



TOWN OF NORTHBOROUGH Community Preservation Committee

Town Hall Offices • 63 Main Street • Northborough, MA 01532 • 508-393-5019 • 508-393-6996 Fax

FY2025 APPLICATION

The Community Preservation Act provides funding for three core community concerns:

- Acquisition and preservation of open space/recreation
- Creation and support of community housing
- Acquisition and preservation of historic buildings and landscapes

DATE SUBMITTED: 1/24/24
NAME OF PROJECT: 432 Whitney Street Land Acquisition Project
NAME OF APPLICANT: Town of Northborough Planning Department
CONTACT ADDRESS: Town Offices, 63 Main Street, Northborough MA 01532
CONTACT TELEPHONE: 508-393-5019
CONTACT EMAIL ADDRESS: lconnors@town.northborough.ma.us
SPONSORING ORGANIZATION: Open Space Committee
CPA CATEGORY: <input checked="" type="checkbox"/> OPEN SPACE/RECREATION <input checked="" type="checkbox"/> HOUSING <input type="checkbox"/> HISTORIC
LOCATION: <input type="checkbox"/> TOWN LAND <input type="checkbox"/> SCHOOL LAND <input checked="" type="checkbox"/> PRIVATE LAND
AMOUNT OF CPA FUNDS REQUESTED: \$1,700,000
OTHER FUNDING SOURCES:
TOTAL COST OF PROJECT: \$1,700,000
BRIEF DESCRIPTION OF PROJECT, INCLUDING ANY CONSTRUCTION REQUIRED:
<p>The proposed project involves Town purchase of 23.77 acres of land currently used for agricultural purposes and enrolled within the MGL Chapter 61A program. In early December 2023, the owner of the land provided the Town with a "Notice of Intent to Sell and Convert Property to Other Use", which includes a Purchase & Sale Agreement executed by Howland Development Corp. to purchase the property for \$1.7 million. The buyer wants to convert the land to commercial/industrial/warehouse/distribution purposes, construct a 40,000-60,000 sq ft building and utilize the abutting freight rail line. Note that the property is currently within the Industrial District and a portion lies within the Groundwater Protection Overlay District Area 3. Due to its enrollment in the Chapter 61 Tax Abatement Program, the Town has the Right-of-First Refusal meaning that the Town can opt to match the purchase price and acquire the property for municipal purposes. This project proposes to purchase the property utilizing CPA funding for open space/recreation purposes and a small-scale affordable housing development consisting of 4-8 multi-family units.</p>

PROJECT DESCRIPTION: Please answer the following questions. Applications will be returned as incomplete if all relevant requested information is not provided. Include additional pages of supporting materials and exhibits if necessary.

1. **GOALS:** What are the goals of the proposed project? Who will benefit and why? How will success be measured?

Purchase of this land for open space and affordable housing purposes will accomplish the following to the benefit of all Northborough residents, especially those who live west of the aqueduct on Whitney Street:

- Provide land that can accommodate a small affordable multi-family housing development of 4-8 units. Construction of these units will help the Town maintain compliance with MGL Chapter 40B and provide housing opportunities for low-income individuals and families;
- Protect important wildlife habitat;
- Protect a wetland system that is hydrologically connected to Bearfoot Brook and the flood control site that is owned, protected and managed by the DCR;
- Provide an important open space connection between the aqueduct to the west of the railroad tracks and the permanently protected open space associated with Bearfoot Brook and ultimately the Assabet River in Berlin;
- Preserve beautiful views towards Boston from a high point located along the western portion of the property;
- Passive recreation facilities could be developed on the property, including a gravel parking lot and trails that could link the aqueduct to the scenic overlook located on the property and existing trails located on the abutting DCR property.
- Provide a substantial buffer between single-family homes located on Whitney Street to the west of the aqueduct and industrial properties located to the east.
- Acquiring this property for open space and passive recreation purposes advances the following goals and objectives as identified in the 2020 Northborough Open Space & Recreation Plan:
 - Goal #1: Preserve open space for the town's overall benefit.
 - Objective #1: Acquire through fee acquisition or conservation restriction additional open space permanently protected by the Town, State or non-profits, particularly for parcels that provide/can provide key linkages among open spaces.
 - Goal #3: Improve and expand properties for active and passive open space opportunities.
 - Objective #2: Expand connections between existing open spaces and community resources. This can include parking, walking/biking routes, sidewalks and trail connections.
- Acquiring this property for housing purposes advances the following goal as identified in the 2020 Northborough Master Plan:
 - Goal #1: Continue to maintain and encourage a diversity of housing options to increase housing affordability and choice for all ages and to ensure that at least 10% of the Town's housing inventory continues to be deemed affordable under state guidelines.

2. **ELIGIBILITY FOR CPA FUNDS:** From your review of the procedural sheet, describe how your project is eligible for the CPA category you have chosen.

This project meets the following Open Space goals as specified on the procedural sheet:

- Provide opportunities for passive recreation;
- Protect or enhance wildlife corridors, promote connectivity or habitat or prevent fragmentation of habitats;
- Provide connections with existing trails or potential trail linkages;
- Preserve scenic views;
- Preserve important surface water bodies, including a wetland and streams located on the property;
- Preserve Northborough's rural and agricultural character;
- Provide a connection to existing open space areas.

This project meets the following Affordable Housing goals:

- Contribute to the goal of maintaining at least 10% affordable housing by purchasing land that can accommodate a small-scale affordable housing development.

3. **COMMUNITY SUPPORT:** What is the nature and level of support and/or opposition for this project? Include either a letter of support from the town board (Housing Partnership, Historic District Commission, Open Space Committee, Recreation Commission etc.) or a letter from the board stating why they do not support this application.

To date, letters recommending that the Select Board act on its right-of-first refusal and pursue purchase of 432 Whitney Street have been received from the Planning Board, Open Space Committee and the Conservation Commission (see enclosed).

The Open Space Committee also supplied a letter supporting the use of Community Preservation Act funds to pay for the acquisition.

4. **BUDGET:** What is the total budget for the project and how will CPA funds be spent? All items of expenditure must be clearly identified and back-up documentation provided. If the project involves construction on Town or school land, it may need to meet procurement and prevailing wage requirements.

Acquisition of the property will cost \$1.7 million. If the Town decides to develop a small-scale affordable housing project on the property, there will be an additional nominal cost associated with subdividing the developable portion of the land from the remainder. The conservation portion will likely be owned and maintained by the Northborough Conservation Commission with the assistance of the Department of Public Works and the Trails Committee. The developable portion of the land will likely be conveyed to a non-profit affordable housing developer, who will design, permit and construct the small-scale development and then convey the finished units to deserving, low-income families.

5. **FUNDING:** What additional funding sources are available, committed or under consideration? Include commitment letters and describe any other attempts to secure funding for this project.

Given the short timeline within which the Town must act in accordance with MGL Chapter 61A, there is insufficient time to apply for grant funds to supplement the cost of this acquisition. Should the Select Board and Town Administration opt to supplement CPA funds with an alternative municipal source, options are municipal appropriation at Town Meeting, ARPA funds and/or an Overlay. I did approach both the Sudbury Valley Trustees and the MA Department of Conservation & Recreation about their interest in purchasing the property themselves, but neither had the financial capacity to do it.

6. **TIMELINE:** What is the schedule for project implementation, including a timeline for all critical elements? This should include the timeline for expenditures, receipt of other funds and/or other revenues, if any.

The proposed timeline is as follows:

Select Board Vote to Act on Right-of-First Refusal: January 2024

Annual Town Meeting Vote: April 23, 2024

Execute Purchase & Sale Agreement: By May 20, 2024

Execute Land Transfer: Within 90 days of execution of Purchase & Sale Agreement

7. **IMPLEMENTATION:** Who will be responsible for implementing the project? Who will the project manager be? What relevant experience does the proposed project manager have? Who else will be involved in project implementation and what arrangements have been made with them?

The Planning Director will work with the Town Administrator, Finance Director and Town Counsel to complete this project. For the purposes of this application, the Planning Director will serve as the Project Manager. All members of the team have the professional knowledge and expertise to handle the various tasks.

8. **MAINTENANCE:** If on-going maintenance is required, who will be responsible and how will it be funded?

The Department of Public Works will maintain the open space portion of the property with the assistance of the Conservation Commission and the Trails Committee, who will likely develop an informal parking lot and trail network. If the Town chooses to develop a small low-income housing project on the property, that portion will be subdivided from the conservation land and conveyed to a non-profit affordable housing developer, who will maintain the property until it is ultimately conveyed to an applicable household upon completion of construction.

ADDITIONAL INFORMATION: If applicable:

9. **FURTHER DOCUMENTATION:** Documentation that you have control over the site, such as a Purchase and Sale Agreement, option or deed; any feasibility reports, renderings or other relevant studies and material; and any additional information that might benefit the CPC in their consideration of this project.

Attached please find the following documents:

Notice of Intent to Sell and Convert Property to Other Use

Deed of the Property

Plan of Land entitled: "Plan of Land in Northborough, Mass", dated March 16, 1984, prepared by MacCarthy & Sullivan Engineering Inc.

