY CROSSINGS OF PROPOSED UTILITIES AND EXISTING UTILITIES.

NOTES

- HOUSE NUMBER: # 306
- ASSESSOR'S NUMBER: 47C 08 008 003
- ZONING DISTRICT: M OVERLAY DISTRICT; COASTAL POND OVERLAY NEP - FALMOUTH INNER HARBOR
- FLOOD HAZARD ZONES: VE (EL. 15), AE (EL. 14)
- BENCHMARK: SEE PLAN
- TOPOGRAPHIC INFORMATION COMPILED FROM AN ON THE GROUND INSTRUMENT SURVEY.
- ELEVATIONS SHOWN ABOVE MEAN HIGH WATER ARE BASED ON THE NORTH AMERICAN VERTICAL DATUM OF 1988 (NAVD88). ELEVATIONS SHOWN BELOW MEAN HIGH WATER ARE BASED ON MEAN LOW WATER DATUM (MLWD).
- REFERENCE: L.C. PLAN 15233C
- WIND EXPOSURE CATEGORY: C
- LOT IS LOCATED IN A WIND BORNE DEBRIS REGION.

NOTICE: (Name and unit shall have to be entered (two) stamp of the responsible Professional Engineer, or Professional Land Surveyor on this plan. (A) the professional person, including any consultant or other public officials, may rely upon the information contained herein and (B) the plan remains the property of Holmes and Ghera, Inc.

DATE	DESCRIPTION	Drawn	Checked
12/29/21	ADD LABEL FOR RETAINING WALL TO BE REDONED	WHH	MBM
08/12/21	CHANGED PROPOSED SHEETING	WHH	MBM
07/01/21	ADD HIGH CHAIR SUBSURFACE DRAINAGE AND DRAINAGE SECTION DETAIL	LAC	MBM
01/29/21	ADD RESTORATION PLANTING DETAIL	TMS	MBM

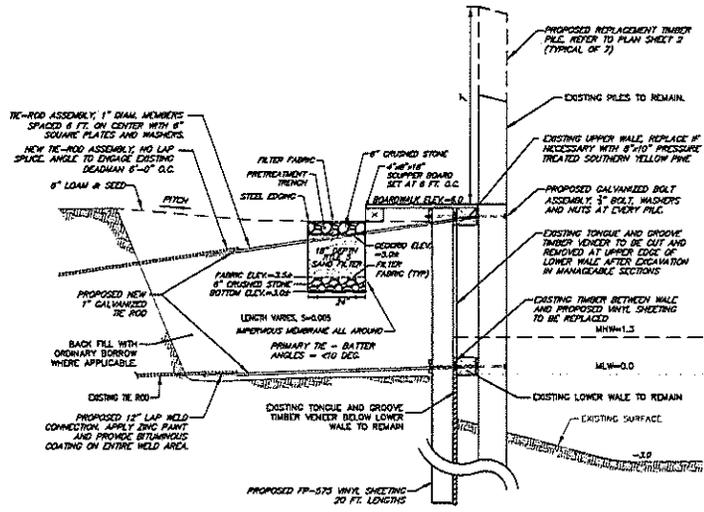
REVISIONS

SITE PLAN OF BULKHEAD REPAIRS PREPARED FOR NINA'S MARINA REALTY TRUST FOR LOT 3, 8305 SCRANTON AVENUE IN FALMOUTH HEIGHTS FALMOUTH, MA

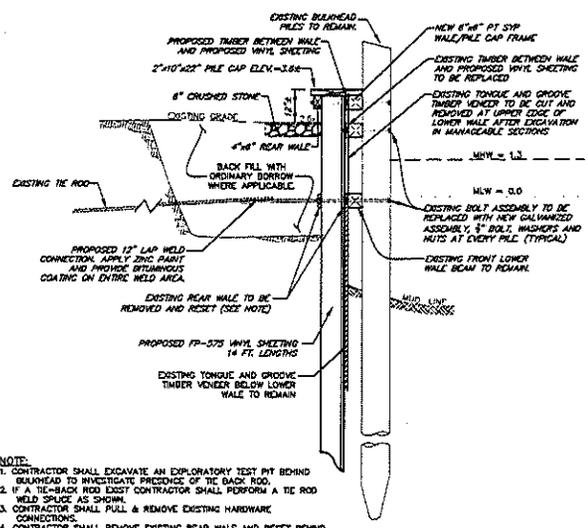
SCALE: 1" = 20' DATE: DECEMBER 18, 2020

holmes and ghera, inc. 505 WATERBURY COURT, SUITE 204 FALMOUTH, MA 02540 508-548-2362 www.holmesandghera.com

DRAWN: GWH, JAF, LAC CHECKED: MBM DATE: 07-11-21 SHEET 3 OF 3

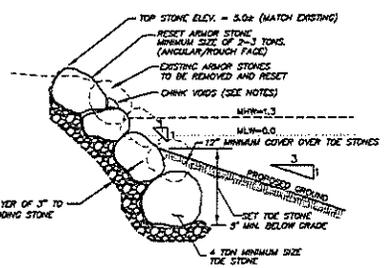


**BULKHEAD RECONSTRUCTION
DETAIL SECTION B-B**
SCALE: 1/2" = 1'



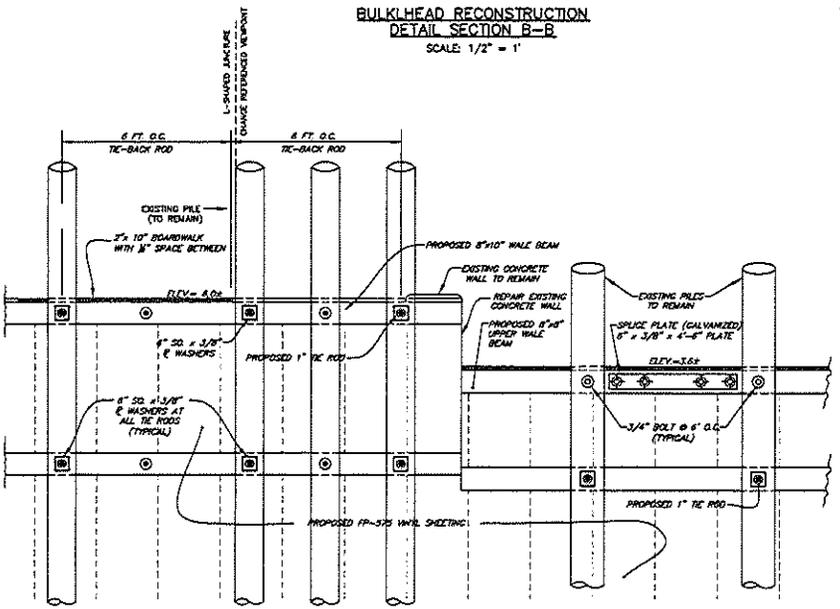
- NOTE:**
- CONTRACTOR SHALL EXCAVATE AN EXPLORATORY TEST PIT BY BIDDING BULKHEAD TO INVESTIGATE PRESENCE OF THE BACK ROD.
 - IF A TE-BACK ROD EXIST CONTRACTOR SHALL PERFORM A TIE ROD WELD SPICE AS SHOWN.
 - CONTRACTOR SHALL PULL & REMOVE EXISTING HARDWARE CONNECTIONS.
 - CONTRACTOR SHALL REMOVE EXISTING REAR WALL AND RESET BY BIDDING VINYL SHEETING. IF NO REAR WALL EXIST CONTRACTOR SHALL INSTALL NEW 4"x6" REAR WALL.

**BULKHEAD RECONSTRUCTION
DETAIL SECTION C-C**
SCALE: 1/2" = 1'

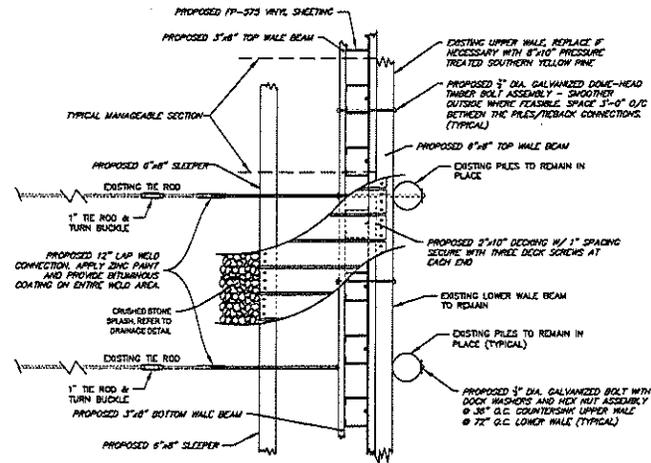


**RIPRAP RECONSTRUCTION
DETAIL SECTION A-A**
SCALE: 1/4" = 1'

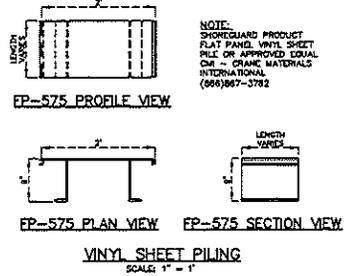
- RIPRAP NOTES:**
- RIPRAP STONES SHOULD NOT DISTURB UNDERLYING MATERIALS OR DAMAGE GEO-TEXTILE FABRIC. RIPRAP PLACEMENT SHOULD BE TO FULL LAYER THICKNESS IN ONE OPERATION. RIPRAP STONES SHALL BE INSTALLED WITH NO SIGNIFICANT VOIDS AS GOOD PRACTICE REQUIRES.
 - PLACEMENT OF ARMOR STONES SHALL NOT DISPLACE THE BEDDING STONE. EACH ARMOR STONE SHALL FIRMLY CONTACT EACH SURROUNDING ARMOR STONE ON FOUR SIDES. ARMOR STONE SHALL HAVE ANGLULAR/ROUGH FACE TO HELP REDUCE WAVE RUNUP.
 - FOR PROPER AND ACCEPTABLE INSTALLATION PROCEDURES, CHINK STONES SHALL BE PLACED BY MACHINE OR BY HAND TOOLS. USING LEVER ACTION SO AS TO PREVENT FUTURE SHIFTING OR MOVEMENT. CHINK STONES SHALL NOT BE INSERTED INTO VOIDS BY HAND.



BULKHEAD ELEVATION VIEW
SCALE: 3/4" = 1'



PROPOSED BULKHEAD PLAN VIEW
SCALE: 1/2" = 1'



VINYL SHEET PILING
SCALE: 1" = 1'

- NOTES**
- ELEVATIONS SHOWN ARE BASED ON THE MLW DATUM
 - CONVERSION TO NVD DATUM: NVD = MLW + (0.00)

NOTICE

Unless we will send you the original (and) stamp of the responsible Professional Engineer, or Professional Land Surveyor on this plan:

(1) no person or persons, including any recipient or other party affected, may rely upon the information contained herein; and

(2) the plan remains the property of Holmes & McGrath, Inc.