GIS Map entitled: "432 Whitney Street Open Spaces in Northborough"

GIS Map entitled: "Open Space Resources Abutting 432 Whitney Street"

Orthophoto

Photos of the property

Letters from Planning Board, Planning Director, Conservation Commission, and Open Space Committee

Santo Anza, Trustee
0 Whitney Street Realty Trust
24 Reservoir Street
Northborough, MA 01532

To: Town of Northborough Select Board
c/o Northborough Town Clerk
63 Main Street
Northborough, MA 01532

NOTICE OF INTENT TO SELL AND CONVERT PROPERTY TO OTHER USE

Re: 432 Whitney Street, Northborough, MA (Assessor's Map 015.0-0022-0000)

Pursuant to the terms of MGL c.61A, s.14, notice is hereby given that 0 Whitney Street Realty Trust, the owner of the land located at 432 Whitney Street, Northborough, MA (the "Land") intends to **sell said Land for conversion to a commercial use.**

Location of Land: 432 Whitney Street, Northborough, MA

Acreage of Land: 23.77 acres

Name, Address and Telephone

Number of Landowner: Santo Anzo, Trustee of 0 Whitney Street Realty Trust
24 Reservoir Street
Northborough, MA 01532
508-341-6020

Included in this Notice are the following:

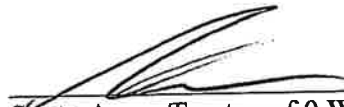
Certified copy of the Purchase and Sale Agreement concerning the sale of the land

Statement of Intent to Sell the Land

Statement of Intended Use of the Land

Map showing locus of the Land (shown as "15-22")

Signed this 5th day of December, 2023



Santo Anza, Trustee of 0 Whitney Street
Realty Trust

cc: Massachusetts State Forester c/o Commissioner, Massachusetts
Dept of Conservation and Recreation
10 Park Plaza, Suite 6620
Boston, MA 02116

Town of Northborough Planning Board
63 Main Street
Northborough, MA 01532


Town of Northborough Assessors
63 Main Street
Northborough, MA 01532

Town of Northborough Conservation Commission
63 Main Street
Northborough, MA 01532

CERTIFICATION OF PURCHASE AND SALE AGREEMENT FOR 432 WHITNEY STREET, NORTHBOROUGH, MA

The undersigned, Santo Anza, Trustee of 0 Whitney Street Realty Trust, the Seller of the land located at 432 Whitney Street, Northborough, Massachusetts, hereby certifies under oath that attached hereto is a true and correct copy of the Purchase and Sale Agreement for said land and dated as of November 28, 2023 which agreement is signed by the undersigned and by the Buyer, Howland Development Corporation.

December 5, 2023

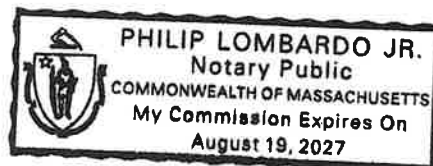

Santo Anza, Trustee of 0 Whitney Street Realty Trust

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss

On this 5th day of December, 2023, before me, the undersigned notary public, Santo Anza, Trustee of 0 Whitney Street Realty Trust personally appeared, proved to me through satisfactory evidence of identification, which were personal knowledge, to be the person who signed the preceding or attached document in my presence and who swore or affirmed to me that the contents of the document are truthful and accurate to the best of his knowledge and belief.


Notary Public
My Commission Expires: 8/19/27



PURCHASE AND SALE AGREEMENT

This Purchase and Sale Agreement ("Agreement") is dated as of November 28, 2023.

1. PARTIES AND MAILING ADDRESSES:

0 Whitney Street Realty Trust u/d/t dated October 27, 1986 and recorded with the Worcester District Registry of Deeds in Book 921, Page 181

hereinafter called the SELLER. agrees to SELL and

Howland Development Corporation, its nominee or assigns, with a principal place of business at 155 West Street, Suite 9, Wilmington MA 01887

hereinafter called the BUYER or PURCHASER, agrees to BUY, upon the terms hereinafter set forth, the following described premises:

• DESCRIPTION OF PREMISES:

The parcel of land with the buildings thereon located at 432 Whitney Street in Northborough, Worcester County, Massachusetts, shown as Lot 327 on the plan entitled: "Plan of Land in Northborough, Mass. Owned By M. Gordon Erlich & Lawrence I. Silverstein, Trustees u/d/t 12/28/79" dated March 16, 1984 and recorded in Plan Book 526, Plan 80 and all rights, easements and other appurtenances therein (the "Property" or "Premises"). Said lot contains 23.7678+/- acres according to said plan.

For Seller's title, see deed recorded in the Worcester District Registry of Deeds in Book 44712, Page 129.

3. TITLE DEED:

The Premises are to be conveyed by a good and sufficient quitclaim deed running to the BUYER, or to the nominee designated by the BUYER by written notice to the SELLER at least seven days before the deed is to be delivered as herein provided, and said deed shall convey a good and clear record and marketable title thereto, free from encumbrances, except,

- (a) Provisions of existing building and zoning laws;
- (b) Such taxes for the then current year as are not due and payable on the date of the delivery of such deed;
- (c) Any liens for municipal betterments assessed after the date of this Agreement;
- (d) Easements, restrictions, reservations and matters of record, if any, so long as the same do not interfere with Buyer's intended use of the Property.

All reference to the "then current year" and like references with respect to real estate taxes payable in respect of said premises shall be construed to mean the then current fiscal tax period within which such taxes are payable;

4. PURCHASE PRICE:

The agreed purchase price for said premises is One Million, Seven Hundred Thousand and 00/100 Dollars (\$1,700,000.00), of which:

(i) Fifty Thousand (\$50,000.00) Dollars to be paid at the time of the signing of the Purchase and Sale Agreement;

(ii) Starting on the first day of the month following five (5) months after Seller records a waiver of the Town of Northborough's Right of First Refusal (if obtained) waiving the right to purchase the property pursuant to Massachusetts General Laws Chapter 61A (or on the first day of the month following five (5) months after the lapse of the Town's right to exercise same), Buyer shall make an additional deposit of Five Thousand (\$5,000.00) Dollars and shall make further deposits of \$5,000.00 on or about the same day of each month thereafter to be paid directly to the Seller and, in addition to the initial deposit paid hereunder, shall be nonrefundable except in the event of Seller's failure to complete the sale of the premises or to perform its obligations under this Agreement. Failure by the Buyer to make timely deposits as required herein (after receipt of written notice from Seller, followed by a failure to make the required deposit within seven (7) days) shall constitute a default of this Agreement by Buyer. Seller shall not be required to notify Buyer of a failure to timely pay a deposit hereunder more than two (2) times in any 12-month period;

(iii) All deposits are attributable to the purchase price and the remaining balance of the Purchase Price will be paid at closing.

If the Town of Northborough, Massachusetts waives its right of first refusal pursuant to Massachusetts General Laws Chapter 61A (or the Town's right to purchase under the Statute lapses), Buyer may apply for permits/approvals to develop the property for a commercial use consistent with applicable zoning, but this Agreement is not in any way conditioned upon Buyer's receipt of such permits and approvals. Seller shall cooperate with Buyer regarding any submissions for permits and approvals buyer desires to make, including signing all applications.

5. TIME FOR PERFORMANCE; DELIVERY OF DEED

The time for performance shall be no later than the two-year anniversary of the date of recording of the above-referenced waiver (or the 2 year anniversary of the lapse of the Town's right to purchase) or such earlier date that the Buyer may set forth in a written notice to Seller given at least twenty-one (21) days in advance. The performance by the parties shall occur at the offices of Greenwald and Greenwald, LLP, 409 Fortune Boulevard, Milford, MA, pursuant to Paragraph 4 above. It is agreed that time is of the essence of this Agreement. Seller need not attend the closing in person so long as the Deed is signed personally by Seller and delivered to Buyer in escrow at least one (1) business day prior to the closing.

6. SELLER DELIVERABLES

At the Closing, Seller shall duly execute and deliver the following closing documents (the "Seller Documents"):

- (1) a Massachusetts quitclaim deed conveying the Real Property in form reasonably acceptable to Buyer and its title insurer;

- (2) such affidavits as the Buyer's title insurer shall reasonably require in order to issue, without extra charge, an owner's policy of title insurance free of any exceptions for unfilled mechanics' or materialmen's liens for work performed by Seller prior to Closing, or for rights of parties in possession;
- (3) a Non-Foreign Affidavit as required by the Foreign Investors in Real Property Tax Act ("FIRPTA"), as amended;
- (4) such authority documents as are reasonably necessary for Seller to convey title; and,
- (5) such other customary instruments and documents reasonably requested by Buyer, Buyer's lender, and/or Buyer's title insurance company, and reasonably required to effectuate the transaction contemplated by this Agreement.

7. SELLER COVENANTS

Seller covenants that between the date of this Agreement and the Closing:

- a. Seller shall not, without Buyer's written consent, which consent may be withheld in Buyer's sole and absolute discretion, enter into any lease, license, occupancy agreement or other agreement or covenant relating to possession or occupancy or any right to use the Property.
- b. Seller shall not, without Buyer's written consent, enter into any new contract respecting the Property which shall be binding upon Buyer. Seller shall cause all contracts affecting the Property to be terminated effective as of the Closing Date.
- c. Seller shall not encumber the Property with any matter except such as may be approved by Buyer in its sole and absolute discretion.
- d. Seller shall, within twenty-four hours of Seller's discovery, give Buyer reasonably detailed notice of: (1) any materially adverse change with respect to the Property which Seller obtains knowledge; (2) any actual or proposed condemnation (or proceeding in lieu thereof) of which Seller obtains knowledge; (3) any written notice received by Seller claiming environmental contamination regarding the Property; and (4) any written notice received by Seller concerning any pending or threatened litigation or administrative proceeding affecting the Property. In the event of the occurrence of any of the above, Buyer shall have the option of terminating this Agreement by notifying the Seller thereof in writing within ten (10) days of receipt of notice, in which event all deposits made by the Buyer hereunder shall be forthwith refunded to Buyer and this Agreement shall be null and void and without recourse to the Parties hereto, failing which the Buyer shall be deemed to have accepted the premises notwithstanding the condition or occurrence set forth in Seller's notice; and
- e. Seller shall not take any action or fail to take any action that will cause the Real Property to not be permitted to be used for its current use under applicable zoning regulations and codes.

8. EXTENSION TO PERFECT TITLE OR MAKE PREMISES CONFORM

If the Seller shall be unable to give title or to make conveyance, or to deliver possession of the premises, all as herein stipulated, or if at the time of the delivery of the deed the premises do not conform with the provisions hereof, the Seller shall use reasonable efforts to remove any defects in title, or to deliver possession as provided herein, or to make the said premises conform to the provisions hereof, as the case may be, in which event the Seller shall give written notice thereof to the Buyer at or before the time for performance hereunder, and thereupon the time for performance hereof shall be extended for such period of time not to exceed thirty (30) days as Seller may need to clear any defects in title, or deliver possession as provided herein, or to make the said premises conform to the provisions hereof, as the case may be. Seller need not expend more than \$10,000.00 in rendering the Premises conforming with the provisions hereof.

9. BUYERS ELECTION TO ACCEPT TITLE

The Buyer shall have the election, at either the original or any extended time for performance, to accept such title as the Seller can deliver to the said premises in their then condition and to pay therefore the purchase price without deduction, in which case the Seller shall convey such title.

10. FAILURE TO PERFECT TITLE OR MAKE PREMISES CONFORM, ETC.

If at the expiration of the extended time the Seller shall have failed so to remove any defects in title, deliver possession, or make the premises conform, as the case may be, all as herein agreed, then, at Buyer's option, any payments made under this Agreement shall be forthwith refunded and all other obligations of the parties hereto shall cease and this Agreement shall be void without recourse to the parties hereto.

11. ACCEPTANCE OF DEED

The acceptance and recording of a deed by the Buyer or his nominee as the case may be, shall be deemed to be a full performance and discharge of every agreement and obligation herein contained or expressed, except such as are, by the terms hereof, to be performed after the delivery of said deed.

12. BROKER'S FEE

A Broker's fee under a separate agreement for professional services as agreed is due from the Seller to Duncan Chapman of Keller Williams Commercial and Raj Sedhn, if, as, and when the deed is recorded in accordance with the terms of this Agreement and the Seller has received the full Purchase Price. Each party hereto hereby states that there is no other real estate broker, other than Duncan Chapman of Keller Williams and Raj Sedhn in connection with this transaction and that, to the best of each such party's knowledge and information, no brokerage commission will be due as a result of this transaction except as stated in this Section 12, and hereby agrees to indemnify the other against any claim, loss, or liability for a real estate broker's fee which may arise as a result of their statement herein not being true and correct. The provisions of this Section 12 shall survive the delivery of the deed.

13. DEPOSIT

The initial \$50,000 deposit made hereunder shall be held in escrow by Greenwald & Greenwald, as escrow agent, in an IOLTA account subject to the terms of this Agreement and shall be duly

accounted for at the time for performance of this Agreement. In the event of any disagreement between the parties, the escrow agent shall retain all deposits made under this agreement pending instructions mutually given by the Seller and the Buyer, or final order of a court of competent jurisdiction. The Buyer shall provide the escrow agent with a signed W-9 and any interest shall be applied to the Purchase Price for the benefit of Buyer or paid to Buyer if this Agreement is terminated under circumstances entitling the Buyer to a return of the deposit, otherwise, interest shall be paid to the Seller. The subsequent deposits paid hereunder shall be made to the Seller who shall account for the same at closing.

14. DEFAULT; DAMAGES.

If the Buyer shall fail to fulfill the Buyer's agreements herein, all deposits made hereunder by the Buyer shall be retained by the Seller as liquidated damages, and all obligations of the parties shall cease and this Agreement shall become null and void and without recourse to the parties hereto either at law or in equity, except that Buyer may terminate this Agreement by giving Seller written notice thereof within ninety (90) days after the recording of the waiver of the town's right of first refusal (or within ninety (90) days after the lapse of the Town's right to exercise same), in which case all deposits with interest thereon, shall be promptly returned to Buyer and all other obligations of the parties hereto shall cease and this Agreement shall be void and without recourse to the parties hereto.

In the event Seller breaches or fails, without legal excuse permitted herein, to complete the sale of the Premises or to perform its obligations under this Agreement, Buyer may, as its sole remedy therefor, either (i) enforce specific performance of this Agreement against Seller or (ii) terminate this Agreement in which case the Deposit and all interest accrued thereon will immediately be returned to Buyer and Seller shall promptly reimburse Buyer for all amounts paid by Buyer to third parties for services performed related to the property for its possible future use. These expenses shall include but not be limited to engineering and legal fees; or (iii) elect to accept title as provided under Section 11 herein. If Buyer is unable to obtain specific performance because of acts or omissions of Seller, in addition to the return of the Deposit and all interest accrued thereon to Buyer, Seller shall promptly reimburse Buyer for all amounts paid by Buyer to third parties for services performed related to the property for its possible future use. These expenses shall include but not be limited to engineering and legal fees.

15. ACCESS

Buyer and Buyer's agents shall have the right of access to the premises, upon notice to the Seller, prior to closing for the purpose of inspecting the premises, showing the premises to prospective mortgage lenders, taking measurements, inspections, testing and any other purpose related to Seller's intended use of the property, provided that Buyer shall provide to Seller evidence of reasonably satisfactory insurance covering injury to persons and property and naming Seller as an additional insured party. Buyer shall provide to Seller reasonable advance notice of any inspection of the Premises. Buyer shall indemnify Seller and hold Seller harmless from all actions, suits, claims, liabilities, losses, damages, and costs, including reasonable attorney's fees, arising from (a) personal injury suffered by Buyer, their contractor, subcontractor or agents, on or about the premises, or any other person on the Premises under Buyer's, or any of Buyer's contractor, subcontractor or agent's request or direction, in connection with such visit; or (b) property damage to the premises.

16. NOTICES

All notices required or permitted to be made under this Agreement shall be in and delivered in hand, sent by certified mail return receipt requested or sent by United States Postal Service overnight Express Mail or other overnight delivery service, or by email addressed to the Buyer or Seller as provided herein. Such notice shall be effective when sent, provided that the sender has evidence of delivery, which may include written receipt, written evidence of attempted delivery or confirmation of receipt. Acceptance of any notice, whether by delivery or mail, shall be sufficient if accepted or signed by a person having express or implied authority to receive same. Such notices shall be addressed as follows:

if to BUYER, to: Wayne Finnegan

Howland Development Corp.
155 West Street, Suite 9
Wilmington, MA 01887
wfinnegan@howlanderdevelopment.com

With a copy to:

Steven Greenwald, Esq.
Greenwald & Greenwald, LLP
409 Fortune Boulevard
Milford, MA 01757
Phone: 508-478-8611 x. 220
Cell: 508-498-2083
Fax: 508-634-3959
Email: sg@gglaw409.com

If to SELLERS to:

Santo Anza, Trustee
24 Reservoir Street
Northborough, MA 01532

With a copy to:

Philip Lombardo Esq.
41 North Road, Suite 203
Bedford, MA 01730
Phone: 781 538 6894
Fax: 81 538 6831
Email: plombardo@pclombardolaw.com

17. MISCELLANEOUS

Each party shall be responsible for its own legal, advisory and miscellaneous expenses associated with the completion of this transaction. Documentary stamps and closing costs shall be apportioned per local custom (i.e., Seller pays for Documentary stamps and Buyer pays for recording of the Deed), and real estate taxes shall be apportioned as of the Date of Closing with Buyer paying conveyance/rollback taxes under MGL c.61A.

18. CONSTRUCTION OF AGREEMENT

This instrument, executed in multiple counterparts, is to be construed as a Massachusetts contract, is to take effect as a sealed instrument, sets forth the entire contract between the parties, is binding upon and inures to the benefit of the parties hereto and their respective heirs, devisees, executors, administrators, successors and assigns, and may be cancelled, modified or amended only by a written instrument executed by both the Seller and the Buyer. The captions are used only as a matter of convenience and are not to be considered a part of this Agreement or to be used in determining the intent of the parties to it. This Agreement shall be deemed to have been prepared jointly and shall not be strictly construed against either party.

19. ELECTRONIC AND FACSIMILE SIGNATURES

This Agreement may be executed by and through electronic signature technology which is in compliance with Massachusetts law governing electronic signatures. Electronic signatures shall be considered as valid and binding as original, "wet" signatures. Signatures, originally signed by hand, but transmitted via e-mail or facsimile machine shall also be deemed valid and binding original signatures.

20. DEDUCTIONS FROM SELLER'S PROCEEDS

Unless paid by Seller by separate check, there shall be deducted from the balance due Seller at the Closing the following:

- (a) Massachusetts state and any county deed excises;
- (b) Cost of recording discharges and releases of monetary encumbrances and any title and curative documents;
- (c) Amounts required to discharge outstanding mortgages shortly after the later of the Closing or the deed to Buyer is recorded; and
- (d) Lender's or Buyer's reasonable and customary attorneys' fee for procuring discharges of outstanding mortgages.

21. POST-CLOSING ADJUSTMENTS

If any errors or omissions are found to have occurred in any calculations or figures used in the settlement statement signed by the parties (or would have been included if not for any such error or omission) and notice hereof is given within two months of the Closing to the party to be charged, then such party agrees to make a payment to correct the error or omission.

22. TITLE AND PRACTICE STANDARD

Any matter or practice arising under or relating to this Agreement which is the subject of a practice or title standard of the Massachusetts Real Estate Bar Association shall be governed by such standard to the extent applicable.

23. MGL c.61A.

The Buyer acknowledges that the premises are covered by the provisions of MGL c.61A and this Agreement is subject to, among other things, the right of the Town of Northborough (the "Town") to purchase the premises as set forth in said Statute. Within 5 business days of the full execution of this Agreement, Seller shall submit to the Town a notice of intent to sell as provided under MGL c.61A. The Buyer shall cooperate with Seller regarding its submission to the Town, as required by the Statute, including provision of a Statement of Intended Use to satisfy the requirements of the Statute. Should the Town exercise such right of refusal, this Agreement shall terminate and all deposits paid shall be promptly refunded to the Buyer. If the Town waives or does not timely exercise its first refusal option to purchase the land (and in the case of any such timely failure to properly exercise such right, Seller, and Seller alone, shall be entitled to raise any objection as to the Town's compliance or lack thereof with the provisions of the Statute in exercising its first refusal option to purchase the land or otherwise complying with the provisions of the Statute, and Buyer hereby waives any rights with respect to same, it being Seller's intention that any litigation as to such matters concerning c.61A and the Town's conduct thereunder be in the complete control of Seller. If the Town concludes that this Agreement does not comply with MGL c.61A, Buyer and Seller shall use good faith efforts to modify the Agreement to bring it into compliance.