DATE	DESCRIPTION	Drawn	Checked
12/20/21	REVISION DETAIL B-B & C-C REMOVE PROPOSED BULKHEAD PLAN VIEW	MMH	MMH
08/12/21	CHANGED PROPOSED SHEETING	MMH	MMH
01/28/21	REVISION TO DETAIL B-B & C-C BULKHEAD PLAN VIEW DETAIL 8x10" WALE BEAMS	LAC	MMH

REVISIONS

DETAILS
OF BULKHEAD REPAIRS
PREPARED FOR
NINA'S MARINA REALTY TRUST
FOR LOT 3, 3308 SCRANTON AVENUE
IN
FALMOUTH HEIGHTS FALMOUTH, MA

SCALE: AS SHOWN DATE: DECEMBER 18, 2020

holmes and mcgrath, inc.
civil engineers and land surveyors
205 WATERBURY COURT, SUITE 401 FALMOUTH, MA 02540
508-548-3368 www.holmesandmcgrath.com

DRAWN: DWG. J.F. LAC CHECKED: [Signature]
JOB NO: 220035 DWG. NO: 07-1-27M SHEET 12 OF 3

BUSINESS

1. COVID-19 update and recommendation – Scott McGann (10 minutes)

BUSINESS

2. Vote to adopt FY2023 budget and submit it to the Finance Committee (10 minutes)

BUSINESS

3. Status report/update on Fresh Pond Well and PFAS issues (15 minutes)

BUSINESS

4. Interview, vote and appoint committee members
 - a. Human Services Committee – Tanya Kohli (5 minutes)

Human Services Committee (9-member committee) (3-year terms)

Two positions

- 2 positions, both with terms until 6/30/2024

One applicant

- Tanya Kohli



TOWN OF FALMOUTH

**BOARD, COMMITTEE OR COMMISSION
APPLICATION FORM**

If you are interested in serving the Town of Falmouth in any capacity, please fill out this form and mail it to: The Board of Selectmen, Falmouth Town Hall, 59 Town Hall Square, Falmouth, MA 02540. Information received will be available to all Town Boards and Officials, although the filling out of this form does not assure appointment. If selected for an interview, you may wish to submit a resume or additional information. This form and a listing of all boards and committees can be found on the Falmouth website: www.falmouthmass.us.

Name: Tanya Kohli

Address: 319 Sandwich Road Village: Falmouth ZIP: 02536

Mailing Address: 319 Sandwich Road Village: Falmouth ZIP: 02536

Telephone: [REDACTED] Email: [REDACTED]

How long have you been a Resident 4 years (date:) / Taxpayer 4 years (date:)

Amount of time you are available to give: 2 - 3 hours per month

Town Committee, Board or Commission you are interested in serving on:

1. Falmouth Human Services Committee
2. _____
3. _____

Seeking: Permanent Position Alternate Position

Have you attended any meetings of the committee for which you are applying? No

Relevant affiliation and work and personal experiences _____

1. Director of Prevention and Screening, AIDS Support Group of Cape Cod February 2020 to present
2. Clinical Supervisor/Counselor, Gosnold Treatment Centre January 2018 to February 2020
3. Mental Health Specialist, Cape Cod Healthcare September 2017 to January 2018

Town offices held in Falmouth or elsewhere and dates of years served: N/A

Briefly describe the particular skills you feel you will add to the committee or board: _____

1. I have an indepth understanding of health and human services community needs in Falmouth.

2. I will bring to the committee my expertise working in field of substance use in Falmouth.

3. I have experience working with local (Cape Cod) community partners/non-profits; collaborating referrals/services, conducting community outreach events.

4. I will bring to the committee 8 years of experience working in the field of mental health services.

5. I will bring to the committee my expertise of strong leadership, policy implementation, advocacy to

bridge the gaps for the unmet community needs in Falmouth.

List three (3) references:

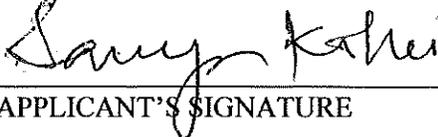
	<u>Name</u>	<u>Title</u>	<u>Phone</u>
1.	Dan Gates, CEO, AIDS Support Group of Cape Cod		508.487.9445
2.	Jill Brookshire, Director of Medical Case Management, AIDS Support Group of Cape Cod		508.487.9445
3.	Paul Goddu, Chief Financial Officer, AIDS Support Group of Cape Cod		508.487.9445

I hereby certify that I have been provided a summary of Massachusetts General Law 268A, the Conflict of Interest of Law, I have read the material provided, and to the best of my understanding have no potential or actual conflict of interest.

I have received a copy of the Board of Selectmen's Appointment Policy and read the material provided.

10/14/2021

DATE


APPLICANT'S SIGNATURE

In the event the applicant cannot sign this statement, you should provide an explanation of the reason (s) why if you still wish consideration for appointment.

BUSINESS

4. Interview, vote and appoint committee members
 - b. Steamship Authority Board of Governors – Peter James Jeffrey (5 minutes)

Steamship Authority Board of Governors (Falmouth representative) (3-year term)

One position

- Unexpired term ending 12/31/2023

One applicant

- Peter James Jeffrey

**Town of Falmouth
Town Committee Vacancy**

The Falmouth Select Board has announced the following vacancy:

<u>Vacancy</u>	<u>Term Until</u>
Falmouth Representative to Board of Governors Woods Hole, Martha's Vineyard, Nantucket Steamship Authority	12/31/23

Applications are available on the Town web site <https://www.falmouthma.gov/647/Town-Committees>, or in the Office of the Town Manager and Select Board, 59 Town Hall Square, Falmouth. The deadline for applications is Thursday, December 30, 2021.

Publication Date: Friday, December 3, 2021



**TOWN OF FALMOUTH
BOARD, COMMITTEE OR COMMISSION
APPLICATION FORM**

If you are interested in serving the Town of Falmouth in any capacity, please fill out this form and mail it to the Select Board, Falmouth Town Hall, 59 Town Hall Square, Falmouth, MA 02540. Information received will be available to all Town Boards and Officials, although the filling out of this form does not assure appointment. If selected for an interview, you may wish to submit a resume or additional information. This form and a listing of all boards and committees can be found on the Falmouth website: www.falmouthma.gov.

Name: Peter James Jeffrey

Address: 98 Gansett Road Village: Woods Hole ZIP: 02543

Mailing Address: P.O. Box 145 Village: Woods Hole ZIP: 02543

Telephone: [REDACTED] Email: [REDACTED]

How long have you been a Resident X (date: 2019) / Taxpayer X (date: 2013)
as needed

Amount of time you are available to give: _____

Town Committee, Board or Commission you are interested in serving on:

1. Steamship Authority Board of Governors
2. _____
3. _____

Seeking: Permanent Position Alternate Position

Have you attended any meetings of the committee for which you are applying? Viewed Board meetings by video. _____

Relevant affiliation and work and personal experiences: _____
Please see attached statement and resume.

Town offices held in Falmouth or elsewhere and dates of years served: _____
None.

Briefly describe the particular skills you feel you will add to the committee or board: _____
Please see attached statement.

You may attach a resume to this application.

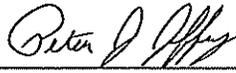
List three (3) references:

	<u>Name</u>	<u>Title</u>	<u>Phone</u>
1.	Kathryn Wilson	Falmouth Representative to the Steamship Authority	508-274-0655
2.	Catherine Bumpus	Falmouth (WH) Resident	508.274.7009
3.	Doug Jones	Past Select Board member, WHCA board member, FA faculty	508.221.6804

I hereby certify that I have been provided a summary of Massachusetts General Law 268A, the Conflict of Interest of Law, I have read the material provided, and to the best of my understanding have no potential or actual conflict of interest.

I have received a copy of the Select Board's Appointment Policy and read the material provided.

December 29, 2021
DATE


APPLICANT'S SIGNATURE

In the event the applicant cannot sign this statement, you should provide an explanation of the reason (s) why if you still wish consideration for appointment.

Town of Falmouth
Board, Committee or Commission Application Form
Attached Statement

Relevant affiliation and work and personal experiences:

When my wife suggested we move fulltime from Alexandria, Virginia to her childhood home in Falmouth, it was not a hard sell. The natural beauty of the Cape and Islands is infectious. I could not imagine a better place or community in which to raise my twin children. Since moving to Falmouth year-round in 2012, I have been involved in the First Congregational Church of Falmouth, Highfield Hall & Gardens, Falmouth Youth Hockey, the Boy Scouts of America, and the Quissett Yacht Club.

Recently, I joined the ResilientWoodsHole Steering Committee: a public-private partnership readying for the impacts of climate change in Woods Hole. Living in a maritime town reliant on its working port, the impact of climate change is inescapable, and I am proud to be part of the group working towards solutions. The Steamship Authority is a vital part of our town and our region and will be greatly impacted by climate change.

As a Federal labor and employment law attorney, I have had the privilege to represent Federal employees throughout the world: from a postal clerk at the window of a Main Street post office, to a Department of Defense Senior Executive stationed in Afghanistan. In my practice, I focus on problem-solving, and value truth and sensible solutions. Understanding that legal action always involves some element of risk, I make sure my clients understand all benefits and risks involved in any proposed course of action.

Briefly describe the particular skills you feel you will add to the committee or board:

Each member of the Board of Governors has a dual role – one as a fiduciary to the Steamship Authority, and one as a representative of their respective Port town. Only in effectively balancing those roles can the Board of Governors be successful. In my law practice, I take very seriously my dual role as counselor and advocate. Therefore, I focus on honest, straightforward advice, and sensible solutions over a “win.” I will bring that focus and skill to the Board. Moreover, in my role as a member of the ResilientWoodsHole Steering Committee, I understand the impact and urgency that climate change and sea-level rise will have on the operations of the Steamship Authority and its respective ports. The Town of Falmouth for centuries has been a working port: an important economic engine for the Town and a vital connection to the Islands. It is with that sense of history in mind, I would approach my role on the Board.

Peter James Jeffrey

P.O. Box 145, Woods Hole, MA 02543 | 703.501.4876 | peterjamesjeffrey@gmail.com

Peter James Jeffrey

P.O. Box 145, Woods Hole, MA 02543 | 703.501.4876 | peterjamesjeffrey@gmail.com

Objective

- Appointment to the Steamship Authority Board of Governors by the Town of Falmouth Select Board.

Education

J.D., *magna cum laude* | MAY 2004 | CATHOLIC UNIVERSITY OF AMERICA, COLUMBUS SCHOOL OF LAW

B.A. (History) *cum laude* | MAY 1994 | XAVIER UNIVERSITY

Experience

MEMBER/MANAGING DIRECTOR | JEFFREY LAW GROUP, PLLC | DEC. 2011 - PRESENT

- Founder and managing director of the Jeffrey Law Group, PLLC, a boutique law firm focusing exclusively on the representation of Federal employees in labor and employment law matters.

LECTURER | CATHOLIC UNIVERSITY OF AMERICA, COLUMBUS SCHOOL OF LAW | JAN. 2009 - PRESENT

- Developed curriculum for an advanced course in Fair Employment Law; instruct law students in the laws prohibiting employment discrimination.

MEMBER/LITIGATION DIRECTOR | MAHONEY & JEFFREY, PLLC | JAN. 2009 - NOV. 2011

- Managed an annual case load of 75-100 cases and supervised a staff of 4 - 5 attorneys who litigated Federal sector labor and employment law claims in administrative proceedings.

SENIOR ASSOCIATE | MAHONEY & MAHONEY, LLP | MAY 2005 - DEC. 2008

- Served as lead counsel in litigation of Federal labor and employment law claims in administrative proceedings.

ARCHIVIST | U.S. NATIONAL ARCHIVES AND RECORDS ADMINISTRATION | JUN. 1996 - APR. 2005

- Appraised and scheduled federal records in accordance with the Federal Records Act; reviewed the Nixon Presidential materials, specifically the Nixon White House tapes, for public access in accordance with the Presidential Recordings and Materials Preservation Act and Executive Order 12958.