If and when the closing occurs, following the Town's waiver of its right of refusal (or failure to exercise same in a timely manner), the Buyer shall pay any conveyance or rollback taxes due with respect to the sale and change of use of the premises.

The parties agree that a copy of this agreement shall be submitted to the Town of Northborough as required by MGL c.61A. However, Buyer shall not record this Agreement or any memorandum or notice thereof with any other governmental agency and Buyer may not assign this Agreement without the consent of Seller which it may withhold in its sole discretion.

Within forty-five (45) days after the recording of the Town's right of first refusal (or within forty-five (45) days after the lapse of the Town's right to exercise same), Buyer shall give Seller written notice of any way in which the title to the property does not comply with the requirements of Paragraph 3 above. Other than issues raised in said notice and title matters occurring after the date of such notice, Buyer will be deemed to have accepted the condition of the title.

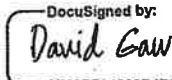
Within ninety (90) days after the recording of the Town's right of first refusal (or within ninety (90) days after the lapse of the Town's right to exercise same), Buyer shall give Seller written notice of any objection to the condition of the premises such as the presence of oil or hazardous materials on or about the premises. Other than issues raised in said notice and inspection matters occurring after the date of such notice, Buyer will be deemed to have accepted the condition of the premises.

EXECUTED AS A SEALED INSTRUMENT AS OF THE DATE FIRST ABOVE WRITTEN

SELLER:
0 WHITNEY STREET REALTY TRUST

By: 
Santo Anza, Trustee

BUYER:
HOWLAND DEVELOPMENT CORPORATION
or its nominee or assigns

By: 
David Gaw, Vice President 11/30/2023 | 2:22 PM PST

STATEMENT OF PROPOSED USE

Re: 432 Whitney Street, Northborough, MA
Assessors' Map 015.0-0022-0000

Pursuant to the provisions of MGL c. 61A, s. 14, the undersigned, Santo Anza, Trustee of 0 Whitney Street Realty Trust, the owner of the land located at 432 Whitney Street, Northborough, Massachusetts (the "Land"), hereby submits this Statement of Proposed use of the Land.

We are informed that the purchaser of the Land intends to develop the land for construction and use, by a user or users to be determined, of an approximately 40,000-60,000 square foot building for commercial/industrial/warehouse/distribution purposes potentially to be served by a new connection to the freight rail line adjacent to the Land.

Signed this 5th day of December, 2023



Santo Anza, Trustee of 0 Whitney
Street Realty Trust

STATEMENT OF INTENT TO SELL LAND
AND CONVERT TO COMMERCIAL USE

Re: 432 Whitney Street, Northborough, MA
Assessors' Map 015.0-0022-0000

Pursuant to the provisions of MGL c. 61A, s. 14, notice is hereby given that the undersigned, Santo Anza, Trustee of 0 Whitney Street Realty Trust, the owner of the land located at 432 Whitney Street, Northborough, Massachusetts (the "Land"), intends to sell the land for the sum of \$1,700,000 as described in and in accordance with the terms of the certified purchase and sale agreement (PSA) accompanying this notice.

The proposed purchaser of the Land under the PSA intends to convert the Land from Agricultural Use to a commercial use as described in the Statement of Intended Use accompanying this Notice.

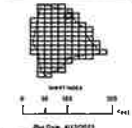
Signed this 5th day of December, 2023



Santo Anza, Trustee of 0 Whitney
Street Realty Trust



- LEGEND**
- PROPERTY LINE
 - OLD PROPERTY LINE
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Parcel Data Table

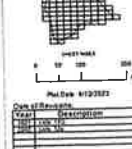
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15-22	1.2	...
15-23	1.1	...
15-24	1.0	...
15-25	0.9	...
15-26	0.8	...
15-27	0.7	...
15-28	0.6	...
15-29	0.5	...
15-30	0.4	...
15-31	0.3	...
15-32	0.2	...

Map Date: 01/20/2015
Scale: 1" = 100'

AppGeo



- LEGEND**
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 - OLD PROPERTY LINE
 - ADJACENT
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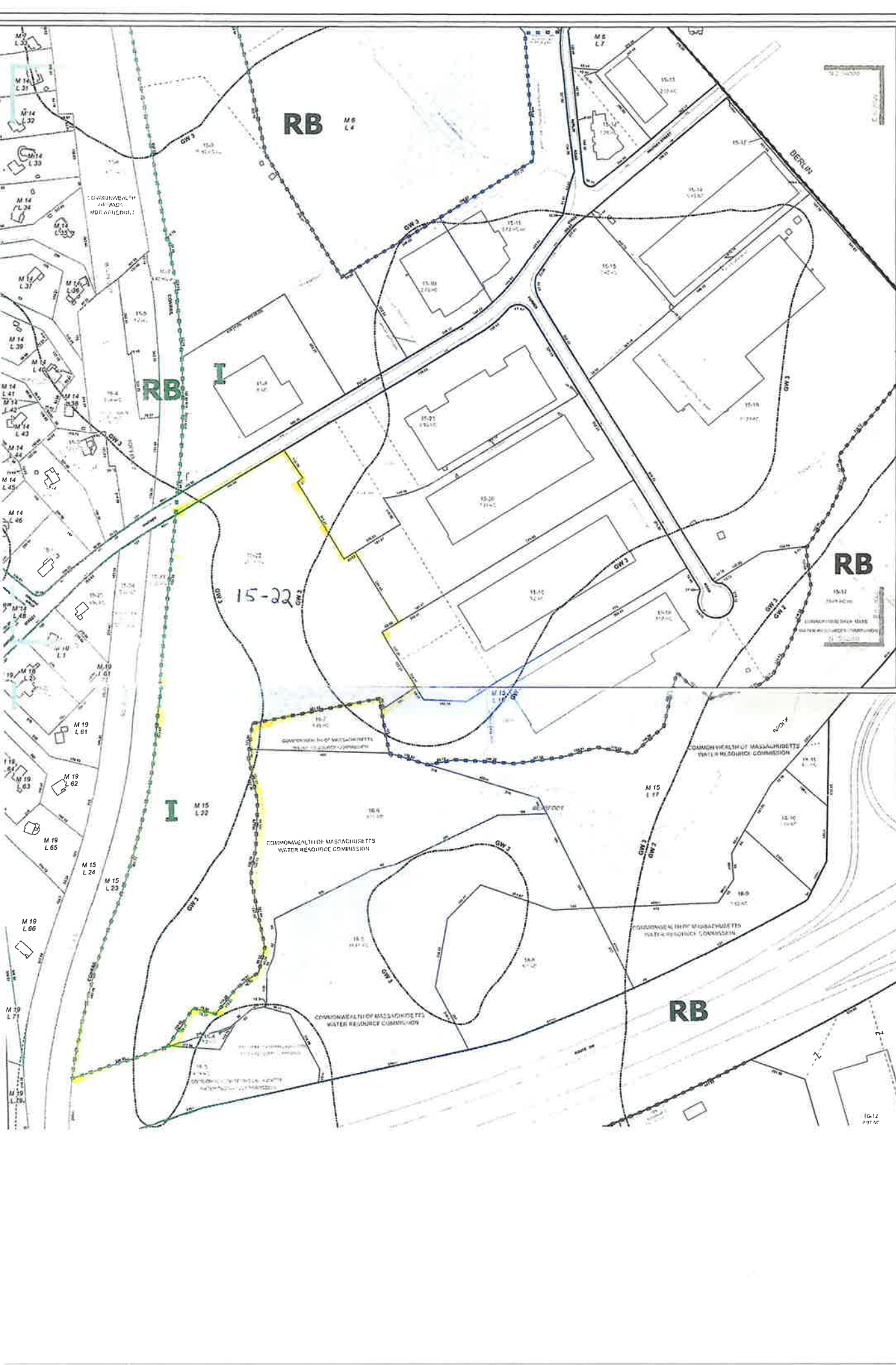


Parcel Data Table

Parcel ID	Area (Ac)	Owner
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15-25	0.9	...
15-26	0.8	...
15-27	0.7	...
15-28	0.6	...
15-29	0.5	...
15-30	0.4	...
15-31	0.3	...
15-32	0.2	...

Map Date: 01/20/2015
Scale: 1" = 100'

AppGeo





Bk: 44712 Pg: 129
Page: 1 of 2 08/11/2009 04:03 PM WD

MASSACHUSETTS QUITCLAIM DEED

Joel Leavitt, as co-Trustee of the 1979 Leavitt Trust⁺, under the declaration of trust dated December 28, 1979 and recorded with the Worcester District Registry of Deeds in Book 6900, Page 264, as amended (the "Grantor"), for consideration paid and in full consideration of **Two Hundred Fifty Thousand Dollars (\$250,000.00)** grants to **Santo Anza**, as Trustee of the 0 Whitney Street Realty Trust under declaration of trust dated ~~July~~^{August} 4, 2009 and recorded herewith^{*} with Quitclaim Covenants,

** in Book 44712 Page 124*

The land in Northborough, Worcester County, Massachusetts, on Whitney Street depicted as Lot 327 containing approximately twenty-three and 79/100 (23.79) acres of land on the plan entitled: "Plan of Land in Northborough, Mass. Owned By M. Gordon Ehrlich & Lawrence I. Silverstein, Trustees u/d/t 12/28/79" dated March 16, 1984 and recorded in Plan Book 526, Plan 80.

Being a portion of the premises conveyed to the Grantor by deed of Julian J. Leavitt and Joel A. Leavitt, trustees of the 1969 Leavitt Trust, dated December 28, 1979 recorded in the Worcester District Registry of Deeds in Book 6900, Page 270, as confirmed by confirmatory deed dated July 31, 1980 and recorded with said Registry of Deeds in Book 7050, Page 136.