Community Participation

- ResilientWoodsHole Steering Committee 2021 - present
- Highfield Hall & Gardens, Board of Trustees 2018 - 2020
- Boy Scouts of America, Falmouth Troop 40, Committee Member 2018 - 2020
- Falmouth Youth Hockey, Squirt B2 Assistant Coach 2017 - 2018
- First Congregational Church of Falmouth 2013 - present
- Quissett Yacht Club 2006 - present

Outside Interests: Boating, Platform Tennis, Reading, Sailing

BUSINESS

5. Discussion on disposition of Police Department weapons (10 minutes)

BUSINESS

6. Status report on Woods Hole Oceanographic Institution (WHOI)
CWATER Project (10 minutes)



FALMOUTH CONSERVATION COMMISSION

59 Town Hall Square, Falmouth, Massachusetts 02540

(508) 495-7445

MEMORANDUM

To: Select Board
CC: Julian Suso, Town Manager and Peter Johnson Staub, Assistant Town Manager
From: Jennifer L. Lincoln, Conservation Administrator
Date: January 7, 2022
Subject: Status of permitting for WHOI CWATER

Proposed Project:

Proposed is the Complex for Waterfront Access to Exploration and Research (CWATER) project, aiming to replace the Iselin Marine Facility (IMF) with a more modern and resilient port facility.

- The dock will be replaced in kind as a pile-supported structure and will be constructed in nearly the same footprint. 246 steel piles (of various diameters) will be removed and replaced with 89 new piles (36" in diameter).
 - o To improve operations, other proposed changes include reconfiguring the bulkhead in the vicinity of the small boat slips along the Eel Pond entrance channel, relocating the large test well, and installing a robotic vessel port on the west berth.
- Expanded dredging is proposed, increasing depth to -24' MLLW. This is estimated to be 420 cubic yards of sediment, located on 4,850 SF of harbor bottom and performed largely within dredge limits previously authorized.
 - o 2,425 cubic yards of riprap boulder, located adjacent to the existing bulkhead, will need to be temporarily removed for the installation of sheet piling for the construction of the new bulkhead.
 - o Dredging along the east berth is proposed adjacent to the re-aligned small boat slips.
 - o Clamshell and hydraulic dredge machinery, and a container barge will be used.
- The existing IMF buildings (48,000 SF) will be replaced with a new waterfront building (NWB) (45,000 SF), constructed landward of the bulkhead and behind Smith Building.

- The dock and high bays are proposed to be constructed 2.5' above the existing dock elevation, and in the future, they are proposed to be raised 1.5' to accommodate for sea level rise as needed.

The project will require construction within 50' of existing eelgrass beds.

Eelgrass, Shellfish, and Benthic Surveys (June 30-July 1, 2020) have been submitted along with an Eelgrass Avoidance and Protection Plan.

- Roughly 21,000 SF of eelgrass was mapped on the west side of the Iselin Dock and the east side near the Eel Pond channel.
- A pre-construction in-water survey will be performed within 100' of the Iselin Pier during the summer or early fall before construction begins. The closest edge of the eelgrass beds will be marked. Silt curtains will be deployed along the marked perimeter prior to in-water construction. Any emergency anchoring within the eelgrass beds will be documented.
- Annual monitoring during the same time of year for 3 years will occur to document the status of the eelgrass meadows and any recovery areas affected by construction.
- The CWATER project has the potential to alter between 500-1500 SF of eelgrass habitat. As mitigation, it is proposed to convert traditional boat moorings within eelgrass meadows in Great Harbor into conservation moorings.

A floating boom with a submerged silt curtain will be installed and maintained during construction. A spill containment kit will be kept on-site and aboard all barges during construction.

The proposed building and the entire pier will ultimately be raised 4.5' above existing elevations from the existing bulkhead and expanding to all edges on the waterside of the site to an elevation of 10.5'.

The project does not meet FWR 10.38 (4)(d) or FWR 10.16 (1)(h)(5), and WHOI is seeking a variance from FWR 10.16 and is taking the position that they have overcome the presumption, and therefore meet, FWR 10.38.

A Storm Runoff Analysis and Operation and Maintenance Plan has been submitted.

Permitting Status:

The project is currently before the Commission for review under a Notice of Intent. The Commission has hired Trey Ruthven, Sustainable Coastal Solutions as the peer review consultant.

FWR 10.16 (1)(h)(5) states: *No new, replacement, or substantial alteration of an existing dock or pier shall be permitted within 50 feet of an area of eel grass (Zostera marina).*

As stated above WHOI has provided a Eelgrass Avoidance and Protection Plan, this plan, in part, proposes to convert 8 traditional moorings to a helical mooring system as mitigation for presumed impacts to eelgrass beds during and after construction.

FWR 10.38 (4)(d) states: (d) *A proposed project within a Velocity zone shall not destroy or otherwise impair the function of any portion of said landform and/or shall not have an adverse effect on adjacent wetland Resource areas. Activities and their ancillary uses in Velocity zones which result in alterations to vegetative cover, interruptions in the supply of sediment to other wetland resources, and/or changes to the form or volume of a Dune or beach will have an Adverse effect on said landform's ability to provide storm damage prevention and flood control and are, therefore, prohibited. These activities include, but are not limited to the construction of:*

- 1. New structures., including buildings, sheds and garages, and additions or substantial improvements to existing structures;*
- 2. Foundations other than open pilings or columns;*
- 3. New or proposed expansions of roads, driveways or parking lots, or impermeable paving for existing unpaved roads, driveways or parking lots;*
- 4. New or proposed expansions of coastal engineering structures;*
- 5. New septic systems.*

Part new waterfront building is located within the Falmouth designated velocity zone. This zone is located 25 feet landward of the FEMA designated velocity zone. As stated above WHOI's position is that they have overcome the presumption and meet the regulation.

Possible implications of allowing the new waterfront building within the Falmouth velocity zone is a *potential* loss of credits/points during the Community Rating System (CRS) review process. The CRS is an incentive program that encourages communities to exceed floodplain management practices outlined in the National Flood Insurance Program (NFIP). The incentive translates to savings on a property owners federal flood insurance. A national program the CRS can potentially save residents up to 45% on flood insurance. This goal is unlikely to be met (only 2 communities in the country) due to factors outside the Town's control. The average savings for communities in Massachusetts is 10%. The percentage of savings is based on the amount/number of credits/points a community receives. Falmouth's local wetland regulations, in particular, the regulations governing activities in a flood zone FWR 10.38 *could* generate credits/points if consistently applied. It is difficult to quantify exactly what the impact of allowing the new waterfront building in its proposed location would be, if any, on the CRS review. Again, it is WHOI's position that they meet that performance standard in the regulations.

BUSINESS

7. Eversource status update (10 minutes)

BUSINESS

8. Status update on Old Burying Ground (10 minutes)

Preservation of Grave Markers and Monuments
Old Burying Ground
Cemetery lane
Falmouth, Massachusetts

The Old Burying Ground, also referred to as the Old Town Cemetery, is a historic cemetery located off Mill Road. The approximately 4.5-acre cemetery is accessed via Cemetery Lane. **Attachment A** is a plan of the Old Burying Ground site. **Attachment B** is an aerial photograph showing the Old Burying Ground.

SECTION 1 – BACKGROUND:

Falmouth's Old Burying Ground was the subject of an article written by Ann Sears, who was a member of the Falmouth Historical Society, titled *Reading History in Falmouth's Old Burying Ground* published in Spritsail's Winter 1996 edition. Ms. Sears describes the Old Burying Ground as follows:

One of the richest collections of Falmouth history lies tucked away from the bustle of traffic on Locust Street, down at the end of a narrow, rutted cart path. The secluded path, which is known as Cemetery Lane, leads to Falmouth's Old Burying Ground.

Inside the gate, the burying ground spreads out like a country meadow. It is quiet but for wind rustling through the aged spruce, cedar, and maples. A line of old sycamore maples separates the path from the ground where more than 700 gravestones are interspersed with dumps of tees. The nearest third of the cemetery belongs to this century; the middle third dates to the 19th century, and from the above-ground tomb back to the far wall is 18th century. Fieldstone walls surround, in a rectangular shape, the four-acre ground. At the far end lies Sider's Pond hidden by brush and trees. Behind the stone walls on the long sides are the back yards of mid- 20th century houses. Their presence is barely noticeable because the ancient cemetery still draws the eye as it did nearly a hundred years ago when Falmouth poet Katharine Lee Bates wrote:

Epitome

*A lonely burial-ground is on Cape Cod.
Claiming the privilege of age, each stone
Leans as it will, its scarred front overflown
With winged cherubic head. By grace of God,
Fulfilled in nature's gentle period,
All ghastly blazonry of skull and bone,
Muffled in moss and lichen overgrown
Hath made its peace with beauty. Seldom trod
These grasses are, where, ghosts of old regret,
Once-tended vines run Wild, but should a guest
Stoop there, this weathered epitaph to trace,
'Twill whisper him of all the human race.
Here lies, beneath a heartsease coverlet,
"Patience, wife of Experience," at rest.*

There is no better introduction to Falmouth's Old Burying Ground than this, written by the author of America the Beautiful, who played there as a child.

**Preservation of Grave Markers and Monuments
Old Burying Ground
Cemetery lane
Falmouth, Massachusetts**

Massachusetts Historical Commission

The cemetery is in the Falmouth Village Green Historic District that was designated as a National Register Historic District in March 1996. The Massachusetts Historical Commission (MHC) identifies the Old Town cemetery on Mill Road in Falmouth as Inventory Number FAL.808. The MHC on-line information includes additional historic information for the Old Burying Ground.

Previous Preservation of Grave Markers and Monuments

DPW records indicate the MHC informed the Town in 1992 that cemetery preservation work was regulated under Massachusetts General law c. 272 s. 73A. MHC informed the Town that permitting was required to complete any preservation work.

The Town of Falmouth retained the services of *Fanin Lehner Preservation Consultants (FLPC)* in 2005. FLPC completed the following:

- Multiple site inspections to inventory and assess the condition of the existing grave markers
- An August 2005 spreadsheet that included the name, death date, marker material, and type of marker for approximately 80 markers. The spreadsheet identified the preservation methods required to for each marker and prioritized the preservation work.
- A later 2005 spreadsheet that included the same information as the August 2005 spreadsheet for over 700 markers.

An undated plan titled *Old Town Cemetery* depicts the marker locations and names for over 500 markers. It is not known if this plan was prepared as part of FLPC's work.

FLPC provided a detailed scope of work and description of services required to preserve the inventoried markers in August 2005. Preservation work was initially undertaken by FLPC in 2005 – 2006. Donna Walcovy, a Cemetery Conservator, completed additional preservation work after FLPC's work. There is little information available for the FLPC and Walcovy preservation work in the DPW files.

SECTION 2 – PROJECT GOALS AND OBJECTIVES:

The Falmouth DPW contacted FLPC in December 2021 and January 2022. FLPC indicated they have copies of their Old Burying Ground inventory spreadsheet prepared as part of their previous work. They recommended completing a site visit to:

1. Evaluate the current marker conditions.
2. Update and revise the spreadsheet information. The spreadsheet update would include documenting the current grave marker conditions, identifying any required preservation work, a preservation work prioritization rating, and preservation work cost estimates for individual markers.