+ excerpt recorded herewith in Bk 44712 Pg 93

(The remainder of page left intentionally blank. Signature page to follow.)

Record and Return to:
James A. Vevone, Esq.
Seder & Chandler, LLP
339 Main Street
Worcester, MA 01608

MASSACHUSETTS EXCISE TAX
Worcester District ROD #20 001
Date: 08/11/2009 04:03 PM
Ctrl# 086529 01597 Doc# 00096024
Fee: \$1,140.00 Cons: \$250,000.00

Total Pages: 2

2

Whitney Street, Northborough, Massachusetts

Witness my hand and seal this 29 day of July 2009.

1979 Leavitt Trust

By: Joel Leavitt
Joel Leavitt, Trustee

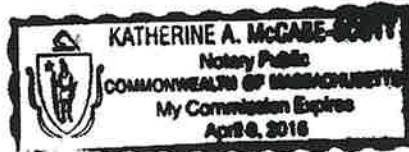
COMMONWEALTH OF MASSACHUSETTS

Suffolk County

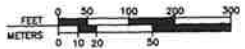
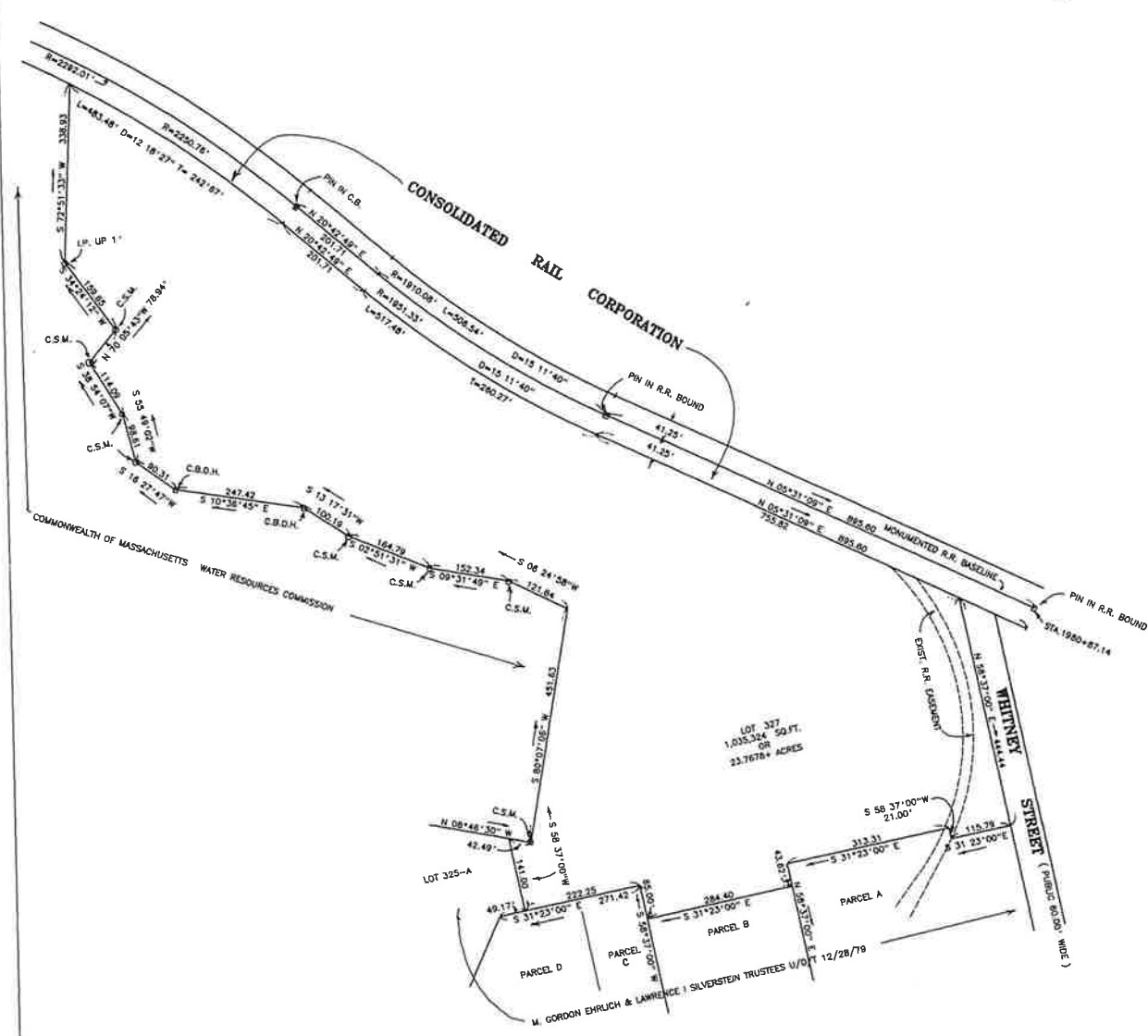
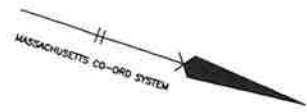
On this 29 day of July 2009, before me, the undersigned notary public, personally appeared Joel Leavitt, co-Trustee of the 1979 Leavitt Trust, proved to me through satisfactory evidence of identification, which was personally known to me, to be the person whose name is signed on the preceding document, and acknowledged to me that he signed it voluntarily for its stated purpose.

Katherine McCabe Scott
, Notary Public

My Commission Expires:



Seal



PLAN OF LAND IN NORTHBOROUGH, MASS.

OWNED BY:

SCALE: 1" = 100'

SURVEY BY : MacCARTHY & SULLIVAN ENGINEERING INC. NATICK, MASS.

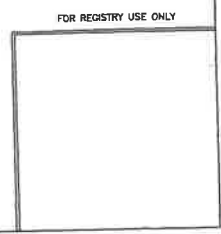


M. GORDON EHRLICH & LAWRENCE I SILVERSTEIN TRUSTEES U/D/T 12/28/79 MARCH 16, 1984

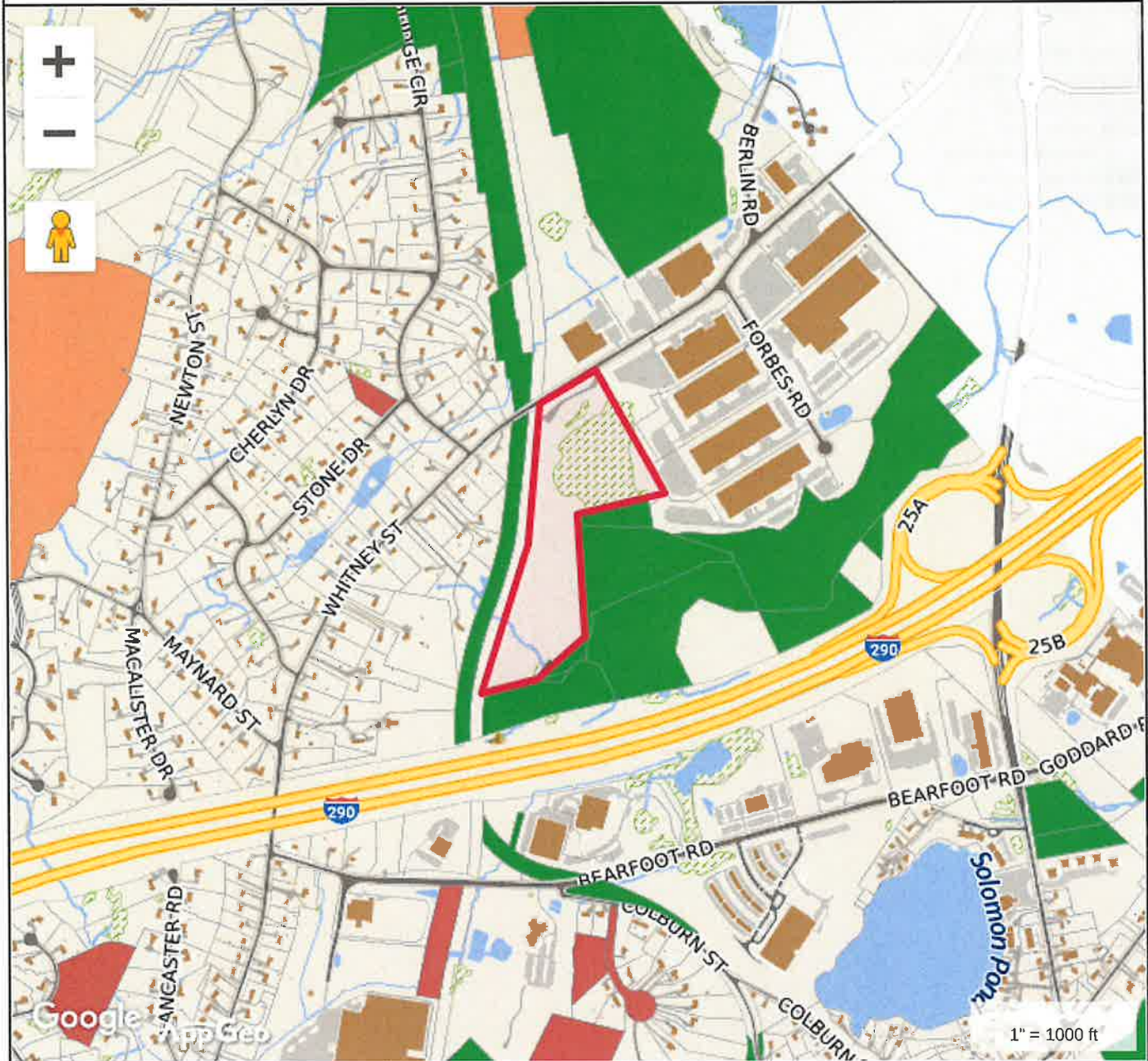
I CERTIFY THAT THE PREPARATION OF THIS PLAN CONFORMS WITH THE RULES AND REGULATIONS OF THE REGISTERS OF DEEDS. JOSEPH R. SULLIVAN, REG. LAND SURVEYOR DATE