Preservation of Grave Markers and Monuments
Old Burying Ground
Cemetery lane
Falmouth, Massachusetts

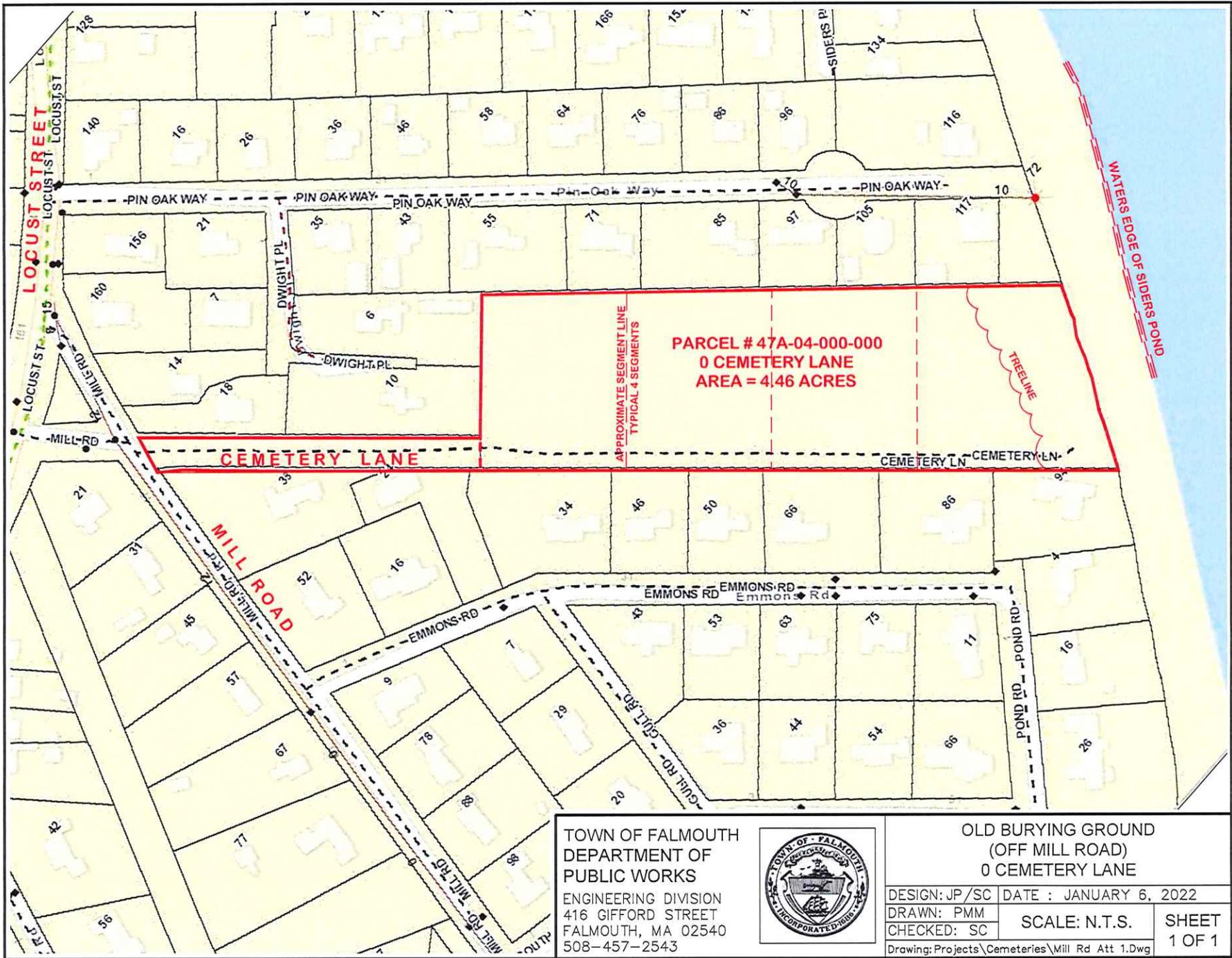
The Town of Falmouth will retain Fanin Lehner Preservation Consultants (FLPC) to provide Cemetery Conservation and Preservation consulting services. With FLPC's previous conservation and preservation experience at the Old Burying Grounds, that historical and institutional knowledge will allow FLPC to build upon previous information and approach the project as a continuation of work rather than start the project from the beginning.

The Conservation of Grave Markers and Monuments Project goal would be to provide a preservation plan to improve the existing grave marker and monument conditions. The following objectives will be required to prepare the preservation plan:

- Documenting and assessing existing grave marker and monument conditions.
- Making specific recommendations for grave marker and monument conservation and restoration.
- Establishing priorities and phases for implementing the recommendations.
- Identifying regulatory and permitting requirements to complete the work.
- Providing cost estimates for outlined recommendations.
- Developing a plan for maintaining the cemetery on an annual cyclical basis.

FLPC would provide a summary report that includes all the bulleted item information listed above. It is our opinion that the future conservation and preservation work will require a phased approach. The Town would then use this report to develop a phasing plan that prioritized future conservation and preservation work. The report's preservation cost estimates would be used to estimate the cost to implement each phase.

The Town of Falmouth DPW currently maintains the Old Burying Grounds landscaping and Cemetery Lane access route. The Falmouth DPW would incorporate the annual maintenance recommendations made by FLPC into the DPW's current maintenance plan.

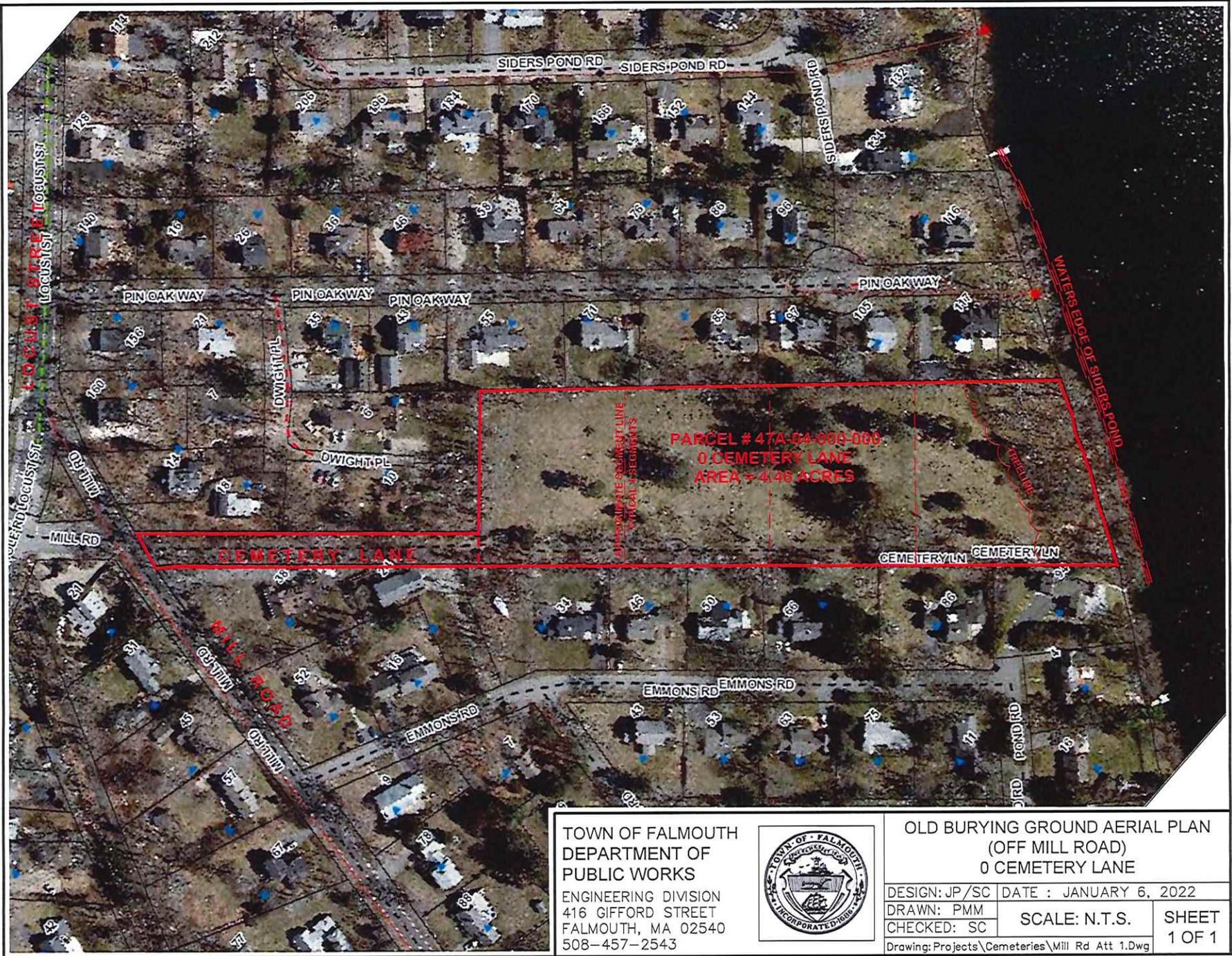


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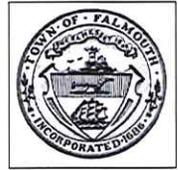


OLD BURYING GROUND
 (OFF MILL ROAD)
 0 CEMETERY LANE

DESIGN: JP/SC	DATE : JANUARY 6, 2022
DRAWN: PMM	SCALE: N.T.S.
CHECKED: SC	
Drawing: Projects\Cemeteries\Mill Rd Att 1.Dwg	
SHEET 1 OF 1	



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OLD BURYING GROUND AERIAL PLAN
 (OFF MILL ROAD)
 0 CEMETERY LANE

DESIGN: JP/SC	DATE : JANUARY 6, 2022	SHEET 1 OF 1
DRAWN: PMM	SCALE: N.T.S.	
CHECKED: SC		
Drawing: Projects\Cemeteries\Mill Rd Att 1.Dwg		

BUSINESS

9. Review and Vote to Approve minutes of meetings (10 minutes)
 - a. Public Session – December 20, 2021
 - b. Executive Session – November 8, 2021

BUSINESS

11. Town Manager's report (5 minutes)

REPORT

TO: Falmouth Select Board

FROM: Julian M. Suso

JMSuso

DATE: January 7, 2022

- The Board will meet at 6:30PM on Monday in executive session to review/finalize draft executive session minutes from the 11/8/21 meeting.
- You will be considering a number of housekeeping items under Summary of Actions. Please note that items "c" and "j" both refer to the same request for a letter of support from the Woods Hole Diversity Committee – this duplication was inadvertently missed in agenda preparation. This also includes a Petition to the General Court to move forward with the Police Department's removal from the State Civil Service process.
- Scott McGann will join us once again for a COVID-19 update. As part of this update, Scott will affirm the recommendation from the Board of Health that the Select Board (re-) establish the masking requirement for Town Hall and Town Administrative buildings.
- As you know, the Board will be considering adoption of the proposed FY2023 operating budget and transmittal to the Finance Committee, in timing consistent with the Falmouth Town Charter.
- Both Cathal O'Brien and Peter McConarty will join us for a status report and update on the Fresh Pond Well and on PFAS issues.
- We have a requested discussion on the disposition of the Police Department weapons, following up on the recent action at the November Town Meeting where funds were appropriated for replacement weapons which would by standard practice involve the trade-in (credit) for the used weapons which have been estimated to exceed \$10,000 in value.
- Jennifer Lincoln will join us for a status report on the Conservation Commission's permitting process for the WHOI CWater project. I also anticipate that a representative from WHOI will be with us.
- EverSource representatives will join us once again for a brief update on their proposed infrastructure project involving easement(s) on the Bikeway.
- Peter McConarty will join us for a status update on the Town's work with the Old Burying Ground.
- I joined the Finance Committee and the Sandwich Road Fire Station Building Committee for their meetings in the past week.
- Your next meeting is Saturday, January 15 from 8-11AM at Town Hall.