THIS SURVEY AND PLAN WERE PREPARED IN ACCORDANCE WITH THE PROCEDURAL AND TECHNICAL STANDARDS FOR THE PRACTICE OF LAND SURVEYING IN THE COMMONWEALTH OF MASSACHUSETTS. BY: JOSEPH R. SULLIVAN, REG. LAND SURVEYOR DATE

APPROVAL UNDER THE SUBORDINATION CONTROL LAW NOT REQUIRED. NORTHBOROUGH PLANNING BOARD. DATE: 4-23-84 DEED REF: WORC. REG. OF DEEDS BOOK 6900 PAGE 270



432 Whitney Street Open Spaces in Northborough



**MAP FOR REFERENCE ONLY
NOT A LEGAL DOCUMENT**

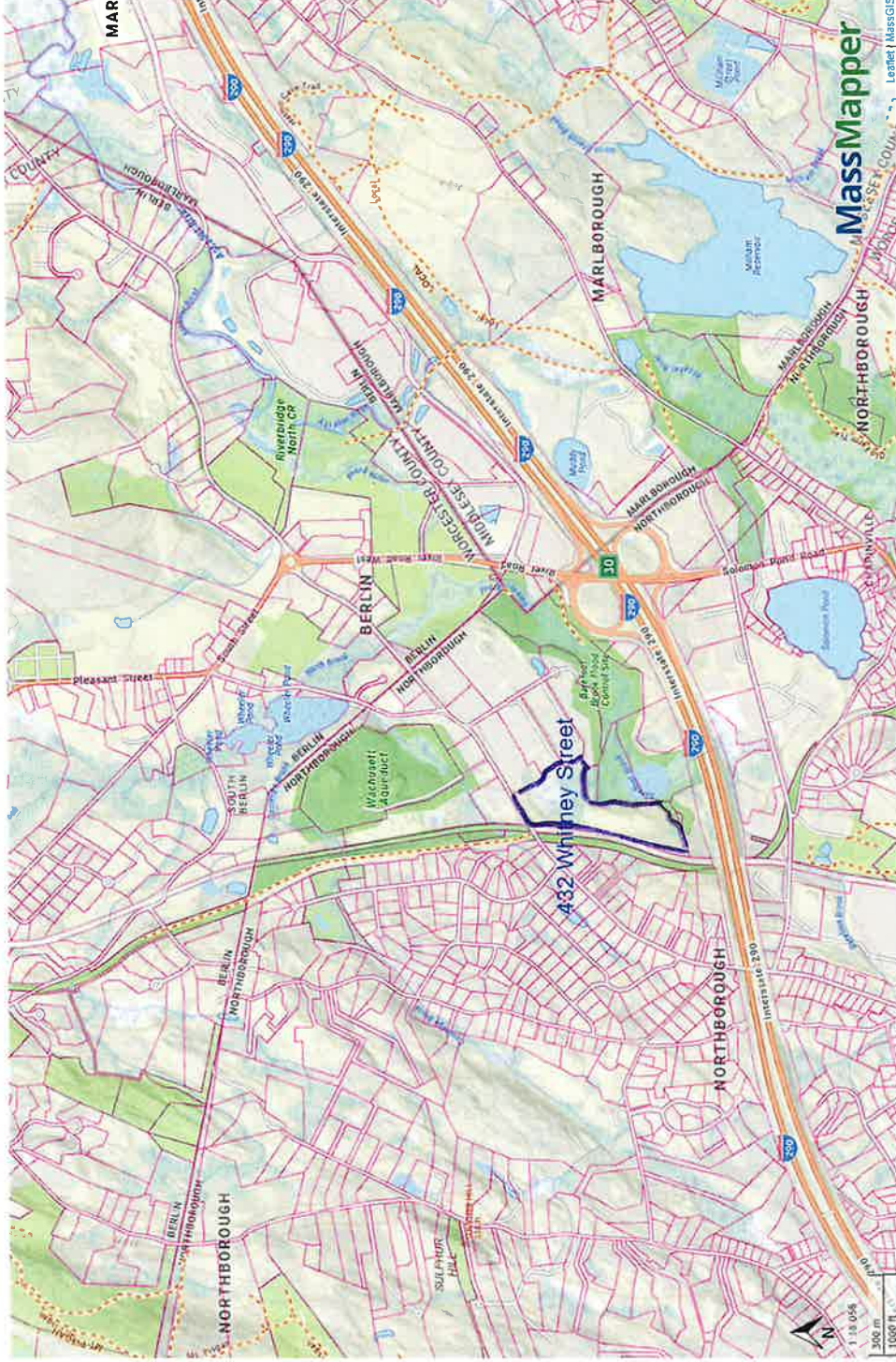
Town of Northborough, MA makes no claims and no warranties, expressed or implied, concerning the validity or accuracy of the GIS data presented on this map.

Geometry updated 08/18/2023
Data updated Jan 28, 2020

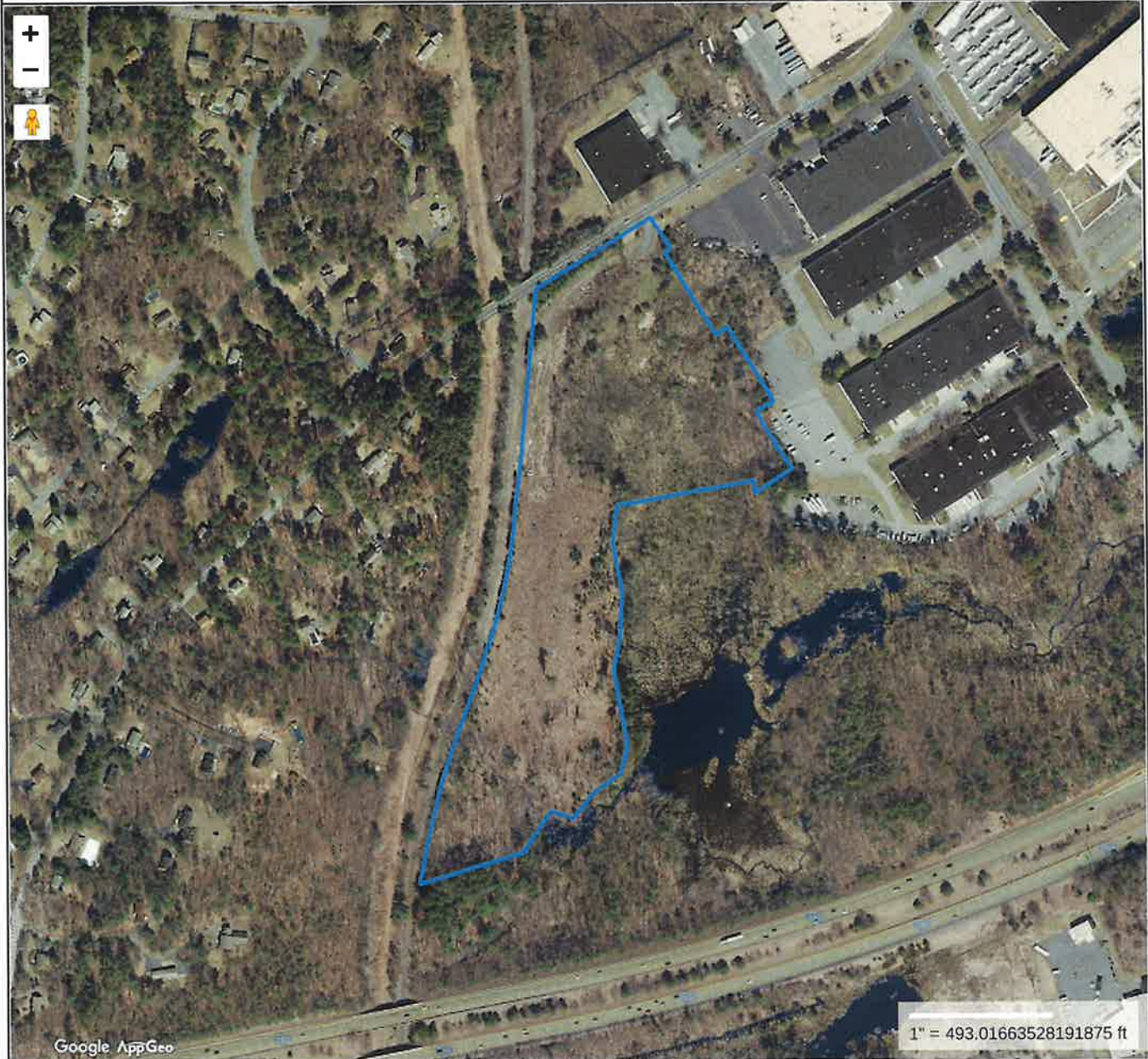
Print map scale is approximate.
Critical layout or measurement
activities should not be done using
this resource.

Open Space Resources Abutting 432 Whitney Street

- Hiking and Wilderness Trails
- Hiking and Wilderness Trails
- Property Tax Parcels



Orthophoto of 432 Whitney Street and Surroundings



Property Information

Property ID 015.0-0022-0000.0
Location 432 WHITNEY STREET
Owner ANZA SANTO Trustee



**MAP FOR REFERENCE ONLY
NOT A LEGAL DOCUMENT**

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Geometry updated 08/18/2023
Data updated Jan 28, 2020

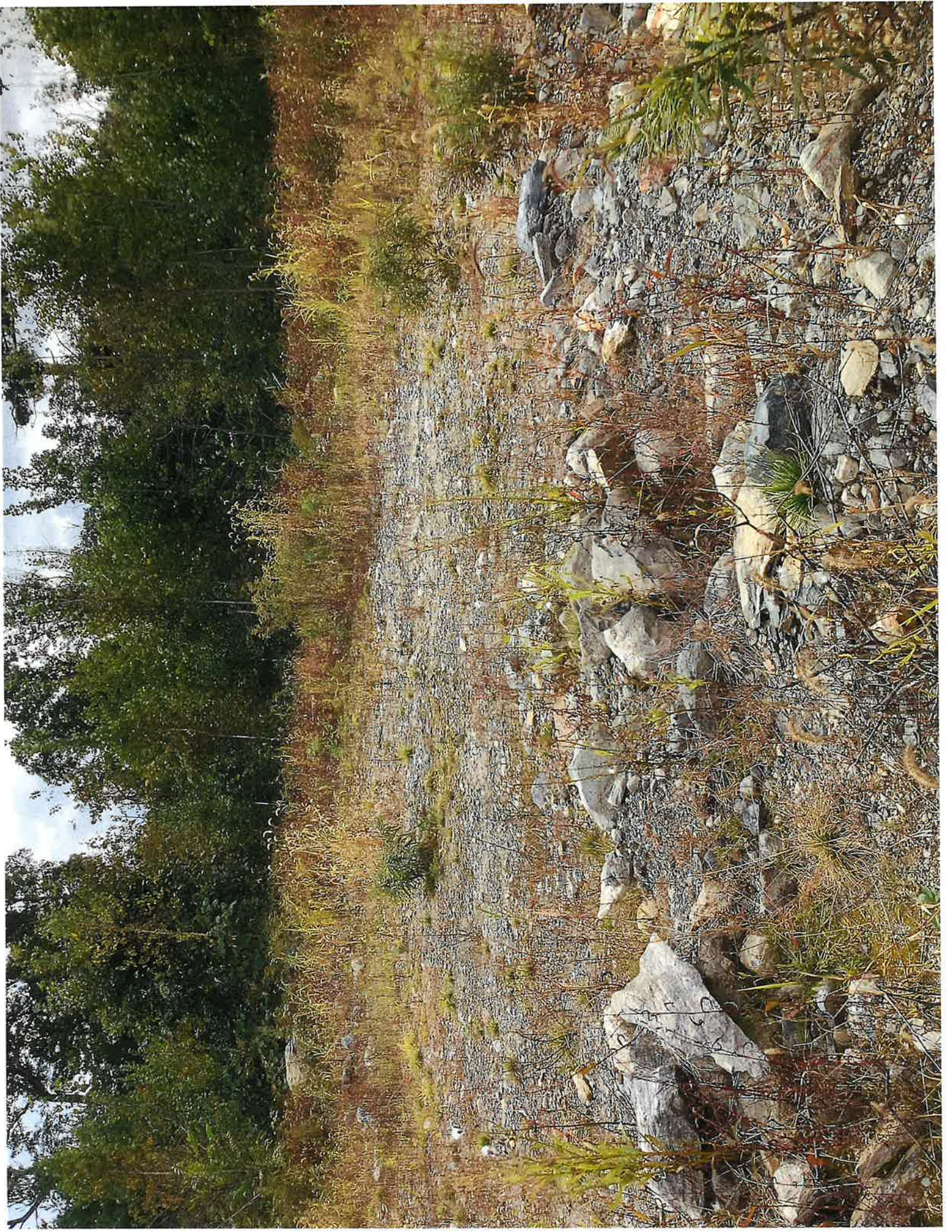
Print map scale is approximate. Critical layout or measurement activities should not be done using this resource.

















TOWN OF NORTHBOROUGH PLANNING BOARD

Town Hall Offices • 63 Main Street • Northborough, MA 01532 • 508-393-5040 x7 • 508-393-6996 Fax

DATE: December 21, 2023

TO: Select Board

FROM: Kerri Martinek, Planning Board Chair

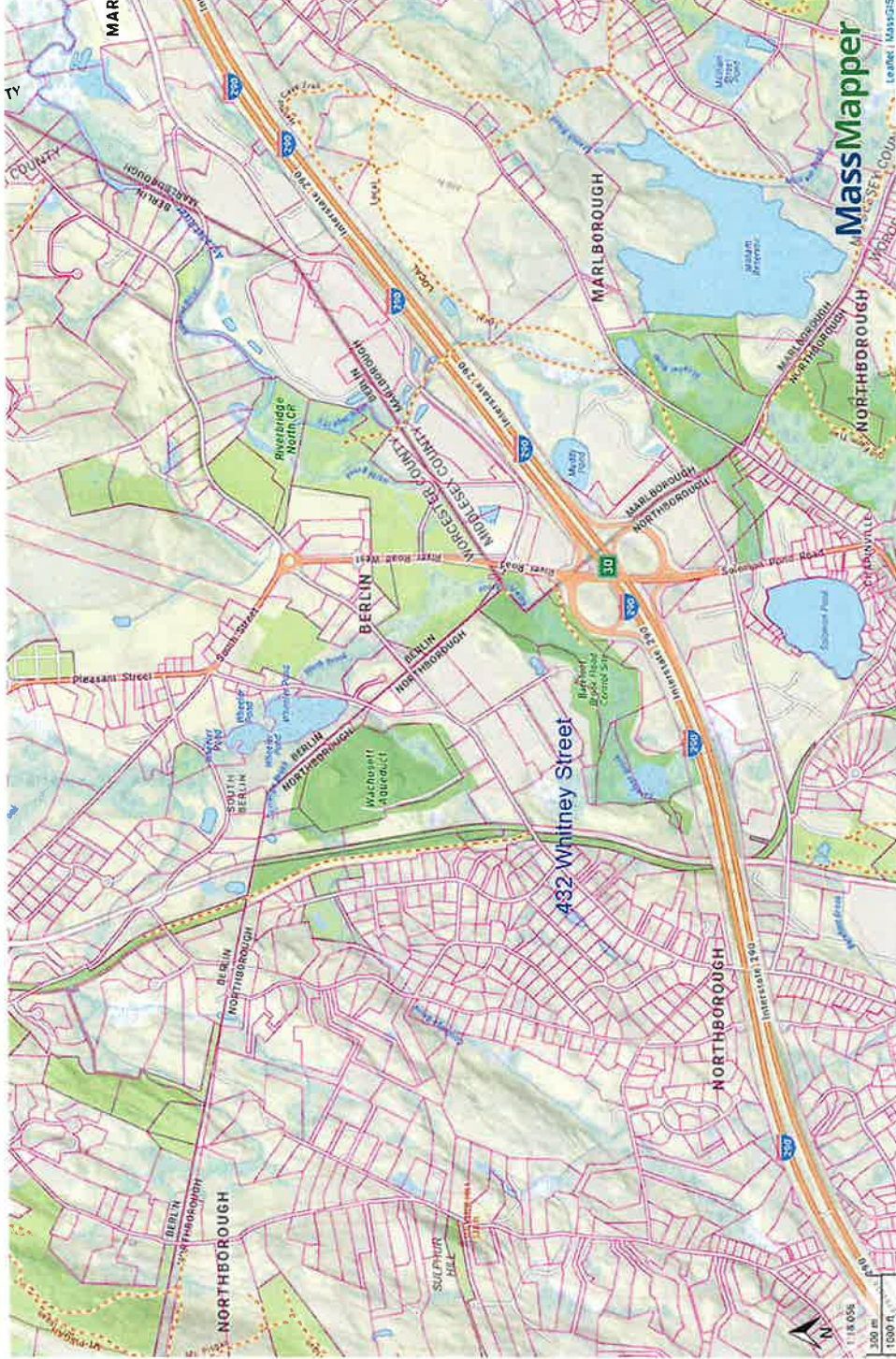
RE: Town's Right-of-First Refusal for 432 Whitney Street

At our meeting on December 19, 2023, the Planning Board discussed the prospect of acting on the Town's Right-of-First Refusal relative to 432 Whitney Street. After reviewing the paperwork associated with the Notice of Intent to Sell and Convert Property to Other Use and considering staff concerns and recommendations (see attached memo from Planning Director Laurie Connors), the Board voted unanimously in favor of pursuing Town acquisition. Of primary concern to the Planning Board is the impact that a large-scale distribution facility will have on the residential abutters and the sensitive environmental resources located on-site. Town ownership of this land will create an appropriate buffer between the abutting industrial and residential uses, as well as provide an important open space link between the aqueduct and the permanently-protected open space resources to the south and east.

Thank you for your consideration and attention to this matter.

Open Space Resources Abutting 432 Whitney Street

- Hiking and Wilderness Trails
- Hiking and Wilderness Trails
- Property Tax Parcels





TOWN OF NORTHBOROUGH PLANNING DEPARTMENT

Town Hall Offices • 63 Main Street • Northborough, MA 01532 • 508-393-5040 x7 • 508-393-6996 Fax

DATE: December 19, 2023

TO: Planning Board

FROM: Laurie Connors, Planning Director

RE: Town's Right-of-First Refusal for 432 Whitney Street

After reviewing the paperwork associated with the Notice of Intent to Sell and Convert Property to Other Use relative to 432 Whitney Street, I would like to recommend in favor of the Town acquiring the property for conservation and recreation purposes for the following reasons:

- This 23.77-acre parcel abuts 51.3 acres of conservation land owned by the MA Department of Conservation and Recreation (DCR), which abuts a large swath of conservation land located within the Town of Berlin that is classified as NHESP Priority Habitat of Rare Species.
- The parcel contains a wetland system that is hydrologically connected to Bearfoot Brook and the flood control site that is owned, protected and managed by the DCR.
- The parcel could provide an important open space connection between the aqueduct to the west of the railroad tracks and the permanently protected open space associated with Bearfoot Brook and ultimately the Assabet River;
- The parcel boasts beautiful views towards Boston from a high point located along the western portion of the property;
- Passive recreation facilities could be developed on the property, including a gravel parking lot and trails that could link the aqueduct to the scenic overlook located on the property and existing trails located on the abutting DCR property.
- The parcel provides important wildlife habitat;
- If the land were preserved for open space, it would provide a substantial buffer between homes located on Whitney Street and industrial properties to the east.
- Acquiring this property for open space and passive recreation purposes accomplishes the following goals and objectives as identified in the 2020 Northborough Open Space & Recreation Plan:
 - Goal #1: Preserve open space for the town's overall benefit.
 - Objective #1: Acquire through fee acquisition or conservation restriction additional open space permanently protected by the Town, State or non-profits, particularly for parcels that provide/can provide key linkages among open spaces.

- Goal #3: Improve and expand properties for active and passive open space opportunities.
 - Objective #2: Expand connections between existing open spaces and community resources. This can include parking, walking/biking routes, sidewalks and trail connections.

Funding for this acquisition can be derived from Community Preservation Act funds and grants including the Local Acquisitions for Natural Diversity (LAND) Grant managed by the Massachusetts Division of Conservation Services.



Town of Northborough

Conservation Commission

63 Main Street

Northborough, Massachusetts 01532-1994

(508)504-8776 Office conservation@town.northborough.ma.us

January 9, 2024

Northborough Select Board
Mitch Cohen, Chair
63 Main Street
Northborough, MA 01532

Re: 432 Whitney Street, Right of First Refusal Recommendation

Dear Mitch:

At the January 8, 2024 meeting of the Northborough Conservation Commission, the members reviewed the documentation provided by the owner of 432 Whitney Street associated with the Notice of Intent to Sell and Convert Property to Other Use relative to its withdrawal from the Chapter 61A program. The Conservation Commission voted unanimously to recommend that the Town proceed as necessary to acquire the property for conservation, recreation, and multi-family housing purposes.

The Committee noted the following justifications for acquiring this property:

- The parcel abuts the CSX rail line and has a spur connection. The DEP advised the Commission that they have no legal basis to force a rail operation to comply with the MA Wetlands Protection Act, due to Federal Interstate Commerce laws. This potentially could result in a use similar to the hazardous material transfer operation in litigation at the Grafton-Upton rail property in Hopedale or the liquid petroleum gas facility operating in Grafton.
- The parcel directly abuts and contains a wetland system that is hydrologically connected to Bearfoot Brook and the flood control site that is owned, protected and managed by MA Department of Conservation and Recreation, Flood Control (DCR).
- Passive recreation facilities could be developed on the property, including a gravel parking area for a trailhead linking the Wachusett Aqueduct Trail to the scenic overlook located on the property and to future trails located to the east on the abutting DCR property.
- Multifamily housing could be constructed on the southern upland portion of the property in concert with the open space protection and passive recreation uses.
- Acquiring this property will accomplish the following important goals and objectives as identified in the 2020 Northborough Open Space & Recreation Plan:
 - Goal #1: Preserve open space for the town's overall benefit.
 - Objective #1: Acquire through fee acquisition or conservation restriction additional open space permanently protected by the Town, State or non-

profits, particularly for parcels that provide/can provide key linkages among open spaces.

- Goal #3: Improve and expand properties for active and passive open space opportunities.
 - Objective #2: Expand connections between existing open spaces and community resources. This can include parking, walking/biking routes, sidewalks and trail connections.

The Commission recommends that this property be acquired by the Town of Northborough. If you have any questions or want additional information, please do not hesitate to contact me.

Sincerely,



Greg Young, Chair

Northborough Conservation Commission

Email c/o: conservation@town.northborough.ma.us

Cc: Laurie Connors, Planning Director
John Campbell, Chair, Open Space Committee



TOWN OF NORTHBOROUGH Open Space Committee

Town Hall Offices • 63 Main Street • Northborough, MA 01532 • 508-393-5019 • 508-393-6996 Fax

December 28, 2023

Northborough Select Board
Mitch Cohen, Chair
63 Main Street
Northborough, MA 01532

Re: 432 Whitney Street, Right of First Refusal Recommendation

Dear Mitch:

At the December 18, 2023 meeting of the Northborough Open Space Committee, the members reviewed the documentation provided by the owner of 432 Whitney Street associated with the Notice of Intent to Sell and Convert Property to Other Use relative to its withdrawal from the Chapter 61A program. The Open Space Committee voted unanimously to recommend in favor of the Town proceeding as necessary to acquire the property for conservation and recreation purposes. The Committee noted the following justifications for acquiring this property:

- The parcel directly abuts and contains a wetland system that is hydrologically connected to Bearfoot Brook and the flood control site that is owned, protected and managed by MA Department of Conservation and Recreation, Flood Control (DCR).
- The parcel could provide an important open space connection between the Wachusett Aqueduct Trail located west of the abutting railroad tracks and the permanently protected open space associated with Bearfoot Brook and ultimately the open spaces along the Assabet River into Hudson;
- Passive recreation facilities could be developed on the property, including a gravel parking lot and trails that could link the Wachusett Aqueduct Trail to the scenic overlook located on the property and to trails located to the east on the abutting DCR property.
- Acquiring this property will accomplish the following important goals and objectives as identified in the 2020 Northborough Open Space & Recreation Plan:
 - Goal #1: Preserve open space for the town's overall benefit.
 - Objective #1: Acquire through fee acquisition or conservation restriction additional open space permanently protected by the Town, State or non-profits, particularly for parcels that provide/can provide key linkages among open spaces.
 - Goal #3: Improve and expand properties for active and passive open space opportunities.
 - Objective #2: Expand connections between existing open spaces and community resources. This can include parking, walking/biking routes, sidewalks and trail connections.

If you have any questions or want additional information, please do not hesitate to contact me.

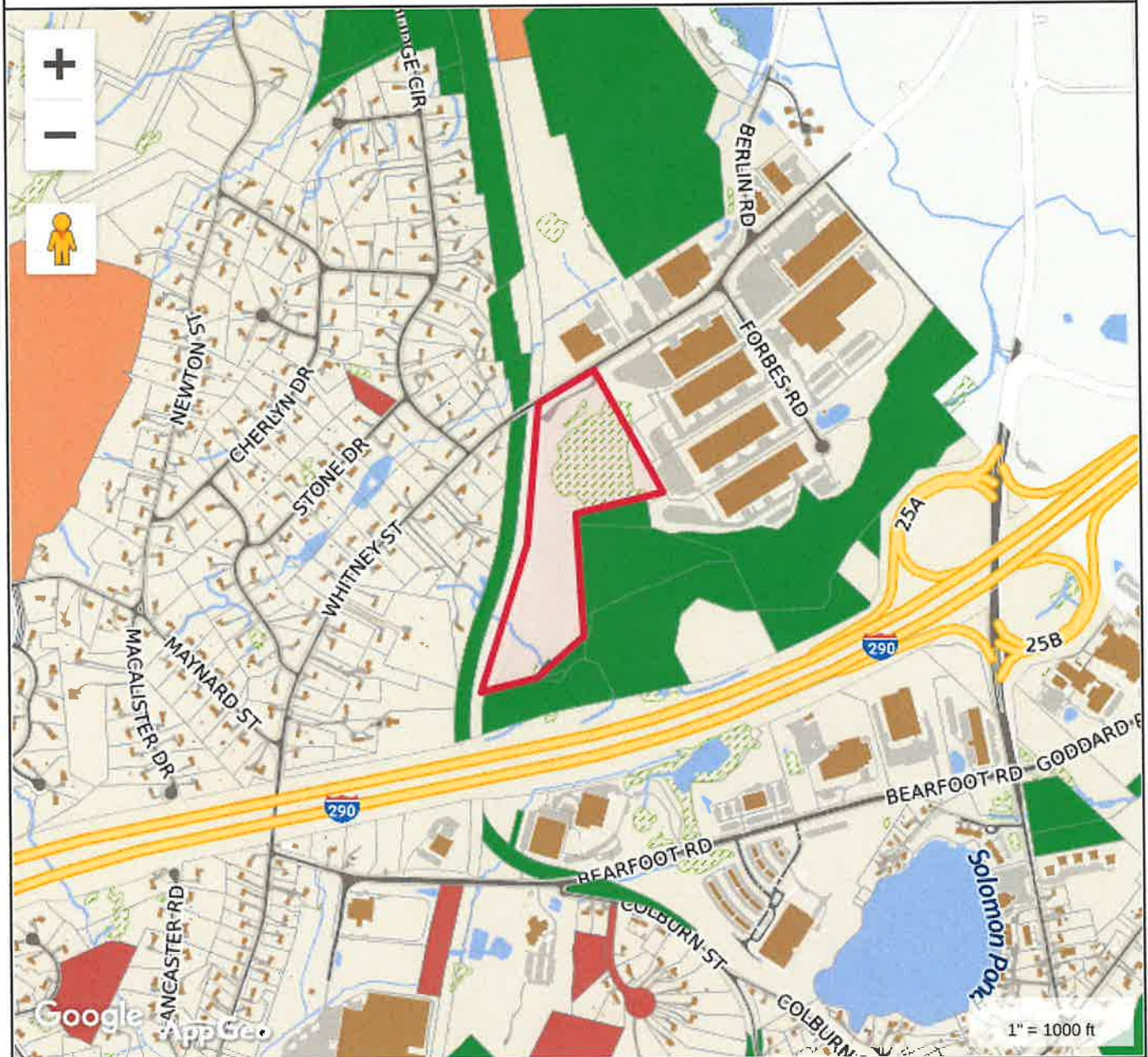
Sincerely,

A handwritten signature in black ink that reads "John Campbell". The signature is written in a cursive style with a large initial "J".

John Campbell, Chair
Northborough Open Space Committee
Ph: 508-878-4683
Email c/o: conservation@town.northborough.ma.us

Cc: Laurie Connors, Planning Director
Greg Young, Chair, Conservation Commission
Vincent Vignaly, Conservation Agent

432 Whitney Street Open Spaces in Northborough



**MAP FOR REFERENCE ONLY
NOT A LEGAL DOCUMENT**

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



Geometry updated 08/18/2023
Data updated Jan 28, 2020

Print map scale is approximate. Critical layout or measurement activities should not be done using this resource.

Map Theme Legends

Open Space

Level of Protection/Ownership

-  Limited, Non-Profit
-  Limited, Private
-  Limited, Public
-  Permanent, Non-Profit
-  Permanent, Private
-  Permanent, Public

432 Whitney Street Regional Open Spaces

Property Tax Parcels

